Public Spaces and Informal Work – Principles and Approaches to Policy Making

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Overview of presentation

1. Contextualise the problem:
   - Overview of law /policy impacting people
   - Who is impacted?
   - What is the impact?

2. Principles/Approaches to Law & Policy-Making

3. Conclusion

Overview of the problem

- In many developing countries, laws and policies, particularly at a local government level, governing economic and social interactions do not afford equal opportunity and protection to a large segment of society, who are mostly poor, minorities, women and other marginalised groups.

- Laws and policies tend to restrict people from working or performing life sustaining activities in public spaces, and also have the tendency to criminalise the socio-economic status of people.

- It is especially at a local government level where legislation and policy regulate how people ought to behave and interact with the environment, public spaces; as well as interact with others:

Overview of the problem

- ***Example 1: urban, spatial planning legislation and policies***

- Often urban, spatial planning legislation and policies restrict public space for particular usages or activities or to certain times and zoning legislation determines how land can be used.

- ***Example 2: local ordinances/by-laws***

- There are offences against local government laws that target behaviour that is not inherently criminal, but rather a perfectly normal action such as selling or producing something, or walking or being in a particular area. What seems to be at issue here is not the act itself, but rather the context: where it is done, when it is done, how it is done and by whom. To this should be added that the offence may not be any of these, but rather not having the necessary permit to do so.

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Who is impacted ?

- There is no closed list of people impacted by these laws and policies.

- These laws impact people who rely on access to public spaces and the informal economy for survival. The poor, homeless, people in informal settlements, informal traders, persons with disabilities, migrants, minority groups.

- e.g. Street traders, informal transport operators taxi or bike operators, waste pickers /informal recyclers, car guard, etc.

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What is the impact ?

- High poverty and unemployment rates around the world and especially in Africa, result in people relying on the informal economy and street living for survival. Local policies and laws tend to punish persons earning a living or seeking work opportunities in public spaces.

- Contravention of local ordinances or by-laws is frequently treated as a criminal offence, compromising informal dwellers and workers' livelihoods and often violating their human rights. They are often harassed by local law enforcement officials and are denied due process protections under the rule of law or constitutional obligations.

What is the impact ?

- Offences against local government laws are victimless offences, in the sense that only the state is the injured party, yet the enforcement is often disproportionate and can have serious consequences for the poor.

- International and regional human rights norms and standards provide people living and working informally in public spaces fundamental rights and protections and various human rights mechanisms has called upon states to do away with laws and policies that criminalise people relying on public spaces.

- Despite this, the use of public spaces is still arbitrarily regulated in most jurisdictions.

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Principles/Approaches To Law & Policy-Making

Principles/Approaches To Law & Policy-Making

- There is growing evidence pointing to the problematic way in which public space is governed and that reconceptualization is needed to shift public law from criminal to an administrative framework.

- Essentially, it comes down to the manner in which authorities formulate and implement public policy and involve the people mostly impacted their decisions.

- The process by which policy is developed has an important impact on the quality of the policy. The process is important and this is even more so when the wellbeing of those perceived to have less power is at stake.

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Policies should be designed around outcomes

- The policy-making process should clearly define the desired outcomes that the policy is designed to achieve.

- The process must consider statistical data and trends and informed predictions of social, political, economic and cultural trends into the future of the likely effect and impact of the policy.

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Evidence-Based Policy Decisions

- The decisions of policy-makers should be based on the best available evidence. This can be done by looking at commissioned research or reviewing existing research on the issue or problem.
  - Eg. vagrancy and other related by-law offences: There seems to be an over-eagerness to resort to criminalisation and law enforcement to deal with issues associated with people performing life sustaining activities in public. While certain behaviours may indeed be problematic, this needs to be unpacked with regard to: What is the problem? What is the purpose of these laws and their enforcement? How does it contribute to making society safer and what is the evidence for this? If there is no evidence that the outcome of having such law enforcement policies result in public safety, then it cannot be sustained.

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Inclusive, Public Participation

- The policy and the policy-making process should be inclusive. Consultations should take place with those affected by the policy and authorities should seek feedback on law or policy from the public.

- The process should also involve key stakeholders directly. The policy-making process must take account of the impact on and/or meets the needs of all people directly or indirectly affected by the policy; especially the poor and marginalised.

  - For example, in the case of street traders, authorities should recognise that their use of urban spaces contributes to employment, accessible and affordable products (e.g., food) and poverty reduction and they should be allowed to partner with authorities in deciding on the rules for use of public spaces (i.e., licensing fees, hours of operation, etc).

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Inclusive, Public Participation

- Opportunities for participation also include calls for written comments within reasonable timeframes, public hearing opportunities, stakeholder engagements, and de-briefing sessions after the implementation of laws.

- Based on lessons, the following challenges should be borne in mind when engaging the poor in policy-making at the local and national level:
  - establishing the conditions for dialogue (which requires both time and commitment);
  - coping with diversity (as the poor are not a homogeneous group);
  - raising the capacity of the poor to participate (e.g., by encouraging self-organisation by the poor).

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The Policy-Making Process Is Outward Looking

- The policy-making process should take account of varied influencing factors (nationally, regionally and internationally) and draws on experience in other countries or localities.

- For example, this approach looks at how other countries dealt with a problem the policy wants to address.

- Furthermore, policy decisions must be assessed against a country's international and regional commitments to key human rights treaties.

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Innovative, Flexible and Creative Policy-Making Process

- The policy-making process should be flexible and innovative.

- People should be able to provide their inputs and suggestions.
  - Eg. The process should consider new methods in which the poor is accommodated and included in the policy-making process.

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Interdepartmental Communication Links

- It is important to consider a policy-making process that look beyond departmental boundaries and identify inter-departmental solutions to cross cutting issues. Further, communication links between departments are essential and it may be beneficial to consult those responsible for policy implementation.

- An example of this would be street traders being impacted by various by-laws or policies at the same time (i.e., urban or zoning, traffic, health, sanitation, environment, etc).

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Policy review and evaluation is key

- The existing or established policy should constantly be reviewed to ensure it is really dealing with problems it was designed to solve.

- For example, the people affected by the policy should be consulted to provide feedback on the policy implementation to determine if it works or if it is rather creating more barriers for them. Their feedback should be vital and action needs to be taken to remove redundant, failing policies or policies that are barriers to them.

- Systemic evaluation of the effectiveness of policy should be built into the policymaking process.

- Good policy-making learns from experience of what works and what does not.

Concluding remarks and recommendations

- A rethink is needed on how poor and marginalised people are considered, included and involved in law and policy-making impacting them since they are often excluded.

- The state will be more responsive to the poor, if local governments implement policies that are efficient and responsive to the poor and allow for broad participation in policy-making.

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Thank you

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