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Reforming Urban Laws in Africa: a practical guide

Award Scheme

Dubai International Award

Summary

The African Centre for Cities (ACC), at the University of Cape Town, identified the need to develop a platform for urban planning law reform in the region in 2009. The reason for this initiative was to focus on the practical question of how to achieve effective and appropriate urban legislation.

Background and Objective

Research team The leading researcher has been Stephen Berrisford, an honorary adjunct associate professor at the African Centre for Cities at the University of Cape Town. He was supported until January 2015 by the late Professor Patrick McAuslan, professor of law at Birkbeck College, University of London. Both authors' careers are marked by the combination of academic research and applied consultancy work, with McAuslan being primarily an academic researcher and teacher and secondarily a consultant and Berrisford having worked mainly as a government official and consultant with part-time academic writing and teaching running in parallel. Berrisford and McAuslan were supported by a reference group, which included the following individuals: Professor Ambreena Manji, professor of law at the University of Cardiff, UK; Dr Mark Napier, formerly of Urban LandMark and currently at the South African Centre for Scientific and Industrial Research; Professor Peter Ngau from the University of Nairobi, Professor Vanessa Watson from the University of Cape Town, Mr Robert Lewis-Lettington from UN-Habitat and Mr Mamadou Diagne and Mr Julian Baskin from the Cities Alliance; and Mr Matt Glasser, formerly from the World Bank and now from the Centre for Urban Law and Finance in South Africa. Useful advice was also obtained from Dr Allan Cain, of Development Workshop in Luanda, Angola, especially on the potential use of the Guide in Lusophone countries. Collaborating partners The main collaborating partners were Urban LandMark (UKaid-funded thinktank, based in Pretoria, now defunct), Cities Alliance and UN-Habitat. The World Bank also made Mr Matt Glasser's time available to give guidance and serve on the reference group, before his retirement. The Rockefeller Foundation sponsored the first workshop in 2012 at which the ACC launched its idea of a platform for urban planning law reform, as well as a subsequent workshop in 2015 at which the idea of establishing the Centre for Urban Law and Finance in Africa was discussed and further contributions to this Guide were gathered. The ACC's collaboration with the Association of African Planning Schools triggered this process, through the request for guidance on questions of urban planning law reform in the region. Research method and approaches The principal research method was the downloading of decades of experience in urban legal reform in the region from the two co-authors (more than sixty years of combined, relevant experience), and especially from Professor McAuslan. Active in the field from the early 1970s right up to his death in early 2015, mainly in Eastern and Southern African countries, he had accumulated a wealth of knowledge and experience. Professor McAuslan had published prolifically; he believed that consultants working in a field such as this, influencing processes that lie at the heart of African countries' fundamental legal and constitutional questions, have a moral obligation to record in writing their experiences. He wrote countless journal articles and a number of books, testimony to his commitment to put this belief into practice. However, the Guide was different in that it was not intended for an academic audience but for practitioners, in African countries, in the public sector and for the private sector consultants advising governments. Due to Professor McAuslan's death midway through the writing of the Guide the research method was changed slightly. Essentially however, it consisted of the following steps: 1. A first draft of the Guide was co-written by McAuslan and Berrisford. This was a substantial download, drawing on their personal experiences as well as their published work, especially the works that recorded the events of actual urban law-making processes. The document was large and unwieldy. 2. The first draft was presented to and discussed by the Reference Group during a two-day workshop in Nairobi in March 2013. The chief criterion applied by the Reference Group was the question whether the selected text and case studies would resonate with in-country practitioners and would they provide practical guidance that could be applied to their day-to-day work. 3. After the Nairobi workshop the draft Guide was substantially revised, restructured and refocused by McAuslan and Berrisford. In order to obtain feedback on the proposed approach the Guide was presented at a number of international conferences, such as the World Bank's Law, Justice and Development Week in Washington DC, 2014 (where ACC convened a panel on urban legal reform in Africa and the outline of the Guide was widely discussed), the World Urban Forum in Medellin, Colombia, 2014, where the ACC convened a Networking Event on urban legal reform in Africa and Latin America in order to cross fertilize knowledge and experience in the field between the two regions, a UN-Habitat Expert Group Meeting in Barcelona, Spain in 2015 at which the Urban Legal Guide was presented to urban legal experts from a diverse range of countries, and the Cities Alliance Africa Conference in Accra, Ghana at which the urban legal guide was discussed in depth with a wide range of participants. 4. The extensively revised and restructured Guide then went through a further intensive interrogation by the reference group at a two-day meeting of that group in Cape Town, 2016. 5. A further round of revisions followed the contributions from the reference group, with the next draft circulated to all of them for a final set of contributions. 6. The final draft was professionally proof-read and edited in order to be sure that the language used was accessible and clear, after which it was translated into Portuguese for use in Lusophone countries. Main findings / results The key principles to guide the urban law-making process are set out in the introduction to the Guide and they establish themes that are then picked up through the document. These principles are that new urban laws need to be pragmatic, must give effect to the right of all citizens to live and work in a city, they must be responsive to actual needs and must be scalable in



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implementation so that the desired regulatory benefits are achieved across the country's range of urban settlements. The purpose of the Guide is to focus on strengthening efforts to improve the legal framework within which urban areas are managed planned, governed and financed to create cities that are more sustainable, inclusive and efficient. How does the Guide achieve this purpose? Firstly, it anchors urban legal reform in the context of global development commitments. Goal 11 of Agenda 2030's SDG 11, for example, cannot be achieved in most African countries without urban legal reforms to ensure access to all for basic urban services and to upgrade slums, to enhance inclusive, sustainable urbanization and the capacity for participatory, integrated planning and management of towns and cities. The New Urban Agenda, for example, calls for more participatory urban decision making and greater decentralization of urban development decisionmaking, both of which cannot be achieved without urban legal reform. Secondly, the Guide combines academic analysis of the legal challenges facing African cities with practical guidance. It provides clear and direct advice on who to consult in a law-making process, and how to consult them. It tackles the most basic, but important parts of the process, such as the drafting of the terms of reference for a legal draftsman, the manner in which the problem(s) to be addressed in the proposed legislation are identified and prioritized, the use and evaluation of policy options to get stakeholder to agree on an approach that is likely to be effective and the manner in which a policy paper that sets out the approach to be taken in the new legislation should be written. Thirdly, while the Guide stands back from recommending a specific legal instrument or instruments as solutions to urban problems, it does identify the characteristics of effective urban legislation: the features of the new legislation that those responsible for the process should be striving to achieve. There are also chapters dedicated to implementation and monitoring of impact and progress, so that law-making process does not seem like an end in itself but rather a means to achieve the particular policy objectives that the government seeks to achieve. Because one of the most risky areas in the urban legal reform process is the moment when the technocratic drafting team hands over draft legislation to politicians, there is a chapter devoted to managing the political process up to and including the handing over of the draft law to the legislature. Significance and impact of the research so far – and future potential The Guide has broken new ground, not just in African terms but also globally. We have been unable to find any other example of such an initiative, to give practical guidance on the development of urban law that is fit for purpose and able to be implemented. The Guide is also innovative in that it is cross-disciplinary, showing how effective urban legislation needs the integration of the different fields of expertise offered by lawyers, urbanists, economists, political scientists and other professions. Developed by authors with feet in both the academic and the professional sectors, the Guide is able to apply the theories of law-making and governance to the practical realities facing everyone involved in taking the idea of an urban reform through the necessary steps that result eventually in law that works as it was intended to work. It thus illustrates the value of applying research and academic knowledge to daily realities. As the Guide was only launched online in June 2017 it is too soon to reflect on its impact. The dissemination process is still in progress. A core part of the dissemination is a series of short video clips of Stephen Berrisford discussing each of the major issues tackled in the Guide. This set of video lectures will be available on a dedicated website and will also be distributed on flash drives to urban planning and legal educators as well as practitioners working on urban legal reform. The response to the online launch, simultaneously by ACC, UN-Habitat and Cities Alliance, has been overwhelmingly positive. The Guide has clearly filled a need, for theoretically grounded but practical advice on how to change deeply complex legal frameworks, and any impacts it has on improved legislation will be felt for generations to come, as laws are by their nature long-lived. The Guide forms a key part of the African Centre for Cities' long-term, ongoing programme to promote urban legal reform in the region. This began with the Rockefeller Foundation's support for the writing up of urban legal reform case studies, continued into the development of a planning law curriculum for use in planning schools in the region's universities and the ongoing promotion of the urban legal reform agenda at international meetings. The Guide represents the high-point of the current phase of impact but it is not the end-point. The next phase of work will address the following aspects: • Developing a Compendium of Good Urban Legal Practice that will be a collection of case studies of urban law reforms from Latin America and Asia, with an emphasis on cases of relevance and potential value in an African context'; • Compiling a set of concise case studies of urban legal reform experience in SSA that will draw on the experience of piloting and using the Guide in order to illustrate in practical terms how the Guide can be used and adapted in practice; and • Collating training and teaching materials for use by university schools of law and planning as well as other capacity-building institutions in order to embed the movement for urban legal reform in the next generation of African urbanists and lawyers. Published The Guide was published online in June 2017 (ISBN number 978-0-620-74707-3). Hardcopies are currently being printed for distribution, in English and Portuguese, to universities, networks of urban practitioners, key government officials and international development agencies. Recognition In the relatively short time that the Guide has been in circulation it has received critical acclaim after it was published on the websites of, among others, the Cities Alliance, UN-Habitat, the African Association of Planning Schools, Centre for Affordable Housing Finance, Foncier & Développement, urbanafrika.net and urbangateway.org. A selection of letters of commendation and appreciation is appended to this entry. Some extracts from these letters are posted below: • From Dr Gilbert Siame, Director of the Centre for Urban Research and Planning at the University of Zambia: o "In Zambia, we have learned that urban laws must be directly grounded in the realities of our citizens and our system of local government, and I am very pleased to see this acknowledgement come through so strongly in the Guide. ... [A]s an academic teaching the next generation of urban professionals in Zambia I am grateful for the resource that the Guide provides to assist us in teaching and capacity building. At the University of Zambia, we have already benefited from the African Centre for Cities model curriculum for the teaching of planning law, developed by Stephen Berrisford initially and adapted to fit into our teaching programme. The Guide enriches that material and I am confident that our students' understanding of the complexity and importance of urban legislation will now be even stronger." • From Allan Cain, Director of Development Workshop Angola: o "We are very pleased that the decision was taken to translate the Practical Guide into Portuguese where it can contribute at a strategic time to the revisions of urban land and governance reforms in Angola and Mozambique. As a laureate of the Dubai UN-Habitat Award that Development Workshop Angola won in 2011, we strongly support your submission for the next cycle of awards." • From Professor Stig Enemark, Professor Emeritus of Land Management, Aalborg University, Denmark, and Honorary President of the International Federation of Surveyors: o "Many countries approve laws that both national and local governments cannot implement and with which many households cannot afford to comply. This is deeply problematic. Such laws make it very difficult to achieve innovations, and impossible for the land sector to translate into the economic, social and environmental benefits that the laws should be promoting. The inefficiencies



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that result from this scenario cannot be justified, especially in African countries that are poor and suffer from weak governance systems. ... This easy accessible Guide aims to strengthen the urban law-making process and, thereby, contribute to creating cities that are more sustainable, inclusive and efficient. The Guide's emphasis on practical steps to improve the ways in which countries make new urban land laws, is a very valuable contribution and one that I support completely.” • From Dr Edesio Fernandes, founder of the International Research Group on Law and Urban Space (IRGLUS): o “[S]ub-Saharan African countries have had a difficult experience with urban legislation over the years and the Guide provides an invaluable resource to governments in the country to help them approach urban legal reform in a more pragmatic way, ... that enables them to meet the very real needs of their poor citizens and to meet the new international development goals for urban governance and urban law. I am not aware of a similar guide focusing on a region's particular urban legal reform needs and I hope that other regions of the world might learn from this initiative by the African Centre for Cities at the University of Cape Town. ... The ACC deserves the highest accolades for having initiated and completed this Guide, the benefits of which will be felt for decades: once legislation is in place it is very hard to change, and so improving the quality of new legislation has an impact that can be measured over generations.” • From Daniel Phiri, lecturer and research fellow at the Copperbelt University: o “As a member of the team led by Stephen Berrisford to revise Zambia's legislation on spatial planning and urban planning between 2007 and 2009 I am excited to see the lessons that we learned in that process turned into useful guidance to professionals across the region who are tackling similar tasks. The legislation that we came up with, through a consultative process that included thorough analysis of a range of different possible socio-economic and environmental impacts, has revolutionized and transformed planning and development in Zambia. A particularly dramatic change is the way that it has enabled proper planning for infrastructure investment and land use management in peri-urban areas under customary leadership. This is one example of the approach adopted in the Guide resulting in practical, far-reaching changes for ordinary people, and in better capacity by the local state to manage urbanization and land development.”