ANALYSIS

ECONOMY AND FINANCE

URBAN INFRASTRUCTURE FINANCIALISATION IN AFRICAN CITIES

Increasingly, urban infrastructure is no longer provided by the State and countries turn to the private sector, especially financial markets, as is the case with housing finance in Kenya.

Financial market rationalities, like short-termism and shareholder value, now shape urban infrastructure management, overshadowing values of dignity, equality, diversity, and democratic participation.

An anti-financialization response is required, that re-embeds these community values at the centre of urban infrastructure.

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1

INTRODUCTION

Urbanization is considered a key milestone in the development process to the extent that it can improve the living conditions of citizens by improving their access to employment opportunities, and also public goods and services, including healthcare, education, and housing. However, these transformative aspects of urbanization depend, among other factors, on the nature of investments in urban infrastructure, whether by the State, the private sector, or civil society. Urban infrastructure has, therefore, become a topic of analytical interest within urban studies and policy making, to the extent that it is crucial to the maintenance of social relations in urban spaces, can systematically promote or undermine access and inclusivity, embeds particular social interests, is intertwined with political and cultural dynamics, and impacts the household.[1]

This context has drawn the attention of researchers, lawyers, civil society and policymakers to the trends of urbanisation and infrastructure development in African cities, including in Kenya, where, it is argued, the processes are designed by and run for narrow business interests, and are neither inclusive nor democratic. For example, The Just City Working Group (JCWG) in Kenya has therefore formulated the concept of a 'Just City', underpinned by four pillars: (1) dignity, i.e. the right of an individual or a group to be valued, respected and treated ethically; (2) equality and diversity, i.e. an equitable city where the city and its benefits are shared equitably among its citizens; (3) rights and responsibilities, i.e. a city where the rights of all citizens and visitors are observed; and (4) democracy, i.e. a city where citizens make collective decisions based on informed majoritarianism, but in a manner that respects the dignity of all, and that considers equity and diversity. [2]

The realization of a Just City, as formulated by the JCWG, however, depends on the changing forms of infrastructural provision, and an essential aspect of urban infrastructure provision is their financing patterns, which have increasingly shifted from State provisioning to financial market provisioning, captured under the term 'Financialisation of urban infrastructure.'

It is worth noting that this concept of "Financialisation of urban infrastructure" embeds the post-2015 development agenda, as well as the Multilateral Development Banks (MDBs) Maximizing Finance for Development (MFD) call, on the need to mobilize additional (private) finance towards Sustainable Development Goals (SDGs).[3] Notably, the Addis Ababa Action Agenda (AAAA) 2015, shows this need to mobilize additional finance to supplement the developing countries' domestic resources, Official Development Assistance (ODA) and other official flows to attain SDGs.[4] This entails use of both private and public funds and more so the latter to unlock additional (private) finance "…through blended or pooled financing and risk mitigation."[5]

Notably, there have been global initiatives to unlock private finance and investments. The MDBs' Hamburg Principles on crowding in private sector finance calls for among others, establishing a fa-

1 Alan Latham and Jack Layton, 'Social Infrastructure and the Public Life of Cities: Studying Urban Sociality and Public Spaces' (2019) 13 Geography Compass e12444, 2.

2 Friedrich Ebert Stiftung, 'Towards the Just City in Kenya' (Friedrich Ebert Stiftung 2022) 4.

3 World Bank Group, 'MAXIMIZING FINANCE FOR DEVELOPMENT (MFD)' <https://documents1.worldbank.org/curated/en/168331522826993264/pdf/124888-REVISED-BRI-PUBLIC-Maximizing-Finance.pdf> Accessed 3 November 2023.

4 UN, 'Addis Ababa Action Agenda of the Third International Conference on Financing For Development' para 54 <https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf>.

5 ibid 54.

vourable investment climate for the private sector, prioritising commercial sources of financing and the place of MDBs to catalyse private investments through reforms and guarantees. For example, the World Bank Group has pioneered initiatives aimed at creating markets for private finance to address the infrastructure financing gap in least and developing countries. For example, following the 2017 "Cascade Approach", private financing is prioritised over the use of public funds. In infrastructure financing, for example, commercial financing should be sought first, and if the same is not possible due to policy, legislative, or marker constraints, then the necessary reforms should be implemented. If the reforms cannot solve the barriers because of risks, use public risk guarantees and only if all these initiatives are not possible that public and concessional funding can be used.

Notably, in low- and middle-income countries, for example, most Sub-Saharan African countries, the public sector funds most of the infrastructure projects, including urban infrastructure. This is because the region has been unattractive to private investors due to low financial return on investments, lack of investible or bankable projects, and political and economic risks.[6] Based on this, these countries have been exploring various ways to fund new and upgrade existing infrastructure, majorly targeting the private sector to relieve the already overburdened public sector.

We therefore explore the impact of financing patterns on urban infrastructure development by employing the concept of 'Financialisation of urban infrastructure', that is, the increasing role of private finance in the development, management and governance of urban infrastructure. The aim of the discussion is to highlight the changes in the norms, values and practices underlying urban infrastructure development, management and governance, as private sector financing increasingly replaces public sector funding, and to make policy recommendations in light of these changes.

The working paper is divided into five sections. Section II sets out the conceptualization of the financialisaton of urban infrastructure. It provides a discussion of public funding of urban infrastructure followed by private financing. Section III discusses municipal bonds as one of the innovative ways of financialisaton of urban infrastructure and the implications to that. Section IV discusses Public Private Partnerships (PPP) as an important instrument in urban infrastructure using the housing sector in Kenya as an illustrative case. Section V concludes the paper by providing policy concerns in the Financialisation of urban infrastructure and some policy recommendations.

6 ibid 26–31

2

PUBLIC FUNDING OF URBAN INFRASTRUCTURE AS PUBLIC GOODS

2.1. Urban Infrastructure as Public Goods

National and devolved governments have historically played a significant role in providing national defence, policing and security services, education, and infrastructure due to their designation as 'public goods'. This category of public (versus private) goods is a product of the Public Goods Theory, which argues that certain goods and services with specific defined characteristics of publicness (i.e. non-rivalry and non-excludability) cannot be produced efficiently by the private sector of the economy, thereby delineating the role of the State in the provision of these goods and services to prevent market failure.

Beyond the economic definition of public goods, the 'publicness' of urban infrastructure has been underscored by its inherent characteristics. Urban infrastructure:

- is a powerfully enabling condition that is material, durable and multifunctional and thereby fundamentally shapes the economy and society;
- defines and limits the agency of urban dwellers, users and stakeholders, thereby shaping what is possible and impossible in society;
- establishes habits, patterns and path dependencies that define cultural, political, and economic trajectories of communities;
- mediates and facilitates (or limits) interactions between social actors, and also with the material environment.:
- acts as sunk costs that are both investment and endowment and act as assets and vulnerabilities to various individuals and groups, preserving and disrupting the status quo.[1]

These characteristics of urban infrastructure have, in turn, shaped their governance frameworks, by making the case for specific norms and principles necessary for the good governance of public goods, to harness the power of infrastructure for the benefit of the general public.

- For example, the Just City Working Group (JCWG) in Kenya has formulated the concept of a 'Just City', underpinned by four pillars: (1) dignity, i.e. the right of an individual or a group to be valued, respected and treated ethically; (2) equality and diversity, i.e. an equitable city where the city and its benefits are shared equitably among its citizens; (3) rights and responsibilities, i.e. a city where the rights of all citizens and visitors are observed; and (4) democracy, i.e. a city where citizens make collective decisions on the basis of informed majoritarianism, but in a manner that respects the dignity of all, and that considers equity and diversity.[2]

1 Susan Star, 'The Ethnography of Infrastructure' (1999) 43 American Behavioral Scientist 377; Jochen Monstadt, 'Conceptuali zing the Political Ecology of Urban Infrastructures: Insights from Technology and Urban Studies' (2009) 41 Environment and planning A 1924.

2 Friedrich Ebert Stiftung (n 2) 4.

2.2. Public Funding of Urban Infrastructure

The governance of the 'publicness' of urban infrastructure goods and services is strongly linked to the nature of financing procured for developing these facilities.

Historically, urban infrastructure wholly owned and operated by the public sector (i.e. the national governments or devolved governments) has been financed predominantly through the public sector's operating budget. Under this traditional approach, public funding sources are used to (i) hire private sector design teams to develop design specifications; (ii) hire private sector contractors to build according to the specifications. Public sector institutions take the responsibility of operating and maintaining the facilities using the public sector budget.

At the local level (which can include municipal, city, county, provincial or other devolved level of government), the sources of funding for urban governance units include:

- intergovernmental transfers from national and state or provincial governments in the form of direct grants, subsidies, low-interest loans, and credit enhancements;
- local government taxes
- development fees
- user fees
- commercial loans

Direct public funding of urban infrastructure in the form of public expenditure is differentiated from private sector financing based on the specific norms and principles of public finance management and governance.

3

PRIVATE FINANCING OF URBAN INFRASTRUCTURE

The increasing role of private sector financing in urban infrastructure development in sub-Saharan Africa is a result of multiple related factors. For example, national and local government budgets have historically been inadequate compared to the infrastructure financing requirements given rapid urban growth. In recent years, public financing deficits have grown due to austerity measures adopted by donor countries in the wake of the 2008 global financial crisis and the 2020 global COVID-19 pandemic. Consequently, Official Development Assistance (ODA), a significant source of budgetary support for public funding of urban infrastructure developments in sub-Saharan Africa, has also not increased with the increasing financing needs due to the tightening budgets in the respective donor countries.

In this context, private-sector financing has been promoted as the main solution for closing the funding gap for infrastructure development. This has been undertaken through various channels. Sub-Saharan African governments and cities have marketed the infrastructure sector as a promising investment market to foreign investors to attract foreign direct investments (FDI). In this effort, national and local governments have developed and adopted various financial instruments and funding programs to create infrastructure investment markets, including green bonds and county bonds in Kenya. In addition, donors have developed competing initiatives to respond to the Infrastructure financing deficits. For example, the Organization for Economic Co-operation and Development (OECD) countries have developed the European Union Global Gateway initiative focusing on infrastructure development with a specific EU-Africa Investment package for Africa.[1] Third, multilateral development banks (MDBs) through their MFD program, have also pivoted away from direct funding of infrastructure developments through the pool of public finance, to the use of overseas development assistance to mobilise and incentivise private sector financing.

In addition to closing the funding deficit, the private sector's financing role is touted as a conduit for innovation and technology, skills development and capacity building of the public sector to ensure that urban infrastructure facilities and services perform at optimal levels and to global standards.

Types of Private Sector Financing of Urban Infrastructure

Private sector participation in the financing of urban infrastructure developments can take various forms in a continuum between, on the one hand, private sector lending to government-owned infrastructure development projects and, on the other hand, private sector financing, ownership and operation of infrastructure development projects.

1 EU Commission, 'EU-Africa: Global Gateway Investment Package' (1 December 2021) <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/global-gateway/eu-africa-global-gateway-investment-package_en> accessed 16 April 2023.

For government-owned infrastructure projects, private-sector finance plays a role in the following ways:

- Government borrowing from private banks
- Government borrowing from the capital markets through the issuance of national or municipal bonds;
- Government entering into public-private partnerships (PPPs) with the private sector.

For private-sector-owned infrastructure facilities, private-sector finance plays a role in the following ways:

- Privatisation of existing State-owned infrastructure facilities;
- Incentivisation of private sector investments in new infrastructure development projects by the State through market creation, fiscal and other incentives, e.g. government guarantees, tax incentives, etc.
- Crowding-in or incentivising private sector investments in new infrastructure development projects by donor agencies through de-risking instruments funded by overseas development assistance (blended finance).

Compared to direct public funding of urban infrastructure, private sector financing is driven by different norms and principles, specifically the anticipated financial returns of a project, balanced against the estimated risks of the infrastructure investment, the private financier's financing capacity and overall strategy.

Therefore, policy makers must understand the different impacts that public funding and private financing of infrastructure projects have on urban infrastructure development, management and governance.

4

THE CONCEPT OF FINANCIALISATION OF URBAN INFRASTRUCTURE

Financialisation is defined as 'the increasing role of financial motives, financial markets, financial actors and financial institutions in the operation of domestic and international economies'.[1] It is also referred to as the transformation of corporate governance by referencing its objectives primarily to shareholder value, resulting in corporate short-termism and financial innovation to raise capital from the capital markets rather than banks.[2] In addition, Financialisation is also referred to as the entrenchment of the logics and rationalities of the financial system into the everyday life of individuals, households and communities, thereby making them financial actors.[3]

The concept of financialisaton has gained traction in urban studies, and specifically urban infrastructure, where an analytical lens is being trained on the relationship between and impact of financialisaton on urban spaces and urbanisation processes, including in housing, urban redevelopment, critical infrastructure, and urban governance, among other areas. The financialisaton of urban infrastructure can be described reductively as the phenomenon where financial intermediaries, instruments and products are mobilised to channel investments in equity and debt into urban developments.

Urban infrastructure funded and developed by the State is, in many cases, administered without a profit motive on the side of the State and for the interests of the public. Their characterisation as public goods for public benefit fundamentally impacts infrastructure projects' structuring, design and governance. This draws a distinct contrast from urban spaces owned and operated by the private sector or owned by the government but funded by the private sector.

The attraction of private capital into urban infrastructure development, therefore, requires the translation of the public goods/infrastructure's structural and operational characteristics (e.g. their universality, with costs amortised through fiscal and intergenerational frameworks) into financial terms and contracts, i.e. their financialisation. This entails three key processes:

a. **Metrification of the public good/infrastructure**, i.e. apportioning the use of the infrastructure services to a cost centre, e.g. individuals' household bills, car drivers' e-toll accounts, or the State.
b. **Commodification of the revenue streams**, i.e. establishing private property rights over the infrastructure project and/or its revenue stream, to facilitate the valuation of the 'assetised' infrastructure in financial market terms and further comparison of the value of the 'asset' and its yield with other assets and asset classes in the financial markets.

1 Gerald A Epstein (ed), 'Introduction: Financialisation and the World Economy', Financialisation and the World Economy (Edward Elgar Publishing 2005) 3.

2 Ted Rutland, 'The Financialisation of Urban Redevelopment' (2010) 4 Geography Compass 1167; Yanpeng Jiang and Paul Waley, 'Financialisation of Urban Development in China: Fantasy, Fact or Somewhere in Between?' (2022) 56 Regional Studies 1271.

3 Randy Martin, Financialisation of Daily Life (Temple University Press 2002); Jane Pollard, 'Gendering Capital: Financial Crisis, Financialisation and (an Agenda for) Economic Geography' (2013) 37 Progress in Human Geography 403.

c. **Embedding the financialized infrastructure in a set of capital, organisational and regulatory structures** throughout the lifecycle of the asset maximises returns on market investments, manages risks of market volatility, and unlocks the property values of the assets.[4]

The process is, however, much more complex and multifaceted in terms of how it transforms the broader urban ecosystem. This wider transformation is characterised by at least four key trends discussed below:

(a) increased or shift in dependence on urban development budgets towards capital markets and away from direct State financing and bank borrowing;

In this process, the national or local government change their roles from that of direct funding and investment of urban infrastructure as a public good and the provision of social and welfare services to the facilitative role of enabling and driving financialisaton through market creation and incentivising private sector investments.

(b) growing role of financial market actors and institutions in urban infrastructure development;

Where the State and related agencies have retreated from direct infrastructure development, private financial actors play a direct and significant role in the design and development of urban infrastructure spaces. This has created an increasingly significant market for private capital, as evidenced by the growing number of specialised transnational infrastructure investment funds. The consequence of the active involvement of financial market actors and institutions in urban infrastructure developments is that they increasingly impact what is built, where it is built, and for whom it is built.

(c) embedding of the logic of finance capital in the development and governance of urban infrastructure;

At the heart of the financialisaton process is the embedding of the techniques, narratives, rationalities, and value systems of finance capital in the ecosystem of urban spaces, including the material infrastructure (housing, roads, utilities, etc.) the actors involved (e.g. the State, policymakers, financial market, construction and real estate market actors, politicians, technocrats), legal, regulatory and policy frameworks, and the reflexive ideas, texts, representations and practices that constitute the ecosystem. The rationalities of financial capitalism include shareholder-oriented investor strategies such as: short-termism and its resulting portfolio strategies; leveraged equity; portfolio management theory and risk-return rationales; and optimisation of financial performance (active value creation).

(d) increased innovation by State and municipal governments and related agencies in financial instruments.

Increasing financial innovations by urban governance agencies has arguably turned urban policies into financial instruments.[5] This is exemplified by urban policies' breadth of financial innovations. In addition to securitization and Real Estate Investment Trusts, which are products of both legal and market financial engineering, financial instruments include: Tax Increment Financing (TIF), Sales tax TIF; various types of bonds and derivatives instruments.In addition to securitization and Real Estate Investment Trusts, which are products of both legal and market financial engineering, financial instruments include: Tax Increment Financing (TIF), Sales tax TIF; various types of bonds and derivatives instruments.[6]

4 Phillip O'Neill, 'The Financialisation of Urban Infrastructure: A Framework of Analysis' (2019) 56 Urban Studies 1304, 1310.

5 Manuel B Aalbers, 'Financial Geography II: Financial Geographies of Housing and Real Estate' (2019) 43 Progress in Human Geography 376, 597.

6 Ibid

5

PUBLIC PRIVATE PARTNERSHIPS AS FINANCIALISATION OF URBAN INFRASTRUCTURE

Various instruments, programs and models have channelled private financing towards urban infrastructure developments. Public-Private Partnerships (PPPs) have been one of the most essential models of mobilising private finances in urban infrastructure development. This model involves collaboration between the State or its agencies, private sector actors, and, in certain instances, non-profit institutions such as philanthropic organizations. PPP structures allow public and private sector actors to share in allocating resources, risks, responsibilities and rewards. Various blending facilities are involved, including loans, grants, equity and quasi-equity.

The main reason for adopting PPP models in urban infrastructure developments is that they offer greater value for money compared to traditional public procurement. The rationale for PPPs is to bring the private sector's expertise and investment into public service delivery, enabling the government to leverage private capital and expertise while sharing risks and rewards. This approach is presumed to bring about transformative changes in the delivery of public services, precipitating economic growth and development while protecting the interests of both the public and private parties.

The key rationales for this policy perspective include:

- PPPs ensure more effective public resource management;
- They ensure high quality and timely provision of public services;
- PPPs do not impose unforeseen extra expenditures on the public sector;
- Private sector actors are granted opportunities for profit-making;
- Private sector expertise and experience is utilized in project implementation
- Appropriate PPP risk allocation enables a reduction of risk management expenditures
- Infrastructure assets designed under PPP agreements can be classified off the public sector balance sheet.

Table 1 below outlines and describes the various PPP models and structures:

PPP Model	Description
Design-Build	The private sector designs and builds infrastructure to meet public sector performance specifications, often for a fixed price, so the risk of cost overruns is transferred to the private sector. (Many do not consider Design-Build Models to be within the spectrum of PPPs).
Finance	A private entity, usually a financial service industry, funds a project directly or uses various mechanisms such as long-term lease or bond issues.
Operation and maintenance	A private operator, under contract, operates a publicly-owned asset for a specified term. Ownership of the asset remains with the public entity.
Build-Finance	A private operator, under contract, operates a publicly-owned asset for a specified term. Ownership of the asset remains with the public entity.
Design-Build-Finance-Operate	The private sector designs, builds and finances an asset and provides hard facility management or maintenance services under a long-term agreement.
Design-Build-Finance-Maintain-Operate	The private sector designs, builds and finances an asset, provides hard and/or soft facility management services as well as operates under a long-term agreement.
Build-Own-Operate	The private sector finances, builds, owns and operates a facility or service in perpetuity. The public constraints are stated in the original agreement and throughout on-going regulatory authority.
Concession	A private sector concessionaire undertakes investments and operates the facility for a fixed period of time after which the ownerships reverts back to the public sector.

There are several policy concerns in respect of the projects implemented through PPPs, some of which are listed below;

1. PPP projects could be more expensive than traditional public procurement. This is because the assessments of "value-for-money" (VFM) using tools such as "public sector comparators" have frequently been inaccurate in anticipating PPP costs and profits.
2. PPPs, in many instances, do not lead to the mobilisation of private sector finance as the dominant source of infrastructure financing since government funding, along with overseas development assistance, usually accounts for more than 50% of the project financing. This challenges the traditional narrative and rationale for PPPs.
3. PPPs structured and managed with the goal of private sector profit incentives do not prioritise developmental impacts such as poverty reduction.
4. Infrastructure managed on PPP models, such as brownfield concessions, usually leads to the infrastructure facilities being run down and left in worse shape by private sector concessionaires, as they do not understand the associated risks.
5. Transparency: PPP infrastructure projects are shielded from public participation and scrutiny due to the embedding of private law proprietary norms and private sector confidentiality practices.

5.1. Public-Private Partnerships and the Urban Housing Sector in Kenya

Notably, among the components of the right to adequate housing, affordability tops the list, and the lack of affordable housing forces people to settle in unsafe places or compromises their enjoyment of other rights, including food, health care, and quality education. Noting the projected 90% growth in urban areas in the global south and the current high informal settlements in developing countries by 2030, there is a need to address housing affordability to achieve safe, sustainable and human-inclusive cities in SDG 11.

As of 2023, housing deficits stood at over 97 million units in Africa and this is bound to increase noting the continuing population increase and urbanization growth. In Kenya, for example, the World Bank reports that approximately 61% of urban households live in informal settlements and the current housing deficit is about 2 million. Kenya's Vision 2030 targets 200,000 units per year, and the government has included an affordable housing program as one of its key pillars towards the development and growth of the country's economy.

To address the housing deficits, development partners and international financial institutions led by the World Bank Group have directed their efforts towards "the access to housing finance" component of programmes to promote access to adequate and affordable housing. Some of these initiatives include creating markets in the housing sector, which is facilitated by the removal of legislative and administrative barriers, including; land ownership and title registration, "…lending regulations, long-term funding instruments, and improving the liquidity of mortgage assets" to attract investors. Private financing towards the housing sector aims to fill the financing gap, supplement the domestic resources allocated to the housing sector, and increase the pool of financiers providing housing finance.

Housing projects are implemented either by the government, through PPPs, or by private sector investors. Where the private sector is involved, the developers benefit from various government incentives such as tax reliefs, simplification of registration procedures, or access to finance and support by development partners, among others.

5.2. Mechanisms for the Private Financing of Urban Housing

Governments have adopted initiatives, policies, and programs to attract private financing to the housing sector. In Kenya, for example, urban housing has benefited from the following initiatives;

a. Real Estate Investment Trusts

The Kenya government, working with Kenya's Capital Markets Authority, developed regulations for Real Estate Investment Trusts (REITS) in 2013 to expand the role of capital markets in mobilising private financing for urban housing developments through special tax concessions. Through REITS, investors provide funds to acquire rights/interests and become beneficiaries of the trust, hence entitled to income and profits from investments in real estate. However, REITS have replicated the trend of private sector financing flowing towards high-cost housing rather than low-cost housing, thereby exacerbating the market failure the regulations sought to address as they are more focused on returns for investors towards investors than the provision of housing services.[1]

b. Fiscal Incentives for Private Housing Developers

In 2007, the Ministry of Housing developed and offered fiscal incentives to private housing developers, to catalyse low-cost housing developments.[2] However, the scheme has failed to adequately respond to the housing deficits due to two reasons cited by the developers. First, despite the fiscal incentives, high-cost housing developments were still more profitable than low-cost housing, dictating private capital flow to the former. Second, private developers consider fiscal incentives unclear, contradictory, and bureaucratic.

c. Special Economic Zones

Kenya's Special Economic Zones Act, of 2015 aims to promote both local and foreign investments.[3] Special Economic Zones (SEZ) are either public (managed by the government), private (private developers) or those being managed under PPP arrangements.[4] Some of the incentives under the SEZs include tax and duty exemptions and preferential treatment[5] and local governments' advertisement and business service permit fees. Private real estate developers can obtain an enterprise licence under SEZ and invest in residential homes within SEZs. However, the biggest concern is that the housing development projects benefiting from these incentives may not meet the objectives of the affordable housing program concerning low-income earning Kenyans, as briefly demonstrated in the next section.

d. Savings and Credit Cooperative Organizations (SACCOs) and Housing Cooperatives

According to the World Bank's 2017 study, Savings and Credit Cooperative Organizations (SACCOs) and Housing Cooperatives provides approximately 90% of the finance towards housing in Kenya.(Wood, 2018, p. 1). Generally, SACCOs are established based on a non-profit governance model with members having mutual interests. Loans are usually advanced to members based on their savings with relatively low interest rates and flexible repayment models.(Feather and Meme, 2019, p. 1500)

Although an essential alternative source of housing finance to fill the existing gap in Kenya, SACCOs and cooperatives are constrained by limited finance as they rely on members' savings. To promote financial inclusion and exploit the potential of SACCOs and cooperatives to provide housing finance in Kenya, Kenya Mortgage Refinance Company (discussed in section 5.3.2) offers home loans to participating SACCOs, which currently holds 8% shareholding of KMRC.

1 ibid.

2 Aden Van Noppen, The ABC's of Affordable Housing in Kenya, the Acumen Fund, 2012. Page 6.

3 The Special Economic Zones Act, No. 16 of 2015.

4 Section 4, the Special Economic Zones Act, No. 16 of 2015.

5 Full exemption from import duty, stamp duty, corporate tax preferential rates (for example, first 10 years 10%, next 10 years 15% and 30% in the subsequent years) withholding tax preferential rates (5% for interest, management and royalty). Avail able at https://www.invest.go.ke/incentives/#sez-epz accessed 6 March 2023.

By the end of 2021, KMRC processed and disbursed Kshs. 1,342,582,938 to seven (7) PMLs, including 4 SACCOs, namely Tower, Stima, Unaitas and Ukulima Saccos and facilitated the development of standardized mortgage issuance practices for the involved SACCOs to promote access to finance further (KMRC, 2021, p. 2)

Kenya's current Medium Term Plan-IV (2023-2027) was based on the Bottom-Up Economic Transformation Agenda (BeTA) Framework, which recognizes SACCOs and cooperatives as a critical development of the affordable housing agenda, among other development pillars. According to the Sacco Societies Regulatory Authority (SASRA)'s Annual Report (2022), regulated SACCOs disbursed Kshs 680.35 billion in loans in 2022 (SASRA, 2023, pp. 27–28). Out of the total gross loans, the highest proportion, 33.24%, went to land and housing sectors, an increase from 26.97% disbursed in 2021. This increase is partly attributed to KMRC's financing of its SACCO members.(SASRA, 2023, pp. 57–58).

To further support the SACCOs, KMRC intends to implement Kenya Mortgage Guarantee Trust (KMGT) to cushion banks and SACCOs from risks from loans advanced to low to mid-income earners by the end of 2024 (Cytonn Investments, 2024). However, SACCOs and Cooperatives face various challenges that must be addressed to fully realise their potential access to housing finance. For example, only regulated SACCOs benefit from KMRC-backed home loans. SASRA, according to the Sacco Societies Act, No.14 of 2008, licences deposit takes SACCOs and Specified Non-Deposit Taking SACCOs with deposits above Kshs. 100 million. SASRA explicitly states that it does not supervise nor regulate Housing Co-operatives. The Housing Cooperatives fall under the authority of the Commissioner for Co-operatives Development and the relevant home county governments. Streamlining and harmonising the SACCO regulatory framework may be necessary to promote seamless regulation and avoid duplication of responsibilities.

According to SASRA, in June 2024, there were 357 regulated SACCOs. Specifically, there are 1,980 housing and investment cooperatives, and currently, 11 SACCOs are shareholders of KMRC. With about 5000 total registered SACCOs country-wide, these statistics show that regulated SACCOs for housing finance remain significantly low, and most SACCOs not falling under SASRA are then excluded from KMRC-backed home loans, which are aimed at promoting financial inclusion.

There is also a need for legislative and regulatory amendments to ensure proper risk management regarding loans, asset recovery procedures, and protection of members from fraud and embezzlement of funds. These amendments should be implemented to preserve the non-profit governance model and the mutual trust and assistance that underpin SACCOs.

5.3. The Affordable Housing Program

The Kenyan Government introduced the Affordable Housing Program (AHP) as one of its Big Four Agenda in 2017.[6] The program envisioned reduced housing deficit through the delivery of 500,000 affordable homes across the country by 2022, home ownership at reduced costs (50% reduction), job creation in the construction sector (300,000 jobs) and reduced construction costs (30% reduction).[7]

Although that affordability and access to housing finance are among the main challenges in the housing sector, the government's and the development partners' initiatives have been revolving around these issues.

The Government's implementation of the AHP entails both physical and soft interventions where the former includes providing subsidised public land, infrastructure for electricity, water, and sewer as

6 State Department of Housing and Urban Development, 'The Big Four Agenda – About Affordable Housing Program'; GoK, 'The Big 4 - Empowering the Nation' <https://big4.delivery.go.ke/> accessed 6 March 2024.

7 GoK (n 22).

well as roads and related networks, and the latter consists of tax and duty incentives.[8]

To implement the AHP, the government introduced the Housing Levy through the Finance Act, 2023 and the Employment Act, 2007 amendment in 2023. According to the Finance Act, 2023, the employers and employees would contribute 1.5% of the gross monthly income to the Kenya Revenue Authority to be utilised in implementing the AHP.[9] However, various stakeholders challenged this move in court, and the court in November 2023 declared this levy unconstitutional in Constitutional Petition No. E181 of 2023, Okiya Omtatah Okoiti & 51 others versus the Cabinet Secretary for the National Treasury and Planning & 6 others. The court held that the housing levy lacked a legal basis and transparent regulatory framework to implement the same. It was also discriminatory as it focused on people in formal employment to the exclusion of those in the informal sector (Para 220 (V)). To remedy this situation, the parliament enacted the Affordable Housing Bill 2023, which was enacted into law on 19/03/2024.

5.3.1. The Affordable Housing Act of 2024

Section 2(1) of the 2024 Affordable Housing Act defines **affordable housing** as "housing that is adequate and costs not more than 30% of the income of a person per month to rent or acquire".

It also defines an **"affordable housing scheme"** as "the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading". This composite definition of a housing scheme that comprises other urban infrastructure is a promising indication of the state's understanding of the multi-faceted needs of urban dwellers.

Section 2(2) of the Act further defines and classifies an affordable housing unit as follows;

- a social housing unit (targeting those earning monthly income below Kshs. 20,000);
- an affordable housing unit (targeting those earning between Kshs 20,000 and 149,000);
- an affordable middle class housing unit (targeting persons earning monthly income of over Kshs. 149,000; and
- a rural affordable housing unit (targeting persons earning over Kshs. 149,000) (Section 2 (2)).

These categories aim at cutting across the various economic classes of people.

The Act establishes a regulatory framework for the AHP. It seeks to operationalize Article 43(1) (b) of the Constitution of Kenya, 2010, on the right to accessible and adequate housing and reasonable sanitation standards. The Act provides for affordable housing financing by establishing an Affordable Housing Fund, financed mainly by imposing a levy known as the Affordable Housing Levy, at a rate of 1.5% of an employee's gross salary or the gross income of a person received or accrued.

The purpose of the Fund includes to:

- facilitate the provision of funds for affordable housing and affordable housing schemes in the promotion of home ownership;
- provide low-interest loans or low monthly payment home loans for the acquisition of affordable housing units within approved affordable housing schemes;
- facilitate design, development and maintenance of affordable housing schemes in all counties;
- facilitate the development of institutional housing units;
- develop long-term financing solutions for the development and off-take of affordable housing;

In addition to the creation of the Affordable Hous-

8 GoK, 'NATIONAL HOUSING CORPORATION STRATEGIC PLAN 2019-2023' 12 <https://www.nhckenya.go.ke/down/NHC%20FINAL%20STRATEGIC%20PLAN.pdf> accessed 6 March 2024.

9 https://cytonn.com/uploads/downloads/review-of-the-affordable-housing-bill-2023-cytonn-weekly-032024-vf.pdf

ing Fund, the Act also ascribes the State the following roles in the implementation of the Affordable Housing Program:

- Land-based financing: county governments can allocate public land for the implementation of the affordable housing scheme and development of the institutional housing scheme;
- National government agencies may be appointed to develop affordable housing units and the associated social and physical infrastructure;
- Public institutions, e.g. universities, may be contracted to develop institutional housing unit;

The Act also provides that private institutions and persons may be contracted to:

- develop and construct affordable housing units and associated social and physical infrastructure;
- Supply goods and materials in connection with the construction of affordable housing units;
- Provide financing for off-take of affordable housing units.

The legal framework is also significant to the extent that it requires the implementation of the affordable housing program to be guided by:

- the national values and principles of governance under Article 10(2)(b) of the Constitution;
- the principles of public finance under Article 201 of the Constitution; and
- the values and principles of public service under Article 232 of the Constitution.

5.3.2. Housing Finance for Affordable Housing

Regarding development partners, the World Bank Group's IFC has been a key development partner in promoting access to housing through housing finance in Kenya. The World Bank' two notable contributions towards attracting private finance in the housing sector focused on legislative reforms to produce bankable housing projects. Firstly, the Sectional Properties Act was amended to allow individual titling of single units in multi-storey buildings. Secondly, the Central Bank of Kenya Act was amended to empower the Central Bank of Kenya to license and supervise mortgage refinancing institutions. This established the Kenya Mortgage Refinance Corporation (KMRC) in 2018.

KMRC was established as a secondary lender to provide long-term funding to primary mortgage lenders (PML) for onward lending to customers who want to buy homes. In December 2019, the World Bank funded Kenya's Affordable Housing Finance project (USD 250 Million) to operationalise the KMRC.[10] Additionally, IFC was an anchor investor in the KMRC and it invested USD 93 million by purchasing up to 40% bonds to be issued by KMRC whose proceeds would be utilised in onward lending by PML as affordable home loans.[11] Furthermore, IFC also provided USD 5.5 Million under Local Currency Facility to support first issuance of a KMRC Bonds. This was possible because of the WBG's 2017 establishing the USD 2.5 billion IDA18 IFC-MIGA Private Sector Window (PSW) aimed at promoting private sector investments in IDA-(eligible) only countries - Fragile and Conflict Affected States through four facilities, namely; Risk Mitigation, MIGA Guarantee, Local Currency and Blended Finance.[12] [13]

KMRC is an essential secondary lender to residential real estate developers (through PPPs or sole private investors) in implementing the AHP under the Affordable Housing Act 2024.
However, some concerns about the AHP and the Affordable Housing Act have been raised. Some of

10 The World Bank, 'World Bank Approves $250 Million to Enhance Access to Affordable Housing Finance for Kenyans' (World Bank, 30 April 2019) <https://www.worldbank.org/en/news/press-release/2019/04/30/world-bank-approves-250-million-to-enhance-access-to-affordable-housing-finance-for-kenyans> accessed 3 March 2024.

11 IFC, 'Disclosure - DCM KMRC' <https://disclosures.ifc.org/project-detail/SII/45936/dcm-kmrc> accessed 6 March 2024.

12 IFC/MIGA, 'IDA18 IFC-MIGA Private Sector Window Mobilizing Private Sector Investment in Challenging Markets' <https://www.ifc.org/content/dam/ifc/doc/mgrt/ida18-ifc-miga-psw.pdf> accessed 6 March 2024.

13 Boma Yangu, 'Bomayangu.Go.Ke - Affordable Housing Program.' <https://www.bomayangu.go.ke> accessed 6 March 2024.

them include;

a. High Costs of the resultant houses: The houses developed by private developers under the AHP are way more expensive. For example, in Unity Homes mentioned earlier, as among the private residential house developers benefitting from AHP incentives, a one-bedroom house in Tatu City SEZ costs Kshs. 5.5 Million. With an average income of Kshs. 9,840- Kshs. 17,053 per month per household in Kibera in Nairobi, as per Soma et al., with some people surviving on less than 1.90 dollar per day the purchase of such houses may remain an ambition for the poor.[14]
Therefore, although the program targets first-time home owners, the costs of the resultant houses are (extremely) high for low-income Kenyans.

b. Exclusion of the poor: Media reports indicate that the government has issued notices to 6 estates, namely Jogoo Road Phase I & II, Jamaa, Mbotela, Ahero, and Mawenzi Gardens all in Nairobi to vacate their homes, primarily government houses/lands for purposes of affordable housing projects.[15] If these reports are to go by, there is a high potential of forced evictions in the near future leading to adverse human rights violations. These people are promised that they will be prioritised in allocating houses once the projects are complete, with no tangible plans for where they will go. Additionally, there is no guarantee that these same people will be able to afford the resultant houses and only those who can will benefit. Thus, the project risks being a curse rather than a blessing to those needing housing.

c. The Affordable Housing Law and the introduction of the housing levy: Although the Affordable Housing Act 2024 tries to remedy the exclusion of the informal sector from contributing to the levy in its section 4(2), there still exists a lack of clarity on how the collection of the housing levy from income earners in the informal sector will be actualised. Although the housing levy aims to support the AHP, it indirectly perpetuates inequality between formal and informal sectors. This affordable housing levy required employees and employers to contribute 1.5% of the gross monthly salary towards the levy.

d. Transparency Issues: There is a lot of apprehension about transparency in allocating houses under the Boma Yangu Platform for the AHP. The people are apprehensive that there are possible instances of corruption and irregular house allocations to, among others, the government officials without due regard to the public and people in need in particular.[16] This apprehension is further exacerbated by the Finance Bill 2024 which proposed to amend the Affordable Housing Act by removing the restriction on the sale of the affordable housing units by the owners without the consent of the Affordable Housing Board. This freedom allows persons or institutions with significant financial resources to acquire houses in bulk and resell them, thereby abusing and undermining the objectives of the AHP.

The discussion above has outlined and discussed the various financial and legal instruments and programs that the government of Kenya and financial market actors have established to promote increased private financing of urban housing. They include REITs, fiscal incentives for private housing developments, special economic zones for private housing developments, home loan provisions by the Kenya Mortgage Refinancing Company to SACCOs, and the Affordable Housing Program established under the Affordable Housing Act 2024. The analysis of these schemes has highlighted the

14 Katrine Soma and others, 'Food Systems in Informal Urban Settlements—Exploring Differences in Livelihood Welfare Factors across Kibera, Nairobi' (2022) 14 Sustainability 11099, 9 <https://www.mdpi.com/2071-1050/14/17/11099> accessed 5 November 2023.Malang Faye, 'URBAN SLUMS AND INEQUALITY IN NAIROBI (KENYA): A THEORETICAL PERSPECTIVE' (2023) 6 60, 63–64 <https://dergipark.org.tr/en/download/article-file/2591760> accessed 6 March 2024.

15 Mate Tongola, 'Eastlands Tenants Face Eviction as Government Redevelops Old Estates' (The Standard, 3 March 2024) <https://www.standardmedia.co.ke/testbed/sports/amp/nairobi/article/2001490847/www.digger.co.ke> accessed 6 March 2024.

16 Geoffrey Odhiambo, 'Affordable Housing: Balancing Economic And Social Rights Amidst Transparency Concerns - ICJ Kenya' (9 February 2024) <https://icj-kenya.org/news/affordable-housingbalancing-economic-and-social-rights-amidst-transparency-concerns/, https://icj-kenya.org/news/affordable-housingbalancing-economic-and-social-rights-amidst-transparency-concerns/> accessed 6 March 2024.

challenges of inadequate profit incentives to encourage private sector investments in low-profit margin affordable housing programs. They have also highlighted the challenges of ensuring that the government's affordable housing program delivers affordable houses and benefits low-income individuals and households rather than financially resourceful property speculators.

6

CONCLUSIONS AND RECOMMENDATIONS

The discussion above has demonstrated that, indeed, the shift towards more private financing of urban infrastructure results in a distancing away from the values of equity, inclusion, transparency and democracy, which have traditionally undergirded the development, management and governance of urban infrastructure as publicly-funded, publicly-owned, public goods. This presents a challenge to resource-constrained policymakers that continue to increasingly rely on private financing of urban infrastructure, in the face of public sector funding deficits.

To decrease the role of financial motives, financial markets, financial actors and institutions and increase the role of users of urban spaces, especially the marginalised communities, in the development, management and governance of urban infrastructure such as housing, movements need to focus on undoing four key trends that have characterised the broader transformations activated by financialisaton:

(a) Reasserting the role and impact of direct public funding of urban development budgets and reducing dependence on capital markets for funding

- Anti-Financialisation activists should influence infrastructure financing policy by highlighting to State and municipal governments the differentiated impacts of the private sector and public financing of urban infrastructure, including housing, on different users of urban spaces, especially the marginalized communities.
- This includes, for example, i**mpact assessments** on the various affordable housing policies and programs that have relied on private sector funding and fiscal incentives from the government and their limits and challenges in achieving affordable housing.

(b) Increasing the role of the State and democratically-legitimated community organisations in urban infrastructure developments

- Activism should be organised against the state's privatisation plans and make a rational case for the state's retention of its public service provision role, especially in the case of public goods.
- Anti-financialisaton activists should also play a larger role in the development, management and governance of urban infrastructure developments by advocating for the representation of social and political communities and interests in the various governance boards, including in:
  - » The Affordable Housing Board, established under the Affordable Housing Act of 2024.
  - » the boards of cities, municipalities

and urban areas established under the Urban Areas and Cities Act, 2011.
» The Public Private Partnership Committee established under the Public Private Partnerships Act N0. 14 of 2021.
» The National Physical and Land Use Planning Consultative Forum established under section 6 of the Physical and Land Use Planning Act No. 13 of 2019.

(c) Embedding constitutional and statutory principles and values and the JCGW principles in the development and governance of urban infrastructure

- Anti-Financialisation praxis can also use legal strategies and structures to enforce constitutional and statutory principles of urban infrastructure development and governance, thereby embedding these principles through judicial and other orders.
- This includes public interest litigation, e.g. through the institution of constitutional and judicial review petitions against the executive, Parliament, and public agencies, to compel compliance with good governance values that mirror the just city principles.
- For example, the Affordable Housing program was subject to similar public interest litigation that ensured government compliance with public participation requirements.
- Public interest litigation can also enforce a rights-based approach to urban infrastructure by using the courts to audit the impact of infrastructure developments on socio-economic rights such as the right to housing.

(d) Increased innovations by the State and municipal governments and related community groups in public financing instruments and governance frameworks

- Anti-financialisation praxis can also imagine new ways of financing urban infrastructure developments.
- For example, Social Infrastructure Bonds (SIBs) have been used in other countries to mobilise private financing of social infrastructure developments.
- In addition, stakeholders can devise innovative ways of promoting access to capital by SACCOs and Housing Cooperatives without stifling the principle of mutual trust and assistance that underpin SACCOs to promote financial inclusion of low and middle-income people.

On the various private financing models, instruments and programs, this paper recommends that policymakers and other stakeholders address the increasing distancing of urban infrastructure from its original principles of equity, inclusion, transparency and democracy in a number of ways:

On PPPs:

The adoption of PPPs as a financing model for urban infrastructure development should be guided by the following principles:

- The PPP frameworks should promote the public interest as the guiding principle instead of private sector profit motives.
- The PPP frameworks should be underpinned by public funding principles, including equity, equality and diversity, transparency, democratic participation of the communities etc.
- The PPP frameworks must ensure that the selected PPP models provide value for money compared to public funding alternatives.

On Urban Housing:

- Instead of intensified efforts towards private investments in affordable housing development projects, the government and the development partners should focus on supporting public social housing and public affordable housing programmes.
- In this way, low-income earning citizens

will not be excluded from unaffordable houses developed under the guise of "affordable housing programmes" by private investors benefiting from incentives under initiatives such as SEZs, REITs, among others.

- In addition, the role of SACCOs in financing affordable housing can be augmented by strengthening their policy, legal, and regulatory framework to promote their access to more public and private financing, as well as good governance.
- Consequently, more support should be directed towards public social housing and affordable housing for all.

List of Abbreviations

Abbreviations

AAAA	Addis Ababa Action Agenda
BOT	Build-Operate-Transfer
CRA	Credit Rating Agencies
DBFOT	Design, Build, Finance, Operate, and Transfer
DBO	Design-Build-Operate
FDI	Foreign Direct Investments
JCWG	Just City Working Group
KENHA	Kenya National Highway Authority
KMRC	Kenya Mortgage Refinance Corporation
MFD	Maximizing Finance for Development
MSMEs	Micro Small and Medium Enterprises
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
PBC	Performance-Based Contracts
PFMA	Public Finance Management Act
PG(s)	Public good or public goods
PML	Primary Mortgage Lenders
PPP	Public-Private partnerships
PSW	Private Sector Window
REITS	Real Estate Investment Trusts
SDGs	Sustainable Development Goals
SEZs	Special Economic Zones

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URBAN INFRASTRUCTURE FINANCIALISATION IN AFRICAN CITIES

Financialisation of urban infrastructure, i.e. the increasing turn to private financing of urban infrastructure, especially urban housing, has led to the undermining of Just City principles and values undergirding urban infrastructure as a public goods, e.g. human dignity; equity, equality and diversity in access and use of urban infrastructure; respect for human rights; and democratic participation in development and governance of urban infrastructure

For example, the financial and legal instruments and programs aimed at channelling private sector financing to affordable housing infrastructure in Kenya have faced challenges, including insufficient profit incentives for investment in low-income housing with low profit margins and inadequate governance frameworks to ensure that low-income persons rather than property speculators remain the main beneficiaries of the government-run affordable housing schemes.

Re-embedding the Just City Principles requires anti-Financialisation practices, including:
(a) impact assessment and analytical comparison of public and privately-financed infrastructure projects;
(b) advocacy and representation of the interests of social and political communities in the development, management and governance of urban infrastructure; and
(c) legal embedding and enforcement of Just City principles in urban infrastructure e.g. through strategic public interest litigation, and innovating new financing instruments that uphold social rather than profit-making goals.

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