

Exit the Rentier State: Legislating to Provide Affordable and Secure Tenure in Kenya

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Classical liberal economists argue that an efficient rent market can be achieved according to four rationales, which justify rent controls. Under a proposed Kenyan Landlord and Tenant Bill “‘premises’ means a place of residence or business to which the Act applies.” It proposes to dilute the existing Landlord and Tenant (Shops Hotels and Catering Establishments) Act protections accorded to informal (unwritten) and short term (less than 5 years) business premises while raising the Rent Restriction Act residential premises’ protective ceiling for dwelling houses with rentals from below the current Kshs 2,500/= (30 US dollars) to a new minimum of 15, 000/= (190 US dollars). Standard rent freezes rent at such low levels depending on their assessed rates as at the year when standardized. Insensitively, however, the new Bill substitutes the rigid concept of “standard” rent with a concept of “fair” rent. The criterion for its determination of fair rent is no longer to be according to standardized rent, frozen on the date the law becomes operationalized, but by comparison to naked “‘market value’...which means the current value of the premises and the land on the open market.” Such “ ‘market rent’ means the rent at which the premises concerned might reasonably be let on the open market, based on the going rent for comparable lettings taking into consideration ‘the factors’.” Not only does the proposed Landlord and Tenant Bill provide far inferior protection to middle classes than does the existing Rent Restriction Act, but also it proposes greater illusory comfort to informal settlements than the liberal World Bank-sponsored “slum upgrading” and “sites and services” schemes of the 1970’s and 1980’s, which never took the issue of land into consideration.

Commendably, the under the new Bill, protected premises mean “any living accommodation used or intended for use as rented premises” thus including informals. Moreover, “‘tenancy agreement’....includes a license to occupy.” However, all rents are at risk of determination according to open market values. Critical legal scholars question the rationale behind reviewing the BPRT’s relevance “in light of progressive liberalization.” They reject radical free-market contention that rent decontrol enhances affordability and secures tenure. Instead, critical legal scholars’ support the National Land Policy’s call for a needs-based approach that would effectively freeze rental markets. In the short-term, Kenyan constitutional courts are urged to adopt creative decisions to interpret the right to life so as to include the right to adequate housing.