

PLANNERS

A NEWSLETTER OF THE KENYA INSTITUTE OF PLANNERS  journal

East African planners in a land mark meeting in Nairobi

EAST African Planners working through the auspices of the CAP East Africa region held a land mark forum in Nairobi 27- 29 May 2003. The meeting was convened by Plan Bosire Ogero in his capacity as regional Vice President of the Commonwealth Association of Planners (CAP) and president of the Kenya Institute of Planners (KIP). It was attended by a record 60 participants who are members of Kenya Institute of Planners (KIP), Town Planning Association of Tanzania (TPAT), and Uganda Institute of Physical Planners (UIPP). Those attending included the President of UIPP Hon Michael Werikhe (a minister in the Uganda Government), the president of TPAT Plan George Mbyopyo, the Director of Human Settlements Development in Tanzania (a portfolio that includes physical planning and housing) Mr Joram Mgweno, the Kenyan Director of Physical Planning Mr R. Mbwagwa and the regional Director of ITDG Elijah Agevi among others.

"The international competitiveness of our individual countries and the entire East African region cannot be realised without proper planning and implementation of plans", says the declaration that was adopted at the end of the historic gathering of planners in Nairobi last May. East African Planners undertook a critical review of the state of planning in their region and committed themselves to decisive action through collaboration with CAP.

The workshop was officially opened by Mr.Zachary Ogongo, Permanent Secretary in Kenya's Ministry of Lands and Settlement, on behalf of the Minister, the Honourable Amos Kimunya



(pictured). This presentation stressed the contribution that planners and the planning profession could make to regional development. However, the Minister also emphasised the importance of ethics and proper professional behaviour, in line with the priority his government of tackling corruption.

Mr. Kimunya's speech identified the

challenges of rural-urban migration and rapid urbanisation in Kenya. He called for strategic development plans that would be closely linked to local authority budgeting. Many of Kenya's cities lack up-to-date growth strategies - the last plan for Nairobi, for example, dates from 1972. He highlighted the problems of poverty and slums, and called for upgrading projects. However, Kenya has many more urban centres (1600 of them) than it has planners (about 100). The Minister recognised the need for more and better training of planners. He said his ministry's view was that promoting professional

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Delegates attending the ISoCarp Conference in Cairo take a break to view the pyramids. Full story on page 9.



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A word from the KIP chairman



WELCOME to our second edition of your favourite newsletter "the Planner". This current issue is the only one prepared for the year 2003 and coincides with the first year of the NARC Government. We present articles that cover a wide range of topical issues of interest to planners and that are written by planners themselves, their associates and the editorial group.

The year 2003 has been an eventful year for our institute as we make strides to consolidate ourselves as a professional body, promote planning issues and galvanise all Kenyans to respect planning in all its facets in an endeavour to make Kenya a planning society. As your chairman I have utilised every opportunity to popularise KIP and advocate for more space for planners to play a "gainful" role in national development. Some say I have been running a live commercial for KIP! I do not regret and will continue doing so.

Major features and events for the year 2003 some of which are reported in this newsletter include the following:

- Asserting our presence with high ranking officials of the NARC Government. To this extent we made courtesy calls and/or presented well articulated written and oral memorandum to the Minister for Lands and Settlement Hon Amos Kimunya, Minister for Local Government Hon. Karisa Maitha, Minister for Foreign Affairs Hon Kalonzo Musyoka as well as Minister for Public Works Hon Raila Odinga. All these were covered in the press.
- Attending a land sector stakeholder's forum organised by the Minister for Lands and Settlement at the School of Monetary Studies early in the year. I made a high profile presentation entitled "building the capacity of stakeholders to participate in the land use planning process".
- Organising successful workshops attended by planners and other stakeholders- These include the Kitale workshop on participatory urban planning and the land mark/ historic East African planners' workshop.
- Becoming members and effectively participating in forums organised by the Kenya Private Sector Alliance (KEPSA). We have constantly made the point that competitiveness of our cities and regions can only be realised if we have up to date and respected plans for each of these areas. We made a strong case for the government to allocate resources that could be used to prepare these plans using the private sector. This position was included in the overall private sector presentation to the national investment conference held towards the end of the year.
- Linking up with ISOCaRP and attending the 39th international planning congress held in Cairo, Egypt, 17-22 October 2003 on planning in a more globalised and competitive world.
- Promoting and popularising the Physical Planning Act (CAP 286) and the Physical Planners Registration Act (PPRA) through several fora and media.
- Raising KIP profile in both electronic and print media.

And yet not everything during the year was all rosy. The planning fraternity lost a long serving planner, Mr Mohammed Turkey of Saad yahya and Associates, who passed away as the year was coming to an end. We take this opportunity to send our heartfelt condolences to his family and friends.

For those who have supported the planners' course we say thank you! For those who have not, please join the rest and let us help realise the KIP vision of making Kenya a planning society. Happy reading!



Nullification of land titles issued irregularly and repossession of government/public land

Excerpts of a paper presented at a Ministry of Lands and Settlements Stakeholders meeting on 16th April 2003 at the Kenya School of Monetary Studies by Ambrose Rachiel of A.D.O Rachier Advocates.

WITH the advent of the National Rainbow Coalition Government in Kenya at the dawn of the year 2003, some Cabinet Ministers and government functionaries have issued various edicts and/or pronouncements relating to the possible nullification of title documents in respect of and repossession by the government of lands the ownership of which was conferred by such titles. As expected these statements have generated much controversy particularly on the legality or otherwise of such administrative action with obvious serious legal ramifications. Having regard to the existing law on the subject of indefeasibility of title and the statutory powers of the President through the Commissioner of Lands to alienate government land and the powers conferred upon local authorities to allocate trust land two schools of thought have emerged.

The proponents of the doctrine of sanctity of title maintain that the government has no powers of nullification of title deeds under the existing law and that once title has been issued by the President in exercise of his constitutional and statutory powers, he must be *functus officio* and has no authority in law to revoke such title. The opposing school of thought bases its argument on the fact that where the law governing land alienation was breached such as by allocation of land intended for public utilities for private development or where the alienation was irregular having regard to the provisions of the relevant statute then such allocation is void *ab initio* and the land must be repossessed and titles thereto declared null and void and of no legal effect. Interestingly, despite

their diametrically conflicting stand points both schools of thought seek to invoke the rule of law to anchor and justify their positions.

Constitutional Protection from Deprivation of Property

Section 75 of the Kenya Constitution provides as follows:

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except where the following conditions are satisfied:

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefit and,
- (b) the necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property and
- (c) Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
- (d) The affected person has direct access to the High Court for the determination of his interest or right, the legality of the taking or acquisition of the property interest or right and the amount of any compensation"

The question is whether or not this has been or is the practice on the ground.

There has been a public outcry raised by the manner of alienation of land in the recent past which has probably led to the present threats at nullification of titles.

Irregular and Illegal Allocation of Land

The claim of irregular and illegal land allocations have been attributed to

- (a) The side stepping of the procedures laid down under the Government Lands Act and the Trust Lands Act chief among which is the fact that land is no longer sold by transparent auction.
- (b) Use of land for political patronage as opposed to development
- (c) Allocation of land for speculative purposes
- (d) Non-payment for allotments
- (e) Allocation of public utility lands for private development

The origins of such allotments are to be found in a government circular issued by the Governor of Kenya in 1952 authorizing a selective system of allocation of land without resort to auction. Such a circular cannot pass for subsidiary legislation but even the latter cannot stand if it is *ultra vires* the Act.

The circular is therefore of doubtful legal validity yet it does not appear to have been revoked. If anything it is the basis upon which the departure from the prescribed statutory procedures for alienation of land is founded.

Despite this apparent illegality can it make sense to nullify rather than validate the titles that have been issued in pursuance thereto since 1952? We think not.



3 What Is To Be Done?

In considering what is to be done the following must be borne in mind.

- a) The Rule of Law must be maintained.
- b) Land must be looked at as a commodity in the economy the value of which must not be eroded.
- c) Land is a security for a commercial and other transaction and the indefeasibility of title must be assured as much as possible so then where title is to be invalidated it must be done on well defined and predictable rules.
- d) The public confidence on the sanctity of title must be maintained.

Revocation

From the existing legislation title can only be rectified or entries therein cancelled or correction of instruments made in the following circumstances;

- a) Under section 59 of the Registration of Titles Act (RTA) by cancellation of the name of a non-existent or fictitious person on order of a competent authority which is not defined under section of the RTA.
- b) Where it appears to the satisfaction of the registrar that a grant, certificate of title or other instrument has been issued in error, or contains any misdescription of land or of boundaries, or that an entry or endorsement has been made in error or any grant, certificate of title or other instrument or that a grant, certificate, instrument, entry or endorsement has been fraudulently or wrongfully obtained or that a grant certificate or instrument is fraudulently or wrongfully retained, he may summon the person to whom the grant, certificate or instrument has been so issued or by whom it has been obtained or is retained to deliver it up for the purpose of being corrected.
- c) Under section 60(2) of the RTA, the Registrar may seek court assistance to compel delivery of title for correction at the pain of civil imprisonment. It is not clear if correction includes cancellation.

It appears that under the Government Lands Act once a Grant has been issued, the registrar cannot cancel it unless the interest contained therein has determined. The registrar however has power under sections 120 and 121 to correct errors and cancel entries where there are errors or cancel and destroy documents where the interest has ceased to exist. But it should be noted that usually after the grant has been issued the land either brought under the Registration of Titles Act or the Registered Land Act.

The Registered Land Act (RLA) (Cap 300)

Ratification and Indemnity

- a) Under section 142 of the RLA the Registrar may rectify formal errors of his own motion.

- b) The court may rectify by cancellation of fraudulently obtained titles but not when the title is created by a first registration. This must exclude all alienations of land either under the Government Lands Act or the Trust Land Act.

These does not appear to be either a clear legal framework or a competent authority or well defined parameters and/or grounds of cancellation of title which may have been obtained in questionable, irregular or even illegal circumstances. The first task would be to provide these. This would call for urgent amendment to the laws and establish a legal framework for the exercise to define the illegality. We may still proceed on the basis of the existing law but in a restrictive sense. We would recommend the following where the allocation is to be challenged;

- a) Revocation of Title with Compensation
 - (i) Where the allotment letter has been issued but has not been paid for.
 - (ii) Where the title is still in the name of the grantee.
 - (iii) Where the title has not been issued.
 - (iv) Where development conditions have not been complied with
 - (v) Where the land was meant for a public utility and has not been transferred by the grantee.
- b) Consider on individual merits action
 - (i) Where land has been transferred to third parties
 - (ii) Where land has been used as security
- c) Where the land is required for public purposes acquisition under the Land Acquisition Act 1968 should be adopted.
- d) There are clear provisions under sections 23, 59(1) and 60(1) of the RTA which may be invoked when the grant is issued in error, or contains a misdescription of land or boundaries where the Grant is obtained fraudulently. Under the heading of fraud may title....
- e) The land meant for public utility can be repossessed both under Section 75 of the Constitution and the Land Acquisition Act with contemptuous compensation having regard to the fact that the titles should not have been issued in the first place.

Legislative Amendments

We think that the first step should be to validate titles issued in pursuance of 1952 Governor's Circular. Secondly there is need to consolidate our Land laws in one comprehensive statute to avoid the confusion caused by the various existing statutes. Thirdly, clear parameters for both alienation and cancellation of irregular title deeds must be legislated. More transparent procedures beyond action should be devised. Alienation of land for example needs to be effected by a panel as opposed to an individual and should be decentralized. Fourthly stringent development conditions must be enacted and enforced to avoid speculation. Fifthly, section 143 of the Registered Land Act should be repealed to obviate frauds in



Strengthening Participatory Urban Planning in East Africa

THE Minister for Lands & Settlement Hon. Amos M Kimunya has expressed the government's commitment to accord slum dwellers decent living conditions and recognition. Taking a swipe at corruption, the Minister asserted that public utilities irregularly allocated would be reverted back to the state.

He was speaking in Kitale during the official opening of 'Strengthening Participatory Urban Planning in East Africa', a workshop convened by Kitale Municipal Council (KMC), Kenya Institute of Planners (KIP) and ITDG- E A. The workshop was organised under the auspices of Building in Partnership – Participatory Urban Planning Project (BP-PUP), a project of ITDG-EA.

Since inception, BP-PUP has conducted Participatory Planning Surveys, prepared the Kitale Environmental Development Plan and undertaken Neighbourhood Planning. The project intends to construct community sanitation facilities, train residents on shelter technologies and initiate income-generating activities in the low-income zones in Kitale.

Hon. Kimunya noted that the workshop came at a time when the government is putting emphasis on the need for networking. "Presently, there is a shift from conventional management approaches where the government assumed the role of provider and controller. The emphasis is now on an enabling approach with a wide range of public, private and community partners in the pursuit of sustainable development," he said. He noted that no model of development is ultimately sustainable unless it has the support of the people.

The Minister indicated that his Ministry is committed to building partnerships with the civil society, professional bodies, Government departments and the community in planning and development. In response to a request from KIP Chairman, the minister

reiterated that the Government will create a favourable environment for planners, both in the public and private sectors to play their rightful professional role. He challenged KIP to work closely with the Physical Planners Registration Board (PPRB) in disciplining planners found engaging in unethical practices.

The Minister directed KMC officials to identify grabbed road reserves and give notice to the illegal occupants saying that these were slowing down planning efforts. "These structures will be demolished", he declared.

The Chairman KIP, Plan Bosire Ogero, blamed the past regime for political interference leading to poorly planned neighbourhoods. "Political interference did not give planners leeway to play a proper role in planning" he said. He added that a strategic plan is required to guide development and enhance the economic competitiveness of Kitale. Meanwhile His Worship the Mayor KMC reiterated that participatory planning would place the ownership of plans to the people and pledged his commitment to improve the development of Kitale. He noted that land and shelter issues in urban areas are both complex and dynamic. In this regard, he said the Council was looking forward to establishing a fully-fledged Town Planning Department to streamline planning.

Presently, there is a shift from conventional management approaches where the government assumed the role of provider and controller. The emphasis is now on an enabling approach with a wide range of public, private and community partners in the pursuit of sustainable development

He hoped that a more enabling and supportive approach to service delivery and management will be unveiled. He expressed gratitude that Kitale has been identified as the pilot area for BP-PUP project to set the pace and be an example throughout the country and beyond.

Mr. Elijah Agevi, Regional Director ITDG-EA, noted that Kitale has a lot of untapped potential. He urged the workshop participants to generate strategies that will be emulated the world over. He noted that partnerships in planning would offer a panacea to squatter settlement problems.

"There is need to disseminate information and be proud and confident of what we are doing", Elijah said adding that poverty will be eradicated only when answers to land issues are found.

The Director of Physical Planning, Plan Renson Mbwagwa told the workshop that planning is a local issue that can only be best done at the local level. He said that his department was willing to second a planner who will work with KMC.

The participants resolved that all local leaders will be involved in future planning activities, especially in the bid to decongest the informal settlements. It was agreed that chief's barazas will be used for policy articulation at the grass root level. The workshop identified the need to increase the number of women involved in participatory urban planning processes noting that the majority in the meeting were men. At the same time, links will be established between youth groups and Non-Governmental Organisations (NGOs) for meaningful development to take place.

While closing the meeting, the District Commissioner Trans-Nzoia district, George MacGoye, recognised that participatory processes take time and thus require a lot of patience. Commending ITDG-EA, and KIP the DC urged public officers to work efficiently and not to wait for NGOs to come and undertake their responsibilities.



Geo-information as a tool in physical planning profession

THE goal of formulating National Development Plans is to accelerate economic growth, enhance social political welfare and promote environmental sustainability. The physical planning profession plays a critical role in nation building. This assertion becomes more discernable with the knowledge that all forms of development activities; agriculture, housing, educational, industrial and recreational among others take place on land. However, land as a resource is scarce given numerous competing needs. Consequently, physical planning has the onerous task of making choices between competing needs in order to formulate sound physical development plans.

Before the enactment of the Physical Planning Act 1996 (Cap 286), the physical planning profession was not recognized like other disciplines like law, architecture, engineering etc. Since its enactment, the PPA has given the profession a new outlook and impetus and physical planners in Kenya today, both in public and private sectors must strive to reach new heights. The legal procedures of preparing physical development plans are spelt out in the Act.

By PLAN. ONDIEKI NYANDIKA

The major objective of physical planning is to attain a spatial framework for a co-ordinated development for infrastructure network and social economic sector in a sustainable physical environment. Since physical planners deal with interpretation and presentation of spatial data, accessibility to geo-information would enhance their productivity. Planners must therefore harness the opportunities provided by information technology.

There is no escaping the thesis that sustained economic growth, balance between development of natural resources and their exploitation in an optimal natural environment and reducing regional imbalances in development requires all planners among them sociologists, environmentalists, economists and physical planners access to accurate, consistent and up to date data or related parameters thereto for mapping out planning strategies. The key to effective decision-making is information.

Most countries are beginning to appreciate the advantage of using geographic information by investing in infrastructure to stimulate business development and support the ever-rising demand. Geographical Information and geographic analysis can be used in many strategic plans including regional planning, land management and sustainable development.

With the changes taking place all the time, the present day geographical system are PC compatible and accepting major operations has been relatively simpler. Planners and other institutions should take advantage of these alternative computers with large storage capacity and good graphical capabilities, high quality plotters and software that would generate reliable baseline information. Kenya institute of surveying and mapping should develop courses to train personnel in these operations and hold demonstrations on the same.

For geo-information technology to be utilized efficiently and effectively, the principle of consistency in generation of topographic maps at a scale agreed upon by most users is critical. The mere process of digitizing the existing topographic maps as we have them may not result in a multiple purpose map that is integral. The bottom line is the standardization of spatial data, investing in both hardware and software and training of human resource.

CHAIRMAN'S COCKTAIL

IN a marked departure from past years, members of KIP congregated at the Stanley hotel Nairobi on 10 December 2003, for the chairman's cocktail. This was a successful event where members met to socialise, exchange ideas and wish each other good tidings for the festive season. At this meeting the KIP chairman Plan Bosire Ogero made a short speech where he recalled an eventful year that saw the consolidation of KIP into a formidable organisation that participated in several events on an equal footing with other professional bodies. On behalf of the governing council he



(L-R) Planners Onyiro, Mbathi, Omare and Hayombe



Some of the planners at the cocktail



presented a gift to the KIP office administrator, Ms Odlie Ngao and wished all planners best wishes of the festive season and prosperous 2004. Plan Kiaye proposed a toast.



(L_R) Plan Kiaye, Kamenyi, a visiting planner and Mrs Manasseh

During 2004 the management of the Stanley have agreed to organise a planners night when members of KIP, families and friends will congregate for dinner and a night full of entertainments.



By PLAN. MS ANN MUTHONI

KANJA is a market centre within Runyenjes Division of Embu District, within the jurisdiction of the County Council of Embu. Like many rural market centres in Kenya, it lacked a comprehensive framework to guide and control development. It falls within an agriculturally high potential area, where tea is an important cash crop. The market is experiencing fast growth due to local people's investments and the growing population. Most of the land is under freehold ownership, the rest is under leasehold ownership.

Steep valleys with permanent streams characterize the area. Urban development may not go beyond the steep valleys. The local people also expressed the wish to limit urban development within 0.5km and 1km from the centre to preserve the rich tea growing farmlands. The vision of the stakeholders for the market is, "a well-organized urban centre with the necessary infrastructure to provide services to the rural agricultural community". The major objective of the plan was to provide a comprehensive spatial framework that could guide and coordinate development infrastructure facilities and services. This would also ensure harmony in land uses towards a healthy living and working environment, efficient and convenient flow of goods and services, as well as protection and enhancement of land values. Areas of environmental concerns were identified for provision of conservation. The local community was involved in the planning process as a planning community in order to facilitate implementation.

The plan consists of the proposed and existing residential, industrial, educational, open spaces and conservation, public utility, commercial, public purpose, transportation and agricultural land uses. These are based on the existing situation, availability of land and suitability of land uses.

Planning Challenges

The following challenges have been experienced during the planning of Kanja Market. They form the basis of

Planning challenges in rural market centres

A Case Study of Kanja Local Physical Development Plan



A rural trading centre

lessons learnt which could inform future planning processes of similar market centres in Kenya.

1. Balancing Urbanization and Agriculture

The major questions are: In the short term: How far would urbanization be allowed from the market centre towards agricultural areas? To what extent would agricultural activities within and outside the market centre be allowed? Where is the meeting point of urbanization and agriculture within the proposed area of the market centre?

Tea production is performing well and is expected to improve in the near future. This is likely to improve the economy of the local people, which could be manifested in improved purchasing power of consumer goods, services and farm inputs. This could also reactivate the generally low economic activities currently experienced in the market centre. At the same time, the growing urban residential population is expected to create a demand for residential housing in the short term.

There exist agricultural land uses within the market centre, which may not be in harmony with urban land uses - the tea buying centre, coffee factory, and cattle dip. These land uses may continue in the short term as strategies to relocate

them are being sought. Those facilities not in use, such as the cattle dip, could be used for such urban related facilities as cattle holding grounds, which are more economically viable. This should be done in consultation with the local community.

There is need to assess the future of agriculture within the proposed commercial, residential and agricultural areas. No agricultural activities should be found within commercial and high-density residential areas to prevent insecurity and congestion and to promote safety, amenity, convenience and health. Agriculture could be allowed in those residential areas whose land parcels are above 0.2Ha. This would encourage improved economy, employment for the idle population, generally improved living standards as well as provide spacious residential areas for farm families and high-income people.

2. Freehold Land Tenure and Planning

Freehold is the greatest interest in land a person can have and it gives absolute ownership rights of land. A freehold title generally has no restriction as to the use or occupation of land. The planning standards proposed in Kanja - minimum plot sizes, maximum plot coverage, and

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Planning challenges in rural market centres

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restriction to certain land uses, environmental conservation measures and building line conditions seem to interfere with absolute land ownership rights.

Sensitisation on the need for planning was done at Kanja. Land conflicts, environmental degradation and unprotected land values were quoted as consequences of unguided decision making in land development. Land operates as a system, which requires keen management, calling for collective responsibility, through the systems approach. Planning on a single land parcel has to be done in relation to others, not in isolation. Local stakeholders and the County Council of Embu officials, who were involved in preparing the Kanja plan, as implementation and enforcement agents, were made to understand and appreciate their roles and benefits of their responsibilities.

3. The Stakeholder in the Planning Process

The stakeholders involved in the planning of Kanja Market included, local leaders, community groups' officials, county council officials, physical planning officers and other government officers. Not all the local people were invited to the stakeholders meetings due to limitations of space and time. The Physical Planning Act Cap 286 does not define the stakeholder and the stage at which the stakeholders should be involved in the planning process. The local leaders

and delays in obtaining the same for use in preparing the plan, caused inconvenience and delay. Inadequate technical expertise for data collection, analysis and final plan drafting was also a major challenge. The technical personnel involved in the exercise lacked modern information technology and equipment, necessitating the use of manual techniques and tools in data collection and analysis and plan drafting. Lack of adequate and precise planning data called for the use of approximations.

The need of adequate and prompt provision of financial resources was identified. Training on the current information technology appropriate to planning and the availability of associated tools and equipments are crucial for effective planning. Other technical personnel, such as surveyors and other relevant professionals are needed for the joint effort in planning, since planning is a teamwork profession. This would assist in obtaining adequate and precise planning data and saving time.

5. Availability of Public Land

Lack of vacant public land influenced the provision for such public facilities as the police post and additional schooling facilities. They were therefore to be provided through land acquisition. The phenomena of public land allocation and squatting on public land, presented challenge in making planning decisions. Consultations were made between the planner, the local stakeholders and the County Council. The

Land operates as a system, which requires keen management, calling for collective responsibility, through a systems approach. Planning on a single land parcel has to be done in relation to others, not in isolation.

and groups officials may not represent common feelings. They only approximately represent common interests. The majority of the stakeholders involved in planning tend to change with time - the County Council, the area Councillor and Government officials. The area Councillor may lose in the following elections, almost halfway in the implementation of the plan. The County Council composition may change tremendously after the general elections. The frequent transfers of government officers including the physical planner may change the persons facilitating the planning process. These changes present major challenges in planning and implementation processes. Changing views and personalities affect both the processes. The problem could only be approximately contained within established full fledged Physical Planning Departments within local authorities to be left with the responsibility of retaining the interests of the local people and other stakeholders and in sustaining the professional inputs of plans more objectively.

4. Limited Resources and Planning

There were financial, human and time resource limitations experienced in the plan preparation process. The challenge of limited financial resources from Government allocations,

resolution based on the majority rule was to repossess all public land that was under private development and which had been allocated irregularly. This would discourage future mismanagement of public land. It was also in line with the current Government policy on such land. Two other alternatives were given - private developers with costly investments on the land parcels to provide alternative sites elsewhere and, in the light of alleged legal allocation of the land to some private developers, the County Council would compensate the former with alternative sites. The squatters were ordered to move out to allow for development and the use of the land as originally planned.

Conclusion

The experience in planning Kanja Market centre in Embu District provides useful lessons that could inform the planning of similar Kenyan rural urban centres, most of which have no updated development plans. Physical planners need to deliberate on these and other issues as away of evolving a practical way forward.

Ms Ann Muthoni is the District Physical Planning Officer, Embu.



Planning in a more globalised and competitive world

THE ISoCaRP 2003 congress was held in Cairo from 17 – 22 October 2003 with the theme, “planning in a rapidly globalising world”. The congress was attended by over 200 planners from the whole world hence providing a good opportunity to exchange ideas on territorial phenomenon and planning practices within an urbanising world. Using these exchanges, planners gathered took time to think about particularities and innovations related to the planning and management of cities and regions. The Kenya Institute of Planners (KIP) was represented by its chairman plan Bosire Ogero, Plan Peter Kibinda and Elizabeth Nguah.

The congress made a deep look at the relationship between developed and developing countries as far as the growth of cities and metropolis is concerned. A core issue is the role and the future of less developed countries facing modes of production and lifestyles that characterise developed countries.

The Cairo congress 2003, hosted in one of the largest metropolis in the Mediterranean area and one of the leading cities in the Muslim World, offered an opportunity for open discussion regarding a planning approach facing multicultural and mutual relationships among different civilisations.

The planning profession is affected by globalisation in many aspects. The following questions seized attention of congress participants:

- “Globalising” cities/environment and cultural identity
- Sustainability-globalisation-market: clashes and barriers vs. interaction and partnership
- Are there global values? If so, how do we cope with global values on a local level
- Which are the most relevant effects of globalisation on third world cities?

The ISoCaRP Congress Cairo 17-22 October 2003

- How do we cope locally and regionally with economic, technological and environmental transformations?
- Who will be the major actors in the process: Who will be included or excluded?
- Do we need new instruments for resolving conflicts over land uses and economic development policies?

Participants also had on opportunity to tour some of the historic places in Cairo going back over four thousand years e.g. pyramids, tombs, the sphinx etc. In this

issue we include some images from this encounter (see front page picture).

The International Society of City and Regional Planners (**ISoCaRP**) is a global association of professional planners, founded in 1965, with secretariat at The Hague. The Netherlands.

Next year Congress will be held in Geneva, Switzerland 18-22 Sept. 2004 with theme: Management of Urban Regions.

For more information on ISoCaRP please visit website at <http://www.isocarp.org>.

Nullification of irregular land titles

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first registration. Lastly an authority such as a quasi-judicial tribunal should be established to deal with present and future cases where nullification of title is contemplated.

At the moment the legal implications of the manner in which the Government is dealing with repossession well includes;

- (a) Legal suite challenging the legality of this activity.
- (b) Legal suits seeking the interpretation of the principle of indefeasibility of title.
- (c) Legal challenges to bank securities of irregularly allocated land.
- (d) Claims of indemnity and compensation or damage by affected parties.
- (e) Rejection of land as a security generally.

Faster Avenues for Handling The Current Situation

After defining by legislation or some other legally acceptable instrument that what constitutes an irregular title, there is need to put in place special tribunals which will speedily and transparently adjudicate on all titles the validity whereof is questioned and make decisions thereon with finality.

Provisions for the enforcement of such decisions must be made. The tribunal should have discretionary addition to judicial powers in the discharge of their fu... orders that the tribunal may make, should be clearly specified having regard to the sensitive nature of land ownership in this country.

Policy

In the long run clear government policy on land tenure and use is crucial. In formulating such a policy regard must be had to...to balance individual interest on the one hand and the public interest on the other. The public and entrepreneurs alike must know what constitutes illegality/irregularity in land alienation. But above all justice must be seen to be done and the only bedrock for achieving this is to ensure that the Rule of Law reigns throughout.



Towards an educational policy for KIP

BY PLAN. HELEN NZAINGA

THE need for an educational policy comes in the wake of the tremendous growth in the planners' professional body; that is, from a humble Town Planning Chapter in the Architectural Association of Kenya to a fully fledged institute - the Kenya Institute of Planners (KIP). Critical educational issues have emerged following the opening up of various universities which are offering the planning discipline and new fields of knowledge and approaches have also come out. All these changes require a policy that will guide and influence the decisions that are made by the training schools/institutions, the employers and the various committees in KIP; in particular, the Education and Qualification Committee. As you all know, the committee is responsible for looking into KIP education related issues such as carrying out professional examinations.

Efforts towards this noble exercise were embarked upon in the year 2002 but due to unforeseen circumstances, the exercise stalled before a workable document could be arrived at. Given the importance and urgency of this policy, the Governing council has once again requested the Education and Qualification Committee to facilitate the drafting of this KIP Education Policy that will be deliberated on and endorsed by all Members of KIP.

The foregoing implies that the task ahead of the Committee is not only new but quite challenging and complex. It, therefore, requires a participatory and creative team that is focused, determined and experienced in order to handle the assigned task. Since the Committee comprises a few members, it will need to source the talents of other planning professionals, when need arises. This will ensure that the exercise is completed on time and at the expected level of accuracy and excellence.

Qualities of a good educational policy:

Before embarking on the exercise, the team needs to remember or take cognizance of the key qualities of an effective education policy. These include, inter alia, the following:

- Must be comprehensive yet realistic and specific, reflecting the mandate and mission / core values / objectives of the planning profession;
- Must embody and promote the nation's planning goals / objectives which are often outlined or spelt out in the country's constitution and relevant statutes;
- Must consider the legal framework (laws and regulations) within which the proposed policy has to operate, particularly on the rewards and punishments to those who abide or violate the laws/regulations, respectively. This helps in facilitating the administration and enforcement of educational matters, thus ensuring its credibility and that of the institution.
- Must also take into consideration the economic factors as well as institutional frameworks that support / facilitate the users and implementers of the policy, such as the required personnel, equipment, information and data systems;
- Must seek to promote the values of the institution or organisation, giving room for the personal growth of every member as well as that of the organisation and entire nation. Values are an organisation's bedrock as they form the basis upon which an institution such as KIP is run. They are vehicles that enable the institute and its members to reach their goals in a competitive national and international market. If KIP members have to add value to their institute and help it reach its potential, then each member needs to know and share in its values. Values give an institution its identity.
- Must be clear and dependable, to ensure that it is understood by all;
- Must be flexible / adaptable enough to cater for future changes in planning norms and values;
- Must incorporate a monitoring and evaluation mechanism that regularly guides and informs the policy and decision-makers as well as planning schools, for efficient and effective performance of the institution and its diverse committees.

On this basis, the proposed KIP Education policy must be specific to our existing planning profession but at the same time flexible enough to accommodate new or emerging relevant fields of knowledge, values, approaches and technologies. The principles of equity and participation need to be ingrained in the proposed policy as well.

To start the committee off, the team needs to divide itself into smaller working groups - based on members' talents and strengths. This will promote division of labour and facilitate the initial collection of required data that will in turn form the base of the committee's discussions as well as pave way to latter discussions with bigger groups. Below is an attempt at the same:



Tribute: Farewell Mr Turki Mohammed

THE Kenyan planning profession has lost a renowned practitioner in Turki Mohammed (1942 – 2003). Until the very last day (July 31st 2003) he was actively engaged in professional planning and property development work at Saad Yahya and Associates Nairobi offices, where he was associate partner for over 23 years.

After a first degree in soil sciences from Uppsala University he joined the postgraduate planning course in Nairobi University where he was tutored by the school's founder Prof. Subbkrishinah. On graduation he joined Nairobi City Council Planning Department, where he benefited from working with such luminaries as Gilbert Njau, John Wangonde and Tony Hurrel. Nairobi Eastern extension and the metropolitan growth strategy were then the major preoccupation at City Hall. Having played an active part in such seminal initiatives, Turki was truly proud of his contribution to Nairobi's growth. In the process he made many friends at City Hall some of whom like John Amunga remained close to the very end.

At SYA, Turki worked on several major planning assignments, both in Kenya and overseas. The Swaziland physical development plan was a pioneering effort in that part of the world. He also played a key role in the Morogoro Master Plan. The satisfaction gained from such jobs was enhanced by voluntary work in aid of charities. He assisted many with his expertise in the areas of needs assessment and forecasting, feasibility studies, investment programmes, change of user and land sub-divisions. Madina Centre on Nairobi's Mbagathi Road is testimony to his expertise in making planning work for the community. Towards the end of his career he was rather reluctant to take on changes of user and sub-divisions because of the bureaucracy, delays and monumental frustration one has to suffer before getting approval. More recently he eschewed AAK's annual dinners and similar image enhancing ceremonial events. He preferred to create room for younger people, but his dedication to the professional community and to excellence in planning practice was total. These qualities, combined with a modest and cheerful disposition endeared him to many.

Towards an educational policy for KIP

From page 10

RESPONSIBILITIES AND ACTORS:

Group One: Mandate / Legal Team

- Formulate/Come up with the Mandate of the Planning Profession based largely on its core values.
- Assess the adequacy of the existing Mission statement and the specific objectives of the Planning Profession to help in bringing out the objectives of the Education Policy.
- Extract / Draw out key legal clauses / statements that will influence the Education Policy.
- Liaise with the other teams to link-up issues and avoid conflict / contradictions.
- Suggest / propose those persons you think could be called upon to assist in the exercise.

Group Two: Planning Syllabus/Content Team

- Compile and assess the existing planning syllabuses (for the different cadres) from all the local planning schools / institutions, bringing out their similarities and differences.
- Assess / Compare them with a number of those from the Eastern and Southern African region as well as the international ones, as far as the group can search.
- Attempt an outline of the key areas that need to form the planning syllabus for the different planning cadres (B.A, M.A, and PhD for planners; Diploma / Certificate courses for planning assistants and Technical programmes for the support cadre).

- Link up with the key employers (both public and private) of the planners, to exchange views and find out what they expect of planners.
- Liaise with the other teams to link-up issues and avoid conflict / contradictions.
- Suggest / propose those persons you think could be called upon to assist in the exercise.

Group Three: Institutional and Coordination Team

- Up date the team on the work already done on the Educational Policy that could be of use by the various teams and help reduce duplication of effort and resources.
- Look at the existing Personnel; Equipment; and Information needs of the planning profession / enterprise.
- Assess the Continuous Professional Development (CPD) programmes, their role and application in adding value to members of the institute.
- Check on requirements towards being accredited to bodies such as the Commonwealth Association of Planners. Liaise with the other teams to link-up issues and avoid conflict / contradictions.
- Suggest / propose those persons you think could be called upon to assist in the exercise.

Compiled by H.K.Nzainga
Education & Qualification Committee
KIP



Harmonisation of planning law and related statutes

By PLAN. PETER M. NKARI

THE purpose of this article is to try to shed some light on the Physical Planning Act and the related statutes in land use planning, development, and management.

The principal urban and rural physical planning law in Kenya at local and national levels is the Physical Planning Act, Cap 286, which came into operation on 29th October. 1998. By nature, planning is a multi-disciplinary process requiring participatory approaches by all stakeholders and harmonization with other related statutes and relevant authorities in land development planning and management.

As the analyses below illustrates, there is no substantive

conflict in any section of the statutes but due to lack of harmonization of the various administrative procedures by the relevant authorities, there appears as if there is conflict in the law. The problem arises from the planners, surveyors, land officers, and the local authorities that have not harmonized their administrative procedures but continue executing their respective statutes independently without coordination and reference to the relevant Acts. Others continue to apply the defunct procedures under the repealed Town Planning Act and the Land Planning Acts.

The Physical Planning Act Cap 286 and the related statutes require, therefore to be harmonized as follows:

STATUTE: 1.0. Physical Planning Act, Cap 286

I. SUBJECT MATTER PROVISION

Application {Section 2}

The provisions of this act shall apply to all parts of the country except areas as the Minister may by notices in he gazette specify.

HARMONIZATION/ ACTION

The act, therefore equally apply on both agricultural and urban land. No area so far has been exempted

EXECUTIVE AUTHORITY

Minister, Lands and Settlement

II. SUBJECT MATTER PROVISION

Functions of Liaison Committee (Section 10 (1))

To advise the minister on broad physical planning policies planning standards and economic viability of any proposed subdivision of urban or agricultural land.

HARMONIZATION/ ACTION

Apply standard guidelines in the Physical Planning Handbook.

On agricultural land formulate viable economic units according to agricultural ecological zones

EXECUTIVE AUTHORITY

- National Physical Planning Liaison Committee
- District/Municipal Liaison Committees

III. SUBJECT MATTER PROVISION

Subdivision of land Section 41 (1)

No private land within the area of a local authority may be subdivided except in accordance with the requirement of a

local physical development plan approved in relation to that area and upon application made in the form prescribed with fourth schedule to the local authority.

HARMONIZATION/ ACTION

In cases where there are no approved local physical development plan as is the case in most of our areas, good planning practice and standards be applied as per the Physical Planning Handbook. Note that this does not mean that if there is no local physical development plan of an area, no development control is enforced. What the section provides is that where there is an approved plan of an area, the approving authority may not deviate from its provisions.

EXECUTIVE AUTHORITY

- Director of Physical Planning/ District Physical planner
- Practising planners
- Relevant Local Authority.

IV. SUBJECT MATTER PROVISION

Environmental Impact Assessment (Section 36)

If in connection with a development application a local authority is of the opinion that a proposal for industrial location, dumping sites, sewerage treatment, quarries or any other development activity will have impact on the environment the applicant shall be required to submit together with the application an environmental assessment report.

HARMONIZATION/ ACTION

The guidelines for conducting Environmental Impact Assessment (E.I.A.) are as stipulated in the Environmental Management and Co-ordination Act (EMCA) regulations.

EXECUTIVE AUTHORITY

- The Local Authority
- The National Environmental Management Authority (NEMA)
- The Director of Physical Planning
- Practising Planners/
- Environmentalists

V. SUBJECT MATTER PROVISION

Transitional Provisions (Section 54(1))

Any approval for development granted under any building by-laws, given under the provisions of any written law, in force immediately prior to the commencement of this Act, shall be deemed to be a development permission granted under this Act.

Provided that such approval shall cease to have effect unless the development in respect of which approval was given has commenced within twenty-four months prior to the commencement of this Act.

HARMONIZATION/ ACTION

Approval under local Authority by- laws such as the Building code now require additional approval under Physical Planning Act

EXECUTIVE AUTHORITY

- The relevant local Authority
- The District Physical Planner
- The Public Health Officer.



STATUTE:2.0. Government Lands Act, Cap. 280

VI. SUBJECT MATTER PROVISION

The Commissioner of Lands may cause Land in Townships to be divided into plots (Section 9)

The Commissioner of Lands may cause any portion of township which is not required for public purposes to be divided into plots suitable for erection of buildings for business or residential purposes, and such lots may be disposed in the prescribed manner

HARMONIZATION/ ACTION

-Authority of the Commissioner of Lands necessary
-The process of subdivision through apart development plan, prepared by the Director of Physical Planning or any authorized public officer and approved by the Minister for Lands and Settlement.

EXECUTIVE AUTHORITY

- The Commissioner Of Land/Land Officer.
- The Director of Physical Planning
- The Minister for Lands and Settlement

VII. SUBJECT MATTER PROVISION

Agricultural land to be subdivided into farms (Section 19)
Subject to ay any general or special directions of the President, the Commissioner may cause land available for alienation for

agricultural purposes to be surveyed and subdivided into farms.

HARMONIZATION/ ACTION

-Authority of the Commissioner of Lands necessary
-The process of subdivision through apart development plan, prepared by the Director of Physical Planning or any authorized public officer and approved by the Minister for Lands and Settlement.

EXECUTIVE AUTHORITY

- The Commissioner Of Land
- The Director of Physical Planning
- The Minister for Lands and Settlement

VIII. SUBJECT MATTER PROVISION

Restrictions on subdivision, assignment (Section 34(I))
In every lease of land under this part there shall be implied by virtue of this Act a convent by the lessee not to subdivide the land and assign or sublet any portion thereof except with the previous consent of the Commissioner.

HARMONIZATION/ ACTION

Seek approval of the Commissioner of Lands

EXECUTIVE AUTHORITY

The Commissioner of Lands/Land Officer

STATUTE 3.0. Local Government Act, Cap 265

IX. SUBJECT MATTER PROVISION

Planning (Section 166)

Every municipal council, county council or town council may, subject to any other written law relating thereto prohibit and control the development and use of land and buildings in the interest of proper and orderly development of its area

HARMONIZATION/ ACTION

-The other written law here is the Physical Planning Act, which in fact reinforces the powers of the local authority on control of development - Part V, Sections 29 - 40.

EXECUTIVE AUTHORITY

-Relevant Local Authority.

X. SUBJECT MATTER PROVISION

Acquisition and dealings in land (Section 144)

(1) A local authority may, for the purpose of any of its functions under this or any other written law, by agreement acquire, whether by way of purchase, lease exchange as gift, any land, whether situate within or without the area of local authority not with standing that the land is not immediately required for that purpose, and where land is so acquired not withstanding that it is not immediately required for the purpose for which it was acquired, it may until so required, be held and used for the purpose of any other functions of the local authority.

(2) A local authority may, subject to approval of the minister, apply to the Government or any other authority having power to acquire land for the purposes of any of its functions to be acquired compulsorily and on behalf and at the expense of

the local authority; and any such purpose shall be deemed to be a public purpose within the meaning of the land Acquisition Act, or any enactment replacing the same.

HARMONIZATION/ ACTION

Land acquisition for public purposes implied in the implementation of local physical development plans on private land

EXECUTIVE AUTHORITY

- The relevant local authority/
- Minister for Local Government
- The Commissioner of Lands/
- Minister for Lands and Settlement
- The Director of Physical Planning

Current KIP Governing Council

- | | |
|---------------------------------|--|
| 1. Planner Bosire Ogero | Chairman |
| 2. Planner David Rukunga | Vice Chairman |
| 3. Planner A. Masinde | Hon Secretary |
| 4. Micahael Gachoki | Hon Treasurer |
| 5. O Mairura | Hon Registrar |
| 6. Plan Peter Kibinda | Corporate member representative |
| 7. Plan (Mrs) Bernadete Mwaniki | Corporate member representative |



STATUTE 4.0. Land Control Act Cap 302 Regulations

XI. SUBJECT MATTER PROVISION

Manner of application for Consent etc. Every application for approval to a subdivision of land shall be accompanied by (a) a suitable plan on durable material showing the manner of subdivision, the means of access to each subdivision

and very approximately any existing permanent development. (L.C.A. regulations section 2 (2)

HARMONIZATION/ ACTION

The respective land control boards to ensure the legal physical requirement

for a physical (land) subdivision plan before consent.

EXECUTIVE AUTHORITY

- Chairman, Land Control Board
- Practising Planners

STATUTE 5.0. Registered Land Act, Cap. 300

XII. SUBJECT MATTER PROVISION

Conflict with other laws Section 4)

Nothing contained in this act shall be constructed as permitting any dealings which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealings

HARMONIZATION/ ACTION

- Other written law is the Physical Planning Act, Section 37(1), which requires the land registrar not to register any land contrary to the Physical Planning Act. Hence the purpose of the compliance certificate etc.

EXECUTIVE AUTHORITY

The Chief Land Registrar/ District Land Registrar

XIII. SUBJECT MATTER PROVISION

The Mutation Form, Page 2

Sketch or development plan to the completed by registered proprietor

HARMONIZATION/ ACTION

- The surveyor to use approved scheme plan which is signed by the proprietor (s)

EXECUTIVE AUTHORITY

-District Surveyor

-Practising Surveyors

-Minister, Lands and Settlement

XIV. SUBJECT MATTER PROVISION

Approval by statutory authorities (section 30 (1)

Before submitting any survey the licensed surveyor shall ensure approval that has been obtained for a submission or other transaction of any plot of land in any case where such approval is required by an act and that the survey submitted conforms with such approval.

The competent authority responsible for giving approval under each respective act is shown in the fourth schedule of these regulations

HARMONIZATION/ ACTION

-The Physical Planning Act repealed the Town Planning Act and the Land Planning Acts. Hence, the competent authority on approval for all land subdivisions is the respective local authority.

EXECUTIVE AUTHORITY

- The District Surveyor
- Relevant Local Authority
- Practising Surveyors
- Practising Planners

STATUTE 6.0. Environmental Management and Coordination Act, (EMCA) No.8 of 1999

XV. SUBJECT MATTER PROVISION

Functions of the National Environmental Authority, (Section)

Establish and review, in consultation with the other relevant lead agencies, land use guidelines, Examine land use patterns to determine their impact on the quality and quantity of natural resource.

Conflict with existing laws

Any legislation on the management in force immediately before the coming in force of this Act which is inconsistent with this Act shall be invalid to the extent of that inconsistency and the provisions of the act shall prevail.

HARMONIZATION/ ACTION

No physical planning decision should

be contrary to proper environmental management otherwise it shall be invalid.

EXECUTIVE AUTHORITY

- Chairman, District Environmental Committee
- Chairman, Physical Planning Liaison Committee



STATUTE 7.0. The Land Adjudication Act, Cap. 284

XVI. SUBJECT MATTER PROVISION

Particular powers of demarcation Officer. Section 18(1)

In the performance of his duties, the demarcation officer may—

- (a) when the boundary between parcels of land is curved or irregular or in his opinion is inconvenient or uneconomic for the use of land lay out a fresh boundary in its place and adjust the interests of the owners of the land adjoining the boundary either by exchange of land or by such other means as the parties may agree;
- (b) demarcate any right of way which is necessary for providing a parcel completely surrounded by other parcels with access to a public road or to water;

- (c) make such alignment of parcels adjoining a public road as may be required in the public interest; with the agreement of the owner or owners group together in one or more parcels, by way of exchange or otherwise, separate areas of land owned by such owner or owners.

HARMONIZATION/ ACTION

Demarcation officers require to consult the physical planners on proper planning standards.

EXECUTIVE AUTHORITY

The Land Adjudication Officer/Demarcation Officer
Physical Planner

STATUTE 8. 0. The Constitution of Kenya / & Land Acquisition Act, Cap 295

XVII. SUBJECT MATTER PROVISION

Protection from deprivation of property section, 75

No property of any description shall be compulsorily taken possession of... acquired except ...in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefit.

HARMONIZATION/ ACTION

Planning should promote public interest and where there is conflict with private interest, the public interest prevails.

EXECUTIVE AUTHORITY

- The Minister for Lands and Settlements
- The Commissioner of Lands

Physical Planning Act (Subdivision) Regulations,
1998

XVIII. SUBJECT MATTER PROVISION

Requirements when subdivision Schemes are submitted 5(e)

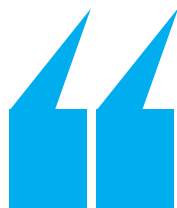
Where required by a local authority and the Director of Physical Planning, land suitable and adequate shall be reserved at no cost to the local authority for open spaces, amenities, road reserves, public purpose relative to the area to be subdivided and for road widening.

HARMONIZATION/ ACTION

A planning decision constituting compulsory land acquisition implies prompt compensation. Surrender of land for public purposes should be within reasonable limits for the beneficial use of the subject land.

EXECUTIVE AUTHORITY

The Director of Physical Planning



No property of any description shall be compulsorily taken possession of... acquired except ...in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefit.





East African planners in landmark meeting

From Page 1

planning was a good way of improving living conditions for the people.

Training and Capacity Building

Mr. Ogongo, in the discussion that followed, welcomed the workshop as a big step in the right direction his only regret was that this should have been done 10 or even 20 years ago! He argued that too much training had focused on postgraduate level, and was often done overseas. The need was for more cooperation in the region on training and for it to be targeted on producing the skills and the staff that the local authorities need and can afford.

The theme of human resources and the capacity of the planning profession was addressed by other speakers. The Uganda Institute of Physical Planners (UIPP) has only 38 members, though there are 92 towns in the country, and economic growth is closely connected to the growth of these urban areas. At Makerere University there is a planning course, but only one full-time planning lecturer. The position in Tanzania was more positive - about 60 professional planners are members of the Tanzania Association of Planners. However, because training is available at diploma and certificate level, there are over 400 persons with some form of educational qualification in planning.

The workshop agreed that there is a need for a close working relationship between practice and research institutions. Future integrated spatial planning will be effective if it has reliable and extensive databases. New electronic technologies need to be supported training is needed in methods such as GIS. At present planners in the region are reliant on old technologies, which in turn lock planners into a slow process of plan preparation, and result in plans that are difficult to adjust. New skills and technologies have an important part to play in reforming the planning service.

Challenges of Informal Settlements

Urban growth in Tanzania is doubling every ten years, and there is a strong association of informal settlements with urban poverty (this link between informal settlements and poverty is same in Kenya and Uganda). Alphonse Kyessi, Hon secretary of TPAT, identified the characteristic challenges this poses:

- Too often planning lacks concepts that are relevant to understanding the dynamics of this form of urbanisation. For example, urban agriculture is currently a very common phenomenon, but planners have no such concept.
- There are weak institutional arrangements, especially in local authorities. There is a shortage of qualified staff, and most officers at district level hold certificates, rather than full professional qualifications. Equipment and office facilities are also of a poor standard.
- There is a widening gap between demand and supply of services, and poor cost recovery on municipal services.

Alphonse also pointed to some important planning initiatives. These again focused on capacity building and institutional change. There has been an attempt to improve the governance of urban settlements by revising the regulatory framework and establishing a department that deals with urban planning and development. Decentralisation is part of the reform of public services in Tanzania, with technical staff being transferred from regional offices to district and urban councils. Planning is very much a part of this decentralisation process. Agreement has been reached that local authorities should carry out strategic planning and more detailed, short-term planning.

An action plan

The meeting agreed an action plan to guide work and collaboration within East Africa. Key points from this plan are:

- A commitment to hold joint conferences and workshops in future,
- To share experiences and undertake projects on key challenges for planners such as gender issues, poverty alleviation, decentralisation and sustainable and economic development,
- To form an East African Association of Planners with the Kenyan Institute of Planners providing an interim secretariat. The regional VP of CAP Plan Bosire Ogero was mandated to establish links with the East African Community Secretariat with a view to give meaning to this resolution.
- To address issues about sustainable use of common regional natural resources,
- To recognise the roles of the private sector and of civil society and to lobby for their participation in planning,
- To participate in capacity building for actors in planning,
- To build new collaborations between research, consultancy and practice and to encourage governments to support capacity building for local authorities,
- To adopt, apply and use new technologies in planning,
- To seek the establishment of Planning Registration Boards where they do not exist, to protect the professionalism of planners;
- To share best practices and work for harmonisation of planning standards; and
- To maintain support for CAP through payment of subscriptions and participation in its activities



City planning, illegal land allocations, road corridors - which way Nairobi?

THE issue of opening up of major road corridors in Nairobi some of which have been irregularly encroached on by developers has been and continues to be the subject of public discussion and Debate in Kenya. In particular discussions have centred on three major roads:

- The Northern By pass
- The Southern By pass
- The Eastern By pass

This article is an attempt to clarify issues as relates to these major road corridors from a city planning and city development perspective.

All these major road corridors were provided for in the 1973 Metropolitan Growth Strategy for Nairobi, a plan that was prepared after a thorough analysis of growth potentials and options for Nairobi. The Plan was prepared by the Nairobi Urban Study Group (NUSG) which worked during the period 1970-1973 through financial support from GOK and the United Nations (UN). Once the plan was approved by the government and published in the Kenya Gazette it was expected that the road corridors would be provided for and respected through subsequent land subdivisions and property development processes. It was also anticipated that where necessary land would be acquired through a process of either direct purchase or compulsory acquisition.

It is important to emphasise that at this time (1973) Nairobi's major growth corridor was seen to be to the east of Nairobi and towards Thika.

... these roads are still required and should be opened as soon as possible. Indeed a new growth strategy for the city that would identify even more road corridors among other things is in urgent need of preparation.

BY PLAN. BOSIRE OGERO



Ministry of Public Works and Housing bulldozers demolish a house on a city bypass recently. Construction of planned bypasses will help ease traffic congestion in Nairobi.

We would like to confirm that these roads are still required and should be opened as soon as possible. Indeed a new growth strategy for the city that would identify even more road corridors among other things is in urgent need of preparation.

Below is a brief assessment of each of these corridors.

The Northern By Pass

A 60 metre wide road corridor that runs from Thika road near Ruiru through Kahawa, Kasarani, North of Garden Estate, North of Runda estate to Ruaka river and connecting on to the "Link Road" that connects Red Hill road to Waiyaki Way near St Austins Road. Information available indicates that the Link road section (Waiyaki way to Red Hill Road) was purchased from private land owners through a process of negotiated sale. This was done using

public funds during the tenure of James O'Loughlin as commissioner of lands-predecessor of Mr Njenga. The other parts of the by pass were acquired either through a process of surrender during subdivisions and/or direct purchase by the government through a process of compulsory acquisition.

Information available through recent media reports indicate that parts of this by pass have been encroached on and title deeds may have been issued to private individuals. It is also true that engineering designs for the link road section of the by pass were prepared sometime back by a reputable Kenyan civil engineering consulting company in 1971-72. It is clear however that this by pass has never been degazated, rerouted or re-planned as required by the Local Government Act, the Physical Planning Act or the Roads Act.

The Southern By Pass

A 60 metre road corridor that runs from Mombasa road near Kul Graphics, to below Carnivore restaurant, below Uhuru Gardens Estate in Langata, through part of Ngong forest to Kikuyu.

Turn to page 19



Land issues, planning principles and implementation of the Physical Planning Act

The Governing Council of KIP notes with concern recent press releases regarding planning and management of land in this country, which have not been discussed by the planning fraternity. These circulars have been issued outside the recognized planning professional framework and may therefore have caused confusion in the minds of the public. As a professional body charged with the responsibility of guiding the planning discipline in this country we feel obliged to put the record straight.

Land and planning

Land is very important as it provided a basis for all human activity. We as planners look at land more as a resource rather than as a commodity. It is a resource, which has to be protected for the benefit of present and future generations. We note however that 'over commodification' of land by some sections of our society has led to a shift from emphasizing good planning principles for the good of the present and future generations to emphasize more on short term and selfish economic gain. The inelastic nature of land calls for its proper planning and management, which is a domain that must be facilitated by professional planners.

As a country, we need to go back to the roots and emphasize more on planning principles as we make critical decisions on land. Long term planning considerations should precede all actions and development on land.

The need for planning all land in the country (urban and rural) is enshrined in the constitution and proved for in relevant enabling statutes. These laws include the Physical Planning Act (Principle law), the Physical Planners Registration Act (PPRA), the Local Government Act Cap, 265, the Land Control Act Cap 302, the Agriculture Act Cap 318, the Environmental Management and Coordination Act No.

BY PLAN. BOSIRE OGERO

6 of 1999 (EMCA), the Public Health Act, the Survey Act among others.

The Physical Planning Act and the recent circular by Ministry of Lands and Settlement:

The enactment of the Physical Planning Act Cap, 286 as well as the Physical Planners Registration Act No. 3 of 1996 (PPRA) was a serious attempt by the Kenya Government and its people to introduce systematized planning in the country. It provided a legal framework for orderly planning of all our human settlements in Kenya (both urban and rural).

- On the plus side the PPA and the PPRA:
- Signifies official recognition by the Government and the people of Kenya of the importance of planning and provides the requisite legal framework.

Before its introduction, the situation was rather chaotic... anybody could plan!

- It harmonizes planning procedures and requirements provided for in other pieces of Legislation.
- It provided the necessary institutional framework for plan approval and regulation of the planning practice
- Provides a framework for public participation in planning and plan implementation.
- It provides a legal framework for protection of all planned public utilities in the whole country.

Unfortunately

- The Act is relatively new and has not been fully implemented
- Plots have been allocated without following planning procedures specified in the Act. Sometimes using repealed Acts! E.g. the Land Planning Act, Town Planning Act

As a country, we need to go back to the roots and emphasize more on planning principles as we make critical decisions on land. Long term planning considerations should precede all actions and development on land.

- Public utilities have been misallocated and developed.
- Development applications have been processed without the input of professional planners
- Public utility land is now an endangered species!!!

In light of the above, the KIP Council welcomes the recent circulars by the Government of Kenya through the Permanent Secretary MLS and the Director of Surveys to all field officers instructing them to adhere to good planning practice and respect the rule of law in all activities related to land planning and management. We in KIP will intensify our efforts to create awareness of the public on their rights under the PPA and the need to protect this meager resource-land.

Professional Fees and charges

It is common knowledge that transactions on land involve a wide range of professionals and institutions who all charge fees for their services. If these fees are deemed to be high as alluded to in some recent press releases – then they should be addressed across the board and not be used as an excuse to exempt any part of this country from planning law. To do this would be courting future disaster!!

For further information please contact the KIP secretariat through kip@wananchi.com or bosire.ogero@matrix.or.ke



Road corridors- which way Nairobi?

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Most of this road is located on government land and no land acquisition was therefore necessary. Recent press reports seem to indicate that parts of this road may have been encroached on and titles issued. It however remains a fact that no lawful rerouting or re-planning of this road corridor has been done to date. At one stage JICA had indicate interest to finance construction of this road and preliminary engineering designs may have been prepared.

The Eastern By Pass

A 60 metre road corridor that starts from Mombasa Road at the boundary of Nairobi and Mavoko Municipal Council East of Nairobi Airport, through East of Kenyatta and Mwalimu farms all the way to Thika road near Ruiru. Most of the land for this corridor was to be provided through a process of surrender during land subdivisions and land development processes.

It is worth noting that as a general case this part of Nairobi, a large part of it formed of land buying companies/cooperative farms is a planning disaster. The Metropolitan Growth Strategy recommendations, planning standards and the Embakasi Structure Plan were generally put a side during subdivisions and land development processes. This is particularly the case following the administrative order issued by the government to subdivide all cooperatively owned farms in the 1980's. It is not uncommon to find plots as small as 40ft by 50ft in this area!

CONCLUSION

The by passes discussed above are all important road corridors which have to remain as planned, be respected by

all and opened up as soon as possible, if the orderly growth, efficiency and economic competitiveness of our capital city has to be sustained. Any encroachment on these should not be respected because of the following reasons:

- The 1973 Metropolitan Growth Strategy recommendations still remain valid and no other plan has been prepared to supersede this.
- The various zonal structure plans for the various districts of Nairobi provide for these corridors
- The road corridors were gazetted as such and no de-gazettement has been done to reverse this. The Local Government Act (LGA), the Physical Planning Act (PPA), the Roads Act are all clear on this issue
- No change of user applications have been prepared and approved regarding any encroachments as provided for in the PPA
- The process of preparing Part Development Plans (PDPs) for the purported encroachment, if any were prepared at all, did not follow the procedures stipulated in the PPA and good planning practice. For example no public advertisements were made in the newspapers to allow for any objections.
- Acquisition of land for purposes of opening up planned road corridors using public resources and then allocating the same to other people is not only illegal but immoral.
- A new plan for Nairobi is required to identify even more road corridors and provide a framework for future growth. Remember under the 1948 Nairobi master plan for a colonial capital, Uhuru highway was a planned bypass!



Participants listen to a presentation at the Kitale participatory workshop. In the picture are Planner Masinde (2nd left) and Elijah Agevi (2nd right)



Lands Minister Amos Kimunya (standing) addresses the Kitale Participatory Planning Workshop. At right is Planner Bosire Ogero, Chairman of Kenya Institute of Planners, Mr George Macgoye, then DC for Trans Nzoia (extreme left) and the Mayor of Kitale (2nd right).

THE PHYSICAL PLANNERS REGISTRATION ACT (NO. 3 OF 1996)

LIST OF REGISTERED PHYSICAL PLANNERS

NAME	ADDRESS	NAME	ADDRESS
1. A. Mahmoud S. Saleh	P O Box 84003, Mombasa	38. Joyce K. Kangai	P O Box 2263, Embu
2. Abubakar A. Maddy	P O Box 83777, Nairobi	39. Juliana K. Mutua	P O Box 41965, Nairobi
3. Alan N. Shibira	P O Box 5176 Nairobi	40. Kefa M'mbarine	P O Box 51655, Nairobi
4. Alexander Kamenyi	P O Box 35516, Nairobi	41. Lawrence S. Esho	P O Box 831, Eldama Ravine
5. Anderson K. Chomba	P O Box 45025, Nairobi	42. Leonard S. Mulongo	P O Box 7759, Eldoret
6. Augustine K. Masinde	P O Box 45025, Nairobi	43. Lincolyne Kivuti Karingi	P O Box 56599, Nairobi
7. Benson A. Akungo	P O Box 331, Embu	44. Margaret M. Ng'ayu	P O Box 8000, Nairobi
8. Bernadette W. Mwaniki	P O Box 54366, Nairobi	45. Michael M. Gachoki	P O Box 1634, Kerugoya
9. Bosire Ogero	P O Box 12849, Nairobi	46. Michael N. Wangaruro	P O Box 6277, Nairobi
10. Charles N. Njau	P O Box 372 Nakuru	47. Njiru M. Nthiga	P O Box 84523, Mombasa
11. Charles O. Konyango	P O Box 1646, Eldoret	48. Obadiah J. N. Chege	P O Box 8690, Nairobi
12. Christopher N. Omare	P O Box 59541, Nairobi	49. Patrick H. K. Kinyanjui	P O Box 45025, Nairobi
13. Dan. K. Kiara	P O Box 741, Embu	50. Patrick S. Adolwa	P O Box 4263, Nairobi
14. David M. Mutiso	P O Box 44934, Nairobi	51. Patrick T. Odongo	P O Box 57255, Nairobi
15. David N. Gichohi	P O Box 57255, Nairobi	52. Patterson K. Mutugi	P O Box 45025, Nairobi
16. David N. Rukunga	P O Box 133, Kilifi	53. Peris C. K. Mang'ira	P O Box 45025, Nairobi
17. E. J. Kuria Wa Gathoni	P O Box 73640, Nairobi	54. Peter M. Kibinda	P O Box 75958, Nairobi
18. Enid Nyambura Nyanja	P O Box 52661, Nairobi	55. Peter M. Kinyua	P O Box 45025, Nairobi
19. Evans O. Mairura	P O Box 19748, Nairobi	56. Peter M. Nkari	P O Box 1486, Meru
20. George A. Onyiro	P O Box 6298, Kisumu	57. Protasio Mutuma Mbui	P O Box 296, Meru
21. Gilbert J. njau	P O Box 57760, Nairobi	58. R. Mukami Kariuki	P O Box 13468, Nairobi
22. H.C.M Wangondu	P O Box 47057, Nairobi	59. Renson K. Mbwagwa	P O Box 45025, Nairobi
23. Haroun M. Mathu	P O Box 40228, Nairobi	60. Rose K. Mwema	P O Box 7821, Nairobi
24. Hellen K. Nzaiinga	P O Box 60424, Nairobi	61. Rose Mideva Mugita	P O Box 24, Nyahururu
25. Henry M. Kamuchere	P O Box 68764, Nairobi	62. Rose W. Githua	P O Box 45025, Nairobi
26. Henry M. Mwau	P O Box 15595, Nakuru	63. Rosemary W. Wachira	P O Box 45025, Nairobi
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31. James S. Kigera	P O Box 53166, Nairobi	68. Steven G. Njuguna	P O Box 74707, Nairobi
32. Jane m. Manasseh	P O Box 43657, Nairobi	69. Timothy G. Ndorongo	P O Box 1138 Nyahururu
33. Jeremiah N. Nyabuti	P O Box 600, Ngong Hills	70. Timothy S. G. Makunda	P O Box 62792, Nairobi
34. Jobson J. Ngari	P O Box 72717, Nairobi	71. Timothy Waiya Mwangi	P O Box 30004, Nairobi
35. John M. Ohas	P O Box 58710, Nairobi	72. William E. O. Amunga	P O Box 125, Nairobi
36. Johnson M. Mochache	P O Box 20775, Nairobi	73. William G. Macharia	P O Box 2637, Nyeri
37. Johnson M. Ruthuthi	P O Box 718, Karatina	74. Wilson K. Njora	P O Box 67144, Nairobi