THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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PHILLIP MUKUKA

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LAND DEVELOPMENT, CONTROL AND USE IN ZAMBIA: AN APPRAISAL OF THE EFFICACY OF THE TOWN AND COUNTRY PLANNING ACT CHAPTER 283 OF THE LAWS OF ZAMBIA.

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing obligatory essays.

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TITLE:

LAND DEVELOPMENT, CONTROL AND USE IN ZAMBIA: AN APPRAISAL OF THE EFFICACY OF THE TOWN AND COUNTRY PLANNING ACT CHAPTER 283 OF THE LAWS OF ZAMBIA

BY

PHILLIP MUKUKA

An Obligatory Essay submitted to the University of Zambia in partial fulfillment of the requirements of the LL.B Bachelor of Laws Degree Programme.

SCHOOL OF LAW

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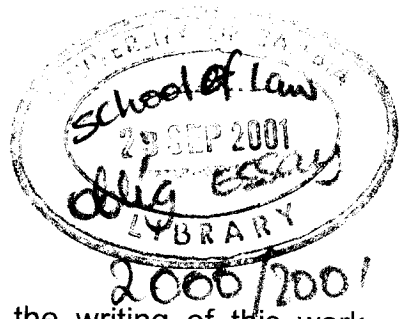

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INTRODUCTION

This research proposal is intended to outline an evaluation of the efficacy of the Town and Country Planning Act in Zambia. The use of planning as a way of land development and control is as a result of the need to solve the problem of chaotic and haphazard setting up of industries and thus exposing the people to health risks. It is also an instrument catering for the needs of several conflicting interests in society over the scarce land resources especially in urban centers and also to address the problem of unauthorised settlements which gives rise to squatter settlements been formed, in this regard, there is need to control the use of land by land owners. The problem of land use and control planning legislation has been prevailing prior to, during and in post British era, therefore to give legal backing to this land use and control planning legislation has been passed not only in Zambia but in different parts of the world as well. Before the advent of the aforementioned Act the right to develop land in Zambia was limited only by the colonialists themselves for purposes of building Industries, Mining, Commercial and Administrative Centres, furthermore, unauthorized human settlements were allowed by white landlords to Africans provided the latter paid rent. In the preceeding discussion it is submitted that there was no effective official control and regulation on building standards and town planning to oversee that all the settlements whether with the landlords consent or not were done in conformity with the intended use and development with regard to planning regulations. Before the adoption of the British 1947 Town and Country Planning

Act, Northern Rhodesia (contemporary Zambia) was regulated by the Town and Country Planning Ordiance of 1929 which provided for the appointment of a Town Planning Boarding which was vested with power to prepare a plan of any town referred to it by the Governor and impose building standards which could be enforced. Sadly to note, this Ordinance was based on a British model with its primary concern of the health and welfare of the European population, Lusaka was built based on the development plan of this Ordinance and it was done by a Professor S. D. Adshead of the University of London. Essentially, Lusaka was only built to cater for the white settlers because of the need for residential, administrative and commercial purposes, sadly indeed, at the material time no provision was made for Africans, in that, permitted settlement of Africans was not accepted in the sense that they were regarded as transit migrant labourers. Two factors have to be borne in mind when discussing urban planning and these are that; planning can be for both economic as well as for the control of land use in order to promote health, social and political endeavours of the people. The current Town and Country Planning Act in Zambia is based on the 1947 British Town and Country Planning Act. The Act was intended to provide the best environment for industries and protecting the nearby residential and commercial areas. Most of the aims it intended to achieve have been achieved but this is not to say that the Act has been implemented as it was envisaged. Therefore, it is along this line of contention that this research shall endeavour to demonstrate the anomalies. Sadly, a brief look most of our urban centers today will reveal the continuation of uneven development, squatter settlements, some industries are

set up in places which are closest to the town centers and residential areas, as a result the physical environment has continued to deteriorate. Traffic congestion is very much the order of the day especially during peak hours. It is therefore in view of such anomalies that this research proposal seeks to address just why the Act has failed to achieve its intended objectives and principles. Furthermore, it is an attempt to highlight the inherent problems in the Act in terms of administration, its implementation and subsequently find those areas that need to be removed from the Act if it is to make the Act more effective.

OBJECTIVES OF THE STUDY

The following are the objectives of the proposed research:-

(a) The proposed research intends to evaluate the capability, suitability and efficacy of the Act in relation to contemporary Zambia, especially with reference to its agencies of Administration.

(b) The proposed research will undertake and examination of the efforts that should be taken to make the Act more effective in line with the Legal institutions framework of the Act, mainly its enforcement and implementation.

(c) The proposed study will also assess the short-comings of the Act with response to current Town and Country planning demands, that is to say, planning legislation though commendable in itself is not free from criticisms.

JUSTIFICATION OF THE RESEARCH

Post independent Zambia continues to encounter problems in Town and Country planning particularly in urban centers, this as a result led to squatter settlements or areas been formed due to uncoordinated efforts made amongst the Local authorities, the Public Environments Central Government (Politicians) and Town Planners themselves. As earlier submitted, the current Town and Country Planning Act is a product of the British 1947 Act which has undergone a lot of Amendments in order to suit the current Technological, Social, Economic and Political change to cope with the demands of the changing environment. Sadly, our Zambian Act has been silent in this area, it has instead maintained the same old, obsolete Laws which all in all does not all cope with the changing world, infact it does not respond to our changing conditions in our physical environment.

Therefore, it is for this reason that this research proposal will endeavour to address and make emphasis on a new approach model or that maybe devised together with the appropriate legislation put in place with the view of bringing it up to date and meet contemporary demands of planning for land use, development and control our valuable land.

METHODOLOGY AND DATA COLLECTION

The methodology to be employed in this research study will be three viz. Desk Research, Inter-Net and Field Research.

(a) Evaluation of the Town and Country Planning Act and other legislation and statutory provisions related to the problem.

(b) Analysis and examination of both published literature and information on the websites on the computer available in the Library and Law School Computer Room respectively. These will include masters thesis, published text books, articles published in local journals, newspapers and other research papers and presentations. Desk Research will be compiled together with field Research.

SCOPE

The proposed Research will be set-out in five Chapters.

The First Chapter Deals with the reasons why it is necessary to plan and Outlines the historical overview of planning Laws in Zambia from the first ordinance in 1929 to the present Act from the discovery of copper mines and the resultant emergence of urban and squatter settlements.

Chapter Two Three deals with the agencies established for the Administration of the present Act Chapter 12; the Minister Authorities, the Town and Country Planning tribunal the local Authorities and lastly public participation in planning decisions.

Chapter Three Contains the definition of development control and use of land in Zambia.

Chapter Four Deals with the enforcement and implementation of planning Laws.

Chapter Five Deals with the short-comings of the Act.

SUMMARY

Proposals for reform, that is to say, what has been signified in the main body of the Essay.

CHAPTER ONE

PLANNING LAW AND ADMINISTRATION IN ZAMBIA: A HISTORICAL PERSPECTIVE

The present system of town and country planning in Zambia is largely a British import. It is therefore imperative that before we plunge into an analysis and evaluation of the law and administration of town and country planning in Zambia, we indicate briefly the position at common law and the evolution of town and country planning system in England.

At common law statutory restrictions on use and enjoyment of land was that "... any land owner was free to develop his land as he wished, provided he did not infringe the rights of others. He could erect whatever buildings he wished, however unsuitable they might be, and however injurious to the amenities of the district."[1] Therefore in essence, provided an owner acted within the limitation of his estate or interest and committed no nuisance or trespass against his neighbour's property, he was free to use his land for the purpose for which it was economically best suited.

However, it was not until the Housing, Town Planning Act 1909 was enacted was there any general power for local authorities to control the development of land. Subsequent statutes strengthened and control was extended resulting into the Town and Country Planning Act 1932, which for the first time conferred planning powers over land in England as separated from towns. The essence of this and the earlier acts was the preparation of a scheme. Each local authority was

empowered to prepare a scheme showing what development would be permitted on each part of the land, and there were powers of enforcement against those who carried out development contravening the scheme.[2]

The historical development of town and country planning in England is closely tied up with the emergence of the welfare state and the resultant expansion of regulatory functions of government.

Until the 19th century English local government was almost exclusively a matter of maintenance of public law and order. This in itself was confined to an inefficient police force, the "watch" of Shakespearan fame, a poor law of considerable rigour and ill-defined and poorly executed duties for the maintenance of highways. Control from the center was virtually non-existent, depending almost exclusively on the courts by means of the prerogative writs. The 19th century brought the industrial revolution, the break down of the old poor law and cholera epidemics in the towns, to the organization of boroughs and urban local authorities and later the country and rural district councils. The principal function of the new authorities was sewerage and sewage disposal. As the industrialization of the country developed, so the need for further controls over private development was gradually appreciated and further functions were created by statute and entrusted to local government; housing and (later) town and country planning and the personal health in particular.

At the turn of the century, the rise of advanced thinkers in many of the newly created local authorities, the Fabians in Metropolitan Boroughs and the liberals in Birmingham in particular, with their desire to raise the standard of living of the "working class" led to an intensive period of municipal enterprise. Gas, electricity, water supply, tramway, public parks, markets and wash houses became local government functions largely by the initiative of the local authorities themselves, either by obtaining local acts or by adopting permissive powers given generally in Statutes. By the middle of the present century, the standard of civilization demanded better housing and education and a wide range of personal, almost paternal, services characterised by the by the expression "welfare' or social service. Voluntary effort has played a great part in the development of these services. Social welfare is not to a very considerable extent the responsibility of local government.[3]

On the other hand the laws regarding public health, housing and planning in England may be seen as being part of a continuous policy to increase the powers of public authorities over the use of land in order to try and get on top of the increasing problems of the urban environment.

A belief in the virtue of public power exercised by or on behalf of elected local councilors has characterized the growth of land use legislation over the last 100 years. Much of the working class housing build in the new industrial centers in the United Kingdom during the 19th century were built by landlords for letting,

usually on short but sometimes long leases. It was inevitable therefore that the direction in which housing laws and policies moved was to impose public health obligations on the builders in order to avoid the social and aesthetic chaos created by generations of unplanned speculative building and urban development, and to empower the same authorities to tear down and clear the slums – the houses unfit for human habitation. The thrust of policy therefore was to replace unhealthy private tenanted property with healthy public tenanted property, and laws were framed accordingly.[4]

The thrust of planning system introduced in 1947 was to control private development in the name of containing urban sprawl, preserving the country side and stopping unsightly and unneighbourly development plan. A positive aspect of the planning system was the role of the development plan. This would set out in ordered form the future land uses of the town and the public authorities by means of its control over private development, and its power to develop land itself would be bale to ensure that the plan came to pass. Finally, as part of the overall policy of bringing about more equitable distribution of industry throughout the county and decentralizing from London, the central government took the power to control industrial location and establish new towns, initially to take overspill from London, later to act as growth poles in less developed regions of the country.

These laws and administrative arrangements were transplanted in Zambia, at the beginning of the 20th century as a result of the colonization of Northern Rhodesia (now Zambia) as a British colony. For some lawyers and administrators these laws were seen as value free, suitable for use anywhere and for others their Englishness was their advantage, it would assist administrators and planners ensure proper standards – would be maintained and it meant that laws would be introduced that were in good working order, that were in good working order, that were acknowledged to be successful and no thought was given as to their sustainability in the colonies.[5]

In actual fact these laws were not value free because as we shall see later, these laws represented the value and norms of the colonizers.

The process of urbanization in Zambia began with the opening of mines in the Central and Copperbelt Provinces in 1906.[6] For the same reason, the railway line progressed from the south across the Zambezi River to the Copperbelt. While the mining industry attracted large numbers of white workers from the south, the railway line paved the way to the establishment of commercial farms and trading centers by white settlers hence the rise of railway sidings like Lusaka, Livingstone and Kalomo, which later developed into major administrative centres, for example Kalomo was once made a capital town but lost its honour to Livingstone because it was too unhealthy and inspite of farming potential could no longer equal the pull of Livingstone. Livingstone remained the capital until

1935 when it was moved to Lusaka. This was at a time when communications were poor and slow for the more than a quarter of a million square miles of the country to administer, and it soon became obvious that Livingstone was too remote, a more central location was desirable for a capital. This was one of the Lusaka's finest periods. Lusaka therefore naturally became the capital city.[7]

Village management boards were set up to administer the small communities around sidings along the railway line, which was now progressing in north-easterly direction across the land. They dealt mainly with streets, buildings and environmental health. For instance, Lusaka's village Management Board was constituted in 1913 over an area of one square mile around the railway station. This and similar boards, remained the main instruments of urban local government until the late 1920's and survived the transfer of the territory from company to crown colony status in 1924.[8]

The system of Village Management Boards as organs of local government in the towns soon probed to be unsuitable and inadequate to cope with the increasing pace of urban development which was accelerated by the rapid growth of mining in the newly emergent Copperbelt. The colonial government dealt with this problem of rapid growth by the enactment of a municipal corporation ordinance in 1927 and township ordinance in 1929. Livingstone and Ndola were declared municipal corporations while Broken Hill (Kabwe), Lusaka, Kitwe, Luanshya, Mufulira and Chingola were townships. The purpose of establishing these towns

as corporations was to administer development plans at a much higher and sophisticated level than Village Management Boards. For instance, municipalities and townships were to have elected councils – the franchise being based on ownership or occupation of property. These councils were to have a wide range of general and specific powers including powers to make levy rates, to finance their services and to make local by-laws.[9]

With the use of municipal corporations and township councils, earlier attempts on planning were given momentum in that the scope of planning was expanded. If we take a case study of Lusaka which began as a permanent settlement known as Lusakas, we see that the first attempts at planning took place under the Lusaka Village Management Board established in 1913. The first Town Planning Ordinance was enacted in 1929. In 1930 SD Adshead, Professor of Town Planning, London University, was commissioned to select a suitable site for the new capital and prepare a plan for the new city.

It must be understood that planners and civic administrators at that time were from England or British trained, hence, the reliance on the system and model with which they were familiar and that is the English system.

It is contented that the Garden City concept introduced to alleviate squatters in existing industrial cities in England strongly influenced Adshead. Adshead was planning a European City in 1929 and this was clearly indicated when the plan

was completed in 1931. There was to be an eventual population of 500 Europeans. These were to live in three different areas on the basis of their income. The richest group was to be in an area with largest sizes of plots around State House. The middle income was to be in an area with plots smaller than those for high income, but larger than those for low income. The area set aside for them is what is now called Northmead.

Adshead not only allocated plots according to income, but also sited the areas on the basis of wealth. The richest were nearer State House and on the crest of the hill, this is Woodlands, Kabulonga, Sunningdale, ets. The middle income at the edge of the hill which is some area around Longacres and Civic Center and towards town or rather around Ridgeway. The low income were allocated in places like Thornpark and Emmasdale. Adshead called these areas 1st, 2nd and 3rd class. However, realizing that this classification would offend some people the nomenclature was omitted on the plan but the plan was followed on the ground.[10]

No provision was made for Africans at this time. This is because permanent settlement for Africans was not yet accepted. Africans were transient migrant labourers. Not only did officials encourage to leave their families in the village, they also ensured under the employment of the natives ordinances that no employer was obliged to provide accommodation for a family but that of a single employee. The result of this system was that the worker would spend his

childhood years in the village, proceed to town during his youth and spend his most productive years working for wages but return in old age to his village.

Migrant labour system later proved wasteful of labour because of the short periods that Africans were in employment, they remained inefficient and lacking in skills. This factor led to the realization of the need for a stable labour force by the colonial government and mining companies. Following the policy of stabilization, the question of African housing became relevant. Areas on the edge of the city were given to employers to construct houses for Africans. These location are places like Kanyama, Marapodi and Chibolya.[11]

Later plans sought to modify Adshead's creation but the one feature which was retained was the racial distance and the former European economic class distinction. These still exist twenty years after independence for instance we have what we call first class and second class trading areas. The first class trading area is the city center and the second class trading area is Kamwala. We have residential areas exclusively held by Zambians of Asian origin and this is popularly known as Madras and we have African traditional huts around Kamwala and homes for the well to do Africans in Kabulonga and the poor in shanties.

Planning was centralized under the Town Planning Ordinance of 1929 and from 1952 until 1958 professional planners from Southern Rhodesia seconded to the

Northern Rhodesia government were responsible for all planning. Varying schemes replaced the earlier 1952 plan. The rapid growth of urban centers, Lusaka and in the Copperbelt required a degree of decentralization. The Town and Country Planning Act 1961replaced the 1929 Town Planning Ordinance and provision was made for the appointment of local planning authorities. Soon planning authorities were established for the cities of Lusaka, Kitwe and Ndola and five municipalities of Luanshya, Chingola, Mufulira, Kabwe and Livingstone. Despite the creation of local planning authorities, central government through the Ministry of Local Government and Housing continued to exercise supervisory powers.[12]

What comes out of this historical exposure is as follows:-

First, our Town and Country Planning laws are derivative, having been "imported" from England at the turn of the century with the rise of urban settlements as a result of the discovery of copper. These laws were based on the English Act 1947. But unfortunately, unlike England where the laws have been brought up to date, our law is still based on the 1947 Act.

Secondly, civic administration and planning system were also originally based on the English model of local government. In the vast majority of cases, civic administrators such as Town Clerks, Town Engineers and Planners were either British by birth or British trained with membership of British professional bodies.

It is against this background that we proceed to discuss the law on Town and Country Planning in Zambia today. This forms the subject matter of our next chapter.

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CHAPTER TWO

INSITUTIONAL FRAME WORK FOR THE ADMINISTRATION OF THE ACT CHAPTER 283 OF THE LAWS OF ZAMBIA

In the preceeding chapter, the history of planning laws in England, the position at common law and Zambia's planning law from the first ordinance was outlined. This Chapter deals with the Town and Country Planning Act Chapter 283 of the Laws of Zambia, in relation to the agencies established for the administration of the Act, namely; the Minister and the Director of Physical Planning and Housing responsible for Town and Country Planning, the Town and Country Planning Tribunal, the Local Authorities and lastly public participation in planning decisions.

THE NEED FOR PLANNING

In the context of the Town and Country Planning legislation the word planning denotes the desire for the beneficial and orderly development or use of land. The primary objectives of the Town and Country Planning Act are basically threefold:-

(i) To prevent development of land contrary to public interest.

(ii) To plan for an enlightened and orderly arrangement in respect of available land for amenities necessary or essential to the

community such as housing, roads, industries, shops, offices, schools, open spaces and places of recreation and entertainment.

(iii) Incrimentally ensure the use of development of land in conformity with the plan development.[13]

Planning Law imposes a call regulating the development of land in the interest of the community. The liberty of the landowner to use land as he pleases is no longer available. In Zambia the machinery for planning is laid down by the Town and Country Planning Act which was enacted in 1962 and replaced the Ordinance of 1929.

The Town and country Planning Act does not apply to the following categories of land; customary areas under the Lands Act No. 19 of 1995, mining areas and mine townships under the Mines and Minerals Act Chapter 213 of the Laws of Zambia. The responsibility of administering the Town and Country Planning Act is currently vested in the Local government and Housing Minister as well as Directors of Physical Planning and Housing of various planning authorities. The Act make provisions for, "the appointment of planning authorities, for the establishment of a Town and Country Planning Tribunal, for the preparation, approval and revocation of structure or local plans, here structure plan under the Town and Country Planning Act Chapter 283 of the Laws of Zambia means the plan prepared by a planning authority under the direction of the Minister in

accordance with Section 16, and local plan under the same Act means the plan prepared by a planning authority under the direction of the Director in accordance with Section 16A. It also provides for the assessment and payment of compensation in respect of planning decisions, for the preparation, approval and revocation or modification of regional plans and for matters connected with and incidental to the foregoing.[14]

Primarily, the Act was to regulate and control the landowner's use of his land so that neither he nor his neighbours could suffer from the other's wrongs. The landowner can no longer build on his land anyhow like was the case at common law. This was unlike the first ordinance whose sole aim had been to restrict the setting up of private townships on private land without first having its town plan approved by the Planning Board. However, the present Act requires the private developer under Section 16A (4) to submit detailed plans to the local planning authorities whose primary task is to approve that detailed plan of the area designed for development. As earlier pointed out, this Act does not apply to all the land in the country. Section 3(2) of the Act is to the effect that the provisions therein will not apply to customary areas as defined in the lands Act 1995, mining area, and mine townships of the Mines and Mineral Act Chapter 213 of the Laws of Zambia.[15] The mines were allowed to regulate their own development. This was partly due to a need to stop antagonizing the mine owners who controlled their own area. And also Section 48 of the Housing (Statutory and Improvement Areas) Act 1974[16] excludes the application of the Town and Country Planning

Act. However, Section 3(4) of the Town and Country Planning Act Chapter 283 of the Laws of Zambia is to the effect that notwithstanding the provisions of any other law, this Act shall apply in all matters relating to land zoning and development. After examining the aims and objectives of the Act, it remains to evaluate the legal framework established under the Act for the administration and implementation of its objectives.

(i) THE MINISTER

The Town and Country Planning Act Chapter 283 of the Laws of Zambia under Section 5 provides for the appointment of Planning Authorities to control the subdivision of land and its development. The responsible minister under Section 5(2) has the powers to appoint the Planning Authorities and to constitute their membership.

Under Section 5(1) the Minister shall designate the Director as the strategic planning authority to exercise such functions as the Minister may delegate to the Director or exercise such other functions as may be prescribed by the Minister.

And Section 15(4) stipulates that the Minister may by statutory instrument, order that in the preparation of a structure plan, approved local plans may be considered in that structure plan, and it may maintain the contents of the approved local plans and to be submitted by the planning authority to the Minister for approval. Under Section 16 a local planning authority will have to submit to

the Minister for approval a structure plan comprising; a survey of the planning area which include; the principle and economic characteristics of the area of planning authority including the principle characteristics of any neighbouring area; the size, composition and distribution of the population of the area; the communication, transport system and traffic of the area or neighbouring areas; the effect of any changes which may affect the development of the area or the planning of such development and such other matters as may be prescribed by the Minister. Further under Section 16(1) (b) the planning authority also submits to the Minister for approval a written submission stating the policy and general proposals of the planning authority in respect of the development and other use of land in that area, including measures for the management of traffic. In formulating the above policy and general proposals, the planning authority will ensure that the policy and proposals are justified by the results of the survey and that the policy and proposals include; current policies with respect to economic planning and development of the region; the resources which will be available for carrying out the proposals of the structure plan and such other matter as the Minister may direct.

Under Section 16(3) a planning authority will in a proposal in respect of land in its area, indicate areas in whole or in part which it has designated for development, redevelopment or improvement and have been proposed to be designated as a statutory and Improvement Area under the Housing (Statutory and Improvement Areas) Act Chapter 194 of the Laws of Zambia. Furthermore Section 16(4) goes

on to provide that a planning authority shall before submitting a structure plan to the Minister, publicise in the Government Gazette and other public media the report of the survey; make a copy available for inspection by the general public and state a period of time within which representations in respect of the structure plan may be made to the planning authority which shall not be less than twenty-eight days; afford interested persons an opportunity to make representations on the proposals and consider any representations made to it. The whole idea of putting it up on the notice board at the Civic office of any planning authority and publishing it in the Government Gazette and other public media is to ensure that people are aware of what is happening. It also allows anyone who has any objection to the Minister's order to lodge an objection. This objection has to be lodged within twenty-one days of the publication of the structure or local plan. It is not very clear whether this is very effective, for to start with most people are not aware of the fact that they have a right to object to the structure or local plans. Most of them although, they may be aware, do not go to civic center and perusing through newspapers and the Government Gazette has got limited circulation for most of the people do not afford to buy a newspaper or the Government Gazette. More often those people who are directly affected to not get to see these publications. In the end only very few people get to know about these structure or local plans.

There are two provisions that has been included in the amendments to the Town and Country Planning Act Chapter 283 that is Section 16A and Section 40. This

Section 16A (6) provides that the "Minister shall before approving a structure plan consider the representations submitted by any person in respect of the structure plan and may cause a public inquiry to be conducted by the tribunal in respect of the representations."[17]

Section 40 goes further to stipulate that, where any land is required to be included in a structure plan or local plan or approved structure or local plan the Minister may recommend to the President that the land may be acquired by the President in accordance with the Lands Acquisition Act, Chapter 189 of the Laws of Zambia.

However, under Section 17, "The Minister or Director may after considering a structure or local plan submitted under Sections 16 and 16A, as the case may be, approve it in whole, or in part with or without modifications or reject it."[18]

Sections 16A and 40 are important in that they have brought in provisions that were never part of the Act before the amendments, for instance, it is not just the Minister alone to approve or reject the structure or local plan but also the Director of Physical Planning and Housing. Here we see that the Minister and the Director have been vested with vast powers. The affecting of a submitted structure or local plan rests entirely on their approval. It would thus be very easy for them to abuse these powers. But fortunately constraints have been imposed on them, so that they are not able to just reject a plan. They have to give

reasons for rejecting the structure or local plan and also institute a public inquiry to be conducted by the tribunal in cases of objections, as already noted under Section 16A.

(ii) THE TRIBUNAL

The most important provision in the Act is that of setting up the Town and Country Planning Tribunal. This is set up under Section 6 of the Act, it is important because any person whose interest in any land may be affected by a decision of the Minister or Director of Physical Planning and Housing of any local authority can appeal to the tribunal. The tribunal is a quasi-judicial independent body headed by a President who is either a barrister or solicitor entitled to practice in Zambia or it would be a person who holds or has held high Judicial Office. We can see here that this body is headed by high qualified personnel, who are essential for the successful working of the Act. And those qualified personnel are appointed by the Judicial Service Commission. In addition to the President, it comprises of a Vice-President who must also be a legal practitioner appointed by the Judicial Service Commission and not less than two other members one of whom must be a Chartered Planner also appointed by the Judicial Service Commission, and a Secretary appointed by the Minister. The functions of the tribunal are set out in Section 11 Subsections (a) to (d).

The Town and Country Planning Tribunal as noted earlier is established pursuant to Section 6 of the Town and Country Planning Act. An appeal lies to the tribunal

by any person whose interest in any land may be affected by a decision of a planning Authority or Minister. Thus in **Ball's** case the applicant sought permission to establish a bar in a small area in Kitwe. The Kitwe City Council also wanted to establish 26 bars in the same area and so they objected to the permission sought because it would be prejudicial to their own institutions. An appeal lied to the tribunal because the applicant's interest in land had been affected by refusing to grant the planning permission that was being sought. However, the tribunal said that it was not the business of the planning authority to refuse to grant permission on grounds of competition.

The instances under which an aggrieved person can appeal to the tribunal are set out under Section 11 and 29 of the Town and Country Planning Act chapter 283 of the Laws of Zambia. Thus, under Section 11, any person whose interest in any land may be affected by any decision of an appeal by the tribunal will have the right to appeal and be heard on the hearing of any such appeal. The tribunal will hear and determine the matter of the appeal and make an order either in addition or in substitution for the matter appealed against as it deems fit, including the award of costs to any party to an appeal. Further the tribunal after considering any case brought before it is of the opinion that the appeal should be allowed will, before awarding costs, give the Minister or planning authority an opportunity of making representations with regard to any conditions or requirements which the appellant or it consider should have been included which the appellant can rely on. Thereafter tribunal can make an order or directive in

the case as it thinks fit that will bind the Minister, planning authority can the aggrieved party or appellant. However, there is a proviso, that the tribunal will not make any order which would operate in conflict with any provision of an approved structure or local plan.

In addition Section 29 consolidates Section 11 by providing additional instances of appeal to the tribunal. Thus Section 29(1) stipulates that, the Minister or planning authority to whom functions have been delegates under Section twenty-four for permission to develop or subdivide land, or for any approval of that planning authority required under a development order or subdivision order, and that permission or approval is refused by the Minister or planning authority, or is granted subject to conditions, then, if the applicant is aggrieved by the decision, he may, within twenty-eight days from the receipt of notification of the decision or such longer period as the Tribunal in writing may agree, and in the manner prescribed, appeal to the Tribunal. Furthermore, under Section twenty-nine, subsection two, any person, other than an applicant or any local or township authority who is dissatisfied with any decision made by the Minister or a planning authority to whom functions have been delegated under Section twenty-four in connection with an application for permission to develop or subdivide land, may, within twenty-eight days from the making of such a decision or such longer period as the Tribunal in writing may agree, and in the manner prescribed, appeal to the Tribunal. These are instances under the Town and Country Planning Act chapter 283 on which an aggrieved party or any other applicant

dissatisfied with the decision of the Minister or a planning authority can appeal to the tribunal with regard to refusal, approval and imposing condition of on a proposed development or subdivision is concerned.

However, it is precluded from making a decision which conflicts with any provision of an approved structure or local plan. Under Section 11(2) any person dissatisfied with its decision may appeal to the High Court within a period of 28 days.

(iii) LOCAL PLANNING AUTHORITIES

Another agency responsible for the administration of the Act are the local planning Authorities. The Act provides for the setting up of these planning Authorities.[19] These planning authorities are set out in the first schedule of the Act. Thus Section 5(1) states that, the Minister shall designate the Director as the strategic planning authority to: exercise such functions as the Minister may delegate to the Director under Section twenty-four or exercise such other functions as may be prescribed by the Minister.

These planning authorities have been vested with a lot of powers and duties. They have been entrusted with the duty of controlling development and subdivision of land in their areas.[20] They do this by granting or refusing to grant planning permission in their areas so that no development can take place without their approval or permission. Should anyone build or develop despite the refusal

of permission, the authority has the right to serve an enforcement notice on the defaulter.[21] Under Section 16A the director can direct a planning authority to prepare a local plan where that area is designed as an area for development in a structure plan which has been approved by the Minister. Under subsection-two of Section 16A, a planning authority that is directed by the Director to prepare a local will prepare a survey of planning area, publicise the report of the survey in the Government Gazette and other public media, make a copy of the proposed local plan available for inspection by the general public and state a period of time within which representations in respect of the local plan may be made to such planning authority which will not be less than twenty-eight days, afford interested persons an opportunity to make representations on the proposals and consider any representations made to it. A Planning authority can by resolution adopt a local plan prepared and submit it to the Director. And under Section 16A (7) the Director can before approving a local plan consider any representations submitted by any person in respect of the local plan and cause a public inquiry to be conducted by the tribunal in respect of the representations. Just like the Minister under Section 17(1) the director may after considering a structure plan or local plan submitted under Sections 16 and 16A, as the case may be approve it in whole, or in part with or without modifications or reject it. In addition the Director may on considering a local plan refuse to approve such a local plan if, the Director is not satisfied that the objective of the local plan has been achieved or it does not conform to the structure plan as approved by the Minister.

Section 18 has brought in some new changes that of namely the alteration of structure or local plan; this Section 18(1) provides that a planning authority may at any time after the approval of a structure plan or local plan in respect of any area, on its own initiative or upon directives from the Minister or Director as the case may be within such a period as specified in the direction from the Minister or Director, submit to the Minister or Director for approval, proposals for the alteration of an approved structure plan or local plan. Thereafter, the planning authority will furnish to the Minister or Director, a report comprising such modifications to the structure plan or local plan as may be necessary.

The state is not bound by the development plan so prepared. It renders the Act and the plans valueless if after designating an area for a different purpose the state can just come up and put any building where they like even if it is not zoned for that purpose. Thus we find that it does not really solve the problem of trying to regulate orderly development.

Section 19 stipulates the procedure to be followed by the planning authority in the preparation of structure or local plans and their submissions. The planning authority may agree or disagree with any objections lodged. They have to inform the Minister about this. The power of the planning authority to refuse to grant planning permission will depend on a lot of factors but these will be dealt with at a later stage. Suffice it here to say that these powers are discretionary.

Section 18 has brought in some new changes that of namely the alteration of structure or local plan; this Section 18(1) provides that a planning authority may at any time after the approval of a structure plan or local plan in respect of any area, on its own initiative or upon directives from the Minister or Director as the case may be within such a period as specified in the direction from the Minister or Director, submit to the Minister or Director for approval, proposals for the alteration of an approved structure plan or local plan. Thereafter, the planning authority will furnish to the Minister or Director, a report comprising such modifications to the structure plan or local plan as may be necessary.

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The Minister, Director and the local planning authority are among most important agencies for implementing planning law because they handle a large volume of work. It may be said that planning evolves around them in that they control development and subdivision of land through the preparation of structure and local plans for their areas. They are the ultimate authority on the granting of permission to develop except where there has been an order by the Tribunal to grant permission.[22]

(iv) PUBLIC PARTICIPATION

We have already noted that there are stages during the drawing up of the development plan by local authorities to involve the public by putting up notices and inviting them to bring their objections if any. The idea here is to examine to what extent the public participates in the formation of development plans.

Public participation is the means by which members of the community are involved in shaping the policies and plans that will have an effect upon their environment. This demand for public participation is a consequence of the growing concern that the policies which determine the quality of life in a community should reflect the wishes of the people, rather than imposition from outside. Many planners are concerned about the role of the people in the planning process not only in Zambia but also world over. It is a question of deciding whether public participation should be restricted to the registering of objections to develop plans and applying for permission to develop, or should be

of a more deeper involvement in decision making at all stages. Within recent years, the concept of "advocacy planning" has had considerable support with emphasis on community action to influence planning.[23] This idea of public participation implies that people should have access to the choices and proposals open to a planning authority and to be able to put forward their ideas. After all they are in a better position to determine the way they want their towns and areas grow.

The Town and Country Planning Act in Zambia restricts public participation to the presentation of objections to structure and local plans and during the application for planning permission to develop or to subdivide land. Section 15 is to the effect that any interested person may object to the Minister's order that a development plan should be prepared or that certain areas should be included or left out of an existing plan. Under Section 19, the public is granted the right to inspect the plan submitted and to lodge any objection arising thereto within a period of twenty-eight days. The Minister is required to consider the objection and may hold a public enquiry,[24] either at the time of the order to prepare, or when a plan is submitted for approval or an order to include or exclude is made. From the preceeding stipulations it follows to say that public participation is limited to two stages; the beginning and the end of a development plan. When the plan reaches the crucial stage of being put together, the people in the community whose areas are being planned for take no part in the process nor is there any right to lodge objections after the plan has been approved. However,

there might be an indirect persecution by dissatisfied people of the elected local government representatives for example, councilors to exert pressure on the planning authorities but usually this do not have a great impact or influence.

Most of the time when people object they only represent sectional and local interests and they regard changes as desirable only when they happen elsewhere, or if they are of direct benefit to them and their interests.

Clearly the Act has little to provide for really an active public participation in the planning process and therefore it is not compatible with Government policy on planning. Such instruments as newspaper advertisements, Government Gazette notices and civic center notice boards are very limited in information dissemination and following other methods for public participation in plan formulation should be devised. This would be done through local meetings, public debates with community and special interest groups. The radio is a very powerful tool of information dissemination so that radio coverage of what is being planned can be a means of disseminating information to the public. The local planning authorities should ensure that people have the right to voice their opinions before an authority is committed to a policy line. It should not be difficult to provide a consultative procedure which would involve public participation during the formulation of a development plan.

It is here submitted that the public should be educated and informed on the importance and purpose of planning and procedures. This is essential in that it stimulates informed participation especially if an authority is to gain an accurate sounding opinion of the local people rather than simply the more vocal representations of articulate pressure groups[25]

ENDNOTES

13. Class notes with Mr. P. Matibini.

14. Heading, Town and Country Planning Act, Chapter 283 of the Laws of Zambia.

15. Mines and Minerals Act Chapter 213 of the Laws of Zambia.

16. Section 48, Housing (Statutory and Improvement Area Act) Chapter 194, Act No. 13 of 1994 (as repeated).

17. Section 16A(6)(a) and (b) of Chapter 283.

18. Section 17, Ibid.

19. Section 5, Ibid.

20. Section 5 and 24, Ibid.

21. Section 31(1), Ibid.

22. Interview with Mr. Abrampha, Director of City Planning, Lusaka City Council, 18th June, 2001.

23. G. W. Kanyemba and J. P. W. B. McAuslan Urban Legal Problems in East Africa. (New York 1978) p. 72.

24. Section 49, Chapter 283.

25. November 30, 1964 (1969).

26. A. Whittick (ed-in-Chief) Encyclopedia of Urban Planning.

CHAPTER THREE

PLANNING PERMISSION, DEFINITION OF DEVELOPMENT, BUILDING OPERATION, CHANGE OF USE AND PROBLEMS

In the preceeding chapter the legal framework for the administration of Town and Country Planning Act was outlined. In this chapter we look at the aims of the Act, the control and use of development. The chapter will focus on the need for planning permission, the criteria for granting this development permission and the question of nuisance, definition of development, building operation, change of use and problems.

(i) PLANNING PERMISSION

V. Moore, in his book, "A Practical Approach to Planning Law" says that: "Planning permission may be granted following the determination of an express application for permission made to the local planning authority for the area in which the land is situated. In other cases, however, it is not necessary for an express application to be made. This is because planning permission for the development in question in question may have been granted by a development order (such development is generally known as 'permitted' development), or by some specific statutory provision (as in the case of enterprise zone or simplified planning zones), or to be deemed to have been granted (as in the case of the display of advertisements) under other powers contained in the Act or authorized by some Private Act of Parliament."[27]

However in Zambia the fundamental concept underlying planning laws is that development permission is required for development and once a plan has been approved, all intending developers should apply and conform to the structure of local plan for that particular area, this is done so to ensure conformity with the plan. Thus, Section 22 of the Town and Country Planning Act Chapter 283 of the Laws of Zambia makes it mandatory for any landowner to obtain planning permission for any proposed development and subdivision of land. And this permission has to be obtained from either the minister of local government and housing or the Director of Planning of the Local Planning Authority. Such permission may be granted unconditionally or subject to such conditions as are deemed fit, or may refuse to grant such permission under section. The conditions must relate reasonably to the proposed development or the approved development plan, if an so far as material thereto, and to any other material considerations. The planning authority is at liberty to depart from the plans for that area, provided that any substantial departure must first be advertised. Further in the exercise of these discretionary powers by the planning authorities to attach conditions, the law requires that they do so reasonably and for purposes for which they were conferred. These were the principles enumerated in the case of **Chilufya v Kitwe City Council**[28] based on the decision of Lord Denning in the case of **Pyx Granite Company Limited v Ministry of Housing and Local Government**[29] at page 572.

"Although the planning authorities are given very wide to impose 'such conditions as they think fit,' nevertheless the law says that those conditions, 'to be valid,' must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest."

Again the law was later restated in this form by the House of Lords in **Fawcett Properties Limited v Buckingham County Council**[30]. Furthermore in **New bury District Council v Secretary of State for the Environment**,[31] the House of Lords were required to consider again the validity of a condition imposed under the general power under Section 70 (1) of the 1990 Act. According to their Lordships, conditions must comply with the following:-

(a) They must be imposed for a planning purpose and not for an ulterior one.

(b) They must fairly and reasonably relate to the development permitted.

(c) They must not be so unreasonable that no reasonable authority could have imposed them.

The principle was also applied in a Zambian case of **Total Oil Products (PTY) v Municipal Council of Livingstone**,[32] where the appellant wished to build a filling station and a block of residential flats. Planning permission was refused inter alia that the council required the development to be carried out concurrently. The issue was whether the refusal of planning permission was based on proper

planning considerations. The court's decision rested on Lord Denning's dictum, that on doing so, the condition must fairly and reasonably attach to the question. Here the condition was imposed for an ulterior motive. Such matters as social and economic consequences of permitting development sought are sometimes taken into account. In **Ball v Western Planning Authority**,[33] it was stated that it is no function of planning authorities to safe guard established business concerns from monopoly. This monopoly preservation is not a relevant material consideration. Therefore, planning consideration can be used where there is need to preserve the social amenities, historic sites and beauty of the environment. Main objectives of the planning process. In Ball's case the applicant sought permission to establish a bar in a small area in Kitwe. The Kitwe City Council also wanted to establish 26 bars in the same area and so they objected to the permission sought because it would be prejudicial to their own institutions. And thus it was held that it is not the business of the planning authority to refuse to grant permission on grounds of competition. And therefore was not rejected.

On the question of nuisance, in the case of **Malin v Municipal Council of Ndola**[34], the question was whether a day nursery school could suitably be established in a residential area. The premises were in a good class residential area and any one living there might expect privacy and quiet of such an area. The objector thought the nursery would be a nuisance. Upholding the objection and dismissing the appeal, the tribunal said that the establishment of a nursery

school must inevitably cause nuisance to adjoining landowners who expect some quiet and peace. Therefore, it was going to be detrimental to the amenities of the area.

As already pointed out commercial competition is not a relevant ground for refusing to grant permission. Similarly it is not relevant planning consideration to refuse to grant permission just because an objector feels that there is no need for a certain facility since already exists in that area.[35]

Further the condition for granting planning permission must not be unreasonable. An example of a condition held to be void because it was unreasonable accused **in Hall and Company Limited v Shoredom-by-sea-Urban District Council**[36] where the company had been granted planning permission for industrial development subject to a condition requiring it to construct an ancillary round over the entire frontage of the site at its own expense and to give a right of passage over it to persons proceeding to and from adjoining properties. The court of appeal held the condition to be unreasonable because its effect was to require the company to construct and dedicate a public road at its own expense. A similar view was taken in city **of Bradford Metropolitan Council v secretary of State for the Environment**[37] where it was held that a condition which required a highway maintainable at public expense to be widened by the applicant was manifestly unreasonable and ultra wires, "it is now quite clear that a condition in a planning permission which requires the developes to carry out or

fund a public function of a local planning authority as a price for getting that permission is unlawful.

Where a condition is held to be invalid, the question arises whether the condition can be severed form the planning permission so that the permission survives shown of its invalidity, or whether the condition cannot be severed so that the whole planning permission is void ab initio. Apparently there has not been a Zambian authority, therefore English case law is persuasive here upon considering the historical background of our Act. Thus in **Hall and Company Limited v Shoredom-by-sea Urban District Council**, a condition which required the company effectively to dedicate a road to the public at the company's expense was held to be invalid. The local planning authority had argued that if the condition was void, then the whole planning permission was a nullity. The Court of Appeal was persuaded by that argument because the invalid condition was fundamental to the whole of the planning permission. The suggestion in this and later cases was that if the invalid condition was incidental or trivial then it could be severed from the permission,' if it were fundamental then the whole permission fell.

In **Allnatt London Properties Limited v Middle Sex County Council**,[38] a condition was held to be void because it took away existing use rights. In argument the local planning authority were unable to give any grounds on which a reasonable planning authority could have refused planning permission

assuming the condition to be void. Not surprisingly, the court held that the permission could stand free of the condition. The condition impugned was clearly not one which was fundamental to the permission.

The only provision in Zambian law where, if one feels aggrieved by the decision of the local planning authority to refuse to grant planning permission is under Section 29. This is where the aggrieved person feels that immaterial considerations have been taken into account, he can appeal to the tribunal within a period of 28 days of passing of the decision. There is also a provision in Part VI of the Act which provides for payment of compensation for refusal or the conditional grant of planning permission. This will be paid if by virtue of the refusal or the conditioned grant of permission, the value of the interest in land has been prejudiced because it has diminished from what it would have been if the permission had been granted unconditionally.[39] But it is not in all cases where compensation will be paid.[40] If permission is refused for development that consists of making any material change in the use of any building or land, or the refusal to develop or subdivide land, if the proposed development would be premature by reference to either, "order of priority if any indicated in the development plan for the area in which the land is situated for development in that area or any existing deficiency in the provision of roads, water supplies, sewage or other public services and the period within which any such deficiency may reasonably be expected to be made good."[41]

This claim for compensation shall not have any effect if it is made after a period of six months beginning at the period of the planning decision in question. Since the planning Authority and the Ministers possess discretionary powers, they can extend this period in which the claim can be made under Section 39.

(ii) DEFINITION OF DEVELOPMENT

"The term 'development' is central to the power of local planning authorities to control the use and development of land."[42] Under the Town and Country Planning Act chapter 283 of the Law of Zambia, development is widely defined under two heads, "as the carrying out of any building, or other works or operations, on or under land or the making of any material changes in the use of land or building."[43] The Act goes on to list those things that are not to be considered development. However, what constitutes development is a root point, and may not be very clear. The Act recognizes this and thus the subsidiary regulations are to the effect that if any person who proposes to carry out any operations on land or make any change in the use of land or the building wishes to house it determined whether the carrying out of those operations of the making of that change in the use of the land or building would constitute or involve development within the meaning of the Act and if so whether planning permission's necessary he may apply to the Minister or planning Authority to determine the question.[44]

However, these are certain exceptions to the definition of development in the Act and one important exception is found in paragraph (9)[45] and this is the use of such land for the purpose of mining or agriculture including the erection and use of buildings for such purposes. These do not fall within the Act because they are regulated by separate statutes.[46]

As already pointed out there are two legs to the definition of development, that is to say, operation and use. The essence of operation was explained by Lord Parker C. J. in **Cheshire County Council Y. Woodward**[47] the brief facts were that a coal merchant installed a coal hopper and conveyor equipment in his coal yard without first obtaining a grant of planning permission to do so. The hopper, which was some 16 to 20 feet in height and mounted on wheels, traversed and delivered coal to stationery lorries beneath. An enforcement notice was then served on behalf of the county council alleging a breach of planning control and requiring the removal of the hopper and conveyor. The coal merchant appealed to the Minister against the enforcement notice and the Minister, after holding an inquiry, accepted the recommendation of the Inspector and quashed the notice. The council then appealed to the High Court on the point of law that the Minister had erred in holding that the installation was not development. In discussing the appeal, Lord Parker C. J. observed as follows:-

"It is some act which changes the physical environmental characteristics of the land, or of what is under it or of the air above it." In the case above therefore,

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"It is some act which changes the physical environmental characteristics of the land, or of what is under it or of the air above it." In the case above therefore,

according to Lord Parker C.J. an object may be affixed to land and not be a development or not be affixed to land and be a development."

With regard to the term change of use the second leg of the definition refers to the purpose to which land or buildings are devoted. Thus **in Parker v Secretary of State for the Environment**,[48] Lord Denning Mr. Said that, "it seems to me that, 'operations' comprised activities which resulted in some physical alteration of the land, which had some degree of permanence to the land itself; whereas 'use' comprised activities which are done in, alongside or on the land but which did not interfere with the actual physical characteristics of the land."

(iii) BUILDING OPERATION

According to Section 2 of the Town and County Planning Act the word building includes any structure or erection and any part of building so defined but does not include plant and machinery comprised in the building. Therefore the use of the word 'includes' shows that the words that follow are not exhaustive and complete of its meaning. Its efficiency however is to extend the ordinary meaning of the word building to include structures which would not normally be regarded as building such as walls and fences.

Similarly machinery in the open will be regarded as a building to the extent that if constitutes a development. It does not follow that anything placed on land is to be regarded as a building, items like caravans and vending machines which are

relatively easy to move are not regarded as buildings for the purposes of planning control.

However, under Zambian case law there have been several cases where an attempt has been made to define development. Material change of use will be determined mainly by the degree of change of use. Therefore, it is clear that physical and material constructions are within the scope of the Act. Thus in the case of **Papenfus v The Lusaka City Council**[49] the issue was whether the applicant had been wrongly refused permission. She had wanted to include children over the age of seven into her nursery school where previously there had only been children below seven years. After looking at the facts of the case, the tribunal decided that there were no building operations proposed in this case. What the applicant tried to do was to make a change in the use of her stand by registering into her nursery, children over the age of seven. This could thus not be regarded as a material change in use. Hence she did not need to apply for planning permission.

(iv) CHANGE OF USE

There would be no development unless the change of use is material, that is to say, unless the change is of such character that it matters having regard to the objections of land control. In determining whether any activity constitutes a change of use, it is the character of the use which has to be considered, not the particular purpose of a particular occupies. In expressing the view that what

really had to be considered was the character of the use of the land not the particular purpose of a particular occupies, Lord Parker C. J. quoted with approval a statement by Glyn Jones J. in **Marshall v Nottingham Corporation**[50] where he said:-

"The mere fact that a dealer in the course of his business begins to deal in goods in which he had not dealt before does not necessarily involve a change still less a material change, in his use of the land or premises where the business is carried on. A dealer in musical instruments might 50 years ago have begun to deal in gramophones or phonographs, as I suppose they would then have been called; and then in the course of time in radio sets and later in television sets. A dealer in electrical appliances, as demanded changed and fresh appliances were invented, might have successively added vacuum cleaners, refrigerators, washing machines and the like to his stock-in-trade, and he too might have begun to deal in radio and television sets. Each of them may have ceased to sell goods formerly sold for which there is no longer an adequate demand. Yet neither, in my view, has thereby altered the use he is making of his premises."

And later in **East Barnet Urban District Council v British Transport Commission**[51] where the Divisional Court refused to interfere with the decision of justices (who had quashed enforcement notices served on the company) that to use land as a transit depot for the handling and storage of the land for the storage and distribution of coal, did not constitute development. However, this

can be contested with the Zambian case of **Liebenberg v Luanshya Municipal Council** before the Town and Country Planning where the applicant sought to convert a derelief church into residential use. The question was whether this conversion was a kind of development or a material alteration which required planning permission. The Town and Country Planning Tribunal held that this conversation was a significant and material change of use and therefore development permission was necessary.

As already pointed out, no single test can be used to say what constitutes development. Mr. Akuyu of Lusaka City Council city Planning department observes that, "it is rather a matter of fact and degree as to whether an operation comes within the definition of material change."[52] But looking at the authorities cited, it may seem that it is those activities in question which alter the physical character of the land involved. Therefore, the new use has to be substantially different from the previous one. However, a view has been advanced by the courts and this is to the effect that the change in the character of use must be judged in the light of planning considerations.

SUMMARY

In summary it can be said that the discretionary powers that the Planning Authorities and the minister can have influence the way they grant permission.

They are allowed to grant permission either conditionally or unconditionally. They can also refuse to grant permission for reasons they feel are related to the development plan. Most of the considerations that may be taken into account when granting permission are the social and economic consequences of permitting the development that is being sought; the preservation of amenities, historical sites and the beauty of the surroundings. Should any one wish to develop in an area where these are present, the planning authority may refuse to grant permission because they feel it will either create a nuisance or disturb the order obtaining. They also consider third party interests, previously these had to establish a locus stand to bring about objections. This was so as to limit the number of complaints by people who were just mere busy bodies. Personal circumstances, road safety, traffic flows and other hazards are also considered when granting permission. The effect of the proposed development on the public utilities such as drainage and water supply systems and other broader public policies. This entails a balancing of the present and futures uses of land in environment terms.

ENDNOTES

27. V. Moore, **A Practical Approach, Planning Law** (4th Edition), (London, Blackstone Press Limited, 1994) P. 77.

28. (1967) Z.L.R. 115.

29. (1958) 1. QB 554 Lord Denning at P. 572.

30. (1961) AC 636.

31. (1981) AC 578.

32. Town and Country Planning Tribunal at Livingstone on 3rd March, (1965).

33. (1966) Z.L.R. 1.

34. (1965) Z.L.R. 162.

35. Town and Country Planning Tribunal at Livingstone on 26th June, (1968).

36. (1964) 1 WLR 240.

37. (1986) 3PL 598.

38. (1964) 15P & CR 288.

39. Section 35 (1) of the Town and Country Planning Act Cap 283 of the Laws of Zambia.

40. Section 36 (1) Ibid.

41. Section 36 (1) (b) (i) and (ii), Ibid.

42. V. Moore, **A practical Approach, Planning Law**, (4th Edition) (London Blackstone Press Limited, 1994) P. 77.

43. Section 22 of the Town and Country Planning Act Cap 283 of the Laws of Zambia.

44. Section 23 (7) Statutory Instrument No. 337 of 1969.

45. Section 22 (4) of Cap 283 of the Laws of Zambia.

46. Cap 213 and Chapter 183 of the Laws of Zambia.

47. (1962) 2 QB 126.

48. (1978) 1 WLR 1308.

49. (1967) Z.L.R. 3.

50. (1960) 1 WLR 707.

51. (1962) 2 QB 484.

52. Interview with Mr. A. Akuyu, Deputy Director of City Planning Department, Lusaka City Council, on 18th June 2001.

CHAPTER FOUR

ENFORCEMENT OF THE TOWN AND COUNTRY PLANNING ACT CHAPTER 283 OF THE LAWS OF ZAMBIA

In the previous chapter it was noted that before any proposed subdivision or development of land is carried out, any one wishing to carry out such works must obtain planning permission under Section 22 of the Town and Country Planning Act Chapter 283 of the Laws of Zambia. We also noted that under Section 16 of the Town and Country Planning Act Chapter 283, the Director could direct a planning authority to prepare a local plan where the area is designed as an area for development in a structure plan which has been approved by the Minister, and further more under Section 16A, (4). A private developer may prepare detailed plans for any part of the area designed for development under Section 16A (1) and the plan shall be submitted to the planning authority for approval. Therefore, we can see that before any proposed development is done, a developer must first be granted the permission and the development must conform to the use that particular area has been zoned for as provided for in the structure or local plan, approval by the Minister or Director of the local planning authority.

This chapter looks at the enforcement and implementation procedure as provided for under the Town and Country Planning Act Chapter 283. Obviously it would be absurd to have in place laws of control if the machinery of implementation is not devised or if devised not property working even to say the least used.

(i) ENFORCEMENT NOTICES

Under the Town and Country Planning Act chapter 283 of the Laws of Zambia, the machinery for the enforcement of planning control is set out under Sections 31, 32 and 33.

Thus Section 31(1) provides that the Minister or planning authority to whom functions have been delegated that any development or subdivision of land has been carried out without the grant of permission or that any conditions subject to which such permission was granted in respect of any development or subdivision have not been complied with, the Minister or planning authority may, within four years of such development being carried out, or in case of non compliance with a condition, within four years after the date of the alleged failure to comply with it, if he considers it expedient so to do have regard to the provisions of the appropriate structure or local plan, if any, and to any other material considerations, serve on the owner and occupier of the land an enforcement notice. The Minister or local planning authority can by an enforcement notice served on the owner or occupier of the land specify the discontinuance or impose any condition on the discontinuance or that any buildings or works should be altered or removed.[53] Also the enforcement notice that is served on the owner or occupier of the land should specify the development or subdivision that is alleged to have been carried out without the grant of such permission.[54] In addition, the Act has stated the time limit for the serving and when the enforcement notice takes effect. The first one has already been discussed in Section 31(1), the

other one is where there has to be a time limit of at least twenty eight days before the enforcement notice can take effect.[55]

There are two situations where breach of control can occur. The first is where the development or subdivision is alleged to have been carried out without the grant of permission.[56] It is expected that before the local planning authority approves a structure or local plan others relevant authorities will have to be consulted for example, the Minister of Local Government Housing. **Bendela V. Northern Planning Authority**[57] is illustrative, the tribunal found as a fact that there was no application for planning permission. The appellant had been told that he did not need to obtain planning permission to develop a shop in an area designated for residential use. It was held that the erection of the building was unlawful and without proper development permission. Therefore, the planning authority could invoke the provision of Section thirty one subsection one of the Town and Country Planning Act Chapter 475 as it was then. In addition the tribunal came out with this revelation.

"There appears to be a regrettable lack of cooperation or communication between the planning authority and the local authority ... the result ... appears to be that there have been very many instances of unauthorized development permitted by the local authority without reference whatsoever to the planning authority." However, this position has now been remedied by the provision in the

Town and Country Planning Act Chapter 283 which provide that most local planning authorities are now planning authorities themselves.

Breach of planning control can also occur where there has been a disregard of the conditions or limitations imposed or contained in a planning permission under Section 31 (3). As already stated, the notice must specify a period before it takes effect. This is to allow the person on whom the notice has been served to appeal to the tribunal and while the appeal is under consideration, the notice is of no effect, that is, it is suspended pending final determination or withdrawal of the appeal.[58]

(ii) RIGHT TO ENTRY

When an enforcement notice has been issued but it has not been compiled with, the Minister or planning authority have been empowered to enter the land and enforce the notice. If during the exercise of the right to entry the local authority did not comply with its own by-laws, and the occupier of the land is affected in anyway, the courts have held that the local authority is liable for damages. Thus in the case of **Ndola City Council v. Kasonso**,[59] it was observed that where a city council's by-laws require that a person who erects a building without obtaining a permit must be notified that the building may be demolished if he fails to do so himself within a specific period and the council fails to notify the person of the period in which the building must be demolished and the fact the council may demolish it, the council will be acting in contravention of its own by-laws if it

demolishes the building and will be liable for damages to the owner of the building. The brief facts in that case were that the respondent applied for a residential plot in Ndola. He was offered the plot and accepted it after paying for necessary service charges, the respondent applied for a building permit in accordance with the Ndola City Council by-laws. However, there was no response to the appellants application for a building permit. Consequently, after a period of five months from the date of application for a building permit the respondent commenced building on the plot. Later the appellant wrote to the respondent, advising him to stop construction as he had no building permit. Consequent to the letter the appellant demolished the building. The trial judge of the High Court concluded by setting out the steps that the appellant must follow before demolishing a building or structure constructed in contravention of its by-laws as:-

(a) Notifying, in writing, the person constructing the building or structure that he must demolish it within a specified period and that

(b) If the structure or building was not demolished within a specified period, that council would enter the site and demolish the structure or building.

It was thus that the appellant council did not follow the procedure by it own by-laws. On appeal the Supreme Court further held that, there was no written notice specifying a period within which the respondent had to demolish his building. Furthermore it found that there was no written notice informing him that if he did

not comply it would enter the premises and carry out such demolition. The appellant demolished the building without following their own by-laws, 67. And that the letter they wrote did not amount to a notice as required by by-law 67. And the appeal was dismissed with costs in favour of the respondent.

The above case can be contrasted in the earlier case of **Kumalo V. Southern Planning Authority**[60], where the appellant was seeking compensation under an enforcement notice resulting into the loss of business. This was rejected because he had not obtained planning permission in the first instance and the enforcement was validity served on him. In that case the brief facts were that the appellant had been allocated a plot in question by the local authority, which was not the planning authority, for the building of a tavern. The local authority did this in the obvious belief that they had authority to do so without reference to any other authority. This area was in fact zoned for industrial use under the development plan. The appellant constructed the tavern with the local authority's approval was subsequently served with an enforcement notice by the respondent planning authority requiring demolition of the structure. On appeal against the notice, the tribunal while obliged to apply the law recorded its sympathy, "we have great sympathy with the appellant, we are satisfied that throughout he acted in good faith and in ignorance of the requirements of the ordinance, but it seems to us that we have no alternative but to administer the ordinance as it is ..."

The planning authority may recover as a civil debt in any court of competent jurisdiction from the person who is the owner of the land any expenses that are incurred by the Minister or planning authority. The owner of such land is allowed to appeal to the tribunal and should he fail to do so within a certain period of time, he cannot turn around and say that the action by the Minister or planning authority was wrong, Section 32(1). Should any enforcement notice be served on any one to discontinue the use of the land in question but this is not complied with the owner of such land shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred and fifty penalty units for everyday after the first day during which the use is so continued.[61]

In addition, compliance with an enforcement notice with regard to demolition, alteration of nay buildings or works, the discontinuance of any use of land or any other requirements in the enforcement notice will not discharge, it further more, where any development is carried out in land by way of reinstating or restructuring buildings or works that have been demolished or altered in compliance with an enforcement notice, the enforcement notice shall be deemed to apply in relation to the building or works as reinstated or restored as it applied in relation to the building or works before they were demolished or altered, notwithstanding that its terms are not apt for the prupose.[62]

(iii) REMEDIES AVAILABLE FOR THE AGRIEVED PARTY

The Town and Country Planning Act provides for remedies for any person who feels aggrieved by a planning decision and he may at any time within the period of twenty-eight-days appeal against the enforcement notice to the tribunal,[63] with a further appeal to the High Court on a question of Law. While this appeal is going on the enforcement notice does not take effect.[64] The tribunal has got powers after determining the merits and demerits of the case before it, can quash the enforcement notice if the conditions have been complied with, and in any other case it shall dismiss the appeal.[65]

It is noted that this is a long procedure in that while an appeal is being determined by the tribunal, the enforcement notice is suspended. Then there might be a further appeal on a question of law to the High Court. However, no notice may be given within four years of the offending building, this is shown by recent trends where the Lusaka City Council has moved in to demolish unauthorized buildings at Kamwala trading center. The Town and Country Planning Act Chapter 283 also provide for payment of compensation to the aggrieved party in respect of a planning decision under taken by the planning authority and the limitations of paying such compensation in certain cases.[66]

In conclusion it has been noted that power has been vested in the Minister and the local planning with regard to the enforcement of their decisions. Thus the

machinery for the enforcement has been provided for, just as there is a provision embodied in the Act under Section 31 (6) and Part VI for, grievances, redress and compensation for the aggrieved party. Thus we find that both the owners or occupiers and the Minister of local authority's interest are catered for and balanced. Therefore, there is no way that one party can accuse the other of unfair dealings. However, even this is the case unauthorized buildings is still taking place, this is shown by unauthorized building in Misisi and John Leng compounds and some other areas, but this will be analysed in the next chapter.

ENDNOTES

53. Megarry's Manual D. J. Hayton, **The Law of Real Property,** 6th Edition (London English Language Book Society/Stevens 1982) P. 559.

54. Section 31 (2) (a) and (b) of the **Town and Country Planning Act Chapter 283 of the Laws of Zambia.**

55. Section 31 (3), **Ibid.**

56. Section 31 (4), **Ibid.**

57. Section 31 (3), **Ibid.**

58. **Town and Country Planning Tribunal, Appeal** No. TPT 06/07/12/1 21st August, (1972).

59. Section 31 (5) of the **Town and Country Planning Act,** Chapter 283 of the Laws of Zambia.

60. Section 32 (1), **Ibid.**

61. **Supreme Court of Zambia** (SCZ Judgement Number 13 of 1997).

62. **Town and country Planning Tribunal** at Lusaka, 19th October 1971.

63. Section 32 (2), **Ibid.**

64. Section 33 (1) and (2), **Ibid.**

65. Section 31 (6), **Ibid.**

66. Section 31 (5), **Ibid.**

67. Section 31 (6) (a) and (b), **Ibid.**

68. Part VI of the **Town and Country Planning Act** Chapter 283 of the Laws of Zambia.

CHAPTER FIVE

SHORT COMINGS OF THE TOWN AND COUNTRY PLANNING ACT CHAPTER 283 OF THE LAWS OF ZAMBIA

The previous chapter dealt with the enforcement of the Town and Country Planning regulations with regard to development of the various areas in accordance with the local plan. However, looking around today, one can say that to a certain extent, the Act has managed to achieve some of its objectives. But this is not to say that it has met all with success. Up to this moment, Zambia is plagued by a terrible traffic congestion, the shops are so closely built together that there is no space in between as was envisaged the Town and Country Planning Act Chapter 283. Those areas that were zoned for residential use have got industries in them so that there is a danger of pollution, for instance, part of Emmasdale is within the Industrial area.

In most of the Urban Cities, development is taking place on the periphery, this has brought about uneven development. Even more a number of illegal structures has continued to flourish for example, the location of Misisi and John Leng compounds have been declared illegal by Lusaka City Council because these areas are supposed to be for commercial and industrial purposes. Furthermore MMD carders were given plots by the then mayor of Lusaka Patricia Nawa in 1999 /in a Dambo area in garden and were consequently declared illegal by Lusaka

collapse on them. These and other features clearly point to the fact that the Town and Country Planning Act Chapter 283 of the Laws of Zambia has not achieved the objective of orderly development it was enacted for. Therefore, the aim of this chapter is to try and pin-point the difficulties that the aforesaid Act has had in terms of implementation and to suggest ways in which it could be improved so that a more efficient system of planning laws could be used.

(i) LACK OF COMPETENT AND QUALIFIED MANPOWER

The lack of competent and qualified manpower is the first and foremost difficulty that most developing countries face in all types of development. This can be attributed to the type of colonial education that was given to the few educated people. In Zambia today, this problem still persists. For instance, Lusaka City Council planning department has got not more than a handful of trained manpower who have to check orderly development for the entire Lusaka City. As if this was not enough, the officers have got no transport, if it is available there is always a problem of fuel, this in effect prevents them from going around areas under their jurisdiction to check on orderly development of structures in the city. This means that they are restricted to a very small area where they can walk to and from their offices. Of course this is attributable to the fact that there is a severe lack of financial resources. At the moment the entire nation is experiencing severe financial constraints owing to the ailing economy because of mismanagement and misapplication of public funds by some irresponsible leaders. And this is also affecting people to go for training because of lack of

funds for sponsorship. And as long as this lack of trained manpower continues, people and carders alike will continue to develop without consulting the planners on the suitability of the proposed development. That is why today most squatter settlements and other illegal developments have flourished because it is not easy to check on their growth, so that by the time any Town Planner gets to hear of such development, the people have become firmly entrenched. Should there be a suggestion to remove them by demolishing their ramshakles, the public outcry is so loud that the planning authority will in one way or another concede and leave them to carry on their squattering. This is closely tied up with the conflict between planning consideration and political expediency as Mr. P. Matibini observes on the 19th July 2001 at M. N. B. Chambers, where one puts up a structure without first seeking planning permission, the planning authority is empowered under the Act to demolish such structures but often they choose to go along with political expedience. For instance, although the location of the people of Misisi, John Leng compounds and other illegal settlements have long been declared illegal by the Local authority, Lusaka City Council, they feel that it is morally wrong in a country like Zambia which is striving to accommodate every urban home seeker to demolish such structures., Demolishing such structures, is often difficult because, politicians use this for political campaigns and contend that, demolishing these illegal structures will create more problems, because a good number of the population would be taken nowhere because of lack of suitable space in Lusaka and besides some of them would be homeless. The planning authorities have insisted on high standards of development. Thus

"many developers," as Mr. Chama a Town planner of Lusaka City Council, observes, "have been driven to the lower income group and peri-urban areas where they have engaged in unplanned and uncontrolled development. What is not appreciated is the fact that this kind of development has got both social and economic effects the slum dwellers and the health risks of the squatter compounds inter mingle with the life of those planned high city standards. As the population grows the city too will have to be expanded to accommodate the growing population. The Town planner then will be faced with the problem of dealing with a situation that he helped to bring about."

Town planners and legislators need to have the necessary information and knowledge about the problems they are supposed to solve. For them to succeed they must have easy access and wise interpretation of the relevant information with regard to planning policy. They need to do thorough research in the areas of housing and planning, and evaluate the information according to the prevailing circumstances in the area. But at the moment, this is not possible due to the lack of manpower and financial resources. The Town planners and legislators are not able to do thorough empirical research because of lack of transport, lack of properly trained manpower and other resources. This means that planning will take place even where a proper research has not been done.

(ii) **OBSOLETE LAWS**

The President of the Town and Country Planning Tribunal Mr. P. Matibini had this to say, "the Town and Country Planning legislation has not been consistent over the years because of its inadequacy of adhering to strict building plans."

The Zambian Planning Laws are modelled on the 1947 British Act. Our Town and Country Planning Act Chapter 283 of the Laws of Zambia has remained principally the same despite a few amendments, notwithstanding that since then Britain has undertaken a review of her planning legislation to modernize it in terms of promoting public participation and to keep it up with the new emerging environment and technological change. Development is not dependent on abstract ideas backed by legislative provisions. But rather by proposals applied in a concrete way with the relevant law according to the prevailing circumstances of the locality in which they will apply. Consequently, what it may work perfectly for Britain does not necessarily mean that it will work for Zambia. It could be that at the time that the laws were enacted, there was a lot of British influence and thus they could have worked then. For example, in the granting of permission for development, the conditions that will be imposed in Britain might not be feasible if imposed in Zambia. Certain considerations in England are considered as being irrelevant while in Zambia they might be relevant. Thus, Mr. Patrick Matibini President of the Town and Country Planning Tribunal observes that there is need to undertake a review of the Town and Country Planning Act

Chapter 283 to modernize it in terms of public participation to the extent of promoting people to engage in planning decisions because public participation under the Act is not adequate. Ultimately, our laws will have to be amended to suit the prevailing, social, economic, environmental, and other conditions and circumstances. This, too will be a way of breaking the chain that still binds us to the colonial masters. There can be no orderly and suitable development if we continue to use the laws they left with a few amendments, there is need to amend the Act so that it suits the Zambian prevailing conditions, for example to clearly define, public participation and to include mining areas and mine townships as well as customary areas.

(iii) NON-APPLICABILITY TO CERTAIN PARTS OF LAND

The Town and Country Planning Act Chapter 283 of the Laws of Zambia under Section 3 provides instances and areas where the Act shall not be applicable. Thus Section 3 (1) provides that the Republic is not bound. It shall not apply to customary areas defined in the lands Act Chapter 184 of the Laws of Zambia. Section 3 (4) and (5) stipulates that the Town and Country Planning Act Chapter will not apply to Mines and Minerals Act Chapter 213 and to any mine township respectively. It must be emphasized that, it is easy for people in these areas to develop without following the Town and Country Planning law since they are not bound. Thus there can be a lot of uneven development in these areas. As far as the exclusion of the government is concerned it could be that it was sought to emphasise the fact that it is supposed to be above the law. This implies that it

can overrule whatever decision of the local authority makes with regard to local plans because it is the supreme authority of the land. It is easy for the government to exert pressure on these local authorities to disregard the approved structure or local plans. This attitude would inevitably jeopardize the Town and Country Planning Act chapter 283 and hinders its effectiveness.

This is really no good reason why customary areas, mining areas and mine township and the Republic should not fall within the ambit of the Town and country Planning Act Chapter 238. For customary areas it is feasible because interests under customary tenure is not registered and under the land Act No. 19 of 1995 but only requires consent by the chief of the area involved. Granted that there are several difficulties that can be encountered over these areas for example pollution in mining areas and other uncontrolled building in these areas but looking at it from the planning point of view, it is imperative that these should fall within the preview of the Town and Country Planning Act Chapter 283. It is necessary that everybody should be bound if orderly development has to strive, irrespective of whether they be quasi government bodies or government, or whether customary areas, mining areas or mine townships. All the land should fall within the ambit of the Act, no wonder its name the Town and country Planning Act Chapter 283 of the Laws of Zambia.

(iv) **PUBLIC PARTICIPATION**

The President of the Town and Country Planning Tribunal observes that, "public participation in the formulation of planning laws has been the major weakness." As already pointed out, this does not have a wide readership in Zambia, so that those who are concerned with the local plan in their areas are often not informed. This limits the participation of the public. The Zambian population is not all literate, so that those ignorant people will build without permission because they are not aware that laws exist that require them to get permission and since there is lack of transport and manpower, no one will stop them until it is already too late. It is equally possible that people who are backed by politicians especially party carders usually exert pressure on the government so that they build without the required permission.

Therefore, there is a great need to involve the public in making of these plans rather than just involve them when plans have already been made without their views. Thus consulting the public when making the plans should be made a condition precedent. Most developed countries like the United Kingdom have devised systems to give adequate publicity and consultation about proposed schemes of development before they are approved. They give sufficient press coverage of the proceedings of the planning committees and this is often preceded by public debates and discussions. Thus the general public is given a

chance to discuss the merits and weaknesses of the development schemes publicly.

(v) INSTITUTIONAL RIGIDITIES

During the colonial era, land rights and ownership of land by the chiefs were often entrenched in the law except where the colonialists needed land for European settlement and public institutions.[1] When the colonialists left, most constitutions of emergent states were changed to suit the prevailing circumstances. However, these nations paid little attention to land legislation in spite of the fact that in most cases the national economy depended on land utilization. This is the problem which Zimbabwe is facing now because it paid little interest to settle landless Black war veterans at independence, however some critics feel that the land reform which President Robert Mugabe has employed to settle these landless Blacks by seizing white owned farms has been done in a bad faith. In this regard there is need to look at land legislation than taking steps to seize land that is considered naturally wrong and against the spirit of justice, for example, public participation, vast powers vested with the Minister and local planning authorities, there is need therefore to undertake a review of the Act with regard to the aforementioned issues.

SUMMARY AND CONCLUSION

The aim of this paper has been to evaluate the efficacy of the Town and country Planning Act chapter 283 of the Laws of Zambia.

In this paper, an effort was made to trace the Town and Country Planning laws from the 19th century when they were passed in England at the time when working class housing were built by landlords. These laws were passed to impose public health obligations on the builders so as to control unplanned speculative building and urban development.[2]

These laws and their administrative arrangements were transplanted into Zambia at the beginning of the 20th century as a result of the colonization of Northern Rhodesia (now Zambia) as a British colony protectorate.

Urbanisation in Zambia began with the opening of the copper mines in central and Copperbelt provinces. As a result of this, the railway line progressed from the South across the Zambezi River to the Copperbelt. The railway line paved the way to the establishment of commercial farms and trading and administrative centers, hence the rise of railway sidings like Lusaka, Livingstone and Kalomo which later became administrative centers.[3]

Village management boards were set up to administer the small communities around sidings. These boards dealt with maintenance of streets, buildings, environmental health and many more, but later these boards proved to be inadequate to cope with the increased urban development accelerated by rapid growth of mining.[4] The colonial government enacted the municipal corporation

ordinance in 1927 to deal with the problem of rapid urban growth. This expanded the scope of planning.[5]

At this time, most of the lawyers and administrators were either British or British trained. These Town planners were influenced by British standards of urban life. They felt that the English Town and Country Planning laws were suitable for use anywhere. No thought was given as to their suitability in the colonies.[6]

Planning Laws in Zambia

Our main focus here has been on the Town and Country Planning Act Chapter 283 of the Laws of Zambia. This is the sole regulator of orderly development and subdivision of land in Zambia. We also looked at the institutional or legal framework for administration of the aforesad Act. The Minister has got vast powers. He can revoke and modify planning permission. He is the one who approves and considers local plans submitted to him. They are required to give public notice so that people can come and inspect the plans so drawn. Then there is the Town and Country Planning Tribunal which is a quasi-judicial body charged with the responsibility of entertaining appeals arising from the decisions of the Town and Country Planning authorities or the Minister by aggrieved persons concerning their applications for permission to develop or subdivide land. The paper also looked at the participation of the public and how they are represented. It was discovered that there are only too stages where they

participate and this is at the preparation stage and the stage when the plans have already been drawn up, that is, only to object.

The paper looked at the problem of defining the word "development" and "control" one has to apply for permission to develop or to convert a used building into something else. The criteria for granting planning permission varies according to the circumstances. The criteria in all cases has to be based upon reasonableness of the conditions or it will be invalid.

The paper also looked at the implementation and enforcement of the Act. When enforcing local plans, the Act allows planning authorities to serve enforcement notices on anyone who does not comply with the provisions of the Act relating to obtaining of building permission. The local authorities have the right to enter upon the premises of the defaulters and demand payment for any work they have done. Should they damage anything, they are liable to compensate the occupier or the owner of the land.

Finally, the shortcomings of the Act which have led to its ineffectiveness have been highlighted. It was noted that the basic difficulty was the lack of competent and qualified manpower. This is due to the lack of financial resources. Further it was discovered that obsolete laws have contributed to its ineffectiveness in that we are using laws that applied to situations that are different from the present ones. The exclusion of the Act from applying to certain parts of the land like

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customary areas and mining areas and mine townships are also part of the difficulties, and also the fact that the Republic of Zambia is not bound. There is also the major weakness of public participation in drawing up of local plans for affected areas.

And finally the Town planners and legislators do not appreciate the technological, economic, social and environmental conditions and the prevailing circumstances in different localities.

PROPOSALS FOR REFORM

It has been shown that there are certain difficulties that have made the implementation of the Act less effective. Some of them, like the lack of competent and qualified manpower is something that has come about due to the financial constraints the country is experiencing, what is needed is to train more people in the department of Town and Country Planning who will see to it that the provisions of the Act have been complied with that there is orderly development. The department needs to have more surveyors who can survey the land where the development is going to take place. But as already pointed out, this will depend on whether the government can release the money with which to train these people.

The Act also excludes its application to certain parts of the country, for example customary areas, mining areas and mine townships.

This is because these areas are under the jurisdiction of different Acts, that is, the lands Act No. 19 of 1995 and the Mines and Minerals Act Chapter 213 of the Laws of Zambia. The Town and Country Planning Act Chapter 283 does not bind the Government of Republic of Zambia. What is being proposed here is that these areas should all come under the jurisdiction of the Town and Country Planning Act Chapter 283. The Republic should be bound by the aforesaid Act so that whatever buildings or other concerns it puts up will conform to the Town plan for that area. As it is the government can just build in any place they want since they are not bound, for instance, the Government recently acquired, Lusaka Boys School area under the so called Presidential Housing initiative to build up the millennium village under the pretext that the village was to be used as accommodation for delegates to the transformation of the Organisation of the African Unity into the African Union which justification never materialized. Therefore, for the Act to be more effective the Republic should be bound.

As for customary areas under the lands Act 1995, and Mining areas under the Mines and Minerals Areas Act Chapter 213 of the Laws of Zambia, these should all come under the Town and Country Planning Act to help solve the problem of haphazard buildings being set up on the periphery in these areas to solve the problem of pollution by the mines on the copperbelt.

The major difficulty is that the participation by the public is not enough. At the moment, the only time the public participants in the making of plans is at the objection stage. The proposal here is that there should be more public participation and dissemination of information. People should have access to the proposals and choices open to the planning authorities. They should be allowed to comment and make suggestions at every stage of the planning process. Such methods as holding of public debates, local meetings, community discussions with community special groups, exhibitions, information and enquiring centers could be very effectively used to involve the public in the planning process. At the moment the only way people come to know of the plans is by reading civic center notices and newspapers. My suggestion is that there should be radio, television coverage, non-technical summaries of proposals, civic leaflets, home visits and ideas competition to invite the public to participate. It will be up to the local authority concerned to choose the type of method that will produce a favourable response.

The public needs to be educated about the purposes of planning if accurate and sounding of local opinion is to be brought to the attention of the local authorities then simply the more articulate and local representations of pressure groups.

Of course one is aware of the fact that the cost of all this will be enormous in terms of financial resources and also time. It is also possible that the process of planning will tend to be prolonged. But if the community concerned values its

options and the reconciliation of its various interests, it must be prepared to pay that price.

These should also be more liason and co-ordination among the various planning concerns. It does not auger well for all concerned if one authority will give planning permission to someone who goes ahead and builds his house or business only to have someone comes up and enforce an enforcement notice because the planner did not conform with the structure or local plan of the area. This has been the case recently in Lusaka City where a Tribunal was set up to probe the illegal land allocation involving senior directors, managers, officers and councilors who were implicated in illegal allocation of plots in different parts of Lusaka to individuals some of them whose structures were demolished. Clearly, here the fault would lie with the one who told him to build in the first place, but the one who suffers is the one who has built his house which has now been demolished. The suggestion here is that these different authorities should co-ordinate when offering a plot or when granting permission so that no problems can arise later on. However, the problems has its roots during colonial legacy as Professor L. R. VOGALE observes:-

> "The African urban environmental legislation is a product of historical accidents and a colonial remainant, most of the developing countries in the African region do have comprehensive human settlements legislation, numerous piece meal and ad hoc ordinances and courts attempt to regulate the acquisition, development and use of land in the urban and

rural areas the Town and Country Planning Act in force are old, obsolete and not effective, they neither serve the present need nor respond to changing conditions the Act do not require comprehensive land use decision in short Town and Country planning legislation in most African environments, at urban planning and housing operate within their statutory framework and often without much co-ordination and cooperation and often with overlapping powers, functions and jurisdictions."[7]

In the final analysis, it could be argued that there is no single judgement applicable at all times and in all places, on whether the Town and Country Planning Act Chapter 283 of the Laws of Zambia is effective or not in its present form to a country like Zambia. We must therefore adopt a contingency approach when evaluating its weaknesses and strengths though most argument rests with the former then the latter to a country like ours. And finally it is submitted and proposed that since the Town and Country planning legislation has not been consistent over the years because of inadequacy of the laws, therefore there is need to undertake a vigorous review of the Act to modernize it especially in terms of public participation to the extent of promoting citizens to take part in planning decisions at all levels and consider some other conditions such as the economy, environment, social, political and the technological dispensation the Act should cope with.

ENDNOTES

- Interview by the author with the President of the Town and Country Planning Tribunal (MR. PATRICK MATIBINI) at MNB on the 19th July, 2001.

- Interview by the author with the Town Planner of Lusaka City Council (MR. CHAMA) at Lusaka City Council on the 19th July, 2001.

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5. Jalil, R. Malik, J. B. Barraclough, J. H. IBID, p. 16.

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LEGISLATIONS

1. Town and Country Planning Amendment Act No. 21 of 1997.
2. Town and Country Planning Act chapter 283 of the Laws of Zambia.
3. Mines and Minerals Act Chapter 213 of the Laws of Zambia.
4. Lands Act Chapter 184 of the Laws of Zambia.
5. Housing (Statutory and Improvement Areas Act) chapter 194 of the Laws of Zambia.

INTERVIEWS

- MR. PATRICK MATIBINI, PRESIDENT, TOWN AND COUNTRY PLANNING TRIBUNA, 19TH JULY, 2001.

- MR. CHAMA, CITY PLANNING DEPARTMENT, LUSAKA CITY COUNCIL, 19TH JULY, 2001.

- MR. ABRAMPHA, DIRECTOR, CITY PLANNING DEPARTMENT, LUSAKA CITY COUNCIL, 18TH JUNE, 2001.

- MR. AKUYU, DEPUTY DIRECTOR, LUSAKA CITY COUNCIL, CITY PLANNING DEPARTMENT, 18TH JUNE, 2001.