Planning law reform in Africa: policy and practice change?

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The question

1. plenty of urban planning law reform
2. very little evidence of a causal link between this effort and
   a. a change in spatial patterns
   b. shifts in land market trends
   c. more efficient cities
   d. more access to formal land tenure or land use opportunities.

Why is this so?

Are the laws too ambitious?

Are the laws too difficult to implement?

Are the laws tackling the right problems?

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Are the laws too ambitious?

Almost always, yes.

But is this such a bad thing? Laws should set a high standard for human behaviour.

The problem of over ambitious laws lies in the nature of urban planning laws:

- they determine what land use/ development is lawful or not
- they tend to overemphasize control
- they are predicated on planning visions that are often out of touch with real conditions
- they assume the existing of a respected and competent profession

The impact often is negative, especially for the poor.

Are the laws too difficult to implement?

"the complaint 'we have good laws, but bad implementation' constitutes an oxymoron" (Robert and Anne Seidman, 1996)

Where the law demands more than the institutions (public and private) are able to do:

- perverse outcomes follow;
- selective enforcement leads to unjust outcomes;
- the legal framework in general falls into disrepute.

Impact assessment for new legal proposals are seldom done or where done ignore the obvious realities.

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Are the laws tackling the right problems?

It’s too easy to compile a very long list of problems that need to be tackled by legislation.

It’s then too hard to scrutinize the list and work out

•which problems are priorities; and

•which are capable of resolution through legislation.

There has to be a systematic identification of **what** a new law should cover and **how** it will do so and **when**.

Important questions include: is the priority facilitation or control of development; is the land tenure system clear and effective; how should the state respond to people holding and using land outside of the law?

Understand what planning law does

Planning laws:

•establish the rules for the making and legal status of plans (primarily spatial plans);

•establish the rules for regulation of land use and land development (in accordance with the plans described above)

•balance the public interest with private rights

They are thus a central – but not the only - factor in determining the **supply** of formal land rights and land opportunities. So, planning laws are pivotal in structuring land markets.

But planning laws are hazardous – they transpose planning visions into rules, which specify what's legal and what's not, where municipal resources are focused and how much land costs.

Operation Murambatsvina

Market stalls demolished in Mbare, Harare.

Family Demolishes own house in Epworth, Harare.

Owners demolishing their own house in Epworth, Harare.

Backyard demolition in Chitungwiza, Harare.

Demolitions outside rural town of Rusape.

Demolished house at Hatcliffe.

The planning law link

12 Thursday 26 May 2005

CITY OF HARARE

REGIONAL, TOWN AND COUNTRY PLANNING ACT
CHAPTER 29:12 REVISED EDITION 1996
ENFORCEMENT ORDER SECTION 32

These orders relate to all residential properties in Greater Harare for illegal developments.

To the owners, occupiers and users of such stands/properties.
Enforcement Order Section 32: Whereas it appears to the City Council of Harare, being the Local Planning Authority that development or use of land is being or has been carried out on the said stands/properties in Greater Harare in contravention of the Act.

Unauthorised erection and use of illegal structures - namely illegal outbuildings, wooden and metal shanties mostly used for human habitation purposes and other illegal businesses.

And whereas it appears expedient to the Local Planning Authority and having regard to the provision of the said Town Planning Act for the areas zoned residential wherein the erection and use of illegal structures without approved plans is **PROHIBITED**, to save on you as the owners, occupiers and users of the said stands, an Order in pursuance of **Section 32** of the **Regional, Town and Country Planning Act (Chapter 29:12) Revised Edition 1996.**

Therefore take note that in terms of the said **Section 32** you are hereby ordered to cease using the illegal structures OR immediately apply for regularisation in terms of the Act. Demolish all illegal structures erected without approved plans on the said stands/properties as more particularly stated hereto and remove the debris, bricks, materials and rubbish arising from the demolition of these illegal structures.

Demolition of Raila Village, Nairobi, 8 February 2004
(Source: COHRE, 2005)

'It is people being demolished not buildings'.
Kibera Resident during Consultations

One initiative

AAPS

AFRICAN CENTRE FOR CITIES

Communiqué: The first meeting of the Platform for Urban Planning Law Reform in Sub-Saharan Africa

A gathering of urban planning and legal experts under the auspices of the African Centre for Cities and the Association of African Planning Schools, at the Rockefeller Foundation Centre in Bellagio July 24th-26th 2012, agreed the following:

Preamble

There is an inevitable shift of Africa's population from a rural to an urban context, as well as a rapidly growing contribution of urban economies to national economic growth. Peri-urban areas are undergoing rapid transition. In many countries these transitional areas are governed separately from the core cities and effective management of the transition therefore often requires solutions across jurisdictional boundaries.

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What needs to be done

Understand the relationships between:

•context – economic, political, demographic;

•capacity – in state institutions, in the private sector;

•chronology – what can be achieved in short, medium and long term.

Unpack what urban planning means in countries where most people are a) very poor and b) living outside of the formal land management system.

Unravel how existing law works and identify whether change is needed to the law or whether there are opportunities for changes to practice that will suffice.

Develop a new methodology for drafting urban planning laws, one that appreciates that this is not a technical exercise but one that is fundamental to the political economy of towns and cities.

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