

Reforming and Restructuring the Planning and Building Laws and Regulations in Kenya for Sustainable Development

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1.0 Introduction

The world is urbanizing at a very rapid rate. According to a report by the UN Habitat three out of ten people on the planet lived in urban areas by the mid-20th century (Habitat, 2010). In the beginning of the 21st century it is estimated that half of the population lives in urban areas and it is projected that by the middle of the 21st century all regions will be predominantly urban.

Like most African countries, Kenya has been urbanizing rapidly. While an estimated 20.4 percent of Kenya's population lived in urban areas by the year 200, the proportion is estimated to reach 60 percent by the year 2030 (Kenya Vision 2030). This growth is largely due to a high level of rural-urban migration fuelled by rural poverty and a dwindling per capita ownership of farming and grazing land. Fundamental transition from relatively low density rural communities to higher density urban societies is manifested spatially.

The rapid urbanization has resulted in an increase in the demand for more urban land, shelter, infrastructure, social facilities and jobs. The growing urban population has put pressure on the existing infrastructure, housing and social amenities. The urbanization process has been uneven dominated by one primate city, Nairobi which is about four times bigger than the next largest urban center, Mombasa. Nairobi has a population of about two million compared to Mombasa's 660,080 people. There is also a wide discrepancy in the level of urbanization and distribution of urban centers across the regions.

However, this urbanization has not been planned. Hardly 30 percent of the urban centres are planned and even where plans are available they are rarely enforced. The growth in unplanned settlements in the urban areas, urban sprawl, congestion, and property development in excess of the carrying capacity of available infrastructure are the most obvious evidence of failure to plan urban development and enforce the designated laws and standards.

In addition physical development planning is not a prerequisite of any building construction in Kenya. This has led to location of developments in areas that poorly served with infrastructural services and with incompatible and conflicting developments. On the other hand the building and construction sector has been proceeding without the appropriate planning and building laws and regulations. The current Building code and By-laws have been an impediment to delivery of housing and the entire building and construction sector.

The paper reviews existing policies, laws and regulations that guide the planning and building industry in order to identify the areas that need improvement in order to ensure sustainable development of our urban areas.

2.0 Planning and Building Policy, Legal and Institutional Framework in Kenya

2.1 Policy Framework

The earliest planning policy efforts began with the establishment of coastal urban settlement and construction of the Mombasa-Kisumu-Kampala Railway in the colonial times. There were also the early colonial policies that alienated the high potential land in the central highlands for the exclusive settlement and commercial use by European settlers. Markets and towns as well as appropriate local authorities were established in the highlands as administrative units and trading centers to support the settler economy. Various planning initiatives during this period were institutionalized through the 1931 Town and Country Ordinance. These initiatives included:

1. **The 1926 Mombasa Municipal Council Plan:** This was the first formally prepared plan.
2. **The 1948 Nairobi Master Plan:** The preparation procedure, scope, content and approval procedures of this master plan followed the 1947 Town and Country Planning Act of Britain. The plan was conceived as a key plan for the general physical, economic and social development of Nairobi for a period of 20 years. It incorporated racial segregation zoning and was linked to the overall budget planning.
3. **The Swynerton Plan of 1955:** This was a colonial agricultural policy established in 1954. It aimed to intensify the development of African agriculture in the Colony of Kenya. The policy focused on increased agricultural productivity as well as environmental resources conservation in order to raise the standards of the communities.
4. **The Mombasa Municipal Council Master Plan of 1962:** This was Mombasa's second master plan.

Though Master Planning became the standard planning method in major townships and municipal in this it was found to be rigid, time consuming and lacked an implementation framework.

The post colonial era witnessed the development of urban and regional planning through deliberate development of policy documents aimed at achieving national development goals. In 1965 the Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya was adopted. This paper provided the main policy framework for development in all sectors of the economy in the country. It spelt out the need to correct development imbalances created by earlier policies, recognize the role of urban, regional, local and rural levels of development in the national economy and decentralize and redistribute development and planning. Based on this policy comprehensive five year development plans addressing development needs in all sectors and regions since 1966 have since been prepared.

In 1978 a human settlement strategy for urban and rural development was developed. The strategy provided an overall framework for the management of future urban growth as well as the location of physical developments in urban and rural areas in order to develop a coherent system of human settlements. It emphasized the service and growth center policies. The service center policy aimed at improving quality of life through provision of basic services in urban centers. The Growth center policy focused on selected growth centers to stimulate development in the hinterland and reduce rural-urban migration into the larger cities such as Nairobi.

In 1986 the Rural Trade and Production Centers (RTPCs) Programme was initiated to create centers that would act as growth poles for the regions to catalyze development of their hinterlands and as well as act as dispersion mechanisms to de-concentrate development from the main towns.

In 2002 country witnessed a shift of policy with a change in the political dispensation. The Economic Recovery Strategy for Wealth and Employment Creation policy document was published in 2003 (GOK 2003). The strategy identified the key policy actions necessary to spur the recovery of the economy as:

1. Rapid Economic growth through measures to enhance revenue collection, expenditure restructuring and a monetary policy that supports achievement of economic growth without putting price stability into jeopardy.
2. Strengthening institutions of governance
3. Rehabilitation and expansion of physical infrastructure in particular roads, railway and telecommunications.
4. Investment in human capita especially of the poor

The strategy was seen as a tool for providing the impetus required for the recovery. The infrastructure and manufacturing sectors were seen as playing a major role in revitalizing the economy.

At the expiry of the Economic Recovery Strategy for Wealth and Employment Creation policy the Vision 2030 was developed. This is the blue print for Kenya's long term national development. It is anchored on three main pillars:

- a) Economic Pillar
- b) Social Pillar
- c) Political Pillar

In this strategy the vision for housing and urbanization is "an adequately and decently housed nation in a sustainable environment". It is hoped that this vision will be achieved through among other things:

1. Better development and access to affordable housing
2. Enhanced access to adequate finance for developers and buyers
3. Pursuit of targeted key reforms to unlock the supply potential of the housing sector

The vision envisages legal and administrative reforms in order to meet the demands of housing and urbanization in the future. It is implemented through a series of five year medium term rolling plans the first being the 2008-2012 plan. However, Kenya lacks a spatial framework for implementation of the Vision 2030 since it has no National Spatial Plan.

Other policies that have an impact on the Planning and building sector include:

- a) **Sessional Paper no. 3 of 2009 on National Land Policy:** This is the first of its kind in Kenya. The policy objective is "*to guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity*". It provides the overall framework and defines the key measures required to address the critical issues of land administration, land use planning, restitution of historical injustices, environmental degradation, conflict resolution, proliferation of informal settlements, outdated legal framework, institutional framework and information

- management. The key principal in the policy is land use planning which is recognized as essential for the efficient and sustainable utilization and management of land and land based resources.
- b) **Sessional paper no. 3 of 2004 on National Housing Policy:** This policy recognizes the absence of comprehensive land use management plans. It aims at facilitating the formulation of comprehensive plans in land administration for sustainable housing development in the future among others.
 - c) **Sessional Paper No. 6 of 1999 on Environment and development:** This policy aims at integrating environmental aspects to the national development planning process. It gives comprehensive guidelines for achieving sustainable development with regard to the effects of development on the environment.
 - d) **National Water Policy of 1999:** This policy guides the provision of safe water for household consumption and sets out the framework for the water sector reform to overcome the instional and operational weaknesses in the sector.
 - e) **Draft Regional Development Policy 2007:** The policy aims to, among others, facilitate the reduction of socio-economic inequalities between and within regions, provide a framework to guide developers on areas of investment that can contribute most significantly to the overall national and regional development.
 - f) **Draft Integrated National Transport Policy of 2003:** The policy recommends transport planning that supports appropriate strategies such as national development, land use planning and efficiency, establishing transport infrastructure and services linking urban industrial centers, rural production zones and markets to induce robust socio-economic activity and growth.

2.2 Legal Framework

There are a multiple of statutes that guide the planning and building sector. Prior to 1996 the main planning legislation was the Land Planning Act. Enacted in 1968 it aimed at controlling the development of the urban land. It provided for the preparation of town plans. The contents of the plans and the machinery of preparation were however not clearly spelt and tts use in rural areas was limited. This act was repealed in 1996 when the Physical Planning Act of 1996 was enacted.

The Physical Planning Act of 1996 (Cap 286, 1996) provides for the formulation of National, Regional and Local physical planning guidelines, policies and strategies. It further provides for the preparation of regional and local physical development pans in its section 16 and 24 respectively. In its section 5 the Act requires Director of Physical Planning to:

- (a) Formulate national, regional and local physical development policies, guidelines and strategies;
- (b) Be responsible for the preparation of all regional and local physical development plans;
- (c) To initiate, undertake or direct studies and research into matters concerning physical planning from time to time;
- (d) Advise the Commissioner of Lands on matters concerning alienation of land under the Government Lands Act and the Trust Land Act respectively;
- (e) Advise the Commissioner of Lands and local authorities on the most appropriate use of land including land management such as change of user, extension of user, extension of leases, subdivision of land and amalgamation of land and

- (f) Require local authorities to ensure the proper execution of physical development control and preservation orders.

In line with section 5 (f) the Act empowers the local authorities in its section 29 to:

- a) Prohibit or control the use and development of land and building in the interests of proper and orderly development of an area;
- b) Control or prohibit the subdivision of land or existing plots;
- c) Consider and approve all development applications and grant all development permissions;
- d) Ensure proper execution and implementation of approved physical development plans;
- e) Formulate by-laws to regulate zoning in respect of use and density of development and;
- f) Reserve and maintain all land planned for open spaces, parks, urban forests and green belts in accordance with approved physical development plans.

The Local Government Act Cap 265 empowers the Municipal, County and Town Councils to prohibit or control the use and development of land and building in the interests of proper and orderly development of its area. All developers are required to obtain development permission from their respective local authorities. It also empowers the councils to regulate sewerage and drainage construction and connection. In doing this, councils can require and compel the removal or alteration of any sewerage or drain works that are in contravention of any by-law

However, the effectiveness of development control is hampered by among others:

- i) Lack of capacity to inspect and implement plans. Until recently the local authority had no planning departments. Even where they existed capacity was very low with very few planners and building inspectors employed.
- ii) Lack of relevant supportive system for effective enforcement
- iii) Lack of resources

The first by-laws building for building development and control in Kenya were introduced by the colonial Government in 1926. They were applied to the then Nairobi Town Council. The by-laws were later replaced by the Nairobi City Council By-laws that incorporated town planning and zoning (Building) in 1948. The current building code dates back to 1967 and is a replica of the British building Regulations of 1948. It is framework that guides the building and construction sector. This code is material based and has several outdated and inappropriate provisions that are susceptible to multiple interpretations.

In 1995 a set of new building regulations commonly known as Code 95 were developed through a Government/Private sector initiative. The objective of these regulations was to promote housing standards and procedures aimed at reducing building costs through the use of innovative designs and local materials. However no significant success was realized through this initiative due to failure by most of the local authorities to adopt this new code.

Some of the other statutes that have a bearing on the planning and building sector include the Government Land Act Cap 280, Public Health Act, Environment Management and Coordination Act (EMCA, 1999), Water Act 2002, Agriculture Act Cap

318, Forest Act 2002, Regional Development Act, Energy Act and the Roads Act among others.

The Government Land Act relates to the planning and building sector in so far as it defines the meaning of Government land thus influencing the way in which the land is planned and utilized.

The Public Health Act Cap 232 mandates every health authority to take all lawful, necessary and reasonably practicable measures for:

1. Maintaining its district in clean and sanitary condition
2. Preventing the occurrence therein of or remedying or causing to be remedied any nuisance or condition liable to be injurious or dangerous to health and take proceedings at law against any person causing or responsible for continuance of any such nuisance or condition.
3. Preventing or causing to be prevented or remedied all conditions liable to be injurious or dangerous to the health arising from:
 - The erection or occupation of unhealthy dwellings or premises or
 - The erection of dwellings or premises on unhealthy sites or on sites of insufficient
 - Overcrowding
 - Construction, condition or manner of use of any factory or trade premises and take proceedings against any person causing or responsible for the continuance of any such conditions.

The Government Land Act Cap 280 defines all land that is vested in the Government land. It provides for the administration and transactions to be carried out on Government land.

The Environment Management and Coordination Act 1999 provides for guidelines for environmentally sustainable development. The Act requires that development plans embrace the preparation of Participatory National Environment Plans that have sectoral coordination and linkages as well as environmental conservation measures. It also requires that environmental impact assessment be carried out for all development projects that are likely to pose negative environmental impacts. For complete projects, the act requires that yearly environmental audits be carried with clear mitigation measures.

The Water Act 2002 establishes and regulates the institutions that are responsible for the provision of water and sewerage services as well as those that are in-charge of the development of large-scale infrastructure for harnessing water resources. The framework for water resources allocation and management strategies is outlined in this Act.

The Agriculture Act Cap 318 promotes agricultural development through the encouragement of soil and water conservation. By regulating the utilization of different categories of land in Kenya for various agricultural purposes, the Act strives to enhance sustainable utilization of agricultural land in Kenya. It also strives to ensure food security for the rural as well as urban populations.

The Forest Act 2005 provides for the establishment, control and regulation of forests in Kenya. It encourages the conservation of all types of vegetation thus contributing to the greening of urban areas immensely.

2.3 Institutional Framework

Nationally, Physical Development Planning is beset by a complex of institutional arrangement. Though the Department of Physical Planning in the Ministry of Lands has the legal mandate of physical development planning, there are other multiple institutions that carry out these activities at various levels in the country. These include the Local authorities under the ministry of Local Government, Regional Development bodies under the Ministry of Regional Development, The Ministry of Nairobi Metropolitan Development and the Ministry of Northern Kenya.

The building and construction is also guided by a multiplicity of institutions. The Ministry of Public works is in charge of supervising all Government and public institutions construction works. On the other hand the Ministry of Roads and Ministry of housing are in charge of roads and public housing respectively. The Local authorities are in charge of the approval and inspection of all developments in their jurisdiction. On the other hand the Ministry of Public health oversees all public health issues and occupational health and safety in the industry. The activities of these agencies remain largely uncoordinated.

3.0 Planning and Building Sector Reform Initiatives

The initiatives towards reforming the planning and building sector include:

1. The formulation of the first ever National Land Policy was a bold step in providing a framework and guidelines for the efficient and sustainable utilization of land in Kenya. Arising from this policy concept paper to provide a road map for preparing a National Land Use Policy for the Republic of Kenya is being prepared by the Land Reform Translation Unit (LRTU) of the Ministry of Lands.
2. Review of the Building code: In 1996, the Kenya Government established a commission of inquiry to investigate and determine the cause of a collapsed building (Sunbeam Building in Nairobi) in which scores of people were killed. This commission was also mandated to examine existing building. To-date, the report of the commission is yet to be implemented. Accidents continue to happen in the building sector leading to injuries, loss of life and property.
3. Review and Harmonization of Planning and Building Laws and Regulations: Following various roundtable discussions between the Kenya Private Sector Alliance and the Rt. Hon. Prime Minister a Review and Harmonization of the Planning and Building Laws and Regulation Committee was launched on 20th April 2009.

4.0 Challenges in the Planning and Building Sector in Kenya

There is no single policy guiding the planning and building sector. The lack of a comprehensive Land use planning policy to guide the way in which land is utilized creates disharmony in land utilization.

Due to the multiplicity of laws and regulations guiding planning and building in Kenya, various conflicts have witnessed. There is lack of a mainstream mechanism for physical development planning thus creating a conflict between the national, regional and local levels of planning. Whereas the plan formulation/preparation is undertaken by the central Government, plan implementation is the responsibility of the Local Government. This has manifested in physical development plans not being informed by local needs thus failing to address local realities.

The building industry lacks a comprehensive and integrated framework within which to operate. There are many pieces legislation scattered in many statutes that impact on the industry. The scattered nature of the legislation makes it difficult for developers to understand the requirements and creates ambiguities that make effective enforcement of the law difficult. The collapse of several buildings under construction in various parts of the country, leading to loss of lives has been attributed to lack of proper building laws.

The greatest legislative impediment in the building industry today is the law enforcement procedures. The administration of the various statutes is carried out by several agencies. For instance, the sanitation aspects are the responsibility of the public health officers regulated by the public health Act, fires control regulation is under the fire officers while the construction of the building is by local authorities under the Local Government act.

The Multiplicity of institutions in the planning and building industry create conflicts and confusion that inhibits the proper functioning of the industry.

5.0 Way Forward

Through the review of existing policies, laws and regulations that guide the planning and building industry the paper identified multiplicity of laws and regulations as well as multiple institutions as the major impediments to the planning and building sector. The absence of a national land use and urban policy has resulted in haphazard developments that are incompatible and conflicting and are poorly served with infrastructural services and with developments. The building and construction sector proceeded without the appropriate planning and building laws and regulations being followed. This is not sustainable for the future.

The harmonization of all policies, laws and regulations that govern the planning and building sector must of necessity happen. As a first step the enactment of the proposed draft Planning and Building Bill should be fast tracked to enable the creation of the Planning and Building Authority that will enhance the coordination of the planning and building sector actors. The proposed Bill brings the functions of various institutions under the proposed Planning and Building Authority for ease of coordination and implementation.

The new building code is expected to move the building industry away from brick and mortar that some players claimed has made construction a rich man's business, locking out Kenyans of average means from owning homes.

The proposed draft Planning and Building Bill will consolidate, amend and provide the law relating to planning, design, construction and maintenance of buildings and associated work.

The new planning and building regulations broaden the range of acceptable construction materials beyond brick and mortar. Though cement will remain a vital component of any construction, locally available materials and latest building technologies could help offer faster and cheaper solutions for housing in the semi-permanent segment. It is hoped that there will be a reduction in the construction period, hastening the rate at which houses are being completed.

If the Bill is passed it will be possible to use modern construction technology such as prefabricated boards and interlocking blocks which are cheaper than the preferred brick and mortar. Building experts reckon that the cost of putting up a house could fall by up to 30 per cent under the proposed code. The new law hopes to address the flaws in the planning and building industry. Contractors will be expected to observe professionalism by involving an accredited checker before embarking on any construction. It proposes that buildings meet specific needs to cater for disabled people and ensure that the primary function for which the building was designed is observed.

In terms of institutional framework the law proposes one body to regulate issues in the planning and building industry. It is expected that with the operationalization of the planning and building regime proposed in the new law, the built and natural environment will become healthier, safer, convenient and more sustainable. Builders who have been moving to areas where the construction code is lax will also be hemmed in by the proposed new law by the requirement to adhere to strict planning.

There is need to prioritize and hasten the formulation of the National Land use policy and a National urban policy to set out the framework for urban settlements and direct urbanization. This will compliment the efforts of other policies such as the Vision 2030 and serve to coordinate and align sectoral policies. Land use planning and regulation set out in the National land use policy must be made comprehensive to support the goals of sustainable urbanization

6.0 Conclusions

The development of the housing sector is hampered by unmitigated urban sprawl and inadequate provision of infrastructure. A national land use framework can facilitate coordination of development of urban and peri-urban area in terms of housing, commercial, industrial and infrastructure developments. A national urban policy should set out a framework for urban settlements and urbanization policy which can serve

As urban areas in Kenya become more complex there is need to achieve sectoral integration and integrate the planning and building institutions within Government and between levels of Government in partnership with the private sector and the civil society. The nature and scale of current and impending urban problems in Kenya will require that the Kenya Government and the private sector as well as the civil society must work hand in hand to develop strategies that are efficient and sustainable in the utilization of resources.

An important pre-condition for more effective planning of our urban areas is that planning legislation is up-to-date and is responsive to current urban issues giving different planning tasks and responsibilities to the various levels of Government in partnership with the private sector and the civil society.

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