



DIALOGUE 1 WUF 7 CONCEPT NOTE

EQUITY IN URBAN DEVELOPMENT LAW

Objectives of the Dialogue

- Demonstrate the role of the urban environment in defining national situations
- Highlight the law as the basic mechanism for promoting equity in the short term and for establishing it as the norm in the long term
- Recognise that the development of urban law and its implementation are not two separate processes but that implementation should be a fundamental consideration in law making
- Explore the linkages between the development of urban law and the rule of law and recognition of rights
- Highlight that, while law making may be technically driven in many respects, it is a fundamentally political process that requires political and legal input distinct from technical considerations
- Explore how impact assessment and scrutiny can include equity considerations and improve the implementation of laws.

Introduction of the topic

Law is fundamentally about the management of relationships among people. For centuries, equity has been the branch of law that has said that law should not simply be about the unthinking application of existing rules but should also consider “the spirit and habit of fairness, justness and right dealing”. Regardless of legal tradition, the concept that the law should be fair exists in one form or another in almost all countries. Urban areas are defined by higher population densities and the greater impact of humans on the landscape. They are, therefore, built upon the most complex relationships among their citizens and, in turn, rely upon trust and the law to maintain those relationships among people who may not know each other or even meet.

Regardless of legal tradition, the concept that the law should be fair exists in one form or another in almost all countries.

Urban law is a wide field, encompassing the full range of policies, laws and regulations that affect the urban environment. For UN-Habitat, urban law is of interest in terms of the impact that it has on the shape of the urban environment in both the short and long terms but also for the central role it plays in the relationships between individuals and interest groups. Planning law and related codes can affect how plans are developed and, often more importantly, how they are implemented. Questions such as who has a say in the formulation of a plan or code, who has the ability to interpret it and who has sufficient information and resources to challenge it fundamentally affect the lives of millions. Similarly, the sources of municipal finance, and the ways in which budgets are formulated and implemented, also have an important impact on the relative interests of individuals and groups.

This dialogue will explore the role of law in defining, requiring and realizing equity in urban areas, with an emphasis on experiences in developing countries.

Linkages with Post-2015 Development Agenda and Habitat III

POST-2015

The success of all possible sustainable development goals is premised on improvements in governance and the rule of law, which are each framed by legislative frameworks.

The proposed elements of an urban sustainable development goal all require particular decisions on resource allocation and the establishment of mandates and responsibilities. These all depend upon legal frameworks and the quality of these frameworks will determine the level of their implementation as well as their equity.

Policy and legislative implementation rates are frequently low in developing and least developed countries and this can only be addressed through innovative legislative solutions.

Habitat III

The new urban agenda is based upon long term strategies for, and investments in, urban areas. Long term strategies can only be embodied in administrative and legal instruments if they are to avoid being entirely subject to electoral cycles.

Key interrogatives

- Should we emphasise equity in process or a more traditional view that focuses on outcomes?
- Public private roles and how to balance – private as a driver of innovation and financial multiplier, public as guardian of the public interest and forum for shaping the city
- How to promote equity in contexts of institutional and regulatory capture
- Access and efficiency of law versus checks and balances
- The social function of property and the right to the city in a context of private property and individual interests
- Recognition of alternative interests and priorities – property vs non-property, formal and informal, customary rights etc.

Aspirational versus pragmatic law. To what degree should law seek to be transformational or to what degree should it restrict itself to incremental change and immediate goals.

References

Edesio Fernandes. The financing of urban development in Latin America: who pays and how? <http://afesis.org.za/index.php/component/content/article/92-sustainable-settlement-publications/1352-the-financing-of-urban-development-in-latin-america-who-pays-and-how>

Rachelle Alterman. Planning Laws, Development Controls, and Social Equity: Lessons for Developing Countries <http://alterman2.technion.ac.il/files/Articles/Refereed/2013-World-bank.pdf>

Susan Fainstein, *The Just City*, Cornell University Press, 2010