

NEW LEGAL FRAMEWORKS FOR URBAN DEVELOPMENT

Barcelona, 17-18 December 2015



With the collaboration of:



GLOBAL EXPERTS GROUP MEETING

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TABLE OF CONTENT

1. BACKGROUND	5
2. ALIGNMENT WITH INTERNATIONAL AGENDAS.....	6
2.1 EXISTING MANDATES AND COMMITMENTS.....	6
3. THE UN-HABITAT EXPERT GROUP MEETING...	7
3.1 OBJECTIVES.....	7
3.2 SPECIFIC OBJECTIVES.....	7
3.3 STRATEGY AND METHODOLOGY.....	7
3.3.1 INTRODUCTION SESSION.....	8
3.3.2 THEMATIC SESSIONS.....	8
3.4 BACKGROUND DOCUMENTS.....	11
3.5 FINDINGS AND OUTCOMES FROM THE EXPERT GROUP MEETING.....	11
3.5.1 MAIN TOPICS OF CONCERN AND CONSTRAINTS OF EXISTING LEGAL FRAMEWORKS.....	11
3.5.2 PRELIMINARY ISSUES ON URBAN PLANNING FOR A NEW LEGAL FRAMEWORK.....	12
3.5.3 BASIC ELEMENTS, GUIDELINES FOR A NEW LEGAL FRAMEWORK.....	12
3.5.4 MAIN NORMATIVE CONTROL ELEMENTS.....	13
4. ANNEXES	14
4.1 ANNEX 1: COMMUNIQUÉ.....	14
4.2 ANNEX 2: LIST OF PARTICIPANTS.....	15
4.3 ANNEX 3: EGM PROGRAMME.....	24

1. BACKGROUND

The global urban population will grow by +3 billion in the coming 50 years and 98% of the urban growth will be in developing countries. This unprecedented growth can result in anarchy and increased inequalities if not underpinned by strong and coherent policy and legal, institutional and governance frameworks that will ensure a solid context for planning and conditions for access to land, infrastructure, housing and basic services.

Effective urban legislation will be fundamental in achieving Goal 11, Sustainable Urbanisation, of the 2030 Sustainable Development Agenda as well as a number of the other goals. Urbanization's potential to generate increases in productivity and contribute positively to development depends on the quality and transparency of its rules and regulations. The generally poor state of urban law in developing countries, particularly in the intermediary towns and cities that are expected to be the focus of future growth and prosperity, demonstrates the need for new approaches. These approaches must be evidence based, locally relevant, designed to be functionally effective and responsive to the needs of people, both individually and collectively.

Despite the significance of urban law to national economies and in the achievement of social goals, its foundational elements have a weak record of design and implementation in most developing countries. On the design side, legal frameworks rarely distinguish between the situations of primary and intermediary cities. They also generally rely on external structures and resources (skills, finance, processes for access to justice etc.) without verifying whether these are present, instead relying on 'capacity building' as a universal solution. In implementation, it can be challenging to match practice with the structures and processes established in law.

To varying degrees this situation prevails in a number of important areas including physical planning, development control and the financing of infrastructure and basic services. When master plans are drawn up but not effected on the ground, or are envisaged but not drawn up at all, the

explanation is capacity. When building codes are not enforced, the explanation is governance. Weak municipal finance systems are the result of poverty, and so on ...

Whatever the precise reality in individual cases (and cases are invariably individual), a significant part of the challenge is almost always that the legal frameworks are not good quality. 'Quality' implies subjective judgement but it can also be characterised by more objective criteria. Chief among these is the extent to which the legal framework seeks to achieve clearly stated and well understood policy goals and is assessed in its effectiveness in achieving these functions; i.e. the law's 'functional effectiveness'. A further important criterion is 'efficiency', that is the degree to which the law achieves its function in the most efficient way possible. Efficiency may be construed in a purely formalistic sense of immediate costs and benefits but, for the United Nations, it also includes more consequential considerations, such as impact upon vulnerable groups and contribution towards the recognition of human rights.

The New Urban Agenda needs to deliver efficient and liveable cities that capture the benefits of agglomeration to contribute to national economies and to create and improve livelihoods. The prevalent models for spatial planning and development control legal frameworks in developing countries do not deliver these outcomes and, in many cases, barely affect the shape of towns and cities at all. The development or identification of alternative approaches is long overdue. The Expert Group Meeting critically reviewed the prevailing models of legal frameworks for physical planning and development control and seek to identify technical and political paths for the development of effective alternatives.

2. ALIGNMENT WITH INTERNATIONAL AGENDAS

2.1 EXISTING MANDATES AND COMMITMENTS

A. The ‘Strategies for Implementation’ of the Habitat Agenda included commitments to:

- a. Review restrictive, exclusionary and costly legal and regulatory processes, planning systems, standards and development regulations;
- b. Adopt an enabling legal and regulatory framework based on enhanced knowledge, understanding and acceptance of existing practices and land delivery mechanisms so as to stimulate partnerships with the private business and community sectors;
- c. Put into effect institutional and legal frameworks that facilitate and enable the broad based participation of all people and their community organizations in decision-making of human settlement strategies, policies and programmes.

B. In paragraph 6 of Resolution 25/4, Implementation of the strategic plan for 2014–2019, Member States gave the following direction:

“... Further requests the Executive

urbanization and human settlements;...”

- C. In fulfilment of these mandates, UN-Habitat seeks to promote reformed legal frameworks that focus on essential policy objectives according to evidence-based identifications of local need and, in these areas, prioritises ‘functional effectiveness’, i.e. the actual ability of the law to deliver agreed policy. Many existing legal structures focus on broad planning and development processes and pay little attention to the core elements of design that make a difference on the ground. They also tend to ignore financial feasibility and economic drivers. These structures rely on high levels of local technical expertise to deliver their objectives and tend to reflect a major disconnect between national aspirations and local realities. As a result, they frequently struggle with ‘implementation’ or ‘enforcement’, which is actually a symptom of poor legislative design. As well as promoting the delivery of specific objectives, functionally effective legal frameworks also reinforce fundamental principles, such as the rule of law and respect for human rights. Furthermore, they can work in secondary cities as well as primary and, therefore, will serve the major poles of growth in the next 50 years. Finally, the implementation of functionally effective legal frameworks improves accountability and responsiveness, particularly for vulnerable groups, and also improves the delivery of policy.

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