

# The North-South Divide in Urban Patterns and the Contradictions of Using Homogeneous Instruments of Planning:

*Lessons from Kenya*

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## Abstract

Three development pathways characterize all urban societies in the world and, this, by necessity, result in different spatial patterns. The first pathway can be viewed as *laissez faire*, which produces informal or organic urban patterns while the second pathway is the preplanned development trajectory which results in the ideal urban patterns. The third pattern can be viewed as urban decay, which occurs when preplanned patterns reach optimum thresholds. Countries in the 'North' have since minimized or eliminated informal development processes in favor of the preplanned pathway. Thus, planning theories and instruments in countries in the 'North' have a bias and tend to reflect the preplanned model. However, countries in the 'South', Kenya included, are trapped in a dual development pathway, where informal patterns dominate the urban fabric and, therefore, preplanned instruments would be ineffective in regulating such patterns. To validate this postulate, the investigation reviewed the historical evolution of the planning instruments both in the North and in the South, using Kenya as a case study. The review established that Planning theories and instruments were developed in the North to respond to challenges in their urban development scenarios and such instruments were exported to Kenya during colonial rule. However, the instruments have never been modified to respond to the specific development challenges in Kenya especially those related to organic urban patterns and this was found to be the main factor in ineffective urban planning.

**Keywords:** Homogeneity, ineffective planning, Kenya, North-South, planning instruments.

## INTRODUCTION

The question which bothers most policy makers and scholars alike is: why is planning ineffective in less developed nations, Kenya in particular, despite the presence of a plethora of laws, policies and other instruments of planning? This paper advances a proposition that African countries, Kenya, in particular borrowed planning instruments based on theories equally borrowed from the west but which have no relevance to the development realities in Kenya. This paper investigates the validity of the proposition that western planning instruments and theories borrowed for use in African and Kenyan cities in particular are inappropriate. In particular, it was hypothesized that all cities pass through two main stages of development although major cities may evolve to a third stage of development, which basically refers to urban renewal.

It was further contended that the first stage of

urban development would be informal or organic development while the second stage is preplanned. It is further argued that whereas countries in the North have since cleared or minimized the informal stage of urban development through urban reconstruction, African countries are still trapped in a dual pattern of informality and formality created during colonial rule. Finally, it was contended that by clearing the informal stage of development, countries in the North have since developed theories and instruments that are mainly informed by the dominant development process-the preplanned urban development trajectory. The western-based theories and instruments found their way into Africa and Kenya, in particular, during colonial rule and, currently, due to influences of globalization. Policy makers in Kenya, however, apply such theories and instruments when planning their cities and rural spaces without modifying them to fit existing development realities and this explains

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why there is ineffective planning and development control.

## RESEARCH METHODS

A review of literature was carried out through desk research to validate the contention that urban areas pass through particular stages of development. A further review was also carried out to ascertain whether there is a connection between the stages of urban development and the nature of theories and instruments developed to regulate urban areas. Thirdly, the nature of urban development and the ensuing patterns were tracked both in the UK and in Kenya up-to post-colonial era to find out whether there was any similarity in patterns between the two countries. Finally, various cases or practices were reviewed and excerpts taken from the Physical Planning Act which has been used in the past to regulate urban development in Kenya in order to find out whether such laws were borrowed from the west and whether such laws and other instruments were premised on the development realities of the UK. The parallels drawn between the UK and Kenyan planning experiences and a comparison of the theories and instruments which inform such planning were analyzed to find out any similarity. If development realities in the urban areas of the UK and in Kenya were found to be different yet the instruments guiding planning in such countries were similar, this would then point to an existing disconnect in the planning of Kenyan cities and rural areas and, therefore, the reason for ineffective planning and development control.

## RESULTS AND DISCUSSION

### Evidence of three urban development pathways in Europe and North America:

Urban development in Europe during medieval era was largely organically driven resulting in poor layouts, unaesthetic urban environments, and lack of connectivity and insufficient provision of infrastructural facilities (Gallion and Einsner, 1963). Writing about the challenges to city planning in America, Peter Hall (1999) also identifies a stage during the pre-industrial era when American cities were informal and refers such stage of development as 'city pathological'. The era of renaissance brought with it a group of thinkers viewed as utopians who dreamt of environmental determinism through some form

of deliberate urban design (Cherry, 1974; Hall, 2002; Taylor, 1998).

After the two world wars, the great depression and the industrial revolution, there arose what later could be viewed as an opportune moment for urban reformers to bring about change in the urban arena (Gallion and Einsner, 1963). For example, there was need to reconstruct blitzed areas of the cities bombed during the war, and there was need to reorganize blighted areas consisting of poor layouts of medieval era urban patterns as well (Cherry, 1974; Hall, 2002; Taylor, 1998). Again, Hall (1999) acknowledges that the era of urban reconstruction occurred in American cities and it was meant to bring about what he refers to as city functional and city beautiful and this covered the period 1901-1939.

When blitzed and blighted areas were successfully minimized in the cities of Europe and North America, policy makers resolved to adopt preplanned urban development in order to determine future urban patterns (Gallion and Einsner, 1963). The planners' dreams of what constituted the ideal future city were guided by a set of norms viewed as 'public interest' and planning only became a vehicle to make it happen (Taylor, 1998; Chapin and Kaiser, 1979; Hall, 2002). It can also be observed that undesirable patterns of the organic development model were not only cleared during urban reconstruction but societies in the west decided to never go back to such development model by adopting and institutionalizing the preplanned urban development model (Kivelli, 1993; Taylor, 1998; Hall, 1999). In America, for example, Peter Hall reports how planners mimicked the works of the utopians such as Ebenezer Howard, Lewis Mumford, Henry wright, and Clarence stein among others to bring about new patterns in urban areas in what he refers to as 'city visionary' (Bannister et al., 1999 in Hall, 1999).

From the foregoing, one can deduce that America urban development trajectory passed from the era of city pathological to city visionary. City pathological and city visionary can be viewed as two different urban patterns resulting from two different development pathways. For example, city pathological pattern results from laissez-faire

development while city visionary results from preplanned development. Similarly, in Australia, Barker (2007) reports that up to the period just after the First World War in the 20<sup>th</sup> century, land development came first and planning later. In the third urban development stage, cities that were once well planned begin to suffer from decay, general blight in the inner city, and pressure for rezoning as former bounded areas threaten to break the walls. Bannister et al. (1999) in Hall (1999) refers to what could be viewed as the third stage of urban development trajectory as city renewable. The city renewable development era occurred in American towns in the periods of 1937-1964, long after planning had taken place and when development had already been implemented according to the plan. This means that the city renewable pattern occurs after the redevelopment or renewal of the urban decay pattern.

**Evidence of two development pathways: Plan, Service, Build and Occupy (PSBO) and Build-Occupy (BO)**

In the western countries, which constitute the North, Preplanned development process occurred on a plain surface, followed by provision of social and physical infrastructure before such land was allotted to prospective developers. Developers were required to obtain development permits before they could undertake actual development and such developers were also required to obtain occupation certificates at the end of the construction process (Kivelli, 1993; Kenya, CAP 133). The development process in the preplanned trajectory model followed the steps of plan-service-build-occupy (PSBO) pathway. The organic-informal model, is the opposite of the planned model where development occurs without planning and infrastructure is not provided for before development. The informal-led development urban trajectory can be summarized as- build-occupy-development pathway (BO). When preplanned development is fully implemented, cities reach the third stage when urban renewal is necessary and further rezoning would be required to facilitate redevelopment.

**Organic and preplanned pathways require separate regulative instruments**

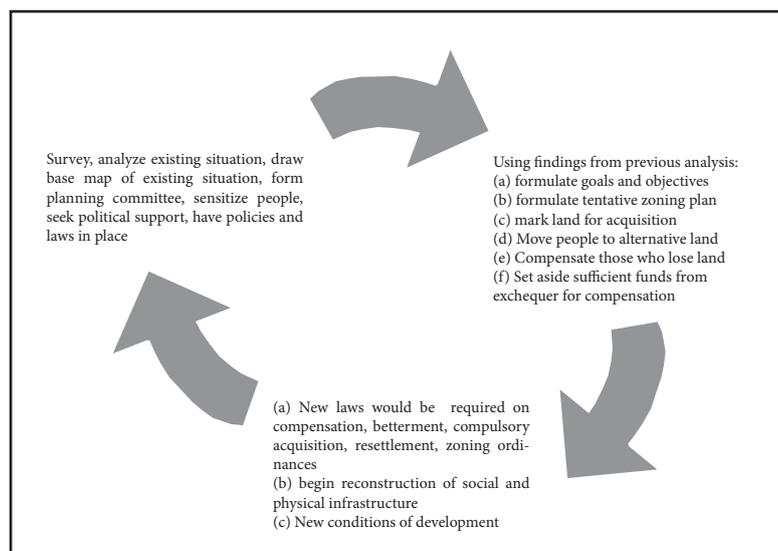
From the foregoing, it is clear that there are three development stages in the urban areas and

since stage 1 and 3 require similar theories and instruments, this paper considers stage one and three as one and condenses the development models into two. In the organic development model, the planners meet a scenario of undesirable patterns in an equally tricky scenario that requires unique approaches. In organic level, development took place sometimes in the past and the planner aims to reorganize such patterns in order to achieve public interest and realign it towards desirable levels. The instruments required in the informal development patterns are those which work backward in a way viewed as retroactive. For purposes of this discussion, this paper shall refer to the theories and instruments relevant to such development scenario as retroactive instruments of development control. In contrast, preplanned development occurs in the future and planning envisages guiding such development towards desirable patterns. The theories and instruments which are relevant in this case are those which are futuristic, innovative, creative and mainly proactive. The section below discusses the retroactive and proactive theories and instruments.

**Organic development model and the use of retroactive planning instruments**

In the organic urban pattern brought about by laissez-faire development process, the planner would most likely follow the stages stipulated in **Figure 1**.

Under this pattern (**Figure 1**), the planner analyzes the existing situation, then formulates the base map and decides the future pattern using the data collected and analyzed from the existing development. The zoning plan shall result to displacement of people and shall require most of the land to be compulsorily acquired in order to accommodate land uses that were neglected during informal development. The reconstruction of the roads through widening and reticulation shall require extra land and this shall lead to displacement of the people. To put in place social and physical infrastructure, concerned authorities shall require finances from the exchequer and more finances shall also be required to compensate those who lose their land and some of those displaced may need to be resettled on land again purchased by the state. This begs the question, do Kenya planning laws and policies take this



**FIGURE 1**  
 The use of Retroactive Planning approach to organize informal patterns  
 Source: Author 2019

approach when reorganizing areas of organic development?

There are those who shall remain in-situ during the reconstruction process but would probably gain from planning decisions like the construction of new roads, railways or the provision of other infrastructure services. The beneficiaries from planning decisions may require to pay the state betterment fee and perhaps the state can use such monies to balance with those lost through compensation. Those who remain behind may also require to be subjected to new development requirements so that such development conforms to the new zoning ordinance. To make redevelopment and reconstruction a success, new laws shall be required regarding compulsory acquisition, betterment cost, zoning ordinances, development covenants, and land tenure realignment, planning committee, sensitization sessions with stakeholders, heavy public participation and consensus building. The relevant theories here shall be Charles Lindblom's (1959) theory of muddling through which detests disruption of the status quo. Some development shall require incremental changes so as not to disturb the social fabric of the people. Some developers may hire expert planners to represent their interests in the various decision making processes and this shall require the theories of advocacy and Palsy's communicative theory. The processes in **Figure 1** were applied in America,

the UK, Australia and France to destroy the old urban order created during medieval era (Gallion and Einsnser, 1963; Cullingworth, 1988) and these must be replicated when managing informal urban development in the urban areas of the countries of the South, Kenya included.

#### **Preplanned development model is facilitated by Proactive theories and instruments**

Preplanned urban development model was adopted for use in Europe, and in the UK in particular. In order to actualize the preplanned model, several changes were introduced in the laws and a new institutional dispensation was also put in place to enable effective plan making, implementation and development control. Most of the theories and instruments intended to bring about preplanned development can be categorized as proactive instruments. Preplanned development occurs in the future and for it to happen, the type of instruments required are those capable of manipulating the current activities of the developer in order to achieve a future pattern considered to be desirable. The following institutions and instruments were reorganized to bring about preplanned urban development.

#### **(a) 'Nationalization of development rights' conditioned developers to seek for permits**

In order to actualize the preplanned development pathway, urban development rights were

'nationalized' and institutionalized using the state's inherent police power. The implication of nationalizing development rights was that although developers owned land and they themselves carried out development, such development, however, had to be in conformity with approved plans. For example, all developers had to obtain development permits and development control authorities used these instruments to indirectly tie developers towards compliance with the approved plans (Cullingworth, 1988; Kivelli, 1993; Taylor, 1998). The Uthwatt commission (1942) which recommended nationalization of development rights helped the government to save on horrendous costs incurred earlier while compensating developers for the loss of development rights (TACPA, 1947; Cullingworth, 1988).

Nationalization of development rights also facilitated planning on a plain surface and this provided the planner with perfect freedom to design cities according to the dreams and ideals of utopianism. Planners did not have to consult with anyone when preparing such plans because, first, the norms that guided planning were not contested and secondly, the training and skills acquired by planners for preparing such plans were not in doubt (Taylor, 1998). The resulting plans from such process were physicalist and fairly accurate end-states referred to as master plans or blue prints (Cherry, 1974; Taylor, 1998).

**(b) *The Town and Country Planning Act (UK, TACPA, 1947)***

The Town and Country Planning Act (Clarke, 1947) of the UK was enacted to facilitate planning on a plain surface. The law also inserted a provision requiring developers to acquire development permits. Earlier, the 1946 New Towns Act had provided for the acquisition of land for development of new towns and the law had also provided for appointment of public corporations to plan and develop the new towns before handing them over to Local Authorities. The 1947 Act therefore only added the requirement for developers to obtain development permits.

**(c) *Issuance of lease-hold titles committed developers to follow plan and obtain permits***

In order to ensure that developers acquired

development permits, the land ownership documents issued to them had development conditions to the effect that any defined form of development could not be undertaken unless sanctioned by the authorized institution and duly approved by the relevant authorities (Clarke, 1947; Cullingworth, 1998).

**(d) *Planning theories dictated by stages of urban development***

Planning on a plain surface during the era of preplanned development trajectory model enabled planners to prepare plans with freedom and with a high degree of precision (Cherry, 1974; Kivelli, 1993; Taylor, 1998). Planning theories which informed the preplanned model include Patrick Geddes's model of survey, analyze, and plan (SAP) and Lewis Keeble's (1952, 1983) classic town planning theory. The two theories proceed straightaway with planning without passing through the hustles of collection of data and rigorous analysis characterizing planning processes today. Secondly, the stage for public participation is not even mentioned in the two theories because such stage was not anticipated in a situation where planning was taking place on a plain surface. In this context, there were no people to consult and the justification for planning was not in dispute to require consultation.

Both Geddes's and Keeble's planning models resulted in the production of master plans or blue prints by necessity because plans were legal and binding and they were prepared with precision. Towards the end of 1950s, most scholars and policy makers criticized the master planning model for being rigid and out of tune with reality (Taylor, 1998). The planning advisory group (PAG) appointed in 1959 to advise on how future planning (would) should proceed recommended that there should be public participation in the planning process. Skeffington was appointed to advise on the form of public participation required in a planning process and he specifically advised that such participation should be limited to consultation (Skeffington's report in Taylor, 1998). The PAG also recommended the preparation of two tier plans consisting of strategic structure plans at a higher hierarchy and local plans at a lower hierarchy. The clamor for public participation and for the adoption of the two tier planning approach were later reflected in the 1968 Town and Country

Planning Act (TACPA) (Cullingworth, 1988; Taylor, 1998). The Rational comprehensive model (RCM) of planning that followed in the 1960s to 1980s emphasized on public participation and two tier planning strands (Faludi, 1973; Taylor, 1998). It can be concluded then that planning theories tended to follow and were informed by the preplanned urban development processes. For example, the Lewis Keeble and Patrick Geddes's models were modified because of the change in the urban development processes and the inclusion of the structure plans to the local plans in particular.

However, one thing must be borne in mind. That although critical changes were introduced to the master planning process that culminated in the adoption of the Rational comprehensive model of planning (Faludi, 1973), three components were still retained as critical aspects of planning theory. The components that were retained especially during the preparation of local plans include:

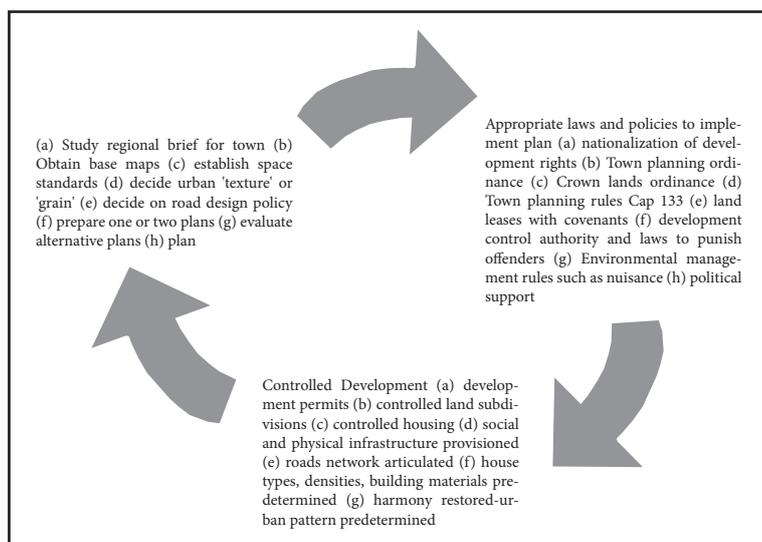
- (a) Planning on a plain surface,
- (b) The technocratic nature of the planning process, and
- (c) The legal and binding nature of the plans.

The structure plans provided elbow space for local plans to extend outwards when time was ripe and this removed the notion of the end-state nature of plans envisaged during the Keeble and Geddes' planning models (**Figure 2**). It must

be borne in mind that the two tier planning approach was informed by Brian Mcloughlin's (1969) and Chardwick's (1971) systems approach to planning who advanced the hypothesis that urban areas should be viewed as systems which cannot effectively operate without their parts. In this context, urban areas should be planned by incorporating their regional areas that have influence on them and over where such towns have considerable influence as well.

### Colonial government exported preplanned development and the accompanying proactive instruments to Kenya

During colonial rule, Europeans exported pre-planning culture to their colonies and this is how Kenya benefited as well. The racial segregation approach, however, created the African, Asians and European zones. Whereas planning was practiced in the European and Asian zones, such practices were excluded in the African zone and this created the White-black space divide. The variations in development processes in the two space divides then resulted in formation of informal and formal development patterns. To undertake planning and development control in the two different development processes, one would require both retroactive and proactive set of theories and instruments. However, the colonial government had no intentions of reforming informality in the African settlements and, therefore, there were no retroactive planning instruments in place to



**FIGURE 2**  
 Preplanned planning process requires proactive instruments  
 Source: Modified from Keeble 1983

reorganize informal space patterns in the African zones. As can be discerned later, the instruments discussed below were all proactive and aimed at provisioning planning in the European and Asian settlements.

**(a) *'Partial nationalization of development rights' to facilitate planning in white zones***

The Crown Lands Ordinance of 1902 and 1915 required that all development in the classified towns and scheduled rural areas would be guided by planning schemes prepared by the Town Planning Advisor and approved by the Commissioner of Lands. Town Planning Ordinance (TPO) borrowed heavily and indeed was modelled on the UK's Town and Country Planning Act (TACPA) of 1947. The 1947 TACPA of the UK particularly made provisions for planning on a plain surface and developers were required to follow the town planning schemes and also seek for development permits. This means that colonial laws and policies had provisions for preplanned development but such laws were only applicable in the European and Asian areas. For example, whereas Europeans and Asians were issued with lease titles with specific covenants stipulating development conditions in their areas, such conditions were not provided in the communally owned African rural land. The implication is that nationalization of development rights were partially provided for in the statutes, particularly, to serve European and Asian interests (Kenya, 1902, 1915; CAP 133).

**(b) *Powerful Development Control Authority and a set of Town Planning Rules***

During colonial era, there was a set of rules to accompany the preparation and implementation of the town planning schemes. Although, the provisions of the Town Planning Rules Ordinance (Kenya 1948, 133) were supposed to be implemented by Local authorities, such rules were, however, implemented by the District Commissioners. District Commissioners were in charge of provincial administration and were known to be very powerful during colonial and post-colonial era. It is possible then that such powerful office was required to implement the equally challenging role of controlling urban development. The Town Planning Rules were elaborate and besides clearly stipulating various requirements necessary to obtain development

permits, and certificates of occupation, the rules also stipulated severe penalty to those who failed to comply.

**Common thread in preplanned model: proactive theories and instruments**

In short, the development model in the European and Asian settlements of Kenya is similar to the one adopted in Europe and North America after dropping the organic development model. The theories and instruments in use in the western countries are relevant to the development scenario in the European and Asian settlements in Kenya. No wonder then that the instruments used to facilitate planning and development control in the European settlements in Kenya are similar to those in Europe and North America. For example, in both cases, development rights were nationalized and developers were required to obtain development permits. The relevant institutions, laws and land tenure systems had to be harmonized to achieve the goal of development control and planning had to be carried on a plain surface. The proactive instruments cannot be effective in reorganizing informal land use patterns currently prevalent in the urban and rural areas of Kenya.

**Period 1963-1998 Duality of development and same planning instruments retained**

When Kenya attained internal self-rule in 1963, all colonial structures and planning institutions were retained, implying that both the organic and preplanned development pathways were retained as well. Rural areas were retained to promote agriculture while urban areas were retained to promote Trade and Growth Center Policies. The colonial era Town Planning Ordinance was changed to Town Planning Act (Kenya, 1948, CAP, 134) while the Crown Lands ordinance became the Government Lands Act (Kenya, CAP, 280). However, the discriminatory nature of planning where African areas were excluded from planning remained the same in post-colonial era although in a different form. Although racial discrimination was abolished in post-colonial era, the divide took a new form of the rich-poor divide where the African-elites joined the Europeans and Asians in the well-planned urban and rural neighborhoods while the poor-Africans occupied the unplanned rural and urban areas. Planning continued to be effectuated in the former European settlements-

now occupied by the rich, while the former African settlements-now mainly occupied by the poor, continued to be excluded from the benefit of planning. Since dual land development processes were retained in post-colonial era, both retroactive and proactive instruments were required to manage past informality and predetermine future land use patterns. Were such instruments provided for?

**(a) No provision for retroactive planning in areas of informal development**

There was no provision for planning in areas that evolved informally during colonial rule. However, communal land was converted to private freehold titles through land adjudication processes without the benefit of planning. The implication is that informality of development continued to escalate in former African settlements both in the urban and in the rural areas.

**(b) Proactive instruments were either weakened or discarded**

*(i) Town Planning Rules discarded, thus weakening development control in former white areas*

During colonial rule, three statutes acted in unison to facilitate planning in the white settlements. The Town Planning Ordinance (CAP 134) provided for planning processes and, in particular, the statute specified areas that were the subject of planning, and the law further specified the town planning advisor as the authority responsible for preparing plans. The Crown Lands ordinance (1902; 1915) provided that the Commissioner of Lands was the plan approving authority. The Crown Lands Ordinance also specified that Crown Land had to be allocated through auction and developers could not undertake development on land that was not planned and approved nor could they undertake development without approval. The District Commissioner was the development controlling authority and this was specified in the Town Planning Rules Ordinance (CAP 133).

The planning and development control process was made effective by creating harmony in all the relevant laws. For example, the Crown Lands ordinance (Kenya, 1902, 1915), the Town Planning Ordinance (Kenya 1948, Cap 134), the Town Planning rules Ordinance (Kenya, CAP 133), the

Local Government Ordinance, the Survey Act and the lease certificates issued to developers were all unified towards a similar accord that towns and scheduled rural areas had to be planned and developers had to receive development permits and occupation certificate. However, the Town Planning Rules Ordinance (CAP 133) was discarded in post-colonial era and no mention is made of this important statute. Town planning rules were contained in this statute and the same statute empowered the District Commissioners to oversee development control and punish those who violated the plans. The exclusion of this law from the statutes created a weak link in the planning process since the implementation and development control framework was lacking.

*(ii) The Land Planning Act (CAP 303) weakened planning in towns and former European rural areas*

The Government Lands Act and the Town Planning Act provided for planning in all government land including that in the former scheduled rural areas albeit in a weakened form. However, the Land Planning Act (Kenya, 1968; Cap 303) redefined what constituted development and in this regard, rural land subdivision above 20 acres was exempted from planning requirement and construction of homesteads were also excluded from planning requirement. The Land Planning Act also created the Interim Planning Authority who could perform planning functions and who could approve plans and control development as well. This created an overlap of functions with those of the Town Planning Advisor who was the plan preparatory authority and it also created an overlap of functions with the Commissioner of Lands who was the plan approving authority as well. The Act also created conflict between Local Authorities who were considered to be development control authority (Kenya, CAP 265) and the new entrants in the name of the Interim Planning Authority under the provisions of the Land Planning Act (Kenya, CAP 303).

**Post-colonial era 1998-2010: Physical Planning Act provided for planning throughout the country**

The Physical Planning Act (PPA) was enacted in 1996 to regulate land use throughout the country both in urban and rural areas and in all land tenure

regimes (PPA, Part 1, section 2; CAP 286). As a result, both the Town Planning Act (GOK, CAP 134) and the Land Planning Act (CAP 303) were repealed. PPA created the office of the Director of Physical Planning whose role inter-alia included preparing all national, regional and local physical development plans. The law granted the Director of physical planning what appeared to be policing authority over Local Authorities to the effect that the Director shall require Local Authorities to implement plans. The minister for planning was given powers to approve plans prepared by the Director and Local Authorities were the implementing agencies. For the Physical Planning Act to be effective in regulating informal patterns and in directing future development patterns, the statute required inbuilt policies of both proactive and retroactive instruments of control. However, the Physical Planning Act contained proactive instruments of control just like its predecessor the Town Planning Act and therefore the law could not guide the mainly informal patterns that had taken place in Kenya during colonial and post-colonial era up to 1998 (100 years).

**(a) *Physical Planning Act was a proactive instrument, hence could not reform informal patterns***

The Physical Planning Act was a proactive instrument which aimed to guide future development patterns. As a result, the statute was not useful in reforming areas where informal development had taken place. The various cases reviewed below shall serve to elucidate the point.

**Case Review 1-1**

**(a) *Physical Planning Act wrongly assumed fully 'nationalized development rights'***

The Physical Planning Act was modeled on the letter and spirit of the Town Planning Act (Kenya, CAP 134) and the TPA had earlier been modeled on the Town and Country planning Act (TACPA) (Clarke, 1947) of the UK and later imported to Kenya during colonial rule. The TACPA of the UK was premised on the concept of a nationalized development right where planning comes before development and where developers are required to obtain development permits (Clarke, 1947; Cullingworth, 1988; Taylor, 1998,). However, previous review of literature shows that Kenya had inherited a dual development system of informality

in African areas and formality in former European areas. Nationalization of development rights was only actualized in government land both in colonial and post-colonial era. The state's power to regulate development was only possible in government land but not in former African rural and urban areas. The Physical Planning Act was not adequately provisioned to plan all areas of the country especially areas that had suffered from informal development.

**Case Review 1-2**

**(b) *The Proactive PPA envisages planning on a plain surface and for new towns***

During colonial era, some towns were classified as 'A' while others were 'B', and even 'C'. The class A and B towns were the headquarters of Provincial and District administration during colonial and post-colonial rule. These towns were developed elaborately during colonial and post-colonial eras using the provisions of the Town Planning Ordinance, Town Planning Rules ordinance, Government Lands Act and Local Governments Ordinance, although the Africans sections were excluded (CAP, 134, 133, 280, 265). These towns exhibit a duality of development constituting the well-planned former European and Asian zones and the informally-developed African zones. After planning, land was allocated for development to mainly Europeans and Asians during colonial era and African elites during post-colonial era. The implication is that such land is now private property and some development exists in various forms, be it commercial, residential, roads, public purpose, recreation or such other urban development category.

The Physical Planning Act (CAP 286) provided for preparation of physical development plans to cover all towns and this provision was found in part (B) section 24(I) of the Act. The relevant section read as follows:

*The Director may prepare with reference to any government land, trust land or private land within the area of authority of a city, municipal, town or urban council with reference to any trading or marketing center, a local physical development plan. In section 24(2), the PPA provides that a Local Physical Development Plan may be a long term or short-term physical development or for a renewal or redevelopment and for the purpose set out in*

third schedule to each type of plan. In the third schedule, the aim of such plan amongst others would include... (iv) indicating action area for immediate development or redevelopment (vii) showing amount of land sufficient to accommodate growth of the local area over a period of 20 to 30 years. In section (24(3)), PPA provides that the Director may prepare a Local Physical Development Plan for the general purpose of guiding and coordinating development of infrastructural facilities and services for an area referred to in subsection (1) and for the specific control of the use of and development of land or for the provision of any land in such area for public purposes.

Let us now interrogate this section of the Physical Planning Act in view of the realities already existing in former class A and B towns currently referred to as municipalities or cities. How do you prepare a plan to provide for sufficient land for various land uses to cover a period of 20-30 years, in a town that was already planned during colonial era and where land is already developed and in private realm? Part V, section 29 of the Physical Planning Act empowered the Local Authorities to implement plans and regulate development and in particular have the power:-

*(a) to prohibit the use of and development of land and buildings in the interests of proper and orderly development of the area; (b) to control and prohibit the subdivision of land or existing plots into smaller areas (c) to consider and approve all development applications and grant approval to all development permissions (d) to ensure the proper execution and implementation of approved physical development plans-----.*

Again the question asked is: how do you control development in a town already developed? Which areas in former class A and B towns are available for fresh planning in order to enable Local Authorities issue development permits?

It is clear that PPA assumed that such planning was to take place on plain surface and on land available for the creation of new towns as was the case in the UK. For example, the 1946 Town and Country Planning Act in the UK provided for the planning of new towns to decongest London and to act as model cities along the ideals of the garden city concept. PPA therefore wrongly assumes that

a similar approach was possible in Kenyan cities. It is only in the context of new towns where fresh plans could be prepared and where issuance of new development permits was possible. In section 30(1), PPA further stated that no person shall carry out development within the area of a local authority without a development permission granted by the local authority under section 33. Again the question posed at this juncture is: under what circumstances could Local Authorities issue new development permits in a town where development was carried out long time ago and where land was already held as private property?

#### Case Review 2-1

##### ***(a) PPA ignored existing informality in former African towns and considered such towns plain***

Town planning rules during colonial era (GOK, CAP 133) permitted the use of informal building materials in African towns. This practice was tolerated even during post-colonial era lasting 1963-1998. Such towns were managed by the County Councils using the Local Government Act (cap 265) and often when allocating plots, Local Authorities did not use planning guidelines. Instead, Local Authorities used the services of cartographers to demarcate and make land available for allocation to developers. Although developers were required to present building plans for approval, such a requirement was ritualistic since there were no plans to guide such approvals and in most cases approvals were used to generate revenue. This means that development in such towns even in the era of post-colonial rule was informal and one would notice glaring absence of good road network and community facilities to-date.

Most of the plots were also created for commercial and residential use and therefore the process excluded industrial areas, recreational areas and community facilities. However, the Physical Planning Act assumes that it was possible to plan such towns as if they were vacant land and issue fresh development permission to developers who would in turn develop according to the planning framework. But, development had already taken place in such towns and land was held as private property. This means that land was not available for fresh adjudication and reallocation of land

use rights unless such rights were compulsorily acquired and compensation issued to the affected persons.

#### Case Review 2-2

##### ***(b) The proactive PPA ineffective in the informally developed former African rural areas***

After independence, former African rural reserves, a form of communal land tenure, were adjudicated and individuals allocated with land and issued with freehold titles. Land adjudication was undertaken by an adjudication committee appointed by the Land Adjudication Officer (Kenya, CAP 288). The committee identified individual land rights, recorded and registered them in the land adjudication register and the boundaries of individual parcels of land were demarcated by survey assistants. The final land adjudication register was approved by the Director of land adjudication and the survey maps finally approved by the Director of Surveys. Finally, the approved register formed the basis of issuance of titles to individual land owners (Kenya, CAP 300). Some rural areas in Kenya are still undergoing land adjudication processes and it is during such process that land was set aside for urban development. Of concern here is the fact that the process of land adjudication and registration was not guided by planning and the absence of planning is manifested in the form of narrow roads and absence of community facilities. Land was allocated to individuals without consideration to police posts, cemeteries, churches, waste disposal sites, schools, hospitals and forests.

The second point to note is that rural areas occupied by Africans were not subjected to planning during colonial and post-colonial era lasting up to 1998; in a period spanning 100 years. The statutes regulating rural land use such as the Land Control Act (CAP 302), the Registered Land Act (CAP 300), the Agriculture Act (CAP 318), the Local Government Act (CAP 265) and the Survey Act (CAP 299) did not have provision for land use planning in the rural areas and the statutes were not repealed when the Physical Planning Act was enacted. The Physical Planning Act was therefore introducing land use planning in the former African rural areas for the first time. To what extent would the Physical Planning Act be able to guide land use planning and control in the

former African rural areas?

##### ***(c) 2-2: PPA wrongly assumed former African rural areas to be plain land available for planning***

In part IV, section 16 of the Physical Planning Act, there was a provision relevant to the preparation of plans covering rural areas or other regions and the section stated as follows:

*A regional physical development plan may be prepared by the Director with reference to any government land, trust land or private land within the area of authority of a County Council for purposes of improving the land and providing for proper physical development of such land, and securing suitable provision for transportation, public purpose, utilities and services, commercial, industrial, residential and recreational areas----- and also the making of suitable provision for the use of land for building or other purposes.*

Section 16(2) further states that a regional physical development plan may provide for planning, re-planning, or reconstructing of the whole or part of the area comprised in the plan, and for controlling the order, nature and direction of development in such area. Former African rural areas were settled and land owners had title deeds implying that such land was private property. Informal development had also taken place in such areas both in colonial and post-colonial periods covering the period between 1896 and 1998. How then were such land to be available for planning unless there was provision for compulsory acquisition? Again it is clear that the Physical Planning Act was premised to take place on a plain surface and in the context where development rights were nationalized permitting the state to have full control over land use planning and development control.

#### Case Review 3-1

##### ***PPA assumes former European rural areas plain and available for planning***

Although European scheduled rural areas were subjected to planning during colonial era, this requirement was relaxed during the period 1963-1998 under the Land Planning Act (GOK; CAP, 303). For example, land subdivisions that were above 20 acres were not the subject of approval and those who constructed houses in the rural areas were not required to seek for development permits. This means that informality of development had crept back to the well-planned areas of former

scheduled rural areas during post-colonial era lasting up to 1998. What is worth noting, however, is that such areas were already developed and land were in private realm. In order to undertake fresh planning as was envisaged in the Physical Planning Act, there was need for compulsory land acquisition. However, PPA had no provision for compulsory land acquisition and only assumed that such land was available for planning and this was erroneous.

## CONCLUSION

The proposition advanced in this paper is that there are three development pathways in all the cities in the world. These development pathways can be viewed in the context of informal or organic development pathway, preplanned development pathway and urban redevelopment which takes place when urban blight sets in. Informal development and urban blight, however, require the use of similar instruments of planning and, therefore, the pathways can be collapsed into two in what could be viewed as a duality of development in all urban areas. On the basis of the dual development pathways, two theories have emerged; one describing the pre-planned development pathway and the other describing the informal/organic development pathway.

Preplanned development pathway required that planning be carried out on plain surface and the state had to nationalize development rights to ensure that developers seek for development permits. Some of the theories which informed the preplanned development trajectory model include the rational comprehensive model (Faludi, 1973), and the urban planning theory by Lewis Keeble (Keeble, 1955, 1983). The second proposition advanced in this paper is that whereas the west has mostly gotten rid of or minimized the informal development model, the third world is still trapped in the dual development model of formality and informality. Whereas the theories and instruments guiding planning in the west are mainly influenced by the preplanned model, similar theories and instruments have been borrowed for use in the dual economies of LDCs making them ineffective in regulating the informal part of the urban fabric.

The case studies reviewed in the previous sections have demonstrated that indeed the Physical

Planning Act in Kenya was modeled on the basis of the Town and Country Planning Act of the UK without modification. The TACPA of the UK was, however, based on the concept of preplanned development and development rights had been nationalized in the UK to facilitate planning and development control. As constituted, the PPA could not be effective in all areas of the country. This is because urban areas are already developed and rural areas are developed and land is in private realm. Yet the Physical Planning Act assumed to operate in areas where land is available and on a plain surface akin to new towns in the UK. The Physical Planning Act, therefore, became dysfunctional and moribund as an instrument of planning and development control and, this explains why planning remains ineffective in Kenya.

Part of the reasons for ineffective urban planning and development control in Kenya can be attributed to the use of inappropriate planning instruments and theories. The instruments are useful in western countries of Europe and North America and in some of the former colonial settlements in Kenya. The use and application of such theories and instruments to all societies as if such societies were homogeneous in levels of development is a misnomer. Effective planning and development control in the urban areas of the countries in transition, Kenya included would require a paradigm shift both in the way we conceive development in urban spaces, the expected outcomes and the instruments used to regulate and direct such outcomes.

## RECOMMENDATIONS

In all the plans provided in the physical planning Act, there is provision for re-planning, reconstruction and renewal whether such planning is at local or regional levels. In all the areas discussed in the foregoing sections, development had already taken place and, therefore, fresh planning could only be construed under the context of re-planning, reconstruction or renewal. Urban reconstruction in Europe, however, resulted into displacement of people and created need for compensation for property acquired compulsorily. The state resolved the two challenges by relocating displaced persons to small and expanding towns and, further, relocated other people to new towns created outside

the city of London. The government set aside monies from the exchequer to compensate land compulsorily acquired to advance urban planning and reconstruction.

Thereafter, the state resolved the issue of compensation by nationalizing development rights thereby allowing the state to determine the type of development through planning and further through the issuance of development permits although such development would be carried out by the developer. Planning and development control in Kenya requires a paradigm shift and, in particular, planning requires re-engineering and rather than reinvent the wheel, the best practices developed in the west can be borrowed for use. These practices include nationalization of development rights in all land tenure systems, reconstruction of areas that have over the years suffered from blight or informal development and adequate compensation of persons who lose land through compulsory land acquisition. Finally, there should be a resolve in both policy and in deed never to allow informal development in all areas of the urban and rural spaces.

#### CITED REFERENCES

**Barker, M. (2007, May).** *How Planning and Environmental Law has Shaped our Cities*. Paper presented to the Planning Institute of Australia National Congress.

**Chapin, F.S and Kaiser, E.J. (1979).** *Urban Land Use Planning*. Urbana and Chicago: University of Illinois Press.

**Chardwick, G.F. (1971).** *A Systems View of Planning*. Oxford: Pergamon Press.

**Cherry, G. (1974).** In Bruton (Ed) (1974). *The Spirit and Purpose of Planning*. London: Hutchinson of London Co Ltd.

**Clarke, J. (1948).** *An Introduction to Planning. With particular Reference to Town and Country Planning Act 1947*. London: Cleaver Hume Press Ltd.

**Cullingworth, J. (1988).** *Town and Country*

*Planning in Britain*. (10<sup>th</sup> ed). London: Unwin Hyman.

**Faludi, A. (1973).** *Planning Theory*. Oxford: Pergamon press.

**Gallion, A. and Eisner, S. (1963).** *The Urban Pattern. City Planning and Design*. London: D. Von Nostrand company, Inc.

**Hall, P. (1999).** In Banister et al. (Eds). (1999). *Environmental Land Use and Urban Policy*. UK: Edward Elgas Publishing Ltd.

**Hall, P. (2002).** *Urban and Regional Planning*. (4th ed). London and New York: Routledge.

**Keeble, L. (1952).** Principles and practice of Town and Country Planning. *The Estates Gazette*.

**Keeble, L. (1983).** *Town Planning made plain*. London; New York : Construction Press.

**Kenya, Republic of. (1998).** *The Local Government Act. Chapter 265 of the laws of Kenya*. Nairobi: Government Printers.

**Kenya, Republic of. (1996).** *Physical Planning Act Cap 286*. Nairobi: Government Printers.

**Kenya, Republic of. (1968).** *The Land Planning Act, Cap 303*. Nairobi: Government Printers.

**Kenya, Republic of. (1989).** *The Registered Land Act, chapter 300 of the laws of Kenya*. Nairobi: Government Printers.

**Kenya, Republic of. (1989).** *The Land Control Act, chapter 302 of the laws of Kenya*. Nairobi: Government Printers.

**Kenya, Republic of. (1984).** *The Governments Lands Act, chapter 280 of the laws of Kenya*. Nairobi: Government Printers.

**Kenya, Republic of. (1965/66).** *Summary of the report of Lawrence mission on Land consolidation*

*and Registration in Kenya*. Nairobi: Government Printers.

**Kenya, Republic of. (1967).** *The Agriculture Act. Chapter 318 of the laws of Kenya*. Nairobi: Government printers.

**Kenya, Republic of. (1931).** *Town Planning Act. Chapter 134 of the laws of Kenya*. Nairobi: Government printers.

**Kenya, Republic of (1948).** *Town Planning Rules Ordinance*. Nairobi: Government printers.

**Kivelli, P. (1993).** *Land and the City. Patterns and processes of urban change*. London: Routledge.

**Lindblom, C.E. (1959).** The science of muddling through. public administration. *Review*. 19 (Spring): 79-88.

**Mcloughlin, B. (1969).** *Urban and Regional Planning: A systems approach*. London: Faber and Faber.

**Taylor, N. (1998).** *Urban Planning Theory Since 1945*. London and New Delhi: Sage Publications.