

Planning Laws, Health Pandemics and City Resilience: A Review of the Urban and Regional Planning Laws in Southern Africa

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Abstract

Urban planning has become increasingly important in the process to bolster city resilience against future health pandemics worldwide. Consequently, a critical doctrinal review of the disposition of town planning principles and objectives informing town planning practice in Africa in the context of global health problems needful of imminent action is critical. This paper examines the present and the potential future of urban planning practices regarding city resilience against health pandemics as encapsulated in the principles and objectives of town planning laws and the regulatory framework of the selected Southern African countries. It explores the role of planning law in either promoting or stifling city preparedness for future health pandemics and resilience in general. The occurrence of the COVID-19 global health pandemic that peaked in the year 2020 has exposed the lack of readiness of world cities for eventualities of a catastrophic magnitude. To ascertain the promotion of resilience or lack thereof, in the planning laws of the selected case cities, doctrinal legal research [DLR] methodology was applied alongside the document analysis. DLR involved searching for rationally consistent guiding principles in the planning laws under review to understand the culpability of planning to city failures. The results reveal that most African cities are slow in adapting their laws to changing environments. Planning certainly has a case to answer. Constant review of urban planning legislation that produces policies and plans that are relevant to the present and future challenges is needed.

Keywords

Planning Law, City Resilience, Pandemics, Southern Africa, Urban Planning

1. Introduction

We live in a rapidly urbanising world, a space of abundant and frequent challenges. In the general sense, these challenges are either of an economic, social, political, environmental and health nature, or a combination of the clusters whose joint effect is catastrophic. Recession and inflation are looming. Climate change and global warming are menaces to the world. Poverty and mortality levels are on the rise. Political rivalry and conflicts are just too high to

be imagined. The scars and footprints of the COVID-19 pandemic are still fresh. All these problems render the global village a sceptical place to live (Chirisa and Dumba 2012). World over, cities have become the front liners in the fight against major global battles (Dube and Gumbo 2022). As cities become increasingly important to our lives (CLIFF 2020), urban planning has even become of critical importance in bolstering city resilience against future global health pandemics worldwide. By its right as a concept and in the face of a plethora of severe urban challenges in African cities, city resilience has become a topical and attractive concept in urban research (Allen et al. 2016; Barnes and Nel 2017; Brunetta and Salata 2019; Lu et al. 2020; Rega and Bonifazi 2020). Critical to note and emanating from the above is that the planning laws and their guiding principles that are pivotal in spatial planning determine what will transpire in the future of regions, communities, and localities. Planning law originated from the quest to maintain high quality in urban environments (Berrisford and Kihato 2006). The majority of African countries inherited their planning systems and laws from former colonial regimes (Watson 2011), such as Britain, France, and Germany. This inheritance of planning laws and their guiding ideologies has, over time, been condemned for being out of context in African city setups (Silva 2015, 2020; Mabogunje 1990). To better manage urbanisation based on the local contexts in Africa, the overhauling of planning law has been viewed as an urgent necessity (Litman 2020). Albeit the similarities in the principles informing city planning, the scope and practice of spatial planning differ greatly from one country to another. In almost all countries, spatial planning deals with land use and physical development of regions and cities and coordinating various sectoral policies (Medeiros 2019; UNHABITAT 2020; Yoshida et al. 2020). That Africa and the world at large are besieged by global challenges, volatility, pressure, and change, alignment of the guiding planning laws and principles is imperative. It is thus appropriate currently to undertake a major doctrinal review of the disposition of town planning principles and objectives informing town planning practice in Africa concerning preparedness to handle unforeseen eventualities such as global health.

1.1 Objectives

This paper investigates how well contemporary planning laws have come to grips with the quest for building city resilience in contemporary Africa. Two points of departure inform this study: that African planning laws are labelled as Eurocentric, outdated and [have a poor record, (Litman 2020)]; and that city planning laws play a pivotal role in shaping city planning outcomes, thus provide a good platform of entrenching city resilience against adversities. The foregoing is a critical doctrinal review of the disposition of town planning principles and objectives informing town planning practice as enshrined in the operational planning laws in Africa about the preparedness and handling of health pandemics. This paper examines the present and the potential future of urban planning practice concerning city resilience against health pandemics using selected Southern African countries. It explores the role of planning law in either promoting or stifling city preparedness for future health pandemics.

2. Literature Review

Over decades now, the practice of urban planning in Africa has been governed by planning laws that are instrumental in the spatial planning process. Through spatial planning, a public planning exercise (Rocco et al. 2019; UNHABITAT 2020; Wekwete 1989), the state's articulation of realities and decisions informing action is realised. Planning laws act as guides to any country's planning system (Wekwete 1995). McAuslan (1980) has advocated for the underlying ideology that should inform the planning law and practice. The structure of the European Union's spatial discourse is conditioned by several megatrends including globalisation (Chirisa and Dumba 2012; Ülgen 2022). In most African countries, colonisation played a central role in shaping planning laws (Chirisa and Dumba 2012; de Satgé and Watson 2018; Dube and Gumbo 2022) with the intent to administer and manage resources (Wekwete 1995) and foster segregation and exclusivity (Coetzee 2012; Silva 2020) whose overall effect shaped the resultant urban forms. More so, the planning practices of the twenty-first century are still based on the modernist ideology whose foci is capitalistic separatism implemented through zoning whose ultimate result is development fragmentation and sprawling (UNHABITAT 2016).

Based on the above observations of context-less imported planning ideologies imported to many African countries, Watson (2014) cited in Chirisa and Matamanda (2019) laments that master planning in many African cities is just a pie in the sky. Ideologically speaking, most African planning laws have well-grounded statist and capitalistic philosophies whose major intention has been controlling physical development (Wekwete 1995). It should be noted that this modernist planning system is an imported ideology that is rooted in the early 1900s in the UK, USA, and Western Europe (Coetzee 2012). This calls for rethinking. Even though, the ideological discord observed in most African spatial planning systems presents an opportunity to redefine planning law ideology for improved city planning and development. It provides opportunities to rethink the city (Fernández de Losada and Abdullah 2020). Currently,

the resilience notion dominates the public discourses as a topical buzzword (Barnes and Nel 2017; Van Breda 2018; Martin 2012; Mouton 1996). is another opportunity for the adaptation of planning law ideologies in Africa. Resilience is also important when unpacking the impact of pandemics in cities (Arup 2015). About resilience, we are looking at the qualities of a system that enables it to cope, adapt and recover from a pandemic or disaster event (Chirisa and Chivenge 2019; Fiksel 2003; Miguel et al. 2021) and such should be the planning law qualities. To better manage cities in Africa, planning laws reformation is key (de Satgé and Watson 2018; Landman 2002; Mbiba 2017; Odendaal 2012; Silva 2015, 2020). Similarly, planning practitioners and politicians must realign their preferences and actions (Watson 2011).

3. Methods

Add methods here (10 font) This paper is purely on the critical review of land and planning laws in Southern Africa with a particular focus on the undelaying principles and objectives informing the statutes herein referred to as the doctrine. For this research, doctrine means 'a principle'(Ciongaru 2020). As such, the method of investigation and analysis is essentially doctrinal legal research [DLR]. To obtain legal commentaries based on the chosen laws, DLR is blended with document analysis, a process known as triangulation in research. The triangulation method in research is becoming increasingly popular (Abutabenjeh and Jaradat, 2018) based on its methodological complementarity strength for improved reliability and quality of research findings. The approach will give a better understanding of the problem and yield more complete evidence (Creswell 2014; Creswell and Clark 2011). DLR will involve the search for a system of general, logically consistent principles (Kharel 2018) with a focus on how they impinge on resilience to understand the culpability of planning to city failure to be adaptive and time-bound. Hutchinson and Duncan (2012) posit that DLR normally involves the twin process of the location of the sources of laws which is then succeeded by text interpretation and analysis. For this research, the first part of this method necessitates the document analysis method. The second part of DLR involves the analysis of statutory provisions by interpreting and analysing the text. The crux is analysing legal rules and guiding principles or doctrines (Hutchinson 2010). On the other hand document analysis will involve reviewing of documents-both printed and electronic material- that are sources of evidence of convergence and corroboration (Bowen 2009; Morgan 2022) on the factors and background influencing principles and objectives of the laws under review.

4. Data Collection

The tendency of choosing a case and sample that best suits an argument has widely been criticised among scholars (Etikan 2017; Taherdoost 2016; Turner 2003). The main case study for this paper is Southern Africa. The region was purposively selected based on the fact that physical planning in these countries is a product of the colonial discourse (Mbiba 2017; Silva 2020) deriving from different former country colonisers. Three classes of planning systems were derived for this study. These are countries that were colonised by Britain, Germany and Portugal. Through the application of random sampling, Namibia [a former colony of Germany], Botswana [a former colony of Britain], Mozambique [a former colony of Portugal] and Zimbabwe [a former colony of Britain and the main case study of the PhD study that inspired this paper] were chosen for data collection and analysis. The selected case studies have a documented past of colonial urban planning systems that were designed to marginalise Africans (Chirisa and Dumba 2012; King 1977). Regional/country and town/urban planning main laws for these countries were downloaded from the internet sources for review. To understand the town planning objectives and underlying principles informing the town planning laws for each country, the authors analysed the meaning of every sentence of the preambles of the statutes wherein the main purposes are expressed. Section by section of each statute was studied with the assistance of the tables of contents for easy reference. Documents detailing the colonial history of countries were reviewed with the intent to understand the history underpinning the principles of the planning laws for the countries under consideration.

5. Results and Discussion

This section presents and discusses the findings based on the auditing of the physical/spatial planning laws of the case study countries drawn from Southern Africa. The considered countries are Zimbabwe, Namibia, Botswana and Mozambique.

5.1 Results

Physical/spatial planning in African cities is governed by the respective mainstream planning laws. Even though, the study found that there exists a wide variety of other laws and by-laws that buttress the mainstream planning statutes in regulating planning. Aside from the cities, planning laws in Africa also regulate spatial planning activity in rural regions. The state is the custodian of the planning laws through public planning, and it represents the public interests

by enforcing the observation of the planning laws. Guiding principles and physical planning objectives are clearly stated in each planning law considered for this study. This study carried out an audit of planning laws with the intent to identify and comment on the fundamental principles that shape the ultimate goals of planning practice in the selected cases (see table 1 for the case-based summaries of planning guides and objectives). Loopholes in the laws will be flagged out and implications for city resilience are analysed.

5.2 Urbanisation as a Growing Challenge in Africa: The Context

Contextualising the urbanisation question in Southern Africa is key for this paper. Zimbabwe, Namibia, Botswana and Mozambique are amongst the global cities with are experiencing rapid urbanisation. Africa’s rate of urbanisation per annum sits at 3.2% (Helena 2020; The Brookings Institution 2021). Africa as a continent is generally experiencing two kinds of urbanisation. The first is the increasing number of urban centres. The second is the rapid population increase in cities. The first kind of urbanisation usually results in quick multiplication and conversion of settlement nodes (non-urban) into urban set-ups (new cities). The second type usually results in the rapid sprawling of cities- an urban management challenge. Figure 1 shows the outlook of the rate of urbanisation as experienced in the selected case studies. Botswana is the fastest urbanising case country when it comes to the increase in the number of cities. The country has 42 developing cities with a population size ranging between 2000-20000. Mozambique and Zimbabwe are the only cases which are experiencing acute population increases in the large cities. For instance, Mozambique has 2 cities with a population size above one million yet Zimbabwe has only one.

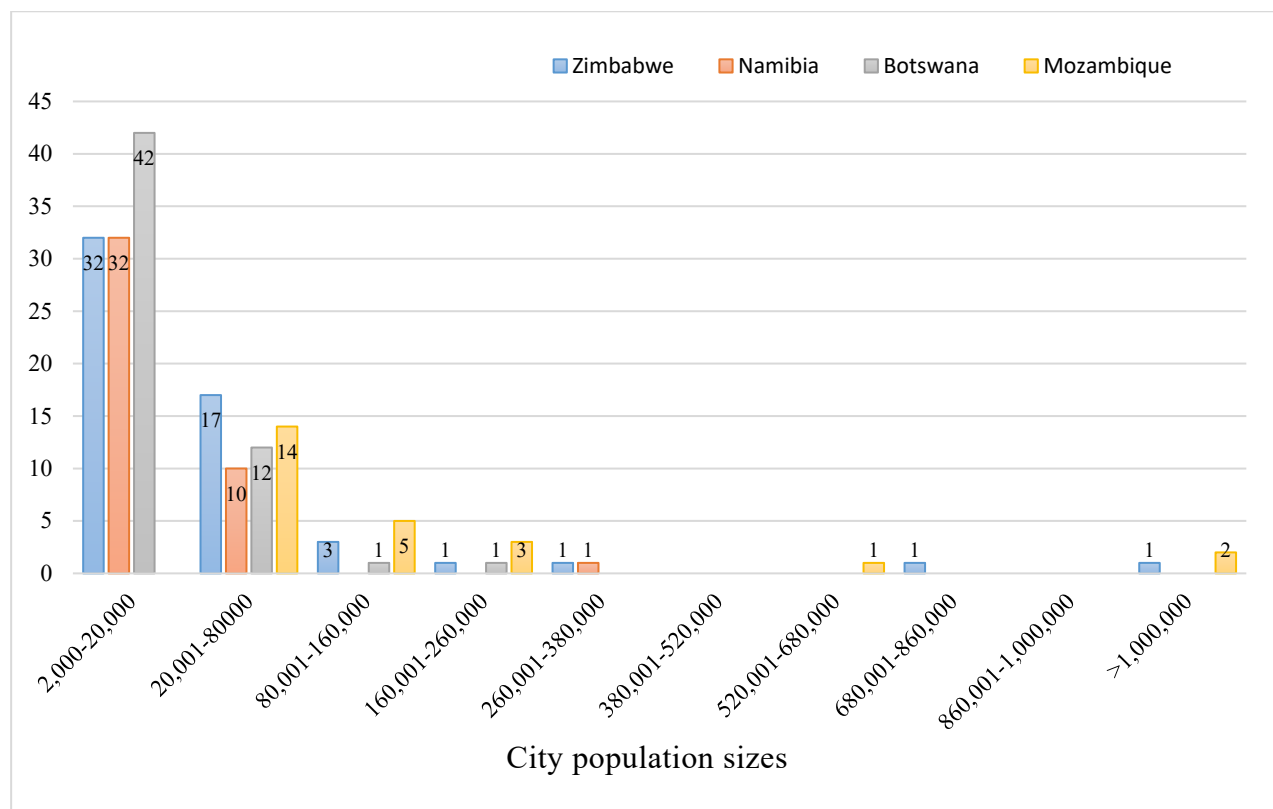


Figure 1: Urbanisation rate of the selected case countries

Source: Adapted from <https://worldpopulationreview.com>, 2023

It is worth noting that either of the two urbanisation kinds i.e., rapid city population and increase in the number of cities, as experienced in Africa, presents a spatial planning challenge. The developing/new towns are usually lax in enforcing and adhering to spatial planning laws and policies as they transform into urban settings. On the other hand, rapidly expanding cities grow so fast that with weak systems such as policy inconsistencies, dilapidated infrastructures, weak city-region economic environments and city authorities fail to match population increase with urban service expansion. In both scenarios of the two kinds of urbanisation aforementioned, planning laws and the guiding policies

that should govern urban growth becomes at stake. Despite the benefits that come with urbanisation, the associated damages it comes within developing countries are enormous.

5.3 The Substance of Laws Governing City Planning: Case Studies

The evolution of scientific and empirical research over time has seen the intensive growth of the use of case study designs across disciplines (Ababacar Sy Diop and Liu 2020). This paper is written based on three case studies that are Zimbabwe, Namibia, Botswana and Mozambique. Based on the selected case studies, the paper performed an in-depth and critical analysis of the planning of each country.

5.3.1 Zimbabwe

Zimbabwe's planning legislation is arguably well-developed and elaborate. The 1996 Regional, Town, and Country Planning (RTCP) Act, the current planning law in Zimbabwe is made up of 9 parts that are divided into 75 sections. The Act provides the framework for regional and local area planning, be it cities or rural areas. It offers the legal basis for the regional, master and local plans. Through the development regulatory tool such as the development permit, the Act ought to protect amenities (both urban and rural), preserve the environment (including the built environments' buildings of historical and architectural significance) and determine the general townscape and landscape appearances. The processes of land acquisition and guidelines for subdividing or consolidating land pieces are provided. The result of this study discovered that Zimbabwe's planning law, i.e., the RTCP Act of 1996 is much more oriented towards control of development, a section that largely answers the question of How to plan. Key objectives, principles and envisaged outcomes of this country's planning law are summarised in table 1. The law does not provide for citizen participation (meaningful at least) and other key fundamentals of resilience as shown in table one. Wekwete (1989b) observes that the Act is mainly centred on three strands of planning powers. These are powers to execute planning [Section 11], powers to exercise development control [Section 25], and powers to set up the administrative structures for planning [Section 4].

5.3.2 Namibia

The current planning law in Namibia is five years old. Before 2018, Namibia was using town planning schemes to control the development of municipalities. Town planning schemes were regulated by the 1954 Town Planning Ordinance, the 1963 Township and Division of Land Ordinance, and the 2007 Local Authority Act. These provide the basic framework for town planning schemes. On the schemes, the municipal boundaries are key. The main objectives of planning schemes were to provide for planning for roads, Lighting, Water Supply, Sewerage, Drainage and Sewerage disposal, Reservation, Control of advertisement, Disposal of Land, and Agriculture. The 2018 and current planning law is made up of 5 chapters that are further divided into 71 articles that define the guiding principles on processes of land use planning at various levels and scales. Specifically, the law specifies the guiding rules on physical planning, classification of land (zoning), and registration procedure. More so, the law recognises competency as a key requirement in doing planning work. It outlines the functions of authorities in planning. Key objectives, principles and envisaged outcomes of this country's planning law are summarised in table 1. However, the law does not provide for citizen participation and is very deficient in other key fundamentals of resilience as denoted in table one.

5.3.3 Botswana

Botswana's planning system slightly resembles that of Zimbabwe though its content and scope of issues covered are reduced. The noted similarities in the two Acts derive from the virtue that both countries are former colonies of Britain. Structurally, Botswana's main planning law is made up of 6 parts that are further divided into 43 sections. The Act is vivid about the role and involvement of central administration (the state) in spatial planning affairs. Quick to notice is that there is no mention of a professional planner in the Act. The Minister is mandated to oversee policy processes regarding the use and development of land and control of development through permits. Like the Zimbabwean planning law scenario on development control, Section 18 sets out an enforcement procedure regarding illegal development. One would hope for more clarity and detail about the object of development control. Botswana's development control section is not as elaborate as that of Zimbabwe. Related to health issues are environmental sustainability provisions in the Act. Section 23 dully provides for the preservation of the natural environment. Key objectives, principles and envisaged outcomes of this country's planning law are summarised in table 1. Like any other studied African law, the case for Botswana is not different as it fails to provide for citizen participation and other key fundamentals of resilience as shown in table one.

5.3.4 Mozambique

Mozambique's planning law is not very old. It was adopted in 2007. Through this planning Act, the government seeks to monitor the operationalisation of territorial management instruments and provide guidance and support in the preparation of spatial planning at the national, provincial, district and municipal levels. As part of the implementation of the planning law in Mozambique, planning has managed to prepare up to completion 49 urban structure plans across the country over the past years. 15 similar plans are underway under the 2020-2024 planning period. The general object of the Act is to regulate the physical structure of human settlements. Order, rationality and sustainability are key fundamentals that the Act guarantees. Being informed by rationality and sustainability, the Act generally seeks to optimise natural resources use, preserve the environment, promote territorial cohesion and quality of life by balancing the quality of life both in rural and urban regions, improve housing and infrastructure conditions, and manage the security of populations from disasters. The Mozambique case is unique in that it is the only law that speaks to the protection of populations vulnerable to disasters. Though the planning mechanism is not specified, the Act acknowledges the need for recognition of vulnerable groups that is a key component for resilience.

Table 1: An Evaluation of Planning Laws Concerning the Infusion or Lack of Resilience

Description of Operational Planning Statute per country				City Resilience Index					
Country	Planning Act reviewed	Key objectives of the Act and outcomes	Guiding principles	Existence of the term 'resilience' in the Act	Governance and citizen participation	Institutional and administrative frameworks for disasters/pandemics [eg, city planning & preparedness, early warning and responses	Sections on city planning financing and resources mobilization	Specification of city planning tools for resilience building	Effective provisions for critical infrastructure for the urban economy
Zimbabwe	Regional, Town and Country Planning Act [1996]	<ul style="list-style-type: none"> - framework and legal basis for regional, master and local plans [urban/rural] -Protect amenities [both rural and urban] -preserve the built and natural environments -determine the appearance of the townscape and landscape -manage land acquisition -control development on space -regulate the land subdivision and consolidation 	<ul style="list-style-type: none"> - conservation - beauty - health, safety, order, amenity, convenience - general welfare, efficiency - public interest - history and heritage - control of development 	Nil	Yes, though not effective	Nil	Nil	Nil	Nil

Namibia	Urban and Regional Planning Act [2018]	<ul style="list-style-type: none"> - declaration of the authorised planning authority - framework for national development [spatial] - specify the regional and urban structure plans - ensure development standards [permits] 	<ul style="list-style-type: none"> -order [zoning] -public participation - emphasis on the qualification and experience of planners - control of development 	Null	Yes	Null	Null	Null	Yes [particularly the town planning schemes]
Botswana	Town and Country Planning	<ul style="list-style-type: none"> - orderly and progressive land development [both rural and urban] - preservation and improvement of amenities - to administer permission to develop land and to control the use of land - constitution of the town and country planning boards 	<ul style="list-style-type: none"> order [zoning] fairness [appeals] environmental preservation amenity improvement of systems of transport, <i>public services</i> history and heritage 	Null	Null	Null	Null	Null	Null

Mozambique	Law [2007]	<ul style="list-style-type: none"> -territorial planning regulation and legal framework -to establish the territorial management system - provide for the utilisation of regional potential - promote quality of life of citizens - improving conditions of infrastructure and housing, infrastructure - Strengthen urban systems - ensure security to vulnerable disaster-prone populations 	<ul style="list-style-type: none"> - order and environmental sustainability - legality of development - rationality and sustainability in natural resource use - national cohesion - equity [rural and urban] 	Null	Vague	Partly Yes though not effective	Null	Null	Null
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5.4 Discussion

Add any validation here including improvement with statistical hypothesis tests write here (10 font) Given the major challenges facing Southern African cities that are inclusive of productivity improvement, housing provision, and employment creation among others, the mainstream planning statutes have not addressed the major policy issues such as resilience and pandemics. Although there is praiseworthy involvement of planning, mostly non-statutory development planning, in the countryside areas, the planning laws of the studied cases are largely urban and physical development control oriented. There is no doubt that African planning laws are purely focused on the territorial arrangement of development with the intent to attain order. Order is premised on the question, 'what and how to plan'. The scenario in that the 'how to plan' question is being applied does not denote any evidence of frequently changing planning environments rendering the planning laws static and rigid. Unlike in Africa, the European planning laws initially were biased toward addressing public health concerns but later on changed to accommodate the emergent processes of participation and democratic governance (King 1977). In Africa, the state, through the planning laws, is solely concerned with the control of physical development to minimise conflicting interests. Regarding Zimbabwe's planning law, there has been an outcry about the unfair application of the planning laws by the state particularly the development control provisions where the biggest victims of practices such as evictions and demolitions have been the informal sector and those perceived to be of opposition political parties. The presence of the state, in providing planning remedies to those pursuing illegal developments, is largely based on section 31 that provides enforcement orders and section 35 that provides for the powers to remove and demolish. The regional planning systems encapsulated in African planning laws promote spatial cohesion, consolidation, and local competitiveness. In line with the observation that planning laws should be read in conjunction with other supporting Acts, it should be noted that Zimbabwe's RTCP Act does not address the emerging global trends such as critical infrastructure for the urban economy, city resilience and democratic governance and participation. In Zimbabwe, the complementary Acts which fall into two categories of sector-specific and local government strands (Wekwete 1989, 1995) are a mere entrenchment of the state's involvement in controlling development. Sector-specific Acts include Water Act, Roads Act, Deeds Registry Act, and Mines and Minerals Act among others. An example of an important linkage and perhaps duplication between the Water Act and the physical planning Act is that the former sanctions the siting, development and management of dams and energy sites. Zimbabwe's national water supply master plan was formulated based on this Act (Wekwete 1995). On the category of local government-specific Acts, which include the Provincial Councils and Administration Act, Urban Councils Act and the Rural District Councils Act, and as an example, the notable relationship with the RTCP Act is reflected in Section 160 of the Urban Councils Act which sanctions the local authorities for estate development that is layout and servicing of land for various purposes. The link is further reinforced by the requirement that the municipalities should submit their plans for approval to the Minister of local government. It can be said that the allied Acts simply buttress the rigidity and narrowness of the main planning law. Any amendment to the RTCP Act would mean aligning all these other allied Acts. Consequently, African planning laws do not provide for any plan of action for cases of emergent outbreaks of a pandemic magnitude. Whilst planning laws are unquestionably the centrepiece of the system of regional and urban planning in Africa, other complementing pieces of legislation impinge on land use planning (McAuslan 1981). The absence of key dimensions of resilience [inclusive of strong recognition of health and well-being, participation, the economy and society, the infrastructure and environment, and leadership and strategy (Arup 2014, 2015; UNDP 2019)] in the studied planning African law is indicative of a gap needful of addressing. Bearing in mind the increasing build-up of discussions surrounding the infusion of the resilience concept to city planning systems in Africa and given the freshness of the impact of COVID-19, the overhauling of the African planning laws is key.

5.5 Recommendations

Considering the static nature, the constantly changing global trends, and the largely out-of-context planning law in Africa, it is paramount to note that there is all reason for recasting the content of planning law to include issues of resilience and planning for city preparedness against pandemics. It is, therefore, imperative to isolate the various facets of planning law to test their relevance or lack thereof to topical development concepts and current realities. Whilst the African planning laws acknowledge the importance of the health of communities, particularly the Zimbabwean one states that it seeks to promote health, the provision of a legal basis for planning responses in the case of health outbreaks is needed. Despite the general acceptability of the broad objectives of African planning laws, there is a need for the realignment of the statutes for purposes of improved relevance. The African states (through the relevant ministries) have too much power in controlling physical planning including in cities. Considering their critical role in addressing global challenges, there is a need for effective decentralisation of planning authority to municipalities for effective action. Planning laws must deliver a new planning environment that is founded on resilience and integrated planning principles. The concept of resilience is as old as the advent of the city planning profession. Thus, planning laws should

have long incorporated this key principle as one fundamental of planning practice. The state governments should desist from abusing planning laws to pursue politically laden agendas.

6. Conclusion

The foregoing is an audit of planning laws of the selected Southern African countries with an intent to explore the extent of the infusion of resilience against disasters and pandemics. The study is premised on the claim that African planning laws lack context and are outdated, and that city planning laws play a pivotal role in shaping city planning outcomes, thus providing a good platform for entrenching city resilience against adversities. Literature review shows that planning law should be founded on a guiding ideology and a set of principles. Physical planning laws in Africa are used in conjunction with other supporting statutes and by-laws for detailed and sector-specific guidance. The objectives and principles of many African planning laws still echo the colonial regime's ideological remnants. The overarching and underlying principles that inform African planning law are order and environmental preservation. The case planning laws considered in this study lack provisions and a framework for planning for resilience and health pandemics. Considering that most African cities are slow in adapting their laws to changing environments, constant review of urban planning legislation that produces policies and plans that are relevant to the present and future challenges is needed.

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