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# PLANNING LEGISLATION IN NIGERIA: POWERS AND FUNCTIONS OF PLANNING AUTHORITIES (FEDERAL, STATE AND LOCAL GOVERNMENTS)

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***Abstract***
*Physical development planning and the control of total environment are the joint responsibility of the entire segments of a given society, since nobody or settlement is immune against the consequences of a deteriorated environment. It is against this backdrop that one could say that Nigeria as an egalitarian society has never from its cradle lived without laws guiding them especially on environmental planning and legislation. Planning legislation in Nigeria could be seen in four broad perspectives as might be chronicled down – the –ages from the settlement patterns. Thus, the pre- colonial era was the period when customs and traditions of various communities were used as the instruments for shaping planning and land administration through kingship system. Some settlements, particularly in the northern and western parts of the country, are located as factors of defense, religion or trade. Defense settlement sites can still be found at Okene in Kwara State, Toro in Bauchi State; Abeokuta in Ogun State and Idanre in Ondo State, all in Nigeria. In colonial era, the policy of indirect rule system was in vogue; urban settlements were administered by the native rulers of kings, chiefs and family heads, while European quarters and Government Reservation Areas, created pursuant to the Cantonment Proclamation of 1904, were administered by the colonialists. Different planning standards were specified for the various segments of the city while physical planning and provision of infrastructure were concentrated in the European or Government Reservation Areas. The post-colonial era domesticated at different regions of the Country the 1946 Town and Country Planning Ordinance which was retained at independence with its attendant problems of discriminatory legislations, inappropriate standards and ineffective administrative frameworks. The plan, like the colonial plans, neglected rudimental issues of urban development. In the contemporary era, it was generally believed that the erstwhile planning legislative instruments were obsolete to meet the planning demands of the present reality; hence, the promulgation of the Nigeria Urban and Regional planning Decree No.88 of 15 December, 1992. The recommendations of this paper are that: an intensive public education and participation in land and planning matters should be put in place. The policy of handpicking few influential members of the communities in representing and formulation planning laws and policies should be discouraged. Both the land and planning laws should be incorporated so as to adequately complement each other for the benefits of the society.*

**Keywords:** Planning, Legislation, Powers, Functions, Planning, Authorities

## Introduction

Planning legislation in Nigeria can be seen in four broad perspectives: the pre- colonial, the colonial, the post-colonial as well as the contemporary era. In the light of the above considerations, it could be recalled that prior to the advent of colonial administration in Nigeria, customs and traditions of various communities was used as the instruments for shaping planning and land administration. Though, most of these local customs are related, there are some relative distinctions and peculiarities that exist among them, which are in consonance with the socio-economic reality of the time. According to Omole, (2012) the pre-colonial traditional Nigeria settlements are structure according to the local customs and practices. In the traditional setting, native rulers or community heads like *Oba, Obi*, *Obong* or Emir as the case may be in various regions of the country are in charge of communal lands while family heads are in charge of family land. One could say that their legal status is that of trustee-beneficiary who can allocate, re-allocate and supervise land use. In effect, traditional Nigeria settlements are established around palaces of traditional rulers, thus ensuring efficient communal interaction and reducing cost of transportation. The development and control of the total environment are the joint responsibility of the entire community. Some settlements, particularly in the northern and western parts of the country, are located there because of the factors of defense, religion or trade. For instance, the walls around some traditional cities like Zaria and Kano served the purpose of defense and religion, with gates provided in strategic locations to facilitate trade and communication. Topography also attracted settlers mainly as strategic defense sites in times of external attacks, such sites can be found at Koton Karfi and Okene in Kwara State, Toro and Billiri in Bauchi State; Abeokuta in Ogun State and Idanre in Ondo State, all in Nigeria. While some of these settlements still retain their identity till date, land use patterns in them are not uniform. As customary laws vary from locality to locality, land use patterns respond to them accordingly. With the passage of time, as population increases, human activities became complex, control of land and land use got out of hands of the traditional rulers, chiefs and heads of families and physical development started springing up in haphazard manner. This necessitated a serious need for a new order in the control of land and land uses. This marked the end of traditional legislation and the beginning of documented legislation in Nigeria.

## The Colonia era

The traditional settlement and development patterns gradually gave way to the colonial approach with the annexation of Lagos as a British Colony under the Treaty of Cession in 1861 and the consequent promulgation of the Town Improvement Ordinance to control

development and urban sanitation in Lagos in 1863. Lord Luggard's Land Promulgation of 1900 in respect to title to land in Northern Nigeria and the introduction of indirect rule served as the pivots for changes in land administration and settlement development in Nigeria. For instance, under the policy of indirect rule, urban settlements were administered by the native rulers of kings, chiefs and family heads, while European quarters and Government Reservation Areas, created pursuant to the Cantonment Proclamation of 1904, were administered by the colonialists. Different planning standards were specified for the various segments of the city while physical planning and provision of infrastructure were concentrated in the European or Government Reservation Areas.

The enactment of the Township Ordinance No. 29 of 1917 was the first attempt at introducing spatial orderliness into the land use pattern in Nigerian cities. It was a landmark in the evolution of Town and Country planning in the country. The impact of the Ordinance, which laid down guide lines for physical layout of towns, is still visible in such towns as Aba, Port Harcourt, Enugu, Jos, Minna and Kaduna today. The ordinance, more or less, legalized the separation of the European from the African residential areas and established a management order for different towns. According to Mabogunje,(1968) in Ezeani et al, (2001) the only first class township was Lagos, with a town council scheduled with a wide range of functions. All the major towns on the rail lines and on the river side or sea ports were classified as second class townships, managed by local authorities with ordinary power to collect rates. They were under the control of District Officers or Assistant District Officers. They were mainly small towns, probably having some administrative functions, but not very important to the colonial economy at the time. In 1914 town-planning committees were established for the Northern and Southern provinces mainly for the classed towns to initiate develop planning schemes, as well as approving building plans. This role was performed by the local Advisory Board and District Officers in the second and third class towns respectively. The Town Planning Committees were abolished in 1941 due to absence of legal backing of their existence and were substituted with Health Board. Up to the Second World War, urban planning and development were much of a day-to-day affair, carried out by senior civil servants under the Health Boards. A number of improved plans and layout were produced. However, apart from the normal administration, no spectacular development in the town planning was observed. The Lagos Executive Development Board (LEDB) was established in 1928 and charged with the general development of the Lagos territory. It was set up under the Lagos Town Planning Ordinance of 1928 in response to the outbreak of bubonic plague. The board (LEDB) had extensive powers to undertake comprehensive

improvement schemes within the city limits. The LEDB concerned itself mainly with minimal slum clearance on Lagos Island, the reclamation of Victoria Island, Housing Schemes in Surulere, South-West Ikoyi and Apapa, and the industrial layouts at Iganmu and Ijora. It was not directly concerned with the "city planning", since maintenance of public service was the responsibilities of the Lagos City Council Ola, (1984).

The preparation of a 10 year Plan of Development and Welfare (1946-1956) by senior government officials marked the beginning of systematic development plans. The decision of the board was subjected to the approval of the Governor-General. One of the major schemes of the plan was the Town Planning and Village Reconstruction. Information from the plan indicated that there was scarcely a town in the country that was not in dire need of re-planning and proper layout for future expansion. The colonial government consequently enacted the Nigeria Town and Country Planning Ordinance (No 4 of 1946) to provide for the planning, improvement and development of different parts of the country, through planning schemes initiated by planning authorities. The ordinance was based in the 1932 British Town and Country Planning Act Ola, (1984) and Omole, (1995). The implementation of the Nigerian Town and Country Planning Ordinance of 1946 created a situation in which planning and development of an urban area was equated with the provision of more physical and attractive layouts, with well-designed housing units. During this time, planning authorities were not seen to be concerned with other problems facing urban centers under their areas jurisdiction. Other related legislations during the colonial era, that had bearing with the town and country planning, were the Mineral Act (1945), which touched on issues like drainage and pollution (air, water), Public Health Laws (1957) which controlled over-crowding, diseases and general urban squalor. Others were the Land Development (Roads) law of 1948 which dwelt on acquisition, safety and allocation of land, the Building Lines Regulations of 1948 which which provided for positioning of buildings and other obstructions with reference to roads. All these laws came around the same time and were structured towards the control of physical development at that period.

**The post-colonial era**

The colonial 1946 Town and Country Planning Ordinance was retained at independence and was domesticated at different regions of the Country tagged: Chapter 123 the Laws of Western Nigeria in 1959, as Chapter 130 the Laws of Northern Nigeria in 1963 and Chapter 126 the Laws of Eastern Nigeria in 1963. As the law was retained, so also were the problems of discriminatory legislations, inappropriate standards and ineffective administrative frameworks in the post-independence development plans. For instance, the first National

Development Plan was largely concerned with economic growth. This was demonstrated in the interest for a rise in per capital income, without regards to the actual living conditions of the people. The plan, like the colonial plans, neglected issues of urban development in its formulation and execution. For example, out of a total expenditure of 84 million Naira (Nigerian Currency) allocated to town and country planning including housings, only 39.2 million Naira was disbursed at the end of the plan period (Onibokun, 1985). However, emphasis was placed on the provision of infrastructure. For example, transport and communication claimed about 26 percent, while electricity gulped 15.1 percent of the total revenue allocation during the plan period. Apart from the 13.4 percent of the revenue allocation made to primary production, one could rightly say that as much as 66.6 percent of the total revenue, during the first national development plan period, was invested in the urban areas. The huge investment was however, largely uncoordinated, owing to lack of a comprehensive national urban development policy. The result was a chaotic pattern of urban development in the country (Nigerian Institute of Town Planners, 1991). The Second National development Plan (1970-74) was launched immediately after the civil war in 1970 represented only a slight departure from the first development plan. The huge investments in the various sectors of urban development were still largely uncoordinated with only about seven per cent of the total revenue allocation that went into town and country planning (including housing, water and sewage). Presumably the plan still considered town and country planning as social overheads and as such, was not bothered with any machinery for promoting or planning an orderly urban development. The plan however, was a viable departure from the previous plans as it set aside 44 million Naira for urban and regional planning and development. That was a modest beginning by the Federal Government for better urban management in the country. Some policy statements were made during the plan period on urban matters. There was a call for controlled dispersal of social overheads and infrastructural facilities. The third National Development Plan (1975 – 1980) was the first to produce the most thoughtful and coherently conceptualized urban development policy, its five chapters dwell on urban and regional development, (water, sewage, housing, town and country planning, co-operatives and community development) allocated 12.6 per cent of the total revenue to the various activities. The plan also came up with a better definition of national urban development strategy. It provided for integration of urban-rural development, urban infrastructure, correction of physical planning inadequacies, reformation of local government machinery for efficient management of towns and cities responsibility and better involvement of states in urban matters. The creation of a federal ministry responsible for

housing and urban development and co-coordinating urban policy was also put in place. The structure of the Fourth National Development Plan (1981-1985) was not entirely different from the third national development plan. However, it noted the role of physical planning as a tool for achieving national development objectives. The plan further recognized that regional and environmental planning was not fully entrenched in the planning and management of the urban and rural areas and that the machinery for physical planning and administration was rudimentary. Attempt to address this flaw was a thoughtful program on land reform. The land reform issue was the first attempt at organizing the administration and development of land at the grassroots and was the enactment of the Local Government Reform Law (1976). The law made town and country planning a Local Government Affair. Thus State Governments established Local Planning Authorities to control development and initiate planning schemes at the local level. The gains of Town and Country Planning through the Local Government Reform Law were cut short with the promulgation of the Land Use Decree Number. 6 of 1978. The Decree, was designed to curb land speculation, ease the process of land acquisition by government, co-ordinate and formulate tenure modernization, has several effects on the practice of Town and Country Planning Law, encouraged preparation of planning schemes among others. Unfortunately, this law has many flaws; worrisome is the fact that the Land Use Act has no provision that a state should cause the preparation of master plans, or layout plans in a designated urban centre. Consequently, private lands are sold out without proper supervision by Town Planning Authorities thereby reducing them to inconsequential, building approval offices, poorly funded and inadequately staffed (NITP 1991). Furthermore, section 3 (a and b) of the Act provides for Estate Surveyors or Land Offices and Legal practitioners, but not for Town planners on the Land Use and Allocation Committee set up for urban centers. Development control was further hampered as the law was silent on non-urban areas. The major problem in the implementation of the law is the fact that there was no cadastral or township maps, topographical maps and land use plans for most Nigerian settlements. By this, appropriate charting and co-ordination of proposed developments into the existing urban structure are greatly affected. Equally, effective monitoring of the growth and development of cities were made impossible, since individuals' still buy and sell land for residential homes on a large scale contrary to the provision of the Land Use Decree Number 6 of 1978.

Town planning in Nigeria recorded a boost in 1988 with the promulgation of Decree Number 3, which established the Town Planners Registration Council (TOPREC). The Council inaugurated on November 30th of same year has as its major duty to regulate and control the

practice of Town and Country Planning in and determine the standard of planning in Nigeria. The enabling law has increased the registration of members and institutions offering planning courses and drastically reduced the activities of quarks in the profession. Of great importance in the trend of development of planning laws in Nigeria was the inauguration in February 1991 the National Committee on the Review of Nigeria Town and Country Planning Laws by the Federal Government. The committee comprising various professionals conducted a comprehensive review of the 1946 Town and Country Planning Law and other related legislations and prepared a new draft law for the country. The report of this committee gave birth to the Nigerian Urban and Regional Planning Law (NURPL), Decree 88 of 1992. This law is the most current urban and regional planning law in Nigeria. While Town Planning in Nigeria for over three decades had essentially been a 'government tool', the formation in 1990 of an Association of Town Planning Consultants (ATOPCON) has been a milestone in planning practice in Nigeria. The increasing number of Town Planners in professional practice has enhanced the importance of the profession and increased awareness of the unlimited spheres of coverage of town planning practice in Nigeria. Planning practitioners are increasingly being consulted in technical, industrial, development studies, environmental impact assessment, recreational planning and tourism among others.

**The contemporary era**

Following the sophisticated and dynamic nature of urban governance in Nigeria, it was a general belief that the old Town and Country Planning Law of 1946 had become obsolete to meet the present planning requirements of the contemporary era. It was against this background that a recommendation was made to the Federal Government to review the law and promulgate new one that would be applicable nation-wide, taking into consideration the variation in climate, topography, culture and other variables to suit the present realities. It was the outcry of the people, particularly the town planners that led to the promulgation of the new law called - the Nigerian Urban and Regional Planning Law, (NURPL) Decree No. 88 of December 15, 1992.

The implication of this is that the old town and country planning law is now null and void with the current dispensation. Part 1(a) of the new law spells out the three levels at which physical development plans can be made or at which planning can be carried out. These are at the Federal, State and Local Government levels. Each level of planning carries the identification, "the commission, 'the Board', and the 'Authority' respectively. By this law, it is now mandatory for each local government council to have a planning authority, whose duties, among others, is to prepare and implement: (a) a town plan (b) a rural area plan (c) a

local plan (d) a subject plan and the control of development within their area of jurisdiction other than federal and the state governments' lands (Part 1 Section 4). More of the functions of the Local Planning Authority are spelt out in Part 1, Sections 11 and 12 of the law. Furthermore, the functions of the state – "the Board" and the Federal – "the Commission" are spelt out in part 1, Sections 6 and 7 respectively.

Development control is an integral part of the master plan. A master plan or a structure plan, on its own, cannot achieve its goals without development control. The new Decree recognizes this and as such, empowers the Commission', 'the Board' and the Authority to establish a department known as Development Control Department (Part II, Section 27). Such department shall be a multi-disciplinary department, charge with the responsibility for matters relating to development control and implementation of physical development plans (Section 27, subsection 2). The Control Department at the Federal level (called the Commission) has power over the control of Federal Lands and Estates. The Control Department at the state levels,( call the Board) has power over the control of state lands and the Control Department at the local government level (the Authority) has power over the control of development on all lands within the jurisdiction of the local government (Part II, Section 27 subsections 3, 4 and 5). Part 2 Sections, 28, 29 and 30 made it clear that approval should be sought before any development commences. The law, by its section 29, makes it mandatory for government and its agencies to obtain approval before commencing any development. The law also (in sections 31 and 34) gives the planning bodies, be it, the Local Authority, State or Federal, the power to approve with amendment, or delay approval of an application, or if circumstances so required, reject development permit completely. Even though the Control Department has been empowered to delay approval when necessary, the law gives a time limit for doing this. This should not exceed three months (Part II, Section 34, subsection 4). Very important for this discussion also is Part II, Section 33, which mandates developers to submit to an appropriate control department a detail environmental impact statement for (a) a residential land in excess of 2 hectares, (b) permission to build or expand a factory or for the construction of an office building in excess of four floors or 5,000 square meters of a lettable space, or (c) permission for a major recreational development.

The law also regulates the timing of planning permit, or development permit, given to a developer. For instance, once a development permit or planning permit has been issued or given by the planning authority, it remains valid for only two years (Section 35, subsection 2a). Where a developer fails to commence development within two years, the development permit shall be subjected to re-validation by the control department that issued the original

permit Section 35, subsection 2b). The authority, which gives planning permit, has power to revoke, altar or amend the permit earlier given by serving of notice of its intention on the holder (Section 37, subsection1). Under this law, there is a Planning Tribunal that hears cases relating to planning matters Sections 38 to 40 affirm the establishment and Sections 86 to 89 spell out the composition of the planning Tribunal. There is provision for an aggrieved developer to appeal against alteration, amendment and revocation of development permit given to him. Section 42 spells out conditions under which compensation shall be paid. Similarly, Section 45 states the conditions under which compensation shall not be paid. By this law, any compensation claim to be made should be forwarded 29 days after a notice of renovation is served on the developer (Section 43, subsection 2c). Compensation payable under this section shall be paid not later than 90 days after a claim for compensation had been made. In the event of a dispute arising as to the amount of compensation payable to a developer, the dispute may be referred to a Planning Tribunal (Section 45). If there is an appeal against the decision of a Planning Tribunal in respect of an amount payable to a developer, this shall be referred to the high court in the State or the Federal Capital Territory, Abuja, as the case may be (Section 46). On issue of 'notices' the Control Department is empowered to serve notice (enforcement notice) to the owners of structures, where a development has commenced without approval. Such enforcement notices could be directed to the developer to alter, vary, remove or discontinue (stop order) development. A person, who fails to comply with the term of an enforcement notice, or disregard a 'stop work order' issued and served pursuant to this decree, shall be guilty of an offence and liable on conviction to a fine not exceeding 10,000 Naira (Nigeria money) in the case of an individual, and in the case of a corporate body, to a fine not exceeding 50,000 Naira (section 59). Where a developer contravenes the provision of a planning law, the control department shall have the power requiring the developer to: (a) prepare and submit his building plan for approval or (b) to carry out such alteration to a building as may be necessary to ensure compliance or (c) to pull down the building or (d) to reinstate the piece of land to the state in which it was prior to the commencement of building (Section 60). Going by Section 61, subsection 1, the Control Department shall have the power to serve on a developer, 'demolition notice', if a structure erected by the developer is found to be defective as to pose danger or constitute a nuisance to the complainer and the public. Notice served pursuant to sub-section 1 of Section 61 shall contain a date not later than 21 days on which the Control Department shall take steps to commence demolition on the defective structure (Section 61, subsection 2). After the expiration of the time specified in the notice served under subsection 1 of Section 61 of the

decree, the Control Department shall take such necessary action to effect the demolition of the defective structure (Section 62).

Similarly, Section 63 empowers the authority to be paid by the owner of a demolished structure the cost of demolition incurred by the planning authority. The power under development control in the new dispensation also extend to preservation of existing trees and or planting of new tress by the imposition of necessary condition (Section 72). Also the Control Department is empowered to control outdoor advertisement. In other words, if it appears to the Control Department that the amenity of a part of an area, or an adjoining area, is seriously injured by the condition of a garden, vacant site, or an open land, the Control Department shall serve on the occupier or owner of such land a notice requiring such step for abating an injury, as may be specified in the notice to be taken within such period of time as may be specified (Section 74). The law further stipulates the conditions under which the authority should carry out demolition. According to section 83, demolition shall not be exercised unless:

(a) The building falls as far below the standards of other buildings used for habitation in the area or that such building is likely to become a danger to the health of its occupiers or occupiers of adjacent buildings.

(b) The building is in such a state of disrepair or is likely to become a danger to public safety and cannot, at a reasonable cost be repaired.

(c) Two or more contiguous buildings are badly laid out and so congested that without the demolition of one or more of them that part of the improvement area cannot be improved.

As a follow-up to Decree 88 of 1992 was the amendment of some of its parts and sections now called urban and Regional Planning (Amendment) Decree No. 18 of 1999. This amendment decree took care of some flaws in the parent decree – decree 88 of 1992. This decree is the most current planning law being used in conjunction with the parent decree – decree 88 of 1992 as of today. One thing comes out very clear from the analysis of this current planning Law (Decree 88 of 1992) in Nigeria and that is the fact that out of its 92 sections, about 47 sections (more than half of the whole law) deal with development control, this is an indication that 'development control' as it relates to land use and development, is a serious and sensitive issue in planning and as such, the law(s) deem it necessary to treat such issues with the seriousness it deserves. However this report will not be complete without saying that the celebrated new planning law has been put under fire and of course challenged at the Supreme Court in Nigeria for some of its grey areas. This situation has actually made

the domestication and implementation of this law as a welcome tool for the practice of urban and regional planning in Nigeria a herculean task.

**Recommendations and Conclusion**

Due to the scarce and fixed nature of land, government and her agencies have been bestowed with the duty to enforce planning laws to control overbearing interests on the use of land. This is perhaps the reason why the issues of land, particularly in developing countries are treated with all seriousness. It is therefore recommended that a type of law that will respect the culture and norms of the people should always be put in place. From the historical evolution as presented above, it is clear that the country has surely passed through successive administrations which have contributed directly and indirectly to the development of planning laws and physical development in general. As the country develops, there is no doubt that new dimensions will come into the practice of land planning laws from which the country is bound to learn and improve on its physical development. Similarly, people play active roles in land and planning issues, particularly when it has to do with decision making and implementation by their co-operation or resistance to changes on issues affecting them. Recognizing this fact, it is therefore the recommendation of this paper that an intensive public participation in land and planning matters should be put in place while the policy of handpicking a very few vocal members of the communities in representing and formulation planning laws and policies should be discouraged. Both the land and planning laws should be incorporated and integrated so that they could adequately compliment one another for the benefits of the society. Along this line, people should be more educated and enlightened on the use of laws in regulating, guiding and directing their landed properties for the benefits of all and sundry. It is also the submission of this paper that in countries like Nigeria, where human demands (for example demand for the use of land are continuously outstripping the available land resources) government should fully be in control regulating the use of land. Also, all the gray areas in the Nigeria Urban and Regional law and the land use act which have concerned these documents to shelf should be straightened and put into effect. These documents should be adopted wholly in Nigeria as tools for general land administration and should not be domesticated with any relative or conditional clause in any region, state or local government in the country.

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