ISSN: 2524-1354 (Online), ISSN: 2519-7851 (Print)
Africa Habitat Review Journal
Volume 16 Issue 1 (September 2022)
http://uonjournals.uonbi.ac.ke/ojs/index.php/ahr

A Tripartite of Spatial Patterns, Sub-Optimal Laws and the Dysfunctional Land-Use Planning in Kenya

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Received on 17th December, 2020; Received in revised form 23rd December, 2021; Accepted on 6th July, 2022.

Abstract

This paper investigated the hypothesis that, for lack of research to bring the 'duality problem' in land use management into the fore, policy makers did not incorporate the required instruments into the planning statutes. In this desk study research, the government laws and policies have been critically reviewed in view of possible changes that can accommodate emerging issues in urban-rural space development. The key finding was that one of the aftermaths of the colonial policy of 'White-African' space divide was the creation of formal and informal space patterns in Kenya. In the mid-90s, areas of former class A and B towns, which were well planned during the colonial era, had begun suffering from urban decay, thus requiring renewal. The implication is that towns and rural spaces in Kenya were now characterized by three spatial patterns, namely; the pre-planned, the informal and the areas of urban decay. This was indeed the case, and ineffective planning in Kenya can be seen from this context. As a result, the study recommends that policies and statutes in Kenya require a tripartite set of planning instruments to effectively facilitate the reorganization of the emerging patterns. For instance, laws in Kenya require retroactive and proactive planning instruments which are required to break past space informality and pre-determine desirable patterns in the future.

Keywords: Duality, Formal-Informal, Harmonize, Instruments, Patterns, Proactive-Retroactive.

INTRODUCTION

During colonial rule in Kenya, land-use planning was introduced in the European and Asian settlements but was excluded from the African zones. The resulting duality in land-use management then created the formal-informal white and African 'space divide' which is glaringly conspicuous in Kenya to date. During the post-colonial era lasting up to 1998, the Town Planning Act and the Land Planning Act (Republic of Kenya (ROK), 1931, 1968) were not re-engineered to reorganize the informality in the former African spaces nor harmonize the former White-African' space divide. As a result, African settlements which evolved informally during colonial era remained so even during the earlier years of post-colonial era. When the Physical Planning Act was enacted in 1996, it was then viewed as a panacea to resolving the taunting land-use planning challenges in the country.

After the promulgation of the 2010 Constitution (ROK, 2010), the Physical and Land Use Planning Act was enacted to bring planning in tandem with the new constitution. However, save for the few amendments which were aimed at creating harmony with the constitution, the Physical Planning Act and the Physical and Land Use Planning Act were the same in letter and spirit. The question then asked is: did both laws contain strategies in the form of proactive and retroactive planning instruments which were required to effectively deal with the three patterns currently observed in Kenya? Secondly, was there deliberate policy to either repeal or harmonize the previous policies and statutes which had created the duality in land-use management? These questions are answered in the sections that follow.

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THEORY

Variations in development patterns and the need for different planning instruments

At any one moment, development pathways tend to vary from country to country due to different political economies, and this then creates a variation in spatial patterns. This implies that world spatial patterns shall always vary in time and space and the different processes and patterns would then require different planning instruments by necessity (Ayonga, 2019). Is there any evidence to back such a powerful statement? European and American urban development had taken a trajectory which had begun with the era of informal or organic development or 'city pathological' as viewed in America. Once the city pathological patterns were eradicated through urban reconstruction, policy makers were able to achieve what Hall calls 'city functional' (Hall, 1999).

Thereafter, policy makers ensured that European and North American cities were planned from scratch on plain land to achieve the ideal city or the 'city visionary' (Taylor, 1998; Hall, 1999, 2002). It should be noted that 'city visionary' was achieved through deliberate policies which required that first, land be planned, followed by the requirement for developers to obtain permits (Gallion and Einsner, 1963; Taylor, 1998; Hall, 1999). However, at some period in the future, cities which were once well planned often began to suffer decay, general blight and the need for redevelopment. Hall (1999) in Bannister et al. (1999), refers to this stage in the urban development trajectory as 'city renewable'. Planning instruments tend to vary from country to country, and they are mostly dictated by the type of pattern which such instruments intend to reorganize. For example, planning instruments which are used to evolve pre-planned patterns cannot be the same instruments which are used to reorganize areas of organic development. To reorganize the three patterns in Kenya, planning statutes required instruments which could reorganize informal patterns and areas of decay, while still spearheading pre-planned development. This then begs the question: did Kenyan laws anticipate and forestall this development eventuality? The review below shall help answer the question.

The Evolution of Formal and Informal Patterns in Kenya

Colonial laws excluded African areas from planning, creating the white-black space divide. In the ensuing divide, *laissez-faire* development took place in African zones while pre-planned pathways guided development in the white zones. The dichotomy in space management then resulted in the formation of informal space patterns in the African zones and formal patterns in the white zones. Following the 'divide', major towns such as Nairobi were zoned into the European, Asian and African quarters. Rural areas were also divided into the 'scheduled' white zones and African reserves. Due to the differences in land-use managements, African areas had no provision for social and physical infrastructure and land was held communally. This then created slums in the African towns and rural areas that persist to date.

Colonial and early post-colonial laws only covered former 'white' zones

When Kenya attained internal self-rule in 1963, all colonial structures and planning institutions were retained as then constituted during the colonial period. For example, the Town Planning Ordinance only changed in title as Town Planning Act (ROK, 1931), while the Crown Lands Ordinance became the Government Lands Act (ROK, 1984). The implication of retaining colonial segregation laws is that space divide along the class system continued, and the formal-informal space dichotomy also continued. The Land Planning Act, which was enacted in 1968, was operating simultaneously with the Town Planning Act on government lands, meaning that former African markets and rural areas were still excluded from planning. The simultaneous use of both Acts also created dual development pathways which provided developers with the opportunity to shun the expensive route, and this is the discretion which made planning ineffective during the period between 1963-1998 (Ayonga, 2019).

The lack of development control powers by the state in the former African urban and rural areas mean that developers had the complete freedom to sub-divide land and construct homesteads without being constrained by a development plan. With this lack of planning, former African areas were insufficiently

provided with social and physical infrastructure and land sub-divisions and construction of homesteads proceeded uncontrolled. All planning laws during colonial and earlier years of post-colonial eras were tailored to the pre-planned development model.

RESEARCH METHODS

A review of various theories was carried out through desk research to understand the various development pathways, and how they help create different patterns on space. This was followed by the question: if different areas would have different spatial patterns occasioned by the variations in development pathways, wouldn't this by necessity also require different planning approaches? This then necessitated a further review of literature.

Using the conceptual framework evolved above, the final approach was to review the Physical Planning Act and the Physical and Land Use Planning Act (ROK, 1996, 2019) in order to find out whether these laws had fulfilled the criteria set above.

RESULTS AND DISCUSSION

Kenyan Rural-Urban Planning Framework and Its Implementation Challenges

The Physical Planning Act and the Physical and Land Use Planning Acts: Did they address the hitherto unplanned zones?

In this section, the Physical Planning Act and the Physical and Land Use Planning Acts were reviewed to find out whether they contained instruments required to reorganize the three development patterns identified in Kenya. For example, did the laws have appropriate instruments to guide development in areas of informal patterns?

Both statutes contained sub-optimal urban-based proactive instruments

Did the Physical Planning Act (ROK, 1996) contain proactive instruments, and if yes, where in Kenya were they applicable? In section 24(3), the Physical Planning Act (PPA) provided that,

'the Director may prepare a Local Physical Development Plan for the general purpose of guiding and coordinating development of infrastructural facilities and services for an area referred to in subsection (1).'

For avoidance of doubt, the area referred to in section (1) included: government land, trust land or private land within the area of authority of a city, municipality, town or urban council or with reference to any trading or market center (Part (B), section 24(1)). This section then answers the question that indeed, the law provided express authority for the Director to prepare proactive plans for all towns in Kenya. The need for fresh plans in all towns was also a good step towards bridging the duality that had divided the country into the 'planned and non-planned' zones, a policy began during colonial period and which had lasted up to 1998 when PPA came into operation. It is also noted that both the Town Planning Act and the Land Planning Act had only covered former European settlements, yet PPA was now covering all areas of the country. This approach was then viewed as a step towards bridging the former duality.

The second component of the proactive statement was contained in Part (B) section (24(3)) of the PPA, which specified that some of the aims of the plans were to include,

'… (vii) Showing amount of land sufficient to accommodate growth of the local area for a period of 20 to 30 years and guiding and coordinating development of infrastructure facilities and services.'

Again, this was a positive gesture in the planning regime considering that former African settlements had evolved without social and physical infrastructure and this provision in the law was critical in making such amendments on space inequity. However, it should be noted that the reality of the existing patterns in Kenya did not permit or offer the opportunity for the use of proactive, futuristic and anticipative statements, such as 'to provide sufficient land to accommodate growth for 20-30 years'. It was not possible, for example, to prepare fresh plans for formerly planned European and Asian towns, nor was it possible to prepare fresh plans for former African towns since the towns were already developed, unless this happened under the auspices of urban reconstruction or renewal. However, it is clear that this part of the law was referring to provision of a planning framework in towns with plain land, and not in towns where development already exists.

More evidence that PPA anticipated carrying out planning on a plain surface can be found in Part V section 29 of the Physical Planning Act. The section, for example, indicated that Local Authorities had powers to:

(a) prohibit the use of, and development of, land and buildings in the interests of proper and orderly development of the area; … (c) consider and approve all development applications and grant approval all development permissions, and (d) ensure the proper execution and implementation of approved physical development plans ...'

However, the foregoing statements beg the following question: Considering that land in former well-planned towns was now in private hands and that considerable development had already taken place, how could fresh planning be carried out in such areas and, how could fresh development control be enforced unless such towns were being reconstructed? Equally true is the fact that although informal development had occurred in former African zones and created informal land patterns, such physical artefact were now in private hands and this was true even in areas of urban decay. The implication is that such lands were not available for fresh planning, unless such areas were the subject of urban renewal or reconstruction, and this would require other measures, for example, land acquisition.

Secondly, development in such towns had occurred a while ago, meaning there were no fresh opportunities for local authorities to issue any fresh permits. Yet, section in 30(1) PPA had anticipated that developers would seek permits as follows:

'... no person could carry out development within the area of a Local Authority without a development permission granted by the Local Authority under section 33.'

As per Section 23, in case areas of informal or decay patterns are treated as special planning areas and declared as so to facilitate re-planning, such areas shall still require the use of retroactive instruments such as compulsory land purchase, relocation of persons and resettlement (ROK, 1996).

To synchronize the Physical Planning Act with the requirements of the 2010 constitution, the Physical and Land Use Planning Act (PLUPA) (ROK, 2019) was enacted to replace the Physical Planning Act (PLA). Section I (5) of the PLUPA provides the norms to be included in planning such as:

'(a) promote sustainable use of land and livability; (b) integrate economic, social and environmental needs; (c) consider optimum use of land.'

Again, the above statements raise similar questions as follows: The norms mentioned above can only be adopted in a future scenario or within the context of the pre-planned development scenario. This is where planning is carried out today then developers seek for permits later to conform to the plan, and the norms are achieved in a spatial pattern to be achieved in the future. However, land in the rural and urban spaces in Kenya is already owned as private property and most of it is developed. The implication is that just like PPA, the PLUPA had also anticipated to operate on plain surface.

To corroborate the above evidence, Part III (22) of the PLUPA provided for the preparation of national physical and land-use plans whose objectives inter alia would include the following: (a) promote environmental conservation, protection and improvement; (b) promote social-economic development; (c) promote balanced national development; and (d) optimal use of land and natural resources. Again, this prompts the following question: How could such objectives be actualized in areas where land was owned as private property? The objectives set out as a-d could only be actualized in a command economy where the government had power to direct the use of resources, or where development rights were 'nationalized'.

Part IV (56) of the PLUPA had a provision for anticipated powers of development control as if such powers would be exercised in the future. For example, PLUPA provided that counties shall have the powers to: (a) prohibit or control the use and development of land and building in the interest of proper and orderly development of its area; (b) control or prohibit the sub-division of land; and, (c) consider and approve all development applications, among other things. In Part IV (57), the PLUPA specifies that a person shall not carry out development within a county without

permission being granted by a county executive committee member, and if the developer undertakes development without permission, such a developer shall be fined not more than 500,000 shillings or imprisonment of not more than two months.

Since the Government had not set aside any new lands to facilitate preparation of new plans and there was no budget allocation to meet the cost of compensation for land acquired for re-planning, it could only be inferred that PLUPA was meant to cover the current towns and rural areas which are already developed and occupied. However, it was not possible to prepare new plans in towns which were already developed and still expect developers to seek for development permits.

Rural-based proactive instruments were inappropriate

In Part IV section 16 of the Physical Planning Act, for example, the relevant section states as follows:

'A regional physical development plan may be prepared by the Director with reference to any government land, trust land or private land within the area of authority of a County Council for purposes of improving the land.'

Such planning was also necessary to provide for proper physical development and secure suitable provision for transportation, public purpose, utilities and services, commercial, industrial, residential and recreational areas. The plan prepared above had anticipated suitable provision for the use of land for building or other purposes. However, it is note-worthy that most, if not all land in the former African rural areas were registered as private property, and such land was subsequently developed for homesteads and farming. Land in the former 'scheduled rural' areas was also developed and owned as private property. Again, just like in towns, proactive planning instruments could not apply in the rural areas because of the existing development and the fact that such property was in the private realm. However, this section of the law was critical if planners had the aim of producing model villages in the rural areas of Kenya. However, this was only possible if plain land was set aside for this purpose.

Both statutes contained in-actionable urban-based-retroactive instruments

PPA had some sections which could be used to reorganize informal areas of development and even promote urban renewal. In section 24(2), for example, PPA had provided that:

'a Local Physical Development Plan may be prepared for…development or for renewal or redevelopment and for… (iv) indicating action area for immediate development or redevelopment.'

This section of the law contained instruments which could be construed in the context of retroactive planning. For example, plans for redevelopment or reconstruction could be prepared to reorganize areas of informal development in former white and African settlements. However, re-planning, renewal or redevelopment, just like urban reconstruction in Europe, often resulted in displacement of people and property.

Displacement of people and property would then require compensation for land that would be compulsorily acquired and extra land shall be required for resettlement of displaced people. In the UK, these scenarios were anticipated during urban reconstruction and sufficient monies were set aside from the exchequer to compensate those whose lands were compulsorily acquired. Although PPA had provided for urban reconstruction, other instruments such as compulsory land acquisition which could actualize such option were not invoked, perhaps because such scenario was not anticipated. This means that retroactive instruments were never used to advance urban planning in Kenya during the tenure of the Physical Planning Act.

Rural-based retroactive instruments were in-actionable

There was a provision in the law aimed at promoting re-planning and reconstruction in the rural areas. Section 16(2) of PPA provided that:

'a regional physical development plan could provide for planning, re-planning, or reconstructing of the whole or part of the area comprised in the plan, and for controlling the order, nature and direction of development in such an area'.

Due to the existing development, retroactive instruments were indeed the required approach to reorganizing the informal or parts requiring renewal in the rural areas. Such instruments could indeed also be used to provide social and physical infrastructure in areas of the former African rural zones where such facilities were missing.

Retroactive planning process would, however, result in demolitions of property and displacement of people and also necessitate for extra safeguards, such as just compensation and resettlement of displaced persons. Both the Physical Planning Act and the Physical and Land Use Planning Act (ROK, 1996, 2019) had no mention of processes of land acquisitions, compensations or resettling displaced persons after the process of re-planning and/or reconstruction. Though the land acquisition act had provided for the foregoing eventualities, such provisions were not invoked at any stage to facilitate land-use planning in areas where development had taken place, such as rural areas.

Parallelism in development pathways provided lacuna for developers to shun Plan-Led Route

In the pre-planning pathway, developers are required to obtain permits, and this enables those in authority to ensure that developers conformed to the plan. However, zoning tends to limit investment options and developers are required to pay numerous levies before they obtain development permits. In this context, if policies provided developers with alternative pathways, developers shall shun the costly pre-planned route. When Physical Planning Act was enacted (ROK, 1996), the Town and Land Planning Act were repealed. Henceforth, the Director of Physical Planning took the place of the Town Planning Advisor as the plan preparatory authority. However, whereas the Town Planning Advisor prepared plans on government land, the Director of Physical Planning covered all land tenure areas. Whereas plans prepared by the Town Planning Advisor had to be approved by the Commissioner of Lands, plans prepared by the Director were to be approved by the Minister. In this paper, it is argued that all relevant statutes were not repealed or harmonized to facilitate smooth operation of PPA and PLUPA as seen below.

Laws created dual approving authorities in urban Government land

Before the Physical Planning Act came into operation, government land was managed by the Commissioner of Lands under the Government Lands Act (ROK, 1984 - now repealed). However, upon the enactment of PPA, the Government Lands Act was neither repealed nor harmonized to be in tandem with PPA. This resulted in two laws with parallel, yet legitimate development pathways. For example, Government Land Act had unequivocally provided that all development on government land be approved by the commissioner of lands. In the same vein, all land allocations, sub-divisions and construction of buildings on government land had to be carried out on a plan approved by the Commissioner of Lands. Yet, the Physical Planning Act had provided that plans in all land tenure areas, including those on government land were to be prepared by the Director and approved by the minister in charge of planning. The Physical Planning Act had also provided that plans prepared by the Director and approved by the Minister were to be implemented by Local Authorities.

However, under the Government Lands Act, which was not repealed, the Commissioner of Lands had remained the de facto plan approving authority in respect of all government lands as it was the case since the colonial era. This policy lacuna then provided developers with the option to seek permits in government land either using the route of the Government Lands Act (ROK, 1984), or through the Physical Planning Act. However, a prudent and rational developer would choose a route with minimal pitfalls and low costs and in this case, PPA was shunned because it was considered expensive.

Plan preparation by Director sabotaged by GLA and Survey Act

For developers who wanted permits to sub-divide leasehold land, the dissonance in Government Lands Act (GLA) and Physical Planning Act (PPA) emerged as follows: In section 41(1), PPA required all land sub-divisions within the jurisdictions of local authorities to be in accordance with the requirements of a Local Physical Development Plan approved in relation to that area. Secondly, the land sub-division schemes had to be prepared by a registered physical planner and

approved by the Director of Physical Planning (ROK, 1996 (Part 41(2)). However, Government Lands Act (ROK, 1984) had provided an alternative route which specified that land alienation could be carried out by a competent authority and on a plan done on durable material. Both the GLA and Survey Act (CAP, 280, 299 - and they were not repealed then) did not specify who constituted the 'competent authority'. This ambiguity in law was exploited to allow land surveyors to prepare land sub-division schemes, and such schemes were approved by the Commissioner of Lands using the route of the Government Lands Act.

In this case, the Director of Physical Planning who was the bonfide plan preparatory authority, and the Minister who was the approving authority under the provisions of PPA, were both sidelined. During the tenure of PPA, the Commissioner of Lands could backdate part development plans and use them to allocate urban and rural land. In this context, both the Commissioner of Lands and the Director of Surveys were perfectly within the law (GLA, CAP 280; Survey Act, CAP 299).

Effective plan implementation under PPA sabotaged by LGA and GLA

Before the advent of PPA, the responsibility of implementing plans in Government land was shared by both the Commissioner of Lands and Local Authorities. However, PPA provided that plan implementation and development control in general be carried out by Local Authorities, and this resulted in two legitimate development control institutions; the Local Authorities and the Commissioner of Lands. During the tenure of PPA, the Commissioner of Lands could clandestinely approve change of user, extension of user, extension of lease and building plans on government land without consulting both the Director and the Local Authorities. This was because PPA had created a policy lacuna which provided the Commissioner of Lands the discretion to exclude other actors in the land management process. As a result of the void, land alienation and sub-divisions were approved by the Commissioner of Lands outside the discipline of planning.

Preparation of plans in former African markets sabotaged by LGA

The Physical Planning Act had provided that the Director shall prepare plans to cover former African markets. Hitherto, plans in former African markets were prepared by county survey assistants to facilitate land allocation. When PPA (ROK, 1996) was enacted, the Local Government Act (ROK, 1998 - now repealed) was not repealed or amended. The two statutes resulted in two plan preparatory authorities and this created discretion. The implication was that, first, it was not possible to prepare new plans in such towns and this was the first impediment that confronted the Director. Secondly, it is note-worthy that Local Authorities had the mandate to alienate and allocate land in all markets under their jurisdiction, and this mandate was still valid even during the tenure of PPA. The legitimacy of the Local Government Act-led development pathways provided a lacuna for developers and local authorities to sabotage the roles of the Minister and that of the Director of Physical Planning. A hypothetical development process in a market town is interrogated below to demonstrate how the developer was likely to make decisions.

A developer who aims to carry out a land sub-division in a market town managed by a County Council was confronted with the option to either have them approved under PPA or under the requirements of Local Government Act (ROK, 1998, 1996). In the first route under LGA (CAP, 265), developers had to engage council surveyors to carry out the land sub-division. The land subdivision scheme would subsequently be approved by county authorities. In the second route, the land sub-division scheme would be prepared by the planner in charge of the district or a licensed private practitioner, and then be approved by the Director. Finally, the scheme had to be taken to the Local Authority for final approval and issuance of form Physical Planning Act 2 (PPA 2). The applicant was again required to take the land sub-division scheme back to the Director of Physical Planning or his representative at the district or county level for issuance of certificate of compliance. If one notes the various points of control, the PPA-led route had more requirements, and considering that charges were also imposed at every point, it was laborious and costlier than the LGA-led route.

From the developers' view point, the PPA-led route was expensive and unnecessary, thus, it was avoided. From the point of view of local authorities, land subdivisions were a source of revenue and offered opportunities for land grabbing, thus LGA-led route was a goose that laid golden eggs. The PPA-led route required that land subdivision schemes be approved by the Director or the Minister for Planning and this had threatened to strip the local authorities of their power. Considering that developers had to launch their applications with Local Authorities before such applications were circulated to other authorities for scrutiny, Local Authorities had the first opportunity to sabotage such circulation. As a result, the Physical Planning Act was shunned by developers and sabotaged by the local authorities, and the law was still on the side of the saboteurs.

The implication is that the ambiguity in LGA and PPA (ROK, 1998, 1996) had also helped to exclude former African markets from the benefit of planning during the period between 1998-2019. Again, since PPA had proactive instruments which could not reorganize towns where development already existed, planning still remained ineffective in the former African towns. The result was the proliferation of informal development in former African markets for a period of 121 years (1898-2019).

Preparation of plans in freehold land sabotaged by LCA and LGA

Physical Planning Act (PPA) had provided for preparation of plans and land subdivision schemes by the Director to guide development in the former African rural areas. While regional plans had to be approved by the Minister, land subdivision schemes had to be approved by local authorities. All approved plans were to be implemented by Local Authorities in consultation with the Director of Physical Planning. Hitherto, Local Authorities were guided and were operating under the provisions of the Local Government Act (ROK, 1998), and this law was not repealed nor harmonized to be in tandem with PPA. The LGA had specified that Local Authorities were in charge of towns and not rural areas. This means that jurisdiction over rural areas, as seen in the Physical Planning Act, was an added responsibility to the Local Authorities. It also means that the role of Local Authorities in the rural areas was now in conflict with the provisions of the Local Government Act. Previously, freehold land in the former African rural areas were managed by the Land Control Boards (ROK, 1989). Again, the mandate of the Land Control Boards over the rural realm was still legitimate since the Land Control Act had not been repealed.

The 2010 policies and laws did not resolve the problematic duality

The practice of putting boundaries to separate urban and rural spaces were retained during post-colonial era. The 2012 Land Act consolidated the former Government Lands Act (ROK, 1984), the Land Control Act (ROK, 1989), and the Registered Land Act (ROK, 1989) into one single statute. However, part IV of the Land Act (ROK, 2012) categorizes land outside towns as freehold or communal agricultural land, and this was the position during the colonial and post-colonial era. In section 14(1) of the Land Act, there was express requirement for planning in public land as follows:

'... a management body shall submit to the Commissioner for approval a plan for the development, management and use of reserved public land.'

It is also noted that those who acquire private interests on alienated public land are issued with leases, while those who acquire private interest in alienated communal land are issued with freehold title. Leasehold titles require developers in public land to obtain development permits, while freehold titles do not have such condition.

Hitherto, the dual problem of lack of express requirements to prepare plans in freehold land, and lack of conditions in the titles for land owners to seek for permits made it difficult to plan and implement plans in the former African rural areas. Since planning was needed in all land tenure areas as was anticipated in the Physical Planning Act (now repealed) and the Physical and Land Use Planning Act (ROK, 2019), there should have been express requirement for planning in freehold land as was the case in public land. Secondly, land owners in freehold zones should have been provided with conditions in their title certificates requiring them to conform to plans, as was the case in Government land.

The Urban Areas and Cities Act did not specify how planning could facilitate a smooth transition between the rural and urban areas. This omission treats the urban and rural areas as separate enclaves, and this was the dichotomy that resulted in informal urban sprawl (Ayonga, 2012, 2021). It should also be noted that the Physical and Land Use Planning Act did not have sufficient provisions to facilitate planning in areas where development already existed, as is currently the case in rural and urban spaces.

CONCLUSION AND RECOMMENDATIONS

Land-use planning challenges in Kenya can be attributed to the colonial policy of racial segregation which divided the country into the 'White-African' dichotomy. Since African areas were excluded from the benefit of planning, the White-African space divide evolved into the 'formal-informal' space axis. The advent of the Physical Planning Act and the Physical and Land Use Planning Acts were viewed as a panacea towards not only removing the former duality, but also towards the reorganization of the informal patterns. Further, parallelism and overlaps between, and among, the relevant planning statutes was seen as another factor which explains the failure of the two statutes in guiding land-use planning. Although these instruments were indeed provided in the statutes, they were not effectively actualized because of the absence of the back-up from other auxiliary laws. This then became the first reason which explains the failure of the two statutes in guiding land-use planning in Kenya.

Evidence from the review of past literature demonstrates that three patterns exist in Kenya, namely, informal patterns, areas of urban decay and pre-planned patterns (Ayonga, 2019). On this basis, laws in Kenya must incorporate the three instruments of planning in order to effectively reorganize the three different patterns already identified.

To effectively play the triad functions mentioned above, the study recommends that the new laws required both proactive and retroactive planning instruments. Although these instruments were indeed provided in the statutes, they were not effectively actualized because of the absence of the back-up from other auxiliary laws. Thus, the land laws need to be aligned to the planning laws for effective implementation of the nation's physical planning agenda.

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