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Practising planners' perceptions of post-1994 planning law and settlement planning and development processes: A Western Cape case study

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Research article

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Abstract

While a significant body of academic work has been compiled on the transformation of planning law since the end of apartheid, far less has been produced on the perceptions of practising planners of these new laws, and their impacts on the planning profession's stated objective of contributing to the creation of quality human settlements. This article seeks to assist in filling this gap in the field by reporting on a study into the perceptions of practising planners in the Western Cape in this regard. The study involves research into the views of professional planners on planning laws applied during and post-apartheid and the impact of these laws on human settlement planning and development. Data was collected through semi-structured interviews with 25 professional planners employed in the public and private sectors. The data sample, limited to the Western Cape province, was regarded as a starting point for further research on the perception of planners in these regards in the remaining eight provinces in the country. The key findings of this study are that planners by and large welcome the new planning legislation and view it as an improvement on the old. The challenges being experienced are mainly related to the institutional and financial landscape in which the law plays out rather than the law itself, notably lengthy planning processes; a focus on meeting housing-delivery targets at the cost of other equally important settlement development objectives; and capacity, and budget constraints.

Keywords: Practising planner; perceptions; human settlement development; planning law

PRAKTISERENDE BEPLANNERS SE PERSEPSIES VAN POST-1994 BEPLANNINGSREG EN NEDERSETTINGSBEPLANNING EN ONTWIKKELINGSPROSESSE: 'N WES-KAAPSE GEVALLESTUDIE

Terwyl 'n beduidende hoeveelheid akademiese werk saamgestel is oor die transformasie van beplanningswetgewing sedert die einde van apartheid, is veel minder gepubliseer oor die persepsies van praktiserende beplanners van hierdie nuwe wette, en hul impak op die beplanningsberoep se verklaarde doelwit om by te dra tot die skepping van kwaliteit menslike nedersettings. Hierdie artikel poog om 'n bydrae te maak tot die vul van hierdie gaping deur verslag te doen oor 'n studie oor die persepsies van praktiserende beplanners in die Wes-Kaap in hierdie verband. Die studie behels navorsing oor die sienings van professionele beplanners oor beplanningswette wat tydens en post-apartheid toegepas is, en hul impak op menslike nedersettingsbeplanning en -ontwikkeling. Data is ingesamel deur middel van semi-gestruktureerde onderhoude met 25 professionele beplanners wat in die openbare en privaat sektore werksaam is. Die datasteekproef, beperk tot die Wes-Kaap provinsie, is beskou as 'n beginpunt vir verdere navorsing oor die persepsie van beplanners in hierdie verband in die ander agt provinsies in die land. Die sleutelbevindinge van hierdie studie is dat beplanners die nuwe beplanningswetgewing grootliks verwelkom en as 'n verbetering op die oue beskou. Uitdagings wat ervaar word, hou grootliks verband met die institusionele en finansiële landskap waarin die reg afspeel, eerder as die wetgewing self, veral lang beplanningsprosesse; 'n fokus op die bereiking van behuisingslewering teikens ten koste van ander ewe belangrike nedersettingsontwikkelingsdoelwitte; en kapasiteit, en begrotingsbeperkings.

MAIKUTLO A LITSIBI TSA THERO EA LITOROPO MABAPI LE MOLAO OA MERALO KA MOR'A 1994 LE LITS'EBETSO TSA MORALO OA BOLULO LE NTS'ETSOPELE: BOITHUTO BA WESTERN CAPE

Leha ho se ho bokelletsoe lingoliloeng tsa boithuto tse ngata mabapi le phetoho ea molao oa moralo ho tloha pheletsong ea aparateiti, liphuputso li foka haholo mabapi le maikutlo a barali ba litoropo ka melao ena e mecha, le litlamorao tsa eona profesheneng ea ho rala libaka haholo-holo thehong ea metse e boleng bo botle.

Morero oa sengoliloeng sena ke ho tlatsa sekheo sena sa tsebo lefapheng lena ka ho tlaleha boithuto mabapi le maikutlo a barali ba libaka Kapa Bophirima. Boithuto bona bo kenyelletsa liphuputso mabapi le maikutlo a litsebi mabapi le melao ea meralo e neng e sebelisoa nakong le ka morao ho khethollo ea

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merabe le litla-morao tsa melao ena meralong le nts'etsopeleng ea metse. Lintlha li ile tsa bokelloa ka lipuisano tse hlophisitsoeng hantle le litsebi tse 25 tse hiriloeng makaleng a sechaba le a poraefete. Mohlala oa thlahiso leseling, o lekanyelitsoeng feela profensing ea Kapa Bophirima, o ile oa sebelisoa e le qalo ea lipatlisiso tse tsoelang pele ka maikutlo a litsebi mabapi le lintlha tsena liporofenseng tse robeli tsa naha. Tse fumanoeng tsa bohlokoa phuputsonbg ena ke hore baetsi ba meralo ka kakaretso ba amohela molao o mocha oa moralo mme ba o nka e le ntlafatso ho oa khale. Liqholotso tse hlahellang li amana haholo-holo le boemo ba litsi le lichelete tseo molao o sebetsang ho tsona ho e-na le molao ka booona, haholo-holo nako e telele e nkuoang ho etsa meralo; tsepamiso ea maikutlo ho fihlelleng lipehelo tsa phano ea matlo ho sa natse lipheo tse ling tsa bohlokoa ntlafatsonhg ea bolulo; bokhoni, le likhaello tsa lichelete.

1. INTRODUCTION

Given its birth during colonial and apartheid times, settlement planning and development in South Africa was guided by, and focused on the pursuit of racial and spatial segregation. With the dawn of democracy in April 1994, the scene was set for significant changes in this regard. Crafting, discussing, finalising, passing, and promulgating new legislation did, however, not happen overnight (Berrisford, 2011; Oranje & Berrisford, 2016). This meant that the newly elected government's promises and stated objectives of delivering adequate housing for all had to be done using the apartheid-based and focused pre-1994 laws. This included the Black Communities Development Act, Act 4 of 1984 (BCDA), the Land Use Planning Ordinance, 15 of 1985 (LUPO), and the Less Formal Township Establishment Act, Act 113 of 1991 (LFTEA).

These laws were repealed only with the passing of the new Spatial Planning and Land Use Management Act, Act 16 of 2013 (SPLUMA), meaning that legally grounded post-apartheid settlement planning in terms of uniform law applicable to all people and all areas in the country, is merely over a decade old (RSA, 2013). Short as this new era may be, enough time has passed for taking stock and establishing how these new laws are being viewed, their provisions experienced, and their impacts on the planner's task of assisting in the creation of quality human settlements perceived. The research reported on in this article aims to obtain these views from practising town planners in the Western Cape province.

2. LITERATURE REVIEW

2.1 Planning reform

At heart, this study is about planning reform and the ability of planners to adjust to and work effectively and efficiently within the new system. Planning reform is not an easy task, as it faces a range of challenges (Berrisford, 2011; Oranje & Berrisford, 2016; Watson, 2011). In countries emerging from erstwhile socialist eras, not unlike South Africa did when it unshackled itself from apartheid, land-use planning reform was regarded as a necessary adjustment to the harsh new economic and political realities of neo-liberalism and globalisation (Niedzialkowski & Beunen, 2019). Poland, one of the countries that had to undergo such a transition, went through decades of adjustment, with planners in the country having to rapidly adjust to a very different land-use planning dispensation (Niedzialkowski & Beunen, 2019; Gurran & Phibbs, 2013; Gunn & Hillier, 2014; Lord *et al*., 2017; Olesen & Carter, 2017).

Grappling with very similar socio-spatial and economic issues as South Africa, *i.e.*, poverty, exclusion, and environmental distress, Brazil experienced similar stresses when it embarked on a process of planning reform in the 1980s and the drafting of new urban plans starting in the early 2000s (Fernandes, 2007; Watson, 2001). While planners have gone to great lengths to work with and within the new system, they have struggled to realise the progressive objectives of the new planning system (Fernandes, 2007).

Back in South Africa, the legacies of planning post-apartheid have been well-documented and highlight the difficulties with impacting significantly on the inherited legacies of an unequal distribution of services, and long travelling distances by the poor to work and study opportunities (Turok, 1994; Turok, 2013; Berrisford, 2011). Further aggravating the situation was the continued use of apartheid legislation over 15 years into the new dispensation (Berrisford, 2011; Oranje & Berrisford, 2016).

2.2 The planning profession and planning laws post-apartheid

The planning profession is of key importance in the planning for, and development of human settlements through a set of statutorily defined processes. In the private sector, consulting town planners are typically appointed by a property developer to design a desired new settlement or extension to an existing settlement, allocate land uses, manage the settlement establishment process, and coordinate the work of the other experts involved, from initiation to construction. The same applies when consulting planners are appointed by the public sector to undertake human settlement development projects on behalf of the government.

During the colonial and apartheid years, the objectives, manoeuvring space and 'permitted set of activities' of planners were framed and curtailed by laws and policies aimed at advancing the ideology of separation, segregation, and marginalisation for the benefit of White South Africans and at the cost of Black South Africans (Barnett, 1993; Watson, 2001). At the same time, the legal framework consisted of different laws for different racial groups and the planning for, and development of 'their' segregated settlements (Berrisford, 2011). Planners had to plan, develop, and regulate human settlement in accordance with these laws. As a result, the planning profession was viewed as a crucial contributor to the creation of parallel planning systems and settlements for different racial groups (Christopher, 1987, Oranje, 1998; Jones *et al*., 2021).

When South Africa became a democratic state in 1994, informal settlements began to develop on vacant portions of land, due to uncertainty surrounding the

political transition at the time (Huchzermeyer, 2013). This period saw the passing of the White Paper on Housing that aimed to ensure inclusivity, equity, justice, redress, and housing establishment and provision, and strived towards a uniform and consistent approach to land-use planning throughout the country (Nkambule, 2012; Van Wyk, 2015; Maleham, 2018). The White Paper policy on the future systems of planning was the first of many versions of the Land-Use Management Bill that were first published in 2001 (Berrisford 2011; Oakenfull, 2021).

Driven on by the need for new planning legislation, Government passed the Development Facilitation Act, Act 67 of 1995 (DFA), providing a legal implementation framework, and the White Paper on Spatial Planning and Land-Use Management in 2001 (Berrisford, 2011; Moodley, 2018). The key objectives of the DFA were to bring the fragmented planning system inherited from the past under one legal regime, to create a uniform system for land development, and to rapidly alleviate the huge housing backlog in the country (Van Wyk, 2015; Joscelyn, 2015). This did, however, not happen, as the law was not applied in the Western Cape, and it did not repeal the provincial ordinances, creating a 'dual legal system' (Berrisford, 1997; Berrisford, 2011).

Less than a year after the passing of the DFA, the Constitution of the Republic of South Africa, 1996, came into effect. The Constitution committed government to the pursuit of sustainability from an environmental, service-delivery and economic perspective in the development of sustainable human settlements. Section 26 in the Bill of Rights further compelled government to ensure the progressive delivery of adequate housing for all, and the rectification of spatial and related economic inequities between different racial groups in this regard. In addition to this, Sections 9, 10, and 12 of the Bill of Rights required of government to guarantee access for all to basic services, a safe environment, dignity, and equality – all of which are linked to the creation of sustainable human settlements (South Africa, 1996).

The Constitution provides for the creation of three spheres of government, namely national, provincial, and local, and sets out their legislative powers and functions. Settlement planning functions were located in the interplay between the three spheres without establishing a clear hierarchy in terms of planning, planning functions, and plans (Berrisford, 2011). As a result of this, the governance of planning continued as it did under the previous pre-1994 system, and several provincial governments embarked on new law-making processes in their provinces (Berrisford, 2011; Van der Westhuizen, 2014; Oranje, 2014). The persistence of the previous system also meant that planners were placed in a difficult situation – they knew they had to make fundamental changes to the way they planned, why they planned, for whom they planned, and how they planned, but at the same time, their daily practice was still guided by the legislation from the past.

The Western Cape province, and three other provinces, continued with the planning, development, and regulation of human settlements in accordance with the Land-Use Planning Ordinance, 15 of 1985 (LUPO) (Maleham, 2018; Oakenfull, 2021). LUPO made provision for the categorisation of structure plans, which, in turn, had to conform to Guide Plans (Watson, 2001). Tools such as structure plans and guide plans, used for regional planning during this period, were regarded as a top-down, national control over settlements in urban areas (Watson, 2001; Makhoni, 2020).

In non-White neighbourhoods, human settlements were, for example, established in accordance with acts such as the Black Communities Development Act, 4 of 1984 (BCDA), designated for Black neighbourhoods (Maleham, 2018).

This meant that the racially grounded, fragmented planning system remained in place until the passing of the Spatial Planning and Land-Use Management Act, Act 16 of 2013 (SPLUMA), 19 years into democracy. This law required planners to shift their focus to spatial redress and the creation of sustainable human settlements. It further meant that human settlement development had to be implemented uniformly in the country, based on a set of legislated principles. In addition to this, SPLUMA, in contrast to the preceding legislative instruments, required detailed specialist studies regarding matters such as land suitability, heritage, services, transport, and 'the environment' in settlement development planning (South Africa, 2013). The planning for land use in settlement development also underwent a major shift away from the creation of 'separate monotonous land-use parcels pockets' to the creation of vibrant, mixed land-use settlements (UN, 1996). Rounding off the introduction of a new planning law dispensation in the Western Cape province was the passing of the Western Cape Land Use Planning Act, Act 3 of 2014 (LUPA) (South Africa, 2014). The Western Cape is the only province that in terms of SPLUMA enacted provincial legislation, allowing municipalities in the province to implement their own by-laws (Van Wyk, 2016; De Visser & Poswa, 2019). Accordingly, category A, B, and C municipalities each have their own by-laws, allowing them to execute their authority in terms of planning functions (Van der Berg, 2019).

In summary, post-apartheid planning law reform has proven, as elsewhere, not to have been an easy task. It requires not only that fundamental changes be made by those in the planning profession as to their role and place in the country, but also that they acquire new skills, design settlements differently, and rebuild trust with citizens and government. At the same time, they had to attune their practices and activities to the prescripts of a new legal system. As key actors in this new system, planners are also ideally placed to provide 'feedback' on the functioning and efficacy of the new laws. While other researchers such as Moodley (2018) and Jones *et al.*

(2021) engaged planning and the transformation of planning from the town planners' perspective, they did not specifically focus on the views and experiences of practising planners of the new planning laws. Likewise, authors such as Van Wyk and Oranje (2014; 2022), who reflected on post-1994 planning law, did so as academics/researchers and not from the perspective of the practising planner who works with the laws on a daily basis.

3. RESEARCH METHODOLOGY

3.1 Research design

In this study, a qualitative approach was used to obtain an understanding of the experiences of planners and their perceptions on the new law and its implementation, almost three decades into democracy, in the development of quality human settlements (Flick, 2022: 52). The approach primarily involved information gathered from a group of people in a flexible manner. In this study, interviews were used to collect data and coding and thematic analysis were used to reduce the data (Flick, 2022: 203). The primary focus was on practising planners involved in human settlement planning and development in both the public and the private sectors.

3.2 Population, sample and response rate

The study population included professionally registered planners with the South African Council for Planners (SACPLAN) who practise their profession in planning functions relating to human settlement planning and development in both the public and the private sectors in the Western Cape province. Using non-probability sampling and purposeful selection (Maree & Pietersen, 2016), participants elected for the study had to be professional planners and had to have had at least ten years' work experience in settlement planning and development projects post-1994. In order to provide insights on the comparison between pre- and post-1994 planning laws, planners who were involved in settlement planning and development work before and post-1994 were also included in the sample. This sampling method allowed participants to answer the research questions based on their experience and knowledge in the field (Henning, Van Rensburg & Smit, 2004). The method was considered appropriate for this study as scholars used it to undertake a similar approach, especially for human settlement research work.

The sample for this study comprised of 25 professional planners with the suitability of the sample size guided by data saturation, applicable to qualitative research. Data saturation is a concept that determines whether a sample size is appropriate or not (Marshall *et al*., 2013). The author states that saturation is reached when the data that is gathered delivers nothing new.

Of the planners, 13 were employed in metropolitan and local municipalities, six in the Provincial Government Western Cape, and six in the private sector. The first 15 participants were interviewed in November and December 2021. Even though 'content saturation' was reached after 12 interviews, an additional three planners were interviewed, totalling 15 planners. Thereafter, another ten planners were interviewed between June and December 2022, to ensure that all themes were adequately covered. The first 15 participants were interviewed only four months post the third wave of the pandemic of coronavirus disease (COVID-19) in South Africa, and at an uncertain time globally, especially concerning the health and wellness of individuals. The further 10 participants were interviewed during the period where all health regulations regarding COVID-19 were ended in the country. Despite these two different time periods, the same themes emerged.

3.3 Data collection

The interview schedule included both closed and open-ended questions. Closed questions were used to obtain background information on the professionals in terms of their age, gender, years of work, and sector/s in which they are/were currently or previously employed. The motive of these particular questions was first, to set the participant at ease by starting with an informal discussion before commencing with the research questions and secondly, to determine whether the candidate would be a suitable participant for the study, in accordance with the preferred profile for the research. The closed questions, therefore, confirmed that the selected participants were suitable for the study.

The open-ended questions were directly linked to the study, *i.e.*, the perceptions of the planners on the new/current and past laws; the statutorily prescribed processes in the two sets of laws, and their impacts on human settlement planning and development; the role of the planner in the new legal dispensation; the space provided by the new laws to the planner to live up to the profession's credo of 'the creation of quality human settlements'; and the extent to which the new laws assisted in enabling the meeting of the commitments made in the Constitution regarding sustainability, housing, quality of life, and so on, and the quality of human settlements being created pre- and post-1994. Due to a large part of the study being done during the COVID-19 pandemic, telephonic and virtual meetings were held with the interviewees.

3.4 Data analysis and interpretation

The research data gathered was captured in text format in Microsoft Excel. These transcripts, analysing the empirical evidence gathered, were then grouped into smaller units, in the form of key points and answers that each participant provided per question. Thematic analysis was conducted on the data (Braun & Clarke, 2006). In the same manner, the transcripts were studied to gain an in-depth understanding of the participants' comments concerning the main research question and objectives. Through this process of transcribing data, patterns started to emerge of which themes were allocated to articulate what the participants conveyed (Braun &

Clarke, 2006; Leech & Onwuegbuzie, 2007). These themes were then coded into three dominant themes, using the general concepts that emerged from the participant's discussions, and included statutory processes impacting on human settlement development in the Western Cape province; the Constitutional guarantees and sustainable development; and the role of the planner in human settlement development and planning in the Western Cape province.

3.5 Limitation to the study

The study was restricted to the Western Cape province. While the choice on the Western Cape province was based on it being the home base of one of the authors of this article, it also assisted in meeting the second criterium, being a province that hosts several 'senior' professional planners who practised during the apartheid era and are still actively involved in the planning space.

4. RESULTS AND DISCUSSION

4.1 Participants' profile

Table 1 indicates that the larger group of participants were aged between 40 and 50 years and predominantly male. The study further included a balance of participants in the public and private sectors in the Western Cape province, obtaining the views of those employed at local government level, at provincial government level, and the private sector. Although the number of participants with between 21-30 years' experience were the larger group, this study regarded participants with 25 years and more experience as the participants who practised during and post-apartheid.

4.2 Views on statutory processes impacting on human settlement development

The vast majority of the interviewees accepted the new law favourably and were of the view that the statutory processes to undertake human settlement developments now are better informed and more rigorous than under the previous dispensation. According to some of those with careers stretching back into the pre-1994 era, LUPO, which was only applicable in so-called 'White areas' pre-1994, had far less restrictive submission requirements for settlement establishment applications than the pre-1994 Acts applicable in so-called 'non-White areas', *i.e.*, the BCDA and LFTEA. It was argued that the adoption of stricter rules under the new legal system provides a far more rigorous and solid evidence base for the planning of human settlements.

Many of the interviewees indicated that significant challenges are being experienced with settlements that were established pre-1994 and that were governed by different state entities using different laws and regulatory frameworks. The Western Cape Provincial Government was responsible for the regulation of land development and land use in so-called 'Black townships', whereas municipalities were responsible for the regulation of properties located within their areas of jurisdiction. The new legal system places all of these areas under the ambit of the relevant municipality and under one set of rules, which is proving to be a huge and complicated task, given the differences in the conditions and rules that were applied in the past. One of the interviewees noted: "It was the House of Assembly and House of Representatives in Indian and Coloured areas, with province being responsible for Black areas … today municipalities are responsible for everything within their municipal boundary" (Public sector planner, 33 years' experience).

The vast majority of the interviewees were of the opinion that the implementation of settlement development projects under the pre-1994 legislation was 'easier' in terms of the processes to be followed. One interviewee argued that "LUPO was clear and straightforward – less public participation and involvement, and the public and processes were clearly defined" (Public sector planner, 21 years' experience). Another interviewee stated bluntly that "[t]he process now is slow, tedious and utterly frustrating" (Public sector planner, 15 years' experience). Another interviewee had a similar, but slightly different view, suggesting that the new legislation is not the cause of processes being drawn out, but that there are other reasons for this: "… we are moving slower now, not because of the new law, but because of other factors, such as a lack of land" (Private sector planner, 32 years' experience).

Several interviewees in the public sector mentioned a key benefit with the new system being the removal of the need for separate removal of restrictive title deed applications, which, pre-1994 in the Western Cape province, had to be submitted to the Provincial Administration for a decision before a land-use application could be approved. This often resulted in delays with statutory decisions, as local municipalities in the province were not the sole decision makers and could only finalise

Table 1: Participants' profile

Characteristic	Category	F (n=25)	%
Age (years)	40	5	20
	40-50	13	52
	50-60	4	16
	60-70	3	12
Gender	Male	17	68
	Female	8	32
Working Sector	Public sector: Local municipality	8	32
	Private sector: Consultant	6	24
	Public sector: Metropolitan municipality	5	20
	Public sector: Provincial Government	6	24
Experience (years)	10-15	7	28
	16-20	6	24
	21-30	9	36
	31-40	3	12

an application once a favourable decision on an application for the removal of a restrictive condition (or set of conditions) was received from the Provincial Administration. Interviewees expressed the view that the delays also created tension between the Western Cape Provincial Government and the municipalities concerned. With the new legislation in place, approval is no longer required from the Western Cape Provincial Government. While this 'hurdle' has been overcome, one of the interviewees stated that there is another issue that is becoming of ever-greater concern in terms of timeframes, *i.e.*, the reality that applications for settlement establishment still have to be submitted to the Western Cape Provincial Government.

Interviewees in the private sector indicated that one of the key challenges impacting negatively on both their work for private and public sector clients is 'nimbyism' (*i.e.*, 'not in my backyard-ism'). One of the interviewees argued that "nimbyism is still alive and well. The question in my mind is whether the law can really deal with this" (Private sector planners, 25 and 26 years' experience, respectively). Similarly, another interviewee argued that "[h]uman settlement developments are moving slower but not because of law but other factors, such as lack of land and contestation of informal settlement relocation and NIMBYism" (Private sector planners, 17 and 32 years' experience, respectively).

Hunter and Leyden (1995) explain that nimbyism is often used to label opposition from citizens to applications for land/property development or changes in land-use rights as selfish, greedy and/or inconsiderate. Research undertaken by these authors on a proposed site for hazardous waste incinerators found that citizens opposing it were, in contrast to these prevailing views, not concerned about property values, but instead were driven by mistrust of government, and a concern that government would not be able to service or regulate what was being proposed (for a similar view, see also Burningham, Barnett & Thrush, 2006). It may be that what a number of the interviewees had experienced in their work in the Western Cape province may also be driven by such concerns.

Interviewees in both the public and the private sectors were of the opinion that statutory applications undertaken in accordance with the post-1994 legislation either take the same time from submission to decision, or longer. Several of the interviewees argued that the reason for this was that the new law requires more detailed specialist inputs/assessments, all of which also need to adhere to a set of legislative requirements in terms of their respective sectoral laws. One of the interviewees stated that the "[p]rocesses are more difficult now because of all the studies required" (Public sector planner, 32 years' experience). For instance, the submission of a full heritage impact assessment to Heritage Western Cape in the Provincial Government can lead to extensive delays in the finalisation of an application for land-development rights. One of the interviewees in the public sector also indicated that there is an added risk of the lapsing of land-development applications due to the many specialist, sectoral inputs/assessments required, which means that the entire process has to start from scratch again.

Several interviewees noted that one of the benefits of SPLUMA is its principle of 'sustainable development', which, in practice, among others, means a greater focus on the development of mixed-use settlements and the location of settlements in close proximity to economic opportunities, or vice versa. Many of the interviewees argued that, previously, the focus was solely on the delivery of houses and not on creating sustainable, well-located, mixed-use developments. Several of the interviewees indicated that this more complex approach to settlement development necessitated the involvement of registered professional planners. They argued that the new legislative framework also requires this. Accordingly, they had a very favourable view of this in the new legal dispensation. This is, however, not entirely correct, as SPLUMA does not specify that only registered planners may undertake planning applications. It is, however, a requirement of the LUPA that each municipality considers including such a provision in its by-laws.

Interviewees in the public sector indicated that the new law demands a far more comprehensive submission and associated processes, resulting in planners spending more hours on assessing development applications, including pre-planning consultations, which removes them from the more proactive developmental dimensions/requirements of their work. The interviewees argued that the additional administrative duties also impacted on their ability to process applications and resulted in delays, which they viewed as contradictory to one of the SPLUMA principles, *i.e.*, 'good administration'. One of the interviewees stated that "[t]he new law addresses the principle of good administration, but how does one give effect to it without the necessary planning capacity?" (Private sector planner, 26 years' experience).

4.3 Views on the constitutional guarantees and sustainable development

Since 1994, government has focused on the delivery of houses and the rectification of the spatial imbalances and injustices created during apartheid. Blamed for being complicit in the creation of the apartheid landscape, planners made the commitment to correct this and fundamentally change the role they would play in the new democratic South Africa (Jones *et al*., 2021; Oranje, 1998).

Several of the interviewees, in both the public and the private sectors, expressed the view that planners can, however, not always provide all the guarantees regarding settlements, quality of life, dignity, and respect, as set out in the Constitution. One of the interviewees in the public sector stated: "No, the reality is that we cannot attend to all the guarantees, and the reason is that, within government, planners are limited in terms of their departmental

mandates. In our case, the focus has not yet broadened out. It is still on housing in terms of number of units, the structures we provide, the servicing of sites and the provision of basic services, and not on the wider set of guarantees" (Public sector planner, 21 years' experience).

Several of the interviewees expressed the view that the backlog in housing and the drive to hence, provide the maximum number of housing units on a said portion of land, results in there often not being land or funding left for providing non-residential land uses and assisting in providing a dignified, quality living environment, or guaranteeing the sustainability of new settlements. A number of the interviewees argued that the focus is simply not on providing quality safe and dignified spaces, but rather on the urgency of the human settlement backlog and the continuous need for more housing, given the rapid population growth and migration into the province. Along similar lines, the view was expressed that the singular focus on housing provision is resulting in Government falling behind with the management and maintenance of crucial public facilities such as schools and hospitals. Given funding constraints, it was argued that Government should focus on optimising and maintaining the facilities it has, before embarking on the construction of new facilities that it could not adequately staff and/or maintain.

In terms of sustainability, most of the interviewees were of the view that both the new legislation and the Constitution adequately speak to the need for the development of sustainable settlements, but do not provide clear guidelines as to how to implement or ensure this. They argued that this is specifically the case with existing settlements, as their spatial footprints, infrastructure networks, and operating logics were already established. In addition, the interviewees argued that there is generally hardly any available government-owned land in such settlements to be used for densification or 'land-use mixing' purposes. With public funding primarily being directed at addressing the housing backlog and the creation of new settlements, existing settlements generally lost out, with especially such settlements in lower-income areas suffering the most from this neglect. Despite the need and the call for the creation of quality settlements, budget constraints and lack of focus meant that landscaping, the appointment of urban designers and architects, attending to matters of universal access, and the maintenance of public spaces and ensuring their safe use was not attended to.

Spatial justice was a crucial matter of concern for many of the interviewees. Interviewees in the public sector by and large were of the view that spatial justice must be addressed in the Spatial Development Frameworks (SDFs) of each municipality and be supported by provincial policies and programmes such as the Western Cape province's Regional Socio-Economic Projects Program (RSEP). The concerns (and frustrations) with the difficulty of pursuing spatial justice in existing settlements was echoed, as in the case of the pursuit of sustainability. In a number of the interviews, perceived challenges with the practicalities of pursuing spatial justice were also raised, such as the cost of living in middle- and higher-income areas. For instance, one of the interviewees asked: "Who can afford to live in an affluent area? The less fortunate will be excluded and their children feel left out …" (Private sector planner, 33 years' experience). Another interviewee argued that "[t]he question is where the children will go to school, as the schools are expensive and travelling costs will have to be incurred to travel to more affordable schools in other areas. Well-intended upliftment can therefore end up having a negative impact on those it sought to assist" (Public sector planner, 14 years' experience).

In a number of the interviews, the point was made that we are only at the beginning of the new legal dispensation in planning law, and many accompanying policies still need to be developed, in order to give effect to the provisions and principles of the law. Several interviewees felt that, although there was a shift to these provisions and principles, planners still continued to apply the same 'old' principles. Many of the interviewees accordingly expressed the view that, despite the current challenges, planners not only need to move forward with the law and away from how things were done in the past, but also had to look beyond the base provided by the law at new ideas, models, and practices that could ensure even better outcomes for communities. One of the interviewees stated: "We as Planners have become comfortable operating and functioning within our scope and sometimes our own scope limits us in terms of what is the best we can do for a settlement. We are sometimes justified by law to do that, but there is more in terms of law that we can do for our settlements if we are looking at what is happening on international level" (Public sector planner, 21 years' experience).

4.4 Views on the role of the planner in human settlement development and planning

Several of the interviewees in both the private and the public sectors expressed the view that the role of the planner is that of 'facilitator' and 'frontrunner' in the human settlement projects, in other words playing a 'strategic project lead role', but that planners have, in many instances, lost and should hence reclaim these roles. One of the interviewees noted that the professional body for planners (SACPLAN) should be more supportive of the planner and create awareness of the importance of the professional role the planner plays. One of the interviewees suggested that "[t]he Planner should be powerful. SACPLAN needs to protect the planner, as any other specialist, such as an economist, can be a planner. SACPLAN can therefore do more to create awareness of the importance of the planner in the public and private sectors" (Public sector planner, 23 years' experience). Another interviewee argued that "[w]e have 288 planners in the country that are unemployed. Yet, we are experiencing a huge under-capacity problem. SPLUMA says good administration, but how does one apply this principle without the necessary planning capacity?" (Private sector planner, 26 years' experience).

On a more procedural point, a number of the interviewees in the municipal sector made the point that

the role of the planner is diminished due to the process being followed, as layout plans are only circulated to the Planning Departments at a very late stage, at which point it becomes very difficult to provide insightful and useful comments. These interviewees expressed the view that planners need to be involved from the start of any land development process to ensure that inputs from the community are sourced to ensure that their values, needs, and preferences are taken into consideration and fed into the planning process, and suitable land (for that community) is identified.

Although not many of the interviewees mentioned politics, the prevailing view in a number of interviews with especially municipal and private sector planners was that politicians are far more powerful than planners in settlement planning and development practice. One of the private sector interviewees stated it very bluntly: "The politicians are king" (Private sector planner, 13 years' experience). This interviewee was of the view that no matter what plan or scheme planners proposed, the politicians had the final say. Several of the interviewees working in municipalities argued that politicians have the power to influence applications and can make things very difficult for planners if they do not have their buy-in and blessing from the beginning of a land or settlement development process. One of the interviewees expressed the view that, although planning legislation has changed and now makes provision for major positive changes in the settlement landscape of the country, politicians are not doing enough from their side to give full effect to the law.

5. DISCUSSION

The study explored the perceptions of practising planners of the planning laws introduced post-1994 vis-à-vis those of the pre-1994 period, and the impacts of these laws on the guarantees provided in the Constitution regarding the creation of quality human settlements, and the planning profession's stated objective of contributing to this pursuit.

First, it was established that by far the majority of the interviewees, both from the public and the private sectors, welcomed the new legislation and indicated that they viewed the new laws as a solid improvement on the laws from the past. Key drivers of these positive perceptions were not only the principle-led focus on creating viable, just, and sustainable human settlements in the new laws, but also the positive improvements that the new system brought to 'the post-1994 land and settlement planning and development process'.

Secondly, in terms of one of the key themes on statutory processes impacting on human settlement development, the study revealed that the interviewees were of the opinion that the new planning legislation allows for more comprehensive human settlement development applications and provides for specialist inputs to be made and considered when deciding on an application. They held that this provides the legal foundation for ensuring that settlement development and redevelopment supports the creation of sustainable human settlements, and the realisation of the constitutional commitments and the objectives of SPLUMA. On the flipside, several of the interviewees raised the concern that these more comprehensive processes can and have resulted in delays in delivery.

The topic of work reservation emerged in a number of the interviews, and not necessarily from the perspective of 'protecting planners' jobs', but rather that planners are best suited to implement the new planning laws, and should be used as such. An important matter raised on this topic was that planners should not only be involved in such processes, but should also be involved as early as possible to ensure that they can influence and shape land identification processes, engage communities, and endeavour to ensure that their hopes, needs, and concerns can be factored into site identification and settlement development plans. While planners expressed the view that they had significant powers to give effect to the objectives of the new system, a number of interviewees raised the issue of 'politics' and the power that politicians had in planning processes vis-à-vis that of planners. The view was also expressed that politicians may not necessarily be doing all that they can to ensure that the new planning system delivers on its promise.

A strong theme that emerged throughout the interviews was the view that there was too much focus on resolving the housing backlog at the cost of the building of sustainable, viable, and quality settlements, despite it being guaranteed in the Constitution and legally mandated in the new planning laws. In a number of interviews, it was argued that this singular pursuit of housing provision is numbing the progressive development potential of the post-1994 planning legal system.

Several of the interviewees questioned the ability of realising the progressive objectives of the new planning legislation and living up to the commitments made in the Constitution. Key reasons for this concern were that the country lacked the enormous funding that the pursuit of these objectives required. Questions were also asked as to whether the country had the technical capacity this necessitated. Others argued that the country may have this capacity, but that it was not putting it to good use.

A less pronounced theme that emerged in the interviews concerned the ability to realise the progressive objectives as espoused in the new legislation, with an emphasis on perceived inadequate consideration of the practicalities of doing so. Matters that were raised in this regard related to the issue of the availability of land and the high cost of living in middle and higher income settlements that, it was argued, would make it very difficult for low-income households to make a life in such areas.

6. CONCLUSION

The study on which this article is based was an exploratory engagement on the experiences and perceptions of practising planners. Its findings suggest that the planning laws prepared post-1994 have been well-received by practising planners, but also raised a number of concerns about the connection between (planning) ideals, action, and outcomes that warrant further

exploration. The fact that planning reform took almost three decades in the country resulted in the continuation of apartheid planning laws, post-democracy. This further contributed to the fragmentation of settlements. The planners' perception is, therefore, that the profession is not doing enough to address spatial justice, despite existing programmes such as RSEP, in the Western Cape province.

Secondly, the fact that the study was done in one province only, begs the question as to what the findings would be if it were to be conducted in the eight other provinces as well, thus making a strong plea for further explorations.

Several undertones in the interviewees' responses, relating to political interference, submission and associated processes, and the additional administrative duties further raised the question as to whether these responses warrant a revision of legislation in the Western Cape.

The political interference responses further beg the question as to whether the new law places politicians in a more powerful role when making decisions relating to settlement planning and development. It would be interesting to find out at what stage in the statutory process planners start feeling this shift in power to the politicians, why and how this happens, and what the impact of this has on the production of truly post-apartheid human settlements.

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