



Why it's difficult to change planning laws in Africa

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Stephen Berrisford, Researcher at ACC and Visiting Scholar at
University of Sheffield
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The conundrum

Urban planning regulatory reform is routinely recommended as an important step to:

- enhance urban land supply
- regularize informal/illegal settlement
- curb the excesses of the land development market
- support infrastructure investment planning
- promote transparency and good governance
- etc, etc...

Yet, in practice efforts to change planning laws are seldom

- effective; or even
- completed.

This paper tries to work out why what is so easy for everyone (country governments, donors, businesses, NGOs, consultants...) to say is so difficult to do.

Why is planning law important?

It determines whose buildings and livelihoods are lawful and whose are not.

It forms a foundation of a land market.

It gives politicians and officials power over the private sector – and everyone else.

It can impose ‘red tape’ constraining land (and business) development.

It determines development rights, which help determine land value, the basis for land-based taxation.

It determines urban form, a major factor in climate change mitigation efforts.

It sets out important elements of the legal relationship between local(-regional/provincial/state)-national levels of government.

Also, deals with urban design, environmental management, heritage conservation, traffic management, public transport and so on.

In relation to none of the above does planning law bear the sole responsibility – laws concerning land administration and tenure, local government administration, transportation, infrastructure and taxation are all important – but it underpins many elements of urban management.

How complex is planning law?

Planning laws have to regulate very complicated matters:


- individual vs society;
- local gov vs national;
- market forces vs public good; and
- human behaviour vs state power.

All **more** complex in African contexts, because of:

- insecure land tenure;
- dramatic political shifts;
- rapid urbanization; and
- weak civil society.

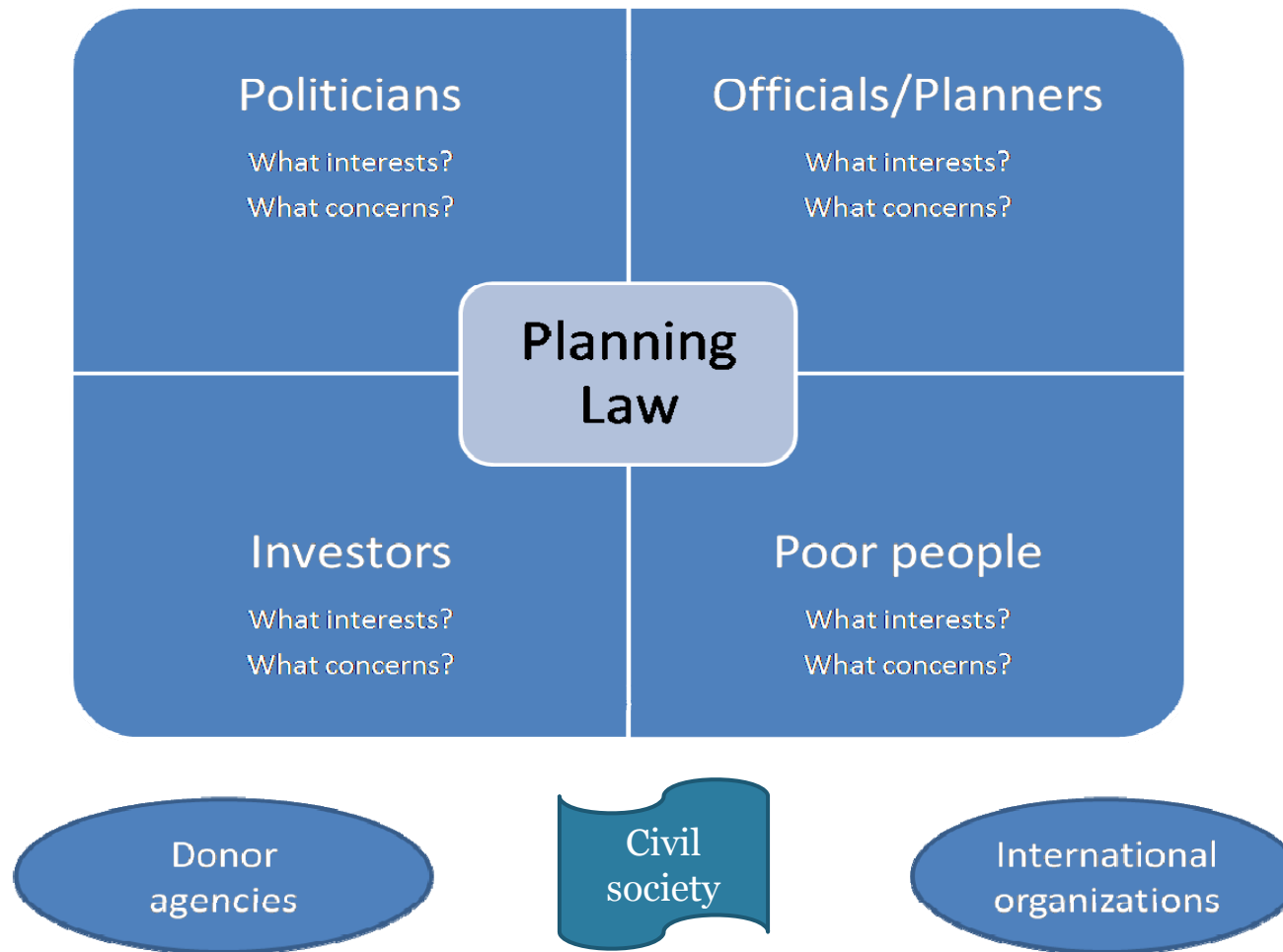
The regulatory tools available though are quite straightforward:

- the contents of plans;
- planning process; and
- development control rules.



Problems arise when we try to move too fast to the regulatory tools, without properly considering the matters, forces and activities to be regulated

Reconciling the interests of these different stakeholders is not impossible, but it's not easy either



Not just a technical exercise

It's been many years since Patrick McAuslan first pointed out, in 1980, that making new planning law is not 'just a technical exercise' – that holds in any country, anywhere in the world

No longer is it helpful to say *we've got a great law, but it's just not implemented*– 'that's an oxymoron' (Robert and Ann Seidman)

Now is an opportune time to move forward, based on a thorough understanding of:

- political possibilities and impacts
- economic possibilities and impacts
- implementation costs and benefits
- compliance costs and benefits

Moving on: how to change practice

Realistic goals: a planning law reform process cannot a) design a new set of intergovernmental relations through the backdoor and b) cannot rewire bureaucrats, planners and politicians' views of what planning should do and be.

Look carefully at international precedent, not just for 'models':

- most developed countries' planning laws are highly contested in court, in the media in politics – this is a universal fact
- fundamental change to legal relationships is slow – Brazil's City Statute was 30 years in the making

Develop a methodology for tackling planning law reform processes.

Possible features of a new methodology

A starting point might be an adaptation of the Five Principles of Good Regulation followed in the UK (but perhaps there is another set of suitable principles?) as the desired end result:

- 1. Proportionality.** Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and the costs identified and minimised.
- 2. Accountability.** Regulators must be able to justify decisions and be subject to public scrutiny.
- 3. Consistency.** Government rules and standards must be joined up and implemented fairly.
- 4. Transparency.** Regulators should be open and keep regulations simple and user-friendly.
- 5. Targeting.** Regulations should be focused on the problem and minimise side effects

If 'good regulation' is the end, what will be the means?

How will the drafting process need to differ for better regulation?

1.Scoping the complex issues: the political, economic, institutional and professional interests at stake

- who would benefit from change, who would not;
- what is the 'planning culture' and are there opportunities for change?

2.Assessing the available human resources – in public and private sectors – as well as the likelihood of change (positive or negative) in the supply of skills and experience.

3.Understanding the constitutional and legal context: what's legally possible and what's not.

4.Identifying what must change (the target);

5.Determining the extent and nature of change in the law that is needed; and then

6.Producing a first draft of new legislation

Practical issues

Consulting team composition

- a mix of 'international' and 'local' is important but the skills required are scarce internationally and locally, so inflexible pre-tender team composition is inefficient, with long term implications for the work
- not just lawyers and planners – must also include regulatory impact experts or at least people able to work with implementation and compliance cost issues

Relationships with stakeholders

- stakeholders/experts outside of government (the ministry even) need to be engaged, without threatening government representatives
- Steering Committees made up of both public and private sector representatives are very useful, but must meet frequently and regularly
- Inter ministerial working group (every Ministry head a member, served by nominees) but no substitute for a diverse Steering Committee
- Techniques for engaging specifically a) developers and b) NGOs or CBOs representing or working with the low-income and informal settlement areas must be used

Building the agenda for better planning law reform

Currently this work is supported by the Rockefeller Foundation.

Next steps:

1. Put out a proposed new approach to planning law reform to stimulate a debate;
2. Engage key stakeholders – donors and international organizations – as well as build bridges between the ‘urban development’ and ‘good regulation’ experts and disciplines
3. Develop new and improved curricula for Planning Law as taught at African planning schools (Association of African Planning Schools)
4. Insert this area of work into existing networks and, if necessary, revive and rejuvenate old ones (such as ICPLA) or build new ones.