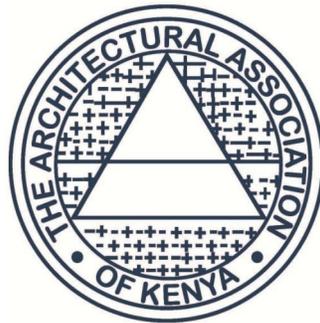


A Study on
Development
Control
Frameworks
in Kenya

The Architectural
Association of Kenya

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The Architectural Association of Kenya is a registered Professional Association incorporating Architects, Quantity Surveyors, Town Planners, Engineers, Landscape Architects, Environmental Design Consultants and Construction Project Managers

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FOREWORD

The Architectural Association of Kenya (AAK), established in 1967, is Kenya's apex association for professionals in the built and natural environments. AAK, a business membership organisation (BMO), represents the interest of the following professionals: **Architects, Town Planners, Quantity Surveyors, Engineers, Landscape Architects, Environmental Design Consultants, and Construction Project Managers.**

As an umbrella Association, AAK provides the most ideal dialogue platform for professionals and other stakeholders in the wider construction industry. They include policy makers, manufacturers, real estate developers, financial institutions, regulators and most importantly professional services consumers. AAK's membership presently stands at 1885 professionals, spread across several categories of membership. The objects of the Association are:

1. To co-ordinate the activities of professions concerned with built and natural environment in Kenya and promote professional integrity and to direct the members of the Association in all matters of professional practice;
2. To advance the science and art of planning and building by developing the standards of professional education, training and practice, and facilitate matters of mutual interest of the member professions;
3. To create public awareness by marketing the services of member professions and provide professional opinions on the matters pertaining to violation of the statutes provided for good maintenance of the built and natural environment;
4. To establish and accredit Continuing Professional Development programmes for the members of the Association and encourage collaboration of professionals and societies engaged in the built and natural environment;
5. To offer community services by participation in the enhancement of built and natural environment, maintain building information services, and monitor quality controls on materials;
6. To liaise with the Government and regulatory agencies on the matters affecting Registration and licensing of the professionals engaged in the built and natural environment;
7. To foster National, Regional and International co-operation in matters dealing with the built and natural environment;
8. To maintain and protecting heritage of the built and natural environment;
9. To facilitate research and dissemination of information for the advancement of professional education, training, and practice;
10. To publish documents and publications for the benefit of the members of the Association and the general public in all matters of the built and natural environment.

FOREWORD

Why a Study on Development Control Frameworks in Kenya?

AAK has long desired to undertake a detailed study of the development control frameworks in Kenya. Key among the reasons we should conduct such a study is AAK's need to elevate its level of dialogue by **developing research-based policy recommendations that would inform its advocacy activities**. Such policy recommendation would act as a firm basis for AAK's continued engagement with Government and other stakeholders in the Built Environment.

According to the United Nations Human Settlements Programme, the bulk of new growth in rapidly urbanizing developing world cities, such as Kenya, is taking place on the urban edge, and in some parts is linking up existing settlements to form extended urban corridors.

This form of growth presents a host of new planning issues and challenges in that this new settlement is informal, un-serviced, fragmented, has a mix of tenure systems, and is in many cases beyond the boundaries of single municipal governments. These areas are also extremely difficult and expensive to service in conventional ways. It is also the case that urban governance deficiencies continue to affect most African cities.

In Kenya, as elsewhere in Africa and the developing world, both rapid urbanization processes and the unregulated physical growth of towns have emerged as major development planning issues. The status of Urbanization in Africa is lucidly expressed by the following statement made by the former Executive Director of UN-Habitat, Dr. Anna Kajumulo Tibaijuka, in 2006:

"Africa is the fastest urbanizing continent in the world. In 1980, only 28% of the African population lived in cities. Today it has risen to about 37%. The annual urban growth rate in Africa is 4.87%, twice that of Latin America and Asia. Cities and towns in Africa are also growing at twice the 2.5% growth rate of the rural population in Africa. In terms of numbers, currently about 300 million Africans live in urban settlements. This figure is expected to reach about 500 million by 2015. UN-HABITAT estimates that in the next 25 years, 400 million people will be added to the African urban population, putting tremendous pressure on cities and towns".

Some of the main problems associated with the above rates of urbanization include weak and poor urban management capacities, unauthorized and uncontrolled development, the proliferation of informal settlements, lack of clear land tenure systems, environmental degradation, poor location of industries, and so on. Poverty, historically a rural phenomenon, has also become an increasingly urban issue in Kenya, and is embracing a gender and youth dimension.

Further, rapid urbanization in Kenya has not been accompanied by the necessary growth of infrastructure services and industrialization. Of particular concern is the inadequate supply of housing for a majority of the urban dwellers that are mainly urban low-income groups, providing themselves with substandard housing in unplanned settlements – colloquially referred to as 'slums', but more precisely a form of 'self-help urbanization'.

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In terms of planning, only 30% of urban towns are settled on the basis of formal plans (GoK, 2008). The situation is even worse in informal settlements; it is currently estimated that about 50% of Kenya's urban population live in unplanned settlements lacking in basic infrastructure provision and services. In Nairobi, three out of every five, or 60%, of the population live in the informal settlements, occupying only 5% of residential land (GOK, 2008).

There is today a realization that, in many parts of the world, urban planning systems have changed very little and are often contributors to urban problems rather than functioning as tools for human and environmental improvement. Against this background, the AAK posits that current approaches to planning must change, and that a new role for urban planning in sustainable urban development has to be found. The future urban planning (and therefore its development control component) must take place within an understanding of the factors shaping 21st century Kenya, including:

1. The demographic challenges of rapid urbanization, rapid growth of small and medium-sized towns and an expanding youthful population;
2. The economic challenges of uncertain future growth and fundamental doubts about market-led approaches, as well as increasing informality in urban activities;
3. Increasing socio-spatial challenges, especially social and spatial inequalities, urban sprawl and unplanned peri-urbanization;
4. The challenges and opportunities of increasing democratization of decision-making as well as increasing awareness of social and economic rights among ordinary people.

It is said that the promulgation of a new constitution heralded Kenya's 2nd Republic. Further, a detailed appreciation of Kenya's long term development blue-print, Kenya Vision 2030, suggests a confident and ambitious nation, one ready to unshackle itself from a mediocre and undistinguished recent past. But which way forward for the built environment sector?

What shall be the nature of contributions from this sector and its stakeholders to this bright new future of Kenya?

It is the sincere hope of the entire AAK fraternity that the conclusions and recommendations of this study will act as a launch-pad for AAK and its ability to contribute more effectively to the implementation of Kenya's new Constitution and realisation of Kenya Vision 2030.

STEVEN OUNDO,

Architect.

Chairman,

Architectural Association of Kenya.

EXECUTIVE SUMMARY

In October 2010, AAK commissioned a study to review the existing development control systems in 17 of Kenya’s Local Authorities and other related public and private agencies. Via an open and competitive process, and with the substantial support of BAF, the AAK contracted **M/s Waaki Associates** as its consultant to undertake this important study. This study was expected to meet the current demands of the industry, changing dynamics of development, and to set the Association on course to remain the premier advocate for a well built and sustainable built environment, in line with the Constitution of Kenya (2010) and Kenya’s long term development blueprint, Kenya Vision 2030.

The objectives of the study were to:

Document and assess existing technical capacities and procedures in Local Authorities and other related agencies in Kenya and describe how these affect:

1. the process of development control and management
2. supervision & inspection of building projects to ensure compliance with statutory requirements and regulations
3. Investigate the extent to which unqualified/incompetent persons were affecting the overall standards and safety of the built environment.
4. Identify best practice internationally in development control systems by way of a comparative review
5. Develop policy recommendations that may be adopted by Local Authorities and related agencies to improve the existing development control systems in the country

A total of 17 Local Authorities spread across fourteen 14 Counties of Kenya, and 4 related development control agencies, were studied. The Local Authorities studied were:

1	City Council of Nairobi
2	Municipal Council of Ruiru
3	Municipal Council of Thika
4	Municipal Council of Kiambu
5	Municipal Council of Nyeri
6	Municipal Council of Mavoko
7	Municipal Council of Embu
8	County Council of Moyale
9	County Council of Marsabit
10	County Council of Olkejuado
11	Municipal Council of Kericho
12	Municipal Council of Kisumu
13	Municipal Council of Garissa
14	Municipal Council of Kakamega
15	Municipal Council of Kitale
16	Municipal Council of Mombasa
17	Town Council of Kilifi

EXECUTIVE SUMMARY

The 4 related development control agencies studied were:

1	Ministry of Lands
2	Ministry of Public Works
3	Ministry of Public Health and Sanitation
4	Ministry of Environment and Mineral Resources.

Primary data was collected through questionnaire administration, interviews, survey checklists, and field observation. A questionnaire was administered to the relevant officers of each organization to collect data.

A sample of 143 members from the general public, 51 practitioners from the built environment, 412 developers, 17 District Physical Planners, 34 officers from four public institutions (related agencies), 12 Neighbourhood Associations, and the Director of Physical Planning were interviewed through questionnaire administration. A stakeholders' workshop was held to validate the preliminary findings of the study and obtain feedback. The institutional framework for development control in Kenya is reviewed and mapped against international best practices from Switzerland, Botswana and Singapore. Observed data was captured through photography. Physical development plans of the 17 Local Authorities were obtained either from the Municipalities or the Ministry of Lands offices, and sampled photographs of development projects mapped onto the development plans. Data collected was presented and analyzed using the Statistical Package for Social Scientists (SPSS), and presented using descriptive statistics, tables and figures, to address the study objectives. The response rate was 62%.

Switzerland, Singapore, and Botswana were identified as representing international best practice in their development control systems. A common theme in these three countries is that land use planning is taken seriously; spatial development plans are regularly prepared and updated, and these are then implemented and enforced, with high levels of compliance. Adhering to the master plans, zoning and development control regulations shaped the development of urban areas in the three countries. Public consultation and information accessibility to all stakeholders also contributed to best practices of development control. In the three countries, people are well informed regarding planning policy and given real opportunities to effectively participate in formulation and implementation of planning policy. In Botswana, private public partnerships (PPP's) are commonly used in provision of housing, while in Singapore they are involved in policy formulation and implementation. Technical adequacy in terms of establishment figures, experience and expertise involved in development control are another key contributor of enhanced development control.

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For example, in Botswana and Switzerland, building inspectors ensure that all developments carried out are in compliance with development control stipulations, while in Singapore development applications are approved on lodgements only by qualified persons.

Investing in key infrastructure is also a common parameter for the three countries. Simplifying procedures to meet needs of different categories of people contributed to best practices whereby in Gaborone, Botswana, less rigorous procedures are followed for low income housing, while in Singapore development applications for simple and straight forward developments are submitted for planning and building approval simultaneously, thus speeding up processing procedures. Superior development and adoption of an information and communications technology (ICT) base contributes greatly to Singapore's efficient development control system, whereby use of the internet in lodging development applications has speeded the development application and approval processes. Further, development control cannot be effective without a strong committed government as indicated by the three countries where there is plenty of political willingness to order public space via approved plans.

Agencies managing land use need to be integrated under one agency for effective development control and management. Singapore has used the strategy of severe penalties to act as disincentives for corruption. Kenya can borrow from such practices in the three countries in its endeavour to achieve the goal of a well housed population living in a safe and secure built environment, as well articulated in both the Constitution of Kenya and Kenya Vision 2030.

Data collected shows that there exists plenty of development policy in Kenya. Development control institutions are also in place. However, policy is fragmented, domiciled in different institutions, and effective enforcement mechanisms are weak. There is also a lack of public awareness (or common knowledge) of development control procedures stipulated in various statutes.

On average in Kenya, 40% of development applications fail to meet Local Authority requirements because developers lack guidelines on application preparation and procedures. The major challenge facing the developer is the delay in approval of development applications; this was attributed to the fact that the developers are required to get approval from several physically separated agencies. Technical capacities in most Local Authorities are challenged, and do not meet the required establishment requirement in terms of experience, expertise and numbers. The study found that only the City Council of Nairobi has a functional City Planning Department with nine (9) sections. 82% of the Local Authorities studied do not have adequate development control staff, and 6% of the Local Authorities had no technical staff and support from related agencies; yet, they proceeded on with full council meetings to approve development applications. This has led to low level of compliance with development projects taking place without the knowledge of, or progress reports by, these Local Authorities.

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Further, Local Authorities implement development control procedures at different levels and the time of accomplishing different tasks of development control varies among the Local Authorities. Onsite supervision of projects was found to be one of the ways that the Local Authorities set out to ensure compliance with development control parameters. However, this has not been effective giving developers leeway to violate known standards. Punishment for offenders does not offer sufficient deter to violators. Non compliance with development controls stipulations has resulted in largely unhealthy human settlements.

Each of the studied Local Authorities was found to have unqualified persons who carry out over 50% of the development control activities within the Local Authority. This has resulted in sub-standard execution of building works.

This study recommends that for effective development control to be achieved in Kenya, there has to be regular review of development plans, and enforcement mechanism that ensure compliance with the physical development statutes.

The multiplicity of laws and regulations needs to be reviewed and consolidated to strengthen governance and coordination of the institutions involved in development control activities. There is also need for the creation of public awareness on development control regulations to engrain and deepen the common knowledge base of the facilitative nature of spatial development planning and its associated the development control processes. There also is need for the creation of a framework for the promotion of the public private partnerships.

Furthermore, the study recommends that the Land Control Act, the Government Lands Act and the Local Government Act, be harmonized to create a clear development control system. The relevant Government institutions should also harmonize land tenure systems between urban and rural areas in order to better manage land use, especially on freehold title.

Finally, Local Authorities should have adequate and competent technical staff, and set aside adequate resources for development control activities. They should also ensure that only relevant professionals who have been registered by their respective registration boards are involved in development control processes. They should also carry out periodic research on development control activities such as forward planning, rezoning, and standards among others on periodic a basis, preferably after every five years.

CHAPTER I—INTRODUCTION

1.1 Background of the Study

Kenya's urban population is growing rapidly. In 2007, 26% of the total population resided in urban areas, and it is estimated that by 2030, 63% of the population will be living in urban areas (Kenya Vision 2030, 2007). The pressure for urbanization has led to the evolution of numerous urban areas whose development in most cases has not been in tandem with physical development planning, alongside enforcement of building standards and regulations. Unmanaged urban growth has contributed to social and economic problems, including the emergence and proliferation of informal settlements, shortage of decent housing, rising crime, vulnerability to disasters such as fire, collapsing buildings and flooding, environment degradation and poor infrastructural services such as road transport, social amenities, drainage system and sanitation services (Kenya Vision 2030, 2007).

Kenya, practically bisected by the equator, has an area of 582,650Km², with a population of 38,610,097 (GOK, 2009). Population growth and urbanization have caused both human and environmental problems. Urban centres in Kenya can be viewed in hierarchical order, which comprise of cities, towns and markets. Urban centres are governed by Local Authorities who are responsible for implementing physical development plans prepared by the Director of Physical Planning, providing public services and controlling physical development activities. Kenya has 175 gazetted Local Authorities.

Local Authorities in Kenya use physical development plans, planning and building regulations and zoning ordinances to control urban development. Categories of urban land uses in Kenya, as stipulated in the draft physical planning handbook (2008) are: **Residential, Industrial, Educational, Recreational , Public Purpose, Commercial, Public Utility, Transportation, Deferred and Agricultural.**

Development control ensures that only planned developments in their correct land use zones are allowed and such developments do not adversely affect the urban environment. Thus, development control is the process of ensuring that development applications comply with policy guidelines, planning regulations, standards, approved physical development plans and Local Authority By-Laws, among many other statutes that guide urban development. Development control further involves ensuring that implementation of approved development applications comply with development standards in order to achieve a healthy, safe, and secure built environment. Development control is thus, the implementation of physical development plans.

Kenya has had different legislations that have guided physical development since 1915. The Town Planning Ordinance Cap 134 of 1931 (now repealed) provided for the use, control and development of Government Land in Kenya. Section 23 provided that Government land outside the Local Authorities and townships could not be sold or leased for more than one year unless a town planning scheme for the area had been prepared and approved or where such a plan was considered is advisable, the land could be leased or sold in accordance with a physical development plan prepared by the Town Planning Advisor and duly approved by Commissioner of Lands (COL). Section 24 required that no land within any municipality or township could be

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divided into lots except in accordance with the provisions of a town planning scheme approved under this Ordinance by the Commissioner of Lands and then upon such conditions as he may specify. If no approved plans existed, the Act required that the sub-division be in accordance with another plan approved by the Commissioner of Lands. Thus, development control under the Town Planning Act was of limited utility in Local Authorities and townships, with trust land tenure such as Ongata Rongai or in Towns where freehold land tenure was rampant (Ayonga, 2008a; Ayonga and Obiero, 2009a).

The Land Planning Act Cap 303 was enacted to address land use in the areas within 3 miles of municipality and township boundaries, and areas within 400 feet from the centre of trunk roads.

This Act required that any proposal for use and development of land be submitted for approval to an authority which must make its decision in the context of relevant land use plans for the area. The Land Planning Act was ineffective because the interim planning authority in the interim planning area was never appointed, first because of the ambiguity of who between the minister for lands and local government could appoint the interim planning authority and two, which Local Authority should be appointed to be in charge and where the boundary would be (Shibira, 1978; Ayonga, 2008a, Ayonga and Obiero, 2009a). Although the Act borrows heavily from the land use regulations ordinance evolved during colonial era, the regulations were enacted during the era of independence (1968).

The Physical Planning Act was enacted by Parliament in 1996 and came into force in 1998. This Act extended planning to all areas of the country. With enactment of this Act, the Town Planning Act (Cap 134) and the Land Planning Act Cap 303 were repealed. Today, urban planning is under two institutions; the Ministry of Lands and the Ministry of Local government. The two institutions are guided by the Physical Planning Act Cap 286 and the Local Government Act Cap 265. There are other numerous laws that guide physical planning and are mostly related to land.

Kenya's approach to land use management exhibits the tendency to fragment power to different institutions. For example, under the provisions of the Local Government Act (Cap 265) and the Town Planning Act (Cap 134, Local Authorities were in-charge of urban areas and small markets while under the provisions of the Land Planning Act Cap. 303, the Interim Planning Authorities were in charge of 3 miles peri-urban strip and 400 feet from the centre of trunk roads. Under the provisions of the Land Control Act (Cap 302), rural agricultural lands are under the regulation of the Land Control Boards (Ayonga, 2008a; Ayonga and Obiero, 2009a). Under the Government Lands Act (Cap 280), the Commissioner of lands regulates all activities on Government land. The Physical Planning Act (Cap 286) places land use management under the purview of respective Local Authorities.

However, the power vested in the Commissioner of Lands to control land use in all areas of government land tenure still remains and the power of Land Control Boards to control land use activities in rural agricultural land as stipulated in the Land Control Act (Cap 302) still remains intact. This anomaly then creates overlap and ambiguity in the mandates of land use management in both the rural and the urban areas (Ayonga, 2008a; Ayonga and Obiero, 2009a). There are also many other statutes today that govern land development.

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The Constitution of Kenya, promulgated on 27th August 2010, established the National Land Commission to carry out several functions including to manage the land on behalf of national and county governments, recommend a national land policy to the national government, advise on land registration, monitor and have oversight responsibilities over land use planning, investigate historical land injustices and assess tax on land among many others. Counties have major roles to play on land use under the new constitution, while central government is responsible for policy and oversight roles with respect to these functions. Environment is addressed in the new constitution under obligations in respect of the environment, enforcement of environmental rights and legislation relating to the environment.

1.2 Problem Statement

By 2030, the percentage of Kenya's total population living in urban areas will reach 60%. Kenya Vision 2030 aims to provide the country's population with adequate and decent housing in a sustainable environment. All people of Kenya are today constitutionally entitled to such rights as accessible adequate housing. These rights necessitate well planned and managed built environments.

Local Authorities are mandated by the Physical Planning Act (Cap 286) and the Local Government Act (Cap 265) to implement and enforce the physical development plans. This is meant to ensure that physical developments are guided by policy consistent with the path of economic and social investments announced in development plans such as in Kenya Vision 2030. Local Authorities use various legal instruments to control development within their areas of jurisdiction for orderly and sustainable urban development.

It is noted, however, that Local Authorities have not adequately enforced development plans. As a result, developments have encroached road and railway reserves, zonal regulations and building by-laws have not been followed, and there is proliferation of informal vendor markets in urban centres, and construction of illegal extensions, among many other unauthorised developments. Urban authorities have been grappling with unplanned settlements, traffic congestion, pollution, inefficient and costly public transport systems, with woefully inadequate infrastructure services (GOK, 2005) (Kenya Vision 2030).

Casual observation shows spill-over developments coming up beyond the planned municipal boundaries. These developments have also created challenges to physical development planning when municipalities expand. This means that Spatial Planning has tended to react to urban development rather than direct it (Kenya Vision 2030, 2007).

Developers lack awareness of the development control procedures and this has been attributed to a lack of guidelines in policy procedures such as current development plans, comprehensive zoning plans and standards. In view of this, urban developers have come to view the development control process as a hindrance rather than a means to achieving sustainable developments.

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These drawbacks in development control processes lead to high risks in real estate development projects and social welfare since it is difficult for developers to envision the sustainable value of their investments. If no action is taken to remedy the development control function in the agencies with this mandate, the state of the built and natural environments will continue to deteriorate. It is in order to understand this complex problem and to begin to address these challenges that this study was undertaken.

1.3 Objectives

The main objectives of the study were to:

1. Document and assess existing technical capacities and procedures in Local Authorities and other related agencies in Kenya and describe how these affect:
2. The process of development control and management.
3. Supervision and inspection of built environment projects to ensure compliance with statutory requirements and regulations.
4. Investigate the extent to which unqualified/incompetent persons are affecting the overall standards and safety of the built environment.
5. Identify best practices in development control systems by way of local and international comparative reviews.
6. Develop policy recommendations that may be adopted by Local Authorities and related agencies to improve the existing development control systems in Kenya.

1.4 Scope

The scope of the study covered:

A review of relevant statutes covering development control. This captured the procedures, relevant activities, policies, and required skills for Local Authorities and related agencies in Kenya. This formed the conceptual framework to guide the understanding of development control frameworks and processes.

A review and assessment of the institutional set up covering development control. This included the existing technical capacities in terms of human resource and its management in the areas of development control in the studied Local Authorities.

To determine the standard compliance of planning and building regulations within urban centers. Non-compliance was investigated to determine the causes and extent.

Best practices in development control systems locally and internationally identified through desk review.

17 Local Authorities, 4 related public institutions including the Ministry of Environment and Natural Resources (NEMA), Ministry of Public Works, Ministry of Lands, Ministry of Health, and stakeholders involved in development control processes (developers, general public, neighbourhood associations and professionals) were consulted.

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1.5 Definition of Terms

Development: The Physical Planning Act Cap 286 defines development as *'the making of any material change in the use or density of any building or land or subdivision of any land'*. Mennes (1969) defines development as *'carrying out of building, engineering, mining, and any other operations in, on over or under the land or the making of any material change in use of any building or other land'*. This study considers the definition of development to include the works that the Local Authority grants approval for as per Section 33 of the Physical Planning Act.

Development Control Process: The draft Physical Planning Handbook of 2008 defines development control as *'a process of ensuring development applications comply with policy guidelines, planning regulations, standards, approved physical development plans, Local Authority by-laws as well as other relevant statutes'*. This also involves enforcing compliance with these requirements in implementing the approved development proposals to ensure sustainable development.

Development Permission: This means a development permission granted under Section 33 of the Physical Planning Act Cap 286 by a Local Authority to an applicant to develop land.

Physical Development Plan: The Physical Planning Act has provisions for two categories of physical development plans: Regional Physical Development Plans and Local Physical Development Plans. The National Land Policy (NLP, 2009) has provision for the national land use framework).

Regional Physical Development Plan: This is a plan for an area or part thereof of a County Council (Cap 286). This development plan is a long term plan providing a framework for development of a region for a period of about 30 years (Draft Physical Planning Handbook 2008). In the context of the new constitution, regional plans may cover the area of authority of a County.

Local Physical Development Plan: This is a plan of an area or the part of the city, municipal town, or urban council and includes a plan with reference to any trading or market centre (Cap 286).

Short Term Plan: This means local physical development plan which elaborates in details policies and proposals in relation to precise areas of land and provide the basis for both positive and regulatory planning to be realized within a specified period of time not exceeding 10 years and includes part development plan, action plan, advisory plan and subject plan.

Part Development Plan (PDP): This is a plan indicating precise sites for immediate implementation of specific projects or for land alienation purposes.

Action Plan: A comprehensive plan selected for intensive change, which is to commence within a specific period by improvement, redevelopment, restoration and reuse of derelict land.

Advisory/Zoning Plan: It is a plan indicating permitted subdivision and use of land specified in such plan.

Subject Plan: It is a plan for detailed treatment of a particular aspect of planning in relation to a

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part or the whole of a local physical development plan.

It is a requirement of Cap 286 that these plans (a, b, c, and d above) be circulated for approval to the: *Local Authority, Commissioner of Lands, Director of Survey and relevant formal bodies whose interest could be impacted by the proposed development.*

Building Code: The Building Code is a standard for the structural and safety aspects of building construction. It is administered by Local Authorities who issue building plan approvals that permit the construction of buildings. The building permit system is an integral part of the control of land use since no permit that contravenes the planning controls in place for the property should be issued.

1.6 Study Structure

- Chapter one presents the introduction of the study.
- Chapter two covers review of literature on theories of development control, review of best practices and Kenya development control legislative frameworks.
- Chapter three discusses the study methods including data collection and analysis. Chapter four presents the results of the study, and;
- Chapter five presents conclusions and recommendations of the study.

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Theories of Development Control

Controlling is part and parcel of an integrated planning of urban centres. According to Lai (1994), public planning assigns and restricts land development rights and development control intervenes in the process of land development, construction, occupancy and use to enable and constrain transactions in accordance with prescribed rules. It is thus important to review the planning approaches used by physical planners to give the platform on how to evaluate the development control systems applied in this study.

In the 1960s, Brian Mcloughlin and George Chadwick made contributions to the theory of process of town and regional planning based on a broader theory of systems and cybernetics. They assumed that planning is a more general and commoner activity than planners consider it, and is centred on man and his environmental relationships. Thus, the whole man-nature system provides a fundamental working framework. Planning theory has evolved in three stages: Master Plan or Blue Print Era of 1950s to mid 1960s exemplified in early development plans coming after the 1947 Town and Country Planning Act of Britain; System theory view of planning from 1960s championed by the Planning Advisory Group (PAG) of 1965, and; Planning as a continuous participation in conflict resolution or collaborative/communicative view of planning in late 1960s and early 1970s. The three stages of procedural theory are discussed below:

2.1.1 Master Plan or Blue Print Era

In the master planning model, planning was concerned with production of plans that gave detailed maps of a desired future end state to be achieved in certain number of years. The 1947 Town and Country Planning Act of Britain had deliberate provision for review of plans after every five years. The philosophy behind the master plans assumed that the planner, being a technocrat, had the skills and know-how to solve the spatial-related problems for the sake of public interest, and the values that constituted public interest were known and generally agreed upon. The master plans then were seen as fairly representing what the future desired-end state was and the developer had the obligation to follow as a servant what the master plan had in command without the option of an alternative view. This was the period when the planning profession was dominated by professionals from backgrounds which were had fairly accurate skills such as Engineers and Architects. In fact, the master planning approach followed a model developed by Abercrombie which had three stages of planning: *Survey, Analyze and Plan (SAP)*.

2.1.2 System View of Planning and the Structure Plans (1960s-1980s)

The systems view of planning concentrated on the objectives of the plan and the alternative ways of reaching such objectives. This planning approach emphasized that planning must be accompanied by reports to show the rationale of decision making at every stage of the planning process. The emphasis is on tracing the possible consequences of alternative policies and evaluating them against the objectives in order to choose a preferred course of action. This process is continually repeated as the monitoring process throws up divergences between the planner's intentions and the actual state of the system (Mcloughlin, 1969).

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The system view of planning is derived from the science of cybernetics which is essentially a new way of organizing existing knowledge about a very wide range of phenomena. Its central notion is that such phenomena can usefully be viewed as complex interacting systems which are separated to different parts and the interactions between them is analyzed. Then by introducing appropriate control mechanisms, the behaviour of the system can be altered in specific ways to achieve certain objectives on the part of the controller.

It is necessary to understand the operations of the system as a whole in order to control it effectively; otherwise, actions taken to control one part of the system may have completely unexpected effects elsewhere.

The systems view of planning is the idea of interaction between two parallel systems; the planning or controlling system itself and the system (or systems) which it seeks to control. This notion of constant interaction should be kept in mind throughout the account of the systematic planning process particularly as it applies to spatial planning using the term 'spatial' in its widest sense: To include for instance notions of economic space (i.e. the costs involved in traversing distance), and psychological or perception space. To control these relationships, in a mixed economy situation, the physical planner has two main drives:

The power to control public investment, especially in elements of infrastructure such as roads, railways, airports, schools, hospitals and public housing schemes;

The power to encourage or discourage initiatives from the private sectors for physical developments, through incentives or disincentives to industrial development, controls on land use and environmental regulations.

Both these forms of power vary in their scope and effectiveness from one nation or society to another. Thus, different countries invest different proportions of their gross national product in public infrastructure; different nations have differing controls over physical development, though in none is there a complete lack of such controls, or a completely effective central control. Therefore, the urban and regional planner is never completely ineffective, or completely omnipotent. He exists in a state of continuous interaction with the system he is planning; a system which changes partly, but not entirely, due to processes beyond his mechanisms of control. Arising from these, Mcloughlin (1969) argues this process assumes that 'it proceeds in a straight line through a sequence of processes, which are then constantly reiterated through a return loop'.

Having taken a basic decision to adopt planning and to set up a particular system, the planner then formulates broad goals and identifies more detailed objectives which logically follow from these goals. He then tries to follow the consequences of possible courses of action which he might take with the aid of models which simplify the operation of the system. Then he evaluates the alternatives in relation to his objectives and the resources available. Finally, he takes action through public investment or controls on private investment to implement the preferred alternative. After a specified interval he reviews the state of the system to see how far it is departing from the assumed course, and on the basis of this he begins to go through the process again.

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This model has been in use in Kenya during the regime of structure planning. The model still makes and takes the planner as the know-it-all, and therefore still has an inherent technological approach to planning. The main difference with the master planning is the rational comprehensiveness approach which holds that all societal goals must be comprehensively articulated in a plan, and that all alternative plans must be generated to address the myriad societal goals. The preferred plan is the one which addresses the majority of societal goals and optimizes resource allocation and the choice of such an optimum plan must be scientifically evolved. The second aspect of the structure plans as informed by the systems view of thinking is the monitoring and evaluation and the flexibility of every stage to change course in case of any new evidence emerging from the sensory component of the system that may change the original assumptions.

The disadvantage of this model is that it exerts a lot of pressure on the part of the planner, and requires plenty of data and yet such data is always scarce in contexts such those in the developing world. Some of the most critical assumptions of the model are that the planner has a freehand to design space. The second assumption is that there is a section on research to continuously nourish the system with data in order to aid in decision making or to allow monitoring the development control model. Thirdly, that the departments of planning, the development control section, and that of policy are not only in tandem but housed under one roof as well.

2.1.3 Planning as a Continuous Participation in Conflict Resolution and the Production of Strategic & Advocacy Plans

The systems theory tenets were that planning was scientific and thus could be predicted, was value-free and therefore the planner could determine what was best for society, and that society planned for was homogeneous. Thus, welfare could be maximized without considering the distributional aspects; further, that notions that planning was to adapt to the rapid growth and change were criticized. The criticisms came when there was a demand for public participation in planning. Thus, following the Skeffington Report of 1968, there was now a statutory requirement that participation be formally incorporated in the planning process. Thus, citizens were to be involved in making plans for themselves. Though this was appealing, it was difficult for deprived urban areas where people were apathetic and least informed about the possibilities open to them.

According to Burke (1979), participatory planning approaches emphasize public participation and reduce the role of the planner to that of a negotiator/advocate whose principal aim is to promote public interest. The majority of the people/groups in society have different interest and values, and the challenge of the planners is to negotiate to enable some of the groups/individuals drop what they hold as dear in order to promote what appears good to majority of the citizens. But this means also that a small group of people using positions of influence or money can influence planning decisions to the disadvantage of society.

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2.1.4 Public Participation in Development Projects

Public participation is the process by which an organization engages stakeholders, interested or affected individuals, organizations, and government entities before making a decision. It is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.

The basis for advocating citizen participation is to reflect more accurately the needs of the community and the fact that it is good to participate.

Burke (1979) has identified two strategies that are appropriate for development control - the *staff supplement* and *behavioural change*. The staff supplement strategy is appropriate when there is need for advisory or shared decision-making. The strategy recognizes the participants' skills and thus, the organization listens to the advice and suggestions of the participant. The behavioural strategy subjects values and preferences to dialogue, allowing them to be aired within the context of the planning process.

Public participation is two-way communication and collaborative problem-solving with the goal of achieving better and more acceptable decisions. Participatory development is the most important approach towards enabling communities to help themselves and sustain efforts in development work. Communities are no longer seen as recipients of development programmes; rather, they have become **critical stakeholders** that have an important role to play in the management of programmes and projects in their areas. (Burke, 1979)

Public participation in development activities are motivated from an administrative perspective by the need to build public support for development projects, educate the public about the project, and also to facilitate useful information exchange regarding local conditions. Public participation also enables individuals and groups to influence the decision from a development agency in a representational manner.

This literature brings out several aspects of development control including: the stages of the spatial planning theory, entire system and sub-systems and interactions thereon, public participation and continuous change needs. Planners or the regulatory authority's ideas are not taken as the final word. Preparation of planning proposals requires stakeholders' involvement so that they can own the process of development control. It is with this general theoretical background of development planning and control, that international best practice and the Kenya development control frameworks are reviewed.

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Review of Best Practices in Development Control

The review of the best practice case studies helps to develop the benchmarks of development control systems which form the checklist used to assess development control processes in Kenya, in Local Authorities and other related agencies.

The review and documentation of literature on best practices focused on countries of Botswana, Singapore, and Switzerland which have performed well in development control.

Justification for the best practices cases selected

Singapore has increasingly gained international recognition for its good practice and procedures in public land management (Yeung, 1987), and was thus selected for this study. Gaborone, through careful management and development control practices, has had its growth contained quite well in spite of rapid development, and its future looks quite bright (Mosha, 1996) - hence its selection for this study. Switzerland has a highly devolved system and therefore provides an excellent contrast with more traditionally centralized systems like Kenya, where devolution has just recently been embedded in the constitution. In the past, the political and cultural diversity in Switzerland made planning difficult and as a result, Switzerland had regional imbalances of growth and employment. There were severe regional planning problems. The Swiss have successfully tackled these problems and hence the need to establish how Switzerland managed to address these challenges.

2.2.1 The City of Gaborone, Botswana: Planning and Management

Gaborone is one of fastest growing capital cities in Africa (Mosha, 1996). Mosha (1996) notes that with careful planning and management, development of the city has been sustainable in all respects. Botswana has a system of physical planning which adapts with growth of the city. The term 'Town' in Botswana refers to a legally established town under the Township Act. The extent of the Town is established by a legal document. These towns are only created in State land, and in the concession areas, and not in Tribal Territories (unless the Town Area is first legally deducted from Tribal Land Board Authority). Physical planning is the responsibility of the Ministry of Local Government, Lands and Housing, through its department of Town and Regional Planning.

Some planning functions have been delegated to Local Authorities, with physical planners posted there to undertake the planning and development control functions at the local level. The day-to-day management of built environments is the responsibility of the Local Authorities and Municipalities.

The Ministry of Local Government, Lands and Housing is the principal land manager. The Ministry is responsible for setting guidelines and policies on the use of land. The Department of Town and Regional Planning is responsible for preparation of physical development plans and setting detailed guidelines for development control. The Department of Survey and Mapping is responsible for surveying. The Department of Lands is responsible for land allocation and land administration. Local Authorities have delegated powers for controlling development within the areas of their jurisdiction (Mosha, 1996).

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The national urban development policies of Botswana have evolved over the years to guide the growth and development of urban areas. The policy of non-subsidy seeks to ensure that the government's approach to urban development, in terms of infrastructure standards and service provision allocation of resources is consistent with the national objective of promoting rural development and discouraging urban migration. Thus Botswana has made significant efforts to redirect resources towards rural development.

The policy on Housing and Land Servicing has made the Botswana government go out to provide decent housing for all groups of people in urban areas.

The Botswana Housing Cooperation builds many houses both for sale and for rental. For low income groups, a Self Help Housing Program (SHHP) was introduced in the 1970s to provide site and service plots where people erect their houses at their own pace using less rigorous standards to ease affordability. Policy on squatter areas is on upgrading and providing infrastructure rather than demolishing. Recent policy changes have made the government the facilitator of housing rather than the provider. Private sector, financial institutions and individuals are called upon to service land and construct houses in urban areas.

To avail serviced land, the government started the Accelerated Land Servicing Programme (ALSP) in 1987/1988, and the sale of state land to the public for building purposes commenced. This practice was applied in some urban areas of Kenya through the 'site and service' and 'tenant purchase', schemes but was targeting the low income. The projects were donor dependent. The two projects could not continue later because of low capacity to recover the money from the tenants and the high cost of servicing the land after donor pull-out. The worst part of the scenario is that most of the public land had become a target of 'grabbing' (illegal acquisition) in the late 80s and early 90s, (Olima, 1997; Klopp 2000; GOK, 2008; 2002) and therefore not available for either servicing or allocation. In consequence, this means that urban development in Kenya is taking place in areas which are not serviced, particularly in peri-urban areas.

The policy of social mix requires that urban areas be planned in a way to avoid polarization of people in terms of social classes, races, and income groups. This would avoid the development of low income ghettos. This is in contrast with the Kenyan situation where the British model of class and racial segregation and discrimination in planning still dominates the post-colonial planner, but in the form of income class segregation. Secondly, the practice of separating the working and commercial areas from areas of residence, a relic of the colonial planning approach, still looms large amongst planners in Kenya. This has caused social exclusion, group suspicion and hatred amongst urban dwellers, a factor which has contributed to insecurity. Thirdly, the separation of commercial and working places from areas of residences has created a bimodal urban structure which causes traffic jams as workers go one way in the morning to access areas of work and shopping, and still go one way in the evening outward from the city to access areas of residence (Obiero,1992; Nyarirangwe,2008).

The government of Botswana has adopted appropriate development standards through upgrading squatter settlements, making SHHA schemes affordable by the poor and adapting the building regulations to a realistic level that is inclusive of the low income. It is with this general

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background that the planning and development of the city of Gaborone and its environs is discussed.

With increased urbanization, the city of Gaborone is growing to the peri-urban settlements where uncontrolled development is happening at end of the planning area boundary. With independence coming in 1966, it was decided in 1962 to locate the new capital in Gaborone because there was water, public land, best communications (railway - north south road) and some existing infrastructure.

Planning of Gaborone

The 1963 Master Plan was prepared by the Public Works Department based on two principles: The town should form a complete entity at each stage of an unpredictable rate of population growth, and; Vehicular movement should be separated from pedestrian movement as far as possible. Infrastructure provision was for maximum of 20,000 inhabitants. However, by 1971 the population was 18,700. This growth included a squatter community of about 6,000 people mainly due to failure to foresee and provide sufficiently for low income families.

In 1971, it was decided to extend the town into the Broadhurst Farm using a concept that mixed low, medium and high cost housing areas both in this area and later throughout the town. The plan stated that it was vital for the government to do what it could to keep average rates of migration to the towns under control.

This did not happen and immediately led to the next phase of planning called Broadhurst II. This provided for more site and service development, looked more deeply at transport and road costing, and provided a second industrial area as the original industrial extension had been settled by squatters. By 1978, there were 42,500 inhabitants of which 10,000 were living in old Naledi which prompted a special upgrading scheme in the late 1970s. The growth of the Town and Regional Planning Department enabled further extensions to Broadhurst to be done in-house which exhausted the state-owned land.

Expansion of Gaborone to the west over the railway line

Expansion plan of Gaborone to the west over the railway line was based on continuous growth in response to market demands. Under this plan, large neighbourhood units or super blocks are delineated by primary roads and communication routes.

The greater Gaborone plan 1994-2011

Population forecasts indicate that by the year 2014, all the vacant state land within the city will have disappeared. There is therefore need for forward planning to be able to accommodate the envisioned development in the city.

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Design aspects of the City of Gaborone

In the planning of Gaborone, the master/structure plans, zoning, subdivision regulations, building codes, urban development standards and other public policies are used to shape development. These regulations are all adopted to help protect the urban natural environment, gear infrastructure investments with development, and enhance property values.

Public participation in the development of the city

Some of the mechanisms for public participation are provided for in the Town Planning Act and related legislation. Oral presentations, formal written requests for opinions and the media are used to let people know of upcoming developments in their areas.

People are given a chance to voice their feelings for or against a proposed program. Other stakeholders participate in public enquires and presentations.

In conclusion, Local Authorities in Botswana are responsible for development control in all the country's planning areas and carry out such a responsibility through building inspectors who make sure that all developments carried out are consistent with the development control code, building standards and the Town and Country Planning Act (Segopa, 2009). All urban centres and major villages are declared planning areas and therefore all developments including houses within the settlements require compliance with the Town and Country Planning Act of 1977 (DCDM Botswana, 2006).

2.2.2 Singapore Urban Planning

Land use planning and management in Singapore has in recent years gained international recognition as exemplifying best practice in public land management. In Singapore, land use planning is taken seriously and plans are implemented, with high levels of compliance with development control and planning regulations (Yuen, 2007).

During the British colonial rule in Singapore, the administration enacted in 1959 the Planning Ordinance which introduced the British notion of development plan and development control. This legislation was similar to the British Town and Country Planning Act of 1947 which was a comprehensive and compulsory planning system that covered the whole country and related land use and development matters to national and regional policy, and defined a major role for the public sector in urban development with regulatory powers and control over land use.

McLoughlin (1973) pointed out that due to contemporary urban challenges, the British Planning systems and urban practices were not effective in development control in Post-British colonial cities.

Post colonial Singapore had to come up with an interventionist approach to urban development that involved integration of both the internal and external environmental factors (social, economic, political, and spatial) through planning, and legitimizing its control through performance and provision of public goods such as housing.

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At independence, and due to its relatively small size, Singapore responded to its severe socio-economic crises (including unemployment, housing shortage, overcrowding, labour strikes and civil riots) by the presence of a strong government-facilitated centralized planning system, unhampered by provincial authorities or sectoral interests.

The highest level of central decision-making in Singapore is the Cabinet developed from the British parliamentary model (Lim, 2000). Planning and development control are administered through a central planning agency, the Urban Redevelopment Authority (URA), a statutory board which comes under the portfolio of the Minister for National Development. The Minister for National Development is currently the minister in charge of physical planning in Singapore. The Minister is the final authority in planning and development control matters. The day-to-day administration of physical planning and improvement of Singapore rests with the Urban Redevelopment Authority (URA). The functions of URA, as illustrated in Figure 2-1, include:

- Prepare and revise development plans;
- Control land use and development;
- Provide good urban form;
- Implement conservation; and
- Coordinate public and private sector development proposals.

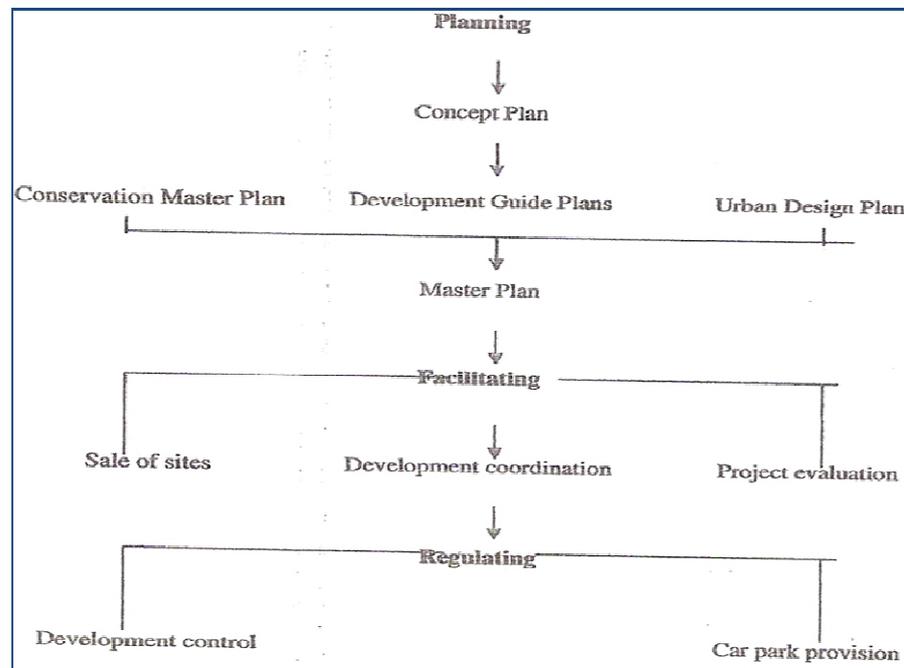


Figure 2 -1: Function of Singapore's National Planning Authority

Source: Urban Redevelopment Authority website, <http://www.ura.gov.sg>

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Driven by a common vision of Singapore's continued development, coordination among public development agencies is facilitated by various standing and working committees, which meet continuously to coordinate the formulation and implementation of their development policies. Inter-agency committees are formed and entrusted with specific roles in coordinating different land requirements (e.g. to meet housing, industry, commerce, transportation, environment, and recreation needs), resolving land use conflicts (e.g. Master Plan Committee), or maintaining the course of design excellence. In recent years, the planning authority has set up advisory design panels comprising both public and private sector representatives to evaluate and formulate urban design guidelines in specific areas (e.g. architectural design, water bodies, conservation) to promote stronger appreciation of the aesthetics of a good urban environment (Healey, 2005, Smith, 2007).

To ensure that plans remain relevant, workable and well integrated with the environment and infrastructure, the Urban Redevelopment Authority explicitly has sought to work with all relevant public development agencies when preparing and reviewing the Concept Plan and Master Plan. Its Development Control Division holds frequent dialogues with professional bodies and private sector to review development rules and guidelines to facilitate the work of the development industry. In other words, Singapore offers a case analysis of a single, central land use planning authority that handles every aspect of planning from strategic long-term planning to day-to-day development control.

Singapore Planning Control System: Legislative and Policy Framework

Singapore's planning and control system legislative framework emanates from the British Town and Country Planning Act of 1947. In 1959, town planning was legislated in Singapore with the passing of the Planning Ordinance, bringing about the establishment of a central planning body to oversee physical planning in Singapore, the preparation of a long-term development plan, the Master Plan, and the implementation of development control. The significance of the Ordinance lies in the operation of the planning control system since it is from this written law that planning derives its legitimacy. Developers and landowners are required to obtain planning permission of the planning authority before they can develop any land. The Singapore planning system is strengthened by centralist administration which has two separate but inter-independent aspects of planning practice: DEVELOPMENT PLAN and DEVELOPMENT CONTROL.

The Development Plan

The planning authority is required to have regard to the development plan in exercising control. This also applies to public and private development agencies in their planning application. The Development Plan allocates land uses. In 1958, the first Master plan was prepared for Singapore and covered the whole Island. The plan covered 20 years with provision for revisions every 5 years, all which have to be approved by the Minister.

The 1958 Master Plan with its detailed and rigid land use zoning proposals proved incapable of dealing with the rapid post colonial urban changes and development during the 1960s. The new state government's many large-scale development programs required departures from the density and standards stipulated in the Master Plan. This led to the lifting of Master Plan

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controls on public sector development, and the search for a more responsive instrument to facilitate long-term planning, hence, the *Singapore Concept Plan*, adopted in 1971.

Public sector development was coordinated through the standing committee, Master Plan Committee, chaired by the Chief Planner, and comprising representatives from all relevant government agencies to ensure that land claims could be resolved without delay and development projects expedited. The committee is tasked to consider and co-ordinate public department proposals, and resolve conflicts and land uses among the public agencies. The general aim is to ensure that state land is optimally and compatibly used according to the Concept Plan. The land recommendation of the Master Plan Committee, when approved by the Minister, is safeguarded for a development period of two years.

Unlike the Master Plan, whose concern is over the production of the plan, the focus of the Concept Plan is on the process of meeting its objective functions of being flexible and responsive to the needs of all sectors. It overcomes the restrictions of the 1958 Master Plan by remaining an expression of principles and policies, not detailed proposals and land use maps. It is an evolving document in order to effect the strategic shifts necessary to meet growing needs, changing circumstances and available opportunities as they arise.

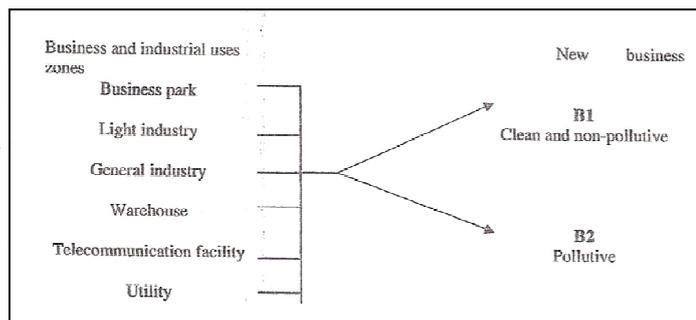
In Singapore, government agencies hold public consultations through media focus group discussion, public dialogues, forums, exhibition, and competitions. The community works with planners in the plan making process. The key goal is consensus building to create and foster a greater sense of community. Stake holding and collaboration has brought:

- Support for business – zoning gives more flexibility – moves away from prescriptive land use zoning system to a wider mix of user being permitted.
- Engaging people in planning.
- Public consultation.
- Private sector professionals plus developers.
- Electronic consultation with the population

Through these consultations, Singapore has developed a new zoning system which moves away from the traditional prescriptive land use zoning system to an **impact based zoning scheme**. The new zoning system gives businesses greater flexibility of having a mixed use and creating work- life- play-learn environment within the same site to suit their need and market demand.

(Figure 2-2 and Table 2-1)

New zoning system
 Source: Urban
 Redevelopment Authority
 Annual Report 2000/01,
 p.21



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Uses allowed in current white zone*		P L U S	Additional uses allowed		
Housing	Shops		Clean Industry	Educational institution	Clean utility
Office	Hotel		Business Park	Civic & community institution	Sports & recreation

Notes: * The concept of white zone was first introduced in 1995 to give developers flexibility to propose a mix of commercial, residential and hotel uses.

Source: Urban Redevelopment Authority Annual Report 2000/01, p.21

Public Private Partnership in plan implementation has promoted and facilitated growth in supporting businesses and engaging people in planning. In addition to public consultation set out in the Planning Act, the plans are sent to private sector professionals and developers to prepare in the move to give the private sector and the general public more participation in the process of planning. In 2003, an e-consultation portal was started to engage the population on specific draft guidelines and policies before they are finalized. Development potential of each site is set out in the development guide plans and this gives the private and public sector developers a clear idea of what they can or cannot build on their land parcels. This also provides certainty and transparency in the planning system and makes development control objectives predictable and accountable.

The Singapore government has taken a proactive approach to realize the vision in the Concept Plan by investing in key infrastructure. The government's commitment is a major factor in Singapore's plan implementation and a key driver behind inter-agency collaboration.

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Development Control

Plan implementation is through the process of development control. In Singapore, the statutory basis of control was set up in the 1959 Planning Ordinance and is now contained in the Planning Act Cap 232 of 1998. Despite several amendments and revisions of the Planning Act over time, the basis of development control has remained the same: No person shall without planning permission carry out any development on any land. The term development is defined in the British 1947 Act as *'the carrying out of any building, engineering, mining, earthworks or other operations in, on, over, or under land or to the making of any material change in the use of any building or land'*. Development is thus confined to the use and development of land - a process of change from one state of built environment or the use of land to an alternative state.

With this wide definition of development, Singapore follows the British practice of providing a number of exemptions where planning permission is deemed to be granted by procedures and a category of 'permitted' development which while legally constituting development, do not require planning permission.

By requiring planning permission to be obtained for all development, the state decides when and where development and land use change would take place by either allowing or withholding individual permission, tempered only by the willingness or otherwise of the private developer to invest in particular locations when demanded.

Process of Control

Procedures for control are set out in the Planning Act and cover making application for planning permission and considering what decision to take, limits within which planning controls operate to ensure no arbitrary decision or abuse of power and machinery for legal challenge by an aggrieved person against the system. The Minister for National Development may appoint a person or persons to act as a competent authority for the operation of Planning Act; currently this is the chief planner of the Urban Redevelopment Authority.

Development applications are made on prescribed forms and submitted to the competent authority. A processing fee which is set out in a subsidiary legislation is charged. Planners have produced development control handbooks and submission checklists to guide applicants through the different applications. Application forms are readily available both in hard copy and electronically. The planners continuously re-examine the procedures to reduce 'red-tape' and processing time.

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The competent authority has three months to determine an application but most applications are decided before the end of the three months period. The planning authority has introduced simplifying procedures to reduce time taken to obtain planning permission. These include the Simplified Planning Approval System (SPAS) which separates development and building control procedures through direct consultation between developers and the technical departments on their requirements before submission of development plans. In this system, submission requirements are simplified and a reduced number of plans are required. To speed up the process, the system allows simple straight forward development applications to be submitted for planning and building approval at the same time. For complex projects, an outline application may be submitted first to give the developer an indication as to whether his plan will be favourably considered without the need to prepare detailed plans. Outline permission is valid for 6 months while planning permission is valid for two years. This time frame situation is similar to that of Kenya.

With internet usage, the Urban Redevelopment Authority has introduced computerized planning application form. This improves on the timelines of granting planning decisions and saves applicant time, manpower and resources. It enables online consultations, checks status online and can be made at any time and place provided there is internet. The negative aspect of internet application is the need to meet hardware and software standards.

Since 1995 Singapore has practiced a plan of lodgement that carries instant approval. Plans are approved immediately on the strength of Qualified Person's endorsement that the plans have been checked and comply with all relevant guidelines and regulations.

At policy level, the Urban Redevelopment Authority actively engages the businesses and community to review and reduce many of rules and simplify development controls. Through the Public Officers Working to Eliminate Red Tape Scheme, the Urban Redevelopment Authority holds regular dialogues with industry players to review development control guidelines and suggest business responsive changes. Businesses, professionals, residents and other end users are engaged to dissect, question and redefine Singapore development control guidelines and give their honest assessment and recommendations. The public is not consulted on development applications but in recent years the public has been invited to comment on several major development projects.

Assessment System

Decisions on planning application are set forth on the planning legislation. The competent authority may grant planning permission unconditionally, grant permission subject to certain conditions or refuse planning permission. The decision must be in writing. The applicant can lodge an appeal if aggrieved within 60 days of the date of notification of the decision. The Minister's decision is final. The Minister may make rules relating to the operational aspects of development control. The competent authority is empowered to grant provisional planning permission which is usually valid for 6 months before granting planning permission.

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Criteria for determining planning application are set out in the Planning Act. Competent Authority is to act in conformity with the provisions of the Master Plan and any certified Interpretation Plan. This makes the master plan a strategic document in the development control process.

The Competent Authority may determine the application in the manner as the Minister may approve where land will be required for public purpose or public utility, is subject of a planning, transportation, conservation or preservation study being carried out by the competent authority or any other public authority, where master plan is being reviewed by competent authority, where a proposal to amend the provisions of the master plan has been submitted to the Minister for approval or where the competent authority is of the view that the proposed development in the application is incongruent with the developments on land adjoining the relevant or other land in the locality.

Circulars to formulate flexible standards, encourage greater creativity and ensure that land is put to maximum use are given to professional bodies. The Urban Development Authority is committed to facilitating orderly development in Singapore through listening to its customers, trusting them more and sharing responsibilities with them.

Clarity in discretion limits is stipulated in the Act. The Competent Authority is accountable to the Minister while the Minister is in turn answerable to parliament for activities of his ministry. There is a strong disincentive for corruption under the country's intense anti-corruption policy where both the giver and receiver of a bribe are guilty of corruption and are liable on conviction to the same court punishment of a fine up to S\$100,000.00 or imprisonment of up to 7 years or both. Penalties are more severe for members of parliament and public servants.

Enforcement of Planning Controls

Development control is enforced through criminal offence. An enforcement notice is in writing and may be served to any person who has interest on land in question. The notice states the breach of planning control, measures and time to be taken to remedy the situation. An offender is liable to a fine not exceeding S\$200,000.00 or imprisonment for a term not exceeding 12 months or both. For a continuing offence, the offender is liable to a further fine not exceeding S\$10,000.00 for every day or part of it during which the offence continues after conviction.

Where a person fails to comply with the planning permission or its conditions, the Competent Authority may cancel the permission. Aggrieved persons may appeal to the Minister against the enforcement notice. An information notice may also be sent to any person with interest on land asking for information on usage and activities on the land. Failure to comply is an offence and on conviction the offender is liable to a fine not to exceed S\$5,000.00 or imprisonment term not exceeding 6 months or both.

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Development control in Singapore is the means by which public sector-derived land use policies are implemented by granting or withholding of planning permission to applications to develop or change the use of land made by the government and private sector.

In conclusion, physical development in Singapore has taken place in an orderly and coordinated manner. On the other hand, many of the developments are criticized for their standardization and monotony. In recent years, effort has been directed towards greater diversity and creativity in the city's skyline and design. In Singapore, plans are prepared and implemented with high levels of compliance with development control and planning regulations.

Some of the challenges are that too much flexibility can be a problem, system constraints when it comes to internet applications and liability problems where the qualified persons may not be willing to shoulder the entire responsibility in an environment that leaves no room for mistakes. This has resulted in normal processes of development control rather than risking the liability.

2.2.3 Development Control in Switzerland

There is probably no other country in the world that is as decentralized and devolved as Switzerland. There is a National Parliament consisting of two chambers, a national government and federal president. Below this there are 26 sovereign Cantons that comprise 2,902 autonomous municipalities referred to as Communes.

Taxes are determined and raised at the local level resulting in all municipal areas trying to attract new inhabitants; it is within such context that the Swiss planning system must be considered.

The planning system follows the structure of the political system - Federal, Canton and Commune. The Federal provides principles and guidance on planning which are then detailed at local levels. Municipalities in Switzerland are responsible for providing development control functions and must produce local guidance plans. Local statutes define how such plans come into existence and vary within municipalities. Commune's plans are subject to approval from the Canton and they cannot overturn decisions contained within the Canton plan, but only detail them further. More detailed plans called 'Use Plans' are developed. These deal with single plots of land and are legally binding not only for the purpose of public administration but for the private land owner who must be absolutely clear on what may or may not be built on their land.

In Switzerland, each plot is classified as either building land, agricultural land or a protected area. If a building satisfies the zoning identified, permission must be granted. However, due to vague statement in planning legislation, authorities have some ability to grant or deny permission based on the character of the development. Factors that work in favour of development include: the group principle where many local and cantonal governments are made up of politicians who are also professionally working in the building and construction sector. This ensures that building practitioners have representation in the planning process from the beginning. Further, regulations for development exist which provide local developers with an advantage when tendering for local public projects. This encourages developers to build close ties to local decision-makers.

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Development Control Process

Before the introduction of the 1979 Law, development control (referred to as building regulations) powers were derived from cantonal law and were operated by the communes using building license approval. Licenses were given if the application met the building regulations for the area which usually covered height, number of storey's, plot ratio, and the distance between boundaries and other buildings. In addition, the granting of a license also took into consideration factors like fire and factory regulations, and wider issues like the conservation of nature, the countryside and the locality. The decisive criteria were the outward appearance of the building and its effect on third parties.

The Federation Law on Land Planning, *Loi Federale sur l'Amenagement du Territoire* (LAT) 1979, formalized and rationalized the administrative procedures. Development application is made to a local commune giving the following details: Site description, nature of building or facility, its purpose and its cost. Posts must be erected on the site showing the actual size of the intended building. There is a period for objections and the applicant can respond. Approval by the commune is not the final go ahead, however, since other public laws on water supply and safety, for example, must be met. In addition, private laws can be invoked by individual objectors. The permit to build is the essential factor and it is illegal to build without one. If a building is constructed without a permit, but it would have met the requirements, of planning law, it must be given permission *a posteriori*, with the guilty developer only being subject to a fine. Similarly, if an application to build meets the requirements of public law, a permit must be given, unless there are reasons favouring the delimitation of a reserved zone or a temporary prohibition on construction.

The 1997 law required that the application is inside a zone a *Batir* Article 22 (a) and that the site is equipped with adequate infrastructure (Article 33(b)). When a permit is given, the building must be constructed in the form prescribed by the permit and any modification must be submitted for approval.

Article 24 of the LAT outlines a number of exceptions for development outside a zone, namely those constructions or installations which have to be located outside a zone because of their destined use, for example, farm and forest buildings. For other developments, an appeal against a refusal to build outside a zone or against inadequate compensation resulting from planning restrictions may be made initially to the canton, and if this fails to the Federal Tribunal. Individual citizens can either call for a referendum to reject an application or can appeal against a planning permission. Individuals have a right to look at planning application files if they are directly concerned and when an application is under consideration. The LAT does not include measures for the preservation of buildings unless they are in the zone. However, all buildings are subject to development control and thus all historic buildings are given some degree of protection.

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A number of developers attempt to obtain planning permission outside a zone or build without permission and in some cases the former practice is encouraged, for example, in some Cantons the planning regulations allow some weekend homes to be built in agricultural zones where the land is not suitable for farming. In other Cantons, the use of an agricultural building outside the zone as a residence is refused permission by the Federal Tribunal and such building has to be demolished.

A two stage process of development is practiced whereby in phase one, the commune is dominated by developers who naturally vote for lax planning so that maximum profits can be obtained. Phase two is dominated by residents or second homeowners who wish to preserve the area as they found it and so they begin to impose stricter planning controls to preserve the landscape.

In conclusion, Swiss development control through building regulations and permits, is a highly bureaucratic procedure involving a good deal of administrative coordination between public agencies. The regulations have produced a high standard of construction and the standards of aesthetics and design are also very high.

2.3 Kenya Redevelopment Control Frameworks :Legislative Overview

Physical planning and development in Kenya has been controlled by several legislations since the colonial times. These legislations are based on British Laws and domiciled in different ministries. The laws cover possession, registration and land planning and development. Institutional frameworks for development control have been defined by these laws, some of which have been repealed. The main laws that have shaped development control in Kenya are:

Constitution of Kenya, 1963

The Constitution of Kenya, 1963, covered Trust Land in Chapter IX. The constitution stipulated what constituted trust land (land vested in the name of the Trust Board, land under Crown Lands Act, communal reserves, and land registered in the name of a County Council outside Nairobi Area). The constitution vested trust land in the County Council within whose area of jurisdiction it was situated for the benefit of the person's resident on that land. Section 116 of the constitution provided for registration of individual titles to Trust Land, section 117 and 118 addressed setting apart of Trust Land by County Councils, while section 119 dealt with land no longer required for purposes of government.

The Government Lands Act

The Government Lands Act, Cap 280 of 1970 (Revised 1980), vested land in the President who has the power to make grants and dispositions of any estates, in interest or right over the land. The COL administers the Act and may execute any conveyance, lease, or other Act on behalf of the President. The Act stipulates the procedure to be followed when converting government land into Agricultural land.

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Development Control on Agricultural Land

In 1940, the Land Control Bill was introduced to give the governor control over land to ensure proper use of land. The governor was empowered to make rules over preservation of agricultural land. In order to strength the objective of promoting agriculture in rural areas, Land Control Act Cap 302, Agriculture Act Cap 318, Chief's Authority Act Cap 128, and the Local Authority Act Cap 265 were enacted (Ayonga and Obiero, 2009).

The Land Control Act Cap 302 of 1981 (revised in 1989) provides for the control of dealings in agricultural land. The Act gave mandate to Land Control Boards to regulate the sale, transfer, lease, mortgage, exchange, partition or disposal of land and also consider the maintenance or improvement of the standards of good husbandry. The Act states that land outside all towns should be managed by the Land Control Board. The main players here are the land surveyor who provides a simple mutation plan, which is considered sufficient for land registration purpose (Lawrence Commission 1965) and the Land Control Board. A person refused consent on any of the relevant activities can appeal to the Land Control Board appeals board. (Kimani, 2008).

The Agriculture Act (Cap 318 of 1967) is the instrument of state regulation of agricultural land use. The Act gives the Minister the power to make orders for proper management of agricultural land and to cause the same to be compulsorily acquired and sold in default thereof. The Act further controls agricultural operations right down to the stipulation of what crops and livestock species are suitable to be grown or reared in specific areas.

The Local Government Act Cap 265

The Local Government Act (LGA) Cap 265 (of 1963, revised 1986) empowers the Municipal Council, County Council or Town Council to prohibit and control development in its area of jurisdiction. Further, County Councils shall have power to prohibit and control shops in rural areas, provided that such power shall not be exercised where the Land Planning Act 303 (now repealed) had been applied.

Section 166 part XI of the LGA states that every Municipal Council, County Council or Town Council may, subject to any other written law thereto, prohibit and control the development and use of land and buildings in the interest of the proper and orderly development of its area. This implies that Local Authorities that manage urban centres have ways and means to implement development plans issued to them by Department of Physical Planning, Ministry of Lands.

Section 210-211 part XIV of the LGA empowers Local Authorities to make by-laws to guide performance of their business. The Act allows the County Councils to control land uses in small urban centres. Ayonga and Obiero (2009) have noted that although the Councils have huge parcels of land in all the markets under their jurisdiction, such lands however, were not subjected to planning as was the case in the Municipalities and Townships. Yahya (1976) asserts that the common practice has been for the area Councillors, a surveyor in some cases, together with the public health officials, to allocate plots in such centres, with the Councils only ratifying the allocation by issuing letters of allotments in all such allocations of plots in market centres

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It should be noted that there is no prior and proper planning; and hence, as Ayonga (2008b) states, the rural market entries are characterized by conflicting and non-optimal spatial patterns. The preceding text shows clearly that development control in rural market centres and their townships and municipalities operated under different legal and institutional frameworks. It is this contrasting institutional framework that is creating problems in development control processes, especially when the township and municipalities extend beyond their original boundaries or there is spill-over of urban development beyond the original township and municipality boundaries. (Ayonga and Obiero, 2009).

Ayonga and Obiero (2009) have concluded that the urban institutional and legal frameworks had a mutually exclusive relationship with those of the rural land use system. This meant that the urban and rural institutions had a specific mandate, operating under a different legal framework, and a specific area of jurisdiction which can be seen as being either urban or rural.

Occupational Safety and Health Act (No. 15 of 2007)

According to the Act, workers should be provided with protective gear when working such as helmets, goggles, gloves and dust masks. It is also stipulated in the Act that, the employer should, before commencement of hazardous work, train and warn his workers on the nature and condition of the work to enhance safety and protect the health of the workers. This also applies to machinery where the employer is expected to service the machines within periods stipulated by the Act to the satisfaction of labour officials and also train his workers on the safe use of the machines.

The Public Health Act, Cap 242

Sections 115–126 of the Public Health Act deal with issues related to sanitation and housing. Some of the issues addressed under these sections include: Discharge of waste, Smells and fumes, Cemeteries and burial places. Further, sections 115 to 156 cover prevention or remedying of all conditions liable to be injurious or dangerous to health arising from erection or occupation of unhealthy dwellings or erection of buildings on unhealthy sites or from overcrowding or from any construction condition in use of space. This section also covers overcrowding and authority for demolition of dilapidated dwellings.

Section 126(d) requires all municipal, urban and area councils to make by-laws regarding the following: Building materials, building space, lighting, ventilation, height of buildings and height of chimneys.

The other by-laws formulated by the Municipalities are prohibition of erection of temporary structure or dwelling purposes, temporary structures for business or dwelling purposes, provision of fire escape, provision of occupational certificates upon certification of fitness of building for occupation, compulsory provision to employees by employers with housing and compulsory demolition of unsafe or dilapidated buildings.

In addition, the councils are empowered to make by-laws on regulative sanitation and regulating sanitary conveniences and drainage from buildings, regulating excavations in connection with buildings, tanks and water supply for human consumption in buildings, regulating stores and

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other fittings (non electrical) for prevention of fire, regulating private sewers and communication between drains and sewers, regulating erection and use of scaffolding during construction demolition, repair, alteration or extension of any building and finally, prohibiting and regulating projections and obstructions in front of buildings and over streets.

There are various clauses that deal with penalties for persons who violate the various requirements outlined. It is the obligation of the site management to be well acquitted with the provisions of the Public Health Act and ensure that both the employees and the employer on site adhere to them.

The Environmental Management and Co-ordination Act (EMCA) 1999

The Environmental Management and Co-ordination Act (No 8 of 1999) is an Act of Parliament that provides for the establishment of an appropriate legal and institutional framework for the management of the environment. The Act is based on the recognition that improved legal and administration co-ordination of the diverse sectoral initiatives is necessary in order to improve national capacity for the management of the environment, and accept the fundamental principle that the environment constitutes the foundation of our national, economic, social, cultural and spiritual advancement.

Part II section 3 of the Act states 'every person in Kenya is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment'. It is worth noting that the entitlement to clean and healthy environment carries a collective duty. Hence, there is not only the entitlement to a clean and healthy environment, but also the duty to ensure that the environment is not degraded in order to facilitate one's own, as well as other persons', enjoyment of the environment.

Section 78 of this Act provides for air quality standards. This is important to workers who have to work in construction sites given the dusty state of the building sites. The section provides for penalties to any persons who pollute the air in any way. Further, section 102 of the Act provides for noise control levels. Noise needs to be controlled to acceptable standards, and even so in construction sites, because of the long-term effect excessive noise can have on workers.

The second schedule of EMCA lists the projects that require environmental impact assessment reports before commencement of the development. Development proposals for industrial location, dumping sites, sewerage treatments, quarries and other specified development activities require an Environmental Impact Assessment (EIA) report; this is also a requirement of section 36 of the Physical Planning Act, if the Local Authority is of the opinion that these projects will have injurious impacts on the environment. Critically, there is no regulation stipulating how a Local Authority is to liaise with the National Environmental Management Authority (NEMA) in determining injurious projects.

The Constitution of Kenya, 2010

The Constitution of Kenya, 2010, classifies land into public, community and private land. The Constitution has established a National Land Commission whose functions are spelt out in article 67. The constitution further empowers Counties in the management of land within their

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Summary of Primary Acts Impacting Development Control

These are as presented in Table 2-2.

The legislation above demonstrates that development control operates under different legal and institutional frameworks. These institutional frameworks create difficulties in planning and development control processes.

No	Act/ other statute	Function as it relates to development control	Where Domiciled	Current Status
1	The Government Lands Act Cap 280 enacted in 1915	Leasing, regulating and disposing government land	Ministry of land	In operation
2	The Town Planning Ordinance of 1931	Use, control and development of government land		Repealed
3	Constitution of Kenya, 1963	Sovereignty		Repealed
4	Trust Land Act, Cap 288 of 1939	Ministry of Lands	Ministry of Lands	In operation
5	Land Control Bill 1940	Gave governor control over land to ensure proper use of land		Repealed
6	The Government Land Act Cap 280 of 1970 (Revised 1980)	Empowers the President and COL to grant public land in trust and trust land conveyance, lease	Ministry of Lands	In operation
7	The Land Control Act Cap 302 of 1981 (Revised 1989)	Control of dealings in Agricultural land	Ministry of Lands	In operation
8	Chief's Authority Act Cap 128	Land dispute resolution in rural areas	Ministry of State for Internal Security and Provincial Administration	In operation
9	The Local Government Act Cap 265 of 1963 (Revised 1998)	In as far as Development Control is concerned, empowers them to make By-Laws.	Ministry of Local Government	In operation
10	Land Planning Act, Cap 303 of 1968	Addressed land use conflict at three miles peri-urban strip and 400ft from centre line of trunk roads.	Ministry of Lands	Repealed
11	Physical Planning Act, Cap 286 of 1996	Physical planning and control of all land in the whole country	Ministry of Lands	In operation
12	Physical Planners Registration Act No. 3 of 1996	Registers and regulates the activities of Planners	Ministry of Lands	In operation

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13	Environmental Management and Co-ordination Act, 1999	Govern overall framework and policy guidance for environmental planning and management, including quality in Kenya	Ministry of Environment and Natural Resources	In operation
14	Public Health Act, Cap 242	Health and Sanitation	Ministry of Health	In operation
15	Building By-laws (Grade I & II), 1968	Building Regulations	Ministry of Local Government	In operation
16	Housing Act Cap 117 of 1952	Housing Provision and Finance	Ministry of Housing	In operation
17	Water Act, 2002	Water Resource Management and Water Distribution Services	Ministry of Water	In operation
18	Sessional Paper No. 3 of 2009 on National Land Policy	Provides Guiding Policy for Transformation and Reform in Land	Ministry of Lands	In operation
19	Code 95	For low cost housing - made changes to various aspects of housing standards	Ministry of Local Government	In operation
20	Architects and Quantity Surveys Act Cap 525, 1978	Registers Architects and Quantity Surveyors	Ministry of Public Works	In operation
21	The Survey Act, Cap. 299	Registers Land Surveyors	Ministry of Lands	In operation
22	Way Leaves Act, Cap 292	Gives powers to carry sewers, drains or pipelines into, through, over or under any land.	Ministry of Lands	In operation
23	Engineers Registration Act, Cap 530	Registers Engineers	Ministry of Public Works	In operation
24	The Constitution of Kenya, 2010	Sovereignty	Republic of Kenya	In operation

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Kenya Development Control Procedures as Enacted in the Physical Planning Act

The Physical Planning Act was enacted by Parliament in 1996 and came into force in 1998. This Act extended planning to all areas of the country. With enactment of this Act, the Town Planning Act Cap 134 and the Land Planning Act Cap 303 were repealed. The Physical Planning Act deals with the material change in the use or density of any building, land or subdivision of any land. It created four institutions and assigned various roles to the authorities as follows:

The Director of Physical Planning (DPP) in the Ministry of Lands was assigned the role of preparing all regional and local physical development plans. The Minister in charge of Physical Planning (MPP) was assigned the role of approving all plans prepared by the DPP. The power of the Commissioner of Lands (COL) to approve physical development plans under the Governments Lands Act (Kenya, Cap 280) was, therefore, transferred to the Minister in charge of Physical Planning under the new arrangements of the Physical Planning Act (PPA). Local Authorities (LA) were mandated under the PPA to oversee the control of land use and the implementation of physical development plans in all areas of the country - in the municipalities, townships and the regions.

Powers of Local Authorities in Development Control Processes

The Physical Planning Act Cap 286 is the principal legislation that governs development planning in Kenya. Sections 29 – 33, Part V of the Act; Control of Development, sets the process of development control and the powers of Local Authorities in the implementation of development control processes. Section 29 states that, 'Subject to the provisions of this Act, each Local Authority shall have the power':

- To prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- To control or prohibit the subdivision of land or existing plots into smaller areas;
- To consider and approve all development applications and grant all development permissions;
- To ensure the proper execution and implementation of approved physical development plans;
- To formulate By-Laws to regulate zoning in respect of use and density of development; and
- To reserve and maintain all the land planned for open spaces, park, urban forests and greenbelts in accordance with the approved the physical development plan.

Application for Development Permission

Section 31 provides the details for development applications. An application is made to the relevant Clerk of the Local Authority in the prescribed form (Fourth Schedule, form P.P.A. 1). It should include necessary plans that indicate the purpose of development including use and density; and land surrendered for a) access to any subdivisions and adjoining land and b) public

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purposes resulting from the proposed development. This section implies that developers know they are required to submit development applications for development permission to the Local Authorities and have access to the relevant professions to prepare the plans and provide all the details required by Local Authorities.

Assessment of Development Applications

Section 32 provides that within 30 days after the receipt of development application, the municipal council shall refer the application to the Director of Physical Planning for his comments. The municipality may also consult with other officers as stipulated in subsection 2 of section 32. As these officers are consulted, they will refer to the acts that guide them in their area of expertise as they provide their comments to the Local Authorities.

When considering a development application, a Local Authority has to consider the regional and local physical development plan approved by the minister; public utilities and the proper planning and density of development and land use in the area; comments received from the Director and other officers, and in case of leasehold, any special conditions stipulated in the lease. For subdivision or change of user development applications, the Local Authority shall refer the application to the relevant Land Control Board which, shall within 30 days of application receipt, recommend to the Local Authority to either accept or reject the application with reasons for its recommendations.

This section highlights various players involved in development control. This requires proper coordination and due diligence on each party to ensure that the application meets all the requirements and delays in the approval process are not encountered. However, there is no single governing regulation that guides evaluation of development applications. Each officer applies the Act that relates to his area of jurisdiction; further, these Acts are not specifically for development control within Local Authorities.

Approval of Development Applications

Section 33 provides that the Clerk of Local Authority, subject to the Director's comment, may grant development permission with or without conditions or refuse to grant the permission and state the grounds for refusal. The Local Authority shall notify the applicant in writing of its decision within 30 days of the decision being made and specify the conditions if any, or grounds for refusal. If the applicant is aggrieved by the Local Authority decision, he can appeal to the relevant Liaison Committee, the National Liaison Committee or the High Court in that order of hierarchy. Given the way courts have operated in the past, we can see the development control hurdles in this process of appeal.

Deferment of Development Applications

The Local Authority may by notice of deferment to the applicant, defer consideration of development application for such reasons and such period as it deems fit (Section 34).

This section gives the Local Authority powers to determine how soon the development application is to be processed.

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Certain Development Applications to be Referred to Relevant Liaison Committee

Applications that involve issues of public policy are referred to the relevant liaison committee. If requested by either the Director or the applicant, the liaison committee will accord the applicant the opportunity to make representations in writing. An aggrieved applicant may appeal to the municipal district physical planning liaison committees (an equivalent of district magistrates court), then to the National Liaison Committee and if still dissatisfied, to the Senior Resident Magistrate's Court. The appeal process is fragmented whereby at times an appeal is in the high court and at other times is at the Senior Resident Magistrate's Court.

Registration of Documents

The registrar will only register documents relating to development of land where development permission has been granted and appropriate conditions relating to such development have been complied with. Thus, no documents may be registered if development permission has not been granted or appropriate conditions have not been complied with.

Enforcement Notice

An enforcement notice is as stipulated in section 38 of the PPA. When it comes to the notice of the Local Authority that development land has been carried out without the required development permissions being obtained or conditions of development have not been complied with, the Local Authority may serve an enforcement notice on the owner, occupier or developer of the land. The enforcement notice shall specify details of contraventions and measures to restore land to its original condition or meet specified conditions. This may require demolition, alteration of any building or works or discontinuance of any use of land or construction of any building or the carrying out of any other activities.

Unless an appeal is lodged, the enforcement notice takes effect after expiration of period specified in the notice. An aggrieved developer may appeal to the District/Municipal Liaison Committee, National Liaison Committee and the High Court in that order of hierarchy. Any development affecting land to which an enforcement notice has been served, and appeal launched, shall be stopped and the execution of the enforcement notice shall be stayed pending determination of the appeal.

Supplementary Provisions as to Enforcement

Section 39 gives the Local Authority power to enter in the land and take measures required to be taken and recover from the person on whom the enforcement notice is served any expenses incurred in connection with the action taken. If no appeal has been launched, the developer shall not question the action of the Local Authority. Where Local Authority takes action, material removed from the land if the owner has not removed them within 30 days shall be sold and the proceeds thereof after deducting expenses incurred by Local Authority be paid to the developer. Anyone obstructing the Local Authority in executing its functions above is liable to a fine of Kshs. 50,000.00 or imprisonment not exceeding two years or both.

The Minister may in writing direct the Local Authority to take appropriate action to ensure compliance with this part with no delay.

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The stipulations in the PPA require that the municipal councils have the capacity to go round monitoring developments being implemented or those that are completed to verify that they comply with the development permission granted or conditions stipulated. Further, Local Authority inspectors have a checklist of what they look for in the field for non-compliance.

Miscellaneous Subdivision of Land

Section 41 provides that no private land to be subdivided unless in accordance with the local physical development plan.

Further, subdivision and land use plans in relation to any private land shall be prepared by a registered physical planner and be approved by the Director of Physical Planning. Where an application for development, change of user or sub-division has important impact on contiguous land or does not conform to any conditions in its title, the Local Authority shall at cost of applicant, publish the notice of the application in the Gazette or in such other manner it deems expedient and serve copies of the application on every owner or occupier of the property adjacent to land to which the application relates and to such other person as Local Authority may deem fit.

If any objection or representation in connection with the application is received, the Local Authority shall notify the applicant and give him an opportunity to respond. The Local Authority may approve the application with or without condition or refuse to approve it. If the applicant is aggrieved, he can appeal to the Liaison Committee, National Liaison Committee or the High court in that order.

Summary of Literature Review

Development control must be seen within wider system of physical planning and its evolution. Any process of development should be inclusive of all stakeholders.

The main finding from the review of Gaborone City development control system is that the government had site and service schemes which were serviced and allowed the people to develop their plots within their ability. The government ensured compliance of developments with laws and regulations.

In Singapore the main lesson learnt is that planning and development control in urban areas is through participatory process involving the business community and other stakeholders. There are severe penalties for those who violate the laid down guidelines for development control.

In Switzerland the government has a devolved system for planning and development control where there is clear stipulation of powers and coordination at the Federal, Cantons and Commune levels. Building inspectors ensure that any constructed building meet the stipulated requirements.

With Kenya's new constitutional dispensation of National and County government, Kenya can borrow a leaf from each of the three case studies.

CHAPTER 3—METHODS

This section identifies the design of the study, sampling techniques, tools, sources of data; the methods of data collection and data analysis. The data analytical tools and techniques applied in the study are also addressed. In addition, the limitations of the study are presented.

3.1 Study Area

The study covered 17 Local Authorities in 14 Counties of Kenya. Kenya has four classes of Local Authorities: City, Municipal, Town and County Councils. Currently only Nairobi is a City. County Councils are essentially rural. Each County as defined in the COK 2010 has several Local Authorities.

Local Authority administration consists of a Mayor (elected by Councillors from amongst themselves), Town/County Clerk (appointed by the Minister for Local Government) and elected and nominated Councillors (representing a ward or nominated by the Minister for Local Government). Local Authorities with City or Municipal status have Mayors while those with Town or County status have a Chairman instead of a Mayor. The number of Councillors depends on the population and area of each authority.

The respective Local Authorities studied are shown in Map 3.1 and Table 3.1 below

3.2 Research Design

The research methodology used was a range of participatory approaches aimed at promoting interactive contributions and comprehensive data collection during the study. A case study design was used to collect the data.

3.3 Research Tools

Both secondary and primary data was collected. Secondary data was from review of existing literature from various sources including Local Authorities and identified agencies reports, government reports, libraries, internet, past studies, policy documents, legislation, procedure manuals, journals and publications. Primary data was collected via questionnaires, observation and interviews.

3.4 Sampling and Data Collection Methods

Case Studies

The study covered 17 Local Authorities and other related agencies and stakeholders involved in development control processes. The Local Authorities were selected from eight regions of Kenya. These Local Authorities were distributed as shown in Table 3.1 and in Map 3-1.

Data Sources

The study used different data sources so as to triangulate the sought data. Seven different questionnaires were administered to seven categories of respondents that are involved in development control processes, namely: The general public, developers, public institutions, neighbourhood associations, town/county clerks, county physical planner, and registered built environment professionals.

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Sampling

To get the sample size for each Local Authority the cluster ratio was multiplied by 100. Some of the Local Authorities (Marsabit and Olkejuado) identified for study had a sample of zero and Nairobi had 59 (Table 3.1). This scenario led the researcher to have a uniform sample size of over 30 which is statistically seen as the minimum sample size for a given population (Table 3.2). In addition, the sample size was based on the available resources. The seven data sources were sampled as explained below:

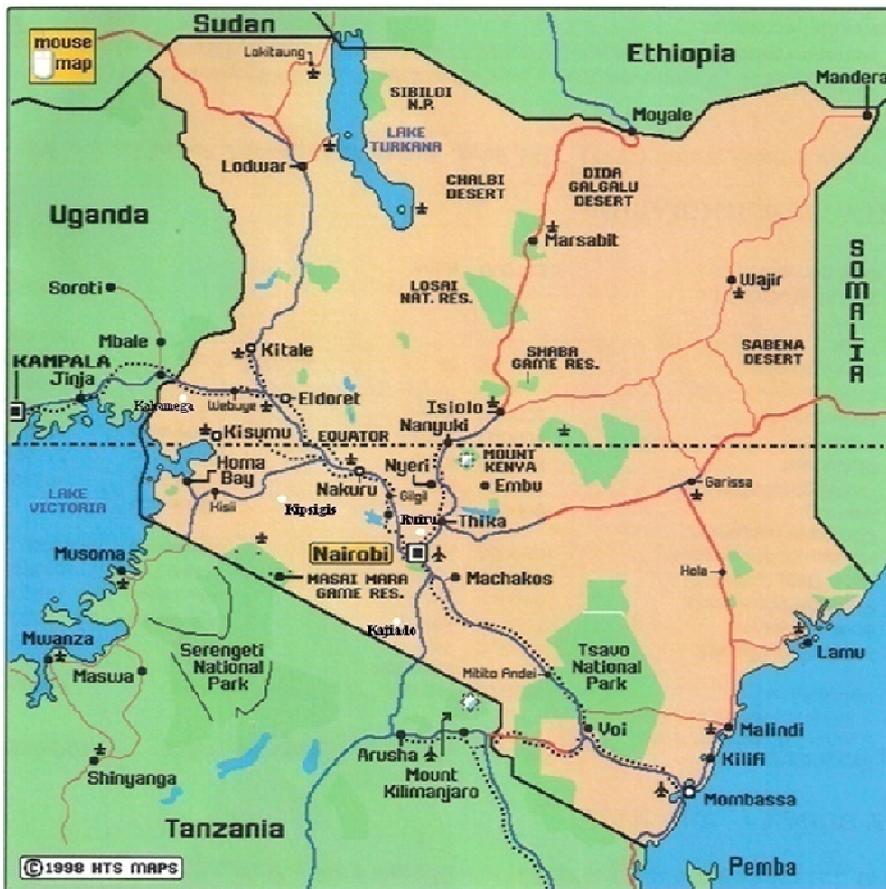
General Public

For Nairobi and Mombasa, 18 members of the public were selected while 12 members were selected in all the other Local Authorities. Respondents were picked randomly from within the different zonal areas of the Local Authorities.

Local Authority Town Clerks

The Town/County Clerk of each Local Authority was selected, therefore a total of 17no. clerks.

Map 3-1: Map of Kenya.



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Table 3 - 1: The distribution of Local Authorities in the Regions and Counties, population of urban core, cluster ratio and sample size.

Region	County	Municipality	Population of urban core	Cluster Ratio	Cluster size (Ratio X 100)
Nairobi	Nairobi	City Council of Nairobi	3,133,518	0.594	59
Central	Kiambu	Municipal Council of Ruiru	236,961	0.045	5
		Municipal Council of Thika	136,576	0.026	3
		Municipal Council of Kiambu	61,336	0.012	1
	Nyeri	Municipal Council of Nyeri	63,626	0.012	1
Eastern	Machakos	Municipal Council of Mavoko	110,396	0.021	2
	Embu	Municipal Council of Embu	35,736	0.007	1
	Marsabit	County Council of Marsabit	14907	0.003	0
		County Council of Moyale	27943	0.005	1
Rift Valley	Kajiado	County Council of Olkejuado	14,631	0.003	0
	Kericho	County Council of Kipsigis.	42,029	0.008	1
	Trans-Nzoia	Kitale Municipal Council	37,701	0.007	1
Nyanza	Kisumu	Municipal Council of Kisumu	259,258	0.049	5
North Eastern	Garissa	Municipal Council of Garissa	110,383	0.021	2
Western	Kakamega	Municipal Council of Kakamega	69,502	0.013	1
Coast	Mombasa	Municipal Council of Mombasa	915,101	0.173	17
	Kilifi	Town Council of Kilifi	44,257	0.008	1
			5,313,861	1.000	100

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Local Authority	Data Source							Total
	General Public	Developer	Public institution officers	Neighbourhood Associations	Local Authority	DPPO	Professionals	
City Council of Nairobi	18	54	5	3	1	1	5	87
Municipal Council of Ruiru	12	36	5	1	1	1	5	61
Municipal Council of Thika	12	36	5	1	1	1	5	61
Municipal Council of Kiambu	12	36	5	1	1	1	5	61
Municipal Council of Nyeri	12	36	5	1	1	1	5	61
Municipal Council of Mavoko	12	36	5	1	1	1	5	61
Municipal Council of Embu	12	36	5	1	1	1	5	61
County Council of Moyale	12	36	5	1	1	1	5	61
County Council of Marsabit	12	36	5	1	1	1	5	61
County Council of Olkejaado	12	36	5	1	1	1	5	61
County Council of Kipsigis	12	36	5	1	1	1	5	61
Municipal Council of Kisumu	12	36	5	1	1	1	5	61
Municipal Council of Garissa	12	36	5	1	1	1	5	61
Municipal Council of Kakamega	12	36	5	1	1	1	5	61
Municipal Council of Kitale	12	36	5	1	1	1	5	61
Municipal Council of Moribasa	18	54	5	3	1	1	5	87
Town Council of Kilifi	12	36	5	1	1	1	5	61
Total	216	648	85	21	17	17	85	1089

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County Physical Planning Officer

The planning officer for each Local Authority was selected. A total of 17 Local Authority planning officers were selected.

Developers of Built Environment

Using the physical development plan and survey observations of completed and ongoing development projects, the research supervisor randomly selected a sample of 6 development projects from each of the zonal areas within Nairobi and Mombasa, and 4 projects from each of zonal areas for all the other Local Authorities. The zonal areas included industrial, educational, commercial, residential, recreational, community facilities, public utilities, transportation and central business areas. Within a zonal area, survey areas were formed from which the development projects were randomly selected. The survey areas were equal development projects. A total of 54 respondents in Nairobi and Mombasa, and 36 respondents from the rest of the Local Authorities were selected.

Related agencies

The Local Authorities obtain certain services that they require, but do not have, from other professionals in the public service. The public institution professionals who render services to the municipalities in the development control procedures were selected. The research assistants obtained information from each Local Authority on the public professionals who offer it services. Having been informed and given the contacts of the officers, the research assistants proceeded to their respective locations to administer the questionnaires. A total of four public officers representing four related agencies were interviewed. A total of 85 public professionals were selected. The related agencies were the Ministry of Lands, Ministry of Public Works, Ministry of Public Health and Sanitation, and Ministry of Environment and Mineral Resources.

Neighbourhood Associations

A convenient sample of 3 registered Neighbourhood Associations each in Nairobi and Mombasa, and one from each of the other studied Local Authorities was selected. The prominent associations with wider coverage were within urban Local Authorities. A total of 21 respondents were selected.

Built Environment Registered Professionals

Registered Architects, Civil and Structural Engineers, Land Surveyors, Physical Planners and Environmental Experts render services to the built environment. A Convenient sample of 5 accessible registered professionals, one of each expertise, who have rendered services in each of the studied Local Authorities, was selected. The Local Authority provided the list of the professionals who had provided services to them. The total number of professionals selected was 85.

3.5 Research Principals and Assistants

The research team was composed of one Principal researcher and two Physical Planners. The team was assisted by 17 graduate research assistants with relevant technical expertise in the area of study. The work programme in Box 1 shows how the team conducted the study in terms of collection of data from the different Local Authorities and related agencies.

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Nairobi Region: Nairobi (5 days), Nyanza Region: Kisumu (3days),
Western Region: Kakamega (3 days),
Coast Region: Mombasa (5 days), Kilifi (3 days)
Rift Valley Region: Kitale (3 days), Olkejuado (3days), Kericho (3 days)
Central: Thika (3 days) Nyeri (3days), Kiambu (3days), Ruiru (3days)
North Eastern: Garissa (3 days), Eastern: Mavoko (3 days), Embu (3days), Moyale (3days),

Box 3-1: *Work Programme, Source: Author*

Workshop

The stakeholders' workshop organized by the AAK on 24th February 2011 at Panafric Hotel Nairobi, correlated data obtained from the field and provided feedback on preliminary results. Preliminary findings on the study were presented and these formed the interactive mode for the workshop. Appendix 1 shows the list of stakeholders who attended the workshop.

3.6 Data Analysis

Data was analysed using Statistical Package for Social Scientists (SPSS) and presented using descriptive statistics, tables, pie charts, bar charts, maps and photographs. Qualitative analysis was done to address the study objectives.

3.7 Limitations of the Study

The study faced four major limitations which included: *Availability of Respondents; Fear of the Respondents, Time and Availability of Physical Development Plans.*

Availability of Respondents: Some of the respondents were not available during the data collection at different working stations. This necessitated that research assistants leave questionnaires for completion and subsequent return to the office. Some respondents did not return their questionnaires timeously, while others did not return them altogether. This caused delays in receiving the responses, and worse they led to a low rate of response since some respondents did not return their questionnaires altogether. The research office constantly followed up with the contact persons for response and in some cases visited the respondent's offices.

Fear of Respondents: Some respondents were not free in providing information for fear that the research assistants were investigative persons. Some of the developer respondents declined to have their buildings to be photographed. To overcome this, the study captured the data through other means such as interviews and questionnaires.

Time: The study had planned resources for field data collection for between one to three days for each case study. It was not possible to collect all the data within the planned time in all the Local Authorities. Data collection for each Local Authority took between three to five days. The study permit was also delayed for one month. Arising from this, the scheduled period for research was revised.

Availability of Physical Development Plans: Local Physical Development Plans of respective Local Authority jurisdictions were not readily available at the Local Authority offices. The study relied on available physical development plans from other sources.

CHAPTER 4—RESULTS

4.1 Introduction

This section presents the results from the Local Authorities and related agencies studied in addressing the study objectives. The results represent the views obtained from the study respondents and the AAK stake-holders validation workshop. The results are presented in the following sections: *Response Rate; Technical Capacity; Incompetent Persons; Technical Procedures; How Lack of Technical Procedure and Capacity Affect Development Control Processes; How Lack Of Supervision And Inspection Affect Development Control Processes; How Other Factors Affect Development Control Processes;* and the *Effects Of Lack Of Technical Capacity, Supervision And Inspection Of Development Control* and the *Involvement Of Incompetent/Unqualified Persons*.

4.2 Response Rate

Table 4-1 shows the responses received from the field for the various categories of respondents. The overall response rate was 62% based on the questionnaires filled and returned.

Table 4 -1: Response Rate

Questionnaire type	Expected	Received	Response Rate
General Public	216	143	66%
Developer in civil and building works	648	412	64%
Public Institution	85	34	40%
Neighbourhood Associations	21	12	71%
Local Authority -Town Clerk	17	12	71%
District Physical Planner	17	17	100%
Practitioners of built environment	85	51	60%
Director of Physical Planning	1	1	100%
Total	1089	682	62%

4.3 Technical Capacity in Local Authorities and Related Agencies

Capacity is the specific ability of an individual, institution, or society as whole measured in quantity or quality over an extended period of time. This section examines the technical capacity in the Local Authorities and related agencies dealing with development control. The issues that were analyzed under technical capacity included the number of **key personnel required and currently available** in each Local Authority, **experience and skill of the staff**, the **available public officers from various ministries who render development control services** and **professionals in the built environment** and the **budgetary allocation for development control departments/sections** within the Local Authorities.

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4.2.1 Technical Capacity in Local Authorities

Existence of Development Control Offices

The study found out that all the Local Authorities have development control offices because they were receiving and approving development plans. However, only the City Council of Nairobi (6% of the studied authorities) has a fully functional development control section, part of the Department of City Planning. The Department of City Planning that performs the following activities: Approval of building plans, Enforcement and Inspection, Approval of development applications (Change of user, amalgamation, sub-division and extension of leases), Research and policy formulation, Forward planning, Rezoning and developing zoning ordinances, Urban design and landscaping and Wall branding and survey of council properties.

For the rest of the Local Authorities (94%), the development control sections were either located within the offices of municipal/town/county engineer, Works officer or at the District Physical planning office. Even though Local Authorities had the development control department/section, it was noted that many did not have the policies and zoning regulations to implement the development plans.

In addition all the physical development plans used by the Local Authorities are outdated with respect to time and space (Table 4-13). This seems to suggest that the offices of the Commissioner of Lands and Director of Physical Planning have concentrated on alienating land using Part Development Plans (PDP) instead of preparation of physical development plans. Some Local Authorities like Ruiru and Kiambu have grown using sub-division scheme plans which are uncoordinated and not based on local physical development plans; additionally, many of the subdivision plans are prepared by non-professional persons. According to the participants at the AAK workshop, the subdivision schemes are currently being done in such a way that no service way leaves are left and this situation makes it difficult for service providers as Kenya Power and Lighting Company (KPLC) to plan for their service provision including; street lighting, power line distribution, water reticulation systems, drains and sewers, for their clientele.

Performance Gap: The planning and development control departments in Local Authorities had no tools and standards to effectively evaluate development applications.

Activities Under Development Control Departments

It was established from the field that all the Local Authorities carry out approval of building plans, enforcement and inspection of development activities. Only the City Council of Nairobi, representing 6%, carries out research and policy formulation. This therefore means that within the rest of the 16 Local Authorities, no research is undertaken on rezoning, forward planning and formulation of building standards, which are pillars of development control.

Performance Gap: Local Authorities do not carry out adequate policy review or research on development.

Staff establishment

The study established that the key personnel required in Local Authorities to implement physical

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development plans and enforcement of these plans include: Architects, Physical Planners, Civil/ Structural Engineers, Land Surveyors, Building Inspectors, Public Health Officers and Environmental Officers.

Table 4-2, shows that only Nairobi, Kisumu and Mombasa Local Authorities have recruited personnel for all sections of development control department. 82 % of the Local Authorities do not have adequate development control staff. Though Mombasa has recruited all personnel for development control, building inspectors are less than 10 and are expected to cover the entire Municipality.

Performance Gap: Local Authorities do not have adequate technical staff to carry out development control activities.

Table 4-2: Technical Staff in the Local Authorities. Source: Field Survey, 2011

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Table 4-2: Technical Staff in the Local Authorities. Source: Field Survey, 2011

LOCAL AUTHORITY	TECHNICAL STAFF	RE- QU IRE D	PRESENT	VA- CA NT
Municipal Council of Embu	Engineers	3	1	2
	Surveyors	1	1	
	Works Officers	1	1	
	Physical Planners	1	1	
Municipal Council of Garissa	Town Engineer	1		1
	Works Officer	1	1	
	Public Health Officer	1		1
	Surveyors	1	1	
County Council of Olkejuado	Works Officers	1	1	
Municipal Council of Kakamega	Town Engineers	3	1	2
	Works Officer	1	1	
	Physical planners	1	1	
	Surveyors	1		1
	Public Health Officers	2		2
Municipal Council of Kiambu	Physical Planners	1	1	
	Engineers	1	1	
Town Council of Kilifi	Works officers	2	2	
	Assistant Building inspector	1	1	
County Council of Kipsigis	Assistant Engineer	1		1
	Surveyors	1	1	
	Works officers	1	1	
County Council of Moyale	Building inspector	1	1	
County Council of Marsabit	Works Officers	1	1	
Municipal Council of Kisumu	Environmental Officer	3	1	2
	Public Health Officer	2	1	1
	Physical Planners	3	1	2
	Surveyors	3	2	1
	Works Officer	1	1	
	Engineers	5	3	2
	Building works inspectors	1	1	
	Development control officer	1		1

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Municipal Council of Kitale	Town Engineers	3	1	2
	Physical Planners	1		1
	Public Health Officers	4	1	3
	Surveyors	1	1	
Municipal Council of Mavoko	Public Health Officers	2	2	
	Physical Planners	1	1	
	Building works inspectors	3	3	
	Surveyors	1	1	
	Engineers	2	1	1
Municipal Council of Mombasa	Architects	2		2
	Building Inspector	5	5	
	Development Control officers	8	5	3
	Engineers	8	4	4
	Physical Planners	4	2	2
	Public Health Officer	3	2	1
City Council of Nairobi	Public Health Officers	1 1	11	
	Engineers	3 3	33	
	Surveyors	1 8	18	
	Architect	6	6	
	Landscape architects	3 3	33	
	Physical Planners	3 1	31	
	Development Control officers	1 9	19	
Municipal Council of Nyeri	Physical Planners	1	1	
	Works officer	1	1	
	Engineers	1		1
	Building Inspector	2	1	1
Municipal Council of Ruiru	Engineers	1	1	
	Physical Planners	1	1	
Municipal Council of Thika	Municipal Engineer	2	1	1
	Physical Planners	4	2	2
	Building Inspector	3	1	2
	Surveyors	1		1
	Architects	1	1	
	Public Health Officer	4	1	3

CHAPTER 4—RESULTS

Staff turnover

Table 4-3 shows the total number of years that each professional has worked in the Local Authority. On average, the study established that staff turnover is high in 94% of the Local Authorities studied.

Table 4-3: The number of years that the technical staffs have worked in the department

	Civil/ Structural Engineers	Ar- chite cts	Physi cal Plan- ners	Build- ing in- specto r	Land Sur- veyors	Pub lic Hea lth Of- fice	Wor ks offi- cer	Envi- ronm ental officer
Embu	5 to 10		<5	5 to 10	5 to 10		5 to 10	
Kakamega	<5		5 to 10	5 to 10			<5	
Kisumu	<5		<5	5 to 10	<5	<5	5 to 10	<5
Kipsigis	<5						5 to 10	
Olkejuado							<5	
Thika	<5	<5	5 to 10	5 to 10		<5		
Moyale							<5	
Marsabit							<5	
Kitale	<5				<5	<5		
Kiambu	<5		<5					
Ruiru	<5						<5	
Kilifi				<5			<5	

CHAPTER 4—RESULTS

Municipal Council of Embu has been able to retain most of its technical staff for more than 5 years as opposed to other Local Authorities where the turnover of staff is high. This was attributed to remuneration and good working environment, with good will from the politicians of the region. The AAK workshop participants confirmed that the turnover of the technical staff is generally high in the Local Authorities. They observed that mostly, employees with diploma qualification are found to stay in one Local Authority for longer periods than those with degree qualification (Table 4-4). Highly qualified and experienced technical staff like architects, engineers and physical planners are not sustainable because they are of high demand, expensive, and would like to set up their own private practices which are viewed as being more financially lucrative than Local Authority employment.

Performance Gap: Local Authorities have high development control technical staff turnover.

Level of Education

Table 4 - 4 shows a summary of the educational qualification of the technical staff within the Local Authorities. The table shows that technical staff at the Local Authorities have either a diploma or degree qualification, implying that they have attained the necessary basic training relevant for their work. However, due to inadequacy of the technical staff at the Local Authorities, the existing staff multi-task and carry out some responsibilities which they have not been trained in, for example, the works officers in Marsabit and Moyale evaluate development applications and inspect development projects. This renders the development control process ineffective.

Table 4 - 4: Level of Education

Building inspectors	University degree Polytechnic diploma
Public environmental health inspectors	University degree
	Polytechnic diploma
Land Valuers	University degree

Technical Staff	Level of Education
Architect	University degree
Physical planners	University degree
Engineers	University degree
	Polytechnic diploma
Land Surveyors	Polytechnic diploma

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Requisite Training Needs

Clerks of the various Local Authorities interviewed indicated that the current training that their staffs have undergone is insufficient to meet the current needs of their respective Local Authorities. They suggested training needs including development control procedures (25%), exposure in development control activities (37%), and Geographical Information System (GIS) training and planning skills (38%) that could upgrade the skills and expertise of their staffs. The participants at the workshop concurred that the use of GIS is minimal at the Local Authorities, yet today the application is very critical for the success of development control process as it enables tracking the growth of illegal structures, ongoing developments and stalled construction. They further observed that the current training of development control staff by the educational institutions is not adequate for persons in lower cadre job groups.

Performance Gap: Training institutions curriculum does not meet the technical requirements of the mid- level development control staff.

Qualified technical staff within the Local Authorities

44% of the professional technical staff within Local Authorities were reported to be registered by their respective boards of registration. This means 56% of the staff undertaking development control at the Local Authorities are not registered professionals. They are thus not statutorily responsible and cannot be held to account by statutory registration Boards.

Performance Gap: Majority of the technical staff hired in the development control department are unregistered.

Budgetary Allocation for Development Control Activities

The study found that on average the Local Authorities studied apportion 20% of their annual budget to development control activities, which is relatively low given the nature of work the departments/sections are required to undertake. The AAK workshop participants confirmed that with this allocation the Local Authorities cannot employ, train and retain qualified technical staff or carry out the much needed research on development control and policy review. The County Councils studied had the least budgetary allocations compared to other Municipal Authorities. (Figure 4-1)

Performance Gap: Limitation of resource allocation hampers development control in Local Authorities.

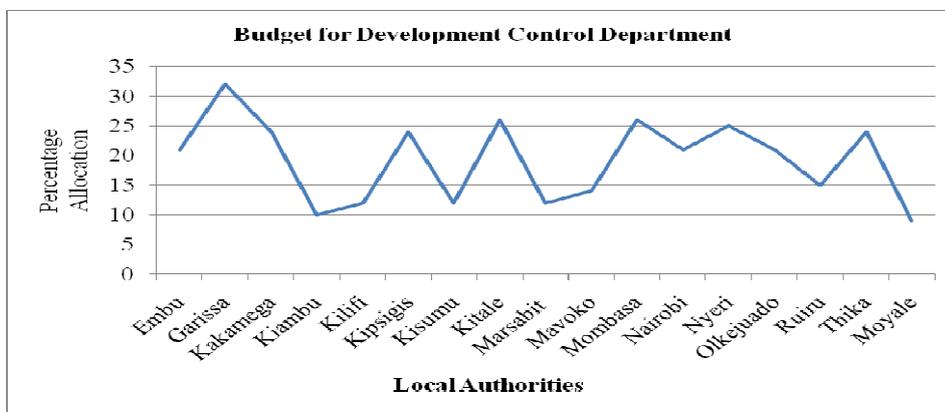


Figure 4 -1: Budget for development control department per Local Authority, *Source: Local Authorities Budget for financial year 2010-2011 financial year 2010-2011*

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4.2.2 Technical Capacity in Related Agencies – Related Ministries

The Development Control Framework in Kenya includes public institutions, mainly the various line ministries involved in development control.

This section examines technical capacity of the related agencies involved in development control (Ministry of Lands, Ministry of Public Works, Ministry of Environment and Mineral Resources, Ministry of Public Health and Sanitation). From the literature review of development control frameworks in Kenya, these ministries were identified as key in the implementation of development control in Kenya. Within these ministries, there are domiciled laws that guide development control (Table 2-2).

Roles of the Ministries in Development Control

Table 4-5 below shows the roles of different related ministries in development control. The major roles are examination and inspection of building plans to ensure compliance, approval of building plans and formulation of by-laws. The study found that all building plan applications which pass through the District Physical Planner for approval are checked for plot coverage, plot ratios, way leaves and compliance with zoning requirements, among other aspects in accordance with the approved physical development plans. For areas where the Local Authorities have expanded and physical development plans have not been reviewed, the study found that subdivision plans are used to control development, for example, in areas around Kirigiti in Kiambu and Ruiru. This has resulted in unplanned settlements.

Ministry Staff Offering Supporting Role to Local Authorities

Figure 4-2 shows the distribution of public officers involved in development control from the four ministries studied within different Counties where the Local Authorities are located. The study found out that where development control expertise is not available within the Local Authority, it is sought from the respective ministry. The figure shows that the Ministry of Environment and Mineral Resources is widely represented at the District offices to offer support service to the Local Authorities. The study also established that in Moyale there is inadequate technical staff (architect, planner or engineer) and that there is no related agency staff in close proximity. It is therefore difficult for the developers to be served and consequently the process of development control and management is not effective.

With technical staff missing at Moyale, the full council meetings approve the development applications submitted by developers.

Performance Gap: Local Authorities with inadequate technical staff and support from related agencies proceed on with full council meetings to approve the development applications.

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Table 4-5: Roles of the related agencies in development control

MINISTRY	DEVELOPMENT CONTROL ACTIVITIES
Ministry of Lands	Preparation of part development plans for public utilities and development plans
	Processing development applications (Extension of leases, change of users, subdivisions, amalgamations) and issuance of compliance certificates
	Monitoring of developments in Nairobi and coordinate monitoring of the same country wide
	Vetting of development plans and ensuring that they meet planning standards before forwarding the same to the director and Minister for approval
	Publishing of notices in the press and Kenya Gazette for approved development plans
	Land adjudication, clearing any land disputes and providing survey cartographic maps for physical planning.
	Design, document and supervise new construction projects to ensure compliance to standards and regulations
Ministry of Public Works	Oversee design of public buildings and their construction
	Supervision of public development projects
	Approval of building plans/structural and civil works
	Oversees the design and construction of civil and structural engineering works of buildings
Ministry of Environment and Mineral Resources	Monitoring, protecting, Conserving and managing environment and natural resources
	Coordinate the various environmental management activities done by lead agencies
	Approving development
	Inspection and Construction as per NEMA report
	Administration of EIA and issue EIA licenses
	Approval of NEMA reports from lead experts
Ministry of Public Health and Sanitation	Inspection and supervision of developments in respect to health issues
	Participate in Environmental Health Impact Audits/ Assessments (EHIA), Housing improvement/indoor air pollution and Health Care waste management to ensure that they comply with the requirements of general public and safety.
	Approval of development applications based on health issues

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Development Control Linkages Between The Related Ministries And Local Authorities

The study found that developers seeking development approval are referred to the respective officers in the District offices before final approval by the Local Authority. Further, the decisions made by different ministries are uncoordinated hence any approving player can stop the project at any stage. The approvals by different ministries use different templates which are not necessarily linked.

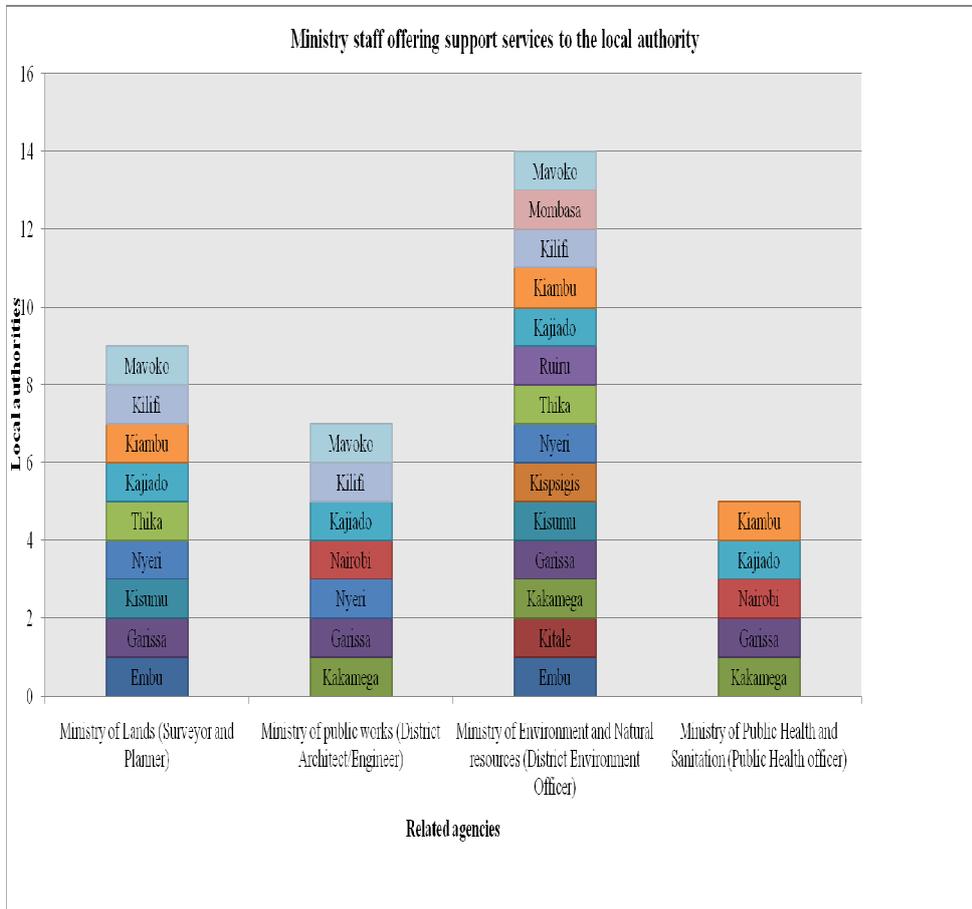


Figure 4 -2: Distribution of related agency staff consulted by the Local Authorities (Source: Field Survey, 2011)

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As these related agencies are guided by their respective mandates, the study found out that whereas Physical Planning Act Cap 286, 1996 empowers Local Authorities to control development throughout the Kenya including areas beyond the municipal boundaries, Land Control Act Cap 302 of 1989 empowers Land Control Boards as well to regulate land developments outside all urban areas. This contradicts the Physical Planning Act because it gives overlapping jurisdictions to different agencies. Similarly, although the Physical Planning Act Cap 286, 1996 gives Local Authorities powers to approve all developments on all land tenure systems, the Government Lands Act Cap 280 of 1980 also gives powers to the Commissioner of Lands to approve all developments on Government Land. This creates overlapping jurisdictions, which makes development control on Government Land confusing and difficult. Arising from these three approving authorities of land uses, the study found that the developer has a choice to avoid controls and the approving authorities have discretion and room for 'rent seeking'. This was further confirmed by the AAK workshop participants who felt that lack of harmony of these authorities makes development control difficult.

Performance Gap: The approving process of development plans by different institutions is uncoordinated and ineffective since there is no template the process is operating from.

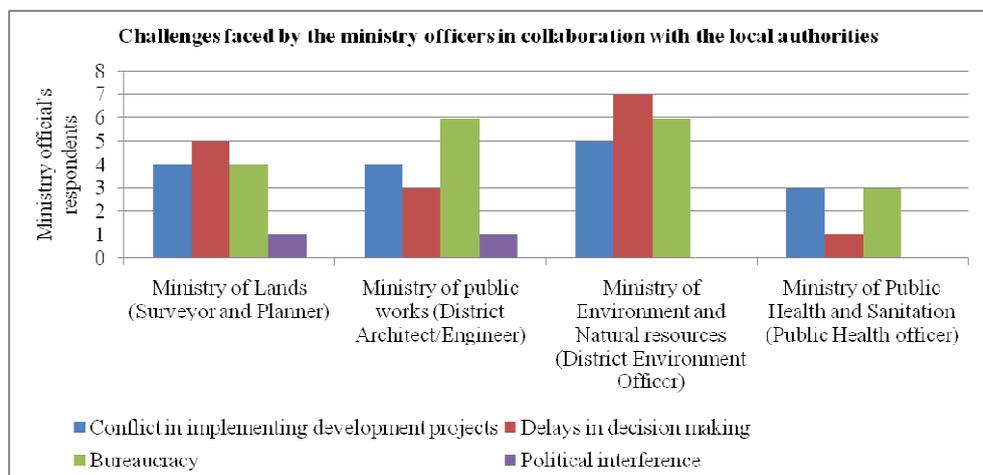
Performance Gap: Multiplicity of approving authorities of development applications complicate development processes undertaken by the developers.

Challenges faced by ministry officers in working with the Local Authorities

The ministries' officers reported some challenges encountered in the process of performing their duties. Figure 4-3 shows the challenges faced by the ministry officers as they work with the Local Authorities in development control activities.

Performance Gap: The related ministries have challenges in carrying out development control processes.

Figure 4-3: Challenges faced by the ministry officers in collaboration with the Local Authorities



Source: Field survey, 2011

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Budget for development control in the related agencies

The study found out that all the ministries have budgetary provisions for development control activities such as personnel, equipment and travel. However, 44% of the respondents of related agencies reported that some of the budgeted activities are not implemented. They attributed this to unforeseen circumstance such as delays in the release of funds by government or allocated funds being inadequate.

Performance Gap: Related agencies do not allocate adequate funds for development control activities.

4.2.3 Technical capacity in related agencies

Statutory bodies registering built environment professionals

The study found that statutory bodies (Table 2.2) coordinate the activities of professionals concerned with built and natural environment in Kenya, and promote professional integrity and ethics for the benefit of the public. Further, the bodies are involved in the development and monitoring of continuous professional education programmes.

Role in development control process

The study found the major roles played by the professionals within the built environment in the development process include ensuring compliance, environmental conservation, advising developers and the Local Authority on the development control issues and enforcing the provisions on building code and physical planning handbook.

The stage of development control that the professionals get involved

Development projects are prepared in various stages. Figure 4-4 shows the stages that professions are involved in during the development process.

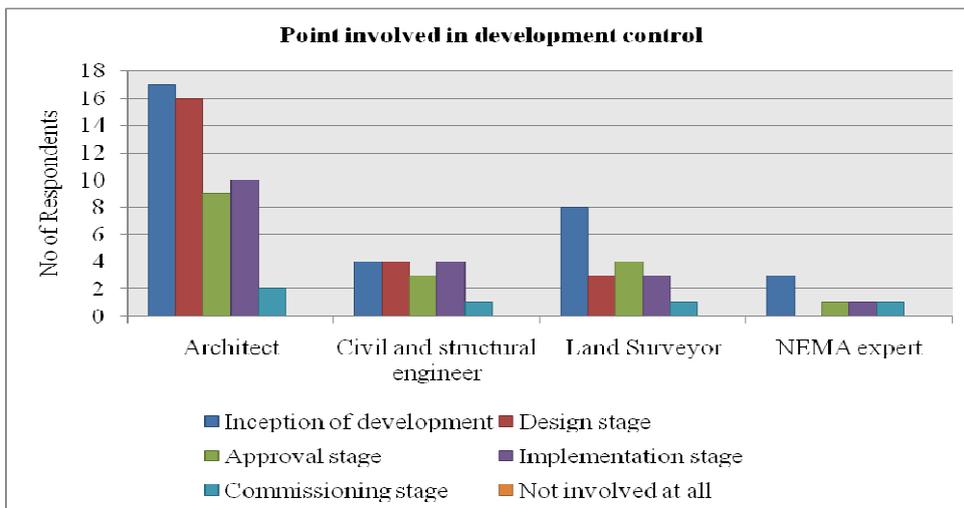


Figure 4-4: The stage of development control that the professions are involved Source: Field survey, 2011

CHAPTER 4—RESULTS

The particular activities undertaken by each professional is as shown in the Table 4 - 7

Table 4 - 7: Activity undertaken by the professionals in development control

Practitioners	Development control activity
Architect	Preparation and design of building plans
	Enforcement of approved development plans
	Make periodic site inspection
	Supervise the contract to ensure that the works are executed as per contracts
	Direct and supervise Clerks of work and other site supervisory staff
	Prepare and issue such additional details, schedules or instructions as may be required to enable the contract to be performed
	Issue certificates for interim payments to the contractor and suppliers
On completion, make full inspection, and when the building work is acceptable issue a certificate of practical certificate of completion	
Civil and Structural Engineer	Preparation and design of engineering works of the building
	Enforcement of approved engineering construction work as per the approved plan
	Make periodic site inspection
Land Surveyor	Surveying/subdivision of parcels of land
Lead expert of NEMA	Prepare Environmental Impact Assessment / Environmental Audit report
Physical Planner	Prepare physical development plans as per the Physical Planning Act and the Physical Planning Handbook requirements

Source: Field survey, 2011

CHAPTER 4—RESULTS

Distribution of the built environment professionals in the Local Authorities

Table 4-8 shows distribution of professionals in the built environment who render services within the studied Local Authorities.

Table 4 - 8: Distribution of practicing professionals within the Local Authorities

Local Authority	Practicing professionals within the Local Authorities.
Embu	Land Surveyor
	Physical Planner
Kitale	Architect
Garissa	Physical planner
	Environmental experts
Nyeri	Civil and Structural Engineer
	Physical planner
Nairobi	Architect
	Civil and Structural Engineer
	Land Surveyor
	Physical planner
	Environmental experts
Thika	Architect
	Civil and Structural Engineer
	Land Surveyor
	Environmental experts
Ruiru	Architect
	Civil and Structural Engineer
	Land Surveyor
Kisumu	Land Surveyor
	Physical Planner
	Civil and Structural Engineer
	NEMA lead expert

CHAPTER 4—RESULTS

Kipsigis	Land surveyor
Thika	Architect
	Civil and Structural Engineer
	Land Surveyors
Marsabit	Architect
Moyale	Architect
Kilifi	Architect
	Physical Planner
Mombasa	Physical planner
	Architect
	Civil and Structural engineers
	NEMA lead expert

These results indicate that different professionals are available to render services to developers in Kenya. The study observed that the professionals who carried out the technical work for the developers were not necessarily from the Local Authority.

Incompetent Persons

Incompetent/Unqualified persons can be categorized as those who practice without relevant training and authority or not registered to perform certain professional duties.

Categories of Incompetent Persons

From the Local Authorities studied, it was found out that unqualified persons comprise retired Local Authority workers, sacked Local Authority workers, unregistered persons and some of the officers of related agencies overstepping their roles. Persons who have undergone formal training but are yet to be registered by relevant registration boards, dominate the list of the unqualified persons.

CHAPTER 4—RESULTS

The study noted that there are other unregistered persons who have gained required experience by virtue of them being in long practice in professional offices or related agencies, but cannot be registered with their respective registration boards because they do not have University training as required by professional registration statutes.

Performance Gap: Persons with experience in development control by virtue of long service in professional practices or related agencies but have no university education are not recognized by their registration boards.

Activities Carried Out By Incompetent Persons

All the Local Authorities studied reported that they do receive development applications submitted by unqualified persons. The Local Authorities studied stated that on average, the unqualified persons carry out over 50% of the development control activities. Activities carried out by incompetent persons include the following;

- Prepare building plans and subdivision schemes. It was established in the field that 49% of the building plans are prepared by the Architects and the rest are prepared by unregistered persons (Figure 4-5).
- Evaluation of development applications.
- Approving building plans using fake stamps.
- Site inspection.

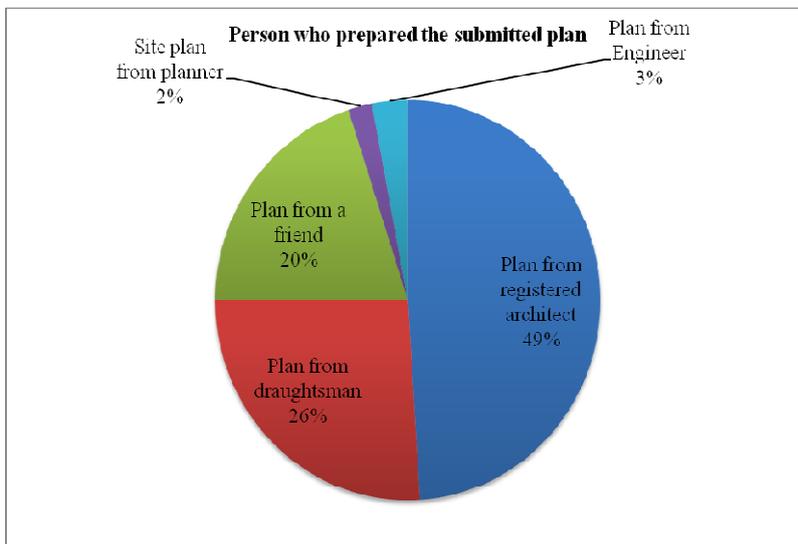


Figure 4 -5: Person who prepared the submitted plan. (Source: Field survey, 2011)

Performance Gap: Developers use unregistered professionals to prepare development plans.

CHAPTER 4—RESULTS

Development control stages where incompetent persons are involved

The unqualified persons are involved throughout the entire process of development control, that is, from approval to commissioning stages. From the studied Local Authorities as shown in Figure 4-6, the unqualified persons are dominant at approval stage of the project.

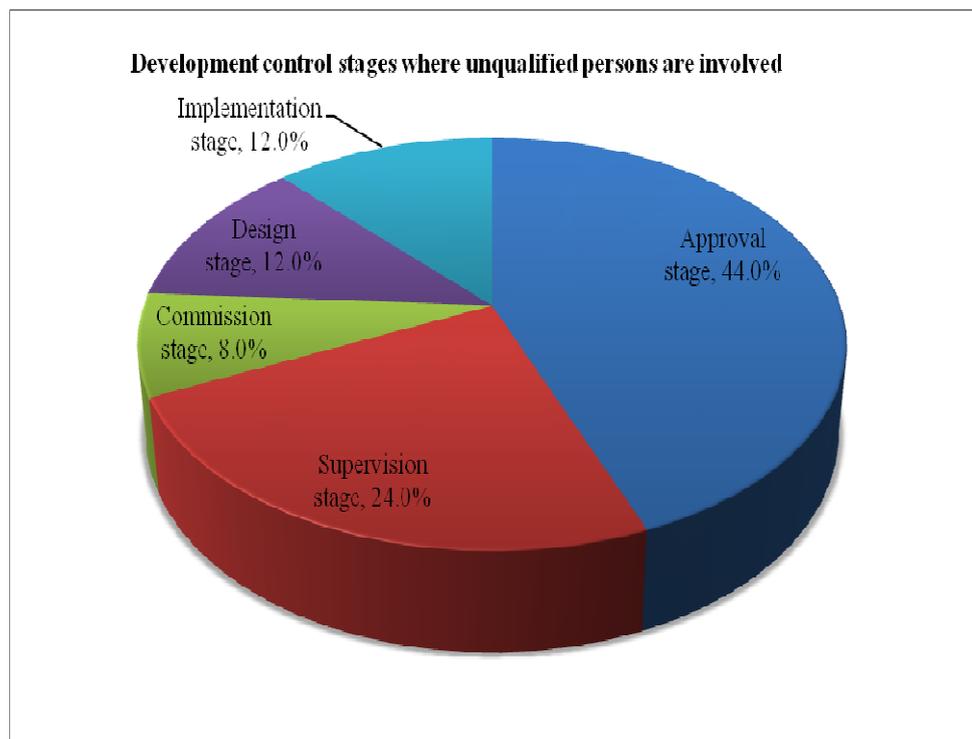


Figure 4 -6: Development control stages where the unqualified persons are involved

Source: Field survey, 2011.

Performance gap: Incompetent persons are controlling over 50% of the development control activities.

CHAPTER 4—RESULTS

Frequency of involvement of incompetent persons in development control activities

Table 4-9 shows the frequency with which unqualified persons are involved in development control for specified categories of activities. The Table shows that impersonation and presenting fake building drawings are the main mode through which the incompetent persons get involved in the development control processes.

Table 4-9: Frequency with which unqualified persons get involved in development control activities

Local Authority	Impersonating Architects	Presenting fake building drawings	Impersonating as officers of development control	Issuance of fake occupational certificates
Embu	Rarely	Rarely	Never	Never
Kitale	Rarely	Rarely		Frequently
Kakamega	Very frequently	Very frequently	Very frequently	occasionally
Kisumu	Very frequently	Very frequently	Very frequently	Very Frequently
Kipsigis	Occasionally		Frequently	Never
Thika	Very frequently	Very frequently	Very frequently	Very frequently
Kajiado	Never	Occasionally	Never	Never
Marsabit	Frequently	Occasionally	Occasionally	Never

(Source: Field Survey, 2011)

The AAK workshop participants concurred that to the extent that the Local Authorities, professions and public institutions are not able to supervise and monitor every development activity taking place within their areas, the unqualified persons will be in the field and will only be noticed when effects of poor workmanship set in, for example, collapsing buildings, fire outbreaks, lack of access roads, lack of children playing grounds or riots by the public.

Suggestions of minimizing involvement of incompetent persons

Measures identified by Local Authorities include:

- Educating the developers on negative effects of involving unqualified persons
- Introduce heavy penalties
- Strengthen the policy and legal environment
- Increase surveillance units, covert or overt, at different stages of development control
- Have continuous assessment and monitoring of agreed targets
- Enhance detection of fake documentation

CHAPTER 4—RESULTS

4.4 Technical Procedures in Local Authorities and related agencies

The development control procedures are documented in chapter two under literature review. This section therefore examines the level of awareness of the development control procedures, physical development plans used by the Local Authorities, violators of development control laws and regulations, tracking development control violations and enforcement of development control laws and regulations.

Level of awareness by the Local Authorities of the existence of development control procedures stipulated in the various laws and regulations

Table 4-10 shows that there is high awareness on the existence of development control procedures as stipulated in the laws and the regulations in Local Authorities except for Moyale, whose level of awareness is below 5 stipulations out of the total 7.

The study established that in many instances there is little reference to policy procedures such as current development plans, comprehensive zoning plans and physical planning standards.

Performance Gap: Local Authorities lack guidelines in policy procedures on current development plans, comprehensive zoning plans and physical planning standards.

Categories of developments that receive development permits

The **study** established that new buildings, land subdivisions, lease extension, amalgamation of plots, building extensions, extension of user and change of user receive development permits issued by Local Authorities.

Refusal of development applications

The study established that not all development applications falling within the jurisdiction of the Local Authorities studied are approved. Development applications are either approved unconditionally, granted approval subject to specific conditions or denied approval completely. In the event that the development applications are denied approval, some developers lodge complaints or appeals against such decisions. In such cases, the Local Authority refers the aggrieved party to the relevant liaison committee or advises the developer to carry out the stated corrections and resubmit the application.

80% of the developers in the studied Local Authorities do not lodge complaints upon receiving written notices but instead revise the developments as required by approving the authority and resubmit. The developers interviewed explained that they do not lodge complaints because it takes a long time to settle the disputes with the liaison committees and also they do not wish to be seen antagonizing with the approving authorities. Further, the AAK workshop participants confirmed that the legal processes in the built environment are ineffective as the legal officers dealing with these cases do not understand the built environment issues.

CHAPTER 4—RESULTS

Table 4-10: Level of awareness of the existence of development control procedures

Source: Field survey, 2011., *The Local Physical Development Plans are out of date.

Local Authority	Development control procedures stipulated in the Physical Planning Act and Physical Planning Regulations	Level of hygiene in the Public Health Act cap 242	Design controls in building code of 1968	Environmental Design as per EMCA	Planning and construction issues allowed and not allowed in Local Authorities By-Laws	Land use in the zoning plan*	Permitted land uses in development plans*
Embu							
Kitale		-		-			
Kakamega							
Kisumu							
Kericho							
Thika		-					
Kajiado							
Marsabit			-				
Moyale		-	-	-			
Kilifi							

Performance Gap: Disputes arising from development control practices have not been fairly adjudicated.

CHAPTER 4—RESULTS

Figure 4-7 shows the reasons for the refusals of development applications. The Figure shows that most of the physical developments across all the Local Authorities are denied development permission because they are not within the zoned areas.

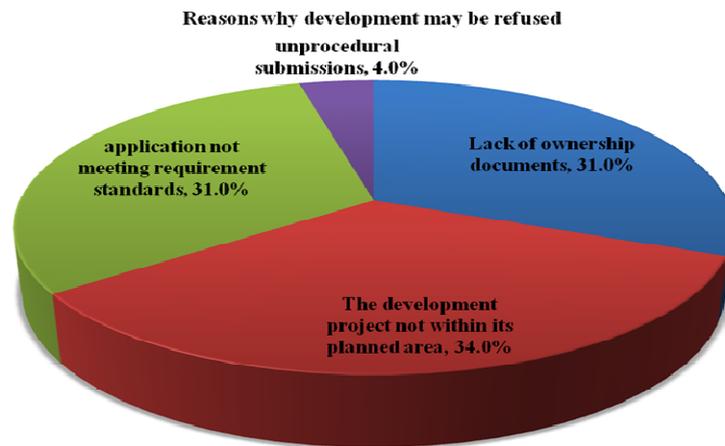


Figure 4-7: Reasons given for denying development applications permit

Source: Field survey, 2011

60% of the district physical planners interviewed reported that they are not in a position to know the total number of development applications that are approved, refused or deferred by Local Authorities. They attributed this to inadequate technical capacity, lack of framework and also the fact that PPA2 forms (Notification of approval/refusal/deferment of development permission) are not copied to their offices or are just ignored and the plan stamped as approved without further reference them.

90% of the developers interviewed did not face difficulties in completing the development application forms. The 10% highlighted the fact that there is need to review the whole submission form to make it simpler.

Performance Gap: Developers do not follow the development application approval procedures.

Physical Development Planning

Table 4-11 shows the types of short term development plans prepared by Local Authorities. This is happening because the Long Term Local Physical Development Plans are outdated. This implies that these development plans do not reflect the current development situation which is evolving and cannot effectively guide development activities within their area of jurisdiction. In absence of updated physical development plans, the Local Authorities refer to building and planning regulations especially the building codes, physical planning handbook, Physical Planning Act of 1996, and the neighbourhood characteristics before approving a development application.

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The study established that in the Nairobi Metropolitan Area, the ministry of Nairobi Metropolitan Development is in the process of preparing a regional development plan covering 15 Local Authorities, including:

- Core Nairobi comprising of the City Council of Nairobi.
- Northern Metro in Thika and Kiambu in Kiambu County comprising County Councils of Thika and Kiambu, Municipal Councils of Thika, Kiambu, Limuru and Ruiru, and Town Councils of Kikuyu and Karuri;
- Southern Metro in Kajiado County comprising County Council of Olkejuado and Town Council of Kajiado
- Eastern Metro in Machakos County comprising County Council of Masaku, Municipal Councils of Mavoko and Machakos, and Town Council of Tala-Kangundo.

The study established that few Local Authorities are involved in regional planning. The AAK workshop confirmed that there is little evidence of the adoption of the tenets of the *Regional Development Policy (2007)* produced by the Ministry of Regional Development Authorities.

Performance Gap: There is no little evidence of integrated regional development planning, especially so amongst the County Councils.

Table 4 -11: Type of plans prepared by Local Authorities Source: Field survey, 2011

Local Authority	Types of plans prepared				
Embu	Part development plans	Action plans	Zoning plans		
Kitale	Part development plans				
Kakamega	Part development plans	Action plans	Zoning plans	Subject plans	
Garissa	Subject plan				
Kisumu	Part development plans	Action plans	Zoning plans	Subject plans	
Kipsigis	Part development plans	Zoning plan			
Nyeri	Part development plans	Action plans	Zoning plans	Subject plans	
Nairobi	Part development plans	Action plans	Zoning plans	Subject plans	
Thika	Part development plans				
Olkejuado	Part development plans	Action plans	Zoning plans		
Kiambu	Zoning plan				
Marsabit	Part development plans	Zoning plan			
Mombasa	Action plan	Zoning plan	Subject plan		
Mavoko	Zoning plan				
Ruiru	Part development plans				
Moyale	Part development plans	Zoning plan			

CHAPTER 4—RESULTS

The physical planners in the field highlighted that the procedure they follow to review physical development plans of a Local Authority is by an agreement of liaisons committee, through identification of new developments and consultation and normal procedure used in planning as outlined in the Physical Planning Act.

Further they said that the review of development plans is guided by Local Authority development policies, development trends, general neighbourhood characteristics, physical planning handbook provisions and finally applications of previous physical development plans.

Validity of Physical Development Plans

Any long term physical development plan is valid normally for a period of up to 30years. The physical development plans obtained from the department of physical planning showed that most Local Authorities are still relying on the old development plans issued between the late 1960s and at best early 1990s (Table 4-12). The master plan for the City Council of Nairobi, prepared in 1948, expired over 40years ago. This means that there is no comprehensive document that guides developments within the city. The physical development plans in place at the Local Authorities have been approved except for Mombasa and Moyale. The Local Authorities of Kiambu, Kakamega, Kisumu, and Marsabit are in the process of reviewing their physical development plans. The study established that this process takes not less than 5 years; this is attributed to bureaucratic challenges within the Local Authorities, cost, political gerrymandering and land administrations challenges.

Most of the physical development is carried out using Part Development Plans (PDP) and Zoning plans prepared by District Physical Planning offices and subdivisions schemes initiated by peri-urban land owners where the Local Authorities might have extended. Municipal Council of Mombasa, for example, not prepared a development plan since 1962 to guide development plans within the Municipality. Rather, they have been using zoning plans for various areas: Nyali, Shelly Beach, Miritini, Old Town conservation area and Mama Ngina drive recreational areas.

The infrastructure service providers present during the workshop complained that the subdivision schemes are currently administered without conclusive consultation with stakeholders.

The resultant subdivisions have not considered way leaves and have resulted into unmanageably high densifications, which have made it difficult for them to serve their clients effectively. They therefore have to rely on upcoming developments to plan for their services because they cannot predict the pattern of developments.

Performance Gap: The majority of Physical development plans are out of date necessitating urgent review.

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Table 4 - 12: The Local Authorities Current Physical Development Plans in Use

Local Authority	Type of plan	Year Prepared
Municipal Council of Embu	Local Physical Development Plan	1978
Municipal Council of Kitale	Local Physical Development Plan	1973
Municipal Council of Kakamega	Local Physical Development Plan	1992
Municipal Council of Garissa	Local Physical Development Plan	1982
Municipal Council Ki-sumu	Local Physical Development Plan	1971
County Council of Kip-sigis	Part development plans	1997 (Ainamoi Market Center)
City Council of Nairobi	Master Plan	1948
Municipal Council of Kiambu	Local Physical Development Plan	1980
Town Council of Kilifi	Local Physical Development Plan	1979
Municipal Council of Mombasa	Zoning plans	2007 (Nyali Zone)
Municipal Council of Nyeri	Local Physical Development Plan	1983
Municipal Council of Thika	Local Physical Development Plan	1967
County Council of Marsabit	Physical development plan	1968
Municipal Council of Moyale	Physical development plan	1970
County Council of Olkejuado	Physical development plan	1992
Mavoko Municipal Council	Physical development plan	1971
Municipal Council of Ruiru	Local Physical Development Plan	1980

Source: Department of Physical Planning, Ministry of Lands

Stakeholders in the process of preparation of physical development plans

The preparation of development plans according to the Physical Planning Act (PPA) is a prerogative of Department of Physical Planning which liaises primarily with other Local Authorities and stakeholders including the related government institutions.

The plan preparation process of physical development plans is a participatory process where stakeholders are brought on board. Figure 4-8 shows the main stakeholders established in the field to be involved by the Physical Planning Department during the planning process.

CHAPTER 4—RESULTS

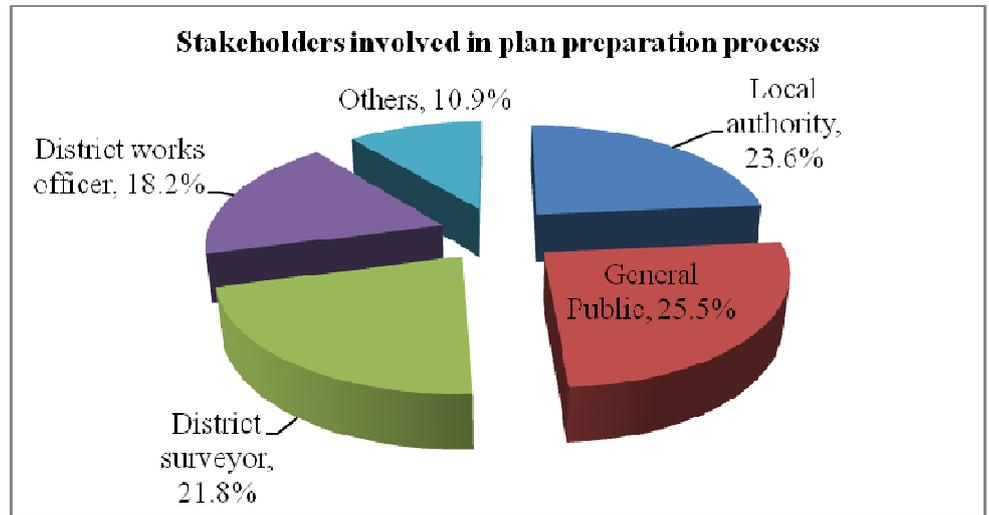


Figure 4 -8: Stakeholders involved in the plan preparation

Source: Field survey, 2011

Application approval process and time taken

Before a development application is approved, the study established that the developer is expected by the Local Authorities to produce the following documentation; Form PPA 1 (application for development permission) to be filled, stamped and signed by an architect or other authorized agent, copy of survey plan, copy of the title, copy of registration certificate and location plan, where applicable.

Once the development application has been taken to the Local Authority with all the required documentation for approval, it undergoes two levels of approval; technical and political.

The technical level is done by the technical experts in evaluation of the development plans. The AAK workshop participants concurred that this is the most important stage of approval. The political stage is undertaken at full council meetings. However, this stage is abused because development plans that pass the technical evaluation are sometimes deferred and those that fail are adopted. The AAK workshop participants noted that the technical staff attending the council meetings are not able to challenge the political team because of fear of jeopardising their employment.

The frequency at which the technical committees meet to evaluate the development applications vary with the Local Authority as indicated in Figure 4-9. The technical committees of most of the Local Authorities do meet every month. However, in Moyale, the technical committee does not meet at all but only the full board council meets to approve development applications.

CHAPTER 4—RESULTS

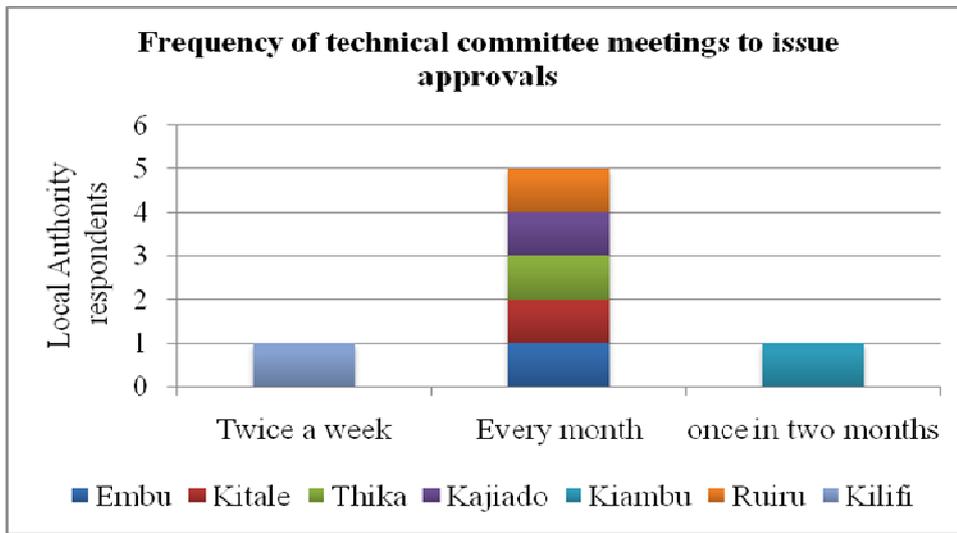


Figure 4-4: Frequency of technical committee meetings to issue approvals.
Source: Field survey, 2011

Table 4-13 shows how long each of the approval procedure takes. The findings for each procedure show the maximum and minimum time taken which in most cases range between 5 days to maximum of 6 months. The study found that in all the four Local Authorities (Embu, Kitale, Thika and Olkejuado) where there were responses, the full council meeting takes place at least once in a month.

Procedure	Local Authority	Time taken
Request approval of the architectural plans and get form PPA1 from the Local Authority	Embu	Less than 5 days
	Kitale	Less than 30
	Kajiado	Less than 5 days
	Kisumu	Less than 5 days
	Kakamega	Less than 30
	Thika	months
Submit architectural plans and get approval from the Physical Planning Department	Embu	Less than 5 days
	Kitale	Less than 30 days
	Kakamega	Less than 30 days
	Kisumu	Less than 5 days
	Thika	2-6 months
	Kajiado	Less than 5 days
Submit and obtain structural plan approval and final building permit	Embu	Less than 5 days
	Kisumu	Less than 5 days
	Thika	Less than 30
	Kajiado	Less than 5 days

CHAPTER 4—RESULTS

Submit project plans and get approval from the Valuation Department	Thika	Less than 5 days
	Kajiado	months
Submit structural plans and signed PPA ₁ form to the Municipal Council Engineer's Department and obtain approval	Kisumu	Less than 5 days
	Thika	Less than 30 days
	Kajiado	Less than 5 days
Submit project plan and get approval from public health department	Embu	Less than 5 days
	Kisumu	Less than 5 days
	Thika	Less than 5 days
	Kajiado	Less than 5 days
Obtain approval from the National Environment Management Authority	Embu	2-6 months
	Thika	2-6 months
	Kajiado	less than 30 days
Notify the Municipal Council of the commencement of building work and receive a routine on-site inspection	Embu	less than 5 days
	Kisumu	less than 5 days
	Thika	less than 5 days
	Kajiado	less than 5 days
Request an occupancy certificate and receive a final on-site inspection by the municipal authority	Embu	Less than 30 days
	Kisumu	Less than 5 days
	Thika	Less than 5 days
	Kajiado	Less than 5 days
Obtain an occupancy certificate	Kisumu	Less than 5 days
	Thika	Less than 5 days
Apply for water and sewerage connection	Embu	
	Thika	
	Kajiado	
Pay water and sewerage installation costs and obtain connection	Thika	Less than 5 days
Apply and pay for telephone connection	Thika	Less than 5 days
Receive an on-site inspection by the local electricity provider	Thika	months
Obtain electricity connection	Kajiado	Less than 5 days

Source: Field survey, 2011

CHAPTER 4—RESULTS

Challenges in seeking development application by developers

60% of the developers interviewed indicated that they face various challenges when applying for development permission at the Local Authorities as shown in Figure 4-10. The greatest challenge faced by the developers across the Local Authorities studied is delay in obtaining approval from their respective Local Authorities. These challenges have led to developers adopting other means through which they can deal with challenges (Figure 4-11), for example, giving 'incentives' to the relevant Local Authority officials. Some of these practices enhance the culture of dishonesty. The developers are required to get approval from several ministries located far from one another. 37% of the developers stated that a lot of time is wasted on following up development applications.

65% of the built environment professionals stated that development application forwarded to the Local Authorities are delayed and this has in the long run impacted negatively on the development control process.

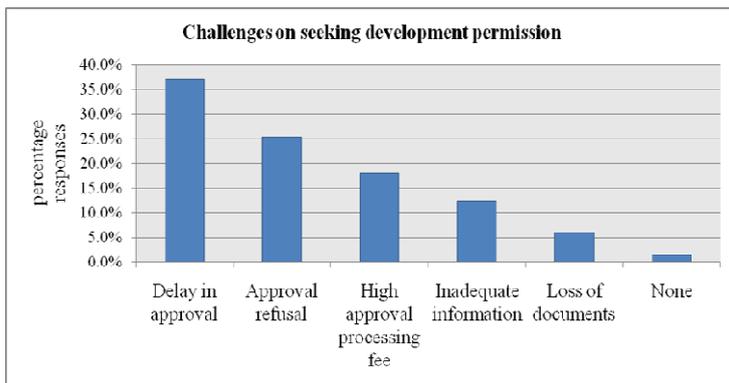


Figure 4-10: Challenges faced by the developers in seeking development permission. (Source: Field survey, 2011)

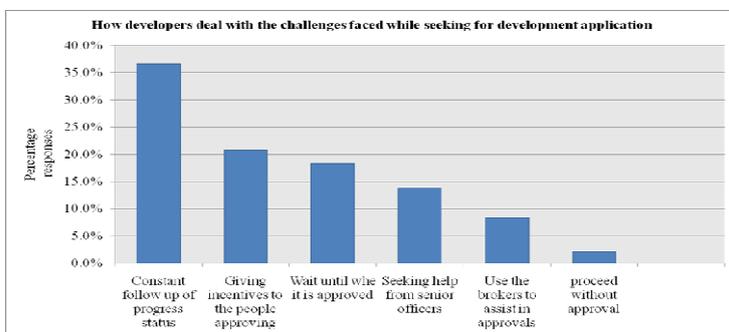


Figure 4-11: Ways in which the developers deal with the challenges faced in seeking development approvals. (Source: Field survey, 2011)

Performance Gap: Approval of development applications is delayed.

CHAPTER 4—RESULTS

Violators of development control laws and regulations

The respondents stated that 57 % of the violators of development control regulations are the developers, 32 % are the Local Authority staff and 11% comprise the built environment professionals (Figure 4-12). The AAK workshop participants felt that the majority of stakeholders are complacent with the development control status quo in the country.

Performance Gap: Majority of stakeholders are part of the violations of development control regulations and policies.

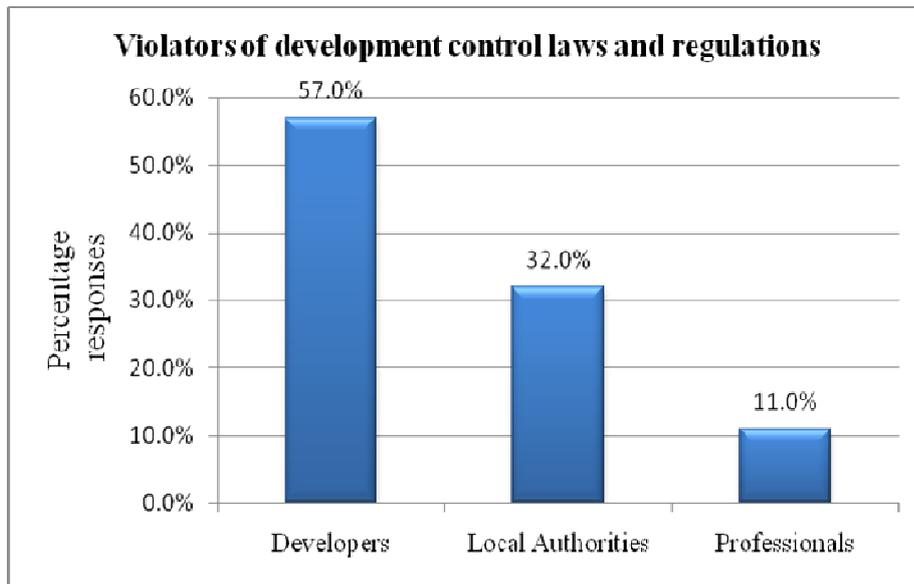


Figure 4 -12: Violators of development control regulations. Source: Field Survey

Reasons for violation of development control regulations

The study established from the respondents interviewed that the main reason for violations is the quest by the developers to maximize profit, by increasing plot coverage and plot ratio of their plots. 35% of the responses from the public indicate laxity of the Local Authority to enforce the development controls as a reason for violating building and planning laws and regulations.

Developers exceed the density approved resulting to higher built up areas of a zone than the planned for in the development plan. 29% of the public respondents cited the high demand of construction space especially for housing and commercial projects as the cause of planning and building laws and regulations violations (Table 4-14).

CHAPTER 4—RESULTS

Table 4-14: Reasons for violation of development control regulations.

Reasons for violation	Percentage responses
Maximize Profit via space utilization	36.4%
Demand of created spaces	28.7%
Laxity of council in reinforcement	34.9%

Source: Field survey, 2011

Reasons given by Local Authorities for not apprehending violators of development control regulations

Despite continued violations of the planning and building laws and regulations in Kenya, Local Authorities have not done enough through legal actions to address this problem. The Local Authority respondents reported that they have not been able to conduct effective enforcement. This was attributed to political interference, inadequate technical capacity, partisanship and hostile developers and members of the public (Figure 4-13).

The related ministry officials stated that the Local Authority officials have not been able to apprehend the violators of development control regulations because the Physical Planning Act gives no power to apprehend the violators. They also cited the inadequacy of funds and technical capacity to monitor development control activities.

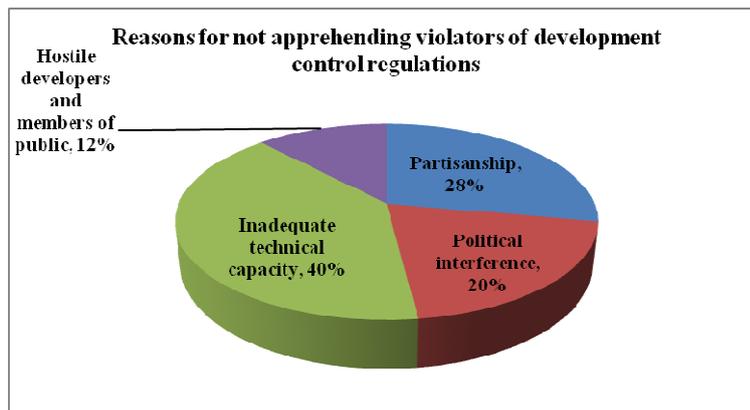


Figure 4-13: Reasons as to why the Local Authorities are not apprehending development control violators. (Source: Field Survey, 2011)

CHAPTER 4—RESULTS

Enforcement of development control laws and regulations

Violation of laws in the built environment is like any other crime in Kenya. It is either punishable through fine or jail term or both. In the Local Authorities studied, 79 % of the responses from the Town Clerk indicated that the punishment mechanism in place (jail terms and fines), are not sufficient enough to deter the violators of development control laws and regulations. The entire interviewed neighbourhood associations (100%) indicated that penalties of planning and building laws and regulations are not severe and they suggested the imprisonment term to be not exceeding a period of between 6 to 12 months and a fine amount as shown in the Figures 4-14 and 5-15 of not exceeding ten (10) Million Shillings.

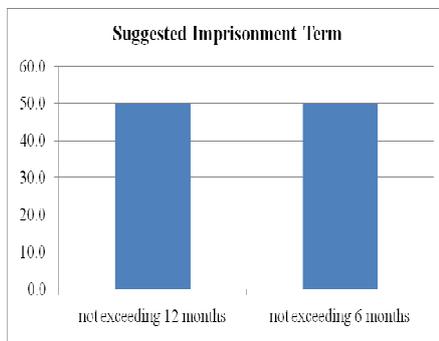


Figure 4-15: Suggested Imprisonment term for the offenders

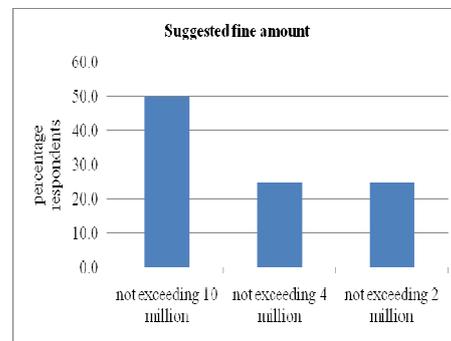


Figure 4-14: Suggested fine amount

58% of the respondents from the related agencies stated that the legal instruments (Government Lands Act, Local Government Act, Physical Planning Act, Environmental Management and Coordination Act) are not sufficient in facilitating enforcement of development control processes. They attributed this to inadequate technical capacity within the agencies, the Physical Planning Act being not easily enforceable and the other Acts being in conflict with one another.

The participants at the AAK workshop noted that the enforcement of the penalties is also not effective because the judicial officers are not in a position to pass a judgment that is commensurate with the offences committed by the development control offenders. The Judges or the magistrates that these cases go do not see the weighty of the offence in interpreting the fines. This has made the enforcement of development control laws difficult and incidences of violation frequently recurring.

Performance Gap: There is leniency in enforcement of the development control rules and regulations.

Performance Gap: Kenya's judicial system is not in a position to pass judgments that would deter development control violation.

CHAPTER 4—RESULTS

Tracking progress of onsite operations of projects by Local Authorities

80% of the Local Authorities studied reported that they track the onsite operations of the projects by regular visits to the project sites for inspection, whereas the remaining 20% rely on the updates from the developers. 57.4% of the developers interviewed indicated that their progress is checked either by: The building inspector, engineer, architect, and environmental expert from NEMA offices or all of them. Whenever these persons come to check the progress, they pay particular interest to compliance of the regulations and stability of the structures being constructed. Table 4-15 indicates that the officials of Local Authorities who visit the site issue green card or sign site inspection cards or do nothing.

Due to the inadequacy of the technical staff and resources to carry out inspection of the ongoing developments, the study established that 56% of the developers carry on with their construction without being supervised by Local Authority staff. There is no organised system of tracking the developer in most Local Authorities and thus it is difficult to get data on ongoing projects and illegal developments.

Table 4-15: The type of report issued upon site visit

Type of report issued upon site visit	Percentage responses
Green card	40.4
Signing site card	27.9
Nothing	32.7
Total	100.0

Source: Field survey, 2011

Performance Gap: The monitoring system of development control at the Local Authorities is inadequate.

Tracking incompetent persons by the Local Authorities

The Local Authorities studied reported that they have mechanisms through which they detect incompetent persons. These mechanisms are as shown below;

- When one notes people giving inducement to Council officers for approval of developers' work. Majority of the incompetent persons are caught while giving inducements to the Local Authority staff.
- Poor quality of development work being submitted.
- Not appearing confident and can easily be challenged when in contact with Local Authority staff.

CHAPTER 4—RESULTS

To ensure that only qualified personnel carry out the developers work, some of the professional bodies (AAK) have circulated the list of the current registered architects, engineers and physical planners to the respective Local Authorities. The qualified person is required to attach his registration certificate to the development application documents. The Local Authority verifies this certificate with the list provided by respective registration Boards. The same practice is followed for NEMA lead experts. This is done to ensure that only qualified registered persons carry out the development control work regardless of where the person operates from nationally. This can be further enhanced by advancements in information technology

4.5 Technical Procedures—Related Agencies

The procedures as laid down in the Physical Planning Act and Local Government Act mandate the Local Authorities to control development. The Local Authorities seek assistance from related ministries when they have no capacity. The relationship between the ministries and Local Authorities is not expressed in law; it is more of a mutual understanding. Local Authorities which have set establishment and capacity to employ, for example, the City Council of Nairobi, have hired most of the technical staff they need and do not rely on related ministry staff apart from NEMA staff who act independently in approvals of development applications.

4.5.1 Ministries' concerns in development control

When the ministries issue instructions with regard to a particular development project, their major development control concerns are in line with their mandates. 75% of the related agencies interviewed stated that the relationship between them and the Local Authorities is strained. This is due to the fact that the Local Authorities do not consult them in matters where they have vested interests. The AAK workshop participants noted that the Local Authorities circumvent related agencies in consultations where they would want to approve development applications that do not meet the established requirements.

Performance Gap: Some of the Local Authority officers' integrity and ethical conduct is questionable.

4.5.2 Site Inspections

The ministry officers carry out their site inspections weekly, monthly, after every two months or once in the implementation period. Ministries of Public Health and Sanitation and Ministry of Environment and Mineral Resources are in the forefront in carrying out site inspection of development projects to ensure compliance with development control regulations. The Ministries of Lands and of Public Works are among those ministries which least carry out site inspections.

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4.5.3 Technical procedure - built environment professionals

The study established that developers require professionals to prepare for them the documents and plans required for development application, and follow up with the Local Authorities for approval. 46% of the responses from the professionals in the built environment stated that the Local Authorities are efficient in carrying out development control processes.

The rest of the practitioners stated that the Local Authorities are inefficient especially during approvals and site inspections stages. On the other hand 12% of the Local Authorities building inspectors complained that the planning practitioners making public notices without the authority of the council. The practitioners state the height of the structure in terms of the number of floor. This normally happens when a notice for change of user application is put in the daily newspaper.

According to the council by-laws, this is unacceptable because the change of user application and the building plan height provision are evaluated differently. Consequently approval of change of user cannot guarantee vertical form to be associated with the building plan. The council has cautioned the members of the public that it won't accept any change of user application stating the maximum height adopted in the building and design at the time of making the advertisement. The practitioners are also advised to adhere to the format of advertisement provided by the Local Authority and they should also use the same. Figure 4-16 shows other major challenges experienced by practitioners.

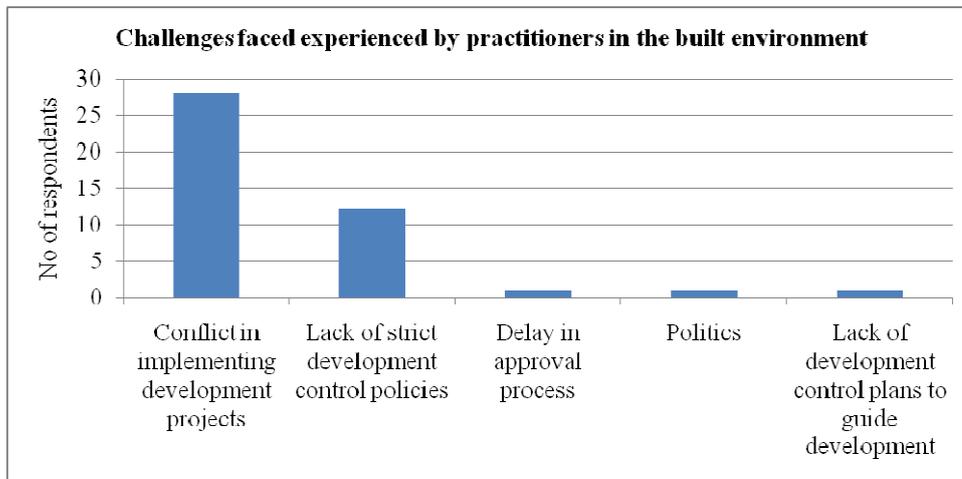


Figure 4-16: Challenges experienced by the practitioners in the built environment.

Source: Field survey, 2011

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4.6 How lack of Technical Procedure and Capacity affectS development control

The law creates many institutions with overlapping jurisdictions within the development control process

As noted above, supervision and inspection of built environment is difficult given all the problems with the procedures.

For example, Physical Planning Act Cap 286 empowers Local Authorities to control development throughout the country, the Local Government Act and the Land Control Act empower Land Control boards as well as to regulate land developments outside all urban areas. This contradicts PPA because it gives overlapping jurisdictions to authorities. Although PPA gives Local Authorities powers to approve all developments on all land tenure systems, the Government Lands Act also gives powers to the Commissioner of Lands to approve all developments on Government land. This creates overlapping jurisdictions which makes development control on Government land difficult. Arising from these three approving authorities, the developer has a choice to avoid controls and the approving authorities have discretion and room for rent seeking. The study established that given the above situation 90% of the developers in peri-urban areas circumvent development control procedures by getting approval from land control boards, while 10% get approval from the Commissioner of Lands (Figure 4-17)

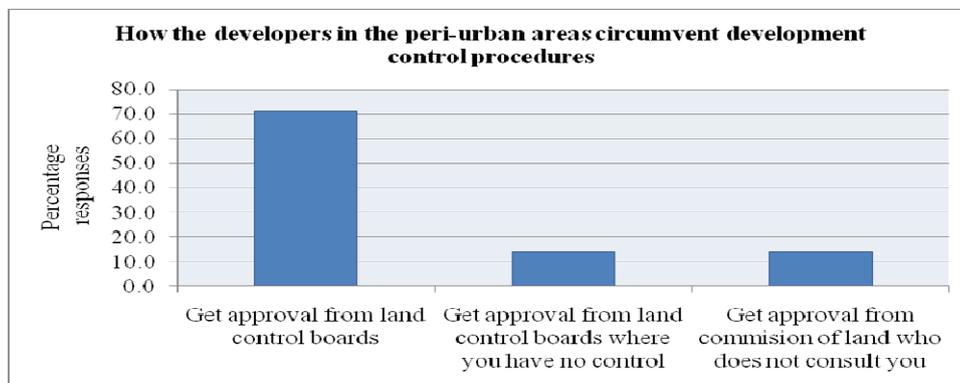


Figure 4-17: How developers in the peri-urban areas circumvent development control procedures (Source: Field Survey, 2011), Source: Field survey, 2011

The procedures of different related agencies and Local Authorities are in conflict and they are interfered with by politicians. Development plans which are the basis of development control are not updated and are in poor state of wear and tear as established during the study. Supervision and inspection with such plans may be incomprehensible and an impossible task.

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Poor coordination and multiplicity of levies among the development control players

The related agencies offering support services to Local Authorities charge fees just as the Local Authorities do for the services they render in application approvals. The fees vary from one Ministry to another. The developer shuttles from one Ministry office to another to have his application considered. This makes development control complicated and developers' respondents said they abandon the process and proceed with their unapproved developments. The multiplicity of these institutions makes the developers wonder whether they serve the same purpose and who is in charge.

Low Levels of Compliance

The study found development projects that were not complying with the requirements. Table 4-16, shows the responses from the general public on the effects of non-compliance on the built environment. Unhealthy living environments, which encompass unsecure, poorly lit, ventilated and poor solid waste management (20.4%) and lack of adequate recreational spaces (20.4%), are the outstanding effects of non-compliance.

Table 4-16: Effects of non-compliance of building and planning regulations

Effects of non-compliance of planning and building regulations and laws	Percentage responses
Unhealthy living environment (Unsecure, poorly lit, ventilated and poor solid waste disposal)	20.4%
Lack of children playing areas	20.4%
Collapse of building	18.5%
Frequent outbreak of fire	14.8%
Lack of parking	13.0%
The built up spaces not within minimum requirements	11.1%
Lack of aesthetics (Neighbourhood character as defined by zoning ordinances)	1.9%

High level of dissatisfaction by the stakeholders

High levels of non-compliance of the development control regimes has led to high levels of dissatisfaction among the general public, developers and the neighbourhood associations in all the Local Authorities studied. 54 % of the total general public respondents interviewed indicated that they are dissatisfied with the level of control within their Local Authorities, 36 % indicated that they are satisfied, 7 % said that they are very dissatisfied and 3% indicated that they are very satisfied (Figure 4-18). Both the developer and neighbourhood association respondents reported highly on the same dissatisfaction, with 90% of the neighbourhood associations interviewed stating that they are dissatisfied with the manner in which the Local Authority controls development in their areas of jurisdiction.

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The above level of dissatisfaction was attributed to the fact that the violations on development control regulations and the inability of the Local Authority to contain the same has impinged on the respondents basic rights such mobility, privacy, access to water, security and property value. When violation of the development control occurs, amenities and interest of larger community are sacrificed for benefit of few influential individuals.

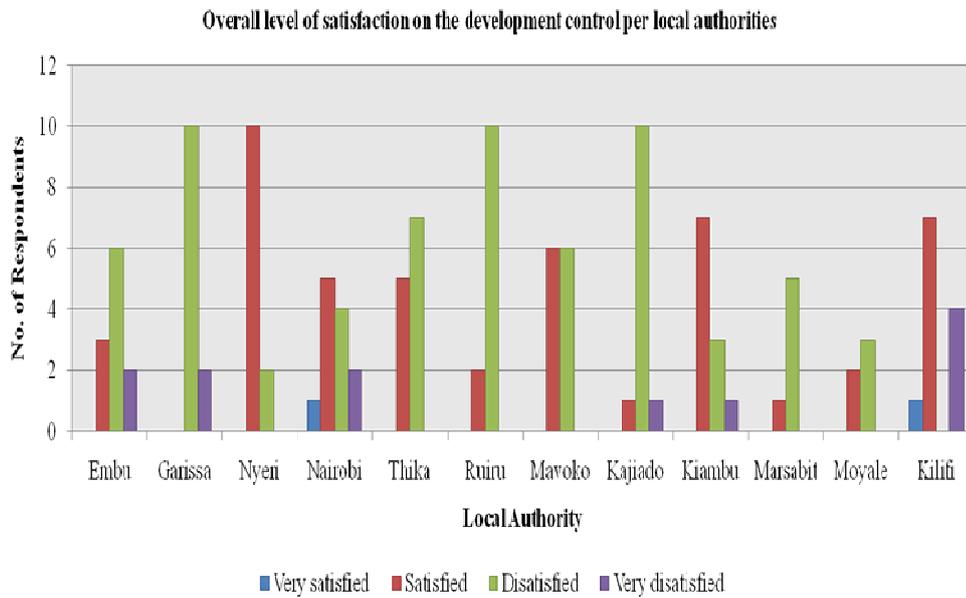


Figure 4-18: Overall level of satisfaction on the development control per Local Authority
 Source: Field Survey, 2011

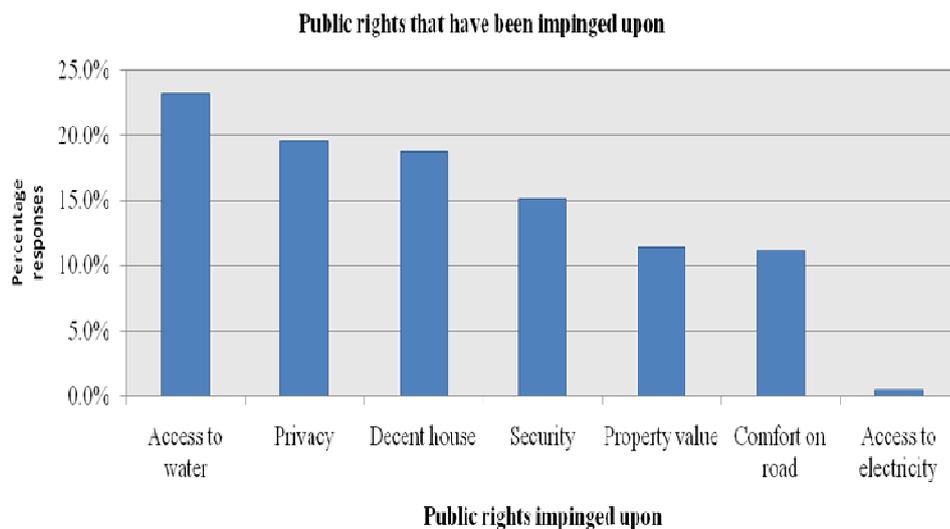


Figure 4-19: Public rights that have been impinged upon through violations of development control rules and regulations (Source: Field Survey, 2011)

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Emergence of neighbourhood association to meet the development control gaps

Neighbourhood Associations are having positive impacts especially where they are strong (Karengata, Runda, and Kahawa Sukari). 75% of the neighbourhood associations interviewed stated that they enforce policing, zoning plans and the building code. These development tasks are in line with activities carried out by the Local Authorities. All the neighbourhood associations interviewed stated that they would like to see development control that is participatory in nature and all the stakeholders consulted in the development control process.

Delay in approval of development applications

Professionals in the built environment interviewed stated that the main challenge they face while collaborating with the Local Authority is the delay in approval of development applications. Most development applications take longer than the two months within which they should have been approved. Consequently developments are taking place without approvals because developers find plan approval process frustrating.

The development projects take place without the knowledge of, or progress reports by the Local Authorities

Given the level of technical capacity established in the field it is not possible to supervise and inspect built environment projects adequately. Thus developments continue without the knowledge of, or progress reports prepared by the Local Authorities, and they only come into the limelight when effects like collapsing building or riots by citizens come up. 40% of the Town planners interviewed confirmed that one of the development control challenges they are confronted with is developers developing in the absence of approved development plans.

Presentation of illegitimate plans to the Local Authorities

49% of the building plans presented were from the registered architects (Figure 4-20). A significant number of plans presented to Local Authorities for approval were from unqualified persons. This was attributed to inadequacy of competent staff at the Local Authority who can properly evaluate the development plans.

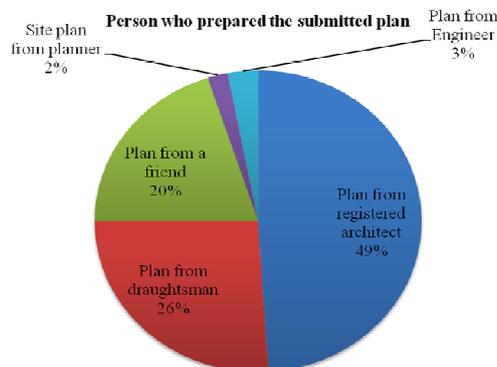


Figure 4-20: Source of the submitted plan. (Source: Field Survey, 2011)

Source: Field survey, 2011

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Inadequate inspection of development projects

The deployment rate of Local Authority technical staff is not commensurate with the pace of development. Thus, developments have outstripped the capacity of building inspectors to adequately inspect them.

4.7 How Other Factors Affect Development Control

Political interference

The Local Authorities who have the mandate to control development are overruled by the politicians. Therefore political interference is a common challenge facing development control efforts. The building inspectors at the Local Authorities interviewed stated that the developments that concern the politicians (Councillors) in most cases cannot be interfered with when they flout development control regulations since the officers, who are employed by the Local Authorities, risk transfers and possible sacking. This was further confirmed by the AAK workshop participants.

Inadequate development control budgetary allocation

The study established that the 20% budgetary allocation to development control departments/sections in Local Authorities is inadequate for them to effectively carry out development control activities.

Public awareness and development control information dissemination

The existing data and information from different Local Authorities and related agencies is hard to access in a comprehensive way due to the bureaucratic structures. 40% of the development applications have been denied approval by the Local Authorities because of the fact that the applications do not meet the requirements as outlined by the Local Authorities. This was attributed to the fact that developers are not aware of the requirements and standards for the development applications. The participants at the workshop observed that the physical planning handbook has been in draft since 2008.

This means that there are no proper guidelines to guide the developers and the professionals while preparing development plans. Information dissemination to the public who would in essence be the best people to safeguard their neighbourhood developments is lacking.

Development plans not covering areas beyond the town boundaries

The study established that about 70% of urban developments are occurring in peri-urban areas for example, Thika corridor and Mombasa road. Some Local Authorities like Embu, Kitale and Nairobi, have their developments extending to peri-urban areas. Under these circumstances, the development projects taking place in the peri-urban areas are beyond the jurisdiction of a municipality and the developments take place without any development control guidelines.

Limited collaboration, partnership and innovation in development control

The nature of public consultations used by the Local Authorities identified in the field includes; public dialogue, forums, focused group discussions and use of public media.

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The study found out that only 11% of the public respondents are consulted during the project planning and implementation by the Local Authorities. 76% of the practitioners interviewed failed to consult the Local Authorities before the approval of development applications. All the neighbourhood associations' respondents also reported that they are not consulted by the Local Authorities during implementation of physical development plans. It is therefore clear from the responses that the level of stakeholders' involvement in development control is low. 59 % of the neighbourhoods interviewed attributed this state to the fact that the Local Authorities are secretive and fear reprisals thereof. 71% of the district physical planners interviewed stated that the Local Authority does not consult their offices in a number of planning assignments especially the subdivision schemes and approval of development applications. Consequently, their role has been reduced to approving only. They attributed this to personal interests which supersede the public interests.

Complacency of status quo by all stakeholders hence silently allowing illegality

The AAK workshop participants' sentiments are that there is very little that is being done to alleviate the current situation. The participants were of the view that unless the governance structures and legislative framework changes, violations of development control will continue with no deterrent from existing institutional set-up.

Land Tenure system

Land tenure was identified as one of the major challenges facing development control efforts within municipalities. In Kilifi, for example, land tenure system has not been clearly defined on whether it is freehold land or communal land. Free hold land tenure system in the areas is characterized by absentee landlordism and the squatters have invaded and settled in this land. The resultant effect is the construction of settlements without adherence to building regulations and standards. The district physical planners interviewed confirmed that this has made enforcement of development control difficult. Free hold ownership of land implies that the owner has absolute rights over his/her parcel of land. This therefore means no development control conditions are attached to the land outside the Local Authority boundaries because such areas are under land control boards or Commissioner of Lands. This scenario has led to non-conformity in development control and hence towns have grown without planning. The AAK workshop participants observed that there are instances where the development plans prepared for specific areas are not adopted by the stakeholders because they would not want their land tenure to be interfered with by the proposed physical development plans. Municipal Council of Mavoko was pointed out as an example where 99% of developable land is in freehold titles in private hands. The Director of Physical Planning prepared a local physical development plan but the stakeholders refused the plan and thus the Minister in charge of planning could not approve it.

In Mombasa road expansion project, land tenure rights and political interference prevailed and the Kenya Government had to return to the drawing board to redesign the road expansion project.

Source: Field survey, 2011

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Effects of the Lack of Technical Capacity, Supervision and Inspection of Development Control Projects and the Involvement of Incompetent Persons

Overall, the effects of the lack of technical capacity, supervision and inspection of development control and the involvement of incompetent persons are the following:

Unplanned development

Developments that come up are unplanned and lack major utility services including; efficient transportation system, efficient drainage and sewer system, proper provisions of sanitation services, adequate access to clean water, low energy consumption and convenient electricity supply. These developments also lack healthy and safe environment, correct zoning of urban functions and decent housing.

- Poor quality of development projects
- Such projects include; incompatible land uses (Plate 4-1), emergence of informal settlements (Plate 4-2), poor solid waste management in urban areas (Plate 4-3), encroachment of developments on building lines and road reserves (Plate 4-4), buildings which are structurally unstable (Plate 4-5), encroachment of informal vendor markets into the road/railway reserves (Plate 4-6), stalled buildings (Plate 4-7), buildings not observing plot ratios and coverage (Plate 4-8) and encroachment of buildings to the ocean (Plate 4-9), uncontrolled dumping near residential neighbourhood (Plate 4-10), Effluents contaminating water bodies (Plate 4-13), Lack of urban aesthetics and beauty (Plate 4-12). Sub-standard work executed that may lead to collapse of buildings or poor fire fighting and protection of the buildings.
- Increased project expenses to the developer because of; numerous approval levies from different offices of different ministries, nullification, demolition or condemned work by Local Authorities.
- Inefficient delivery of services
- Exposes weaknesses in the policy and legal environment, human resource management and processes of development control within the development control institutional set up.

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, [Plate 4-1](#): Incompatible land uses, Source: *Field Survey, 2011*

[Plate 4-2](#):
Emergence
of informal
settlements



[Plate 4-3](#):
Poor solid
waste dis-
posal and
management
in urban areas

CHAPTER 4—RESULTS



Plate 4-5: Structurally unstable buildings



Plate 4-4:
Encroachment of developments into the road/railway reserve



Plate 4-6: Encroachment of informal vendor markets

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Plate 4-7: Stalled buildings

Plate 4-8:
Developments not observing plot ratios and plot coverage



Plate 4-9:
Encroachment of developments into the ocean reserve

CHAPTER 4—RESULTS



Plate 4-10:
Uncontrolled dumping near residential neighbourhood



Plate 4-11:
Upcoming developments on unserviced plots



Plate 4-12:
Lack of urban aesthetics

CHAPTER 4—RESULTS



Plate 4-7: Stalled buildings

Plate 4-8:
Developments not observing plot ratios and plot coverage



Plate 4-9:
Encroachment of developments into the ocean reserve

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Plate 4-13:
Effluent
flowing into
the oceans
from nearby
develop-
ments

CHAPTER 5—CONCLUSIONS AND RECOMMENDATIONS

5.1.1 Development control in Kenya

From the review of the best practices on development control processes and results from the field surveys, it is evident that there lacks adequate enforcement of development control as shown by poor implementation of physical development plans by the Local Authorities and related agencies. There is a multiplicity of factors that produces such challenge, including; Lack of technical capacity in the Local Authorities, Overlapping roles and mandates by different related agencies; Local Authorities with poorly coordinating frameworks; The absence of streamlined development control principles, policies and guidelines for development control; Inadequate developer awareness on development control process, and; Development processes not being guided by adequate development plans. As a result, the vast majority of urban developments are of a poor quality, with traffic congestion, overcrowding, poor refuse management, poor drainage and inadequate water and sanitation services prevailing.

5.1.2 Factors contributing to Ineffective development control

This section discusses factors contributing to ineffectiveness of development control at different levels of development control process including Planning and Development, Local Authorities, Institutional and legal framework

5.1.2.1 Planning process and development control process

Physical Development Plans

The plans that are currently being used by the Local Authorities are mostly out of date, in time and space. Most of these plans covered the Government land and have since been overtaken by development pressures.

Plan Preparation Process

The plan preparation process in Kenya is over centralized having been embedded in the office of Director of Physical Planning.

Under these circumstances Local Authorities cannot prepare plans which can be used for development control processes. This therefore results in a time lag in the preparation of physical development plans.

Lack of regular review of physical development plans

The physical development plan is a framework that the Local Authorities use to regulate and guide developments within the areas of their jurisdiction. These plans should also be used as a basis for enforcing development regulations. The study found that there lacks a review of development plans that should encompass the new growth of the urban centres, especially when the boundaries of the Local Authorities are extended. This has led to haphazard subdivision of land and change of use of land. The usage of part development plans has not been useful in managing growth in urban centres. Arising from these scenarios of planning, development control is difficult because it is not relying on well prepared physical development plans.

CHAPTER 5—CONCLUSIONS AND RECOMMENDATIONS

Poor coordination among the multiple players involved in development control process

The coordination between the related agencies and the Local Authorities, and also amongst the related agencies is poor. The study established that it was not clear who is in charge of approving development controls because every approving agency seems to claim jurisdiction.

Currently in Kenya, there are no broad national guidelines and standards on which to base development control. Guidelines cannot however be applied in absence of development plans. This is a direct inadequacy of local physical development plans which could guide development control processes, especially in peri-urban areas.

5.1.2.2 Local Authorities

Lack of adequate technical capacity

The Local Authorities lack adequate technical capacities for approval, supervision and inspection of development projects.

This is attributed to multiplicity of factors including; absence of established development control departments/sections in most Local Authorities, inadequate budgetary allocation to hire the qualified personnel for development control activities, and an inability to retain qualified staff. The study established that there is high turnover of the technical staff from the Local Authorities due to the uncompetitiveness of terms in service in Local Authorities.

Delay in approving plans

The Local Authorities sometime takes an inordinately long time to approve submitted development applications. The delay has led to developers proceeding with their developments without statutory approvals.

Inadequate budgeting for development control activities

Local Authorities were unable to undertake thorough inspection and supervision of development activities because of inadequate finances to buy or hire equipment such as vehicles. The study established that on average, the Local Authorities allocate only 20% of their annual budget to development control activities, which is relatively low.

Weak institutional and legal framework

There are many Acts which are domiciled in different ministries that apply in development control of physical developments. For example, the Ministry of Land prepares physical development plans for the Local Authorities; the Local Authorities are empowered to implement these plans and undertake development control; and National Environmental Management Authority oversees issues on environment. This leads to lack of institutional coordination arising from different mandates in development control.

Political interference

Since the Local Authorities are creatures of political dispensation, often their decisions overlook the necessary technical imperatives of development control. **There is a critical absence of political will to prepare and enforce development plans in Kenya.**

CHAPTER 5—CONCLUSIONS AND RECOMMENDATIONS

Lenient penalties

The developers who violate development control regulations and laws easily get away with such transgressions because the fines are affordable and custodial sentences are rarely meted out.

Lack of public awareness of development control procedures

The procedures that guide development control have not been sufficiently shared with the public – public awareness of planning policy is extremely low. This apparent lack of knowledge also directly impacts developers in their understanding of planning policy requirements, leading to poor development proposals, low levels of compliance and ultimately weak attempts at enforcement of planning policy as it exists.

Lack of involvement of stakeholders

The processes of plan preparation, implementation and enforcement are not in any way participatory, with the obvious consequence of failing to establish buy-in from the public and stakeholders in development management. In such an environment, it is much more difficult to establish effective public participation in development control activities which are poorly appreciated by those it is expected to serve.

Incompetent persons

The Local Authorities reported that unregistered persons are involved in development control stages and carry out over 50% of the development proposal preparation within the Local Authorities. Development proposals when implemented are then likely to be of the poor quality that we find manifest in much of urban Kenya.

5.1.2.3 Institutional framework and legal provisions

There are many Acts related to development control domiciled in many ministries.

There is no overarching institutional co-ordination framework

There are three development control pathways created by the provisions of the Local Government Act (LGA) cap 265, Government Lands Act (GLA) cap 280, Land Control Act cap 302 (LCA) and the Physical Planning Act (PPA) Cap 286.

5.1.3 What Kenya can borrow from the best practices?

It is clear from the best practices that the governments of Botswana, Singapore, and Switzerland consciously guided the development management of their urban areas by taking the following actions:

- Devolving the governance structure of development control frameworks
- Creating Public Private Partnerships
- Strict enforcement
- Adequate budgetary provisions to meet the cost of development control

CHAPTER 5—CONCLUSIONS AND RECOMMENDATIONS

- Ensuring competent personnel
- Provision of serviced plots for development
- Harmonize land tenure systems between the urban and the rural space economies

5.1.4 What is lacking in the Kenyan development control frameworks?

Development control is fragmented among several institutions and the power to control is also given to several institutions, hence overlapping and conflicting jurisdiction and decision making. No one and everyone is responsible.

Public Private Partnership: There is no policy and structure of how the public and private sectors can become involved in identifying and formulating development control policies and enforcement of planning policies.

There is inadequate budgetary allocation to development control activities from the national level to the Local Authority level.

Numerous Local Authorities have incompetent staff who are in charge of development control sections

The determined political will to prepare, implement and enforce physical development plans. Political processes need to determinedly move Kenya towards a culture of physical development planning as the surest way to ensure a sustainable and well managed built environment.

5.2 RECOMMENDATIONS

This section outlines the recommendations for effective development control in Local Authorities at various levels.

5.2.1 Policy level

Carry out regular reviews of physical development plans and development control policies.

The Ministry of Lands in conjunction with other stakeholders should prepare a national physical development plan to guide developments at a national level and provide framework for the preparation of local physical development plans.

Strengthen enforcement mechanism: There is need to create strict enforcement mechanisms that ensure compliance with the physical development statutes.

5.2.2 Legal framework

Review and consolidate existing statutes in order to strengthen good governance of development control.

Harmonize and coordinate the institutions and related agencies that deal with development control process and management.

Governance and institutional framework

CHAPTER 5—CONCLUSIONS AND RECOMMENDATIONS

Increase public awareness of development control procedures. Citizens need to be educated on development control regulations to engrain and deepen understanding on the facilitative other than punitive nature of development control. Citizens should also be educated on the dangers of involving incompetent people in development control.

Create a framework for the promotion of public private partnerships especially in the enforcement of the zoning regulations. Residential communities, for example, would define how they want their neighbourhood to evolve and what bottlenecks and requirements need to be addressed, and also what they can contribute to the process.

Involve all stakeholders in developing development control procedures: Public participation should form a key plank of encouraging compliance.

Minimize political interference: The Local Authority should act within the development control regulations and laws without influence from other quarters when approving and supervising development projects.

The Land Control Act, the Government Land Act and the Local Government Act should be harmonized to create a clear development control system.

Land tenure systems between the urban and the rural areas should be harmonized in order to curtail the freedom of the developer especially on freehold land to undertake irregular developments.

Strengthen the role of technical officers and consultants in the development control process

5.2.4 Process of development control

Create schedules for application permission stages and inspection periods: Local Authorities should hasten approval of development applications so as to discourage non-compliance. Development applications should be made flexible and responsive to the different sections of the urban population and also to the dynamic characteristics of the urban areas.

5.2.5 Capacity building

The Local Authorities should ensure only statutorily registered persons are involved in development control. Local Authorities should implement more rigorous mechanisms for detection of frauds in the preparation of development proposals and, implementation and supervision of these proposals.

Hire relevant and adequate technical capacity: Local Authorities should ensure they have right establishment required to undertake development activities.

Adequate financing for all development control activities should be mandatory for full implementation of the physical development plans and adequate management of physical development.

There is also need to professionalize enforcement by training and employing professional people to carry out enforcement.

The training institutions (Colleges and Universities) should come up with adequate and specific curriculum in development control issues.

There is also need for technical staff to be versed with knowledge on Geographic Information

CHAPTER 5—CONCLUSIONS AND RECOMMENDATIONS

System and other current ICT based skills to enhance their effectiveness in development control activities.

Local Authorities should also carry out periodic research on planning policy areas.

The Government should second staff from the related agencies to the Local Authorities to enhance internal capacities and therefore increase the likelihood of effective development control.

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