BAD URBAN LAWS

PART ONE
Spatial Planning

THE FUTURE OF DEVELOPMENT

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

The Charter Cities Institute is a non-profit organization dedicated to building the ecosystem for charter cities by:

- 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. Algeria
Strict Building Regulations

Even though Algeria gained independence in 1962, most of its laws—particularly building regulations—stem from the French colonial era. Algerian authorities are currently following the provisions of the code de l'urbanisme, which was based on the urban-planning practices of France, a country with a different urban, political, and social context. While some of the codes have been modified, most of the building regulations have stayed the same.

Image 1: Algeria's traditional windows, which make homes more private and block more sunlight (UNESCO/Hana Aouak)

The code de l'urbanisme contains the guiding principles for land development and construction in Algeria. Building permit applications must be filed with the "urban inspector," who then approves or rejects the building plans per the code. Some provisions are extremely stringent because the regulations were designed to produce the type of house found in the suburbs of French cities, which has been very difficult to imitate in independent Algeria. Some codes also require certain design practices that contradict the cultural norms of a conservative Muslim country (e.g., the need to have large windows that open onto the streets).

Throughout the colonial period, there was a <u>disparity</u> between the buildings that abided by the code de l'urbanisme and the informal settlements that lacked the resources to afford the same design. After independence in 1962, Algeria experienced rapid urbanization owing to the burgeoning population and rural exodus to the cities. Most of the people moving from the countryside to Tlemcen, for example, could not afford to follow the regulations when building their houses or to participate in the formal housing market, so they built whatever they could afford, resulting informal settlements surrounding the city.

The de facto informality resulting from strict, foreign building regulations keeps residents from accessing the formal housing market. People who continue to move toward cities have had few alternatives but to move into informal settlements in the outskirts, which are tightly packed and often lack basic necessities like running water, electricity, and sewer systems. Though the Algerian government is trying to <u>reform and update</u> town planning codes, many of those strict regulations are still in place today.

Image 2: The dense old Casbah of Algiers from the highest point
(Fforde, 2015)

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2. Kenya
Rapid Road Construction

Kenya is among the fastest-growing countries in sub-Saharan Africa due to the success of the country's new economic and political reforms—including its focus on road construction, particularly in peri-urban areas around Nairobi and Kisumu. The previous Kenyan government, led by President Uhuru Kenyatta (2013–22), pushed forward policies, programs, and laws to help facilitate building new, modern road infrastructure. Despite these well-intentioned plans, many Kenyan citizens criticize the heavy construction, arguing that it is doing more harm than good to urban growth.

The recent emphasis on road construction can be traced back to 2005, when the Kenyan government pledged to fix the country's dilapidated roadways, which were in need of desperate repairs. However, the rate of construction did not accelerate until 2007, when the Kenya Roads Act was passed. This law consolidated the different agencies and branches of government that oversee road construction and streamlined approval processes. Among the various groups and agencies that this law created are the Kenya National Highways Authority, the Kenya Urban Roads Authority, and the Kenya Rural Roads Authority.

Ongoing works at Chiromo

Image 1: Construction of the Nairobi expressway (Kenya National Highway Authority, 2021)

As a result, Kenya's current road network totals around 170,000 kilometers (106,000 miles), almost triple the amount it had a decade ago. Some of the most significant road projects around Kenya include the modernization of the Thika superhighway, the construction of the Nairobi expressway, and the construction of bypasses in Mombasa, Eldoret, and Kisumu, among other cities.

Though these road projects aimed to modernize Kenya and alleviate congestion across its cities, they have had negative externalities that have affected Kenyans' lives. These policies have exacerbated economic inequality, spatial segregation, environmental damage, and congestion. For example, the Nairobi expressway only benefits the economic elite due to its use of tolls. Drivers of most Kenyan vehicles—mainly matatus, minibuses, motorbikes, and taxis—cannot afford the $2–$3 toll fees, leaving them in the congested streets below. There are also concerns that these highways will significantly increase urban sprawl. Kenyans have also protested new roads and highways that have resulted in the removal of endangered trees and animals, most notoriously the sacred Kenyan fig tree.

We also should not ignore these laws and plans' impact on the stakeholders of spatial planning. The Kenyan government has had to find new business partners and funding strategies for its commitment to substantially improving the road infrastructure. In 2015, the Ministry of Transport and Infrastructure implemented a road annuity program to support the growth of road construction through contractor-facilitated financing mechanisms. Once tolls started being charged on the newly constructed highways, public-private partnerships with companies like the China Road and Bridge Corporation became more commonplace. China has become a significant partner in financing road infrastructure projects across Kenya.

Image 2: People protesting the environmental damage of the new Nairobi expressway (Natural Justice 2021)

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3. Kenya
Confusing Building Regulations and Enforcement

Although Kenya is one of the fastest developing countries in sub-Saharan Africa, this growth poses a risk to many citizens. Kenyans have been building to keep up with increasing urbanization demands, but the government often does not conduct proper inspections or enforce building regulations. This has resulted in a crisis of building collapses throughout the country, leading to property damage and—in many cases—death. The confusing nature of the current building regulations, issued by both local governments and the National Construction Authority (NCA), has made addressing this issue very difficult. In response, the national government has instituted new laws to help oversee the construction process. However, this news has also been met with large pushback, mainly from developers, builders, and contractors.

Kenya's Physical Land Use Planning Act is the focal point for all the issues regarding building regulations—or lack thereof—across the country. It development principles often confuse and complicate relations between local governments and the NCA. While the NCA enforces construction quality standards, county governments are tasked with issuing a certificate of occupation once the building is complete, even though they are largely uninvolved in the inspection process. This has led to approving even lower-quality buildings that ultimately collapse.

Image 1: An NCA official marking a building in Nairobi (Nikirote 2021)

To address this issue, the NCA (Defects Liability) Regulations stipulate that owners of commercial buildings have up to seven years to recall contractors to fix defects in projects at their own cost, essentially dictating the process of contractual obligations. Builders and contractors alike have widely contested this legislation and demanded its suspension, arguing that it increases development costs drastically and that the NCA is overreaching its authority.

Whether this particular law will positively affect the building standards in Kenyan cities is yet to be seen. However, a fix is urgently needed. Poor Kenyan citizens are disproportionately affected by these subpar building regulations, as most of them live in the informal settlements that comprise up to 70 percent of Kenyan cities and their houses are often mixed-use. Worsening torrential downpours—exacerbated by climate change—have also aggravated this situation. According to the UN Office for the Coordination of Humanitarian Affairs, flooding in Kenya in late 2019 killed 132 people and affected more than 160,000 others. Although the new laws could overcome the country's economic stagnation, the lack of proper enforcement of regulations continues to jeopardize Kenyan lives.

Image 2: Building collapse in Nairobi after heavy rains (Kenya Red Cross 2015)

Image 3: A building that collapsed due to alleged flooding (Kenya Red Cross, 2019)

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4. Ghana
Strict Building Codes

In Ghana, private land ownership is inclusive of customary land titles, according to Article 257 of the latest version of its Constitution. The existence of both customary land-tenure systems and mainstream laws has created a conflict in the administration of building standards.

To address this problem, the government of Ghana has passed various laws over the years to keep land use and development in line with a building plan or permit. Some instruments that govern the built environment of towns and cities include the Town and Country Planning Ordinance of 1945; the Town and Country Planning Act of 1958; the Town and Country Planning Regulations of 1959; the 1992 Constitution; the Local Government Act of 1993; and the National Building Code of 1996.

The most widely accepted framework regulating land use in Accra is Section 46(1) of the Local Government Act, according to which the municipal government has authority over physical planning in its jurisdiction. However, although the municipal authority only issues building permits after a rigorous vetting process of building plans, noncompliance with building codes is widespread in Ghana.

According to the doing business index by the World Bank, in Ghana a minimum of 170 days are needed to issue a construction permit. from the acquisition of a land title from the Land Title Registry/Land Commission to the certification of completion for habitation by the Town and Country Planning Department. Developers believe the urban-planning standards are not only cumbersome but also irrelevant since they are largely based on colonial British standards that are ill-suited for Ghana.

Image 1: Launch of Ghana's first comprehensive building code (Twitter/MBawumia)

The Local Government Act 462 requires the developers to seek a permit before commencing construction as well as approval for minor renovations such as increasing the size of windows. Along with this, real estate developers claim that the excessive red tape makes it take four to five years to gain a building permit despite the Local Government Act's stipulated timeframe of three months.

Image 2: Melcom shopping mall collapse (Diario de Leon 2012)

Due to the extensive and cumbersome process of obtaining a building permit, approximately 76 percent of developments in Ghana opt not to get one. This leads to malpractice in construction and the use of substandard building materials. Many buildings are vulnerable and prone to collapse. From 2000 to 2016, Accra witnessed eight major collapses that killed 20 people, with many others missing or seriously injured. The biggest of these was the November 2012 collapse of Accra's Melcom shopping complex, in which 14 people died and 82 were injured. The investigation team cited the use of substandard materials and glaring violations of the building code as the reasons for the disaster.

After the Melcom shopping complex incident, there was a renewed push to revise laws governing the built environment and create a comprehensive and unified legal framework for the entire country. Therefore, in 2018 the government unveiled the Ghana Building Code (GS1207) to regulate the country's construction industry. The document comprises 1700 pages and 38 sections that cover the essential areas of the built environment. It lays down basic requirements for residential and commercial buildings, including planning, management, and construction practices. It too early to ascertain the effects of this new law, and only time will tell how well it is implemented.

Image 3: Closing the building as a reaction to noncompliance with planning regulations (Arku 2016)

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5. Nigeria
The Land Use Act

Nigeria has adopted a host of different urban planning policies and principles to help support its economic growth and establish itself as a significant player on the global stage. This growth is being led by cities such as Lagos, the fastest-growing metropolitan area on the continent. However, despite Nigeria's vision, Lagos still has some of the strictest and most antiquated urban policies in the country, resulting in stagnated, inconsistent, and unequal growth. Even though modernization has been a defining feature in Lagos, more than 50 percent of the population lives in slums and informal housing.

Among the many different policies that have driven urbanization issues, the Nigerian Land Use Act of 1978 has been most critical. Although the Land Use Act was intended to alleviate poverty by formalizing the housing market, over the years its flawed regulations have in fact significantly propagated land disputes, slums, and rapid urban growth.

Image 1: Informal settlement in Lagos (World Bank, 2003)

The Land Use Act aims for effective and sustainable management and control of land in Nigeria by giving the government sufficient authority to acquire, transfer, or assign land and land resources. Its first objective is to curb land speculation by allowing government ownership of property, thus forcing out speculators and stabilizing land values. Other objectives include allowing citizens to own a place to live a secure and peaceful life and allowing the government to easily acquire land for public use.

In actuality, the Land Use Act has made land ownership much more difficult, complex, and highly exploitable. Though it was believed that the transfer of land rights would be more efficient with the government acting as the intermediary and distributor, approval processes became much slower. It also meant regional governors could exploit their powers and expedite land approvals for wealthier groups or corporations. Furthermore, the Land Use Act has made it so that foreigners are entirely barred from owning any land within Nigeria, stalling international growth and investment. The issues stemming from the Land Use Act can most widely be felt in southern parts of the country, where drawn-out litigation over land rights has stalled industry development, infrastructure projects, and the construction of affordable housing. As a whole, less income is in the hands of the average Nigerian, thus affecting the country's overall GDP.

Image 2: Real-estate developer Babatunde O. Gbadamosi of the Lagos State Action Democratic Party has called for repealing of the Land Use Act (Facebook/Babatunde O. Gbadamosi)

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6. Kenya
Spatial Planning Creates Racial Segregation

Residential segregation in Kenya's urban centers can be traced back to the British colonial era. Nairobi, like many other cities in Kenya, owes its birth and growth to the Uganda Railway. When the railroad arrived in Nairobi, the Chief Engineer, exercising the powers vested in him under the Land Acquisition Act of 1894, acquired large swaths of land to build the city. Europeans began building their homes away from Asian and African residents, which led to exclusively European residential areas such as Muthaiga, Upper Parklands, Westlands, and Kilimani. In 1900, the colonial government published the Nairobi Municipal Committee (NMC) regulations, which—together with the Land Acquisition Act of 1894—enabled it to seize land and demarcate it into separate residential areas for Europeans, Asians, and Africans. Colonists continued to incorporate racial segregation into the city's framework through the early 1960s.
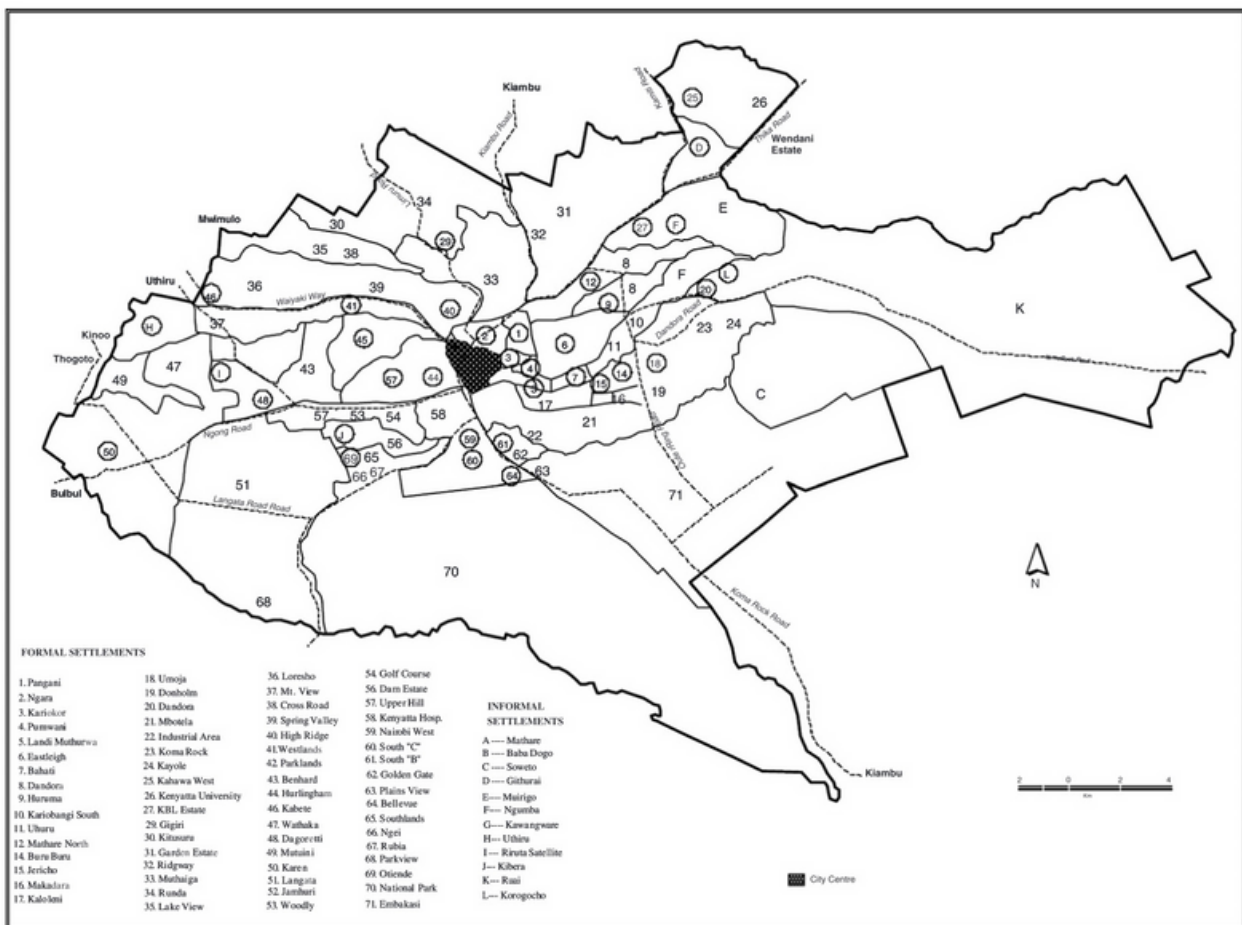

Image 1: Formal settlements of Nairobi as of 1995 (K'Akumu 2007)

This pattern of racial segregation continued after Kenya's independence in 1963. Many Africans were forced to live in substandard housing and shantytowns in the eastern part of the city. The 1969 census noted that 73 percent of Nairobi's African population lived in the Eastlands area, 83 percent of all Asians in Nairobi still lived in formerly Asian-only residential areas, and 82 percent of the Europeans lived in formerly European-only settlement areas.

The colonial spatial planning severely limited Africans' access to land. Subsequently, indigenous Kenyans migrating to the city, who could not find affordable land, created informal settlements. These settlements were first established in the city's outskirts, although periodic demolitions during the colonial era restricted their number. Informal settlements mushroomed after Kenya's independence, from an estimated 500 in 1952 to 22,000 in 1972 to almost 111,000 in 1979. One result has been extremely high population density and crowdedness. An as much as 70 percent of the total population of Nairobi lives on only 5 percent of the residential land (or 1 percent of the city's total land). These areas often "lack public services, proper governance, electricity access, and they face the high rates of unemployment and crimes."

Image 2: Mathare Valley, one of the oldest informal settlements in Nairobi
(Githiri and Mbaka 2016)

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7. Guinea
Rural Land-Right Disputes

Despite being one of the world's poorest countries, Guinea is experiencing an economic boom due to expanded bauxite mining operations in rural areas. These mining operations, mainly located in the northwestern Boke region, have been a stable source of tax revenue and job creation. However, with the industry's growth also come complications regarding land rights, spatial planning practices, and human rights abuses in the rural areas most affected by mining.

Guinea has notoriously bad customary land-tenure laws and inadequate protection of land rights for rural residents, who constitute about 70 percent of Guineans. These issues worsened after the implementation of the Mining Code in 2013, when the national government—aiming to increase economic opportunities for the country—expanded the maximum land coverage for areas surrounding mines, created more jobs for mining companies, and expedited their land-purchase agreements. As a result, many rural residents across the country lost their ancestral farmlands without just compensation. Meanwhile, the mining companies claim that due to colonial definitions of land ownership, rural land effectively belongs to the government and thus requires no informed consent from residents.

Image 1: The Bel Air bauxite mine (Alufer Mining)

Throughout the past decade of mining, rural residents—such as those from the village of Hamdallaye, which was destroyed to create a mine in 2020—have been either forcibly removed from their homes or needed to leave because the land had become unsustainable for non-mining work and living. Pollution of water sources and the mines' high water consumption have reduced families' access to adequate drinking and cooking water. Dust particles from the mines have also smothered homes and worsened air quality.

As Chinese mining companies have started to increase their joint ventures with Guinean companies, mining sites are encroaching closer and closer on rural settlements. Many residents feel the government is leaving them behind, despite local experts claiming that these mining operations are essential to the country's economy. In response, in 2017 spatial planners and experts in Guinea were called to find the balance between protecting communities and satisfying mining companies.

Image 2: Almost 40 percent of "protected" ancestral land in Hamdallaye has been taken over by mining operations (Human Rights Watch 2018)

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8. Morocco
The "Museumification" of the Medina

According to French colonial officials, Moroccan cities and towns did not offer acceptable living conditions in the early twentieth century; they pushed for an interpretation of "modern" French architecture as superior to the traditional Moroccan one. Therefore, French residents lived exclusively in new neighborhoods known as "Ville Nouvelle" while starting preservation projects that kept the old quarters in their original state in the name of conserving cultural heritage. This "museumification" process, which isolated the original medinas from any new development, became common practice.

Image 1: View of the tanneries in the old medina of Fez (Flickr/Alex Torrenegra)

The French protectorate used heritage management as a tool to enforce its ideologies and control urban development and access to cities. As a result of such centralization, Rabat and Casablanca significantly expanded into French-style cities during colonial times. Meanwhile, historical Moroccan capitals such as Fez, Marrakesh, and Meknes, which used to be the country's core, stagnated. Rigid codes and building regulations froze the old medinas—not just forts, palaces, and gardens but also the broader residential and commercial buildings.

Crucially, these tight regulations blocked economic opportunities. They restricted modernization and made it difficult for the medinas to attract new businesses and investments. This had a profound impact not just on the social fabric, but also on the economic vitality of these areas.

By disallowing modernity in these places, the French also destroyed their social meanings. Their conservation strategies emphasized physical structures but completely ignored the ways in which people lived and connected to the spaces.

For example, the famous Jamaa el Fna plaza in Marrakesh is in many ways a French invention. The square had always held a vital significance in the city but never had clear geographical limitations separating it from the surrounding environment. The location had historically been used for many temporary activities, making it look empty to the French, who delimited its boundaries and announced the need to protect and preserve the plaza's shape even though this aspect had not been essential in the history of the urban space.

Since Morocco's independence, other international entities such as UNESCO have been highly involved in building heritage programs for the country's medinas, continuing to import a European idea of preservation that does not allow for the full provision of public services in these areas.
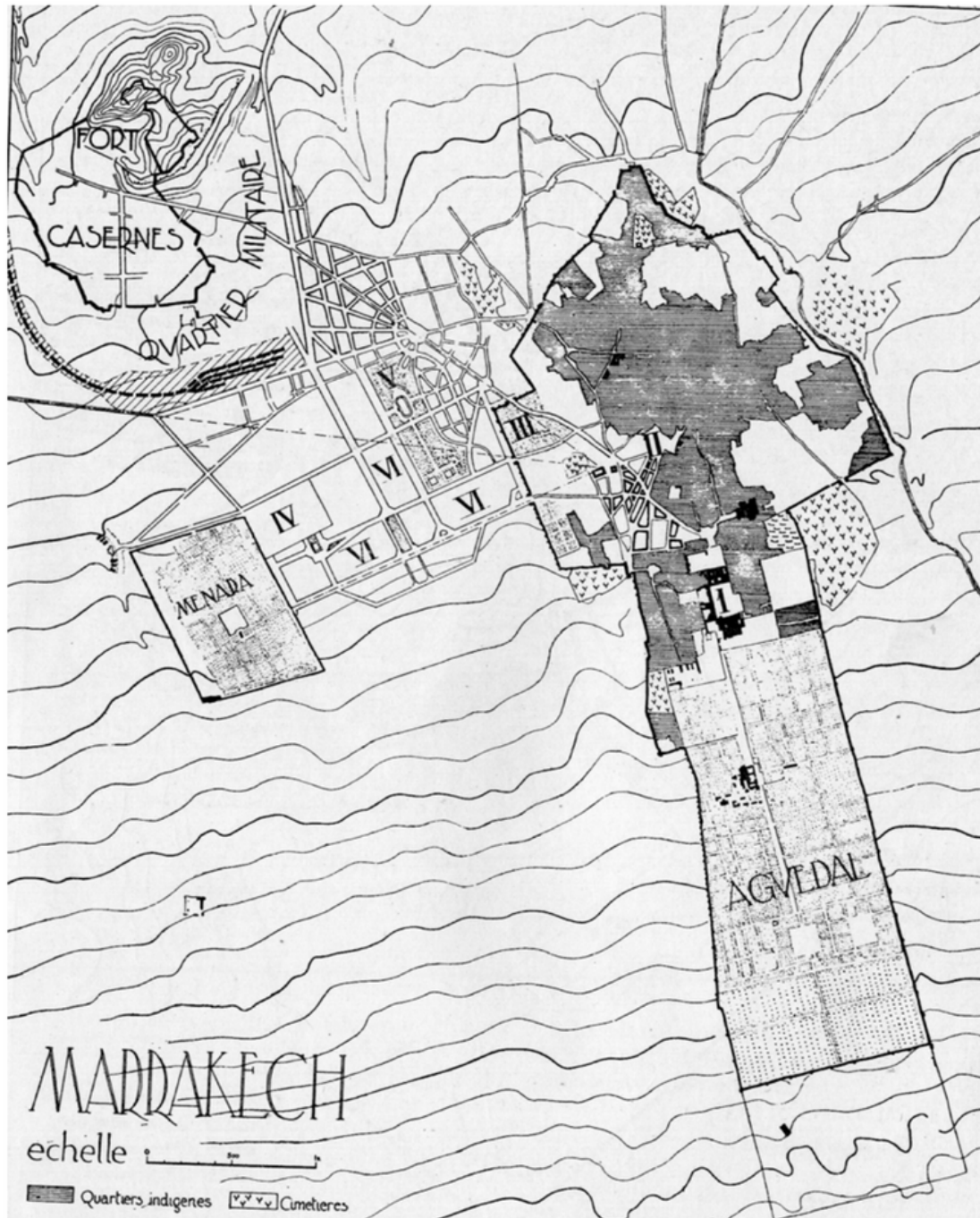

Image 2: The Marrakesh master plan designed by Henri Prost in 1913. The map shows the old medina (represented by the dark spot) and the more spacious "ville nouvelle" on its left (Assia 2014).

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9. South Africa
Failure of Social Housing

South Africa has a long history of spatial segregation. During and before apartheid times, multiple laws were produced to separate non-White communities from indigenous South Africans, including the Black Communities Development Act of 1984, the Groups Areas Act of 1950, the Native Trust and Land Act of 1936, and the Natives Land Act of 1913. Although all the legislation contributing to a racially based residential system was officially dismissed through the Abolition of Racially Based Land Measures Act in 1991, segregation remains deeply embedded in the structure of South African cities, and trying to reverse this has been a prolonged process. South African cities are still some of the most segregated urban areas in the world.

Image 1: Aerial view of the sharp demarcation between different neighborhoods of a suburb of Johannesburg (Google Earth, 2023)

From 1994 to 2006, the South African government concentrated on answering accommodation needs with social housing projects. In those years, more than 3.5 million houses for poor Black families were provided through the Reconstruction and Development Program, launched in 1994, and the Breaking New Ground program, launched in 2004. The strategies focused on delivering free-standing, individually owned properties. These requirements meant such houses were often constructed on the periphery of cities, where land was not as expensive for the government. This approach contributed to additional spatial segregation in cities. Furthermore, to be closer to their jobs, many owners of social houses left their properties to move to more central locations, worsening the conditions in already crowded informal settlements.

In 2006, the government incorporated rental units into the social housing program, unlocking a theoretically more flexible market sector. The intention was to provide more central locations and give people opportunities to access more economic and social benefits. However, from 2011, new projects were again situated in peripheral and suburban areas, in part due to the rise of real-estate values, stagnation of government subsidies, and the unavailability of parcels of land.

Spatial segregation is still shaping South African cities, as depicted clearly in maps produced with data from the 2011 census. A new census was taken in spring 2022. Once the collected data is published, it may be possible to analyze whether the present situation has improved and evaluate the current effects of colonial segregation and past policies on the urban fabric and accessibility to housing.
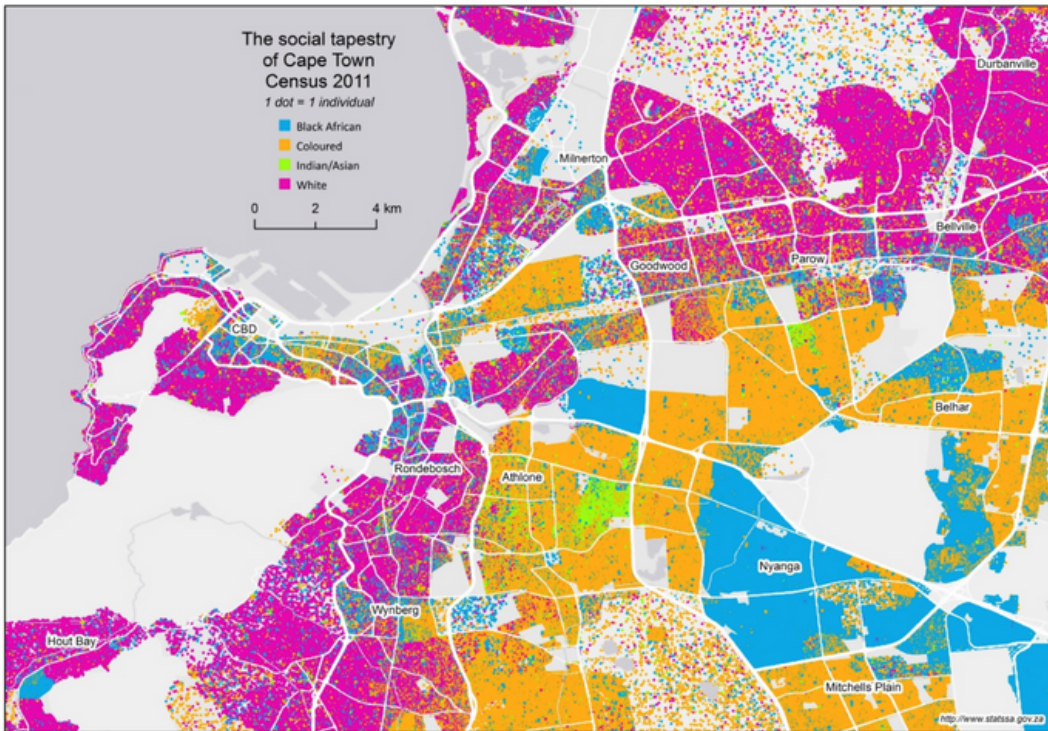
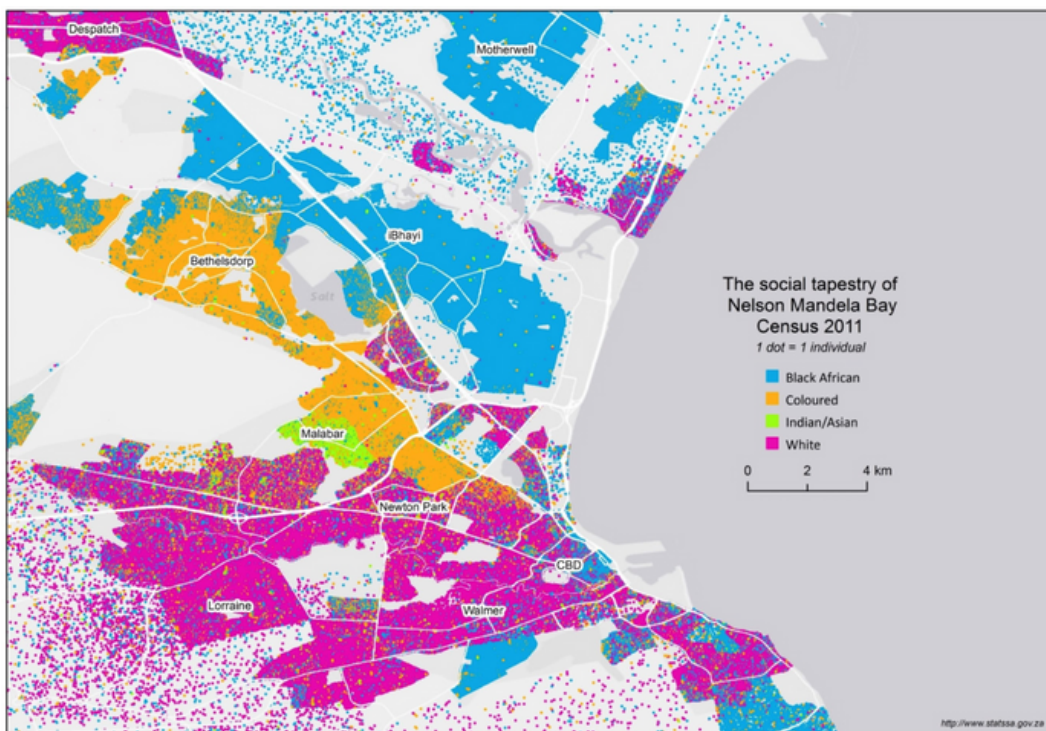**Image 2**: Racial distribution of residents in Cape Town, 2011 (Stats SA 2011)

Image 3: Racial distribution of residents in Nelson Mandela Bay, 2011 (Stats SA 2011)

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Image 2: Statistics South Africa (2016). "The Social Tapestry of Cape Town." May 20. http://www.statssa.gov.za/?p=7678.

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10. Kenya
Imported Building Code

Like many sub-Saharan African cities, Nairobi has developed according to British urban-planning principles. Buildings in the Central Business District resemble those of downtown London, and the land uses of the Kenyan city are also a replica of the British capital.

Kenya imported UK building codes when a civil servant who was part of the city administration copied the existing bylaws of Blackburn (his hometown) for Nairobi. This included British standards for a "proper" dwelling unit that made for absurd requirements in the Kenyan context. For example, the bylaws dictated that roofs had to be able to bear the weight of six inches of snow even though Nairobi is close to the equator and has a warm and temperate climate.

These building regulations remained untouched until the 1970s, when changes started to be implemented. The last revision of the code took place in 2009. More changes were proposed in 2020, focusing mainly on structural requirements, but they are still at a draft stage.

Image 1: Downtown Nairobi
(Pixabay/Nina Stock)

Image 2: West London
(Mike Malone 2018)

Despite the improvements to the original code, the regulations are still <u>based on foreign principles</u>. The bylaws measure lengths in imperial units (feet and inches), even though Kenya shifted to the metric system in the early 1970s. Requirements for minimum entrance spaces, wall thicknesses, and spacing between buildings should reflect the type of housing and dense urbanization in Kenya. Instead, according to the current regulations, houses need to be at least 20 feet away from the street. The code also states that each house should have at least two bedrooms of a minimum of seven square meters, a separate kitchen, and flue ventilation. These strict requirements are not feasible for the majority of the low- and middle-income inhabitants of urban areas in Kenya.
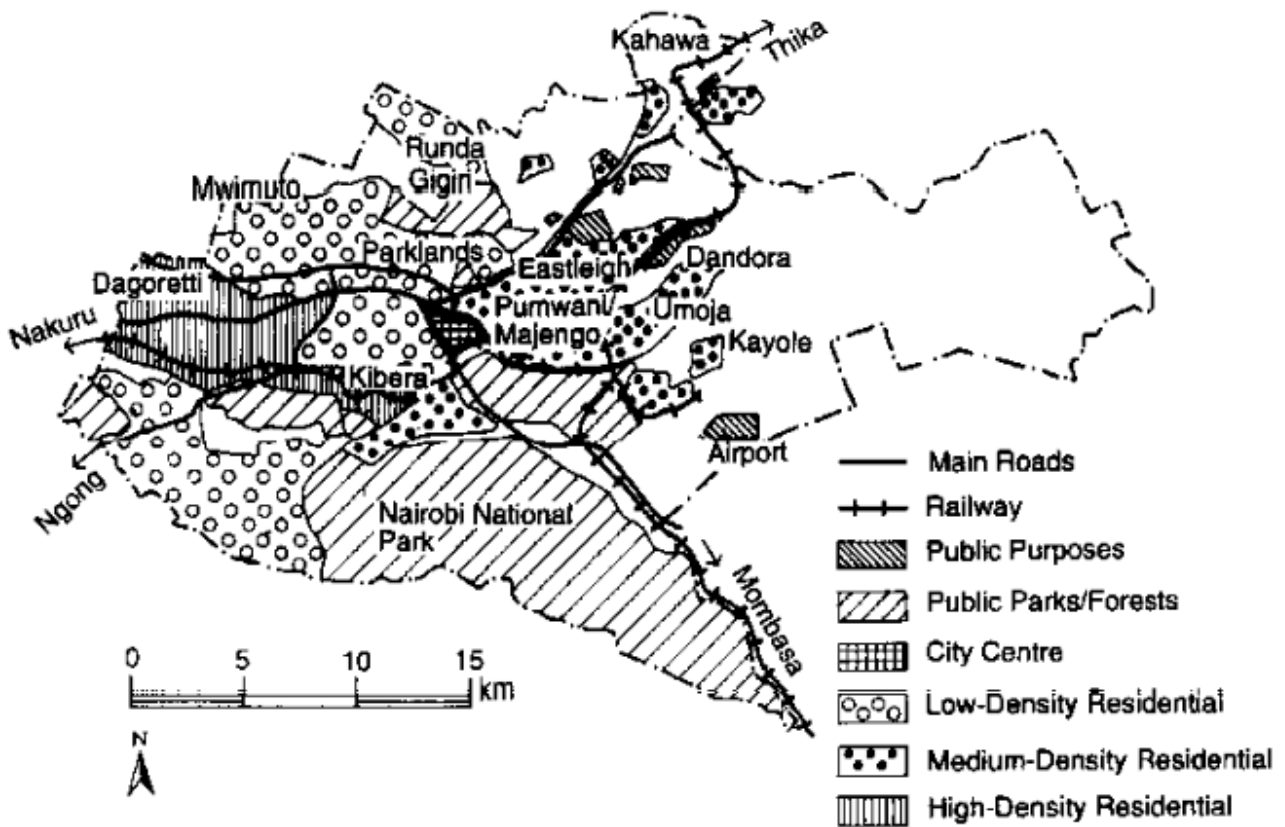
Image 3: The urban structure of Nairobi in 1997 (Obudho 2020)

The consequence of the lack of simple, flexible, and specific regulations is that many citizens do not live in housing that conforms to the code. An unregulated building sector can lead to safety issues; structural collapses are often reported in Nairobi neighborhoods. Another indirect result of the code and its lack of enforcement is the prevalence of slums; some citizens ignore the building regulations entirely and build houses without basic sanitation or access to clean water.

Image 4: The Huruma slum in Nairobi (WPF/Alessandro Abbonizio)

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11. Zambia
Insufficient Land Tenure System

Zambia's land tenure system, based on statutory and customary law, has been a topic of contention. Statutory laws, being written and recorded, often take precedence over customary law in Zambia's hybrid common law system. By default, all lands in Zambia are state-owned and administered, except for those specifically stated otherwise. Yet Zambian chiefs have the authority to enforce customary law as long as it doesn't conflict with the written law or constitution. The complexity of these multiple land ownership laws has led to significant confusion and complications in the land ownership and conversion processes.
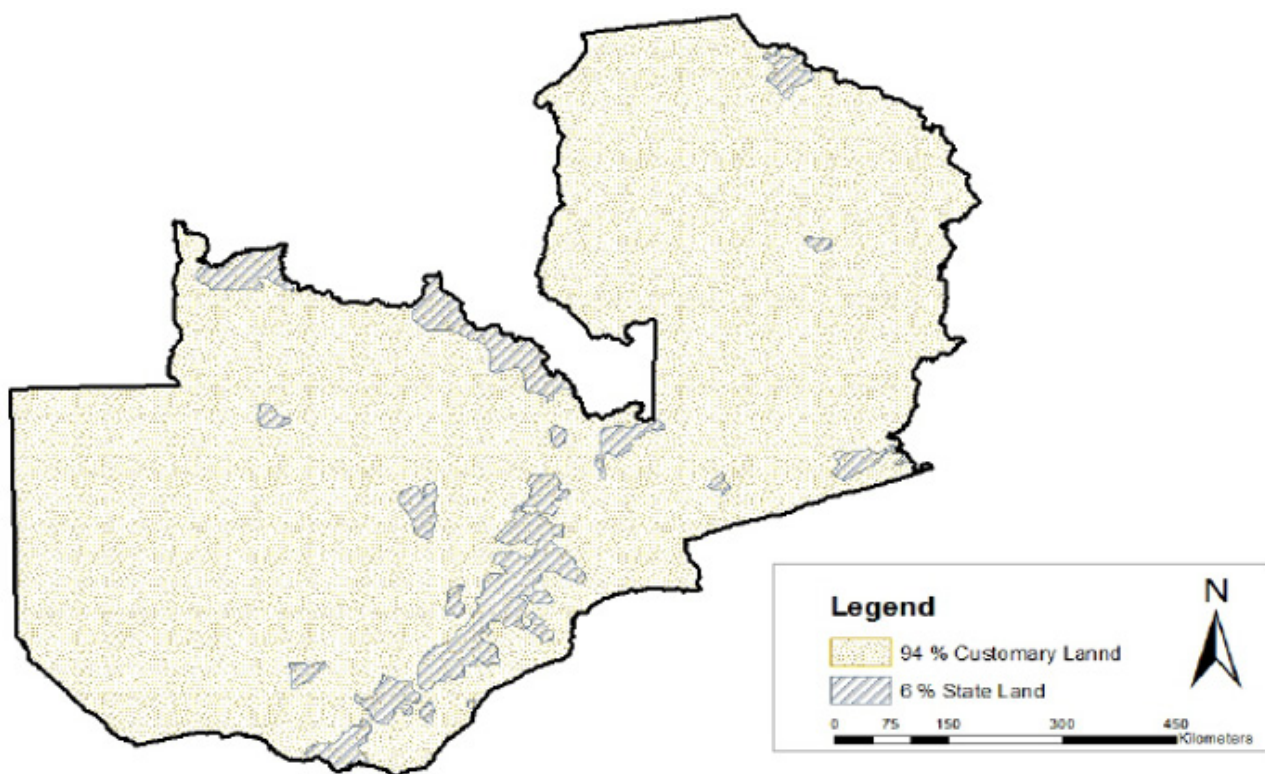
Image 1: Map of Zambia showing land tenure categories
(Hall, Murombedzi, Nkonkomalimba, Sambo, & Sommerville, 2017)

In 1995, the Lands Act was introduced, permitting the conversion of customary land into statutory land. However, the legal processes involved in such changes are often intricate. Chiefs, lacking the necessary legal expertise, often choose to bypass these formal processes, allocating land as they see fit. This practice has resulted in further confusion concerning land ownership.

To mitigate this confusion, the government launched a large-scale initiative in 2014 known as the National Land Titling Program. However, it ended up taking much longer than anticipated due to legal challenges stemming from a lack of comprehensive Land Policy addressing customary land rights in Zambia. These ongoing issues have perpetuated frustration, causing many to forego the legal procedures. Given that the majority of land in Zambia is customary land, the deficiencies in the law have led to significant confusion in land ownership.

Image 2: A newspaper article from 2014 showing the active discussions over customary land issues between chiefs and the government
(United Nations Sustainable Development Goals Knowledge Platform, 2020)

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12. Zambia
Outdated Garden City Planning

Under British rule in Zambia, the legislative council passed the Town Planning Ordinance in 1929. This ordinance stipulated that Lusaka was to be developed as a garden city capital, adhering to a 20th-century planning paradigm that advocated for self-contained small towns abundant with green spaces. British urban planner Adshed drafted the spatial plan for Lusaka. However, the interests of the native population were largely overlooked. The plan did not provide native quarters, and the Town Planning Ordinance effectively banned natives from residing in planned urban areas. The ordinance tied the natives' presence in the city to employment passports. Essentially, Lusaka was intended for Europeans and as a result, native quarters developed organically, with little planning or provision of services.
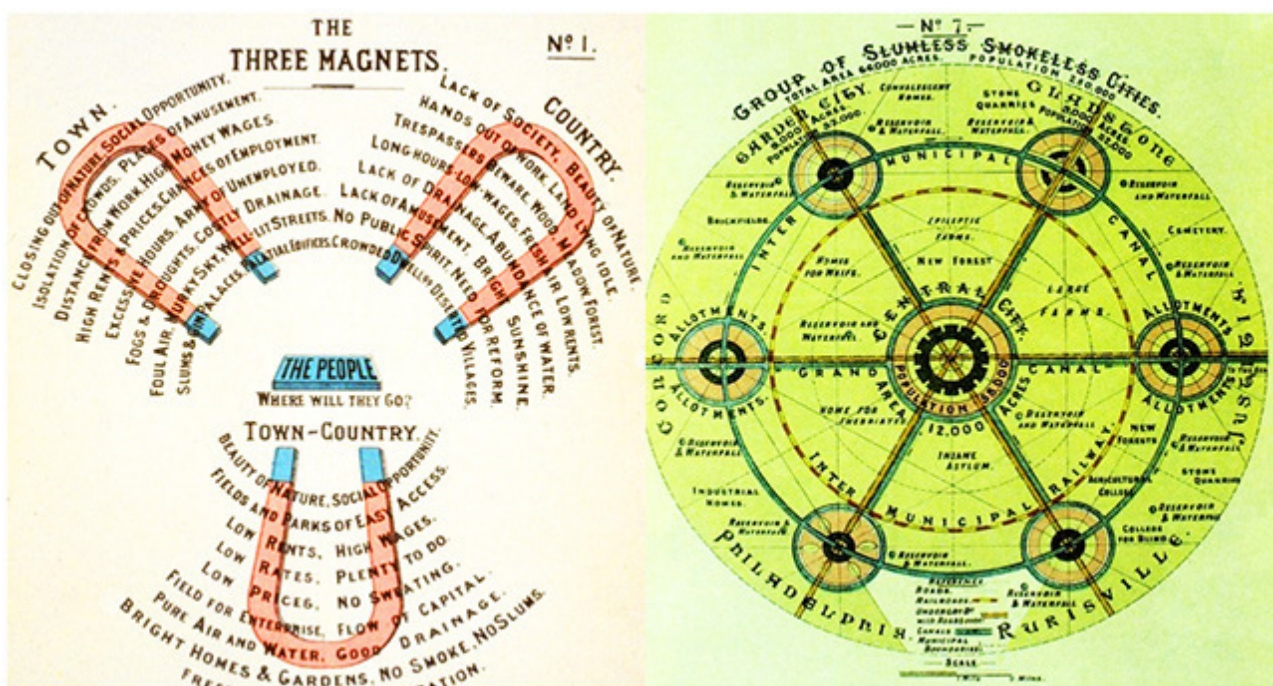

Image 1: Example explaining Sir Ebenezer Howard's Garden City Idea (Garden Visit eBooks, 2023)

Regrettably, <u>Zambian law is still rooted in the 1947 act</u>. The out-of-date nature of these planning laws, combined with the surging population growth and constant demand for housing, has led to an increase in informal settlements. Following independence, many people moved to the city for better opportunities. However, the strict planning laws and the scarcity of accessible housing have resulted in the proliferation of informal settlements. In Lusaka, it's estimated that 70% of the population lives in such areas. This has led to a rise in widespread poverty and disease, as increasing numbers of people are compelled to reside in these areas. The failure to appropriately update these laws after independence has left Zambians to endure the adverse effects of these outdated planning laws.

Image 2: Image showing conditions of one of Zambia's informal settlements, Chibolya (Lusaka Times, 2021)

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