

REBUILDING A MORE JUST,
CLIMATE RESILIENT AND
EQUITABLE URBAN FUTURE
FOR ALL: THE ROLE OF LAW
| A REPORT

DATE

28th October 2021

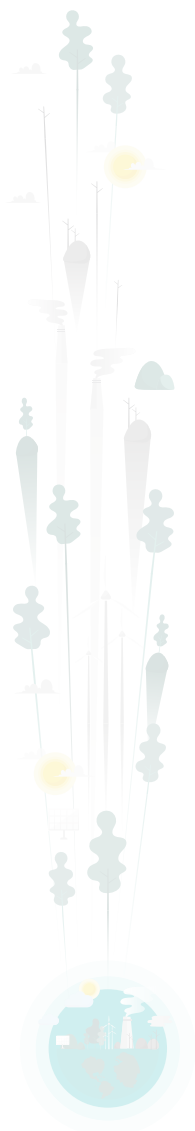
14.00 - 16.00 (GMT+2) SAST

ORGANIZED BY

CLES (NWU) and the Wits School of Law

IN COLLABORATION WITH





UN-Habitat



1. EVENT BACKGROUND

The COVID pandemic continues to leave its mark on the ability of multilevel governments to cope and on the capacity of local communities to prosper. The pandemic has deteriorated city governance, in particular concerning service delivery, and has negatively affected local democratic processes and accountability.

It has deepened pre-existing resource deficits, strained social cohesion and fueled manifestations of civil discontent. From an urban law and governance perspective, the pandemic has seemingly triggered the need for:

-  A new social contract, one that must be re-invigorated by the rule of law and respect for human rights;
-  Innovation in designing and implementing principles, accountability measures, intergovernmental support and intervention initiatives, and suitable remedies to sustainably address failing or struggling local governance;
-  Understanding community-wide tragedy and disaster as well as socio-ecological resilience through a human rights lens; and
-  Assessing the content and impact of urban initiatives aimed at tackling climate change and protecting natural resources, given that cities are the epicentres of health and environmental crises.

Against this backdrop, UN-Habitat, CLES (NWU) and the Wits School of Law hosted a joint Urban Law Day on 28 October 2021 as part of the global "Urban October". The event took the form of an interactive virtual panel discussion involving:



Mr Robert Lewis-Lettington
(UN-Habitat)



Prof Sheila Foster
(Georgetown University, USA)



Prof Susan Parnell
(University of Bristol, United Kingdom)



Liteboho Makhele
(South African Cities Network)



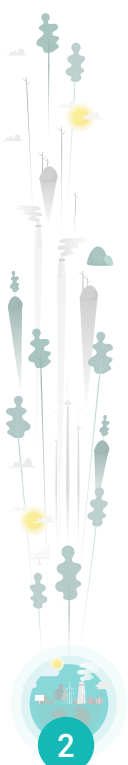
Prof Marius Pieterse
Moderator

A total number of 87 people signed up for this Urban Law Day.

2. KEY MESSAGES CONVEYED



In his presentation, **Robert Lewis-Lettington** stood still with a few questions. The first of which was: what does it mean to 'rebuild' and whether rebuilding in the urban context in an era of COVID-19 is a need or an opportunity? Leaning towards an interpretation of 'opportunity' Lewis-Lettington argued that the role of law in rebuilding a more just, climate-resilient and equitable urban future for all has to do with the management and balancing of relationships and with how we bring these around for longer-term good. The law may end up becoming a political process in this, but Lewis-Lettington suggested that we look at how the law operates in a different and novel way. In this vein, he highlighted the meaning and relevance of injustice regarding climate change and how it requires maturity – we must pursue a just future – it might not be achievable immediately but we must pursue it pragmatically.



He argued that we need to look carefully at what climate resilience means and how we achieve it in the urban / city context – also by way of law and law reform processes. Lewis-Lettington stated that we need to protect economies as well as socio-ecological systems in what tends to be a very unjust urban environment, globally. Regarding equitability, Lewis-Lettington made the point that it is a process and state of being that requires a strong legal framework to achieve and maintain it in a world plagued by climate change and COVID-19, where find ourselves now, in the year 2021. He concluded that cities are spaces and places which the law should not (further) fragment; cities are admittedly institutions that are difficult to manage while the law battles to address 'the urban'. But the potential of law is real in that it has a very important role to play in keeping relationships and urban systems (and institutions) functional.

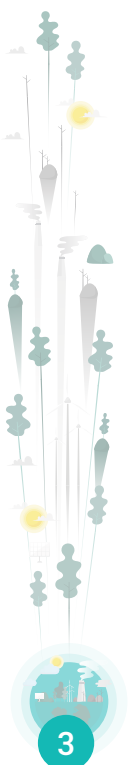


Susan Parnell's presentation focused on a positive point of politics where there is scope for action to implement a set of values in the context of urban rebuilding. She made the point that the question of rebuilding takes us beyond the individual – we need to scale up for the degree of robustness needed for socio-ecological change. For this, different framings of the city are required. She referred to a few normative frameworks such as that of Sen. But, argued that if you are thinking about the more just or climate-resilient city, a legal angle is necessary and that we need to understand how states work to understand the role of law. Parnell used the substantive focus of the so-called PEAK project as an explanatory example.

Parnell argued that without meaningful law reform, constructive change in the short to medium term, cannot be achieved. She stated in this regard that the “intelligence capacities” of local authorities are legally relevant, for example, control of data (e.g. by municipalities) and standards (how do we measure and what do we measure in local government). She further held that information and the legality of information are fundamental to prediction – to understanding and responding to urban futures e.g. with reference to urban informality. Parnell made the meaningful point that the law is catalytic of what happens in cities considering the force of neoliberalism – and that this has huge implications for how we all see the city. We should understand and appreciate urban processes and trends “through a legal eye” – e.g. in relation to densification, use of land etc. Parnell made the point that the role of law in the urban age we live in can be progressive or retrogressive. “The law is the single biggest force determining the size and shape of cities”, in her view. Parnell concluded by saying that we do not talk often enough about the sediment of the city is impossible to understand without understanding the law – absent and present law. Equally important is knowledge (of the law) in the transformative process in the urban context - critical faculties should be used in a formative way. Rebuilding cities require us to understand 'what to preserve etc.' versus understanding 'what is wrong'. She left us with the knowledge that “law is the cement that holds the city together”.



Sheila Foster presented her views on how municipalities (cities in the traditional sense and otherwise) are enabled by law to respond to climate change and other global challenges. In a federalist system like that of the USA, a lot of power sits with the states (sub-national authorities). This leaves a lot of room for local government to innovate e.g. with relation to climate mitigation (reducing carbon impact) and adaption (responding to climatic events such as heat waves). Adaptation responses may typically focus on frontline communities and those most vulnerable, for example, and has a strong focus on 'climate equity' - also in the name of effecting a just transition.

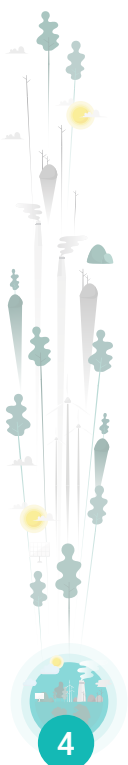


She argued that cities have a lot of opportunities to innovate to the extent that they have a lot of assets and infrastructure that add to greenhouse gas emissions, for example. In the USA states are however pre-empting some of the local action around climate change. Local governments are typically regulating in three areas: land use and building codes (green design standards etc.); renewable clean energy standards (e.g. renewable targets for transitioning to 100 percent clean energy by a set date); and budgetary restrictions (e.g. divesting from fossil fuels at city level). Examples of inclusive governance mechanisms in local government in the USA are plentiful - cities like Boston are including local communities in the design and implementation of local building standards, for example - and this makes for responsive local governance. Furthermore, equity features in redistribution and targeted financing in local communities. Overall, Foster conveyed the message that there is a lot that cities can do in the face of climate change and other pressures - and that cities in the USA (large and small) are doing already - subject to vulnerabilities such as state preemption.



In her presentation, **Liteboho Makhele** gave an overview of the work of the South African Cities Network (SACN) with a focus on governance and how cities can change how they govern the sustainability transition. She highlighted the national policies of South Africa that enable and encourage municipalities in the country to act on climate change and related areas - many of such policy statements being replicated locally. The well-known and widely acknowledged challenge is implementation - so what then is the ability of these to help with the required transition? Makhele made the point that institutional and legal transitions may be required. Findings of research projects of SACN (and its 8-member metros across South Africa) show an appetite for such transitions despite politics, economic pressures and other external factors.

She reminded the audience that the SACN's most recent State of SA Cities Report stated that cities need to start embedding sustainability in their day-to-day operations - acceleration needed in cities beyond the letter of policy (and even law). The real question is whether we know how cities are doing as far as the move towards sustainability is concerned. For this, it is important to track progress in clear terms e.g. via realistic and meaningful indicators. Often, the policy architecture looks good on the theme and goal of just and sustainable transition and climate resilience - however, the successful implementation and outcome of this goal depend on an "all of society"-approach and cooperative governance. In some cities (at least in South Africa), it was found that intermediaries play a crucial role in brokering partnerships. This was highlighted for example by the Day Zero situation in Cape Town a couple of years ago. Makhele concluded by stating that cooperative governance is the 'unlocking lever' for a meaningful law and policy response to the climate-related and other sustainability challenges that cities experience.



3. QUO VADIS?

This Urban Law Day cast light on a couple of areas that remain in need of further deliberation, research and conversation in the law and cities discourse:



Multilevel, multiscale and multidisciplinary interventions (e.g. for implementing the SDGs) required;



Legal principles give us a normative framework but the nuts and bolts on standards and requirements etc. are most important to effect real change;



Cities should be bold in terms of taking innovative legal and policy action towards transition and change;



Differentiation (to space, legal frameworks, institutional design etc.) remains important for understanding the capacity and constraints of cities and towns of different sizes and resources in the response to climate change conversation;



Law is to create a public good – the post-COVID city is an ideal place to do that;



(Urban) law that is good would be implementable / implemented;



Incentives and requirements in law have an equally important role to play;



Information on and from, and legally relevant challenges in the urban environment are complex and not always in the control of the state;



The law 'holds and binds' and should be understood as such;



Rights-based language does not always assist to understand and address urban problems in an era of global climate change and COVID-19; and



Law should give longitudinal life – law cannot only stop at saying what should be done since the law is a conduit for change but only if it sufficiently deals with the detail of problems and their solutions.