Urban growth management in sub-Saharan Africa: conflicting interests in the application of planning laws and regulations in middle income residential developments in Nairobi

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Faculty of Social Sciences
Department of Urban Studies and Planning

Mary Muthoni Mwangi

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Abstract

The middle income group in Nairobi, as in many other sub-Saharan African cities, is of a significant size. Many housing developments aimed at this group do not comply with planning laws and regulations. The costs of non-compliance include loss of lives when buildings collapse, costs to developers in terms of bribes to corrupt officials, and planning authorities' inability to ensure compliance with regulations when developers do not follow formal procedures. Despite this, the scholarly, legal and enforcement focus on informality, and housing and planning policies, is mostly on low income group settlements, neglecting the middle income group. This research addresses this gap, investigating why there is non-compliance with building laws and regulations in developments for middle income residents.

The project uses an embedded case study design within Nairobi. Qualitative interviewing was aimed at understanding perceptions of the planning system by both planners and developers, and how and why their interests differ. The research finds that, despite conflicting interests in the application of planning laws and regulations in middle income developments, non-compliance is tolerated or ignored because there is informal collaboration between state agents and developers, which validates the indispensability of these developments. This informal collaboration is prompted by unmet housing need, and the inappropriateness of a system that is a result of colonial hangovers. The results are manifested in a poor planning framework (including poor land use management), inadequate resources for planning, and shortcomings in governance, as well as unruly developers.

The research contributes to the planning and housing literature about the production of rental housing for the middle income group in sub-Saharan Africa. It asserts that non-compliance in such developments does not *necessarily* produce inappropriate housing developments. Rather than fighting these developments, housing needs could be better served by positive and formal collaboration between planners, developers and other stakeholders, in order to secure acceptable and improved developments.

Declaration

I hereby declare that this thesis is my original work and has not been done in collaboration with any other work. I certify that it has not been submitted for any other degree.

Mary Muthoni Mwangi

July 2016

Dedication

To my late father, Mr Henry M Thuo; his respect for knowledge led me to this research. He would be proud.

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Contents

Abbreviations

AAK – Architectural Association of Kenya

ADB – African Development Bank

ADF – African Development Fund

BMR – Bureau of Market Research

CBD – Central Business District

CCN – City County of Nairobi (formerly City Council of Nairobi)

DRSRS - Department of Resource Surveys and Remote Sensing

GIS – Geographical Information System

HBE – Home Based Enterprises

HDD – Housing Development Department

HFCK – Housing Finance Corporation of Kenya

HND – Higher National Diploma

IFC – International Finance Corporation

IT – Information technology

JICA - Japan International Cooperation Agency

KEBS – Kenya Bureau of Standards

KENHA - Kenya National Highways Authority

KIPPRA - Kenya Institute of Public Policy Research and Analysis

KNBS – Kenya National Bureau of Statistics

KPDA – Kenya Property Developers' Association

KSh – Kenya Shilling

KURA - Kenya Urban Roads Authority

NACHU – National Cooperative Housing Union

NCA – National Construction Authority

NCC – Nairobi County Council (formerly Nairobi City Council)

NIUPLAN – Nairobi Integrated Urban Development Master Plan

NLC – The National Land Commission

NEMA – National Environment Management Authority

NMR – Nairobi Metropolitan Region

NSSF – National Social Security Fund

PPA – Physical Planning Act

RNA – Residential Neighbourhood Association

RSIP - Road Sector Investment Programme

SEA - Strategic Environmental Assessment

UON – University of Nairobi

UN – United Nations

UNCHS - United Nations Centre for Human Settlements

UNEP – United Nations Environment Programme

UNFPA - The United Nations Population Fund

USAID - United States Agency for International Development

WHO – World Health Organisation

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Chapter 1: General introduction to the research

'...*Plans provide a framework for different interests to work together in a common purpose, and [provide] a transparent and accountable arena for negotiation of conflicts over development, both within civil society and between private and public interests...*' (Farmer et al., 2006:3)

1.1 Introduction

Urban planners have historically played a vital role in shaping the growth of towns and cities by assigning development zones and overseeing developments. Nigel Taylor (1998) defines urban planning as a technical and political process concerned with the control of land use and urban environmental design, including transportation networks, to guide and ensure the orderly development of settlements and communities.

Urban populations in sub-Saharan Africa are expanding at alarming rates, creating high demand for housing. Most of this population is in the low and middle income groups, creating high housing demand, especially in the rental sector (Rakodi, 1992; Tipple, 1994; Rakodi, 1995; Schilderman and Lowe, 2002; Kessides, 2006; UN-Habitat, 2007). Cities struggle to meet this demand; evidence for this includes expansive informal settlements and poor infrastructure systems (Schilderman, 1992; Okpala, 1999; Otiso, 2003; Tibaijuka, 2007, among others), as well as poor adherence to planning laws and regulations in residential settlements for low and middle income groups[1] (Kironde 1992a; Kironde, 1992b; Arimah and Adeagbo, 2000; Anyamba, 2011).

The phenomenon of non-compliance with urban planning regulations is an on-going concern for sub-Saharan Africa's cities; for planners, it creates informality, in that the resulting developments have aspects which do not comply with formal planning stipulations. This is unacceptable because legislation that guides planners in these countries, and which is often based on the British Town and Country Planning Act of 1947, is geared towards guiding developments to preserve order, among other aspects like health and safety. For the general population, issues presented by non-compliance

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[1] *Poor adherence to planning law (as will be revealed in this research) does not necessarily represent a struggle to meet housing demand.*

include poor environmental standards for the majority of the city's population, as well as general environmental degradation (Matrix Development Consultants, 1993; Mbogua, 1994; Oyugi and K'Akumu, 2007; Tibaijuka, 2007; UN-Habitat, 2007); this leads to increased costs in public health due to exposure to poor environmental conditions (Oyugi and K'Akumu, 2007; Tibaijuka, 2007). The resulting settlements pose concerns that cannot be ignored, such as poor sanitation, poor solid waste management, inadequate water supply, and air and water pollution. Failure to address such concerns could have far reaching repercussions (Tibaijuka, 2007).

Although non-compliant residential developments are rapidly expanding and are often fully occupied, they remain a problem nonetheless because they imply failure of the planning system to control urban developments in the interest of all, and disregard for the rule of law. This research will show that, unlike in developed countries where a strict adherence to planning laws deters private developers who are seeking to maximise profit at the expense of neighbourhood decline (Adam and Watkins, 2008), private developers in sub-Saharan Africa have ways of 'negotiating' with the system and are relentless in the provision of housing, albeit outside the formal guidelines. This research is aimed at identifying why there is non-compliance with planning laws and regulations in middle income developments. It contributes to knowledge about the phenomenon of non-compliance by exploring interactions between urban planners and residential developers for the middle income group in Nairobi. It focuses on middle income developments because, although many developments for this group do not comply with planning laws and regulations, the current focus (scholarly, legal and enforcement) on informality, housing and planning policies, mostly considers low income group settlements, neglecting the middle income group. This thesis will reveal that in Nairobi rental housing, specifically apartment blocks, are the main type of housing provided for the middle income group, thus the focus for this research. Knowledge, such as will be provided by this research, is needed by planners in sub-Saharan Africa in their considerations of how to provide appropriate housing for this income group.

Existing literature answers questions such as: what are the objectives of the planning system? Are current planning laws and regulations functional and

just in meeting the needs of the whole population? What is deemed relevant by planners and developers of these settlements, and what are the areas of contestation? The research builds on existing literature and contributes to knowledge about the shortfalls of the present planning system. It uses an interpretive approach, employing qualitative interviewing to gather information from planners and developers in Nairobi.

1.2 Problem statement

The vision of Kenya's Ministry of Housing[2] (the government body which is responsible for facilitating the development and management of good quality and affordable shelter for Kenyans) is '*Excellent, affordable, adequate and quality housing for Kenyans*' with a Mission '*to improve livelihoods of Kenyans through facilitation of access to adequate housing in sustainable human settlements'* (Republic of Kenya, undated). To realise the housing vision, city planners and developers need to practice positive collaboration to ensure acceptable and sustainable standards are achieved in urban development. This recognises that the government cannot do everything to eradicate problems in the housing sector, and that developers have a responsibility too. Indeed, the Ministry acknowledges that private investors provide rental housing to 96% of the urban population, including rentals in low income settlements (Republic of Kenya, 2012a). This affirms Rakodi's (1995) observation that the majority of residential dwellings in the rental sector in developing countries are produced by commercial landlords (corporate or individuals) as an investment. Indeed, Peattie (1983) highlighted that housing is '*… a process in which different individuals and institutions continually invest and disinvest, maintain or fail to maintain…'* (p. 230).

The rate at which developments occur is partially determined by the demand for housing, both arising from housing need[3] and a demand for housing as an investment asset by people already adequately housed. It is projected

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[2] *This ministry has since then been amalgamated with others to become the Ministry of Lands, Housing and Urban Development under the new Constitution 2010.*
[3] *It is worth noting that there is housing need that does not express itself as effective demand in the formal housing market, which is usually met in low quality informal housing settlements.*

that by the year 2030, the number of people living in the world's urban areas will be 4.9 billion (UNFPA, 2007). Recent projections, by WHO (2013), estimate that 60% of the population will be in urban areas by that date. The UNFPA report projected that the urban population of Africa and Asia will double between 2000 and 2030. This calls for effective planning to accommodate the housing needs of this population.

The Vancouver Declaration on Human Settlements (Habitat, 1976) highlighted the need to prioritise planning processes, with a view to achieving socio-economic and environmental objectives when developing human settlements. It recognised that the use and tenure of land should be subject to public control, since land is limited in supply, and defined planning as '…*a process to achieve the goals and objectives of national development through the rational and efficient use of available resources…*' (p. 5, Vancouver Action Plan).

However, Pickvance (1977) has asserted that if planning powers are preventative rather than powers to initiate development, actual developments and development patterns will depend on developers, guided by market forces. Although planning is a part of urban governance and has powers of intervention in market processes to control land uses through a development plan (Taylor, 1998; Pile et al., 1999), such a plan has not been effective in Nairobi, as will be evidenced in Chapter 4. Policy makers are therefore still faced with the challenge of developing frameworks that incorporate the demands of a growing national city.

The Kenya Physical Planning Act Cap 286 states that each local authority has the power to ensure the proper execution and implementation of approved physical development plans. It goes further to stipulate that "…*no person shall carry out development within the area of a local authority without a development permission granted by the local authority*" (section 30). The Kenya Building Code reinforces these regulations – the adopted by-law compels any potential developer to submit their development application to the local authority for approval, and local authorities are empowered to disapprove any such plans if they do not conform to the by-law. However, Wheeler (2004) points out that plans are only effective if they

are implemented appropriately. Unfortunately, sometimes developers and planning staff have different and conflicting goals, and planning systems that ignore the reality of this usually fail (ibid.). Whilst in developed cities such conflict might result in underdevelopment by private developers (Adams and Watkins, 2008; Cheshire, 2014), in sub-Saharan Africa it leads to non-compliance (by developers) with planning laws and regulations, rendering the planning system ineffective in controlling developments. Whilst some developers take pride in respecting the building guidelines, others circumvent the law, resulting in poor quality housing and increased pressure on available infrastructure. A survey carried out by Bamburi Cement and the City Council of Nairobi (CCN) suggested that as many as 70% of buildings in Nairobi are constructed illegally (Construction Business Review, March 1, 2010). Likewise, a study by the Architectural Association of Kenya (AAK, 2011) revealed that 65% of the buildings in Nairobi are sub-standard and unapproved.[4]

Non-compliance implies failure of the planning system to control developments. Although on face value this does not appear to be a problem for developers (given the ongoing non-compliance in ever expanding developments),[5] it ultimately leads to arrangements of land uses which are detrimental to urban society as a whole; overcrowding, and inadequate provision of infrastructure, as well as environmental degradation (UNCHS,1999).   While such developments may benefit individuals, the costs to urban society as a whole are significant (ibid.). The literature review will identify costs to developers in terms of bribes to corrupt officials, to the target population in terms of loss of lives when buildings collapse, and to planning authorities when developers do not follow formal procedures. The Kenya Property Developers' Association (KPDA) highlighted the need for joint working between policy makers, developers and host communities to define 'illegal developments' in the light of discrepancies and inconsistencies

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[4] *The AAK study was about development control in Kenya with a view to making policy recommendations on technical capacities and procedures in 17 Local Authorities across Kenya. AAK used a case study design and triangulation of different data sources, including questionnaires to randomly selected respondents involved in development control. The joint survey (using quantitative methods) by Bamburi Cement and CCN was about the use of building materials in relation to the building codes.*

[5] *There could be hidden costs to developers, and this research explores that aspect.*

in the application of planning laws and regulations. This would remove ambiguity, and it would help towards equitable distribution of responsibility and accountability between the stakeholders (KPDA, 2010).

This research explores why there is non-compliance with planning laws and regulations by developers in Nairobi, specifically in middle income residential developments, which have been relatively under-studied to date. This was looked at from the perspective of both planners and developers, exploring issues of contestation between them. The research is timely in that the property development industry in Nairobi seems to have picked up momentum, and urban areas are spreading and merging. As Taylor (1998) argued, it is when a local economy is booming and there is great pressure from the private sector for development that local planning authorities can exert greater pressure on developers to conform to planning ideals. The research is based on a political economy perspective, which recognises that the market system of land development plays a crucial role in determining the outcomes of planning practice (ibid.).

1.3 Aim of the research

There is widespread non-compliance with planning and building regulations in the provision of housing for the middle income group[6], yet there is little research into the interplay between planners and developers in this sector. Most of Nairobi's low and middle income households live in rental accommodation (KNBS, 2013; Habitat for Humanity, 2013), yet housing provision in the rental sector for the middle income group seems to have been neglected both in research and in national housing policy.

The principal aim of this research project is to investigate the phenomenon of non-compliance in the urban planning system in Nairobi with regards to rental housing developments for middle income groups. As such, its primary research question is: *Why is there non-compliance with planning laws and regulations by developers for the middle income group?*

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[6] *A definition of the middle income group in Nairobi (and the range of their developments) is given in Chapter 1.5, and non-compliance issues in housing for this group are covered in Chapter 2.2.3.*

1.4 Objectives of the research

The literature review will give context to the problem of non-compliance with planning regulations in sub-Saharan Africa; it will look into other research work done to explain urban growth and development problems. This will help in identifying key themes, trends and areas of debate, and which areas have been neglected and would benefit from additional research. With regards to this project, the question of what planning law is aiming to control in Nairobi and why thus far it has not been successful will be addressed, both in the literature review and the empirical chapters. Rakodi (1992) has noted how most literature and policies have concentrated on particular residential areas rather than on city-wide land and housing markets; and how there are deficiencies with regards to understanding and explaining the processes of urban development, which poses a dilemma when it comes to policy guidance.

The research objectives are to:

1. Investigate the challenges that urban planners face in implementing planning laws and regulations and monitoring best practices in housing developments for the middle income group.
2. Investigate the challenges that urban property developers face in adhering to the relevant laws and regulations in housing developments for the middle income group.
3. Explore the characteristics of relationships between planners and developers.

1.5 Scope of the study

This research is based in Nairobi but has wider relevance to other fast developing cities in sub-Saharan Africa, especially those with shared historical contexts that are national or regional hubs.[7]

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[7] *The relevance of this research to other cities in sub-Saharan Africa is explored further in the final chapter.*

1.5.1 Who are the middle income group?

'…They are creating demand, and it's driving growth….' (Mthuli Ncube, chief economist at African Development Bank Group)

For the purposes of this research, it is important to define the 'middle income group' being considered, and which of their housing practices constitute non-compliance. It appears that there can be different definitions of the middle income group depending on the issues being investigated. Globally, the middle income group has been hailed as the engine of economic growth and the bastion of social values (Goldman Sachs, 2008). As well as being a source of demand, they have also been seen as a critical support to political openness – they are perceived as arbiters of political elections by driving political pressures, as their rising numbers generate higher demand for political involvement, openness and democracy (ibid.). Although this has been primarily the case in developed countries, projections and such an analysis could be extended to sub-Saharan Africa (ibid.).

With regards to developing countries, Banerjee and Duflo (2008) have defined the middle income group as those living on between $2 and $10 a day; and people with steady jobs, who are also probably healthier and better educated. Ravallion (2009), on the other hand, defined them as those living on between $2 and $13 a day. Both definitions were based on how this group earned their income and on consumption patterns within their own countries; they are thought to be better off than the poor in their own countries (who could be living on less than $1 or $2 a day), but may still be deemed poor by the standards of rich countries (Banerjee and Duflo, 2008). Birdsall (2010), on the other hand, has defined the middle income group in relative terms as the population living on more than $10 a day (in 2005)[8], but below the 95th percentile of the income/consumption distribution in their own country. She points out that economic growth is more likely where the middle income support, in their own interests, good governance, political and economic institutions, and policies that encourage investment by ensuring the rule of law and recognition of private property rights. She excludes the top 5% of the population in her definition of the middle class on the basis that

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[8] *Compared to the World Bank's classification of $1.90 a day as an absolute poverty line, $10 a day is a high minimum. In developing countries $2 a day has commonly been denoted as the poverty line (Birdsall, 2010).*

their income would most likely be from inherited wealth, or based on rents associated with monopoly or other privileges, rather than primarily productive and labour activities. This implies an inclination towards free market capitalism on her part.

The middle income group has also been defined by their occupations. Although sub-Saharan Africa has always had a modest middle income group made up mostly of government workers or others tied to the ruling elite, this group has been growing steadily over the years within the private sector, to include secretaries, computer professionals, and business people. In South Africa, working class occupations include plant and machinery operators, craft and related trade workers, skilled agriculture and fishery workers, service and market sales workers and all elementary occupations not necessarily demanding higher education levels (Visagie, 2013). In Kenya middle income occupations include managers, senior officials, legislators, professionals (such as teachers and nurses), associate professionals, technicians and clerks. It is apparent that the education levels and occupations which are deemed to define this group differ across different countries in sub-Saharan Africa (AllAfrica, 2015). A survey carried out in Nigeria revealed that 92% of middle income Nigerians (defined as those with an average monthly income ranging between NGN75,000 and NGN100,000 (roughly ($480 to $645, or $6,000 to $7,000 per annum)) have post-secondary education, and 50% were skilled professionals in paid employment, whilst 38% were entrepreneurs (Renaissance Capital, 2011). This level of education does not, for example, match the typical middle income occupations in South Africa.

With regards to income and spending power, a market based study across Africa by the African Development Bank (AfDB) revealed that a large percentage of Africans are firmly entrenched in the middle income category, spending between $2 and $20 a day – the lower margin bordering the world poverty line of $2 per person per day, and the upper margin bordering the elite in their countries (Africa Development Bank, 2011)[9]. This represents

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[9] *This study included middle income African Countries such as South Africa, Algeria and Nigeria, as well as low income countries like Kenya, Uganda and Zimbabwe (among others). Thus the figures are not a true reflection of what would be considered as middle income group in all the countries.*

those between the 20th and 80th percentile of the consumption distribution, or between 0.75 and 1.25 times the median per capita income. In South Africa the middle income group in 2010 had incomes between 50,000R and 300,000R ($5,067 – $30,404) per annum (Bureau of Market Research (BMR), 2010). In the same year, the Kenya National Bureau of Statistics (KNBS) (2010) placed the middle income band in Nairobi at between KSh23,672 and KSh120,000 ($272 - $1,379) per month ($3,264 - $16,548 per annum), accounting for 24% of the urban population, whilst the high income group with incomes above KSh120,000 formed only 3.7% of the population. The low income band, according to KNBS, have incomes below KSh23,672. This places the Kenyan middle income group at the low end in comparison with other countries, typically earning about $9 a day, placing it in the middle of the middle income band of countries (as classified by the AfDB, 2011). KNBS based this definition on monthly household expenditure as of 2005. Since then, the country has grown economically, and was in fact declared as a middle income country in 2014 (World Bank, 2014). According to the World Bank (2014), Kenya was two places above Ghana and Ethiopia, and the fifth largest economy in sub-Saharan Africa, behind Nigeria, South Africa, Angola and Sudan.

Looking at income ranges, education levels and occupations, it is apparent that the middle income group could be defined differently in different countries. However, the common factor is that this segment of the population is comprised of households who are neither poor, nor rich, but relatively affluent; the kind of people who provide an important base of education and skills, promote entrepreneurship and investment, and are an important source of consumer demand (Kharas and Gertz, 2010; Birdsall, 2010). This is the group associated with productive and primarily labour activities to which Birdsall (2010) alluded. For this research, however, the middle income group was defined based on the rent paid rather than, for example, income levels, occupation or education level, because such classifications may vary. Moreover, the amount of rent paid is indicative of household income and spending power, as revealed in the following section. The majority of developments under study offer rental accommodation, and the levels of rent are set in response to effective demand.

1.5.2 Developments for the middle income group

This research works on the assumption that developments for the middle income group are guided by effective demand for housing by this group; the developments studied are therefore representative of what the middle income group occupy, based on affordability.

As Nairobi has evolved, most Kenyans in the low and middle income groups have found out that they cannot afford to buy or build their own homes (National Cooperative Housing Union (NACHU), 2012). Only 8% of the urban population have mortgages, mainly because of lack of access to housing finance (Hass Consult Property Index, 2011). This does not mean that the rest live in rental properties; there are owner occupiers who do not need mortgages to buy or build their houses, and according to NACHU, 16% of urban dwellers do own their housing. However, clearly the proportion of housing that is owner-occupied is relatively low when compared to rental accommodation, because not only is access to mortgages limited, but also access to urban land is limited for the majority of the population due to the commercialisation of land (resulting in inflated land prices) (Musyoka, 2006). The negative consequences of contraventions of planning regulations in owner-occupied developments are not as far reaching as those in the much larger rental sector. Likewise, although there might be non-compliance in housing developments for the high income group, these affect a significantly smaller population. In Nairobi, the greatest demand is for rental housing, mostly in low and middle income neighbourhoods; according to the National Cooperative Housing Union (NACHU) (2012), 84% of households in urban areas in Kenya live in rental housing, while the Ministry of Housing has given a figure of 82.2% for Nairobi, as per the 1999 census, spending more than 30% of their incomes on rent. Historically, rental housing in Kenya was associated with the low-income group, and there is substantial literature on the rental housing market in the low income informal sector (Amis, 1984; Lee Smith, 1990; Amis and Lloyd, 1990; Amis, 1996; Mwangi, 1997; UN-Habitat 2003, among others). The rental housing market for the middle income group is also thriving and expanding, but tends to be overlooked. According to Mwangi (1997), demand for rental housing, which has become the main form of housing for middle-income households, has made the sector highly

competitive. This research focused on apartment blocks, which are the main type of rental accommodation for the middle income group (see figures 1 and 2 for examples).

Figure 1: Some middle-income rental properties in Eastlands, Nairobi, flouting ground coverage and plot ratio regulations. Poor waste management is also noticeable (Author, 2014)

Figure 2: More middle-income rental properties in Eastlands, Nairobi, flouting ground coverage and plot ratio regulations. (Author, 2014)

For the purpose of this thesis, the term 'housing development' is used to encompass all housing construction work. The research draws on other studies for technical information regarding non-compliance issues, and also makes general observations of where by-laws have openly been flouted.

1.5.3 Developers

The majority of developments in Nairobi are led by private developers (Republic of Kenya, 2008a), and this research focuses on these rather than developments undertaken directly through the public sector. It uses the term developer(s) to encompass all investors in residential developments, especially for the middle income population. Such investors could be individuals, corporate entities, communal or family groups. Investments vary depending on financial strength, ranging from incremental building (as and when funds become available) of a single block of apartments, to multiple developments in multiple locations by more affluent investors. The source of funds could be individual or group savings (for the less affluent individual or group investors), or mortgages from financial institutions for those with collateral. There have also been allegations of money laundering activities in property developments, for example proceeds from piracy in the Arabian Sea, international drug trafficking and wildlife trafficking (Thomson Reuters Foundation, 2013). This is echoed in the local press (Property Wire, 2010; Business Daily Africa, 2013).

Under the Sectional Properties Act, 1987, owners of residential apartment blocks, are able to profitably sell all or some of their apartments, to raise further funding for construction. Sales are mostly in the high end development areas, whilst apartments in middle and low cost blocks are for rent. Most developers do not live in their developments, but have accommodation elsewhere, depending on their financial and/or social status. However, some individual investors reside in their developments, sometimes building and renting out units incrementally.

Developers (or investors) are not necessarily hands-on in the developments, but are supported by various agents throughout the process. Developers' agents, with regard to residential developments, include physical planners,

architects, structural engineers, and building contractors. Some of the developers' agents are also investors in their own right.

The research looks at the period since 2006, when private developers in Nairobi formed an organised body, The Kenya Property Developers' Association (KPDA), to control developers' activities. KPDA members pride themselves on observing planning laws and regulations and publicly condemn errant developers who circumvent the law. It was important to get KPDA's perspective on what hurdles the planning system presents that drives developers towards informality.

1.5.4 Planners

The term 'planners' is used broadly to represent planning professionals working for the state, as well as private planning consultants. These may be qualified planners with relevant academic qualifications in planning, but others involved in planning have different skill sets.

1.6 Structure of the thesis

Chapter 2 of this thesis highlights the fact that developers in sub-Saharan Africa do not seem to be deterred by strict planning laws and regulations in their quest for profitable investments, but have instead found ways to bypass or negotiate with the planning system. The theoretical framework looks at the aims of planning and problems of urban growth management. It also discusses the political economy aspect in planning, as well as governance issues.

Chapter 3 lays out the methodology adopted for this research, providing a rationale for the approach and detailing the methods used. The chapter gives details of the research design, sampling of areas and participants, data collection and analysis. It also analyses ethical issues that cropped up in the research.

Chapter 4 reviews the planning framework in Nairobi. It gives timelines of the evolution of master plans and planning legislation, pointing out the shortcomings that have resulted in the present development chaos. It also analyses the new master plan and new legislation. Chapter 5 is about the

actual application of the planning system in Nairobi – by whom and how attempts are made to implement it.

Chapters 6, 7 and 8 give the perspectives of planners and developers on the planning system and how it affects development. Findings in these chapters show that planners and developers do not necessary want different outcomes, and that both parties would appreciate a more effective planning system.

In conclusion, Chapter 9 asserts that there is a role for planners in balancing the workings of the capitalist market in property development for the middle income group; rather than being 'strict' enforcers, it is suggested that they could form effective liaisons with developers of housing for the middle income group. Policy recommendations which were derived from this research are spelt out in more detail in Appendix 6.

Chapter 2: Literature review

'If the planning powers involved in plan preparation and plan implementation (i.e. development control) are essentially powers to prevent rather than powers to initiate, then the actual development which does take place depends on the initiators of development or 'developers'…and not solely on the preventers of development, the physical planners' (Pickvance, 1977:70)

2.1 Introduction

As mentioned in Chapter 1, non-compliance with building laws and regulations implies failure of the planning system to control developments. It is therefore important to give a context to non-compliance in sub-Saharan Africa by reviewing literature by other scholars on the subject of planning frameworks and how non-compliance issues arise. This chapter, in section 2.2.2, starts by describing the context of unmet housing need in sub-Saharan Africa. Section 2.2.3 gives an overview of informality in sub-Saharan Africa, and identifies problems in urban growth management that are hampering effective planning for residential development. Since the thesis is about non-compliance in middle income developments, the section captures how planning problems have manifested themselves in housing developments for the middle income group in sub-Saharan African cities, exacerbating environmental degradation and threatening sustainability in those cities. The section highlights conflicting interests in the planning system. Section 2.2.4 highlights the impact of poor land use management on urban growth management, whilst section 2.2.5 reveals the effects of poor governance on the planning system.

The theoretical framework gives an overview of what planning for residential developments entails in section 2.3; and what the planning system is aimed at controlling, because ultimately this affects what gets judged as 'informal' or illegal. It expands on planners' role in planning and the contestations therein. It also reviews how political economy principles impact on housing development, with a view to understanding how market forces influence the operations of planning systems in sub-Saharan Africa. Section 2.3.1 highlights that planners are mandated to steer development trends, and section 2.3.2 shows that issues in land delivery, administration and

development impact on the effectiveness of planning. Section 2.3.3 shows why market forces drive developers towards meeting housing demand. Section 2.3.4 looks at informality as a mode of governance, noting that informal practices, like corruption, can permeate institutions, and undermine the role of the state.

2.2 Planning systems in sub-Saharan Africa: inadequate tools for effective development control

'…every state has the right to plan and regulate use of land, which is one of its most important resources, in such a way that the growth of population centres both urban and rural are based on a comprehensive land use plan…' (Vancouver declaration on human settlements, 1976. II: 10)

2.2.1 Introduction

This section reviews other research work done to explain the urban growth problems of sub-Saharan Africa, with a view to giving a context to the problem of non-compliance with planning regulations in Nairobi.

In sub-Saharan Africa, neither market forces nor the laudable intentions of governments to control development have resulted in the required regulation of developments - developers have been left to their own devices by default. The results are a cause for concern. It is therefore important to identify where the gaps are in the present planning systems in sub-Saharan Africa, and why the systems are ineffective in meeting the settlement needs of the urban population. Only then can progress be made towards making the systems more effective. However, first and foremost it is important to understand the extent of the housing needs of the urban population, as this will give context to planning efforts to control (housing) developments. Section 2.2.2 therefore gives an overview of housing need by fast growing populations in sub-Saharan Africa cities. This is followed, in section 2.2.3, by an overview of informality in sub-Saharan Africa and ongoing inadequacies in the present planning systems. Since land use control has a fundamental role in planning, issues related to land use management in sub-Saharan Africa are examined in section 2.2.4. Section 2.2.5 discusses impunity,

corruption and poor governance, practices which have been placed at the core of the ineffectiveness of the planning system.

2.2.2 Unmet demand for housing in urban areas

'*…everyone has a right to an adequate standard of living for themselves and their families, including […] housing, water and sanitation, and to the continuous improvement of living conditions…*' Habitat Agenda (UN-Habitat, 1996. Chapter I:11)

The Habitat Agenda (UN-Habitat, 1996) observed that inadequate shelter and homelessness in many countries are major concerns, as they increase the threat to standards of health, security and even life itself. Indeed, there are major concerns over the escalating crisis in sub-Saharan Africa with regard to inadequate provision of basic services, as well as housing.

In 2014, the UN asserted that 54% of the world's population was residing in urban areas, and projected that by 2050 that proportion will rise to 66%, adding 2.5 billion people to urban areas (UN, 2014). UNFPA (2015) corroborated this, stating that more than half of the world's population[10] now lives in urban areas, and that this is likely to rise to five billion by 2030. Nearly 90 per cent of the increase will be in Asia and Africa (UN, 2014). Africa's urban population is projected to rise to over 60% by the year 2050 (Watson, 2011). Watson (ibid.) predicted that Lagos will be the largest city in the world by 2020, with over 20 million people, and observed that Nairobi is doubling in size every 10 years. This corroborates the UN's projection that most urban growth will occur in the cities of developing countries (UN, 2014).

As the population expands, so will the problems of cities and towns of sub-Saharan Africa, which are frequently characterised by, among other things, inadequate housing, services and infrastructure. It does not help matters that these countries do not have adequate resources, such as legal, technological, institutional, financial, and human resources (Kironde 1992b; Kessides, 2006; Davis, 2006; AAK, 2011; among others). Tibaijuka (2007) warned that these concerns may be confined to sub-Saharan Africa now, but failure to address them could have widespread global repercussions, ranging from climate change to environmental catastrophes that threaten all, as well

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[10] *World's population is presently about 7.3 billion people (World Population Clock)*

as migration pressures. Planning systems have a major role to play in steering urban development, and reducing the ecological footprint of the present urban populations so as to preserve resources for the future. But in sub-Saharan Africa, planning has been found lacking. It has been blamed for many of the ills facing the urban poor in these countries, ranging from homelessness to dire living conditions in poor neighbourhoods (Kironde, 1992a; Un-Habitat, 2003; Watson, 2009; Berrisford, 2011a, among others).

The following two sub-sections will give an overview of informality in sub-Saharan Africa; its origins, and why and how planning has failed to address urban growth problems in the major cities. This is to rationalise non-compliance with regulations by developers for the middle income population. Non-compliance in such developments implies that they have elements of informality, and it is important to understand how this practice has extended there.

2.2.3 The origins of informality in sub-Saharan Africa and ongoing inadequacies in planning systems

'Planning activities should promote and guide development rather than restrict or simply control it' (The Vancouver Action Plan, UN-Habitat (1976a:5).

Although this research is about planning irregularities in middle income developments, it would be difficult to broach the topic of planning irregularities in sub-Saharan Africa without highlighting the phenomena of informal settlements, or how they come to be. Indeed, it would appear that there is a thin line between 'informal housing' in slums and squatter settlements where non-conventional building materials are used (Urban Foundation 1991), and 'informality' in middle income settlements where conventional building materials are used, but the building practices offend the planning regulations (Gilbert and Ward, 1985). Such middle income settlements may not be considered to be totally informal, but they may well be on the way to becoming just that. It is evident that informality in sub-Saharan Africa is a major contributor to environmental degradation, which in turn threatens sustainability in these cities (Mbogua, 1994; Tibaijuka, 2007; Oyugi and K'Akumu, 2007). Nevertheless, Gilbert (2014) has highlighted

how in some cases 'illegality' in housing developments can easily be resolved, for example by the provision of infrastructure, or by modification of planning regulations. Discussions by other scholars infer that informality is a matter of perspective, in the sense that 'order' in formality and 'disorder' in informality can have different meanings to different groups of people (Pile et al., 1999; Roy and AlSayyad, 2004; Roy, 2005; Roy, 2009).

According to Anyamba (2011), informality in sub-Saharan Africa did not exist before the imposition of western standards; practices were so labelled because they did not conform to set laws and regulations. In Nairobi, for example, the phenomenon of informality grew in the 1960s and 1970s, when developers defied the inherited planning laws and regulations to meet their needs (ibid.). 'Informalisation' of formal settlements is mostly a result of transformations by dwellers and developers, through extensions and alterations that do not follow statutory rules and regulations (ibid.). Anyamba echoes Pickvance (1977), who argued that planning systems that evolved from the British 1947 Town and Country Planning Act (which was adopted in British colonies like Kenya) gave planning authorities powers to refuse permission to developments that did not conform to planning rules and regulations – he termed these 'negative' powers, in that local planning authorities have power to refuse permission for illegal developments, but do not have 'positive' powers to take on developments themselves due to their limited resources, thus delegating this role, by default, to private developers.

'Negative' planning powers have created spaces of resistance and struggle for all income groups, developers and (inter)national elites who are investing in housing development, with spatial divisions along economic divides. It could be argued that the 'positive' planning powers of a state may not necessarily ameliorate spatial divisions; in the face of broader social and political ideology, housing provision by the state is part of broader role of the state rather than a planning role – a state's focus might be on housing provision rather than planning. However, the fact that the state cannot provide adequate housing paves the way for citizens to take the lead in provision. There is therefore a conflict of interests between the logic of governing and of survival; planners aim to implement and enforce planning

regulations, while the majority of the population need to survive in the city (Watson, 2009).

According to Bridge and Watson (2002), spaces based, for example, on Le Corbusier's modernistic planning ideas, or Ebenezer Howard's garden city, would be well ordered, well-functioning, with streamlined spaces and clearly demarcated and separated land uses. Unfortunately, given the reality of housing need for the majority of the population in sub-Saharan Africa, the inherited planning systems are inappropriate. For example, whilst the Global North was industrialising and experiencing economic growth in the nineteenth century (when planning was introduced planning to deal with housing and sanitation issues), the same level of industrialisation and growth has not been experienced in countries in the South. In particular, the population of most countries in sub-Saharan Africa is growing at a much higher rate than economic growth (Kironde, 1992b; Gandy 2006). As a result, the adopted standards are mostly attainable or affordable only for elites of the urban population because '…. *the whole apparatus of planning was built around the notion of a benevolent elite working towards common goals...*' (Allmendinger, 2001: 2). Such standards are virtually impossible to enforce for the lower income groups, who neither understand nor respect them (Rakodi, 2001; Berrisford, 2011b; Mbaku, 2010). Watson (2002) echoes this, observing that within these cities, '…. *highly differentiated patterns of access to resources are reflected in growing spatial divisions between a well-connected elite and the larger mass of the poor*' (p. 40). Despite the 'negative power' of planning which aims to shape and control the capitalist development of housing, low and middle-income housing developments that do not comply with planning regulations have expanded.

It is evident that the transposition of foreign standards has been the norm for most countries in sub-Saharan Africa, a legacy of colonisation. For instance, imported standards regarding lighting and ventilation are out of context in African conditions where climatic conditions are different (Okpala, 1987; Nguluma, 2003). Despite the different and changing context, the inherited planning systems have not been revised (Kironde, 1992b; Gandy, 2006; Watson, 2009; Watson, 2011), and as a result the contrast in amenity levels between elite areas and poor areas is an on-going phenomenon (Watson,

2002; Nwaka, 2005; Berrisford, 2011a). Okpala (1987) echoed this, cautioning that if problems are defined using inappropriate (inherited and unrealistic) concepts, then the resulting policy solutions will be ineffective and end up exacerbating the problems which they were supposed to address. This echoes the Vancouver Declaration (Un-Habitat, 1976), which highlighted the detrimental effects of transposing standards and criteria which disadvantage the majority of the population; it noted that this can compound existing inequalities, foster the misuse of resources, and exacerbate environmental issues in developing countries.

Indeed, if legal standards and grassroots expectations vis-a-vis commercially viable development are out-of-step with each other, then this opens up a space for malpractices such as corruption, and presents powerful incentives for developers to circumvent the law. However, it may be undesirable and unreasonable to drop planning standards altogether - collapsing buildings in Nairobi, for example, show the importance of effective regulation that enhances construction standards. The issue therefore is how much regulation is necessary or desirable before it becomes unrealistic.

There are arguments that planning standards in sub-Saharan Africa are unrealistic and restrictive, and this leads to abuse (Kironde, 1992a; Arimah and Adeagbo, 2000; Rakodi, 2001; Watson 2009). According to Rakodi (2001), non-compliance occurs when policies and standards are inappropriate to the needs of urban actors. With regards to private commercial developers of rental property, contravention of set standards is mostly led by a desire to maximise profits, regardless of the consequences (Rakodi, 1995; UN-Habitat, 2003). Rakodi (1995) further attributes non-compliant behaviour to lack of common experiences; she argues that when individuals, such as absentee commercial landlords, do not have a shared experience (for example deterioration of the quality of urban life in terms of safety, environment or property values), then they might not appreciate or deem necessary certain restrictions.

According to Nwaka (2005), 30%- 60% of houses in Africa are constructed outside formal planning laws and regulations. Building regulations are violated with regards to plot coverage, provision of utilities, change of use,

building materials, etc. This has been evidenced by case studies in Nigeria, Tanzania, and Kenya (Arimah and Adeagbo, 2000; Kironde, 1992a; Onyango and Olima, 2008). However, a Member of Parliament in Nairobi, when opposing the demolitions of condemned non-complying buildings, argued that these buildings are a preferred choice for their inhabitants (Daily Nation, 11 April 2012). This implies that users' perspective is different to that of state enforcers', and that alternative housing, to those being demolished, would obviously be less desirable, perhaps with regard to location and cost. The problem is that once such situations are not controlled, the new developments create higher density population in areas which were planned for low density development, leading to strains on infrastructure and the environment (Kironde, 1992a; Onyango and Olima, 2008).

The Habitat Agenda recommended that governments should re-evaluate and periodically adjust planning and building regulatory frameworks, putting them in context within other policies. It recognised that contrary to some misguided notions, one size does not fit all (UN-Habitat, 1996) due to the diverse nature of the countries, with different cultures, histories and experiences, as well as social, economic and political perspectives (Kironde 1992a; UN-Habitat, 2009; Berrisford, 2011a). Nwaka (2005), for example, found that the inherited colonial Master Plans implied wasteful zoning in post-colonial periods, since by then the urban population was much larger than when the plans were drawn up. This larger population (which was predominantly poor) posed a dilemma for planners with regards to land use control, housing and infrastructure services. The post-independence Master Plans, that were drawn up for African Cities like Lagos and Nairobi, failed to address the needs of these cities, and were mostly abandoned before implementation (Otiso, 2005; Gandy 2009).

The UN-Habitat *Global Report on Human Settlements* (1996) warned that traditional planning could not cope with urban growth and development in southern countries, failing to organise and control the pace of development and distribution of land uses in those countries. Indeed it was doomed to fail in the post-colonial period, due to inadequate enforcement. Slaughter (2004) points out that it is not practical to expect one law to work in contexts characterised by different social values, land supply, and economic

capacities, to name but a few. But whilst there were cries for changes in the planning laws in sub-Saharan Africa, research reveals that those advocating change often give no indication of what needs changing, or what the new laws should be (Berrisford, 2011b).

Although some planning laws have been revised over the last 50 years (Watson, 2011; Berrisford, 2011a), the revisions or amendments only look good on paper, and indeed Rakodi (2001) calls them 'paper plans'; proposed changes have not been effected, mainly because implementing agencies still serve and protect elitist sections of the cities, whilst sanctioning those (mostly the poor) who fail to comply with the laws. Implementation of the laws is rarely successful in meeting the purposes for which they were intended (ibid.). As a result, legislation has little legitimacy in the eyes of the population (Rakodi, 2001; Berrisford, 2011b), resulting in of the laws. For example, in South Africa there have been incidents of outright insurgence by the poor as they strive to claim a right to the city (Miraftab, 2009); in Ibadan, Nigeria, there is widespread non-compliance, not only by the ignorant, but even by those who are aware of existence of planning regulations (Arimah and Adeagbo, 2000); in Nairobi, there are numerous cases of 'illegal' housing transformations (Arimah and Adeagbo, 2000; Onyango and Olima, 2008); whilst in Dar es Salaam, Tanzania, a case study revealed malpractices by state agents in the allocation of plots (Kironde, 1992a). As Schilderman (2002) points out, '...*quite often, if a rule has to be enforced [when] it does not make sense in its own right, it is not going to work because people will find a way to avoid or circumvent it...*' (p. 23). It could of course be argued that there are always people who will resist some rules, especially those that aim to redistribute costs and benefits at a societal level, but Schilderman was alluding to the fact that people have to be convinced of the necessity of rules.

The Vancouver Declaration (UN-Habitat, 1976) stated that governments are obliged to remove all hindrances to the achievement of adequate shelter and services to all. The Vancouver Action Plan (UN-Habitat, 1976) advised that it was important for settlement planning to be flexible, adapting to changing priorities and/or conditions. Kironde (1992a) argues that a convergence of planned and unplanned areas needs to be explored; this could mean that

standards are not set so high to be unattainable, and would mean less defiance from developers. Although Kironde was primarily focusing on self-built housing projects in Nairobi and Dar es Salaam, his argument could well apply to 'informalised' commercial developments for the middle income group, where authorities are turning the same blind eye. A more flexible and realistic approach would arguably be more effective in development control. Such a flexible approach is especially important in developing countries where there is vast informality. Watson (2009) takes this view and argues that '…*planning can work with informality, supporting survival of the urban poor rather than hindering them through regulation*…' (p. 2268). This research aims to unearth what planning regulations are perceived as relevant and realistic for the middle income group, and how 'planning can work with informality' in relation to this group in sub-Saharan Africa. For those involved in housing development for this group, working with informality would involve an assessment of the planning laws and regulations in operation, taking into consideration areas of contestation by developers, identifying redeeming features in development practices, and supporting developers in their efforts to meet housing need. The key issues in this thesis will be to find out whether and how the perceptions of developers, who are potentially driven solely by profit, might not be compatible with those of planners, who may in turn have unrealistic standards. The following section will expand on how developers of housing for the middle income group have negotiated planning laws and regulations.

2.2.3.1 Non-compliance with planning laws and regulations in middle income developments: conflicting interests

Watson (2003) has argued that there is a gap between the reality of residents and the reality of planners. Jenkins and Anderson (2011) have also noted that what an urban resident might consider to be an adequate and suitable 'home space' may not meet the standards of planning officials. As a result, those standards become irrelevant and destructive as people struggle to survive in the city. It has been argued that housing professionals involved in the design and approval stages in development in Nairobi have adopted a top-down approach to housing design, resulting in regular and formal aesthetics, but designs which do not adequately address users' needs

(Onyango and Olima, 2008). As a result, the city has refused to be tamed and ordered as envisaged by the foreign forefather planners (Onyango and Olima, 2008; Anyamba, 2011). Whilst planners seem oblivious to this gap in reality, developers have stepped in to create realistic living spaces for the residents. It is evident that, no matter what checks and controls are put in place to govern space, society always tends to find a way to subvert these if their needs are not provided for.

The middle income settlements, according to Anyamba (2011), have become 'informalized' by virtue of them not going through the formal authorisation procedures, or by developers manipulating regulatory procedures to meet their interests. Anyamba (2005) discusses what he terms as 'informal modernism', whereby the middle and high income groups practice 'intermediate' informalities, as opposed to 'survivalist' and 'primary' informalities by the low income groups. The reason Anyamba terms such developments informal modernism is because they use standard approved building materials, even though their plans may be illegal, and their quality of design and construction questionable. The structures erected in Nairobi, based on slab and column frameworks, are similar to those reproduced internationally using Le Corbusier's modernistic techniques after the second World War; but the difference is that they have minimal glass, thus less natural lighting (ibid.).

Nairobi's middle income developments provide numerous examples of incomplete modernisation. Envisaged as modernistic developments in the form of high rise residential blocks, usually with commercial units on the ground floor (Anyamba, 2005), incomplete modernisation implies deterioration of the physical fabric, health and safety concerns, lack of amenities and high levels of pollution. Such blocks can house as many as 60 people per floor, with 20 people sharing a toilet and bathroom, which is in contravention of statutory requirements regarding sharing of sanitary facilities (Anyamba, 2011).

In the wider sub-Saharan African context, some researchers have made a case for simplifying planning regulations and procedures (Mugova and Nyamayaro,1998; Schilderman and Lowe, 2002). However, these

arguments are mostly made in relation to the poor/low income groups, implying that developers in that group neither find the regulations reasonable, nor do they understand the technical language. This might not necessarily be the case for developers for the middle income group – it would be interesting to find out what problems developers for this group have with regards to the rationale for regulations and their understanding of them. This research contributes to understanding what forces are at play in settlements for the middle income groups.

Housing requires land, and as the following section will show, land use management (including issues with zoning), poses major challenges to planners in their effort to regulate the built environment in the city.

2.2.4 Poor land use management

According to Mwangi and Nyika (2010), land use management is concerned with the stewardship or custodianship of land both for the present and the future, thus it incorporates the concept of sustainable development (as used by Brundtland Commission): the use of available resources now without compromising the use of the same resources by the future generations.

Land management in its totality across a city is implemented through land use planning, thus planners in urban areas are faced with the task of ensuring stability and sustainability in relation to urban land resources (Healy et al., 1988; Taylor, 1998; Payne, 2001; Healy and Shaw, 2006; Rydin, 2011). Planners are involved in the identification of resources to facilitate planning, as well as levels of utilisation of identified resources; they are responsible for regulating and/or controlling what use land is put to, including the location, intensity and amount of land designated for various uses. However, Watson points out that land use regulations that accompany master plans *usually demand standards of construction and forms of land use which are unachievable and inappropriate for the poor in cities'* (Watson, 2009:78). Such standards have sometimes led to forced evictions from unplanned areas and demolitions of unauthorised developments; in Zimbabwe for example, over 700,000 urban dwellers were evicted in 2005 in Operation Murambatsvina and their homes demolished, as they were deemed not to comply with the objectives of planning (UN-Habitat, 2007).

Likewise, in Abuja, Nigeria, 800,000 people were evicted in 2006 from land because their land use did not conform to the master plan (Watson, 2009).

UN-Habitat (2015) noted how, in many developing cities, urban land management is ineffective due to fragmented services and institutions, corruption, and lengthy and costly procedures. The Habitat Agenda recommended that there should be appropriate structures for enforcement of land laws and regulations, provision of institutional support, accountability and transparency in land management, and generation of accurate information on land ownership, and land transactions, as well as land use. This research aims to look at the land administration structure in Nairobi and the perceived constraints therein.

The next section reviews some practices that have been placed at the heart of the failure of the planning system in controlling non-compliance with planning laws and regulations.

2.2.5 The blind eye syndrome and poor governance

Inherited laws and regulations have been seen to promote social inequality, and their implementation to exacerbate the plight of the poor in sub-Saharan Africa (Gandy, 2006). According to Arimah and Adeagbo (2000), demolitions are often the official approach to unauthorised housing developments. But whilst planning authorities are quick to condemn some developments, there are many housing developments, even in planned areas, which do not comply with planning laws and regulations, yet the planning authorities seem to turn a blind eye to their irregularities. In Umoja, Nairobi, for example, illegal extensions (in otherwise planned areas) that started modestly as single storey hidden developments gradually developed into multi-storey buildings in the absence of any counteractive intervention by the planning authorities (Kironde, 1992a). In Dar es Salaam, superfluous open spaces in planned areas have been sub-divided and developed without sanctions from planning authorities (ibid.).

Similar to Olima's (1997) findings in Nairobi, Arimah and Adeagbo (2000) found that planning authorities in Ibadan were seen to be under the influence of politicians, who made them biased against enabling aspects of planning regulations in favour of restrictive ones, which were generating more income;

maintaining unrealistically high specifications presented opportunities for illicit income generation. In Nairobi, Onyango and Olima (2008) noted that planners often turn a blind eye to non-complying developments, and planned settlement areas for the middle income population are constantly metamorphosing as dwellers and developers implement transformations to meet their social and economic needs.

With regard to poor implementation, enforcement and monitoring, critics have cited inefficiency in planning institutions, corruption and abuse of office by staff, and lack of accountability to the general public, as the reasons why the system is not effective (Muraguri, 1999; Mwangi, 2007). Government agents have been known to use enforcement of planning regulations as a means of generating income, not for the government but for themselves (Mwangi, 2010; Schilderman and Lowe, 2002; Nwaka, 2005; Gandy 2006; among others). Schilderman and Lowe (2002) went as far as to say that corruption in the public sector is universal when it comes to implementation of planning and building regulations, land registration and allocation. They attribute poor implementation of building regulations in countries of the South to the fact that the regulations, which were formulated in the northern countries, assume the availability of competent and incorruptible officials, as well as adequate resources to enable implementation, which might not be the case in the South. Nwaka (2005) reinforces this, saying that, when it comes to land use control procedures in Africa, not only are laws cumbersome and over-bureaucratized, but also administrative practices are usually slow, inequitable and corrupt. He also argues that land is allocated inefficiently and in a discriminatory manner, creating administrative and legal blockages to land development. Similar sentiments regarding corruption are echoed by Gandy (2006), who argues that funds which were meant for investment in public infrastructure, health care and housing in Lagos were being pilfered by the political and military elites. Indeed, the United Nations Centre for Human Settlements (UNCHS) (1999) highlighted how political interference in council activities has contributed to poor enforcement of planning regulations in most African countries.

Rakodi (2001) points out that not only do such practices undermine confidence and trust in the planning institutions, but erosion of their fiscal

base leads to crisis management and reactive decision making. There is also a view by developers that operating formally (i.e. applying for planning regulations) is expensive, although Anyamba (2011) points out that it might actually be cheaper, since non-compliers usually have to pay protection fees to corrupt state officials so that they will turn a blind eye to non-compliance with building regulations. He argues that informality can only survive where the state's legal system and administrative capacity are weak, as a result allowing certain social groups to manipulate regulatory regimes to their advantage. This is echoed by Rukwaro and Olima (2003), who argue that non-compliance with planning regulations by developers in housing provision in this sector is a manifestation of the weak administrative and institutional framework of the city council - *'...laxity on the part of the enforcement agencies and corrupt practices within the local authority....'*(p. 153). UNCHS (1999) asserted that inadequate manpower regulations in African countries also affect enforcement of planning regulations, and Anyamba (2005) noted that a lack of capacity hinders implementation of regulations.

With regards to poor governance, Schilderman argued that there is too much bureaucracy in the revision of legislation, and too many conflicting interests when setting up and developing legislative frameworks (Schilderman, 2002). Meeting such interests to the satisfaction of all simultaneously is not possible, leading Schilderman to argue for an increase in local involvement and control. Conflicting interests between the main actors also lead to poor implementation, for example enforcement officers may be out to maximise their income through corruption, and it would not be in their interest to ensure that regulations are adhered to (ibid.). Chabal and Daloz (1999) argue that implementation of regulations is not supported by the ruling elite because they want to maintain the status quo based on a 'big man' patronage system based on reciprocal interdependence between leaders and the general population; the former need such manipulations to maintain their control over the poor.

However, in practice such practices end up increasing environmental poverty for the majority of the urban population. For example, when regulations regarding the installation of lifts (for buildings with more than 5 floors) and adequate provision of sanitary facilities are not implemented in residential

housing blocks in middle income settlements (Anyamba, 2005), it is the tenants who suffer. The same applies when infrastructural facilities, such as access roads, are neglected (ibid.). Developers' interests in maximising profit are also not in the best interests of the inhabitants - developers are not concerned about the comfort and physical environment of the tenants. However, this does not deter prospective occupants because effective demand for apartments is greater than supply; as a result sub-standard developers continue to thrive. It would take vigilant and consistent enforcement of rules and regulations for such developers to delve into their profit margins to enhance the lived experiences of their tenants.

Poor governance is exacerbated by lack of knowledge and information. Lewis (2008) and K'Akumu (2006), for example, have put partial blame for poor governance on the lack of social information (including on community needs) and housing statistics for the area to be planned for, arguing that information and statistics are needed by planners in order to formulate suitable land use management systems. There are also strong arguments for inclusive planning frameworks, which are people centred and value inhabitants' knowledge. Arimah and Adeagbo (2000) argue that this would give inhabitants a sense of ownership of local environments, and would promote accountability and transparency in planning systems. Other researchers have taken a similar stance, making a case for Residential Neighbourhood Associations (RNAs); and arguing that RNAs, which are driven by residents with a vested interest in the welfare and quality of their neighbourhood, would promote quality and sustainability (Rukwaro and Olima, 2003; Onyango and Olima, 2008). Rakodi (2001) is of the opinion that it might be more worthwhile to concentrate on governance arrangements rather than on the quality of urban spatial plans, in order to break the vicious circle of inefficiency and ineffectiveness.   She advocates creating alliances with different stakeholders involved in planning, taking a collaborative approach which is based on realistic understanding of actors' strengths. However, she acknowledges that this would only be possible if the relevant policies are regularly reviewed, in collaboration with the different stakeholders. Improvements in governance would also need a change in existing negative norms by all stakeholders. However, change can be

disruptive and Watson (1969) noted how people resist change as a natural reaction to anything that interferes with the status quo. This was echoed by Conner (1998), who argued that human inertia encourages attachment to certainty and stability. This research looks into governance of the planning system in Nairobi, with a view to identifying shortfalls. It also explores ways in which the system could be improved to meet the needs of some of the key stakeholders (planners and developers), and how resistance to changes in the system might be overcome.

This chapter so far has discussed the mismatch between over-ambitious planning legislation in sub-Saharan Africa and the capacity to implement it on the ground. This has paved the way for practices that undermine good planning outcomes. The chapter has also suggested that vested interests would prefer to maintain the status quo, for example enforcement officers who benefit from bribes and the ruling elite who benefit from being in control. However, the chapter has also shown a range of practices that might reduce the gap between planning legislation and implementation, from better information flows to the participatory review of legislation. This research will examine, from the perspective of planners and developers in Nairobi, how inherited planning concepts, land use management problems, unmet demand for housing, and poor governance, have contributed to non-compliance with planning laws and regulations.

2.3 Planning and informality in housing developments: wider literature debates

This section discusses underlying international debates that will be used to refine the thesis' questions about the phenomenon of non-compliance with building laws and regulations in Nairobi. The literature so far has revealed challenges in urban growth management in sub-Saharan Africa, ranging from unmet housing need, rise of informality, land use management challenges, to poor governance. These challenges imply deficiencies of the state in providing adequate housing for citizens, and in controlling urban growth. Section 2.3.1 looks at motivations and rationalities for land use planning. It looks at what planning for residential developments involve. The concepts in this section will help to understand why non-compliance with building laws

and regulations in sub-Saharan Africa is widespread. Section 2.3.2 examines the impact of land delivery and administration on such planning. Section 2.3.3 looks at political economy drivers in planning and housing development, and why investors might feel compelled to disregard laws and regulations. Section 2.3.4 highlights the effects of informality in governance, and how it can corrupt institutions and systems.

2.3.1 Planning for residential developments

Whittemore (2014) noted that planners and academics respond to events and ideas in the wider society. This has indeed been the case in planning practice over the years, with responses ranging from Lindblom's (1959) 'muddling through', to Schön's (1983) 'reflective planning'. Planning practices evolve because, as Kirchner (1967) noted, a solution to one problem raises other problems. For the purposes of this research, it is important to look at the role of planning and the constraints on it, especially with regard to residential developments. This is to give context to the investigations of this research by highlighting important aspects that planning for residential developments should pay heed to. This section therefore highlights some theoretical bases for planning practice, ranging from public health, and beautification, to political/power rationalities. It looks at some conceptualisations that have been used in the global North, such as social and economic planning, that have not been applicable to the global South. It also looks at the evolution of planning in sub-Saharan Africa, and the fundamental differences in planning realities between Global North cities, where the concepts originated, and cities of the Global South. The section juxtaposes planning as a social good versus planning as a necessary regulatory tool in securing sustainable economic development. It highlights conflicting interests in planning; the contestations between planning and politics, as well as between planning and a capitalist economy.

There are different conceptualisations of planning for residential developments. In Britain, for example, public health was a big driver for the creation of the modern planning system in the late 19th century (Taylor, 1998; Healey and Shaw, 2006; Hall, 2002). That kind of planning is viewed as social planning (Taylor, 1998). Planning to secure spatial justice in a redistributive sense, or to rebalance inequalities, for example in employment, could also be conceived of as social. This may well be the case in some

developed countries, but non-compliance with planning laws and regulations in residential settlements in sub-Saharan Africa, especially for the lower income groups, implies that such developments are shaped by forces outside of planning agendas.

Adam and Watkins (2008) argue that having a regulatory framework provides certainty, which is valued by some in terms of securing economic developments. This kind of planning could be conceived of as economic planning, which Taylor (1998) alludes to, which serves as a tool to secure economic growth. Such planning would also likely be concerned with securing economies of scale, for example with regard to infrastructure provision (Adam and Watkins, 2008). It is questionable as to how well this concept is applicable in sub-Saharan Africa, given that it often involves large amounts of capital outlay on the part of the state.

Planning has been viewed as physical or spatial when its primary concern has been the physical environment and land use, including buildings and roads (Taylor, 1998; Healey et al., 1988; Hall, 2002). It is such planning that took the 'master plan' or 'blueprint' approach, which visualised how a town or a region would look like at a future date, and used this to guide development (Taylor, 1998). According to Watson (2008), such master plans are spatial plans which project how an urban area should be when the plan is actualised, usually over a period of 20 years.

The British Town and Country Planning Act of 1947 was guided by the master plan approach (ibid.). This is the legislation that has been adopted to underpin land use planning in countries colonised by Britain,, and is still influencing planning systems in most sub-Saharan African cities today (Watson, 2008; Watson, 2009; Berrisford, 2011a). Such planning involves the formulation and implementation of spatial public policies which affect urban and regional development, zoning and land use practices (Taylor, 1998; Watson, 2009). Sandercock (2003) refers to planners as spatial police, who regulate not only land used but also the categories of people who might use that land. Watson (2009) highlighted that such planning was viewed by early urban modernists (for example Le Corbusier) as a spatial tool for managing spatially defined territories and populations, with its main

concerns being order, harmony, formality and symmetry, or general aesthetics. There are those who would disagree with Watson, pointing out the economic, social and political aspects of physical planning (Taylor, 1998; Hall, 2002; Healey and Shaw, 2006). Taylor (1998) for example, reckoned that physical planning can also be conceived of as social, since the idea is to control the environment to result in the improved wellbeing of the population. However, it has been noted that the main preoccupation of planning has indeed been the built and natural environment (Hebbert, 1992; Taylor, 1998). This research finds out whether this has indeed been the case with regards to planning in Nairobi.

There is acknowledgement that planning and politics are intertwined, and that planners need to participate effectively in political processes (Taylor, 1998; Forester, 1980). Taylor points out that land use planning involves state intervention in the property market, intervention determined by some political ideology. He sees this as a form of political planning, which allocates land uses according to prevailing interests of different groups. Forester (1982) argued that if planners ignore those in power then they are rendered powerless, and lack of power frustrates the achievement of planning objectives. He reckoned that political power or private economic power often influence planning initiatives. In the same vein, Adam and Watkins (2008) noted how various groups and interests can influence (to their advantage) planning policies and their implementation. Rydin, 2011, corroborates this, asserting that planning responds to political pressure over opportunities, losses and inequalities associated with urban change. She reasons that where there are expected monetary returns following urban change, pressures arise to promote it, or to advocate for developments in particular areas. This research explores the impact of political and economic forces on planning in Nairobi; to what extent have they shaped the built environment? Has planning shaped the spatial distribution of residential developments by private developers?

Pile, Brook and Mooney (1999) argue that 'disorderly' developments are the products of a capitalist economy and the normal operations of housing markets which mostly favour dominant groups. Such developments leave

expansive and intensified ecological footprints[11] (ibid.), a problem which, in an ideal scenario as created in Howard's and Corbusier's visions, would be solved by the orderly development of planned cities. This entails intervention in market processes, thereby controlling land uses according to a development plan (ibid.). For example, in 20th Century western cities (where the planning ideas for many commonwealth cities originated), land uses were separated, usually in hierarchical order in relation to accessibility to the city centre (Central Business Zone) so as to reduce impacts on each other (Healey, 2000).

The Vancouver Action Plan (1976) noted that governments can use zoning and planning as instruments in controlling land use by the population. Indeed, planning is the state's regulatory framework, which is directed towards influencing the spatial outcomes of urban development. Healey et al. (1988) defined the planning system as a set of instruments and institutional arrangements that form a framework for land-use management. In the Global North, such systems have evolved in the context of changing social needs, political and economic regimes and environmental agendas. They have acquired references such as comprehensive planning, integrated planning, communicative (or collaborative) planning, among others (Healey et al., 1988; Adam and Watkins, 2008; Rydin, 2011). However, Pethe et al. (2014) have pointed out that, whilst planning systems in developed cities have evolved beyond land use planning and zoning, many cities in the Global South still retain a master plan system. Whilst conflict between planning and the market has resulted in planning reform in developed cities (Healey, 1992), the same cannot be said for cities in the Global South, where master plans effectively freeze legal land use for a period, even when the proposals are incompatible with economic realities (Pathe et al., 2014). Watson (2008) pointed out that those approaches have not been appropriate for cities of the Global South, and advocated a review of planning approaches for those cities (ibid.). This research looks at whether planners in Nairobi have adapted their approach to planning, and what considerations have influenced any policy reviews.

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[11] *It is worth noting that high-end developments could have higher ecological footprints than poorer developments*

Arguably, without appropriate planning, implementation of planning laws and good practices, urban development cannot be sustained due to ensuing environmental issues (Tibaijuka, 2007). Moreover, unplanned developments create other social and economic burdens, such as disease, crime, health and safety concerns, and socio-political upheavals (O'Sullivan, 2003). Planning for residential developments should aim to control such environmental impacts in the interests of all. Sustainable Development, '…*development that improves the long-term health and human and ecological systems...*' (Brundtland Commission, 1987) entails planning which takes into account long-term human and ecological well-being, by having a longer-term perspective. Planners therefore need to be concerned about the long term consequences of present actions (Wheeler, 2004). For planning and environmental policies to be fair, they should also consider the equitable distribution of environmental 'goods', and equitable reactive responses to environmental 'bads' (Agyeman and Evans, 2004). To this end, planners can guide developers using design guidelines (including zoning frameworks) and building codes that set appropriate standards in meeting human and ecological needs (ibid.). Such planning would balance conflicting objectives in the economic, social, political and environmental arenas (Healey and Shaw, 2006). However, it has been argued that plans are never neutral tools for spatial ordering, in that there are usually power imbalances, and the poor are usually at the losing end (Bridge and Watson, 2002). This research explores the effectiveness of the planning framework in Nairobi in guiding residential developments for the middle income group.

Roy (2005) points out that the state has the power to determine what is informal and what is not, power which is reproduced through …*'the capacity to construct and reconstruct categories of legitimacy and illegitimacy…*' (p. 149). This suggests that normative positions within the planning regulatory framework reflect and create power for state agents. This is resonant with planning systems that originated from the west, which gave central and local government powers of direction and implementation of land use and development policies. However, Andersen et al. (2015) have refuted Roy's (2005) assertion, arguing that non-state capacities and interests in urban development also influence land-use planning, when the state resources

needed to control rapid urban growth and the development activities of the private sector are limited. Like Andersen et al. (ibid.), Adam and Watkins (2008) noted how groups with different interests, amid political controversy, may influence the direction and implementation of planning policy to their advantage. They acknowledged the importance of bargaining and negotiation in the planning process, and suggest that the role of the state should be restricted to guiding and facilitating rather than controlling. This suggestion affirms advice by The Vancouver Action Plan (UN-Habitat, 1976), that planning activities should promote and guide development rather than restrict or simply control it. It is of interest to this research to find out how different interests in Nairobi have shaped policies and development reality on the ground.

When and if the state has 'the power' to control development driven by the private sector, Friedmann (2008) argues that planners are faced with the dilemma of which variables to consider and which ones to ignore, suggesting that, more often than not, there is bias against demographic dynamics and economic performance (variables which are constantly changing and which planners cannot forecast). Since they do not have control over such variables, planners tend to project images onto two-dimensional maps, ignoring demographic dynamics and economic performance since they do not have ready data, thus they are planning without facts (ibid.). Pethe et al. (2014) have echoed this notion, pointing out that planning, in all its forms, cannot be complete because it is impossible to predict the future population, economy and requirements of a city. This is an interesting observation, and this research looks at how planning in Nairobi has evolved in the context of population and economic changes.

This section has established that the territorial dimension of planning includes demarcation of administrative boundaries to determine land use, development and provision of services (Healey et al., 1988; Taylor, 1998; Hall, 2002; Watson, 2009). It has also acknowledged that planning systems are influential in shaping social, economic and environmental dimensions (Healey and Shaw, 2006). Healey (1992) noted that in developed economies, planning reform takes into account market trends and thus planning responds to economic forces, overriding the fundamental friction

between planning and the market. However, planning in sub-Saharan Africa has been accused of focusing more on the physical and spatial development control aspects rather than on the social and economic needs of the population or the economy (Berrisford, 2011b). It is clear that the planning system is a core part of the state, which is given the formal authority to adjudicate over the use and development of land. It is also clear that it is not a neutral system, but one which embodies the values of those who originally designed it (colonial planners), and those who have subsequently amended it. In sub-Saharan Africa, suffice to say, the values and practices of this system might not be in tune with the needs of significant sections of the population. Research, therefore, needs to be sensitive to the potential divergence between planning law (which is likely to be partially or selectively deployed), and actual practices of land development, which may embody different values and practices. This research aims to find out whether non-complying developments for the middle income group are a manifestation of defiance against a planning system that ignores the needs of the majority population. As Berrisford (2011a) has also noted, although planning law is supposed to moderate and direct private interests in land development, in different African countries planning law represents the interests of the minority elite, a trend inherited from colonial days. This affluent society, whose political influence is more concerned with protecting the quality of the enclaves where the elite live, may not be concerned about environmental justice and could be indifferent to exploitation of the poor and the environment, while condemning non-compliance by the lower income groups (ibid). It is clear that the rest of the urban population, and their residential developers, have a different focus, as will become clear in the next section, which will review other research work done to explain informality in land development. This research is not about non-compliance by the lower income groups, but rather about non-compliance by developers who provide housing for the middle income group. It will be of interest to find out the motivation for such developers; are they concerned about housing provision for the lower (middle) income groups, or are their motivations solely a desire to enhance their wealth?

2.3.2 Informality in land delivery, administration and developments

Rapid urbanisation, such as experienced in sub-Saharan Africa, generates competition for secure and serviced land, and as Payne (1997) noted, such competition renders such land more valuable. As population in cities expands, so does the demand for land for development, in the cities and their peripheries. And as the demand for land rises, so does the price; Payne (ibid) noted how land prices in some developing cities are at par, or even higher, than prices of land in developed cities. This is relevant for this research because high land prices are likely to influence the actions (or non-actions) of developers as they look to maximise profit from their investments.

According to Payne (1997), private land ownership in developing countries is an imported concept, and mostly used in urban areas where it was introduced by colonial administrations. This may well have been the case, but regardless, pride in land ownership and registration of individual property rights seems to have overtaken concepts of communal land ownership in many states in sub-Saharan Africa (Gitau, 1996; Gatabaki-Kamau and Karirah-Gitau, 2004; Musyoka, 2006). As Payne (1997) correctly points out, private land ownership promotes the commodification of land for property markets, which normally ensure efficient use of land, for example, making it possible for rural land to be converted to urban land. Competition for urban land increases the need to put it into more intensive and effective use. Indeed, Musyoka (2006) has noted the preference of private ownership of land, which enables participation in a commercial land market.

Roy (2005) argues that informal urbanisation is a product of state regulatory logics, because the state has power to determine which forms of informality can be tolerated. Payne's (2001) research resonates with this; planning regulations are usually meant to curb incompatible land uses, as well as to prevent developments which are not in the public interest. He highlighted that where land registers are not accurate, irregularities occur in land transfers, with transfers outside the formal systems. For example, Payne (1997) noted that most land on the urban periphery in developing cities is not registered (because in pre-colonial eras this land was communal), thus making it difficult to determine the tenure status of owners. This ultimately

affects land administration. Integration of public land in the market through direct allocation also occurs, with irregular transfers by state agencies to private holders (ibid). As noted in the literature review, state agents in Kenya have power to allocate land, and do not necessarily do so in an equitable way. This is bound to have an effect on the planning system, and this research looks to find the effects. Payne notes the difficulties faced by governments in controlling or regulating the land market, due to the high demand for urban land, as well as lack of commitment (to control or regulate) and low capacity to do so. Furthermore, sustained demand ensures a good return on investments, which in turn attracts more investments, including from those seeking to launder black market money. It is of interest to this research to find out which of these factors has impacted on land use management in Nairobi, and how this has contributed to non-compliance with building laws and regulations.

Informality in housing development occurs not only when actual developments do not conform to legal requirements, but also when the developments are on land for which subdivision(s) have not been approved, or on land that does not belong to the developers (Gitau, 1996; Gatabaki-Kamau and Karirah-Gitau, 2004). Payne (1996) highlighted the fact that the degree of informality varies widely, ranging from informalities in land delivery to non-conformity with building standards, norms, regulations and procedures. He noted that illegal subdivisions for commercial purposes create a different kind of tenure, which generates more irregularities in the actual developments. Gatabaki-Kamau and Karirah-Gitau (2004) have echoed this, finding that informality kicks in when developments are on land that does not meet subdivision requirements, or when the actual developments have not been approved by the relevant authorities (ibid). Payne (2001) goes further to assert that illegal subdivisions have become the most common form of tenure in many developing cities, serving the demands of both low and middle income groups. Illegal subdivisions avail land at more affordable prices to lower income groups, who then bypass unrealistic formal planning requirements and bureaucratic procedures, assisted by specialist development agents (Payne, 1997). Given such a scenario, it is no wonder then that there are extensive 'informalities' in

developments on such land, if and when planning systems do not legitimise such tenure. Such developments came about as a result of commercial transactions.

Musyoka (2006) asserts that the laws on land tenure (and) subdivision, and commercialisation of land, have contributed to shortage of land in most urban areas. This is more so for lower income groups. Faced with unaffordable land, community groups sometimes come together and pool their resources to buy land. As seen the literature review, in Kenya, such groups were initially land buying companies or cooperatives (formed of neighbourhood groups or affinity groups), based on self-help and cooperative principles from pre-colonial societies. Such groups are ongoing in Kenya. Freehold land purchased communally is then subdivided informally into proportionate shares according to individual investments, and individual owners are issued with share certificates. The subdivisions are informal in that they do not comply with legislation (or regulations) relating to land transfer, registration and subdivision (Musyoka, 2006). However, share certificates are recognised as proof of ownership in the property market (willing buyer, willing seller), and subdivisions often change hands from their original owners (ibid). By default, developments on illegal subdivisions are also considered illegal. Illegal commercial subdivisions result in illegal commercial developments, which may have permanent structures, but lack building permits (Payne, 1997). Payne noted that seasoned entrepreneurs know where they can get away with such developments (with impunity from public sector officials), and are quick to expand their investments in such areas. Their success sets a trend. This could explain the avalanche of non-complying developments in certain areas.

According to the World Bank (1993), high building standards, large plot sizes, oversized roads and complicated procedures for securing land titles contribute to inefficiency in urban land use management. This is echoed by Payne (2001), who asserted that the imposition of high standards with regard to, for example, floor ratio and plot setbacks means lower densities and higher costs for developers, which ultimately impact on the urban poor. Payne (2001) noted that local perceptions may not be at par with laws and regulations, and that realities on the ground suggest that people may be

willing to accept higher density developments, mixed land uses, and less space for roads. If official standards are considered to be too high, people are excluded from the legal housing market, and are driven to substandard developments (ibid). Also, Payne (1997) notes that unrealistic requirements and bureaucratic procedures create fertile ground for corruption, making informality in land an extra-legal domain. In a study in Uganda, Goodfellow (2013) found that those in charge of land use management were abusing their power, authorising unsustainable land uses, for example developments on wetlands or sewerage lines, for self-serving interests. This research reveals whether high standards have been a deterrent to developers in Nairobi, or whether they have found ways to negotiate with the expected standards.

This section has highlighted that rapid urbanisation and commodification of land in urban areas has resulted in informalities in urban land supply. Debate within the literature has focused on irregularities in land allocations and subdivisions, as well as in developments thereon. There are arguments that state difficulties in controlling the land market are to blame for informalities (Roy, 2005; Roy, 2009; Payne, 2001). There are also arguments that unrealistic requirements and high standards in developments are the deterrent to compliance with planning laws and regulations (World Bank, 1993; Payne, 2001; Musyoka, 2006). Such arguments imply differing perceptions between the law-givers who set requirements and enforce the standards, and the receivers who should respect the given requirements and standards; between planners and developers. However, if, as Roy (2005) articulated, the state can determine what forms of informality to tolerate, then informality arising from non-compliance with laws and regulations by developers portrays permissiveness on the part of the state. If, on the other hand, there is no leniency on the part of the state, it implies that developers have ways of negotiating with the system to bypass planning requirements. The argument that irregularities in subdivisions and allocations make urban land more affordable for lower income groups (Payne, 1997; Musyoka, 2006) is not supported by the reality of high cost multi-storied developments for middle income groups, which suggests that capital for investment is not a concern to some of the developers. What, then, compels developers to

negotiate with the planning system? This research aims to delve into perceptions of state agents as well as those of developers in order to gain insight into the phenomenon of non-compliance.

2.3.3 Political economy drivers in planning and housing developments; the rise of informality

This section reviews how political economy principles impact on housing development, with a view to understanding how market forces influence the operations of planning systems in Sub-Saharan Africa. It highlights how planners are mandated to steer development trends. It notes 'negative' powers of planners, as opposed to 'positive' powers, and how this limits their role in controlling urban growth. It also notes that planners can use government policies on land management to influence the direction of developments. Regarding developers, the section highlights how market forces drive developers towards meeting housing demand, motivated by a search for profit.

Pickvance (1977), a renowned scholar on the political economic context of the market in which planning operates, argued that planning powers are limited, and that market forces largely determine urban development – that planning does not necessarily make any significant difference to the pattern of land development than would otherwise have materialised under the free market. He argued that planning authorities generally have no 'positive' powers to ensure that any planned developments take place, that they only have 'negative' powers to prevent development. Campbell and Fainstein (1996) argue that limitations in the effectiveness of planning could be due to the fact that planners do not have the resources to deliver developments; rather they have to rely on either political goodwill from leaders, who have various agendas that often rank higher than planning interests, or private capital, which is driven by the search for private economic gain. It could also be argued that, even when the state takes on a housing development role, the scope of developments is usually limited in comparison to provision by the private sector. In such a scenario, planning might come up with plans, but private developers, who are guided by supply and demand and their own interests, would not necessarily share the planning vision.

Taylor (1998) acknowledged that planning authorities have the power to make a plan with land use allocations that would not otherwise have materialised in free market conditions, but like Pickvance, he was of the opinion that such a plan could be useless because developers would only follow it if it served their interests. In anticipation of this, local authority plans ended up mirroring what developers found acceptable (ibid.). Similarly, Rydin (2011) reckoned that in some cases plan making is a process of catching up with developments that have already taken place. Although Taylor's and Rydin's observations were based on Britain, similar conclusions could well be drawn in sub-Saharan Africa, where the role of planning in development control is questionable given the extent of uncontrolled areas in the cities.

There are arguments for state intervention to influence the direction of developments. One way is by undertaking developments itself, but even in developed countries, this is usually limited due to inadequate resources (Taylor, 1998; Adam and Watkins, 2008; Rydin, 2011). The situation is far more challenging in the Global South (Mwangi, 1997; Watson, 2009; Pethe et al., 2014, among others). The state can also direct developments by provision of infrastructure, such as roads, sewage lines and water supply (Taylor, 1998). These again require resources, but suffice to say, Global South cities are less well equipped than Northern ones. State intervention could also involve financial incentives to developers, as has happened in some cases in developed cities (Adam and Watkins, 2008; Rydin, 2011).

Government policies on land management have also been known to influence developments. For example, by controlling the amount of land converted from rural to urban land (Taylor (1998) referred to this as '*urban containment*'), the outward spread of urban areas to surrounding areas is contained. Such 'urban containment', when demand for land for building is high, means that the cost of available land and property increased (ibid.). In such a scenario, state land policies fuel inflationary land prices (ibid.). However, that could be considered as a desirable cost of planning in that, by restricting urban spread, planning could be protecting rural land in the interests of all, such as for environmental reservation and agricultural production. Indeed, there are conflicting views among academics,

researcher and developers regarding the necessity of regulation. Radicals have argued against planning regulations, saying that not only do regulations slow down development (especially when the regulations are unrealistic and restrictive), but they also add to the costs; some advocate for market forces to be left alone to influence developments, whilst others reckon that unwritten social norms would regulate building practices anyway (Schilderman, 2002; Rydin, 2014). However, such arguments have been discredited by evidence to the contrary; market forces have obviously failed to regulate building practices; spreading informality in settlements and widespread infrastructure problems are a testament to this (Kironde, 1992b; Arimah and Adeagbo, 2000; Nwaka, 2005; Tibaijuka, 2007; Onyango and Olima, 2008; among others). Even in western cities, planning has been faulted for restricting housing development and pushing up housing prices (Cheshire et al., 2012). However, there are those who advocate for regulations, arguing that uncontrolled developments would pose risks to health and safety (Schilderman, 1992). Even in the western context, there are those who regard planning as a process that helps to create the kinds of places where people want to live, work, relax and invest, in other words 'shaping places' socially and environmentally (Adams and Watkins, 2008).

Harvey (1982) showed how the production of the built environment is intertwined with production and consumption processes, and the 'circuits of capital' which interlink them. He argued that commodification of the built environment paves the way for the circulation of capital between landowners, developers, builders, financial institutions and the state. However, when capitalists buy and develop the land using their own money, landscapes emerge fashioned to the dictates of the market in which they are operating, and undermine the role of the state in spatial ordering (ibid.). Other than market forces, Campbell and Fainstein (1996) pointed out that planners, unlike most other professions, do not have a monopoly on power over their area of work – their visions compete with interests of developers, residents and other influential groups of people. This notion is backed up by Taylor (1998), who asserted that planning is always situated within a political economic context, which shapes and constrains its effectiveness.

So what are the driving forces for developers? Becker (1978) inferred that human actors tend to engage in maximising behaviour, whatever the commodity. With regards to landed property, Guy and Hanneberry (2008) affirm Becker, arguing that capitalism requires buildings to be produced profitably, and operations towards this are determined by how people interpret their positions within a given social system. Healey (1991) asserts that the process of private property development is a passive reflection of the demands of industry, commerce, and households for accommodation. Healey (1992) points out that property investment is opportunity driven, and developers look for returns which reflect perceived risk-reward profiles. Adam and Watkins (2014) concur; they point out that developer behaviour is governed by market conditions, current and expected. However, property investment calls for high levels of capital investment, from which substantial returns are realised in the long term (Healey, 1992). Berry et al. (1993), echo this, pointing out that real estate assets realise high rates of returns on invested capital, providing value appreciation and protection against inflation. It is therefore not surprising that many developers emerge in periods of boom, when speculation in landed property seems more certain. Investments in property are not limited to local developers; Healey (1991) aptly observes, 'globalization of real estate' has led to international investment. In sub-Saharan Africa the effects of international influence are evidenced in emerging visions for developments which, as noted by Watson (2013), mirror those in developed cities like Dubai, Singapore and Shanghai. Such visions are likely to be realised, if at all, only through investments by property developers from developed cities which have now reached saturation point in terms of urban land and development (ibid.).

However, developers' reaction to market forces is not without criticism. Pure unadulterated greed (and sometimes ego) has been blamed for developers' actions, with developers being labelled as predatory, profit driven and ruthless in their pursuits (McDonald & Sheridan, 2009). McDonald and Sheridan revealed how in Ireland some developers bribed and convinced councillors to rezone land that was never meant for development (ibid.). Rydin, 2014, corroborates this, pointing out that developers are guided by effective demand, not need, and usually seek land at the right place and the

right price to maximise their profits. Such self-interest means that there is disregard for social justice and equity, with the 'haves' having unfair advantage and control over the 'have nots'. It will become evident in later chapters of this research that such practices are common in sub-Saharan Africa.

Healey (1998) has noted widespread negative views among politicians and other public officials, who reason that since developers generate a lot of profit from their investments in real estate, they should contribute some of those profits to help counteract the adverse effects of their developments, for example towards provision of infrastructure and community facilities. In reference to practices in Britain, Crook and Monk (2011) have defined this as planning gain, whereby planning policies enable planning authorities to negotiate with private developers who are seeking building approval for provision of physical and social infrastructure connected to their developments. This research will reveal whether there is provision in the Kenyan planning system for capturing planning gain, or whether developers escape the net, to the detriment of neighbourhoods and residents.

This section has looked at the constraints on planners operating within a market economy. The literature has indicated that planners have *de jure* dominance over land and resources, with powers to implement ordered space in given jurisdictions. However, plans do not necessarily precede *de facto* land use. Planning powers have therefore been perceived as 'negative' in that they seek to prevent development. The role of planners seems limited to implementing a predefined '*rational planning order*', setting and trying to enact a vision, devoid of recognition of the *'realpolitik'* of the political economy (Andersen et al., 2015:347). In a capitalist setting, where developers' investments are shaped by market forces, their realities and rationalities (and those of the population being provided for), and those of planning, are often mutually exclusive. Resourceful developers might not be willling to accept guidance in their quest for profitable investment, and yet planning does not always have 'positive' powers to ensure development. It is clear that, whatever their motivations, private property developers play an important role in shaping urban growth. This research explores the powers of and constraints on planners and developers in shaping the built environment in Nairobi. It looks at whether, on the one hand, planners are

reasonable and effective in their guidance, and on the other hand, whether developers are receptive of planning guidance.

2.3.4 Corruption in governance

'If a country has laws and institutions, but these do not adequately constrain the state … corruption is likely to be pervasive since state custodians are not fully constrained by existing laws and hence, can easily abuse their public positions for private gain' (Mbaku, 2010:71)

A widespread system of informality is known to exist in African societies, and corruption is among the most rampant informal practices. It is embedded in daily governance, and routine administrative practices foster and accommodate the practice (Blundo and Olivier de Sardan, 2006). This section looks at corruption in the context of urban development and planning. It also examines explanations for the nature of corruption and its prevalence, explores why corruption happens, and discusses why efforts to eradicate it are met with resistance.

There is general consensus that corruption is the abuse of public power for private benefit; a practice that hinges on practices by people attempting to subvert or undermine existing rules in order to generate extra-legal income (Nye, 1967; Khan 1996; Friedrich, 2002; Bayart, 2009; Mbaku, 2010; Transparency International, 2015; among others). Nye defines corruption as '*behaviour that deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains'* (Nye 1967:416). Similarly, Khan (1996) defines it as *'...behaviour that deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power, or status'* (p.12). Both these definitions use the term '*behaviour that deviates'* in their definition, which poses a problem when and where corruption tends to be the norm rather than the exception. The literature for this research has revealed that corruption is rather common in African states, and can therefore not been seen as '*behaviour that deviates*'. For this research, Friedrich's (2002) definition of corruption makes most sense; *'…corruption may therefore be said to exist whenever a power holder who is charged with doing certain*

things, that is a responsible functionary or office holder, is by monetary or other rewards…. induced to take actions which favour whoever provides the reward and thereby damage the group or organisation to which the functionary belongs, specifically the government' (p.15). This is echoed by Transparency International (2015) in their definition *'…the abuse of entrusted power for private gain. It can be classified as grand, petty and political…'.* This definition encompasses anyone entrusted with power, from those in high offices, to low level officials. It covers widespread and systematic corruption, which has become a basic mode of operation in some states. This definition is especially apt for this research project, because as Chabal and Daloz (1999) have noted, '…*corruption is not just endemic but an integral part of the social fabric of life in the African continent'* (p.99). This is echoed by other scholars, who concur that everyday corruption or petty corruption is part of the social landscape in Africa, indispensable for survival in post-colonial economies (Olivier de Sardan,1999; Bayart,2009). Mbaku (2010) has noted that corruption is the biggest constraint to Africa's development efforts. Suffice to say, corruption in urban growth management systems impacts on the effectiveness of the systems in promoting and steering private developers. This research looks to explore and understand the nature and extent of the impact of corruption on non-compliance with building laws and regulations.

Types of corruption

Blundo and Olivier de Sardan (2006) have coined the term *'complex of corruption'* for '*all practices involving the use of public office that are improper – in other words, illegal and/or illegitimate from the perspective of the regulations in force or from that of users – and give rise to undue personal gain'* (p. 6). Such corruption includes practices such as nepotism, abuse of power, misappropriation, and influence-peddling, among others. This is echoed by Mbaku (2010), who identifies corruption as theft of public resources by civil servants, misuse of office for extra-legal income or other benefits, selective enforcement of government regulations in order to benefit the regulator (including exemptions from compliance with certain laws and regulations), illegal taxation for economic activity, and nepotism in the distribution of public goods/services and employment in government

agencies. These recognitions sit well with this research in exploring the reasons for non-compliance with planning laws and regulations; are developers exempt from compliance? Is there selective enforcement? Are planners abusing their power for personal gain? According to Blundo and Olivier de Sardan (2006), amongst the basic forms of corruption is the payment of unwarranted fees for public services, where users of a public service are forced to pay for an otherwise free service or over and above the official fee to officials ('overbilling'). Alam (1989) noted that state regulators may exempt entrepreneurs from compliance with laws and regulations so as to reduce their costs, in exchange for proportionate monetary rewards. Moonlighting is another form of corruption, whereby public officials carry out private consultancy work whilst employed in the public service (Blundo and Olivier de Sardan, 2006). Indeed, Gatabaki-Kamau and Karirah-Gitau (2004) found moonlighting activities among government surveyors in Nairobi. In an urban planning system, either type of corruption is harmful in that the former undermines and delegitimises the system in the eyes of developers, whilst the latter is often outright theft and misappropriation of state resources.

According to Blundo and Olivier de Sardan (2006), impunity, another form of corruption, mostly arises from clientelism. This is echoed by Olivier de Sardan (2008). Despite stigmatisation of corruption as an evil practice, impunity is enjoyed by those practicing it; there appear to be no sanctions for the guilty, or sustained campaigns against the practice. Impunity can defeat attempts at reform in that individuals being sanctioned are protected in a clientelist network, with sanction threats being met with either interventions or threats, from peers or more senior actors, because sanctioning one user could pose a threat to the whole corrupt system (Blundo and Olivier de Sardan, 2006). Goodfellow (2013) found that persistent political interference in Uganda impacted on the effectiveness of planning, with impunity extended to elite and popular groups who could give financial or electoral incentives to the politicians. It is not just impunity from politicians that renders planning ineffective; where there is mistrust between service users and state officials, users are compelled to develop relationships with officials who can then protect them from obstacles in formal procedures (Blundo and Olivier de Sardan, 2006). A user with a 'contact' in a department gets preferential and

personalised treatment, whereas anonymous users are easily excluded from public services. In systems where impunity prevails over sanctions, implementation of laws and regulations is ridiculed; isolated implementation of laws and regulation is seen as a penalty for failure to show allegiance, or refusal to pay up, or any other motivations that have little to do with just enforcement (ibid). Again this type of corruption could explain how developers get away with non-compliance with planning laws and regulations.

Mbaku (2010) noted how civil servants implicated in corrupt practices rarely lose their jobs – they are more likely to lose their jobs if they opt out of corrupt practices. Indeed, Blundo and Olivier de Sardan (2006) have noted that officials who would rather not engage in corruption or informal systems are usually powerless not to do so; staff who are reluctant to engage in corrupt behaviour are considered to be outside the norm. This is more so when corrupt behaviour comes from above i.e. people in more powerful positions (ibid). The practice raises the question of why laws and institutions do not conform to expectations, enabling public officials to collect bribes or 'rents' from the public. Bayley (1966) pointed out that bribery need not be in monetary form, but can have a non-pecuniary form, nevertheless still constituting an act of misusing authority for considerations of personal gain.

Just as there are rules in formal practices, there are multiple rules in informal practices. A study in Malawi revealed a 'parallel order', with a set of moral principles outside the official code of conduct in institutions (Anders, 2005). This is resonated by Mbaku (2010), who noted a parallel organisation within bureaucratic organisations, which values posts on their ability to generate extra-legal income. Negotiation, with regard to the money being paid, and also with regard to the rules to be applied or ignored, is part and parcel of corrupt transactions; the practice generates a language for the informal practices (Olivier de Sardan, 2008; Blundo and Olivier de Sardan, 2006). State officials and auxiliary administrative staff often function as a team in corrupt practices, creating a horizontal partnership: excluding colleagues from extra-legal transactions would put the corrupt officials at risk of being denounced by adversaries, disappointed colleagues, or envious and jealous people in their circles (Mbaku, 2010). Auxiliary staff are augmented by

administrative brokers or canvassers of clients, who help by accelerating procedures or by preventing imposition of sanctions (ibid). Brokers reassure users because they are confident in their knowledge of local professional culture and they remain in place even when there is turnover of officials (ibid). They contribute to the growth of the extra-legal practices by blurring the boundaries between the formal administrative practices and informal practices, and by making it difficult to expose extra-legal transactions between state officials and the public (ibid). Peiffer and Rose (2014), noted that corruption at the top (grand corruption) has hidden mechanisms operated by high officials, and is responsible for draining public resources by a 'state elite'. This research explores the interplay between planners and developers in Nairobi, and the nature of corruption in the planning system.

Why corruption happens

Mbaku (2010) argues that the imposition of laws and institutions inherited from European colonists have somehow contributed to corrupt practices in that citizens do not respect them as legitimate tools because they do not necessarily understand them, were not involved in their formulation, and they are not compatible with their belief systems. Also, if such laws are vague and unclear, they are easily manipulated by civil servants to enhance personal gain (ibid). This echoes Tyler (1990), who found that people did not comply with laws if they found them, or their enforcement, to be unfair. Compliance is further undermined if the government does not have the capacity to enforce the laws (Mbaku, 2010).

Mbaku (2010) sees corruption as post-constitutional opportunism, and places the public sector at the heart of corruption in African states. Practices may have elements of bureaucratic corruption, involving misuse of public office for personal gain, as well as political corruption, involving subversion of laws and institutions to advance political agendas (Mbaku, 2010). Bureaucratic or petty corruption can therefore be curbed by political goodwill and political ability to implement and enforce regulations, but when the systems are corrupt, the formal legal framework of the state is ineffective. Mbaku (2010) points out that it is not unusual for civil servants to dedicate more time towards generating extra-legal income, than on their regular employment.

This undermines the interests of the state, at times undermining the very regulations they should be enforcing. Often, bureaucratic and political corruption are interlinked, with those in political power having access to public office resources and misusing them to enrich themselves and their supporters (ibid).

Blundo and Olivier de Sardan (2006) have noted that the public service in Africa is 'oversized', whilst Diamond (1987) refers to it as the 'swollen state'. Both are referring to the excessive number of administrative personnel in some government departments. According to Blundo and Olivier de Sardan (2006), there was a rapid increase in administrative employees in the post-colonial period, and by the 1980s, some countries had as many as three times the number of employees as in the 1960s. According to Diamond (ibid), the 'swollen state' results in systematic political corruption, which ensures survival of this clientelistic system, as office holders can allocate goods and resources to their 'clients' for personal gain. Also, over employment of unproductive civil servants has somewhat contributed to corrupt practices, as lowly paid employees seek to meet the gap between their needs and their official incomes from the state (Price, 1975).

Mbaku (2010) noted that government regulations generate high transaction costs, compelling entrepreneurs to avoid the formal requirements, or to pay bribes with a view to minimising their costs and maximising their profits. Olivier de Sardan (1999) asserts that, although corruption is sometimes due to ignorance of users, in some cases it is not due to ignorance, but rather calculated to exploit gaps and weakness in regulations. He points out that those practicing corruption auto-legitimise their behaviour by giving excuses, for example lengthy processes, loss of money, or even the fact that everybody else engages in corrupt practices.

Poor working conditions and low salaries have also been cited as the cause of corruption in the civil service (Price, 1975; Olivier de Sardan, 1999; Blundo and Olivier de Sardan, 2006; Bayart, 2009; among others). This compels civil servants to look for means of supplementing their income, to meet their needs, which are sometimes compounded by demands from extended families and expectations of social status (Price, 1975; Mbaku, 2010).

However, it has been noted that corruption is not necessary due to low earnings and that relatively wealthy civil servants and politicians in positions of power are among the most corrupt in some states (Mbaku, 2010).

Whilst corruption may be due to ignorance on the part of users, the same cannot be said of the state agents; good knowledge of the relevant information on the part of the officials facilitates manipulation of laws and regulations (Blundo and Olivier de Sardan, 2006). A study in three African countries revealed that the laws and regulations often leave scope for discretionary powers by state officials; if a fraudulent act is modest, for example, it is not unusual for state officials to turn a blind eye (ibid). There are clearly unequal power relationships between the users of public services and public officials, which are compounded by a lack of information available to users, as well as selective application of regulations (ibid). Blundo and Olivier de Sardan (2006) highlighted classification of government employment posts, by state officials, into 'lucrative' posts and 'dry' posts. 'Lucrative' posts give contact with users and provide access to many profitable transactions, and therefore rapid accumulation of wealth. Staff compete for such posts. 'Dry' posts, on the other hand, have fewer opportunities for earning extra-legal income; officials in such posts are easily overlooked by the hierarchy, and such posts are seen to be a form of punishment (ibid).

State officials have the power to control the speed and duration of interaction with users, and this fact is easily exploited in corrupt negotiations. For example, state officials have been known to create bottlenecks and elongate queues, or hijack resources so that they can offer the users services informally, for extra-legal payments (Blundo and Olivier de Sardan, 2006). With regard to planning systems, such practices are likely to frustrate developers and compel them to disregard the formal processes. Such corruption compromises the integrity of civil servants and generates mistrust of public sector employees, who have been known to demand payments for regular services which should be provided free (ibid; Bayart, 2009). Mbaku (2010) resonates this, noting that corruption '*can force the masses to lose respect for and interest in the government and its institutions*' (p 108). Elimination of contact with the public, for example by computerising some

routine activities like issuance of permits, therefore has potential to make public services more transparent. However, there are those who would rather maintain the status quo, because of personal benefits (Bayart, 2009; Mbaku, 2010).

In Nigeria, an anti-corruption programme found '*professionalism and efficiency in public service has been replaced by indiscipline, laziness, excessive arrogance by civil servants, nepotism, tribalism, absenteeism, and mediocrity*' (Mbaku, 2010). Indeed, incompetency and inefficiency in African states have been placed at the heart of corruption in these states (ibid). Mbaku (2010) argues that in order to ensure sustainable economic growth, it is important for the civil service to be responsive to the needs of entrepreneurs, who are critical for wealth creation and economic growth. This calls for recruitment of civil servants based on their competencies rather than corrupt practices (ibid).

Blundo and Olivier de Sardan (2006) have noted that civil servants are not sorely to blame for corruption, but the users of public service are equally to blame for corrupt relationships, with participants often transforming such relationships into social relationships of a 'clientelist' nature. Corruption results from a mutual agreement, benefiting both sides at the expense of a third party, usually the state. Mbaku (2010) has echoed this, asserting that if private citizens did not contribute to the culture of corruption in African countries, corruption would be limited to 'private corruption' (misuse of power for personal gain), but as it is, payments to civil servants by entrepreneurs are the highest source of extra-legal income for civil servants. Mbaku (2010) points out that efforts to eradicate bureaucratic corruption need to address both the sides of the bribe giver and the bribe taker. This calls for enforcement and prosecution, as well as prevention and education.

Fighting corruption

Social science scholars have highlighted how institutional arrangements in African states are ineffective in constraining state custodians and politicians in their engagement with opportunistic behaviour, and in promoting entrepreneurship and wealth creation (Olivier de Sardan,1999; Bayart, 2009; Mbaku, 2010). Corruption especially thrives in government departments

which have been impacted by national financial crises, or which are suffering from institutional weaknesses; such departments have various dysfunctionalities (Olivier de Sardan, 1999; Blundo and Olivier de Sardan, 2006). In that context, interventions, for example by brokers or contacts, in favour of individuals become the norm, and in the process corruption becomes commodified (Olivier de Sardan, 1999). Indeed, Mbaku (2010) asserts that corruption is an outcome of a market which has structures and rules, determined by those participating in the market. Olivier de Sardan (1999) points out that the more the practice develops, the more it becomes part and parcel of social habits, creating a moral economy of corruption. The resulting corruption culture is difficult to retreat from. When leaders and others in powerful positions are equally entangled in corrupt practices, it becomes difficult to promote anti-corruption measures. Mbaku (2010), points out that corruption clean-up programmes can only be effective if they have the support of leaders (political goodwill), and institutional arrangements to constrain state custodians from corrupt practices; when civil servants and politicians adhere to laws and regulations and promote effective public policies, they increase state legitimacy. Effective institutions can promote good economic policies, and enhance the operation of markets for maximum economic growth (Mbaku, 2010; Hope and Chikulo, 2000). Only then can citizens be convinced to participate in a corruption clean-up. This research looks at what institutional reforms have been put in place to combat corruption in Nairobi.

In the face of conflicting interests, such as between planners and developers, the legal system, as Tyler (1998) noted, is heavily dependent on voluntary compliance with the laws; government actors have limited ability to compel people to obey the law, even when the authorities have the power to reward or punish. If the legal rules and decisions are easily ignored and do not influence the actions of those to whom they are directed, then the effective functions of the authorities are undermined (Tyler, 1990). Voluntary compliance calls for trust in the institutions, and between citizens and government actors. As Braithwaite and Levi (1998) noted, citizens are more likely to comply with legal dictates when they perceive the actions of the authorities to be fair and legitimate. Braithwaite (1998) argued that

awareness of and capacity to act in the interest of others, coupled with regularity and predictability of action, can enhance trust in institutional structures. Other scholars have echoed this, asserting that trust in institutional structures is essential, and that strong enforceable laws and trust reinforce each other towards good governance (Blackburn, 1998; Braithwaite and Levi, 1998). Braithwaite and Levi (1998) pointed out that quality of governance reflects the quality of laws, and trust can ease coordination among citizens and government actors, reduce transaction costs and compel compliance with the laws. Such trust involves faith in professionals implicated in the operations of the institutions; professionals of integrity, bound by a strong code of ethics which sets behavioural norms to guide them in exercising responsibility in their roles (Howe and Kaufman, 1979). Braithwaite and Levi (1998) point out that, once trust in the state has been destroyed, rebuilding it requires phenomenal efforts, requiring citizens' help to give them ownership of policies. Public choice theory advocates institutional reforms that embrace participatory approaches (approaches that are people-driven, bottom-up and inclusive) – this would result in governance structures that promote wealth creation and minimise opportunist behaviours, such as corruption. According to Transparency International (2000), this entails rooting out of entrenched groups who would rather retain the status quo, realistic and achievable goals, coordinated and comprehensive reforms, establishment of institutional mechanisms that can outlive the leaders of the reforms, and inclusion of civil society and the private sector in the reform process. It also calls for corruption to be 'high risk' and 'low profit', with high risk of detection and appropriate penalties. Also, no one should be above the law or 'untouchable', otherwise reforms lose legitimacy. This research explores the element of trust between planners and developers in Nairobi.

This section has indicated that corruption in governance is an informal collaboration between state agents and the public, which undermines the functionality of government systems. It has indicated that corruption is a complex informal system lurking under the formal system, a mode of governance that works according to its own moral compasses and ethical codes. There are allegations in the literature that imposition of inherited laws and institutions promotes corruption (Tyler, 1990; Mbaku, 2010). This is

further aggravated by political influence, that not only advances a 'swollen' or 'oversized' state, but also fosters impunity under clientelism practices, alluded to by Blundo and Olivier de Sardan (2006). However, it is also acknowledged that corrupt transactions are by mutual agreement by the givers and the takers, an outcome of a market with informally developed structures (Anders, 2005; Blundo and Olivier de Sardan, 2006; Olivier de Sardan, 2008; Mbaku, 2010). The literature conceptualises informality as a mode of governance which permeates all government institutions, and which pervades most transactions within those institutions. With such a concept in mind, this research considers whether non-compliance with planning laws and regulations can be understood not as the individual acts of those 'short-circuiting' planning regulation, but rather as a systemic effect of governance practices that deliberately produce 'grey areas', within which there are possibilities for future developments of uncertain legal status. It therefore investigates the characteristics of the relationships between planners and developers; their interactions and their perceptions of issues, which lead to non-compliance with planning laws and regulations.

2.4 Conclusion

'Human settlements shall be planned, developed and improved in a manner that takes full account of sustainable development principles [….] Sustainable human settlements development ensures economic development, employment opportunities, social progress, in harmony with the environment.' Habitat Agenda (UN-Habitat,1996. Chapter II:29)

The expectation of the Habitat Agenda quoted is a tall order, especially for sub-Saharan Africa, given the magnitude of the problems in its cities, and the perverse impacts of planning. As seen in this chapter, planning for sub-Saharan Africa, which was adopted from the Global North, has been mainly spatially oriented, concerned with the orderliness of the physical environment in cities (Watson, 2008; Watson, 2009; Berrisford, 2011a). It has also been influenced by political and other vested interests (Schilderman, 2002). These influences, coupled with limited resources and poor administrative systems, have greatly undermined the role of planning in those cities (Rakodi, 2001; Schilderman, 2002; Anyamba, 2011). It also became

apparent that, although planning and planning systems in the Global North have evolved in the context of changing social, economic, political and environmental arenas, the same cannot be said about the Global South. Such systems were developed in different contexts in the Global North, and have thus failed to address the problems of a developing City like Nairobi, where there is a split between formal and informal settlements (Onyango and Olima, 2008; Watson,2009; Anyamba, 2011, etc) and the *de facto* standards of most developments are contrary to the *de jure* standards of planners' normative views.

There is general consensus that planning systems in sub-Saharan Africa need to be reviewed (Kironde 1992a; Nwaka, 2005; UN-Habitat, 2009; Watson, 2009; Berrisford, 2011a). The relevance of the laws and regulations has been questioned, with terms such as 'wasteful zoning' (Nwaka, 2005) being used to analyse them. To put this in Berrisford's words, '*the underlying approaches towards planning and understandings of planning law themselves need to change before the laws can be revised*' - new planning laws in themselves will not be effective unless they reflect appropriate planning visions and objectives in the context of needs (Berrisford 2011b: 237). Whilst the role of planning might have evolved in the countries of origin to take into account other factors like economic growth, or spatial justice to balance other inequalities, planning systems in sub-Saharan Africa are still caught up in the inherited spatial planning systems. These systems (and their effects) are investigated in Nairobi by this research.

To give theoretical context to why there is non-compliance with planning laws and regulations by developers for the middle income group, the chapter has noted different conceptualisations of planning, and how they may (or may not) be influential in planning in sub-Saharan Africa. Such concepts include social planning, economic planning, physical or spatial planning. It was noted that planning in most sub-Saharan Africa has been based on the British Town and Country Planning Act of 1947, which is fundamentally spatial, using zoning tools to control land use. However, freezing land use in the master planning approach makes the plans incompatible with realities on the ground. It was also noted that informalities in land delivery, administration and developments have an impact on the effectiveness of

land use control. Commodification of land (Payne1997) creates a competitive market, in which efforts to maximise profitability lead to informal practices in subdivisions and developments. The impact of politics on planning was also highlighted, and how conflicting interests can exert pressure to influence planning policies and systems. This chapter has also reviewed some political economy drivers in planning and housing development, highlighting the contestations that arise when, in the face of 'negative' powers of the state, private capital rises to meet the demands of the market in housing provision. It was established that private developers are interested in maximising their returns (Harvey, 1982; Healey et al., 1988; Adams and Watkins, 2014). In doing this, they are not averse to undermining the state in its planning role (Harvey, 1982). It does not help matters that state agents (planners) are easily compromised by their pursuit of extra-legal gains (Blundo and Olivier de Sardan, 2006; Bayart, 2009; Mbaku, 2010). Informal collaboration between state agents and citizens breeds mistrust between them, and undermines the formal functions of state institutions and agencies. Ultimately, corruption in governance renders the functions of the state ineffective (Tyler, 1990 and 1998).

It is apparent that non-compliance with planning regulations is costly to various actors; for example, there are costs to the general population due to environmental degradation and costs to developers in terms of bribes to corrupt officials. Planning systems need to devise ways of expediting access to land and housing for the urban poor, so that they are not pressured to operate outside the laws and regulations. For the purposes of this research, the overarching question that remains is; 'how does the planning system *actually* operate, and what does this tell us about the mismatch between formal and informal practices?'

The World Urban Forum 7 (Un-Habitat, 2011) recommended adaptation of more meaningful spatial planning strategies, which involve stakeholders in formulation and implementation of policies that affect their lives, in recognition that effective settlements policies require joint-working between the government and the general populace. According to Berrisford (2011a), good planning regulations would be proportional and appropriate to the risks posed (at the same time identifying and minimising the costs of

enforcement). This might entail a review of existing laws and regulations to increase their relevance, as well as review of enforcement resources, including the supply of planners. In good planning there would also be accountability, consistency and transparency, which would minimise impunity, and ambiguity, ensuring that the laws are fair and clear to all (ibid.). Such planning would embrace '*the economic, the social, the environment',* being sensitive and imaginative in projecting future standards as well as in dealing with existing issues (ibid., p. 227). This echoes Healey (1992), who advocated for planning which is responsive to economic forces. In the same vein, guidelines by UN-Habitat (2015b) put emphasis on transparency, flexibility and provision for enforcement. Watson (2005) advocated for planning to work with informality and for this, planners will need to envisage cities as complex, heterogeneous and fluid. This, indeed, would seem like a desirable approach for the majority of the population in cities like Nairobi. There are criteria which can be used to judge a 'good' planning framework.. A good planning framework should, for example;

- Be proportional to the needs and risks posed (Berrisford, 2011a)
- Evolve in the context of changing economic forces (Healey, 1992)
- Understand the pressures and interests faced by relevant stakeholders (Berrisford, 2011a)
- Be enforceable, accountable and transparent (UN-Habitat, 2015b; Transparency International, 2000).
- Have appropriate partnerships involving all relevant stakeholders (UN-Habitat, 2015b; Transparency International, 2000)
- Work with informality (Watson, 2005)
- Foster trust in institutions, and between citizens and government actors (Blackburn, 1998; Braithwaite and Levi, 1998)

Such a system in sub-Saharan Africa would set appropriate planning and building standards, deliver effective land management, and avoid corruption

and poor governance. These are some of the parameters which are employed to guide this research in the quest for answers with regards to non-compliance. Against this framework, this research gauges whether the above recommendations have been taken forward in Nairobi. The purpose of this research is to ask why the above criteria may not be met in practice. Chapter 4 evaluates the evolution of the Nairobi master plan and relevant legislation, and their operations to date (why they have not been effective thus far). It also considers planned reviews of the same, and the hopes being pinned on the reviews. Chapter 5 covers the institutions involved in planning, the processes of implementation and enforcement, staffing structure and capacity, and land registration and regularisation processes. The chapter answers the question; 'Do planners have structures to implement the laws and regulations and monitor adherence to them?' Chapter 6 explores problems in the actual application of the planning system, from the perspective of both planners and developers. Chapter 7 expands on problems with governance of the planning system, whilst Chapter 8 looks at problems in practice in developments. The three chapters go towards answering the questions:

- What challenges do urban planners face in implementing planning laws and regulations, and monitoring practices in housing developments for the middle income group?
- What challenges do urban property developers face in adhering to the relevant laws and regulations in housing developments for the middle income group?
- What are the characteristics of the relationships between planners and developers, and why do they foster non-compliance?

Chapter 9 is the concluding chapter. It culminates in an argument that non-compliance with planning laws and regulations by developers for the middle income group does not necessarily result in inappropriate housing developments, and that planners would do well to support the efforts of these developers with a view to meeting housing demand by the middle income group.

It is clear that obtaining answers to the above questions requires interaction with both planners and developers. Chapter 3 sets out how this interaction was designed and cultivated to generate comprehensive data for the research.

Chapter 3: Methodology

'…Then you will know the truth, and the truth will set you free…' (The Bible, John 8:32)

3.1 Introduction

Chapter 2 revealed that there is a gap in the knowledge needed to discern why there is non-compliance with planning laws and regulations in sub-Saharan Africa. It has been acknowledged that inappropriate concepts have resulted in informality in developments (Okpala, 1987; Kironde, 1992b; Watson, 2009; Watson, 2011; Nguluma, 2003). These have left the relevant policies open to abuse by developers (Rakodi, 1995; Rakodi, 2001; UN-Habitat, 2003). The World Urban Forum 7 (Un-Habitat, 2011) recommended adaptation of spatial planning polices to suit reality on the ground. Similarly, Berrisford (2011) has highlighted the need to review approaches to planning in the context of housing needs. He has acknowledged that although *'…systems of planning law are necessary to provide a framework of rules to mediate and regulate competing pressures and interests…'* (Berrisford, 2011a: 211), it is important to understand what pressures and interests are faced by relevant stakeholders before any reviews or reforms of the planning laws and regulations are considered (ibid.). This research is an effort to understand those pressures and interests in Nairobi. It looks beneath the surface to explore what is lacking with regards to planning laws which affect housing developments for the middle income group, and why so far they have been driven to contravene by-laws and regulations.

3.2 Understanding interactions between planners and residential developers for the middle income group in Nairobi: an interpretive approach

Friedmann (2008) has argued that the amount and the type of 'knowledge' needed for planning is not yet known, and that planners' professional knowledge is based on very limited understanding of the urban complex, thus they tend to develop 'abstract' models of reality. Answers to the main question for this research (*why is there non-compliance with planning laws and regulations by developers for the middle income group?)* aim to provide new knowledge to contribute to more effective planning. The epistemological

position of this thesis is that meaningful data to 'construct' knowledge for planning can be generated by talking interactively with developers and planners, who are able to reflect on the challenges posed by the current planning system. The ontological position is that perceptions of the planning system by planners and developers partially shape the impact of the system on residential developments.

According to Kitchin and Tate (2000) *'...the researcher's job is to seek to understand the process of making the world meaningful as it is these processes by which we come to know, and behave in, places...'* (p. 12). The search for 'truth' in this case involves an exploration of everyday interactions between planners and developers. The research aims to uncover the perceptions of planners with regards to limitations and gaps within the present planning system, the obstacles they face in implementing and enforcing the planning laws and regulations, how they monitor implementation of the laws and regulations, and what changes to the planning system might be necessary. With regard to developers, the research delves into what developers' perceptions of the planning system are, whether non-compliance on their part is accidental or intentional, and how, in their view, the planning system could be improved.

The research adopts an interpretivist approach, which argues that reality cannot be objectively determined, and that there is greater opportunity to understand the perceptions people have by placing them in their social contexts (Kelliher, 2005). Interpretivism presumes a qualitative approach to gaining knowledge and information, which is believed to provide more in-depth contextual knowledge. The reason for using this approach is because qualitative research has been found to be useful for understanding issues in which processes and connections are important (Peattie, 1983). Knowledge in this research is contextual, situational and interactional, in that planners and developers relate their own experiences and interactions.

It has been argued that interpretive research cannot be generalised i.e. findings from such a research cannot be generally applied outside the specifics of the situation studied (Williams, 2000; Robson, 2002). However, Williams (2000) acknowledges that generalisation is inevitable even in

qualitative, interpretive research; he argues that interpretivists do generalise, although they will not admit it, instead using terms such as *'external validity', 'transferability'* or *'conformability'* (p. 210)*.* Fossey et al. (2002) have asserted that the applicability of findings to different settings depends on the contextual knowledge by people who want to apply the findings; it could thus be said that applicability of the findings of this research to other cities in sub-Saharan Africa would depend on the contextual knowledge of researchers in those countries.

This research looks to use the data collected to explain the behaviour of both planners and developers with regards to the application and implementation of planning regulations. Fossey et al. (2002) have asserted that research '...*should illuminate the subjective meanings of the phenomena, or social world, being studied, but which should also place the findings in context so as to represent the real world of those studied and in which their lived experiences are embedded...*' (p.730). The acquired data is used to link the research with previous research findings (thus maintaining continuity), and to establish new knowledge and explanatory concepts, stimulating further research in the process.

3.3 Use of qualitative methods in exploring interactions between urban planners and residential developers is Nairobi

3.3.1 Research Design

According to De Vaus et al. (2001), *the function of research design is to ensure that the evidence obtained enables us to answer the initial question as unambiguously as possible* (p.9*)*. Similarly, Kothari (2009) has noted how a good research design is not only appropriate, efficient and economical, but also that it yields maximum information. At the same time, such a design would give opportunity to consider different aspects of a problem. This entails having a clear picture of the research objectives. In its conclusion, Chapter 2 clarified the gaps in knowledge for effective planning and what questions need to be answered in order to plug those gaps. These are the questions being taken forward by this research. The objectives and related questions of this research are detailed in table 1.

Table 1: Research objectives and related questions (Author, 2013)

Research Objectives	Related Questions
1. To investigate the challenges met by planners in implementing and enforcing planning laws and regulations	• What are the perceived limitations of, and gaps within, the present planning laws and regulations as they relate to residential developments? • What obstacles do planners face in implementing and enforcing the planning laws and regulations? • Do planners have structures to implement the laws and regulations and monitor adherence to them? • Why are contraventions by housing developers for the middle income group tolerated by planners? • Is there evidence that planning regulators are flouting their own laws and regulations, and if so, in what circumstances and why?
2. To investigate the challenges met by developers	• What are developers' perceptions of the limitations and/or gaps in the present planning laws and regulations? • What obstacles do developers face in adhering to the planning regulations? • Is non-compliance deliberate or accidental? • Why do housing developers get away with non-compliance? • Do they actually get away with it or there are other costs?
3. To explore the characteristics of the relationships between planners and developers, and	• In what ways do developers interact with planners? • At what stage do planners and developers first come into contact with regards to any particular development? • What are the working relationships between developers and planners like?

examine why they foster non-compliance	• Are there issues of trust between planners and developers?

Having clarified the objectives, the research design guides the researcher in case study selection, sampling, methods of data collection, as well as ethical issues (De Vaus et al., 2001; Kitchin and Tate, 2000).

Section 3.3.2 is therefore about case study selection. O'Neill (2001) identified that stakeholders' interests can be brought into a process through representation (in case studies) by those with knowledge and expertise, and whose judgement can be accepted in representing others with shared 'epistemic values' (p.490). With regard to case studies, Williams (2000) has stressed that although case studies are chosen according to their relevance to the research, it is important to select representative examples *within* the case study on the basis of their appropriateness for the research. This research used an 'embedded design', in which relevant cases across different middle income areas in Nairobi were explored individually to build an overall picture. This was with a view to minimising concerns regarding validity, reliability and generalisation, which might arise in the case of a single study (Eisenhardt, 1989). The section rationalises why and how the case study area(s) were selected.

Section 3.3.3 is about sampling and details how participant samples of planners and developers were derived. The research took into account time and financial constraints, and went for quality of sample rather than quantity, carefully selecting purposeful informants who could give maximum and relevant information. Kothari (2009) advises that an optimum sample size is neither too small nor too large, and should fulfil requirements of efficiency, representativeness, reliability and flexibility. Kitchin and Tate (2000) have noted that it is possible for a smaller, well designed sample, to give adequate information. Baxter and Eyles (2004) have echoed this, arguing that a sample size can be determined by the need to involve as many experiences as are necessary without getting to saturation or redundancy of themes, and that credibility need not be threatened by low sample sizes. Bryman (2012) makes similar arguments, and also points out that the researcher cannot

know at the outset how many cases will be needed for data collection. Sampling for this research was therefore purposeful, aimed at revealing the full range of potentially important perceptions without imposing the hardships of endless data gathering.

Section 3.3.4 discusses the methods used for this research. Rowley (2002) has noted that case study research uses various sources of information, such as documents, interviews and observations, which are more than a researcher would get in a historical study or from an experiment, and analysis of the sub-units helps in achieving a holistic perspective. To meet the objectives of this research, a combination of methods was used for maximum data collection, including closed and open-ended questionnaires to developers, qualitative interviewing of planners and developers, examination of relevant documents in planning offices and site visits for observations. The section also elaborates on how the methods of data collection were applied on the ground, including problems encountered while using those methods. Table 2 expands on the research questions, information required, and the relevant sources of data towards meeting the research objectives.

Table 2: Mapping of research questions and information required (Author, 2014)

Main Research Question	Mid-level Research Questions	Sub-questions	Information required	Relevant interview/document
Why is there non-compliance with planning laws and regulations by developers of middle income group housing	What challenges do urban planners face in implementing planning laws and regulations?	What are the perceived limitations of, and gaps within, the present planning laws and regulations as they relate to residential developments? (*mostly for senior planners)*	Planners' perceptions of limitations and gaps What goes into formulation of planning laws and regulations? Shortcomings of the present planning system	Interviews with consultants at the University, Estate director at NSSF, Deputy Director Interview with Chief Admin Interviews with frontline planners and Assistant Directors Interview with County Minister Interview with Ex Planner Documents in planning offices
		Why hasn't the planning system been changed to improve the quantity and/or quality of housing for middle income groups?	Hindrances to review of the planning system	Interviews with frontline planners, private planners and consultants, Assistant Directors and Deputy Director, Chief Admin and County Minister
		Do planners have structures to monitor the implementation of and adherence to planning laws and regulations?	Processes of monitoring: what follows an admission for planning approval? Staffing capacity to deal with applications Governance issues: authority, administration processes, institutional networks	Interview with Chief Admin Interviews with front line planners and Assistant Directors Interviews with Architects Interviews with developers – re timeframes for approval Interviews with – re un approved

			developments
			Interviews with developers/developers' agents e.g. architects
			Interviews with frontline planners and assistant directors
			County Procedures for Approval
			County Zoning Ordinance
	In what circumstances are contraventions by housing developers tolerated?	Reasons for turning a blind eye	Interviews with Deputy Director and County Minister
			Interviews with planners and Assistant Directors
			Interviews with land registrars at Ardhi House
			The PPA, among other legislations
	Is there evidence that planners are flouting their own laws?	Reasons for turning a blind eye

Conflicting interests amongst planning professionals | Interviews with Assistant Director

Interview with frontline planners

Documents in planning offices |
| | | | |
| | What challenges do urban developers face in adhering to planning laws and regulations? | What are developers' perceptions of the limitations and/or gaps in the present planning laws and regulations? | Developers perceptions of limitations and gaps | Interviews with developers and developers' agents

Questionnaires to developers and their agents |
| | | What obstacles do developers face in adhering to the planning regulations? | Process for approval of applications: what follows an admission for planning | Interviews with private architects

Interviews with Deputy Director, |

		approval?	Assistant Directors and frontline planners
			Interviews with developers
		At what stage do planners and developers first come into contact with regards to any particular development?	
		In what ways do developers interact with planners during the development process?	
		Length of time for approval process in relation to expectations	Questionnaires to developers and their agents
	Is non-compliance deliberate or accidental?	Awareness of and familiarity with the planning application process	Interviews with developers, Assistant Directors and planners, consultants, land registrars
		Various forms of conflicting interests	
	Why do housing developers get away with non-compliance?	Level of engagement with planning regulators	Interviews with developers and developers' agents
		Application of due process by planning officials	Interviews with planners
	Do they actually get away with non-compliance or are there other costs?	Sanctions for unapproved developments	Interviews with Assistant Directors, developers and developers' agents Documents in planning offices
	What are the characteristics of the relationship between planners and developers,	Are there issues of trust between planners and developers?	What are the working relationships between developers and planners like?	Interviews with developers and their agents (architects, contractor)
		Corruption issues	Interviews with all planners and developers

	and why do they foster non-compliance?		Governance issues	Questionnaires

With a clear map of what information was needed and from what sources, Section 3.3.5 of this chapter gives the fieldwork schedule. It indicates when the data was collected, and how long it took to gather the data needed for the research.

Analysis of the acquired data is covered in section 3.4. Whilst experienced researchers might consider qualitative data analysis as an art which is mostly an inductive and open-ended process, Kitchin and Tate (2000) have warned that a structured series of steps in coding, analysis and interpretation of qualitative data might be most appropriate for beginner researchers, as it gives a clear set of guidelines for analysing data and helps to lend rigour to the research (ibid.). Finlay (2006) takes the same view, asserting that the use of explicit criteria in evaluation of data adds to the transparency of the research, and enables readers to understand the values and interests of the researcher. The section elaborates on the methods used to analyse data, and the challenges therein.

Section 3.5 looks at ethical issues that arose in the research. About ethical issues, Kitchin and Tate (2000) have advised how research on sensitive issues that might have broad social and ethical implications should be approached cautiously and sensitively. This research is investigating a sensitive topic (non-compliance) which could potentially have implications for participants. The section will show that potential problems were pre-empted by thoughtful insight in the course of the fieldwork. In conclusion, the chapter highlights the feat of gathering adequate data on such a sensitive topic.

3.3.2 Case study selection

Nairobi was chosen as a case study to represent the fast growing cities in sub-Saharan Africa which are struggling with non-compliance with planning laws and regulations, and informality in middle income settlements.

Since the majority of middle income group households, as will be revealed in Chapter 4.2, are in rental housing, this research defines the middle income group based on their spending power in rental housing. With regard to rental housing, this tenure is dictated by affordability, and affordability also determines neighbourhood conditions, including safety, infrastructure

provision and amenities. The Housing Survey 2012/13 indicated that Nairobi residents spent an average of 40.8% of their household income on house rents (KNBS, 2013). The monthly rent for a room in a slum area or other low density informal housing is about KSh1,500 to KSh2,000 ($17 to $23). Monthly rents in the apartment blocks under study range from about KSh3,500 ($40) for a room in a tenement (accommodation comprises rooms in a block, with communal bathrooms), to well over KSh 50,000 ($575) in a self-contained apartment in a respectable neighbourhood. Monthly rent in the more affluent locations in the city, for self-contained apartments as well as for low density accommodation, is well over KSh100,000 ($1,149).

The above rent levels imply that for a household to spend 40.8% of their income on KSh3, 500 rent for a room in a tenement, their total household expenditure would be about KSh 8,600 ($99). Even following the UN-Habitat rule for affordable housing costing 20% to 30% of a household's expenditure (UN-Habitat, 2011), it would mean that the middle income band would start at about KSh 12,000 ($138), and would be less restricted than the 24% of the population given by KNBS based on 2005 statistics. This research will therefore define the middle income group as the segment of population with incomes above KSh8, 600 and able to afford monthly rents of KSh3,500 and above. The top end of this scale would be those earning about KSh300, 000, able to afford rents of up to 30% of their income in the more affluent areas. The lower end of the middle-income group live in poorer neighbourhoods, with inadequate infrastructure and amenities, whilst the upper end is in better locations. This is the segment of population that ensures that a developer who puts up apartments in certain areas has a captive market for his units – it explains the many new apartment blocks and housing developments that are being built in and around the city, ranging from blocks with shared facilities to blocks with self-contained units.

For the middle income group in Nairobi, there are two main types of rental accommodation; high rise apartment blocks with self-contained units, and apartment blocks with shared facilities (toilets and bathrooms), otherwise referred to as tenements. Indeed, the Kenyan Minister for Lands, Housing and Urban Development (while releasing the National Housing Survey

2012/2013), asserted that more than 75 per cent of the buildings under construction in urban areas are high-rise flats for rent, which is indicative of demand (Business Daily, 5th May 2015). The research wanted to sample developers across the two types of rental developments because there are non-compliance issues in both types of developments.

Nairobi is divided into 8 divisions (see Map1), which are then subdivided into locations. Developments for the low and middle income groups are predominantly towards the east of the city, otherwise known as Eastlands, and also along Thika Road. In Eastlands, such developments are found in Embakasi Division, including Kariobangi South, Dandora, Kayole, Umoja and Embakasi locations. In the Thika Road area, such developments are predominant in Kasarani, Roysambu, Zimmerman, Ruaraka and Githurai (see Map 2 and Table 3). Developments in these areas range from low end middle income tenements (high rise blocks of rooms with communal bathrooms and water supply as found in Pipeline, Embakasi) to middle end self-contained apartments. The apartment blocks go as high as 9 floors. Rents in such developments range from KSh 3,500 per month for a single room in a block to about KSh 50,000 per month for a self-contained unit[12]. These areas are mostly outside the boundaries of the original Nairobi master plan.

The research also spanned developments for the high end middle income group in Nairobi. Such developments are mostly to the West of the City, in areas such as Westlands, Kilimani, Kileleshwa, Lavington and Parklands. In those areas, many single dwelling, low density developments on half acre plots, have been replaced with multiple apartment blocks. Rental developments in these areas are mostly self-contained apartment blocks for the high end middle income group, and rents are well over KSh 50,000 ($575) per calendar month for a 2 bed-roomed self-contained unit.

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[12] *This equates to about $57 - $575 a month, which is rather a high amount considering that the income range for this group is KSh 23,672 – KSh 119,999 ($272 - $1,379) (KNBS, 2005)*
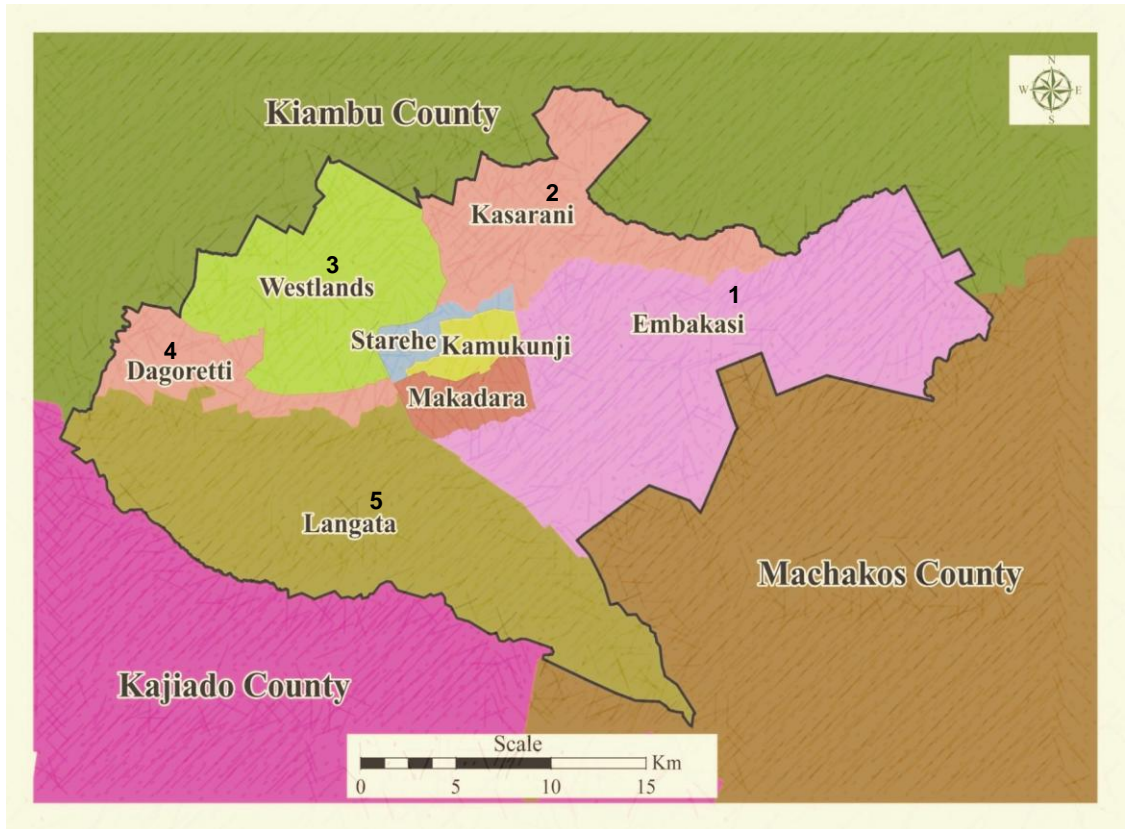
Map 1: Map of Nairobi Divisions (Author, 2015)
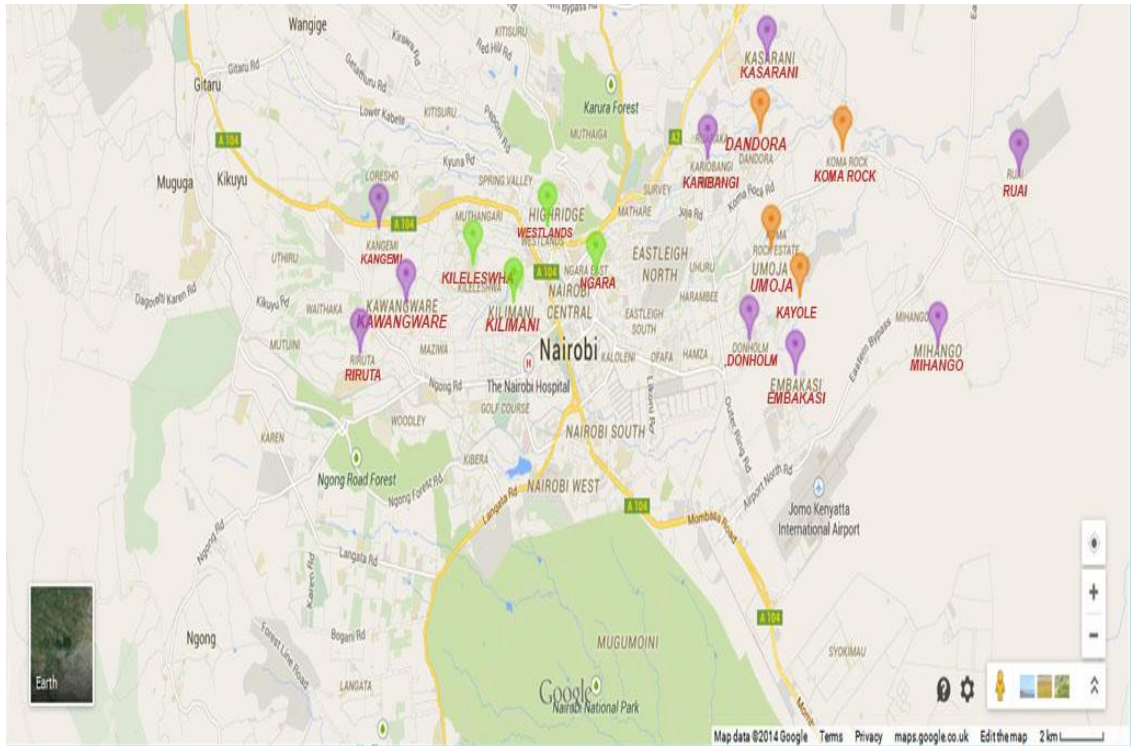
	Low and middle end developments for the middle income group (outside the master plan area)
	High end developments for the middle income group
	Former Site and Service Scheme areas (discussed in later chapters).

Map 2: Predominant middle income residential areas (Author - adapted from google maps)

Table 3: Middle income areas in Nairobi (Author, 2015)

No. in map 1	Constituencies	Locations
1	Embakasi	Mwiki, Ruai, Njiru, Kariobangi South, Dandora, Kayole, Umoja, Embakasi, Mukuru
2	Kasarani	Kahawa, Githurai, Roysambu, Kasarani, Ruaraka, Kariobangi, Korogocho,
3	Westlands	Highridge, Kitisuru, Kangemi, Parklands, Kileleshwa, Kilimani
4	Dagoretti	Uthiru/Ruthimitu, Mutuini, Waithaka, Kawangware, Riruta, Woodley, Kenyatta Golf Course
5	Langata	Karen, Langata, Sarangombe, Kibera, Laini Saba, Nairobi West, Mugumoini

The other aspect of the research was aimed at practices in the planning offices. This required visits to planning offices at City Hall and other government offices associated with the planning system, such as the Ministry of Lands, Housing and Urban Development offices at Ardhi House, as well as visits to private consultants in their offices.

3.3.3 Sampling

This section covers the selection of participants. In total, there were qualitative interviews with 44 participants, comprising 14 planners, 4 planning consultants, 4 relevant government agents, and 22 developers (or their agents). Senior planners and front line planners alike were important to the findings, as well as sample developers from representative areas. Table 4 gives details of participant samples.

Table 4: Mapping of Qualitative Interviews Participants (Author, 2014)

Participants	Target	Actual	Breakdown	% of Target	Comments
Senior Planners	7	8	1 county Minister 1 Deputy Director 6 Assistant Directors	114%	The Deputy Director was chosen instead of the Director because he had more experience in the planning department, both as a front line planner and as a senior planner. 1 of the Assistant Directors left employment after my 1st field visit, and I got to interview his replacement during my 2nd field visit.
Operational Staff	8	4	2 physical Planners – City Hall 1 Physical Planner (Ministry) 1 Chief Administration Worker (Planning)	50%	The Assistant Directors were acting up in their posts, and had previously been operational staff; they therefore could talk about experiences of operational staff and it was not necessary to interview more operational staff as data was getting saturated.

Ex Planners	1	2	Ex-operations – City Hall Ex-operations Housing Development Department (HDD)	200%	The 1ˢᵗ Ex-planner introduced the 2ⁿᵈ one. It was useful to have data in relation to operations at City Hall and field operations.
Developers & Developers' Agents (those engaging with the Planning Process	15	16	6 Developers (1 foreign) 5 Architects 5 Physical Planners	107%	Developers' agents proved to be invaluable because most developers who engage with the planning process delegate to their agents and are not actually involved in the planning approval process apart from making necessary payment. Kenya Property Developers' Association (KPDA) members were not readily available and are yet to be interviewed, and this might generate new data.
Developers and Developers Agents (those not engaging with the Planning Process)	10	6	5 Developers 1 Contractor	60%	It was difficult to get access to this category of developers because there were no records of them in government offices – mostly relied on word of mouth from friends and acquaintances
Planning Consultants	4	4	2 Professors – U0N 1 Planning Lecturer – UoN 1 Director – (Kenya Institute of Public Policy Research and Analysis (KIPPRA)	100%	These participants had qualitative data on the new Master Plan and new legislation

Other Government Agents	4	4	4 Land Registrars	100%	Land Registrars gave data on Land Use Management; officials of the estate office gave data on the new legislation (including their views of the built environment bill).
			1 Estate Director		
			1 Estate Officer		
			1 Structural Engineer		
			1 Public Health Officer		
Total	49	44		90%	

3.3.3.1 Sampling planners

With regards to planners, the aim of the sample selection was to get representation of senior planning officials who are involved in policy making and reviews, as well as front line planning officials who cover operational processes of the approval system. According to AAK (2011), there are 31 Physical Planners in Nairobi, 11 Public Health Officers, 33 Engineers, 18 Surveyors, 6 Architects and 33 Landscape Architects.[13]The chief administrator for the planning department advised that there are 18 qualified staff in development control, 4 qualified enforcement staff, 5 qualified staff in forward planning, 5 qualified staff in policy and implementation, and 4 qualified staff in research. Qualifications range from degrees to HND. The rest of the staff in those sections (who are the majority) do not have formal qualifications but are involved in administration tasks, landscaping and enforcement tasks.

With regards to the senior professionals, samples were purposeful in that the heads of identified departments were targeted. Interviews were carried out with the County Minister for Planning, Lands and Urban Development, the Deputy Director of County Planning, and Assistant Directors for relevant

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[13] *The AAK report referred to landscape architects, but from the field visit it was established that these are not actually qualified architects – they are just landscape assistants and not technical staff. Also, the AAK figures incorporated staff at the Ministry of Lands, Housing and Urban Planning. County staffing figures were given by the chief administrator for this research, and these figures will be highlighted in Chapter 5.*

sections of the county planning department (development control, enforcement, forward planning, policy implementation and research sections). These senior professionals were important participants in this research because they were best placed to shed light on issues of governance and authority, as well as hindrances to effective reforms of the planning system.

For operational professionals, a cross-section of those allocated to the processing of applications in different sections of the planning department were interviewed. It turned out that the Assistant Directors had been operational planners for a number of years, and were only acting up in their present positions; they were therefore able to give perspectives and experiences as frontline planners, as well as Assistant Directors. A few frontline planners were also interviewed, including a structural engineer, which enabled generation of more holistic data in relation to implementation and enforcement difficulties, and their perceptions of what would make a workable planning system. Introductions were also made to two retired planning officials, who talked freely about their experiences of the planning systems without fear of recrimination or incrimination. Interviews with front line planners were stopped when subsequent interviews did not seem to be adding value to existing data from previous interviews.

Apart from planners, other government agents who are implicated in urban land administration and planning, such as Land Registrars in the ministry of Lands, Housing and Urban Planning, also contributed invaluable data to the research. Private planning consultants, amongst them professors at the University of Nairobi, and a director at the Kenya Institute of Public Policy Research and Analysis (KIPPRA), who are consulted by the government in relation to the master plan, planning policy and legislation reviews, were an invaluable source of relevant data.

3.3.3.2 Sampling developers

It was quite a challenge to get developer participants considering that the research was investigating non-compliance with planning regulations, which made culprits potentially vulnerable to incrimination. However, by using a

combination of recruitment methods (detailed in 3.3.4), it became possible to develop a sample of developers willing to talk about their experiences and perceptions of the planning system. The sample was aimed at getting developers of apartment blocks for the middle income group being considered in this research. It was important for the samples to reflect developers in areas which could not have obtained planning approval due to lack of title deeds, as well as in areas where land was titled and owners might have obtained planning approval. The proportion of samples for the different groups did not necessarily have to be equal, but they had to generate enough data to answer the relevant research questions.

Kothari advises that the actual number in a sample will depend on the size of the target population, but for this research it was difficult to determine the size of the target population of developers because it transpired that the majority of developers for the middle income group do not engage with the planning system – according to estimates by planners, for every 30 developers seeking planning approval, 70 other developers were building without going through the approval system. Records of applications for approval for apartment blocks in middle income areas which were processed between 2009 and 2013 were acquired from the planning offices at the onset of fieldwork in the first field visit. The applications listed the developers and their architects, the size of the land to be developed, the type of developments, the locality, submission fee and conditions for approval. Only applications for rental apartment blocks were examined. However, this was not a true representation of development activity for the middle income group, in that most developers in and for this group, according to planning officials and other professional people involved in development, do not engage with the planning approval process.

It was soon clear that records in the county office could not give access to developers directly since only their postal address was listed, without a contact number. It would have taken at least a month to get access, in that letters would have had to be posted to their address, which could take weeks, and even then there would have been no guarantee that the developers would have responded. It was easier to follow the architects,

who were easier to find using the internet or yellow pages. Going through architects proved useful in that they could be interviewed as the developers' agents, and they could also refer developers for interviews.

Sampling developers who by-passed approvals posed a challenge in that there were no official records; official information on such developments, if any, is limited, and only recently is the county government devising a process (regularisation) to net such developers. Visits to development sites usually yielded agents like foremen and caretakers, who were mostly unaware of the official status of those developments, suspicious, reluctant or very vague with regards to the planning process.

A total of 22 in-depth interviews were carried out with developers or developers' agents. This sample included developers who have engaged with the planning system, and those who have not. In-depth interviews with developers were stopped when additional developers stopped generating new data.

3.3.4 Research Methods and Data Collection

As mentioned, in the research design, the research used a combination of primary and secondary sources of data. Information was gathered from policy documents and official documents in the planning office, as well as from interviews with senior planners, frontline planners and developers. With regard to developers, questionnaires were used to recruit an optimum sample for qualitative interviews. Information from the planning office, coupled with triangulation of information from the different sources (in this research planners, developers and official documents), corroborated the findings, and helped to give a holistic perspective on the phenomenon of non-compliance with planning regulations in Nairobi.

3.3.4.1 Questionnaire surveys

According to Patton (2001), using questionnaires minimises variations among interviewers, but interviewees are still able to respond in their own words. McLafferty (2010) points out that a face-to-face interview gives an opportunity to clarify vague responses and probe for hidden meanings, and

that such interviews result in more meaningful answers, as well as a higher
rate of response. For this research face-to-face interviews were the most
effective as opposed to other methods of administering the survey. Table 5
gives details of participant samples for questionnaires.

Table 5: Mapping of Questionnaires' participants (Author, 2014)

Participants	Target	Actual	Breakdown of participants	Comments
Developers and Developers' Agents engaging with the Planning Process	40	50	8 Developers 42 Developers' Agents	It was easier to get access to developers' agents than to developers. These included architects, draftsmen, physical planners, contractors and foremen.
KPDA Developers	2	1	1 KPDA representative	
Developers and Developers' Agents not engaging with Planning Process	38	11	10 Developers 1 Developers' Agent (a contractor)	Some developers and agents engage with the process for some developments but not for others (depending on the area)
Total	80	61		Some of the developers' agents e.g. draftsmen and foremen, might have been ignorant of the fact, or were misrepresenting about engaging with the Planning System

To maximise the use of available time, a Masters planning student at the
local university who had experience of administering questionnaires for other
researchers was recruited as a research assistant. He canvassed middle
income development areas in search of developers or their agents, to whom
to administer questionnaires. He visited sites in close proximity on any given
day so as to minimise travel time and expenses, and the research strived to
arrange follow-up interviews in more central and convenient locations. This

did not always work out as planned, but on the whole the strategy was effective. Questionnaires were administered by both the researcher and the research assistant, but mostly by the research assistant. Structured questions were used to gather socio-economic data, for example; what type of developments and target population? How long did the planning application process take? What contractors do they employ? (See Appendix 3 for questionnaire).

61 questionnaires made up of structured questions and semi structured questions were administered to developers and their agents. After examining responses to the questionnaires to determine which ones were worth following up for more in-depth experiences, this sample of developers was sieved to form a purposeful or deliberate sample (Kothari, 2009) – developers who represented different areas and, types of developments and who were willing to participate in in-depth interviews. Word of mouth from developers' agents, friends and acquaintances also generated some developers relevant to the research, and these proved to be the most open and informative because there was an element of trust. With regards to these developers recruited directly into the research project, the questionnaire was not necessarily administered; it was only used as a guide to getting relevant information, but interviews were mostly led by interviewees' responses, using the questionnaire as a rough guide so as not to miss out on any relevant information.

As Mason (2001) pointed out, preparing questionnaires is time consuming in that a great deal of preparation is needed to ensure that questions to respondents will generate relevant information and data for the research question. After a questionnaire was drafted, it was piloted among known developer contacts, who were asked to give feedback regarding the questionnaire. This exercise not only identified questions which were considered ineffective and/or unnecessary, but also helped to generate more meaningful questions. An induction meeting with the research assistant also helped in further refining the questionnaire, following a discussion on envisaged difficulties in administering certain questions.

Some developers and developers' agents, such as foremen and caretakers, were not fluent in the use of the English language, and used the national language (Swahili). Luckily the researcher and the research assistant were both fluent in the national language. To avoid misunderstanding and misinterpretation, simple language was used, giving easy to understand questions. The research assistant's skill in paraphrasing and explaining questions using the national language was rather impressive – he had a better grasp and command of the local slang.

Although the questionnaires yielded some data, most participants were reluctant to also give in-depth interviews. On several occasions, the research assistant was asked to leave the questionnaires and collect them later, some of which never materialised. Others gave very brief responses, and did not give much data in the open ended questions. It was very frustrating when the research assistant returned with good quality interviews, which could not be followed up because the respondents had expressed they did not wish to participate further, and had declined to give contact numbers. Even more frustrating was when the research assistant returned good interviews with contact numbers for follow-up, but arranging a follow-up interview became a struggle.

3.3.4.2 Semi-structured interviews

Peattie (1983) and Kumar (2010) have made a case for using unstructured interviews within a qualitative approach to researching differing views of issues or problems by members of a community. Charmaz (2006) has advised that for a grounded theory research, a few broad, open-ended and non-judgemental questions are helpful in getting the most out of participants in terms of inviting detailed discussions of a topic; the researcher can guide the structure of the interview by inviting reflections and clarification from the interviewees. Like Charmaz, Mason (2002) advises that the researcher can take cues from ongoing dialogue with interviewees about what to ask them next, and this was indeed helpful in maximising information extracted from the senior planners, land administrators and consultants.

Primary data was gathered through in-depth interviews with planners (who make and apply the laws and regulations) and developers (who are subject to the rules and regulations). The researcher carried out all in-depth interviews with participants. Senior planners were interviewed towards the end of the field visit, which gave opportunity to clarify and query issues that had been raised by front line planners as well as developers and developers' agents. The respondents were able to tell, in their own words, their experiences or stories of how the processes work. The research categorised the interviews as follows;

- Senior planners, people who are in positions of authority in the planning department, were interviewed with a view to getting their perspective on what the system aims to control and why, in their eyes, it fails. They were able to give an overview of the planning policy frameworks and their implementation; their view of inherited planning laws, shortcomings of the present planning system and how it could be improved, how planning legislation reviews come to be, and how these reviews could be made more effective.

- Operational Planners, on the other hand, had practical experience of implementing and monitoring planning laws and regulations. They were able to advise on what they find challenging in interactions with developers. They were able to answer questions relating to 'the blind eye syndrome' – whether there are circumstances in which they feel compelled to ignore regulatory abuse. Also from a practical point of view, they were able to point out in which areas the planning system is lacking, and what changes might be necessary.

- Interviews with developers and developers' agents were aimed at looking beneath the service as to why developers choose to ignore some regulations (which regulations they do not find sensible), and also the consequences of their actions. Following on from the literature review, issues of restrictive planning laws and building standards were explored, as well as issues of trust and corruption.

- To answer the question of whether there was room for manoeuvre and how the system could be reviewed in consideration of the changing needs of the population, it was especially of interest to review debates surrounding proposed new planning legislation (the Built Environment Bill 2012, the National Building Regulations 2012, and the National Building Maintenance Policy 2012) by politicians and relevant professionals. Information about this came from unexpected sources; an independent consultant at the University of Nairobi, and one of the directors at the Ministry of Lands, Housing and Urban Planning, where the debate originated. This shed some light on what insights there are in how the planning system could be steered towards better enforcement by planners, and better adherence by developers.

At the onset of the field visit, contact was made with an Assistant Director in Development Control to introduce the project; this helped in that the Assistant Director in turn introduced the project to the Deputy Director of City Planning and to other colleagues – operational staff trusted the judgement of the seniors and were therefore very cooperative in extending assistance. The willingness of participants to give their valuable time was really humbling, including the County Minister who spent about one hour (with minimal interruptions) in an interview.

Before the trip to the field, expectations were to conduct two in-depth interviews a day, at most three. What hadn't been factored in were impromptu interviews from unexpected and unscheduled sources, and rearrangement of appointments to accommodate participants' changing schedules. There were some frustrating days when appointments were cancelled at short notice, or delayed appointments that meant that subsequent ones got messed up or cancelled. On one particular day there were no interviews at all, but this was taken as an opportunity to go through documents at the planning offices. And there were those days that gave more than had been planned for; on two days there were six interviews, as

opposed to the three in the field calendar. It was not unusual to have a first interview of the day at 7.00am (especially with the senior planners), or to have interviews over breakfast or lunch, and to have interviews ending at 7.00pm in the evening; one interview with a contractor, which was an impromptu interview, happened 8.00pm in the evening. On such days, having a recorder that worked was really appreciated because it would have been difficult to keep pace with note taking. It was necessary to be aware of the effects of such impromptu interviews on the overall sample of respondents: both to ensure appropriate spread of interviewees (to ensure that these had been recruited into the project through a variety of initial contacts) and to ensure that there wasn't undue repetition.

Although it was much easier to get appointments with planners at City Hall than it was with developers, developers were more flexible with appointments, and there were two interviews on weekends and two on a public holiday. There were also two telephone interviews with developers, which presented difficulties in recording, but they did generate some useful data. On two occasions it was necessary to travel to satellite towns to meet with developers.

Arranging interviews with lecturers was a bit difficult because it had to be on certain days, and around their lectures and other commitments; one interview went beyond 7.00pm, whilst another key professor was really rushed between consultation meetings and field work outside Nairobi – it was indeed fortunate to get 25 minutes of his time.

A tape recorder was used at interviews. Although on the whole the request to record interviews was well received, two developers did not wish to have their interviews recorded, and it was important to take comprehensive notes. Even when recording, hand written notes were taken, either during the interview or immediately after, in case there were malfunctions with the tape recorder (during or after the interviews). Notes helped in that some of the interviews were carried out in noisy cafes or thin walled offices, and as a result, recordings had a lot of background noise. One recording in an architect's office was full of banging noises from construction work

(incremental building in the block he was operating in). Also, some respondents, though audible during the interviews, sounded muffled in the recordings, and notes helped to fill in the gaps.

There was awareness that a lot of skill and energy is needed to carry out the interviews, and that transcription of recordings would undoubtedly be laborious. Jackson (2001) reckons that each one-hour interview needs six to seven hours for transcription; the whole exercise of transcribing interviews generates overwhelming amount of data and transcripts. Jackson (2001) was right – transcribing was indeed laborious, especially in the early days, when an eight-hour day (or longer) would be spent transcribing a 40 minute interview. Transcription Buddy (a transcription software), and experience over time, did make the task easier.

3.3.4.3 Examination of planning documents

Secondary data was gathered from various sources. At the planning offices, access was given to planning applications and minutes of past planning committee meetings where approvals are determined. Time spent in the planning offices going through the documents gave the additional advantage of being privy to conversations in the planning offices, which proved informative for the research. Different departments that dealt with applications, and time spans for processing applications, were also noted. Examining this data helped to establish what the planning regulations and procedures actually stipulate, with a view to answering the question as to whether planners are flouting their own laws. Also used was information derived in other relevant case studies in Nairobi (by different authors), including literature from books, journals and other publications. Websites, including those of government, civil society, and professional bodies, were also a good source of information.

Minutes of planning committee meetings, as well as other council meetings, are amalgamated into publications, three or four months at a time. There were shelves holding volume upon volume of these publications, going back over many years, which was rather intimidating. McLafferty (2010) noted how government data sources in most developing countries are often of poor

quality and out of date; this to some extent was the case in the Nairobi physical planning offices - publications were not arranged chronologically and it was necessary to go through several shelves to locate relevant documents. The research homed in on publications from 2006 to 2012 (2013 was not yet available). Prior to the field visit, enquiries had been made, by phone and email to friends in Nairobi who had experience of research in government offices, about how long it would realistically take to get hold of relevant documents, so as to make tangible arrangements. The advice was that, as long as there was a named contact person amongst the senior planners, this would not be a problem. On the third day after arriving in Nairobi, introduction was made by a friend to one of the Assistant Directors in the planning department. The Assistant Director, after introduction of the project to him, proved very helpful by instructing a secretary to avail data and access to planning documents for the research.

3.3.4.4 Site visits

The research involved visits to various housing development sites for the middle income group. Visual observations were made on how the plots are utilised (including plot coverage and zoning implications), provision of infrastructure, and general application of by-laws. These observations helped in guiding the unstructured and semi-structured interviews with planners and developers. Although the main role of the research assistant was to administer questionnaires to developers across the study areas, he accompanied some site visits. He was confident and knowledgeable about most areas in Nairobi, which was important for site visits.

It was difficult travelling to sites using public transport, the only available means of transport during the working hours. During off peak hours, trade for the *matatus* (multi passenger taxis) is slow, and a journey of normally 10 minutes could take more than 1 hour during such times. It did not help matters that October was a hot and dusty month, and prolonged journeys in the *matatus* were quite testing. Daily travel between areas was therefore minimised (mostly for the research assistant) by visiting sites or conducting interviews within close proximity on any given day. Although there was the

occasional need to revisit a certain area, for example to collect questionnaires which had been left with developers, this arrangement proved to be quite time and cost efficient. Once the research assistant had completed questionnaires, any follow-up interviews were arranged in more convenient locations in the city centre. Some developers, though they had given their contact numbers for follow-up, ended up being unavailable for face to face interviews, and a couple of them opted for telephone follow-up interviews.

It was difficult to gain access to owners of properties, especially completed and tenanted developments. Owners of such developments are not necessarily local to the development. Also, it appears to be common practice to secure construction sites with a gated masonry fence at the onset of construction works, and this limited visual as well as physical access, especially when there were no builders on site.

For necessary visits to rough neighbourhoods, the research assistant mostly solicited the company of a peer, whilst the researcher requested the company of the research assistant on such visits. Also, all visits to development projects were done in daylight hours. The researcher and research assistant(s) exchanged a daily schedule of visits, and communicated by phone in the course of the day and at the end of the day.

3.3.5 Fieldwork schedule

Field work for this research was done in two phases; the first phase of field work in Nairobi started in October 2013, and this visit lasted for one month. The second visit was made in June/July 2014, and it lasted for three and half weeks. A lot of preparation was done before going to the field, including sourcing a research assistant, a contact in the planning office, and extensive use of printed material. This enabled maximum use of time in the field. Also, the city was familiar due to previous residency and regular visits thereafter, during which property development patterns had been observed. A lot of tacit knowledge allowed practical competence in terms of 'getting things done' quickly. These factors enabled a significant amount of primary data collection within two relatively short field visits.

The bulk of fieldwork, including recruitment of developers for the questionnaire and most qualitative interviews, was done during the first field visit. In the second field visit, in-depth follow-up interviews were held with two developers who had been going through the planning approval process in the first field visit, and one developers' agent who had experience of the regularisation process. Also, no KPDA members were interviewed in the first visit – it turned out that they are not as well-known as had been implied. However, the Chief Executive Officer of the organisation was successfully sought out for an in-depth interview during the second field visit. The interview was aimed at clarifying requirements for KPDA membership, their views of the planning system as it stands, and their ideas for improvement and collaboration. In the second field visit, there were also in-depth follow-up interviews with two senior planners regarding the regularisation process, and progress with the master plan, as well as progress in staff re-structuring.

The gap between the first field visit and the second field visit allowed time to analyse data from the first field visit and to clarify where the gaps in data were. (See Appendix 4 for schedule of first fieldwork).

3.4 Qualitative data analysis

The data collected for this research were analysed systematically with a view to arriving at a grounded theory about the phenomenon of non-compliance with planning regulations. From data analysis, the research aimed to answer questions relating to perceived obstacles by planners in the implementation and enforcement of planning laws and regulations, perceived obstacles by developers in adhering to the planning laws and regulations, perceived gaps and limitations of the current planning system, as well as perceived solutions.

Data collected in the Physical Planning departments was useful in determining the number of, for example, planning applications within the scope of the research, as well as time spans for processing applications, and this was used to reinforce other qualitative data from the interviews.

With regards to semi-structured interview transcripts and questionnaire surveys, themes in the interviews were identified and categorised and

integrated into the report. The transcripts were coded manually, employing some elements of NVivo computer package. Kitchin and Tate (2000) have warned of how the coding task is difficult where open questions have been used, thus calling the need for a coding frame and coding book (See Figure 3 for an example of a coding frame used). This was applied to semi-structured interviews used in this research since they had open-ended questions.
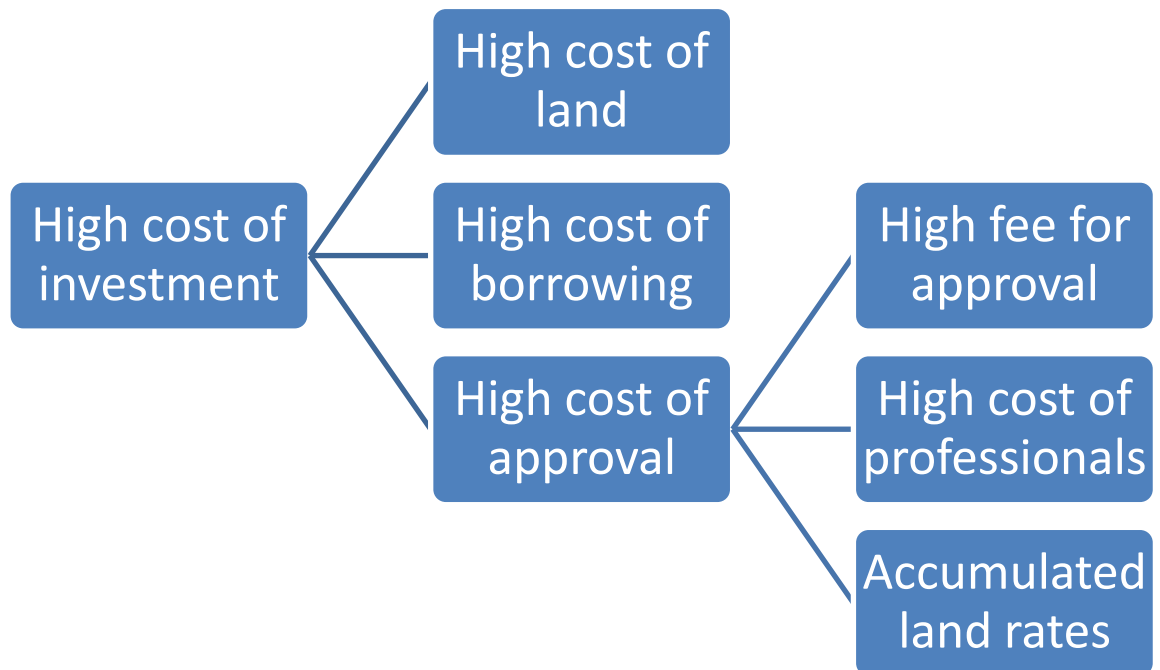
Figure 3: Example of coding tree used (Author, 2014)

3.5 Ethical issues

To avoid misrepresentation or inaccuracy in findings, a case study database was created, which included case notes, documents collected from planning offices, transcripts of interviews, and analysis of the evidence. A chain of evidence was maintained; the report would make clear what sections of the case study databases were being used, by appropriate citation of documents and interviews.

It was amazing that some participants were openly giving names of people who could be implicated in corruption and impunity issues. However, it was quickly pointed out that the project report would not give any individual's

name and would retain anonymity. Besides, the research was not looking to evidence or witness first-hand any such action, therefore all information was, in legal terms, hearsay. Although such findings were analytically useful in generating an understanding of the processes through which corrupt behaviour occurred, it was not a legal requirement for the research to attempt to intervene in individual alleged acts of corruption. Besides, it was ethically inappropriate to do so, as this would have undermined the trust through which a more in-depth understanding of how the planning system could be improved could be gained.

For both developers and planners, oversight could have occurred with regards to consent, for example by assuming consent; to avoid overlooking this, consent forms were used, and there was a standard introduction regarding what information was being sought, and what it would be used for. No pressure was exerted on the participants. All planners, lecturers, land registrars and other private professionals signed consent forms, but some developers' agents, especially on construction sites, declined to sign the consent forms, although they were willing to answer the questions. Also, at the outset participants were advised of the intention to record interviews, giving them the option of opting out of recorded interviews, or of stopping recording at any time during the interview. Some participants needed reassurance about the recording being used for research purposes only, but on the whole most participants agreed to be recorded – only two participants opted out.

With regards to data analysis and interpretation, the research acknowledges that it would have been possible to jump to premature conclusions. To avoid this, coding was used to build up interpretation through a series of stages so as to make the analysis more systematic. This was to deter accusations of 'cherry picking' (Jackson, 2001).

There was awareness that no one was going to incriminate themselves by answering questions about this sensitive topic; both planners and developers could have been wary of answering questions regarding non-compliance, since they would in effect be in contravention of laws and regulations, which

is a sanction-able offence. Confidentiality was therefore promised at the onset to minimise anxiety, reassuring participants that the research was for academic purposes only – that it was not spying on them, but was rather aimed at exploring how the system could be improved in future in the interest of both planners and developers. An interview with a foreign developer also lent another perspective on the process, but after much reassurance that the project was only for academic purposes.

Due to the sensitive nature of the subject, there was awareness that there could have been potential issues of personal safety for both the researcher and the research assistant in the course of fieldwork. For this reason, questions were phrased tactfully, such that research questions could be answered without aggravating the participants. For example, it could be inferred from an interview whether non-compliance was deliberate or accidental, without asking the question directly. Mock interviews were done with friends to get a feel of which questions were effective in gathering maximum data, and to explore how questions could be sensitively and tactfully worded. The research was also not interested in sources of funds for developments, which was potentially another volatile topic, but rather on developers' experiences of the planning application process.

3.6 Conclusion

Whilst most researchers on non-compliance issues and informality in sub-Saharan Africa have looked at micro localised areas (for example Kironde, 1992a; Arimah and Adeagbo, 2000; Rukwaro and Olima, 2003; Anyamba, 2011), this research was citywide, encompassing predominantly middle-income areas in Nairobi.

This research relied mostly on qualitative data from participants, which presented a significant methodological problem about how to identify, select and recruit participants (planners and developers alike) willing to think/reflect on a difficult and sensitive topic, and on their own practice. Whilst researchers (as cited above) have used surveys and/or observations, this

research went further and engaged at a deeper level with carefully chosen participants for their lived experiences.

It was especially a challenge to generate a sample of developers, considering that the research was investigating non-compliance issues. As Kitchin and Tate (2000) noted, a study with potential consequences or implications for the participants is a sensitive one that requires a cautious approach. However, by using a combination of recruitment methods and reassurances of maintaining confidentiality, the research developed adequate samples to address the research questions. This chapter has discussed how the samples were derived, research methods and the different ways in which data was collected, problems faced in data collection, how the data was analysed, as well as ethical issues in the research.

The methodology used helped to add to knowledge and understanding about non-compliance with planning regulations, as will be evidenced in the empirical chapters, and in so doing helped to get closer to identifying how this phenomenon can be addressed in sub-Saharan Africa.. The next chapter will focus on the planning system for Nairobi in the context of housing need; the evolution of planning policies and the non-effectiveness of the system to date.

Chapter 4: Overview of the planning system and its (non)effectiveness in Nairobi; a historical perspective

*'Maybe one day Nairobi will be laid out with tarred roads, with avenues of flowering trees, flanked by noble buildings; with open spaces and stately squares; a cathedral worthy of faith and country; museums and galleries of art; theatres and public offices. And it is fair to say that the Government and the Municipality have already bravely tackled the problem and that a town-plan ambitious enough to turn Nairobi into a thing of beauty has been slowly worked out, and much has already been done. But until that plan has borne fruit, Nairobi must remain what she was then, a slatternly creature, unfit to queen it over so lovely a country' (*Dutton, 1929)

4.1 Introduction

Nairobi is the capital city of Kenya. It is also the largest city in the country. The Nairobi City County (formerly Nairobi City Council until 2010 when it changed in accordance with the new Constitution of Kenya 2010), is the governing authority over the entire city. In 2008, the Ministry of Nairobi Metropolitan Development[14] revealed a vision for a wider Nairobi Metropolitan Region (NMR), which covers approximately 32,000 square kilometres, including Nairobi City County. The NMR covers 15 local authority areas, namely the City County of Nairobi (684 km2); the County Councils of Kiambu, Olkejuado, Masaku and Thika; Municipal Councils of Ruiru, Thika, Kiambu, Limuru, Mavoko, and Machakos; and Town Councils of Karuri, Kikuyu, Kajiado, and Kangundo (Republic of Kenya, 2008a) (see map 3). This is in line with Kenya Vision 2030 which aims to make Nairobi 'a World Class African Metropolis'. To this end the ministry released "Nairobi Metro 2030: A World Class African Metropolis", in which it laid out its strategy for realising that vision. This is work in progress.

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[14] *This ministry is no longer in existence. It is now a directorate of Urban Development in the Ministry of Lands, Housing and Urban Development under the new Constitution 2010.*
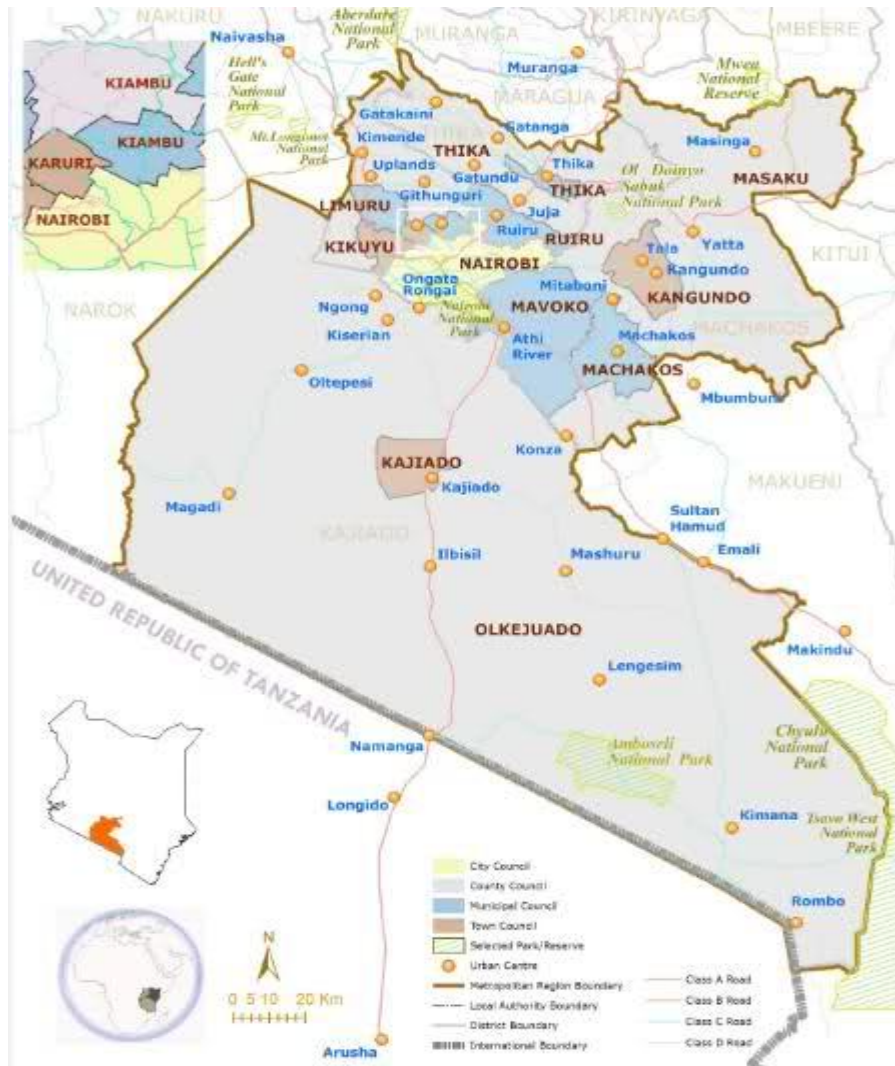
Map 3: Map of the Nairobi Metropolitan Region as identified by the Kenyan government (Ministry of Metropolitan Development, 2008)

This research, however, is only about Nairobi City County and its eight divisions, as explained in Chapter 3. Like Dutton (1929), other urban planners of colonial Nairobi predicted that their blue-prints would become 'The Plan of the Citizen of Nairobi' (Slaughter, 2004). It would appear that they were right, despite the different contexts and changing needs of the city. Several authors have asserted that the urban problems facing Nairobi today are rooted in their historic policies; they have argued that planning problems in Nairobi today are enhanced by the fact that planners are using borrowed and outdated concepts, rules, regulations and procedures which were imposed by the colonial masters (Slaughter, 2004; Otiso, 2005; Oyugi and

K'Akumu, 2007; Tibaijuka, 2007). Indeed, the imprint of British urban planning and architecture is scattered across the whole city, five decades after independence. But whilst medieval planning and architecture can be valued as a city's heritage in developed cities like London, there are far greater concerns for planners in developing cities in the context of unmet housing need.

This chapter gives an overview of the planning system in Nairobi, covering its evolution and its impact (or lack of) in controlling development in the city in the context of unmet housing need. It aims to answer the question 'Where has the existing planning system gone wrong?' The chapter therefore starts in section 4.2 by reviewing (unmet) housing need in Nairobi, and the consequences of this with regards to middle income developments. It is not surprising that unmet housing need has attracted private investors to fill the gap. What is surprising is that such investors seem to have been given a free reign, with serious repercussions in some cases.   Section 4.3 reviews literature on land tenure and land use management, with a view to providing a backdrop to non-compliance issues in land development. The chapter then highlights in section 4.4 the institutions that are supposed to guide the implementation of the planning framework. Section 4.5 gives a historical overview of the planning framework to date, including the master plans and planning legislation, and why these failed in controlling developments. Section 4.6 discusses the new master plan and new legislation, and the hopes being pinned on them. The chapter will make clear the scale of the housing challenge, and the institutional and legislative framework for planning. By doing so, it gives context to the views of planners and developers regarding the planning system.

4.2 (Unmet) housing need and non-compliance in middle-income developments in Nairobi

Nairobi has grown rapidly since independence; it is currently the 12th largest city in Africa, with the largest population of any East African city. It has experienced one of the highest growth rates of any city in Africa. Its population as of 2009 was 3,138,369 (Kenya Central Bureau of Statistics,

2009). With a growth rate of 4.1% per year, it is estimated that its population will reach 5 million by 2025 (see Figure 4 for Nairobi's population trend). As well as natural population growth[15], Nairobi's population growth is driven by rural-urban migration, as immigrants flock in search of better economic prospects (NEMA, 2003; Mitullah, 2003). There is also a build-up of migrants from neighbouring countries like Somalia.

A study by the Department of Resource Surveys and Remote Sensing (DRSRS 1994) identified that of the eight major land use classes in Nairobi[16], residential land use had the second highest percentage of 25.22%, catering for a population of about 1.8 million. Open land constituted the largest land use of 28.55%. It could be considered short-sightedness that residential land was not the largest category of land use, and as a result the *de facto* land use could partly be the result of an inadequate allocation of land for housing.
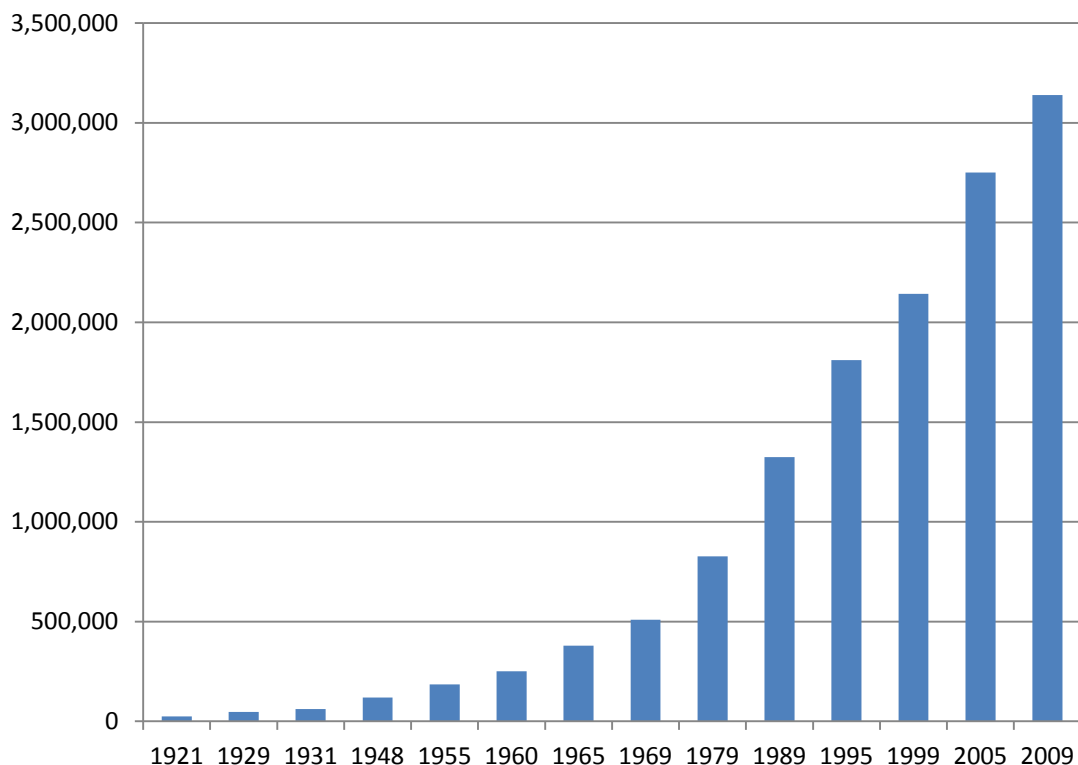
Figure 4: Nairobi population trends since 1921 (Author, 2015)

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[15] *Kenya's rate of natural increase was estimated to be 2.8% per annum in 2014 (IndexMundi, 2014)*
[16] *The other land uses are industrial/commercial/service centres, administration and commercial (CBD), infrastructure, recreation, water bodies and riverine areas, urban agriculture and open lands.*

The public and formal sectors have not facilitated production of enough units to meet the demand for housing by the population to date. In 2004, urban housing needs in Kenya were estimated at 150,000 per year, whilst only 30,000 units were being built - a shortfall of 120,000 units (Kusienya, 2004; Kenya National Housing Policy, 2004). Suffice to say that Nairobi, being the capital and the regional hub, bears the brunt of that shortfall. Today, the population of the city is much higher; it may not have doubled in size in10 years as predicted (Un-Habitat, 2007), but from census reports it still increased by about 1 million; from about 2.1 million in 1999 to about 3.1 million in 2009 – and population growth is still much higher than housing provision. The Kenya Vision 2030 development programme had committed to increase the current annual urban housing production from 35,000 in 2007 to over 200,000[17] housing units by 2012, but only about 100,000 housing units were claimed to have been produced in 2012 (Hon President Mwai Kibaki, 2012). This however, is contradicted by a report published by KPDA, which revealed that new construction in 2013 had fallen to 7.5% (15,000 units)[18] of the government target of 200,000 units per year, leaving a shortfall of 185,000 units (KPDA, 2013). KPDA figures are more realistic, but they did not offer any explanation for the discrepancies in government figures.

Deficits in housing supply have caused an expansion of informality in housing as well as poor standards of construction, as owners are compelled to provide affordable housing for themselves, and developers out to maximise profits capitalise on unmet housing demand (Obudho, 1997a; Gatabaki-Kamau and Karirah-Gitau (2004); Anyamba, 2011; among others). Regulations are flouted by property developers for the rental market, who are assured of demand for such dwellings by a large section of the urban population (Anyamba, 2011). Obudho (1997a) found that developers had put up high rise developments and extensions against legal guidelines. Other scholars have echoed this, observing that numerous developments

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[17] *Reports in relation to these are vague, and the figures may well relate to national urban housing provision, not just Nairobi*
[18] *Of this 7.5%, 90% were apartments for middle income housing, with developers following market demand.*

have informalities, including discrepancies with regards to ground coverage and plot ratios (Onyango and Olima, 2008; Anyamba, 2011).

Mwangi (1997) attributed non-compliance with building laws and regulations to the fact that not all developers sought approval for their developments – in two case studies, he revealed that only about 50% of developers had submitted plans for approval. Another argument is that the application/approval processes can take an indeterminate length of time due to inefficiencies within the planning offices, which discourages some developers from following the formal processes for obtaining development approvals – this results in unplanned developments, financial losses to the economy, and also loss of revenue to the government (Mwangi, 2007).

There have been allegations in the local press of developers having two sets of architectural plans, one which complies with regulations and is approved, and the other 'live' one that disregards regulations (BUILDesign.co.ke, 13 January 2013). Such developments are usually in contravention of regulations. In Nairobi, safety issues have been evidenced by collapsing buildings (see Figure 5); the local press is rife with such reports, for example a building that collapsed because the developer added 3 floors to the approved 5, buildings collapsing due to poor beams and columns, collapse due to poor workmanship and due to building on waterlogged sites without proper specifications (Daily Nation, 8 December 2012; Standard Media 19 December 2014, Daily Nation 1 January 2015, among others).

Figure 5: Collapsing buildings in Nairobi (the-star.co.ke, 2015)

4.3 Land tenure and issues with land use management in Nairobi

In Kenya, the Registration of Titles Act (Chapter 281) empowered the Commissioner of Lands to dispose of all land under his jurisdiction. Prior to 2012 (when legal reviews led to the repeal of some laws, as will be revealed in Chapter 4.6), the Commissioner of Lands and the president of Kenya could allocate land to private individuals, groups, institutions or corporate bodies (Republic of Kenya, 1991). Such allocations were supposed to be above board, with public advertisements of available land, and open to all people to apply. However, in reality most people did not have access to such land, either because of ignorance about its availability, or because of abuse of power in the allocation process. As a result, the land ended up the hands of those in positions of great wealth and/or power, or their cronies (Musyoka, 2006). Olima (1997) asserted that poor urban land management had resulted in problems such as double and multiple plot allocations, irregular land allocations (land grabbing), re-allocation of plots, sale of plots and land speculation, problems which raise the issue of the adequacy of the cadastral systems in the country. He concluded that urban land management in Kenya seemed to favour the socially, politically and economically powerful, and noted that the government turned a blind eye or was slow to act on irregularities and deficiencies in the practices of such people. It is of interest to this research to find out how irregularities in land allocation and administration have impacted on urban growth management in Nairobi, and why such irregularities have been tolerated.

After independence in Kenya, the government invited citizens to buy farms from Europeans. This entailed subdivision of most farms, although in some cases farms were bought intact by individuals or land buying groups (Musyoka, 2006). Some land buying groups were comprised of community/neighbourhood groups, cooperatives, or other affinity groups. Such groups enable members to get shares in land (sometimes incrementally), which they could not have afforded to buy individually. Members are issued with share certificates, which can be converted into titles through the formal land registration process. Whilst some members buy into the schemes with a view to developing their land, others are merely

speculators (ibid). The idea of land-buying companies originated with the formation of such groups. However, most land buying companies in the present day are commercially oriented. They informally and irregularly subdivide their land and distribute it among members (who are then free to trade their shares) or sell excess land in the open property market (Rutten, 1992; Yahya, 2002; Musyoka, 2006). Surveying and subdivision of such land is supported by quasi-professionals, but has resulted in unplanned neighbourhoods (UNCHS, 1991; Musyoka, 2006). Musyoka (2006) notes that land outside municipal boundaries cannot be subdivided officially for urban use. Because boundaries do not keep pace with urban growth and it is possible to purchase farms at relatively lose cost, there are extensive illegal subdivisions in areas outside the official city boundaries, for example in Nairobi (as will be revealed in Chapter 5). The subdivisions are informal in that they do not comply with legislations (or regulations) relating to land transfer, registration and subdivision (ibid). Developments on illegal subdivisions are inevitably also considered illegal.

In Kenya, the local authority is responsible for the provision of infrastructure within its boundaries (Musyoka, 2006). In most cases, the local authorities impose a caveat on subdivisions, which requires freeholders to provide infrastructure prior to being issued with subdivision approval (ibid). However, due to the costs involved, the reality is that most land is subdivided (informally) and sold on before infrastructure is provided (ibid). It does not help matters that there is no follow-up, monitoring and enforcement of such requirements. Given the costs of infrastructure development, it is not surprising that there are many developments with poor provision, especially when the onus is on investor developers looking to maximise their profits.

Gatabaki-Kamau and Karirah-Gitau (2004) highlighted the shortage of affordable serviced land for residential developments in Nairobi, prompting developments which are considered 'informal', especially in areas outside the formal city boundaries, which were formerly agricultural. This is echoed by K'Akumu and Olima (2007), who report inequitable access to serviced urban land.

There are arguments that developers were able to put up unauthorised high-rise blocks and extensions because the process of land allocation was fraught with corruption and disregard for regulations and planning standards (Obudho 1997a; Mwangi and Nyika 2010). Indeed, Gatabaki-Kamau and Karirah-Gitau (2004) found that in Zimmerman, state agents conceded to pressure from developers and politicians with vested interests and lifted a demolition order on non-complying developments. In effect, those who felt excluded from the formal housing market influenced government policies on land and housing development (ibid). This served to open doors for more non-complying developments in the area, a trend that has been replicated in other parts of the city.

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

4.4 Institutions involved in planning

There are several institutions that administer different elements of legislation which affect urban development control. For example, the Ministry of Roads is responsible for all road works, the Ministry of Public Health is responsible for all public health, including occupational health and safety, and local authorities are responsible for approving planning applications in their areas. The activities of these institutions are not coordinated under any single framework, and as a result there arises duplication of roles and confusion for developers. Nevertheless, there are two main players in the approval of developments in Nairobi County, namely the Ministry of Lands, Housing and Urban Development, and Nairobi City County.

4.4.1 The Ministry of Lands, Housing and Urban Development

The Ministry is responsible for the provision of policy direction and coordination of all matters relating to land, housing and urban development. Until 2012, the Commissioner of Lands, who fell under the former Ministry of Lands and Housing, was responsible for land administration in the country,

facilitating the application of the Registration of Titles Act (Chapter 281, revised 2010), under which all land registration in the country was done. Registration of Titles Act (RTA) was supported by the Registered Land Act (RLA) (Chapter 300, revised 2010), which facilitates the formation of leaseholds. In 2012, guided by the new Kenyan Constitution 2010, both the RTA and the RLA were repealed under new laws, namely the Land Registration Act 2012, the Land Act 2012, and the National Land Commission Act 2012 (see Appendix 1). The Commissioner of Lands was replaced by the newly formed National Land Commission, which aimed to devolve land administration responsibilities to different counties, with a view to addressing malfunctions in land administration in the country.

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

4.4.2 Nairobi City County

The Nairobi City County, which has 17 sub-counties under its jurisdiction, has the mandate to control developments within its boundaries. The county government is responsible for preparation of spatial plans, development and enforcement of planning and zoning regulations, and infrastructure development in the city. Planners are charged with the stewardship of developing and enforcing planning laws and regulations, and planning legislation (outlined in Appendix 1) has given them a guiding framework; the problem, therefore, appears to be implementation, enforcement and monitoring of the given regulations.

The County Government Act 2012 directs the county governor to submit county plans and policies to the county assembly for approval, and holds the

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

So with these institutions in place, why have systemic problems arisen within the planning system? This will be established in the following section, which reviews how the inherited planning concepts and guidelines have evolved over the years.

4.5 The Planning framework to date

4.5.1 The Nairobi master plans

In Chapter 2 it became clear that the master plans adopted for African cities are often out of context, unrealistic, and fail to meet the needs of the population (UN-Habitat, 1996; Otiso, 2005; Gandy, 2009; among others). This section will review the plans that have influenced developments in Nairobi to date, and in what ways they have failed to meet expectations.

4.5.1.1 The 1927 (master) plan

The first urban plan for Nairobi, the 1927 Nairobi plan, was commissioned in 1926 while Kenya was still a British colony (see Map 4). Before this plan, planning in Nairobi was done on an ad hoc basis (Obudho, 1997a). This plan aimed to recommend zoning arrangements, to give guidelines for residential, industrial and other public purposes. The plan has been labelled a settler master plan, put in place to segregate the European settlers from the natives and the Asians; the Europeans were allocated 90% of the land, leaving 10% to be shared by everyone else (Vogel, 2008). This plan was linked to a budget, and the settlers did what they had to do to make orderly

and serviced settlements for themselves. It was not really a master plan, but rather an attempt to furnish the settlers with a monumental administrative centre.

African Use   Asian Use   European Use   Roads   Railway line
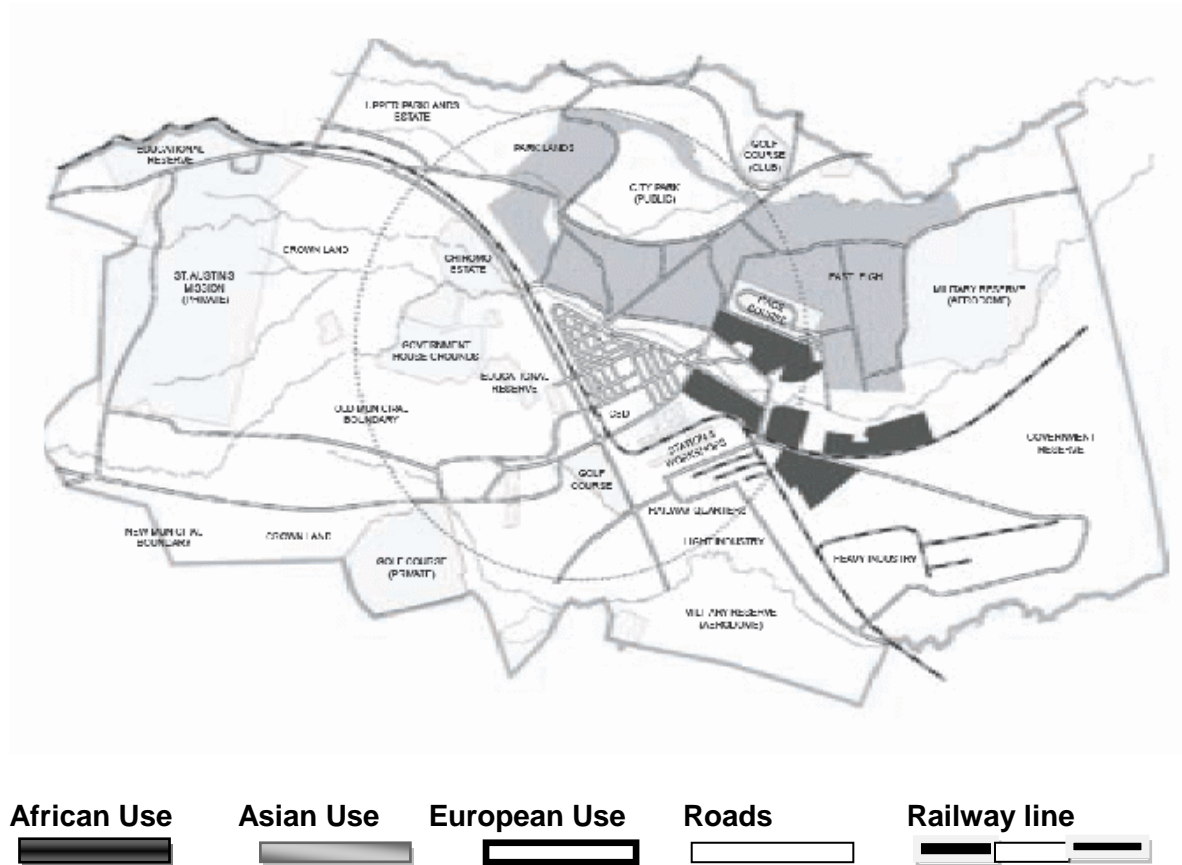
Map 4: The Plan of Nairobi as depicted in the 1927 Master Plan (Source: Vogel, 2008)

4.5.1.2 The 1948 master plan

In 1948 a master plan was put in place to give guidelines for the next 20 years (White, Silbermann and Anderson, 1948). The plan was prepared by a team of South African and British Planners, based on the principles of Howard's garden city concept. That master plan is the basis for the current statutory planning rules and regulations. It is responsible for the present layout of Nairobi's industrial area, and some residential areas. It was characterised by provision for boulevards and generous sidewalks, as well as landscaped roundabouts, parklands, forest reserves and riparian

reserves, the effects of which are still evidenced today in some affluent locations like Karen to the west of Nairobi and the Central Business District (CBD) (see Figure 6).

Figure 6: A view of Nairobi from the top of the Conference Centre tower (Geographical Association, 2006)

The 1948 Nairobi Master Plan has been referred to as a plan for a colonial capital (Silberman et al., 1948). The British colonial authorities used the 'one size fits all' approach which UN-Habitat (1996) cautioned against, when in 1948 they commissioned a master plan for the Colonial Capital, from which a blueprint for Nairobi was developed. They used their experience from planning in South Africa and concepts of British sociology and racialized space (which had been used for racial segregation), in Nairobi; this plan was modelled on the British town and country planning (Slaughter, 2004). The ideas espoused in Howard's Garden City movement seem to have been hybridised to facilitate racial segregation. The plan classified Nairobi into zones, aiming to make the city more attractive to investors. The zones included the Kenya Centre, Business and Commerce, Light industry and

heavy industry, residential (for the settlers), noxious industry (in the Eastland area), official housing (state provided housing for indigenous people in the Eastland area near the industries), reserve for official housing, railway line area and open spaces. As uncovered previously in the literature review, this resulted in marginalisation of the majority of the urban population, and propagation of informality in the city's periphery (Tibaijuka, 2007). The structure plan was financed by the British, and infrastructure like sewers and roads were put in place for the colonial capital (see Map 5).

N

Roundabout	Main Road	Bicycle Path
Regional Road	Railway	

KENYA CENTER	BUSINESS & COMMERCE	LIGHT INDUSTRY	RAILWAY	HEAVY INDUSTRY
OPEN SPACES	RESIDENTIAL	OFFICIAL HOUSING	RESERVE FOR OFFICIAL HOUSING	NOXIOUS INDUSTRY

Map 5: The Plan of Nairobi as depicted in the 1948 Master Plan. (Source: Vogel, 2008)

The 1948 master plan only covered an area which extended to the outer ring road on the east side (see map 6).
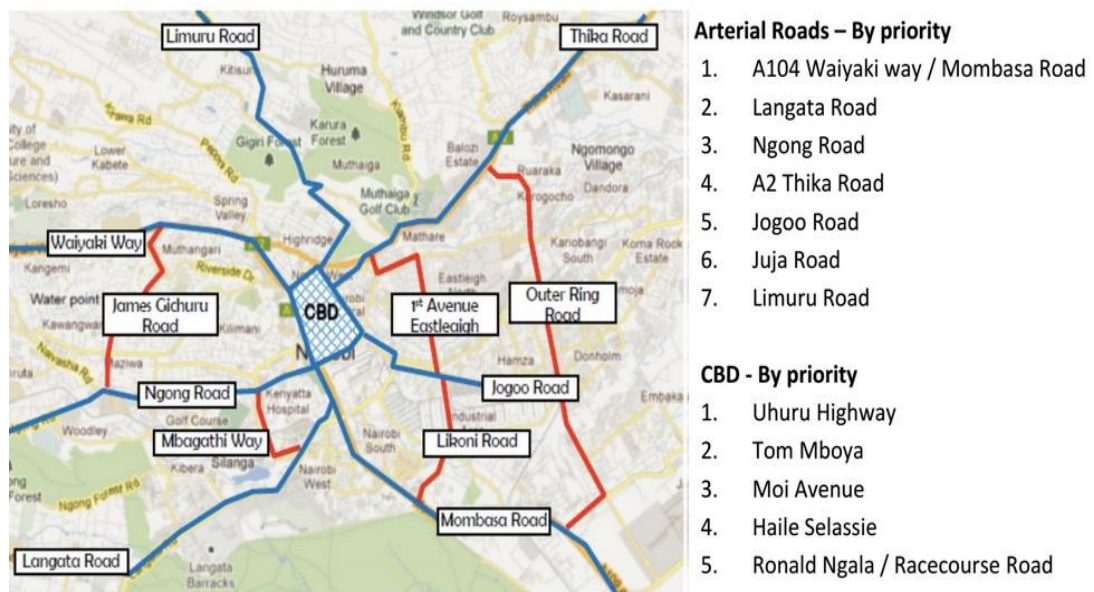
Map 6: Map of Nairobi showing Outer Ring Road. (Source: Ministry of Lands, Housing and Urban Development, 2015)

According to Oyugi and K'Akumu (2007), the 1948 master plan became irrelevant soon after independence due to changes in political and social variables; there was less emphasis on its implementation after the end of colonial rule.

4.5.1.3 The Nairobi Metropolitan Growth Strategy 1973

After independence, the government developed a second plan in 1973, the Nairobi Metropolitan Growth Strategy. Although not a master plan, the strategy was supposed to address physical planning and urban development of the city up to the year 2000. It aimed at maximising land use in the CBD, utilising existing infrastructure and public services, harmonising the haphazard zoning system, creating a balanced urban environment, and creating incentives for development and redevelopment of derelict areas in the CBD (Nairobi Urban Study Group, 1973). It anticipated that the city would grow eastwards, and that infrastructure would be developed by the public sector; being expanded to the areas in the direction in which the city

was predicted to grow. Indeed, as well as site and service schemes[19] like Umoja, Kayole and Dandora, and the Komarock project which was fully facilitated by the Housing Finance Corporation of Kenya (HFCK), most of the developed areas to the east of the outer ring road were outside the 1948 master plan area.

The 1973 Growth Strategy was driven by donors – the World Bank and United Nations in partnership with Nairobi City Council and the Kenyan Government (Anyamba, 2004), who identified areas for improvement, such as water supply, sewers and roads. The development projects were left to the city council to manage within a certain funding allocation by the donors, but it turned out that allocation of funds was never adequate. For example, with regards to water supply, efforts were made to secure funding for infrastructure from the World Bank in schemes such as 1st The Nairobi Water Supply Project (1972 -76), the 2nd Water Supply Project (1978-84) and the 3rd Nairobi Water Project (1989-2010) (ADB/ADF, 1998), but this provision was outstripped by unprecedented demand in the fast expanding urban areas. The plan was too ambitious – it made laudable promises but it was not any more effective a plan than the master plan before it. Indeed, by 1985, expenditure for the growth strategy was expected to be KSh8 million (about $91,954) for capital outlay, and KSh22 million (about $252,873) for recurrent expenditures, but by then the city was already in debt (Vogel, 2008). That was quite a low per capita provision, even for 1985, given that the population of Nairobi was already 827,775 in the 1979 census.

With regards to roads, infrastructure agencies such as KURA (Kenya Urban Roads Authority) and KeNHA (Kenya National Highways Authority), formed after the Kenya Roads Act 2007, and who were getting government funding (from donors, namely the Nordic Development Fund and the World Bank) for the expansion and improvement of roads, started improving the road networks in 2009. According to the Kenya Roads Board (2013), the government prepared a five-year Road Sector Investment Programme

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[19] *The World Bank had funded these schemes in the mid-1970s after Kenya attained independence in 1963 (apart from Umoja Inner Core which was funded by USAID) with the intention of delivering affordable housing to low income households.*

(RSIP) running from 2010 to 2014, comprised of maintenance and improvement works. Other initiatives such as an oil levy were also meant to supplement funding efforts for the improvement of roads; the government increased the fuel levy by KSh2.00 in 2008, with a view to raising bridging funds for the deficit (Kenya Roads Board, 2013).[20] However, the budget for the backlog of maintenance works (nationally, in 2008) was estimated at KSh230 billion, and some works in urban areas (estimated at KSh27 billion) had to be deferred due to lack of funds (ibid.). As a result, the surface was barely scratched with regards to the vast residential areas of Nairobi. In fact, it is only in the last few years that major road networks in the city have been overhauled, and even now, residential areas are still in dire need of transportation networks.

The Nairobi Metropolitan Strategy 1973 did a comprehensive analysis of the city, including laudable recommendations, such as formulation of realistic housing programmes and upgrading of infrastructure (Owuor and Mbatia, 2012). However, at the time most of the city areas were empty, and the strategy's authors did not foresee that informal infill developments, contrary to planning laws and regulations, would occur. Most of Nairobi was planned for low density, single dwelling units, with infrastructure to suit. Areas like Kileleshwa and Kilimani are now changing from low density to high density developments, without reciprocal upgrades in road capacities, sewer networks and water supply facilities. This is overstretching infrastructure in those areas. This scenario is duplicated in the Eastlands and along Thika Road, but on a larger scale. This is hardly surprising, given that developers were left to cater for themselves with regard to basic infrastructure - the areas are crying out for intervention in the provision of a better environment and infrastructure, as evidenced by overflowing sewers, poor drainage, questionable road sizes and water supply issues (see Figure 7 for an example of drainage issues). As noted in Chapter 2, commercial developers are out to maximise profit and are not concerned with the consequences,

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[20] *The Road Maintenance Levy Fund Act 1994 (revised 2012) facilitates the imposition of a road maintenance levy on petroleum fuels used by motorised road users.*

especially when they do not live in the areas in which they build (Rakodi, 1995; UN-Habitat, 2003).

Figure 7: Drainage problems in Eastlands (Author, 2014)

So what went wrong with the master plans? The UN-Habitat *Global Report on Human Settlements* (1996) had warned that traditional planning could not cope with land use control in southern countries due to inadequate levels of enforcement, and this was proved right in Nairobi. Opiyo (2009) argued that the reasons the previous plans failed is because they were economically and bureaucratically driven, not giving much consideration to the needs and aspirations of the inhabitants. The rate of population growth was higher than the rate at which serviced land was being availed to developers, and speculation by land owners was rife; to the east side were ranches, and the owners subdivided the land in anticipation of the predicted growth towards the east. Speculators bought most of the coffee estates and subdivided them; the market dictated the expansion of the city towards these areas. These areas, which are predominantly for the middle income people, have

metamorphosed differently to what was envisaged – development is effectively out of control.

Nairobi is also said to be still under the influence of outdated by-laws which are out of context and unrealistic, including those relating to construction materials, plot coverage stipulations, room sizes, lighting and ventilation provision of utilities, as well of change of use to accommodate household needs (Obudho, 1987; Obudho, 1997b; Syagga, 2001). The following section will highlight the planning legislation that has guided the city to date.

4.5.2 Legislation that guides planning

There are several pieces of legislation and policy documents that have guided the planning system in Nairobi to date. The Constitution of Kenya (revised 2010) provides the backdrop to all this legislation. However, multiplicity of legislation, as well as institutions involved in the planning system, leave room for misinterpretation and adaptation (Kimani and Musungu, 2010). Some of these issues were taken into consideration during the Constitution's recent review (enacted in 2010).

The main laws relevant to planning are covered in Appendix 1, though not exhaustively. These include;

- The Physical Planning Act 1996 (revised 2009)
- City Council of Nairobi (CCN) Development Ordinances and Zones 2004
- The Building Code 1968
- Urban Areas and Cities Act 2012 (Chapter 275\0
- The Sectional Properties Act 1987

Each of the above is now described briefly in turn.

4.5.2.1 The Physical Planning Act 1996 (Revised 2009)

This legislation empowers local authorities to control land use and development in their jurisdiction. It gives local authorities mandates to prepare and implement physical development plans, and to formulate and implement zoning by-laws for their areas. The legislation also gives

guidelines for the subdivision of land (or existing plots) into smaller areas, as well as extension of leases. Section 29 of the Act gives local authorities the mandate to control the use and development of land and buildings under their jurisdiction, including tackling issues related to poor infrastructure, poverty, environmental degradation and declining urban areas. This Act only came into being in 1996; before that there was no comprehensive reference for planners. Although masterplans and visions for the city's development were being put forward before 1996, they were more visionary than strategic, and the Physical Planning Act is more comprehensive in that it provides for both physical planning and development control. There were therefore no strategic guidelines to direct urban growth for the city before the Act, and planners were for the most part disempowered. It has been alleged by the Architectural Association of Kenya (AAK) that 65% of the buildings in Nairobi are sub-standard and unapproved, implying that their developers and the planning department do not comply with the Act (AAK, 2011). Poor enforcement under the Physical Planning Act has been attributed to impunity and corruption with regards to enforcement officers, as well as limited manpower within the council offices; thinly spread site inspectors mean that developers easily get away with non-compliance with planning regulations (Kimani and Musungu, 2010). This research will investigate reasons for shortcomings in enforcement and give findings in Chapters 6 and 7.

4.5.2.2 City Council of Nairobi (CCN) Development Ordinances and Zones, 2004

These ordinances expand on the provisions of the Physical Planning Act. The county's planning ordinances divide the city into 20 planning zones, giving guidelines for development in different zones and their geographical areas. They cover the ground coverage ratios and plot ratios acceptable in each zone, types of developments allowed, minimum plot sizes, and general policy issues. The areas covered by this research have been designated residential zoning, with mixed developments; flats, maisonettes and bungalows. The minimum plot size allowed is 0.05 of a hectare, and ground coverage in these developments ranges from 35% to 50% (in areas classified as high density), with plot ratios mostly 75%. The ordinances are

clear in their stipulations and the guidelines look good on paper, but the reality on the ground in these areas is rather different, with regards to ground coverage, plot sizes and plot ratios, as will become clear in Chapter 6.

4.5.2.3 The Building Code 1968

The building code stipulates the standard specifications of buildings and gives guidelines on the quality of building materials, requiring developers to submit a planning application to the local authority for scrutiny before commencement of construction works. The building by-laws were adapted from the 1932 British Planning Act and the 1932 United Kingdom Town Planning Ordinance in 1968 (Akatch, 1998). Although some amendments have been made and incorporated in the by-laws over the years, most of the code has retained the original stipulations. Agevi (1999) noted that the planners, who were British at the time, adopted by-laws from the United Kingdom, and just substituted 'Nairobi' for, for example, Blackburn (in the UK), not taking into consideration differences in climate. For example, the by-laws stipulated that roofs should be strong enough to withstand six inches of snow, and this was not noted or corrected until the 1970s (Agevi, 1999).

4.5.2.4 Urban Areas and Cities Act 2012 (Chapter 275)

This Act was drawn up following the new Constitution 2010. It repealed the Local Government Act (Chapter 265). Among other things, the legislation provides stipulations for provision of infrastructural facilities, including roads, sewerage, waste disposal system and street lighting. It requires that urban areas have the capability to effectively deliver essential services. Unlike its predecessor, it promotes public participation in the running and management of urban areas, advocating that citizens are enabled to express their views about the management of their urban areas and can gain access to relevant information.

4.5.2.5 The Sectional Properties Act 1987

This Act facilitates the division of buildings into units to be owned by different proprietors and its enactment appears to have contributed to the development chaos in Nairobi. Whilst most areas were zoned for low rise

buildings, developers applied this Act and built high rise developments in the city, undermining the zoning regulations. In areas like Kileleshwa, Kilimani and Lavington, apartment blocks have been erected on empty land, replacing the original low rise dwellings. Such land is privately owned by individuals or corporates. The government has also itself flouted these laws, for example in the publicly initiated project of Nyayo Highrise in Kibera in 1990, in which the government allocated apartments to different owners – this was before reviewing zoning stipulations for the area. This implies that planners are breaking their own laws in allowing such developments; that in such instances they find the laws, for example zoning plot ratio requirements, unrealistic, and thus choose to ignore them. Although, as established in Chapter 2, housing provision is often regarded as a public sector role, legal frameworks relating to land use, building codes and land ownership are all interlinked and cognate to each other. Planners are implicated, in that they have a role to play in controlling all developments, which in this case appears to have been overlooked.

Individually, the laws outlined above are clear in their stipulations, but they are either being ignored, or they are not being implemented. In addition, there is overlap of jurisdiction between the different statutes, and there is not a single comprehensive and integrated framework to guide the building industry - the planning laws are fragmented, with different pieces of legislation dictating similar obligations, but being governed by different institutions or departments. Berrisford (2011a) pointed out that good planning regulations would be relevant and have enough resources for enforcement, but clearly this has not been the case in Nairobi. There has not been accountability, consistency or transparency, and going forward the situation calls for more imaginative practices.

4.6 The planning vision; going forward

'…. the challenge is to develop more inclusive and effective forms of planning, rather than to give up on it all together' (Goodfellow, 2013:84)

4.6.1 Introduction

Having reviewed the planning framework to date for Nairobi and its ineffectiveness to control developments in Chapter 4.4, this section will review reforms in the planning framework, and whether there have been any lessons learnt from the failures of previous planning guidelines.

The main objective of the Kenya Vision 2030 programme was to help transform Kenya into a "*middle-income country providing a high quality life to all its citizens by the year 2030*", and as noted in Chapter 2.4.6, the World Bank declared it a middle income country in 2014. With regards to planning, the programme asserted that presently the country's cities and towns are poorly planned and acknowledged the need to initiate high quality urban planning in order to facilitate '…*decent and high quality urban livelihoods*...' by rapid build-up of urban planning and implementation capacity. The new Constitution of Kenya 2010 has given new powers to county governments with regards to planning issues. Two new pieces of legislation, namely the County Government Act 2012 and the Urban Areas and Cities Act 2011, give guidelines on how to engage with planning; facilitating political support for the planning system, as well as funding which is tied to implementation of local plans. This could potentially right the errors of the past system, which did not link plans to funding.

4.6.2 The new master plan

In 2007, UNEP prepared a state of the environment report for Nairobi (City of Nairobi Environment Outlook). The report provided a baseline with respect to which environmental issues in all development and planning activities could be assessed. The report highlighted how overcrowding in poor neighbourhoods was causing environmental health problems. Following this, Kenya Vision 2030, the country's development programme for the period 2008 to 2030, included housing and urbanisation in its aims. On the back of this was formed the Nairobi Metropolitan Development Plan in 2008, which

gave birth to the Nairobi Metropolitan Region 2030 Plan (NMR 2030) or Nairobi Metro 2030. Its goals included development and enforcement of zoning regulations, and preparation of a spatial plan for the metropolitan area. The Nairobi Metro 2030 (incorporating some recommendations in the Spatial Planning Concept for the city which was prepared in 2013) evolved into the present Nairobi Integrated Urban Development Master Plan (NIUPLAN) 2014 - 2030. NIUPLAN, however, is for Nairobi City County – it does not extend to the wider Nairobi Metropolitan Region which includes other counties and municipalities (see Map 7). However, as seen in Chapter 4.3.1, the Physical Planning Department in the Ministry of Lands, Housing and Urban Development has overall responsibility for urban development in Kenya, and oversees operations of all counties with regard to development plans.
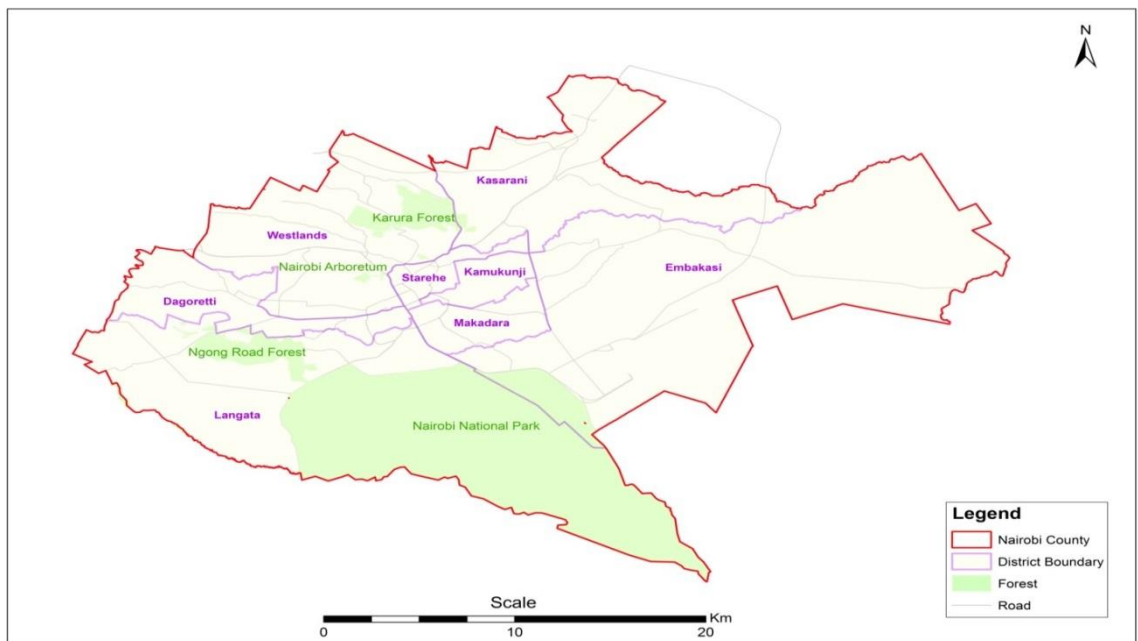
Map 7: Area covered by the new master plan: Source JICA, 2014

NIUPLAN's objectives are to ensure spatial order for physical investments, enhance the quality of life for inhabitants, guide investments by providing location criteria, and embrace the evolving urban policy regime by integrating social, economic, environmental and political issues under one unitary

framework. It seeks to integrate all the existing sectoral plans in the city, such as the water, solid waste management, energy and electric power subsector plans, and align them to Kenya Vision 2030, thereby providing a framework for coordinating urban development. The new master plan is ambitious; it aims to address the issue of extensive housing demand in the city by proposing, for example, densification and decentralisation of hubs. According to the NIUPLAN website, the plan was completed in May 2014, and validated in September 2014 (the public were invited to a validation event).

In developing NMR 2030 and NIUPLAN, the government took a consultative approach, involving a range of stakeholders in developing the programme. The government expressed expectations of transformations in the city's governance systems, with increased transparency and accountability. Scoping meetings as well as follow-up meetings were held in different wards in Nairobi to get the public's input towards a Strategic Environmental Assessment (SEA) for an integrated plan. Consulting stakeholders regarding the new master plan is in line with recommendations of the World Urban Forum 7 (Un-Habitat, 2011) on consultation, and can be seen as a step in the right direction. According to the minutes[21] of those meetings, the public obliged; they recapped neighbourhood issues in their wards, gave their views on proposed sector plans, and presented a wish list for improvement programmes in their areas. With regards to development, pleas for changes ranged from eradication of land grabbing, rehabilitation and construction of roads, and improvement in sewerage connections, to the beautification of neighbourhoods. Planners and their consultants listened and took notes, but also highlighted the need for continued joint-working between them and the public. As to how well they listened and how well the plan will be implemented, this will be judged by history depending on the effectiveness of the plan on the ground in the years to come. NIUPLAN was drawn up to reflect what was actually happening on the ground, in areas like Eastlands and Kasarani, as well as other areas like Kayole and Kamunyu that had not

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[21] *Minutes are available on the Nairobi Master Plan website -*
http://citymasterplan.nairobi.go.ke/

been considered in the previous master plan. That may be well and good, but for the plan to be actualised in giving directions and guidelines, to succeed where its predecessor had failed, it needs to be followed by a more detailed local physical development plan, incorporating a review of the present zoning ordinances.

In drawing up these local plans, they need to be realistic and conscious of the needs of recipients. Modern plans in sub-Saharan Africa have been criticised for being overly fanciful and inappropriate, such as the new master plan for Kigali in Rwanda, which was created by an international architectural and engineering company; it has glass-box towers and replicas of skyscrapers in developed cities like London, which are highly inappropriate considering that 80% of Kigali's residents live in informal settlements (Watson, 2013). Likewise, in Luanda in Angola, the Chinese built tower blocks 20km south of the city, which the locals have difficulties accessing due to cost and distance (ibid.). In Kenya, in 2013, the Japanese (Japan International Cooperation Agency (JICA)) took a lead in drawing up the new Nairobi master plan.

UN-Habitat (2015b), has urged local authorities to *'effectively supervise professionals and private companies contracted for urban and territorial preparation, in order to ensure the alignment of plans with local political visions, national policies and international principles…'* (p.11). It is up to the local planners to rein in presented ideas if they envisage them to be unrealistic for local needs. The questions they should be asking include: what is in it for these foreign partners – whose interests are they representing? Are they marketers selling dreams and fantasies, and is their transference of experiences and best practices appropriate or applicable for the population of Nairobi? It would be naïve to ignore political forces at play, and economic drivers, both local and international[22], but whilst political and economic elites are progressing their agendas, planners are ethically bound to steer urban transformation, and are ultimately held responsible for it. This

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[22] *The Japanese and Chinese are said to be 'taking over' Nairobi, among other cities, in terms of private capital investments as well as government commissioned projects such as roads (The Economist, 2011; The World Bank, 2015; IFC, 2015).*

plan is still very new and only time will tell about its effectiveness. What will the city say about the plan and the planners in years to come?
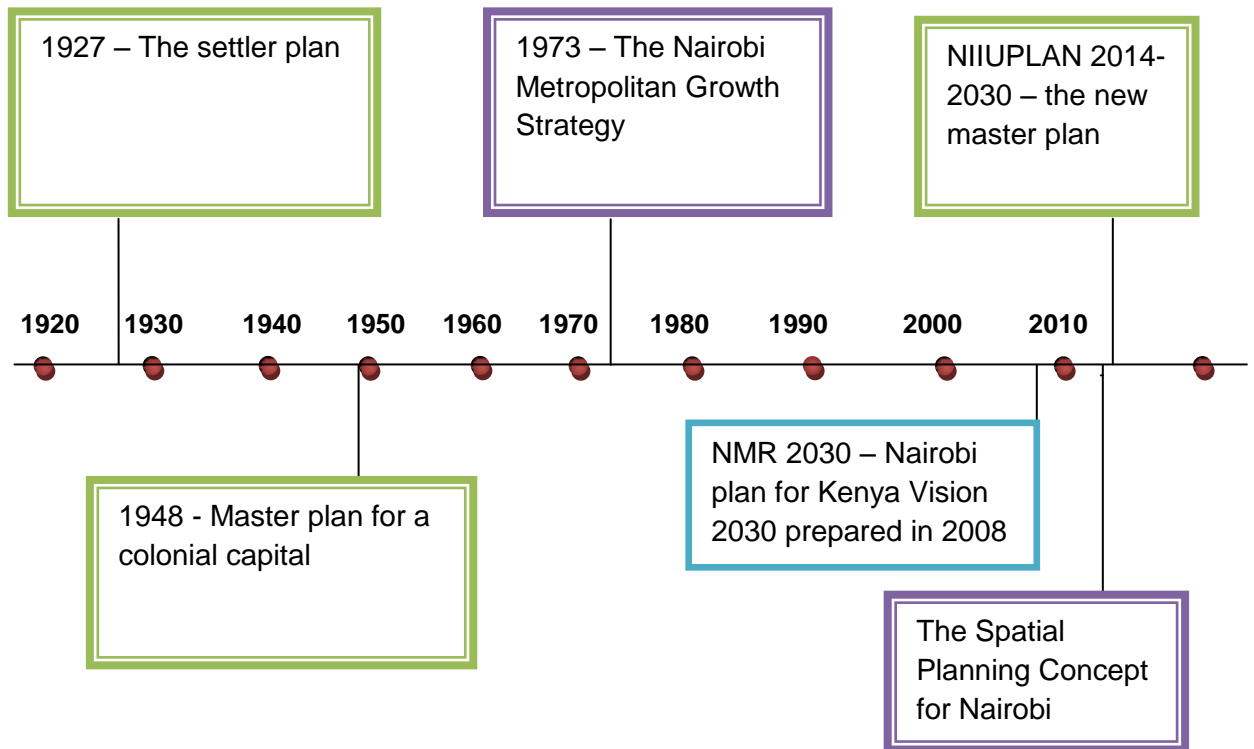
Figure 8: Master Plan Timeline for Nairobi (Author, 2015)

4.6.3 New legislation

For the most part, the previous by-laws and regulations did not work for the urban population. One outcome has been the revolt by developers, and the negative consequences thereof. For example, the review of the 1968 building code was initiated in 1996, following complaints by the Kenya Private Sector Alliance (KEPSA), when the government commissioned an enquiry[23] into the collapse of a supermarket building in Nairobi in which about 10 people died (the Sunbeam disaster).

The Kenya Vision 2030 programme prompted the release of new laws aimed at regulating the housing industry, namely the National Building Regulations

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[23] *The Mutiso Commission of enquiry*

2012 and the National Building Maintenance Policy 2012[24]. Initially, the review was to encompass planning as well as building laws, to draw up Planning and Building Regulations under the National Planning and Building Authority, but this was later changed to National Building Regulations approved in 2012 (and now under the National Building Authority of Kenya) after disagreements with planners, who argued that they did not need a new law besides the Physical Planning Act (which had been revised in 1996). Planning issues and building issues impact on each other, and the idea behind the Building (and Planning) Authority was to govern and monitor all professionals under the same institutional framework. The National Building Regulations 2012 (under the National Building Authority of Kenya) are meant to regulate the building industry in the whole country, and like other counties, Nairobi County is bound to adhere to the guidelines. The Ministry of Housing, Lands and Urban Development has overall jurisdiction over these laws.

The new laws, according to the Housing Minister, were intended to establish a harmonised institutional framework structure– setting standards for registration, certification, maintenance, water, power, safety and health (Minister for Housing, 2012). The Built Environment Bill 2012[25] and the Building Surveyors Bill 2012, were also a product of this review. To oversee the construction industry and coordinate its development, the National Construction Authority Act 2011 was also enacted. The National Construction Authority (NCA) is a state corporation established under this Act to regulate contractors, provide relevant training to them and ensure quality assurance in the industry. Although its legislation was enacted in 2011, its operational guidelines are a work in progress, and the National Construction Authority Regulations, for example, have only been effective from June 2014. The Building Code is also being revised, to take into

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[25] *The Built Environment Bill was passed by cabinet in 2012, but at the time of writing (July 2015) it had not been approved by parliament.*

consideration locally available materials and the latest building technology, with a view to reducing construction costs.

The changes proposed in the new laws could potentially consolidate the functions of various institutions under one body, which would enhance coordination and implementation of the planning framework. However, lack of consensus about the Building Authority indicates that there is already disharmony amongst the professionals involved in the formulation of the new laws, which could result in further fragmented laws, undermining the very purpose they are supposed to serve. Berrisford (2011b) advised that new planning laws can only be effective when they put their objectives in the context of needs - '*the underlying approaches towards planning and understandings of planning law themselves needs to change*' (pp 237). Revision of the Building Code could therefore be seen to be a step in the right direction, with the NCA demanding accountability from building contractors.

However, a question arises as to whether the good intentions of the new laws, like the good intentions of their predecessors, will be realised; could the impediments to previous laws encroach on the new laws? The new laws are seen to be a way of regulating the actions of developers, who are seen to be way ahead of planning, by streamlining the planning and building industry (Kimani and Musungu, 2010), but there are no guarantees that what the Acts stipulate will be adhered to, and they could be as ineffective as their predecessors unless measures are taken to address detrimental governance practices that may hinder their implementation.

The (new) Constitution of Kenya 2010

CCN Development Ordinances and Zones 2004

Sectional Properties Act 1987

NCC Regulation of Developments Bill 2014

1970 1975 1980 1985 1990 1995 2000 2005 2010 2015

Pre-Constitution 2010 legislation

Post Constitution 2010 legislation (enacted)

New legislation bills (not enacted)
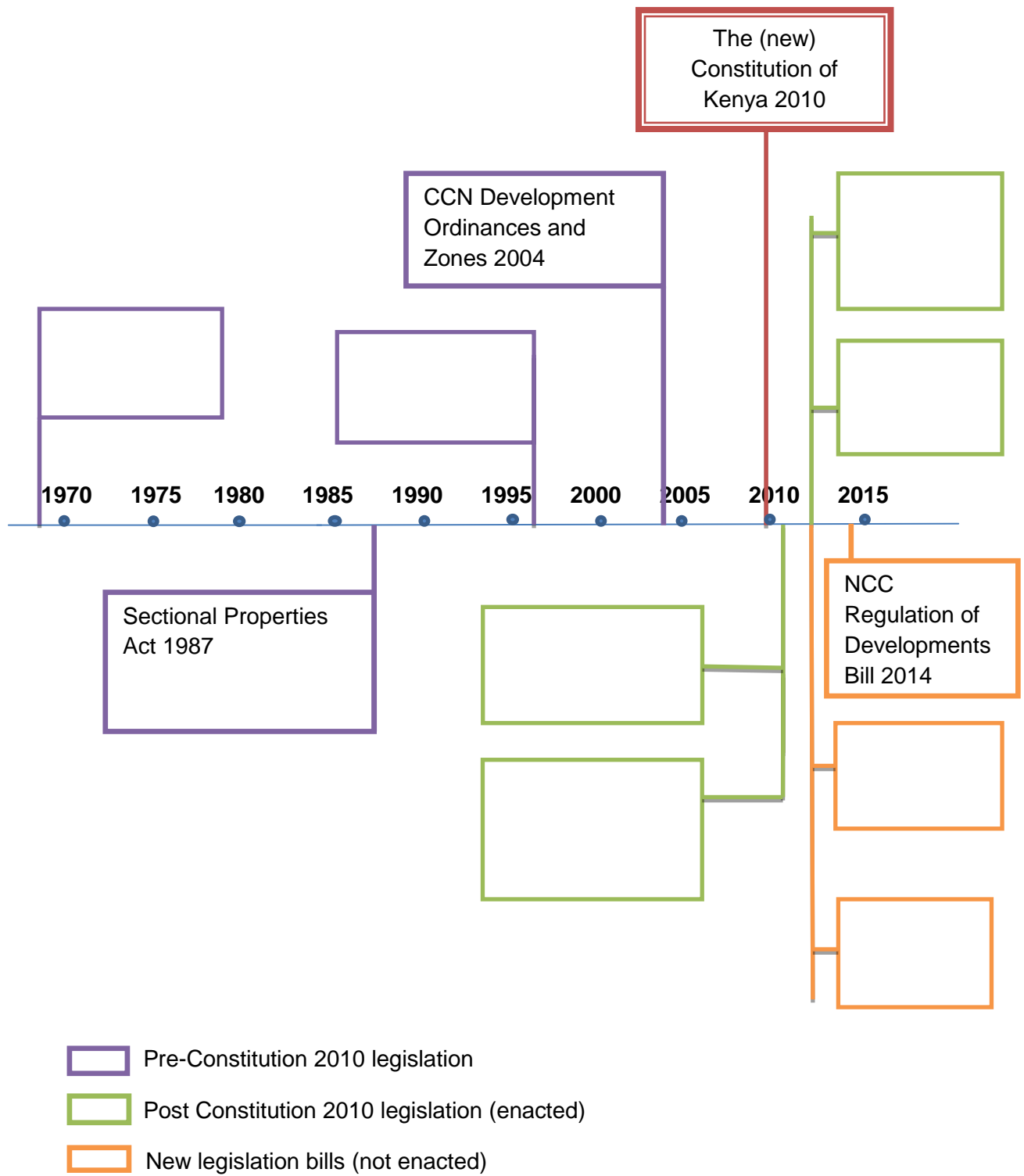
Figure 9: Timeline for planning-related legislation (Author, 2015)

4.7 Conclusion

This chapter has discussed unmet housing need in Nairobi. This is an ongoing problem due to rapid increase in the urban population, resulting in a widening gap between housing provision and demand. In the face of unmet housing need, development control has not been effective, and non-compliance with building laws and regulations by developers continues unchecked. The chapter also reviewed issues with land tenure and land use management, which form bases for informality in land development.

The chapter identified the two main institutions that are supposed to guide the implementation of the planning framework, namely the Ministry of Lands, Housing and Urban Development, and the Nairobi City County. UNCHS (1999) had noted how fragmentation in local government and planning institutions negatively impacts on institutional coordination of planning functions; ambiguous demarcation of responsibilities and conflicting interests pose constraints on development control. Indeed, it is bewildering that, other than the county planning department, there is another Physical Planning Department in the Ministry that controls development in Nairobi. Although this department oversees physical planning for the whole country, it has officers who are designated as responsible for the Nairobi City County. It will become clear, in Chapter 6, that the Nairobi county's planning department lacks full planning powers, and that there is poor joint-working with colleagues at the Ministry.

A plan is just a plan until it is implemented and enforced, but evidently, the planning framework in Nairobi has not been actioned to fulfil all its aims and functions. The Nairobi master plan of 1948 and the follow-up Metropolitan Growth Strategy of 1973 were not realised within their timeframes and many developing areas in the city were therefore unplanned. Turner, 1945, was of the view that a town's blue-print (master plan) would be realised or completed in 20 – 30 years, but clearly this did not apply in Nairobi – this research concurs with reports by other scholars (for example Oyugi and K'Akumu, 2007). Evidently the last master plans were outgrown by demand for urban occupation, which was underestimated at their inception. It is also worth noting that the last master plan expired in the year 2000, thus Nairobi

has been operating without a master plan since then. It might be assumed that the most relevant master plan is effective until another one has been approved, but this is not reassuring, considering that the last one was not realised. It has not helped matters that the Building Code, which was adapted from the British one, has not been reviewed since 1968. As it is now, Nairobi does boast some beauty, but this is only enjoyed by high income groups who can afford housing in affluent areas. It is a beauty that is not shared by the majority of the urban population, who, to the contrary, cannot afford the luxury of boulevards and generous sidewalks (see Figure 10).

Figure 10: What sidewalks? A streetscape in Eastlands, Nairobi (Author, 2014)

A question arises why (after at least two major post-colonial development planning exercises) outdated policies are still being used. For example, the Building Code is presently under a comprehensive review for the first time since its inception, affirming what Berrisford (2011a) and Watson (2011) noted; that some planning-related laws have not been revised over the last

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50 years. In the Kenya case it has been more than 50 years without a review of the Building Code. Other legislation in support of planning efforts was developed much later, and there are reforms in progress. In particular, the Kenya Vision 2030 programme prompted the formulation of new laws (some of which are still in draft stage) aimed at regulating the housing industry and enhancing the performance of the planning system. Also, a new master plan was developed and became live in 2014. There has been a flurry of activity in recent years with regards to the master plan, as well as legislative reviews, as evidenced in the timelines (see Figures 8 and 9), in an effort to enhance the effectiveness of the planning framework.

The following chapter will evaluate how the planning framework in Nairobi has been applied, answering the question 'Do planners have structures to implement planning laws and regulations and monitor adherence to them?'. This will then be following by empirical chapters aimed at answering the questions; 'What challenges do planners and developers face in the application of planning laws and regulations?', and 'What are the characteristics of the relationships between planners and developers, and why do they foster non-compliance?'. The chapters provide a review of the planning framework and issues with its implementation in practice.

Chapter 5: Application of the planning framework in Nairobi

'…. 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…' (Physical Planning Act Chapter 286 (Revised edition 2010); Part V)

5.1 Introduction

Having looked at the planning framework in Chapter 4, this chapter will give an outline of the processes and operational procedures involved in planning, and how they are supposed to work in Nairobi. It expands on how the planning authority implements and enforces planning laws and regulations, identifying the staffing resources available as well as the processes involved. It provides answers to the question 'Do planners have structures to implement planning laws and regulations and monitor adherence to them?' It does so in order to provide information on the context in which the planners and developers face challenges in implementing laws and regulations. It will lay the backdrop of the rest of the research, in that for there to be non-compliance, there has to be a system that is being ignored or bypassed. Section 5.2 covers the implementation and enforcement processes, including the structure of the Planning Department in Nairobi, and staff and staffing structures in it. It also describes the process of building approval as well as the relevant fees. The section is descriptive to start with, but it goes on to use empirical material from the study. Section 5.3 is about land administration in Nairobi. It covers the process of registration, and reveals how land buying companies contribute to registration problems. Section 5.4 discusses the new regularisation of development process.

Material for this chapter was derived from county documents, government websites, and interviews with participants, particularly planners and planning consultants.   All participants have been given codes to preserve anonymity (see table 6 for codes);

Table 6: Participant codes (Author, 2014)

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

5.2 Implementation and enforcement

5.2.1 Introduction

With the existing legislation in place, one would not expect to see neighbourhoods in high density development areas characterised by poor drainage, poor sanitation, poor access and general environmental degradation. But all too often, such would be familiar sights. There is a perception that the reason local authorities fail in their supervisory role is mainly due to limited resources; in 2009, a statement by the Director of Planning at the City Council of Nairobi (as reported in the local press) claimed that there were only 20 building inspectors for the whole of Nairobi (Daily Nation, 24 July 2009). It is alleged that this low provision of human resources, coupled with ineptitude and inefficiency by the planning professionals, contributes to easy entry into the construction industry by unqualified people, for example, to developers using contractors who cannot interpret or understand building plans (the Star newspaper, 20 June 2012). An architect quoted in the newspaper claimed that investigations into collapsing buildings in Kenya revealed that none of those buildings had registered architects or engineers (ibid.). From local press reports in Nairobi (Business Daily Africa 17 December 2014; Standard media, 19 December 2014; Daily Nation, 21 December 2014; Daily Nation 5 January 2015, among others), it appears that it takes collapsed buildings to galvanise public planning officials into action, with promises of conducting quality checks on buildings and threats of demolition; a classic case of too little, too late. This

suggests negligence with regards to inspections by planning officials, during and after the construction. Before the perceptions of planners and developers can be put forward, it is important to look at the systems for implementation and enforcement in Nairobi. The following section lays out the different sections in the planning department in Nairobi, and their roles.

5.2.2 Sections of the County Planning Department

The county planning department has eight sections; Central Administration, Urban Design Development, Land Survey, Forward Planning, Development Control, Research, Policy Implementation, and Enforcement. The first three sections are not directly involved in planning application approval – they are either in the background i.e. administration, or fulfilling different functions alongside the planning approval sections. The functions of the remaining five sections are detailed here[26].

i)   **Research and Development:** This section is responsible for looking into emerging urban needs, challenges and trends in the city, and making recommendations for forward planning and enforcement.

ii)   **Forward Planning:** This section looks ahead and develops policies to guide development in the county. Its main role is policy review and formulation. It also advises the other sections of the department on policy issues, using policy instruments such as the development ordinances, and other planning legislation.

iii)   **Policy Implementation:** This section implements what forward planning has recommended. It is in charge of development application evaluations, and recommendations for approval in regards to change of use, extension of leases, land subdivisions and amalgamations. As noted in section 4.5.1.3, most of Nairobi was zoned for single dwellings, so to develop apartment blocks owners have to apply to this section, through a physical planner, for change of use from a single dwelling to multiple dwellings. Lease extensions are also done using a private physical planner. The private and county physical planners are guided by the provisions of the Physical

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[26] *Information for this section was derived from interviews with participants, and from departmental publications.*

Planning Act 1996 (revised 2009) in their assessments. The section vets applications with regards to policy issues before endorsing them for development approval.

iv) **Development Control:** This section is the first point of call for all building plan approvals (building or construction permits); once approval for change of use (facilitated by the policy implementation team) has been granted, it processes and approves all applications for development. It receives architectural drawings which are submitted by architects, to ensure that they comply with planning and by-law requirements. The architects in this section are guided by the Building Code 1968 and the zoning regulations in their assessment of development applications. The process also involves consulting other relevant department sections, such as the Nairobi Water Company, and Public Health Department, who evaluate the applications to assess whether the developments are in compliance with the Public Health Act and other relevant public health requirements. Other departments that are consulted include the city engineers, for example the engineer in charge of roads to ensure that new developments are well connected, and the engineer in charge of structural implications. For commercial developments, the chief fire officer is also consulted to ensure that all the designs have taken into account fire safety issues and measures. A structural engineer is also required to submit structural drawings of the development, which have to be approved before a building permit is granted.

v) **Enforcement:** This section monitors developments and enforces planning requirements. It is supposed to do inspections, penalise illegal practices, as well as issue occupation certificates. This entails checking whether approved developments are implemented appropriately on the ground. It also entails checking or monitoring construction works which are taking part on the ground without approval so that action can be taken within the law, specifically the Physical Planning Act. The 20 building inspectors mentioned in Chapter 5.2.1 are affiliated to this section, which is dependent on the enforcement arm of the county council, comprised of county *askaris*

(policemen) who are responsible for the provision of security and enforcement in the City. The duties of the *askaris* range from removal of illegal structures, and environmental enforcement, to acting as traffic wardens.

The planning department has clear guidelines regarding how to make an application for a development; who needs to make an application, to which section applications and/or enquiries should be directed, the documents needed, and the fees required. Common requirements in all forms of development applications, be they new buildings, alterations, subdivisions or change of use, include an outline of the proposed development, a survey plan, ownership documents, and proof of rates payments to the county.

Conditions for approval are listed in the report form that is used by the different sections of the Planning Department, which gives room for comments and/or objections to an application (see Appendix 2).

5.2.3 Staff and Staffing Structure in the Planning Department

The planning profession in Kenya came rather late in the day, and this could be seen to add to its other shortcomings. It would appear that, before the Physical Planning Act came into being in 1996, it was not very clear who was undertaking the functions of planning, and various professionals, for example surveyors and engineers, were fulfilling the role. This was indeed the case in other local authorities and municipalities in Kenya, which did not have an established planning department like Nairobi, until 2007 when they started employing planners (interview PA16).

Allegedly, the Nairobi County Planning Department has got a myriad of staff who are not serving their purpose, and continuously drain the county's resources in payroll (interviews OP3, SP6, SP7, SP5). It was the opinion of one respondent that the number of unqualified staff far outweighs qualified staff[27] (interview OP3); the departmental sections are bottom heavy with unqualified staff whose roles and responsibilities are vague, if not undefined. At the time of this research, out of 110 staff in the 5 planning sections

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[27] *Qualifications in terms of relevant degrees, diplomas or certificates*

(Research and Development, Forward Planning, Policy Implementation, Development Control and Enforcement), only 36 staff members were qualified planners - the rest were clerical staff, messengers or landscape assistants (interview OP3). The problems have spanned the years, plaguing past and present planning offices. According to a retired planner who was in employment during the Site and Service Schemes projects, more often than not he was supervising vast areas like Kayole, Dandora and Umoja, alone (interview OPX4). It is not unusual in any organisation to have a relatively low proportion of experts in comparison to total staff, but the structure and nature of the tasks assigned could determine the efficiency of the organisation, in this case the planning office.

Ambiguity in roles and responsibilities of staffing section will be explored further in Chapter 6. Figure 11 shows the staffing structure in the Planning Department in the different sections, whilst Table 7 gives the breakdown of staff in the different sections of the department;
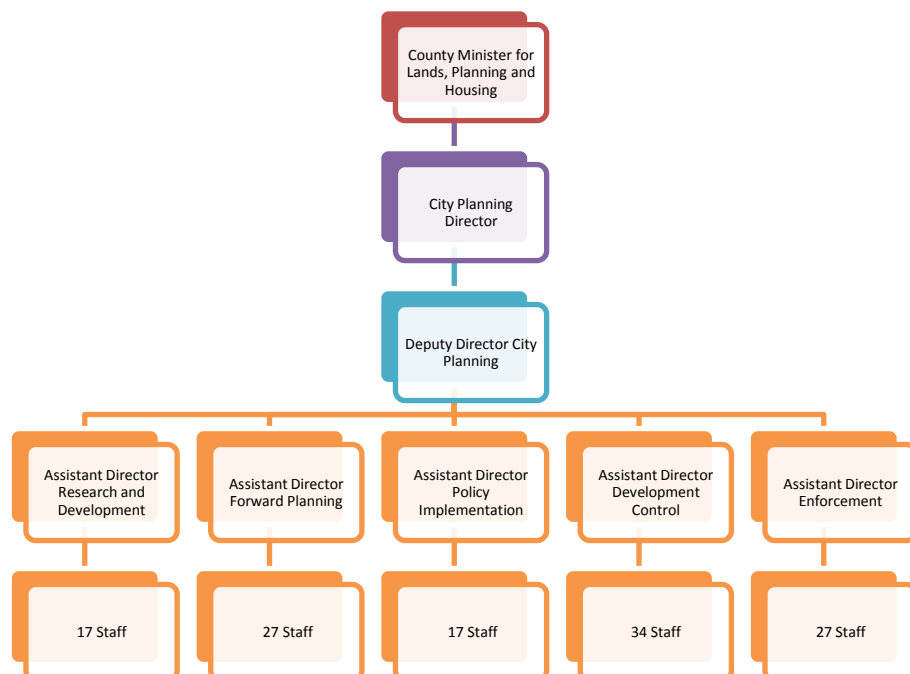
Figure 11: Staffing structure, Planning Department (Author: Interview with Chief Administration Officer, October 2013)

Table 7: Sectional breakdown of staff (Author: Interview with Chief Administration Officer, October 2013)

Planning Section	Total No. of staff	No. of Qualified Staff	Breakdown of qualified staff	No. of Unqualified Staff
Research and Development	17	4	2 Planners 1 Surveyor 1 Development Control Officer	13 – clerical officers, landscape assistants, secretaries, etc.
Forward Planning	15	5	5 Planners	10 – landscape assistants, clerical officers, messengers
Policy Implementation	17	5	2 Planners 2 Development Control Officers 1 Procurement Officer	12 – clerical officers, secretaries, etc.
Development Control	34	18	4 Planners 12 DCO1[28] 2 DCO2	16 – clerical officers, secretaries, etc.
Enforcement	**27**	**4**	Enforcement Officers scale 10	23 – city *askaris (policemen)*

According to planners, most of the unqualified staff were employed in the 1980s, at a time when political influence and interference promoted nepotism in most government agencies (interviews SP2, OP3, SP7). In the same era, ward offices were created in the different county wards, again driven by political agendas and vested interests. When the main county offices became saturated with staff (secretaries, typists, messengers and other non-technical staff), those in leadership created the ward offices, so that they

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[28] *DC01 and DC02 – Development Control Officer Level 1 and Level 2.*

could bring more people into employment.

It would appear that employment of staff was supply driven, not demand driven, and the local authority struggled to pay them (OP3, SP2). As a result, an embargo on employment was put in place by the Ministry of Local Government in 1981 (World Bank,1992), which unfortunately meant that qualified staff could not be hired and the different planning sections had to make do with whatever staff they had at their disposal at the time. Also, there was no undergraduate degree course in urban planning in local universities until 2003, when an undergraduate course in Urban and Regional Planning was introduced at the University of Nairobi – although the university had offered a two year master's degree in Urban Planning since 1974[29], the initial qualifications of those enrolling on this course were in other disciplines (interview DV9). Although this is not a rare occurrence in planning globally, it would appear that not enough qualified planners were being generated by the education and training system in Kenya.

For example, a retired county planner felt that the council does not have enough mid-level officers:

> The officers I was working with in the 70, 80s, the council has not employed more skilled technical staff. You know they need inspectors from mid-level colleges, polytechnics - who have diplomas or higher diplomas from these particular fields, engineers from the University of Nairobi, and architects, the planners; I think they don't even have 20% of what they need. That one I can positively say because I know the people I was working with and I know they've not employed more. There is acute shortage (interview OPX4).

There may well be acute staffing shortage but, as noted in the literature review in section 2.2.5 (UNCHS, 1999; Anyamba, 2005), the situation in Nairobi is not unique; inadequate qualified manpower to enforce planning regulations is a serious problem in most African cities. This sentiment was

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[29] *The University of Nairobi introduced the Department of Urban and Regional Planning in 1971, when it started offering a one-year diploma certificate in planning. The two year masters' programme started in 1974.*

echoed by planners in the planning department in Nairobi, and the effects of this on planning will be discussed further in Chapter 6.

5.2.4 Process of building Plan approval

Prior to development works, developers are supposed to get a construction or building permit from the relevant Local Authority (see section 5.2.2 under development control), which is empowered by all the other relevant institutions to process applications; the permit is considered as essential physical planning tool for promoting and protecting amenity and the built environment in the best interests of the urban population.

In Nairobi, applications for building permits are submitted to the Nairobi City County of (NCC) by developers' agents, usually architects or physical planners. According to NCC's Development Control, Monitoring and Enforcement Service Charter, each department involved is expected to take at most three days to process the relevant section of the application for their department, and to grant building permits or advise on areas which need revision. Resubmissions after comments on the architectural drawings have been complied with are expected within 14 days. The application is then forwarded to the Technical Committee, which normally convenes twice a week. Before 2008, approvals were being issued by NCC, but this responsibility was transferred to the Technical Committee with a view to easing the backlog.

After approval of the architectural plans and drawings by the Technical Committee, the application then progresses to the NCC, together with structural drawings. Before the final approval is given by NCC, a report is required from National Environment Management Authority (NEMA) regarding the environmental impact of the development. According to NCC Service Charter (Development Control, Monitoring and Enforcement Sections), this should be achieved within a week. See Figure 12 for the approval application process.

Planning Application submission
- The application is submitted with all the required documents to development control. Such documents include survey plans, proof of ownership and receipts for county rates payments (in relation to the development)
- The submission is done a prescribed form. The department advises applicants to use qualified professionals, such as a Registered Architect for building plans, or a planner for change of use.
- An assessment of fee based on plinth area of development is done and an invoice issued.

Circulation
- The development plans are circulated to different sections in the department; Roads, Forward Planning, Research, Housing Development, Structural, Valuation, Water
- The different sections write their comments

Feedback/comments
- Feedback and advise to person who submitted

Submission of structural Plans
- Details of architectural drawing are cross-referenced with structural plans
- Plans are returned with comments to the person who submitted

Technical Committee
- The proposal is presented at the technical committee, which holds court fortnightly.

Approval
- Subject to meeting all requirements the development application is approved.

Figure 12: Approval Application Process (Author; Information from participant interviews)

The Service Charter of the Development Control, Monitoring and Enforcements Sections promises to advise developers/architects on building regulations and planning policies, and carry out quality assurance inspections in liaison with relevant county departments – they promise to carry out inspections of on-going approved building works, and to monitor development activities to check compliance with the building regulations. The Service Charter also states that these sections will undertake enforcement action against illegal developments and issue occupation certificates to buildings that fully comply with development requirements. The whole process of approval, from the date of application, should ideally take 30 days, according to the Service Charter. It all looks good on paper, but the reality, according to developers (which will be discussed further in Chapter 7) is rather different; this research, in corroboration of the literature review (Mwangi, 2007; AAK, 2011), found that the approval process could take indeterminate period of time.

5.2.5 Application fees for planning approval

Prior to October 2013, building permit charges were assigned on a graduated scale per every 50 square metres, ranging from KSh1,200 (about $14) for 0 to 46 square metres to KSh9,930 (about $114) for 855 to 930 square metres for domestic class developments. These fees were not based on the value of the development, but on the area covered. However, from October 2013 and in line with the new Financial Act 2013, submission charges for New Domestic Class housing developments were revised and consolidated to rates ranging from 1.1% to 1.5% of the total value of the proposed construction based on the prevailing Joint Building Council rates, on a downward sliding scale – smaller developments attracting the higher percentage. For developments with a type plan[30], there is a flat rate of 1.25% of the total cost of individual developments. For the type of developments being covered in this research, submission charges presently would be 1.1% to 1.25%. The approval expires after two years, after which a fee is charged for a renewal application of KSh 10,000 (about $115) per

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[30] *A building plan designed for use by many people in a particular residential scheme/development*

dwelling. The value of the construction is evaluated under the Joint Building Council rates, not any valuation given by the developer.

Some areas within Nairobi County are considered as Special Density Areas, and these attract different submission rates. These areas include former site and service schemes to the east of Nairobi (outside the master plan area), namely Kayole, Dandora, Mathare North, Huruma and Umoja, and other informal settlements in Eastlands. For these Special Density Areas, submission rates range from 0.75% to 1.1%, again on a downward sliding scale. Any approval renewals are charged at KSh750 per square metre. Originally the intentions of the differential rates were to promote developments in the low income site and service schemes, but differential rates seem to have been carried forward in reviews even after site and service schemes were overtaken by other commercial developments.

A senior planner disclosed that in the financial year 2012/2013, the department generated KSh1 billion, but expectations for the next financial year have gone up KSh4 billion for the sector of urban planning, housing and lands; they need the money to implement the new master plan and to build capacity in the department:

> ….as we go forward we'll be able to have an increase because our sector in the last financial year was able to generate about one billion shillings to the county's coffers. This time with an expanded mandate we're expected to generate almost four billion shillings, to be earned through the sector of urban planning, housing and lands. So we're hoping that we'll be able to do better because we'll need more money to build capacity and to implement…. (Interview SP2)

Unfortunately for developers, the county has to generate this money from somewhere. Chapter 8 will give some insight into the effects of this increase in charges to developers and developments.

The planning framework is supposed to be supported and complemented by land administration– planning and urban land administration are intertwined, with development control relying heavily on effective land administration.

The following section will therefore look at land administration in Nairobi.

5.3 Land administration in Nairobi

5.3.1 Introduction

Like Olima (1997), this research found poor land use management has contributed to development control challenges - it has been a contributory factor to non-compliance with planning laws and regulations. For one, classification of land use in the city is very vague, and this has given room for discretionary interpretation, for example with regards to mixed developments (residential and commercial units) in residential areas. It is not unusual, for example, to find commercial units on the ground floor of a residential unit, despite the land being classified as solely residential. Although the Constitution of Kenya provides a skeletal framework for land administration purposes, it has not been reinforced with holistic and detailed policies to guide development. According to planners, lack of clarity in policies has led to misinterpretation by developers, thus adding to their (planners') frustrations. A planner expressed:

> .... what exactly is in that zone, like the size of the apartments… you see when you have a clear policy that whoever comes knows, for example this is a phone you can't call it any other name (interview SP5).

Secondly, some areas like Ruai in the far east of Nairobi were not even planned and developers there do not have title deeds. Developers bought land mostly from land buying companies, and such parcels of land have not gone through the complete land registration process for issuance of title, and have completely bypassed the planning approval process. Although the planners can issue notices for non-compliance to such developers, they are not able to inspect developments for non-compliance since they do not have a blue print to cross-check them against – such a blue-print would have been produced during the approval process. As a senior planner explained:

> … you can only issue a notice to a development which is not approved; there's no time you can inspect it for compliance. What I'm

saying is, what you have not approved you cannot inspect for

compliance – you can only issue a notice against it (interview SP1).

In such a case there would the element of illegal change of land use (thus making the whole development illegal), and planners are well within their rights in giving the developers notice to stop development. This deficit in the land administration process in Nairobi has been a source of frustration for both planners and developers. UNCHS (1999) highlighted poor coordination of physical planning and development activities in African cities as one of the constraints on development control. The next section will cover the land registration process, and legal loopholes that have an impact on compliance by developers. It will draw on procedural processes as depicted by land administrators in Nairobi.

5.3.2 The Land Registration Process in Nairobi

The land registration process has been perceived as elongated and bureaucratic, and has been a source of frustration for developers. This section will look at what is involved in getting proof of land ownership (see Figure 13 for a summarised version).

Preparation for Subdivision of freehold land	• The freehold could be owned by a land buying company • A private Physical Planner prepares a plan guided by zoning regulations - they prepare a planning brief to justify the subdivision • The planners consults all the relevant bodies like National Environment Management Authority (NEMA), and gazettes the intention to subdivide.
Submission to the Planning Department	• The Physical Planners submits to the county council on a PP2 form.
Circulation	• The application is circulated to relevant authorities, e.g. Ministry of Agriculture, Public Health, Director of Survey, Ministry of Lands (Land Registry), Director of Physical Planning, and Environment. • The different departments give their comments and return the documents to the council on a PPA2 form • The documents are then returned back to the Physical Planner
Verification	• The Land Registry receive the comments and check and clarify ownership - ensure land is not public utility land, and that it was legitimately acquired. • The Land Registry give provisional approval, subject to council approval • If council approves the land owner (title holder) is given final approval to subdivide by the Land Registry
Subdivision	• A private Registered Surveyor demarcates the land • The plans is forwarded to the Director of Survey to check bearing and approved subdivisions.
Proof of ownership	• The owner gets a Registered Index Map showing plots and their numbers • The owner gets a subdivision certificate
Registration	• The new owner takes the documents to Ministry of Lands (Land Registrar) to get a certificate of title, or a lease • A technical committee holds court and to discuss applications for titles • If all is legit the certificate of title or lease document is signed by the Commissioner of Lands and the Chief Land Registrar. • File goes for final audit in accounts department e.g. certificate of stamp duty • Owner is invited to settle the account and collect ownership document

Figure 13: The land registration process (Author: Information from participant interviews)

In an effort to resolve land administration issues, the Constitution of Kenya directed the enactment of the Land Commission Act 2012. This Act is aimed at empowering the newly formed National Land Commission (NLC) to, among other things, 'manage public land on behalf of the national and county governments', 'monitor and have oversight responsibilities over land use planning throughout the country' and 'monitor the registration of all rights and interests in land', recommending appropriate redress when called for. The NLC took over all the functions which had been held by the former commissioner of lands. However, since its formation, there has been squabbling with the Ministry of Lands, Housing and Urban Development, regarding its powers and remit; it appears that there are no clear boundaries between the functions of the Land Commission and those of the Ministry. Land registrars in the Ministry felt that issuance of titles should remain the remit of the Ministry, and that the National Land Commission should be like an independent consultant, guiding the Ministry of Lands, Housing and Urban Development:

> …the land titles have crown of the government, not the Commission's …The Commission should come up with *[an]* enabling Act of Parliament on how to deal with, for example, illegal acquisitions. The Commission is supposed to be an arbiter between the government ministry and the public. The Commission should be advisory – it can come up with the right mechanisms. If the public complain regarding the ministry, then the Commissioner can arbitrate but they can't arbitrate if they are the ones issuing titles (interview PA8).

However, colleagues in the newly formed Land Commission begged to differ:

> The National Land Commission is responsible for titles, as they *[the NLC]* create leases – it's part of land administration…. Court proceedings are starting tomorrow[31] to determine who signs titles. No idea how long it will take.... (Interview PA5)

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[31] *Court proceedings were to start on 23rd July 2014.*

Not only can the Land Commission not arbitrate between the government and the public, but it does not inspire the confidence of the public if its role is questionable from the onset; there is need for clear and unambiguous boundaries, measurable and reviewable assignments, as well as accountability systems, for both the Ministry and the Land Commission[32]. One is left to wonder why it matters so much who signs the titles, since they are both government agents. PA8 thought the power struggle was linked to corrupt practices, or envisaged benefits of taking the lead:

> The problem is just somebody thinking, 'there's this piece of meat, I have a feeling Mary will eat more than myself…' (Interview PA8)

PA8 was echoed by PA2:

> …. The fear, I think, is just that control – it's just about power and who administers land in Kenya and who plans land in Kenya…. But here it's an issue of 'if we bring you on board in our decision making, you're going to influence us in this way', and people probably don't want that. You see when you act in isolation your position goes but when you act in a corporate it's not your position that goes – you probably have to do an election, or you vote to agree a position…. (Interview PA8)

PA8 implied that there are self-serving interests motivating those seeking positions of power, and they would prefer to be in total control, making all important decisions, without consulting others. The dispute between the ministry and the Land Commission impacted on planning matters in that, while the two were squabbling, the issue of title deeds was put on hold – nobody was signing titles for well over one year, which meant that aspiring developers either had to halt their application for development approval, or bypass the approval process. In the course of this research, a case was filed with the court, to decide who among the two is responsible for signing title

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[32] *As of February 2015 the National Land Commission and the Ministry of Lands, Housing and Urban Development were waiting to go to the supreme court for a ruling regarding their mandates, after all reconciliation efforts had failed. That is more than 2 years after the formation of the commission in 2012, during which time the issuance of title deeds has been on hold. Although in late 2014 issuance commenced (by the ministry amidst squabbles with the commission), the titles are apparently questionable and have been rejected in some instances by some financial institutions (DVA13)*

deeds – because each was claiming legal mandate in land adjudication matters and issuance of title deeds. Such a squabble is the wrangling between leaders alluded to by UNCHS (1999), which handicaps efficiency in local authorities. The intentions of the Land Commission Act 2012, and the National Land Commission are noble, but as will be seen in Chapter 6, there are controversies surrounding their administration, and as a result they have not yet taken root towards straightening out land administration issues in Nairobi.

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

5.3.3 Land buying companies in Nairobi and the registration process

Most of Nairobi is unplanned, as most of the area covered by Nairobi now was outside the original master plan. Most of this area, especially towards the East of Nairobi, had been ranches in the colonial era. As noted by Yahya (2002) and Musyoka (2006), land buying companies acquired such land and subdivided it into plots, and these areas are now an integral part of Nairobi. While the company's purchase is legal and it can obtain a title deed, the subsequent subdivision is not approved and individual plot owners cannot obtain titles. The issue of land buying companies and their contribution to the planning chaos has come up a lot during this research and this section will look at the registration process when land buying companies are involved.

One issue that was uncovered by this study is the contribution of a lack of title deeds in unplanned areas of the city to non-compliance – a major unplugged legal loophole that is known by planners and developers, and that continues to deter the intentions of the planning framework. Without title deeds, developers of such land are not able to seek development approval. According to planners, it is not until recently (perceived to be between 2006 and 2008) that the county conceded, potentially allowing share certificates[33]

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[33] *Share certificates are certificates issued by the freehold title holders of land to certify that the holder has bought a share (or a piece) of the freehold as indicated in the certificate.*

(complemented by sworn affidavits by the holders) to act as proof of ownership in the proposed regularisation process (interviews SP2, SP6)[34]. Before then, share certificates did not suffice as proof of ownership for the purposes of obtaining title deeds.

Where land buying companies are involved, the registration process can become more elongated. This is because the land buying company owns the freehold title, and members have first to comply with the requirements of the land buying company, such as due payments. Sometimes it is also a challenge to trace the holder[35], or to reach a named director, especially in cases where the directors of the company are deceased – this adds to the frustrations of developers who want to get individual title deeds. The registration process can also become quite complicated, in the event that subdivisions were not done legally or in a regular manner. Not all land buying companies are above board, and indeed some are established by rogue traders who disappear into the night after subdividing and selling the land, leaving the new owners with a catalogue of registration problems which have to be made sense of before registration; including issues pertaining to the provision of infrastructure and social amenities and plot sizes.

One senior planner explained:

> …if your land is 10 hectares or more you have to surrender 0.1% of that land for public utilities – schools, open spaces, etc.…. But you find that later that land buying company they end up selling even the surrendered land… the scheme changes.... There are some well-established land buying companies, but there are some brokers – some semi-illiterate people who are land buying companies; they don't care, they go buy a chunk of land and subdivide into whichever plots.... But those land buying companies are powerful people; they're

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Unfortunately, such certificates are implicated in a lot of malpractices, including multiple allocations (using fake certificates)
[34] *It is worth noting that the Regularisation of Developments Bill 2014, at the time of writing, has still not been passed in parliament – it has therefore not been enacted.*
[35] *Failure to register new directors for such a company should be illegal, but after the death of the original titleholder, it is not unusual to have cases where the new ownership has not been resolved or established.*

the people who will come here with the politicians, with senators sometimes…. (Interview SP7)

If a land buying company is legitimate, and after a member has paid their dues to the company, the member's name is forwarded to the Commissioner of Lands (Land Registry). The director of survey will have forwarded information regarding the land, clarifying plot numbers – they do not indicate the names of the owners, but they clarify what the plot number was before the survey and the new number after survey. The Land Registry is then able to process the certificate of title or lease. Challenges posed by land buying companies are explored further in Chapter 6.

Having looked at the planning framework and how it is applied, the following section will look at how the planning authority aims to redress malfunctions in the planning system – in particular how it aims to formalise non-compliant residential developments in the city. This is of interest to this research because the developments being investigated are mostly implicated in non-compliance issues.

5.4 Regularisation

5.4.1 Introduction

Although there is a planning framework in place, this has been limited in its functions by various factors, as will become clear in Chapters 6 and 7, and this limitation is more visible in the 'unmapped' areas of the city. Evidently, many developers have not paid heed to planning laws and regulations, and clearly the planning authority has not been able to stop them. Lack of funding, unprecedented urban population growth, the development of unplanned areas and a 'borrowed' building code have hindered the planning framework from achieving orderly development; the resulting developments are anything but (see Figure 14);

Figure 14: A disorderly neighbourhood in Eastlands (Author, 2014)

Regularisation of developments is a new process in Kenya, aimed at rectifying the past failures of development control; the process is about 'formalising' informal developments in retrospect. Of middle income developments, a planner expressed:

> …. I always thought that *[the development of apartment blocks]* was a neglected area. And it's one which pretends to be doing formal housing and they are not (interview PA3).

PA3 used the term 'pretends to be formal housing' because apartment blocks use formal building materials, and engage in formal processes, albeit partially in some cases. When research for this study was being carried out in October 2013, the drive for regularisation of developments was in full stride, having been kick-started with much bravado; road-shows led by senior planners and politicians were being mounted in areas known to have expansive illegal developments, and attempts were being made to streamline a procedure to guide the process. However, a policy for the regularisation process had not yet been approved, and planners did not have an

operational procedure for it. The draft of the regularisation bill has been a work in progress and has not been enacted, so there has been no guiding legislation for the process.

This section will look at the guiding framework for regularisation, the rationale for regularisation, and what the process entails.

5.4.2 The Regularisation of Developments Bill 2014

There has not been any law with regards to regularisation of unauthorised developments, and the new bill to this end is yet to be enacted. The Regularisation Bill was drawn up in recognition (by planners) that they need to address the issue of unauthorised developments in the city. The bill aims to facilitate provision of basic infrastructure in unauthorised developments, regularisation of unauthorised developments which meet planning requirements, and eradication of developments that do not meet planning requirements, such as developments on public land (see Figure 15). However, the bill also proposes establishing a framework to 'provide for regularisation of unauthorised developments having more than the allowed number of floors', perhaps in recognition that such developments are the norm, rather than the exception. Due to the magnitude of non-compliant developments, planners acknowledge that it would not be realistic to demolish all of them, and that it would in fact be considered immoral in the context of the acute housing shortage. They have therefore looked for a way to go around the problem, by developing a procedure to legalise such developments. A senior planner explained:

> .... we cannot justify using public funds to demolish; sometimes to demolish one house is more than several millions of shillings, so we have found that the approach is to involve the developers through the new political system where one of the pillars of the governor is to deliver titles to those people who are in areas hitherto not based on prior planning permission before development so that those areas can be regularised, those investments can be seen to be supported through honest documents, and then some planning intervention is in

place to consolidate the type of investments they have made over time...(Interview SP2)
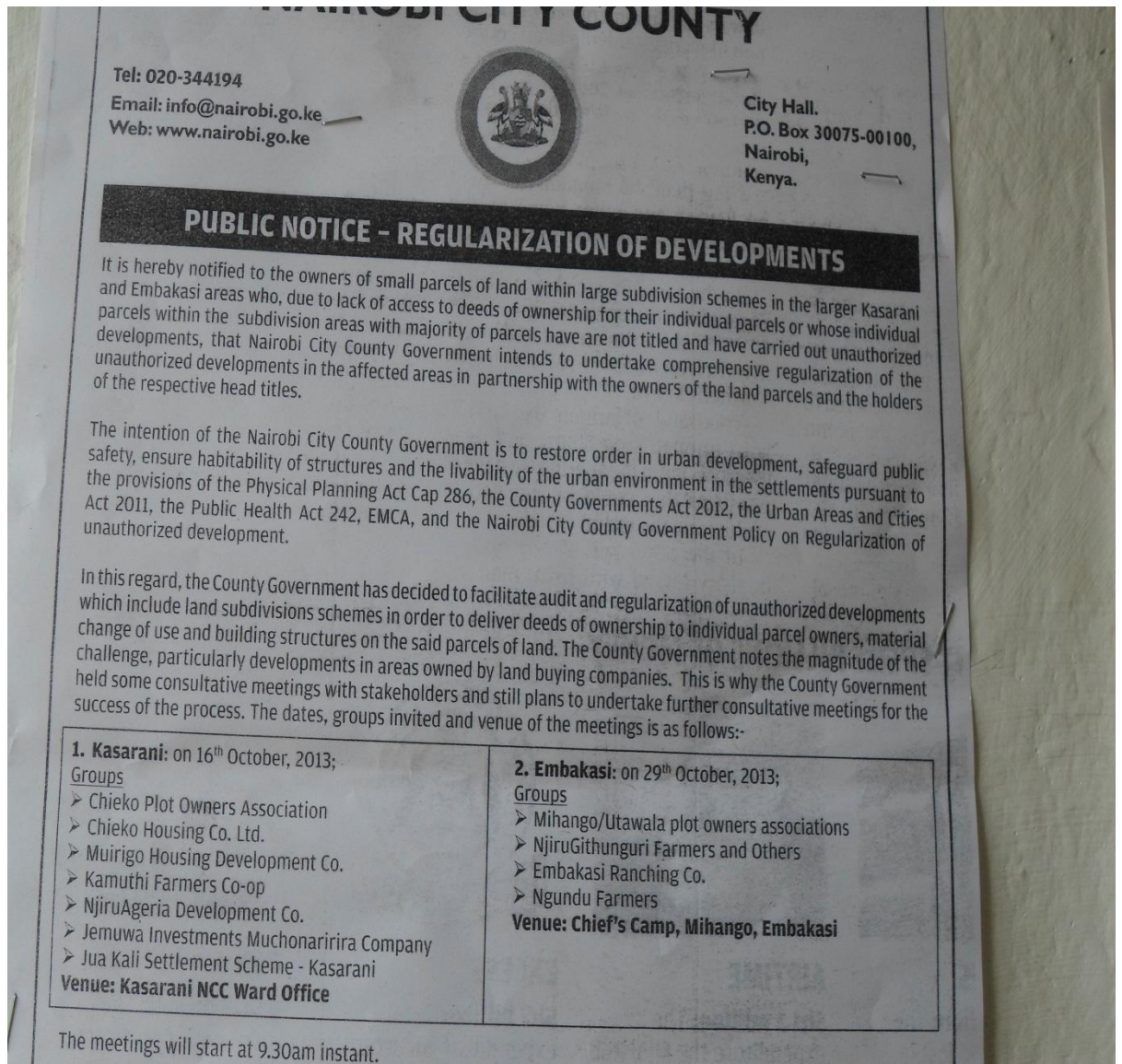
Figure 15: Invitation to developers in Kasarani and Embakasi areas for a consultation meeting – notice at the county planning offices (Author, 2014)

5.4.3 The regularisation of developments process

In Nairobi, there are two scenarios that call for regularisation;

i)   When a property owner has a development which has not been approved by the county.

ii)   When a property owner has a development which is part approved, for example, the development was approved for three floors but the

owner illegally added more floors. This occurs where development owners *can* apply for planning approval, but for reasons which will be discussed in Chapter 8, they either bypass the process altogether, or partially engage with it. Then they apply to regularise after completion of the development.

The regularisation process requires;

- The development's owners to submit architectural drawings: For projects which had not gone through the planning approval process, there might not have been legitimate architectural drawings; submission for regularisation involves getting a Registered Architect to provide building plans
- Structural engineer's tests report: A structural engineer carries out tests to determine whether or not the building is structurally stable. For regularisation, unlike the normal planning approval process, structural engineer's drawings are not a requirement – just the structural test reports.
- Photos of the building as it stands: This applies to both projects which are totally unapproved, and partially approved developments.

Approval fees for regularisation are higher than routine planning approval fees, and developers are wary of this. The fee for regularisation is more than double the normal approval costs. Bearing in mind that normal approval fees have recently been increased, regularisation ends up being an extremely costly process. As a result, most developers will only go through the process if, for example, they need to raise funds from a financial institution (they are asked for planning approval documents), or for insurance purposes require a certificate of occupation, which can only be given by the planning department if the development has been approved.

Planners could have another agenda in seeking to regularise developments in Nairobi; there was acknowledgment that a lot of developers had circumvented the approval process, and developed profitable developments

in the city without permission, thus without paying due fees to the planning authority.

> …. at some point in 2008, what happened *[was]* we realised we're losing a lot by not netting these people – they're not in our laid net, yet they're building and benefiting from the hospitalities of this city…. provided the subdivision had already been approved by us, it was only that you were waiting for the process at lands which sometimes would take forever…. if we have evidence that we approved that subdivision, we know that it meets the requirements, therefore what we would ask somebody is to bring the share certificate, a signed affidavit from a lawyer ascertaining that '…this land is mine as per this share certificate…'…the rest of the process can wait so that first of all we can get some money (interview SP6).

SP6 affirms the views of public officials (alluded to by Healey, (1998)), that developers should contribute some of their profits towards general development. Not only would they pay the planning fees, it would also mean that their properties could be followed up for payment of ongoing rates. Whatever their reasons, whether a genuine need to formalise developments in the city (in retrospect) or to generate income from errant developers, planners had every hope in this process, thus the development of the bill. Although the bill has not been enacted as yet, the process of regularisation had already started and was ongoing during this research, thus planners and developers could give their perspectives on its effectiveness. This will be explored further in Chapter 6.

5.5 Conclusion

This chapter has provided evidence that there are structures in place to facilitate development control - the chapter has detailed the staffing structure and processes involved in development approvals. So given that the framework is there (as seen in Chapter 4) and the structures are in place, it is of interest to understand why there is no coherent or effective guidance for developers, especially for the middle income residential developments. One architect commented:

The framework is there, but enforcement of that framework is not. And when these things went out of the way, it now just became like an avalanche of developments. And when it's gone to that level, stopping it, saying that from this point on people have to comply, it's a difficult task (interview DV4).

It is indeed a difficult task, as evidenced by the extensive areas of uncontrolled developments. Land administration, a parallel function (to planning) of the city county, has also been facing non-compliance issues, for example in subdivisions by land buying companies, which have in turn impacted on ensuing developments. As seen in Chapter 2, the Habitat Agenda (UN-Habitat, 1996) advocated for appropriate structures for enforcement of land laws and regulations, institutional support, accountability, transparency, accurate information on land ownership, land transactions, as well as land use. However, it will become clear in Chapter 6 that land administration in Nairobi is rife with constraints, ranging from problems with rampant speculation and inappropriate demarcations to poor provision of infrastructure. Squabbles between the National Land Commission and the Ministry of Lands, Housing and Urban Development are also a handicap, and problems with land buying companies have only exacerbated land administration issues.

Planners are not oblivious to the fact that the planning framework has not delivered as it should have, and the Regularisation Bill of 2014 is aimed at giving them a reference in their attempts to rectify past failures of the system. However, developers have questions about regularisation, as will become clear in Chapter 6; is it going to make things right or is it just another form of harassment? Can it work? Is it mainly about raising revenue for planning?

With all the empowerment that has been afforded the city county, what is holding them back in monitoring and enforcing the application of planning guidelines in the city? Whilst there could be valid and extenuating circumstances for the state of neglect of some of the 'uncontrolled' middle income residential areas (this will be looked at in the following three chapters), there are basic environmental requirements that are a

constitutional right for citizens of the city – the Kenya Constitution 2010 states that *'if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter'.* It gives the County governments the mandate to make that happen – it enables a court 'to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment'.

One planner expressed that, although the Constitution has given directions for planners, it did not have the right reference because there wasno Urban Policy to refer to (the Urban Areas and Cities Act was enacted in 2011, after the Constitutional review in 2010). That may well have been the case before 2011, but three years later, planners are still struggling to navigate the sea of uncontrolled developments. Whilst the city waits for the effects of the intended reforms, it is groaning under the burden of unmet planning needs and defiant developers.

It could be argued that, although unmet housing need is a trigger for non-compliance with planning laws and regulations, it is not the main determinant because even in developed countries today there are cries of housing shortage in the cities: Instead, the problem could be said to be with the planning framework itself – the policies, their application, implementation and enforcement. Berrisford (2011a) had the right idea about reforming the planning laws to form a better framework in the context of needs – it is a good starting point. However, there are other complex factors hindering its application on the ground, especially with regard to provision of resources and governance. This chapter has demonstrated that planners and developers have some insight into what is ailing the planning system. The question which remains therefore is to what extent their perceptions impact on the application of the planning framework on the ground. Chapter 6 will give planners' views of how and why the planning system has lost its footing so far. Chapter 7 will look at how governance of the system has influenced

the application of planning laws and regulations. Chapter 8 will give perspectives of the problems in practice in developments.

Chapter 6: The Planning Challenge in Nairobi – impediments in planning practice

'…. development has already taken place and overtaken the planning. We're concentrating more on development control. Maybe even 70% of city planning now is controlling development….' (Interview SP7)

6.1 Introduction

This chapter will explore impediments to planning implementation, monitoring and enforcement. The questions it will analyse are; what challenges do planners and developers face in the application of planning laws and regulations? What are their perceptions of the limitations and/or gaps in the present planning laws and regulations? Why hasn't the planning system been changed to improve the quantity and /or quality of housing for income groups? Are planners flouting their own laws?

In Nairobi, the County government is supposed to implement the planning framework.

> … development control all over, it's always under the docket of the
> city council. You can never put up a structure if the council doesn't
> allow you…. (Interview PA5)

But developers in Nairobi have done just that. This research was guided by the fact that the expected role of planning in creating an orderly urban environment (among other functions) appears to have been sabotaged by developers/developments, thus the resulting chaos in the city of Nairobi. Planners may not be authorising these developments, but consent is implied when non-complying developments are tolerated. One planner admitted:

> Most of the time when the economy is doing well the developers are
> going faster than what we planned. We may not cope with the
> development trends (interview PA11).

This is contrary to Taylor's (1998) argument that when the economy is booming, like PA11 noted in the case of Nairobi, planners are well placed to drive their agendas forward with developers; it would appear that planners in

Nairobi have not quite grasped the opportunities being proffered by private capital, and are instead focusing on control.

Unmet demand for housing can be said to be at the heart of the phenomenon of non-compliance. In the literature review it was evident that the population explosion in sub-Saharan African cities poses major housing challenges (Rakodi, 1992; Tipple, 1994; Rakodi, 1995; Shilderman and Lowe, 2002; among others), but it is also presenting investment opportunities to opportunist developers. According to a retired planner, the last rental houses built by Nairobi City County were in the late 1970s, at Kariobangi South, Huruma and Buruburu (OP4X). This corroborated Owour and Mbatia's report (2012), which reckoned the last rental houses delivered by NCC were in 1978. Site and Service schemes were also government housing projects of the 1970s, after which the county seems to have resigned from housing provision, delegating the responsibility, by default, to private developers.

The demand for non-complying developments is both in 'un-mapped' areas where the planning department are not empowered to approve developments, and even in areas where land owners have titles and can apply for planning approval - but planners have not been able to monitor or enforce compliance. Poor enforcement has spanned many years, not only in private developments, but even in government led housing schemes, such as the site and service schemes in Dandora and Kayole to the east of Nairobi.

The tools that are being used to control developments in the city are not able to cope with the reality in the housing and land market. Unless the government can deliver housing for this population, or support and facilitate provision by the private sector, the planners are fighting a losing battle to control these developments. As a planner so aptly put it:

> … if the demand is there and the institutions are weak, I'll be prepared to bend the law if not to break that law. Those are issues we need to understand (interview SP4).

This is reminiscent of Rukwaro and Olima's (2003) argument that non-compliance with planning regulations is a manifestation of the weak administrative and institutional framework of the county. The institutions are weak indeed, and as will be evidenced in this chapter, the planning system has not been up to the task of controlling those developments. This was affirmed by 18 participant planners and four other government agents. Issues with the planning system were also highlighted in qualitative interviews with 22 developers and/or their agents.

Section 6.2 gives perceptions about the planning framework, including views on laws and regulations, land administration and the new regularisation process. It relates back to Chapters 4 and 5 on the planning framework, but presents planners' and developers' perspectives regarding the shortcomings of the system. Section 6.3 addresses the key question of how planners and developers view the resources for planning. These perceptions potentially affect the pressure put upon the planning system because if it is widely understood to be under-resourced, developers may be more likely to risk non-compliance.

6.2 Poor planning framework

'You cannot control what you've not planned...' (Interview, PA11)

Nairobi has been operating without a broader master plan since 2000, and has thus lacked an integrated development policy for over 13 years to guide development in the city. Also, the previous master plan did not cover most of present day Nairobi, and although projections for growth were made, they were rather short-sighted in terms of how far or how fast the city would grow. Section 6.2.1 highlights the frustrations posed by outdated plans and laws and regulations that are perceived as unreasonable (by both planners and developers). The section argues that, if even planners view the laws and regulations as unreasonable, it is no wonder that there seems to be a high level of tolerance for non-compliance. Section 6.2.2 reveals deep-seated issues with land administration (ranging from irregularities in allocation and subdivision to poor infrastructure provision), which also imply a lack of

political goodwill. These issues have disempowered planners and exacerbated non-compliance. Section 6.2.3 argues that efforts to regularise developments are not likely to succeed if faced with the same afflictions as mainstream planning.

6.2.1 Outdated laws and regulations

As seen in chapter 4, most of Nairobi was zoned for single dwellings, but the reality on the ground in the present day, as developers strive to keep up with demand, tells something different. Zoning tools have not been reviewed sufficiently given the rapid growth of development, and in terms of plot ratio and ground coverage, Nairobi has had a low level for maximum permitted development compared to developed cities. Some consultants' reports argue for the maximum utilisation of available land to match that of cities like Hong Kong, Singapore, Tokyo and Shanghai, especially in the areas close to the CBD (PA4). This would be realistic, given the demand for built space in those areas. According to developers and their agents, the most common form of non-compliance is exceeding ground coverage and plot ratios. This is not surprising because, as Watson (2013) noted, some investors with diverse portfolios have been exposed to other cities, can see the potential for developments and have the finance to realise such developments, yet are limited by zoning guidelines. There are still areas in Nairobi where the laws only allow subdivisions of a minimum of one acre, for example in Karen (DVA8). This is viewed as being unrealistic, considering the rate of population growth in the city:

> … we're still using very old plans – 1973 plan when I think the
> population of Nairobi was 1 million, now we're almost 5 million
> (interview DV9).

DV9 was not far wrong; Nairobi's population in 1979 was about 800,000, whilst in the 2009 census it was about 3.1million. In some areas like Kilimani, Parklands, Kileleshwa, Lavington and Upperhill,[36] the stipulation to develop buildings of a maximum of four storeys has become quite unrealistic

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[36] *Areas to the West of Nairobi near the CBD (zones 3, 4, and 5), which were formally zoned for single dwellings.*

when gauged against the cost of land in those areas[37]. According to a consultant commissioned by the planning department to consult the public on zoning issues, petition letters had been sent by developers to planners and consultants, urging them to review zoning regulations for those areas (interview PA4).

> For the entire Upperhill, in the 50s, 60s, 70s, up to early 80s, one private dwelling house per acre - not even ½ an acre, an acre. Lower Upper Hill is ½ an acre. They were now writing submissions to the director: please can you guys revise these laws because we want to build 50 storeys? That was just a simple letter. Another one the same. And then a conglomerate buys an acre in the anticipation that one day the laws will be reviewed. Do you know he's going to sit and say, Ok, I think there's too much pressure, let's allow for rezoning and let these people do their 10, 20 storeys (interview PA4).

This was corroborated by a senior planner (interview SP6). According to SP6, this pressure from developers started in 2006. As a result, spot zoning[38] has, in recent years, been applied to some areas which were originally zoned as low density (single dwellings); these areas have now been revised to become high density zones. Areas such as Kileleshwa, Kilimani, Westlands - to the west of the city and surrounding the CBD[39], and Parklands to the north of the city – have now metamorphosed into areas of residential apartment blocks for the high end of the middle income group, interspersed with developments and occupation by commercial activities. Kileleshwa, for example, was originally zoned for ground coverage of 25% and a plot ratio of 25%, but these have been revised to 35% and 75% respectively, and even more recently to 100% plot ratio (County Ordinances). With regard to plot ratios, Umoja Innercore and some areas of Kasarani are an exception, with plot ratios of 150% and up to 200% respectively. But

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[37] *½ an acre of land in Kilimani, according to local estate agents, is going for about KSh 250 million ($2.87 million).*
[38] *Spot zoning involves identifying certain areas (especially near the CBD) for a review of the zoning policy, usually where substantial developers are exerting pressure on planners. Developers in such areas engage with the planning approval process, and also have protested against unrealistic planning expectations, thus pushing for a review.*

[39] *The CBD is mostly zoned for commercial and administrative purposes*

even where a higher plot ratio is permitted, developers seem to expect more, thus issues of non-compliance with regards to building heights persist despite the revisions in plot ratio requirements. However, it is the outer areas like Kasarani and Eastlands where the majority of the population is spurring on developers to cater for their housing needs, where non-compliance with planning laws and regulations is most rife.

Figure 16: A development under construction in Embakasi area – still going up. The roofed one at the front would be within planning guidelines for the plot ratio (Author, 2014)

The problem with 'spot zoning' is that by the time planners react to pressure, some impatient developers have already bypassed the zoning regulations and developed without guidance, setting a trend for the area which may not be appropriate, because of their failure to take other factors like infrastructure provision into consideration. Also, areas like Kayole and Kamunyu, further away from the CBD, and especially outside the former master plan area, are neglected in such exercises, and yet the areas are being densely developed.

Other forms of non-compliance include changing use from solely residential to mixed developments (commercial use, mostly on the ground floor, and residential use) without applying for planning permission (interview DVA6). In areas like Eastlands and along the Thika Road, planners admitted that during the approval application process, some developers give examples of other developments in their vicinity, alleging discrimination if planners insist on observing the stipulations (OP1, OP2). Moreover, some developers do not even bother to apply for approval – they just follow the trend and build. In Donholm phase 8 in Eastlands, for example, a planner thought that 70% of the developments had been built using the wrong ground coverage allowances, having been built without change of use approval from a single dwelling to multiple dwellings (interview SP7).

Planners acknowledged that the Physical Planning Act is not flexible, and gives no room for negotiation:

> …. we just prescribe and regulate; we don't guide…. Because the planner that the training institutions churn out is almost a policeman - he's being told '...you know what, when you go there, the policy frameworks should be your bible. You must adhere to it, you must almost swear allegiance to it…' so that if a person comes and tells you '…. instead of channelling my waste to the main sewer I want to do some recycling facility whereby maybe I'll use the water for gardening and all that, but in exchange for that I need some higher density…' That doesn't happen (interview OP1)

Planners' sentiments regarding their education echo the views of Watson and Agbola (2013), who highlighted the need to reduce the gap between training for planning students and the realities they confront in the cities. Their perception of shortcomings in the approach to date concurs with UN-Habitat (1976) and Andersen et al. (2015), who suggested that the role of the state should be relegated to guiding and facilitating rather than controlling. Indeed, developers and their agents viewed the laws and regulations as more controlling than facilitative:

You see, like, the by-laws that the city council uses are the *mzungu (white man's)* bylaws which were done in 1948. By then the building line was six metres from the road. If it's residential, the back from your neighbour you have to leave at least 2.4 metres…. So if your plot is about, say, 12.5 metres wide or six metres like in Buruburu, and then when you try to apply the by-law you're left with nothing *[on which to build]*. If it's six metres by 20 metres, and this side you allow border to border on one side, and you have 20 metres – the minute you remove six metres you're left with 14 metres. Then from the back you have to leave at least 2.4 metres. Assume there was a sewer line so you have to leave a way leave. At the end of the day you're left with something like 6 metres by 10 metres. That's about 60 square metres. What kind of a house is that? …... (Interview DV5)

With that perception, it is not surprising that most developers avoid the approval process. A developer, who is also a contractor for other developers, disclosed about his development:

…. It was zoned for a single dwelling unit for two floors, but we decided to do five floors, without any planning……. We decided we're not going there *[planning offices]*, because they were not going to approve five floors – they'd only have approved two floors. That's what happens. In fact, if you go to Eastlands, 70% of what you're seeing there are not approved buildings (interview DV9).

The building code has been faulted for being outdated and unrealistic. For example, it specifies that every dwelling unit must have its own bathroom and toilet, but the reality in the low end apartment blocks is rather different: several residents or households on one floor share communal sanitary facilities (interview SP6). There is demand for such accommodation, which developers are aware of, and are profitably meeting:

…. But I know the ones that we felt were too stringent in some areas, you know like there was a time we could not approve single room developments because of the code; every room must have its own bathroom, toilet, stuff like that.… However, the reality on the ground

> when you go to Mathare North, when you go to those places –
> Pipeline, you find it's single rooms, people sharing the sanitary
> facilities. Which meets their needs and economic capacity – I've just
> been employed, I just need a room; I've just graduated from
> university, I'm searching for a job – I just want that house of maybe
> 4,000 shillings *[about $46]* where maybe my sister who works can pay
> *[the rent]* for me as I look for a job, or from the little I'm getting….
> (Interview SP6)

In addition, with reference to the 1948 building code, both planners and developers pointed out that technology has evolved. For example, whilst access to sewerage previously determined the scope of allowable development[40], this need not be a deterrent in the face of versatile sewerage and sanitation systems that can support higher densities on smaller parcels of land. The building code also stipulated external walls 200mm thick, but there are strong arguments for considering the performance of new building materials that give the same standards of construction. Granted that such technology may not have been tested exhaustively, this option could be jointly investigated by planners and developers in order to refine and adapt it with a view to easing development pressures. As Berrisford (2013) points out, planners should focus on the minimum standards needed for basic health and safety, rather than stressing the appearance of buildings or materials used:

> ... when we keep insisting on the 1960's bylaws in today's context
> then you're likely to have those sort of conflicts, because these
> developers also – quite a number of them are exposed and they know
> what is happening out there *[in the rest of the world]* (interview PA18).

18 years after the review of the Building Code 1968 was initiated, it is yet to be completed. Institutional and professional rivalry, which has resulted in a lack of consensus with regards to the review, coupled with the effect of transitions in offices, has caused the delays. This ties in with poor joint

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[40] *In the previous regulations the minimum plot size allowed in areas without a sewer was 0.1 of a hectare.*

working amongst professionals and government agencies, as will be revealed in Chapter 7. Planners and other professionals involved are locked in debate as to which professionals are more grounded than others, and who will lead the proposed umbrella authority:

> Because the authority *[the National Building Authority - see section 4.5.3]* was going to control the construction industry in terms of enforcing the building code, in terms of review of the building code, in terms of checking the building inspection, registering buildings themselves, in terms of maintenance, in terms of disaster management; it's quite big (interview PA9).

In the meantime, more buildings have collapsed[41] in the city, with numerous fatalities and injuries. Thus the building code is evidently not being followed, because if it had been, there would have been no collapsing buildings due to usage of low quality materials or non-usage of professionals in construction.

Evidently, the legislation and regulations are outdated and inappropriate, and both planners and developers find them extremely difficult to work with. The standards are unattainable and unenforceable, as alluded to by other scholars (Allmendinger, 2001; Rakodi, 2001; Berrisford, 2011b; Mbaku, 2010). Clearly, planners are frustrated by the very framework that should be guiding them, mainly due to the fact that planning policies do not keep pace with the rate of development or the reality of housing needs. In addition, inflexibility in the application of the Physical Planning Act and an unreasonable building code have been inhibitive in dealing with the expectations of developers. Planners are perceived as controlling rather than guiding, and this does not bode well for adherence to the laws and regulations. Planners demonstrated insight into these limitations and expressed empathy with developers. Whether this influences their tolerance for non-compliance is anybody's guess, but undoubtedly their passiveness is

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[41] *Between December 2014 and January 2015 alone, 2 storied residential apartment buildings collapsed in Nairobi: In Huruma in Eastlands, a 7 storied residential apartment block collapsed, leaving at least 4 people dead and numerous others injured, and in Makongeni (again to the East of Nairobi), a 5 storied residential building collapsed, killing at least 8 people and injuring many others.*

costly in terms of environmental degradation, as well as health and safety aspects in non-complying developments.

Developers are defying zoning regulations, which is partly a reaction to the 'wasteful zoning' of the colonial blue prints that Nwaka (2005) alluded to. Moreover, piecemeal planning has not controlled development in a comprehensive way. It is a classic case of planning playing catch up with development, as referred to by Taylor (1998) and Rydin (2011). The 'Globalisation of real estate' that Healey (1991) alluded to has underlined the unrealistic nature of policies and added pressure for zoning reviews. However, spot zoning in reaction to pressure from developers has been confined to areas close to the CBD, and there are areas further afield which are in dire need of intervention. More recently, UN-Habitat (2015b) recommended a review of building regulations and zoning laws to accommodate compact cities with high-rise structures to cater for high density populations in certain areas, and clearly it would be desirable to heed this call in Nairobi.

Having looked at the problems in practice with the planning framework, the following section will look at land administration issues, which have also been a deterrent in planning efforts. Although land administration is not governed under the planning framework, it has a significant role in determining the effectiveness of the planning system, as will be evidenced below.

6.2.2 Issues with land administration
This section gives perceptions of the shortcomings in land administration in Nairobi that have contributed to non-compliance by developers. Irregularities in land allocation and subdivision impact on developments thereon, making them non-compliant by default. The section therefore expands on such irregularities and how they impact on developments. Infrastructure provision is also important in shaping development, and this section reveals inadequacies in provision, with detrimental effects on the urban environment. It shows that, whilst poor supervision of allocations and subdivisions has

played a big part in the poor provision, financial provision for infrastructure provision by the state has also been limited.

6.2.2.1 Land allocation and subdivision irregularities

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

> This phenomena of people being allocated public utility plots, people building houses irrespective of whether they are approved or not, disregarding the authorities, these things are later developments of the 80s and 90s. I don't want to be political, but people started doing those things in Moi's[42] time - it was the first time people started being allocated public utility plots.......Because as long as you were loyal and you shouted *nyayo!, nyayo!*[43], you were given an acre in Upperhill[44] for nothing, you just pay rates maybe of 100 thousand and you get a title. Once you get title the land is worth 400 million - you became a millionaire overnight.... (Interview OP4X)

Some of the informal land allocations in the 1980s, either of public land or land purchased and informally sub-divided by land buying companies, which resulted in informal developments, were supposedly done above board. A senior planner (SP1) corroborated OP4X, revealing that in the Kasarani and Zimmerman areas along Thika Road, the government, with a view to 'winding up' land buying companies and getting the land developed, gave a blanket approval to allottees of land buying companies to receive titles, and cushioning them against strict zoning regulations. This suggests that past

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[42]*Daniel Arap Moi, The second President of Kenya 1978 - 2002*
[43] *Nyayo! - this was a political slogan of the regime*
[44]*The land around Upperhill was supposed to be government land, for senior government housing (interview OP4X)*

government complicity created a culture which permeates the current day. These areas are now populated with apartment blocks for the middle income group, with non-compliance issues ranging from ground coverage and plot ratios, to poor infrastructure provision and misappropriation of community land.

Attempts were made to reclaim some public land in the last government regime, starting with the Ndung'u Commission Report of 2004. The Commission had been established to make enquiries into the illegal allocation of public land, such as riparian reserves and other national land reserves. However, those allocated land had been given title deeds, and some refused to surrender their land. Although caveats had been put on the titles, the land had been developed. Some of the illegal allocations were to powerful people[45], and land officers are wary of looking into such allocations in case they are personally victimised as a result.

> ..... we don't want to dig. If you dig into the genesis, maybe the plots that Uhuru[46] has, you're going to capture them *[identify allocations to influential people]* – who is ready to venture into that? It's a risky game... (Interview PA7)

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

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

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[45] *The Ndung'u Commission Report gave a list of wealthy and prominent individuals and corporations who had benefited from illegal allocations (Republic of Kenya, 2004a)*
[46] *His Excellency the president of Kenya*

More often than not, by the time misappropriations and irregular subdivisions come to light it is too late; development has already taken place without the guidance of planning authorities. So whilst in the planning records everything appears to be above board, open spaces zoned for children's playgrounds have been built on, with wall to wall developments, which are considered good if there is a paved open space where playing children can compete with cars for space (interview SP6). Furthermore, in subdivisions intended for single dwelling units, land and housing pressure in the city has egged investors on to put up apartment blocks, which flout even basic planning requirements like provision of natural lighting and ventilation.

Figure 17: A typical streetscape in Pipeline, Embakasi (Author, 2014)

As seen in Chapter 5, many developers do not have title deeds, especially in Eastlands outside the master plan area, and in some areas along Thika Road; areas like Dandora, Utawala and Ruai, among others. In most of these cases, land buying companies like Embakassi Ranching, which had purchased almost 100,000 acres, and Kiambu Dandora, with about 500 acres, hold the mother title, whilst current holders of subdivided plots were

issued with allotment letters (interviews PA13, SP7, OPX4). Moreover, most of the original schemes have metamorphosed on the ground, with plots changing shape, size and use as compared to what was proposed in the original subdivision plans. What is more, some of the land owners are subdividing the plots further as demand rises:

> …. The directors *[of the land buying companies]* are still the owners of the mother title and they don't want to release it because … in 2013 you can still get some extra plots and sell them… (Interview SP7)

Releasing the title would limit the ease in which freeholders can further subdivide their land (sometimes irregularly and illegally, as seen in Chapter 5). Developers expressed frustration that the illegally subdivided land parcels were sometimes too small, but also noted that following the present planning guidelines would not make economic sense:

> We were supposed to cover – I think 60%. But we covered almost everything – I think 80%. Almost wall to wall. That's what most Kenyans have done. Because some of these plots are also very small. You find the sub-division, some of these plots are even an eighth of an acre. Like the one I had at Jamhuri was 7 metres by 24 metres – very small, so we would have to cover wall to wall (interview DV9).

Within such subdivisions, the roads provided can hardly accommodate motorised traffic (interview SP7). What aggravates the problem is that developers insist on constructing apartment blocks within such plots, wall to wall (beacon to beacon) developments, which fail to comply with planning regulations and hinder infrastructural provision further. Nevertheless, it is clear that there is a demand for such development, affirming Payne's (2001) and Musyoka's (2006) assertions that realities on the ground suggest purchasers or tenants mostly accept those developments as they are.

Figure 18: A typical dry weather road in a heavily built residential area in Pipeline, Eastlands (Author, 2014)

Land buying companies have therefore played a part in frustrating planning efforts in Nairobi, mostly because their activities with regards to subdivisions and allocations were unchecked.

Land administrators expressed the belief that the mandate for land administration, like other matters pertaining to planning, needs to be free of political interference as far as possible; political input should rather be limited to resourcing the relevant departments, leaving the technical staff to get on with their jobs. One resource that would be valued by staff is computer software to facilitate the cataloguing of land parcels, and to record comprehensive land information, including the origins of a subdivided plot:

> .... We could start at the centre of Nairobi, and by the time we retire maybe we will have finished one town properly, then we go to another one. And there are some that we don't need to go that far back because, like the land buying companies, we can start at the mother title... (Interview PA7)

However, such systematic coverage is unlikely to happen when those commissioned with development control are embroiled in political power games; not only do these delay progress, but they also mean that each time there is a change in the government and main players, the games start all over again – there is no continuity. To put it in the words of one planning consultant:

> .... So you go all the way maybe to producing drafts, and these drafts have to be taken back to the public to be scrutinised and brought back for finalisation, you find the elections are here, so whoever was spear-heading that might leave, and whoever comes in wants to start their own agenda (interview PA8).

It therefore stands to reason that some, like participant PA8, advocate the delinking of planning from politics, in order to ensure the continuity of planning and administrative reform agendas.

It would appear that 'urban containment', as alluded to by Taylor (1998), has not been effective in Nairobi, and that agricultural land surrounding the city has been converted to urban land without due regard for the law. Whether this is because of the activities of land buying companies, interference by influential people, blinkered developers, or an unsupportive land administration regime, irregularities in land subdivision are a source of frustration for planners. For example, when they start considering regularisation, they are presented with dilemmas, especially with regards to the provision of infrastructure. This is looked at in further detail in the following section.

6.2.2.2 Inadequate provision of infrastructure

In the history of planning, infrastructure plays a big part in shaping cities and general urban growth. Once basic infrastructure like sewerage, roads and water supply are established, development can then easily follow. Usually, and Nairobi is no exception, land which is advertised as 'serviced' is far more attractive and commands better prices than un-serviced land.   When infrastructure provision is not addressed at the onset, or is not a prerequisite

for development, the resulting built environment can present many challenges for its occupants, as well as those charged with development control. This has been the case in most of the middle income residential development areas in Nairobi. Thus developers feel unsupported by the planning system, in that whilst the population is crying out for housing, the city government has not complemented their efforts to meet this demand, for example by providing the necessary infrastructure. Despite remittances to the county for rates and approvals, developers are frustrated by the fact that infrastructure provision is very poor:

> Such areas, although they are built up, have no council services such as sewerage (interview DVA10).

Developers and their agents question how new areas are opened up for development before the provision of basic infrastructure facilities like sewers and access roads; they see the county as being negligent in allowing such areas to be developed (interviews DV4, DVA1, DVA2). Rather than pre-empting the negative environmental consequences of unplanned and unauthorised developments, the county only seems to react after the fact, by which time the situation is way out of control. Indeed, more often than not, developers are the ones to cater for infrastructure (if at all):

> … if there is a wholesale violation of the bylaws whereby everybody has built apartments instead of single dwellings, normally what the city council will do is build a sewer…. Because when they do a controlled development they tell you to use a septic tank, but if you build a high rise and your neighbour is building a high rise, then you have a problem of soak it *[the capacity of the soak-away]*. Somehow you get sewage flowing on the roads. So the council don't have a choice but have to react. Like in Zimmerman[47], that's what happened (interview DVA1).

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[47] *Zimmerman, an area along Thika Road, is developed with unauthorised apartment blocks for the middle income group*

Drainage problems, which DVA1 refers to as 'soak it', are a common problem in uncontrolled development areas; the ground is not able to accommodate (or soak up) all the waste from dense developments.

Even in the high end of middle income development areas, existing infrastructure has been unable to cope with increasing demand. Kileleshwa, Lavington, Kilimani, Loresho and other areas close to the CBD did not have sewers because they were intended for low density developments, and the council had not built a trans-sewer (interviews OP2, OP5X, OP4X). Zoning requirements have been reviewed in the last few years and the areas rezoned from single dwellings to multiple dwellings, but the subsequent developments have occurred without a matching review of infrastructure requirements. As a result, even rain water/storm drainage, let alone sewerage, causes flooding because the systems are not adequate (see Figure 19).

Figure 19: Somewhere in Kileleshwa during the rains in May 2015 (Standard Media, 17 May 2015)

Consultants commissioned by the city county to prepare a zoning review in 2006 (interviews PA2, PA4, SP6) found that in such areas, most of the physical infrastructure had been laid down according to the 1948 master plan and its capacity has not been significantly upgraded since. And as discussed in Chapter 4, the 1973 Metropolitan Growth Strategy was no closer to addressing the problem, again due to shortage of funds.

According to developers, problems with infrastructure provision by land owners started in the 1980s, when land owners were allocated land and allowed to develop without first satisfying the requirement for them to install infrastructure. A senior planner (SP1) confirmed this, with regard to the blanket development approval given in the 1980s to those allocated land along Thika Road:

> ..... the people who were heading the land buying companies were originally politicians, who had political interests in Nairobi. So the blanket approval released the land and sort of insulated them from being influenced substantially by planning, because they were allowed to develop without infrastructure – they could develop flats without infrastructure. So they became part of what we call the special scheduled areas of development through that political intervention... (Interview SP1)

What the land commissioner had not foreseen was that some land owners would sell the subdivided plots without first providing infrastructure – because officials were neither looking, nor questioning. Furthermore, landowners were allowed to sell part of their land un-serviced to raise funds towards the cost of infrastructure provision (interview DVA2).

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

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

the area you might be told that you have to tarmac, or put murram[48], you have to do storm drains, if there's a sewer connection you need to do your sewer extensions, you have to bring in your power and water supply – all these requirements are there (interview DVA2)

Evidently, provision of services to that land was not enforced; the areas developed environmental problems because sewers were not planned, nor roads or water facilities provided. Efforts to enforce provision of services during the subdivision process did not work because some owners could access titles without putting in services – with their titles, plot owners could legitimately apply for development approvals and seek financial backing if necessary. Due to the fragmented nature of the system, planners would take it that provision of services had been catered for in the subdivision process (as it usually is), but in this case it was not.

Subdivisions of former agricultural land/ranches were done by private surveyors, not guided by the council. Owners, mostly land buying companies, were out to maximise profit, and the tracts of land were subdivided illegally without due regard to planning guidance or building sustainable communities; no infrastructure provision, no spaces for shopping centres, schools, churches, play areas for children, open spaces, or other facilities for community use. For every 10 hectares, such an owner is supposed to surrender 0.1 hectares for public utilities (interviews SP7, PA7, PA6), but this has not been adhered to in many cases.

…they're not approved. They're subdivided but without sewer, the minimum you can go to is ½ acre but we allow maybe ¼. But they've gone to plots of 40 by 60, with no access roads. The people who are subdividing there are kangaroo surveyors. The access roads there should not be less than nine meters, feeder roads should not have been less than 15 metres. If you have six, it's the pathway that's supposed to be the service link where when the sewer comes, that's

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[48] *Compacted laterite soil commonly used to surface minor roads in Kenya and Africa in general*

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where you're going to put the sewer, the power, everything *[that is missing]*.... (Interview SP7)

SP7 painted a very dire picture of these areas, but unfortunately it is the reality on the ground. In such cases the registration process was bypassed, and buyers were issued with share certificates in lieu of titles, thus the planning authority missed the opportunity to enforce provision of infrastructure. Even where such companies had submitted proposals for approval to the council, and had been given provisional approval subject to the conditions for approval being met, they still bypassed these conditions by subdividing and selling before final approval was given (interview PA12). It also did not help that such areas were, at the time, not under the city council, but under the councils of the counties surrounding Nairobi. In areas like Ruai to the east and Githurai to the north, county council land boards did not necessarily share the same urban values, or views on urban standards, in assessing suitability of subdivisions, as in the city. It is obviously frustrating for planners when developers and their agents do not want to acknowledge the problems their over-development creates:

I remember even arguing with a professor who is a structural engineer: he said this *[limited number of floors]* will not make economic sense. I asked on what basis? Let us use a scientific basis – all this you want to pump into Eastleigh. Six floors, where are the services to support all these developments? (Interview SP2)

In the Site and Service Schemes areas, the World Bank had provided a small loan of KSh 36,000 for basic development, but most of those allocated plots took the loan with no intention of developing their plots – instead they sold the plot to another developer. These plots now have storied apartment blocks. Developers in surrounding areas like Kangundo, Umoja 3, Saika, etc, followed these trends, and as demand grew, the buildings became higher (interviews OPX4, OP5X). These developments overwork the original designed and installed infrastructural services – roads, sewer networks, water supply – because the designs catered for a smaller population than is

accommodated by subsequent development. A retired planner described the situation as follows:

> …. you could not get water pressure to the upper flats, and when they were developing, that was an oversight; most of it is black cotton[49] sites, so whatever they excavated most of it they dumped carelessly on the infrastructure – on the roads.… The people who were supposed to be in Umoja – maybe now it's about 600% of the people who were supposed to stay there. In what was supposed to be a single storey *[house]* for a single family of five people, now there are about 100 people leaving there in those multi storey buildings. How do you maintain that? …. You find sewage blockages, you find surface water overflowing everywhere when it rains because those systems cannot work… (Interview OPX4)

In these areas, the government had provided Y junctions[50] for sewerage, so that plot owners could connect individual plots (interview OP4X). Each connection was supposed to be authorised and facilitated by the council. When illegal development started, developers did not approach the council for a connection; instead they got independent plumbers to connect to the sewer at the Y junctions (interview OP4X).

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

> … like in Kasarani because they don't have a sewer they are allowed four floors, yet there is no sewer – but it's a controversial area because without a sewer they shouldn't go to four floors, and years later we wonder whether it was done with someone in mind. Then,

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[49] *Black cotton soil is not a good base for a foundation as it has great affinity to water; it swells when wet and shrinks when dry. The soil is therefore removed before a foundation is laid.*
[50] *The main sewer line running along the road would have Y shaped connection points which would enable the different plot owners to connect their units.*

there are areas with a sewer and you're only allowed to do one floor
or two floors. Like in most of Eastlands there are a lot of illegal
developments because there is a sewer and they are only allowed
one floor or two floors, so developers are defiant – you find your
neighbours have done five floors and the law is telling you can only do
two (interview DVA6)

In the Kasarani scenario, the tolerance of four storey construction may well
have been meant for a few people (as seen in the previous section), but
planners have not been able to stem the tide of storeyed developments.
Also, even where developers were officially permitted to build four storeys,
this was not respected, judging by what is on the ground. In Eastlands,
where there is a sewer line but where the zoning guidelines, in contradiction
of the 'sewer rule', allow only two floors, regulations appear to have been
treated with contempt; not only have developers exceeded two floors, most
developments are well above four floors.

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

If you're doing a development and you realise you're one kilometre
from the sewer line, and assuming you have one acre, you're told you
can only put up four houses because only four houses can be
accommodated within a septic tank situation. But if you have access
to a sewer, you can even do 50 units. You can extend to join the
Tran-sewer at your own cost. But what happens is that that extension
you can only own it for six months – after that it goes back to the
council and other developers can take advantage of that…. I'll give
you a good example of a project close to Safari Park, where on
Waiyaki way we were about two kilometres from the trans-sewer.
Without the sewer you have low plot ratios and coverage, but by
accessing the trans-sewer it gives you high coverage. So you look at
the value of land versus the cost incurred in doing that (interview
DVA6).

Partnership with the private sector was therefore considered to be one way of boosting infrastructural development in the city:

> …. Get people to buy in. Get investors also to do some commitment but you have to convince them what is in it for them. You see things like infrastructure…that would be an immediate *[clicked his fingers to signify quick returns]* because government can give tenders, concessions, those kind of things….to private companies (interview DVA4).

The fact that developers do not wait for the provision of infrastructure before developing their land is not surprising, since the county is well behind with respect to the provision of infrastructure even in well planned areas of the county, let alone the 'unplanned' areas of development. Waiting for the county to install infrastructure could be a long wait, and developers are not inclined to speculate about the delay. Planners are, therefore, not able to stop the tide of development in areas without infrastructure, and appreciate that a different approach to dealing with the problem is needed:

> …. there is no machinery for us or justification for us to decline to grant approval on account of somebody not having a road leading to their plot. What we go by is whether there is actually a surveyed road, whether implemented or not – we guard against someone encroaching on what is already on the survey plan or in the structure plan because we hope that some time in the future that *[road construction]* will be implemented and we can see a lot of effort has been done really, if we were to give credit where it's due. A lot of things are being done – I know the Nairobi water company is extending sewers in most of that area (I've been in talks with them) – there will be sewer connection in most of the Eastlands, those far flung areas, and also roads (interview SP6).

The problem is that when approval is given on the premise that an access road has been surveyed and will eventually be provided, no one takes responsibility for ensuring provision in conjunction with development. It is all

very well for the building code to stipulate that an access road be provided, but like other stipulations, for the most part this is never followed up.

Reasons for the poor provision of infrastructure can be related back to budgetary deficits, as discussed in Chapter 4. According to a senior planner, the per capita public investment in infrastructure was about KSh 500 (about $5.7) in 1996, and the average amount of money spent on infrastructure over three years – roads, water and sewer - was less than KSh500 for every 1000 people in 1992/93, 93/94, 94/95 (interview SP2). That is a low amount by any standards, and could not have provided much infrastructure for the general population. It would be safe to assume that there were conflicting priorities as to which areas should benefit from such a limited budgetary allocation, and that the low and middle income areas would not have been at the top of the list. However, poor provision of infrastructure has not deterred enterprising developers in their bid to meet housing demand: not only do planners have an insight into the plight of investors when it comes to infrastructure provision, they also know what they need to do:

> …. if I'm buying a property I'll be looking at it and I say, I see in the plan there's a road, so I'll buy my plot. Whether there is sewer or water to be supplied, it'll come tomorrow. I'll buy my plot and start building…. as you plan you must be very clear whether you get finances for your plan…. if it's a programme for infrastructure, within the first five years, which projects do we have to finance this particular road which moves from point A to point B? And I've been saying, if we can deal with the roads and sewer, the rest can follow…. So even as we talk about densities of developments vis-à-vis the land values, which have gone crazy, I think the government, not even the county government itself, needs to think about improving, adding infrastructure (interview SP4).

> For you to develop at development densities that are commensurate with the borrowing of funds from the secondary market, then you need development densities which are higher. For them to be high or to be enhanced, you need infrastructure to support that development. And

that is what the city has been suffering from – inadequate investment in infrastructure development, and this is a responsibility of the public sector (interview SP2).

Poor land administration has definitely impacted negatively on developers' actions. In some cases, irregularities have implicated political forces, which create the conditions for impunity and result in helplessness on the part of land administrators. In addition, deception, especially where land buying companies have been involved, is a complicated web, which would take time and resources to unravel. Many investors in such areas are still struggling to get their titles and to upgrade their infrastructure. Kasarani along Thika Road is just one example. The problem is multiplied, especially in the areas outside the master plan area, and it will take concerted effort on the part of the planners and developers alike to put things right. There has been no tangible state intervention to direct development by investing in infrastructure, and existing infrastructure such as roads and sewers are stretched by overdevelopment. Planners will have to recognise existing developments as they make their plans, affecting the potential for economies of scale in infrastructure provision (Adam and Watkins, 2008).

There were strong views that a comprehensive land use policy, which the master plan could draw on, would go a long way towards addressing some of the issues:

> .... we're moving ahead with the national planning master plan, but we've not done with the land use policy......we should do the land use policy so that the master plan implements the land use policy, so that we can address these issues of '…if you have been seeing these plots are too small, how come you've been allowing it, what is the thinking behind it…?' (Interview PA5)

As it is, land administration officials were not involved in the drawing up of the master plan, which in hindsight could have prevented contentious issues in development control. But the master plan is a skeleton, with potential for further input from strategic stakeholders – perhaps there is still room for

negotiations and clarifications while stepping it down to implementable local structure plans.

There is a consensus that development control should never have come to this; that developers should never have built without following the proper guidelines. But unfortunately this has occurred, so as well as planning for future development, planners have to look back and fathom ways in which the past failures of the system can be rectified; the regularisation process, which aims to formalise illegal developments in retrospect, is an attempt to do this. However, the process is not only confronted by the same problems that have hindered planning efforts hitherto, but also experiences its own obstacles. These are looked at in the following section.

6.2.3 Irregular regularisation

Regularisation is a sensible but ambitious process which acknowledges that existing development control has failed to cope with developments on the ground, but that there is some hope of damage limitation. It has been optimistically viewed by planners as a process which can be used to raise awareness amongst developers and other stakeholders in the city. As to whether existing planning guidelines might have been too strict in relation to what is permissible on the ground, an ex-planner responded:

> I think so, but even though, it was the law; you can only change when the law changes. They should have changed the law first then effect it. You don't say that '…you gave a speed limit of 50, I went at 70…' and when you had gone at 70 that is when you want to be regularised (interview OP4X).

Developers, as evidenced by their actions, disagree with OP4X– they have not waited for the laws to change, and the planners will have to catch up in order to regularise their developments. Even among planners, there are sceptics who do not have faith in the process, especially in cases where approval was completely by-passed. An ex-planner expressed:

> …. that is so difficult because how do you regularise a building which was unsupervised up to fifth floor? How do you regularise the kind of

skill that was used, the quality of materials that was used, the concrete that was used, how do you do that? For a building that has already been built? …. if you can go back to Umoja 1, leave alone *[what is]* now inner core and Umoja 2, people were provided with what they were calling wet core – just one room built in the plot, then you get a type plan and you build the rest. All of them – none of them was double storeyed. And all of them now are storeys. Some demolish *[the single rooms]*, other times they put up buildings in what is supposed to be the compounds. The buildings are uncontrolled, the systems are completely overworked, it's just madness… (Interview OP4X)

The above ex-planner raised some valid questions because as seen in Chapter 5, the regularisation process looks at the buildings as they are; it uses photos of the building, drawings of the building as it stands, and a report from a structural engineer. An application for change of use, for example from a single dwelling to multiple dwellings, is also done for existing buildings, therefore not giving a chance for planners to enforce appropriate zoning controls with regards to requirements for ground coverage and plot ratio.

It is worth noting also that the process is more expensive than a regular development approval. According to developers,

It might even be ten times the fee you would have paid. Because they charge per floor and they charge you something like 500,000 per floor, so if you have four floors, you're paying … (Interview DVA1)

But to me when they say regularisation, I know the council would not be very happy to hear me say this, but as far as I'm concerned, it's simply a way of collecting revenue. Because when you say regularise, and that building has not met any conditions for approval, it flouts all zoning requirements for that particular area, then somebody paying some money so that he gets a stamp does not make it right – it flouts all the rules; doesn't provide parking, doesn't provide any of those required setbacks or anything like that, it's not even healthy to

live in. It's basically for revenue collection – to simply certify, putting a stamp for somebody to show (interview DVA2).

Such scepticism about regularisation affects the willingness of developers to engage with the process. Planners are aware of this, acknowledging that developers are right to think of the high fees as a penalty for non-compliance:

> …. regularisation – the way we handle regularisation is a sanction in itself. The charges are exorbitant. A regular change of use would be 40,000 shillings in Clayworks, although it changed since the beginning of this month. But for regularisation it is 180,000 shillings – that's a penalty in itself (interview OP2).

Indeed, many developers view regularisation as a penalty for having failed to follow the regulations in the first instance, or just another way for the county to raise revenue rather than a way of making the developments compliant with regulations:

> You see what has happened; over time they realised that they didn't have capacity. They also realised that they wanted to make money out of these developers. So they told Kenyans (they gave Kenyans some time) – they told them, '…even if you have never brought your plans for approval, just bring them now, we'll calculate what you're supposed to pay and we'll approve your plans…' (Interview DV9)

Neither planners nor developers seem to be inclined to acknowledge the added value that regularisation might give to a property due to the legal security that it offers. Although DV9 was not implying differential treatment for Kenyans vis-à-vis foreign developers, foreign developers might be more likely to comply than local developers. However, DV9, a serial developer and a contractor for other developers, has not yet engaged with the process – he had not heeded calls for regularisation. He said:

> We did not go. You know what happened during Moi's regime, people never used to go to city hall, what happened is that after that, city

council advertised and said that we can take those plans for approval (interview DV9).

It would appear that DV9 was not alone in defying calls. There were perceptions amongst planners that political interference and impunity carried a lot of weight in protecting such developments, rendering efforts by planners to regularise them ineffective (interviews SP7, OP4X).

> Like now about regularisation, all of them *[politicians]* are actually with us, and they organise meetings. But part of the problem was that these were not participatory processes, so when you got to the ground, the conflicts were there because the politicians want to protect their people, because they think these are your own ideas – they don't want to be a party to them (interview SP1).

Impunity and political interference emerged as common perceptions amongst planners and developers, as will be seen in section 7.2.

In addition, as regularisation is a new process, only limited guidance is available to the public. It was intended that an operational procedure would be available from the county planning offices, but this was not the case. As a result, the process is still lacking in clarity for planners, and there is limited information for developers:

> The other thing that you find with regularisation, when we were making those enquiries then, you also find a situation where even the council officers, it seems like the structure of regularisation has not been fully worked out. So this particular officer will be telling you this, that particular officer will be telling you that, at some point you find that they're getting cold feet in terms of processing what you want them to process for you – they feel like this might come back to haunt/bite them at some point in the future because the rates, issues are not very clear. So you find them not wanting to commit themselves. Unless they've brought it out very clearly and come out with a proper policy paper - but they have not given us anything of that nature. You

know even these new rates they have also not published (interview DVA2).

DVA2's comments are corroborated by the fact that the process did not appear to be very well coordinated, and its effects are yet to be seen or felt. Presently, the way it is being applied is rather haphazard, and developers seem to be approaching it reservedly, and only when there are economic gains (in as much as a proposal for a development needs to be formalised in order to raise capital for the development itself), or when a development is threatened[51]. A developer's agent, an architect, expressed:

> The most common one is exceeding plot ratio. Like in Umoja you're only allowed to build two floors. But you want to build four or five floors like your neighbours. So what you do is build the legal two floors, then build the other three floors with protection from local agents and come for regularisation. Because once it's built they will not say no to regularisation, unless the building is very poorly done or structurally unstable (interview DVA6).

DVA6 meant that developers present acceptable developments to the planning office in order to get approval, but that is just a front in most cases. It does not help planners that commercial banks are happy to accept developments that have informal aspects as collateral for advancing owners capital for more developments, regardless of whether they have planning approval or not (interview DVA2).

A year after the first field study for this research, the initial optimism about the regularisation process seemed to have fizzled out. This was not surprising really, putting into consideration the scale of illegal and unapproved developments, related costs to the developer with regards to formalising such developments, and the fact that there were no coherent guidelines in place. One planner recounted how in Cieko Kasarani, an area

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[51] *There are spurts of enforcement enthusiasm portrayed in the local press sometimes, whereby the council coordinates demolition of developments, especially those which are deemed as structurally unsafe (often after highly publicised collapsing buildings), or those on public land.*

where more than 2000 properties were targeted for regularisation of subdivisions, they had only been able to give allotment letters to about nine owners (interview SP7), because other plots had not been surveyed and did not have proper records. The planners realised that some of the drawings presented by the subdivision schemes were sketches, not done by professionals and therefore not to scale. In such cases, regularisation of the subdivision, which had to be done before regularisation of the buildings thereon, was stalled, while the planners regrouped to think of a way forward.

It would appear that the county planning office has a lot of convincing to do before developers will value the regularisation procedure. Perhaps they can justify the high fees, in that the developers did develop before getting approval, but they also need to reassure developers that it is not just about the money, it is about safety and the provision of sustainable living environments for residents. Any procedure that labels itself as a 'make-good' process would have to address some basic requirements of health and safety in developments, if nothing else. As one developers' agent pointed out:

> …. even when you're regularising, there are certain particular minimum requirements that one must meet in terms of ventilation and lighting and your window distances and such…. even if something is flouting those regulations, at least it should be safe (interview DVA2)

As seen in chapters 4 and 5, there are extensive developments that need formalisation, especially in 'unmapped' areas in the Eastlands, so clearly there is money to be made for the county if all such developments are taken through the regularisation process.

Developers, for their part, mount a counterargument: if the planning authorities are just collecting fees and formalising developments without due process, to right the informalities, then the process could rightly be considered a sham. However, in all fairness the process is still being developed; it does not even have legislation or a written procedure in place. The fees structure is also very vague and it would appear that there is no consistency in the charges; efforts to get a copy of the fees structure in the

course of fieldwork for this research were in vain. This raises the question of how the county has, for example, derived the high fees already being charged to developers who are engaging with the processes.

Not only has the planning framework fallen short of expectations in controlling developments in Nairobi, but efforts to put right what has already gone wrong are not yielding many results either. The process of regularisation is not only confronted by the same problems that have hindered planning efforts hitherto, but comes with its own obstacles, as has been evidenced in this section. It is difficult at this point to judge how the process will address informality – whether it will do what it says on the label, or whether it will fail in its functions, like the rest of the planning framework. There is indeed potential in this process to do damage limitation in unregulated areas and developments, but only if and when the county streamlines the regularisation procedure, and starts implementing it as a matter of course. For this to happen, planners need clear legislation for reference, clear operational procedures that leave no room for ambiguity or misinterpretation, as well as clear guidelines for developers and their agents. it can still bring a semblance of environmental order if planners and developers embrace their responsibilities towards damage limitation. It needs collaboration between planners and developers because, as one senior planner pointed out:

> The people have created this mess. It's like garbage; who generates garbage? It wasn't the local government. Was it put in the right place? (Interview SP8)

Private professionals felt there is potential for regularisation to work, but only if planners negotiate with developers and demonstrate responsible regularisation, for instance by pushing regeneration agendas forward. This was in acknowledgement that developers also get frustrated by lack of basic infrastructure such as access roads and sewerage, poor water pressure in high rise apartments, and poor garbage collection, and some end up parting with some of their investment money to install infrastructure. Consultants were of the opinion that most developers would be happy to work with the

county in the provision of services, paying that bit extra so that they can benefit from the provision of services, because it would make their developments more valuable. One planning consultant expressed:

> So let them first come up with a regularisation plan, because that plan will not only look at that building, but it will say what are the infrastructure aspects of this place, what are the open public spaces, then you can say this is what we propose; we propose there will be enhancement of this road, there will be enhancement of this sewer here, water here, and it's a dual job – the infrastructure must be done by the city, and they can justify why they are charging that money…. Instead of taking 100%, I'm sure he'll take 80%. You negotiate, you are realistic, then you bargain with the developer; '…ok I can add you three floors, but can you add this number of spaces for common use?'… You negotiate. It's a more flexible way of guiding development (interview PA3)

Some of the developments, especially the low end unregulated apartment buildings in Eastlands and Kasarani, seem beyond redemption, but even in those developments there is recognition that a lot has been invested:

> …. I think it's very difficult to demolish because they're huge investments. Of course there are tenements, there are vertical slums, but it's difficult. The council has let it go too far. What we're saying ourselves is that perhaps what can be done is to try and upgrade on services (interview DVA2)

Such buildings may well be vertical slums, going by the level of services in some of them, but clearly developments serve a purpose; they meet the needs of a large proportion of the city's population. Perhaps it is time for planners to tackle developers outside the laws and regulations, but at the same time meet them halfway and complement their efforts by upgrading these 'vertical slums'.   Upgrading of services is not a new concept in development. In slum areas of developing cities, upgrading has been a popular theme amongst government housing departments, with encouragement and support from international bodies such as UN Habitat.

Even in developed cities, some infrastructure, such as roads, was evidently upgraded after the buildings were already in place. The photos in figures 20 and 21 demonstrate that infrastructure, for example roads, can be negotiated with buildings in-situ.

Figure 20: A side street in Lewes, East Sussex, UK; very narrow and negotiating round buildings (Google Maps)

Figure 21: Cholmeley Park - a street in North London curved around buildings (Google Maps)

Planning advisors and consultants were of the opinion that developers were way ahead of the planners, following market forces in the housing sector, whilst the planners were crippled by an ineffective system. But unlike enterprising developers, who appear to have resources to invest, planners have limited resources to guide development. This deterrent to planning efforts is looked at in detail in the following section.

6.3 Limited resources for planning

This section addresses the question of how planners and developers perceive the resources for planning (including staffing). For planners, availability of resources affects how the system is implemented, enforced and monitored on the ground, while if developers perceive the resources to be inadequate, they are more likely to risk non-compliance. Ultimately, these perceptions impact on the effectiveness of the system.

6.3.1 Poor allocation of funding

To implement, monitor and enforce the application of planning laws and regulations requires the regular allocation of funding – for infrastructure, for staff and for equipment. Historically, since the colonial era, the planning department does not seem to have ever got the funds it required to control development in the city. As discussed in Chapter 4, master plans were drawn up, and follow-up strategic plan(s), but implementation has consistently been hampered by insufficient allocation of resources.

It appears that even today, planning is not a priority in budgetary allocation. Planners feel that with all the money the department generates, they could be afforded more resources. All the money collected goes to a county pot in the central treasury (interviews SP5, OP2), and the amount the planning department receives in budgetary settlements is limited. In October 2013, the county government reviewed its fees and charges for approvals, in some cases more than doubling the charges, but even then, the benefits were not being felt at the frontline.

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

A KPDA representative revealed how they had been trying to ascertain how much of the revenue collected from developers was put towards service and infrastructure improvements, but this information was not forthcoming from planning officials. According to KPDA, the planning department does not satisfactorily rationalise the increase:

.... they *[planners]* try to justify the increase in fees by saying this and that but none of it is something that is measurable, none of it is written down, none of it is something we can track (interview KPDA).

It could be argued that revenue going from developers to the planning system need not be trackable, as it is paid for public services and infrastructure. The problem, however, is that there is no evidence or accountability of such spending on the part of the state. Nevertheless, it is worth noting that proper funding of city planning would depend on more than the fees and charges collected from planning applications. For effective planning, there should be consideration of the wider need for sustainable urban development, and the planning system should make a more significant contribution to this by ensuring that land development and usage contributes to the city's economy through a range of means, including appropriate rates on landed property. As noted by Healey (1998), densification by private developers, while generating profit for them, also increases demands on infrastructure, and it is therefore fair that there should be expectations (from politicians and planners) for them to share the cost burden as part of the development process.

Planners lamented that the situation with limited resources is sometimes so dire that even basic supplies, such as stationery, are in short supply (interviews SP2, SP3, OP2). Site inspections are often limited due to lack of

transportation; either there are no vehicles available, or the ones available do not have fuel. And this is not just in the planning department; peers in the Land Registry office were facing the same issues when it came to transportation to the field. For example, one operational staff member disclosed that they were reporting to work after 12.00 instead of 8.00am on a particular day because a site trip had been aborted due to lack of transportation (interview PA7).

Apart from transportation for staff, other essential equipment is also in short supply, from IT equipment in the offices, to bulldozers for demolitions. The county has invested in computers in some of the planning sections, such as Development Control, with a view to facilitating online applications for various processes. Introduction of the new online system in 2009/2010 for approval applications was heralded with optimism and promises that it would expedite the approval process. However, the computers are made redundant by lack of supporting online networks, defeating the very purpose they were meant to serve. Planners disclosed that they brought in their personal internet modems to work because without one they could not access the system: although there is internet access, the server is slow most of the time, sometimes it can be down for up to a week, yet they are under pressure to complete work. As a result, they often have to revert back to hardcopy systems due to problems with the online system (interviews PA13, OP2). Moreover, not all sections have been provided with an online system; at the time of this research the Policy Implementation Section, for example, was still hoping the system would be rolled out for them. In a planner's words:

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

This problem is not limited to planners at City Hall; their peers at the Ministry of Lands, Housing and Urban Development also complained that their computer systems are not established yet, thus rendering them ineffective

(interview PA7). The Land officers would also welcome the introduction of an effective IT system for land administration:

> There are seven commissioners dealing with land issues – from different professional backgrounds. IT development would help – having documents online (like at City Hall). Having the data in software. History of land; any pertinent issues should be provided for but there's no manpower, will, and no proposals for that – there's no expertise for that. The search does not show that. Search is not conclusive especially if land is allocated by government [52](interview PA7).

To be fair, it would appear that the problem is more than just the deficiency in computers and online systems; some of the officers admitted that they were more comfortable and familiar with hard copy systems than the new computerised systems:

> ...because we're also not thorough keying in information into the system – some of us do but others don't…. And because there is no enforcement for that, you work on the file the traditional way.... (interviewPA7)

Although the new online system has eased the process, it has not taken root yet and is a source of frustration not only for planners, but also for developers and their agents.

> … I don't know whether they are good in that system. The people you find there, remember they are the same people who were dealing with the manual system, so when this one started being put in place, either they have not been very conversant with it, or they are not willing to use it, I don't know (interview DV7).

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[52] *PA7 explained that when land is allocated by government agents, it is usually to influential people. Sometimes official plans still show it as Government Land, but the allocator and allocated (who could then go on to sell the land) are in collusion. A subsequent search reveals the person allocated the land by the government, and does not necessarily show that it was previously government land, and legally still is. Searches of documents related to a plot do not necessarily reveal the problem.*

The above demonstrates developers' insight into the problems planners are facing in adapting to the new system, as well as the issue of inadequate internet systems which render the system ineffective; one developer, also an agent, speculated that there are about 1500 architects, and perhaps a similar number of engineers, who submit plans online, which perhaps could overload the system, resulting in regular crashes (interview DVA3). It also reinforces the notion that there are planners who would rather not use the system because they preferred the contact with developers (which yielded more unofficial payments in terms of bribes) that the manual system offered. Reasons for this preference are explored in Chapter 7.3. Nevertheless, there is no denying that IT online systems are full of promise, both to forward-thinking developers who believe they can speed up the approval system and make it more transparent, and to planners who are frustrated by the manual system.   There can be no justification, therefore, for holding onto a manual system when clearly an electronic one promises greater efficiency, especially at a time when the department is publicly declaring war on corruption, as will be seen in Chapter 7.3. As the IT systems are rolled out to all, it is hoped that they will be tried, tested, and fully functional – it is otherwise underutilisation of resources to invest in systems that cannot be efficient, for example due to poor internet provision.

To effect the demolition of illegal developments, the county requires adequate bulldozing equipment, but such equipment is expensive, and therefore only a small fraction of the requirement is available. The planners are aware of this gap, and so are the developers:

> ...because like I think we have only two bulldozers if it's enforcement in terms of demolitions. So if maybe the people see the bulldozer heading east, they know activity can continue in the west and south and the north. It's that kind of scenario (interview SP6).

However, bulldozers should be a last resort, after planners have exhausted other enforcement procedures, such as comprehensive and effective issuance of notices, which seem to be falling short.

Even as they are waiting for high capital investment systems, it might motivate existing staff to have basic supplies in place, such as stationery, fuel for existing departmental vehicles, and a functional internet connection for IT systems and software which are already in place. Without basic resources, the capacity of working staff is diminished even further:

> Civil service have very qualified people, but they're not given a chance to work – so they'll just come and laze about and go away…
> (Interview PA8)

And that is unacceptable because evidently there is so much work to be done. It is all good and well to have laid out policies and procedures, but when planners are in reality struggling with regards to essentials such as transportation to the field, and even basic office stationery, it begs the question of how the system is ever expected to work - it is indeed a waste to have staff on the payroll when they cannot fulfil their duties, for example due to lack of transport. Such paucity is likely to affect feelings of self-worth and professional morale in staff. The irony is that, were investments to be made in supportive equipment, it would potentially increase the output of the department in terms of efficiency and in reaching a wider populace.

According to a senior planner, the ratio of capital to recurrent expenditure is usually 30:70, and even then at a struggle:

> ... Sometimes it's 65%, 70% going on, … we use on recurrent expenditure, which is not fair on a city that is a regional, industrial and communication centre in East Africa. It means we must have less on recurrent expenditure - probably to 50% or less, so that we have more on the capital expenditure to invest (interview SP2).

SP2 is right; a regional hub like Nairobi requires a solid fiscal base for development control, otherwise the risk of reactive planning and crisis management that Rakodi (2001) inferred increases. Recurrent expenditure includes staffing costs, and takes a big chunk of the budgetary allocation. This echoes findings by Werner et al. (2011), who reckoned that three quarters of local government budgets in the 1990s went to staff salaries,

whilst services deteriorated. Clearly the local authority has a high number of staff in its employment; the problem is not shortage of staff per se, but rather shortage of the right kind of staff for effective delivery of services. Staffing issues are looked at in the following section.

6.3.2 Staffing problems

This section looks at the staffing structure and how it affects implementation and enforcement of planning laws and regulations. Much was said in Chapter 5 about staffing issues, stemming from the historical recruitment culture and funding problems. There is apparently a chronic shortage of qualified staff, as seen in Chapter 5; only 32 % of the workforce in the department are qualified professionals. Unfortunately, even the developers know of this shortage, and feel it.

Without exception, all the senior planners interviewed lamented that they had very low numbers of qualified staff. An administration worker in the department disclosed that about 80% of the employees in the city county are not qualified; out of 11,000 staff members, only 2,000 are qualified. A senior planner was of the opinion that the department needs at least 500 qualified staff - planners, surveyors, valuation officers, and engineers (SP6). If that is the case, a retired planner (OPX4), who thought the department does not even have 20% of the staffing capacity it needs, was close to the mark. Instead, each and every section is lumbered with unqualified staff, who, rather than easing the workload, end up not only draining departmental resources, but also creating challenges for qualified planners.

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

Developers and their agents also have insight into this staffing issue:

> You see like Dandora, it has about 4,000 workers, what is their work? They can't fit in that office. They just earn a salary (interview DVA1).

The Forward Planning and Research sections of the planning department are supposed to facilitate projection and prediction of urban growth, but both sections are not only understaffed, but also do not necessarily deliver on what they are supposed to. As a result, there was a general consensus that they are redundant. The Research Section, as seen in Chapter 5, should be researching how the functions of planning are being met (or not) and informing other planning sections, including Forward Planning, so that they can develop and review policies and re adjustments can be made for planning functions to remain relevant. As one planning consultant noted:

> The importance of research is that you're able to re-look at the way you're doing things and trying to do the necessary re-adjustments so that the profession and practice remains relevant…. *[for example]* with the change in technology, how has this affected the carrying capacity in terms of development (interview PA18).

However, the Research Section in Nairobi has only four qualified planners, while the rest are unqualified:

> ...If you tell them to collect data, they are standard seven drop-outs who left school in the 60s or early 70s, what kind of data can they bring? So you see, we're frustrated in research.... we have saturation of subordinate staff…. I have two secretaries, I have a clerical officer, I have a messenger – I have more than six people (interview SP7).

According to the above senior planner (SP7), the Research Section should have at least twelve qualified planners for it to make any sense of the city. Likewise, the Forward Planning Section, which is supposed to do the broad planning and review growth trends, has five qualified planners, thus undermining their visionary potential and limiting their ability to carry out zoning reviews. At times their capacity is propped up by planning internees from the local university, who can assist, for example, in spot zoning exercises, but mostly planners are overwhelmed by routine work, such as advising developers and clearing building plans, which ends up taking three-quarters of their working day (interview SP6).

The Policy Implementation Section, which processes changes of use, extension of leases, among other duties, has four qualified planners to evaluate applications, advise developers and make site visits – hardly enough to meet the needs of the city. SP7 said they are forced to 'jump many stages' because they do not have adequate and effective staffing capacity in the different sections. The 'many stages' could be during the change of use or subdivision processes, when the officer responsibel might not have time to go and inspect the land or property, or during the building permit approval process, when development on the ground may be different from whatever was approved. And it is not just that stages are jumped; whole areas are bypassed because of the staff shortage: For example, officers admitted to concentrating on those areas close to the CBD because they are easily accessible, ignoring far flung developments in the 'un-mapped' areas.

Without research and forward planning, policies, or urban growth control efforts, are not guided by information from the field. Instead, qualified planners in those sections are deployed to other sections, such as Development Control, rather than identifying visionary policies for the department. As a result, planners do not have the empirical evidence to fully appreciate the desperation and possibilities in the city. It presents difficulties in trying to reason with far-seeing and far reaching developers when the department cannot justify its actions (or non-actions), or table any tangible and valid promises to aspiring investors. This is unfortunate because, if those sections were fulfilling their roles of heralding changes and giving direction to the planning department, perhaps the latter would be making viable and valid projections regarding development control, enabling them to plan ahead of developers. Planners in the research and forward planning sections have ideas of what they should do, but these tasks are not prioritised or promoted by the department. To put it in the words of a planning consultant:

> You find that here in the NCC when you are taken to Research and
> Development Unit it's like a punishment – it's called Siberia because

you don't link with the clients. Everybody is fighting to be in Development Control…. (Interview PA16)

The 'fight' to be in Development Control should raise suspicions, as it suggests that contact with clients is a lucrative means of supplementing one's salary. Corruption, which will be discussed further in section 7.3, seems to have played a part in making the Research Section redundant; apparently other sections of the department are deemed to be more lucrative because staff there have direct contact with developers and their agents when they are processing applications – that contact paves the way for solicitation of unofficial payments. As a result, planning policy review in Nairobi has been reactive rather than informed. In most cases, planners find that developers have already built, having contravened various planning requirements.   In such cases, pressure comes from the fact that, by the time planners get there, so many developers are involved, having invested heavily in their developments, and also other factors, such as political interference, come into play (see Chapter 7).

After approval, site visits are supposed to occur, to ascertain that what is on the ground is what was approved. Developments are supposed to have signboards indicating the name of the developer, consultants, the contractor, and plan approval number. The regulations also require that developers have a record book on site, which supervising planning officials are supposed to inspect regularly and to make notes on progress – whether the project is conforming and if not what amendments should be done to conform. That rarely happens because the planners do not have time (due to limited numbers), and more often than not developers complete a whole building without having a professional inspection by a planner:

> …. we've given a provisional approval, we have checked the roads are OK, it's approvable, but you see, I'm dealing with fifty of them – one in Kasarani, another Lavington, another in Karen. And that fifty, it's only one planner dealing with them because other planners have others. So after you approve the right thing in the office, whatever is

implemented on the ground is something very different. You don't
have time to go and visit.... (Interview SP7)

Incremental building by developers does not help the situation when it comes
to site visits (see Figures 22 and 23). There are developers who, after
getting approval, do not start developing the site immediately, perhaps due to
lack of funds, and by the time they start construction months later, the
planners are not notified so that they can carry out site inspections. Other
developers build in phases, leaving lengthy gaps in the construction stages,
as dictated by availability of funds. In such cases planning officials might
believe a development is dormant, but when they revisit later they find a
completed development.

**Figure 22: An incremental building in Eastlands; evidently occupied but
additional floors being built (Author, 2014)**

Figure 23: Another incremental building in Eastlands; still going up (Author, 2014)

According to a senior planner, there are only six qualified building inspectors[53] presiding over Nairobi, whereas in any one day there could be as many as 2,500 developments going on (interview SP2). This was backed up by another senior planner in the enforcement section, who said that not only do they not have enough qualified officers, they also only have two vehicles to cover the whole city, which spans about 690sq km (interview SP4). The planning department is supported by the county inspectorate department, the enforcement wing of the city county, but the planning department has no control over the latter. Also, the problem is that the inspectorate employees are not planners – they do not necessarily have technical knowledge of planning issues, or the will power to enforce.

> …How will they know this is an approved ten floors building? Their concern is if you have a licence which has been approved …
> (Interview PA16)

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[53] *That implies that of the 20 building inspectors that the Director of City Planning was talking about in 2009 (Daily Nation, 24 July 2009), 14 were unqualified.*

The city county has staff in each ward, who are supposed to police developments under their jurisdiction. However, most of the staff in the wards, as seen in Chapter 5, were employed in the 80s under questionable recruitment methods, and are not conversant with planning requirements; they do not have the technical understanding to monitor building code requirements. They are therefore easily convinced by developers to ignore variations, especially where the deviations are not distinctively different from the approved development:

> …If the building will only vary by one or 1.5 storeys then the inspector can… it's not a big deal, it's not so obvious. Now, if you dispatch your child to school and their uniform is torn a little bit or just some speck of dust, do you think they'll not get away with it?.....The teacher will say that's not so bad….If the fare to Buru Buru is twenty shillings and I have eighteen shillings or nineteen fifty, I don't think they will kick me off the bus… (Interview PA14)

Lack of vigilant supervision by the officers frustrates developers who need certified developments, as it ends up costing them more in informal payments.

> …. when the project is completed and you have to apply for certificate of occupation, that is when you have to go looking for them, and that's when corruption comes in. They're supposed to be signing green cards on site, but they never show up (interview DVA6)

When developers go looking for planning officials, for example to issue an occupation certificate or to inspect for a change of use, more often than not the planning officials do not have vehicles to visit sites, and developers often have to make transport arrangements for the planners, thus bumping up their costs. These findings echo issues alluded to by Kimani and Musungu (2010). The majority of developments in Nairobi have no occupation certificate, either because the developers did not engage with the approval

process at all, or because if they attempted to engage there was no follow-up supervision, or need for the developer to pursue the certificate.[54]

Historical staffing issues are not only evident amongst field officers, but also in City Hall. This sentiment, which was held by planners, was also echoed by developers' agents, who frequently attend to business at the planning offices:

> ….. most of the problems we have in Nairobi are historical. Most of the workers who are in city hall are politically employed - they are handpicked workers. There was no time that there was an advertisement that the city council requires A, B, C, D applications. So these people are either friends of councillors or town clerks or whatever. …. Sometimes you might go to city hall, you see a messenger there; after two, three years, you meet him signing plans. Or four years. So they're promoted. I don't know how a messenger is promoted to be able to sign plans. Or a clerk…. Some of them don't even know how to read the plans. They are not qualified – they're just harassing people (interview DVA1).

As a result of the mismatch between staffing capacities and developments in the city, the current planners are overworked, and apparently underappreciated:

> You know people say that council employees don't work – but I'm telling you there are no people who are overworked like us professionals - sometimes I even leave this office as late as 8.00pm (interview SP7).

One planner argued that the situation would not be so bad if there were middle level technicians (not necessarily graduates), supervisors with diplomas in construction, who could support professionals like architects and development control planning officers in monitoring the application of the building code, and to play a supervisory role, carrying out inspections and

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[54] *Developers are likely to seek occupation certificates for insurance purposes, or for financial institutions. This would be more likely to occur in the high end middle income developments rather than the low end developments.*

evaluating plans (interview SP3). Once employed, such staff could then be deployed to the different wards to supervise developments, replacing the unqualified staff who, as seen in Chapter 5, were allegedly employed under dubious circumstances. However, the county staffing budget is already groaning under the weight of staff salaries; they would need to lay off the unwanted staff first to pave the way for more appropriately skilled replacements. A retired planner expressed:

> … there are many people who are qualified. There are many jobless people who are looking for work. Kenya Polytechnic, Mombasa Polytechnic, they are produced in those schools - they are there, they just don't employ…. (Interview OPX4)

Developers echoed what planners said about the lack of training for mid-level professionals, who were previously trained in polytechnics:

> Before there used to be polytechnics which were taken over by universities and university colleges so the polytechnics just died off. Within these polytechnics that's where the *fundis* [builders] used to be trained and they were given grades. Even the city council used to give grades. But now it's no longer there – I don't know what happened to that department (Interview DVA1)

These perceptions were reiterated by a retired planner, who expressed a view that mid-level officers from mid-level colleges and polytechnics with diplomas or higher diploma qualifications, were lacking – he reckoned the planning department had not employed more since he left the department in the 1980's (interview OP4X). This corroborates what a current senior planner said; that the city county did not hire any staff for the department between 1989 and 2009 (interview SP7). As seen in Chapter 5, there has been an embargo on recruitment of new staff, despite depleted numbers of competent staff. As a result of the embargo, county staff who died or retired were not replaced, and even those who remained were 'tired', thus leaving a gap in the capacity of active planners:

> …and they were so many because even the other planners are so old.

> If government had not increased the retirement years they would all
> have left – the deputy director, etc., would have left when the
> retirement age was 55yrs. So there's a gap (interview SP7).

For the planning department to make a tangible impact in steering urban growth and in controlling development, developers, like planners, expressed that it is imperative to get more qualified staff. As one developers' agent aptly concluded:

> …to run to touch all corners of Nairobi with the minimal staff that they
> have – it's not possible really. They cannot get engineers, planners,
> in all places, everywhere, it's not possible. So they just talk, but on
> the ground they are doing nothing because they can do nothing...
> (Interview DVA3)

Since '*on the ground they (planners) are doing nothing because they can do nothing* '(interview DVA3), any cries for help by developers, which could be implied rather than expressed, are left unheard.

A senior planner was for the idea of involving private professionals to supplement county workforce:

> … we can source professionals from the private sector to work with us
> and take a little bit of our burden, if his excellency the governor and
> his team agree …. we can offload some of our work through an
> integrated computerised system …. *[They]* can do some of the work
> on a competitive basis and be paid by the same middle class or high
> income class or the developers who want to invest (interview SP2).

Developers' agents also thought outsourcing professional inputs from the private sector would aid planners in enforcement efforts (interviews DVA4, KPDA).

Apart from the shortage of qualified staff, there is an apparent lack of continuous professional development programmes for existing staff; training programmes are limited. Gaps in qualifications were noted not only with

respect to technical know-how, but also with regards to etiquette in day to day public service.

> …. You see like this person *(referring to a person who had interrupted the interview)* …. they've been there so many times; they've been taken round.…. people have never known that the only way to transform the civil service is through customer care training – that's lacking in the government (interview PA8).

Planners disclosed that there is no training schedule – whatever limited training is given is rather sporadic. For those in the higher levels of employment, most training is undertaken following a personal initiative, and is not necessarily financed by the government.

> …. I find a member of staff has come approached me '…I've been to the University I'd like to apply for this course, I'll be going in the evenings, because it's relevant for me…' …. maybe as time goes by, I'll check on the internet, I'll see there's some training somewhere, it's free, and I'll ask my boss, if I'm released, well and good (interview SP6).

Under new performance contract targets, the city county has started nominating staff, usually at the lower levels (like secretaries and clerks) for one-day training courses, such as public relations and handling clients, but again there is no established schedule for this. Moreover, these efforts do not appear to be well coordinated:

> …. you find memos flying everywhere that your staff are needed for this or the other……it benefits people because maybe you find sometimes they've called all the secretarial staff and they take them through a one day *[course in]* public relations, handling clients and all that, which is good. But the only weakness is that there is no schedule – I cannot know two months from now what training will come on board unless what I have initiated from here (interview SP6).

An improved curriculum for planning staff at the local universities could also help future generations of planners to avoid some of the problems that are plaguing the Planning Department today. As Watson and Agbola (2013) highlighted, planning educators and their students need to '*get their shoes dirty'* – they need to open their minds up to urban realities of their developing city, thus being able to challenge inappropriate laws and regulations which are out of context in their world, rather than policing them unquestionably. The University of Zambia master's programme in planning incorporates informality in its curriculum (ibid.), and educators in Nairobi could do well to emulate this. Such a curriculum would change the mind-set of planning professionals regarding what constitutes informality in the built environment, with a view to accommodating local realities.

Clearly, the planning department is struggling to meet expectations due to inadequate resources, as seen above, among other things. One senior planner summarised issues with resources as follows:

> .... It's because of many reasons; mainly because of our capacity to enforce. Human, equipment, so you find that our officers are strained – we don't have many enforcement officers to have enough coverage for a city of 3 million plus, to get to know every site that is happening in every corner of this city... (Interview SP6)

The researcher could not have put it better. The planning department in Nairobi is groaning under the weight of unmet expectations, and it would appear that relief is not in sight as yet. Although there are efforts to improve production with existing staff through use of technology (by putting approval systems online), this has its own share of problems, and it could be a while yet before such systems are sufficiently streamlined to be effective. The capacity to enforce is limited, not only because of staff numbers and competency, but also because of deficient structures. This is a far reaching problem that impacts on implementation, monitoring and enforcement of policies and procedures. Developers' agents feel that if the city county had more professional people on the ground to supervise developments, developers would heed advice from their agents. As it is now, developers

are well aware of the inadequacies of the system, and have chosen to get on with developments regardless. In the face of limited government resources, the local authority does not have the 'positive' powers referred to by Pickvance (1977), and private developers, as envisaged by Pickvance, are the driving force in development in Nairobi.

6.4 Conclusion

Clearly planners and developers have insights into the issues plaguing the system. They appreciate the necessity for change, as well as the demand for the developments in question. Unmet demand for housing has resulted in a situation whereby developers, and their agents seem to be dictating the pattern of development and growth in the city – they are way ahead of the planners. Differing perspectives (between planners and developers) of 'formal' and 'informal', 'order' and 'disorder', as alluded to by Pile et al. (1999) and Roy (2005), have resulted in areas of expansive uncontrolled development.

With regard to the planning framework, planners have to contend not only with poor standards of construction work, but also over-development by developers. Development control seems to be 'out of control'. Planners are facing challenges not only from developers, but also from the very framework that is supposed to be guiding them - there has been little linkage between intervention by investors and the way the planners want the city to grow. As to whether planners are breaking their own laws, it is clear that at times the laws have been ambiguous and unrealistic, and planners have had to retrospectively apply review outcomes, for example with regards to zoning stipulations. These findings concur with other scholars who found planning standards in sub-Saharan Africa unrealistic and restrictive (Kironde, 1992a; Arima and Adeagobo, 2000; Rakodi, 2001; Watson, 2009; among others). Planning policies in the county have not supported high density developments, and reviews of these policies are done sporadically and haphazardly. It would have been desirable for the policies to have evolved fully in the context of changing economic forces (Healey, 1992), but clearly a lot of work still needs to go into this.

Land administration issues are another major constraint addressed in this chapter: irregularities in subdivisions and allocations and the fact that some land owners have no title deeds have compounded the problems for planners. Also, the planning system does not support a robust investment climate for developers. For example, the state has not directed developments by provision of relevant infrastructure, as Taylor (1998) envisaged. In such circumstances, it is not surprising that developers find it uneconomical to comply with policies which have not been reviewed for many years. And yet, even though developers defy the planning system, their contribution to the production of habitable space is commendable – they play an important role and planners would do well to embrace this. As Berrisford (2011a) recommended, it is important for planning to understand the pressures and interests of relevant stakeholders. It could be said that regularisation is an acknowledgement of developers' contribution in housing provision, but like the procedures before it, though laudable in principle, it lacks operational leverage due to the same inhibitive factors that plague the rest of the planning system. Regularisation could be seen as a process to 'work with informality', as Watson (2005) advocated, which could be a compromise intervention for both planners and developers.

Crucially, this chapter has revealed how the planning authority has not had adequate resources at its disposal. The 'swollen state' alluded to by Diamond (1987) has not helped to make the best use of limited financial resources, with excessive numbers of unqualified workers (rather than qualified staff) in the planning department, absorbing the allocated resources. While developers have strong incentives to maximise their rental returns, planners have not been armed with adequate tools to plan and control developments, because of the gaps in capacity and capability to monitor and enforce. As seen in Chapter 4, planners cannot implement their plans, laws and legislation without resources – any such plans are doomed to fail if they are not linked to resources for implementation. Change in staffing capacity, whether by increasing qualified staff or by revitalising planning sections, call for an increase in funding. Likewise, to improve infrastructure in the city in support of development also calls for an increase

in funding. For this to happen, there needs to be political goodwill (as inferred by Mbaku, 2010), and a recognition that developers cannot afford to wait for planners to catch up. As Harvey (1982) envisaged, when private capital is leading development, then emerging landscapes undermine the role of the state in spatial ordering. Clearly, the county is struggling to meet its financial obligations, and allocation of funds to planning is low priority. Also, the concept of 'planning gain', which is used to maximise financial contributions from developers in some developed cities of the Global North (Crook and Monk (2011), has clearly not been cultivated to its potential. Rather than waiting cap in hand for budgetary allocations, planners need to think outside the box, and evaluate what other sources of resources might be accessible to them.

As Guy and Hanneberry (2008) expressed, operations under capitalism require buildings to be produced profitably, and evidently developers in Nairobi have interpreted their position within the social and economic context but contrary to the rationalities of the state. Clearly the system has been lacking in the various aspects of a good planning framework alluded to in Chapter 2 by Healey (1992), Berrisford (2011b), and UN-Habitat (2015b); it has not evolved appropriately, and it does not seem to understand or accommodate the pressures and interests of stakeholders. Such concerns need to be addressed, so that new and appropriate initiatives, such as the regularisation process, can deliver as expected. Having looked at the (inadequate) resources, the following chapter will shed some light on the systems of channelling these resources; how they're governed and in what way this contributes to the success or failure of the planning system.

Chapter 7: Shortcomings in governance

You know a policeman arrests people because the government and the judiciary are behind them – otherwise if…nothing happens to you, you would never obey them. The developers know that - that these guys are barking dogs… (interview OP4X).

7.1 Introduction

Poor governance has been cited by other scholars (Rakodi, 2001; Shilderman and Lowe, 2002; Nwaka, 2005; Gandy, 2006) as contributing to non-compliance with planning laws and regulations. It was important for this research to explore issues of governance further, with a view to answering the question; What are the characteristics of the relationship between planners and developers, and why do they foster non-compliance? This question is further broken down into; Are there issues of trust between developers and planners? Why are contraventions by housing developers for the middle income group tolerated by planners? Do developers actually get away with non-compliance or are there effective sanctions?

Section 7.2 examines the effects of political influence and impunity, and argues that planners are disempowered in the face of the self-serving interests of those in high office. Section 7.3 expounds on the 'blind-eye syndrome', raising the question of whether people really want a change in culture with regards to this practice, or whether it has become too familiar and comfortable. It argues that corruption has created a new norm in planning practice; money and influence seem to determine what is acceptable in the eyes of planning. Section 7.4 addresses issues of joint-working: it asks whether planners are harnessing the full potential of other stakeholders, and explores issues of trust between planners and other stakeholders. The section reveals that relevant stakeholders feel left out of the planning arena, and perceive planners to be self-serving rather than guiding. This influences developers' response to planning agendas. Their perceptions about this are important, in that if they feel guidance is lacking, they are more likely to disregard planning laws and regulations which they perceive to be irrelevant or unreasonable. Section 7.5 reveals that a

prolonged and complicated approval process has been a major deterrent to some developers engaging with the system. Section 7.6 gives perceptions on penalties for non-compliance. It argues that sanctions for non-compliance are meaningless if they are sabotaged by malpractices in the system.

7.2 Political influence and impunity

'… 'Orders from above' is messing up this city; it's messing up this country…' (Interview SP7).

Political interests do not necessarily foster good practices in the planning system – these are interests that serve a few, but do not necessarily represent the desires of the majority of the affected population. It is like an invisible governance system working alongside the official systems, and planners have been rendered helpless by political interference at many levels. Impunity appears to be an accepted way of life:

> In this country … you find that you're in a fix you find somebody to assist you. And most probably you'll not run to a bishop, you'll not run to a pastor, you'll run to a politician... who will fix things for you... (Interview PA13)

According to a retired planner, impunity became rife in the 1990s, following a change in government regime; he reckoned that in the early 1970s people were not carrying out illegal developments because punitive measures, such as demolitions, were being enforced, and also asserted that there were no illegal allocations of land, such as public utility land. This research, however, revealed conflict within the planning department, mostly because of political interference by powerful and influential people. As a result, planners feel compelled to abet non-compliance by developers. A senior planner explained that in the previous governance structure (before the new government and constitution), the town planning committee used to have more politicians than planning professionals, and this influenced how decisions regarding approvals were made (interview SP3). Minutes of a committee meeting revealed that some meetings had more councillors than all the other professionals combined – in one town planning meeting more

than 30 councillors were on record as having attended, as opposed to 25 professional representatives.

Councillors are supposed to present issues from their wards, such as issues with drainage systems, illegal developments, outstanding title deeds, and illegal invasions of public land. However, planners revealed that some councillors (and other politicians) were using their positions to push their private agendas and interests. Political influence is not limited to the boardroom, but follows planners into their offices and their operations. Even in the Site and Service schemes in Eastlands, intended for low income households, some powerful people were allocated plots. In those schemes, developers were supposed to use a type plan[55] provided by the city council (now city county) for their developments, but the developments on the ground today bear no relation to any of the type plans, and 90% of the developments could be considered illegal (interview OP4X). For example, OP4X, who had been involved in monitoring those schemes, recalled how the council had been unable to stop a member of parliament, who had been allocated plots, from erecting storied buildings when he was supposed to have used type plans for single dwellings.

Today, planners are subjected to political interference as a matter of routine:

> …. even in places like up-market areas you will find that you as a professional you're forced to approve something that is not approvable in those areas because of political influence, and there is nothing you can do about it. A call is coming from a high office and you know you don't have a choice. The planning process in Nairobi is very much affected by politics.... (Interview SP7)

Political interference seems to know no bounds, and comprises even those at senior levels in the planning offices. For change of use and other land administration processes, some developers have been known to bypass the city county and go straight to the land commissioner at the ministry, since the

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[55] *The council architects had prepared and preapproved standard and acceptable plans for houses in the schemes.*

latter has more clout in land matters and gives the final word (interview DVA8). As one private planner and consultant expressed:

> The director.... of City Planning works with the mayor ...., and the mayor asks for a favour for a friend – asks the director to assist in approving a six storey development in Kileleshwa. The director knows it's bad but not too bad, and through her boss's request '…can you please, assist my friend…' she gets compromised by the political environment she's working in. The mayor is influencing the planner. The mayor uses polite language but sends a strong signal to the director to do what he wants '…kindly assist this person and give him what he wants…'; it's not written anywhere or said in those words, but it's implied that she needs to do what he wants (interview PA14).

On impunity, a foreign serial developer of high end middle income apartment blocks complained that Chinese developers (for the same market) had a more favourable investment environment than other developers:

> ...you see what the Chinese are doing; the Chinese in one acre they are putting 60, 70, even 80 apartments……I don't know. Maybe they have some other concessions, maybe because they are bringing materials from outside, maybe they're giving the grants - their government is giving grants, their government is giving loans. Because even the outcomes which are achieved – even the cost of ... business is much cheaper because they're getting loans from overseas, from China in particular. So we are unable to compete with that…. it doesn't give an even level playing field for us. Just as an example, my friend, one of my colleagues, he is developing a property in Kileleshwa. He built a property of seven floors. His neighbour the Chinese is building ten floors. But my friend has been told to reduce from seven floors to six floors (interview DV11F).

The above developer implied that there were quid pro quo arrangements between government officials in high offices and Chinese investors, who

have played a big role in Kenyan development projects in recent years[56]. He complained that they could no longer compete with the Chinese, who due to favourable treatment can construct higher volume of development on their land, and are thus able to recoup and profit from their investments, whilst investments by other developers were becoming relatively less profitable.

It is not surprising, then, that in January 2015, senior planning staff, including the Chief Officer in charge of Planning, Urban Development and Housing, were implicated in impunity scandals after the collapse of several buildings in the city. A senior planner recounted how, while engaged in a planning investigation that unearthed political interference within the department, was side-lined and unofficially removed from the project:

> I forwarded all the data and everything, but nothing happened. It was just silenced. And that is what is killing me, it's what is killing Kenya; impunity. You realise there so many things you can point out, but there are some people you're not supposed to question. Then what are you doing? … (Interview SP7)

Another private planner told of how his client was bullied into submission when they questioned some irregular developments (interview PA18). Planners reported that, in some cases, politicians have been known to promote violence and aggression in a bid to deter enforcement efforts by planners. Indeed, there was a glimpse of this in the literature review; newspaper reports of a politician leading a neighbourhood to the East of Nairobi blocking demolition orders. Planners and developers affirmed this:

> There is a time we had this MP called Waititu in Eastlands, and there was an issue of demolitions in Eastland and some people had constructed on the road and he ganged up with the people to stop the

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[56] *China is reportedly Kenya's largest source of foreign direct investment, and second largest trade partner. By June 2013, China's direct investment in Kenya reached $474 million, with bilateral trade alone amounting to 2.8 billion in 2013. Projects spearheaded by the Chinese in Kenya range from $108 million road networks project, to a Research and Referral Hospital project at Kenyatta University (Standard Media, 2013; Engineering News 2013; Capital News, 2015).*

council demolishing the building[57] – when the council went there it became war... (Interview PA13)

Sonko and Waititu stopped demolitions of uncontrolled developments in Eastlands[58].... Donholm *(in Eastlands)* is a mess because of politicians stopping the law.... I would say politicians and corruption are the reason developments are not controlled. Developers pay 20,000 to 100,000 shillings to a Godfather at City Hall (interview DV3).

Perhaps this could be attributed to the fact that politicians do not necessarily have the technical knowhow regarding development, and are rather guided by other factors, such as maintaining their status and standing with their communities. According to planners, it is not only with regards to demolitions that politicians collude with developers, but organised groups (mobilised by politicians, especially in election periods) have been implicated in land invasions and the ensuing illegal developments, especially in the eastern part of the city (interviews SP4, PA13).

Apparently a 'godfather' is especially valuable when a developer has no planning permission, but also comes in handy even if planning permission has been obtained:

(The godfather) ... would be the head of the city inspectorate, for example at Kasarani. But guys on the ground keep coming for more payments. Payments are very high where the developer has no planning permission .... If we have planning permission, we have to observe by-laws for safety. For example, builders have to have hard hats and reflective jackets, and there has to be proper scaffolding. If we don't have these then we still need a Godfather. And the inspectorate will always find a fault so as to get payments. For example, in Kasarani, for a plot of 50 by 50, there is no dumping ground when one is building; we have to bribe the inspectorate or pay fines (interview DV3).

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[57] *This information was corroborated by reports in local press (Capital News,2012; KTN News, 2012; Business Daily Africa, 2013, among others)*

[58] *See note 51*

Apart from political forces, impunity is also extended by unlawful cartels, such as a group called *Mungiki,* an outlaw group that protects its affiliates and associates from planning enforcement.

> What I know in Eastlands, this is Mafia. In Eastlands if I'm a developer and I want to do my three storeys in an area that is allowed ground plus one, and the Karengata[59] of my estate says 'no way, I will chop off the chairman's head'…. The chairman will or shall receive threats; '…mind your business - this is my business, mind your business...'. ….. If a phone call is made to that chairman – '…take this, you have children to take care of, this is our Kenya, please don't step on my toes….' What is this phone call trying to communicate to you? (Interview PA14)

Most of the impunity is extended because money has changed hands, compelling planning officials to turn a blind eye to malpractices by developers, while developers and their agents have become seasoned to making informal payments to buy protection.

> Owners 'talk' to the council officials before the building works start. You pay about 60,000 to 100,000 shillings to the council workers, so they will not bother the builders. For example, behind Thika Road Mall I have constructed buildings with seven floors, yet the approval was only for two to three floors. I have also constructed two blocks of six floors each, and one was not even approved. The owners are now looking to regularise/legitimise the building. In Donholm, I have built six houses. The plots are only approved for single dwellings and a DSQ. But developers have [built] six floors of apartments (interview DV10).

Developers argued that it would be hypocritical of planning regulators to enforce laws selectively and inconsistently:

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[59] *Short for Karen-Langata, a residents' association operating in Karen and Langata high income development areas.*

> .... one of the compliance requirements is that if you go anything more than five levels you should have a lift – now how many buildings, even in the CBD, have more than five floors and they don't have a lift? So how can you tell somebody in Umoja to put a lift? You cannot stand on a podium and start telling people '…now we're going to start to demolish all buildings with more than five floors and they have no lifts….' – where would you start it? You go to Umoja, Kayole[60] you find even five, six storeys, a tower, standing and they don't have lifts. Even a fire escape - forget about a lift – even a fire escape stair case, it's not there (interview DV7).

The evident lack of enforcement, even in areas close to the planning offices, coupled with inconsistent application of relevant laws and regulations, seems to have caused confusion for some developers, and spurred on others who are intent on non-compliance. It is indeed difficult for planners to enforce planning laws and regulations when some developers have 'protection' from people in positions of power and influence, and the remaining developers follow suit in defying planning laws and regulations. This defiance has resulted in widespread uncontrolled development in the city, while the planners look helplessly on. Any efforts to effect enforcement are greeted with valid questions and challenges from developers, with the powerful people who have vested interests egging them on.

> … unless you have a very particular concern with a particular person who you want to suffer .... how will you justify that it is A and B who are wrong, and everyone else has done the same thing? Even the developers will start defying that and say '…no, if you want to demolish mine you have to demolish the rest…' (Interview OP4X)

Thus the phenomenon of non-compliance in Nairobi remains unchecked: while the planners appear to tolerate it or are helpless to stop it, developers appear to be having it their way. As OP4X said, the planning authorities have been proved to be 'barking dogs' with no bite.

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[60] *These are areas to the east of Nairobi which were not allocated for residential development in the original master plan*

Although development control in Nairobi is under the docket of the city county, for planners to meet the demands of their profession they need to be free from undue political influence, from 'orders from above', otherwise the checks and controls that the planning system provides in urban growth management are dead in their tracks – there may as well be no planners. Forester (1982) argued that planners cannot ignore those with power, economic or political, because they would be rendered powerless. However, it is difficult for planners to do their jobs with their hands tied behind their backs, or in fear of repercussions. In such circumstances, they are more likely to concede to pressure from those in positions of power and influence, as inferred by Blundo and Olivier de Sardan (2006), which is tragic for the many good intentions of planning with regard to development control.

There is another element to impunity, which is also a force in its own right, but compounds impunity – corruption. The section below will look at this practice further, and how it stimulates harassment by planners (towards developers).

7.3 Corruption and harassment

Kenyans have thought that if they want something and they cannot get it, then they can buy their way out (interview SP2).

Engrained corruption was a common theme among participants; this research was made aware of corrupt practices, ranging from grubby 'envelopes' exchanging hands at construction sites between planners and developers or their agents, to sophisticated quid pro quo practices in high offices by powerful and influential people. According to a planning consultant, more than 90% of the middle income apartment blocks in Eastlands, for example, are owned by rich and powerful people who live in high end residential developments such as Runda, Lavington and Kitsuru – they are the ones with hundreds of million shillings to put up such developments, and who can afford to persuade planning officials to look the other way (interview PA17).

With regard to planning efforts, even government-initiated housing projects, such as the Site and Service schemes, were riddled with this practice – appointed officers turning a blind eye while those allocated serviced plots ignored type plans for single dwellings in favour of storied multiple dwellings. According to a retired planner, notices served on those who were not complying were copied to the heads of departments, the enforcement team in City Hall, the town clerk, and the legal team – all of whom had the power to stop such developments in their tracks.

> …I had one box file of notices, another one of warnings and they were not followed up… (Interview OP4X).

However, when the plots were bought by rich and powerful individuals, who developed storied apartment blocks (interview OP4X), corruption and impunity reared their heads, and other developers, by default, benefited from the same impunity that the powerful people enjoyed:

> …. most of my colleagues, they don't mind if you give them something small – they will allow it – they'll close their eyes, so you're covered (interview OP4X).

Planners at City Hall were of the view that Ward Officers in the field were also in most cases turning a blind eye (interviews OP1, SP3). They attributed this to the fact that remuneration for subordinate staff is pathetically low, and so there is no official (as opposed to informal) financial motivation. Developers also acknowledged that planning officials are poorly paid, and that this pushes them to harass developers and their agents for side payments. Unofficial payments vary depending on the area and the size of development, and the amount is determined by the results the developer is looking for. In the Eastlands and Kasarani areas, developers seem to have accepted making informal payments as part and parcel of their investments. Even when they make an effort to comply, when they have approvals from the planning department, they are frustrated by the questionable practices of some planning personnel:

What they do is they just go to the site, collect the money and you keep on building. Some of them protect the illegal construction; they condone it and they even protect it. And you know they are the ones who have been posted there. If they see those people don't have the requirements, they are not supposed to arrest you, they are supposed to report you (interview DV5).

It would appear, therefore, that it is not in the interest of planning officers on the ground for developers to follow planning regulations. A developer, and also a building contractor, revealed how planning officials in the field bluff with enforcement letters, with a view to soliciting informal payments.

Oh yes – they will come with enforcement letters.... Sometimes they say the building should be demolished. I 'talk' (*indicated money changing hands)* to the enforcement officer and if we can't agree, I go to his senior and give however much it takes for them to forget the notices or orders. There are also fake enforcement orders made by council officials just to make money. Sometimes they threaten to demolish but will only come at night because they don't have court orders to demolish, just to scare the owner so that they can pay up – they might knock down one wall. They can ask for up to 200,000 *(shillings)*, and then you negotiate (interview DV10).

Planners reckoned that, because such officers have limited technical knowledge of the planning requirements, they are easily 'persuaded' by developers or their agents to look the other way (interviews OP1, PA5). This notion was reinforced by developers, who were of the view that those officials did not seem to have the technical knowhow to inspect or monitor developments, or to support developers. A contractor, who deals with them regularly, had this to say:

Problems originate with the ward inspectorate. They don't know the building codes but they know about simple issues like dumping, helmets for workers, scaffolding. They don't know the technicalities of building requirements. They harass developers on the minor stuff (interview DV10).

Apparently field officers do not like dealing with the owners – they prefer dealing with the contractors because contractors are more 'conversant' with these practices and see them as part and parcel of the construction process:

> ….one woman developer insisted she wanted to speak to them *[field planning officers]* or reporting them because they were getting too greedy, and she ended up paying more. It is cheaper to deal with contractors. They say the figure they want and look away – won't look at your face while you're negotiating[61]. With the owner they give even higher figures and make more threats – create more problems…. (Interview DV10).

Such officers feed on the power and fear (of being brought to book) they generate over developers. A senior planner also expressed a concern that planning officers might also be lacking in commitment, instead being more concerned about enhancing their own interests.

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

> …This guy is the owner of Equity Bank. He wants offices up there and he buys a big plot, even for one billion, to build his office headquarters. And he asks somebody to approve his plans. And he will ask what is happening to my plans. And this guy *[in the planning office]* will need to go to that big office to get a loan and so forth…[62] (Interview OP4X)

Malpractices sometimes cause conflict between planners; there are those who want to do right but are either compromised by political influence and/or pressure, or out of a sense of loyalty to their colleagues. One planner disclosed how, following a field survey, they discovered malpractices by colleagues, which put them in a moral dilemma:

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[61] *It is a negotiating tactic – they know whatever figure they have quoted is exaggerated.*
[62] *It implied a **quid pro quo** arrangement*

> …. now I'm in a place I'm not able to analyse data because if I analyse the data I will put so many people into problems, and they might even lose their jobs (interview SP7).

Before the online system for planning approval was introduced, there were middlemen prowling the corridors in the planning offices at City Hall who were adept at progressing applications from developers because they had established a rapport with officers in the planning sections – it was an industry created by those who wanted to mint money out of the developers, and by developers who wanted shortcuts in getting planning approval. Such brokerage is not limited to City Hall; peers at the Ministry of Lands, Housing and Urban Development are plagued with the same issues:

> … there has been brokerage in Ardhi house *(the ministry offices)* because if you follow up your file the title will be released faster…
> (Interview PA7)

Although the middlemen are being phased out by the online system, there are still pockets of solicitation of funds from developers and/or their agents. What many developers who use such middlemen may not know is that sometimes the middlemen collude with corrupt planning officers and jump stages, which is detrimental to the validity of the approvals. For example, some building plans are given an approval stamp without having been presented to the technical committee, which makes the approval null and void.

> …if you are bringing a change of use and I know you can't be allowed to do a commercial something, I cannot take it to the technical committee because it will be removed, because nobody wants to own that. But I still give you the approval without taking it to the technical meeting... (Interview SP7)

Such a development application, although bearing an approval stamp, would not be genuine or in the office records; whilst some developers may know what they are getting, others are naïve and think that it is legitimate because it was stamped in the planning office.   There are also fraudulent land titles,

whereby an owner of a subdivision scheme surrenders land to the government for public utilities/open spaces, but that land is then allocated by a government officer to an individual.

Corruption is not one-sided though, and developers have a large part to play in it. According to DV10 (contractor/developer), when developers are complying and are not afraid to challenge harassment from the field officers, they are left alone.

> I tell the foreman to give them my telephone number if they come to the site – they either leave a letter or call me. If they call, I ask them in which department they work and where can I report at city hall, so that when I go to city hall I'll be told what my problem on the site is. Most of them disappear, unless it's a genuine case, like you don't have a sign board, and [then] we have to pay for it (interview DV1).

'Disappearing' officers could well be explained by the notion that there are rogues who canvass building sites and departmental halls, homing in on vulnerable and desperate developers – they would not wish to be under scrutiny by the county.

> Some don't even have offices. In fact, sometimes those people who left city hall a long time ago, sometimes you see them around harassing people, saying they are still employed by the council (interview DVA1).

Developers are harassed for payments, but they cannot claim to be innocent in all this. There is evidently joint-working with the planners to beat the system, and together they seem to be chipping away at it, while at the same time demonstrating consciousness of general guidelines.

> The people on the ground are also careful - they will only support you if you're working within the harmony of the area. For example, even if you pay them and you want to put up apartments in Karen, they'll not allow you because their job will be on the line. They'll turn a blind eye within the realm of what is allowed in the area. They're not totally

blind. They'll never allow what is not allowed in that area (interview DVA6).

Indeed, they are not totally blind, and there are lines that cannot be crossed in terms of development. As DVA6 pointed out, for example, it would be difficult to ignore apartment blocks in an exclusively single dwelling residential area like Karen. Therefore, there is selective blindness, more pronounced in some areas than others. This could be for any number of reasons; problems in and of 'unmapped' areas, the vastness of non-compliance issues in those areas, not forgetting limited resources for planners.

As one planner aptly said:

> …. City hall will not bribe itself; the officers who are being bribed will not bribe themselves, and they will not be bribed by other officers – they will be bribed by developers.... Because if you are willing to comply with the law why would you like to bribe? (Interview SP4)

A senior planner told of how one developer went berserk in the planning office because he could not understand how the planner could say no to his 'gift' of money, which was more than the planner makes in several months (SP7). However, there are those planners who will not turn such an offering away, and this fuels developers' belief that they can buy planners' loyalties. Planners in City Hall perceived their remuneration to be relatively low compared to other government sector workers, and several believed that unless salaries were reviewed, they would remain easy targets and prone to temptation by developers (interviews SP2, SP7, OP3).

> ……a lot of the development we saw in this Upperhill area, we found the council officer is aware of the provisions of the law and regulations, but when he's put against the developer and the type of financial power the developer seems to command, the council officer simply melts, and it comes to a level where you're saying '...so what do you want?'…. (Interview PA4)

The quagmire that is corruption is a product created by both planners and developers, and the powers that be are aware of this.

Whichever side corruption emanates from, it has eroded the values of the planning function in Nairobi. It is not just that the majority of contravening developers are not known to the authorities, but also that those known can get away with it. Even when they are called to face the consequences, for example with planned demolitions, they run to the politicians for protection. Attempts have been made to eradicate corruption in the city county. During this research, evidence of these attempts was seen in the county planning offices; for example, notices to members of the public cautioning them against paying bribes, and cautioning planners against accepting bribes (see Figure 24).
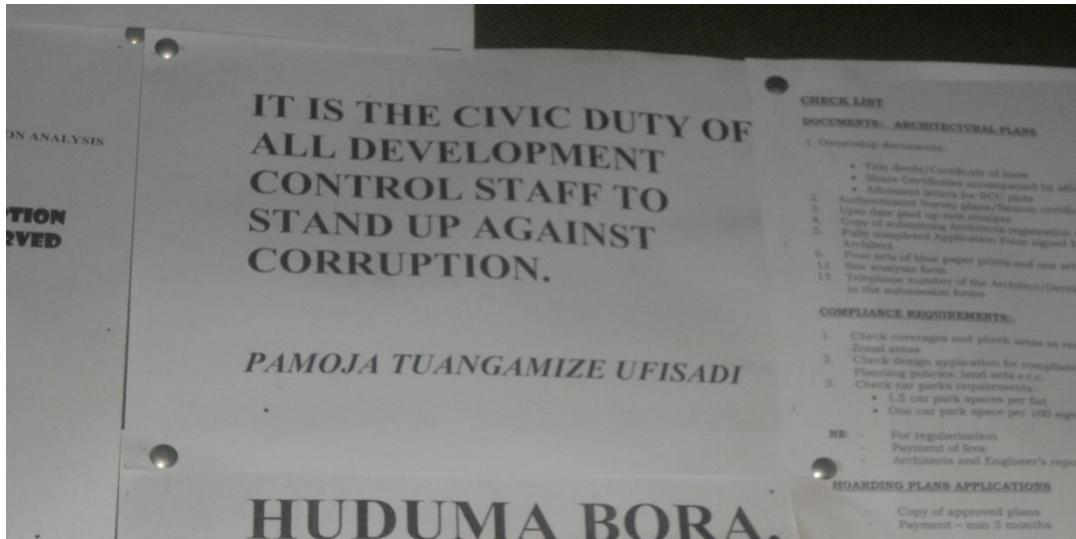
Translation of phrases in the poster;

'Pamoja tuangamize ufisadi' - Together we overcome corruption

'Huduma bora' - Excellent service

Figure 24: Notices at City Hall (Author, 2014)

The posters were put up amid cries of 'reforms' after the new Constitution came into effect in 2010. The posters are all well and good, but as witnessed in one of the offices in the course of this research, developers and planners are still engaging in corrupt practice; one developer was expressing anger at a planning official because he had apparently informally paid KSh 200,000 (about $2,299) to a planning officer who had been recommended by a councillor to process and progress his application for approval, but this had not materialised. What was interesting about this case was that the developer was not upset because he had paid extra informal money for the approval, but because he had not got the approval – he would not have minded paying extra for it.

Thus the same people who were crying 'reforms' were the ones behind corruption, even when reforms are implemented. For example, at the Ministry of Lands, Housing and Urban Development, the Constitution facilitated a change in governance in relation to land administration, establishing a new Land Commission to oversee land administration. However, the new Commission inherited most of its staff from the ministry. To borrow a participant's words:

> It's just like you have a black shoe, and you turn the colour to brown. And that shoe is not different (interview PA8).

PA8 is right; it will take more than shuffling of staff – it will take a change in culture across the board to tackle corruption. The question is, do people want to change the culture or they are happy and comfortable with it (the human inertia referred to by Connor (1998))? The evidence suggests that there is insight into the scale and depth of the problem. It also suggests that there is some will to eradicate it. However, it also suggests that corrupt practices have become an accepted way of life in the planning system.

It was surprising that there was no denial of this on the part of planners – they acknowledged corruption as a cancer that devours integrity and ethical practices in the planning system. What was even more surprising was the high level of tolerance by the public, despite open invitations to object to such practices. And there lies the difficulty; on the one hand are the

developers, who even while complaining about corrupt officials seem to have developed a mind-set that it is the only way to get results, and on the other hand there are planning officials who are only too happy to oblige. From small bribes to poorly paid officers looking to supplement their incomes, to sophisticated backhanders to those in positions of power, who ultimately want to accumulate and protect their wealth and positions – the cancer that is corruption persists and spreads. The negative impacts of corruption are known, yet it is accommodated and tolerated by the same people who claim to hate it. It would take a change in culture between the stakeholders to eliminate this practice. Developers' agents should not have to factor in 'kickbacks' to planning officials while negotiating their fees, and those messages of anti-corruption practices which line the walls in county offices should count for something.   It would appear that messages are put there so that the county can be seen to be fighting corruption, but in reality not much is done to fight it. For any fight against this practice to be effective, it would have to start from the people in powerful positions. They need to lead by example, because otherwise it becomes difficult to advocate changes in culture and to enforce from within if conviction is not demonstrated.

Figure 25: Cartoonist's impression of the saga between NCL and the ministry of Lands, Housing and Urban Development (Nation newspaper)[63]

It is the same people in powerful positions who can offer impunity and shield wrongdoers from punishment, not necessarily because they have the interests of the wrongdoers at heart, but because they might lose out in the process. As Chabal and Daloz (1999) have argued, the ruling elite do not support procedures which threaten the 'big man' patronage system which is grounded in interdependency between powerful people and the public. Anyamba (2011) also noted laxity on the part of enforcement agencies due to corrupt practices within the local authority. The planning system might be flawed, but it is the same people in the positions of power who could potentially lead on correcting the flaws, re-writing laws and revising policies, facilitate efficiency in the system, monitoring and enforcement, and lead on meting out justice without discrimination. It might seem idealistic and unrealistic to expect those in positions of power, who are also involved in corrupt practices, to lead on correcting flaws. However, in certain political circumstances they may do so. For example, in Kigali, Rwanda, Goodfellow (2013) found that the government led by example, with sustained zero

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[63] *The ongoing conflict between the Minister for Lands, Housing and Urban Development, Mrs Ngilu and the Chairman of the National Land Commission, Dr Swazuri,depicted in a local newspaper cartoon*

tolerance for corruption and illegality, regardless of the status of culprits. Indeed, UN-Habitat (2015b) has highlighted the need for government and those in powerful spheres to lead in providing a level playing field for all stakeholders with a view to promoting investment and transparency, respect for legal systems and eradication of corrupt practices. Only then will there be a chance of winning any fight on corruption and impunity.

There are myriads of reasons for this practice; for example, planners capitalising on fear and the possibility of retribution to hold power over developers, impatient developers who are happy to 'buy' their way through the system, middlemen only too willing to oblige, and the ignorance of field staff, coupled with a desire to supplement their low incomes. As one participant said:

> You know allegations of corruption and impunity – these are situations that arise out of a vacuum or out of lack of proper ways of doing things. The moment you plug them, you also eliminate (interview SP3).

The problem is, there is evident lack of will or determination to eradicate this practice, starting from high offices, through to lowly paid staff in the field, and including developers. A willingness to change would have to be cultivated consistently and persistently over time. In the meantime, a major challenge to planning practice is that developers are not deterred in their development ventures, either because they have some protection (political or otherwise), or because they can 'buy' their way out of any impediments. The parallel organisation referred to by Anders (2006) and Mbaku (2010) has strongly rooted itself, undermining any efforts to eradicate corruption. Minimising corruption will take a concerted effort between planners and other stakeholders, which presently is lacking, as demonstrated in the following section.

7.4 Poor joint working with developers, other government agencies and departments

Developers aired their frustrations that planners did not seem to pay any heed to their concerns, and so the planning department did not complement their efforts. According to them, they were not effectively consulted for suggestions, and their complaints were ignored. A KPDA representative complained that, although they were supposed to have meetings with planning officials twice a year, the meetings were not happening:

> On their part…I think they're just too busy. We're trying to reschedule because we like to keep them on track but sometimes it's difficult…. we haven't had one in over a year…because of schedules and excuses and all sorts of things…. (Interview KPDA)

Consultation meetings twice a year is hardly too demanding; in such meetings planners would have the opportunity to articulate their reasoning, justify their services and gaps in services, and at the same time give developers an opportunity to express their views and frustrations. As it is now, developers are left wondering about many aspects of development control and approval requirements, such as zoning reviews and fee increases.

According to a KPDA representative, the organisation writes policy review documents and provides capacity training for its members i.e. it responds to the different capacity needs of the industry. Regular consultation meetings with the planners could therefore be quite productive for both planners and developers. Although there is some scepticism amongst planners that KPDA members just lobby for their own interests, it cannot be denied that even as they pursue their interests, they would be pushing planners to come up with good policies and general practices in planning that could benefit all. A senior planner acknowledged:

> They can lobby for infrastructure, they can lobby for quicker approval processes, they can lobby for efficient and effective enforcement mechanisms (interview SP4).

It is through such forums that civil society organisations and other professionals in the industry could contribute to the evaluation and review of the planning system. As one developer aptly noted:

> I don't think that in the building industry, that development is a preserve of the planner. There are times when the engineers are right, there are times when the architects will be right….and a developer often has a respectable view about what he thinks ought to be (interview DV1).

Developers' agents also complained that there are no avenues to give feedback to planners or to appeal decisions:

> …. planning in Kenya is still housed within the government. We have not really become a planning society where we are so informed about the structure of planning and where, when you feel aggrieved, where you can go…. (Interview DVA4).

They also suggested that there is potential to help developers by advising them what is realistic and acceptable, based on their professional experiences:

> … more and more of the developments have become like a negotiated process. Even the council, we are not saying they are so unreasonably or irrationally strict to the letter. They know the areas that seem outdated, whether they have been revised or not, but they know them. As a practitioner with that kind of knowledge then you can help your developer to negotiate their case with the council…. (Interview DVA4)

Making developers' agents, especially architects, structural engineers and even building contractors, more accountable would help to reduce the number of county planning staff required to monitor developments. However, at present there is no code of ethics for these professionals. As it is now, the system has created a 'new normal' of ignoring rules and regulations, and developers' agents are turning a blind eye as much as the planners - in practice, developers are aided and abetted by professionals

who should be guided by their professional ethics, but are not in part because planners do not acknowledge their value in influencing actions (or non-actions) by developers. One suggestion by a senior planner was to require:

> ….. that every development that is coming up in this city… has an architect on record. Just the way if you go to court you wouldn't find any case going on without an advocate on record…. *[then]* if one architect pulls out and puts it very clearly why he's pulled out…. then any other architect will find it very difficult to come in because the guidelines are very clear to all and sundry…. the architect should be able to tell the developer, even if you move to the next architect it doesn't mean that he's going to get preferential treatment in city hall…. (Interview SP3)

However, this research also discovered that developers' agents do not always agree with unscrupulous clients, who pay no heed to their warnings regarding health and safety:

> …. you see these residential houses they have to have proper ventilation… so that the house may not have dampness…. most of the buildings don't have fire exits – they only have 1 staircase…. if you put another staircase, it takes the space of a whole room - so you're not maximising your land (interview DVA4).

The agents may disagree with the developers they work for, but they also need developers to keep employing them:

> …. should you …. submit as per the whims of the developer and it's rejected then they will not pay you – you'll only be lucky if you had received a down payment… the developer maybe has been taken to court or to the tribunal and they come to you and they tell you 'yeah I believe you can get me out of this'. And there are two things here; one, absolve them from the blame but two, also push their agenda so they're not only relieved of their charges but they are also allowed to carry on with whatever they wanted to do (interview DVA4).

Developers' agents are therefore potentially a powerful ally for planners in that they are in contact with developers, but may be more inclined to make sense of reasonable laws and regulations, than their clients. It is in the interest of such agents for developers to seek and gain approval, because then they are more likely to get commissioned for their input. If planners were to come up with viable programmes for educating developers and changing their outlook for the better, then they would most likely get backing from developers' agents. As one agent put it:

> …. if you *[a developer]* come to me *[because]* you want to develop a plot, I should have a question '…have you attended the council training before you came to me?' And I can't draw a plan for a person who has not attended, because the plan will not be approved by the council. And maybe at the same time there is a form which I will sign, or there will be a form that will be attached to your plan to say that you've attended the training (interview DVA5).

The theme of poor consultation is visible not only with respect to the public, but also between the planning department and other government agencies and departments that work towards similar ends. For example, it would appear that there are four government departments which are operating in the same space and on the same principles: the Physical Planning Department at the Ministry (whose remit includes land management, physical planning and implementation), the City Government (which houses another Department of Physical Planning), the Ministry of Local Government (mandated with developing urban development policies and assisting with planning), and the Ministry of Nairobi Metropolitan Development (mandated to give technical support and resources for planning and implementation). Granted that these bodies have different roles, but there is a lot of overlap in their remits. More coherent joint-working and amalgamation of resources could mean increased efficiency in service provision.

Apart from the wider government departments, there are also overlapping departments concerned with planning. For example, for the Site and Service projects, responsibility was given to a newly created department of Nairobi

City Council (now Nairobi City County) called the Housing Development Department (HDD), which was based in Dandora. The office in Dandora had its own management structure in place, complete with a director for the scheme, technical staff (surveyors, engineers, and architects) and other site staff, but it still had some officers at City Hall (interview OP1). Problems started when, after the council stopped implementing the schemes, the HDD offices remained and were accessed by developers in the Eastlands of Nairobi, which were not part of the Site and Service schemes, for advice and planning applications. Developers in Umoja, Komarock, Kayole and other areas in the vicinity would go to the Dandora office to obtain approval, even though, according to planners in City Hall, staff in the Dandora HDD office are not authorised to give development approval because this is beyond their remit:

> … they *[HDD]* are not vigilant because of course their terms of reference do not allow them to evaluate and plan approvals, so they don't have a template to work from…. The former city council had its (HDD's) processes shrouded most of the time and it was not a transparent entity and therefore it didn't go out to the public, for example to say that '…if you want this you can come here…'. So when a developer is on the ground and he sees a council facility next door, he goes there to consult … They *[developers]* come from Kayole, they go to Dandora, … to that office, and those people are not honest enough to tell them '… you know what, we don't approve this here…' They'll just say '...where is your plot…?' And they will look like they are going to sign. The next thing you see, people are building (interview OP1)

The officers 'look like they are going to sign', but their authorisation is not valid because they don't have the mandate. Given the extensive demand for developments in Eastlands of Nairobi, it makes sense to keep the former HDD office in Dandora open to the public as a way of decentralising the planning department. What does not make sense is that it seems to be operating within separate guidelines whilst controlling developments in the county's jurisdiction. It would be in the interest of development control to

equip this satellite office with proper guidelines, and to demand accountability in its operations.

The Physical Planning department at the Ministry of Lands, Housing and Urban Development has a total of 31 qualified physical planners, spread out in Development Control, Policy Planning, Local Planning, Regional Planning, Forward Planning, Research and Development (interview PA11). So whilst the Planning Department at City Hall is struggling due to a shortage of qualified staff (with a lot of employees doing the wrong jobs), the Physical Planning Department at the Ministry, which is privileged to have graduate planners, has a duplicate section, which unfortunately works independently from that at the county planning department. The planners in the Physical Planning department at the Ministry were criticised on the grounds that, for all their qualifications, they do not seem to add much value to the functions of planning by the county; it was alleged that they discharge their duties from the comfort of their offices, without going to sites or bothering to authenticate the county planners' work:

> …... if a particular plan comes to you, and you're somebody subdividing this land in Kasarani, this person, instead of approving it in the office, he's supposed to go to the site; and see that the plot is one acre.... he should check are there roads, are there primary schools around, and open spaces, or what, and they should recommend. … And then they *[planners at the Ministry]* say, '…we refer to a letter dated this, and we have no adverse comments….' (Interview PA8)

A senior planner at the Ministry of Lands and Housing asserted that they can demand accountability from the city county with regard to illegal developments:

> Of course in terms of advising we do have power. If we're not satisfied, we can actually require the council to stop those developments (interview PA11).

However, in practice this accountability channel does not appear to function. PA11 pointed out that approval for change of use is with regard to the land,

not the actual development, and time lapses between approval and development make it difficult to follow up and enforce the approval and its conditions. Like his counterparts in City Hall, he too blamed institutional incapacity to enforce, claiming there were not enough physical planners to monitor development.

Relations between the Lands Office and Planning Departments (both at the county and the Ministry) could also be better. When these planning departments approve a development, the application is then submitted to the Commissioner of Lands. However, the Government Land Act and the Survey Act do not recognise the PPA2, the Physical Planning Act instrument used for notification of approval – the Physical Planning Act is considered weak because it does not give instructions regarding land administration (interview SP1).

There has also been some controversy between planners and their peers in the Estates Department of the ministry, with regards to the new Built Environment Bill. Government planners, as opposed to private practitioners, were opposed to this bill, claiming that they already had the Physical Planning Act to guide them. As a result, they did not want to team up with others in the formulation of the new law. According to colleagues in Estates:

> It's because planners want to control planning and the use of land.
> Because that's where investment is, that's where the money is. They
> want to control that themselves, they don't want others involved.
> …The fear *(by planners)* I think is just that control – it's just about
> power and who administers land in Kenya and who plans land in
> Kenya… (Interview PA2).

It is not only in ministries and planning departments that there is overlap and rivalry, but in subsidiary departments as well. For example, Nairobi City County, Nairobi Water Company, and the Kenya Power Company were operating with different 'master plans'[64] (interview OP2). It would have made more sense for the different agencies to ensure their programmes are

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[64] *This is in reference to organisational programmes and strategies rather than the city's land use masterplan*

compatible and then team up in implementing their plans and in operations.

Clearly, developers do not necessarily apply for development approval because they believe in the relevance of guidelines for a sustainable environment or the effects of their development on infrastructure, but because getting approval may be a prerequisite for, for example, funding applications to financial institutions (interview OP1). Planners would therefore do well to forge and foster relationships with such institutions, as this could potentially improve compliance with planning laws and regulations amongst developers. Such institutions need not be involved for technical reasons, but because of their ability to exercise leverage over their clients and to liaise with the relevant planning section if they have any concerns.

What frustrates developers and their agents is that the different departments, such as water, public health, electricity and roads, are aware of developments, yet when it comes to guidance and the provision of infrastructural services they are not very proactive or supportive. Planners provided an insight into this problem; a planning consultant expressed:

> If you ask them *(developers)* they will tell you city planning guys are irrelevant. Because one, they don't facilitate …*[development]*. If you have a plot somewhere and you want to start building – you want hook ups of water, electricity, what not, *[but]* try to get it! The water department will not even tell you where the water pipe is passing. They don't know because they have no maps. It's left to the developer to dig round and locate where the water pipe is. And then after that go and apply to be connected. They might even take three months (interview PA3).

This begs the question why, having identified this source of frustration for developers, planners have not attempted to rectify it by improving coordination between the departments involved in planning approval. For example, the planning department gives approval, subject to approval by the environment agency, NEMA. But every so often NEMA has been known to

turn down applications due to environmental implications, after the planning department has given development approval. A developer provided an example:

> ...There's a project I'm involved in – the scheme for 2000 apartments has already been approved. After we got the plans approved we went for EIA. There was a sewer passing through, and they said we have to cut our project by so many houses, and we had already got the approval…. There was a sewer, there was a river – two things. Where the sewer was passing, from the river, instead of the sewer following the river there was space and in between the sewer and the river we had some developments. These people were arguing that from the sewer to where the river was there should be no developments…. (Interview DVA1)

DVA1, among others, thought that the process would work better if all departments, including NEMA, gave their approval before the final approval from the planning department. They found it frustrating that NEMA could fail to approve a development after the planning department had passed it. They also felt that there was an overlap in the roles these departments were playing, and that the process could be more streamlined to avoid duplication. NEMA does its own research, for example, on alternative means of sewage disposal, so could advise and guide the planning department in zoning guidelines reviews, but there does not seem to be joint-working between them in this respect (interview OP2). This is frustrating, not only to forward thinking developers, but also to planners, who have to answer questions from developers, as one operational planner commented:

> ...there are also alternative methods of sewer disposal – there are these things we're calling the bio-digesters; those are things we're supposed to look at. If there is no trans-sewer and the developer is willing to use them…NEMA has studied those things and it has several models that they have approved. And I hear they work just as well. I know they're able to recycle water, I hear they're very effective... (Interview OP2).

Occasionally such technology is applied, for example in parts of Kileleshwa in zone 4 (where there is no sewer line) (interview OP2), but it could easily be rolled out to different areas to meet the needs of the growing population.

Planners are coming round to the idea of involving the public. In drawing up the new master plan, there were consultation meetings in different wards. Likewise, in promoting the regularisation procedure, public *barazas*[65]*were held.* Planners may recognise the knowledge held by members of the public:

> And that's why every time we engage residents, especially the organised ones in terms of resident associations, we encourage them that they are our eyes out there – they should not sit there and say *serikali* [government] is not taking care of us because you're my eyes out there in the neighbourhoods, you should be the first to report to my office that '…we notice that our neighbour is doing this and that - could you just confirm whether it's approved or not?'…. (Interview SP6)

Putting some onus on the public to monitor developments by supporting and developing organisational arrangements at the local level might indeed complement planning enforcement in the city – there could be public forums which could convene with or without the planners, in which development proposals for neighbourhoods could be discussed, accepted or objected to. There are already some structures in place, such as residents associations, that could be groomed and harnessed to support planning efforts, and which could ultimately lead the way for others to follow suit. Promoting such public participation and inclusion would be in line with UN-Habitat's (2015b) guidelines, which advocate for local authorities to facilitate equitable involvement of urban stakeholders (including communities, civil society and the private sector) in implementation, monitoring and evaluation.

It is clear that developers have no respect for planners and the system as a whole, particularly because of the perceived inadequacies of the system in guiding them when called upon to do so. It is no wonder, then, that many

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[65]*Public meetings facilitated by various officials*

developers bypass the planning system. Also, it appears that there is potential for more joint working to enhance the effectiveness of planning efforts in the city, but this is not being harnessed presently. Such joint-working could start internally between different sections of the planning department, and different departments involved in planning approvals. However, conflicting interests within and between different departments have so far undermined effective joint-working. There seems to be lack of trust between planners and other stakeholders: developers do not believe that planners have their best interests at heart, planners feel undermined by other professionals, and other professionals believe planners want to hold all the power for selfish gains. And yet, each had insights regarding ways in which joint-working could be fostered for more effective planning. During the campaign for regularisation, for example, planners held planning clinics for developers, to educate them about the procedures for getting their developments formalised. According to the planners, people turned up in large numbers for those meetings. Perhaps this was because they felt threatened and wanted to know what would happen to their buildings, but then again, it could have been because they really wanted guidelines on how to change their developments and environments for the better. Whatever their reasons, there is clearly potential for planners and their consultants to meet developers and their agents in consultations on planning issues.

However, respect for the system by developers is further undermined by the length of the planning approval process, as illustrated in the following section.

7.5 Prolonged processes

Planners acknowledged that the approval process can be quite elongated and frustrating for developers. According to developers and their agents, poor monitoring and enforcement is not helped by the level of bureaucracy involved in the planning approval process. Of those developers who gave in-depth interviews, 69% expressed their frustration at the bureaucracy of the system. Of those to whom questionnaires were administered, more than 50% did not divulge whether or not they had engaged with the process, but

for the majority of those who had done so, it took more than five months. Of those developers who gave in-depth interviews, 63% had been frustrated by the length of time it took to get approval, which they felt ended up increasing their development costs.

As seen in Chapter 5, most of Nairobi, especially outside the master plan area, was agricultural land. For residential developments, such land needs to go through change of use from agricultural to residential. Also, most of Nairobi was zoned for single dwellings, and developers of apartment blocks have to apply for change of use from single dwelling to multiple dwellings, before they can get approval for development. This means developers have to go through the approval process with both the Planning Department and the Lands Department. This prolongs the planning approval process, as developers and their agents have to track applications through the different stages and planning sections:

> One of the problems has been the process itself. Right now it's less cumbersome *(the online system of approval application)* – not perfect but it's better than what was there before. The other one was very manual; you go, you take your drawings from stage a, b, c, d, physically- that was quite laborious (interview DV7).

Developers lamented that certain officials might delay giving their comments and that they are not empowered to ask for faster processing. However, a planner gave an example of how some private physical planners would deliberately give vague locations of the properties in question, with a view to getting favourable zoning requirements, thus elongating the approval process further while the planners sought clarification, sometimes even having to ask a developer to take them to the site in question because the physical planner the developer had employed had not been clear in his or her directions (interview OP2). Planners empathised with developers in such cases, acknowledging that for the fee developers pay upon application, they should be expecting a full and speedy service:

> …. because the person has paid 120,000 shillings, we shouldn't be bothering them with such detail…. By the second day this guy has not brought me the elevation plans, I have to write, I have to show that I didn't take more than the 72 hours. So I end up having to write a letter; it's another process, it has to go to the typist, then back to me for proofreading, then to my boss for signature, and this lengthens the process... (Interview OP2)

Technical committee meetings are supposed to be held every two weeks, but allegedly, sometimes the intervals are three or four weeks, delaying the approval further (interview DVA6). The process becomes longer still if or when comments are given that require a response, or while developers assemble the fee, which is charged after the initial assessment.

Some developers and their agents thought the Nairobi County planning department could work better if it is decentralised from one central office to minimise bureaucracy; they gave examples of satellite towns like Thika and Kajiado, which have much smaller departments, and where application processing is much simpler (interviews DVA6, DVA1). While the county already has teams on the ground in the different county wards, as was shown in Chapter 6.3, ward staff are mostly unqualified and also are notorious for harassing developers on the ground.

It was not only the length of the approval process that frustrated developers, but also the pace at which the planning department reviews their policies and procedures, especially with regards to zoning.

> They take so long to execute things on the ground, it takes years – like now they took so long to change regulations for a small area in Kilimani, Kileleshwa and some areas of Ngara, so other areas are neglected. Those areas had single dwellings and it's next to the CBD and things were changing fast (interview DVA6)

It emerged that the length of time it took different developers/agents varied, sometimes being dependent on how well connected they or their agents were with officers in the planning department. This finding resonates with

other scholars, who found deliberate sabotage of state processes to enhance personal gain (Blundo and Olivier de Sardan, 2006; Bayart, 2009; Mbaku, 2010). Although there are developers who do not see the elongated process as an issue, since they do not engage with it, there are those who consider the length of the process and the bureaucracy involved in obtaining a building permit as a deterrent in their intent to seek planning approval, so they go ahead and start building without engaging with the process.

Non-complying developers, when caught, are subject to a penalty under the Physical Planning Act. However, planners perceived these penalties to be inadequate in curbing malpractices. Their perceptions are looked at in the following section.

7.6 Low penalties for non-compliance

… developers can only support systems which have rules. If the rules are not clear to them they cannot. And if the penalties are not hefty, of course they'll just take shortcuts (interview DV9).

This section addresses the question of whether developers get away with non-compliance. Planners and developers were of the opinion that the penalties on developers for non-compliance are not hefty enough to deter developers in their ventures. The Physical Planning Act specifies a maximum penalty of KSh100,000 (about $1,149), and the court takes into consideration any mitigating circumstances before making a judgement. Some developers felt the penalties for non-compliance were not high enough, compared to the financial rewards they were getting:

> ..... the penalties are not hefty enough to discourage *[us]* from doing it. Because what happens is, if you're arrested once and you're charged and fined, you cannot be re-arrested..….If you're investing 20 million and you're charged only 100 thousand, you can pay. You can even be charged three times and you keep paying and you continue building.. … make them *(penalties)* stiffer so that it becomes very expensive to undertake illegal structures (interview DV9).

DV9 is a serial developer, and a contractor for other developers, and was talking about official penalties once non-complying developers are arrested. He was talking from experience, and going by the undeterred sprawling developments, he may well be right in thinking that the penalties are not high enough for the larger projects.

Developers who are arrested and taken to court can get away with a fine as low as KSh 10,000 (about $115), which is insignificant for a development worth millions of shillings:

> Come out of court, go continue with my construction. Now coupled with this issue of low *(staffing)* capacity, by the time you catch me, maybe I've built two floors (interview SP4).

Weighed against the likely returns, the official penalties do seem puny; for example, charging10 flats KSh 50,000 per month would net KSh 500,000 (about $5,747) monthly rent as middle income residential apartments. But more than that, the reasons for the penalties are not respected, and developers continue to take risks after planning officials condemn their applications on the ground. These findings resonate with Mbaku (2010), who asserted that government regulations generate high transaction costs, which compel entrepreneurs to avoid formal requirements. The effects of bureaucratic delays and limited resources for planning, compounded by the blind eye syndrome, contribute to the confidence of developers that they can ignore official cautions.

As noted above, there are other forms of 'penalties', namely informal payments to corrupt planning or field officers to turn a blind eye, which can be as high as KSh 300,000 (about $3,448) (interview PA14). Even with these, the returns in the long run outweigh the costs to developers. Thus, it can be argued that it is not the inadequate level of official penalties that is failing to curb uncontrolled developments, but, as seen in Chapter 8, rather the fact that 'unofficial payments' facilitate impunity for illegal developments – it is those unofficial payments that are counterproductive in controlling development.

7.7 Conclusion

This chapter has explored the circumstances under which planners might turn a blind eye to non-compliance, such as corruption and the impunity offered by politicians and other influential people. Forester (1982) aptly noted that planners find it difficult to ignore those in power, because to do so may render them powerless. His argument that private economic actors and/or politics can overwhelm planners has been affirmed by this research; politicians and other influential people do often undermine planning efforts. The impunity for developers that results affirms that planning responds to pressure from various sources (Adam and Watkins, 2008; Rydin, 2011). Also, as noted by Chabal and Daloz (1999), 'the big man' patronage system (and the manipulations it allows), which is characterised by interdependence between leaders and the general population, is present in Nairobi, like elsewhere in Africa.

Corrupt practices are two-sided and deeply engrained: developers offer informal payments to expedite the approval process, while middlemen and poorly paid planning staff are only too willing to oblige. Some planners neither have pride in their profession nor the motivation to uphold professional ethics. The blind eye syndrome discussed in Chapter 2 is clearly at play here, spanning planning facilitation from lowly paid field operatives to the highest planning office, and beyond. These practices have played a major part in non-compliance issues, and in these circumstances, even the regularisation procedure, which has the potential to address irregularities, does not stand a chance of meeting its purpose. Unless this culture in the planning system is addressed, no amount of reviews or additional resources for planning will combat non-compliance issues, for there will always be those wanting to push the boundaries and bypass the legitimate system. In addition, people would have to overcome their resistance to change, the human inertia that resists disruption to the status quo, as inferred by Conner (1998). UN-Habitat (2015b) emphasises that a good planning framework should be transparent and accountable, and these are practices that clearly need to be cultivated in Nairobi for more effective implementation of the planning framework. Indeed, transparency and

accountability would be a step towards making corruption a 'high risk' and 'low profit' activity, as recommended by Transparency International (2000).

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

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

It is indeed difficult to enforce or mete out justice if there is selective toleration of corruption and impunity. It is even more difficult when the very people who are entrusted with power are making a mockery of the best practices they are supposed to be promoting, and are involved in violations. No one should be above the law. As Transparency International (2000) asserted, a law needs to be applied fairly and evenly (not just to the 'small fry'), otherwise it loses legitimacy. Only then would the planning system and other government departments which are suffering from endemic corruption and impunity have a chance of meeting their aspirations.

There is also room for more consultation and feedback, which if accommodated could help to foster relationships between planners and developers. There is an inherent lack of trust between these two groups of people: planners on the one hand strictly lay down the law, but are frustrated because developers are defiant of the regulations, and on the other hand developers (and their agents) are bewildered and frustrated because they do not understand or follow the rationale of planning. The two groups have not developed common ground to discuss and resolve development control issues and concerns, and neither is happy with the workings of the other, to the detriment of the city-scape. Governance arrangements, as noted by Rakodi (2001), need a lot more attention, even as planners look to review the rest of the planning framework, otherwise future reviews will still be in vain. This involves forging strong links with non-governmental stakeholders and developing mechanisms to share planning responsibilities appropriately. Streamlining such links and mechanisms could positively impact on the number of developers voluntarily engaging with the system, and even on the

approval process, which developers presently perceive as unnecessarily elongated. However, this calls for trust in the planning institution, and between planners and other stakeholders. As Braithwaite and Levi (1998) suggest, trust can ease coordination and encourage compliance with laws.

Institutional and departmental rivalries hamper planning efforts in Nairobi at many levels; not only is there bureaucracy and duplication of resources, there is also unhealthy competition, which in the end leads to a loss of credibility in the different departments and institutions. This is demonstrated by the squabbles between the newly formed National Land Commission and the Minister for Lands, Housing and Urban development – while they are locked in power contestation, land administration functions have been on the decline. Whilst those in power are squabbling over who leads on what, not only do they waste valuable time and effort, they leave the city still in the grip of unrealistic and impractical laws that continue to frustrate developers and planners alike. It would be more effective for relevant institutions and departments to work together, but for that to happen, those in positions of authority need to put their self-serving interests aside and engage in round-table discussions. This research suggests that these players could serve the interests of the public more efficiently by doing an inventory of their staffing resources, and looking into ways of teaming up to cut bureaucracy and expenditure on staff costs. Relationships with NEMA could also be streamlined to avoid duplication and curtail bureaucracy, and other partners in government and supporting parastatals, such as water and electricity boards, could be recruited to aid compliance.

So do developers get away with non-compliance? To a large extent they do, in that the penalties are not sufficient to deter transgressions. Had they perceived the penalties for non-compliance (formal or informal) to be high, that would have deterred them from pursuing developments without approval. It should not be acceptable for developers to ignore notices to stop a development or take corrective measures, and it should not be acceptable for planning officials to tolerate non-compliance. To date, the evidence suggests that developers have indeed been getting away with non-

compliance, playing 'catch me if you can' with planners, demonstrating the blatant disrespect for authority that Tyler (1990) alluded to.

Governance of the planning system in Nairobi is clearly not effective, and the results are visible for all to see. The *'weak nature of the state and governance regimes'* alluded to by Jenkins and Anderson (2011) is clearly at play. Berrisford (2011b) contends that planning should be focused on the physical aspects, leaving the economic, social and environmental considerations to other laws/authorities. This research begs to differ, demonstrating that it would be difficult for planning to distance itself from those considerations because it has a major role to play in integrating and coordinating all aspects of physical development. Chapter 8 will elaborate on this by looking at practical problems with developments in more detail.

Chapter 8: The development challenge – negotiating with the planning system in developments

'…. developers can only support systems which have rules. If the rules are not clear to them they cannot….' (Interview DV9)

8.1 Introduction

Having established the problems of implementation, monitoring and enforcement in the planning system in Nairobi, this chapter will look at how these translate to problems in practice with regard to developments. As asserted by Campbell and Fainstein (1996), developers' visions do not necessarily coincide with those of planners. It therefore stands to reason that developers aiming to maximise returns from their investments question the legitimacy and validity of the planning system, and the manifestation of their frustrations is visible in their non-compliance. As Rukwaro and Olima (2003) asserted, non-compliance with planning laws and regulations reflects the weak administrative and institutional framework of the city county, which has been demonstrated for Nairobi in Chapters 6 and 7.

Chapter 6 also revealed that there is a dire shortage of qualified planning staff. This is coupled with other influences, such as political and social/cultural influences, which are ingrained in the system. On the ground, as will be evidenced in this chapter, this has translated into unruly developers operating with minimal guidance and supervision from planners, and professionals who feel compelled to support developers' investment visions. The chapter will answer the questions; what are the actual problems in developments with regard to the planning system? How do developers negotiate with the planning system? Is non-compliance deliberate or accidental?

Section 8.2 looks at unruliness amongst developers, which, it will be argued, is compounded by speculation, greed and ignorance. It addresses the question of whether non-compliance is deliberate or accidental. As noted in Chapter 7, developers are abetted in their practices by professionals, and this is discussed in section 8.3. Section 8.4 discusses investment costs, and how these drive developers to negotiate with planning laws and regulations.

It argues that if approval fees are not regarded as legitimate, or if they are perceived as extreme, unjust or unevenly applied, then developers are more likely to disregard the system. Section 8.5 illustrates problems in practice in developments through the use of three case studies.

8.2 Unruly developers: the play of speculation, greed and ignorance

Complacency on the part of planners in monitoring and enforcement, the fragmented departments which increase bureaucracy, or even the extended time it might take to get approval may explain developers' non-compliance. As described above, planning guidance leaves a lot to be desired, and its inadequacy and inconsistency has definitely exacerbated unruliness by developers. Despite planners' efforts, developers are still pushing for higher densities, as evidenced by the changing skyline of Nairobi. This section provides insights into developers' shortcomings with regard to the application of planning laws and regulations; it explores whether non-compliance by developers is deliberate or accidental.

The main problems identified by developers are shown in Figure 26, which gives a breakdown of responses from 65 developers to whom questionnaires were administered[66].

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[66] Of the 65 developers, 18 were involved in developments of more than five floors. 52 developments were for self-contained units, while 18 developers disclosed they had built blocks with shared facilities. Some of the developers or developers' agents were involved in both types of developments.
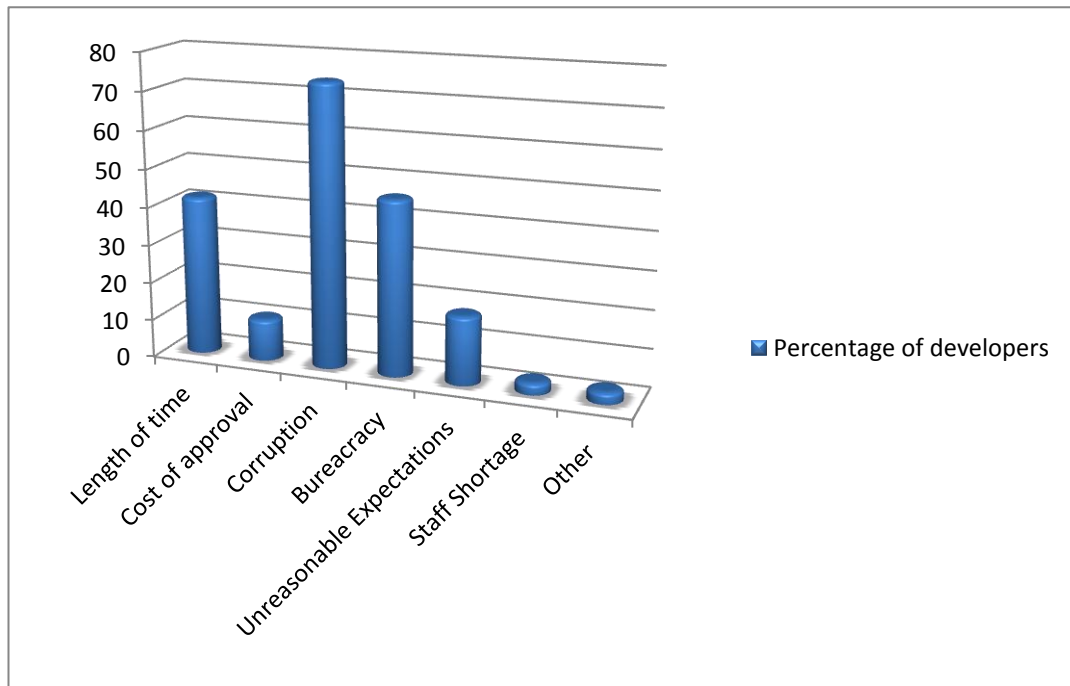
Figure 26: Problems faced by developers (Author, 2015)

The responses show a general consensus amongst developers about corruption being a bane that hinders compliance with planning laws and regulations. This is closely followed by bureaucracy and the length of time needed to obtain approval. Of the 65 developers questioned, it is not surprising that only seven were concerned about the costs, since the majority of developers do not engage with the process. For most, unreasonable expectations were not perceived as an issue, perhaps because they did not care to find out what those expectations were. A shortage of planners was not an issue of concern for many either, which is not surprising if, when they showed up, developers felt harassed rather than supported. It is in trying to scale down and minimise those hurdles that developers engage in cat and mouse games with the planners.

Malpractices are rife because of gaps and inconsistency in planning guidance. The research found that most developers do not seek approval for their developments because they are aware that they would not meet the specifications. When they do seek approval, some developers have two sets of drawings; one which is presented to the planning offices for the approval

process, and one which is actually used on site by the builders (interviews DV10, DVA2, DVA4, and DVA5). Developers also know of loopholes in the system. According to one,

> To get to six floors, some developers apply for a penthouse approval.
> Normally the council will authorise ground floor plus four levels without
> a lift, total of five floors. But for a penthouse a lift is not required so
> developers get approval for one, and then build a whole floor
> (interview DV2)

Although planners do empathise with developers, because they acknowledge that the planning framework has fallen short of expectations, they also assert that developers are not necessarily honourable, and are sometimes driven towards non-compliance by reasons they regard as selfish and untenable. Speculation by developers is rife, and this, coupled with the high demand for housing, only adds to the challenges posed to planners. It would appear that some developers are more visionary than planners: For example, a planner revealed how some developers, though building three floors, would have their structural engineers design for 10 floors, to allow for future incremental development when and if plot ratio allowances are reviewed (interview PA12). Whilst that could be considered to be positive and harmless speculation, there is another kind of speculation that gives little or no thought to planning requirements.

Apartment blocks for the middle income group are commercial ventures by wealthy individuals, institutions or groups of investors. These are not usually the people who live in developments, and, as Rakodi (1995) observed, their interests are solely commercial. Such developers may therefore not be concerned with planning standards, which, if adhered to, would limit the profitability of their investments. Planners confirmed this. For example:

> Yes. I know of many…. captains of industry who have tenements in
> Eastlands. People who live in Kitsuru, who live in Runda, who live in
> Lavington[67] – they are the one who can afford to put up structures that

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[67] *Kitsuru, Runda and Lavington are upmarket residential areas to the west of the city, historically populated with single dwellings on substantial land holdings.*

are costing 100 million to 150 million (*shillings*)..... they *[such developments]* have very quick returns. You do a development in Eastlands and you return your investment in five years (interview PA17).

Developers corroborated this, revealing that returns in areas for the low end and middle income developments are in fact higher than returns in high end developments (interviews DV3, DVA2). They know the housing market, including where the shortages are greatest and where returns are highest.

> … there is a shortage of housing, and of course as a developer, why not capitalise on your land and invest and you reap your maximum benefits? (Interview DVA9)

And that is exactly what developers are doing; capitalising on their land for maximum returns. Planners are not oblivious to what is happening on the ground, even when developers have gone through the planning approval process. Some contraventions are rather obvious, such as set-backs and the height of the buildings, while on closer inspection, other contraventions come to light, such as a lack of lifts in development of more than five floors. A lot of developments are far in excess of allowed plot ratios. One senior planner described this:

> Then you come*[and]* we tell you '...you can only do 15 units. You can only go this high, this is your footprint...'. So you find people then say '...OK, just approve what is allowable….' Ok, they won't tell you that. They'll say '…OK, OK, yes, we'll amend...' So the architects amend, will do maybe just three floors which are allowable, but on the ground they'll do even ten floors (interview SP6).

SP6 implies that there may also be conflicts between developers and developers' agents. The latter are caught in a tug of war between their employers and planning officials:

> Most of the times we're caught in the middle …. the developer wants this and the council says this. When you try to advise the developer of council requirements …He'll say '… why not I? How come that

> person has been allowed to build flats and you're telling me I'm not? Why are you telling me I'm supposed to leave a provision... *[for these number of]* feet and my neighbour has built right up to the end of his plot?' (Interview DVA5)

This eventually leads to non-compliance, and although the agents know that, they turn a blind eye because if they don't, someone else will facilitate it:

> Like now if you tell me you want me to draw a plan for a plot of 40 by 60, I tell you '…. you have to leave some space here…', but you tell me '…no, no, draw as I'm telling you…' So I draw as my client is telling me to do, knowing that when it goes to the council it will come back with some comments. So when I get the comments I amend the plans, but the developer still has the first set of drawings. So he can still use the first drawings (interview DVA5).

Developers have been known to their sack agents once planning approval has been given, so as to avoid further professional fees. Such developments are then left to the devices of the building contractors, without professional supervision from an architect or structural engineer. Architects described the outcomes of such practices:

> There are areas such as Pipeline where the residents have no natural lighting at all and they need lights even during the day. No ventilation either. There are no fire escape routes so if there was a fire people would be trapped. And they go up so many floors, up to nine floors (interview DVA10)

Developers of such schemes do not care about environmental issues, and will in some cases defy NEMA guidelines, building on sensitive land such as riparian reserves. For example, a planning consultant disclosed complaint letters regarding a development by a KPDA member, whereby the member had built on a riparian reserve, contrary to NEMA instructions (interview PA1).

According to planners, 90% of developers do not keep plans of their developments on site during construction, for fear that inspectors would then

be able to tell when they are not following the plans (interviews PA13, SP3). Apparently there are also a lot of fake documents presented by developers, for example subdivision approvals or fake change of use, so that building permits can be processed (interview SP7). Most commonly, according to planners, the building plans which are approved are usually right, but developers do not necessarily follow them on the ground; and when they are caught they resort to bribery, as seen in Chapter 7.

Whether totally ignoring the approval process or just going through the motions, developers have developed practices to aid them in avoiding planning officer patrols:

> It is easier for builders when there is a fence to get on with their work, without fear of prying eyes. In areas like Kasarani and Eastlands plans are usually not approved (interview DV10).

Developers have other tactics for avoiding planning officials. For example, there are those who build at night, during the weekends or public holidays, because they know that government officials do not usually work on those days. Once the building is up, planners' powers, as seen in Chapter 7, are limited by social and political pressures, and they are more likely to turn a blind eye or regularise a building than demolish it.

> Come Monday, there is no one on site. You wait; when there are no officers on the ground you construct....by the time *[officers]* realise that construction has been going on, it's two levels (interview SP4).

Planners and their consultants reasoned that most buildings collapse during the weekend because that's when (unqualified) contractors and builders are building in haste and cutting corners, to avoid planning officials (interviews PA12, SP4). This could obviously be just a coincidence – for a building to collapse immediately after being (poorly) built, but it is a damning coincidence nevertheless. It is not just by building over the weekends and public holidays that developers can avoid planning officials; developers' agents have been known to run away from sites when planning officials are expected, or when they are sighted. Avoidance of their visits is frustrating for

planners and also risky at times; the researcher was in a planning office one morning in the course of fieldwork, when planners in that office received a report about the death of one of their colleagues at a building site – some workers had pushed him from a height (perhaps accidentally) as they ran off to avoid confrontation. Apparently the builders had previously been served with a notice to stop construction, but that had not stopped them.

Unfortunately for planners, many of the people who have created the mess in the city are people with money and in powerful positions:

> You see it's about governance – who invests? Not small timers. It's just like drugs – who brings drugs? It's not the guy who takes it, it's another guy who ships it from Colombia and brings it here (interview PA2).

That is so indeed. Money, greed and power, as noted in the literature review, foster predatory behaviour (McDonald & Sheridan, 2009). There are those who know the law but disregard it, both because it is not advantageous to apply it, and because they can.

However, there are also those who do not understand the finer points of the planning legislation; they do not comply because guidance is lacking. Planners complained that some developers do not know the special conditions attached to their titles, such as road widths and sewer works which are meant to support dense developments. They develop without paying heed to such conditions, guided instead by the amount of income they want to generate (interview OP1). This is especially so when developers have enough money to build without having to borrow funds from lending institutions, who would otherwise require planning approval, in which any special conditions would be highlighted. According to developers' agents, some developers are ignorant of the building code and other regulations:

> The developers don't know anything about buildings, they only see buildings. They have the money but they don't know how the building

comes up, they don't know the issues concerning the materials that are supposed to be used (interview DVA5).

Feedback from consultants on the ground reinforces that the present planners' approach is off the mark, and indicates that developers need more effective guidance, perhaps more than policing:

> … they'll tell you, '…why can't the planners come and advise me?'…. Because all they want is - 'this is the space I have, I want to spend so much, how do I get value for my money? Tell me how I can build this house, which will be healthy, which will create necessary spaces, but within the economy. Don't tell me that I *[should]* build a 30% floor ratio because I can't recover the money…' (Interview PA3)

For planners to be able to do that, they would first have to put their house in order; including reviewing the laws and regulations to be more realistic and contextual, increasing their resources (including staff), demonstrating accountability in the use of their resources, streamlining the approaches and practices in planning offices, and being assertive regarding their autonomy. Only then will they gain credibility with developers. In gaining credibility, they would gain ground with respect to controlling developments in the city.

It is not just developers' ignorance that frustrates planning efforts, Civil society and the public at large are not proactive in curbing illegal developments; either they are ignorant about the laws, or they do not seem bothered by what is happening in their vicinities. Planners and planning consultants expressed concern that most people do not seem to know about zoning requirements (interviews PA2, PA7, PA18); perhaps if they were more knowledgeable, planning could become a community effort, with everyone taking some responsibility for their residential environment.

This section has shown that there are two sides to the question of whether non-compliance is deliberate or accidental: there are developers who knowingly take their chances in non-compliance, but there are also those who would appreciate planning guidance. The system has failed with regard to both categories of developers, with similar results in both camps. There

are professionals working with developers who should know better, yet collude with investors in non-compliance. Such cases are looked at in the following section.

8.3 Unprofessional professionals

Developers do not necessarily engage qualified professionals to facilitate developments without planning approval; they either use unqualified people, or qualified but rogue professionals. For example, in subdivisions, ethically guided professionals (surveyors and physical planners) would implement planning guidelines with regards to the provision of land for public utilities, but most of the subdivision schemes outside the master plan area contain many irregularities. A retired planner attributed this to the use of rogue professionals:

> … Leave alone now approval of the developments, the planning itself
> is not approved by the city council. How do you develop if planning,
> survey is not properly done? …. it was done by rogue surveyors,
> rogue planners, rogue engineers, rogue owners (interview OP4X).

For developments seeking planning approval, applications are lodged by developers' agents, not the developers themselves. These developers have to engage architects, structural engineers, sometimes quantity surveyors and for subdivisions, physical planners and surveyors. Unfortunately, such agents do not always behave professionally, to the frustration of planners. Sometimes planners are not able to clarify the information given by professionals about a development due to staff shortage, or lack of transportation to go to the field (as seen in 6.3); this results in more unregulated building (interview OP2).

> For example, areas where the boundaries for zones are along the
> road – like for example, we have zones 4 and 5; in zone 4 we do allow
> apartments but in zone 5 we don't. And the boundary is Muthangari
> Road. So one *[physical planner]* will lie that his plot is on this side of
> the road where we allow apartments…. by the time they *[the*

enforcement team] notice it, the guy has already started building (interview OP2).

Architects have also been known to collude with developers, for example drawing up and submitting proposals for more floors than specified in the zoning stipulations: Whilst developers may be ignorant of such laws, the professionals should know better. The researcher witnessed a submission where the architect tried to trick planners by resubmitting plans for ten levels after consenting to reduce the development to five floors to get planning approval. Even when they submit plans for the correct number of floors, operational drawings for a site are often amended to suit the developer's requirements. Planners felt that some private practitioners are bullied by developers and do not stand their ground when it came to maintaining professional ethics (interview SP3). Even those working for KPDA members had reportedly been compromised, being influenced by money and power (interview PA18).

However, planners also perceive some of the developers to be ignorant of why and how the planning system works, and oblivious to the repercussions of not following planning guidelines, until it is too late. It would therefore be beneficial for developers to be educated on the importance of following planning guidelines, and knowing how the process is supposed to work, so as to avoid being duped by unscrupulous agents:

> Because first of all you should pay the council charges – if you haven't paid then you're getting a fake document. You should also know the date of the meeting your item was tabled, when the committee meeting was held. Otherwise it's like you want a degree but you don't want to go to school. 90% will know they used a shortcut – only 10% might be innocent. But they might still think their papers are valid, even though they used the shortcut, but they are not unless *[the application]* went to the technical committee meeting (interview SP7).

Planners were of the opinion that private professionals engaged in developments should take responsibility for compliance by developers, ensuring that all the relevant regulations are observed, as per the approval of

the development (interviews SP3, OPX4). Unfortunately, as described above, this often does not happen, and reportedly, in most cases such professionals wash their hands of the development. In some cases, the end result has been fatal when a building collapses:

> … a developer decides to do more levels, more floors, than what was approved. In which case now it means that whatever was supposed to be carried by the columns on the ground – of course when you put more than what they were expecting, the result is death (interview PA12).

Of such developments, an established contractor revealed:

> 70% of them are not drawn [up] by qualified architects…. Draftsmen, people with just basic technical training…. Yes, that's why they collapse. Because you just engage a *fundi [builder]*, somebody you have gotten from the village, you train them for a short time, after a few years he takes himself to be a qualified engineer… Most of the people don't use architects. You see the government has not made it mandatory that you must use an architect. You can even draw [up plans] yourself – even somebody who has not gone to school (interview DV9).

It is not only the private practitioners who are employed by developers that are compromised; planning officials in the local authority and ministry are also able to double up as private practitioners – they have licenses to practice outside of their government employment. One developers' agent (interview DVA2) revealed how some developers try to coerce private practitioners into designing unsatisfactory buildings and implicating planning officials in abetting malpractices:

> … A few fellows turn up here and ask us to design for them such buildings. But we're very specific – even if it's a high rise building, you'll be specific about ensuring that building is safe and comfortable to live in. But many of these characters will never come to an architect. A lot of the time they probably even work with the same

council officers – they're the ones who do the sketches for them (interview DVA2).

Such moonlighters are in demand by developers because they can afford to undercut the costlier private practitioners and because they can extend impunity. Developers and planners affirmed this, saying:

> …I'm lucky because my architect is an employee of the Council, so he knows his way around and who to talk to…. (Interview DV2)

> There's a lot of undercutting going on. We realise there is a developer somewhere, I go and quote 1/2m, you go and quote 300 thousand, when you know for sure 300 thousand cannot deliver the quality of work that is required (interview PA18).

Moonlighting is bound to cause conflicts of interests for county planning officials, who were at times accused (by private counterparts) of coercing developers who presented at the planning offices:

> ...you take your client there as a planner, but the regulators there steal your client, and they do the work, and they regulate themselves. So you wonder what they are regulating if they are now taking the job and they sign *[the approval]*…. (Interview PA16)

When such planning officials are working privately for developers, and when, as may be the case, they are compromised in their work ethics, heeding the wishes of the developers and abetting non-compliance, they are clearly breaking their own laws. This has been known to cause conflict with planning consultants, when their recommendations are ignored by planning officials due to conflicting interests, or when they question malpractices by planning officials:

> And I remember in one of those consultation meetings with city hall officers, with the directors, we raised the issue to them – how come you officially sanctioned this development in this place with total disregard of this regulation, for example riparian reserve; you find a developer has been allowed to build up to the bank of the river, and

the regulation is very specific about riparian reserve. So we were asking them – how do you want us to change what you have approved? And you have approved knowing very well it is against this regulation?... (Interview PA4)

As seen in 6.3, planners do not have adequate resources to police development projects in Nairobi, and are thus lax in monitoring and enforcement of planning laws and regulations. In such circumstances, registered professionals working for the developers may be entrusted with monitoring development work; for example, supervision of construction, including submission of ground bearing capacity, concrete tests of mixtures during construction, strength of steel used, and other technical compliance tests (interview PA12, Building Code). However, in the majority of cases this follow-up does not occur, either because the private practitioners concerned are only partially engaged by developers (to minimise costs), or because the approval process was by-passed entirely, or because they do not want to draw attention to other non-compliance aspects, such as plot ratio violations. Whichever the case, planners are deprived of much needed back-up from the private practitioners.

It is not only in construction works that private professionals let the planning system down, but also in land administration processes. For example, physical planners and surveyors could do a better job of ensuring that their clients comply with stipulations in subdivisions. However, there are unscrupulous agents who have been known to facilitate irregular subdivisions for land owners, resulting in further challenges for planners.   In such cases, professionals do not even seem to challenge each other – for example a surveyor goes on to demarcate land even when the plans provided by the physical planner are clearly not compliant with zoning regulations:

> …Even planning *[a plot of]* 20 by 40 – it's client based, professionalism does not come in for as long as the client has got money to pay…. because the surveyor will never survey against the plan. The much that he can do is adjustments - so that a smaller plot

can be smaller by a few metres. The surveyor follows a planner strictly. …That framework is provided by the planners, so the survey always follows the planners….. (Interview PA5)

Yes, the planning system has its faults, but also, when planners want to streamline development in the city, they are hampered by rich, powerful and greedy developers, who are blatantly dishonest in their ways, and unscrupulous private professionals who abet the developers. To summarise this in a planner's words:

> I will relate this to a case where I'm bringing up my child. I will encourage my children to grow up as obedient children, respectful, and try as much as possible to have a good positive attitude towards the public – that's what we teach our children. However, they'll go out there and commit murder……the developers – they will innocently bring their plans, but when they leave the door they know what they're up to. There's no way a developer will come and declare – 'you know my friend, I'm going to do ten storeys, but here is my four storeys'. Ok, maybe some of them are forthright and will declare –'you know my friend, I'm going to do ten storeys, here's my four storey plan, and here is my economic considerations for the other bit you cannot see' (interview PA14).

In most cases, professionals have played a part in developments, even if it is only at the design stage in some cases. It is a broken system that gives way to unqualified 'professionals'. It is an even worse system that allows professionals to abet non-compliance. Professionals implicated in any developments owe a duty of care both to the developers and to the planning community as a whole, and it is negligence on their part when they ignore or abet non-compliance. It is all the more a failure on their part when such professionals happen to be county staff moonlighting for extra income, betraying not only their profession but their employer too. Developers may have monetary influence over professionals, but the planning system has legislative and procedural backing, which if consistently and vigilantly applied could streamline actions by professionals. Given the county's limited

resources for planning, integrity in private professionals would be a welcome credit to the system.

Investment is not an easy feat for developers, as the cost of investment is rather high, which has a huge part to play in determining how big a development needs to be to make economic sense. Aspects of the cost of investment in Nairobi and how they influence non-compliance with planning laws and regulations will be looked at in the following section.

8.4 Balancing the costs of investment

This section expands on the challenges faced by developers for the middle income group, and perceptions that the planning system does not seem to empathise with their plight. The high cost of investment (including the high cost of construction materials) guides developers in calculating the expected returns on their investments, and compels them to look for shortcuts in their pursuit of a profit. Developers gave their own experiences with respect to the cost of their developments and why they circumvented the expectations of planning. For example, land prices in Nairobi are very high, and these costs are not commensurate with the policy-driven density requirements; for most investors in the property market, those requirements do not make economic sense. In 2012, Knight Frank, a real estate management company, classed Nairobi as the fastest growing real estate market in the world (Ventures Magazine, 2014). For example, a ½ acre of land in Kilimani and Upperhill areas could at that time fetch as much as KSh 250 million (about $2.87 million). However, before the recent plot ratios review, zoning stipulations for the area allowed only up to four levels, and ground coverage of 75% (County Ordinances) – it was therefore unviable for developers to invest, and this resulted in non-compliance issues. To realise a return from such highly priced land, investors feel compelled to ignore planning policies that restrict the use of their land.

The high cost of land, coupled with high land rates, and high professional and approval fees, deter developers from complying with the system in an effort to make savings and maximise returns from their investment.

…in Kileleshwa, land was about 50 million shillings per acre or so four to five years ago… but now it's almost about 150 million per acre…. at 50 million, maybe you're doing 20 apartments…. Now if you're costing your land value of 50 million and now at 150 million [*shillings*], which means the increment of volume of the houses you should be able to put up should increase substantially. But the problem is that the city council, they are not giving you those approvals. So a lot of people are using their own means to sort of get the approvals. Although everyone knows, and even the council knows, even the government knows, everyone knows that the land use has to be multiplied …. – in the same sort of ratio. So if your land is approximately 25% *[higher in value]*, …then you should be able to put that much *[proportionate]* money in the building itself (interview DV11F).

However, it is worth noting that if planning regulation followed land prices, as DV11F suggests, that could fuel increases in prices even further, creating a vicious circle. On the other hand, if planning regulations are strictly enforced and followed, that would be more likely to stop the market value of land rising astronomically, thus restricting boom/bust cycles in the land market, since value and regulation are intertwined. The problem therefore is that planning regulations in Nairobi are neither strictly enforced nor willingly followed.

DV11F above specialises in high end middle income developments to the West of Nairobi. These are sensitive areas in that they are in the original master plan and close to the CBD, and moreover the inhabitants of those areas expect and demand a certain standard in their environments. As such, developers have to go through the planning approval process before they can build. However, developers, local and foreign, also appear to have expectations visionary with regards to the development value that can be realised in those areas, and this has driven up the cost of land. As seen in Chapter 6, such developers have been putting pressure on the planning department to review their regulations, which has resulted in some spot zoning in those areas. DV11F lamented that, although land prices had soared, the planning authority had not reviewed the zoning policies to reflect this, and as a result developers are struggling to make economic sense of

their investments. He was not alone in this view, and it did not just apply to the high end middle income areas:

> … I'm an investor. I want to reap maximum benefits on that particular plot. You see the problem is, like that area was planned for two floors; you can do your two floors, the following day somebody will build ten floors, and your house will not have any value. And you've seen it has happened in Zimmerman – in Zimmerman people developed their own houses, then others came and developed flats. You find that you cannot even be able to sell your house, unless you sell it as a plot (interview DV9).

There is awareness that the land market is distorted; prices for landed property are extremely high, pushed up by an unregulated black market. This has been attributed to newly wealthy Kenyans, foreign investors, for example South Africans, Chinese and Japanese, institutional investors, such as insurance companies, and members of the Somali community. It would be safe to say, as Healey (1991) envisaged, that global market relations, for example with the Chinese and the Japanese, give rise to pressure and financial incentives to open up the property development market to foreigners. Local newspapers are rife with reports of new investors scanning the urban sites, and indeed the city is dotted with development projects in progress. The Somalis are notorious for offering and often paying more than the real worth of landed property, thus distorting property prices. The papers are full of allegations of Somali pirates being behind the property boom in Kenya[68], pushing developers' costs even higher as land prices escalate.

Other costs associated with land include payments to land buying companies towards their administration of share certificates and for processing titles; some plot owners end up paying more for the land buying company's administration costs than what they actually paid for a plot.

Other than the cost of land, developers are also faced with professional costs, such as fees for a physical planner, an architect, a structural engineer,

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[68] *The pirates could be presumed to be investing in property as a means of money laundering, namely ensuring that 'hot' money is transferred into secure assets.*

and for subdivisions, a surveyor. In areas where developers have to apply for development approval, these costs are not an option and have to be factored in as part of the investment. However, in areas like Eastlands where developers have no intention of going through the approval process, they avoid the full professional fees by using less qualified technicians, for example draftsmen instead of architects, just asking contractors to 'copy' other similar buildings, or borrowing plans from friends and neighbours (interviews DVA8, DV9). One developers' agent reckoned:

> …… They do it their own way; the *fundi* says that they know how to tie the steel, to lay the concrete, and they just go on. And you find that the issue of paying an architect or a structural engineer is – there's no such money available to pay (interview DVA2).

Apparently, even members of the KPDA, a developers' association that takes pride in following planning laws and regulations, have in some cases failed to use qualified professionals to supervise building works. It is not only with regards to drawings that developers avoid paying for quality in professionals, but also in actual construction works, whereby rather than using experienced contractors or builders, some developers have been known to use unqualified labour.

> …. Any guy, even you, can go to the site, start as a labourer pushing a wheelbarrow, eventually you get to know how to lay a brick, until in time you claim you're a *fundi*, or one of the foremen declares you're a *fundi* (interview DVA1).

In such a scenario, the construction work does not have professional supervision. Not only do such developments not comply with planning laws and regulations, but in some cases they collapse, raising accountability issues for government planners. Of the 65 developers or developers' agents to whom questionnaires were administered, only five admitted to using unregistered and unqualified contractors. According to the rest, their contractors, even the family and friends who were hands on in the construction, were all qualified.

For high end developments where developers make an effort to comply with planning laws and regulations, registered contractors are employed. One developers' agent, who uses registered contractors, disclosed:

> …. in our company we have shortlisted contractors, those who have their CVs or company profiles. The contractors range from those who are capable of building a small house, and others are registered by the ministry of public works. When we have a project we call them, depending on the project. We don't have to know them, they don't have to be our friends, we recommend to the developer depending on the size of the project (interview DVA1).

Such registered contractors are obviously more expensive than un-registered, unqualified ones, who are more likely to be used by developers in Eastlands and along Thika Road, developers who are operating on the side lines of the planning system.

Apart from the cost of hiring professionals, the approval process is made costlier by the high approval fees. As seen in Chapter 5, approval fees have gone up drastically in recent years, some fees being increased by as much as 318% (interview SP7). These costs escalate even further when a lease extension is required before development can be approved. Before the new county government, the fees for renewing a lease for a residential property were KSh100,000 (about $1,149) for every 0.1 hectare – a developer with 1 hectare would therefore be required to pay KSh1 million. The fee increase, coupled with the extended period before approval can be obtained, cost developers more, as described by one developers' agent:

> …. Approvals are very expensive, for example *[an]* increase from 40,000 to 300,000 *[shillings]* – normal approval, not regularisation. More than double the normal approval cost… Like we do projects for University of Nairobi (UON) and because government decisions take long, 3 - 4 months…. Like we asked for a cheque for the council for 70,000 shillings after getting the invoice, but by the time the cheque came out the rates had gone up to 600,000, and we had …another job

of convincing them *[the UON]* how the rates have gone up, thus causing more delays… (Interview DVA6)

The revised charges that DVA6 is talking about reflect the value of a development based on the prevailing Joint Building Council rates. A report by KPDA lamented that the increase translated to as much as 200 to 1150 times the previous charges depending on the value of the development (from previous rates of 0.001% to 0.006% which were based on square metre coverage of floor area) (KPDA, 2013). It stands to reason that developments in the high end (where KPDA members mostly operate) are costlier, and thus attract high charges. Developers and the KPDA seem to suggest confusion, discrepancies and/or inconsistencies with the charges, but whatever the case, the increases created uproar on the ground. Developers' agents were concerned that the increase in fees would serve to further discourage developers from applying for planning permission:

> ..... like a project we were working on in Industrial area, the payments for the council were 4.6 million *[shillings]* for the development. They *[investors]* were reluctant to spend this and thought they should just get on with the building and hold the council payments. It *[the fee increase]* will result in a lot of illegal construction (Interview DVA6).

The Architectural Association of Kenya (AAK) was challenging the high fees in 2013 on behalf of their members, and had supposedly taken the city county to court after the increase (interview SP7). Although that action by AAK could be perceived as AAK pursuing their own interests (higher fees would mean that more developers would be driven to avoid applying for planning approval, thus diminishing the need for registered professionals of the AAK), it was also an indication that planners were pushing the developers further into non-compliance. By reducing fees to reasonable levels and by being more accountable, it is likely that the enforcement burden on the planners would be reduced:

> …. Because those who go for approvals tend to comply more than those who don't (interview SP1).

Thus apartment blocks to the West of Nairobi, for example in Kileleshwa, Kilimani and Lavington (where developers do go through the approval process) can hardly be compared to developments to the East of the City and along Thika Road, where most developers have not engaged with the process. And yet, as seen in the last three chapters, serial investors (as revealed by developers DV3, DV9 and DV10) have the money to develop in both types of area. It could also be argued that the fees are not high in relation to the investments, but that developers just do not like being 'taxed', especially when there is no accountability and transparency in the system.

Costs related to application approval include payment of outstanding rates to the city county, which for some developers might have accumulated over the years. By the time they want to develop, the outstanding rates exceed the amount they paid for the land:

> …the land might have accumulated land rates arrears, for example you could be asked *[to pay]* 200,000 shillings for rates, and the developer might have one million shillings to start the development. …. In Enterprise Road the bill came to 6 million (interview DV3)

After approval is granted, developers are required to put up sign boards on the construction sites. Apparently such a sign board costs KSh 17,000 (DVA1), is renewable after one year, and expires after two years (DVA6). The board ends up costing more for renewal after expiry:

> It *(the signboard)* expires after one year. But it doesn't mean you go back to them, it is the billboard that expires. You have to go back to them for the renewal of the poster, and they'll look into why you haven't started building – it'll draw up a lot of things...that's the whole point (interview DV2).

The cost of borrowing in Kenya is very high[69], and in relation to a mortgage, the lending financial institutions assess proposed developments for viability

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[69] *In 2013 commercial banks in Kenya were charging between 12.9% (Standard Chartered) and 22% (Chase Bank) (The Mortgage Company, 2013). However, more elite banks have been known to charge as high as 28% interest on commercial mortgages (local papers). This was because in 2011 the Central Bank of Kenya (CBK) increased the benchmark*

in relation to recovering their funds; this puts pressure on developers because not only do they want to meet their financial obligations to such institutions, they would also like some profit from their investments. According to developers' agents, most of the developments in the upper market areas are financed either by banks, or by other investors, with a view to making quick sales after development (interview DVA2). For such developments, planning approval is mandatory in order to get financial backing[70]:

> …. if you're doing a development of say 20 units, and each of those units is costing say 5 million to do it, that's 100m, you must have approval because after that you're going to sell to somebody, and that somebody is going to sign a mortgage – to sign a mortgage you have to go through that whole process. That's why you find there's almost full compliance on this side (interview DVA2)

It is a different case in point when developers do not need external finance, or where they have no intention of selling their development(s). Developers at the lower end of the middle income developments, as in Kasarani and Eastlands, often engage in incremental development, as and when funds become available. There are also those who use their existing properties as collateral with commercial banks to raise funds (interview DVA2), without necessarily having to mortgage the development in question. In such instances, developers look to minimise costs by avoiding the costs of gaining approval.

This chapter has shown how developers perceive the planning system to be lacking in guidance, and this perception has most likely fuelled the

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lending rate to 16.5%, but even when this rate came down to 8.5% in 2013, commercial banks did not reduce their rates. Having said that, in July 2014 CBK set a bankers' reference lending rate of 9.13%, and since then commercial banks have lowered their rates; the average lending rate is now 17%. (The Mortgage Company, 2014).

[70] *It is worth noting that getting planning approval as a prerequisite for funding by financial institutions does not necessarily guarantee that the developers build as per the approved plans, unless the institution (for example, the Housing Finance Corporation of Kenya (HFCK) is undertaking the development on behalf of the developer. Once the funding is released to developers they are free to manipulate the plans, as will be evidenced by Case Study 2 in the following section.*

malpractices of unruly developers. It does not help matters that the costs of investment are high: developers have to contend with the high cost of land, land rates, professional fees, and approval fees. Given these high costs and poor guidance and monitoring on the ground, it is easy to see why developers, especially the greedy and ignorant ones, bypass regulations which they perceive to be unrealistic, in their quest for maximum profits. It is likely that developers' perceptions of the approval process and related costs are warped and that planners could justify the process, including the fees. As it is now, there is a gap in knowledge and understanding on the part of developers with regard to the relevance and legitimacy of the system, which undermines planning efforts. It also does not help matters that there are professionals (or non-professionals as the case may be) who oblige developers because they perceive the planning system to be unreasonable. These issues will be illustrated by some case studies in the following section.

8.5 Case Studies

Three developers' case studies were chosen to give an insight into the various issues plaguing developers when it comes to investment and the reasons why they do not necessarily appreciate the role of planning. They demonstrate a spectrum of issues that plague developers in middle income areas across the city, each providing a vivid and tangible account of some actual developments and alleged transgressions. Case Study 1 illustrates how engaging with the planning approval process drives up investment costs. It also makes a case against unrealistic planning laws and regulations. Case Study 2 illustrates the frustration posed by lack of clarity and an elongated approval process, and the fact that developers engaging with the system end up paying both formal and informal fees. Case Study 3 shows that there are informal costs to developers who do not engage with the approval process. The case studies demonstrate that developers perceive the planning system as punitive, and this influences their level of engagement.

8.5.1 Case Study 1: DV2

DV2 has a ¼ of an acre worth KSh 10 million in one of the un-mapped areas of Nairobi. His intention is to build 32 units on four floors – one bedroom and two bedroom flats. He reckoned this would cost him about KSh 55 million. It is his first development, and he wanted to get development approval because he feared repercussions later. He admitted that he was naive to start with; thinking that he would be allowed to use the whole plot, building wall to wall like his neighbours.

> In order to break the law, you need to know the rules. I was naïve to begin with and thought that I could use the whole plot – build wall-to-wall - because my neighbours have. But my Architect, who works for the council, informed me otherwise. He's an asset in that he knows what can pass and what cannot be done. I will build on two sides of the plot in such a way that more units can be built in the middle space later on (interview DV2).

DV2 lamented that, unlike his neighbour, who had not gone through the approval process, he had already spent close to KSh 1 million even before he started construction works. First, he had to apply to change the use from single dwelling to multiple dwellings, and this involved paying KSh 10,000 for a gazette notice, KSh 20,000 as county fee for change of use, and KSh 80,000 for a Physical Planner to facilitate the application. He had paid an architect KSh 300,000 for the drawings, and was told the submission fee to the county (for the drawings) was KSh 80,000. That fee quotation had been given one year previously. At the time of the interview, after the revision in fees, he had been advised that he needs to pay KSh 480,000 to submit the drawings. He also paid a Structural Engineer KSh 130,000. He said he was expected to put up a construction sign board, which was now going to cost KSh 30,000 (an increase from KSh 15,000). He was also due to pay a Quantity Surveyor KSh 50,000 for a Bill of Quantity, and a similar payment (maybe higher) for an Environmental Impact Assessment (EIA) report.

The law requires DV2 to provide parking for 1.5 cars per household. He reasoned that he could only get the desired number of units if he increased the number of floors:

> …. the laws say I have to provide parking for 1.5 cars per household, which doesn't leave much room on the ground. I can only get reasonable returns on the investment if I go up…. Other developers are creating underground parking space. If the parking spaces cannot fit, then you have to reduce the development. …. The rules are not realistic. If one was to decrease the number of floors because of, for example, parking rules of providing parking space for 1.5 cars per unit, the investment returns would be minimised… Comes to 42 parking spaces, on a quarter plot. That is not realistic at all. You'd have to build two floors of parking... …. at the end of the day, you can only use 35% for the building – the rest is for parking (interview DV2).

DV2 revealed that he could not afford to provide all those parking spaces, and said that he was not going to – he would cater for them in as far as he needed to get approval, but he would not implement them on the ground. He was also frustrated by the approval process because he thought it was taking too long:

> So far I've spent the last two months pushing someone at NCC – if I didn't have this contact it could take six to seven months (interview DV2).

DV2 did not have KSh 55 million for the development, and he was hoping to take out a 15-year mortgage from Housing Finance Corporation of Kenya (HFCK), an institution that supports land owners to develop their land. HFCK will only grant funds once the owner has got development approval from the county. It had quoted him a round figure of KSh 60 million to develop his plot.

> You tell them you have the land but you don't have money, so they can build the house. They make sure they build nice houses so they

can collect good rent, and after they pay themselves each month if there is any balance, they give you (interview DV2).

The downside to this arrangement is that HFCK 'owns' the house for 15 years, collecting all the rent to recoup their loan, and the developer is lucky to get any income at all from the investment during that 15 years. DV2 thought that, if his land was in a high income area like Kileleshwa, he would probably get a good balance even after HFCK had taken the amount due, but considering where his development is located, he thought it was unlikely that he would get any substantial income during those 15 years. He was also considering the option of starting to build, then approaching a commercial bank for a mortgage. Another option he was weighing was to dispose of some of his other property to raise the funds.

DV2's plot has no access to a sewer line – it was supposed to be for a low density development, building on 35% of the plot and using a septic tank. He said that his architect tried to push the allowance to 40%, but the county insisted on 35% coverage. However, DV2 was planning to build on 50% of the plot, arguing that a sewer line had been proposed and would be fitted in future. He said that he had got 'help' from a friend in the county and could therefore utilise 50% of the plot. He was planning to build on two sides of the plot in such a way that more units could be built in the middle space later on. To be on the safe side, he planned to put up a fence first, with the billboard on the other side of the fence.

> .... When inspectors come they'll be given some money to keep them off the construction site. That's what other developers do. Then they can do whatever they want…*[with a fence, we]* can also ignore rules about hard hats, reflective jackets and scaffolding. Without the bill board and the fence, the inspectors will storm the site and arrest everyone (interview DV2)

DV2 was confident that his architect, who is an employee of the county, would ward off any unwanted attention.

By engaging with the planning approval process, DV2 had spent substantial money on fees. He needed to engage with the process because he had to approach financial institutions for funding. However, he was frustrated by the fact that, even though he had chosen to engage with the approval process, he still had to factor in 'unofficial payments', for example to his architect (who was an employee of the planning department), so that he could expedite approval. Also, even though he was engaging with the process, he was planning to ignore some of the stipulations, such as ground coverage, because he thought the laws and regulations were unrealistic, and this meant that payments would have to be made to inspectors for them to ignore such deviations. These would also cost him more in future for the regularisation process.

8.5.2 Case Study 2: DV12

DV12 has a 30 x 70 plot at Kasarani along Thika Road. He had bought the plot in the 1990s, before the development of the highway, when land prices were relatively low. In fact, he later paid more in administration costs to the land buying company (to process the title) than he had paid for the plot.

DV12 wanted to develop his plot in 2010. He said he was naive in that he thought everyone has to get planning permission, and besides, he was contemplating soliciting for funds from a financial institution. His architect advised him that ground coverage for that area was 66.6% but that it was being revised to 75% in future due to land pressure.

DV12 wanted to build a total of 12 flats on four floors, and was very excited when the architect gave him the first draft of the drawings showing the building elevations, including landscaping (see Figure 27) – he could then visualise the development and even started thinking of what name to give it.

Figure 27: Architect's impression of the proposed development in Kasarani

Shortly afterwards, the architect advised him that buildings in the neighbourhood were going higher, and proposed that they add another floor to make 15 flats – he was assured that no lift would be required for five floors, or even more (see Figures 28 and 29).

Figure 28: An apartment block in Kasarani, exceeding allowable plot ratio (Author, 2014)

Figure 29: Another apartment block in Kasarani, clearly exceeding the allowable plot ratio (Author, 2014)

The architect charged him KSh 150,000, and the structural engineer KSh 50,000 (friend's rates).

The architect submitted the drawings to the city county for approval in June 2010, and boasted that he had a physical planner contact at City Hall who would fast track the approval process. He was advised that the committee meeting would be in two weeks' time.

It was quite a blow when the comments came back from the planning department – the architect had got it so wrong; the ground coverage was wrong and the plot ratio was wrong. The zone guide gave 50% ground coverage and 100% plot ratio. The building could only be three floors, and there was not enough empty space on the ground. In response to this, the architect advised DV12 that he would do another set of drawings which could be approved, but that for construction they could use the first set of plans.

DV12 was not happy working with two sets of plans, thinking that he would be looking over his shoulder with worry; he would only use the approved plans.

In July, the architect's friend at City Hall (the Physical planner) advised him that the Physical Planning and Roads departments had given the drawings a clean bill, and reported that he was only waiting for comments from the Public Health department. The architect advised DV12 to start sourcing a contractor, and to get a water connection to the plot in readiness for construction works.

> I did not connect a water meter but I'm being charged water rates for the plot for a number of years and I have no building...I imagine the bill will be huge... (Interview DV12)

In September 2010 the architect got the invoice for the approval fees, about KSh 60,000, and DV12 was positive that he was about to get approval. Then it turned out that he should have applied for change of use from a single dwelling to multiple dwellings, a process which had been totally overlooked. For the change of use process, which he was advised would take about a month, he needed a physical planner. His architect recommended a physical planner at City Hall, reasoning that it would be faster that way. The physical planner asked for KSh140, 000 (KSh 80,000 for his fee and KSh 60,000 for the county fee). This was really disheartening to DV12; at this point he felt that he had already spent substantial money that could have been used for construction, the process was taking too long, and he still did not have the planning approval. He decided to shelve the project for a while and diverted the funds to other uses. He was also unhappy with the architect, who he thought was incompetent and did not seem to know what he was doing. He thought the architect should have known better from the start, and reckoned that perhaps he was more used to designing developments which did not need planning approval.

DV12 decided to go ahead with the project in 2014, and engaged another architect to take it forward. Unfortunately for DV12, by that time the approval fees had been increased drastically, and it appeared that his former

application was invalid. This time he decided he would start with the change of use.

> ...they *(the council)* are just greedy. I have receipts for the payments I made the first time in 2010, but now they want to charge the new rates.... (Interview DV12)

As of June 2015, he was still going through the approval process, and by the end of it was expecting to have spent close to KSh 1 million on the cost of professionals and county fees, including 0.5% fees (and an additional 'informal fee' to expedite processing) to the National Construction Authority to register the development. He lamented that he had spent so much money on the approval application process, which he could have used for construction, and that the delays had cost him a lot of money:

> .... now the costs of building are higher – costs of labour, costs of materials. And I could have been collecting rent already for all those years.... Most of my neighbours have now built, and I doubt very much that they have planning permission.... (Interview DV12)

8.5.3 Case Study 3: DV7

DV7 has a 40 metres x 60 metres plot in Eastlands. He did not have title for his plot – he had a share certificate from a land buying company. He wanted to invest in a block of flats on his land. He is a young architect with a young family, and had not accumulated money for the investment – he planned to do it incrementally. He designed the project himself, and consulted a structural engineer friend regarding structural issues. He had not engaged with the planning approval process. He argued that none of his neighbours had, and that he had also been an agent for many developers who had not engaged with the process. The building covered the whole plot (beacon to beacon), with a just a narrow corridor for access, and definitely no provision for parking on site.

DV7 wanted a 3-bedroom flat on the ground floor for his family, and another 2-bedroom flat for rent. On the upper floors he was building three flats per floor. At the time of the interview, he was already living in the first flat with

his family, and the second flat on the ground floor was near completion. The builders were already working on the second floor. It was a public holiday, but the *fundis* (builders) were busy constructing the second floor, which would have three flats – 2 x 2-bedroom flats, and a 1-bedroom flat. The developer was planning to go up to four floors to start with because of his economic capacity, but there was provision to extend in future when he got more money.

DV7 acknowledged that he had to factor in unofficial payments to planning officials on the ground. Once he started construction, a planning official came to the site and he had to pay KSh 20,000 to be allowed to continue. Then there were building inspectors, sent by the engineering department, who demanded another pay-off. DV7 thought that the officials alerted each other of new developments, and representatives from different offices and sections made different visits. He was contemplating going for regularisation (he had a contact in the planning offices who could help with this) so as to minimise the informal payments, which could otherwise be never ending.

8.5.4 Summary of Case Studies

The three case studies have demonstrated why developers engaging with the system might feel they are getting a raw deal. In Case Study 1, developer DV2 indicated that his neighbour had developed his land without plans and without development approval for his block of flats, but because he (DV2) had applied for approval, his development would be limited if he followed the regulations – he would be required to observe parking requirements and height restrictions as well as ground coverage, thus limiting his investment returns. Not only that, those applying for approval were spending substantial amounts in the process (and still paying informal fees), as opposed to non-engagers like DV7 (Case Study 3) who had only to contend with informal fees. Case Study 2 demonstrated the frustrations posed to developers by lack of clarity and inconsistency in the system, elongated processes and escalating costs in relation to the approval application. It is quite disheartening that even newly formed 'authorities' designed to champion quality assurance in the construction industry under recent reforms, such as the NCA, are already displaying the symptoms that

had afflicted the system in the past. The three cases demonstrate that professionals are implicated in developments, with varied levels of engagement depending on whether or not approval is being sought.   Even where approval is not sought (Case Study 3), county staff are aware of developments, turning a blind eye in return for informal payments. The case studies demonstrate the scale of malpractices within the planning system, and the frustrations that drive developers to non-compliance.   The 'maximising behaviour' referred to by Becker (1978) is apparent in the three cases. Going by the level of non-compliance with planning laws and regulations in Nairobi, it is safe to say that the three developers are representative of most other developers in the city, in their reasoning and in their ways of negotiating with the planning system.

8.6 Conclusion

Unmet demand for housing gives room for enterprising developers to step into the breach, abetted by unscrupulous private professionals. Developers' agents, such as architects, physical planners and surveyors, frustrate planners when they do shoddy, unprofessional work, colluding with developers in non-compliance. Likewise, consultants are sometimes frustrated by planners when, after being commissioned to aid in reviewing regulations, their advice is not heeded. And yet, these are intelligent and professional groups of people, and could do much better in addressing problems in the built-environment, if only they could find a way to work together.

Clearly there are a lot of conflicts of interests between various stakeholders in planning; some conflicts within the department and between government agencies, and some with external stakeholders, such as developers and their agents. While planners care about the orderliness and functionality of developments in the city, developers seek maximum returns (engaging in the maximising behaviour that Becker (1978) alluded to), and the general public and civil society are either oblivious to planning concerns, or they trust planners to sort out the mess created by developers. Professionals, who should know better, are sometimes in cahoots with the developers because it

is in their immediate, short-term interest. As well as shortcomings in the planning framework, these conflicting interests have deterred the planning system from realising its goal of a well-planned but functional city for all stakeholders.

Given the poor planning guidelines, elongated approval process, the high cost of the approval process, as well as high cost of actual development, it is not surprising that developers in Nairobi have found ways and means of evading the approval process. Although there are opportunity costs in the form of unwarranted harassment from officials in pursuit of 'informal fees', developers have not been deterred in their efforts to maximise their investment returns, and, in the absence of qualified planning personnel to give guidance and supervise developments, developers have determined what, where and how they want to develop - like unsupervised naughty children in a playground, developers have taken full advantage.

> For the upper Nairobi, I'd say virtually everyone *[goes through the approval process]*. But for the low income areas – Thika Road, Eastlands, less than 50%. In particular areas like Pipeline, people who go through city hall might be less than 30%. The rest of it is just wake up in the morning and build, and try and negotiate your way through the local ward officers (interview DVA2)

Perhaps compliance in higher income areas is enhanced by the fact that high-end developments usually require formal finance, which in turn requires full planning approval. Residents in such areas are also more proactive in planning matters and take an interest in developments in the area, and there are established and recognised residential forums.

In high end middle income areas, developers do engage with the approval process, but are disillusioned on many levels; for example, there is the issue of stubborn laws and regulations which do not seem to move with the times, and disillusion when some developers appear to be more valued, receiving preferential treatment with regards to the application of the said laws. There is a sense of bitterness that the Chinese, in particular, have manoeuvred their way into unholy alliances with politicians, allegedly offering huge sums

of money, and in return have been allowed to dictate their terms and conditions.

Whether in the low end or high end of middle income developments, there is no escaping from the fact that this sector, which gives the impression of being formal, is harbouring informalities, with developers capitalising on legal loopholes and gaps within the planning system. It is clear that planners have an insight into the plight of developers, as seen in Chapter 6. It is also quite clear, going by the rate of urban growth in Nairobi and as people claim their right to the city, that developers will continue to plug gaps in housing provision, with or without the support of planners.

As such, the planning problem with regards to residential developments for the middle income population in Nairobi has two broad dimensions; damage limitation in unruly areas because the informality therein cannot be wished away, and controlling future developments in the city whilst meeting the housing needs of the population. This calls for collaborative efforts on the part of both planners and developers. Planners need to acknowledge developers' interests, confront political interference and take responsibility for effective planning, *for* the people. Perhaps only then would developers get on board to aid planning efforts in the city; when they understand the laws and regulations, the rationality and accountability in fee structures, when planners demonstrate ethical, and informed practice, and provide reasonable guidance without undue influence, and also give them (developers) a platform to contribute to the planning process.

This research, as evidenced in this chapter, corroborates the findings of other scholars who have blamed non-compliance with building laws and regulations by the middle income group on the weak institutional framework and the laxity of the planning authorities in enforcement of said laws and regulations (Mwangi, 1997, Rukwaro and Olima, 2003; Anyamba, 2011). However, it also demonstrates that developers accept their responsibility in this, and that many would appreciate support towards complying with planning law and regulations. The developers under study have money, some of which could be channelled towards improvements, for example in

infrastructure. The concluding chapter will argue that the interests of planning and those of developers can merge in positive collaboration to produce developments that meet the demands of the middle income population, while at the same time producing orderly and safe environments.

Chapter 9: Conclusion and recommendations

'You cannot control development by refusing people to build…. If you refuse people to build then the city will not grow, or if it grows, it will grow illegally – because somehow it grows' (interview DVA4).

9.1 Introduction

The aim of the research was to find out why there is non-compliance with planning laws and regulations by developers for the middle income group. This chapter revisits the aim and objectives of the study, stating how these were met by the research. It gives a summary of findings in Nairobi, and new knowledge gained regarding non-compliance issues in Sub-Saharan Africa. The chapter also incorporates recommendations regarding areas for further research. In this final chapter, the primary research questions of the thesis are revisited: answering these has also given rise to some policy recommendations from the research, which are presented in Appendix 6.

As revealed in the literature review, Nairobi is among the fastest growing cities, not only in sub-Saharan Africa, but in the world. As in other cities, the government is not ever likely to meet the supply of housing needed for its population, which continues to grow. For the middle income group, private developers have stepped into the breach and are housing a substantial proportion of the population in apartment blocks. The research has revealed that in Nairobi developers are responding to demand by exceeding the allowable development capacities on their land, while the city planners turn a blind eye for various reasons, ranging from low staffing capacities to financial inducements to planning officers. These findings echo those of Gatabaki-Kamau and Karirah-Gitau (2004), about developers leading in setting trends contrally to planning expectations. In Nairobi, these developments, which give the impression that they are formal because they do not display the same obvious symptoms of informality as slum areas, have spread and have clearly been tolerated. Whatever the reason that they're tolerated, it is clear that there is a need for them, that they serve a purpose.

It was clear that whether it is in the form of residential block developments for the middle income groups, or informal settlements in marginalised areas, the repercussions of non-compliance in residential developments can be serious and far reaching. These not only include deterioration in the quality of new housing provision and urban public space, but can sometimes be fatal. Also, non-compliance is costly, in various forms, to various stakeholders. Planning systems are therefore faced with the challenge of intervening in market processes, in a way that promotes sustainable residential developments.

The research approached the issue of non-compliance from a political economy perspective, which explains how economic interests of developers guide their actions, which end up impinging on planning agendas. The ontological position was that perceptions of the planning system by planners and developers are meaningful in explaining the social reality and impact of the planning system on residential developments. The epistemological position was that meaningful data on interactions between planners and developers can be generated by interacting with them, listening to them and asking questions. This turned out to be so, with the research generating a humbling amount of data from planners and their consultants, developers and their agents.

It was of interest to this research to find out why non-compliance is tolerated or ignored by planners. Is it because the planning system recognises that the rules were not sensible or appropriate to start with, and if so, why have they not been amended to reflect and accommodate what is happening on the ground? This research looked to identify what rules developers find practical and/or sensible and are respected, and which ones they choose to ignore, and why. With this in mind, the research addressed the following questions;

1. What challenges do urban planners face in implementing planning laws and regulations, and monitoring best practices in housing developments for the middle income group?

2. What challenges do urban developers face in adhering to the said laws and regulations?

3. What are the characteristics of the relationship between planners and developers, and why do they foster non-compliance?

Although some of the data from the research served to reinforce the existing literature with regards to non-compliance issues, this research also found out that the phenomenon in middle income residential developments has different dimension. Unlike non-compliance in informal settlements (slums and squatter settlements), the rationality for non-compliance in middle income developments is buried in differing perceptions (between planners and developers) of what is acceptable, relevant or realistic for housing provision for this group, while potential residents' expectations of provision are guided by effective demand in addition to their needs. Also, examining housing provision for this group reveals a wealth of untapped resources that are within reach of planners – the lived experiences and private capital of developers, as well as professional and visionary inputs from consultants and private practitioners. These present a lot of potential for enhancing compliance with building laws and regulations in Nairobi and other sub-Saharan African cities. Following on from discussions in the literature review on non-compliance and contestations within planning systems (for example Kironde, 1992; Olima and Rukwaro, 2000; Onyango and Olima, 2008; Watson, 2009; Berrisford, 2011b), the research project had assumed clear differences in interests between planners and developers. However, what emerged in the field is that there are many interlinking factors between these two groups of players, and in many cases, the challenges in the system have bred informal collaboration between them.

The following sections will discuss the findings with regard to challenges in planning, in developments, and in interactions between planners and developers. Section 9.2 will address the question of challenges to planners, section 9.3 the question of challenges to developers, and section 9.4 the characteristics of relationships between planners and developers and why they foster non-compliance.

9.2 Challenges in the planning framework

This section gives a summary of findings towards answering the question; 'What challenges do urban planners face in implementing planning laws and regulations, and monitoring best practices in housing developments for the middle income group?'

The Vancouver Declaration On Human Settlements recognised that the use and tenure of land should be subject to public control, since land is limited in supply. It defined planning as '…*a process to achieve the goals and objectives of national development through the rational and efficient use of available resources*…'. (UN-Habitat 1976b, pp 5). However, plans are only effective if they are implemented (Wheeler, 2004); if planning powers are merely preventative instead of also initiating development, the actual developments and development patterns represent responses to market forces (Pickvance ,1977). Unfortunately, sometimes developers and planning staff have different and conflicting goals, and planning systems that ignore the reality of this usually fail (ibid.). The literature suggests that non-compliance with planning laws and regulations is mostly due to failures of the system (Olima, 1997; Rukwaro and Olima, 2003; Nwaka, 2005; Watson, 2009). This research did indeed find failures in a system that is based on laws and regulations adapted out of context, without paying heed to realities on the ground. Developers for the middle income group are a 'dominant' group, the term used by Pile, Brook and Mooney (1999). The research found that 'informal' developments for the middle income group are thriving because there is effective demand from this group, spurring on developers. In the face of failures of the planning system, the operations of a capitalist economy and housing market have produced 'disorderly' developments.

The Vancouver Declaration warned about transposing standards and criteria which disadvantage the majority of the population, and this is a risk when foreigners from developed countries take the lead in drawing up blueprints for cities. Acknowledging that the planning system has failed to control development, planners in Nairobi have followed their counterparts in Kigali, for example, and reviewed the city's master plan. However, like in Kigali, this

exercise was spearheaded by foreigners, in Nairobi's case the Japanese. Whilst the new master plans are ambitious and if actualised would change the skylines of these cities, it is the local planners who will be judged by history, and they have a role in steering the content and implementation of these plans, guided by local contexts and experiences. The role of political and economic drivers in making decisions about who is involved in drawing up city plans cannot be ignored, but neither can possible repercussions in the years to come if the plans do not accommodate the majority of the cities' population. As Campbell and Fainstein (1996) asserted, planners' visions compete with interests of developers and other stakeholders – planners therefore need to visualise urban futures in tandem with other stakeholders. Kenya Vision 2030 is still young; perhaps there could be lessons learnt from this research, however small, so that practices of the middle income groups to address their housing needs in Nairobi will be within, not contravening, the formal systems. Perhaps then, in 20 years' time from now, there will be more favourable responses to the question 'whose interests are represented in the city?'

As seen in Chapter 8, planners and their consultants in Nairobi have also been reviewing planning legislation, and the Kenya Constitution 2010, as seen in Chapter 4, created other new legislation, such as the County Government Act and the Cities and Urban Areas Act, intended to empower planners to streamline the planning system. Berrisford (2011a) advises that, when carrying out such reviews, it is important to not only identify the main stakeholders' political and economic interests, but also the resources and systems required for implementation. According to him, good planning requires accountability, transparency, consistency, and should embrace economic, social and environmental aspects. Also as seen in Chapter 2, a good framework should also evolve in the context of changing economic forces (Healey, 1992), be enforceable and transparent (UN-Habitat, 2015b), have appropriate partnerships involving all relevant stakeholders (UN-Habitat, 2015b), and be able to work with informality (Watson, 2005). However, it would appear that none of the stakeholders who were involved in drafting the new laws – the ministries, consultants from the universities, and

professional bodies, among others – felt any urgency to finalise the review of the laws so that those responsible could get on with the job of guiding developments in the city. For the laws to be enacted and to become effective in controlling urban growth in Nairobi, there has to be consensus about how best to control land use within holistic guidelines. For example, in South Africa, the Council of the Built Environment Act No. 43 of 2000 provides a framework for professions in the built environment, guiding on policy matters and on legislation. Although this precise arrangement may not be appropriate for Kenya and Nairobi, the concept of bringing built environment legislation under one umbrella could potentially make governance easier. Perhaps the Kenyan review was too ambitious to start with, and building and planning aspects should have been treated separately from the onset. This research found it rather disappointing that reviews and enactments of essential legislation can be sabotaged by conflicting interests amongst those trusted with the reform assignments, such as the conflicts between the NLC and Ministry of Lands, Housing and Urban Development over their mandate, as seen in Chapter 5.3.2. And whilst those in power are squabbling over who leads on what, not only do they waste valuable time and intellect, but they leave the city in the grip of unrealistic and impractical laws that continue to frustrate both developers and planners.

Lack of consensus, institutional rivalry, and also professional rivalry have played a big part in delaying reviews of the relevant legislation intended to take into account contextual differences, accommodate changes in technology and address the emerging needs of the population. Inadequate and outdated legislation has fostered non-compliance with building laws and regulations by developers. There is, however, hope that whilst previous legislation was 'hand-me-down' from the colonial masters, and mostly favoured the elite in the city, the new laws have been drawn up with inputs from civil society, which can influence other players in law making. Berrisford (2013) was right to point out that '*they (civil society) can exert influence and assert rights to make decision-makers more cognisant of the limits of their powers and more accountable to the general public'*.

With regards to land administration, this research echoes findings by other scholars (Olima, 1997; Oyugi and K'Akumu, 2007; Mwangi and Nyika, 2010) about the challenges poor practices in land administration pose to planners with regards to irregularities in allocations, abetted by corruption and impunity. But this research has gone further, revealing particular issues regarding subdivisions, including issues of ownership registration, which are posed by the activities of land buying companies. It is clear that there is a market for plots in irregular subdivisions. It is also clear that residential developments on such informally subdivided land have a niche in the housing market. This reflects the findings by other scholars, who claimed that local perceptions and realities, for example with regard to plot sizes, spaces for roads and density of developments, were not in sync with the formal requirements (Payne, 2001; Musyoka, 2006). Musyoka (2006) argued that such informal subdivisions are deemed to be adequate by those who could afford to buy shares and plots in them. This research found that effective demand for informal subdivisions in Nairobi translates, in many cases, to ownership by commercial investors in middle income developments, who are spurred on by the demand for those units. Such differing perceptions (between consumers and the state) are likely to frustrate planning efforts, if and when planners insist on (unrealistic) formal standards. Although this thesis' evidence was limited to Nairobi, these issues are likely to be present in other parts of sub-Saharan Africa. There is room for research in other cities to examine issues related to land ownership, registration, regulation and development.

The literature highlighted the difficulties faced by Nairobi's planners in gathering statistics and information (K'Akumu, 2006; Lewis, 2008). This is not surprising, considering that the research section in Nairobi's planning department has not been serving its functions, and is considered to have 'dry' posts, as termed by (Blundo and Olivier de Sardan, 2006). Instead, planners compete for more 'lucrative' posts in development control, contributing to the failure of the visionary sections to make a significant contribution to planning the city.

It was noted in the literature review that planning has typically not been prioritised in the allocation of budgets in sub-Saharan African cities and as a result, the objectives of previous blueprint plans have not been not actualised. In Nairobi, the 1948 master plan failed to deliver its promises because there was no emphasis on its implementation (Oyugi and K'Akumu, 2007), and the same fate met the subsequent Nairobi Metropolitan Growth Strategy of 1973. Planning goals have been a low priority within the overall political agenda, and planners have been restricted to playing reactive, regulatory roles. The 'swollen state' (Diamond, 1987) and 'oversized' public service (Blundo and Olivier de Sardan) have not helped in preserving resources. Neither has misappropriation of public office resources, as alluded to by Mbaku (2010). The research data indicates that there is still a long way to go before the planning department in Nairobi is equipped with enough resources to fulfil its roles, requiring adequate staffing capacity, as well as basic equipment like transport to the field and operational software for planners. Given the rate at which the city is growing, it is doubtful whether the planning department in Nairobi could ever employ enough qualified planners to oversee development in its area of jurisdiction. O'Looney (1998) asserts that outsourcing of government functions can generate new ideas to increase efficiency and effectively use knowledge and resources, which might be in short supply in the public sector. But more than that, outsourcing also frees up government agencies to focus on their core functions. This research affirms that developers feel under-provision of guidance and monitoring by planners. If this gap was to be minimised and more guidance provided, then there would be fewer developers defying the laws.

The study found that there is some hope that whatever has gone wrong with development in the city can be rectified to some extent through the regularisation procedure. There is no reason why the regularisation process cannot work; it has worked in developed countries where infrastructure has been upgraded with buildings in-situ. Closer to home, the approach has yielded positive results in slum upgrading schemes in sub-Saharan Africa cities, such as Dar es Salaam, Nairobi, Lagos, and Dakar, among others

(Kironde, 1992a; Gulyani and Bassett, 2007; among others). However, initiatives by planners to reach out to developers in an effort to formalise their developments under the regularisation process in Nairobi are already being undermined by poor coordination as well as high costs. In addition, the process does not compel developers to conform to the procedure. And yet, it would be in the interests of all if the regularisation procedure was to be facilitated effectively, even though it affects people's investments in that it can require total or partial demolitions, or adjustments which add to investment costs. As Healy (1992) pointed out, developers invest high levels of capital, expecting substantial returns in the long term. Planners need to demonstrate an insight into this, even as they push their well-meant agendas forward. It goes back to the question of whether there is trust between the planners and developers - questions such as; where does all the money paid by developers for regularisation go? Why are some developments not being regularised? Can developers be trusted to follow guidance and can planners be trusted to supervise and monitor necessary revisions? The general consensus in the literature is that trust in institutions, and between citizens and state agents, enhances compliance with laws and regulations (Blackburn, 1998; Braithwaite and Levi, 1998). It is evident from this research that such trust in the planning institutions in Nairobi is lacking, and as result, non-compliance permeates even the remedial process of regularisation.

9.3 Challenges in developments

This section summarises the findings towards the question; 'What challenges do urban property developers face in adhering to the relevant laws and regulations in housing developments for the middle income group?'

The literature has mostly blamed non-compliance with building laws and regulations by the middle income group on the weak institutional framework and the laxity of the planning authorities in enforcement of the said laws and regulations (Mwangi, 1997, Rukwaro and Olima, 2003; Anyamba, 2011). This research revealed that developers do feel challenged by planning

requirements, but that the high cost of investment in the city is an equally important explanation for the way they engage (or not, as the case may be) with the planning system. Some of the costs, such as land and mortgage costs, are taken into account by developers in their investment decisions and planners have little or no control over them. However, there are additional investment costs that really irk developers, such as inflated approval fees, and the 'informal' fees that have to be paid to planning staff if an application is to be approved and construction to proceed.

In talking to developers who do engage with the approval system, for example those in case studies 1 and 2 presented in Chapter 8.5, this research revealed that such developers would rather develop legally, but are frustrated by failures in the system, and feel penalised, for example by the high fees. This echoes Mbaku (2010), who noted that government procedures generate high costs. Such developers engage with the system because they are weary of the repercussions of not complying, and sometimes because of requirements by funding institutions. Whatever their reasons, the county would do well to foster and 'reward' these developers rather than punishing them, at the same time meting out harsher penalties for non-compliers to deter them from defying the laws and regulations. However, planners can only root out 'rogue' developers by first ensuring that the laws and regulations are understood by all, have a clear rationale, and that the system works in support of those engaging with it. They can only do this if their operations are transparent, fair and just, and if their role is truly supportive of appropriate and sustainable developments. This argument echoes other scholars cited in the literature review, for example Tyler, 1990; Braithwaite and Levi, 1998; Transparency International, 2000; UN Habitat, 2015b.

The research was conducted when developers and their agents were still reeling from a sharp increase in development approval fees, and the general feeling was that this could only bring the numbers seeking formal approval down. They questioned the rationale behind the high fees charged for development approval and even higher fees for regularisation. Developers' Case Study 1 revealed how the developer had spent more than KSh1 million

(and rising), before he had even started construction works, because he had chosen to engage with the planning approval process. This is a major deterrent for developers. This research argues that if the fees related to planning approval process were to be reduced, developers would be prompted and encouraged to seek planning approval – efforts to reel them in would be more rewarding. And if the numbers of developers seeking planning and building approval increased substantially, the fees would not have to be punitively high, since the county would raise enough revenue to meet the target for the department. Such reforms could, therefore, potentially create a virtuous circle of income generation.

Developers' ignorance of the regulations,, alluded to in the literature review (Arimah and Adeagbo, 2000; Musyoka, 2006), was evident in this research. However, it also found that, in the case of middle income developments, while ignorance does contribute to non-compliance, the lack of respect for the laws and regulations with regard to land subdivisions, as well as developments, is even more important. This affirms Mbaku (2010), who pointed out that when citizens do not understand laws, they do not respect or legitimise them. As one participant expressed, developers can only comply with systems which have clear rules (interview DV9). This is supported by the actions of many developers, which indicate that they do not understand the laws and regulations, or the rationale behind them. Reality on the ground implies that existing irregular subdivisions and developments thereon, which play an important role in meeting demand, need to be accepted. The reality cautions against excessive and unrealistic expectations. Planners therefore need to come up with both a way of addressing the deficiencies of existing residential developments and an education programme to address the gap in understanding by developers, and more than that, they need to be realistic in their policies and expectations. As discussed in Chapter 8, developers could be trained in planning clinics, through their agents, or in other forums in communities. However, no amount of education will deter developers if innappropriate laws and institutions, such as those inherited from European colonists, are still the ones being pushed forward. Planners need to put their house in order first.

9.4 Challenges in governance: Distrustful relationships between planners and developers

This section summarises findings with regards to the question; 'What are the characteristics of the relationships between planners and developers, and why do they foster non-compliance?'.

A lot has been said in the literature about corruption in government offices, power relations and political motives (Rakodi, 2001; Schilderman and Lowe, 2002; Nwaka, 2005; Gandy, 2006; Mbaku, 2010; among others). This research corroborated this, revealing a complexity of many-layered conflicts of interest involved in the planning system. There is general concurrence, in the literature and this research, about the detrimental effects of corruption and impunity in the system. It is clear that whilst there is corruption and 'protection' in the system, the city will lack effective growth control.

It is also clear that corruption and impunity practices are fostered by those in powerful and influential positions, including high political offices. The sad thing about this is that efforts by those with integrity are easily quashed and frustrated by powerful people who want to protect their wealth and position. This finding concurs with other scholars, who found that civil servants are more likely to lose their jobs by not engaging in corrupt practices than by good practice (Blundo and Olivier de Sardan, 2006; Mbaku, 2010). The fact that the functions of the planning office are intertwined with political structures and governance means that planning and politics are inevitably linked, and indeed should be in a democratic system in which elected representatives make decision and are held to account by voters. However, in practice in Nairobi, political influence means that the system allows/empowers investors to do what they want 'under' the law by extending impunity. This is linked with sophisticated corruption in high offices, as well as other political intentions. These findings resonate with Blundo and Olivier de Sardan (2006), who noted that laws and regulations are sometimes implemented partially and harphazardly, and usually for reasons that have little to do with just enforcement. The findings also affirm Olivier de Sardan's

(1999) assertion that corruption is not necessarily a result of ignorance, but rather is calculated to exploit gaps and weaknesses in regulations.

Eradication of these negative practices cannot be effected overnight. As Oliver de Sardan (1999) pointed out, corruption thrives where government departments are suffering financial crisis, and when institutions are weak, as is evidenced in Nairobi. This research concurs with Mbaku (2010), that this is one area that calls for a top-to-bottom approach; only in ousting perpetrators in high offices can best practices be cascaded to those at other levels. This is echoed by Goodfellow (2013), who found that sustained indiscriminate intolerance of corrupt practices can yield results. However in Kenya, as noted by Mbaku (2010), wealthy civil servants and politicians in positions of power are among the most corrupt. The higher people are in office, the higher the stakes, and the more difficult it might be to foster collaboration or good joint-working practices that promote compliance with laws and regulations.

The research also found that there is collaboration of a different kind between planners and developers, one that tolerates and undermines the formal planning system. Contrary to recommendations by Transparency International (2000), planners and developers seem determined to retain the status quo, despite a rhetoric of institutional reform. This affirms Blundo's and Olivier de Sardan's (2006) assertion that corruption results from mutual agreement. On the one hand there are developers looking to exploit gaps and weaknesses in the regulations, while on the other, planners are abusing the powers entrusted to them for extra-legal gain.

UN-Habitat (2015b) identified the potential for planning professionals and their associations to be more proactively involved in planning processes (for example lending their expertise in the preparation of plans), in research and knowledge enhancement amongst the public through seminars and other consultative forums, in reviewing planning curricula in educational institutions, as well as in general advocacy for inclusive and equitable development. This research found that most of the planners consulted acknowledged the need for educating, consulting and listening to the public

when formulating new regulations, and, as seen in Chapter 6, they had done so in reviewing zoning regulations in some areas to the west of the city after a hue and cry from developers. However, as well as educating and consulting developers, there is a need to review planners' education and approaches. Watson and Agbola (2013) noted that planning education in Africa has adopted its curriculum from the (ex)colonising countries, which even today often promote inappropriate ideas and policies from their own countries. In Nairobi, the research found that there was not even an undergraduate programme for planners at the local university until 2003, and even today the curriculum is still promoting an authoritarian and controlling approach to planning. This research argues that going forward in sub-Saharan African cities, education systems need to produce open-minded planners who are equipped with the skills to explore and negotiate collaborative partnerships with all the stakeholders in urban growth, including developers, private professionals, civil society, and the residents of different neighbourhoods. Moreover, continuing education for planners should be aimed at addressing professional incompetence and inefficiency, including indiscipline, laziness and arrogance, as alluded to by Mbaku (2010). Such reforms would aid in promoting integrative, participatory and strategic planning.

Indeed, there are big challenges in the governance structure of the planning system, which will require changes in deep rooted cultures in the planning offices, such as the widespread practice (and acceptance) of corruption and impunity. There is also a need to enhance and reward creativity, and open minds to how partnerships between relevant departments can be formed to combat non-compliance with building laws and regulations. To address challenges in governance, there is a need to cultivate trusting relationships between all the stakeholders and institutions involved, which is clearly lacking in the present state of play.

9.5 Conclusion

'.... there is a role for planners in balancing the workings of the capitalistic market in property development for the middle income group' (Author, 2015)

Planning involves the formulation and implementation of spatial public policies which affect urban and regional development, zoning and land use practices. It has been argued that the territorial dimension of planning includes the demarcation of administrative boundaries and the determination of land use, development and provision of services. The Vancouver Action Plan (1976) recommended that local planning should be concerned with the use of space over time, including the designation of general land use patterns; it pointed out that governments can use zoning and planning as instruments in controlling land use by the population.

With regard to the question 'What challenges do urban planners face in implementing planning laws and regulations, and monitoring best practices in housing developments for the middle income group?', it is evident that inherited planning theories, laws and practice, which were used in different contexts in the Global North, have failed to address the problems of developing cities like Nairobi, where there are conflicting rationalities between what is regarded as 'formal' and 'informal', creating areas of contestation between states and their citizens. Policy makers, prompted and backed by international organisations like UN-Habitat, tend to concentrate their welfare efforts on the poor, for example in slums and squatter settlements, ignoring a multitude of city dwellers living in middle income areas. Given that UN-Habitat's headquarters are in Nairobi, it is ironic that it has not woken up to the reality of the problems in the middle income developments in the city. In its 2013–2015 Country Programme Document, its emphasis was still on slum upgrading programmes, ignoring the plight of those living in the 'vertical slums' at the low end of middle income areas. As noted in previous chapters, some of the developments in these areas are only a step away from total 'informality'. Developers in and for the middle income group have engaged with the planning system in diverse ways, depending on their needs and abilities; in some areas the planning system

has been totally ignored, whilst in others developers have negotiated ways round the laws and regulations. This research found that, while planners and their consultants in Nairobi debated behind closed office doors on policies and other reviews, developers went to work and extended the city's developments beyond the allowable limits. Now officials are debating the best way to regulate existing and future developments. This research acknowledges the progress that developers have made in accommodating the city's population. It argues that, rather than trying to control them, planners in Nairobi and other sub-Saharan Africa cities would be better off supporting their efforts, in order to realise habitable, safe and environmentally sustainable developments, to meet the needs of a majority of the city's population.

According to Sandercock (2003), planners are 'spatial police', who regulate not only land used but also the categories of people who might use that land. Today, more than five decades after independence, urban planners in Kenya, as discussed in Chapter 4, are still using some of the regulatory framework that was inherited from the British, despite contextual differences of rapid urbanisation which is not accompanied by equal economic growth. Although some modernist plans like Le Corbusier's explicitly assumed new (and more technocratic) social relations, underpinning his vision of the modern city, there are some modernistic plans which assume that cities can be made better without changing their underlying political economies, that outcomes can be known in advance, and that order is better than chaos for everyone. But evidently that has not been the case in Nairobi, or indeed in other cities in sub-Saharan Africa.

In 'Limits to Capital', David Harvey (1982) argued that capitalism must have its fixes, and that we cannot determine what fixes will be implemented. He argued that capitalism creates the conditions for volatile and geographically uneven development. As Watson (2009) so aptly puts it, '*…urban space is increasingly shaped by the workings of the market and the property industry in cities, which may align with urban modernist visions of city governments, but which do little to benefit or include the poor…*' (page 2260). This research concurs, but also argues that there is a role for planners in

balancing the workings of the capitalist market in property development for the middle income group. With the right kind of intervention and collaboration with developers and the public at large, planners could ensure that developers provide habitable spaces that meet health and safety standards and sustainable environmental provisions, even in low end development areas for the middle income group. The scope of this research was limited to perceptions of planners and developers. However, there is another very vital stakeholder in these developments – the residents. It would be interesting to get their perceptions: how is it living in those developments which have non-compliance issues? What are their relationships with planners and developers? This could potentially unearth rich data with regards to the effects of non-compliance with planning laws and regulations on those who live in the residential environments produced.

In answer to the question 'What challenges do urban developers face in adhering to planning laws and regulations?', various themes emerged in Chapters 6,7 and 8, to explain non-compliance with planning laws and regulations by the developers of middle income apartment blocks. At the heart of failures of the planning framework lie unrealistic planning laws and regulations, as well as problems in land administration. The research touched on the ills resulting from the operations of land buying companies, and how this contributes to non-compliance by developers. It would be of interest to find out more about the land buying companies; their financial and administration systems and any regulatory systems in place, and their perspectives of the planning and land registration systems.

Problems with the planning framework are exacerbated by limited resources for planning, coupled with poor governance. Developers are resentful of the limitations in the framework, and being mindful of the high cost of investment, and spurred on by ever-growing demand for housing, they have defied the guidelines. This results in ineffective implementation and monitoring of the laws and regulations that govern settlement development in Nairobi. Questions arose, such as whether the regulations are necessary or relevant, and why planning authorities appear to turn a blind eye to regulatory abuse. This research has been conducted during a very transitional period in the

national government and county governance structures, and in the planning framework, including the drawing up of a new master plan and changes in relevant legislation. In fact, the master plan was concluded and validated in September 2014, and the new legislation, apart from the National Construction Authority Act 2011, is yet to be enacted. As a result, the effect of these changes could not be gauged . One such piece of legislation is the Regularisation Bill, which is aimed at facilitating make-good intervention for existing developments that do not comply with planning laws and regulations. It would be of interest to find out how effective the regularisation procedure is, once embedded, in regenerating and reshaping areas with rampant non-compliance issues. In addition, it would be equally interesting to find out whether the National Construction Authority practices on the ground are what it says on the tin.

It is clearly a challenge to accommodate growth in cities, especially in cities with rapid population growth like Nairobi. It is also clear that developments to accommodate this growth cannot be prevented, because there is demand from the population. With regard to the question 'What are the characteristics of the relationships between planners and developers, and why do they foster non-compliance?', the research found that, although there is no trust between planners and developers, they do, nevertheless, collaborate informally and have developed a 'parallel order' (as alluded to by Anders, 2005), which tolerates non-compliance. There is a spirit of entrepreneurship amongst developers in and for middle income group, as well as resources (finance, skills and influence) that could be accessed by planners to complement their planning efforts. However, mistrust and self-serving interests stand in the way of joint-working. While policy makers and planners are having ineffective discussions about environmental degradation, sustainability and affordable housing, private money is being put to work and plugging the housing gap, with little regard to policy issues. It stands to reason that developers present an untapped resource that could work collaboratively with planners and policy makers - incorporating them strategically by respectful inclusion could change cityscapes for the better.

Taylor (1998) asserted, '*To become effective implementers, public authority planners and policy-makers need to become skilled in three tasks. First, they must be able to identify the other actors necessary to the implementation of a plan or policy. Secondly, they must establish contacts with these actors. Thirdly, because these other agents have their own objectives which do not always coincide with those of the public authority, planners and policy-makers must acquire the skill of negotiating. Taken together, all these tasks require interpersonal skills; in short, effective implementation requires planners who are skilled at **contacting**, **communicating** and **negotiating** with others'. (pp117)*. This research concurs with this assertion. There is room for negotiations with developers in creating economically viable but acceptable developments, potential to augment staffing capacity with private professionals, opportunities for partnerships with developers in infrastructural provision, and ways to enhance public participation and inclusion in planning. But for this to happen, planners need to carry out an analysis of the strengths, weaknesses, opportunities and threats of each of those stakeholders; only in so doing would they then be able to harness their full potential to contribute to effective development control. This suggests a collaborative model alongside a political economy understanding, which gives planners an important role in coordinating input from different stakeholders. In so doing, they could potentially play a role in creating 'the just city' which is advocated by the political economy model, which would embrace the entrepreneurial spirit and generate increased wealth, but at the same time be mindful of the welfare of the disadvantaged in society. This could result in a city that is desirable and acceptable by all. As Farmer et al. (2006) have pointed out; '*smart planning' can control long lasting negative environmental and social costs in cities because it would be a 'responsive learning system'*.

The importance of educating developers and planners, as well as the general public, cannot be underestimated. Even as planners go for capacity building and boosting of planning resources by building on existing relationships, collaborative efforts can only work if all stakeholders understand what is at

stake, and this requires training programmes and training forums tailored to meet the needs of each player.

Whilst the ideology of planning purports that local authorities have power over development, the reality, as supported by this research, is that private capital drives and directs what happens in the city. This research asserts that, whilst market forces in land and property development dictate the direction of growth in the city, planners need not be constrained to their traditional role of regulation and control; they could instead be viewed as an ally by both developers and a city's inhabitants.

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Appendix 1

Legislation that has been guiding the planning system in Nairobi

- **The Constitution of Kenya (Chapter 5):** states that the state may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning, and that the state should establish systems of environmental impact assessment, environmental audit and monitoring of the environment. Section 69 stipulates that every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

- **The Land Registration Act 2012:** The purpose of the Act is to revise, consolidate and rationalize the legislations relating to registration of title to land, and to give effect to the principles and objects of devolved government in land registration. However, land registers under previous registration are honoured under the new legislation. The Act has simplified the process of land adjudication by amalgamating laws for demarcation and registration of land under one Act, as opposed to multiple registration systems. The Act conferred powers to the National Land Commission to control the Land, Land Surveys, Land Registration and Recorder of Titles Departments.

- **The Land Act 2012:** this Act repealed the Registered Land Act (Chapter 300), which facilitated the creation of land leases, the Land Acquisition Act (Chapter 295) and the Way leaves Act (Chapter 29). The repealed acts were found to have different and confusing definitions, and this Act gives land a more encompassing meaning. The legislation is aimed at revising, consolidating and rationalizing land laws, to provide for the sustainable administration and management of land and landed resources.

- **The National Land Commission Act 2012:** this legislation gives the National Land Commission (NLC), which has replaced the Commissioner of Lands, powers in the management and administration of public, private and community land. Among the functions of the NLC are requirements to manage public land on behalf of the national and county governments, and to monitor and have oversight responsibilities over land use planning throughout the country.

- **The Physical Planning Act 1996 (Revised 2009):** the main legislation with regards to development control, responsible for processing development applications and monitoring of developments in Nairobi and the rest of the country (among other things). States that the planner is duty-bound to provide solutions to tackle issues related to poor infrastructure, poverty, environmental degradation and declining urban areas, which has a direct implication on the wellbeing of the society. Section 29 gives mandate to local authorities for development control - to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area, and to ensure the proper execution and implementation of approved physical development plans, whilst section 33 gives stipulations regarding building and development control, including specifications.

- **The Building Code 1968:** sets out building by-Laws which local authorities adopt to regulate building activities within their areas of jurisdiction – it stipulates the standard specification of buildings in different stages of construction and also gives guidelines about quality of building materials. An adoptive by-law which compels developers to submit planning applications to the relevant authority prior to commencement of development works, provides guidelines on accessibility, safety, sanitation, and how to connect to common facilities like sewer, electricity, water etc., and empowers local authorities to disapprove any plans which are not correctly drawn or which do not comply with the by-law.

- **The Urban Areas and Cities Act 2011:** This legislation was enacted following the review of the Kenyan Constitution in 2010. It repealed the Local Government Act (Chapter 265). It facilitates classification of areas as urban areas or cities. The legislation provides stipulations for provision of infrastructural facilities, including roads, sewerage, waste disposal system and street lighting. The Act also guides on governance and management of the urban areas, participation by residents of those areas in governance issues, financial provision and integrated development planning; it requires that the urban areas have the capability to effectively deliver essential services. Unlike its predecessor, this Act promotes public participation in the running and management of urban areas, advocating that citizens will

be enabled to express their views about the management of their urban areas and can gain access to information about their area.

- **The County Government Act 2012 (replacing the Local Government Act (Cap 265)):** This defines functions of local authorities, including mandate for planning and development. With regards to planning, it directs the county governor to submit county plans and policies to the county assembly for approval, and holds the seat holder accountable for the management and use of county resources.

- **The Environmental Management and Coordination Act No. 8 of 1999:** exercises general supervision and co-ordination over all matters relating to the environment, and is the principal instrument of Government in the implementation of all policies relating to the environment. Section 68 authorises environmental inspectors to assess environmental impacts of proposed developments.

- **The Public Health Act 1986 (Cap. 242) (Revised 2012):** stresses that environmental degradation may pose a health hazard to the general public, and deems environmental degradation from wastewater from any premises and offensive smells such as gases, as a "nuisance". It acknowledges that local authorities are responsible for taking lawful measures to maintain clean and sanitary conditions and to remedy nuisance conditions which are injurious to public health.

- **The Local Government Act 1977 (Revised 2010) (Cap. 265):** Section 166 of this Act gives mandate to local authorities to prohibit and control development and use of land and buildings in the interest of the proper and orderly development of its area, whilst Section 160 (a) states that local authorities have the power to establish and maintain sanitary and waste removal services, and to compel the use of such services by persons to whom the service is available.

- **City Council of Nairobi (CCN) Development Ordinances and Zones:** the county's planning ordinances have divided the city into 20 planning zones, giving guidelines on different zones and their geographical areas. The Ordinances and Zones give guidelines for developments in the different

areas of the city, including minimum plot sizes in each zone, ground coverage and plot ratios, types of developments which are acceptable in different areas/zones within the city region, as well general policy issues.

- **Sessional Paper No. 6 of 1999 on Environment and Development:** in line with the concepts of sustainable development, states that every person in Kenya is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment for future generations – recommends integration of environmental concerns into the national planning and management process and provide guidelines for environmentally sustainable development.

- **The Sectional Properties Act, 1987:** this Act facilitates the division of a single residential development into many units, which can be owned separately. The different owners (or tenants in common), do not necessarily own the ground on which the whole building stands. Such a property is registered under the Registered Land Act, cap 300.

Appendix 2

A sample comments form: Development control Section. (Author: NCC Planning Department)

City Council of Nairobi — City Planning Department — Development Control Section — Submitted Plans Comment Sheet

Appendix 3

Questionnaire for developers

Introduction of the research *– what the research is about and what it is aimed for; Researcher will explain that it is for academic purposes and the research is not commissioned by any group, organisation or institution. The researcher would advise respondents that they should feel free to ask for clarification or meanings of any words or statements. The researcher will get a signed consent form.*

Confidentiality statement *– the researcher will advise respondents that discussions would be kept confidential (as far as possible) and quotes in the research report would be anonymous.*

Questions

1. Are you

a) The developer?

b) The developer's agent? (e.g. architect, planner, etc)

2. Is the development(s) owned by;

   a) You (individual)?

   b) Family Members Group venture?

   c) Investment Group venture?

   d) Other?

3. How many floors does the development have?

4. Does the development(s) have;

a) Shared facilities (toilets and bathrooms)? *– how many units per floor and how many people sharing?*

b) Self-contained units? - *how many units per floor and how many bedrooms in each unit*

5. Is there consideration on whether the plot is serviced or not before planning permission is granted?

6. Do you consider the development to have adequate supportive infrastructure e.g. access road, sewage, garbage collection?

7. Who is responsible for providing the supportive infrastructure;

   a) The owner?

   b) The council?

8. Which of the following best describes the contractors (foreman and labourers) for the development;

   a) Friends (qualified professionals or unqualified)?

   b) Family (qualified professionals or unqualified)?

   c) Professionals (registered contractors or un-registered contractors)?

9. How many times, in Nairobi, have you been involved in the planning application process with regards to rental apartment developments?

10. How long did the planning approval process take?

11. Were you happy with the length of time it took?

12. Did you experience any problems with the planning application process?

13. Is there a fast track or short cut route to obtaining planning permission?

14. In your opinion has the planning application process been affected by bureaucracy or corruption?

15. Did you experience any planning related problems after planning approval (during the actual development work)?

16. Did you feel supported by planning officials;

    a) In the Council offices?

    b) During site visits?

17. Does a planning officer have to visit the site before planning permission is given?

18. Is it possible to deviate or change from the approved development to a different development?

19. If you answered yes to the question above, in what ways is it possible to deviate from the approved development?

20. How do planning officials manage such deviation from approved development?

21. Are there penalties or sanctions for deviation from approved developments?

22. Given the opportunity, what would you like to see changed in the planning application process?

Appendix 4

Schedule of fieldwork (Action Plan) – 1st field visit

Activity	Pre-arrival preparations	Week 1	Week 2	Week 3	Week 4
Researcher(s)	Advertise (through contacts at the local university), check profiles and shortlist	Finalise recruitment of Research Assistant. Carry out induction, define remits and issue instructions	De-brief and feedback	De-brief and feedback	De-brief and feedback
Senior Planners	Make contact and send written introduction via email Request (via email) interviews with frontline planners – nominees and authorisation of interviews Request (via email)	Carry out in-depth interviews with 3 senior planners			Follow-up interviews with senior planners

	access to records at the planning offices				367
Front line planners		Carry out in-depth interviews with 3 front line planner	More interviews with other front line planners		
Developers		Source out (by phone and site visits) developers and make appointments	Interviews with developers Source out more developers	Interviews with developers Source out more developers	Interviews with developers

Appendix 5

Research schedule

	Year 1	Year 2	Year 3
Sept	Taught sessions and literature review	Sorting out access/permission	Report writing (and literature review)
Oct		Fieldwork	
Nov		Transcription and data analysis	
Dec			
Jan			
Feb	Research Question - aims and objectives		
March	Methodology		
April	Proposal outline	Fieldwork: follow-up in-depth interviews	Submission of 1st draft
May	Proposal	Transcription and data analysis	
June	Proposal presentation		
July	Revision		Research submission
Aug	Preparing for fieldwork e.g. recruitment of research assistant, use of printed materials – investigation of new legislation.		

Appendix 6

Policy recommendations

'…. *sometimes you look at situations and you say that particular neighbourhood has gone to the dogs, but for goodness sake can we ensure that new neighbourhoods that are coming up comply?*' (Interview DV4)

The following recommendations are given with regards to the planning system in Nairobi, but may be transferrable to other cities faced with similar challenges in sub-Saharan Africa.

1. The planning framework - what next?

There are prospects to improve land administration systems, for example by adapting supportive IT systems and strategically cataloguing details of land parcels, including their genesis. Technological advances need not be confined to IT; in this age of GIS technology it is viable to complement some functions of planning sections, such as Research and Forward Planning, with information generated by such a system. The system could capture irregularities in subdivisions, and abnormalities in developments, complementing planning efforts to control land use in the city. In controlling subdivisions, it would be possible to invigilate the provision of infrastructure by land owners. Those owning huge tracts of land could be facilitated to subdivide and sell some of the land (partial release) to raise capital for developing infrastructure, before selling the bulk of it to other individual buyers. This has previously tried and tested, but failed due to abuse by greedy and unscrupulous land owners. However, with tighter reigns, and ICT systems to store data efficiently, it has potential to facilitate provision of basic infrastructure by land owners. The revisions should not end with controlling subdivisions, but also apply to the follow up process of registration following subdivision. Investment in such a system could therefore pay off in a big way, while at the same time bypassing issues presented by staff in terms of capacity and control of their operations. In Addis Ababa, Ethiopia, for example, GIS technology was used to facilitate the collection of vital information for urban planning proposals, managing services, and collecting tax revenues (World Bank, 2011).

The UN-Habitat (2015) guidelines for international planning have recommended that planners should *'…identify and recognise the value of declining built environments with a view to revitalising them, taking advantage of their assets and strengthening their social identity…' (p. 22)*. Planners in Nairobi (and elsewhere) would be wise to take this on board as they drive the regularisation procedure forward. Only then can the process be perceived to have the interests of both planners and developers at heart. For the middle income areas, developers could give a hand in meeting the cost of infrastructure provision, but they need to be drawn in strategically, with a demonstration of accountability and transparency on the part of the planners. Indeed, the UN-Habitat (2015b), in its guidelines for planning, emphasised the need for a transparent legal framework, as well as a sound financial basis, for effective implementation of plans. There should be visible results for planners and developers if the regularisation process recognises that developers have used economic resources to do what they have done, and that there were institutional barriers that hindered planning implementation efforts. This would call for reasonable, clear, consistent and transparent guidelines on the part of planners, but also for developers to accept sanctions when their developments are beyond redemption with respect to those guidelines.

One thing that might give the planning system more control is decentralisation of the planning office to the different wards. The county already has offices at at ward level, but apart from the HDD office in Dandora, approval processing is done in City Hall. The city is now sprawling outwards, especially towards the east, and establishing functional local offices in different areas would give better control. For one, ease of access to planners would be enhanced, as would ease of access to neighbourhoods for planners. Also, it would be easier to hold local offices to account for developments in their areas, just like planning offices in satellite towns are accountable for their areas. Decentralisation could also potentially be more effective in generating a sustainable stream of data from local neighbourhoods, which could be used by researchers and forward planners for policy reviews. But to be able to decentralise development control

functions, more resources are called for, at least initially, and the research noted how the county planning department is struggling as it is due to inadequate resources.

This research found that there could be more effective use of staffing resources in the two institutions dealing with land administration in the country – the Ministry of Lands, Housing and Urban Development and the National Land Commission. The fact that more than two years since the NLC was formed they still cannot agree on their designations and remits is a failing of critical importance. In the meantime, their operational staff are rendered ineffective in serving the public. Regardless of who is issuing titles, the end result should be to streamline land administration in the country, and in the city, plugging gaps that create frustrations for both planners and developers. Rather than arguing over who controls which resources, the two entities should be looking at how best to amalgamate their resources for optimum delivery of their mandates. There is clearly potential for more effective joint-working, even as the ministry retains the supervisory role.

2. Augmenting planning resources

There is potential for collaboration to substantially supplement planning resources. Capacity does not necessarily have to be built internally within the county planning department – it can also be outsourced amongst relevant professionals in civil society, with clear lines of responsibility and accountability. The research found that there is potential to outsource monitoring and enforcement duties to qualified private partners, thus transferring some of the workload off, and in so doing, easing the burden on qualified planners. It could be said that NEMA is already outsourcing environmental impact assessments in that developers get reports from private practitioners, which are then submitted to the NEMA office. With regards to development control, outsourcing could be done for building inspections, whereby qualified professionals would inspect construction works and monitor compliance with building laws and regulations. There is a risk involved in this, in that the county would be outsourcing to private companies who might be motivated by profit, who might want to cut corners,

and who might also be subject to influence by powerful and influential people. For example, it was of interest to this research that the NCA, which like NEMA, is autonomous in its recruitment of private professionals, has powers to '…*facilitate, or promote the establishment or expansion of, companies, corporations or other bodies to carry on any activities related to construction, either under the control or partial control of the Authority or independently..*' and '…*to receive, in consideration of any services that may be rendered by it, such commission or payments as may be agreed upon with any person*'. Such powers could potentially be damaging in the face of self-serving interests, opening the doors for high stakes corrupt practices. The onus would still be on the planning office to monitor implementation of any contracts. Outsourcing does not mean that planners would be hands off, but it would probably be easier for planners to oversee and bring to account a few designated private partners, rather than retaining responsibility for development control for the whole city with limited resources.

Outsourcing could potentially free planners to focus more on wider planning strategies. Costs would have to be weighed; is it cheaper to outsource? It is not just financial costs that should be looked at, but opportunity costs in terms of the sustainability of developments and environmental degradation, and bearing in mind that so far the planning department has lost control in shaping the city's growth. There is also potential to develop allies in developers' agents, who can aid in educating and orchestrating their clients, because it is also in their interest for developers to go through the application process, so that they can offer their services. Registered contractors could also be brought on board to educate developers and raise consciousness and conscience in putting up developments, whilst at the same time there could be more robust monitoring of unqualified and unregistered contractors.

There is a lot of potential for embracing the entrepreneurial spirit of developers, which could generate innovative propositions to address the provision of infrastructure in developing areas. In Britain, Healey (1998) noted how development plans require various contributions from developers for facilities previously provided by local authorities. Although it would be reckless to blindly adopt policies from a developed country without taking into

consideration social, cultural and contextual differences (as proven by the blind adoption of planning laws and regulations), opportunities to get valuable contributions from developers in terms of financial and other inputs, as well as sub-contracts for infrastructural development, are being missed. Some developers are already undertaking infrastructural provision, such as sewer lines, as seen in Chapter 6.2. They would welcome state mechanisms that facilitate recuperation of costs from other beneficiaries, ensuring that they provide a fair share of the capital outlay. Private investors would welcome any such initiatives because not only would it enhance the value of their investments, it would also offset their costs of investment if the government was proactive in the provision of infrastructure. But the data also indicated that developers command significant capital, and planners could seize opportunities to link spatial planning with private investments. Private investors have funds to cater for different income levels, but the planners need to improve their operation, draw in the developers, and guide and support them to invest their money where the need is, so as to produce legally, economically, and morally/socially viable residential buildings.

The research also highlighted other partners in government and supporting parastatals, and asserts that they could be recruited to aid compliance in building work. For example, all developments require input from the water and electricity boards, and the planning office could work collaboratively with these offices to minimise non-compliance with building laws and regulations.

Planners could also do more to involve the public in development control, by consultations in communities and by raising awareness of development issues.

These measures for augmenting resources for the planning department are not only applicable to Nairobi, but also to other cities in sub-Saharan Africa which are struggling under the same difficulties.

3. Meeting challenges in governance

Sound political, democratic structures and governance are necessary for macro facilitation of the system. In addition, those in positions of power need

to limit their micro involvement, which damages and undermines the technical aspects of planning. There is no single prescription for eradicating corruption and impunity in government systems – it will take goodwill and inner resolve to overcome these practices. For those in high offices, it requires downplaying their selfish interests for the betterment of the wider society.

Planners do not have to wait for shouts of desperation which manifest themselves in open defiance to the planning system, rather they need to take heed when developers question the validity of the laws and regulations and plead for flexibility in their application, and constructively rationalise their stance when they cannot relax any particular stipulation. Other than professionals, citizens could also be educated, with a view to developing a planning society, a society that appreciates the role of planning in shaping good quality neighbourhoods that have adequate social facilities and the right infrastructure. The findings of this research suggests that this is viable, given that in some areas like Karen and Lang'ata in Nairobi, among others, there are established residents' associations, which demonstrate a desire to get involved in the evolution of their neighbourhoods. It is likely that more residents in areas like Karen and Lang'ata are owner occupiers (and thus have a stake in the improvement of buildings and neighbourhoods, and maintenance of property values) compared to Eastlands where more residents are tenants. Participatory models based on the experience of owner occupiers may not be appropriate for those with insecure tenure. However, although the skills and interests present within upper-income neighbourhoods might influence participation in those areas, residents in lower-income neighbourhoods would also like to sleep safely at night, not worrying that their building might collapse, and would also welcome good living environments – it would therefore be in their interest to respond to calls for upgrading their living environments.

The research also highlighted conflicting interests in different departments involved in planning duties, which limit effective joint-working, for example between the planning department in City Hall in Nairobi, and the planning section at the Ministry of Lands, Housing and Urban Development. To

overcome some of these challenges, stronger linkages and joint-working need to be fostered in high offices where the stakes are highest; defining and agreeing on boundaries, identifying any undermining scenarios, and mapping out implementation processes. Instead of compartmentalising roles and functions between different departments, the planning system in Nairobi and other sub-Saharan African cities ought to exploit the resources within these departments, but in a well-coordinated and coherent manner. Only then can barriers to collaborative efforts be effectively countered.

To resolve issues hampering planning efforts requires not only intervention from high office and political good will, but also selflessness in serving, and putting the communities' interest before personal gains and/or prestige. As UN-Habitat (2015b) articulated in its International Guidelines on Urban and Territorial Planning, strong political will is required for successful implementation of plans, as well as appropriate partnerships involving all relevant stakeholders. Such partnerships require trust between the stakeholders, which can only be cultivated by consensus legitimisation of what the system is trying to achieve. This research asserts that planners and others could serve the interests of the public more efficiently by doing an inventory of their staffing resources, and looking into ways of teaming up to cut bureaucracy and financial outgoings on staff remittances. Relationships with NEMA should also be streamlined to avoid duplication and curtail bureaucracy.

4. A vigorous training curriculum for planners

If training is coordinated, consistent and strategically aimed at all the weak points in staffing capacity, it would be a worthy investment in enhancing departmental resources. That, coupled with comprehensive staff performance management, could ease the burden of carrying dead weight in staff registers, whose only impact is depletion of resources. Once improved management has been instituted, how many more staff and at what level they would need to recruit can be gauged.

Training need not end at graduation, but should be ongoing in places of employment, with well-structured training programmes covering all

operational aspects. The research noted the frustration of planners who would like to advance their skills, but are not supported by the county planning department, which neither enables them to use external providers nor provides the necessary training courses itself. There is a lot of potential for enhancing skills and knowledge, and training could be commissioned from private consultants and practitioners. Joint-training for planners, for example with developers and their agents, could also be explored, with a view to developing empathy and understanding of the issues that concern both.

Training should also be extended to planning subordinate staff, especially those who are at the forefront of serving the public in offices and the field. The reputation of field and general subordinate staff in Nairobi is appalling; there are reports of ignorance and incompetency, rudeness and disregard for the public, general poor customer service, and petty corruption, among others. The planning departments could do well to invest in day release in-house training programmes for their workers. Not only does planning education need to enhance its curriculum in formal university level training, it also needs to be more expansive and inclusive of all stakeholders involved in the planning system. To minimise areas of contestation, a good planning system needs comprehensive education and inclusion of the various stakeholders in its ideals.

5. In support of developers

There are clearly gaps in understanding by the public and accountability by the planning department. For investors developing multi-million dollar projects, it is sometimes not a question of money, but rather how that money is utilised. In developed cities such as in Britain, there are tariff charges designed to be pooled together across an area for general infrastructure provision, and developers are aware of this element. Similarly, during the approval process there are other negotiated financial obligations, such as provision for communal facilities, such as play parks, transport improvements, or a cash payment for other forms of neighbourhood

regeneration. It is difficult for developers to argue with such requirements since ultimately the improvements enhance the value of their investments.

Advice to developers could easily be given in planned forums. Planned public forums could be a regular assignment for county planners, with a view to imparting knowledge and at the same time gathering ideas and feedback on lived experiences from developers. Training for developers could also be channelled through their agents. As well as preparing them for the financial demands of the approval process, architects, for example, could help their clients by giving them examples of what is acceptable or not.

Educating developers on county financial demands and how they need to contribute to them might be a start. However, developers would need more than that; they would need to be able to verify such statements from authorities by actions they can see being taken on the ground. It is acceptable for the county to say that they need levies to instal infrastructure, but only if they deliver as planned. As it is now, most developers would rather avoid the process and put the money they would have incurred in fees and related costs into their developments. It would therefore be in the interest of planners to work with developers towards setting acceptable and justifiable levels of charges. By encouraging more developers to engage with the approval process, the county would be in a position to enforce other obligatory dues from property owners, such as land rates and rents, thus enhancing their revenue streams. If these were in place, even developers would be supportive of planners' efforts to punish those who were not complying and so shirking the share of the burden of maintaining good living environments in the city.