

The Legislative Framework for Urban Planning: No Voice for the People

“We know what the merchant wants, what the bank wants, and what the municipality wants, but nobody ever asked the people what they want.”

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During our field research in the orchards of East Wastani in the southern city of Sidon, we were stopped by Rua, a girl about twenty years old. Having found us carrying maps and cameras (“experts”), she followed us to ask, “Are you from the municipality? Or from the planning directorate? What will happen to our home? Do you know anything? Will they evict us?”

Initially, we did not understand her completely or comprehend the severity of her concerns about the plan to be implemented in East Wastani via the new land-pooling and subdivision project that the Sidon municipality is promoting.[1] That is, until we realized that Rua’s concerns were a story about not just her and her family, but an entire group of people living on a certain patch of land and all the temporal and spatial circumstances that led to their presence and their clash with urban planning.

Rua introduced us to her aunt, who told us her story with what they call the “old land-pooling and subdivision” project that was adopted as part of Sidon’s last general master plan, issued in 1995. [2] She recounted,

My daughter, her husband, and I had lived all our lives in the old land-pooling and subdivision area. The land consisted of an orchard and a house, and we had been orchard workers for sixty years, living in the old stone house. Even my grandfather was an orchard worker and was born in the orchard. The land’s owner bought it in my grandfather’s time. It was a loquat and banana orchard. We worked it, and he rented out the land. When the land-pooling and subdivision project was carried out, the land became blocks and couldn’t be farmed because of the network of new roads. The landowner cleared the orchard in 1995, but we stayed in the house. In 1999, the owner wanted to evict us without compensation, but we filed a court case. We lost the case because we demanded compensation after the trees were cleared. The law specifies that an orchard worker’s compensation is calculated on the basis of the number of trees. After losing the case, a local *zaim* [one of Lebanon’s elite political leaders or *zuama*] gave us some money. After the eviction, we lived in a tin house with the *zaim*’s assistance. Of course, they let us live here in return for our votes. They came with a car to take us to vote.

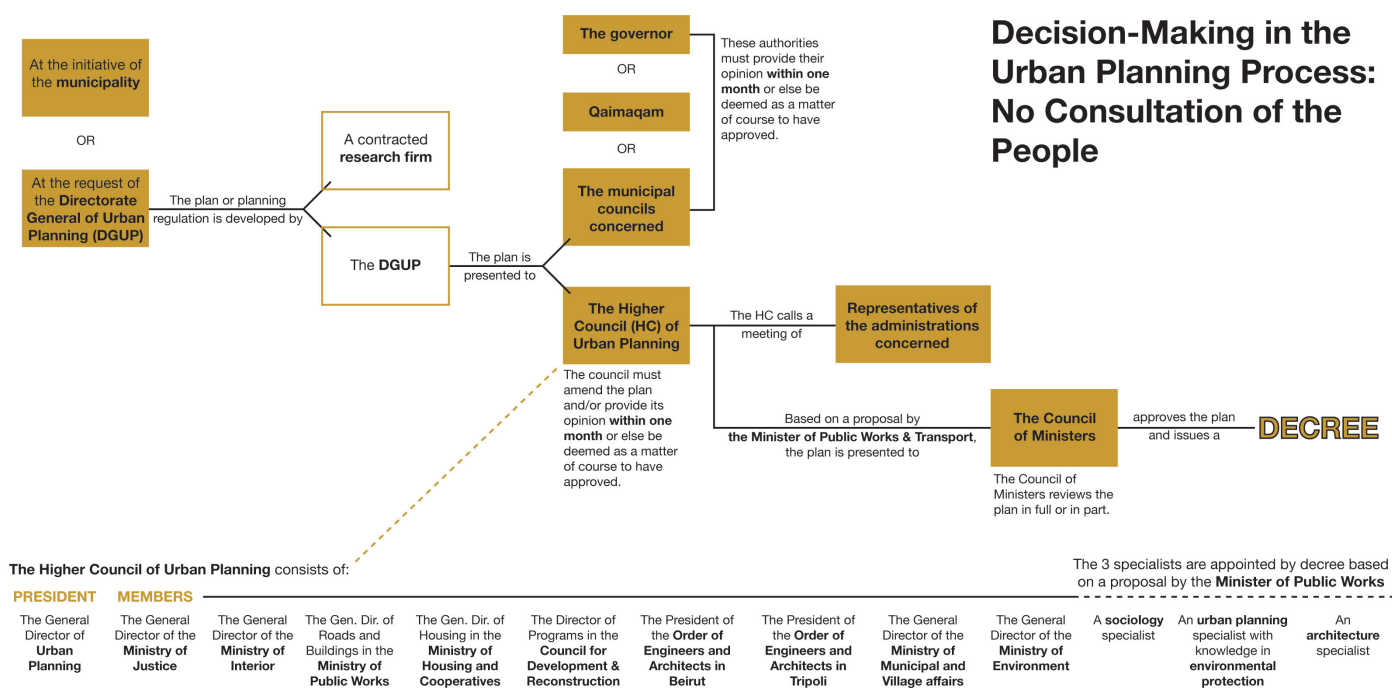
(The daughter said, “We went, but I stepped behind the curtain and cast a blank ballot”.)

Although agriculture was the mainstay of Sidon’s local economy, the economic and political actors in the city pushed for subdivision, and the orchards fell victim to real-estate speculation. This contributed to the fall in the value of the local farmers’ products, and the small-scale industries that depend on agriculture also lost their productive efficiency. This vision manifested itself in the city’s general master plan, which expressed one orientation for the economy at the expense of the others.

The state and local authorities in Lebanon have forgotten the main role of regulations and general master plans, namely to be a means of organizing communal life and negotiating between different interests. They have also forgotten that these plans and regulations serve a social purpose in dealing with urbanization and environmental issues that have a daily effect on all our lives. In some cases, the plans have even become a tool for extending political and *zuama* control and for pressuring ordinary people.

How are urban plans and regulations developed? Has the development process been directed by constraints, rules, or a comprehensive vision? Are the interests of all residents – such as Rua and her family – represented? If so, how? Why does Rua not know the fate of her house and family, and are there means available for them to resist the project or for representing and negotiating between different interests?

How are Master Plans and Planning Regulations Developed?



In Lebanon, urban planning occurs on the basis of Law no. 69, issued via a decree in 1983. The law defines the process of issuing plans and regulations.

General master plans sketch the general framework of the physical planning and set the basic orientations for planning a given area. According to Article 3, they must “take into consideration the relationship between residential communities and the neighboring areas and then the balance that must be preserved between the development of urban areas, on one hand, and the conservation of natural sites, agricultural activities, and forest areas, on the other”. In an interview conducted we previously conducted with engineer and former General Director of Urban Planning Mohamed Fawaz, he explained that “The master plan is ... tantamount to a directive that sets the outlines of the land-usage plan”.

Detailed master plans, on the other hand, set the detailed rules and conditions for land usage, such as the principal use, exploitation ratios (which limit the permitted size of a structure based on the size of the underlying property), road network, public areas, industrial areas, and easements.

The general and detailed master plans and regulations are developed by the GDUP, most of them at its own initiative and a minority at the request of the municipalities. The GDUP drafts the plan

and presents it to the municipality, which provides its opinion. The draft is then presented to the Higher Council of Urban Planning (HCUP). Finally, it is presented to the Council of Ministers to be ratified via a decree. If it is not ratified, the HCUP's decision becomes invalid after three years.[3]

During this process, approval for general master plans must be obtained from the municipalities within whose limits they fall, per Article 51 of Decree no. 118/77 (the Municipalities Law). The municipal councils must give their opinions on the plans and regulations within a month of receiving them or be deemed as a matter of course to have approved them, per Article 11 of the Urban Planning Law.

Based on these texts, the municipal councils participate as a matter of course in the decision-making process and can provide their opinions on the plans and regulations. However, the legally defined timeframe of one month is very short. The function of the municipal councils – i.e. the local elected officials – includes ensuring that the local level and the interests of their residents are represented in the procedures for developing the plans and regulations, whether they occur at the councils' request or at the GDUP's own initiative. However, we know that it is rare for the inhabitants of a municipality to be the electors of its council and for people to reside in the towns and cities where they are registered.

If the Municipalities Do Not Represent the Majority of People Living Within Their Limits, Who Do They Represent?

According to former minister Charbel Nahas, the municipalities represent “The male bloodline of those who were there in 1932 [the year of Lebanon's last census], as well as some naturalized persons. They are whom the municipalities represent. The overwhelming majority of them don't live there, but they vote there. What unites them? Two things: Firstly, the cemetery. If a person wants to stand for election, the best place to do so is the wakes because that's where he'll see the electors. If he walks in the street, he'll see other people. Secondly, they are united by landownership. Hence, the municipalities are really a syndicate representing the landowners”.[4]

Fawaz confirms this analysis, relating that,

One of the rare plans that I claim to have produced is the urban planning of the Tyre region: The old city would be preserved. The archaeological area would be an archaeological area. The area beyond is an agricultural plain, a very fertile agricultural land irrigated from Ras al-Ain since the days of the Romans. So it would be agricultural, like a green belt, and the urbanization would remain on the hills of the mountain. After the plan was ratified by a decree, there was an uproar. The landowners hadn't known about it, so they consulted the influential people in the area. What was the response of the most influential one? “Build wherever you want.” And that's what happened: the agricultural plain disappeared!

On the other hand, in an interview we conducted with a source in the GDUP in July 2017, he explained how the plans are exploited as a tool to ensure sectarian-political loyalty for the benefit of the *zuama*:

The plans come from the landowners, influential persons, or local *zuama*. Often, the [permitted] exploitation ratio is changed in a plan for a given area as leverage over the landowners to ensure loyalty to a given *zaim* in his area of influence. Or the exploitation ratio is lowered to trap the owner into selling the land cheaply, and then they raise the exploitation ratio back up. This happens a lot in Matn and Chouf, where the *zuama* influence is clear. The HCUP includes delegates from various ministries, and their opinions come at the end after the study is cooked up and in accordance with the political climate in the area.

In short, rarely are the plans and regulations developed for national interest or for common good in a given area. On the contrary, they serve the interest of the landowners and constitute a tool of political pressure for local *zuama*.

Is There a Way for Citizens to Participate in Determining the Fate of the Places Where They Live?

Informing the residents and heavily involving them before the issuance of a plan is a key part of any urban planning process. This is because the participation process “allows greater transparency in the negotiations between the central administration, the experts, and the municipal councils, and because it allows the orientations envisaged in the plan to correspond more to the citizens’ actual needs”.^[5]

Yet the source in the GDUP explains,

There’s nothing in the planning law related to seeking the opinion of the people. To the contrary, the contracts we sign with the consultation firms that produce the plans prohibit discussing the plan with the public or giving any information until the study is submitted to the GDUP. The discussion is internal between the engineer or architect, the GDUP, and the municipality, or between the realtor, the major landowner, the *zaim*, and some technicians ... The result is that we know what the merchant wants, we know what the bank wants, and we know what the municipality wants, but we don’t know what the people want. Nobody ever asked them for their opinion.

When we asked the source whether there are any mechanisms for objection after the plan is issued, he explained that the only such mechanism is for landowners, who may send a letter to the GDUP if the exploitation ratio permitted on their land is reduced. The source added,

Usually, all objections directed to the HCUP concern the reduction of exploitation ratios. They arrive at the GDUP’s planning department, and the engineer refers them to the HCUP. This is where personal connections come into play. If an owner knows a *zaim*, they remove the exploitation reduction from his land for him.

From another angle, given the municipalities’ limited ability to represent all their residents, we cannot consider consulting the municipal council a participatory measure. Although the municipal council’s elected members could seek the citizens’ opinions on a given project, there is no legal text compelling them to do so. In reality, it is rare for the members of a municipal council to take this step. Hence, the opinion that the municipal council provides must be considered limited and non-participatory as the representatives are the ones participating in the process of public decision-making, rather than the citizens providing their opinion directly.

In fact, the Urban Planning Law makes no mention of the principle of participation or the word “inform”. According to architect Serge Yazigi and legal researcher Sébastien Lamy in a study on public participation in the urban planning process by the MAJAL observatory,^[6] at the time of the 1983 legislative decree containing the Urban Planning Law, the government was striving primarily for rapid reconstruction after the Israeli invasion and had been authorized by the legislature to enact laws on several topics. But today, the absence of a legal basis for participation is one of the causes of the full or partial failure of planning projects at some stage of their implementation. The MAJAL report adds,

The [urban planning] law did not mention the principle of participation in Article 9 (before the area is studied), nor in Article 10 and the articles that follow (developing the plan). Hence, except for the requirement to obtain an advisory opinion from the municipal council, the law imposes no consul-

tative mechanism when a plan is developed, nor are there any public information campaigns.

About their study, Yazigi and Lamy write:

The main premise of this study was that, contrary to European legislations or even the legislations of some Arab states, Lebanese law does not stipulate any process for informing the public or involving it before decisions on physical planning are made.

However, in accordance with the Rio Agreement, the Environment Protection Law (Law no. 444 of 2002) included the principle of public participation in environmental decisions. However, no applicatory decree stipulating that urban planning is related to the environment in the sense of the aforementioned law has been issued. Yet any decision allowing the urbanization of a rural area, for example, will clearly have consequences on the environment.

A booklet on the importance of public participation in the decision-making process was then prepared and presented to the public authorities in 2010. It is linked to the effectiveness of the projects or plans subject to an administrative decision, which might be more readily accepted if the population were involved in them beforehand. Public information also increases the transparency of public actions and prevents attempts at corruption. At that time, the possibility of amending Decree no. 9333 of 2002 on the Classification of Contractors and Consultancy Firms to introduce a participatory approach into the function of urban-planning consultants was also considered, but to no avail.

Subsequently, two decrees on environmental assessment were issued, namely Decree no. 8213 of May 24, 2012, on Strategic Environmental Assessment for plans and Decree no. 8633 of August 7, 2012, on Environmental Impact Assessment for projects.

Both procedures include a mechanism for informing and involving the public. The file subject to environmental assessment is made available to the public and a public meeting is then held.

The adoption of these texts was a significant step forward. However, no urban plans, master or detailed, have been subjected to strategic environment assessment during either their development or revision except in exceptional cases and on an experimental basis for preliminary studies that did not succeed.

Nevertheless, any plan adopted without having undergone a strategic environmental assessment and, hence, without the public having been permitted to participate and without the minister of environment having been permitted to give his opinion is liable to be annulled if it is challenged before the State Council.

Finally, we can go even further and consider other forms of participation upstream, not just after the main options for the plan have already been identified and the studies already conducted. Similarly, virtualizing information and participation using websites dedicated to this purpose appears to be essential in our current time.

Decision-Making Circles Confined to Personal Relationships

This current legislative framework exacerbates the power of decision-making circles that are restricted to personal relationships and facilitates the rise and spread of corruption in the form of nepotism and clientelism. It also promotes purely technocratic administrative practice, which helps pave the way for the abuse of power on the local level. The procedures stipulated in the Urban Planning Law can be considered an example of both technocratic democracy and representative

democracy dependent on the municipalities providing proper representation. In practice, this produces poor results.

However, in light of some of the cases that we are studying in this project, we must point out that Lebanon's regional and societal framework does not facilitate direct participation of the population. It appears to create several obstacles that can limit or negate the effectiveness of participation. This problem will be the topic of other articles, wherein we will explore the local populations' participation in the development of general master plans and address other aspects besides the legal framework that obstructs it.

This article is an edited translation from Arabic.

Arabic version: <http://legal-agenda.com/article.php?id=4121>

[1] To read more about the land-pooling and subdivision project intended for the East Wastani area, see Huda Hubaysh, "'al-Damm wa-l-Farz' .. Hal Yunqidh Sayda min 'al-Tawahhush'", *almodonline*, December 24, 2015; and the Lil Madina Initiative's articles (lilmadinainitiative.wordpress.com).

[2] Decree no. 6552 of 1995 on Ratifying the General and Detailed Master Plan and Regulation for the Sidon Area.

[3] Article 13 of Law no. 646 of 2004 stipulates that

The planning studies and construction conditions, in planned and unplanned areas, that are approved via a Higher Council of Urban Planning decision shall become binding for the authority that grants construction permits insofar as they do not violate the conditions of the ratified regulations, provided that the planning decree is issued within three years of the decision's issuance.

[4] Charbel Nahas made this remark during a lecture he delivered in a conference on the importance of strategic planning and sustainable development in Lebanon held by the Order of Engineers and Architects (Beirut) on September 25, 2017.

[5] A research report on participatory democracy in urban planning written by architect Serge Yazigi and jurist Sébastien Lamy and published by MAJAL in 2010.

[6] MAJAL is an academic observatory established in 2007 in the Lebanese Academy of Fine Arts (ALBA) – the University of Balamand. The observatory aims to facilitate research and public participation in discussion about issues related to land tenure and property and, more generally, the major issues related to physical planning in Lebanon.