

How to adapt the planning legislation to the ground reality in the Pacific small islands nations

The Fiji town and country planning act case study

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1. Introduction

Fiji Islands nation has about 48 Acts dealing with land (comprising islands and oceans interface masses) and human settlement issues. There is no one single common institutional body to manage all these documents. Among these outdated documents, an act relating to Town Planning: the Fiji Islands Town and Planning Act that was designed to manage the development and use of land and properties within its urban areas boundaries. This paper will examine (a) the Fiji Town and Country Planning Act document in terms of its content, structure and layout, (b) a constructive critic of the key paragraphs and articles in regards to the updated planning issues in Fiji Islands, (c) disclosing a conceptual framework of possible recommendations.

2. The Fiji town and country planning act document content, structure and layout

The last version document (1995) has 6 parts splitted into 45 articles.

- 2.1. Part I of the Act contains and interprets key words defining the planning objects, subjects, actors, vectors and factors. It specify the role of the key personnel (much more focused on one single person: the director of Town and Country Planning); the advising committees; the process of legal action; the constitution of the town planning area, this in a much more restrictive tone; the land and properties development procedures and process (concerning only the “legal zones” but not the “legitimated” zone, i.e. the non statutory land tenure peri- urban areas and the surrounding villages).
- 2.2. Part II contains and instructs the Town and Country Planning schemes in terms of objects, contents, preparation, provisional approval, publication of approved schemes, objections to scheme or objection to the Board hearing of objections, implementing of scheme and modification / suspension of schemes. The important point is that the object of a scheme is expressed quit broadly to cover the provision of land for transportation, residential, commercial and industrial use, amenities and like. One paragraph is explicit in regards to the local authority ability to initiate, design and implement its own town planning scheme (for the Director of Town and Planning approval). The good one is: if the local authority does not produce a scheme within a time prescribed by the Director of the Town and Country Planning, the latter may produce a scheme at the expense of the local authority.
- 2.3. Part III defines and interprets the power of local authorities (here mainly the City Councils) in enforcing the schemes.
- 2.4. Part IV instructs the provisions contained in a scheme that allow for compensation for injurious affection as well as where compensation will not be applicable; where recovery of increase in value for landowners is applicable; where claims for compensation or increase in value are appropriate; where special assessment to recover expenses is appropriate; determination of claims and recovery of expenses; local authority abandonment of schemes.

- 2.5. Part V outlines what is involved in the purchase and compulsory acquisition of land - with particular reference to local authority's purchase of land included in a scheme, utilization and sale of such -.
- 2.6. Part VI contains additional guidelines that interprets the indemnification of the Director Department of Town and Country Planning; power of entry; assault on authorized personnel; services of notices; penalties not otherwise provided for regulation mainly from directive of the relevant Minister.

This chapter has briefly has just summarized the Fiji Town and Country Planning Act, Cap.139 (the whole document is available: www.Pacli.org/town_planningAct). Now it is convenient to suggest ways in which ramification to parts of the Act which may today need amending and / improving by innovating because of the change in time as well as the new planning paradigms -inspired by some international level best learned practices-.

3. A conductive critic of the key paragraphs and articles dealing with updated planning issues in Fiji

Before any constructive critical proposal, a statement of some fundamental issues based on the grounded facts would be relevant:

3.1. The environmental component is totally ignored; neither paragraph nor explicit article mentions the urban environment component of planning and management. These detailed issues touch on the day-to-day urban land development and the environmental impact assessment: the old cities' downtowns to renovate, the peri-urban slums /squatters to be legalized or legal slums to be ecologically based redeveloped, the high density settled areas impact on coastal land/water masses; the lack of baseline studies -inland and coastal town environmental profiling-; the weak institutionalized Town Council (although having the financial resource) are those issues impelling the legislator. The existing separate Public Health Act is mainly based on the old 19.century hygienist approach. There is no environmental branch within the Planning Service. There is also the EMA-Environment Management Act but there is neither legal nor administrative linkage with the Town and Country Planning Act.

3.2. The local authorities e.g. City Councils have legally the planning attributes but "all master plans must be approved by the Director of Town and Country Planning". That is to say the discrepancy between the articles. What happens usually: some land developers submit their request directly to the Director of Town and Country Planning who instructs the local authorities to insert those development plans and approve the modified scheme! Here comes the evidence of decentralization limiting factors.

3.3. The compulsory land acquisition process and procedures is formulated in hermetic jargon that only few number of initiated citizens can really interpret and use it. Information and communication is also a source of power. Why not making a simplified version -without being too simplest- even in local language that everyone can understand?

3.4. The philosophy backing the Act is not based on partnership decision-making (from planning, to management and administration) but on expediency (the Minister though his/her Advisors and the Director of Town and Country Planning) excluding the rest of the civil society. Only the limited objection before the scheme approval is explicit ... that is to say without public participation to the planning process.

3.5. No time frame for the preparation, implementation and control of urban master plan are instructed. Meaning while some schemes contents are outdated the new plans are not often even scheduled. This is due to the lack of comprehensive chronogramme from the Town and

Country Planning Department and / or the City Councils planning services . How it should be possible without any Territorial Planning Act as a fundamental contextual reference?

3.5. There is no monitoring and evaluation of the running town planning schemes. Since a structural and institutional framework such as land administration is not yet known (but only within the academia circle).

3.6. The Town and Country Planning does not actually specify with high precision -suitable to secondary cities / small areas large scale –, in terms of detailed content and consistent structure. It mentions only in some vague land use type for an oversimplified zoning through a same level of a vague zonation.

3.7. The majority of the articles are rather dealing with land management problematic / thematic than urban planning purpose. A Real Estate actor may feel at home with this document in hand but not the urban planner. Meaning the logic of scale is not adequately followed.

3.8. This Act is seemingly not inspired by the Site Planning and Urban Design framework approach but just building permits issues (the day-to-day land management and land development from the statutory law conception) meaning there is a lack of global perception or “a view over the bridge”.

3.9. The land development schemes typology and classification are based only on the functional approach.: neither the genetic / historical nor the site valuation and evaluation approaches are used.

3.10. The terms “facilities” and “utilities “are not clearly formulated: making the document very difficult to understand according to the international terminology nomenclature.

3.11. The Housing and Housing Delivery System that should be the main components in any Town and Country Planning Act are totally ignored. The Housing Authority Act exists as a separate document.

3.12. The land valuation is exclusively based on quantitative tangible parameters, the qualitative view is not followed (land /property symbolical value, ethical value, socio-cultural value). Meaning there is no clear conception of historical, archeological and cultural lands survey and mapping as Town Planning scheme document component overlay. The valuation method may be confused with pricing (within a land market orientation without any speculation control power).

4. A conceptual framework of recommendations

Recommendations can be stated terms of principles, methods and techniques of a Town Planning Act design and edition.

4.1. The first ruling principles is that any juridical and legislative document would be based on the updated outputs of the social environmental and managerial /administration sciences dealing with land studies and not the other way around: that is say when trying to accommodate some general jargons into an outdated Act. An Act as an operational documental should be linked to the fundamental and applied research as inputs items to re- interpret

4.2. There are two ways to get lost by alienation: either copying and pasting blindly the international academia standard rhetoric or remaining scientifically and intellectually isolated through the “insularity syndrome”. There is logic of balance between one’s own original creativity and the international-based learning willing. There are neither two Town and Country Planning Acts totally different nor completely similar in terms of philosophy, content and expression.

4.3. There is a gap between globalization and internationalism, since the first goes with the logic of implicit domination and the latter demands the sense of fair cooperation. The

good governance (internal core) involves also a good cooperation (external context).The demand of internationalist inspired Act could help to provide some sound example for national -based planning Act document design or improvement.

4.4. From the methodical perspective, an Act design and edition or re-edition should be based on:

- i) A wide scope of land rights/restrictions, land interests and land responsibilities. Meaning the dualism “statutory / native law” is no relevant: each approach will be used as far as it constitutes a concrete answer to a concrete situation. This involves a clear and detailed land tenure(s) nomenclature (in Fiji, it happens often that a single land parcel unit is affected by different and antagonist land rights and land responsibilities) .The Act is too vague to providing the real answer;
- ii) A large scale land cover classes/subclasses and land use types / utilization categories comprehensive classification (neither the existing cadastre nor the property registration has as such of an operational document) for survey and mapping purpose. Otherwise the so-called multi-purpose cadastre (as basic document for land use control as a core land administration component) will remain just an irrelevant imported software and hardware.
- iii) A defined urban planning and management actors, vectors and factors typology. Otherwise the planning affairs remain in the hand of the few civil servants (top executive managers and junior technicians) and some private economic operators. Land is a source of knowledge, wealth and social power to be economically and socially shared.
- iv) A Town Planning Act is like the circulating blood within the land affairs corpus: it must irrigate all the organs /systems by linking the development planning, land policy, land management, land conservation, land administration, geo data infrastructure and integrated land tenure systems components.

4.5. Concerning the technical aspects, the Act document edition and diffusion should be presented:

- i) In a bilingual version (English-Fijian or English-Hindi or Fijian-Hindi) that is widely understood by the majority of land stakeholders;
- ii) The document layout should have tree sort of components: the text + the graphic version and illustrative diagrams since it is at the same time a rigorous legal instrument but also a simple communication tool;
- ii) This is one of the way for and explicit public participation to the planning process and procedures without demagogy.

5. Conclusion

This modest contribution from Fiji Islands experience may show that so many things to do and so little done. That is the good reason to move ahead by considering the objectively the arising shortcomings of the Town and county Planning Act document design and use but also bearing in mind that there is no well formulated factual problem without an operational solution. In this respect, the best practices may inspire the Fijian authorities towards new internal and external perspectives.

6. Acknowledgement:

The author would like to acknowledge the help and support of the following people in gathering information and sharing ideas to put this article together:

- i) Mr. Doni Wainiqolo and Mr. Francis Lacanivalu, members at the Fiji Department of Town and Country Planning;
- ii) Mr. Jainend Kumar, Nasinu Town Council, Fiji;
- iii) Staff at Department of Lands and Survey, Suva, Fiji;
- iv) Mrs. Rukalisi Dileqa and Mr. Jone Baleikadavu, Land Management Post Graduate Students, The University of the South Pacific,

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