

## URBAN LAW DAY 2023

### The Role of Parliaments and Legislators for Good Urban Legislation

#### | A REPORT

#### DATE

Friday, July 07, 2023

14.00 - 15.30 (Nairobi time)

#### ORGANIZED BY

The Institute of Advanced Legal Studies (IALS)

#### IN COLLABORATION WITH

UN-Habitat



## PANELISTS/DISCUSSANTS



**Prof. Sahar Attia**

Member of Parliament, Egypt  
and Member of the Inter-  
Parliamentary Union



**Hon. Nontembeko  
Boyce MPL**

Speaker of the KwaZulu-Natal  
Legislature, South Africa



**Mr. Deogratias D.  
Kalimenze**

Director for Urban Planning,  
Ministry of Lands, Housing  
and Human settlements  
Developments, Tanzania



**Prof. Anel du Plessis**

Professor of Urban Law,  
Stellenbosch University, South  
Africa



**Dr. Maria Mousmouti**

Associate Research Fellow,  
Institute of Advanced Legal  
Studies (University of London)

## BACKGROUND AND INTRODUCTION

Urban legislation plays a crucial role in promoting urban growth and development by setting rules for behaviour, rights, obligations, and governance frameworks. Well-crafted legislation can effectively promote sustainable urban development, by being succinct and precise to achieve clarity; utilize plain language techniques for effective communication to its target audience (technicians and common citizens) to enhance its compliance and enforcement thresholds.

Several Sustainable Development Goals (SDGs) can only be achieved through establishment of robust regulatory frameworks and formulation of effective policies. Urban legislation plays an important role in the attaining of the targets and indicators of SDG 11 on sustainable cities and communities. Legislation defines conditions for access to land, infrastructure, housing and 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 governments and communities are expected to fulfil their mandate and react to emerging urban challenges.

Just as effective urban legislation can have positive impact on urban development, poorly drafted legislation can have adverse outcomes and undesirable consequences on urban development and growth. Such ineffective legislation can generate institutional gaps, regulatory overlaps and both procedural and substantive inadequacies.

Unclear or ambiguous provisions that are complex and are difficult to access or understand lead to high compliance costs and unwanted effects which will have a negative impact on sustainable urban development.

In today's ever-changing world, legislation needs to be of the best possible quality; the law should produce the desired results; and that required action is taken to correct "errors" and improve its effectiveness. What might read like a good urban law before adoption might produce unwanted effects and impacts which can be more acute to low-income groups and vulnerable communities. For instance, a bad urban legislation can easily lead to accentuating inequalities and exclusion in cities and communities, which would compromise the achievement of **SDG 10**.

With an attendance of around 90 participants from multidisciplinary professionals, the **10th Urban Law Day** achieved the objectives of: showcasing the existing methodologies into quality law-making processes such as the UN-Habitat/IALS [Guidelines for the Scrutiny of the Quality of Urban Legislation: A Manual for Parliamentarians](#) which provided practical skills and knowledge on ways that good urban legal frameworks can promote sustainable and inclusive cities; providing global and regional perspectives on best practices and strategies in advancing effective and rights-based legislation; and detailing the nexus between establishing good urban law and existences of sustainable cities and communities.

# SESSION ONE: 10<sup>TH</sup> URBAN LAW DAY ACHIEVEMENTS



## **Anne Amin (UN-Habitat) – Moderator**

The Urban Law Day is an initiative between the Institute of Advanced Legal Studies (University of London), UK and UN-Habitat that provides a platform for professionals, practitioners, academics and any third-party actors with an interest in the thematic areas of urban law to continuously explore this niche area, discuss and examine the novel and innovative trends in urban legislation and analyze their impacts globally. The thematic focus for this year's 10th Urban Law Day is on **the Role of Parliaments and Legislators for Good Urban Legislation**.

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## **Dr. Constantin Stefanou (IALS) – Opening Remarks**

The 2023 Urban Law Day marks the 10th anniversary since the inception of the programme and today's launch of the first guideline on the role of parliamentarians on drafting good urban laws, regulations and legislation is a measure of the evolution and progress made by the partnership. The guide is the outcome of many years of shared experience and expertise working on the thematic areas of legislative drafting and urban law. The delight of the Urban Law Day as an event that has lasted for a decade is pegged on the fact that its positive impact is leading to substantive tangible results within the discourse of urban law as can be evidenced by the guideline.

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## **Dr. Remy Sietchiping (UN-Habitat) – Opening Remarks**

The celebration of the 10th Urban Law Day is a milestone that cements the cordial relationship between the UN-Habitat and IALS. The Urban Law Day initiative arose from the shared understanding of the importance of legislation and laws in implementation of effective and far-reaching transformation in urban settings and specifically in allocation of public good services to shape the institutions that speak to the needs of the people, promote human rights and inclusivity. One of the important successful outcomes from the partnership is the introduction of trainings on legislative drafting targeted at scaling up the knowledge, capacity and skills of urban practitioners which have been quite transformative since 2017. The trainings have improved in-country appreciation for legislative drafting in the area of urban development which has eased and strengthened UN-Habitat's support to some of the Member State partners.

The Urban Law Day is also a key instrument that represents the deliberate efforts by the partners in bringing together diverse actors in the urban scene to contribute in addressing some of the current challenges faced in legislative drafting and policy formulation to assist in promoting sustainable and inclusive urbanization. Living in a very dynamic society with multi-prong intersecting vulnerabilities calls for an appreciation of good legislation drafted in the best possible way and placing the needs and demands of people at the center of the drafting process.

## Presentation on the 10-year milestones and achievements of the IALS & UN-Habitat partnership

**Anne Amin** (UN-Habitat)

The foundation of the Urban Law initiative was centered on furthering academic knowledge and developing a joint research agenda in urban law. It was established as a multidisciplinary forum to facilitate discussion, the exchange of views, networking and the presentation of new research findings or emerging issues. In addition to holding annual urban law days, the initiative also focuses on research on comparative analysis in urban laws to identify best practices and emerging and innovative pro-poor approaches (i.e. 2019-

2020: [Joint comparative study on rental regulations in Kenya, Nigeria, Botswana and South Africa](#); and 2020-2021: [Joint comparative analysis of Housing Acts in five countries, Bolivia, Botswana, Ethiopia, Nigeria and South Africa](#)). The experiences and findings from these research activities are incorporated in assisting Member State countries in drafting their domestic urban law legislations (for instance, the ongoing *Lesotho National Housing Bill through the Sir Willian Dale Drafting Clinic*).



**Dr. Maria Mousmouti** (IALS)



The various research work either preparatory or related to drafting were developed through a collaborative approach from diverse global professionals resulting in deliverables that are rich and reflect a global understanding of the importance of good urban legislative drafting.

Drawing from research outputs, principles established are put into practice to assist governments develop their own legislations based on the principles of good law. The Urban Law initiative has also invested heavily in advocacy for urban law by making efforts to raise awareness on topics that were not traditionally part of the urban law discourse.

## Presentation of the Guidelines for the Scrutiny of the Quality of Urban Legislation: A Manual for Parliamentarians

**Anne Amin** (UN-Habitat)

UN-Habitat recognizes that there can be no lasting change without effective legislation and governance and therefore the organization is investing in promotion of transformative change in cities and human settlement through knowledge, policy advice, technical assistance and collaborative actions. One such investment is ensuring regular assessment and scrutiny of urban laws: to ascertain that they are up to date to address the most essential issues in rapidly growing cities; monitoring urban laws management, compliance and

enforcement parameters, and lastly assessing whether urban laws meet their desired outcomes. It is on this basis that UN-Habitat has engaged with over 40 Member States regarding the reform of their legal and institutional frameworks since 2013. The engagement and support for legal reform is through legislative analyses using different methodologies, assessment tools and diagnostic tools developed that aim to identify the strengths and weaknesses of an urban planning legal system in an objective and structured manner.

**Dr. Maria Mousmouti (IALS)**

The core functions of parliaments are to enact laws. However, their legislative roles are not limited and exhausted with enactment of laws. The three legislative functions are cumulatively progressive meaning parliament’s legislative role continues throughout the life cycle of legislation. Classified broadly, the 3 above defined roles can be undertaken either ex-ante or ex-post legislation. The ex-ante phase entails the identification of the needs for legislation or legislative revision/amendment; the legislative proposal and pre-legislative scrutiny; and lastly, the consideration and adoption by parliament procedures. The ex-post phase entails law implementation by government and executive agencies; and post-legislative scrutiny. Parliament’s role is essential during both the ex-ante and ex-post legislation phases.

The scrutiny of quality and role of parliament in drafting of legislation is based on focusing on the following key guidance: purpose of the law (what does the law aim to achieve); contents of the law (how the law goes about achieving those aims); structure of the law (how and ways in which law is communicated to achieve clarity); accessibility of the law (understandability of the law to its audience); and feasibility of the law (mechanisms of implementation of the law).

A good legislation needs a purpose that reflects in an unambiguous way, what the law is intended to achieve in the legislative, policy and social domains.

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## SESSION TWO: PANEL DISCUSSION



**Mr. Samuel Njuguna**  
> (moderator)



**Key Question:** What are your country experiences as a legislator/practitioner (challenges and opportunities) in promoting legislative effectiveness?



**Prof. Sahar Attia**  
> (Member of the Egyptian Parliament, Emeritus Professor Cairo University)

Egypt’s parliament is composed of two houses: the Senate with a membership of 300 and House of Representatives with 596. One of the ways of ensuring good legislation is by having experts in specialized fields leading the legislative processes during the preparation of the substance of Bills. In Egypt, the President appoints a specified number of members to Parliament to maintain technical expertise and skills in certain fields, such as urban planning.

The process of legislation enactment in Egypt commences with a proposal advanced by Government or a particular Member being forwarded to the Senate for approval. The proposal is then sent to a relevant Committee in the House of Representatives which reviews each article/clause of the proposal in details and provides recommendations and amendments. Finally, it will be presented for voting in the general session of the House of Representatives.

Urban legislation is not a separate field, and it encompasses social, economic, environmental and governance concerns, impacts and challenges. Therefore, there is need to understand the difference between legislations, executive regulations, codes and policies.

In Egypt, Parliament enacts legislation and afterwards, it is the Executive that should formulate regulations, codes and policies to drive implementation of those laws. The parliament has no power to review executive regulations which may result in substantive, procedural and institutional gaps in terms of strict compliance with the laws.

One of the major challenges in drafting urban legislation is that urban laws and urban areas are increasingly complex and diverse, impacting a wide range of social, economic and environmental factors for consideration.

It is vital that experts on urban issues and trends have their input at the preliminary stages of proposal preparation to ensure legislation encompasses a proper vision and all aspects on board. Another challenge arising from unavailability of adequate resources is that legislators are restricted on access to data and information needed to make informed decisions about urban policy and to support research and analysis on urban issues that can substantively enrich legislations.

**Egypt is placing emphasis on how science and technology can positively influence parliamentarians' approaches to enacting legislation.**

It is important to regularly update, revise and amend laws proportionately with rapid changes in urban development i.e., population growth patterns, urban mass expansion, climate and environmental changes, technological advancements etc. In the event law is rigid or outdated, it ceases to have the impact it was intended to address.

The main urban legislation in Egypt including the Building Law No. 119 of 2008, are currently under revisions and such revisions are a constant reaction to urban trends and changes.

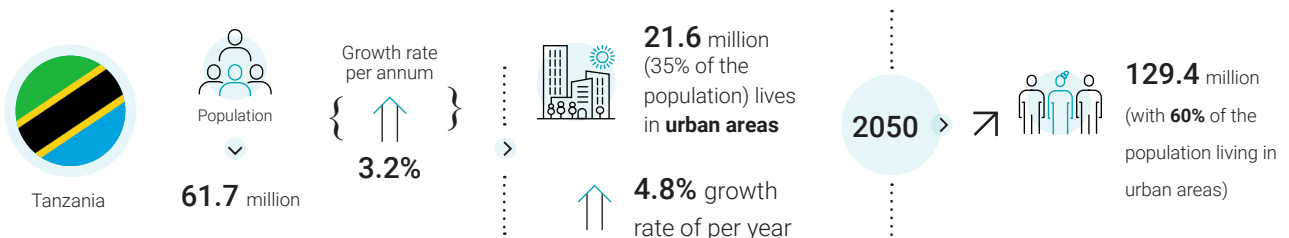
A good legislative process ought to incorporate the majority's ideas, inputs and participation to enhance compliance and decrease enforcement costs. Legislations should be gender, age, status inclusive to facilitate the benefit of majority. If the legislative process is all inclusive and participatory, the target audience is likely to appreciate the legislation, their impacts and importance.

The guidelines on the role of parliamentarians on drafting urban laws, regulations and legislation is an important toolkit and to enhance its effectiveness and practicality, a short version containing quick messages will be useful to incentivize its use by parliamentarians. One efficient dissemination mechanism for the guide will be through the Inter-Parliamentary Union's (IPU's) UN Committee and the Sustainable Cities Committee.



**Mr. Deogratius Kalimenze**

> *Director Human Settlement Development, Ministry of Lands, Housing and Human Settlements Development in Tanzania*



Tanzania is facing a challenge of rapid urbanization. The country has a population of 61.7 million growing at a rate of 3.2% per annum with 21.6 million (35% of the population) living in urban areas at a growth rate of 4.8% per year. It is estimated that by 2050, the country population will be 129.4 million and 60% of the population will be living in urban areas. Section 3 of Tanzanian Constitution establishes the composition and functions of Parliament. The Parliament has powers to deal with both Union and non-Union issues which are not in the scope of the Zanzibar Government. It is responsible for discussing bills and passing laws. It also scrutinizes the actions of the Executive arm of the Government.

Tanzania has an elaborate process to legislate laws. The Ministry responsible prepares a draft Bill supported with a detailed document highlighting special issues to be considered; side effects of the proposed law (positive or negative); stakeholders to be engaged on the proposed draft bill; and then a cabinet paper is prepared and the draft bill is submitted and discussed by Cabinet. Thereafter, the Chief Parliamentary draftsman prepares a Bill which is gazette for 21 days in a Government Gazette. The Attorney General tables the Bill to Parliament. Opposition members are allowed to table their observations in Parliament then a voting is conducted with the Bill gaining approval after a majority vote.

The Bill will be published in the Government Gazette and the Speaker will submit it to the President for approval or dissent. If not approved by the President, the Bill will be sent back to the Parliament with reasons. If two thirds of Members of Parliament accepted the Bill, the President must sign the Bill to be a law or dissolve the Parliament.

Currently, Tanzania has six (6) main urban policies and laws. These are: National Land Policy 1995 and Human Settlements Development Policy 2000; Urban Planning Act Cap 355 of 2007 (15 Regulations); Land Act Cap 113 of 1999; Land Acquisition Act Cap 118 of 1967 (RE:2019); Local Government Urban Authorities Act Cap 288 (1982:RE:2002); Local Government District Authorities Act Cap 287 (1982:RE:2002).



**Ms. Nontembeko Boyce**

> *Speaker of Kwa Zulu-Natal Legislature South Africa*

In South Africa, the Constitution determines whether the law is working for the people. The South African Judiciary plays a critical role in establishing the functionality of the law regarding the impact it has on its citizens. Urban planning in South Africa is managed by two departments i.e., Department of Cooperative Governance and Traditional Affairs which conducts a direct oversight and Department of Human Settlements, which is responsible mostly for the provision of housing. The urban set-up in South Africa also has economic activism through the Department of Economic Development, Tourism and Environmental Affairs.

The main legislation that guides urban law is the 2013 Spatial Planning, Land-Use Management Act (SPLUMA). Under the Act, the responsibility of its implementation falls on the municipalities within metros which form the majority

Some of the challenges in implementing urban policies and laws are: malpractices in land allocation and planning; limited accountability especially on development control and provision of infrastructure, basic services and maintenance; fragmented institutional arrangement for human settlements which is also exacerbated by overlapping roles and limited accountability; local government failure to mobilize resources for provision of shelter, infrastructure and essential services; only 57.4% of urban areas have general planning schemes; and weak multi-level and institutional coordination on urban service delivery including implementation of detailed planning schemes.

of urban municipalities. Nationally, Parliament oversees implementation of the Act through the Department of Cooperative Governance but still possesses the power to exercise its oversight over municipalities as well. A part of the legislature's oversight role involves conducting focused intervention studies in municipalities to ensure that the laws are working for the people (*people oriented*) and are more inclusive. Such intervention studies are done through **public participation, stakeholder engagements, budget process and direct initiative** to take the Parliament to the people where they interact with communities and ensure municipalities are working in line with the legislations in place.

One of the challenges being faced is the lack of involvement of experts and developers is conducting an oversight role. This is only being conducted by the Parliamentarians.



**Prof. Anel du Plessis**

> *Professor of Urban Law, Stellenbosch University, South Africa - what do we mean by good climate legislation?*

Climate law is not climate legislation. Climate law is much broader with legislation in many sector areas that are all deemed to be part of climate law such as tax law, finance law, municipal law, environmental law etc. Climate legislation highlights or addresses the basics of a country or a city's vision for climate mitigation and adaptation.

A "zombie" climate legislation would be legislation that failed to respond to the needs of citizens and the local context. Some of the issues that climate laws may lack to consider include for instance, unique vulnerabilities of a community, carbon footprints etc.

A “zombie” legislation is a result of non-intrusive law-making process and inadequate participation by everyone. Secondly, a piece of law becomes “zombie” legislation when it sets out very complicated and expensive compliance processes where essentially, it’s just impossible to comply because of the nature of the requirement set out in the loop. Thirdly, unclear institutional structure for implementation of law which bring about lack of accountability. Fourthly, when it is out of touch with available financial and human resources available which impacts on its implementation. Fifth, it is when the law lacks a clear purpose. Sixth, when there’s a lack of alignment between the new climate law and the existing laws in the legal system i.e., laws in the energy, water planning, tax or housing sectors. Lastly, a law becomes a “zombie” legislation if it lacks monitoring, review and evaluation considerations.

**To legislate good climate laws, legislators must include not only the communities and private sector but also the scientific community.** Climate change is a scientific phenomenon. Natural scientists are good at mitigation and social scientists have a very good understanding of vulnerability and issues of climate resilience. Secondly, climate change laws have to be adaptable.

**Legislators must revise and review laws to adapt to climate change.** Third, it should be fit for purpose and be suitable for the local context. Fourth, it must align with the existing laws in a country. Fifth, conducting regulatory impact assessment to avoid running the risk of having unintended consequences and severe impact on the law’s implementation.

## Question and Answer

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**Q1. In terms of the role of party caucuses and the waiting system. How does it affect the climate change agenda at Parliament level? To what extent can party ideology affect the role of a legislator?**



A. Party ideology affects the role of a legislator. Once the law is adopted, the law is final, it must be implemented and applies to everyone. Legislation is an important part of the work of parliaments, and it needs to be done on a methodologically solid basis, to ensure it is qualitative.

**Q2. To what extent are laws informed by good planning?**



A. One cannot have a good law, if there are no sufficient resources for planning, implementation and management of the development plans. A law/policy cannot be put in place without considering who will be involved, who will implement it and there is capacity, resources and money to implement a law/policy. Effective law requires effective policies, however, for effective legislation, there must be effective policies in place.

**Q3. What are the reasons behind the suspension of laws related to climate change?**



A. There is an underestimation of climate action to the world economy. This is an issue of limited financial resources to the implementation of climate friendly measures.

Legislation may also be affected by the politics in a country. However, when the basis of a law is stronger e.g., the Constitution, then the laws will not be affected by politics.

**Q4. How feasible is it to consider adaptability of climate change law considering that a law-making process is long?**



A. There is no immediate solution on how to fasten the legislation process, however, situations such as severe weather, pandemics and disasters put a new emphasis on the need for laws and regulations to respond quickly to address these challenges. Regarding adaptability, Parliaments need to monitor implementation of legislation but also review their laws every 3-5 years and if necessary, amend and adapt based on science, data and other evidence-based methodologies.



## KEY LESSONS:

### LEGISLATIVE QUALITY AND GOOD LEGISLATION

**Legislative quality is assessed through its functional effectiveness i.e., the capacity of a given law to fulfill its intended function.** Many urban laws, particularly around spatial planning, have the characteristics of what is colloquially referred to as ‘zombie’ legislation: many of its processes are dysfunctional or non-functional – it is dead for most practical purposes - but because it is technically in force (and therefore is enforceable), partial functionality or occasional manipulation can produce perverse outcomes or create opportunities for irregular rent seeking.

**A good law must be judged by its impact and to achieve this, it must be appropriate to its context, proportionate to its objectives and to the availability of resources.** Global experience highlights a widespread popular perception that the law is “good”, but the resources and capacity are not there to make it work. This perception is challenged by two basic arguments. First, how can the law be defined as ‘good’ if it has no meaningful impact? Second, if the resources and capacity required to make the law work are not there and the situation is not projected to change, why is the law designed based on the assumption of their availability?

**Legislative interventions on climate change issues are best developed through a bottom-up approach that accommodates the specificities of different legal and cultural contexts and utilizes country-to-country knowledge sharing tools.** There is no “one-size-fits-all” legal solution to climate smart urban planning. Ready-made templates from other jurisdictions, notably in the Global North, to support law making and review in low-income countries rarely work. Instead, the process of reforming and developing climate-smart legal frameworks should make use of inter-country knowledge sharing but remain defined by national ownership and broad stakeholder participation.

Using the UN-Habitat/IALS [Guidelines for the Scrutiny of the Quality of Urban Legislation: A Manual for Parliamentarians](#), countries and cities can rely on an approach for legal reform that focusses on four main components of essential law. First, **urban laws need to be appropriate to the local contexts in which they operate.**



This is not compatible with the practice of the blind transplantation of models. Second, **the compliance processes created by these laws should be simple, expeditious and affordable for most urban dwellers.** The complexity and costs of the process should not discourage otherwise law-abiding residents from compliance.

Third, **legal frameworks should be characterized by clear institutional and governmental set-ups including horizontal and vertical coordination mechanisms.** They need to specify the roles of each institution to eliminate gaps and overlaps, which often lead to confusion, and to eliminate lack of transparency, poor accountability and poor compliance. Fourth, **the law-making process should include an adequate appraisal of the financial and human resources needed for its implementation.** Such an assessment ensures that proposed laws set realistic targets, have the necessary political support and will be implementable.

This essential legal framework approach, which is the minimum necessary framework to deliver positive outcomes, will enable cities and countries to meet their legislative commitments in **Paragraph 111 of the New Urban Agenda** to, “*promote the development of adequate and enforceable regulations in the housing sector, including, as applicable, planning regulations.*”