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THE KENYAN JUA - KALI: A QUEST FOR A COMPREHENSIVE
LEGAL REGIME:

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE AWARD OF
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DEDICATION

To my parents, Kalungu and Kavata, whose love to me is invaluable, and who have been a source of great inspiration in my life.

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Apart from topographical errors, I exempt them from any mistakes in this work and personally take full responsibility.

T H A N K Y O U:

INTRODUCTION

In this topic "The Kenya Jua-Kali: A quest for comprehensive legal regime" an attempt will be made to unveil the controversies and confusions that surround the sector. These controversies and confusions stem from the fact that the sector is not clearly defined - Its limits are not clearly spelt out and marred by hostile official policy which makes the sector prone to persecution. These attributes are all-pervading in the corpus of the sector.

The sector emerged and subsisted for a time without attracting official recognition. It is only in early 1970s when the sector was politically recognised. Due to the fact that the sector was politically - not officially recognised up to today no clear - cut policy on how the sector should operate and most political pronouncements end up being falsehoods or blowing up beyond proportions the little that is in place or are never turned into reality. This characteristic features prominently throughout the sector- there is non - transformation of the averred recognition into reality and the statements remain void of target as the policy is never implemented, and even where there is a positive move towards implementation, very little has been achieved in terms of effecting the policy of the central government.

Despite this hostility the sector is ever-growing and it seems that it is there to stay. It is a sector which Kenya has to live with and cannot suffer to miss as it possesses a reservoir for current and future employment opportunities steering and projecting economic growth, and alleviating the entrenched poverty, not to mention the escape gate it offers to the poor and those without "tall relatives" who can make connections for them to join the formal sector. In a way it offers the necessary morale for the operator to invest all their energies as they are free from frustrating supervision which instead of boosting the morale of the employee inhibits them from working to the best of their abilities - a feature common in the formal sector. The sector has a vast potential in terms of its precious resources for economic and social development

These positive attributes demand that the sector should be considered and incorporated in the overall development plans. It is deplorable that the sector has been sidelined in many development plans and budget estimates since its recognition - only in a few years were ^{it} ~~it~~ touched by way of setting up an underground machinery. The sector needs to be supported and nourished so that it can realise growth and attain maturity. All cartels to its growth whether financial or legal ought to be removed as it is only through this when it can be relied upon to unleash its potential and fill the gap it emerged to seal.

In this thesis, the first chapter will be devoted to the definition of the informal sector. Although a precise definition might be lacking analysis of what is understood as jua-kali will be given. This will be drawn from different jurisdictions - first in Kenya, second in a commonwealth country, and thirdly an international approach. In the same chapter, some justification for the emergence and growth of the sector will be included. Government's initiative towards the promotion of the sector will be given in this stage.

In the second chapter, some pieces of legislation which hamper the growth of the sector will be analysed - whether prohibitive or regulatory, the legislation will be critically analysed in the light of the attributes of jua-kali sector and the extent of which it offends, or regulates or encourages the proliferation of the sector. A look of what other countries have done towards streamlining the operations of the sector will be given.

The third chapter will be recommendations and will be derive its materials from the preceding chapters. It will give a suggestion of how the law and the policy should be - what needs to be removed or added to the present legislation or what a new legislation designed for the sector should contain.

The conclusion will give an overview of how the sector is, in the light of what will have been discussed in the first three chapters.

CHAPTER ONE:

(a) DEFINITION OF JUA-KALI AS A SECTOR

The word 'Jua-Kali' describes the climatic conditions under which the artisan's operate: and is mostly characterised by open sunny atmosphere whether selling second hand clothes, making jikos or garage work, the operation is carried out in hot sun (jua-kali). This goes ahead to explain the fact that there are either no structures or if they are there, they are only temporary and not permanent. This lack of permanence remains a distinguishing attribute of jua-kali operation.

In soft terms, jua-kali sector is referred to as informal sector or micro and small enterprises, thus for the purpose of this thesis, the terms will be used interchangeably. Since it is an informal sector, it is characterised by absence of some key features which are prominent in the formal sector and thus the two can be contradistinguished. In most cases, the formal sector is clearly defined, regulated and controlled, its extent is clear and characteristics discernible. The jua-kali sector suffers from want of a precise definition, non-comprehensive statutory control and want of fixed limi

Although the terms 'formal' and 'informal' are opposites, this does not necessarily mean that informal sector's salient features are exactly opposite of those prevalent in the formal sector. Despite recent recognition and lack of an all-embracing legislation the informal sector possesses some attributes which still feature in the formal sector. This is aggravated by the fact that informal sector's parameters are not clearly defined and there is a tendency for new operations to emerge and be part of jua-kali. These operations could be possessing the characteristics of both sectors but be more inclined to jua-kali than the formal sector.

The want of a precise definition on the part of jua-kali, an aspect which makes it difficult to statutorily control and regulate the sector can be attributed to the age of the sector. When compared with the formal sector, jua-kali is relatively a youthful sector. It emerged as a result of the failu

of the formal sector.

The formal sector was unable to live to the demands of all the job-sectors. Many school drop-outs and even some people with academic certificates could not be accommodated by the sector due to limited employment opportunities that the sector could offer. In order to get a means of livelihood, the jua-kali sector came up as one of the available options.

Notwithstanding the fact that the sector is a young one, as shown above, when the time the sector emerged and has been moving is considered, a conclusion of reluctance on the part of the government is inevitable. More than three decades have elapsed since the sector emerged and was granted recognition. This period of time is not short in any shade. Thorough regulation and control measure should have been put in place if the recognising commitment was a serious one. Thus the government deserves its share of blame for the current state of jua-kali - for had it moved swiftly to promote the sector, may be the sector would be having a new face-free from controversies and want of a clear definition, aspects which stranglehold the sector at every corner.

Defining the informal sector is, often times, as controversial and elusive as understanding it. The sector's operations keep on clouding with the operations of the formal sector, small - cottage, industries and some service industries. An operation could be a jua-kali one, but if undertaken on another scales, it just crosses the line and becomes a formal one. For instance, hair plaiting commonly referred to as 'saloon' if carried out in rural areas where there is no electricity and adequate equipment, and the operator uses her hands is an exemplified form of jua-kali. The operator will be charging reasonably low fees. But if the same operation is carried out in Nairobi Central Business district where there is a well furnished room, high class furniture and electric-propelled equipment with minimal human labour, this becomes a formal sector operation. The charges are exorbitantly high and only the well - off financially will benefit from the services offered by these saloons. A kiosk owner selling goods in his resident - house can be considered as a jua-kali but whole seller offering

almost the same goods is in the formal sector. A person selling cigarettes in a busy street is part of the jua-kali operators but if selling the same commodity on wholesale or as a distributor he ceases to be a jua-kali operator and joins the formal sector. Thus the difficulty of a steadfast definition of informal sector is yet to be resolved.

It can be argued that despite a lack of a clear definition of the sector, interested parties can know it when they see it. There are some characteristics which favour informal sector more than the formal. In the above cases, the saloon in rural areas has very little initial capital, uses human labour, has low running costs and charges reasonably low. The equipment to be purchased includes a comb and simple oils for softening the hair. Not complex furniture. A city saloon will be equipped with the opposite - high class furniture, complex machines which are electric propelled. Huge initial capital is required, thus the charges are bound to be high. A person selling cigarettes in a busy street can operate with an initial capital of five hundred shillings. All he has to buy is five packets of every brand of cigarettes and may be a small table. Thus all, and is assured of getting something to survive on. If a wholeseller or distributor, the capital required is quite high and the jua-kali operator has no dreams of having such huge capital one day in his purse. Thus the sector operations can be discerned when seen. There is no clear cut line dividing the formal sector from the informal. An activity falling under the latter becomes a former if it advances to a point.

Due to this controversy and illusion, the sector has been difficult to comprehend. The sector has been operational within and above the law. It is shielded from the law. The fact that it is not properly recognised by law implies that enforcement machinery is weak. For any recognition to be effective it must be portrayed in a legislation. Now that this is not the case with jua-kali in Kenya, the recognition is ineffectual to transform policy into reality /action. In the absence of a specific legal basis upon which the sector falls, any action taken in furtherance of the interest of the sector can be declared illegal for want of a firm foundation upon which the sector

can rest.

It will be an action taken in the air without supporting posts and is bound to fall.

In appreciation of the difficulties inherent in coming up with a square-cut definition, emphasis has been shifted from search for a concise definition to basic attributes that underline the sector. It is in the light of its salient features that a definition can be derived. This approach is not peculiar to this sector alone. Under many other subjects, if an item is too complicated to define, a list is given of examples that form the item. For instance, under the Income Tax Act, taxable income is given, not by concise definition but by some sources of income which should be subjected to tax. Thus, by analogy, this is the same approach.

The salient features associated with the sector remain vital to its full grasp. These unique attributes range from difficult in obtaining raw materials to lack of capital and good quality equipment, thus there is a high degree of improvisation. Other notable characteristics include constraints of managerial skills, lack of organised training systems and lack of recognition by policy-makers.² The artisans, who mostly come from low income families lack sufficient investment capital. They only purchase a small portion of the product they are selling or equipment with which to offer services. The sector wants to compete with the formal sector. It wants to offer for sale the same or substantially similar goods or services. The artisans will try as much as possible to improve on the technology employed in the formal sector, but sell the products at a low price to attract consumers. For example a jua-kali padlock can be equally qualitative as one obtain in the formal sector but sold at a lower price.

Kenya has endeavoured to define jua-kali sector. According to a report appearing in the bureau of statistics, the sector is defined as generally those activities carried out:-

- (i) In open-air market or in a temporary structures and there is no separate and permanent or enclosed individual business premises

(ii) with little initial capital outlay and no major administrative or legal formalities involved.³

(iii) With ease of business entry and exit.

These characteristics are not ~~definitive~~ enough as it is not a requirement that for an operation to be fully informal, it must posses all the attributes. One of them may be absent yet the operation still fall under jua-kali. Generally, many artisans venture into the sector with little initial capital and can carry their operations in open sun. However there are instances when the operator may start with huge initial capital. A case in point is the classical example of Jua-kali operation of a motor garage. The capital required is high. The rent is high, numerous equipments have to be purchased for example Jacks, and one has to be able to bear the responsibility should a vehicle while within the garage be affected by a peril not insured against. Despite all the capital outlay, the operation is still jua-kali.

Most plots in Gikomba area are permanent and there is enclosed individual business premises. The artisan~~s~~ knows very well that his premises is enclosed. Even the city council rents plots to individual engaging in jua-kali sector. These may have little initial capital but they are operating in a permanent and enclosed premises free from scorching sun, but they are still jua-kali operators.

Ease of exit or entry into an undertaking is not only an attribute of jua-kali but also of all other sector. With exception of specialised fields such as medicine, law, an individual can always leave one operation for another. A person engaged in formal sector can tender his resignation and joint private sector but as a formal operator. He may start distributing cigarettes or a wholesale shop. While a distributor or a wholeseller he can still opt for other undertakings depending on the rewards he reaps from wholesale or distribution and those he expects to earn in the opted operation.

It can be seen that the sector does not enjoy exclusive characteristics. Much of these characteristics can still be found in the formal sector. An

auctioning business carried out in an open market but in an individual premises is still formal operation despite the sunny weather: Some characteristics can be shared by the two sector, other be absent from an informal activity. Thus the want of a clear definition rages on.

Indeed the characteristics of the sector is as diverse as the countries and regions in which it is found. What is considered a jua-kali operation in Germany is not necessarily so treated in Kenya, and what is considered a jua-kali operation in Nairobi city may not be so regarded in the remote Mwingi North constituency. Diversity in Kenya ranges from services of shoe-shiners, maize roasters, cart pullers and car washers to petty commodity production of fundi making improvised jikos, handicrafts, bed springs, dyeing clothes. The sector includes the self-employed and the employed, the skilled and the unskilled, the literate and the illiterate, the land owners and the landless, young and the old, men and women, urban and rural.⁴ A broader definition will encompass open-air garages, fish mongery, hawking, carving and making manilla woven baskets (ciondo), ~~Kiosks~~, barbers, hair plaiting.

A word to word scrutiny of the foregoing reveals that there is no clear dividing line between informal sector and cottage industries. This is obvious due to the diverse characteristics the formal can borrow from the latter. Activities such as saloons, running kiosks, selling ciondos, vegetables and fruits cannot be placed in any particular class to the exclusion of the others. The informal sector can borrow from cottage industries or formal sector becos the latter two's failure to provide employment necessitated the emergence of the former. These three exist, hand in hand, but in competition to each other through serving the common purpose of provinding employment to those they absorb.

The sector was globally recognised in 1972, and prior to that year, it was existing without recognition. This global recognition did not give clear definition of the sector, and like the Kenyan approach, it defined it in terms of its unique characteristics. The 1972 International Labour Organisation, Kenya Mission; suggested that informal sector activities are characterised by

the following seven criteria.⁵

- (i) Ease of entry
- (ii) Reliance on Indigenous resources
- (iii) Family ownership of enterprises
- (iv) Labour intensive and adaptive technology
- (v) Small-scale operations
- (vi) Skills acquired outside the formal school system
- (vii) Unregulated and competitive market.

This enumeration of the chief attributes of the sector is wider than Kenya's approach as it derived from different countries and regions, but the seven criteria is discernible in the Kenyan context. As was said in the Kenyan approach, these characteristics serve as a general rule and exceptions are bound to be found. It is not mandatory that for an activity to qualify as an informal one, all the seven attributes must be present. A combination of some may make it qualify even if all the others are absent. There is a move towards liberalisation of all markets, thus not only will informal sector be competitive but the formal sector still. Prices of commodities is to be determined by market forces and not determined through anti-competitive tendencies such as predatory pricing, collusive tendering, agreements on prices to be charged for goods and services. Thus in the modern economy, unregulated and competitive markets is not a exclusive characteristic of jua-kali, although the fact that in the informal sector the competition shown can go beyond the intention of the liberalisation of all markets, for it is possible to find four kiosks and many hawkers displaying their commodities in front of one plot. To them it does not matter that the returns of each individual is reduced. It is better for each of them to get alittle than one person getting all of it and the rest going without any.

Although skills are learnt outside the formal school system there is no harm if learnt inside a formal school. No school as yet teaches how hawking is done, how shoes are shined, how hair should be cut or plaited, but a person who went into a mechanic and driving school can very easily benefit from the

services offered by open-air garages. A person who went to a dress-making school stands to benefit while at Gikomba by purchasing clothes, at low prices, cutting them and making other garments such as children clothes, shirts, skirts, and selling them at high prices. Of late, these artisans purchase the clothes directly from a factory and make suits, trousers. However if one has been in the sector for long enough to be conversant with the skills required, thus fair.

Jua-kali operations offer the best reward if owned and run on a family basis. It is the owner who can work tirelessly, in the hot sun for he knows what the commodity he is selling or services offering cost him. He cannot charge high price and in the records enter false price. He cannot maliciously fail to record any sale or offer of services, and where he forgets, the money is still in his purse. However there are instances of employment in the sector. The employer engages in jua-kali and employees a person. To the employee, this is not a family enterprise and will try as much as possible to reap any benefit that comes on his way. He can sell a commodity or offer service at a higher price but enter a lower price in the records if the employer is not around, if he honestly forgets a transaction, the money will go outside the business. Indeed most employees within a short time, can set up a competing business. This has a detrimental effect on the employer as most consumer will be conversant with the former employee and not the employer,
employee
and they will be clouding in the former's business. The employer starts recording reduced returns and in the end may close the business.

The artisans rely on indigenous resources - the local and available raw materials. The carvers rely on trees in the rural areas or stones, weavers rely on baobab fibre. Improvised jikos are made from old metal boxes, jumbes from old vehiclebodies. The sector prefers human labour, although this is because it cannot afford the modern technology/machines. The artisans used wooden fire to heat metals and work on them when red hot.

There is a stigma placed on the sector by those engaged in the formal sector, the intellectuals and those well off financially. There is a

misperception that informal sector is urban - based and constitutes the community of poor, a popular belief that informal sector activities are primarily those of petty traders such as hawkers, shoe-shine boys, parking boys and other group on the street. This negative public image blurs the positive attributes which the sector possesses. It should be borne in mind that the current jua-kali operators are not the poorest. Indeed formal sector employees are resigning from the formal sector to join jua-kali as it has many positive attributes. A formal employee who is poorly paid can resign to join jua-kali as the working atmosphere there is not frustrating. By so resigning, he is relieved from unnecessary control and supervision which is exerted on him by his employers, and at times his earnings increase proportionately.

The sector has extended to rural areas. Wamunyu wood handcraft in Machakos district is such an example. Carving stones are obtained from Western Kenya. Woven baskets are made by women from all over the republic. Activities like cart pulling, kinyozi, saloon started in Nairobi but now are everywhere. Once people came to Nairobi and failed to secure a formal employment, all these options came into their mind. With the congestion in the city, the artisans shifted to rural areas.

The negative notion that informal sector comprise of the community of poor, illiterate, landless urban folk and those who cannot make it to the formal sector should be discarded, as this view can no longer be validated. The sector infact accommodates many literate, skilled, rich and individuals who can make it to the formal sector only that their employers will have ~~an~~ ^{to} experience pinch if they are to pay them as they would be earning while in the informal sector. It is not a sector of school-drop-outs as is sometimes believed. It is a person not conversant with factors underlying the emergence of the sector and its curning attributes who can be heard to argue in this manner.

The use of local materials, mostly recycling waste and bias towards labour intensive techniques of production give informal sector's technology a greater appeal for. Infact the sector is reknowned for its

innovative activity which is often based on technical information that is already in the public domain. It draws mainly from what is available and improves on it to come up with a high quality product. If further incentives can be offered, the sector can make significant advances in production process.

Although intermediate technology may appear insignificant when viewed in the context of global technological change, their contribution to local production as well as economy are significant.⁶ The technologies generated in this sector are relatively easier to replicate and copy and is drawn from technological knowledge that is already in the public domain: The artisans blend some of the existing technologies with imported ones so as to build technological capability and recapitulate their technological development.

Informal sector training exists generally as an apprenticeship system with skills being learnt on the job. The training is occupationally linked and production oriented. However expansion and diversification of technical secondary schools and introduction of vocational education, the introduction of pre-vocational training which expanded the scope up to primary school level and non-formal training schools through institutions such as National Youth Services and Village Polytechnics have play a role in training jua-kali operators. These institutions not only favour formal sector but have in a way equipped the artisans with the necessary ammunition for facing challenges of surviving in the diverse fields of informal sector.

Generally the sector relies heavily on personal and family saving for investment. The majority of the artisans lack adequate capital and get it from relatives. The money generated in the trade is usually not spent on expanding the business but it is sent to rural areas for the up keep of families and to pay school fees, school uniforms and building fund for their children, or brothers or sisters. The city council personnel can visit the artisans once every week all in the name of demanding a licence, but actually seeking 'money' from the operator. The initial investment capital comes after along period of careful family saving, although this depends from one occupation to another. A business like maize roasting, shoe-shining

require small capital to start while selling second-hand clothes require relatively higher capital. Once established, some operations do not demand thorough expansion due to limited markets, for example a person who can sell a maximum of ten skirts has no reason to bother himself to acquire 20 skirts a day if assured of fresh stock everyday. Thus he can operate with the capital of ten skirts. A kiosk owner who sells two bundles of maize meal needs not purchase four bundles a day if the stock is available everyday.

Once the stock is depleted, there is another period of thrift in order to save cash to replenish the stock of goods for sale. Thus there could be intermittent periods of depletion and stock fillings. This depends on the season. When there are more ~~less~~ consumers, there is a likelihood of stock or the commodity and this cannot cover expenses. The artisan will have to rely on capital, thus the stock depletes.

In most cases, as the name 'jua-kali' suggests, the operators carry on their business under extremely difficult conditions. They are constantly harassed by local authorities - demanding licences but end up being corrupted. Its informality is derived from it being unrecognised by the authorities, and the fact that they operate mainly under temporary shelters along the urban thoroughfares and fringes of urban wasteland. These have been several attempts to sweep them out of the city allegedly to keep the city clean. In the late 1970s Nairobi city council was bulldozing shelters indiscriminately without providing an alternative, and on demolition the artisans were forced to conduct their activities in open air.⁸ Of late thousands of hawkers who had invaded the Nairobi Central Business District were ordered to move to designated areas or risk losing their hawking licence.⁹ It was argued that they were not only contravening city by-laws but were impeding the environmental cleansing operations.

The sector relies mainly on local input hence its foreign exchange requirements are modest. Its activities conserve scarce foreign exchange, require little capital to create jobs, rely primarily on family saving and often provide skills and training at no cost to the government. The majority

are all trained and illiterate craftsmen who acquire a wide variety of skills through their own initiatives and without any assistance from the government agencies. Competence is judged by the ability to perform specific tasks rather than wide ranging skills. Above all, the sector has a potential for creating new jobs for the expanding labour force.

The enterprises could represent the major part of business activities in market centres and small towns in rural areas. The sector has also the potential of fulfilling key functions in support of Agriculture and local production by marketing farm implements and providing the rural residents with a wide range of expensive consumer goods and services.

(b) JUSTIFICATIONS FOR THE EMERGENCE AND GROWTH OF THE SECTOR

The emergence of the sector can be traced and linked with unemployment. It came up to cure ills which the formal sector failed to remedy. It is as old as unemployment. Whether school drop-outs or school leavers, literate or illiterate, skilled or unskilled, poor or well-off financially, once a person fails to secure employment in the formal sector, he had no option but to go for the remaining alternatives, of which one is informal sector. It is not that the artisans enjoy the harsh conditions that they decide to engage in those operations but because they cannot obtain a fair job in the formal sector. Nowadays, the formally employed can resign in favour of informal sector. This might be caused by poor remuneration offered in the formal sector or strict supervision which undermines one's morale to serve as an employee, and may elect to resign in protest.

Jua-kali offers one with the right working spirit. The operator may not be under any supervision. He is the boss. He knows that any effort invested in the operation is for its own benefit. He takes the responsibility of the collapse or growth of the operation and will try his level best to achieve success, and any deadline in the operation will be due to conditions beyond his control. He is aware that failure of the operation implies a denial of his means of livelihood.

Although jua-kali is associated with the poor, this is not necessarily true. Infact some simple jua-kali operations rewards more than a factory employment. A maize roaster can purchase 50 maize cobs at a price of 4 shillings each, buy charcoal for ten shillings. He can sell the roasted maize at an average of nine shillings each. Now by investing a capital of two hundred and forty shillings and if in a relatively busy street, he is assured of earning this much. A factory worker can be employed at a salary of two hundred shillings per day. Since some factories offers piece work he might work for one day and rest the next day for either want of material

or lack of an order.

At the end of the month, the jua-kali operator will have a net salary of seven thousands, while the formal employee may not make six thousands. At the end, it will be plain that the jua-kali operator is well-off financially than a factory employee. Factories impose strict supervision because the employers are afraid of recording negative returns. Due to this supervision the employees are really over worked and exploited. They return to their houses very tired, exhausted, weary and wasted. They are not properly paid - more so if paid on time basis. The employer will ensure that within the stipulated hours, he has really exploited the employees for his own benefit. A maize roaster will return in his house fully relaxed and happy. He is not exhausted, tired or weary. He has not been exploited by anybody. These attributes have lured some people to forego factory employment and engage in jua-kali sector. Infact some have gone for maize roasting, cart pulling or even being matatu touts, as these prove somehow better rewarding.

The sector is further associated with low quality products. This cannot be validated in entirely. Infact some jua-kali commodity have high qualitative and durability value than similarly formally produced commodities. A second-hand cloth can be obtained at a relatively lower price than a formally obtained yet be of high quality and durable than the latter. A jua-kali jembe turns out to be more ^{hardy} and durable than one offered by formal sector, and yet it is offered at a lower price. Nowadays one can get the original honey from jua-kali operator, while the formal sector is offering a mixture of sugar and other chemical. It is not original at all. Despite this the original honey will be available at a cheap price while the mixture of sugar and other chemicals will be expensive. Thus the sector has numerous positive attributes, although these are tainted and a gloom paint applied on the face of the sector.

Stimulation of creation of more employment opportunities remains a daunting challenge to leadership in Kenya. According to a 1987 presidential report on Employment,¹⁰ it was recommended that nearly two hundred and fifty thousand new jobs should be created every year for the young people who join the labour force if unemployment was to be eased. A recent report from the central bureau

of statistics" shows that to cope with the new faces in the labour market the government is to create one hundred and sixty thousand new jobs per year. This is not an easy task, particularly in times of economic austerity. The government did not fail to create new jobs with impugnity. There was no malice or bad ^{farth}_↑ on the contrary it had no ability to do so. It had the willingness, but its power was weak". The spirit was willing but the body was weak. Otherwise it cannot be comprehended how a government can sit back and watch as the situation goes out of hand if it has the capability of arresting it. The government has already failed to create new opportunities as recommended, not to mention the fate of the unemployed faces prior to the reports.

Contrary to these recommendations is a World Bank and International Monetary Fund preconditionalities which hang on the back of Kenyan authorities. The two bodies attaches a string to their renewed and continued aid assistance to Kenya. There is a condition that for Kenya to continue benefiting from financial assistance offered by these bodies it must strive to reduce its civil servants at a rate of sixty thousands employees per year.¹² Indeed this has been implemented and civil servants have retired without having attained the statutory age of 55 years and not due to any illness or infirmity but under the civil service reform programme, and in return benefiting from golden handshake sums.

Now the nitty gritty, in the first place the formal sector failed to absorb all job-seekers as the number of jobs created in the sector could only satisfy a fraction of job-seekers. The sector needed massive expansion if it was to absorb all an aspect the sector lacked. As per the reports, many job opportunities had to be created each year. This could absorb the new faces only, the fate of the old faces' is not disclosed. Whether they were condemned to remain unemployed or not, is not clear.

Now under the new aid package, the civil servants ought to be reduced. Massive unemployment results. There were those unemployed before the presidential commissions' report was compiled. Many thousands have gone unemployed since the report was compiled and now civil servants are retiring

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at an early age. Some of these may still need employment. Now that people are retiring, there is no possibility of the civil service absorbing new faces. It's committed with reduction and not addition of labour force. Very soon the number of those tamarcking jobless is going to multiply. The nagging question is how will they earn their means of livelihood?

It is only advisable that an alternative sector be created or if in existence be strengthened to operate with efficacy so that the unemployed and the discharged can venture into it, and one of the available options is the jua-kali sector. It is a sector which deserves to be viewed optimistically and with hope. It has the potential of creating new jobs for the expanding labour force, increasing the incomes of the operator and catapulting the country's economic growth. It is a sector which is well armed and strategically placed to attack and cripple the ever-increasing unemployment and enable our country to move with the anticipated pace of economic growth.

The old thinking that the economy must pass through prescribed stages of development seems to be no longer valid in Kenya. Development must now be through the utilisation of resources particularly the indigenous trade exhibited in the informal sector. It is lamentable that the artisans great ability to identify gaps in the supply of goods and services, and response to changes in the market has not been appreciated and utilised for greater progress. These positive attributes should be harnessed for greater prosperity of the sector.

Increased support of the informal sector would have a fundamental and significant impact on the Kenya's economy. It will rescue it from its current stanglehold and revitalise it, but for this to be achieved, new energies will have to be revamped into the sector. There is therefore an urgent need to give boost to the informal sector so that its full potential can be realised, particularly in production process. This is the only way the sector can be clothed with new energies to drive Kenya into an industrial age by the year 2020.¹⁴ Measures should be taken to strengthen and promote it as it has proved inevitable, a sector there to stay, resistant to hostile

and negative official policy, for were it not hardy, it could have been wiped out by the hostility that visited its operators from the government at the time of its infancy. It has continued to exist and grow, and infact spreading into diverse directions. With increase in unemployment, the ~~hostility~~ that used to be directed at the sector, has began to melt away and a hopeful look placed on the sector for it sends forth a promise for future employment provision and values to be had from it.

The inability of most people to secure employment in the formal sector has led to mushrooming of informal sector business kiosks and illegal shelters in major urban areas, by the squatting landless and unemployed people, and demolition of temporary structures of the sector by local authorities has not been a solution to urban squatting. The remedy lies in supporting development of more employment opportunities outside the flooded formal sector. The local authorities will be doing a great favour and infact promoting the Kenyan economy, If instead of demolishing those structures they under take to ensure that the sector is recognised in the policy - formulating table and carry the formulated policy into implementation.

(c) GOVERNMENT INITIATIVES TOWARDS PROMOTING THE SECTOR

As noted elsewhere in this paper, historically, the informal sector has received little government attention and in most of these directed to the sector's suppression. At the beginning of 1970s,¹⁶ the official policy was negative and hostile. This trend is still entrenched up to date but not with rigous it had at the beginning. With increased unemployment, policy formulators had no option but to soften their hearts towards the sector and now rest their hope for future employment provision on the sector. This is not a unique move particularly if the factors that led to the emergence of the sector, the challenge facing formal sector and the tight world bank preconditionalities are borne in mind, as all these millitate in favour of a friendly policy towards jua-kali.

Kenya has not been totally left behind in changing her heart towards the sector. A number of initiatives can be pinpointed. Government recognition

of the existence of the sector is evidenced in the 8th National development plan of 1983-1988.¹⁷ This plan called on the relevant ministries and local authorities to team up with non-governmental organisations and community-based organisations to work out modalities for the improvement of credit and finances of the sector. In the sessional paper number 1 of 1986, entitled "Economic Management for renewed growth" the sector's role in Kenya's economy is discussed at length. It also drews up an agenda for action for the renewed economic growth of the sector by endeavouring to remove stresses which hinder rapid growth of the sector. The same paper proposes the allocation of more funds through local authorities to improve the market for the sector.

The 1992¹⁸ sessional paper number 2 called on the relevant ministries and Attorney-General chambers to review all important Acts of parliament that had an impact on micro and small enterprises, review of licensing agreements and building codes of small enterprises. The sector falls under the ministry of research, technical training and technology.

However the aforementioned programmes suffers from non-implementation. It is easier said than done. What appears on policy papers remain there and is never carried further. Despite that government policy, little on the ground has been achieved. Little or nothing has been done towards the actual review of the laws; which remain on the backs of jua-kali operators. Local authorities have no programmes for improving the sector's credit and financial position. On the area of market, local authorities have a policy on market development which also accomodates micro sector enterprises of all traders. However, the fairly large number of trades have inhibited market development and the capacity of councils to finance and support their activities. This boils up into a conflict between the central government policy and that of local authorities. What is formulated by the central government is not implemented by the local authorities. The co-ordination between the central government and local authorities has been weak to transform official policy into reality.

In response to the sessional paper number 1 of 1986, the ministry of Co-operative development has addressed itself to some activities:-

(i) In the field of handicraft development, the objectives of the ministry is to support the handicraft products through developing market lines and improving management capabilities.

(ii) The ministry understands jua-kali to mean open-air garages, fish mongery, hawking, carving and making ciondos. This category of the sector required organisation to realise efficiency and the establishment of Kazi co-operatives to organise the unemployed. There are jua-kali Association, such as ziwani. This is a success of the ministry.

Some non-governmental organisations have moved into iron-out. Some inefficiencies of the sector, A case in point is the Undugu Society of Kenya. This is a charitable organisation that addresses problems peculiar to women in the informal sector and provides services for them. It has helped to form women groups and also find market outlets for their products.

The government has provided financial incentives as well as deploying facilities to support the sector. Some materials used in the sector are exempted from tax, the government has provided sheds for jua-kali operations, training facilities as well as financial. It is being said ~~that funds~~²⁰ are being set aside to facilitate innovations and production. These facilities are likely to stimulate the innovative potential in the sector and therefore lead to product differentiation as well as introduction of new technologies.

The progressive capacity of the informal sector has been further recognised by the United Nations centre for human settlement (Habitat) and is believed to play a vital role in countries' development, particularly in cities and urban areas, as it holds vast potential for economic growth and greatly expands employment opportunities.^{20b} The ~~pp~~ Habitat in its programme seeks to encourage and promote development,

particularly in cities and urban areas, as it holds vast potential for economic growth and greatly expands employment opportunities. The Habitat in its programmes seeks to encourage and promote development of the sector. It was given prominence in the programmes of Habitat II conference as well as recently - concluded 16th session of the commission on Human settlement²¹. In their 1995 Johannesburg declaration on Africa common position on Habitat²¹. African Ministries in charge of human settlement recognised and re-emphasized the fact that the formal sector can constitute a precious resource for economic and social development and urged Africa governments to take into consideration the importance of this sector in overall development. They also suggested that support mechanisms ^{be} created to facilitate growth of the sector, particularly by removal of restrictions on its expansion. The ministers also called for the establishment of simple flexible and stable administrative fiscal and legal framework and foster change of attitude towards the sector to accept it as viable economic source.

FOOTNOTES

1. The concept and characteristics of the informal sector in mobilisation of the informal sector for Kenya's development : A report of the conference on the informal sector (efal)
2. 1bid p.3
3. KABEBERE JOHN: Developing the informal sector in small towns in Kenya (thesis) U.O.N 1989. p.11
4. Supra Note 1.p.4
5. 1bid p.2
6. 1bid.
7. JUMA: Innovations in the jua-kali sector in JUMA and OJWANG: Innovations and sovereignty p. 125
8. Supra note 3, p.1
9. Kenya times 15th May thursday 1997 p.4
10. Wanjigi commission on employment, Government printer (1987)
11. Central bureau of statistics, Government printer (1996)
12. Supra note 1

13. 1bid
14. 1bid
15. 1bid
16. Supra note 3 p.1
17. Daily Nation, Tuesday April 1 1997
18. 1 bid
19. Supra note 1 p.2
20. Supra note 7 p.124
21. Informal sector 'key to progress'; Daily Nation, Wednesday May 21 1997.

CHAPTER TWO

THE LEGAL MACHINERY IN PLACE AFFECTING JUA KALI SECTOR

(a) AN OVERVIEW

As I have mentioned earlier, jua-kali sector is not established under any specific Act of parliament. It is a sector that operates within and above the law; while so existing its operations are bound to be controlled regulated or encouraged or discouraged by other pieces of legislation which were not enacted to specifically control, regulate or encourage the sector. Such Acts include trade licencing Act², Local government Act³, land planning Act⁴, public Health Act⁵, factories Act⁶, contract Act⁷. These statutes, however, should not be dismissed wholesomely for they have lived their purpose, but the problem with them is that they expect jua-kali to comply with their requirements, not realising that they were designed to regulate the formal sector. Jua-kali is yet to receive statutory recognition yet it is being controlled by formal sector laws.

An examination of some statutes, as they exist, reveals the presence of systematic bias that make informal sector illegal and denies some opportunities to people to engage in economically productive activities. The artisans are subjected to constant harrassment and persecution, as witnessed in Nairobi city early this years from local authorities. There is a serious setback within the legal frame which takes its roots in the existence of laws that discriminate consistently against the informal sector. This can

be attributed to the evolution of legal instruments that allow state to intervene in commerce, and the regulatory framework is heavily influenced by the crisis in revenue generation. The central government wants to collect revenue even from jua-kali operators, the local authorities want their by-laws observed by all including the artisans, yet the two bodies have failed to streamline the operations of the sector. The central government has failed to give the sector a statutory recognition and effecting the necessary recommendations, while the local authorities have not been able to review and harmonise licencing fees and charges to the benefit of the artisans. Formal sector laws are applied to jua-kali, a different sector, and come into play to impase an obligation. A jua-kali operator is required to ensure that; the business premises conforms to area/town plan,

The business does not cause nuisance or unnecessary smoke, but he cannot enjoy the benefits of being exempted from the provision of any Act such as income tax, law of contract Act, The provisions of any statute, provided ther is a correlation, can be put on the back of the operator and this will remain so untill a statutes defining the exact obligation of the sector operations is put in place,

Science and technology are key factors vital to the development and realisation of the full potentials of the sector, infact they are tools with which conduct development, appropriate technology and improvisation would be made simple.⁸ The sector is a renowned wizard in the field of innovation often based on technical information that already in the public domain. While the formal sector in Kenya operates on the basis of establishment intellectual property and licensing arrangements, such instruments are not available for the jua-kali sector. There is a critical need to protect the innovation of the sector from being exploited in an authorised quartees as this will render the sector less open as devices and processes will be kept as trade secrets, something which will have a negative effect on diffusion of technology. The appeal for protection from jua-kali sectorrelates directly to the capacity of the country to assimilate imported technology and

generate modified versions, as opposed to the protection of innovations under patent laws.⁹ The existing intellectual property laws do not adequately reflect the need to stimulate and protect innovations that are normally referred to as appropriate or intermediate technologies.

Informal sector operators enjoy minimal financial incentives, tax rebates and other encouraging elements of law. Indeed very little of this role is currently performed by the law. Examples abound elsewhere in the formal sector of the encouraging attributes of law.

The positive use of law has not been intensified to cover informal sector adequately as it does the formal sector.

(b) SPECIFIC STATUTES

Kenya lacks a comprehensive legislation on informal sector. No single body of law that answers to the title 'jua-kali' law or be declared as dealing with the sector specifically. On the contrary, one has to forage among numerous laws to identify provisions which have an effect on the sector. in one way or another. The entire corpus can only be found in various statutes and in scattered provisions which touch on the sector in an incidental manner as they are not designed purposely for the sector. They play a peripheral role, avoiding the central purpose of articulating how the sector should operate in as much as they impose obligations without conferring rights on the artisans. Further there are inconsistencies within the provision of these Acts, as no single common authority is established to oversee the compliance of the statutes. Under the public health Act, medical officer is required to ensure compliance, under the local government Act, the local authority is in charge, while under the factories Act, the Kenya bureau of standards is responsible. These are different authorities mandated to ensure compliance of different statutes. It is not mentioned that the same officials are to act in all capacities or work in co-ordination. In reality they work independent of each other.

Due to the peripheral address the statutes offer the sector, there is a tendency of the statutes to control and intimidate rather than advancing

and promoting the sector. High standards which are unattainable by operators are set, ~~required~~^{ment} of land planning Act, among others serve more to inhibit smooth running of the sector than streamlining it.

The statutes which affect jua-kali are numerous - from law of contract Act cap 123, sale of goods Act cap 23, local government Act cap 265, hand palnning Act cap 303, trade licensing Act cap 497, factories Act cap 514, among othera. Due to the time constraints, those discussed in this paper are land planning Act, factories Act, public health Act, local government Act, patents and financial legislations.

(i) PUBLIC HEALTH ACT - CAP 242

The Act was passed to control nuisance and other conditions which can be injurious or dangerous to health. It requires that no one should cause nuisance; no one should suffer a nuisance to exist; and no one should suffer any other condition to exist which is liable to be injurious or dangerous to health.¹⁰ Every local authority is enjoined to make the best endeavours to maintain its area of juridiction in clean and sanitary conditons at all times and to prevent the occurrence of or remedy any nuisance or conditions liable to be injurious or dangerous to health".¹¹ The local authority can institute legal proceedings against any person causing or responsible for the continuance of any such condition or nuisance. An act or omission amounts to a nuisance if it is injurious to health, and be threat to health in the sense of a threat of disease, vermin or the life.¹²

Health authorities are required to take all possible steps to prevent or cause to be prevented or remedied all conditions liable to be injurious or dangerous to health arising from the erection or occupation of unhealthy dwelling or premises or the erection of dwelling or premises on unhealthy sites or on sites of insufficient extent or from over-crowding conditions or manner of use of any factory or trade premises.¹³

The Act describe structures which should be considered as nuisance and amenable to the abatement procedure laid by the Act. Any structure so constructed or in a state or situated or dirty or verminous as to be

injurious and dangerous to health or can favour the spread of infectious diseases; structure in a state or condition as to be likely to harbour rats, and chimney sending for the smoke in a manner or quantity likely to be offensive or dangerous to health are all nuisance for the purpose of the Act.

The Act seeks to serve a useful purpose, and thus why it has lived to this age. No person should be granted a constitutional right to commit nuisance and cause a threat to public as he may wish. Nuisance is not a darling to any person including the jua-kali operator. Nuisance threatens his health and life as much as it does to a formal sector employee.

Nobody should suffer to work at the peril of his life. Both a jua-kali artisan and a formal employee will hate it. To this extent, the act regulates the informal sector by prohibiting commission of any nuisance. In this role, the Act is protecting the health and life of all people. It is a useful purpose which should be encouraged.

However, when the fact that jua-kali sector is not recognised in the national planning table, is combined with the urge to promote the sector is viewed in the light of these statutory provisions, it become clear that some of provisions are too high for the jua-kali operators. A jua-kali fire heating metal will definitely produce smoke. Although the statute talks of a chimney, it can be argued that jua-kali open-fire is subject to the same standards, because it is difficult to concieve how smoke from a factory can be controlled.,while a smoke from an open-place is not. Indeed the latter can turn out to be more dangerous and harmful than the former. Now if open - fire smoke becomes applicable to the Act, the artisans have no means of regulating smokes and will violate the provisions of the statute. This will be aggravated by the fact that the exact manner or quantity is not stipulated. The Ministry of health officials will take the advantage of the subjective discretion and haras the artisans if they fail to corrupt them.

Generally, most jua-kali artisans are poor. They cannot afford

expensive building materials for their structures. Furthermore those structures should not be permanent but temporary as they may be demolished at any time for want of compliance with the provisions of land planning Act. They are structures which do not conform to the requirements of area/town plans as the sector is not given an advantage while the area/town plan is being drafted.

Whether due to poverty or fear of loss incase of demolition, jua-kali artisans set up simple structures on where to carry out their operations. These can be declared a nuisance on flimsy grounds as; their state or construction being liable to harbour rats or constructed on sites of insufficient extent. Again there is subjective discretion vested on health official. This discretion can very easily be abused to the detriment of the sector.

The Act should be relaxed before by removing those high standards and reducing the chances of abuse of power by the officials concerned. This should be done for the benefit of the informal sector. So as to leave the formal sector intact the lowered standards should only apply to jua-kali, and not to formal sector.

II THE LOCAL GOVERNMENT ACT - CAP 265

This Act established local authorities and regulates the activities the authorities may undertake. Every local authority is in charge of a specific area and it is only that area where it exercises its powers.

- The Act empowers a local authority, in its area of jurisdiction, to
- (i) prohibit or control activities like peddling, hawking and street trading and their operators.
 - (ii) Control barbers and hair dressers and their shops
 - (iii) Control second-hand goods business, trades and their premises
 - (v) Control or prohibit factories and workshops which by their emmission, noise vibration or any other cause may be a source of danger, discomfort or annoyance to the neighbourhood and prescribe conditions to be observed by such factories or workshops.

A local authority may decline to grant or renew any licence which

which is empowered to grant on any ground as may be specified by-law and on ground that the business or premises intended for the business does not conform to the requirements of a by-law in force. The presence or absence of the ground in the specified by-law is irrelevant.¹⁶ It is assumed that this requirement forms part of every by-law. It does not need to be expressly stated.

The Act protects sound interests. It is imperative that most activities be controlled so that competing interests are taken care of. Street trading needs check as it may occasion difficulties to pedestrians and motor vehicles and increase chances of thuggery and pickpocketing. It further protects the public by ensuring that factories and workshops do not emit substances or produce vibration as may endanger, annoy or discomfort the neighbours.

The informal sector is affected in as much as the activities enumerated above are jua-kali, although this may depend on the scale the activity is carried out. Peddling, hawking and street trading are jua-kali operations despite the scale they are carried out. Barbers and hair-dressing if operated in a remote area, with simple machine and/or high class rooms with complex furniture and sophisticated machine used, they may be formal sector operations. The local authorities are required to regulate these operations. Bearing in mind that the sector is not statutorily recognised the local authorities will be serving the interests of formal sector while controlling informal sector operations. Currently there is a standing quit notice for hawkers.

There is discretion left to council officials. There is no clear standards for identifying smoke, fume, dust or smell that may become a source of annoyance to neighbourhood. It is for the official to determine. There might be a tendency on the part of these officials to harass jua-kali

operators on the pretext that their operations are a discomfort and annoyance to the neighbours.

III LAND PLANNING ACT - CAP 303

The Act regulates development. Development is defined to mean the making of any material change in the use or density of any building or sub-division of land, erecting such building or works; and carrying on such building operations as may be determined by the minister.¹⁷

Under the Act, development carried out must conform with general law and requirements of area/town plan, and in particular must conform with the environmental health standards as stipulated by the public health Act and the housing standards as laid down by the local government Act.

If unauthorised development occurs, the authorities may serve and enforcement notice specifying steps to be taken to instal the land to its position before the development took place. The notice may require the alteration or demolition of buildings, discontinuance of any use of land or it may require one to carry out any building or other activities to restore them.¹⁸

The enforcing authority in respect of development control is the local authority of the area. A person wishing to undertake development must apply for and obtain consent from the authority. If consent is not secured first, the development is illegal and constitutes an offence under the Act for which punishment includes demolition.¹⁹ The authority should in considering such application, be bound by the provision of the area/town plan and have regard to health amenities and convenience of the community generally with regard to proper planning, development and use of land in the area.²⁰²¹

It is useful that the Act seeks to control development. This ought to be controlled because the land is limited. Development is a continuous process and those who develop land today should not be required to demolish whatever building they set up so as to create space for a .

future building. This will be too costly. The current and future buildings should be planned in a manner that best ensures that all other interests are served. There is a need to have a sport ground, resting park, drainage system and roads; among others Each of these is as important as the other. Provided that the land is yet overcrowded, no building should be concentrated in any particular place as to cause congestion.

The Act however, poses problems to Jua-kali sector. This sector is not considered while the area/town plan is being drawn up. Most jua-kali structures will be erected on thoroughfares, corridors in front of plots. Now that any development not conforming to the area plan is illegal and subjected to demolition, a jua-kali structures will invariably be declared illegal and demolished. It is not logical for a jua-kali operator to seek consent before erecting a temporary structure, and the chances are high that the building will be contravening area/town plan. Even if it is not so contravening, local authorities may still demolish it, on the pretext of want of compliance as it is not easy for the artisans to get access to the area/town plan. A small grudge between a jua-kali artisan and a council official will work to the detriment of the artisans'. The official will work tirelessly to ensure that the artisan's structure does not stand.

The definition of development catches some jua-kali operation. A jua-kali operator may require a building; he may erect it or use it for rent. If erected, the building has a change in the use or density of land. This will properly be treated as development. Jua-kali operators deposit refuse scrap or waste materials. An artisans making improvised jikos will have scrap metal as waste, a jua-kali tailor will have rags as waste, just as a formal one. If these are deposited on land, altering its use, this is purely development. Indeed this Act really affects jua-kali operations than any other. Any demolition purportedly undertaken is under the umbrella of this Act. It denies people the opportunities to engage in productive activities and makes the sector illegal and subject to persecution.

IV TRADE LICENSING ACT - CAP 497

It

is an Act regulating business, trades or occupations. Regulated trade is defined to encompass hair dressing, beauty culture, shoe-repairing, motor vehicle repairing and sale by manufacturers of goods manufactured by him.²² Therapist, beauty or keep fit parlour, business of kiosk and business of carrying on distributive trade are declared to be occupations. In exercise of the powers conferred upon him, the minister has declared handicraft fresh vegetables of all description, second - hand clothes, charcoal, onion, maize and potatoes specified goods, as described under the Act.²³

No person should conduct any business unless he is in possession of a valid licence granted in the appropriate form.²⁵ A person desirous of obtaining a licence should make an application therefore in a prescribed manner and the licence may be granted with or without condition or denied.²⁶ Whether to grant or refuse any licence a licensing officer is to be guided by a consideration as to whether the activity is in the public interest; and any special programme of development in the area.²⁷ Once granted, the licence may be revoked on the ground that the licence has used discriminatory or otherwise unfair or improper trading practice.²⁸

The minister may, by notice in the gazette, exempt any class of persons who are citizens of Kenya from any of the provisions of the Act.²⁹ To this extent, persons carrying on the business of a hawker licenced by any local authority, persons carrying on the business of a charcoal dealer not having business premises built of permanent materials and persons trading from an open-market, stall or temporary market have been exempted from the provisions of the Act.³⁰

In my view, the Act regulates jua-kali operations. most of the 'regulated trade' are jua-kali operations. To this extent, the Act has an impact of jua-kali. This position remains intact and further supported by specified goods and declaration of occupations order. These orders enumerates goods and occupations which are properly jua-kali operations.

Jua-kali operators are in away favoured by the exemption effected by the minister. Hawkers, charcoal dealer and other open- market traders are not

required to obtain a licence under the Act. To hawkers holding a valid licence from local authority, the problem of double licensing is eliminated.

Where the operators are required to obtain a licence, the procedure can be abused. A licence can be denied or revoked on ground if licence~~s~~ engages in discriminatory, unfair or improper trading practices. However, there is no definition of what can amount to unfair or improper trade practices. The same is left to the discretion of the licensing officer. This can be abused to frustrate the sector licences have been denied or revoked on grounds which are unclear, for example due to grudge a licence and the officer or failure of the licence to corrupt the officer. Licence is not automatic .

V THE FACTORIES ACT - CAP 514

The Act provides that every factory in which there is given off any dust fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to persons employed or ~~not~~ ^{any} substantial quality of any kind, practicable measures should be taken to protect persons employed against inhaling a dust, fume or any other impurity. A further amendment to the Act prohibits factories from emitting any dust, fume or impurity into atmosphere without undergoing appropriate treatment to prevent air. Pollution or other ill-effects to life or properties. It is the responsibility of Kenya bureau of standards to ensure appropriation and machinery to comply with the standard's requirements.

The Act seek to prevent people from inhaling substances that may harm them. It requires installation of treatment plants into factories to ensure that harmful substances are not ^{given off}. It is designed to regulate formal sector -factories. However it can be argued that the Act can apply to jua-kali sector. If a jua-kali operation is producing dust, smell or fume that can injure those who come into contact with it, the operation should be prohibited just as a formal one. However, the requirement of treatment plants has a bad effect on jua-kali These are very expensive to purchase, and further the operation is carried out in an open-air where treatment plant cannot be installed. To this extent the standard imposed by the Act is too high. If the Act is effected to the

letter, it can be fatal to smooth running of the sector. Modest application of the Act should be adopted to favour jua-kali. The net it should be enforced with the interests of jua-kali at heart.

To a point, the fore mentioned pieces of legislation can be seen as playing a prohibitive role to the informal sector. This negative role comes out clearly when the law is strictly looked at as being tailored to regulate formal sector. Some instances of Kenya's experience reflects this role, for example the banning of certain informal sector operations by local authorities to facilitate monopoly by formal sector firms and the levying disproportionately high fees and other charges by local authorities to stifle or discourage informal sector operations.

However this need not be the only use to which the law can be put. The law may also play a positive role. Law can and has been used as a regulatory instrument. Regulatory mechanism are often imposed to systemize operations of any economic sector including the informal sector. Such statutes as factories Act, public Health Act, Town planning Act have a regulatory role although the standards imposed by them may be unattainable by jua-kali operator. While saving the formal sector, they are useful and well-meant but strict application of their provisions to informal sector may paralyse it, thus they need to be mitigated so as to favour jua-kali. Low standards may be imposed to affect informal sector. Regulation underlies a recognition that there are other competing interests which must also be given consideration to minimise other risks, for example sanitary, pollution, exposure to toxic chemicals and public health hazards. Thus the regulatory statutes, once low standards are applied to jua-kali, may be enforced as there are other competing interests which should be protected.

Some degree of regulation by the local authorities is desirable to preserve public order. Often however, regulation are too rigid, and full of discretion, a power fraught with abuse. Jua-kali structures can be demolished at any time, hawker ordered to vacate one place. This inhibits andblocks entry into the sector, apart from intimidating those already have entered.

morderate controls are necessary to streamline the sector operations and make it pay tribute to health standards, minimise exposure to toxic substances and reduced pollution. Liberal licensing policies should be adopted.

VI FINANCIAL LEGISLATIONS

The formal sector at times enjoys favour from statutes. Existing and willing entrants are motivated to join the sector by some legislation. This is done with the interests of promoting the sector and not solely to benefit the entrepreneurs. Under the foreign investment and production Act, and export compensation scheme, entre preneurs are granted tax- exemptions or long tax-free operation periods. These periods are intended to enable the entre preneurs establish themselves.

The informal sector benefits minimally, yet it is a sector to nurse. Apart from the finance and appropriation Act, which exempts from tax raw materials used in the sector, no other financial incentives is enjoyed . Remember ; the sector suffers from statutory non-recognition. Informal sector is a young sector and require all kinds of support and incentives to grow. It should be offered more incentives than the formal sector, and not being discriminated as it is done . Incentives attract new investors and encourage those already in the sector to remain. Equally the incentives should be stable overtime because it takes time for investment to yield profits. Tax rebates and other financial motivations should be deliberately used to enlance the production in the informal sector, for example giving priority to informal sector entre preneurs for government tenders and contracts, waiver of stamp duty tax and land rates paid by informal sector entrepreneurs untill such time as production begins a.

VI PATENT LEGISLATION

Patents covers right of innovations and invention. In Kenya this is covered by the Kenya Industrial property Act. Under this Act, for a product or process to be patentable, it must be novel, constitute an inventive step and be industrial applicable.³³ Novelty is taken to mean inventiveness and be

that the invention is not anticipated by previous inventions - prior Act. Invections constitute innovative steps if they are not obvious to a person skilled in the specific art at the time of filing of the patent application. In addition, an invention must be reproducible. This requires the applicant to disclose the information such a way that the invention can be made to work by a person skilled in the relevant art. An invention is defined to mean
 a solution to a specific technological problem.

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While the formal sector operates on the basis of established intellectual property and licensing agreements, these instruments are unavailable to jua-kali operator, who is respected for his innovative capacity often based on technical information already in the public domain. Scientist seek to have their inventions protected, but jua-kali appeals to the capacity of the country to assimilate imported technology and generate modified versions, in order to promote indigenous technological capability.

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There is a largely body of technological knowledge which in the public domain and not currently affected by the international patent system. It cannot be protected under the current patent system. The development requirement of developing countries can be met by tapping this pool of knowledge and recombining it with local innovations to generate alternative technologies. This remains precisely the basis of innovation in the jua-kali sector.

There is a need of an intellectual property system that would promote the search for innovations in the public domain as well as the local generation of appropriate or intermediate technologies. In these circumstances, the main issue of technological development is the ability of the people to blend some of the existing technologies with imported ones. This will serve a twin purpose of enabling them to build local technological capability and allowing them to recapitulate the various stages of technological developments. Recombination of technologies from different historical moments is a major aspect of innovation and stands as the impulse that keeps the jua-kali ticking.

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Most of the work in the sector does not rely on knowledge of the principles behind the operation of certain machines. However, the knowledge materials and information already available especially on mechanical devices is enough to keep the sector growing. The sector relies on very limited access to technological knowledge embodied in functional devices. The accumulation of technical skills and basic principles on key technologies make it possible for the sector to innovate.

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The large pool of information that is available in the industrialised countries ~~is not~~ accessible to the jua-kali sector. As a result, the little that is available is kept as trade secrets and only made available in product or design configuration. Developing countries hold the view that the existing patent system in industrialised countries reduce the flow of technology to the developing countries, inhibit local innovations and contribute to high international debt incurred during the importation of technology.

The technologies generated in the informal sector are relatively easier to replicate and copy, and therefore the need for intellectual property protection is more urgent. Since jua-kali innovations have very limited capital and rely on relatively smaller and vulnerable markets, any copying of innovations or technological imitation may eliminate the original producer from the market. Further, since the innovators largely draw from knowledge already in public domain, the possibility that other artisans will come up with a similar design is relatively higher than in the state of art technologies. Finally, jua-kali innovators cannot rely on the political system to grant them monopoly rights over their products. They are not covered by the existing intellectual property regime. If they were, they could enjoy monopoly rights over their innovations without contravening anti-competition laws, as these laws allow an innovator to exercise monopoly rights over his innovation. Now in the current position, they have to face the destructive wave of innovations from their competitors. These factors make the need for protection much more urgent.

Thus it is arguable that the existing patent laws do not adequately

reflect the need to stimulate and protect innovations that are normally referred to as appropriate or intermediate technologies - jua-kali innovations - such as cook~~t~~, stoves windmills, water pumps. The definition of a patentable invention under the law precludes a large number of socially - useful technologies from protection. Intermediate or appropriate technology can meet the requirements of reproduction, but fall short of novelty and inventive step criteria. The requirement for novelty and inventive steps would preclude most of the applications that are likely to come up from small-scale innovators. Technologies that fall under the category of appropriate technology could not qualify for patents. In addition, innovations resulting from modification or recombination of technological knowledge that is available in the public domain would also be precluded.

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CHAPTER THREE

RECOMMENDATIONS FOR REFORM

A look at the informal sector reveals that it is far from perfection. It is a sector crippled by many obstacles. These bottlenecks have to be removed, new energies injected and infused into it if it is to run smoothly and achieve its objectives. The sector is catapulted to ease unemployment and to expand labour force apart from increasing income of the operators and in turn boosting our Economic growth. Kenya looks forward to being fully industrialised by the year 2020! This remains a dream and beyond achievement unless the present bariess which hinder the efficient performance of the sector are identified and removed in advance.

The sector is inevitable, as given the present unemployment situation and the world bank condihonalities, the urge to promote the sector is irresistible. The formal sector could not absorb all job seekers, and now it is required to reduce its employees, yet the population is increasing. There is a need for sector to absorb the new faces who will be jobless. It is thus necessary that informal sector be strengthened to ensure its efficient performance.

The sector

remains cloudy, it is not clearly defined and classified. It is marred by ambiguities and confusions. The government's policy in relation to the sector is contradictory - commitment to promote the sector can be identified from sessional papers.³ Development plans and speeches of top government officials. The same commitment is contradicted by hostilities and negative attitudes the sector receives from the government.⁵

Since the sector lack a precise definition, and a comprehensive recognition by policy - formulating table, policies, laws and regulations that emanate from these tables have a far-reaching effect on the sector's performance. They hamper, rapid growth of the sector. Incentives are availed to formal ~~and rarely to informal sector~~⁶ sector that need encouragement than all others. It deserves all incentives necessary for its unfettered growth.

For the purpose of this thesis, recommendations will be committed to definition, Government policy, role of local authorities and formulate of by-laws, incentives and patents.

(a) DEFINITION OF THE SECTOR

An endeavour should be made to define and classify informal sector activities so that ambiguities and confusion that bound today are minimised. Positive action such as delineation of scheduled areas and specified goods, and services to be reserved for informal sector on the same lines as the Africanisation programme under trade licensing Act.⁶ This would go along way in guaranteeing markets for informal sector goods and services.

As the position stands today, there is no clear-cut definition of what jua-kali means. In the absence of a particular legislation which deals exclusively or substantially with informal sector, the sector remains in dark and cloudy. It is not properly established. No Act of parliament which was drafted with the interests of jua-kali operators at heart, and as such, it is impossible to retrieve the meaning of the sector from a statute. Defining the informal sector proves as controversial and elusive as understanding it, and the absence of a steadfast definition, interested parties argue that they know it when they see it. It is a sector shielded

from the law. It exists within and beyond the laws it relies on numerous statutes, if at all, which address it incidentally, without going into the nittygritty.

As a consequence of this anomaly, the sector is defined in terms of its salient features. These attributes is the lack of capital and good quality equipments, constraints of managerial skills, difficulty in obtaining raw materials, lack of organised training and lack of recognition by policy makers. At another dimension, the sector is defined as those business activity generally carried-out in open-air market or in a temporary structure where there is no separate and permanent or enclosed individual business premises, with ease of entry and exist; and with little initial capital outlay and no major administrative or legal formalities involved. Informationally the sector is associated with ease of entry, reliance on indigenous resources, family ownership of enterprises, small-scale operations, labour intensive and adaptive technology; skils acquired outside the formal school system and unregulated and competitive market.

Although the above are not definitions properly so called, they are pointers of the informal sector activities. Were they definitions, they could be valid as there are many other cases where an item is not given a strict definition but defined by use of examples, such that it an activity fall. Under any of the listed examples, its qualities to be part of them. Under the income tax Act, taxable income is not given a strict definition. Incomes from various sources are listed. These from the taxable income. This has never been disputed for want of a clear definition.

The sector's unique characteristics do not entirely agree domestically and internatinally. Some are present in both jurisdictions, and others present in one lacking in theother. Since none of the juridictions can claim superiority over the other, it remains to be questioned which are current attributes of the sector. Domestically, the sector is not statutorily recognised, and as such no domestion law can claim pre-eminence. This confussion can be solved by an attempting to address exclusively or

substantially on the sector and particularly the meaning of jua-kali.

The Attorney General should move quickly to draft such a legislation. It is a welcome idea that a taskforce was set up to recommend a necessary legislation for the sector. The Act is vital as ~~the attributes associated with jua-kali are not~~ ^{it will} command superiority over all other held opinions and clear the air.

There are no specified goods and services associated with jua-kali. This can only be solved by a statute. The sector is as diverse as the countries and regions in which it is found. Kenyan diversity ranges from shoe-shiner services, maize-roasters, cart pullers, car - washers, handicrafts, bedsprings and cloths. It includes the self-employed, and the employed, the skilled and the unskilled, the literate and the illiterate, the landowners and the landless, the old and the young, men and women, urban and rural. A wider definition should encompass open-air garages, fish mongery, hawking, carving, kiosks, barbers, saloons and making manilla woven baskets.

At the city centre, hawkers are under a directive to quit the centre to designated area. It is not clear whether the government is considering the hawkers as jua-kali operators or not. There is a tendency to limit jua-kali to a very narrow range-blacksmiths, open-air garages, sheet metal work and cooking jikos. If the government is taking this narrow view, then the hawkers are not part of jua-kali. It is my opinion that a wider definition should be preferred, such that apart from the above activities, hawking, carving, running of some kiosks, some barbers and saloons, selling vegetable and fruits are included. In this regard, the definition can borrow extensively from the trade licensing Act's definition of regulated trade occupations and specified goods as defined under the Act.

In the absence of specific legislation declaring the exact parameters of the sector, the operators can be harassed by state with impunity. The activities may publicly be described as jua-kali operations, but the absence of a specific legislation declaring them so, the operators are not safe from state hands.

(b) GOVERNMENT POLICY IN RELATION TO THE SECTOR

The government should have a clear-cut policy in relation to the sector. There is a lot of contradictions, and inconsistencies on its current policy. This mess deserves to be removed if the government is serious and convinced that the sector can absorb school drop-outs, school leavers, "literate and illiterate, skilled and unskilled, poor and rich. just as the formal sector does. Positive official policy will enable the sector create job opportunities which the formal sector proved in capable of providing and the same time make the government comply with the world bank conditions of reducing its civil servants, if it is to continue benefiting from aid assistance, without adverse consequences on its citizens.

At one breadth, the government shows some determination of promoting the sector as a realisation of the crucial role the sector plays in the economy. Now that it wants the country to be industrialised by 2020 AD, this realisation is welcome. A development plan called on the relevant ministries and local authorities to team up with non-governmental organisation.⁹ and community based organisations to work out modalities for the improvement of credit and finances of the sector. A sessional paper discussed the sector's role in the economy at length and drew up an agenda for action for the renewed economic growth which puts stress on informal sector's contribution, and further proposed the allocation of more funds through local authorities to improve the market for the sector.¹⁰ Another such paper called on the relevant ministries and the Attorney General chambers to review all important Act that had an impact on micro and small enterprises, review licensing agreements.¹¹ A promise yet to be fulfilled assures the artisans that arrangement could be made to create zones where jua-kali products would be exhibited periodically to facilitate buying by local and foreign investors and that District development committees are under directions to allocate jua-kali entrepreneurs enough land for development and provision of basic amenities to jua-kali sites and provision of more jua-kali sheds.¹²

The force of the aforementioned commitment is *watered down* by what is at the ground "Hawkers" continued stay at city centre is deemed as contravention of city

by-laws and impediment to environmental cleaning operation. They are ordered to quit to designated areas.¹³ Informal sector shelters could be demolished by city personnel forcing entrepreneurs to conduct their trade in open-air. The areas allocated for hawkers are too remote to offer fair market for their commodities. The hawkers used to serve the people working in the city centre. Now that they have been moved to remote parts, the possibility of the workers going to those areas is low.

Confidential

The proclaimed government has not been realised. The laws have not been reviewed. Local authorities have no programmes for improving the sector's credit and financial position. On the area of market local authorities have a policy on market development which also accommodates micro-sector enterprises of all trades. There is a conflict between the central government's policy and that of local authorities. What is formulated by the central government is not implemented by the local authorities. There is a weak co-ordination and cannot transform the official policy into reality. Once the central government directs the local authorities to review licensing rules, the latrers fails to do so.

There is a tendency to persecute jua-kali operators. They are viewed as vagabonds and ~~soldiers~~ *idlers* and arrested under the vagrancy Act. Matatu touts miraa seller and other operators are netted. The sector is associated with people with little capital outlay. However these groups appear not as poor people but thugs. To streamline this end, we can borrow leaf from Tanzania to pass legislation - Human Resources Act, which protects the artisan from being percieved as vagabonds.

All this reveals that the same government's claim to enhance the sector is frustrated by the same government. A clear and definite policy is desired and all acts should be done in furtherance of that policy.

Nothing that the rôle the sector in the economy can never be doubted, the promoting commitment of the government should take the uppershare and never clogged by any other move, whether political or not. Demolition

or any manner of perceiving the sector as illegal ought to be halted. Such government policy should be implemented within a reasonable time. If the government commits itself to reviewing some laws relating to the sector, this should be undertaken without delay. The delays which have marred the reviewing of certain laws proposed to be reviewed should be abandoned and efficiency adopted. These should be co-ordination between the central government and local authorities. What is formulated by the former should be effected by the latter. The loose co-ordination between the two bodies should be strengthened if the plans are to become a reality.

If the artisans are to be moved to other areas, the pattern of demands needs to be considered. In this way the operators will not be disadvantaged. The new sites should have the potential of attracting new customers as the former ones.

4. (c) THE ROLE OF LOCAL AUTHORITIES IN RELATION TO THE SECTOR

The government should re-assess the role of local authorities in relation to informal sector operations with view to removing bottlenecks that infringe the operations of the sector. A crucial aspect in this regard is to finance local authorities services. This could avoid situations where local authorities view the informal sector operations from one-sided and immediate interest only. The authorities have developed a bias towards the sector due to the evolution of legal instruments that allow state to intervene in commerce. The legal framework is heavily influenced by the crisis in revenue generation and thus informal sector becomes an attractive source of revenue through the use of by-law. Vegetable and fruits sellers, hawkers and other street traders are required to obtain a licence.

A licence is required to enter transaction with only licenced business. Many jua-kali operators are subjected to the requirements of the trade licens Act - obtain licence and renew them during the continuance of their operations. These may still ^{be} obliged to obtain a local authority licence. There are accepted groups. This double licensing overburdens the operators and should be scrapped out. ^{say where} the central government control is essential.

Otherwise this multiplicity of licences Act to encompass other operators.

~~The exception should be expanded to cover more operators~~

The group that benefit from them is too narrow - hawkers, charcoal dealers in open-market or a temporary premises. It should be expanded.

The local authorities are further mandated to ensure compliance of some statutes. The public Health Act, ~~land~~ planning Act, Trade licensing Act and the local government Act ~~vests~~¹⁴ on the local authorities, the responsibility of ensuring that their provisions are complied with. Some of the standards set by these Acts are high for jua-kali operators, and others automatically illegalise jua-kali operations. Under the ~~land~~ planning law and the area/town plans and particularly the environmental standards as set out in public health Act and the housing standards as set out under the local government Act.¹⁵ Jua-kali operations are carried out on sites not preserved for them. The sector is ~~not~~¹⁶ represented in town planning "no Site" is reserved for it. Thus most jua-kali structures are illegal under the Act.

The same legislation vests local authorities with wide ~~power~~^{Power} which are liable abuse. The authorities can order demolition of any building not in accordance with town plan, refuse to grant or renew or cancel a licence. They also regulate hawking business, and workshops which may endanger or create discomfort or annoyance to the neighbourhood. This framing of the statutes is detrimental to the operators. Informal sector operations may be banned by local authorities thus paving way for monopolies by formal sector. High fees and charges can be levied to purely stifle or discourage informal sector operations.

However these statutes should not be dismissed outright. They ~~serve~~^{serve} as regulators instrument, only that they impose high standards for informal sector. Regulatory mechanisms are imposed to systemise operations of any economic sector, to which informal sector falls. Regulation underlies a recognition that there are other competing interests which must also be given due consideration to minimise other risks such as sanitary,

pollution, exposure to toxic chemicals and public health hazards. Thus there statutes are useful and well meant.

They regulate formal sector. Only their standards should be modified in the care of jua-kali, once the sector is statutorily recognised.

(a) FORMULATION OF BY-LAWS

There is a need of a co-ordinated approach to formulation of by-laws, so as to solve the bias the sector is viewed with. The ministry of local government and that of planning and national development should undertake this responsibility of formulating by-laws. The ministry of planning should comprise, ~~in~~^{drawn} ~~from~~ personnel ~~drawn~~ from the jua-kali sector. These represents the interest of the sector. This will ensure that the interests of the operators are considered before by-laws are passed. The by-laws' impact on the sector will have been weighed. In this way the sector operation will not be banned to leave way for formal sector monopolies or high fees and charges levied on the operators.

It is distasteful that jua-kali operators are not sought before by-laws which adversely affect them, are passed. They are condemned unheard. How could a statutes such as land planning Act stand in the face of a jua-kali representative in the law formulating pannel that came up with such a statute? How can a representative authorise disproportionately high fees to be levied on the artisans? Their opinion should be sought, heard and considered before decisions which touch on their means of livelihood are passed. The by-laws should be as fair as possible to the artisans.

Now that Act like public Health Act and Land planning Act are in force ~~and~~ materially have impact on the sector, the sections which touch on the sector should be reviewed and made conducive to the sector. The statutes, impose high standards for the artisans. The artisans operate on temporary shelters, along urban thoroughfares and fringes of waste land. They have little initial capital to afford treatment plants and their premises are open-markets. These factors should be considered before a reviewing legislation comes into force.

comes into force. It is laudable that hawkers and charcoal dealers are exempted from the provisions of the trade licensing Act.

Any law or regulation promulgated by local authorities ~~on~~ in informal sector must follow the patterns of demand. Local authorities should consider the use of pedestrian priscints, market to be located in areas of de and, particularly estates, and examine the possibility of utilising ~~highways~~ highways on particular days-thus there is a need for an integrated town planning system. Under the current quit directive from the government to hawkers, it is important to consider whether the deagnated areas the hawkers are being forced to move to will fetch high customers.

(5) INCENTIVES

Incentives attract new investments and lure entrepreneurs to take the risk of venturing into the business. They also encourage those experiencing negative returns to remain in the business. The incentives should equally be stable overtime for it takes time for an investment to yields policy. This attribute receives tribute in the formal sector where a new investor can be granted tax-exemption or aloweed to operate for long periods without paying sector.

It is not laundable that this benefit has not been extended to the formal sector. where little capital and ~~undependable~~ markets characterise the business. However, the burden is not so pronounced on the sector as the artisans are not liable to pay tax inform of V.A.T.

Giving priority to informal sector entrepreneurs for government tenders and contracts and implementation of subsidies for the informal sector will encourage and motivate jua-kali operators. Kenya can borrow the Tanzania's experience - the rulling party has instructed the giving of preference to goods from informal sector operators, by way of tendering, confining to this sector the production of certain items such as school desks, uniforms, bricks and giving preferential taxes to small-scale enterprises and relaxing their credit conditions. It has established an award system whereby the best entrepreneur is nationally

recognised and rewarded.

The government should further encourage the formation of industrial and production co-operatives which should encourage the formation of group activities. The co-operatives is existance are in adequate. Non governmental organisations should be encouraged to come up and address the problems of informal sector. The jua-kali sheds should be diversified to cover more areas. These should be located at convenient places near the main business district so that the goods are sold easily.

VI PATENT

The patent laws in Kenya seem to protect inventions that are novel, constitute an inventive step and are industrially applicable. Thus they operate on the basis of established intellectual property and licensing arragement.

In jua-kali, innovation largely draw technological knowledge that is already in the public domain. They assimilate imported technology and generate modified verssions. They blend some of the existing technologies with imported ones.

Thus the existing patent laws in place do not adequately reflect the need to stimulate and protect innovations that are fermedas appropriate or intermediate technologies. These can meet the requirement of reproducability but be defeated by the tests of novelty and inventive steps. There is a need for a new legislation to incorporate the salient features of jua-kali innovations.

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CONCLUSION

The need to look at the informal sector positively as a sector that can inject life into Kenya economy cannot be over-emphasized. It is a sector that requires attention from the government as well as the public. The government ought to recognise the crucial role it plays and create the necessary atmosphere in which its full potential can be realised especially when the country is striving to get industrialised.

There is a need of change of heart on the part of the government and

to adopt a common and uniform approach towards the sector. It should discard the inhibitive approach that it has been directing, the sector. It should refine its current approach and reconcile its multiple approach to come up with a single approach free from inconsistencies. What the artisans are doing out there in the sun should be curtailed by negative policies emanating from the government.

The public should change its hostility towards the sector. It should not ridicule the sector on ground that it is for the illiterate and poor. The belief that the operators make low quality products deserve to be dumped in pits and set ablaze, never to be employed to drive the country economy towards attaining industrial age within the stipulated period. It possesses the potential to offer more employment opportunities which can absorb the jobless, and thus accelerate the pace of economic growth.

The urge to remove the bottlenecks that are crippling the sector is pertinent and pressing. The sector loaded with lots of hindrances that reduce its efficacy. In the face of the current barrier by they financial, legal or otherwise is prohibitive to the effective performance of the sector. The sector should be streamlined as an endeavour to realise its potential. In other effort to remove those barriers efficiency should be employed. Delay and bureau cracy attendant upon the implementation of the various recommendations should be replaced with efficiency, knowing very well that the faster the recommendation are effected, the better for the sector, hence the projected goals are likely to be achieved with the time set.

The formal sector has failed to absorb all jobseekers into employment. It is the high time that attention is shifted to the motivation to the operators-should flow in form of tax rebates, encouragement of formation of co-operatives and establishment of award system to arouse the competitiveness of the operators.

Efforts need to be directed towards classifying and defining the sector.

The present unclear and narrow limits of the definition speaks loud in favour of discouraging the sector's activities.

FOOTNOTES

CHAPTER TWO

1. Supra - Chapter One
2. Cap 497
3. Cap 265
4. Cap 303
5. Cap 242
6. Cap 514
7. Cap 23
8. JUMA: Innovation in the jua-kali sector in JUMA & OJWANG innovations and Sovereignty
9. 1 Bid
10. Public Health Act, section 115
11. 1 Bid section 116
12. James Kisanga V Republic HCCR 27/1989
13. Supra note 10 sect 117
14. 1 bid sect 118
15. Cap 265 sect 164
16. 1 bid sect 165(a)
17. Cap 303 sect 10(1)
18. 1 bid sect 165 (a)
19. 1 bid sect 17(1)
20. 1 bid sect 18 (b)
21. 1 bid sect 18(c)
22. Cap 497 sect 2
23. 1 bid Declarations of Occupations order
24. 1 bid specified goods order
25. 1 bid sect 5(1)
26. 1 bid sect 13
27. 1 bid sect 13
28. 1 bid sect 14
29. 1 bid sect 27
30. 1 bid Exemptions under sect 27
31. 1990 amendment.
32. Supra note 8
33. 1 bid
34. 1 bid
35. 1 bid
36. 1 bid
37. 1 bid

FOOTNOTES

CHAPTER THREE

1. Daily Nation, Monday 14, July 1997
2. Supra chapter one
3. 1 bid
4. 1 bid
5. 1 bid
6. Mobilisation of the informal sector for Kenya's Development A report
7. Supra Chapter 2. Cap 497
8. Supra note 6
9. Supra note one; Government's Initiatives
10. 1 bid
11. 1 bid
12. 1 bid
13. Daily Nation Tuesday April 1997
14. Supra note 7
15. 1 bid