

**PROBLEMS OF DEVELOPMENT CONTROL IN URBAN CENTRES IN
KENYA: A CASE OF KERICHO MUNICIPALITY**

BY

KENNETH C. KOECH
B.A.(Hons) Egerton University

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
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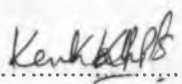


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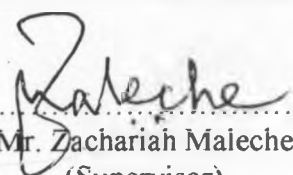
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DECLARATIONS

This is my original work and has not been presented for a degree in any other university.

SIGN:  DATE *15th October 2001*
Kenneth C. Koech
(Candidate)

This is has been submitted for examination with my approval as university supervisor.

SIGN:  Date *19th Nov. 2001*
Mr. Zachariah Maleche
(Supervisor)

DEDICATIONS

To

My late Dad who didn't live long enough to see what his son would be

And to

My Mum who laboured tirelessly and with inspirations to see that my life heads for the

Better.

ACKNOWLEDGEMENT

There are various individuals and institutions who deserve credit for helping me in one way or the other by providing support and information without which this study could not have been successful. I am grateful to the Ministry of Lands and Settlement-Physical Planning Department for financing my study through taxpayers' money. I particularly wish to thank Mr. Z. Maleche (my supervisor), DURP staff members and my colleagues for support, positive criticisms and advice through my entire study period. I cannot fail to acknowledge the following institutions – Kericho Municipal Council, Physical Planning office (Kericho), Public Health office (Kericho) - for providing valuable information instrumental for this study. God bless you all. However, all errors and omissions in this study are purely my fault

ABSTRACT

The growth of urban centres have been so immense that urban managers are facing great challenges in the provision of infrastructure and other services in addition to ensuring that urban areas are environmentally conducive to work and live in. Practically with unprecedented urbanization, the use of various tools of development control system to bring harmonious urban and natural environments has been curtailed and every effort has been fruitless. In the process, fragmented and unharmonious developments have occurred. These developments are characterized by; abuse of common public interests, unplanned, insanitary and crowded settlements, inadequate physical and social infrastructure and the general environmental degradation.

Given the above scenario, the study set out to examine the factors that contribute to problems of development control in urban centres in Kenya with particular emphasis on the problems in Kericho town.

Field data analysis revealed trends of urban growth and the challenges it poses on compliance with development control regulations. The study further revealed several factors that impede the efficiency of the development control system in the town. These included; laxity in approving plans, poor policy implementation, inadequate council capacities (finances, technical and human), political interference and (lack of) will, poor enforcement machinery and lack of public awareness of the existence of planning and development regulations.

The study proceeds to give strategies in form of policy proposal and measures that are considered capable of reversing the negative process. These include, strengthening Local Authority's' capacities (financial, human and technical), preparation of a comprehensive urban development policy taking into account the needs of all urban residents and flexible to changing socio-economic conditions of the town, creation and improvement of public awareness of development control regulations and requirements and political support and reviewing and updating of the physical development plan(s) regularly among others. These are believed will lead to a more effective development control system.

Further research in understanding the nature of operational powers of the various institutions on guiding and controlling development is recommended. The research will entail inter alia institutional relationships, overlaps and conflicts between the central and local government agencies and how these impact on the process of development control. Particular attention will be laid on the exact information required for the respective institutions to effectively and efficiently operate.

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LIST OF ABBREVIATIONS

- AIDS- Acquired Immune Disease Syndrome
- AMREF-Africa Medical Research Foundation
- CBD-Central Business District
- DPHO-District Public Health Officer
- KFW-*Kreditanstalt Fur Wiederaufbau*
- KMC-Kericho Municipal Council
- LADP-Local Authority Development Programme
- LA-Local Authority
- LATF-Local Authority Transfer Funds
- PPA- Physical Planning Act
- PPD- Physical Planning Department
- UMS-Urban Management System
- UNCHS-United Nations Centre for Human Settlement
- WSD-Water and Sanitation Department

CHAPTER ONE

INTRODUCTION

1.0 Background

Urbanization and urban growth whose courses cannot be altered are irresistible forces of nature. They pose great challenges to countries, many cities and more particularly urban managers (planners inclusive). The growth has been so intense such that many countries, cities and urban managers are not able to give to their populations the entire infrastructure and services that they desire to have.

The above growth of urban centres has been both in number and in population. Growth has been an uneven process and this uneven and rapid growth of urban population has led to problems in these areas. These problems are as follows; overcrowding living conditions, growth of insanitary settlements, homelessness, malnutrition, outbreaks of epidemic diseases such as cholera, typhoid and the many deviant behaviors such as delinquency, alcoholism and prostitution (Syagga and Kiamba, 1985 cited in UNCHS, 1994). Others are lack of adequate educational facilities, transportation problems and a general lack of adequate physical and social infrastructure.

In an attempt to provide harmonious urban development in light of unprecedented urbanization and its associated problems various instruments of development control have been used. These instruments are master planning (and other planning approaches), subdivision, zoning regulations and building by-laws. The use of these instruments notwithstanding urban development has not been guided properly as it is expected.

Several factors explain these limitations in the management of urban areas in view of development control. These are improper plan making procedures, implementation, institutional inadequacies and overlaps in responsibilities of planning and development control alongside weaknesses in the planning system and the plans. Institutional inadequacies for instance have led to lack of updating of plans in most towns. This has resulted to towns dominated by lack of enough preparation on the part of responsible institutions to capture the speed and direction of growth in peripheral areas. Hence these areas are characterized by growth, which is going on without adequate infrastructure and services. Central government allocation of funds to develop necessary infrastructure have neither been forthcoming.

In the end the existing development control instruments have not cured the urban problems since these problems continue to persist. These problems include increased levels of poverty, squatter and slum settlement, illegal and unguided land sub divisions, collapsed and inadequate infrastructure and environmental degradation and diseases. Others are illegal and unauthorized buildings, societal dissatisfaction with the way the towns are run and resulted inefficient spatial structure.

Kericho town, which is a medium sized town, is experiencing rapid growth estimated at 5.5 per cent per annum. With this growth there is great pressure on the municipal authority on the provision of infrastructure and other services. This situation is compounded by institutional framework, which is not well coordinated and integrated enough as to facilitate proper attention to the problems and challenges brought about by

such unprecedented growth. Professional and technical staff (example planner {s}) prerequisite for good urban governance are absent and this have led the situation to become worse. Equally, financial resources from internal and external sources to employ qualified staff in addition to initiating infrastructure led development are not enough. Similarly political will and support is not encouraging execution of development control instruments. The net result has been presence of uncontrolled and unhygienic settlements, conflicting and unharmonious land uses inter alia.

1.1 Statement of the Problem

Towns in many sections of the society offer various services. To the urban dwellers it is a home and a place of work and recreational centre while to rural dwellers it is a market for their produce and a shopping centre and source of other social services. To foreign visitors it is a stopping place on their journeys to the country and a source of souvenirs and to the unemployed and the criminals they offer work and opportunities (George, 1973). Owing to this there is a continuous influx of people to towns and therefore world cities generally are undergoing rapid growth accompanied by rapid development pressures resulting from high population growth rates. As a result there is great demand for urban land and both social and economic infrastructure. This has led to social and infrastructure inadequacies in turn leading to urban sprawl, congestion, social delinquencies and housing and unemployment problems. In the end objectives of urban planning to bring about sound urban development in view of public interest are constrained.

In developing countries in particular, the growth has doubled in the last decade. Arising from this spontaneous/unprecedented growth and coupled by inadequate finances, institutional weaknesses among others there have been unplanned growth in such areas as commercial, industrial and residential development. Due to this “unplanned” urbanization, most cities have experienced fragmented development, urban sprawl and both social and physical infrastructure deficiencies including transport services, housing and recreational facilities, juvenile delinquency, prostitution and crime. Results also include deteriorating human settlement conditions, depletion of natural resources and increased discharge of unprocessed wastes into the environment resulting in severe health problems (UNCHS, 1999). It also led to increased kiosks and food sellers in the city’s downtown, increase in size and numbers of open air markets and explosion of small trades and services dealing with almost every facet of life in the city.

Kenya being a developing country with a growth rate of urbanization averaging 6.8 per cent (UNCHS, 1999) experiences rapid urbanization, which poses potentially devastating development problems. Estimates by UNCHS (1999) indicate that by 2005 about 58 per cent of the population will be living in the urban areas and well over 60 per cent by the year 2025 in Sub-Saharan Africa. This population has great pressure of demand for urban land and both social and economic infrastructure. This has led to urban sprawl, fragmented development, infrastructure deficiencies and general deterioration of the human environment.

Kericho town depicts different urbanization characteristics. The old town (10.245 square km) depicts high urban growth while the rest of the municipality is characterized by low-income areas and other market centres. This latter zone represents areas of new massive developments. Uncontrolled development is a common phenomenon in this zone. The town has an existing Local Physical Development Plan prepared by Physical Planning department and approved in 1981 by the Commissioner of Lands for the town, which is meant to guide development direction. Contained in the approved existing plan is the zoning of various parts of the town demarcating different land uses including commercial, residential, recreational, public purposes and utilities among others. The plan shows areas where various land uses are allowed and areas where some land uses are disallowed. The plan also shows areas of different densities of development such as high, medium and low-density residential zones.

At the moment there is a general complete disrespect of the approved plan. Land uses have taken place where they were not meant to be. A close scrutiny reveals areas of unplanned development besides unharmonious land uses. Specific problem areas include the main highway, which is meant to be a safe way for quick through traffic, the informal (totally) unhygienic residential settlement in the immediate periphery and the other informal structures for commercial purposes. Informal activities such as hawking are to be found all over the town and mainly on the main highway where public service vehicles drop and pick passengers in total risk attached to the movement of vehicles.

On the whole, attempts by governments globally, nationally and locally to use regulations and other instruments to help protect the urban and natural environment, gear infrastructure with development and maintain and enhance urban image in view of human-nature interactions have been dismal in performance. An overview reveals troubling evidence that many government urban land policies are ineffective and frequently result in significant adverse impacts on social welfare and economic productivity.

1.2 Research Questions

1.2.1 Main Research Question

Why have existing instruments of development control failed to ensure effective planning and development control in urban centres in Kenya?

1.2.2 Specific Questions

1. Which institutions are responsible for preparing, approving, implementing and enforcing plans?
2. What are the existing instruments and powers for development control?
3. How are these instruments performing?
4. What reasons explain why developers violate approved development?
5. What is the extent of unauthorized development?
6. What are its effects?
7. What should be done to alleviate/revert the situation?

1.3 Objectives of the Study

- (i) To evaluate the institutional framework for formulating, preparing plans and enforcing compliance.
- (ii) To find out why developers continue violating approved/permitted development plans.
- (iii) To assess the extent of unauthorized development and its effects on the town's environment and the welfare of the residents.
- (iv) To propose a more effective and coordinated system for development control.

1.4 Study Assumptions

1. If institutions' capacities are strengthened financially, technically and in terms of manpower the urban management system will be strengthened leading to eradication of uncontrolled development
2. If development control instruments are used effectively and efficiently this will bring about harmonious urban development.

1.5 Justification of the Study

Historically Kericho town was a white settler's town. It provided various services mainly for the white settlers in the tea plantations and large-scale commercial farms surrounding the town. It offered little services to the indigenous community who served as labourers in the plantations and surrounding large-scale farms. Residential housing was not an important aspect of the town at the time mainly because the labour force was accommodated in the labour lines on the tea estates. However, with attainment of

independence and withdrawal of the Kipande system and restrictions on movement, there was eminent massive rural-urban migration leading to rapid urban growth. The impacts of this unprecedented urban influx on the general development and urban environment have been negative. It is accentuated by urban growth (hence urban sprawl) without concomitant infrastructure facilities. To date the town with its growth supported by a thriving tea industry (within the municipality and in the hinterland) in addition to other economic activities has been experiencing rapid growth. The town's population has almost doubled in less than a decade and is projected to grow faster given the growth rate of 5.5 per cent per annum. This population has equally continued to create pressure of demand for infrastructure and other services. The former and the later situations call for an effective urban management system to address this uniqueness in urbanization trends. This study attempts to unveil this uniqueness.

In addition to the above the expansion of the town's boundaries overtime has not been congruent with infrastructure expansion and provision. The expansion has not taken into cognizance basic planning principles. This has also encouraged the growth of informal settlements in the fringe of the town.

Similarly the need to study the town was necessitated by the fact that it is a medium sized town whose management is more manageable possible given the limitation of time and resources available for carrying out the present study. Equally the proximity to the area by the researcher prompted the selection of the town as a case study. This is because proximity in this respect led to greater convenience and ease in information gathering

which in the end led to a more detailed and incisive investigation and understanding of the development control issues.

This study aimed to suggest strategies that promote sustainable urban development. It entailed assessment of development regulation and land use controls, which have impact on urban development. The results helped to explain the reasons for prevalence of land use conflicts, presence of congestion, unharmonious urban environment and deterioration in the quality of the urban environment.

This study after examining development regulation and land use controls comes up with a system that would ensure control of urban sprawl, which if not effectively controlled would be expensive and difficult to control in future. The same system would ensure provision of both social and physical infrastructure that would keep pace with planned development. Conflicts arising from incompatible land uses will also be reduced if not eliminated. Areas of fragile ecosystem, which needs to be safeguarded can only be understood and appreciated by the presence of a coordinated system which is believed has resulted from this study. In short, this study has attempted to come up with a proposal elaborating on a more effective and coordinated system of development control which would ensure an urban environment of good quality, that is, conducive for working and living for all.

Finally it is not deniable that a thorough study of all urban centres in Kenya would provide a more detailed analysis of the problem faced by such urban centres but due to limitations of time and resources, the study was confined to Kericho as a case study

1.6 Scope of the Study

The study dealt with the process of development control in the municipality with emphasis on the built up area and its immediate environs (urban-rural fringe). The study was confined to the development control process, that is, comprising use of space (land use zoning and subdivision) and building and Adoptive by-laws (building codes, standards and regulation).

Case studies were used to identify areas with complex problems which needed closer scrutiny and analysis. These typically showed areas where there is failure of the urban management system to guide and control urban development. The existing regulations and other instruments of development control were considered in relation to their role in urban development, the institutions mandated to administer including the penalties for contravening such regulations. The study also involved the examination of the institutional framework responsible for guiding and controlling urban development. In particular, it entailed examining their capacities, their coordination and the proposals that should be instituted to improve the urban management system.

This study is divided into six chapters.

In **Chapter one** forms introduction, statement of the problem, research questions, study's objectives and assumptions. Others include justification of the study, scope of the study, research methodology and limitations.

Chapter two focuses on the literature review and the conceptual framework. It particularly involves synthesis of the same and as attempted to come up with the conceptual framework that is applicable in the study.

Chapter three concentrates on the background to the study area with physiography and drainage, population, existing process and pattern of development, it's planning and control and future development trends being the sub-topics.

Chapter four focuses on general and specific cases development control process in the study area.

Chapter five concentrates on summary of findings and the discussion of the policy recommendations.

Chapter six finally summarizes the study and draws conclusions

1.7 Research Methodology

This outlines how the research was conducted, the kind of data collected and lastly how the same data were analyzed. A reconnaissance study was done and this yielded the identification of different activity zones in the town.

The above-mentioned zones were where different activities take place for example residential, commercial and industrial among others. A scrutiny of the urban-rural

interface (fringe) where there is land conversion from agricultural to urban residential, commercial, industrial *et cetera* were studied.

This was with the aim of establishing whether regulation was being observed and whether there are or no conflicts arising therefrom. The main road (Moi highway) was studied.

1.7.1 Sources of Data

Both primary and secondary data were used. This involved data from both institutions and individuals. Among others, it included data on socio-economic activities, physical and environmental conditions of the study area. The uncontrolled development, that is, informal developments was stratified into different categories namely informal kiosks, hawkers, public service vehicles (PSVs) operators. Institutions included Local Authority (Kericho municipal council) and various heads of departments, example, physical planning, survey and public health.

1.7.1.1 Primary Data

1.7.1.1.1 Questionnaires

A set of questionnaires was administered to owners of informal structures example informal food kiosks. This was used to obtain information related to owners details, form of ownership, whether development permission was sought, the problems, risks and whether they access infrastructure or not. Another set of questionnaires was administered

to the Local Authority in so far as attempting to understand whether they are effective in enforcing compliance with the laid down development control is concerned.

Information regarding the application of the planning law, presence of a department concerned with planning was obtained. The absence of a planning department necessitated further questions in an attempt to understand the department responsible and the strength in terms of skills and workforce (staff numbers), which is thought to have an impact on the level of enforcement of compliance. Questions regarding the kind of development applications they receive including the statistics per period(s) and the position of the department on the organizational structure of the council were asked. The relevant departments where the council is supposed to seek comments from before approving, denying or deferring application permission was confirmed or otherwise. Resource persons included the Town Clerk and Engineer among others.

Another set of questionnaire was posed to the public service vehicles among others. Questions relating to whether they were taken care of in the existing local physical development plan were asked. Whether they are facing any risks, lack of essential services, are aware of the concomitant problems arising from their activities and their proposals on what they think should be done to bring efficiency in the town's framework in relation to their activities were inquired.

1.7.1.1.2 Personal Observations

This was used to appreciate like the environmental impacts of certain developments, encroachment on reserves (roads, riparian, way leaves and public utility sites). It also formed a basis for ground truth verification on the existing patterns and type of unplanned developments. Pictures were taken for sites where developments infringe on the aesthetics of nature and zoning regulations.

1.7.1.1.3 Checklist(s)

Checklists were administered to the Public Health department and Physical Planning department. This was an attempt to establish whether they are equipped in undertaking their mutual role in the whole set up of development control. Also whether they are in contact with the Local Authority (LA) in forwarding comments in order to help the later in considering applications for approval, refusal or deferment.

1.7.1.1.4 Formal and Informal Personal Interviews

Formal personal interviews were administered to officials of lands and survey departments. Others included the chairmen and committee members of the Town planning, housing and works and public health and environment committees of the Kericho Municipal Council policy arm.

The above was undertaken with guidance of a questionnaire. There was an attempt to obtain information relating to the legal framework of land administration in so far as the planning laws interact and operate. From the councilors, their perception about

development controls in general and the effects of uncontrolled development including their way forward among others was sought.

Informal personal interviews were administered to residents of estates and villages where especially there are problems arising from non-planning and development control. These areas formed case studies. Informal interview was also administered to the hawkers. Questions included the risks they encounter and access to infrastructure services.

1.7.1.2 Secondary Data

These were mainly obtained from documents available in institutions (documentary research). These included official records from the municipal council, different government offices among others.

Literature review also proved to be relevant in obtaining secondary information, for instant, by examining procedures followed in preparing plans, enforcing compliance and the legal documents used to administer the system.

1.7.2 Sampling Frame

The sampling frame composed of the entire uncontrolled/unauthorized development activities identified. These included hawkers, “matatu” operators, informal kiosks and landowners in the urban-rural fringe. Kericho Municipal Council assumed one questionnaire. This attempt was done in order to have a representative sampling process.

Finally, after establishing the number of questionnaires to be administered in each category systematic sampling was used to choose the respondents.

Table 1.1: Sampled Questionnaires

Household Questionnaires	
Villages (Wards)	Number of Respondents
Kereko(Kipchebor)	6
Motobo(Motobo)	6
Keongo(Sumeiyon0	6
Sumeiyon(Sumeiyon)	4
Chepsetio(Kabarus0)	4
Total	26
Other Questionnaires	
Informal kiosks	30
Public service vehicles	20
GRAND TOTAL	76

1.7.3 Methods of Data Analysis/Processing

The collected data was analyzed by use of both quantitative and qualitative techniques. These include descriptive statistical methods such as percentages, frequencies and tabulation. Cartographic method was also used which include making of maps and pictorial presentation. Maps include land use map showing growth direction and infrastructure map Pictures as earlier mentioned includes areas/ sites where developments infringing on aesthetics of nature and zoning regulations are found

In comparing the laid down procedures, for example, enforcing compliance and the documents (legal) that goes with that and actual procedures as was obtained from the questionnaires, observations among others, a correct impression was obtained concerning laxity or loopholes in the town's development system. This has helped to recommend

appropriate measures. It is important to note that variance from the legal framework was explained by unskilled manpower. Ultimately there is a proposal measure for this and others.

1.7.4 Study's Limitations

The most limiting of all was lack of records. For instance a report accompanying the Local Physical Development Plan was not available. This report would have helped in elaborating how the plan was to be a good guide for future development though broadly. The number of considered applications for development applications- subdivision plans, building plans- lacked in both Physical Planning department and KMC. These include plans received, approved or rejected over a number of years. In addition, records for the approved or rejected, the corresponding condition(s) for such actions were not available. This lack of records hampered exhaustive examination of the entire procedure(s). There was also limitation of resources in form of time and money.

1.7.5 Definitions of Terms

Development plan

It is simply a statement of proposals. It indicates the manner in which a local authority proposes land in their area should be used. This plan is prepared on the basis of an intensive study of existing conditions, trends and needs.

Development

The undertaking of activities that would change the use or density of land or building

Structure plan

It is primarily a written statement of policy accompanied by diagrammatic illustrations for counties and towns. It gives broad land use policies (not detailed). Its purpose is to channel major forces in socially and economically desirable directions.

Land use plan

It is a design or the document according to which land uses are to be arranged in a particular area. Its publication makes it a legal document and binding to the public. There are various types, regional, local, advisory etc

Development control

It is legislative granting of permission to commence development and undertaking of action to remedy undesirable and illegal development.

Local plans

It involves showing in a map how the different demands for land within the district will be balanced and distributed. The local plans recognize the need for land use control at the city-region scale. Local plans relate and are derived from the structure plan.

Policy-It is a statement of intentions.

LADP is a five-year capital expenditure plan containing a programme of infrastructure and investments in a sectoral priority. It is supposed to be prepared in recognition of the approved spatial plan of a local area. This is done to avoid lack of coordination between different institutions.

CHAPTER TWO

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

2.0 Planning Ideology and Planning Practices

The ideology of planning grew from and became a town planning practice through coalition of groups of people who realized that their everyday life was threatened in one way or the other. Coalition composed of sanitary reformers, garden city idealists, would-be conservers of countryside and architectural heritage and those who feared the loss of agricultural land. Their vision has subsequently translated into huge, powerful and professional machine. The general approach was a progressive and reactive movement trying to protect natural and social environments of cities.

Through the above approach Geddes advocated for cities to be thinned out, penned in by green belt and generally made like villages as possible. Geddes and others have formed part of the mythology and ideology of planning. All these have been turned professional in practice and in the academic world in order for such ideas to be used as identification of the correct strategy in professional situations.

Generally out of the above discussions the planning ideology constitutes the basic operating rationale by which the planner feels able to justify his own activities and to judge the claims of others for his sympathetic attention (Knox, 1982). Ideology is also reflected in the day to day responses to planning problems within the domain of a professional planner.

There are a number of strands of thought, which has formed the basic foundation to planning ideology:- environmentalism, aesthetics, spatial determination, the systems approach and futurism. Environmentalism in planning ideology can be traced back to the various reforms during the Victorian era. The core contribution to planning ideology has been the view that for any development (physical, moral and social) the care for the physical environment cannot be delegated to the periphery. Provision of facilities must also go hand in hand with development so as to create harmonious social environments.

Aesthetics is to do with considerations of scale, harmony, townscape and visual order as they stem from the link between planning, civic design and architecture. The main objective is to have a beautiful urban landscape. This has contributed to planning ideology through use of controls over building height, the alignment of buildings and outhouses on residential streets. In the end these are reflected in the way planners have embraced and approached slum clearance, redevelopment schemes and environmental improvement programmes.

Spatial determinism is based on the assumption of imposition of spatial order in bringing social and economic benefits. It is built on the premises that best spatial order of limited supply of land through zoning as planning's chief concern. Transport and traffic controls are also used to bring a harmonious spatial environment. Harmonious spatial environment have great bearing on the welfare of all city users:- businesses become more profitable and commuters become less frustrated and residents and pedestrians become less

vulnerable to traffic hazards. It can also lead to social interaction, the situation of feelings of security and stability and the development of community.

System approach has contributed to the planning ideology. The approach uses systems such as city system empirically analyzing interrelationships and interactions. It advocates for cybernetic approach to planning. It has redefined the substantive matter of planning in terms of modeling and monitoring of urban economics, demographic and social systems. It enables planning to be manipulated to different circumstances in problem solving facets. It is basically rational, uncontroversial and scientific.

Futurism brings the concept of the future in the idea of planning. It advocates for visioning and an optimistic view of social and economic trends. Gladstone (1976) refers to this as 'dream planning' and these are manifested in planning documents. In adapting the current to the future, planning becomes expensive, modern and technology oriented. The resultant ideology favours future designs and schemes.

Evangelistic bureaucrat as dubbed by Davis (1972) crowns all the ideology strands. This resulted from the need to immunize the profession from the persistent criticism against it due to day-to-day professional activities. The mantle of evangelism allows the planner to turn a deaf ear to these criticisms since planning as Davies (1972) puts it is "far sightedness, selfness, fairness and humanitarianism". However Cox (1976) puts some caveats that such "bureaucratic aggression would perhaps lead to relentless pursuit of policies (by planners) at the expense of defenseless citizens".

The situation can be worsened by the fact that once an idea or strategy has been floated it tends to acquire an almost autonomous life of its own. Further, this approach has severed irreparably as Ravetz (1980) describes planning to have been transformed from an 'enabling' to a 'disabling' profession. This perhaps explains why planning has met quite some amount of resistance.

2.1 Traditional Approaches to Urban Planning

The main objective of the traditional approaches to planning was to formulate a long term plan which guides development upon approval by a legal authority. It is used to guide public sector infrastructure and services and a detailed system of land use regulation and control. One such traditional planning tool is the master plan which is a blue print and is centrally planned relying on central government funding and technical capacity.

Traditional approaches to urban planning are two fold. The first is based on European practice and was developed on concerns for public health and other communities. It involves strong and centralized public intervention measures in form of land use regulations and public sector investment. The second approach resulted from the need for a strong tradition of private property rights and values in America. It emphasizes land use zoning and sub-division regulations.

Despite their theme of bringing about harmonious urban development in both developed and developing countries they have been found wanting. The inability to match planning and resource assessment and the absence of community consensus in the plan making process explains the above failures. The traditional planning approaches have been inappropriate particularly to meet the needs of towns, which immediately after 1960s experienced rapid low-income population influx. This is so because the growth has overwhelmed the financial, human and institutional resources of the Local Governments. This has resulted to cities characterized by informal residential and business premises and inadequacies of infrastructure services especially in relation to the urban poor (UNCHS,1994).

Use of traditional planning approaches have earned planners accusation that they are restricted to servicing the minority influential high income clients and trying to bring some coordination of development and services to the informal areas or ignoring such areas altogether.

2.1.1 Lack of Coordination between Financial, Infrastructure and Socio-Economic Strategies for Urban Development

Financial resources from the central government for the provision and maintenance of urban services, land banking, employment opportunities inter alia have been constrained. Master planning did not encompass financial implications for their recommended programmes and projects neither did it provide for modification in case of budget constraints.

Equally the master of planning approach inadequately reflects the priorities resource constraints and programmes of infrastructure line agencies. Where attempts have been made to address the above there have been problems of integration between “horizontal” planning systems and “vertical” systems of resource allocation. Sectoral public spending and spatial planning implementation are not coordinated and integrated. This is basically because specification of development budget priorities has little to do with spatial objectives or process (UNCHS, 1994).

In light of the above failures of the master planning approach many countries have adopted a project by project (since 1970s) as a way of financing the same so long as the project in question is financially feasible. However still there has been lack of coordination in development activities hence there was need for continued search for improved urban planning mechanisms.

2.1.2 Inappropriate Land Use Regulations

Traditional planning approach through master planning has relied on rigid regulations using traditional tools such as zoning, subdivision and building regulations and standards. These tools are known to confer more costs than benefits to residents and businesses in the city. In contrast to the rigid tools mentioned above, master planning offers little in terms of tools especially to address ecological fragile areas including steep slopes wetlands and earthquakes prone land. The net result has been fragmented urban development with negative impacts especially on the low-income groups.

The use of building regulations and standards such as minimum plot sizes, density limits and building lines have yielded to raising up land and property prices and reducing the community's access to shelter. Due to this informal unregulated sector have resulted with no concern for the environment (including hazardous areas).

Complex development permission procedures have also hampered effective and efficient urban planning and land development process. This rises due to the inability of developers (especially low-income) to afford access to land but rather being forced to occupy illegal sites. In some instances land regulations and standards have increased housing costs by up to 50 per cent denying many urban residents access to a decent housing (UNCH, 1994).

2.1.3 Institutional Shortcomings

Master planning approach of placing planning powers and responsibilities with the central government have often contributed to enlargement of the gap between the planning process and the executive system at the local level. Lengthy plan preparation periods and inadequate enforcement of such plans explain this. This in the end has led to poor and untimely implementation of plans at the local level with concomitant problems arising.

The unclear mandate on the respective department responsible for preparation, implementation and enforcement of plans due to the shifting of these responsibilities

from one ministry to another have contributed to non-compliance with the plans in various ways. For instances frequent bypassing of the planning authority by both infrastructure delivery agencies and private developers have resulted

In some instances within the domain of master planning statutory legislation have been regionalized resulting to being unenforceable over the entire country. Lack of this comprehensive approach to planning has contributed to problems of coordination and enforcement finally encouraging development preceding planning scenario.

Lengthy, over-centralized and cumbersome approval processes have also yielded inefficiency of the traditional planning approach through master planning. This as already outlined has led to fragmented and unharmonious urban and natural environments.

2.1.4 Public – Private Sector Antagonisms

Traditional master planning's failure in 1960s to meet the needs of accelerating rates of urban growth in most developing countries led to increasing public-private sector antagonisms. Communities and developers no longer trusted the public sector in the provision of infrastructure and services. To this extent land use regulations enforced by the public sector was viewed as negative and an irrelevant system.

Several reasons could be postulated to explain the root cause of this antagonism. Worst of all was the lack of incorporation of communities and their leaders in the plan formulation

and preparation process. This means that communities' needs and aspirations were not incorporated hence plan ownership and implementation greatly suffers.

Summarily, master-planning approach has conferred more costs than benefits in their implementation to the intended beneficiaries. This approach has not incorporated the stakeholder communities and their leaders hence implementation has greatly been hampered.

2.2 Sustainable Urban Development and Improved Planning Instruments

Sustainable urban development has three key features in its definition; economic efficiency, social equity and avoiding future costs. Economic efficiency demands the use of development resources provided by the natural environment while maintaining their stocks at or above their present level. Social equity calls for the equal distribution of development benefits and costs as and in special reference to the poor. Local Authorities avoidance of future costs implies that any development undertaking must be done within sound development options. The lesson learnt here is that sustainable urban development calls for use of resources accessible to everybody with environmental consideration in order to bring about an effective urban spatial structure.

The use of appropriate urban planning instruments to bring forth sustainable urban development has identifiable benefits at community, citywide and regional level. These include higher environmental standards and attention to externalities, improved access to shelter, commercial and public land uses for low-income groups and increased individual

peace of mind, cultural satisfaction and social stability. Others are efficient and more coordinated provision of infrastructure and other services and increased generation of land property based financial resources, which can be used to improve urban conditions. The various appropriate urban planning instruments, which have yielded the above encouraging results, can be summarized:

Regulatory Measures
<ul style="list-style-type: none"> • Legal regulation of land use and development • Legal regulation of land ownership, tenure and transaction • Legal controls on pollution standards, carrying capacities, hazardous areas, cultural property etc • Legal controls on buildings and infrastructure standards • Legal regulations on provision of public services and/or their provision by contracted out private companies
Development Promotion
<ul style="list-style-type: none"> • Direct and indirect support to land development, redevelopment and upgrading • Provision of infrastructure to guide urban expansion
Financial Resources
<ul style="list-style-type: none"> • Taxation of land and property • Infrastructure and services cost recovery • Subsidies for the provision of infrastructure, buildings and services
Coordination Measures
<ul style="list-style-type: none"> • Coordination of spatial, financial, socio-economic and environmental impacts on land use and development • Coordination of national, regional and local policy affecting city land use and development • Support to low-income, disadvantaged and other target groups in the city

Source: UNCHS, 1994

2.2.1 Improved Typologies of Plans

As a response to the shortcomings and demerits, which accompanied the use of master planning new approaches have been developed. These are expected to lead to more sustainable urban development.

2.2.1.1 Structure Planning

It was introduced in the United Kingdom as a long-term plan with broad policy directions. It is a generalized spatial plan which is intended to act as a framework for more detailed plans - local plans basically acting as guides to development. Structure plans address a broader range of social, economic and physical developments issues as opposed to the older master plans. Structure planning can also be seen as advantageous in the following ways; it is much more comprehensive, flexible and much better able to respond to community needs and aspirations.

In situations where structure plans are prepared centrally their effective implementation has been adversely affected by lack of coordination between the national and local administrative levels. Besides this, other shortcomings associated with the approach include too long time taken in preparation of plans leading to plans becoming outdated before they are approved. This can be explained by shortage of skilled planning staff and the tendency to be too comprehensive through collection of too many data. In situation where structure plans are prepared centrally their effectiveness to implementation has been adversely affected by lack of coordination between the country and local administrative levels.

To make sure that structure planning serves its intended purpose there is need to ensure that these plans are action oriented , general but clearly identify areas where growth and change should occur and to be flexible enough in guiding urban policies.

2.2.1.2 Action Planning

Generally defined as an implementation-oriented process to solve problems at a local level with a short-term perspective. It does need comprehensive collection of data and may remedy physical, social or economic problems as it involves local community participation so as to ensure success.

Action planning basically has six stages as follows:-

- i) Identification; What are the problems?
- ii) Strategies; What are the approaches?
- iii) Options and tradeoffs; What are the actions?
- iv) Planning for implementation; Who does what, when and how?
- v) Monitoring; What is the performance and what have we learned?
- vi) Presentation of Community Action Plan to the community.

As opposed to the earlier master planning (blue print) it is a 'process' rather than a 'product' system. It also involves emphasis on community involvement at an early stage in the planning process. However action-planning approach, if over emphasized may be counter productive in the long run. It can produce a number of uncoordinated projects or programmes, which will be productive in attending to the underlying problems.

2.2.1.3 Strategic Planning

It arose also in response to the shortcomings of master planning and structure planning respectively. It is participatory in bringing about integrated urban development. It is an all inclusive approach in the sense that it does not stop with the production of a structure plan but proceeds to outline a set of inter-related strategies (hence strategic) for urban development. The broad aims of this approach are to enable all public and private initiatives to promote economic growth, provide basic urban services and enhance the quality of the environment. Its relationship to the regional and national development goals and strategies is of strategic importance to the success and relevance or viability of the plans.

The key characteristics of strategic planning are:-

- i) Community participatory approach.
- ii) Cross-sectoral coordination and integration.
- iii) Financial feasibility.
- iv) Agreement on comparative advantage of public and private sectors in urban development and management.
- v) Enabling role of public sector in support of private sector.
- vi) Inter and intra-sectoral choice mechanisms.
- vii) Linkages to and from national policy issues.
- viii) Resolution of conflicts among participants.
- ix) Regular monitoring and evaluation.

2.2.1.4 Improved Standards and Regulations

Most of the common instruments used are, building regulations, infrastructure regulation (on-and-offsite) and zoning. The implementing aspects of all these three are standards. Use of standards (in relation to the three mentioned instruments) can be manipulated to serve different circumstances in the process of development. For instance standards can be relaxed or reduced for the low-income groups and selected areas to make them affordable. Through this approach existing settlements can be legalized and the poor can further benefit by using tenure rights for obtaining loans hence more incentive to improve their living conditions. However, this can be made inappropriate by the need to strictly enforce environmental controls (bearing more benefits than cost to the whole society), social and political resistance in general and a resistance by city officials in particular to implement the relaxed or reduced standards.

Improved and appropriate land use regulation must respect local socio-economic conditions, household income levels, and the limited resources of the city to implement and enforce regularities.

For land use regulations to be effective they must be characterized by:-

- A clear distinction between planning, infrastructure and building standards and regulations
- A range of standards for infrastructure and building appropriate to different income levels, capable of incremental upgrading
- Reduced minimum legal plot sizes
- More appropriate standards for floor area ratio and density limits

- Interim measures for areas not yet covered by local plans
- A simpler and more effective system of development control

2.2.1.5 Improved Zoning Techniques

Zoning is perhaps the oldest and common form of land regulation. It entails delineation of land into zones or districts with gross densities of user areas and plot ratios for commercial areas, parking and height control among others outlined.

The earlier form of zoning involving single or limited use of land parcels for example housing has been accused of being rigid. This has called for development of new zoning variations such as mixed use zoning, floating zoning, conditional or contract zoning and phased zoning. Mixed zoning involves incorporation of integrated project components within a coherent plan that stipulates the type and scale of use, permitted densities and related items. Floating zoning recognizes future needs and this needs are described in zoning ordinances but no spatial location on the map will take place until the need arises. Conditional or contract zoning involves bargaining between city governments with developers in terms of planning gain arising out of planning exercises. The two parties need to agree on the transfer of social benefits upon development of commercial land uses by developers. Phased zoning is step-by-step zoning through the need to seek permission before development could occur. Example is the issuance of permit to develop up provision of adequate infrastructure by the governments.

For zoning techniques to continue to be important tools of land regulation, flexibility to reflect performance standards must be maintained and enhanced.

2.3 Choices of Development Control System

Two types development control systems are available for a country to choose from; the policing and enabling model.

The policing model requires individuals through to large development projects to comply planning, environmental and building standards before they can obtain building permits.

The model assumes availability of skilled and adequate staff to enforce compliance.

Several other departments such as the physical planning department, and the public health department respectively are to participate in this process.

The enabling model recognizes various aspects in efforts to promote sustainable urban development. First is the need of partnership between a department responsible for physical planning and private sector developers. Secondly, is the recognition that staff shortages and other constraints will continue to affect city government's potential to effect sound urban development especially in the developing countries and Local Authorities. Thirdly is that development control as a guide to development is determined in its effectiveness by resources, political and social consensus.

2.4 Making Urban Planning more Effective

Besides the earlier improvements to urban planning practice structure, action and strategic planning there are other innovative approaches through which the planner can

play an important role. These include supporting innovative land development, supporting land tenure and land transactions, redefining public and private sector partnerships, infrastructure-led development, supporting urban economic development and improved investment decision-making.

2.4.1 Supporting Innovative Land Development

This advocates for adequate supplies of serviced land for productive enterprises as well as residential and social uses. These can be achieved through extension to the urban areas and major redevelopment of Central Business Districts. This approach also takes cognizance of key concerns such as hazardous lands and underground aquifers and carrying capacities and other similar limitations and constraints to urban development.

Particularly planners could guide development more proactively in the following ways:-

- Increasing the supply of new urban land by direct and indirect interventions in private land markets i.e. land banking, land readjustment, land acquisition
- Encouraging the development of vacant land in built-up areas by the use of vacant land taxes and other methods
- Implementing guided land development programmes as joint public-private sector initiative
- Increasing access of low income groups to existing and new urban land through; cross-subsidies, the intensification of low density urban areas, sites and services projects, land sharing, use of appropriate land development standards and the more intensive use of low density built-up areas

- Incorporating informal settlements into formal systems of land management, recognizing the legitimacy of informal settlements and identifying those areas capable of improvement and those resettlements is needed

2.4.2 Supporting Land Tenure and Land Transactions

The existing land laws and regulation in most cases do not adapt with the growth in land transactions and subdivisions. This is compounded by the costly (staff time, transfer taxes, stamp duties etc) of the land transfer processes. Discouraging results in this sense include; poor access to credit systems, insecurity of tenure and long and costly dispute over land ownership.

To promote sustainable urban development, therefore quicker and cheaper systems of titling, registration and tenure must be introduced. The private sector can play an important role in speeding up these processes.

2.4.3 Redefining Public/Private Sector Partnerships in Development Projects

In assessing this relationship it is important to understand what each one of these two sectors would do best. The public sector would do well in land assembly, fast track plan approval and coordination of infrastructure investment for the projects while the private sector would facilitate efficiency in the provision of finances; floor space marketing and efficient relationships with building contractors.

Mutual benefits that would result include; urban redevelopment of decayed neighborhood considered too risky by developers to tackle on their own, increased economic activities

and taxes, financial gains from grouped leases and participation in cash flows from joint development projects.

2.4.4 Infrastructure-led Development

The trend of urban growth has not been in conformity with infrastructure provision such as water resources and supply, sewage, drainage and transport. The private sector/developers must be enabled and given incentives to play their role in urban development. For instance road construction can be used to direct urban expansions into desirable low cost development zones and away from hazardous land, ecological conservation areas etc. Through this way (among others) urban planners would see their roles in guiding urban development bearing fruits.

2.4.5 Supporting Urban Economic Development

Through the integration of macro-economic policies in urban planning context urban economic development including employment generations and other economic objectives can be enhanced. This is possible because potential constraints would be identified early enough and incorporated in the plan so as to provide guidance on the operations and requirements of the growing informal sector, or its linkages with formal businesses.

Particularly as World Bank (1991) summarizes below the use Urban planning measures can support economic development in many ways:-

- Strengthening the management of urban infrastructure with particularly emphasis on maintenance

- Improving the city-wide regulatory framework to increase market efficiency and private sector participation
- Improving the financial and technical capacity of municipal institutions
- Strengthening financial services for urban development.

2.4.6 Improved Investment Decision Making

With the use of strategic planning approach calling for close linkages between spatial planning, financial resources and sectoral strategies, the urban planners must become involved in investment decision making more than before. Through this the urban planners would use the opportunity to help achieve key urban development objectives.

2.5 Theoretical Approaches to Urban Planning

Theoretical approaches to urban planning are directly or indirectly concerned with the distribution of power in society and the mechanisms for effecting possible changes in existing power relationships. The perspective is on the people, institutions or structures constituting the locus of power (Kirk, 1980).

2.5.1 Pluralist Approach

This approach categorizes the society into a collection of interest groups competing for control over government action through electoral process. Power is with “People” and each society is composed of small interest groups with different approaches to exercise influence on decision salient to them. Power is so much diffuse such that non of the group can exert dominance over any particular segment of society. Any group that tries to

exert dominance over the other is countered by an opposition from another group hence ensuring equilibrium over the whole system. In this approach the political process is 'open' and democratic, with easy access to decision-makers and numerous channels of communication for individuals and groups.

In relation to land use planning pressure group activity in Britain in the 1960's for instance has been in opposition to the proposed location of motorways, large-scale power stations, more playing space, additional housing, rehabilitation of existing housing rather than demolition and redevelopment etc. Much of these pressure group's activities have had success. Additionally trade unions acting as pressure groups have been characteristic with growing power and increasingly consulted by government on matters of individual and economic policy before they are to be made. These community interests may be taken in support of pluralist formulation. They involve forming of groups and organizations based on the shared interests.

The pluralist perspectives have an implicit egalitarianism, with its stress on the right and ability of the people to organize themselves around issues that concern them. Since individuals are equal legally, they have equal opportunity for organizing themselves for their particular interest.

Several organizations acting as pressure groups such as Royal Town Planning Institute, the Royal Institute of British Architects etc are being consulted by government and make representation about existing or prospective legislation. Locally such Professional bodies

participate by contributing submission in inquiries like the recent Njonjo Land Commission of Inquiry. Some other land organizations are concerned with trying to influence Local Authorities in relation to influencing land-use planning policy and practice.

2.5.2 Power of Public Bureaucracy

Local Authorities' decision making in sphere as housing and land use planning encompasses though implicitly the power of public bureaucracy. This is exhibited by usual residents' groups conflict with the Local Authority decision-making. This is so because members of the public have difficulty in obtaining information as a result of bureaucratic and complex structures of Local Authorities. In this ways, the Local Authorities are viewed as being insensitive to the residents need for definite information concerning the future of their homes.

In the context of this approach there is need for administrative justice by allowing residents participate in decision making and access to information. If this is implemented as it should, it will lead to efficiency in the provision of services and safeguard of the interests of the residents. Since there is bound to be 'maladministration' in the running by Local Authorities there is need for residents to have means of safeguarding their interests either through their elected representatives or through the ombudsman or appropriate tribunals.

For the pressure groups to penetrate bureaucracy in government systems, these pressure groups must be knowledgeable. They must know how the government departments and Local Authorities work, the division of Labour between department and the chain of command. They must know the relevant legislation and obligation of Local Authorities. They must be knowledgeable at least with technical languages for instance a knowledge of planning procedures and technical aspects.

This approach advocates for managers to be more in touch with the needs and aspiration of the people they are managing and they are needed to better utilize the existing resources. For this is to be achieved, there is need for better communication between professional, administrators and residents. Situations where land use decisions are taken by officers and policy makers with prejudices, conviction and technical expertise and with little regard to the interest of “the planned” shouldn’t happen.

2.5.3 Reformist Approach

It differs from the previous two approaches in the sense that it takes recognition of basic structural inequalities of power, influence, income and wealth (Kirk, 1980). The approach entails critique of inequalities in resource use, explanations for the same and how they are reinforced by the prevailing institutions and thus perpetuated. The approach in addressing the proceeding problems embraces a humanistic liberal egalitarianism and some variant of Marxisms. Harvey (1973) cited in Kirk (1980) sees the need to enhance the understanding of urban process in order to facilitate a more just distribution of scarce resources especially in urban areas.

Effort for redistribution of scarce resources raises question such as who is intended benefits, who actually benefit and whether there is a “give and take” (trade off) as in as one gains the other loses and vice versa.

Political activities in urban areas must be “zero sum gains” in the sense that conflicts between the led and the leaders must be productive through arbitration and agreement so that gains in the long run will be equalized. Conflicts must be contained within the scope of existing local political institutions and with appropriate political will.

2.5.4 Political Economy of Urbanism

This approach incorporates the Marxist’s concepts as a basis for an analysis of urban situation. It ties economic factors and both social and political situations. It stresses that the study of urban issues like power exercised and land use planning cannot be separated. Lamarche (1976) views the city and urban problems as the local consequence of capitalist accumulations. Capitalist approach to urban development and issues can widen the gap between well-equipped and poorly equipped regions, towns or neighborhoods for instance. This can be corrected through state intervention in maintaining social formulation as a whole. Rational, socialized planning of urban development is necessary to continued capitalist accumulation.

State intervention can eliminate externalities, encourage capital formulation and concomitant benefits through financing unprofitable and expensive urban infrastructure

and encouraging outcomes of urban planning as tools of creating harmonious urban development.

The approach points out that urban politics can be divided into urban planning and urban social movements. Kirk (1980) explains that urban planning is the study of the structures governing the nature of urban society and to minimize conflicts while urban movements is the study of the practices of the class agents. This explain how urban systems can be socially formed and maintained or transformed

To sum up, this approach has more strength for gaining an understanding of urban issues and land use planning since it integrates city development and the workings of a market economy.

2.6 Development Control

Purdue (1977) defines Development Control as legislative granting of permission to commence development and undertaking of actions to remedy undesirable and illegal development.

Omuta (1987) considers it as a major operational component of the town planning professional practice.

Physical Planning Hand Book (1987) defines it as “any administrative system seeking to plan the country’s resources and regulate the use and development of land”

2.7 Public Interest and Planning (Land Use) Control

Apart from man's economic and social behaviour, land use planning also is explained by public interest – health, safety and general welfare. This public interest connotes the use of urban land with assurity of livability and sound development. Additionally it involves the notion of control for public ends, as they may be distinguished from private economic or social ends. Further public interest is associated with public interest- encompassing actions taken for the public interest. To achieve and protect these, public interests connotes the notion of control. Its control ranges from city planning process itself through to imposing of regulatory measures. In nutshell public control over land use is concerned with livability-related considerations involved in achieving an efficient and harmony in the way in which the physical environment develops. Public interest can be sanction as a public purpose, whether under the police power, the power of eminent domain or the power of taxation. It includes health, welfare, morals, safety, convenience, comfort and prosperity. The first four are usually given much attention in land use planning.

Health and safety are achieved through regulatory measures such as health, sanitation, housing and building codes. These measures prevent conditions injurious or hazardous to the physical well being of the people of the community. On top of physical health and safety, mental and emotional well being is also emphasized. Controls in this respect may include developmental measures as involved in the programming and carrying out of public works or urban renewal proposals and public acquisitions of certain areas or open spaces in the community and the planning or re-planning of these areas for specific uses.

These may entail use regulatory measures such as zoning, subdivision and density control and the preservation of land for public uses through official map procedures.

Convenience provides a basis for the exercise of control in the public interest. This can be achieved through upholding the construction of streets and highways as a public purpose and locational arrangements of land use and the relationship that each functional use bears to every other one. Convenience is measured (modernly) in terms of minutes of transportation time saved. Land use planning as it attempts to increase convenience concerns itself with the locations of destinations (example shopping-to-work, home-to-work), which obviously play an important role in maximizing the ease of movement.

Economy (public costs) is defined in terms of efficiency in the land use pattern and its public costs implications whether in terms of municipal expenditures or cost to the urbanite in general. It is related to convenience with slight differences. Convenience involves expenditure of time and effort while economy concerns itself with the cost of this time and effort to the urban residents and to the city as an institution.

Amenity is the pleasantness of the urban environments as a place to live, work and spend ones leisure time. Relates to the urban perceptual aspects of urban surroundings- their aesthetic appearances. It is however questionable as a part of public interest since what is attractive and pleasant in the living environment tends to vary with every person- according to individual's values, whims and beliefs. This variation puts amenity in the lower end of the scale in relation to the other aspects of public interests.

2.8 Need for Development Control

The significance of planned and regulated urbanization has many benefits to offer especially in developing countries. It generates forces of economic growth; occupational diversity; social mobility; cultural change; technological innovation; new forms of thought and behavior and in short a new way of life (UNCHS, 1994).

An efficient Development Control System should ensure control and development of urban land as a home for the inhabitants without seriously endangering the economic structure and policies of state. It is also to ensure good healthy environment of the residents and the town's aesthetics (Planner Miriams cited in George, 1973).

In particular, environmental considerations enshrined in the Development Control System ensure that industrial concerns should have a proper solid waste disposal system. They should not dump their wastes in public garbage receptacles, at street corners, or any near about places. Effluents, which are veritable source of horrid odour and breeding places for mosquitoes and flies, should be avoided.

It is true that land is specific in location, immobile hence, their character and value often owes as much to the use, which is made of neighbouring sites as to their inherent qualities. Their value may reduce due to nuisance, which may spillover. On the other hand, their market values may increase because of improvements on adjacent plots. Different activities have varied effects on the well being of plot owners. Effects can be positive or detrimental, for example, in the presence of huge coal-fired power stations.

Here as much as electricity is produced and consumed the negative effects of acid rain over thousands of square miles cannot be overemphasized. In other words the market system, which advocates for absolute rights of private owners, has failed. This has forced the government in light of costs and benefits to restrict these rights in the interest of society now and in the future. In championing the interest of the society, the government redresses the external costs on behalf of the affected individuals and firms against those who cause the negative spillovers either by forcing them to pay or to minimize their effects or simply prevent them from occurring. For instance, zoning of land may separate factories and houses in order to reduce the effects of atmospheric pollution and industrial noise and heavy traffic on residential areas.

Land regulation is also relevant given the wide interests, which give rise to demands for the protection of sites and might yield information of archaeological, ecological, historic or scientific interests. Equally, development control can come in handy in integrating development and conservation of areas of great scenic beauty, which provide recreation or wilderness experiences (marshland habitats). It is with this in mind that the government feels obliged to protect land, which offers these resources as well as that which can produce food (hence restrict threat over arable agricultural lands). This last part confirms that market systems have failed to allocate resources among the competing uses in a proper manner.

In relation to the supply of "public goods", social gains by the community at large would not be possible in a market system since the pricing and payment by all those who

receive these gains over a period of time wouldn't be practical. In areas of great scenic beauty, it may be easier for the government to compensate such owners for the diminution of their property rights than for the owners to collect a payment from all those who visit the area and enjoy the unspoiled view and to exclude those who are unwilling to pay.

2.9 Voices against Land Regulation

Proponents argue that land ownership makes the individual independent of the state, strengthens democracy and thwarts the abuse of government power. State ownership and control can lead to corruption and discrimination (Bjork, 1980). Also in all facets, history of economic growth argues strongly for the private and unfettered ownership of land.

Other results culminating to the voice against development control includes expenses involved in the drawing up and restrictions, delays impacted on developers by the need to obtain approval before work can start to the drab uniformity of regulated development among others (Sharp, 1975 and Strong, 1981).

2.10 Origin of Land Use Control

2.10.1 Early attempts to Control Land Use

Land use control can be traced back to Enclosures Acts period where the British government and Parliament were involved with the layout and ownership of land. A serious first attempt however to control land use though unsuccessfully by the crown was in London after the great fire of 1666.

2.10.2 Artisans' and Labourers' Act of 1868

This marked the beginning of continuous and modern development controls. The entire process started by control of residential developments by Local Authorities. This was after they were given the first historical powers by the Central Government to close and demolish insanitary or dangerous houses.

By 1909 another step of ensuring minimum standards of construction and provision of adequate facilities was brought forth. At this time Local Authorities were given additional powers to build houses and in so doing hoped to ensure the home healthy, the house beautiful, the town pleasant, city dignified and suburb salubrious in contrast to the previous years. This was done by development of public health and housing policies.

This Act gave Local Authorities powers to prepare schemes for controlling development of new housing areas. It emphasized on regulating and raising the standards of new development to heal the evident health and housing problems.

It is important to note that the increased powers for controlling and regulating development was only for land which was being developed or appeared likely to be developed. The Act was also short of remodeling the existing town, re-planning of badly planned areas and driving of new roads through old parts of the town.

(Cullingworth, 1970).

2.10.3 Town Planning Legislation of 1919

Though strengthened, the above powers through the 1919 Town and Country Planning Act, the Housing Acts of 1920's and the Housing and Slum Clearance Act of 1930's it did little in practice to broaden the basis of town planning. It is however appreciable that under Housing and Slum Act of 1930 more than 300,000 houses were demolished before the Second World War.

It obligated Boroughs and urban districts having a population of 20,000 or more to prepare schemes (which were later subject to parliamentary approval). It gave powers (total) to Local Authorities to take steps to plan the future aerial arrangements of development. Despite little contribution of the Act to planning much of the developments in the housing sector can be attributed to the Act. For instance, (this is in addition to the appreciable fact above) government subsidies were introduced especially in building of middle-income houses. Equally, the issue of residential densities was introduced.

Operationally, the Act allowed a time lapse between the time the scheme is prepared and the time it was approved by parliament. During this time lapse, Local Authority exercised interim control though developers were not under any required obligation to apply for planning permission. Too often developers took chance that no scheme would ever come into force or if it did no Local Authority would face pulling down existing buildings. The damage was therefore done before planning authorities had the chance to

intervene. Ironically, still once development permission had been granted the Local Authority ceased to have powers to control planning over individual developments.

The scheme so mentioned above was a zoning plan which allowed particular uses with provision for limiting the number of buildings, the space around them *et cetera*. Additionally non-conforming uses were not allowed.

Nevertheless, besides the above merits there are notable shortcomings, which are observable. These include weak control over land-use change; the optional role of Local Authorities participation in planning and the cumbersome nature of plan approval and amendment mechanisms. The threat (which) by landowners and developers to seek compensation from LA after being refused approvals discouraged LA from taking decisive actions was also a shortcoming. Additionally land use change was subjected to very little control before Second World War- choice of sites was determined to a substantial degree not by “good planning reasons “ but by market forces (Dawson, 1984).

2.10.4 Town and Country Planning Act of 1947

The Act almost brought development under control by ensuring that the development control system stopped to be merely a regulatory undertaking. The Act ensured that development plans were mandatory for all areas in the country in so far as showing the use to which each parcel of land was to be put. This guided development or preservation hence development took a new dimension, that is, according to good planning principles (no development proceeded without planning permission). In summary, all purported

development must tally with the overall development plan with the exception of development by central government bodies, statutory undertakers for example the British railway, farming activities and agricultural improvement and afforestation of land.

2.11 Tools of Development Control

Broadly, the Physical development plan as a planning tool aims at organizing the use of land and the character of buildings and communication routes to achieve the maximum practicable degree of economy, convenience and beauty.

Particularly, zoning, sub division and density control regulations are used as development control tools. Zoning entails delineation of land into zones or district with gross densities of residential areas and plot ratios for commercial areas, parking and height control outlined. Sub division regulations encompass the use of minimum plot sizes acceptable in specified development zones. The intentions of these regulations are to restrict gross developments in a certain area. Density control regulations involve plot ratios, which denote the total floor of a building to the area of the site it occupies. There is also plot coverage, which is the ratio of the area the building occupies to the total area of the plot. User restrictions are also used to control development.

2.12 Kenyan Case

2.12.1 Historical Perspective

The beginning of the last century initiated the development control concept in the country. In 1901, the Colonial Governor due to the need to address urban problems

proclaimed the Development and Land Use Regulations Act. Evidently, the Kenyan planning machinery is a product of the English Town and Country Planning Acts. The Town Planning Ordinance of 1909 (later Town Planning Act cap 134) was the first of the physical planning laws and machinery in use in Kenya by 1931 having been modeled from the British Town and Country Planning Act of 1919.

By 1952, the Colonial Government further emphasized the need for urban management leading to the formation of a study group to look into "Land and Population in East Africa" (Kanyehamba, 1973). The following year the colonial secretary recommended the setting up of a Royal Commission. This was in response to the findings (later published) of the study group whose terms of reference were "The problems of Land in relation to the Economic, Industrial and Social Development of the East African Region as a whole and the increase of population which was taking place" (Journal of Africa Administration Vol. XII cited in Murithi, 1990).

With the attainment of independence, most of both the colonial and customary laws (determining land rights and ownership of land), which were applicable before independence, were reviewed. This gave birth to a new legal and administrative framework within which both government and other public institutions operated. The first National Development Plan of 1964-70 - albeit prepared at short notice - intended to be flexible to create provision for adjustments in the face of experience and new ideas. The Government in the Sessional Paper No. 10 of 1965 explained "...with independence, Kenya intends to mobilize its resources to attain a rapid growth of the economy for the

benefit of its people...". In the whole setup, resources were to be reorganized and mobilized for a concerted carefully planned attack on poverty, disease and the lack of education for achieving social justice, human dignity and economic welfare for all

To attain the preceding it was paramount that planning, direction, control and cooperation needed to be followed as a priority. The modification over time of the degree and nature of controls was necessary because in most cases private or public ownership may be abused leading to improper use of resources. This is beefed up by planning that ensures the appropriate uses of resources since planning is a discipline that is bounded by objectives and mechanisms on a range of controls to ensure that plans are carried out.

Besides the policy framework, the constitution and the first ruling party manifesto also echoed the need for planning with the former asserting that "...there must be controls to ensure that property is used in the mutual interest of the society and its members...". The ruling party manifesto asserted thus "...we believe in a wide measure of governmental control of the economy in the national interest ...". It continued that private investment must be undertaken in accordance with "...our national policy and needs..." and "...the government will not tolerate holding of large underdeveloped tracts of land by anyone..."

Despite these attempts to make legal and administrative frameworks conducive to changing environment it is important to note that land use legislation have received little attention in real terms despite rapid urbanization. This is because with attainment of

independence hence removal of the Kipande system and restriction on movement there was eminent massive rural-urban migration leading to rapid urban growth with inadequate infrastructure facilities.

In an attempt to understand the urban framework in Kenya, it must be made clear that urban planning has two broad objectives. Firstly it aims at the attainment of economic development of the country as a whole and secondly control of land use with environment, health, social and social considerations among others. Kenya being a developing country it has done little (at least in practice) to integrate economic development and the control of land use in national policies. This should be done in such a manner that Local Authorities must strengthen development of regional areas of jurisdiction since they are very capable to guide and locate new industries and factories efficiently than a national authority or government.

The above ideal situation, however, cannot be realized in developing countries (Kenya included), explanation being that Local Authorities lack adequate finances, qualified manpower and efficient infrastructure inside urban areas among others.

On the other hand, the said laws having been derived from Britain are not effective in the local situations given the fact that planning problems in a developed country are not similar to the problems in developing countries. These laws must be reviewed and amended to accommodate new factors and circumstances. Uchenda(1971) observed

rigidity in such laws to integrate land use to economic development resulting to apparent social development

2.12.2 Development Control Legal Framework in Kenya

There are various Acts of Parliament and Adoptive and other By-laws that are used to guide and facilitate development in Kenya.

2.12.2.1 Physical Planning Act (PPA)

This Act became operational after it was formally launched by the Minister for Lands and Settlement on 29th October 1998. The Act is broken down into parts namely part I, II, III, IV, V, VI and schedules.

Part I deals with definition of various terms. Among others the ones relevant to planning and development control includes advertisement, development, development application, enforcement notice, Local Authority and various plans.

Part II deals with the administration of the Act with the Director of Physical Planning being the chief government advisor on all matters relating to physical planning with respective functions clearly defined in sections 5(a) to 5(f). It includes the delegation of powers by the Director and indemnity of the Director and his delegated officers in the course of their work.

Part III entails the establishment and composition of Physical Planning Liaison Committees at National, District and Municipal levels (sections 8-9). National liaison committee functions are stipulated in section 10(10) while the functions of other liaison committees are stipulated clearly in section 10(2).

Part IV identifies two types of plans to be prepared by Director Physical Planning (DPP) that is Regional Physical Development Plans and Local Physical Development Plan. The former is to be prepared for government land, trust land or private land within the area of authority of a county council (section {11}). The later is prepared within the area of the authority of a city, municipal, town or urban council or with reference to any trading center or market centre (section 24{1}). Their various purposes and contents are clearly outlined. This part also provides the procedure of how they should be prepared, submitted and consequently approved.

Part V is the most important part in relation to this study as it deals with the control of development. It identifies the Local Authorities as a very important institution controlling development with delegation of powers from the Director of Physical Planning. It deals at length with how development is to be guided in relation to procedures of development application, how decisions are to be carried out and the enforcement of development permissions. Caveats against aggrieving decision(s) are clearly stated. Penalties against non-compliance are also included.

Part VI deals with miscellaneous items with section 41(1) and 41(2) being worth noting. These two sections deal with subdivision of land whereby the procedures of doing the same outlined as it should be in accordance with the requirements of a Local Physical Development Plan (approved) and prepared by a Registered Planner or Department of Physical Planning. It finally ends with various schedules, which provide various instruments to be used in administering the Act.

2.12.2.2 Local Government Act cap 265

Local Authorities at the local level may initiate and undertake plan preparation activities. A clearer role of Local Authorities is that of implementing the proposals of plans and ensuring that the requirements therein are complied with. Local Authorities by invoking Local Government Act and the Public Health Act have wide-ranging powers to control and guide development in their areas of jurisdiction in addition to using various by-laws. The Physical Planning Act bestows Local Authorities with legal authority in the implementation of physical planning proposals and decisions and based on this, it is implied that Local Authorities are key development control agencies in the country.

Local Authorities under the Local Government Act cap 265 of 1968 are empowered to make by-laws subject to any other superceding legislation for “controlling and regulating” the development and use of land and buildings in the interest of proper and orderly development of their area.

Building codes and By-laws are of two types: -

- (i) Grade I by-laws which is applicable to high income and high quality standards of buildings.
- (ii) the Local Government (Adoptive) by-laws-Grade II building or development of 1968.

Grade II by-laws were enacted to control development in urban frontier areas, which initially were agriculturally used. They deal with specific issues relating to subdivision, use of land including change of user conditions in such lands. It also deals with advertisements among others. They may also be used to control quality of development by stipulating conditions in relation to sitting of buildings, the design, size, shape, elevation structure and appearance of such permitted developments.

Particularly sections 162, 159, 166 and 177 of the Local Government Act are relevant for planning and development control. Section 162(g) concentrates on subdivision regulations. It prohibits subdivision or cutting of land and transfer without the approval of the Clerk or any other person appointed by him. Any plan, which has been approved by the Local Authority, must not be changed (cancelled, altered, withdrawn) without the consent of the same Local Authority.

Section 159 advocates for control and licensing of shops in the rural areas.

Section 160(a) to (d) gives powers to LA for establishing and maintaining sanitary services for use by the public and also ensuring that the persons served by such services are compelled to use (example use of dust bins). They also have powers to establish and

maintain public lavatories and these must always be maintained in good order and repair. Other services are establishment of cold storage works and depots, slaughterhouses among others.

Section 165(1) gives Local Authorities powers to refuse to grant or renew licenses and to cancel licenses. They also do this with compliance with respective by-laws.

Section 166 deals with planning as a process of guiding development. It prohibits and controls the development and use of land and buildings in the interest of the proper and orderly development of its area.

Section 177 deals specifically with planning for housing purposes. It guides sub division for purposes of house construction and specifically for rentals and tenant purchase.

Section 201 gives powers to councils to make by-laws. These by-laws are made to ensure maintenance of good health, safety and well being of the inhabitants of its area including also good rule and government. They (by-laws) must also prevent and suppress likely nuisances. They are equally important to strengthen administration of the things it must establish, maintain and carry on, control or regulate, prohibit, and require compulsion.

2.12.2.3 Public Health Act cap 242

This Act does not define standards for land planning designing and construction. It requires the Ministry of Local Government to consult the Minister for Health before

approving any by-laws by LA affecting public health. It avoids the use of any Act, which will be in conflict with any under the Act.

2.12.2.4 District Liaison Committees

Local Authorities being the direct beneficiaries of the various planning activities must liaise significantly with these committees to realize effective implementation of their plans. These liaison committees are composed of various officers who head different sectors of the economy and different aspects of development at the local level. The function of the liaison committee among others is to determine development applications for change of user or subdivision of land, which have significant impact on contiguous land or be in breach of any condition registered against a title deed in respect of such land (PPA 10{1}-2{e}).

2.12.3 Development Control Procedures

As earlier outlined there are different matters dealt with – these are subdivisions and amalgamation, extension of leases and uses, change of users and building plans.

When seeking development permission form PPA1 is filled in triplicate and submitted to the relevant Local Authority. This is so because part V of the Physical Planning Act vest development control powers in the Local Authorities. The Local Authority does this role in supervision from the Director of Physical Planning or an officer authorized by him in that behalf.

Section 30(7) and 32(1) of the Act bestows this responsibility on the Director of Physical Planning thus

30(7)

“ no local authority shall grant a development permission for any of the purposes mentioned in subsection(5) without a certificate of compliance (PPA 5) issued to the applicant by the director or an officer authorized by him in that behalf” and

32(1) continues

“a local authority may when considering a development application submitted to it under subsection(1), consult with various head of departments at the national level or their authorized officers in that behalf.

2.12.3.1 Subdivisions and Advisory, Change of User Plans Procedures and Extension of Leases

The applicant begins with making an application to the Land Control Board as per Land Control Board regulations section 32(4) for consent to subdivide land.

Upon receipt of consent to subdivide the Land Control Board regulations section 2(2) and the Physical Planning Act 1996 section 41(2) should be adhered to in preparation of the plans. The said sections dictates that the plans be prepared by a commissioned physical planner or the Director of Physical Planning or his authorized representative (example District Physical Planner). In case the subdivision plans are prepared by commissioned physical planner, physical planning act 1996 section 41(2) directs that

such plans shall be subject to the approval of the director responsible for physical planning.

Local Authorities receives development applications through form PPA 1 accompanied by such plans (read subdivision plans) and particulars necessary to indicate the purposes of development and other specific requirements as provided by PPA section 31 subsections 2(a) and 2(b). Upon such receipt it (LA) shall immediately or within 30 days send such a copy of the development application on form PPA 1 to the Director of Physical Planning/District Physical Planner and other relevant authorities in the district. The purpose is for inspections, comments and advice. These relevant authorities include departments of lands, water, forest, livestock, roads, surveyor as provide for in Physical Planning Act section 32(1), 32(2) and 41(3-5), that is first schedule.

Section 33(1-2) of the Physical Planning Act authorizes the Local Authority to approve or refuse the development permission made to it. This is communicated through the fifth schedule (PPA 2) within 30 days of the decision being made by it after considering comments from District Physical Planner and other relevant authorities. The Local Authority can approve with or without conditions and in case of refusal grounds must be included. The PPA 2 must be addressed to the applicant and copied to all relevant authorities and other stakeholders. One other condition to be attached to approval of any application for permission to development is the issuance of form PPA 5 (certificate of compliance) by District Physical Planner. This certificate will only be issued when the applicant has fulfilled all the conditions attached to the approval as indicated on form

PPA 2 and/or when the applicant has carried out his development in accordance with the approved physical development plan and the approved development proposal. The certificate of compliance will be considered the final approval for any application for development permission.

Any person aggrieved by the decisions of the Local Authority (refusal of development permission) shall apply to the relevant Liaison committee within 60 days under PPA section 13. A further aggrieving by the relevant local Liaison committee, then national liaison committee will imply that the aggrieved party should seek redress from the high court. All these are contained in section 33(3-5) of the Act.

In case of subdivision/amalgamation after approval, the applicant will furnish the surveyor with the Land Control Board consent and form PPA 2 together with approved scheme, which will mandate the surveyor prepare the mutations/survey plans. The District Physical Planner will issue form PPA 5 (certificate of compliance) if satisfied that the survey plan/mutations are in accordance with the approved scheme.

The next stage is the issuance of title by the land registrar after being furnished by Land Control Board consent, forms PPA2, PPA5 and a copy approved subdivision/amalgamation in case of freehold land. In case of leasehold land plans drawn by either Registered Physical Planner/District Physical Planner shall be circulated to the Commissioner of Lands/District Lands Officer (DLO) for consent before approval by the Local Authority. Once approval for such applications has been granted, the Local

Authority will communicate this decision to the Commissioner of Lands/District Land Officer through forms PPA2 and PPA5 to enable the Commissioner of Lands effect the necessary documentation as required under the relevant laws.

2.12.4 Roles of different Actors in Urban Management

There are various offices/institutions bestowed by various acts of parliament to guide development in the country. These include primarily Local Authorities and Director of Physical Planning.

2.12.4.1 Role of Director of Physical Planning and other Planners

The Director and other Planners as professional advisors possess expertise and opinions, which are sought by the government in relation to land use policy in general, or to extend a professional response to particular proposals for land use change. Planners fulfill important roles as arbiters of conflicting interests and managers of the urban environment. More often than not planners are biased against the market system (as opposed to planning) to determine the use of land. To them professional rather than personal, career interests override in seeing the adoption and implementation of the plan, which they produce.

2.12.4.2 Role of Local Authorities

Part V of the new Physical Planning Act of 1996 vests development control powers in the Local Authorities as stipulated by sections 30(7) and 32 (1) of the Act. Their

responsibilities are delegated to those Local Authorities, which demonstrate the technical and human resource capacities to carry out such duties to the satisfaction of the Director.

Section 30(1) reads

“no person shall carry out development within the area of a Local Authority without a development permission granted by the Local Authority under section 33”. To check for the proper use of delegated powers by Local Authorities, they are supposed to abide by section 30 (7) which reads “ no Local Authority shall grant a development permission for any purposes (mentioned in subsections 5) without a certificate of compliance being issued to the applicant by the Director or an officer authorized by him in that behalf”.

For the purpose of development the interested party must apply for the same to be granted permission by the Clerk of the respective council where the land falls. Applications for development permission shall be done on form PPA1 and may be for the purpose of submitting building plans, subdivision plans, extension or lease or use or change of user.

Upon receipt of development application by the council via PPA1 firstly it is required to seek comments from a number of department heads including Director of Survey, Commissioner of Lands *et cetera* and subjecting the plans to any relevant approved Physical Development Plan including comments from the Physical Planner. After proper deliberations keeping the above in mind it may either in respect of such

development application “grant the applicant a development permission via PPA2 with or without conditions or refuse to grant the applicant such development permissions stating the grounds for such refusal (section 331-a and b) decision (s). It must notify the applicant within thirty (30 days) in writing.

Secondly, Local Authority shall refer any development application, which in its opinion involves matters of major public policy to the relevant liaison committee.

Thirdly if the Local Authority is of the opinion that a development application may be injurious to the environment, the Local Authority is mandated to require the developer to submit together with the application an Environmental Impact Assessment report. For clarity injurious proposals includes industrial development, dumping sites, sewerage treatment and quarries among others (section 36)

The Local Authority is strongly mandated to ensure that compliance with development permission with or without conditions is observed.

Section 38(1) to 38(4) gives powers to Local Authorities to ensure compliance by issuing enforcement notice. The enforcement notice forces the developer to restore the land to its original condition before development took place demolition, or alteration of any building or works or the discontinuance of such developments. It additionally stipulates penalties for non-compliance of the enforcement notice.

Local Authorities have specific powers to control development namely to: -

- (a) Prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area
- (b) Control or prohibit the subdivision of land or existing plots into smaller areas
- (c) consider and approve all development applications and grant all development permissions
- (d) to ensure the proper execution and implementation of approved physical development plans
- (e) to formulate by-laws to regulate zoning in respect of use and density of development and
- (e) to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan(PPA section 29{a}).

2.12.4.3 Role of Developers

Developers are varied and include statutory bodies, government departments and private investors in general. According to the existing (new enacted) Act they primarily must submit planning applications to the Local Authority for consideration. The Local Authority when considering such plans must do so in compliance with an approved plan for that area of jurisdiction.

The Act asserts that an approved plan has full force and effect in the area to which it relates and compliance should be by all (section 21{2}). Every development must comply with that approved plan.

In arriving at that approved plan, developers as part of the community are entitled or required to participate. They 'must' contribute information as to how they want their cities/towns evolve, hence their role in contributing to such endeavors is very important. As the plan preparation progresses they (developers) read notices when the draft plan is open for inspection in such places and times specified. They must raise objections or representations in not more than 60 days upon which the Director of Physical Planning on receipt may accommodate or not and must inform petitioner in writing accordingly and give reasons for declining (if any). An aggrieved petitioner may appeal to relevant liaison committee. If aggrieved by such liaison committee appeal, National liaison committee appeal may be instituted. With further aggrieving subsequently may proceed to the High Court.

In the end developers must pay legal and other approval fees as they comply with the approved plans. By complying with approved plans (which are guiding and directing development) the value per unit of time of their developments will be long.

2.12.5 Conceptual Framework

Development control is the legal tool in urban land use planning and implementation of urban plans. Its objective is to facilitate land development that is compatible with natural

environment and resources. Specifically in relation to land use, development control is intended to ensure that implementation of development projects conforms to planned proposals. It helps in identifying projects, proposals and development applications as part of development control tools that ensure safety, amenity, welfare, convenience, efficiency and harmony in the public interest. This is attained through adherence to established planning standards, regulations and procedures. This is further attained by ensuring that every developer must apply for a development permit from a legal planning agency. It is a statutory responsibility for each developer to apply for permission. The successful use of development control measures relies on an effective operation of the established rule of procedure and use of appropriate instruments.

As mentioned above different instruments have been used over time. The use of traditional tools has resulted in fragmented and unharmonious urban environment. Master planning being a centralized approach has led to a number of urban problems. It is excessively bureaucratic, rigid, complex and does not provide coordinated and integrated institutional shortcomings. It does not match the local resources and the national resources in addition to it not being dynamic to accommodate the local needs and aspirations through participatory planning. All these have led to poor implementation of these plans in our urban centres. The involvement of the community and private sector partnership in urban areas, which is beneficial in bringing coordinated development, has not been realized. For instance where the private sector could assist in finding infrastructure in return for rates rebates and subsidies, it has not been encouraged to do so. Therefore situations where developments have preceded planning have occurred

Given the above there is a continuous need to develop new strategies, which would improve the scale of urban management in our urban areas. This is in recognition of the fact that development control is an ever changing process with continuous greater need to innovate better responses to ever increasing and complex problems of land use and especially so in urban centres.

The new approaches that have come in response to the above problems and short comings in master planning are structure planning, action planning and strategic planning including a multiple of other tools and procedures noted above. Structure planning aims at curing the problems associated with master planning by encouraging public-private sector participation. In this manner private sector encouragement to provide infrastructure within their development in return for rates rebates and subsidies. This encouragement is appropriate in the cases where the private sector has huge funds at their disposal. Participation of the communities is a pre-requisite for proper implementation of plans.

Action planning can be used to remedy local physical, social and economic problems by involving the participatory planning approach. This approach can be in projects like urban renewal and redevelopment. This may involve the insanitary urban settlements, which are devoid of most basic infrastructure. Use of strategic plans can be realized when undertaking the formulation and preparation of regional development plans. This is in view of the fact that strategic planning involves comprehensive plan formulation including inter-linking of resources (human, technical and financial) and cutting across

different policies at different levels (national, regional and local) in strategically controlling and guiding development. The special value of strategic planning however is its ability to address and satisfy both the broad strategic policy objectives as well as the local action programmes and projects in a single planning operation.

Given the two models; policing and enabling that are used in guiding urban development the local situation in Kenya requires the use of the two models. The situation in Kenya requires that before any development is carried out development permission must be sought from the relevant planning authorities. This is done in addition to the recognition of participation and partnership in urban development. The approach of incorporating the two should also recognize the shortage of qualified staff and other constraints such as political interference in controlling and guiding urban development. This being the case the approach should advocate for recruitment of qualified staff and elimination of political interference and other constraints in running the affairs of urban centres development.

State intervention in land use management is very critical in balancing the private sector interests of capital accumulation with those of the common public interest. This should be done without discouraging capital accumulation process since capital accumulation is very crucial in creating surplus funds to be invested for infrastructure and service development. The enlightenment of the populace on the advantages associated with good urban management will eliminate the production of externalities by entrepreneurs and investors.

Locally though urban areas have continued to expand spontaneously, thus attracting the attention of the central government there is still little that the same government is doing in the real terms. The integration between urban planning and land use planning and national planning policies is very weak. Central government's emphasis has been on legitimization of political powers, problems of nation building and development of national economy. Thus Local Authorities have not been strengthened well enough to tackle the problems arising out of 'unplanned' urbanization. Due to this, urbanization has disrupted good environment by resulting in urban sprawl, slums, encroachment on open spaces, environmental degradation, risks and strain on infrastructure services. Local Authorities are incapacitated in such areas as financial resources and technical personnel. Infrastructure facilities are also inadequate in many Local Authorities.

Apart from the above, various Acts designed or intended to guide planning, administration and implementation of the land use plans having been adopted from the British system, hence are British oriented. They are incongruent with the local circumstances. Also they do not take into cognizance the local and changing socio-economic characteristics of the urban population, a majority of whom are poor. These Acts have continued to be used to guide and determine development despite having not been revised over the years and not modified to suit local conditions. It is noteworthy that planning problems in developed countries are not similar to the problems in developing countries. These laws must be reviewed and amended to suit the local conditions and circumstances. Among the reasons for failing to apply development permission regulations is the over strict, expensive, bureaucratic building standards and

regulations applied by Local Authorities. Similarly, Local Authorities are not equipped in terms of both qualified and dedicated personnel and equipment to carry out their development control roles.

The study of Kericho aims at unraveling and bringing into light these shortcomings. In the end, it aims at proposing appropriate measures through an appropriate development control system. The study will show that to attain a coordinated and effective Urban Management System (UMS) that is desirable, there is need to harmonize the legal and institutional framework in addition to improving coordination of the same so that urban development is guided properly. It will also show the need to build Local Authority's capacities (financial, human and technical) by increasing their autonomy to help in decision making on top of the improvement of reliable sources of revenue. In this way among others the entire process of plan preparation through to enforcement will be examined. The importance of public awareness that population is made to appreciate the need to observe regulations, which would result to sustainable urban development will also be examined.

CHAPTER THREE

BACKGROUND TO STUDY AREA

3.0 Introduction

This chapter provides background information on the study area. It gives the physiography, drainage and population and their relationship with the development of the town. Land tenure types and existing land uses and their implications on development control in the municipality are also outlined. The chapter also includes the institutional framework, which is responsible for guiding and controlling development.

3.1 Location, Topography and Drainage

The town lies in the highland areas West of the Rift Valley. It lies 265 kilometres North West of Nairobi between Longitudes $35^{\circ} 02'$ and $35^{\circ} 40'$ East of Rift Valley. It lies between the Equator and Latitude $0^{\circ} 23'$ South. It is 105 kilometres from Nakuru and 80 kilometres from Kisumu the largest town in Western Kenya. Kisii and Eldoret are 105 kilometres 120 kilometres away respectively.

The town lies on the Western side of the Mau Ridge escarpments and owing to this land in the town slopes from the Northeast to the South gently. The central business district (CBD) stands at 2020 metres in altitude and the boundaries to the South rises to 1920 metres. Some areas of the town have gently to steep slopes. With increase in slope there are extra costs in construction and maintenance of infrastructure because of high erosion rates. To the South the tea estates border the town, which automatically denies growth in that direction. Northern part of the town is witnessing greater growth.

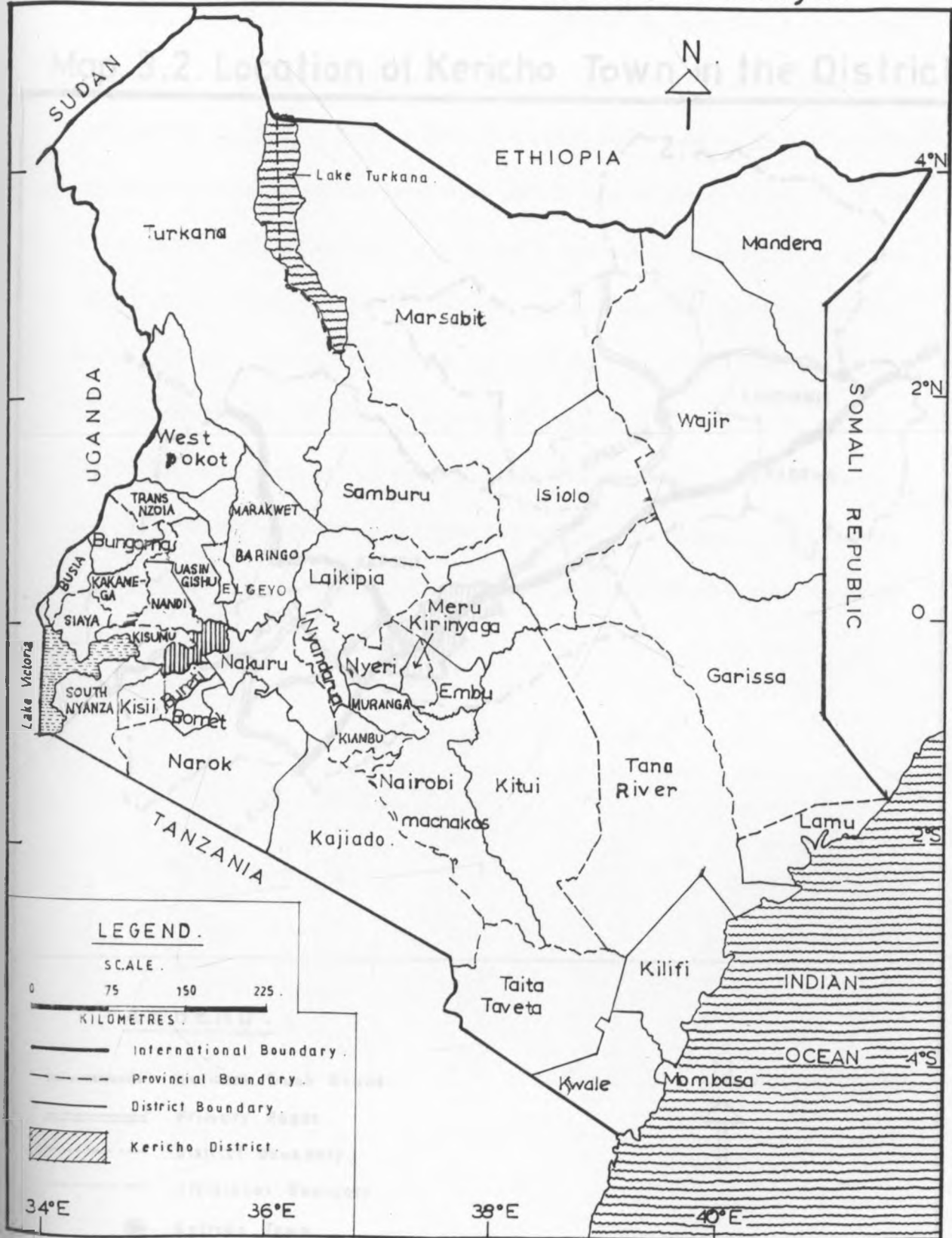
In terms of drainage, there are two permanent rivers Dionsohyet and Kimugu. Kimugu is a source of water supply for the town while Dionsoyot sort of divides the town into the Northern section and forms a marshy area Westward, hence limiting urban expansion in that direction. These areas are not suitable for urban expansion because it can lead to damages in form of flood risks. These rivers run east to west and finally to the Nyanza province.

3.2 Geology and Soils

The town lies in the Lake Victoria basin and the Rift Valley highland system. The town like other parts of the district is endowed with volcanic as well as igneous and metamorphic rocks. Volcanic rocks are intermediate and basic including phonolites, basalt, nepheline and basic turf. Other volcanic rocks of phonolites nature are found in Kedowa about 30 kilometres from the town. These rocks are suitable for building materials.

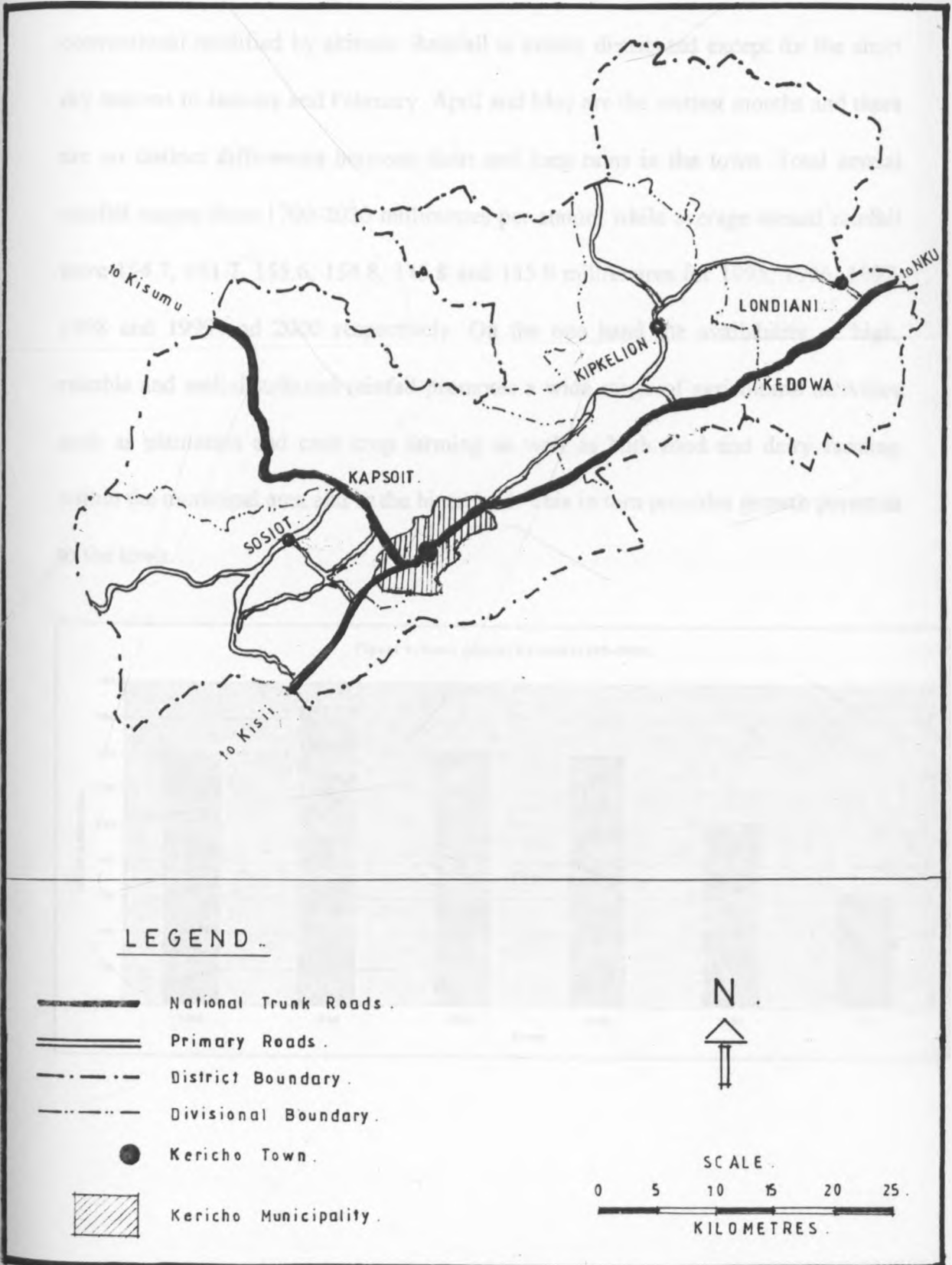
The soils are mainly red volcanic soils across the municipality, which is well drained, with the steep slopes land terrain located on a spier between river Kimugu and Dionsohyet. This soil type developed on tertiary igneous rocks. There is no difficulty in the construction of infrastructure such as roads, water lines, sewer lines and buildings-this is because there are no unstable soils such as black cotton soils. Along the river valleys it is characterized by shallow soils, which are unstable hence, urban development is not potentially possible in such areas.

Map.3.1. Location of Kericho District in Kenya.



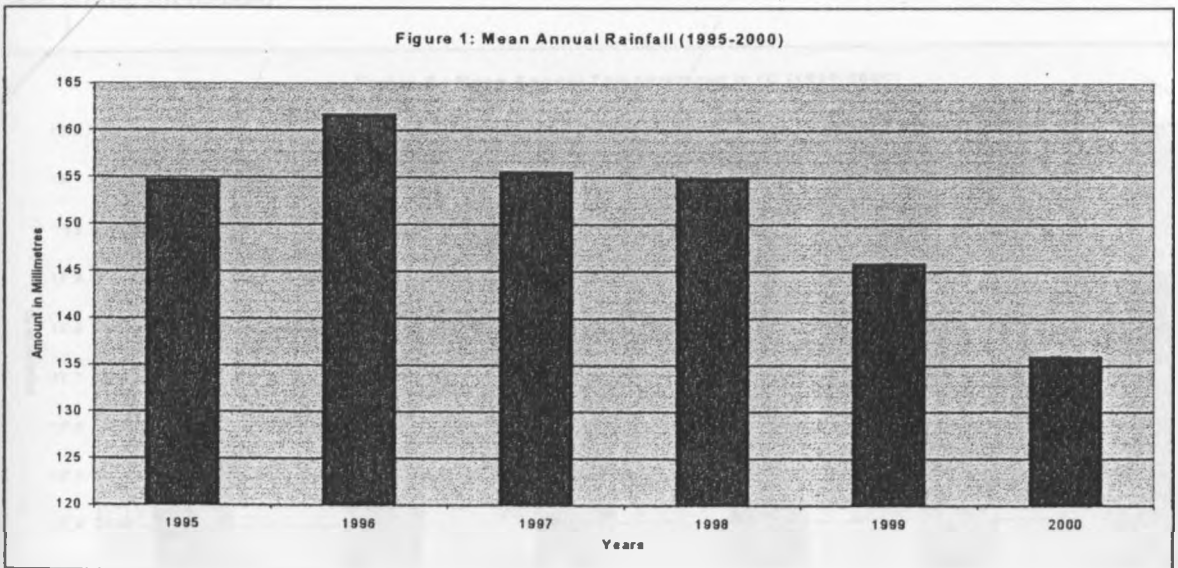
SOURCE: KERICHO DEVELOPMENT PLAN (1997-2001)

Map. 3.2. Location of Kericho Town in the District.



3.4 Climate

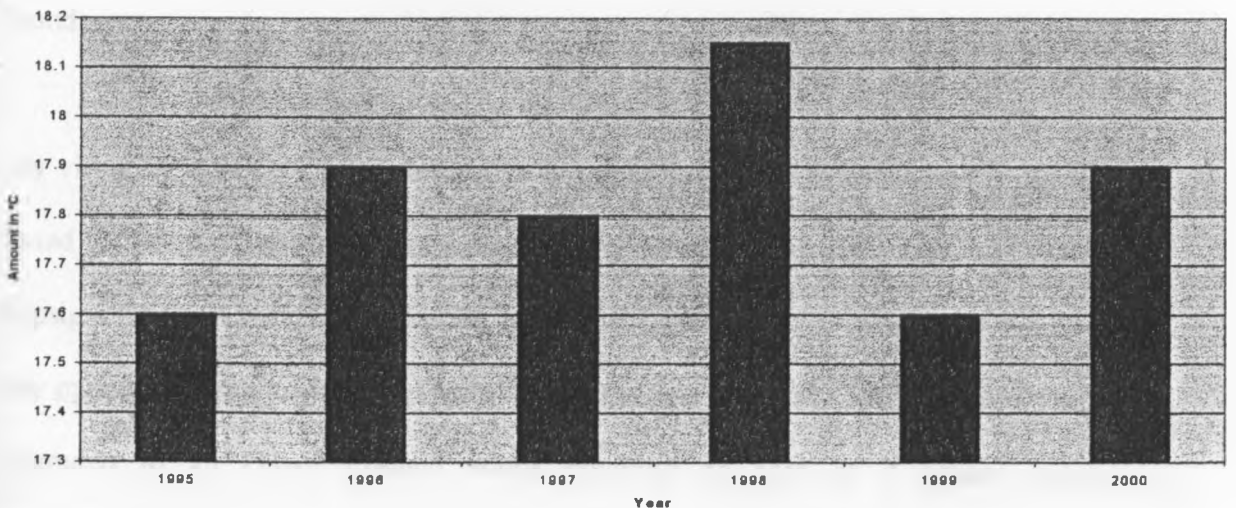
The climate of the district is highland sub-tropical with moderate temperatures, low evaporation rates and higher rainfall in low-lying areas. Rainfall received is conventional modified by altitude. Rainfall is evenly distributed except for the short dry seasons in January and February. April and May are the wettest months and there are no distinct differences between short and long rains in the town. Total annual rainfall ranges from 1700-2020 millimetres per annum while average annual rainfall were 154.7, 161.7, 155.6, 154.8, 145.8 and 135.9 millimetres for 1995, 1996, 1997, 1998 and 1999 and 2000 respectively. On the one hand the availability of high, reliable and well-distributed rainfall promotes a wide range of agricultural activities such as plantation and cash crop farming as well as both food and dairy farming within the municipal area and in the hinterland. This in turn provides growth potential to the town.



On the other hand, high rainfall experienced in the town can be a constraint to development in the town. High rate of erosion with little percolation could lead to high surface runoff, which makes settlements on steep slopes hazardous owing to erosion. In marshy and riparian reserves it can lead to flood risks.

Temperatures range from 16⁰ Centigrade to about 20⁰ Centigrade. There are also no distinct characteristics between hot and cold months. However, January(18⁰ C) and July (16⁰ C) are relatively hot and cold respectively. Mean annual temperatures for 1995 to 2000 were 17.6⁰, 17.9⁰, 17.8⁰, 18.2⁰, 17.60 and 17.9⁰ centigrade respectively. These favourable temperatures in addition to other favourable climatic conditions such as well distributed rainfall boosts the growing of agricultural production in the municipality and in the hinterland. This has a strong bearing on the growth of the town since the town's growth is attributed to rich agricultural land in the municipality and in the hinterland.

Figure 2 : Mean Annual Temperatures in °C (1996-2000)



3.5 Historical Development of the Town

3.5.1 Overview

Kericho town is the administrative headquarters of Kericho District in the Rift Valley province. Its history dates back to 1909. It grew when it was declared a district headquarters in 1909 and the first District Commissioner posted in 1919. It also grew because it became service town for settlers in the surrounding tea estates, white large commercial farms and small-scale tea farming in addition to being stopping place for settlers going to settle in the Sotik area. It also acted equally as a disembarkment centre between Kipkelion railway station and Sotik settlement schemes. In addition to the preceding it became (up to today) a link and a stopping place for those traveling by road to Nana and other parts of Western Kenya.

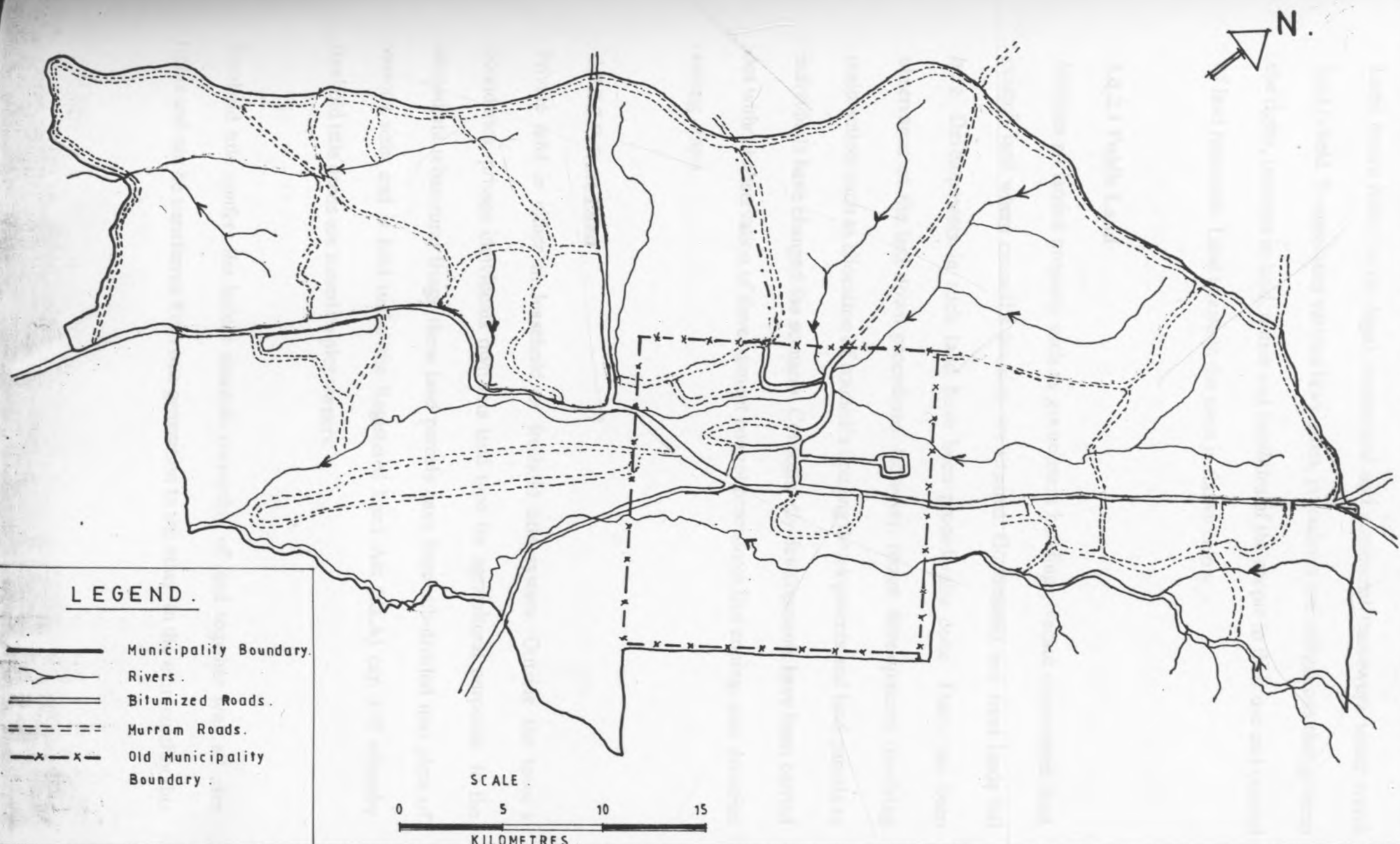
The name Kericho is believed to have come from the fact that herbal medicine used to be sold in the town in the early part of the century. The town was therefore nicknamed Kericho that is, as the place where herbalist medicine (*Kerichek*) could be found.

By virtue of it being the administrative headquarters of the district various offices found include the District Commissioner, various Heads of Departments, Law Courts, Kipsigis County Council and Kericho Municipal Council, which oversees the day to day operations. The town was gazetted as market centre in 1924 and by 1960 it was upgraded to an Urban Council status covering an area of 4 square miles (10.245km²)(Map 3.3).




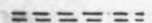

By 1973 its size was increased to 66 square miles (168.96 km²) when it was upgraded to Town Council status (Kenya Times, Nov, 19, 1996) with a population size of 10,000 persons (Green Town Project-Kericho, 1995). In 1980, it was upgraded to Municipality status covering the same area. There are 15 elected and four nominated councilors including the District Commissioner representing various wards (Map 3.3).

Before the opening of physical planning office in 1983, the physical planning matters were administered from Nakuru. The plan used up to 1981 was a 'plan' with the main CBD being areas of particular concerns to the then administrators. The responsibility of the council in relation to physical planning matters was minimal partly explained by lack of qualified staff (e.g. planner) and the centralized kind of decision-making from Nakuru office. After 1983, physical planning matters involved the municipal council and therefore the council became active in day to day running of the town. This being the case the growth of the informal settlements typical of case study one was necessitated by this scenario in addition to the usage of Land Planning Act cap 303 of 1968 which only covered urban areas without paying planning attention on rural areas in rural areas including urban fringes.

Map 3.3. Historical Map.



LEGEND.

-  Municipality Boundary.
-  Rivers.
-  Bitumized Roads.
-  Murrum Roads.
-  Old Municipality Boundary.

SCALE .
0 5 10 15
KILOMETRES .

Source. Adapted from L.A.D.P. (K.M.C, 1997-2001.)

3.5.2 Land Tenure and Existing Land Uses in the Municipality

Land tenure refers to the legal, contractual and communal framework under which land is held. It constitutes various laws, rules, procedures and obligations that governs the rights, interests in land, duties and liabilities of the people in their use and control of land resources. Land tenure in the town is shown below: -

3.5.2.1 Public Land

Includes all landed property such as government buildings, vacant unoccupied land, council land where council's housing are situated. Government and trust lands fall here. Developments in such land have been procedurally done. There has been observance of the laid down procedures. However, recent developments involving malpractices such as allocation of council's housing developments and land parcels to individuals have changed the scenario. Consequently developments have been carried out without observation of development control procedures like zoning, user densities among others.

3.5.2.2 Private Land

Private land is either in leasehold or freehold title system. Outside the town's boundaries, private individuals own this land type for agricultural purposes. In the immediate urban-rural fringe these land parcels have been sub-divided into plots of various sizes and is held under the Registered Land Act (RLA) cap 300 whereby freehold title deeds are issued to plot owners.

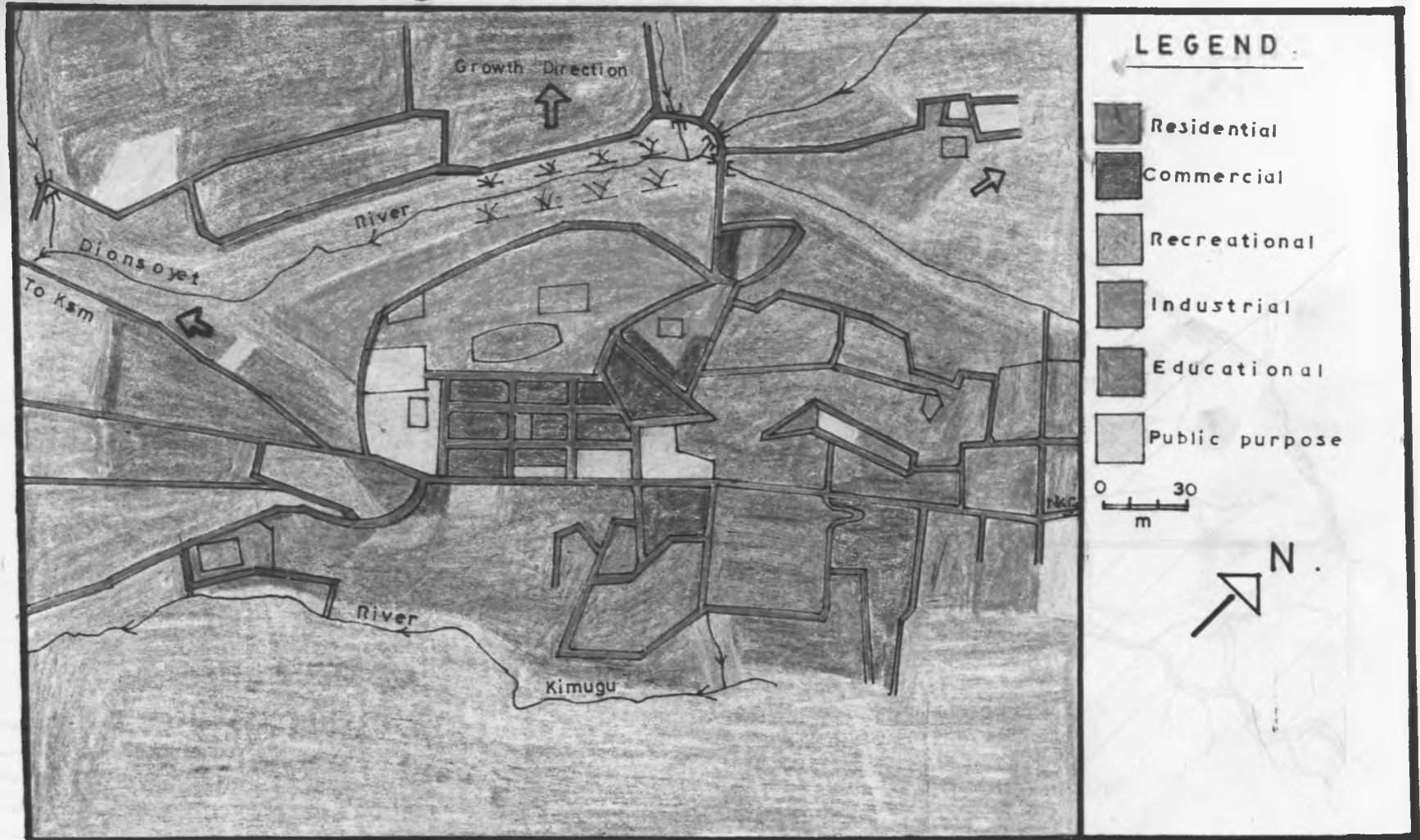
Freehold title confers the holder absolute ownership of land together with all user rights and can be transferred from one generation to the other. In the municipality this

tenure type covers the extended boundaries covering an area of 158.7 square kilometers as shown in the land tenure map. Prior to the Physical Planning Act of 1996 land held under freehold tenure system was not subjected to planning. Mutation survey was done followed by registration and issuance of title.

The freehold title deed has no conditions of user and transaction regulations attached to the title. Due to these freehold titles, bypassing of planning authorities, that is, Local Authority and Physical Planning Department has occurred. This has weakened the urban land management hence no control and guidance of urban development especially within the extended municipal boundaries. Additionally, acquisition of freehold title is characterized by cheap process of registration, transfer and the fact that no strict regulation is attached to its development. As a result of this, the release of this land for urban development has been easy. There have been uncoordinated and uncontrolled sub-divisions and housing construction in these peri-urban areas leading to urban sprawl as observed in the study area.

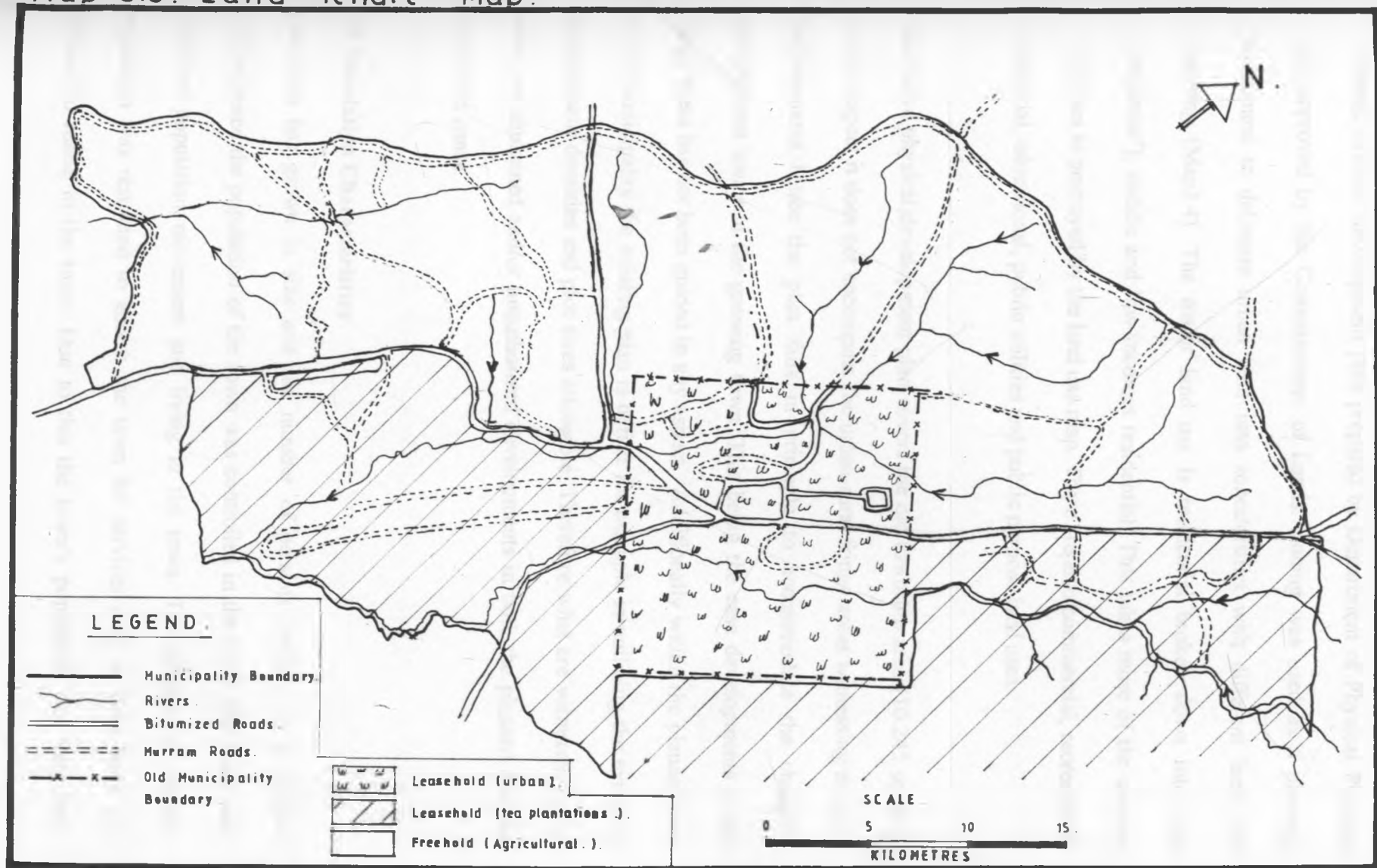
Land under leasehold title is usually leased with ownership and user rights conferred to the holder for a specific period of time (99 years). The issuance of this title from the Government contains conditions of use. These regulatory measures have had positive effect on development control. In the study area leasehold tenure is restricted to the old township declared in 1960 covering an area of 10.245 square kilometers. This encompasses the CBD and some few residential areas as shown in the land tenure map (Map 3.5). Developments (especially the permanent) in this zone have been consistent (at least minimally) compared to developments on land parcels held on freehold title.

Map. 3.4. Existing Land Uses : Kericho Town.



Source: Adapted from Mutai (1989.)

Map 3.5. Land Tenure Map.



At the moment, development control and guidance is administered through an existing physical development plan prepared by Department of Physical Planning and approved by the Commissioner of Lands. Zoning was used as a planning instrument to delineate urban land into zones/district with different land uses resulting (Map3.4). The major land use is residential broken down into high (*'milimani'*), middle and low incomes residential. This takes more of the existing land uses as portrayed by the land use map. There are also commercial, recreational, industrial, educational, public utilities and public purpose land uses.

The above physical development plan covers the old township area (10.245 sq. km). In this respect it does not encompass the urban-rural fringe areas witnessing massive developments hence the plan fails in principle to accommodate the changing development issues in the growing town. This being the case developments in the fringe areas has not been guided in any aspect. Additionally within the planned area of the municipality the existing plan is deficit for example in outlining the extent of development densities and plot sizes allowable. Therefore what are witnessed in the town are unplanned and/or unauthorized developments in both the planned and the unplanned zones.

3.6 Population Characteristics

The town has grown in size and the number of persons residing in it. Before independence the population of the town was controlled in the sense that there was restricted population movement and living in the town. The indigenous African population was restricted to access the town for services only as they were not allowed to reside in the town. Due to this the town's population was very low.

However with attainment of independence and withdrawal of the Kipande system and restriction on movement the town's population increased. This was caused by the indigenous African population migrating to the town in search for employment opportunities.

As at 1962 the town's population was 7692 with males (4,568) more than females (3,124). In less than a decade (1969) the town's population stood at 10,144 (males-5,931, females-4,213). Migration to the town explains the highest growth rate of the population in the town. Migration was categorized; from elsewhere in Kenya, outside Kenya, elsewhere in same province and the same district. Migration accounted for by elsewhere in Kenya accounted for the highest increase. The migration was mainly from Western and Nyanza provinces in such of better opportunities. By 1989 the town's population had grown tremendously to reach 48,511 persons. According to the 1999 Population and Housing Census Report, the population of the municipality was 93,213 of which 49,222 were males and 43,991 females. With an intercensal growth rate of 5.5 per cent per annum the population is projected to grow to 121,826 and 159,221 in 2005 and 2010 respectively.

The Kericho District Development Plan estimates the town's night population to be 60,000 while the day population to be 120,000. According to the Green Town Project Report, 1995 projection of growth rate was estimated at 5.5 per cent per year and was to be 10.5 per cent of the district population by 2000.

The high population growth rate is attributed to improved health, declining mortality rates and immigration in search for employment opportunities in the town. These

opportunities include employment in formal and informal sectors (second hand clothes and hawking). This population involving itself in small businesses and resides in the informal settlements devoid of most basic infrastructure such as accessible roads, water, sewerage (or better sanitation). These areas are in the urban-rural fringe experiencing massive subdivisions.

This high growth rate is a challenge to the Local Authority in terms of meeting their infrastructure and other service needs. Equally important to note is the challenge the population size together with its high growth rate will pose on the development control system in the town.

Table 3.1: Population Size and Densities per Sub Location within the Municipality

Sub location	Population	Area (Sq. Km)	Density
Kapsuser	7,449	20.9	356
Motobo	12,854	5.1	2520
Township	20,987	10.7	1961
Kapkugerwet	11,509	16.4	702
Kipchimchim	4,942	13.8	358
Total	57,841		865

Source: *Central Bureau of Statistics, 2001*

The population densities of the sub locations identified as falling in the municipality are far much higher than the district's population density standing at 222 persons per square kilometres. Motobo with higher population density experiences massive developments. Case study One (to be analyzed later) falls in this zone. On the whole, all the sub locations identified are experiencing more sub divisions into smaller

portions (Table 3.1). This calls for an effective development control system to control and guide development in such areas.

The town serves over 20,000 tea estates workers and their families of different provinience and ethnic background.

Table 3.2: Population Size and Projections

Sex\Year	1962	1969	1989	1999	2005	2010
Males	4,568	5,931	26,661	49,222	-	-
Females	3,124	4,213	21,850	43,991	-	-
Total	7,692	10,144	48,511	93,213	121,826	159,221

Source: *Central Bureau of Statistics, 2001*

The municipality's population of 93,213 is divided into 24,560 households resulting to an average household size of 4.

3.7 Economic Development

The growth and economy of the town is closely related to the tea industry in form of tea plantations and small-scale tea farming. Tea plantations are owned by Multinational National Companies (Brooke Bond, African Highland Produce and George Williamson), which owns plantation farms (within the immediate hinterland). Besides small-scale tea farming in the hinterland other crops include sugar cane, maize, potatoes, beans and peas. Dairy production is also practiced on both large and small scale. The town provides a great service to the agricultural hinterland in terms of source of inputs, extension services, market for produce and credit facilities hence major economic activities revolve around agricultural products and inputs. Tertiary services are provided by public corporations with branch offices in the town, that is, Telkom, Postal Corporation, Kenya Tea Development Agency, Kenya Cooperative

Creameries and Kenya Power & Lighting. Others are Kenya Industrial Estates, Agricultural Finance Corporation, Industrial Credit and Development Corporation and Kenya Farmers Union. Financial institutions are Kenya Commercial Bank, Barclays Bank of Kenya, Standard Bank and Co-operative Bank.

Industrial development in the municipality is basically agro-based. Major industrial activities are the tea factories. According to LADP (1997-2001) there are 10 tea factories within the municipality. Factories include Kenya Tea Packers Ltd at Kapkugerwet and Brooke Bond's Kericho and Kimugu tea factories. Kenya Industrial Estates (K.I.E) has also developed a site for medium size industrial developments with Bakery and other minor factories notably present. Potential lies in setting up more agricultural produce factories (milk processing, horticultural processing etc).

There are various commercial activities in the town. These range from wholesales, retail shops to informal activities (informal food kiosks and hawking). Wholesales, retail shops and the like represent the high to middle income businesses while informal businesses represent the low-income group. Opening of access roads to the periphery and industrial zones will boost growth potential in such zones hence boosting the growth of the town.

Employment in the town is in form of wage employment as well as community, social and personal services. Wage employment in civil service, private companies and public corporations. Other employers are wholesale, restaurants and hotels, which represents in excess of 10 per cent. Immigration in search for employment in the town will contribute to the growth of the town.

3.8 Infrastructure

Apart from the road network the town can be accessed by railway station via Kipkelion (30 kilometres away), Inland port at Kisumu (80 kilometres away) and the International airport at Eldoret (120 kilometres away). There is an airstrip at Kerenga 5 kilometres away run by Kenya Airports Authority. Road networks in the municipality are composed of major streets and one major highway Nairobi-Kisumu. The CBD has roads in good conditions (bitumized)-this being owed to the Kenya Urban Transport Infrastructure Project. Roads to peri-urban and in peri-urban areas are either graveled, murramed or earth. Tarmac roads cover-12 kilometres, murram-43 kilometres and earth-72 kilometres (LADP, 1997-2001). Roads in the immediate urban-rural fringe witnessing massive developments are poorly drained, dumping grounds and causes difficulty when passing. The situation is compounded by restrictive roads, which were planned narrowly regardless of slope.

Additionally the council is planning to open up new access roads including constructing bridges to the formally deferred land parcels so as to enable the area accommodate the increasing housing demand and other development needs in the town. If this is done it would mean that development in the town would be guided. There are also plans by the council to open access roads to the light industrial area to fasten industrial development. Maintenance of access roads in the periphery will greatly benefit when the council purchase the motor grader.

There is a water reticulation system in the town, which is operational and undertaken by the Water and Sanitation Department (WSD) of Kericho Municipal Council. The maximum output of the treatment works is 10,368 cubic metres per day at the

moment operating out 8,460 cubic metres per day as compared to demand of 7,000 cubic metres per day. There is no water shortage in the town though there is 35-45 per cent water loss according to WSD's staff.

There is an existing sewer system having been upgraded from the old treatment facility with assistance from KFW-Germany at a cost of Kshs 396 millions. It covers the central business district (CBD) and the few residential estates. The sewer system covers approximately 30 per cent. Where it is non-existent, septic tanks and pit latrines are used. There are a number of public toilets in the municipality. The council doesn't own an exhauster. For exhausting services Brooke Bond's and African Highlands' are used in the municipality.

There is a developed bus and taxi park albeit being underutilized since not all buses and *matatus* through the town do disembark at the bus park. Utilization level is about 50 per cent. There is adequate parking in the town.

3.9 Future Growth Direction of the Town

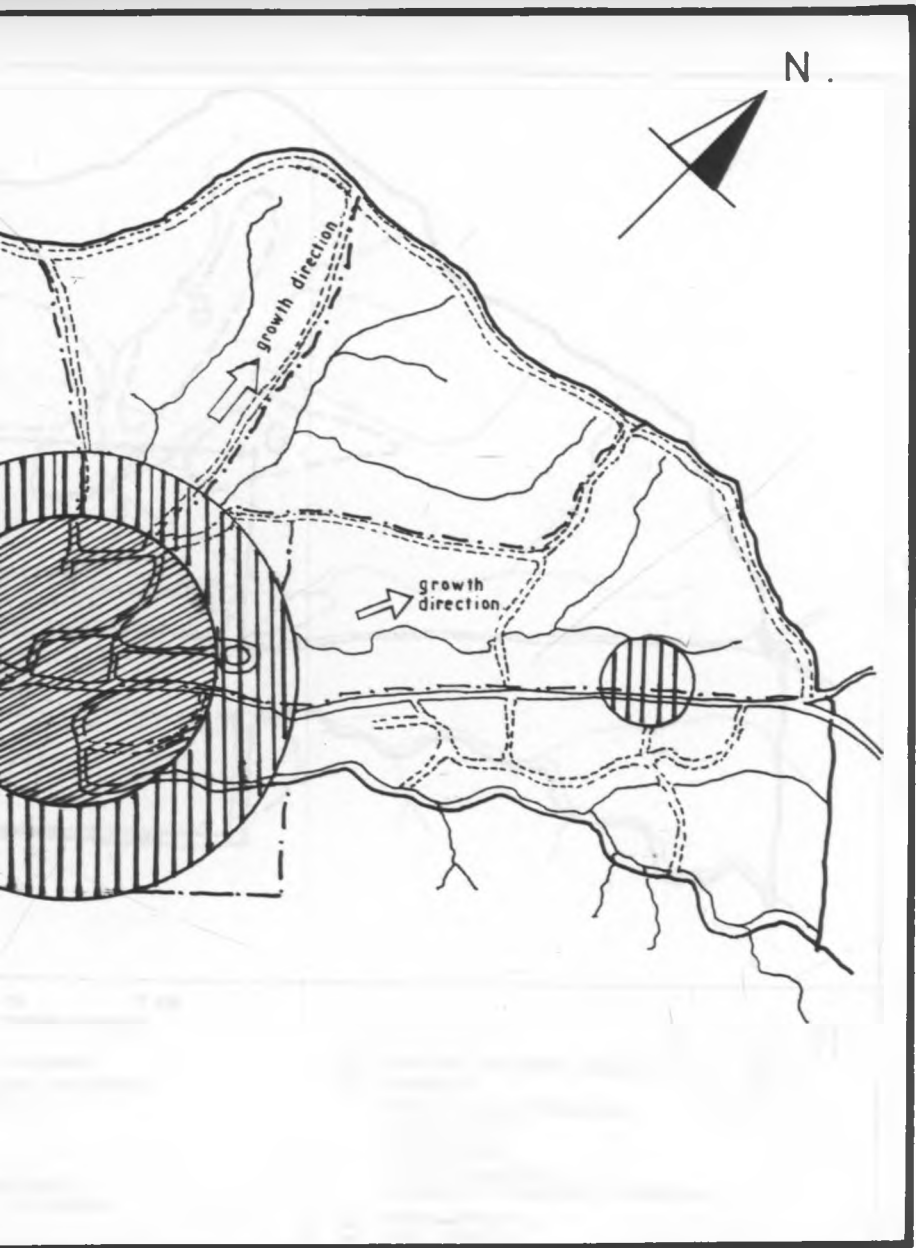
The growth of the town has been influenced by several factors. Notable include the large and small scale farming, is administrative functions and the transport and communication network. The bypassing of the town by the railway in the early part of last century in a way stalled the growth of the town. Its growth in relation to transport and communication was only encouraged when the town acted as a stopping and transit point to the Sotik settlements scheme. When the road network overtook the railway in terms of communication to the towns in western Kenya the town started to

post greater growth. The town's growth was also boosted by the influx of indigenous population after independence.

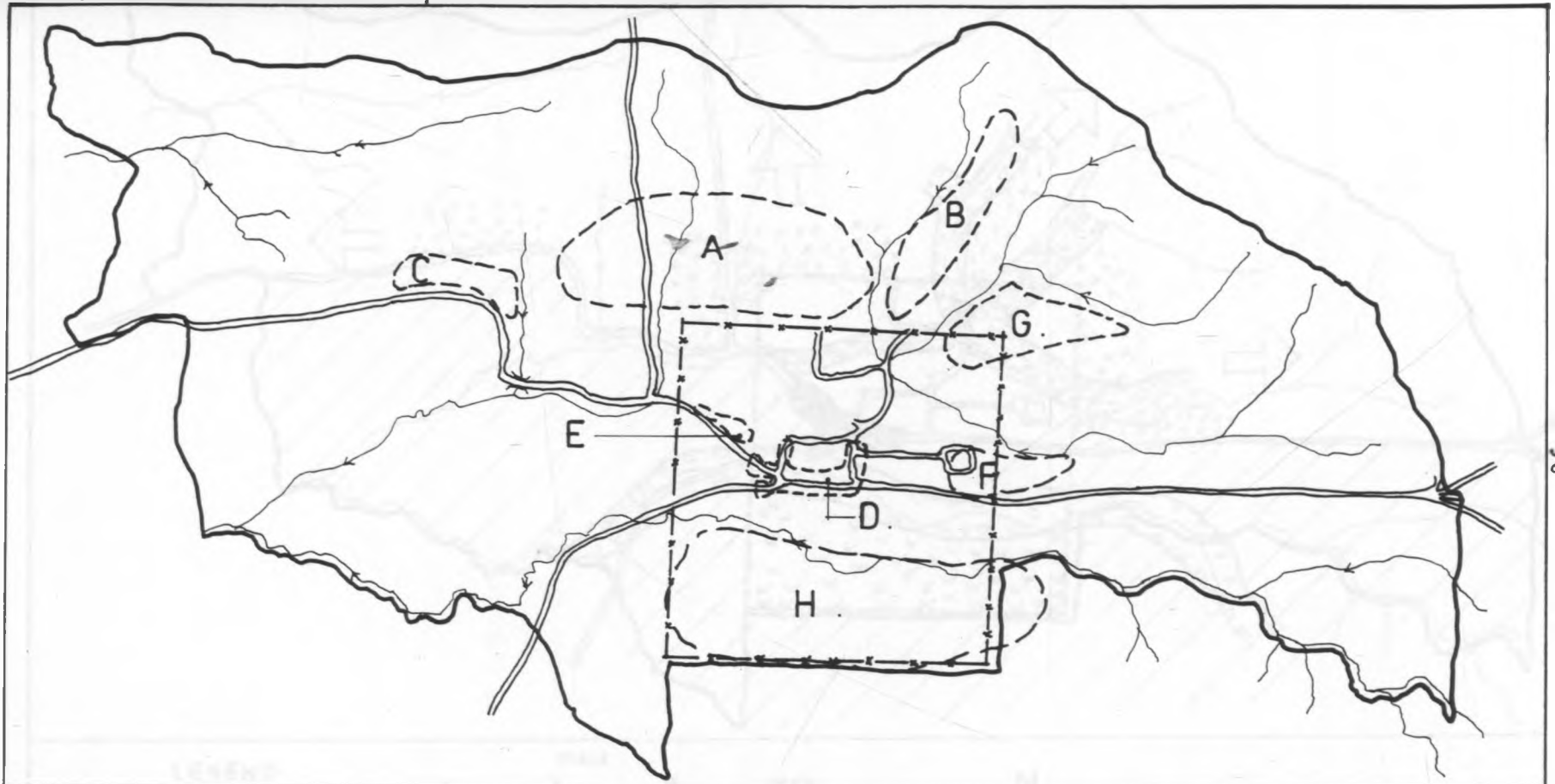
Map 3.6 therefore shows different urbanization characteristics within the municipality. The inner ring represents the old municipality while the other rings represents moderately urbanized zone. The inner zone is fairly developed with CBD and few residential suburbs (high, middle and low income) included. Observation reveals that it is planned having been planned during colonial period and it is served by most of infrastructure.

The second zone is characterized by low-income areas and satellite market centres such as Motobo (Nyakacho), Kapsuser and Kapkugerwet (Brooke) as shown in the Map. It depicts areas of new massive developments. This zone requires an effective development control system since most of the unauthorized developments example case study one (and others) to be discussed later in this work is situated.

The terrain and other factors that determine urban development in the town are less constraining in encouraging urban development. However, there are unsuitable zones for urban development and these include areas where it is difficult and expensive to build such as flood plains, areas where springs occur and steep slopes. Infrastructure construction in such zones such as water, reticulation, sewer and bitumized roads are expensive and difficult.



Map.3.7. Problem Map.



88

LEGEND



- Municipality Boundary
- Rivers
- Bitumized Roads
- Old Municipality Boundary
- H** - Deforestation
- Soil Erosion
- Water Pollution
- Uncontrolled & Unguided Development

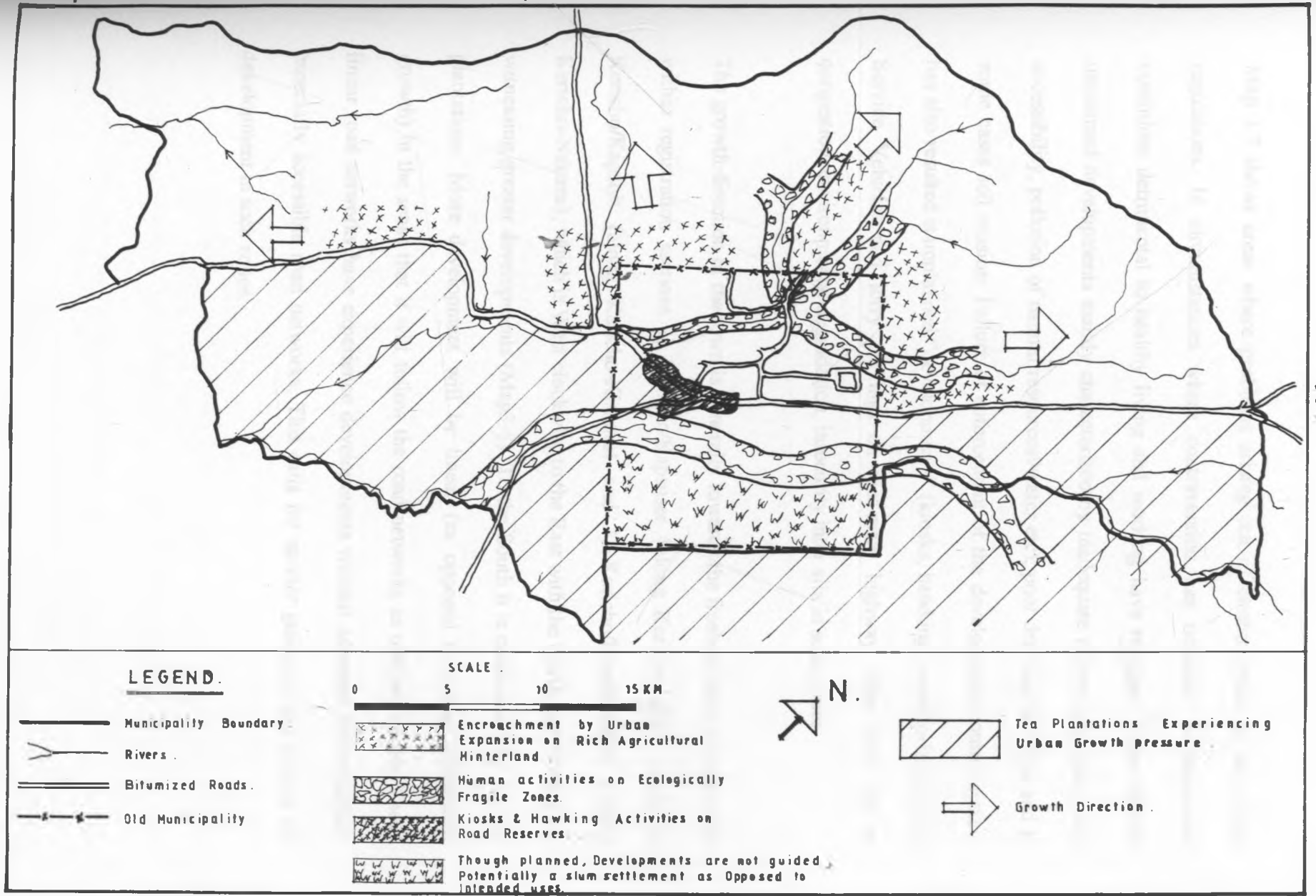
- A** - Unplanned Developments
- Inadequate Sanitary Facilities
- Poor Accessibility
- Poor Drainage
- Congestion
- B** - Unplanned Developments
- Inadequate Refuse Collection
- Soil Erosion
- C** - Unplanned Developments
- (Early Stage)

- D** - Kiosks on Road Reserves
- Hawking
- Noise & Air Pollution
- Insecurity
- Congestion
- Poor Sanitation
- Inadequate Rubbish Collection
- E** - Deforestation
- Soil Erosion
- F** - Refer to A
- G** - Refer to A



Source: FIELD SURVEY, 2001.

Map. 3.8. Land Use Conflict Map.



Source.: FIELD SURVEY 2001.

Map 3.7 shows areas where problems arising out of contravention of laid down regulations. In circumstances where contravention has occurred environmental conditions detrimental to healthy living and working have resulted. These include unplanned developments mainly characterized by inadequate refuse collection, poor accessibility, pollution of natural resources (water etc), poor drainage facilities and in some cases soil erosion. Failure of enforcement of the development control system has also resulted in unplanned "developments" (kiosks, hawking, unauthorized Public Service Vehicles and lorry parking) on the main highway. This has led to congestion, environmental degradation, insecurity inter alia in such zones.

The growth direction of the town is generally towards the freehold land parcels lying within registration sections 1) Kericho/Kapsuser {along Kericho- Kisii road} 2) Kericho/Kapsoit {along Kericho-Kisumu} and 3) Kericho/Kipchimchim {along Kericho-Nakuru}, which is West clockwise to the East with the North and North-East witnessing greater developments (Map3-8). To the South it is constrained by the tea plantations. More development will be linear (as opposed to earlier concentric growth) in the sense that it will follow the road networks as outlined above. These linear road networks have experienced developments without adequate infrastructure especially accessible road networks. This calls for stricter guidance and control of development in such zones.

Table3.3: Subdivisions for the Period 1996-2000

Registration Section	Kipchimchim		Kapsuser	
	>0.1 ha	≤0.1 ha	>0.1ha	≤ 0.1 ha
Area				
Number of Transactions	373	134	288	157

Source: *District Survey office, 2000*

Given the above urban expansion/growth trend, the land use conflict map depicts that there are zones, which portrays land use conflict. These conflict zones include the road and riparian reserves, open spaces, urban-rural fringe areas witnessing unplanned developments (concomitant with other negative human conditions as earlier outlined). Included also are former natural forests which have undergone deforestation and subsequent erosion and siltation of watercourses. Given this negative and dehumanizing conditions there is need for stricter guidance and control of development in such zones.

Given the fact that the hinterland is economically sound, this is seen as potential for growth as benefits (developments) trickles down. Many towns have grown in this way such as Nakuru, Eldoret and Kitale. Additionally given the population of the hinterland and the estates, derived demand for urban services will encourage the growth of the town.

The town is a distributing point for such urban centres as Litein, Sotik, Nyamira and Londiani among others. This linkage augurs well for a future urban growth. Good road networks within and outside the CBD boost this.

3.10 Institutional Framework

3.10.1 National Level Planning

Planning at the national is a three-tier system carried out within the Ministry of Lands and Settlement (Physical Development Plans), Ministry of Planning and National Development (Economic planning) and Ministry of Local Government (LADP and Physical Development Plans).

The Ministry of Planning and National Development articulates national development objectives, policies and programmes through five-year development plans. Sectoral approach is used to identify targets and means to achieve them. Other lower level institutions make plans by responding to the national development policies formulated by the government. It encompasses the regulatory policy to guide the procedure, standards and administrations of sectors in carrying out their duties.

The Ministry of Lands and Settlements – Physical Planning Department is mandated to undertake the overall preparation of physical development plans for all towns in the country. It is represented at provincial and district levels. It works and coordinates closely with Local Authorities in matters related to forward planning, development control and urban research.

The Physical Planning Act of 1996 has established several institutions such as liaison committees and the office of the Director of Physical Planning. The creation and responsibilities of these institutions are clearly outlined in the Act. The Act emphasizes the preparation of both regional and local physical development plans and

it centralizes powers and responsibilities of policy-making implementation in the office of Physical Planning Department.

Local government Act cap 265 especially section 166(g) mandates the Local Authorities to carry out land planning and development. Urban Development Department (Ministry of Local Government) is involved in assisting Local Authorities to prepare with Local Authority Development Plans (LADP). LADP is a five-year capital expenditure plan containing a programme of infrastructure and investment in selected priority areas. The preparation of these LADPs however in most cases has not been harmonized with Physical Planning. Currently, all Local Authorities must prepare these LADPs before they could access Local Authority Transfer Fund (LATF). This being the rule, however, implementation of these plans is not satisfactory.

3.10.2 Regional Level Planning

Various Acts of Parliament have established different (six in number) Regional Development Authorities (RDA) for the management and utilization of resources in their areas of jurisdiction in order to facilitate rapid socio-economic development. Among the six, Lake Basin Development Authority (LBDA, 1979) incorporated in 1979 is the one that covers the study area. All the RDAs are administered centrally in the Ministry of Rural development. These RDAs plan for expansive areas especially cutting across different districts. This has created disharmony with the provision of the Physical Planning Act of 1996, which uses the district or an area covered by a County Council as a planning region. This has affected coordination and implementation of these plans in addition to causing duplication of roles.

3.10.3 District Level Planning

It does its functions in line with District Focus for Rural Development. Under the district planning approach two types of plans - five-year District Development Plan and Long Term District Development Plan- are prepared. District Development Committee (DDC) guides the overall planning and coordination between the different sectors at the district level. It encourages participation in provision of basic needs at the grass root level.

Also at the District level the District Physical Planning Liaison committee is mandated by the Physical Planning Act of 1996 with major development application and arbitration matters.

3.10.4 Municipal and/or Urban Planning

Municipal urban planning entails laying out of demarcated areas of differentiated land uses in urban centres. Zoning, subdivisions and other regulations and legislation are used to achieve the above objectives. The intentions of doing this are broadly to produce a coordinated economic land use and carrying out of development projects within a satisfactory environment. This is also emphasized so as to attain good health and hygiene. The exercise involves the preparations of long term, short term and advisory urban plans to control and guide development. The use of these instruments has failed to manage urban development in the country and has led to urban problems. These include urban sprawl and growth of squatter and slum settlement, illegal land subdivisions and environmental degradation.

At the municipal level different institutions mainly physical planning and public health departments and the respective municipal council are responsible for guiding and controlling development. They use powers bestowed by different Acts such as Physical Planning Act of 1996(part V sections 29-42), Local Government Act Cap 265 and Public Health Act cap 242 in their daily operations and activities. The powers and responsibilities have been outlined earlier in the previous chapter.

The preparation of physical development plans (regional or local) in theory must be done in accordance to the macro-policy planning at the national level. This implies that the above-mentioned institutions should all coordinate in preparing their respective plans. However, what has happen is far from the provision in the theoretical framework. There is little (if any) coordination between macro economic policy with spatial planning (at various levels) in the country. For instance, LADP preparation has been done without any harmony to physical (spatial) planning.

3.11 Kericho Municipal Council (KMC)

3.11.1 Structure and Capacity

The Council's administrative structure is two-fold that is policy and executive arms. Policy arm is concerned with policy formulation while the later is charged with policies implementation.

3.11.2 Policy Arm

The Mayor heads this arm and there are a total of 19 councillors (Mayor inclusive) in the council. Fifteen of these councillors are elected while 4 are nominated. There are 4 committees namely Finance and General Purposes Committee; Works, Town

Planning and Markets committee, Education, Housing and Social Services Committee and Environment Committee all headed by chairmen. Problems and projects are identified and discussed at committee level first then to the Finance and General Purposes committee and finally to the full council.

The full council is the highest decision making body in the council. It is composed of all the elected and nominated councillors of all committees together with the council chief officers. Its purpose is to manage the growth of the town by ensuring proper planning and managerial activities within the council jurisdiction. Each committee of the council is mandated to perform specific functions.

3.11.2.1 Functions of the Committees

3.11.2.1.1 Finance, Staff and General Purposes Committee

The committee's functions include: -

- To oversee collection and proper management of the council's finances.
- To coordinate the implementations of policies through approval of budgetary estimates.
- To make recommendations to the council for the fixing of all charges and scales of fees and consider waiver of the same.
- To receive the reports of internal and external auditors, MLG inspector, Controller and Auditor general and make appropriate recommendations to the council.
- To settle financial matters in dispute between the executive and the policy arms of the council.

3.11.2.1.2 Town Planning, Housing and Works committee

The main role of the committee is the physical development control within the Council's jurisdiction. It prohibits uncontrolled developments (example kiosks) and provision and maintenance infrastructure services (example road grading and gravelling) among others. It deals with planning matters such as approval of all plans (advisory, sub-division, building), plot transfers and plot allocation.

3.11.2.1.3 Environment Committee

Its function includes environmental conservation activities within the Council's area of jurisdiction. It deals with tree planting and protection of riparian reserves so as to ensure sustainability of the various activities.

3.11.3 Executive Arm

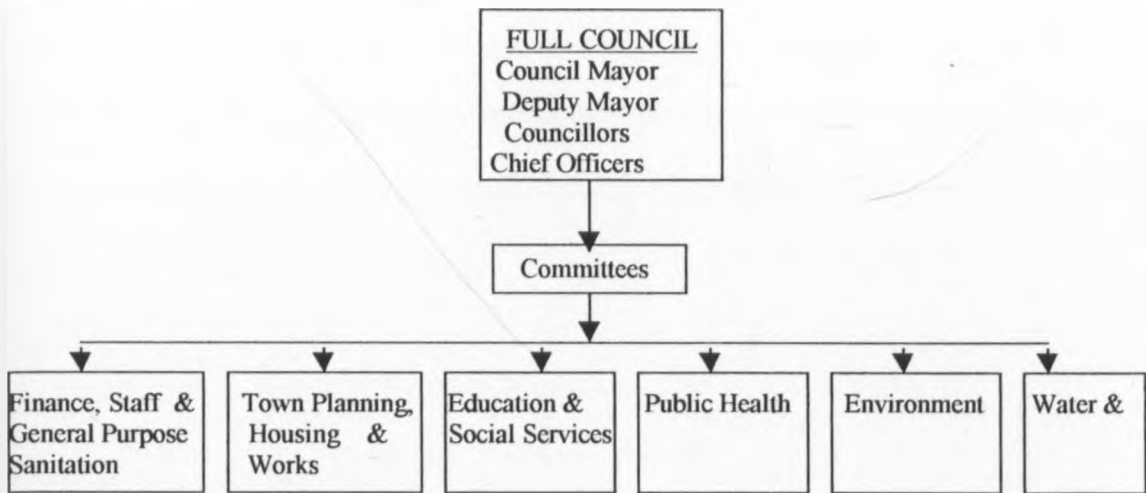
The Town Clerk heads the executive arm and is assisted by other Chief Officers and employees of the council. The executive arm administrative structure is spread in departments namely Clerk's department, Treasurer's department, Town Engineer's (Works) department and Water and Sanitation department. All the departments are functional.

Table 3.4: KMC Total Workforce per Department

Department	Workforce	Number
Town Clerk	Permanent	56
	Casual	-
Treasury	Permanent	60
	Casual	4
Works	Permanent	136
	Casual	-
Water & Sewerage	Permanent	220
	Casual	18

Source: *Council Records, 2000*

CHART 1: Committee Organizational Structure



Source: *Field Survey, 2001*

Table 3.5: Current and Ideal Number of Vehicles for Specific Purposes

	Revenue Collection	Garbage collection	Development control
Current	1	3	-
Ideal	2	4	1

Source: *Council Records, 2000*

From the field study there is evident understaffing in the council and especially upper cadre. The council is unable to function efficiently in the absence of these officers. For instance lack of the planning unit for instance has not been established. The lack of the public health officer puts the residents' public health and safety at stake in the town.

3.11.4 Revenue Capacity

The council's revenue stands at over Kshs 41 million. The Council's main revenue sources in ranking are bus park/barrier fees, market dues, licensing, rental houses and water bills. There were no records to establish the amount of revenue collected via the

Chart 2: Council's Organizational Structure



The Council is the governing body of the City of [City Name]. It is responsible for setting the overall policy and direction of the City, and for approving the budget and the annual financial statement. The Council also has the authority to hire and fire the Executive Director, and to appoint and remove members of the various advisory committees.

The Executive Director is the chief administrative officer of the City. He or she is responsible for the day-to-day operations of the City, and for implementing the policies and directives of the Council. The Executive Director also has the authority to hire and fire all City employees, and to manage the City's financial resources.

The various advisory committees provide the Council with expert advice and recommendations on a wide range of issues. These committees are composed of representatives from the public, business, and professional communities, and they meet regularly to discuss and report on their work.

The Council also has a number of other important responsibilities, including the approval of the City's annual budget, the issuance of bonds, and the declaration of emergencies. The Council also has the authority to enter into contracts with other government entities, and to sue or be sued.

The Council's organizational structure is designed to ensure that the City is managed in a transparent and accountable manner. The Council is held accountable to the voters of the City, and the Executive Director is held accountable to the Council. The various advisory committees provide an important check and balance on the Council's power.

The Council's organizational structure is a key component of the City's governance. It ensures that the City is managed in a way that is consistent with the interests of the community, and that the Council is held accountable to the voters. The Council's organizational structure is a model of transparency and accountability.

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development control procedures. These include approval of building plans, subdivision and change of user plans and extension of use and lease. If the council can really take full control in carrying out the above there is bound to be an increase in revenue from the new sources. Strict revenue control in this respect is mandatory.

Table 3.6: Actual Revenues for the Financial Years 1997/98-2000/01 in Kenya Pounds

Year	1997/98	1998/99	1999/00	2000/01
Amount	1,818,689	2,202,838	2,384,762.90	

Source: *Council Records, 2000*

Table 3.7: Council's Surplus/(Deficit) in Kenyan Pounds

Financial Year	1998/99	1999/00	2000/01
Amount	120,930	63,675	31,662

Source: *Council Records, 2000*

There are no definite records to show the amount of money collected from kiosks in particular.

3.11.5 Development Control

Development control functions in this respect include planning, monitoring, inspection and enforcement of notices. Enforcement of notices is under the Town Clerk's domain while other development control functions are under the Town Engineer's (TE) department.

The implementation of the new Physical Planning Act of 1996 is operational though it is applied with reservations (Field Survey, 2000). Political interference from within and without dictates to a larger extent what is to be done in the end. This interference encompasses decisions in such areas as unplanned/informal structures (kiosks),

subdivision and change of user and encouragement of unplanned and unauthorized buildings/developments. Given the preceding it can be implied that the executive arm is incapacitated in the sense that political decisions override their decisions. This has led to several cases of clash whereby politicians often prevail.

3.11.6 Approval Process

In the Town Planning committee meetings deliberate on the development applications after discussions. The committee can approve an application with conditions,

approve without conditions or reject the application. Any decision reached is communicated to the applicant as stipulated by the law (Field Survey, 2000).

Particularly upon receipt of plans (subdivision, change of user, extension of lease and building plans) the Town Engineer and his staff peruses the plans and forwards the same to Town Planning committee for deliberations. Since the analyzed situation indicates that the amount of planning and development control issues are technical and massive, the situation demands a commensurate qualified professional hence there is need to recruit a Planner. Town Clerk, Town Engineer, various invited district heads of departments and relevant councillors are members of the Town Planning committee. District heads of departments include Physical Planner, Public Health officer and Land officer among others.

3.11.7 Enforcement Section

The section staff capacity totals 18 though the ideal number is recommended at 30 according to the Council's records. Reason for not employing the ideal number is

basically lack of enough funds. It controls development through stop notices and demolition (if stop notices are not complied with).

3.11.8 Coordination and Monitoring

Given the legal provisions in use in urban management, coordination between Kericho Municipal Council and other departments is legally provided. Departments referred here are such as physical planning and public health departments. In this, physical planning and public health departments for instance are to offer technical expertise and advise to Local Authorities.

From the Field Survey there is evident lack of coordination between Physical Planning Department and Kericho Municipal Council since from the onset the Part Development Plans (PDPs) preparation was not officially and procedurally done as laid in the various Acts. Additionally, building plans in some instances have been approved without necessary professional comments being sought from relevant departments hence lack of coordination. One typical incident is where a developer constructed a perimeter wall after his plans had been approved without District Planner's comments. This is explained by the fact that the plans once received by the council were not circulated to relevant departments for their comments before decision to approve was reached. This led to a series of fact-finding meetings with Telkom maintaining that the developer had interfered with its telephone lines. Since the plans had been approved, the Council was on the receiving end. The wall was to be demolished at the cost of the Council.

Another typical case is where a developer constructed residential buildings without plans being approved and more so on top of a sewer. The connection of the same buildings to the main sewer was practically impossible as outlined by Building Code section 194(1). The Council invoked section 194(2) as the Local Authorities conditional approval procedure. This subsection conditionally outlines thus “ the Council may cause a building constructed in contravention of section 194(1) of this by-law to be altered, pulled down or otherwise dealt with and may recover as a civil debt any expenses incurred in so doing from the person erecting the same or the owner thereof”. The developer was to agree to the terms of the conditional approval thus “in any case of any liabilities, blockage, burst of the sewer, the council was not liable”. The council deserves the right to demolish such buildings should need (example blockage) prevail at the developer’s cost. Equally, for any sewer line diversion away from the buildings, then the landlord/developer is to meet the cost. In nutshell this is a serious anomaly in the Development control system.

There were no other records to establish the number of developments, which have been stopped due to lack of development permissions or contravention of approval conditions.

3.11.9 Control of Advertisements

Building Code Part IV Section 228-235 together with Local Government Act 162 (L) gives powers to the Local Authorities to control displaying of such advertisements. The Kericho Municipal Council attempts to control such displaying though records were not available. However the council charges some fee upon application for the displaying of such advertisements.

Table 3.8: Type and Amount charged per Advertisement

Type		Amount charged (Kshs) per year
Billboards		1500
Signboards	Electric	800
	Ordinary	500

Source: *Council Records, 2000*

The nuisance associated with such displaying of advertisement was not witnessed. Therefore harm and/or obstruction to road users caused by advertisements like in other major towns in the country is absent.

3.11.10 Uncontrolled Developments

The council views the issue of uncontrolled development as a nuisance in the entire harmonizing of different areas in the town. This is particularly in the peri-urban areas. These peri-urban areas immediate to the town witnessing such uncontrolled developments is approximately 3 square kilometres and is feared that it will increase due to need for developments as the town expands especially housing demand.

3.12 Other Departments Responsible for Land Use Management in the Town

3.12.1 Physical Planning Department (PPD)

This is a department which must closely work with Kericho Municipal Council not only in plan approval but also on daily planning exercises example physical plan preparation, LADP preparation among others.

The department uses an existing Local Physical development Plan prepared by the Physical Planning department and approved by Commissioner of Lands to guide development. It is used to control development (s) in the unalienated government

land. The plan is a short-term plan, which was supposed to have been reviewed after 5 years to accommodate the changing development issues in the town. The plan as is required does not give any plot sizes allowable, which must be tied to infrastructure services. Additionally the plan neither gives the maximum allowable development nor whether flats or bungalows in case of residential areas are to be constructed. In relation to subdivision plans the planner also issues form PPA 5 if satisfied that survey/mutations are in accordance with the approved scheme.

The department receives plans (both land and building) from the council requiring their comments for approval purposes. However, there were no records pertaining to the plans considered then rejected or approved. Perusal of the council's Town Planning committee minutes indicated that the Planner does not attend all the meetings. Lack of notification for the meetings from the council explains these absents.

In addition to the above the District Physical Planner plays an additional role by issuing form PPA 5 (certificate of compliance). This certificate will only be issued when the applicant has fulfilled all the conditions attached to the approval as indicated on form PPA 2 and/or when the applicant has carried out his development in accordance with the approved physical development plan and the approved development proposal. The certificate of compliance will be considered the final approval for any application for development permission. The Planner being a secretary of the District Liaison committee plays an important role in guiding development direction in the district.

3.12.2 Public Health Department (PHD)

This is also one of the departments the council should seek comments from by circulating plans before reaching at any decision. The department's concern is to peruse the plans in light of public health standards and the effect of the same on the environment.

According to this study it was found out that Public Health Department do receive correspondence from the council relating to comments for approval purposes. Particularly the department in perusing the plans considers the following; light and ventilation and compliance with the sewer by-laws. In the municipality the department impose conditions thus Central Business District (CBD) proposed buildings must be connected to the sewer. Areas of the CBD and isolated residential not served by sewerage system must use the septic tanks. Peri-urban areas (within the municipality) must have pit latrines for their usage. The department ruled out chances of no sanitation in the periphery since public awareness in relation to sanitation issues is high. The department also emphasizes on efficient and sustainable storm water drainage and water supply system.

Table 3.9: Number of Plans (Buildings) Perused and Approved

Year	Number of Plans
1996	31
1997	6
1998	23
1999	35
2000	41

Source: *Public Health Department records, 2000*

In case of non-approval a note is attached detailing reasons for rejection and necessary rectification to be included. The same is not recorded in the Public Health

Department's records hence the table above contains only perused and approval. The actual number of plans they receive does exceed the figures in the table.

3.12.2.1 Coordination and Monitoring

Monitoring is done by the department though not frequent so as to ensure proper lighting and ventilation among others since it is reported that developers often do alter their plans (approved) at the construction stage. There are buildings, which have been condemned though actual records were not available. It however averages 4 per year according to the DPHO. Reasons for such condemnation include failure to provide sustainable sanitation and structural defects arising from the age of the structures (after outliving their usefulness). The District Public Health Officer (DPHO) indicated that condemnation is counteracted by lengthy periods of court proceedings.

The department is rarely invited to the Council's committee on Public Health and Environment. This is more so worse given the fact that sanitation problems and environmental degradation are prevalent in the town. Dumping and uncollected garbage is witnessed in roads and every open space especially in the residential suburbs. This dumped and uncollected garbage becomes breeding places for disease causing microorganisms. Similarly, when it rains this is washed to the watercourses example river causing pollution in such watercourses. The situation is particularly worse because there is no delegated officer in the council to deal with the issues of the public health and environment.

Areas with poor sanitation facilities include Kwa Michael and Mombasa Ndogo with reported three (3) pit latrines for 1,000 persons. This causes diarrheal infections, which is second in ranking incidence. Other diseases in ranking incidence though not directly related to sanitation are malaria, upper respiratory tract infections (URTI) and skin diseases.

Public Health Act cap 242 section 126(d) empowers the Minister responsible for Public Health to control the drainage of land, streets or premises, the disposal of offensive liquids and the removal and disposal of rubbish, refuse, manure and waste matter.

3.13 Summary

In this chapter several factors have been considered and all of them work in various ways to determine the growth, structure and conditions of the town. Administrative system ensures that the growth of the town is given impetus so to climatic factors which encourages striving agricultural production, which has potential of boosting the growth of the town.

Population offers both potential for growth and challenges in the urban management system. Potentially it boosts growth in form of creation of derived demand for urban services, which in the end encourage the growth of the town. However, challenges created are in form of over utilization of available infrastructure and unmet housing demand resulting in urban sprawl.

The town easily accessed via transport network hence acting as a stopping and transit point have been outlined. This has positive trend in the growth of the town as history has proved that many towns such as Nakuru, Nairobi and Mombasa did grow because of transport network (stopping and transit).

Land tenure types existing in the town as it affects the pattern of development have also been clearly pointed out. Freehold land tenure offers challenges to urban management as compared to leasehold land tenure. However, with the operationalization of the Physical Planning Act of 1996 there are bound to be a change in this respect since all land must be subjected to planning and corresponding regulatory measures.

The concentration of the town's growth in few directions as shown in the land use map implies that more development control needs to exercise in such zones. Coordination, monitoring and enforcement needs to be beefed up in such zones. Only through this will massive development areas be made sustainable as it is converted to urban use.

Institutional framework has been assessed in view of establishing their capacities, powers, instruments at their disposal for controlling urban management and the necessary coordination they need to exercise as they undertake their mutual roles. Lack of staff and adherence to the laid down procedures have been noted as an impediment in the development control system in the town. Inadequate and unqualified staff has also been noted.

CHAPTER FOUR

DEVELOPMENT CONTROL PROCESS

4.0 Introduction

As earlier outlined different sets of subjects formed uncontrolled development activity zones - these included informal kiosks, Passenger Service Vehicles operating on undesignated sites, hawking activities and developments in the rural-urban fringe. These activities are treated as part of the general development control issues in the town. Case studies are also included and this represents specific development control process. This chapter gives findings arising after studying the general and specific development control processes.

4.1 General Development Control Process

The municipal council is the institution at the local level responsible for guidance and control of development in the town. It liases with several other departments such as physical planning and public health in carrying out these responsibilities. These responsibilities involve initiation of plan preparation, approval, implementation and enforcement. It invokes various Acts notably Local Government Act cap 265, Physical Planning Act of 1996, Public Health Act and various by-laws in carrying out its duties and reaching at any decision.

As earlier pointed out planning responsibility in the Council lies with the Town Engineer while enforcement of development permission lies with the Town Clerk. Development applications are received by the Town Engineer (through PPA 1) whereby they evaluate the development application and make necessary recommendations before forwarding the same to the Town Planning committee for

deliberations. The committee either approves with or without conditions or rejects. Conditions attached or grounds of refusal must be clearly indicated and communicated through fifth schedule (PPA 2). The decision reached is communicated to the applicant within 30 days from the day the application is received. The Town Planning committee is composed of various technical heads of departments in the District such as District Planner, District Public Health Officer, District Surveyor etc.

The following activities requiring development control are used to illustrate the nature and extent of general development control process in the town.

4.1.1 Kiosks

Kiosks in the municipality forms part of the uncontrolled development and it is witnessed in various places including along road reserves, next to bus stop and bus parks, next to schools and within open air market precincts implying they are located in government land. Due to lack of council records the number of kiosks could not be ascertained. Through an estimate survey they exceed 100 in number. Many are located on the highway. Some of the kiosks were constructed with the assistance of different companies for example British America Tobacco (BAT), Supermatch and Coca Cola with their marketing colors and decorations explicitly portrayed. The items sold ranges from industrial goods to household goods. These are for example second hand items (clothes, shoes), retail goods and meat.

Individuals own most of the plots after seeking site allocation consent or permission from the municipal authority. Individual owned kiosks composed of 62 per cent while 38 per cent are hired for purposes of business from 'landlords'.

Tenants pay Kshs 500 on average as rents. The Local Authority consented to all the sites occupied though with stipulated periods of not more than two years. The Council however deserves the right to demolish the kiosks on short notice.

4.1.1.1 Nature of Occupation

All the structures are temporary or semi-permanent being constructed of timber or iron sheets on the walls and all roofed with iron sheets while floors are cemented. Sizes of such structures range from 12 -88 square metres with many (69 per cent) occupying area less than 20 square metres. The kind of materials used to build is susceptible to greater damage in case of fire outbreaks implying that damage will be great. This is worsened by lack of on-site fire fighting and first aid facilities. Additionally the lack of well-maintained and running vehicles for fire fighting in the council exacerbates the situation.

4.1.1.2 Approval Process

By virtue of seeking Council's consent for site allocation most of the kiosk owners did not seek permission to build the kind of structures present keeping in mind the kind of building materials used. Additionally no building plans were prepared and submitted for approval to the relevant offices. As a result of the preceding therefore no procedure was followed in ensuring approval of the kinds of structures witnessed. Fifty five per cent of the respondents however indicated that they were aware that

application for development permission was mandatory. Lack of monitoring from the council explains this omission.

4.1.1.3 Environmental Concerns

Various activities carried out in these kiosks do generate wastes both liquid and solid. The solid wastes are either disposed in a dumpsite or collected by the council. Collection by the council is not frequent and field survey found out that it ranged from once a month, a fortnight, once a week and very rare. All in all the service is not sufficient as shown by physical sitting of huge pillage of wastes (solid) next to these kiosks. The Council does not provide receptacles or rubbish bins. The kiosk owners use boxes for instance to dispose wastes to the dumpsite.

4.1.1.4 Risks

Risks identified by the kiosk owners/operators are several. Insecurity arising from theft of valuables tops the list. Potential accidents also were raised. Accidents can occur through vehicles ramping into the structures (since they are sited on road reserves) or fire outbreaks coupled with susceptibility and lack of necessary equipments identified earlier. Given the temporary nature of such structures coupled with political changes demolishing is rampant. In any case compensation is non-existence.

4.1.1.5 Opinion on Relocation

As to the decision to change such sites either through self identification or Council's relocation, fifty four per cent of the respondents indicated that they didn't want to change their sites while forty six per cent indicated their willingness to be located

elsewhere. Advocates for non-changing sites argued so because of the good current business(es) scales they were enjoying. The ones who wanted to change the sites conditionally accepted that their willingness is subject to being located where they will attain better or equal business returns in relation to the sites they currently occupy.

4.1.1.6 Infrastructure Facilities

Sanitary facilities (toilets) are non-existent. Kiosk owners/operators seek this essential service from neighbouring commercial entities especially the bars. Those next to open air market use the public toilets sited in such areas though in pathetic conditions. Due to lack of such facilities some sites in such neighborhoods have been turned into urinal points. This is more so in kiosks next to bus stops experiencing huge number of persons. Water is accessed through private taps in commercial entities. The respondents prioritized sanitary facilities in provision.

Given the fact that the kiosks are situated along the roads, bus stops/parks, schools and open-air market accessibility is not a problem. The kiosk owners/operators as they undertake their businesses do experience congestion. Problems including noise from vehicles, garbage collection problems and insecurity (property demolition by council, accidents and fire outbreaks) were identified as impacting on the kiosk owners/operators. Particularly lack of sanitary facilities (toilets) was noted. There are no incidences of diseases.

In concluding there is evidence of environmental degradation brought about by uncollected garbage which end up filling the drains making neighbourhoods unsightly

and producing stenchy smell. The LA by failing respond to its responsibilities as mandated in form of provision and maintenance of infrastructure and other services including garbage collection and disposal directly cannot escape the blame.

4.1.2 Transport Facilities

This also forms part of the uncontrolled activity in the municipality. Private individuals and formal associations or established companies offer this service to the public. Formal associations or established companies like Akamba Bus and Kenya Bus services have 'offices' on road reserves and petrol station (Caltex) along the highway having shifted them from the planned bus park. At the most the above mentioned private individuals and established companies started occupying the site for the last three (3) year. Convenience in terms of accessibility, business advantage, "followed what others had done" and because it is on the highway hence highly utilized unlike the planned bus stage or park were the reasons given for locating to the site. In relation to business advantage locating in the bus park will imply low business as opposed to the current site where there is great influx and flow of travelers or commuters.

4.1.2.1 Nature of Occupation

Occupation of the site(s) is practically temporary with those having 'offices' having built their 'offices' with iron sheets or timber, iron sheets and cement on the walls, roof and floor respectively. For those lacking 'offices' they carry their activities in the petrol station precincts and along the road reserves. The players in this sector are aware of another site meant for them but due to the reasons mentioned above they

cannot occupy. Kenya Bus and Akamba Bus companies who sought permission from the council pay rates to the council.

4.1.2.2 Infrastructure Facilities

The site these actors occupy is lacking most of the facilities. Out of both the persons interviewed (71%) and personal observations most facilities are lacking and/or insufficient. Toilets or sewerage system is non-existent. Absent also were water reticulation systems, efficient and/or frequent garbage collection and electricity supply. Respondents ranked the provision of toilets top in the list. The site(s) are practically and physically congested (Plate No.6).

4.1.2.3 Environmental and other Risks

Risks associated with the day-to-day business undertakings in this sector were identified. Speeding vehicles on the highway act as potential accident sources. Security for passengers and their goods especially at night was also noted. This is more profound through the stealing of passengers' luggage by unorganized groups of stage attendants in addition to the hawkers. There are no attempts to improve security.

To create efficiency in the site proposals were made by the respondents and included the following: -the responsible Local Authority should provide shades, power supply, water and rubbish/garbage collection. Police patrol, which is efficient and effective, should be present to improve on security. There should be road and storm drainage system maintenance. The current users proposed the turning of the site permanently for the current use.

Environmental concerns in this case include noise and air pollution from vehicles fumes. The lack of efficient refuse collection on top of lack of receptacles causes garbage backlog in these zones. The only disposal method is dumping hence the zones are characterized by unhygienic dumpsites.

4.1.2.4 Other Vehicles

Due to alienation (hence change of user to commercial) of the lorry park in the town, lorries and other goods transport vehicles are forced to park along the roads (Plate No 5). The resultant scenario is that of congestion along the main road.

4.1.3 Hawking Activities

4.1.3.1 Overview

According to the Local Government Act cap 265 especially section 201(g) Local Authorities have the powers to make by-laws. Kericho Municipal Council by invoking this section made Hawkers By-laws-1996. The By-law defines what is entailed (By-law 2) and not entailed (By-law 3) in hawking. The By-laws stipulates that a license must be issued for such purposes upon payment of an appropriate fee though the Town Clerk has the discretion to issue or not. The license shall include such particulars as the commodities and place(s) at which the applicant intends to engage in hawking. The license has terms and conditions specified. This includes the lack of transfer of a license to another party than otherwise specified in the license. An offence under these By-laws is that offenders will be liable to a fine not exceeding Kshs 2,000 or imprisonment or to both such fine and imprisonment [By-laws 10(a)].

4.1.3.2 Hawking in the Town

Hawkers do their business(es) in areas 'where customers can be found'. Such one area 'where customers are found' is along the highway. They sell assortment of petty commodities commonly called *mali mali*. They reside in slum settlements in the municipality (example Kwa Michael and Mombasa Ndogo). Respondents indicated that they obtain their goods from Asian wholesales and other shops. Their customers include passengers and town goers. They face various problems ranging from harassment by council *Askaris* to fatigue (the kind of business requires high mobility). However, they view this as the only way of doing their business(es). Risks include insecurity and accidents.

4.1.4 Developments in the Periphery

4.1.4.1 Land Ownership

From the questionnaires administered in the peri-urban areas, ninety six per cent of the land tenure is freehold while the remaining four per cent is leasehold. All respondents had title deeds. Land sizes ranges from 0.25 acres to 5 acres. Land ownerships are varied with own (owned by the respondent) accounts for seventy four per cent, family (18.5%) and others (rented) accounting for 3.75 per cent. For those who own their land, they either bought or inherited (from their parents) representing twenty five per cent and fifty one per cent respectively. Others (example lease from individuals) accounted for 22.2 per cent. It was evident from the responses that no conditions were attached with the issuance of land title. Land parcels, which could have necessitated change of user, was never done hence no accompanying user conditions from the Commissioner of Lands. Respondents asked preferred to have their pieces stay as freehold titles with absolute right. The argument being that

changing use (by extension changing tenure from freehold to leasehold) would cause mandatory payment of rates to both the Commissioner of Lands and the council annually. This is a hindrance to development control efforts.

4.1.4.2 Permission for Development

Developments on land are varied and include family housing (25.9%), rental (both residential and business){33.3%}, family housing and rentals (29.7%) and not developed (11.1%). In some cases permission for development was sought from the council (25.9%). 66.7 per cent of developments had no development permission while 7.4 % accounted for the parcels, which had no developments.

Table 4.1: Developments versus Permission to Develop

	Valid %	Cum %
Developments with Permission	25.9	25.9
Developments without Permission	66.7	92.6
Parcels without developments	7.4	100

Source: *Field Survey, 2000*

Various reasons were postulated to explain lack of development permission and this included the fact that the property was personal (18.5%). Others included lack of awareness for the need for development application (25.9%), temporary nature of structures (7.4%) and the fact that the council is not effective in carrying out its responsibilities. Lack of effective monitoring and enforcement of compliance illustrate this inefficiency. Additionally it is also explained by the longer time plans takes to be approved (7.4%). Twenty two per cent accounted for the undeveloped parcels. For the proportion, which applied for permission conditions of approval included the need to obey the plans with no alterations whatsoever.

4.1.4.3 Time taken by Plans before Approval

According to the same respondents the time the plans took varied with not more than 30 days representing 18.5 per cent, within 60 days (3.7%), above 60 days 7.4 per cent and the rest (66.7%) being attributed to non-application for permission.

4.1.4.4 Infrastructure Facilities

Available infrastructure facilities and services – water, electricity, telephone, sewer, road network, rubbish or garbage collection and storm water drainage – were varied and deficient in most cases. Water was the most accessible (77.8%), followed by electricity (33.3%), telephone (25.9%) and road network (7.4%). Other facilities were not available out of the responses obtained.

In terms of provision ranking priority, water ranked first followed by electricity, sewer and rubbish collection in that order. Road widths in the periphery ranged from 6-12 metres wide. Roads of 6 metres accounted for 29.6 per cent, 8 metres

4.1.5 Summary of General Development Control Process

An overview of the above various activities, which require development control, indicate that the situation of urban management in the town is not satisfactory. Coordination and monitoring as stipulated in the legal framework is not efficiently carried out. Instances of approval of plans (building and subdivisions) have occurred without professional considerations. Also instances of development taking place without permission have occurred. The typical cases where kiosks and residential are built without any plans drawn and therefore never submitted for approval illustrates this point. Records keeping showing updated number of approved with or without permission or deferred development applications are lacking in the council.

A multiple of reasons could explain this lack of coordination and monitoring including enforcement of development application approved. These include lack of dedicated and qualified staff, lack of political will and support among others. Future improvements could be realized by updating and preparing the local physical development plan; recruiting and remunerating well qualified staff and elimination of political influence and interference.

4.2 Specific Development Control Case Studies

This section is devoted to the assessment of case studies as this approach offers a deeper and practical knowledge about the actual development action(s) on the ground. The need for such case studies was necessitated by the complexity of the identified problems in such zones, which typically required closer scrutiny and analysis. Two areas qualified to be studied for this purpose. Case study one is a low-income residential development in form of urban sprawl in the rural-urban fringe. Case study two involves assessment of 'developments' taking place along the main highway.

In each case attempt is made to assess planning and implementation aspects; the institutions (and their development control problems), which are (were) responsible for such planning and implementation, their weaknesses and lack (or presence) of coordination, monitoring and enforcement (if any). Reasons, which support and 'rationalize' such developments and their implications on the sustainable urban development, is also assessed.

4.2.1 Case Study 1: Low-income Residential Developments in the immediate Rural-Urban Fringe

4.2.1.1 Introduction

The residential developments are just outside the former boundary of the municipality and have witnessed uncontrolled and intense developments over the years. These uncontrolled developments in the zone have been a response to unmet housing demand, which is far short of supply. This has been documented by Mutai (1989) "... tendency in Kericho has been for low income housing to be built on land converted from agricultural use..." The area is a gentle sloping land extending to around twelve (12) acres. The area is demarcated into 50ftX100ft plots with little observance of the laid down development control system or procedures. It is private land under freehold tenure system.

Building materials are mainly timbers on the walls and corrugated iron sheets on the roof. There is no organized layout of the housing units in the sense that building lines and setbacks were not observed. Building plans were never drawn and therefore never submitted for approval. The Kericho Municipal Council does not monitor the planning and development of the area. There was no change of user from agricultural to residential cum business land use. This was necessitated by the fact that landlords felt that if they changed use or user they will be compelled to pay rates to the Council and Commissioner of Lands. This explains why the Kericho Municipal Council is not willing to extend the sewer as a result of tenure. Through this scenario (lack of user change) the Council and the Central government are losing a lot of revenues.

Between neighboring plots (developed), access paths are only through narrow corridors measuring less than 2 metres (Plate No.1). The access roads for vehicles are impassable and though intended to be 6 metres due to non – observance of the building lines it has reduced in size. Dead end roads are also witnessed. Save for the restrictive road reserves, reservation of open spaces was never observed. Equally there were no sewerage reticulation reserves and community facilities. Road networks don't have culverts and are not all weather. They are impassable during the rainy season. Solid waste (Plate No 2) deposited on the same also increases its impassability. In this state of restrictive roads and access paths there will be no way of fighting fire implying that damage will be extensive.

In a typical plot size of 50ftx100ft, 12ftx12ft single rooms totaling 12 are built. This together with canteen in front and pit latrines and bathrooms behind implying that plot coverage is over 85 per cent. This is so bad to the extent that hanging wires are observed on the restrictive road reserves (Plate No 3). For a room 12ftx12ft on average there are 2-3 persons. There is also little gardening in plots, which are not fully developed.

Besides the above, drains are non-existent and where there is, maintenance is poorly done. Arising from this, foul water drains into road reserves and finally to the rivers. During dry season foul smell is predominant due to stagnant wastewater. These areas also act as mosquito breeding areas thus malaria is prevalent as mentioned by the various respondents. Lavatories are in bad state since the filled pit latrines cannot be easily exhausted because of poor access roads. This leads to another problem of waste collection. A dilemma exists on the part of the landlords on how to rid their human

wastes. This is complicated by impossibilities of accessing the sewer system, which besides being expensive cannot be operational due to the absence of sewer reticulation reserves. Additionally the landlords are unco-operative hence their input in contributing to the proposed endeavor has not been forthcoming. Electricity supply is also non-existent leading to lack of streetlights.

The above problems notwithstanding landlords and tenants alike mentioned the issue of insecurity has been dominant. Mugging and burglary in the night and even early evening is witnessed. Lack of streetlights complicates the situation. Illicit alcohol is brewed by a section of the tenants. According to respondents, illicit brews lead to prostitution. There are instances of AIDS deaths though there is a downward trend thanks to enlightenment efforts especially by AMREF. Estimate point at around 5-8 deaths associated with AIDS.

Rubbish collection is not frequent (once a month). There are no provided rubbish bins by the Council. There are unsightly dumping sites as witnessed in undeveloped plots and road reserves including the intended drains. Water is accessible to individual plots and some access to other landlords while a good number go to the river to fetch water and clean. This according to the interviewees is approximately 50 per cent. Residents utilize river water for washing of clothes, cars and bathing of children, while cows were drinking from the same source. The cost of water at Kshs 5 per 20 litres seems to encourage the utilization of river water for non-consumptive usage. Rainwater is not being tapped since rain harvesting is not being done.

The youths in the area are school dropouts. This is due to the fact that income levels are low hence paying school fees and other funds are not possible. There are more school girls drop-outs than boys and while most girls go for prostitution, boys engage in such businesses as hawking on the highway (Case study 2), handcarts and touting. The above situation can be explained by the breakdown of family cohesiveness because parents are too busy engaging in minor businesses from morning to evening (this is according to respondents interviewed). Family size is averagely 5-8 persons per household with the cost of living mainly being subsistence.

4.2.1.2 Planning and Implementation

The owners who wholly or partly sold their plots in sizes of 50ftx100ft initiated the subdivisions observed in the area of study. Subdivisions, mutations drawn (by Surveyors) and registration of titles were done without the Local Authority's knowledge. This is explained by the little knowledge the Authority had which could have led to monitoring and enforcement of non-compliance.

The road reserves were "planned" at 6 meters wide without consideration of the slope of the land. In steep zones road widths were still "planned" at 6 metres such that at the moment most access roads are restrictive in movement. This was worsened by non-compliance with building lines or setbacks.

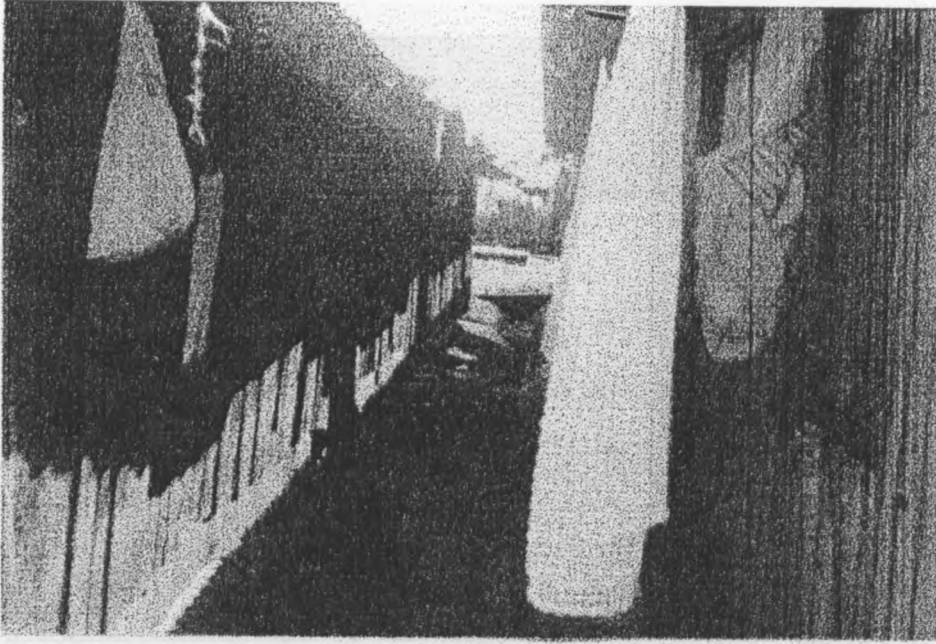


Plate No. 1: Narrow Corridors used as Access Paths

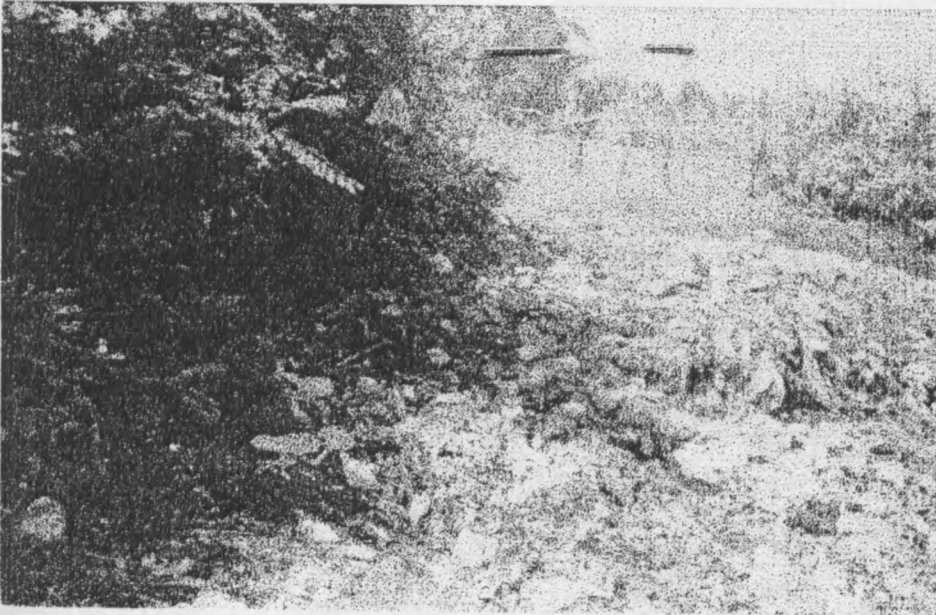


Plate No. 2: Uncollected Garbage, which has made the Road Reserves Impassible



Plate No. 3: Road Reserves with Clothes' Lines



Plate No. 4 : Poorly Planned Road Reserves in the Urban Sprawl Neighborhood with No Observance of the Building Lines.

It is important to note that in the just repealed Act (Land Planning Act cap 303 of 1968), planning regulations only concentrated in the urban areas only with no mandatory planning of the agricultural land rural-urban fringe inclusive. The new Act (Physical Planning Act of 1996), however, subjects all land subdivisions to planning by Registered Planners or Director of Physical Planning and the approval of the Local Authority in the area in which the proposed subdivision falls. If this exercise, is undertaken with the strictness it deserves it will ensure effective control of the pattern of development and bring harmony in the various land uses in relation to conflict avoidance and accessibility to adequate infrastructure facilities.

It is worth noting that in the Land Planning Act, planning was not inclusive as the way it is in the new Act. In the new Physical Planning Act of 1996 the zone upon being subjected to professional planning and approval by the Local Authority would have involved change of user from agricultural (freehold) to other urban land user (residential, commercial *et cetera*), that is, leasehold. This would imply that the council would be legally obliged to control development and provide services and in turn raise some revenues in form of rates. Commissioner of Lands also could raise revenues in form of rates through leasehold titles. The kind of land tenure witnessed in the case study being freehold is blamed in most cases for causing development control problems. The lack of conditions attached on the use of land despite the anticipated rise in population density and intensification of development is also worth noting.

4.2.1.3 Evaluation of the Project

The land tenure (freehold) dictating and the fact that it is just outside the planned area (existing short term plan) the Council felt not obliged to call for plan preparation and

subsequent implementation. With the review of short-term plan long overdue, there is a clear breakdown of planning preparation and implementation in the municipality. Without reviewing the plan so as to take into account the growth of the town experienced in the urban-rural fringe, the council in short is incapacitated in its operations in so far as the guiding scheme is concerned. The players responsible in plan preparation and implementation and especially the Physical Planning Department (since the Local Authority though a planning authority is incapacitated by lack of qualified staff – Planner{s}) are to share the blame. A Local Authority such as Kericho Municipal Council, which is coupled with lack of staff, must rely on an updated development plan and an accompanying report prepared by the Physical Planning Department.

The unplanned developments being the case, overstretching of resources and/or facilities of the council such as rubbish collections, water provision *et cetera* has resulted. This has ended in the presence of garbage on roads and road reserves. The road reserves are physically disorganized to the extent that movement is difficult and confusing. Pit latrines are hazardous in nature and digging of the new pit latrines cannot be realized since plot ratios have been in excess of 85 per cent. No proper planning consideration was carried out to reserve appropriate road widths. For instance one road reserve is used as a drying line (Plate No. 3) since it is narrower widthwise and similarly has a dead end (cul-de-sac). The housing units in the end do not qualify in meeting the basic standards-privacy, security and a healthy environment.

4.2.2 CASE STUDY 2: ' Developments' along the Main highway

4.2.2.1 Introduction

The highway stretches through the CBD and stands at the peak of the town as it passes through the town from Nairobi to western Kenya. Historically, the growth of the town has been influenced by the position of the highway. It divides the town into two with more developments to the North than to the South. To the south the high-income residential (*milimani*) areas together with high class hotels including the golf club characterize it. Along the main highway there are two councils (Kipsigis County Council and Kericho Municipal Council), commercial banks and other major service facilities. The highway acted as a good by-pass through the town and has shaped the activities of the town. In this period there were no informal activities happening on the main highway like kiosks and unauthorized parking.

In the early 1990s several activities happened that changed the purpose and density of use of the main highway. The open space (*Moi gardens*) was planned and allocated, the only Lorry Park in the town was alienated and allocated and buses and other public service vehicles 'started' their activities along the main highway. The coming of the buses and others attracted the activities of kiosk owners and hawkers while the alienation of the two land sites led to lorries parking on the highway (Plate No. 5) and increase access 'junctions' to the main highway. All these activities increases risks associated with the use of the main highway. This scenario has necessitated the need of the 'developments' on the main highway to be studied as a case study.

4.2.2.2 Planning Aspect

A road system for a growing town like Kericho contained in a development plan must

- (a) Accommodate growth and change in the urban fabric
- (b) Differentiate between through traffic and local traffic at various levels in a hierarchy or classification of roads by function
- (c) Protect environmental standards particularly where residential, recreational and shopping areas are concerned.

The highway in the municipality as part of the road system has failed since the highway is no longer serving the purpose it was meant to - for quick through traffic. Its state can at best be explained as impassible and pot holed.

For a medium town like Kericho four level hierarchies of roads is adequate, that is,

Local roads- providing direct and unrestricted access to adjoining land accommodating vehicle storage, if necessary.

Secondary roads (distributor roads)-connecting local roads with other roads with very limited access to adjoining land. They have minimum number of intersections. They collect traffic from lower roads and deliver to higher hierarchy roads.

Primary roads- mainly for quick traffic flow within the town.

Urban freeway- meant to ensure quick through traffic in the town.

Physically on the ground there is a 3-hierarchy of road with the main highway acting as both primary and urban freeway. It doubles as a main link road between the Rift Valley (and as far as Nairobi and Mombasa) and Western Kenya towns of Kisumu, Homa bay among others.

Developing plots along the highway for purposes of land alienation from low-density uses to high-density uses have occurred. Such changes have occurred in form of lorry parks, recreation to commercial plots. This has created big interference between town

and through traffic. Potentially with continued developments (partial developments is now witnessed) the scenario would be worse in the sense that the trend will necessitate high direct flow of traffic to the main highway unlike if the collector street is used. Additionally it is in total contrast with the initial planning proposal, that is, to maintain the place as high-income (low-density) residential zone. The preceding has necessitated several intersections with the initial ones planned in the Development Plan accommodable while recent developments involving land alienation has mentioned above accounting for unaccommodable intersections. Physical observation indicates that initial direct access(es) to the main road were less than 5 but with subdivision and land alienation it has increased manyfold(12). Good planning principles dictates that direct access(es) to the main road should be minimized as much as possible.

Besides the developments, 'illegal' public service vehicles (PSVs) stage or park and informal kiosks, which has increased concentration of persons and vehicles, is also worth noting. This has slowed traffic flow in the main road implying that the town traffic gets collected in the secondary roads forming jams before joining the main road.

The absence of infrastructure facilities to comfortably serve the increased human traffic in the highway generated by kiosk owners, customers and passengers poses sanitation threat in view of public health. Also the uncontrolled and unauthorized activities create potential accident zones along the highway.

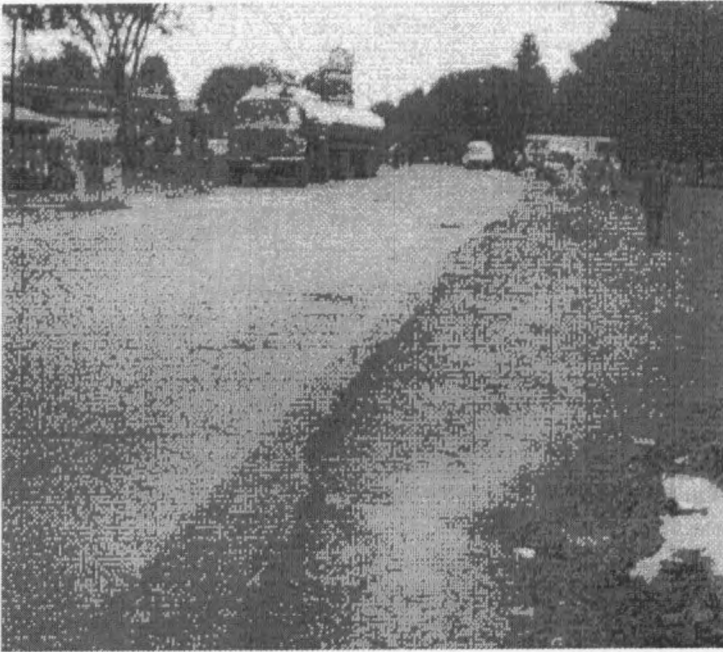


Plate No. 5: A Lorry Parked along the highway caused by alienation of Lorry Park for Other Uses.



Plate No. 6: Activities on the main highway. Kiosk next to the main highway on the left and Public Service Vehicles and Operators on the either side.



Plate No. 7: Other Activities taking place along the Main Highway

4.2.3 Summary of Specific Development Control Processes

In both cases the various activities are undertaken in contravention of the objectives of harmonious urban environment. The residential developments were constructed without any planning guidance and control. Similarly, the 'developments' along the highway are undertaken without any professional planning proposals. The plots alienated and allocated are purported to have been planned. In professional terms the allocation was unprocedural in addition to political inclination.

In addition to the above both cases the need for such 'unauthorized' developments have been necessitated by a response to a need. The residential developments were responding to a need for shelter (housing) while 'developments' on the highway are responding to a need for petty (small) income businesses (hawking and kiosks) and picking (and dropping) passengers. If the situation is to be corrected these needs must be attended to concurrently with enforcement of the development control system.

Implications on the environment arising out of the two case studies are negative. Insanitary conditions have resulted which contravenes the Public Health Act. In the planning and development control point of view the resultant activities are illegal since they are being undertaken within the requirements of various legislations, regulations and building codes and standards. Reasons for such illegal developments could be explained by failure of the responsible institutions especially the Local Authority to ensure planning, implementation, coordination, monitoring and enforcement, which are mandated legally to undertake. Improvements in this respect to ensure that the two cases are not repetitive or expand should be instituted.

CHAPTER FIVE

POLICY IMPLICATIONS

5.0 Introduction

From the preceding chapters, a number of factors that affect the development control and urban management have been noted. These include, inadequate capacities, low levels of awareness about planning and development regulations, political interference, high population growth rate mainly characterized by massive poverty and poor policy and plan implementation. This chapter discusses these factors together with their planning implications and recommends measures for improvement.

5.1 Findings and Planning Implications

From the field study the length of time plans takes before approval ranged from 30 days (18.5%), within 60 days (3.7%) and above 60 days (7.4%). The stipulated number of days plans must take is 30 days from the day the application is submitted to a planning authority. The scenario just mentioned of not following the laid down procedures shows the inefficiency of the local authority to carry its own responsibilities. This encourages developers to go ahead with no regard for submitted plans hence developers do things "their ways" leading to mushrooming of unplanned settlements. This delay, caused generally by inefficiency of the local authority, can also be explained by complicated procedures the applications have to go through, laxity amongst the officers and the councillors among others. In situations where there is delayance in approving plans hence non-compliance there is need to ensure that building permits are more rapidly processed in an effort to control developments. The lengthy time taken by plans to be

approved should be penalized. Penalties should be incorporated for contravening stipulated periods.

The use of various development control instruments in the study area has not yielded the expected results. Kericho Municipal Council, though it has enacted by-laws, it has failed to effectively control and manage certain urban activities such as vendors and hawkers activities. The fines handed down to offenders are not punitive enough to deter such activities. For instance, the Kericho Hawkers By-laws stipulates that offenders are to pay Ksh. 2000 or three months imprisonment or both fine and imprisonment. Apart from it being non-deterrent its execution also is ineffective.

Additionally, assessing the penalties in the Physical Planning Act of 1996, it is true that penalties are too minimal, to deter any developer who contravenes such regulations. The fine of not exceeding one hundred thousand shillings or an imprisonment not exceeding five years or both are minimal compared to the gains made from inefficient modes of production activities especially of major development such as obnoxious factories. The situation is accentuated by the failure to prosecute the offenders. In these circumstances non-compliance to planning regulations is encouraged.

Given the non-detering regulations as noted above, developers have contravened development control regulations as they undertake their activities. This has led to developers failing to submit their plans to the relevant local authority for approval

purposes. In the end, unauthorized developments have been carried out in total contravention to the laid down regulations.

The revenue base of the council is weak. This has hindered the council from recruiting qualified staff and answering to its responsibilities in form of technical provision and maintenance of infrastructure and other services. The level of contribution of the council to infrastructure development in general has been poor and lags behind urban growth. In the town only a small percentage (30 percent) is covered by sewerage services. Similarly, garbage collection lags behind as do other essential services. The weak financial base is determined by lack of transparency and accountability of staff especially in revenue collection and use of funds. Revenue collected is not adequate partly because of the use of unqualified and untrustworthy staff.

The level of awareness of development control regulations and procedures in the study area hence reason for lack of application for development permission is low. The Proportion of developments taking place without permission arising out of lack of awareness was 25.9%. This represented the greatest reason for non-compliance. Others being the notion that the property was personal (18.5%), the property was temporary (7.4%) and the lack of monitoring and enforcement by the council (7.4%). By implication, if the level of unawareness is high, non-compliance to planning regulation would be rampant. Similarly, the public must be made aware of the provisions and requirements of by-laws, health, licensing and building regulations. With this

understanding, developers will appreciate that planning and development control regulations boosts development rather than delay. Unless developers are made aware of these regulations, urban centres will be characterized mainly by; unauthorized and unplanned developments, encroachment on reserves and general environmental degradation.

Related to the above, the view that the proportion of the urban poor especially the low income persons is over 50 per cent is supported by a large proportion of the low income persons in the town. Such individuals occupy themselves with all kinds of petty activities or jobs such as hawking, selling of second hand items and maize roasting. Their activities in most cases do not often follow the laid down regulations. This is true to the extent that with such a large proportion the urban poor struggling to make a living compliance to urban development regulations is not in their scheme of priorities. Responses to correct such results have been punitive and reactive such as victimization and harassment of hawkers and other petty traders.

Political interference especially at the local authority level has been outlined in the study as a hindrance to the pursuits and objectives of the development control process. Regulations and control of development in the town has been left at the whims of the political system. Such political interference has been witnessed in development control aspects especially of open spaces, citing hawking activities, kiosks and transport facilities. Alienation of open spaces and change of use of land parcels from low order land uses to high order land uses have occurred in the town as noted. This is

explained by politically motivated unprocedural and illegal alienation of such lands. In the same light the local physical development plan of the town which provides the framework for controlling and guiding development has not been adhered to. This has mainly been explained by the lack of political will to support implementation of the plan.

Informal developments such as kiosks, hawking activities and jua kali activities detrimental to public health and the environment have been witnessed in the town. The council allocates kiosks and deserves the right to demolish them as per notices. Respondents mentioned that the time span of kiosks is mostly 1-2 years (Field Study, 2000) and that this tally with the Mayoral elections. This shows and supports the view that there is a strong relationship or influence of politics in decision affecting these development control functions.

The growth of the town in terms of population growth rate per annum is high (5.5%). This population increase is mainly influenced by immigration from outside the municipality in search of better opportunities in the town. As earlier noted these opportunities include employment in informal jobs and participation in informal businesses such as hawking. There is documented evidence that there is a strong relationship between economic strength of an individual or community and unregulated development. High levels of unemployment and other related economic hardship leads to vendors and hawkers, for instance, to squat anywhere to market their merchandise in the town. Efforts therefore to enforce compliance to development control regulation in the town in the face of the above scenario has created much conflict between the vendors

and the enforcing authorities. By this, the use of Local Government Act Cap 265 section 164 (a) and use of the Hawkers By-laws 1996 in the town has been rendered non-performing. This finally has led to hawkers selling their commodities (*mali mali*) in total contravention of the planning regulations. On the same note, housing supply in the town is outrightly short of demand and by implications this has created a major urban planning problem. This situation was correctly pointed out by Mutai in 1989 that the supply was short of demand by 9202-housing units and the deficit was to increase. Rightly the situation has moved from bad to worse. Several factors have led to this situation where demand has exceeded supply. The council has not responded to alleviate this by building housing units as an alternative to the private individuals. Also the cost of building decent houses has risen. This is due to inflation which has affected all sectors of the economy, housing sector included. Due to this, private developers have been constrained to build decent houses to meet the increasing demand. What have arisen therefore to absorb the increasing population are illegal (and insanitary) settlements in the urban fringe.

The results of the analysis of the general development process and case studies, reveals that the status of most infrastructure provision and accessibility is appalling. Housing supply, transport network characterized by poor conditions and pot holes and storm water drainage channels are insufficient. What has resulted from this are; a serious housing deficit, inaccessible transport network and lack of adequate drainage channels among others. In turn this has resulted to unplanned settlements, stagnant and foul

wastewater on road reserves. In the planning point of view, these have led to insanitary settlements and general environmental degradation.

The man-nature interaction through attempts to address development needs without it being controlled can lead to substantial environmental degradation. There are evident externalities or external costs and other nuisances to the environment. This is seen in form of garbage dumped on road reserves especially in the urban sprawl areas. Cases of abuse of the common public interests have occurred. This is a threat to environmental quality in regard to housing, water, sanitation and refuse management, drainage and transport facilities. This situation has resulted because of non-compliance to the regulation especially relating to public health and safety. This being the case, the use of the relevant regulations must be strengthened through proper compliance and enforcement. For instance, though the Public Health Act empowers the respective Local Authority (Kericho Municipal Council) to ensure that the general health standards stipulated by the Act are adhered to through specific regulations the adherence to this Act's provisions in the town through enforcement has been haphazard. The requirements of the Act in compliance with public health and environmental quality, light and ventilation and sewer by-laws have not been adhered to. This is explained by the lack of qualified staff (Public Health Officer) in the council establishment in addition to the lack of coordination with the Public Health Department (central government).

The existing physical development plan, which is used to control and guide development, is outdated and there are no concrete efforts to prepare one. This implies

that the planning process has lagged behind development trends in the town. The changing development issues in the town have therefore not been accommodated in the existing plan. The lagging behind of such an important process to review the plan to development has led to inefficiency in controlling and guiding development by the relevant local authority. This is evident by the presence of unplanned, overcrowded and insanitary developments within the urban fringe areas.

The study also revealed that staff establishment (in terms of numbers and quality) of the council is not sufficient especially in relation to control and guidance of development control system. This lack of qualified and dedicated staff has been evidenced in inadequate appraisal plans, inspection of building works and sites, processing of planning application and basic understanding of the provisions of the Acts. As a result unauthorized formal buildings and other developments have been witnessed. Unauthorized extensions and overcrowding have also resulted. The current freeze on civic service recruitment has exacerbated the situation. Top senior staff also leaves the local authority establishment due to poor remuneration.

Related to the awareness level of the planning and development control regulations is land tenure, ownership and its use. Land tenure in the municipality is the most determining factor of the state of urban land use management. The freehold land tenure in the fringe, characterized by cheap processes of transfer and lack of accompanying user conditions on issuance of title, will be the space to accommodate the future growth of the town. At the moment land parcels under this type of land tenure are

witnessing uncontrolled development. The study generally revealed that developers on freehold land show higher non-compliance with regulations as compared to those in the leasehold land.

Coordination between the Kericho Municipal Council, Physical Planning and Public Health Departments for development control in the town is wanting. Building plans in some instances have been approved without professional comments from technical departments. Typical cases earlier outlined; the construction of a perimeter wall by a developer after plan approval without District Planner's comments and construction of residential buildings on top of sewer line without plans being approved, show this lack of coordination and monitoring in the development control system in the town. Though there were no other records to establish other developments which have been stopped due to lack of development permissions or contravention of approval conditions the two cases mentioned above are enough.

The general cleanliness of the town is not satisfactory. Garbage collection lags behind, there are insanitary settlements and the town's residents especially the poor do not access clean and portable water hence are forced to utilize stream water. Drains in the informal settlement are non-existent and uncollected garbage is deposited in such drains blocking them completely. Arising from the blocked drains foul water is collected which when it rains is drained finally to the rivers. Foul smell is predominant due to stagnant wastewater in dry season. This foul wastewater also acts as mosquitoes breeding grounds hence malaria is prevalent as earlier outlined. In other areas due to the failure of the

council to collect garbage, informal dumpsites have been formed. Rubbish bins are not provided. Animals could be seen feeding on uncollected garbage. Lack of sufficient sanitation facilities for example have led to populations outstripping the number of pit latrines provided in the town and raising concerns with compliance with public health regulations.

Professional and other fees charged to developers determines whether developers will comply or not with the procedures and their ability to following the right procedures or not. In the study lack of application for development permission for instance change of use is explained by the fact that developers fear change of use from agricultural to urban use in the sense that change of use hence land tenure imply mandatory payment of rates to both the Commissioner of Lands and the council annually. As per the Physical Planning Act of 1996, there are a number of fees to be paid and these include fees to the Land Control Board, planning, survey and finally land registration including staff time, transfer, stamp duties and in some cases unofficial payments. Because of these developers opt to do without services of professionals. In the end, this is a hindrance to development control efforts.

The kind of plan which is used to control and guide development was prepared and approved without the participation of the public. This is contrary to the fact that public participation is a pre-requisite for any effective planning process. This is in agreement with what was pointed out in the earlier chapters where traditional planning approaches were used. The efficiency of traditional planning approaches to bring harmonious urban

development necessitated the innovation of new typologies of approaches with core emphasis being public participation. The failure of the existing plan to incorporate such participation has made it ineffective and repugnant to the changing urban development trends, hence the predominance of urban planning problems in the study area.

As an outcome of the above assessment, policy and plan implementation in the town is characterized by failures. This is a result of an ineffective Municipal Council (KMC), lack of institutional and inter-sectoral co-ordination framework for developing planning and inadequate participation by the beneficiary population. Skills as earlier noted are lacking especially in the local authority. This factor has also led to the mushrooming of kiosks, vendors and hawkers as well as most urban population (especially the poor) living in squatter settlements that are unplanned. Overcrowding, no proper sanitation, increased environmental degradation, poor waste disposal system and lack of proper transport system characterize such areas. The resultant overcrowding leads to difficulties in collection of solid waste and emptying of pit latrines (typical of case study one).

5.2 Recommendations

As noted above the laxity in approving plans has caused developers to do things "their ways" leading to unharmonious and fragmented urban development. This calls for the council to hasten approval of such plans so as to discourage non-compliance. Where laxity is arising out of lack of staff dedications there is need to replace such staff with dedicated staff. Inadequacy of staff can be cured by recruitment of more staff or alternatively the council could liaise with the Central Government for secondment of

such staff. The blame on professional and other processes has been 'dubbed' lengthy and this has resulted to non-compliance with development control regulations. To eliminate this, quicker and cheaper systems of planning, titling and registration must be instituted. Plan approval lagging behind as shown in the study area must not be allowed. The private sector can play an important role in speeding up these processes. It is important to note that by privatizing planning and leaving scrutiny roles only to Physical Planning Department, Physical Planning Act of 1996 has initiated a directional change that is recommendable. Similarly, the recent cut of survey department staff and in a way 'privatize' surveying will also speed up land administration and registration. This will result to elimination of non-compliance explained by laxity in plan approval.

In order to enable the council provide adequate technical provision and maintenance of infrastructure and other services, the council's revenue base should be improved. Improvement in this also will imply that the council will recruit adequate and qualified staff. To attain this, improvement of collection procedures and strengthening the financial base, there is need to improve revenue collection procedures and expanding of the revenue base such as generating more revenue from development control functions. A strong financial base will facilitate recruitment of competent and qualified staff (Planners etc) who in the long run will improve the running of the council. Improvement will ensure that financial management will be enhanced. It will involve viable recommendations to the council for management of funds and investments. Qualified staff will understand the local government system and how it operates. Qualified internal auditors will monitor strictly the financial operations in the council.

Public awareness is a factor, which mainly determines the level of compliance with planning and development regulations. As pointed out earlier, low levels of awareness implies rampant non-compliance to planning regulation. Given this scenario it is therefore imperative that the ugly situation should be reversed. Planning institutions (local authority, physical planning and community interests groups) should undertake planning decisions. This can be done through group's activities like the community action groups. Improvement of awareness among developers and the general public is critical. This can be attained by mounting campaigns and explanations on the processes and relevance of planning and the need for controlled development. The public should be sensitized on the planning regulations and the advantages accruing from compliance with development control measures. The intended awareness must be undertaken with emphasis on positively regulating the public view of development control from being punitive and policing. This would mean that the public would change from seeing the requirement to apply for development permission on their property and freehold land as interference from the development control institutions. Specifically in relation to the new Physical Planning Act of 1996, the public should be informed that all land must be subjected to planning and development control regardless of ownership and tenure or use.

From the discussion, it can be implied that presence of political support and lack of political interference in the running of urban institutions, is pre-requisite for attainment of a greater effective development control system. This enables such institutions to acquire the abilities to regulate and control developments involving informal enterprises

among other activities. This problem can be reduced by the setting up of and adherence to clear policies and regulations for urban development. Training the council staff on the etiquette of good leadership is a recommendable effort. Improvement of integrity among civic leaders and staff will reduce problems manifesting themselves in frequent malpractices such as graft, nepotism and illegal and unprocedural land allocation. Staff must follow the legally laid down procedures in carrying out their duties. They must know that offenders will be punished for wrongdoing. Additionally the council staff must know that their employer is a legal administrative set up for providing basic needs, facilities and services and to achieve this, they must be transparent, accountable and professional in carrying out their services.

The high rate of population growth together with the challenges it brings in the town can be cured through preparation of a comprehensive urban development policy. This would guide regulation and recognize the various needs of the urban residents including their economic realities. This can be done through various ways. These include the council building low-cost housing on top of subsidizing housing land so as to make it affordable for the urban poor, taking into account the needs of small businesses such as hawkers and vendors and allocating more adequate spaces to various users and especially those for the poor. Similarly, building standards can be relaxed for the low-income groups and selected areas. This will improve affordability to decent housing and economic well being of most of urban dwellers and by extension improve on the compliance with the regulations. The council should also solicit for funds for land banking and provision of serviced urban land at appropriate locations. This should be

done especially for the low-income groups. Though relaxation of standards is considered appropriate care should be put that relaxation of such standards can be tricky when it comes to implementation. The scope and level of relaxation can be subjective and therefore may result to more costs than benefits in the end. Also in view of environmental control it would be contravening to lower standards with the aim of assisting the low-income persons. The 'trade off' equation can be difficult to balance.

Given the insufficiency of most infrastructure and other services in the town there is need to increase the provisions and accessibility of the towns residents' access to infrastructure and other social services. This could be done through a number of ways.

The Local Authority's financial strength should be improved as earlier pointed out so that the Local Authority is enabled to provide services to keep pace with urban growth. The private sectors and individual's role in provision of infrastructure at least within their developments precincts should be encouraged. The private sector and individuals with encouragement in form of rates rebates and subsidies can fund a significant units of urban infrastructure such as housing, drainage channels and transport and communications networks.

Contract zoning can be used in areas where developers are willing to develop infrastructure. In such circumstances transfer of social benefits upon developments must be negotiated early enough. Phased zoning can also be advantageous in initiating infrastructure-guided development. Infrastructure in this case can be used to guide

development into areas desirable for low cost development zones and away from hazardous lands and ecologically fragile zones.

Similarly, the central government should increase funding for provision of infrastructure. The recent LATF is a move which is commendable though accountability and transparency in the use of such funds should be improved at the local level. If this is done there is an assurance that urban land is serviced before being allocated. This would entail infrastructure guided development. Additionally, this should be done in view of the fact that the growth of urban population and concomitant need of the urban services including housing land are inevitable hence there is at least need to provide such areas with basic public infrastructure such as roads, water supply, electricity and sewerage system. LATF use should be made accountable and transparent through strict control from the central government. Central Government auditors can do this through field appraisal regarding the use of LATF money. As laid down at the moment that is preparation and approval of LADP before LATF is released, this must be followed strictly.

Reduction of conflict between public and private interests is a step in eliminating substantial environmental degradation in urban areas. This can be done through the use of relevant measures specified in various regulations and Acts. In relation to by-laws much consideration should be given to the health standards in the development applications in order to minimize conflicts. Also there is need to improve environmental awareness and

implementation of other existing regulations on top of enacting new legislations. The council for instance should invoke the Environment and Coordination Act of 1999.

The lagging behind of planning process vis a vis development trends in the town does not augur well for a conducive urban environment. This situation should not be allowed in future. Timely planning of all potential areas for urban development should be undertaken legally mandated planning authorities. Where development has preceded planning for various reasons such areas should be declared special planning areas and plans should be prepared and implemented by local authorities with participation from the intended beneficiaries. This entails extensive action planning exercises through Community Action groups. These plans must identify clearly areas where growth and change should occur and at the same time be flexible enough to guide such future urban growth. The planning process must offer more in terms of tools especially to address ecologically fragile areas including steep slope, wetlands and earthquake prone areas. This can be implemented through the demand of Environmental Impact Assessment report as a compulsory conditional requirement for any development approval. Finally the responsibilities of different actors involved in urban management including coordination and integration between them must be clearly defined.

The need for adequate staff establishment for efficient running of local institutions cannot be overemphasized. Building institution's capacities in numbers and skills is pre-requisite for efficient running of such institutions. To undertake such improvement of the staff establishment in the council employment there is need to recruit and commensurate well

the Local Authority's staff. This should be done especially for the upper cadre and decision-making staff even on temporary basis. Coordinating with central government for staff secondment would be appropriate where Council's funds are inadequate. Funding of staff training in technical and professional aspects should be accorded great attention when allocation of funds is being done. This would ensure staff with adequate skills forms the council's staff establishment.

Non-compliance brought about by nature of land tenure in the urban fringe area can be eliminated through strict control of development in such areas. Ensuring effective and efficient coordination, monitoring and enforcement by the mandated local level institutions are the measures to be used to bring successes. Additionally, with the operationalization of the Physical Planning Act of 1996, it is expected the Act will greatly streamline the shortcomings arising out of managing these areas. This would be eliminated by ensuring total compliance and enforcement by the responsible institutions.

Institutional coordination and integration will require to be improved. Such improvements on institutional coordination will increase the reaching at appropriate decisions at the local levels. Such coordination could be between government ministries, NGOs and the private sector. This would be done by ensuring circulation of plans between technical departments as outlined in different Acts in the previous chapters. Through this unauthorized or unapproved developments will be eliminated. On the same note, developments, which are contravening regulations will be eliminated and this way a precedent of ensuring compliance with regulations will be established. Coordination will

also ensure that incorporation of spatial, financial and socio-economic activities and their environmental impacts on land use and development is achieved. Integration of national macro-economic policies with urban planning policies will enhance urban economic development leading to enhancement of employment generations and other economic objectives. This can be attained for instance by incorporating the requirements of the growing informal sector or its linkages with the formal sector.

The town's cleanliness status is mainly the responsibility of the municipal council. The council has to work with other stakeholders interested in the urban areas (individuals, technical departments such as Physical Planning, Public Health etc) to ensure cleanliness in the town. In light of what have been mentioned above, to improve the cleanliness status of the town the council must do a number of things. The council should ensure that refuse collection system for the municipality must respond adequately in relation to the existing and future demand. The layout of an efficient collection system should provide inhabitants with a proper and healthy environment. It should depend on proper analysis of refuse generation, refuse composition and collection frequencies and rates. There should be provision of dustbins of different sizes in strategic locations where solid waste are generated. Proper analysis will mean adequate financial allocation and purchase of all necessary equipments for refuse collection and disposal.

Incorporation of participatory planning is a pre-requisite for harmonious development. Recommendations for the next plan preparation should at least incorporate the public in its preparation. This will result to improvement of compliance with urban development

regulations as the communities and developers are made aware of the new developments. Equally, through participatory planning the public would be made aware of the physical environmental potentials and limitations for urban development as this will lead to promotion of sustainable urban development and environmental conservation. This can be attained through adoption of enabling model, which recognizes staff shortages in the local level institutions and therefore call for partnerships between such institutions and private sector developers. This would imply that effectiveness of development control could be enhanced since there is resources, political and social consensus. Additionally partnership would open dialogue between the institutions and the informal settlements inhabitants in relation to how such areas can be legitimized and improved in form of upgrading and resettlements where needed. Specifically in terms of upgrading the exercise will be efficiently done since discussions will also include risks sharing in such areas where private developers considers too risky and costly to undertake. In the end, this will result to a dialogue situation where development control efforts are viewed as non-punitive and non-policing.

CHAPTER SIX

SUMMARY AND CONCLUSIONS

6.1 Major Findings

The study has confirmed that urban development has not been adequately controlled and guided. The failure to control and guide urban development has meant that the resultant urban development system has not been able to satisfy the urban residents and consumers. This has been necessitated by a number of factors. Primarily the growth of urban centres in both the number of people living in them and spatial size have not been uniform and harmonious as this rapid growth has led to overstretching of efforts to provide the basic infrastructure and other services. There has been inadequate provision and access to low-income housing; inadequate health and educational facilities; transportation problems and generally a lack of adequate physical and social services.

The above scenario has led to encroachment on road reserves (road, riparian etc), mushrooming of unplanned and overcrowded informal settlements on the urban fringes, strain on basic infrastructure, abuse of public interests, social delinquency (crime, prostitution etc) and the general environmental degradation.

Efforts by urban authorities using various instruments of development control have not been fruitful. Various reasons explain this dismal performance. There has been lack of allocation of enough funds and strict budgetary controls for the smooth operation of good urban governance. This has led to lack of provision and maintenance of infrastructure and other services hence people find 'their ways' to evade taxes and Council's regulations.

The latter accentuates the vicious cycle of lack of adequate funds in the Councils. In general local authorities have been ineffective in approving building plans, preparation and implementation of physical development plans, attracting and retaining qualified staff among others shortcomings. Local Authority's staffs are not motivated and in this case involve themselves in various malpractices such as graft, nepotism and illegal and unprocedural land allocations.

There has been weak institutional and legal capacities and framework between the relevant agencies bestowed to guide development. The benefits that should accrue from their mutual roles have watered down the benefits that could result from the implementation and enforcement of planning and development regulations.

Political interference and lack of awareness on the planning and development regulations on the one hand also explains the dismal performance of various tools of development control.

6.2 Recommended Measures

Based on the above and driven by the need to make urban development harmonious, the use of development control instruments must be made more effective and coordinated. With this in mind a number of policy measures have been proposed. There is need to channel more funds to the Local Authorities from the Central Government and at the same time increase the economic base of the Local Authorities by allowing them autonomy and in so doing widen their revenue bases and sources. Alongside, the

preceding local authorities' must also incorporate transparency and accountability in collection and use of revenue they generate from various sources. In this way infrastructure and other services provision could match urban development.

Integrity and professionalism must be improved among civic leaders and staff to reduce malpractices and increase provision of services to the urban population. Capacity building and improved managerial skills of urban managers through competitive recruitment are the key factors in overcoming this challenge.

Participation of the urban population in the whole process of planning and implementation must be increased. The role of Local Authorities in this respect (as the representatives of the community) should take leadership roles in encouraging all stakeholders to take responsibilities for their own unique roles in the development and success of their urban areas. Local Authorities must participate in sensitizing developers and urban residents on the need to observe planning regulations so as to come up with a sustainable urban development. Additionally, development strategies that originate and are wholly owned by the local communities would really outline stakeholders' vision(s) for the urban areas. Through this approach, prioritizing areas needing quick intervention is possible. Communities and entrepreneurs (including the urban poor) also mobilize ideas, skills and resources for better management and attainment of societal needs and aspirations. Communities would define how they want the city evolve, what bottlenecks and requirements need to be addressed and what they can contribute to the process.

Rigid building, approval and planning regulations as contributors to impediments to the management of urban areas must be addressed. Bureaucratic; cumbersome; lengthy; restrictive and expensive regulations should be reviewed. They should be made flexible and responsive to the different sections of the urban population and also to the dynamic characteristics of the urban areas. They should address the plight of the majority urban poor in housing, economic activities, employment and provision of other basic services. This if addressed adequately will improve compliance hence reduction of uncontrolled development in urban areas. It must be added that the above to succeed there is need for political will and support, efficient technical capacity and accountability.

6.3 Recommendations for Further Research

Further research in understanding the nature of operational powers of the various institutions on guiding and controlling development is recommended. The research will entail inter alia institutional relationships, overlaps and conflicts between the central and local government agencies and how these impact on the process of development control. Particular attention will be laid on the exact information required for the respective institutions to effectively and efficiently operate.

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APPENDIX 1**QUESTIONNAIRE (Informal Kiosks)*****Background Information***

1. Date and time of interview _____
2. Name of respondent (optional) _____
3. Location/ward _____
4. Sex _____ 4. Age _____ 5. Marital status _____
6. Educational level _____ 7. Family size _____
8. Income per month _____

Occupation data

9. What do you sell? _____
10. Who owns the site? Own landlord others(specify) _____
If own ,who allocated you the site? _____
 Squat council others(specify) _____
If landlord, do you pay rent? (Yes/no) _____
If yes how much? _____
11. Is the occupation temporary or permanent? _____
12. a) How big are the structures? _____
b) What are the building materials? (Observable) _____
13. Did you sought permission from the council before undertaking the current developments? (yes/no) If no, why _____
14. Are there fire fighting, first aid facilities etc? _____
15. What kind of wastes do you generate? Liquid solid others (specify) _____
- (a) Where do you deposit your wastes? Dump site council collects Others (specify) _____
- (b) If council collects, is the service sufficient?
16. What is the risk attached to your activities?
17. Do you wish to change the site?
If yes which site do you wish to be transferred?
- (a) To self identify

(b) To be relocated by the council

18. Is the site accessed by infrastructure facilities?

If yes, which ones

i) _____ ii) _____ iii) _____

If no, what should be provided in priority?

i) _____ ii) _____ iii) _____

19. Are you aware of development control measures? _____

20. Is the site accessible?

21. Is there congestion?

22. Which problems do you encounter most? _____

Suggest solutions to these problems (if any) _____

23. What do you want done to alleviate your problems?

25. Are there incidences of disease outbreaks? (Yes/no)

If yes, what are the likely causes? _____

APPENDIX 2**Questionnaire (Kericho Municipal Council)**

1. Name of council _____

2. Are you aware of any planning law?(Yes/No)

If yes, which one? _____

Is it operational?

If no, which one you apply? _____

3. Is there a planning department? _____

If yes,

i)Who heads the department

ii)What is the total workforce?

If no, which department handles development control functions?

4. a)Which development permissions do they receive and consider for approval?

b) How do you carry out the entire process of considering development applications?

i) Land use plans

ii) Building lands

5. How is the organizational structure of the council?

6. Does the council have an enforcement section? (yes/no)

If yes, how does the section carry out its activities?

7. Which departments do you seek comments from when considering development applications?

8. Does the council keep records of all developments applications considered?

i) Land use plans (yes/no)

ii) Building plans (yes/no)

APPENDIX 3**QUESTIONNAIRE (Hawkers)****Background Information**

1. Name _____ 2. Sex _____ 3. Residence _____

Occupation Data

4. a) Who are your customers? _____

b) What type of merchandise do you sell? _____

c) Where do you get your merchandise? _____

5. On average, how much is your earnings per month?

6. Are you aware of any site allocated and set aside for the kind of activity you undertake? _____

If yes, why don't you occupy that site? _____

If no, do you want a site to be allocated? (Yes/No)

If yes, where? _____

Explain _____

7. What problem do you encounter in undertaking your business?

i) Harassment (by who?) _____

ii) Fatigue (what do you propose to be done?) _____

iii) Others (specify) _____

Are there any risks attached to your business? (Specify) _____

8. What should be done to alleviate the risks and problems identified above?

i) Risks

ii) Problems

THANK YOU

APPENDIX 4**QUESTIONNAIRE(PSVs)****Background Information**

1. Name of company _____

2. Route of operation _____

Activity Data

3. How long have you occupied the site? _____

4. How did you set offices on site? _____

5. a) Why did you occupy the site? _____

b) Is your occupation temporary or permanent? _____

In any case, explain. _____

6. a) Are you aware of any other site meant for you? _____

b) If yes, why didn't you occupy that site? _____

7. a) Is the site served with infrastructure facilities? _____

b) If yes, which ones? _____

c) In addition to what is on site which facilities do you wish to be provided (in priority)? _____

8. Is the site congested? _____

9. Are there risks attached to your activities being present on site? _____

10. In order to create efficiency in your activities, what do you propose to be done? _____

THANKYOU

APPENDIX 5**CHECKLIST-Physical Planning Department**

1. Who heads the department? _____
2. What is the total workforce of the department? (enclose staff list and cadres) _____
3. Does the department keep records concerning development permission?
 - (i) land use plans(yes/no)
 - (ii) building plans(yes/no)
4. Which type of development permission do you respond to in terms of comments? _____
5. What do you they consider in perusing development applications for approval purposes? _____

THANK YOU

APPENDIX 6**CHECKLIST-Public Health Department**

1. Who heads the department?
2. What is the total workforce of the department?(enclose staff list and cadres)
3. a) Does the department receives correspondence from the council relating to comments on building plans?
b)If yes, what do you consider in perusing the plans for approval purposes?
4. Do you keep records of
 - (i) correspondence relating to plan approval?
 - (ii) diseases outbreaks in the district?
5. a) Which are the major of diseases in the municipality?
b) What are their causes?

THANK YOU

APPENDIX 7

THE PHYSICAL PLANNING ACT
(No 6 of 1996)

Form P.P.A 1 (s. 31 (1))

Registered Number of Application

APPLICATION FOR DEVELOPMENT PERMISSION

(To be completed in triplicate in respect of each transaction and sent directly to or left at the appropriate office of the Local Authority)

To the
(insert Name and address of the appropriate Local Authority Office)

I/We hereby apply for permission to develop land and/or building as described in this application and on the attached plans and drawings.

DateSignature of Applicant or Agent.....

If signed by Agent state:

Name.....

Address.....

Profession.....

SECTION A - GENERAL INFORMATION

1. Owner's name and address

2. Applicant's name and address

3. If applicant is not the owner, state interest in the land e.g. leasee, prospective purchaser, etc. and whether the consent of the owner to this application has been obtained.

4. a) L.R. or parcel No.....

b) Road, District and Town

c) Acreage

5. If an application has been previously submitted state the registered number of the application

SECTION B - SUBDIVISION

6. Describe briefly the proposed subdivision including the purposes for which the land and/or buildings are to be used

.....
.....

7. State the purpose for which land and/or buildings are now used. If not now used, the purpose for which and the date on which they were Local Authorities used

.....
.....
.....

- 8. State whether the construction of a new or an alternative of an existing means of access to or from a road is involved
.....
.....
- 9. State method of:
 - (a) Water supply
 - (b) Sewerage disposal
 - (c) Surface water disposal/drainage
 - (d) Refuse disposal
- 10. Give details of any relevant easements affecting the proposed subdivision
.....
.....
.....

SECTION C - EXTENSION OF LEASE OR USER OR CHANGE OF USER

- 11. State whether subdivision is involved and if so whether permission has been applied for and if so give registered number of the application
.....
.....
- 12. Describe briefly the proposed development including the purpose for which land and/or buildings are to be used
.....
.....
- 13. State the purpose for which land and/or buildings are now used. If not now used, the purpose for which and the date on which they were Local Authorities used
.....
.....
.....
- 14. State whether the construction of a new or an alternative of an existing means of access to or from a road is involved
.....
.....
- 15. If proposed development consists only of a change of user and does not involve building operations state the exact nature of such change
.....
.....
- 16. If the site abuts on a road junction, give details and height of any proposed walls, fence, etc., fronting thereon
.....
.....
- 17. State method of:
 - (a) Water supply
 - (b) Sewerage disposal
 - (c) Surface water disposal/drainage
 - (d) Refuse disposal

18. Give details of any relevant easements affecting the proposed subdivision

.....
.....
.....

19. State the:

- (a) Area of land affected
- (b) Area covered by buildings
- (c) Percentage of site covered
- (i) by existing buildings
- (ii) by proposed buildings

Note. - Drawings and specifications must be prepared and signed by a registered physical planner.

APPENDIX 8

THE PHYSICAL PLANNING ACT
(No 6 of 1996)

Form P.P.A 2 (s. 33 (1) (a))

Registered Number of Application

NOTIFICATION OF APPROVAL/REFUSAL/DEFERMENT OF DEVELOPMENT PERMISSION

To.....
.....
.....

Your application number as above, submitted on for permission to
..... on L.R. Parcel No situated in
..... road has been..... on (date)
.....by the for the following
reasons/subject to the following conditions:

- a)
- b)
- c)
- d)
- e)
- f)
- g)

Date Signed

for Local Authority

- c.c The Commissioner of Lands, Nairobi.
- The Land Registrar.
- The Town/County Clerk.
- The Director of Physical Planning, Nairobi.
- The Director of Surveys, Nairobi.

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APPENDIX 9

THE PHYSICAL PLANNING ACT
(No 6 of 1996)

Form P.P.A 5 r. 4 (3)

Certificate No

CERTIFICATE OF COMPLIANCE

Name and Address of the Applicant

Type of Development (Industrial, Commercial, etc.) on
L.R./Parcel No. situated in road
..... locality (Municipality, Township, etc.)

Received from(Local Authority) by Ref.
No of

Issued by(Name of Officer)

.....Signature
for director of Physical Planning

Departmental Seal

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