

**URBAN LAND DEVELOPMENT AND PLANNING LAW IN
KENYA: The Case of Nairobi City and Bordering
Urban Areas**

by

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A thesis

presented to the University of Waterloo
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thesis requirement for the degree of
Doctor of Philosophy
in
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ABSTRACT

The dissertation focuses on urban land development in Kenya, using Nairobi city and bordering urban areas as a case study to illustrate critical problems of metropolitan planning in Kenya. The study is an attempt to assess the planning and management of urban land development by agencies of the central government, local authorities and private land owners, and explores the role of planning law.

The planning law is ineffective in the planning and management of urban land development. The law is dominated by statutory provisions which were imported in the form of ordinances or legal orders and the law exists in numerous pieces of legislation. The management of government and trust land is merely symbolic and the planning function is carried out by representatives of the central government with no real participation of local authorities. In such situation, the law promotes conflict and competition in the public domain instead of cooperation and coordination in planning and further weakens the planning capabilities of local authorities.

There is a lack of relevance of the planning law to existing urban planning and management problems in Kenya. The communities feel that compliance to the provisions of planning law would not improve their standard of living. In the study area there is widespread lack of enforcement of planning law provisions, and disregard for planning for the environmentally sensitive areas and community recreation open spaces. In the planning process, private land owners and developers are left to operate without clear policies and guidelines. The results of the field study show that the present planning activities such as the subdivision of land and its development may ultimately lead to more degraded living conditions for those living in urban areas.

The research has concluded that local planning has been ignored and planning by the central government departments and agencies does not take advantage of private initiatives of companies, cooperatives, joint public-private developments and private

developments by individuals in the diverse freehold land development areas. This has led to a weak local economic base and inappropriate management of the urban environment. Planning law which exists in the form of ordinances and legal orders should be consolidated into a new *Planning Act*. A strategic model, a planning law model and an integrated model involving local levels are presented. They will serve to facilitate individuals and organizations in planning and management of urban land development in the study area and Kenya in general. Areas that have been discussed in the strategic model include widening the scope of policies and philosophy of planning, improving planning and management organization, local planning in the context of local authorities, coordination of private initiatives and unifying planning law into one *Planning Act*. The planning law model will become the framework for the legislation of the new *Planning Act*. More interaction between the local authorities and their communities, and clearly stated levels of policy making and jurisdictional planning are some of the areas to be improved in the model. The integrated model suggests organizational relationship and implications for land ownership and its development.

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DEDICATION

To Rebecca Njeri *mwari wa* Kamau, and our children, Dennis Mwangi and Lewis Kamau.....*Ukitaka chamvunguni, sharti uiname.*

and

My Parents Daniel Mwangi *wa* Ndiba, and Tabitha Waithera *mwari wa* Karanja;
... thank you for the discipline of.....*Urutaguo mwiruti*

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CHAPTER 1

INTRODUCTION

1.0 Introduction

Urban land development has become an important issue in recent years, especially in developing countries. In Kenya, land development issues in the urban areas are sensitive and complex because more people rely directly on land for sustenance than ever before (Kenya, 1989:130). Comparative statistics on urban population go back to 1948 (Physical Planning Department, 1978:34), when the proportion of urban population was 5.1 per cent of the national total. The urban population increased to 7.1 per cent by 1962, and during the period between 1962 and 1969 the population further increased to 10.1 per cent of the total population of Kenya and remained at 1,082,437.

In the 1979 census, the urban population showed an increase of 7.6 per cent and was 2.3 million out of a total of 16.1 million Kenyan population (Kenya, 1979:207). The population had increased to 4.0 million by 1988. It is expected that it would rise to 5.6 million by 1993, an increase of 40 per cent since 1988 (Kenya, 1989:247). The total land area of Kenya is 582,646 sq km, but only 18 per cent of the area is medium and high potential agricultural land (Kenya, 1979:171). In 1989, two-thirds of Kenya's estimated total population of 21.4 million lived on this prime agricultural land (Kenya, 1991a:31). Because more people live within this small proportion of land area there is more pressure to convert the agricultural land into urban land uses.

These statistics serve to illustrate the increasing process of urbanization in Kenya. With the rapid urbanization and an increase in the number of cities and urban areas

(Kenya, 1991a:34-35), there is a critical need to plan, regulate and manage land development. This presents a challenge to both public and private sectors especially in the funding of urban physical and social infrastructure and in the creation of jobs (Kenya, 1986 and Kenya, 1991a:36). There were more challenges throughout the 1960s, 1970s and 1980s (Wescott and Obudho, 1982:48-49), and the emphasis was on rural-centred regional development planning (Edwards, 1968 and Funck, 1974).

Planning responses to urbanization have been in the form of developing growth poles and service centres. The approach was based on the view that the poles and centres are to function as "growth points" that can lead to the growth of small towns. This was seen as the effective way to decentralize development which was at that time concentrated in one or two cities such as Nairobi and Mombasa. The small towns in turn were to trigger development in their rural hinterlands leading to reduced growth of the larger cities such as Nairobi and Mombasa.

In fact, planning and management of urban land development was not emphasised as an important dimension in the development process throughout the 1960s and 1970s. This was due to a bias in rural development and the assumption that the majority of people in Kenya were to remain rural, engaging in agriculture as their only source of livelihood (Obudho, 1984:379-380). Unfortunately, even in these "urbanized" growth points, management of urban land development was never considered relevant. Therefore, implementation of urban land development projects and programmes through instruments such as an urban development plan, a structure plan or part development plan failed in spite of their elevated status as statutory policy guidelines in implementation and as Obudho indicated:

Only as pressures of accelerating urban growth in Kenyan urban centres pushed beyond local staff and finance capacity, have problems began to emerge with such rapid rate and on such scale, that they have become visible to administrators, social scientists, technicians and politicians (Obudho, 1984:369).

At the present time, the planning and management of urban land development activities in 148 gazetted cities located in 136 local authorities are matters of serious concern (Kenya, 1991a; Kenya, 1992; and; and Weekly Review, 1989a:5-10). The usefulness of existing planning law as an instrument of planning and management of urban land development is also questionable (Yahya, 1976:118). Private developers, and the government departments have initiated urban development projects without regard to provisions of the planning law (Weekly Review, 1989c:8-9). The disregard for planning law in urban land development is evidence of existing conflict in the policy and local level planning (Weekly Review, 1989b:9), especially in the context of jurisdictions of local authorities. The failure of planning law in Kenya is due to the inadequacy of the provisions in the law, which can make local authorities effective in the planning of land development (Nation, 1991b:14-15).

The research on these issues will consider the planning and management of urban land development by organizations and individuals. Data on planning and management of urban land development by the organizations and individuals will be used and will be collected through a field survey. Selected local authorities in Nairobi and bordering urban areas will be covered by the survey and a few sample areas will be studied in some detail. A review of the planning law to assess its usefulness in guiding planning and management of urban land development will form part of the data as it is considered essential to the study.

1.1 Problem Statement

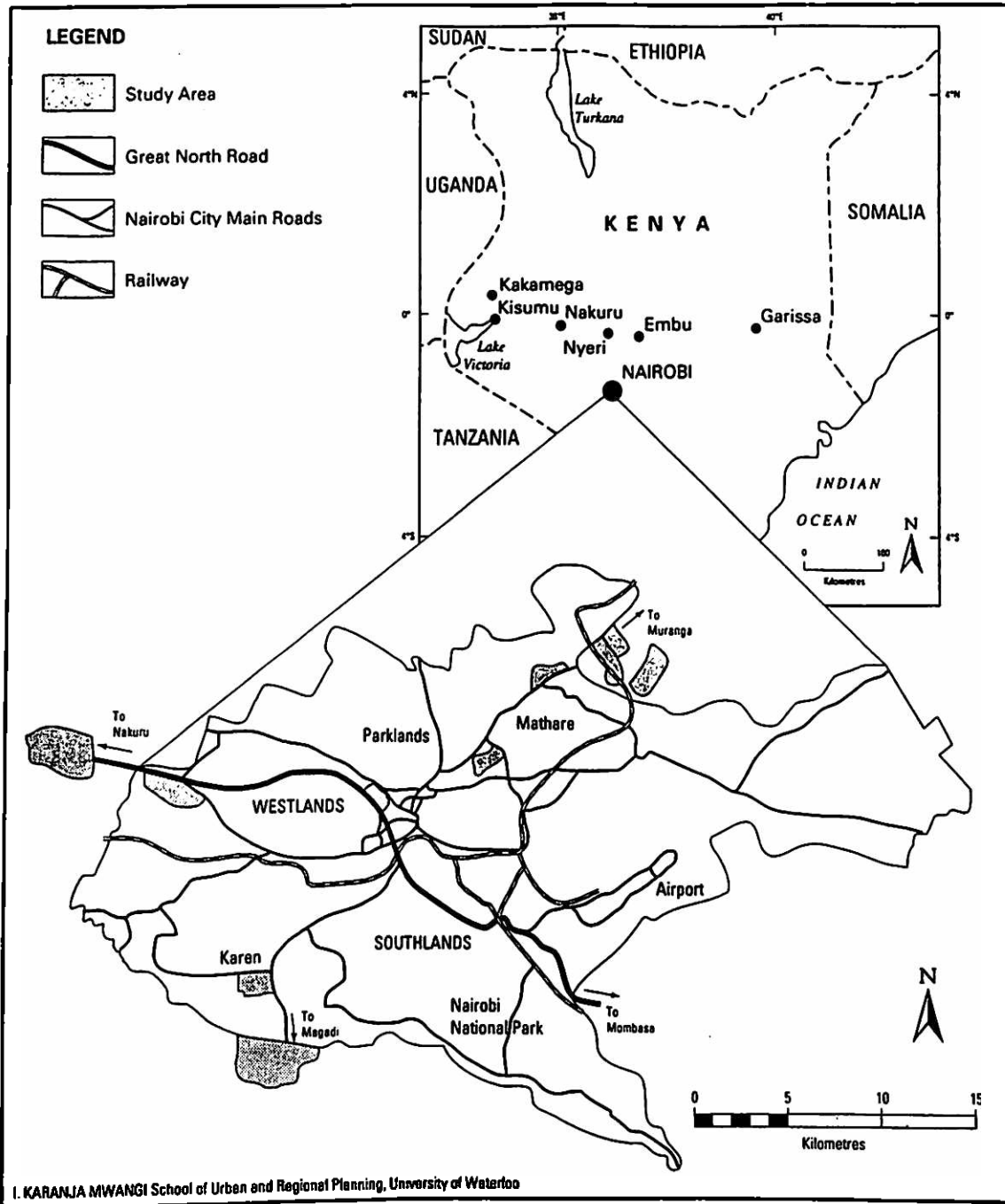
In Kenya, the concerns related to development planning are not so much focused on how resources are made available but on how to accommodate development actions in the public and private domains. Occasional government and local authority responses to coordinate planning for urban development has not been effective and this has attracted the attention of planners and policy makers (Standard, 1990b:8). In 1984, the response at

the urban local authority level was an acknowledgment that continued illegal and unplanned development in Nairobi had become a challenge to the local authority (*Nairobi City Commission*, 1984:623). One of the initiatives by the central government to solve some of the problems was the establishment of a *National Coordination Committee on Urban Land Use Planning and Development* (NCCULPD) in 1988 and the publication of a "*HandBook on Land Use Planning, Administration and Development Procedures*" in 1991 (Kenya, 1991c).

Brecheny (1983:104) has argued, that even with the most dynamic urban development policies, implementation of such policies will not be effective without an equally dynamic and relevant planning law which is the most important instrument in land use planning. In a developing country like Kenya, with an economy, controlled by public and private sectors, planning law can clarify areas of policy mandates and jurisdictional planning, the responsibilities of government departments, agencies and local authorities. Provisions of the planning law can further guide development activities of private urban land owners and developers. The planning law, besides being applicable to short and long term urban development activities, reflect relationships between land resources and socio-economic conditions.

The problem of urban land development and inadequacies of the planning law are generally applicable to most of Kenya. However, Nairobi city and bordering urban areas are exceptional and they require immediate attention for three reasons. First, they have continued to grow in area and in population size. Second, there has been poor planning and management over the years. Third, Nairobi city and its bordering urban areas are the largest single urbanized region in Kenya (Figure 1.1).

Figure 1.1: Nairobi City and bordering urban areas: Regional context



The present study is an examination of urban land development policies and how they are coordinated and implemented.¹

The relationship between growth of population, increase in the number of cities and the need to plan and manage urban land development in view of the limited agricultural land is more apparent in Nairobi city and its bordering urban areas than other urban centres in Kenya. The region has comparatively high rate of urbanization which reflect the national trend. In 1962, Nairobi alone accounted for 39.8 per cent of urban population in Kenya while in 1969 it was 47.0 per cent (*Physical Planning Department, 1978:35*). During 1979 and 1989 the population of Nairobi accounted for 39.9 and 36.0 per cent of the national urban population respectively. The decrease in population is due to the changes in the distribution of population among the urban centres of the region (Kenya, 1983; Kenya, 1989:33; and Standard, 1990b:8). Table 1.1 shows that the provisional 1989 census results for Nairobi and surrounding urban centres to be 1.4 million (Kenya, 1991a). A summary of the area and land use types for Nairobi city is shown in Table 1.2.

The research on the planning and management of urban land development was carried out in relation to four types of organizations (Table 1.3). The first category includes organizations with their operation extending beyond the study area, but have a continued influence on urban land development. The two central government departments and two service corporations: Department of Lands and Physical Planning Department; and Kenya Power and Lighting Company (KPLC) and Kenya Posts and Telecommunications Corporation (KPTC) are included in this category.

¹. In this study the definition of policy according to McAlpine (1978b:7) is adopted, and it is defined as: a statement of management intention which when implemented can affect fundamental structure of a society and the way it will develop in the long term.

Table 1.1: Population of Nairobi and surrounding urban areas, 1979 - 1989

URBAN CENTRE	1979 CENSUS	1989 CENSUS	PERCENTAGE OF 1979 TO THAT OF 1989	PERCENTAGE CHANGE
Ongata Rongai Centre (Olkejuado County Council)	n/a	5,800	n/a	n/a
Kariuri Urban Council	n/a	14,800	n/a	n/a
Ruiru Town Council	1,718	11,800	0.2	586.9
Kiambu Municipality	3,669	4,400	0.4	19.9
Kikuyu Town Council	3,961	5,900	0.4	49.0
Ngong Trading Centre (Olkejuado county Council)	4,004	9,300	0.4	132.3
Athi River Town Council	9,760	23,000	1.0	135.7
Limuru Town Council	1,728	1,600	0.1	-7.4
Machakos Municipality	84,320	116,100	8.6	37.7
Kiambu County Council	n/a	n/a	n/a	n/a
Thika Municipality	41,324	57,100	4.2	38.2
Machakos County Council	n/a	n/a	n/a	n/a
Nairobi City Council	827,775	1,346,000	84.6	62.6
TOTAL	978,259	1,446,300	100.0	47.8

Note: n/a mean not applicable.

Source: Kenya (1991a:34-35) *Economic Survey Nairobi*: Nairobi: Central Bureau of Statistics, Ministry of Planning and National Development.

The second category covers the urban local authorities which in the study area include Nairobi City Council and three selected bordering local authorities. These local authorities have a jurisdictional mandate to plan and manage development of urban land. The third category includes land buying companies (LBCs) and cooperative societies (LCSs) which are involved in urban land development through mobilizing finances to buy land, subdividing the land and then allocating plots to members. Finally, the fourth category includes individuals who own small parcels of land that can be developed.

Table 1.2 : Area and percentage of land use types in Nairobi as of 1990

LAND USE TYPE	AREA (km sq)	PERCENTAGE
Residential	175.6	25.2
Industrial/Commercial	31.8	4.6
Infrastructure	15.9	2.3
Recreation (including Nairobi National Park)	128.4	18.4
Agriculture	96.8	13.9
Others (gazetted forests, riverine area, natural forests and deferred or open land)	247.5	35.6
TOTAL	696.0	100.0

Source: Kenya (1990b) *Land Use Map of Nairobi and Vicinity*. Nairobi: Department of Surveys and Remote Sensing, Ministry of Economic Planning and National Development.

Table 1.3 : Types of Organizations

CATEGORY OF ORGANIZATION	TYPE OF ORGANIZATION
First	Central Government Departments and Corporations
Second	Urban local authorities
Third	Land Companies and Cooperative societies
Fourth	Individual households

There are two research questions that emerge so far. They are:

1. *How do planning and management of urban land development in the study area relate to the activities of the two central government departments, the service corporations, Nairobi city and the bordering local authorities?*

2. How is the planning of land, privately owned through land buying companies, cooperative societies and by individuals, integrated into urban planning and management in the study area?

These questions arise from the fact that the process of planning and management of urban land development is inexact (Nation, 1989a:6; Nation, 1989b:15 and, Nation, 1992c:22), and in part is due to the very nature of planning law in Kenya. The law is comprised of numerous pieces of legislation and unwritten customary law instead of a unified law (Onalo, 1986). The complexity of planning law produces competing and conflicting urban land use planning and management situations. The competition and conflict make the responsibility for planning policies and implementation of the policies in the local authority areas more difficult. Consequently, the application of planning law without cooperation and coordination from jurisdictions promotes ineffective urban land development practices. In Nairobi and its eight bordering local authorities planning is characterised by *ad hoc* decision making and management strategies. The main issues in the nature and process of decision making in planning are the ownership of land and the responsibility for planning. This leads to the last question in the study:

3. What is the role of planning law in the planning and management of urban land development in the study area?

1.2 Objectives of the Study

The study has five objectives. They are:

1. to determine how public and private organizations identified in the study area plan and manage development of urban land; and how individually owned private land is integrated into urban development.

2. to ascertain whether there are variations in planning and implementation of urban land development proposals according to the types of land ownership.
3. to assess the implications of planning and management practice(s) based on objectives (1) and (2).
4. to review the planning law and its use in planning and management of urban land development in the study area, and
5. to synthesise and interpret findings in objectives (1), (2), (3) and (4) with a view to evolve and recommend alternative urban planning models.

1.3 Scope and Assumptions of the Study

The scope of the study is limited to the philosophy and practice of planning and management of urban land development in Kenya. In carrying out the study, it is recognized that the present urban environment is primarily a result of the interplay of national and international factors.² The study will focus only on the local and regional factors within the national context.

The various organizations, who own urban land and who are agents of change in the planning and management of the urban environment, and the role of individuals as owners and developers of small parcels of urban land, will be considered. The study includes consideration of the role of planning law in regulating urban land use planning and management. The field research will cover Nairobi city and bordering urban areas and is treated as a single metropolitan area (Table 1.1).

There are four assumptions in the study which are:

² See W.T.S. Gould (1992) on funding urban development.

1. Existing urban land use planning, and management practice(s) in Nairobi city and bordering local authority areas are partly a result of urban land ownership patterns which restrict effective coordination. It is also due to the existing planning law which does not enable such coordination. This assumption is based on the observation that planning and management of land development in the study area do not distinguish between land ownership and the responsibility of planning.
2. There seems to be ambiguities on policy directives and territorial jurisdiction. This situation discourages effective involvement of urban local authorities in planning and development.
3. Citizens, local authorities and central government are concerned about urban land development problems in the study area.
4. Planning law is important but does not play its role in the coordination, and as the basis for responsibilities in making planning policies, and in local planning and management within territorial jurisdictions.

The significance of the study is in its focus on investigating the influence of central government organizations on the planning and management of urban land development. The study includes the consideration of the existing planning law, the local level institutions in planning and development, and land ownership. The relationship between these aspects is key to understanding why poor planning exists in Nairobi city and bordering urban areas. The recommended models of planning and managing urban land arising out of the study will be an attempt to offer alternative future directions in urban planning.

1.4 Organization of the Dissertation

This dissertation is organized into eight chapters. Chapter two deals with the methods used in carrying out the research. Chapters three, four and five review the literature on urban land development and management. In chapter six, existing provisions of planning law in Kenya are reviewed. Analysis of field data is presented in chapter seven, while discussions and conclusions with the recommended model of planning are included in chapter eight.

CHAPTER 2

METHODS

2.0 Introduction

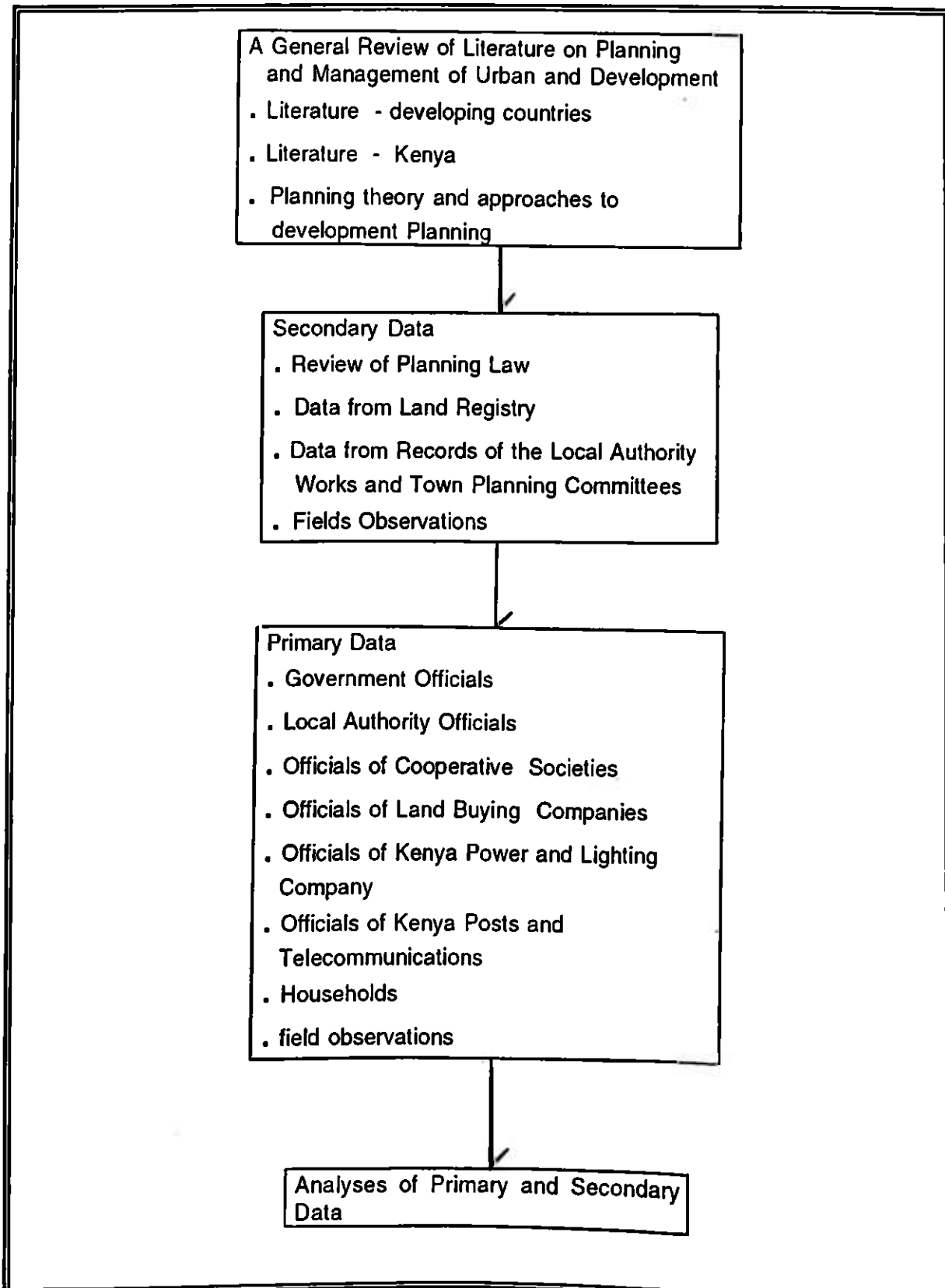
The methods of data collection in the field are first described. This is followed by a description of the types and sources of data, including methods of analysis and presentation. Various limitations of the methods are indicated and discussed at the end of the chapter. The survey questionnaires and interview procedures were approved by the *Office of Human Research and Animal Care* (OHRAC) of the University of Waterloo. A *Research Clearance Permit* was obtained for collection of data in Kenya after submitting two copies of the research proposal and payment of necessary fees (Appendix 1A).

2.1 Data Collection Methods: Overview

Figure 2.1 shows the four main stages of data collection and tasks accomplished at each stage. Out of the twelve local authorities (Table 1.1), eight share border with Nairobi and four were selected for a more detailed investigation.³ Field data were collected from the four local authorities which are Olkejuado County Council, Kikuyu Town Council, Ruiru Town Council and Nairobi City Council (Table 2.1). Ten land development areas were further selected from each of the local authorities (Table 2.1 and Figure 2.1). Urban land management data for the areas indicated in Table 2.1 were collected from the Land Registry of the Department of Lands.

³ Olkejuado is counted once in the table because both Ongata Rongai and Ngong are part of Olkejuado County Council.

Figure 2.1: Stages of Data Collection



The need for adequate representation of the land ownership types, styles of urban land development along the lines of ownership and outcome of land development activities were used as criteria for the choice of survey areas. Household questionnaires were administered to the same areas.

Table 2.1: Local Authorities and sample areas

LOCAL AUTHORITY	DATA COLLECTION AREAS
OLKEJUADO COUNTY COUNCIL	. Ongata Rongai
KIKUYU TOWN COUNCIL	. Kinoo
RUIRU TOWN COUNCIL	. Langata Development . Alli Juja-Wendani . Mwana Mukia
NAIROBI CITY COUNCIL	. Zimmerman Development . Mathare North . Karen Langata . Kangemi . Spring Valley

The ownership types of land include public (government and trust) land and private (company, cooperative society, public-private joint development and individual) land. There were four selected local authorities for detailed study (Figure 2.2), and ten sample areas which include companies, cooperative societies, public-private joint development and the freehold where questionnaires were administered. The sample areas represent situations in which land is accessed, planned and developed. Among the selected freehold areas, Karen Langata, Spring Valley and Mathare North have formal plans. The others which include Kinoo and Ongata Rongai have no such plans. Some of the sample areas have subdivision plans and they include Langata Development Company, and, Mwana Mukia and Alli Juja-Wendani cooperative societies. Zimmerman Development, which is a land company, has no such plan. Existence or non-existence of a plan in these sample areas create different conditions under which land is developed.

The common border with Nairobi, and the availability of specific land ownership

types were the criteria used to select local authorities. The first group of sample areas is located in the Eastern Development Corridor (EDC) and includes Mathare North, and Zimmerman Development within Nairobi City Council; and Mwana Mukia, Langata Development, together with Alli Juja-Wendani in Ruiru (Figure 2.1). The second group of sample areas is in the Southern Development Corridor (SDC) and includes Karen Langata within Nairobi and Ongata Rongai Trading Centre in Olkejuado County Council. Finally, the last group of sample areas is in the Northwestern Development Corridor (NDC) and includes Spring Valley and Kangemi, both within Nairobi City, and Kinoo in Kikuyu Town.

Except for the Kinoo sample area which is located in a zone where urban development was to be discouraged in light of the agricultural value of land, the other sample areas fall within the development corridors shown in Nairobi Metropolitan Structure Plan 1973 (*Nairobi City Council, 1973; Department of Urban and Regional Planning, 1973:5-6; and Kenya, 1990b*).

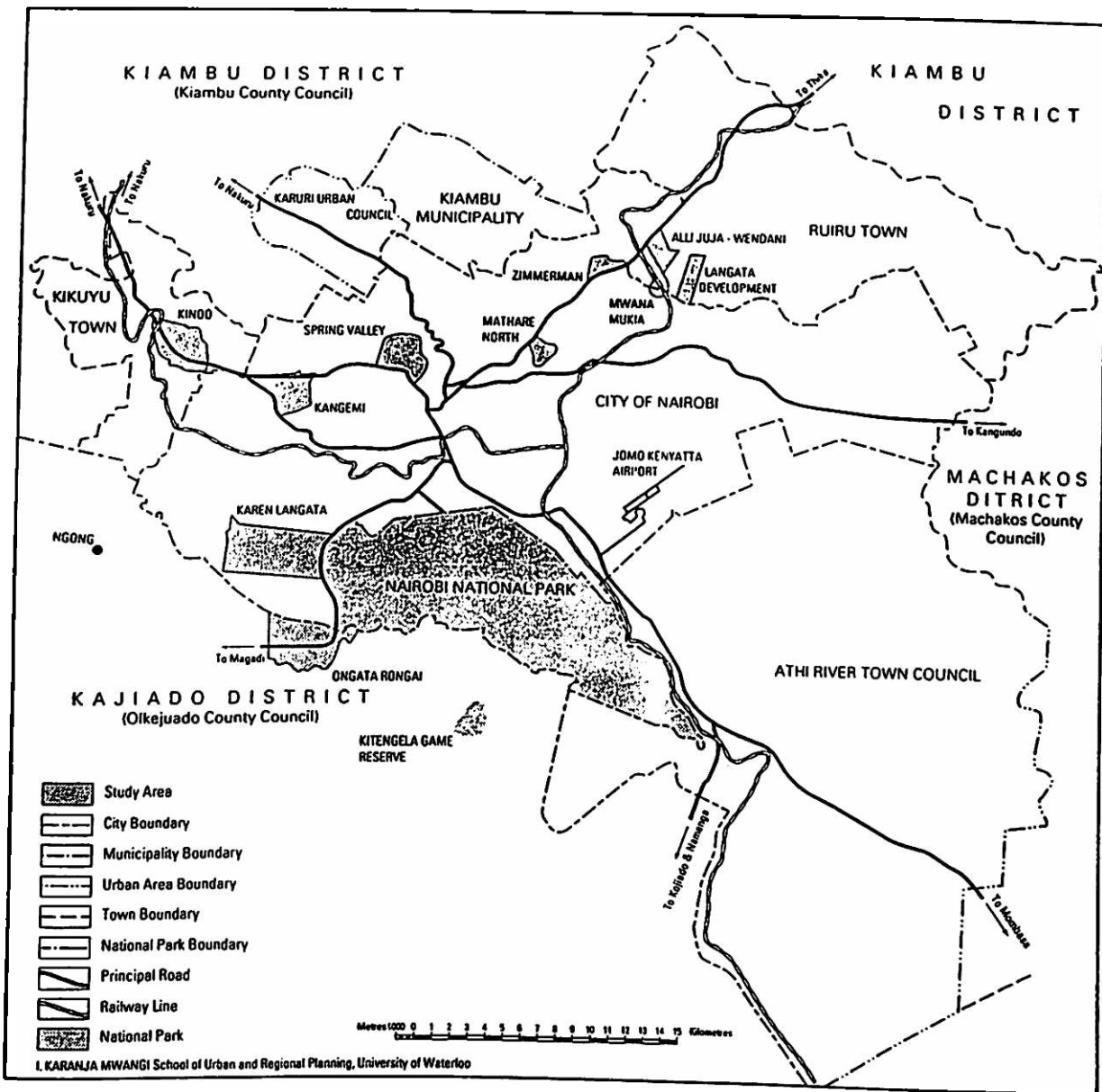
The information and data required for the thesis were obtained by a review of the general literature and planning law, secondary data collected from Land Registry, minutes of the local authorities and some field observations; and primary data gathered through a questionnaire survey of households (Appendices 1B and 1C) and officials in the local authorities and other organizations (Appendix 1D). Field data collection formed the source of information on planning and management of land development by individuals and different organizations. Planning and management of urban land development take place in the context of existing planning law and hence planning laws are reviewed to assess the role of legal provisions in urban planning.

2.2. General Review of Literature

The review was done in three stages. The first stage related to literature on planning and management of urban land development in developing countries. The

second level consisted of a review of literature on planning and management of urban land development in Kenya. Lastly, the literature on planning theory and approaches to development planning was reviewed.

Figure 2.2: Nairobi City and bordering urban areas: Sample areas



2.3 Secondary Data

Planning law was reviewed by analysing the ordinances and acts which contain planning provisions. The statutes that were reviewed are shown in Appendix 2. The review focused on the historical evolution, contents and areas of application. Published

and unpublished data related to the survey areas were collected from the Physical Planning Department, Department of Lands and the local authorities. Data on urban land development and management recorded in land registers were collected from the Physical Planning Department and the Department of Lands. This data included subdivision plan approvals and the registered land transactions in the sample areas for twelve years, 1981 - 1992. The two categories of data were intended to be used in finding the distribution and changes in the area of land units, nature of transactions and the extent to which these activities have been recorded. Such information is expected to show the degree to which planning and development of land were guided by the two departments of the central government.

The selection of registers was completed in three stages. First, the Land Registration Numbers (LR No.) for each plot/property in Registered Index Map Sheets (RIMS), and Plot Numbers (P/No.) used in urban subdivision plans were selected.⁴ Land registration numbers (LR Nos) for properties in Kinoo and some parts of Kangemi were directly recorded on each land register. In other sample areas, which included Karen Langata, Spring Valley, Mwana Mukia, Langata Development and Alli Juja-Wendani Inland Numbers (IR Nos) were used for identifying property instead of Land Registration Numbers.⁵ These forms of identification are slowly being replaced with Land Registration Numbers as a new policy of the Ministry of Lands.

At the time of the study, files with data on each plot/property for the five sampling areas were assigned Inland IR Nos, although in the land register the identity of each was in the form of a LR No. In the register, the LR Nos did not correspond to the IR

4. Registered Index Sheet maps (RIMS) shows true location (and size of rural land) for each parcel of land or plots/property on the ground because they show surveyed boundaries. RIMS are produced by surveyors following subdivision plans. Subdivision plans on the other hand show relative positions of parcels of land or plot/property. They are usually prepared by the planners.

5 Inland Registration Numbers (IR Nos) is the earliest form of land registration that was introduced in Kenya at the beginning of the this century as form of registration of private land which is surveyed.

Nos for each files (say the plots/properties LR Nos 10, 11, 12, ...N, cannot be used to locate the respective files) in the register of a given area. Instead, the LR Nos in the registers that are assigned to correspond to different IR Nos for each land file, say LR No 10 is assigned for a property whose file number is IR No 25, LR No 11 to IR No 19, LR No "N" to "P", etc. Therefore the second stage involved the use of selected Land Registration Numbers to identify corresponding Inland Registration Numbers in each sample area. Third, a search for individual land files was undertaken using identified Inland Registration Numbers in the Land Registry archives.

During the field data collection several difficulties were encountered. For example, occasionally, land registry files were either lost or misplaced; for identification of land registration numbers (LR No.), inland registration numbers (IR No.) and even plot numbers (P/No.) were used. Records of plot transactions and transfers for Zimmerman and Mathare North were not available.

Data on infrastructure were available only from the Nairobi City Council. Such information from other local authorities were collected by field observations and from a questionnaire survey. The data on the distribution of electricity to households were gathered from a distribution engineer of Kenya Power and Lighting Company. A telephone statistician and the Assistant to the Managing Director of the Kenya Posts and Telecommunications Corporation gave information on the factors that affect the delivery of telephone services. Statistical data on delivery and costs of telephone installation were not available.

Another type of secondary data on policy areas and decision making on urban land development in the selected local authorities is in the form of records of the proceedings of Works and Town Planning Committees. The records contain policies and decisions taken on land development proposals and other planning problems for the months of April, August and December in the years 1990, 1991 and 1992. A short period

was chosen because except for Nairobi City Council, other local authorities have data covering only for that period. Field observation involved visits to the selected areas and recording of the existing physical development that include roads, sewer lines, and electricity and telephone services.

2.4 Primary Data

The study population comprising of land units/households land owners is 11,394 (Table 2:2). Table 2:2 also, shows the sample size for each area. Data on the number of tenants and land owner households and how they are distributed were not available before the field survey was carried out. Such data were available after the survey (Table 2.3).

Table 2.2: Size of Sample Households

SAMPLE AREA	POPULATION SIZE	INTENDE DSAMPLE SIZE	ACTUAL SAMPLE SIZE IN THE FIELD	ACTUAL SAMPLE SIZE AS A PERCENTAGE OF THE SAMPLE POPULATION
Karen Langata	1,392	30	30	2.2
Spring Valley	290	20	12	4.1
Zimmerman Development	1,089	20	20	1.8
Langata Development	2,402	20	20	0.8
Alli Juaja-Wendani	435	20	20	4.6
Mwana Mukia	724	20	20	2.8
Mathare North	1,392	20	20	1.4
Kinoo	939	30	30	3.2
Ongata Rongai	1,589	30	30	1.9
Kangemi	1,142	20	20	1.8
Total	11,394	230	222	Average = 2.46

Household information and data were collected through interviews and discussions with the respondents and by the questionnaire survey (Table 2.2). The questionnaires were administered in each of the sample areas at a time beginning with, cooperative areas (Alli Juaja-Wendani and Mwana Mukia), then company areas (Langata

Development and Zimmerman), Kangemi, Kinoo, Spring Valley, Mathare North Karen Langata, and Ongata Rongai.⁶ All questionnaires were administered during Saturdays and Sundays when most members of the households were available. Two hundred and twenty two questionnaires were administered in the sample areas and this sample size represented 2.0 per cent of the total plot/property population in all the sample areas (Table 2:2). One hundred and twenty eight questionnaires were administered to households who own plot/property. The other ninety four questionnaires were administered to households who were tenants.

Table 2.3: Distribution of questionnaires in sample areas

SAMPLE AREA	TENANT HOUSEHOLDS	LAND OWNER HOUSEHOLDS	TOTAL
Karen Langata	6	24	30
Spring Valley	3	9	12
Zimmerman	20	n/a	20
Langata Development	7	13	20
Alli Juja-Wendani	5	15	20
Mana Mukia	8	12	20
Mathare North	16	4	20
Kinoo	4	26	30
Ongata Rongai	11	19	30
Kangemi	14	6	20
TOTAL	94	128	222

Note: n/a mean not applicable.

For administering questionnaires, each plot/property was considered to represent a household unit and a potential respondent (Jackson, 1963).⁷ Registered Index Map

⁶ Four Research Assistants and myself administered the questionnaires. Two of the research Assistants were Second Year University Students, one in Education and the other in Commerce. The other Research Assistants were Third Year Students in Mathematics and Applied Statistics at Kenya Polytechnic. Two days were spent discussing with the Research Assistants the nature of field survey. Another Two more days were spent in the data collection areas to allow the Research Assistants become familiar with each of the areas.

⁷ The family unit and not the census household unit was used as the unit for the administration of the

Sheets (RIMS) were used in Ongata Rongai, Kangemi and Kinoo. The existing subdivision plans were used for Langata Development Company, Karen Langata, Zimmerman Development, North Mathare, Spring Valley, Mwana Mukia, and Alli Juja-Wendani. Registered Index Maps Sheets and plans were also reviewed to compare urban land development patterns to assist in the administration of the questionnaire.

It was found out that the numbers assigned to plots/properties in the RIMS and plans did not follow a logical numbering system and those numbers were, therefore, not used. Using existing road patterns, questionnaires were administered in every third household along major distributor and collector roads. However, it was not possible to administer the questionnaire to every third household because some potential households refused to participate.⁸ For example, it was intended that a map showing the distribution of household respondents would be prepared using plot/property numbers (Table 2.4). However, Table 2.4 show that some of the respondents declined to give the information. The respondents, who participated, were treated as principal respondents and were not selected randomly. Due to this unexpected situation, the number of tenant and land owner household respondents could not be determined prior to the survey.

There seems to be no relationship between the response rate and the social status. Table 2.3 shows that Karen Langata has a high response rate than Spring Valley although, the two are wealthy communities households in Nairobi. In Kinoo, a less

questionnaires (Jackson, 1963:49-53). The extended families whenever found were considered single sample point and only one questionnaire was administered. Jackson (1963:50) points out that a census household is:

" single persons living alone or groups of individuals voluntarily living together under single manage in the sense of sharing the same living-room or eating at the same table; boarders and domestic servants are considered visitors".

⁸ This is one weakness of the field survey method and it was a limitation in attaining a random sample of the household respondents. It seems more difficult to get a random sample in the field when dealing with large household samples in this kind of survey.

wealthy community, 46.2 per cent of the household respondents declined to give plot/property numbers (Table 2.4).

Table 2.4: Land owner respondents who gave information on their number of plot/property and those who declined

SAMPLE AREAS	NUMBER OF TENANTS	NUMBER OF LAND OWNERS	NUMBER OF LANDOWNER WHO RESPONDED.	NUMBER OF LAND OWNERS WHO DECLINED	PERCENTAGE OF LAND OWNER WHO DECLINED
Karen Langata	6	24	11	12	54.2
Spring Valley	3	9	6	3	33.3
Zimmerman	20	n/a	n/a	n/a	n/a
Langata Development	7	13	13	n/a	n/a
Alli Juja-wendani	5	15	12	3	20
Mwana Mukia	8	12	12	n/a	n/a
Mathare North	16	4	4	n/a	n/a
Kinoo	4	26	14	12	46.2
Ongata Rongai	11	19	13	6	31.2
Kangemi	14	6	5	1	16.7

Note: n/a not applicable.

Questionnaires were administered to the officials of the four local authorities and eight other organizations through interviews and discussions (Appendix 1D and Table 2.5). The discussions were held with a group of three officials from each of the organizations. However, from the Kenya Power and Lighting Company and the Kenya Posts and Telecommunications Corporation, only two officials were involved in each case. The discussions focused on involvement of these organizations in urban land use planning. The official respondents who later contributed data that were collected by use of questionnaires came from among those who were in the groups.

The questionnaires were distributed to the officials and they had time to study the questions prior to the appointed day and time when interviews took place. The officials

who were interviewed held senior positions within their respective organizations (Table 2.5) and therefore the data are expected to be reliable. Furthermore, each official was interviewed without reference to the kind of response received from another official.

Table 2.5: Organizations and the officers who were interviewed

ORGANIZATION	DESIGNATION OF THE OFFICER
Nairobi City Council	Chief Planner
Kikuyu Town Council	Town Clerk
Ruiru Town Council	Town Clerk
Olkejuado County Council	Clerk to County Council
Physical Planning Department	Chief Planner
Department of Lands	Assistant Commissioner of Lands
Kenya Power and Lighting Company	Distribution Engineer
Kenya Posts and Telecommunications	Assistant to the Managing Director, and Telephone Statistician
Langata Development Company	General Manager
Zimmerman Development	Director
Alli Juja-Wendani Cooperative Society	Secretary/Manager
Mwana Mukia Cooperative Society	Secretary/Manager
Mathare North	Senior Administrative Officer, Housing Development Department; Nairobi City Council

Note: The Chief Planner works in the City Planning and Architecture Department, and the Senior Administrative Officer in the Housing Development Department which is responsible for Mathare North.

2.5 Analysis of Secondary and Primary Data

The analysis was completed in two stages. First, codes were improvised and assigned to questions that were asked during the field survey (Appendix 1B, 1C and 1D). This was followed by creating a summary of the results into data sets and organized further into tables. This procedure was also followed for the analysis of secondary data. In the second stage, the data sets were grouped according to the research questions and objectives of the study.

2.6 Limitations of the Study

Research in urban areas of developing countries such as Kenya face considerable difficulties, particularly if the research involves administration of questionnaires, discussions with potential respondents in the field and data collection from government and local municipalities. The thesis involves is a policy research and Blalock and Blalock, Jr. (1982: 111-116) has pointed out that policy research do not always conform to the principles of scientific research such as random surveys. In policy research, it is not always possible to control and manipulate the variables.⁹ According to Handyck *et al* (1975: 78-79), there are two requirements that must be fulfilled in a survey involving random samples. First, every household in the sample areas must have an equal chance of inclusion in the sample. Second, the selection of one household should not affect chances of the next household from inclusion. During the field survey when data for the present study were collected, these requirements were not fulfilled.

In light of the views expressed by Handyck *et al* (1975) and Blalock and Blalock, Jr. (1982), the present research has a number of limitations and does not meet the requirements of a random sample. Some respondents refused to participate. There was poor system of data storage, and loss of land files at the Land Registry. It was therefore, not possible to select respondent households or the land files randomly. At the Kenya Posts and Telecommunications Corporation, statistical data were not available on delivery and costs associated with telephone installation. The numbers assigned to plots/property in Registered Index Map Sheets (RIMS) and plans did not follow a logical numbering system. At the same time there was lack of trust on the nature of field research and a general lack of incentives to participate especially among some of the household respondents, and the government officials. This suggest that a *Research Clearance Permit*

⁹ A.N. Blalock and H M. Blalock, Jr. (1982) suggest that such variables are social, political and organizational forces operating within a specific setting in which data is to collected.

to authorize collection of data does not guarantee success of a study according to research design.

The weaknesses in the research were compensated in a number of ways. Responses from officials and household respondents on planning law were cross-matched with the findings from the review of planning law. Policies of local authorities from records of Works and Town Planning Committees, responses on infrastructure planning and land development activities of the officials and respondent households were also cross-matched with field observations, literature review and secondary data from the Land Registry. District Focus for Rural Development policy paper which outlines the basis for planning at the district level, Sessional Paper No.1 of 1986 which deal with policies on Rural Trading and Production Centres, and the five years National Development Plans were also consulted. In this way, possible bias in the collection of data from the land registry, and in the responses of the households and officials was minimised. For example, it will become evident in chapter seven that the distribution of size of plots established through field survey in some of the sample is similar to the one established from Land Registry data. The weaknesses in data collection were reasonably compensated by the diversity of sources of data and this has allowed some generalized conclusions about the findings.

CHAPTER 3

URBAN LAND DEVELOPMENT AND MANAGEMENT IN DEVELOPING COUNTRIES

3.0 Introduction

There are five important aspects to consider in the planning and management of urban areas (*The World Bank*, 1991). They are rapid urbanization, planning of the land resources, management of urban areas, role of law especially planning law and the development itself. This chapter examines these aspects in relation to, practices in urban land development and management in developing countries.

3.1 Urbanization

Urbanization and population growth is increasing rapidly in developing countries and is the result of migration processes and natural increase.¹⁰ Although Africa is the least urbanized continent with only 30 per cent of the population living in cities (Wekwete, 1992:105), it has the highest rate of population growth in the urban areas which averages 4.6 per cent per annum. In Latin America, a decline in rural population began in the 1950s due to rapid out-migration to cities. In that region urbanization has reached a level where infrastructure provisions are needed to support the population needs in the 1990s (Di Pace *et al*, 1992:22). By the end of 1990s, between 1.2 - 1.6 per cent of the total land area will become urbanized in Latin America and as more and more people live in cities the problems in planning and regulating land development are

¹⁰ Harris, N. (1988); and Hardoy, J.E. and Satterthwaite, D. (1986) have published extensively on urbanization and urban population statistics collected by the United Nations Organization (UNO).

shifting from rural to urban areas. In Brazil, the urban sprawl and overcrowded slums surround primary cities where urban populations face desperate social and living conditions (Klaren and Bossert, 1986:3; and Habitat, 1987a:3). Actual and projected urban population for 15 years, 1980 - 2000, in Table 3.1 show that the urban population will continue to increase (*The World Bank*, 1991).

Table 3.1: Actual and projected growth of urban population in selected developing countries for fifteen years, 1985 - 2000

REGIONS AND COUNTRIES		SIZE OF POPULATION (in 000's)				PERCENTAGE OF URBAN POPULATION	
		1985		2000		1985	2000
Region	Country	Urban	Rural	Urban	Rural	1985	2000
LATIN AMERICA	Argentina..	25,648	4,683	32,163	4,075	84.6	88.8
	Mexico.....	55,276	24,099	82,985	24,248	69.6	77.4
	Colombia....	19,357	9,357	28,557	9,441	67.4	75.2
	Brazil.....	98,599	36,966	148,397	31,090	72.7	82.7
ASIA	Malaysia....	5,905	9,543	10,509	10,361	38.2	50.4
	India.....	196,228	572,955	356,875	685,654	25.5	34.2
	Indonesia....	42,170	124,294	75,960	132,369	25.3	36.5
	China.....	218,576	840,946	322,125	963,769	20.6	25.1
AFRICA	Algeria.....	9,251	12,448	16,845	16,403	42.6	50.6
	Morocco.....	9,910	12,210	17,488	13,878	44.8	55.8
	Senegal.....	2,343	4,101	4,301	5,366	36.4	44.6
	Ivory Coast.	4,302	5,950	10,118	8,429	42.0	54.6
	Nigeria.....	29,556	65,643	68,893	90,256	31.0	43.3
	Sudan.....	4,502	17,316	8,902	24,708	20.6	26.5
	Kenya.....	4,002	16,351	11,937	25,645	19.7	31.8
Zaire.....	11,248	19,464	22,875	26,474	36.6	46.4	

Source: The World Bank (1991:) *Urban Policy and Economic Development: An Agenda for the 1990s*. Washington, D.C.: International Bank for Reconstruction and Development/The World Bank. pp.20.

At a projected average growth rate of 2.2 per cent per annum of urban population, Asian countries have lower rates of urbanization than the world average of 2.4 per cent during the period 1990 - 2000 A.D. (Whitney, 1992:229), and these low rates are shown in Table 3.2. Asian countries, however, in absolute figures form a major urbanizing region. Urban population in Asia will stand at 49 per cent of the total, Africa 52 per cent

and Latin America 83 per cent.¹¹

Table 3.2: Actual and projected growth rate of urban population in selected developing countries for twenty years, 1980 - 2000

REGIONS AND COUNTRIES		AVERAGE ANNUAL RATE OF GROWTH			
		Urban Population (percentage)		Rural Population (percentage)	
REGION	COUNTRY	1980 - 1985	1995 - 2000	1980 - 1985	1995 - 2000
LATIN AMERICA	Argentina.....	1.88	1.39	-0.87	-0.88
	Mexico.....	3.36	2.39	2.30	-0.07
	Colombia.....	3.11	2.29	0.28	-0.07
	Brazil.....	3.71	2.28	-1.27	-1.00
ASIA	Malaysia.....	4.51	3.32	1.06	0.15
	India.....	3.91	3.96	1.65	0.93
	Indonesia.....	4.60	3.62	1.13	0.58
	China.....	1.44	2.95	1.18	0.14
AFRICA	Algeria.....	3.71	3.85	2.51	1.25
	Morocco.....	4.28	3.42	1.40	0.50
	Senegal.....	3.34	4.46	2.11	1.52
	Ivory Coast...	6.63	5.24	2.54	2.26
	Nigeria.....	6.07	5.33	2.22	2.02
	Sudan.....	3.99	4.88	2.88	2.19
	Kenya.....	8.06	6.72	3.17	2.78
Zaire.....	4.41	4.73	2.29	1.80	

Source: The World Bank (1991) *Urban Policy and Economic Development: An Agenda for the 1990s*. Washington, D.C.: International Bank for Reconstruction and Development/The World Bank. pp.20.

The rapid pace of urbanization is taxing the economies of these developing countries and presents a major challenge to the existing planning machinery (Wilcox, 1983; and Baross and Linden, 1990:63).¹² Ways to get out of this crisis in the planning of urban areas in developing regions of the world are yet to be developed (Wekwete, 1992:105; and Pernia, 1992:237).

¹¹ Harloy, J.E. and Satterthwaite, D. (1986) "Urban Change in The Third World" have outlined these changes in more details. Projections of world population by region show that the population will increase from 0.5 billion in 1950 to 4.0 billion by 2000 A D in developing countries. Of the 4.0 billion world population, 45 per cent will live in cities of 1.0 million or more people. Also see Harris, N. (1988:106) "Urbanization: An Economic Overview of Some of the Issues".

¹² See Tobey, J.A. (1989) for a comparative analysis of economic development and environment and in relation to poverty in developing countries.

While sectoral planning for food production in the agriculture is important, trends in urbanization point out the need to pay more attention to the planning and management of urban land development now than ever before. These challenges in urban planning do not suggest that rural areas should be ignored, but at the same time, an urgent response is needed to the problems of development in urban areas. These areas play an important role in the national development process. Harris points out that:

Commonly national economic development is led by urbanization and rapid increase in productivity of labour associated with physical concentration of labour in cities... Thus as governments pursue industrialization and modernization, urbanization is an almost inevitable result (Harris, 1988:103 and 105).

During the accelerated urbanization in developing countries of the 1970s and 1980s, social and physical planning was inspired by post-independence goals of rapid economic development (Mehretu, 1986:32; and Douglass, 1989). To achieve these goals development models of planning which evolved outside of the developing regions of the world were relied upon (Wehber, 1983).

Three reasons were advanced to explain the causes and trends of urbanization. The first reason is the pull factors mainly in the form of employment opportunities and improved social services in urban areas and the push factors in the form of decreasing size and productivity of agricultural holdings in rural areas (*World Commission on Environment and Development* (1987:245). The second reason is the increasing population growth rates which are relatively higher than in other regions of the world (Stren *et al*, 1992 eds). The third reason is that urbanization is not accompanied by improvements in industrialization, technology and the way people conduct business (Wekwete, 1992). Improvements are limited because of the trends in liberalization of international trade and financial markets in the 1980s that did not take into account the adverse factors influencing economic productivity in developing countries (*United*

Nations Economic Commission For Africa, 1989; and Opkala, 1992).¹³ The result is the deterioration of the agricultural sector forcing more people to migrate to the cities.

Developing countries are not coping with the phenomenon of rapid urbanization and are unable to solve the urgent problems associated with development (Habitat, 1989d). The result is the establishment of slums and squatter settlements, inefficient transportation, inadequate community services and utilities and conflict between formal and informal urban economic activities in the use of land which at times ends in violence and political squabbling. At the same time these problems lead to the degradation of the environment (Habitat, 1989a:19).

3.2 Urban Planning and Land Resources

Urban planning in relation to land resources is a neglected area of public policy in developing countries especially in Africa during the 1970s and 1980s.¹⁴ The limited attention paid to human settlements in Africa were on a few surveys rather than in the development of urban planning policies and management strategies (Mosha, 1989; and Racodi, 1990). Some of the initiatives that were taken were often in the form of conventional comprehensive physical planning guided by the principles and assumptions evolved in Continental Europe and England (Grant 1982:75-76; Garner and Gravells, 1986:113; and Abler, 1989:60-63).

The policies, emphasized sectoral and pricing policies, and ignored urban policies dealing with land use planning and control (*World Commission on Environment and Development*, 1987:245-247). The initiatives did not take into account the need for planning law and local level institutional arrangements for the implementation of urban

¹³ These factors include debt problems and low level of technological development.

¹⁴ Haar, C.M. (1964:iv) drew attention to these issues in 1960s by observing that "... cultivate your garden - is becoming even a metaphorical impossibility under twentieth century conditions. Steadily increasing demands on fixed quantity of land brings to sharp focus issues of adequate housing, optimal uses of land and effective relations among the city, suburb and rural areas".

plans (*Housing and Physical Planning Department*, 1990; and Sorrenson, 1968:53). Norway (1975) and Falkanger (1986) point that the success of settlement patterns at the local level is the result of the application of planning law which expresses social, economic and environmental values. Okpala (1975), Suetens (1986:37), and Hawke (1991:82-84) also hold similar views in their observation that in regions where urban development in relation to planned use of land resources is relatively successful, new ways of dealing with problems of urban growth evolve simultaneously with appropriate planning laws.

Urban planning is also ineffective due the existing land tenure practices among the urbanites and the migrants into cities (Baross and Linden, 1990). The developing countries are still struggling with the complex land tenure systems, a legacy inherited from the past colonial administration(s). At the same time western culture and value systems still have influence in land ownership and land use patterns (Brook, 1946; and Ife, 1964:200-201). Urban planning will have to deal with the problems of migrants coming to the cities as well as with diverse types of land ownership which dictate how land is made available (Habitat, 1987b:49-58).

Financial supports for urban development are many, but are mainly from two sources. The policy makers will have to come up with policies to guide the planners who will in turn have to plan urban development that is financed by the established systems of money market. At the same time, such policies will have to accommodate the independent initiatives in urban land development by the individuals and groups that operate outside these money markets. Those who do not fit into the many systems of money markets or the independent financial operator will end up in slum and squatter settlements (Islam and Sheng, 1989:117).

In recent years, solutions to urban planning in relation to land resources in developing countries have adopted indigenous methods of land ownership to implement

development process. In Thailand for example, urban land sharing (ULS) was adopted as a method of resolving conflict between squatters and land owners in the planning and development of land (Islam and Sheng, 1989). The success in ULS has been achieved where the government takes on the role to mediate conflicts while at the same time financially support the development of infrastructure. Similar efforts have been made in India (Misra, 1986 and India, 1988), Mexico (Angular, 1987), Nigeria (Uyanga, 1987), Indonesia (Douglass, 1989); and Tanzania, Zambia and Zimbabwe (Racodi, 1990) with varying degrees of successes.

3.3 Urban Management

Management is a broad concept that coordinates decisions and actions towards achievement of expected out-put(s).¹⁵ The concept of management involves the use of three categories of resources namely human knowledge, skills and biophysical resources to achieve objectives that are pre-determined through planning (Lucas, 1978). Management involves continuous identification of short and long term strategies and the resources that are required to implement those strategies. Continuous identification of strategies and the resources required in the implementation are the two main aspects of management, and as Dale (1965) suggested, good planning is the basis of effective management.

There are four different schools of thought that expound approaches to management (Hollingsworth and Hodgetts, 1975:27, 60, 82 and 202). First, the management process school of thought (MP) emphasises the functions of planning, organization and control. Second, the quantitative management school of thought (QM) stresses mathematical techniques and models as tools for making decisions about the

¹⁵ The idea of management has its roots in rational actions and human behaviour as they are influenced from time to time by the internal and external environment of human organizations (Hollingsworth and Hodgetts, 1975).

choice of alternative courses of action. Third, the behaviour management school of thought (BM) points out the importance of human behaviour in different kinds of organizational setting and relies on psychological and sociological theories. Finally, the social mutual responsibility management school of thought (SMR) concerns itself with numerous responsibilities and functions including redistribution of resources and ensuring fair returns in the form of goods and services to the communities from invested resources.

SMR is of interest to urban planners and managers because of the two assumptions it makes. The first assumption is that social responsibility in management is commensurate with the kind and quantity of resources being managed. Secondly, planning and management strategies are fashioned by those responsible for implementation along expectations of communities.¹⁶

Various researchers explained the role of management as a part of implementation in the public domain including urban development in the 1970s (Diamond and McLaughlin, 1973:39-47; and Goldchalk *et al*, 1977).¹⁷ Diamond and McLaughlin have suggested that training of planners should include some skills in management. In recent years in urban management, there has been emphasis on organizational structure of private enterprises and government agencies with a shift towards more decentralized institutions of decision making and implementation (Lawrence and Lee, 1986:25). The emphasis on organizational structures was made to develop the capacity of organizations to make management activities more strategic and democratic (Stren and White, 1989; and Brinkerhoff, 1991:193).¹⁸

¹⁶ Whichever school dominates in implementation of plans depend on over-riding objectives, kind of resources and types of planning and management organization.

¹⁷ Other researchers who made extensive contribution towards the debate in the 1970s and early 1980s include Lupton (1970); (McAlpine (1973b:1-35); Kaiser *et al* (1977) and Lucas (1978).

¹⁸ Stren and White (1989 eds) suggest that ideas from other management schools of thought are also relevant in urban management in developing countries.

Urban management is a municipal function involving planning, regulation of the urban land development process and financing the provision of services and physical infrastructure (Wekwete, 1992:134).¹⁹ It is an advanced process of implementing public policy which relies on management principles applied in private enterprise. Urban management is committed to the use of resources to achieve short and long term goals of local communities without compromising the goals of society in general.

At the present time, in many developing countries urban management to implement public policies and private economic activities is a neglected area of action (Stren and White, 1989 eds). It is argued that in the past, urban management was not important as settlement systems were scattered, and had no industrial and commercial base to support complex economic activities. Okpala (1992:iv) has however advanced the view that the neglect was due to ineffective and inappropriate planning policies which did not allow continuous reallocation of both human and natural resources. Financial resources also were used in favour of investment in rural development, neglecting the growing cities (Wekwete, 1992:135).²⁰ The need to build the institutional capacity of urban local authorities to face the management challenges of the future was disregarded (Habitat, 1989d:11).

For example, in Tanzania, socialist policies that led to the creation of *ujamaa* villages for the rural communities did not pay attention to the management of local development, although only 5 per cent of the population lived in urban areas in 1972 (Moshia, 1989:220). Encouragement of a limited sub-national regional development administration by the government in Bangladesh, rarely linked urban management to

¹⁹ Wekwete (1992) suggests that the goal of adopting urban management as a municipal (local authorities) activity is to cater for human settlements which support economic, social, environmental and political needs of the urban communities.

²⁰ This bias was matched with modest investment in the implementation of spatial policies of secondary cities which were to act as mediators of agricultural production and support growth of rural *agricultural based settlements* (Stren and White, 1989 eds).

national development policy (Hassan, 1991). The centralized structure of the government did not facilitate implementation of Bengali agro-rural development policy in the context of local planning and development activities. This suggests that some of the developing countries may not introduce appropriate management measures to deal with growth of the urban areas (Habitat, 1989c and Habitat, 1989e).

In English-speaking Africa, the institutional arrangements for urban management are weak and is attributed to the interference of central governments in the planning functions of local authorities.²¹ In French-speaking Africa, indirect urban planning and development activities through the *prefecture administrative system* have created several problems.²² At the present time, problems in urban management range from water supply and solid waste disposal in Nigerian cities (Anibokun, 1989:79), to municipal finance in the Ivory Coast (Attahi, 1989:131), lack of coherent policy in providing services in Senegal (Ngom, 1989:202), and inadequate control of land development in Zaire (Mbiyu, 1989:172-173) and Tanzania (Kulaba, 1989:203-245). Urban areas in Kenya including Nairobi are affected by these problems in varying degrees (Lee-Smith, 1989:277-304). These types of centralized urban management are not also conducive to community participation in planning decisions (Habitat, 1989f:66-70). Further, such management inhibits the development of necessary levels of local autonomy for urban institutions to regulate land development and levy taxes.

3.4 Law and Development Process

Law is an important instrument to effect social change and development (Tikarambudde, 1983:1; and Bryde (1976).²³ In most of the developing countries, law is

²¹ This interference is such that many municipalities are administered by appointed officials of central governments (Stren and White, 1989 eds).

²² *Prefecture* is the arrangement where local matters in politics, administration and development are in perpetual control of local officials called *prefects* who are appointed by the government rather than elected by local people.

²³ In this context, development is seen as social change to be achieved through political and economic

made up of statutory rules which have evolved under formal court systems through the principles of precedent, customary law and religious law.²⁴ The centralized departments and agencies of governments in developing countries intervene in social, economic and political process in the hope that it will accelerate development process. This has resulted in the weakening of local governments and democratic processes. Government intervention therefore, undermine the role of planning and environmental laws. As pointed out by Bryde (1976:126) meaningful development requires effective law and by continuing to ignore the role of law, governments risk failure in their development policies.²⁵

There are numerous and confusing sources of laws that are used in the formulation of development policies and in their implementation. The sources include laws that were imported during the colonial era, and customary laws developed by the indigenous peoples (Sorrenson, 1968:44-45; Sacke; 1973:1; Allot, 1980:168-172; and Oluyede, 1981:1-7). Based on African experience, Ojwang has summarised the reasons why imported laws are responsible for the failure of development process:

...for most of Africa, the dominant received bodies of law, which are western in provenance have been explicated in terms of western legal theory. It is this theory that governs all law-making and all approaches to enforcement in environmental matters It is a preservationist approach to operative institutions and their regulatory norms and therefore... does not lend itself to the state of flux....in developing countries, let alone, the

development, and more recently improvement of the environment (Bryde, 1976:1). The role of law in the development process is therefore the continuous clarification of planning procedures, the design of institutions as players in development process and provides a basis for the formulation and implementation of development policies (Tikaranbudde, 1983).

²⁴ Reference to religious law in this context recalls observation by Bryde (1976:119-123) on *Sharia Law* which is a variation of Islamic Law. Bryde suggests that so long as societies relying on Islamic law adapt to the demands of incremental development and modernization in spite of clinging to fundamental Islamic religious dogmas, the law can be regarded as open for use in strengthening procedures of implementing development policy through incremental adaptation of customs to new ideas.

²⁵ The role of law in this context is understood in the functional sense: organizing society and institutions of governance which have legitimacy for leadership as well as formulation and implementation of development policy.

fluidity of environmental degradation (Ojwang, 1992a:3-4).²⁶

Importation of laws was based on two conflicting assumptions: first, that customary law systems will not support social, economic and political organizations that can bring about change and progress, and secondly, that the imported laws would function as instruments to modernize indigenous societies beginning with the sectors of commerce and resource development.²⁷ In this process customary laws were seen as primitive and therefore obstacles to improvement in the material conditions and political process of indigenous societies. The imported laws were not used to strengthen indigenous systems of law which were adaptive to local social and resource conditions. The new legal systems were used to support new kinds of centralized institutions at the cost of indigenous laws (Ekechi, 1989:146-149).

As Allot (1980:109) has suggested, imported laws introduced in African and Asian countries differed from customary and religious laws. The imported laws were to facilitate exploitation of local human and natural resources. In Latin America the application of imported laws has facilitated ownership of land in fewer landlords.²⁸ In Ecuador and Cost Rica the application of imported laws has resulted in ineffective planning because decision on the use of land resources are centralized (Simon, 1990 ed). In most other Latin American countries concentration of power in small groups of elites

²⁶ Ojwang (1992a) argues that legal theory of imported law is positivist, largely standard methods of state legislation and well-worn approaches to conflict resolution. Importation of legal systems from abroad for the purpose of development administration and use of resources took place in the late 19th and early 20th century. The legal systems included English common law (Seidman, 1968), and French civil code (Ife, 1964 ed).

²⁷ This view was supported through research in the 1940s that resulted in the publication of the controversial work by The Revered Father Placide Tempels (1945) *"La Philosophie Bantoue"*; translated into English language in 1953 as *"Bantu Philosophy"*. See *"Bantu philosophy"* pp.78-80 on views about customary law, and pp.110-120 on "mission to modernize". Also see Okere, T. (1983:1-12) on the same subject.

²⁸ Instances when attempts are made to make new laws are usually in response to immediate needs, while long term implications of such law are ignored (Simon, 1990:76-77 ed).

makes it very difficult to evolve effective laws (Klaren and Bossert, 1986:13-15, 64 and 101-104).²⁹

Indonesian laws, a legacy of Dutch administration, are partly responsible for ineffective urban land use planning in Indonesia (Buxbaum, 1968:xxiv; and Simon, 1990:173-175 ed). It is interesting to note that changes in laws accompanied by agrarian reforms of 1948 have been partly responsible for the economic development of South Korea and making her one of the Newly Industrializing Countries (NICs) (Brown and Liu, 1992:83).³⁰ Korean reforms were focused on social institutions as they relate to the process of local economic development.

Imported systems of law that were imposed over African indigenous social and community systems are still influencing the planning and development processes. Gold Coast Court Ordinance (GCCO) of 1876 fashioned after the common law of equity in England was only appraised in the 1960s (Seidman, 1968:10-11). Sudanese Bills of Exchange Ordinance (SBEO) 1914, based on the English Act of 1882, was still in its original form even in 1968 (Thompson, 1968:157).³¹ The application of the imported laws fail to recognise aspects of customary legal systems. It is important to note that the customary legal systems were reflected in the patterns of social and community organization, in highly localized political process and in resource development and utilization (Park, 1968; Allot, 1971; and Takirambudde, 1983:2-4 ed).³²

²⁹ Klaren and Bossert (1986) have cited Brazil, Venezuela, Columbia, Peru and Chile as examples. They suggest that reaction to social and economic problems resulted in the emergence of radical social movements which rely on orthodox and neo-marxist historical materialism paradigms in addressing themselves to problems of development.

³⁰ Also see J. Hee-Yun (1991). Hallowell (1964:38) suggests that although Japan was never a colony, land reform that was accompanied by changes in law after World War II partly explains her success in economic development today.

³¹ A major amendment was made to the English Act in Britain in 1957 (Thompson, 1968). Examples of African countries where imported laws have continued to be applied over several decades without addressing themselves to changing circumstances in resource availability, social and community organization and structure of formal institutions that influence development process are well documented by Ife (1964 ed) and Takirambudde (1983 ed).

³² Legal theory of customary law implies that individual rights are only subsumed *not substituted* in the

There are suggestions that developing countries, particularly in Africa, should reappraise laws that relate more directly to contemporary planning problems and development processes (*Housing and Physical Planning Department; 1990:122*). There should be integration of certain provisions of customary laws and useful sections of imported laws which were used for many decades. Such an integration must, however, avoid over emphasising constitutional powers of central governments at the expense of jurisdictional powers of local governments.³³ The role of planning law will be to minimize discretion and to restructure planning organization.³⁴ Planning law is a sub-branch of administrative law, itself a branch of public law.³⁵ Once there are improvements in administrative law, there will be changes for the better in local planning and management institutions. Further, a system of law which is relevant to development should avoid reliance entirely on principles of imported or customary systems, but should consider instead, the desired social goals and material progress (Hutchinson, 1968:vii ed).³⁶

interests of community as an organic entity in which administrative functions are held by groups of elders through sheer practice and oral tradition (Ojwang, 1992b). Application of the law is not separated from its philosophy. And Ojwang continues to argue that this is the strength of the law in social, economic and environmental management.

³³ The argument for weakness of organizations is that constitutional law which gives nation-state governments ultimate authority in national development programmes places legal authority for planning and implementation on central governments. The consequences have been weak organization in local institutions (Reisman, 1983:185 and 191-192).

³⁴ Discretionary powers and centralized organizations in the administration of development have come under criticism by the media in developing countries (STANDARD FEBRUARY, 1993:15; "Do We Really Need PCs, DCs?"). The media suggest that they frustrate local development. As Rostow (1990:6-9) has argued, they work against the attainment of "take-off stage" in the development process.

³⁵ The second main branch of law is private law which deals with conduct and relationships between people. In fact, division between public and private law is not as definite as the literature would suggest because in practice government and private actions interact. J.A. Griffith and H. Street (1967) have given a detail description of principles of administrative law.

³⁶ In Madagascar where customary law has been used as basis of urban planning, there is evidence that indigenous systems of law have potential for application in development process (Hutchinson, 1968:ix ed). However, the success cannot be realized if the law is applied outside institutional context; and in Madagascar, mutual-collective participation in the framework of *fokon olona* organizational structure which helped to inspire respect and responsibility in planning.

The only option left for the developing countries is to adopt incremental adjustment towards a dynamic system of law which is adaptive to social and economic needs. The African customary law can benefit from principles of imported contract law (Godling, 1975 and Allot, 1980: 12 and 72). On the other hand customary laws, particularly those of the family and land laws can be used to strengthen and improve institutions, administration and planning processes. The way out of the ineffective legal systems is to improve and integrate planning and development processes and to apply appropriate planning laws. Seidman (1968:24) has summarised this requirement this way:

Plan[ning] is that aspect of the social process... concerned with maximum utilization of institutions and resources from the point of view of economic development. Law is that aspect of social process which is concerned with the structuring and enforcing social policy in terms of duties and rights therefrom.

Therefore, the task faced by the developing countries is to develop appropriate planning laws and institutions for regulating and guiding development of resources. As private initiatives are guided by the law of contract and as governments have to regulate economic activities in the private sector, such changes in law are imperative.

3.5 Development: The Changing Meaning

Issues relating to urban land development are part of the large debate on the development of society and their economy in developing countries (Hettne, 1990). In spite of the realization that development has degraded the environment in industrialized countries, the conventional view is that development is necessary to solve problems in developing countries (Tobey, 1989). There is, however, an intellectual debate in some countries on the concept of development in relations to the structure of society, economic activities and resource use practices. Those countries have attempted to implement development projects and programmes at different levels through diverse strategies but concentrated only at national and regional levels (Simon, 1990:7-9 ed).

During the United Nations Development Decade (UNDD) of the 1960s, development was defined in terms of economic growth that is reflected in Gross National Product (GNP), with growth rates of 5 - 7 per cent, and an average of 6 per cent per in a year (Abdalla, 1983; and Dube, 1988:2-3). However, these goals of development were not achieved. Hollowell (1964:220-223) has suggested that when people have confidence in what they do to meet their basic needs by using resources and technology they can access, that is development. This view did not receive attention from experts. By the end of the 1960s poverty both in rural and urban areas in developing countries was still a major problem.

The failures of development plans and programmes prolonged the debate and into the 1970s. Seers (1977) has pointed out that if development was merely economic growth it could be assumed that increase in GNP in a country would lead to an improved standard of living for everyone. Thus:

While it is very slipshod for us to confuse development with economic development and economic growth, it is nevertheless very understandable. We can after all fall back on the assumption that increases in national income, if they are faster than the population growth, sooner or later lead to the solution of social and political problems (Seers, 1977:1).

For Seers, widespread poverty, unemployment and inequality in society were evidence that much of what had been achieved was not development.³⁷

Johnson (1984:24 ed) and Berger and Hsing-Huang (1988:5 eds) from their development studies in South Asia have concluded that development meant change that gives people a sense of optimism and confidence in progress.³⁸ For them, development included positive change in material and social welfare and can be expressed in many

³⁷ Seers enumerated parameters of poverty as food, clothing, footwear and shelter and emphasised that poverty, unemployment and inequality in society were worse in the early 1970s than at the beginning of United Nations development decade.

³⁸ G. White (1988:1 ed) has suggested that states in South East Asia have had to play a strategic role in development in which they tamed "domestic and international market forces to harness them for their national economic interest"

forms, including physical change in landscape and abstract ideas. Brown (1988:257-263) has expressed similar views in which the emphasis was on the geographical dimension of development. He has suggested that the significance of development in developing countries must be seen in the kinds of specific changes in rural and urban communities. However, even during the 1980s, development continued to be seen in relation to economic growth,³⁹ which can be identified as development epochs taking place in a linear fashion.⁴⁰

Failure to achieve development along the lines envisaged during the three decades led to a disillusionment on the part of many intellectuals and policy makers in developing countries. This failure was blamed on wrong economic development strategies which were assumed to have been adopted by developing countries resulting in ever increasing population and migration to cities. The failure was also attributed to the limited period of contact with the rest of the world (Hettne, 1990:247).⁴¹ Therefore, Hettne (1990:3) and Simon (1990:xiv ed) have argued for a reappraisal of the meaning of "development" as proposed by Seers (1977). They have advanced the view that development is comprehensive structural transformation of cultural, social, political and economic systems and the efforts that can bring about changes in these areas.

The debates and discussions on development have encouraged a new thinking on the development process. The resulting changed perspective of development is that the gradual acts of positive transformation can be noted in progressive changes, instances of stagnation and at times short lived failures in economic spheres and social life (*African*

39 "Stages of economic growth" thesis advanced by Rostow, W.W. in the three editions of *"The Stages of Economic Growth: A Non-Communist Manifesto"*; 1960, 1971 and 1990 is one of the most influential publications on the subject. Rostow's (1990:4) position is that societies undergo five stages of economic development: traditional society, pre-conditions to take-off, take-off, drive to maturity (industrial); and high mass-consumption.

40 Also see M. Gills et al (1983 eds).

41 Also the failure has been attributed to development planning traditions supported by financial, expertise and theories relevant elsewhere but used extensively in developing countries (Webber, 1983; Knox and Masilela, 1989; Okpala, 1990; and Gaile, 1992).

Centre for Applied Research and Training in Social Development, 1990:47-49).⁴² Such progressive changes represent a better life for the people. Instances of stagnation and the short lived failures occur when there is a technological change and a society has to get used to it. Short lived poor economic productivity, inaccessibility to resources can also cause stagnation and failures. This development perspective can be effective by including environmental concerns in the management of the development process (Atkinson, 1991:iii-vi). In view of the recently introduced structural adjustment programmes (SAPs) which have brought unstable social and economic conditions (*United Nations Economic Commission For Africa*; 1989), developing countries can benefit from the new line of thinking.⁴³

Management, as part of the development process, implies that development agenda in developing countries should include improved organizational capacity of local planning institutions, provisions in planning law and governance. These are the necessary pre-conditions of planning and management in the development process because the use of primary resources including land is central to them (Okpala, 1992:iv). They will lead to resolving the confusion surrounding the place of planning and management of urban land development in developing countries now that urbanization is the most challenging planning problem.

In this chapter, literature on urban land use planning and management in developing countries has been reviewed. The rapid urbanization, planning of land

⁴² This is a process-based definition of development and as Ismail (1990:172) has noted; it is transformation of the capacity of people in a given society to improve their life and that of others. This kind of development is a product of learning how to apply one-self and one's environment to meet one's needs as well as those of others. It is a process of transformation which is not linear but nevertheless leads to improved life and personality of individuals and groups. Therefore, the process is both quantitative and qualitative, and not subject to empirical measurement at all times. Economic development is not synonymous with development but is only a part of it.

⁴³ Some of the demands in SAPs are that people in developing countries should produce more for export so that they can increase the share of their international trade. Land holdings in developing countries are small and require more capital investment per unit returns. Such capital is hard to come by and land fertility being so low due to prolonged farming, has become less productive. These factors are "pushing" more people from rural to urban areas in search of better prospects (Phang, 1987).

resources and management of urban areas, the need for the role of law (especially planning law) to be relevant and more effective in planning and management, and development itself, are serious challenges facing people and their governments in these countries. In chapter four that follows, urban land development and management in Kenya will be reviewed.

CHAPTER 4

URBAN LAND DEVELOPMENT AND MANAGEMENT IN KENYA

4.0 Introduction

Many policies of the government in Kenya emphasise the importance of land use planning in urban areas (Kimani and Taylor, 1973; and Taylor, 1981). However, the haphazard development of towns seems to indicate that the policies so far have not been effective (Obudho, 1984:363-365; Kenya 1991a). As urban population continues to grow, more people turn to the informal sector for jobs (Kenya, 1989:198).⁴⁴ The resulting increased housing needs and demands out-strip the available housing stock (Kenya, 1991a). The need to invest in social and physical infrastructure, and better management of energy supply also grow over the years. Urban land development to provide housing and employment outside the formal sector has become the major thrust.⁴⁵ Any planning attempts to intervene in this informal sector present a big challenge to urban development in Kenya. Many times, the eviction of sections of urban population from their settlements by the central government and local authorities often end in confrontation and sometimes violence (Kobiah, 1985; Nation, 1990b:1-2).⁴⁶

The failure of policies and the constant confrontations have forced the government and private sectors to explore other alternatives to contain the problems,

⁴⁴ The phrase "Informal Sector (IS)" is no longer fashionable in Kenya's planning and development literature but instead, "Small Scale Enterprises (SSE)" became popular since 1986 (Livingstone, 1991:654-664).

⁴⁵ However this alternative creates conditions for unplanned urban development.

⁴⁶ Confrontational eviction as a measure of urban planning, management and development in Kenya dates back to the beginning of this century. Werlin (1981:200-201 and 207) has given an account of the evictions in the 1960s and 1980s.

because they continue to affect job creation and sustained urban environment (Kenya, 1989).⁴⁷ There is now a gradual awareness that planning and management of urban land development can lead to a more productive local economy. It is important to overcome the challenges of land ownership in relation to planning and development in the urban areas before progress can be made.

4.1 Basis of Land Ownership

The concept of land ownership in Kenya is as old as the history of indigenous communities (Bullock, 1975; and Glazier, 1985).⁴⁸ The attachment of people to their land is related to its present and future monetary and non-monetary value. Therefore land ownership in Kenya means the uses to which one puts the land one owns, and the socially established status/rights around which such ownership claims revolve. The land is immovable and consequently, the land use and development claims are organized to reflect perpetual ownership (Kenya, 1965:5; and Kiriro and Juma, 1991:21).

The ownership concept includes access and use claims and not absolute possession, and covers individual (private) and community (public) ownership claims (Okoth-Ogendo, 1983). The rights to land ownership are driven by the interaction of social-legal systems at the resource-environment interface (Kenya, 1929:9). The rights to access and the use of land remain as long as the use continues and the rights cease once the land is not used and is left vacant (Kenya, 1959:21). The absolute ownership to the land with the exclusion of the others is fairly recent.

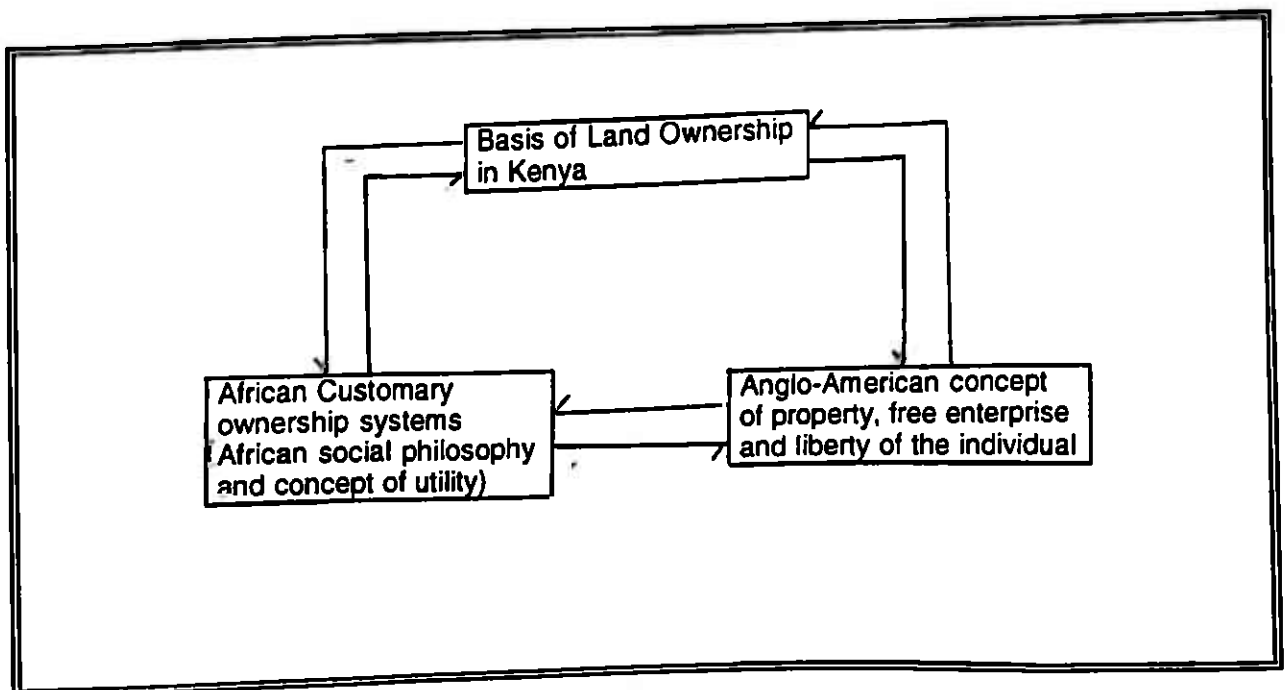
Wanjala (1990:12-13) has elaborated on land ownership in the Kenyan context

⁴⁷ This concern represents an emerging trend in Kenya's development history namely; that unlike in the past (before the mid-1980s) when development and use of agricultural land dominated development thinking, rapid urbanization now requires that the planning and management of land in urban areas be responsive to shifting patterns of human settlements from rural to urban..

⁴⁸ Pollock (1892) suggests that land ownership is one of the oldest form of property ownership in human history. Since land ownership is socially and culturally determined, there are as many types of ownership as there are societies and customs (McAuslan, 1983:18). Others who have researched on the subject as it relates to this dissertation include Kenya (1929), Sorrenson (1944) and Sorrenson (1967:9 and 52-61).

and emphasised that the ownership does not mean absolute possession of soil, vegetation and other natural resources. She has pointed out that, ownership means rights of an individual or groups of individuals to have *access* to, and *use* of identifiable parcels of land for creating structures such as housing and roads, or/and, use resources on, over, above or under it for economic production. In commercial agriculture and urban development, "ownership" expresses absolute right to property on the basis of private enterprise in a macro-economy (Ojwang, 1992b:10-12). Therefore, in Kenya there are two types of land ownership which forms the basis of its development (Figure 4.1). The first type relies on African conceptions of land as property, its administration/allocation and utilization. The second type embodies notions of free economic enterprise where ownership is identified with absolute possession.⁴⁹ This duality is illustrated in Figure 4.1.

Figure 4.1: Basis of land ownership in Kenya



⁴⁹ This perspective borrows from Anglo-American philosophy of liberty.

4.2 History of Land Ownership

Prior to 1900, land ownership was governed by customary laws of various ethnic groups. Access, allocation and "development" were exercised in the context of indigenous community organizations and institutions of ethnic groups. Arrival of European settlers introduced their systems of land ownership which evolved over the years. The introduction of the *Indian Acquisition Act* (IAA) in 1886 was used to regulate land development. This was followed by the adoption of the *Foreign Jurisdiction Act* (FJA) from Britain in 1890, and enabled to place the East African region under the British Crown. These two acts allowed limited land acquisition for public purposes, including government buildings and railways.⁵⁰

As the IAA and FJA had no effect in the interior lands the *East African (Lands) Order in Council*, (EALOC) was introduced in 1901. This allowed land acquisition from indigenous communities in the interior. EALOC was repealed and the *Crown Lands Ordinance* (CLO) was promulgated in 1902 and the ordinance was applied specifically to Kenya. It was used for comprehensive land acquisition which resulted in the creation of crown (government) land, 99 years leasehold land and tribal land.⁵¹ The ordinance gave powers to the Commissioner of Lands to allow Africans to occupy and "develop" portions of crown land in the form of temporary huts leading to the evolution of the first *squatter settlements*.⁵² Later, in 1908, the Land Titles Ordinance (LTO) was introduced to separate crown (government) land from private land. At that stage much of the leasehold land was converted to absolute private ownership.

For indigenous people, land ownership policy was changed by repealing the

⁵⁰ This law was also applied in the dominion of the sultan of Zanzibar which included the 10 miles coastal strip that stretched from southern Tanzania, through Kenya and Somalia (terminating at the Gulf of Aden), and the Islands of Zanzibar and Pemba (Maini, 1972:44).

⁵¹ Leasehold land ownership type was in fact developed and used as private land (Sorrenson, 1968:99 and Maini, 1972:45).

⁵² This generated confusion and debate which led to conflict in the administration of land acquisition and development on the part of both settlers and indigenous people.

Crown Land Ordinance in 1915 so that:

...tribal lands were Crown Lands and that neither a tribe nor members had any right to deal with the land (Maini, 1972).⁵³

On their part Africans did not understand the legal basis of compulsory acquisition that could result in loss of ownership claims to most of their land. They, however, understood provisions of customary legal systems and continued to maintain ownership rights over land and its development for much of 1920 to 1963. They knew however that laws relating to land ownership and development that were introduced differed from their own.⁵⁴ The development and disposal of land followed patterns of indigenous systems of law and customs when most of them were allowed to own land under the Land Titles Act (LTA) and the Land Registration Act (LRA) introduced in the 1950s.

By the time of independence in 1963, four systems of land ownership were already entrenched in Kenya. First, land designated as crown land remained under government ownership. Second, communal land and any other land that was placed under the local authorities became trust lands.⁵⁵ The third system is private group land ownership in the form of companies and land (buying) cooperative societies which were a reformed community system of ownership and distribution of resources. Lastly, land owned under titles became private (freehold) land. In this last system, there were people who moved into urban areas but could not own land through group ownership arrangements or afford plots in established urban districts. That group turned to peri-

⁵³ With the advice of the Commissioner of Lands the Governor could reserve a portion of Crown Land for Africans. In fact there were a series of Africa reserves that were gazetted in 1926 (Mucai-Kattambo, 1992:6)

⁵⁴ For indigenous people, this meant that new patterns of ownership which did not reflect African concepts of land ownership and development were being imposed over their own.

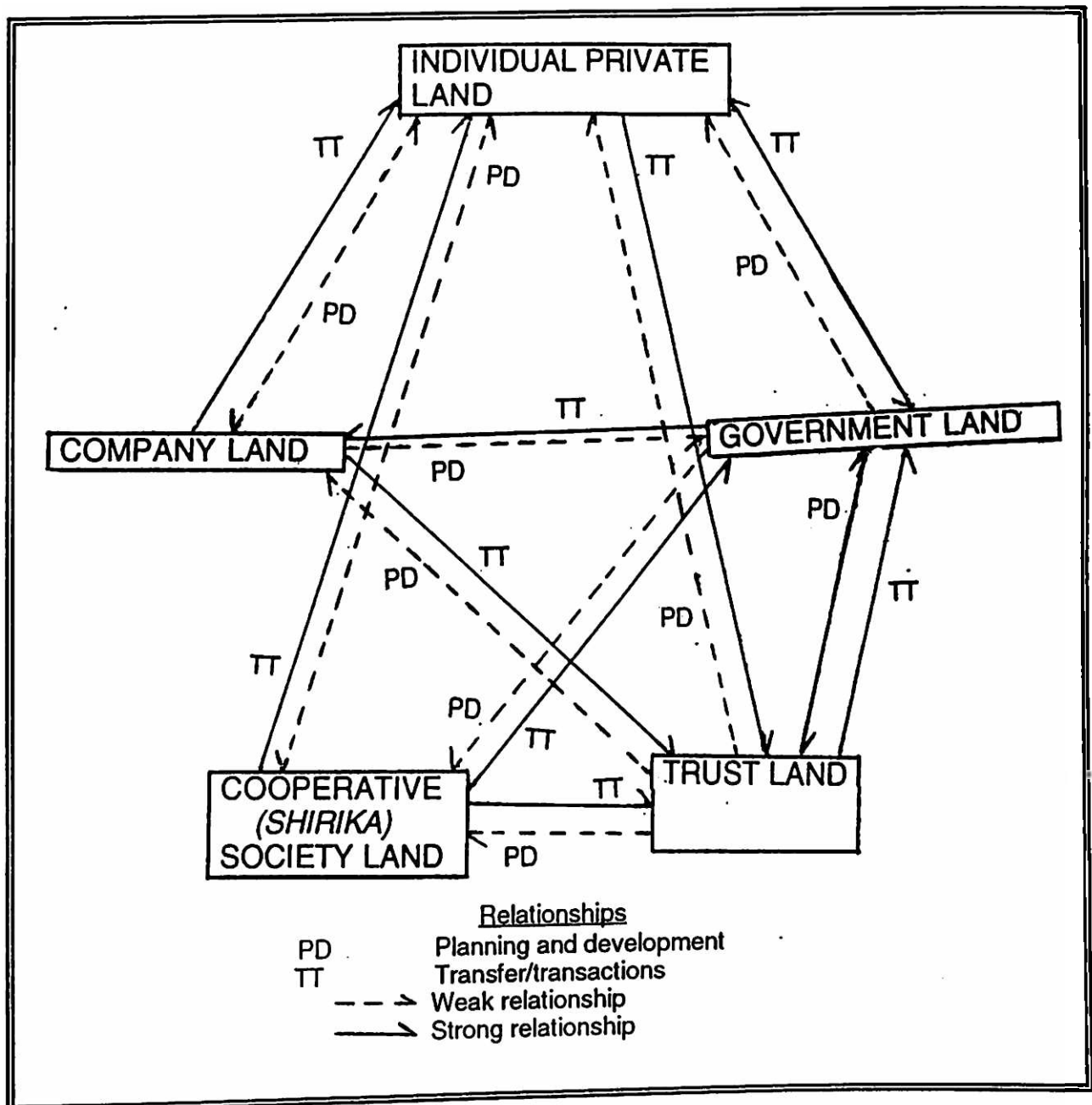
⁵⁵ Whereas local African leaders were allowed to contribute in decisions on planning and use of trust land, government officers, particularly the Commissioner of Lands and District Commissioners had the final say in the decisions.

urban areas where land is cheaper and bought small plots.

Land ownership (Figure 4.1) and, its planning and development (Figure 4.2) in Kenya, are dynamic and are driven by a dual philosophy of resource use and development: *African social philosophy* and Anglo-American concept of land as property to be acquired, developed and disposed in the market place. Both share a complementary tradition of land development policy which was not sustainable. The opportunity to improve on the two traditions was not used because it was assumed that indigenous systems were not adaptive to change.

Rapid changes in settlement patterns were not subject to realistic policies in relation to the land ownership systems that evolved and therefore, urban planning was not effective. These ownership includes government, trust, company and cooperative (*shirika*), and individual private lands (Figure 4.2). The relationship between land ownership and urban planning and management were generally ignored. Land ownership remains the most challenging organizing concept in land development in Kenya. Figure 4.2 is a summary of the existing relationships in ownership, planning and development. The dominant role of government in the planning and development process is evident from the figure.

Figure 4.2 : Urban land in Kenya: Ownership, planning and development



Source: organized from literature review.

4.3 Types of Land Ownership

In Kenya land ownership systems are made up of public and private land categories (Table 4.1). Government land is controlled by the Commissioner of Lands, and includes gazetted forests, wild life sanctuaries and parks, and lease land used for agriculture and urban development. Under the *Government Lands Act (GLA)*,

Commissioner of Lands administers the allocation of land to potential developers, collects land fees and controls its development.

Table 4.1: Types of land ownership in Kenya

PUBLIC LAND	PRIVATE (FREEHOLD) LAND
Government Land	Individual Ownership
Trust Land	Company Land
Communal Land	Cooperative Land
Easement	Group Land
Wayleaves	n/a
Reservation Land	n/a
Leasehold Land	n/a

Note: n/a mean not applicable.

Source : Organized from literature review.

Trust Land is land held by local authorities in trust for people living within their jurisdictions ⁵⁶, and the local authorities are expected to have direct influence in its administration and development. Most Trust Lands were part of the Native Land Units (NLU) and Native Reserves (NR) set aside between 1915 and 1963 under the *Crown Land Ordinance* of 1915. Portions of NLU and NR that are not registered as being part of local authority trust areas became communal land. Communal land is administered under African customary law and rights (Onalo, 1986:33-34), but those who occupy and use it have no registered rights.

Easements and Wayleaves are transportation corridors which includes land earmarked for physical infrastructure. Planning for Easements and Wayleaves is covered by the *Land Planning and Wayleaves Act* (Kenya, 1991c:18). Reservation land is set aside for a specific development by a government department or corporation. The

⁵⁶ Development of trust land is, however, administered by the Commissioner of Land as an agent of local authorities under *Trust Land Act* Cap 288 (Kenya, 1991c:17).

government owns leasehold land and it could be under temporary use by an individual or jointly with others. This ownership remains for a specific period established in the lease agreement and after the period expires, the government takes over the land or the lease is extended by a new agreement (Jackson, 1988:249-250).

Private/freehold land is registered in the form of titles and is for individual or joint (cooperative, company and other types of group) ownership (Wanjala, 1990:32-33). It is assumed that development and use of freehold land in urban areas will be in accordance with existing planning laws, local bylaws, and agricultural development policies for rural areas (Kenya, 1991c:18). However, owners are responsible for the development of their land and will have to initiate the planning process. Land that is owned by an individual is registered to ascertain ownership is vested in one holder.

Company land is owned jointly for financial reasons and not necessarily for settlement by owners. Due to increasing urbanization company land comes under pressure for urban development. With the prospects of financial gains from urban land development, directors of land companies subdivide their land into small plots and sell them in open market to individuals/families. The plots are then developed by new owners according to their financial ability. Cooperatives became popular organizations and through agricultural development programmes they were used by government to introduce indigenous people into production and marketing in a money economy between 1946 and 1960 (Mucai-Kattambo, 1992:7-9). After 1963 land cooperatives were formed by various communities with a view to generate money to buy land and settle the members (Maini, 1972:264). Group land is the least widespread form of joint ownership or co-ownership. This form of ownership is the more common form of private registered land ownership among pastoral communities (Wanjala, 1990:34). The land ownership is based on community, clan and family relationships. Any transactions in the land in relation to outsiders is usually controlled by government officers and the selected

representatives of the group(s).

4.4 Evolution of Urban Policies

The development of urban policies in Kenya took place within the context of administrative and economic policies and were often in conflict at the implementation stage. The conflict was due to the centralized decision making process in land planning and administration which was not able to translate plans into local economic development in line with the expectations and needs of people at the community level.

The administrative policies focused on the organization and actions of institutions which were controlled by the administrative officers of the central government (Sorrenson, 1968:241- and 254). This allowed the involvement of government in the planning and development of urban land. The involvement of government was first, through sectoral departments, and secondly, through the regional administrative offices of Provincial and District Commissioners. Administrative functions were biased towards maintaining law and order, whereas formulation of policy relied on centralized institutions (Akivaga, *et al*, 1988:15 and Wallis, 1990). The government economic policies were reactive and was a response to the poor and financially depressed conditions of Kenyans. The policies were presented in the form of government policy documents which included sessional papers and development programmes. They were also expected to be implemented by sectoral departments and administrative officers (Kenya, 1955b).

4.4.1 Colonial Legacy of Urban Policies

Administrative bias in policy formulation is a colonial heritage dating back to 1902 when the *Village Headmen Ordinance* (VHMO) was introduced, giving Provincial Commissioners (PCs) and District Commissioners (DCs) power over planning, organization and development of the African settlements. VHMO was strengthened by land administration, allocation and development control provisions in the *Crown Lands*

Ordinance of 1902 (CLO) (Sorrenson, 1968:61-64; and Mucai-Kattambo, 1992:5).

Administrative procedures and institutions were also strengthened as a response to the earlier growth of identifiable urban areas to cater for land use planning through *Township Private Streets Ordinance 1924 (TPSO)* (Kenya, 1924).⁵⁷ Administrative approaches to the implementation of urban policies were strengthened in 1927 to improve collection of tax from the African population (Stren, 1972:57). These approaches were also used to control economic activities and also migration into cities. *Regulation and Control of Land (Division of Lands) Ordinance 1928 (RCLDO)* was also introduced to control land development outside established municipalities and townships.

Administrative bias in urban policies emphasised regulation and control and did not support planning and development of urban areas. The focus was not on future economy and social transformation to create employment and development of urban infrastructure.⁵⁸ The policies were implemented through the District Commissioners (DCs) who represented extended control of central government over local communities (Kenya, 1931; Stren, 1972:59; and Mwangi, 1988:48). Local governments were not encouraged to evolve and become responsible in local planning.

Control and regulation of urban policies shifted slightly in favour of economic production between 1948 and 1952.⁵⁹ The changes were in response to increased investment in the Kenyan economy from abroad and strengthening of sectoral departments in the belief that poverty among the African population was caused by inefficient use of land which resulted in low agricultural production. The relationships

⁵⁷ This ordinance catered for urban areas that were settled by European population.

⁵⁸ The bias favoured urban areas where European population lived and conducted business. Administrative concerns in urban areas where African population lived did not go beyond issues of sanitation and overcrowding.

⁵⁹ The changes were introduced by the new governor, Sir Philip Mitchell, 1944-1952. Presumably, these changes were the result of post-war development planning activity initiated in all colonies from London by the British Government. All Provincial Commissioners (PCs) and the DCs were required to initiate plans in 1948/49, but they all complained that the central government did not put up enough money to implement their proposals.

between policy for agricultural development and urban development in 1957 was that:⁶⁰

There are no consequent demands for the provision of expensive and extensive urban services, ... A concentration on agricultural development for a number of years should allow time for the country to build up a reservoir of skilled manpower for non-agricultural development at a later date (Kenya, 1957:5).

Desired outcomes of urban planning and development were not realized because their implementation was through established sectoral departments and administrative officers. The failure of urban planning and development resulted in, first, the establishment and growth of squatter - slum urban developments, increased unemployment and frequent confrontation between government administrative officers and informal business entrepreneurs due to problems of eviction. Secondly, there was provision of differentiated levels of infrastructure creating economic activities that were unorganized and therefore unproductive in some sections of urban areas. Colonial urban policy in Kenya, therefore, focused on controlling and regulating behaviour of people rather than social development.

4.4.2 Urban Policies After Independence

Throughout the 1960s, the new government of Kenya undertook to reformulate urban policy as a response to the new political realities and increased migration into urban areas. However, the government failed to introduce new policy directions, save for the formal sub-sector of urban housing.⁶¹ The housing policies however, did not improve the situation due to lack of a holistic approach where the housing sub-sector was given

⁶⁰ The view was that industries in Kenya were to be built on the assumption that people living in urban areas will become urban households and that incomes, housing, education, health and other services will be improved; and therefore allow more land to be available for agricultural production (Kenya, 1946; and Stren, 1972:62).

⁶¹ National Housing Corporation (NHIC) was formed to replace Central Housing Board (CHB) and cater for financing and delivery of formal housing (Bloomberg and Abrams, 1965; and Hutton, 1972:86-92).

policy attention in isolation to other urban problems.⁶²

Another opportunity came up when the International Labour Organization (ILO) was asked to conduct a study on informal sector in 1971 and recommend appropriate policies to the Kenya government. ILO recommended that the government should recognise the urban informal sector as a potential source of employment and services, but did not suggest urban planning policies and strategies to develop the sector. The government was concentrating on regional physical planning "for systematic and equitable distribution of development of urban centres" (Ligale, 1972:30; and Wescott, 1981:290 and 295), and to reduce the urban primacy of Nairobi and Mombasa (Wescott, 1982). Also, the implementation of these regional physical plans as in the earlier times, continued to rely on an administrative approach and relevant policies could not be developed. Sectoral departments, Provincial and District Commissioners were responsible for the implementation of regional urban policies. The administrative directives even now continue to dominate as *ad hoc* styles of dealing with urban problems (Standard, 1990a:8).

Continued ineffective policies on planning and management of urban land development is degrading the urban environment. The activities of the central government and local authorities are reactive and consider the continued demolishing of unplanned urban developments and the restricting of hawkers as planning and management measures (Livingstone, 1991:661; Macharia, 1992:231-234 and 236).

4.5 Urban Land Use Planning and Implementation of Plans

For a long time urban land use planning in Kenya was related to the physical development of towns. Physical planning is concerned more with the physical development and it can discourage social and economic activities if environmental, social

⁶² National Housing Corporation remains a centralized agency which functions as a channel for investing loans from abroad in government housing projects (Kenya, 1991a:138).

and economic objectives of land use planning are ignored (Kenya, 1990a:80).⁶³ Furthermore, physical planning in Kenya focuses on public land, while freehold land owners are left to plan and develop their land outside established bench-marks of urban physical development. As a response to these inadequacies and to problems of urbanization, the need to translate economic policies through land use plans became a reality.⁶⁴ This was a significant departure from the earlier narrow view of urban land use planning of allocating land for mere physical development including buildings, engineering, mining and other operations.

Implementation of urban land use plans is through other types of plans. Urban development plans (UDP), structure plans (SP) and part development plans (PDP) are the technical instruments and policy documents for implementing urban land use plans. Each represents a level of urban land use and development policy (Singler and Breede, 1977:60-61), and indicates the role of private land owners and developers during implementation. The assumption in the preparation of these plans is that the governmental planning authority is legitimized by the public (those who will be affected by the plans). There is also an assumption that the public (especially the local communities) is involved in the plan preparation. The recent emphasis on the role and importance of development and part development plans by the government is evidence of the entrenchment of the urban land use plans as policy documents in the implementation of urban development (Kenya, 1991c:19). The urban development plan, structure plan and part development plan will now be described briefly below.

Urban Development Plan: The urban development plan (also called development plan) is a comprehensive statement of policy, goals and broad objectives

⁶³ In fact this explains why past practices in urban land use planning were not responsive to planning needs in other sectors of the economy (including the informal sector) which are outside the public sector.

⁶⁴ The government adopted this view recently in the *"Handbook on Land Use Planning, Administration and Development Procedures"* (Kenya, 1991c:19).

(Kent, 1964; and Hague, 1984). The plan has diagrams and maps illustrating its proposals as popularized by Abercrombie (1945). Legitimacy to the plan is achieved by elevation of the plan to a statutory document through an approval and adoption process by the local planning authorities (Ola, 1977). However, adoption and approval of the plan do not guarantee the implementation of land development originally proposed. There is flexibility during plan implementation to consider local factors such as land ownership and existing development, but without compromising the original principles and objectives of the plan.

There are three assumptions in urban development plans which are; first, that land owners and developers will submit their development proposals to local planning authorities. Due to weak enforcement practices, even if the plans were submitted and approved, land owners may not strictly implement the conditions of approval. This assumption is valid only to a limited extent in development proposals on government and trust land (Sorrenson, 1967; and Kenya, 1991c:19-22). Furthermore, land owners are under no obligation to submit their plans for approval. Second, once approved, the proposals would be implemented according to the conditions attached to the approval. The third assumption is that citizens, including land owners and developers, participate in the preparation of the plan, and understand and support the implementation of social, economic and environmental aspects of the plan (White *et al*, 1948; and Kenya, 1991d). This last assumption seems inappropriate since planning in Kenya is top-down which makes local level participation very difficult.

Structure Plan: A structure plan is an innovation of the British planning system (*Planning Advisory Group*, 1965), and was imported to Kenya in the 1970s. The plan focuses on local strategies for economic development, and therefore is intended to effect decentralization and encourage public participation (*Nairobi City Council*, 1973; Grant, 1982:84-85; and Sillince, 1986:6-8). Structure plans are statements of proposed land use

patterns, the sequence and spatial location of the physical infrastructure and are represented in diagrammatic/structure maps (*Department of Urban and Regional Planning*, 1973:11-16). Usually, a statement of costs of the proposed physical infrastructure is attached to the plan. Generally, it is assumed that land owners and developers will take advantage of existing infrastructure to develop their land and that they will submit their development proposals to local planning authority for approval. However, this is not the case for a number of reasons.

There are no provisions in the planning law on public participation as part of the preparation of structure plans (*Nairobi City Council*, 1973). The administrative and sectoral bias in the form of unnecessary and ineffective involvement of central government in local planning prevent close liaison between freehold urban land owners and local authorities. The involvement of central government in local planning weakens the capacity of local authorities to generate money for financing infrastructure development (Kenya, 1990a:82; and Kenya, 1992:79). The local authorities are not able to coordinate private land development effectively because their planning capability is weak.

Part Development Plan: Part development plan is an innovation of the Physical Planning Department in Kenya in the 1960s (Ligale, 1972; and *Physical Planning Department*, 1986). In the implementation of urban land development, the part development plan is used in allocation, surveying and administration of leases (Kenya, 1991c:190). The plan is also used to amend existing plans for government and trust land (Kenya, 1984:12).

The scope and effectiveness of part development plans are limited because they are prepared at the request of the Commissioner of Lands who approves them and is also expected to enforce their implementation. The Commissioner works at the head office in Nairobi and because of administrative duties and the long distance to local centres, the

Commissioner has not been effective in enforcing implementation. The plans apply only to the government and trust land (leaving freehold land without similar instruments as an implementation device), and they are open for misuse in the allocation of land and approval of development that is not compatible with surrounding areas.

4.6 Urban Land Use Planning and Management Organization

Urban land use planning and management is a part of the domain of public policy (Kenya, 1991d). Therefore public organizations have a leadership role to play in the planning process and the central government can exert a great deal of influence. The government facilitates financing of urban infrastructure in the form of public funding programmes, and has overall authority in administrative and legislative policy which influences land development in the private sector. At the same time, the government owns land and has development interests which compete with those of private owners.

4.6.1 Public Sector Organization

Commissioner of Lands: The President is the owner and administrator of all lands in Kenya on behalf of Kenyans and therefore acts as *eminent domain* (Blanc-Jouvan, 1964:225). This role is relegated to the Commissioner of Lands and the Commissioner is therefore, the chief administrator and planning authority of public land on behalf of the President (Kenya, 1984:8).

This arrangement has a long history which dates back to 1895 when Kenya was declared a British protectorate (Sorrenson, 1968:245-246). Since that time, the position of the Commissioner in planning and administration was retained and strengthened up to and after independence (Okoth-Ogendo, 1991:25, 34 and 45). By this arrangement, the Commissioner has become an organizational entity, himself or through delegated officers, to carry out numerous administrative and planning functions. The Commissioner therefore has considerable influence in urban land use planning and

management. In organizational terms, the Commissioner exercises the power to regulate growth of urban areas through allocation and control of land development. The regulatory power through the administrative authority and the discretion of the Commissioner mainly determine the type and siting of specific development projects on government and trust land.

Central Authority: It is the national organization which is the one responsible for the administration of the approval of subdivision plans in rural and peri-urban areas, especially, in the conversion of agricultural land into urban uses (Kenya, 1991c:29).⁶⁵ The authority in fact works from Nairobi because the chair of the planning committee is the Commissioner of Lands. As discussed earlier the Commissioner (and therefore Central authority) is geographically far removed from rural and those close to the urban centres. This makes the authority ineffective in taking appropriate decisions during approval of subdivision plans and monitoring implementation of plans.

District Development Committees: Under the discretionary powers of the District Commissioners (DCs), District Development Committees (DDCs) and District Executive Committees (DECs) are responsible for district planning in each of the forty seven districts (Kenya, 1987b:15-17). The District Development Committees are responsible for formulating policy and ensuring their implementation through the authority of the DCs. The District Executive Committees are responsible for offering professional advice and implementing the plans.

Most investments on government land in urban areas are expected to be "approved" by the district committees. The approval is preceded by forwarding the investment projects and programme proposals to, and from the districts and the Ministry of Planning

⁶⁵ Composition of the Central Authority is seven members, who are ministers. Their representative can discuss land development issues and make decisions on their behalf. Division land control boards undertake the functions of the central authority in rural areas but they face problems related to communication and coordination with the authority.

and National Development (MPND). Thereafter, the proposals are expected to be implemented in accordance with the existing five year development plan (FYDP).

The responsibilities of local planning authorities are subsumed in the working of the District Development Committees. The committees occasionally extend their planning function to the control of urban land development by freehold land owners, depending on sensitivity of location, physical size and amount of money involved.

Urban Local Authorities: In Kenya, "local authorities" as planning and management organizations, refer to the agencies granted local political power through a specific act of parliament. It is a special status usually (but not always) conferred on local governments. The difference between a local planning authority and other statutory authorities is the requirement by the act which stipulates that policy makers in local planning authorities be elected officials (Akivaga *et al*, 1988:8-11). The authority's mandate to plan is based on representative and participatory notions of democratic politics. The different levels of local authority includes Urban, Town, County, Municipal and City Councils. Each category of local authority maintains a level of autonomy, Urban Councils having the least and City Councils the most. The Minister for Local Government is responsible for creating and upgrading local authorities from one level to another (Kenya, 1978:8-170).

In theory, responsibilities of local authorities in Kenya are many and varied. They include provision of service and the planning and management of financial and land resources. Through urban land use planning, the authorities are expected to influence patterns of local economic and community development. There is, however, frequent interference by the central government. In some instances, some elected officials are replaced by appointed commissions for extended periods of time as in the case of Nairobi, Kirinyaga and Kisumu local authorities.⁶⁶ Further, comprehensive powers of

⁶⁶ Nairobi City Commission lasted for ten years from 1983 to 1993; Kirinyaga County Commission for

district committees under the DC weakens the participation of local authorities in the planning and management of finances and land resources.

Physical Planning Department (PPD): Physical Planning Department occupies a peculiar position in the organization of planning and management of urban development in Kenya. The department is responsible for plan preparation and has an advisory role. In the 1980s there were suggestions to strengthen the department capabilities in regional physical planning, and in site planning in government and trust land (Yahya and Associates, 1984). In 1991 the Department's mandate was clearly established as the national, provincial and district level planning agency (*Physical Planning Department*, 1986; and Kenya, 1991b). The department, however, was excluded from direct involvement in rural trading and production policy studies and the implementation of the programmes based on those studies (Kenya, 1986; and Gaile, 1988). There were attempts to get the Department involved through the *Physical Planning Bill* in 1987 (PPB) (Kenya, 1987b), but the bill has since remained in draft form.

Other Planning Authorities (OPA): The Minister of Local Government and Minister in charge of planning influence urban planning and management.⁶⁷ By the *Local Government Act*, the powers of the Minister of Local Government extended over the local authorities in three ways (Kenya, 1978:108 and 210). First, in the planning of urban areas and secondly, in the implementation of plans. These two activities are done either through officers working from the head office in Nairobi or those seconded to local authorities. In this way, the authority of the minister is extended through the officers who

three years, 1991 to 1992 and Kisumu Municipal Commissions for six years, 1988 to 1993. The commissions were terminated after the first multi-party elections which were held in December 1992 and civic local authorities taking over in March and April of 1993.

⁶⁷ Economic planning and national development are in a separate ministry from urban planning.

will plan and implement projects. Thirdly, the minister has power to appoint commissions.

The minister, whose portfolio includes physical planning, is only in theory in charge of planning. The department has been moved to and from various ministries ever since it was created in 1966 (*Physical Planning Department*, 1986). The organizational position of the Minister in charge of planning has never been stable due to the frequent transfer of the department. There was insufficient time for the minister to formulate and implement long term planning policies related to land resources and urbanization. The Ministry of Environment and Natural Resources, and the National Environment Secretariat which is affiliated to it can have a role in land use planning. However this is not recognised in the existing policy documents, or legislation (Kenya, 1989 and Kenya, 1991c).

4.6.2 Private Sector Organization

The need to involve the private sector in the development process was emphasised by government in 1982 (Kenya, 1982:42). The private sector involvement in urban development was encouraged on the basis that:

... partnership between government agencies and private firms offer a promising approach for the development of urban industrial and commercial sites, construction of residential housing, building of public utility infrastructure or the leasing and operation of public facilities and services (Kenya, 1986:50).

The government acknowledged that private land ownership occurs in many forms and that private sector is a potential source for financing of urban development.

The importance of individual land ownership in small plots is illustrated in Kiambu rural area (including Kinoo sample area) close to Nairobi that recorded 80,000 plots of 0.1 to 0.8 hectares in 1991 (Kenya, 1991d:62). Also, land ownership in small

lots in older urban areas is common.⁶⁸ Where most of the land is owned as freehold, the land was purchased when it was under agricultural use (Leo, 1984:197), which justifies the need to integrate the agricultural sector with urban planning. The owners develop their plots individually (and rarely collectively) to meet demands for housing, marketing outlets and other urban work spaces. The cost and amount of money available to individual (small scale) urban developers determines the kind and level of development (Mochache, 1992:5-6). This makes urban land development through private sector initiatives unpredictable.

Land buying companies LBCs, as owners of land, represent a form of freehold group interest in land. They work under the *Companies Act* and became a popular means of acquiring land in the mid-1970s (Gichohi, 1988:72-73).⁶⁹ They conduct their functions as public or private limited companies depending on the wishes of the owners (Jackson, 1988:43). Public companies allow a wide range of membership background through share - holding and their financial statement are published annually as public records. In limited companies, membership is usually restricted to a few people and their financial statements need not be made public. In the two type of companies, land is owned jointly until it is subdivided and plots allocated on the basis of shared contribution.

Land cooperative societies are the third major private organizations and they are encouraged to get involved in development.⁷⁰ It is hoped that their involvement will

⁶⁸ The small lots range from 15 by 100 feet or smaller, through 25 by 100 feet, to 50 by 100 feet which is a result of subdivision planning (Mochache, 1992:4). Subdivision of larger farms located in peri-urban areas is slowly being replaced by lots for urban housing, workshops, and other non-farming urban activities, while subdivision of plots in older urban districts is also taking place, resulting in intensified development.

⁶⁹ *Companies Act* is Chapter 486 of laws of Kenya (Onalo, 1986:27). Most of the companies bought land under the *Kenyanization* of land programme which began in the 1960s (Haberson, 1973). In response to increased urbanization, the companies began to subdivide their land into small lots ranging from 100 by 40 ft to 0.25 acres which were allocated to the members, who in turn used their initiative to development their plots.

⁷⁰ Cooperative societies as organizations of [formal] economic activities were introduced in Kenya in the 1930s, one century after they were established in Rochdale, England by 28 weavers (Maini, 1972:15). In Kenya cooperatives were recognition through legislation in the *Cooperative Societies Registration Ordinance* (CSRO) of 1931 (Mucui-Kittumbo, 1992:7). In 1943-45 the cooperatives were encouraged to

raise the standard of living among members through improved economic conditions and at the same time bring about social benefits in the form of goods and services at lower cost(s) without the middle men. The organization and strengthening of cooperatives in Kenya in the 1960s and 1970s benefited from the African indigenous systems which encourage individual ownership of property in the context of communal social systems. As in the case of land buying companies, land cooperative societies buy land and later subdivide into plots which are allocated to members. Throughout the period 1984 - 1988, cooperatives controlled significant proportion of urban land and this control was partly responsible for the success of Kenya's land redistribution strategy (Kenya, 1984:166). But planning and management strategies of land owned by companies and cooperatives were neglected because their mandates did not go beyond the purchase of land. Once the land is subdivided and plots allocated, members are left to use their own initiatives to plan and develop their plots (Wanjala, 1990:34).

4.7 Financing Urban Development

The funding of urban development in Kenya comes from international and local sources.⁷¹ Sources of money for investment in industrial, commercial and housing development in the urban areas of Kenya include the World Bank, WB, the European Economic Community, EEC, the Commonwealth Development Corporation, CDC, and the United States Agency for International Development, USAID (Tobey, 1989; and Okpala, 1990:208, 211 and 219). In the 1980s, the WB, the EEC and the USAID were

get involved in industrial and marketing activities of agricultural products (Maini, 1972:2-3). At the present time the functions of cooperatives are governed by the *Cooperative Societies Act*, Chapter 490 of laws of Kenya.

⁷¹ The proportion of money from each of the two sources cannot be easily quantified because data on informal sources are not documented and secondly, data on formal sources, including a break down of contributions by local banks and insurance companies is never quantified even in development plans (Kenya, 1974; Kenya, 1978; Kenya, 1989).

major sources of finance for low-income housing and infrastructure in Nairobi (Njau, 1987; and Kiamba, 1989). During the same period, the CDC was the major source of finance for middle-income housing in Nairobi. Usually, the financial investments from abroad attach conditions to development of urban land, including housing standards and densities per unit area.

Money from foreign sources fund development in the formal sector through the National Housing Corporation NHC, and the Housing Finance Company of Kenya HFCK (Kenya, 1989:246-248) and represents public sector (central and local government) financial contributions. For a period of five years between 1984 and 1988 for example, the public sector contributed 89.8 per cent of the money invested in urban development compared to 11.2 per cent by the private sector during the same period (Table 4.2). Companies from abroad are also directly involved in locating industrial and commercial establishments in urban areas. Kenya attaches considerable importance to these foreign sources and recently the government has attempted to attract a greater proportion of 2 trillion US\$ which is earmarked for investment in the 1990s by western countries and Japan in developing countries (Kenya, 1991b:56).

Table 4.2: Funding of capital projects by central government, local authorities and the private sector during the 1984 - 1988 Development plan period

SOURCES OF FINANCE	AMOUNT IN MILLION K(P)	PERCENTAGE
Government	122.95	55.5
Local Authorities	73.85	34.3
Private Sector	24.81	11.2
TOTAL	221.61	100.0

Source: Kenya (1984:174) *Development Plan 1984/88*. Nairobi: Government Printer.

The local sources of money for urban development include commercial banks and

Non-Banking Financial Institutions (NBFI). The money from these institutions is in the form of dividends and profits from public corporations and household savings (Kenya, 1991c:51). The 23 commercial banks, with 431 outlets, lend money which fund both short and long term urban development in the formal sector (Kenya, 1989:11).⁷² There were 54 NBFIs, including the insurance companies and the money from these sources finds its way into urban development through the Housing Finance Company of Kenya, HFCK and other building societies in the form of mortgages (Nation, 1992a:I-V and Nation, 1992c:2).⁷³ Through private arrangements, access to NBFIs financial sources is restricted to individuals who have high and stable incomes. Savings and credit cooperative societies are the third major source of finance (Table 4.3).

Table 4.3: Five year growth trend of savings and credit cooperative societies (SCCS) compared to other types cooperative societies

YEAR	TOTAL No. OF COOPERATIVES	TOTAL No. OF SAVING AND COOPERATIVE SOCIETIES (SCCS)	OTHER COOPERATIVE SOCIETIES	PERCENTAGE OF SCCS OUT OF TOTAL
1987	3809	1608	2201	42.2
1988	4024	1723	2301	42.8
1989	5183	2141	3042	41.3
1990	5400	2251	3149	41.7
1991	5494	2339	3155	42.6

Source: Kenya (1992:114) *Economic Survey*. Nairobi: Government Printer.

The table shows that the growth in the number of savings and credit societies remained

⁷² Kenya Commercial Bank and National Bank are the two main public banks that make short (1-2 years) and long (15-25 years) term loans. Industrial Development Bank (IDB) lends money for industrial development (Kenya, 1979; and Kenya, 1989). Most development funded from these banks is implemented on government and trust land.

⁷³ NBFI advanced K(P) [Kenya Pound] 1660.0 million in 1989 and 2126.0 million in 1990, showing a growth of K(P) 465.0 million in urban development. In 1991, the advance grew by K(P) 609.0 million to a total of K(P) 2735.0 (Kenya, 1989:11, Kenya, 1991a:60 and Kenya, 1992:64).

steady at 41.2 to 42.8 per cent of all types of cooperatives during the five year period from 1987 to 1991.⁷⁴ This is evidence of their continuing role in financing urban development.

There are others who are engaged in private business and employment in the informal sector (Nation, 1990a:6 and Standard, 1990a6). The significance of this sub-sector in urban development is through the establishment of informal settlements (Kobiah, 1985:69), which are developed using money generated in informal work places. Table 4.4 shows the trends in job creation in the informal urban sector for a period of six years, 1988 - 1993.

Table 4.4: Six year (1988 -1993) trend in growth of jobs in informal sector

YEAR	NUMBER OF JOBS	PERCENTAGE INCREASE
1988	346,234	n/a
1989	389,953	11.3
1990	443,104	13.6
1991	497,157	10.9
1992	n/a	n/a
1993	730,000 (Projections)	46.8

Note: n/a mean not applicable.

Source: Kenya (1989:198) *Development Plan*. Nairobi: Government Printer; Kenya (1991a:46-47)

Economic Survey. Nairobi Government Printer; and Kenya (1992:5) *Economic Survey*.

Nairobi: Government Printer.

The money generated in the informal sector finds its way to urban development through informal borrowing arrangements at household level, and largely benefit those who

⁷⁴ Employees in the public and private sectors contribute through monthly deductions of proportions of their incomes to a common cooperative account maintained at the Cooperative Bank of Kenya (CO-OP BANK). The deductions can be adjusted on request of the contributor depending on other financial commitments. Savings and credit cooperative societies are therefore popular in urban areas where most of the contributors live and work.

derive their livelihood from this sector (Standard, 1990d:6). These are the people who have no access to formal financial institutions such as banks and Non-Banking Financial Institutions, such Housing Finance Company of Kenya (Nation, 1992d:2). In this sector, the buying of plots and putting up a housing colony by developers is a slow and incremental process which for some is a long term undertaking (Nation, 1991:14). Nation summarised this phenomenon that:

...many people are nowadays moving out of the city to the suburbs. The trend is to buy plots in such outlying areas... and then build slowly. Many of these people usually buy the plot first, then take a lengthy break before starting to build. They then build two or three rooms and then move in and complete building the house while occupying it. It's a process which may take over five years (Nation, 1992a:V).

In concluding this chapter, it is noted that urban land ownership systems in Kenya lack appropriate urban planning policy processes. Existing technical instruments of planning and implementation such as urban development plans, structure plans and part development plans are ineffective. Planning and management of urban land development is part of national development planning, and an assessment of approaches to development planning over the years can indicate why planning and management of urban land development has failed or succeeded. Literature on planning theory and approaches to development planning in Kenya will be reviewed in chapter five to show where planning and management of urban land development stand in development planning debate.

CHAPTER 5

REVIEW OF PLANNING THEORY AND APPROACHES TO DEVELOPMENT PLANNING IN KENYA

5.0 Introduction

For a long time development programmes and projects in Kenya were guided by the rational planning theory (Clark, 1968), collective community action and African socialism derived from the African social philosophy (Kenya, 1965). Both theory and philosophy permeate government institutions and society and are the root of the legal basis of planning.⁷⁵ The planning theory, the application of the African socialism in planning and the planning law were intended to make development planning more effective.

Development planning is concerned with the conscious guidance of social progress and transformation, through government mechanisms and institutions in designing and implementing social and economic projects and programmes (Tinbergen, 1967:34-46 and 211-213; and Webber, 1983:90-96).⁷⁶ These mechanisms and

⁷⁵ R. Cotterrell (1989:3) *"The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy"* London: Butterworth and Co (Publishers), has defined legal theory as the systematic theoretical analysis of nature of law, laws or legal institutions. He has suggested that "legal theory focuses to develop theoretical understanding of the law as a social phenomenon", and that "legal theory can also be termed empirical legal theory". In *"Legal Foundations of Land Use Planning"*, J.G. Rose (1980) attempted to apply legal theory to planning issues.

⁷⁶ Development planning became popular when governments began to organize their political and economic commitments to their people around a national policy or goal (Tinbergen, 1958:3). Objectives of development are intended to create favourable conditions to appreciate the existing potential and advantages of development; to enable governments to invest usually in infrastructure, and to create conditions stimulate private economic activity and investments. T.Pinfold and G.Norcliffe (1980) have given a more recent account development planning in Kenya although they seem to see development planning purely in the context of economic growth driven by planning for agriculture.

institutions must allow for community participation and assist individuals and groups to take advantage of the programmes and projects to improve their standard of living. Development planning is organized and directed at the national level and the social and economic benefits can be felt and observed at regional and community levels.⁷⁷ This chapter reviews the trends in the use of the theories and the approaches in development planning. Before the review, a description of the legal basis of planning in Kenya is presented.

5.1 Legal Basis of Planning

It is generally accepted that laws of human conduct focus on the regulation of human activities to conform to restraints that are socially desirable (Sacke, 1973:12-13; and Aruka, 1989:29).⁷⁸ According to Mihyo (1975:125) and Woolhouse (1988:42-47) planning law is developed out of the desire to organize a society and regulate resource use and development activities. People in a society are in continuous rational interaction in the economic sphere and exchange of ideas on the best way to organize production, and Mihyo and Woolhouse argue that from the stand point of moral philosophy, individuals have duties and obligations to themselves and to others.⁷⁹

The public law which deals with the administration and implementation of policies evolved to ensure that socially accepted duties and obligations are flexible and consistent with the development aspirations of people. Administrative law is therefore

⁷⁷ When the new government in Kenya adopted development planning in 1965 as a paradigm of societal guidance, development planning had been practiced in Europe and North America for 20 years, 50 years in the region that was covered by the Soviet Union (Tinbergen, 1973: 211), 20-30 years in Germany, China and India (Seth, 1967:167-169, 201 and 419).

⁷⁸ This view is rooted firmly in Anglo-America perspectives of legal theory (Golding, 1975; and Ojwang, 1992b).

⁷⁹ Duties and obligations are socially created, and the ability of people to discharge them to the satisfaction of others in equal measure is not always guaranteed. Woolhouse (1988:45) explains that this deficiency is the basis of Hobbes' philosophy of *social contract regarding relationship between governments and the governed*. The interface of relationship is the political process and the structure of organization in institutions responsible for discharging planning duties and obligations.

one of the branches of public law.⁸⁰ The law goes beyond the conventional land laws which deal with ownership rights, traditional small scale agreements of trespass and relationships between land lord and tenants. Planning law has influence on substantive and procedural aspects of land development and can affect local and regional development. The law focuses on the organization, process and objectives of development that result from exercising land ownership rights in identifiable social, political and economic jurisdictions. Consequently, planning law place land owners and use of resources such as money to develop the land in a framework of the social, economic and environmental needs (Daintith, 1982 and Hawke, 1991).

In Kenya African customary law was applied indirectly and in limited local areas to facilitate planning, but the application of the imported law was more direct and widespread (Conran, 1966:72-73). The two kinds of laws embrace the idea that law is a body of rules by which rights are acquired and obligations imposed, and the selective application in the case of African customary was not in the best interest in the long term. It can be assumed that differences in the application of the two kinds of laws was based on their different philosophical roots. The African laws rely more on interaction of individuals at the community level, resulting in social rationality, and the Anglo-American laws value the freedom of the individual (Woods, 1992:83-85 and 93-94).⁸¹

It is assumed that laws in Kenya provide the framework and basis for formulating social and economic agendas by the government, including those that guide development planning. Therefore, law is used to rationalize the planning function of the centralized

⁸⁰ It is indicated earlier in chapter three that planning law is a sub-branch of administrative law. T.Prosser (1982:1-2) notes that planning law deals with the human conduct in the planning and implementation of obligations in land development and other planning activities.

⁸¹ P.L. Berger and M.H. Hsing-Huang(1988:5 Eds) Suggest that " Western individualism provided a fertile soil for the birth of one of important elements of modernity". This was the birth of the capitalist entrepreneur and more collective oriented communities and institutions were dissolved, throwing the individual much more to himself. These resulted to both the values and social-psychological reality of individualism.

institutions. This role allows the central government to exercise close control of planning activities at all levels of society and is provided for in section 75(a) of the constitution. However, this style of involvement does not encourage the government to embrace and inspire local level community participation.

5.2 African Social Philosophy of Planning ⁸²

The two aspects of African social philosophy which form the basis for planning in Kenya are the African Traditional Thesis (ATT) (Davidson, 1969:36-41) and the Social Mutual Responsibility (SMR) (Acholla-Ayayo, 1980:34). The ATT consists of a body of principles which form the basis of the African customary law and the African political democracy. Spontaneity, in accessing and disposing of resources especially land, is one of the guiding principles (Lambert, 1947:133) and Tanner (1960:15). Lambert and Tanner have suggested that flexibility enhances access. The value of the principle of spontaneity is that the resources, particularly land, as the productive asset of the community, can be used to the best advantage when there is flexibility in ownership.

The spontaneity and flexibility aspects link planning law to the process of development (Haberson, 1973:173; and Bryde, 1978:1 and 108-111). This linkage facilitate the use of resources within groups in communities and is an important characteristic of the African society. The groups act as a vehicle for evolving ways that allow individuals and households to gain access to land in order to build a house, grow crops or graze animals.

A second principle in the ATT is that individuals in a community have inherent rights to access and use of land but less rights to own it. This involves the principle of birthright which consists of rights in terms of occupation, cultivation and grazing. The

⁸² The discussion on African Social philosophy of planning in the dissertation is based on Sessional Paper No.1 of 1965. S. Parish (1974) and P. J. Hountodji (1983) among others researchers have researched on the subject of African philosophy.

principle was elaborated by Tanner (1960) for communities in Tanzania and by Wilson (1968) and Glazier (1985) for communities in Kenya. Kenya (1929) and Gluckman (1944) had shown that birthright was widely used by Bantu communities of the Sub-Saharan and the Sahel regions in Africa.⁸³ Both the principle of spontaneity and the principle of birthright in the use of land were put into practice by individuals or groups of individuals who act as trustees for others interested in the land through mechanisms of land allocation and transactions.⁸⁴ These principles guaranteed against possible misuse of the land and can be related to the wider context of custodians of "the commons".

A third principle of the African Traditional Thesis relates to resource (land) user activities and their potential impact on the environment. In theory, the activities of individuals and groups are guided by the indigenous knowledge on environmental resources and their ability to regenerate. They are also guided by a systems of beliefs based on myths to explain the reality (Donders, 1974; Huontodji, 1983:60; and Gbadegesin, 1991:111-120).

The concept of Social Mutual Responsibility (SMR) has its basis in two principles of organization, namely, the economic relations and the functional responsibility in an African family (Acholla-Ayayo, 1980:34). The first principle considers the notion of the family as a unit of society with monogamous or polygamous marriage arrangements (Hobley, 1971b; and Holleman, 1974). The monogamous type of family unit is simpler in terms of relationships.⁸⁵

A family is as much an economic as well as a social unit (Kenyatta, 1959:53). Thus, the second principle is based on the premise that each member of the family is

⁸³ Communities studied included Tswana, Bechuana, Nyakyusa, Kikuyu, Debele in East, Central and South Africa; and Igbo in West Africa.

⁸⁴ Different communities have developed their institutions to accommodate women to exercise their rights in access to resources such as land (Amanduime, 1987).

⁸⁵ However, in both types of family organizations, property owned by individuals and that which is owned by the entire family can be identified.

bound by an obligation to contribute through sincere and hard work towards the creation of wealth. According to this principle each member of the family has a duty in economic productivity and distribution of resources which aims at material prosperity and social stability. Kasanga (1988:30) has further suggested that the operation of the principle at the family level permeates all levels of organization in the society, including communities, regions and the entire country. In the use of land there is interaction between people, and between people and land resources, the stewardship of the environment resting on each individual. This perspective helps to clarify the place of the individual, private groups or community (the public) and their responsibility in the production of goods and provision of services. SMR in African social philosophy recognizes that private and collective efforts in the development and use of resources are mutually supportive. However, there is a constant need to coordinate private and collective efforts in the use of the resources, requiring continuous management of the activities in both sectors.

5.2.1 Collective Community Action

The collective community action is a form of social rationality built around the African social philosophy and is bound by indigenous structures of African social organization and relationships between communities and individuals (Mbithi, 1982). The collective community action is related to resources and environment, types and level of technology, and institutional arrangements. These are the basis for decision making, and the implementation actions in communities (take place based on them). However the decisions about the use of resources and how the use will affect the environment is taken by the individuals, but they are coordinated so that they only appear as if they were a consensus of a group (Ekechi, 1989:143).

In theory, a model of collective community action reflects a socio-economic way

of life which is consciously articulated by communities in Kenya. In the 1930s, collective community action was the basis of assembling and coordinating the use of community resources to build schools and collect money to send bright students abroad for advanced studies. The practice became popularly called *Harambee* (*wira wa muingi* or *gitati* in central Kenya and *nyoluoro* in Nyanza) and was adopted with the understanding that the returns of such "investments" were for the benefit of the society as a whole.⁸⁶ The practice is an extension of small group organization and development activities at levels beyond the household or the clan. At that earlier period collective community action was extended and was a response to the neglect of the colonial government to initiate and fund development programmes/projects. It has also become popular as a means of contributing money and other forms of resources by communities towards financing development where formal government funding is not adequate or forthcoming.

In the 1970s and 1980s, the scope and practices of collective community action widened and led to the formation of (land) cooperatives societies and companies which are major organizations that dominate the urban development sector. It is also used in an informal way by the central government and local non-governmental organizations through *Harambee*, to collect "tax" which is a kind of voluntary donation of money for funding development programmes/projects.

5.2.2 African Socialism and Planning⁸⁷

African socialism was formally adopted in Kenya in 1965 as a strategy for

⁸⁶ *Harambee* is a Swahili word meaning "let us pull together", and was commonly used in work chants.

⁸⁷ In Sessional Paper No.1 of 1965 African political democracy and social responsibility are identified as the two characteristics of African socialism (Kenya, 1965:3). Political democracy requires that all individuals in society have equal political rights, and that individuals or groups of individuals will not be permitted to exert undue influence on policies of the state and society. Social responsibility requires society and its members to do their best for each other with the full knowledge and understanding that if society prospers, its members will share in that prosperity.

integrating African social and cultural experience into planning thought and action (Kenya, 1965), and was intended to improve the process of formulating policy and implementing decisions (Haberson, 1973:172-173). Introduction of African socialism in planning was not new according to many researchers (Davidson, 1969:22; Parish, 1974:21-22; and Hettne, 1990:109) and was introduced to re-direct African ways of life to formal institutions of the government, and into the private sector. Recently, Acholla-Ayayo (1980), Huontodji (1983: 176) and Aruka (1990:89) have illustrated that African socialism will be useful in planning theory and practice. For local politicians and planners, African socialism represented appropriate practice of planning because it exemplified familiar way of dealing with development problems in view of economic and social realities (Ife, 1964 ed).

The relevance of African socialism as a framework for planning and managing resources was justified on the basis of African Traditional Thesis (ATT) and Social Mutual Responsibility (SMR). ATT presented a political justification for the government to adopt African socialism, arguing that it represented African traditional political democracy (Tanner, 1959). ATT is useful in planning and management in Kenya in three ways.⁸⁸ First, the spontaneity-flexibility principle presented opportunities to promote socially acceptable administration to develop resources, particularly with respect to allocation. This was viewed as the basis of social justice. Secondly, the principle of inherent birthright was the basis of legitimacy for the allocation of land to the landless. The principle has its basis in African legal philosophy. Third, the principle of user activity was the foundation of a national theory of planning and management and provided justification for government intervention in resource development activities by the private sector (Kenya, 1965). As discussed earlier SMR helped to clarify the place of

⁸⁸ The principles were formalized in public policy and implementation as perspectives of African Planning Philosophy (APP) when *SESSIONAL PAPER No.1 of 1965* entitled "African Socialism and Its Application To Planning in Kenya" was published by the government.

the goods produced and services provided by individuals, private groups or communally (the public). Coordination of these efforts was to ensure effective management of economic activities, social progress and a resilient environment.

Application of the principles of the African socialism in planning however, did not have the intended results. Officers in the Ministry of Planning and Economic Development relied more on the conventional rational planning approach. Development activities by the informal planning organizations, however, continued to operate within the framework of African socialism. However, in urban planning, existence of the two opposing approaches have resulted in diverse formal and informal economic activities and unplanned settlements.

5.3 Rational Planning Theory

Rational planning theory has four main characteristics which rely on formulations of natural science and methods of justifying scientific knowledge (Kuhn, 1970:174-178; and Camhis, 1979). First, the theory assumes that actions in response to social and individual needs take place in elaborate and distinct steps which include; identification of a problem, formulation of solution(s), and finally, the application of solutions to the problem. Secondly, rational theory is based on the premises that the response takes place in elaborate stages of perceiving and solving the problems of society in a reasoned way. The third characteristic of the theory is founded on the premises that these stages take place outside politics (Kiernan, 1983:71-87).⁸⁹ Centralization of decision making is the fourth dimension of the theory. It implies the need for comprehensive understanding of planning which is presumed to be the domain of planners and often politicians. Planners become centres of knowledge which gives them advantage to decision making, and to

⁸⁹ In fact, Mannheim emphasised that the role of reason (therefore rationality in human affairs) and individual freedom are the most important aspects of society to be inherited from Philosophers of Enlightenment (Mannheim, 1965:185-187).

implement solutions affecting society (Webber, 1983:91).

The features of rational planning theory were adopted as the main sources of knowledge which inspired planners in the government institutions in Kenya.⁹⁰ Its practice is the most established style of rationalizing and allocating resources for implementing development programmes and projects. The theory was seen by researchers from other parts of the world as the most effective approach (Alexander, 1988), and thus it was easily introduced in Kenya.⁹¹ In fact, Faludi (1973) argued that although procedural stages of the theory were elaborate and did not represent the way people make and implement decisions, the stages are valid because decision making that involve more than one person need these stages to build consensus.

In Kenya, problems associated with the application of the rational planning theory are not rooted in its principles, but are due to ineffective institutions that can support the process of building consensus. Such ineffective institutions are in turn a result of over emphasis in technical-administrative expertise which is centralized, and which excludes democratic participation.

5.4 Substantive and Procedural Considerations

The kind of planning issues dealt with in the context of the rational planning theory were mainly economic in nature and centered on productivity of agricultural land. In the 1950s planners were concerned more with economic and social issues in rural areas (Haberson, 1973:35-36).⁹² Economic growth issues were of high priority because of the

⁹⁰ Although economic data are used in some instances such as in the preparation of the national development plans, one may not claim such planning to be entirely based on empirical rational planning. There is almost no public debate on national development plans, and other kinds of plans that implement public policy. It can be concluded that both the empirical and theoretical rational planning are used in Kenya, but there is a bias towards the latter.

⁹¹ Meyerson and Banfield in 1955, Meyerson in 1955, Branch in 1959 and Banfield again in 1959, were some of the earlier researchers and supporters of the rational planning theory (Alexander, 1988).

⁹² Although social issues were included in policy statements, they did not feature in development plans and programmes that were pursued (Kenya, 1955b; Kenya, 1957; and Haberson, 1973:35-36).

heavy financial cost of World War II and the return of many Kenyans from the war who did not have immediate means of subsistence. This made the British government to change its policies of direct subsidies to the colonies. The new policies emphasised the productivity of resources and they formed the framework of comprehensive plans for resource development. The plans were biased towards the agricultural sector, with a focus on land tenure and agrarian reform (Mkangi, 1983).⁹³

Land rehabilitation and adjudication of land in the areas where Africans lived were initiated to support productivity in the agricultural sector with a view to making economic programmes successful (Kenya, 1963).⁹⁴ A Directorate of Economics and Statistics was created in 1963 as a central source of data and information. From then on, all proposed development projects and programmes to be selected for funding had to be justified with data and information from the directorate (Kenya, 1963).

Procedural planning based on rational planning theory is simple and the decision making and formulation of policies are straight forward. In the 1950s and 1960s, development plans were prepared in the form of sectoral priority projects and programmes. These were few and funding of their implementation was by disbursing money to departments from the treasury based on prioritized proposals from sectoral departments. The existing government organization was the enabling framework for centralized planning (Kenya, 1987a). Implementation of the selected projects and programmes was done without coordination and cooperation among the departments. Often, this caused duplication of efforts and conflicts between officers from the various sectors. Involvement of the administrative officers in the planning activities was not

⁹³ Economic benefits of the policy were rationalized through the Swynnerton Plan in 1954, which marked genuine concern for the development of rural areas where indigenous people lived.

⁹⁴ The process initiated also consolidation and registration of farming units owned by Africans into single parcels under the *Native Land Tenure Rules* (NLTR) of 1956, the *Native Land Tenure Registration Ordinance* (NLTRO) of 1959, and the subsequent introduction of a cash crop economy mainly in coffee and tea (Mkangi, 1983).

beneficial to the local people. The officers did not have a defined mandate other than that of clarifying government policy, assisting in the enforcement of law and order, and the administration of land development on behalf of the Commissioner of Lands.⁹⁵ During plan implementation by the government, the practice was coercive, rather than consultative

After Kenya got independence in 1963, these planning procedures were strengthened to suit the new government. A Ministry of Economic Planning and Development (MEPD) was created and it carried out the role of coordination, formulation and rationalization of funding in the implementation (Mhoya, 1973). From then on, sectoral development projects and programmes were to be submitted to the ministry for approval and funding. Once projects and programmes were "approved", the Ministry of Finance authorized release of money from the Central Bank through accounts operated by each department. Officers in the field were then allowed to use the money to implement the projects and programmes.

5.5 Reforms in Development Planning

Except in the resettlement of rural population and agricultural intensification programmes, development planning in Kenya did not involve people and hence there was no democratic participation (Leo, 1984). There was not much attention paid to the planning activity especially in view of the changes that were taking place in settlement patterns. Lack of the attention in planning has been summarised by the Mission on Land Consolidation and Registration (MLCR):

Even worse still is the fact that no provision... have been made to extend professional planning services of Town Planning Department to... settlement schemes... There is no attempt at any sort of Town or Village Planning. It is obvious that within a generation Market centres must become village areas if the landless are to lead the ordinary life found in

⁹⁵ DOs (District Officers) are assistants to the District Commissioners, while the chiefs are in charge of administration in smaller geographical areas of a district called "locations".

most other parts of the world... Many...will, we hope become craftsmen and traders not merely labourers and squatters scattered over the countryside... It is imperative that an overall layout should be worked indicating sites of future towns and villages to serve the needs of a locality as a whole (Kenya, 1966:54).

Thus, MLCR identified lack of planning for the development of human settlements in the 1960s even though more people were expected to live in cities.

Development Plan 1966-1970: Ministry of Planning and Economic Development was strengthened during this period and marked the beginning of centralized planning after Kenya's independence. The ministry became responsible for organizing and promoting economic development, and was expected to integrate African socialism in planning and, to follow the rational model with its comprehensiveness (Stolper, 1968). At the end of that plan period, planners in government were biased towards the rational planning model. The bias was partly due to the recommendations from the *International Bank for Reconstruction and Development* (IBRD) for centralized planning so as to pursue goals of economic growth in Kenya and partly due to traditions of sectoral planning where administrative officers implemented plans (Kenya, 1963; and Nellis, 1981).

For the planners who worked for the government, theory and principles of African Socialism in planning were rhetorical and according to President Kenyatta (Kenya, 1996:v):

The government has introduced this sessional paper which discusses in detail both theory of democratic African socialism and its application to planning in Kenya and it is the responsibility of the Minister of Economic Planning and Development and his cabinet colleagues to explain and help interpret this paper to parliament and to the public so as to ensure that it is fully understood (Kenya, 1965:v).

The government of Kenya has been working to decentralize planning functions and administration since 1970. The first approach focused to decentralize government

administration and professional staff from Nairobi to the districts. The second approach was to rely on spatial planning to decentralize economic activities and settlement patterns which are dominated by the primacy of Nairobi. By bringing officers close to the people in the districts, it was hoped that development planning could become more effective. Therefore these two approaches to decentralization dominated the development policies outlined in the five year development plans for 1970-1974, 1975-1978, 1979-1983, 1989-1993:

Development Plan 1970-1974: Agricultural development through investment in basic infrastructure became the main activity which included extension services to small farmers. It was hoped that once job creation through this agro-economic development strategy succeeded in the context of an experimental special rural development programme, it would be replicated throughout the country (Gerhart and Laurenti, 1973:6-7; and Chamber, 1974). However, implementation of special rural development programmes became a source of conflict between the provincial and district officers on the one hand and field officers of the Ministry of Economic Planning and Development on the other.

A system of urban places, believed to be critical in servicing the predominantly agricultural communities was adopted in the form of growth centres and service centres (Christaller, 1966 and Taylor, 1981:336). However, the establishment of growth centres and service centres was difficult because resources for implementation were not adequate and planning was centralized. There was also professional conflict between the economists in the Ministry of Economic Planning and Development and the planners in the Physical Planning Department.

Development Plan 1974-1978: This plan also emphasised rural development, with a focus on improvement of the standard of living. Rural agricultural programmes, including domestic water supply, irrigation and afforestation were adopted as strategies

for realizing this goal. Once again, provincial and district administrative officers were mostly responsible for implementation and therefore, coordination of special rural development programmes was ineffective. This led to the termination of the programme in 1977 without having evolved a replacable model for implementing rural development programmes.

Two approaches were adopted for urbanization during this plan period. The first was to promote growth of selected towns into industrial and administrative centres. The second, was to allow growth of small service centres where local communities can purchase households consumer goods, receive health services and send children to school. These would be also places where information would diffuse to and from rural communities. In addition rural access roads and inter-regional road network programmes were initiated so as to support mobility of people within the growth and service centres, and between them and rural hinterlands.

At the end of this development period there was dissatisfaction due to the failure of the special rural development programmes and the government began to consider other possible approaches to rural development planning. On the urban front, development benefits from the growth and service centres were yet to be realized and assessed. The regional urban development strategy was retained and, in fact, was supported by the publication "*HUMAN SETTLEMENT IN KENYA: A Strategy For Urban and Rural Development*", a report which contained policies on the distribution of urban population and economic activities (Kenya, 1978).

Development Plan 1978-1983: District development committees and district executive committees (DDC) and (DEC) were declared agents of development planning at the local level during this period. In 1982 District Focus for Rural Development Policy (DFRD) came into effect. The districts were made the lowest level of decentralized

planning and management of development.⁹⁶ The goal of planning at the district level was comprehensive rural-urban development (Kenya, 1982:50). Existing district administrative structures for administration became the framework for urban and regional planning and District Commissioners became chief planning and implementation coordinators. The DFRD policy emphasised that:

... the district team, under the leadership of District Commissioner and with the guidance of District Development Committees should be established as the major force and vehicle for management and implementation of rural development (Kenya, 1982:53).

DFRD was declared as the new model for decentralization in the form of a Presidential directive:

Districts were to become centres of development in rural areas, and that he (The President) had instructed all ministries to ensure that this new approach is put into full operation by July 1st, 1983 (Obudho and Aduwo, 1988:166; Wallis, 1990:443).

The directive was formalized in the 1984-1988 Development Plan which explained the source of changed policy and its intention:

In line with the Presidents' many exhortations, we are implementing the policy of making district focus for rural development thereby bringing the people into the forefront in the provision of their own things for their own welfare (Kenya, 1983:xi).

This change in planning strategy was abrupt and did not put the growth and service centre model in the context of district planning (Kenya, 1982:55). The model was, however, retained for spatial planning with a hope that the centres could:

... relieve population pressure in the country-side, provide less congested and populated urban living in the primary city..., increase modernization spin-off which urban centres provide better with integration of the economy of rural hinterland (Kenya, 1978).

⁹⁶ Reasons for this were that 80 per cent of the population lived and earned their livelihood in the rural areas, and 60 per cent of them relying on on-farm activities or as pastoralists and the other 20 per cent on off-farm activities) (Kenya, 1982).

Decentralization to the districts did not consider the possibility of using the local government system which relies on civic political process and closeness to the communities as an alternative institutional structure.

Development Plan 1984-1988: Decentralization to the districts became the theme of this plan period and became known as "*mobilization of domestic resources for equitable development*" (Kenya, 1984:ix-xii and 91-96). Equity was seen in two major ways. First, there was to be equity in the geographical distribution of development projects. Second, demands of rural and urban development were to be balanced when allocating resources in national investment programmes. District planning was expected to facilitate planning with these equity considerations (Kenya, 1984:58-60; and Obudho and Aduwo, 1988:165).

Planners assumed that growth and service centre strategy would still be the model for planning regional development projects and programmes and therefore distribution of population. They were of the view that the strategy complimented implementation of the rural-urban balance policy (Kenya, 1983:174-176). They were found to be wrong.

The establishment of Rural Trading and Production Centres (RTPC) as an investment programme was addressed to the problem of physical infrastructure and marketing outlets.⁹⁷ The strategy was intended as a strategy to promote growth and development of selected urban areas.⁹⁸ By selecting investment RTPC towns from all regions (districts), it was hoped to achieve the goal of equity in distribution of benefits of development.⁹⁹

⁹⁷RTPC was introduced by the government in its policy paper called Sessional Paper No.1 of 1986 entitled "*Economic Management for Renewed Growth*" (See Kenya, 1986a).

⁹⁸ In the middle of the 1984-1988 Development Plan, Rural Trading and Production Centres (RTPC) replaced Growth Centre and Service Centres (GCSC) as a strategy for implementing equity in the context of spatial planning.

⁹⁹ Its introduction marked a new approach in urban centred regional planning initiated by Harvard Institute of International Development (HIID) during the 11th year of the 17 years (August, 1976 - June, 1992) of the institute's technical assistance in regional planning to Kenya (Cohen and Hook, 1986:30-32; and Gaile, 1988:242-243).

The strategy was presented as a government programme for implementing rural-urban balance with a view to accelerating the growth of selected secondary and smaller towns (Kenya, 1986:41).¹⁰⁰ Later changes in policy limited the choice of the RTPC towns to those with less than 5,000 people and having potential for stimulating development in their rural hinterlands (Kenya, 1991b:200). When the RTPC strategy was adopted in 1986, it replaced GCSC policy, which had become out-dated by the end of the 1979-1983 plan period. However, except for the outline of the RTPC policy intention in 1986, the implementation of the investment programme had to await until the preparation of the development plan for the period 1989 to 1993.

Development Plan 1989-1993: The plan clarified that a district was a geographical area and its administrative framework would be the basis for the administration of development. Also, the framework became the basis for the implementation of the RTPC regional equity model in the form of agro-economic regional production and marketing centres (Kenya, 1989:xvii-xx). The objective of the plan was accelerated growth of selected towns to avoid planning along sectoral lines. Three development plans which include 1989-93, 1994-98 and 1999-2003 were to facilitate structural adjustment for Kenyan economy.¹⁰¹ Among the objectives in

¹⁰⁰ A programme of investment in development planning means a specific package of investments that is made in identified locations in a country's space economy, and in which the government plays a strategic role in funding (Tinbergen, 1958:4). The RTPC programme in Kenya assumed that Kenya government will fund the development of physical infrastructure and marketing outlets in the selected towns, leaving private initiatives to make rational economic decisions to invest in commerce and industry (Kenya, 1982:42; and Gaile, 1988:244 and 253).

¹⁰¹ Structural adjustment is qualitative and quantitative change in policy which, when translated for operational purposes, means structural re-organization of existing production and consumption in the economy (Tinbergen, 1955:1-2 and 70-71; and Tinbergen, 1973:40-41). In Kenya, structural adjustment during the 1989-1993 plan period was in the form of dissolving and/or selling some public corporations. Adjustment in other areas will have to be made during the plan periods 1994 to 1988 and 1999 to 2003. In quantitative changes, structural adjustment was in form of a falling value of Kenyan currency, which meant diminished gains from commodities such as coffee and tea sold in export markets and cost sharing between the government and people in social services, including education, health and transport. In 1992, it was suggested that future development plans will cover a three (3) year period and it can remain to be seen how implementation schedule of the RTPC programmes will be accommodated in the proposed development planning periods.

structural adjustment, two are of relevance to this research. First, in structural adjustment, cost sharing which imply that consumers of goods and services will have to pay more is considered as participation in development (Kenya, 1989:258-260). Second, implementation of RTPC programmes and projects was to be incremental.

The suggested population size of 5,000 for RTPC candidate towns was expected to grow at a rate of 7.5 per cent per year which is above the national average of 6.5 per cent (Kenya, 1989:74). RTPC investment towns were to increase from eight selected small towns during the 1988/89 financial year to twelve in 1989/90, sixteen in 1990/91 and in 1991/92 and eighteen in 1992/93 (Gaile, 1992:147). By the end of 1993, seventy RTPC candidate towns were expected to have had the prescribed investment programmes fully operational (Kenya, 1989:77). The projected cost for each RTPC town was K(P) 800,000 and for the seventy RTPC towns targeted for the 1989-1993 development period was K(P) 56.0 million

RTPC investments, it was assumed, would lead to creation of off-farm employment activities in the processing of agricultural products, service industries, livestock marketing, work-for-food programmes, service industries, public works and mining and tourism. It was expected that farmers and people in off-farm economic activities would respond rationally to market opportunities resulting from the improvement in physical infrastructure and marketing outlets.

By these approaches the programmes were meant to promote "planned" urbanization as an objective in development. During this time, development planning focused on:

...renewed economic growth, with a target rate of 5.6 percent in Gross Domestic Product (GDP) from 1984 to 2000, through gradual structural change from an agrarian into urban-based industrial economy with agricultural and small scale industries and services leading the way for the next fifteen years as modern industry is restructured to play its essential role in development (Kenya, 1986:104).

Implementation of the RTPC programmes became part of the district planning and local authorities did not have a specific role. By this arrangement, district administrative and sectoral planning officers controlled more resources compared to the local authorities. The presidential directive for decentralization identified district commissioners, and not local authorities as centres of authority in regional planning (Cohen and Cook, 1986:40-43; Obudho and Aduwo, 1988:166, and Wallis, 1990). It is against this background that the two objectives of structural adjustments mentioned earlier were to be achieved.

5.6 Organization and Financing of Development Planning

By establishing a decentralized planning organization in 1983, individuals, non-government organizations and local authorities were expected to participate and strengthen the administrative structure of the district (Kenya, 1987a). As the district planning became operational, development interests of the individuals and organizations were presented during district development committee meetings by their representatives so that their interests were accommodated in the district plans. But membership in the committees is dominated by government representatives (Were, 1989: 126-129). In his study on district planning in Busia District, Were found out that 70 percent of District Development Committee membership is government representation. District development committees and executive committees would prepare district plan annexes and forward them to the Ministry of Planning and National Development for scrutiny and funding.¹⁰²

This organizational structure limits community participation in the planning

¹⁰² District plan annexes are lists of priority programmes and projects prepared by District Development Committees and they show where the programmes and projects will be located within the district. Priorities in district annexes are usually (but not always) the basis on which money is allocated. At the present time, the old Ministry of Economic Planning and Development (MEPD) that was established in the 1960s is the Ministry of Planning and National Development (MPND).

process. However, indirect community participation is assumed through the representation by their parliamentary members in the committees. The district treasuries pay part of the finances for the implementation of projects and programmes from district development fund (DDF). Sectoral departments contribute the other part of funding.

It is obvious that without adequate and reliable sources of money, development programmes and projects cannot be implemented. Also, without reliable and effective planning and schedules for funding, money will not be available for implementation. With these kinds of financial uncertainties goals of development cannot be achieved. Lack of appropriate financial resources to implement plans is a very vexing problem that affects all developing countries, including Kenya (Tinbergen, 1958:58).

One measure of the ability to finance development is the proportion of funds generated by the national economy. During the 1957-1960 development programme, the colonial government advised that planners should include projections to show how far the plans will be effective (Kenya, 1957:1). These projections were to form the basis to plan the funding of public investments and to advise private investors in their economic activities, with a view to generate local capital. During the plan period K(P) 16.0 million per year was needed and the economy could only generate a mere fraction.¹⁰³

The economy improved in the 1970s and for the 1970-1974 development plan, K(P) 93.6 million, representing 13 per cent of development money, came from external sources, while the rest, K(P) 626.4 million (87 per cent) was generated by national economy (Kenya, 1969:5). This improvement was not sustained in the 1980s. During the 1985/1986 to 1988/1989 financial years, the money needed to finance such programmes and projects was K(P) 775 million, of which K(P) 200.0 million, or 25.8 per cent, came from external loans; and K(P) 575.0 million, which is 74.2 per cent, came

¹⁰³ The proportion of total budget projected for any development period, which is generated from the national economy compared to the proportion from external sources in form of loans and grants (not from sale of exported goods) is a good measure of local development (Gills *et al.*, 1983).

from local banks (Kenya, 1989:34).¹⁰⁴ Table 5.1 is a summary of trends in financing development for the five year period, 1989 to 1993.

Table 5.1: Five year trend in financing development in Kenya through local and external borrowing

SOURCE OF FINANCE	1988/89	1989/90	1990/91	1991/92	1992/93
LOCAL BORROWING (in K(P) Million and percentage of the total)	162.9 (45.0%)	134.2 (37.5%)	99.4 (28.0%)	110.1 (30.6%)	122.0 (32.0%)
EXTERNAL BORROWING (in K(P) Million and percentage of the total)	200.0 (55.0%)	223.6 (62.5%)	255.0 (72.1%)	249.4 (69.6%)	249.4 (68.8%)

Source: Adopted from Development plan 1989-1993 (Kenya 1989:62).

The discussion so far and the trends in the table show that with passage of time during the twenty three years (1970 - 1993), Kenya relied more on external sources to fund development programmes.

It is important to note that another measure of the ability to finance development is in the higher proportion of the annual budget allocated for capital development such as roads, and industrial support programmes compared to the proportion allocated to salaries of government officers and expenditures in health, education and training. The larger the proportion of the annual budget allocated to funding capital projects, the more money in the budget that is available to increase productivity. However, this may not have been the case. The central government has been the largest employer in the public sector (Kenya, 1991a:38; Kenya, 1992: 40-42 ; and Kenya, 1993:52-53).

As Kenya relied more on external sources of finance, the proportion that went to

¹⁰⁴ Throughout the 1980s, external sources of money for development were used to finance budget deficit (Kenya, 1986:34).

pay for salaries in the public sector and finance the provision of services also increased, but less money was available for capital programmes and projects. Therefore, more money was required to finance differed and/or suspended programmes and projects, and made the government rely even more on external sources to make up the difference.¹⁰⁵

In terms of development planning these trends show that while government cannot be expected to finance all programmes and projects due to ever growing deficit financing, past investments in capital and annual (or recurrent) spending on salaries and provision of services were not made in the most productive sectors of the economy.¹⁰⁶ This means that by borrowing heavily from local banks, government takes away the money that could otherwise be used by the private sector (Kenya, 1991b) and inhibits effective management of the development process (Kenya, 1982:31). Deficit financing and the practice of heavy borrowing locally is not in line with Kenya's development objectives which targets recurrent and capital expenditure on social and economic infrastructure through a purposeful and effective management:

The principal criticism of the Working Party on the current use of national resources is that they are not now managed for their maximum effect on national development. The result is the creation of excess capacity which is not utilized to benefit the people, the needless replication of government functions in two or more ministries, the inefficient duplication of administrative responsibilities between county councils and district administrations and a diffusion of administrative responsibilities and lines of authority which makes effective management and the evaluation extremely difficult (Kenya, 1982:31).

5.7 Role of Urban Land Development in Development Planning

The discussion in this chapter which has reviewed planning theory and

¹⁰⁵ By 1991 Kenya's total debt was US\$ 720,000 million and total debt service was 9.4 percent of Gross Domestic Product (GDP) (*Inter-Church Coalition on African*, 1993). In African, the average total debt for 29 countries was US\$ 55,656 million and total debt service stood at 5.02 percent of GDP.

¹⁰⁶ In 1979-1980, the entire civil service salary was 47 per cent of total recurrent outlay, which increased to an average of 60 per cent in 1984-1985, with the Ministry of Agriculture and Livestock Development alone having 80 per cent of total budget committed for salaries (Kenya, 1991b:32).

approaches to development planning demonstrate that urban development is part of the wider policy debate in development planning. However, at the centre of this policy debate is a bias towards spatial planning in which the Rural Trading and Production Centres (RTPC) investment in infrastructure and marketing outlets for example, are the background to the national debate. A balanced geographical distribution of urban centres is the focus of this debate. In the RTPCs as was the case in the Growth Centres and Service Centres (GCSCs) before them, planning of urban land development within the urban areas is not considered as part of the development planning policies.

The spatial planning policies do not consider that urban land development involves the proportion of population engaged in off-farm economic activities and that it is an indicator as to the direction of change in settlement patterns. The emerging urban settlements, the social and economic problems that are created require localized policies (Kenya, 1978). Planning of urban land development is a process of development planning at the local level, only that, it impacts life style of households because it has to deal with social and economic activities in communities more directly. The role of urban development in development planning is therefore to facilitate the implementation of projects and programmes and become an expression of cultural, economic, political and environmental management attitudes. Unfortunately, this role seems not to have been recognized in Kenya and has caused confusion about the relationship between the need for planning urban land development and the national development planning process.¹⁰⁷

As already indicated, the over involvement of administrative authorities in planning and implementation has compromised the local political and legal basis for urban planning. It seems that centralization and dominance of administrative authorities

¹⁰⁷ Except in the 1970-1974 development plan, which attempted to clarify this relationship at the time when growth centres and service centres regional spatial policies were becoming popular (Kenya, 1970:82-90), five other development plans are silent on the issue (Kenya, 1964:68-71; Kenya, 1974:135-142; Kenya, 1979:58-61; ; Kenya, 1984:172-176; and Kenya, 1989:74-78 and 130-132) .

in planning may be responsible for the ineffective local level planning more than any other factor. Specifically, centralization and dominance of administrative authority seem to explain the confusion surrounding the role of urban land development in the development process. We may conclude that the relationship, or lack of it, between the philosophy/theory and the centralized planning system which relies on administrative discretion, explains the nature of the existing legal instrument that forms the basis for planning. That legal instrument is planning law in Kenya and reviewed in chapter six.

CHAPTER 6

PLANNING LAW IN KENYA

6.0 Introduction

The history of planning law in Kenya dates back to the early years of the twentieth century (Kenya, 1924; and Kenya, 1931). The law was imported into Kenya to avoid:

The same mistakes of overcrowding and insanitary conditions as existed in England in the early part of the 19th century, and which were brought to light at the time by several commissions, have a tendency to repeat themselves in new countries, unless there is a sanitary department to prevent them (White *et al*, 1948:13).

From then on, the law gave public agencies the right to intervene in the planning and development of land (White *et al*, 1948:1). Also, the law shaped the evolution of the kind of organizations that assumed the role of statutory planning authority (*Nairobi City Commission*, 1991). The historical processes associated with colonization, and societal experiences led to the type of planning authorities, and existing planning approaches and styles in Kenya (McAuslan, 1966 and McAuslan, 1978). In particular, the styles and approaches evolved and developed from the introduced laws during the colonial period 1920-1963. This evolution and development was influenced by the social and economic interests of immigrant settlers. Even where the provisions of African customary law was applicable it was subservient to those social and economic interests.

The chapter reviews the planning law in Kenya and to do that, the legal philosophy as it relates to planning law is first outlined. Following that, an analysis of the Common law, the Statutory law and the African customary sources of planning law

are presented.

6.1 Legal Philosophy and Planning Law

The laws in Kenya are based on the principles of liberty (Datainth; and Ojwang, 1992b), social contract (Oluyede, 1981) and the African communitarian doctrine (Barkan, 1984 ed; Jones, 1989; and Hawke, 1991). The freedom of the individual and the functions of the government to intervene/guide in exercising the freedom are explained by the principles of liberty and social contract which were fostered by societies in Western Europe and North America. As a social goal, liberty of the individual especially, became the building block of the legal system (Ojwang, 1992a:12).

The cultural norms, the institutions and the political economy in the society are the basis of the African communitarian form of social organization. It evolved from social processes in relation to the use of resources (Allot, 1980:viii). The organization functioned as the media for "communication" within the communities and also as the framework for using resources (Gyeke, 1987; and Amadiume, 1987:43). The role of cultural norms is that specific resources, especially plants and animals, were related to certain uses which were generally known in the community. That created awareness in the community and was useful as a mechanism to control the extent of resource use in the environment (Epstein, 1954; and Gbadegesin, 1991). In spite of the ethnic diversity, the organization is common to the many community groups in the African society. It is therefore interesting to note that effective law must be applied in the context of existing social realities (Allot 1980:x). The context is who made the law, when and for whom law is made.

A legal philosophy makes two assumptions about the nature of the society (Bowles and Gritis, 1986:3).¹⁰⁸ First, the law as an instrument of societal guidance must

¹⁰⁸ R. Cotterrell (1989:2) has explained that legal philosophy can be considered to be the normative legal theory and deals with thought and belief in terms which legal process is justified.

balance moral and material objectives. Second, the cost to enforce law is minimal in societies where the notions of social contract have influenced the evolution and development of systems of government which rely on democratic processes (Woolhouse, 1988). This second assumption helps to clarify that the notions of social contract have assisted in the development of common (also called private) and public branches of law (Hayek, 1973b: 131-134). Social, economic and political institutions that developed as a result of legal systems based on these assumptions explain the operation of common and public law.

In practice the common law, was nurtured and allowed to flourish in Anglo-American liberalism based on freedom of the individual and the right to pursue economic improvement. Common law focuses on three categories of problems (Paul, *et al*, 1992). The first category includes the knowledge as understood by a society and associated with the administration of justice. In this category also, there is the need for rules to regulate human actions so that they conform to lawful conduct. It is assumed such rules will be administered to provide useful information and enable individuals take correct actions relative to others. Finally, there is the problem relating to the discovery of the rules and principles which are consistent, useful and considered just in the control of the use of resources in economic activities. Such rules and principles will be useful in the relationships in the use of resources and in the market place. The second category of problem is that of private interest, also called the partiality problem which is associated with the improper use of resources where there are no incentives. In such situations people tend to make decisions that support their own interests over the interests of others.

In law, the first and the second categories of problems are caused by the assumption of just conduct in exercising freedom of the individual. In reality, it is not always true that the individual will be fair once left unaccountable to ones actions in light of social environment within which freedom is exercised. The individual may make

decisions and take actions to further her/his interest and the law must consistently deal with non-compliance of the expectations of just conduct.

The third category of problem is "power" which becomes a problem in two main ways when it is used to solve the problems of knowledge and partiality. First, the problem of power can be created when force is used to solve problems of knowledge and partiality. Lack of knowledge by those who enforce provisions of law result in enforcement errors. The second problem of power is when compliance to the law is pursued to serve interests of the enforcing agents (Paul *et al*, 1992:64).

Common law addresses the three categories of problems by emphasizing that the law is concerned with actions and not preferences. Actions take place in space and time whereas preferences are made in the mind which has no dimensions (Paul *et al*, 1992:67). In liberal legal philosophy, law should be concerned with the actions of the individual in using resources to promote development. In this way the law encourage just preferences and actions, and at the same time discourage unfair preferences and unjust actions .

Public law, is legislated to ensure effective and just process of governance. Fairness, social benefit and equitable distribution of resources are seen as the basis of the effective and just process of governance in the public domain (Bowles and Gintis, 1986:xi), Mills, 1987). It assists governments to intervene in a deliberate/rational way in the actions of people that are sanctioned by the common law (Hart, 1961:44).¹⁰⁹ The arbitration of disputes on the ownership and utility functions of resources in turn are the areas of intervention. Therefore, through the public law, governments and their agents receive the mandate to intervene as a way of solving the problems of knowledge and partiality, which are inherent in the enforcement of the common law provisions. The government interventions are expected to be just and that it would avoid the use of power

¹⁰⁹ In capitalistic societies, the process is more entrenched because of the heritage of enlightenment and the work of philosophers in the 18th and 19th centuries which resulted to positivistic law, i.e law of government (Woolhouse, 1988; Giddens, 1990:134-135).

in an unfair way to enforce compliance. By making laws through legislation, it is only expected that effective and just kind of power is given to governments for the intervention.

In planning interventions, governments rely on the planning law. As discussed earlier (in chapter three), planning law is a part of administrative law which is a major branch of public law. Administrative law has two main types of rules (Hayek, 1973b; and Bryde, 1976:180). The first type of rules are the statutory provisions for regulating organizations and the way government departments function.¹¹⁰ The provisions in this types of administrative rules assist to make fair judgments and effective decisions. The second type of rules are made by the government departments to govern the conduct of officers, and also, the people who seek services and goods from the departments.¹¹¹

The general modern administrative law have its origins in the interventionist actions of the government. Lack of law and order due to poor social conditions, especially in the urban areas that resulted from economic activities of post-industrial revolution in the 19th century, led to the making of the laws (Hague, 1984; Suetens, 1986; Kuhn and Weber, 1986). Towards the end of the century and during earlier years of the 20th century planning law evolved and developed to deal with urban planning problems (Moore, 1987:1-2).

In the indigenous societies of Africa, customary law is based on cultural values of communities and social realities in the use of resources. The laws are made on the basis of the experience of society, and not merely on positivistic philosophy.¹¹² The law

¹¹⁰ The regulations provide the administrative framework to the institutions and officers working in them an administrative framework, and give them also power over persons and property.

¹¹¹ The regulations make provisions for the relationship between statutory organizations and individuals. Usually the regulations are in form of bylaws or subsidiary legislation for the organizations and they are formulated (but not always) by the organizations on basis of statutory power conferred to them. Therefore, effectiveness of administrative law depends on relationship between the (public) officers and private citizens (Bryde, 1976:182).

¹¹² In fact, Holleman (1974:1-2), writing on characteristics of Bantu law, Allot (1975:55-56) on unity of African law, Bryde (1976:109) on African legal development, and Wirendu (1980) on philosophy and

evolves as a product of interaction of people with their environment and with their fellow human beings. The purpose of the law is to assure social harmony and to accommodate the use of resources (Penwill, 1986:35-44 and 48-50; Aruka, *et al* 1989:12-15 and 29).

The interaction resulted in social democracy which influenced political process and organization based on the jurisdictions of the tribe(s) (Ojwang, 1992a:18). These conditions helped the administration of law through dialogue between the sages and members of their communities.¹¹³ The application and development of the African customary law until recently was based on practice and not any formal documents. In spite of the absence of any written laws, and the practice of law in diverse tribal communities in different regions, common value systems about the environment and resources were developed.

The fact that forms of economic and institutional arrangements were cooperative, the place of individuals and their knowledge about world view were recognized. In the event of individuals pursuing their economic objectives, that background helped to entrench the notions of the just attitude.¹¹⁴ The cooperative arrangements and recognition of the individuals led to a social philosophy which embraced aspects of freedom of the individual and social contract (Allot, 1980:25; Gyekye, 1987:208-212; and Gbadegesin, 1992:4). The customary law had limited adoption in the formal setting

African culture argue that customary law is a distinct kind of law. Others who have contributed to the debate include Blanc-Jouvan (1971:217), and Ruger (1987:31). Specifically, Conran (1966:73), writing on customary law in Kenya argue that although the law did not develop through rationalistic route, it developed into the body of rules and conventions with common principles in many communities in Africa. More recently, Amadiume (1987:31-33) and Aruka (1991:140) suggested that the philosophy was evolved and developed by the indigenous court(s) systems in the context of communitarian social organization. The major concern in the philosophy was in the governance of the utilization of primary resources such as land.
¹¹³ According to Wilson (1968) and Wirendu (1980), communication of knowledge in African communities relied more on folklore and customs, and least on the conventional forms of writing or recording.

¹¹⁴ This form of social organization worked because of the close range-relations in the community and economic productivity, which were largely non-money economies (Amadiume, 1987), as we know them today.

due to the lack of written provisions of law and the rule of the colonial power (Esptein, 1954).

The law is based on notions of just conduct, contract, and exchange of material things and property usually land and livestock. In theory, more than in practice, the sphere of property ownership and the use of such property are explicitly a community/public responsibility, and only implicitly in the realm of the individual (Allennu, 1963:28).¹¹⁵ African customary law is therefore well grounded in a dynamic legal philosophy that protect and promote individual freedom in the production of resources and the use of land without unnecessary hoarding.

Recently, Mucui-Kattambo (1992), Woods (1992:90 and 92) suggested that the dynamic social capitalism continue to dominate African economic and political life. They argue further that, at the present time, the successes of this kind of capitalism is clearly seen in the accomplishments of the cooperative sectors of the economy in contemporary social and economic organizations in Africa.¹¹⁶

Gluckman (1944:18) has observed 50 years ago that social groups which take on identity of persons will continue to be the basis of legal rights of the individual and the community in the African social and economic setting. In the modern sectors of the economy, community associations or groups especially in the urban areas are gradually overcoming the tribal and ethnic influences. However, to translate the diverse network of customs and value systems to be an effective basis for the planning of the urban areas

¹¹⁵ Norms of the customs provide the legal protection of the individual to benefit from crops they cultivate and animal which they graze. This was the first and the most important level of private/individual ownership of the enterprise. The land on which the individual grew crops and/or grazed animals was a specific part of the community territory. The individual carried out the productive activities (to create wealth) as a sign of private ownership in the enterprise. Once the use functions of the individual ceased out of ones voluntary and left the land vacant, it reverted back to the community (the public) as the secondary level of ownership.

¹¹⁶ The argument advanced by Mucui-Kittambo, Woods and Maini is that personalized closer relationships will continue to play a major role in communitarian structural relations. At the same time there will be a wide scope for the freedom of the individual in response to social and economic forces that are work in the world.

lags far much behind (James and Fimbo, 1973). The fact the laws among the different tribes have their roots in a legal philosophy that could be identified as African in experience and origin and the gradual change suggest that the laws may take longer before they can be widely used in formal settings.

In future, the law that would become the basis of planning and management of urban development, will have to deal with activities of individuals and groups. This will be a form of intervention and would become undesirable to the demands of democratic governance, especially, if the kind of power used to enforce compliance is not relevant to social conditions, economy and local politics. The "cost" of enforcing the provisions of the law would therefore depend very much on the social, economic and political institutions that would be created.

6.2 Sources of the Planning Law

The foregoing discussion shows the sources of law in Kenya are many, and represents diverse philosophies which are reflected in the practices of urban land development (Williams, 1955; and Okoth-Owiro, 1988). The laws are administered by similar institutions which also enforce implementation in the local authority jurisdictions and are due to two reasons.

First, Kenya was under the British rule for seventy years, 1894 to 1963 (McAuslan, 1966; Okoth-Ogendo, 1978), and the British common and public law statutes were introduced to alienate local people and to develop a settler economy (Park, 1963:15-16). Also, the imported laws were intended to apply to the areas where Africans lived. Secondly, the African culture and social systems, which had endured for a long time as the basis for customary legal system, contributed to the diversity of the law (Blanc-Jouvan, 1971:226-227, Okpala, 1975 and Bryde, 1976). However, during the seventy years of the British rule, there was gradual erosion in the use of the customary law, although there were instances where the law was used in African areas. The application

of the law was not consistent and was restricted to certain areas. However, the indigenous law survived due to the localized nature of the community organizations which formed the basis of social and economic systems.

6.3 Heritage of Common Law

The contribution of the common law heritage to planning in Kenya can be traced back to its evolution and development in Britain. In Britain, the common law was evolved and developed as an instrument of social control to regulate and to resolve conflict over the use of adjoining land and in transactions (Park, 1965:56). The law was mainly influenced by the principle of precedence, from the 12th century and was adjudicated in courts (Pollock, 1896; White, 1980; and Jackson, 1988:12; van Caenagem, 1992: 2-3, 134-135 and 162-165).¹¹⁷

There are two acts of common law imported to Kenya that influenced urban land planning and development. The first was *Indian Transfer of Property Act (ITPA)*, 1882 (Okoth-Ogendo, 1991:18-19). ITPA was enacted in 1870s for the purpose of settling disputes regarding mortgages, easements and contracts in the sale and development of land.¹¹⁸ Section 54 of ITPA applied to the transactions and agreements between parties, and also for planning (Onalo, 1986: 237). The second, the English common law doctrine of equity and statutes of general application in force in Britain since 1887, were made the principal source of private law in 1921 in Kenya (Onalo, 1986:3; Jackson, 1988:82). That became the major source of law which influenced the relationship between individuals and groups in transactions, development and use of land. In particular, that law was the source of *Law of Contract Act (LCA)* and *Registered Land Act (RLA)*.

¹¹⁷ According to Meyer (1971) the British customs of just conduct that were acceptable in the mediation and resolution of conflicts over the use and development of resources (especially land) and business transactions were integrated into the law.

¹¹⁸ ITPA was introduced in Kenya in 1897 from India after Kenya became a British protectorate in 1895. Twenty five years later when Kenya became a colony in 1920, ITPA provisions were seen as limited in their scope .

These two Acts have influenced planning and development of urban land in Kenya.

Section 163 of RLA which is based on the English common law emphasises that:

Subject to this act and except as may be provided for by any written law of England as modified by doctrines of equity, shall extend and apply to Kenya in relation to land, leases and charges under this Act and interests therein...

RLA contains provisions for the subdivision planning, ownership and development rights. The provisions in Sections 25(1) and (2) of the Act allow owners to subdivide land into smaller lots on condition that they submit their plans for approval and the new ownership rights could only be guaranteed by registration. Section 27(a) of the Act clarifies that:

Subject to this Act- (a) the registration of a person as proprietor of land shall vest in that person the absolute ownership rights and privileges belonging or a appurtenant thereof

Sections 85 and 86 allows for the transfer of part or whole of land by the owners so long as there are no outstanding charges. The central government and local authorities are also protected by private law as they are treated as personalities with interests in the ownership and development of land. The rights of the central government in the ownership of Government Lands and the local authorities in ownership of Trust Lands are protected by Section 160 of the RLA.

The LCA affect planning and development of urban land because it allows transactions of land by private agreements by owners in response to their possible gain. The Act promotes the notion of freedom of the individual and allows economic forces to operate in transactions of goods and services. By Section 3(3) of the Act, the transactions including sales, transfers or use of land as security for a loan would not be recognized, if they were not recorded in writing and signed by the people involved.

Under the provisions of the RLA, different owners of land have a wide leeway to

determine the kind of development they could have on their land. The ownership in freehold land is secured by issue of the land title. It is assumed that the owners would develop the land for economic gain with the secured confidence and that part of the gain would accrue as taxes to the government and local authorities. Thus, the LCA and RLA provide legal protection while promoting the initiatives of land owners to exercise their options in land development.

6.4 Heritage of Statutory Law

The statutory law was introduced into Kenya in the form of ordinances.¹¹⁹ The initial provisions of the statutory planning law focused on the creation of farming areas and small towns. Specifically, the law was intended to cater to the interests of the migrants from other parts of the world. They were also used to regulate movement of the Africans into and within urban areas in the form of vagrancy laws (Kobiah, 1985). In the beginning the statute law focused on the regulation of movement, and relocation of the population and did not deal with any identifiable urban planning problems.

Sorrenson (1968:43-58) has given an account of how statutory law was adopted and used in relation to land development. Historical and social factors that influenced the development and application of planning law were not entirely a response to the development needs of the communities. The historical factors were related to the process of colonization. Ordinance based legislation was introduced in the beginning, and with time, it became the principal source of administrative law (Kenya, 1931a; Kenya, 1970; and Okoth-Ogendo, 1978:274). The social factors that influenced planning law were associated with the process of urbanization due to the economic programmes of the settler population, and whose employment and way of life in towns were important during that

¹¹⁹ An ordinance is an Act of parliament in Britain which was imported to Kenya in form of an order or directive to be adopted as if it was enacted in Kenya as the law of the land. The provisions of the ordinances were always at variance with those of customary law.

period.

There were three historical factors that guided government decisions in the introduction of the early planning legislation in Kenya. The first factor related to the prevention of individual and group land owners from causing injury to themselves and others when carrying out development activities, and the preservation of agricultural land. Planning organizations including administrative arms of the government and the local authorities were formally empowered to carry out the planning and management functions.¹²⁰ The second factor was colonialism, and as more settler population would have had access to land, it implied further land acquisition from indigenous people. This required an enabling legislation. Lastly, government took upon itself the responsibility to identify issues to be dealt with in urban development practices. According to Okoth-Owiro (1988) the three factors are linked to the notion that, the government was the most suitable agent to guide the formulation of planning and development policies, but at the same time was not the most effective and efficient user of land. Therefore the third factor relates to the application of imported provisions of law in the areas where the Africans lived and was meant to perpetuate the interests of the colonial government and the settler population.

The above referred three historical factors were influential in shaping the economic, political and settlement patterns. As these were not socially desirable, the government was always under pressure to amend the existing planning legislation (Kenya, 1979:282-284 and 293). However, no amendments were ever made and consequently, the planning legislation still remains in the form of numerous statutes. The approval and implementation of the urban plans continue to rely on these statutes. In the urban areas, the response to the development pressure remain ineffective as the provisions in the statutes may not apply to the planning problem (Mwangi, 1988:43-53).

¹²⁰ Legislation to control land use and development was introduced.

6.4.1 Evolution of Statutory Law

The *Crown Lands Ordinance* (CLO) of 1902 is one of the earliest and influential statutory planning laws. Section 35 show that the ordinance repealed East Africa Land Regulation (EALR) of 1897. When the ordinance was introduced, there was the assumption that the land that appeared unoccupied was waste land and that indigenous people did not have ownership claims. Initially, the ordinance was intended to encourage the allocation and the development of the newly acquired land by the settler population. At that time, there were no towns that required major planning policies and implementation mechanisms. The towns however, were expected to grow and develop from the wealth generated as a result of the agrarian reforms. Therefore, section 16(a) of the ordinance required the newly settled farmers to develop their land in a prudent and business like manner. Under section 23(1), future planning in urban areas was placed under the Commissioner of Lands who then became the chief land administrator and planner.

The Commissioner was authorized to carry out planning activities and was responsible for laying the utilities such as telephone, water and sewers in private land without giving compensation as long as they are in the public interest. Compensation was possible only under Section 23(2) if the actions of the Commissioner may have caused damage on private property.

The *Crown Lands Ordinance* (CLO) of 1902 was repealed by the *Crown Lands Ordinance* (CLO) of 1915. In the new ordinance crown land was defined as all land including land settled by the Africans. This definition was however modified in 1939 to exclude the land set aside and occupied by the Africans under the *Native Lands Trust Reserve Ordinance* (NLTRO), 1939, (Onalo, 1986:60).

By 1920 Kenya became a colony and by that time many settlements acquired

distinct urban forms and Nairobi attained the status of a municipal corporation in 1919.¹²¹ There were a number of planning legislations that were introduced in the 1920s. The *Municipalities Ordinance* (MO) of 1928 came into effect for the running of local governments by elected officials in the larger urban areas such as Nairobi. Provisions for the election of local officials to the City of Nairobi were included in Sections 3 and 4. For other urban centres including Mombasa such provisions were included in Sections 9 and 10. Section 51(1) authorized local authorities to manage and control the use of the public utilities, roads, public open places and the parks. In order to strengthen the management capabilities of the local authorities, Section 52 made the provision empowering municipalities to plan for the utilities and Section 59(10) authorized them to collect taxes and invest in property. These measures were further introduced to strengthen the capabilities of municipalities to implement plans.

However the provisions of the MO did not consider the fact that local authorities had no influence on the development and use of land in their jurisdictions. Under Sections 52(3) and 52(3) of the MO, government and private individuals also owned land within the local authority jurisdictions. The government land was placed under administrative authority of the Commissioner of Lands and the Commissioner alone allocated and determined how the land was used. It was only assumed that planning functions of the Commissioner complimented those of the local authorities.¹²² There was no legislative requirement for the private land owners to obtain planning permission from the local authorities. The planning mandate of the local authorities in their areas of jurisdiction was based on the assumption that the Commissioner (government) and private owners recognized them as the local planning authorities.

¹²¹ L.W.T.White *et al* (1948:17).

¹²² But in fact, planning authority of the municipalities were conditional. Section 15 and 16 of *Municipalities Ordinance* made provision that the councils were free to undertake urban land use planning and development so long as they consulted the Commissioner of Lands.

The *Public Health (Division of Lands) Ordinance* (PHDLO) was introduced in 1928. Section 2 of PHDLO regulated subdivision planning and the development of land outside the municipalities and townships. Section 5 of the ordinance restricted severance of land less than 20 acres, while Section 6 required a layout plan for the intended and bordering developments. The statutory provisions in the Section required submission of the layout plans of the proposed development to the Commissioner of Lands for approval. Developers were required to attach a written statement indicating the portion of land they surrendered for public at no costs. Whenever the development in question was within 3 miles of a Municipality or Township, Section 7 of the ordinance required that the Commissioner of Lands consult the local councils.

The law relating to planning and development in the Townships was introduced in the form of the *Townships Ordinance* (TO), 1931. According to the provisions in Section 3 there could be two categories of urban areas: grade A, and grade B Townships. The existing urban areas that were not covered by the *Municipalities Ordinance* of 1928 became the Grade A Townships. All the smaller urban settlements and those upgraded to Township status, became Grade B townships.

In the *Townships Ordinance*, the District Commissioners became responsible for planning functions. By Section 5 of the ordinance, the District Commissioners, if they so wished, were supposed to consult the Township Committees for advice. The committees were merely to play the role of the advisor. The commissioners had the full power to make the final decisions on how and where land development would take place under Section 6 of the ordinance. In that arrangement in land matters, the District Commissioners were also supposed to consult the Commissioner of Lands as the representative of the Governor. Under Section 33(21) and 33(68) of the ordinance, the two commissioners were responsible for the subdivision planning and enforcement of the regulations of building plans.

Implementation of the provisions in the *Townships Ordinance* was to take place together with those of the *Town Planning Ordinance* (TPO), 1931. TPO was introduced to serve as the comprehensive legislation for the integrated planning in the Townships and Municipalities. By the provisions in Section 2(1), the Commissioner of Lands became the executive authority for the approval of planning schemes. In Section 2(2), a plan preparatory authority (a person or group of persons) is to be appointed who has planning skills, experience and proven professionalism. Under Section 5(1), the plan preparatory authorities were answerable to the Commissioner of Lands who approved the plans. However, according to Section 4(1) and 4(2) the role of preparatory authority was contradicted as the provisions gave the Governor-in-Council the power to determine what would be included in the plans.¹²³

The plans were prepared under Section 7 of the ordinance which contained provision that the plans could be for public land in the entire or a part of an urban area. The Governor-in-Council and the Commissioner of Lands had enormous planning authority according to the ordinance and they could make decisions without consulting local authorities. Section 23(1) made the Commissioner, the planning authority for the government and trust land while Section 23(2) made the Commissioner the preparatory authority for the plans of private land owners and developers outside the townships and municipalities. The involvement of the Commissioner however, was based on requests by land owners, but there were no provisions that required them to make such requests. The statutory provisions in Section 24(1) allowed the Commissioner to use discretion in approving, and in establishing criteria and guidelines for subdivision planning within any Municipality or Township.¹²⁴

¹²³ The objectives of a Town Planning Scheme (TPS) are outlined in Section 3(1) of the *Town Planning Ordinance*, 1931. They are the improvement of, and the provision for proper development of land, aimed at securing the advantage of public and private developments.

¹²⁴ Section 24(2) indicates the areas in which the Commissioner could use discretion to deny or approve selected aspects of a proposed plan or the whole plan.

The concentration of planning authority in the Commissioner of Lands was contested in the *Memorandum on the Town Planning and Development Ordinance* (MTPDO), 1931. The memorandum interpreted the provisions of *Town Planning Ordinance* and clarified the role of the Commissioner. MTPDO supported the principles and the contents of planning schemes, but questioned the role of the Commissioner of Lands as the executive authority in the preparation and approval of plans. Section 12 of the memorandum suggested the replacement of the Commissioner of Lands with the Commissioner of Local Government. However, the TPO was not amended but was gazetted as the *Town Planning Act* (TPA) of 1931, chapter 134 of laws of Kenya.

6.4.2 Existing Statutory Planning Provisions

The introduced ordinances on planning were adopted through the *Kenya Subsidiary Legislation* (KSL) of 1961. The ordinances appear now in the existing Kenyan laws and are called Acts as they were legislated by the parliament after independence in 1963. The provisions in the ordinances (Acts) continues to be the basis for the administration of public policy, including the planning and development of land in urban areas.¹²⁵

The *Crown Lands Ordinance* of 1902 which had been repealed by *Crown Lands Ordinance*, 1915, became the *Government Lands Act* (GLA), 1970. Section 9 of the Act allows the Commissioner of Lands to use discretion related to subdivision of government land. By the provisions contained in the section, the Commissioner would allocate the plots and determine the development conditions to be followed. Under Section 11 of the Act, the Commissioner determines the land rent and charge of the lease. Even Section 20 of the Crown Land Ordinance, which had been used to issue Temporary Occupation

¹²⁵ J. P. W. B. McAuslan (1966) and T. Jackson (1988:252-256).

License (TOL) on alienated land to the Africans is retained in the Act.¹²⁶ At the present time, the provision is used to issue TOLs to some squatters in urban areas, and thereby, it continues to encourage and facilitate unplanned urban development.

The *Native Lands Trust Ordinance* (NLTO) of 1938 which was used to alienate and proclaim areas where the Africans lived as reserves between 1910 and 1940, was changed into the *Trust Land Act* (TLA), 1962.¹²⁷ Any unoccupied land in the former reserves was placed under the local councils in trust for the local people. At the same time, Section 5 of the Act gives the Commissioner of Lands the administrative and planning authority as an agent of the councils.

By *Land Control Act* (LCA) of 1981, the government continue to influence the development of land at two levels. First, through the provincial land appeal boards (PLAB) which are appointed by the Minister of Lands as provided for in Sections 10 and 11.¹²⁸ By Section 11(2), the boards rely on the information from the Division Land Control Boards (DLCB), in making decision in the appeal cases. Those decisions are administrative, and therefore discretionary. There are no established set of criteria to be followed in making the decisions.

The second level in which the LCA continues to exert influence on the way land is developed is through the Central Land Appeal Board (CLAB).¹²⁹ CLAB is a body

¹²⁶ According to Section 40 of the *Government Lands Act*, Temporary Occupation Licenses can be issued to the people who occupy and or conduct business in unauthorized development on government land. The Temporary Occupation License expire after one year and those occupying the land will have to pay a fee before the license can be renewed.

¹²⁷ P. L. Onalo 1(986:42) and T. Jackson (1988:239-242).

¹²⁸ The Provincial Land Appeal Boards are non-judicial appeal bodies for the decisions made by the Division Land Control Boards (DLCB) which are the lower level organizations for the control of land subdivision. The composition of the provincial boards in each of the eight provinces is 8-12 members including the Provincial Commissioners (PCs) as the chairmen. In considering appeals or complains made to the boards by land owners the boards have to deal with decisions made earlier by Division Land Control Boards based on the provisions of the customary law such as determining legitimate persons in inheritance and consent by members of the family on proposed subdivision.

¹²⁹ Members of Central Land Appeal Board include Ministers of Lands, Economic Planning, Agriculture, Home Affairs, Cooperative Development, Social Services, and the Attorney General. By Section 13(1) of *Land Control Act*, the Commissioner of Lands is the secretary to the Central Land Appeal Board.

which operate from Nairobi. Whenever necessary, members of the CLAB travel to the provinces so as to hear appeals and make decisions. Like the PLCBs, CLAB is also a non-judicial body and relies on the administrative authority and some discretion to decide on the appeals. By Sections 13(1) of the Act, CLAB is the final authority on land appeal cases.¹³⁰ According to the provisions of Section 13(2), the board could make final decisions on appeals at its discretion and the decisions could not be questioned in any court of law in Kenya.

The *Land Acquisition Act* (LAA), assists in the compulsory acquisition of private land. The statutory provisions of the Act are parliamentary interpretation of Section 75(1) of the constitution and enables the compulsory acquisition of lands and other interests in private property. In the constitution, public health, town and country planning, development or use of acquired land with a view to promote public benefit are cited as reasons that could lead to compulsory acquisition. This constitutional provision is translated into Section 6 of Land Acquisition Act for operational purposes.

The authority for compulsory acquisition is exercised by the Commissioner of Lands under Sections 4 and 5, and Sections 8, 9 and 10 deals with the procedure for the prompt compensation. According to Sections 28 and 29 owners of land that is acquired could appeal to the courts on issues related to the nature of interests/rights, extent of interests and amount of compensation. Any appeals that question the reasons for acquisition will not be heard in courts.

The *Public Health Act* (PHA), 1972, is the existing version of the *Public Health (Division of Lands) Ordinance* (PHDLO), 1928. Section 126 of the PHA contains the important provisions for land use planning. The Section 126A requires that the Minister for Health and the Minister for Local Government consult each other in the making of

¹³⁰ Appeals must be forwarded to the board within 30 days after the decisions being appealed against were made by the provisional land control appeal boards.

bylaws which are used in the approval of the building plans. Also, the Ministers are required by Section 126B, to consult with each other when planning requirements have to be changed in the bylaws. Finally, Section 126C describes the guidelines for the approval or rejection of the building plan proposals. The planning provisions in the Act therefore are concerned with the implementation of building plans to ensure compliance with the public health standards. The two ministers discharge their planning responsibilities from Nairobi and they are not involved in the day-to-day implementation of the plans which are left to the Public Health Officers in the districts and officials of local authorities.

The *Housing Act* of 1972, serve to strengthen the powers of the National Housing Corporation which took over the functions of the Central Housing Board in 1967.¹³¹ Section 19 of the Act allows the Minister for Local Government to be less stringent in plan approval and land development requirements wherever the plans proposed by the corporation contravene the bylaws of the local authorities. Thus, the provisions in the section of the Act contradicts the *Local Government Act* (LGA), 1968.

The *Local Government Act* (LGA), 1968, is the existing version of the *Municipalities Ordinance*, 1928. The Act contains the statutory provisions dealing with the planning responsibilities and functions of the local authorities. Section 159 of the Act allows the County Councils to control land development in the rural areas. That control is intended to restrict encroachment of urban development into the agricultural land. Planning provisions in Section 166 of the Act are the most explicit on the role of local authorities. The section requires the Municipal, Town, Urban, and County Councils to plan for the open spaces and buildings in the interest of the local people:

Every Municipal Council, County Council or Town Council may, subject to any written law relating thereto prohibit and control the development and use of land and buildings in the interest of the proper and orderly

¹³¹ See Bloomberg and Abrans (1965).

development of its area (*Local Government Act*, LGA, Section 166).

In order to promote these goals, Section 201 makes provision for the council to make bylaws that would make them more effective in planning needs. Also, by Section 210, the councils could adopt the bylaws in the existing *Local Government (Adoptive) Bylaws* (LGABs), 1968, that are relevant in local planning. The adoptive bylaws contain the standards which must be followed by land owners and developers in site plans and during construction.¹³²

The *Land Planning Act* (LPA) of 1970 is the most influential planning legislation in Kenya.¹³³ Sections 4 and 5 allow for the establishment of planning authorities. The idea of a local planning authority in the Act conforms to the planning responsibility of the municipalities, county and town councils outlined in Section 166 of the *Local Government Act*. However, the appointment of an Interim Planning Authority (IPA) and a Preparatory Authority (PA) are provided for in Sections 4 and 5 of the Act, without making reference to the provisions in Section 166 of the *Local Government Act*.

By the *Land Planning Act*, the Minister in charge of planning can appoint the IPA to replace the planning functions of a local government in whole or in part. The IPA is appointed if the Minister should have evidence of existence of an approved plan for the area. The local planning authority to be replaced by the appointed IPA should have taken part in the preparation of the plan in consultation with the Minister. IPA is a plan implementation agency, but there are no provisions in the Act for the period it can remain

¹³² These standards are controversial partly because approval of building plans is based on British Standards and Code of Practice as in Sections 2, 25, 31 32(4), 35 and 51(1) which deal with a wide range of aspects of land developments such as use of permanent building materials such as concrete, dimensions of spaces and structures of buildings, accessibility and size of plots. Because these standards imply costs which some land owners and developers may not afford, it seems that many of them would rather not use them as basis of land development.

¹³³ The Act was originally in the form of land use regulatory rules in 1961, called, *The Use of Land (Planning) Regulations* (ULPR), 1961. The regulations were changed in 1968 by the parliament into *Land Planning Act*.

the local planning authority. Therefore, an IPA can operate as long as the Minister wants.

Section 2 of the *Town Planning Act* (TPO), 1931, defines a preparatory authority (PA) as a council or municipal board. Preparatory authorities could be responsible for planning in the local authority areas established under the *Municipal Ordinance* of 1928, where IPAs are not appointed. However, the authorities would not extend their planning activities outside the gazetted municipalities. Both the *Town Planning Act* (TPA) of 1931 and the *Land Planning Act* (LPA) of 1970 merely outline the planning responsibilities of a preparatory authority and, not its composition.

Sections 11 and 16 of LPA supports for the creation of a Central Authority (CA) which is a planning authority for the entire country. Under Section 11(1) and 16(1), the authority approves land use and building plans for areas that are not covered by an interim planning authority.¹³⁴ The planning functions of the Central Authority, covers both the rural and urban areas. According to the two Statutory Acts, planning functions of the preparatory authorities cover urban areas only and as a result, the planning mandates of the two authorities are the same in urban areas.

The Central Authority relies on decisions made and communicated from the Division Land Control Boards (discussed earlier) in dealing with the issues of subdivision planning and approval of the plans in agricultural land outside the gazetted urban areas. Also, the authority relies on Section 3(a) and 3(b) of the *Land Planning Act* which classify building and infrastructure into class A development, and subdivision planning and alteration of existing buildings into class B development.

¹³⁴ A local council, the central authority, and a preparatory authority have planning mandates in urban areas where an interim planning authority is not appointed. However, provisions in the *Land Planning Act* of 1970 do not explain the relationship between them. On membership of the three planning authorities, Section 6 of the *Land Planning Act* states that the central authority has membership of six government officers. The officers represent the Ministers of Economic planning, Agriculture, Health, Local Government, Town Planning Advisor (who is the Director of Physical Planning) and, the Commissioner of Lands as the Chairman. On the other hand there can be as many preparatory authorities as there are local councils.

Section 15(1) of the Act requires that the planning activities of the central and the interim authorities should follow the plans approved by the Minister in charge of planning. Private land owners are left to make their own choices as to which of the many planning authorities they would like to submit their planning proposals and most of them end up choosing neither. For those who submit the proposals to an authority and if they are rejected, Section 21(1) provides the opportunity to appeal to the Minister within 30 days. Section 21(2) gives the Minister power to dismiss or approve the plan with conditions to be fulfilled by the developer. At the same time, plans approved by the Commissioner of Lands under the *Town Planning Act, 1931*, have the legal binding as if they were approved by the Minister. Therefore land owners could appeal to the Commissioner, instead of the Minister.

6.5 Heritage of Customary Law

Customary law in Kenya covers matters that include:

..land held under customary tenure, marriage, divorce, dowry, maintenance, matters affecting status of individuals in society, succession, claims in contract and tort (Jackson, 1988:21).

The law applies under three conditions. First, when the provisions of the law apply to one of those to be affected by decisions made under the law. Second, if the law is consistent with justice and morality in situations where decisions based on common law and made in statutory court system apply in Kenya.¹³⁵ And third, in situations where ethnicity is not an important factor for the people concerned.

The law is applied in "court situations" by elders' courts. The courts are similar to the indigenous community court systems such as the *Kiama* of the Kikuyu, the *Nzama* of the Kamba, the *Nchuri ncheke* of the Meru, the *Owaluyale* of the Luhya, the *Kokwet* of

¹³⁵ T. Jackson (1988:22).

the Kipsigis and the *Ruoth* of the Luo.¹³⁶ The indigenous court systems were adopted and applied in the formal government organizations .

In the earliest stage, the East African Order-in-Council of 1897 established the African courts and placed them under the judicial authority of the local elders.¹³⁷ The courts administered customary law without interference from the newly introduced English court system. Later, the *Village Headman Ordinance* (VHO), 1902, placed community courts under one Headman.¹³⁸

The *Village Headman Ordinance* was repealed, and in its place, the *Native Local Authority Ordinance* (NLAO) of 1912 was introduced. In that ordinance, provisions for planning and land allocation in the African areas were included.¹³⁹ In the provisions, functions of planning and land allocation in the ordinance were restricted to those intended for community. The *Native Authority (Amendment) Ordinance* (NAAO) of 1924 replaced the 1912 ordinance. The repeal resulted to the formation of the *Local Native Councils* (LNCs) in 1924. The new councils were expected to strengthen planning functions in the context of local institutions and customary law. The regulation of the use of land, public health, water supplies, planning for the market places and the collection of taxes were considered important functions of the LNCs. In performing their duties, the councils relied on the provisions of the customary law of the communities within which they performed those planning functions.

In 1946 the *Local Government (African District Councils) Ordinance* (LGADCO) of 1946 replaced the *Native Authority (Amendment) Ordinance*. The African District Councils were organized so as to operate under the English statutory law. However, even

¹³⁶ Membership in the courts was made up of a council of elders. The elders were responsible for the interpretation and administration of the provisions of the customary law. Also, they advised on specific matters relating to land among other social issues in their communities.

¹³⁷ S. K. Akivaga *et al* (1988:15).

¹³⁸ The aim of establishing the courts under a Headman was to supervise the collection of taxes, maintain the roads and arbitration in the minor cases which include those that relate to land use development .

¹³⁹ S.K. Akivaga *et al* (1988:16-17).

under that law, the District Councils relied on the customary law as basis of their organizational structure. The law was the basis also of the administrative procedures in the issues they dealt with on ownership rights and in the enforcement of land use/development requirements.

The African District Councils under LGADCO were merged with the local authorities in the European settlement areas in 1963. That merger led to the formation of the existing county councils under the *Local Government Act, 1968*.¹⁴⁰ At that time, substantive and procedural aspects of the customary law were excluded, while retaining, the concept of trust in customary law. The concept had been used before as the basis for the legislation in dealing with the planning and administration in African reserves which formed the trust land area after 1963.

6.6 Trust Land Laws and Planning

In the 1930s, the colonial government was keen to introduce land use planning instruments that were supported by indigenous laws and institutions. The new instruments were intended to be used in the development of areas where the Africans lived. They however, were not used and instead, the government adopted the concept of "trust" which was well entrenched within the African social organization. The concept was seen most effective in the support of and for legitimizing the authority of government within the African communities, and in the administration of justice. In that way, the formal land administration and planning institutions were introduced.¹⁴¹

¹⁴⁰ S.K. Akivaga *et al* (1988:21). In the process of this merger, aspects of the customary law were underplayed. At present time provision in the imported statutory law dominate in the *Local Government Act*. In fact the provisions relating to the planning and control of land development by the county councils, and also the other categories of local authorities is subject to other statutory provisions. Those subjective legislative clauses are administered by *other planning authorities* outside the framework of planning under the existing system of local government.

¹⁴¹ The concept of trust applies in situations where the principles and provisions in the African customary law are used to administer the land ownership right, and planning and development of land. "Trust" means to give authority to an individual, or to an organized group of people to be the custodians (trustees),

Thus, the *Native Lands Trust Ordinance* (NLTO) of 1930 was introduced in response to the demands for the return of the alienated land from Africans.¹⁴² The government and the formal court system were soon faced with the problem of applying the concept of trust in the social context. The problem arose when the courts interpreted the provisions in the NLTO whereby Africans in the reserves have had the absolute and perpetual land rights to the reserves, subject to alienation by the governor for public use. The institutional arrangements and planning authority provided in the ordinance created confusion on how those land rights and future land acquisition by the governor can be administered. The ordinance failed to establish the procedures for the simultaneous administration of the African land rights and land acquisition.

The Carter Land Commission in 1938 was given mandate to evaluate and make suggestions on how planning and development of land in the trust areas could be made more effective. Following the commission report, the 1930 ordinance was repealed and replaced with the *Native Trust Lands Ordinance* (NTLO) of 1939. The new ordinance identified the need for the establishment of a statutory planning authority in the trust land areas. The Native Lands Trust Boards (NLTB) were formed and took over the functions of planning. The boards were encouraged to use local customs and values as inputs in decision making. They were also expected to focus on the problems that were faced by the indigenous developers.

The planning mechanisms that were used by the Native Land Trust Boards were becoming ineffective due to the growing population pressure on land in the 1950s. The

and within limits of that authority to determine policy (and at times the organizational mandates) and to make decisions about planning, administration and development of the land. The idea of trust provide also for the utilization, the control, the occupation, inheritance, succession and disposal of land by the authority in whose trust the land would be placed. That safeguards ownership in the future at the levels of the individual, the families or groups.

¹⁴² Legislation of trust laws were introduced in 1930s to facilitate use of customary laws in the administration, planning and development of land by the local, and later, the central government.

Native Land Tenure Rules (NLTR) of 1956, were introduced to replace the *Native Trust Land Ordinance*, 1939. NLTR contained a more detailed legal part of the African customary law and covered subdivision planning and soil conservation practices. The Native Trust Land Boards were reorganized into judicial-cum-administrative elders courts and were retained as the planning authorities. From then on, individual ownership rights to the land will prevail in disputes within the trust land areas. This was a significant departure in the administration of land ownership.

In 1959 the *Native Lands Registration Ordinance* (NLRO), 1959, and the *Land Registration (Special Areas) Ordinance* (LRSAO), 1959, were introduced. The two ordinances served as the basis for the integration of land ownership claims under the customary law, with the claims under English common law. The new integrated land ownership rights were placed under the *Registered Land Act* (RLA), 1977.

The concept of trust in African customary law continued to influence the planning, ownership and the use of land. It was used in the *Trust Land Act* (TLA), 1962, and land that was not registered as private was placed under the county, urban, town, municipal and city councils.

There are contradictions in the *Trust Land Act* as the provisions in Section 53 of the Act transferred both the administrative and planning authority in the trust land areas to the Commissioner of Lands. At the same time Sections 10 and 11 allowed the District Commissioners to initiate subdivision planning and allocate trust land for grazing animals, and for settling people. Both the Commissioners of Lands, and the District Commissioners rely on the administrative authority and not judicial or local authority to discharge their functions. They consult with the local African Advisory Committees (AAC) if they so desire. The organization of AACs is similar to that of the elder courts, the only difference being the dissolution of elders courts each time they discharge their duties.

The concept of trust was also retained in the *Mazrui Lands Trust Act (MLTA)* of 1931 which makes provision for the establishment of two land boards. The first board consist of appointed government officers and elders and will administer the Mazrui land in trust for the owners.¹⁴³ Under the Sections 3(1) and 6(1) the officers and the elders are the planning authority of Mazrui land they rely on the African and Islamic customs, including those on inheritance. All members in the second board are to be members of the Mazrui family and procedures used by the board in making decisions on subdivision proposals follow the customs of the family.¹⁴⁴

Another statutory law where the concept of trust was retained is in the *Land Control Act (LCA)*, 1981. The legislative provisions are used by the Division Land Control Boards (DLCB).¹⁴⁵ The boards are non-judicial and they rely on the principles of trust in their planning functions. Section 1 of the schedule in the Act sets the criteria for membership in the boards to include the District Commissioners as chairmen or a representative (usually the Division Officers), two representatives of the local county council and a maximum of seven people who are well versed in the (local) customary land law. The seven members advise the District Commissioners or/and the Division Officers on ownership history, family, clan, and the community rights.¹⁴⁶

In the *Magistrate's Jurisdiction (Amendment) Act (MJAA)* of 1981, customary law is incorporated in the planning and development of land. The act allows the seven

¹⁴³ Legislative provisions in the Act are used in transactions and development of land occupied by members of the Mazrui family and Shakh'si followers of Salim bin Khamis who live at coastal region of Kenya.

¹⁴⁴ Most of these customs are based on the religious doctrines. They are in the existing *Law of Succession Act (LSA)* chapter 160 of the Laws of Kenya. Section 5(1) of the Act makes provision for the consideration of either, the secular or religious law in decisions on property succession (See Jackson, 1988:328-329).

¹⁴⁵ The principles of customary law apply in the *Land Control Act* and are used at the local level to control transactions and subdivision of the agricultural land in situations involving transmission on death either by written will, intestacy or unwritten will.

¹⁴⁶ The functions of the board are restricted to administer transactions and approve subdivision of agricultural land. According to Section 2 of the *Land Control Act*, agricultural land is the land outside gazetted Market Centres, Townships and Municipalities. Also, it includes land within Nairobi and Mombasa that could be gazetted into that category by the Minister of Lands.

elder-members of the Division Land Control Boards to form the elders courts. The elders courts are supposed to strengthen the role of the boards by serving as the forum where independent opinion could be sought on land disputes related to subdivision and sale. The use of customary law was thus retained in land use planning and development. The discussion so far helps to clarify on the principles of the concept of trust in the context of the indigenous political economy and planning.

6.7 Existing Jurisdictional Organization For Urban Planning and Management

From the foregoing review and analysis of the planning law, two levels of organization can be identified in the area of planning and management. These are the organization at the central government and the local authorities level both of which are covered by the provisions of the existing planning law (Figure 6.1).¹⁴⁷

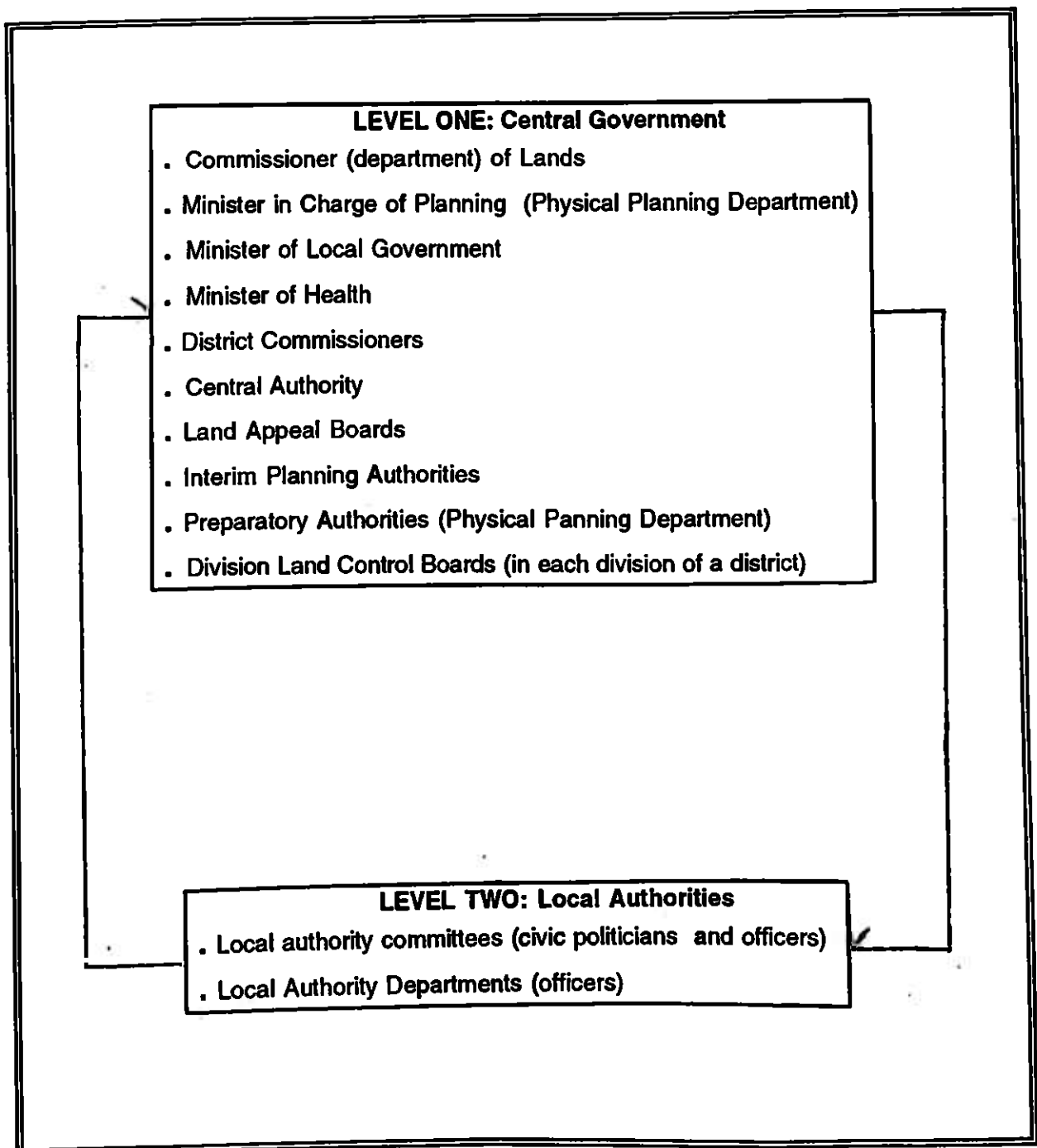
LEVEL ONE: Central Government: Organization of planning and management in this level are based on both the policy and the administrative mandates. The mandates are not defined in terms of a jurisdiction, a geographical area or a resident population. The Commissioner of Lands, the Minister of Local Government, the District Commissioners and district development committees, the Physical Planning Department, and the Minister in charge of planning are the major actors at this level.

The Commissioner of Lands acts on behalf of the President, who in turn, acts as the *eminent domain* which means that all land is held at the pleasure of the president. Section 6(1) of the *Land Acquisition Act (LAA)*, 1970, allows for compulsory acquisition of a specific parcel of land based on the idea of public good. Further, through the Section 8A(1) of the *Government Lands Act* of 1984, compulsory acquisition is possible. The

¹⁴⁷ The National Environment Secretariat (NES) which play a technical and professional role on environment at the national level is one of the organizations dealing with planning. The existing legislation does not provide for any role by the secretariat in urban planning.

Commissioner of Lands is an organizational entity and has the authority to plan, allocate and enforce land development requirements, authorize compulsory acquisition, and administer trust land.

Figure 6.1: Existing jurisdictional organization for urban planning and management



The District Commissioners are the executive officers in the districts and there are forty seven district committees that are responsible for planning in the forty seven districts. Implementation of the projects and programmes is expected to follow the guidelines outlined in the respective district plans and the five year national development plan. It is interesting to note that within the existing planning legislation there are no provisions for the involvement of the District Commissioners and the committees in the context of district planning.

The Physical Planning Department is a preparatory authority for plans that are approved by the Commissioner of Lands. The Department's role is advisory and is intended to give the professional support of the planning authority to the Commissioner. At the same time Section 3(d)(ii) of the *Land Planning Act* of 1970 gives the Minister in charge of planning the responsibility for physical planning.

Organizational problems at that level prevents the Minister from exercising planning authority under Section 29 of the Act. The section empowers the Minister to ensure that planning authorities implement urban plans according to the provisions in the Act. Furthermore, by Section 4(1), the Minister has the power to create planning areas, and to regulate planning functions of the Interim Planning Authorities and the Central Authority under Section 33(1), and those of the Division Land Control Boards under Section 33(4).

LEVEL TWO: Local Authorities: As provided for by Sections 5, 6, 11 and 12 of the *Local Government Act*, 1968, new local authorities can be created, and the existing ones upgraded by the Minister of Local Government. Planning and management by the local authorities are organized around a system of committees and Section 91 of the *Local Government Act* caters for the creation of the committees. A committee is responsible for

the formulation of sectoral policies of the local authorities. At the committee meetings, civic politicians and professional officers discuss and approve the local policies and the required resources for implementation. The officers advise on the technical, administrative and legal implications of the policies adopted by the civic politicians. The number of committees vary depending on the range of the broad policy areas of concern within a particular local authority. Also, the committees vary and they reflect professional departments in the organization of each level of local authorities.

The responsibilities of local authorities include the provision of services such as water, sanitation, roads, health, education and community markets. In addition, the local authorities fix the rates and collect and manage the taxes and subsidies received from the central government. By the provisions in Section 2 of the *Local Authorities Service Charge Act (LASCA)* of 1990, the authorities collect a fraction of monthly income from all employees in the formal sector, including the industries and commercial companies located within their jurisdictions.

Finally, the local authorities are responsible for the planning and management of land development within their jurisdictions. This responsibility includes, the siting and control of patterns of urban land development. Such responsibility for controlling land use planning would make the local authorities more effective organizations in local planning. In particular, they would be more effective in the implementation of local programmes on economic and community development, and in the management of the urban environment.

6.8 A Model of Planning Law in Kenya

The three sources of legal heritage, common law, statutory law, and customary law, are used separately and in combination to legitimize the economic policies and existing styles for managing the urban environment. The provisions of the statutory law are the most influential and therefore the most dominant legal instrument which favours

the central government organization as a planning authority.

The heritage of statutory law preserves, and at the same time perpetuates two major features in the provisions of the existing planning legislation. The first feature is the ordinances/acts which specify the kind of planning authority for the various organizations in the central government. Those organizations use the provisions in the ordinances/acts and at the same time use wide discretionary powers in making decisions. The legislation enables a group of central government officials to be involved in the day-to-day planning and even at the very local level. The officials do not perceive local planning problems, nor are they effective in planning. Those aspects of the legislation satisfies the central government because of the symbolic involvement of the government in local planning and implementation. The second feature is the provisions in the *Local Government Act* which stipulate that local level planning should be carried out by the local authorities. These two features in the provisions of the existing legislation makes the planning functions of the local authorities ineffective.

The two features in the provisions of the law are reflected also in the proliferation of legislation and they have created a division resulting to two kinds of local planning authorities. The existence of the two kinds of planning authorities could be the cause of ineffective planning because it has created perpetual conflict in jurisdictional planning between agents of the government and the local authorities. Administrative discretion employed by the organizations at the central government level helps to assert the planning authority of the government at that level. Especially, the discretion strengthens the power of the Commissioner of Lands, and allows District Commissioners (and committees) to exercise more influence on planning for the land resources both at the community level and in the urban regions. The heritage of statutory law did not include provisions to establish the Physical Planning Department, and for linking urban land use planning, local economic development and the management of urban environment.

The provisions of the common law heritage in the *Law of Contract Act* and *Registered Land Act* are exploited by land buying companies, cooperative societies and individual private land owners and developers. They operate outside government planning control without the expected intervention by the provisions of the statutory law.

Planning outside of public control also relies on the African customary laws. The law is used in the context of social-legal conception of land ownership, use/development and administration. The concept of trust is retained in the law, and that way, ownership of land is continually implied in the law but not absolute. The customary law practices were extended to other legislation such as the *Trust Land Act*, the *Land Control Act* and the *Mazrui Lands Trust Act*. The law is also applied extensively in non-legislated forms in the freehold and squatter settlement areas. The on-going purchase of land by urban households at the peri-urban areas in small plots has a long history. The transactions are influenced by the cultural determinism of the indigenous social and economic organizations that flourished under the customary land law. Subdivision of land, followed by acquisition either by inheritance or purchase facilitated the transactions.

Thus, Kenya's model of planning law has three components which are the common, statutory and customary laws. The three kinds of law have had disproportionate influence in the legal system. The heritage of common and statutory laws caters for the formal public and private land owners in land development. However the acts are not effective because of the ambiguity in the authority for local planning, and therefore the conflict they create between organizations. The heritage of customary law also caters for both public and private land owners. But in the private sector, the law is used in informal planning and development situations. A summary of the characteristics of planning law in Kenya is presented in Table 6.1, and a model is illustrated in Figure 6.2.

Table 6.1: Summary of the Characteristics of planning law

HERITAGE OF LAW	MAJOR CONTRIBUTION	IMPLICATIONS FOR LAND USE PLANNING	COMMENTS
Common Law	<ul style="list-style-type: none"> •Allows freedom of land ownership, use and disposal through private initiatives. 	<ul style="list-style-type: none"> •Disregard intervention in planning. •Many land owners are able to develop land outside provisions of existing planning law. 	<ul style="list-style-type: none"> •Planning law provisions should incorporate land development activities of the private developers in into public policy.
Statutory Law	<ul style="list-style-type: none"> •Creates and places planning responsibility on the central government. •The responsibilities are not discharged effectively but they satisfy legitimacy of the government's involvement in local planning. •Planning applies to the government and trust land. 	<ul style="list-style-type: none"> •Create many conflicting organizations for planning. •Result in weak local authorities. •Does not cater for community participation. 	<ul style="list-style-type: none"> •The many organizations, weak local authorities and non-participation of local communities in planning need streamlining.
Customary Law	<ul style="list-style-type: none"> •Continues to allow subdivision of land for purposes such as inheritance even when resulting units could not be economical. •Concept of trust in customary law was incorporated into statutory provisions . •Applied in local situations but not consistently. 	<ul style="list-style-type: none"> •Only some aspects of the law apply and does lead to discontinuities in the use of law. •Management aspects in the law are not implemented in private land areas (company and cooperative societies), which could imply inadequacies in the law in terms of long term planning. 	<ul style="list-style-type: none"> •Need wider application as a way of developing the relevant provisions of planning in conjunction with the other legal heritage. •The law can be more effective in local planning and organization.
The Legal heritage	<ul style="list-style-type: none"> •Philosophies of the three heritage of laws support some form of planning. •The provisions tend to be applied in different areas of land ownership. 	<ul style="list-style-type: none"> •Disorganization in urban planning policy and practice. •Continued conflict, confusion and disregard of local economy and environment. 	<ul style="list-style-type: none"> •Aspects of statutory and customary law that allows positive activities by intervention in the private sector need further exploration and application.

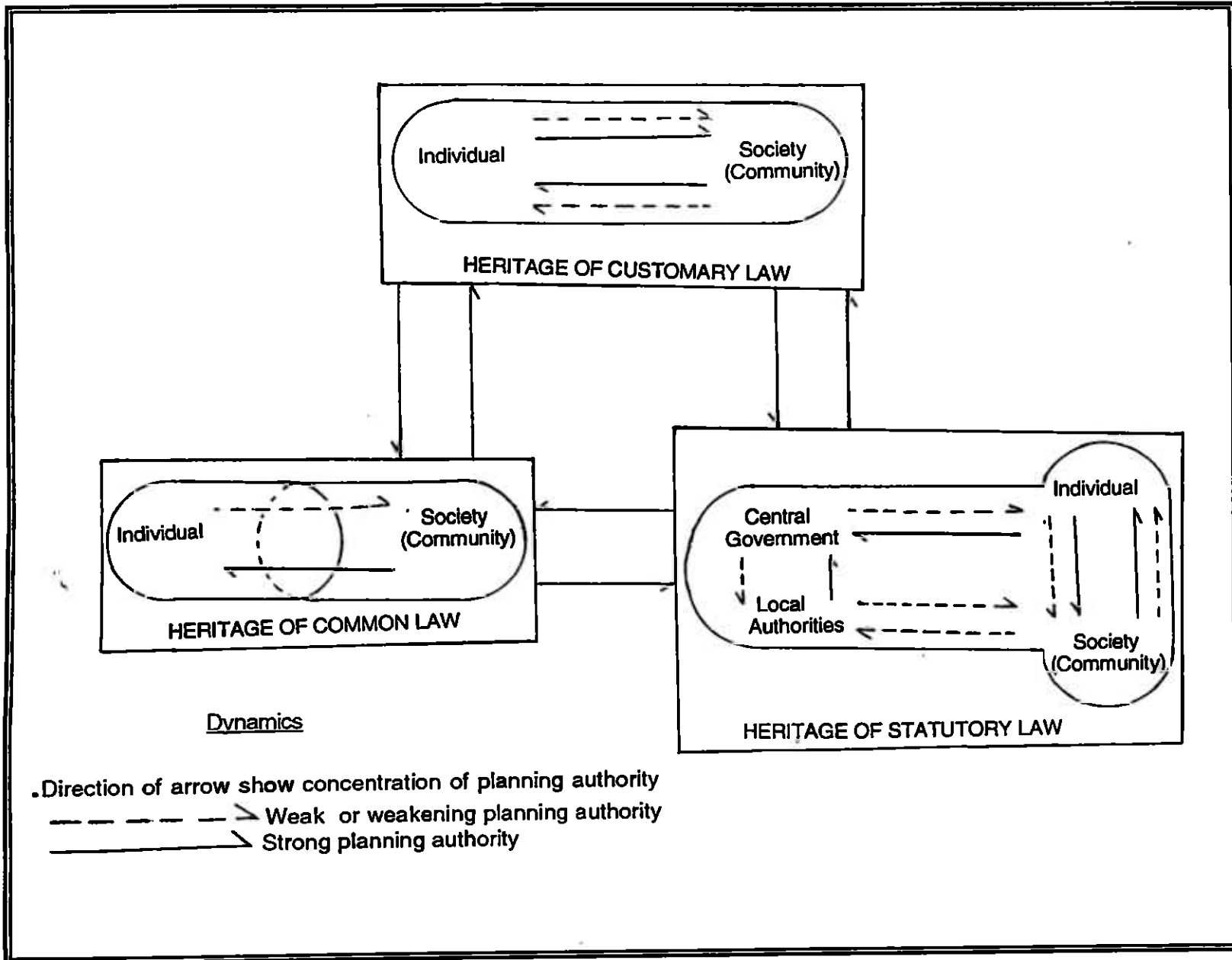


Figure 6.2: The existing model of planning law in Kenya

CHAPTER 7

URBAN LAND USE PLANNING, DEVELOPMENT AND MANAGEMENT

7.0 Introduction

This analysis of data from the field is presented in two major sections. Section I deals with the data that were collected from officials of the Department of Lands (under the Commissioner of Lands), the Physical Planning Department, land buying companies and cooperative societies, Kenya Power and Lighting Company (KPLC), Kenya Post and Telecommunications Corporation (KPTC); and Nairobi, Kikuyu, Ruiru, and Olkejuado local authorities. The Department of Lands is in the Ministry of Lands, Housing and Urban Development. The head of the department is the Commissioner of Lands whose role together with that of the Physical Planning Department have been described in Chapter Four. The role of Kenya Power and Lighting Company and the Kenya Posts and Telecommunications, and each of the companies and cooperative societies (in urban land development) will be mentioned at the respective sections where data about them are analysed in Section I. Section II deals with analysis of data that were collected from the households in the sample areas and from the Land Registry at the Department of Lands.

SECTION I: Role of Organizations

In this section, data were collected from the officials of the organizations through interviews based on a questionnaire and open discussions. Questionnaires were administered to one official from each of the twelve organizations, but the open discussions were held with a group of officials (including the respondents) of each

organization.¹⁴⁸

7.1 Planning and Management of Government and Trust Land by the Department of Lands and Physical Planning Department

Table 7.1 summarises the planning role of the Department of Lands and the Physical Planning Department in urban land development.

Table 7.1: Role of Department of Lands (DL) and Physical Planning Department (PPD) in planning of urban land development

TYPE OF LAND OWNERSHIP	ALLOCATE LAND TO DEVELOPERS	FORMULATE AND PREPARE URBAN DEVELOPMENT PLAN	APPROVE URBAN LAND USE PLANS	APPROVE BUILDING PLANS	ADVICE ON PLANNING
TRUST	DL	DL, PPD	DL	n/a	PPD
GOVERNMENT	DL	DL, PPD	n/a	DL	PPD
COMPANY	n/a	n/a	DL	n/a	DL, PPD
COOPERATIVE	n/a	n/a	DL	n/a	PPD
INDIVIDUAL	DL	n/a	DL	n/a	DL, PPD

Note: n/a mean not applicable.

The Department of Lands deals more in the planning and allocation of government and trust land (Table 7.1) and is more involved in the approval of urban land use plans. Incidentally, the existing planning law establishes the planning authority of the Commissioner of Lands. The Land officers in the department take part in the approval of proposed building plans that are implemented on the two types of land ownership. The officers also deal with the land that is owned by the companies, cooperative societies and individuals. Division Land Control Boards give initial approval and pass them on to the

¹⁴⁸ As mentioned in chapter two on methodology, the discussions served to introduce the officials to the nature of research so that it was possible for them to give general information about activities of their organizations and areas of concern. A group of three officials from each of the organizations (except the Kenya Power and Lighting Company and the Kenya Post and Telecommunications Corporation where only two officials took part in the discussions in each case) participated in the discussions..

officers whose work is confined to the approval of proposals for change of use, subdivision of registered land for purposes of transfer and registration involving more than one ownership. None of these officers is responsible for what happens during development of the land.

The Physical Planning Department merely supports planning activities of the Department of Lands (Table 7.1). Planners in the department prepare subdivision plans for the development of government and trust land and advise on planning. The *Land Planning Act* provides for membership of the Director of Physical Planning on the Central Authority. The extent to which the planners are effective in their advisory role depends on whether the Commissioner of Lands and other officers seek advice, and in fact whether they make use of the advice.

The two departments interact in the preparation of plans for development of government and trust land. Officers and planners from the two departments advise individual developers on subdivision planning (Table 7.2), but the developers rarely consult the officers and planners during their land development activities once the plans are approved.

Table 7.2: Department of Lands (DL) and Physical Planning Department (PPD) Involvement in the implementation of urban development plans

TYPE OF LAND OWNERSHIP	FINANCE DEVELOPMENT (development funded)	ENFORCE PLANNING REGULATIONS	ADVISE DEVELOPERS
TRUST	n/a	DL	PPD
GOVERNMENT	n/a	DL	PPD
COMPANY	n/a	DL	PPD
COOPERATIVE	n/a	DL	PPD
INDIVIDUAL	n/a	DL	DL, PPD

Note: n/a mean not applicable.

As shown in the table, planners in the Physical Planning Department advise companies

and cooperatives, the Commissioner of Lands and the land officers under him. The two Departments have no funding role and they do not implement development of their own on government, trust, company, cooperative or individually owned land. Officers of the Department of Lands continue to focus on the enforcement of planning regulations in plan implementation. Although the Commissioner (department) of Lands is not responsible for implementation of plans, existing planning legislation contains provisions which give the Commissioner power to enforce the regulations.

The role of the Physical Planning Department in implementation of plans on the other hand is limited to advising private developers (Table 7.3).

Table 7.3: Management of urban land development by Department of Lands (DL) and Physical Planning Department (PPD)

AREA OF MANAGEMENT ACTIVITY	FORMULATE POLICY	FACILITATE FINANCING	PREPARE PROGRAMME /PROJECT	GIVE ADVICE
ZONING	PPD	n/a	n/a	PPD
WASTE COLLECTION/ DISPOSAL	n/a	n/a	n/a	PPD
INDUSTRIAL LAND DEVELOPMENT	DL, PPD	DL*	DL*	PPD
HOUSING DEVELOPMENT	DL	n/a	DL*	PPD, DL*
LAND FOR COMMUNITY SERVICES	DL	DL	DL*	PPD, DL
ENVIRONMENTALLY SENSITIVE AREAS	DL	n/a	n/a	PPD, DL
BUSINESS, SMALL SCALE ENTERPRISES	n/a	n/a	n/a	PPD
URBAN TRANSPORTATION	DL*	n/a	DL	PPD, DL
OTHERS	DL -informal sector-	n/a	n/a	PPD

Note: Asterisk indicates that the extent to which the departments were involved in the activity could not be ascertained. The absence of an asterisk indicates that the departments were fully involved. n/a means not applicable.

Even in that role, planners are expected to work with the land officers. The developers

have no legal obligation to take the advice of the planners and land officers. This explains why the two departments are ineffective in urban land development, especially on private land. It is evident from the table that in practice the two departments confine their management activities to the formulation of policies and advising. They have no control in financing land development, or in the preparation of projects and programmes which can be the basis for effective management.

The two departments are involved in five areas: the formulation of policy on the development of industrial land, advice on the land requirements for urban transportation during subdivision planning, advice on housing development, advice on land development for community services, and advice on planning for environmentally sensitive areas (Table 7.3). The officers of the Department of Lands have a bigger role in policy areas of urban land management and this may be due to their part in land allocation. As can be expected, the officers leave out waste collection and issues of business licenses, but it is interesting to note that they are not involved in zoning. The merely advisory role of the planners in the Physical Planning Department in coordination of planning and management indicates that they have no direct control in urban land development.

The roles of the two departments in the coordination of planning and management are different. The Department of Lands attaches greater importance to subdivision planning and land allocation (Table 7.4), and this explains why land allocation is important to the Commissioner of Lands. The Physical Planning Department is involved in land allocation when dealing with the Department of Lands and most of its activities are confined to planning alone (Table 7.5).

Data in Tables 7.4 and 7.5 also show that planning by the two departments is confined to activities related to government and trust land subdivision planning and allocation. The use of discretionary powers by the officers in the Department of Lands in the approval of plans and allocation of land determines the location of development.

Except in the planning of the government and trust land where local authorities are consulted, efforts in coordination with other organizations show that the other agencies of the central government were the only ones that they dealt with.

Table 7.4: Departments/agencies and areas of coordination sought by the Department of Lands in Planning and management

DEPARTMENT/AGENCY	AREA OF COORDINATION
Physical planning Department	. Subdivision planning . Allocation of government land . Allocation of trust land
Department of Survey	. Survey of subdivision plans
District Lands Officers	. Subdivision planning . Allocation of government land . Allocation of trust land
Agricultural Officers	. Subdivision planning
Land Control Boards	. Subdivision planning
District Development Committee	. Subdivision planning . Allocation of government land . Allocation of trust land

Table 7.5: Departments/agencies and areas of coordination sought by the Physical Planning Department in planning and management

DEPARTMENT/AGENCY	AREA OF COORDINATION
Department of Lands	. subdivision planning . Allocation of government land . Allocation of trust land
Department of Survey	. Cadastral maps (for planning)
District Development Committees	. Planning (advice)
Local Authorities	. Planning of government land Planning of trust land
Kenya Bureau of Statistics	. Population data

Even in coordination with these agencies, the departments focus more on subdivision planning and land allocation. Presumably, coordination in subdivision and allocation is most important in the pursuit of goals in social and economic development, and

environmental management. But in practice, the departments are not effective in the enforcement of conditions the officers attach to approved plans although the existing legislation give them the authority to do so as indicated in legislation such as *Land Planning Act* and *Local Government Act*. It seems that the departments choose not to enforce such conditions although the law empower them to do so. Therefore, their involvement is symbolic rather than real, and is ineffective in managing the urban environment.

The media used in communication of planning matters by the two departments to organizations, and citizens within Nairobi, Kikuyu, Ruiru and Olkejuado local authority areas are presented below in Table 7.6. Letters, notices and telephone messages are the most popular channels of communication to other organizations from the Department of Lands. In the Physical Planning Department, unscheduled meetings, letters and telephone messages are the most popular means of communication. These established formal channels of communication and information flow within government departments may not be the most effective means of communication to citizens because many of them are not available, especially by telephone. On the other hand, the Official Gazette is used to communicate to the resident communities in Nairobi, Kikuyu, Ruiru and Olkejuado local authorities decisions that are taken by the officers and the planners such as change in land uses (on specified government and trust land). The gazette is not accessible to a wide public reading because sale of the copies is only at the Government Printer in Nairobi. Furthermore, it is available only in the English language whereas more people, including those in the rural areas, communicate in the Swahili language, which they understand better than English.

Direct verbal discussions take place to clarify planning and land administrative decisions and policies to the developers and citizens who visit the land office in Nairobi. As a means of communication, it has limited use because only members of the public

who visit the land office and physical planning office can only benefit.

Table 7.6: Means of communicating planning decisions and policies by the Department of Lands (DL) and the Physical Planning department (PPD)

1. COMMUNICATION TO OTHER ORGANIZATIONS	
MEANS OF COMMUNICATION	DEPARTMENT
Unscheduled meetings	PPD
Special meetings	PPD
Letters/notices	PPD, DL
Others (name)	DL - Telephone
2. COMMUNICATION TO DEVELOPERS AND LOCAL CITIZENS	
Local Newspapers	n/a
Direct Verbal (conversation)	DL
Local Government Public Notices	n/a
Public meetings (<i>Barazas</i>)	n/a
Official Gazette	DL
Planning Journal/Newsletter	n/a
Others (name)	PPD - written plan proposal to Nairobi, Kikuyu, Ruiru and Olkejuado local authorities. DL - Verbal communication to those who come to land office for advice.

Note: Unscheduled meetings refer to meetings that are convened to discuss problems as they arise and not in the schedule of work.
n/a mean not applicable.

The officers and planners have different views about planning law. According to the officers in the Department of Lands, the law is weak in implementation of building plans. The officers felt that the law does not cater to their role in the implementation of plans. The existing legislation provides for the planning functions of the Commissioner as an individual and leaves out other land officers. Planners in the Physical Planning Department felt that the existing planning law did not evolve and develop in response to actual urban problems in Kenya. Instead, the law is dominated by imported legislation

which largely explains why the law is weak. Much of the weakness resulted in difficulties in the enforcement of the provisions of the law because of the ambiguities in the organizational structure, and authority in jurisdictional planning. The responses of the planners agree with the findings from the discussions on planning law in Chapter Six. However, the planners did not suggest why the ambiguities persist although the attempt to put forward a proposed bill on physical planning in 1987 for discussion and legislation by the parliament failed. It can only be speculated that the provisions in the proposed bill were not convincing enough for government and parliament to take action, and that the provisions in the existing planning law are viewed as adequate.¹⁴⁹

Those findings on the inadequacy of existing planning law in promoting planning are shown in Table 7.7. The table presents the suggested planning activities by both the officers and the planners that were promoted by provisions of the law, and those that were discouraged. The view of the land officers is that the provisions did not strengthen any of the planning organizations to the disadvantage of others, and only that the provisions discouraged most developers from submitting their proposals for approval. According to the planners, the provisions strengthen the planning authority of the Commissioner (department) of Lands, and the powers to approve building plans. Table 7.7 also show that according to the view of the planners, the provision in the existing legislation discourage effective approval of land use plans, allocation of public land, the management of the built environment, and planning of company and cooperative land.

On what could be done to improve the situation, the officers in the Department of Lands emphasised that there is potential for the role of African customary law and indigenous knowledge about development problems.¹⁵⁰ In their view, a cooperative

¹⁴⁹ Section 3 of the proposed bill suggested to repeal of the *Town Planning Act* and the *Land Use Planning Act*, and Section 6 suggested to recognize the Director of Physical Planning and the planners working under him as the physical planning agents.

¹⁵⁰ The potential for the application of the law in the country as a whole is in the context of principles rather than universal legal provisions. Specific provisions will have to vary from one area to another and

approach in the planning and development of community facilities and services is essential.

Table 7.7: Suggested Planning activities that are promoted, and those that are discouraged by the existing planning law

PLANNING ACTIVITY	OFFICIALS SUGGESTING THAT THE LAW PROMOTES PLANNING	OFFICIALS SUGGESTING THAT THE LAW DISCOURAGES PLANNING
Incentive for more developers to submit their plans for approval	n/a	Land Officers (DL)
Improving organization of identifiable planning authority/agency and increase effectiveness in planning	Planners (PPD)	Land Officers (DL)
Urban land use plan approval	n/a	Planners (PPD)
Building plan approval	Planners (PPD)	n/a
Administration and allocation of public land	n/a	Planners (PPD)
Management of built environment through zoning	n/a	Planners (PPD)
Planning of company and cooperative land	n/a	Planners (PPD)

Note: DL means Department of Lands and PPD means Physical Planning Department.
n/a means not applicable.

In this approach, the provisions of customary law can be part of the planning law and the role of planners in the planning process will be advisory. According to them, such an approach can improve communication, and therefore local planning.

The planners' view is that the law can be as effective in the approval of building plans, and in implementation only in situations where the local authorities are involved. They suggested that greater application of the customary law would strengthen the

experience in the application of the provisions can be the basis for further improvement in the law.

provisions of existing law. The source of some of the existing planning problems is that the gazette, letters, verbal and telephone communications are the only means that are used to communicate with land owners and developers. The problems could be minimized if planners have access to the local communities. Once the appropriate aspects of the customary law in planning were used to strengthen the process of building consensus, chances are that the planning services would be made more accessible.

7.2 Planning and Management of Land by Companies and Cooperative Societies: Langata and Zimmerman Companies; Alli Juja-Wendani and Mwana Mukia Societies

The locations of sites of the two land buying companies and cooperative societies are shown on Figure 2.1 in Chapter Two. Langata Development Company was formed in 1978 and owned 202.2 acres of land. A subdivision plan for the land was submitted and approved by the Commissioner of Lands and in 1983 the land was subdivided into plots of 60 by 40 feet and were then sold to 2402 buyers. Share certificates that would later become the basis of issuing the titles were given to the buyers by the management of the company. Zimmerman Land Company was formed in 1975 and had 400 acres of land which was subdivided in 1976, and the plots offered for sale in the open market without submitting the plan for approval.¹⁵¹ Accurate records on the sizes of plots were however not kept, although the estimated sizes by the local authority were in the range of 30 feet by 60 feet, to 80 feet by 100 feet. It was hoped that estimated size of plots indicated on the share certificates that were issued by the company to the buyers would also coincide with measurements that would appear on the approved plan and become the basis for survey. When the field research was carried out, survey work was still in progress. It was therefore not possible to check whether estimated plot sizes shown on the

¹⁵¹ The subdivision plan and plot ownership in Zimmerman were later approved by the Commissioner of Lands and the Nairobi local authority in 1991.

subdivision plan were within the range of the surveyed plots. In both companies the sale of land was followed by the development of plots depending on the financial ability and housing designs of the owners.

Alli Juja-Wendani cooperative society was formed in 1970 and bought 109 acres of land. The land was subdivided into 0.25 acre plots in 1987. They were then allocated to the 435 members after the plan was approved. Thereafter, the management committee of the cooperative society had no dealings with the members. Each member was left to develop the plot the way they want, similar to development in Zimmerman and Langata company areas.

Mwana Mukia society was formed in 1976. The cooperative bought 56 acres of land that was located at Gigiri in Nairobi. That site was later acquired and allocated for the siting of United Nations Regional offices in Nairobi. Following the acquisition of the original site, the members of the cooperative society who at the time of the field survey numbered 1000, purchased 83 acres of land at another site. The land at the new site was subdivided into 724 plots of 50 by 75 feet each, and allotted to members after the plan was approved. Some did not get the plots and the money was refunded. As was the case in Alli Juja-Wendani cooperative society and Zimmerman and Langata companies, land owners in Mwana Mukia were left to develop their plots.

In Langata Development, the officials of the company ensured that standard plot sizes were 60 by 40 feet and that land for community facilities was set aside. During the field survey it was confirmed that there were twenty one plots set aside for shopping and commercial buildings, a nursery school, a local health centre and a church. At the time, only the church was built at the site through a community self-help project programme and the other plots remained vacant. Subsequently, there was encroachment on the vacant lots with the development of surrounding private lots. In Zimmerman, Alli Juja-Wendani and Mwana Mukia, land for similar community facilities was not set aside.

Officials of Zimmerman Land Company cited the weak provisions in the existing planning law that have encouraged them to subdivide, sell and allocate plots to buyers without an approved plan. The officials in Langata Development, Alli Juja-Wendani and Mwana Mukia held the view that the weakness in the law was a result of lack of planning policies for the entire country.¹⁵² In the absence of such policies, there was no framework for planning authorities to enforce effective development control measures. The officials suggested that African customary law and indigenous knowledge about the environment could improve the planning law, especially, in the organization of local planning authorities. However, some customs, such as the extended family system were considered by the officials of Langata Development to have a negative effect because life styles in the urban areas favoured the unitary family structures.

In Alli Juja-Wendani and Mwana Mukia Cooperative societies, implementation of the community programmes and projects in water supply, market outlets and education attracted more attention from the societies' officials and according to them these were financed by the two cooperative societies.¹⁵³ During field survey, observations revealed that the programmes and projects were not in place. The officials of Mwana Mukia cooperative society claimed the cooperative society was involved in waste collection, the promotion of small businesses by developing a community policy and programme for implementation, and extension of advisory service to members. However, the field

¹⁵² By section 11(2) of *Land Planning Act* Interim Planning Authority (IPA) and the Central Authority (CA) should approve plans on private land development. As shown earlier in Chapters Four and Six IPA can only be appointed. The CA is an agency for the whole country and it relies on Division Land Control Boards for information to make its planning decisions. Similarly, it was seen that Section 24(1) of the Act requires that subdivision of land in any Municipality or Townships can be authorised only by the Commissioner of Lands but no provisions are made to guide private land owners and developers in the process. Finally, the *Land Control Act* deals with rural agricultural land. While Section 166 of the *Local Government Act* gives power to the local authorities to control development and use of land and buildings in their areas, the Act has no provisions that require that private land owners and developers submit their plans to them for approval. This legislative phenomenon is again noted in the *Government Lands Act*.

¹⁵³ The officials of the cooperative were more concerned with the facilities than officials of the companies because cooperative officials are members of the cooperative communities, unlike the officials of the companies.

observations indicated that those activities did not take place. The cooperative officials were concerned about waste collection and disposal and how members of their communities can access advisory services on operating small businesses. The officials of Mwana Mukia expressed the urgent need to improve roads, water supply, schools and provide a community health centre in the area.

The members of the companies and cooperative societies were left to develop their land without any form of guidance. In the absence of such guidance, planning and development of land lacked coordination. From the interviews and discussions with the officials it was clear that after approval of subdivision plans, effective communication between the cooperatives and the Commissioner of Lands or between the cooperatives and Ruiru local authority was not maintained. The Ruiru local authority was responsible for the coordination of land development in Langata Development company and in Alli Juja-Wendani and Mwana Mukia cooperative societies, but failed due to the lack of communication. Communication between the officials of the companies and the cooperative societies, and their members was also weak. There were *ad hoc* meetings that were convened when there were serious issues related to infrastructure for discussion. Often, they would not resolve the issues because development such as building of roads are beyond their capacity to finance.

The officials of the two cooperative societies considered the planning law weak because the provisions in the law were not helpful, especially in enforcing the conditions to be followed by the developers. Officials of Mwana Mukia suggested that weak local economic base created conditions which make the enforcement of law difficult. People did not believe that by adhering to the provisions of the existing law, there will be improvement in their social and material conditions. The officials of the two cooperative societies however had the convictions that organizations and leadership roles which were supported by customary laws and knowledge could improve the economic base.

7.3 Role of Service Corporations in Urban Land Development

7.3.1 Kenya Power and Lighting Company

The Kenya Power and Lighting Company is a public corporation responsible for the distribution (sale) of electricity generated at hydroelectric power stations, and the geothermal power station close to Lake Naivasha in the Rift Valley.¹⁵⁴ The company supplied electricity to consumers in both planned and unplanned areas. Housing schemes, industrial, institutional, and the large commercial developments constitute the greater portion of the planned developments. Those schemes are undertaken by the central government departments or its agencies, and private developers. Most of the schemes undertaken by the central government departments or its agencies involved in extensive housing development and institutional projects. Proposals for such schemes are usually implemented on government or trust land. The distribution of electricity in the planned areas is coordinated with the land use planning activities.

According to a Distribution Engineer, installation lines for the distribution of electricity in planned areas is quicker than in unplanned areas. Also, the costs to the consumer are lower in these areas because material, labour and administrative charges are shared by a larger number of people. The lower costs are also due to the fact that the plans of the schemes are used as the basis for the planning the electricity distribution lines and therefore the installed capacity is fully used.

The high cost of transformers (Appendix 3A), the cost of power transmission poles (Appendix 3B), and the cost of material, unit cost of labour and transportation (Appendix 3C), all for 1991, 1992 and 1993, show that the distribution of electricity will have to be coordinated with land use planning. These costs illustrate the cost implications during installation of electricity distribution lines in planned and the unplanned schemes in the

¹⁵⁴ In 1987 69 per cent of electricity was generated from the hydroelectric power stations, 18 per cent imported from Uganda and 13 per cent was generated from the geothermal station (Kenya, Republic of (1989:92-93) "*Development Plan 1989-1993*" Nairobi: Government Printer.

study area.¹⁵⁵

In unplanned areas most of the requests for the installation of electricity distribution lines come from individuals. Requests from a group of consumers in unplanned areas are rare and even if such a group makes a request, the costs would not be as low as in the planned areas because of the smaller number of people.

Consumers will have to pay higher costs, or will have to live without electricity if there is no coordination in the preparation of plans, approvals and in the implementation of land development proposals. Many of the households in Langata Development, Alli Juja-Wendani, Mwana Mukia, Ongata Rongai and Kinoo, lived without the supply of electricity (Appendix 4). The Distribution Engineer indicated that all categories of costs during installation of electricity distribution lines per unit consumer were higher in unplanned areas, mostly due to the extra costs of poles and transformers. In places like Langata Development, Alli Juja-Wendani, Mwana Mukia, Ongata Rongai and Kinoo there was no coordination in the of planning and development of land, and the high costs to be paid by consumers may partly explain the limited supply of electricity in these areas.

In Kinoo and Langata Development, uncoordinated land development interferes with wayleaves and road reserves. As the homes, business and industrial/workshops are isolated, especially in Kinoo, supply of power is more costly. It is evident that planning and coordination of land development would reduce costs that are associated with the distribution of electricity.

¹⁵⁵ According to the Distribution Engineer an area with a radius of 0.6 km can be served by the one phase transformer. The more the number of phases (e.g. three, four etc.) in transformers, the more electricity could be distributed to serve more homes, commercial buildings and support industrial output per unit area. The area (or radius) can be increased with the same transformer by using power transmission wires with larger diameter. The area can also be increased by using a transformer with more phases and with wires of smaller diameter. All these requirements implied a cost which must be taken into account when installing electricity distribution lines.

7.3.2 Kenya Posts and Telecommunications Corporation

Like Kenya Power and Lighting Company, the Kenya Posts and Telecommunications Corporation is a public enterprise. The responsibilities of the corporation include provision of postal and telecommunication services at a profit. There are three factors that influenced the planning of the telephone infrastructure to provide services in the urban areas by the Kenya Post and Telecommunications Corporation (KPTC). First, delivery of telephone services was done without regard to the land use plans of local authorities from Nairobi, Ruiru, Kikuyu and/or Olkejuado local authorities. Also, the corporation implemented its programmes without consultation and coordination with the Commissioner (department) of Lands, the Physical Planning Department and the District Commissioners (and committees) on land use planning. The lack of coordination and consultation was summarised during the field survey by the Assistant to the Managing Director:

It has become difficult to plan for telephone services because urban development is no longer coordinated with the planning of other infrastructure. The reason for this is that public planning institutions have abdicated their planning responsibilities, and private developers have taken over and therefore only a few private developers are eager to coordinate their development plans with the corporation. So the KPTC now install telephone haphazardly where developments occur.¹⁵⁶

Second, the corporation did not rely on market demand for its services. Instead, a subjective category of income group was employed to identify potential users. In 1981, a minimum income of KSh 5,000 per month would qualify an applicant for telephone service. So the few plans that were received by the corporation (from the few private developers that were mentioned during the office interview) merely served as indicators that the minimum income criteria applied in the schemes covered by the plans. In 1990/91 the corporation raised the minimum income criteria from KSh. 5,000 to KSh

¹⁵⁶ Communication from the officer during office interview.

15,000 in response to the increases in the transport cost, consumer items and levels of taxation.

Lastly, due to the financial difficulties that affected the operations, the corporation could not meet the increased demands in telephone services. The financial difficulties resulted from political interference in the decisions by the management of the corporation on how to spend the income from the rendered services. The national policy papers prepared and published by the central government were used to justify interference in the management. Often, they were used to justify decisions of the central government on how money of the corporation was used. The influence of the central government was apparent in the choice of areas where new major telephone services would be located, often at a financial loss. This interference may be justified because as a public corporation, other sources of public revenue can be used to make up for the loss. The most popular of the policies cited by the two official respondents from the corporation was the *District Focus for Rural Development* (DFRD). One of the requirements outlined in this policy document is that District Development Committees will have to review and endorse projects that are sponsored by public corporations, while equity in regional growth and in the provision of infrastructure is another.¹⁵⁷ The established affordability criteria of KSh 15,000 income was ignored as a result of the changes in policy. The planning and investment in telephone services were thus not coordinated and the economic and social service needs were ignored. As a result, they failed to respond to the demands of urban development, as was the case in some of the study areas.

¹⁵⁷ Kenya, Republic of (1987:2) "*District Focus For Rural Development*". Nairobi; Government Printer. Revised Edition, March 1987; Kenya, Republic of (1989:xx) "*Development Plan*" 1989-1993. Nairobi; Government Printer, and Were E.M. (1989) *Rural Development Planning and Participation at the District Level: The Case of Busia District*. Waterloo: School of Urban and Regional Planning, University of Waterloo. M.A. dissertation.

7.4 Nairobi, Ruiru, Kikuyu and Olkejuado Local Authorities

Nairobi local authority is involved in all activities, except allocation of land (Table 7.8). Nairobi, Ruiru and Kikuyu local authorities' participation in the planning of company, cooperative society and individually owned land is limited to the approval of layout and building plans. As for Ruiru, Kikuyu and Olkejuado local authorities, the officers who were interviewed indicated that the local authorities participated in the allocation of land. The involvement of the three local authorities in other planning activities varied from one authority to another.

Table 7.8: Role and responsibilities of Nairobi (NBI), Kikuyu (KKU), Ruiru, (RUR), and Olkejuado (OLK) local authorities in planning of urban land development

TYPE OF LAND OWNERSHIP	ALLOCATE LAND TO DEVELOPERS	FORMULATE AND PREPARE URBAN DEVELOPMENT PLAN	APPROVE URBAN LAND USE PLANS	APPROVE BUILDING PLANS	ADVISE ON PLANNING
TRUST	RUR* KKU OLK	NBI* OLK	NBI KKU	OLK KKU	OLK KKU
GOVERNMENT	n/a	NBI	NBI	NBI	NBI RUR*
COMPANY	OLK	NBI RUR	NBI KKU RUR	NBI KKU RUR	RUR
COOPERATIVE	n/a	NBI RUR	NBI RUR	NBI RUR	NB RUR
INDIVIDUAL	n/a	NBI RUR	NBI KKU RUR	NBI KKU RUR	NBI RUR

Note: An asterisk indicates that the extent to which a local authority was involved in activity could not be ascertained. The absence of an asterisk indicates that the local authorities were fully involved. n/a mean not applicable.

The land owners and developers consult the officers of the local authorities and seek approval of plans. Olkejuado County Council participated the least in the planning of urban land development and was involved only when the land was sold to companies.

The role of the four local authorities in the implementation of urban development plans is shown in Table 7.9. Nairobi, due to its large area, and Ruiru due to its high concentration of land that is owned by the companies and the cooperative societies, are more involved at the implementation stage as they have to deal with the financing of infrastructure development. Olkejuado County Council confined most of its responsibility in the implementation of development related to government and trust land and was least involved in private land development.

Table 7.9: Role of Nairobi (NBI), Kikuyu (KKU), Ruiru (RUR) and Olkejuado (OLK) local authorities in the implementation of urban land development plans

TYPE OF LAND OWNERSHIP	FINANCE DEVELOPMENT (development funded)	ENFORCE PLANNING REGULATIONS	ADVISE DEVELOPERS
TRUST	NBI - roads, markets, primary schools, sewer RUR - roads OLK - Markets	NBI KKU RUR OLK	NBI KKU RUR OLK
GOVERNMENT	RUR - roads OLK - markets	NBI RUR	NBI RUR OLK
COMPANY	RUR - roads	NBI KKU RUR	NBI KKU RUR
COOPERATIVE	RUR - roads	NBI RUR	NBI RUR
INDIVIDUAL	RUR - roads	NBI KKU RUR	NBI KKU RUR

This may explain why land development in Ongata Rongai which is within its jurisdiction is more chaotic. Kikuyu Town Council, on the other hand, is concerned more with the enforcement of the planning regulations, and advising land owners and developers because urban development pressure on the agricultural land in Kinoo is perceived as a planning problem.

The responsibilities of the four local authorities in the management of urban land development are shown in Table 7.10. The four local authorities were actively engaged in the formulation of policy and providing advice. But the advisory role of Olkejuado local authority was restricted to zoning.

Table 7.10: Responsibilities of Nairobi (NBI), Kikuyu (KKU), Ruiru (RUR) and Olkejuado (OLK) local authorities in the management of urban land development

	FORMULATE POLICY	FACILITATE FINANCING	PREPARE PROGRAMMES AND PROJECTS	GIVE ADVICE
ZONING	NBI KKU RUR	RUR	KKU RUR	NBI KKU RUR OLK
WASTE COLLECTION/ DISPOSAL	NBI KKU RUR OLK	NBI KKU RUR	NBI KKU RUR	NBI RUR
INDUSTRIAL LAND DEVELOPMENT	NBI KKU RUR OLK	n/a	n/a	NBI KKU RUR
HOUSING DEVELOPMENT	NBI KKU RUR OLK	NBI* KKU RUR	NBI KKU RUR	NBI RUR
LAND FOR COMMUNITY SERVICES	NBI KKU RUR	NBI* RUR	NBI* KKU RUR	NBI KKU RUR
ENVIRONMENTALLY SENSITIVE AREAS	NBI KKU RUR OLK	RUR	NBI RUR	NBI KKU RUR
BUSINESS/SMALL SCALE ENTERPRISES	NBI KKU RUR	n/a	NBI	NBI RUR
URBAN TRANSPORT	NBI KKU RUR	NBI KKU	n/a	NBI RUR

Note: Asterisk indicates that the extent to which a local authority was involved in the activity shown in the column could not be ascertained. Absence of an asterisk indicates that the local authority was fully involved. n/a mean not applicable.

In the area of policy formulation, this local authority was more concerned with waste

collection and disposal, industrial land and housing development and environmentally sensitive areas. The four local authorities were not involved in facilitating the financing of development on industrial land and small business enterprises or in the preparation of programmes and projects for industrial land development and urban transportation (Table 7.10). Therefore, management by local authorities in Nairobi city and bordering urban areas are biased towards the formulation of policies, regulatory and advisory planning as will be shown later in Table 7.13.

In coordinating the planning activities between the local authorities and other organizations, the Commissioner (department) of Lands and the Physical Planning Department have taken active part (Table 7.11). The two departments have been interacting with the local authorities in subdivision plans and allocation of public land. Coordination with other agencies depended on planning and development priorities at any given time. Among the local authorities, only Ruiru indicated that the continuous involvement in local planning by the district development committees is essential. The Nairobi and Kikuyu local authorities accepted participation by the committees only because of administrative requirements and would involve them only if absolutely essential.

The role of local authorities in planning, management and development were reflected in areas of coordination and the organizations that participated. There seems to be an opportunity to strengthen coordination and the consultative process. It is important to note that the local authorities did not coordinate planning and management activities among themselves (Table 7.11), although such coordination is provided for by provisions in Section 93(1) of the *Local Government Act* by indicating that:

A local authority may concur with any one or more other local authorities in appointing from amongst their respective members a joint committee of those local authorities for any purpose in which they are jointly interested, and may delegate to such committee, with or without restrictions or conditions, as they may think fit, any functions of local authorities relating

to the purpose for which the joint committee is formed, except the power of levying a rate or borrowing money or making bylaws (*Local Government Act, Section 93(1)*).

Table 7.11: Organization and areas of coordination sought by Nairobi, Kikuyu, Ruiru and Olkejuado local authorities

LOCAL AUTHORITY	DEPARTMENT/AGENCY	AREAS OF COORDINATION
Nairobi City Council	<ul style="list-style-type: none"> . Commissioner (department) of Lands . Physical Planning Department . Other government Department with interest in the proposed development 	<ul style="list-style-type: none"> . Planning policy if the planning project in question will take place on government or trust land.
Ruiru Town Council	<ul style="list-style-type: none"> . Commissioner (department) of Lands ----- . Physical Planning Department ----- . Minister of Local Government ----- . Kiambu District Development Committee (DDC) 	<ul style="list-style-type: none"> . Allocation of government and trust land ----- . Preparing plans ----- . Financial budgeting ----- . Preparing plans, financial budgeting
Kikuyu Town Council	<ul style="list-style-type: none"> . Commissioner of Lands (Department of Lands) . Physical planning Department ----- . Department of Public Health ----- . Department of Urban and Regional Planning, University of Nairobi 	<ul style="list-style-type: none"> . Allocation and administration of planning of government and trust land ----- . Public health requirements ----- . Consultancy in preparing structure plan
Olkejuado County Council	<ul style="list-style-type: none"> . Department of Community Health ----- . Ministry of Education ----- . Ministry of Health 	<ul style="list-style-type: none"> . Community projects ----- . Education services to local schools ----- . Health services

The decisions and policies of the local authorities are generally communicated to the central government agencies and departments through letters or meetings (Table 7.12). District development committees were used by Nairobi, Ruiru and Olkejuado local authorities to communicate such information. As Table 7.12 shows, the means of communication with other agencies are similar to the ones that are used by the Department of Lands and the Physical Planning Department. They are suitable as the formal means of communicating official matters by the officers to other agencies or departments. The way planning decisions and policies of the local authorities are passed on to the resident communities in their areas of jurisdiction was slightly different. The newspapers, the official gazette and the local government notices were by far the most popular mode of communication to their citizens.

Table 7.12: Means of communicating planning decisions and policies by Nairobi (NBI), Kikuyu (KKU), Ruiru, and Olkejuado (OLK) local authorities to other departments/agencies and to their citizens

MEANS OF COMMUNICATING PLANNING DECISIONS AND POLICIES TO OTHER DEPARTMENTS/AGENCIES	MEANS OF COMMUNICATING PLANNING DECISIONS AND POLICIES TO CITIZENS
<ul style="list-style-type: none"> . Unscheduled meetings . Special meetings . Letters and notices . District Development Committees 	<ul style="list-style-type: none"> . Local Newspapers . Local Government Public Notices . Public meetings (<i>Barazas</i>) . Planning Journal/Newsletter

As Table 7.12 shows, the means of communicating with other agencies are similar to the ones that are used by the Department of Lands and the Physical Planning Department. They are suitable as the formal means of communicating official matters by the officers to other agencies or departments. The way planning decisions and policies of the local authorities are passed on to the resident communities in their areas of jurisdiction was

mostly by the newspapers, the official gazette and the local government notices.

Public meetings (the *Bazaras*) are also commonly used in Nairobi, Kikuyu, and Ruiru and were supposed to facilitate community participation. However, the *Barazas* were not specifically meant as forums to which the members of the public are invited with a view to discussing and contributing to local planning policies. The *Barazas* are occasionally convened by a local councillor, a local Member of Parliament (MP), or administration officials (the District Commissioner, the Division Officer, the Chief or the Sub-Chief). The *Barazas* are of a general nature and usually would not have a local planning agenda. Communication during the *Barazas* is one-way from the guest official to the audience. As a result the *Barazas* lack dialogue and do not encourage the development of a participatory planning tradition within the urban communities.

The four local authorities view the usefulness of the planning law differently and relate it to their specific concerns within their respective jurisdictions. There was general dissatisfaction with the law as a legal tool for urban planning and management in the Nairobi authority. In Ruiru, the law is not considered to assist in subdivision planning, approval of plans and the allocation of public land. There are no laws to control subdivision in company and cooperative lands, and for effective integration of small plots by private owners into local development programmes. Dissatisfaction of the local authorities by the existing planning law arises out of their inability to exercise their planning responsibility to determine how land is developed and used in the interest of proper and orderly development within their jurisdictions. The planning responsibility is a legal one according to Section 166 of *Local Government Act*, but it is interfered with by provisions in other Acts and legislation.

On the role of the African customary laws and knowledge in urban planning and management, the officials who were interviewed from the four local authorities expressed the view that incorporation of community organization based on small (groups), local

communities with identical problems and civic leadership could offer a more effective approach. In that organization, planners would adopt and rely on a leadership-cum-advisory role to evolve and develop a participatory and consultative tradition. According to the officials, such an approach to restructure existing planning organization similar to the indigenous African council of elders was desirable. The new local planning organization would promote modern design skills and improve planning approaches to facilitate the incorporation of services and physical infrastructure into the African homestead systems. It was noted in Chapter Six that aspects of the African customary law are already legislated in the *Land Control Act*, the *Trust Land Act*, the *Mazrui Trust Lands Act* and the *Magistrates' Jurisdictions (Amendment) Act*.

7.5 Urban Land Development Policies of Nairobi, Kikuyu, Ruiru and Olkejuado Local Authorities

The planning resolutions adopted in the four local authorities are reviewed in this section to assess their policies. The resolutions were recorded in the form of Minutes of Council Meetings of Town Planning Committees in each of the local authorities. Minutes that were used as the source of information for this section are for the years 1990, 1991 and 1992. These were the only years for which the records were available from the local authorities except Nairobi. In this review, each problem or group of problems about an issue discussed by respective committees of the local authorities, and the solutions that were (or were not) adopted are treated as policy area.

7.5.1 Nairobi Local Authority

Policy Areas in 1990

Policy Area One:¹⁵⁸ Nairobi local authority was concerned with the approval

¹⁵⁸ The titles in the review i.e. "Policy Area One", "Policy Area Two"; etc. do not represent a chronological order in the records of the minutes of the records. They were used as part of organizing the

process of building plans. According to the building codes and bylaws in the *Local Government (Adoptive) Bylaws* the land owners and developers are required to submit their plans for approval. The approval process generates revenue in the form of planning fees but the local authority was not receiving the revenue because the land owners and developers avoid submitting their plans for approval. Section 7(1) of the *Local Government (Adoptive) Bylaws* makes provision that developers should be informed within 30 days after submitting a plan whether their plans are approved or not. This period can be extended for another 30 days so long as the developers are informed of the extension. According to Section 7(2) the period can be extended beyond the extra 30 days, and is determined by the local authority. The local authority views the delays in approval process as the reason for the failure of the land owners and developers to submit their plans for approval. The solution to the problem is to improve the efficiency in the approval process.

Policy Area Two: There were delays in the payment of rates by most property owners in Nairobi which affect income of the local authority. The local authority intends to use subdivision plan approval process to ensure that rates were paid in time. The decisions taken by the local authority on subdivision planning, and the Commissioner of Lands approving the final plan are from then on to be linked to the payment of outstanding charges on rates by property owners. This was to ensure that rate charges would not accumulate and that the local authority got its revenue as projected in its financial estimates.

Policy Area Three: There was concern that some land owners and developers

discussion in the dissertation. *Policy area* refers to issues or problems and solutions adopted and their implementation requires long term planning and coordination implementation by the local authorities. *Policy* is discussed elsewhere in the thesis and here it can also refer to an intended course of action that is adopted (See Footnote 1).

within Nairobi did not provide essential services on their properties and did not rehabilitate the sites after development. For plan approval, they will be required to guarantee landscaping, pay for the provision of water, sewer and access to the proposed development. The local authority will ensure that land set aside for roads is not developed into other uses and this will guarantee accessibility to the newly developed properties. It was not indicated how it will enforce this requirement.

Policy Area Four: The owners of property situated on leased government and trust land in Nairobi were required to apply for the renewal of their leases from the local authority and no new development on such land would be approved by the local authority unless the authority was involved in renewal of the lease. When such applications are submitted, the local authority would process the lease and forward a recommendation either renewing or denying the lease to the Commissioner of Lands for final approval. There were instances in the past when agreement for leased property had been renewed without involving the local authority. It is hoped that the requirement to apply for the renewal of lease from the local authority will prevent such instances from occurring.

Policy Areas in 1991

The same four policy issues of 1990 were present in 1991. From 1991 the approval of changes in land use by the Commissioner of Lands was to be effective for a period of two years and if the plans were not implemented during that period, approval has to be sought again.

Policy Areas in 1992

Policy Area Five: The need to strengthen procedures for the approval of building plans continued to be a policy area of concern. Evolving improved procedures to solicit comments from the public health officers, the city treasury officers, the water and sewerage engineers, and public work engineers were considered to be important. A shorter turn - around time in returning plan proposals from the professionals to the

planners was suggested as a solution. However no specific time was indicated.

7.5.2 Kikuyu Local Authority

Policy Areas in 1991

Policy Area One: The private developers continued to violate the provisions of the existing development plan of the town and hindered the development programmes of the authority. There is widespread freehold land within the local authority area over which the local authority had no planning jurisdiction. As will be come evident (Section 7.12 in this Chapter), land in Kinoo sample area in Kikuyu is predominantly freehold. Also, the Commissioner of Lands continues to authorize Kiambu District Commissioner to allocate public land without consulting the local authority. These actions by the Commissioner of Lands and the District Commissioner were not helpful in planning for the social services and community facilities such as schools.

The local authority officials of Kikuyu outlined two approaches that would improve the situation. The first was to persuade the freehold land owners to respect local planning and development guidelines even though the persuasion alone could not guarantee success. The second approach was to request the Commissioner of Lands to consult with the local authority more in the decision making and allocation of land and to stop the practice of authorizing the District Commissioner to allocate public land.

Policy Area Two: The local authority was concerned with the plot sizes in Kikuyu that are too big. The land owners were encouraged to subdivide the land and the local authority hoped that the implementation of that policy could result in smaller plots, and hopefully, result in a higher number of properties. That strategy was seen as helpful when fully implemented because of the increase in the number of rate payers. Obviously, such an action would affect Kinoo (sample area in Kikuyu) when fully implemented because there will be further subdivision of agricultural land units and conversion into urban use.

Policy Area Three: The third policy area is related to the way useful information for planning purposes was stored. The local authorities and the Department of Lands recorded and stored information differently. This created difficulties in using information from the two sources about the same property by the local authorities. Maps, plans and records of the proceedings of the council were used to store the information. At the Land Registry of the department, a filing system existed where a separate file was used for each property. A complicated system of property numbering using Land Registry Numbers, Inland Registration Numbers and Plot Numbers is also in use. These are confusing and therefore there is an urgent need for a unified system of information storage and retrieval. The local authority did not have a solution to the problem.

Policy Area Four: The roads were not in good repair and the capacity of the existing sewerage system was inadequate. The local authority plans to implement a roads repair programme and extend the sanitary lines into new areas for which central government was expected to provide money in the form of grants or loans .

Policy Areas in 1992

Policy Area Five: There was no provision for the Kikuyu Town Council to contribute in the decisions regarding allocation of plots in government and trust land areas within its jurisdiction. The council merely made recommendations and the final decisions were made by Kiambu District Commissioner on behalf of the Commissioner of Lands without further consultation. The officials of the local authority felt excluded in the decision making. No policy solution of this problem was formulated.

Policy Area Six: A policy for accelerated urban development was adopted and this required more land for development. To help achieve the goal, three approaches were adopted. First, property sales and transfers were encouraged among the land owners in Kikuyu. The second approach was that new proposals for changes in business types would be approved without delay, and more business licenses for temporary *kiosks* in the

open spaces would be issued to the applicants.¹⁵⁹ Lastly, the approval of new building plans and the processing of business licenses were speeded up. In order to accommodate a greater number of businesses, the standard of plot sizes was set at 20 feet by 80 feet. For areas that are still considered to be of agricultural value according to *Nairobi Metropolitan Growth Strategy* of 1973 (Chapter Two of the dissertation), greater number of businesses and smaller plots imply a change from agricultural to urban land use. The implementation of policy area six would assist in solving problems of the 1991 policy area two which encouraged further land subdivision.

7.5.3 Ruiru Local Authority

Policy Areas in 1990

Policy Area One: The location of the informal businesses at existing open spaces within the town is to be encouraged. The open spaces are considered strategic sites that are favourably located because they are served by usable roads, potable water supplies and existing sanitary infrastructure. The local authority acknowledged that the implementation of the policy could lead to conflict between vehicular and pedestrian traffic, and with the market operations of the informal business outlets. However, the local authority hoped that by not intervening in the operation of "market forces" of the new informal businesses, the businesses would eventually locate and organize at strategic sites where the conflict is minimum.

¹⁵⁹ A *Kiosk* is small building (with varying size but can be as small as approximately 7 feet by 9 feet in surface area) and it is usually constructed of wooden poles, paper carton and/or polythene paper, hard boards or metal sheets for walls and roof cover. *Kiosks* are popular small scale business/service outlets and work places. Most of the business and service operations are licensed by the local authorities for a period of one year with possibilities of renewal of the licenses in the following year. The business and services operations can serve a catchment of between seventy to one hundred households in a community. These business/service outlets and work places are located on temporary sites, road and utility reserves. Once the rightful owners of the sites initiate development on the sites, this results to eviction of *Kiosk* operators and they have to relocate elsewhere if they will have to continue with their economic activities. In recent years some business operations in *Kiosks* that have been established by the operators at their own plots have succeeded requiring them to expand and built more permanent buildings. At present time use of small rooms in the existing permanent buildings for business operations and service outlets have become popular work places.

Policy Area Two: The government and trust land was not used efficiently and two approaches were suggested in order to achieve the efficiency. First, standard plot sizes of 45 by 45 feet in the government and trust land areas would be recommended to the Commissioner of Lands. Secondly, the same standard of plots would also be recommended to the private land owners. The planning provisions in Section 166 of the *Local Government Act* would be cited as the basis for the new policy if both the Commissioner and/or the private land owners needed further clarification. That Section gives power to local authorities to plan and control land development in their areas.

Policy Area Three: The policy area was related to the consultative process between the local authority, Kiambu District Commissioner and the district development committees in local planning issues. Ruiru local authority will make deliberate efforts to improve consultation with the Commissioner and the district committees, and hoped that such affirmative action could lead to the improvement of planning and management in the development of the area. However, specific areas or details for consultation were not mentioned.

Policy Areas in 1991

Policy Area Four: The focus of the policy area was on informal (*Jua Kali*) economic activities as a means of local economic development.¹⁶⁰ To support and encourage local economic development, improvement in the informal (*Jua Kali*) activities was a favoured choice. The local authority had no influence on the approval of the plans. Regarding the *Jua Kali*, the improvement of the sector was seen as one way of encouraging local economic development. Contribution of the local authority in the implementation of the policy would be by providing funds for capital projects, mainly in housing and market outlets. In this policy area, the local authority assumed that money in

¹⁶⁰ *Jua Kali* is a Swahili expression which means "hot sun". The use of this expression, *Jua Kali activities* or *Jua Kali informal activities*, mean that these activities are conducted in the open under the *hot sun* and are rarely held in permanent well planned business premises.

the form of grants from the central government was guaranteed.

Policy Areas in 1992

Policy Area Five: Related to the policy area four above, the important role of local economic programmes was acknowledged in Ruiru. Successful implementation of the programmes depended on an effective policy on planned and managed urban land development. The local authority was not able to put mechanisms in place to facilitate planned and managed land development in view of the diversity of land ownership and development interests within its jurisdiction.

Policy Area Six: Continued haphazard allocation of trust and government land for development that encouraged unplanned informal uses of land was the sixth policy area. No decision was taken for this policy area. Perhaps changes in law could improve the process of decision making and implementation because the mandates in jurisdictional planning will be clear.

7.5.4 Olkejuado Local Authority

Policy Areas 1990

Policy Area One: Within Olkejuado, private land owners subdivide land without informing the local authority. A request is then made to the local authority to recognize those subdivisions. Another closely related problem was unauthorized squatting that continues to take place on the government and trust land. To solve the problem of severance of land, the local authority would enter into a dialogue and attempt to persuade the land owners. Unauthorized squatter settlements would be demolished by the authority without compensation. It seems that the position of the local authority in this policy area is similar to that of Ruiru in policy area six where changes in existing planning law may lead to an improved process of decision making.

Policy Area Two: The property owners default in the payment of property rates and the cash flow to the local authority is thus reduced. The defaulters could be

penalized according to Section 148 of the *Local Government Act* (LGA), and Sections 7(1) and 101 of the *Valuation for Rating Act* (VRA). In LGA, local authorities can impose fees and charges on economic activities in their areas. They can also collect the revenue. By the provisions in VRA, they could enter private property and determine the value for purpose of taxation.¹⁶¹

In the past, the decisions to penalize rate defaulters were stopped by "...higher authorities" ¹⁶² and soon the local authority realized that pursuing such an option could not lead to successful rate collection. The identity of the higher authorities was not, however, revealed. The reader will recall that in Kikuyu, according to the minutes, the Commissioner of Lands interfered with the allocation of government and trust land. This suggests that the interference in the functions of the local authorities is widespread and they cannot take action. A reference to an attempt to penalize defaulters in the minutes was perhaps the only intention.

Policy Area Three: There was conflict between Olkejuado County Council, the Commissioner of Lands and Kajiado District Commissioner over the lack of consultation in planning decisions. The two Commissioners complained that the local authority took decisions without consulting them but they did not cite any specific examples. In the minutes, it was confirmed that was the case and there were no suggestions on how to resolve the conflict.

Policy Areas in 1991

Policy Area Four: There was conflict between the local authority on the one hand, and the Commissioner of Lands and Kajiado District Commissioner on the allocation and development of open spaces reserved for community, subdividing

¹⁶¹ If no payments are made the local authority can sell the property to recover the fees and charges. However this action is rarely taken because most property owners end up paying the charges sooner or later after written reminders and when the amount due has accumulated for some time (mostly two, three or four years).

¹⁶² Minutes of Olkejuado County Council for 1990.

government and trust land, and approving plans. The authority could not formulate an immediate solution to the problem in this policy area.

Policy Area Five: As in the policy area one (1990), which dealt with illegal subdivision of private land, the local authority was not satisfied with the on-going trends in the development of slums and squatter settlements on government and trust land. The concern for the development of the two forms of settlements was related to public health risks. Furthermore, they were a constraint to local economic development. As in policy area four above, there were no immediate solutions to the problems in this policy area.

Policy Area Six: There is need to improve the physical infrastructure, especially roads and sanitation in Ongata Rongai. The kind of improvement for the roads in the urban areas was not mentioned in the minutes. To improve the sanitation, the local authority decided that in future, development proposals will not be approved if there is no provision of septic tanks. Construction of permanent buildings that are serviced with sewers, instead of the pit-latrines, were to be recommended to land owners and developers. Because there are no financial or other forms of incentives that are given by the local authority to land owners and developers, the authority will have to rely on persuasion and expect affirmative action from the land owners.

1992 Policy Areas

Policy Area Seven: There was interference by the District Officer for Ngong and Kajiado District Commissioner on the recommendations made by the local authority to the Commissioner of Lands on land allocations.¹⁶³ This policy area on the interference by the officers of the central government in local authorities is similar to the concerns in policy area three in Kikuyu. To solve the problem, Olkejuado local authority intended to inform and ask the District Officer and the District Commissioner to stop the interference. From available records of minutes of the meetings of the Works and Town Planning

¹⁶³ The two officer substituted the names of the allottees with a set of names of their own choice.

Committee, the two officers had not been informed.

7.6 Summary of Local Authorities Urban Land Development Policy Areas

The numerous policy areas that are described fall into four major policy areas of planning within the four local authorities.

Major Policy Area One: The planning activities of the local authorities, and the central government are always in conflict. The Commissioner of Lands is the key person from the central government who is involved in the conflict and to a certain extent the District Commissioners and the district planning committees. The conflict is mostly related to the interference/involvement by the higher authorities in local planning, plot allocation and rate collection as in the case of Kikuyu and Olkejuado. Provisions in the existing planning law allows for this interference. Nairobi, Kikuyu, Ruiru and Olkejuado local authorities were not effective in the planning and management of urban development, especially in the private sector. The higher costs in the distribution of electricity and the haphazard implementation of telephone services were, partly the result of jurisdictional conflicts. None of the four local authorities had developed a policy on how to resolve the issue.

Major Policy Area Two: In the context of planned urban environment and local economic development, slum and squatter settlements appear undesirable, though high densities associated with such settlements may imply efficiency in the use of urban land. Their haphazard development would in the long run lead to higher cost in the provision of infrastructure such as roads. Also, this major policy area interferes with the goals for the promotion of local economic development through the planning of land development. Smaller plot sizes to accommodate more development per unit area with the hope that it would lead to the licensing of more businesses, are taken to be the most effective strategies for development of a strong local economic base. Kikuyu, Ruiru and Olkejuado local authorities adopted the strategies. The weakness in this strategy is that

the policy ignores the impact of unplanned high density business outlets and housing development. The urban environment that could be created by implementing goals on promotion of unplanned economic activities and smaller urban plots would be an urban development that is not sustainable in the long term.

Major Policy Area Three: The four local authorities are concerned about the improvement of the physical and social infrastructure and the marketing outlets. Lack of finances was identified as the main constraint in resolving the problem of poor infrastructure and marketing. Two popular alternative sources of money for the local authorities are identified to be grants and loans from the central government which had been the main source of funds for the local authorities as has been shown in Chapter Four (Table: 4.2). Continued dependence on the government as the major source of funds to finance most of the local programmes and projects increases the possibilities for future control by the government and to retain existing local planning jurisdictional arrangements.

Major Policy Area Four: Coordination, consultation and joint urban development programmes between the four authorities are discouraged as a result of interference from the government. The minutes of the four local authorities showed no areas of coordination and/or consultation among them. In the absence of joint policy areas for coordination in planning at the level of a metropolitan region, cooperation in planning and management of urban development programmes by the four local authorities was found to be weak. Although organizational structure of the local authorities and their priorities for action may differ, more effective policies such as those dealing with land use planning, planning for and implementation of physical and social infrastructure can be more effective when jointly undertaken.

7.7 A Summary of Planning and Management Approaches By the Organizations

A summary of planning and management approaches by the organizations is

presented in Table 7.13.

Table 7.13: Summary of Existing Planning and Management Approaches by Different Organizations

ACTIVITY	PLANNING FOR ECONOMIC GAIN AND PROVISION OF SERVICES	REGULATORY PLANNING	ADVISORY PLANNING
MANAGEMENT: Organizing resources to achieve expected (but not always physical) results.	KPLC, KPTC, LBC, LBCS	n/a	n/a
ENFORCEMENT OF PLANNING LAW: Applying provisions of law as legal basis of plans.	n/a	DL LA*	DL PPD LA*
PLANNING: Taking decisions and formulating policies (but not necessarily to take action) by the planners.	LA*	DL, PPD* LA* LBC LBCS	DL* PPD* LA*
IMPLEMENTATION: Translating plans using resources (especially funding) to produce (usually but not always) physical results.	KPLC KPTC LA*	LA*	LA*

Note:: Asterisk indicates that the extent to which the organization was involved in the activity shown could not be ascertained. DL (Department of Lands), PPD (Physical Planning Department), KPLC (Kenya Power and Lighting Company), KPTC (Kenya Post and Telecommunications Corporation), LBC (Land Buying Company), LBCS (Land Buying Cooperative Societies), LA (Local Authorities).
n/a mean not applicable.

There are two important findings that are worth noting from the table. The first is the role of the Department (Commissioner) of Lands in regulatory and advisory planning. Also, the Physical Planning Department is not involved in the planning for economic gain and its role in regulatory and advisory planning are limited. The second finding is the involvement of the local authorities in planning and implementation of proposals for economic gain and provision of services. It is also noted from the table that the local authorities are involved in regulatory and advisory planning. However, the extent of their

involvement in planning for economic gain and provision of services, and in regulatory and advisory planning could not be determined. This finding seems to confirm the fact that although the authorities have legal jurisdiction over local planning, because of ambiguities in the planning law they never get fully involved. One can conclude from Table 7.13 and the many policy issues that the local authorities could not resolve (such as policy area six of Olkejuado local authority), that the application of political, economic and social values based on Western norms of planning law may not alone be effective basis for planning and management in Kenya.

SECTION II: Land Development By Private Individuals: Households

Section II deals with the findings based on the household data that were collected using questionnaires and from the Land Registry in the Department of Lands.

7.8 Land Development in Freehold Areas Covered by Formal Plans: Karen Langata and Spring Valley

Karen Langata and Spring Valley are covered by formal urban plans. As shown earlier, in Figure 2.1, Spring Valley is closer to the city centre than Karen Langata. Although household response in Spring Valley was poor (See Table 2.2 discussed in Chapter Two and Table 2.2), field observations and data from the Land Registry were considered adequate for the needs of the study. The Karen Langata Structure Plan of 1979 has limited the plot sizes to a minimum 1.0 Ha (2.5 acres). In 1988, another structure plan that was introduced reduced the minimum plot size to between 0.5 - 1.0 acres. However, the actual size of plots was still well above the minimum size at the time of the field study. In fact, 70 per cent of the sample plots according to the Land Registry were over 3.0 acres (Appendix 6A) and from the field survey, 50 per cent were more than 3.0 acres. Therefore the level of land subdivision in the area remained low.

The land owner response to the need for planned land development indicated that

architectural and site planning services were the most sought after (Table 7.14).

Table 7.14: Planning services sought by land owners in Karen Langata

TYPE OF PLANNING SERVICES ¹⁶⁴	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONSE	NUMBER OF NO RESPONDENTS	PERCENTAGE OF RESPONSE
Preparation of Building Plan	13	54.2	11	45.8
Approval of Building Plan	16	66.7	8	33.3
Preparation of Site Plan	10	41.7	14	58.3
Approval of Site Plan	12	50.0	12	50.0
None	1	4.2	n/a	n/a

Note: n/a means not applicable. Sample Size = 24.

Plan approval services were sought from the Commissioner of Lands, the Physical Planning Department, and the planning department of Nairobi local authority. Demand on services for building plans was higher than those for site plans. Although 54.2 per cent of the respondents sought planning services for building plans, 66.7 per cent of the respondents indicated that they submitted their plans for approval. This apparent discrepancy may be due to the fact that some plans are approved without formal submission to the planning authorities or due to a situation where some land owners seek approval after developing their land.

Services for the preparation of site plans and plan approval were sought by 41.7

¹⁶⁴ Each of the services is sought independent of the others because as analysis of urban planning law in Chapter Six showed, provisions of existing planning legislation such as the *Land Planning Act*, the *Government Lands Act* and the *Local Government (Adoptive) Bylaws* require that site layout plans, which show how a site will be developed, and building plans which deal with structural requirements of buildings are to be approved by different planning authorities. Because each planning service is independent of the other a respondent may seek one of them and develop the land without having sought the other. Therefore the total number of those who responded and those who did not respond as shown in the columns of the table do not add up to 24 which is the total number of household land owners.

and 50 per cent of the respondents respectively. These are low proportions and they show that coordinated land use planning is not as highly regarded as architectural design of buildings. Land owners and developers would pay for the architectural design services but less interested in other aspects of planning. For example, the land owners and developers would not promote planning for neighbourhood economic activities or for the wider concerns for urban planning. This results in lack of coordination in planning in Karen Langata and with other areas within Nairobi, and acts as an impediment to urban land development.

There is a low level of provision of social services such as education and health. Also, there are no economic activities such as small workshops (to give services in the neighbourhood) located close to the community. Due to these two problems, land development in Karen Langata lacks a basis for integrated planning with other parts of the city.

Table 7.15: Ranked priority planning problems in Karen Langata

PROBLEM AREA	RANK IN PRIORITY FOR PLANNING						TOTAL RESPONSES
	1	2	3	4	5	6	
Business	1	5	5	4	0	0	15
Housing	3	7	2	1	0	0	13
Industry/Workshops	1	2	6	1	2	1	13
Social Services	12	2	1	4	0	0	19
Environmental/Recreation	2	3	4	2	3	0	14
Identification of investment priorities	1	1	2	3	5	2	14

Note: Sample size = 24.

According to the respondents, planning for both the social services and economic activities should be the priority (Table 7.15) ¹⁶⁵, and they would attract employment and

¹⁶⁵ The score representing a rank in the table(s) is the number of households who responded to a specific

the location of a vocational training centre into their community.

Respondents were asked to rank planning problem areas in order of priority. In Table 7.15 social services are ranked the top priority and represent twelve out of nineteen responses. Planning for the industry/workshop ranks low because the households in Karen Langata are a high income group and would not favour the siting of factories in the neighbourhood. The respondents suggested that they knew their priorities and may not need assistance from outside to help identify local needs. The low priority accorded to environmental and recreational planning indicates that the residents may not be aware of the implications of policies introduced in the 1988 structure plan which change plot size from minimum 2.5 acres to anything from 0.5 acre to 1.0 acre. As there is more urban intensification going on, land for recreation needs and issues dealing with the environment are likely to be suppressed for now. Subsequently, the community may have to pay more for recreation and to deal with environmental problems in the future.

High priority (66.7 per cent of responses) is set on improved management of the existing physical infrastructure such as building of streets, provision of telephone, electricity and water (Table 7.16). Many of the homes are accessible from the main streets through driveways which are privately owned but not paved and respondents wanted financial assistance from the local authority to improve them. Management of waste collection and disposal ranks second while the enforcement of planning regulations is ranked third. Responses from Spring Valley were similar except the respondents gave

question during field survey. To determine the sequence of preferred action, the value of score (number of respondents) is considered first, followed by the position of the value relative to others for the same problem area. For example in problem area of housing in Table 7.15, 7 respondents have determined the ranking of housing as second and not first priority. The first priority in this case is represented by a total of 3 respondents. In the text, the percentages of ranked priorities are expressed out of the total sample size of household land owners who participated and NOT out of the total responses for each problem areas shown in table "TOTAL RESPONSES" For example, 24 households land owners participated in Karen Langata. Therefore in Table 7.15 social services rank highest with 12 scores out of 19 responses but the value of 12 expressed in percentage is 12 out 24 which is 50 percent.

greater priority to the enforcement of planning regulations.

Secrecy and ineffective bureaucratic procedures were cited as the causes for the inefficiency in the delivery of services in Karen Langata and Spring Valley. Respondents in the two areas explained that at the offices of the corporations, local authorities and government departments, the administrative procedures were protracted. People did not have easy access to the officials and that delayed implementation of infrastructure programmes in their areas, made the services more costly, and therefore affected distribution of electricity, telephone services and water supply.

Table 7.16: Ranked management problem areas in Karen Langata (KL) and Spring Valley (SV)

PROBLEM AREA		RANK IN PRIORITY FOR MANAGEMENT			
		1	2	3	TOTAL RESPONSES
Waste: collection and disposal from residential, work and recreation place	KL	3	12	3	18
	SV	1	1	0	2
	Total	4	13	3	16
Enforcement of planning regulations	KL	0	11	0	11
	SV	0	3	1	4
	Total	0	14	1	15
Infrastructure: roads/streets, telephone electricity and water	KL	16	2	0	18
	SV	1	0	0	1
	Total	17	2	0	19

Note: Sample size KL =24 and SV = 9.

As can be see from Table 7.17 both telephone services and electricity were not available to 16.7 per cent of the respondents at the time of the field survey. Widespread use of septic tanks for sewerage treatment and bore-holes for water supplies explains the low priority placed on environmental sanitation through a sewerage system and supply of piped water (Table 7.17). The table shows that, 62.5 per cent of the respondents are

without sewerage system and their reliance on septic tanks limits intensification of land development and is a potential source of environmental contamination.¹⁶⁶ They prefer the sewerage system but their immediate priority is on roads.

Table 7.17: Infrastructure in Karen Langata

INFRASTRUCTURE NOT IN PLACE	NUMBER OF RESPONDENTS (for each infrastructure not in place)	PERCENTAGE OF RESPONSES (for each infrastructure not in place)
Telephone	4	16.7
Sewer	15	62.5
Electricity	4	16.7
Water	n/a	n/a

Note: n/a means not applicable. Sample size = 24.

Turning to land development, plots in Karen Langata were purchased at an average cost of KSh 1.2 million (Appendix 5). Personal household savings and bank loans were the most popular sources to finance housing development (Table 7.18).

Table 7.18: Sources of finance for plot development in Karen Langata

SOURCES OF FINANCE	NUMBER OF RESPONDENTS	PERCENTAGE RESPONSES
Personal Savings	8	33.3
Personal savings and Other Sources (excluding the two categories below)	7	29.2
Cooperative Loan	1	4.2
Commercial Banks, and Housing Development Companies	6	25.0
Employer Provided Loan	2	8.3
TOTAL (Sample size)	24	100.0

¹⁶⁶ The main sewer line is provided and it left up to the individual land owners to arrange and pay for the construction of the sewer lines to their properties from the main line.

Due to the low response from the households in Spring Valley, the Land Registry was the source of information on finance for land development and showed that most land transactions involve the use of title of land to secure loans. Plot sizes in that community are smaller than in Karen Langata (Appendix 6A and 6B) and 26.9 per cent of the plots are 0.25 acres or less and a cumulative percentage of 65.3 per cent of them are 1.0 acres or less (Appendix 6B), but the value of land is higher. Part of the reason for the small size of plots and high price of land in Spring Valley may be the close proximity of the community to the Nairobi city centre (Figure 2.1).

Land owners and developers in Karen Langata are expected to follow guidelines in the structure plan for the area but many of them have no regard for the provisions in the plan. As shown earlier (Table 7.14), few submit their land use plans for approval to the Nairobi planning local authority. Unlike development of land in Karen Langata that is based on a structure plan, in Spring Valley development is based on the Nairobi City Master Plan of 1948. The sewerage treatment and water supplies are provided by the city of Nairobi. From field observations it has been noted that all properties are served with electricity and telephone services and the streets, and most private driveways are paved.

Levels of land transaction as an index for urban development activity in Karen Langata and Spring Valley represent cycles of land development, not sales and transfers (Appendices 7A and 7B). There are three land transaction peaks; 1981 - 1982, 1987 -1988, and 1990 -1991 identified during the period from 1981 to 1992. These transactions took place when the titles were used as security for loans from financial institutions and copies of the loan agreement were filed at the Land Registry. The use of land titles in understanding patterns of costs of land development in Karen Langata is shown in Appendix 5. It can be noted that the peak periods of transactions in Karen Langata and Spring Valley are similar. This may suggest that the peaks represent alternating cycles of low interest rates when more transactions took place and high

interest rates with fewer transactions.

7.9 Company Land: Langata and Zimmerman Companies

In Langata Development only 46.2 per cent which represents six out of thirteen respondent land owners sought planning services. Land owners seek the services mostly from officers of Ruiru local authority and less from the Department of Lands and the Physical Planning Department. The claim by the 46.2 per cent of land owners that they sought planning services from the local authority is questionable. There are no planners who are employed by the local authority.

The planning problems identified in Langata Development are the establishment of investment priorities, planning for the environmentally sensitive/recreation areas, social services (health and education), neighbourhood business and local workshops (Table 7.19). This order of priority shows that subdivision of land by officials of the company did not consider future environmental needs and the local economy in the community.

Table 7.19: Priority planning problems in Langata Development

PROBLEM AREA	RANK IN PRIORITY FOR PLANNING						TOTAL RESPONSES
	1	2	3	4	5	6	
Business	0	2	6	4	0	0	12
Housing	0	3	0	7	1	0	11
Industry/Workshops	0	5	5	1	2	0	13
Social Services	5	6	1	0	0	1	13
Environmentally Sensitive/ Recreation areas	7	2	0	1	2	0	12
Identification of investment priorities	8	0	1	0	0	0	9

Note: Sample size = 13.

The officials did not have any long term goals for community development other

than selling the land. In fact, dissatisfaction in the community as a result of poor land use planning, is shown in the areas where the respondents consider the need for more focused management (Table 7.20). According to seven respondents (53.9 per cent of all thirteen households), the most serious problem in management is the enforcement of planning regulations. The provision of infrastructure which is ranked second by seven out of twelve responses and represents also 53.9 per cent of all thirteen households. By results in Tables 7.19 and 7.20, waste collection and disposal as a management problem can be associated with lack of environmental planning. This may suggest that failure to enforce planning regulations in land development relates closely to problems of waste management that appear later.

Table 7.20: Priority management problems in Langata Development

PROBLEM AREA	RANK IN PRIORITY FOR MANAGEMENT			TOTAL RESPONSES
	1	2	3	
Waste: collection and disposal from housing, work and recreation places	4	5	4	13
Enforcement of planning regulations	7	2	1	10
Servicing of infrastructure (street/roads, electricity and water)	4	7	1	12

Note: Sample size = 13.

There is a clear relationship between problems identified by the respondents in the field and those dealt with by Ruiru local authority in its policy areas. For example, the enforcement of planning regulations, the need for infrastructure and waste collection and disposal are also found in Ruiru policy areas. Policy area four deals with plan approval, policy area five with local economic development and policy area six with haphazard allocation of government and trust land.

In the development of land, 69.2 per cent of the respondents built their own

houses. The average cost of development per plot was KSh 248,818 and the price per plot was KSh 26,666 (Appendix 8). Out of twelve responses on sources of finance, 75 per cent (nine respondents) financed their development with personal savings and cooperative loans.¹⁶⁷

In Zimmerman Development, where the respondents are mainly tenants, the owners developed their plots but then rented them out for residence and business space.¹⁶⁸ Because there was no plan for Zimmerman, property owners are left to arrange and pay for power lines to the Kenya Power and Lighting Company, and pay for telephone services to the Kenya Post and Telecommunications Corporation. It is noted from field observations that electricity and telephone lines are established in isolated properties. As no sites were allocated for health and school facilities, market and residential open spaces when land was subdivided, the tenants are left without convenient access to those services.

The high density of buildings is not served by sewers and therefore landlords have to pay for emptying of septic tanks. According to the tenants, some landlords provide the service after many repeated requests. Nairobi local authority licenses businesses, which include those of the *Kiosks* and general shops, and also supplies water used in the community. The roads are not paved and the constant movement of vehicular and pedestrian traffic generates dust in dry weather, and muddy and slippery conditions during wet seasons.

By renting their property, landlords get high rental income from the tenants (Table 7. 21).¹⁶⁹ The tenants would like to own properties of their own because of the high rents

¹⁶⁷ Analysis of sources of finance for development is based on proportions of responses of a group of respondents out of the total number of all responses and not out of the total number of household land owners in the sample because in this case actual cost in KSh was mentioned. During field survey respondents in Langata Development did not state their views on planning law.

¹⁶⁸ The number of tenants in Langata Development was negligible compared to Zimmerman.

¹⁶⁹ As stated in Chapter Two this six year period was considered long enough for such data but also short enough for the respondents to remember.

and the responses (Table 7.22) show the preferred means of owning their houses. Affordability is the most important factor in seeking ownership to houses and seventeen (85 per cent) out of twenty respondents built their own houses. Self-built houses are considered more flexible because they can be used for informal industrial/workshops and business operations. The tenant respondents who prefer the self-built houses suggested that they would buy the land and build the house in two stages.

During the first stage, efforts are made to save the required amount of money to buy the land from the land companies, cooperatives or individuals.

Table 7:21: Grouped average rent paid by tenants in Zimmerman for six years, 1987 - 1992

AVERAGE RENT PER YEAR (KSh)	NUMBER OF TENANTS	PERCENTAGE OF TENANTS	CUMULATIVE NUMBER OF TENANTS	CUMULATIVE PERCENTAGE
Below 10,000	1	5.3	1	5.3
10,000 - 14,999	2	10.5	3	15.8
15,000 - 19,999	4	21.0	7	36.8
20,000 - 24,999	3	15.8	10	52.6
25,000 - 29,999	5	26.8	15	78.9
30,000 - 34,999	3	15.8	18	94.7
35,000 - 39,999	1	5.3	19	100.0
TOTAL	19	100.0	19	100.0

Note: Sample size = 20.

Once land is bought, additional efforts are made to save money for financing the building of the houses. At the time of survey, 42.1 per cent of tenant respondents have bought plots in companies, cooperatives and from individuals elsewhere in the study area. That proportion of tenants were already trying to save money for building their houses.¹⁷⁰ The relationship between the two stages when the tenants achieve objectives of self-built

¹⁷⁰ It is difficult to get respondents give accurate information on incomes than on expenditure and therefore, data on rent paid by tenants is more reliable. Households tend to spend anything between 25 percent and 35 percent of their incomes on housing. The grouped average rent paid by the tenants in Table 7:21 can only serves as an indicator of the range of incomes of the respondents.

houses and the companies, cooperatives and the individuals who sell their land for urban development is an interesting one. It seems this relationship will continue to influence community development in the study area because other forms of housing were not as popular.

Table 7.22: Rank of preferred means of home ownership by tenants in Zimmerman considering cost as most important factor

PREFERRED CHOICE	RANK OF CHOICE				TOTAL RESPONSES
	1	2	3	4	
Direct purchase of an existing house	1	11	4	2	18
New mortgage housing	1	5	7	3	16
Employer provided housing	0	7	4	3	13
Self-built house	17	0	1	0	18

Note: Sample size = 20.

7.10 Cooperative Land: Alli Juja-Wendani and Mwana Mukia Land Cooperative Societies

The number of respondents who sought plan preparation and approval services in Alli Juja-Wendani and Mwana Mukia were 40 and 10 per cent respectively. In addition, the 40 per cent of respondents in Alli Juja-Wendani and 10 per cent in Mwana Mukia suggested that they consulted officials in their cooperative societies to mediate disputes about plot boundaries.

The planning law requirement that every home be built with permanent building materials such as quarry or concrete blocks makes home building prohibitive for an average home owner. Such standards increase the cost of land development and discourages people from seeking planning services. By ignoring to formalize development of their land through existing planning framework and planning authorities,

the land owners avoid the high costs. In the cooperatives, land development therefore lacks coordination.

Although possibilities exist for further subdividing of the plots in the cooperative societies the Land Registry records show that such things did not happen. It is worth noting however that, initially, land in Alli Juja-Wendani was subdivided into plots of 0.25 acre each while in Mwana Mukia each plot was 75 by 50 feet. Following subdivision and allocation of land to members in the two cooperative societies, they were left to develop their land without any form of planning control.

The average cost of development is KSh 420,800 and the buying price per plot KSh 50,000 in Alli Juja-Wendani (Appendix 8). Personal savings and cooperative loans are the most popular sources of money for the 66.7 per cent of land owners. In Mwana Mukia KSh 200,538 is the average cost of development per plot while the buying price stands at KSh 36,416 per plot, with 75 per cent of respondents relying on personal savings and cooperative loans to buy and develop the land.

Priorities in solving planning problems in the two cooperative societies were in the social services such as education and health, business in the form of neighbourhood economic activities, and environment, especially recreation and open spaces (Table 7.23). These same priorities were mentioned in Ruiru local authority policy areas one, on organization and promotion of local economic activities, and policy area five, which focused on the problems of planned and managed urban development in view of land ownership and development interests. The residents continue to be disadvantaged by poor planning.

Table 7.24 shows the priority management problems identified by the residents as the provision of services, roads, telephone, electricity and water supply. There was high response rate from Alli Juja-Wendani compared to Mwana Mukia in the identification of the priorities and it may be due to later development of land in Alli Juja-Wendani. In the

two communities however septic tanks and pit-latrines remain the only form of sewerage disposal and a more effective sewerage system is necessary to accommodate any increase in resident population.

Table 7.23: Priority planning problems in Alli Juja-Wendani (AJ) and Mwana Mukia (MM)

PROBLEM AREA		RANK IN PRIORITY FOR PLANNING						TOTAL RESPONSES
		1	2	3	4	5	6	
Business	AJ	1	4	8	2	2	1	18
	MM	2	5	0	1	0	0	8
	Total	3	9	8	3	2	1	[26]
Housing	AJ	1	2	2	2	4	0	11
	MM	1	1	3	0	0	1	6
	Total	2	3	5	2	4	1	[17]
Industry/ Workshops	AJ	1	1	4	1	2	2	11
	MM	2	2	3	2	0	0	9
	Total	3	3	7	3	2	2	[20]
Social Services	AJ	11	1	1	1	0	0	14
	MM	4	2	2	2	0	0	10
	Total	15	3	3	3	0	0	[24]
Environmentally sensitive/ Recreation	AJ	1	6	2	1	0	2	12
	MM	1	2	3	2	0	0	8
	Total	2	8	5	3	0	2	[20]
identification of investment priorities	AJ	0	1	1	2	1	0	5
	MM	4	0	0	2	1	0	7
	Total	4	1	1	4	2	0	[12]

Note: Sample size AJ = 15 and MM = 12.

The provision of water supply, telephone services and electricity supply were inadequate, especially in Alli Juja-Wendani (Table 7.25). Water supplies were not available to 86.7 per cent of the respondent households. The supply of electricity to all the twelve respondent households in Mwana Mukia may be due to earlier establishment of the community (in 1976) compared to Alli Juja-Wendani (in 1987). The delays in processing applications for electricity distribution lines and to deliver telephone services were cited as the problem (Table 7.26). These delays result in increased installation costs which are already high. The supply of electricity to all the twelve respondent households

in Mwana Mukia may be due to earlier establishment of the community (in 1976) compared to Alli Juja-Wendani (in 1987). The delays in processing applications for electricity distribution lines and to deliver telephone services were cited as the problem (Table 7.26). These delays result in increased installation costs which are already high.

Table 7.24: Priority management problems in Alli Juja-Wendani (AJ) and Mwana Mukia (MM).

PROBLEM AREA		RANK IN PRIORITY FOR MANAGEMENT			
		1	2	3	TOTAL RESPONSES
Waste: collection and disposal from housing, work and recreation places	AJ	1	5	3	9
	MM	1	6	2	9
	Total	2	11	5	[18]
Enforcement of planning Regulations	AJ	2	5	3	10
	MM	3	4	3	10
	Total	5	9	6	[20]
Infrastructure: roads/streets, electricity and water	AJ	13	1	0	14
	MM	9	1	0	10
	Total	22	2	0	[24]

Note: Sample size AJ = 15 and MM = 12.

Table 7.25: Proportions of household respondents without telephone, electricity and water supply in Alli Juja-Wendani and Mwana Mukia

INFRASTRUCTURE NOT IN PLACE	ALLI JUJA-WENDANI		MWANA MUKIA	
	NUMBER OF RESPONSES	PERCENTAGE RESPONSES	NUMBER OF RESPONSES	PERCENTAGE RESPONSES
Telephone	11	73.3	3	25.0
Electricity	8	53.3	0	0.0
Water	13	86.7	1	8.3

Note: Sample size AJ = 15 and MM = 12.

Respondents consider the building of roads and streets to be the responsibility of

the central government and Ruiru local authority. The support for capital development projects including roads, which is mentioned in policy area four of the local authority, is in agreement with the views of the respondents who would not rank the problem of roads and streets on the basis of the administrative constraint alone. This means that respondents view the government and the local authorities to have failed them for not building the roads and streets. Furthermore, a sewerage system of sanitation was not suggested to be of immediate priority because already septic tanks and pit-latrines are used.

Table 7.26 Administrative constraints faced in providing for roads, access to telephone, electricity, sewer and water by Alli Juja-Wendani (AJ) and Mwana Mukia (MM) residents

TYPE OF INFRASTRUCTURE		RANKED ADMINISTRATIVE CONSTRAINTS				
		1	2	3	4	TOTAL RESPONSES
Roads	AJ	0	5	4	0	9
	MM	1	3	1	2	7
	Total	1	8	5	2	[16]
Telephone	AJ	1	2	4	4	11
	MM	0	1	1	0	2
	Total	1	3	5	4	[13]
Electricity	AJ	12	2	0	0	14
	MM	11	0	0	0	11
	Total	23	2	0	0	[25]
Sewer	AJ	0	3	0	1	4
	MM	0	2	1	3	6
	Total	0	5	1	4	[10]
Water	AJ	1	2	3	2	8
	MM	0	3	5	2	10
	Total	1	5	8	4	[18]

Note: Sample size AJ = 15 and MM = 12.

In Alli Juja-Wendani and Mwana Mukia, tenant population is low, while owners of properties would not rent their properties because the returns (average KSh 10,000 per year per household unit) are low.

7.11 Public - Private Joint Urban Development: Mathare North Development

Mathare North is an area of 129 acres of government land, a part of which was subdivided into plots of 26 by 72 feet. The plots were partly developed into a site and service scheme by the Kenya and Nairobi local authority in the early 1980s, and then sold to selected low income families. The part development on each plot includes a portion of the house to be fully developed to a maximum of two storeys and 16 rooms. Each of the allottee families was offered a loan of KSh 40,000 for the development of the other portion of the plot. The repayment of the loan would begin once the plot was fully developed and some of the rooms rented out for additional income. Paved roads and streets, water supply, community health centre and schools were provided as a package in the part development.

According to the sale agreement between the government and the local authority on the one hand and the buyers on the other, the plots would not be sold before the loan was fully paid. However, some allottees violated the agreement and sold their partly developed plots without involving officers of either the Department of Lands or the local authority.

At the time of the field survey, Mathare North was fully developed into residential and small business areas. The buildings covered 100 per cent of plot area and the building heights ranged up to ten storeys where the permitted height was only two storeys. Continued violation of the sale and development agreement means that more people per unit area have now to be accommodated in the 26 by 72 feet plots while nothing is done to increase the capacity of the physical infrastructure and community facilities. From the field survey, only 20 per cent of the respondent households who own the properties lived in Mathare North. Most moved out and rented their buildings for residential and business operations. The 20 per cent responded that they sought services to approve their plans for the extension of their buildings from planners in the Physical

Planning Department.

Tenants who live in the other 80 per cent (16 respondents) paid rents and the grouped annual average rent in a six year period (1987 to 1992) are shown in Table 7.27. As the table shows, 60 per cent of the tenants representing nine respondents out of the fifteen tenant household respondents paid below KSh 10,000 per year during the six year period and this is an average of KSh 833 or lower per month.

As in Zimmerman, the majority of the tenants in Mathare North intend to move out and live in their own homes and the ranked preferred choice of home ownership by the tenants, shows that to be the case (Table 7.28). As tenant incomes are low, buying a plot and then building the home at a later stage was the most viable option.

Table 7.27: Grouped average rent paid by tenants in Mathare North for six years, 1987 - 1992

RANGE OF AVERAGE RENT PER YEAR (KSh)	NUMBER OF TENANT RESPONDENTS	PERCENTAGE OF TENANT RESPONDENTS
Below 10,000	9	60
10,000 - 14,999	3	20
15,000 - 19,999	3	20
TOTAL	15	100

Note: Sample size = 16.

Table 7.28: Ranked preferred means of home ownership by tenants in Mathare North

MEANS OF HOME OWNERSHIP	RANKED MEANS OF HOME OWNERSHIP				TOTAL RESPONSES
	1	2	3	4	
Direct purchase of an existing house	1	8	5	2	16
New mortgage housing	4	1	7	3	15
Employer provided housing	1	3	2	10	16
Self-built house	11	4	1	0	16

Note: Sample size = 16.

Purchase of existing houses ranks second, new mortgage housing ranks third while employer provided housing is the last. Therefore, like tenants in Zimmerman, those living in Mathare North rely on the same strategies in their approach towards home ownership. Also, it is of interest to note that land buying companies, the cooperatives and individuals who subdivide their small lots for sale, will continue to influence urban land development in Nairobi city and bordering urban areas. The tenants will depend on the companies, cooperatives and such individuals for land.

7.12 Freehold Areas Without Formal Plans: Kinoo, Ongata Rongai and Kangemi

Kinoo area is in Kikuyu Town, Ongata Rongai Trading Centre is under Olkejuado County Council and is located on Nairobi - Kajiado District boundary and Kangemi is within Nairobi (Figure 2.1). According to the Land Registry and the field survey data, there are more smaller plots in those three areas (Appendix 9A, 9B and 9C). According to 96.2 per cent (representing 25 out of the 26 in the sample) who responded to the question in Kinoo, 42.3 per cent of the plots are 0.25 acres or less. From the Land Registry records on the other hand, plots in that category accounted for 43.3 per cent out of the 30 land files in the sample. The conclusion may be that where the number of respondents equals the number of the sampled files, the two proportions of plots of 0.25 acres or less may yield similar results. Another conclusion is that from the two samples, almost half of all plots in Kinoo are 0.25 acres or less (Table 7:29). The proportion of 0.25 acre plots or less may be even higher because Table 7.29 shows that 53.8 per cent of household respondents in Kinoo intend to subdivide their land.

Tenants form the majority of households in Kangemi. The Land Registry was therefore the source of data for the sizes of plots (Appendix 9C). There were 70 per cent plot sizes of 0.25 acres or less, 13.3 per cent between 0.26 and 0.50 acres and only 3.3 per

cent between 0.76 and 1.00 acres. Consultation with the officers at the registry indicated that there are subdivisions where the plot sizes were not recorded. Therefore, it is to be expected that the proportion of plots that are 0.25 acres and less should be greater than the one established through the sample. That is indeed the case because 33.3 per cent of the land owners interviewed in Kangemi intend to subdivide their land.

Table 7.29: Households in Kinoo and Kangemi who intend to subdivide their land and those who do not intend to subdivide it

	INTENDS TO SUBDIVIDE	DO NOT INTEND TO SUBDIVIDE	NO RESPONSE	TOTAL (Sample size)
Kinoo	14 (53.8%)	4 (15.4%)	8 (30.8%)	26 (100%)
Kangemi	2 (33.3%)	n/a	4 (66.7%)	6 (100%)

Note: n/a means not applicable.

Based on the field survey, 73.7 per cent of plots in Ongata Rongai are 0.25 acres or less and the cumulative percentage of plots that are 0.5 acres or less is 94.7 (Appendix 9B). These proportions are significantly higher than the ones calculated using the data from the Land Registry where 23.5 per cent of plots are 0.25 acres or less.¹⁷¹ This data reveals that the greater proportion of development in Ongata Rongai is not recorded. This finding suggests that subdivision of land may already have gone beyond control by the planning authorities. Policy area one in Olkejuado local authority which deals with subdivision of land in the private sector without informing the authority is proof that policies of the local authority are no longer influential over land development. Although the problem may appear to be almost out of hand, improved local planning can change the situation for the better in the long run.

¹⁷¹ This apply to Kangemi because there seems to be no major difference in the proportions of data collected in the field and that from the registry considering that some data were not recorded.

The effect of urban development on environment by land owners (11.5 per cent) who would not seek planning services to avoid payment of planning fees in Kinoo may appear negligible (Table 7.30). However, the serious environmental impacts in the long term could be serious. Lack of planning services close to Kinoo community by 73.1 per cent of the respondents was cited as the reason for not submitting their plans for approval. Planning services by the Commissioner (department) of Lands, the District Commissioners and planners in the Physical Planning Department are administered from Kiambu Town and Nairobi which are far from the communities. Furthermore, 42.3 per cent of respondents in Kinoo and 26.3 per cent in Ongata Rongai would not know where to go for the services.

Table 7.30 Response to planning needs by private land owners in Kinoo and Ongata Rongai

RESPONSE TO PLANNING NEEDS	KINOO		ONGATA RONGAI	
	RESPONSES	PERCENTAGE	RESPONSES	PERCENTAGE
Sought planning services	8	30.8	4	21.1
Did not seek planning services because they did not know where to go for the services	11	42.3	5	26.3
Did not seek planning services because there are none close to where they live	19	73.1	n/a	n/a
Did not seek planning services because of cost implications	3	11.5	n/a	n/a
Did not make effort to get planning services	16	61.5	n/a	47.4

Note: Sample size Kinoo = 26 and Ongata Rongai = 19.

From the table, it is also noted that most of the respondents (61.5 per cent) in Kinoo and (47.4 per cent) Ongata Rongai made no attempt to consult the officers of planning authorities. Besides the Commissioner of Lands, the officers under him and planners in the Physical Planning Department are in Nairobi. According to the

respondents the offices of Olkejuado local authority and the District Commissioner are in Kajiado Town and that is 130 km away from Ongata Rongai. The travel to these offices involves extra costs and time and this discourages land owners and developers from seeking the services.

In Kangemi, land owners and developers have continued to resist attempts to integrate their land development activities into the existing planning framework of Nairobi local authority since 1975.¹⁷² They prefer to be left to develop their land with least interference. Following the opposing views between the land owners and developers in Kangemi and Nairobi local authority on planning approaches and therefore land development styles, the requirement that plans should be submitted for approval is not adhered to.

There are some interesting patterns related to the sources of money, cost of land and cost of land development, especially in Kinoo and Ongata Rongai (Appendix 10). In the first place, household savings are the most popular source of money for land development in Kinoo. Calculations based on field survey show that the average cost of developing a plot in Kinoo is KSh 131,318, and KSh 486,611 in Ongata Rongai.¹⁷³ In Ongata Rongai the average cost of land is KSh 74,428 per plot. The cost of land in Kinoo is not possible to calculate using the data due to the factor of land inheritance, which has no associated cost. The total average cost of development, together with that of land in Ongata Rongai is KSh 561,039 per plot compared to the KSh 131,818 in Kinoo. Land in the two areas is privately owned but there are differences in the way it is developed.

¹⁷² This continued resistance is documented in the Nairobi City Commission "Approved Planning Policies" (Nairobi City Commission, 1991:75). Nairobi: City Planning and Planning and Architecture Department.

¹⁷³ Calculations of cost of land based on intended selling prices by respondents in the field show that average cost stand at KSh 522,333 per plot (Appendix 10). But this cost only show what is *likely* and is not based on actual land transactions. Hence they were not considered in the discussion and to make conclusions in the dissertation.

Land transactions in Kinoo, Ongata Rongai and Kangemi within a period of twelve years from 1981 to 1992 shown in Appendices 11A, 11B and 11C include transactions for sale and those related to inheritance. Transactions which are not recorded in the land registers represent land development in Kikuyu (Kinoo), Olkejuado (Ongata Rongai), and Nairobi (Kangemi) that is not integrated into the existing framework of planning. As a result, various problems related to planning and management in the face of on-going development were identified by respondents.

In Kinoo and Ongata Rongai planning problems are connected to social services (education and health), businesses, industry/workshops and housing. Besides, planning for environmentally sensitive/recreation areas ranked fourth in Ongata Rongai (Table 7.31). Based on the priorities identified, the study concludes that land owners in Kinoo and Ongata Rongai are affected by different conditions in the development of land. Although the main sources of money for land are the same, the levels of calculated cost of land and development are not the same because of the special localized factors such as inheritance. While this factor is important in Kinoo, it is not so in Ongata Rongai because land is acquired through purchase. In the absence of effective planning in the two areas however, they are faced with the same problems which are reflected in the expressed priorities.

Due to the poor response, an analysis of prioritized planning problems in Kangemi based on household questionnaires was not possible, but field observation did show that planning for activities such as the social services and recreation that require more land would be faced with the problem of land shortage. Only one plot was set aside for siting such services (Appendix 12), and as already explained, 70 per cent of plots are 0.25 acres or less (Appendix 9C). Planning for social services and recreation will be faced with two problems. First, compulsory acquisition is politically sensitive, and secondly, the buying of land in the open market would be an unwelcome tax to the

community.

Environmentally sensitive and recreation areas are ranked low planning priorities (Table 7.31) and may be due to lack of immediate material benefit.

Table 7.31: Priority planning problems in Kinoo (K), Ongata Rongai (OR) and Kangemi (KM)

PROBLEM AREA		RANK IN PRIORITY FOR PLANNING						TOTAL RESPONSES
		1	2	3	4	5	6	
Business	K	4	9	8	4	0	0	25
	OR	11	1	4	1	0	1	18
	KM	0	3	0	2	0	1	5
	Total	15	13	12	7	0	2	[48]
Housing	K	5	5	11	2	1	0	24
	OR	0	4	4	2	1	0	11
	KM	0	2	3	0	1	0	6
	Total	5	11	18	4	3	0	[41]
Industry/ Workshops	K	6	8	5	4	0	1	24
	OR	3	5	4	1	0	0	13
	KM	2	1	0	2	0	1	6
	Total	11	14	9	7	0	2	[43]
Social Services	K	12	5	3	6	0	0	26
	OR	11	2	4	0	0	0	17
	KM	0	3	2	1	0	0	6
	Total	23	10	9	7	0	0	[49]
Environmentally Sensitive Areas/ Recreation	K	0	3	4	13	4	0	24
	OR	4	8	1	3	0	0	16
	KM	1	0	1	1	1	0	4
	Total	5	11	6	17	5	0	[44]
Identification of Investment Priorities	K	4	1	4	11	3	1	24
	OR	2	2	0	2	2	0	8
	KM	0	0	0	2	3	1	6
	Total	6	3	4	15	8	2	[38]

Note: Sample size K = 26, OR = 19 and KM = 6.

Therefore, it is not possible to formulate solutions and implement them to deal with problems of environmental and recreational planning. This is interesting because data in the table show that planning for the environmentally sensitive areas and for recreation have seventeen responses. In Kinno and Kangemi, planning for open space recreation facilities may be difficult due to the lack of cheap land. Urban land use in the area is

dominated by mixed uses in residential/commercial activities (Appendix 12). At the moment, Ongata Rongai, with 3.9 percent of its land earmarked for recreation and 11.5 per cent earmarked as vacant, may be able to provide recreational services to the community. However, the proportion of residential/commercial land units is higher than agricultural land units. It is an indicator of possible future conversion of recreational, vacant and the agricultural land units into the mixed uses.

Within these freehold land areas, the highest ranking is given to the provision of infrastructure, including roads and streets, electricity and telephone services (Table 7.32).

Table 7.32: Priority management problems in Kinoo (K), Ongata Rongai (OR) and Kangemi (KM)

PROBLEM AREA		RANK IN PRIORITY FOR MANAGEMENT			
		1	2	3	TOTAL RESPONSES
Waste: collection and disposal from housing, work and recreation places	K	4	11	10	25
	OR	11	1	4	16
	KM	4	0	4	8
	Total	19	12	18	[49]
Enforcement of planning regulations	K	8	12	6	26
	OR	3	5	8	16
	KM	1	1	4	6
	Total	12	18	18	[48]
Infrastructure (streets/roads, electricity, telephone and water)	K	14	9	1	24
	OR	6	2	7	15
	KM	1	2	0	3
	Total	21	13	8	[42]

Note: Sample size K = 26, OR = 19 and KM = 6.

Waste collection and disposal rank second and enforcement of planning regulations third. Within the sample areas, infrastructure and enforcement of planning regulations ranked highest in Kinoo, and waste collection and disposal in Ongata Rongai. Water is not considered a priority in Kinoo because the one bore-hole and supply network are owned

and operated by the community. In Ongata Rongai, bore-holes that are drilled and owned privately by some households are the sources of domestic water. They are also available for sale to the households that do not have bore-holes. At the same time, Olkejuado local authority supply piped water at communal points which supplements that from the private bore-holes. Kangemi community gets water from Nairobi's supply network.

Table 7.33 illustrates the low level of electricity and telephone services in Kinoo and Ongata Rongai. In Kinoo only 11.5 per cent of respondents have access to telephone and 26.9 per cent electricity. At the same time only 21 per cent in Ongata Rongai have telephone and 57.9 per cent have electricity. The low level in the provision of the services suggests there is a need to provide the services to these communities.

Table 7.33: Provision of telephone and electricity in Kinoo and Ongata Rongai

INFRASTRUCTURE	KINOO		ONGATA RONGAI	
	NUMBER OF HOUSEHOLDS	PERCENTAGE	NUMBER OF HOUSEHOLDS	PERCENTAGE
Telephone:				
In Place	3	11.5	4	21.0
Not in Place	23	88.5	15	79.0
TOTAL	26	100.0	19	100.0
Electricity:				
In Place	7	26.9	11	57.9
Not in Place	19	73.1	7	42.1
TOTAL	26	100.0	19	100.0

Note: Sample size Kinoo = 26 and Ongata Rongai =19.

Once again administrative delays and high costs in the distribution of electricity in the areas were cited as the most important factors. Out of a total of 18 installations of electricity at the homes of respondents in Kinoo and Ongata Rongai, 38.9 per cent of installations cost KSh 5,000 or less and the other 61.1 per cent cost between KSh 5,000 and KSh 35,000 (Appendix 4). These levels of cost to the respondents seem low

compared to the cost of electricity distribution lines (Appendix 3). The low level cost to the respondents suggest that administrative problems within the service corporation also explain the high incidence of the households without electricity.

In both Kinoo and Ongata Rongai three out seven telephone installations cost KSh 5,000 or less while the other four cost from KSh 1,500 to KSh 6,000. These costs for the delivery of telephone services are much lower when the KSh 15,000 monthly income eligibility criteria is considered. But the proportion of respondents without telephone is higher than those without electricity. Effective administration at the Kenya Post and Telecommunication Corporations is therefore more critical in the delivery of telephone services than the cost to the consumers.

House rental charges were relatively low for tenants who lived in Kinoo, Ongata Rongai and Kangemi during the six year period from 1987 to 1992. They are KSh 10,000 per year for the 50 per cent of the respondent households in Kinoo. In Ongata Rongai and Kangemi 60 per cent of tenants pay the same levels of rent. The highest rental charge in Kinoo is KSh 25,000 per year, and KSh 40,000 per year in Ongata Rongai.¹⁷⁴ The self built homes are more preferred in the three communities. Buying land and building the home at a later stage is the most popular and is also happening in Zimmerman and Mathare North.

7.13 A Summary of the Involvement of Private Individuals in Urban Land Development

Table 7.34 is a summary of the findings (in Part II of the present chapter) about the involvement of private individuals in urban land development. This summary, together with that presented in Table 7.13 about planning and management approaches by

¹⁷⁴ These annual rental charges can be expressed as monthly rental charges. The 50 per cent of the tenants in Kinoo paid KSh 833 per month which is also paid by 60 per cent of tenants in Kangemi and Ongata Rongai respectively. The highest rental charge in Kinoo per month is KSh 2,083, and the charge is KSh 3,333 in Ongata Rongai.

the organizations, demonstrate the need for alternative approach(es).

There are three major findings in Table 7.34. First, there is widespread lack of planning and planning services are not regarded highly in the sample areas. Development of land without consulting the planning authorities suggests the need for more effective enforcement of planning regulations in the implementation of development proposals. However, such regulations have to be applied within a context of planning law provisions which address the planning needs of land owners and developers. At the same time the provisions must safeguard against the land owners and developers implementing their development proposals without regard to the environmental needs in their communities in particular, and society in general.

Second, the households in areas without formal plans rely less on formal money markets to finance the development of their land and the areas have poor infrastructure and services. Third, the problem of weak economic base is widespread among all areas, but those without formal plans seem to be the most affected. The weak economic base suggests that there is a need for coordination in local planning, but there are problems in the existing planning law. More appropriate provisions in the planning law will have to be the basis for effective local planning and coordination in implementation.

Table 7.34: Summary of involvement of private individuals in urban land Development

FREEHOLD LAND DEVELOPMENT AREAS	PLANNING: Consulting planning authorities	IMPLEMENTATION		COMMENTS
		FINANCING LAND DEVELOPMENT	PROVISION OF INFRA- STRUCTURE AND SERVICES	
<p>1. AREAS WITH FORMAL PLANS:</p> <ul style="list-style-type: none"> • Karen Langata • Spring Valley <hr/> <ul style="list-style-type: none"> • Mathare North (public - private joint Development) 	<ul style="list-style-type: none"> • Low regard for planning services. 	<ul style="list-style-type: none"> • Formal sources mainly loans from banks and Non-Banking Institutions. <hr/> <ul style="list-style-type: none"> • Partly loans by the developer and partly personal savings. • Tenants rely on personal savings and cooperative loans. 	<ul style="list-style-type: none"> • Have most services but not all residents are connected to sewer in Karen Langata). <hr/> <ul style="list-style-type: none"> • Low provision of telephone services, waste collection and disposal. 	<ul style="list-style-type: none"> • Need some incentives to take planning more seriously. <hr/> <ul style="list-style-type: none"> • Need incentives to implement appropriate building plans. • Tenants rely on land companies and cooperatives to access land.
<p>2. COMPANY AND COOPERATIVE SOCIETY AREAS:</p> <ul style="list-style-type: none"> • Langata Development • Zimmerman • Mwana Mukia • Alli Jua-Wendani 	<ul style="list-style-type: none"> • All except Zimmerman, had approved subdivision plans. • More land owners would seek planning services if the services were accessible to them. 	<ul style="list-style-type: none"> • Personal savings and cooperative loans are the major sources of finance. • Tenants rely on personal savings and cooperative loans. 	<ul style="list-style-type: none"> • Limited provision of infrastructure and services. 	<ul style="list-style-type: none"> • Need planning services close to them and incentives to be involved. • Provision of infrastructure and services are needed. • Strengthen money generating activities.

**Table 7.34 ...continued. Summary of involvement of private individuals
urban land development**

	PLANNING: Consulting planning authorities	IMPLEMENTATION		COMMENTS
FREEHOLD LAND DEVELOPMENT AREA		FINANCING LAND DEVELOPMENT	PROVISION OF INFRA -STRUCTURE AND SERVICES	
3. AREAS WITHOUT FORMAL PLANS: <ul style="list-style-type: none"> . Kinoo . Ongata Rongai . Kangemi 	<ul style="list-style-type: none"> . Low regard for planning services. 	<ul style="list-style-type: none"> . Personal savings and cooperative loans. . Limited use of funds from banks and Non-Banking Institutions 	<ul style="list-style-type: none"> . Limited provision of infrastructure and services (except water in Kinoo and Kangemi). 	<ul style="list-style-type: none"> . Need for improved planning, provision of infrastructure and services. . Strengthen money generating activities.
4. All Freehold areas.	<ul style="list-style-type: none"> . Low regard for planning services (except residents in Langata Development, Mwana Mukia and Alli Juaj-Wendani if planning services were accessible). 	<ul style="list-style-type: none"> . A relationship exists between sources of finance, type of land ownership and existence of a plan for an area. . Formal contact and (or) initiative of the individual (household) are essential in accessing the sources of finance for land development. 	<ul style="list-style-type: none"> . Areas with formal plans are better served with infrastructure and other services in comparison to those without formal plans. . Areas without formal plans and therefore poor infrastructure and services are more exposed to environmental degradation. 	<ul style="list-style-type: none"> . Effective planning will have to focus on coordinating how freehold land is developed to improve:- <ul style="list-style-type: none"> a) money generating activities. b) urban environment in communities. c) Provision of infrastructure and services. . Effective coordination will have to rely on appropriate planning law.

CHAPTER 8

TOWARDS A MODEL OF URBAN LAND DEVELOPMENT AND PLANNING LAW

8.0 Introduction

The present research has attempted to study planning and management of urban land development in Kenya, focusing on Nairobi city and bordering urban areas. The recommended approaches to planning and management of urban land development and the planning law are discussed. Two categories of recommendations are discussed in the context of a strategic planning model, a planning law model and an integrated model.

The first category of recommendations applies to the whole country and the second category to the study areas. The three models are related in the way they will apply in planning and management of urban land development. In the strategic planning model, there is an area of planning law which links the model to the recommended planning law model. There are improvements which are suggested in the three heritages of laws (common law, statutory law and customary law) that constitute the planning law model. Each of the suggested improvements connects the suggested model of planning law to the integrated model. It will also become evident that implications for managing economic activities and the urban environment, and the character of the urban communities which are part of the integrated model are derived from discussions based on the findings in the research. Before the recommended models are presented, a discussion of the findings follows.

8.1 Discussion

The discussion of the findings will include five main areas. First, there will be a discussion of the findings on urban land ownership and planning, which will be followed by urban land development, managing economic activities and the urban environment. Lastly, there will be a discussion of the implications of these four to the existing planning law.

Throughout the discussion there will be frequent reference to information in Tables 6.1, 7.13 and 7.34. Table 6.1 is a summary of the characteristics of planning law and is part of the findings from the analysis of the existing provisions of the planning law in Kenya. Table 7.13 summarises the findings on the role of planning and management approaches by the organizations, and the findings are based on the analysis of data in Section I of Chapter Seven. Lastly, Table 7.34 presents the summary of findings from data on private land owners (households) in urban land development in Section II of Chapter Seven.

8.1.1 Urban Land Ownership and Planning

Types of land ownership, its history and the basis of ownership have been discussed in Chapter Four (Bullock, 1975; Sorrenson, 1967). Bullock and Sorrenson point out that land ownership and its history are influenced by the indigenous customs, and past colonial policies and administration. Sorrenson (1968), Penwill (1986) and Wanjala (1990) have underscored the influence of these three aspects in land ownership and they suggest that the customary law, statutory law and common law are the basis of land ownership. There are two types of land ownership, one belonging to the public and one to the private sector. Public land includes government and trust land, while private land includes land that belongs to the companies, cooperative societies and individuals. In Nairobi city and bordering urban areas, planning and management of land within each category of land ownership were not conducive to promote local economy and the

management of urban environment. The provisions of the existing planning law are partly responsible for the ineffectiveness of local planning. It is demonstrated in the summary in Table 6.1 that the existing planning law has two main problems. First, *urban planning policy and practice are not coherent*. Second, there is *confusion, conflict and disregard for the local economy and the environment*. The law has encouraged the establishment of planning organizations and authorities that would not promote coordination and cooperation in planning. At the same time the law has discouraged effective jurisdictional planning. This has resulted in the local authorities being denied their legal responsibilities in local planning. The role of planning and management approaches by different organizations is given in Table 7.13, and it was not possible to ascertain the *involvement of local authorities in planning for economic gain and provision of services, and in regulatory and advisory planning*.

Effective jurisdictional planning responsibilities are assumed by the Commissioner of Lands as the executive authority for government and trust land, and this responsibility is to be found in many legal provisions. These same legal provisions also provide for the planning authority of the Minister in charge of planning and the local authorities. In addition, there are other several planning authorities which under existing legal provisions are also influential. These planning authorities include provincial land control appeal boards, divisional land control boards, the central authority, interim planning authorities and the preparatory authority. Furthermore, District Commissioners are also planning authorities by the provisions in the *Trust Land Act* and the *Land Control Act*. The Commissioners are planning authorities in the context of their recently strengthened administrative role in the district development committees. Through their comprehensive administrative powers, rather than any legal authority, the District Commissioners liaise with the Commissioner of Lands. Thus, the planning authority of the District Commissioners over the government and trust land is consolidated. This

arrangement of the planning organization partly denies the local authorities their responsibility in local planning.

However, both the Commissioner of Lands and the District Commissioners merely concern themselves in the subdivision and allocation of the land. The two organizations are without significant funding capabilities to finance development. It is important to note that coordination in planning between the two organizations is weak. The enforcement of planning regulations to ensure compliance is not carried out once the allocation of land is completed. These planning authorities will only intervene in land development such as squatter settlements and informal activities that are considered by the government to be of a political nature or a security risk (Kobiah, 1985). It appears that when the local authorities are involved in land development, it is not to implement what policies they initiate, but merely to facilitate implementation of policies of other planning authorities.

Some areas which show that the local authorities are weak in planning have been identified and discussed in the dissertation. In Nairobi, for example, there are no policies on the improvement of infrastructure such as roads and streets, with the result that in places like Zimmerman the roads are dusty in dry weather and muddy and slippery during the wet season. Also in Nairobi, subdivision planning and liaison in renewal of leases involve the Commissioner of Lands, who gives the final approval, while the approval of building plans is the most important mandate of the local authority. These policies are spelt out in policy areas one, two and three. Policies that deal with local economic development and infrastructure in Ruiru local authority are more specific and directed to local communities. However, successful implementation of the policies has to rely on direct government involvement in planning and funding.

Communities in the cooperative societies have limited access to social services such as schools and hospitals and infrastructure such as roads, electricity, telephone and

water. These were not adequately dealt with due to poor planning and management of land development. For example in Alli Juja-Wendani, 86.7 per cent of the respondents are without water, 73.3 per cent without telephone services and 53.3 per cent with no electricity. By allowing the location of informal activities at strategic places without planning and by permitting haphazard allocation of land, any coordinated development cannot be expected.

Many of the land owners and developers in the company, cooperative and freehold areas do not feel the need to seek planning services, and they develop their land without approval from the planning authorities. As shown on Table 6.1, *private land owners and developers do not respect public intervention in planning* because (from Table 7.34) *private land owners and developers do not take planning services seriously*. The fact that 46 per cent of the respondents in Langata Development sought planning services from Ruiru local authority which has no planners is a case in point. Consequently, it is not possible to enforce planning law provisions and coordinate private land development. The same response contradicts the actions of the local authority in policy areas one and four. In policy area one, the local authority approves the use of open spaces for informal activities without regard for the need to coordinate implementation. The concern expressed in policy area four is that land development takes place without approval. In the context of these two policy areas, officers of the local authority could not have given the best advice to those respondents who claim to have consulted them. The approval did not guarantee coordination and therefore any integrated land development in the long term cannot be achieved.

Planning without coordination contributes to poor management and results in the provision of low level infrastructure and a weak economic base. At the same time, administration in the delivery of services becomes weak and requires improvement to minimize delays within the service corporations. In these areas, land development is not

integrated into the existing framework of planning in which agencies of the central government are the most influential. For example, in Karen Langata which has a formal plan, aspects of architectural design of buildings are the most sought after planning services, but most of the respondents do not seek plan preparation and approval services. In Kinoo, Ongata Rongai and Kangemi, which do not have formal plans, land owners and developers are far removed from any coordinated planning. Most of the respondents developed their land without any planning services in Kinoo and Ongata Rongai, while in Kangemi, land owners have resisted formal planning since 1975. Consequently, social services such education, health, and infrastructure are inadequate. In Kinoo, 88.5 per cent of the respondents are without telephone, while electricity is not available to 73.1 per cent of them. Household respondents cited inefficient administration at the Kenya Posts and Telecommunications Corporation and the Kenya Power and Lighting Company, and cost of distribution of the services as reasons for the lack of telephone and electricity. Lack of coordination in the delivery of services (telephone and electricity), and land use planning was cited by the officials of the service corporation as another reason. On the other hand, Kikuyu local authority remained concerned about deterioration of the roads and the poor sanitary drainage and is not sure when roads would be repaired or new ones built.

8.1.2 Urban Land Development

There are no urban development programmes such as roads that are financed by the central and local authorities in many of the study areas (Table 7.13). The Commissioner (department) of Lands and the Physical Planning Department *are not involved in planning for economic gain or in provision of services*. The lack of such programmes partly contributes to ineffective planning. Private land owners can only finance and develop their plots, but that development is usually without essential infrastructure such as reliable road networks, community health services, schools, telephone and electricity (Table 7.34).

In urban land development there are differences in the sources of finance between areas of freehold which are covered by formal plans such as Karen Langata and Spring Valley. In Karen Langata and Spring Valley, loans from banks and other financial institutions are the most popular sources of funding. In these two areas, land titles are used as security for the loans and consequently, transactions in land are not mere sales and transfers between sellers and buyers. Plots are the most commonly used security for loans and cost of land development is higher. For example, in Karen Langata where commercial banks are sources of some of the money, average cost of development per plot is KSh 1.2 million. Banks will not risk investing money in land development in areas where there is no guarantee for the loan repayment and land owners in areas with plans are preferred. In Spring Valley, where more land owners and developers rely predominantly on commercial banks, most of the services were found to be in place. This is not the case in Karen Langata, even though the area has a plan. Land owners and developers rely on personal savings and other sources of finance apart from the commercial banks. There is a relationship between the large proportion of smaller size plots, the existence of a formal plan, having a title to the plot and prevalence in the use of the title to secure a loan. This relationship is better illustrated by a contrast between Karen Langata and Spring Valley. According to the Land Registry, Karen Langata has fewer plots of 0.25 acres or less than Spring Valley. As noted above more land owners in Spring valley than in Karen Langata rely on money from commercial banks to finance the development of their land.

A different pattern emerges when areas covered by formal plans are compared to those without such plans. In Langata development company, Alli-Juja Wendani and Mwana Mukia cooperative communities, and the freehold areas without formal plans (Kinoo and Ongata Rongai) many of the respondents used personal savings and cooperative loans, rather than loans from commercial banks, for housing development. In

these areas the cost of land and its development is also fairly low (as discussed in sections 7.9, 7.10 and 7.11 of chapter seven). But differences in cost of land and its development between the areas without formal plan also vary and this is due to factors that dictate how people have access to land they own. For example, the average cost of land development is higher in freehold areas such Ongata Rongai (KSh 486,611) where ownership has been by purchase. In Kinoo where ownership through inheritance is widespread, the average cost of development per plot that is calculated from the field survey is much lower (KSh 131,318). There is also a big variation in cost of land and its development within the companies and cooperatives. The average cost of land development is lowest in Mwana Mukia cooperative (KSh 200,538), followed by Langata Development Company (KSh 248,818) and it is highest in Alli Juja-Wendani cooperative (KSh 420,800). Although there are significant variations in the cost of land development, communities in all of the study areas face the same problems associated with poor planning and management. There are no effective policies to guide the land owners and developers. The cause of this situation has been summarised in Table 6.1, Table 7.13 and Table 7.34 . Also, the tenants living in areas without formal plans rely on the methods that have been described for access to land, and finance for funding its development in these areas (Table 7.34). Land development takes place in two protracted stages of buying land, and then developing on it (Nation, 1991:4). The present research corroborates that finding. At the same time, the potential for further land subdivision in the areas without formal plans has been identified and appropriate planning and management measures will have to be taken to guide land development.

8.1.3 Managing Economic Activities

Respondents suggested that workshops and a community vocational training centre in Karen Langata are the only activities that will have economic benefits while nothing was suggested in Spring Valley (see Section 7.8.1 of chapter seven). One

interesting finding is that after development of plots in Mathare North some space in the buildings are rented out for business operations. The use of residential buildings for business is also widespread in Zimmerman Development. Such use of residential buildings in Nairobi is part of an increase in informal business activities which has to be managed in the context of urban planning. Unfortunately, from the policy areas derived from the Minutes of the local authority meetings, Nairobi has no policies on planning for and the management of economic activities.

Household respondents in the companies and cooperative societies suggested that assistance be given for the identification of investment priorities in their communities. This specific response is related to Ruiru local authority policy area one on strategic location of informal activities, and policy area five on local economic development. The objective of both the communities and the local authority is to improve wealth generating activities (Table 7.34). In fact, the concern for the weak local economic base is more widespread and has attracted the attention of the officials of the cooperative societies who consider stimulating economic activity as the most important problem facing their communities. It is a clear indication that there has been no proactive planning for economic development in different policy areas of the local authorities.

The freehold areas, without formal plans, are also facing many problems related to the local economy. To stimulate the economy, further subdivision of land to increase the number of business units who pay rates as outlined in policy area one of Kikuyu local authority is seen as a move in the right direction. Furthermore, efficiency in administrative process in policy area four of the local authority to increase sales and transfer of property, reduce delays in approval of proposals for change of business types and licenses for more businesses (especially *Kiosks*), are expected to improve the local economy. These findings clearly show that the approach of the local authorities in the management of urban economic activities does not take into account the need for

coordinated planning in the development of land to accommodate these activities, business skills, and financial services to support the implementation of the policies. The approach lacks integration.

Olkejuado local authority has no policies to manage economic activities in its jurisdiction and this is particularly serious because the local authority relies more on property rates as a major source of revenue. However, rate charges as sources of revenue are not reliable because defaulters are not prosecuted all the time by the local authority. Such a lack of enforcement of law encourages the non-payment of the rates. It is the respondents in Ongata Rongai who are more concerned about how their community can develop, but there will have to be effective local planning based on more realistic policies. Meanwhile, there is a general need to evolve more effective planning as a basis of articulating community concerns.

8.1.4 Managing the Urban Environment

The priorities in environmental management in Karen Langata are to enforce planning regulations and to collect and dispose wastes. At the same time, preparation of building plans with more emphasis on architectural design are the most sought after planning services. The scope of the planning services is narrow at present, and should be extended to environmentally sensitive and recreation areas. It is not surprising that most of the land owners in Karen Langata focus on narrow environmental concerns which include such building plans and architectural designs (Ojwang, 1992a), because Nairobi local authority also has a narrow focus without consideration of the natural environment in its own policy areas. For example, in policy area one, the local authority intended to improve the efficiency in the approval of building plans with a view to minimizing delays and to generating more revenue. Again in policy area five the authority focuses on reducing the time taken by the planners to approve building plans. These policy areas indicate that the local authority is concerned more with the physical character of

buildings and not concerned with the environmental issues such as the provision of recreational open spaces which are not included in plans.

Policy area four of Ruiru local authority which deals with the approval of building plans can be considered to be limited to the management of the urban environment as in the case of Nairobi. However, concerns dealing with the unplanned development in policy area five and haphazard allocation of land in policy area six suggest a move to a more comprehensive approach in the management of the urban environment in Ruiru. Respondents in the cooperative societies also suggest managing waste and environmentally sensitive areas as worthy of more public attention. Therefore, the concerns of the respondents are also on the wider biophysical environment. But no effective environmental management can be undertaken in the company and cooperative communities without effective mechanisms to ensure effective planning and enforcement of planning regulations.

Issues dealing with the management of the environment are ranked fourth in Kinoo, Ongata Rongai and Kangemi and the respondents seem not to attach much importance to environmental problems. This is not surprising because, as shown on Table 7.13, *the planning authorities are not involved in regulatory and advisory planning as aspects of urban management*. Without proper collection and disposal of wastes, they accumulate in close proximity to properties of residents and this has been a major concern to the respondents. However, natural habitats and community open spaces do not appeal to them because respondents did not think they provide immediate benefits. Furthermore, the freehold land ownership rights which are exercised without effective enforcement of planning regulations is responsible for the lack of concern for the environment. In fact in policy area one, Kikuyu local authority acknowledges that the relationship between freehold land ownership and its development is the cause for the continued violation of the provisions of the urban development plan. To enforce planning regulations, the local

authority has to rely on persuasion. Olkejuado local authority is faced with the same problems where as policy area one shows, land owners subdivide and develop their land without approval and then ask the authority to recognize their development at a later date. The local authority has also to rely on persuasion to solve the problems as shown in policy areas one and six. Lastly, the land owners and developers in Kangemi refused to integrate development activities into the planning framework of Nairobi which makes the management of environmental problems in the community more difficult. In the absence of policies on the environment in Nairobi, land development in the freehold areas such as Kangemi will continue to undermine effective management of the urban environment. But this can be improved *by incorporation of land development activities of the private land owners and developers into the mechanisms of public policy process* (Table 6.1).

8.1.5 Implications for the Existing Planning Law

There is almost no management of economic activities and the urban environment in the context of urban land development by the local authorities in Kenya. This is surprising because *the philosophies of the three heritage (common, statutory and customary) laws support some form of planning* (Table 6.1). The absence of such management, which is noted in Table 7.13, is not in line with the mandates of local authorities. The provisions of the planning law are the basis of planning, and without appropriate planning law such management will not succeed. Therefore, in future, the kind of provisions in planning law will determine the effectiveness of the planning and management of the urban land development. The statutory legal heritage introduced in the form of ordinances dominates Kenya's model of planning law. According to the information in Table 6.1 *the provisions in the existing planning law have created many conflicting planning institutions. Such institutions have weakened the local authorities. At the same time there are no provisions for any form of community participation in planning.* The many pieces of legislation in the planning law have created a situation

where the responsibilities for planning rest with the central government. The government's role seems to be justified because of its involvement in national planning policies and in the administration of the country. The administrative role of the government and its agencies especially, makes the existing model of planning law shown in Figure 6.1 inappropriate because of the wide discretionary powers used in planning. The result is that the planning capabilities of local authorities are not developed and they remain dormant.

The government lacks the civic, political and jurisdictional planning authority in the conduct of local government in Kenya. The legislative provisions in the imported ordinances which are now the legal basis for planning perpetuate the dominance of the central government in planning, and are a legacy of colonial rule. The role of the government in the formulation of the national development policies is ambiguous, considering its involvement in day-to-day activities of the local authorities, in local planning jurisdictions. In that involvement, the existing model of planning law favours the entrenchment of the Commissioner of Lands and the numerous district planning committees under the administrative authority of the respective District Commissioners.

According to the *Local Government Act* a committee system is organized around civic politics and jurisdictional planning. Such a system forms the basis for local planning and implementation of community (development) projects and programmes. This legal provision is distorted by provisions in other legislation such as the *Government Lands Act* and the *Land Planning Act*. The committee system of local authorities can no longer play the role defined by the legal provisions that created them as the individuals and organizations in policy making and administration of the central government are involved in the work of the committees. The role of these individuals and organizations in planning is without the anticipated results because they do not translate policies into the expectation of the communities. This failure can be appreciated in light of the

findings discussed earlier in this chapter. Due to failure in the planning and management of urban land development, managing local economic activities and the urban environment are ineffective. Instead, the entrenchment of these individuals and organizations in local planning is merely symbolic of government concern for local development which is perceived to justify its involvement. Meanwhile, the need for solutions to ever - growing problems in planning and managing urban land development remains. It seems there is no realization that subdivision and allocation of government and trust land alone cannot be of much help. Unless realistic steps are taken to address these existing legal provisions in the planning law to improve on the approaches to urban land development, managing economic activities and the urban environment will continue to be a serious challenge to Nairobi city and bordering urban areas, and indeed to the nation.

The discussion so far shows that existing planning law does not promote coordination and cooperation in planning. The following are the four broad areas of concern which result from the lack of coordination and cooperation:

- 1. Consistent conflict between policy and administrative responsibilities of the central government organizations, and jurisdictional planning responsibilities of the local authorities.*
- 2. Management of the local economic activities, and the link between the activities and management of the urban environment as expressed in some of the policy areas in Kikuyu, Ruiru and Olkejuado (but not in Nairobi) local authorities and households.*
- 3. Poor delivery of the physical, social and marketing infrastructure and the need to improve existing ones, and*

4. The *Lack of consultation and integrated urban planning and management programmes for Nairobi, Kikuyu, Ruiru and Olkejuado local authorities.*

The law has disenfranchised the local communities of their right to participate in planning and has also created conditions that justify individuals and private organizations in developing their land without consulting the centralized planning authorities. Therefore, conceptions of Common and African Customary law encourage private land owners to exercise their freedom to pursue economic rights without effective public policy (Table 6.1). Such activities have promoted self-interest or the partiality problem in the companies, the cooperative societies and the freehold areas as discussed in Chapter Six (Paul *et al*, 1992). Paul *et al* suggest that solutions to this problem, and the problem of knowledge and problem of power are key to effective application of common law. In most of the areas studied, land development has failed to create economic activities that can always support a strong local economic base in the communities. At the same time that kind of development could be a potential source for the degradation of the urban environment. Results of the survey show that the failure of common law provisions is related to the exercising of the freedom of the individual. Failure of the African customary law relates to the resource user concept which fails to adopt more effective management strategies because "planning" is really short term. Subdivision of land and allocation seems to be the only important aspects which are promoted in the concept. The resource user concept is associated with the inherent right of the individuals in the community to have access to resources such as land and use them. It seems that once people have access to land resources, they exercise their rights without regard to the requirements of social mutual responsibility (SMR) (Kenya, 1965, and Gbadegesin, 1991). The failure to apply the resource user concept has had more serious economic and

environmental implications because economic productivity and redistributive (subdivision/transfer of small units) aspects which are implied in the SMR support land development without effective planning. The failure can be attributed to the fact that owning a piece of land seems to be the ultimate goal and the impact on the economy and the environment from development of the land is not taken into account. The conclusion is that although the regime of planning law which is mainly derived from imported ordinances and legal orders dominates the model, it is not effective, especially in freehold areas.

The failure of the existing planning law model was evident in many ways. For example, the provisions in the heritage of common law prevail in freehold land areas with formal plans such as Karen Langata and Spring Valley, and public - private joint development at Mathare North site and service scheme. The provisions partly also influence land development in the freehold land areas without formal plans such as Kinoo, Ongata Rongai and Kangemi, in the company development areas such as Zimmerman and Langata Development, and in the cooperative areas such as Alli Juja-Wendani and Mwana Mukia. In the company and the cooperative areas the provisions begin to operate soon after subdivision and allocation.

Customary law aspects of distributive and resource user activities are prevalent also in the company and cooperative areas where collective efforts in the ownership and development of land is the philosophical basis of the enterprise (Maini, 1972; Mucai-Kattambo, 1992 and Woods, 1992). Maini, Woods and Mucai-Kattambo point out that collective efforts in the ownership and development of resources such as land continue to be a feature in the social and economic development in African society. The enterprise change into individual ownership through subdivision and allocation. A situation where personal savings and cooperative loans are the most popular sources of finance for development follows. Failure of the customary law provisions can be attributed more to

subdivision planning than to the objectives of land development because notions of social mutual responsibility (SMR) in management which require coordination in the use of resources are disregarded. The concept of trust in customary law is used in statutory law in the form of the *Trust Land Act*. However, under the Act the Commissioner of Lands and the District Commissioners are officers of the central government who have the executive planning authority. The Act is not useful because it lacks provision for coordination in the planning and management of land development

Based on the survey, the major conclusion is that the existing planning law is weak. For example, officers working under the Commissioner (department) of Lands are of the view that the *law is weak in regulating implementation of building plans*. On the other hand, planners in the Physical Planning Department consider *dominance of imported legislation which is not relevant to present urban problems* in Kenya as the source of weakness.

In Karen Langata and Spring Valley developments, the role of the *planning law is not considered essential* by the respondents simply because it would interfere with the development of their lands. In Kinoo, Ongata Rongai and Kangemi also the *law is not considered essential* and *enforcement of planning regulations is ranked low*. Interestingly enough, communities in company and cooperative areas consider the role of planning law as crucial to the implementation of land development plans. However, they consider it *weak for lack of policy for the whole country and lack of enforceability because of the existing weak economic base and widespread poverty*. According to them, poverty has eroded their confidence in the law, and they feel that compliance with the provisions of the law cannot guarantee a better standard of living. Based on the sentiments expressed by these communities, Ruiru local authority is hesitant to enforce the provisions in Section 166 of the *Local Government Act* as noted in policy area one. In the policy area, the authority wished to stop the involvement of the Commissioner of

Lands in planning within its jurisdiction and land owners who develop their land without consulting its officers. Therefore, non-enforcement of planning regulations will persist as an important management problem for the communities in the company and cooperative areas and the local authorities if nothing is done to improve the situation.

8.2 Recommendations

From the foregoing discussion a few recommendations are made on urban land development and planning law approaches for Nairobi city and bordering urban areas. As indicated earlier, recommendations are made in the context of a strategic model, a planning law model and an integrated model. The recommendations relating to planning law and the central government departments/agencies also apply to other urban areas in Kenya and can be implemented as measures for the whole country. The other recommendations are specific to Nairobi, Ruiru, Kikuyu and Olkejuado local authorities as local planning organizations and the individual land owners in the sample areas.

The recommendations aim to bring planning in the public domain away from mere physical planning that deals with subdivision and allocation of land and architectural design of buildings. The concern with the quality of buildings seems to have relegated the role of planning law to irrelevant legal provisions for planning in the public domain. The recommendations are made in the context of five areas of concern which arise out of the earlier discussions. The five areas are:

1. Planning agenda: scope of policies and philosophy
2. Organizational
3. Local planning
4. Private initiatives, and
5. Planning law.

The relationship between the five areas is shown in Figure 8.1.

*Public domain
- need for
- need for
- need for*

Figure 8.1: Strategic model of planning and managing urban land development

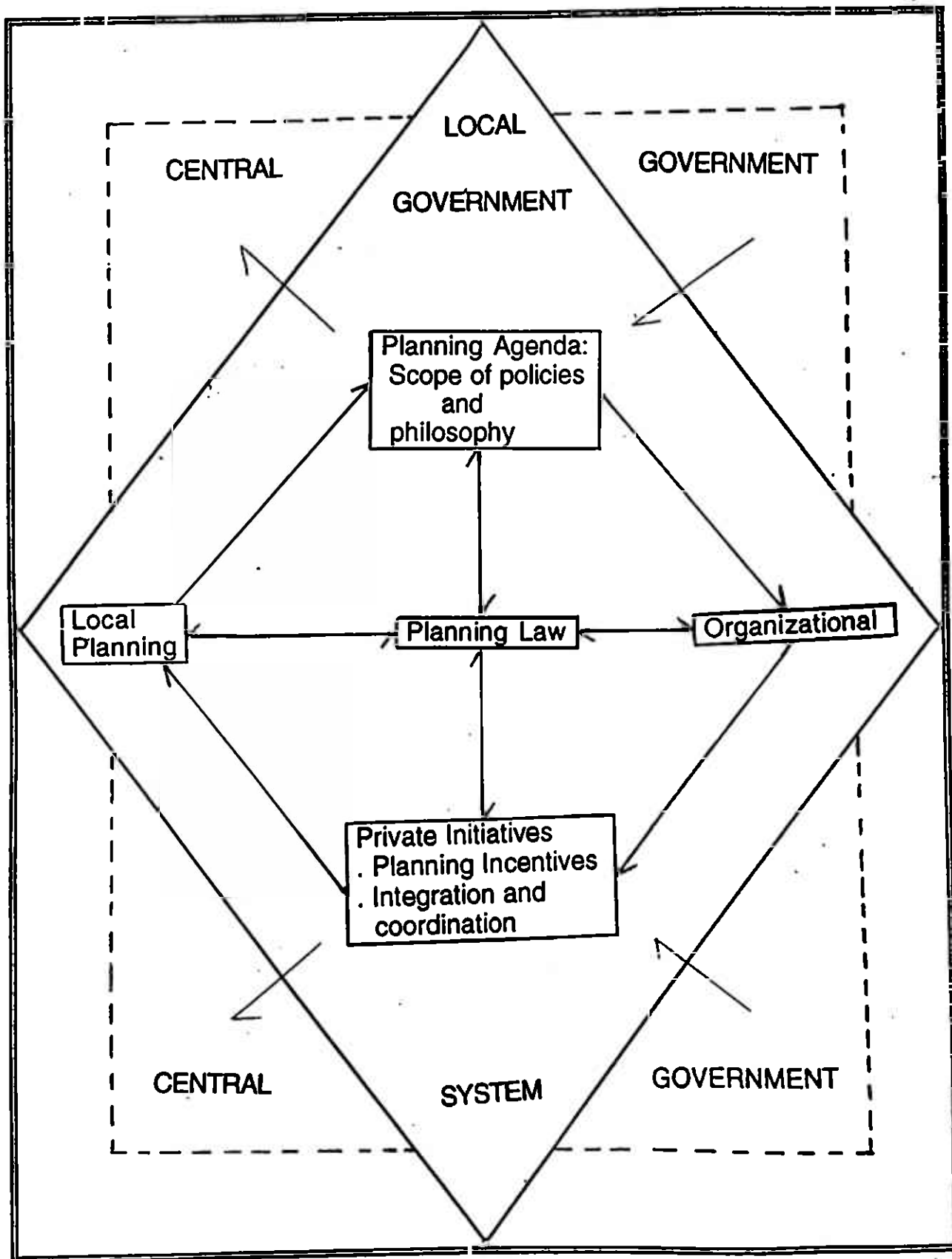


Figure 8.1 also represents the recommended strategic model. To make the planning and management of urban land development more effective, planning law will have a more important role. In the strategic model the law mediates the other areas of concern (scope of policies and philosophy, organizational, local planning and private initiatives), but they too, are key to the successful application of the model. Each of the five areas will be discussed briefly.

1. Planning Agenda: scope of policies and philosophy: There is a need to reconsider the role of planning specific to Nairobi city and bordering urban areas, and in general to other urban areas of Kenya. Based on the conclusions of the study, more effective approaches in the planning and management of urban land development must be explored and adopted. The approaches should widen the scope of policies, and rely on more relevant philosophical grounds as the basis of planning. Existing policies are only short term and do not have any explicit philosophical underpinnings. Effective approaches in planning and management of urban land development must address the problems of urbanization and population pressure in the implementation of the policies. A new agenda for planning should simplify planning in Kenya and also go beyond administrative concerns by divorcing central government departments/agencies as the only (main) agents of local planning. Instead, participation by people, regard for the wider area of environmental planning and management should be part of the new agenda, especially at the level of local authorities and communities.

2. Organizational: Planning institutions should be directed to resolve confrontation and conflict by mediation. The institutions should be organized in such a way that there is no unnecessary overlap in their jurisdictional mandates in the formulation and implementation of policies at the national and local levels. Goals of planning must be focused on integration of urban land use planning, economic planning, resource use and management of the urban environment. This organizational orientation can increase the

scope of policies and integrate goals of equity and decentralization in Kenya's development planning.

3. Local planning: There is a need to move local planning from the district planning system to the local authorities. Coordination and cooperation among different local authority jurisdictions should become the framework for the implementation of urban land development policies. Municipal forms of public organizations are recommended as more effective in local planning (*World Commission on Environment and Development, 1987*). The recommendation is meant to improve development planning at the local level. It can be expected that such a framework will also be useful in planning for the national and the regional programmes and projects. At the local authority level, community organizations already exist in the form of companies, cooperative societies and other associations. These organizations should become the basis of initiating and implementing development, and community participation. Planning legislation should provide for the responsibilities for formulating policies at various levels with special attention to community participation in planning.

4. Private initiatives: Private initiatives should be encouraged through local level support in planning services and in the provision of services and infrastructure. Coordination with a view to integrating development of land in all categories of land ownership is suggested as the most effective way in planning and in the provision of social services and physical infrastructure.

5. Planning law: Planning law should become the basis of articulating a planning agenda and appropriate organization, and help in developing confidence in the communities. The law should make provisions which encourage private initiatives and which can also become a useful guide in managing economic activities and the urban environment.

Each of the five areas discussed above constitute the recommended strategic model in Figure 8.1 and is now discussed in some detail to illustrate how the model will

apply. The planning law model and the integrated model will be included in the discussion in relation to the strategic model. First, the discussion of recommendations for the study area, Nairobi city and bordering urban areas, will be presented. This will be followed by discussion of recommendations on planning approaches for the whole country.

8.2.1 Planning Approaches for the Study Area

The recommended planning approaches are for Nairobi, Kikuyu, Ruiru and Olkejuado local authorities as planning entities, and the land buying companies (Zimmerman and Langata Development), cooperative societies (Alli Juja-Wendani and Mwana Mukia), and the freehold land areas (Karen Langata, Spring Valley, Kinoo, Ongata Rongai and Kangemi).

1. Planning Agenda

Problem: Scope of policies and philosophy

Recommendations: Planning in the context of local authorities should be concerned more with social, cultural, local economic activities and the management of local biophysical environment (recreation, waste and environmentally sensitive areas) (Figure 8.2). Figure 8.2 represents the suggested integrated model of planning and managing urban development in Nairobi city and bordering urban areas. The model is a summary of relationships in philosophy, planning law and organizations, the place of planning and management in urban land development, and their relationship to urbanization and conversion of land. This relationship lacks a policy to deal with land ownership types, and land development activities of individuals and organizations. Lack of such policy has resulted to poor planning for a strong economic base, and management of the urban environment. It is noted that three aspects (the character of urban communities, and the managing economic activities and the urban environment) of the model are linked to the five main areas of discussion (in section 8.1 of this chapter).

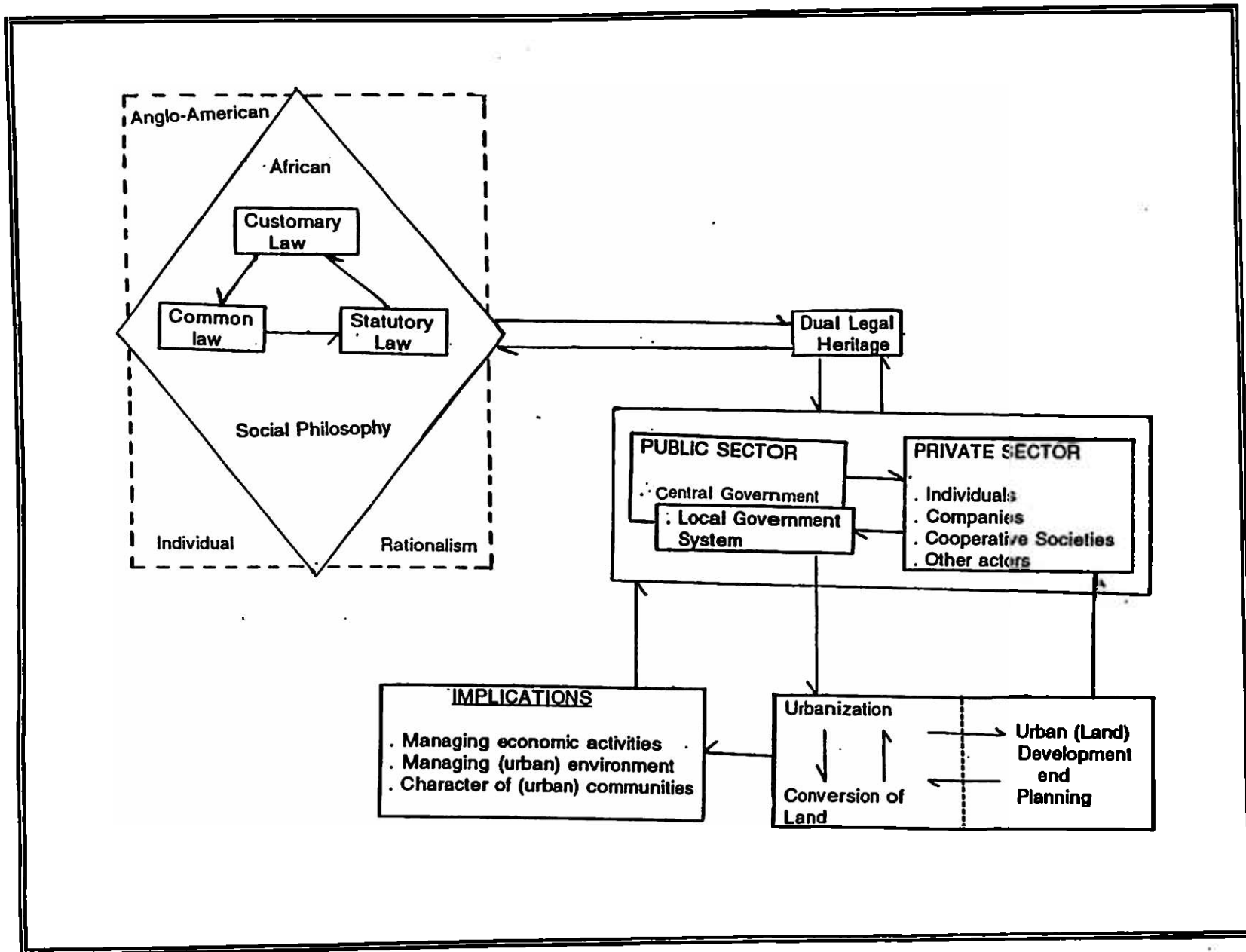


Figure 8.2 : Suggested model for planning and management of urban land development

Once the model is operational, planning at local authority level would not be mere preparation and approval of building plans and leases (as was the case in Nairobi), and the widespread concern by the local authorities to be involved or consulted in subdivision and allocation of government and trust land in their areas.

It is recommended that after officials of the companies and the cooperative societies allocate land to the members, they should be asked by the local authorities to organize business support programmes, infrastructure and local environmental programmes in their communities. To help in the growth of the small enterprises, the officials should be encouraged to participate in the administration of the community financial support services in consultation with the local authorities officials. In the freehold land areas (Kinoo, Ongata Rongai and Kangemi) the authorities should be involved directly or through community leaders to introduce community business support programmes, community infrastructure and local environment management programmes. In the long term local authorities should employ planners to work from within them on land use planning and help in the implementation of local environmental policies. In their planning assignments planners should mediate between civic politicians and local communities in the constant evaluation of local planning directions.

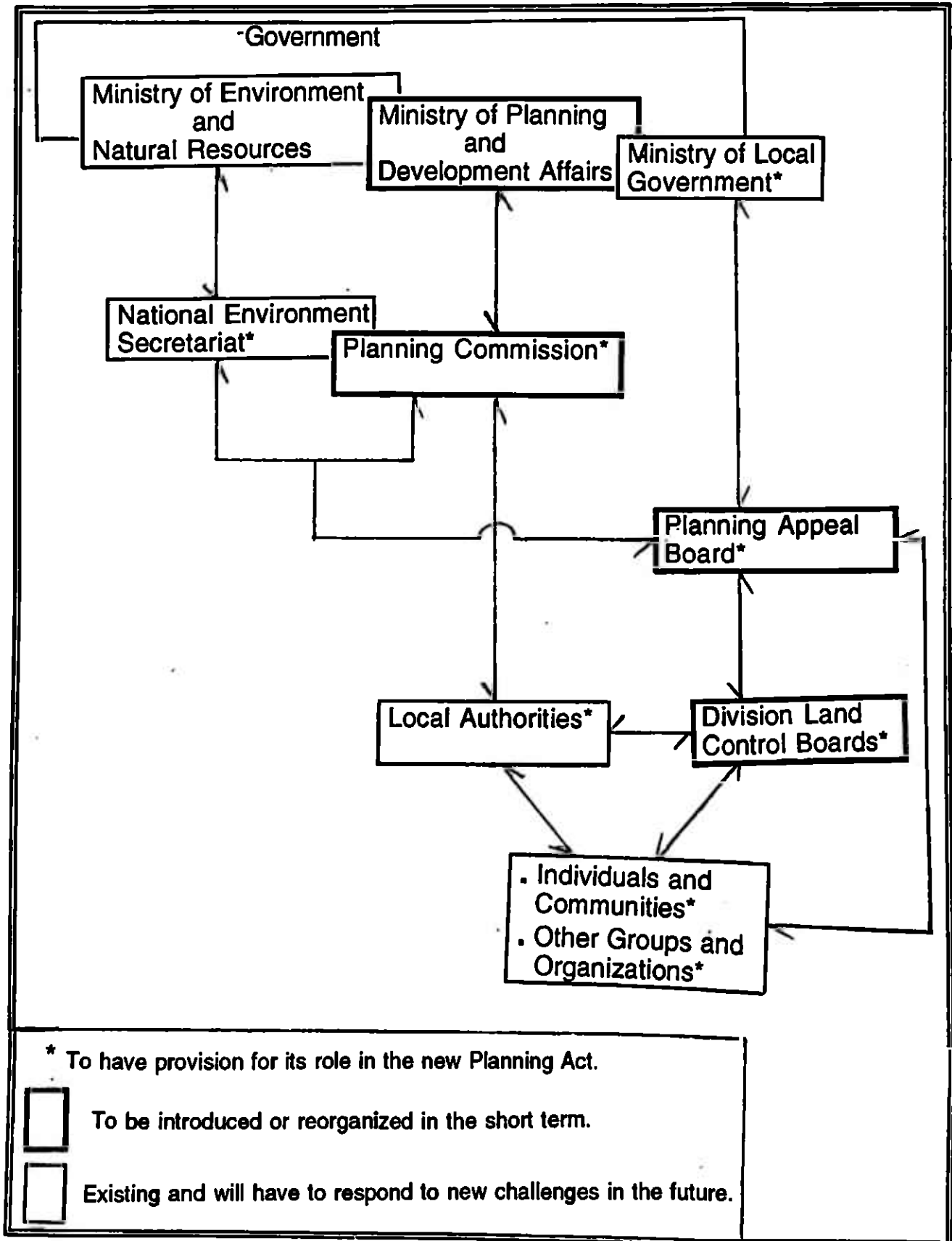
2. Organizational

Problem: Basis for local planning and management

Recommendations: Once the capacity of local authorities is strengthened, those that share common border should be encouraged to identify common problems which can be a basis of coordination in land use planning. Local authority urban land use planning should be mediated by Division Land Control Boards (DLCD), but there should be provisions for a *Planning Appeal Board* to intervene in cross-border planning issues between local authorities (Figure 8.3). Such changes in organization, and the expected effectiveness in mediation will very much depend on changes in other levels of

organization as shown in Figure 8.3, and will be discussed later (in section 8.2.2).

Figure 8.3 : Suggested organization for planning and management of urban land Development



The *Planning Appeal Board* should be consulted to make decisions on land use planning issues (especially appeals) when the local authorities and DLCB cannot resolve them. At the same time individuals and groups should access the *Planning Appeal Board* for appeals (Figure 8.3).

Local authority strategic planning should be the basis of investment programmes in infrastructure and services (water supply, sanitation, streets, education and health). However, the local authorities will not have to administer the programmes. Such planning should be used as a framework for the distribution of electricity, and in delivery of telephone services .

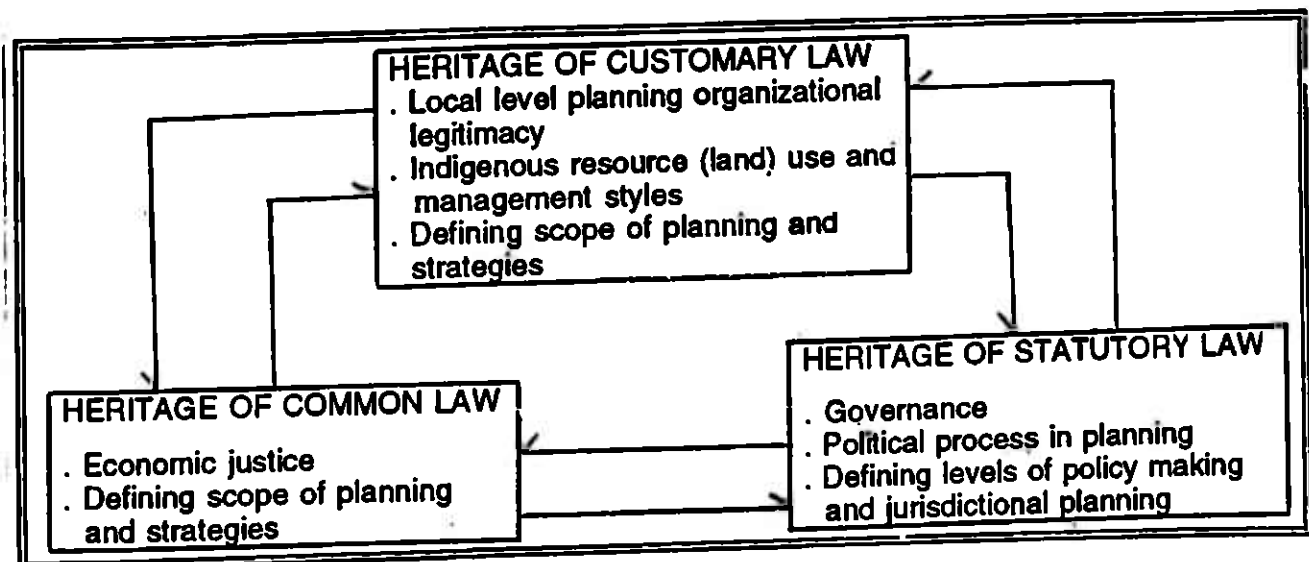
3. Local Planning

Problem: Relationship between local authorities and local communities

Recommendations: Civic political institutions in Nairobi, Kikuyu, Ruiru and Olkejuado local authorities should be the basis for the extension of opportunities for the participation of communities in local planning (Figure 8.2, Figure 8.3 and Figure 8.4). Figure 8.4 which represents the suggested model of planning law also show the suggested improvements on the existing distorted model (Table 6.1 and Figure 6.2). This suggested model of planning law show that local authorities should have more power in local planning. At the same time the model suggests jurisdictional planning in the context of a strengthened relationship between the local authorities and communities. Distinct community groups already exist in response to market economy and they are organized in form of land buying companies, cooperative societies, etc. These groups should be seen as a basis for multi-level community planning and participation in the local authorities, and they should be used.

The suggested model of planning law for the study area should be adopted as a framework of a new *Planning Act* which should be for the whole country (section 8.2.2). It can be expected that such new legislation will be a useful guide in formulating planning bylaws in different local authorities. The main features of the suggested planning law model to be strengthened are shown in Figure 8.5 .

Figure 8.5: Areas to be strengthened in the suggested model of planning model of planning law



It is evident from Figure 8.5 that each of the three heritage of laws will need some improvement. For example, in the heritage of customary law, it has been established that in view of the concept of resource user in the context of social mutual responsibility (SMR), land ownership and its development are all that which concerns the owners. But, long term planning of such development in view of economic and environmental needs are discouraged. This finding was particularly evident in Kinoo and Ongata Rongai which have no formal plans, and in the company and cooperatives communities where land is developed without guidance after subdivision and allocation. Furthermore, in Kinoo, Karen Ongata Rongai, Kangemi and Karen Langata there is lack of appropriate

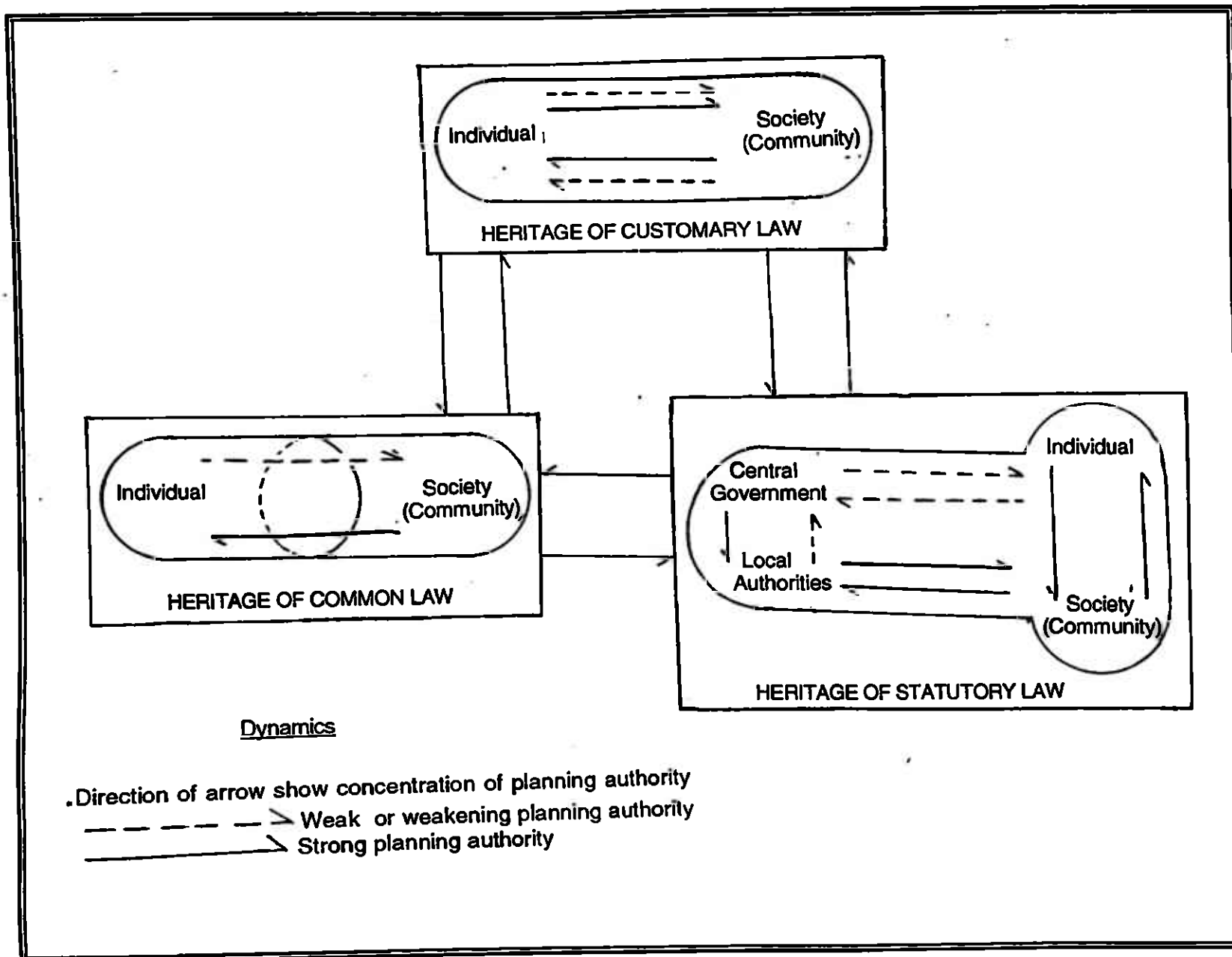


Figure 8.4: Suggested model of planning law

policies and strategies. Lack of such policies and strategies is a result of the problem of governance and ineffective jurisdictional planning in Nairobi, Kikuyu and Olkejuado local authorities. Another example is that the statutory heritage of law dominates in the existing model of planning law (Table 6.1), but the role of the provisions in the law is symbolic than real. Governance and jurisdictional planning in the study area should be improved (Figure 8.5). The symbolic role promotes the problem of self-interest in the heritage of common law which affect local economic base and the urban environment. One of the recommendations to improve common law heritage in the model of planning law is to increase the scope of planning policies and strategies for implementation (Figure 8.5). Such improvement will have to be translated into legal provisions in the *New Planning Act*.

4. Private initiatives

Problem: Lack of incentives, integration and coordination

Recommendations: Ownership of freehold land after subdivision and allocation in Zimmerman, Langata Development, Kinoo, Ongata Rongai, Kangemi, and, in Alli Juja-Wendani and Mwana Mukia should be seen as positive attributes of private initiatives. However, without planning and management of the initiatives, they will not contribute to long term development. Subdivision of land to "uneconomical" units can be contained if development control mechanisms will be introduced in the context of local planning and participation.

Private initiatives require incentives in the form of infrastructure and services such as telephone and electricity. Planning for the provision of the infrastructure and services can be more effective in the context of strategic planning illustrated in Figure 8.1 and will help to integrate private initiatives in land development, economic activities, and the management of the urban environment.

Meetings of the boards (especially Division Land Control Boards) will improve

communication and make communities in Kinoo, Ongata Rongai, Kangemi, Zimmerman, Langata Development, Ali Juja-Wendani and Mwana Mukia more informed and responsive to planning policies. This should attract more developers to consult local planning authorities in the development of their land. At the same time, local authorities should encourage consulting planners to take their services to Kinoo, Ongata Rongai, Kangemi, Zimmerman, Langata Development, Ali Juja-Wendani and Mwana Mukia. On their part, consulting planners will have to liaise with local authority planners with a view to develop a consultative relationship with the communities.

There should be some form of financial support, and provision of other services to small business operators in the communities. Such financial support and services should be coordinated with the implementation of local authority policies in form of community programmes. To coordinate community policies and programmes, two sets of relationships should be used. The first set is the relationship between public and private sectors, urban land development and planning, and economic and environmental implications (Figure 8.2). The second set is the relationship between individuals, communities and local authorities (Figure 8.3). Such coordination will also attract land owners and developers to consult local planning authorities when they develop their land.

5. Planning Law

Problem: Distorted model of Kenya's planning law

Recommendations: The existing planning law has created many planning authorities and as a result is a distorted model of planning law (Figure 6.1, Figure 6.2 and Table 6.1 in chapter six). Such distorted model has affected planning and management of urban land development in Nairobi city and bordering urban areas (discussed in section 8.1.5 of this chapter). A new *Planning Act* should be introduced in Kenya to unify planning law and replace the existing numerous legislative acts. The number of planning authorities in the existing planning legislation should be reduced and in the new *Planning Act*, the role

of the Interim Planning Authority and the Preparatory Planning Authority should be taken over by the Division Land Control Boards and local authorities. (Figure 8.3). The new Act should have provisions for consulting planners and there should be a provision that enable them to coordinate their work with local authority planners. The proposed Act should also have provisions that deal with aspects of environment such as planning for recreation open spaces and environmentally sensitive areas. In the long term it can be hoped that *legal provisions for environmental planning will become useful in guarding against possible degradation as it is already happening in Kinoo where natural habitats and opens spaces seems to be of little value.*

Some of the planning committees meetings in the local authorities should be open to the public and interested members of the public should be allowed to express their concerns on specific planning projects or programmes which they feel are likely to affect them (Figure 8.3). Such meetings will improve communication between citizens and the local authorities which the study found to be one-way from planning authorities to the people, and become the media through which relevant provisions of the African customary law can be introduced and developed. At the same time Kikuyu, Ruiru and Olkejuado local authorities should formulate local planning bylaws and in Nairobi the bylaws will have to be updated in order to reflect the principles in the new *Planning Act*.

8.2.2 Planning Approaches for the Whole Country

Planning approaches which are recommended for the whole country are discussed in the sequence that has been used above. There are no recommendations on private initiatives because data that has been used in the present study were collected within Nairobi, Kikuyu, Ruiru and Olkejuado local authorities. In future, other studies will have to be carried out in other cities of Kenya on this aspect. The strategic model, the planning law model and integrated model discussed earlier in section 8.2.1 apply to the whole country to the extent of finding based on literature review and the analysis of planning

law. The planning law is for the whole country, and its provisions which are part of secondary data in this study apply to all cities in Kenya.

1. Planning Agenda

Problem: Scope of policies and philosophy

Recommendations: The diverse types of land ownership should be seen to represent many levels of opportunity for planning and managing urban land development (sections 4.1, 4.2 and 4.3 of chapter four). *These diverse types of land ownership represent social-cultural and historical frontiers of Kenya's philosophy in resource use and development and they should be used.* It is indicated in the summary on the role of organizations in planning (in chapter seven) that, *application of political, economic and social values based on Western norms of planning may not alone be effective basis of planning and management in Kenya.* Figure 8.2 discussed earlier (in section 8.2.1) show that *the Agro-American philosophy, the African social philosophy and the three heritages of laws (common law, statutory law and customary law) are key to Kenya's philosophy in resource use and development.* Planning in the public domain in Kenya must always take into account the political, economic and social implications of these philosophical roots.

The scope of planning policies should be extended beyond the narrow view that urban planning is mere land subdivision, land allocation and physical development. Planning policies should take advantage of positive aspects of philosophy in resource use and development, especially indigenous knowledge and institutional organization. This requires re-orientation of planning from cycles of experimentation. Such cycles of experimentation in the 1960s, 1970s and 1980s were in form of *special rural development programmes, growth centres and services centres, rural trading and production centres, and district planning where administrative officers and central government professionals exercise unnecessary control* (chapter five). Instead, *community involvement in economic activities and genuine concerns in the use of*

resources should become the basis for planning. Such focus should consolidate peoples' confidence and lead to more effective management of the urban environment.

2. Organizational

Problem: Organization for Policy Making and basis for Jurisdictional planning

Recommendations: Existing conflicts and competition between government departments/agencies and the local authorities do not promote coordination and cooperation. They are partly sanctioned by existing planning law and they should be resolved. The suggested organization (Figure 8.3), is intended to help resolve these conflicts and make planning more proactive.

At the same time planning activities such as the approval of plans should become a responsibility of local authorities and the authorities should seek advice from central government agencies in technical, professional matters and in the coordination of decisions to approve more complex planning proposal that involve extensive land development such as housing schemes. The strategic model (Figure 8.1) and the integrated model (Figure 8.2) show that the relationship between central government and the local government system is essential, but in planning, such relationship will have to adopt the suggested organization (Figure 8.3).

Planning, including allocation of trust land earmarked for urban development should be a jurisdiction of local authorities. It is indicated (Section 4.6.1) that the Ministry of Environment and Resource Natural (MENR) does not have a role in urban land use planning. It is recommended that the environmentally sensitive land and any other land with values to be conserved should be incorporated into government land under the ministry. Both MENR and the National Environment Secretariat (NES) which is affiliated to the ministry, are not provided for in jurisdictional planning (Figure 6.1). NES should be charged with the responsibility of developing policies for the management of the two categories of land.

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Urban land use planning and economic planning should be integrated and collaborated with the strategic plans of the Ministry of Environment and Natural Resources. A new *planning commission* should be formed and physical planning functions be part of its responsibilities. The new commission should deal with spatial and economic policies and liaise with NES on environmental policies. The commission will have to take most planning responsibilities now under the Ministry of Planning and National Development (MPND) (see sections 5.3 and 5.4 of chapter five). Policies developed by the commission should become the regional framework for managing local economic activities and the urban environment by the local authorities. The MPND will become a smaller *Ministry of Planning and Development Affairs* (MPDA). It will be the responsibility of MPDA to present and explain national planning and development policies in the government and in the parliament. The organizational structure suggested in Figure 8.3 provide for this new relationship. It can be expected that the Kenya Power and Lighting Company and Kenya Post and Telecommunications Corporation will have to improve their administrative procedures, and take advantage of the suggested organization with a view to improve distribution of electricity and delivery of telephone services.

3. Local planning in the context of the whole country

Problem: District Commissioners and District planning Committees *vis-a-vis* Local authority Jurisdictional Planning

Recommendations: The distorted nature of planning law model (Table 6.1 and Figure 6.2), has been discussed and improvements have been suggested (Figure 8.4 and 8.5). Local authorities and communities should become more involved in local planning (Figure 8.4). Such planning at the local level *should shift from district planning (with many levels of committees which include the district, the division, the location and the sublocation which are now under the District Commissioner), to local authority*

jurisdictional planning. The aim of the recommended change is to make local government system become the basis for planning local economic activities and managing the urban environment. Already there are civic policy makers, and a policy committee system exists which can be improved to serve this purpose. Also, the established *framework for the role of professional staff exist, and can be used to improve the capacity of the local authorities*.

4. Planning law

Problem: Distorted model of Kenya's planning Law

Recommendations: A new *Planning Act* is a necessary condition for planning and management of urban land development to be effective in the study are (see section 8.2.1). The recommendation that the new *Planning Act* should unify planning law and replace the existing numerous legislative acts has already been made. The new *Planning Act* should be administered by the Minister of Local Government, and should create a *Planning Appeal Board* to hear and decide on complex developments (Figure 8.3). The board will replace the Central Land Appeal Board, the Central Authority and Provincial Land Appeals Boards. The Commissioner of Lands whose duties should be redefined to include control of government strategic land reserves should serve on the board. The Division Land Control Boards (DLCB) should be provided in the new *Planning Act* to hear and determine simple local planning appeals. This will help to develop the application of customary law in planning.

The new *Planning Act* should contain provisions for community participation. Aspects of the African customary law on collective mutual social responsibility and those of the common law to require recording of agreements should be introduced in the Act. These aspects will help to improve responsibility to comply with the conditions attached to approved plans which are proposed by freehold land owners.

8.3 Contribution of the dissertation

Reflecting on the contribution of this dissertation, the following four aspects are worthy of attention. First, this dissertation addressed itself to urban land development and planning law in Kenya. In examining the heritage of common law, the statutory law and the customary law the dissertation focused on the role of planning law and the management of urban land development. The use of primary data from the field survey, use of secondary data and the review of sources of law went beyond approaches of case law which are popular with traditional lawyers. The lawyers may not afford rigours of field survey method. Furthermore, data for a case law approach in this kind of study in Kenya is limited because administrative decisions are more popular in resolving planning disputes. Enough data on judicial hearings and decisions for this kind of research is generally not available.

Second, the focus of the study is important in the context of multiple urban land ownership interests, relevance of these interests to land development styles and sources of finance for development. Apart from the multiplicity of ownership interests, there are different roles of the government departments, service corporations, and the local authorities. Each of these dimensions is important but the study found their relationship in planning for, and in management of economic activities and the urban environment not to create necessary conditions for development that can sustain urban communities. Lack of coordination and excessive control by the central government have created this relationship. Such relationship is attributed to the provisions of the existing planning law and has led to the conclusion that, a more relevant planning law is a necessary condition for the effective planning and management of urban land development.

Third, it has been shown in the dissertation that existing planning organization is a result of a legal philosophy which is the basis of the operating heritage of law. In Kenya the relationship between law and planning organization is the most influential in urban

land development. Specifically, the influence of statutory sources of planning law dominates the other two (common law and customary law) and this implies that decentralization is unattainable, and also that possibilities to evolve and develop a sense of planning communities are more challenging. Lastly, the recommendations in the dissertation offer a new window of opportunities for Kenya's urban development planning in general, and Nairobi city and bordering urban areas in particular because wider scope in planning philosophy and practice is suggested.

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APPENDICES

APPENDIX 1A: Research Clearance Permit No. OP/13/001/17c.153/7

CONDITIONS

1. You must report to the District Commissioner of the area before embarking on your research. Failure to do that may lead to the cancellation of your permit.
2. Government Officers will not be interviewed without prior appointment.
3. No questionnaire will be used unless it has been approved.
4. Excavation, filming and collection of biological specimens are subject to further permission from the relevant Government Ministries.
5. You are required to submit at least ² four bound copies of your final report.
6. The Government of Kenya reserves the right to modify the conditions of this permit including its cancellation without notice.



REPUBLIC OF KENYA

RESEARCH CLEARANCE PERMIT

GPK 6585-3m-11/88

(CONDITIONS—see back page)

PAGE 2

PAGE 3

THIS IS TO CERTIFY THAT:

Prof./Dr./Mr./Mrs./Miss ~~xxxxxx~~ Isaac Karanja.....
~~xxxxxx~~ Mwangi.....
 of (Address) P.O. Box 30197,
 NAIROBI.....
 has been permitted to conduct research in
~~Nairobi, Kiambu and Kajjumo~~ Location,
~~Nairobi, Kiambu and Kajjumo~~ District,
~~Nairobi Central R/Valley~~ Province,
 on the topic Urban Land Use Planning.....
 Development in Kenya. The case ref.....
 Nairobi City and Bordering Urban.....
 Areas.....

for a period ending December, 19 95.

Research permit No: OP/13/001/17c.153/7....
 Date of issue 11th June, 1992.....
 Fee received 100/=.....



[Signature]
 Applicant's
 Signature

[Signature]
 (J.W. WANJOHI) (MISS)
 Permanent Secretary,
 Office of the President

Appendix 1B: Household Questionnaire for tenants

A. PERSONAL DATA

1. Research Assistant-----
2. Questionnaire No.-----
3. Sample Area-----
4. Sample Point No.-----

B. HOUSEHOLD DATA

1. Respondent
 - a) Position in Household-----
 - b) Age (Optional)-----
 - c) Dependents-----
 - d) Occupation-----

C. HOUSING

1. Present residential house.

Rent Paid

<u>YEAR</u>	<u>KSh.</u>
1987	----
1988	----
1989	----
1990	----
1991	----
1992	----

2. Which is most preferred means of housing in order of preference considering cost(s) as the most important factor. [Show with 1, 2, 3, ...n; where 1 is the most preferred].

- a) Direct Purchase -----
- b) Mortgage -----

c) Employer Housing-----

d) Self-Built-----

e) Other (name)-----

3. What steps have taken []/ intend to take [] towards owner-occupied housing? [Show with "X"].

a)Purchase plot [] (b) Use personal savings []

c) Use Mortgage [] (d) Other (name)-----

Appendix 1C: Household Questionnaire for owners of land

A. PERSONAL DATA

1. Research Assistant -----

2. Questionnaire No.-----

3. Sample Area-----

4. Sample Point No.-----

B. HOUSEHOLD DATA

1. Respondent

a) Position in Household----- (b) Age (optional)-----

c) Dependents----- (d) Occupation -----

C. URBAN DEVELOPMENT

1. Indicate means of developing this site/plot into a house.

MEANS	COST(KSh)
a) Direct Purchase	-----
d) Mortgage	-----
c) For Employer	-----

- d) Self-Built -----
- e) Inheritance -----
- f) Other -----

3. Source of money for development of your plot. [Show with "X"].

SOURCE OF DEVELOPMENT FINANCE

- a) Informal Borrowing/Loans -----
- b) Personal Saving(s) -----
- c) Cooperative Loan -----
- d) Commercial Bank -----
- e) Housing Finance Company -----
- f) Employer Loan -----
- g) Other Sources -----

4. If 3(d) or (e) above, indicate the following.

ITEM	MEASURE
a) Size of Plot	-----Acres
b) Cost of Plot	KSh.-----

D. PLANNING OF URBAN LAND DEVELOPMENT

1. Indicate planning services sought for this (your present) development.

[Show with "X"].

TYPE Of PLAN	Building Plan	Building Plan Approval	Site Plan	Site Plan Approval	None (did these myself)
a.-----	b.-----	c.---	d.---	e.-----	

2. If a, b, c, or d in E1 above indicate where planning services were sought.

TYPE OF	Building	Building Plan	Site	Site Plan
---------	----------	---------------	------	-----------

SOURCE OF PLANNING SERVICE	PLAN	Plan	Approval	Plan	Approval
Private Planners	a.-----	b.-----	c.----	d.-----	
Private Architects	a.-----	b.-----	c.----	d.-----	
Physical Planning Department	a.-----	b.-----	c.----	d.-----	
Department of Land	a.-----	b.-----	c.----	d.-----	
Land Buying/Selling Company	a.-----	b.-----	c.----	d.-----	
Land Cooperative Society	a.-----	b.-----	c.----	d.-----	
Others [name]	a.-----	b.-----	c.----	d.-----	

3. If "None" in Ele above, why were no planning services were not sought.

4. Which of the following was/is planned and put in place to service your land/plot by the time you implemented your development.

INFRASTRUCTURE	COST TO YOU (KSh)	CORPORATION (AGENCY)	COMPANY	YEAR	NOT IN PLACE NOW
a) Accessibility (Street)	-----	-----	-----	-----	-----
b) Earth/Paved (name)	-----	-----	-----	-----	-----
c) Communication (Telephone)	-----	-----	-----	-----	-----
e) Sewer Trunk	-----	-----	-----	-----	-----

- f) Energy (Electricity) ----- ----- ----- -----
- g) Water ----- ----- ----- -----

5. If "NOT IN PLACE" in D4 above in any of the services indicate expected date/year of provision.-----

6. Rank difficult infrastructure to get on your property/land in E4 above with the most difficult first.

COST TO YOU (KSh)	ADMINISTRATIVE PROCEDURE
a) -----	-----
b) -----	-----
c) -----	-----
d) -----	-----
e) -----	-----

E. PRIORITY PROBLEMS IN YOUR NEIGHBOURHOOD FOR THE LAST THREE YEARS.

1. Indicate priority Planning problems. [Show in order of priority by assigning numbers 1,2,3,...n].

PROBLEM AREA	PRIORITY
a) Planning For Business (accessibility & land/space)	-----
b) Planning For housing (number, site organization, internal space & land/space availability)	-----
c) Industry/workshops (accessibility & compatibility with surrounding property)	-----
d) Social services (education, health, etc location & space/land)	-----
e) Environmental/recreation (natural places, community open spaces)	-----
f) Identifying investment priorities (private and public)-----	

g) Others
(name) -----

2. Indicate priority management problems. [Show in order of priority by assigning numbers 1,2,3,...n].

PROBLEM AREA	PRIORITY
a) Waste (collection & disposal from housing, working and recreation places)	-----
b) Enforcement of planning regulations	-----
c) Infrastructure and services (streets/road, Communication, electricity and water supply)	-----
d) Others (name) -----	

F. PLANNING LAW

1. Which African customs/knowledge can be used in planning of urban areas in Kenya? Mention them against the following.

AREA OF APPLICATION	AFRICAN CUSTOMS/KNOWLEDGE
a) Housing	
b) Allocation/administration of land for urban development	-----
c) Responsibility of urban local authorities	-----
d) Role of urban planners	-----
e) Any other (name) -----	

Appendix 1D: Office Questionnaire for planning organizations

A. PERSONAL DATA

- 1. Research Assistant (name)-----
- 2. Questionnaire No. -----
- 3. Agency/Department .-----
- 4. Respondent (Position in Agency/Department; *OPTIONAL*)-----

B. RESPONSIBILITY OF AGENCY/DEPARTMENT.

1. Planning of land in Nairobi and bordering towns. [Please indicate with "X"].

	ALLOCATE URBAN LAND TO DEVELOPER	PREPARE URBAN PLANS	APPROVE LAND USE PLANS	APPROVE BUILDING PLANS	ADVICE ON PLANNING
TYPE OF LAND					
a) Trust land -----	-----	-----	-----	-----	-----
b) Government land -----	-----	-----	-----	-----	-----
c) Company land -----	-----	-----	-----	-----	-----
d) Cooperative land-----	-----	-----	-----	-----	-----
e) Land/Plot(s) owned by individuals -----	-----	-----	-----	-----	-----

2. Implementation of urban development plans in the region. [Please indicate with "Y"].

	FINANCE DEVELOPMENT (development funded)	ENFORCE PLANNING REGULATIONS	ADVISE DEVELOPERS
a) Trust Land -----	-----	-----	-----

- b) Government Land -----
- c) Company land -----
- d) Cooperative -----
- e) Land/Plot(s)
owned by individuals -----

3. Management of urban land development in the region. [Please indicate with "X"].

	FORMULATE POLICY	FACILITATE FINANCING	PREPARE PROGRAMME /PROJECT	GIVE ADVICE
a) Zoning -----	-----	-----	-----	-----
b) Waste collection and disposal -----	-----	-----	-----	-----
c) Industrial Land development-----	-----	-----	-----	-----
d) Housing development----	-----	-----	-----	-----
e) Land development community facilities-----	-----	-----	-----	-----
f) Environmentally Sensitive Areas-----	-----	-----	-----	-----
g) Small scale business enterprises-----	-----	-----	-----	-----
h) Urban transportation----	-----	-----	-----	-----
i) Other (name)-----	-----	-----	-----	-----

C. COORDINATION

1. With which other Agencies/Departments do your organization coordinate in its responsibilities.

AGENCY/DEPARTMENT	AREA OF COORDINATION
a) -----	-----

b) -----

c) -----

D. COMMUNICATION OF PLANNING DECISIONS/POLICIES

1. What means are used to communicate planning decisions/policies/

a) Between your Agency/Department and other Agencies/Departments. [Please indicate with "Y"].

i) Unscheduled Meetings----- (iii) Letters/Notices-----

ii) Special Committee----- (iv) Other (name)-----

b) Communication to developers and citizens in Nairobi City and bordering Towns. [Please indicate with "X"].

i) Local Newspapers ----- (iii) Official Gazette -----

ii) Local authorities notices---- (iv) Public (*Barazas*) -----

v) A Planning Journal----- (iv) Other (*name*)-----

E. PLANNING LAW

1. What is the strength and weakness of Urban Planning Law in Kenya?

STRENGTH

WEAKNESS

a)-----

b)-----

c)-----

2. *IMPROVEMENTS* and/or *LIMITATIONS* have these strengths or weaknesses contributed to planning in Nairobi City and bordering Towns? [Please indicate with "Y"].

	IMPROVEMENTS	LIMITATIONS
a) More developers submit plans for approval	-----	-----
b) Specific planning and authority their responsibilities	-----	-----
c) Approval of urban land use plan	-----	-----
d) Building plan approval	-----	-----
e) Administration/allocation of public land in urban areas	-----	-----
f) Manage built environment through zoning	-----	-----
g) Planning of Company and cooperative urban land	-----	-----

3. Which African customs/knowledge can be applied in planning of urban areas in Kenya? Please mention them against the following.

AREA OF APPLICATION	AFRICAN CUSTOMS/KNOWLEDGE
a) Housing	-----
b) Administration/allocation of public land in urban areas	-----
c) Planning responsibility of local authorities	-----
d) Role of urban planners	-----
we) Any Other (<i>name</i>)	-----

Appendix 2: List of Statutes

1. Agriculture Act (Chapter 318), 1986
2. Companies Act (Chapter 486)
3. Cooperative Act (Chapter 490)
4. Crown Lands Ordinance, 1902
5. Crown Lands Ordinance, 1915
6. Government LandS Act (Chapter 280), 1970 and 1984
7. Housing Act (Chapter 117), 1972
8. Indian Transfer of Property Act, 1897
9. Kenya Constitution
10. Law of Succession Act (Chapter 160), 1981
11. Law of Contract Act (Chapter 23)
12. Land (Group Representative Act, Chapter 287), 1968
13. Land Acquisition Act (Chapter 295), 1968
14. Land Control Act (Chapter 302), 1981
15. Land Planning Act (Chapter 303), 1970
16. Local Government (African District Councils) Ordinance, 1946
17. Local Government Act (Chapter 265), 1968
18. Local Authorities Service Charge Act (Chapter 274), 1990
19. Local Government (Adoptive By-Laws)(Building) Order, 1968 and Local
Government (Adoptive By-Laws) (Grade II Building) Order and 1968
20. Magistrates jurisdiction (Amendment Act No.11), 1981
21. Mazrui Lands Trust Act (Chapter 289), 1962
22. Memorandum on the Town Planning and Development Ordinance, 1931
23. Municipalities Ordinance (Municipalities Act Chapter 136, 1948), 1928
24. Native Authority (Amendment) Ordinance, 1924

25. Native Lands Trust Ordinance, 1932
26. Native Trust Land (Amendment) Ordinance, 1932
27. Native Lands Trust Ordinance, 1938
28. Native Land Tenure Rules, 1959
29. Native Land Registration Ordinance, 1959
30. Native Land Registration (Special Areas) Ordinance, 1959
31. Public Health Act (Chapter 242), 1972
32. Public Health (Division of Lands) Ordinance, 1928; (Chapter 131, 1948)
33. Registered Land Act (Chapter 300), 1977
34. Town Planning Ordinance, 1931 (Town Planning Act (Chapter 134, 1948)
35. Townships Ordinance, 1931 (Townships Act Chapter 133, 1948)
36. Townships Private Streets Ordinance (Townships private Streets Act Chapter 135, 1948), 1924
37. Trust Land Ordinance, 1939, Revised to Trust Land (Act Chapter 288), 1962
38. Valuation for Rating Act (Chapter 266) 1984

Appendix 3A: Cost of transformers to consumers

CAPACITY OF TRANSFORMER (KVA)	NUMBER OF PHASES	COST (KSH)		
		1991	1992	1993
25 Kilo Amperes	1	48,232	--	233,000
25 Kilo Amperes	3			
50 Kilo Amperes	1	--	59,000	85,000
50 Kilo Amperes	3	68,590	81,000	338,000
100 Kilo Amperes	3	91,612	--	358,000
200 Kilo Amperes	3	121,171	--	--

Source: Kenya Power and Lighting Company, 1991, 1992 and 1993 price design list.

Appendix 3B: Comparative cost of electrical power transmission poles in new installations

HEIGHT OF POWER TRANSMISSION WOODEN POLES IN METRES(M)	COST PER POLE (KSH)		
	1991	1992	1993
8.5 M (light)	--	--	661.46
8.5 M (medium)	--	--	1,329.37
9.8 M (light)	--	--	1,113.74
11.0 M (light)	--	1,665	1,393.72
11.0 M (medium)	1,850	1,732	--
11.0 M (stout)	1,850	2,357	--
12.2 M (light)	--	--	1,425.78
12.2 M (medium)	1,650	2,042	--
13.2 M (stout)	2,160	2,160	--
13.7 M (medium)	2,100	--	--
13.7 M (stout)	2,900	3,045	--
15.3 M (stout)	--	2,922	--

Source: Kenya Power and Lighting Company 1991, 1992 and 1993 price design list.

Appendix 3C: Unit cost of wire and pole fittings; and unit cost of labour and transportation of electrical material to the consumer during installation

1. CATEGORY OF ELECTRICAL WIRE AND FITTINGS	COST PER UNIT (KSh)		
	1991	1992	1993
72 mm sq. Steel Coded Aluminium (SCA) per metre	33	36	--
Terminal Pole fittings	260	--	--
Section Pole Fittings	620	2,893	3,850
2. LABOUR AND CATEGORY OF TRANSPORT	COST (KSh)		
	1991	1992	1993
One gang (15 people) per day	3,600	3,200	--
One Lorry (to carry material) per km	25	25	--
One Pick Up (to carry material) per km	15	24	--
One Saloon car (transport) per Engineer	8.81	11.1	--

Source: Kenya Power and Lighting Company 1991, 1992 and 1993 price design list.

Appendix 4: Cost of Telephone, Electricity, Water Supply and Sanitation by consumers (land owners) in Langata Development; Alli Juja-Wendani; Mwana Mukia; Ongata Rongai and Kinoo

LANAGATA DEVELOPMENT (Cost in KSh)				
Questionnaire	Telephone	Electricity	Water	Sanitation
1	5,000	--	--	--
2	--	--	--	--
3	3,000	--	2,000	3,000
4	--	--	--	--
5	--	--	--	--
6	--	--	--	--
7	--	--	--	--
8	15,000	60,000	7,000	90,000
9	25,000	160,000	9,000	--
10	3,000	25,000	--	--
11	25,000	70,000	70,000	2,000
12	--	30,000	15,000	8,000

ALL JUJA-WENDANI (Cost in KSh)				
Questionnaire	Telephone	Electricity	Water	Sanitation
1	--	--	--	--
2	--	--	--	--
3	--	--	--	--
4	--	40,000	--	20,000
5	--	20,000	5,000	--
6	--	20,000	--	--
7	--	--	--	--
8	--	--	--	--
9	--	--	5,000	--
10	8,000	20,000	--	30,000
11	--	40,000	--	--
12	--	30,000	--	--
13	--	--	--	--
14	--	--	--	--
15	--	--	--	--
16	5,000	15,000	--	--

Appendix 4...continued

MWANA MUKIA (Cost in KSh)				
Questionnaire	Telephone	Electricity	Water	Sanitation
1	3,000	10,000	10,000	5,000
2	2,000	70,000	5,000	--
3	--	30,000	4,000	8,000
4	3,000	15,000	5,000	7,000
5	3,000	60,000	4,000	12,000
6	1,300	15,000	3,500	10,000
7	5,000	16,000	4,000	--
8	1,200	60,000	3,500	--
9	--	120,000	12,000	20,000
10	--	100,000	25,000	10,000
11	6,000	30,000	7,000	27,000
12	7,000	160,000	--	3,500

ONGATA RONGAI (Cost in KSh)				
Questionnaire	Telephone	Electricity	Water	Sanitation
1	--	15,000	--	--
2	--	16,000	--	--
3	--	--	--	--
4	--	1,500	--	--
5	--	35,000	7,000	--
6	5,000	10,000	--	24,000
7	--	--	--	--
8	--	20,000	--	--
9	8,000	10,000	3,000	--
10	--	--	--	--
11	--	--	--	--
12	--	--	--	--
13	--	26,000	--	40,000
14	6,500	--	2,200	--
15	2,000	6,650	--	--
16	--	5,000	3,000	--
17	--	4,500	--	--

Appendix 4 ...continued

KINOO (Cost in KSh)				
Questionnaire	Telephone	Electricity	Water	Sanitation
1	--	--	300	--
2	--	15,000	300	--
3	--	--	2,800	--
4	--	--	800	--
5	--	--	400	--
6	1,500	--	--	--
7	--	--	--	--
8	--	2,000	2,000	--
9	--	--	--	--
10	--	--	300	--
11	6,000	--	--	--
12	--	--	--	--
13	--	500	4,500	--
14	--	--	--	--
15	--	5,000	1,200	--
16	--	--	--	--
17	--	--	--	--
18	--	--	--	--
19	--	--	3,000	--
20	--	--	--	--
21	--	--	--	--
22	5,600	--	1,000	--
23	--	--	700	--
24	--	2,000	500	--
25	--	1,800	1,000	--
26	--	1,500	--	--

Source: Field survey.

SUMMARY OF THE TOTAL NUMBER OF HOUSEHOLDS WITH SERVICES IN LANGATA DEVELOPMENT, ALLI JUJA-WENDANI, MWANA MUKIA, ONGATA RONGAI AND KINOO				
	Telephone	Electricity	Water	Sanitation
Number and Percentage of Households	24 (28.9%)	42 (50.6%)	22 (26.5%)	17 (20.5)
Levels of Cost For Electricity in Kinoo and Ongata Rongai				
Those who paid less than KSh 5,000: 7 out of 18 = 38.9%		Those who paid between KSh 5,000 and KSh 35,000: 11 out of 18 = 61.1%		

Appendix 5: Cost of land development per plot in Karen Langata

Questionnaire	Cost of Land Development (KSh)
1	2,000,000
2	1,900,000
3	1,000,000
4	600,000
5	2,500,000
6	1,300,000
7	500,000
8	1,800,000
9	126,000
10	1,000,000
11	2,000,000
12	250,000
Total	14,976,000
Average cost of development	1,248,000

Source: Field survey.

Note: A summary of sources of finance for land development in Karen Langata is presented on Table 7.18.

Appendix 6A: Size of Sample plots in Karen Langata

SIZE OF PLOTS (acres)	FREQUENCY	PERCENTAGE	CUMULATIVE FREQUENCY	CUMULATIVE PERCENTAGE
LESS or EQUAL 0.25	2 [1]	6.8 [4.2]	2 [1]	6.8 [4.2]
0.26 - 0.50	1 [0]	3.3 [0.0]	3 [1]	10.1 [4.2]
0.51 - 0.75	1 [0]	3.3 [0.0]	4 [1]	13.4 [4.2]
0.76 - 1.00	1 [5]	3.3 [20.8]	5 [6]	16.7 [25.0]
1.10 - 1.25	0 [0]	0.0 [0.0]	5 [6]	16.7 [25.0]
1.26 - 1.50	0 [0]	0.0 [0.0]	5 [6]	16.7 [25.0]
1.51 - 1.75	0 [0]	0.0 [0.0]	5 [6]	16.7 [25.0]
1.76 - 2.00	0 [1]	0.0 [4.2]	5 [7]	16.7 [29.2]
2.10 - 2.25	4 [4]	13.3 [16.6]	9 [11]	30.0 [45.8]
2.26 - 2.50	0 [0]	0.0 [0.0]	9 [11]	30.0 [45.8]
2.76 - 3.00	0 [1]	0.0 [4.2]	9 [12]	30.0 [45.8]
OVER 3.00	21 [12]	70.0 [50.0]	30 [24]	100.0 [100.0]
TOTAL	30 [24]	100.0	30 [24]	100.0

Source: (a) Ministry of Lands, Land Registry 1993 for data not in brackets.

(b) Field survey for data in brackets.

Appendix 6B: Size of sample plots in Spring Valley ¹⁷⁵

SIZE OF PLOTS (acres)	FREQUENCY	PERCENTAGE	CUMULATIVE FREQUENCY	CUMULATIVE PERCENTAG
LESS or EQUAL 0.25	7 [1]	26.9 [12.5]	7 [1]	26.9 [12.5]
0.26 - 0.50	8 [2]	30.8 [25.0]	15 [3]	57.7 [37.5]
0.51 - 0.75	0 [0]	0.0 [0.0]	15 [3]	57.7 [37.5]
0.76 - 1.00	2 [5]	7.6 [62.5]	17 [8]	65.3 [100.0]
1.10 - 1.25	0 [0]	0.0 [0.0]	17 [8]	65.3 [100.0]
1.26 - 1.50	1 [0]	3.9 [0.0]	18 [8]	69.2 [100.0]
1.51 - 1.75	1 [0]	3.9 [0.0]	19 [8]	73.1 [100.0]
1.76 - 2.00	2 [0]	7.6 [0.0]	21 [8]	80.7 [100.0]
2.10 - 2.25	3 [0]	11.5 [0.0]	24 [8]	92.2 [100.0]
2.26 - 2.50	1 [0]	3.9 [0.0]	25 [8]	96.1 [100.0]
2.51 - 2.75	1 [0]	3.9 [0.0]	26 [8]	100.0 [100.0]
2.76 - 3.00	0 [0]	0.0 [0.0]	26 [8]	100.0 [100.0]
OVER 3.00	0 [0]	0.0 [0.0]	26 [8]	100.0 [100.0]
TOTAL	26 [8]	100.0	26 [8]	100.0 [100.0]

Source: (a) Ministry of Lands, Land Registry 1993 for data not in brackets

(b) Field survey for data in brackets.

¹⁷⁵ Although the number of respondents in Spring Valley was low because many of those who were asked to participate by responding to the questions in the questionnaires declined, information on plot sizes (data in the brackets) reflect a pattern similar to that of data from the Land Registry where more data was available. The table shows that most plots in the area are below 1.0 acres.

Appendix 7A: Sample plot transactions in Karen Langata for twelve years, 1981 - 1992

YEAR	NUMBER OF PLOT TRANSACTIONS	PERCENTAGE	CUMULATIVE PLOT TRANSACTIONS	CUMULATIVE PERCENTAGE
1981	6	16.7	6	16.7
1982	4	11.0	10	27.7
1983	1	2.8	11	30.5
1984	2	5.6	13	36.1
1985	1	2.8	14	38.9
1986	2	5.6	16	44.4
1987	4	11.0	20	55.5
1988	5	13.9	25	69.4
1989	6	16.7	31	86.1
1990	2	5.6	33	91.7
1991	3	8.3	36	100.0
1992	0	0.0	36	100.0
TOTAL	36	100.0	36	100.0

Source: Ministry of Lands, Land Registry 1993.

**Appendix 7B: Sample plot transactions in Spring Valley for twelve years,
1981 - 1992**

YEAR	NUMBER OF PLOT TRANSACTIONS	PERCENTAGE	CUMULATIVE PLOT TRANSACTIONS	CUMULATIVE PERCENTAGE
1981	2	7.7	2	7.7
1982	3	11.5	5	19.2
1983	0	0.0	5	19.2
1984	1	3.9	6	23.1
1985	0	0.0	6	23.1
1986	0	0.0	6	57.7
1987	9	34.6	15	73.1
1988	4	15.4	19	73.1
1989	0	0.0	19	73.1
1990	4	15.4	23	88.5
1991	3	11.5	26	100.0
1992	0	0.0	26	100.0
TOTAL	26	100.0	26	100.0

Source: Ministry of Lands, Land Registry 1993.

Appendix 8: Cost of land development and cost of land per plot in Langata development, Alli Juja-Wendani and Mwana Mukia

Cost of Development Per Plot (KSh)			
Questionnaire	Langata Development	Alli Juja-Wendani	Mwana Mukia
1	500,000	180,000	80,000
2	250,000	100,000	250,000
3	100,000	750,000	150,000
4	600,000	160,000	500,000
5	150,000	300,000	100,000
6	200,000	350,000	200,000
7	82,000	400,000	140,000
8	130,000	102,000	60,000
9	25,000	500,000	82,000
10	400,000	2,000,000	225,000
11	300,000	300,000	20,000
12	--	800,000	500,000
13	--	200,000	300,000
14	--	20,000	--
15	--	150,000	--
Total	2,737,000	6,312,000	2,607,000
Average cost	248,818.18	420,800	200,538.46

Source: Field survey.

A SUMMARY OF PERSONAL SAVINGS AND COOPERATIVE LOAN SOURCES OF FINANCE FOR LAND DEVELOPMENT IN LANGATA DEVELOPMENT, ALL JUJA-WENDANI AND MWANA MUKIA		
Sample Area	Number of Respondents	Percentage Respondents
Lanagata Development	9 out of 12	75.0
Alli Juja-Wendani	10 out of 15	66.7
Mwana Mukia	9 out of 12	75.0

Appendix 8 ...continued

Cost of Land Per Plot (KSh)			
Questionnaire	Langata Development	Alli Juja-Wendani	Mwana Mukia
1	40,000	70,000	40,000
2	15,000	30,000	60,000
3	15,000	60,000	20,000
4	35,000	50,000	60,000
5	40,000	70,000	60,000
6	10,000	80,000	40,000
7	20,000	15,000	8,000
8	10,000	25,000	16,000
9	45,000	--	21,000
10	10,000	--	15,000
11	40,000	--	50,000
12	40,000	--	47,000
Total	320,000	400,000	437,000
Average cost	26,666.67	50,000	36,416.67

Source: Field survey.

Appendix 9A: Size of sample plots in Kinoo

SIZE OF PLOTS (acres)	FREQUENCY	PERCENTAGE	CUMULATIVE FREQUENCY	CUMULATIVE PERCENTAGE
LESS or EQUAL 0.25	13 [11]	43.3 [42.3]	13 [11]	43.3 [42.3]
0.21 - 0.50	6 [1]	20.0 [3.9]	19 [12]	63.3 [46.3]
0.51 - 0.75	2 [1]	6.7 [3.9]	21 [16]	70.0 [50.1]
0.76 - 1.00	3 [3]	10.0 [11.5]	24 [16]	83.3 [61.6]
1.10 - 1.25	1 [0]	3.3 [0.0]	25 [16]	93.3 [61.6]
1.26 - 1.50	3 [0]	10.0 [0.0]	27 [16]	93.3 [61.6]
1.51 - 1.75	0 [0]	0.0 [0.0]	28 [19]	93.3 [61.6]
1.76 - 2.00	0 [3]	0.0 [11.5]	28 [19]	93.3 [73.1]
2.10 - 2.25	0 [0]	0.0 [0.0]	28 [19]	93.3 [73.1]
2.26 - 2.50	0 [1]	0.0 [3.9]	28 [20]	93.3 [77.0]
2.51 - 2.75	0 [0]	0.0 [4.0]	28 [20]	93.3 [77.0]
2.76 - 3.00	0 [3]	0.0 [11.5]	28 [23]	93.3 [88.5]
OVER 3.00	2 [3]	6.7 [11.5]	30 [26]	100.0 [100.0]
TOTAL	30 [26]	100.0	30 [26]	100.0

Source: (a) Ministry of Lands, Land Registry 1993 for data in brackets.

(b) Field survey for data in brackets.

Appendix 9B: Size of sample plots in Ongata Rongai

SIZE OF PLOTS (acres)	FREQUENCY	PERCENTAGE	CUMULATIVE FREQUENCY	CUMULATIVE PERCENTAGE
LESS or EQUAL 0.25	4 [14]	23.5 [73.7]	4 [14]	23.5 [73.7]
0.26 - 0.50	4 [4]	23.5 [21.0]	8 [18]	47.0 [94.7]
0.51 - 0.75	0 [0]	0.0 [0.0]	8 [18]	47.0 [94.7]
0.76 - 1.00	1 [0]	5.9 [0.0]	9 [18]	52.9 [94.7]
1.10 - 1.25	0 [0]	0.0 [0.0]	9 [18]	52.9 [94.7]
1.26 - 1.50	0 [1]	0.0 [5.3]	9 [19]	52.9 [100.0]
1.51 - 1.75	1 [0]	5.9 [0.0]	10 [19]	58.8 [100.0]
1.76 - 2.00	0 [0]	0.0 [0.0]	10 [19]	58.8 [100.0]
2.10 - 2.25	0 [0]	0.0 [0.0]	10 [19]	58.8 [100.0]
2.26 - 2.50	0 [0]	0.0 [0.0]	10 [19]	58.8 [100.0]
2.51 - 2.75	0 [0]	0.0 [0.0]	10 [19]	58.8 [100.0]
2.76 - 3.00	1 [0]	5.9 [0.0]	11 [19]	64.7 [100.0]
OVER 3.00	6 [0]	35.3 [0.0]	17 [19]	100.0 [100.0]
TOTAL	17 [19]	100.0	17 [19]	100.0

Source: (a) Ministry of Lands, Land Registry 1993 for data not in brackets.

(b) Field survey for data in brackets.

Appendix 9C: Size of sample plots in Kangemi

SIZE OF PLOT (acres)	FREQUENCY	PERCENTAGE	CUMULATIVE FREQUENCY	CUMULATIVE PERCENTAGE
LESS or EQUAL 0.25	21 [3]	70.0 [50.0]	21 [3]	70.0 [50.0]
0.26 - 0.50	4 [0]	13.3 [0.0]	25 [3]	83.3 [50.0]
0.51 - 0.75	0 [0]	0.0 [0.0]	25 [3]	83.3 [50.0]
0.76 - 1.00	1 [0]	3.3 [0.0]	26 [3]	86.6 [50.0]
1.10 - 1.25	0 [0]	0.0 [0.0]	26 [3]	86.6 [50.0]
1.26 - 1.50	0 [0]	0.0 [0.0]	26 [3]	86.6 [50.0]
1.76 - 2.00	0 [0]	0.0 [0.0]	26 [3]	86.6 [50.0]
2.10 - 2.25	2 [0]	0.0 [0.0]	28 [3]	93.3 [50.0]
2.26 - 2.50	0 [0]	6.7 [0.0]	28 [3]	93.3 [50.0]
2.51 - 2.76	0 [0]	0.0 [0.0]	28 [3]	93.3 [50.0]
2.76 - 3.00	0 [0]	0.0 [0.0]	28 [3]	93.3 [50.0]
OVER 3.00	2 [3]	6.7 [50.0]	30 [6]	100.0 [100.0]
TOTAL	30 [6]	100.0	30 [6]	100.0

Source: (a) Ministry of Lands, Land Registry 1993 for data not in brackets.

(b) Field survey for data in brackets.

**Appendix 10: Cost of land development per plot in Kinoo and Ongata; land
Selling prices per plot in Kinoo and cost of land per plot in Ongata Rongai**

Cost of Development Per Plot (KSh)		
Questionnaire	Kinoo	Ongata Rongai
1	30,000	1,900,000
2	300,000	150,000
3	80,000	25,000
4	85,000	700,000
5	20,000	800,000
6	10,000	1,200,000
7	5,000	700,000
8	200,000	20,000
9	400,000	220,000
10	220,000	600,000
11	100,000	250,000
12	--	400,000
13	--	600,000
14	--	100,000
15	--	100,000
16	--	500,000
17	--	14,000
18	--	480,000
Total	1,450,000	8,759,000
Average cost	131,818.18	486,661.11

Appendix 10 ...continued

Cost of Land Per Plot (KSh)		
Questionnaire	Intended Plot Selling Price in Kinoo	Actual Cost of Plots in Ongata Rongai
1	100,000	150,000
2	150,000	20,000
3	170,000	60,000
4	175,000	70,000
5	200,000	120,000
6	250,000	80,000
7	200,000	20,000
8	540,000	50,000
9	250,000	40,000
10	2,400,000	180,000
11	480,000	180,000
12	2,000,000	12,000
13	200,000	30,000
14	640,000	30,000
15	80,000	--
Total	7,835,000	1,042,000
Average cost	522,333.33	74,428.57

Source: Field survey.

A SUMMARY OF PERSONAL SAVINGS AND COOPERATIVE LOAN SOURCES OF FINANCE FOR LAND DEVELOPMENT IN KINOO AND ONGATA RONGAI		
Sample Area	Number Respondents	Percentage Respondents
Kinoo	23 out of 26	88.5
Ongata Rongai	9 out of 18	50.0

**Appendix 11A: Sample of plot transactions in Kinoo for twelve years, 1981
-1992**

YEAR	NUMBER OF PLOT TRANSACTIONS	PERCENTAGE	CUMULATIVE PLOT TRANSACTIONS	CUMULATIVE PERCENTAGE
1981	3	10.7	3	10.7
1982	0	0.0	3	10.7
1983	3	10.7	6	21.1
1984	1	3.6	7	25.0
1985	2	7.1	9	32.1
1986	3	10.7	12	42.8
1987	4	14.3	16	57.1
1988	4	14.3	20	71.4
1989	4	14.3	24	85.7
1990	2	7.1	26	92.8
1991	1	3.6	27	96.4
1992	1	3.6	28	100.0
TOTAL	28	100.0	28	100.0

Source: Ministry of Lands, Land Registry 1993.

Appendix 11B: Sample of plot transactions in Ongata Rongai for twelve years, 1981 - 1992

YEAR	NUMBER OF PLOT TRANSACTIONS	PERCENTAGE	CUMULATIVE PLOT TRANSACTIONS	CUMULATIVE PERCENTAGE
1981	1	6.25	1	6.25
1982	1	6.25	2	12.50
1983	1	6.25	3	18.75
1984	2	12.5	5	31.25
1985	3	18.75	8	50.00
1986	2	12.50	10	62.50
1987	2	12.50	12	75.00
1988	0	0.0	12	75.00
1989	1	6.25	13	81.25
1990	1	6.25	14	87.50
1991	1	6.25	15	93.75
1992	1	6.25	16	100.0
TOTAL	16	100.0	16	100.0

Source: Ministry of Lands, Land Registry, 1993.

**Appendix 11C: Sample of plot transactions in Kangemi for twelve years,
1981 - 1992**

YEAR	NUMBER OF PLOT TRANSACTIONS	PERCENTAGE	CUMULATIVE PLOT TRANSACTIONS	CUMULATIVE PERCENTAGE
1981	5	16.7	5	16.7
1982	1	3.3	6	20.0
1983	5	16.7	11	36.7
1984	3	10.0	14	46.7
1985	2	6.7	16	53.4
1986	4	13.3	20	66.7
1987	1	3.3	21	70.0
1988	0	0.0	21	70.0
1989	4	13.3	25	83.3
1990	0	0.0	25	83.3
1991	5	16.7	30	100.0
1992	0	0.0	30	100.0
TOTAL	30	100.0	30	100.0

Source: Ministry of Lands, Land Registry 1993.

Appendix 12: Distribution of land uses in Kinoo, Ongata Rongai and Kangemi sample plots

LAND USE TYPE	FREQUENCY OF PLOTS	PERCENTAGE	CUMULATIVE FREQUENCY OF PLOTS	PERCENTAGE CUMULATIVE FREQUENCY
1. KINOO				
Residential	4	13.8	4	13.8
Commercial	2	6.9	6	20.7
Residential/ Commercial	9	31.0	15	51.7
Agriculture	14	48.3	29	100.0
TOTAL	29	100.0	29	100.0
2. ONGATA RONGAI				
Residential	15	57.7	15	57.7
Commercial	2	7.7	17	65.4
Residential/ Commercial	4	15.3	21	80.7
Agriculture	1	3.9	22	84.6
Community	1	3.9	23	88.5
Vacant	3	11.5	26	100.0
TOTAL	26	100.0	26	100.0
3. KANGEMI				
Residential	7	23.3	7	23.3
Commercial	5	16.7	12	40.0
Residential/ Commercial	12	14.0	24	80.0
Agriculture	5	16.7	29	96.7
Community	1	3.3	30	100.0
TOTAL	30	100.0	30	100.0

Source: Ministry of Lands, Land Register, 1993.