

Analysing the Law of Urban Development in Uganda from the Lens of Wakiso Town Council

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ABSTRACT

This article analyses the law governing urban development from the lens of the Wakiso Town Council of Uganda. The article observed that the multiplicity of the laws in Uganda makes it hard for urban residents to comprehend and appreciate in its entirety. The urban residents are explicitly aware that there are urban laws in existence but without able to discern and appreciate the content. The lack of clear rules and regulations regarding land use restrictions is a big bottleneck to achieving compliance in urban law enforcement. This leads to minimal respect for spatial planning. The lack of a participatory approach to planning in which all stakeholders participate in the formulation of the rules and regulations has led people to lose confidence in the law. It is on this basis that the article calls for the need to orient the urban law to the local population through mass sensitization and awareness using friendly media means so that, residents appreciate the law in place to be able to implement it. More so, there is a need to consider promoting community skilling and sensitization in addition, the drafting of the laws should be cognizant and involvement of community stakeholders, CBO, NGOs, and local politicians to attain knowledge and information that they can pass on to others.

Keywords: Authorities, Legal framework, Town planners, Urban development, Urban dwellers

INTRODUCTION

Urban development is critical to national growth and central to national planning[1]. The Fifth Edition of the Uganda Economic Update[2] presents evidence that well-managed urbanization can stimulate economic growth. While the secondary towns in Uganda are still relatively small, unless they are managed properly, they will grow into large unplanned settlements over time. Urbanization involves many decisions whose cost needs to be greatly reduced by the law. Institutions that make decisions need a mandate, capacity, and motivation.

Urban development refers to the planned and regulated growth of urban areas. An urban town refers to places with a concentration of people in a given geographical area with a minimum density of 1,000 people per Square Kilometer engaged in more than 60% of non-agriculture activities[3]. The law of urban development is pivotal and intended to promote a sustainable, spatially integrated, and orderly development of urban areas with adequate space for services, effective and efficient institutions for development[4]. Uganda is

experiencing rapid urbanization of 5.2% per annum which is among the highest in the world. The percentage of the population living in urban areas increased from 12.3% in 2002 to 18.6% in 2014 which is low comparatively in the region. The country has a population base of 35 million and a high population growth rate of 3.2% making it one of the fastest-growing populations in Africa. This has implications for urban development and services. It is projected that by 2035 Uganda's population will have grown to 68.4 million of which 30% will be in urban areas[5]. Urbanization has been occurring in Uganda without a proper explicit policy framework to guide the growth of urban areas. The existing urban legal instruments are in place to enhance the institutional performance to improve urban development to effectively prevent, and halt unplanned urbanization. All urban policies and legal instruments are enacted with the intent to ensure that urbanization occurs in a planned manner[6].

Despite the existence of the urban law, Wakiso Town Council is failing to realize planned

urbanization. The town is characterized by a lack of proper zoning of economic activities and construction of physical infrastructure. There is no regard for spatial quality and environmental conservation. There are sharp differences in residential standards that co-exist with slums and informal settlements. There is poor sanitation, inadequate housing, contaminated drinking water

Legal Framework Concerning Urban Development

Legal and regulatory frameworks promote the national development agenda of a country. Bidandi and Williams[7] indicate that legal instruments are the by-laws, ordinances, acts, laws, regulations, standards, and guidelines enacted to prevent and promote desired urbanization in

The Constitution of the Republic of Uganda 1995 as amended

The Constitution of the Republic of Uganda 1995 as amended is the supreme law of Uganda and forms the apex of the legal framework. All the laws that girdle urban development by and large must take cognizant of the constitution of the republic of Uganda. For instance, the District and Urban Councils are mandated by law to prepare comprehensive plans for orderly urban development [8]. This provision of the legal framework is useful for highlighting the roles of local governments in planning for urban development. The implication of this provision is

The Local Government Act 1997 Cap 243

The Local Government Act[10] was introduced in 1997 with the aim of decentralizing power from the Centre to lower levels of government such as the Districts and Urban Councils. The implicit of giving powers in a decentralized manner to lower local government is to empower the leaders there to plan and, in this regard, they can enforce urban laws for sustainable urban development. Urban Authorities have autonomy to prepare integrated urban development plans within the National

Physical Planning Act 2010 (As Amended)

The Physical Planning Act of 2010 as amended[11] replaced the Town and Country Planning Act of 1964, which was formulated based on the 1947 British Town and Country Planning Act. The new Act declares the entire country a planning area. It also establishes Physical Planning Committees in Districts, Town Councils, and sub-counties. The Physical Planning Act creates the National Physical Planning Board (NPPB), with the mandate to regulate physical developments in the country. The Board also approves regional, urban, or District physical development plans and recommends to the minister national plans for approval. Section 3 of the Physical Planning Act 2010[11] as amended declared the whole country a planning area. As such Section 18 provides for the national, regional, District, Urban, local, detailed

sources, poorly managed human excreta and solid waste disposal, water pollution, and a reduction in ecological services. It is therefore not clear whether these flaws in urban planning are related to the law of urban development. This therefore made it pertinent for this study to analyze the urban development law in light of the urban development anomalies in Wakiso Town Council.

terms of physical infrastructural development, settlements, and service delivery. The law is an instrument passed by the act of parliament and assented to by the president. There are various legal instruments for urban development in Uganda and they are discussed here below;

to the effect that, regardless of the land tenure type, urban planning regulations are enforceable in designed physical planning areas. The constitution of the Republic of Uganda 1995 as amended[9] provides that parliament makes laws to enable urban authorities to enforce and implement planning and development. The implication of this provision is that from time to time, it is incumbent upon Parliament to raise laws that they deem fit and suitable for urban development in Uganda.

Planning Framework[10]. The Act also empowers the Minister of Local Government to create and elevate the status of urban centers in Uganda. The creation and elevation of urban centers in Uganda are largely based on the population size. According to the Act, a Town Council should have a minimum population of 25,000 people, a Municipality of 100,000, and a city of 500,000. For the newly created Districts, their headquarters automatically become Town Councils.

physical development plans, area action plans, and subject plans. The National Physical Development Plan is the master plan to which all the other plans must conform. Every person must comply with the requirements of the approved plan. Section 22 (3) of the same Act emphasizes that no development can take place unless the developer complies with the requirements of the approved plan. Furthermore, development can only be carried out upon obtaining permission from the Physical Planning Committee of the area in which the development will take place. If the requisite permission is not obtained or the requirements within the permit are not complied with, the development is null and void and the developer must restore the land to its natural state before the development occurs. The subdivision or

consolidation of land within a local government can only be done by the approved physical development plan. For environmentally sensitive

areas, approvals are done subject to an Environmental Impact Assessment certificate[11].

The Condominium Law 2001

The Condominium Property Act of 2001[12] was introduced to facilitate the development, ownership, and occupation of flats and sectional properties. The Act was also intended to promote high-density housing to meet the increasing

housing needs in urban centres. The move towards high-density housing was also necessitated by the surge in urban population as well as the scarcity of land in the major towns.

Kampala Capital City Authority Act

The Kampala Capital City Authority (KCCA) Act[13] was introduced in 2010 as part of the new strategy to restructure the city and introduce a new management style. The Act provides for the establishment of the Kampala Metropolitan

Physical Planning Authority (*KMPPA*) an institution that is mandated to regulate physical developments in Kampala and surrounding districts of Wakiso, Mpigi, and Mukono.

National Physical Planning Guidelines and Standards 2011

The national physical planning guidelines and standards form the criteria for determining the scale, location, and site requirements of various land uses and facilities. The planning standards affect the location of scarce land and financial resources. They are also supposed to be applied

with flexibility. The standards are applied in four aspects: forward planning (the equitable basis for allocating scarce land resources), development control, plan implementation as well as raising the quality of life[14].

The Land Act Cap 227

The Land Act Cap 227[15] was passed to implement the constitutional provisions on ownership and management of land. The Land Act guarantees the security of occupancy of lawful and bona fide occupants of 'Mailo' land and other registered land and obliges parliament to enact a law regulating the relationship between them and registered owners of the land they occupy. Section 46 of the Land Act cap 227[16] provides that, the land shall be used in accordance with planning law among others and any approval process of land

application must take into consideration the planning requirement. The implication of this act on urban development is that once zoning is done and the plan becomes law, owners have to conform to approved plans no matter what existing land rights are held. For purposes of urban development, the government or local government may acquire land in accordance with Articles 26 and 237(2) of the 1995 constitution of the Republic of Uganda.

Public Health Act, (PHA) Cap 281

The PHA CAP 281 specifies the rules and regulations regarding public health issues concerning infectious diseases, vector control, buildings of various types and uses, as well as drainage and sanitation. The Act specifies details of the building standards under Section 13 which apply to Municipalities and Towns, planning areas declared under the Physical Planning Act 2010 as amended. Urban Councils, Town boards, factories,

public buildings, stores and schools[17]. This Act[17] forms the basis to enforce building regulations and health standards in any planning area. This forms the ground for the authorities to inspect the zoning and planning about health standards of the public health interest. An urban authority may halt further construction of the building which falters the public health standards of other institutions regarding urban development.

The National Environment Management Act, Cap 153

Sections 46 and 49 of the Act[18] concerns land use planning. The Act ensures the integration of environmental concerns in overall national planning, through coordination with the relevant ministries, departments, and agencies of government. Therefore, urban development must relate to this Act by incorporating environmental concerns in the

planning arrangement. It further subjects all projects to undergo an Environment Impact Assessment. By and large any urban development that contradicts environment management is deemed illegal and cannot be sanctioned for development and a certificate of approval has to be issued to that effect.

The Nature of Urbanization in Uganda

An analysis of the operation of the urban law in Uganda depicts a lot of deficiencies. For instance, Kampala's urbanization reflects sharp differences in residential standards where

expensive housing and luxury flats co-exist with shanty towns and informal settlements, with about 60% of the city's population living in unplanned residences with largely potholed and

narrow roads without street lights[19]. Other studies show that Kampala's urbanization is typified by deteriorating environmental health characterized by air and noise pollution[20]. This depicts a lacuna in the urban law and it is not an exception to other towns including Wakiso town council. This gives the impression that the failure of the law to operate in the capital city epitomizes a lacuna in the application of the law in lower urban centers. Public health concerns have not been addressed in Uganda's urban areas. The drainage in urban towns in Uganda shows that drainage channels are silted and contaminated by organic and inorganic waste dumped by town dwellers and workers, causing the channels to get blocked, thereby flooding during rainy seasons. The towns are littered with garbage making them unclean. It is very common to find houses constructed in swamps and green belts, arcades and storied buildings closely interspaced with muddy huts in

slums[21]. Moreover, it is also not rare to find posh residential and office buildings whose access roads are so narrow that even a fire brigade vehicle finds it difficult to access them when the need arises. The result has been the unplanned urbanization and development of different types of slums which puts into question the efficiency and operation of the urban law[22]. Although these findings were arrived at in Kampala, it is imperative to establish whether this situation epitomizes the recent urban system in Uganda including Wakiso Town Council. Williams and Bidadi [23] observes that Uganda's town planning does not pay attention to the full participation of the different key stakeholders, including NGOs, CBOs, the academic community, the private sector, and the different levels of government, which are vital dynamics that could have been considered and understood to ensure that towns urbanize systematically.

Achievements of the Urban Law

Uganda has one of the multi-faceted and most complex land management systems with overlapping tenure systems, especially in the central region where the Wakiso Town Council is found. Four different land tenure systems operate alongside each other. This is counterproductive to urban development investments. The Land Act (1998) which is part of the urban law, operationalized the provisions of the constitution on land by defining the different types of land tenure systems. This addressed the complex situation and the ambiguity of the land systems thus offering a basis to solve difficult cases and land disputes on some lands that have an unclear status. This legal provision establishes an effective and efficient land governance framework, which facilitates urban development investment[24]. The key function of clear rights to urban land is that it is a pre-condition for the emergence of a formal land market. Land, as an asset, can make its transactions viable if the purchaser can rely upon legal means by which the new ownership is recognized an issue that is addressed by the Land Act 1998. The urban law drives formality which brings with it legally enforceable transactions. These drive viable good connectivity standards that facilitate the provision of essential services. This cannot happen without the active support of government

authorities and institutions[25]. This can only be tenable with land registration and planning that will facilitate the provision of public infrastructure and services for transport; and the provision of public social goods and services for a decent quality of life. This requires enforcement of those private behaviors that are counter urban development and planning. These facets are possible under the law of physical planning [26]. Since land is not produced, the valid title to a parcel is entirely a social construct determined by the recognized authority of law. In the absence of a unique public register of titles maintained by the pertinent public authority, a land market cannot function properly and so is urban development[27]. An effective public authority with a mandate is pivotal to overseeing urban development. This has to be backed by the legal framework and institutions. This gives it a unique power of enforcement which is valuable in many aspects of urbanization. At a basic level, public authorities are essential to enforce planned urbanization. Because building the city depends upon private rights over land and structures, enforcement of standards established by law turns out fundamental to successful urbanization. Beyond the enforcement of property rights, public authorities are important for enforcing building regulations[28].

CONCLUSION AND RECOMMENDATIONS

Uganda has a rich urban law concerning urban development. It concerns several line ministries that are related to urban development. The multiplicity of the law makes it hard for the urban residents to comprehend and appreciate in its entirety. The urban residents are explicitly aware that there are urban laws in existence but without

able being to discern and appreciate the content. The lack of clear rules and regulations regarding land use restrictions is a big bottleneck to achieving compliance in urban law enforcement. This leads to minimal respect for spatial planning. The lack of a participatory approach to planning in which all stakeholders participate in

the formulation of the rules and regulations has led people to lose confidence in the law. It is on this basis that the article calls for the need to orient the urban law to the local population through mass sensitization and awareness using friendly media means so that, residents appreciate the law in place to be able to implement it. More so, there is a need to consider promoting community skilling and sensitization in addition, the drafting of the laws should be cognizant and involvement of community stakeholders, CBO, NGOs, and local politicians to attain knowledge and information that they can pass on to others. Furthermore, the study also recommends that policy administrators and implementers should learn from the current policy implications for an alternative urban policy that ensures that urbanization takes place in a planned

manner. There is a need for features that could be integrated into the policy to counter unplanned urbanization while promoting systematic urbanization that curtails the construction of buildings whose construction does not follow approved plans. Finally, the article recommends a deliberate application and enforcement of the urban law without any conflict of interest between politicians and administrators to counter uneven and informal urbanization. There is a need to establish a fund for adequate compensation of all residents who are not able to develop their land in a manner that meets required urban standards. There is a need for making urban law operations independent of political influence, giving the technical wing a stronger mandate than the political leadership, and improving staff motivation.

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