
Devolution by court injunction: The case of land use planning and management in South Africa

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Abstract

In South Africa, the legal and policy framework for land use planning and control underwent a significant transformation in which power over land use planning and control was shifted from provinces to local governments. This shift has taken over fifteen years to materialize as national and provincial governments resisted the devolution of authority. It was ultimately made inevitable by five Constitutional Court judgments in which local government asserted its authority. This article discusses the importance of the reform of planning laws in Africa and outlines key tenets of the recent reform. It discusses the devolution of planning powers to local government and the role played by the judiciary in unlocking the impasse. The central question is whether the court-led transformation of the planning sector was the appropriate mechanism for ushering in change. It is argued that the consequences of devolution for the planning sector in South Africa have been very significant and not all unreservedly positive. It is furthermore argued that the developments in South Africa are relevant for other countries on the continent, particularly as more and more countries constitutionally entrench devolution or decentralization programmes.

Introduction: The Importance of (Changing) Planning Law in Africa

Land use planning and control is essential to the role of cities and towns to shape the future of their communities. The law, underpinning this role, is equally important. In essence, “planning law determines which buildings are legal and which are not” (Berrisford, 2013: P 1). Planning law gives birth to planning instruments that shape economies and influence social and political life in cities and towns. They are adopted and implemented in order to mediate a range of different objectives. Firstly, planning instruments guide infrastructure development. New developments need to be connected to municipal services. Municipal governments must therefore be able to exercise some control over new infrastructure development in order to ensure that the infrastructure is included in the grid of municipal services (water, electricity, sanitation, road networks etc). The erection of new infrastructure without proper connection to municipal services leaves the users of such infrastructure deprived of essential services and is a recipe for underdevelopment and marginalization. Secondly, planning instruments contribute to certainty and predictability with regard to what will be permitted in a particular area and

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