

REFORMING URBAN LAWS IN AFRICA

A PRACTICAL GUIDE

UN HABITAT
FOR A BETTER URBAN FUTURE

Cities Alliance
Cities Without Slums



Urban LandMark
making urban land markets work for the poor



AFRICAN CENTRE FOR CITIES
urbanism from an African perspective



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Foreword and acknowledgements

The idea for this guide emerged at a workshop held at The Rockefeller Foundation's Bellagio Center, in Italy, in July 2012. The workshop was convened by the African Centre for Cities with the goal of establishing a platform for urban legal reform in Sub-Saharan countries.

Discussions at the workshop ranged widely. A fundamental concern emerged: even though there is widespread acknowledgement that the urban laws used for governing, planning, managing and financing African cities are deeply flawed, this realisation alone is not enough to help improve the situation. We also need to improve the processes of conceiving, drafting and implementing new legislation.

With more than 40 years of experience in conceiving, drafting and implementing urban legislation in Africa and elsewhere, the late Professor Patrick McAuslan argued in Bellagio that there is no benefit to developing laws that introduce new legal tools and instruments to address urban challenges if the processes of law-making are so weak that the new laws stand little, if any, chance of being implemented. And so the decision was made to produce a guide focusing on the processes by which laws are

developed, drafted and processed. The problems facing African cities are enormous, and the need to urgently address them is extreme. But without a solid, workable legal framework that is capable of introducing fundamental change to current patterns of governance, management and planning, these problems cannot be addressed. Better urban law is a necessary (but not the only) requirement if African cities are to successfully pursue sustainable, inclusive and fair economic growth.

Developing this guide has been a challenge, primarily because of the death, in January 2014, of Patrick McAuslan, an irreplaceable source of insight into African urban legal reform. Fortunately, Patrick was a prolific writer, publishing his views widely in a range of books and articles. Indeed, he saw his contribution to this guide as an expression of his belief that those of us working at the coalface of urban legal change have a moral obligation to record and share our experiences and views. The aim of this guide is to allow a wider pool of people to draw on the ideas of Patrick and myself – and to adapt and challenge them as needed – rather than feel that they need to start from scratch. Nevertheless, it has been hard to co-write without a co-writer, and I have missed his wisdom, his



Patrick McAuslan and Stephen Berrisford at The Rockefeller Foundation's Bellagio Center in July 2012.

humour and, of course, his vast experience over the last two years of drafting this guide.

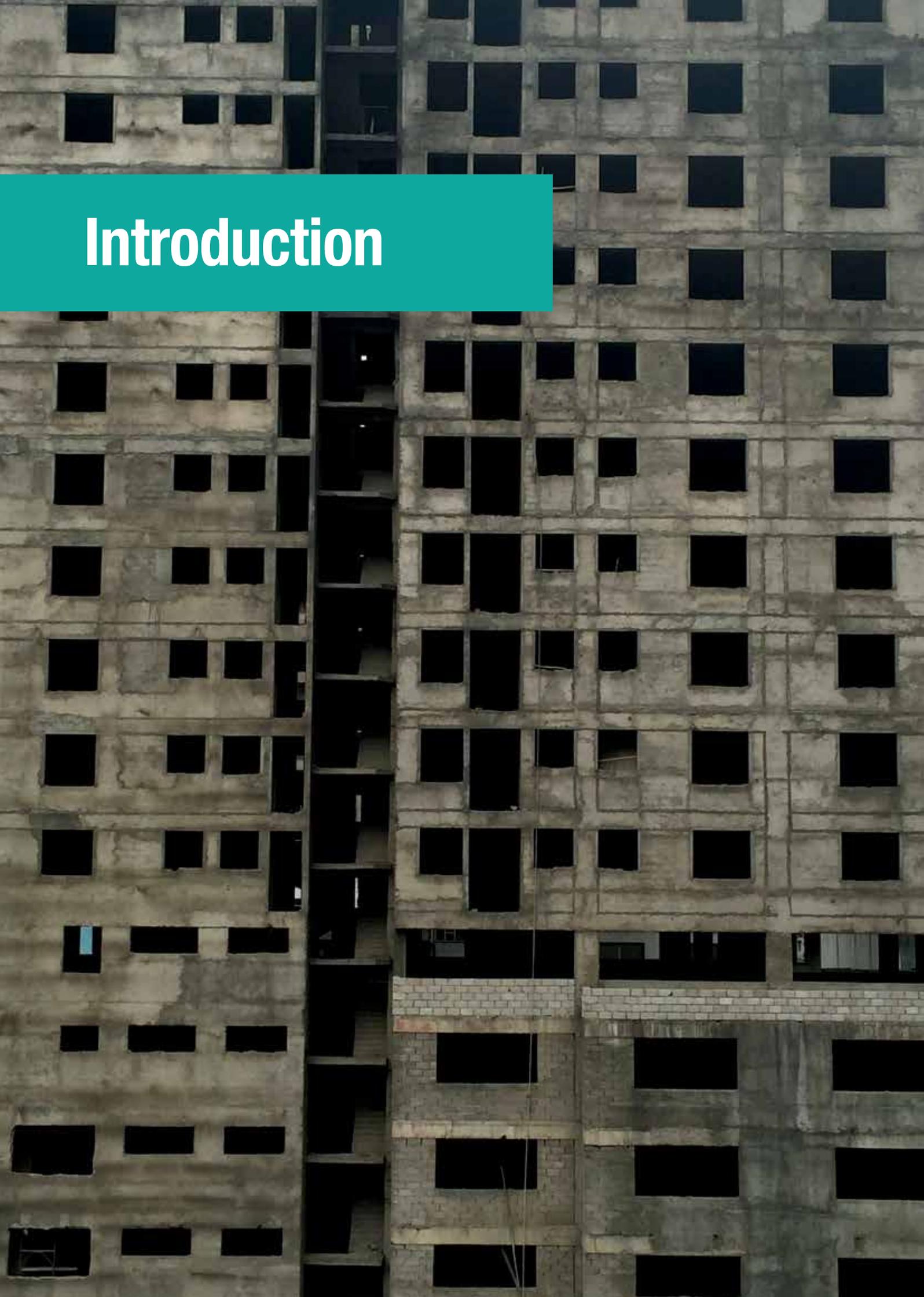
The Urban Legal Guide for Sub-Saharan Africa owes its existence to the support of many institutions and people. Dr Mark Napier of Urban LandMark provided the seed funding to kick off the project, thanks to that organisation's funding from UKaid. This was more than matched by Cities Alliance and UN-Habitat. Of course, The Rockefeller Foundation's support for the inception workshop in Bellagio was also invaluable.

The guide has benefited from the wise counsel of a reference group consisting of Julian Baskin (Cities Alliance), Matt Glasser (formerly with the World Bank, now with the Centre for Urban Law and Finance in Africa), Robert Lewis-Lettington (UN-Habitat), Professor Ambreena Manji (Cardiff

University), Dr Mark Napier (formerly with Urban LandMark, now with the Council for Scientific and Industrial Research in Pretoria), Professor Peter Ngau (University of Nairobi) and Professor Vanessa Watson (University of Cape Town). Thank you for your time and ideas.

As you read this guide, please remember that there is no instant cure for urban legal problems. Cities and legal systems are too complex for that to be possible. However, this guide can help practitioners both within and outside governments to design and lead urban law-making processes that, at the very least, avoid the mistakes of the past, and that, in an ideal situation, set new benchmarks for effective and responsive urban laws.

Stephen Berrisford,
Cape Town
April 2017



Introduction

The extraordinary projected rate and scale of urban growth in Africa between now and 2030 underscores the need to urgently develop urban laws and regulations that will create and shape cities that work more efficiently and treat people more fairly. New urban infrastructure has to be provided, new areas for urban growth developed, and new systems of governing and managing cities put in place. All this has to be done in accordance with laws that provide clarity, give everyone a fair hearing, prepare cities for a climate-change-resilient future and create efficient systems of decision-making and administration. And it has to be done quickly.

The rate at which African cities are growing and the scale of problems in urban governance and management demand immediate action to reverse entrenched, ineffective governance practices. To be effective, urban laws need to:

- **Be pragmatic.** Urban laws need to set standards of behaviour that people, organisations and governments are realistically able to meet. They also need to be cognisant of the resources available to enforce these laws. This does not mean that new laws should not set standards for human behaviour that are higher than

current practices, just that they cannot be too high. If standards are set so high that no one can attain them, then they serve no useful purpose and may even make a situation worse by making criminals out of otherwise law-abiding citizens and companies.

- **Give effect and strength to the right of all citizens to live and work in a city.** Many colonial and post-colonial governments have tried to limit the number of people living in cities and the working opportunities available to urban residents. Where these laws are still in place, they effectively exclude certain groups of people – especially the poor – from the benefits of living in a city.
- **Be responsive and scalable.** It is important to provide an implementable legal framework to manage both the growth of cities and the ongoing planning and management of cities. Urban laws must thus both respond to actual needs of each city in a country while also being easily implemented across the range of different types of city.

The term “African city” is limited in its usefulness, as is the term “African country”. Each term describes where a city or country may be found – in Africa – but neither does justice to the economic, political, cultural and physical diversity of the continent’s cities and countries. Nevertheless, there are common challenges and conditions that pertain to most cities in the region. Most African countries are dominated by one major city, normally the capital. Getting these cities to work better, include people better and generate jobs more efficiently is crucial for national economies and the growing urban population. This is also true of secondary cities and towns, which are also growing quickly.

URBAN LAWS NEED TO BE PRACTICAL, RESPONSIVE AND SCALABLE WHILE PROTECTING THE RIGHT OF ALL CITIZENS TO LIVE AND WORK IN A CITY

PURPOSE OF THIS GUIDE

THIS GUIDE FOCUSES ON STRENGTHENING EFFORTS TO IMPROVE THE LEGAL FRAMEWORK WITHIN WHICH URBAN AREAS ARE MANAGED, PLANNED, GOVERNED AND FINANCED TO CREATE CITIES THAT ARE MORE SUSTAINABLE, INCLUSIVE AND EFFICIENT

The most effective urban laws are those that are developed where they are to be applied, by the people that will abide by and enforce them. They need to be shaped by what is needed and possible there. Difficulties arise when laws are developed – often by outside advisers – without properly considering the relevant context. This guide helps urban legal reform initiatives within African countries and enables government officials, local experts and members of civil society and the private sector take part in developing effective urban laws. It is also a resource to help international advisers think about different ways of supporting urban legal reform to create cities that include all citizens – established and new – in a more just and more sustainable urban future.

This guide aims to create and strengthen law-making processes that build and secure the legal rights of all people living in all urban areas to be governed fairly, live safely, earn a living and participate fully in the economic and cultural offerings of cities. It does not aim to address all the problems of African cities. Rather, it focuses on strengthening efforts to improve the legal framework within which urban areas are managed, planned, governed and financed to create cities that are more sustainable, inclusive and efficient.

Legal systems differ across the region, with a particular divide between the Anglophone countries' legal traditions and those of the Lusophone and Francophone countries. This guide is written to support urban legal reform in both contexts, while acknowledging that distinct legal issues will inevitably arise in different places.



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