Model course outline for Planning Law at an African Planning School

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Background

This is the first draft of a course outline that could be used at planning schools at African universities.   It is intended that it could be adapted without excessive changes to fit the specific needs of a country, here referred to as Country X. Obviously some countries will require greater adjustments to fit their contexts than others. The work is underpinned by the following premises:

1. in most African countries planning law is neither static nor uncontroversial;
2. planning law in African countries is the subject of donor and multilateral interest and so international developments and trends are relevant;
3. planning law never operates in isolation from other areas of law such as property, environmental, local government and transportation laws;
4. the international perspective is also important because of the role planning laws play in regulating new investment in land development, which many governments hope to attract from outside their borders;
5. there is an important economic dimension to planning laws; and
6. understanding the historical and political context of planning laws is crucial to inform changes to those laws.

These premises distinguish the proposed outline from those currently taught at most planning schools where the emphasis is on simply learning the existing formal laws applicable in the particular country. The outcome that the course outline seeks to achieve is a body of planners equipped to engage creatively and effectively with initiatives to change planning laws in their countries.

Number of hours

To be determined by the university. However it is likely that Learning Units VI and VII will require more hours per unit than the others.

Minimum learner standards/pre-requirements

To be determined by the university.

Justification/rationale

For planners in Africa to make a meaningful contribution to change in the way that they work and the way that their work impacts on their societies they need to approach planning legislation with confidence. Planners must understand that the laws governing their work are the products of particular social and political forces and are should never automatically be assumed to be cast in stone. Nor should planners accept that planning legislation reflects an internationally universal standard for good

planning. If the legislation in their country is not implemented effectively it is, more often than not, the result of the legislation being inappropriate.

Because almost all planning work is circumscribed by legislation it is essential that planners have a sound grasp of the nature of law, how it relates to economic, social and political forces and how it changes over time. Law is not static and changes constantly. Planners must be able both to follow these changes closely when they affect planning but also must be empowered to influence those changes in a meaningful way.

Learning goals

This course aims to introduce students to the ways in which law operates in their society in general and in the practice of planning specifically. It thus starts broadly, after an initial introduction to the subject, with a contextualisation of planning law which examines theories of law, the history of planning law in Africa as well as the international dimension that applies to planning law.   This prepares the student for an exposure to the specific legal provisions applicable in their country before concluding with an examination of the relevant factors to consider when changing those laws.

An important thread running through the course is the message that planning law operates as part of a wider set of laws dealing with land, the environment, local government and infrastructure, among others. The way in which the law is used in any country plays a central role in determining whether or not planning will have the integrative effect that it aims to achieve.

Learning outcomes

Upon conclusion of the course students will:

1. have a critical insight into the ways in which law has influenced planning practice and how it continues to influence the work of planners;
2. be able to engage constructively with discussions on planning laws and other laws affecting the built environment in their daily professional practice;
3. be able to participate effectively in processes of planning law reform and able to articulate views on how legal improvements could best be effected;
4. be able to identify opportunities for innovative practice within existing legal frameworks; and
5. be able to work confidently with the forward planning and land-use management aspects of his or her country's planning laws.

Learning units

This outline of units should be adapted by the university to fit its own staffing and time resources but is provided as a guide as to how a planning law course could be structured.

I: an introduction to planning law

This session will introduce the concept of planning law, with a particular focus on the African context. It will thus emphasise the importance of land law and policy for planning in most African cities and towns. It will illustrate the planning legal issues which are particularly pertinent such as the parallel existence of formal planning structures integrated into formal government structures alongside both customary structures and informal structures and the role of planning law in urbanisation and decentralisation policies. Within that context this unit will then identify the key legal themes that dominate planning law:

1. the legal power of the state to regulate how people use and develop land that they either own or hold;
2. the legal power of the state to plan future investment by both public and private sectors; and
3. the legal allocation of powers both to regulate land-use and development and to undertake future planning to different levels of authority within the state.

Readings

Farvacque, C and P McAuslan (1992) *Reforming Urban Land Policies and Institutions in Developing Countries*, Urban Management Program, Washington DC – especially the part of chapter III that deals with 'Land-use Regulatory Framework' and which summarizes nicely the issues that should be covered in a planning law course

McAuslan, P (2003c) 'Land in the city: the role of law in reforming urban land markets' in McAuslan, P (2003) *Bringing the law back in: essays in law, land and development*, Ashgate, Aldershot – this is an excellent introduction to the role of law in urban development and, indirectly, urban planning

Van Wyk, J (1999) *Planning Law: principles, procedures and land-use management*, Juta, Cape Town - this is a text book specifically for South Africa but is a good model for emulating in other countries

II: theories of law and human behaviour

Very little work on planning law acknowledges the rich body of legal research on what law practically can and cannot achieve in the regulation of the ways in which individuals, firms and government officials act. In this session the relationships between law and morality, economics and politics will all be explored to give the students a clearer sense of the law's possibilities as well as its impossibilities. Examples from other areas of law such as commercial law, family law and traffic law will all be used to draw comparisons with what planning laws often seek to achieve.

Readings

The best general source of readings here will be the texts prescribed for new law students at the university, generally under the heading 'Introduction to law'.

III: a history of law, planning and land development in Africa and in Country X

In order to provide historical context this session will cover the rules developed in pre-colonial, post-colonial and independent Africa to regulate the use and development of land and, especially in the colonial and independent eras, to determine the making of new plans for future development. An

important trend to track in this session is the way in which customary and informal rules have persisted and adapted over time. Another trend to follow is the continuation by many independent governments of their erstwhile colonial administrations' use of planning laws to control the movements and economic activities of poor people. This session will then show the extent to which planning law has been effective in producing spatial, economic and political outcomes.

Readings

McAuslan, P (2003a) 'The role of law in urban planning and land development' in McAuslan, P, *Bringing the Law Back In: essays in land, law and development*, Ashgate, Aldershot

McAuslan, P (2003b) 'The best laid schemes o' mice an' men: the diaspora of town and country planning law in Africa and Asia' in McAuslan, P (2003) *Bringing the law back in: essays in law, land and development*, Ashgate, Aldershot – this chapter provides a clear overview of the ways in which the colonial governments enacted model planning laws in their colonies, most of which remain in place today

Parnell, Susan (1993) 'Creating racial privilege: the origins of South African public health and town planning legislation', *Journal of Southern African Studies*, 19 3, 471-488 – this is obviously a South African article but it illustrates well the ways in which planning law can be used on the surface to deal with one thing when in fact it has an ulterior motive

IV: the international dimension

Planning law has long been the concern of the international development co-operation community. Bilateral donors have funded many initiatives to update and modernize planning laws while the multilateral organizations such as the World Bank and the UN agencies UN-Habitat and, earlier, FAO have also long advocated far-reaching changes to planning laws. To a lesser, but growing, extent international NGOs have also pushed for changes to planning laws. In this session the students will follow the international dimension, especially as reflected in the major summits in Stockholm, Vancouver, Istanbul and Rio de Janeiro. Increasingly the African Union, through the African Ministers' Conference on Housing and Urban Development, has been developing positions on planning law and these will also be covered. The session will emphasise the potential for conflict between the interests of the international agenda and that of a particular country and its government. It will also look at the increasing globalization of the laws regulating land use and development both from the perspective of efforts to facilitate property investment but also from those to protect the poor and vulnerable from forced evictions and demolitions.

Readings

McAuslan, P (2003b) 'The best laid schemes o' mice an' men: the diaspora of town and country planning law in Africa and Asia' in McAuslan, P (2003) *Bringing the law back in: essays in law, land and development* , Ashgate, Aldershot – this chapter provides a clear overview of the ways in which the colonial governments enacted model planning laws in their colonies, most of which remain in place today

McGranahan, Mitlin et al (2009) Africa's Urban Transition and the role of regional collaboration, Human Settlements Working Paper Series, African Centre for Cities and International Institute for Environment & Development, London

Njoh, AJ (2004) 'The experience and legacy of French colonial urban planning in sub-Saharan Africa', *Planning Perspectives*, 19, pp 435-454

UN-Habitat (2005) *Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe Mrs. Anna Kajumulo Tibaijuka*, Nairobi – this report demonstrates clearly what can happen when legal frameworks for planning and urban development are interpreted uncritically and how they are capable of being used by governments to achieve developmentally backward outcomes

UN-Habitat (2009) *Global Report on Human Settlements: Planning Sustainable Cities*, Nairobi – chapter 4 'The Institutional and Regulatory Framework for Planning' and chapter 11 'Towards a New Role for Urban Planning' are particularly relevant

Whitehead, C, RLH Chiu, S Tsenkova and B Turner (2009) 'Land use regulation: transferring lessons from developed economies' in Lall, SV et al (2009) *Urban Land Markets: improving land management for successful urbanization*, Springer: New York

V: country X – an overview of the regulatory framework for planning

Here the focus shifts to the particular context and laws of Country X. This session will tackle two main objectives. Firstly, it will provide an overview of the constitutional framework relevant to planning in Country X. This will look at the way in which customary law is integrated or recognized, the protection of property rights, land ownership provisions and the allocation of planning, land and housing powers between the different levels of government. Secondly it will provide an overview of the planning laws in the country. Here the session will examine the basic architecture of the planning legal system including the relationship between the planning laws and other laws dealing with housing, land, environmental management, local government, transportation and economic development.

Readings

Obviously here it will be important to identify appropriate country-specific readings. The ones listed below are examples from some countries.

Berrisford, S and M Kihato (2008)'Local government planning legal frameworks and regulatory tools: vital signs?' in Van Donk, M, M Swilling, E Pieterse and S Parnell (2008) *Consolidating Developmental Local Government: lessons from the South African Experience*, UCT Press, Cape Town

Leduka, CL and S Setšabi (2008) 'The two facets of Lesotho's Urban Land Law and Implications for Planning, *Urban Forum* 19: 23-41 – this is Lesotho specific but has useful lessons and implications for many other countries especially in the way that it explores the relationships between land law (and land tenure) and planning law

Mammon, N (2008) 'Land use regulation in the context of developmental local government' in Van Donk, M, M Swilling, E Pieterse and S Parnell (2008) *Consolidating Developmental Local Government: lessons from the South African Experience*, UCT Press, Cape Town

Njoh, AJ (2002) 'Development implications of colonial land and human settlement schemes in Cameroon', *Habitat International*, 26, pp 399-415

Njoh, AJ (2006) 'The role and goals of the state in urban development in Niger', *Habitat International*, 30, pp 540-557

VI: country X – law and forward planning

This session covers the provisions of the law that provide for the making of plans for future land development. It will look at the process of plan preparation, the responsibility for plan approval and the legal effect of plans as well as the scale of required plans (e.g., national, regional and/or local). The objective here will be to analyse the provisions critically to identify the extent to which they result in positive development impacts. A case study of a legal requirement for plan-making in Country X could usefully be demonstrated here to illustrate some of the important themes.

Readings
It will be important to use country-specific literature but the readings below will all be useful background reading to provide a perspective through which to view the situation in Country X.

Farvacque, C and P McAuslan (1992) *Reforming Urban Land Policies and Institutions in Developing Countries*, Urban Management Program, Washington DC

UN-Habitat (2009) *Global Report on Human Settlements: Planning Sustainable Cities*, Nairobi – chapter 4 'The Institutional and Regulatory Framework for Planning' and chapter 11 'Towards a New Role for Urban Planning' are particularly relevant

VII: country X – law and development management

Continuing with the focus on Country X this session will look at the rules in place for regulating the use and development of land. Particularly important issues to track here will be the parallel systems of formal, customary and informal development management rules and their implications as well as the potential for abuse of these rules both by developers and government officials. The nature of the land market in Country X and the relationship between the planning laws and the operations of that market will also be important. A case study of a legal requirement for development management in Country X could usefully be demonstrated here to illustrate some of the important themes.

Readings
It will be important to use country-specific literature but the readings below will all be useful background reading to provide a perspective through which to view the situation in Country X.

Berrisford, S, D De Groot, M Kihato, N Marrengane, Z Mahlanga and R Van Den Brink (2008) *In Search of Land and Housing in the New South Africa: the case of Ethembalethu*, World Bank Working Paper no. 130, World Bank, Washington DC – this is a thoroughly documented case study of how a low-income

community in peri-urban Johannesburg battled through the land, housing and planning laws in order to secure a place on which to live

Berrisford, S and M Kihato (2006), 'The role of planning law in evictions in Sub-Saharan Africa', South African Review of Sociology, volume 37, no. 1 – an examination of the role that planning law has played in a string of large-scale urban evictions

McAuslan, P (2003c) 'Land in the city: the role of law in reforming urban land markets' in McAuslan, P (2003) *Bringing the law back in: essays in law, land and development*, Ashgate, Aldershot – this is an excellent introduction to the role of law in urban development and, indirectly, urban planning

McAuslan, P (2007) 'Law and the poor: the case of Dar es Salaam' in Philippopoulos-Mihalopoulos, A (ed.) *Law and the City*, Routledge-Cavendish, Abingdon

Ocheje, Paul D (2007) 'In the Public Interest: forced evictions, land rights and human development in Africa', *Journal of African Law*, 51 2, 173-214 – a good introduction to the role of law (not just planning law) in creating the conditions for widespread evictions in many African countries

UN-Habitat (2005) *Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe Mrs. Anna Kajumulo Tibaijuka*, Nairobi – this report demonstrates clearly what can happen when legal frameworks for planning and urban development are interpreted uncritically and how they are capable of being used by governments to achieve developmentally backward outcomes

VIII: changing planning laws

The course concludes with a session on changing planning laws. This session will examine what would be an appropriate rationale for changing planning laws, how would a good law reform process be designed, how would the impacts of possible new legal provisions be measured and costed to ensure effective implementation and who would be important stakeholders to include in the process. A case study of another country's (or, where appropriate, country X's) efforts to change planning laws could usefully be demonstrated here to illustrate the key issues.

Readings
Berrisford, S (2010a) *Why it's difficult to change urban planning laws in Africa*, African Centre for Cities Working Paper, University of Cape Town

Berrisford, S (2010b) *Revising spatial planning legislation in Zambia: a case study*, African Centre for Cities Working Paper, University of Cape Town

Berrisford, S (2010c) *Unravelling apartheid spatial planning legislation in South Africa: a case study*, African Centre for Cities Working Paper, University of Cape Town

Cities Alliance (2010) *The City Statute of Brazil: a Commentary*, Cities Alliance and Ministry of Cities, São Paulo – although this is not an African case it is a useful insight into what it takes to effect fundamental change in the laws governing urban development and planning

Minogue, M. and Cariño, L. (2006) *Regulatory Governance In Developing Countries*, Edward Elgar, Cheltenham – a comprehensive overview of the importance of approaching law reform (not specifically planning law reform) in the context of developing countries

Payne, GK and M Majale (2004) *The Urban Housing Manual: making regulatory frameworks work for the poor*, Earthscan, London – this book shows well how planners can contribute practically to the process of reviewing and changing urban planning and land laws

UN-Habitat (1999) *Reassessment of urban planning and development regulations in African cities*, UN-Habitat, Nairobi

World Bank (2010) *Regulatory Governance in Developing Countries*, Washington DC – this is a good introduction to a way of thinking about designing new legal frameworks in developing countries

Pedagogic approaches

This course would benefit from an interactive approach. It should avoid the format where a lecturer reads what the law says about various different situations and requires the students to remember the minutiae. Through an interactive approach the students should be encouraged to reflect on the role that law has played, continues to play and might in the future play in the implementation of planning. Students should be encouraged to look for areas in which the law provides opportunities for innovation as well as to identify those areas where the law actively obstructs innovation. The teaching of this course would benefit from the contributions of outside lecturers, from planners and lawyers in practice as well as representatives of NGOs and other civil society bodies engaged with urban development issues. The contribution of a property developer who has experience of getting projects through the legal framework would also be useful, although that perspective could also be provided by a lawyer or planner in private practice. As indicated below in the Guidance to Educators the use of case-studies is very effective in communicating the ways in which planning law affects day to day practice of planners, developers and communities.

Support & mentoring

As indicated above it would be ideal for this course to be taught by one core educator supported by outside experts so as to give the students a sense of how planning law works in practice. There is no specific need for the core educator to be a lawyer but obviously it helps if a suitable one can be found.

Assessment

Planning law courses are usually relatively small components of a planning course. Should the overall curriculum permit it would be beneficial to get the students to prepare an essay on a subject related to one of the unit topics. The final assessment should be in the form of an open-book examination. The purpose of the examination should not to be to test the students' capacity to memorise different laws or rules but rather to reflect critically on the implications of the law for their future practice as planners.

They will have plenty of opportunities to learn specific legal provisions when they are working, should that be necessary. What the assessment should show is whether or not they are able to read into the wording of a particular law or regulation what constraints it might impose or, alternatively, what opportunities it might create. A useful way to do this is to design assessment questions as stories involving people facing real planning legal problems. This is more effective than simply asking the student to describe what a particular law says but rather gets the student to apply knowledge and insights obtained on the course to a 'real-life' situation.

Readings

Berrisford, S (2010a) *Why it's difficult to change urban planning laws in Africa*, African Centre for Cities Working Paper, University of Cape Town

Berrisford, S (2010b) *Revising spatial planning legislation in Zambia: a case study*, African Centre for Cities Working Paper, University of Cape Town

Berrisford, S (2010c) *Unravelling apartheid spatial planning legislation in South Africa: a case study*, African Centre for Cities Working Paper, University of Cape Town

Berrisford, S and M Kihato (2008)'Local government planning legal frameworks and regulatory tools: vital signs?' in Van Donk, M, M Swilling, E Pieterse and S Parnell (2008) *Consolidating Developmental Local Government: lessons from the South African Experience*, UCT Press, Cape Town

Berrisford, S, D De Groot, M Kihato, N Marrengane, Z Mahlanga and R Van Den Brink (2008) *In Search of Land and Housing in the New South Africa: the case of Ethembalethu*, World Bank Working Paper no. 130, World Bank, Washington DC

Berrisford, S and M Kihato (2006), 'The role of planning law in evictions in Sub-Saharan Africa', South African Review of Sociology, volume 37, no. 1

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McAuslan, P (2003a) 'The role of law in urban planning and land development' in McAuslan, P, *Bringing the Law Back In: essays in land, law and development*, Ashgate, Aldershot

McAuslan, P (2003b) 'The best laid schemes o' mice an' men: the diaspora of town and country planning law in Africa and Asia' in McAuslan, P (2003) *Bringing the law back in: essays in law, land and development* , Ashgate, Aldershot

McAuslan, P (2003c) 'Land in the city: the role of law in reforming urban land markets' in McAuslan, P (2003) *Bringing the law back in: essays in law, land and development*, Ashgate, Aldershot

McGranahan, Mitlin et al (2009) Africa's Urban Transition and the role of regional collaboration, Human Settlements Working Paper Series, African Centre for Cities and International Institute for Environment & Development, London

Mammon, N (2008) 'Land use regulation in the context of developmental local government' in Van Donk, M, M Swilling, E Pieterse and S Parnell (2008) *Consolidating Developmental Local Government: lessons from the South African Experience*, UCT Press, Cape Town

Minogue, M. and Cariño, L. (2006) *Regulatory Governance In Developing Countries*, Edward Elgar, Cheltenham

Njoh, AJ (2002) 'Development implications of colonial land and human settlement schemes in Cameroon', *Habitat International*, 26, pp 399-415

Njoh, AJ (2004) 'The experience and legacy of French colonial urban planning in sub-Saharan Africa', *Planning Perspectives*, 19, pp 435-454

Njoh, AJ (2006) 'The role and goals of the state in urban development in Niger', *Habitat International*, 30, pp 540-557

Ocheje, Paul D (2007) 'In the Public Interest: forced evictions, land rights and human development in Africa', *Journal of African Law*, 51 2, 173-214

Parnell, Susan (1993) 'Creating racial privilege: the origins of South African public health and town planning legislation', *Journal of Southern African Studies*, 19 3, 471-488

Payne, GK and M Majale (2004) *The Urban Housing Manual: making regulatory frameworks work for the poor*, Earthscan, London

UN-Habitat (2005) *Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe Mrs. Anna Kajumulo Tibaijuka*, Nairobi

UN-Habitat (2009) *Global Report on Human Settlements: Planning Sustainable Cities*, Nairobi

Van Wyk, J (1999) *Planning Law: principles, procedures and land-use management*, Juta, Cape Town

World Bank (2010) *Regulatory Governance in Developing Countries*, Washington DC

Websites

Finding information for the units that deal with Country X may be difficult. Where there is no textbook on Planning Law (which is the case in most countries) there may be Land Law or Environmental law

textbooks that have chapters on Planning Law. Otherwise it will be necessary to search through the websites listed below to see if there is anything suitable.

1. www.worldbank.org – it is useful to look at a couple of sections on this website: 'urban development', 'public sector governance' and 'regulatory reform'
2. www.unhabitat.org - particular look for country and city 'urban profiles' which often have sections on legislation and the regulatory framework
3. www.citiesalliance.org – The Cities Alliance site often has useful publications on regulatory and policy frameworks for urban development and planning
4. www.idlo.net – the International Development Law Organization at the moment does not have much in the way of urban law on its programme but this is likely to change and then this could prove to be a useful source of information
5. www.iied.org – the International Institute for Environment & Development does cover a number of urban issues but only touches on legal issues indirectly
6. www.africancentreforcities.net – currently the ACC materials do not include much on legislation but that is likely to change and this site will hopefully become a rich resource for planning law educators
7. www.lincolninst.edu - the The Lincoln Institute for Land Policy has a number of publications dealing with urban land management but primarily in a Latin American context

Guidance for educators

The model course outline tries to move the teaching of Planning Law away from an exercise in remembering what a particular country's laws say about planning. Instead it moves the focus of the teaching onto giving the students an ability to engage with planning law at both a practical and an abstract (or policy) level in a way that is constructive and critical. As planners in practice they will never have to know every aspect of the law – they can ask lawyers for that detail when they need it – but they will need to know what questions to ask and how to interpret the answers given to their questions by lawyers, or indeed by other professionals. Also, as the countries in the region are all envisaging planning law reform either in the short or medium term it is important that planners are able to contribute usefully to those processes.

Because law in general, and planning law in particular, often comes across as dry and tedious for non-lawyers it is important to use the material in this course outline in an interactive way, allowing for students to express their views and raise their questions. There are many questions about the suitability and effectiveness of planning law in African towns and cities and the students should feel free to raise those questions. The use of real-life cases is important as it shows the students how in everyday planning practice important planning law questions arise and have to be confronted. It would be helpful to build a collection of planning case studies to use for teaching the different aspects of this course.[1]

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[1] One example is Berrisford et al (2008), a case study of a community's efforts to use the planning and other laws needed to secure their land rights in peri-urban Johannesburg. There are presumably other examples and it would

be useful for AAPS or a member school to start building a collection of such case studies for teaching (and research) purposes.