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Entangled Rationalities: Planning Responses to Informal Housing Practices within Middle-Income Neighbourhoods in Nairobi City, Kenya

Eunice Nthambi Jimmy¹. Melanie Lombard²

¹Gran Sasso Science Institute, L'Aquila, Italy

²The University of Sheffield

Abstract

This paper analyses planning responses to middle-income informalities in Nairobi city, an increasingly significant element of informal urban development focusing on ad hoc zoning practices and regularisation. The findings highlight aspects of fractured governance, negotiated planning, and power struggles involving middle-income housing developers and other actors that exacerbate housing informalities rather than ameliorate them. The article reveals how different rationalities drive the different spheres of government functionaries, some of whom use planning systems for financial and political gain. Building on debates around ‘conflicting rationalities’ in planning, the paper proposes the concept of ‘entangled rationalities’, which has scope to highlight the nuanced, multi-actor and non-binary nature of interactions between planning, political and development practice characterising responses to middle-income informalities in the global south cities and how this shapes urban outcomes.

Introduction

Urban growth and city expansion are associated with informal and irregular housing in many countries. Governments in the ‘global south’¹ have addressed the challenge of informal housing through a spectrum of responses, categorised into seven main approaches, namely: ignoring informal settlements; using them for political purposes; eradication, eviction, and displacement; relocation; provision of public housing; sites and services schemes; and upgrading (UN-Habitat, 2015). Most of these responses and the scholarly debates accompanying them focus on informality associated with poverty. Meanwhile, informal practices by more privileged social groups receive less policy and research attention.

Formal planning systems in African cities are often selectively enforced, misused or do not serve a large proportion of society; hence, the informal sector plays a significant role in housing provision, with an estimated 30 to 60 percent of housing built outside official regulations (UNICEF & UN-Habitat, 2020). Development processes in middle-income neighbourhoods are often characterised by informal as well as formal processes, entangled in the semi-legal assemblage of planning law circumvention, flexible omissions, off-the-books negotiations, opacity in documentation and toleration, leading to ‘grey developments’ (Smith, 2020 p.15). Despite a growing awareness of this phenomenon (e.g. Lemanski & Tawa Lama-Rewal, 2012), there remain surprisingly few studies on how city and planning authorities address informalities and non-compliance within middle-income neighbourhoods. An emerging literature on informality beyond poverty has predominantly focused on elite informalities (Moatasim, 2018; Pow, 2017; Vieda Martínez & Chiodelli, 2021), resulting in a lack of policy, empirical and conceptual studies on middle-income groups’ use of informal practices and processes.

¹ The use of ‘global south’ in quotation marks refers to countries in the southern hemisphere, a term used instead of ‘developing countries’ or ‘Third world countries’. The quotes are used to acknowledge the contentious nature involving its interpretation, intricacies and varying viewpoints. The quotations emphasise the significance of contextual comprehension while averting oversimplification or overarching assumptions when discussing the diverse countries and regions encapsulated within the ‘global south’.

This paper contributes to these emerging debates on the informality of the privileged, which may involve violations of planning law and regulations, alteration of original permits, additional features to buildings, change of use and non-compliance with building and architectural designs (Chioldelli et al., 2020; Grashoff, 2020). Nairobi is among the cities with the fastest-growing middle-income group in Africa, leading to increased housing demand, which has strongly influenced the development of unregulated and semi-regulated satellite towns in peri-urban areas, such as Rongai, Kitengela, Tatucity, and Northlands (Muiga & Rukwaro, 2016; UN-Habitat, 2018). Substantial developments in these satellite towns are undertaken without the correct permissions (e.g., change of use or subdivision permits) or constructed without following planning procedures. Meanwhile, in more central areas, formally-planned neighbourhoods are now experiencing informal infill and densification, evidenced by vertical and horizontal housing extensions (Jimmy, 2023).

This study analyses planning responses to this phenomenon, investigating how different eras of urban growth and planning have influenced middle-income informalities in Nairobi and analysing zoning practices and regularisation as specific approaches. The persistence and continued growth of informal middle-income housing in the ‘global south’ cities indicate that the various policy and strategy interventions in the past have not succeeded (Diang’a, 2011), and the paper explores why this might be. Critically engaging with Watson’s (2003, 2009a) concept of ‘conflicting rationalities’, this paper proposes the concept of ‘entangled rationalities’ to more appropriately explain the bricolage of planning, political and development practice characterising responses to middle-income informalities in the global south cities, and how this shapes urban outcomes.

Housing Informality and Planning in the ‘Global South’

Informality as Non-Compliance

Recent debates have suggested that urban informality is strongly related to the compliance and enforcement of regulations. Specifically, it emerges when residents are incapable or unwilling to comply with regulations and/or where the government lacks the capacity or willingness to enforce them (Harris, 2018). In the ‘global south’, non-compliance with planning and regulatory frameworks is a widespread phenomenon, but the degree and form differ from one country and context to another (Alterman & Calor, 2020); moreover, middle-income informality as non-compliance is rarely criminalised in the way that low-income groups’ informal practices are (Banks et al., 2020).

In Mexico, India and Colombia, non-compliance practices by privileged groups are associated with claims to land or property rights through invasion, squatting, or discretionary allocation of public and private land without titles (Connolly, 2019; Lemanski & Tawa Lama-Rewal, 2012; Vieda Martínez & Chiodelli, 2021). Meanwhile, violations of planning regulations (e.g. zoning, land use, building codes, density allowances) during housing construction and modifications to approved building plans have been observed in Argentina (Ferlicca, 2020), Vietnam (Hoai & Yip, 2017) and Mexico (Aguilar et al., 2022). Such practices can be understood as ranging from passive non-compliance or circumvention of existing regulations to profound sabotage (Scott, 1985) but are always expressive of conflicts between state regulations and prevailing norms and practices (Hilbrandt et al., 2017).

Entangled with politics, land markets, planning, and real estate developments, the non-compliance practices by middle-income groups blur the line between official and unofficial or formal and informal (Smith, 2020). This entanglement of formal and informal thrives through interactions and transactions between planning authorities, political actors and middle-income developers, mostly characterised by circumvention of existing regulations, oversight, informal

negotiations and illicit ownership documentation (ibid). According to McFarlane (2012), elite groups profit from their capacity to evade existing rules and regulations through financial or muscle power or the right social and political connections: they “construct mansions by mobilising their networks of personal resources and political connections, developing unlikely alliances, and mimicking bureaucratic devices” (Moatasim, 2018 p.3). The counterpart to non-compliance is lack of (enforcement of) regulations: Cirolia and Berrisford (2017) claim that the formulation, execution, and enforcement of planning regulations in African countries are decided through negotiation, which is often subject to power struggles among different actors, such as the state, civil society, private developers, and financial institutions.

From ‘Conflicting’ to ‘Entangled Rationalities’

The regulatory negotiability that underpins both non-compliance and enforcement may derive at least partly from the inappropriateness of regulations. Planning and regulatory frameworks have been criticised for directly or indirectly reinforcing and/or worsening the issue of housing informalities in the ‘global south’ (Watson, 2009a). Simone (2004) posits that there is a mismatch between the lived reality within African cities and available housing solutions because Western city fantasies heavily influence planning there. Payne argues that such mismatching planning and regulatory frameworks raise the cost of access to the formal housing ladder, impede long-term improvements in housing and encourage corruption, facilitating the growth of informal and unauthorised developments that they intend to prevent (Payne, 2001). What the governments in the ‘global south’ consider a proper urban environment (devoid of informal practices) ‘conflicts’ with urbanites’ socio-economic realities and survival strategies, causing informality (Mwaura, 2015; Watson, 2009b).

The concept of ‘conflicting rationalities’ in urban planning theory seeks to capture the complexities of decision-making in diverse contexts in Africa. Conflicting rationalities become evident in planning systems and policy frameworks when groups participating in development

processes exhibit difficult-to-reconcile perspectives (Cirolia & Berrisford, 2017; Satge & Watson, 2018). In particular, it occurs when assumptions deriving from Western experiences and norms about “proper citizens and communities”, highly influential in local government and planning practice, come into conflict with the lived realities of urban environments shaped by poverty and inequality (Watson 2003, p.398). These studies infer that urban planning systems may engender ‘conflicting rationalities’ between stakeholders, influenced by power relations, market systems (involving producers and consumers) and profit motives (Watson, 2003, 2009a; Wheeler, 2004).

However, the notion of conflicting rationalities may oversimplify the intricate state-society interaction, power dynamics and historical legacies at play (Balbo, 1993; Satge & Watson, 2018). Banks et al. (2020) state that interactions between planning authorities, socio-income groups, and political and economic elites are intertwined in tensions, practice, and negotiation. Hence, these actors’ rationalities (or interests and objectives) are not only opposing but also interact and shape each other through practices and negotiations (Hansen & Vaa, 2004; McFarlane, 2012). In these complex entangled dynamics, different interest groups may clash over a specific development initiative due to differing visions and objectives (Stiefel & Wolfe, 1994), while different government agencies with diverse interests (Ngwenya & Cirolia, 2021) may negotiate a consensus (Cirolia & Berrisford, 2017). For instance, individuals in positions of power may pursue their political and financial objectives through activities such as rent-seeking, bribery, and patronage to influence planning processes (Banks et al., 2020).

Additionally, actors’ rationalities may be nuanced, dynamic and even integrated rather than simply opposing or clashing, as the term ‘conflicting’ connotes. Watson (2003) asserts that rationalities and tensions extend beyond mere communication barriers or a refusal to consider the perspectives of others. Planning practitioners may acknowledge the tensions between actors

but struggle to resolve them effectively because of intense political influence and constraints within legal frameworks (Makhale & Landman, 2017). Hence, rationalities often mutually reinforce one another, and sometimes, one action may trigger the next, with planning and development evolving in tandem, causing *entanglement*. ‘Entangled rationalities’ refers to the complex interplay between legal and organisational frameworks and individual behaviours, leading to intertwined patterns of reasoning and action (Achermann, 2021). This suggests that no one rationality is in play at a specific time. Instead, multiple actors and rationalities interact at the interface of those seeking change and those who resist, which is inherently political and influenced by power dynamics (Murray, 2007; Watson, 2012). Rationalities coexist, frequently overlap, rely on, challenge, and contend with one another (Foucault, 2008).

The rationality of regulatory frameworks to ensure an orderly built environment in African cities has often failed, given that informality plays a major role in urban structuring and processes (Banks et al., 2020; Watson, 2012). The diverse yet complex rationalities and interests between the different actors result in poor implementation of such frameworks (Schilderman & Lowe, 2002), which may lead to non-compliance in response to the ineffective planning regulations controlling development (Mwangi, 2016; Wheeler, 2004). This paper empirically analyses these entangled rationalities within and between actors by focusing on planning responses to middle-income informality in Nairobi, specifically focusing on regularisation.

Responses to Middle-Income Housing Informalities: Regularisation

Governments adopt different tactics to address informalities depending on the socio-economic characteristics of the actors involved, political climate and interest, organisational capacity and government motive and interests (Rakodi, 2006). Regularisation, legalisation and periodic amnesties have become widely employed approaches to address middle-income informalities. More broadly, regularisation programmes are prevalent in many ‘global south’ countries,

particularly in Latin America (Fernandes, 2011) and Africa (Payne & Durand-lasserve, 2012), whereby informal developments and practices across different socio-economic groups are adopted into formal planning systems.

For low-income groups, the regularisation of informal development mainly focuses on titling (one of several ways of securing tenure), improving service provision and living conditions of informal housing (Connolly, 2019; Fernandes, 2011). Regularisation for low-income groups may employ a participatory approach to land regulation, facilitating informal settlement residents' formal land ownership through documents or title deeds (Zakayo et al., 2018). As a needs-driven approach, it often also involves the provision of social and physical infrastructure, including housing upgrading and proper basic services (Ibid).

Meanwhile, the regularisation of middle-income informality often focuses on legalising and bringing unauthorised buildings under the umbrella of the planning framework, given that these are often quality housing on land belonging to developers (Mwangi, 2016; Pow, 2017). Developers usually have legal ownership of the land where they have constructed, but they may have violated land use regulations and planning procedures (Roy, 2005). Regularisation in such contexts, therefore, aims to integrate formal and informal systems and cope with or respond to non-compliance practices (Jenkins, 2001).

The prevalence of regularisation programmes suggests tolerance or even recognition of informal actions and practices by the state (Payne & Durand-Lasserve, 2012). These programmes have been criticised for their lack of context-sensitivity and limitations in realising their main goal: rather than provide solutions to informality; they are often used for political interests and exacerbate exclusion (Fernandes, 2011; Lombard, 2014). For example, in some African countries (e.g., Zimbabwe, Ghana, Tanzania, Kenya, Uganda, Zambia, and Nigeria)²,

² Mpofu (2021) in 'Informal sector taxation and enforcement in African countries: How plausible and achievable are the motives behind? A critical literature review reports that informal sector in the aforementioned African countries is seen as a barrier to collecting taxes and revenue effectively. Hence, efforts are continuously made to include this sector in the tax system.

the governments use regularisation to incorporate informal developments into formal land and housing markets with the motive to expand the tax base and increase government revenues (Payne & Durand-Lasserve, 2012). Instead of addressing informality, these programmes safeguard powerful interests while encouraging more informalities (Page & Sunjo, 2017). In the following analysis, we explore these issues in the context of Nairobi.

Research Context

Informal Development in Nairobi

Three broad phases summarise Nairobi's historical growth, planning and urbanisation patterns, impacting its current (informal) housing development (Mwau et al., 2020), summarised in Figure 1. The first is the colonial administration phase, where the city was partitioned and zoned based on race, facilitated by different urban plans (e.g., the Settler Capital Plan, 1905; the Colonial Capital Master Plans for Nairobi, 1927 & 1948) (ETH Studio Basel, 2008). The plans were exclusionary, with restrictive regulations and policies aimed at Kenyan natives, confining them to the impoverished Eastlands of the city (Huchzermeyer, 2007, 2011). This led to the genesis of single-roomed housing markets in areas like Shauri Moyo and Kariokor, called bachelor quarters because they were meant to house only single Kenyan working men without their families (Boniburini, 2020; Mwau et al., 2020). This exclusionary system provided an environment for the early growth of unauthorised housing for Kenyan industrial workers, especially in areas close to industries. In this phase, the Kenyan middle-class and elite were also established, giving rise to a group of influential leaders who embraced both capitalist and autocratic principles (Huchzermeyer, 2011).

Figure 1. History of planning, housing informality and response strategies. Source: Author's own elaboration

The second is the post-independence and neo-liberalisation phase: between 1963 and the 1990s, the city experienced rapid growth and the proliferation of informal housing due to rural-urban

migration and a high population growth rate (Mwau et al., 2019). The racial segregation legacy was replaced by segregation based on socio-economic status (Manasseh, 2012). The European zones became neighbourhoods for the Nairobi elite, and the African zones became sites of informal settlements and lower-income tenements (Huchzermeyer, 2011; Mwau & Sverdlík, 2020). The state's capacity to regulate all land undertakings (e.g. subdivision and land allocation for residential use) was ineffective and could not meet demand, leading to most land for housing development being supplied through unconventional channels and informal systems (K'Akumu & Olima, 2007). The role of the state in providing housing decreased and was replaced by wide-ranging privatisation of service provision (e.g. housing, electricity, solid waste management and transport services) (Anyamba, 2005; Pitcher, 2017), incentivised by high-profit returns, which favoured elite and middle-class populations (Huchzermeyer, 2011).

The last phase is post-2000, when responsibility for service provision shifted from central government to local authorities. After the promulgation of the new Constitution in 2010, constitutional reforms advocated for planning functions' decentralisation to county governments through a devolved government system (Bassett, 2019). Meanwhile, Nairobi has continued to undergo tremendous changes in urban form and development, primarily manifested in increasing densification (formal and informal) and spatial inequalities (Jimmy, 2023; Jimmy et al., 2019). Development of gated communities targeting middle-income groups and unprecedented urban sprawl in neighbourhoods initially planned for single-dwelling units (e.g., Lavington, Kilimani, Buruburu, Umoja, Kileleshwa) have become the predominant trend (City Council of Nairobi, 2004; Nairobi City County, 2019).

Throughout this historical trajectory, middle-income housing informalities and practices happened in differing degrees and typologies. The upper-middle-income neighbourhoods located mainly in the western and northern parts of the city, characterised by low-rise and low-density residential housing, have changed morphologically over decades due to non-compliant

development favouring high densities and land use changes (Karisa, 2011; Mwaura, 2006). Economically powerful developers have been motivated by increasing profit margins, speculation, and maximising land use (Jimmy, 2023). Middle middle-income neighbourhoods, primarily government-sponsored sites-and-services housing developments constructed in the 1970s and 1980s and characterised by low-rise bungalows with large front and back yards, have recently been characterised with illegal vertical and horizontal extensions (Jimmy, 2023; Ochieng, 2001; Ondieki, 2016).

Lastly, lower middle-income neighbourhoods, mainly located in the eastern, are characterised by high-density apartments (of at least four storeys) (Sverdlik, 2021) where developers do not comply with planning procedures before construction (Jimmy, 2023). Moreover, developers in these neighbourhoods do not comply with planning standards: for example, they use low-quality materials and provide only basic minimum standard services and facilities. These neighbourhoods are often dilapidated and poorly maintained (Mwau & Sverdlik, 2020). However, they are extremely sought after by low-wage workers and represent the most prevalent of the three categories (Huchzermeyer, 2007, 2011).

This view was found in the study, with an urban planning researcher at UN-Habitat defining these lower middle-income neighbourhoods as:

“The neighbourhoods that planning tolerates and assumes that they do not exist... They tolerate them not to the extreme of slums/shanties and do not say they do not like them openly...The apartments in these areas offer better quality housing units [physical appearance and services] than tenements of the lower-income group but still not to the housing standards stipulated in

planning. We know these kind of developments are here to stay” (Participant 14, September 10, 2021³).

This assertion shows that the planning institutions are aware of and tolerate these developments as ‘planning by exception’ (Schramm and Bize, 2022). It also confirms arguments by Smith, Hansen and Vaa that urban growth in Nairobi occurs with minimal control by the formal planning system, where informal developments are taking place with tacit tolerance and to some extent of approval by the state, even though the formal recognition or acknowledgement of these informal practices is withheld (Hansen & Vaa, 2004; Smith, 2020).

Researching Middle-Income Informality in Nairobi⁴

This study employed a qualitative research methodology, utilising both primary and secondary sources of information. A case study design strategy approach was adopted (Yin, 2009), involving defining, identifying, categorising, and mapping middle-class neighbourhoods in Nairobi and selecting Kilimani, Komarock, and Nasra as cases for data collection. These neighbourhoods were selected as representative of the three development phases outlined above (Kilimani was developed during the colonial era, Komarock after independence and before liberalisation, and Nasra after liberalisation and the privatisation of housing supply), with varying degrees of informality (Jimmy 2023). All three were also targeted by the Regularisation Act of 2015, explored further below.

The research was undertaken in two interconnected phases. The first phase focused on reviewing secondary documents, including official planning documents (Nairobi housing development control guidelines, plans, regulations, and policy documents) and media reports

³ For confidentiality purposes, each interview quoted in this publication has been designated with a numerical identifier.

⁴ The research presented in this article was undertaken as part of the PhD project “Reconsidering informality: Informal housing practices, illegal actors, and planning response strategies within middle-income neighbourhoods in Nairobi City, Kenya” (see Jimmy, 2023).

(newspapers, news articles, television broadcast videos, and documentaries). The second phase involved primary data collection (July to November 2021) with key informants and residents of the neighbourhoods. A total of 26 key informant interviews were undertaken with representatives from different sectors involved in housing development, including national and city government representatives, private practice professionals, Residential Association (RA) leaders, NGOs, developers and researchers. Additionally, with residents and Residents' Association representatives, 13 semi-structured interviews, three focus group discussions and five walking interviews were undertaken, the latter in the three neighbourhoods.

Planning Responses to Middle-Income Informalities in Nairobi

This section examines how middle-income housing informality and non-compliance have been addressed using data from the interviews and analysis of plans and policies, through a focus on *ad hoc* zoning practices and *regularisation* as the most significant approaches (for an overview of formal⁵ and semi-formal approaches to middle-income housing informality in Nairobi, see Figure 2.

Figure 2. Formal and informal responses to housing informalities. Source: Author's own elaboration

The first approach, *ad hoc* zoning practices, responds to development needs and neighbourhood trends in a context where outdated zoning regulations are common (African City Planner, 2016; Kanyiha, 2023). The second approach, regularisation to legalise non-compliant developments, represents a move away from smaller-scale approaches via the implementation of the Regularisation Act 2015.

⁵ These also included inspections and enforcement by issuing notices and applying sanctions (e.g. arrests, demolitions, removals, and court cases) to developers.

Ad hoc Zoning Practices

Spot zoning is the act of identifying a portion of land and assigning it a different use from the designation applied to the neighbouring area (Shapiro, 2013). Spot zoning is a form of re-zoning, which includes reviewing existing land uses to allow different uses in a specific area within a larger zone in the master plan, which disregards the existing land use plan and zoning restrictions (Neumann, 2023) in terms of density, use of the land, plot coverage, plot ratio while maintaining land use compatibility. Between the 1980s and 1990s, re-zoning approaches were introduced in primarily residential (mono-functional) areas like Kilimani and Westlands to permit other land use functions such as commercial establishments and offices, especially along the main roads (e.g. Ngong Road, Waiyaki highway) (Mwangi, 2016; Cheruiyot, 2009). The proximity of these areas to the city centre made them prime for commercial and office uses. This state-instigated zoning strategy aimed to increase density along main roads in low-density areas and introduce mixed-use neighbourhood developments (Jimmy, 2023).

However, introducing other land uses (functions) in these areas led to non-compliance practices and informal soft densification by profit-driven entrepreneurial developers (Mwaura, 2006). By 2000, formal and informal densification of mixed-use development became a key feature characterising Kilimani (Jimmy, 2023). Many developments were constructed outside the planning framework (Wafula, 2016). A former executive member for housing and urban renewal in the city narrated the situation as follows:

“Kilimani turned into a major construction site in the 1990s through spot zoning for commercial and office uses because the government created opportunities for people to do things that were not allowed. The lands were leased to investors for political gain, and the politically correct speculators released the land to the market because their interest was high returns in areas near the city centre...Land prices shot up, and in 1997, land value figures were highest. These well-connected developers pushed the government to review densities in the

neighbourhood. In 2004, the Nairobi zoning ordinance was reviewed to permit high-rise buildings of up to 4 floors in Kilimani...” (Participant 46, June 28, 2022).

This statement reveals that spot zoning in Nairobi was a planning strategy to keep up with the development trends in the city, resulting in what Dunning et al. (2020) refer to as ‘hard densification’, whereby infrastructure initiated by the state helps to overcome market disincentives in re-zoned areas⁶. This triggered non-compliance in areas adjacent to or near the spot-zoned corridors and was a catalyst for similar development functions (commercial and office) in areas not selected for re-zoning.

For instance, the Yaya shopping centre (Figure 3) was the first commercial establishment based on spot zoning (change of use from residential use to mixed-use, i.e. residential, commercial and offices) in Kilimani (Kamau John, 2017; Musalia, 2023). The land was associated with a former politician, the late Nicholas Biwott. Influenced by politically connected developers like Biwott, a planning liaison committee meeting held in 1987 recommended the introduction and allowance of office complexes and commercial nodes within the Kilimani residential zone within a 1.5km radius of one another, with the location of these new uses left at the discretion of the approving personnel in development control department (Cheruiyot, 2009) (also referenced by Participant 46, June 28, 2022). Yaya’s construction became a catalyst leading to neighbourhood changes by prompting actual and perceived demand for similar functions (commercial and office spaces). Nearby developments applied to change from residential to office and commercial use, using the Yaya establishment as an example. While some used corrupt means to obtain approvals for similar projects (Citizen TV Kenya, 2023), others

⁶ This contrasts to soft densification ‘primarily driven by land and property owners and small-scale developers ...[to manage] high levels of demand in already desirable places’, supported by land-use and building regulations (Dunning et al., 2020 p.4).

engaged in passive non-compliance, sabotage, or circumvention of the existing regulations (Mwaura, 2006).

Figure 3. Spot-zoned approval in Kilimani to allow Yaya Centre commercial mall and offices. Source: Google images

The above events show how rationalities may be dynamic yet connected, where one action triggers the next across different actors in an urban setting. Spot zoning for the Yaya Centre in Kilimani created a loophole and precedent that nearby plot owners subsequently exploited. Due to these unprecedented land use changes and densifications, in 2004, a new zoning ordinance was formulated to allow buildings with a maximum of four floors (City Council of Nairobi, 2004), but informal densification persisted as developers continued to follow market trends. After 2014, the zoning ordinance expired, but the proliferation of informal densification in Kilimani continued, with buildings reaching up to 20 floors without any review (see Figure 4).

Figure 4. Current Kilimani neighbourhood with different high densities.

Discussing the changes in the neighbourhood, a member of the Kilimani Residents' Association Foundation explained: *“10 years ago, this [referring to the restaurant we were in] was one house for one family, but now more than 1000 people are coming in and out of this building daily. And approximately two to three hundred from the next door, so even the element of a community is lost. You knew your neighbours, but now it is very hard... We have seen an increase in high-rise buildings, and stand-alone houses are being taken over... Bungalows are being phased out. They are being bought up by rich developers, who are tearing them down and putting up multi-storeys of 15-20 floors. They are even pushing the county government to have up to 25 floors zoning review in Kilimani, stating that is the future”* (Participant 14, September 10, 2021).

The narration reveals more entangled rationalities where entrepreneurial developers are interested in maximising profits in the area through high-density development (formal and

informal) and through lobbying planning to review the zoning further (City Council of Nairobi, 2004). Meanwhile, longstanding residents have been resisting these changes through the Resident's Association and participation in off-the-books collaborations with the planning authority to report non-compliances and oppose informal densifications in the neighbourhood, concerned about losing a sense of community. However, the success of these collaborations in the city depends on the strength of the Residents' Association, where the entrepreneurial developers often win by leveraging their financial and political power, leading to some residents moving out of the neighbourhood. The city authorities' continued authorisation of buildings using *ad hoc* zoning practices has led to a recent public petition by the residents⁷ seeking suspension of development permit issuance by the planning department until zoning regulations are reviewed and a new local physical development plan is prepared.

The Nairobi Regularisation Act 2015

The Regularisation Act 2015 is the biggest effort in Nairobi's history to address informality beyond poverty. It aimed to regulate unauthorised developments and integrate them into the planning framework. Many developments were built without city-county government approval because owners lacked official ownership documents, which are a prerequisite for development permits (K24 TV, 2015). Delays in title deeds being issued also contributed to the issue, which was acknowledged by city planning (Citizen TV, 2015).

The Act responded to this situation and, more urgently, to a spate of house collapses in 2014/15 due to non-complying developers building substandard homes in the middle- and lower-income areas, with loss of lives causing public outrage (Huchzermeyer & Obala, 2019; Smith, 2020; Wafula, 2016). City Planning, through the County Assembly, proposed a Buildings

⁷The petition is available at <https://www.change.org/p/stop-issuance-of-construction-permits-and-the-development-of-buildings-above-four-floors>. It states that lack of clarity and enforcement of zoning laws in the neighbourhood is causing unplanned developments and growth, and petitions the county government to immediately stop approving development of buildings with more than four floors. As of 23 April 2024, it had over 2,100 signatures.

Regularisation Bill to facilitate mass regularisation (Citizen TV, 2015). The bill, which received positive support from the general public and the national government, would facilitate mass auditing of unauthorised houses in middle and upper-income neighbourhoods to ensure they met building code standards (The Nairobi City County Regularisation of Developments Act, 2015).

A former county executive member involved in the formulation of the Act outlined the events that led to its development:

“Before the Act, a significant number of developments were taking place outside the framework of the law incentivised by barriers within the system... The titling or planning approval process took forever and was centralised. Also, the threat of encroachment on undeveloped land, even when one has a title, is a prevalent phenomenon. Hence, the owners in these neighbourhoods felt building on the land was legitimate to ensure protection. These incentives instilled weaknesses within the land administration process, planning and the urban governance system, generating informalities. Enactment of the Regularisation Act accepted that some of these incentives for illegal developments came from the government and planning side. Hence, there was the need to develop an amnesty to lift the normal application of enforcement and give people a window to make good what they had constructed without approvals. The Act was to operate for 12 months [the amnesty period]; once the amnesty period ended, it could only be extended by another six months, and no more” (Participant 46, June 28, 2022).

This quote reveals that delays in issuing title deeds partly contributed to non-compliance, revealing the system’s inadequacy, as Watson (2012) discusses. It demonstrates the entangled interaction and relationship between planning and development actors, leading to complex responses that evolve depending on the prevailing settings.

This situation is also revealing political dynamics around middle-class informality. Wealthy investors in some lower-middle-income areas feared sanctions for failing building audits and offered the President financial and voting support for the second-term elections in exchange for intervention by the central government (controlled by the Jubilee party), an issue explored further below. Meanwhile, the city-county government (controlled by ODM⁸) lacked the planning capacity to facilitate the regularisation. In this context, the national government took over the process, simplifying the requirements for obtaining legal permits to prevent demolitions and sanctions on developers and a new regularisation department was formed. The new department created conflicts with the city's planning department. This was confirmed by an executive officer involved in the formulation of the Act, who stated:

“Politics came in, and the framework never implemented what was planned. It turned into a revenue collection tool. The politicians used planners to popularise the Act but decided to change its meaning. The one which was operationalised is not the same as what was in the Act...They were doing the inspection, which had certain legitimacies even without auditing the buildings...and just signing regularisation certificates” (Participant 4, August 05, 2021).

The explanation above aligns with Goodfell's (2019) argument that political figures often use planning and regulatory systems as opportune scapegoats to pursue positions for themselves, acting as popular heroes. It also aligns with Watson's assertion of a fragmented and potentially corrupt government, where officials manipulate planning systems for personal and political advantages, which impacts urban development (Watson, 2012). The Act's implementation lacked coordination between national and city-county governments, entrenching differing interests and failing to address neighbourhood informalities. The regularisation department created by the national government focused on revenue collection from application fees while

⁸ Kenya has been a multi-party system since 1992 and one of the ruling coalitions consists of several parties. Between 2013 and 2017, Jubilee was the ruling party and ODM the opposition. However, in Nairobi county the opposition won the gubernatorial election.

conducting few on-site inspections; hence, houses were regularised on paper, but the *status quo* was maintained on the ground, as the lack of inspections allowed developers to continue participating in non-compliance. Media reports confirm that the Act became a revenue collection tool such that “through the exercise, the county recorded the highest revenue of Ksh 12 billion in 2015/2016” (Nation, 2024).

Findings reveal that the Act resulted in positive and negative outcomes, summarised in Figure 5. On positive outcomes, firstly, banks wanted to protect loans given to developers without proper documentation. Hence, immediately after the Act was enacted, they encouraged developers to use the amnesty period to get the necessary documentation to avoid demolition and losing collateral. As a result, many developers with loans participated in the regularisation process. Secondly, the Act triggered discussions about building inspection services, including capacity issues. It was found that the city authority lacked the necessary resources, so the national government created a new inspection department to handle the regularisation process. Lastly, the Act caused an increase in land titling, documentation, and surveys with support from both county and national governments. The government sped up the titling and regularisation processes during the amnesty period. Infrastructure projects were started in the peri-urban areas where development occurred before the land was serviced.

Figure 5. Positive outcomes and shortcomings of the Regularisation Act in Nairobi.

Regarding negative outcomes, firstly, the city-county initiated the Act to resolve housing informalities, but the national government created a parallel department focused on titling and documentation instead of improving capacity within the county (NTV, 2020; The Star, 2018). This resulted in a lack of coordination with the local planning department, leading to challenges in inspecting and addressing non-compliance (CGTN Africa, 2016), as the separate units

working on similar functions caused duplication of efforts and inefficiencies in the regularisation process.

Secondly, the national and county governments from different political parties had diverging interests in the creation and execution of the Regularisation Act. The national government, led by the Jubilee party, implemented the large-scale titling project for non-compliant elite developers (not originally envisioned by the Act) to garner political support for a second term (The Standard, 2022). A planning officer involved in the formulation of the Act stated: *“When this Act started,.. the politics came in to ensure that planning responded with a merciful face. That was also beneficial to politics”* (Participant 46, June 28, 2022). This suggests that politics around enforcement took precedence from the beginning, as the Act was used to legitimise and safeguard investments belonging to developers who were well-connected to the national government’s executive arm, revealing ‘negotiated’ planning (Cirolia & Berrisford 2017).

Thirdly, the processes became revenue-driven, as the regularisation department concentrated on the economic advantages of collecting revenue through application fees; as the former executive officer explains: *“The moment you judge planning on the revenue rather than on the orderly development that it generates, you begin to use wrong standards to judge planning”* (Participant 46, June 28, 2022). The process became a shortcut for entrepreneurial developers who opted to build without following planning procedures due to the possibility of *post hoc* regularisation, hence contributing to the tenacity of non-compliance in Nairobi. The one-off, 12-month amnesty period of operation (2015-2016) was not observed, with the Act continuing to be a critical feature in the development approval process in the city; during data collection in 2021, it was still a regular planning tool, seven years after its planned expiry.

Fourthly, the Act’s enforcement led to corruption among officials, including enforcement officers, health officers, and building inspectors, who extorted money from developers by

posing as auditing and inspection officers in the field (Nation, 2018; NTV, 2020). They demanded bribes to prevent demolitions and provided fake legalisation documents. As one of the officers stated: *“The Act became a tool that placed discretionary powers on individuals, and they were using it for extortion and received illegal proceeds from developers who were not aware and led to a generation of illegal or fake documentation”* (Participant 46, June 28, 2022).

In fact, findings show that it did not achieve its objective of bringing all unauthorised buildings under the planning umbrella and may have encouraged further informal development. An official in the planning department explained: *“Regularisation encourages people not to comply. The minute you bring in the regularisation law, one can do what they like since they will only be required to pay double the fees whether they have done something accommodated or outside the development policies. It is not positive because it encourages non-compliance”* (Participant 2, August 02, 2021). The Act aimed to regularise more than 50,000 unapproved buildings (Nation, 2016) in identified neighbourhoods, but there are no official statistics on how many developments were successfully legalised.

Discussion: Entangled Rationalities and Middle-Income Informalities

Based on the above analysis, the concept of ‘entangled rationalities’ offers the potential to understand and evaluate responses to middle-income informality through highlighting aspects of fractured governance, negotiated planning, and power struggles involving middle-class groups and other actors.

Firstly, conceptualising entangled rationalities reveals how weak institutions and fractured governance shape development outcomes (McFarlane 2021). Political and planning processes in Nairobi are closely intertwined, making it difficult to distinguish between them, as suggested by Smith (2020). For instance, the divergent and uncoordinated responses to housing

informality at county and national governments, reflecting the control by different political parties, resulted in overlap, redundancy, and duplication. Different rationalities drove the different spheres of government functionaries, some of whom used planning systems for financial and political gain, in keeping with Watson (2012) and Guma et al. (2022). Lack of coordination and diverse motivations impeded proper enforcement of strategies addressing informalities, ultimately failing to reduce non-compliance while potentially exacerbating informal practices.

Secondly, the 'entangled rationalities' perspective also reveals negotiated planning (Cirolia & Berrisford, 2017), especially highlighting negotiable enforcement (by the state) and negotiable compliance (by developers). These negotiations happen through politics, trust networks, and clientelism and play a role in the interactions between planning, enforcement, and development actors (Goodfellow, 2019). Political actors negotiate for political gain, while developers focus on maximising profits by following market trends instead of planning regulations. Political leaders are believed to help developers in exchange for support and votes, as access to authority and resources is crucial for socio-economic and power connections (Watson, 2003). Developers build illegally to meet market demands, hoping that updated regulations would use the development trends to legitimise their developments. This temporary non-compliance forces the planning system to adjust and evolve. The complex and entangled relationships between politics, planning, land markets, and real estate economics leading to negotiated enforcement and compliance impact planning strategies, reflect improper regulatory tools that hinder long-term improvements in the housing sector, especially when facilitated by corruption; hence, unauthorised developments continue to proliferate, as argued by Payne (2001).

Lastly, the 'entangled rationalities' reveal power struggles amid the middle-class and multiple other actors and their agendas. The middle-income group has more bargaining power to negotiate for legitimacy compared to marginalised social groups living in poor neighbourhoods'

'permanent temporariness' either between integration and formalisation or extinction (Pfungst & Kimari, 2021; Yiftachel, 2009a, 2009b). They are well-connected politically and can leverage their social and political power and relationships (Guma, 2021) to avoid sanctions and negotiate for legitimacy, leading to 'planning by exception' (Schramm and Bize, 2022). Planning and government entities' willingness to negotiate on informal activities in middle-income and affluent areas confirms Roy's (2005) assertion that informality is often shaped by the state's ability to define what is considered formal or informal and which types of informality are permitted to thrive. This tends to lead to consensus founded on enduring power struggles and agreements laden with power, involving different actors such as the state, civil society, private sectors, notably developers and financial institutions, not only in Nairobi but in other countries across the globe (see Moatasim, 2018; Roy, 2005; Roy & Alsayyad, 2005).

Conclusion

This paper highlights the factors affecting planning responses to informality in middle-income neighbourhoods, shaping urban outcomes. In Nairobi, where middle-income informalities are prevalent, planning responses have exacerbated rather than ameliorated the situation. This paper explores the reasons for this, examining in detail the planning responses of zoning and regularisation, and arguing that the concept of 'entangled rationalities' is helpful for understanding the underlying dynamics. The concept is especially appropriate given the salience of multiple actors and interests contributing to this situation, where complex motivations impede compliance and hinder efficient enforcement of planning strategies. In particular, the Regularisation Act acted as an amnesty strategy for informal practices, serving as a convenient loophole for entrepreneurial developers. In this way, it resulted in a 'cobra effect' (Siebert 2001), where well-meaning policies inadvertently lead to unexpected and negative outcomes that are opposite to what was intended.

The paper contributes to debates on planning in cities of the global south, critically engaging with the concept of ‘conflicting rationalities’ as the basis for a better understanding of different communicative expectations and discourses (Satge & Watson, 2018), and conflicts between and within different actors involved in housing and urban development (Ngwenya & Cirolia, 2021). Building on this concept, it argues that in complex cases like Nairobi, ‘entangled rationalities’ may be better suited to highlight the nuanced, multi-actor and non-binary nature of these interactions. ‘Entangled rationalities’ is helpful for understanding contexts where competing interests and poorly aligned policies result in non-compliant development practices responding to weaknesses in the formal planning system, leading to back-and-forth interactions between planning and formal and informal developments in the process of shaping urban space. In particular, it highlights the significance of fractured governance, negotiated planning, and (middle-income) power struggles in understanding the outcomes of planning responses to this type of informality, which may be positive or negative.

In this way, the paper also contributes empirically and theoretically to debates on urban informality, particularly those which address the issue beyond low-income neighbourhoods. Despite its increasing salience, housing informality among middle-income groups in Sub-Saharan Africa and other regions is still only vaguely understood, suggesting that this should be an area of priority for planning theory and practice. The case study of Nairobi, where planning responses to middle-income informality are now relatively well-established, presents important insights into the complexities that planning and policy interventions face in addressing this type of informality, which is characterised by non-compliance with, violations of or alterations to planning laws and regulations.

Lastly, the paper provides insights to rethink whether the planning responses discussed are the right approach to housing informality, adding to longstanding debates in responses, particularly around regularisation. We argue that spot zoning and regularisation are piecemeal

interventions addressing localised informalities, which have been subject to political dynamics and have had unintended consequences, including the reproduction of informal developments. This suggests that these approaches, as they stand, are not sustainable for addressing urban informality at the city scale, considering that the cities in the south continue to expand and densify informally. Hence, there is a need to deepen the understanding of how the entire system works and its dynamics: we suggest that this must include recognition of entangled rationalities, an important element of moving development forward, for better or worse.

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Authors' Biography

Eunice Jimmy is a postdoc researcher at the Department of Architecture and University of Napoli Federico II, Italy. Her PhD research focused on “Reconsidering informality: Informal housing practices, illegal actors, and planning response strategies within middle-income neighbourhoods in Nairobi city Kenya” at Gran Sasso Science Institute, Italy. Her research interests include informal urbanisation, social and housing and human settlement analysis, spatial inequalities, quality of life, and inclusive and sustainable cities.

Melanie Lombard is a Senior Lecturer in the School of Geography and Planning at the University of Sheffield, UK. Her research focuses on how the built environment connects to social processes through exploring the everyday activities that shape cities and particularly housing. She is interested in urban informality and land conflict processes in Latin America, Africa, and the UK.

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