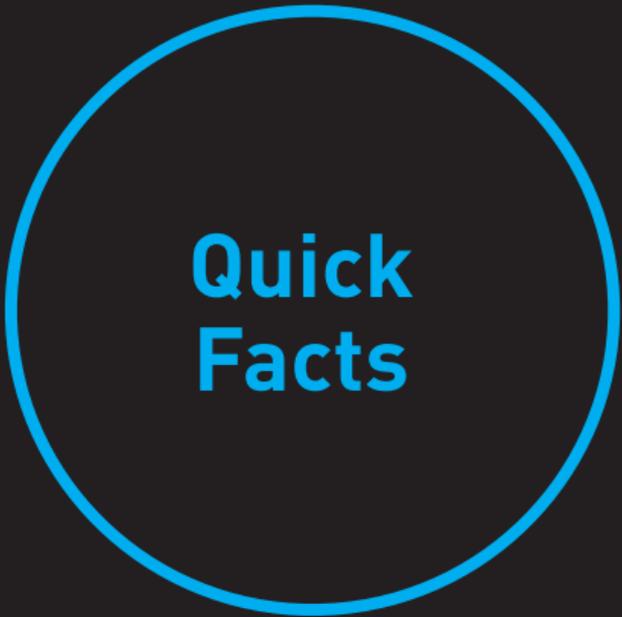


RULES OF THE GAME



UN  **HABITAT**
FOR A BETTER URBAN FUTURE



**Quick
Facts**

1

Legislative reforms are yet to come and in most countries the dispensation of public power remains very similar to what it was at the time of Habitat II, and even earlier periods. Decision-makers fundamentally remain unable to influence the size, shape and morphology of their cities.

2

Inefficient or impracticable legislative reforms reflect the dominance of 'universal' technical concerns and replication of foreign 'best practice' that disregard local circumstances.

3

Planning regulations in developing and transition countries are often too detailed, and inflexible, making compliance so challenging that people tend to bypass them altogether.

Introduction

Effective urban legislation is an indispensable pillar of sustainable urban development. 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 inequality if not underpinned by effective and coherent policy and legal, institutional and governance frameworks that will ensure a solid context for planning, dialogue between actors and rights-based approaches to development.

Good quality urban law provides predictability and order in urban development, from a wide range of perspectives, including spatial, societal, economic and environmental viewpoints. Through this it contributes to investment, strong economic performance and wealth creation.

The quality of human settlements and urban governance affect the quality of life of billions of individuals. Choices made in relation to settlements have tangible positive or negative effects on social justice, good governance, demo-

cratic decision-making, economic development, upholding fundamental rights and transparency. Urban legislation has an important role to play by defining conditions for formal/informal access to land, infrastructure, housing and basic services; laying out rules for planning and decision-making; and pushing for improved livelihoods and living conditions because the law sets requirements for urban development initiatives. It also sets the guidelines for how urban authorities, local governments and communities are expected to fulfil respective mandates and respond to emerging challenges. The effect of legislation is important: it can either set effective frameworks for sustainable development, or accentuate inequalities and exclusion. Urban law is necessary to provide rules to mediate and balance competing public and private interests, especially in relation to land use and development. It creates a stable and predictable framework for both public and private sector action, guaranteeing inclusion of the interests of vulnerable groups and encouraging local and national discourse.



**What is
Urban
Law?**

Urban law is the broad ranging collection of diverse policies, laws, decisions and practices that govern the management and development of the urban environment.

Urban law has several defining characteristics:

- It governs the central functions of towns and cities and reflects the rights and responsibilities of the residents and users of these 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, national legislation and also municipal rules or by-laws that often govern local issues such as 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 within the urban environment - with those more vulnerable, such as the poor and the socially marginalized, being of particular concern.



**Why Urban
Legislation?**

Growing communities require frameworks of principles and rules to ensure fairness and efficiency to help make decisions. In many cases the dominance of 'universal' technical concerns and the replication of foreign 'best practices' has led to inefficient or impracticable reforms. Reforms made in this way often disregard both local circumstances and miss opportunities for effective review and adjustment.¹ Good quality urban law combines technical understanding with local relevance, culture and context to effectively perform its designated function.²

Outdated or inadequate urban laws generate inequality because they inhibit the beneficial interactions between resources, abilities and backgrounds that create opportunities for all:

1. They are unable to manage on-going urban transformations or anticipate current and future challenges;
2. They maintain the socioeconomic status quo and the grip of self-perpetuating élites; finally
3. They exclude hundreds of millions from the effective benefit of their recognised, unconditional human rights, such as access to adequate housing and land rights.

1 UN-Habitat, 2015, *Urban Rules and Legislation, Habitat III Issue Paper 5*

2 Xanthaki, Helen (2011) Quality of legislation: an achievable universal concept or a utopian pursuit? In: Quality of Legislation. Principles and Instruments: Proceedings of the Ninth Congress of the International Association of Legislation (IAL) . Nomos, Baden Baden, pp. 75-85.

Growing urban inequality too, has deeply-felt spatial effects. An increasing number of poor people do not live under the protection of the law and the opportunities it affords. Urban land markets, infrastructure systems and public space provisioning are becoming unequal as well, contributing substantially to insecurity in poorer neighbourhoods of many Latin American, African and Asian cities. Amidst these trends, conventional urban planning has proven singularly ineffective and often complicit. Many people are denied access to tenure security, property and land rights, basic services and to economic opportunities simply on the basis of gender, skin colour, ethnicity or beliefs, without regard for capabilities and skills.

Inadequate laws deny equal opportunity and protection to specific segments of the population. They act as barriers and biases against the poor and marginalised groups through institutions and processes that are too difficult and costly for them to access, or through corruption and abuse of power. Disadvantaged minorities are usually poorly represented in political structures and decision-making bodies and consequently have little control over decisions that affect them. Now, as per the universally agreed Sustainable Development Goals, national laws should make space in our cities for all, instead of nurturing discrimination, exclusion and destitution from one generation to the next. Good quality laws promote the inclusion of vulnerable groups, contribute to poverty alleviation and promote social cohesion.



Disadvantaged minorities are usually poorly represented in political structures and decision-making bodies and consequently have little control over decisions that affect them.



**URBAN
LEGISLATION
TRENDS-**

**FROM HABITAT II TO
HABITAT III**

Urbanisation is happening rapidly, with 60 percent of the world population expected to be urban by 2030. Together with climate change and sustainable development, it highly influences the way governments deploy public policies with supporting laws and regulations. If governments want to remain in control of urbanisation, they must create a fresh, well adapted dispensation of powers and rules. Cities must respond to these challenges with urban laws that govern the relationships among people and define mechanisms of interaction along with novel ways of reaching agreements and building consensus.

In the Habitat Agenda, the government is seen as an enabler, rather than a hands-on agent of urban development. The government should provide institutional and legal enabling frameworks for mobilising financial resources for sustainable shelter and human settlements.



Urbanisation is happening rapidly, with 60 percent of the world population expected to be urban by 2030.

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- 3 A useful series of case studies are provided in: McDonald, 2014
 - 4 Fernandes & Maldonado Copello, 2009

The 'Strategies for Implementation' of the Habitat Agenda included commitments to:

1

Review restrictive, exclusionary and costly legal and regulatory processes, planning systems, standards and development regulations;

2

Adopt an enabling legal and regulatory framework based on enhanced knowledge, understanding and acceptance of existing practices and land delivery mechanisms, to stimulate partnerships with the private and community sectors;

3

Deploy institutional and legal frameworks for inclusive participation in decision-making regarding human settlement strategies, policies and programmes.

However, various international assessments suggest that the reviewing imperative has largely remained ineffectual, and where not, only marginal reform has followed. Most legal frameworks remain very similar, and often identical, to their form at the time of Habitat II and even earlier periods,⁵ despite the fact that there is often no proof they are effective. Since national, and often local, authorities deliver policy through the legal and administrative framework, this suggests that decision-makers are unable to fundamentally influence the size, shape and morphology of their cities.

This failure has not only direct consequences on the effectiveness of individual and community rights (particularly in the areas of security of tenure, shelter and basic services) but also means that public authorities are unable to harness the national economic benefits of agglomeration like the interactive concentration of resources and abilities in cities. Apart from lack of follow-through on Habitat Agenda recommendations, legislative reform remains intractable because entrenched legal "...systems tend to be complex, as they accommodate different, contradictory, and even conflicting provisions adopted over time as a result of evolving socio-political processes. The maintenance of a legal system that does not fundamentally express the realities of the socioeconomic and political-institutional processes that it proposes to regulate generates distortions of all sorts."⁶ This phenomenon is frequently reflected in the

5 Bahl, Linn, & Wetzel, 2013; Berrisford, 2014

6 Fernandes & Maldonado Copello, 2009

laws governing physical planning and land development: these include procedures for important elements (such as identification and maintenance of public space, plot design and allocation, the control and economic role of built space and building codes) that consistently fail to produce the expected physical outcomes to match economic and social policies.⁷

For example, in Mozambique, current building codes are derived from the Portuguese rulebook. After the cataclysmic 1755 Lisbon earthquake, Portugal adopted very restrictive rules and extended them to her African colonies. Today, more than 250 years later, Mozambique, with little history of tremors, retains one of the more stringent building codes in Africa (brick or cement block walls, reinforced concrete beams), which excludes all but the wealthiest households.⁸ In London, U.K., inadequate housing and sprawl result from building regulations dating back to the Great Fire of 1666.

Urban laws must be enforceable and enforced. Legislation needs to not only solve problems, but also avoid the creation of others. It must also set out clear, unambiguous, comprehensive, reliable and well-circumscribed rules, for the sake of easy, inexpensive implementation and access, and do so for the longer term. Outdated, complex, rigid and ineffective legislation that does not reflect reality nor recognise and preserve the inventiveness of the informal

7 UN-Habitat, 2015, *Urban Rules and Legislation, Habitat III Issue Paper 5*

8 UN-Habitat, 2014, *Legal Assessment*

9 Hannerz, 1980

(licit) sector,⁹ will woefully fail to address today's and tomorrow's challenges, discouraging development and forcing citizens and officials into informality and corruption for access to basic services.

Urban law remains a highly segmented and complex field where technical objectives as well as institutional, financial and social factors are considered in isolation from each other. For example, planning laws often seek to achieve ambitious and radical reforms but fail to consider the resources and infrastructure required for implementation. Lawmakers may assume that resources will automatically follow, but this results in enacting ineffective, impractical statutes.¹⁰ In Uganda, a draft planning law was designed in such a way that enforcement and implementation would require no fewer than 20,000 civil servants.¹¹ In Egypt, the law calls on local planning offices to devise detailed plans for cities and villages, but for lack of funding and staff only 10 out of 228 cities have so far managed to do so.¹²

The number of innovative, locally relevant urban law frameworks in fields such as physical planning and development control remains remarkably low, particularly by comparison with the needs of cities where institutional and financial resources are scarce.¹³ Even in Latin America, path-breaking reforms in Brazil (Statute of the City (2001)), Colombia and Peru have met with uneven and arguably disappointing results to date.¹⁴

10 Mousmouti & Crispi, 2015

11 McAuslan, 2013

12 Nada, 2014

13 UN-Habitat 2015, *Urban Rules and Legislation*, Habitat III Issue Paper 5

14 Fernandes & Maldonado Copello, 2009



The Legal
Imperatives of

**URBAN
DEVELOPMENT**

Legal frameworks are a reflection of politics – and power dynamics are an integral part of political life. Unequal power relations across most societies and settlements are often seen as a fundamental reason for poor results and performance.¹⁵ It is, therefore, understood and broadly accepted that clear legal frameworks are essential to mediate the contests that arise from competing powers and to keep a check on those who wield disproportionate power over vulnerable constituencies and the natural environment. Public law effectively formalises allocation of powers, responsibilities, functions and funding in any society, and therefore responds to power relationships in order to reach agreed policy objectives.¹⁶ Legal reform is extremely important for the appropriate design of government structures, particularly decentralisation and multi-level governance that can advance sustainable human settlements and citizen empowerment. Ultimately, upholding fundamental human rights through effective legal protections, standards and effective public institutions structured through subsidiarity, which means issues are dealt with at the most immediate (or local) level, is the most robust political remedy to systemic

15 Mansuri & Rao, 2014; Goetz & Gaventa, 2001; Manor, 2004; MirafTAB, 2004; Rakodi, 2002

16 Tamanaha, 2001

power imbalances. This is reflected in the emergence of the Right to the City Movement and other rights-based interpretations of urban law, which highlight that the latter is not simply the formalistic deployment of universal principles for provision of services.¹⁷

Challenges of Legal reform

Although the power of legal reform was recognised in the 1996 Habitat Agenda, reform of urban law and legislation is challenging, even though in many ways it is a precondition for success in the other domains of urban development. To lay the groundwork for more effective legal reform under the recently adopted New Urban Agenda, it is important to identify the core challenges.

To effectively address these challenges, the reform of urban law must address five central imperatives:

1. Streamline, balance and systematise inter-governmental divisions of powers and financial assignments;

17 The Right to the City Platform seeks to contribute to the adoption of commitments, public policies, plans and actions in order to build fair, democratic, sustainable and inclusive cities. See more at: <http://www.righttothecityplatform.org.br/?lang=es>

2. Strengthen the role and functioning of metropolitan authorities in the overall government system, in order to buttress the territorial dynamics of development and address climate change impacts;
3. Provide principles and standards for the structural aspects that influence a liveable city morphology and promote their consistency across space and time
4. Reform intergovernmental public finance systems to expand overall public resources, ensuring subnational authorities have the autonomy and resources they require to implement locally-defined development pathways;
5. Bolster the human and institutional capacities of subnational authorities whilst improving national government ability to work in an enabling manner with empowered partners.

While carrying out these reformative steps, two fundamental legislative principles must be emphasized:

1. The quality of law, specifically its ability to perform the functions determined by policy; and,
2. Policies, for instance, the 'prescriptions' for law and governance, are primarily based on realistic assessments of what a country's urban development needs are, and what resources and capacities are available to fulfil them.



Legislation and the
**21ST CENTURY
DEVELOPMENT**

Legislating amidst plural regulatory systems

Statutory law is not the only form of regulation at play in most cities, especially in the developing world. Most urban residents are subject to multiple regimes of regulation, especially where many households rely on informal networks and resources to access land, build shelter, secure livelihoods, and benefit from basic services such as health (especially traditional medicines), water and transport.¹⁸ These informal regimes of regulation and control can have a variety of sources: quasi-traditional, religious or ethnic-traditional authority, or a local strongman or network with control over land-use or trading permits, some of which can be linked to the threat of violence or the power to prevent it.

These parallel regulatory systems can overlap with formal systems of rule and authority. It is not only the poor who operate within multiple regimes of regulation. Elites in most cities rely on public authorities' inability to enforce regulations to build up assets and extract rents. Many property subdivisions and extensions are carried out without formal permission in efforts to secure maximum, particularly short-term, profits and avoid taxation.¹⁹

18 Berrisford, 2014; Jaglin, 2014

19 Neuwirth, 2011; Tonkiss, 2014

Likewise, many formal businesses impose informal contracts to secure labour and optimise profits. In other words, informal practices around socially or culturally specific regulatory systems are evident in most cities. It is imperative that 'good' urban laws acknowledge this fact and devise well-adapted provisions that can systematically provide rights- based protection focussed on public interest.

For legal reform to facilitate urban transformation, it must be based on a broader-based dynamic which brings in civil society, whose relevance public authorities must formally recognise when it comes to advancing and consolidating the public interest and entrenchment of human rights.

In other words, government must act upon opportunities for legal reform. Public action must operate through a multiplicity of levers to be effective, ranging from education to advocacy, to engagement, to well-targeted advocacy, among others. This process calls for public investment (without undue influence) in the capabilities of those organisations that represent and champion the interests of the urban poor.²⁰

Enhancing Credibility

If associated with on-going efforts to establish urban public policies, legal reform is in a better position to support systematic advancement of collective rights, sustainable urban planning, adequate housing, provision

20 Hickey & Mohan , 2004; Narayan & Kapoor, 2008

of public goods and a balanced, healthy environment. The critical ingredient for successful legal reform is credibility. Credibility is enhanced when laws are culturally resonant and enforceable (with the population deriving a higher sense of 'ownership'). Where legal provisions hold no sway, and government cannot enforce compliance; enacting such laws would be counterproductive.

Rights-Based Approach to Urban Development

A rights-based approach to legislation will be imperative if the Post-2015 Goal of sustainable cities and human settlements are to be realized. Coincidentally, this approach will have a profound outcome in the realization of other human rights standards in municipalities such as the integration of urban dwellers in the development decisions and planning outcomes that affect their daily lives. Indeed, the New Urban Agenda emphasizes the role of human rights and inclusivity in urban development. It envisages "cities and human settlements where all persons are able to enjoy equal rights and opportunities."²¹ To this end, the Universal Declaration of Human Rights and other international human rights treaties are listed as informing the New Urban Agenda. Moreover, the NUA asserts that inclusivity, non-discrimination and public participation are among its guiding principles.²²

21 The New Urban Agenda (2016), para 12.

22 Ibid, para 14.

Gradual fulfilment of rights creates room for the necessary societal negotiations about the assortment of regulatory systems—formal and informal—that can coexist and potentially complement one another in an iterative process of ensuring equality before the law. These multiple and overlapping systems must be readily intelligible, resulting in a sound basis for public debate about what serves the public interest best. The critical objective should be gradually strengthening of public authority capacity to make decisions in a transparent and predictable manner to enhance accountability. In places where decision making on urban matters is not just the job of the public authority, it is also necessary to agree where decisions will be made and who will be held accountable. A political commitment to this institutional reform will go a long way toward establishing a democratic framework for co-development of any locally appropriate and effective system of urban law. It is crucial that coalitions working towards transformative urban legal reform focus on the way regulatory and fiscal instruments can be brought into harmony and mutual reinforcement. A good example of this is the potential for mobilising public assets through value capture mechanisms. Such techniques are captured in the New Urban Agenda which calls for the sharing of increased land and property value generated as a result of urban development processes, infrastructure projects, and public investments.²³ However, it is important to recognise

23 Ibid, para 137.

that these are only effective where there is a strong social and legal case for claims of unfair private gain through government spending on infrastructure and public works. Local authorities can benefit from increased revenue if they opt for progressive legal frameworks that give them the powers to recoup publicly created gain from developers that can then be used for public investments. In Western Europe, public authorities will frequently grant urban land and (re)development rights to private investors on the condition that the projects provide public services (health, educational, cultural, etc.) and low-cost housing alongside commercial and middle-class residential spaces. However, these projects are only effective if they are not negatively influenced by patronage, influence or corruption that take away from their public welfare.



The critical ingredient for successful legal reform is credibility.



**SDGS AND THE
NEW URBAN
AGENDA**

“The success of the SDGs will be determined to a large extent in the world’s cities, which lie at the fulcrum of employment creation, eradication of extreme poverty, inclusive economic growth, and environmental sustainability.”²⁴ However, the fundamental prerequisite to make this happen is that democratic urban governments are endowed with appropriate legal powers, adequate financing assignments and the human capacity to drive a transformation agenda.

In light of the New Urban Agenda, it is crucial to recognise that a focus on basic, essential statutory and subsidiary legislation will provide the most effective support to sustainable urban development. Governments should identify the minimum set of instruments and tools to build the major elements of a legal framework.

Several SDGs can only be achieved through effective regulatory frameworks. Urban legislation has an important role to play in virtually all targets of Goal 11. It defines conditions for access to land, infrastructure, housing, 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

24 SDSN Thematic Group on Sustainable Cities, 2013

governments and communities are expected to fulfill their mandate and react to emerging challenges. Furthermore, urban legislation can set meaningful frameworks for sustainable development or accentuate inequalities and exclusion (Goal 10). Effective urban regulatory frameworks are also fundamental to promote the rule of law (Goal 16), develop effective, accountable and transparent institutions at all levels, and ensure participatory and representative decision-making.

UN-Habitat approaches and methodologies for legal reviews and reforms tackle the legal and institutional exclusion of poor and marginalized people from affordable housing, property rights and tenure security, economic opportunities, basic urban services (water, sanitation, and electricity) and from the right to participate to the city decision making process. UN-Habitat aims at simplifying

urban laws and improving their implementation as an effective means to promote suitable urban development, fight corruption, promote the rule of law and legally empower the poor and marginalized urban dwellers.

The recognition that good quality law makes for efficiency for public authorities at all levels and for the citizenry – together with realistic implementation pathways inherent to the instrument itself – has the potential to significantly enhance the effectiveness of urban law. The effectiveness of urban law depends upon a series of elements, chief among which are clear and coherent policy and legislative instructions, selection of appropriate legal instruments, the efficiency of the mechanisms proposed and the proper formulation of the legal instrument, but, above all *local relevance and practicality*.



Governments should identify the minimum set of instruments and tools to build the major elements of a legal framework.

The New Urban Agenda

The adoption of the New Urban Agenda provided the ideal moment to re-commit the global community to review and enhance their legislative frameworks.

The New Urban Agenda consists of components focused on desired directions of change for urban areas in the context of national development. These focus points are largely at the city level, although they are combined together through national urban policies.

The key strategic components can be thought of as frameworks for action in response to the multiple challenges raised by the often chaotic forces of urbanisation; and also, at the same time, as frameworks for action to harness the opportunities that the same urbanisation brings. UN-Habitat advocates for the “three-pronged” approach: 1) rules and regulations; 2) urban planning and design, and 3) municipal finance mechanisms. Along with national urban policies, these three development enablers underpin planned urbanisation and they can generate across-the-board sustainable urban development. The components overall respond to the question of what needs to change.

Rules and Regulations: Strengthening urban legislation and systems of governance

Laws, institutions, regulatory mechanisms and systems of governance bound by the rule of law all integrate a composite set of factors which embody the normative and operational principles, organisational structures and institutional and social relationships that underpin the process of positive urbanization. Encapsulated under the notion of Rules and Regulations, they aim to promote a clearer— better formulated— and more transparent legal framework for urban development. The emphasis lies on the establishment of adequate rules and regulation systems that respond to real needs, actual capacities and available resources that can provide a solid, forward-looking framework to guide urban development. This is a framework based on accountability, the rule of law, clear implementation mechanisms, and can be continuously enforced as part of efforts to harness the transformative force of urbanization.

Urban policies, from national to very local levels (neighbourhoods and districts) depend on laws and regulations as the primary framework for action, implementation, monitoring and evaluation. Lack of clear legislative frameworks can act as one of the major impediments to effective design and implementation of these policies and stand in the way of “positive urbanization.” Still, more often than not, local and national governments formulate policies without appropriate legislative support or without the capacities to enforce and regulate existing legal instruments.

Key Policy Points

1

Rules and regulations create the normative basis for action and advancement.

2

A focus on basic, essential statutory and derived legislation that can be enforced will provide the most effective support to sustainable urban development.

3

Good quality urban law contributes to investment, strong economic performance and wealth creation, as it provides predictability and order in urban development.

4

The critical ingredient for successful legal reform is credibility. Credibility is enhanced when laws are culturally resonant and enforceable.

Essential Elements of Laws for Sustainable Cities

Taking into account the intricacy of the urbanization process and the plethora of legal instruments, rules and regulations must identify the key elements that can assist cities to become more prosperous and sustainable. Cities can adopt essential elements of laws that are grounded in sustainable processes and systems, and move on to more elaborated arrangements and legal instruments as management and governance institutions mature. These elements include: (1) regulations related to the public space, (2) establishment of development rights, (3) the building codes governing the quality and standards of buildings, and (4) adequate street and plot layouts.²⁵

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These essential regulatory elements “have the power to shape the form and character of the city by playing an essential role in the implementation of urban plans.” They are necessary to make cities sustainable. Overabundant laws, regulations and standards can become so complex that they become a negative externality for decision-making. However, with clear mechanisms and processes and well-defined responsibilities and coordination mechanisms, rules and regulations can expand to other key development areas, including, among others: (a) municipal finance (i.e., tax collection, property tax, property registration and land value capture and sharing); (b) environmental sustainability regulations (protection of natural assets and biodiversity, land use planning, impact assessment regulations, waste management, air and water quality); (c) urban governance (decentralisation and local autonomy laws, empowerment of citizens and public participation rules, accountability mechanisms) and (d) equitable access to opportunities (laws facilitating wealth redistribution, protecting commons and ensuring provision of public goods).

Rules and regulations must have a clear objective and sound coordination mechanisms. They must be adapted to any country's and city's specific needs, resources and capacities and be enacted according to specific circumstances. The New Urban Agenda notes the importance of taking into account different realities, capacities and levels of development²⁵ as well as the need for coherence between goals and measures of sectoral policies.²⁶ Rules and regulations must also allow for evolution and adaptation over time, but with clear checks and balances to prevent elites and powerful interest groups from capturing or using them for their own benefit.

As an urban development enabler, rules and regulations provide security and stability for residents; promote social and economic inclusion, legal certainty and fairness in the urbanization process. Laws, rules and regulations must not discriminate in substance or in practice, ensuring that benefits are geared towards those most in need to avoid reinforcement of inequalities and exclusionary processes. Balancing regulations with incentives provides the framework through which the transformative force of urbanization is controlled and taken advantage of.

25 The New Urban Agenda (2016), para 17.

26 Ibid, para 88.

Notes

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