The Effectiveness of Land Use Administration and Governance on Controlling Urban Spatial Forms in Nairobi

Mary Muthoni Mwangi

Department of Construction and Real Estate Management, School of Engineering and Architecture, Kenyatta University, Nairobi, Kenya

Email address:
muthoni.mwangi@ku.ac.uk

To cite this article:
Mary Muthoni Mwangi. (2024). The Effectiveness of Land Use Administration and Governance on Controlling Urban Spatial Forms in Nairobi. *Urban and Regional Planning*, *9*(1), 12-23. https://doi.org/10.11648/j.urp.20240901.12

Abstract: It is recognised that in developing human settlements, the use and tenure of land should be subject to public control, since land is limited in supply. The demand for housing by the middle-income group in Nairobi, as in many other cities of the global south, is of a significant size, and growing at an alarming rate. This article demonstrates that this group is not only an engine of economic growth, but also a driver for new urban spatial forms, including residential developments. However, housing developers for the middle income group, in pursuance of high investment returns, are not necessarily concerned about complying with planning laws and regulations; they have found ways to negotiate with land administration and governance to realise returns from their investments. This phenomenon of non-compliance with planning laws and regulations is an on-going issue of concern for sub-Sahara Africa cities; it creates informality in urban development in that the resulting developments have aspects which are perceived to be outside formal planning stipulations. This article investigates the effectiveness of land use administration and governance on controlling middle-income housing developments in Nairobi. Qualitative interviewing was aimed at understanding perceptions of the planning system by both planners and developers, and how and why their interests differ. It was of interest to this research to find out why non-compliance in land use planning is tolerated or ignored. The study argues that even though developers defy the planning system, their contribution to the production of habitable space is commendable because they bridge a large gap in urban housing provision – they play an important role and planners would do well to embrace this. Non-compliance in land use planning, and informalities in housing developments thereon, does not necessarily produce inappropriate housing for the residents. Resulting residential developments have a niche in the housing market and serve a housing need, affirming that local perceptions and realities are not in sync with formal planning requirements of the state.

Keywords: Land Administration, Governance, Non-Compliance, Planners, Developers, Conflicting Interests

1. Introduction

UN-Habitat noted how, in many developing cities, urban land management is ineffective due to fragmented services and institutions, corruption, and lengthy and costly procedures [57]. The Habitat Agenda recommended that there should be appropriate structures for enforcement of land laws and regulations, provision of institutional support, accountability and transparency in land management, and generation of accurate information on land ownership, and land transactions, as well as land use.

This article gives perceptions of the shortcomings in land management and administration, as well as governance in Nairobi, that have contributed to non-compliance with planning laws and regulations by property developers for the middle income group. Irregularities in land allocation and subdivision impact on developments thereon, making them non-compliant by default. The article therefore expands on such irregularities and how they impact on developments. Section 2 looks at land use management and informalities in provision of urban land for middle income developments. Section 3 will present the findings for the research, while section 4 discusses the findings. Section 5 will give the conclusion of the findings.

The research used data from qualitative interviews with participants. To ensure anonymity, all participants were given codes (see table 1 below).

Table 1. Participant codes (Author, 2014).

Participants	Code
Senior Planners	SP
Operational Planners	OP
Planning Consultants/Advisors/Other government agents	PA
Developers	DV
Developers' Agents	DVA

The article demonstrates that, whilst poor supervision of allocations and subdivisions has played a big part in irregularities in developments, financial provision for infrastructure development by the state has also been limited.

2. Provision of Land for Developments

2.1. Land Use Management

2.1.1. Role of Planners in Land Use Management

Land management in its totality across a city is implemented through land use planning, thus planners in urban areas are faced with the task of ensuring stability and sustainability in relation to urban land resources [16, 27, 50]. Planners are responsible for regulating and/or controlling what use land is put to, including the location, intensity and amount of land designated for various uses. However, Watson points out that land use regulations that accompany master plans 'usually demand standards of construction and forms of land use which are unachievable and inappropriate for the poor in cities' [59]. Such standards have sometimes led to forced evictions from unplanned areas and demolitions of unauthorised developments.

According to Huang, C. Y. et al, high building standards, large plot sizes, oversized roads and complicated procedures for securing land titles contribute to inefficiency in urban land use management [17]. Payne noted that local perceptions may not be at par with laws and regulations, and that realities on the ground suggest that people may be willing to accept higher density developments, mixed land uses, and less space for roads. If official standards are considered to be too high, people are excluded from the legal housing market, and are driven to substandard developments [27].

In a study in Uganda, Goodfellow found that those in charge of land use management were abusing their power, authorising unsustainable land uses, for example developments on wetlands or sewerage lines, for self-serving interests [13]. This research reveals whether high standards have been a deterrent to developers in Nairobi, or whether they have found ways to negotiate with the expected standards.

2.1.2. Informality in Land Delivery, Administration and Developments

Roy argues that informal urbanisation is a product of state regulatory logics, because the state has power to determine which forms of informality can be tolerated. Payne's research resonates with this; planning regulations are usually meant to curb incompatible land uses, as well as to prevent developments which are not in the public interest [27]. He highlighted that where land registers are not accurate, irregularities occur in land transfers, with transfers outside the formal systems. For example, Payne noted that most land on the urban periphery in developing cities is not registered (because in pre-colonial eras this land was communal), thus making it difficult to determine the tenure status of owners. This ultimately affects land administration. Payne notes the difficulties faced by governments in controlling or regulating the land market, due to the high demand for urban land, as well as lack of commitment (to control or regulate) and low capacity to do so [28].

Informality in housing development occurs not only when actual developments do not conform to legal requirements, but also when the developments are on land for which subdivision(s) have not been approved, or on land that does not belong to the developers [11, 21]. Gatabaki-Kamau and Karirah-Gitau found that informality kicks in when developments are on land that does not meet subdivision requirements, or when the actual developments have not been approved by the relevant authorities [11]. Payne goes further to assert that illegal subdivisions have become the most common form of tenure in many developing cities, serving the demands of both low and middle income groups. Illegal subdivisions avail land at more affordable prices to lower income groups, who then bypass unrealistic formal planning requirements and bureaucratic procedures, assisted by specialist development agents [28].

Musyoka asserts that the laws on land tenure (and) subdivision, and commercialisation of land, have contributed to shortage of land in most urban areas [20]. Faced with unaffordable land, community groups sometimes come together and pool their resources to buy land. Freehold land purchased communally is then subdivided informally into proportionate shares according to individual investments, and individual owners are issued with share certificates. The subdivisions are informal in that they do not comply with legislation (or regulations) relating to land transfer, registration and subdivision [20, 21]. The following section looks at land administration practices in Nairobi; the institutions mandated to oversee best practices, as well as the governance structure.

2.2. Land Administration in Nairobi

In Kenya, the Registration of Titles Act (Chapter 281) empowered the Commissioner of Lands to dispose of all land under his jurisdiction. Prior to 2012 (when legal reviews led to the repeal of some laws), the Commissioner of Lands and the president of Kenya could allocate land to private individuals, groups, institutions or corporate bodies [33]. Such allocations were supposed to be above board, with public advertisements of available land, and open to all people to apply [48]. However, in reality most people did not have access to such land, either because of ignorance about its availability, or because of abuse of power in the allocation process. As a result, the land ended up the hands of those in positions of great wealth and/or power, or their cronies [20]. Olima asserted that poor urban land management had resulted in problems such as double and

multiple plot allocations, irregular land allocations (land grabbing), re-allocation of plots, sale of plots and land speculation, problems which raise the issue of the adequacy of the cadastral systems in the country. He concluded that urban land management in Kenya seemed to favour the socially, politically and economically powerful, and noted that the government turned a blind eye or was slow to act on irregularities and deficiencies in the practices of such people [25].

After independence in Kenya, the government invited citizens to buy farms from Europeans. This entailed subdivision of most farms, although in some cases farms were bought intact by individuals or land buying groups [20]. Such groups enable members to get shares in land (sometimes incrementally), which they could not have afforded to buy individually. However, most land buying companies in the present day are commercially oriented. They informally and irregularly subdivide their land and distribute it among members (who are then free to trade their shares) or sell excess land in the open property market [20]. Surveying and subdivision of such land is supported by quasi-professionals, but has resulted in unplanned neighbourhoods [20, 21]. The subdivisions are informal in that they do not comply with legislations (or regulations) relating to land transfer, registration and subdivision (ibid). Developments on illegal subdivisions are inevitably also considered illegal.

In Kenya, the local authority is responsible for the provision of infrastructure within its boundaries [20, 21]. In most cases, the local authorities impose a caveat on subdivisions, which requires freeholders to provide infrastructure prior to being issued with subdivision approval (ibid). However, due to the costs involved, the reality is that most land is subdivided (informally) and sold on before infrastructure is provided (ibid). Gatabaki-Kamau and Karirah-Gitau highlighted the shortage of affordable serviced land for residential developments in Nairobi, prompting developments which are considered 'informal', especially in areas outside the formal city boundaries, which were formerly agricultural [11].

There are arguments that developers were able to put up unauthorised high-rise blocks and extensions because the process of land allocation was fraught with corruption and disregard for regulations and planning standards [11, 21, 22]. Indeed, Mwangi found that in Kasarani and Roysambu, state agents conceded to pressure from developers and politicians with vested interests and lifted a demolition order on non-complying developments [21]. This serves to open doors for more non-complying developments in such areas.

This research set out to find out why the Nairobi county government has allowed developments that do not conform to planning regulations. The county has institutions that are mandated to control developments, as revealed in the following section.

2.2.1. The Ministry of Lands, Housing and Urban Development

The Ministry is responsible for the provision of policy direction and coordination of all matters relating to land, housing and urban development. Until 2012, the Commissioner of Lands, who fell under the former Ministry of Lands and Housing, was responsible for land administration in the country, facilitating the application of the Registration of Titles Act (Chapter 281, revised 2010), under which all land registration in the country was done. Registration of Titles Act (RTA) was supported by the Registered Land Act (RLA) (Chapter 300, revised 2010), which facilitates the formation of leaseholds. In 2012, guided by the new Kenyan Constitution 2010, both the RTA and the RLA were repealed under new laws, namely the Land Registration Act 2012, the Land Act 2012, and the National Land Commission Act 2012 (see Appendix 1). The Commissioner of Lands was replaced by the newly formed National Land Commission, which aimed to devolve land administration responsibilities to different counties, with a view to addressing malfunctions in land administration in the country.

The Physical Planning Department of the ministry oversees physical planning and implementation in the country. It is also responsible for the preparation and approval of urban master plans and planning strategies, as well as provision of technical support and resources in relation to planning, a role which previously fell under the Ministry of Nairobi Metropolitan Development, which was dissolved by the new constitution. However, it is worth noting that, although the Ministry of Lands Housing and Urban Development oversees physical planning in the city, the power to enforce development control lies with the city county, not the ministry.

2.2.2. Nairobi City County

The Nairobi City County, which has 17 sub-counties under its jurisdiction, has the mandate to control developments within its boundaries. The county government is responsible for preparation of spatial plans, development and enforcement of planning and zoning regulations, and infrastructure development in the city. Planners are charged with the stewardship of developing and enforcing planning laws and regulations, and planning legislation has given them a guiding framework; the problem, therefore, appears to be implementation, enforcement and monitoring of the given regulations.

The County Government Act 2012 directs the county governor to submit county plans and policies to the county assembly for approval, and holds the seat holder accountable for the management and use of county resources. The county assembly approves county development planning, and the budget and expenditure of the county. The county governor is also entrusted with promoting and facilitating public participation in the development of policies and plans. The county executive committee is supposed to monitor the process of planning, formulation and adoption of the integrated development plan within the county. The county Minister for Planning, Lands and Housing, is entrusted with the supervision of the county's planning department.

This research set out to find out the reasons why with these institutions in place, there are systemic problems within the planning authorities. The following section reviews

governance practices in Land Administration.

2.3. Governance in Land Administration in Nairobi

Good governance in land administration aims to protect the property rights of individuals and enterprises as well as of the state. It has such principles as transparency, accountability, rule of law, equity, participation and effectiveness into land related public sector management [62].

Key obstacles in land administration remain, such as corruption, inconsistency in legal framework, weak judiciary and poor public sector management [62]. Nwaka reinforces this, saying that, when it comes to land use control procedures in Africa, not only are laws cumbersome and over-bureaucratized, but also administrative practices are usually slow, inequitable and corrupt. He also argues that land is allocated inefficiently and in a discriminatory manner, creating administrative and legal blockages to land development [24].

2.3.1. Corruption

There is general consensus that corruption is the abuse of public power for private benefit; a practice that hinges on practices by people attempting to subvert or undermine existing rules in order to generate extra-legal income [2, 10, 19, 53]. This research uses Friedrich's definition of corruption; *'...corruption may therefore be said to exist whenever a power holder who is charged with doing certain things, that is a responsible functionary or office holder, is by monetary or other rewards…. induced to take actions which favour whoever provides the reward and thereby damage the group or organisation to which the functionary belongs, specifically the government'* [10].

Mbaku sees corruption as post-constitutional opportunism, and places the public sector at the heart of corruption in African states. Practices may have elements of bureaucratic corruption, involving misuse of public office for personal gain, as well as political corruption, involving subversion of laws and institutions to advance political agendas [19]. Often, bureaucratic and political corruption are interlinked, with those in political power having access to public office resources and misusing them to enrich themselves and their supporters (ibid).

Blundo and Olivier de Sardan have noted that civil servants are not sorely to blame for corruption, but the users of public service are equally to blame for corrupt relationships, with participants often transforming such relationships into social relationships of a 'clientelist' nature [4]. Corruption results from a mutual agreement, benefiting both sides at the expense of a third party, usually the state. Mbaku has echoed this, asserting that if private citizens did not contribute to the culture of corruption in African countries, corruption would be limited to 'private corruption' (misuse of power for personal gain), but as it is, payments to civil servants by entrepreneurs are the highest source of extra-legal income for civil servants [19].

2.3.2. Poor Provision of Resources

UNCHS highlighted poor coordination of physical planning and development activities in African cities as one of the constraints on development control [55]. In the same vein, Habitat Agenda advocated for appropriate structures for enforcement of land laws and regulations, institutional support, accountability, transparency, accurate information on land ownership, land transactions, as well as land use. Planners cannot implement their plans, laws and legislation without resources – any such plans are doomed to fail if they are not linked to resources for implementation [58].

Guy and Hanneberry expressed that operations under capitalism require buildings to be produced profitably [14]. Harvey envisaged that when private capital is leading development, then emerging landscapes undermine the role of the state in spatial ordering [15]. This was echoed by Mwangi, who found that developers in Nairobi have interpreted their position within the social and economic context but contrary to the rationalities of the state [21].

Section 3 will present the findings of the research.

3. Issues with Land Use Administration and Governance Irregularities

3.1. Issues with Land Use Management in Nairobi

3.1.1. Land Administration in Nairobi

This research found poor land use management has contributed to development control challenges. For one, classification of land use in the city is very vague, and this has given room for discretionary interpretation, for example with regards to mixed developments (residential and commercial units) in residential areas. According to planners, lack of clarity in policies has led to misinterpretation by developers, thus adding to their (planners') frustrations.

Secondly, in some areas developers bought land mostly from land buying companies. Such parcels of land have not necessarily gone through the complete land registration process for issuance of title, and have completely bypassed the planning approval process. A senior planner explained:

… you can only issue a notice to a development which is not approved; there's no time you can inspect it for compliance… what you have not approved you cannot inspect for compliance (interview SP1).

This deficit in the land administration process in Nairobi has been a source of frustration for both planners and developers. The next section will cover the land registration process, and legal loopholes that have an impact on compliance by developers.

3.1.2. The Land Registration Process in Nairobi

The land registration process has been perceived as elongated and bureaucratic, and has been a source of frustration for developers. This section will look at what is involved in getting proof of land ownership (see Figure 1 for a summarised version).
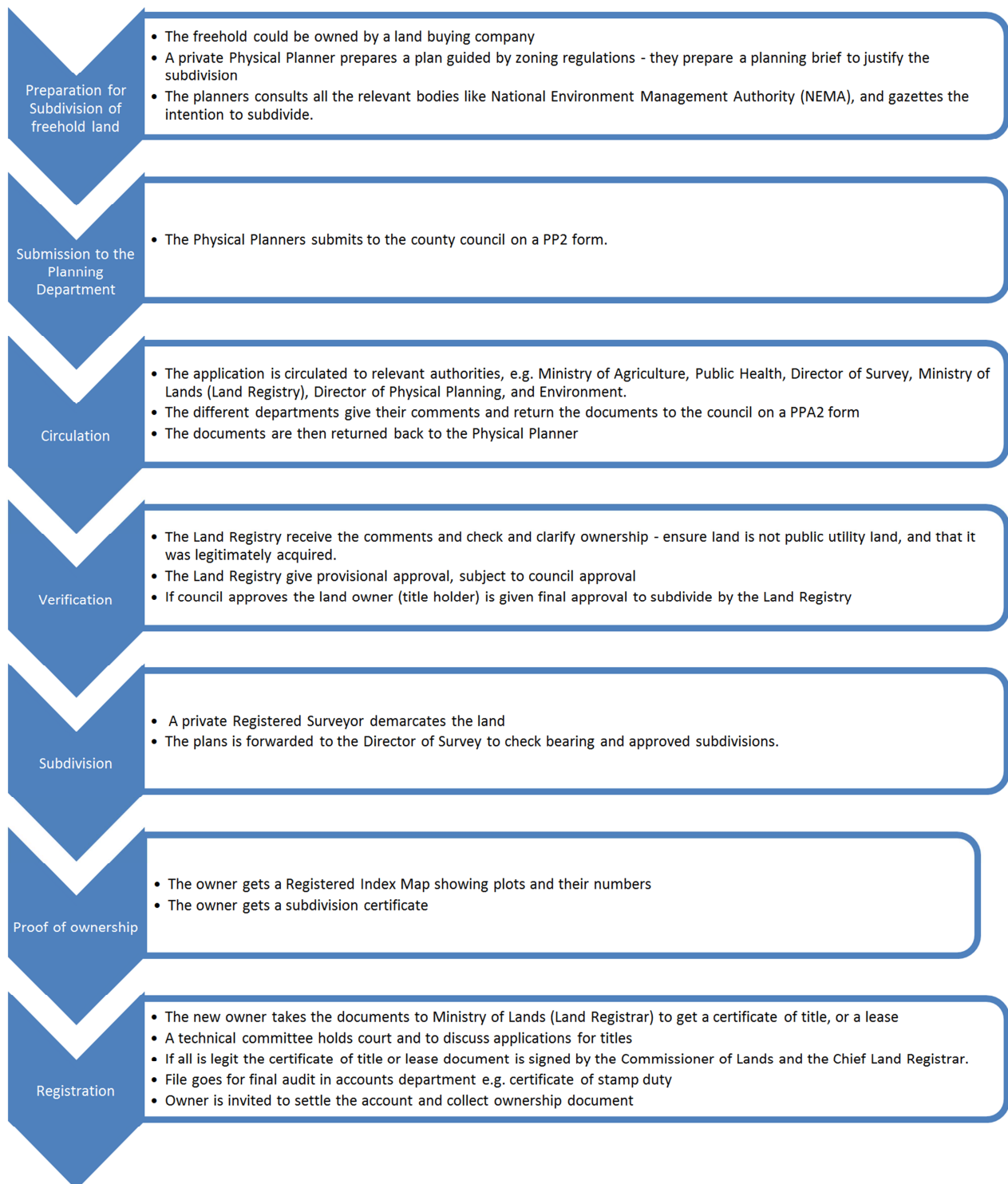
Preparation for Subdivision of freehold land
- The freehold could be owned by a land buying company
- A private Physical Planner prepares a plan guided by zoning regulations - they prepare a planning brief to justify the subdivision
- The planners consults all the relevant bodies like National Environment Management Authority (NEMA), and gazettes the intention to subdivide.

Submission to the Planning Department
- The Physical Planners submits to the county council on a PP2 form.

Circulation
- The application is circulated to relevant authorities, e.g. Ministry of Agriculture, Public Health, Director of Survey, Ministry of Lands (Land Registry), Director of Physical Planning, and Environment.
- The different departments give their comments and return the documents to the council on a PPA2 form
- The documents are then returned back to the Physical Planner

Verification
- The Land Registry receive the comments and check and clarify ownership - ensure land is not public utility land, and that it was legitimately acquired.
- The Land Registry give provisional approval, subject to council approval
- If council approves the land owner (title holder) is given final approval to subdivide by the Land Registry

Subdivision
- A private Registered Surveyor demarcates the land
- The plans is forwarded to the Director of Survey to check bearing and approved subdivisions.

Proof of ownership
- The owner gets a Registered Index Map showing plots and their numbers
- The owner gets a subdivision certificate

Registration
- The new owner takes the documents to Ministry of Lands (Land Registrar) to get a certificate of title, or a lease
- A technical committee holds court and to discuss applications for titles
- If all is legit the certificate of title or lease document is signed by the Commissioner of Lands and the Chief Land Registrar.
- File goes for final audit in accounts department e.g. certificate of stamp duty
- Owner is invited to settle the account and collect ownership document

Figure 1. The land registration process (Author: Information from participant interviews).

In an effort to resolve land administration issues, the Constitution of Kenya directed the enactment of the Land Commission Act 2012, and the formation of the National Land Commission (NLC). This Act is aimed at empowering the National Land Commission (NLC) to, among other things, 'manage public land on behalf of the national and county governments', 'monitor and have oversight responsibilities over land use planning throughout the country' and 'monitor

the registration of all rights and interests in land', recommending appropriate redress when called for. The NLC took over all the functions which had been held by the former commissioner of lands.

However, the NLC appears to be in a power struggle with the Ministry of Lands Housing and Urban Development. A planner expressed:

.... The fear, I think, is just that control – it's just about

power and who administers land in Kenya and who plans land in Kenya…. But here it's an issue of 'if we bring you on board in our decision making, you're going to influence us in this way', and people probably don't want that…. (Interview PA2)

The intentions of the Land Commission Act 2012, and the National Land Commission are noble, but there are controversies surrounding their administration, and as a result they have not yet taken root towards straightening out land administration issues in Nairobi.

The following section will look at how land buying companies, originally formed to aid the transfer of land from Europeans to the natives, contribute to land administration problems, and thus to non-compliance issues in developments.

3.1.3. Land Buying Companies in Nairobi and the Registration Process

Most of Nairobi is unplanned, as most of the area covered by Nairobi now was outside the original master plan. As noted by Musyoka, land buying companies acquired such land and subdivided it into plots, and these areas are now an integral part of Nairobi [20]. While the company's purchase is legal and it can obtain a title deed, the subsequent subdivision is not approved and individual plot owners cannot obtain titles.

Without title deeds, developers of such land are not able to seek development approval. According to planners, it is not until 2006 that the county conceded, potentially allowing share certificates[1] (complemented by sworn affidavits by the holders) to act as proof of ownership in the proposed regularisation process (interviews SP2, SP6)[2].

Where land buying companies are involved, the registration process can become more elongated. This is because the land buying company owns the freehold title, and members have first to comply with the requirements of the land buying company, such as due payments. The registration process can also become quite complicated, in the event that subdivisions were not done legally or in a regular manner. Not all land buying companies are above board, and indeed some are established by rogue traders who disappear into the night after subdividing and selling the land, leaving the new owners with a catalogue of registration problems which have to be made sense of before registration. One senior planner explained:

…if your land is 10 hectares or more you have to surrender 0.1% of that land for public utilities – schools, open spaces, etc.…. But you find that later that land buying company they end up selling even the surrendered land… the scheme changes.... (Interview SP7)

If a land buying company is legitimate, and after a member

has paid their dues to the company, the member's name is forwarded to the Commissioner of Lands (Land Registry). The director of survey will have forwarded information regarding the land, clarifying plot numbers. The Land Registry is then able to process the certificate of title or lease.

In many cases, however, land buying companies have played a part in frustrating planning efforts in Nairobi, mostly because their activities with regards to subdivisions and allocations were unchecked.

3.2. Issues with Land Administration

3.2.1. Land Allocation and Subdivision Irregularities

According to an ex-planner (interview OP4X), the political era of the 1980/1990s facilitated a lot of land grabbing – publicly owned land was allocated to individuals in a dubious way. It is quite common to find private developments, such as apartment blocks, on public utility plots which were originally meant for schools, churches, play grounds and other communal spaces. In some cases, even riparian reserves have been subdivided and sold, to the detriment of other developers. Freeholders even sell roundabouts!

Some of the informal land allocations in the 1980/1990s, either of public land or land purchased and informally sub-divided by land buying companies, which resulted in informal developments, were supposedly done above board. This suggests that past government complicity created a culture which permeates the current day. These areas are now populated with apartment blocks for the middle income group, with non-compliance issues ranging from ground coverage and plot ratios, to poor infrastructure provision and misappropriation of community land.

Also in pre-election periods, some politicians apparently drummed up votes and enticed crowds by illegally allocating land; this not only compounds the problem for land registration purposes, but also exacerbates problems relating to infrastructure in the area concerned:

…then the politicians of the day … invaded the place and actually allocated the land …[they] sold that which didn't belong to them, to people who thought they were getting the land from the right people. In the first place the ownership is in dispute, no planning, no infrastructure, no roads, no sewage, no nothing.… (Interview OP4X).

More often than not, by the time misappropriations and irregular subdivisions come to light it is too late; development has already taken place without the guidance of planning authorities.

In some areas like Eastlands outside the original master plan area of Nairobi many developers do not have title deeds. Also in some areas along Thika Road. In most of these cases, land buying companies like Embakassi Ranching, which had purchased almost 100,000 acres, hold the mother title, whilst current holders of subdivided plots were issued with allotment letters (interviews PA13, SP7, OPX4). Moreover, most of the original schemes have metamorphosed on the ground, with plots changing shape, size and use as compared to what was proposed in the original subdivision plans.

…. The directors *[of the land buying companies]* are still

---

1 Share certificates are certificates issued by the freehold title holders of land to certify that the holder has bought a share (or a piece) of the freehold as indicated in the certificate. Unfortunately, such certificates are implicated in a lot of malpractices, including multiple allocations (using fake certificates).

2 It is worth noting that the Regularisation of Developments Bill 2014, at the time of writing, has still not been passed in parliament – it has therefore not been enacted.

the owners of the mother title and they don't want to release it because …you can still get some extra plots and sell them… (Interview SP7)

Figure 2. A typical streetscape in Pipeline, Embakasi (Author, 2014).

Within such subdivisions, the roads provided can hardly accommodate motorised traffic (interview SP7). What aggravates the problem is that developers insist on constructing apartment blocks within such plots, wall to wall (beacon to beacon) developments, which fail to comply with planning regulations and hinder infrastructural provision further.

Figure 3. A typical dry weather road in a heavily built residential area in Pipeline, Eastlands (Author, 2014).

3.2.2. Inadequate Provision of Infrastructure

In the history of planning, infrastructure plays a big part in shaping cities and general urban growth. Once basic infrastructure like sewerage, roads and water supply are established, development can then easily follow. Usually, and Nairobi is no exception, land which is advertised as 'serviced' is far more attractive and commands better prices than un-serviced land. When infrastructure provision is not addressed at the onset, or is not a prerequisite for development, the resulting built environment can present many challenges for its occupants, as well as those charged with development control. This has been the case in most of the middle income residential development areas in Nairobi. Despite remittances to the county for rates and approvals, developers are frustrated by the fact that infrastructure provision is very poor; they see the county as being negligent

in allowing such areas to be developed (interviews DV4, DVA1, DVA2). Rather than pre-empting the negative environmental consequences of unplanned and unauthorised developments, the county only seems to react after the fact, by which time the situation is way out of control. Indeed, more often than not, developers are the ones to cater for infrastructure (if at all):

… if there is a wholesale violation of the bylaws whereby everybody has built apartments instead of single dwellings, normally what the city council will do is build a sewer…. Because when they do a controlled development they tell you to use a septic tank… you get sewage flowing on the roads… (interview DVA1).

Drainage problems are a common problem in uncontrolled development areas; the ground is not able to accommodate (or soak up) all the waste from dense developments.

Even in the high end of middle income development areas, existing infrastructure has been unable to cope with increasing demand. Kileleshwa, Lavington, Kilimani, Loresho and other areas close to the CBD did not have sewers because they were intended for low density developments, and the council had not built a trans-sewer (interviews OP2, OP5X, OP4X). Zoning requirements have been reviewed in recent years and the areas rezoned from single dwellings to multiple dwellings, but the subsequent developments have occurred without a matching review of infrastructure requirements. As a result, even rain water/storm drainage, let alone sewerage, causes flooding because the systems are not adequate (see Figure 4).

Figure 4. Somewhere in Kileleshwa during the rains in May 2015 (Standard Media, 17 May 2015).

Consultants commissioned by the city county to prepare a zoning review in 2006 (interviews PA2, PA4, SP6) found that in such areas, most of the physical infrastructure had been laid down according to the 1948 master plan and its capacity has not been significantly upgraded since.

Regulations require that land owners provide basic infrastructure before they can sell subdivided land, so the county could have held land owners to account during the subdivision stage:

…the requirements normally are that you should do the basic infrastructure – the roads must be up to a certain class,

depending on the area you might be told that you have to tarmac, or put murram, you have to do storm drains, if there's there's a sewer connection you need to do your sewer extensions, you have to bring in your power and water supply – all these requirements are there (interview DVA2).

Efforts to enforce provision of services during the subdivision process did not work because some owners could access titles without putting in services – with their titles, plot owners could legitimately apply for development approvals and seek financial backing if necessary.

Subdivisions of former agricultural land/ranches were done by private surveyors, not guided by the council. Owners, mostly land buying companies, were out to maximise profit, and the tracts of land were subdivided illegally without due regard to planning guidance or building sustainable communities; no infrastructure provision, no spaces for shopping centres, schools, churches, play areas for children, open spaces, or other facilities for community use.

In the Site and Service Schemes areas, the World Bank had provided a small loan of KSh36,000 for basic development, but most of those allocated plots took the loan with no intention of developing their plots – instead they sold the plot to another developer. These plots now have storied apartment blocks. A retired planner described the situation as follows:

.... you could not get water pressure to the upper flats.... The people who were supposed to be in Umoja – maybe now it's about 600% of the people who were supposed to stay there..... You find sewage blockages, you find surface water overflowing everywhere ... (Interview OPX4).

Ordinarily, in zones where there are no sewer lines, like in Kasarani along Thika Road, planning regulations allow a maximum of two floors, whilst in areas with trans-sewer connections developers can officially build up to four floors. However, the laws are not interpreted or applied consistently, which confuses developers:

... like in Kasarani because they don't have a sewer they are allowed four floors, yet there is no sewer – but it's a controversial area because without a sewer they shouldn't go to four floors, and years later we wonder whether it was done with someone in mind. Then, there are areas with a sewer and you're only allowed to do one floor or two floors. (interview DVA6).

In the Kasarani scenario, the tolerance of four storey construction may well have been meant for a few people, but planners have not been able to stem the tide of storeyed developments. In Eastlands, where there is a sewer line but where the zoning guidelines, in contradiction of the 'sewer rule', allow only two floors, regulations appear to have been treated with contempt; not only have developers exceeded two floors, most developments are well above four floors.

Some developers do take it upon themselves to provide infrastructure, such as access roads and sewer lines, which would otherwise be the responsibility of the city county.

If you're doing a development and you realise you're one kilometre from the sewer line, and assuming you have one acre, you're told you can only put up four houses because only four houses can be accommodated within a septic tank situation. But if you have access to a sewer, you can even do 50 units. You can extend to join the Tran-sewer at your own cost...(interview DVA6).

The fact that developers do not wait for the provision of infrastructure before developing their land is not surprising, since the county is well behind with respect to the provision of infrastructure even in well planned areas of the county.

Reasons for the poor provision of infrastructure can be related back to budgetary deficits. It would be safe to assume that there were conflicting priorities as to which areas should benefit from limited budgetary allocation, and that the low and middle income areas are not at the top of the list. However, poor provision of infrastructure has not deterred enterprising developers in their bid to meet housing demand.

Poor land administration has definitely impacted negatively on developers' actions. There is a consensus that development control should never have come to this; that developers should never have built without following the proper guidelines. But unfortunately this has occurred, so as well as planning for future development, planners have to look back and fathom ways in which the past failures of the system can be rectified.

3.3. Irregularities in Governance

3.3.1. Corruption and Impunity

According to a planning consultant, more than 90% of the middle income apartment blocks in Eastlands, for example, are owned by rich and powerful people who live in high end residential developments and who can afford to persuade planning officials to look the other way (interview PA17).

Self-serving interests breed corruption and impunity, and unfortunately, influential people in positions of power have been implicated in such practices. As one developer said:

... when the big man does things violating set rules, it's expected everybody else will also (interview DVA9).

Planners were of the view that Ward Officers in the field were in most cases turning a blind eye (interviews OP1, SP3). They attributed this to the fact that remuneration for subordinate staff is pathetically low. Corruption is not one-sided though, and developers have a large part to play in it. Unofficial payments vary depending on the area and the size of development, and the amount is determined by the results the developer is looking for. There is evidently joint-working between developers and planners to beat the system, and together they seem to be chipping away at it.

At times the quid pro quo is not only in terms of instant rewards, but a long term game with high stakes. Whatever the case may be, such officers are happy to look the other way:

...This guy is the owner of Equity Bank. He wants offices up there and he buys a big plot, even for one billion, to build his office headquarters. And he asks somebody to approve his plans.... And this guy [in the planning office] will need to go to that big office to get a loan and so forth...[3] (Interview

---

3 It implied a quid pro quo arrangement

OP4X)

There are myriads of reasons for this practice; for example, impatient developers who are happy to 'buy' their way through the system, ignorance of field staff, coupled with a desire to supplement their low incomes. As one participant said:

You know allegations of corruption and impunity – these are situations that arise out of a vacuum or out of lack of proper ways of doing things…(interview SP3).

The problem is, there is evident lack of will or determination to eradicate this practice, starting from high offices, through to lowly paid staff in the field, and including developers. The parallel organisation referred to by Anders and Mbaku has strongly rooted itself, undermining any efforts to eradicate corruption [1, 19]. Minimising corruption will take a concerted effort between planners and other stakeholders, which presently is lacking.

3.3.2. Inadequate Resources

It appears that planning is not a priority in budgetary allocation. Planners feel that with all the money the department generates, they could be afforded more resources.

…. you think they would say since I've generated one million shillings I need a budget of 300,000 shillings to sustain myself, but it doesn't happen like that. You find that you maybe generate a lot of money but the money ends up in other departments or in uses that are not necessary… (interview SP5).

One operational staff member in the Land Registry disclosed that they were reporting to work after 12.00 instead of 8.00am on a particular day because a site trip had been aborted due to lack of transportation (interview PA7).

Introduction of the new online system in 2009/2010 for approval applications was heralded with optimism and promises that it would expedite the approval process. However, the computers are made redundant by lack of supporting online networks, defeating the very purpose they were meant to serve. In a planner's words:

…We lack logistics and capacity... I would like to have ten officers each with their computer. We have four officers, we have two computers. So when I circulate plans to my officers, they have to wait for each other. Sometimes I have to get out for them to work on my computer (interview PA13).

Without exception, all the senior planners interviewed lamented that they had very low numbers of qualified staff. An administration worker in the department disclosed that about 80% of the employees in the city county are not qualified; out of 11,000 staff members, only 2,000 are qualified. Each and every section is lumbered with unqualified staff, who, rather than easing the workload, end up not only draining departmental resources, but also creating challenges for qualified planners.

You never get a report back, yet people are going to the field every day and getting paid. For 20 unqualified staff I could get two qualified officers to do the work, if they got rid of them. Because right now what's the work of a person who can't operate a computer in this era?..... (Interview SP7)

The Policy Implementation Section, which processes changes of use, extension of leases, among other duties, has four qualified planners to evaluate applications, advise developers and make site visits – hardly enough to meet the needs of the city. It is not just that stages are jumped; whole areas are bypassed because of the staff shortage: For example, officers admitted to concentrating on those areas close to the CBD because they are easily accessible, ignoring far flung developments in the 'un-mapped' areas.

In the face of limited government resources, the local authority does not have the 'positive' powers referred to by Pickvance [29].

4. Discussion of the Findings

4.1. Issues with Land Use Management

This article has highlighted arguments that state difficulties in controlling the land market are to blame for informalities [27, 48, 49]. It has also highlighted arguments that unrealistic requirements and high standards in developments are the deterrent to compliance with planning laws and regulations [17, 20, 27]. Such arguments imply differing perceptions between the law-givers who set requirements and enforce the standards, and the receivers who should respect the given requirements and standards. However, if, as Roy articulated, the state can determine what forms of informality to tolerate, then informality arising from non-compliance with laws and regulations by developers portrays permissiveness on the part of the state [48]. If, on the other hand, there is no leniency on the part of the state, it implies that developers have ways of negotiating with the system to bypass planning requirements. The argument that irregularities in subdivisions and allocations make urban land more affordable for lower income groups [20, 28] is not supported by the reality of high cost multi-storied developments for middle income groups, which suggests that capital for investment is not a concern to some of the developers.

4.2. Issues with Land Administration in Nairobi

Land administration, a parallel function (to planning) of the city county, has also been facing non-compliance issues, for example in subdivisions by land buying companies, which have in turn impacted on ensuing developments.

This research has shown that land administration in Nairobi is rife with constraints, ranging from problems with rampant speculation and inappropriate demarcations to poor provision of infrastructure. However, it is clear that there is a demand for such developments, affirming Payne's and Musyoka's assertions that realities on the ground suggest purchasers or tenants mostly accept those developments as they are [28, 20].

The National Land Commission and the Ministry of Lands, Housing and Urban Development appear to be struggling to fulfil their mandates, and problems with land buying companies have only exacerbated land administration issues.

It would appear that 'urban containment', as alluded to by

Taylor [52], has not been effective in Nairobi, and that agricultural land surrounding the city has been converted to urban land without due regard for the law. Whether this is because of the activities of land buying companies, interference by influential people, blinkered developers, or an unsupportive land administration regime, irregularities in land subdivision are a source of frustration for planners.

4.3. Governance Irregularities

This research concurred with Mbaku who argued that the imposition of laws and institutions inherited from European colonists have somehow contributed to corrupt practices in that citizens do not respect them as legitimate tools because they do not necessarily understand them, were not involved in their formulation, and they are not compatible with their belief systems [19]. Tyler, found that people did not comply with laws if they found them, or their enforcement, to be unfair [52]. Compliance is further undermined if the government does not have the capacity to enforce the laws [19, 21].

There is evident lack of will or determination to eradicate this practice, starting from high offices, through to lowly paid staff in the field, and including developers. Whichever side corruption emanates from, it has eroded the values of the planning function in Nairobi. It is not just that the majority of contravening developers are not known to the authorities, but also that those known can get away with it. Mwangi political goodwill and political ability to implement and enforce regulations, but when the systems are corrupt, the formal legal framework of the state is ineffective [21].

To implement, monitor and enforce the application of planning laws and regulations requires the regular allocation of funding – for infrastructure, for staff and for equipment. For planners, availability of resources affects how the system is implemented, enforced and monitored on the ground, while if developers perceive the resources to be inadequate, they are more likely to risk non-compliance. Ultimately, these perceptions impact on the effectiveness of the system. In Nairobi, recurrent expenditure, including staffing costs, takes a big chunk of the budgetary allocation [21]. This echoes findings by Werner et al., who reckoned that three quarters of local government budgets in the 1990s went to staff salaries, whilst services deteriorated [60]. While developers have strong incentives to maximise their rental returns, planners in Nairobi have not been armed with adequate tools to plan and control developments, because of the gaps in capacity and capability to monitor and enforce.

5. Conclusion

'.... there is a role for planners in balancing the workings of the capitalistic market in property development for the middle income group' [21].

Land administration in Nairobi is rife with constraints, ranging from problems with rampant speculation and inappropriate demarcations to poor provision of infrastructure. Power struggles between the National Land Commission and the Ministry of Lands, Housing and Urban Development are also a handicap, and problems with land buying companies have only exacerbated

land administration issues. There are prospects to improve land administration systems, for example by adapting supportive IT systems and strategically cataloguing details of land parcels, including their genesis. Technological advances need not be confined to IT; in this age of GIS technology it is viable to complement some functions of planning sections, such as Research and Forward Planning, with information generated by such a system. The system could capture irregularities in subdivisions, and abnormalities in developments, complementing planning efforts to control land use in the city.

Problems with the planning framework are exacerbated by limited resources for planning, coupled with poor governance. Developers are resentful of the limitations in the framework, and being mindful of the high cost of investment, and spurred on by ever-growing demand for housing, they have defied the guidelines. This results in ineffective implementation and monitoring of the laws and regulations that govern settlement development in Nairobi. This research acknowledges the progress that developers have made in accommodating the city's population. It argues that, rather than trying to control them, planners in Nairobi and other sub-Saharan Africa cities would be better off supporting their efforts, in order to realize habitable, safe and environmentally sustainable developments.

It is clearly a challenge to accommodate growth in cities, especially in cities with rapid population growth like Nairobi. It is also clear that developments to accommodate this growth cannot be prevented, because there is demand from the population. The research found that, although there is no trust between planners and developers, they collaborate informally and have developed a 'parallel order' (as alluded to by Anders) [1], which tolerates non-compliance.

This research concludes that there is a role for planners in balancing the workings of the capitalistic market in property development for the middle income group. This calls for a collaborative model alongside a political economy understanding, which gives planners an important role in coordinating input from different stakeholders.

ORCID

https://orcid.org/0000-0002-9993-3833

Conflicts of Interest

The authors declare no conflicts of interest.

References

[1] Anders, G. (2005). Civil servants in Malawi: Moonlighting, kinship and corruption in the shadow of good governance. PhD Manuscript, Law Faculty, Erasmus University, 15.

[2] Bayart, J. F. (2009). The State in Africa: The Politics of the Belly. Cambridge: Polity Press.

[3] Berrisford, S. (2011a). Why It Is Difficult to Change Urban Planning Laws in African Countries. In Urban Forum (Vol. 22, No. 3, pp. 209-228). Springer Netherlands.

[4]   Blundo, G., de-Sardan, J. P. O., Arifari, N. B., & Alou, M. T. (2008). Everyday corruption and the state: Citizens and public officials in Africa. Bloomsbury Publishing.

[5]   City Council of Nairobi (2004), A Guide of Nairobi City Development Ordinances & Zones, Unpublished Report: Department of City Planning, City Council of Nairobi. https://ccn-ecp.or.ke/asset_uplds/files/zoneguide.pdf

[6]   City Council of Nairobi (2010). City Planning Department. Development Applications Awareness Guide. https://ccn-ecp.or.ke/asset.../Planning

[7]   City Council of Nairobi (2008). Approved fees and charges, 2008. Gazette Notice No. 10312.

[8]   City County of Nairobi (2013). The Finance Act 2013. http://www.nairobi.go.ke/assets/Documents/finance-city-count y-act2013-2-1.pdf

[9]   City Council of Nairobi (Undated). Development Control, Monitoring and Enforcement Sections. Service Charter. https://ccn-cp.or.ke/asset_uplds/files/Charter%20poster2.pdf

[10] Friedrich, C. J. (2017). Corruption concepts in historical perspective. In Political Corruption (pp. 15-24). Routledge.

[11] Gatabaki-Kamau, Rose and Karirah-Gitau, S. (2004) Actors and interests: the development of an informal settlement in Nairobi, Kenya, in Hansen, K. T. and Vaa, M. (eds) Reconsidering Informality: Perspectives from Urban Africa, Uppsala: Nordiska Afrikainstitutet, p 158-75.

[12] Gandy, M. (2006). Planning, anti-planning and the infrastructure crisis facing metropolitan Lagos. Urban Studies, 43(2), 371-396.

[13] Goodfellow, T. 2013. 'Planning and development regulation amid rapid urban growth: explaining divergent trajectories in Africa'. Geoforum, Vol 48, pp. 83-93.

[14] Guy, S., & Hanneberry, J. (Eds.). (2008). Development and developers: perspectives on property. John Wiley & Sons.

[15] Harvey, D. (2018). *The limits to capital*. Verso books.

[16] Healey, P., & Shaw, T. (2006). Planners, plans and sustainable development. Regional Studies, 27(8), 769-776.

[17] Huang, C. Y., D'Aoust, O., Lall, S. V., Aguilar, J., & Bird, J. (2017). Clarifying Property Rights and Strengthening Urban Planning. elibrary.worldbank.org

[18] K 'akumu, O. A., & Olima, W. H. A. (2007). The dynamics and implications of residential segregation in Nairobi. Habitat International, 31(1), 87-99.

[19] Mbaku, J. M. (2010). Corruption in Africa: Causes, consequences, and cleanups. Lexington Books.

[20] Musyoka, Rose (2006) Non-compliance and formalisation: mutual accommodation in land subdivision processes in Eldoret, Kenya, International Development Planning Review, 28, 2, 235-61.

[21] Mwangi, M. (2016). Urban growth management in sub-Saharan Africa: conflicting interests in the application of planning laws and regulations in middle income residential developments in Nairobi (Doctoral dissertation, University of Sheffield). http://etheses.whiterose.ac.uk/15563/

[22] Mwangi, W. N. & Nyika, D (2010); The impacts of poor

Governance on Land Development Applications Processes, Nairobi, 46th ISOCARP Congress 2010.

[23] Nairobi City County (2014). The Nairobi City County Regularisation Bill, 2014. Bill for introduction into the Nairobi City County Assembly. http://nrbcountyassembly.go.ke/files/The_Nairobi_City_Coun ty_Regularisation_of_Developments_Bill_2014(1).pdf

[24] Nwaka, G. (2005). Planning sustainable cities in Africa. Canadian Journal of Urban Research, 5, 119-136.

[25] Olima, W. H. A. (1997). The conflicts, shortcomings, and implications of the urban land management system in Kenya. Habitat International, 21(3), 319-331.

[26] Oyugi, M. O., & K'Akumu, O. A. (2007, January). Land use management challenges for the city of Nairobi. In Urban forum (Vol. 18, No. 1, pp. 94-113). Springer Netherlands.

[27] Payne, G. (2001) 'Urban land tenure policy options: titles or rights?', Habitat International 25: 415-429.

[28] Payne, G. (2004). Land tenure and property rights: an introduction. *Habitat international*, *28*(2), 167-179.

[29] Pickvance, C. (2013). Physical planning and market forces in urban development. Critical Readings in Planning Theory: Urban and Regional Planning Series, 27, 69-82.

[30] Republic of Kenya (1968). The Building Code. http://www.kenyalaw.org/

[31] Republic of Kenya (1968). The Local Government Act (Cap. 265). http://www.kenyalaw.org/

[32] Republic of Kenya (1986). The Public Health Act (Cap. 242). http://www.kenyalaw.org/

[33] Republic of Kenya (1991). Handbook on land use planning, administration and development procedure, Nairobi, the Kenya Building Research Centre.

[34] Republic of Kenya (1996). The Physical Planning Act, CAP 286. http://www.kenyalaw.org/

[35] Republic of Kenya (1999). Sessional Paper No. 6 of 1999 on Environment and Development. Government Printers, Nairobi.

[36] Republic of Kenya (1999). The Environmental Management and Coordination Act No. 8 of 1999. http://www.kenyalaw.org/

[37] Republic of Kenya (2004). Ministry of Housing, National Housing Policy for Kenya: Sessional Paper No. 3 of 2004.

[38] Republic of Kenya (2004a). Ndung'u Commission Report. Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public land. Retrieved April 20, 2015 from http://cemusstudent.se/wp-content/uploads/2013/01/Ndungu-L and-Report.pdf

[39] Republic of Kenya (2008). Kenya Vision 2030 Development Programme. http://www.vision2030.go.ke/

[40] Republic of Kenya (2008a): Ministry of Nairobi Metropolitan Development. Nairobi Metro 2030 – A World Class African Metropolis: Building a Safe, Secure and Prosperous Metropolitan. Nairobi.

[41] Republic of Kenya (2009). National Bureau of Statistics. Census 2009. http://statistics.knbs.or.ke/

[42] Republic of Kenya (2010). The Constitution of Kenya. https://www.kenyaembassy.com/pdfs

[43] Republic of Kenya (2012). The County Government Act. http://www.kenyalaw.org/

[44] Republic of Kenya (2012a). Statement by Chief Housing Planning Officer, Ministry of Housing, Kenya. Retrieved October 25, 2014 from; http://www.lth.se/fileadmin/hdm/alumni/papers/SDD_2008_2 42b/Nora_Matindi_Kenya.pdf

[45] Republic of Kenya (2013). National Bureau of Statistics. Kenya National Housing Survey 2012/2013. http://statistics.knbs.or.ke/

[46] Republic of Kenya (2015). Ministry of Lands, Housing and Urban Development. The plan for intervention by the Executive Task Force on Nairobi Decongestion, 2015.

[47] Republic of Kenya (Undated). Ministry of Housing. Vision and Mission Statements.

[48] Roy, A. (2005). Urban informality: toward an epistemology of planning. Journal of the American Planning Association, 71(2), 147-158.

[49] Roy, A. 2009. Why India cannot plan its cities: Informality, insurgence and the idiom of urbanization. Planning Theory 8(1): 76–87.

[50] Rydin, Y. (2011). The purpose of planning: Creating sustainable towns and cities. Policy Press.

[51] Sandercock, L. (2003). Cosmopolis II: Mongrel cities of the 21st century. Continuum.

[52] Taylor, N. (1998). Urban planning theory since 1945. Sage Publications Limited.

[53] Transparency International website (2015). Retrieved 16/3/16. http://www.transparency.org/what-is-corruption/#define

[54] Tyler, T. R. (1990). Why people obey the law: Procedural justice, legitimacy, and compliance. Yale University Press. New Haven, United States.

[55] United Nations Centre for Human Settlements (1999). Reassessment of urban planning and development regulations in African cities. The Stationery Office.

[56] UN-Habitat (2007). Presentation by Mrs Anna K Tibaijuka, Under Secretary General of the United Nations and Executive Director of UN-Habitat to the Planning Convention of the Royal Town Planning Institute.

[57] UN-Habitat (2015). Website. Urban themes. http://unhabitat.org/urban-themes/planning-and-design/

[58] Watson, V. (2009). Seeing from the South: Refocusing urban planning on the globe's central urban issues. Urban Studies, 46(11), 2259-2275.

[59] Werner, M., Otieno, V., and Wakhungu, J. (2011). Kenya's urban development in the 21st century: the call for innovative initiatives from local authorities.

[60] World Bank (2011). Good Urban Governance through ICT: Issues, Analysis, and Strategies. Africa Urban & Water Sector Unit (AFTUW).