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# PLANNING LAWS FOR URBAN AND REGIONAL PLANNING IN ZIMBABWE - A REVIEW

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## 1. INTRODUCTION

There exists a wide variety of laws (statutes) which underpin the activities of regional and urban planning. These forms of planning are part of public planning which is primarily carried out by the state and its agencies (e.g. parastatals). Public planning is a state activity which represents intervention in economic, social and political activities to achieve a set or sets of goals.

The nature of public planning is influenced by the prevailing state ideology, where in capitalist economies it will be relatively limited given the central role given to market forces in the management of the economy, whereas in socialist systems planning assumes a central role as the state controls and manages the major means of production. In most developing countries the state assumes a central role, not necessarily because of socialist ideology, but because of the overriding desire to develop, which requires massive physical and social infrastructure investments.

The interventionist role of planning in most cases is backed by legislation, which in most cases establishes what can be termed a 'legitimating' framework. Laws establish the rules and conventions, which reflect the different societal or class interests. Laws are created and used by the state apparatus (including the judiciary and administration) to legitimate state power. Planning law therefore has no ideology of its own, but that of the state; laws are created to reflect state powers.

McAuslan (1980) argued for the existence of an ideology for planning law using the experience of the United Kingdom as a basis. He identified what he termed three competing ideologies: firstly, that law exists and should be used to protect private property and its institutions; secondly, that law exists and should be used to advance the public interest (if necessary against private property); and thirdly that law exists and should be used to advance the cause of public participation.

In fact within the context of the United Kingdom, the ideologies do not exist independently of each other. Rather as McAuslan argues (1980:6):

"...they (the ideologies) do not always come through so clearly nor must it be assumed that the courts always expouse the ideology of private property or the planners and administrators the ideology of public interest ..."

At any given point in time law is being shaped and reshaped by the needs or different needs of society. Planning law is an outcome of social processes which are based within the context of overall societal development. Law is shaped by political conf-

licts and class struggles which are a dynamic phenomena if one adopts the dynamic view put forward by the dialectical materialist epistemology.

In most former colonial developing nations, planning laws have been largely borrowed or transferred from the experiences of the former 'mother countries'. Such legal frameworks reflected primarily the colonial interests and needs - in most cases it was a wholesale transfer of laws regarding property, business, land and constitutions. The emphasis was on establishing the fundamentals for a capitalist colonial mode of production. The indigenous systems (largely agrarian) were based on communal ownership of land and property. In Zimbabwe the fabric of the indigenous system was undermined through the alienation and privatisation of land. (This was effected through a series of land tenure and apportionment acts 1930, 1969 etc). This resulted in the creation of a settler economy whose laws and regulations were British based.

This paper is an attempt to review some of the basic planning laws, focussing on urban and regional planning. Such a review will not necessarily cover all the laws, but rather highlight some of the key relationships with a focus on the Regional, Town and Country Planning Act. Legislation for planning includes that which is oriented to the administrative framework, to specific sector activities or a combination of the two.

## 2. REVIEW OF THE LEGISLATIVE FRAMEWORK FOR PLANNING

McAuslan (1981:149) who was a member of the United Nations team studying the spatial planning system of Zimbabwe noted:

"It also quickly become clear to me once I had started my work that my evaluation of the present system could not be confined to an analysis and discussion of the Regional, Town and Country Planning Act 1976. That Act is certainly the <u>centrepiece</u> of the system of town and country planning and development control in Zimbabwe, but there is a great deal more legislation impinging on land use planning and control in the country and no report on the present system would be anything like complete which left out of account any discussions of legislation such as the Natural Resources Act, Land Acquisition Act, Housing and Public Health Laws etc ...."

Such a recognition is critical in understanding planning law, because it places it within the overall context of the operations of the state apparatus. Two broad categories of planning law will be reviewed before focussing on the Regional, Town and Country Planning Act. Firstly, the laws which related to administration and administrative arrangements for planning and secondly, the more specific sector laws or combining with administ-

ration.

### 2.1 Planning Law Related to Administration

Planning (urban and regional) takes place within the context of certain administrative arrangements. In Zimbabwe this refers first and foremost to local government acts, which define local planning authorities. The Acts include: Urban Councils Act, District Council Act, Rural Council Act, Provincial Councils and Administration Act. These acts define the administrative arrangements for subnational planning. Fig 1 shows the different forms of local authorities as defined by the local government acts.

The basic nature of local government has also been defined within the context of the 1984 Prime Minister's directive which was subsequently consolidated in the 1985 Provincial Councils and Administration Act.

Local government in Zimbabwe has a long tradition which can be traced from pre-colonial times when it operated under chiefs,to colonial local government which served the interests of European settlers and their administration, and more recently to post-independence local government which has been very much defined in terms of carrying out development programmes. Wekwete 1988:18). The legislative arrangements for the different forms of local government include:

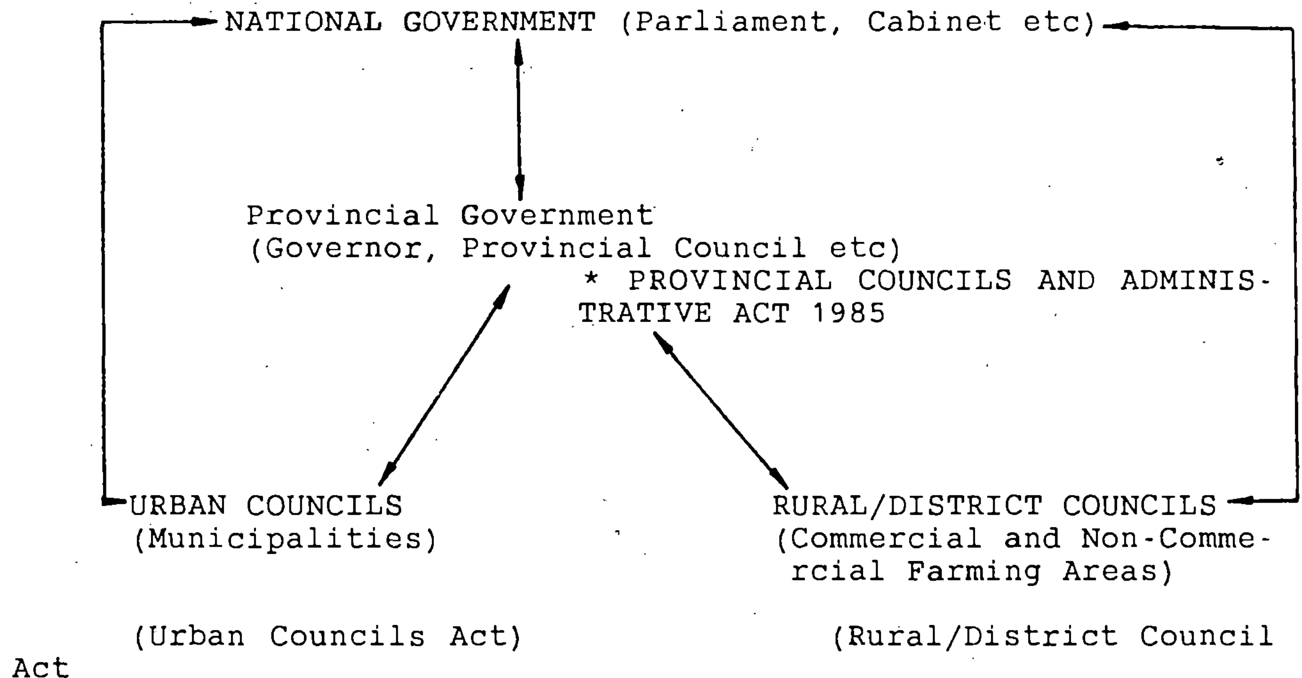
- powers to elect councillors and constitute local government
- powers for planning and administration
- powers to raise revenue and provide services

From the point of view of planning law it can be argued that local government acts provide the enabling framework for planning. The powers provided in the different statutes only become operational or implementable through the local planning authorities e.g. Housing and Building Act, Public Health Act etc. In other words, although the acts might be sector or activity oriented, they become law in relation to the functioning of the local authorities. In Zimbabwe there is a tradition of local authorities functioning on a committee system. It is the committees (delegated by council and advised by their executive officers) who make the laws operational. This is well illustrated in the case of the Regional, Town and Country Planning Act provisions for development control. Powers for granting permission to develop are the prerogative of the local authority. In part II of the Regional, Town and Country Planning Act local planning authorities are defined and "a local planning authority shall be empowered to do anything which is necessary to implement an operative master plan or local plan an approved scheme" (RTCP Act p. 18). However as defined in Section (30) of the Act in

the Minister (of local government) is required to decide development cases of natural and regional importance.

Local authorities are charged with the responsibility for preparing and implementing plans. This is done through the administrative powers and arrangements of the constituent local government acts. In Zimbabwe, the ministry of Local Government, Rural and Urban Development is responsible for the management of local government. That same ministry is also responsible for the Department of Physical Planning, which advices local authorities

*FIG I - Relationship Between Central and Local Government*




on all matters pertaining to urban and regional planning. This includes preparation of layouts for residential commercial and industrial purposes, development, preparation of regional, master -

and local plans, and other related technical work. Therefore there is a direct link between the Regional, Town and Country Planning Act, and the local government acts which include:

District Councils Act (Chapter 231)
Rural Councils Act (chapter 263)
Urban Councils Act (chapter 214)
Provincial Councils and Administration Act (no 12 of 1985).

An example of important linkages between the planning Act and the local government Acts is reflected in Section 160 of the Urban Councils Act. Section 160 gives power to the local authorities for estate development i.e. lay out and service land for residential, commercial and industrial purposes. Municipalities however must submit their plans for ministerial approval which ensures that overall planning considerations are taken into account. It is clear that the Minister (through the Department of Physical Planning) maintains an overall enabling power for planning.

The other important forms of administration related legislation relates to special agencies (parastatals), who are delegated powers and responsibilities of a development nature. These include:

- Agricultural and Rural Development Authority
- Urban Development Corporation
- Small Enterprises Development Corporation

The agencies created by these acts of parliament have a wide range of powers, but in carrying out their functions they have to take due cognisance of any regional, master or local plans, prepared by local authorities under the provisions of both the local government acts and the planning act.

Legislation or Acts which pertain to administration refers to those that set up the institutional and administrative arrangements through which planning operates or functions. It is also an important arena for defining centre-local relations.

The experience in Zimbabwe reflects problems related to multiplicity of agencies operating at subnational levels, lack of complementarity between plans and lack of resources or budgets to meaningfully carry out planning and implementation (Wekwete 1988). More recently there has been amalgamation of rural and district councils - Rural District Councils Act (1988), which is both an attempt to reduce the multiplicity of rural local government and to remove the vestiges of what was a colonial legacy of separating European commercial farming areas from African communal farming areas. There is also a significant

attempt which has been made to use legislation to co-ordinate planning efforts in the spirit of the 1984 Prime Minister's directive.

## 2.2 Planning Laws Related to Sectors or Sector Specific Activities

Such legislation is related to the control and management of specific sector activities. Central government operates in a functional way through sector ministries and agencies e.g. Education, Health, Water Development etc, which are provided with public sector funding annually to implement and manage projects. Legislation to control the specific sectors has evolved to establish the norms or operational guidelines, which are applied nation wide. Examples include the following:

- Mines and Minerals Act; which is directly used by the ministry of Mines to manage the mining sector. This includes the siting of mines (mining claims), installing of machinery, infrastructure for mining locations and other more specific mining requirements. This act has direct relevance to urban and regional planning, and therefore is an allied act to the Regional, Town and Country Planning Act. The Mines and Minerals Act has a wide range of jurisdiction, which might override the broader consideration of the Regional Town and ountry Planning Act. This is a historical phenomena given that mining was a central feature of the early colonial economy, and continues to be a major export earner and employer.

- Water Act (No 41 of 1976): falls under the jurisdiction of the ministry of Energy and Water Resources. It provides powers for siting and development of dams and energy sites, their management and where necessary their protection. Through provisions of this Act, the National Water Supply master plan was formulated.

- Roads Act (Chapter 263):
This provides powers to the ministry, for the construction and maintenance of state roads. This power does not apply to local authorities, where roads are approved within the context of master and local plan. However, in preparing regional plans, there is a need to pay specific attention to state roads.

Indeed there is a whole range of statutes which have a direct or indirect influence on planning law. They define specific sector activities and the ways of managing or controlling them. The centrepiece of the system of regional and urban planning however is the Regional, Town and Country Planning Act (1976) amended 1980, 1982. The act focusses on land use and provides a framework for local authorities to prepare regional, urban and rural plans.

There has been continuity in town planning laws since the colonial period. The 1976 Act has been amended in very limited ways since independence, 1980. This is largely because the main fabric of public laws relating to land and property have been retained emphasising private ownership. Thus despite the removal of the racial aspects, there have not been any essential changes in terms of property relations. The Act's terms of reference however have been broadened to cater for the communal areas which were formerly excluded from 'statutory' planning as outlined in the Act. This is particularly significant in the field of rural regional planning (growth centres, resettlement etc) Wekwete 1987.

## 3. REGIONAL, TOWN AND COUNTRY PLANNING ACT (1976)

The Act is divided into sections which can be analysed under three basic categories:

- powers to plan
- powers to control development
- powers for setting up the administrative framework for planning

Because the Act relates to many other statutes the powers have close links with sector specific and administrative statutes. Fundamentally the Act provides the basis for statutory regional and urban planning.

### 3.1 Powers to Plan

The Act provides for a range of powers for forward planning, which powers are operationalised within the context of local planning authorities (urban, rural/district councils). The type of planning envisaged is physical and/or spatial, and can be distinguished as rural-regional and urban regional. There is a wide variety of overlaps that can occur between and among the different forms of planning

Part I of the Act makes provisions for regional planning and a region is defined in terms of specific needs or need, and only when it is considered desirable by central government. The region is therefore created by central government and a regional planning council is appointed by the minister.

The objectives of the regional plan are stated as follows:

"..... to indicate the major land uses, including the important public utilities and any major amenity and recreational areas, areas for development, major transportation and communication patterns and measures of the physical environment....."

RTCP Act (1976 p. 11)

The concept of regional planning put forward in the Act represents a middle tier between national and local levels. It was not linked to any specific administrative level (district/province) but rather would be determined for a specific planning or programme functions. This could be termed ad-hoc planning in so far as regional planning only became necessary .. "whenever the President considered it desirable ...."

RTCP Act (1976 p. 9)

However there were several other regional planning initiatives during the colonial period including the growth centre policy, the intensive rural development areas etc. Such initiatives were focussed on the African tribal trust lands, and therefore were within a segregationist framework.

The application of the 1976 provisions for regional planning was made in 1978/9 when a decision was made to prepare a plan for the Sebungwe region. The Sebungwe stretches from the north-west boundary comprising the shorelines of lake Kariba, to the east up to Sanyati river and to the south and south-west covering Binga and Gokwe districts. This region could be termed homogeneous in terms of low agro-ecological potential, sparse population and poor infrastructural services.

The initiative to plan the Sebungwe largely emanated from central government ministries including the Department of Physical Planning. The responsibility to prepare a study and plan was given to a sub-committee of the standing committee of the agricultural and rural development authority (ARDA). A study was prepared covering the different sectors and ministries, and reviewing resource potential. However it became very difficult to prepare a plan given the diversity of interests and ad-hoc nature of the region. This became even more problemmatic after 1980 when government began to emphasise a formalised hierarchy for planning, which strengthened the role of local government in planning. (1984 Prime Minster's directive). Therefore there has never been a formal Sebungwe plan for implementation.

However more recently in 1986, a new initiative was undertaken to prepare a Zambezi valley plan, which covers most of the areas which were included in the Sebungwe planning exercise. The need for a Zambezi valley plan was identified in the first five year plan (1986-90) and currently consultants have been engaged to prepare a plan. This exercise has mantained the need for part I of the Regional, Town and Country Planning Act in terms of providing powers for inter-regional planning. Such plans provide and important feedback to provincial planning and other local level planning. The second section of the Act (Part II) defines local authorities which includes:

"... every municipal council or town council for the area under its jurisdiction, and every rural council, district council or local board for the area under its jurisdiction ..." RTCP Act (1976 p. 14).

This definition is an important aspect in terms of operationalising statutory subnational planning. Local government authorities are the planning authorities and

".... a local planning authority shall be empowered to do anything which is necessary to implement an operative master plan, local plan or approved scheme .." RTCP Act (1976 P. 18).

Because the Act follows the United Kingdom model of planning laws, there is an imphasis on the role of the local government system as a basis for planning. The Act does not refer to broad aspects of development planning but is rather confined to town and country planning. (What could be termed planning for the built environment). Increasingly however, a new emphasis is being placed on linking national and subnational planning. This raises the debate on the issue of integrating physical and economic planning (Rambanapasi 1988).

Part III of the 1976 Act defines the specific nature and characteristics of urban master and local development plans. In theory the concept of master and local plans also refer to rural planning, but in practice this has been confined to urban areas. The provisions of the 1976 Act superseded the 1945 Act provisions which empowered municipal local authorities power for preparing town planning schemes. Such schemes were criticised as being rigid and inflexible according to a commission appointed in the early 1970's to review the statutory framework. Schemes were very specifically geared for development control and were rather rigid in terms of responding to dynamic urban development. The commission highlighted to evidence of the city of Harare, where the rigidity of the schemes was resulting in many appeals against the granting or not granting of planning permission.

The 1976 Act distinguished between master and local plans, with the former taking into account broader stategic/economic issues, whilst the latter focussed on development control issues (in the tradition of schemes). The master plan concept was modelled on the British structure plan idea (1968 British Act). In terms of preparation, the logic was to prepare a master plan first and then a local plan latter.

Since 1976 however, there have been only three master plans completed - Bulawayo city master plan, Marondera master plan and Kwekwe-Redcliff master plan. Currently the Harare combination master plan is being prepared and there are many new initiatives to prepare plans for smaller urban centres. (Wekwete 1988). In reality therefore most urban centres still utilise schemes

prepared under the 1945 Act provisions.

Most urban municipalities have prepared local development plans (even without master plans) to facilitate housing, industrial and commercial development. This provision is granted by the Urban Councils Act, which is the main enabling local government Act.

The Act elaborates the sequences for preparing master and local plans. This is further elaborated in what are termed statutory instruments, which provide explanatory guidance for planners and local authorities. The main features of a master/local plan, which the minister statutorily expect to be covered are:

- what land in the area is used for
- population of the area and its distribution
- public services available in the area (social/physical infrastructure)
- availability of financial and other resources
- relationship of the plan area with other contiguous areas

The information would be put in a study report, which subsequently will be made into a written statement. Plan adoption involves consultation with the public (who have the right to make objections etc) and other interested parties. The minister of local government, rural and urban development has the final adoption authority, after considering objections and representations from the public.

Preparations of master plans has been problemmatic for most local authorities largely because of the lack of manpower and financial resources. Planning for most local authorities revolves around the annual budget cycle of the national economy. This is because major capital and infrastructural development is linked to sector ministries e.g. Housing and Public Construction, Water Development etc.

Another problem is that local authorities are organised sectorally which limits the role of master plans, as they tend to be associated with land use and transport. They are plans linked to the town/city engineer's department. This is a purely technical department dealing with roads, building standards etc. Therefore at the urban municipal level, master plans are stategic long term documents (with a specific focus), but not carrying the full corporate strength of all departments. This is inspite of the powers of the Act which state that:

"a master plan shall formulate the policies of that authority and its general proposals for a planning area ... and the economic development of the planning area ..."

RTCP Act (p. 20)

It has been argued that master plans sometimes tend to be cumbersome, taking a long time to prepare and in most cases demanding resources outside the scope of local authorities. In reality local authorities should aim to have a clear statement of policy intend and then work more through local development plans. The other related problem is that central government needs to prepare a clear urban development policy, defining the key parameters for local authorities.

It is also doubtful whether all local authorities need master plans of the same kind or that they should vary according to size and nature of urban area. For most smaller authorities local development plans suffice for purposes of development control.

Another fundamental problem of master plans is that organisationally and in terms of form and content, they do not easily fit within the hierarchy of development plans - district, provincial and national plans. The first problem is that master plans are statutory land use documents, whilst the other plans are non-statutory and largely co-ordinatory. Their statutory nature is related to property and land laws, which are the basis of real estate development in all capitalist countries. The other plans (district, provincial etc) are largely coordinatory and indicative plans dealing with broad development issues. The meaning of development within the context of the Regional, Town and Country Planning Act is closely linked to 'physical manifestations' i.e. "the carrying out in, on, over or under the land of a building or mining operations ..."

Such a definition of development has meaning within the context of development control of the built environment, but is not easily related to other definitions of development (Seers 1972). The question therefore has been how much master plans deal with development issues e.g. employment generation etc.

That master and local plans are statutory has not given them any more powers than non-statutory plans, particularly given their limited implementational capacity. The plans still depend to a large extend on property capital investing, which is controlled by the private sector.

## 3.2 Powers to Control Development

Local authorities have powers bestowed upon them by the Act to control development (Part IV, RTCPA 1976). The meaning of development relates primarily to the use of land and the buildings or structures thereof. Any person wishing to carry out 'development' must first obtain a permit from the local planning authority in the area. This includes change of use of land or building, deposit of refuse or waste material, erecting or displaying signs or advertisements on land or external part of

buildings etc.

The rationale of development control is that within the context of a free enterprise economy, the state and its agencies (including local government) regulates activity in the public interest. This was one of the major rationales for town, planning during the industrial revolution. Town Planning would curb the unregulated use of land, speculation on land and regulate infrastructure and building developments. Indeed development control occupies the major part of what is called planning law.

The Regional, Town and Country Planning Act (regulations), RGN No 927 of 1976 stipulate that:

"any person who -
a) proposes to carry out any operations on land or to make any change in the use of the land or any buildings there:
and
b) wishes to establish whether those operations or change of use would constitute development, and if so whether a permit is necessary for the developments may apply, in writing, to the local planning authority for the determination of the matters"

The Act gives discretion to the local authority to determine planning applications. The local authority may consider the following in dealing with a planning application - provisions of the master/local plan, planning conditions and standards and other material considerations. There is therefore a close link between the powers to plan and powers for controlling development in that the plan provides the basic framework for local authority policies and proposals.

The Act defines what is not 'development' and therefore does not need a permit, to include internal work, using land for a purpose for which it is designated e.g. building agricultural storage units on agricultural land and minor alterations within the same use groups, as provided for by the regulations (RGN 926 of 1976).

The use groups are an important guide to development control and they are divided into nine groups:

Boarding house; medical residential institutions; medical treatment centres; shops; office use; storage use; light industrial use; service industrial use; and general industrial use. Within each use group a number of specific permitted uses are outlined, which form the basis for determining planning applications. Not all uses are stated in the regulations which gives the local authority the discretion to determine in terms of compatibility of uses.

Before 1980 there was no statutory framework for development control in the communal areas (then Tribal Trust Lands). This

was established through the special development order (District Councils areas) 1982, which stipulated permitted development and instituted a procedure for application of planning permission. To a large extend the procedures were an extension of what prevailed in urban and rural commercial areas (where private ownership of land prevails). In communal areas however land is communally owned, it is state land, but allowing for long leases in business and commercial centres.

Development control powers for local authorities include powers for enforcement where an authority considers that there is illegal development taking place, powers for granting orders for preservation of buildings of special architectural merit or historic interest, powers to remove or demolish or alter existing buildings or discontinue to modify uses, and powers to preserve trees and woodlands. Such powers reflect what McAuslan (1984) terms a public interest ideology (if necessary against private ownership). In theory this gives the local authorities significant powers, but in practice the role and needs of property capital prevail.

Plans in most cases are indicative stating where and what private development may take place, and maybe stating more precisely what and where public development will occur; however there is usually limited control of the former and a general acquiesence to its dictates in mixed economy capitalist economies.

In Zimbabwe powers for development control have been most significant and effective in urban areas, particularly during the colonial period. This was reinforced by a clear and rigid perspective by the state on racial use of land and clearly defining public interest in terms of European settler interests. There has been continuity of implementation to strict development control after independence but without a racial ideology, This has been enhanced by the up to date registers on land ownership, and particularly the distinction between state, municipal and private ownership in urban areas. There is in essence a continuity of urban 'values' and standards. This is increasingly posing problems in the field of housing where there is now a strong manifestation of overcrowding inspite of housing standards/development control standards. We would argue that there is possibly a need to reexamine 'public interest' given the shortage of basic facilities being experienced by the poor.

The concept of 'development' as put forward in the 1976 Act is narrowly defined for the physical built environment. The extension to communal areas has been to business/commercial areas. However, the rationale for such a code has been transposed from the experience of the industrialised and highly urbanised-'mother' country. In the case of Zimbabwe (and other developing economies) the main thrust should be to promote and not control development. There is a need to promote formal and informal employment, to encourage entrepreneurial skills and development and to create massive social and physical infrastructure. The set of rules and regulations reflected in the Act might hinder many local initiatives (e.g. role of small entrepreneurs) by portraying such developments as might not meet the stated standards as illegal.

There is no doubt however that there are merits in a strong development control system in terms of creating a degree of certainty about investment in property and land. This benefits particularly the 'big' business. In Harare, the central business district investments are controlled by less than 5 property investors (largely pension and insurance houses). They no doubt, benefit from certainty, although they have also complained about rigidity whenever there has been resistance to certain land use changes e.g. if the market is favourable to office development then there is an immediate response through the 'change of use' mechanism. However in the ultimate end the benefits of a strong development control system are usually to land owners and property owners, who form the bulk of 'public' interest on land in urban areas. In other words, they are the actors most involved

in seeking planning permission and for whom plans have meaning. The bulk of the urban dwellers (tenants, squatters, urban poor) have a limited stake and therefore tend to be marginalised in urban decision making.

It is important to note that a close relationship exists between the powers to plan and powers for controlling development. The former provides the basis for development control policy, which policy is then elaborated in the provisions for development control. In most cases therefore a 'negative' form of development control is a reflection of 'negative' planning. The problem in most cases is that the philosophy of planning is poorly conceptualised - what does the authority really want? is it clear about the future? how does it intend to implement its programmes? Most developing countries (including Zimbabwe) have not tackled the problem of redefining the rationale for planning law which was wholly adopted from the colonial system. Planning laws therefore tends to be 'out of step' with the broader development thrust.

Another key feature of development control provisions of the Regional, Town and Country Planning Act (1976) are the powers for subdivision and consolidation of land. This refers to land (and property) which is privately owned in both rural and urban areas. This land is held with separate title deeds or is legally registered in the Deeds registry as a separate piece of land. This does not apply to communal land, commonage land or land owned by the state or municipality.

The provisions for subdivision and consolidation are an important regulating mechanism for privately owned land (which is the dominant form in all urban and rural commercial areas) and ensures that whatever developments occur are within the general parameters of the state/local authority development control policy.

The process of land subdivision is fundamental to the process of urban development in Zimbabwe. At the time of colonisation, land was disposed to the settlers in private titles. Thus the nuclei of most urban areas were surrounded by privately owned agricultural land. A certain amount of commonage was set aside, but future urban development would depend on annexation of contiguous privately owned agricultural land. In the case of Harare, the first substantial annexation and subdivision of agricultural land occurred in the 1920's when the Avondale farm (6 kilometres from the city centre) was subdivided and sold to private development (Christopher, 1977).

Indeed one of the major functions of the town planning department established through the 1933 Town Planning Act was to implement the policy on subdivisions as the urban areas expanded. It is also through the process of subdivision of farms for urban

development that many of the current standards for low-density suburbs' evolved. One such standard was that where sewage disposal was by septic tank, no plot should be less than one acre (4,000 sq metres). The subdivision of the peri-urban areas (being annexed as part of greater Harare) formed an important basis for preparing town planning schemes which became the official development control policies for the built up areas.

The issue of subdivisions is not only related to farms, because within the existing urban areas some low densities prevail (with plots averaging 2-5 hectares) which offer possibilities for subdivision. Such subdivisions are governed by sets of prevailing standards and tend to be discouraged where the character of the area might be altered. Therefore subdivisions have been more frequent on more peri-urban fringes which for planning purposes are are still designated rural.

In the case of Harare, the areas where most subdivisions took place (or continue to take place), were established in the Salisbury Rural Town Planning Scheme (1957). The scheme was divided into six sections, including the north eastern, western, south western and south east sections. These areas are generally agricultural with a residential component closely linked to the economy of the city. It is also in these areas that consilidations are likely to occur.

Consolidation refers to amalgamation of one or two or many pieces of land to achieve a certain type of development or increase viability of existing holdings. The objectives for consolidation are usually less problematic than those for subdivision. In most cases because local authorities (rural) charge unit taxes on specific units of land, it is usually advantageous to consolidate contiguous pieces of land. It is also usually linked with a desire to increase economic viability, particularly to achieve 'economies of scale'.

The role of local authorities and the state in regulating subdivisions and consolidations is broader than the specific reasons given for a particular application or its refusal. Because the land is owned privately the state/local authority must ensure that the general development standards prevail. This is particularly so in terms of infrastructure provision - roads, water, drainage, sewage etc. These considerations are elaborated in the explanatory guidance notes to the 1976 Act, prepared in 1985.
An important aspect relates to reservation of land required for common services and it is stipulated that land up to 20% has to be set aside for local authority purposes such as schools, post office,etc. This refers to subdivisions of 20 hectares and not less, which in most cases involve housing development. Such subdivisions are at the scale of local development plans.

However besides subdivisions of private land there are major

subdivisions of state or municipal land for 'low income' housing. These usually involve the purchase of a farm, which is subsequently subdivided as a local development plan. In rural areas there has been significant land resettlement which has involved 'de facto' subdivision of former commercial farms. The main requirement according to the Act (1976) is that the subdivision plans must be approved by the Minister of local government, rural and urban development (in most cases the subdivision plans are carried out by the staff of the physical planning department).

Subdivisions and consolidations therefore form an important aspect of the development control policy and are significant land planning processes. The main actors are the state and its agencies, and the landowners, who hold land in private titles.

The Act in part VI provides for powers of acquisition and disposal of land. It states:

"Subject to the provision of this Act, land within the area of a local planning authority may be acquired .... for the implementation of any proposals, including development redevelopment or improvement, contained in an operative master plan or local plan or an approved scheme ..."

Although the local authority has wide discretionary powers in this regard, there are provisions for appeal and compensation to aggrieved persons as a result of a certain plan coming into operation or damage resulting from compulsory purchase. Such provisions ensure that local authorities do not unduly prejudice private property interests. In the history of the 1976 Act there is no evidence of major conflicts, indeed there has been emphasis, on the 'willing seller, willing buyer basis'. In most urban areas, including the main cities, pressure on private owners of land and property has been limited. They have enjoyed protection which has been conducive to relatively high profitability in the field of real estate development. Restrictions on rent etc, have not really challenged the private basis of land and property ownership. There have been no curbs on land prices or property, with all being left to market forces. Within the context of McAuslan's ideologies (1980) the private sector interests are still dominant in practice. Urban planning has been guided by relatively conservative and incremental laws.

### 3.3 Powers for Setting up the Administrative Framework for Planning

The powers of the Regional, Town and Country Planning Act (1976) are vested in the department of Physical Planning which is central government's arm for implementing the provisions of the Act. The department, which is located in the ministry of Local

Government, Rural and Urban Development, has the statutory responsibility for urban and regional planning. The department advises the minister and the local authorities on all matters pertaining to physical planning. Indeed it is through the Act that provisions are made for the appointment of a director of physical planning.

It is however through the local authorities (rural, regional, urban) that the provisions of the Act are implemented - making of plans, development control and land management. A direct relationship exists between local authorities and the department of physical planning. This relationship also exists vis a vis other government departments who implement acts allied to the Regional, Town and Country Planning Act.

An important feature of the Act are the provisions for an Administrative Court, which is a legal body established (in the previous 1945 Act, it was the Town Planning Court) as an appeal body for all matters relating to planning decisions. These are decisions on development control, enforcement notices, subdivision and consolidation, and even decisions relating to master and local plans. The administrative court consists of the President of the Court (approved by the Chief Justice), two assessors and a list of not less than ten persons who have skill and experience in the hearing of matters pertaining to urban and regional planning.

If we follow McAuslan's argument of ideologies of planning law (1980) the role of the court is to adjudicate the conflicts that might arise between these ideologies. The court is in the middle of private property and landowners, (developers) planners and administrators and the general public. Most cases handled by the administrative court are between the private property and landowners (developers), and public interest held by the planners and administrators. This public interest emanates from provision of development plans which form largely the basis for development control policies.

McAuslan (1981:200) said of the Administrative Court in Zimbabwe:

"There can be little argument with the statement that the administrative court in its town planning appeals capacity and its predecessors (Town Planning Court) play a central role in town planning in Zimbabwe ........ it has gained a reputation for fair and judicious decisions, usually supportive of the local planning authorities especially in special consent cases given after open discussion of the issues ...."

However it is questionable that the case by case approach of the court (in a typical British planning system) is suitable for the emerging development planning system of Zimbabwe. The new

emphasis is development and its promotion, not control, and usually the case by case approach is suitable for setting precedents for development control. There is no doubt about the importance of the court in town planning cases, especially of the main cities, but little use of the court has yet been made within the context of rural regional planning.

An important role the court should play is to review the existing legislation and modifying it for new experiences. For the majority of the citizens there is a need to make laws simpler and more accessible. Councillors after independence have been in a 'learning situation' and this will continue for some time. It is therefore imperative for the court to advocate broader public participation in the legal system for planning. In recent years some authorities have tried to interpret development control provisions into the vernacular languages. This is a very positive step in making the public familiar with what the law of planning means.

Another important issue is to decentralise the role of the administrative court to provincial level. They should, at the provincial and district levels, be able to advice local authorities not just on how to control development, but on rationalisation of what sometimes looks like a 'maze' of laws, and a plethora of local planning authorities. The role of the administrative court could extend into the field of local government in general.

The Act in the first and second schedules highlights areas for which the Minister of Natural Resources and Water Development is the local authority for purposes of local plans. These include parks and wild life areas. There are also resettlement areas which were directly under the ministry of Lands, Resettlement and Rural Develeopoment, until recently when the ministry was disbanded. In fact now the resettlement areas are controlled by the Ministry of Local Government, Rural and Urban Development (which is responsible for all local authorities).

With the establishment of the National Planning Agency (1987) there is a move to streamline planning from national to local levels, among sectors and particularly resolving the lack of synchronisation between physical and economic planning. This is likely to improve the administrative framework for planning if the central agency is given adequate powers.

## 4. CONCLUSIONS

There is no doubt about the central importance of the Regional, Town and Country Planning Act in the field of urban and regional planning. Since 1980 its provisions have been widely applied to include the communal areas, which were formally excluded from

statutory planning.

The review however indicates that there are many sources of what could be termed planning laws, which creates a problem in creating a streamlined development planning approach. The RTCP Act (1976) is strongly oriented towards physical planning (land and property) and has not taken full cognisance of economic and social perspectives. This has created a problem in terms of linking up the different plans - district, provincial, urban and local plans. They have different forms and content. There exists therefore a great need to review the statutory framework and to rationalise it.

This raises an important issue of planning laws in development. What role should they play given that historically they have evolved to control development, to establish norms, rules and regulations. In a developing country how much should reliance be placed on laws? This problem is even more significant given that most planning laws were received laws, imposed through the colonisation process.

If planning is a dynamic phenomenon representing state intervention in the field of development (rural, urban, regional), there is a need to make the statutory framework dynamic. This will allow for flexibility in setting standards and the general perception of the planning process. Most legislation tends to be outdated and governments shun their revision because of the cumbersome procedures. Thus whereas there are merits in 'statutory' planning, the practice suggests that there is need for more flexible and simpler circulars. These overcome the problem of revising or repealing statutes. That means planning evolves 'in situ' and local authorities have more discretion (within the context of broad guidelines). All master and local plans should not have to follow necessarily what the 1976 Act says. What they should aim to become is to be up to date frameworks for day to day decision making. This is not only about land use, but on all strategic matters, which also calls for a corporate approach at local government levels.

The major requirement is that there should be more financial and manpower resources at the disposal of local planning authorities. The planning complement of each local authority (rural or urban) should be geared to carry out the tasks elaborated in the Act. Firstly, there should be a forward planning component which deals with master and local plans. This section will be responsible for preparing, monitoring and updating the plans. It should liase closely with other departments or sector ministries. Secondly, there should be a development control/promotion section which will be responsible for development control or promotion and implementation. This section should be manned by a variety of specialists particularly those with a finance orientation (Estate Managers etc). Finally there must be a research and

administration section which elaborates and manages specific sector policies or specialist areas. Such an arrangement would cover the three main themes of the Act - powers to plan, powers to control development and powers for administrative governance.

Currently only the two main cities - Harare and Bulawayo - have a basic complement for implementing the provisions of the Act. This is generally inadequate as illustrated by a complement of 2 responsible for the major task of preparing a Harare combination master plan. (Wekwete 1988). In the small and medium sized towns they have town engineer's departments with no planning complement. They rely on the central advice from the Department of Physical Planning provincial offices. This is totally inadequate and therefore most settlements are only capable of implementing development control on the basis of old development schemes. Statutorily therefore each urban or rural local authority must employ at least two planners, with the necessary complement of technicians. At the minimum one planner should be responsible for forward planning and the other for development control or promotion.

The British model of town and country planning on which the Act is based assumes a strong local government system. It is at the local government level that plans should be prepared and implemented. In Zimbabwe, this has to be reconciled with the other perspective of development planning, where central government through annual budget plans, allocates resources. The reconciliation should be through central government ensuring that adequate resources for planning exist and that national planning reflects the local initiatives.

An attempt to overhaul the existing legislation is a complicated task given that it is one of many used by the state apparatus in conjuction with the others. If radical change is desired then it has to basically alter the nature of property relations and replace the prevailing capitalist mode of production. Such a course has been pragmatically avoided and therefore change can only be perceived incrementally within the context of the existing system.

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