

CHAPTER  
**06**

# Rules of the Game: Urban Governance and Legislation

## QUICK FACTS

- 1 Although most countries have embarked on decentralization, the results are generally falling short of the ambitions set out at Habitat II.
- 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.
- 4 Genuine accountability and administrative capacity to implement public policies based on accurate information about local conditions are essential for decentralization to contribute to economic development.

## POLICY POINTS

- 1 Good quality urban law contributes to investment, strong economic performance and wealth creation, as it provides predictability and order in urban development.
- 2 Effective local governance rests on participatory service delivery planning, budgeting, management and monitoring. When endowed with appropriate legal powers, adequate financial allocations and the human capacity they can drive the transformation agenda.
- 3 The critical ingredient for successful legal reform is credibility. Credibility is enhanced when laws are culturally resonant and enforceable.
- 4 A focus on basic, essential statutory and derived legislation that can be enforced will provide the most effective support to sustainable urban development.



Most legal frameworks remain very similar to what they were at **HABITAT II**



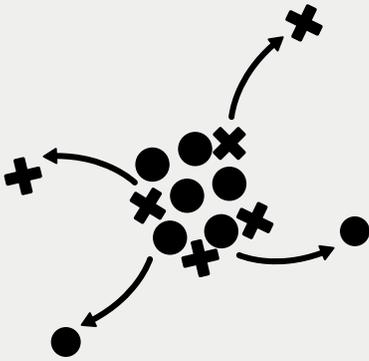
Urban Law provides rules to  
**MEDIATE** and **BALANCE**  
competing interest



## Hidden Powers

- > prevent formal political and policy deliberative processes
- > exclude certain voices and interests
- > minorities are rendered **invisible**

# Decentralization



**1. Administrative Decentralization** > PLANNING +MANAGING is transferred from Central Government to Local (Delegation)

**2. Political Decentralization** > Delegation of political power, authority and resources

**3. Fiscal Decentralization** > Redistribution of resource form central to subnational government

**4. Devolution** > Political and fiscal decentralization

**5. Deconcentration** > Territorial redistribution of central power



## Urban governance

delivers **sustainable development** when it is:

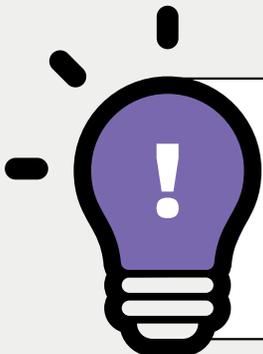
- > environment-friendly
- > participatory
- > accountable
- > transparent
- > effective and efficient
- > equitable and inclusive
- > abiding by the rule of law



## Ineffective decentralization

reasons:

- > weak legal framework
- > lack of political will
- > poor capacity for implementation
- > under-resourced local authorities
- > poorly trained personnel
- > inadequate political representation



**Sustainable human settlements development** requires the active engagement of civil society organizations, as well as the broad-based participation of all people. It equally requires responsive, transparent and accountable government at the local level. Civic engagement and responsible government both necessitate the establishment and strengthening of participatory mechanisms, including access to justice and community-based action planning, which will ensure that all voices are heard in identifying problems and priorities, setting goals, exercising legal rights, determining service standards, mobilizing resources and implementing policies, programmes and projects (*Habitat Agenda 1996: par. 181*).

# 6.1

## New Times, Intensifying Pressures

Urban development unfolds over decades and frequently outlives its architects, both literal and metaphorical. Good quality urban law provides predictability and order in urban development, from a wide range of perspectives, including spatial, societal, economic and environmental, and, through this, 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

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, democratic decision-making, economic development, upholding fundamental rights and transparency. Against this background, urban legislation has an important role to play: defining conditions for formal/informal access to land, infrastructure, housing and basic services; laying out rules for planning and decision-making; pushing for improved livelihoods and living conditions as law sets requirements for urban development initiatives. Urban legislation also sets the background against which 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 set effective frameworks for sustainable development, or accentuate inequalities and exclusion. Urban law is necessary to provide a set of 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 providing a catalyst for local and national discourse.



...legislation...can set effective frameworks for sustainable development, or accentuate inequalities and exclusion. Urban law is necessary to provide a set of rules to mediate and balance competing public and private interests, especially in relation to land use and development

The Habitat Agenda, adopted in 1996, acknowledged the role of local authorities and the importance of participation as fundamental to achieving the universal goals of adequate shelter for all and safer, healthier, more liveable, sustainable and productive human settlements.



The policy outcome of Habitat II commits governments as follows: *"We adopt the enabling strategy and the principles of partnership and participation as the most democratic and effective approach for the realization of our commitments. Recognizing local authorities as our closest partners, and as essential, in the implementation of the Habitat Agenda, we must, within the legal framework of each country, promote decentralization through democratic local authorities and work to strengthen their financial and institutional capacities in accordance with the conditions of countries, while ensuring their transparency, accountability and responsiveness to the needs of people, which are key requirements for Governments at all levels."* (Istanbul Declaration on Human Settlements, 1996).

One of the preconditions for this is the establishment and consolidation of democratic local government empowered with the requisite human and financial resources to carry out their legally enshrined responsibilities.

The Habitat Agenda further argues for a leadership role on the part of local government in enabling "partnerships for action" and ensuring full and equal participation by all, especially those that are typically discriminated against or marginalized, e.g. children, youth, women, disabled and indigenous populations.

At first glance, the Habitat Agenda and associated efforts by the international development community have been extremely influential. Most countries in all regions of the world have embarked on decentralization,<sup>1</sup> often formally enshrined in the principles set out in 1996. However, results have been highly variable, generally falling short of the ambitions set out at Habitat II.<sup>2</sup> The reasons are numerous and circumstantial, but can be summarized as follows: (1) weak legal frameworks; (2) lack of political will (or, conversely, partisan politics between central and local government) along with (3) poor capacity for effective implementation; (4) under-resourced local authorities, due to lack of inter-governmental fiscal frame-



People enjoying the Riva promenade. This spot has become the city's most important public space. December, 2012, Split, Croatia.

Source: Donatas Dabravolskas / Shutterstock.com

works that empower primary tiers of government, also (5) hindering joined-up service delivery, synergies and institutional alignment (both vertical and horizontal); (6) poorly trained political and administrative personnel; and (7) inadequate political representation, feeding popular disenchantment and even resentment. Generally speaking, inefficient or impracticable legislative reforms reflect the dominance of “universal” technical concerns and replication of foreign “best practice” that largely disregard both local circumstances and opportunities for effective review and adjustment.<sup>3</sup>

The most deeply felt by-product of the current global economic system is ever-steeper inequality and the social-cultural damage it is causing (see Chapter 4).<sup>4</sup> The challenges facing African urban youth — the “face of the precariat”<sup>5</sup> — offer a telling illustration. Only 28 per cent of Africa’s labour force holds regular, stable wage-earning jobs, while 63 per cent are mostly trapped in vulnerable employment,<sup>6</sup> making decent homes and family life unaffordable. Therefore, it is not surprising that 61 per cent of urban dwellers in Sub-Saharan Africa live in informal settlements, with attendant deprivations. Stark as they are in Africa, these trends prevail in most developing regions and can also be found among the “working poor” or repossessed home-owners with nowhere to sleep but their cars in some cities in the OECD area<sup>7</sup> where de-industrialization and the housing bubble have left scars. Youth unemployment rates remain high in Spain, Portugal, Greece and Eastern Europe, as well as in some Arab countries and Central America.

Outdated or inadequate urban laws generate inequality, as they interfere with the beneficial interactions between resources, abilities and backgrounds that historically create opportunities for all in the cities of the world: (1) they are unable to secure a hold on on-going urban transformations or to 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 recognized, unconditional human rights. Growing urban inequality too, has deeply-felt spatial effects (Chapter 4). More and more poor people do not live under the shelter of the law and the opportunities it affords. Urban land markets, infrastructure systems and public space provisioning are becoming unequal as well, contributing in no small measure to insecurity in the poorer neighbourhoods of many Latin American, African and Asian cities.<sup>8</sup> Amidst these trends, conventional urban planning has proven singularly ineffective and often complicit (Chapter 7).<sup>9</sup> Millions of women and men around the world are denied access to tenure security, property and land rights, to 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, acting as barriers and biases against the poor and marginalized 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 poorly represented in political structures and decision-making bodies, and consequently have little control over decisions that affect them. Now, as per universally agreed Sustainable Development Goals, it is for national laws to make space for all in our cities and beyond, instead of nurturing discrimination, exclusion and destitution from one generation to the next. Good quality laws promote inclusion of vulnerable groups, contribute to poverty alleviation and promote social cohesion.

Urbanization, together with climate change and sustainable development, reconfigures the spatial constraints where governments deploy public policies with supporting laws and regulations, and a fresh, well-adapted dispensation of powers and rules is overdue if governments are to keep in control. Cities must respond to these challenges with well-adapted urban laws that

Outdated or inadequate urban laws generate inequality, as they interfere with the beneficial interactions between resources, abilities and backgrounds that historically create opportunities for all in the cities

Good quality laws promote inclusion of vulnerable groups, contribute to poverty alleviation and promote social cohesion

### Box 6.1: 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 crucial 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, to national legislation and on to municipal rules or by-laws that often govern local issues such as provision of services or management of public space.
- It often has a dual character, with an apparently neutral technical nature accompanied by a complex social aspect, including the potential for differential effects on different groups within the urban environment - with those more vulnerable, such as the poor and the socially marginalized, being of particular concern.

Source: United Nations, 2015j.

govern the relationships among people, define mechanisms of interaction, together with novel ways of reaching agreements and building consensus.

“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.”<sup>10</sup> However, the fundamental prerequisite for this is democratic urban governments endowed with appropriate legal powers, adequate financing assignments and the human capacity to drive a transformation agenda. In this regard, it is worth noting that since the early 1980s, the imperatives of legal reform aimed at democratic decentralization and citizen empowerment, have been the subject of vigorous debate.

This grounds well behind urban public policy, and was aptly crystalized in the 1996 Habitat Agenda. However, today’s serious challenges (rising inequality,

intensifying environmental stress and volatility, continual economic crisis, low-intensity and violent conflicts – together with unprecedented technological opportunities) suggest that over the past 20 years, substantive decentralization has been hindered by lack of political will<sup>11</sup>

**The success of the SDGs will be determined to a large extent in the world’s cities... the fundamental prerequisite for this is democratic urban governments endowed with appropriate legal powers, adequate financing assignments and the human capacity to drive a transformation agenda**

and inadequate financial mechanisms. Consequently, efforts at decentralization have created a logjam, instead of the continuum of powers and policies it is supposed to be. Nonetheless, governments confirmed their commitment at the Rio +20 Summit (2012), and reinforced it at the Sustainable Development Goals Summit in September 2015. The anticipated adoption and subsequent implementation of the New Urban Agenda at the 2016 Habitat III conference represents a crucial opportunity to address this policy logjam (Chapter 10).

## 6.2 Urban Law and Governance Trends

### Urban legislation

In the Habitat Agenda, the government is seen as an enabler, rather than a hands-on agent of urban development. It is for government to provide institutional and legal enabling frameworks for mobilizing financial resources for sustainable shelter and human settlements. When the Habitat Agenda was adopted in 1996, law was seen as a formalistic tool for development, i.e. economic growth to combat poverty, with strong emphasis on deregulation.

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, marginal reform has followed. Most legal frameworks remain very similar to what they

were at the time of Habitat II and even earlier periods.<sup>12</sup> 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.<sup>13</sup> In London, UK, inadequate housing and sprawl result from building regulations dating back to the Great Fire of 1666.

Apart from lack of follow-through on the recommendations, legal 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.*"<sup>14</sup> Urban legislation must be enforced, not just enacted; solve problems instead of creating some more; 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, and does not recognize and preserve the inventiveness of the informal (licit) sector,<sup>15</sup> 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 (see Box 6.2).

Urban law remains a highly segmented and complex field driven by a dynamic where technical objectives in specific fields are considered in isolation from each other as well as from the institutional, financial and social factors that will determine effectiveness. 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 and that is how they enact useless, impractical statutes.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

Even in Latin America, path-breaking reforms in Brazil's (Statute of the City (2001), Colombia and Peru have met with uneven and, as some would argue, disappointing results to date.<sup>20</sup>

One of the most comprehensive legal reforms in favour of democratic and participatory decentralization was adopted by the Peruvian parliament in 2002. This comprehensive decentralization mandates transfer of new powers to subnational governments on the one hand, and provides a legal basis for civil society participation in regional and local governments, on the other. As part of this legal agenda, an expansive battery of participatory institutions was introduced: regional and local coordination councils, participatory budgets, and health and education councils.<sup>21</sup> Peruvian regions, provinces, and districts undertake mandatory annual participatory budgeting.<sup>22</sup> However, 12 years on, the efficiency and responsiveness of local authorities

**Urban legislation must be enforced, not just enacted; solve problems instead of creating some more; set out clear, unambiguous, comprehensive, reliable and well-circumscribed rules, for the sake of easy, inexpensive implementation and access**

### Box 6.2: Concomitance of different planning provisions: Kenya

Law is spelt out across various statutes that have been amended over and over again, leading to a chaotic result, not to mention regulations, circulars, and guidelines that make the picture even more complex. In Kenya, different planning provisions coexist without a clear connection between them: the Physical Planning Act 1996 authorizes the director for physical planning to devise local physical development plans. The Constitution of Kenya 2010 rests the function of land planning with the national government, and the coordination of planning to counties. Under the Urban Areas and Cities Act of 2011, every municipality must have an integrated development plan, prepared by the municipal board and approved by the county assembly. These provisions introduce parallel procedures: the relationship or connection between local physical and integrated development plans is not clear, coordination mechanisms are lacking, statutes are inconsistent with the Constitution and planning comes under two distinct ministries with overlapping functions. As a result, determining with reasonable certainty, which provisions apply, where to find them, and what they mean, is a challenge. Lack of legislative transparency and clarity stands in the way of both enforcement and accountability.

Source: Mousmouti and Crispi, 2015.

### Box 6.3: Complex planning regulations: Mozambique

Planning regulations in developing and transition countries are often too detailed, and inflexible, making compliance such a challenge that people tend to bypass them altogether. An apt example is Mozambique's procedure to register land use rights: it is lengthy and complicated, and involves an overlapping double registration with the national-level Deeds Registry (under the Ministry of Justice) and the Land Registry (at provincial and national levels, under the Ministry of Agriculture). As a result, most land transactions take place informally, making identification of the ownership status of a property difficult. Simplified registration and greater transparency would improve the land market, eliminating the current parallel, extralegal segment.

Source: Mousmouti and Crispi, 2015.

The Brazilian Constitution enshrines participatory local government and connects it to the right to the city

have not necessarily improved. On the contrary, a majority of citizens regard most politicians as corrupt and accept they have to "play" the system to make headway.<sup>23</sup>

Brazil has had more promising results from its legal reforms. The Brazilian Constitution enshrines participatory local government and connects it to the right to the city. Thus, the legal system is defined as a means to activate participatory governance institutions to address the imbalance of power and resources in society.<sup>24</sup>

### Governance

Governance consists of the traditions and institutions by which authority in a country is exercised. This includes: a) the process whereby governments are selected, monitored and replaced; b) the capacity of the government effectively to frame and implement sound policies; and c) citizen and government compliance with the institutions that govern economic and social interactions among them.<sup>25</sup> Governance is the double process of making and implementing decisions (or not). Urban governance delivers sustainable development when it is environment-friendly, participatory, accountable, transparent, effective and efficient, equitable and inclusive, and abides by the rule of law.

The cornerstone of the Habitat Agenda is member States, clarifying the minimum norms that they are willing voluntarily to hold themselves accountable to.

Urban governance delivers sustainable development when it is environment-friendly, participatory, accountable, transparent, effective and efficient, equitable and inclusive, and abides by the rule of law

The discourse of Habitat Agenda is rooted in principles and precepts of people-centred sustainable development that was in currency during the mid-1990s (Amartya Sen,<sup>26</sup> the Brundtland Commission).

As one might expect, the Habitat Agenda is imbued with a hierarchical understanding of policymaking and implementation: national governments establish the parameters and empower local authorities as primary agents of implementation. National governments establish enabling frameworks for partnerships and civil society engagement through appropriate legislation and various support measures such as capacity building and training. Deeply embedded in the "democratic procedural approach" of the Habitat Agenda is a belief in a rational-comprehensive view of politics and policy processes: all stakeholders are assumed to be open to rational dialogue to determine how best to solve a given problem. Thus, "The strategy of the global plan of action is based on enablement, transparency and participation. Under this strategy, government efforts are based on establishing legislative, institutional and financial frameworks that will enable the private sector, nongovernmental organizations and community groups fully to contribute to the achievement of adequate shelter for all and sustainable human settlements development." (Habitat Agenda 1996: par. 59)

The governance and legislative reform vision of the Habitat Agenda are cogently reflected in the following paragraph: "*Sustainable human settlements development requires the active engagement of civil society organizations, as well as the broad-based participation of all people. It equally requires responsive, transparent and accountable government at the local level. Civic engagement and responsible government both necessitate the establishment and strengthening of participatory mechanisms, including access to justice and community-based action planning, which will ensure that all voices are heard in identifying problems and priorities, setting goals, exercising legal rights, determining service standards, mobilizing resources and implementing policies, programmes and projects*" (Habitat Agenda 1996: par. 181).

This vision rests on a belief that the real action for advancing the agenda resides at the local community level "in the public, private and non-profit sectors. It is they, local authorities and other interested parties, who are at the front line in achieving the goals of Habitat II" (Habitat Agenda 1996: par. 56). Through effective and

National governments establish enabling frameworks for partnerships and civil society engagement through appropriate legislation and various support measures such as capacity building and training.

properly supported *partnerships*, progress will be made. This necessitates enabling legal frameworks, an active civil society and broad-based participation by ordinary citizens in the affairs of their communities and local authorities. In this perspective, it is for central government to establish “legislative and regulatory frameworks, institutional arrangements and consultative mechanisms for involving organizations in the design, implementation and evaluation of human settlements strategies and programmes” (Habitat Agenda 1996: par. 237).

At the heart of this national imperative is a determined policy reform agenda, to change the inter-governmental distribution of powers and resources, in a bid to give effect to the principle of subsidiarity as confirmed in the *International guidelines on decentralization and strengthening of local authorities*.<sup>27</sup> However, in practice, approaches to decentralization vary across countries. Box 6.4 provides the broadly accepted typology of decentralization modalities.

Beyond the formal technical distinctions set out in Box 6.4, there is a growing recognition that local authorities are pivotal to the realization of the broader goals as reflected in the 2030 Agenda for Sustainable Development. This points to the underlying purpose of decentralization, namely, empowering autonomous local

governments to meet a general developmental mandate to provide for the welfare of the citizens, natural systems and economic stakeholders within their territories.<sup>30</sup>

## 6.3

### Uneven Progress in Decentralization Reform

The Habitat Agenda implies a number of practical steps for decentralization (see Figure 6.1) which can be summarized as a sequence that flows from: 1) developing decentralized systems, to 2) intermediate policy outcomes, to 3) primary outcomes (on the ground). In practice, these steps are shaped by the political economy of development, combined with critical demographic, economic, social, cultural and educational variables, from which the dynamics and prospects of reform cannot be isolated. In other words, the pursuit of a generic set

Through effective and properly supported partnerships, progress will be made. This necessitates enabling legal frameworks, an active civil society and broad-based participation by ordinary citizens

#### Box 6.4: Dimensions of decentralization<sup>28</sup>

Decentralization is the assignment of specific public functions to subnational governments linked through supporting structures, systems, resources, and procedures. The international representative of local government, United Cities and Local Government (UCLG), actively promotes democratic decentralization and regards it as an on-going institutional revolution whereby competencies and resources exclusively held by central government are transferred to other spheres of government, e.g. federal states, regional or provincial governments or municipalities. UCLG provides a useful working definition of types and forms of decentralization:

**Administrative Decentralization:** the transfer, through delegations, from central government to its local extensions or local

authorities, of specific planning and managing capacities, for which central government retains full accountability.

**Political Decentralization:** the delegation of political power, authority and resources to subnational government tiers acting as representative of, and accountable to, the local population that empowered them.

**Fiscal Decentralization:** the redistribution of resources from central to subnational government tiers, complete with the decision-making capacities required to use these resources, in a way that enhances local discretion and establishes effective and transparent financial management.

**Devolution:** the most robust form of decentralization, incorporating the *full* political and fiscal dimensions. It involves full transfer of

responsibility, decision-making, resources and revenue generation to a local public authority that is autonomous and fully independent of the devolving authority and has clear and legally recognized geographical boundaries within which to exercise its authority and perform its public functions.

**Deconcentration:** instead of decentralization, this is only a territorial redistribution of central power, as specific administrative responsibilities of the central government are transferred to local public structures that are accountable to the sole central government. This format undermines the principle of subsidiarity, yet it remains stubbornly widespread.<sup>29</sup>

Since 1996, very few developing countries have, in fact, seen decentralization through to the full extent...policy prescripts are expected to work without fully engaging with requirements in terms of legal reform, institution-building, financial restructuring, and capacity development, for a series of ambitious processes to click into place

of decentralization measures will always have a uniquely national and local character. On the other hand, the prospects and momentum of reform are highly dependent on the nature of institutional and other resources and related support mechanisms. Short of explicit national programmes to establish and systematically build institutional (especially

legal and fiscal) and human capacities, the reform agenda will run aground or, at best, stall.

Since 1996, very few developing countries have, in fact, seen decentralization through to the full extent.<sup>31</sup> Consequently, “although decentralization has been widespread and conspicuous, its performance has been uneven and our systematic practical knowledge of how it works is relatively modest.”<sup>32</sup> One of the major problems is that policy prescripts are expected to work without fully engaging with requirements in terms of legal reform, institution-building, financial restructuring, and capacity development, for a series of ambitious processes to click into place. Moreover, too little attention is paid to the political economy factors that underpin and drive decentralization reform.<sup>33</sup>

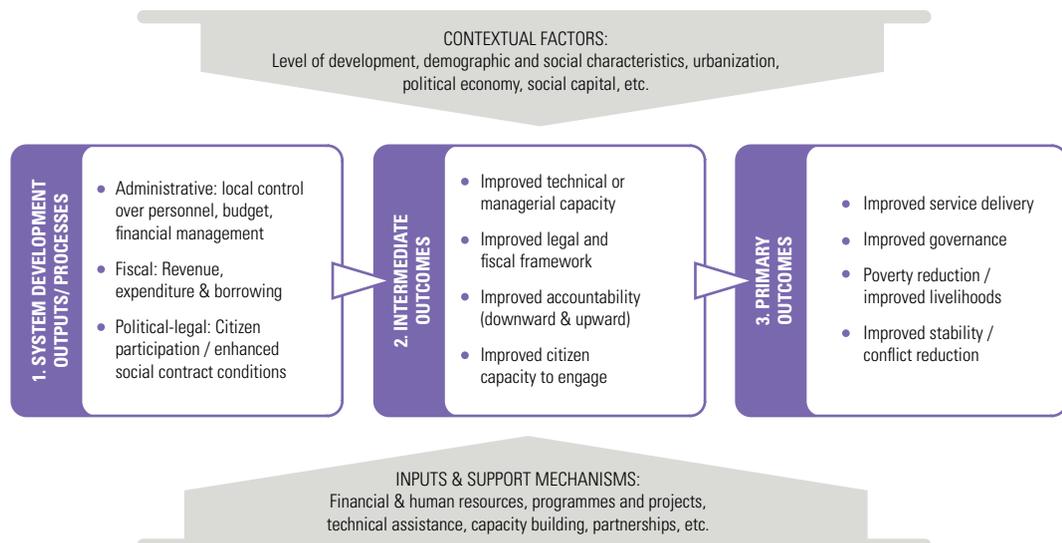
Finally, short of legal reforms that respond to local constraints, decentralization is unlikely to achieve assigned

ambitions such as improved service delivery and reduction of both poverty and conflicts.

Some countries pursue decentralization without a strong democratic component and instead focus on improved public services and economic infrastructure to sustain growth and inward investment. Two features are essential if decentralization is to contribute to economic development irrespective of the substantive democratic dimension: (1) genuine accountability and (2) administrative capacity to implement public policies based on accurate information about local conditions. Institutional readiness and capability cannot be divorced from financial resources. In both developed and developing countries, the bulk of tax revenues and public expenditure accrue to, and emanate from, central government. Subnational governments collect less revenue and expend substantially less than national governments, especially in developing countries (Table 6.1). For example in Egypt, 80 to 90 per cent of local budgets originate from central government; only two governorates – Alexandria and Qena – collect user fees to finance their own development priorities. Only in the Occupied Palestinian Territories is the financial system truly decentralized (probably reflecting an exceptionally fragmented territorial configuration), with every city raising its own revenues.<sup>34</sup> By contrast, small towns in Central Asia are completely dependent on transfers from higher tiers of government and have no budgets

**Figure 6.1: How decentralization works**

Source: Smoke, 2015.



**Table 6.1: Fiscal decentralization – International comparisons – early 2000s**

Source: Bahl et al, 2013.

Region	Subnational government expenditures		Subnational government taxes	
	% of total govt expenditure	% of GDP	% of total taxes	% of GDP
Developing Countries	18.8 (n = 16)	5.1 (n = 20)	11.4 (n = 16)	2.3 (n = 20)
Industrial Countries	27.8 (n = 26)	13.9 (n = 26)	22.7 (n = 24)	6.4 (n = 27)

1. n = number of countries in sample

Visible power is the manifest capacity of participants in formal decision-making bodies and public spaces to present and advance their respective interests, (ideological) perspectives and priorities

of their own, resulting in weak autonomy and capacity.<sup>35</sup>

A related, just as essential issue has to do with the division of powers and intergovernmental relations, which must be consistent with the division of revenue and expenditure if it is to be efficient. Before focusing on the legal dimensions of decentralization, a discussion of the sticky question of power relations is in order.

## 6.4 Local Governance and Power

As suggested earlier, at the core of the Habitat Agenda is a belief in inclusive deliberative democracy and special-purpose partnerships to ensure effective service delivery and enhance political legitimacy. In practice, though, policy reform is more complex than expected, and a major challenge is none other than altering a well-entrenched status quo, with the administrative arrangements that come with it. When reviewing and redefining urban governance prior to legal reform, it is essential to focus on the power dynamics of decentralization and local governance.

A useful guide is the distinction between three kinds of power: visible, invisible and hidden.<sup>36</sup> *Visible power* is the manifest capacity of participants in formal decision-making bodies and public spaces to present and advance their respective interests, (ideological) perspectives and priorities. In democratic institutions, these power contests are regulated by legally enshrined principles, which tend to have the public's attention because they embody what is deemed "proper" politics worthy of media attention. Significant amounts of government,

donor, and civil society energies are invested in participatory governance in formal decision-making arenas, such as participatory budgeting (Box 6.5). However, evidence from Brazil and other parts of the world suggests that participatory budgeting (PB) can be extremely time-consuming, prone to bureaucratization, easily hijacked by technocratic readings of local development, and often only applicable to small proportions of public operational budgets. In this sense, PB can easily detract attention from real power and decision-making in a city or neighbourhood, and fail to make any difference on the main factors of urban inequality and social exclusion. This is when invisible powers are in a position to control major decision-making.

### Box 6.5: Participatory budgeting around the world

In addition to Porto Alegre, Brazil, many other cities in Latin America and elsewhere in the world have adopted participatory budgeting (PB), some even earlier. A particularly notable example of policy transfer was the adoption of PB by Saint-Denis, a predominantly poor suburb outside Paris (population: 130,000, largely immigrants) at a time (1999) when the mayor was very close to his counterpart in Porto Alegre. By 2009, it was estimated that PB was practiced in 200 locations around the world, involving over eight million people in active discussion. By 2014 "some form" of PB was being practiced by at least 1,700 local governments in over 40 countries.

Now, does PB make any difference? Part of the popularity seems to derive from citizens' better understanding of, and stronger involvement in, local public budgeting, in the process removing misconceptions about paying local taxes. As a result, some cities report dramatic increases in tax receipts. In 1999, the mayor of Porto Alegre claimed that after 10 years' experience, "we have practically tripled the municipal revenue... It is not because we have adopted a tough taxation policy -- we have not increased taxation, and there has been no increase in fees and charges. But because of the credibility we have gained over the budget, we have been much better able to enforce the collection of the revenues owing"

Sources: Oliveira and Allegretti, 2010; Sintomer et al, 2010; Cabannes 2014; Pont 2001.

*Hidden power* refers to whatever prevents the formal political and policy deliberative processes and forums from acting as civic “playing fields,” systematically excluding certain voices and interests from public debate. Hidden power explains how formal political and policy arenas are constructed and hemmed in by specific discourses.<sup>37</sup> These include assumptions about the way issues must be framed, what can be said and what is politically or culturally considered taboo.<sup>38</sup> In highly hierarchical societies, lower castes, lesbian, gay, bisexual, transgender, intersex, indigenous, non-white people, immigrants, women, youth and any combination of these

**Hidden power refers to whatever prevents the formal political and policy deliberative processes and forums from acting as civic “playing fields,” systematically excluding certain voices and interests**

markers are rendered invisible – because the elites form the competing sides of a (staged) debate that tends to predominate in formal deliberative forums, even when these are part of participatory mechanisms such as PB or citizen supervisory committees. Hidden power is effective when the media or citizens fail to question the very assumptions behind a public policy issue.

Hidden power works because it is culturally underpinned by *invisible power*, which stems from subjectivity, i.e. the way someone understands and enacts a sense of self as an expression of self-esteem, confidence, self-worth, dignity and physicality— i.e. individual ability to project oneself onto shared, civic urban space, and become an active part of it. Invisible power “involves the ways in which awareness of one’s rights and interests are hidden through adoption of dominating ideologies, values and forms of behaviour by relatively powerless groups themselves.”<sup>39</sup>

The lesson to draw from this reading of local governance dynamics is that normative ideals must result in partnerships, stakeholder engagement and participatory mechanisms, with a clear-eyed realism as to the way culturally coded vested interests can operate within the parameters of formal ideals, but still reproduce the status quo.



**Normative ideals must result in partnerships, stakeholder engagement and participatory mechanisms**

## 6.5

# 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.<sup>40</sup> 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, too. Public law effectively formalizes allocation of powers, responsibilities, functions and funding in any society, and therefore responds to power relationships in order to reach agreed policy objectives.<sup>41</sup>

It is impossible to overstate the importance of legal reform as a basis for appropriate design of government structures, particularly decentralization 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 as structured on the principle of subsidiarity (i.e. issues are dealt with at the most immediate (or local) level consistent with their solution), is the most robust political remedy to systemic 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.<sup>42</sup> Fortunately, the power of legal reform was clearly recognized in the 1996 Habitat Agenda.

**Clear legal frameworks are essential to mediate the contests that arise from competing powers**

Despite pointed calls in the Habitat Agenda for legal framework review around the world, 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.<sup>43</sup> This

suggests that, in many respects, decision-makers remain unable fundamentally to influence the size, shape and morphology of their cities. This failing has 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 (i.e. the interactive concentration of resources and abilities that is a characteristic of cities). Apart from lack of follow-through on 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, i.e. the realities of its context, generates distortions of all sorts."<sup>44</sup> This phenomenon is frequently reflected in the 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 physical outcomes that were expected to match economic and social policies.<sup>45</sup>

Clearly, reform of urban law and legislation comes as a challenge, even though in many ways it is a precondition for success in the other domains of urban development. In order to lay the groundwork for more effective legal reform under the New Urban Agenda, it is important to sift through the core challenges. If one considers the three imperatives identified in the Habitat Agenda mentioned earlier (development of decentralized systems, intermediate policy outcomes, primary outcomes (i.e. on the ground)), it is clear that they are not sharp enough and fail to focus the mind. Instead, reform of urban law must address four central imperatives if the policy logjam is to be broken:

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

4. 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 reforming steps, renewed emphasis is called for on two fundamental legislative principles:

1. The quality of law, i.e. its ability to perform the functions determined by policy; and,
2. Policies, i.e. 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.

## Intergovernmental frameworks

As mentioned earlier, there is no uniform or even predominant approach to the way relations between different tiers of government are structured or regulated. In some cases, formal agreements define the terms and forms of engagement. For example, in Europe all three Scandinavian countries rely on formal agreements rather than statutory law. In other cases, a combination of legal provisions and negotiated agreements prevails.

In light of intensified pressures on city-regions and towns (Chapter 2) and the ambitious scope of the global development agenda as reflected in the SDGs, it is vital that governments recognize anew the potential of strong local government to act with determination, relative autonomy, capability, resources and in alignment with national, supranational and global agendas. It is essential that governments rely on city-regions to take the lead in figuring out the best way of engaging multiple and complex pressures and opportunities (Chapter 9 and 10).

Decentralization puts central government in a better, overarching position to ensure inter-regional equity with appropriate specializations based on local natural advantage, in the process securing the position of the country as a whole in existing regional and other strategic blocs. On top of decentralization, sustainable urban development implies three fundamental imperatives: met-

**Public law effectively formalizes allocation of powers, responsibilities, functions and funding in any society, and therefore responds to power relationships in order to reach agreed policy objectives**

**Decentralization puts central government in a better, overarching position to ensure inter-regional equity with appropriate specializations based on local natural advantage**

Historically inconsistent territorial boundaries and numerous local governments with limited coordination, let alone integration, remain the norm in most parts of the world

In the metropolitan area of Mexico City, public services are provided by the city authority, the governments of adjacent States and more than 50 local authorities with minimal coordination

ropolitan government, public finance reform and legislating amidst multiple regulatory systems.

## Metropolitan government

As intimated before, a reformed intergovernmental system does not necessarily impose absolute uniformity at every tier. On the contrary, it is advisable to pursue a differentiated pattern of assignments among various categories of local authority. It does not make sense for local authorities in large metropolitan regions to hold the same powers and responsibilities as their counterparts in smaller cities and towns. In fact, where strong and financially autonomous metropolitan governments are endowed with a full range of competencies and powers to ensure service delivery and optimization of the built environment, it gives the national government, along with States or provinces, more room to play a more active role in support of smaller authorities governing complex rural-urban areas as well as cross-over zones where rural and urban blend together due to migration and logistical constraints. With this degree of focus, national governments can in theory be more effective, have greater impact and reduce inter-regional inequity. Yet, historically inconsistent territorial boundaries and numerous local governments with limited coordination, let alone integration, remain the norm in most parts of the world.<sup>46</sup>

As a consequence, even though most observers would concede the obvious value of integrated transport and logistics systems for metropolitan regions, in most cases fragmentation and institutional antagonisms will stand in the way. In 1988-1992 France's third largest city, Lyon, together with no fewer than 59 municipalities devised a shared regional master plan known as *Lyon2010*. Not only does this landmark document set out how local plans and priorities work together within a regional system, but it also provides an evaluative framework for what the municipalities should prioritize based not just on local needs but also informed by shared regional imperatives.<sup>47</sup> By contrast, in the metropolitan area of Mexico City, public services are provided by the city authority, the governments of adjacent States and more than 50 local authorities with minimal coordination.<sup>48</sup> In South Africa, the country's eight met-

ropolitan governments represent the clearest example of one single authority per metropolitan area, endowed with wide-ranging powers and functions as entrenched in the Constitution, and largely dependent

on own revenues. This would go to show that many of the policy prescripts of the Habitat Agenda have inspired local authority dispensation in South Africa, even if curtailed by institutional constraints and sluggish economic growth.

## Public finance reform

Well-devised, effective intergovernmental relations and strong metropolitan authorities fundamentally require effective financing of subnational government. At the core, the intergovernmental imperative hinges on the financing requirements and taxation powers of subnational authorities. Devolution as defined in Box 6.4 is infrequent because national governments are reluctant to promote financial decentralization, since they regard the financial and political risks of failure as too high. In highly contentious and competitive polities, these concerns are of course understandable. However, national authorities must focus on the bigger picture: inclusive, sustainable development requires intergovernmental approaches which in turn must be firmly entrenched in sensible and effective public finance mechanisms. This requires clarity on a number of inter-related issues: the functional and financing assignments to be devolved; strengthening tax collection capacities of subnational governments to ensure that respective assignments are optimized and can be further enhanced as institutions mature; efficient expenditure; and effective accountability thereof.

Once the vision for development-oriented local authorities in a given country is clear, it is possible to design the differentiated intergovernmental system, which in turn will inform how best to structure the financing capacity of those authorities. In theory, local development finance comes from four sources: (1) intergovernmental transfers that are either conditional (for specific purposes) or unconditional; (2) own revenues through, mainly, property taxes and service charges; (3) borrowing from capital markets where this is legally possible; and (4) to a limited extent, public-private or public-civic partnerships.<sup>49</sup> All of these options require careful institutional design, matched with capacity and political openness so that the systems can evolve and mature over time. Cities with well-performing local authorities and sound tax bases usually can manage with less support from central government transfers. In India, the bulk of Mumbai's own financial revenue, for example, comes from octroi – levies on commercial goods brought into the city.

## 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, avail themselves of basic services such as health (especially traditional medicines), water and transport.<sup>50</sup> These informal regimes of regulation and control can have a variety of sources: quasi-traditional, religious or ethnic-traditional authority, or a local strong-man 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.

To make matters even more complex, 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.<sup>51</sup> Likewise, many formal businesses impose informal contracts to secure labour and optimize 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 entrench a rights-based dispensation 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 recognize 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. Now, if it is to be effective, public action must operate through a multiplicity of levers, ranging from education to advocacy, to engagement, to well-targeted advocacy, among others. This process, which in no way can be static, calls for public investment (without undue influence) in the capabilities of those organizations that represent and champion the interests of the urban poor.<sup>52</sup>

If associated with on-going mobilization to

entrench urban public policies, legal reform is in a better position to support systematic advancement of collective rights, sustainable urban planning, adequate housing, provision of public goods and a balanced, healthy environment. The critical ingredient for successful legal reform is none other than 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 can only be counterproductive.

Gradual fulfilment of rights creates room for the necessary societal negotiations about the multiplicity 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 gradual strengthening of public authority capacity to make decisions in a transparent and predictable manner for the sake of enhanced accountability. And where decision-making on some urban matter is not the prerogative of the sole public authority, then it is also necessary clearly to agree where decisions are to be made and who can 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 mobilizing public assets through value capture mechanisms – at the same time recognizing 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 stand to benefit in terms of 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 critical 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 make some room for public (health, educational, cultural, etc.) services and low-cost housing alongside com-

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 recognize

The critical ingredient for successful legal reform is none other than credibility. Credibility is enhanced when laws are culturally resonant and enforceable

Coalitions working towards transformative urban legal reform focus on the way regulatory and fiscal instruments can be brought into harmony and mutual reinforcement

mercial and middle-class residential spaces. However, these projects actually deliver to contract as long as they are not detracted from their public welfare purposes by patronage, influence or corruption.

It is self-evident that it will take capacity-building programmes if the outlooks, values and competencies of judges, lawyers, lawmakers, economists, administrators, planners, and others are to be changed. Programmes of this nature must underpin every step of national and local legal reform processes. They must be based on realistic expectations of the potential to expand and maintain capacity in the light of political and financial constraints.

## 6.6 Governance and Law for a New Urban Agenda

The Habitat Agenda, along with most policy agreements emanating from the UN system, rests on a consensual model of modern democratic politics. This approach operates on the assumption that it is possible to differentiate societal institutions along distinct categories: public (government), private (business) and community (civil society organizations). These institutions come, in turn, under the influence of distinct interests that must be brought into harmony for the larger societal good. This conceptual and political model is rooted in sustainable development precepts whereby social, economic and envi-

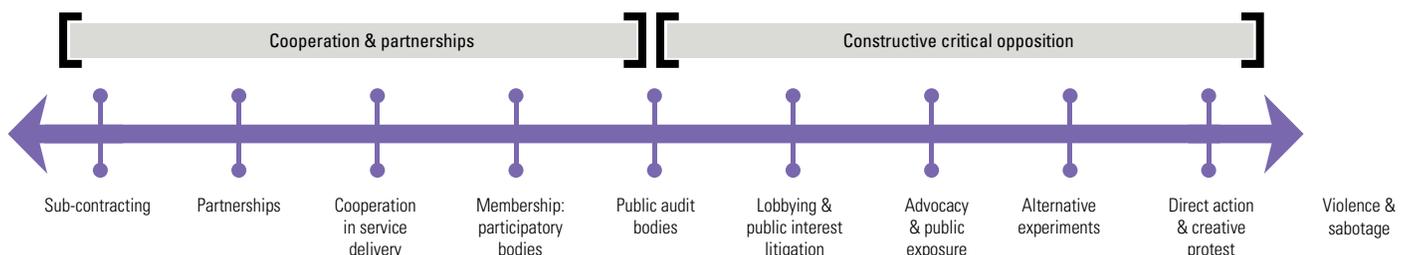
ronmental imperatives must be “coordinated” and “balanced.”<sup>53</sup> The idea is that if a legally determined “level playing field” can be deployed for those three spheres of political life (through effective deliberation premised on access to the best possible information), then this will be the optimal political solution. Fair deliberative consensus produces the most democratic and effective outcomes.

However, this model of planning and politics is running against some criticism.<sup>54</sup> This includes claims that elite interests can adopt formal resolutions that embrace the precepts of democratic, transparent and inclusive local governance – but still manage to perpetuate elite-driven processes of decision-making and control. It is, therefore, imperative to recast governance systems in order more explicitly to acknowledge the necessity of agonistic (i.e. friendly, rule-based competition) debate as a necessary fuel for effective local governance. This calls for both legal and cultural acceptance of pluralistic civil society engagement with the local authority, which can range from close collaboration and cooperation around service delivery to an adverse relationship expressed through non-violent action and protest. The governance system and culture must be tolerant of both aspects of democratic citizenship if the local polity is to thrive and nurture the capacity to address the myriad development challenges that confront cities and towns. Figure 6.2 provides a diagrammatic illustration of the spectrum of civil society identities and actions that characterize (local) polities.

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 significantly to enhance the effectiveness of urban law as well as local governance. The effectiveness of urban law depends

**Figure 6.2: The spectrum of civil society action in relation to government**

Source: Pieterse, 2015.



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.

Institutional and procedural structures are central to the delivery of technical standards and are mostly determined by law. When adequately considered and tested at the design stage, the effectiveness of institutional and procedural structures can be significantly enhanced.

Admittedly, democratic local governance would not be able to function effectively short of formal deliberative institutions that provide opportunities for well-organized interests to debate the challenges facing their territory and how best to respond. Such spaces are essential to shape the content and nature of formal decision-making by local authorities at the levels of the council and the executive. Rules – both formal and informal – deal with the interaction between the executive and the council and the various political committees; they govern the relations between the local authority and major stakeholders, and they also define the participatory mechanisms available to organized civil society organization and citizens. In an era of e-governance it is self-evident that these inter-locked local rules determining governance interactions should be publicly accessible with an explicit commitment to monitor efficacy and appropriateness (Chapter 10).<sup>55</sup>

When considering the New Urban Agenda, it is crucial to recognize that a focus on basic, essential statutory and derived 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 (Chapter 10).<sup>3</sup>

Local governance systems should be characterized by a capacity for continuous learning and adaptation. This can be enabled through explicit investment in a range of complementary instruments to ensure effective strategic planning, priority-setting, implementation, continuous monitoring and learning to improve performance, and a deep belief in the rule of law, transparency, openness and working collaborative across levels of government and across State and society lines (refer to the principles for a New Urban Agenda, Chapter 9). Given the enduring power of system inertia and the tendency of

complex systems to reproduce the status quo, it is essential to appreciate that this dynamic governance is simply not possible in the absence of *distributed leadership* committed to what the Habitat Agenda refers to as “public spiritedness.” The capacity of leaders and their constituencies to engage robustly and collaborate is a further requirement for effective governance to take root.

When thinking about what needs to be done to bring this kind of local governance system into being and to sustain it, it is useful to differentiate between five institutional building blocks that together consolidate participatory development: 1) strategy and long-term planning; 2) service delivery innovations; 3) advocacy and activism; 4) social learning mechanisms; and 5) “smart” monitoring and continuous improvements. This agenda assumes that all reasonable policy reforms agree that elected local councils have a mandate to mediate competing social interests and demands, holding the executive authority to account. Further, strong local government leadership can take the form of executive mayors (whether directly elected or not), working closely with the council and representative bodies of civil society and the private sector. In an era where every urban management decision can have far-reaching long-term consequences,

it is essential that political leaders offer vision and direction on how the tough trade-offs and imperatives will be addressed during their terms of office but within a shared long-term perspective.<sup>56</sup> This is consistent with the role of mediators between global and local imperatives, which well-placed individuals can play and which are seen as critical for the success of public policies today.<sup>57</sup>

## Strategy and long-term planning

Local governance often falls short because the preoccupations of elected leaders, administrators and civil society organizations are confined to the term-of-office and even more immediate horizons. Given the long-term effects of sustainable investment decisions (e.g. infrastructure) and various regulatory standards, it is crucial that robust “macro” long-term strategic plans are developed. The experimentation with City Development Strategies (CDS) under the aegis of Cities Alliance among others, are instructive.<sup>58</sup> CDS helps municipalities to harness the potential of urbanization and to develop coordinated institutional frameworks to make the most of opportunities. And, perhaps most importantly, CDS gives

**It is crucial to recognize that a focus on basic, essential statutory and derived legislation will provide the most effective support to sustainable urban development**

The NUP aims at maximizing the benefits of urbanization, while mitigating inequalities and potential adverse externalities

residents a chance to have a voice in the future of the place where they live.<sup>59</sup>

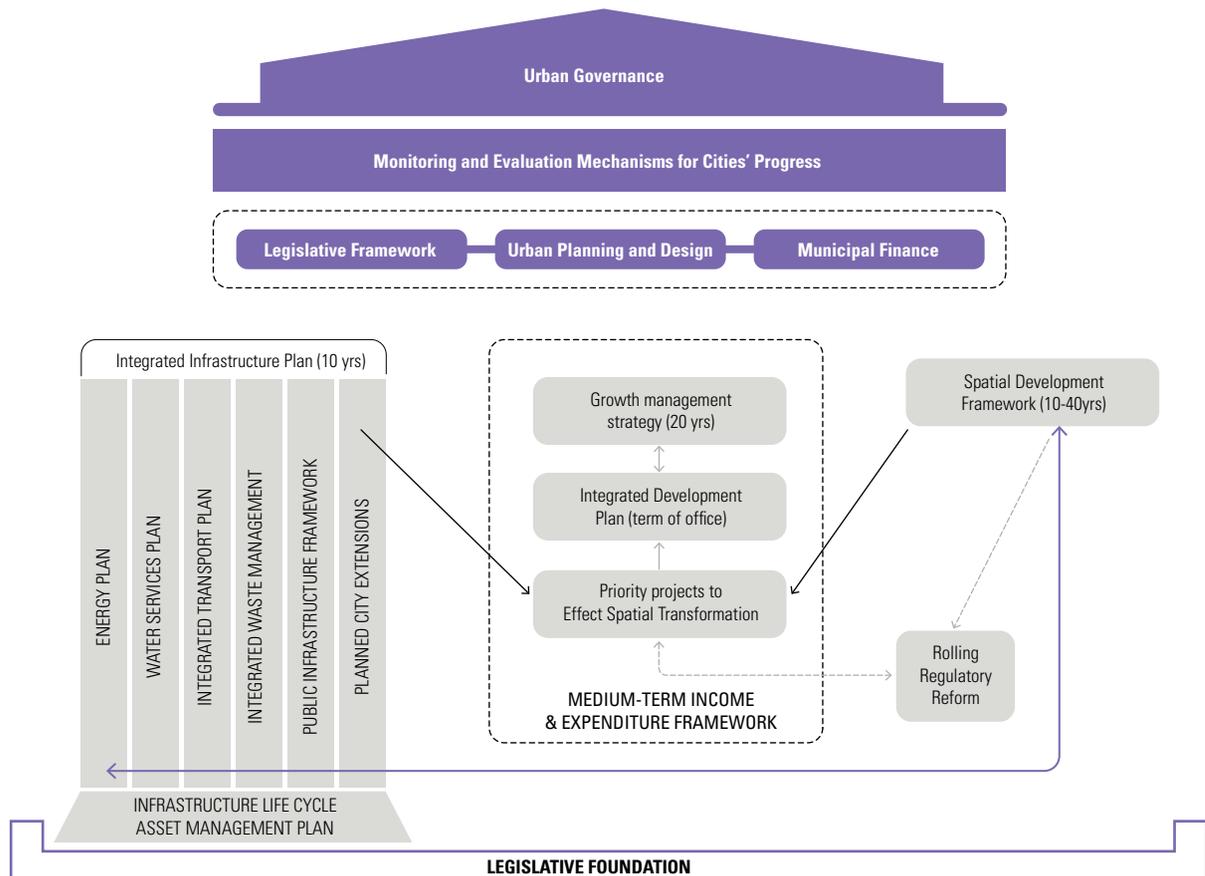
In low- and middle-income countries experiencing rapid urbanization, UN-Habitat promotes its own National Urban Policy (NUP) tool. Its outcome is a coherent set of decisions derived through a deliberate government-led process of coordinating and rallying various stakeholders for a common vision and goal that will promote more transformative, productive, inclusive and resilient urban development for the long term (which can be from 20 to 30 or even 100 years' horizon). The NUP aims at maximizing the benefits of urbanization, while mitigating inequalities and potential adverse externalities, and is proposed as an important component of the New Urban Agenda (Chapter 10). While the new NUP is context-specific, three main areas are worthy of note (1) urban legislation, with the focus on development rights, building code, plot regulations and preservation of

public space; (2) urban planning and design with emphasis on planned city extensions, infills, public spaces and adequate ratios for street–open/built-up space;<sup>60</sup> and (3) the urban economy, particularly job creation, land value sharing and municipal finance.

It goes without saying that, if local governments lack adequate financial resources, it is not possible to implement any strategic agenda. Therefore, it is fundamental to recognize a range of locally empowering municipal finance tools, and to link these with institutional structures and policy objectives. The Republic of Korea stands out for making public-private partnerships work with appropriate legislation, third-party regulatory bodies, and capacity building for public institutions. Finally, community-driven local and neighbourhood plans, as promoted in the Habitat Agenda, can work alongside “macro” plans, in the process improving citizens' and political leaders' understanding of the way local and regional spaces can inter-connect optimally.

**Figure 6.3: The institutional components of effective urban governance**

Source: UN-Habitat, 2015.



## Service delivery innovations

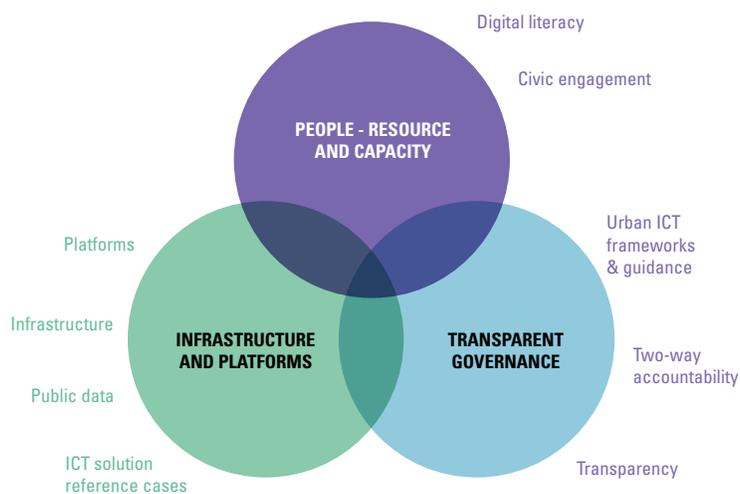
The most important aspect of any effective local governance system is the capacity to deliver basic services and deploy the infrastructures that will enable the economy and culture to flourish (Chapter 10). The credibility of local governance hinges on its capacity to implement plans and priorities. However, in most developing countries, local authorities lack the resources, access to legal expertise or powers to do all this on their own. With the aftermath of the financial crisis, including low growth rates and high youth unemployment, more developed countries experience this type of pressure, too. Partnerships and co-production are indispensable. Therefore, effective local governance rests on participatory service delivery planning, budgeting, management and monitoring. This is especially the case in poor communities where affordability, access and quality issues involve trade-offs that require explicit balancing. Joint delivery systems at the local level enable those who cannot afford services to contribute in other ways, with the aim of achieving access over time. However, it is vital that such arrangements are complemented with supervisory mechanisms such as (public) audit panels or committees that bring together ordinary residents and professionals in order to ensure contract compliance and recourse for disgruntled citizens.

As mentioned in Chapter 2, ICTs are opportunities to accelerate improved service delivery and responsiveness, for instance through use of cell phone photographs and bespoke applications enabling citizen monitoring of the responsiveness of public bodies.<sup>61</sup> This kind of digital crowdsourcing of information can be applied to virtually every aspect of local governance, and a step-change in the effectiveness of these tools can be expected over the next decade. Local authorities can invest in much more sophisticated sensor-based systems for real-time tracking of the performance of various infrastructure systems, establishing a capacity for auto-correction and adaptation. The potential of e-governance and “smart city” innovations is dependent on the investment towards training officials, politicians, community members; particularly technologies that bring stakeholders together, enabling them to shape systems that serve local needs and priorities. Figure 6.4 provides a summary of the institutional background and political culture that are best able to nurture local approaches to e-governance and “smart city” investments.

**Effective local governance rests on participatory service delivery planning, budgeting, management and monitoring**

**Figure 6.4: An ICT-based enabling environment for cities**

Source: United Nation, 2015h.



## Advocacy and activism

One of the biggest obstacles to effective local governance is complacency. Once local authorities have established a variety of mechanisms in the domains of planning and service delivery to enrol citizens and stakeholders in urban affairs, they focus on sustaining these forums. However, evidence from all regions demonstrates that officially sanctioned spaces of participation can quickly grow stale and turn into stage acts. Dynamic, democratic local governance demands a public (policy) commitment to keep spaces

for public consultation and planning open to the widest array of interests and opinion. If the full diversity of interests in a given polity is not allowed to contribute to public policies, it is unlikely that planning or service delivery choices will be effective or just. However, the requirements for adaptive governance are even more demanding. It is for local authorities to ensure legal protection (and incentives) of civic actors to establish their own independent political and practice spaces that may criticize or oppose official deliberative spaces. This contributes to a broader culture of debate and innovation that can benefit public and private interests.

**Digital crowdsourcing of information can be applied to virtually every aspect of local governance**

Uncertainty and risk will become permanent features of society and governance... institutions must also be endowed with the capacity to learn and adapt on a continuous basis

All governments require accountability to achieve effective urban management

## Social learning mechanisms for innovation

The only certainty about the next few decades is that... uncertainty and risk will become permanent features of society and governance, and this Report argues in favour of “a city that plans,” as opposed to a planned city (Chapter 7). Consequently, institutions must also be endowed with the capacity to learn and adapt on a continuous basis.<sup>62</sup> This requires pro-active investment in dynamic regional innovation systems, ideally buttressed by effective metropolitan authorities. If they are, as required, to promote resource-efficient built environments and underlying infrastructures, local governments must support regional innovation systems that connect “green” businesses, universities, think-tanks, social movements, social entrepreneurs and State-owned enterprises. Where these are in short supply locally, agreements can be made with larger urban centres in the country or in other parts of the world.

One of the most effective ways of ensuring a dynamic flow of information between regional innovation systems and public policy is “innovation laboratories.”<sup>63</sup> Typically, these problem-solving labs focus on critical systemic obstacles to the medium- and long-term sustainability of a city or town. One instance is Pakistan’s Civic Innovation Labs, where groups of volunteers meet regularly to collaborate with government, non-profit and media organizations on technology, data, policy, and design projects to strengthen their communities.<sup>64</sup> Ideally, these labs can act as the first building blocks of innovation, maintaining a culture of public debate that can take the form of displays and learning fairs, drawing in all age groups and nurturing dialogue about best practice. A related though distinct initiative takes the form of “festivals of democratic achievement,” through which non-government organizations highlight and celebrate major milestones along the urban transformation journey. These events can latch on to established cultural rituals and festivals, especially those with popular appeal across large segments of the population.

SDGs augment the domains of law and policy across the whole humanized space and existing constraints: “informal” is to turn formal, and “nature” into an extensive, vital ecosystem

## Monitoring and evaluation

As stated before, at the core of the governance imperative for the new urban agenda is accountability. All governments require accountability to achieve effective urban management. Local and regional law-making

and legislative powers significantly influence policy implementation on the ground. Since such powers are often highly discretionary and are lodged within relatively weak governance frameworks, appropriate balances between accountability and discretion must be achieved. It is important that local authorities pay close attention to institutional performance-monitoring mechanisms across the urban governance system.

It is much more effective, in terms of costs and otherwise, to lodge monitoring systems within the public domain through open information policies and guaranteed public access modalities, combined with media training so that reporting and analysis about continuous urban governance processes can be improved.<sup>65</sup> Even service delivery processes are better secured through public contract monitoring than relying only on managerial supervision, as demonstrated by social auditing experiences in India, South Africa and a growing number of other countries.<sup>66</sup> National and international standards, particularly for the rule of law, human rights, and the implementation of the SDGs and the New Urban Agenda should be integrated into local monitoring instruments, as suggested in Chapter 10 (“Levers of change”). Such integration should also be regularly reviewed for effectiveness.

As the governments of subscribing countries will know, SDGs take in the whole of humankind (“inclusive”) and the environment (“sustainable”). Being at the intersection of both, SDGs augment the domains of law and policy across the whole humanized space and existing constraints: “informal” is to turn formal, and “nature” into an extensive, vital ecosystem. As they pursue SDGs, national law- and policy-makers are to extend their reach to hundreds of millions of slum-dwellers and informal workers, for instance, to bring them fully into the system of rights and obligations that characterizes any democratic State of law, and into the nests of opportunities which cities afford. This fresh dispensation of rights in the physical, civic, socioeconomic, cultural and environmental spaces naturally calls for a fresh dispensation of the various spaces of public authority (from central to local) – and one that makes room for participatory, inclusive, sustainable governance at the (micro) local level. If globally-approved SDGs are to be embedded in every country in accordance with local constraints, it is for national governments, who sit in between the global and the

local policy spaces, to engineer proper legal-financial continuums in order to deliver the policies that will respond to global and local requirements.

The development of a New Urban Agenda provides an ideal moment to re-commit the global community to substantive decentralization /devolution through democratic local authorities. The review of the evolution of urban legislation and governance over the past two decades can enrich international and local deliberations of

cities and towns as they figure out their unique pathways to becoming prosperous “spaces of justice”<sup>67</sup> – in other words, “good cities.”<sup>68</sup>



**It is for national governments... to engineer proper legal-financial continuums in order to deliver the policies that will respond to global and local requirements**

## Notes

- UCLG, 2013.
- Local Development International LLC, 2013.
- United Nations, 2015j.
- UN-Habitat, 2010a.
- For a definition, see: Standing, 2014. The precariat denotes the majority populations within the working class that will not work in traditional manufacturing sectors receiving a stable wage with some social benefits. On the contrary, the precariat are trapped in a series of vulnerable employment opportunities that are characterized by low wages, no social benefits or social protection. The rise of knowledge-based economic sectors, continual mechanization of manufacturing and casualization of labor whilst the labor market is expanding in the global South drive the persistence of the precariat. The usage of the term here is derived from: Harvey, 2012.
- Stable employment includes wage and salaried employees and business owners. Vulnerable employment includes subsistence farming, informal self-employment and work for family members. McKinsey, 2010.
- leJSD, 2016.
- A useful series of case studies are provided in: McDonald, 2014.
- Fernandes & Maldonado Copello, 2009.
- SDSN Thematic Group on Sustainable Cities, 2013.
- One of the important and contested issues in the future is the role of technology in accelerating or frustrating just sustainable development, especially over the course of the next two decades. The various sides of this debate, especially as it pertains to the ideas of “smart cities” can be explored here: Greenfield, 2013 contrasted by: Khanna and Khanna, 2012.
- Bahl et al, 2013; Berrisford, 2014.
- UN-Habitat, 2014c.
- Fernandes and Maldonado Copello, 2009.
- Hannerz, 1980.
- Mousmouti and Crispi, 2015.
- McAuslan, 2013.
- Nada, 2014.
- United Nations, 2015j.
- Fernandes and Maldonado Copello, 2009.
- Wampler and McNulty, 2011.
- For a useful summary of these legal provisions to enable participatory local governance, see: Morel, 2012.
- The Economist, 2016.
- Fernandez, 2010.
- World Bank, 2015b.
- Sen, 1999. The UNDP Human Development Reports published since 1990 is based on the capabilities framework of Sen and represented an important counterpoint to the virulent neoliberalism of the 1980s.
- According to the Guideline (p. 10), “The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.”
- Adapted from: Local Development International, 2013.
- Bahl et al, 2013.
- The decision of the Commonwealth Local Government Forum to adopt the principle of developmental local government captures this policy approach powerfully (CLGF, 2013).
- A comprehensive treatment of these challenges in developing countries can be accessed in: Bahl et al, 2013.
- Smoke, 2015.
- Local Development International, 2013.
- UN-Habitat, 2012e.
- CER, 2013.
- Pettit, 2013.
- Some of the most systematic analysis of this is found in the expansive work of Bent Flyvbjerg (Flyvbjerg, 2001).
- Healey, 2004.
- Gaventa, 2013.
- Mansuri and Rao, 2014; Goetz and Gaventa, 2001; Manor, 2004; Mirafab, 2004; Rakodi, 2002.
- Tamanaha, 2001.
- 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.
- Bahl et al, 2013; Berrisford, 2014.
- Fernandes and Maldonado Copello, 2009.
- United Nations, 2015j.
- OECD, 2006a.
- These examples, along with a number of others can be reviewed in International Guidelines on Urban and Territorial Planning. Towards a Compendium of Inspiring Practices (UN-Habitat 2015f).
- Bahl et al, 2013.
- For guidance on these technical options and institutional implications, Bird & Slack, 2013; UN-Habitat 2015g.
- Berrisford, 2014; Jaglin, 2014.
- Neuwirth, 2011; Tonkiss, 2014.
- Hickey and Mohan, 2004; Narayan and Kapoor, 2008
- Pieterse, 2011.
- Appadurai, 2004; Mouffe, 2009.
- Issue Papers and Policy Units of the Habitat III Conference, Nairobi, April, 2015.
- It is precisely this quality that has allowed Colombian cities such as Medellin and Bogota to implement key urban strategies despite frequent changes in Mayor and political parties.
- Muller, 2015.
- UCLG, 2010.
- Cities Alliance, 2016.
- UN-Habitat, 2015h, New Generation of National Urban Policies.
- An instructive example has been implemented in Tel Aviv. See: Fox, 2015.
- Hajer, 2014.
- Hassan, 2014; Tiesinga and Berkhout, 2014.
- Code for Pakistan, 2016.
- More and more cutting-edge local authorities are adopting open data policies in order to reap the service delivery improvement benefits that come from greater transparency. A recent adopter is the City of Cape Town metropolitan government. See: City of Cape Town, 2014.
- Arya and Sharma, 2014.
- Muller, 2015.
- Clos, 2014.