GUIDELINES FOR THE SCRUTINY OF THE QUALITY OF URBAN LEGISLATION

A MANUAL FOR PARLIAMENTARIANS

UN-HABITAT

IALS INSTITUTE OF ADVANCED LEGAL STUDIES | SCHOOL OF ADVANCED STUDY UNIVERSITY OF LONDON

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First published in Nairobi in 2023 by UN-Habitat

United Nations Human Settlements Programme (UN-Habitat)

P.O. Box 30030, 00100 Nairobi GPO, Kenya

Tel: 254-020-7623120 (Central Office)

www.unhabitat.org

HS Number: HS/001/23E

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Cover photo: House of Parliament, Cape Town by Gerry Lynch

ACKNOWLEDGEMENTS:

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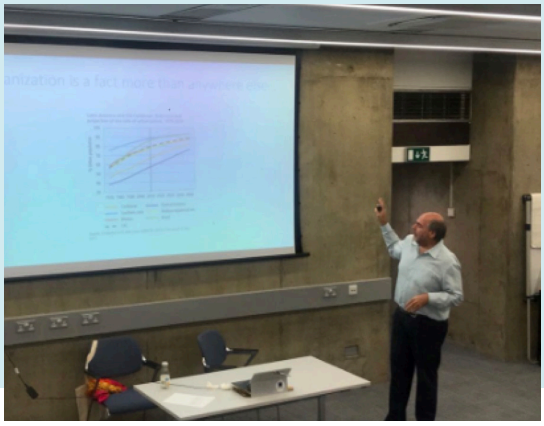
UN-Habitat is steadily mainstreaming urban law in the urban development discourse, through training and awareness with initiatives such as the UrbanLex Database, Urban Law Days, legislative drafting training, etc. UrbanLex provides a platform for comparative analysis and the identification of patterns and innovations in urban law, and features about 4,000 laws from all world regions with over 25,000 users in 2022.

Since 2014, Urban Law Days, in collaboration with universities, have become annual events which address specific legal issues linked to equity, human rights, climate change and smart cities as well as stimulating discussion over ways to address shortcomings in existing legal frameworks.

Participants presenting during various Urban Law Days. Source: UN-Habitat.



In 2014, the Sir William Dale Centre for Legislative Studies at the Institute of Advanced Legal Studies, United Kingdom, and UN-Habitat launched the Urban Law Initiative with the aim of promoting innovative research and generating knowledge in the niche area of urban legislation. Additionally, in 2017, a training module targeting urban practitioners on legislative drafting was introduced that focused on the dividing lines between policy and legislation, existing methods and tools for evidence-based law making, basic drafting principles, as well as the criteria to design effective legislation. To date, over 300 urban practitioners and government officials have been trained through this initiative. This has created key awareness of the role of urban legislation in sustainable urban development and enhanced UN-Habitat's portfolio in providing technical support in legal reform processes.

IALS INSTITUTE OF ADVANCED LEGAL STUDIES | SCHOOL OF ADVANCED STUDY UNIVERSITY OF LONDON

The Institute of Advanced Legal Studies is part of the School of Advanced Study of the University of London, United Kingdom, with the mandate to promote research facilitation, advance innovation and to bridge research between academics and the practitioners. The institute produces its own high-impact research and contributes to the generation and development of high-impact research by others. The institute brings together academic researchers, students, judges and legal practitioners from diverse backgrounds, enabling important opportunities for cross-fertilization; it also has leadership involvement in strong networks, both discipline-based and spanning geographical and jurisdictional differences.

Through its research projects and programmes the Institute of Advanced Legal Studies leads and shapes research agendas, facilitates the identification of new research horizons and facilitates debate by providing opportunities and resources for cutting-edge research.

UN-HABITAT

UN-Habitat is the coordinating agency in the United Nations system for human settlement activities and, in collaboration with Governments, is responsible for promoting and consolidating collaboration with all partners, including local authorities, private and non-governmental organizations, in the implementation of the Sustainable Development Goals, in particular Goal 11 to "make cities and human settlements inclusive, safe, resilient and sustainable".

UN-Habitat is also the task manager of the human settlements chapter of Agenda 21, and is the focal point for the monitoring, evaluation and implementation of the New Urban Agenda adopted during the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) held in Quito, Ecuador, in 2016. The Policy, Legislation and Governance Section, is one of the five sections/units of the Urban Practices Branch of UN-Habitat.

Swiss Parliament, by Hansjörg Keller Source: Unsplash

I. Introduction

Urban planning and design have a fundamental influence on the shape and morphology of urban areas, and practical financial strategies determine whether plans are feasible or not. Law on the other hand has a profound influence on whether objectives and commitments are followed through; it provides the guarantee that institutions will consistently pursue transparent objectives over time and that funds can be predictably invested on that basis.

Law also performs the balancing function of ensuring that all citizens and interests are treated as equitably as possible in decision-making and resource allocation to achieve agreed policy objectives. Finally, law, particularly in its regulatory function, has a major influence on the details of what is, and what is not, built and protected in the urban environment. This affects the liveability and efficiency of a city but also often how it looks and feels. As such, urban law is not to be considered lightly but should be a central element of urban development, growth and place making.

The legislative and regulatory regimes affecting the urban environment are highly diverse, covering all aspects of human activity and concern. If laws are formulated, monitored and reviewed effectively, they will increase the opportunities to develop a prosperous city and to ensure that the prosperity can be shared by all citizens.

Urban law is thus necessary to provide a framework of rules to mediate and balance competing public and private interests, especially in relation to land use and development. It has several defining characteristics:[1]

- It governs the central functions of towns and cities and reflects the rights and responsibilities of residents and users of urban areas. The functions are diverse, including urban planning, municipal finance, land administration and management, infrastructure provision, mobility and local economic development, among others.
- It is present at various levels, from internationally recognized rights, such as the right to housing, to national legislation, as well as in municipal rules and by-laws that often regulate local issues such as the provision of services or the management of public space;
- It often has neutral technical wording but is accompanied by a complex social aspect, including the potential for differential effects on various groups in the urban environment – with those more vulnerable, such as poor and marginalized people, being of particular concern.

1 UN-Habitat (2016). Rules of the Game, p7, https://unhabitat.org/rules-of-the-game-0 .Accessed 13 June 2022.

The Sustainable Development Goals were adopted by all United Nations Member States in 2015 and are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. The 17 Goals are integrated – that is, it is recognized that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability.

Several Goals can only be achieved through effective regulatory frameworks. Urban legislation has an important role to play in virtually all targets of Goal 11 (make cities and human settlements inclusive, safe, resilient and sustainable). It defines conditions for access to land, infrastructure, housing and basic services; lays out rules for planning and decision-making; guides the improvement of livelihoods and living conditions by setting requirements for urban development initiatives; and sets the context within which urban authorities, local governments and communities are expected to fulfil their mandate and react to emerging challenges.

Furthermore, urban legislation can set meaningful frameworks for sustainable development or it can accentuate inequalities and exclusion (Goal 10: to reduce inequality within and among countries). Effective urban regulatory frameworks are also fundamental to promote the rule of law (Goal 16: promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels); develop effective, accountable and transparent institutions at all levels; and ensure participatory and representative decision-making.

The New Urban Agenda is a concise, action-oriented, forward-looking and universal framework of actions for housing and sustainable urban development. It was adopted in 2016 during the Third United Nations Conference on Housing and Sustainable Urban Development (Quito, Ecuador). Governments committed to "take measures to establish legal and policy frameworks, based on the principles of equality and non-discrimination" (para. 89) as well as to "the development of adequate and enforceable regulations in the housing sector, including, as applicable, resilient building codes, standards, development permits, land-use by-laws and ordinances, and planning regulations, combating and preventing speculation, displacement, homelessness and arbitrary forced evictions and ensuring sustainability, quality, affordability, health, safety, accessibility, energy and resource efficiency, and resilience" (para. 111).

Therefore, the impact of legislation is important; good laws and institutions can set meaningful frameworks for sustainable development, but bad ones can accentuate inequalities and exclusion.[2] Governments should formulate and implement laws and regulations that are effective, which refers to the ability of a law to fulfil its intended function. To enhance legislative effectiveness, UN-Habitat has developed an Essential Law Framework which has four main components:[3]

2 UN-Habitat (2016). World Cities Report: Urbanization and Development: Emerging Futures, p.103, https://unhabitat.org/world-cities-report-2016 Accessed 13 June 2022.
3 UN-Habitat (2018). Planning Law Assessment Framework. https://unhabitat.org/planning-law-assessment-framework-0#:~:text=The%20Planning%20Law%20Assessment%20Framework,an%20urban%20planning%20legal%20system. Accessed 13 June 2022.

A. Urban laws should have strong links with the needs of citizens, i.e., appropriate to the local contexts in which they operate. This is not compatible with the practice of the blind transplantation of model laws or laws from other jurisdictions.

B. The compliance processes created by legislative frameworks should be simple, expeditious and affordable for most urban dwellers. The complexity and costs of the process should not discourage otherwise law-abiding residents from compliance.

C. Legal frameworks should be characterized by clear institutional and governmental set-ups, including horizontal and vertical coordination mechanisms. They need to specify the roles of each institution to eliminate gaps and overlaps, which often lead to confusion, lack of transparency, poor accountability and poor compliance.

D. The law-making process should include an adequate appraisal of the financial and human resources needed for the law's implementation.

This is key because, of the various tools used to shape and govern cities, laws are the most difficult to change once they are in place. The costs of getting them wrong are high and changing them can take decades. Therefore, close attention must be paid to how new laws are formulated. Consequently, UN-Habitat has prepared these "Guidelines for the Scrutiny of the Quality of Urban Legislation" to act as a point of reference and reflection into quality law-making for all parliamentarians and lawmakers, with the hope of stimulating discussion over ways to address shortcomings in urban legal frameworks.

The first section of this document discusses the inherent features of a law that are detectable through a rapid desk review, while the second section looks closely at the relationship between a law and its functionality, i.e., compatibility, coherence and practical implications for the overall regulatory process and framework. Examples and illustrations have been made from UN-Habitat's country and global experiences on legislative project implementation as well as from in-force urban law provisions (in place in 2022).

II. Good urban legislation as a tool of sustainable urban development

Traditional old court of law of the Toba batak, Indonesia by pawopa3336, source: Envato elements

Urban growth can be anarchic if not underpinned by clear and coherent policies; legal, institutional and governance frameworks that ensure a solid context for planning; dialogue among actors; and rights-based approaches to development.

Urban legislation is an important development tool for urban growth. It lays down the rules for acceptable behaviours, rights, obligations and governance frameworks; it defines conditions for access to land, infrastructure, housing and basic services; it lays out rules for planning, decision-making and participation; it guides the improvement of livelihoods and living conditions by setting requirements for urban development initiatives; and it sets the context within which urban authorities, local governments and communities are expected to fulfil their mandates, react to emerging challenges and be accountable.[4]

Urban law provides a framework in which to mediate and balance competing public and private interests, especially in relation to land use and development; to create a stable and predictable framework for public and private sector action; to guarantee the inclusion of the interests of vulnerable groups; and to provide a catalyst for local and national discourse.[5]

A. Why is good urban law important?

The mere existence of legislation does not ensure effective urban management and development. Legislation can generate more problems than it solves. Unclear or ambiguous provisions that are complex, overlap, or leave gaps in protection, that are difficult to access or understand and poorly enforced and implemented, with high compliance costs and unwanted effects, will have a negative impact on competitiveness and economic growth. Outdated, complex and rigid legislation has hindered development and compelled citizens and administrators to seek informal arrangements and corrupt means to access basic services. Businesses, citizens, professional groups, consumers and other stakeholders often complain about the negative effects of bad or unnecessary legislation. If legislation lays down the terms of a social contract and determines the framework for social development, its quality is of primary importance. In other words, what is needed for sustainable development is not just legislation but good legislation.

B. What is good urban law?

Good legislation is important for sustaining the rule of law and sustainable development.[6] But what is a good law?

Although everyone may agree on the need for "good laws", the features of a good law are not obvious. Quality of legislation is a broad and vague term, perceptions of which differ depending on the viewpoints of different actors, legal traditions, and social and political contexts. However, although there is no single understanding of quality in legislation, three common values characterize good legislation: efficacy, effectiveness and efficiency. These three values operate in synergy to allow a multidimensional understanding of legislative quality.

4 Mousmouti, M. and G. Crispi (2015). "Good" Legislation as a Means of Ensuring Voice, Accountability and the Delivery of Results in Urban Development, in The World Bank Legal Review - Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability, vol. 6, World Bank Group.

5 Ibid.

6 Ibid.

Xanthaki's pyramid of virtues[7] reflects the different scope of each principle (see figure 1 Pyramid of virtues for legislative drafters[8]).

The three values of efficacy, effectiveness and efficiency work together to reflect different functions of a legislative text: achievements in the legal or social arena (efficacy), application and observance of the law and achievement of desired results (effectiveness) and cost-effectiveness as well as timeliness of the solution (efficiency).[9]

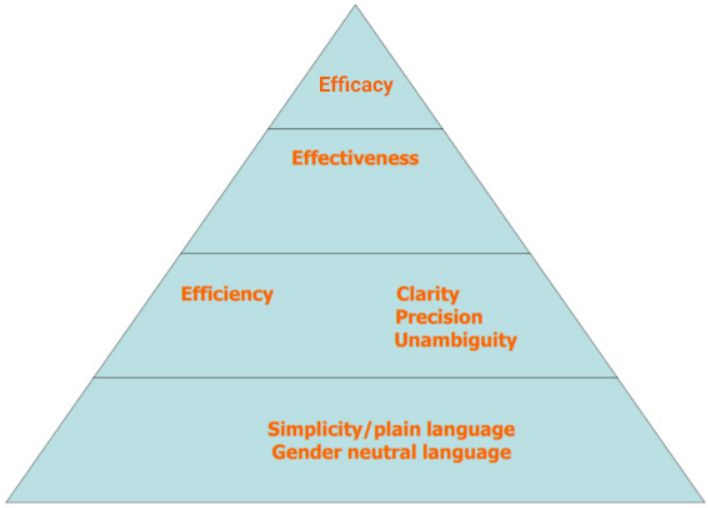
Efficacy focuses on the extent to which legislation can contribute to broader policy or societal goals. (The question being: can the law contribute to the related policy goals?) For example, a housing law aims to introduce rules that serve the broader housing policy and aims, for instance, to improve the housing conditions for the population. The efficacy of this law would reflect the extent to which the housing law positively promoted the objectives of the policy and contributed to the improvement of housing conditions.

Effectiveness focuses on results directly associated with the rule and its mechanics. (The questions being: can the law work? Can it achieve its objectives?) In the example above, a housing law that aims to facilitate access to adequate housing for vulnerable populations is one that introduces the necessary and appropriate rules to achieve this. The law will be effective if it is fully implemented and manages to produce the desired results.

Finally, efficiency looks at objectives in relation to costs. (The question being: does the law achieve maximum benefits with the least cost?) In the example of the housing law, efficiency would examine the relationship between the costs of the implementation of the law and what has

7 Xanthaki, H. (2008). On Transferability of Legislative Solutions, in Stefanou, C. and H. Xanthaki (eds.) Drafting Legislation. A Modern Approach Ashgate, p.17; Xanthaki, H. (2014). Drafting Legislation. Art and Technology of Rules for Regulation, Bloomsbury Professional.
8 Ibid, Xanthanki H (2008).
9 Mousmouti, M. (2019). Designing Effective Legislation, United Kingdom: Edward Elgar Publishing.

Figure 1:Pyramid of virtues for legislative drafters



been achieved. So, if the law was very costly and benefited a very small number of people, then it might need to be re-examined from the perspective of efficiency. The question would be whether there are more cost-efficient ways to achieve the same, or better, results.

One aspect of good legislation on which everyone agrees is the need for laws to be effective.[10] Effective legislation sets rules that address existing problems, considers the voice of affected people and communities, ensures accountability and can deliver the results it promises.

A good urban law is an effective law. Effective urban legislation has the capacity to do the job it is meant to do.[11] An effective law needs to align four fundamental elements: the objectives of the law, the "solution" expressed in the content of the law, its results, and the overarching structure of the law. Each element has a distinct importance for effectiveness: purpose sets the benchmark for what legislation aims to achieve; the substantive content determines how the law will achieve the desired results and how this will be communicated to its subjects. The results of legislation indicate what has been achieved.

The overarching structure of legislation determines how the law integrates the legal system and interacts with it. Although the influence of external factors on the broader effects of legislation cannot be undermined, the effectiveness of a legislative text is determined to an important extent by the way in which legislation is integrated into the legal system, the way its purpose is expressed, its content, structure, expression, and the ways to capture and measures its real-life results.

An effective law might not be easy to trace by an inexperienced eye, but a knowledgeable legislator knows what to look for and how to draft legislation that can be effective.

The foundation of an effective law is in the legislative text. Its composing elements are purpose, content, context and results. Each element has a distinct importance for effectiveness:

- Purpose sets the benchmark for what legislation aims to achieve.
- The substantive content determines how the law will achieve the desired results and how this will be communicated to its subjects.
- The results of legislation indicate what has been achieved.
- The overarching structure of legislation (context) determines how the law integrates the legal system and interacts with it.

The mechanics of designing effective legislation cannot be explained at length here,[12] but some key elements are highlighted below: (Figure 2: Selected mechanics for designing effective legislation[13])

Effective legislation does not materialize magically. In fact, it will not materialize unless explicitly anticipated. This means that effective laws can be engineered if effectiveness guides the design, drafting and scrutiny process.

10 Ibid.

11 Mousmouti, M. and G. Crispi (2015). "Good" Legislation as a Means of Ensuring Voice, Accountability and the Delivery of Results in Urban Development, in the World Bank Legal Review - Improving Delivery in Development: The Role of Voice, Social Contract and Accountability, Volume 6, World Bank Group.

12 Mousmouti, M. (2019). Designing Effective Legislation, United Kingdom: Edward Elgar Publishing. .

13 Designed by the authors.

C. Good urban law across the lifecycle of legislation

The life of a law does not progress in a straight line. Instead, the lifecycle of legislation is an eternal process of action, reaction and more action, in which each phase builds into the next. The need for legislation is identified, laws are drafted, debated and adopted, implemented, scrutinized, amended and so on.

Good urban legislation is not a one-off concern. Instead, it requires a consistent effort across the life cycle of legislation.[14] To have a good law, it is important to scrutinize it before it is adopted, monitor it when it is implemented and evaluate its results and outcomes ex-post. Like all good law, urban law should be founded on evidence-based policy making – a well understood concept where policymaking is based on and informed by rigorously established objective evidence. In other words, policymaking that is based on evidence rather than on ideology, anecdotal evidence, so-called "common sense" or even the intuition of even the most experienced policymakers.[15]

14 Designed by authors.

15 European Parliament Research Service, 'Evidence for policy-making Foresight-based scientific advice', PE 690.529 – March 2021.

Figure 2: Selected mechanics for designing effective legislation

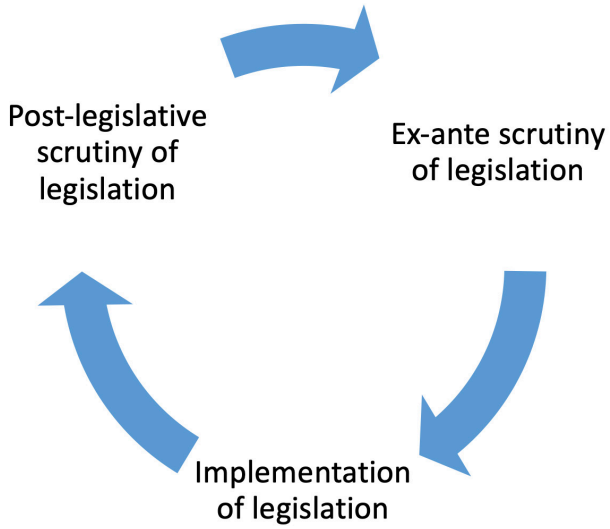


Figure 3 : The lifecycle of legislation

What might read like a good urban law before adoption might produce unwanted effects and impacts or might need to be amended to fully respond to needs in reality. Legislative scrutiny is a systematic process that needs to take place throughout the life cycle of legislation.

1. Parliaments and scrutiny of legislation

Parliaments are the branch of power with the constitutional mandate to legislate / adopt legislation. Even though many legislative proposals might originate within governments, parliaments are the bodies that will ultimately decide whether proposals will become binding laws and what their final content will be. This is a significant privilege, but it is also an important responsibility for parliaments that need to make sure, firstly that they produce legislation of the best possible quality; secondly, that the law is producing the desired results; and thirdly that required action is taken to correct "errors" and improve its effectiveness.

Within parliaments, committees are the bodies usually responsible for scrutinizing draft legislation at a more detailed level.

2. Ex-ante scrutiny of draft legislation

Pre-legislative, or ex-ante scrutiny, focuses on draft legislation before it reaches the plenary and is debated. It is performed in order to improve legislation and reduce the need for subsequent amending legislation. We must distinguish here between pre-legislative policy consultation, which often takes the form of a Green Paper, a White Paper or a research paper, and pre-legislative scrutiny on a draft bill which has come to parliament. In jurisdictions around the world, parliamentary committees are the main "scrutinizers" of draft legislation in parliament and can propose amendments and improvements to draft bills. Committees receive a bill and all accompanying documents and have the task of scrutinizing draft legislation and propose amendments and improvements.

Parliamentary committees rarely have a clear methodology for conducting their scrutiny. The discussion might be led by political and policy concerns or by technical concerns. In an ideal world, parliamentary committees should be scrutinizing the potential of legislation to be effective, in other words, the capacity of legislation to produce the desired results. The advantage of pre-legislative scrutiny is that it sometimes de-politicises discussion, thus making party political agreement easier to achieve as governments do not necessarily regard recommendations for changes to a draft bill as a defeat.

3. Ex-post scrutiny of legislation

Post-legislative scrutiny is a structured process of collecting information and answering questions about one or more pieces of legislation to assess if legislation passed has had the "desired effect", and since 1999 it has become the buzzword in parliaments. Post-legislative scrutiny is intended to show what worked in legislation, what did not work and why, and what needs to be changed. Post-legislative scrutiny is a broad concept, the scope of which can range from an assessment of the enactment of the law to a broader assessment of its impact.[16]

Post-legislative scrutiny resembles the old "evaluation" part of the policymaking cycle but in a more structured and perhaps more scientific way – taking a lead from evidence-based policymaking. It can reveal how the law worked, its achievements and unwanted impacts and can show the way on how to "correct" them.

The process of post legislative scrutiny involves 4 distinct phases and at least 18 different steps. But to do all this, post-legislative scrutiny needs to collect and evaluate data, which the draft law itself specifies to be collected, stored and analysed in the future. Without this, post-legislative scrutiny itself can become whimsical and, therefore, ineffective.

Ex-post scrutiny of legislation is also an opportunity to learn from the failure or the success of legislation that is already in place. What worked well and why? What did not work? How can ineffective solutions or legislative patterns be avoided in the future?

16 De Vrieze, F. (2017). Post-Legislative Scrutiny. Guide for Parliaments. Westminster Foundation for Democracy. www.wfd.org. Accessed 13 June 2022.

III. What to look for when scrutinizing a draft law

African Ambassadors in Geneva by Africa Progress Panel source : flickr

A. Clear purpose/objectives

> **Legislation needs a purpose that reflects, in an unambiguous way, what the law is intended to achieve in the legislative, policy and social domains.**

A good law should set a clear and meaningful benchmark for what is being to be achieve. Many statutory instruments include an enacted statement of the law's purpose or objective. These enacted purposes are part of the enacted text of the statute, often at the beginning of the statute as a short title (figures 4 and 5 below) or even as a specific section within the legislation (figure 6).

It is recommended that the purpose is an operative part of the law and that it is clear, objectively identifiable and traceable, reflecting the direct and broader objectives, results, outcomes and effects, and setting a clear and substantive benchmark for what the law aims to achieve. In this way, professionals, citizens and enforcement agencies can interpret, enforce or understand what is going on. The key test for a good purpose is to offer clear benchmarks for what a law aims to achieve.

In the first example below, the purpose statement is descriptive and refers to the means that the law uses rather than its purpose. Alleviating effects of disasters is the overarching goal, but this would need to be made more specific.

In the second example, the purpose offers a lot of information but not everything is useful in the effort to establish the purpose of the law. The overall purpose appears to be to make land acquisition fair and transparent.

The key test for a good purpose is to offer clear benchmarks for what a law aims to achieve. So, in each of the examples above, when the law is scrutinized ex post, the purpose should offer the substantive criteria to do so. Has the law been successful in alleviating the effects of disasters for the vulnerable populations (for example)? Has the process of land acquisition become fairer and more transparent?

An Act to make provision for the co-ordination and implementation of measures to alleviate effects to disasters, the establishment of the office of Commissioner for Disaster Preparedness and Relief, the establishment of a National Disaster Preparedness and Relief Committee of Malawi, and for matters incidental thereto or connected therewith

Figure 4: A purpose statement from the Disaster Preparedness and Relief Act of Malawi[17]

17 Malawi, Disaster Preparedness and Relief Act, No 27/1991.

In Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

Figure 5: A purpose statement from the Indian Right to Fair Compensation and Transparency in Land Acquisition.[18]

18 India, Rehabilitation and Resettlement Act, No 30/2013.

OBJECTS AND PURPOSES OF THE ACT

1. The objects and purposes of this Act are to
   a. ensure that appropriate and sustainable use is made of all publicly-owned and privately-owned land in Saint Lucia in the public interest;
   b. maintain and improve the quality of the physical environment in Saint Lucia, including its amenity;
   c. provide for the orderly sub-division of land and the provision of infrastructure and services in relation thereto;
   d. maintain and improve the standard of building construction so as to secure human health and safety;
   e. protect and conserve the natural and cultural heritage of Saint Lucia.

2. This Act shall receive such purposive and liberal construction and interpretation as best ensures the attainment of its objects and purposes.

Figure 6: Objectives in law's provisions in the Physical Planning and Development Act, Saint Lucia.[19]

19 Saint Lucia, Physical Planning and Development Act, No 29/2001.

B. Clear structure

Structure is the backbone of any Act. A clear structure plays a major role in organizing and prioritizing the issues according to their importance and relevance to the purpose of legislation. Structure is paramount for an effective law. General rules for structure include:

- First state the law's title, purpose and objectives.
- Then state the authority to administer the law.
- Then state the procedure according to which the law will be administered.

C. Clear rules

Laws introduce the rules that are necessary and appropriate to accomplish their objectives. These take a variety of forms depending on the subject and the purpose of the legislation.

A planning law may:

- Create an obligation to prepare plans.
- Introduce obligations for development permits, procedures for development permits.
- Create offences and introduce sanctions.
- Prerequisites for development projects.
- Give rights to owners of land.
- Set procedures for review and appeals.
- Create an instrument for upgrading of informal settlements (for instance, by establishing special planning processes for such areas).

Similarly, an environmental law may require the preparation of environmental impact assessments and a law on taxation may create a mechanism for valuing property.

An effective law needs to offer a clear (legal) solution to the problem addressed. Conceptual errors in legislative solutions might include standards in discordance with the needs of specific urban contexts, unrealistic building requirements or poorly coordinated procedures. Wrong formulas might result in non-compliance, informality, manipulation of markets and exclusion, among other issues.

So, whether the law creates procedures, introduces requirements or entitlements, it needs to do so in a clear way and determine:

- What the rule is.
- What needs to be done.
- Who the bearer is of the right/obligation.
- How can the right/obligation be fulfilled/implemented.

APPLICATION FOR PERMISSION TO DEVELOP LAND

An application to the Head of the Physical Planning and Development Division for permission to develop land shall be made on the prescribed form and shall be accompanied by-

Figure 7: Provision of a mechanism for application of development permits in Saint Lucia.[20]

20 Saint Lucia, Physical Planning and Development Act, No 29/2001.

Obligation to undertake Environmental Impact Assessment

81.-(1) Any person, being a proponent or a developer of a project or undertaking of a type specified in the Third Schedule to this Act, to which Environmental Impact Assessment is required to be made by the law governing such project or undertaking or in the absence of such law, by regulations made by the Minister, shall undertake or cause to be undertaken, at his own cost, an environmental impact assessment study.

Figure 8: Creation of the environmental impact assessment mechanisms in Tanzania.[21]

21 Tanzania, Environmental Management Act, No 20/2004.

Article 12: Urban planning documents

Urban planning shall be performed with the aid of the following documents:
1 ° master plan for land management and urban planning;
2 ° local land development plans;
3 ° specific land development plans;
4 ° land subdivision plans.

Figure 9: List of required planning instruments in Rwanda.[22]

22 Rwanda, Governing Urban Planning and Building, No 10/2012.

D. Clear mechanisms to administer and implement the law

At the most fundamental level, good quality urban legislation must be implementable. A law is not implemented on its own. Resources need to be mobilized, action needs to be taken, and an institutional framework needs to be designed to orchestrate the implementation process. An effective law that provides realistic enforcement strategies within the capacity of those in charge of compliance will lessen the probability of failed implementation.

Overall, an effective law should include provisions that stipulate and facilitate its implementation. The essential mechanisms for an effective implementation comprise the creation of institutional bodies with monitoring, enforcement, offences and penalties powers.

A quick reading of any piece of legislation reveals the institutions created or appointed to implement the law. The laws often contain provisions that establish institutions for implementation of the act and lay out their functions. In the provided example (figures 10 and 11), the Dominican Physical Planning and Development Authority is created by the act which also laid out its functions.

Implementation and enforcement mechanisms need to be appropriate, realistic and consider existing resources and infrastructure.

The number of created institutions depends on the purpose of the act and the way the regulatory system is meant to work. At times, the institution created is not an autonomous body but an "office", a department in a bigger institutional unit (such as a ministry). There is also the possibility of formulating a governance system composed of multiple institutions with different functions. For instance, the Urban and Regional Law Act in Zambia confers different functions on the director of planning, regional planning authorities, local planning committee and planning appeals tribunals (figure 12).

In addition, it is important for legislation to provide for the institutions' composition, i.e., who are the members of such institutions and how are they selected (figure 13). Failure to do this may lead to uncertainty, enforcement gaps and manipulation as individuals fight for control.

Beyond the creation of institutions, the stipulation of their functions and their composition, planning laws often empower relevant institutions with adequate economic and administrative capacities to be leveraged to incentivize private behaviour compliance with planning rules. For instance, sanction provisions enable planning authorities to undertake various administrative actions to penalize breaches of planning control such as unauthorized construction or change of use (figures 14 and 15). Furthermore, implementation measures may also be aided through creating and ringfencing fiscal instruments (figure 16).

4. (1) For the purposes of this Act there shall be a Physical Planning and Development Authority for Dominica.

Figure 10: Creation of the Dominican Physical Planning and Development Authority.[23]

23 Dominica Republic, Physical Planning Act (2002).

(4) The Authority shall -

a. advance the purposes of this Act as set out in section 3;

b. institute, complete, maintain and keep under review a study of matters pertinent to planning the use and development of the land of Dominica;

c. prepare or cause to be prepared development plans in accordance with part III of this Act;

d. regulate development by the means provided by this Act having regard to the need to secure consistency and conformity with the development plan;

e. regulate the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings;

f. prepare, and submit to the Minister subject reports on matters which the Authority or the Minister may from time to time consider necessary or desirable having regard to the provisions of section 3;

Figure 11: Functions created Dominican Physical Planning and Development Authority.[24]

24 Ibid.

Director of Planning

8. (1) There shall be a Director of Planning in the Ministry who shall be a public officer and principal adviser to the Minister on matters relating to urban and regional planning.

Establishment of planning committees

14. (1) The standing committee of a local authority responsible for planning shall be the planning committee for purposes of this Act.

PART VII PLANNING APPEALS TRIBUNALS

Planning appeals tribunals

62. (1) The Minister shall, by statutory instrument, constitute a planning appeals tribunal for each Province of the Republic which shall determine disputes and hear and determine appeals from the decisions of planning authorities in the Province.

Figure 12: Assignment of planning functions to multiple institutions.[25]

25 Zambia, Urban and Regional Planning Act (2015).

(2) A regional planning authority shall consist of the following members who shall be appointed by the Minister-

a. five members qualified in planning, environmental management, law, land surveying, architecture or any other related or relevant field, nominated by the provincial planning authorities in the region;

b. a representative of each of the planning authorities in the region;

c. two representatives of the chiefs in the region, nominated by the Chiefs in the region;

Figure 13: Provision of institutional composition.[26]

26 Zambia, Urban and Regional Planning Act (2015).

CHAPTER VIII SANCTIONS ARTICLE 81

Besides obligations contained in these provisions, breach and execution of illegal actions that constitute administrative contravene in the field of urban planning shall be punished with a penalty as follows:

- For [violation of] Articles 34, 56, 57, and 58 with 50 000 ALL;
- For Articles 60, 61, and 63 with 200 000 ALL;
- For Articles 66, 67, 73, 75, 77, and 78 with 500 000 ALL

The Chairperson of the Construction Police Branch shall impose the penalties.

Figure 14: Sanction provision for illegal planning activity in the Albania's planning law.[27]

27 Albania, Law on Territorial Planning and Development (2014).

37. ENFORCEMENT NOTICES

(1) Where it appears to the Head of the Physical Planning and Development Division

a. any development of land has been carried out after this Act comes into force without the grant of permission required under Part 3; or

b. the developer has not complied with any condition subject to which permission was granted in respect of any development,

The Head of the Physical Planning and Development Division may, if it appears to be expedient to do so having regard to the provisions of the development plan for the area, if any, and to any other material considerations-

i. In a case to which paragraph (a) applies, within 4 years of the development being carried out, or

ii. In a case to which paragraph (b) applies, within 4 years of the date of the alleged failure to comply with the condition,

serve an enforcement notice on the owner and the occupier of the land and any other person who has a registered interest in the land.

Figure 15: Administrative enforcement notices powers to planning authorities in Saint Lucia.[28]

28 Saint Lucia, Physical Planning and Development Act, No 29/2001.

PART VI- FINANCIAL PROVISIONS

25. (1) There is hereby established the Climate Change Fund which shall be a financing mechanism for priority climate change actions and interventions approved by the Council.

(2) The Fund shall be vested in the National Treasury.

(3) There shall be paid into the Fund-

(a) monies appropriated from the Consolidated Fund by an Act of Parliament;

Figure 16: Ad-hoc special funds with a clearly stipulated source from Kenya.[29]

29 Kenya, Climate Change Act, 2016.

E. Clear language

Even the most well-intentioned laws can fail due to ambiguity and poor drafting. Every law includes a set of (legislative) messages directed to the public, professionals, lawmakers, enforcers and the judiciary, among others (what their rights are, what obligations they are under, etc.).

The importance of clarity, unambiguity, simplicity and accuracy cannot be overstated as it is through these that legislation is clear to all audiences: those who must comply with it (the subjects of legislation), those who much implement it (implementers and professionals working with the law) and those who might interpret its provisions (judges).

Creating clear and unambiguous (legislative) messages is a demanding task if not considered in relation to the audiences of legislation and communication choices that will best put the message across.

The message of legislative provisions needs to be clear equally to citizens and the authorities expected to enforce them. This is fundamental to upholding the rule of law. The effectiveness of a law depends on the ability to communicate its objectives and the means of achieving them. As such, the law must be characterized by precision and coherence. The legislative language must be plain, certain, clear, grammatically correct and gender neutral.

Redrafting the Law in Figure 17:

BEFORE

Obligation to undertake Environmental Impact Assessment

81.-(1) Any person, being a proponent or a developer of a project or undertaking of a type specified in the Third Schedule to this Act, to which Environmental Impact Assessment is required to be made by the law governing such project or undertaking or in the absence of such law, by regulations made by the Minister, shall undertake or cause to be undertaken, at his own cost, an environmental impact assessment study.

Figure 17: Creation of the environmental impact assessment mechanisms in Tanzania.[30]

30 Tanzania, Environmental Management Act, No 20/2004.

AFTER

Developers or proponents of projects or undertakings for which an environmental impact assessment is required under Schedule 3 of Tanzanian Environmental Management Act (2004) are under obligation to undertake such an assessment at their own cost.

Ambiguity and opaqueness in law drafting risks causing conflicts, institutional paralysis and ultimately ineffective implementation. The 2010 Kampala Capital City Act[31] is an example of the consequences of lack of clarity in law formulation.[32] To improve efficiency of basic service delivery, the Act establishes the Kampala Capital City Authority. In doing so, the Act does not clearly delineate the hierarchy and the composition of bodies responsible for its implementation.[33]

On the one hand, section 11(1) of the 2010 Act provides that the mayor shall be the political head of the capital city. On the other hand, section 17(1) provides that the executive director shall be the chief executive of the metropolitan authority. While no clarification of the difference between the capital city and the metropolitan authority is given, section 6 indicates the mayor as a member of the Kampala Capital City Authority without mentioning the role of the executive director. The unclear definition of the functions and responsibilities of political and administrative institutions caused the emergence of multilevel governance conflicts that hindered the effective delivery of services. Clarity not only refers to the wording of a singular legal document. It also refers to the structure of the law.

31 Uganda, the Kampala Capital City Act, No 1/2011.

32 G. Stewart-Wilson and others (2017). Owning our Urban Future: The Case of Kampala City. Uganda National Academy of Sciences.

33 Karyeija, G. K. and S.B. Kyohairwe (2012). Organizational puzzles of agencification: A Kampala City Council Authority Case, Uganda, Journal of African & Asian Local Government Studies, vol. 1, No 4.

Multiple amendments over time make it impossible for the public to follow the law changes and its status. In England, for instance, there are more than 17,000 pages of law dealing with town and country planning, scattered over about 45 acts and thousands of pages of regulations. Only professionals specializing in that aspect of the law can find their way about which is both inefficient and exclusionary.[34]

F. Enabling clauses for secondary legislation and regulations

Most statutory instruments, i.e., the enabling or parent act, make provision for the enactment of regulations, commonly known as subsidiary legislation. These regulations normally contain the various administrative and procedural details necessary to ensure that the provisions of the parent act will operate successfully. The parent act normally specifies the authority that has the delegated power to make the subsidiary law.

34 McAuslan, P. (2013). Towards a just planning system: the contribution of law, Journal of Planning and Environmental Law, 2, pp. 145–157.

(3) For the purposes of this Act, and in furtherance of this section, the Regulations, guidelines, policies, circulars, manuals and other documents issued under this Act may provide for

(a) permitting standards and procedures;

(b) the preparation and submission of plans for permits;

(c)the manner of publication of notices in relation to matters in this Act which require notice;

(d) matters relating to zoning and depressed settlements;

(e) site requirements;

(site coverage of buildings;

(g) projections beyond building lines including erfs;

(h) orientation, building lines and improvement lines;

(i) boundary lines;

(i) building at street corners;

(k) dimensions, heights and space of rooms and areas in dwelling units;

(1) planning standards;

(m) zoning and re-zoning;

(n) variation of planning standards;

(o) planning in respect of heritage and listed building;

(p) procedure for considering appeals

(q) procedure for public consultations; and

(r) structural repairs.

Figure 18: Regulations needed to operationalize the Land Use and Spatial Planning Act in Ghana.[35]

35 Parliament of Ghana, Land Use and Spatial Planning Act (No. 925/2016).

G. Review provisions

Every new law falls within the broader legal system and interacts, coexists or competes with other messages which are already there. Therefore, coherence of new laws with the existing legal system is of upmost importance. A set of provisions cannot incentivize behaviours that other acts prevent.

Overlapping or poorly coordinated provisions (and legislative messages) are common in urban law. In Kenya, for example, different planning provisions coexist without clear connection between them.[36] While the Constitution of Kenya assigns land planning functions to the national Government, the Physical Planning Act 1996 and the Urban Areas and Cities Act 2011 assign overlapping and parallel roles for cities without setting coordination mechanisms. Beyond creating conflicts in implementation, incoherent laws diminish accountability.

36 Mousmouti, M. and G. Crispi (2015). "Good" Legislation as a Means of Ensuring Voice, Accountability and the Delivery of Results in Urban Development, in The World Bank Legal Review - Improving Delivery in Development: The Role of Voice, Social Contract and Accountability, vol. 6, World Bank Group.

How are citizens to make sense of them?

As the legislature is responsible for adopting legislation, it also has a role in monitoring the implementation of legislation and evaluating whether the laws it has passed have achieved their intended outcomes. Review or reporting clauses can be used which require that the implementing institution reports to the legislature on results and impact.

Effective legislation requires a clear framework for monitoring, review and evaluation. This will allow implementation, assessment performance, capturing the achievement of results and broader impacts, and evaluation and allowance for corrective interventions where necessary.

(5) The Authority shall, annually, report to the Council on the performance of functions under this Act, and such report shall form part of the report by the Council to the National Assembly.

Figure 19: Provision in the law in Kenya that requires a review of the measures introduced by the law.[37]

37 Kenya Climate Change Act, No 11/2016.

Many urban laws, particularly around spatial planning, have the characteristics of what is colloquially referred to as "zombie" legislation: many of its processes are dysfunctional or non-functional – it is dead for most practical purposes – but because it is technically in force (and therefore is enforceable), partial functionality or occasional manipulation can produce perverse outcomes or create opportunities for irregular rent seeking. For instance, through the Future Saudi Cities Programme, UN-Habitat discovered that in Saudi Arabia there are over 500 urban planning regulatory instruments, all having legal force. The lack of periodic review and consolidation of laws hampered uniform development of the country's cities since various local authorities (amanahs) conducted what is colloquially referred to as "cherry-picking", meaning they applied different laws depending on how favourable their outcomes were.

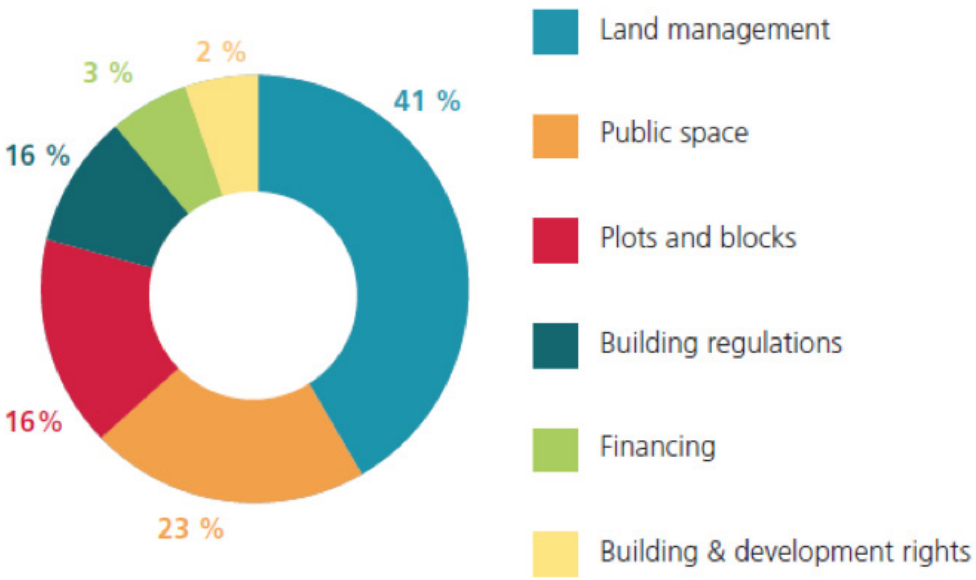


Figure 20: Number of urban laws in Saudi Arabia, organized by planning topics.[38]

38 UN-Habitat (n.d). Future Saudi Cities Programme.

To avoid saturating the legal system with laws remaining in force indefinitely, a sunset clause can be inserted in a statute. A sunset clause provides that the law should cease to have effect after a specific date unless further legislative action is taken to extend the law.

For instance, section 21 of the United Kingdom Terrorism Prevention and Investigation Measures Act 2011 provides a five-year time limit for the legal validity of the Act itself (figure 21).

Expiry and repeal of TPIM powers

(1) Except so far as otherwise provided under this section, the Secretary of State's TPIM powers expire at the end of 5 years beginning with the day on which this Act is passed.

(2)The Secretary of State may, by order made by statutory instrument-

(a) repeal the Secretary of State's TPI powers;

(b) at any time revive the Secretary of State's TPIM powers for a period not exceeding 5 years;

(c) provide that the Secretary of State's TPIM powers-

i. are not to expire at the time when they would otherwise expire under subsection (1) or in accordance with an order under this subsection; but

ii. are to continue in force after that time for a period not exceeding 5 years.

Figure 21: Sunset provision from the Terrorism Prevention and Investigation Measures Act 2011 in the United Kingdom.[39]

39 United Kingdom, Terrorism Prevention and Investigation Measures Act, No.23/2011

H. Commencement, expiry and transitional provisions

Legislation needs to clearly stipulate its commencement and expiry dates to avoid confusion and gaps. It may be a particular date (e.g., 1 April 2020) or when a specified action takes place (e.g., 14 days after presidential assent). Moreover, a new law should leave no gap between its commencement and expiry and should adequately address the issue of what happens to any institutions, resources or mechanisms that had been created by the preceding law. The law also needs to clarify the status of any rights and entitlements that had existed under the previous law and should indicate how inconsistencies between itself and related legislation may be resolved.

Savings and transitional provisions Cap. 283,Cap. 194

76. (1) Any acts, orders and conditions lawfully done, given or imposed under the provisions of the Town and Country Planning Act, the Housing (Statutory and Improvement Areas Act or under the provisions of any planning scheme, zoning scheme or zoning plan prepared under those Acts before the commencement of this Act shall remain in force and be deemed to have been lawfully done, given or imposed under this Act, but shall not, in respect of anything done prior to the commencement of this Act, give rise to claims for compensation under this Act.

Cap. 194

(2) An occupancy licence or certificate of title issued under the Housing (Statutory and Improvement Areas) Act shall be valid as if issued under this Act.

Figure 22: Transitional provisions in the Urban and Regional Planning Act in Zambia.[40]

40 Zambia, Urban and Regional Planning Act, No. 3/2015

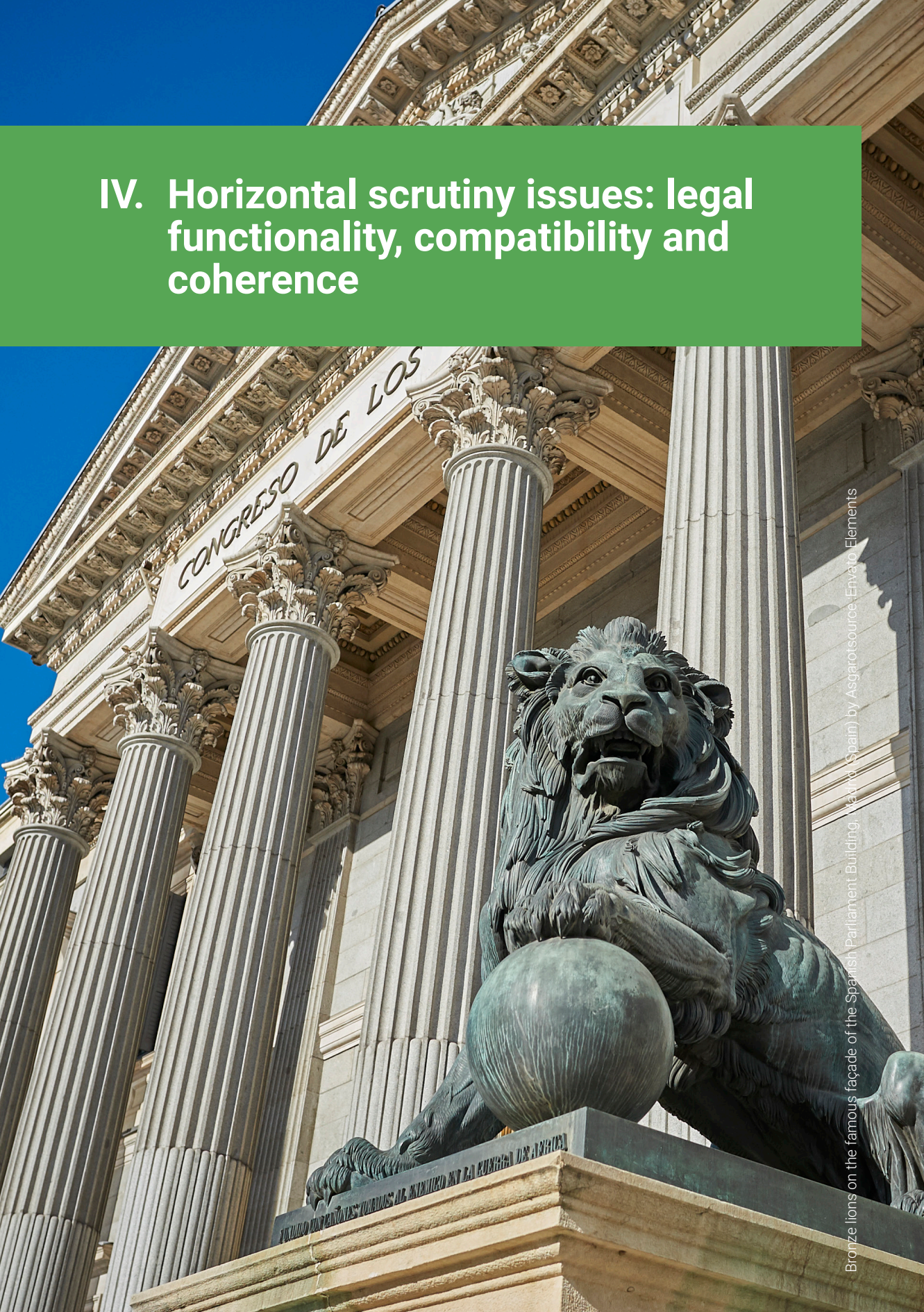
Inconsistencies between Acts Cap. 1

4. Subject to the Constitution, where there is an inconsistency between the provisions of this Act and the provisions of any other written law relating to planning that is not a specific subject-related law on a particular element of planning, the provisions of this Act shall prevail to the extent of the inconsistency.

Figure 23: Legal inconsistency clarification resolution.[41]

41 Ibid.

IV. Horizontal scrutiny issues: legal functionality, compatibility and coherence



Bronze lions on the famous façade of the Spanish Parliament Building, (Madrid, Spain) by Asgaroth/source.Envato Elements

A. Compatibility with international law and norms

Under international law, States have the obligation and duty to respect, protect and fulfil international norms such as human rights which set minimum standards required for people to live in freedom, equality and dignity. The international human rights framework can be found in international treaties such as the Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966), Convention on the Elimination of all Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), and Convention on the Rights of Persons with Disabilities (2006), among others.

The preamble of the Universal Declaration of Human Rights notes that "human rights should be protected by the rule of law",[42] which has evolved to mean, inter alia, that the substance of any domestic law needs to be consistent with minimum human rights norms and standards as defined by international human rights instruments accepted by the international community.[43]

42 Preamble paragraph 3, Universal Declaration of Human Rights.

43 Gosalbo-Bono, Ricardo (2010). The Significance of the Rule of Law and its Implications for the European Union and the United States. University of Pittsburgh Law Review.

PART XI - INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS

124. Conventions, agreements and treaties on environment

(1) Where Kenya is a party to an international treaty, convention or agreement, whether bilateral or multilateral, concerning the management of the environment, the Authority shall, subject to the direction and control of the Council, in consultation with relevant lead agencies-

(a) initiate legislative proposals for consideration by the Attorney-General, for purposes of giving effect to such treaty, convention or agreement in Kenya or for enabling Kenya to perform her obligations or exercise her rights under such treaty, convention or agreement; and

(b) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.

Figure 24: Example of a compatibility provision with international law in Kenya.[44]

44 Kenya, Environmental Management and Co-ordination Act (No. 8/1999).

For instance, the principle of non-refoulement is a fundamental norm recognized by various international human rights instruments, including the 1951 United Nations Convention on the Status of Refugees, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2007 International Convention for the Protection of All Persons from Enforced Disappearance. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment or other serious human rights violations. As such, domestic laws that promote refoulement are incompatible with international law and thus can be challenged. For instance, the High Court in Kenya declared section 16 of the 2014 Security Law (Amendment) Act (figure 25) as null and void because of its inconsistency with the Constitution of Kenya.[45] More precisely, the Act violated the principle of non-refoulement since it could be used to expel refugees and asylum seekers from the country.

45 High Court of Kenya, Constitutional and Human Rights Division, Petition No. 628 of 2014 consolidated with Petition No. 630 of 20154 and Petition No. 12 of 2015.

PERMITTED NUMBER OF REFUGEES AND ASYLUM SEEKERS IN KENYA.

16A. (1) The number of refugees and asylum seekers permitted to stay in Kenya shall not exceed one hundred and fifty thousand persons.

(2) The National Assembly may vary the number of refugees or asylum seekers permitted to be in Kenya.

(3) Where the National Assembly varies the number of refugees or asylum seekers in Kenya, such a variation shall be applicable for a period not exceeding six months only.

(4) The National Assembly may review the period of variation for a further six months.

Figure 25: Provisions declared unconstitutional by the High Court of Kenya.[46]

46 Kenya, Security Laws (Amendment) Act, No.19/2014.

B. Consistency with national policy objectives

Policy is the formal manifestation of a government's political priorities and principles into programmes and courses of action to deliver desired change. A policy document therefore is the compilation of policy commitments in relation to what needs to be done in a specific area or field; a guide to the socioeconomic development plans based on the review and analysis of national socioeconomic development frameworks, policies, strategies and provisions. Legislation (which is one of the tools used to operationalize the policy goals) is the translation of policy objectives into specific clauses and articles, skilfully transforming policy goals (by trained drafters) into legislative, binding obligations.

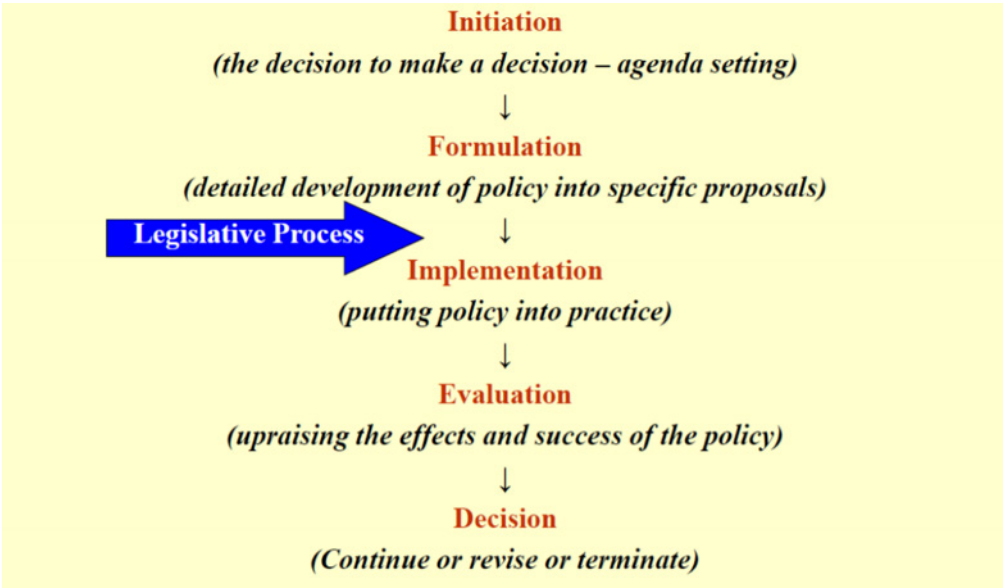


Figure 26: The policy and legislative process.[47]

47 Stefanou, C. (2008). Drafters, Drafting and the Policy Process, in Stefanou, C. and H. Xanthaki (eds.). Drafting Legislation: A Modern Approach. Ashgate.

Therefore, urban laws should be preceded by adequately researched policies and should embody the policy's spirit, the lack of which has a negative effect on the law's consistency, interpretation and application. This would mean that if the policy agenda is, for example, to achieve compactness and higher urban density, then it would be contradictory for the law to set the minimum plot size above 200 m^2 as large plot sizes compromise the generation of flexible street networks.

At the same time, due diligence is required to ensure that new policy objectives are aligned with pre-existing norms, and vice-versa, to avoid conflicting agendas which leads to confusion and non-implementation.

For instance, since 2007 the Government of Uganda has published new policy documents to guide the drafting of a new urban development law which use the word "government" indiscriminately to refer to the national-level Government.[48] However, pursuant to the Constitution of Uganda 1995 and the Local Governments Act 1997 some roles referred to in the policy documents have been decentralized to local governments. For instance, paragraph 609 of the Second National Development Plan (2015) states that "Government will develop and ensure implementation of Regional Physical Development Plans, District Physical Development Plans and Sub-Urban and Local Physical Development Plans to guide the establishment and development of urban corridors, regional and strategic cities, and other urban centres".[49] Moreover, in paragraph 228 of the Uganda Vision 2040, it is stated that "Government will develop and ensure implementation of the area physical master plans to guide the establishment and development of the Greater Kampala Metropolitan Area, regional and strategic cities, and other urban centres. This will take into consideration provision of social amenities such as education and health, and recreational facilities".[50] If these paragraphs are the basis of the drafter's instructions, it will not only create widespread legal uncertainity but will also antagonize officials at different government levels and could result in unintended perverse outcomes.

C. Coherence and compatibility with existing legislation

New urban laws must be coherent with existing legislation and determine their relationship with the existing body of laws, namely if they are repealing, amending, complementing or introducing new provisions.

Ensuring coherence with existing law is an immense challenge. Records of laws currently in force are not always available, and when they can be traced, they do not always reflect amendments. In-text referencing and acknowledging other laws is one way of ensuring consistency. It not only creates confidence that the drafting team is aware of the legal system, but also that the provision will not be repealed for being remiss, unconstitutional or illegitimate. For example, in Kenya, section 38 (jj) of the Environmental Management and Coordination Act (1999)[51] stipulates that the National Environment Action Plan should take into account and record all monuments and protected areas declared by the minister under National Museums and Heritage Act.[52] The Act also acknowledges existing legislative powers, as shown in figures 27 and 28.

48 This deduction has been made as there is reference to the role of local governments in other sections of the documents.
49 Uganda Government (2015). Second National Development Plan. Kampala, para. 609.
50 Uganda Government (2007). Uganda Vision 2040, National Planning Authority, Kampala, para 228.
51 Kenya, Management and Co-ordination Act, No. 8/1999.
52 Kenya, National Museums and Heritage Act, No. 6/2006.

118. ENVIRONMENTAL INSPECTOR'S POWERS TO PROSECUTE

Subiect to the Constitution and the directions and control of the Attorney-General, an environmental inspector may, in any case in which he considers it desirable so to do-

(a) institute and undertake criminal proceedings against any person before a court of competent jurisdiction (other than a court martial) in respect of any offence alleged to have been committed by that person under this Act; and

(b) discontinue at any stage with the approval of the Attorney-General, before judgment is delivered any such proceedings instituted or undertaken by himself.

Figure 27: Example of constitutional reference, Kenya.[53]

53 Kenya, Management and Co-ordination Act, No. 8/1999.

102. NOISE IN EXCESS OF ESTABLISHED STANDARDS PROHIBITED

Subject to the provisions of the Civil Aviation Act (Cap. 394), any person who emits noise in excess of the noise emission standards established under this Part commits an offence.

Figure 28: Example of reference to related acts and laws, Kenya.[54]

54 Ibid.

At the same time, legislators need to consider the impact of new legal processes on pre-existing frameworks; for instance, will the current system be able to cope with an increased load if the new law introduces new categories of administrative process? Is the current system able to deliver timely decisions of reasonably good quality? Will the new law add to the number of appeals, or detract from it?

To speed up development approvals in South Africa, the Development Facilitation Act empowered provincial planning tribunals to approve applications for the rezoning of land and the establishment of townships. They were enabled to approach such applications without considering other laws, including environmental management regulations.[55]

55 South Africa, Development Facilitation Act (No. 67 of 1995).

Developers fully exploited this, resulting in numerous inappropriate applications being approved. Only in 2010, after many development projects had benefited from the legal uncertainty that this sort of "override provision" created, the Constitutional Court declared the law unconstitutional.[56] The Constitutional Court held that the zoning and land management powers are exclusive municipal functions. They were previously assigned to municipalities by section 156(1) of the Constitution, and by the Town Planning and Townships Ordinance (15/1986).

In 2008 in Tanzania, the Government initiated the Mkurabita (property and business formalization) programme to formalize property. The programme ignored legislation already in force in Zanzibar and imposed a local land registry at the neighbourhood level, where administrative capacity was the weakest. The new law, grounded in the principle of individual property rights, was thus superimposed over an existing system dominated by socialist values, with no effective mechanism to resolve property conflicts. In effect, the law undermined rather than strengthened the land rights of ordinary people, with wealthy outsiders able to secure the most valuable properties. An initiative very much aimed at empowering the urban poor thus ended up weakening their property rights because attention was not paid to pre-existing land laws.[57]

D. Transparency and efficiency of mechanisms

A good law should have clearly defined mechanisms and processes with sufficient checks and balances to prevent arbitrary actions. In addition, the law should incorporate mechanisms which ensure that affected people are not only heard, but that their views are taken into consideration during decision-making. For instance, involving the public in the formulation of urban plans by incorporating multiple perspectives creates a sense of ownership which increases the likelihood of compliance. In Colombia, neighbourhood plans are approved without the agreement of landowners as consent is sought only when a law is being applied. Consequently, only 44 per cent of approved plans in the past 10 years have been implemented.[58]

Significantly, the processes involved in the legislation should not be too complex to hinder compliance. Unclear processes with overlapping or contradicting procedures often lead to higher discretion of public authorities, limited accountability and corruption.

56 Constitutional Court of South Africa, 89/09 (18 June 2010), City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others.

57 Berrisford, S. and P. McAuslan (2005). Reforming Urban Laws in Africa - A Practical Guide. African Centre for Cities, Cities Alliance, UN-Habitat, Urban LandMark.

58 https://unhabitat.org/sites/default/files/download-manager-files/Urban%20legislation-Colombia11.pdf.

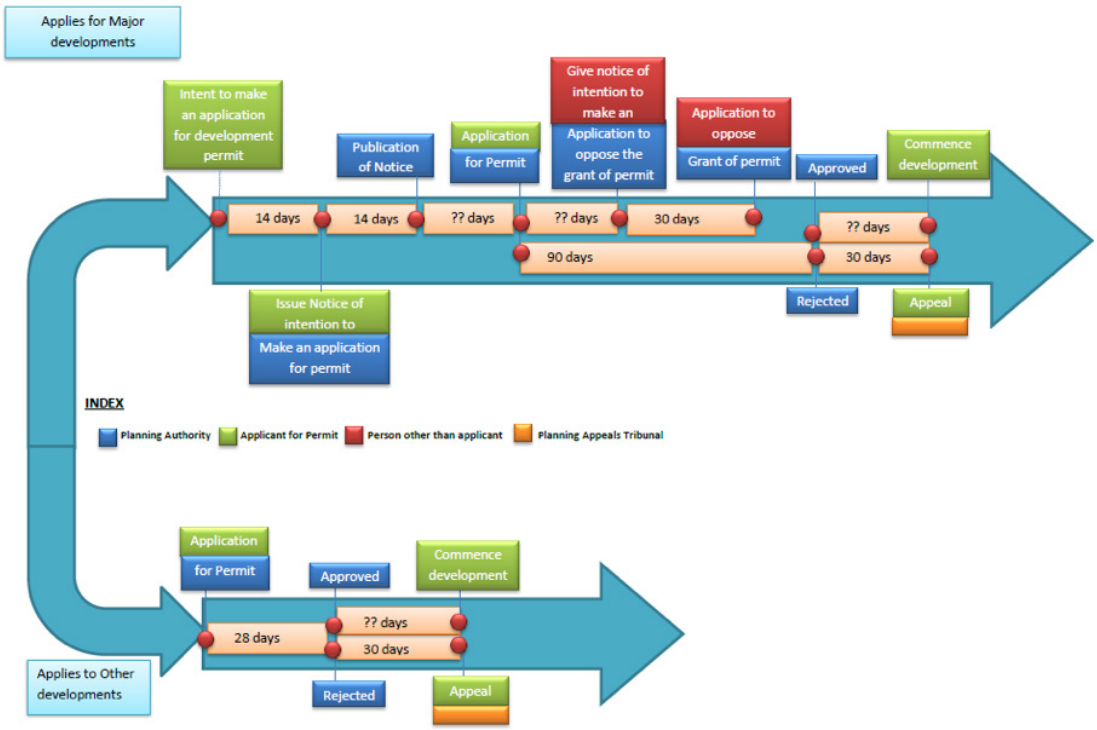


Figure 29: Gaps identified in the development control process in Zambia.[59]

59 Zambia, Urban and Regional Planning Act, No 3/2015.

Detailed, rigid and inflexible laws make compliance difficult and encourage people to go around them. An otherwise law-abiding citizen can be discouraged from adhering to the law due to its complexity, time-consuming nature as well as the costs associated with it. Consequently, this enables the sprouting of non-legal activities that ultimately result in informal procedures and institutions. A helpful benchmark when designing urban legislation is to include regulatory standards that 80 per cent of a typical neighbourhood can realistically meet.[60] A study on the extent of compliance with land-use regulations in Nigeria found that, when it came to maximum plot-coverage rules, the level of compliance in high-income neighbourhoods was 15 per cent, in middle-income neighbourhoods it was 20 per cent, but in low-income areas there was no compliance at all.[61] This is an inversion of the 80 per cent rule, which is a threshold which stipulates that at least majority of the population (80 per cent) should have the ability to comply with the legal requirements of a given legislation. As the study's authors pointed out, "none of the developers could afford to leave 50 per cent of the plot undeveloped simply to comply with development regulations. Apart from the need to provide accommodation for large households

60 Glasser, M. and S. Berrisford (2015). Urban Law: A Key to Accountable Urban Government and Effective Urban Service Delivery. The World Bank Legal Review, vol. 6.

61 Arimah, B. C. and D. Adeagbo (2000). Compliance with Urban Development and Planning Regulations in Ibadan, Nigeria, Habitat International, 24, pp. 279–294.

averaging about 10 to 12 persons, a sizeable proportion of residents can only afford to buy one half or less of a standard plot of land".[62]

In a UN-Habitat study on "Effectiveness of Planning Law in Sub-Saharan Africa",[63] the city of Arusha, Tanzania, reported in 2018 that over 254.8 acres of illegal subdivisions were attributed to the rigidity, lengthy and costly process of the land subdivision process as outlined in the Town and Country Planning Regulations (Statutory Instrument 246–1). The process that can take between six and nine months is as follows:

- Determination of land tenure ownership by the Arusha City Council Ward Development Committee.
- Landowner submits an application letter and the minutes of ownership to the city council.
- The application is assessed based on the land uses specified in the master plan.
- The urban planning department officials physically visit the site for inspection.
- Landowner pays the fees for subdivision and town planning drawings ($ 45).
- The drawings are submitted to the Urban Planning Committee (15 members) for consideration. They sit every three months.
- Once approved by the committee, the application is submitted to the Regional Administrative Secretary (Arusha Regional Commissioner's Office) who forwards the same to the Ministry of Lands.
- Once the plan is approved by the Director of Urban Planning at the said ministry, a surveyor can then subdivide the land after the landowner has paid the demarcation fees ($ 10).
- Once the demarcation is done; the drawings need to be submitted to the Director of Survey and Marking at the Ministry of Lands to approve the cadastral plan.
- Later, allocation of plots takes place and title deeds are issued after fee payment, e.g., for a plot size between 1 and 500 m2, the fee payable could be $ 700 (inclusive of taxes, land rent, etc).

To establish the relationship between environmental and development decision-making in the urban context, UN-Habitat oversaw six case studies on environmental review processes from Uganda, South Africa, Fiji, Sri Lanka, Brazil and the United States of America in 2018.[64] In the case of Fiji, it was established that the legal and institutional development for environmental review of tourism and residential development was not coordinated and public participation in the development and environmental decision making was yet to be fully operationalized. The study suggested a comprehensive legal and institutional reform for environmental review and that, given the complex customary land ownership system, the participation, involvement and prior informed consent of people would be an indispensable action for successful environmental review of plans and projects.

62 Ibid.

63 UN-Habitat (2019). Effectiveness of Planning Law in Sub-Saharan Africa. www.unhabitat.org. Accessed 13 June 2022.

64 UN-Habitat (2018) Strengthening Environmental Reviews in Urban Development. Urban Legal Case Studies: Volume 6; https://unhabitat.org/strengthening-environmental-reviews-in-urban-development-urban-legal-case-studies-volume-6 . Accessed 16 June 2022).

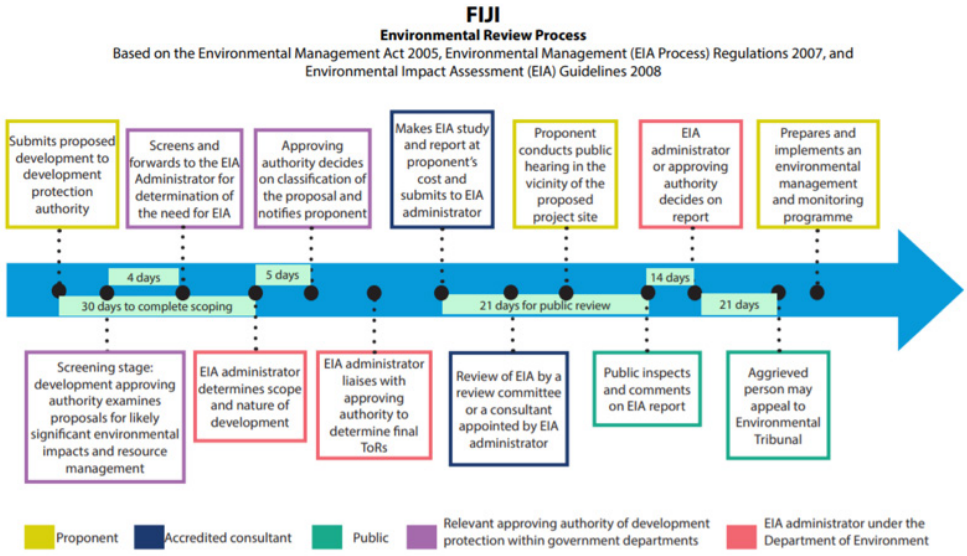


Figure 30: Mapped process of environmental review in Fiji.[65]

65 Ibid.

E. Capacity for implementation

Urban laws should not require more plans and tools that can be produced and effectively implemented with the capacity of the authority. Thus, it is important for central and local governments, before embarking on a process of legislative reform, to carry out an appraisal of existing resources using a set of performance indicators – which might include total expenditure, degree of self-sufficiency (i.e., the proportion of own revenues to total), budget management performance (i.e., absence of deficits) and service delivery performance (i.e., client surveys). This would allow for the legal and regulatory frameworks to have differential approaches reflecting local capacity and resources.

For example, in assessing the scope of parameters needed to implement the Urban and Regional Planning Act (No.3) of 2015 in Zambia, UN-Habitat discovered that the planning system required the preparation of over 2,000 planning instruments in a country that has limited human resources; roughly 60 accredited planners (0.45 planners per 100,000 inhabitants) as of 2011.[66]

Similarly, a draft planning law in Uganda was designed in such a way that its enforcement and implementation would require 20,000 civil servants.[67] In Egypt, the law in force calls for detailed plans for cities and villages to be prepared by planning offices within local governments.

66 UN-Habitat (2014). The State of Planning in Africa, An Overview.

67 Mousmouti, M. and G. Crispi (2015). "Good" Legislation as a Means of Ensuring Voice, Accountability and the Delivery of Results in Urban Development, in The World Bank Legal Review - Improving Delivery in Development: The Role of Voice, Social Contract and Accountability, vol. 6. World Bank Group.

However, because the central Government does not provide the required financial and human resources to allow local authorities to establish these offices and perform this mandate, only 10 of the 228 participating cities in Egypt had approved detailed plans in 2015.[68]

F. Potential impacts on gender and priority groups

People's lived experiences are shaped by a series of intersecting factors, including gender, age, ethnic origin, disability, sexual orientation, socioeconomic status and geographic location (urban / rural).[69]

Even legislation does not impact everyone in the same way, as people are not a homogeneous group (intersectionality approach, see figure 29).[70]

Depending on the social context, intersecting identities may lead to oppression or empowerment. For instance, gender-blind laws, which ignore the distinct gender realities, are most likely to exacerbate – rather than reduce - existing gender inequalities.[71] Gender-sensitive laws make a big difference in people's lives. Furthermore, they are the only effective legislative vehicle to reach the worldwide commitment to increase gender equality.[72]

68 UN-Habitat (2015). Legislative Analysis to Support Sustainable Approaches to City Planning and Extension in Egypt, UN-Habitat, https://unhabitat.org/legislative-analysis-to-support-sustainable-approaches-to-city-planning-and-extension-in-egypt. Accessed 13 June 2022.

69 The paragraph adopts the critical lens of intersectionality that enables a profound analysis of social relations of exclusion. It recognizes the specific lived experiences of marginalization and inequality of different social groups. For further information about intersectionality analysis in access of urban sevicess see: Castán Broto V. And S. Neves Alves (2018). Intersectionality challenges for the co-production of urban services: notes for a theoretical and methodological agenda. Environment and Urbanization, vol. 30, No. 2, pp. 367-386.

70 Mousmouti, M. (2020). Policy Paper: Gender-sensitive Post-Legislative Scrutiny. Westminster Foundation for Democracy.

71 Mousmouti, M. (2020). Case Study 1: Gender-sensitive Post-Legislative Scrutiny of general legislation. Westminster Foundation for Democracy.

72 United Nations (2015). Transforming Our World: The 2030 Agenda for Sustainable Development, Goal 5: Gender equality.

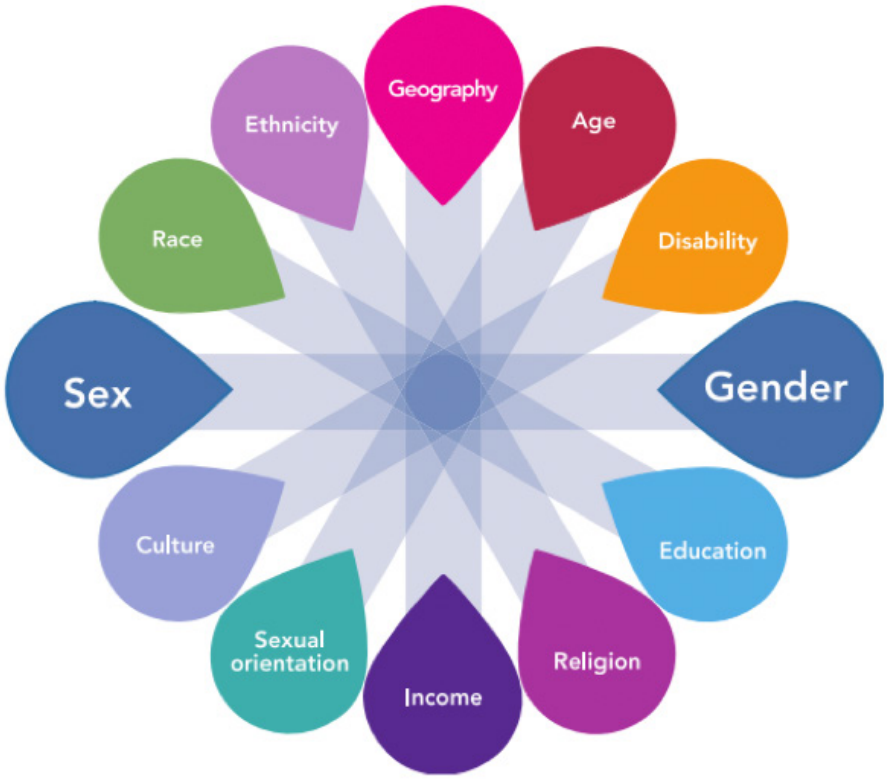


Figure 31: Interacting factors in the experience of laws[73]

73 Mousmouti, M. (2020). Policy Paper: Gender-sensitive Post-Legislative Scrutiny. Westminster Foundation for Democracy.

Members of Parliament are uniquely placed to address the disparate potential impacts of laws on people. Every decision a parliamentarian makes is an opportunity to enhance equality and to ensure that everyone's needs are met in the most effective and efficient way. Parliaments have a key role in ensuring not only that everyone is properly represented in decision-making, but also that legislation and government actions consider everyone's needs on an equal basis.

Gender-sensitive scrutiny is a technique that Members of Parliament can use to address gender inequalities that emerge from the disparate experience of laws.[74] Gender-sensitive scrutiny is a way of exploring and addressing the potential and real impacts of laws based on the different experiences, needs and contribution to society of women and men.[75]

74 "Gender" is often understood in a binary way as "woman" or "man", but non-binary, transgender and other people identify and express their gender in much broader ways. References to women and men in this paper should not be interpreted in a limited, binary way, but as including the range of gender identities that people experience.

75 International Institute for Democracy and Electoral Assistance

The aim of doing this, is to evaluate whether legislation can or has produced (positive or negative, unintended or unexpected) impacts on gender-related results and outcomes. It aims to assess how the law worked for women and men, whether there were achievements and unwanted impacts from a gender equality perspective and how to "correct" them. As such, gender-sensitive ex-ante and post-legislative scrutiny is, at the same time, informative and transformative. On the one hand, it can highlight gender-related issues in an evidence-based way. On the other side, it can influence social relations and inform future work and thinking around legislation and its impact.[76]

The focus of post-legislative scrutiny can range from a single law to specific provisions, to the cumulative effects of related laws, including implementing regulations. There are no predetermined forms of conducting a gender-based scrutiny. It can vary according to the mandate of the committee exercising the scrutiny, the available time and resources, the existence of data and other related reviews, and the importance of the topic in the political agenda, among other factors. While legislative scrutiny might differ, the key is asking the right questions (box 1) and using the best available data.[77]

Addressing a gender-based analysis, it is key to acknowledge how parliamentarians' backgrounds and perspectives influence the scrutiny. Contextual factors can prevent questions being asked and answers being heard. To avoid the reinforcement of stereotypes or systemic discrimination, it is important to ensure that the whole scrutiny process is based on valid and reliable data.[78] Beyond statistical and quantitative data, qualitative information can be collected through stakeholder engagement. It is important to define who may be affected directly, indirectly or potentially by a law. This includes many actors, such as citizens, businesses, professional associations, business organizations, non-governmental organizations, consultancies, research and academia, organizations representing regional, local and municipal authorities, national and international public authorities.

(2022). Gender-Sensitive Scrutiny A Guide to More Effective Law-Making and Oversight. Inter pares – European Union Global Project to Strengthen the Capacity of Parliaments.

76 Mousmouti, M. (2020). Policy Paper: Gender-sensitive Post-Legislative Scrutiny. Westminster Foundation for Democracy.

77 Ibid.

78 Mousmouti, M. (2020). Case study 3: Data and gender sensitive post legislative scrutiny, Westminster Foundation for Democracy.

EXAMPLE OF GENDER-SENSITIVE EVALUATION CRITERIA

Relevance

- Did the programme respond to the practical and strategic needs of women and contribute to commitments on gender equality?
- Was the treatment of gender equality issues throughout the implementation phase logical and coherent? Were adjustments made to respond to external factors of the project or programme (for example, economic crisis, new government and so on) which influenced outcomes on gender equality?

Efficiency

- Are the means and resources being used efficiently to achieve results in terms of improved benefits for both women and men?
- Have the results for women and men been achieved at reasonable cost, and have costs and benefits been allocated and received equitably?

Effectiveness

- Have the results contributed to the achievement of the planned results and outcomes, and have benefits favoured male and/or female target groups?
- Did stakeholders (organizations, institutions, indirect target groups) benefit from the interventions in terms of institutional capacity building in gender mainstreaming and the development of gender competence among their staff?

Impact

- What has been the impact of the project's outcomes on wider policies, processes and programmes which enhance gender equality and women's rights?
- For example, did it have an impact on reducing violence against women? Did it contribute to a more balanced distribution of unpaid care labour and family responsibilities between women and men?

Sustainability

- To what extent has ownership of the policy goals been achieved by male and female beneficiaries?

- To what extent have the long-term needs of women and men been addressed through the project, and has this resulted in sustainable improvement of women's rights and gender equality? To what extent has capacity for gender mainstreaming through the project been built and institutionalized?

Box 1: Example of gender-sensitive evaluation criteria.[79]

79 European Institute for Gender Equality (n.d.). Gender Evaluation – Gender Mainstreaming Tools. www.eige.europa.eu. Accessed 15 June 2022. Gender-Sensitive Scrutiny Models: United Nations Development Programme (2017); Scrutinizing Legislation From A Gender Perspective – A Practical Toolkit. UNDP Asia & the Pacific. www.undp.org. Accessed 15 June 2022.

G. Organization of institutional responsibilities and roles

Effective and efficient institutions depend on coordination within and across departments and sectors. Coordination within institutions is vital to ensure that information gathered in one office, such as land titling or permitting, is relayed and acted on by other offices, such as enforcement and regulatory development. Indeed, legislative quality is evidenced by the ability of established institutions to smoothly coordinate with one another. A legislative baseline mapping exercise of the formally laid out organizational structures, hierarchies and spheres of responsibility can disclose potential conflict of interest and gaps in the institutional competencies. Such flaws can lead to institutional wars and result in unenforced plans and regulations.

For instance, in Saudi Arabia, the preparation of the local plan is complicated by the existence of parallel structures applied by Ministry of Municipal and Rural Affairs and Housing and the Ministry of the Interior. Whilst the legal mandate for planning clearly lies with the municipalities (under Ministry of Municipal and Rural Affairs and Housing), there are jurisdictional overlaps with the mohafezat (governates – sub-regional) and markaz (districts), which fall under the Ministry of Interior.

More precisely, the Ministry of Interior remains the oversight body for regional project implementation with the Ministry of Municipal and Rural Affairs and Housing designated as the central spatial planning institution. However, there is no clear mechanism in the law for institutional coordination, which has frequently led to an impasse in decision-making, affecting the delivery of spatial planning within municipalities.

In Kenya, the 2010 Constitution together with the National Land Commission Act (No. 5) 2012 established the National Land Commission which, among its other functions, is responsible for monitoring the registration of all rights and interests in land and the development and maintenance of an effective land information management system. However, these functions were also vested in the Ministry of Lands. As a result, these two institutions have clashed on several occasions with each claiming interference by the other. Their disputes have had to be resolved through the courts.[80] As a result, ordinary citizens suffered as title deeds issued by one institution were denounced by the other.[81]

80 Republic of Kenya (2014). The National Land Commission v The Attorney General & 5 others, Advisory Opinion Reference No.2/2014.

81 UN-Habitat (2012). Planning Law Assessment Framework.

Through the Essential Law Project, UN-Habitat piloted an assessment in Zambia of the Urban and Regional Planning Act (No. 3) of 2015. The mapping of the planning institutional framework revealed some gaps and oversight as shown in figure 32.

Question 1: Minister of? Article 2 does not explicitly clarify the context the term "Minister" is referred to under the Act but it does so implicitly when defining director of planning and other officials in the Ministry as "responsible for urban and regional planning." Under the Zambian governance structure, the Ministry involved in planning is the Ministry of Local Government and Housing.

Question 2: Regional planning authorities: Article 2 states that a region means, "two or more provinces or parts of a province or different provinces within the boundary of the country as delimitated pursuant to section 9." So perhaps the answer to this is that RPAs will work at the interprovincial level. They are created by the Minister (Art. 9.1)

Question 3: Provincial planning authorities: According to Article 11 (7) it seems it is the Minister's duty to designate the PAs. It states: "The Minister may, by statutory instrument, prescribe the procedures, reporting structures and administration of provincial planning authorities." Perhaps the only official, apart from the members of PPA that is already established is the Provincial Planner who pursuant to Article 11(8) shall be "the Secretary to the PPA and coordinate the nomination of members of the PPA and recommend their appointment to the Minister." Incidentally, pursuant to Article 14 (2), he/she is an ex-officio member of all the planning committees within the province. This raises another question whether it is envisaged that planning committees shall also operate as authorities at the provincial level in conjunction with what is solely mentioned in the Act i.e. city/municipal/ district level? There is no mention of composition, duties and responsibilities of these institutions.

Question 4: Council of the Local Authority - check the Local Authorities Act? Which planning functions do they have? What are their responsibilities? Firstly, under Article 2, a local authority means "a city, municipal or district council established under the Local Government Act." These councils are then "converted"/designated as planning authorities by the Minister. This is quite confusing in this sense; if a local authority means city council for instance, then what does a council of the city council mean? Moreover, since designation is done by the Minister it could mean that not all local authorities are or will be planning authorities. Then, has this been done? What are the criteria and processes for designation?

Question 5: Planning Committee/Standing Committee of a Local Authority: it is a political organ composed by councilors.

Question 6: The numbers required for planning inspectors is vague. How many will be required?

Figure 32: Mapping exercise of the institutional planning framework of Zambia.[82]

82 UN-Habitat Project on Essential Law in Zambia (2016).

The mapping exercise also outlined the complexity of the institutional set up and the required number of institutional players (see figure 33).

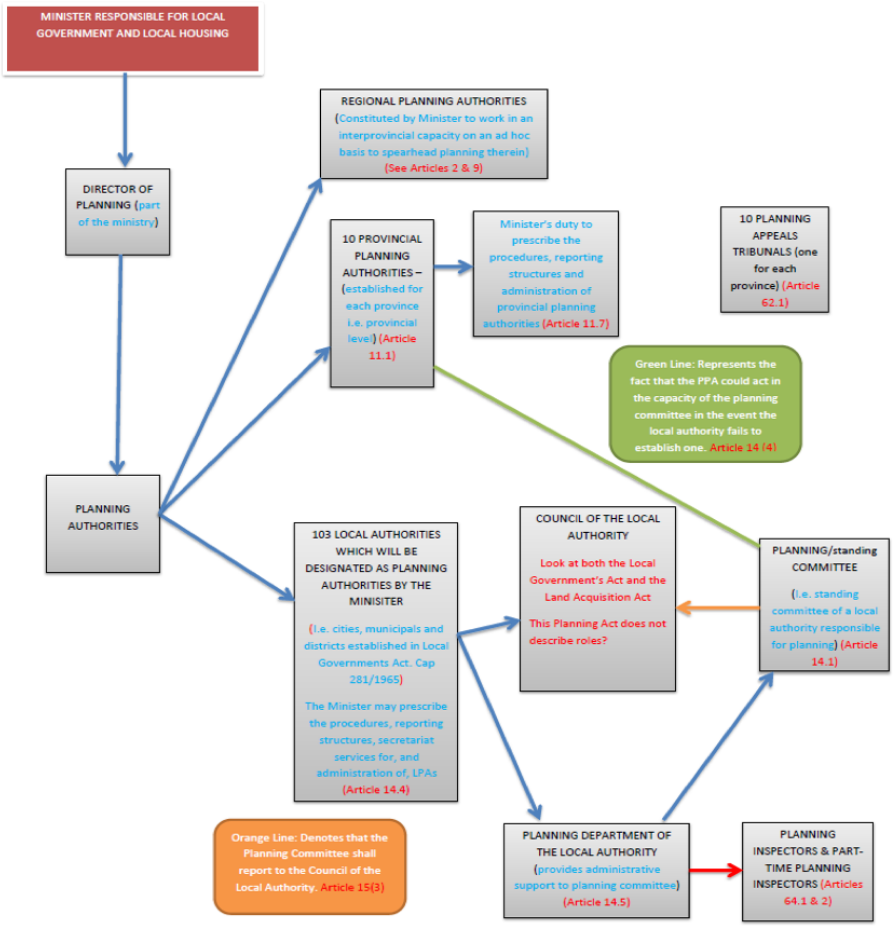


Figure 33: Planning institutional framework of Zambia.[83]

83 Source: UN-Habitat Project on Essential Law in Zambia (2016).

In Uganda, the creation of the Kampala Capital City Authority in 2011, pursuant to the Kampala Capital City Authority Act, 2010, was an effort to better align governance of the capital city and the central Government, but this relationship has at times also confused things. For example, the Minister of Kampala Capital City Authority is the person ultimately responsible for the management of the city, and the person to whom both the mayor and the executive director report. However, the extent of the minister's oversight powers and ability to intervene in the day-to-day decisions of the authority are unclear. Additionally, putting a government minister at the head of the organizational hierarchy creates a dual constituency for the mayor. In executing

his or her functions, the mayor is responsible to both the electoral constituency and to the minister. These constituencies frequently have differing priorities, which creates blurred lines of accountability and opacity in who the mayor should represent in policy formulation. While the executive director gains his/her mandate directly from the President, who is the appointing authority, the director is also required to report to Kampala Capital City Authority, which is headed by the mayor. Thus, while the Kampala Capital City Authority Act officially stipulates the autonomy of the authority, these dynamics mean that in practice the boundaries of the authority and Government are substantially blurred.[84]

84 For more information, see Uganda National Academy of Sciences Consensus Study Report, 'Owning our Urban Future: The Case of Kampala City' (2016).

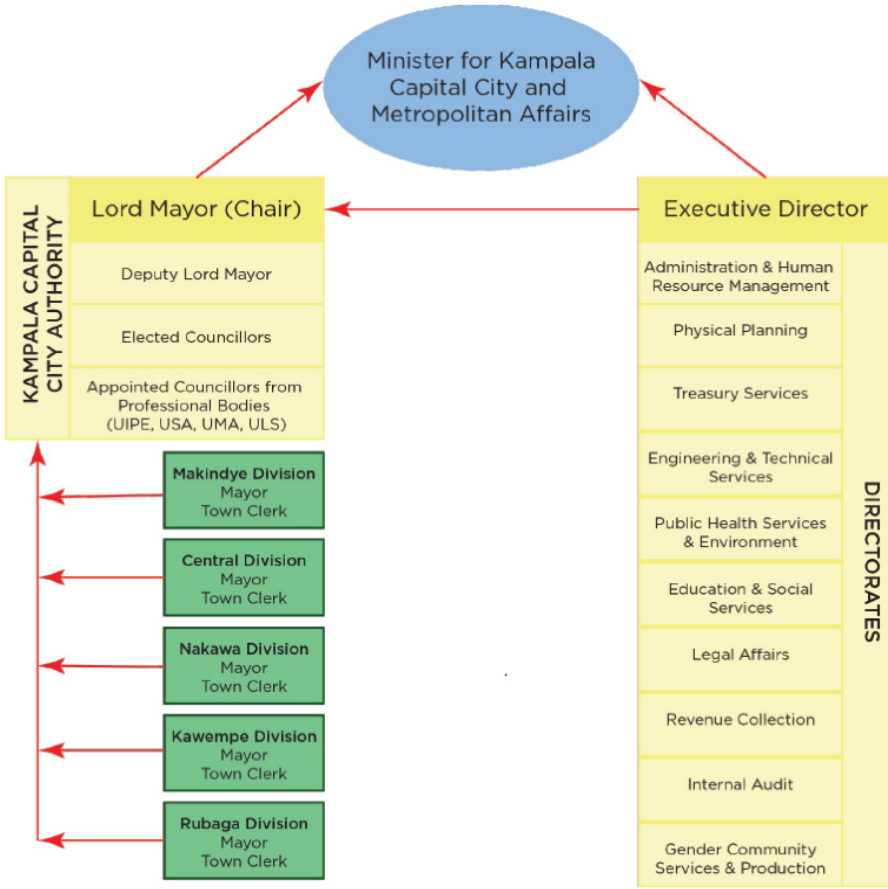


***Figure 34: Institutional arrangement of Kampala, Uganda.*[85]**

85 Kampala Capital City Act, 2010, retrieved in Uganda National Academy of Sciences Consensus Study Report, 2016 (Owning our Urban Future: The Case of Kampala City).

H. The law and its regulations

It is difficult to assess the likely effects of a proposed law if its regulations have not yet been set out. In countries where trust in the Government is low, stakeholders are likely to reject any new urban law that only covers overarching principles without also specifying the accompanying regulations, because it is impossible to determine how the law might affect them in practical ways. Lack of clarity at the regulation level is also a problem for officials who need to determine which resources they will need to implement the law and how it will affect institutional arrangements. For these reasons, regulations should ideally be developed in tandem with the main legislation and published at the same time. If this is not possible, mechanisms (such as annual revisions) should be sought to consolidate the two to benefit the end-user.

REFUGEES (RECEPTION, REGISTRATION AND ADJUDICATION) REGULATIONS, 2009

ARRANGEMENT OF REGULATIONS

PART I - PRELIMINARY

Regulation

1. Short title.
2. Interpretation.

PART II - RECEPTION AND REGISTRATION

3. Reception of asylum seeker.
4. Application for recognition as a refugee.
5. Combatants.
6. Registration interview.
7. Considerations for categories at risk.
8. Disclosure of information and surrender of documents.
9. Identification of asylum seeker.
10. Duties of registration officer.
11. Confidentiality.
12. Interpreters.
13. Asylum seeker pass.
14. Withdrawal of asylum seeker pass.
15. Unaccompanied and separated children.
16. Register and registries.
17. Confinement of asylum seeker.

Figure 35: Piece of regulation in Kenya incorporated within an Act.[86]

86 Kenya, Refugees Act, No.13/2006.

Conditions in towns and cities can vary tremendously, even within the same country. Regulations allow for rules to be adapted to suit different sets of local conditions. The legal framework governing urban areas should be flexible enough to accommodate such change. Updating a regulation that has been issued by a minister or a local authority is much easier than changing a law that must be approved at the highest legislative level.

In South Africa, for example, the Spatial Planning and Land-Use Management Act (2013) empowers the national minister to implement a wide range of regulations concerning the way local councils manage land-use applications (although the fact that the minister issued the regulations before the main Act came into operation casts doubt on the legality of the regulations).

In Zambia, the Urban and Regional Planning Act (2015) gives the national minister extensive authority to make regulations to operationalize the Act. In this case, the scope of the regulations is so broad that the Act itself cannot come into operation until they are finalized. Unfortunately, this means that a long-awaited urban legal reform remains dormant.[87]

Where regulations have been left to a minister or local council to draft, it is advisable to ensure that these regulations are updated regularly and made available either at government offices or on government websites.

I. Relevance (stakeholders' needs)

Urban legal interventions often fail because of inadequate discussion with both the parties that will be affected by a new law (households, businesses and the organizations representing them) and the officials and politicians who will be responsible for implementing it. For example, a law aimed at regulating land use in peri-urban areas, especially in Africa, might be successful if the relevant interests of traditional leaders who oversee these areas are considered.

Consultation is the only way a drafting team can ascertain the context within which a proposed law will operate. Consultation provides clarity on:

- The social, economic and environmental pressures that the law will operate within and will shape.
- The relative interests of different people and institutions that will be affected by the new law.
- The availability of information on which drafters can base recommendations.

A case study in Zambia shows the importance of stakeholder engagement. Zambia enacted the 1964 Town and Country Planning Act which was based largely on the 1948 Town and Country Planning Act of the United Kingdom. In 1976, Zambia introduced a significant change in the law through the Housing (Statutory and Improvement Areas) Act with limited stakeholder consultations.

87 Berrisford, S. and P. McAuslan (2005). Reforming Urban Laws in Africa - A Practical Guide. African Centre for Cities, Cities Alliance, UN-Habitat, Urban LandMark.

This Act allowed for parts of a town or city to be excised from the planning system created by the Town and Country Planning Act and for a more rudimentary form of planning to be introduced to accommodate low-income residential areas in the city. Since spatial planning did not apply to land under customary law (which accounts for the largest proportion of land in the country), the application of the primary Act was restricted to just urban areas. But even in urban areas, it was becoming the exception rather than the rule because of the increase in improvement areas. The declining ability and willingness of local governments to implement the Town and Country Planning Act, even where it applied, and its resistance by many stakeholders, resulted in a failed law reform.[88]

J. Regulatory impact assessment

To improve the quality of regulatory decision-making, most countries conduct regulatory impact assessments which help regulators to decide in favour of more efficient policy and legislative options, discarding less efficient alternatives. This is typically accomplished through a broad three-stage process: (i) identifying the need for the proposed action, (ii) examining alternative approaches, and (iii) analysing the benefits and costs of the identified alternatives.

Regulatory impact assessments are not there to replace a cost-benefit analysis, which is still the main systematic method of assessing the suitability of proposed legislation. However, because of the prohibitive cost and personnel expertise required by a cost-benefit analysis, regulatory impact assessments have become the accepted alternative. We should be careful here. There are different versions of such assessments. Some are short – between 3 to 5 pages – and some are more comprehensive and extend to 200 pages. What determines the "length" and "cost" of a regulatory impact assessment is the national legal framework for "impact" of normative acts. Different jurisdictions have their own models based on "needs", preferences and national idiosyncrasies. The important thing for the urban law expert is to follow the national style of regulatory impact assessment, otherwise their efforts, however good they may be, could go to waste.

88 Berrisford, S. (2011). Why It Is Difficult to Change Urban Planning Laws in African Countries, Urban Forum vol. 22, No 3, pp. 209-228.

STEP	ACTION
1	Specify the set of options.
2	Decide whose costs and benefits count.
3	Identify the impacts and select measurement indicators.
4	Predict the impacts over the life of the proposed regulation.
5	Monetise (attach dollar values to) impacts.
6	Discount future costs and benefits to obtain present values.
7	Compute the net present value of each option.
8	Perform sensitivity analysis.
9	Reach a conclusion.

Figure 36: Steps in preparing a full cost–benefit analysis.[89]

89 Boardman, A. and others (2010). Cost-benefit analysis: concepts and practice, (4th edition). Pearson Prentice Hall.

For instance, the first proposal of the regulation concerning the Registration, Evaluation, Authorization and Restriction of Chemicals from the European Commission could have imposed a €10 billion cost on the European chemicals industry. However, after conducting a thorough regulatory impact assessment and holding a public debate discussing various regulatory alternatives, the regulation was revised to make it more cost effective and less burdensome for the private sector, while preserving the major benefits of the proposal. The final cost to the industry was reduced to €2 billion. The entire regulatory impact assessment was estimated to cost €1 million making a return on investment of 10,000 to one.[90]

Some countries have issued either specific guidelines (guidance notes, studies or templates) or established a legal requirement on how to prepare, consult and assess impacts of proposed regulation. For instance, the Guidance Note on Cost-Benefit Analysis, Australia (2016)[91] emphasizes the need to monetize the gains and losses from a regulatory proposal. If the net present value of an option is positive, the proposal improves efficiency (figure 37).

90 World Bank Group (2010) Regulatory Governance in Developing Countries.

91 Australian Government (2016). Guidance Note on Cost-Benefit Analysis, Department of the Prime Minister and Cabinet, Office of Best Practices and Regulation.

To determine the net present value (NPV) of an option, the costs and benefits need to be quantified for the expected duration of the proposal.

The net present value is calculated as:

$$NPV = \sum_{t=0}^{T} (B_t - C_t)/(1+r)^t$$

where B_t = the benefit at time t

C_t = the cost at time t

r = the discount rate

t = the year

T = number of years over which the future costs or benefits are expected to occur (the current year being year 0).

Consider an option that will require industry to install new equipment to limit air pollution. The equipment costs $5 million to install and will operate for the following four years. Ongoing (annual maintenance) costs to business are $1 million a year (in constant prices). The benefits are estimated at $3 million a year (in constant prices). The discount rates are 3 per cent, 7 per cent and 10 per cent.

	Costs	Benefits	Annual net benefit	Net Present value		
	(C_t)	(B_t)	(B_t-C_t)	3%	7%	10%
Year 0	5	-	-5	-5.00	-5.00	-5.00
Year 1	1	3	2	1.94	1.87	1.82
Year 2	1	3	2	1.89	1.75	1.65
Year 3	1	3	2	1.83	1.63	1.50
Year 4	1	3	2	1.78	1.53	1.37
Net present value of proposal				2.43	1.77	1.34

Figure 37: Monetizing costs and benefits.[92]

92 Australian Government (2016). Guidance Note on Cost-Benefit Analysis, Department of the Prime Minister and Cabinet, Office of Best Practices and Regulation.

To enhance transparency and accountability,[93] results of regulatory impact assessments should be made publicly available. It is estimated that 74 countries out of 92 that conduct such assessments reveal the results to the public.[94] Georgia, Moldova and Japan, for instance, publish their impact assessments on a unified website, while in Costa Rica, such assessments are communicated to stakeholders through regular mail or e-mail.[95]

93 Conducting impact assessments already improves transparency by obliging regulators to motivate their actions in writing, to provide details of the proposed course of action and to explain why the chosen option is more desirable than other alternatives.

94 World Bank Group (2018). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments.

95 Ibid.

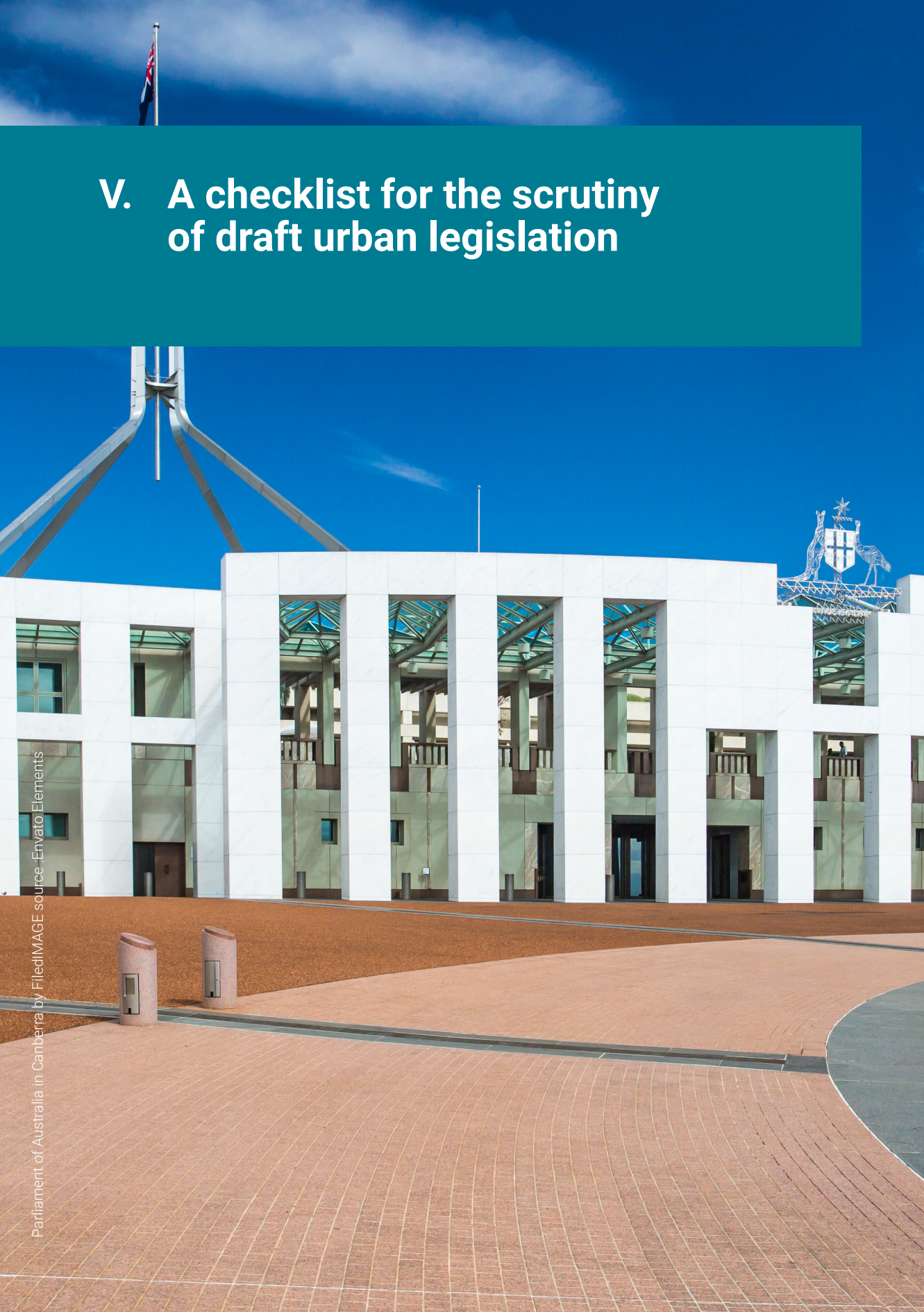
Regulatory impact assessments should also be done on existing legislation. In these cases, it is referred to as an impact assessment (rather than a regulatory impact assessment). Because it is an assessment of legislation, it tends to be lengthier and more precise. The legal context within which new laws will work needs to be free of inconsistency and fragmentation. Countries should apply regulatory impact assessment methods to existing regulations, in line with the national common format for regulatory impact assessment, which will inform whether, or to what extent, laws need to change. If there is no national format (which is rare nowadays) then one model should be chosen and used consistently.

If it is not used consistently then there is a risk of the impact assessment appearing to be whimsical and, therefore, inadequate. The overall thrust of this should be to reduce red tape and government formalities, while still achieving a desirable benefit in the public interest. For example, satellite images of towns and cities can be used to determine land use and the extent to which urban areas consist of certain types of development.

This information can be used to extrapolate population figures, income bands, infrastructure availability and environmental conditions. These factors are indicative of households' ability to comply with various legislative requirements and can, combined with an analysis of available government implementation capacity, be used to set regulatory standards for different areas.[96]

96 Berrisford, S. and P. McAuslan (2005). Reforming Urban Laws in Africa - A Practical Guide. African Centre for Cities, Cities Alliance, UN-Habitat, Urban LandMark.

V. A checklist for the scrutiny of draft urban legislation



Parliament of Australia in Canberra by FiledIMAGE source -Envato Elements

CHECKLIST FOR LEGAL SCRUTINY		
SCRUTINY PHASE	**QUESTIONS**	**NOTES**
Legislation		
Ex-ante	What problem does the law address and what aspects of it can the law address?	
	How do the objectives of the law project into expected results, outcomes and effects?	
	How are objectives expressed? Are they easy to find, clear and unambiguous?	
Ex-post	Do objectives correspond with results? Do they coincide? Do they deviate? To what extent? And why?	
	What does case law (court decisions) show?	
Content		
Ex-ante	How are the legislative choices through which the law intervenes relevant to the problem addressed? Are rules proportionate and appropriate in relation to the defined objectives?	
	Are rules structured and organized clearly and intelligibly? Are the messages expressed and communicated in a straightforward manner to the target audiences making it explicit what is expected?	
	Do rules reflect the reality on the ground (target audiences, resources, institutions, etc.) and the available information and evidence? Are rules realistic? Do they consider current/existing institutional capacity and resources?	
	Is the implementation of rules supported by existing information and evidence?	
Ex-post	Did the law reach the correct target group? Was the target group able to understand and comply with the law? If not, what was the problem (complexity, clarity, rigidity, transparency)?	
	Were responsible institutions able to coordinate among themselves and leverage the necessary resources and capacities to implement the rules?	

Context		
Ex-ante	How will the law integrate the legal order?	
	What are the potential points of conflict with existing provisions? Does the law provide a clear solution to identified conflicts or inconsistencies?	
	Does the law stipulate its commencement and expiry dates?	
Ex-post	How did the law interact with other provisions and laws? Were there overlaps, gaps or inconsistencies? What problems arose? To what extent were these predictable? How can these be solved?	
	Are there pending issues with institutions, resources or mechanisms that had been created for the implementation of the law?	
Results		
Ex-ante	What are the specific results, outcomes and impacts to be expected? Can they be operationalized with measurable targets and indicators?	
	How will the implementation of the law be monitored? How will results be measured? What data and information is required to monitor implementation? Who will collect this data/information and under which processes?	
	How and when will the law be reviewed and evaluated? Does the law provide a specific review provision?	

Ex-post	What were the broader impacts of the law? Are these positive or negative, expected or unexpected? Has the law failed partially or entirely? Why?	
	According to the data collected, have objectives and expected results been achieved? Are collected data adequate to analyse the impacts? What type of information is missing to effectively explore the implementation performance?	
Overarching questions		
Ex-ante	Does the law reflect a clear regulatory strategy? Are purposes, contents and expected results well aligned and proportional? Are the mechanics of the law appropriate to support its effectiveness and implementation?	
	Does the law consider the specific needs of priority groups in setting its objectives? Do the legal mechanisms respond to practical concerns of priority groups and contribute to commitments to social equality?	
	Is the law based on disaggregated data that assess different impacts on priority groups?	
	Does the law require regular reviews and assessment mechanisms that acknowledge different experiences of the law itself on priority groups?	
Ex-post	To what extent has compliance with the law been achieved by different target groups?	
	Has the law had disparate impacts on different target and priority groups? Has an adequate monitoring framework to assess disparate impacts been put in place?	

GUIDELINES FOR THE SCRUTINY OF THE QUALITY OF URBAN LEGISLATION

A MANUAL FOR PARLIAMENTARIANS

Urban legislation is an important development tool for urban growth as it provides a framework in which to mediate and balance competing public and private interests, especially in relation to land use and development; creates a stable and predictable framework for public and private sector action; guarantees the inclusion of the interests of vulnerable groups; and provides a catalyst for local and national discourse.

Parliaments are the main branch of government with the constitutional mandate to legislate and adopt legislation. This is a significant privilege, but it is also an important responsibility for parliaments that need to make sure, firstly that they produce legislation of the best possible quality; secondly, that the law is producing the desired results; and thirdly that required action is taken to correct "errors" and improve its effectiveness. What might read like a good urban law before adoption might produce unwanted effects and impacts or might need to be amended to fully respond to needs in reality. Legislative scrutiny is a systematic process that needs to take place throughout the life cycle of legislation.

Consequently, UN-Habitat, in collaboration with the Institute of Advanced Legal Studies, University of London, UK has prepared these **Guidelines for the Scrutiny of the Quality of Urban Legislation: A Manual for Parliamentarians** to act as a point of reference and reflection into quality law-making for all parliamentarians and lawmakers, with the hope of stimulating discussion over ways to address shortcomings in urban legal frameworks.

HS Number: HS/001/23E

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