BAD URBAN LAWS

PART THREE

Fiscal Policy

CHARTER CITIES INSTITUTE

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CHARTER CITIES INSTITUTE

THE FUTURE OF DEVELOPMENT

Empowering new cities with better governance to lift tens of millions of people out of poverty.

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- Creating legal, regulatory, and planning frameworks;
- Advising and convening key stakeholders including governments, new city developers, and multilateral institutions;
- Influencing the global agenda through research, engagement, and partnerships.

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1 Angola
Absence of a Mortgage Law

WEST AFRICA — MODERN LAWS

After Angola's civil war ended in 2002, the government launched a big initiative in 2009 to build 1 million homes in the country. However, its Housing Development Fund estimates that the country still has a shortfall of more than 1.7 million houses as of 2019, with about a third of the population lacking adequate housing. One way the government has tried to address this is by contracting with Chinese companies to build multi-story apartments in exchange for oil. However, most Angolans cannot afford these homes and are forced to live in low-quality informal settlements.

The primary reason for this problem is the absence of a mortgage law. Although some banks offer mortgage loans to employees or individuals who meet their stringent mortgage application criteria, most Angolans do not have access to this financing, as two-thirds of the population earns less than $2 per day. Without a legal framework, banks can charge high interest rates—an average of 19.295 percent in 2019—that make loans inaccessible to most of the population. Local banks are reluctant to grant mortgages to most Angolans because there is no legal framework to collect significant debts. Even well-paid Angolans find it difficult to service the high-interest loans. Elias Isaac, country director at the Angolan Office of the Open Society Initiative of Southern Africa (OSISA), has said, "The government needs to start giving priority to building low-cost housing because a great majority of the population lives in shacks with no water, electricity or sanitation."

The effect of the absence of a mortgage law can be seen in Kilamba, a new residential development located 18 miles from the capital, Luanda. The development was designed to house up to half a million people and was built by the China International Trust and Investment Corporation (CITIC) in 2011 for $3.5 billion. They were initally only available in a rent-to-buy scheme restricted to civil servants. Few of these apartments have been purchased because they cost between $125,000 and $200,000, making them unaffordable to most of the population. However, the lack of mortgages and difficulty accessing bank credit was the bigger issue, not the prices, which were "correct for the quality of the apartments and for all the conditions that the city can offer." People cannot access housing finance, so for years Kilamba remained a "ghost town."

In 2013, President dos Santos “ordered that the apartments be made affordable and the state-backed mortgage scheme open to all Angolans,” and the price of the smallest units dropped from $125,000 to $70,000. This made them far more accessible, and all of these apartments were sold by the end of the year. As of 2019, however, some of the larger apartments remain unoccupied, and around half of the residents who purchased their units using the state-backed mortgages have defaulted on their payments.

Image 1: Image shows some of Angola’s social housing projects (CITIC Construction, n.d.)

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2 Tanzania
A Lopsided Mortgage Law

EAST AFRICA — MODERN LAWS

One of Tanzania's most significant long-term development challenges has been providing citizens access to decent and affordable housing. Despite rapid urbanization and increased demand for housing and mortgages, interventions by the government have had minimal success. Many low- and middle-income families in Tanzania had to spend years living in poor or unfinished houses—or renting with little hope of saving enough money to build or buy their own homes. The majority of the urban population is reported to be renting their dwellings.

In 1999, the government introduced the Land Act to boost housing ownership. However, the country's banks had severe reservations regarding the sections covering mortgages, claiming that the law prevented them from repossessing the land of a defaulting debtor. The banks presented their case to the World Bank, which then pressured the government to make the mortgage law more equitable between the banks and borrowers. The resulting Mortgage Finance (Special Provisions) Act of 2008 shifted the balance so that banks were highly favored in the event of a default.

Image 1: Informal houses in Dar es Salaam (SDI 2016)

There have been many positive effects of the Mortgage Finance Act of 2008—which led the country's mortgage portfolio to increase to nearly 5000 properties nationwide, and the number of mortgage providers to increase from four to 33 institutions by 2019. Women comprised 34 percent of the beneficiaries of these mortgages. However, the lopsided law that favors the banks has resulted in disadvantageous policies for borrowers. Banks are charging an exceptionally high interest rate of around 15–19 percent per year, making homes unaffordable for the urban poor. Wary of bad debts, banks have been instituting very high collateral requirements, making many prospective borrowers reluctant to take out a mortgage.

The mortgage law, among other factors, has led to the exponential growth of squatter settlements in Dar es Salaam. As many as 3.6 million residents out of the city's population of 4.5 million reside in informal housing. The 2015 Master Plan for Dar es Salaam set many ambitious targets for the next 10 years, one of which was to remove squatters and informal housing from flood-prone and industrial areas. Although a local court issued a temporary injunction against evictions in January 2016, the government has since continued to work to dismantle informal settlements in Dar es Salaam.

Image 2: A sign warns people not to build settlements on this land near the Simbazi River (SDI 2016)

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3 Nigeria
The Joint Account System

EAST AFRICA — POSTCOLONIAL LAWS

After years of colonization, military control, and civil unrest, Nigeria is attempting to decentralize governance on a broad scale. Following its independence from the United Kingdom in 1960, Nigeria has gone through four different periods of republic rule during which the constitution and the laws that govern the country have changed. Broadly speaking, although Nigeria has made great strides in improving its laws and regulations, many issues still exist in municipalities' banking and financing systems, especially concerning joint accounts.

The joint account system in Nigeria refers to section 162 in the 1999 Constitution, which essentially states that all revenues sent to the main Federation Account must be approved and prescribed by the National Assembly before each State Joint Local Government Account can receive its share. This means that the local governments across Nigeria were stripped of their autonomy in sustaining adequate funding, forcing them to rely on the approval of national leaders. The joint account system has turned into a de facto moneymaking venture for the national government, which closely controls the revenue streams of local councils and districts, thus lowering the overall productivity of certain areas.

Though initially designed so the national government could monitor the manipulation and misappropriation of funds from lower councils, the system has been the center of corruption scandals in which the National Assembly misused government funding. There have been numerous incidents of illegal deductions from local government statutory allocations, delays in releasing these allocations, and the diversion of funds.

The joint account system has increasingly blurred the lines of federalism in Nigeria, jeopardizing trust in government officials at the highest levels. The State Joint Local Government Accounts have financially impaired some local governments that cannot pay for recurring expenses such as public-sector wages or finance developmental projects. The system has also limited local governments' ability to provide services and meet residents' needs, resulting in many urban problems and challenges. These challenges include an inadequate provision of public utilities such as water, sanitation, and electricity, poor infrastructure, including dilapidated roads, schools, and healthcare facilities. Furthermore, the lack of funding impedes local governments' ability to efficiently manage waste, causing environmental and public health issues.

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4 Tunisia
Labor Market Dynamics

NORTH AFRICA — MODERN LAWS

Tunisia has had many periods of growth and development since its independence in 1956. However, it also faced a weak economy and ineffective governments, culminating in the 2011 Jasmine Revolution. One can argue that Tunisia had the most successful outcome of the Arab Spring, with the country casting off its authoritarian president and recommitting itself to democratic reforms. However, it has become apparent that these commitments have weakened in recent years, and Tunisia has found itself again on the brink of collapse.

Since the 2011 Revolution, Tunisia has had a lengthy and poor economic recovery, with an annual GDP growth rate of about 1.5 percent. In recent years, this growth has stalled due to the COVID-19 pandemic, with the economy shrinking by about 8 percent in 2020. General unemployment in the country has reached 17 percent—and up to 36 percent among youth—nearing levels that precipitated the civil unrest in 2011. There are many different reasons for the failing labor market and economy, but there are three specific issues that are most often cited: labor supply pressures, job skill mismatches, and inefficient regulations and institutions that govern the market. These problems can be found in the existing legal framework such as the Investment Incentives Code, the Competition Law, and the revised Labor Code.

Image 1: Protests during the Tunisian Revolution (Belsten, 2011)

Tunisia has one of Africa's most rigid and strict labor codes. Though many revisions were made to the Labor Code in 1966, which strengthened hiring practices and made it more difficult to fire workers, these labor laws only apply to formal employment. About 50 percent of workers are informally employed, so they do not enjoy these benefits. The strict labor laws have also led to the rise of fixed-term and informal contracts, which encourage employers to invest in low-skilled jobs and low-value activities rather than expand, formalize, and modernize. This creates a higher rate of unemployment for the high-skilled workers these laws were trying to protect in the first place.

Over the decades, the labor market's supply pressures have become more imbalanced. The supply of educated workers has increased quickly while job opportunities have decreased. The Tunisian economy did not create enough jobs even when GDP growth was relatively high. New jobs tend to be low-productivity, low-wage, and low-quality positions, not the type that educated youth expect. On top of all this, Tunisian labor laws hinder collective bargaining among young workers, which has disrupted the communication pipeline between the government, educational institutions, and the labor market. As most educated young people live in cities, places like Tunis often suffer the most from those policies. The situation causes migration out of the country for educated youth and marginalization among those who remain but cannot find work, affecting the city's contemporary fabric. This exodus creates a 'brain drain', diminishing the city's skilled labor pool and innovation potential. Yet, Tunis still attracts low-skilled workers as a commercial hub, leading to overcrowding and inequality. The city, while losing high-skilled workers, struggles to support the influx of low-skilled labor, resulting in a significant urban socio-economic imbalance.

Image 2: Protests against high unemployment in January 2021 (Agence France-Presse)

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5 Kenya
Outdated Property-Tax Rolls

EAST AFRICA — POSTCOLONIAL LAWS

After promulgating the 2010 Constitution, Kenya became a two-tier framework made up of the national government and 47 county governments. This led to a more decentralized system wherein county and local authorities are responsible for providing basic infrastructure, including water, waste management, local roads, and early childhood education. The Constitution also increased the fiscal responsibilities of county-level governments, which are responsible for collecting property taxes according to Article 209.

Kenya presently practices a land-value model of taxation, which can be traced back to the British colonial administration in East Africa. Currently, the Valuation of Rating Act is the legal framework for the county government to determine property rates based on their market values, valuations it is supposed to revise every 10 years. However, the rates have not been revised since 1982, and current property values are around 20 to 30 times higher than reflected in the property-tax rolls of county governments.

Image 1: Nairobi City Council building (Facebook)

Historically, property taxes have been an important source of revenue for Kenyan local authorities. For example, before independence in 1963, the city of Nairobi generated 45 percent of its revenue from property taxes—compared to 23 percent in the 2014–15 fiscal year. At the national level, in 2012, total taxes amounted to 15.6 percent of GDP, while property taxes amounted to only 0.01 percent of GDP.

The outdated property-tax rolls have affected the Nairobi County Council's available funds. In 2020, Nairobi's revenue collection was 55 percent less than the target it set for the fiscal year. This has dampened the county government's role in providing basic infrastructure such as clean water to Nairobi slums.

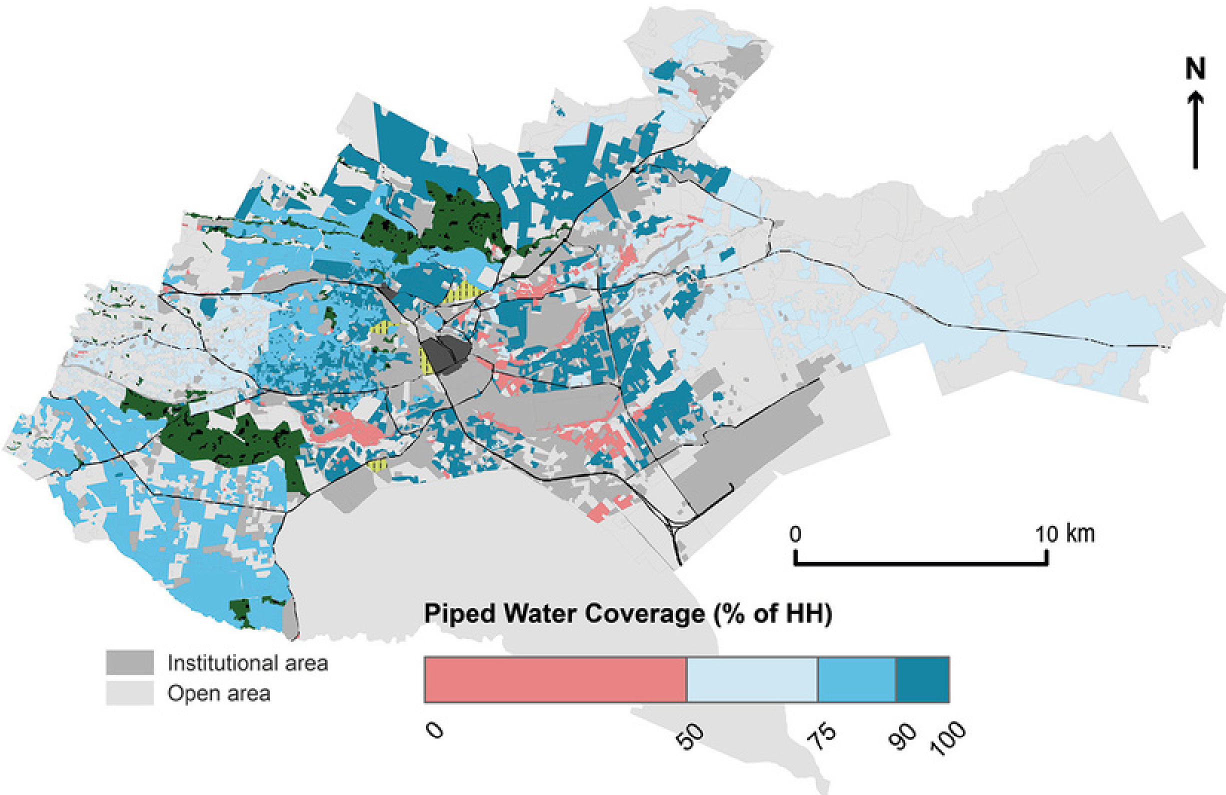

Image 2: Protests against high unemployment in January 2021 (Agence France-Presse)

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6 Somaliland

Nonexistent Land-Ownership and Property-Tax Register

EAST AFRICA — POSTCOLONIAL LAWS

Somaliland is one of the world's poorest and least-developed countries, with a GDP per capita of $428 in 2021. Amid years of war, the land-registration system was destroyed, and very few properties were registered for tax purposes. The capital, Hargeisa, has its own property-tax system, but its revenue was only $169,062 in 2005 despite an estimated population of 396,000.

A significant reason for this is the country's poor fiscal and administrative legal framework. According to Law No. 17/2001, the power to register land ownership lies with local governments. Article 12 of this law states that a person must either pay their taxes or develop their land within a year of registration. If they fail to develop or pay taxes within two years of registering their land, they may risk losing ownership of the plot. This law has discouraged people from registering their land in the first place, and there were only 15,850 registered properties in Hargeisa as of 2004. However, the availability of satellite data enabled the city to expand this number to around 59,000 in 2005, increasing revenue by 248 percent compared to the previous year.

Image 1: The Supreme Court of Somaliland (Sare, 2021)

Since declaring independence in 1991, Somaliland has focused on a decentralized governance system in which local authorities are responsible for raising their own funds to pay for services. Therefore, because so few properties are registered in Hargeisa, the capital has faced difficulties in providing municipal services, as evident in the poor infrastructure in many city neighborhoods.

Image 2: The main bridge in Hargeisa (Somaliland Chronicle 2018)

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7 Senegal
Dakar's Municipal Bond

WEST AFRICA — MODERN LAWS

Senegalese national authorities have adopted decentralization policies such as the 1996 Municipal Code to help ease the burden on national governments and strengthen local government powers. However, despite these intentions, national authorities often withhold development funds from local governments, partly because the political parties in charge at the national level do not want to disburse money to opposing parties in power at the local level. Despite a 2008–12 effort by local councils that increased their total revenues by 40 percent, they still only control about 10 percent of their total budgets.

In Dakar—where 40 percent of residents live in slums—this had contributed to job shortages, public transportation failures, and poor sanitation. In 2009, the newly elected mayor of Dakar, Khalifa Sall, promised to help Dakar become financially strong despite the lack of funding from the Senegalese government. Sall raised financial capital by using the World Bank's Subnational Technical Assistance Program (SNTA) to establish the Dakar Municipal Finance Program (DMFP). The DMFP aimed to launch the first-ever African municipal-bond program, which would help local governments lower barriers to raising capital from willing investors.

After many years of careful planning, securing investment-grade credit ratings, and budgetary review, the municipal bond program was all set to go in 2015. However, two days before the official launch date, the Senegalese Ministry of the Economy rescinded its approval of the program, citing fears that the nation might be liable for any defaults on payments. Dakar had no choice but to suspend the municipal bond program and work within its limited capacity to raise funds for the city.

Though Dakar failed to create a municipal bond, there were many lessons to be learned from the process. Sall showed that it is possible for gridlocked African cities to find workarounds to raise funds. Subsequently, other African countries, from highly centralized Cameroon to decentralized South Africa, have successfully developed municipal-bond programs to aid development. However, cities in countries like Senegal—with decentralized governance but centralized fiscal policies—remain at an impasse.

Image 1: Development in Dakar (Jeff Attaway 2011)

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8 Lesotho
Patriarchal Forms of Landholding

SOUTHERN AFRICA — MODERN LAWS

Image 1: A rural village in Lesotho (Help Lesotho 2017)

Like many African countries, Lesotho embraces chieftainship and cultural practices through customary laws, which are based on traditions rather than formal legislation. Customary laws are often used to preserve specific communities' cultural practices and heritage but, in some cases, can have adverse side effects such as perpetuating gender inequality and infringing on international human rights law.

Traditional elites in Lesotho often use customary laws to exercise their power regarding land-tenure issues within communities. Women are often treated unequally by this system. For example, the Deed Registries Act of 1967 states that government officials can refuse to register property in a married woman's name if this does not comply with local customary laws, instead registering land under her father, father-in-law, or husband.

Increasing women's access to land can significantly affect the rate at which human and physical capital is accumulated, particularly in rural or developing economies. However, in many cases, women in Lesotho renounce their property to preserve good social relationships with their male relatives. Customary law has thus prevented women from owning land, taking away an essential source of finance—but social and legislative reforms could help achieve broader land ownership for women.

Image 2: Sotho women in the town of Hlotse (Help Lesotho 2017)

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9 Malawi
Process of Tenure Formalization

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The Malawian experience demonstrates how a poorly designed institutional infrastructure combined with slow bureaucracy can result in inefficient systems. Many residents decide not to proceed with land registration, discouraged by the high costs of the procedure, unpredictable time frames, and the language barrier (the registration takes place in English, a language only 40 percent of the population is comfortable with). To finalize a title transfer, the applicant must fulfill certain conditions, including covering all the registration fees and costs.

According to the Registered Land Act, the overall procedure to apply for a plot lease includes seven to ten steps, depending on whether the plot is in a planned layout. When there is no plan or sketch of the plot, a general surveyor needs to verify its dimensions, which requires payment, drawings, stamps, and development fees. Only when all the steps are achieved can the land be registered. It can take months—or even years—to register land.

This has two main consequences. First, many people abstain from registering their land at all, resulting in low revenue from land-registration taxes. The other consequence is the deceleration of urban investment and projects that depend on land registration to formally start their business operations.

Malawi has proposed significant new land reforms since 2016. Therefore, improvements in the land registration processes can be expected that will improve land acquisition, taxation, and transfer processes.

Image 1: A rural village in Lesotho (Help Lesotho 2017)

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