

**COMPARATIVE ASSESSMENT OF THE TOWN AND COUNTRY PLANNING  
ORDINANCE (CAP 155) OF 1946 AND THE NIGERIAN URBAN AND REGIONAL  
PLANNING DECREE (NO. 88) OF 1992 AS A BASIS FOR THE EVALUATION OF  
THE  
CONTEMPORARY PLANNING LAW IN NIGERIA.**

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**Abstract**

Planning laws are tools for regulating and controlling the arrangement of physical development activities to ensure orderliness and aesthetic quality. With this important responsibility for planning laws, it is necessary that, as a tool, it must be adequate and effective to achieve the desired goal. The Town and Country Planning Ordinance of 1946 was in force for 46 years before the enactment of the present law The Nigerian Urban and Regional Planning decree of 1992. It became obsolete and moribund before replacement giving a loud signal on the low degree of importance placed on this vital tool. This paper therefore, takes a careful look into the old law to identify the reasons for its obsolescence, comparing it with the new law to determine the adequacy/appropriateness of the law towards the development of a more comprehensive and adequate planning law in Nigeria for effective physical planning.

**Introduction**

Urban development started in Nigeria from ante-colonial era. According to Olatunbosun (1981), urban development was recorded in the northern parts of the country through the influence of the ancient Sudanese Empire of 800 AD, Mali Empire of 1500 AD and Songhai Empire of 1800 AD as a result of their location along the Trans-Saharan trade routes. In the southern parts, Dmochowski (1990) stated that urban development had already been identified in Benin by the 15<sup>th</sup> century AD. The advent of the Europeans, however, enhanced the development of some of these settlements, retarded the growth of others and also created new ones in line with their policy objectives.

These socio-political and economic changes were accompanied by population explosion in some cities with its attendant problems. The need for proper control of physical development therefore, became imperative. Consequently planning laws emerged in Nigeria as important tools for the regulation and control of orderly arrangement of physical development. The first urban planning related legislation in Nigeria was published in the mid-19<sup>th</sup> century with the appellation - Town Improvement Ordinance of 1863. It was limited to Lagos colony and primarily addressed sanitation matters. This was followed by the 1904 Cantonment Proclamation which segregated Europeans from Africans through the European Reservation Area concept which later became Government Reservation Areas in post-colonial period. The 1917 Township Ordinance was a further improvement as it introduced Land Use Zoning for the first time in the country. The 1928 Lagos Town Planning Ordinance was later enacted in response to the outbreak of bubonic plague in the city and it made provisions for slum clearance and a comprehensive land use planning and development of Lagos.

The Town and Country Planning Ordinance (Cap 155) of 1946 which followed the 1928 ordinance was described by many planning experts, including Oyesiku (1998) as the most significant development in the field of planning legislation in Nigeria. The law was considered a landmark in urban and regional planning as it spanned a wide area of planning operations and covered the entire country unlike previous ones which were restricted to the Lagos colony. It was in operation in Nigeria for 46 years before being replaced. Ironically, the euphoria and applause which greeted the most recent planning law - the Nigerian Urban and Regional Planning Decree No. 88 of 1992 have been described as

superlative. It is therefore, instructive to critically assess the last two planning laws as a basis for the evaluation of the contemporary planning law in Nigeria and a pre-requisite for evolving more effective planning law

### The Town and Country Planning Ordinance of 1946

This was the most significant planning legislation in Nigeria in the pre-independence period. It commenced operation on the 28<sup>th</sup> of March, 1946 and was patterned after the Town and Country Planning Act of United Kingdom of 1932. Ironically, the parent law was considered obsolete only 6 years after it was passed and has undergone several revisions since then, while the Nigerian variant remained in operation for 46 years, becoming totally obsolete, moribund and grossly inadequate for a dynamic and advancing society like Nigeria. (Mba *et al*, 1992)

The major objective of the ordinance was to make provision for the re-planning, improvement and development of different parts of the country (later region, then state) by means of planning schemes and planning authorities. The ordinance became necessary as there was scarcely any Nigerian town that did not require re-planning and proper laying out of extension as at 1946. It formed the legislative basis of all town and country planning in Nigeria, even several decades into the post-independence era.

The ordinance commenced as a law of the central government of Nigeria, but at the introduction of the federal structure, it was adopted by the constituent regions of the federation, thereby becoming a regional law and later became state law at the creation of states.

### Function of the Ordinance

The main focus of the ordinance was the improvement and control of development by means of planning schemes to be prepared by planning authorities appointed by the governor.

The ordinance however covered a wide range of planning operations which include the following:

- (i) Planning schemes
- (ii) Planning authorities
- (iii) Preparation and approval of schemes
- (iv) Supply of schemes
- (v) Execution of schemes
- (vi) Acquisition and disposal of land for schemes
- (vii) Compensation and Betterment
- (viii) Legal procedure for the operations of the scheme
- (ix) Financial matters for successful implementation of the scheme

The control of development was principally carried out by the adoption of an approved scheme, over an area designated as planning area, to which all development within the area must conform, whether buildings already exist on such land or not.

### Aim of the Ordinance

According to S.3, the development and use of land which is the focus of the ordinance was primarily to achieve the following:

- (i) Secure proper sanitary conditions, amenity and convenience
- (ii) Preserve buildings and other objects of architectural, historical or artistic interest and places of natural interest or beauty.
- (iii) Protect existing amenities whether in urban or rural portions of the area.

### Scope of the Ordinance

In carrying out its requisite functions, the first schedule of the ordinance clearly enumerates the scope and contents of the scheme. They include the following:

- (i) To provide for the reservation of land for roads and establishment of public rights of way, regulating the characteristics of road, whether proposed or existing.
- (ii) Regulate and control the size, height, spacing and building line and other details of individual buildings.
- (iii) Limit the number of buildings or the number of buildings of a specified class which may be constructed or erected in any planning area.
- (iv) Provide for the reservation of sites for places of religious worship, schools, and public buildings and for places required for public services, open spaces and burial grounds.

- (v) facilitate the construction of works in relation to lighting, water supply, sewage, drainage and refuse disposal or other public utility services, establishment, extension or improvement of systems of transport whether by land, water or air.

#### Development and Development Control Under the Ordinance

It is highly essential to establish the meaning of Development and Development Control under this ordinance because it is an established fact that the daily activities in most, if not all planning authorities in the country are centred around Development Control.

According to the ordinance, S.2 (1), Development refers to “any building or rebuilding operations and any use of the land or any building thereon for a purpose which is different from the purpose for which the land or building was last being used: provided that the laying down by the occupier of farmland to fallow or any change of crops grown or to be grown or in the method of their cultivation by the said occupier shall not be deemed to be development, except in so far as the Governor, the Authority or a Local Government may determine”. It recognizes development to be more than erection of building or re-building operations, but it includes material change of use. In a variant of the ordinance; Cap 123 of the law of Western State of Nigeria (1959), S.2 (3), development embraces the following:

- (i) The creation of wholly or partly of any building pulled down to or below the top of the ground floor, or any frame building of which only the framework is left down to or below the top of the ground floor.
- (ii) The re-erection, wholly or partially, of any building of which an outer wall is pulled down to or within ten feet (three metres) of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down as to leave any of the framework of the lowest storey or part of such framework.
- (iii) The conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only.
- (iv) The re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house.
- (v) Making of any addition to an existing building by raising any part of the roof, constituting or altering a wall, or making any projection from the building, or making any other structural addition to the building, but so far as regards the addition only.
- (vi) The roofing or covering over an open space between walls or building.

Development Control on the other hand refers to careful organization, management and enforcement in the development of spatial activities and overall growth of cities and rural areas to ensure orderliness through the provisions of the ordinance. It ensures that adequate provisions are made for roads, buildings and other structures, amenities, public utility services, transport and communications and other uses to which land is put. (Oyesiku, 1998).

The principle of zoning is integrated into the ordinance to promote harmonious inter-relationship among competing land uses. For example, the Town and Country Planning Law of Eastern Nigeria, 1963, S.16 and Town and Country Planning Edict of Lagos State, 1986, S.3(b) make it mandatory for every planning scheme or development plan to operate essentially on zoning principle.

#### Administration and Execution of the Ordinance

Planning in general was vested in the hands of the Governor who delegates his powers to the Minister/Commissioner in charge of planning matters. The Commissioner/Minister in turn empowers the Planning Authorities to secure control through the preparation of planning schemes.

A scheme prepared for an area declared planning area is submitted to the state governor through the commissioner for approval. The commissioner may modify as he/she deems fit before granting approval. The scheme is subsequently published in the gazette or any other form of publicity that the authority may consider fit. The effective date of the scheme is the date of publication.

The Local Planning Authorities are autonomous statutory organisations established by the planning law of the states and their functions include the following:

- (i) Preparation of town planning schemes and implementing them in stages/phases
- (ii) Approval of layouts and building plans
- (iii) Sub-division of land and preparation of zoning regulations
- (iv) Enforce adherence of property owners to building by-laws and other regulations
- (v) Enforce strict compliance with the requirements of the town and country planning laws of the state.
- (vi) Accept any rates, money, property, or other assistance for the purpose of executing the scheme and raising revenues through levies and planning rates
- (vii) Control and manage their own finances and buy, sell, let, hire, lease, exchange or otherwise dispose of any property.

In executing the ordinance, the planning authorities are empowered to acquire compulsorily from or enter into contracts with owner or occupier of land or buildings or prohibit any use of the building or land considered inconsistent with the provisions of the scheme. Betterment and Compensation is stipulated in the ordinance to address the issue of properties increased or reduced in value due to planning actions. Betterment refers to any increase in the value of land (and buildings on it) resulting from planning action.

The execution of this aspect of the ordinance as well as some other important provisions, vary among the states of the federation.

Improvement In the Nigerian Urban and Regional Planning Decree (No.88) Of 1992 Over The Town and Country Planning Ordinance of 1946

The Nigerian Urban and Regional Planning Decree (No. 88) of 1992 came into force on 15<sup>th</sup> December, 1992 as the first post-independence planning law in Nigeria. Section 90 of the law declares that the Town and Country Planning Act is consequently repealed. The new law contains drastic provisions for overhauling the administration of urban and regional planning in the country and is considered by most planners as being very comprehensive and a tremendous improvement on the obsolete/out-dated 1946 ordinance.

Specific improvements in the law will be addressed sequentially according to the sections of the law.

#### Plan Preparation

##### Levels of Planning

The new law identifies different levels of planning which are Federal, State and Local. The erstwhile law did not. The new levels of planning identified are more appropriate for the federal system of governance.

##### Types of Plans

It enumerates different types of plans to be prepared on these various levels. These plans are as follows:

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| <ul style="list-style-type: none"> <li>(ii) <b>Regional plan</b></li> <li>(iii) <b>Sub-Regional plan</b></li> <li>(iv) <b>Urban plan</b></li> <li>(v) <b>Subject plan</b></li> <li>(vi) <b>Town plan</b></li> <li>(vii) <b>Local plan</b></li> <li>(viii) <b>Rural plan.</b></li> </ul> | <ul style="list-style-type: none"> <li>(i) National Physical Development Plan - Federal level</li> <li>- Federal and State levels</li> <li>- Federal and State levels</li> <li>- Federal and State levels</li> <li>- Federal, State and Local levels</li> <li>- Local level</li> <li>- State and Local levels</li> </ul> |
|---|--|
- Local level

##### Administration

The law clearly enumerates the functions and responsibilities of each level of government to prevent conflict or ambiguity in the performance of their respective duties. (S. 2-4). This is not included in the previous law which did not recognize various levels of government, nor levels of plan preparation.

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#### Execution

Categories and Functions of Executing Bodies Unlike the obsolete law which vested the administration and execution of the planning law in the hands of the Governor, the new law stipulates that the execution will be by constituted bodies on the different levels (S.5). This ensures that decisions are made based on thorough deliberation and inputs of various people from various walks of life and varying backgrounds. The bodies are as follows:

- (i) National Urban and Regional Planning Commission, on the federal level, comprising 29 members to be headed by a registered Town Planner, and having an executive secretary who must also be a registered Town Planner
- (ii) State Urban and Regional Planning Board, on state level, comprising 18 members to be headed by a registered Town Planner, with a secretary who must also be registered Town Planner
- (iii) Local Planning Authority on Local Government level, comprising 14 members to be headed by a registered Town Planner, and a secretary who must also be a registered Town Planner.

Composition of the Bodies. The law stipulates the composition of each of these bodies and enumerates their respective functions.

It also provides for the inclusion of an array of relevant professionals in the Held of physical planning and development in the Bodies. These Professionals include the Town Planner, Architect, Land surveyor, Estate surveyor, Civil Engineer and Lawyer. In addition, representatives of relevant government ministries and agencies are also included (S. 6-10).

Status of the Town Planner. The decree gives much prominence to the Town Planner and the Town Planning profession. This is because the chairmanship of the National Urban and Regional Planning Commission, the State Urban and Regional Planning Board and the Local Planning Authority were made the exclusive preserve of the Town Planners. The post of the Executive Director of the commission and the secretary to the state Boards and Planning Authorities are also reserved for the members of the noble profession. Even the chairmanship of the Urban and Regional Planning tribunal and the post of the secretary are to be filled by registered Town Planners.

Section 30 (3) also empowers the Town Planner to prepare plans for application for development permit, a hitherto exclusive preserve of the architect.

#### Plan Preparation

Public Participation. It provides for effective public participation in the plan preparation process. S.15 of the law provides for the exhibition of the Draft National Physical Development Plan and the receipt of written statements of objection and suggestion of alterations/amendments. This is a great improvement on the previous law because it incorporates the inputs of the general public.

Provision for Review of the Operative Plan. The Operative National Physical Development Plan is to be reviewed every five (3) years to reflect the constant socio-economic changes in the dynamic Nigerian environment. (S.21), this makes the plan dynamic and more efficient, with less likelihood of it running into obsolescence.

#### Development Control

Multi-disciplinary Development Control Department. Unlike the previous law where the Planning Authority, on behalf of the Governor, prepares and implements planning schemes, the 1992 decree provides for a separation and streamlining of duties. The Commission/Board/Authority which prepares the plan, establishes a Development Control Department on their respective levels for the implementation of the Operative National Physical Development Plan (S.27).

Worthy of note is the fact that the Development Control Department (DCD) is to be multidisciplinary, therefore comprising professionals from different disciplines which make it more effective and versatile. Jurisdiction over Land and Estates. The powers of the DCD is wide, encompassing both land and estate.

Government Agencies to Obtain Planning Approval. S.29 states “Any existing law exempting government and its agency involved in development of land from obtaining approval of the relevant control Department is hereby repealed”.

This is a volte-face and welcome departure from the past and it is a very bold step in establishing law and order in development control in the country.

**Importance of the Environment in Urban and Regional Planning Highlighted:** The new law gives prominence to the environment in physical development activities of urban and rural areas of the country. Hitherto, lack of consideration for the environmental implication of major development activities has exacerbated environmental degradation and gross abuse of the endowed natural resources (Oyesiku, 1998).

Environmental Impact Statement (EIS) is made mandatory for any substantially large scheme like:

- (i) Residential land in excess of 2 hectares,
- (ii) Building or expanding a factory, or the construction of office building in excess of four floors or 5,000 m<sup>2</sup> of lettable space
- (iii) Major/large recreational development.

#### Enforcement

**Fines and Penalties.** A more realistic fine was imposed for contravention of the law. S.59 stipulates a fine of £410, 000.00 in the case of an individual and N50, 000.00 in the case of a corporate body. This is a more realistic and likely deterrent than the ridiculous N100.00 fine of the 1946 Ordinance.

**Contravention Notice.** For the first time in Nigeria’s physical planning law, the controlling body is empowered to serve contravention notice on grounds of danger to public health and environment.

**Additional Control.** A specific feature of the law is the expansion of conventional planning responsibilities and functions of the Development Control Department. Part of these roles for planners include the control of advertisements, waste lands, trees and buildings of special architectural or historical interest (S.64, 67). The law also empowers the Development Control Department to exercise a right of permission over provision for preservation and planting of new trees and control of outdoor advertisement.

**Planning Appeals** A proper mechanism for protest and redress is established in the law. A provision is made for Urban and Regional Planning Tribunals in each state of the federation and the Federal Capital Territory. The chairman and secretary of these tribunals are to be registered Town planners.

#### Recommendations

It is evident that The Nigerian Urban and Regional Planning Decree (No. 88) of 1992 is a giant step in the right direction towards the regulation and control of the arrangement of physical development activities in ensuring orderliness and aesthetic quality. However, like almost every product of human endeavor, it requires some amendments, especially in response to some flaws which have been discovered to constitute veritable obstacles in its implementation, as the law is only partially implemented at best, in most states of the Federation.

The following recommendations are hereby proffered:

- (1) The law should be made to conform to the Supreme Court Judgment of 13<sup>th</sup> June, 2003 in the case of the Attorney-General of Fagos State versus the Attorney-General of the Federation and Thirty-five others. The court ruled that Urban and Regional Planning and the regulation of physical development are not listed either in the exclusive or concurrent legislative lists of section 4 of the 1999 constitution. They are therefore, residual matters solely within the legislative and executive jurisdiction of the state governments.
- (2) The law should address and establish a clear relationship with the highly controversial Land Use Act (No. 6) of 1978/ Cap 202 of the Laws of Nigeria 1990 on which it has tactically taken a silent position. This is highly essential as according to Oyesiku (1998), past and existing patterns of

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physical development are functions of the laws that regulate land use and land control in all societies.

- (3) There should be sufficient provision to enforce and discipline public authorities found in contravention of the law, as this has been one of the greatest problems of Development Control in the country.

**Conclusion**

The Nigerian Urban and Regional Planning Decree (No. 88) of 1992 is a remarkable improvement on the 1946 ordinance as presented above. It is pertinent to note that unlike its immediate predecessor, which was adopted from the Town and Country Planning Act of the United Kingdom, 1932, Decree 88 of 1992 is wholly Nigerian, although, it is not perfect as it is silent on many important issues.

It was developed by Nigeria from intense study and understanding of the structure, values and psyche of the Nigerian society with its peculiarities. The concept and operational modalities are fully indigenous and this is a major factor in its comprehensiveness and wide acceptability by Nigerian Planners. It is therefore, very instructive that the much needed review of the law must take cognizance of these salient points which have fostered its acceptability, with a view to preserving them and further improving on them.

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