

Planning by Exception: The Regulation of Nairobi's Margins

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Abstract

Nairobi's planning regime is characterized by two conditions of exception: on the one hand, exceptions from regulation, that is, planning offices granting exceptions from planning rules and, on the other hand, regulatory regimes that are enforced by low-level administrations outside the planning office but that significantly impact Nairobi's urban space—we call this exceptional regulation. We argue that it is these two intertwined conditions of exception that make possible the building of shiny modern city as well as the provision of essential urban services. We examine the two conditions of “planning by exception” by analyzing a scrap heap that has endured in central Nairobi for over a decade, even as the neighborhood around it has radically changed. The position of the scrap heap makes the contradictions of this regime of planning particularly visible. On the one hand, the construction sites dotting these neighborhoods provide a wealth of scrap for dealers to gather—and dealers, in turn, provide an essential recovery service. On the other hand, in these increasingly exclusive spaces, businesses like scrap metal heaps are no longer welcome. Thus, the construction boom simultaneously grants scrap dealers opportunities for accumulation and makes the conditions of that accumulation highly uncertain. This scrap metal heap thus offers important insights into Nairobi's spatial regulation because it is both a leftover from the neighborhood's earlier socio-spatial form and intricately entangled with the redevelopments currently reshaping the city. Our key contribution is that we can only understand urbanization of Nairobi—and other post-colonial cities—if we understand planning as simultaneously working through a regime that grants exceptions to formal planning and by employing exceptional regulation of marginalized spaces.

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In the last decade, an astonishingly rapid construction effort focused mostly on roads, housing, and office space has remade Nairobi, Kenya. Much of this construction is made possible through exceptions to planning regulations, creating a scenario in which private development is rapidly outpacing the planning and provision of essential infrastructures like water, electricity, and waste management. In this article, we use “planning by exception” as a lens onto the processes through which this development is permitted and through which its effects are mitigated. Through a close examination of the tenacious endurance of one scrap metal heap in central Nairobi, we discuss a range of regulatory and deregulatory practices that shape the city’s spatial outcomes. In calling these practices “planning by exception,” we aim to capture two dimensions of Nairobi’s spatial regulation: on the one hand, planning authorities’ frequent use of exceptions from planning rules—we call this *exceptions from regulation*—and, on the other, regulatory regimes that exist in a grey area of urban planning but have a significant impact on spatial outcomes—we refer to this as *exceptional regulation*. While attending to the intertwined nature of these two dynamics, we focus here on the second dimension of exceptionality, which we argue is less present in planning literature.

Many contemporary planning processes in Nairobi involve an explicit, calculated practice of exception-making. This includes, for instance, allowing unpermitted development to take place by turning a blind eye to rule-breaking or by legalizing irregular structures after the fact. Nairobi’s shiny new office towers are often several stories higher than their formal permits allow and are built on roads and sewer lines that cannot sustain the levels of traffic these new constructions will attract, but an established practice of regularizing these structures once built allows private developers to flout plans and regulatory guidance. These practices, which we refer to as “exceptions from regulation,” have been relatively well documented as a key aspect of neoliberal urban development, particularly in the Global South. Scholars working with concepts of both “exceptionality” and “informalization” have drawn attention to the way that planning authorities are engaged in the creation of “alternative regulatory regimes” (Murray 2017) that foreground private interests (Roy, 2009; Yiftachel, 2009).

In this paper, we argue that this well-documented form of planning by exception is underpinned by, and deeply entangled with, a second form, *exceptional regulation*. This is a deliberately provisional regime of regulation that governs the urban margins, primarily implemented by low-level urban authorities. Nairobi, like many cities, is full of “awkward” (Jones, 2007) spaces—roadsides, bridge undersides, traffic islands, and other such interstitial, leftover, or overlooked sites. The city’s rapid development has created even more such spaces, which now exist at the heart of the redeveloping center city amidst highrises and overbuilt roads. These kinds of spaces often house small-scale traders and businesses who provide essential, but overlooked, goods and services. While they are

largely and deliberately ignored by official planning, these spaces are by no means unregulated. Indeed, they are subject to highly structured regimes of licensing, both by city council officials and by other authorities like chiefs. However, these regimes are deliberately provisional: small-scale businesses are allowed to endure here, but in tenuous forms that urban authorities can easily displace when they wish. In a city like Nairobi, where spatial and social reproduction are largely undertaken by precarious actors and in marginal spaces, these other regulatory practices should be taken seriously as having an important role within Nairobi's wider planning regime. Thus, we understand planning as a set of spatial regulation practices that includes both the decisions and calculated blindness of the planning office but also a broader range of regulatory regimes involved in managing the who, what, and how of urban space.

We explore these arguments by analyzing the history and present situation of a scrap heap that has endured in central Nairobi for over a decade. This scrap metal heap offers a particularly interesting lens onto the spatial regulation of the changing city because it is both a leftover from the neighborhood's earlier socio-spatial form and is intricately entangled with the current redevelopment taking place across the city. Kilimani, the neighborhood where the scrap heap is located, is among the most affected by Nairobi's rapid development—it has transformed in the past decade from an area characterized by colonial-style villas or two-story row houses on large open plots into a dense mix of shopping malls and high-rise condominium and office buildings. But remnants of what existed before have re-emerged in the awkward spaces created by this construction, and among these is the scrap heap we describe, run by an entrepreneur named Macharia. This business was once part of an informal settlement known as Denis Pritt Village, which was destroyed to make space for the construction of a large road. Today, the remnants of Denis Pritt Village occupy a space between the road and the wall of a housing estate, which, coming together at an angle and protected by an electricity wayleave, left a triangle-shaped strip of "grey space." Here, some of the former village residents returned with their businesses once the road construction was finished. As we will discuss at length, these traders are not included in planning visions for this area—but they are nevertheless fully integrated into its urban flows and regulatory regimes. Macharia's business thrives off the myriad construction sites in the area, which provide a steady flow of scrap metal, and it also provides recycling services which are otherwise not available. His business, like the others scattered along this strip, is permitted to remain there through two separate licensing regimes—that of City Council, and that of the Chief's office, both regulatory regimes that are primarily implemented in the governance of small-scale and "informal" spaces—the urban margins. What this brief introduction to Macharia's scrap heap shows, however, is that the margins can be located at the heart of the city's redevelopment efforts.

Scholars of postcolonial urban spaces have noted the need to look beyond formal urban planning to understand how urban systems are constituted and sustained (Mitlin, 2008), but practices of exception ask us to think more broadly about what "formal planning" is to begin with, and how it intersects with other regimes of urban governance (Roy, 2009). In conversation with this literature as well as the broader and older body of work on urban informality, we describe the calculated blindnesses and partial inclusions through which recyclers and other informalized service providers are tacitly allowed to continue

operating, without being given an explicit right or mandate to do so. Unlike other studies that focus on the way that urban systems are reworked and diverted by marginalized urban dwellers (Lawhon et al., 2014; Silver, 2014), here we focus on the sites and ways in which such networks *interact* with urban authorities and planning regimes. The so-called “informal” businesses are tacitly tolerated by urban authorities in ways that do not grant their operators a durable right to space or a livelihood, but rather allow them to exist while also preserving the ability to easily dismantle or displace them. We show how these businesses provide needed services, generate livelihoods for their operators, and reproduce the conditions for urban capital accumulation, but without incurring obligations from urban authorities. Here, we show that scrap traders’ presence across the city as well as the precarity of this presence is part of a wider strategy of urban spatial and economic governance, in which urban planning operates as much through exception as through explicit decision-making. Thus, we argue that attention to planning by exception reveals how cities are produced through accommodations between urban authorities and “informal” systems in ways that often exacerbate the precarity of marginalized actors.

Exception and Planning: The Literature

Exception as a mode or even strategy of planning has received increasing attention in planning literature over the past decade, responding both to theoretical developments in the discipline and to the ways that deregulation has changed the role of centralized economic and spatial planning. That is, spatial planning continues to be important at the regional level with an emphasis on connectivity and trans-urban regions, but cities are increasingly dominated by developer-led decision-making (Schindler and Kanai, 2021). Across urban contexts, scholars note the increased—and increasingly normalized—role that exceptions to rules and regulations play in making urban planning possible (Murray, 2017). In conversation with a literature on urban informality which perceives non-conforming structures and activities as something that takes place *despite* urban planning, the literature on exception understands them as a fundamental aspect of the way that contemporary planning works. Roy (2009) describes this as a “calculated lack of urban planning”—an informality that is produced *by*, not *in spite of*, state and planning processes—while Fawaz writes that in her research in Beirut she observed “planning agencies deliberately involved in the production of illegality” (2016: 1940). As Roy (2009) explains, this calculated lack of planning is visible not only in relation to marginalized spaces and practices but also to those that are recognized and endorsed by urban planning. Indeed, a core feature of “speculative urbanization” (Goldman, 2011) is that it works by making exceptions from formal laws, regulations, and democratic processes in order to enable developer-led urbanization. Thus, considering planning by exception reveals how the state-capital nexus supports forms of development that prioritize international investment and real estate speculation.

Our paper takes up these very important questions around the role of the state and planning institutions in producing “informality” through the use of exceptions and calculated omissions. With our thematic attention to “exceptions from regulation” and “exceptional regulation,” we seek to disentangle two different levels of this broader

conversation, the first referring to the way that the planning institutions increasingly normalize exceptions to rules and regulations (the way that the state itself is “informalized”), the second considering the relationship between formal planning and the regulation of marginalized city dwellers. At the first level, we draw on work by Murray (2017), Fawaz (2016), and others who describe how exceptions become a planning strategy that grants a “margin of maneuver” (2016: 1942) for planning authorities. Focusing both on everyday decisions around building regulations, as well as on special events and emergencies, these scholars point out that exceptions to regulations are increasingly fundamental as a planning strategy. In what Gogishvili (2021) terms “mega-event exceptionalism,” exemptions from democratic processes and planning provisions that are justified by the urgency of the moment become the norm in the realization of large urban construction projects (see also Vainer, 2017). Similarly, Lo Piccolo and Todaro (2021: 4) offer a useful overview of the ways that state actors pursue large-scale planning activities, such as theme parks and mega-projects, through the manipulation, suspension, or unequal application of laws—that is, through various forms of exceptionality. As Roy writes in her (2009) discussion of planning through “informality,” informalization extends to all levels of urban development, including state decisions and planning. As urbanization processes become progressively deregulated, it is through *exception*, rather than through *regulation*, that most urban planning decisions are made. Some scholars whose contributions we discuss here (such as Goldman, 2011; Lo Piccolo and Todaro, 2021) mobilize Agamben’s “state of exception” (2005) for their analysis, while other scholars who engage with exception in planning do not (e.g., Fawaz, 2016). A wider debate as to whether the “state of exception” concept should be stretched to explain phenomena that might relate only loosely to the original concept is ongoing in urban and planning studies (cf. Schinkel and van den Berg, 2011). Our own interest draws on Martin Murray’s sense that exceptionality is not an escape from regulation but rather the result of “a meticulously orchestrated dynamic designed to create alternative regulatory regimes” (2017: 306). Agamben’s concept does resonate with our own analysis, particularly its focus on the creation of spaces in which and subjects for whom liberal rights do not apply (Gray and Porter, 2015; Lo Piccolo and Todaro, 2021; Roy, 2005). We complement this here by illuminating the way that entangled regimes of exception come to produce not just specific spaces but the entire urban fabric, with implications for all urban dwellers.

While many of the scholars cited above focus on how large-scale developers or projects are granted legality, a parallel process occurs at the urban margins, where calculated blindness and exceptional regulation have long been a strategy for managing urban populations. The literature on urban informality and the marginalization of low-income city dwellers has demonstrated both the centrality of marginalized urban actors to urban reproduction (Anjaria, 2011; Gidwani, 2015) and their “informalization”—the ways that marginalization is actively preserved by urban authorities (Harms, 2012; Roy, 2009; Thieme, 2018). For example, Fawaz explains that low-level state actors sell “‘legality,’ or the cost of turning a blind eye to low-income urban dwellers” (2016: 1941). We draw on this literature to develop our second concept, *exceptional regulation*, where we show that small-scale trading is simultaneously included and excluded from formal planning. As we will argue, even as formal planning manifests a calculated blindness toward these spaces, they are regulated by other urban authorities in ways that actively

preserve zones of irregularity. Alongside *exceptions from regulation*, official means of legalizing and permitting irregular structures and activities, *exceptional regulation* refers to the specific kinds of ad hoc permissions granted to small-scale traders and businesses—often-marginalized urban actors that urban planning officially rejects. Here, we draw inspiration from Yiftachel's (2009) concept of "gray spacing." As Yiftachel writes, certain urban actors are subject to a dynamic of simultaneous inclusion and exclusion, where their presence is temporarily tolerated but never permanently legitimized—grey spaces are "neither integrated nor eliminated, forming pseudo-permanent margins in today's urban regions, which exist partially outside the gaze of state authorities and city plans. (2009: 250). In terms of our classification of exceptionality, then, one might say that the second dimension, *exceptional regulation*, generates the flexible urban space needed to accommodate the kinds of developer-led rule-breaking that is permitted by *exceptions from regulation*. This comes, however, at a cost, as marginalized urban residents are further marginalized.

Thus, our overarching argument is that we can best understand the urbanization of Nairobi—and perhaps aspects of neoliberal urban development more broadly—if we understand planning as working through a doubled regime of exception, bringing together the calculated use of exceptions from formal regulations and plans with the exceptional regulation of marginalized spaces by low-level urban authorities. This dual approach responds to a longstanding critique of planning and planning studies, which argues that formal planning does not reflect "actually existing urban conditions" (Silver, 2014) and that studies should focus more on the practical strategies of marginalized urban dwellers (cf. e.g., Cornea et al., 2017; Simone, 2004). While acknowledging the need to look beyond formal planning, we wish to show that attention to planning is nevertheless important for understanding the production and reproduction of the urban, particularly given planning authorities' role in furthering projects of neoliberalization and speculative urbanism. We aim to demonstrate how urban planners and urban authorities actually *interact* with modes of urban reproduction they officially reject, by both actively and tacitly allowing them to continue to exist. Small-scale traders are fundamental to the reproduction of the urban, and they operate through heterogeneous accommodations with urban authorities. They are not entirely outside of planning, nor even at its peripheries. Rather, they exist within strategic blind spots that, we argue, are a fundamental way that planning works in postcolonial cities (and beyond).

In the next sections, we will introduce our site and describe these dynamics more concretely in relation to Nairobi's political and economic history, before moving on to examine them through the lens of our particular case: the scrap heap.

Perspective and Methods: The Scrap Heap

Our perspective on planning by exception is anchored in a detailed study of one "exceptional" business, a scrap metal heap located at the heart of Nairobi's redeveloping urban core. We argue that this scrap heap is especially valuable for understanding exceptionality because its position—at once central and marginalized, at once permitted and precarious—illustrates the contradictory ways that urban authorities in the redeveloping

city approach small-scale traders. As we will show, this scrap heap is regulated by particular regimes of zoning, licensing, and permitting that both include and exclude it from urban space. These regimes respond both to historical debates around the position of small-scale traders in the “informalization” of Nairobi and to contemporary political and economic pressure toward particular kinds of urbanization.

By focusing on this specific heap, we aim to provide a broader understanding of city-making in Nairobi. In order to assess the place of the scrap heap in a situation of planning by exception, we conducted several interviews with the scrap heap’s owner, Macharia, and his employees in the course of repeated visits to the scrap heap. We additionally interviewed Macharia’s partner, who was based at another scrap heap they owned together. These interviews were semi-structured and unstructured. We also conducted open-ended observation and repeat visits to track events over time and to map the scrap heap’s relationship to other businesses and people in the area in order to understand the dynamics of change in the neighborhood. To understand the perspective of formal planning on the dynamics the scrap heap is experiencing, we conducted semi-structured interviews with planning officials and engineers in Nairobi as cited below.

In the next subsections, we introduce planning by exception in Nairobi, first by explaining the formal planning regime and the ways it works through exceptions, and second by tracing the history of “informal” trades and manufacturing businesses and their subjection to a regime of exceptional regulation. We then explain how the scrap heap is exposed to these dynamics of exceptionalism and how this impacts the scrap trade in a rapidly transforming neighborhood; and we explore how Macharia and his workers manage the threshold between marginal and capitalized economies by engaging in a play of visibility and invisibility. This leads to our conclusion that a particular planning regime of exception that works through the intertwined dynamics of exceptions from regulation and exceptional regulation allows decision-makers to keep important urban functions going without having to invest in them. Finally, providers of urban services for the majority population are not integrated into the vision of Nairobi as “a world class city,” but they are also not entirely expelled from the city. Rather, they endure.

Planning Nairobi: Exception and the “Self-help” City

Before beginning our examination of how Macharia’s scrap heap is entangled with the two dimensions of exceptional planning, we explain some of the broader dynamics underpinning the evolution of formal planning in Nairobi, as well as the intricate relationship between the so-called informal trades and state administration and planning.

Nairobi’s formal planning regime and the role of exceptions from regulations

Nairobi is a relatively young city that emerged as the rapidly growing capital of Kenya from a small British colonial railway reserve established around 1900 (Murunga, 2012). Nairobi’s urbanization is intertwined with European colonialization, and informalization has been a strategy used in Nairobi since its inception (Hake, 1977). As in other instances of colonial planning, the city’s planning system and urban designs were adapted to suit the

specific goals and requirements of colonial rule—that is, dominance over and control of the colonial subject. Nairobi’s influential 1948 master plan, for instance, appropriates functional segregation—the idea of the time—to pursue racial segregation within the city (White et al., 1948). Planning of the segregated city never fully accounted for all the city’s needs nor all its residents (Myers, 2015; Njoh, 2009). According to Hake, Nairobi was from its beginning a “self-help city” (1977)—from its early days, a large portion of population relied on services that were neither provided by urban authorities nor explicitly regulated. Traces of these segregated rationalities continue to shape Nairobi today, as it is estimated that the majority of the city’s population lives in “informal settlements” across the city and continues to rely on locally provided trades and services (Kimari, 2021). Even beyond informal settlements, the city is marked by class segregation between the densely settled, low-lying eastern parts of the city where the bulk of the urban population lives and the wealthier, higher-elevation neighborhoods north and west of the city center. The first master plan after independence, the 1973 Nairobi Metropolitan Growth Strategy, does not represent a significant break from this tradition. With its focus on an expanded road network and large housing programs for an extended metropole, it continued to largely disregard the interests of the urban majority population which according to Owuor and Mbatia (2008: 5) was “marginalized further.” Nor has this disregard of the majority population substantially changed with the new and current master plan, the “Nairobi Integrated Urban Development Master Plan 2014–2030” (NIUPLAN) (cf. Huchzermeyer, 2011; Kimari, 2021).

In Nairobi, practices concerning zoning and development control arguably display the most apparent form of planning through *exception from regulations*. Zoning plans are almost never enforced. Instead, in order to accommodate rapid urbanization, highrise apartment blocks are regularly approved without adhering to formal zoning or they even proceed without any formal approval (Cirolia and Berrisford, 2017: 74). This exceptionalism in terms of building permits and the partial ignorance of zoning plans has particularly affected Kilimani, the neighborhood in which Macharia’s scrap heap is located, where existing waste, water, and electricity services simply cannot keep up with the density created by the rapid replacement of one- or two-story houses by highrise apartment buildings. In particular, we find that zoning plans have been changed to permit higher densities in order to accommodate speculative urbanization. According to a Nairobi City County Engineer we interviewed in 2016, “The planning authority has changed zoning in Kilimani. They did it silently, without consulting utilities of water, power, or roads. The utilities were caught flat footed, they were not aware, they just woke up to find that traffic congestion was more severe.” Furthermore, apartment building heights regularly exceed the five-story height limit of the zoning plan valid in 2017. These planning practices—the shifting of zoning and height regulations, the granting of frequent exceptions to these shifting regulations, and retroactive building legalization—illustrate that the planning department primarily works by staying out of the way of private development. In Nairobi, the official function of planning largely concerns the production of a city-wide road network, as an infrastructure that paves the way for the investor-led development of real estate.

Many planners did not perceive these development practices as an explicit problem. A Nairobi City County Planner we interviewed in 2016 agreed with the Engineer cited above that the core problem of planning in Nairobi to date has been the lack of integration of spatial planning with infrastructure planning and argued that this lack of integration has now been addressed with the preparation of the current Nairobi Integrated Urban Development Masterplan, which integrates spatial planning with infrastructure provision. She went on to explain that “Most of the infrastructure you are seeing, the major road corridors that are being constructed, actually they are coming from [the 1973 city masterplan]. They are built strategically, they were big projects that are still going on.” Thus, according to her, urban planning in Nairobi largely functions the way it is supposed to—that is, in accord with city infrastructure planning—albeit with delays in implementation. This perception may be surprising, insofar as the majority of Nairobi residents live in settlements largely cut off from utility infrastructure provision. However, it speaks of an approach to planning that is not geared toward providing certain minimal standards for the majority population. Rather, its primary function is to enable fast real estate development by granting exceptions from rules and regulations and by providing infrastructure and land.

Planning and informalized trades—exceptional regulation

The current trend of using master planning to pave the way for large infrastructure investment now dominates Nairobi planning. In line with other efforts to create modernized “world cities” (Harms, 2012), these processes have developed by largely ignoring roadside trades and other “unruly” spaces of the city instead of explicitly addressing them. Thus, master planning is one of the mechanisms by which so-called informal traders are placed in an exceptional, liminal space in the first place: according to master planning, they are not supposed to be there. However, since plans are often not implemented or only partially so, these businesses continue to exist in a “gray space,” a space shaped by exceptional regulation.

These dynamics of inclusion-by-omission have a deep history in the cyclical conflicts between Nairobi city government and small-scale traders and manufacturers. Accounts of these conflicts reveal how the shifting of the city’s stance toward small-scale traders—from tolerance to repression—has been marked by a central tension. On the one hand, Nairobi authorities were aware of the city’s dependence on these businesses; on the other, they feared their potential for undermining urban control and, increasingly, for getting in the way of real-estate speculation and urban development. In her 1993 account of the militant women hawkers of Nairobi, for instance, Robertson shows how the “struggle for the city” played out in the contestations between small-scale traders and manufacturers and changing city administrations since the beginning in the colonial period (cf. Robertson, 1993: 9). The colonial government initially had an ambivalent stance toward informal trade and manufacturing—this stance reflected the tensions between the city’s dependence on these traders and manufacturers for the provision of basic services and its aversion toward activities that were out of its direct control (Robertson, 1993). However, as part of the “emergency” measures implemented near the end of the colonial period, the

government harshly restricted the activities of small-scale traders and manufacturers in order to control the urban African population (Mitullah, 1991). After independence, the Kenyan government took a more relaxed stance toward activities it came to term “small-scale enterprises” (rather than “informal businesses”) (Muraya, 2006). This more relaxed stance was in line with the 1972 ILO report that praised the vital contribution of these traders and manufacturers to the urban and national economies, arguing that they filled a gap in the supply and production of goods that formal markets fail to satisfy (Bangasser, 2000).

Tensions between the city’s traders and the government began to grow again in the 1980s. They culminated in what became known as the “hawker wars” in the 1990s, when the government approach to informal trades seemed to go back to that of the colonial regime during emergency—aiming to completely remove them from urban space instead of merely controlling them through a licensing regime and the provision of stalls in open air markets (Robertson, 1993). As Robertson argues (1993: 34), struggles between the police and the city’s small entrepreneurs were explicitly connected to questions of urban real estate development and speculation. Citing a 1991 National Public Radio broadcast, for instance, Robertson demonstrates how police brutality against the city’s hawkers was motivated by the urge to access and develop the land these traders were occupying. Mitullah (1991: 19) further shows that harassment of small-scale traders and manufacturers by the police became “a function of location,” as traders were relatively secure in some places and exposed to attacks and harassment in others. As the city continues to grow, it has become increasingly clear that the “informalization” of small-scale traders allows them to continue to exist but also to be easily displaced when needed for development.

Amidst these complex historical and economic dynamics, particular forms of zoning and licensing have emerged which institutionalize not only regimes of exception but also the importance of state violence as a mechanism of urban control. Regulation of small-scale businesses such as the so-called “hawkers,” small manufacturers, and kiosks is now primarily left to City Council. Nairobi profits enormously from this kind of space, which includes most roadside activities and is governed primarily through daily or weekly licenses issued by City County official. Known as “Kanjo,” these officials employ multiple tactics to maintain their control over the city’s margins. Alongside the payments they request, they also conduct regular (often-violent) raids, which ensure that small-scale traders never feel security over their right to occupy a space. Traders exist thus in an uneasy, uncertain relationship with Kanjo officials, who at once grant them licenses to trade and ensure that those licenses are understood as impermanent and subject to violent displacement (Bize, 2017).

In short, Nairobi’s current urbanization is shaped by two particular planning strategies: that of granting exceptions from existing regulations in order to facilitate investor-led development and that of applying exceptional regulations to those who do not fit into the vision of modern urbanization but are still of fundamental importance to the city’s functioning. In order to illustrate how these two dynamics are distinct and yet intertwined, and how seeing them together reveals the specific ways in which planning by exception works to shape Nairobi’s urbanization, we turn to our example: the scrap heap.

The scrap heap: impacts of exceptions from regulation and exceptional regulation

Macharia, the scrap metal trader we focus on for this study, has been subject to dynamics described above. He occupies his space precariously, in ways that have made him vulnerable to displacement, and his business is primarily licensed through the precarious regimes that address the urban margins. At the same time, these entanglements are complex—as a scrap trader, Macharia is existentially threatened by the city’s urban transformation but also benefits from it.

As we describe in the introduction, Macharia’s scrap heap was removed when a small informal settlement known as Denis Pritt Village was demolished to make space for the construction of a large road, which was a key feature in Nairobi’s “modernization” and urban development efforts (see [Figures 1, 2 and 3](#)). Macharia and most of the people who sell in the space had both lived and worked in Denis Pritt Village. When most of the settlement was removed, including Macharia’s home, a few kiosks were far enough from the road to be spared, and one of these was his scrap heap. As Macharia puts it, his business was spared due to an electricity post which defined the edge of the road reserve and also the edge of his business (see [Figure 4](#) to the left). The wayleave required for overground electricity lines helped to produce an open space where building was not permitted. This electricity pole is now a structural element in the fence around Macharia’s scrap heap, continuing to play its threshold role between state planning and popular construction.

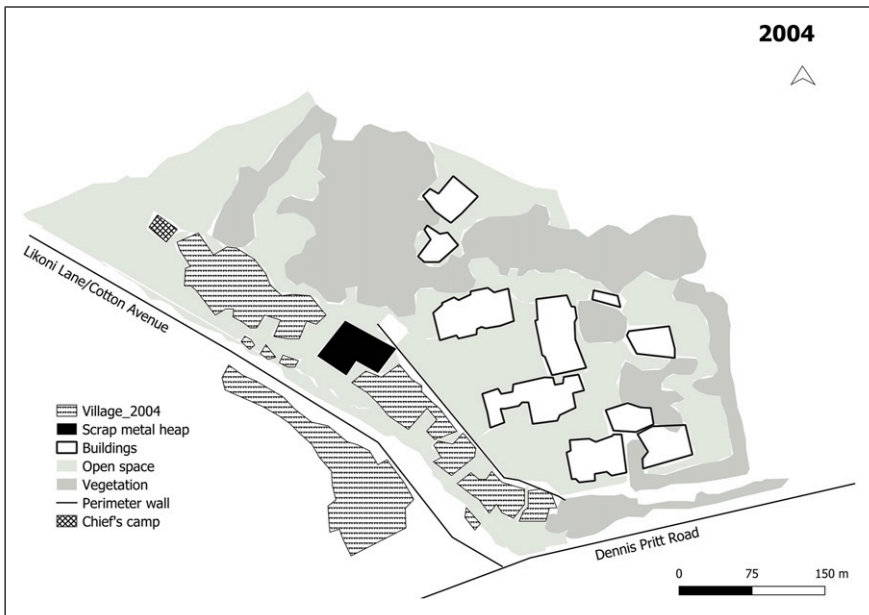


Figure 1. Map of Denis Pritt Village before road construction (2004).

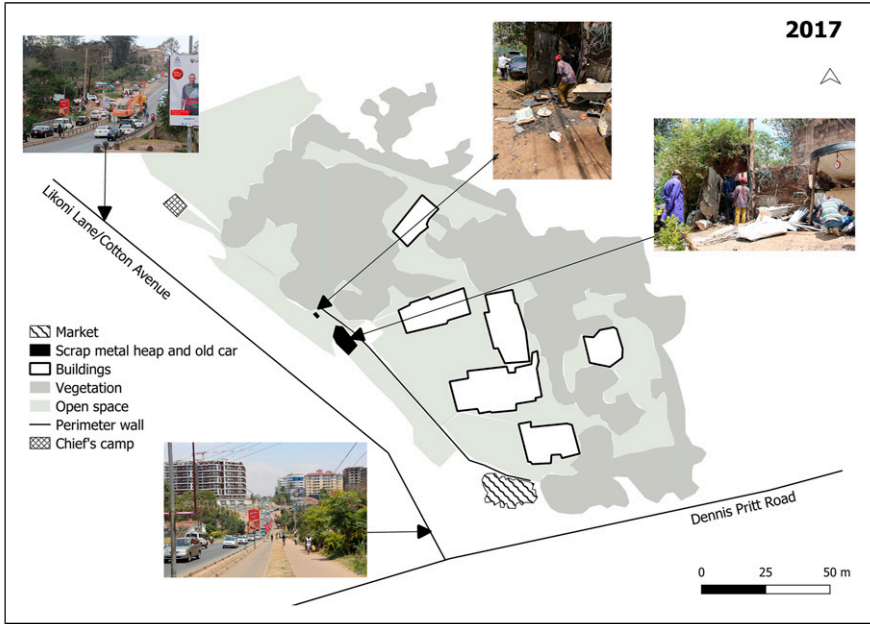


Figure 2. Map of the remnants of Denis Pritt Village in 2017 with location of pictures.



Figure 3. New road with the remaining businesses to the right.



Figure 4. Scrap heap with electricity pole to the left.

Even as his village was demolished in order to pave the way for “modern” infrastructure and urban development, this urban development also provides him with his source of livelihood. Macharia explained in our 2016 conversations that he once had a scrap metal business in his rural home in Kiambu, but they “were struggling” for lack of business, whereas the many construction sites around Denis Pritt make it an excellent place for scrap metal trading. Most of the scrap that he gathers comes from the demolition and construction that are ongoing in the neighborhood. This is a distinct feature of this scrap heap. Anne, Macharia’s wife, explained to us in 2017 runs a scrap heap close to their new home in Kawangware, where she mainly gathers materials like discarded household appliances or furniture. In Denis Pritt, workers from construction sites nearby stop by the heap on their way home, bringing a few pieces from the day’s offcuts. He also gets larger hauls from demolition and construction sites.

The scrap heap’s location within the remnants of an informal settlement which has been destroyed to pave way for a new road allows Macharia to accumulate scrap while being nevertheless centrally located. The position of the scrap heap owner is thus doubly tricky: one the one hand, he is engaged in the kind of messy business which has no place in visions of a modern, middle-and-high-income Nairobi; on the other, he is accumulating wealth in a form that is just visible enough that he is vulnerable to the interventions of prying passersby, including city authorities who might seek to extract something extra on the top of regular licensing fees. Macharia’s intermediary status allows us to highlight the heterogeneous nature of the scrap trade chain, and thereby also to show the ways in which the transformation of scrap into commodity is not organized by municipal authorities but

rather occurs through both Macharia's and the city's strategic use of grey areas and blind spots.

Macharia's scrap heap exists between *exception* as the organizing logic of the building boom, and *blind spot*, the way that the city chooses to ignore specific roadside businesses even as it promotes the erasure of "messy" roadside activities in general. This unruliness, in turn, is facilitated through regulation itself, especially the institution of the wayleave which prevents "planned" functions from occupying that space and thus in a way helps to create the "gray" or "awkward" spaces we discuss here. Today, Macharia's business is located both physically and metaphorically in a "gray space." It is spatially intermediary—existing in an undefined and marginal space along the electricity line and the road. And at the same time, it occupies a precarious zone between formal tenure and eviction, subject to the constantly shifting "boundaries between 'accepted' and 'rejected'" (Yiftachel, 2009). As both Yiftachel (2009) and Roy (2009) explain, this shifting regulation is a key feature of the reproduction of urban inequality.

Macharia's occupation of his space is neither illegal nor unregulated. Rather, it is regulated and permitted through regimes of authority which themselves exist in areas of exception.

First, Macharia pays City Council guards a daily fee for a license to trade in his space. As introduced above, the licensing regime managed by the City Council specifically addresses small traders. Mitullah (1991) explains that this licensing regime dates back to the 1920s, when the Municipal Council passed a special by-law granting licenses to hawkers. Its function shifted from being a source of municipal revenue to controlling the city's small entrepreneurs during the emergency of the 1950s, when the government radically restricted the number of licenses officially allocated (Robertson, 1993). This restriction of licenses is important, as it has created the conditions for "additional" licenses to be issued in return for the payment of a bribe, and thereby to a perception of small entrepreneurs as corrupt. This in turn has served as a pretext for police harassment, including harassment of traders with a license, in the name of the fight against corruption. The (suggested) number of licenses to be formally allocated has become an indicator for the stance of politicians toward small-scale entrepreneurs (Robertson, 1993). The licensing regime continues to exclusively regulate those at the margins by granting some of them a precarious status of legality. The 1998 Economic Survey of the Government of Kenya (GOK, 1998) defines the "main legal feature of the informal sector" as those activities not being "registered with the Registrar of Companies." It further states that "operators of the informal sector may or may not have licenses from relevant authorities for carrying out businesses," thus placing even licensed enterprises in the realm of the "informal." While this phrase has been removed from the 2019 Economic Survey, which in regard to legal terms only states that the "informal sector" excludes "illegal activities" (GOK, 2019), the licensing regime is an institution that builds on and at the same time solidifies a distinction between formal, large-scale and informal, small-scale entrepreneurship, and within the latter, between legal and illegal.

In addition to the City Council license, Macharia also has permission from the local Chief to operate his business, which was granted to him when Denis Pritt Village was still there. Like the City Council license, this permission places his business into a category

that is defined by its marginality. Chiefs have far greater authority in rural than in urban areas, and in Nairobi they are almost exclusively concerned with the governance of informal settlements. Even the existence of the Chief's camp adjacent to a large road is, like Macharia's business, a leftover from the informal settlement that once was there. Outside informalized settlements, the Chief's permission means little. To have a Chief's permission, then, is implicitly to be designated as "informal." [Majale \(2002\)](#) describes this system of Chief's permission, which regulates various affairs in informalized settlements, such as the size and materials of buildings, as "quasi legal," because it is not laid out in formal laws and regulations and is yet known, accepted and adhered to by all actors involved including the formal city administration. Hence, both of Macharia's "licenses" are derived from regimes of regulation that ultimately solidify his marginality: this is a form of marginalization through regulation.

Macharia's case speaks to the wider dynamics that regulate Nairobi's margins and profoundly shape the city's spatial and social possibilities. While these spaces are rarely taken into consideration by the planning offices themselves—and which therefore might fall outside of "explicit" urban planning tasks—managing them is nevertheless an integral part of Nairobi's spatial planning. This, we argue, ultimately enables planning as exception from regulation. While we have only briefly mentioned the more violent aspects of this exceptionality, violence plays an important role in producing and maintaining exceptional regulation. In this way, our argument resonates with [Kimari's \(2021\)](#) notion of "planning by force," where she describes the militarization (qua extreme use of violence by the state) of Nairobi's marginalized spaces as a practice integral to Nairobi's spatial planning approach and rationality. In the following section, we explain how those who are marginalized through exceptional regulation deal with their situation and their exposure to "planning by force."

Enduring the urban transformation: in/visibility as a tactic

It is crucial for a medium-level scrap recycler to be both visible (to potential clients) and not-too-visible (to those who perceive the scrap heap as a sign of urban disorder in need of removal). Macharia has to negotiate this intermediate position. The new road has made his scrap heap extremely central. It is now conveniently located at one of the city's main thoroughfares and directly accessible by foot, by pushcart, and by lorry; meaning that people can easily both drop off piece of scrap and pick up loads to bring them to the larger scrap traders in the industrial area. At the same time, the scrap heap needs to be unseen, to remain under the radar of those who might try to extract a bit of surplus. As we have noted, Macharia's business is not illegal: it exists within the licensing regime that encompasses most small entrepreneurs across the city. However, a system of police raids on small-scale entrepreneurs, be they legal or illegal, has existed in Nairobi at least since the 1960s, when the public image of small-scale entrepreneurs shifted to understanding them as "poor people" ([Robertson, 1991: 23](#)). [Robertson \(1993\)](#) cites Mukui, who noted in 1978 that "police harassment should not be a surprise to anyone in a society where the poor are thought of as potential trouble-makers, carriers of disease and social pariahs" ([Mukui, 1978](#); cited in [Robertson, 1993: 23](#)). The persecution of legal small entrepreneurs by the

police was normalized in the course of the 1990s, and today the police depend on payments extracted from illegal or legal entrepreneurs as a means of supplementing their pay. In a situation, where “the police are struggling from an underprivileged position to carry out the wishes of the ruling class” (Robertson, 1993: 34), Macharia is particularly vulnerable to police harassment due to the widespread perception that scrap dealers are engaged in illegal activities. Thus, the visibility of his scrap heap carries the danger of exposing him to the police or other authorities trying to extract a payment. Visibility can also expose him to robbery or scamming attempts. As a consequence, Macharia and other men who work or spend time at the scrap heap employ various tactics that allow them to be present and yet hidden.

Macharia said he takes advantage of a tree and the electricity pole we mentioned, which partially block the business and make the scrap heap seem smaller than it really is. Both he and the workers have also mastered the art of being partially hidden. Once, we found him sitting in the back of a shoe seller’s stall, not far from his own business and right next to the Chief’s Camp (Figure 5). The stall has a roof and walls close it off from view on the sides not facing the road. This person’s hospitality allowed Macharia to be close to his business while both hidden from the road and able to avoid the young men who hang out and sometimes work at the scrap heap, but who are not consistently employed there. Similarly, Macharia’s permanent worker Danny and the shifting group of men who spend time there will sit under a tree when they are not busy buying or selling scrap. An old car blocks the view from the street and serves as a “lounge” in bad weather and at night (Figure 6). The scrap heap itself has a hole for people to hide in. According to Macharia,



Figure 5. Road with the chief’s camps and adjacent shops on the left.

this is meant for “askaris,” watchmen, who guard the heap at night. Finally, people working at the heap take advantage of seasonal and daily rhythms (rainy days, evenings, and weekends) to work when the city county guards and police are not out on the street. As another worker, Leonard, explains, “Friday to Sunday are the busiest hours, because that



Figure 6. Scrap heap with the “lounge” car.

is when people don't work." Danny states that "in the rainy season there is more business, because the rain hides".

The intermediary or marginal position of the heap can sometimes work to the business's advantage and sometimes against it. One morning, we arrived at the scrap heap to find that Danny had been arrested. He and Macharia explained that Administration Police officers ("APs") had found him before dawn pushing a cart load full of scrap that he had gotten from a construction site nearby. The APs refused to accept his bribe, loaded him into the trunk of their car, and took him to an Administration Police camp. According to Leonard, who was at the scrap heap in 2017, "The police just want money so they said he talked rudely to them and took him. If they thought he'd stolen [the scrap], they would have taken the steel as part of the evidence". Macharia received news that Danny had been arrested and looked for him at the police stations, but could not find him because Administration Police are not regular police and he was in fact being held in an AP camp. Like Chiefs, APs exercise their authority primarily in rural areas and in informal settlements; they are known to be among the more violent and lawless of the country's forms of law enforcement. APs would rarely arrest someone in a part of town as central as where Danny was caught. But it was clear that despite their physical placement, Macharia and Danny were subject to a different regime of regulation than the one normally governing the city's wealthy neighborhoods. The regimes defining their location within the city are thus not only geographical but also linked to other ideas of what "makes" space—the practices that re-produce it, the politics that govern it, and the materialities that shape it.

Conclusion

Our analysis of one specific scrap heap in Nairobi as an example of planning by exception helps us to understand the city's urbanization dynamics and thereby to contribute to broader scholarship on the ways in which urbanization works through manifold entanglements between planning and everyday city-making. In doing so, we engaged with current planning literature exploring the ways in which city-making works through exceptionalism in planning and related dynamics of "gray spacing" (Yiftachel, 2009).

Specifically, we demonstrated how marginalized people and spaces are subject to two intertwined conditions of exception: exceptions from planning regulations as well as exceptional regulation. These conditions together allow for speculative urbanization to unfold while keeping in place the people and spaces that do not conform to the vision of a modern Nairobi but are necessary for urban reproduction, albeit in a perpetually provisional and precarious way. This is our crucial contribution to the planning literature on informalization and to planning theory in a broader sense: that attention to the doubled nature of exceptionality gives us a more complete picture of how urban space is made and for whom. We add nuance to the planning literature on exception by broadening the perspective. We wish not only to point out how planning works by not enforcing regulations but also to further consider the ways this exceptionality regime shapes urban space *in combination with* practices and institutions that exceptionally regulate the urban margins. Enacted by low-level urban authorities who see themselves primarily as maintaining order, these practices and regulations are not part of the formal spatial

planning apparatus. Nevertheless, they allow the formal planning apparatus to continue to operate in a regime of exceptionality, by making it possible for planning authorities to turn a blind eye to the small-scale providers who fill the gap in services that developer-led urbanization creates. Thus, the purposeful deregulation of urbanization by planners is enabled by practices and institutions that are outside formal planning bodies. Since these practices and institutions nevertheless fundamentally shape urban spatial outcomes together with the formal planning regime working through exception, we argue that these practices and institutions, such as daily licenses for small entrepreneurs, are integral to spatial planning itself. In short, we argue for an understanding of planning that stretches beyond the formal planning apparatus and its de/regulatory practices. With this shift of perspective, we aim to not only speak to planning studies but also to broader urban studies that have in recent decades increasingly argued that planning is largely irrelevant for urbanization particularly in Southern cities. We argue, to the contrary, that this broader understanding of planning as working simultaneously through exceptions from regulation granted by the planning offices and exceptional regulations enforced by administrations outside the spatial planning apparatus makes visible that planning does indeed fundamentally shape urbanization in Southern cities and—potentially—beyond.

Finally, Robertson (1993) anticipated organization and solidarity amongst those suffering from Nairobi's repressive urban regime. We may add nuance to this, as our analysis suggests that Nairobi's speculative urbanization not only marginalizes small businesses but may also simultaneously grant them new opportunities while rejecting them any formal claim on the future. Meanwhile these entrepreneurs, who are stuck in a regime of exceptional regulation, endure within "awkward spaces" (Jones, 2007) within the city's regulatory and planning systems.

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