

Making Urban Planning and Development Control Instruments Work for Kenyan Cities : The Case of the City of Eldoret

Job K. Ngetich, Grephas P. Opata and Leonard S. Mulongo

School of Environmental Studies, University of Eldoret,
P.O BOX 1125-30100, Eldoret, Kenya.

Corresponding Author: Job K. Ngetich

Abstract

Urbanization is a process of town formation and growth, which is occasioned by population increase, both natural and migratory, and spatial expansion of settlements to accommodate increasing population. Urbanization process is unstoppable, irreversible, and is taking place largely in developing world. In 2003 the global urban population was estimated to be at 3 billion, while half of the world population or 3.3 billion people lived in urban areas in 2008. This number is expected to rise to 5 billion by 2030, and 80% of these urban dwellers will live in towns and cities of the developing world. Kenya is rapidly urbanizing with about 30% of the population living in the urban areas. Every year more than 250,000 Kenyans are moving to urban areas and by 2030 half of the population will be urban. Effective Urban planning and development control instruments will therefore be needed to guide rapid urbanization. Urban planning and development control regulatory frameworks are important as they provide orderly land development which is essential for efficient and equitable growth of urban areas as well as facilitating efficient land management and environmentally sound use of land. Statutory and non-statutory instruments inform urban planning and development control practices in Kenya. The paper gives an assessment of the application of urban planning and development control instruments based on the research done in the City of Eldoret in Kenya and makes recommendations for enhancing their effectiveness.

Keywords: urbanization, urban planning, development control, instruments

INTRODUCTION

Urbanization is a process of town formation and growth, which is occasioned by population increase, both natural and migratory, and spatial expansion of settlements to accommodate increasing population. Urbanization process is unstoppable, irreversible, and is taking place largely in developing world. The world urban population is about 3.8 billion and this number is expected to rise to 5 billion by 2030, and 80% of these urban dwellers will live in towns and cities of the developing world (Leautier, 2006; ISOCARP, 2010). Kenya's population is estimated to be 40 million people. Every year more than 250,000 Kenyans are moving to urban areas and by 2030, half of the population will be urban. Figure 1 shows the projected urban population in Kenya in percentages.

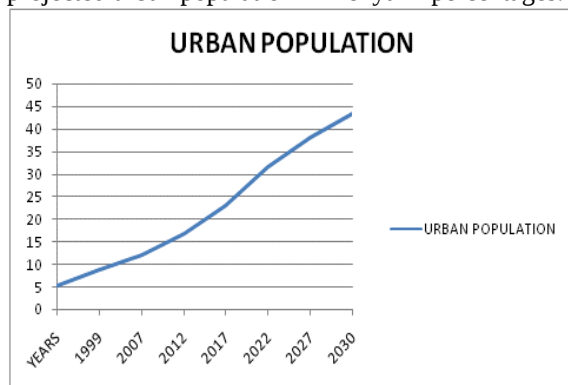


Figure1: Projected urban population in Kenya
Source; Kenya Vision 2030 (2007a)

Rapid urbanization therefore underscores the need for effective Urban planning and development control instruments to guide orderly urban development. Development control in this regard is seen as a mechanism to maintain standards. It is a process laid down by legislation, which regulates the development of land and buildings. It is the professional activity carried out by town planners in order to ensure compliance with the approved master plan, thereby ensuring orderliness (Ola, 2011). It is an attempt to ensure that what is arranged before hand is carried out to the letter or decisions are made to reconcile conflicting interest (Ahmed, 2011).

RESEARCH METHODOLOGY

The general objective of the study was to assess the effectiveness of urban development control instruments and practices being applied in the City of Eldoret. The specific objectives include;

- To assess the effectiveness of urban development control tools being applied in the City of Eldoret
- To establish challenges associated with application of Urban development control tools
- To explore appropriate strategies for improving the usage and application of urban development control tools

Data was acquired through questionnaires which were administered to; 188 randomly selected households drawn from a list of developers in the neighborhoods of Elgon View ,Kimumu, Maili Nne and Langas, who had sought development planning permission for building plans from the City of Eldoret. 22 Practicing Designers comprising of; Architects, Engineers, Contractors, Physical and Environmental planners were interviewed with the objective of getting outsider perspectives in the application of urban development control instruments. Interview schedules were used to collect data from various Urban Development Control institutions including; the relevant Departments and offices of the County Government of Uasin Gishu (CGU), National Construction Authority (NCA), National Environmental Management Authority (NEMA), National Lands Commission (NLC), Occupational Safety and Health Department, Kenya Airports Authority and Ministry of Lands and Physical Planning. Focus Group Discussions, observations and mapping were also used as data collection methods. Data collected was organized and analyzed using SPSS Version 20. The findings were presented using maps and descriptive statistics.

RESULTS AND DISCUSSIONS

Urban development control process in Kenya

In Kenya urban development control framework is informed by both statutory and non-statutory instruments. The statutory instruments include; The Constitution of Kenya 2010; Physical Planning Act Cap 286, City of Eldoret By-Laws 2009, Public Health Act Cap 242, Roads Authority Act 2007, Housing Policy, Lands Act, 2012 , Land Registration Act, 2012, Physical Planning Handbook 2007 and the Kenya Civil Aviation Authority Regulations. The non-statutory instruments are the interim City of Eldoret Land Use Regulations and the resolutions of County Development meetings. The County Government of Uasin Gishu has not constituted the City Management Board to run the City, as envisaged under the Urban Areas and Cities Act 2011 and as such the office of the Town Engineer of the City of Eldoret plays a Key role in coordination of urban development control processes. Figure 2 shows the key stakeholders in Urban development control processes in the City of Eldoret.

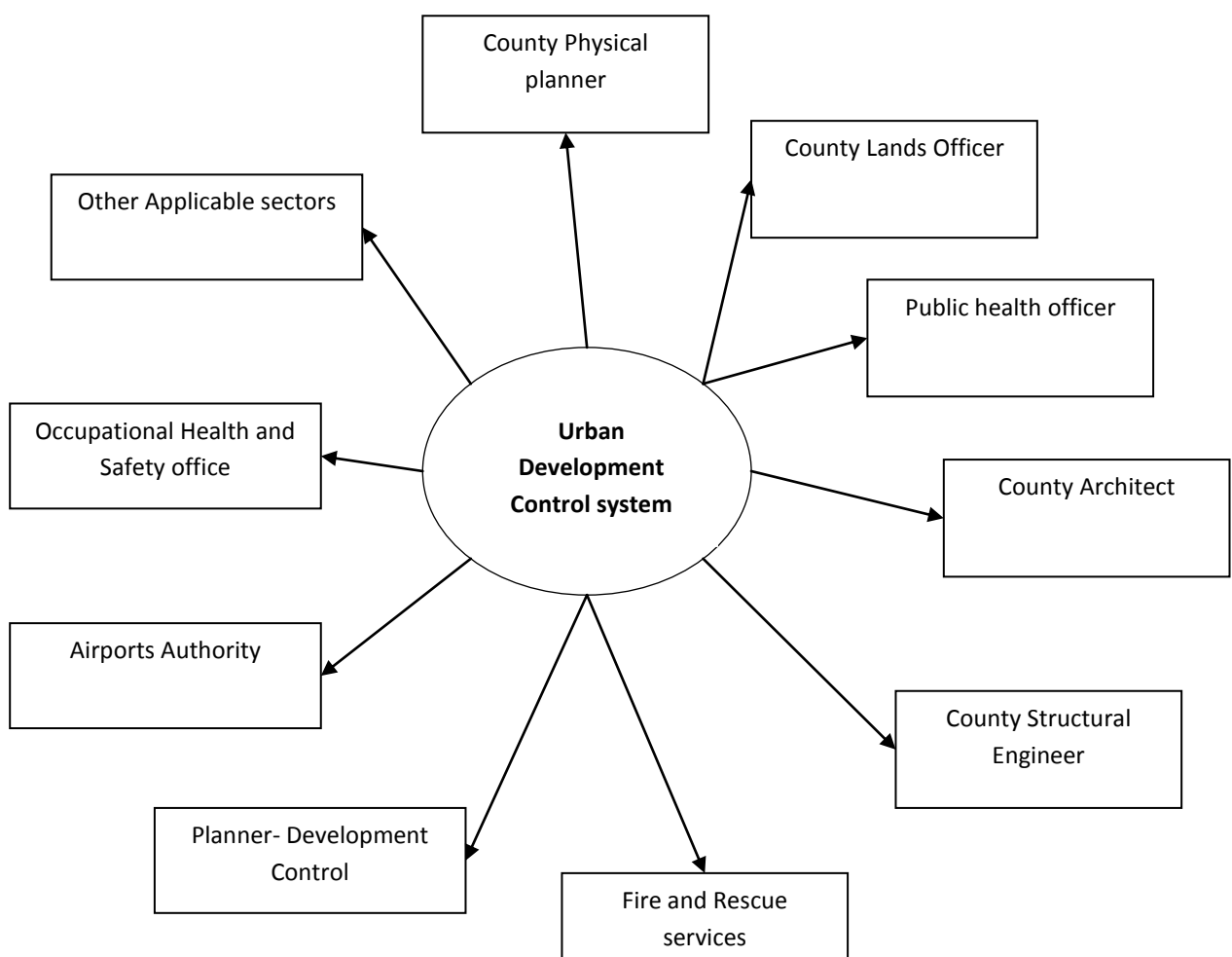


Figure 2 Urban Development Control Stakeholders in the City of Eldoret
Source: Author's Design

The principal instrument that is used for decision-making in Urban Development control is the Master plan for the town. Figure 3 shows a Land use plan for

the City of Eldoret which covers an area of 147.9 Km².

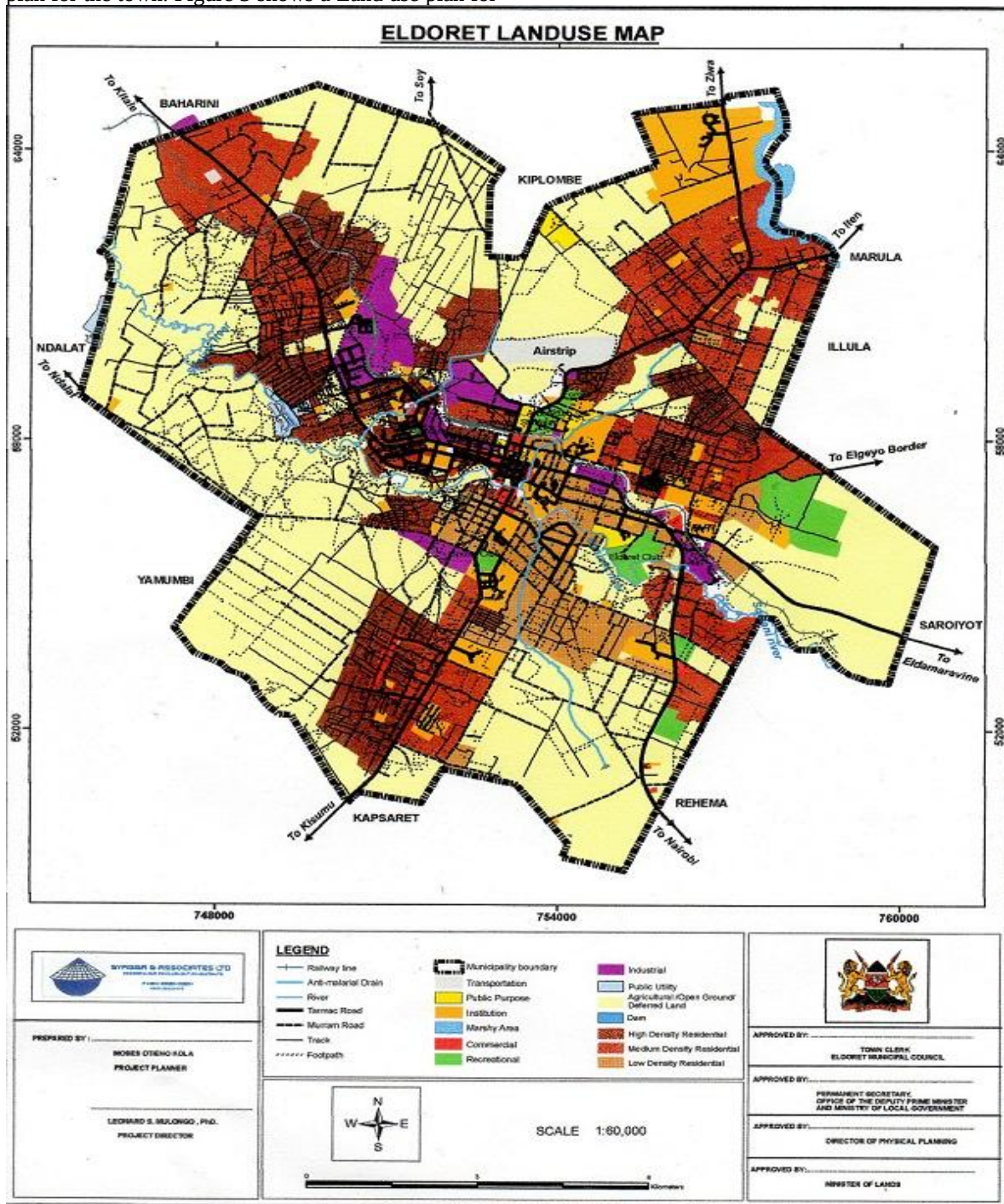


Figure 3 Eldoret City's Land Use Plan
Source: Republic of Kenya, 2010

Effectiveness of urban development control instruments

The effectiveness of urban development control instruments were assessed through examination of levels of compliance with urban development control standards, awareness levels of urban development control instruments by respondents, rating of performance of urban development control

institutions, timeliness and cost effectiveness of urban development control processes, as well as determination of urban neighbourhood zone quality.

Awareness of Urban Zoning Standards

In determining the effectiveness of urban development control instruments, the study tested the awareness levels of households through in-depth interviews, to find out whether they had sound

knowledge of their neighborhood zone, planning and development standards, prior to submission of development applications for building plans for approval. 57% (102) of the respondents said they were aware of the zoning standards of their areas while 43% (78) were not aware. Elgon View neighbourhood zone had the highest level of awareness level 88% (29), compared to Langa 76% (29) and Maili Nne at 23% (15).

According to the UN Habitat (1999) in Ibadan, Nigeria, it is noted that the level of awareness of the existence of urban development regulations increases progressively from the low to high quality residential neighbourhood specifically, 80%, 73% and 56% of households in the high, medium and low quality residential neighborhoods respectively are aware of the existence of urban development and planning regulations. A large proportion of the people on low income areas are therefore not aware of the regulations. In Ghana, Ahmed et al (2011) noted 57 percent of the study population was aware of the existence of development control in Wa Town and 43 percent are not. However the study established that the level of awareness in Langa, a low income high density area did not resonate with studies done in Nigeria as the level of awareness is at 76% which is higher than 56% as stated by UN Habitat. The high level of awareness of zoning standards in Langa neighbourhood could be attributed to many slum upgrading projects which have been done in the past and the insecure land tenure that makes people to seek for development planning permission as a strategy of asserting their plot ownership status.

In Elgon View, Low density residential neighbourhood 88% of the respondent said they were aware of urban planning instruments prior to plan submission, which is slightly higher than the stated 80% by UN Habitat (1999). Ogundelele (2010) noted that lack of public enlightenment programmes on physical planning issues by the Federal Housing Authority makes members of the public illiterate on physical planning programmes. This leads to development of illegal structures that have negative impacts on the urban environment. In this regard, there is need for sensitization measures to be mounted for enhancing effective compliance with urban development control instruments.

Timeliness in Processing of Development Applications

Time taken in processing of development applications is an important variable that is considered in analysis of ease in doing business which is an emerging aspect in urban development control. Investors are interested in putting their money in an environment where approval processes are faster so that they can recoup the returns of their investment within the shortest time possible.

According to the World Bank and ISO specifications, development applications should be processed on the spot and in one day. The study established that majority of the respondents took up to 5 days to get recommendations and approvals from various urban development control institutions. 69.3% (79) of the respondents said it took them between 1-5 days for Physical planning office to grant approval compared to 40% (57) at Engineers Departments, giving an indication of an inordinate delay by the Engineers Department to grant approval. When compared with other studies, the time take to process development applications is much shorter. The study by Ahmed et al (2011) in Wa town in Ghana, noted that it took four (4) applicants more than three months to acquire building permit. This was attributed to the irregularities of statutory planning committee meetings, leading to developers building without permits after submission of application. The delay in handling urban development control applications contributes to non-compliance leading to creation of shanty urban character and the likelihood of occurrence of disasters.

Frequency of Building Inspections

Inspection of buildings in different stages is crucial in that it prevents poor workmanship and also ensures that the approved plans are adhered to by the developers. Cases of buildings collapsing in the process of construction or after completion may not arise if buildings under construction are inspected regularly. Figure 4 shows a collapsed building in Nairobi.



Figure 4: Shows a Four-Storey building which collapsed in Zimmerman area in Nairobi on 9th March 2016

Source: http://www.the-star.co.ke/news/27/3/2016;11:00_hrs

It was established that the buildings which were inspected less than 5 times were 122 (70%) while the buildings that were inspected more than five times were 12 (7%). This shows that there is a possibility of buildings collapsing because of irregular and random

inspections. In terms of zones, Elgon View seems to have the highest number of buildings inspected more than 4 times. Elgon View had only two buildings which were inspected less than 3 times while Kimumu had 21, Maili Nne, 14 and Langas had 4 buildings. In general, most buildings in Kimumu and Maili Nne were inspected between 3-4 times while most buildings in Langas were inspected at least 4-5

times. For a building to be considered compliant in terms of inspections, it must be inspected eleven (11) times which is not the case in the City of Eldoret. The reason as to why inspection is not done as expected is because of lack of resources involving, transport and personnel for site inspections, and hence the need for provision adequate facilitation. Figure 5 shows status of building inspections in the City of Eldoret.

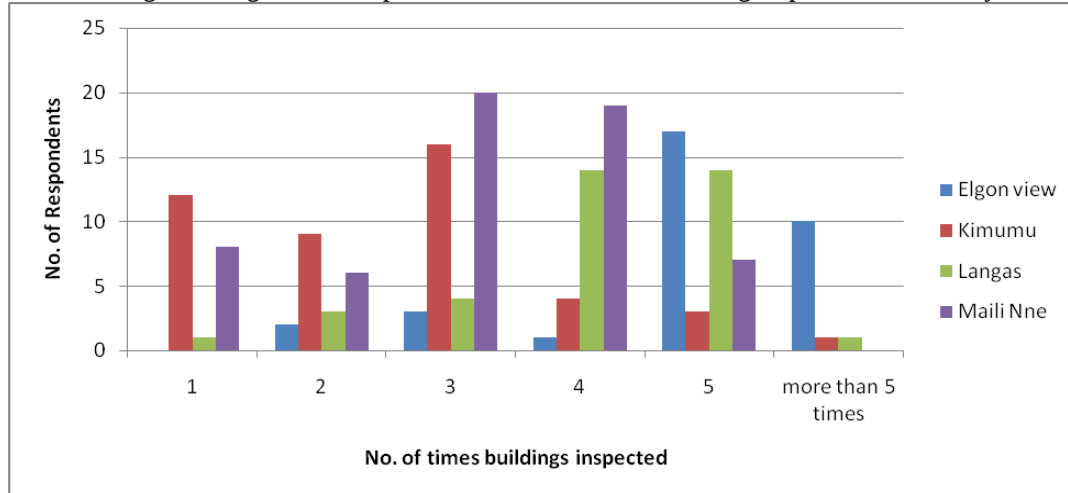


Figure 5: Number of times building was inspected

Compliance with Building Standards

To ensure compliance with building standards as stipulated by the codes and the Physical Planning handbook, maintenance of a minimum setback of 2.5m and building line of 3m were used as compliance yardsticks. The study established that 12% (19) of the respondents had violated a minimum of 3m building line requirement and went ahead to carry out development within the boundary between the frontage and the edge of the road. Similarly 49% (80) of buildings had encroached on the distance between the fence on both sides of the plot and walls of the buildings (setbacks). Some developers had built from beacon to beacon and within their property boundaries.

In terms of compliance with a minimum of 3m requirement on the building line of frontage side; all the respondents (33) in Elgon View had 100% compliance, followed by Maili Nne 95%, Kimumu at 84% and Langas at 74%. The compliance generally was found to be very high for the frontage side of observation of 3m building line requirement, compared to maintenance of the distance between the walls of the building on elevation sides and plot boundaries (setbacks) which stood at 89% compliance in Elgon view, 50% in Maili Nne, 47% in Kimumu and 27% in Langas. The reason why some developers encroached on spaces for setbacks and building lines is either failure to carry out regular inspections, or some changes were made on approved designs by the builders on the ground. The results of the study cannot be compared with the findings from

Simiyu (2002), who examined the effects of urbanization on the use and control of land at Ngong fringe area of Nairobi and established that 54% of plot owners had contravened planning regulations, of which specific types of regulations violated were not specified because the methodology used was observation and not measurement as it is in this study.

Variation between Approved Plans and Completed Buildings

The study established from the respondents whether they had carried out any changes or amendments in the building plans on the ground during the process of building construction, 11% (19) of respondents said they changed the design on the ground while 89% (161) complied with approved plans. The analysis of the urban zone compliance rate indicated that Maili Nne zone had the highest level of compliance at 92%, followed by Elgon View 91%, Langas 89% and Kimumu at 85%. The respondents cited the reasons as to why they changed their building design as mainly to enhance the aesthetic value of the building especially, the roofs in Elgon View and because of high cost of construction. It should be noted that changes in the design of structure on the site is not permitted as it calls for the need to re-submit the plan a fresh, like any other new development application for approval.

Presence of Illegal Developments in the Urban Zones

The study sought to understand from the dimensions of the respondents whether they knew of any existing structure within their neighbourhood zone which is an eyesore and 26 (14%) of respondents said that there are structures which they felt were illegal and they were not happy with in their respective Urban zones, while 157(86%) said there are no illegal structures in their zones. The fact that some respondents are not happy with the existence of some structures within a neighbourhood zone is a clear indication of the ineffectiveness of urban development control tools. The findings on existence of illegal structures almost agrees with what Ondola et.al (2013) established when examining the effectiveness of housing policies in Kisumu City where he noted that 80.73% of the population sampled agreed that there existed unauthorized housing units within the neighbourhoods while 19.27% disagreed that there existed unauthorized housing units within the neighbourhood, thus depicting high rate of proliferation of informal settlements within Kisumu. In the case of the City of Eldoret, it can be indicated in this regard that some developers do not adhere to the planning and development regulations. The respondents who noted that illegal structures existed could include temporary or permanent structures for practicing urban agriculture. Eldoret City Bylaws and the PPA outlaw agriculture which conflicts with the needs and cultures of people. In some communities in Kenya keeping cattle and Poultry within the plot is considered as a lifestyle which is inconsistent with urban development control norms.

Performance Rating of Urban Development Control Institutions

The study examined the effectiveness of urban development control institutions by asking the respondents to rate the overall performance of the various urban development control institutions using the summated rating scale, as they processed for the approval of their building plans. Physical planning office was rated by majority of respondents as very good (24%), followed by NEMA (20%), and the Engineer's Department at 12%. Engineers Department had the highest number of respondents who rated it poorly at 16% followed by NEMA at 5% and Public Health at 12%; Lands office at 9% and Physical Planning at 4%. On average, all the urban development control institutions were rated below average which means that there is need for concerted efforts in order to improve the entire urban development framework. The study resonates with what Hayombe (2010) in his study of Kisumu-City Lake interface whereby performance of Urban development control institutions was rated below average according to public assessments. The

performance of Kisumu City Council was rated at 85.9% for unsatisfactory performance using Municipal planning variable, while other respondents rated as fair (8.2%) satisfactory (0.8%) and excellent (4.8%). Poor performance rating of development control is one of the causes of haphazard development in the Municipality, especially in the informal settlements. This had led to deteriorating environmental quality in most neighborhoods such as Bandani, Manyatta, Migosi, Nyalenda and Nyawita (Anyumba, 1995, Hayombe, 2010).

Challenges of the Application of Urban Development Control Instruments and Practices in the City of Eldoret

Inordinate Delays

The study established that inordinate delay is one of the greatest challenges faced by many respondents (55%) when processing development applications at the City of Eldoret's Engineer's Department. The FGD and the respondents indicated that they had to wait for too long in order to get their applications sanctioned. It takes time to circulate plans and receive comments, while in the County, the various committees including the Technical Committee and other County meetings have to be convened to consider applications, resulting in delays. In some cases, respective committees have to organize to make site visits for inspections as a group, in order to appreciate the existing parameters on the ground before approval is granted. It is this process of mobilization of committees that take time causing inordinate delays leading to some developers carrying out illegal developments.

High Cost of Processing of Development Applications

The challenge of high cost of processing of development applications was cited by 22% of the respondents and also corroborated by results of Focused Group Discussions (FGD). Urban development control institutions whom the plans are circulated to including the Town Engineer's Department, Physical Planning, Lands Office, NEMA and Public Health, National Construction Authority, Occupational Safety and Health Department, charge approval fees which in total cost a minimum of Eighty Seven thousand, Five hundred Kenya shillings (Ksh.87,500) per applicant. Table 1 shows the minimum breakdown of approval fees payable to Urban development Control institutions in Kenya.

Table 1: Minimum Fees and Charges of Urban Development Control Institutions in Kenya Shillings

S/No	Urban Development Institution/Department/ Stakeholder	Type of Fees	Unit Cost Kenya Shillings(Ksh)	Total (Ksh)
1	Physical Planning	Application Form PPA 1 Scrutiny Fees	500 1200	1700
2	Engineer's Department	Submission Forms Structural Form Structural Fees(plinth area by 10 Ksh Rates Clearance	500 500 1000 2600	3200
3	Public Health	Building Inspection fees Sanitation Fees	1000 1000	2000
4	Occupational Safety and Health Department	Registration of Site Fees OSHA Fund Approval fees	2000 3000 600	5600
5	NEMA	EIA fees(0.1% of project cost) Lead Expert Fees	10,000 30,000	40,000
6	Lands	Approval Fees	2,000	2,000
7	National Construction Authority	Approval/Inspection Fees(0.5% of project cost)	25,000	25,000
8	Practicing Designer's	Drawing Fees	8,000	8,000
	Total Cost Ksh			87,500

Source; Compiled from Various Urban Development Control Institutions, 2016

It was noted that the cost of seeking for development permission including rates clearance payment sometimes exceed the cost of erecting development and the value of the plot and hence making the applicants to circumvent the approval process leading to non-compliance with Urban development control instruments. CGU on the other hand takes advantage of application for development permission to compel plot owners within its jurisdictional area of the City to clear all the rates payable before development applications are received and accorded approval. This requirement has been found to be providing a disabling environment for investors in the City of Eldoret leading to many developers building without development permission.

Lack of Awareness

Most people within the City of Eldoret are not aware of urban development control instruments and practices. A study showed that 57% of the respondents were aware of planning and development standards of their urban zone while 43% of the respondents were not aware. When the boundaries of the City of Eldoret were extended, most areas which were previously rural in character were brought to be under the City and most people still harbor the rural belief that since they are the rightful owners of the plots, they are not subject to urban development control instruments. There will be need for awareness raising campaign in order to change the trend for better urban planning and development control. In deed Hayombe (2010) quotes Buigut (2004) as having noted that ignorance of environmental concern is the main cause of environmental problems, poverty and unsustainable living, which could happen in the City of Eldoret if adequate sensitization measures are not put in place.

Insecure Land Tenure

The people who occupy land with insecure tenure including squatters do not comply with urban development control standards and procedures. This is because it is a requirement that one must first proof ownership of the property either through production of a copy of the title deed, official search or an agreement which is lacking in areas with complicated land tenure arrangements .Musyoka (2004), advocates for regularization of informal settlements as a strategy for sustainable urban livelihoods. Mutual accommodation over standards, procedures contributions to Municipal Revenue enables, other things being equal eventual regularization of subdivisions that are informal (Musyoka, 2006). Majority of the people who do not comply because of insecurity of land tenure live in the informal settlements of Langas, Munyaka and Kamukunji areas of the City of Eldoret. Most of these informal settlements occupy contested spaces with unresolved land disputes and thus making it difficult to apply urban development control instruments and practices. As an example, in 2012, the Environment and Land Court registered 1021 land related cases in the City of Eldoret. The increasing number of cases contributes towards stifling urban development control system in the City of Eldoret.

CONCLUSIONS AND RECOMMENDATIONS

It was established that Urban development control instruments are not effective as many developers had failed to comply with the stipulated urban planning and development standards. The challenges faced by developers in the application of urban development control tools include; high cost of design, processing and approval, insecure land tenure, inordinate delays, and lack of awareness. The institutional challenges of urban development control include; lack of resources for site inspections and institutional conflicts over

space in urban development control system. The study recommends that the County Government of Uasin Gishu which is in charge of the management of the City of Eldoret in cooperation with other stakeholders in development control process should address themselves to the question of how to surmount the challenges confronting urban development control system. In particular, they should consider the following strategies in their development agenda;

- Development of a Single Urban development control Instrument as opposed to having numerous pieces of plans for different neighbourhoods,
- Ensure strict enforcement of Urban Development Control instruments and practices so as to achieve 100% compliance,
- Elimination of inordinate delays and Bureaucracy as they trigger non-conformance with urban development control instruments,
- Reduction of high Cost of processing Development Applications,
- Creation of awareness on the need to adhere to urban development control instruments
- Review and harmonize all urban development control standards and penalties,
- Automation of Urban development Control Processes in order to eliminate delays, bureaucracy and missing planning data,
- Capacity Building of personnel in charge of Urban development control,

The study recommends that all institutions that are handling urban development issues should be put together in order to operate under one roof. And as such an urban development control model is proposed for adoption as shown in Figure 6. The model brings together stakeholders in the public and private sectors including the County government's Departments of Fire; Engineer's, Housing and Public Health. Other institutions are; Lands, Physical Planning, National Lands Commission, National Construction Authority, National Environmental Management Authority, Occupational Health and Safety Department, Professional bodies of Architectural Association of Kenya, Kenya Institute of Planners(KIP) and Environmental Institute of Kenya(EIK), Service providers of Eldoret Water and Sanitation Company, Kenya Power and Lighting Company, Communication Commission of Kenya and Research Institutions. There is provision in the model to co-opt other stakeholders in decision-making processes pertaining to urban development control. The salient issue in the proposed model of urban development control include; the establishment of urban development promotion and management Board at the centre and whose functions will be to approve development applications in collaboration with the Physical Planning Office. The aggrieved development applicants can seek redress from appeals bodies such as the Physical Planning Liaison Committees, Land and Environment Court and the High Court. The Proposed model is as shown in the Figure 6.

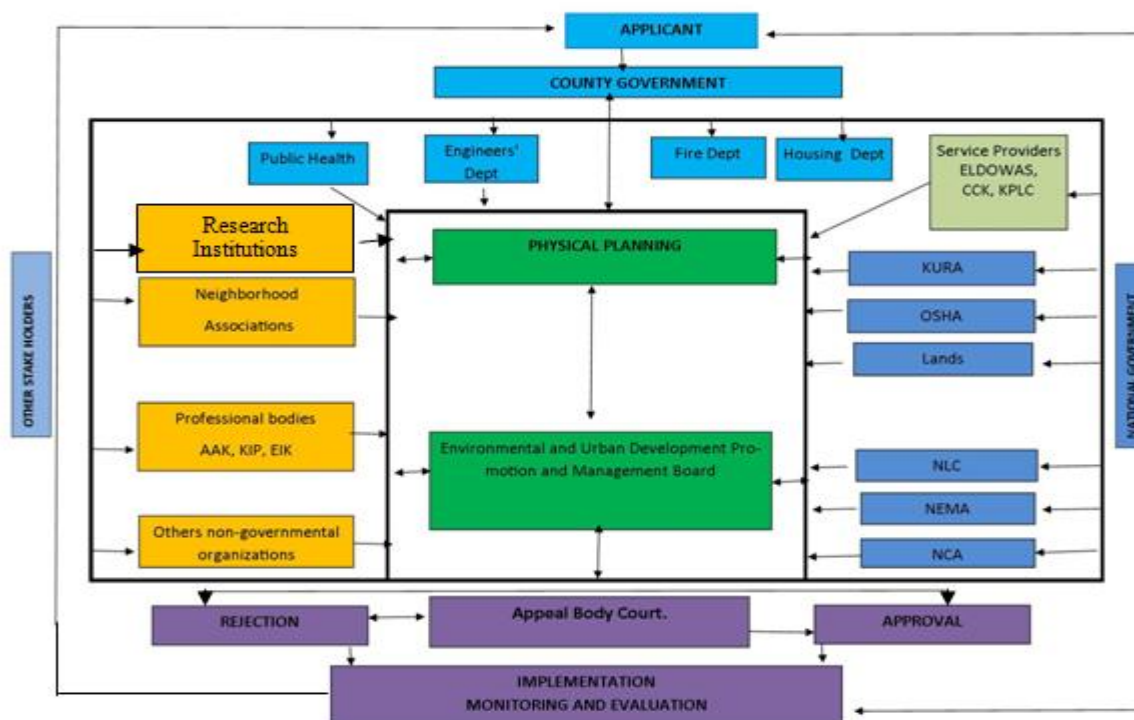


Figure 6: Proposed Model of Urban Development Control

Source: Own Construct

REFERENCES

- Ayumba G. (1995): *Kisumu Town: History of the Built Form Planning and Environment*; 1890-1990, Delft, Delft University Press.
- Ahmed A et al (2011): *Urbanization and the Challenges of Development Controls in Ghana: A Case Study of Wa Township*; *Journal of Sustainable Development in Africa* Volume 13, No.7, 2011, Pennsylvania, Clarion University of Pennsylvania.
- Hayombe P.O (2010): *Environmental Planning and Management; Implications of a City-Lake Interface; A case study of Kisumu Municipality, Kenya*. Unpublished PhD Thesis, Moi University.
- ISOCARP (2010): *Congress Papers Introductory Reports*, 46th Congress; Short outlines of papers Hague, ISOCARP.
- Leautier F (2006): *Cities in a Globalizing World*, Washington D C; World Bank.
- Musyoka R.M (2004): *Informal Land Delivery Processes in Eldoret, Kenya. Summary of Findings and Policy Implications*, University of Birmingham, University of Birmingham.
- Musyoka R.M (2006): *Non-Compliance and Formalization, Mutual Accommodation in Land Subdivision Processes in Eldoret Kenya*, IDPR, 28(2).
- Ogundele F.O (2011): *Challenges and Prospects of Physical Development Control; A Case Study of Festac Town, Lagos Nigeria* in *African Journal of Political Science and International Relations* Vol 5(4),pp 174-178 retrieved from www.academicjournals.org/ajpsir, 5:00 am 16/6/2014.
- Ola Aluko (2010): *Development Control in Lagos State: an Assessment of Public Compliance to Space Standards for Urban Development* ; *International Multidisciplinary Journal, Ethiopia* Vol. 5 (5), downloaded from <http://dx.doi.org/10.4314/afrev.v5i5.14>, 14hrs 17/1/2016.
- Ondola et al (2013): *Effectiveness of Housing policies and their implementation strategies in the provision of low-cost housing to the urban poor in Kisumu City, Kenya* , *International Journal of Academic Research in Progressive Education and Development* October 2013, Vol. 2, No. 4 accessed from www.hrmars.com/journals; 26/2/2015 at 6.00 Hours.
- Republic of Kenya (1996): *Physical Planning Act Cap 286 of the Laws of Kenya*, Nairobi, Government Printer.
- Republic of Kenya (2010): *Constitution of Kenya 2010*; Nairobi, Government Printer.
- Republic of Kenya (2014): *2012/2013 Kenya National Housing Survey*, Nairobi KNBS.
- Republic of Kenya (2011): *Urban Areas and Cities Act 2011*, Government Printer.
- Republic of Kenya (2007): *Kenya Vision 2030*, Government of Kenya, Nairobi, Ministry of Planning and National Development.
- Republic of Kenya, (2010): *Municipal Council of Eldoret Strategic Urban Development Plan 2008-2030*, Nairobi, Nairobi, Office of the Prime Minister and Ministry of Local Government.
- Simiyu L. B. (2002): *Effects of Urbanization on the Use and Control of Land: A Case of Ngong Fringe*, Unpublished MA Thesis, University of Nairobi.
- UN Habitat (1999): *Re-Assessment of Urban Planning and Development Regulations in African cities*, Nairobi. United Nations.
- www.the-star.co.ke/news/27/3/2016; 11:00 hrs.