

# The Potential of Spatial Planning as a Tool for Cities' Pursuit of Sustainable Development Goal 11 in Zimbabwe

LK Masekesa\* and O Fuo\*\*

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## Authors

Liberty Masekesa  
Oliver Fuo

## Affiliation

University of South Africa  
North-West University, South Africa

## Email

libertykudzai@gmail.com  
Oliver.Fuo@nwu.ac.za

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## Abstract

This article analyses the extent to which the applicable legal and policy frameworks in Zimbabwe enable cities to use spatial planning to pursue the vision encapsulated in SDG 11. This article argues that although the existing legal framework makes adequate provision for features that can hypothetically guide cities to use spatial planning to pursue the vision envisaged in SDG 11, their potential is constrained by diverse factors such as lack of effective public participation in local governance, the inability of local authorities to generate sufficient revenue, systemic corruption in spatial planning processes, and under-utilisation of a flexible and accommodating legal framework. The research is based on an integrated analysis of primary and secondary sources of law.

## Keywords

Sustainable Development Goal 11; spatial planning; local authorities; law and policy; Zimbabwe.

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## 1 Introduction

More than half the world's population is living in cities,<sup>1</sup> and that share is projected to rise to 60 per cent by 2030.<sup>2</sup> By 2050, the world's urban population is expected to nearly double, making urbanisation one of the most transformative trends of the twenty-first century.<sup>3</sup> In order to exploit opportunities presented by urbanisation the international community reinvigorated the role of cities as co-global actors in pursuance of the global sustainable development agenda, by dedicating Sustainable Development Goal (SDG) 11 in the United Nations (UN) 2030 Sustainable Development Agenda<sup>4</sup> to cities. This goal requires local authorities to assist UN Member States in making cities and human settlements across the world "inclusive, safe, resilient and sustainable" by 2030. These four modifiers generally seek to promote sustainability in cities. This view is based on the opinion that inclusiveness, safety, and resilience are indispensable to a sustainable city.<sup>5</sup> Although sustainability is a far-reaching term, SDG 11 provides a framework within which it is supposed to be understood and encapsulates specific targets that are critical for the transition of cities around the globe to a sustainable future by 2030.<sup>6</sup>

Spatial planning can be used to address urban sustainability challenges and therefore to promote the normative vision portrayed in SDG 11.<sup>7</sup> "Spatial planning", also referred to as "urban planning" or "town planning", is a generic term used to describe systems for managing the physical development of land.<sup>8</sup> It is a decision-making process aimed at realising social, economic, cultural and environmental goals through planning tools

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\* Liberty Masekesa. LLB LLM PhD (NWU). Postdoctoral Fellow, Department of Public, Constitutional and International Law (CLAW), University of South Africa (UNISA). Email: libertykudzai@gmail.com. ORCID: <https://orcid.org/0000-0002-1668-6743>. This article draws from the PhD thesis of Dr Masekesa that was supervised by Prof Fuo and submitted to the NWU: *The Role of Local Authorities in Realising Goal 11 of the Sustainable Development Goals (SDGs) in Zimbabwe* (2021).

\*\* Oliver Fuo. LLB LLM and LLD (NWU). Professor, Faculty of Law, North-West University (NWU), South Africa. Email: Oliver.Fuo@nwu.ac.za. ORCID: <https://orcid.org/0000-0002-1442-8599>.

<sup>1</sup> There is no universally accepted definition of a city. However, the term is broadly read to include all municipal or local governments exercising some form of legislative, executive, and administrative powers within a defined geographic jurisdiction. See Aust and Du Plessis "Introduction" 7.

<sup>2</sup> UN *SDG Progress Report* 44. See also UN *World Population Prospects* 1.

<sup>3</sup> Paragraph 2 of the *Habitat III New Urban Agenda* UN Doc A/RES/71/256 (2016) (hereinafter referred to as the NUA).

<sup>4</sup> UN *Transforming Our World: The 2030 Agenda* (hereinafter referred to as Agenda 2030).

<sup>5</sup> Masekesa 2021 *PELJ* 2.

<sup>6</sup> See Part 2 below for details.

<sup>7</sup> Van Wyk *Planning Law* 1.

<sup>8</sup> Silva and Acheampong *Developing an Inventory* 11.

such as spatial plans, strategies and policies for regulating the location, timing and form of development.<sup>9</sup> Spatial planning is a critical tool for reshaping the forms and functions of cities and regions. It can be used to generate endogenous economic growth, prosperity and employment while addressing the needs of often marginalised sections of society.<sup>10</sup> It has the potential to guide and ensure the orderly development of cities, their settlements and infrastructure considering other communities which commute into and out of urban areas or share resources with them.<sup>11</sup>

Zimbabwe is committed to the pursuit of local sustainability as envisaged in terms of SDG 11 since it was among the 193 UN Member States that unanimously adopted the 2030 Agenda in 2015. A closer look at laws and policies in Zimbabwe shows that the commitment to promote local sustainability predates the adoption of the 2030 Agenda.<sup>12</sup> Despite the existence of a legal framework aimed at facilitating decentralisation in Zimbabwe, local authorities are still faced with a wide range of sustainability challenges, including an ever-increasing number of slum dwellers, unplanned urban sprawl, worsening air pollution, and inadequate and overburdened infrastructure and services.<sup>13</sup> Even though spatial planning cuts across all processes of local governance,<sup>14</sup> its potential in the pursuit of local sustainability in Zimbabwe as envisioned in terms of SDG 11 is, however, unknown and unexplored.

In this context, the main objective of this article is to analyse the extent to which the applicable legal and policy frameworks in Zimbabwe enable cities to use spatial planning to pursue the vision encapsulated in SDG 11. Through engaging in this process the article reflects on the extent to which these frameworks make provision for some generic benchmarks for successful spatial planning distilled from the literature. We note that despite the agreement in the literature in terms of identifying these benchmarks, differences in economic, political, social, and technological developments can affect outcomes in different settings.<sup>15</sup> In order to achieve the above objective we have structured the remainder of the discussion in five parts. We begin by briefly reflecting on the meaning of the vision captured in SDG 11 in order to understand what is expected of cities generally. The second part establishes, from the relevant literature, some generic benchmarks in spatial planning that could hypothetically guide city authorities in drafting

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<sup>9</sup> Healey *et al* *Making Strategic Spatial Plans* 3; UN-Habitat *International Guidelines* 2.

<sup>10</sup> UN-Habitat *International Guidelines* 2.

<sup>11</sup> Chan, Samat and Hoa "Decision Support System" 199.

<sup>12</sup> Masekesa 2021 *PELJ* 10-12.

<sup>13</sup> Republic of Zimbabwe 2020 <http://zimbabwe.un.org/en/159037-zimbabwe-sdgs-review-progress-report>; Masekesa 2022 *AHRLJ* 244; Masekesa 2021 *PELJ* 25-27.

<sup>14</sup> See Parts 2 and 3 below for details.

<sup>15</sup> Stead 2012 *Planning Practice and Research* 104, 107.

and implementing spatial plans in pursuit of local sustainability in Zimbabwe. The third part of the article discusses how the law and policy framework in Zimbabwe positions cities to pursue the vision in SDG 11. The fourth part questions the extent to which the legal and policy frameworks in Zimbabwe empower cities, based on the generic benchmarks identified, to utilise spatial planning to advance local sustainability. Part five concludes this discussion.

## 2 The vision and mandate of cities in SDG 11

Cities across the world are expected in terms of SDG 11 to be "inclusive, safe, resilient and sustainable" by 2030. Even though there are no generally accepted parameters of what makes a city "sustainable", SDG 11 contains specific targets on a wide variety of issues that should be realised by cities across the globe.<sup>16</sup> This framework envisaged in comprises time-bound targets that can be broadly categorised into outcome-oriented and process-oriented targets.<sup>17</sup>

Outcome-oriented targets require local authorities to: 11.1) ensure access for all to adequate, safe and affordable housing, basic services and to upgrade slums; 11.2) provide access to safe, affordable, accessible and sustainable transport systems and to improve road safety by expanding public transport; 11.3) enhance inclusive and sustainable urbanisation and the capacity for participatory, integrated and sustainable human settlement planning and management; 11.4) protect and safeguard the world's cultural and natural heritage; 11.5) reduce the number of deaths and the number of people affected by economic and other disasters; 11.6) reduce their adverse per capita environmental impact with specific emphasis on air quality and municipal and general waste management; and 11.7) provide universal access to safe, inclusive and accessible green and public spaces.

On the other hand, process-oriented targets require local authorities to: 11.a) support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening development planning; 11.b) adopt and implement disaster risk reduction (DRR) strategies in line with the Sendai Framework for Disaster Risk Reduction 2015-2030 (the Sendai Framework); and 11.c) put pressure on national governments to seek international financial and technical support in building sustainable and resilient buildings.

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<sup>16</sup> Fuo "Funding and Good Financial Governance" 87; SDG 11 (Targets 11.1-11.7, 11.a-11.c.) (available at UNEP date unknown [https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-11\\_](https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-11_)).

<sup>17</sup> UN-Habitat *SDG Goal 11* 14-55; Masekesa 2021 *PELJ* 5-6; Van der Berg 2017 *Obiter* 561-563.

Against the above background it may be thought that the set of SDG 11 targets may not be exhaustive as to what can be done by local authorities across the world to assist the states in which they are situated to foster local sustainability. Although there is no unanimity in the literature as to the definition of a sustainable city due to different typologies and characteristics that a sustainable city might present,<sup>18</sup> some definitions resonate with the framework in SDG 11.<sup>19</sup> For example, According to Joss,<sup>20</sup> a sustainable city is one that supports human health and wellbeing, protects the environment, reduces energy consumption, lessens urban heat-island effects, provides clean water, eases traffic congestion, recycles waste, promotes urban density, expands parkland, creates "walkable" neighbourhoods, generates local employment, champions urban agriculture, celebrates civic engagement and enhances the efficient management of information. According to Slavin,<sup>21</sup> sustainable cities are those that design and manage their form of governance, economies, built environment, transportation systems, energy and water use, food production, and waste in a manner that imposes the smallest possible footprint upon the environment. The above definitions differ slightly<sup>22</sup> but resonate to some extent with the framework within which a "sustainable city" can be conceptualised in terms of SDG 11.

SDG 11 underlines the need to employ planning as a local governance tool In pursuit of local sustainability.<sup>23</sup> This requires local authorities to engage in spatial and strategic planning and to adopt and implement spatial plans, strategic plans, and other related local governance tools to advance their local sustainability agendas in the areas of housing, land, water, energy, environment, roads, traffic, culture, and mitigating climate change and local disasters, for example.

### **3 Spatial planning as a local governance tool for realising SDG 11**

Discussion on how cities should use spatial planning to promote local development is not new. It is therefore not surprising that SDG 11

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<sup>18</sup> See, for example, Du Plessis 2017 *LDD* 239-262; Doust 2014 *Journal of Traffic and Transport Engineering* 151-182; Eiraibe, Al-Malki and Furlan 2015 *American Journal of Sociological Research* 101-118; Jabareen 2006 *Journal of Planning Education and Research* 38-52.

<sup>19</sup> For other definitions, see Du Plessis 2017 *LDD* 245-246; Satterwaite *Earthscan Reader* 6; Doust 2014 *Journal of Traffic and Transport Engineering* 180; Jabareen 2006 *Journal of Planning Education and Research* 38

<sup>20</sup> Joss *Sustainable Cities* 3.

<sup>21</sup> Slavin "Rise of the Urban Sustainability Movement" 1-19.

<sup>22</sup> For other definitions, see Satterwaite *Earthscan Reader* 6; Doust 2014 *Journal of Traffic and Transport Engineering* 180; Jabareen 2006 *Journal of Planning Education and Research* 38.

<sup>23</sup> See, for example, SDG 11 (Targets 11.3 and 11.a).

acknowledges the importance of planning for the realisation of its targets.<sup>24</sup> Planning can be broadly categorised into spatial planning or strategic planning. Strategic planning is a disciplined effort to produce fundamental decisions and actions that shape and guide a local government in what it does, how it does it and why it does it.<sup>25</sup> It entails devising programmes and mobilising resources to achieve the defined goals and objectives of a local authority in a prescribed period of time.<sup>26</sup> On the other hand, spatial planning aims at facilitating and articulating political decisions and actions that will transform the physical and social space and affect the distribution and flow of people, goods and activities.<sup>27</sup> Its primary objective is to rethink and improve the spatial organisation, accessibility and design of urban space.<sup>28</sup> It is trite to note that this article focusses on spatial planning as a tool for advancing local sustainability.<sup>29</sup> The present section establishes some generic benchmarks in spatial planning that could hypothetically guide city authorities in drafting and implementing spatial plans in pursuit of local sustainability. The benchmarks are distilled from secondary sources of law such as the International Guidelines on Urban and Territorial Planning that was developed by UN-Habitat to serve as a universally applicable framework of reference for urban planning, the scholarly literature on urban planning, and several non-binding UN policy documents.<sup>30</sup> We identify four key benchmarks from these sources.

Firstly, there should be a solid and predictable long-term legal framework for urban development.<sup>31</sup> This framework should promote sound and flexible urban planning and design that ensures vertical, horizontal and territorial integration.<sup>32</sup> Vertical integration is promoted where higher tiers of government determine the legislative and policy framework within which local authorities must conduct planning processes, without specifying in detail how such processes should be done at the local level.<sup>33</sup> Target 11.a of SDG 11 underscores the need to promote the vertical dimension of integration since links between urban, peri-urban and rural areas are supposed to be strengthened by "national and regional development

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<sup>24</sup> See, for example, SDG 11 (Targets 11.3 and 11.a).

<sup>25</sup> Bryson *Strategic Planning* 6.

<sup>26</sup> Yelder *et al Effective Strategic Planning* 1; Clarke and Stewart *Planning for Change* 6; Gates *Strategic Planning* 3; Cheshmehzangi and Dawodu *Sustainable Urban Development* 8.

<sup>27</sup> UN-Habitat *Habitat III Issue Paper* 8 1.

<sup>28</sup> UN-Habitat *Habitat III Issue Paper* 8 1-10; UN-Habitat *The City We Need 2.0* 8.

<sup>29</sup> UN-Habitat *Habitat III Issue Paper* 8 1-10; UN-Habitat *The City We Need 2.0* 8; Chan, Samat and Hoa "Decision Support System" 199.

<sup>30</sup> UN-Habitat *International Guidelines* 1-40.

<sup>31</sup> UN-Habitat *International Guidelines* 3.

<sup>32</sup> UN-Habitat *International Guidelines* 3.

<sup>33</sup> Chigwata, Muchapondwa and De Visser 2017 *J Afr L* 44; Chigwata and Ziswa 2018 *HJRL* 311-312.

planning".<sup>34</sup> Apart from this, horizontal integration emphasises the significance of coordinating the planning process across different sectors/departments of government to optimise the utilisation of resources and aim for mutually beneficial outcomes.<sup>35</sup> The need to promote horizontal integration in spatial planning is at the core of SDG 11, as it requires "economic, social, [cultural] and environmental" links between urban, peri-urban and rural areas to be strengthened by national and regional development planning.<sup>36</sup> In addition, territorial integration can be promoted by coordinating policy, planning, infrastructure and accountability across neighbouring administrative borders.<sup>37</sup> For our present purposes, Target 11.a underscores the need to promote territorial planning as it requires the strengthening of the economic, social, cultural and environmental links between "urban, peri-urban and rural areas". Overall, the extent to which this condition is met by local authorities has an effect on "compactness", which is a characteristic of urban form (shape, size, density and land use). Strategies that focus on compact urban form seek to ensure that future urban development takes place adjacent to existing urban structures, and that further development of the existing urban fabric takes place in a contained manner.<sup>38</sup> Accordingly, in promoting compactness city authorities should facilitate development in a manner that avoids sprawl and provides a concentration of socially sustainable and mixed land uses located in close proximity to public transport networks, jobs, schools, shops, health facilities and recreational opportunities.<sup>39</sup>

Secondly, local authorities should have sufficient resources to successfully design and implement spatial and other related plans.<sup>40</sup> Where there is a financial crisis and a lack of sufficient resources, this may lead to fragmentation, the absence of authority and legitimacy, and a democratic deficit.<sup>41</sup> In an ever-increasingly constrained fiscal environment, local authorities need to be able to explore innovative ways of raising revenue, and incorporate financial planning in all their action plans.<sup>42</sup> The financial

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<sup>34</sup> SDG 11 (Target 11.a). See also SDG 11 (Target 11.b), which is measured by the proportion of "local governments" that adopt and implement local disaster risk reduction strategies in line with "national" disaster risk reduction strategies.

<sup>35</sup> For details on horizontal integration, see Gupta and Nilsson "Toward a Multi-Level Action Framework" 275-281.

<sup>36</sup> See SDG 11 (Targets 11.a).

<sup>37</sup> Kanuri *et al Getting Started with the SDGs in Cities* 72.

<sup>38</sup> Jabareen 2006 *Journal of Planning Education and Research* 39; Wheeler 2002 *Journal of the American Planning Association* 270-274.

<sup>39</sup> Burton, Jenks and Williams "Compact Cities and Sustainability" 4; UN-Habitat *International Guidelines* 3.

<sup>40</sup> UN-Habitat *International Guidelines* 3; Stead 2012 *Planning Practice and Research* 107; Kanuri *et al Getting Started with the SDGs in Cities* 49; Hendrick 2010 *Public Administration Review* 222; Virtudes 2016 *Procedia Engineering* 1711.

<sup>41</sup> Virtudes 2016 *Procedia Engineering* 1711.

<sup>42</sup> Kanuri *et al Getting Started with the SDGs in Cities* 49.

plans of local authorities should contain a realistic income plan, including the sharing of urban value between all stakeholders, and an expenditure provision to address the requirements of the urban plan.<sup>43</sup> Although SDG 11 is silent about the significance of the financial resources necessary for the implementation of each target, local authorities are expected to complement their financial resources with those obtained from higher tiers of government, the international community and the private sector in order to be able to deliver on the commitments in SDG 11.<sup>44</sup> Local authorities across the globe need to invest trillions of US dollars to build the infrastructure needed to realise SDG 11.<sup>45</sup>

Thirdly, local authorities should facilitate public participation in spatial planning.<sup>46</sup> This enables local authorities to consult citizens and the private sector in order to be better informed of the development needs and priorities in their jurisdiction and the governance areas that need improvement.<sup>47</sup> This may entail a very wide range of activities, such as the use of information technology, grass roots action, lobbying, public-speaking, hearings, public reporting and third-party monitoring.<sup>48</sup> Local authorities can broaden public participation in planning processes by engaging civil society organisations (CSOs).<sup>49</sup> CSOs have the potential to contribute to the mobilisation and representation of all sectors of society in community forums and community planning initiatives, with a view to fostering equitable urban development, promoting peaceful social relations and prioritising the development of infrastructure and services in urban areas.<sup>50</sup>

Fourthly, it is important for politicians and management teams of local authorities to be committed to supporting the entire spatial planning process and the implementation of spatial and other related plans.<sup>51</sup> This should include top management and all other managers at the different levels of the management hierarchy who have specific roles to play in the overall

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<sup>43</sup> UN-Habitat *International Guidelines* 3.

<sup>44</sup> See SDG 11 (Targets 11.3, 11.4 and 11.a).

<sup>45</sup> Fuo "Funding and Good Financial Governance" 87. The US dollar is predominantly the standard currency unit in which goods are quoted and traded, and with which payments are settled in, in the global commodity markets. See Kowalski 2020 <http://www.thebalancemoney.com/how-the-dollar-impacts-commodity-prices-809294>.

<sup>46</sup> Virtudes 2016 *Procedia Engineering* 1711; International Council for Local Environmental Initiatives *Local Agenda 21 Planning Guide* 80; and SDG 11 (Targets 11.1; 11.2 and 11.7).

<sup>47</sup> Virtudes 2016 *Procedia Engineering* 1711; International Council for Local Environmental Initiatives *Local Agenda 21 Planning Guide* 80.

<sup>48</sup> Moyo "Basic Tenets of Zimbabwe's New Constitutional Order" 18; Mutema 2012 *International Journal of Asian Social Science* 2091.

<sup>49</sup> SDG 11 (Target 11.3).

<sup>50</sup> UN-Habitat *International Guidelines* 11.

<sup>51</sup> UN-Habitat *International Guidelines* 3; Mitchell 2018 *State and Local Government Review* 110.



planning process.<sup>52</sup> Strong political commitment serves to encourage other stakeholders at the local level, including the private sector, to contribute to spatial planning processes aimed at promoting local sustainability.

The above factors would enhance the potential of spatial planning in driving development at the local level. The discussion below briefly explores the law and policy basis for sustainable cities in Zimbabwe.

#### **4 The legal and policy basis for sustainable cities in Zimbabwe**

The duty of local authorities to promote sustainable development in Zimbabwe predates SDG 11. A reading of the *Constitution of Zimbabwe* (2013), legislation and policies shows that local authorities in Zimbabwe have a legal duty to realise some of the aspirations captured in SDG 11. Although the Constitution does not clearly demarcate the mandate of local authorities, its National Objectives<sup>53</sup> can be considered as one of the sources of the mandate of local authorities to pursue local sustainability. In terms of the National Objectives, local authorities share a moral responsibility with higher tiers of government to adopt and implement a variety of tools that promote access to housing<sup>54</sup> and access to public spaces.<sup>55</sup> In addition, they must promote public participation,<sup>56</sup> promote and preserve local cultures<sup>57</sup> and engage in development planning.<sup>58</sup> The National Objectives are not legally binding and therefore not enforceable. However, they provide guidance on what local authorities can do in order to advance sustainable development and the rights in Chapter 4 of the Constitution.<sup>59</sup>

Apart from the National Objectives, the mandate of local authorities to pursue local sustainable development is evident from their co-responsibility for ensuring the progressive realisation of the socio-economic and environmental rights enunciated in the Constitution.<sup>60</sup> In this context local authorities have a shared responsibility with the other tiers of government to give effect to substantive rights such as the right to shelter,<sup>61</sup> the right to

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<sup>52</sup> Šuklev and Debarliev 2012 *Economic and Business Review* 72-73.

<sup>53</sup> Chapter 2 of the *Constitution of Zimbabwe, Amendment (No 20) Act*, 2013 (the Constitution).

<sup>54</sup> Section 28 of the Constitution.

<sup>55</sup> Sections 20(1)(d), 21 and 32 of the Constitution.

<sup>56</sup> Sections 13(2) and 17-22 of the Constitution.

<sup>57</sup> Sections 16 and 33 of the Constitution.

<sup>58</sup> Section 13 of the Constitution.

<sup>59</sup> *Zimbabwe Homeless People's Federation and 7 Ors v Minister of Local Government and National Housing and 3 Ors* (Civil Appeal SC 541 of 2019; SC 94 of 2020) [2020] ZWSC 94 (17 July 2020) para 8.

<sup>60</sup> See for example, ss 73(2), 75(4), 76(4) and 77(b) of the Constitution.

<sup>61</sup> Section 81(1)(e) of the Constitution.

a clean and healthy environment,<sup>62</sup> the right to food and water,<sup>63</sup> and the right to language and culture<sup>64</sup> by adopting and implementing a wide range of legal, administrative, financial, educational and social measures, for example.<sup>65</sup> These substantive rights are complemented by procedural rights such as the right to access to justice,<sup>66</sup> the right to administrative justice,<sup>67</sup> the right to public participation,<sup>68</sup> and the right to access to information.<sup>69</sup> These rights could be invoked by aggrieved right-holders to force a local authority to comply with the legal norms and standards enshrined in the Constitution.

Besides the Constitution, the mandate of local authorities derived from framework local government legislation<sup>70</sup> and sectoral legislation is also critical to the pursuit of local sustainability in Zimbabwe. This mandate relates to the duty of cities to provide services such as housing,<sup>71</sup> water and sanitation,<sup>72</sup> public transport systems, and public spaces.<sup>73</sup> Local authorities are further required to promote cultural diversity,<sup>74</sup> manage the environment,<sup>75</sup> engage in development planning,<sup>76</sup> plan for and manage

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<sup>62</sup> Section 73 of the Constitution.

<sup>63</sup> Section 77 of the Constitution.

<sup>64</sup> Section 63 of the Constitution.

<sup>65</sup> See paras 3-5 and 7 of CESCR 1990 <https://www.refworld.org/legal/general/cescr/1990/en/5613> (*General Comment No 3*). Also see ACHPR *Principles and Guidelines* 10, 13.

<sup>66</sup> Sections 69(3) and 85 of the Constitution.

<sup>67</sup> Section 68 of the Constitution. This right is governed in terms of the *Administrative Justice Act* [Chapter 10:28] 2004.

<sup>68</sup> Section 67(1) of the Constitution.

<sup>69</sup> Section 62 of the Constitution. This right is governed in terms of the *Access to Information and Protection of Privacy Act* [Chapter 10:27] 2002.

<sup>70</sup> See the *Urban Councils Act* [Chapter 29:15] 1996 (UCA) – a framework local government legislation which functions in tandem with the *Regional Town and Country Planning Act* [Chapter 29:12] 1976 as amended (RTCPA).

<sup>71</sup> See ss 16, 23, 36, 43, 63 and 88 as well as the First and Second Schedules to the *Housing Standards Control Act* [Chapter 29:08] 1972. Also see Principles 33 and 63 of the *National Housing Policy* (2012) (NHP).

<sup>72</sup> See ss 12(1), 64(1), 67 and 183 of the *Water Act* [Chapter 20:24] 1998. Also see *Zimbabwe National Water Policy* (2012) 16, 17.

<sup>73</sup> See ss 4 and 39-52 of the *Roads Act* [Chapter 13:18] 2001; *National Transport Policy* (2012).

<sup>74</sup> Section 8 of the *Environmental Management Prohibition Access to Genetic Resources and Indigenous Genetic Resource-Based Knowledge Regulations*, SI 61 of 2009 (hereinafter referred to as SI 61 of 2009). Also see the *National Museums and Monuments Act* [Chapter 25:11] 1972.

<sup>75</sup> *Waste and Solid Waste Disposal Regulations*, SI 6 of 2007; *Environmental Management (Environmental Impact Assessments and Ecosystems Protection) Regulations*, SI 7 of 2007; *National Environmental Policy and Strategies* (2009).

<sup>76</sup> Section 9(1) of the *Civil Protection Act* [Chapter 10:06] 1989; s 4(a) of the *Roads Act* [Chapter 13:18] 2001; s 12(1) of the *Water Act* [Chapter 20:24] 1998; *National Climate Change Response Strategy* (2014) (NCCRS) 145; *National Climate Policy* (2016) (NCP) 24; NHP para 62.

disasters,<sup>77</sup> and engage in climate change mitigation and adaptation.<sup>78</sup> The fact that local authorities have a mandate over a wide range of issues underscores the need for local authorities to promote horizontal integration across different sectors and departments in order to address the multi-dimensional and crosscutting issues faced by urban-dwellers in the face of rapid urbanisation.

Although the constitutional, legislative and policy frameworks capture the mandate of local authorities piecemeal, they oblige and enable local authorities to provide city services critical to the pursuit of local sustainability as envisaged in terms of SDG 11. Since the ability of local authorities to discharge this mandate depends on their utilisation of different local governance tools, Part 5 below questions the extent to which the legal and policy frameworks in Zimbabwe empower urban local authorities to utilise spatial planning in pursuit of local sustainability, taking into consideration the generic factors discussed in Part 3 above.

## **5 Legal and policy framework for spatial planning in Zimbabwe**

As noted in Part 3, the success of spatial planning depends largely on the existence of a solid and predictable long-term legal framework for urban development.<sup>79</sup> It can be argued that Zimbabwe has such a framework in place. The national government, through Parliament, enacted the *Regional Town and Country Planning Act* [Chapter 29:12] 1976 (RTCPA) as the principal planning legislation that prescribes the minimum standards to be complied with by local authorities, and designates all urban local authorities as "local planning authorities" for the areas under their jurisdiction.<sup>80</sup> This legislation has undergone several amendments. This section explores how the legal and policy framework caters for the critical success factors distilled in Part 3 above in order to be able to draw conclusions on their relevance and potential in realising the vision in SDG 11.

### **5.1 Flexible urban planning and design**

Successful spatial planning requires that the legal framework for urban development should promote sound and flexible urban planning and design from vertical, horizontal and territorial perspectives.<sup>81</sup> The RTCPA seems to

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<sup>77</sup> See, for example, ss 11(1), 11(5) and 18(2)(c) of the *Civil Protection Act* [Chapter 10:06] 1989; also see the NCP 9-20.

<sup>78</sup> See the NCCRS 100-130. Also see the NCP 9-20.

<sup>79</sup> See Part 3; UN-Habitat *International Guidelines* 3.

<sup>80</sup> Section 10(1) of RTCPA. Since RTCPA was inherited at independence in 1980 and has since then remained the primary tool governing planning in urban areas with no significant changes in 1996, it needs to be construed in line with the 2013 Constitution.

<sup>81</sup> See Part 3; UN-Habitat *International Guidelines* 3.

provide the basis of flexible urban planning and design, if one considers the two-tier planning system captured therein, with regional and master plans<sup>82</sup> on the upper tier and local plans<sup>83</sup> on the lower tier. All local authorities are expected to utilise a master plan to formulate their policies and general proposals for the planning area with regard to coordinated and harmonious development and other uses of land.<sup>84</sup> A master plan is meant to guide development for the whole or part of a local authority's area of jurisdiction<sup>85</sup> for a longer period of time, usually extending to 25 years.<sup>86</sup> It usually precedes a local plan in terms of preparation, and takes into consideration broad policy issues and the economic development of a local authority's area of jurisdiction.<sup>87</sup> Its flexibility lies in the fact that it can be used for: the regulation of land-use; the construction and use of buildings; the conservation and improvement of the physical environment, including the preservation of buildings of special architectural merit or historic interest; the economic development of the planning area; and the movement of traffic therein, including the closure and diversion of any road.<sup>88</sup> It is also required to set out the relationship of the above-mentioned proposals to major proposals for the use of land and traffic in any neighbouring area, which may affect the planning area.<sup>89</sup> The RTCPA also mandates that a master plan contains the following key components: an indication of any part of the planning area to be developed;<sup>90</sup> a written statement with the proposals therein being illustrated on a map - showing topographical details and property boundaries; and other maps, diagrams or illustrations of descriptive nature as the local planning authority considers appropriate.<sup>91</sup>

In order to operationalise master plans, the RTCPA also authorises a local planning authority to keep under review at all times the desirability of preparing a local plan for any part of its area of jurisdiction.<sup>92</sup> A local plan presents in detail the manner in which the policy and general proposals of the master plan are to be implemented in that area.<sup>93</sup> It may be prepared for different purposes for the same part of any area.<sup>94</sup> A local plan focusses on particular aspects or issues in the area that require attention and indicates

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<sup>82</sup> Sections 14-16 and 20-21 of RTCPA.

<sup>83</sup> Sections 17-21 of RTCPA.

<sup>84</sup> Section 14(2)(a) of RTCPA.

<sup>85</sup> See generally s 14 of RTCPA.

<sup>86</sup> Chigara *et al* 2013 *International Journal of Management and Social Sciences Research* 33.

<sup>87</sup> Section 14(2) of RTCPA.

<sup>88</sup> Section 14 (2)(a) of RTCPA.

<sup>89</sup> Section 14 (2)(b) of RTCPA.

<sup>90</sup> Section 14(4) of RTCPA.

<sup>91</sup> Section 14(5) of RTCPA.

<sup>92</sup> Section 17(1) of RTCPA.

<sup>93</sup> Sections 17(3)(c) and 17(4) of RTCPA.

<sup>94</sup> Section 17(2) of RTCPA.

the manner in which these are to be treated.<sup>95</sup> As is the case with a master plan, a local plan can be used for: the regulation of land-use; the construction and use of buildings; the conservation and improvement of the physical environment, including the preservation of buildings of special architectural merit or historic interest; the movement of traffic therein, including the closure and diversion of any road; and the phasing of any development, redevelopment or improvement.<sup>96</sup> A local plan should consist of a map of the planning area showing topographical details and property boundaries; and a written statement with the proposals being illustrated by additional maps, diagrams, illustrations and descriptive matter as the local planning authority considers appropriate.<sup>97</sup> Overall the master planning and local planning functions of local authorities emanating from the RTCPA enable local authorities to effect physical change in accordance with the collective vision, development objectives, projects and sectoral planning tools included in the strategic plans.

In the light of the above, local authorities are required in terms of the RTCPA to adopt and implement master plans<sup>98</sup> and local plans<sup>99</sup> to deal with matters in sectors such as housing, land-use, traffic, roads, the physical environment and culture. These issues are critical to the pursuit of local sustainability as envisaged in terms of SDG 11. The potential of these plans can be enhanced if local authorities imbed within their planning processes the horizontal, vertical and territorial dimensions of integration. The fact that Zimbabwe's legal framework provides context to these dimensions promotes flexible urban planning.

### 5.1.1 *Horizontal integration*

As noted in Part 3 above, horizontal integration requires coordination in the formulation and implementation of spatial plans across different sectors/departments of a local government.<sup>100</sup> Local authorities in Zimbabwe can promote this dimension of integration by coordinating, in their spatial plans, sectors defined in terms of legislative and policy frameworks discussed below.

In the housing sector, local authorities in Zimbabwe have a combined responsibility, together with the other tiers of government, to contribute towards ensuring that people have access to adequate housing.<sup>101</sup> This

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<sup>95</sup> Section 17(3)(b) of RTCPA.

<sup>96</sup> Section 17(3) of RTCPA.

<sup>97</sup> Section 17(5) of RTCPA.

<sup>98</sup> Sections 14-16 and 20-21 of RTCPA.

<sup>99</sup> Sections 17-21 of RTCPA.

<sup>100</sup> See Part 3; Gupta and Nilsson "Toward a Multi-Level Action Framework" 275-281.

<sup>101</sup> Sections 28 and 81 of the Constitution; s 205(1)(b) of the UCA; *Housing Standards Control Act* [Chapter 29:08] 1972; NHP.

responsibility must be fulfilled on a progressive basis through planning for and coordinating appropriate housing development in the authorities' areas of jurisdiction.<sup>102</sup> In order to ensure the conformance of new housing developments with the master plan land-use proposals, urban local authorities are expected *inter alia* to approve the plans for superstructures; supervise construction; provide on and offsite servicing; and certify completed developments.<sup>103</sup> In the same vein local authorities are expected to take all necessary, reasonable and practicable measures to: repair, demolish or close buildings, including dwellings, of an unsatisfactory standard;<sup>104</sup> abate the overcrowding of dwellings;<sup>105</sup> control the harmful use or occupation of premises, and control any undue interference with the rights of the residents of a neighborhood.<sup>106</sup> For example, where slums and informal settlements were established, local authorities in Zimbabwe, with the supervision of the national government, have since independence invoked their planning and development control powers such as regularisation,<sup>107</sup> evictions with demolitions<sup>108</sup> and slum upgrading interventions.<sup>109</sup> By meeting their planning obligations related to housing, local authorities would contribute towards the realisation of Target 11.1 of SDG 11.

Regarding land-use, local authorities are given development control powers<sup>110</sup> which enable them to permit, monitor and regulate<sup>111</sup> the

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<sup>102</sup> NHP para 66.

<sup>103</sup> NHP para 42 and Principles 33:5 and 33:6.

<sup>104</sup> Sections 16, 23(b) and 88 and the First Schedule to the *Housing Standards Control Act* [Chapter 29:08] 1972.

<sup>105</sup> Sections 36, 43, 88 and the Second Schedule to the *Housing Standards Control Act* [Chapter 29:08] 1972.

<sup>106</sup> Sections 52 and 88 of the *Housing Standards Control Act* [Chapter 29:08] 1972.

<sup>107</sup> For example, in 2015 government, through the Urban Development Corporation, began a process of regularising Caledonia – perhaps the largest informal settlement within City of Harare boundaries. The regularisation approved layout plans for phases 4-20 and regularised 27,000 houses with about 90% of the structures being completed houses. Muchadenyika and Williams 2017 *Cities* 38.

<sup>108</sup> A high-profile example is when urban local authorities across the country, with the supervision of the national government, launched a blanket enforcement of planning laws and spatial plans through *Operation Murambatsvina/Restore Order* in order to restore the form and structure of cities, which had significantly changed as if there was no planning at all. It is regrettable to note, however, that about 700,000 people either lost their homes, their source of livelihood or both; with a further 2.4 million people or 18% of the Zimbabwean population affected at varying degrees. For details on this Operation, see Chitimira 2017 *J Afr L* 178-179; Muchadenyika and Williams 2017 *Cities* 37; Ndhlovu *Protection of Socio-Economic Rights in Zimbabwe* 3-4.

<sup>109</sup> Muchadenyika and Williams 2017 *Cities* 37; Republic of Zimbabwe 2015 [https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat\\_2.pdf](https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf) 39.

<sup>110</sup> Part V of RTCPA.

<sup>111</sup> Sections 31-33 of RTCPA.

acquisition, disposal,<sup>112</sup> subdivision and consolidation of land.<sup>113</sup> In this context no person is permitted to subdivide, consolidate or enter into agreements for the lease or change of ownership in relation to a portion of his property without obtaining the permission of the local authority.<sup>114</sup> In the same vein, local authorities, together with the Department of Physical Planning in the Ministry of Local Government, should make sure that construction works commence only upon the approval of the settlement and housing plans.<sup>115</sup> The significance of this, especially in cases where land is owned privately, is that infrastructure and facilities should be designed and used in a way that meets the general development standards. Apart from this, as new settlements develop local authorities should also focus on densification and the development of integrated communities in order to minimise the cost of providing basic services and infrastructure.<sup>116</sup> However land is developed, local authorities should adopt a transit-oriented development approach<sup>117</sup> in the planning of their areas as expected in terms of Target 11.2 of SDG 11. They should also make sure that provision is made for quality and safe public spaces such as public parks, or other social infrastructure that accommodates people from all backgrounds as envisaged in terms of Target 11.4 of SDG 11. In addition, plans should seek to prohibit projects that invade endangered areas such as riverbanks, wetlands, gullies, sloppy areas and marginal lands as well as disaster- and flood-prone areas which are not suitable for human settlement.<sup>118</sup> For example, the Chitungwiza-Seke Combination Concept Plan was developed to respond to unplanned settlement on fragile ecological sites such as wetlands and other areas prone to floods, and to curb illegal land occupations.<sup>119</sup> However, due to the fact that this plan was not effectively implemented, it is reported that many low-lying areas of Chitungwiza were affected by flooding occasioned by the 2020-2021 rainfall season.<sup>120</sup>

In terms of the transport sector, local authorities have a specific mandate to plan, design, construct, maintain, rehabilitate and manage roads in their respective areas of jurisdiction as part of their mandate to provide public transport and ensure road safety.<sup>121</sup> Master plans and local plans adopted

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<sup>112</sup> Part VII of RTCPA.

<sup>113</sup> Part VI of RTCPA.

<sup>114</sup> Section 39(1) of RTCPA.

<sup>115</sup> Paragraph 588 of the Republic of Zimbabwe 2020 [http://www.veritaszim.net/sites/veritas\\_d/files/NDS.pdf](http://www.veritaszim.net/sites/veritas_d/files/NDS.pdf) (the *National Development Strategy*); NHP para 42.

<sup>116</sup> *National Development Strategy* para 599.

<sup>117</sup> NCCRS 115, 137.

<sup>118</sup> NCCRS 49.

<sup>119</sup> *Chitungwiza-Seke Combination Concept Plan* (2015).

<sup>120</sup> Toriro 2021 *Journal of Urban Systems and Innovations for Resilience in Zimbabwe* 144-145.

<sup>121</sup> Section 4(a) of the *Roads Act* [Chapter 13:18] 2001.

by local authorities should include measures for the movement of traffic.<sup>122</sup> For example, they should assist in determining in respect of any omnibus service, the routes and terminal points and the places for the setting down and taking up of passengers in their areas of jurisdiction or any other area under their administration and control.<sup>123</sup> These spatial plans should also include measures for the provision, establishment, erection and maintenance of facilities on roads for the convenience and safety of road users.<sup>124</sup> Cities may also be designed in a way that prioritises non-motorised transport networks such as cycling and pedestrian lanes; that promotes walking; and that includes an interconnected street network.<sup>125</sup> To this end, spatial plans are a tool for the pursuit of Target 11.2 of SDG 11, in terms of which cities are encouraged to provide access to safe, affordable, accessible, and sustainable transport systems for all as well as to "improve road safety, notably by expanding [the provision of] public transport."

In the cultural dimension, the master and local plans adopted by local authorities should seek to improve the facilities or amenities available to the public in connection with any land or thing under the control of the local authority, which may be a monument or national monument or relic in terms of the National Museums and Monuments Act.<sup>126</sup> For example, these plans should include measures for the preservation of buildings of special architectural merit or historic interest.<sup>127</sup> Moreover, the ability of local authorities to design cities in ways that give space for institutions such as schools, public libraries, museums, historical monuments and art galleries<sup>128</sup> is critical to the preservation of natural and cultural heritage in Zimbabwe,<sup>129</sup> and is in line with the objective in Target 11.4 of SDG 11.

In the environmental dimension, the Zimbabwean legal framework for planning obliges and enables local authorities to reduce the environmental impact of cities. For instance, in cases where activities such as housing developments, the provision of water supply, the development of tourist-resorts and other recreational facilities, and the establishment of waste treatment and disposal plants<sup>130</sup> require an environmental impact assessment (EIA) in terms of the *Environmental Management Act*,<sup>131</sup> local

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<sup>122</sup> Sections 14(2)(a)(iv) and 17(3)(iii) of RTCPA.

<sup>123</sup> Section 196(2) of the UCA.

<sup>124</sup> Section 4(g) of the *Roads Act* [Chapter 13:18] 2001.

<sup>125</sup> NCCRS 115, 137.

<sup>126</sup> Paragraph 53(2) of the Second Schedule to the UCA.

<sup>127</sup> Sections 14(2)(a)(ii) and 17(3)(ii) of RTCPA.

<sup>128</sup> Paragraphs 38(a) and 53(1) of the Second Schedule to the UCA; s 16(3) of the Constitution.

<sup>129</sup> Section 16(2) of the Constitution.

<sup>130</sup> Sections 97-108, as well as the First Schedule, to the *Environmental Management Act* [Chapter 20:27] 2002.

<sup>131</sup> *Environmental Management Act* [Chapter 20:27] 2002 (EMA). Part Three of *Environmental Management (Environmental Impact Assessments and Ecosystems*



authorities should make sure that such an EIA is conducted in order to ensure that the development project complies with the local vision for the sustainable use of land and environmentally sensitive areas as stipulated in their master plans or local plans. In the light of the above, the significance of EIA requirements to the realisation of all SDG 11 targets cannot be questioned as it helps in identifying which policies or actions are going to realistically achieve the desired sustainability objectives as well as highlighting where trade-offs and countermeasures may be required during the development planning.

Apart from the above, local authorities have very specific planning responsibilities with regard to waste management in Zimbabwe. The RTCPA identifies refuse or waste disposal<sup>132</sup> as one of the development control functions of local authorities.<sup>133</sup> This responsibility is complemented in terms of Statutory Tool 6 of 2007, which requires local authorities to adopt a waste management plan by 31st December of each year. Such a plan needs to deal with the quantity of waste, the components of the waste, goals for the reduction of the quantity and pollutant discharges of the waste, the transportation and disposal of the waste, and the adoption of the environmentally sound management of wastes.<sup>134</sup> In preparing its own plan, a local authority may request generators of waste in its jurisdiction to submit their own waste management plans.<sup>135</sup> No person is allowed to dispose of solid waste without having obtained a permit from the presiding local authority.<sup>136</sup> A local authority has discretion<sup>137</sup> to issue permits for the disposal of waste considering the provisions of the master/local plan, planning conditions and standards and other material considerations.<sup>138</sup> What one gathers from this is that there is an intrinsic relationship between strategic planning and spatial planning. By adopting and implementing these plans, local authorities will in principle be able to make a meaningful contribution towards realising the environmental rights especially of impoverished urban dwellers who are more vulnerable to the adverse health effects associated with improper waste management practices.<sup>139</sup> From this perspective, these plans are important to local authorities' realisation of Target 11.6 of SDG 11, in terms of which local authorities are encouraged

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*Protection) Regulations*, SI 7 of 2007 specifies how EIAs are conducted in Zimbabwe.

<sup>132</sup> Section 22(1) of RTCPA.

<sup>133</sup> Part V of RTCPA.

<sup>134</sup> Section 12(2) of SI 6 of 2007.

<sup>135</sup> Section 12(1) and 12(2) of SI 6 of 2007.

<sup>136</sup> Section 24 of RTCPA

<sup>137</sup> Section 26(5) and 26(6) of RTCPA.

<sup>138</sup> Section 26(6) of RTCPA.

<sup>139</sup> Section 73 of the Constitution.

to reduce the adverse per capita environmental impact of cities, specifically in terms of municipal solid waste management.

With the above in mind, there is no doubt about the potential of master plans and local plans to promote compactness and mixed land-use. Since the areas of focus of these plans transcend different sectors, such as the environment, roads, traffic, cultural and natural heritage, there is a need for the responsible departments to consider and balance the sector-specific and local area-specific needs in planning processes and encapsulate them in the goals, targets and strategies of local authorities. By integrating sector-specific needs that speak to the socio-economic, environmental and cultural rights entitlements in the planning and implementation of local and master plans, local authorities would improve the relevance of their plans to the objectives envisaged in SDG 11 in their areas of jurisdiction.

### 5.1.2 Territorial integration

As indicated in Part 3 above, territorial integration is important in the spatial planning process.<sup>140</sup> Its significance in this context lies in the fact that Zimbabwe's nine provinces are divided into districts<sup>141</sup> administered by a total of 92 local authorities,<sup>142</sup> 31 of which are urban.<sup>143</sup> Urban local authorities are hierarchically divided into four classes.<sup>144</sup> From highest to lowest, there are seven city councils,<sup>145</sup> nine municipal councils,<sup>146</sup> eleven town councils<sup>147</sup> and four local boards.<sup>148</sup> Zimbabwe's legal framework provides a space for territorial coordination between local authorities in planning processes. At the constitutional level, local authorities in Zimbabwe have a shared responsibility, with other tiers of government, to facilitate rapid and equitable development, and are particularly obliged to formulate and implement (with the participation of local communities) development plans and programmes to ensure a proper balance in the development of rural and urban areas.<sup>149</sup> In terms of this national objective, metropolitan

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<sup>140</sup> UN-Habitat *International Guidelines 1-40*; Kanuri *et al Getting Started with the SDGs in Cities* 72.

<sup>141</sup> See s 5(c)(ii) of the Constitution; ss 6 and 7 of the Rural District Councils Act [Chapter 29:13] 1998; s 4 of the UCA.

<sup>142</sup> See para 40 of the NHP.

<sup>143</sup> Combined Harare Residents Association *Green Paper on Zimbabwe's Local Government* 14; Office of the Auditor-General 2019 [https://www.veritaszim.net/sites/veritas\\_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf](https://www.veritaszim.net/sites/veritas_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf) iv.

<sup>144</sup> Section 4 of the UCA.

<sup>145</sup> Harare, Bulawayo, Gweru, Mutare, Kwekwe, Kadoma and Masvingo.

<sup>146</sup> Kariba, Victoria Falls, Gwanda, Chitungwiza, Redcliff, Marondera, Bindura, Chegutu and Chinhoyi.

<sup>147</sup> They include Karoi, Chipinge, Gokwe, Plum Tree, Norton, Lupane, Zvishavane, Rusape, Shurugwi, Chiredzi and Beitbridge.

<sup>148</sup> They include Ruwa, Chirundu, Epworth and Hwange.

<sup>149</sup> Sections 13(1) and 13(2) of the Constitution.

councils may cooperate with urban, peri-urban and rural areas, based on their common local contexts, in designing and implementing economic, social, cultural and environmental plans that seek to equitably distribute the costs, benefits and opportunities of urban development and particularly to promote social inclusion and cohesion.<sup>150</sup>

In the same vein, section 10 of the RTCPA authorises two or more local authorities to combine their spatial plans on such terms and conditions as may be agreed between them for the purposes of discharging their duties. In addition, before preparing any master plan or local plan, every local authority is obliged in terms of the RTCPA to undertake a study of the planning area and, to the extent it considers necessary, of any neighbouring area in order to determine any factors that are likely to affect its planning or development.<sup>151</sup> When determining any matters relating to a neighbouring area, the local authority is further obliged to consult *inter alia* with the local planning authority or local authority which has jurisdiction in that area concerning those matters.<sup>152</sup> The Harare Master Plan is an example of a plan that embraces the territorial dimension as the Harare City Council jointly prepared the master plan with eleven other local authorities around and adjacent to Harare City.<sup>153</sup> These constitutional and legislative provisions can be used to improve the development linkages between urban, peri-urban and rural areas by coordinating and integrating sectorial policies that commonly affect local authorities as envisaged in terms of Target 11.a of SDG 11. They can be a powerful tool to reduce territorial inequalities, protect ecological systems and improve economic productivity in the region, while addressing the needs of the most vulnerable, marginalised or underserved groups.

### 5.1.3 Vertical integration

As noted in Part 3 above, by promoting vertical integration local authorities would enhance the potential of spatial planning.<sup>154</sup> Vertical integration can be promoted by allowing supervision from higher levels of government since the objectives that local authorities seek to pursue contribute to the overall development objectives of government. Zimbabwe's legal framework specifically provides for the supervision of local authorities in the formulation and implementation of development plans and programmes to ensure a

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<sup>150</sup> Section 298(1)(c) of the Constitution. Also see Principle 6(a) of UN-Habitat *International Guidelines*.

<sup>151</sup> Section 13(1)(a) of RTCPA.

<sup>152</sup> Section 13(2) of RTCPA.

<sup>153</sup> These included local authorities governing the adjacent areas of Goromonzi, Chitungwiza, Seke Beatrice Mazowe and Zvimba. *Harare Combination Master Plan* (1993).

<sup>154</sup> Chigwata, Muchapondwa and De Visser 2017 *J Afr L* 44; Chigwata and Ziswa 2018 *HJRL* 311-312.

good balance in the development of rural and urban areas.<sup>155</sup> In this light, a local authority can promote vertical integration by aligning proposals for its local plans to standards prescribed in terms of the RTCPA, National Development Plans (NDPs) and provincial development plans (PDPs), for example.<sup>156</sup> In order to promote vertical integration, the law requires that a local authority should submit a draft local/master plan to the Minister of Local Government for approval before it becomes a legal document.<sup>157</sup> Apart from this, vertical integration can be promoted by allowing the Department of Physical Planning to exercise its oversight role over local authorities through the technical evaluation of plans such as master plans, local plans and layout plans.<sup>158</sup> This oversight role has the potential to ensure that struggling local authorities are provided with the necessary support to enable them to meaningfully contribute to the pursuit of local sustainability. In the same vein, local authorities can promote vertical integration by complying with any ministerial directive which makes proposals for the alteration, repeal or replacement of a master plan or local plan within such a period as the Minister may direct.<sup>159</sup> These powers by the Minister need to be exercised in a manner that strikes a balance between the need to optimise the national supervision and self-governing powers of local authorities entrenched in section 276(1) of the Constitution.<sup>160</sup> Overall, meeting these obligations has the potential to strengthen and align urban planning with national and regional frameworks as expected in terms of SDG 11.a.

## **5.2 Public participation**

Public participation, which is one of the constitutive elements of good urban governance, is important for spatial planning.<sup>161</sup> While the Constitution provides for public participation<sup>162</sup> in broad terms, the RTCPA elaborates how local authorities can particularly facilitate meaningful participation in decision-making and implementation.<sup>163</sup> In terms of this Act, there are two stages at which local authorities need to engage the public. Firstly, in formulating, and before finally determining the contents of a master or local plan, a local authority is expected to take the necessary steps to ensure that

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<sup>155</sup> Sections 13(1) and 13(2) of the Constitution; s 17(4) of RTCPA.

<sup>156</sup> Section 17(4) of RTCPA.

<sup>157</sup> Sections 16(4) and 19(5) of RTCPA.

<sup>158</sup> Chirisa 2014 *Consilience* 6; Kamete 2009 *Urban Studies Journal Limited* 906.

<sup>159</sup> Section 20(1)(b) of RTCPA.

<sup>160</sup> Subject to the Constitution and any legislation, local authorities have the right in terms of this section to govern, on their own initiative, the local affairs of the people within their areas of jurisdiction.

<sup>161</sup> See Part 3 above. Also see UN-Habitat *International Guidelines* 8, 9. Virtudes 2016 *Procedia Engineering* 1711; International Council for Local Environmental Initiatives *Local Agenda 21 Planning Guide* 80; and SDG 11 (Targets 11.1; 11.2 and 11.7).

<sup>162</sup> Section 67(2) of the Constitution.

<sup>163</sup> Section 15 of RTCPA.

there is adequate consultation in connection with the matters proposed to be included in a local or master plan.<sup>164</sup> In this context, local authorities may rely on the input of CSOs,<sup>165</sup> the National Association of Non-Governmental Organisations (NANGO), and other relevant stakeholders which may contribute to the mobilisation and representation of certain classes of people including women,<sup>166</sup> children,<sup>167</sup> youths,<sup>168</sup> older persons<sup>169</sup> and persons with disabilities<sup>170</sup> in public consultations on spatial planning.

Secondly, after adopting a master or local plan, but before submitting it to the Minister for consideration,<sup>171</sup> a local authority is obliged in terms of the RTCPA to place on public exhibition for two months a copy of the draft master or local plan with a statement indicating the place or places at which, and the time within which objections to, or representations in connection with, the draft master or local plan may be made.<sup>172</sup> The participatory planning envisaged in terms of these obligations<sup>173</sup> has the potential to promote inclusivity as envisioned in terms of SDG 11.

Despite the above obligations, it is regrettable to note that public participation is not effective in Zimbabwe.<sup>174</sup> In some cases local authorities have completely failed to comply with their mandate to promote public participation during planning processes. For example, when adopting the Enterprise Corridor Local Development Plan Number 60,<sup>175</sup> the Harare City Council blatantly ignored the objections raised by the Harare Wetlands Trust that the proposed developments had the potential to destroy the wetlands in different parts of the area.<sup>176</sup> The failure to consult the public may be attributed to the general alienation of citizens from public governance in Zimbabwe.<sup>177</sup> Apart from electing local councillors, citizens do not have any

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<sup>164</sup> Sections 15(1) and 18(1) of RTCPA.

<sup>165</sup> Section 7(c) of the Constitution.

<sup>166</sup> Sections 20 and 80 of the Constitution.

<sup>167</sup> Sections 19 and 81 of the Constitution.

<sup>168</sup> Section 20 of the Constitution.

<sup>169</sup> Sections 21 and 82 of the Constitution.

<sup>170</sup> Sections 21, 22, 82 and 83 of the Constitution.

<sup>171</sup> Sections 16(1) and 18(2)(a) of RTCPA.

<sup>172</sup> Sections 15(2)(a), 15(2)(b), 18(2)(b) and 18(2)(c) of RTCPA.

<sup>173</sup> Also see SDG 11 (Target 11.3).

<sup>174</sup> Masvaure 2016 *Urban Forum* 447-463; Chikerema 2013 *Journal of Humanity and Social Science* 88.

<sup>175</sup> The plan covers an area approximately two kilometres from the Enterprise Road along the whole stretch of the Enterprise Road from Eastlea, through Highlands up to the north-eastern end of Harare City. It seeks to introduce several non-residential uses (offices and other commercial uses) along this corridor, that was previously largely residential in character. *Harare Enterprise Corridor Local Development Plan* (2020).

<sup>176</sup> For details, see Toriro 2021 *Journal of Urban Systems and Innovations for Resilience in Zimbabwe* 139-141.

<sup>177</sup> Masvaure 2016 *Urban Forum* 447-463; Chikerema 2013 *Journal of Humanity and Social Science* 88.

other effective means of participating in local governance. This means that citizens cannot generally influence spatial planning in Zimbabwe.

### 5.3 *Financial resources*

It was noted in Part 3 above that the successful execution of the spatial planning function also depends on whether a local authority has the requisite fiscal resources.<sup>178</sup> In line with this, section 14(3)(b)(v) of the RTCPA obliges local authorities to give due regard to the available resources when preparing master plans.<sup>179</sup> The ability of local authorities to meet this requirement partly depends on the extent to which their fiscal powers is guaranteed in Zimbabwe's legal framework. Although the Constitution does not expressly assign revenue-raising powers to local authorities in Zimbabwe, it gives discretion to the national government to confer, through an Act of Parliament, "the power to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objects and responsibilities".<sup>180</sup> There are various Acts of Parliament that expressly provide for a wide range of powers of local authorities to unilaterally or mutually (with other tiers of government) raise revenue to meet their obligations.<sup>181</sup> Despite their fiscal powers, research shows that local authorities in Zimbabwe are struggling to raise sufficient revenue to meet their expenditure and development obligations.<sup>182</sup> As such, local authorities often depend on financial support from the national government sanctioned in terms of the Constitution.<sup>183</sup> For example, in the 2022 National Budget the national government committed to allocating conditional grants of ZWL\$470 million specifically towards spatial planning.<sup>184</sup> This was in addition to the amount of ZWL\$42.5 billion that was allocated as inter-governmental fiscal transfers to local and provincial tiers of government.<sup>185</sup> Considering the annual inflation rate, which was pegged at 54.5 per cent in October 2021,<sup>186</sup> it seems the allocations were inadequate. It is against this background that local authorities in Zimbabwe can engage the international

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<sup>178</sup> UN-Habitat *International Guidelines* 3; UN-Habitat *Habitat III Issue Paper* 8 7, 8.

<sup>179</sup> Section 14(3)(b)(v) of RTCPA.

<sup>180</sup> Section 276(2)(b) of the Constitution.

<sup>181</sup> See for example ss 218, 159, 179, 173, 174, 178, 152, 269 and 272 of the UCA. Also see the Second Schedule to the UCA. For details on these sources of revenue, see Chigwata "Fiscal Decentralisation" 218-240.

<sup>182</sup> Republic of Zimbabwe 2020 <http://zimbabwe.un.org/en/159037-zimbabwe-sdgs-review-progress-report>; Chigwata "Fiscal Decentralisation" 226.

<sup>183</sup> Section 301(1) of the Constitution.

<sup>184</sup> Ministry of Finance 2021 <http://www.zimra.co.zw/downloads/category/18-government-gazettes?downloads=1756:2022-national-budget-statement-25-nov-21.pdf> paras 342 and 349. (hereafter Ministry of Finance 2022 *National Budget Statement*).

<sup>185</sup> Ministry of Finance 2022 *National Budget Statement* paras 134 and 538.

<sup>186</sup> Ministry of Finance 2022 *National Budget Statement* para 26.

community<sup>187</sup> and the private sector<sup>188</sup> for financial assistance to complement the financial resources obtained from higher tiers of government.<sup>189</sup> The prospect of success in securing private sector economic assistance and international donations is limited, however, given the constrained national and global economic conditions. In addition, systemic corruption in planning in Zimbabwe<sup>190</sup> has seriously diluted transparency and accountability in local governance. This is contrary to the vision expressed in the Constitution.<sup>191</sup>

#### **5.4 Political will**

Political and managerial commitment was identified in Part 3 above as a crucial success factor for spatial planning.<sup>192</sup> Although local authorities in Zimbabwe generally have operative master and local plans, there are mixed findings about their commitment to implementing and monitoring them. To start with, local authorities are empowered in terms of the RTCPA to do anything which is necessary to implement an operative master plan or local plan.<sup>193</sup> They can establish sound monitoring and evaluation mechanisms in terms of the RTCPA in order to assess the rate of development progress and identify the gaps in development.<sup>194</sup> In cases of the non-conformance of physical developments with the requirements in a master plan, urban local authorities have often invoked their development control powers to demolish or regularise informal structures.<sup>195</sup> However, it is lamentable to note that local authorities have in some cases blatantly ignored certain proposals in master plans, as if they were self/-executing. For example, the Harare City Council has not constructed the two major dams that were proposed in terms of its Harare Master Plan to augment the water supplies in the Manyame Catchment that were projected to be inadequate by the year 2000.<sup>196</sup> It is difficult to tell if this should be attributed to a lack of political will or inadequate fiscal resources. In addition, local authorities have often been reluctant to alter, repeal or replace outdated plans as required in terms

<sup>187</sup> SDG 11 (Target 11.c).

<sup>188</sup> Masekesa 2021 *PELJ* 1-43.

<sup>189</sup> SDG 11 (Targets 11.3, 11.4 and 11.a).

<sup>190</sup> The Auditor-General noted with concern that Gweru City Council was also unable to provide layout plans for stands sold during the 2018 financial year. Office of the Auditor-General 2019 [https://www.veritaszim.net/sites/veritas\\_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf](https://www.veritaszim.net/sites/veritas_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf) v. Also see *Norton Town Council Strategic Plan (2019-2023)* (2019) 15, 17; *City of Harare Results-Based Strategic Plan (2017-2020)* (2017) 27, 29, 43; *City of Bulawayo Corporate Strategy (2020-2024)* (2020) para 4.1.

<sup>191</sup> Sections 9 and 265(1)(a) of the Constitution.

<sup>192</sup> UN-Habitat *International Guidelines* 3.

<sup>193</sup> Section 11(1) of RTCPA.

<sup>194</sup> Section 20(1)(a) of RTCPA.

<sup>195</sup> See Part 5.1.1.

<sup>196</sup> For details, see Toriro 2021 *Journal of Urban Systems and Innovations for Resilience in Zimbabwe* 142-143.

of the RTCPA.<sup>197</sup> As such, master plans that have been operative in some local authorities have not been kept abreast with the current and emerging urban challenges. For example, the Harare City Council and the Mutare City Council are only now in the process of reviewing their master plans which were adopted in 1993.<sup>198</sup> When these master plans were prepared, about 20 years ago, the urban population was still small, housing was still largely delivered by councils and not cooperatives, the economy was largely formal, and there were very few vendors who could all be accommodated in designated areas. However, the process of reviewing these obsolete master plans by the Harare City Council and the Mutare City Council could be fruitful as it gives these local authorities the chance to define goals and targets that resonate with the local sustainability envisioned in terms of SDG 11.

### **5.5 Legal effect of spatial plans**

For the draft master or local plan to become a legal document, the Minister must formally approve it.<sup>199</sup> Once a master plan or local plan is approved, it becomes a binding local governance tool (on a date specified in the Government Gazette) which guides and informs all planning and development in a planning area.<sup>200</sup> It is of paramount importance to ensure that there are no conflicts between master plans and local plans,<sup>201</sup> as is sometimes expected from the development of physical plan products like houses and roads, for example. Where there is a conflict between a provision in a master plan and a provision in a local plan which was operative before the master plan became operative, that provision in the local plan ceases to be of effect when the master plan becomes operative.<sup>202</sup> Apart from this, the RTCPA accords more legal force to master plans than by-laws. If any provision in a municipal by-law conflicts with any provision of an operative master plan or local plan, such a provision of the by-law ceases to be of force and should be amended or repealed.<sup>203</sup> In the same vein, the RTCPA makes provision for an Administrative Court to address disputes relating to planning decisions,<sup>204</sup> including master/local plan implementation.<sup>205</sup> This is in line with the right to access to justice

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<sup>197</sup> Section 20(1) of RTCPA.

<sup>198</sup> Toriro 2021 *Journal of Urban Systems and Innovations for Resilience in Zimbabwe* 143.

<sup>199</sup> Sections 16(4) and 19(5) of RTCPA.

<sup>200</sup> Sections 14(2), 17(3) and 19(4) of RTCPA. In terms of s 2 of this Act, "planning area" means the area for which a regional plan, master plan or local plan is being or has been prepared.

<sup>201</sup> Section 21 of RTCPA.

<sup>202</sup> Section 21(1) of RTCPA.

<sup>203</sup> Section 21(2) of RTCPA.

<sup>204</sup> Part X of RTCPA.

<sup>205</sup> Section 11 of RTCPA.



guaranteed in the Constitution.<sup>206</sup> Any person with legal standing in terms of section 85(1) of the Constitution can approach the court for relief. The effective functioning of the court has the potential to ensure that local authorities do not unduly prejudice private property interests and vindicates aggrieved persons as a result of a master or local plan coming into operation or damage by reason of an action taken by a local authority.<sup>207</sup>

Moreover, where SDG 11 targets have been mainstreamed into a spatial plan, a local authority must pursue such targets in a manner that is consistent with the content of the respective spatial plan and may not deviate from it. When physical developments in urban local authorities do not conform to the land use requirements in a master plan, the respective urban local authorities can exercise their development control powers in order to ensure compliance. These development control powers include: powers for enforcing legal compliance where an authority considers that there is illegal development taking place;<sup>208</sup> powers to remove or demolish or alter existing buildings or to discontinue or modify uses;<sup>209</sup> powers to grant orders for the preservation of buildings of special architectural merit or historic interest;<sup>210</sup> and powers to preserve trees and woodlands.<sup>211</sup>

It goes without saying that spatial plans are dynamic, since a local authority is obliged in terms of the RTCPA to alter, repeal or replace plans if it is discovered that the assumptions upon which they were based are no longer valid.<sup>212</sup> The fact that the Harare City Council and the Mutare City Council are in the process of reviewing their master plans gives them the opportunity to define their goals and targets, to be guided by the levels of ambition in SDG 11 while taking local circumstances into account.

## 6 Conclusion

The international community acknowledges cities as essential drivers of sustainable development as is shown by the inclusion of a stand-alone goal for cities in the 2030 Agenda. In Zimbabwe, as elsewhere, a sub-national scale of intervention at the core of SDG 11 is critical if by 2030 its cities are to meaningfully address a wide range of sustainability challenges in the areas of housing, land use, access to water, roads, traffic and culture, to address climate change and to plan for the mitigation of local disasters, for example. Although there is no piece of legislation or policy containing a coherent set of principles for the transition of cities to a sustainable future,

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<sup>206</sup> Sections 69(3) and 85 of the Constitution.

<sup>207</sup> Part VIII of RTCPA.

<sup>208</sup> Section 32 of RTCPA.

<sup>209</sup> Section 33 of RTCPA.

<sup>210</sup> Section 30 of RTCPA.

<sup>211</sup> Section 31 of RTCPA.

<sup>212</sup> Section 20(1) of RTCPA.

as expected in terms of SDG 11, there are synergies and interactions that can be drawn between the rights-based constitutional duties of local authorities in the country and their express mandate in national legislation, on the one hand, and planning for the sustainable cities envisioned by SDG 11, on the other hand. Cognisant of the many local governance tools that are at the disposal of local authorities, this article has analysed the extent to which the legal and policy frameworks for spatial planning in Zimbabwe enable cities to use this tool to pursue the vision encapsulated in SDG 11. In order to achieve this objective the article has distilled spatial planning benchmarks from scholarly literature and international best practice and used them to test Zimbabwean planning laws and policies. In terms of this assessment, it has generally been established that the Constitution and the *Regional Town and Country Planning Act* [Chapter 29:12] 1976 sufficiently make provision for some of the key features required for effective spatial planning at the local level. This article has argued that although the existing legal framework makes adequate provision for features that could hypothetically guide cities to use spatial planning to pursue the vision envisaged in SDG 11 in Zimbabwe, their potential is constrained by diverse factors such as the lack of effective public participation in local governance, the inability of local authorities to generate sufficient revenue, systemic corruption in spatial planning processes, and the under-utilisation of the flexible and accommodating legal framework. Some local authorities in Zimbabwe continue to use outdated spatial plans that do not reflect the current reality in their jurisdictions. Without adequately addressing these challenges, the ability of such local authorities to utilise the legal framework regulating spatial planning to drive the ideals encapsulated in SDG 11 is severely constrained.

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## List of Abbreviations

ACHPR	African Commission on Human and People's Rights
AHRLJ	African Human Rights Law Journal
CESCR	Committee on Economic, Social and Cultural Rights
CSOs	civil society organisations
DRR	disaster risk reduction
EIA	Environmental Impact Assessment
EMA	Environmental Management Act [Chapter 20:27] 2002
HJRL	Hague Journal on Rule Law
J Afr L	Journal of African Law
LDD	Law, Democracy and Development

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NANGO	National Association of Non-Governmental Organisations
NCP	National Climate Policy (2016)
NCCRS	National Climate Change Response Strategy (2014)
NDP	National Development Plan
NHP	National Housing Policy (2012)
NUA	New Urban Agenda
OECD	Organisation for Economic Co-operation and Development
PDP	Provincial Development Plan
PELJ	Potchefstroom Electronic Law Journal
RTCPA	Regional Town and Country Planning Act [Chapter 29:12] 1976
SDG	Sustainable Development Goal
SI	Statutory Instrument
UCA	Urban Councils Act [Chapter 29.15] 1996
UN	United Nations
UN-Habitat	United Nations Human Settlements Programme
UNEP	United Nations Environment Programme