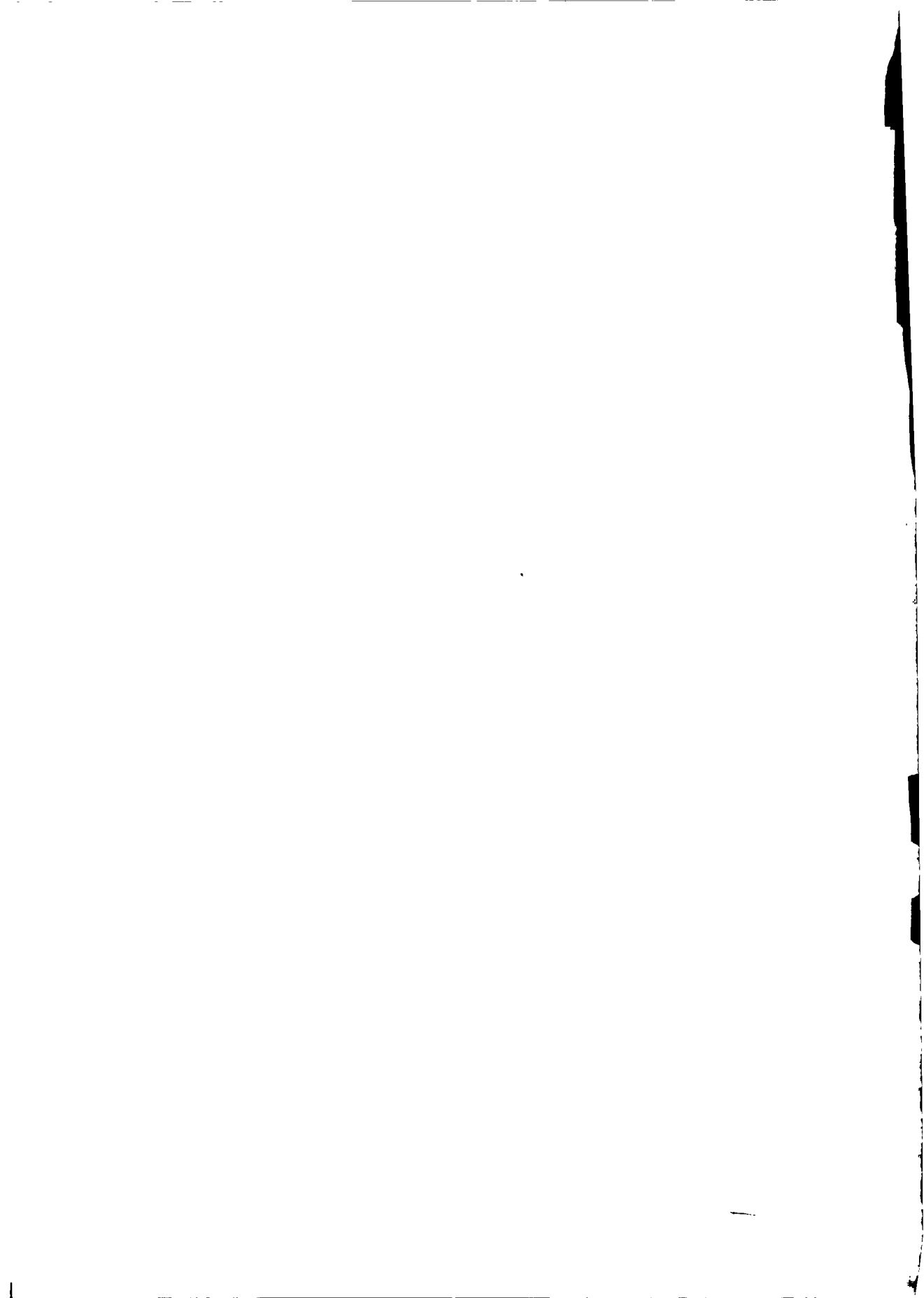


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Report of the
Commission of Inquiry
to
Examine the Existing
Building Laws, By-Laws
and
Regulations



TRANSMITTAL LETTER

**H.E. The President
STATE HOUSE
NAIROBI**

Your Excellency

You appointed us on 19th December, 1996 in exercise of the powers conferred on you by Section 3 of the Commissions of Inquiry Act, Chapter 102, Laws of Kenya. Our Terms of Reference were to -

"Examine the existing Building Laws, By-Laws and Regulations and make recommendations with a view to prevent incidences similar to the collapse of the "Sunbeam Building" and make appropriate recommendations."

After one year of detailed analysis of existing laws, discussions and interviews with members of the public, professionals in the building industry, and civil servants and after detailed comparative analysis of laws of several commonwealth countries and visits to the newly industrialised countries of the Far East, it is my singular privilege and pleasant duty to present to you, on behalf of the Commissioners and Joint Secretaries, our Report to which is annexed a draft Planning and Building Bill and the attendant draft Regulations.

On behalf of my colleagues, I thank you most sincerely for the honour you bestowed on us by the Appointment

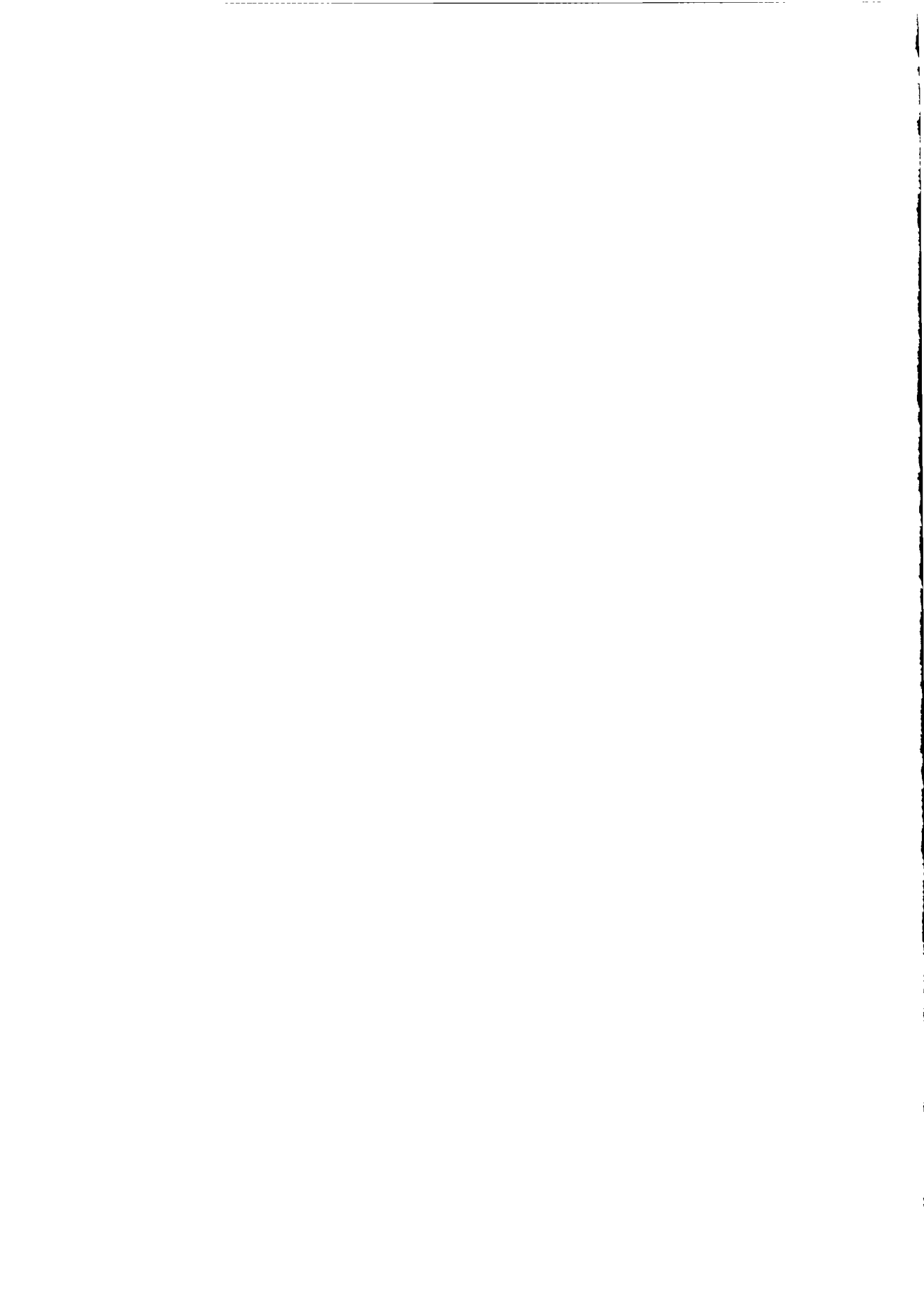
Yours faithfully,

**Dr. R. G. M. Mutiso
(CHAIRMAN)**



ACKNOWLEDGEMENTS

The Commissioners are sincerely grateful for the valuable contributions of all those professionals, senior civil servants, and members of the public during the investigations and research into the information and data contained in this Report. The Commissioners particularly wish to acknowledge the assistance of Messrs Atul Desai and Rusi Khambatta, the Presidents of Indian Institute of Architects, and the Commonwealth Association of Architects respectively. The immense contribution and assistance of Messrs Chia Kok Leong and Yap Guan Hwa of Singapore, Dato Ikmal Hisham Albakri of Malaysia and Messrs Ronald Poon, Choi Yu-Leuk and Cheng Wei-dart of Hong Kong is acknowledged. Finally we Acknowledge the assistance of Mr. George Wilson, the Executive Director of the Commonwealth Association of Architects, and Rod Hackney, the past President of the International Union of Architects, and Kenya's High Commissioners in India, Malaysia and United Kingdom for their great assistance.



EXECUTIVE SUMMARY

1. Introduction

- 1.1 On 13th May, 1996, a building housing the Sunbeam Supermarket along Moi Avenue Nairobi, suddenly collapsed after a heavy downpour. The collapse claimed sixteen innocent lives. The Government reacted swiftly to the catastrophe by appointing a Special Committee of building professionals to investigate and determine the cause of the collapse. In its report, the Special Committee observed that the collapse was due to several technical reasons occasioned primarily by failure by the control authorities to discharge their functions effectively. The Committee further observed that the legal framework governing the building industry was inadequate for effective enforcement.
- 1.2 Based on the recommendations of the Committee, H.E. the President on 19th December, 1996 appointed this Commission of Inquiry to examine the existing building laws, by-laws and regulations and make recommendations with a view to prevent incidences similar to the collapse of the Sunbeam building. The Commission of Inquiry immediately embarked on a thorough and intensive investigations into the existing laws and regulations, and invited members of the public, professionals in the building industry, and public servants for views, discussions, and contributions on how to resolve the existing problems in the industry. For a comparative analysis, the Commission examined laws of major common law countries such as England, Canada, Australia and New Zealand. On the Continent, the Commission examined the laws of South Africa, Botswana and Seychelles. For various reasons including climatic, and state of development most of these laws were considered inappropriate for our needs except certain aspects of the South African laws.

- 1.3 The Commission visited some of the newly industrialised countries of the Far East, namely, Singapore, Malaysia and Hong Kong, and held detailed discussions with both senior civil servants and

professionals on how these countries have managed to effectively police and enforce their building laws and regulations. The experience gained from these countries was immensely valuable. We found most aspects of their laws relevant to our needs. It is for this reason that we have modelled our proposed legal framework on the modern laws of Singapore and Hong Kong. Because of shared problems, the laws of India were also considered but the bulk of them were found inappropriate. The recommendations and conclusions arrived at in the Report, are, therefore, a result of an in-depth study of our local situation and environment, and the successful experiences of other countries. We believe that our proposed law will be modern and relevant as we move into the next century.

2. Our Problem

- 2.1 Our problem in the building industry may be summarised as follows:

- (a) uncontrolled physical planning;
- (b) inadequate and out-dated laws lacking effective controls and enforcement mechanisms;
- (c) corruption on the part of enforcement authorities; and
- (d) ineptitude and inefficiency on the part of some professionals and other players in the industry.

In defining the problem the input of the experts, the public, and the public servants was sought and obtained. The Commission is convinced that our laws in their present form are incapable of

effectively resolving these problems. The laws themselves are scattered in several statutes and define problems and confer control responsibilities to various entities without any form of co-ordination for effective policing and enforcement.

- 2.2 The absence of a comprehensive and integrated legal framework has created ambiguities in the law, loopholes which have been exploited by property developers, and opportunities for both conflict of

interests and passing the bulk among the enforcement authorities. The law is hopelessly inadequate in key areas of the building industry such as physical planning, land allocations, submission and approval of building plans and designs, supervision during construction, and in maintenance of buildings. The Government on its part, has aided and abated the existing situation because its own buildings are in some cases worse than the most risky of buildings in urban areas.

We are convinced that no amount of piecemeal amendments will remedy the myriad of problems caused by the existing legislation.

3. Our Recommendations

- 3.1 The Commission's vision in making the recommendations contained in this Report, is to make the built environment safe and healthy for our community. The Commission's mission in the implementation of these recommendations is to set and enforce safety, health and environmental standards for a built environment. It is because of this vision and mission that our recommendations are designed to achieve clear policy and operational objectives. These objectives aim at:

- (a) controlling all aspects of physical planning,
- (b) reviewing and setting standards for building design and construction;
- (c) inspection of building works and monitoring of construction sites to enforce safety requirements;

- (d) identifying dangers, combating and stopping unauthorized building works;
- (e) promotion of preventive maintenance and timely repairing of buildings through responsible building management; and
- (f) prosecuting and disciplining those who contravene and breach the law.

3.2 To achieve these objectives, the Commission recommends that:-

- (i) a completely new legislation, to be known as the Planning and Building Act, be enacted immediately;
- (ii) an independent Planning and Building Authority be established to take over the control, management, and enforcement of the required standards; and
- (iii) that a current and up-to-date set of Planning and Building Regulations be adopted simultaneously with the enactment of the proposed law.

3.3 The Commission is convinced that a legislative framework where the substantive law provides the legal principles, defines responsibilities and prescribes, in clear terms, the sanctions attendant to any breach of the law, coupled with detailed Regulations which are dynamic and subject to periodic review depending on changing needs and technology, is ideal for our country. It is for this reason that the proposed legal regime has both the draft Bill containing the substantive law, and the Regulations setting out the technical and administrative details required in the industry.

3.4 The Commission wishes to emphasise the importance of establishing an independent Authority to take over the administration and enforcement of the technical functions set out in both the Bill and the Regulations. The glaring ineffectiveness of local and other control authorities necessitate this major shift of the control function.

both the Bill and the Regulations. The glaring ineffectiveness of local and other control authorities necessitate this major shift of the control function.

- 3.5 We are convinced that the enactment of the proposed law and its effective implementation will make Kenya a LEADER on the African Continent and beyond in the field of safety in buildings and control of the built environment.

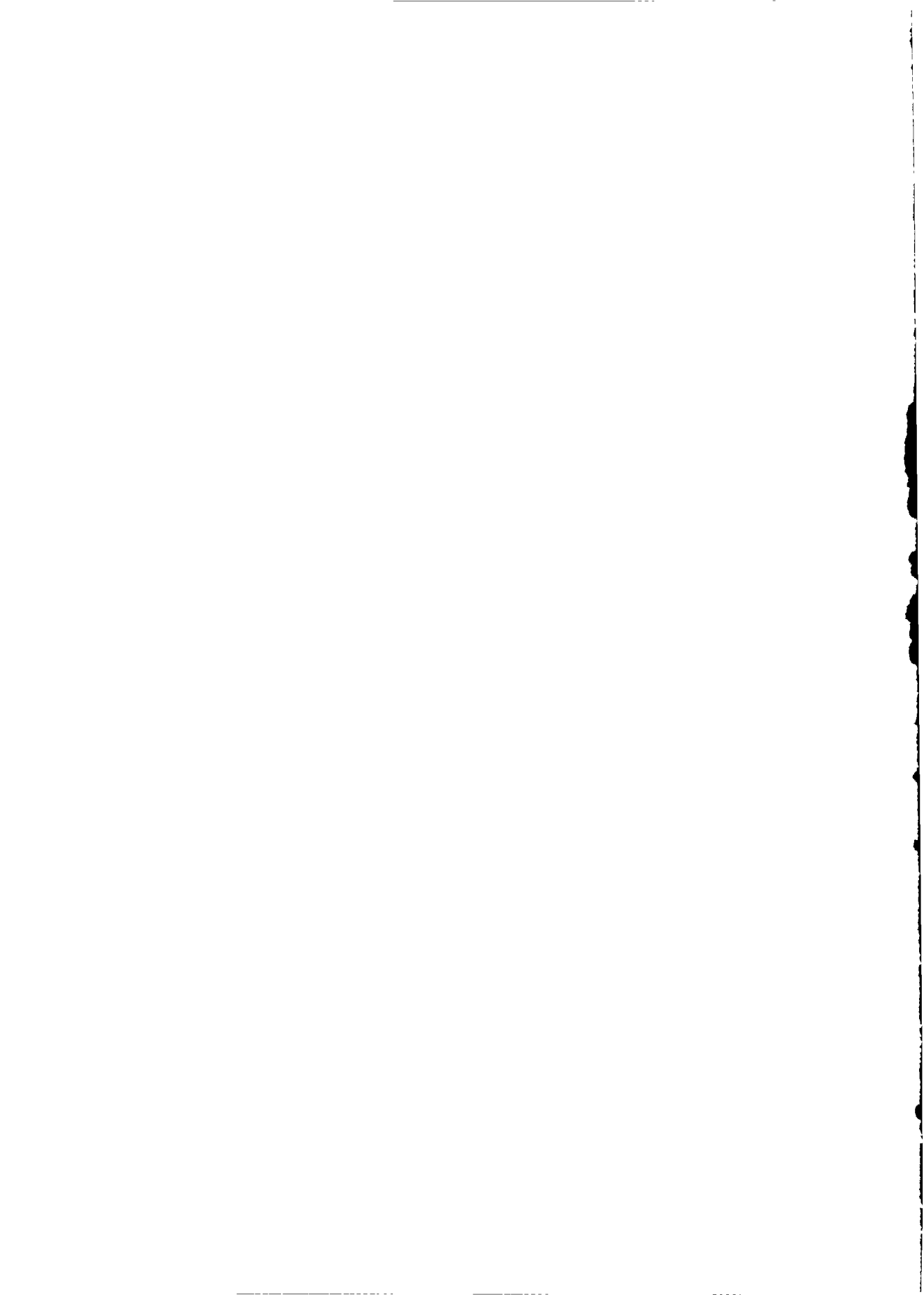


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BACKGROUND

1 Collapse of Sunbeam Building

1.1 On the fateful afternoon of May 13th 1996, at 4.15 p.m. a single storey building housing the Sunbeam Supermarket along Moi Avenue, Nairobi suddenly collapsed after a heavy downpour. The collapse was partial but swift lasting no more than a few minutes. In the ensuing rescue operation, it was confirmed that sixteen innocent Kenyans perished in the catastrophe.

1.2 The reaction of the Government to this collapse was swift. On 15th May, 1996 a Committee was appointed by the Government with the following terms of reference:-

- (i) to investigate and determine the cause of the collapse of the "Sunbeam Building"; and
- (ii) to examine the existing building laws, by-laws and regulations and make recommendations with a view to preventing similar accidents in future.

1.3 The Committee observed that the collapse was due to the following technical reasons

- (i) Failure of two roof trusses in the left block next to gable wall along Moi Avenue due to overload, decay or both over a period of time leading to instability of the gable walls;
- (ii) In addition the Committee noted that the gable wall was built without adequate stiffeners and lacked proper bonding at the stone/mortar interfaces;
- (iii) Lack of proper embodiment of the anchorage of the canopy struts and ties;
- (iv) Rot and decay of timber in the canopy due to leakages as a result of lack of proper maintenance;

- (v) Overload on canopy due to accumulated silt, leaves, debris and waste matter which was compounded by rainwater on the material day as a result of lack of proper maintenance;

1.4 In view of the gravity of the problem as unearthed by the collapse of this building, the Committee recommended inter alia that -

- (a) To safeguard the safety of the public, some of the recently constructed or ongoing buildings which appear unsafe should be checked and certified for safety standards and structural soundness. Any structures failing to meet the minimum safety standards should be rehabilitated under the supervision of the relevant authority or demolished. The Committee considered several buildings in Umoja, Mathare North, Zimmerman Estates, Highridge, and the City Centre, to name but a few, unsafe;
- (b) An in-depth review of the process of condemning buildings for demolition is required.
- (c) Unauthorized change of use for premises would appear to be of great significance particularly with respect to safety standards. In the short terms, no premises should be licensed if there has been an unauthorized change of usage which results in structures being subjected to excessive loading but further investigation is required to arrive at a more permanent solution to the problem;
- (d) There should be a deliberate campaign to create general public awareness as to the state of buildings with particular reference to safety. This could be done by the Government, Non-Governmental Organizations and professional bodies; and that

- (e) The existing laws and regulations governing the building industry should be enforced and any loopholes or deficiencies should be rectified immediately, pending a thorough study into these laws.

1.5 The Committee's recommendations clearly demonstrated the inherent weaknesses in the existing laws and the impotence of the control authorities in adequately dealing with problems in the building industry.

1.6 The Sunbeam Report is appended hereto as Annex I.

2 **Appointment of the Commission**

2.1 Following the recommendations in the Sunbeam Report H.E. the President, in exercise of the powers conferred on him by Section 3 of the Commissions of Inquiry Act (Chapter 102, Laws of Kenya), appointed this Commission on 19th December, 1996 with the following terms of reference, namely:-

- (i) "to examine the existing building laws, by-laws and regulations; and
- (ii) make recommendations with a view to prevent incidences similar to the collapse of the Sunbeam Building and make appropriate recommendations".

2.2 The appointment was gazetted on 20th December, 1996 in the Kenya Gazette.

2.3 The Appointment and the Terms of Reference are appended hereto as Annex II.

THE REPORT

Chapter One

INTRODUCTION

1. The multi-disciplinary composition of the Commissioners spanning all the facets of the building industry enabled the Commissioners to summarise the following as the major problems today:
 - (i) uncontrolled physical planning;
 - (ii) inadequate and outdated legislation;
 - (iii) inadequate controls and enforcement;
 - (iv) corruption;
 - (v) professional inefficiency;
 - (vi) inadequate definition of professional roles; and
 - (vii) easy entry by unqualified people into the construction business.
2. In the definition of the problems as we view them, the public appreciation that these are the problems and their input in not only defining but also seeking solutions thereto for their benefit, was considered crucial.
3. Apart from the general public, opinion of public servants in defining and seeking solutions to the problems was vital because the effectiveness of any remedial action depends on whether the public servants understand the problems and agree with the proposed solutions.

4. The major administrators in the industry are professionals. Their roles, awareness of the inadequacies in the discharge of their responsibilities, and their input in seeking solutions was indispensable. Indeed, by appreciating that their complacency in abiding by the law has substantially contributed to the problem, greatly assisted the Commission in identifying the key areas of weakness.
5. Having studied and clearly understood the local environment, defined the problem as we see it at national level, and examined the existing legislation and its inherent weaknesses, the Commission found it necessary to seek comparative studies on an international scale since safety and security of a built environment is not a monopoly of any given country.
6. Arising from our appreciation of the problems and the comparative studies, the Commission is convinced that our laws and the control mechanisms in the building industry have such serious flaws that no amount of piecemeal amendments to the laws and or re-organization of existing institutions will adequately resolve the fundamental problems. It is for these reasons that a major departure from the existing legal and institutional framework is recommended in this Report.
7. Our recommendations are that:
 - (a) a completely new legislation, the Planning and Building (Draft) Bill, appended hereto as Appendix III, be enacted;
 - (b) an independent Planning and Building Authority be established; and
 - (c) that current and up-to-date Building Regulations appended hereto as Appendix IV, be adopted at the same time as the enactment of the draft Bill.

8. These should be done immediately. In arriving at these recommendations, the Commission's vision is to make the built environment safe and healthy for our community, and the mission in the implementation of these recommendations should be to set and enforce safety, health and environmental standards for the built environment.

Chapter Two

INVESTIGATIONS AND RESEARCH

2.0 Several methods were used to access the information necessary for the preparation of this Report. These are grouped into national and international investigations and research.

2.1 National

Information Sourcing

2.1.2 To obtain information at national level several approaches were designed. The Commission invited and received representatives from:-

- (a) members of the public;
- (b) professionals, contractors and specialists in the building industry; and
- (c) public servants.

2.1.2 The information was obtained through:-

- (i) written memoranda, and documents;
- (ii) public hearings and discussions;
- (iii) interviews and dialogue; and
- (iv) carefully drafted but simple questionnaires designed to obtain basic and raw information.

2.1.3 Several meetings and public barazas were scheduled in an effort to access the information. The Secretariat received and written memoranda, collected and obtained relevant documents and kept a

record of the discussions and interviews. The Commissioners visited all provincial and some district capitals in an effort to reach as many members of the public as possible in areas as far afield as Wajir and Lamu.

Legislation

2.1.4 The Commission examined the existing laws and regulations in very great detail. The inherent weaknesses therein were noted. The various loop-holes and how these have been exploited were equally noted. The various hurdles the existing laws placed in the path of enforcement and the ineffective penalties for violations of the laws were found to be a matter of great concern. The Commission is convinced that the myriad of statutes having a bearing on the building industry and the manner in which these apportion control and enforcement responsibilities among the various players necessitate the enactment of a comprehensive legislation which clearly defines roles and responsibilities and provide for effective policing and enforcement.

2.2 International

2.2.1 Our jurisprudence is based on common law. As a result it became necessary to examine the existing laws of major common law countries such as England, Australia, New Zealand and Canada. We compared these with the laws of other neighbouring common law jurisdictions of South Africa, Botswana and Seychelles.

For various reasons including climate, density and state of development, we found the bulk of the provisions of the laws of England, Australia, New Zealand and Canada not entirely relevant to our critical needs. We found certain aspects of the South African laws relevant. The Botswana and Seychelles laws were considered simplistic for our requirements.

2.2.2 The Commission opted for a detailed examination of the laws of Singapore, Malaysia and Hong Kong because, apart from having a

common law background, their climatic conditions are relatively similar to ours. Indeed, the level and rate of development of these countries within a fairly short period is a source of great admiration. We believe that, given the fast growth rate our country is experiencing, the laws of these countries will be more relevant to our expectations. India was considered because of the shared problems, particularly, of poor planning, corruption and a historical common law background. These shared problems notwithstanding, the Commission was aware of the admirable progress new Mumbai has made in addressing, not only these problems, but also in laying a firm foundation for the future in the recent years.

- 2.2.3. The Commission visited India, Singapore, Malaysia and Hong Kong and held extensive discussions at very senior levels with Government officials and professionals in the building industry, obtained copies of their modern building laws and regulations, discussed the enforcement mechanisms and controlling authorities in terms of composition and effectiveness. Indeed the Commissioners saw modern laws in actual practice in Singapore, Malaysia and Hong Kong. Our proposed Bill and Regulations have been developed extensively from these modern pieces of legislation.

Chapter Three

OUR PROBLEM

3.1 The Control Authorities

3.1.1 At present the authority vested with the power of controlling the planning of development of land and the construction of buildings in major centres are local authorities. These local authorities are expected to administer and enforce the Building By-Laws issued pursuant to the provisions of the Local Government Act (Chapter 265, Laws of Kenya), and the Public Health Act (Chapter 242, Laws of Kenya) among others.

3.1.2 The local authorities administer the By-Laws primarily through departments which are related to specific aspects of a built environment. The basic objective of the By-Laws has been to ensure that adequate standards of safety, health and environment are attained in the planning and construction of buildings. The control is meant to be exercised over both the erection of new and the maintenance of existing buildings. The effectiveness of the control mechanisms have been hampered by a number of reasons. It is the failure to effectively control the unplanned developments that has led to the present problems in the industry. We address these problems from planning to maintenance in the paragraphs following.

3.2 Planning

3.2.1 Physical Planning is a process by which a state controls the use of land for specific purposes aimed at achieving a given development strategy. This process entails 'inter alia,' clear requirements on services and infrastructure required for the planned objectives. In this context, the Ministry of Lands and Settlement has a significant role to play in securing well-thought-out planning and the enforcement of the required planning regulations.

- 3.2.2 The departments responsible for Physical Planning are expected to provide adequate rules governing among other things the building space, plot coverage, plot ratios, densities, and access to buildings. In our view, physical planning must precede development of any urban area. In creating zones for building developments, the physical planner within a given local authority, should provide for future developments. He should ensure that zones for a particular use are clearly defined in accordance with the appropriate potential of the area, taking into consideration geotechnical investigations, compatibility of zone use and the topography of the area.
- 3.2.3 We have observed that one of the problems currently facing the building industry in most local authorities is lack of development plans. In our view, this lack of strategic forward planning which would have provided for both zoning and future growth has resulted in a lot of waste of both private and public sector resources due to misinvestment. Where development plans have been prepared, there is glaring evidence of failure to adhere to and/or up-date those plans. For example the 1970 Nairobi Metropolitan Strategic Plan has never been up-dated for twenty seven years, nor has it been adhered to. The effect of this failure to the planning objectives of Nairobi are obvious.
- 3.2.4 The lack of up-to-date development plans has been compounded by frequent unauthorized change of user and sub-divisions. Today, most of the urban centres have witnessed the mushrooming of illegal and unplanned structures all over. These structures have arisen mainly as a result of several reasons, but principally because of the inefficiency of the enforcing authorities and the rapid population growth. The planners should anticipate this growth pattern while the enforcing agencies should be more stringent. In our view, planned land use zones as described in a development plan of any town should be strictly adhered to. Where changes of user have to be effected, this should be carefully done in consultation with all relevant technical and professional interest groups. Equally necessary are prior consultations before any sub-divisions are effected. Places planned for public facilities should

be restricted to the planned use. All urban centres should not only prepare Master Development Plans upto the social boundaries of their towns, but must equally review and up-date the same periodically.

3.3 Land Allocations

3.3.1 We have observed that the manner in which land has been allocated by both the central and local governments, has had a major negative impact on the proper planning and land use in many urban centres. The result has been not only growth of unplanned developments but also lack of infrastructure and infrastructural planning leading to the mushrooming of inadequately serviced developments. Both consequences have an environmental impact. It is common knowledge that land reserved for public facilities has been allocated to individuals without any regard to the use for which such land was reserved. In a majority of cases land is allocated for speculative purposes.

3.3.2 To curb speculation and its distorting effects in the building industry, any available land should be advertised and disposed of at market rates. Sufficient safeguards could and should indeed be put in place to ensure that the ordinary Kenyan remains competitive in the acquisition of any such land. The overwhelming powers of the Commissioner of Lands relating to land allocations as set out in the Government Lands Act (Chapter 280, Laws of Kenya) should be reviewed. In our view no land should be allocated unless proper physical plans for such land have been prepared and appropriately approved. As a professional, the Director of Physical Planning should diligently and firmly advise the Commissioner on the implications of any planned alienation and/or allocation of land. The Director of Physical Planning must pay due diligence to continuous and regular updating and reviewing of comprehensive planning.

3.4 Building Plans and Designs

- 3.4.1** The design of a building starts with a survey plan showing inter alia beacons and dimensions of the plot.

For purposes of developing the plot, the developer is expected to consult professionals in the industry. Ideally, the professional building team should comprise of an architect, an engineer (mechanical/electrical/structural) and a Quantity Surveyor among others.

- 3.4.2** We have observed that today, the above minimum expectations are flouted with impunity. The approval system in most local authorities is chaotic and riddled with outright corruption. There are buildings in urban centres constructed without approved plans. There are also plans which have been approved which do not meet even the minimum approval requirements. Indeed there are plans approved without any regard as to the environmental impact of the intended developments. Furthermore, there are inordinate delays in processing approvals on the part of local authorities.
- 3.4.3** We have observed that this state of affairs has continued with the knowledge of both councillors and chief officers in local authorities. Approvals are done by persons either not qualified to so approve or negligently, without any regard as to the consequences of intended developments to the surroundings and the environment.

In some cases approvals are done for corrupt personal gain. It is for these reasons among others that we feel these critical technical functions should be removed from local authorities since they are not being discharged effectively, or, at all. We do not foresee the possibility of local authorities improving in the short and medium term to effectively discharge these functions.

3.5 Building Construction

- 3.5.1 Building construction in Kenya is one trade where any individual can join without a modicum of either academic and/or professional qualifications. The result has been the emergence of quack contractors. The recent collapse of new buildings either during construction or soon after completion can be largely attributed to the entry into the trade of such contractors. In our view before a contractor takes up any building assignment, he should not only be technically qualified but should also demonstrate ability by showing past projects successfully completed. The proposed law seeks, not only to prescribe the technical requirements of a contractor but also make registration of contractors a mandatory requirement.
- 3.5.2. Today the safety of buildings is compromised by the entry into the market of building materials which do not meet set standards.
- 3.5.3 It has become evident that because some developers avoid engaging competent professionals during the construction stage, hardly any of the required inspections and/or supervision is undertaken. This has been the case in many recent residential developments in major towns, particularly in Nairobi. Buildings have been constructed without any technical supervision to ensure structural safety. This has been a major contributory factor to recent collapses. The local authority personnel charged with the supervisory or inspection responsibility, have miserably failed to ensure that the various stages of construction comply with approved standards of design and safety.

3.6 Maintenance

- 3.6.1 Buildings require regular and consistent maintenance throughout their lifespan. Lack of periodic maintenance reduces the life of a building and in some cases renders the building unsafe. Periodic inspections are required for early detection of defects. There are buildings whose life span has expired but are still in use. Such

buildings require rehabilitation and subsequent re-certification for continued use.

- 3.6.2 Today, there is no elaborate legal mechanism in place to ensure that buildings are periodically maintained. The nebulous provisions to be found in the Public Health and Licensing Acts requiring a modicum of maintenance prior to issuance of trading licences, are considered both inadequate and ineffective to secure the desired standards of maintenance for safety purposes. Since maintenance costs money, both landlords and developers avoid that cost. The result is dilapidated and dangerous buildings.

3.7 State of Government Buildings

- 3.7.1 The effective enforcement of any law requires observance and compliance by all those to whom the law is applicable. Given the important constitutional role of the Government in the formulation of the law, the Government must be the first party to observe the law if the general public has to have confidence and abide by the law. Today, the Government lacks any moral authority to enforce any of the laws governing the building industry because the Government is one of the major culprits in breaching building laws. We have observed that most Government buildings country-wide are in such state of disrepair that they pose as much danger to the safety of Kenyans as the mushrooming illegal structures in Mathare. The death of three children on 28th April, 1997 in government quarters in Kileleshwa is ample evidence of our observation.
- 3.7.2 We have observed that the Government attitude towards maintenance of its buildings is deplorable. First, it has rendered technical officers in the field to mere report writers. It has decentralized funding for maintenance so that each ministry maintains its own buildings notwithstanding the fact that most ministries do not have competent technical people to do the job. The role of professionals from the Ministry of Public Works and Housing have been rendered mere advisors since they have no

money to maintain not only the ministry buildings but indeed those of the entire Government.

3.8 Existing Legislation and Judicial process

3.8.1 The objectives of any law in a building industry should be to secure safe and healthy buildings, and related infrastructure. Because buildings and physical infrastructure are prone to several hazards both during and after construction, the law must ensure safety and meticulous compliance with set technical standards so as to control, prevent and even eliminate these hazards. The hazards pose a great risk to both construction workers, tenants and also members of the public.

3.8.2 Damage to a building may be through failure of the structure, or the outbreak of fire, etc. An unsafe structure may have immediate consequences of structural damage or collapse, but equally, so deterioration may be a gradual process spanning many years, often unnoticed but ultimately leading to total or partial failure and ultimate collapse of the structure.

Alternatively errors in electrical and mechanical installation may expose the structure to fire hazards or water damage. Sometimes fire outbreaks may be a result of some other misdeeds but a building should provide protection for life and property in case of fire. Disasters such as earthquakes, cyclones, flood, lightning fire etc. can cause damage to the structure and can be very severe. Even though such disasters can hardly be prevented, it is possible to minimize the damage to construction, property and lives through the application of appropriate regulations and codes.

3.8.3 There are several risks to health which result from faulty construction although the criteria for measuring these is often subjective and controversial. The prominent health risks in the construction industry arise from water supply and sanitation, poor lighting and ventilation, and construction materials.

- 3.8.4 The building industry in Kenya lacks a comprehensive and integrated legal framework within which to operate. There are many pieces of legislation impacting on the industry scattered all over the statute books. There is need to consolidate the law to ensure that the respective roles of all parties involved in the industry are clearly defined and responsibilities clearly spelt out, and offences made manifestly clear with attendant penalties to secure compliance with the law. The law should also ensure professional involvement all the way from preparation and approval of physical and building plans, construction, supervision and maintenance of buildings and related infrastructure to ensure that the standards set out in the law are complied with.
- 3.8.5 The scattered nature of the legislation makes it difficult for the users to understand the law, creates ambiguities and renders effective enforcement difficult. Lack of co-ordination in the enforcement of the law by the various regulatory authorities, has created a situation of conflicts and opportunities for passing the buck. The result has been ineffective enforcement of the law.
- 3.8.6 Apart from the fact that substantive law is scanty and scattered, the Building Code is both complex and confusing even to professionals themselves. The Building Code has several outdated and inappropriate provisions and it is equally inadequate in certain key aspects of the building requirements. A number of the provisions in the Code are susceptible to multiple interpretation thereby providing apt opportunities for lob-sided interpretation. In our view, the Building Code is outdated.
- 3.8.7 The greatest legislative impediment in the building industry to-day is the law enforcement procedures. The administration of the various statutes is carried out by several agencies. For example, the sanitation aspects of the industry is handled by the public health officers; fire control regulations by fire officers; and the construction of buildings by local authorities. This arrangement does not lend itself to effective enforcement of standards. The lacuna created by the absence of co-ordination has been exploited

by building owners who have turned out to be inspectors of their own buildings. Standards have therefore been compromised.

This has been further compounded by the fact that there are no laws to-day specifying who can be a contractor. This has created an opportunity for property developers to decide on their own men as contractors often lacking both training and knowledge, and who are ignorant of the existence of standards required in the building industry.

3.8.8 We have, in particular, observed that there are numerous shortcomings in the law itself as it stands today apart from its multiplicity. In particular, we note the -

Absence of reference to a system for periodic review and inclusion of new building materials, design procedures, and construction methods

Archaic and obsolete rules which tend to ignore specialised features such as lightning protection, flooding etc.

Material oriented regulations which cause unnecessary restrictions with the consequence that the construction industry has been limited to only a few building materials and techniques. New options, unless imported have little chance of being incorporated in the regulatory instruments. This has made construction expensive and hence created a fertile ground for cutting corners by unscrupulous property developers.

3.8.9 It has been observed that prosecuting breaches of existing building laws is both protracted and ineffective. There are too many hurdles in the pathway to justify the feeble and ineffective sanctions presently in statute books and the Building Code. Given the glaring

loopholes, developers have obtained indefinite court injunctions against local authorities to frustrate any serious action being taken against their risky buildings. The misuse of the judicial process coupled with mild sanctions have compounded the problem.

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Chapter Four

RECOMMENDATIONS

4.1 Objectives

4.1.1 In the light of the problems as identified above, our recommendations are designed to achieve specific objectives which may be summarised as follows:

- (i) to control all aspects of physical planning,
- (ii) to initiate emergency services on existing dangerous buildings,
- (iii) to review and set standards for building design and construction,
- (iv) to vet building plans, structural details and building services for building developments,
- (v) to inspect building works for compliance with approved plans and standards,
- (vi) to monitor construction sites for safety,
- (vii) to identify danger from buildings and take remedial action,
- (viii) to render safe dangerous advertising signs and remove dangerous appendages,
- (ix) to combat and stop unauthorized building works,
- (x) to abate sanitary nuisance from defective drains,
- (xi) to issue licences and advise on suitability of premises for such use as restaurants, schools etc.,

- (xii) to prosecute and discipline offenders for breach of building laws, and
- (xiii) to promote preventive maintenance and timely repair of buildings through responsible building management.

4.1.2 To achieve these objectives, the Commission sets out in the following paragraphs its comprehensive recommendations.

We will address the proposed Planning and Building Bill (the Bill) highlighting the critical provisions therein and why we consider these essential. We will thereafter deal with the detailed Regulations.

4.1.3 We have opted for an approach where minimum substantive provisions are set out in the Bill, and the technical and administrative details reserved for the Regulations. The Bill sets out the legal principles that must be observed. The Regulations are intended to be dynamic and will be updated periodically depending on changing needs and technology. They provide the details on how substantive principles set out in the Bill will be applied. The sanctions for non-compliance are deliberately stringent to ensure that there is no temptation to breach the law.

THE DRAFT PLANNING AND BUILDING BILL

4.2 The cardinal focus of the proposed law and the Regulations made thereunder, is the controlling authorities. The ineffectiveness of local and other control authorities necessitate a major shift of the control function. The function of both planning and building details is now vested in a management body with functional independence. Indeed this is similar to the modern approach employed in Singapore, Malaysia and Hong Kong.

4.3 The Planning and Building Authority

4.3.1 Section 3 of the Draft Bill proposes the establishment of a Planning and Building Authority (the Authority). The Authority will be a body corporate with all attributes of legal personality. The management of the Authority will vest in a Board composed of professionals, business executives, policy makers and a chief executive. The effectiveness of the Authority will depend on the composition of the Board. It is for this reason that we propose the following composition:-

- (a) The Permanent Secretary of the ministry in-charge of buildings in person;
- (b) Three distinguished retired professionals two of whom shall be from the building industry;
- (c) Three distinguished and successful business executives;
- (d) Two active professionals from the building industry;
- (e) A Managing Director as the Chief Executive.

4.3.2 The Bill also provides in Section 4 how the appointments, to and withdrawal from the Board will be carried out . It is important to note that a member of the Board shall cease to be a member if he conducts himself in a manner inconsistent with the expectations of membership of the Board. This provision is intended to ensure that members pursue an objective and professional approach to the discharge of their functions. Among other things, this provision is intended to eliminate situations of conflict of interest in the performance of the Board's duties.

4.3.3 The functions of the Authority have been extensively considered and are set out in Section 5. The Authority will have responsibility spanning from planning to maintenance of the built environment. In particular, the Authority will:-

- (a) ensure harmonization and integration of individual physical plans with the national physical master plan;
- (b) approve all buildings designs and plans;

- (c) conduct inspections of all building projects;
- (d) issue occupation certificates;
- (e) issue maintenance certificate;
- (f) enforce the Planning and Building Regulations;
- (g) keep a register of professional consultants;
- (h) license and keep a register of building contractors;
- (i) keep a register of buildings;
- (j) preserve and conserve historical buildings;
- (k) disseminate information to the public on building requirements;
- (l) advise the Government on all aspects of the development and building operations of the building sector;
- (m) regulate and oversee the construction of all buildings works.

4.3.4 Apart from the professional responsibilities, it should be noted that the Authority will have responsibility to disseminate information to the public on building requirements. It should advise the Government on all aspects of the development and building operations. We feel that the Authority should educate Kenyans on building requirements through all possible means to ensure that people in rural areas understand and appreciate the need to observe required building standards. The Authority should not be seen to be an elitist urban organisation but as a public-friendly professional body which listens and addresses the needs of both urban and rural based citizens.

4.3.5 To ensure that the Authority effectively discharges the proposed functions, it is recommended that it be clothed with power:-

- (a) to approve development plans and the national physical development plans;
- (b) to order physical plans;
- (c) to stop construction where such construction does not conform to the building regulations;
- (d) to order sealing off or demolition in the case of dangerous buildings;
- (e) to order evacuation of any building; and

- (f) to inspect any building and to order the maintenance of any building which the Authority considers to be not well maintained; and
- (g) to take such other action as may be necessary in the furtherance of the objectives of the Bill.

4.3.6 One of the major concerns we have is the lack of masterplans for practically all our urban centres. Planning is so unco-ordinated that today, there is no single physical masterplan for any of the urban areas. It is for this reason that we recommend that the Authority should have power to approve physical masterplans to which all other individual master plans will relate.

To ensure that the Authority has adequate teeth to bite, it is recommended that the Authority should have power to order stoppage of any construction which does not conform to the building regulations. Periodic maintenance of buildings has hitherto been ignored. This has caused several disasters countrywide. To curb this trend, we recommend that the Authority should have power to carry out random inspections and order mandatory maintenance of any building which the Authority considers inadequately maintained. Where the Authority orders that a building should be demolished, provision has been made for the Authority to order evacuation of people from such building.

4.3.7 Decisions of the Authority in the discharge of its functions and exercise of its powers shall be made at duly convened meetings of the Authority. The Bill makes elaborate provisions in Sections 7 and 8 on the meetings of the Board and execution of the Authority's documents.

Sections 9 and 10 on the appointment, functions and removal of the Chief Executive are designed to ensure that the Chief Executive is subject to the authority and directions of the Board. The Board, may inter alia, remove the Chief Executive. This is to ensure that the Chief Executive is not directed by and subject to any organ and/or authority external to the Board.

- 4.3.8 To ensure that the Authority obtains information necessary for the discharge of its functions, Section 13 empowers the Authority to obtain any information by requiring any person to whom it has written to furnish such information. To ensure effectiveness, the Board may function through professional and/or technical committees.
- 4.3.9 We consider it necessary for the Authority to enjoy financial independence for the effective discharge of its functions. It is for this reason that Section 14 establishes a General Fund for the Authority in which shall be paid all sums of money paid as fees under the law and any other sums received by the Authority from any other source. It is proposed that the Headquarters of the Authority be in Nairobi but with countrywide branches at such locations as the Board may determine.

4.4 **Planning Control**

- 4.4.1 We have examined the provisions of the Physical Planners Registration and Physical Planning Laws of 1996. We have noted that under these laws, local authorities have a mandate to control and prohibit the development and use of land in the interest of proper and orderly development in their areas of jurisdiction. The draft Bill intends to bring the entire approval mechanism within the ambit of the Authority. The Bill aims to rationalize all approvals of physical plans intended for building development whether these plans are done for public or private sector clients. To ensure that there is order, building plans will only be approved if they relate to land that is planned and if such plan has been submitted to and approved by the Authority. It is for this reason that Section 18 of the Bill provides that:

"Any person who intends to prepare physical development plans of any area, for the purpose of construction, shall apply to the Authority for a permit".

4.4.2 We have observed that urban centres cannot be left to plan incidentally, spontaneously and accidentally for themselves. The Authority will cause, through a new practice order, regional development physical plans, physical development plans, and part development plans, to be prepared and approved. These will herald the preparation and approval of a National Plan. The Bill seeks to make these requirements mandatory. The Bill makes elaborate provisions on conditions to be satisfied before submission of plans and what must accompany submission proposals. Section 22 sets out situations where approval of plans may be rejected. Among other things, approval will be rejected if the plans will contravene any approved or draft masterplan or where the land planning works are within a comprehensive development area of an approved regional or local physical development, or where the carrying out of the land planning works shown thereon, would result in inconsistencies with densities and use. These provisions are deemed necessary to ensure orderly and planned developments. We are aware that land use and planning are sensitive subjects and rejection of any proposals submitted by a developer may generate passionate reactions. For this reason a party aggrieved by any rejection has a right of appeal provided for in the Bill.

4.4.3 These elaborate planning control provisions have become necessary because as we said earlier, planning is a process by which a state controls land use aimed at achieving a given development strategy. Such strategy cannot be achieved unless clear zoning, specific plot coverage and plot ratios consistent with available infrastructure are specified and complied with. It is for these reasons that these critical planning aspects have now been made mandatory in the Bill and detailed elaboration thereof set out in the Regulations.

4.5 Statutory Professionals

4.5.1 To eliminate the situations where unqualified persons take key decisions in the planning and building industry, the Bill provides a hierarchy of professionals and demands for their registration. We have borrowed substantially from the Singapore and Hong Kong

experience in the creation of and designation of these professionals. Each plays a crucial role and has well defined professional responsibilities for which they will be held liable. We consider it very important to set out the clear duties of these professionals so that their responsibilities and attendant consequences for negligence can be easily discerned from the law.

4.5.2 Section 23 requires the Authority to maintain a register of qualified persons within the meaning of the proposed law. These will range from architects, engineers, surveyors, planners etc. A second register of professionals will be referred to as Authorised Persons. A third register will refer to Accredited Checkers.

4.5.3 An Accredited Checker shall be a Structural Engineer and shall perform the following responsibilities:-

(a) evaluate, analyse and review the structural design in the plans of any building works of the prescribed category and perform such original calculations with a view to determining the adequacy of the key structural elements

of the building to be erected or affected by building works carried out in accordance with those plans; and

(b) verify that key structural elements as designed are consistent with the layout shown in the architectural plans and any amendment thereto.

In the performance of his duties, it shall be the responsibility of an Accredited Checker to notify the Authority of any contravention or non-compliance with the statutory requirements in connection with the structural design of any plans of building works. The Bill makes elaborate provisions to govern the entry into the register, duties, publication of names, and the establishment of independent professional disciplinary bodies to ensure that approved persons perform their functions diligently and in a professional manner.

4.6 Contractors

- 4.6.1 Construction to-day is one trade where anybody can join without either experience and/or a modicum of minimum qualifications. This is one of the major shortcomings in the law as it stand today. The Bill desires to address this lacuna by requiring contractors to be registered with the Authority. The Bill provides in Section 43 that the Authority shall keep a register of all persons who are qualified to perform the duties of a registered contractor in accordance with the provisions of the Bill.

It is important to note that the emphasis in this section is on whether a person is qualified to perform the duties of a registered contractor. The Authority will prescribe both the requirements for registration and the qualifications essential to the registration. The contractors are categorized into general building, civil, electric, plumbing and drainage, heating and ventilation, firefighting and labour contractors. Each category will have its own schedule. In considering any application, the Authority shall have regard to any qualifications, capacity and experience of each applicant. In Section 46, provision for appeal is made for those applicants whose applications have been rejected. Provision is also made in Sections 44, and 45

for a contractors Disciplinary Board and the sanctions that can be imposed by the Board.

4.7 Control of Building Works

- 4.7.1 This part of the Bill is designed to cover the construction of both temporary and permanent buildings. Section 48 makes it mandatory for any person who wants to commence, carry out or authorize the commencement of any building, to obtain approval of the building plans from the Authority. The Authority must grant a permit prior to any commencement of building works. Failure to comply with the requirements of this section is a criminal offence. In essence, the importance of this section is to ensure that no building works

are commenced or authorized prior to the approval of the relevant building plans.

4.7.2 The preparation of building plans including engineering plans must now be done by qualified and approved persons. The practice where unprofessional persons prepared and submitted building plans for approval is no more. Severe penalties have been prescribed to ensure compliance with this requirement. It is important to remember that this requirement and its attendant custodial penalties has become necessary to ensure safety and security of building users. Emphasis has been put on structural safety in buildings and a strict control has been introduced through the creation of statutory professionals such as Accredited Checkers. Every structural engineer, for certain class of buildings, will subordinate himself/herself to another structural engineer (in this case known as an Accredited Checker). The role of the latter is to scrutinise the former's calculations and design criteria to ensure that all the required details are observed. It is an extra technical audit which has been found desirable if not essential in certain countries. The Authority will only approve such design after scrutiny and certification by an Accredited Checker.

4.7.3 The Bill makes elaborate provisions in Sections 49 and 51 for the procedure in the applications for and approval of building plans. It makes it possible for both the professionals and the Authority to enter into dialogue in determining the appropriateness of a development proposal early on a given time-scale. Needless to state that time is of essence not only to the developers but also for the nation. Hitherto professionals have spent considerable time on unapproved projects. It is in the interest of both developers and investors to have clear approval procedures. The several levels of professionals introduced in the approval procedures is designed to ensure completeness in the scrutiny of all design plans for the sake of safety and security of buildings.

Section 52 sets out situations where the Authority may refuse to approve any building plans. Among other things, the Authority will

refuse to approve a building plan where it appears to the Authority that the proposed user of the building to which the plans relate would contravene the planning provisions of the Bill, or that the building works will be carried out on a site which ought to be provided with streets having adequate connection to a public street and the Authority is not satisfied that such streets are or will be provided.

- 4.7.4 Among the statutory professionals provided for in the Bill is an Authorized Person. Section 54 sets out in detail the requirements for the appointment and duties of such Authorized Person. A developer of any building works is required to appoint an Authorized Person for the works. The Authorized Person shall be in control of the works and has power to take such steps as he deems fit in the interest of the works. The elaborate functions and duties of the Authorized Person are set out in Section 54(4). Among other things, the Authorized Person shall take all reasonable steps and exercise due diligence in arranging for the supervising and inspecting of building works to ensure that the works are being carried out in accordance with the provisions of the Bill and the Regulations. In addition it shall be the duty of the Authorized Person to submit to the Authority reports and certificates in respect of the works as are required under the Regulations. The Authorized Person will face criminal sanctions in addition to profession discipline for failure to carry out diligently any of his duties under this section.
- 4.7.5 Where the structural elements of any building works are required to be carried out under the full-time supervision of a site supervisor, it shall be the duty of the Authorized Person to appoint a site supervisor to supervise the structural elements of the building works. The precise duties of a site supervisor are set out in Section 56 of the Bill.

4.8 Appointment of registered contractor

4.8.1 To reverse the trend where unqualified contractors have invaded the building industry, Section 57 makes it mandatory for a developer to appoint a qualified contractor. It shall be the duty of the contractor to ensure that the building works are carried out in accordance with the plans of the building supplied to him by a qualified person, and to observe any terms and conditions imposed by the Authority. The contractor must, in addition, keep at the premises on which the building works are carried out all plans of those works supplied to him by a qualified person. To ensure structural soundness of the building during construction, the Authorized Person appointed in respect of the structural elements shall carry out such tests in connection with the building as may be prescribed by the Authority. The Authority has power under Section 59 to order the demolition or removal of any building where in its opinion the building has or is being erected in contravention of the provisions of the Bill or the Regulations. Where the building is under construction, the Authority may order cessation of building works until remedial modifications have been carried out.

4.9 Custody of drawings

To secure the historical construction data of buildings, Section 61 requires every qualified person to retain in safe custody for at least 7 years all documents relevant to the building to which he has been appointed. Wilful destruction of such documents is a criminal offence.

4.10 Occupation of buildings

In order to curb the existing tendency of buildings being occupied before they are safely completed, Section 62 of the Bill provides that no building or part thereof shall be occupied in any way unless the Authorized Person, the contractor, and the site supervisor, where applicable, have each signed a prescribed certificate that the

building works are complete and that the works were completed in accordance with the approved plans. In addition to this certificate, the Authority will need to be satisfied with the works before issuing a certificate of statutory completion. The section has two proviso - namely occupation for purposes of preventing damage to the building, or where a temporary occupation permit has been granted. In the event of a temporary occupation a specific time-frame is prescribed and the precise purpose for the temporary occupation specified. It is a criminal offence to permit the occupation of any building until the Section 62 requirements have been complied with.

4.11 Change of User

One of the critical problems in the industry to-day is situations where the use of a building has been changed without authority and with no regard to the structural suitability of the changed use. Flats have been converted into disco rooms and offices into video shops without any professional input as to the ability of the building to absorb the increased loads. The Bill now requires a notice to be given to the Authority for any intended material change in the use of a building by the person intending to carry out or authorise the carrying out of such change. In order to obtain public opinion on the intended change of user, the Bill requires the Authority to publish the proposed change of user. Where, in its opinion, the Authority feels that the building is not suitable by reason of its construction for the intended use, it will decline to authorize the change of user. Where authority to change of user is granted by the Authority, the law imposes on the owner of the building an obligation to display in a conspicuous place on the building a notice stating the current use of the building and the date when the change was effected. This display is necessary for the public to know that the building whose use they knew has since changed. It will be a criminal offence to change use without approval from the Authority.

4.12 Registration of Buildings

4.12.1 In order to keep track of the history of a building, the Authority will keep a register of all buildings which have complied with the requirements of the Bill and for which occupation certificates have been issued. Each building must be registered

within 21 days of the issuance of an occupation certificate. The register shall contain the following information:-

- (a) Registration number allocated by the Planning and Building Authority;
- (b) The Land Registration Number;
- (c) The physical location of the building;
- (d) The area of the land on which the building is situated;
- (e) The limitation of use;
- (f) Inspection date;
- (g) The plan number;
- (h) The name of the owner;
- (i) The area of the building
- (j) Height of the building;
- (k) Date of registration;
- (l) Any other particulars that the Planning and Building Authority may by notice require to be contained in the register.

Application for registration must be submitted by qualified persons. These requirements are set out in Sections 65 and 66 of the Bill.

4.12.2 Having been registered, the Authority will henceforth monitor and ensure that all registered buildings are periodically maintained, and that the owner files prescribed inspection certificates. The Authority shall ensure that buildings which have outlived their intended use are either inspected and restored, or are demolished altogether. It shall be a criminal offence to fail to register a building which is required by the Bill to be registered.

4.13 Inspection of Buildings

Section 72 makes it mandatory for the owner of a building to have it inspected every five years. Where the owner fails to have the building inspected, apart from facing criminal sanctions, the Authority will be required by law to serve him with notice that the building will be inspected and costs arising therefrom will be met by the owner. The inspection, whether at the instance of the owner or the Authority, shall be carried out by an approved structural engineer. The engineer shall file with the Authority a signed report of the inspection. To ensure the highest degree of compliance during the inspection, Section 73 (8) imposes a personal liability on the engineer in the event of any injury, loss or damage occasioned to any person resulting from any defects in a building inspected by the said engineer which defects ought to have been detected upon any reasonable examination of the building. An engineer who has either a professional or financial interest in a building shall not be appointed to inspect such a building. This is intended to eliminate conflict of interests. Section 74 elaborates situations which shall be construed as creating either a professional or financial interest in a building. These include situations where the engineer was responsible for the design, or he is a partner or in the employment of the owner of the building, or where he occupies the building or any part thereof.

4.14 Dangerous Buildings

- 4.14.1 Section 75 provides several instances which may render a building dangerous. Where a building lacks means of escape in case of fire, given the purpose for which the building is used, the Authority may declare the building dangerous and require the owner to execute such work and make such provision as may be necessary to remedy the danger. If the owner fails to remedy the situation, the Authority will cause the same to be remedied at the owner's cost and expense. If the Authority considers the building unsafe during the period

when the necessary remedies are being put in place, it may by notice to the owner order the closure of the building or restrict its use.

Under Section 76 if it appears to the Authority that a building is in such state or is used to carry such loads as to be dangerous, and that immediate action is necessary to remove the danger, the Authority may, among other steps, order the closure of the building.

- 4.14.2 Where, on inspection, the Authority finds any dilapidation or defect in a building, it may order an approved person to carry out an investigation. If the inspection reveals that remedial works are necessary, the Authority may order the closure of the building or restrict its use pending the carrying out of the remedial works.
- 4.15 Section 79 provides that a permit from the Authority will have to be obtained before any building can be used for trades which are identified as dangerous. These trades are specified in Section 79(1). In addition, these section requires the Authority to be notified of the existence or production of dangerous or toxic waste on any premises. Failure to either to obtain the permit or notify will be a criminal offence.
- 4.16 The remaining provisions of the Bill cater for appeals by aggrieved persons, transitional arrangements, and miscellaneous provisions.

Chapter. Five

THE REGULATIONS

5.1 Introduction

- 5.1.1 In addition to the Draft Bill which is intended to define the substantive law governing the building industry, we have developed detailed planning and building regulations covering practically all aspects of the industry. The Regulations are meant to be pragmatic and responsive to the changing realities. We appreciate that development in the building industry is a continuous process and that with the passage of time, new materials become available, design methods are refined and innovative building systems are introduced. It is for these reasons that we have adopted Regulations meant to cope with and reflect the realities of modern times. The Authority is by law required to up-date these Regulations every 5 years.
- 5.1.2 The draft Regulations represent a major departure from what has been in existence. They focus on the need to encourage the use of innovative designs and construction methods where these are suitable. They are not designed to outlaw or condemn buildings designed and constructed under the existing laws unless some of these buildings are dangerous. Indeed any building designed in accordance with the accepted methods and constructed of conventional materials in accordance with the principals of good building practices, should in general, comply with these Regulations.
- 5.1.3 The Regulations set out in the simplest and shortest way possible requirements to ensure that buildings will be designed and built in such a way that persons may live and work in a healthy and safe environment. Our aim is to reduce the number of regulations and regulators to an acceptable minimum in an effort to clearly define responsibility, accountability and sanctions for violations. In order to clearly understand our thinking we have decided that as far as

possible, the Regulations should be concerned only with the health and safety of persons in a building, and that all technical aspects be covered by functional regulations written in such a way that they would assist rather than impede the use of innovative building systems and designs. The scope of the Regulations is wide enough covering planning, building site operations, building design, construction, and maintenance. The details are set out but in Parts A to T of the Regulations. These may be summarised as hereunder.

5.2 Part A - Interpretation and Administration

- 5.2.1 This Part is the link between the draft Bill and the draft Regulations. It also sets out the regulations regime. It begins with a catalogue of definitions of all technical and often used words in the construction industry. The aim of all this is ensure clarity in the Regulations and compliance by all.

In this Part buildings which will be subject to the legal requirements set out in both the draft Bill and the Regulations, are defined.

A building for purposes of the proposed law means:-

- (a) "any building or erection constructed of durable materials (excluding buildings of local traditional or vernacular construction) whether temporary or permanent and includes a prospective building; and
- (b) in relation to an extension, alteration or change of use of a building, only so much of the building as is comprised in the extension or is the subject of the alteration or change of use":

Care has been taken in appreciation of the fact that most Kenyans reside in rural areas and have for centuries built and lived in traditional houses suitable for their needs and constructed within their financial abilities. It is not the intention of the new law to

reverse this trend by either condemning such constructions or by imposing additional financial burden on the rural folk in future constructions. Care has also been taken to provide for buildings whose use is temporary. A temporary building is defined to include:-

"Any building constructed wholly or in part of materials which are, in the absence of special care, liable to rapid deterioration, or are otherwise unsuitable for use in the construction of permanent buildings, and may include any house or building the erection of which is permitted under licence issued by the Authority for a limited period to be specified upon the expiration of which the building shall be demolished;"

5.2.2 In this Part, the Regulations takes one through all the stages of development from land planning through the design of the building, approvals of the same to construction, and inspection to completion of the building, issuance of an occupation certificate and maintenance. Through this route one is introduced to the actors, the land planner, architect, engineer, quantity surveyor, contractor, site supervisor and the Authority officials.

5.2.3 As a starting point in its regulatory role, any person who intends to erect any building will now be required to submit to The Authority at least the following plans and particulars:-

- (a) a location plan;
- (b) a site plan;
- (c) a drainage installation drawing;
- (d) a fire installation drawing;
- (e) particulars of any existing building which is to be demolished and details of the method of demolition to be used;
- (f) such plans and particulars as may be required by the Authority in respect of:-

- (g) general structural arrangements, subject to any requirement contained in these regulations with regard to design of the structural system;
 - (ii) general arrangement of artificial ventilation;
 - (iii) a fire protection plan;
 - (iv) any certificate contemplated in these regulations; and
 - (v) any other particulars;

To ensure that what was approved is what is eventually constructed, it will be required that a certified copy of any approved plans be made available at the site at all times until a certificate of occupancy has been issued by the Authority. This is intended to control changes to approved plans and enhance inspections by the Authority.

5.2.4 To ensure that buildings are used for the purpose for which they were intended, the Regulations provide for classification and designation of occupancies. The occupancy of any building will be classified and designated according to the appropriate occupancy class as set out in the Regulations from time to time reflecting the primary function of each building. In particular, the Regulations provide that:-

"No person shall use a building or cause or permit any building to be used for a purpose other than the purposes shown on the approved plans of such building, or for a purpose which causes a change in the class of occupancy as contemplated in these regulations, whether such plans were approved in terms of the Act or in terms of any law in force at any time before the date of commencement of the Bill, unless such building is suitable, having regard to the requirements of these regulations, for such first-mentioned purpose or for such changed class of occupancy."

Failure to comply with this requirement will attract criminal sanctions.

- 5.2.5 One of the problems identified by the Commission is the current practice of many buildings being occupied without appropriate certificates of occupation. The Regulations now clearly specify that a person for whom the building works were carried out shall apply to the Authority either for an Occupation, Sectional Completion Certificate or a Temporary Occupation Permit as the case may be. Circumstances under which the Authority may approve or reject issuance of any of the above certificate(s), are now clearly spelt out in the Regulations. It is important to note that the Regulations require that both the contractor and the Authorized Person must execute applications for issuance of any of the certificates.
- 5.2.6 The Regulations further provide that on completion of any building works, a Qualified Person must underwrite to the Authority when applying for an occupation certificate, that the works have been carried out in accordance with the design, and complies with the Regulations. This is designed to hold liable any professional who negligently and unprofessionally approves any design or construction without giving such approval a professional touch. Indeed, the Regulations specifically require a structural engineer engaged in any building works to provide a certificate of suitability of the structure in addition to the underwriting by a Qualified Person. The Authority has been empowered, through its officers, to visit and inspect any plot or building in order to ascertain that the requirements of these Regulations are being observed.
- 5.2.7 In an attempt to stop the development of structures which are not approved such as extensions to existing buildings, the Regulations provide that:-

"Any person, who having obtained approval in terms of the Bill for the erection of any building, deviates to any material degree from any plan, drawing or particulars approved by the Authority shall, except where such deviation has been approved, be guilty of an offence."

In addition, the Authority has been clothed with power to serve notice and order stoppage of the construction of any unapproved structures and/or extensions. Where the unapproved construction has been completed or is in progress, the Authority may further order demolition.

5.3 Part B - Planning, Dimensions, Siting and Space within and Around Buildings

5.3.1 The Regulations in this Part cover all provisions relating to the plot and the manner in which buildings are to be placed in the plot, the access to the plot including the treatment of street frontages.

5.3.2 All manner and types of boundary walls have been constructed in our urban areas some of which are hazardous to motorists as they block traffic views.

Standards of what types of boundary walls are permissible have been clearly set out and the unpermitted ones proscribed.

5.3.3 Regional and urban development controls are effected, among other things, through land use, plot coverage and plot ratios. In this country land use broadly falls under the categories of Agricultural, Industrial, Commercial, Residential, Open Spaces etc. In finer terms these land uses are further categorised into high, medium and low densities. The actual control in a given plot or parcel of land is effected through plot coverage and plot ratio.

Plot coverage is the percentage of gross area of the plot of land which may be covered by a building or buildings.

A method of determining plot coverages has been developed.

Plot ratio is the ratio of gross permissible constructed area of the plot of land.

A method of determining plot ratios has been developed.

Control of development through plot coverage and plot ratio is intended to match development to available services such as water, electricity, sewerage etc.

5.3.4 Car parking provision has been addressed and a matrix of how this is to be accomplished has been given. In addition methods information has been provided and width of streets cul-de-sac and roads have been provided together with how these are to be constructed.

5.3.5 Guidelines on sizes of buildings and spaces such as kitchens and habitable room have been given. Such other information like sizing of windows has been made available.

It will be noted that illustrations have to be provided to make easy reading.

5.3.6 The Regulations have addressed the plight of the disabled in society. For certain categories of buildings, it has been made mandatory to design for the needs or provide for disabled persons.

Strong sanctions have been imposed against non compliance with this aspect of the Regulation. It is to be noted that it is not in buildings alone where this requirements have to be met but also in access to the buildings, roads and entrances.

5.4 **Part C - Advertisements**

The Regulations have addressed this subject because advertisements of late have been erected in a manner which sometimes obscure and hinder the interpretation of road traffic signs, railway signs, safety of navigation by air sometimes rendering hazardous the use of roads, railway line or airways.

Location of advertisements, particularly the large illuminated and non-illuminated signs, will be determined by the Authority.

5.5 Parts D & E - Demolition work, Site Preparation and Operations

5.5.1 This Part makes provision for site preparations prior to commencement of construction works. Where the site has a building situated thereon, specific provisions on how to demolish such building are provided. It provides for the de-construction aspects of a construction.

5.5.2 Elaborate provisions are made in this Part on what one needs to do in order to prepare a piece of land for construction of a building. Provisions are made to ensure public safety and limited nuisance to the immediate environment during the site preparations. The Regulations in this Part address a common problem in this country, namely, damage to public facilities and utilities such as roads, pathways etc.

5.6 Part F - Structure, Foundations and Excavations

Details on structures, foundations and excavations of a building are provided in this Part. Technical details on the structural elements of a building necessary for the stability, serviceability, and durability of a building are elaborately set out in this Part. In addition, details on materials and workmanship required for construction are clearly set out. Provision is also made for control of quality, materials and workmanship. These are now made mandatory in the Regulations.

5.7 Parts G, H, J & K - Materials and Workmanship, Floors, Walls and Roofs

5.7.1 Details on quality of both materials and workmanship required for construction are clearly set out and provision made for quality control.

Stiff penalties are imposed against those who breach this Part of the Regulations.

5.7.2 Specific provisions are made on design of floors and as a general principle it has been provided that:-

"Any floor of any building shall:-

- (a) be strong enough to safely support its own weight and loads to which it is likely to be subjected; and
- (b) have a fire resistance appropriate to its use and where required be non-combustible."

5.7.3 The Regulations further set out requirements for walls and their construction.

Walls are an important component in a building and it has been provided that:-

"Any wall shall be capable of safely sustaining any loads to which it is likely to be subjected and in the case of any structural wall, such wall shall be capable of transferring such loads to the foundations supporting such wall."

Walls are also supposed to protect a building occupant from the severities of weather and as far as possible be fire resistant. To this extent guidelines have been set out in the Regulations.

5.7.4 To many, the roof is the most important in a building. The Regulations provide among other things that:

" The roof of any building shall be so constructed that it will:-

- (a) resist any forces to which it is likely to be subjected;

- (b) be durable and weatherproof; and
- (c) will not allow accumulation of any rainwater upon its surface"

5.8 Part L - Glazing, Cladding Materials and Protection

- 5.8.1 Dangers posed by glass and glazing in buildings have been addressed by the Regulations in this Part.

Apart from details on how glazing is to be installed, emphasis has been put on specifications and guidelines for use of safety glazing.

Safe breakage of glass is defined as that breakage that would result in separate pieces that are not sharp or pointed.

Buildings intended for public gathering would have this type of glass installed.

- 5.8.2 This Part is well illustrated in the Regulations through sketches. Various methods of fixing glass are given.

Limitations have been given on use of reflective glass in buildings as this practice has an impact on the environment and safe driving.

- 5.8.3 Stone curtain walling is common practice now and guidelines have been provided. Specification and requirements are that, precast concrete panelling, granite, marbles, stone, aluminium, profiled sheets steel panelling shall have mechanical stainless steel fixing and nothing less over 20 metres high from ground floor.

5.9 Part M - Stairways, Ramps, Guards and Lifts

5.9.1 In a building movement of persons is achieved through stairways.

The Regulations provide comprehensive information on sizing of stairways for the different class of buildings to ensure safety of persons.

Stairways also provide means of escape in the event of emergency in a building. Adequate provisions have been made to cater for this.

5.9.2 Movement of persons and goods in buildings is also achieved through ramps. The Regulations provide comprehensive information on sizing of ramps and safety precautions for the same. Ramps that are user friendly for disabled persons have been recommended, and emphasis has been put on guidelines for their provision.

5.9.3 The other means providing movement of persons and goods is achieved is through lifts and escalators. Comprehensive data and information on the provision and installation of these have been provided.

5.9.4 The Regulations have provided strict penalties for obstructing stairways and ramps, and for the failure to keep lifts and escalators in a state of good maintenance.

5.10 Part N - Lighting, Ventilation, Condensation and Space Heating

5.10.1 In this Part the Regulations provide that:-

"Any habitable room, bathroom, shower room and room containing a W.C. pan or urinal or urinal or any room that is a parking garage shall be provided with means of lighting

and ventilation which will enable such room to be used, without detriment to health or safety or causing any nuisance, for the purpose for which it is designed."

5.10.2 This Part is comprehensive and is well illustrated to give the user basic guidelines on lighting.

Sufficient sanctions have been recommended against those who offend through obstruction.

5.10.3 The Regulations provide for the design of mechanical ventilation and airconditioning plants. In their design, the Regulation detail that:-

- a) in every design of mechanical or airconditioning plant, provision shall be made to protect the fresh air supplies from contaminants injurious to health. Air inlet for ventilation systems shall not be sited where they may draw in excessively contaminated air; and
- b) in every design of mechanical and air control plant, every effort shall be made to avoid eugenol contamination.

5.11 **Part O - Water Services, Drainage, Waste Disposal and stormwater**

5.11.1 The Regulations in this Part deal with all aspects of water-borne means of sanitary disposal. The Regulations make it mandatory the disposal of waste from buildings.

5.11.2 The Regulations detail among other things the manner in which waste and stormwater is to be disposed of.

The Regulations put effective controls on objectionable discharge. In the Regulations it is provided that,

"No person shall cause or permit sewage discharged from any sanitary fixture to enter:-

- (a) any stormwater drain, stormwater sewer or excavated or constructed watercourse;
- (b) any river, stream or natural water course whether ordinarily dry or otherwise;
or
- (c) any street or other site."

5.11.3 The Regulations have outlawed the discharge of industrial effluent in any manner except as directed by the Authority.

5.12 **Part P - Non-water-borne Means of Sanitary Disposal**

In this Part the Regulations make provision on how sanitary disposal is to be handled in building located in areas where water-borne sanitation cannot be provided.

5.13 **Part Q - Electrical Installations**

5.13.1 Electrical supply into buildings, its reticulation and the maintenance of the installations has been a weak point in this country.

These Regulations have addressed the entire spectrum of the subject of electrical installations. The Regulations have been tied up with the comprehensive Kenyan Wiring Regulations issued by the Kenya Bureau of Standards, Parts 1 and 2 - KS04-662 of 1988.

5.13.2 In most societies people need the assurance that they are fully safe in buildings. This assurance is necessary even where lightning strikes are concerned. This is not so in Kenya.

The Regulations have been tied up to the Code of Practice for the Protection of Structures against Lightning, KS04-503, issued by the Kenya Bureau of Standards.

5.14 Part R - Refuse Disposal

5.14.1 People in places of work, recreation or residence generate refuse. The quality and quantity of this refuse depends on the type of quality and occupancy in buildings.

Means of refuse disposal vary from country to country. In developed countries refuse is recycled and in others it is used as a source of energy.

In most developing countries refuse is dumped in tips at the fringes of the city. In primitive societies refuse is dumped anywhere and mountains of refuse are created and re-created. We are in the last category. This is an unwarranted state of affairs because refuse disposal can be managed.

5.14.2 The Regulations have placed a mandatory responsibility on local authorities by providing that:-

"Every local authority shall, to the satisfaction of the Authority, make sufficient provision for the collection and the safe disposal of refuse within its area of jurisdiction."

It is a further requirement that,

"where the Authority is satisfied that the local authority:-

- (a) has failed to satisfactorily perform the functions of collection and disposal of refuse, or
- (b) has made no provision for the collection and safe disposal of refuse, the Authority may on application

by a private contractor permit to carry out the said function of collection and disposal of refuse, provided that every such private contractor shall certify that he has made sufficient provision for the collection and safe disposal of refuse."

5.15 Part S - Fire Safety and Installations

5.15.1 The Commission confirms that Kenyans have cause to worry about their state of preparedness to combat fire disasters in buildings. The Regulations have comprehensively addressed the subject of fire safety and installations.

The Regulations have brought in affordable requirements in:-

- (a) use of appropriate building materials to ensure the right combustion or fire rating.
- (b) provision and maintenance of emergency escape routes, free from all obstructions.
- (c) provision and maintenance of affordable fire fighting installations.

5.15.2 The Regulations provide for the inspection of installations and buildings in general to ensure compliance with fire safety. Severe penalties have been provided for offenders.

5.15.3 The Commission noted the absence of trained manpower in the field of Fire and Industrial Safety and recommends that:-

- (a) an establishment of a Fire Institute to train personnel at tertiary level; and
- (b) that an establishment of a course in Fire and Industrial Safety at post graduate level in one of the public universities.

5.16 Part T - Inspection of Buildings and Maintenance

- 5.16.1** The Regulations impose a mandatory responsibility on owners for the maintenance of buildings and the adjoining grounds and provide for periodic inspections. An owner who fails to periodically maintain the building and the adjoining grounds will face severe penalties under the Regulations.
- 5.16.2** Lifts, Escalators and Hoists have to be maintained periodically and Certificates of Inspection issued by competent persons.

CONCLUSION

1. The planning and control of land and the built environment impacts on everybody's life. The safety of buildings is vital to society because people spend so much of their time, either working, sleeping or relaxing in and around buildings.
2. The observations made in this Report, identify clearly the inherent weaknesses in the existing laws and regulations governing the planning of land and the building industry, and it is evident that there is a need for an immediate overhaul of the present legislative framework. Kenya can, if these changes are implemented and regulated, become a LEADER on the African continent and beyond in the field of safety in buildings and the control of the built environment.
3. The Government is encouraged to set up an independent Authority in line with this Report, and hasten the enactment of the Draft Bill and Planning and Building Regulations. The Authority proposed to be established should be self-financing and excess funds generated by or accrued to the Authority should be invested in improving the quality and safety of life in the neighbourhoods of this nation.
4. In Kenya, disasters from fires are a potential problem and a serious issue. The nation's preparedness to combat fire is highly questionable. To deal with this area of weakness it is recommended that a "Fire Institute" be set up to train personnel at tertiary level. It is further recommended that a postgraduate course be set up and students at postgraduate level be encouraged to take up studies on "Fire and Industrial Safety."
5. The vision of this Commission is for the Government to set up and enforce new safety, health, and environmental standards for the built environment.

We append our signatures hereunder to signify our agreement with the contents of this Report.

Chairman

Dr. Reuben Mutiso

Commissioners

Justice Sarah Odeyo

J.J. Gathara

Dennis M. Rimber

Dr. Kenneth Kiplagat

John Cavanagh

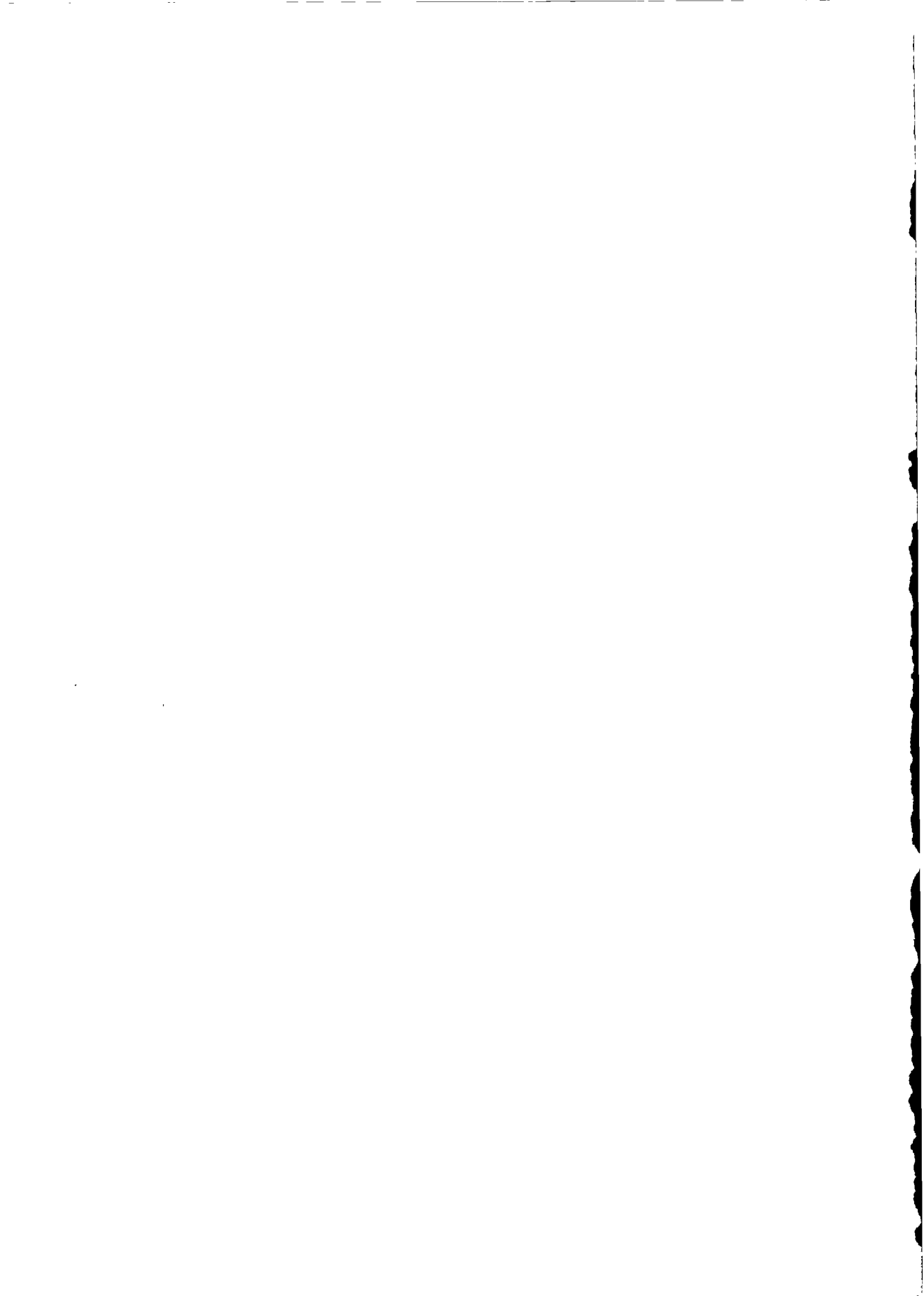
Otieno Odongo

Abdi Farah Osman

Joint Secretaries

Dan Ameyo

Adila A. Bashir, (Mrs)



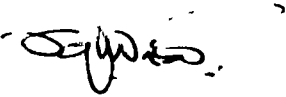
APPENDIX 1

**REPORT OF THE SPECIAL COMMITTEE INVESTIGATING THE
COLLAPSE OF THE BUILDING HOUSING SUNBEAM
SUPERMARKET**



Fowarding

On behalf of the Members of the Special Committee investigating the collapse of the building housing the Sunbeam Supermarket, I forward herewith our Report on Phase One of our Terms of Reference. I thank you most sincerely for the honour you bestowed on us by the appointment to undertake this task.



(Dr. Reuben Mutiso)

CHAIRMAN.

EXECUTIVE SUMMARY

On the 13th, May 1996, innocent Kenyans were sheltering themselves from the late afternoon downpour under a canopy of the building housing Sunbeam Supermarket among others. The building is fronted by Moi Avenue, Gill Lane and Tom Mboya Street; which are very busy Matatu Termini.

At about 4.15 p.m., (peak travel time) on that day the canopy under which commuters and hawkers were sheltering themselves caved in and huge stones from the wall above fell thereby causing havoc and death. When all settled some sixteen (16) persons lay dead under the weight of the canopy and construction stones.

Members of the public, the police and non governmental organizations moved swiftly to rescue trapped survivors, move the injured to hospital and the dead to the mortuary.

This accident caused a lot of anxiety and concern to the Government and the public. The Government offered some financial assistance to defray costs of hospitalization of the injured and the burial of the dead.

Following this accident the Government set up a Special Committee to investigate and report on the cause of the collapse. The Special Committee was further detailed to look at existing legislation and make recommendations of how future similar incidents can be prevented from occurring.

The Special Committee has met continuously since its appointment. Public notices placed in the dailies have generated a nationwide response with professionals and the laity giving a catalogue of buildings that could fall anytime.

The committee has held interviews with survivors, officials of the Nairobi City Council, interested parties, members of the public and representatives of professional bodies. The Committee also received memoranda from various persons in the construction industry.

The Committee made several visits to the scene of the accident, collected building samples for testing and made professional evaluation of the state of the building.

After careful study of results after the site inspection of the building all records of series of drawings showing changes to the building from inception in 1991 to date possible causes of the collapse were originally identified as follows:-

Increased load from external forces of some sort on a relatively weak structure from poor maintenance and bad construction standards. The forces likely to cause the overload were identified to arise from:-

- Wind forces to the roof and wall and underside of the canopy.
- High electrical charges created by lightning.
- Vibration and shaking from thunder
- Accumulated silt, leaves and waste matter in addition to pounding of water on the external walls as a result of clogged drainage to the gutter and pipes.

All these possible causes were analyzed.

Wind force on a weak and deteriorated structure was eliminated as this is a very low building within much taller buildings and trees. These would act as wind breakers.

Lightning was eliminated since it would have manifested itself in a different and precise way.

Thunder causing shaking and eventual collapse was also eliminated because on 13th May 1996 there was no extraordinary thunder. And in any case such thunder would give a different pattern of fall.

Overload on a weak and deteriorated structure emerged as the only possible cause of collapse. The failure of the canopy and wall was triggered by some force exerted by rainwater on the canopy. The canopy had clogged drainage, Over the years the roof structure had also been giving way. On the canopy there were leaves, silt and debris. These waste matter soaked water on a rainy day and caused the collapse of the canopy and the wall.

The Committee's conclusion is that this failure was not an act of God. The failure was as a result of negligence, first by the owners

of the property as they paid no attention to periodic maintenance. Secondly, Nairobi City Council should have stopped licensing business in this building long time ago or insist on substantial repairs to be carried out. They had and still have powers to do so. The Nairobi City Council officers carried out an inspection on this building on 7th December 1995. They found the building defective but never did anything else.

On the broader term of reference relating to the nature and efficacy of the building legislation in relation to building, the committee has concluded that there are serious deficiencies and shortcomings.

Incidents similar to the one under investigation will recur. The Committee's preliminary findings show that many buildings in our major urban centers are a danger to the users. We have received a catalogue of buildings that are under occupation but are a serious threat to the users.

The building industry, we have found out, is controlled by very many scattered pieces of legislation. The enforcing agencies, the local authorities primarily, are not fulfilling their duties and responsibilities. We doubt their ability.

An in depth investigation of the existing legislation is being carried out by the committee and comprehensive findings and recommendations will be furnished. This second phase of our terms of reference is considered vital if innocent lives are to be preserved.

CHAPTER 1

INTRODUCTION

Section 1.1 Collapse Of The Building

On 13th May, 1996 at about 4.15 p.m. the canopy and part of the wall of the building housing Sunbeam Supermarket collapsed killing sixteen people and injuring several others. The incident occurred during a heavy rain down pour and at a period when there is very high pedestrian traffic. The accident reawakened public awareness regarding the safety of buildings and other structures in our Urban Centres. This feeling caused a lot of anxiety to the members of the public with several individuals and groups expressing their outrage on the senseless death of the 16 Kenyans. The general public apprehension was heightened by the fact that there are several other buildings which have collapsed in the recent past mainly during construction stage and during which, fortunately there have been very few fatalities.

Section 1.2 Appointment Of The Committee

The Government moved in immediately so as to contain the situation by assisting those who were injured during the accident and transporting the dead to the mortuaries. The area was also sealed off partly to protect members of the public from a recurrence of the accident and also to preserve the evidence for further investigations.

On 15th May, 1996 the Government appointed a ten member Special Committee to investigate the cause of the accident. The members of the Committee were drawn both from the Private Sector and the Public Sector. The names of the Committee Members are set out in Appendix 1.

Section 1.3 Terms Of Reference

The Terms of Reference as set out in the letters of appointment for the Committee are as follows:-

- (i) To investigate and determine the cause of collapse of the "Sunbeam Building"
- (ii) Examine the existing building laws, bye-laws and regulations and make recommendations with a view to preventing similar accidents in the future.

The Committee considered these broad Terms of Reference and in view of the gigantic nature of the assignment, agreed with the Government to elaborate these Terms of Reference to enable the Committee

- I. Investigate and determine the cause(s) of collapse of the "Sunbeam Building";
- II. Look at the existing building and planning by-laws and any other relevant laws and assess what requires to be done to prevent future recurrence;
- III. Look at the existing methods of enforcing the building by-laws and make appropriate recommendations;
- IV. Examine existing by-laws to assess whether they have a routine or periodic maintenance policy;
- V. Examine whether the existing policy on licensing of business premises has a provision for assessing the status of the premises;
- VI. Look at the existing policies on insurance of buildings as pertains to public liability;
- VII. Examine such other matters that may be relevant to the foregoing;

Due to the magnitude of the exercise and taking cognizance of the fact that it will be necessary to visit other urban centres in the country, the Committee considered it prudent to carry out the exercise in two phases. The objective is to allow for action on the immediate critical problems so as to ensure the

safety of and service to, the public and allow more time for investigating the long term problems. Consequently, phase one of the exercise focuses on the causes of collapse of the "Sunbeam Building". This Report contains the Committee's considered observations on the reasons leading to the collapse of the building and those we consider liable for the tragedy.

Phase two will look into all the other Terms of Reference and make appropriate recommendations. This phase is estimated to take two and half months.

Section 1.4 Methodology

The Committee adopted a number of strategies to obtain information for purposes of this Report.

1.4.1 Public Notice

Due to the need to receive information from members of the public, the Committee put out a Public Notice through the Radio and the three English Daily Newspapers requesting any member of the public who either witnessed the collapse of Sunbeam Building or has any information as to the possible cause(s) of the collapse or has any suggestions as to how to prevent similar occurrences or has knowledge of any building that may pose a risk to members of the public to contact the Special Committee.

As a result of the above Notice, the Committee organized and held interviews with and received memoranda from several members of the public, professional organisations, and officers from the Nairobi City Council. The professional bodies included the Architectural Association of Kenya, the Institution of Engineers of Kenya, the Construction Review Magazine, University Lecturers, among others.

1.4.2 Inspection Of Building Sites

The Committee visited the Sunbeam Building several times, and examined the entire building including the collapsed materials

and debris, all the shops, the remaining canopy along Tom Mboya Street and the roof. Samples of the materials in the building were taken and tested. The test results were received and analysed. Still photographs and a video documentary were also taken. The Committee also visited and did preliminary inspection on various buildings in Umoja Estate, Mathare North, Zimmerman Estate, Highridge and City Centre. The Committee was astonished at the state of several buildings and lack of services in these areas. However, detailed inspection of these and other buildings will be carried out during Phase Two of the exercise.

1.4.3 Official Search

The Committee carried out an official search on the property housing the Sunbeam Building at the Commissioner of Lands Office to establish ownership. The Committee had no access to the files. The search was fruitless. The Committee examined a copy of the Nairobi Town Planning drawings and file of the same property. Relevant pieces of Legislation were also procured either from the Government Printer or other Government Offices.

1.4.4 Discussions

The Committee held continuous discussions among the members to deliberate on all the relevant issues. At least two meetings or a site visit were being held every day. For specialist aspects of the report, special Sub-Committees were formed to deliberate and report back to the main Committee. Such tasks included the preparation of the Engineering report, the preparation of the chronology of the construction of the Sunbeam Building, and overview of the existing Legislation.

CHAPTER 2

TECHNICAL REVIEW

Section 2.1 History of the Building

2.1.1 The building which is located between Moi Avenue and Tom Mboya Street to the South and North and Gill House and Development House to the West and East respectively is erected on two separate plots namely:-

L.R.209/2260 and LR. 209/2261 hereinafter referred to as the left and right blocks respectively. The left block housed the Sunbeam Supermarket. The right block was leased to U.N. Patel and Sons Studio.

2.1.2 The first set of Architectural Drawings were submitted to the then Municipal Council of Nairobi for approval on 30th November, 1937 and approved on 31st January, 1938. Drawings for the erection of a canopy and store were submitted on 27th October, 1940. A Canopy Agreement was entered into between the Proprietor and the Nairobi Municipal Council on 9th November, 1940. A Certificate of Occupation for a garage, show rooms, canopy store and water closets was issued on 29th March, 1941.

On 21st August, 1951 the Council approved drawings converting the premises to a District Police Headquarters. On 29th February, 1955, fresh drawings were submitted to the Council converting the building into shops and stores. These drawings were rejected on grounds of not conforming to the Bye-Laws. On 21st September, 1957 the City Engineer instructed the owner to carry out repair work to the canopy due to loose timbers and roof leakages.

2.1.3 On 5th January, 1959 an application was made to extend user to include a Petrol Station. This application was rejected. On 2nd March, 1959, the Town Planning Committee detected the presence of unauthorized alterations on this building and served a statutory notice to the owner. On 12th March, 1959, pursuant to bye-law 356

the Town Planning Committee drew the owners attention to **the dilapidated condition of the building**. On 2nd April, 1959, **the Council approved drawings in respect of alterations** to the covered yard. During a routine inspection on 9th June, 1959, the Council noted departure from all approved drawings and sent a warning letter to the owner. On 13th November, 1968, the Council approved Architectural drawings to convert premises into a showroom. A certificate of occupation as motor showroom was granted by the Council on 27th February, 1969. Since the above date, there has been no-further applications or approvals on change of user.

Section 2.2 Non-Conformity with Approved Drawings

- 2.2.1 The Architectural as well as structural drawings obtained from City Council indicated that the roofs facing Moi Avenue and Tom Mboya Street were originally designed as hipped and that the tension cables supporting the canopies were to be connected to the timber trusses. What was constructed did not conform to this technical specification.
- 2.2.2 The original drawings approved on 4th November, 1938 showed a single storey structure of hipped roof on masonry walls providing accommodation for showroom and garage. These drawings were prepared by M/S L.N.Vadgama who was a draftsman.
- 2.2.3 On 6th November, 1940 alterations were carried out to provide for a canopy on the Government Road and Victoria Street (now Moi Avenue and Tom Mboya Street respectively) facades. These drawings were also prepared by M/S L.N. Vadgama.
- 2.2.4 On 8th May 1957 a conversion was prepared to convert the building into a District Police Headquarters. These drawings showed that by this time the roof was now a gable wall. The change constituted a major departure from the original drawings.

2.2.5 There was further modification on 2nd September 1959 to provide for an open yard at Victoria Street (now Tom Mboya Street) end of the building. By now the building had reverted to shops. This change of user must have involved some structural changes.

2.2.6 The last modifications according to the available drawings were done on 5th November 1968 to create larger windows and provision of Reinforced Concrete Beam over openings of the left block. The other right block was not affected. These modifications also included the conversion of the shop to a vehicle display area. This change must have had an effect on the structure as well.

Section 2.3 Maintenance of the Building over the years

2.3.1 The building has remained in poor state of disrepair for a long time. The owners have also been changing the usage of the premises without the necessary approvals. The Committee observed that:-

- (i) The City Engineer wrote to the proprietors on 6th February, 1957 noting that **"there were unauthorised changes in usage.** The 'celotex' partition separating two shops was not of an acceptable material" and the owner was instructed to construct a proper partition wall to separate the two tenancies;
- (ii) On 21st September, 1957 the City Engineer wrote to the owner of the building pointing **out that the canopy projecting over Government Road was in a dilapidated condition** particularly in respect of the underboarding which required straightening up and generally renovating. Furthermore, water was noted to be dripping from the canopy onto pedestrians which could not be allowed;
- (iii) On 5th January, 1959, The Town Planning Committee rejected an application to extend the user for the plot to include a petrol filling station;

- (iv) On 2nd March, 1959, the **Town Planning Committee cautioned the owners about the unauthorized alterations** and changes in use which had been done to the building;
- (v) On 12th March, 1959, a **warning was issued to the owners regarding the dilapidated condition of the building;**
- (vi) On 7th December, 1995, the City Council **issued a notice requiring abatement of nuisance** under the provisions of the Public Health Act. As stated later in the report, this notice was not acted upon.

2.3.2 From the above scenario, it is self evident that the building has been very poorly maintained over the years. The successive proprietors of the building have either ignored lawful orders or simply remained negligent. The City Council has remained silent.

Section 2.4 State of the Building as at 13th May, 1996

2.4.1 The only known recent inspection by the Nairobi City Council was conducted on 7th December, 1995. The Committee was informed that such inspection ought to be periodic. There was no record to show that this was adhered to.

Notes taken by the Public Health Inspector necessitating the issuance of the Notice requiring abatement of Nuisance issued to the Directors of Sunbeam Supermarkets give an idea of the state of the building on and before 13th May, 1996 when the building collapsed.

The state of the building was as follows:-

- (i) Broken sagging Ceiling boards.

These observations by the Public Health Officer were just symptomatic. The real problem was that the trusses had failed

causing the ceiling joists and purlins to break and sag.

(ii) Dirty wall surfaces

This observation is indicative of the state of the cleanliness of building. The building was very dirty and had not been painted for a long time due to poor maintenance.

(iii) Damaged Canopies and broken fascia board.

This state and condition is glaring in the canopy facing Tom Mboya Street that has not collapsed. The canopy is leaking and has broken timber, the drainage is clogged and therefore it remains unsafe.

(iv) Partitioned walls in semi permanent materials.

This was a major fire risk.

2.4.2 This state and condition prevailed in contravention of the Bye-Laws. The City Council has taken no action to-date.

Section 2.5 Initial observations on causes of failure by Professional Bodies and Members of the Public

Opinion from various professional bodies, groups and individuals were given as noted below:-

- (i) The Architectural Association of Kenya (AAK) was of the opinion that the failure was due to weakness of the mortar and lack of restraints in the gable wall.
- (ii) The Institute of Engineers of Kenya (IEK) was of the opinion that the failure was due to overload on the canopy and weakness of the gable wall.
- (iii) The Corrosion Engineer was of the opinion that the weakness of the gable wall was caused by the breakdown of the bond between the stones and the mortar due to carbonation.
- (iv) The public in the Daily Newspapers suggested that

failure was due to lightning, weakness of the wall and heavy downpour. Another observer put it as an old building that could fall anytime.

Section 2.6 Committee's Observations on the Cause(s) of Failure and Collapse

- 2.6.1 The building has left and right blocks (Appendix 2) and it had two canopies one along Moi Avenue and the other Tom Mboya Street. The canopies were supported on steel (T and I) beams as well as bars of 16mm diameter tension cables anchored onto the gable walls which was 2.29m high, 230mm thick and 13 m long with inadequate stiffeners (Appendix 3).
- 2.6.2 The left side block had truncations at the corners facing Gill House. Each of the blocks had timber trusses spanning 13m at a pitch of 15°. These trusses were supported by masonry piers along the longitudinal walls at a spacing of 3.5m except the first truss from the gable wall which was at a spacing of 4.72m, for unknown reasons. The Committee observed that the trusses had two members at the bottom of 225mm by 75mm to make the tie and two members of 150mm by 50mm to make the struts. All the internal chords were 100mm by 75mm. The jointing was done with bolts.
- 2.6.3 Upon inspection of the site on 17th May, 1996, it was observed that the canopy facing Moi Avenue had collapsed along with the gable wall onto which it was anchored. Upon close inspection of the roof structure it was noted that there were no trusses along the gable walls. It was found that the bottom members of the first two trusses in the left block had failed completely and the purlins had sagged. It was further noted that the same purlins had at some time been extended with addition pieces possibly into the pockets in the gable wall. To reinstate the alignment of the purlins, some remedial work had been carried out. This involved erection of timber beams of approximately 200 x 200mm supported by the first truss and the gable wall. The props had been fixed onto the timber beams to support the purlins.

- 2.6.4 On the right side the trusses had not failed except some chords. There were no timber beams and the purlins were supported on the ceiling joists. At the other end facing Tom Mboya Street the Committee observed that the roof structure had not failed and had not been disturbed.
- 2.6.5 It was observed that the collapsed canopy had been supported on inverted T and I steel sections which were embedded across the whole thickness of the 340mm wall. It was supported with 16mm round mild steel bars as tension cables at 45° and anchored into the gable walls with bolts and metal plates at the back of the wall. There were ten such supporting steel assemblies equally spaced for the whole canopy. The canopy roof was of iron sheets on timber purlins with T & G ceiling. Most of the canopy timber had decayed as a result of leakage due to the worn out gutter. There was accumulated silt, debris, leaves and waste matter.
- 2.6.6 An inspection of the fallen stones indicated that the stones did not have any mortar bonded onto them. Otherwise the mortar beds were completely separated from stones originally from the gable wall. Some stones showed pockets for supporting the timber purlins.

Section 2.7 Test Results

- 2.7.1 Test results from the Chief Materials Engineer showed that the mortar had a composition of a ratio of cement to aggregates of 1:3.2 with the remark that it was good mortar.
- 2.7.2 The 16mm diameter mild steel tension cable had a yield stress of 243.7N/mm². The timber compression was 25.5N/mm² and 27.34 N/mm² for old and new specimens respectively. Corresponding static bending stresses were 55.5N/mm² and 61.6 N/mm² at moisture contents of 12.10 and 15.84 respectively.

The test results show that the materials used were of good quality.

Section 2.8 Possible causes of Failure

2.8.1 Arising from inspections, interviews, press reports, written memoranda, discussions, the Committee formed the opinion that the following could have been the causes of failure either individually or severally:-

- (i) Lightning
- (ii) Thunder
- (iii) Wind
- (iv) Weakness of gable wall
- (v) Weakness of canopy

2.8.2 The evaluation and analysis of the above causes of failure by the Committee are as follows:-

(i) Lightning

Lightning usually create high voltage charges capable of inducing large forces to the part of the structure at the point of entry.

As submitted by the Electrical Engineer, there were no burning marks noticed at the site upon inspection. Therefore this cause of failure was discounted. Moreover, it was observed that the building was protected against lightning by the lightning arresters on the adjacent high rise Development House.

(ii) Thunder

Thunder manifests itself by way of vibrations which would have caused stones from the gable wall to fall both to the inside and outside. No stones were observed on the inside. Again for thunder to cause such failure it would have been loud enough to be noticed. Since this was not noticed, this mode of failure was also discounted.

(iii) Wind

The building is single storey and is well protected against wind forces by the surrounding high rise structures. Failure due to wind forces is accompanied

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(iii) Wind

The building is single storey and is well protected against wind forces by the surrounding high rise structures. Failure due to wind forces is accompanied

by ripping the roofing sheets off at the gable wall. Similarly, lack of evidence of above occurrence failure due to wind was discounted as well.

(iv) Gable Wall

In the left side block the roof trusses which had failed resulted in weakening of the gable wall. This was compounded by the weakness of bonding between mortar and stones.

(v) Canopy

As far as the canopy was concerned there were three main structural components which could have failed either individually or severally namely:-

The T or I steel bottom compressive members, (struts) the inclined tension cables at the top (files) and three connections. The first connection was between the struts and ties, the second was between the tie and the wall and the third between the strut and the wall. The Committee observed that the struts, ties as well as the connection had not failed at all since the ties had not elongated and shaped neither had the said connection opened up. The struts were all found to be straight and in their original state. The ends of T and I beams at the gable wall above the lintel level were found to be straight and with no sign of failure at all. The tension cable anchoring bolt together with the steel plate behind the gable wall were straight and in their original shape.

Section 2.9 Actual Causes of Collapse

Arising from the above, the Committee concentrated its attention on the weakened gable wall and the connections of both the canopy supports.

2.9.1 In the left side block housing the Sunbeam Supermarket, the failure of the two trusses next to the gable wall caused sagging of the purlins and the ceiling joists. This downward

movement of purlins subjected the gable wall to a horizontal outward force, thus causing a progressive failure of the gable wall.

Therefore, out of the four similar gable ends the wall of this particular block facing Moi Avenue was the most vulnerable as testified by the location of the highest number of casualties.

- 2.9.2 Both canopies along Moi Avenue and Tom Mboya Street had silt, debris, leaves and waste matter which had accumulated over many years. The canopies had poor drainage which could have caused overload.

The gutters next to the gable walls were worn out at various points along their lengths resulting in serious leakages. The leaking water had over the years caused rot and decay to the timber purlins, joists as well as the tongue and groove (T & G) ceiling. Though the rain water down pipe may have been discharging effectively, there still was water stagnation due to obstruction of flow by the debris. This overload on the canopy due to rainwater, water absorbed by the rotten timber, and the accumulated debris subjected the weakened gable wall to an excessive pulling force. The Committee observed that the gable wall of the left block along Moi Avenue was the weakest and therefore it toppled down first. After the tension cables of the canopy pulled down the stones at the points of anchoring which fell onto the collapsing canopy, the poorly bonded stones above the anchorages immediately continued to collapse. As this happened the T and I steel struts tilted down thereby pushing the stones above the lintel upwards and outwards to complete the failure of the gable wall. At the same time, the purlins and joists of the canopy of the left block extended the effect of failure to block LR No. 209/2261 housing U.N Patel Studio which had its share of overload. The overload in conjunction with the effect of the left block canopy caused the tension cables of the right block canopy to pull down the gable wall stones in a manner similar to the left side.

- 2.9.3 These various steps in the failure process followed

each other instantaneously such that the whole operation looked like a collapse of canopy and wall at the same time. It is worth noting that the canopy and gable wall along Tom Mboya Street are still intact. However, its stability is doubtful.

2.9.4 After careful consideration of the foregoing the Committee formed the opinion that the collapse of the canopy and gable wall of the building housing Sunbeam Supermarket was due to:

- (i) Failure of two roof trusses in the left block next to gable wall along Moi Avenue due to overload, decay or both over a period of time leading to instability of the gable walls;
- (ii) In addition the Committee noted that the gable wall was built without adequate stiffeners and lacked proper bonding at the stone/mortar interfaces;
- (iii) Lack of proper embedment of the anchorage of the canopy struts and ties;
- (iv) Rot and decay of timber in the canopy due to leakages as a result of lack of proper maintenance;
- (v) Overload on canopy due to accumulated silt, leaves, debris and waste matter which was compounded by rainwater on the material day as a result of lack of proper maintenance;

CHAPTER 3

RESPONSIBILITY AND LIABILITY

Arising from the technical findings above and given the gradual deterioration of this building over the years due to lack of mandatory inspection and maintenance, we apportion responsibility and liability for the collapse and the consequent loss of life to the Nairobi City Council and the present proprietors of the building. Our reasons for the apportionment are set out hereunder;

Section 3.1 Nairobi City Council

- 3.1.1 Whereas the Building Code requires that a building be constructed in accordance with the approved plans, this particular building was not built according to the original approved plans.
- 3.1.2 Several changes of user have been effected on this building. The records made available to the Committee show that the left block which specifically housed the Sunbeam supermarket was in 1969 converted into a motor show room. There are no records showing when it was later changed into a supermarket as required by the City Bye-Laws. The Committee is of the view that change of user from a motor showroom to a supermarket which is not documented must have involved changes which had an effect on the structure of the building. Since there are no records at City Hall to show what structural changes were effected upon this change of user, the Committee is unable to be definitive on the matter. However, we find absence of records to show change of user contrary to the requirements of the bye-laws.
- 3.1.3 The law requires that a building be inspected and found habitable prior to issuance of the annual trading licences. The Committee has observed that trading and business licences have been issued annually to the tenants by

Nairobi City Council without the mandatory annual inspection. We consider this lack of annual inspection a flagrant breach of the law.

- 3.1.4 The Building Code and the Bye-laws require that partitions in certain buildings be of specified materials. Partitions of the business premises is required to be of materials specified in the Building Code. The Committee observed that the partitioning wall on right block housing U.N. Patel & Sons Studio (1970) Limited was of hazardous fire risk materials contrary to the requirements of the Bye-Laws. There is no evidence that the City Council ever invoked the relevant Bye-Law(s) to condemn this violation.
- 3.1.5 On 9th November, 1940 the then Municipal Council of Nairobi entered into an Agreement (the Canopy Agreement) with the then proprietor of the two parcels of land. The Agreement required the Canopy to be:-

“.....constructed strictly in accordance with plans to be approved by the Council.....”.

It further required the proprietor to:-

“.....keep the said Canopy clean and in proper repair and condition.....”.

It also required the proprietor to:-

“.....observe all Bye-Laws in force for the time being in Nairobi with respect to Canopies or similar structures over public highways.....”.

It is important to note that the word 'Proprietor' was defined in the agreement to mean the original proprietor, his heirs, executors, administrators and assigns. In our view, the present proprietors of this building are bound by the provisions of this Agreement as assignees.

We have earlier observed that the Canopy was not constructed in accordance with its original approved plans. The Canopy accumulated debris and dirt over the years without Nairobi City Council taking any action contemplated by the provisions of the Agreement. Having established that the dilapidated and very poor state of the Canopy was a

major contributor to the tragedy, we hold liable the parties to the Canopy Agreement for breaching its provisions without any remedy.

- 3.1.6 On 7th December, 1995 the City Council invoked the provisions of the Public Health Act and issued a Notice requiring Abatement of Nuisance in the building to the Director(s) of Sunbeam Supermarkets.

The Notice cited several instances that constituted a nuisance under the Act and required the same to be removed within seven days. The Committee noted that no action was taken by Nairobi City Council upon the expiry of the 7 days notice. There is no evidence on record to show that any action has since been taken following the notice.

Indeed the Committee was shocked to hear from the Public Health Officers at City Hall that they decided not to take further action on the notice because precedents have shown that it takes a long time to deal with any person who does not abide by such notices. It is important to note that the law requires Nairobi City Council to take legal action against the proprietor and/or the occupier of a building who violates a notice to abate a nuisance. Failure to take legal action for the reasons given by City Council Officers is unacceptable and we hold Nairobi City Council responsible for failure of abatement of the nuisance which in our view contributed to the collapse of the building.

- 3.1.7 Whereas the law requires a Medical Officer of Health, as defined in the Act, to issue notices to remove a nuisance, we observed that at City Hall, junior untrained officers and indeed anybody can issue notices. The notice to Sunbeam was not issued by the Medical Officer of Health. The types of nuisance set out in the notice demonstrate want of professionalism and knowledge on the part of the issuer. The reasons stated in the notice demonstrated ignorance of not only the building but also of what were the real problems with the building at the time. The Committee finds this casual and dont-care approach and inaction by City Hall Officers very worrying and legally unacceptable. It is the Committee's view that this building should have been

condemned long time ago had City Hall taken measures required of it under the law. Indeed the Kenyan lives lost on 13th May, 1996 would have been saved had Nairobi City Council observed its legal responsibilities properly.

Section 3.2 Agricultural and Industrial Holdings Limited (formerly GEMA)

3.2.1 Agricultural and Industrial Holdings Ltd. (Hereinafter referred to as AIH) has gone to the media and also told the Committee that their hands are tied because they have no title deed to the two parcels of land. In their view, they could not do anything and could not develop the property for that reason. The Committee disagrees with them for the following reasons:

- (i) the AIH has been collecting rent from the two parcels of land from 1977. This has been admitted by the present managers of AIH.
- (ii) that on 9th September, 1993, AIH executed with the Government an Exchange and Transfer of Title to the two pieces of land. The document was signed by Njenga Karume and Wilson Gacanja for and on behalf of AIH and the Government respectively.

3.2.2 In our view the right to collect rent carries with it obligations in respect of the premises from which that rent accrues. You cannot collect rent and use the proceeds thereof from property in which you have no property interest. It is our considered opinion that the right to collect and use rent carries with it legal obligations over the premises from which that rent is collected. We consider AIH the proprietor of this building. AIH has obligations not only arising from the provisions of the City Bye-Laws but also those in the Building Code. AIH's argument that lack of a title deed relieved them of any powers over the buildings is an attempt to evade the consequences arising from breach of her obligations under the law.

3.2.3 Having established that AIH has been collecting rent from this building since 1977, having also established that the Government signed with AIH an Exchange and Transfer of Title over the pieces of land on which this building is erected, the Committee is unable to understand why AIH has not diligently pursued issuance of a title deed. The transfer document having been executed in 1993, the administrative procedure of obtaining the title deed should not have taken such inordinate time had AIH acted diligently.

The Committee considers AIH's actions or inaction to progress issuance of a title deed deliberately dilatory. There is sufficient correspondence on record to show that AIH has been slow in pursuing the title deed. By the time of writing this report the Committee has not been able to establish why the title deed has not been issued.

AIH should not be allowed to evade their responsibility in law on the grounds of their own inaction.

3.2.4 The Committee was informed that the dilapidated state of the building had been brought to the attention of AIH as recipients of rent by the tenants, time and again. Instead of taking any action to remedy the situation, AIH remained silent and instead raised the rent in October/November 1995. Despite protest from tenants that the increase was unjustified, given the dilapidated state of the building AIH took no notice of the protests. The tenants went to Court on the matter.

AIH promised an out-of-court settlement to rectify the defects on the building. The case was then removed from the Court. As at the time of the tragedy, AIH had not even honoured the out-of-court settlement to repair the building.

3.2.5 In the existing lease agreement between AIH and Sunbeam Supermarket, AIH has covenanted that it will:-

".....keep in good and tenantable repair all and every of the..... together with the roof and outside walls of the said building and the drains, downpipes and sanitary apparatus thereof.....".

AIH has also undertaken under the lease agreement to:-

“.....keep the main structure plate glass and exterior of the said building insured against loss or damage by fire.....”.

In the Committee's view, one cannot lease premises in which one has no proprietary interest. The Committee rejects AIH's view that absence of a title deed relieved it of its obligations over that property. Indeed, the Committee holds AIH liable for the defects in this building some of which it had undertaken to keep in good and tenable repair under its lease agreement with Sunbeam. The Committee further holds AIH responsible for the failure to ensure that the building from which they were collecting rent for nearly 20 years remained in such dilapidated state that it eventually collapsed and caused death.

The Committee holds AIH liable for the common duty of care under the provisions of the Occupiers Liability Act (Chapter 34, Laws of Kenya).

3.2.6 The Canopy Agreement of 1940 to which was referred to earlier binds AIH as assignees of the property. AIH has breached its provisions in respect of keeping the canopy clean and in proper repair and condition. Indeed, AIH, as proprietors have failed to abide by the provisions of the by-laws governing the canopies as set out in that Agreement.

CHAPTER 4

EXISTING LEGISLATION IN THE BUILDING INDUSTRY

Section 4.1 Objective

The objective of the law in the building industry is to secure safe and healthy buildings and related infrastructure. Because buildings and physical infrastructure are prone to a myriad of hazards both during and after construction, the law must ensure safety and meticulous compliance with standards so as to control, prevent and even eliminate these hazards. The hazards pose a great risk to both construction workers, tenants and also members of the public

- 4.1.1. Damage to a building may be through failure of the structure, fire, etc. The impact of an unsafe structure may have immediate consequences of structural damage or collapse but deterioration may be a gradual process spanning many years, often unnoticed but ultimately leading to total failure and ultimate collapse of the structure.

Alternatively errors in electrical and mechanical installation may expose the structure to fire hazards. Sometimes fire outbreaks may be a result of some other misdeeds but a building should provide some minimum protection for life and property in case of fire.

Disasters such as earthquakes, cyclones, flood, lightning etc. Can cause damage to structure and can be very severe.

Even though such disasters can hardly be prevented, it is possible to minimise the damage to construction, property and lives through the application of appropriate regulations and codes.

- 4.1.3 There are several risks to health which result from faulty construction although the criteria for measuring these is often subjective and controversial. The prominent health

risks in the construction industry arise from water supply and sanitation, poor lighting and ventilation, and construction materials

Section 4.2 The Present legislation

- 4.2.1 The building industry in Kenya lacks a comprehensive and integrated legal framework. There are several pieces of legislation impacting on the industry scattered all over in the Statute books. There is need to consolidate the law to ensure that the respective roles of all parties involved in the industry are clearly defined with attendant penalties for secure compliance with standards set out in the law. The law should also ensure professional involvement all the way from preparation and approval of building plans, construction and supervision of buildings and related infrastructure to ensure that the standards set out in the law are complied with.
- 4.2.2 The statutes impacting on the building industry include the Town Planning Act (Chapter 134) the Local Government Act (Chapter 265), the Public Health Act (Chapter 242), the Architect and Quantity Surveyors Act (Chapter 525), the Rent Restrictions Act (Chapter 296) and Land Control Act (Chapter 302), The Engineers Registration Act (Chapter 530) among others. These statutes describe the roles of various players in the building industry and apportion responsibility in a haphazard manner. In the result, enforcement law of the against defaulters is not only uncoordinated but also lengthy and costly.
- 4.2.3 The technical component of the laws covering planning and Building construction controls as set out in the Planning Regulations and Building Codes respectively fall under different legal entities and agencies without any provision for harmonization. There is therefore need to combine both into one legal entity so that standards can be ensured and deviations therefrom swiftly dealt with.
- 4.2.4 The greatest legislative impediment in the building industry to-day is the law enforcement procedures. The

administration of the various statutes is carried out by several agencies. For example, the sanitation aspects of the industry is handled by public health officers; fire control regulations by fire officers; and the construction of buildings by local authorities. This arrangement does not lend itself to effective enforcement of standards. The result has been that the lacuna created by the absence of coordination has been exploited by building owners who have turned out to be inspectors of their own buildings. Standards have therefore been compromised.

This has been further compounded by the fact that there is no law to-day specifying who can be a Contractor. This has created an opportunity for property developers to decide on their own men as contractors who often lack both the training, knowledge and are ignorant of the existence of standards in the building industry

4.2.5 The Committee has observed that there are numerous shortcomings in the law governing the building industry. These include:-

- Absence of references to a system for periodic review and inclusion of new building materials, design procedures and construction methods
- Archaic and obsolete rules which tend to ignore specialized features such as lightning protection etc.
- Material oriented regulations which cause unnecessary restrictions with the consequence that construction industry has been limited to only few building materials and techniques. New options, unless imported have little chance of being incorporated in the regulatory instruments. This has made construction expensive and hence created a fertile ground for cutting corners by unscrupulous property developers.

4.2.6 The Building Codes and regulations are incomprehensible and lack clarity. A typical clause in one regulation reads as follows

"No building shall be constructed so that any part thereof cuts and projects above an imaginary line drawn from the building line to the opposite side of the street at ground level to produce an angle of 45 degrees to the horizon".

Simple and comprehensive building codes are desirable.

CHAPTER 5

RECOMMENDATIONS

- 5.1 From the foregoing, the Committee is of the view that the Nairobi City Council and Agricultural and Industrial Holdings should be held liable for the accident and action should be taken appropriately.
- 5.2 Both buildings on L.R. No.209/2260 and LR.209/2261 should be demolished or suitable reconstruction drawings submitted to the relevant Authorities for approval and implementation.
- 5.3 No business should be transacted in the premises because the building is unsafe and a risk to the members of the public. The premises should be fenced with approved hoarding and the canopy along Tom Mboya Street propped until action recommended in 5.2 is effected.
- 5.4 The Agencies charged with the responsibility of enforcing the existing building by-laws and the Public Health Act should be strict. We have noted that the relevant departments of the Nairobi City Council have been very inept, disorganized and uncoordinated. The Committee recommends that these departments be re-organized with a view to making them more effective.
- 5.5 To safeguard the safety of the public, some of the recently constructed or ongoing buildings which appear unsafe should be checked and certified for safety standards and structural soundness. Any structures failing to meet the minimum safety standards should be rehabilitated under the supervision of the relevant authority or demolished. The Committee considers several buildings in Umoja, Mathare North, Zimmerman Estates, Highridge, and the City Centre, to name but a few, unsafe.
- 5.6 The Committee considers that the judicial process may be hindering demolitions and subsequent re-development of properties in the Urban Centres. An in-depth review of the process of condemning buildings for demolition is required.

- 5.7 Unauthorized change of use for premises would appear to be of great significance particularly with respect to safety standards. In the short term, no premises should be licensed if there has been an unauthorized change of usage which results in structures being subjected to excessive loading, but further investigation is required to arrive at a more permanent solution to the problem.
- 5.8 There should be a deliberate campaign to create general public awareness as to the state of buildings with particular reference to safety. This could be done by the Government, Non-Governmental Organizations and professional bodies.
- 5.9 The existing laws and regulations governing the building industry should be enforced and any loopholes or deficiencies should be rectified immediately, pending a thorough study into these laws by the Committee.

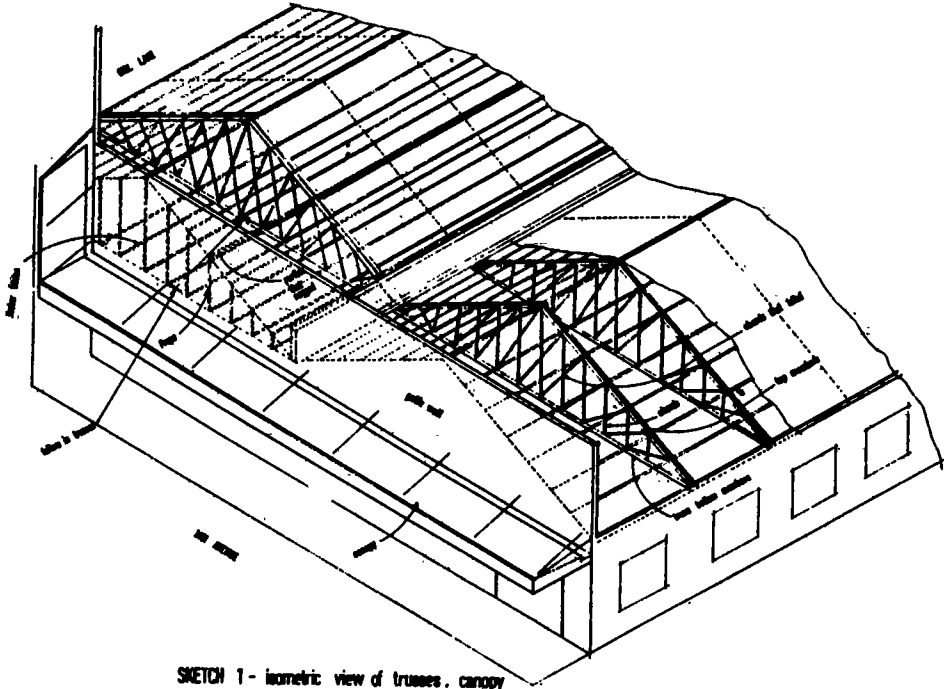
APPENDIX I

COMMITTEE MEMBERS

- | | | |
|---------------------------------|---|--------------------|
| 1. Dr. Reuben Mutiso | Tectura International
Architect | Chairman |
| 2. Eng. M. Otieno Odongo | Otieno Odongo & Partners,
Consulting Engineers | Member |
| 3. Eng. J. J. Gathara | Lecturer, Civil Engineering Dept
University of Nairobi | Member |
| 4. Eng Arthur W. Nyamu | Chief Structural Eng., MOPW & H | Member |
| 5. Mr. Maurice O. Ayugi | Director, Kenya Building
Research Centre, MOPW & H | Member |
| 6. Mr. Philip O. Sika
Member | Ag. Principal Supt. Architect,
MOPW&H | |
| 7. Mr. Dan Ameyo | Senior Principal State Counsel
Office of the Attorney-General | Joint
Secretary |
| 8. Eng. Michael Munzyu | Senior Superintending Engineer,
MOPW& H | Joint
Secretary |
| 9. Mr. Michael N. Mugwanja | Chief Superintending Architect
MOPW& H | Joint
Secretary |
| 10. Mr. Peter Nzioka | Officer Commanding Police
Division Central Police Division,
Nairobi | Secretariat |

APPENDIX 2

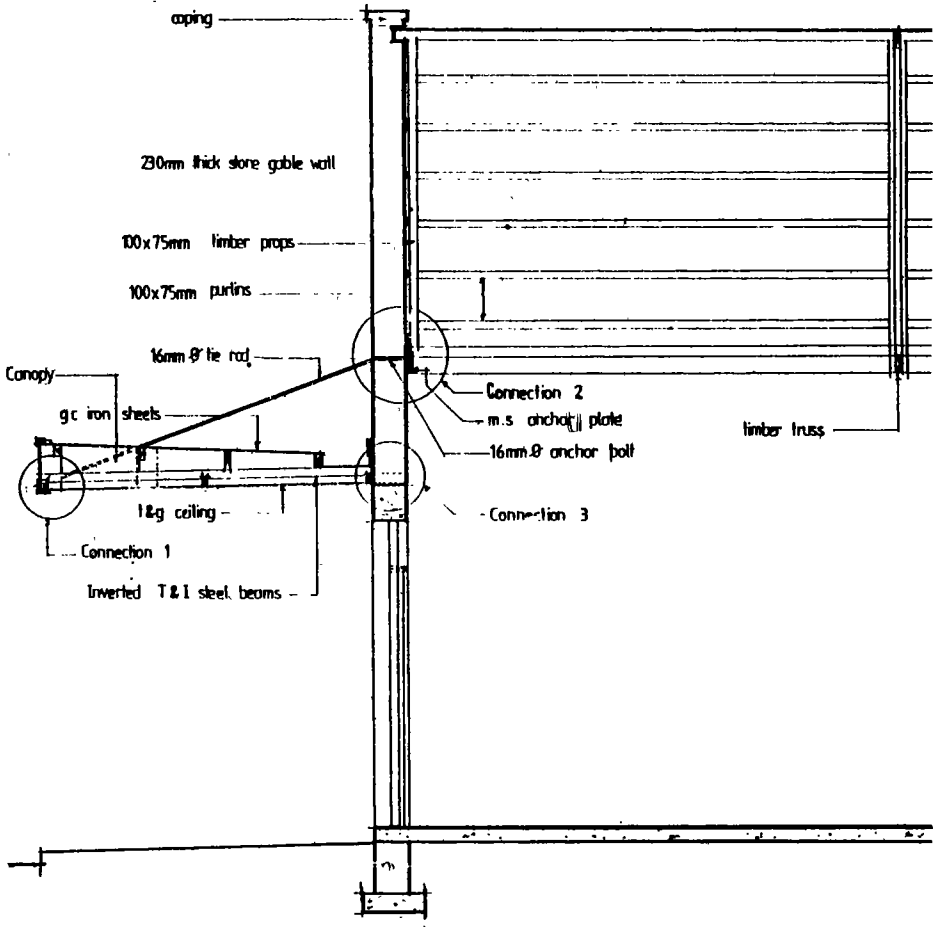
ISOMETRIC VIEW OF SUNBEAM BUILDING



SKETCH 1 - isometric view of trusses, canopy
& gable wall

APPENDIX 3

CROSS SECTION THROUGH CANOPY



NAME

SIGNATURE

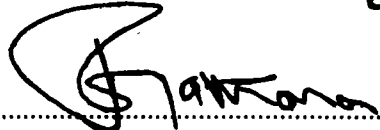
1. Dr. Reuben Mutiso



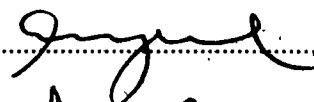
2. Eng. M. Otieno Odongo



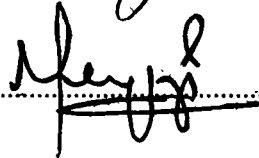
3. Eng. J.J. Gathara



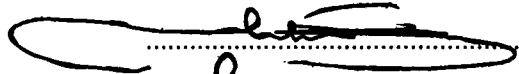
4. Eng. Arthur W. Nyamu



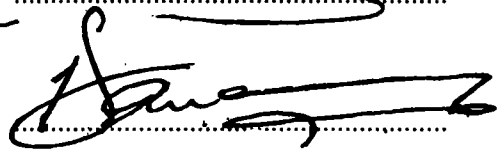
5. Mr. Maurice O. Ayugi



6. Mr. Philip O. Sika



7. Mr. Dan Ameyo



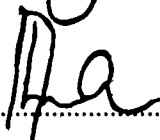
8. Eng. Michael Munzyu

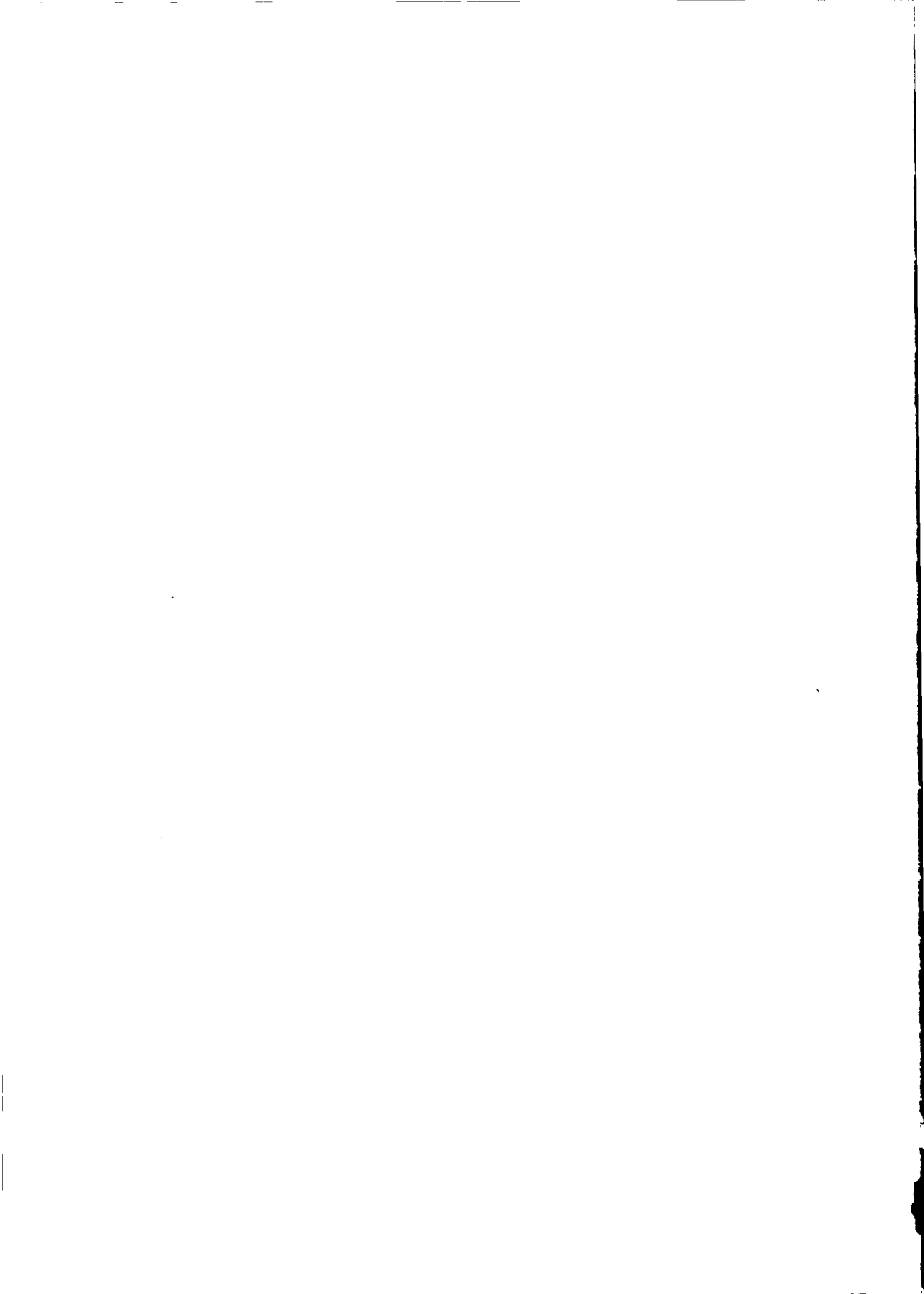


9. Mr. Michael N. Mugwanja



10. Mr. Peter Nzioka





APPENDIX II

GAZETTE NOTICE NO.7023

DATED 20TH DECEMBER, 1996

ON THE APPOINTMENT OF THE

COMMISSION OF INQUIRY



GAZETTE NOTICE No.7023

THE COMMISSIONS OF INQUIRY ACT

(Cap. 102)

APPOINTMENT OF A COMMISSION OF INQUIRY

IN EXERCISE of the powers conferred by section 3 of the Commissions of Inquiry Act, I, Daniel Toroitich arap Moi, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, being of the opinion that it is in the public interest, do appoint a Commission of Inquiry to examine the existing building laws, by-laws and regulations and make recommendations with a view to prevent incidences similar to the collapse of the "Sunbeam Building" and make appropriate recommendations, to be headed by—

Reuben Mutiso (*Dr.*).—*Chairman,*

Members:

Justice Sarah Odenyo,

J. J. Gathara,

Dennis M. Rimba,

Kenneth Kiplangat (*Dr.*),

John Cavanagh,

Otieno Odongo,

Abdi Farah Osman,

Joint Secretaries to the Commission:

Dan Ameyo,

Adila A. Bashir (*Mrs.*).

The commission is required to complete the inquiry and submit its report within six months.

Dated the 19th December, 1996,

D. T. ARAP MOI,

President.



APPENDIX III

THE PLANNING AND BUILDING (DRAFT) BILL



LAWS OF KENYA

PLANNING AND BUILDING (DRAFT) BILL

1997

PRINTED BY THE GOVERNMENT PRINTER KENYA



PLANNING AND BUILDING (DRAFT) BILL

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PLANNING AND BUILDING (DRAFT) BILL 19..

A Bill for

An Act of Parliament to consolidate, amend and provide the law relating to planning, design, construction and maintenance of buildings and associated works; to make provision for the rendering safe of dangerous buildings and land; and to make provision for matters connected therewith.

Enacted by the Parliament of Kenya as follows:

PART 1

PRELIMINARY

1. This Act may be cited as the Planning and Building Act. Short title
2. In this Act, unless the context otherwise requires - Interpretation
 - "Accredited Checker" means a person who is registered as an Accredited Checker under Section 28 of this Act;
 - "Accredited Checkers' Register" means the Accredited Checkers' Register kept and maintained by the Authority under Section 25 of this Act;
 - "Advocate" means a person registered as such under the Advocates Act (Cap 16);
 - "Agent" means a Qualified Person, an Authorised Person or an Accredited Checker;
 - "Appeal Tribunal Panel" means the Appeal Tribunal Panel established by the Authority under Section 83 of this Act;

"Appeal Tribunal" in relation to an appeal means a Tribunal constituted under section 84 of this Act;

"Applicant" means any person who makes an application under this Act or the Regulations made thereunder;

"Approved" means approved by the Authority;

"Approved Plan" means a plan approved by the Authority in accordance with this Act and the Regulations made thereunder;

"Architect" means a person registered as such under the Architects and Quantity Surveyors Act (Cap 525);

"Authority" means the Planning and Building Authority established under Section 3 of this Act;

"Authorised Person" means a person registered as such under Section 28 of this Act;

"Authorised Persons' Register" means the Register kept and maintained by the Authority under Section 24 of this Act;

"Board of the Authority" means the Board established under Section 4 of this Act;

"Board of Registration of Architects and Quantity Surveyors" means the Board established under the Architects and Quantity Surveyors Act (Cap.525)

"Building" includes a reference to part of the building and means any construction work that has the provision of shelter for its occupants or contents as one of its main purposes and is normally designed to stand permanently in one place;

"Building Services Engineer" means a person who is registered as a Professional Engineer under the Engineers Registration Act (Cap.530) in the electrical or mechanical disciplines;

"Building Works" includes any kind of building construction, site formation works, ground investigation, foundation works, repairs, demolition, alteration, addition and every kind of building operations and include, installation of building services both electrical and mechanical:

"Certificate of Registration" means the certificate issued by the Authority under Section 28 of this Act;

"Certificate of Registration" in relation to a building means the Certificate of Registration issued by the Authority under Section 67 of this Act;

"Chairman" in relation to the Appeal Tribunal means the Chairman appointed under Section 84 of this Act;

"Chairman" in relation to the Board of the Authority means the person appointed as such under Section 4 of this Act;

"Chairman" in relation to the Disciplinary Board for Contractors means the Chairman appointed under Section 45 of this Act;

"Chairman" in relation to the Professionals' Disciplinary Board means the Chairman appointed under Section 40;

"Chief Executive" means the Managing Director appointed under Section 4 of this Act;

"Civil or Structural Engineer" means a person registered as such under the Engineers Registration Act (Cap.530);

"Dangerous Building" means any building which is in such a

users of such building or to the occupiers or users of any neighbouring building or to the general public;

"Developer" means any person who has obtained the approval of the Authority to develop any land pursuant to this Act and includes his executors, administrators and successors in title;

"Development" means any land on which any building or infrastructure is constructed or is in the course of construction;

"Disciplinary Board for Contractors" means the Disciplinary Board established under Section 45;

"Engineers Registration Board" means the Engineers Registration Board established under the Engineers Registration Act (Cap.530);

"Foundation System" means a system of arrangement of foundation units such as footing, raft or pile through which the loads from a building or structure are transferred to the supporting soil or rock;

"Gross Floor Area" means the area contained within the outer walls of a building and in a building with more than one floor it is the summation of the areas of the individual floors;

"Height of a Building" means the vertical distance measured, in the case of flat roofs, from the average level of the ground and contiguous to the building to the highest point of the building and, in the case of pitched roofs, up to the point where the external surface of the outer wall intersects the finished surface of the sloping roof, and, in the case of gables facing the road, the mid-point between the eaves level and the ridge;

"Judge" means a Judge of the High Court of Kenya;

"High Court" means the High Court of Kenya;

"Managing Director" means the Managing Director appointed under Section 9 of this Act;

"Occupation Certificate" means an Occupation Certificate issued under Section 64 of this Act;

"Officer" includes a person appointed under Section 11 of this Act;

"Owner" includes the person for the time being receiving the rent of any building, whether on his own account or as agent or trustee or as receiver, or who would receive the same if the building were let to a tenant;

"Physical Development Plan" means a plan for an area or part thereof, City, Municipal or Urban Council and includes a plan with reference to a trading centre;

"Planning and Building Regulations" means the Regulations made under this Act;

"President" means the President of the Republic of Kenya;

"Professionals' Disciplinary Board" means a Disciplinary Board constituted under Section 40 of this Act;

"Professionals' Disciplinary Board Panel" means the Panel established under Section 39 of this Act;

"Professionals' Registers" means any of the three Registers established by the Authority under Sections 23, 24 and 25;

"Qualified Person" means any Architect, Civil and/o. Structural Engineer, Quantity Surveyor, Landscape

Architect, Physical Planner, Building Services Engineer and Licenced Land Surveyor who is registered as a Qualified Person under Section 26 of this Act;

"Qualified Persons' Register" means the Register kept and maintained by the Authority under Section 23 of this Act;

"Quantity Surveyor" means a person registered as such under the Architects and Quantity Surveyors Act (Cap.525);

"Register of Buildings" means the Register kept and maintained by the Authority under Section 64 of this Act;

"Registration Committee" means the Committee appointed under Section 26 of this Act;

"Registered Contractor" means a person whose name is for the time being in the Register of Contractors kept and maintained by the Authority under Section 43 of this Act;

"Registered Contractors' Disciplinary Board Panel" means the Panel established under Section 44 of this Act;

"Register of Contractors" means the Register established by the Authority under Section 43 of this Act;

"Regulations" means the Planning and Building Regulations;

"Temporary Occupation Permit" means the permit issued by the Authority under Section 62 of this Act.

PART II

ESTABLISHMENT OF THE PLANNING AND BUILDING AUTHORITY

3. (1) There is hereby established an Authority to be known as the Planning and Building Authority.

Establishment of
Planning and
Building
Authority

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of -

- (a) Suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under the Act which may lawfully be done by a body corporate.

4. (1) The Management of the Authority shall vest in a Board which shall consist of:

Establishment of
Board of the
Authority

- (a) A Chairman;
- (b) A Permanent Secretary of the Ministry in-charge of buildings in person;
- (c) Two distinguished retired professionals one of whom shall be from the building industry;
- (d) Two distinguished and successful business executives;

- (e) Four active professionals from the building industry, two of whom shall be selected from lists submitted by the Board of Registration of Architects and Quantity Surveyors and the Engineer's Registration Board;
- (f) A Managing Director as the Chief Executive who shall be appointed by the Board.

(2) The Chairman and members of the Board shall be appointed by the President;

(3) The Chairman appointed under sub-section (2) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.

(4) The members of the Board appointed under sub-section (2) shall hold office for a period of four years and shall be eligible for re-appointment for a further term of four years.

(5) The appointment of a Chairman or a member under sub-section (2) shall cease in any of the following cases:-

- (a) If he is absent from three consecutive meetings of the Board without leave or good cause;
- (b) If he is convicted of a criminal offence;
- (c) If he is incapacitated by mental or physical illness or is dead or otherwise unable or unfit to discharge the functions of a member or is unable to continue as a member;
- (d) If he is adjudged bankrupt;
- (e) If he conducts himself in the opinion of the Board in a manner inconsistent with membership of the Board;

- (f) In the case of a Chairman, if he serves the President with written notice of his resignation;
- (g) In the case of a member, if he serves the Chairman with written notice of his resignation.

5. The Functions of the Authority shall be to enforce the provisions of this Act and the Regulations made there under and :-

Functions of the Authority.

- (a) to ensure harmonization and integration of part development physical plans;
- (b) to approve Physical Development and the National Physical Development plan;
- (c) to approve all building designs and plans;
- (d) to conduct inspections of all building projects;
- (e) to issue occupation certificates;
- (f) to issue maintenance certificates;
- (g) to licence, keep and maintain a Register of contractors;
- (h) to keep and maintain a Register of buildings;
- (i) to preserve and conserve historical buildings;
- (j) to disseminate information to the public on building requirements;
- (k) to advise the Government on all aspects of development and building operations in the construction sector;
- (l) to encourage, through public participation, the improvement of the quality of life in its neighbourhood;
- (m) to register, Qualified Persons, Authorised Persons and Accredited Checkers;
- (n) to revise and update the Planning and Building Regulations.

6. The Authority shall have all powers necessary for the performance of its functions under this Act and in particular, the Authority shall have power -

Powers of the Authority.

- (a) to approve National Physical Development plans;
- (b) to order preparation of Physical Development plans;
- (c) to stop construction where such construction does not conform with the building Regulations;
- (d) to order sealing off or demolition of dangerous buildings;
- (e) to order evacuation of any building;
- (f) to inspect any building and to order the maintenance of any building the Authority considers is not well maintained;
- (g) to take such other action as may be necessary in the furtherance of the objectives of this Act and the Regulations made thereunder.

7. (1) The Board shall meet at least once in every month.

Meetings of the Board.

(2) Six members of the Board shall constitute a quorum at any meeting of the Board, and all acts, matters or actions authorised or required to be done by the Board may be decided at any meeting at which a quorum is present.

(3) A Member of the Board shall attend all the meetings of the Board in person.

(4) The Chairman shall preside at every meeting of the Board at which he is present and in his absence, the Board shall elect from amongst those present a member to act as Chairman.

(5) All matters for consideration by the Board or acts to be done by the Board shall be decided by a resolution at a meeting of the Board at which a quorum is present.

(6) A decision of the majority of the members present and voting at a meeting of the Board shall be deemed to be a decision of the Board.

(7) Every member of the Board shall have one vote and in the event of an equality of votes, the Chairman of the day shall have a second or Casting Vote in addition to his deliberative vote.

(8) Any member who has a direct or indirect interest in any decision that is to be made on any specific matter before the Board shall disclose the nature of such interest at the meeting of the Board where such decision is being made, and disclosure shall be recorded in the minutes of the meeting and if the majority of the members of the Board believe that such member's interest in the matter in such as to influence his judgement, he shall not participate in the deliberations or the decision of the Board on such matter:

Provided, that if a majority of the members in attendance at the meeting where such matter is considered determine that the experience or expertise of the interested member is necessary for the deliberation on the matter, they may permit such member to participate as they may deem appropriate.

(9) Minutes of each meeting of the Board shall be kept in proper form and shall be confirmed by the Board at the next meeting and signed by the Chairman at the meeting.

(10) Subject to the provisions of this Act the Board may regulate its own procedure.

8. (1) The Common Seal of the Authority shall be kept in the Custody of the Authority and shall not be affixed to any instrument or document except as authorised by the Authority.

Seal and
execution of
documents.

(2) The Common Seal of the Authority shall be authenticated by the signature of the Managing Director and the Chairman or of one other member as may be authorised by the Authority in that behalf.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Board may be signified under the hand of the Managing Director or, in the case of a decision taken at a meeting at which the Managing Director is not present, under the hand of the person presiding at such meeting.

9. The Managing Director shall, subject to the general direction and control of the Board, have the power;

Appointment and duties of the Managing Director of the Authority.

- (a) to direct the affairs and transactions of the Board.
- (b) to ensure the implementation of the decisions of the Board.
- (c) to ensure the administration and control of the servants of the Authority.

10. The Board may remove from office the Managing Director appointed under Section 4 (1).

Removal of the Managing Director.

11. (1) The Board may appoint such other officers and servants as it considers necessary for the efficient discharge of its responsibilities and functions;

Appointment and remuneration of Authority staff.

(2) The officers and servants appointed under sub-section (1) shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by the Board.

(3) The officers and servants appointed under sub-section (1) shall, subject to this Act, exercise such powers and functions and perform the duties assigned to them from time to time by the Managing Director.

12. (1) Neither the Board, any of its members, officers nor servants shall be personally liable for any action which is done in good faith on the direction of the Board or in the performance or intended performance of any duty or in the exercise of any power under this Act or the Regulations made thereunder.

Protection from legal action.

(2) Any expenses incurred by any person referred to in sub-section (1) in any suit or prosecution brought against him before any court in respect of any act done or purported to be done by him under the Act or on the direction of the Board shall, if the Court holds that such acts were done in good faith be paid out of the general fund of the Authority.

13. (1) The Board or any person officially authorised in that behalf by the Board may, by notice in writing, require any person to furnish to the Authority or to the person so authorised, within such period as is specified in the notice, all such information as is specified in such notice.

Furnishing of information to the Authority.

(2) The Board or any member thereof, or any officer or servant of the Authority, shall not disclose to any person or use any information acquired under sub-section (1) except for the purpose of achieving the objectives of the Authority unless required to do so by a Court of Law.

14. The Board may appoint committees whether of its own members or otherwise, to carry out such general or special functions as may be specified by the Board, and may delegate to any such committee such of its powers as the Board may deem appropriate.

Committees.

15. (1) The Authority shall have its own general fund.

General fund.

(2) There shall be paid into the general fund:-

- (a) all such sums of money as may be paid as fees under this Act, and the Regulations; and
- (b) all such sums of money as may be received by the Authority for its operations from any other source;

(3) There shall be paid out of the fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise, discharge, and performance of its objectives, functions and duties.

(4) The members of the Board shall be paid such remuneration and allowance out of the general fund of the Authority as the Authority may deem appropriate.

(5) In the fulfillment of the objectives set out in Section 5 (1), the Authority may apply its funds in the promotion of partnership projects for the benefit of the general public, provided that the Authority may recover the funds so applied from the beneficiaries thereof.

16 The Board shall cause proper books of accounts to be kept of its income and expenditure, assets and liabilities and all other transactions of the Authority.

Accounts

17. (1) The Headquarters of the Authority shall be in Nairobi.

Headquarters and
branches of the
Authority.

(2) The Authority shall establish branch offices in such locations as the Board may determine.

PART III

PLANNING CONTROL

18. Any person who intends to prepare physical development plans of any area, for purposes of construction shall apply to the Authority for a permit. Permit to prepare plans.

19. (1) An application for a permit to prepare physical development plans shall be made by the person for whom the plans are to be prepared or by his agent, accompanied by:- Who may apply for a permit

- (a) a notification, signed by the person for whom the plans are to be prepared.
- (b) a confirmation signed by a Qualified Person of his appointment.
- (c) such other documents as the Authority may require.

(2) Any permit granted under this Section, to any person, to prepare, physical development plans shall automatically lapse if any of the persons, for any reason, ceases to be:-

- (a) The person for whom the physical development plans are to be prepared.
- (b) The Qualified Person appointed in respect of those plans.

20. (1) No person shall prepare or cause to be prepared plans for buildings or associated works for submission to the Authority unless - Conditions to be satisfied before submission of plans

- (a) physical development plans have been approved.
- (b) there is in force a permit granted by the Authority.

(2) The approval of physical development plans shall not be deemed -

- (a) to confer any title to land;
- (b) to act as a waiver of any term in any lease or licence; or
- (c) to grant any exemption from or to permit any contravention of any of the provisions of this Act or the Regulations or any other written law.

21. (1) Subject to the provisions of this Act, the person for whom any proposed physical development plans have been prepared may apply to the Authority for approval and such application shall be accompanied by -

Submission of
Plans for
approval

- (a) the prescribed fee;
- (b) the physical development plans prepared in accordance with the Regulations;
- (c) such other documents as may be prescribed in the Regulations.

(2) The Authority may -

- (a) approve, subject to terms and conditions it may impose, any one or more of the plans submitted to it, or
- (b) in writing direct the applicant to comply, within such period as may be specified in the direction, with such requirements as the Authority may specify for the purpose of ensuring compliance with the provisions of this Act and the Regulations.

(3) If the person to whom any written direction is given under sub-section (2) fails to comply with the requirements specified in the direction within the time specified therein, the Authority may reject the application.

(4) Where physical development plans of any parcel of land have been approved by the Authority and the person for whom the planning is or is to be carried out intends to depart or deviate from the approved physical development plans, that person shall apply to the Authority for its approval of the said plans showing the proposed departure or deviation and such application shall be accompanied by the latter plans.

(5) Any approval granted in respect of physical development plans under this Section shall automatically lapse if the plans are not implemented within the period specified by the Authority at the time of approval provided that, the Authority may on application by the applicant extend the period.

(6) Where an approval granted under Section 19 has automatically lapsed, the person for whom the plans were prepared, or his agent may re-apply to the Authority for a fresh approval.

22. The Authority may refuse to give its approval of any physical development plans where -

- (a) the plans are inconsistent with the provisions of this Act, the Regulations and, or any other enactment.
- (b) the carrying out of planning works shown thereon would contravene any approved physical development plans.
- (c) it has not received such other documents as are prescribed by the Regulations;

Rejection of
Physical
Development
Plans.

- (d) such fees as are prescribed by the Regulations have not been paid;
- (e) the plans consist of, or any part thereof involves, the creation of any means of access or other opening, not being a street or access road, to or from any street, and the place at or manner in which such means of access or other opening opens on to the street is, in its opinion, such as to be dangerous or likely to be dangerous or prejudicial to the safety or convenience of traffic using the street, or which may be expected to use the same.

PART IV
QUALIFIED PERSONS, AUTHORISED
PERSONS, AND ACCREDITED CHECKERS

23. (1) The Authority shall keep and maintain a Register hereinafter referred to as the "Qualified Persons' Register" in which shall be entered the names and prescribed particulars of all persons registered in accordance with this Act as Qualified Persons and the absence of the name of any person from the Register shall be prima facie evidence that that person is not so registered.

Establishment of
a Qualified
Persons'
Register.

(2) The Qualified Persons' Register shall contain the following schedules:

- (a) Schedule I, consisting of architects;
- (b) Schedule II, consisting of civil and/or structural engineers;
- (c) Schedule III, consisting of quantity surveyors;
- (d) Schedule IV, consisting of landscape architects;
- (e) Schedule V, consisting of physical planners;
- (f) Schedule VI, consisting of building services engineers;
- (g) Schedule VII, consisting of licensed land surveyors.

(3) The Qualified Persons' Register shall be kept and maintained at the office of the Authority and shall be available for inspection by any person without charge at such time as that office is open for business.

24. (1) The Authority shall keep and maintain a Register hereinafter referred to as the "Authorised Persons' Register" in which shall be entered the names and prescribed particulars of all persons registered in accordance with this Act as Authorised Persons and the absence of the name of any person from the Register shall be prima facie evidence that that person is not so registered.

Establishment of
Authorised
Persons'
Register.

(2) The Authorised Persons' Register shall contain the following schedules:-

- (a) Schedule 1, consisting of architects;
- (b) Schedule 11, consisting of civil and, or structural engineers;
- (c) Schedule 111, consisting of building services engineers;
- (d) Schedule IV, consisting of quantity surveyors.

The Authorised Persons' Register shall be kept and maintained at the office of the Authority and shall be available for inspection by any person without charge at such time as that office is open for business.

25. (1) The Authority shall keep and maintain a Register hereinafter referred to as the "Accredited Checkers Register" in which shall be entered the names and prescribed particulars of all persons registered in accordance with this Act as Accredited Checkers and the absence of the name of any person from the Register shall be prima facie evidence that that person is not so registered.

Establishment of Accredited Checkers' Register

(2) The Accredited Checkers' Register shall be kept and maintained at the office of the Authority and shall be available for inspection by any person without charge at such time as that office is open for business.

26. The Authority shall appoint a committee to be known as the Qualified Persons', Authorised Persons' and Accredited Checkers' Registration Committee, hereinafter referred to as the "Registration Committee" to assist it in considering applications for registration as Qualified Persons, Authorised Persons and Accredited Checkers.

Registration Committee

27. (a) The Registration Committee shall consist of -
- (i) 1 Director of the Authority as Chairman of the Committee;
 - (ii) 2 architects whose names are included in Schedule 1,
 - (iii) 2 engineers whose names are included in Schedule 11,
 - (iv) 1 quantity surveyor whose name is included in Schedule 111;
 - (v) 1 building services engineer whose name is included in Schedule VI;
 - (vi) 1 licenced land surveyor whose name is included in schedule V11

Constitution of
Registration
Committee.

of the Qualified Persons' Register and,

- (vii) an officer of the Authority who shall be the Secretary to the Committee.
- (b) The Registration Committee shall assist the Authority in considering applications for inclusion in the Qualified Persons' Register, Authorised Persons' Register and Accredited Checkers' Register, hereinafter referred to as "The Professionals' Registers", by:-
 - (i) examining the qualifications of applicants;
 - (ii) making such inquiries as it considers necessary to ascertain whether an applicant has the prescribed experience;
 - (iii) conducting professional interviews with applicants; and
 - (iv) advising the Authority as to the acceptance or rejection of applications for inclusion in such Registers.

- (c) The Registration Committee shall meet at least twice a year or at such times and places as the Authority shall appoint.
- (d) The quorum for a meeting of the Registration Committee shall be six members.
- (e) The chairman shall preside at every meeting of the Registration Committee at which he is present, and in his absence, the Committee shall elect from amongst those present, a member to act as chairman.

28. (1) Every applicant for registration and inclusion in any of the Professionals' Registers shall submit his application to the Secretary of the Registration Committee, and every such application shall be accompanied by such documents and particulars as may be relevant.

Application and registration of Qualified Persons, Authorised Persons and Accredited Checkers.

(2) No person shall be registered as -

- (a) Qualified Person,
- (b) Authorised Person or,
- (c) Accredited Checker.

unless he satisfies the Authority that he possesses the prescribed qualifications and practical experience.

(3) The Authority may refuse to register as Qualified Person, Authorised Person or Accredited Checker, any applicant who is, in its opinion, not of good character and, reputation or unable to carry out their respective duties under this Act.

(4) Where the Authority has registered a person as a Qualified Person, Authorised Person or Accredited Checker, the Authority shall issue to the person a certificate of Registration.

(5) The Authority may cancel the registration of -

(a) A Qualified Person, an Authorised Person or an Accredited Checker:

- (i) who is deceased;
- (ii) who is convicted of an offence involving fraud or dishonesty or an offence under this Act or the Regulations;
- (iii) who, in the opinion of the Authority, is no longer in a position to carry out the duties of accredited checker under this Act; or
- (iv) whose name has been included in the register by fraud or misrepresentation,

(b) An Accredited Checker who has contravened or failed to comply with Section 29.

Provided that the Authority shall not exercise its powers under sub-section 5 (a), (ii), (iii), (iv) or (b) unless an opportunity of being heard has been given to the Qualified Person, Authorised Person or Accredited Checker against whom the Authority intends to exercise its powers.

(6) Where the Authority cancels the registration of any Qualified Person, Authorised Person or Accredited Checker under sub-section (5), it shall remove the name and particulars of the person from the relevant Register and cancel any certificate issued to the person pursuant to sub-section (4) and the person shall, within 14 days of being notified of the removal, surrender to the Authority the said certificate and, if the person fails to do so, he shall be guilty of an offence.

(7) Any person whose application for registration under sub-section (1) is refused or deferred, or who is dissatisfied with the decision of the Authority made under sub-section 5 (a),(ii),(iii) (iv), or (b) may within 14 days of being notified in writing of the refusal or the decision, appeal under Section 82, to the Appeal Tribunal, against such refusal or decision.

Appeals.

Provided that if the appeal is against a decision made under sub-section (5), the name of the appellant shall remain in the relevant Register pending the determination of the appeal.

29. (1) At the time of the making by an Accredited Checker of a certificate under Section 49, the Accredited Checker shall have no professional or financial interest in the building works shown in the plans described in his certificate.

Independence of Accredited Checker.

(2) An Accredited Checker shall be regarded as having a professional or financial interest in any building works if -

- (a) he is or has been responsible for the design or construction of any of the building works in any capacity;
- (b) he or any nominee of his is a member, officer or employee of a company or other body which has a professional or financial interest in the building works; or
- (c) he is a partner or is in the employment of a person who has a professional or financial interest in the building works.

(3) For purposes of this Act -

- (a) a person shall be treated as having a professional or financial interest in the building works even if he has that interest only as trustee for the benefit of some other person; and
- (b) In the case of married people, the interest of one spouse shall, if known to the other, be deemed to be also an interest of the other.

(4) For the purpose of this Act -

- (a) involvement in the building works as an Accredited Checker; and
- (b) entitlement to any fee paid for his function as an Accredited Checker,

shall not be regarded as constituting a professional or financial interest.

30. No person shall be included in any of the Professionals' Registers, unless he has the relevant qualifications for inclusion in such Register and has paid the prescribed annual fees to retain his name in the relevant Register.

Applicant not possessing relevant qualifications not to be Registered.

31. In respect of every application for inclusion in any of the Professionals' Registers the Authority shall within 3 months from the date of the meeting of the Registration Committee at which the application was considered -

Processing of Applications for inclusion in Register.

- (a) on payment by the applicant of the prescribed fee, publish in the Authority Gazette and enter in the appropriate Register, as the case may be, the name of the applicant; or

- (b) inform the applicant that his application is deferred for a period not exceeding 12 months; or
- (c) refuse his application.

32. An application that has been deferred under Section 31 (b) shall, when it comes up for consideration again -

Deferred Application.

- (a) be accepted, so that the applicant is included in the appropriate list or registered, as the case may be, upon payment of the prescribed fee; or
- (b) be refused.

33. The Authority shall publish semi-annually in the Authority Gazette the names of Qualified Persons, Approved Persons, and Accredited Checkers.

Publication of Names of Persons in the Qualified Persons' Register, Approved Persons' Register and Accredited Checkers' Register.

34. The Authority may remove from any of the Professionals' Registers the name of any person who -

Removal from Register.

- (a) is deceased;
- (b) is not practicing the profession in respect of which the name of that person was included in the Register; or
- (c) is in default of paying annual subscription fee for a period exceeding 12 months.

35. (1) A person whose name is removed under Section 34 (b) or (c) may apply to the Authority in the prescribed form for the restoration of his name to the relevant register.

Applications for restoration of name.

(2) On receipt of an application under sub-section (1) the Authority may:-

- (a) restore the name of the applicant to the relevant Register;
- (b) require that the applicant pay any penalty that the Authority may impose for failure by the applicant to pay annual subscription fees on time;
- (c) defer the consideration of the application to the next meeting of the Authority called to consider such applications;
- (d) refuse to restore the name of the applicant in any of the Registers.

36. (1) It shall be the duty of an Accredited Checker to -

Duties of an Accredited Checker.

- (a) evaluate, analyse and review the structural design in the plans of any building works of the prescribed category and perform such original calculations with a view to determining the adequacy of the key structural elements of the building to be erected or affected by building works carried out in accordance with those plans; and
- (b) verify that key structural elements designed are consistent with the layout shown in the architectural plans and any amendment thereto.

(2) Without prejudice to sub-section (1), an Accredited Checker shall in carrying out his duties in relation to any plans of building works of the prescribed category:-

- (a) determine if the structural designs are in compliance with the Regulations;
- (b) check the design loading and, where applicable, wind loading;

- (c) check the standards and specifications of materials to be used in the building works;
- (d) ascertain the structural design concept used and identify the key structural elements;
- (e) analyse all key structural elements and the foundation system of the building to be erected or affected by building works carried out in accordance with those plans;
- (f) determine the stability of the structural frame;
- (g) check structural detailing; and
- (h) determine the adequacy of other aspects of the design which are peculiar to the building to be erected or affected by the building works and which are essential to the structural integrity of the building.

(3) It shall be further the duty of the Accredited Checker to notify the Authority of any contravention or non-compliance with the provisions of the Act and, or the Regulations.

Provided that nothing in this Act or the Regulations shall impose any such duty on an Accredited Checker in respect of any such contravention or non-compliance which he did not know and could not reasonably have discovered.

37. A Qualified Person appointed under this Act shall perform the same duties for which he is registered under the relevant Act of Registration which governs his profession.

**Duties of a
Qualified Person**

38. An Authorised Person shall be the single point of reference for the Authority on any building project and shall be responsible for the co-ordination of the various Qualified Persons involved in a building project.

**Co-ordination of
Qualified
Persons.**

39. (1) There shall be a Professionals' Disciplinary Board Panel, which shall be appointed by the Board of the Authority.

Establishment
and composition
of Professionals'
Disciplinary
Board Panel.

(2) The Professionals' Disciplinary Board Panel shall consist of not more than 35 members, of whom not more than -

- (a) 5 shall be architects whose names are included in schedule I;
- (b) 5 shall be civil or structural engineers whose names are included in schedule II;
- (c) 5 shall be quantity surveyors whose names are included in schedule III;
- (d) 5 shall be landscape architects whose names are included in schedule IV;
- (e) 5 shall be physical planners whose names are included in schedule V;
- (f) 5 shall be building services engineers whose names are included in schedule VI;
- (g) 5 shall be licensed land surveyors whose names are included in schedule VII;

of the Qualified Persons' Register.

(3) No person shall be appointed to be a member of the Panel referred to sub-section (2) unless he has been in practice in Kenya for a period of at least 10 years.

(4) Members of the Panel shall hold office for 3 years but shall be eligible for reappointment.

40. (1) For purposes of Section 39 the Authority may, from time to time, appoint a Disciplinary Board to inquire into complaints made against any Qualified Person, Authorised Person or Accredited Checker.

Professionals'
Disciplinary
Board

(2) Every such Board shall consist of -

- (a) 3 persons who are members of the Professionals' Disciplinary Board Panel at least 1 of whom shall be a member of the same profession as the person in respect of whom the inquiry is being held;
- (b) A representative of the Authority;
- (c) a legal adviser.

(3) The Chairman of a Disciplinary Board appointed under this Section shall be a member of the Board of the Authority.

(4) For purposes of any inquiry under sub-section (1), a Disciplinary Board appointed under this Section shall have all such powers as are vested in the High Court in relation to -

- (a) enforcing the attendance of witnesses and examining them on oath or otherwise;
- (b) compelling the production of documents;
- (c) ordering the inspection of premises; and
- (d) entering upon and viewing premises.

(5) The members of any Disciplinary Board appointed under this Section shall be remunerated at such rate as the Authority may determine from time to time or in any particular case.

41. (1) Where it appears to the Authority that a Qualified Person, an Authorised Person or an Accredited Checker has been convicted by a court of law of such offence or has been guilty of such negligence or misconduct as to -

- (a) render such person unfit to be in the relevant Professionals' Register as the case may be; or

Sanction against convicted or negligent registered person or registered person who has misconducted himself.

- (b) make the further inclusion of such person in the relevant Professionals' Register, as the case may be, prejudicial to the due administration of this Act; or
- (c) render such person deserving of censure,

the Authority may bring the matter to the notice of a Disciplinary Board appointed under Section 40.

(2) Where, after due inquiry, the Disciplinary Board is satisfied that a Qualified Person, an Authorised Person or an Accredited Checker has been convicted of such offence or has been guilty of such negligence or misconduct, such Board may -

- (a) order that the name of such persons be removed-
 - (i) from the relevant Professionals' Register, as the case may be;
 - (ii) and if his name appears in more than one Register, from all such Registers, either permanently or for such period as the Board deems fit; or
- (b) order that such person be reprimanded; and
- (c) order that its findings and order be published in the Authority Gazette.

(3) On an inquiry under this Section, a Disciplinary Board may make such order as it deems fit with regard to the payment of the costs of the inquiry and the costs of the Authority or of the Qualified Person, Authorised Person or Accredited Checker in respect of whom the inquiry is held.

42. (a) Any Qualified Person, Authorised Person or any Accredited Checker aggrieved by any order made against him under this Section may appeal under Section 82, to the Appeal Tribunal and upon any such appeal the Tribunal may confirm, reverse or vary the order of the Disciplinary Board.

Appeal

Provided that if the appellant's name has been ordered removed from any Register or Registers, his name shall remain in the Register(s) pending the determination of the appeal.

(b) The decision of the Tribunal on any such appeal shall be final.

PART V
REGISTRATION OF CONTRACTORS

43. (1) The Authority shall keep a Register, hereinafter referred to as the Register of Contractors in which shall be entered the names of all persons who are qualified to perform the duties of a Registered Contractor in accordance with the provisions of this Act.

Establishment of
the Register of
Contractors.

(2) The Register of Contractors shall contain the following schedules -

- (a) Schedule I, consisting of general building contractors;
- (b) Schedule II, consisting of civil contractors;
- (c) Schedule III, consisting electrical contractors;
- (d) Schedule IV, consisting of plumbing and drainage contractors;
- (e) Schedule V, consisting of heating, mechanical, ventilation and air conditioning contractors;
- (f) Schedule VI, consisting of labour contract contractors;
- (g) Schedule VII, consisting of fire fighting installation contractors.
- (h) Schedule VIII, consisting of any other contractors in the building industry not specified in any of the above schedules.

(3) Every applicant for inclusion in the Register of Contractors shall submit his application, to the Authority.

(4) An applicant referred to in sub-section (3) shall pay -

- (a) a non-refundable application fee to be prescribed by the Authority; and

- (b) a licence fee on admission and a fee for the renewal of his licence.

(5) (a) In respect of every application referred to in sub-section 3, the Authority shall within 3 months from the date of receipt of the application -

- (i) inform every successful applicant to pay the licence fee within a specified period, and upon payment of such fee, his name shall be entered in the appropriate schedule and the Authority shall cause the successful applicant's name to be published in the Authority Gazette, or
- (ii) inform the applicant that his application has been deferred for a period not exceeding 6 months; or
- (iii) refuse the application.

- (b) In considering an application for inclusion in the Register of Contractors, the Authority shall have regard to the qualifications, capacity and experience of the applicant or of those persons employed by him who will supervise and carry out the inspection of building works.

(6) Where an application referred to in sub-section 3 is deferred or refused, the applicant may appeal under Section 82, against the decision to defer or the refusal.

(7) The Authority shall publish semi annually in the Authority Gazette a list of the names of the persons appearing in each schedule in the Register of Contractors.

(8) The Authority may remove from the Register the name of any registered contractor who ceases, for any reason, to engage in the respective works for which he is registered.

Removal of
name from
Register of
Contractors.

(9) A name included or retained in or restored to the Register of Contractors under this Section shall be removed by the Authority with or without notice to the person concerned if the Authority has not after the date of expiry of the relevant registration, received the prescribed annual fee for the renewal of the licence for a period exceeding six months since the said fee became payable and any such removal shall be effective from the date of expiry of that registration.

(10) A person whose name is removed under sub-section (8) may, within 12 months from the date the relevant registration expires, apply for the restoration of his name to the Register.

(11) An application under sub-section 10 shall be accompanied by the prescribed fee for such restoration and the appropriate license fee for such retention.

(12) Where the Authority allows an application made under sub-section (3) or (8) it shall -

- (a) issue to the applicant as regards the relevant registration a contractors' licence in respect of that registration and shall enter his name in the appropriate schedule; and
- (b) in the case of an application under sub-section (10), restore the name of the applicant to the Register.

(13) A registration under this section shall -

- (a) be effective, in the case of -
 - (i) an inclusion in or restoration to the Register of a person's name, from the date of such inclusion or restoration; and
 - (ii) a retention or further retention of a person's name in the Register, from the date of the expiry of the previous registration; and
- (b) expire, whether or not the person's name is removed from the relevant register, on the expiry of the period specified in the particular case in the application for registration as the period for which the name of the applicant is to be retained or further retained in a register, and any reference to the expiry of a registration shall be construed accordingly.

44. (1) There shall be a Registered Contractors' Disciplinary Board Panel, which shall be appointed by the Board.

Registered
Contractors
Disciplinary
Board Panel..

(2) The Registered Contractors' Disciplinary Board Panel shall consist of not more than 42 persons of whom not more than -

- (a) 3 shall be architects whose names appear in Schedule I in the Qualified Persons' Register;
- (b) 3 shall be civil or structural engineers whose names appear in Schedule 11 in the Qualified Persons' Register;
- (c) 3 shall be quantity surveyors whose names appear in Schedule 111; in the Qualified Persons' Register;
- (d) 3 shall be land scape architects whose names appear in Schedule 1V in the Qualified Persons' Register;

- (e) 3 shall be physical planners whose names appear in Schedule V in the Qualified Persons' Register;
- (f) 3 shall be building services engineers whose names appear in Schedule V1 in the Qualified Persons' Register;
- (g) 3 shall be licenced land surveyors whose names appear in Schedule V11 in the Qualified Persons' Register;
- (h) 3 shall be general building contractors whose names appear in Schedule 1 in the Register of Contractors;
- (i) 3 shall be civil contractors whose names appear in Schedule 11 in the Register of Contractors;
- (j) 3 shall be electrical contractors whose names appear in Schedule 111 in the Register of Contractors;
- (k) 3 shall be plumbing and drainage contractors whose names appear in Schedule 1V in the Register of Contractors;
- (l) 3 shall be heating, mechanical, ventilation and air conditioning contractors whose names appear in Schedule V in the Register of Contractors;
- (m) 3 shall be labour contract contractors whose names appear in Schedule V1 in the Register of Contractors;
- (n) 3 shall be fire fighting installation contractors whose names appear in Schedule V11 in the Register of Contractors.

(3) The members of the Registered Contractors' Disciplinary Board Panel shall hold office for 3 years but shall be eligible for reappointment.

45. (1) For purposes of Section 44, the Authority may from time to time, appoint a Disciplinary Board to hear and determine complaints against registered contractors.

(2) Every Board appointed to hear and determine any proceedings under sub-section (1) against a registered contractor shall consist of –

- (a) 3 contractors who are members of the Registered Contractors' Disciplinary Board Panel appointed under Section 44;
- (b) 4 professionals who are members of the Disciplinary Board Panel appointed under Section 44;
- (c) the Authority's representative; and
- (d) a legal adviser.

(3) The chairman of a Disciplinary Board appointed under sub-section (1) shall be the Authority representative on the Board.

(4) For purposes of any proceedings under sub-section (1), a Disciplinary Board appointed under this Section shall have all such powers as are vested in the High Court in relation to-

- (a) enforcing the attendance of witnesses and examining them on oath or otherwise;
- (b) compelling the production of documents;
- (c) ordering the inspection of premises; and
- (d) entering upon and viewing premises.

(5) The members of any Disciplinary Board appointed under this Section shall be remunerated at such rate as the Authority may determine from time to time or in any particular case.

46. (1) Where it appears to the Authority that a registered contractor has been convicted by a court of law of such offence, or has in the carrying out of any works in respect of his appointment acted in a manner prejudicial to the administration of this Act or has been guilty of such negligence or misconduct, as to -

Sanction for convicted or negligent registered contractor or a registered contractor who misconducts himself.

- (i) render such contractor unfit to be on the Register;
- (ii) make the further inclusion of the contractor in the Register prejudicial to the due administration of this Act: or
- (iii) render the Contractor deserving of censure, the Authority may bring the matter to the notice of a Disciplinary Board appointed under Section 45.

(2) Where, after due inquiry, the Disciplinary Board is satisfied that the contractor has been convicted of such offence or has been guilty of such negligence or misconduct, such Board may -

- (a) order that the name of the contractor be removed from the Register of Contractors, either permanently or for such period as the Board deems fit: or
- (b) order that the contractor be reprimanded; and
- (c) ensure that its decision is published in the Authority Gazette.

(3) On an inquiry under this Section, a Disciplinary Board may make such order as the Board deems fit with regard to the payment of the costs of the inquiry or with regard to the payment of the costs of the Authority or of the contractor in respect of whom the inquiry is held.

(4) Any registered contractor aggrieved by any order made against him under this Section may appeal under Section 82, to the Appeal Tribunal and upon any such appeal the Tribunal may confirm, reverse or vary the order of the Disciplinary Board:

Provided that if the Disciplinary Board had ordered the removal of the appellant's name from the Register of Contractors, the appellant's name shall remain in the said Register pending the determination of the appeal.

(5) Any registered contractor aggrieved by the decision of the Appeal Tribunal may appeal to the High Court, provided that if the appeal is against an order for the removal of his name from the Register of Contractors, the appellant's name shall remain in the said Register pending the determination of the appeal.

(6) The decision of the High Court in the matter shall be final.

PART VI
CONTROL OF BUILDING WORKS

47. This Part shall not apply to single storey vernacular houses constructed traditionally by those in the rural areas for their own use.

Application to traditional and vernacular buildings etc.

48. (1) Except as otherwise provided in this Act, no person shall commence or carry out, or permit or authorise the commencement or carrying out of, any building works unless -

Prohibition of building works without approval of plans and permit.

- (a) all the plans of the building works have been approved by the Authority; and
- (b) there is in force a permit granted by the Authority to carry out the building works shown in the approved plans of the building works.

(2) Any person who contravenes or fails to comply with sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

(3) Subject to sub-section (1), neither the approval of any plans nor the consent to the commencement of any building works or street works shall be deemed -

- (a) to confer any title to land;
- (b) to act as a waiver of any term in any lease or licence; or
- (c) to grant any exemption from or to permit any contravention of any of the provisions of this Act, or any other enactment.

49. (1)

Subject to the provisions of this Act, the person for whom any proposed building works are to be commenced or carried out may apply to the Authority in the prescribed form for approval of the plans of the building works and such application shall be accompanied by -

Application for approval of building plans.

- (a) the prescribed fee;
- (b) the plans of the building works prepared in accordance with the Regulations;
- (c) unless otherwise prescribed, a certificate by an Accredited Checker where applicable in respect of the plans relating to the structural elements of the building works stating that, to the best of his knowledge and belief, the plans so checked do not show any inadequacy in the key structural elements of the building works carried out in accordance with those plans; and
- (d) such other documents as may be prescribed in the Regulations.

(2) The Authority shall cause all plans which meet the requirements of sub-section (1) to be published in the Authority Gazette indicating the following:-

- (a) reference number of the applicant;
- (b) the street name;
- (c) name of the area;
- (d) the land reference number;
- (e) gross area and height of the building;
- (f) the nature of the development.

50. Upon receipt of an application under Section 49 above, the Authority may, before making a decision, by notice to be published in the Authority Gazette and in the local media, invite objections, within a specified period, from any person or persons likely to be adversely affected by the proposed building works.

Notice inviting objections.

51. (1) The Authority may within a period of thirty working days from the date of receipt of an application -

Approval of Plans.

- (a) approve, subject to terms and conditions it may impose, any one or more of the plans submitted to it under Section 49; or
- (b) in writing direct the applicant to comply, within such period as may be specified in the direction, with such requirements as the Authority may specify for the purpose of ensuring compliance with provisions of this Act and the Regulations.

(2) Subject to the provisions of sub-section (1) (a), any person, for whom building works are to be commenced shall at least fourteen days, prior to the commencement of those works, notify the Authority in writing, the date of commencement.

(3) If the person to whom any written direction is given under sub-section (1) fails to comply with the requirements specified in the direction within the time specified therein, the Authority may reject the plans;

(4) Where the plans of any proposed building works have been approved by the Authority and the person for whom the building works are or are to be carried out intends to depart or deviate from the approved plans, that person shall apply to the Authority for its approval of the plans showing the

proposed departure or deviation and such application shall be accompanied by the latter plans and, unless otherwise prescribed, by a certificate by an Accredited Checker where applicable in respect of such of the latter plans relating to the proposed building works stating that, to the best of the knowledge and belief of any Accredited Checker, those plans do not show any inadequacy in the key structural elements of the building to be erected or affected by the building works carried out in accordance with those plans.

(5) Any approval granted in respect of building works under this Section shall automatically lapse in any of the following cases -

- (a) if the building works are not commenced within a period of two years from the date of the said approval;
- (b) if the building works are suspended for a continuous period of more than 6 months;
- (c) if the approval lapses pursuant to this Act.

52. (1) The Authority may refuse to give its approval of any plans of building works in any of the following cases -

Grounds of refusal to approve plans of building works.

- (a) if the plans are not such as are prescribed by this Act and the Regulations or are not such as it may have required under this Section;
- (b) if it has not received application for their approval or if any such application does not contain the particulars required therein;
- (c) if the carrying out of the building works shown

- (e) if it has not received such other documents as are prescribed by Regulations;
- (f) if such fees as are prescribed by the Regulations have not been paid;
- (g) if the building works consist of, or any part thereof involves, the construction, formation or laying out of any means of access or other opening, not being a street or access road, to or from any street, and the place at or manner in which such means of access or other opening opens on to the street is, in its opinion, such as to be dangerous or likely to be dangerous or prejudicial to the safety or convenience of traffic using the street, or which may be expected to use the same;
- (h) if in its opinion, it is necessary for it to have further particulars of such plans or of the building works shown thereon or, where all the plans prescribed by the Regulations have not been submitted, to have one or more of the other plans prescribed by the Regulations, to enable it fully to consider such plans;
- (i) if any further particulars or other plans delivered to it, upon its refusal, under sub-section (1) (h), to give its approval to any plans, are not to its satisfaction;
- (j) if it appears to it that the demolition of a building that requires to be demolished before the building works shown on such plans can be carried out-

- (i) will cause, or is likely to cause, a total or partial collapse of any adjoining or other building, or
 - (ii) will render, or is likely to render, any adjoining or other building so dangerous that it will collapse, or is likely to collapse, either totally or partially, and it is not satisfied that the collapse or the likelihood of the collapse, or such danger or the likelihood of such danger to the building, can be avoided;
 - (iii) will render, or is likely to render, an adjoining or other building, street or natural, formed or man-made land so dangerous that it will collapse, or be likely to collapse, either totally or partially, and it is not satisfied that the collapse or the likelihood of the collapse, or such danger or the likelihood of such danger to the building, street or land, can be avoided;
- (k) in the case of plans showing site formation works, piling works, excavation works or foundation works, it appears to it that the carrying out of such works-
- (i) will cause, or is likely to cause, a total or partial collapse of any adjoining or other building, street or natural, formed or man-made land, or

- (ii) will render, or is likely to render, an adjoining or other building, street or natural, formed or man-made land so dangerous that it will collapse, or be likely to collapse, either totally or partially, and it is not satisfied that the collapse or the likelihood of the collapse, or such danger or the likelihood of such danger to the building, street or land, can be avoided;
- (l) it appears to it that the proposed user of the building to which the plans relate would contravene the planning provisions in this Act and, or the Regulations;
- (m) in the case of building works to be carried out on a site which in its opinion ought to be provided with streets having adequate connexion to a public street, it is not satisfied that such streets are or will be provided;
- (n) in the case of building works to be carried out in an area of sloping ground the building is one which in its opinion must be capable of resisting landslip debris and it is not satisfied that the plans provide adequately for that capability.

(2) The Authority may refuse to give its approval of any plans of street works in any of the following cases -

Grounds of refusal to approve plans of street works.

- (a) if the plans are not such as are prescribed by this Act and the Regulations;
- (c) if the carrying out of the street works shown

- (b) if it has not received an application for their approval or any such application does not contain the particulars required therein;
- (c) if the carrying out of the street works shown thereon would contravene the provisions of this Act, the Regulations or any other enactment;
- (d) if in the case of an access road, the place at or manner in which the access road opens on to a street is, in its opinion, such as to be dangerous or likely to be dangerous or prejudicial to the safety or convenience of traffic using the street or access road, or which may be expected to use the same;
- (e) if such fees as are prescribed by the Act and, or the Regulations have not been paid;
- (f) if in the opinion of the Authority, it is necessary for it to have further particulars of such plans to enable it fully to consider such plans;
- (g) if any further particulars delivered to it, upon its refusal under sub-section (2) (f) to give its approval to any plans, are not to its satisfaction.

(3) The Authority may refuse to give its consent to the commencement of any building works or street works in any of the following cases -

- (a) if it has not received and given its approval to all the plans thereof prescribed by the Regulations;

Grounds of refusal to give consent to commence building works or street works.

- (b) if it has not received such other documents as may be prescribed by the Regulations;
- (c) if any condition or requirement imposed by it under Section 51 in respect of the building works or street works has not been complied with to its satisfaction;
- (d) if such fees as are prescribed by the Regulations have not been paid;
- (e) if a period exceeding 2 years has elapsed since the approval of any of the prescribed plans in respect of the building works or street works;
- (f) if the carrying out of the works will cause, or is likely to cause, a total or partial collapse of any adjoining or other building, street or natural, formed or man-made land,
- (g) if the carrying out of the works will render, or is likely to render, any adjoining or other building, street or natural, formed or man-made land so dangerous that it will collapse, or be likely to collapse, either totally or partially, and it is not satisfied that the collapse or likelihood of the collapse, or such danger or likelihood of such danger to the buildings, street or land, can be avoided;
- (h) if in its opinion the approval in the particular circumstances is inconsistent with the objectives of this Act, the Regulations or any other enactment.

53. (1) Where-

Provision for
urgent work.

- (a) any accident or emergency renders it necessary to shore up, underpin, demolish or otherwise make safe any existing building, or any natural, formed or man-made land, or to carry out any street works immediately; and
- (b) notice in the prescribed form of such work and of the accident or emergency which necessitated the same is given to the Authority by the building owner, or the owner of the land or other person who under this Act is under an obligation to maintain the land, or by the person for whom the street works are being, or are to be, carried out either before such work is authorized by him or within 48 hours after it has been commenced whichever is the earlier,

such work may be commenced without obtaining the Authority's consent provided that the said owner or the said person who, under this Act is under obligation to maintain the land or the person for whom the urgent works have been executed, shall, within 48 hours of the completion of those works, notify the Authority in writing of the nature and extent of the urgent works so executed.

(2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Ksh.3 millions and in default to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

(3) If the Authority considers that the emergency no longer exists it may by order in writing served on the building owner, or the owner of the land or other person referred to in sub-section (1), or person for whom the street works or building works are being carried out require that the street works or building works cease until consent is obtained.

54. (1) Subject to the provisions of this Act, every person for whom any building works are or are to be carried out shall appoint an Authorised Person in respect of those works.

Appointment and
duties of
Authorised
Persons.

(2) If any Authorised Person appointed under sub-section (1) becomes unwilling or unable, whether by reason of the termination of his appointment or for any other reason, to carry out his duties under sub-section (4) -

- (a) the Authorised Person shall, within 14 days of his ceasing to carry out his duties, notify the Authority in writing.
- (b) the contractor shall cease or shall not commence the building works until the person for whom the building works are being or are to be carried out appoints another appropriate Authorised Person in respect of those building works.

(3) Where the person for whom any building works are being or are to be carried out appoints an Authorised Person pursuant to sub-section (2) (b), he shall, within 7 days, notify the Authority of the appointment.

(4) Every Authorised Person appointed under this Section in respect of building works shall -

- (a) take all reasonable steps and exercise due diligence in supervising and inspecting the building works to ensure that the building works are being carried out in accordance with the provisions of this Act, the Regulations, the plans approved in respect thereof by the Authority and any terms and conditions imposed by the Authority;
- (b) in the absence of a site engineer, take all reasonable steps and exercise due diligence in giving immediate supervision to carrying out of concreting, piling, prestressing, tightening of grip bolts or other critical structural works to ensure that the critical structural works of the building works are being carried out in accordance with the provisions of this Act, the Regulations, the plans approved in respect thereof by the Authority and with any terms and conditions imposed by the Authority;
- (c) notify the Authority of any contravention of the provisions of this Act or Regulations in connection with those building works;
- (d) keep and maintain at the premises on which building works are carried out such documents, books and records as may be prescribed in the Regulations;
- (e) submit to the Authority at the prescribed times such reports and certificates as may be prescribed in the Regulations;

- (f) notify the Authority if the building works have been suspended for a period exceeding six months; and
- (g) supply to the site engineer, site architect and contractor of building works a copy of every plan of those building works approved by the Authority

(5) If any person contravenes or fails to comply with sub-section (2) (b), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 10% of the Authority's estimated cost of the works.

(6) Any Authorised Person who contravenes or fails to comply with sub-sections (4) (a), (b), (c), (d) or (e) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 10% of his professional fees.

(7) Any Authorised Person or person for whom building works are or are to be carried out, as the case may be, who, without reasonable excuse, contravenes or fails to comply with sub-sections (2) (a), (3) or (4) (f) or (g) shall be guilty of an offence.

55. (1) Where the relevant works or any part thereof cannot be carried out by reason of the objection or want of agreement of any person whose property would be entered upon, cut through or interfered with by or for the purpose of the works, the person in connexion with whose building works any plans for the relevant works have been approved or, as the case may be, any of its successors may apply to the Authority for an order under this Section authorizing him to carry out the relevant works.

Authorisation to carry out relevant works in case of objection etc., by persons whose property is affected.

(2) Notice in writing of the application, of the place where it can be inspected and of the time, which shall be a period of 30 days commencing from the date of service of the notice, within which objections to the relevant works may be made to the Authority, shall be served by him on every person, not a party to the application, whose property is proposed to be entered upon, cut through or interfered with:

(3) The Authority shall consider every objection to the relevant works made to it within the time specified in the notice and not withdrawn and, by order in writing, may, subject to such conditions as it considers necessary, authorize with or without alteration the carrying out of the relevant works.

(4) Notice in writing of any authorization under sub-section (3) or of any refusal so to authorize shall be served by the Authority on every person required to be served with a notice under sub-section (2).

(5) The person authorized under sub-section (3) shall have authority to carry out the relevant works and for that purpose to enter upon any land specified in the authorization.

56. (1) Where the structural elements of any building works are required to be carried out under the full-time supervision of a site supervisor, the Authorised Person appointed under Section 54 in respect of those building works shall appoint one site supervisor in respect of the structural elements of those building works.

Appointment and duties of site supervisor.

(2) Where the critical structural works of any building works are required to be carried out under the immediate supervision of a site supervisor or Qualified Person, the Authorised person appointed under Section 54 in respect of the building works may appoint one or more site supervisors in respect of the critical structural works of those building works.

(3) No person shall be appointed as a site supervisor in respect of any building works for the purposes of this Act unless he possesses the adequate practical experience and qualifications acceptable to the Authority.

(4) If a site supervisor appointed in respect of any building works becomes unwilling or unable, whether by reason of the termination of his appointment or for any other reason, to carry out his duties under sub-section (5)-

- (a) the site supervisor shall, within 7 days of his ceasing to carry out such duties, notify the Authority in writing of that fact; and
- (b) the Authorised Person appointed under Section 54 in respect of those building works shall -
 - (i) appoint another site supervisor in his stead; and
 - (ii) notify the Authority of such appointment within 7 days from the date of the appointment.

(5) Every site supervisor of building works shall take all reasonable steps and exercise due diligence in giving -

- a) in relation to building works which require full-time supervision, to the carrying out of the structural elements of the building works; or

- (b) in relation to building works which require immediate supervision to the carrying out of the critical structural works of the building works, to ensure that the structural elements or critical structural works, as the case may be, of the building works are carried out in accordance with the plans of the building works supplied to him in accordance with Section 54 (4) (g) by an Authorised Person and with any terms and conditions imposed by the Authority.

(6) If any site supervisor contravenes or fails to comply with sub-section (5), he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 12 months.

(7) Any site supervisor or Qualified Person who, without reasonable excuse, contravenes or fails to comply with sub-section (4) (a) or (4) (b) (ii), respectively, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 12 months.

57. (1) Subject to the provisions of sub-section (2) every person for whom building works are to be carried out shall appoint a contractor in respect thereof.

Appointment and
duties of
contractors.

(2) If any contractor appointed in respect of building works becomes unwilling to act or unable, whether by reason of the termination of his appointment or for any other reason, to carry out his duties under sub-section (1)-

- (a) the contractor shall, within 14 days of his ceasing to carry out his duties, notify the Authority of the fact; and
- (b) the person for whom building works are to be or are being carried out shall appoint another contractor in his stead.

(3) Where the person for whom building works are to be or are being carried out appoints another contractor under sub-section (2) (b), he shall within 7 days thereafter notify the Authority of the appointment.

58. (1) Subject to sub-section (3), the Authorised Person appointed under Section 54 in respect of the structural elements of any building works shall carry out or cause to be carried out such tests of or in connection with the building works as may be prescribed or required by the Authority.

Tests of or in connection with building works.

(2) Any tests that may be prescribed, or required to be carried out, under sub-section (1) shall be carried out in such manner and at such places and times as may be prescribed in the Regulations.

(3) The Authority may, on application in relation to any particular building works, give a direction waiving the operation of sub-section (1) in relation to those building works if it is satisfied that the operation of sub-section (1) in relation to that particular case would be unreasonable.

Waiver of the requirement to carry out tests of or in connection with building works.

(4) An application under sub-section (3) shall be accompanied by such particulars as may be prescribed in the Regulations.

(5) If an Authorised Person fails to comply with sub-section (1), the Authority may, by order in writing served on the Authorised Person, site supervisor and contractor of the building works and the person for whom the building works are carried out, require the building works to cease until the order is withdrawn.

(6) Without prejudice to the right of the Authority to exercise its power under sub-section (5), any Authorised Person who fails to comply with any requirement under sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 3 million or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

59. (1) Where in the opinion of the Authority any building has been erected, or any building works are or have been carried out, in contravention of the provisions of this Act or the Regulations, the Authority may by order in writing require -

Order for demolition, removal, etc., of unauthorised building or building works.

- (a) the cessation of the building works until the order is withdrawn;
- (b) the demolition of the building; or
- (c) such work or alteration to the building or building works to be carried out as may be necessary to cause the same to comply with the provisions of the Act and the Regulations or otherwise to put an end to the contravention thereof,

and, in every case, the order shall give notice to the person to whom it is directed that if he fails to comply with the said

order, the Authority may carry out the works specified in the order and the person may forfeit any materials resulting from the carrying out of such works, and the order shall specify -

- (i) the manner in which the demolition, work or alteration specified in the order is to be carried out;
- (ii) the time within which the demolition, work or alteration shall commence;
- (iii) the time within which the demolition, work or alteration shall be completed; and
- (iv) that the demolition, work or alteration shall be carried out with due diligence to the satisfaction of the Authority.

(2) An order made under sub-section (1) shall be served-

- (a) where a building has been erected, on the owner of the building personally or through registered post to his last known address or by affixing the notice on the building; or
- (b) where building works are being carried out, on the person for whom the works are carried out and the contractor carrying out the building works.

(3) If an order made under sub-section (1) is not complied with, the Authority may demolish, remove or alter, or cause to be demolished, removed or altered, such building or building works or take such other steps as appear to the Authority to be necessary and may recover all expenses reasonably incurred by it in the exercise of its powers under this Section from the person in default and the person may forfeit any materials resulting from the carrying out any works under this sub-section.

(4) Without prejudice to the right of the Authority to exercise its powers under sub-section (3), if any person on whom an order made under sub-section (1) is served fails to comply with the order, that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.3 Million or to imprisonment for a term not exceeding 6 months or to both.

60. (1) Upon receipt of an application in relation to any particular building works, for waiver of any of the requirements of the Regulations and if it is satisfied that such waiver is in the national interests and is not likely to compromise the safety of anyone, the Authority may modify or waive, subject to such terms and conditions as it may impose, any of the requirements of the Regulations.

Modification or
waiver of
Regulations.

Provided that the Authority shall, within a period of seven days from the date of the grant of the waiver, publish or cause the same to be published in the local media.

(2) Every application under sub-section (1) shall be made to the Authority by or on behalf of the person for whom building works are being or are to be carried out and shall be in such form as may be required by the Authority and shall

state the nature and extent of and reasons for the proposed modification or waiver of those requirements and shall be accompanied by such plans and other particulars as may be prescribed.

(3) Any person who contravenes or fails to comply with any term or condition of an approval of plans of any building works, or any term or condition of a permit to carry out any building works, granted to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.5 million or to imprisonment for a term not exceeding 12 months or to both.

61. (1) Every Authorised Person shall retain or shall cause to be retained in safe custody for a period of at least seven years all the documents related to the building works to which he has been appointed.

Custody and
production of
documents.

Provided that if at the expiry of the seven year period commencing from the date of completion of the building works, he destroys the said documents, the documents to be destroyed shall not include the approved drawings and calculations.

(2) Every Authorised Person who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) Any person who, being required by or by virtue of this Act or the Regulations to make or produce to the Authority any plan, declaration, certificate, report, record, notice or other document, or who, for the purpose of obtaining any licence, permit, waiver or approval from the Authority under this Act or the Regulations or for the purpose of establishing any fact relevant to the administration of this Act or the Regulations -

- (a) makes or produces any plan, declaration, certificate, report, record, notice or other document which is false in material particular; or
- (b) produces any plan, declaration, certificate, report, record, notice or other document which is false in material particulars, or has not been made by the person by whom it purports to have been made, or has been in any way altered or tampered with,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 3 million or to imprisonment for a term not exceeding 12 months or to both.

62. (1) Except as otherwise provided in this Act, no building or part of a building where any building works have been carried out, shall be occupied in any way unless the Authorised Person together with the contractor and, where applicable, the site supervisor have each signed the prescribed certificate that the building works are complete and have been so completed in accordance with the approved plans and no element of the building works contravenes the requirements of this Act and the Regulations and the Authority has issued a certificate of statutory completion in respect of that building or part of the building:

Occupation of building.

Provided that nothing in this Section shall prohibit-

- (a) the occupation by any person of any building or part thereof for the sole purpose of preventing any damage to the building or part thereof or any theft of any property therein; or

- (b) the occupation by any person of any building in respect of which a temporary occupation permit has been granted.

(2) The Authority may, on an application in the prescribed manner in relation to any building, grant a temporary occupation permit in respect of the building subject to such written directions as the Authority may specify and, in particular, those written directions may-

Temporary
occupation
permit.

- (a) limit the period for which the temporary occupation permit is granted;
- (b) require such work or alteration to the building to be carried out as may be specified by the Authority; and
- (c) provide for the completion of the work or alteration before the expiration of a specified period.

(3) A temporary occupation permit shall be for such period and purpose as the Authority may determine and shall only be prima facie evidence that a building is suitable for occupation and is and shall not be taken to be evidence of compliance with the provisions of this Act, the Regulations or any other written law.

(4) The Authority may amend, suspend or, in the event of failure to comply with any written direction issued under sub-section (2), revoke any temporary occupation permit.

(5) Any person who contravenes or fails to comply with sub-section (1) or any written direction issued under sub-section (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 3 million or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

(2) Upon receipt of a notice issued under subsection (1) the

63. (1) Notice shall be given to the Authority of any intended material change in the use of a building by the person intending to carry out or authorizing the carrying out of such change.

(2) Upon receipt of a notice issued under sub-section (1) the Authority shall publish or cause the same to be published in the Authority Gazette.

(3) Where the Authority has given its consent pursuant to a notice under subsection (1), and the use of a building has materially changed, the owner of the building shall display or cause to be displayed, in a conspicuous place on the building a notice stating the current use of the building and the date when the change was effected.

(4) Where in the opinion of the Authority any building is not suitable by reason of its construction or location for its present or intended use, it may by order in writing served on the owner or occupier -

- (a) within 1 month of the receipt of a notice under sub-section (1) prohibit such intended use; or
- (b) require the owner or occupier to discontinue such present use of the building within 1 month from the date of service of the order:

Provided that the Authority may permit by notice in writing such building works as it deems necessary for the purpose of rendering the building suitable for its present or intended use.

(5) The use of a building shall be deemed to be materially changed -

- (a) where the carrying out of building works for the erection of a building intended for such use would have contravened the provisions of this Act; or
- (b) where the Authority could have refused to give approval to plans of such building works under Section 52.

(6) Any person who, except with the permission of the Authority, uses, or permits a building or any part thereof to be used otherwise than for the purpose specified in the approved plan thereof, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ksh.3 million and in default 12 months imprisonment or to both such fine and imprisonment.

PART VII REGISTRATION OF BUILDINGS

64. The Authority shall keep and maintain a Register hereinafter referred to as the "Register of Buildings" in which shall be entered the prescribed particulars of all buildings which comply with the requirements of this Act and which have been issued with an occupation certificate and the absence of the particulars of any building from the Register shall be prima facie evidence that that building is not so registered and, or does not comply with the requirements of this Act.

Creation of
Register of
Buildings.

65. The Register of buildings shall be a public document and any person, upon payment of a fee to be prescribed by the Authority, may apply for a search certificate of any registered building.

Register of
Buildings to be a
public document.

66. The Register of Buildings shall in respect of each building contain the following particulars:

Particulars to be
included in the
Register of
Buildings.

- (a) Registration number allocated by the Authority;
- (b) The Land Registration Number;
- (c) The physical location of the building;
- (d) The size of the land on which the building is situated;
- (e) The limitation of use;
- (f) The last Inspection date;
- (g) The next inspection date;
- (h) The building's plan approval number;
- (i) The name of the owner;
- (j) The area of the building in square metres;
- (k) Height of the building in storeys or floors;
- (l) Date of registration,
- (m) Any other particulars that the Authority may by notice require to be contained in the Register.

67. Upon registration of a building pursuant to an application under Section 64, the Authority shall issue to the applicant, a certificate of registration in the form prescribed in the Regulations, provided that the owner of any registered building, shall in writing, notify the Authority of any change in the particulars contained in the registration certificate issued in respect of a particular building.

Notice of change of particulars of registered building.

68. All Applications for registration of a building shall be submitted by a Qualified Person, within 7 days from the date of the issuance of the occupation certificate provided that the Authority shall register the building within 14 days from the date of receipt of the application under this Section.

Application for registration of a building.

69. An application for registration of a building shall be accompanied by the following-

Requirements for Registration of buildings.

- (a) Registration fees which shall be by order be prescribed by the Authority;
- (b) all the approved plans of the building;
- (c) occupation certificate for the building;
- (d) any other document or requirements which the Authority by order in the Authority Gazette may require.

70. Any person who contravenes any of the provisions of this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.500,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Penalty.

PART VIII

INSPECTION OF BUILDINGS

71. For the purpose of this Part, a building which is physically connected with another building -

Connected Buildings.

- (a) shall, although so connected, be treated as a separate building if it is so constructed as to be capable of remaining in position and being used independently of the other building or as to require only minor modification as to render it so capable; and
- (b) shall not be treated as other than a separate building merely because it is so connected with the other building at or below ground level or by means of a bridge or similar structure whether affording access or accommodation to both.

72. (1) The owner of a building shall cause the building to be inspected after the fifth year commencing from the date the last certificate of statutory completion was issued in respect of the building and thereafter at intervals of not more than 5 years from the completion of the last inspection of the building under this section;

Periodic inspection of building.

Provided that any owner of a building who fails to cause the building to be inspected within the prescribed period shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 500,000 or to imprisonment for a term not exceeding six months or to both.

(2) Where the owner of a building fails to cause the building to be inspected in accordance to sub-section (1) the Authority shall, by notice served on the owner of the building require the building to be inspected;

73. (1) Notwithstanding the provisions of Section 72 the Authority may at any time by notice served on the owner of a building require the building to be inspected.

Notice of
inspection.

(2) Every owner of a building to which this Part applies shall, on receipt of a notice under sub-section (1), cause the building to be inspected in the prescribed manner by a Qualified Person appointed by the owner and if the notice is not complied with, the Authority may inspect the building or cause the building to be so inspected by a Qualified Person appointed by it and may recover all expenses reasonably incurred by it in the exercise of its powers under this section from the owner of the building.

Provided that when necessary, the Qualified Person shall engage such other Qualified Persons as may be required to check on any other defects and those other Qualified Persons shall each personally attest their findings in the inspection report.

(3) Any Qualified Person who is appointed by the owner of a building or the Authority under sub-section (2) to carry out an inspection of a building under this section shall be entitled at all reasonable times to full and free access to the building and any part thereof that he is required to inspect and any person who hinders, obstructs or delays a Qualified Person in the performance of his duty shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 100,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(4) A Qualified Person appointed under sub-section (2) to carry out an inspection of a building under this section shall -

- (a) carry out the inspection in the manner prescribed in the Regulations;
- (b) on completion of the inspection, prepare and sign a report of the result of the inspection; and
- (c) serve a copy of the report on the Authority within such period as the Authority may specify in the notice under sub-section (1)

(5) Without prejudice to the right of the Authority to exercise its powers under sub-section (3), any owner of a building who contravenes or fails to comply with a notice under sub-section (1) shall be guilty offence and shall be liable on conviction to a fine not exceeding Kshs.500,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(6) Any Qualified Person who contravenes or fails to comply with sub-sections (4) (a), (b) or (c) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.500,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(7) The Authority may by order provide for the application of this Section with such adaptations or modifications as may be specified therein to buildings in respect of which no certificate of fitness for occupation has been issued under the Regulations made under any previous Acts or Regulations which are now repealed or superseded by this Act.

(8) A Qualified Person shall be personally liable for any injury, loss or damage occasioned to any person resulting from any defect in a building inspected by him and for which defect he ought to have detected on reasonable examination of the building.

74. (1) A Qualified Person shall not be appointed by the Authority or owner of a building for the purpose of carrying out an inspection of a building under Section 73 if the said Qualified Person has any professional or financial interest in the building.

Independence of
Qualified Person

(2) A Qualified Person shall be regarded as having a professional or financial interest in any building if -

- (a) he has been responsible for the design or construction of the building or any part thereof in any capacity;
- (b) he or any nominee of his is a member, officer or employee of a company or other body which has a professional or financial interest in the building or any part thereof;
- (c) he is a partner or is in the employment of a person who has a professional or financial interest in the building or any part thereof; or
- (d) he holds any interest in the building or any part thereof;
- (e) he occupies the building or any part thereof.

(3) For the purpose of this section-

- (a) a person shall be treated as having a professional or financial interest in the building even if he has that interest only as trustee for the benefit of some other person; and

- (b) in the case of married people, the interest of one spouse shall, if known to the other be deemed to be also an interest of the other.

(4) For the purpose of this Section -

- (a) involvement in the inspection of a building under Section 72;
and
- (b) entitlement to any fee paid for carrying out any inspection under Section 72;

shall not be regarded as constituting a professional or financial interest.

PART IX

DANGEROUS BUILDINGS

75. (1) If it appears to the Authority that a building is not provided with such means of escape in case of fire as the Authority considers satisfactory, regard being had to the purposes for which the building is used and the number of persons likely to resort to the building at any one time, the Authority may by order require the owner of the building to execute such work and make such provision as may be necessary to remedy the defect and if the owner fails to comply with the order, the Authority may execute the order in such manner as it thinks fit and may recover all expenses reasonably incurred by it in doing so from the owner in default.

Means of escape.

(2) If the Authority is satisfied that the safety of the public requires that immediate action should be taken in the case of any building in respect of which it has given an order under sub-section (1), it may by further order in writing served on the owner of the building require the closure of the building, or restricting its use by the public and if the owner fails to comply with the order, the Authority may execute the order in such manner as it thinks fit and recover all expenses reasonably incurred by it in doing so from the owner in default.

(3) Without prejudice to the right of the Authority to exercise its powers under sub-section (1) or (2), any person who, without reasonable excuse, fails to comply with an order served on him under sub-section (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.500,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(4) The owner of any building shall take steps to ensure that the means of escape in case of fire within the building are kept free and unobstructed and if he fails to do so, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 500,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

Penalty for obstructing means of escape in case of fire.

76. (1) If it appears to the Authority that-

- (a) a building is in such a state or situation, or is used to carry such loads, as to be dangerous; and
- (b) immediate action should be taken to remove the danger,

Loading dangerous building, emergency measures.

it may, if it considers it necessary, take such steps as may be necessary for that purpose, including ordering the closure of the building.

(2) Before exercising its powers under this Section, the Authority shall, if it is reasonably practicable to do so, give notice of its intention to the owner and every occupier of the building.

(3) Subject to this Section, the Authority may recover from the owner of the building all expenses reasonably incurred by it under this Section.

(4) So far as expenses incurred by the Authority under this Section consist of expenses of fencing off the building, or arranging for it to be watched, the expenses shall not be recoverable in respect of any period -

- (a) after the danger has been removed by other steps under this Section; or
- (b) after an order made under sub-section (1) for the purpose of its removal has been complied with or has been executed.

(5) Without prejudice to the right of the Authority to exercise its powers under sub-section (1), any person who, without reasonable excuse, fails to comply with an order served on him under sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.500,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

Provided that where bodily injury or death is occasioned through failure to comply with an order issued under Section 77 and this Section, or a notice issued under sub-section (1) , the person charged shall, on conviction, be liable to a fine not exceeding Kshs.3 millions and to imprisonment for a term not exceeding 12 months.

77. (1) Where, on inspection, the Authority finds any dilapidation or defect in a building it may by order in writing served on the owner of such building require -

- (a) such works as may be specified in the order to be carried out;
- (b) a Qualified Person to be appointed to carry out such investigation in relation to the building as may be so specified;
- (c) the submission for approval by the Authority of proposals for remedial work to be carried out as regards the dilapidation or defect, being proposals based on the findings of the investigation; or may;

Defective and dilapidated buildings.

- (d) order closure of the building or restrict the use of the building

within such time or times as may be specified in the order.

(2) Where proposals for work are submitted pursuant to an order under sub-section (1), the Authority may -

- (a) approve the proposals;
- (b) require amendments to or substitution of the proposals; or
- (c) refuse to approve the proposals.

(3) On approving any proposal for remedial works required to be submitted under sub-section (1), the Authority may by order in writing served on the owner require the carrying out of such approved work within such time as may be specified in the order.

(4) All work and investigations specified in an order under this Section shall be carried out to such standard acceptable to the Authority and in compliance with the Regulations.

(5) Where the owner referred to in sub-section (1) cannot be found or fails to comply with any requirement of an order served under this section or where there is a failure to comply with the requirement in sub-section (4) or where approval is refused for proposals submitted under this Section, the Authority may, without further notice, carry out or cause to be carried out

- (a) all or any part of the work or investigation specified in the order;

- (b) such other investigations it considers necessary or expedient; and
- (c) such remedial work as it considers to be necessary or expedient as regards the dilapidation or defect, having had regard to the findings, whether such investigation in relation to the building is done by the owner referred to in sub-section (1) or by the Authority,

and the Authority may recover the costs thereof from that owner.

Provided that if the Authority considers the building to be of immediate danger, it may, without any further notice to the owner, evacuate and close the said building.

(6) Without prejudice to the right of the Authority to exercise its powers under this Section, any person who, without reasonable excuse, fails to comply with an order served on him under this Section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.500,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

78. (1) Where the Authority makes any order under this Act requiring the closure of any building, the order, referred to in this Section as a closure order shall be served on the owner and every occupier of the building.

Service of
closure order.

(2) Except with the permission in writing of the Authority, no person other than an employee of the Authority in the course of his duty shall enter or be in a building at any time while a closure order is in force in respect of the building and any person who contravenes or fails to comply with this sub-section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 50,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(3) Where the Authority deems fit, it may, subject to such conditions as it may impose, by notice in writing, permit any person to enter temporarily the building while a closure order is in force for the purposes of either carrying out remedial work or removing belongings from the said building.

(4) Any permission granted under sub-section (3) may be cancelled by the Authority at any time and for any reason.

(5) Where a closure order is in force in respect of a building-

- (a) A police officer may, with such force or assistance as may be necessary, remove therefrom any person who is in the building in contravention of sub-section (1);
- (b) the Authority may seal, or cause to be sealed, all or any of the entrances to or exits from the building.

(6) A closure order shall remain in force in respect of a building until the Authority has served a notice of expiry of a closure order on the owner of the building by causing the notice to be posted upon a conspicuous part of the building to which it relates and by serving a copy of the notice upon the owner

(7) Every notice of expiry of a closure order shall specify the building to which it relates and the date upon which the closure order expires.

(8) The provisions of this part shall supersede the provisions of any other Act of Parliament which restricts the effectuation of the provisions of this Section or in any way interferes with the application of the said provisions.

PART X
PREMISES USED FOR DANGEROUS TRADES
OR PURPOSES & DISPOSAL OF DANGEROUS
WASTE

79. (1) No premises shall, except in accordance with a permit from the Authority, be used by any person for any of the following trades or purposes:

Permit to use premises for certain trades or purposes.

- (a) tallow-melting and candle making;
- (b) making or storing matches, fireworks, carbide or any industrial gas;
- (c) making or storing charcoal;
- (d) a sawmill or place for depositing or storing coal, wood, timber, attap or other combustible materials otherwise than for domestic use in that place;
- (e) a foundry or forge;
- (f) the manufacture, storage, treatment, smoking or preparation of rubber in any form;
- (g) the manufacture, storage or treatment of cinematography or other films;

- (h) a garage or place kept or used for repairing, painting, washing, storing, housing or parking motor vehicles or a place where a pump is maintained from which petrol or oil is supplied to motor vehicles, except a garage or place used in connection with a private dwelling-house and kept for private use only; and
- (i) such other trades or purposes as the Authority may, by notification in the Authority Gazette, specify.

(2) The Authority may at any time suspend or revoke any permit under sub-section (1) without assigning any reason.

(3) Any person who uses or permits to be used any premises without a permit for any of the trades or purposes specified in sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.3million or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(4) Where the Authority is satisfied that any premises have been or are being used in contravention of this Section, it may enter the premises and seize any movable property by means of or in respect of which an offence under this Section has been or is being committed or which contains evidence of such offence and which is found therein.

80. Any person who produces dangerous or toxic waste on his premises, shall -

Application for approval of means of disposal of dangerous or toxic waste.

- (a) notify the Authority in writing of the nature of such waste; and
- (b) If he intends to dispose off the dangerous or toxic waste, apply to the Authority for approval of the means of disposal.

81. Any person who contravenes the provisions of Section 80, or who fails to dispose off the dangerous or toxic waste in the manner permitted by the Authority under Section 80 (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs. 5 million or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

Penalty

PART XI APPEALS

82. A person aggrieved by any decision made by the Authority in exercise of the discretion conferred on it under the provisions of this Act may, except where the Act provides otherwise, appeal to the Appeal Tribunal against that decision in accordance with the provisions of this Act.

Appeal to the
Appeal Tribunal.

83. (1) There is hereby established an Appeal Tribunal Panel.

Establishment of
Appeal Tribunal
Panel.

(2) Every such Panel shall consist of -

- (a) Three Physical Planners
- (b) Three Architects
- (c) Three Civil Engineers
- (d) Two Land Surveyors
- (e) Two Environmentalists
- (f) Three Structural Engineers
- (g) Two Quantity Surveyors
- (h) Three Building Services Engineers
- (i) Two Landscape Architects
- (j) Three General Building Contractors
- (k) Two Electrical Contractors
- (l) Two Air Conditioning Contractors
- (m) Two Plumbing, Drainage and Fire Fighting Contractors
- (n) Three Civil Contractors
- (o) Three Prominent Developers.
- (p) Two Advocates of the High Court of Kenya of not less than seven years standing.

(3) Members of the Appeal Tribunal Panel shall hold office for 3 years and shall be legible for re-appointment.

84. (1) For purposes of Section 82, the Authority shall from time to time constitute an Appeal Tribunal.

Constitution of
Appeal Tribunal.

(2) Every such Tribunal shall consist of -

- (a) A Chairman who shall be a Member of the Board of the Authority.
- (b) A Secretary appointed by the Board of the Authority for the purpose of providing administration services to the Tribunal.
- (c) The Secretary appointed under sub-section (b) shall be a person other than a member of the Appeal Tribunal Panel.
- (d) Four people selected from the Panel and whose profession is relevant to the determination of the issues raised in the appeal,

Provided that, where necessary, a representative from the locality where the appeal originates, shall be the sixth member of the Tribunal.

85. (1) A person aggrieved by the decision of the Appeal Tribunal, on any matter, except where this Act provides otherwise, may appeal to the High Court, against that decision.

Appeal to High
Court.

(2) The decision of the High Court in the matter shall be final.

PART XII

TRANSITIONAL PROVISIONS

86. Notwithstanding the provisions of Section 6, all pending applications for approval under any previous legislation hereinafter referred to as "the old law" shall at the commencement of this Act be transferred to the Authority for consideration, and in considering such applications the Authority shall apply the old law. Transfer of pending applications.
87. If at the commencement of this Act, any plans had been approved but the same had not been implemented the Authority may on application for a permit to implement the approval - Approved Plan not acted upon at commencement of this Act.
- (a) call upon the applicant to furnish it with all documents necessary to enable it consider the application.
 - (b) in its absolute discretion review the approval and in doing so it shall apply the old law.
88. (1) The owner of - Buildings under construction at commencement of this Act.
- (a) a building to which this Act applies and which is under construction, or
 - (b) any land to which this Act applies and which is under planning,

at the commencement of this Act shall within a period of 30 days from the commencement thereof notify the Authority in writing of that fact and the extent of the building or the planning works as the case may be.

(2) Upon receipt of a notice under sub-section (1), the Authority shall take over the inspection of those works and shall in so doing, apply the provisions of the old law.

(3) If at the commencement of this Act the carrying out of building works has been completed but no occupation permit has been issued, the Authority may, on application by the owner thereof, consider such application under the old law.

Provided that, if on inspection of the building, the Authority is satisfied that the building poses a danger to any person or property or that it was constructed, or part of it was constructed in contravention of the old law, it may issue such orders as it may deem appropriate.

89. (1) The owner of any building to which this Act applies and which was constructed prior to the commencement of this Act, shall within a period of three months from the date of the commencement of the Act, apply to the Authority for registration of the building.

Buildings
constructed prior
to
commencement
of this Act.

(2) Any person, who contravenes the provisions of this Section and of Section 88 (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Kshs.100,000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

90 (1) The owner of any building to which this Act applies and which was constructed without approved plans shall, within a period of six months from the commencement of this Act, apply to the Authority for the registration of the building and the application shall disclose that the building was constructed without plans.

Buildings
constructed
without approved
plans.

(2) Upon receipt of an application under sub-section (1) the Authority may make such orders as it may deem appropriate.

91. Any person who contravenes the provisions of Section 90 shall be guilty of an offence and shall on conviction, be liable to a fine not exceeding Ksh.100,000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Penalty.

PART XIII MISCELLANEOUS PROVISIONS

92. Where there is a contradiction in the Provisions of this Act and the Regulations made thereunder the provisions of the Act shall prevail.

Act and
Regulations.

93. Any person who commits an offence for which no penalty has been prescribed under this Act shall on conviction be liable to a fine not exceeding Kshs 50,000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

General Penalty.

94. The Regulations contained in the Building Code are hereby repealed.

Repeal.

APPENDIX IV

THE DRAFT REGULATIONS



PLANNING AND BUILDING (DRAFT) BILL

SUBSIDIARY LEGISLATION

THE PLANNING AND BUILDING APPEAL (PROCEDURE) RULES

ARRANGEMENT OF RULES

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PLANNING AND BUILDING (DRAFT) BILL

APPENDIX

SUBSIDIARY LEGISLATION

THE PLANNING AND BUILDING APPEAL (PROCEDURE) RULES

1. (1) These Rules may be cited as the Planning and Building Appeal (Procedure) Rules.

Short title.

(2) Nothing in these Rules shall be deemed to limit or otherwise affect the powers of the Tribunal to make such orders as may be necessary to prevent abuse of the process of the Tribunal.

2. (1) In these Rules -

Interpretation.

"Agent" means a Qualified Person, Authorised Person or Accredited Checker;

"Tribunal" or "Appeal Tribunal" in relation to an appeal means the Tribunal constituted under Section 84 to hear and determine that appeal;

"Chairman" in relation to an Appeal Tribunal means the person appointed as its Chairman under Section 84 (2)

"functions" includes powers and duties;

"notice of appeal" means a notice of appeal given under Rule 4 (1)

"Secretary to the Appeal Tribunal" means the person appointed as such under Section 84

(2) Any reference in these Rules to the performance of a function includes the exercise of a power or discharge of a duty.

3. (1) A person aggrieved by any decision made by the Authority in the exercise of a discretion conferred on it under this Act may, except where this Act provides otherwise, appeal from that decision in accordance with these Rules.

Appeals.

(2) If-

- (a) a decision appealed from under sub-rule (1) requires the carrying out of works; and
- (b) a notice of appeal as regards that decision is given under Rule 4 (1)

with effect from the day the notice is so given, the Authority shall neither enforce nor permit the enforcement of such decision, until the appeal is disposed of or unless it is withdrawn or abandoned.

(3) The Authority may enforce a decision referred to in sub-rule (2) or permit enforcement where it is of the opinion that an emergency exists and that having regard to that emergency such enforcement is necessary and serves a notice on the appellant stating that due to an emergency the enforcement of the decision and the carrying out of works or other action is necessary.

(4) The decision of the Authority that an emergency exists for the purposes of sub-rule (3) shall not be subject to an appeal under Section 82.

4. (1) Any person who intends to appeal to the Tribunal against a decision of the Authority, shall give notice in the prescribed form in duplicate which shall be lodged with the Secretary of the Tribunal.

Notice of Appeal.

(2) Every such notice shall be so lodged within 14 days of the date of the decision against which he intends to appeal.

(3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision, and where it is intended to appeal against part only of the decision, shall specify the part complained of, the address for service of the appellant and the names of the person intended to be served with a copy of the notice.

5. (1) Every person on whom a notice of appeal is served shall within 14 days after service on him of the notice of appeal lodge in the Tribunal, and serve on the intended appellant notice of a full and sufficient address for service;

Respondent's
address for
service

(2) A notice of address of service shall be in the prescribed form.

6. An appeal shall be instituted by lodging in the Appeal Tribunal, within 21 days from the date the notice of appeal was lodged -

Institution of
Appeals

- (a) a memorandum of appeal in quadruplicate
- (b) the record of appeal in quadruplicate
- (c) the prescribed fee.

7. (1) Where a notice of appeal is given under Rule 4, the Authority shall appoint, from the Appeal Tribunal Panel, a Tribunal consisting of a Chairman and 4 or 5 members, for the purpose of hearing and determining the appeal to which the notice relates.

Appointment of
Tribunal and
remuneration of
members

(2) The Chairman or any member of the Appeal Tribunal, shall be paid such remuneration at such rate as the Authority may determine.

8. An appeal shall not be instituted in the names of a person who is dead but may be instituted in the name of his legal representative.

Death of party to intended appeal.

9.(i) A memorandum of appeal shall set forth concisely and under distinct heads and without argument or narrative, the grounds of objection to the decision appealed against, and the nature of the orders which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Tribunal to make.

Contents of memorandum of appeal.

(ii) The grounds of objection shall be numbered consecutively;

(iii) A memorandum of appeal shall be in the prescribed form and shall be signed by the appellant or his advocate or any other agent.

10. The record of appeal shall contain certified copies of the following documents -

Contents of record of appeal

- (a) an index of all the documents in the record adequately cross-referenced
- (b) a statement showing the address of service of the appellant and the address of service furnished by the Authority as required by Rule 5,
- (c) the application which gave rise to the decision appealed against,
- (d) the Authority's notes taken at the meeting at which the application was considered,

- (e) the decision of the Authority appealed against,
- (f) the notice of appeal filed under Rule 4,
- (g) such other documents, if any, as may be necessary for the proper determination of the appeal.

11. The appellant shall before or 7 days after lodging the memorandum of appeal and record of appeal serve copies thereof on the Authority.

Service of memorandum and record of appeal.

12. If a party who has lodged a notice of appeal, fails to institute an appeal within the prescribed time, the notice of appeal shall be deemed to have been withdrawn and shall unless the Tribunal otherwise orders be liable to pay the costs arising therefrom, of any person on whom the notice of appeal was served.

Effect of default in instituting appeal.

13. An appeal may be withdrawn any time before hearing, by notice in writing to the Secretary of the Appeal Tribunal, signed by the appellant or his advocate or agent, and upon receipt of it by the Secretary, the appeal shall be deemed to have been dismissed and the Tribunal may make such order on costs as it deems fit.

Withdrawal of appeal.

14. When any appeal is withdrawn, the Secretary shall forthwith notify the Authority.

15. (1) If at the hearing of an appeal the appellant intends to adduce new evidence which was not adduced at the time when the application subject matter or the appeal was determined, he shall lodge with the Secretary a notice of his intention to adduce additional evidence and shall serve a copy thereof on the Authority.

Notice to adduce additional evidence.

(2) The notice referred to in sub-rule (1) shall be accompanied with a copy of the additional evidence to be adduced during the hearing of the appeal and shall be lodged at least 7 days before the date appointed for the hearing of the appeal.

Provided that an appellant shall not adduce additional evidence without the leave of the Tribunal.

16. The Secretary shall cause notice to be given to the appellant and to the respondent of the time and place at which an appeal will be heard.

Notice of hearing

17 Such notice shall be given not less than 14 days before the date appointed for the hearing unless in any particular case, the Chairman of the Tribunal directs otherwise.

18. The following shall apply as regards appearance before the Appeal Tribunal at a hearing of an appeal.

Parties to appear in person, by advocate or agent.

- (a) a party, whether the Authority or any other party may-
 - (i) be present in person and make representations;
 - (ii) be represented either by advocate, Qualified Person, Authorised Person or Accredited Checker.
- (b) Where an appellant is represented by an advocate or any other agent, it shall not be necessary for him to attend personally, the hearing of his appeal, unless the Tribunal orders his attendance.

- (c) the Authority may be represented by an advocate or its legal officer or any other appropriate officer of the Authority.

19. (1) A party to an appeal who does not intend to appear in person, or by advocate or agent at the hearing of the appeal, may lodge in the Tribunal, a statement in writing of his arguments in support of or in opposition to the appeal, and he shall before, or 14 days after lodging it serve a copy of it on the other party.

Presentation of arguments in writing.

(2) Every such statement shall be lodged -

- (a) by an appellant within 14 days of lodging his memorandum of appeal.
- (b) by The Authority, within 14 days of service of the memorandum and record of appeal.

20. (1) The Tribunal may, for the purpose of determining an appeal at any reasonable time-

Access to land or premises.

- (a) enter and inspect any land or premises it considers relevant for the purposes of the appeal; and
- (b) make any opening on such land or premises or take such samples as it considers necessary.

(2) The Tribunal may, as regards any appeal, direct any person to do anything which the Tribunal may do under sub-rule (1).

(3) A person directed under sub-rule (2) may enter any land or premises which the Tribunal considers relevant for the purposes of an appeal and remove anything obstructing -

- (a) his access to or inspection of the land or premises and make such openings or take such samples as the Appeal Tribunal considers necessary for purposes of the appeal; or
- (b) the access of the Tribunal to such land or premises for the purposes of sub-rule (1).

21. (1) If on the day fixed for the hearing of an appeal no statement has been filed under Rule 19 and the appellant does not appear either in person or by advocate or agent, the appeal may be dismissed, unless the Tribunal deems it necessary to adjourn the hearing.

Appearance at hearing and dismissal for non appearance.

(2) If on the day fixed for the hearing of an appeal the appellant appears, but the Authority does not appear either in person, by advocate, agent or by any other appropriate officer and has not filed a statement under Rule 19 the appeal shall proceed unless the Tribunal deems it necessary to adjourn the hearing.

22. (1) The Chairman or a member of the Tribunal performing any function under or pursuant to these Rules shall have the same privileges and immunities as a Judge of the High Court has in relation to civil proceedings in that court.

Immunities and privileges of Chairman and Members.

(2) A party to any hearing of an appeal, an agent, advocate, legal officer or any appropriate officer of the Authority appearing before the Tribunal shall have the same immunities or privileges such a party, agent, advocate, legal officer or appropriate officer of the Authority respectively would have had in relation to civil proceedings in the High Court.

23. At the hearing of an appeal, the appellant shall not, without leave of the Tribunal, argue any ground of appeal not specified in the memorandum of appeal.

Arguments at hearing.

24. Any person who -

Offences and Penalties.

- (a) refuses or fails without reasonable excuse to comply with any lawful order, requirement or direction made or given by the Tribunal ; or
- (b) disturbs or otherwise interferes with the proceedings of the Tribunal, commits an offence and is liable on conviction to a fine not exceeding Kshs.100,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

25. (1) The Chairman may, as regards a particular hearing, determine the procedure in relation to a matter where provision has not been made in these Rules or the Regulations made under this Act.

Procedure

(2) The following shall apply in relation to the hearing and determination of an appeal -

- (a) every question shall be determined by the opinion of the majority of the members of the Tribunal;
- (b) Where there is an equality of votes, the Chairman shall have a casting vote;

(3) In determining an appeal, the Tribunal may make an order confirming, varying or reversing the decision appealed against or substituting thereof such other decision or make such other order as it deems appropriate.

26. (1) Upon making an order under Rule 25 (3) the Appeal Tribunal may make such order as to costs as it deems necessary. Costs

(2) Where there is more than one appellant, the Tribunal may apportion among them, the costs if any, ordered against them.

(3) The Tribunal shall not award any compensation or make an order for any other payment, other than an order for costs referred to in sub-rule (1).

(4) Where an order for costs is made against the appellant the amount of the costs may be recovered by the Authority and the Authority shall cause a copy of the order to be served on the appellant.

(5) Any costs awarded against the Authority under this Rule shall be paid out of the general fund.

27. Any person dissatisfied with the decision of the Tribunal may appeal to the High Court within 14 days from the date of the decision appealed against. Appeal to the High Court.

LAWS OF KENYA

PLANNING AND BUILDING AUTHORITY TRIBUNAL CASE

NO. OF (Year)

NOTICE OF APPEAL

TAKE NOTICE that.....(*name of appellant*) being dissatisfied with the decision of The Authority given at..... on the.....day of.....(*Month*).....(*Year*) intends to appeal to the Tribunal against the said decision/part of the said decision as decides that: (*specify part complained of*)

(1)

.....

(2)

.....

The address for service of the appellant is:

.....

.....

.....

It is intended to serve copies of this notice on the Planning and Building Authority

Dated this.....day of.....(*Month*).....(*Year*)

Signed..... Appellant/Advocate for the Appellant/Agent

Lodged in the Registry aton the.....Day of.....

.....

Secretary to the Tribunal

LAWS OF KENYA

PLANNING AND BUILDING AUTHORITY TRIBUNAL CASE

NO. OF(Year)

_____ APPELLANT
(Name of appellant)

AND

_____ RESPONDENT
(Planning & Building Authority)

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of
(Name of respondent)
a respondent served with notice of appeal, is.....
.....
.....

Dated this..... day of(Month).....(Year).....

Signed.....
Authority/Advocate for the Authority/Agent

To:-

The secretary to the Appeal Tribunal at.....

Copies to be served on.....(Name of Appellant)

Lodged in the Tribunal at..... on the..... day of.....(Month).....(Year)

.....
Secretary to the Tribunal

LAWS OF KENYA

PLANNING AND BUILDING AUTHORITY TRIBUNAL CASE

NO. OF(Year)

BETWEEN

_____ APPELLANT
(Name of appellant)

AND

_____ RESPONDENT
(Planning & Building Authority)

(Appeal from a decision of The Authority dated the.....day of.....(Month).....(Year) in case No..... of..... (Year)

MEMORANDUM OF APPEAL

....., the above-named appellant appeals to the Tribunal against the whole/part of the above named decision on the following grounds, namely:

1.
2.
3.

It is proposed to ask the Tribunal for an order(s) that:

- (a)
- (b)
- etc.

It is intended to serve copies of this memorandum on:

The Planning and Building Authority
.....(Address of Authority)
.....

Date this.....day of(Month),(Year)

Signed.....Appellant/AdvocatefortheAppellantlodgedinthe

Registry at on the.....day of(Month)....., (Year)

.....
Secretary to the Tribunal

