

Assessment and Evaluation of the Functioning Laws of Significance
for Urban and Land Use Planning and Development Control
in Sierra Leone

The Ministry of Lands, Country Planning and the Environment

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TABLE OF CONTENTS

	Page
CHAPTER 1.....	5
1.1 Introduction.....	5
1.2 Background.....	6
1.3 Objectives.....	7
CHAPTER 2 - LEGISLATIVE REVIEW.....	9
2.1 Town and Country Planning Act (TCPA).....	9
2.2 Freetown Improvement Act (FIA).....	17
2.3 Freetown Improvement Extension Act.....	20
2.4 Other related Acts.....	21
CHAPTER 3 – REVIEW OF INSTITUTIONAL FRAMEWORK.....	22
3.1 Background.....	22
3.2 Central Government Level.....	24
3.3 Local Government Institutions.....	25
3.4 Ministry of Finance and Economic Development.....	25
3.5 Other Ministries, Departments and Agencies.....	26
3.6 Assessment of the Institutional Framework.....	27
3.6.1 Lack of Capacity.....	27
3.6.2 Lack of Coordination and Participation.....	27
3.6.3 Inadequate attention and support to Land Use Planning.....	28
3.6.4 Good Governance and Land Use Planning.....	28
CHAPTER 4 – REVIEW OF SPATIAL AND LAND USE PLANNING.....	29
CHAPTER 5 – PROPOSED INSTITUTIONAL FRAMEWORK.....	32
5.1 Strategy.....	32
5.2 Land Use Planning Authorities.....	33
5.2.1 The National Land Use Planning Authority.....	33
5.2.2 The National Advisory Land Use Planning Committee.....	34
5.2.3 Regional Planning Authorities.....	35
5.2.4 Planning Tribunal.....	35
5.2.5 Local Planning Authorities.....	35

	Page
CHAPTER 6 – PROPOSED LEGISLATIVE AMENDMENTS.....	39
6.0 Town and Country Planning Act (TCPA).....	39
6.1 Interpretation Section of the TCPA/Definition of Development.....	39
6.2 National Advisory Land Use Planning Committee.....	40
6.3 Planning Organization and Decentralization of Planning Functions.....	40
6.4 Delegation of Powers.....	41
6.5 Declaration of Planning Areas.....	41
6.6 The Planning Authority, the Land Use and Ownership of Land.....	42
6.7 The Spatial Development Planning System.....	42
6.8 Preparation and Approval of Structure Plans.....	46
6.9 Preparation and Approval of Local Plans.....	48
6.10 Preparation and Approval of Action Area Plans.....	48
6.11 Simplified Planning Zones.....	50
6.12 Financing of Structure, Local, and Areas Action plans.....	50
6.13 Public Participation in the Planning Process.....	51
6.14 Development Permits.....	52
6.15 Special Important Prioritized Land Use Planning Issues.....	53
6.16 Trees.....	53
6.17 Compensation and Betterment.....	53
6.18 Appeals.....	

CHAPTER 1

1.1 Introduction

This paper examines the institutional arrangements, the land use planning system and the supporting legislation existing in Sierra Leone in order to modernize future land use planning and management in the country. To avoid confusion the authors want to mention that when the terms “urban planning, town planning, land use planning, physical planning, spatial planning, land use management or development control” are used in the report they refer to the human use of the territory, the area, the parcel or the plot of land. On the other hand the term ‘land administration’ refers to something very different not included in this report, which is administration of the land tenure rights or the property of land.

In the review of the institutional arrangements in land use planning, there is considered the possibility of adapting the proposed system to the existing institutional set-up rather than requiring extensive changes to it. It has also been important to consider ways of improving cooperative links between agencies involved in land use planning and management, and to effect well-meaning collaboration with the present Land Use Planning Authorities (Ministry of Lands, Country Planning and the Environment (MLCPE) & Ministry of Works, Infrastructure and Housing (MWHI)) in order to establish an effective spatial development planning system in Sierra Leone.

In this paper, the institutions with responsibility for physical planning as well as the related legislations are identified and examined in relation to each other. The existing planning system is examined in relation to the provisions of the land use planning laws. Most importantly, the study elaborates the proposal to revise the present Town and Country Planning Act, Cap 81 of the laws of Sierra Leone (TCPA) taking into consideration the planning/ ‘development control’ functions that have been devolved to Local Councils in the decentralization process.

The rights and interests of the public within the institutional and legislative framework for land use planning play an important role. Therefore the proposed spatial development planning system in this paper introduces equity mechanisms to safeguard public concerns and this must be provided for in a revised land use planning law.

The Government’s coordination and influence on land use can be a decisive factor to promote rational and sustainable urban and rural development. The paper therefore, further examines issues that enable land use planning and management to be coordinated with economic development planning.

Finally, this paper seeks to propose amendments to/revision of existing planning laws in order to provide for a modernized land use planning system to be used all over the country.

1.2 Background

Before any public control over the use and development of land was introduced, landowners were free to use their land in any way they wished provided they acted within the boundaries of their property and did not commit any nuisance or trespass against their neighbour(s).

Urbanization brought about rapid increase in the urban population due to population growth and migration. This in turn led to increased population density and with it congestion, overcrowding and squalid living in major urban areas, especially Freetown.

An important milestone in the introduction of public control on land use was the enactment of the 1900 Freetown Improvement Ordinance for the City of Freetown. There were also the Public Health Rules of 1927, a supplement to the Laws of the Colony and Protectorate of Sierra Leone (1925). These two legislations imposed on the authorities the duty of enforcing building by-laws and sanitary codes in order to remedy the worst effect of insanitary living conditions. The Department of Public Works was the authority responsible for planning and building control in areas declared as 'Town Planning Areas', while the Department of Health and Sanitation was responsible for building control in other areas which fell outside the application of the Ordinance. An attempt to deal with more general land use problems led to the enactment of the Town and Country Planning Ordinance 1946. This law was applicable only to the Colony but later extended to the whole of Sierra Leone.

By introducing the Town and Country Planning Ordinance the use of land was made a public concern, while the ownership and right to sell and buy land remained a private issue. The individual or private developer no longer had the right or freedom to use their land in the manner of their choice without obtaining prior planning permission from the authorities if the land in question fell within a 'planning area'.

The new law imposed restrictions on the freedom of use of land in order to improve and ensure good living conditions and the health of the inhabitants as the rapidly increasing population created congestion and overcrowded living conditions in urban areas. The law was also intended to improve and ensure the long-term interests of community development.

The Town and Country Planning Act, Cap 81 of the laws of Sierra Leone 1960(TCPA) as amended is now the principal legislation that provides for town and country planning (land use planning) in Sierra Leone. Ironically, its provisions have rarely been used in recent times, its usage being mainly limited to the declaration of 'Planning Areas' and the appointment of 'Planning Committees'.

The Freetown Improvement Act as amended and its Rules, Cap 66 of the laws of Sierra Leone 1960 (FIA) form the basic 'development control' tool for land use and building construction in Freetown. They provide basic standards that are varied and extensive as regards the use of land, buildings and building materials. They have been applied with some degree of success but have also provided such high standards that have not been able to be met by a large portion of the population. Successful implementation of the FIA provisions and Rules is visible in the older part of Freetown in the area between the junction of Ross Road extending west wards to the Congo Cross roundabout (which includes Cline Town, Fourah Bay Road, Central Freetown). However, there are functional issues which, though may not have been envisaged by the FIA, presently need much attention. These

issues include inadequate space for parking, transportation, traffic, inadequate markets and recreational areas.

The Freetown Improvement (Extension) Act Cap 77 of the laws of Sierra Leone as amended extend the provisions of the FIA to other areas outside the city of Freetown within the first, second and third urban areas. There are also the 'Greater Freetown' Zoning rules of 1969 which were policy guidelines used by the Ministry of Housing and Country Planning to assist in planning and building control.

At present, the Ministry of Lands, Country Planning and the Environment (MLCPE) is the authority responsible for town and country planning. The day-to-day land use planning matters rest with the Department of Country Planning, with powers to prepare and implement legally binding land use plans.

To conclude this background, it is worthy to note that land use planning has been given very little priority by successive governments and the land use planning authorities have been left with too little or no capacity to produce plans and control urban development.

1.3 Objectives

Land use planning is a potential tool that can be used by governments to influence and ensure good coordination of construction activities and development projects as well as protection of natural resources in any country.

The failure of the Government to control land use urban and rural projects has led to undesired and irrational developments taking place which has resulted in economic loss for the individual, the community and the nation as a whole. There has to be political will which ensures that the provisions of the planning laws are complied with to lead to efficient land use planning and this should create improved and secured conditions for private and public investments which in turn will ensure progress and development continually in the long term.

Therefore, it is important that the right institutional and legal framework exists to ensure that the planning system works efficiently. For example, once a land use plan has been approved under the planning law, it should be binding on every one including government institutions. It is necessary in these instances that there is efficient coordination among all government ministries and agencies to work within a national framework which reflects the Government's general development goals. As land use planning must reflect socio economic development, there must be in particular, a good coordination with the Ministry of Finance and Economic Development, (MFED) which is primarily concerned with formulating policies and enacting legislation in the strategic, economic and social interests of the country.

Public policies should therefore be designed in ways that seek to orderly plan and regulate land use in an efficient way to prevent land use conflicts and ensure that land use policies and concrete planning decisions are being enforced.

The objective of this study is therefore:

“To review, assess and evaluate the existing institutional set-up for land use planning in Sierra Leone and the land use plan system with their supporting legislative framework, in order to select and adopt the best land use planning options that will further the welfare of the people and their communities by creating convenient, healthy, efficient and attractive environments for present and future generations including equity and gender considerations”

In pursuing this objective, the guiding principles will be:

- i. That Institutional provisions should adapt to the existing institutional set-up rather than requiring extensive changes in them.
- ii. To enhance the country’s decentralization process and in particular create an enabling environment for local authorities to better perform the land use (spatial) planning and development control functions devolved to them.
- iii. To develop cooperative links between institutions and agencies involved in land use planning and management, and to bring them gradually into collaboration with the MLCPE.
- iv. To ensure that land use planning reflects national social economic development efforts, and support local authorities with land use policies including private sector participation within an overall framework of good governance.
- v. To safeguard and protect the rights of the public within an equitable system of land use planning in the country.
- vi. To ensure community contributions and participation in the planning process.

CHAPTER 2

LEGISLATIVE REVIEW

2.1 Town and Country Planning Act (Cap 81 of laws of Sierra Leone)

[No. 19 of 1946] [PN76 of 1946] [PN 69 of 1947][PN18 of 1948][PN19 of 1948] [PN20 of 1948] [PN39 of 1948] [PN69 of 1948] [P.N 156 of 1960][Order 17 of 1969][P.N 4 of 1969] [Order 52 of 1971] [P.N 53 of 1971][P.N 54 of 1971] [P.N 98 of 1971] [P.N 1 of 1972] [P.N 1 of 1974][Order 2 of 1974] [P.N 3 of 1975] [Order 2 of 1976] [Order 3 of 1976] [P.N 39 of 1976] [P.N 7 of 1977][P.N 1 of 1979] [Order 2 of 1979] [P.N 12 of 1999]

Since its enactment, the TCPA has gone through several amendments. The effect of the amendments of 1960 *[P.N 156 of 1960]* was to transfer the functions of the ‘Governor’ or ‘Governor in Council’ under the TCPA to the Minister of Housing and Country Planning. Under the Town and Country Planning (Amendment) 1969, the application of the TCPA’s provisions were extended throughout the country, and the Planning Board was replaced by the Minister of Housing and Country Planning.

The repealed *Section 3* of the TCPA had established a Board known as the Town and Country Planning Board (TCPB). The President of the Board had to be appointed by the Governor including other members whom were to be chosen from the Public Works, Medical Board, Surveys and Lands Departments, and an elected member from the Freetown City Council (*Section 3 (1)*).

The Board established under the TCPA was given corporate status and established as the authority for all Town and Country planning in the Colony (*Section 3(3)*).

The Powers of the Board were to:

1. Advise the Governor in Council (by way of representation) if after consultation with the local authorities it was of the opinion that a scheme should be made for an area. (*Section 6 (1)*).
2. Where an area declared a ‘Planning Area’ by the Governor in accordance with the TCPA fell within a municipal area, then the powers to undertake matters described in the Schedule 1 of the TCPA and which by law were vested in the Town Council would at the Governor’s direction be transferred and vested in the Board except those concerning road transport and public utility services (*Section 8(1) (a)*).
3. The Board was (subject to the exercise of their powers of delegation), also empowered to administer exclusively any regulations relating to any planning and building operations made by the Town Council.

4. Where that part of the Planning Area in whole or in part fell outside the municipal area, then the powers and duties relating to buildings, roads or open spaces imposed or conferred on a person were transferred and vested in the Board (*Section 8(2)*).
5. The Board had the power to make regulations with regards matters listed in *Section 33* of the TCPA.

The matters laid out in *Schedule 1* of the TCPA are extensive and range from providing for the reservation of land for new road construction, restricting and controlling the construction of new roads and the alteration of existing roads; regulating and controlling generally or in a particular area, the height, size, space and building lines of buildings; the location of buildings, the extent of yards, gardens and curtilage of buildings; the purposes for and the manner in which buildings made be used or occupied including in the case of dwelling houses, the letting into separate tenements; regulating or controlling or enabling the Board to regulate the design, external colour and materials of buildings and fences; reserving or allocating any particular land or all land in a particular area for trade and industry purposes; reserving or allocating any particular land or all land in a particular area for housing schemes; providing for the clearance of slums in specified areas; providing for health conditions; reserving land for both private and public burial sites; providing for the preservation of forests, woods, trees, shrubs and flowers; preservation of buildings of historical significance etc.; the prohibition, regulation and control of the deposit or disposal of waste material and refuse.

In effect, these matters which were the responsibility of the Town Council could be transferred and vested in the Board but only by the direction of the Governor when an area falling within a municipality had been declared a 'Planning Area'. If the area was outside the municipality, then these matters were automatically the responsibility of the Board.

The main function of the Board was to work on a Planning Scheme. Once an area was identified and declared a Planning Area, the Board was under a duty to appoint a Planning Committee of which two of the members had to be the Medical Officer of Health and Town Engineer (*Section 10(2)*). The Committee was under a duty to submit a scheme at the Board's request within a given period of time as prescribed by the Board. Since an Order declaring a "Planning Area" ceased after three years, the period for preparing a scheme would have to fall well within the three year time limit. The TCPA provides for two types of plan, an outline planning scheme and a detailed planning scheme. Both are to be accompanied by a survey plan of the area.

In relation to the outline scheme, if the Planning Committee did not submit a plan within the prescribed time, then the Board had a discretion to prepare the scheme itself. (*Section 12(3)*).

In relation to the detailed scheme, the Planning Committee was not obliged to submit a scheme unless the Board was satisfied that a planning scheme had to be made for the given area. If the Planning Committee failed to submit a detailed scheme within the prescribed time, then the Board could prepare a detailed plan. The words used in *Section 13(3)*.

'If the Planning Committee fails to submit a detailed planning scheme within the time prescribed by the Board, the Board may prepare a detailed scheme.....'

suggest that the preparation and submission of a scheme are discretionary. The same wording is also used for outline schemes.

The Planning Committee could exercise powers delegated to it by the Board in accordance with the TCPA (*Section 10 (2)*). One of their duties was to provide the Board with information or particulars that it required in relation to present and future plans for development of an area (*Section 11*).

It must be pointed out that the appointment of Planning Committee members have always been those representatives of government ministries and institutions and as such are not expected to physically prepare the plans. This would have had to be done by technical bodies. However, the Planning Committee were there to ensure that the preparation of such plans was expedited. The Planning Committee could be considered as an oversight body ensuring that the government's interests were being reflected in the plan.

Summarized briefly below are the stages taken for land use planning under the TCPA pre the 1969 Amendment:

- 1) A Planning Area was declared by an Order made by the Governor in Council under the TCPA which was published in the Gazette.
- 2) The Planning Committee had a duty to submit an outline planning scheme within a period prescribed by the Board, failing which the Board was required to come up with a planning scheme and such scheme was then deemed to be a scheme prepared by the Planning Committee (*Section 12(3)*).
- 3) At any time after this, the Planning Committee could submit a detailed planning scheme of any area within the 'Planning Area' to the Board or could adopt with or without modification any proposed plan by all or any of the owners of the area of land (*Section 13(1)*).
- 4) If the Planning Committee had not submitted any detailed planning scheme to the Board then the Board could prescribe a time for submission if it was satisfied that a detailed scheme should be prepared. If the Planning Committee failed to submit such a scheme, then the Board could prepare it and this would be deemed to have been prepared by the Planning Committee (*Section 13 (3)*).

- 5) To make, carry out or enforce a scheme, the Board would notify in writing, the owners of land within the planning area to which the scheme related; requiring them within thirty days to state in writing their interests, rights in the land, buildings therein and also to state in writing the names and addresses of all those who they knew had an interest and rights in the land and buildings in the area. (*Section 14(1)*).
- 6) For the purposes of making a scheme, the Board had authority to cause entry on to land within the planning area, to have the area surveyed and examined and to carry out all such investigations necessary for the scheme.
- 7) Before a planning scheme was framed or adopted, the planning scheme had to be deposited in the place decided upon by the Board, and notice of such a place published in the Gazette and any of the local newspapers. Public notices were also to be posted elsewhere in the Colony. The purpose of this was to allow representations to be made by the public regarding the scheme. Two months were given in which such representations could be made and the Board was obliged to submit them with the planning scheme to the Governor for consideration (*Section 16(3)*).
- 8) A Planning scheme of the Planning Area had to be approved by the Governor through the making of an order before it could be executed (*Section 17*).
- 9) If a planning scheme was not approved by the Governor within three years of declaration of the Planning Area, then the Order declaring the Planning Area ceased to have effect.
- 10) If a scheme was approved, then the Governor was obligated to deposit it for inspection any place within the planning area (*Section 18*).
- 11) The Board was the authority also for execution and enforcement of planning schemes and its authority included power to demolish, alter buildings that were in contravention of the scheme; reinstate land within a planning area which had been used in contravention of the scheme after the area had been declared a Planning Area (*Section 19 & 20*)).

The TCPA contains penalties for non-compliance of its provisions. However, they have rarely been used as a means of ensuring compliance. This is because they can only apply in areas which are actively planning areas. Also, schemes have never been approved of under the TCPA. Penalties created under the TCPA are summarized below:

- i. Any person who does not apply for planning permission if he wishes to carry out development on land or major works to a building within an area declared to be a planning area and before a final detailed planning scheme is approved under *Section 17*, is guilty of an offence and liable on summary conviction to a fine of 10 Leones, and 1 Leone for every continuing day of the offence. (*Section 7(2)*).
- ii. Where the Board (Minister) for the purposes of making, carrying out or enforcing a scheme has notified in writing to persons in the planning area affected by the scheme, requiring them to produce information on their rights/ interest in land or buildings therein or other information as to others rights /interests, failure to do so or the producing of false statements is an offence of which a person is liable on summary conviction to a fine of 25 Leones (*Section 14(2)*).

- iii. Those persons who use buildings or land in contravention of the actions taken by the Board in trying to execute or enforce a scheme are not only liable to civil action, but are guilty of an offence liable on summary conviction to a fine of 25 Leones (*Section 20 (4)*).
- iv. Any person who willfully obstructs or interferes with any person in lawful exercise with his powers under the TCPA is guilty of an offence and on summary conviction liable to a 25 Leones fine (*Section 22*).
- v. Any person who does an act in contravention of the provisions of the scheme, or fails to comply with the provisions of the scheme is guilty of an offence and liable on summary conviction to 50 Leones and 5 Leones each day for the continuing offence (*Section 23*).

Acquisition of land and Buildings

The Board also had power to acquire land or buildings necessary for the purposes of carrying out the provisions of a scheme (*Section 24*) and the TCPA lays out the procedure for doing this which includes representations to be made by the owner if he was against it. If agreement was not reached, then the Board had to apply to the Governor in Council for his consideration for compulsory acquisition. After considering representations by the owner, and making any other enquiries, the Governor in Council could direct that the land/buildings be used for Town and country Purposes (*Section 24(2)*). Appropriation of the land for town and country purposes was completed when a plan of the land/buildings and a certificate under the hand of the President of the Board stating that the land was appropriated for 'Town and Country Purposes' was registered at the Office of the Registrar and Administrator General (*Section 24(6)*).

Compensation and Betterment

Claims for compensation under the TCPA can only be made by a person a) whose property has been injuriously affected by the operation of any provision under a scheme or execution of work done under a scheme or; b) where expenditure incurred as a result of compliance of a provision of a scheme or making or resisting a claim under the provisions for compensation or betterment, is rendered abortive because the scheme has been revoked or modified. The TCPA also provides a specific list of cases and classes of cases for which compensation cannot be claimed (*Section 26*). The procedure for claiming compensation is also laid out in *Section 27*. Prior to the 1969 Amendment Act the Governor could make rules prescribing the way in which compensation was to be assessed and rules regarding the appointment of committees to advise the Board on amounts to be paid out in compensation (*Section 6(5)*). In 1947, the Governor in exercise of his powers under this section, made rules known as the Town and Country Planning (Compensation Assessment) Rules 1947 to guide the Board in assessing compensation. There is also a

provision in the TCPA for betterment which allowed the Board to claim on the value of increase to a person's property which was affected by the implementation of a provision of a scheme in the area to which the scheme related or as a result of work done under a scheme (*Section 28*). The amount could be set off against any claims for compensation.

Disputes

There is a right of recourse to the High Court to determine the right to recover compensation by a person, or right to recover betterment by the Board which are in dispute (*Section 29*).

Under the Minister' Statutory Powers and Duties (Modification of Town and Country Planning Ordinance 1946) Order No 156 of 1960, an amendment to the TCPA was made wherein the word 'Minister' was inserted into Section 2 and was defined as 'the Minister charged for the time being with Town and Country Planning'. Further, the word 'Minister' was substituted for 'Governor in Council' or 'Governor' wherever it was found in the TCPA. In 1961, the Ministry of Housing and Country Planning was established and the Minister continued its functions under the TCPA.

The next amendment to the TCPA was the Town and Country Planning Act (Amendment) Decree, No 41 of 1967. The major amendments were that the TCPA now applied to the whole of Sierra Leone; and that *Sections 3, 4, and 5* were repealed which effectively abolished the Board. Further, for the first time a person affected by an Order declaring a 'Planning Area' could make representations to the National Reformation Council Representative who had the power after considering such representations to modify the 'Planning Area'. Another amendment was that the Minister was no longer responsible for making rules regarding the assessment of compensation. Instead, the provisions of the Compulsory Acquisition of Property (Constitutional Safeguards) act 1961 were now to apply to compensation matters arising under the TCPA.

The effect of this amendment Act was to transfer all powers vested in the Board and Minister to the NRC Representative.

The Town and Country Planning (Amendment) Act 1969 mirrors the 1967 decree save that 1) the expression 'Western Area' is deleted in the 1967 Decree and replaced in the 1969 Amendment Act with the expression 'Sierra Leone' wherever it appears in the TCPA. The definition 'NRC' Representative is deleted and is replaced by the expression 'Minister' wherever it appeared in the TCPA. In Effect, just as under the 1967 Decree, the Minister of Housing and Country Planning took on all the powers and duties of the Board.

The most recent amendments to the TCPA have been made in the Town and Country Planning (Amendment) Act 2001. The main changes have been to *Section 6* of the TCPA and are summarized as follows:

1. If the Minister is of the opinion that a scheme should be made for the whole of Sierra Leone, then after hearing the views of members of the public, he may by Order declare the whole of Sierra Leone a 'planning area'.
2. The Minister may by Order, declare a specified area as identified in a survey plan as a 'planning area' if he is of the opinion that a scheme should be made in the case of Freetown, after consultations with the Freetown Committee of Management (now City Council of Freetown); in the case of other towns established under the Townships Act, Cap 295 (now repealed), the Committees of Management (now Town Councils) of those towns; in the case of the Sherbro Urban District, the Sherbro Committee of Management (now Sherbro District Council) in public hearings.
3. An order declaring a 'planning area' will come into operation in accordance with the provisions of Section 170(7) of Constitution of Sierra Leone.

The main effect of these amendments is that in deciding whether a scheme should be made for the whole of Sierra Leone or any areas therein, there is a consultative process which includes public participation.

In critically examining the TCPA from a modern urban planning perspective it is fair to state that the law is to a great extent obsolete. An efficient land use plan system needs to be supported by a law whose provisions make for the design of policies for land use planning which take in account the socio economic needs of the country and which therefore ensure coordination between physical planning and socio economic development.

Some of the inadequacies of the provisions of the TCPA are dealt with below:

- i. **Definition of 'development' within the TCPA:** The definition 'development' in the TCPA should be broadened to reflect other land use types for which there is a material change. For example, mining, excavating, dredging, bridges, civil and engineering works etc.
- ii. **Preparation of a scheme after declaration of a 'Planning Area;** There is an inherent weakness in sections 12 and 13 of the TCPA which provide for the preparation and submission of schemes. The wording of both sections suggest that though there is a duty on the part of the Planning Committee to submit schemes to the Minister (MLCPE), this is only to be done at the request of the Minister in a period prescribed by him. Schemes can only be made under the TCPA after an area has been declared 'a planning area' by the making of an Order in accordance with the procedure laid out in section 170(7) of the Constitution. If a scheme is not approved within 3 years of the order being made, the order lapses. This means that the area is no longer considered a planning area. In 1999, the whole of Sierra Leone was declared a 'planning area'. No Schemes have been approved since then; and all orders declaring planning areas within Sierra Leone have long lapsed. **Preparation of legally binding plans (to be revised periodically) should be made mandatory under the provisions of the TCPA.**

- iii. **Land Use Plan System:** The TCPA provides for the preparation of outline planning schemes and detailed planning schemes to which there are guidelines contained in the First Schedule to the Act. The TCPA needs to be revised to provide for a more comprehensive land use system which ensures that national land use policies are transmitted to all regions, districts, towns and cities through the preparation of a national spatial plan and regional plans as well as Structure, Local and Action area plans.
- iv. **Enforcement of Planning Control:** The methods for the carrying out of enforcement functions by the planning authorities are not clearly defined in the TCPA. These methods include enforcement notices, stop notices, revocation of use certificates etc. Neither are the procedures for enforcement action fully laid out. Provision should be made to allow coordination with the State enforcement agency to facilitate enforcement measures and compliance with the provisions of the Act. Provision for the establishment of a special body to deal solely with enforcement measures (e.g an enforcement unit) is ideal; other matters to be provided for include enforcement registers; appeals against enforcement notice decisions.
- v. **Decentralization:** The TCPA must be modified to reflect decentralization provisions under the Local Government Act 2004 (LGA) wherein land use planning and development control functions have been devolved to the Local Councils.
- vi. **Greater public participation in the planning preparation procedures:** Though, the new Section 6 of 2001 Town and Country Amendment Act 2001 provides for public participation, it is insufficient to guarantee equity within the land use planning system. Public participation should be provided for not only prior to declaration of planning areas for planning purposes, but at other stages which include before and after the preparation of a draft scheme.
- vii. **Compensation:**The TCPA only provides for compensation to a person whose property is injuriously affected or loss is suffered as a result of a provision of a scheme coming into operation or where work is being executed under a scheme. The law should be widened to include other instances for example where a person's property is adversely affected or loss is suffered by a change in the already acquired use of land right.
- viii. **Appeals/Complaints/Review:** The right to appeal, to lodge a complaint or to seek a review under the TCPA is not adequately dealt with in its provisions. The law only provides redress for disputes arising as to the right of a complainant to recover compensation, or the right of the Minister to recover betterment (section 29 TCPA). There are several grounds for which a person may seek redress and include where a person has reason to believe that he has been prevented from enjoying rights and privileges under the act; where a person has grounds to believe that there has been a breach of the provisions of the act by a person or entity; or where a person is dissatisfied with a decision of a planning authority.
- ix. **Coordination:** Since effective coordination between ministries, agencies and local authorities is very important in achieving the objectives of land use planning, a new TCPA should make sufficient provision for coordination throughout the whole plan preparation process. Coordination should be made obligatory. For instance, if the Ministry of Tourism & Cultural

Affairs intends to make a policy which relates to the provision of five storey hotels for tourism in Freetown, it should made be obligatory that it follows the regulations in the land use plan already approved or initiate a negotiation with the MLCPE to review if necessary.

- x. **Preparation of plans to be made mandatory:** Provision should be made in the TCPA that where a physical development project of a significant nature is to take place, it is mandatory that a plan is prepared by the land use planning authority within a period to be agreed upon by the developer and the land use planning authority. Excluded from the provision for mandatory land use planning will be for example, the construction of individual isolated buildings which do not contradict any regulations made by the land use planning authority or sector ministry; or buildings which can be considered to follow the general land use guidelines in a structure plan or local plan. Successive construction of individual buildings cannot not be excluded from requirements to make a plan.

2.2 Freetown Improvement Act and Rules (Cap 66 of 1960)

[Order 23 of 1899] [Order 32 of 1908] [Order 8 of 1926][Order 25 of 1929] [22 of 1940] [P.N 9 of 1941][Order 10 of 1941] [Order 27 of 1941] [Order 29 of 1942][P.N 165 of 1942] [P.N 106 of 1944] [P.N 73 of 1946][P.N 42 of 1955][P.N 99 of 1959][Sec. 23 of 13 of 1912] Sec. 29 of 12 of 24] [Order 30 of 1953] [Order 56 of 1961]

The Freetown Improvement Act and Rules 1960 (FIA) is the principal legislation which regulates the construction, alteration and major repair of buildings within Freetown and in other areas declared as ‘town planning areas’ including declared ‘urban areas’ outside the city of Freetown. The FIA has a planning component providing for the issue of building permits as a means of development control.

The FIA was made to provide guidelines for construction of buildings based on a detailed planning scheme for the improvement of various areas of Freetown. The provisions in the second part of the FIA detail the sub-division of each of the wards of Freetown into sections, describing the area comprised within each section. The FIA lays out those building control provisions that apply to various wards and sections within Freetown.

Prior to the Freetown Improvement (Amendment Act) 1961, the Director of Public Works was responsible for the issue of building permits for the construction or alteration of buildings. The FIA lays down the procedure for application of building permits and regulates (under the provisions of the Act and its Rules thereunder) how buildings must be constructed taking into account the use for which buildings are erected.

The FIA lays down penalties for non-compliance with its provisions. Some of the penalties are summarized below:

- I. Failure to comply with the condition (of erecting a building for a specified use) set out in a building permit by the Minister is an offence for which a person is liable on summary conviction to a fine not exceeding 100 Leones and 10 Leones for every continuing day of the offence (*Section 17*).

- II. Failure to notify the Minister of an alteration of a building within the meaning of the FIA is an offence for which a person is liable on summary conviction to a fine not exceeding 100 Leones (*Section 18*).
- III. Failure to notify the Minister within seven days of the commencement or completion of a building or of any repair, addition or alteration is an offence for which a person is liable on a summary conviction to a fine not exceeding 100 Leones (*Section 20*).

Prior to the 1961 Amendment, the Governor in Council had the power to declare 'Town Planning Areas' under *Section 63* of the FIA. These orders could attach provisions that no person could construct or repair buildings within these areas without the consent of the Director of Public Works, contravention of these provisions led to an offence liable to summary conviction of fine not exceeding 100 Leones and the discretion of the Director of Public Works to demolish any building unlawfully constructed.

Several orders were made declaring Town Planning Areas which included as follows:

- I. The Freetown Improvement (Magazine Town Planning Area) Order in Council – *PN No. 9 of 1941*
- II. The Freetown Improvement (Cline Town Area) Order in Council – *PN No. 105 of 1944*
- III. The Freetown Improvement (Freetown Town Planning Area) Order in Council – *PN No. 76 of 1946*

Under the Freetown Improvement (Amendment) Act *No. 56 of 1961* – The Director of Public Works was replaced by the Minister of Housing and Country Planning, thus all powers and duties conferred on the Director of Public works under the Act were now transferred to the Minister including the transfer to him of those powers of the Governor in Council under the Act. In particular, it was now the responsibility of the Minister to issue building permits and he had the power to make rules for the better carrying out of the provisions of the Act; making rules prescribing the suitability of building materials, the dimensions for construction, regulating the drainage and disposal of water etc; prescribing penalties amongst other things; and making orders to declare areas to which the Act applies or would apply hereafter, 'Town Planning Areas'.

Under the Freetown Improvement (Amendment) Act *No. 28 of 1964* - The Principal act was amended to include 'advertisement' in its definition section and *Section 62* was amended to allow the Minister to prescribe rules regulating or restricting the use of advertisements.

The FIA restricts the application of its provisions to Freetown and some or all of its provisions with modification to the first, second and third Urban Areas which were declared as such by Orders in accordance with the Freetown Improvement (Extension) Act, Cap 77 of the laws of Sierra Leone.

The FIA and the TCPA are two separate though related legislations which are meant to serve different purposes. The FIA came into operation as a result of the creation of a detailed plan made specifically for Freetown taking into account factors such as the topography of the place, soil conditions etc.

The TCPA provided the basic framework for plans which had not yet come into existence and where land use had not yet been determined. They both deal with the issue of development control. The FIA provides for the issue of building permits based on the provision of guidelines set out in the Act which relate to a detailed plan.

The TCPA provides for the issue of planning permission not just the construction, alteration, repair to buildings but also for the development of land. In actuality, planning permission has no place if a 'planning area' has not been declared. It must be pointed out that planning permission granted to construct, alter or repair a building under *Section 7* of the TCPA is different from that of a building permit issued under the *Section 16* of the FIA which permits a person to build only according to the plan (attached to application for a permit) which must be in accordance with the detailed planning scheme that has already been laid out. If there is no planning area under the law, then there can be no question of granting planning permission as a means of development control for the use of land.

There is a provision in the FIA for declaring 'Town Planning Areas' by an Order made by the Minister in exercise of his powers under *Section 63* FIA. This is similar to the provision in the TCPA where a 'Planning Area' may be declared by the Minister before a planning scheme is prepared (*Section 6* TCPA). In this respect, there may seem to be an overlap in the sense that the possibility arises for the Minister to declare planning areas under both the TCPA and the FIA. It is therefore important to emphasize that 'Town Planning Areas' declared under the FIA presuppose the existence of a plan (whether structural, local or action area) whereas a 'Planning Area' declared under the TCPA is an area for which a plan has not yet been prepared. It is interesting to note that 'Town Planning Areas' ceased to be declared after the coming into existence of the TCPA in 1946. The last area declared to be a 'Town Planning Area' under the FIA was the area to be known as the 'Freetown Town Planning Area'. This area stretched from around Cline Town near the Freetown Port all the way to Ross Road.

Again, the functions of the Minister under the FIA may appear to overlap with the functions of other authorities in light of the enactment of the Local Government Act 2004 (LGA). For example, *Section 48* deals with the prohibition of obstruction in streets. A person who causes anything such as goods, bale, stones etc to be left in any street without the consent of the Minister is guilty of an offence. It must be noted that this offence only exists if the land use in the area has already been specified in a detailed plan. However, street trading and other matters of streets should now come under the authority of Local Councils.

Today, the FIA and its Rules are used as building guidelines all over the country. Though some of the building standards' provisions are very high and unattainable for many a builder/developer they are limited in scope to meet modern day building designs requirements. The FIA should be revised in order to provide for a standardized building code which will form the basic guidelines to be used all over the country.

The Planning Authority in the past has shied away from applying the provisions of the TCPA as the main land use planning law and has concentrated on the FIA. Therefore, there should be mandatory

provision that the TCPA must be used by the Planning authority as the legislation to be applied for all land use planning.

The FIA is 'area specific'. It was within the geographical areas of Freetown that a detailed plan was designed and the FIA provisions were based. In order for the FIA be extended to the whole of Sierra Leone, it seems practical and reasonable to extract all planning provisions from FIA and restrict the remaining provisions to purely building matters. For example, section 22, 24, 25, 26 are planning provisions and could be removed and transferred to the TCPA.

The FIA is still relevant because of its 'development control' provisions for Freetown and other declared Urban Areas'. However, there is need to extend its 'development control' provisions in respect of buildings of architectural or historic interest classified as "listed buildings". Alterations to listed buildings should require a separate 'listed buildings' consent from the land use planning authority with conditions attached. For example a condition is not to change the façade of the building.

Though the provisions for planning control and enforcement in the FIA are more detailed than those in the TCPA, the implementation of these enforcement provisions by the planning authority have proved difficult. This is because the procedure for enforcement is not sufficiently detailed or clear from the Act for effective application. As a matter of principle once an enforcement notice takes effect, the development which is unauthorised must cease or be removed. If there is non-compliance with the enforcement notice, then a criminal offence is committed and the owner of the building is liable to fine on summary conviction. Though it is acknowledged that implementation is a great problem, it would do well for enforcement notices to be defined clearly; for the procedure for making an enforcement notice to be clearly laid out including procedures for complaints made by the development control authorities; and an appeals procedure for an aggrieved person on whom an enforcement notice is served.

2.3 Freetown Improvement (Extension) Act (Cap. 77 of 1928)

[14 of 1927] [13 of 1928] [P.N 74 of 1964] [P.N 75 of 1964] [P.N 76 of 1964]

This Ordinance was aimed at empowering the Governor with the approval of the House of Representatives to extend the provisions of the Freetown Improvement Act and Rules to other parts of the Colony outside the city limits of Freetown and to make further provisions with respect to such parts.

This Act established the first urban area which extended from Congo River through to Aberdeen and included Congo Town, Murray Town and certain parts of Wilberforce and Lumley. The Schedule of the Act lays down the provisions (with modifications) of the FIA and the FI Rules that should apply to the area. Under the Act, orders could be made by the Governor with the approval of the House of Representatives to declare any area in the Colony outside the city of Freetown, an 'urban area'. An order could also be made to alter the limits of urban areas and to declare that urban areas should cease to exist. An order could also be made under the Act that all or any of the provisions of the FIA and the FIA Rules could be applied to any urban area, such provisions and rules being subject to

modification. The Governor in Council also had powers to make rules on the provision of building lines.

The effect of Freetown Improvement Extension (Amendment) *Act No. 10 1964* was to transfer the powers and duties of the Governor-General and Permanent Secretary in the principal act to the Minister of Housing and Town and Country Planning.

The Freetown Improvement (Extension) Order of 1964 established the second and third urban areas which spanned areas from Waterloo in the east to Hamilton in the west. The Order also laid out those provisions of the FIA and its Rules to be applied subject to modification.

The effect of the Freetown Improvement (Extension) Act was not only to create urban areas outside the original city boundaries of Freetown but also to make provision for the application of the FIA and its Rules which are based on a detailed planning scheme.

.2.4 Other related acts

There are other legislations relevant to physical planning. The following list presents those that are most relevant. They include:

- The Public Health Ordinance (1960)
- The Public Health Rules (1927)
- Building Line Ordinance Cap. 129 (1960)
- Public Lands Act Cap 116 (1960)
- Survey Act and Rules Cap. 128 (1960)
- Unoccupied Lands Act Cap. 117 (1960)
- Protectorate Land Act Cap. 122 (1960)
- Airfield and Defence Lands Act Cap. 121 (1960)
- Environmental Protection Agency Act (2008)
- Forestry Act Cap. 189
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- Wildlife Conservation Act (1972)
- The National Protected Areas Authority Act 2012
- Sierra Leone Roads Authority Act
- Tourism Development Act Cap.....
- Monuments and Relics Act Cap. 59 (1962)

CHAPTER 3

REVIEW OF INSTITUTIONAL FRAME WORK

3.1 Background

As far back as 1900 the Director of Public Works in the Public Works Department was directly responsible for carrying out development control in Freetown and his powers were derived from the FIA (1900). When the TCPA was introduced in 1946, a centralized authority known as the Town and Country Planning Board (TCPB) was established under *Section 3* of the Act. The constitution and functions of the TCPB are detailed in the preceding chapter. The TCPB was the overall authority for town and country planning with powers to identify and recommend areas suitable for planning schemes to the Governor in Council who in turn had the power, based on the TCPB's representations to declare 'planning areas'. The Board also had the responsibility of appointing Planning Committees (PCs) as soon as 'planning areas' were declared (*Section 10*).

The Planning Committees had a duty to furnish the Board with such particulars and information as the Board required with regard to the present and future planning needs and the probable direction and nature of the development of their areas. It must be noted that in the past, the Planning Committees have acted more or less as supervisory bodies ensuring that all aspects for preparing a plan were taken into account. For instance, the Health Officer was appointed to make sure aspects of sanitation were considered in the plan. The Town engineer was appointed to make sure aspects of water supply, construction of roads etc. was taken into consideration. Over the years, there has been a lack of qualified planners to assist in the technical side for the preparation of land use plans and also the lack of provision for the training of planners.

In reviewing the provisions of *Sections 12 and 13 under the TCPA*, it is submitted that the lack of a mandatory, stipulated timeframe for preparation and revision of planning schemes has been responsible for non-planning. For a land use plan system to work effectively there must be mandatory provision for the preparation and updating/review of outline plans over a fixed period at national, regional and local government levels; and any allocation or change of use of 'State land' must be based on such approved land use plans.

Institutional changes to the TCPA came initially with the establishment of the office of 'Minister charged with the subject of 'Town and Country Planning' and under The Ministers' Powers and Duties (Modification of Town and Country Planning Ordinance 1946) Order 1960, the Minister was given all powers of the 'Governor' and 'Governor in Council' under the TCPA. The Minister was now responsible for declaring 'planning areas'; he had the discretion to vest in the Board those powers to undertake such matters as described in the first Schedule to the TCPA for instance 'providing for the reservation of land for roads and the construction of roads...'. The Minister was now responsible for considering representations made by persons aggrieved by proposed plans; approving planning schemes, declaring that lands would be compulsorily acquired for town and country planning purposes etc. In 1961, a new Ministry of Housing and Country Planning (MHCP) was established.

With the Town and Country Planning (Amendment) Act 1969 came more sweeping changes. Amendments to the principal act were reflective of the prior Town and Country Act (Amendment) Decree 1967 in which sections of the principal act were repealed. In particular, *sections 3, 4 and 5*

were repealed in effect getting rid of the TCPB. The effect of the 1969 Amendment was to transfer all functions of the Board to the Minister of Housing and Country Planning.

The Minister for Housing and Country Planning was now responsible under the amended TCPA for seeking consultation with the local authorities if he was of the opinion that a planning scheme should be made for any area within Sierra Leone (*Section 6(1) TCPA*). He was now responsible for the granting of planning permission in areas declared to be Planning Areas; for constituting the Planning Committee after an area had been declared a 'Planning Area'; for delegating his functions to the Planning Committee. He was responsible for prescribing the time within which a Planning Committee should submit a planning scheme. He was responsible for the carrying out, execution and enforcement of a scheme. For example, he was now responsible for the demolition or alteration of a building which did not comply with an approved scheme. In summary, the town and country planning authority was now vested in the Minister.

In 1961, the (MHCP) replaced the Public Works Department as the institution responsible for physical planning. The FIA was amended and the Minister of Housing and Country Planning took over the responsibilities of the Director of Public Works and the Governor in Council (*An Act to amend the Freetown Improvement Ordinance No. 56 of 1961*). This Act also made provision for the Minister to delegate to a public officer all powers conferred on or duties imposed on him by the Act (*Section 2(2), No. 56 of 1961*).

In spite of these institutional changes, the duties and powers of the Minister were only restricted to areas declared as 'planning areas'. These areas were limited to only Freetown until 1971 when the Minister exercised his powers under the TCPA to declare Bo town as a 'planning area' [*PN 98 of 1971*]. This was a major step in extending physical planning to the provinces. Koidu new Sembehun was declared as a 'planning area' [*PN No. 52 of 1971*] including KaffuBullom [*PN No. 2 of 1974*], Kenema [*PN No. 2 of 1976*], and Makeni [*PN No. 2 of 1979*].

The Ministry's regional offices were established in these areas in the provinces for the first time. Planning Committees were also appointed following the declaration of these areas as 'planning areas'.

Areas of Freetown were declared a 'planning area' under the TCPA in 1969 to be known as the 'Greater Freetown Planning Area' (*PN No. 4 of 1969*). Though a Planning Committee was appointed in 1969, no scheme within the three year period was ever realised. The whole of Sierra Leone was declared a 'planning area' in 1999 (*PN No. 12 1999*). Again no scheme was approved within a three year period. The legal effect is that there is no 'planning area' in Sierra Leone.

Nevertheless, since the City of Freetown and the three areas declared 'Urban Areas' are covered by the FIA provisions, it continues to be used as the legal framework for building control functions. While in other areas which can no longer by law be considered 'Planning Areas' under the TCPA, the Ministry of Health under the Public Health Act of the laws of Sierra Leone 1960 has declared 'health areas' as a means of building control. This institution has played a significant role in land use planning prior to the declaration of planning areas in towns and villages around the country.

The provisions of the Public Health Act empowered the Minister of Health and Sanitation to declare any area in the country to be any of the following as listed below, and to appoint the Health Authority of the area for the execution of the provisions of the Act:

- a) An Urban Health Area
- b) A Rural Health Area
- c) A Port Health Area or
- d) A Labour Health Area

The Environmental Health & Sanitation Department of the Ministry of Health is responsible for carrying out building control and land use planning functions in areas that are outside planning areas. In addition to the building control functions carried out in these areas, the Health Authority is responsible for other functions such as regulating and administering the provision of:

- Burial grounds and the maintenance of cemeteries;
- Drainage, sanitation, water supplies and housing;
- Markets and slaughterhouses.

Until the enactment of the Local Government Act 2004 (LGA), the Local (District and Town) Councils carried out planning activities in their localities and have been involved in implementing development projects in areas declared as planning/health areas such as the construction of markets, access roads, primary schools, etc.

3.2 Central Government Level - MLCPE:

Today, the Ministry of Lands, Country Planning and the Environment (MLCPE) is the Central Government institution responsible for town and country planning. However, development control which is a very important arm of the implementation process of planning has been transferred to the Ministry of Works, Housing and Infrastructure (MWHI). The responsibility for planning matters rests with the Town and Country Planning Division of MLCPE. However, over the past years, the Ministry has given priority to land survey matters and the administration of State land to the detriment of land use planning. It has always been the case that the Planning Division is under resourced.

In the year 2000, the responsibility for Building Control was maintained in the Ministry Of Lands, Housing, Country Planning and the Environment. (*Sierra Leone Gazette No. 13, 2000*).

In 2002, the Housing division was transferred to the Ministry of Works which became known as the Ministry of Works, Housing and Technical Maintenance. At this time all planning matters including development control remained at the Ministry of Lands, Country Planning and the Environment (*Sierra Leone Gazette No. 47, 2002*).

In 2008, in exercise of his powers under the Constitution, the President assigned to the Ministry of Works, Housing and Infrastructure, responsibility for the approval of building plans and issuance of building permits; and responsibility for enforcement of development control and building regulations. The matters that remained with the Planning division of the MLCPE were those of 'enforcement of planning control and building control including the demolition of unauthorized structures (*Sierra Leone Gazette No. 21, 2008*).

In 2011, the President in exercise of its powers under the Constitution assigned to the Ministry of Works, Housing and Infrastructure, the added responsibility of the enforcement of development control and building regulations (*Sierra Leone Gazette No. 9, 2011*).

The separation of the planning function as can be seen in the preceding paragraphs weaken the land use planning system because policy making, development strategies and land use planning have been separated from the enforcement of plans via development control. It can be seen that the present planning system at the institutional level includes several authorities, (the MLCPE, the MWHI, the local government authorities). A revision of TCPA must provide for procedures that ensure efficient information sharing and coordination at the decision making levels among the institutions mentioned above during the planning preparation process. It should also include coordination between the planning authorities and the Ministry of Finance and Economic Development, as land use planning must reflect on-going socio economic development.

3.3 Local Government Institutions.

The LGA re-established Local Government Institutions throughout the country. These include the Freetown City Council; the Bo, Kenema, Makeni and Koidu New Sembehun Town Councils; the Bo, Bonthe, Bombali, Moyamba, Tonkolili, Kambia, Port Loko, Kenema, Koinadugu, Pujehun, Kailahun and Kono District Councils and the Western Rural Council.

The LGA started a process of devolving the planning in urban and rural areas and development control in their respective areas to the local government institutions. The LGA states expressly that local councils will be responsible for the development, improvement and management of human settlements and the environment in the locality. The LGA also clearly specifies functions of the MLCPE that are to be devolved to local councils. These are the preparation of land use plans (strategic and detailed plans); and the issuance of building permits. In 2008, the function of the issuance of building permits was taken from the MLCPE and transferred to the MWHI presumably because the local councils have not been sufficiently prepared for the take-over of this function completely.

The LGA should ultimately improve the land use planning system by bringing cohesion between land use planning and development planning in the local councils, each guided by corresponding policies and guidelines made in the respective ministries.

At the moment, the decentralization process in respect of land use planning is progressing rather slowly due to the lack of a revised legal frame work and guidelines for decentralised land use planning. The TCPA does not make express provision for a decentralized land use plan system and the only input of local authorities is during the consultative stages with the Ministry pre-declaration of planning areas. There is also the issue of a serious lack of sufficiently qualified staff, equipment and funds to develop and implement the town and country planning at local level.

3.4 Ministry of Finance and Economic Development (MFED)

As stated earlier, land use planning must reflect on-going social economic development planning. The Development and Economic Planning Division in the MFED is responsible for the formulation of national economic development objectives, policies and strategic plans through economic intelligence and socio-economic planning, co-ordination between line ministries on economic development matters; coordinating and programming of public development expenditure and preparation of annual development estimates and public investment programme (PIP).

The Ministry has prepared a 3-5 year Poverty Reduction Strategy Plan (PRSP) focusing on poverty alleviation. The PRSP has been transformed into the Agenda for Change (2008 – 2012) and the Agenda for Prosperity (2013 – 2017). For the long-term, the Vision 20/20 was prepared and this plan outlines the visions and aspirations of the people of Sierra Leone.

A Strategy and Policy Unit (SPU) has been established under the President's Office to develop strategic economic development plans for the country. The Agenda for Prosperity includes the sector visions, general development goals and the prioritised development project prepared by the ministries. In particular, the activities that have been identified for implementation under this Agenda include the revision of urban planning laws and a new legal framework for sustainable land use planning system and development control with strong political support and special attention to law enforcement. Also to develop guidelines for planning and construction of new cities, for the improvement of existing structures and infrastructure for social improvement and economic growth.

Therefore, MLCPE must be able to coordinate with MFED and the President's Office on how to transmit the long term development goals into physical planning. At local level, the local councils must ensure that the local development plans are reflected in the land use plans.

3.5 Other Ministries, Departments and Agencies

Other ministries, departments and agencies whose activities are directly or indirectly related to physical planning and development control include the Ministry of Works Housing and Infrastructure (MWHI). As earlier mentioned, in 2008 the responsibilities of Development control relating to the responsibility of the issue of building permits was taken from MLCPE and assigned to MWHI. This has sometimes led to the overlapping of land use planning functions between these two ministries. Both institutions are even responsible for the demolition of buildings when needed. However as mentioned, decentralization under the LGA prepares the way for the development control function to be handed over to the local councils.

Other stakeholders in physical planning include: the Ministry of Agriculture, Forestry and Food Security, Ministry of Tourism and Culture, Ministry of Mining and Mineral Resources, the Environmental Protection Agency, National Assets Commission, Sierra Leone Roads Authority, Sierra Leone Transport Authority, Guma Valley Water Company., Sierra Leone Water Company, National Power Authority, Monument and Relics Commission, the National Tourist Board and others.

It must be noted that the development policies and projects of these other ministries, departments and agencies must similarly be taken into account when land use plans are being prepared. These institutions must provide easily accessible information on their future policies and projects to be shared with the MLCPE and planning departments of the local councils. Both the MLCPE and the local councils have a duty to ensure that strategic plans of the other institutions are being considered.

3.6 Assessment of the Institutional Framework

The foregone review clearly indicates that the institutional framework for physical planning that was put in place under the TCPA is not sufficient for purposes in guiding urban development to match the physical needs of the country. This is for the following reasons:

- i. There is an absence of a clearly defined and sufficiently powerful planning authority.
- ii. There is a lack of support to the changes in the institutional arrangements. An example is while the LGA devolved local planning (including development control) functions from the MLCPE to local councils, this was not backed by additional support from the MLCPE and MWHI in guiding the decentralization of land use planning.

The lack of a robust institutional and legal framework has created constraints which has prevented the carrying out of effective land use planning in the country. These include:

3.6.1 Lack of capacity

- i. The Central Government agency (MLCPE), which is responsible for land use planning, does not have the capacity to propose improvement in the legal framework, develop and implement plans at national and regional level and ensure guidelines for physical planning at local level. In addition to this, there is the lack of coordination and cooperation between the various divisions in the Ministry. The Ministry is inadequately staffed, financed and equipped to undertake physical planning.
- ii. Local councils do not have the capacity to carryout physical planning functions and need trained staff.
- iii. There is a lack of training facilities in the country for land use planning, data collection techniques using IT and GIS, development control and building inspections.
- iv. The local councils lack the capacity to include long term development goals into their development plans.

3.6.2 Lack of coordination and participation

- i. Line ministries and other relevant agencies do not practise formalised information sharing, consultation and coordination regarding development programmes and development projects of importance for development and physical planning.
- ii. There is not sufficient contribution from Central government ministries and agencies as regards information to local councils to ensure implementation of central policies and development goals at local level involving local, political and technical resources for the improvement of local development.

- iii. The land use planning authorities and the local councils rely little on stakeholder (NGO's, civil society and private sector) and public participation in local development planning including issues related to physical development.

3.6.3 Inadequate attention and support to land use planning

In general, policy makers and senior government officials have little understanding of and give little support to land use planning, amongst other things leading to:

- i. An inherent lack of understanding at all levels of government, of the relationship between social and economic policies and land use planning; and also the need for plans to prepare, rationalize and control the sustainable use of the territories, the areas, the parcels and the plots.
- ii. The low priority given to physical planning by successive governments in the past, which has led to lack of urban development goals and visions, support to development control, inadequate staffing, office space and budget allocation to the institution (s) responsible for land use planning and development control.
- iii. The low priority to encourage and support the implementation of land use planning and development control to local councils have left them without inspiration, motivation and resources to carry out their responsibilities.

3.6.4 Good Governance and land use planning

Good governance is important for the effective administration of land use planning and development control. Weaknesses of this system (land use and development control) have been manifested in land use planning decisions being based on often manipulative grounds which engender for the example the misuse of the issue of building permits to favour personal, economic or political interests.

CHAPTER 4

REVIEW OF SPATIAL PLAN SYSTEM

Urban Plans

In the mid 1940's, when the TCPA was enacted, several areas were declared planning areas in Freetown, Fourah Bay Road Planning Area (*PN18 of 1948*), Wilkinson Road Planning Area (*PN19 of 1948*), Ginger Hall Planning Area (*PN 20 of 1948*) and Cline Town Planning Area (*PN69 of 1948*). Planning schemes were prepared for these areas as required by the Act. Most of these plans drew much from a scheme prepared by Fry and Farm (1944). These schemes provided subdivisions of plots, road layouts, and identified public infrastructure and facilities, and residential areas.

Fry and Farms (1944) in their **Town Planning Scheme for Freetown** proposed the development of outlying areas such as between Kissy Road and Ross Road on the eastern part, Brookfields, Kissy and Murray Town outside the city boundaries, as residential suburbs, and the development of Hill Station area for middle and upper income groups, to address the problems associated with slums in the city.

The construction of the Mereweather Road and the King Harman Road in 1948 opened up the area of New England which contains government department buildings constructed by the Royal Air Force during the Second World War, as well as quarters for government officers and the Brookfields hotel. The area was laid on a density of not less than three-quarters of an acre to a building plot (Jarret, 1954).

Borys (1963) incorporated some of the proposals from Fry and Farm in his **Freetown Comprehensive Redevelopment Plan**, notably a by-pass round the south-east of the city and a continuous main artery along the northern side close to the sea.

The two plans made recommendations for the development of particular streets as main traffic arteries to which other streets would act as feeders such as:

- i. The construction of a road linking Mereweather Road and Circular Road to by-pass the congested southern end of the Pademba Road. Only now is this proposal being realized;
- ii. The transformation of Macaulay Street and Mountain Cut into main artery;
- iii. A link between Oxford Street and Hennessey Street bridging the mouth of the Alligator River and the Sanders Brook, now called Siaka Stevens Street.

The rapid growth in population in Freetown within a limited area raised several problems of overcrowding, poor housing and sanitation and slum areas. These problems occupied the attention of planners in the early planning of Freetown, such as; Fry and Farms (1944), Stevens (1955), Doudai (1961) and Borys (1963).

There have been several other attempts to develop land use plans and policies but because of the lack of will and institutional capacity, most of the plans and policies were not implemented en masse. They include among others the following:

- i. A National Urbanization Plan of 1965, which draws attention to the growing economic prosperity and population concentration in Freetown and the increasing disparity between the city and rural areas;
- ii. The Preliminary Report and Development proposals for Central Kono (1969/70);
- iii. The Zoning Map and Rules prepared in 1969 and the local plans prepared for Kissy to Wellington in the east and Tengbeh Town in the west in the early 1970s;
- iv. Studies carried out for the Freetown Infrastructure Rehabilitation and Investment Programme (FIRP, 1993) laid the foundation for the preparation of the Greater Freetown Structure Plan and Investment Programme, water master plan, drainage and sewage master plan, traffic management study, solid waste management study organization and financial review of Freetown City Council;
- v. The Greater Freetown Structure Plan and Investment Programme (GFSP 1997), a comprehensive development plan, was the first attempt to introduce the concept of strategic structure planning into the planning process. It recognizes the feasible roles of the public and private sectors and the form of local government in the development process. The concept is simple but robust which indicated broad policies and programmes areas of the city as well as indicating land uses, and the form and direction of the city growth. The plan was also the first attempt to introduce the Simplified Planning Zone (SPZ) concept into the planning process with the aim of simplifying and fast tracking the processing of planning application, and to reducing the burden on potential developers.

Lack of long term Structure Plans

The TCPA provides for the preparation of planning schemes, which in themselves are limited to preparing plans of the areas that are declared as planning areas, and do not provide the visions for the future development context and the functional inter-relationship between the planning area and the urban areas around. Since the introduction of the TCPA no comprehensive development plan has been developed and most plans have remained unimplemented and only few provisions of some plans were carried out particularly in Freetown.

The plan system and activities in the country have several drawbacks, which include:

- i. There are no policies and visions that address urbanization, settlement distribution and growth in the country that take into account the inter-relationships between different development zones;
- ii. Land use planning at national, regional and local levels does not exist, and local land use planning is carried out in an ad-hoc basis with little coordination and visions for functional and rational urban development. The plans further on do not reflect any national aspiration as expressed in “Vision 25”;
- iii. Planning schemes do not coordinate with local or national economic development planning and vice versa;

- iv. Inaccurate and inadequate consideration of the use of existing infrastructure;
- v. Inadequate review of the general and public needs and interest to be catered for in the plans;
- vi. The development pressure is ahead of the spatial planning and builds up faster than plans are being prepared. The authorities in many cases have to rely on non-statutory plans or make development control decisions on an individual and ad hoc basis;
- vii. The planning scheme preparation methodologies as provided for in the current act focused on isolated technical solutions for the land use, without considering the need for considerations taken to issues such as geographic distribution and increase of population, employment issues, the socio-economic development trends and strategic disadvantages resulting from the rapid urbanisation and to consider what planning decisions should be taken to counteract them;
- viii. Inadequate research on challenges and potentials related to the physical environment and hence inadequate guidelines, information and data for plan development;
- ix. Lack of up-to-date base maps and modern facilities to produce them has been a further constraint for preparing development plans;
- x. Inadequate funding for plan preparation.

CHAPTER 5

PROPOSED INSTITUTIONAL FRAMEWORK

5.1 Strategy

The strategy proposed intends to allow national and local planning authorities to rely on both legally binding land use plans (prepared with community participation) and enforceable development control to ensure the proper use and protection of the land within their territory. The objective of land use planning and development control is to ensure optimal use of land resources for the benefit of the community as a whole and coordinate the community or individual needs for activities on the land. Fig 1 shows the proposed structure of the institutional arrangement.

At national and regional levels, planning requires a multi-disciplinary approach and the planning authorities will have to rely on various government agencies for their input. The co-ordination will be achieved through reporting requirements and formalised procedures for inter- ministerial, inter agency and regional consultations and coordination including consultations with and between the local councils. At national and regional levels, the National Land Use Planning Authority (NALUPA) and its regional teams will be responsible for the coordination and development of the planning process and preparation of regional land use plans.

At local government level, the planning authorities will take into account the binding planning guidelines from NALUPA, and employ a multi-disciplinary approach by inter department cooperation and staff composition. At local level, an urban or land use planning unit together with a development control unit will be established in the Development Department to coordinate and develop the urban and rural land use planning processes.

Land use planning at all levels should be viewed as a component of national socio economic development planning; helping to achieve the desired future development aims set by society and community. Sector laws relating to land use such as those concerning future transport infrastructure and areas for conservation of natural resources must be taken into consideration when preparing the plans. Urban and land use planning will promote functionally and economically sustainable and coordinated physical environment for socio-economic development. The land use planning strategy must be based on the long and short term goals for the social economic development with emphasis on the sharing of information and data for planning activities.

In the local councils, the Structure Plan will present the strategy for the future use of local government territory and will be prepared parallel with the local socio economic development plan sharing as much as possible data collection, approval and community participation procedures. But the land use planning will require a separate team with special skills related to plan preparation and development control.

The local land use plans at all levels include a special chapter to take into account the lines of directions from the national and regional land use plans and procedures as well as the national sector development projects.

The proposed institutional framework will adapt to the existing two-tier institutional set-up (as provided for under the LGA) i.e. the central government agency responsible for land use planning on one hand and district and city/town councils on the other. The NALUPA will be the central authority and responsible for the development and implementation of the national and regional spatial development plans, ensuring the necessary coordination with national policies and the line ministries. It will set the policies and guidelines for the local district and city/town councils, while the local councils will be local planning authorities and responsible for the preparation of the land use plans for their respective administrative areas. At the local level, the land use plan system includes long term structure plans, local plans and detailed area action plans.

To all types of land use plans correspond a legally binding plan preparation procedure which includes public participation and consultation. When approved and endorsed by the responsible authorities, the plans at all levels will be legally binding. Amendments to the plans and the revision of the plans must follow the same legally binding preparation procedures as the plan preparation itself.

5.2 Land Use Planning Authorities

5.2.1 The National Land Use Planning Authority (MLCPE)

NALUPA currently the Ministry of Lands, Country Planning and the Environment (MLCPE) will be the National Land Use Planning Authority. The Minister, as head of the NALUPA, will be given the authority and responsibility for the elaboration of the general land use policies and guidelines, the preparation of the National Spatial Development Plan and the coordination of the Regional Spatial Development Plans.

It shall be the responsibility of the Minister to supervise the local councils to ensure that they work within the National Policy Framework set by the Ministry when preparing plans for the future development of their respective administrative areas. The NALUPA shall be responsible for land use planning throughout the nation developing guidelines for land use planning. It shall be also responsible for development of policies and guidelines for development control (currently the responsibility of MWHI). NALUPA will prepare the National Spatial Development Plan and the regional structure plans; as well as monitor and coordinate the planning activities of the local councils.

Relying on the appropriate legislation, the NALUPA shall ensure:

- i. The orderly and progressive development of land in both urban and rural areas and provide planning policy guidance to planning authorities;
- ii. The development and enforcement of planning regulations to effect compliance with national policy requirements;
- iii. The preparation of spatial development plans with respect to any land in the country by the authorities concerned;

- iv. The spatial development plans are coordinated with national and regional socio-economic development plans; that consultations with relevant agencies takes place and that the public is adequately involved at the different levels and stages of the planning process;
- v. Physical planning at national level shall constitute a series of general development goals identified in a national spatial development framework for the urban settlement patterns and coordinated use of the national territory and regional developments; with reservations of land for the purposes of agriculture, forestry, conservation, mining, forestry and future development projects of nationwide importance, such as infrastructure for power supply networks, transport facilities and road networks.

5.2.2 The National Advisory Lands Use Planning Committee

A National Advisory Lands Use Planning Committee shall be established under the land use planning law. The Minister shall appoint members of the Committee. It shall be gender balanced and shall consist of 36 members being representative from the Western Area and the 3 Regions of Sierra Leone, the private sector, the universities, professional institutions, NGOs and other civil society organisations involved in the development of the country. The Committee shall meet at least twice a year and the Minister shall prepare the meetings after having consulted with the members on the meeting agendas. The Minister shall prepare a report on the discussions of each meeting to be distributed to the press and all other relevant stakeholders.

The functions of the National Advisory Lands Use Planning Committee shall be to advise the Minister on any matters related to the use of land, in particular on:

- i. the strategic policies for the development of urban and rural settlements;
- ii. the preparation and revision of the National and Regional Spatial Development Plans;
- iii. the preparation of the national policy guidelines for the preparation of the District and City/Town Structure Plans;
- iv. the strategic policies for urban development and renovation;
- v. the strategic policies for slum upgrading and resettlement;
- vi. the strategic policies for the development of production and tourism areas;
- vii. the strategic policies for development and protection of areas for nature, flora, fauna, recreation and tourism;
- viii. the supervision and monitoring of the planning activities of the local councils;
- ix. other matters as the Minister or the members of the Committee may prescribe.

It shall also be mandatory for the Committee to organise a Forum once a year under the mantle the NALUPA. It shall be composed of 80 invited participants (20 from each region) who will be given two months' notice of the convening of the Forum. The aim of the Forum is to lift the community participation in the land use planning to the highest level to inspire the decision making and identification of priorities. The Chairperson of the Committee will prepare a report on the discussions ensuing from the Forum to be distributed to the press and relevant stakeholders.

5.2.3 Regional Planning Authorities (MLCPE)

The MLCPE shall also be the regional planning authority with regional offices in the all regions of the country (Western Area, Northern, Southern and Eastern). These offices will develop regional plans, monitor and supervise the planning activities of local councils in their respective areas, and ensure that planning policies and procedures developed by the Ministry are implemented at regional and local levels.

NALUPA through its regional offices shall be responsible for preparing regional structure plans (in graphic and written form) for their respective regions. Like the national plans, the regional plans will mainly consist of policy statements and development frameworks leaving the detailed allocation of land use to the local planning authorities. The preparation of regional plans must be done in consultation with the local councils as part of the plan preparation process.

5.2.4 Planning Tribunal. Planning Tribunals shall be set up at national and regional levels so that an approval of a land use plan or a refusal of an application for development may be challenged by an appeal made to the Planning Tribunal. Any planning decision made by a local planning authority shall be the subject of a right of appeal in the event of refusal of planning permission, the taking of enforcement action, imposition of an erroneous or improper condition on a granted planning permission, or the failure of the local planning authority to determine the application within a timely period. The Planning Tribunal can put on hold a plan implementation for 12 months while investigating whether all legal planning procedures have been followed for the plan preparation. In the event of non-compliance, the plan may be rendered invalid. The Planning Tribunal will only evaluate the legality of the planning procedure.

The right of appeal should apply only to an applicant or developer who is aggrieved by the decision of a local planning authority (LPA) and not to third parties such as a member of the public who disagrees with the decision of a LPA to grant planning permission. Planning appeals should be administered and decided by the Planning Tribunal consisting of three members, which will be established under the land use planning law and to be constituted by Chief Justice or Minister of Justice.

5.2.5 Local Planning Authorities (District and City/Town Councils) The main planning functions of local councils will be twofold; namely 1) the preparation and timely revision and maintenance of land use development plans for their area, and 2) development control, which includes such matters as the evaluation of applications for planning and building permission, inspection of the development on the site and the service of enforcement notices. In addition, they will perform the following duties:

- i. Ensure coordination between the local socio-economic development planning and the physical land use planning both being implemented in the Development Department.
- ii. Prepare the City/Town and District structure plans for their respective administrative areas, local plans for the development of priority areas and area action plans for neighbourhood development schemes. All three plan types must follow the development guidelines included in

national and regional plans covering their area and also the planning decision derived from approved land use plans at superior level.

- iii. Implement and monitor the implementation of approved local land use plans in accordance with approved procedures and guidelines from the NALUPA, including stakeholder and community participation;
- iv. Organize and participate in planning forums, and provide advice to potential land users and ensure public relations related to development concerns in the area;
- v. Liaise with the NALUPA, and other Sector Ministries to assess the implications of major public and private sector projects for development within their areas.
- vi. Submit to the NALUPA all local plans for final approval.

The local plans must be prepared within the framework of the regional plans. It is at this level that many important plan decisions are taken for local development. Therefore, the local councils must pay attention to the preparation of the Regional Structure Plans and promote their local interests within the regional development context. These efforts are most effective when cooperation between neighbouring districts takes place. The NALUPA must provide efficient consultation opportunities.

Fig. 1 Organogram of proposed institutional arrangement for land use planning

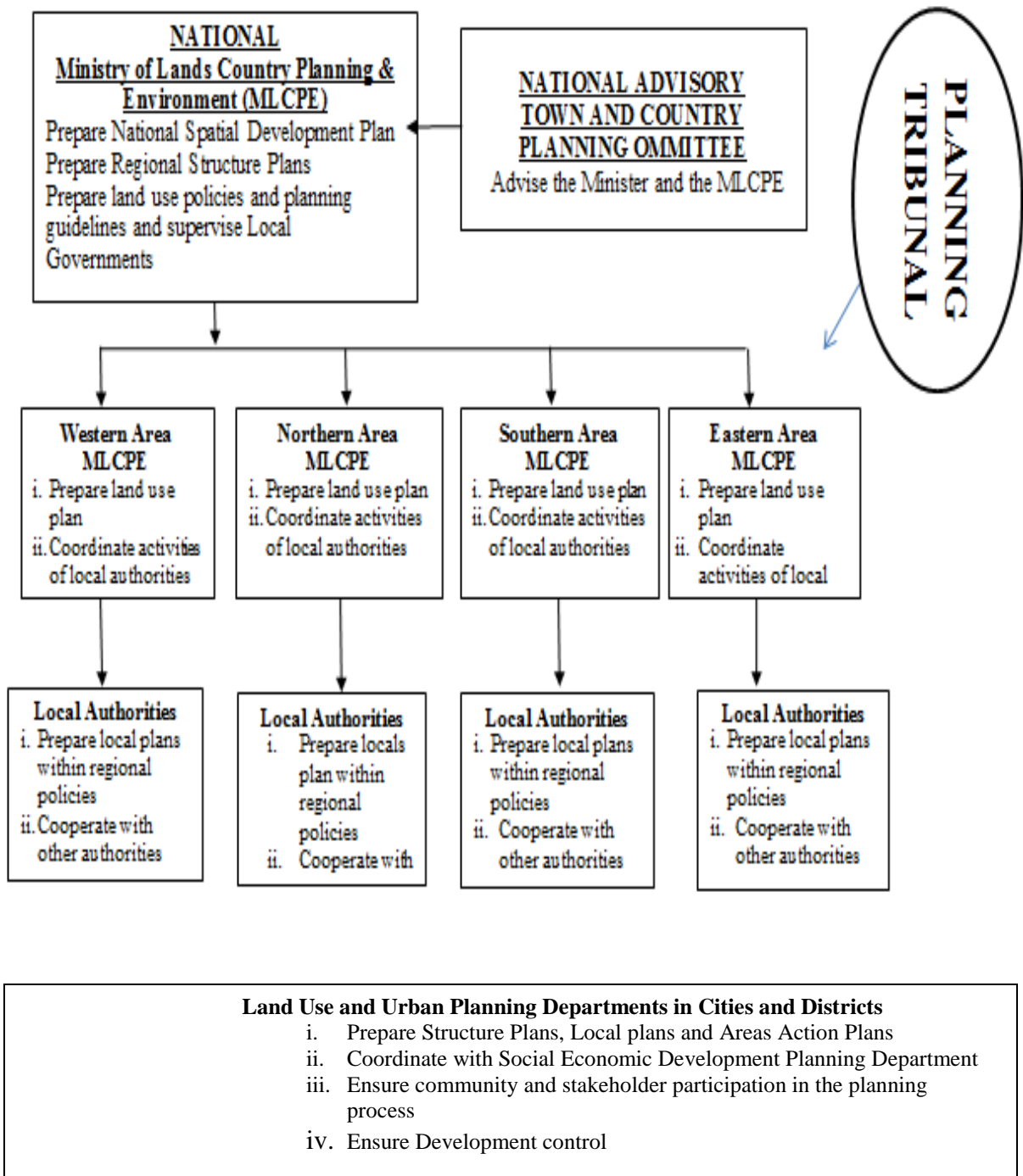
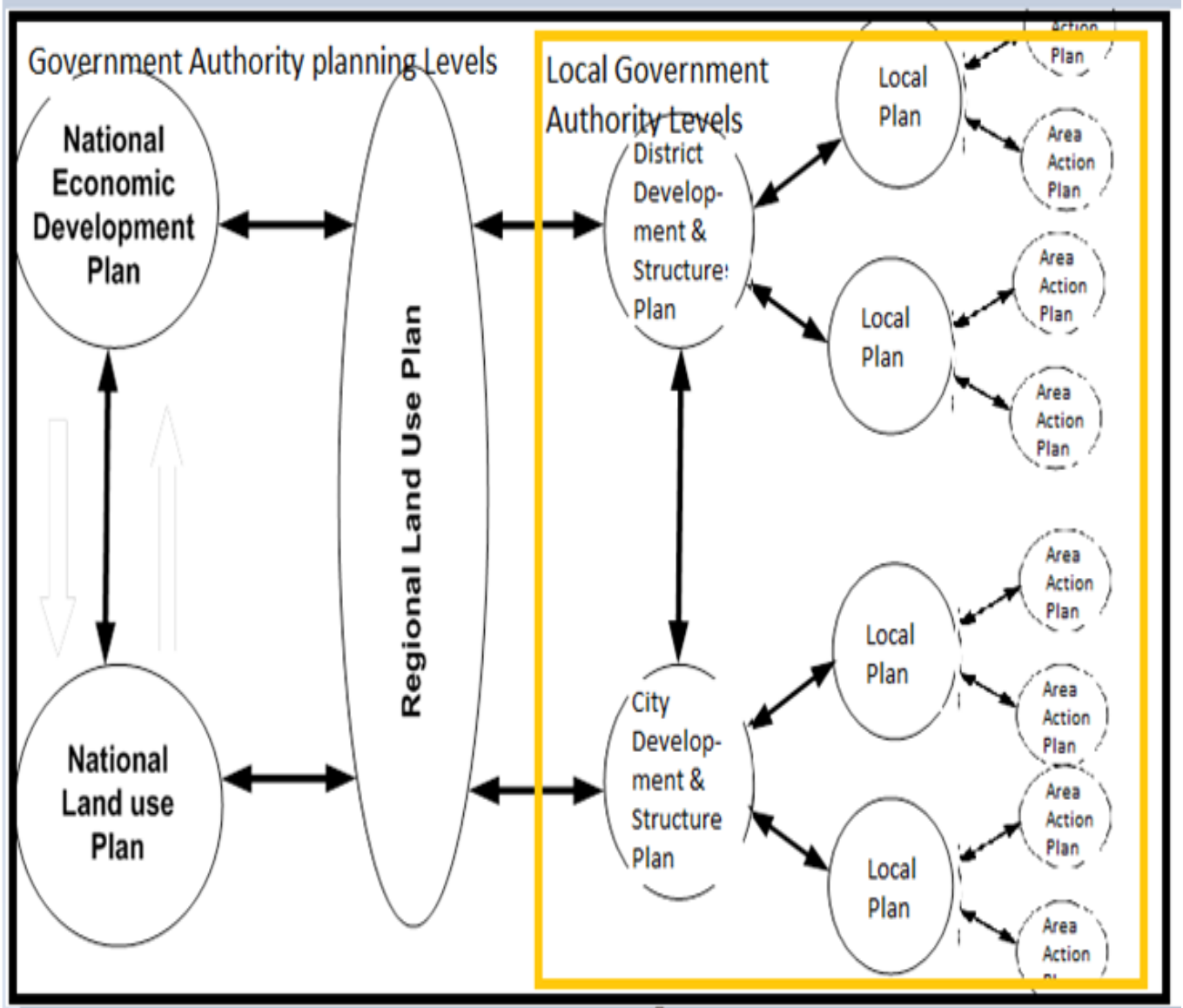


Fig. 2 Proposed Development Plan System



CHAPTER 6

PROPOSED LEGISLATIVE AMENDMENTS

Institutional arrangements for land use planning in the country outlined above will require adequate legislative support in order to achieve the objectives of land use planning and the land use plan system. . The following are the proposed amendments to the existing legislation:

6.0 Town and Country Planning Act

The new TCPA should be titled “An Act to consolidate and amend the Town and Country Planning Act (20.. ..)” and should apply to:

- i. All private or public institutions and persons involved in and responsible for, directly or indirectly, for human settlement development, and use of the land resource;
- ii. Any person, whether corporate or otherwise, charged with the responsibility for development or planning of any physical area within the territory of the Republic of Sierra Leone;
- iii. Development of any physical area within the territory of the Republic of Sierra Leone;
- iv. All national spatial planning matters;
- v. All regional strategic long term physical planning and plans;
- vi. All local government strategic land use planning and area action plans;
- vii. Land use permit processes and standards including development permits, development control;
- viii. All establishments of spatial planning and land use databases;
- ix. Coordinating definitions;
- x. Sub-division of land for purposes of land use;
- xi. Any special development project planning with implication on use of land or development control function;
- xii. All spatial planning and physical development issues related to the preparation of plans.

6.1 Interpretation Section of the TCPA/definition of ‘Development’

The interpretation section should generally be revised and those definitions that are archaic and are no longer of relevance should be removed. In particular, the definition of ‘development’ is inadequate and therefore it is proposed that the definition used in the UK Town and Country Planning Act 1971 or similar, should be adopted. The following is a summary of the suggested definition; “Development” means the carrying out of building, engineering, mining, or other operations, in, on over or under land, or the making of any material change in the use of buildings or other land. The definition excludes

- i. The carrying out of works for the maintenance, improvement or other alteration of any buildings which affect only the interior of the building or which do not materially affect the external appearance of the building;
 - ii. The carrying out of works by a statutory authority required for the maintenance or improvements of a road, being works carried out on land within the boundaries of the road;
 - iii. The carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus including the breaking open of any street or land for that purpose;
 - iv. The use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;
 - v. The use of land for the purposes of agriculture and forestry (including afforestation) and the use for any of those purposes with any building occupied together with land so used;
- In the case of buildings or other land which are used for a purpose of any class specified in development order, the use thereof for any purpose of the same class.

6.2 National Advisory Land Use Planning Committee

It is proposed that provision be made for the creation of a National Advisory Planning Committee to advise and support the NALUPA in making the land use policies and strategies and ensuring participation for relevant and different sectors of the Sierra Leonean Community via a Forum. The Minister of NALUPA shall appoint 15 to 20 members who are representative of the Western Area and 3 regions, the universities, professional institutions, private sector, NGO's and civil society. The Minister reserves the power to increase the number of members.

The Committee will meet at least twice a year and advise the Minister in all matters related to the national physical planning policy and priorities. The reports and discussions of the Forum shall be made public.

6.3 Planning Organisation and Decentralization of planning functions

The Act must make provision to reflect the planning organisation and needed decentralisation of planning functions as proposed below and which will allow for the establishment of national, regional and local planning authorities.

Planning organization will have basically two main tiers, a central government tier under the mantle of the Minister of the NALUPA, and a local government tier in the form of local planning authorities under the mantle of the District and City/Town councils. The NALUPA will be directly responsible for two levels of planning i.e.:

- i. **National level:** The NALUPA is to develop the National Spatial Development plan, planning policies and guidelines to be applied nationwide. These shall set the framework in which to guide a sustainable and rational physical development in the regions, cities, towns and districts. The NALUPA shall also be responsible for supervising and monitoring the local councils to ensure that they follow the policies and guidelines that have been set.

Regional level: The NALUPA through its regional offices will be responsible for preparing a regional structure plans for the Western Area and the Northern, Southern and Eastern Regions. It will also be responsible for the supervision of the implementation of land use planning at regional, City/Town and District levels. The NALUPA may also involving the regional offices will be directly responsible for the implementation of physical planning related to special national development projects all over the country such as major infrastructural development projects, including airports, harbours, large tourist resorts, and national parks.

The NALUPA will be indirectly responsible for general land use planning policy and strategy in the local government areas, as it will prepare the binding planning guidelines and define binding general land use planning goals to be fulfilled.

The local councils will have the direct power and responsibility for carrying out the strategic local land use planning and development control.

6.4 Delegation of Powers

There should be express provision in the TCPA for delegation of the functions of all the Planning Authorities (national, regional and local) to a committee, a sub-committee, an officer of the authority, or to any other legal authority. With the exercise of this delegated power, the actions of the delegate, acting within his power, will bind the delegator. This should include statements, acts and omissions made by officers. Furthermore, the delegator should have the freedom to withdraw that power even before it has been exercised. However, the Planning Authority will be responsible for the monitoring of the delegated planning work and the final approval of the plans as well as Development control decisions and actions.

The outsourcing of the preparation of plans by a planning authority should also be envisaged including the execution of the development control to private companies professionally qualifying for the tasks.

However, the Planning Authorities will be entirely responsible for preparation of terms of reference for the work, monitoring of the delegated planning work, the outcome of the planning work, and the final approval of the plans as well as development control decisions and actions.

6.5 Declaration of Planning Areas

Sierra Leone can no longer be considered a planning area as The Order which declared the whole country a "Planning Area" in 1999(*PN No. 12 of 1999*)has ceased to have effect. This is because no scheme has ever been approved within the three years since the Order was made. It is proposed that the provision for the declaration of planning areas in the TCPA is maintained, however that it is made mandatory in the law that a plan must be prepared and approved (become legally binding) within a time period to be stipulated within the declaration itself. The provision within the TCPA that states

that an Order which declares a planning area will cease to have effect after three years, where there has been no approved scheme should be revoked.

6.6 The Planning Authority, the Land Use and the Ownership of Land

It is important to stress the relation between the authority to land use planning and development control and the authority concerning ownership of land. Ownership of land depends on the land tenure rights. A person may have legal rights of ownership to land which are evidenced by registered documents lodged at the Office of the Registrar and Administrator General. This does not give an owner a right to use the land in any way contradictory to a land use plan.. The right to determine land use is a public one and falls within the authority of a land use planning authority. Provision should be made in the TCPA that future land use must be determined by a legally binding land use plan and that all Cities and Districts within a given time frame following the guidelines from the NALUPA, must establish City/Town and Districts Structure Plans and area action plans.

6.7 The Spatial Development Planning System.

The TCPA must be revised to provide for a modern spatial development planning system that caters for a national planning policy framework within which legally binding structure plans, local plans and action area plans are made and revised within a decentralized system. In the existing law, only outline planning schemes and detailed planning schemes are catered for. Therefore it is proposed that the process procedures for the preparation of these varying plans are provided for by law. This should include the objectives, content, scope of the plans, the timeframe for preparation of the plans and the procedures to follow during preparation including public consultation approval and the needed endorsements to make them legally binding. Below is a brief description of the proposed Spatial Development Planning System for Sierra Leone and some of the areas the TCPA or its rules should be expected to cover:

- i. **The National Spatial Development Framework:** The National Spatial Development Framework (NSDF) will be prepared by the NALUPA as a land use plan for the national territory with the purpose of promoting and coordinating national development policies and projects concerning the use and development of national territory. A special tema for the NSDF is the consideration on how the urban settlement pattern shall develop. Current national policies and development programmes all have spatial dimensions, which will be interpreted and expressed by the NSDF. National strategies and development agendas for transformation, the Sierra Leone Vision 2025 (PRSP 1), the Agenda for Change (PRSP II), and the Agenda for Prosperity (PRSP III), will provide a point of departure, and be supplemented with a range of economic, social, environmental and infrastructure sector policies and programmes issued by GoSL, the Sierra Leonean private sector, development partners and international institutions. The NSDF will also take into account the development policies, plans and projects promoted by the local governments.
- ii. **The Regional Structure Plan (RSP):** The Regional Structure Plan (RSP) will be prepared by the NALUPA involving the Regional Offices of the NALUPA and coordinated with relevant sector

ministries and the local councils in the respective regions. The RSP will follow the land use development goals and directions outlined in the NSDF. The purpose of the RSP is further onto ensure development coordination with sector ministries and the local councils regarding the use of land and development projects. The RSPs will coordinate with the regional social economic development policies and plans. The NALUPA may when needed prepare Sub Regional Structure Plans to coordinate special land use development in a part of the Region using the same plan preparation procedures as for the preparation of the Regional Structure plan. The preparation process for the Regional Structure Plans includes a legally binding procedure for coordination with the neighbouring regions and consultation with development stakeholders and the Cities/Towns and District within the region. The NALUPA is responsible for the preparation of guidelines and plan preparation procedures for the Regional Structure Plans.

- iii. **Land Use Planning at City/Town and District level.** Under the Local Government Act 2004 (LGA), the local councils have the responsibility for the human settlement development in their area including land use planning. The proposed land use planning system comprises three types of land use plans in the Districts and City/Town Councils: the Structure Plan, the Local plans and the Area Action plans.

The Structure Plan: The purpose of the Structure Plan is to define the general guidelines or strategies for the physical development of a city/town or district. The Structure Plan will be prepared by the local councils. The structure plans should normally be prepared in the scale of 50:000 to 75:000, and plan types must be endorsed by the NALUPA.

Structure Plans concern development policies for all land uses within the structure plan area such as uses and land reservations related to production, employment, housing, education, health, mining, recreation, protection of natural resources, the transport and communication infrastructure among others and their interrelations. The Structure Plan also relates and must coordinate with developments and projects in the neighbouring district and/or city/town council structure plans. Structure Plans do not consider individual ownership of land when being prepared and therefore will not show precise boundaries of areas where policies apply.

The Structure Plans must reflect economic and social planning at national, regional and local levels and integrate development projects approved by the corresponding National and Regional Authorities. The NALUPA must prepare procedures to ensure that the local planning authorities when preparing the Structure Plan work within the framework of the requirements of land use plans at higher levels. The Structure Plan will consider the development for 15 - 20 years ahead and will be revised every 5 years or when needed. The procedures for the revision and modification of the Structure Plan are the same as for the preparation of the plan.

The plan is presented as a report with analysis, policy goals, and the plan structure shown on a map. The structure plan also indicates the approved phasing of the development areas and need for detailing local plans. The structure plan finally will present the monitoring methodology for the plan implementation. Among the annexes the plan should include a report on the community consultation process and might include minority expressions of opposition to issues in the plan.

The NALUPA will prepare guidelines for the preparation of the City and District Structure Plans and the training of local government planning staff in using the guidelines.

The stakeholders and the community members must be involved at least twice during the Structure Plan preparation process. The first consultation will concern ideas and proposals for development goals and development options and the final consultation will give the stakeholders and the communities the opportunity to comment on the final draft of the proposed Structure Plan before its approval. A minimum notice of two months must be given by public announcement for the holding of any consultative activities. Stakeholder and community contributions must be recorded and may be annexed to the final plan. The local council must justify any of its decisions taken against the stakeholder and community proposals which have been presented within the prescribed time and according to prescribed procedures by the community members.

The Local Plans: The Local Plan is similar to the Structure Plan, but as the scale is different (1:10.000 -1:20.000), it will be more detailed and zoning considerations(the kind of desired land use in specific areas) can be included in the plan. The needs and priority of preparing local plans should be identified in the Structure Plan and a decision to make local plans can be taken of the local planning authority, when a need occurs. A Local Plan could for example be prepared for an entire city centre, for the capital and other important towns in a District, for a new area planned for extension of an urban area or for the development of a new tourist development in a larger area.

The Local Plans detail the development policies and goals for a sub area within the context of the development policies and strategy set out in the 'Structure Plan'. Local Plans indicate the existing and future road system and the general decisions of land use identified as zones for housing areas of different density and areas for industry, workshops, private and public service, commercial areas and markets, important district functions, protected areas and risk prone areas, etc. The plan is presented as a report with analysis, policy goals, a local plan map and guidelines, timetable for phasing out of the implementation plan and a provisional development budget. The Local Plan will consider the development planning needs for 15 - 20 years ahead and will be revised every 5 years or when needed. The NALUPA is responsible for preparing the guidelines for the preparation of the Local Plans and the training of local government staff in the use of the guidelines.

Where an area in a Local Plan has been indicated for one or more uses, i.e. that special development zones, SPZ, has been identified, the Local Plan itself can be used as reference for building permits for constructions within the area as long as the development does not have a major impact on the surroundings. The possibility of making SPZs is ensured to avoid the work and expense associated with the preparation of Area Action Plans on land with little development.

Any building permission granted to a construction within a SPZ will be subject to a minimum of conditions such as the specific permitted land uses, including indication of building highs and

densities as well as non-built area on each plot. The conditions must be presented in the Local Plan. The NALUPA shall prepare guidelines for the preparation and use of Local Plan Special Planning Zones.

Where there is no action area plan in existence, local plans with SPZs which are legally binding may thus provide the basis for the exercise of a local planning authority's development control functions (issuing of development permission and the issuing of building permits for minor development projects (1-4 smaller buildings)). This ensures that buildings and development projects are in accordance with indicators for land use presented in the Local Plan for the area in question. Nevertheless where application for land use varies from that of the Local Plan or where applications for larger development projects or projects of more complex nature are presented, area action plans must be prepared to ensure coordination with the other functions and services in the area.

The Local Plan should follow policies and reflect key issues related to land use prepared by the NALUPA and also follow legally binding plan preparation procedures prepared by the NALUPA. These procedures include guidelines for coordination with the neighbouring districts if necessary. The NALUPA will prepare and update the procedures and guidelines. Stakeholders and the community members must be part of the consultative process in the preparation of the Local Plan similar to the procedure of the Structure Plan.

The Action Area Plans: The most detailed land use plan type proposed for the land use plan system is the Area action Plan. This detailed plan type must follow the planning goals and requirements made in the eventual Local Plan and the Structure Plan for the Area. The Area Action Plan will also indicate the precise private and public use of all land and parcels within the 'action planning area' and indicate areas reserved for utility service, roads and transport systems, recreation, protection, etc. The Area Action Plan will also indicate street names, parcel numbers, eventual reservation or protection lines as well as development and building regulations to be followed when using the parcels included in the plan. Development permits as well as building permits will be granted where they do not contradict with the information and regulations in the Area Action Plan.

The Area Action Plan shall take into account the general national policies and reflect key development issues related to land use as well as follow legally binding plan preparation procedures also prepared and updated by the NALUPA. Community members with relation to the Area Action Plan area must be involved during the preparation process and the same procedure for public participation will be followed as in the Local and Structure plans.

- iv. **Structure Plans, Local Plans and Area Action Plans prepared by the NALUPA:** Structure, Local and Area Action plans may also be prepared by the NALUPA when needed for particular National Development Projects that require special attention or are of an urgent or special nature. For example, areas reserved for major future infrastructure developments such as bridges, ports, larger tourist developments, major environmental protection interventions or special urban

renovation or resettlement projects.. In such cases the NALUPA must follow the established land use planning guidelines and procedures for the corresponding plan types including community consultation i.e. the same guidelines as prepared for the local planning authorities.

6.8 Preparation and approval of Structure plans

Though, the present TCPA allows for public participation in the instance where the Minister is of the opinion that a scheme should be made for an area, and also allows for representations to be made by those affected by a scheme before its final approval, there needs to be a more rigorous process which ensures active participation to its full and also ensures transparency and accountability on the part of those preparing the scheme. Thus provision (either in the act or in rules) should be made to cover the following:

Pre-deposit consultation:

- a. When preparing a structure plan, a local plan and an action area plan, making supplements or revising the plans, the local council must follow the established procedures given by the NALUPA which include:
 - i. To comply with any requirements in the National Spatial Development Framework and the Regional Structure Plan for the area;
 - ii. To comply with any requirements from Sector Ministries and other National Development Plans and Development Projects considered for the area;
 - iii. To coordinate with neighbouring District and City/Town Councils;
 - iv. To follow the NALUPA guidelines for important land use planning policies and goals to be considered;
 - v. To involve the local council departments in the preparation of the plan;
 - vi. To ensure that Local Council Head of Departments are involved in the land use planning process and periodically consulted during the preparation process to ensure coordination.
 - vii. To ensure local councils involvement and support to definition and selection of development goals;
 - i. To consult on development goals and plans with stakeholders and interested organizations including the business sectors, environmental protection organisations as well as sports, cultural, gender and youth organisations and other local interest groups.
- b. The local planning authority shall, when preparing, revising or altering Structure, Local and Area Action plans before final approval, consult the public in the following manner:
 - i. Follow the NALUPA established guidelines for public participation including list of parties and persons to be consulted; and take into consideration any

comments, proposals, opposition or claim made by the participants according to the guidelines;

- ii. Prepare a statement of any other persons they have consulted when preparing the plan proposals, in addition to those listed above, and of steps they have been taken to publicize their proposals and to provide persons with an opportunity of making representations in respect of the plan proposals.
- iii. In addition to the list of those that must be consulted, the local planning authority has the discretion to consult others;

c. **Deposit of proposals:** When a planning authority (National or Local) has prepared proposals for a Structure or a Local plan, and before the final approval they should present the draft plan for consultation with the community members concerned by:

:

- i. Announcing the availability of the plan proposal in the local newspapers;
- ii. Making copies of the proposals and the explanatory memorandum available for inspection by members of the community at the planning authority's principal office (and website, where applicable), and such other places within their area as they consider appropriate;
- iii. Sending a copy of the draft plan to the NALUPA before the beginning of the community consultation period;

Each copy of the proposals made available for inspection or sent to the Minister (NALUPA) must show conspicuously the dates of prescribed two month period within which objections may be made to the planning authority along with how and where objections and representations shall be made to the planning authority. This information shall also be shown on the Published note.

- iv. The period within which objections and representations may be made to the planning authority with respect to the proposals for the revision or replacement of a structure plan made available for inspection, shall be two months beginning with the date on which a notice is first published in a local newspaper.
- v. Comply with the guidelines and requirements for the consultation process prepared by the NALUPA..

The planning authorities shall not approve the proposals until after they have considered any objection made in accordance with the regulations or, if no objections are made, after the expiry of the prescribed two month period.

- d. **Approval of the Structure Plan:** The Local Planning Authority will approve the City/Town and District structure plans within its locality. After approval, the NALUPA shall endorse ensuring that the plans fulfil the requirements of the national land use planning policy and guidelines.

Once approved and endorsed the structure plan is valid and legally binding until it has to be revised in accordance with the NALUPA guidelines. However an approved structure plan can if needed be adjusted or even changed before the obligatory revision. In this case the approval procedure for the revised plan must follow the same procedures as for the plan preparation including the community consultation procedures and the endorsement by the NALUPA.

The Minister of NALUPA may after having declared an area as a 'Special Planning Area' prepare and approve structure plans following the general NALUPA policies and guidelines for public consultation.

Adoption of proposals: After the public consultation process the local planning authority may consider the objections or objections made by the community to the plan and include the proposals for adjustments it might find valid and reject the proposals it cannot support. In the annex to the Structure Plan the local planning authority has to explain the reasons why it did not take into consideration rejected complaints and proposals.

6.9 Preparation and Approval of Local Plans

The public participation approval and endorsement procedures for the preparation of Local Plans are the same as for the Structure Plans.

6.10 Preparation and approval of Area Action Plans

Pre-deposit consultation:

When preparing the Area Action Plan, making supplements or revising an existing Area Action Plan, the Local Planning Authority must:

- i. Follow the established Area Action Planning procedures and guidelines set out by the NALUPA;
- ii. Comply with any requirements imposed by the National Spatial Development Framework, Regional Structure Plan, The Structure Plan and the eventual Local Plan for the area;
- iii. Ensure coordination with neighbouring area action plans;
- iv. Following the NALUPA guidelines for important land use planning policies and goals to be considered;
- v. Involve the local council departments in the preparation of the plan;
- vi. Ensure that the Local Government Head of Departments are involved and participate in the plan preparation process to ensure coordination;
- vii. Ensure local council members are involved in the plan preparation process.

- d. The local planning authority shall, when preparing, revising or altering an area action plan before final approval, consult the public in the following manner:
 - ii. Consult the 'area action plan concerned' communities and stakeholders during the preparation process and before the final approval of the plan;
 - iii. During the plan preparation process follow the established NALUPA guidelines for public participation and take into consideration any comments, proposals, opposition or claim made by the Area Action plan neighbourhood communities and stakeholders, including the local education, health, sports, cultural, gender and youth institutions and organisations;
 - iv. Prepare a record of statements of any persons they have consulted when preparing the proposals. The local planning authority must comment on the statements and justify decisions taken not in accordance with the statements. A report on the consultative process must be annexed to the final approved plan;
 - v. In addition to the list of those that must be consulted according to the NALUPA guidelines, the local planning authority has the discretion to consult others.

- e. **Deposit of proposals:** When a Local Planning Authority prepares a proposal for an area action plan and before the final approval they shall:
 - vi. comply with the requirements, regulations and guidelines imposed by NALUPA;
 - vii. Announce the availability of the plan proposal in the local newspapers and in the concerned neighbourhood(s) according to NALUPA the public participation guidelines;
 - viii. Make copies of the proposed plan available for inspection at the authority's principal office, at the authority's website if any, and at the address/office of the significant local community organisations as they consider appropriate;
 - ix. Send a copy of the draft plan to the corresponding Regional Office of NALUPA before starting the public consultation process.;
 - x. From the date the draft plan has been publicly presented and announced, allow a two month period for the community and directly involved stakeholders to make and submit their comments to the draft plan;
 - xi. Record the comments and eventual objections or proposals for adjustment or changes of the plan with identification of the authors;

Objections and representations shall be made in writing and addressed to the local planning authority in accordance with the details given in the published notice.

The local planning authorities shall not approve proposals until after they have considered any objections made in accordance with the regulations or, if no objections are made, after the expiry of the two month period for the submission of comments to the draft plan.

- d. **Approval of the Area Action Plan proposal:** The local planning authority will approve the area action plans. However the NALUPA must endorse the approvals ensuring that the plans do not contradict planning policies or decisions in other national and regional planning.

The local councils will during the plan preparation monitor the preparation process to be familiar with the development considerations and involve themselves in the definition of the land use, development and building regulations decided for the development of the Action plan Area.

Once approved, the area action plan is valid and legally binding for any future use of land, development and construction in the action plan area until it may be revised according to the NALUPA guidelines. Nevertheless if needed an approved area action plan can be adjusted or even cancelled. In such a case the approval procedure for the revised plan must follow the same area action plan procedures as for a new plan.

The Minister of the NALUPA can after having declared an area for a special planning area substitute the Local Planning Authority. The NALUPA shall then prepare and approve the area action plan following the normal Action Area Plan preparation procedures.

6.11 Simplified Planning Zones (SPZ)

The TCPA should make provision for zoning of areas in Local Plans. The zoned areas will identify one or more specific permitted use of the land within zoned area. The advantage of SPZs is that on granting planning permission for development specified in an SPZ scheme, developers know with certainty the precise type of development that can be carried out without having to make (and pay for) a development permit. However in larger projects an area action plan has to be prepared, while minor constructions or developments can be permitted without an area action plan.

Obviously all developments need a building permit and cannot contradict any planning decision made in the structure and local planning. The NALUPA has to prepare guidelines for the use of SPZ and could use the SPZs within a limited first phase period to step by step introduce land use planning to the local governments.

6.12 Financing for the preparation and implementation of Structure, Local and Action Area Plans

Provision should be made in the revised planning law to allow for the appropriate planning authority, in its preparation and implementation of plans to be able to source financing from the following list which is by no means exhaustive:

1. Grants from Central government given for the preparation and implementation of plans;
2. Revenue generated by the planning authority which includes income from the issuance of planning/development permits;
3. Foreign aid and assistance from Development Partners;
4. Assistance from the private sector (includes the entering into of public private partnerships where preparation of plans may be outsourced to a private entity);
5. Income from other sources including gifts, donations and endowments.

6.13 Public participation in the Planning Process

As public participation plays a vital part in an equitable spatial planning system for land use, new procedures have to be developed that will take a variety of factors into consideration in order to strengthen the land use plan system, ensure community participation in planning decisions and to make the authorities more accountable for their decisions. Provision in the TCPA must be made to ensure the general procedures and enforcement of the community participation process, and give the NALUPA the mandate to prepare the concrete guidelines to ensure:

- i. Active and substantial public and stakeholder participation in the plan preparation process by established consultative procedures for community involvement in the definitions of general and neighbourhood development goals, discussion of eventual alternative plan solutions as well as participation in the final consultation concerning the final draft plan before a final approval by the Planning Authority.
- ii. A special planning tribunal or body should be set up at national level to evaluate the fulfilment of the legal planning procedures in case complaints arise from concerned community members.

Procedures for obligatory stakeholder and/or community consultation should be established in the case of:

- iii. Preparation and approval of the National Spatial Development Plans involving other ministries, local governments and private sector organisations;
- iv. Preparation of Regional Structure plans involving ministries and the concerned City/Town and District councils;
- v. Preparation of City/Town and District Strategic Structure Plans involving the community members in general, the private sector organisations and local NGOs;
- vi. Preparation of City/Town and District Local Plans (Sub Structure Plans) involving the community members in the plan area, the private sector and local NGOs;
- vii. Preparation of City/Town and District Area Action Plans involving the community members in the planning area including the land and business owners;
- viii. The Community participation procedures should be legally binding indicating ways of invitation to the public consultation activity (announcements in local press and radio/TV of consulting procedures and the content of the proposed plans), the period and dates available for the consultation activity (minimum eight weeks for each consultation process) and the procedures for the assessment and consideration of the public opinion and contributions by the planning authorities.
- ix. The same established public participation procedures should also be obligatory when making addendums to the plans or revising them;
- x. Land owners and citizens living immediately adjacent to the planning site should be notified of the contents of the planning proposal;
- xi. All proposals for preparation of land use plans be made easily available for viewing and reading in public space to make community members able to express their views/opinions;

Public access to information concerning development and building applications:

- xii. Land owners and citizens living immediately adjacent to applications for development must be notified of the contents of the application;
- xiii. Planning authorities to be compelled to give reasons publicly in writings on enforcement action which is to be taken against unauthorized development;
- xiv. A register of development and building permit applications should be kept at all times and made accessible to the public.

6.14 Development Permits

The following are proposed:

- i. Enforcement action provisions for 'Development control' in both the TCPA and the FIA are inadequate. Planning officials have invariably found it difficult to carry out enforcement actions because of the lack of clarity within the provisions of both acts. Therefore, amendments should be made to provide for the making of procedures including the following:
 - a) for planning authorities (national, regional, local) to be able to obtain information relating to breaches of planning control (planning contravention notices);
 - b) For enforcing planning conditions (breach of condition);
 - c) For obtaining injunctions to restrain breaches of planning control (planning injunctions);
 - d) Alter time-limits on the determination of planning applications and taking of enforcement action;
 - e) Increasing the penalties for non-compliance with an enforcement notice according to list of penalty fees adjusted yearly by the NALUPA. (note: the present penalty sums in both the TCPA and FIA need to be revised to represent today's monetary values);
 - f) Ensure the authorities the rights of entry to property for enforcement purposes;
 - g) Make provisions for stop notices and other methods of enforcement;
 - h) The outsourcing of enforcement action to other agencies;

Provision for creating an enforcement unit charged with responsibility of carrying out enforcement actions as a means of Development control. ii. The Act must clearly reflect decentralisation of the function which relates to the granting of planning permission that is to be issued for all development projects and which is to ensure compliance with the approved plans (structure, local action area plans). Therefore the NALUPA will be responsible for issuing planning permission for any development project being carried out at regional or national levels; or of which it has a special interest by virtue of the nature of the project.

- i. Local Councils will only be responsible for issuing planning permission at the local level. Provision for creating an enforcement unit charged with responsibility of carrying out enforcement actions as a means of Development control.
- ii. The Act must clearly reflect decentralisation of the function which relates to the granting of planning permission that is to be issued for all development projects and which is to ensure compliance with the approved plans (structure, local action area plans). Therefore the NALUPA will be responsible for issuing planning permission for any development project being carried out

at regional or national levels; or of which it has a special interest by virtue of the nature of the project.

- iii. Provision for the publication of Land Development control Guidelines which clearly set out prescribed forms of applications for planning permission to carry out development should be made mandatory.
- iv. Provision should be made for mandatory consultation with other sector ministries/agencies if relevant before planning permission is granted. The NALUPA shall prepare and revise when needed the guidelines used in the process of determination of all planning permission applications.
- v. Provision for the granting of building permits should be made under the TCPA with the condition that they do not contradict an identified legally binding land use plan. Further, these conditions must be attached to permits which obligate the holder to fulfil all the relevant building regulations. It shall be the responsibility of the NALUPA to support the process of granting building permits by making the necessary guidelines including drawing up a list of other national planning bodies and planning authorities to be consulted in special cases.
- vi. Building Regulations under the FIA were made originally for Freetown and are being used as guidelines for the construction of buildings all around the country. These regulations need to be revised to meet universal standards and modern design. In particular, that buildings are required to be designed, constructed and altered so as to be structurally safe and robust, and also so as not to impair the structural stability of other buildings. Ideally a new law should be enacted which enshrines a standardized building code for the whole country.
- vii. There should be a separate system of control over alterations to buildings, which are listed as being of architectural or historic interest ("listed buildings"). Alterations to such a building that affect its character or appearance should require "listed building consent" (and may also require planning permission if the scope of the proposed alterations or development is above that classified as 'permitted development'). Such applications should be referred to the Monument and Relics Commission. The owner of a listed building can also be compelled to keep it in a good state of repair to safeguard its architectural or historic significance.

6.15 Special Important and Prioritised Land Use Planning Issues

Special issues concerning environmental, historic and cultural values should be the subject of special attention in any land use planning law. Such issues may relate to historic and cultural places, constructions, conservation of the environment including, forests, wetlands, rivers, creeks, coasts and landscapes and the preservation of important trees. The main reason for including them into the law should be that the protection of these values will be made universal and not vulnerable for temporary weakening or negligence in the land use planning and development control activity. Therefore provision should be made in the TCPA for coordination and liaising of the planning authorities with the various agencies such as the Environmental Protection Agency and the Monuments and Relics Commission. . The NALUPA shall together with corresponding ministries and agencies prepare guidelines for when development and building permits are being given conditionally taking into account the special environmental, historic and cultural values. Such guidelines could include obligatory distances to be held to monuments and important landscapes or obligation to halt developments if historic material appear in the development site under implementation of a project.

6.16 Trees

Special provision should be made to enable the NALUPA to make rules regarding tree preservation orders; trees removal procedures; compensation for loss or damage caused by orders; consequences of trees removal etc. and protection of trees in conservation.

6.17 Compensation and Betterment:

The TCPA should detail in its provisions the instances in which a person may claim compensation including where the claimant has been adversely affected by a planning decision or suffered loss a result. It must also state clearly the cases where claims for compensation are excludable. A claimant should also be entitled to claim in those cases where adverse planning decisions have been made by a planning authority. Any compensation claim must reflect the value of the land at the current market price, and should not take into account an expected increase in value due to a future development. The Act should also provide the procedure for claiming compensation. The NALUPA will be the Authority for hearing claims for compensation and any appeal against a decision will lie to the High Court whose decision in the matter will be final. The provision for betterment should stay in the TCPA but should only be claimed as a set off where compensation has been sought.

6.18 Appeals:

Provision should be made for a right of appeal in respect of a person or developer, who is adversely affected by a planning decision.

A right of appeal should lie with a National Planning Tribunal (composed of three) which must be established under the law and constituted by the Chief Justice.

Procedure for making the appeal must be laid out and which include (i) the time within which it should be made and (ii) that it should be in writing.

The grounds for making an appeal include where:

- i. Planning permission ought to have been granted for the development,;
- ii. The alleged breach has not in fact taken place;
- iii. The matters alleged in the enforcement notice do not in law constitute a breach of planning control;
- iv. The matters alleged in the enforcement notice are immune from enforcement action;
- v. There are failures to carry out the correct procedures in serving the enforcement notice;
- vi. The steps required to remedy the breach are excessive;
- vii. The time allowed for compliance with the enforcement notice is unreasonably short.

