An alternative right to the city ideology for realizing adequate urban housing for all: Lessons for Nairobi from Sao Paolo, Brazil and Johannesburg, South Africa

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The *purpose* of this paper is to explore the efficacy of the "right to the city" ideology in realizing adequate housing for all in Nairobi, Kenya guided by its 2030 goal of "*… an inclusive city, thus ensuring spatial and social equity*" as envisaged in the Nairobi Integrated Urban Development Master Plan (NIUPLAN) 2014-2030. The *problem* critiques the over half a century of neoliberal configurations favoring ownership and marketization of affordable housing opportunities that have been inept in sustainably impacting the city's housing realities. Today, Nairobi's urban landscape can be described as "Islands of wealth in a sea of slums" with two – thirds of its inhabitants living in inadequate single roomed housing typologies measuring short in basic provisions and sanitation. The *method of study* makes reference to textbooks supported by desktop review of online journals and relevant urban planning legislations. Specific attention is paid to the application of the right to the city in realizing adequate urban housing for all through appropriating the use value of urban space and strengthening the participation of the urban inhabitants. The study narrows to two world class aspiring cities in the global south – Johannesburg and Sao Paolo – that have enabled and facilitated this alternative ideology. *Key Findings*: Contrasted to Johannesburg and Sao Paulo, Nairobi's legal framework is grey on appropriation of urban space for its use value to achieve its envisioned spatial and social equity. Further the alternative instruments to capture and direct value towards realizing adequate housing for all are weak or inexistent. Nairobi has made significant strides in enabling public participation anchored by the constitution of Kenya 2010. However, these are limited to non-planning dialogues that falls short of 'meaningful engagement' when applied to city planning and can ascribed as 'tokenism participation'. *Conclusion:* Learning from Sao Paulo and Johannesburg, Nairobi needs to urgently activate tools for appropriating the use value of its urban space and strengthen public participation beyond 'tokenism' participation if it is to realize its desired 2030 goal of "*… an inclusive city*", the city urgently.

Key Words: adequate housing for all, neo-liberal, right to the city, appropriation, participation.

I. INTRODUCTION

This aim of this paper is to explore the efficacy of the "right to the city" in actualizing the objective of the Nairobi Integrated Urban Development Master Plan (NIUPLAN) 2014-2030 "*to have an inclusive city, thus ensuring spatial and social equity*"

The over half a century Kenyan government championed neoliberal strategies towards affordable home ownership in the city have yielded small scale experiments and are by and large a failure. (Syagga, Mitullah, & Kirirah-Gitau, 2002)

Neoliberalism as an ideology has multiple configurations which in-common romance supremacy of markets in solving human problems, advocate for reduction in government control of goods as well as promote privatization (Harvey, 2005). These strategies have dominated the global narrative for realizing housing for all by promoting individualization and commoditization of affordable housing (Woetzel et al., 2014).

However, the ineptness of these neoliberal approaches in delivering "…adequate, safe and affordable housing…" is well documented (Butler, 2019) (Jefferies, 2020)(Mitlin, 2012) not only in the global south but in the global north as well (Jones, 2012). When applied to the Nairobi Integrated Urban Development Master Plan (NIUPLAN) 2014-2030 with a stated goal of realizing "*… an inclusive city, thus ensuring spatial and social equity*" the divergence of the neoliberal strategies of exclusive ownership, capitalization and marketization is apparent.

Deconstructing Nairobi's goal 2030 "… *an inclusive city, thus ensuring spatial and social equity*"?

Equity is a concept of justice connoting a sense of fairness or equitability (Denhardt et al., 2014), an egalitarian orientation that all citizens irrespective of socio-economic status or personal traits has a right to equal treatment in the political dispensation (Shafritz, 2015). However equity goes beyond guiding the basis for distribution of goods in society to consider correction of past imbalances. It therefore proposes a "*morally defensible but unequal process*" that benefits greater those disenfranchised by the past social orders(UN-Habitat et al., 2015) (Denhardt et al., 2014)(Leuenberger & Wakin, 2007)(Svara & Brunet, 2004).

Social equity has then been defined as:

*"...equal access to the opportunities that allow people to pursue a life of their own choosing and to avoid extreme deprivation in outcomes—that is, equality in **rights, resources** and **voice**"* (World Bank, 2006)

Spatial equity looks at justice in the spatial lens recognizing the inseparability of human existence and the use of space. This inevitably raises question on equitable access to space especially to those who need it the most (Cooper, 2003) and can also be extended to evaluate the distance to access the space(Halás et al., 2017). Holistically then spatial equity in the urban areas covers the distance and access to spaces that the urban inhabitants would require to pursue their life in a meaningful way such as proximity to job opportunities, education, healthcare and green recreation spaces. (Haynes et al., 2003). Spatial equity can also extend to promoting social interactions that overcome place-based stigmas that label certain zones as 'poor' or 'risky'(UN-Habitat, 2015).

Inclusivity as a desirable feature of sustainable urban development mirrors the UN - SDG Goal 11 on Sustainable Cities and Communities[1]

Pledge: "Make cities and human settlements inclusive, safe, resilient and sustainable." Target 11.1: By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums (2015 – 2030)

Inclusivity calls on urban authorities to engage with the underrepresented or underserved urban population in land use planning, infrastructure design and development of policies to address their housing needs (UN HABITAT, 2020). Participation, therefore, is at the core of realizing an inclusive city (UN Habitat, 2015). For the case of Nairobi, in a minimum, this calls for meaningful engagement with the two – thirds city residents living in single roomed iron sheet or high density tenements (KNBS, 2018)in designing initiatives to realize adequate urban housing.

In pursuing its goal 2030 of "… *an inclusive city, thus ensuring spatial and social equity*" therefore, Nairobi desires to:

(i)   anchor its urban development on the principle and practice of inclusivity which
(ii)   in a minimum calls for meaningful engagement with its low income residents comprising two – thirds of the city residents
(iii)   such that by 2030 all its citizens irrespective of socio-economic status or personal traits are socially and spatially enabled to pursue a meaningful urban life.

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[1]   https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-11-sustainable-cities-and-communities.html

The urgency for the Nairobi city's authorities to concretize action towards this desired goal has been tragically humanized in the recent past especially with respect to its two - thirds majority low income residents (approximately 3 million persons; 1 million households). On September 12, 2011, the Mukuru – Sinai pipeline fire tragedy razed hundreds of slum shanties and claimed lives of over 100 victims(Huho et al., 2016). Even more recently and heartbreaking, on September 23, 2019, the collapse of a classroom block in an informal low income private primary school claimed the lives of at least seven school children (BBC, 2019). Many more fatal tragedies have been documented as well shortcomings on sanitation, environmental pollution and security(Corburn & Hildebrand, 2015)(Corburn & Sverdlik, 2017)(Chikozho et al., 2019).

Given that the neoliberal strategy, as in the past, is likely to fall short of Nairobi's desire, this study explores an alternative right to the city ideology by exploring its application and efficacy in two other cities in the global south trailblazing in considering an alternative ideology.

Using a desktop review approach, I critically evaluate two cities in the global south – Johannesburg and Sao Paolo considering an alternative ideology towards realizing adequate housing for all. Urban sociologist Martin Murray connects these two global south cities describing them as "exemplars in extremis" of the postmodern urbanism referencing the spatial morphological struggles for aspiring "world – class" cities (Murray, 2004). At the height of urbanization in these two cities in the 1990's and early 2000's urban governance was grounded on neo liberal "privatized planning" away from holistic design of the urban landscape progressively creating spatial fragmentation and peripheral urbanization away from a center core.

Nairobi reflects a similar trajectory with development having progressed in an abyss from the year 2000 – 2014 following the expiry of the 27 year effective 1973 Nairobi Metropolitan growth strategy (Nairobi City County , 2014). Increasingly, Nairobi is becoming polycentric away from its decaying Central Business District. Ongoing entrepreneurial capital is creating alternate city nodes such as Tilisi in Limuru (400 acres), Tatu City in Ruiru (5,000 acres), Northlands City in Ruiru (11,000 acres) and Konza technopolis in Machakos (5,000 acres) estimated to accommodate up to 500,000 persons. Further, formally produced urban housing opportunities are designated for sale to individuals through affordable mortgage solutions targeting the middle income "mortgage – gap" group with incomes between KES 50,000 – 149,999. All other projects including slum improvement and social housing programs are billed on a much lower scale - below 15,000 units (Affordable Housing Program (AHP), 2019).

Similar to the Sao Paulo and Johannesburg experience, these neoliberal trajectory has led to precarious urbanism: with extreme and growing disparities in the share of the city's opportunities and provisions for the top 1% wealthiest and the bottom majority. These disparities are particularly evident in provision of basic services. Nairobi's poorer residents pay nearly 4 times more for water, 2 times more for electricity and nearly 20% more for rent per square meter when compared with formally housed middle and upper income class residents, with the provision of sanitation, garbage and sewer services virtually inexistent in the poorer neighborhoods. (Mutinda & Otieno, 2015).

In 2014 and 2016 respectively, Sao Paolo and Johannesburg formally embedded the right to the city ideology in their city planning regulations especially to the case of provision of adequate housing for all its citizens. The right to the city approach in provision of adequate housing for all re-orients how urban space is produced (and valued) emphasizing the use value over the exchange value; and advocates for urban inhabitants to have a literal seat at the urban space planning table(Purcell, 2002) – an orientation out of step with the neoliberal strategies.

This shift away from neoliberal strategies especially for adequate housing by the two cities marks an important case of reflection in light of similarities of Nairobi's urbanization trajectory when juxtaposed to Johannesburg's and Sao Paulo's experience.

Therefore, this study is guided by these three questions:
1.   How are urban spaces appropriated in the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?
2.   How do urban inhabitants participate in the production of the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?
3.   How can Nairobi improve its adequate housing for all policy frameworks in line with the city's objective of "… *an inclusive city, thus ensuring spatial and social equity*"?

II.   METHOD

Therefore, this study is guided by these three questions:

●   **Question 1:** How are urban spaces appropriated in the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

●   **Question 2:** How do urban inhabitants participate in the production of the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

●   **Question 3:** How can Nairobi improve its adequate housing for all policy frameworks in line with the city's objective of "*… an inclusive city, thus ensuring spatial and social equity*"?

A qualitative desktop review approach was employed to analyze core city planning documents as well as anchoring legislations relating to housing and right to the city within the respective cities.

For each of the questions the analysis begins with a general literature search to highlight referenced policy documents as well as visiting the city's websites. After the relevant policy documents and anchoring legislations were identified, full documents were downloaded and first scanned through to identify the key elements under the right to the city ideology: Participation and appropriation of urban space as well as subsidiary related terms including: 'housing', 'space', 'zone', 'index', 'right', 'inclusion', 'social housing', 'equitable', 'just', 'fair', 'all' - to the extent that they expound the application to adequate housing for all. The policy document was then contextualized and reviewed in referenced journals for its application to the city's practice.
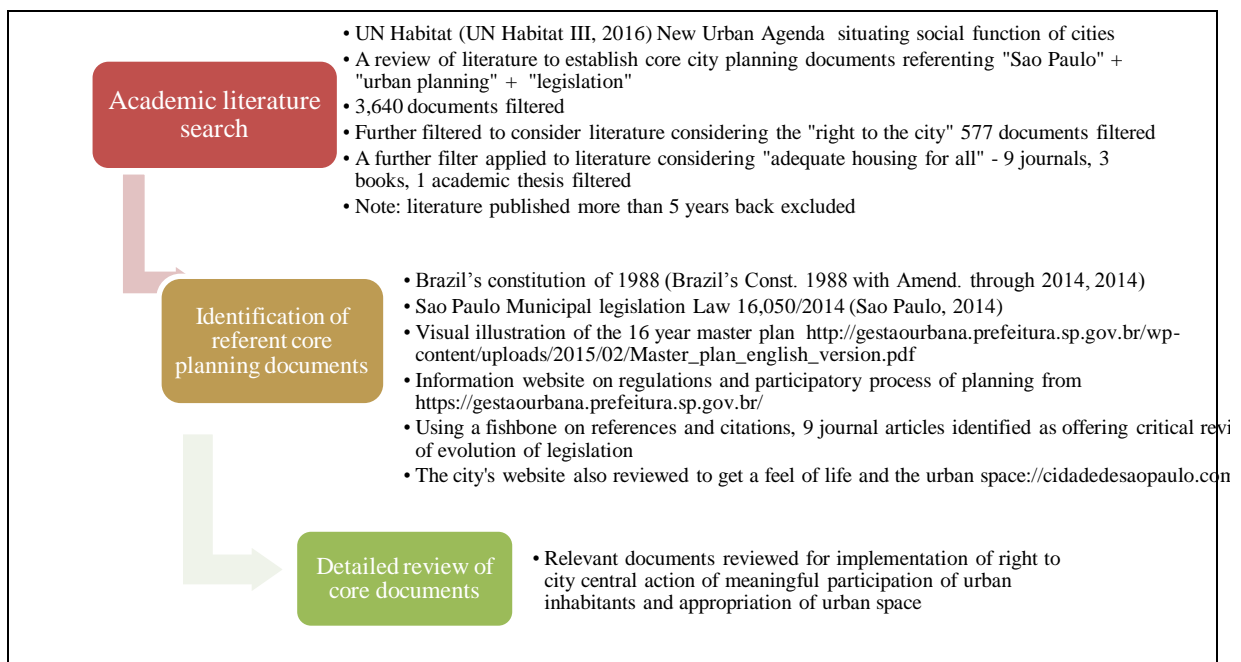

Academic literature search
- UN Habitat (UN Habitat III, 2016) New Urban Agenda situating social function of cities
- A review of literature to establish core city planning documents referenting "Sao Paulo" + "urban planning" + "legislation"
- 3,640 documents filtered
- Further filtered to consider literature considering the "right to the city" 577 documents filtered
- A further filter applied to literature considering "adequate housing for all" - 9 journals, 3 books, 1 academic thesis filtered
- Note: literature published more than 5 years back excluded

Identification of referent core planning documents
- Brazil's constitution of 1988 (Brazil's Const. 1988 with Amend. through 2014, 2014)
- Sao Paulo Municipal legislation Law 16,050/2014 (Sao Paulo, 2014)
- Visual illustration of the 16 year master plan http://gestaourbana.prefeitura.sp.gov.br/wp-content/uploads/2015/02/Master_plan_english_version.pdf
- Information website on regulations and participatory process of planning from https://gestaourbana.prefeitura.sp.gov.br/
- Using a fishbone on references and citations, 9 journal articles identified as offering critical revi of evolution of legislation
- The city's website also reviewed to get a feel of life and the urban space://cidadedesaopaulo.com

Detailed review of core documents
- Relevant documents reviewed for implementation of right to city central action of meaningful participation of urban inhabitants and appropriation of urban space

***Figure 1:** Flow chart on desktop review for the city of Sao Paulo*
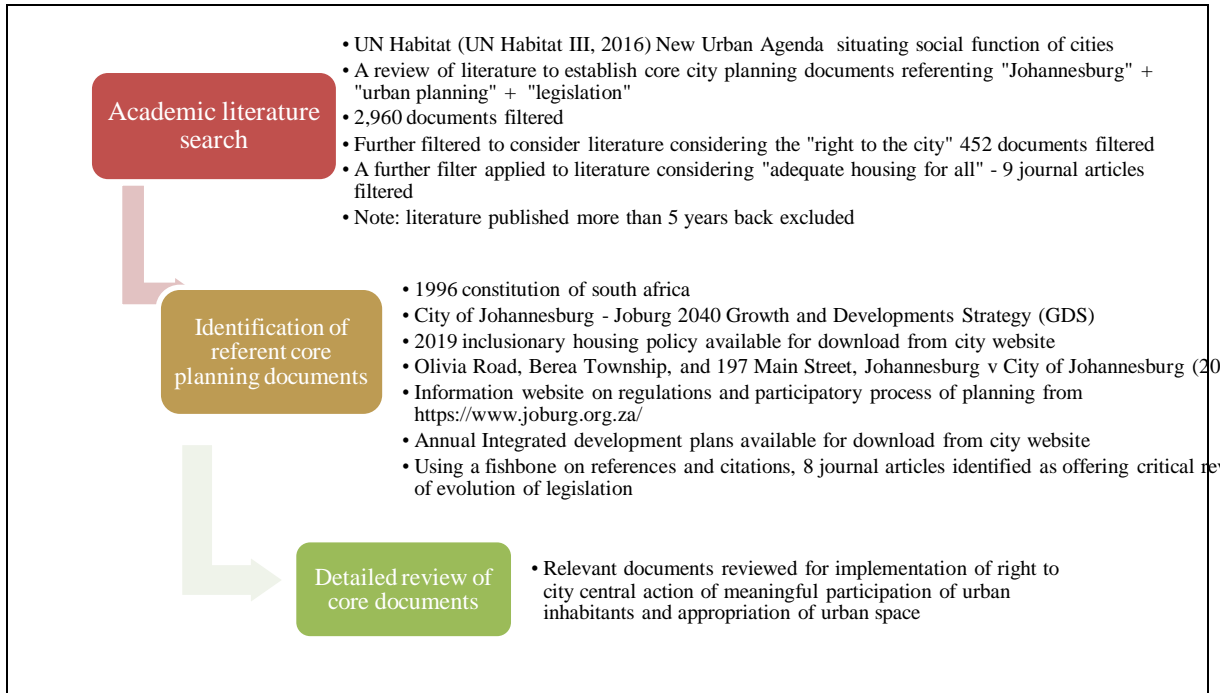
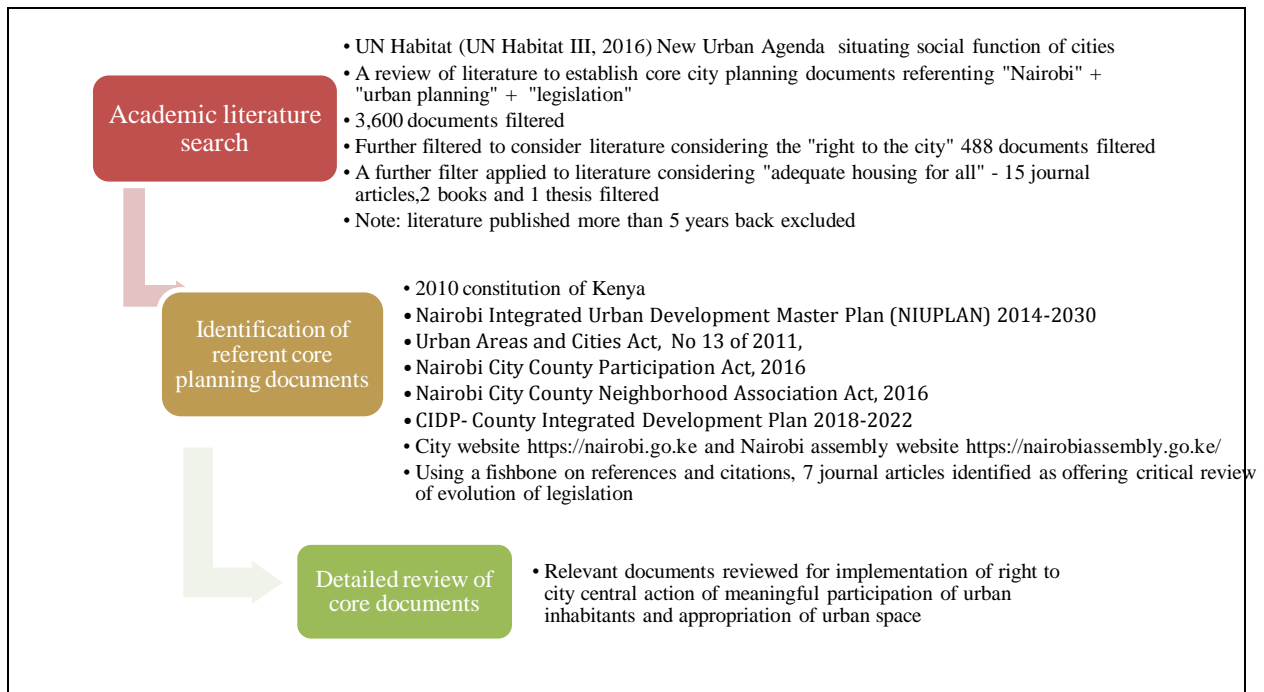**Figure 2:** *Flow chart on desktop review for the city of Johannesburg*

Figure 3: *Flow chart on desktop review for the city of Nairobi*

III.   FINDINGS

Question 1: How are urban spaces appropriated in the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

(UN - Habitat, 2019) Curates the definition of 'Adequate housing for all' to 8 criteria: Access to water; Access to sanitation; Sufficient living area, overcrowding; Structural quality, durability and location; Security of tenure; Affordability; Accessibility; and Cultural adequacy.

These criteria underwrite the definition of adequate housing beyond the structure and basic services and affordability (often catered for in the neoliberal dispensation) to consider other social and cultural factors of the urban space and its inhabitants.

The endearing and intuitively compelling right to city "cry and demand" emanates from the streets and urban neighborhoods (Harvey, 2014) urging for strengthening of urban inhabitants to take charge of the spatial reproduction of the city(Lefebvre, 1967). In contrast to Marxists time and space writing in the 800's where industrialization induced urbanization, Lefebvre realizes that in the 1950's and 60's industrialization by and large no longer determined the growth of the city. Conversely it was the production of that urban space that determined the consumptions and economic flows that determined the industrial production(Lefebvre, 1992).

This presents justifiable arguments towards the city's inhabitants having a say in how the city, for which they are now dominantly producing, is appropriated and used for their future offering a real promise responding to the growing disenfranchisement of the urban low income majority (Purcell, 2002). A central action towards this is the ***Appropriation*** of urban spaces with urban inhabitants reclaiming these spaces by arguing the supremacy of the 'use value' over the property regimes established by the exchange value which can fractures and erodes the social life (Samara et al., 2013). This is not necessarily applied to the Marxist notion of anti – neoliberal resistance toward the use of space. It can however take different form to consider the exchange values that promote common good for instance appropriation as a right for people with disability to move safely within the urban spaces; appropriation of city roads for market days for small scale entrepreneurs or resisting spatial segregation of economic classes(Purcell, 2002).

(i)   Sao Paulo, Brazil

In Brazil the enactment of the "statute of the city" on 10 July 2001, formally incorporated the right to the city and redefined urban land ownership beyond exchange value (Friendly, 2013).

Appropriation in the context of prioritizing the 'use value' of urban space to preserve the social life over the exchange and property rights is a guiding principle in the city of Sao Paulo Municipal legislation Law 16,050/2014 (PREFEITURA MUNICIPAL DE SÃO PAULO, 2014) defined as:

Art. 5 (1) "Social Function of the City comprises meeting the needs of citizens regarding quality of life, social justice, universal access to social rights and socioeconomic and environmental development, including the right to urban land, decent housing, environmental sanitation , urban infrastructure, transportation, public services, work, peace and leisure."

The supremacy of the 'use value' over the property regimes is further clarified in the subsequent definition:

Art. 5 (2) "Social Function of Urban Property is a constitutive element of the right to property and is met when the property meets the criteria and degrees of territorial ordering requirements established by law ..."

According to the Strategic master plan of 2014, developments falling under the Special Zone of Social Interest (ZEIS) territory predominantly demarcated for decent housing of low income residents must, among other requirements, meet set criteria on Social Interest Housing (HIS) and Popular Market Housing(HMP).

Responding to the Lefebvre's perspective of right to city considering not only the present but future rights(Lefebvre, 1967) with respect to housing, Sao Paulo defines "Axes of Urban transformation" determined by evaluating the existing and planned public transport system and the subsequent potential of these axes as population nodes. (Art. 75) (PREFEITURA MUNICIPAL DE SÃO PAULO, 2014). The strategic plan lays critical thresholds for public appropriation of the open and built up spaces.

Financing this re-conceptualization of the urban space is always the elephant in the room. With thinning public budgets towards affordable housing, the opportunities to leverage private capital to deliver right to the city agenda have been increasingly considered(Izar, 2019). Though the inclusionary policies were sound in appropriating the land value capture for the good of Sao Paulo residents, with the ever present pressure of attracting private capital, the right to housing paradigm has been critiqued as blurring the line of state and capital(Shimbo, 2019) and in some cases leading to evictions and gentrifications in the case of Sao Paulo Águas Espraiadas.

Further the national neodevelopmentalism agenda of enabling private market on one hand while instituting the supremacy of the use value and the centrality of participation in urbanization of space on the other hand (Ebenau & Liberatore, 2013) has been critiqued as conflicting with no possible convergence (Rolnik, 2011). The outcomes of these statutes at local level have been argued to be at best uncertain (Friendly, 2013)

and in some cases regressive leading to the "undoing the right to the city" (Freitas, 2017).

(ii)   Johannesburg , South Africa
The effective formation of autonomous local governments in 2000 controlling nearly 80% of its revenues coupled with the desire to instrumentalize "developmental local government" as intentioned by section 153 of the constitution (Parliament of the Republic of South Africa, 1996) saw local governments in South Africa increasingly responsible for coordinating land use, housing and transportation within their jurisdictions (Pieterse, 2019). Johannesburg zoned strategic low income township areas as priority investment areas, encouraging densification and affordable housing that was integrated to the city transit systems (Todes, 2012).

The desire to realize adequate housing for all in Johannesburg was further strengthened by the adoption of the inclusionary housing policy (City of Johannesburg, 2019) which defines inclusionary housing as:
"A housing programme that, through conditions attached to land use rights approvals, requires private developers to dedicate a certain percentage of new housing developments to low income and low middle income households, or to households that may not otherwise afford to live in those developments."

This effectively appropriates the urban space to consider its use value over private exchange value with the city of Johannesburg explicitly stating the function of this policy in leveraging land value capture in favor of the city's residents.

Inclusionary housing is mandatory for any development of more than 20 units and a minimum of one – third of the units must be inclusionary units (City of Johannesburg, 2019). With the nature of qualifying housing being in the lower mid to mid – tier range the policy is critiqued as omitting the very poor, it however does fill the void of realization of integration and densification (Klug et al., 2013).

By effectively limiting the private property rights and value, the inclusionary housing is made effective through incentives to keep private developers in the Johannesburg market. The incentives have however been critiqued as either being beyond the local government jurisdiction – such as the appropriation of subsidies (Kulundu & Muller, 2020). (Butcher, 2020) also illustrates potential of developers tied to the inclusionary housing condition reconfiguring the neoliberal ideology of maximizing return using differential or monopoly rents to realize their deprived property value.

(iii)   Nairobi, Kenya
The articulation of the supremacy of the use value is silent in the case of Nairobi with the right to the city ideology yet to be considered and adopted and the neoliberal strategies still pervasive.

In implementing the NIUPLAN, the Nairobi City County unveiled the urban renewal and redevelopment project in 2018 seeking to transform Nairobi old county owned housing estates on 475 hectares of land[5] to nearly 70,000 modern affordable housing – densifying the units five – fold from the current 16,632 units. The project was subsequently co-opted into to the national government Big 4 – housing agenda that envisions to deliver 500,000 units (Affordable Housing Program (AHP), 2019**).** The dominance of the neoliberal configuration of ownership and marketization is apparent with over 90% of units designated for sale to individuals through affordable mortgage solutions. A paltry 15,000 units have been designated for social housing contrasted to the estimated 500,000 Nairobi city households living in unsanitary slums. Interestingly the national and county strategies do not consider affordable rental housing as a pathway for provision of adequate housing for the majority low income urban residents (Omenya, et al., 2020) bulwarking the current reality of a dominant private rental market serving over 85% of Nairobi City population (Gulyani et al., 2018).

The alternative mechanism of redistribution and realizing social equity is through taxation. In the city of Nairobi, the property tax regime has been neglected with vested interests preventing application, updating and harmonizing of the relevant legislations and cadastral maps increasing inequity in property tax (Nyabwengi, 2020).

Yet another mechanism of appropriating the land value gained by private owners as a result of public infrastructure improvement is rather grey, not stated explicitly and scattered on different land legislation (Nzau & Trillo, 2020).

Appropriation of urban space is not only limited to the realization of adequate housing but also accessibility of the housing unit for the desired mobility by the urban inhabitant – the case of spatial equity that Nairobi desires.

The city has described as the "walking city" with 40% of its residents predominantly making their trips on foot, the highest percentage within the surveyed 14 major African cities (JICA, 2013). Further 89% of Nairobi adults either walk or use privately operated minivans or Matatu's (Salon & Gulyani, 2019). Potentially the city stands to make significant improvement in its score for spatial equity by appropriating its urban space for sidewalks and bus stops which are currently significantly lacking (Omenya, et al., 2020).

(iv)   Summary findings on Question 1

Whereas Sao Paulo and Johannesburg have taken measurable steps in legislating the appropriation of its urban space for its use value in provision of inclusionary housing, Nairobi is generally quiet on this as it is yet to adopt the right to the city ideology. Nairobi's hesitation could be explained by its rather complicated land rights with historical and overlapping contestations. Nairobi has been argued as an accidental capital city (Omenya, et al., 2020) with majority of its land appropriated for private ownership with upto 99 year leases and a weak property tax regime relying on a 30 year old property roll that effectively nets less than a quarter of property owners(Nyabwengi, 2020) .

Additionally the cities of Sao Paulo and Johannesburg have applied spatial equity beyond the housing opportunities by linking its zoning and inclusionary policies to urban logistics. With majority of Nairobi residents making short trips predominantly by foot or 'matatu' the city can significantly improve its score on spatial equity by improving walkways and bus stops to serve its majority populace.

Question 2: How do urban inhabitants participate in the production of the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

UN - SDG Goal 11 on Sustainable Cities and Communities[1] articulate the pledge to:

"Make cities and human settlements inclusive, safe, resilient and sustainable." Target 11.1: By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums (2015 – 2030)

(UN Habitat III, 2016) articulated the New Urban Agenda taking to cognizance the function of cities beyond economic spaces to include *"the social and ecological function of land"* (par. 13(a)). Therefore supporting progressive realization of adequate housing in cities encompasses promoting policies that:

"focus on the needs of the homeless, persons in vulnerable situations, low-income groups and persons with disabilities, while enabling the participation and engagement of communities and relevant stakeholders in the planning and implementation of these policies, including supporting the social production of habitat, according to national legislation and standards."

This essentially promote the notion of collective production in the urban space (Maringanti, 2011) with the city as a common good.

Urban spaces including the build-up areas and natural endowments are more of common good than public good. Whereas the public good is characterized economically as non-excludable and non- rival (accessible to everyone but used in individual independent capacity), common goods are characterized by being "non – excludable" but "rival" (Though accessible to all they are relational goods and an individual can actually be worse off from the provision of a common good. Well- being can therefore only be adequately expressed in a collective manner) (Deneulin & Townsend, 2007).

Evaluating the right to the city with the urban space, its infrastructure and services as a common good therefore transcends individual preferences since it is a collective resource shared and irreducibly produced in common through freely undertaken common activities as the inhabitants interact in daily life (Berni & Rossi, 2019). The discourse on common good has however been dominated by (Hardin, 1968) famous essay *"The tragedy of the commons"* inked in the same year that the right to the city was conceived. With common good having no individualized ownership, the optimal action from the individual egoistic standpoint is to maximize their own utility without taking to account availability to others. This inevitably leads to overuse and misuse, decay and eventually destruction (Maringanti, 2011).

In the case of the city the tragedy of commons manifests in practices of appropriation, dispossession, gentrification and enclosures taking away common spaces and converting spaces to consumptions. This leads to conflicts, congestions and overall decay of the city's infrastructure and 'oeurve'[3] of the city (Berni & Rossi, 2019). This tragic formulation has been critiqued notably by arguing that the institutions governing collective action strongly determine the fate of the common good (Dietz et al., 2003). The control over decision making and the vesting of the underlying property rights in effective agency then arguably animates the impact of the right to the city in realizing the common good of the urban citizenry (Maringanti, 2011).

The right to the city advocates for strengthening of voice of urban residents to participate in the production of urban space at any scale to ensure it full utility to their everyday lives(Lefebvre, 1967). This, is argued, would address the static 'out of sync' nature of cities in responding to the needs of its populace. This kind of participation is fundamentally different from the 'tokenistic' form of participation that involve convincing the mass to back a pre crafted solution calling for ***rescaling*** of participatory structures centered around the inhabitance of the urban space as opposed to the hegemonic political membership based on national citizenship.

(i)   Sao Paulo, Brazil

Participation is established as a guiding principle in Article 5 (7) of the city of Sao Paulo Municipal legislation Law 16,050/2014 (PREFEITURA MUNICIPAL DE SÃO PAULO, 2014)

Art. 5 (7) *"Democratic Management is the guarantee of the participation of representatives of the different segments of the population, directly or through representative associations, in the planning and management processes of the city, of making public investments and in the elaboration, implementation and evaluation of plans, programs and urban development projects."*
To guarantee participation, the policy allows for 20% of residents already occupying such areas to request for Management councils. Further the urbanization plans can be initiated by members of a ZEIS with the city authority providing technical, legal and social support. (Art. 50 (1, 2) (PREFEITURA MUNICIPAL DE SÃO PAULO, 2014).
A particular challenge to Sao Paulo was actualizing participation in a city of 19 million residents with the city adopting the middle ground of engaging with social movement and neighborhood leaders (Rocco et al., 2019)

(ii)   Johannesburg, South Africa
In contrast to Brazil, though the right to have access to adequate housing is enshrined in the South African constitution under section 26 of the bill of rights (Parliament of the Republic of South Africa, 1996), this is defined as a function of national and provincial government. The desire to decenter the development of urban areas to the local level with respect to adequate housing in South Africa has been molded through progressive court rulings requiring local governments to provide alternative accommodation in the event of state induced evictions as well as conduct in 'meaningful engagements' (Turok & Scheba, 2019).
The Constitutional court ruling on the 2008 matter of Olivia Road (Pillay, 2012) mandating *'meaningful engagement'* as a defining factor in how the city authorities relate with city residents fit in glove with the right to city cry for participation of city dwellers in determining the utility of the urban space (Coggin & Pieterse, 2012). This principle of participation has been co-opted into the city's 2040 spatial development framework (CoJMM, 2016) stating:
"Participation in decision-making is therefore an essential aspect of social inclusivity."
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(iii)   Nairobi, Kenya
With the adoption of the Constitution of Kenya 2010 (Government of Kenya, 2010)public participation is recognized as a national value and principle of public service under article 10(2)(a) Further Article 232(1)(d) and (f) provides for *"involvement of the people in the process of policy making;* and *" transparency and provision to the public of timely, accurate information;"* respectively.
This principle has then been cascaded under the devolved system to various instruments of governance at county level with all major planning and financing documents requiring evidence of public participation espoused in the County Government Act 2012 Part VIII. This process has however been critiqued as a tokenism process meeting the letter of law – falling short of the spirit of the constitution for meaningful participation (Mbithi et al., 2019).
In the case of Nairobi, appended to the NIUPLAN are summaries of inclusive participations undertaken in the design of the plan. The NIUPLAN however recognized the weakness in community participation mechanism critical for successful implementation (Nairobi City County , 2014).
To address this challenge, Nairobi enacted the Nairobi City County Neighborhood Association Engagement Act 2016 establishing the legal framework for engaging with the city's neighborhood associations in decision making on county service delivery. This however does not formally invite the associations to the spatial planning table.

(iv)   Summary findings on Question 2
The three cities have made major progress in advancing the instruments of participation in the planning of urban areas, and in common creating instruments to engage with social movements and neighborhood associations. However, there are significant differences in the approach and strengths for each of the cities. Whereas in the case of Sao Paulo a bottom - up approach to planning is recognized in legislation where citizens of a zeis can initiate the planning process, this is not the case for Nairobi with neighborhood engagement limit to service provision such as garbage and water services. Sao Paulo has been lauded for strengthening the voice and place of grass root residential organizations in determining the growth of the city (Earle, 2017). Johannesburg on the other hand has applied the jurisprudence on *"meaningful participation"* to strengthen the credibility of the participatory process by making it more transparent and accessible through leveraging on technology and social media, presenting an innovative approach towards realizing meaningful participation.
Question 3: How can Nairobi improve its adequate housing for all policy frameworks in line with the city's objective of "… *an inclusive city, thus ensuring spatial and social equity*"?

Legislatively, Nairobi's desire for adequate housing for all is anchored in the Constitution of Kenya (CoK) 2010(Government of Kenya, 2010) Article 43(1) (b)

Every person has the right - (b) to accessible and adequate housing, and to reasonable standards of sanitation;

The County Governments Act 2012 gives effect to Chapter 11 of the Constitution, providing for county governments responsibility to deliver services. Part 10 outlines the County governments' role in county planning.

The National Urban Development Policy (NUDP), 2016 activates clause 184 of chapter 11 on urban areas and cities stating:

184. (1) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular—

(a)   establish criteria for classifying areas as urban areas and cities,

(b)   establish the principles of governance and management of urban areas and cities; and

(c)   provide for participation by residents in the governance of urban areas and cities.

NUDP, formally endorsed in 2016 is considered the "umbrella policy" in delivering social and physical infrastructure to urban areas in Kenya. Specific objective (g) states: *Ensure adequate housing for all urban income groups.*

Its guiding principles towards adequate housing for all include:

(a)   Equity in access to resources and opportunities;
(b)   Inclusivity: cities and urban areas that cater for all segments of urban residents including marginalized and vulnerable groups;

Though the ineptness of neoliberal strategies in meeting this desire is evident, the right to the city approach is yet gain traction and create impact on the ground Learning from Sao Paulo and Johannesburg, Nairobi can leverage on the appropriation and participatory elements of the right to city ideology, as a path of recognizing, redefining and incetivizing the redevelopment of informal settlements wholly ignored in the NIUPLAN of 2014 – 2030 as expanded in the discussion below.

IV.   DISCUSSIONS

Therefore, this study is guided by these three questions:

●   **Question 1:** How are urban spaces appropriated in the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

●   **Question 2:** How do urban inhabitants participate in the production of the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

●   **Question 3:** How can Nairobi improve its adequate housing for all policy frameworks in line with the city's objective of "*… an inclusive city, thus ensuring spatial and social equity*"?

Though geographically dispersed and of varying urban densities - Johannesburg, Nairobi and Sao Paulo also share characteristics of being economic hubs of their states, experiencing high rates of urbanization and grappling with chronic shortfall of adequate housing. Further, common to the three cities is the constitutional recognition of the socio – economic right for all citizens to adequate housing. Johannesburg and Sao Paulo have however considered an alternative right to the city trajectory towards realizing adequate urban housing for its residents.

The three cities share in common (Murray, 2004) ascription of an aspiring "world – class" city as articulated in their respective vision statements. Sao Paulo is undoubtedly trailblazing after years of urban reform movements with the right to city agenda. Article 6^4 of the Brazil's constitution of 1988 (Brazil's Const. 1988 with Amend. through 2014, 2014)sets housing as a social right.

In the case of South Africa, against the backdrop of an apartheid segregation era, post-apartheid housing policies have inevitably sought to critique and right the past of racial division with policies dominantly aiming to compact and integrate cities (Harrison & Todes, 2015). Johannesburg stands out particularly as the referential economic powerhouse of South Africa and its progressive institutionalization of the Integrated Urban Development Framework (IUDF) and the enactment of the 2019 Inclusionary housing policy to instrumentalize this (City of Johannesburg, 2019).

Fundamentally in political terms of the policy framework, by ideologically reframing the urban area as a common good under the right to the city, Johannesburg and Sao Paulo have made significant progress in enfranchising its inhabitants to determine the appropriation of the city which they co-produce. This better aligns

the cities' towards realizing inclusion in their housing opportunities. In contrast, under the big – 4 agenda, Nairobi neoliberal approach to ownership of affordable urban housing buttresses the supremacy of the exchange value of the urban space.

Socially, Nairobi's housing gap is systemic, cutting across multiple income brackets and though ambitious – the big 4 agenda of 500,000 housing units bridges just 20% of the current middle income group demand. The individualization of the limited affordable housing units through home ownership raises questions about sustainability and gentrification. Similar to what was witnessed in the neoliberal housing programs of the 1970s and 1980s, it is rational to assume that the unserved 80% of the middle income group would then resort to accessing housing units that are designed for those lower income or social support groups who make up two - thirds of Nairobi's urban households—by offering to pay higher prices for these units than the lower-income groups can afford. This will exacerbate gentrification of lower income groups, negating the city's desire for an inclusive planed urban space.

Economically though, financing the right to the city ideology is always the elephant in the room.. Nairobi's urban renewal program, targets private capital. Under a joint venture agreement, the county provides land for construction and collateral purposes as well as improve basic service infrastructure. The private sector investor is responsible for meeting all the construction finance for all the projects. While this improves the feasibility of actual production of affordable housing units, it oftentimes does not safeguard gentrification which for the case of Nairobi is the majority two – thirds of residents at risk.

Legally speaking, with an ever burgeoning urban population for all three cities, appropriation and re appropriation of urban space becomes an ever-present need. Also, realizing participation in the sense of "meaningful engagement" is an ever present challenge. Whereas Nairobi recognizes the principle of participation and has taken steps in setting legal frameworks for consultation with organized city residents, the efforts fall short in recognizing the role of the citizen in determining the growth of the city. The novel strategy adopted by Sao Paulo in recognizing and engaging with social movement and neighborhood leaders enabled the approval of an effective 2014 spatial plan. Conditioning private profits to public interests through direct participation by the urban residents (Fernandes, 2007)) has been instrumental in blocking violation of rights enshrined in law (Rolnik, 2013) and has challenged the segregated exchange dominated inner city development model that had pushed low income households to the periphery of the city (Caldeira & Holston, 2008).

Environmental considerations are clearly articulated in Nairobi's approach with the NIUPLAN subjected to the Strategic Environmental Assessment (SEA) process to identify environmental and social impact of the plan as well as embed appropriate environmental safeguards. The prescriptive approach by Johannesburg and Sao Paulo have on the other hand been criticized as fragmenting the understanding of right to the city laying more emphasis on the human appropriation of the urban space over other ecological considerations.

V. CONCLUSION

The study set to explores the efficacy of the "right to the city" ideology in Nairobi guided by these three questions:

● **Question 1:** How are urban spaces appropriated in the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

● **Question 2:** How do urban inhabitants participate in the production of the cities of Sao Paulo, Johannesburg and Nairobi towards the realization adequate urban housing for all?

● **Question 3:** How can Nairobi improve its adequate housing for all policy frameworks in line with the city's objective of "*… an inclusive city, thus ensuring spatial and social equity*"?

The study has established that Nairobi is weak in effecting instruments of appropriation of urban space towards its envision future of a city with "*spatial and social equity*". The city's planning instruments are grey on legislating the use value of urban space, and the alternative property tax system is generally weak and ineffective. Comparatively the cities of Johannesburg and Sao Paulo have effectively applied Land value capture, incentive mechanisms and Inclusionary housing instruments to appropriate the city for the use value of its inhabitants.

To realize spatial and social equity, Nairobi needs to intentionally prioritizes and pursues legal instruments of appropriating urban space value to capture and redirect capital towards addressing the needs of its two-thirds majority low income households. The time is ripe for various instruments successfully implemented in other cities including: Land value capture and transfer of development rights.

In its quest for spatial equity the city can engage low lying fruits associated with accessibility of majority of its residents by providing sidewalks and improving bus stops.

In the case of participation, though Nairobi has made significant steps in enabling public participation in planning matters anchored under the constitution of Kenya 2010, this falls short of 'meaningful engagement'. Community engagement instruments are limited to discussing basic services provision such as greening the city,

policing and waste management with no leeway for communities to initiate and direct planning. This can be described as 'tokenism participation'. Learning from Sao Paulo and Johannesburg, strengthening the legal and institutional recognition of the urban voice to facilitate stronger participation in shaping the city's growth can sets the city on a more sustainable trajectory of urbanization.

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