



# THE IMPLEMENTATION GAME

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# PHASES OF LEGISLATING

Three major phases in legislating

- **Pre-legislative** = from the moment a political decision to legislate is adopted to the submission of a draft to Parliament
- **Legislative** = consideration of a draft law in Parliament
- **Implementation** = adopted legislation is enforced and implemented

# THE 'IMPLEMENTATION GAME'

Once a law is **adopted**, the 'implementation game' begins

Implementation is a complex 'assembly' of **mechanisms**, **funds** and **actors**

Several '**incidents**' can affect its course: changes in facts, diversion of resources, deflection of goals, resistance from stakeholders etc

# WHY FOCUS ON IMPLEMENTATION?

## **Reason 1: A requirement of democratic governance**

The legislator adopts laws that need to be applied, according to the principles of legality and legal certainty

## REASON 2

### **Reason 2: Preventive function against potential adverse effects on fundamental rights**

When factual situations are uncertain, laws might have adverse effects on fundamental rights

## REASON 3

**Consistent appraisal of the responsiveness of the law to the regulated problems and phenomena**

Legislation is a **'shot in the dark'** if there is no information on its implementation and its effects in real life.

## REASON 4

### **The 'real' test of quality and effectiveness of legislation**

- Critical for knowing how the law is implemented and what its results are

# URBAN LEGISLATION AS A CASE STUDY IN IMPLEMENTATION

Urban legislation is an important pillar of sustainable urban development

lays down **acceptable behaviors**, **applicable standards**, **rights and obligations** of parties, **governance frameworks**

The global urban population is expected to grow by 3 billion in the next 50 years – 98% in developing countries

Without a coherent policy and good legal, institutional, and governance frameworks this could result in anarchy and increased inequalities



# NIGERIA

In the Nigerian state of Kogi, regulation on the size of plots determines an acceptable size that ranges from 900 to 1,350 square meters

- These standards are in discordance with the needs of dense urban centers, smaller cities and urban areas
- place plots out of reach of the low-income population.

Is this an implementation issue?

# MOZAMBIQUE BUILDING CODES

Following an earthquake in 1755, Portugal adopted a building code with restrictive rules for construction - extended to the country's colonies

Mozambique Building Codes require brick or cement block walls and reinforced concrete beams

**NO history of tremors**

Requirements that exclude low and middle income households

**Lack of compliance due to inadequate consideration of local incomes, building techniques, and materials – is it an implementation issue?**

# “RIGHT OF USE AND ENJOYMENT” OF LAND IN MOZAMBIQUE

In Mozambique land belongs to the state and citizens can acquire only a “right of use and enjoyment” ( *direito de uso e aproveitamento dos terras*; DUAT)

According to the Urban Land Regulations, DUATs can be issued after the land has an urban development plan

BUT plans in most cases do not exist and

- low-income households live in informal arrangements

**Is it an implementation issue?**

# COLOMBIA

- Neighborhood plans are approved without the agreement of landowners – their consent is sought only when a law is implemented
- This results in failures and delays in implementation
- Only 44 percent of plans approved in the previous 10 years were implemented

**Lack of prior consultation and participation of stakeholders – is it an implementation issue?**

# UGANDA

Draft planning law in Uganda

designed in such a way that its enforcement and implementation would require 20,000 civil servants.

**Is it an implementation issue?**

# EGYPT

The law requires that detailed plans for cities and villages are prepared by planning offices within local governments

The central government has not provided financial and human resources to local authorities to perform this mandate

only 10 of the 228 participating cities in Egypt have approved detailed plans

**Lack of resources – is it an implementation issue?**

# THE RESULT OF FAILED URBAN LAWS

Laws which are not in line with the needs of the people and local socioeconomic realities. They can result in

- Lack of compliance and loss of credibility for the planning system,
- insufficient land supply, increases in land prices,
- Regulatory barriers that limit opportunities in land markets, exacerbate inequality and discourage investments;
- Predominance of informal structures and formation of slums
- Selective application of legislation in favor of specific groups
- Manipulation of legislation designed to protect the public to enhance the value of land owned by specific groups

## FUNDAMENTAL ELEMENTS OF EFFECTIVE LEGISLATION

Effective legislation is one that has:

- clear purpose
- substantive content that addresses the regulatory problem and **considers enforcement and implementation issues early on**
- Construction that makes it clear and accessible and
- clear methods for monitoring and evaluating results



# A NUMBER OF QUESTIONS NEED TO BE ASKED

- Is legislation necessary ? If yes, at what level?
- What is it there to achieve?
- What are the necessary rules?
- How best to structure the law ?
- How to best express and communicate rules?
- How best to enforce and implement it?
- What are the results of the law?
- What has the law achieved?

## CONCLUSION

The only way to legislate effectively is to consider  
implementation issues PROACTIVELY  
WHEN LEGISLATION IS BEING DESIGNED AND  
DRAFTED