



NAMIBIA SUMMARY REPORT

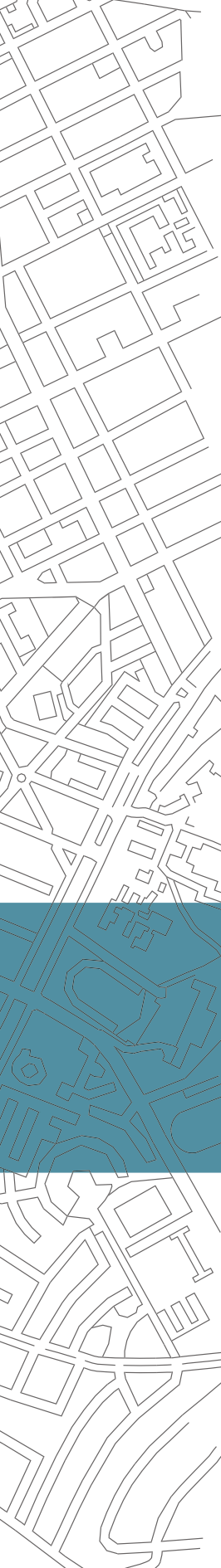
ASSESSMENT OF NAMIBIA LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

<https://climatelawtoolkit.org/>

PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN
DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

URBAN CLIMATE LAW SERIES | VOLUME 2





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[Urban Planning Law for Climate Smart Cities: Urban Law Module of the Law and Climate Change Toolkit](#)

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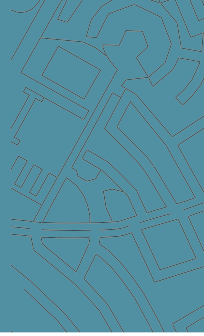
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COVER PHOTO:

Arid landscape of Namib-kuakluft National Park in the Namib Desert by SteveAllenPhoto999 source: envato elements.

INTRODUCTION



UN-Habitat, through the Policy, Legislation and Governance Section, in collaboration with the Taubman College of Architecture and Urban and Regional Planning at the University of Michigan (United States of America) supported Malawi, Namibia and Zimbabwe (between December 2021 and November 2022) in conducting country assessments of existing urban laws on climate change for resilient and low carbon urban development. The project was funded by the Konrad-Adenauer-Stiftung Regional Programme Energy Security and Climate Change in Sub-Saharan Africa (KAS) with the aim of improving the capacities and knowledge of the national Governments to support climate-friendly urban development through legal frameworks.

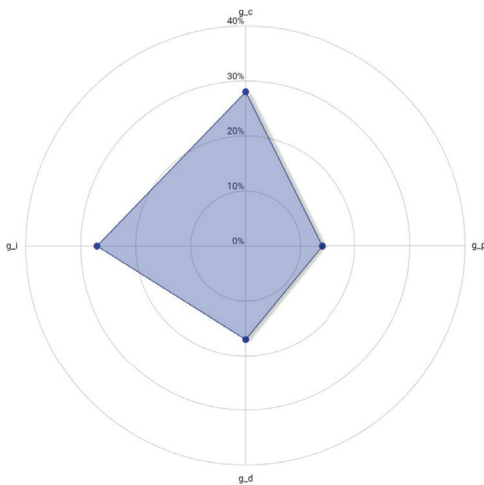
This report is the summary version of the country legal assessment for Namibia in the five assessment areas of the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit namely: a) governance framework for urban and climate planning; b) urban and territorial planning; c) urban planning and design for adaptation; d) urban planning and design for mitigation; and e) economic and non-economic instruments for climate-friendly urban planning.



Dry cracked earth and Sand Dune in Namibia. by SteveAllenPhoto0999 source: envato elements

CHAPTER 1. GOVERNANCE FRAMEWORK FOR URBAN AND CLIMATE PLANNING

EXECUTIVE SUMMARY



Governance & Institutional Arrangements

g_c	Multi-Level Institutional Coordination
g_p	Participatory Governance
g_d	Data Collection Sharing
g_l	Local Government Mandate

Figure 1: Rating matrix for Namibia on governance framework for urban and climate planning

The magnitude and urgency of climate change calls for an emphasis on strong and effective governance systems and practices. Governance refers to the process through which State and non-State actors interact to design and implement law and policies within a given set of formal and informal rules that shape and are shaped by power.¹ Multilevel governance characterized by intergovernmental (between different levels of government) and intragovernmental (within the same level of government) cooperation built around broad consultative processes

1 World Bank (2017). World Development Report 2017: Governance and the Law.

and mechanisms for vertical and horizontal cooperation and integration will be necessary to achieve climate-responsive governance. Effective climate governance will also require participation by stakeholders, data collection and sharing among public agencies as well as dissemination to the general public, and adequate powers allocated to local authorities on steering and controlling climate-friendly urban planning and land use.²

In Namibia, inter-institutional coordination among national and subnational governments is foreseen in the Constitution of Namibia, which provides for the creation of a National Council composed of regional council members to oversee the legislative processes of the National Assembly,³ and in the Regional Councils Act, which makes provisions for regional councils to coordinate with both national-level authorities and local authorities.⁴ The Local Authorities Act also fosters multilevel coordination by enabling local authority councils to make agreements with the Government or regional councils in relation to the exercise or performance of their powers, duties and functions.⁵ The Environmental Management Act requires all levels of government to coordinate and consult one

2 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for Climate-Smart Cities: Urban Law Module", Law and Climate Change Toolkit, p. 13.

3 Constitution of the Republic of Namibia (1990). Article 74.

4 Regional Councils Act (No. 22 of 1992). Section 28 (1) (a) and (d) and Section 28 (2) (a) and (b).

5 Local Authorities Act (No. 22 of 1992). Section 32.

More explicit provisions could be made in the Namibia Local Authorities Act (1992) to allow coordination among local authority councils belonging to the same region as well as among different line departments in local authority councils.

another as needed when drafting environmental plans affecting the area under their jurisdiction.⁶ The Disaster Risk Management Act establishes the Disaster Risk Management Committee to ensure effective disaster risk management at all levels of government.⁷ Furthermore, the oversight and advisory functions of the Urban and Regional Planning Board, under the direction of the Minister of Urban and Rural Development, serves to coordinate and integrate spatial plans developed at all levels of government to ensure coherence, in accordance with the Urban and Regional Planning Act.⁸

Several pieces of legislation related to the environment and energy establish boards, councils and other governance structures which facilitate coordinated inter-institutional governance at the national level in Namibia. These include the Atomic Energy and Radiation Protection Act,⁹ the Biosafety Act,¹⁰ the Nature Conservation Ordinance,¹¹ the Petroleum Products and Energy Act,¹² the Minerals (Prospecting and Mining) Act¹³

6 Environmental Management Act (No. 7 of 2007). Section 1 (a) and (b), Section 24 (3), and Section 44.

7 Disaster Risk Management Act (No. 10 of 2012). Section 5.

8 Urban and Regional Planning Act (No. 5 of 2018). Section 7.

9 Atomic Energy and Radiation Protection Act (2005). Section 3.

10 Biosafety Act (2006), Section 6.

11 Nature Conservation Ordinance (1975). Section 11.

12 Petroleum Products and Energy Act (1990). Sections 2A and 12.

13 Mineral (Prospecting and Mining) Act (1992), Section 10.

and the Prevention and Combating of Pollution of the Sea by Oil Act.¹⁴ In addition, the National Policy on Climate Change establishes the ability of the Ministry of Environment, Forestry and Tourism to ensure that all government departments at all levels of government are working together to combat climate change.¹⁵ This would entail the Ministry of Environment, Forestry and Tourism collaborating with other offices, ministries and agencies of Government and regional and local authority councils on issues related to climate change.

Horizontal coordination requirements among local jurisdictions in the same region are provided for in the National Policy on Climate Change, which elaborates on the need for a relevant local authority council encompassing an urban area to coordinate efforts by sharing knowledge and resources and ensuring the region's ability to mitigate climate change.¹⁶ However, more explicit provisions could be made requiring coordination among local authority councils in the same region as well as among different line departments comprising a local government. Legal provisions should also be made to better ensure coordination between neighbouring

14 Prevention and Combating of Pollution of the Sea by Oil Act (1981). Section 13.

15 Namibia National Policy on Climate Change (2011). Section 7.

16 Ibid. Section 7.

local authority councils that face the same socioeconomic or environmental challenges.

Regarding public participation, Article 95(k) of the Constitution of Namibia imposes a positive obligation on the Government to develop policies that educate the people of Namibia to develop policies that educate the people of Namibia on issues which enable them to influence public policy by participating in debates on Government decisions. Despite having this constitutional provision in place, there is no overarching law or policy in the country that obligates policy and lawmakers to engage in public consultation or stakeholder engagement when writing policy and legislative frameworks. Instead, provisions prescribing participatory governance are limited to individual, and oftentimes sectoral, policies and legal frameworks.

The Environmental Management Act of 2007 outlines legal provisions that require stakeholder and community identification through collaboration between the State and community-based organizations.¹⁷ Namibia's National Policy on Climate Change emphasizes the need to ensure the participation of women, children and other vulnerable, marginalized groups in planning processes.¹⁸ The Urban and Regional Planning Act requires public participation in national, regional and urban planning through a process of public notice whereby members of the public are invited to inspect the draft plans and submit any comments or objections which are then considered by the Urban and Regional Planning Board. The latter makes recommendations to the Minister of Urban and Rural Development, who may amend the plan accordingly.¹⁹ While these provisions may facilitate the

consideration of and response to community demands and priorities, the affected public is not given the opportunity to participate in the process of initially drafting the national development framework or regional or local structure plans. Legal provisions requiring the consideration of specific communities' needs are only identified in the Flexible Land Tenure Act of 2012, which seeks to provide alternative tenure options for low-income communities.

There is no law or any legal provision in Namibia which explicitly grants the public the right of access to information, nor does the Urban and Regional Planning Act guarantee the right of access to information across the planning process. Rather, the Act only explicitly grants the public the right to inspect draft spatial plans at the prescribed dates and times and makes provisions to publish the final approved framework or plan in two widely circulated newspapers and the Gazette.

Access to dispute-resolution mechanisms is an important element of participatory governance, especially for vulnerable or historically marginalized populations. Indigenous communities have accessible dispute-resolution mechanisms through the Traditional Authorities Act of 2000 and the Community Court Act of 2003. Legal provisions for resolving disputes through formal appeals processes can be found in the Constitution of Namibia,²⁰ the Environmental Management Act²¹ and the Urban and Regional Planning Act.²² While the Deeds Registries Act provides mechanisms for certain land disputes,²³ such as those concerning fees charged by conveyancers or notaries public, Namibia

20 Constitution of the Republic of Namibia (1990). Articles 25, 79, and 80.

21 Environmental Management Act (No. 7 of 2007). Sections 50 and 51.

22 Urban and Regional Planning Act (No. 5 of 2018). Section 129

23 Deeds Registry Act (2015), Sections 80 and 81.

17 Environmental Management Act (No. 7 of 2007). Section 7.

18 National Policy on Climate Change (2011). Section 3 (3).

19 Urban and Regional Planning Act (No. 5 of 2018). Sections 3, 22, and 34.

does not have a dispute resolution mechanism dealing with land disputes more broadly.

Namibia lacks explicit legal provisions requiring data collection and sharing of climate-sensitive information among different institutions dealing with urban and climate planning. The National Policy on Climate Change for Namibia of 2011 directs the Government to create a law “for regional and international cooperation, collaboration and networking in order to tap into the existing wealth of information, data, expertise and financial resources”,²⁴ however, this policy objective has yet to be implemented and given legal force.

The Urban and Regional Planning Act of 2018 clearly assigns local authority councils and regional councils the mandate for urban planning in their respective local authority and settlement areas. To decentralize urban planning functions to regional and local government, the Act introduces the concept of declaring certain local authority councils and regional councils as authorized planning authorities, contingent upon certain conditions. A local authority council or regional council which is declared to be an authorized planning authority “may exercise powers and perform functions imposed on or assigned to an authorized planning authority” as prescribed in the Act.²⁵ The status of being an authorized planning authority with an approved structure plan empowers such an authority to hear and determine applications for the rezoning of land, the alteration of approved township boundaries and the subdivision of land on its own; all other applications must be recommended to the minister for approval on the recommendation of the Urban and Regional

Planning Board.

Existing legislation in Namibia does not include provisions that require local governments to build and improve their capacities to implement their mandates, however the National Policy on Climate Change requires the national Government to secure funding for effective climate change adaptation and mitigation investments and associated activities, including capacity building.²⁶ Provisions specific to the capacity building of local government are nonetheless absent. The Public and Environmental Health Act of 2015 includes provisions that can facilitate inter-municipal collaborations for urban and infrastructure planning. Namely, when administrative boundaries do not correspond to functional and morphological boundaries, two or more local authority councils can come together to form a single health committee.²⁷ However, collaborations such as these are not explicitly prescribed in the urban and infrastructure planning powers of local authorities in other pieces of legislation.

24 National Policy on Climate Change for Namibia (2011). Section 4 (15).

25 Urban and Regional Planning Act (No. 5 of 2018). Section 17 (1).

26 Ibid. Section 7.4, Objective 4.

27 Public and Environmental Health Act (2015). Section 4

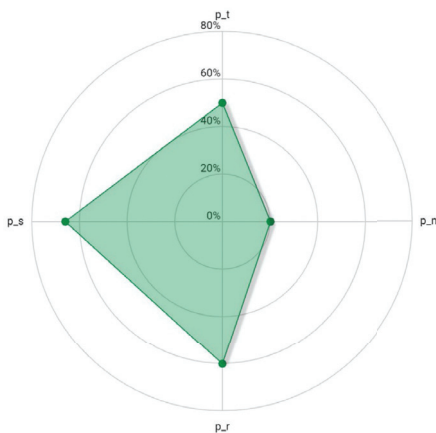


Dramatic landscape in Damaraland in Northern Namibia, Africa. by SteveAllenPhoto999 source : envato elements

CHAPTER 2.

URBAN AND TERRITORIAL PLANNING

EXECUTIVE SUMMARY



Planning Instruments

- p_t Total
- p_n National Planning
- p_r Regional Planning
- p_s Urban Planning

Figure 2: Rating matrix for Namibia on Planning Instruments

Urban and territorial planning establishes long-term, sustainable frameworks for social, territorial and economic development.²⁸ The New Urban Agenda specifically sets out the requirement for the integration of climate change adaptation and mitigation considerations and measures into urban and territorial development and planning processes in recognition that cities are both major contributors to climate change and the primary subjects of its effects and risks.²⁹ In Namibia, a three-tiered planning hierarchy exists

28 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for Climate-Smart Cities: Urban Law Module", Law and Climate Change Toolkit, p. 27.

29 New Urban Agenda (2016). Paragraph 101.

at the national, regional and local levels and is primarily defined by the Urban and Regional Planning Act of 2018. The Act prescribes for the creation of a national spatial development framework, regional structure plans and urban structure plans at each of these levels of spatial governance, respectively.

At the national level, the national spatial development framework is required to "deal with spatial aspects of Namibia's social and economic development."³⁰ It should "give effect to the relevant national policies, plans and laws" as well as to the principles of spatial planning prescribed in the Act.³¹ This provision effectively serves as a legal requirement for the national spatial development framework to implement (i) spatial planning principles related to the environment, such as the requirement that "spatial planning must contribute to sustainable development by enhancing the natural environment and ensuring that development takes place within environmental limits";³² and (ii) national plans and policies related to climate change, such as the National Climate Change Policy of 2011. The Act thus implicitly requires the national spatial development framework to also facilitate the coordination, integration and alignment of the 2018 Namibian Transport Policy (2018-2035), which includes provisions for an integrated national transport and infrastructure network which "respond[s] to the challenges of climate change."³³ Regarding national land-use

30 Urban and Regional Planning Act (No. 5 of 2018). Section 21.

31 Ibid. Section 20(b) and (c).

32 Ibid. Section 3(b).

33 Ibid. Section 9.1.

classification, one of the purposes of the national spatial development framework is to “indicate desirable land uses and promote predictability in the use of land” as well as to “provide guidelines for the integrated social and economic development and land use patterns of Namibia.”³⁴ Other pieces of legislation, such as the Land Survey Act of 1993 and the Agricultural (Commercial) Land Reform Act of 1995 give recognition to the classification of land at the national level as either urban (land which is located within a local authority area)³⁵ or rural (land which is not situated in a township or settlement).³⁶ Finally, the Urban and Regional Planning Act does not include the legal requirement to assess the climate vulnerability of the implementation of the national spatial development framework, though it states that spatial planning must have a focus on “protecting and respecting Namibia’s environment [...] and natural heritage, including its biological diversity, for the benefit of present and future generations.”³⁷ Likewise, the Urban and Regional Planning Act does not require that the greenhouse gas emissions associated with the implementation of the national spatial development framework be assessed.

The Urban and Regional Planning Act obliges regional councils to “prepare or cause to be prepared” a regional structure plan in respect of the region under their jurisdiction.³⁸ The predominant objective of the regional structure plan is to “provide guidelines for the integrated social and economic development and land-use patterns in the region concerned.”³⁹ However, regional structure plans must comply with both

34 Ibid. Section 20.

35 Urban and Regional Planning Act (No. 5 of 2018). Section 1, “local authority area”.

36 Land Survey Act (No. 33 of 1993). Section 1, “rural land”.

37 Urban and Regional Planning Act (No. 5 of 2018).

Section 3 (c).

38 Ibid. Section 25.

39 Ibid. Section 26 (e).

The Namibia Urban and Regional Planning Act (2018) should explicitly require that urban structure plans assess future land needs and identify land which is safe from the effects of climate change.

extant land-use plans for the regions and the objectives of the national spatial development framework.⁴⁰ The Environmental Management Act of 2007 also facilitates the coordination of regional territorial planning with national climate goals through its provisions regarding drafting and monitoring compliance with environmental plans.⁴¹ There are no legal provisions that explicitly require regional territorial planning to establish transport networks and infrastructure systems, however, the Regional Councils Act of 1992 provides that a regional council has the power to plan and develop the infrastructure of “transport systems in such a region.”⁴² There is no legal requirement to assess the climate vulnerability or greenhouse emissions associated with the implementation of the regional structure plan provided for in the Urban and Regional Planning Act. The Environmental Management Act states that “[environmental] assessments must be undertaken for activities which may

40 Ibid. Section 26.

41 Environmental Management Act (No. 7 of 2007). Section 26 (1)

42 Regional Councils Act (No. 22 of 1992). Section 28 (a).

have a significant effect on the environment or the use of natural resources.”⁴³ However, the preparation of the national spatial development framework, regional structure plans or urban structure plans are not listed as activities requiring an environmental assessment.⁴⁴

The Urban and Regional Planning Act mandates local authority councils with preparing, or causing to be prepared, urban structure plans in respect of the local authority area under their jurisdiction.⁴⁵ According to the Act, urban structure plans must “be aligned to the national spatial development framework and the relevant regional structure plan” where such plans have been approved and are in force.⁴⁶ The Act also prescribes zoning schemes to, inter alia, “determine land-use rights and provide for control over land-use rights and over the use of land in the area to which the zoning scheme applies.”⁴⁷ The zoning scheme is prepared by a local authority council and approved by the Minister of Urban and Rural Development, who ensures that the scheme conforms to the applicable urban structure plan⁴⁸ and who also considers the environmental implications of the zoning scheme.⁴⁹ However, the Act lacks provisions specifically requiring urban structure plans to set urban growth boundaries or implement other growth management strategies to make sure that the amount of buildable land within the boundary is adequate to meet current and future land needs. Namibia does not have any law requiring urban structure plans to be reviewed if new climate risks or new climate adaptation options are identified. However, the Urban and

Regional Planning Act does refer to a planning horizon of 10 years for urban structure plans and specifically requires the review of these plans once that period has elapsed from the date of their commencement; it also gives local authorities the right to “at [their] own initiative review [their...] urban structure plan.”⁵⁰

43 Environmental Management Act (No. 7 of 2007). Section 3 (e).

44 Ibid. Section 27 (1) and (2).

45 Urban and Regional Planning Act (No. 5 of 2018).

Section 31 (1).

46 Ibid. Section 32 (e).

47 Ibid. Section 41(1) (c).

48 Ibid. Section 41(2) 43 (1).

49 Ibid. Section 48 (d), (k) and (l).

50 Ibid. Section 38 (2).



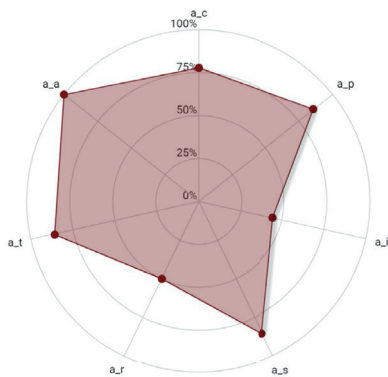
Dusty Road Through the Namib Desert, Namibia. by [imagaphoto source](#). enviado elements

CHAPTER 3.

PLANNING FOR ADAPTATION



EXECUTIVE SUMMARY



Planning for Adaptation	
a_c	Climate Risk Vulnerability
a_p	Adaptation Options
a_i	Implementation of Adaptation Options
a_s	Adaptation of Slums
a_r	Planned Relocations
a_t	Security of Tenure
a_a	Development Approval/Adaptation

Figure 3: Rating matrix for Namibia on planning for adaptation

Urban areas stand to be acutely affected by climate change due to their concentration of people, economic activities, assets and social and cultural institutions, and impacts are already being felt by millions of urban dwellers throughout the world.⁵¹ Considering that 55 per cent of the world’s population lives in urban areas and this share is projected to increase to 68 per cent by 2050,⁵² there is an urgent need for urban

areas to adapt to the effects of climate change.⁵³ Urban law can support cities in becoming more climate-resilient through provisions on climate risks and vulnerability for planned areas and infrastructure; the identification and prioritization of adaptation options; the implementation of the identified adaptation options; the adaptation of slums and other vulnerable settlements; planned relocations from areas at risk of climate change; security of tenure; and development approval and adaptation.

With respect to climate risks and vulnerabilities in urban areas, the Paris Agreement requires countries to engage in adaptation planning processes and to implement actions through, among other things, the “assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems.”⁵⁴ Climate risk assessment is discussed in several laws and policy documents in Namibia, most notably the Environmental Management Act, which requires that environmental impact assessments be conducted and environment clearance certificates obtained prior to undertaking certain activities which “may have a significant effect on the environment or the use of natural resources.”⁵⁵ These environmental impact assessments can

51 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 42.

52 United Nations Department of Economic and Social Affairs (2018). Revision of World Urbanization Prospects.

53 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 43.

54 United Nations Framework Convention on Climate Change (2015), Adoption of the Paris Agreement, 21st Conference of the Parties, Paris: United Nations. Article 7.9 (c).

55 Environmental Management Act (No. 7 of 2007). Section 3 (e).

The Namibia Vulnerability Assessment Committee established by the Disaster Risk Management Act (2012) should be required to assess environmental and climate change-related vulnerabilities and produce climate hazard maps for Namibia.

facilitate the consideration of climate risks and vulnerability for planned areas and infrastructure since activities flagged by the 2012 Environmental Management Act and Environmental Impact Assessment Regulations include the rezoning of certain land, resettlement schemes and transport infrastructure planning.⁵⁶ Nonetheless, neither the Environmental Management Act nor the provisions of other pertinent statutes such as the Regional Councils Act, the Flexible Land Tenure Act, or the Disaster Risk Management Act strictly require climate risk and vulnerability assessments as part of the planning process vis-à-vis the national spatial planning framework, regional structure plans or urban structure plans. Non-binding policy documents, such as the National Policy on Climate Change and Namibia's Updated Nationally Determined Contributions

56 List of activities that may not be undertaken without Environmental Clearance Certificate (No. 4878 of 6 February 2012). Annexure, 5(1)(2) and 10 (2).

identify certain people, property and economic sectors exposed to risks arising from climate change, though such categorizations are far from comprehensive.

Since Namibia lacks legal provisions which explicitly require planning authorities to identify and assess climate risks and vulnerabilities when preparing spatial development plans, likewise there are no legal provisions which oblige planning authorities to identify and prioritize adaptation options corresponding to extant risks and vulnerabilities. However, a process of identifying and prioritizing adaptation options for climate risks and vulnerabilities may take place through the assessment process foreseen in the Environmental Impact Assessment Regulations, which require project proponents to “describes how activities that may have significant effects on the environment are to be mitigated, controlled and monitored.”⁵⁷ The National Policy on Climate Change also has explicit provisions concerning climate change adaptation which identify prioritized ecosystem-based⁵⁸ and infrastructure-based⁵⁹ adaptation options. Nonetheless, neither the National Policy on Climate Change nor other pieces of policy or legislation explicitly require that identified adaptation options, actions or strategies be assessed and prioritized according to their costs, benefits, implementation period and barriers to implementation. While several legal and policy instruments reference stakeholder engagement in climate policy implementation and spatial planning processes, none of these require stakeholders' engagement in the process of identifying and prioritizing adaptation options. Legal requirements to have targets to improve the adaptation of urban areas with measurable

57 Environmental Impact Assessment Regulations of 2012.

58 National Policy on Climate Change (2011). Section 4.5.

59 Ibid. Section 4.8.

and verifiable benchmarks against which progress can be assessed are not provided for by law in Namibia, though the National Planning Commission could use its powers given in the National Planning Commission Act to formulate and monitor such targets. It should be noted that national policymakers are in the process of formulating a national adaptation plan which may address many of the gaps identified with respect to the identification and prioritization of adaptation options, however, unless such plan is enacted as legislation its provisions will remain non-binding.

As the process of formulating a method for the identification and prioritization of adaptation options is still being undertaken in Namibia, legal provisions which require the implementation of adaptation options for planned areas and infrastructure have yet to be established. Nonetheless, certain law and policy provisions may facilitate the implementation of climate adaptation measures related to urban planning and management. The Urban and Regional Planning Act,⁶⁰ as well as the Flexible Land Tenure Act,⁶¹ and the Communal Land Reform Amendment Act,⁶² limit development in hazard-prone areas through land-use restrictions enforced by the competent local authority. At the regional level, the Disaster Risk Management Act mandates regional disaster risk management committees with ensuring that development is veered away from hazard-prone areas.⁶³ Other type of adaptation measures, such as public land buffers between sea, rivers and land, riparian or coastal setbacks, and coastal zone management plans are not provided in

60 Urban and Regional Planning Act (No. 5 of 2018). Section 61 (j)

61 Flexible Land Tenure Act (No. 4 of 2012). Section 11 (7) (e) and 11 (8).

62 Communal Land Reform Amendment Act (No. 13 of 2013). Section 36G.

63 Disaster Risk Management Act (No. 10 of 2012). Section 12 (f).

Namibian environmental and spatial planning legal frameworks. While provisions requiring local authority councils to plan the location of essential infrastructure out of flood-prone areas are not explicitly provided for in local authority or urban and regional planning legislation, the Flexible Land Tenure Act⁶⁴ and Communal Land Reform Act⁶⁵ include provisions which empower certain local authorities to grant permits and other authorizations necessary for infrastructure installations conditionally, on the basis of compliance with local climate plans and land-use authorizations. Namibia lacks provisions of law which require planning sewerage systems, storm drains and wastewater treatment plants based on predicted rainfall, flooding and densification with a time horizon of at least 20 years. Namibia also lacks legal or policy provisions which require nature-based stormwater management or other strategies for managing increasing volumes of stormwater in built-up and designated expansion areas. Regarding evacuation routes and low-risk safety areas, the Disaster Risk Management Act effectively mandates the establishment of evacuation routes through “specific procedures to be taken for the safety or evacuation of persons in a disaster area”, which must be formulated by the relevant government entity in a plan.⁶⁶

The National Policy on Climate Change acknowledges that climate change is expected to disproportionately impact vulnerable groups. The primary piece of legislation identified which can support the adaptation of slums and other vulnerable settlements to the effects of climate change is the Flexible Land Tenure Act. The law enables informal tenure holders to incrementally formalize their tenure rights through starter title

64 Flexible Land Tenure Act (No. 4 of 2012). Sections 11 (7) (e), 11 (8), and 12 (6).

65 Communal Land Reform Act (2012). Section 4.

66 Disaster Risk Management Act (No. 10 of 2012). Section 23 (2) (b).

and land hold title schemes which, taken on a large scale, can regularize and facilitate the adaptation of slums and vulnerable settlements. So, while there are no specific provisions of law which address the use of customary and non-documented forms of tenure to access water, sanitation and electricity services, access to starter title and land hold title schemes can secure access to basic services. The Act also provides tools for urban expansion, infill and redevelopment that call for changing the configuration of plots, as the process of establishing a starter title or land hold title scheme requires “the land concerned [to] be subdivided or consolidated in such a manner that the scheme concerned would be situated on one portion of land registered as such in the deeds registry.”⁶⁷ However, the process of formalization foreseen in the Flexible Land Tenure Act does not include legal requirements for community-led surveys or household enumerations, nor are there legal requirements to maintain the affordability of informal areas regularized through starter titles or land hold titles.

Considering the lack of provisions regarding climate hazard mapping and the limited measures available for the adaptation of vulnerable settlements, provisions of law or regulations that support the relocation of populations from areas at risk of the effects of climate change have not yet been incorporated into laws or policies in Namibia. Though unrelated to climate risks, the Agricultural (Commercial) Land Reform Act and National Resettlement Policy were established in 1995 and 2001, respectively, to provide the Government with the necessary legal tools to acquire commercial farms for the resettlement of displaced persons and for the

purposes of land reform.⁶⁸ In the urban context, the apartheid-era Squatters Proclamation of 1985 includes provisions for the relocation of any evicted squatter and his/her dependents to “any other suitable place determined by [the relevant local authority], within or outside his [her] district”.⁶⁹ The law makes provisions for any local authority council to establish an “emergency camp for the purpose of the accommodation of homeless persons”⁷⁰ which can be governed by regulations which “contain different provisions in respect of different areas, categories or classes of persons.”⁷¹ Evidently, these provisions fail to ensure the safety and health of evictees after all reasonable on-site alternatives and solutions have first been explored and may in fact promote discriminatory practices. Looking forward, however, the use of Housing Revolving Funds and the Decentralized Build Together Committees established by the National Housing Development Act may provide an opportunity for the Government to anticipate and implement planned relocations in response to climatic risks.

The legal framework of Namibia surrounding security of tenure recognizes a broad variety of tenure rights and provides participatory tools for informal tenure regularization. The Constitution of Namibia upholds the validity of customary law in force on the date of the country’s independence to the extent that such customary law does not conflict with the provisions of the Constitution or any other statutory law.⁷² Statutory law, namely the Communal Land Reform Act of 2012, has affirmed the validity of various types of customary tenure rights over communal

67 Flexible Land Tenure Act (No. 4 of 2012). Section 11 (2).

68 S. K. Amoo (2014). *Property Law in Namibia*. Pretoria: Pretoria University Law Press, p. 21.

69 Squatters Proclamation (AG 21 of 1985). Section 2 (3) (b) (ii).

70 Ibid. Section 8 (1).

71 Ibid, Section 8 (2) (b).

72 Constitution of the Republic of Namibia (1990). Article 66(1).

land.⁷³ The Flexible Land Tenure Act serves as a tool to recognize and regularize informal tenure and occupancy rights by (1) creating alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; (2) providing security of title for people who live in informal settlements or who are provided with low-income housing; and (3) empowering the people concerned economically by means of these rights.⁷⁴ However, the draconian Squatters Proclamation of 1985, continues to govern the eviction of informal tenure holders (“squatters”) with the aim of “the prevention and termination of unlawful squatting and matters incidental therefore”.⁷⁵ Section 4(1) and (3) of this Proclamation were ruled unconstitutional by the Supreme Court of Namibia in 2013, nonetheless the remainder of the law continues to be in force. Outside of the context of informal land tenure, Namibia’s National Housing Development Act of 2000 provides guidance on eviction processes when a person defaults on their home loan from the Housing Revolving Fund.⁷⁶ Numerous provisions regarding the expropriation or compulsory acquisition of land are made in Namibian legislation, including the Constitution, the 1978 Expropriation Ordinance, the Agricultural (Commercial Land Reform) Act, and the Local Authorities Act. These pieces of legislation, as well as the Urban and Regional Planning Act, include compensatory provisions for loss of formal rights,⁷⁷ however, the law does not provide compensation in respect of informal rights, interests and livelihoods.⁷⁸ Formal grievance, review and dispute-resolution

73 Communal Land Reform Act (2012), Section 21 and 25.

74 Flexible Land Tenure Act (No. 4 of 2012). Section 2.

75 Squatters Proclamation (AG 21 of 1985).

76 National Housing Development Act (2000). Part V, Section 25.

77 Namibia Urban and Regional Planning Act (No. 5 of 2018). Section 59.

78 Agricultural (Commercial) Land Reform Act (No. 6 of 1995). Section 32.



Dead trees in Sossusvlei, Namibia. Photo by estivillim source: envato elements

mechanisms for land and property disputes are primarily addressed in the Flexible Land Tenure Act,⁷⁹ the Deeds Registries Act,⁸⁰ and the Agricultural (Commercial Land Reform) Act.⁸¹

the Urban and Regional Planning Act,⁸³ and the Deeds Registries Act.⁸⁴

The developmental approval process in Namibia takes place primarily at the local level through building permit applications submitted to the local authority council, which assesses the proposed construction for compliance with the municipal building regulations as well as the local land-use and zoning schemes. However, while this development approval process is linked to legally approved urban plans and zoning regulations, it is not necessarily linked to planning and design standards for adaptation to climate risks and vulnerabilities, since such standards are largely lacking in the extant legal framework. Environmental impact assessments prescribed in the Environmental Management Act and its subsidiary legislation also serve as a mechanism for development control in response to environmental, and potentially climate change-related, concerns. In Namibia, there are no examples of legal provisions which enable local authority councils to charge developers, either in cash or in kind, for infrastructure costs associated with their development. All developers must pay building permit application and inspection fees; while any development which requires an environmental impact assessment under the Environmental Management Act will be obliged to pay the requisite environmental clearance certification fees. Finally, monitoring and enforcement mechanisms to ensure compliance with development approval conditions can be found in the Environmental Management Act,⁸²

79 Flexible Land Tenure Act (No. 4 of 2012). Section 8 (1) (d).

80 Deeds Registries Act (No. 47 of 1937). Section 4 (2).

81 Agricultural (Commercial) Land Reform Act (No. 6 of 1995). Part VII.

82 Environmental Management Act (No. 7 of 2007). Section 20 (2).

83 Urban and Regional Planning Act (No. 5 of 2018). Section 125 (2).

84 Deeds Registries Act (2015). Section 4(1).



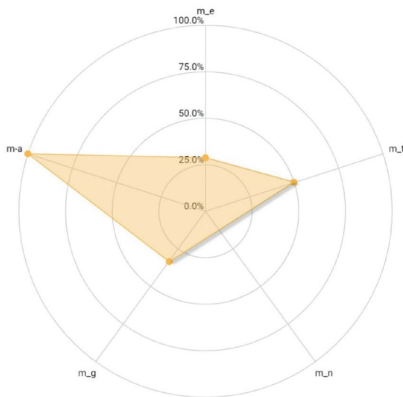
Authentic huts in African desert, Namibia. Photo by Galyna_Andrushko, source: envato elements

CHAPTER 4.

PLANNING FOR MITIGATION



EXECUTIVE SUMMARY



Planning for Mitigation

m_e	Urban Plans and GHG Emissions
m_t	Urban Form and Reduction of GHG emissions
m_n	Neighbourhood Design and Energy Savings in Buildings
m_g	Green Spaces for Environmental and Climate Services
m_a	Development Approval Mitigation

Figure 4: Rating matrix for Namibia on planning for Mitigation

Along with enabling populations to adapt to the risks created by climate change, urban law can play an important role in helping cities reduce greenhouse gas emissions by defining urban forms; determining where land, infrastructure and basic services can be built; promoting the development and maintenance of urban green spaces; incentivizing energy saving in buildings and neighbourhood design; and laying out rules for planning and decision making.⁸⁵ Climate

85 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for

change mitigation considerations should be integrated into urban planning processes by ensuring that urban plans consider mitigation strategies as well as emphasise assessing greenhouse gas emissions associated with the implementation of final approved plans.

In Namibia, several pieces of legislation and national-level policies recognize the role of greenhouse gas emissions in driving climate change and reiterate the country's commitment to reducing them. The Updated Nationally Determined Contribution of 2021 establishes the goal of reducing emissions by 21.996 metric tons of carbon dioxide equivalent (MTCO2e). The National Policy on Climate Change for Namibia identifies "enhanced carbon sinks" as one of three prioritized actions and strategies for climate change mitigation in Namibia.⁸⁶ However, in the area of urban law, neither the Urban and Regional Planning Act nor any other piece of urban or environmental legislation includes provisions that require the assessment of greenhouse gas emissions or estimation of carbon sinks associated with existing or potential spatial plans.

Namibia's urban law framework contains a limited set of provisions or regulations that explicitly promote a connected, accessible and dense urban form that reduces car trips, and promotes walkability and the efficient use of public infrastructure; by and large, local authorities are left to regulate the zoning

Climate-Smart Cities: Urban Law Module', Law and Climate Change Toolkit, p. 82.

86 National Policy on Climate Change for Namibia (2011), Section 2.2.2.

New National Building Standards for Namibia should be enacted, which include provisions promoting neighbourhood design and building standards for energy saving.

schemes and the building regulations and standards of their local authority areas and settlements as they see fit. The Urban and Regional Planning Act states that urban structure plans should “provide guidelines for the integrated social and economic development and land-use patterns in the local authority area concerned.”⁸⁷The Urban and Regional Planning Regulations of 2020 include provisions requiring the zoning of pedestrian and cycle corridors and require zoning schemes to provide extensive details regarding street design, layout and use;⁸⁸ however, the regulations do not necessarily require that street planning be formulated with a view to promoting walkability and density. Moreover, provisions on plot design rules for a walkable streetscape and mixed land use to facilitate accessibility to jobs, housing, services and shopping are absent from the urban law framework. Urban density is mentioned in certain pieces of urban legislation, though none of the laws and policies reviewed include legally binding language pertaining to optimizing urban density or leveraging infrastructure planning to promote compact development. The lack of guidance on these issues can be primarily attributed to the absence of a model building

⁸⁷ Urban and Regional Planning Act of 2018 (No. 5 of 2018). Section 32(e).

⁸⁸ Ibid. Annex 1, Section 6.

code and/or zoning scheme issued in Namibia.

Urban green space is crucial for the mitigation of greenhouse gas emissions and urban heat island effects. Public green spaces also contribute to improved health, air quality, rainwater management, increased property values and outdoor recreation opportunities.⁸⁹ However, Namibia lacks legal provisions which establish minimum quantitative standards for green spaces or require the adequate distribution of green spaces across the city. The Land Survey Act can protect existing green spaces in Namibia by granting the Surveyor-General the power to cancel any plan that affects a public place, such as an urban park or greenspace.⁹⁰ Larger greenspaces, such as natural parks and nature reserves, are discussed extensively in the Forest Act of 2001, which encourages the creation of these spaces for ecosystem preservation and details their management structure.

Urban and environmental law in Namibia lacks provisions addressing neighbourhood design and energy savings in buildings. The Guidelines for Building in An Energy-Efficient

⁸⁹ UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 93.

⁹⁰ Land Survey Act (No. 33 of 1993). Section 25(3).

Manner provides some non-binding policy guidance on these issues, such as building orientation, which could be incorporated into formal regulatory provisions. Such provisions should address issues of the street layout as well as plot orientation (with respect to wind and sun direction) and the thermal properties of urban surfaces.

Since the legal framework applicable to urban planning and development in Namibia includes very few planning and design standards that mitigate greenhouse gas emissions, the existing development approval process contributes relatively little to climate mitigation. Nonetheless, there are provisions in law which seek to enforce compliance with legally approved urban plans and zoning regulations. As discussed with respect to adaptation, these include the Urban and Regional Planning Act, the Environmental Management Act, the Land Survey Act, the Disaster Risk Management Act, and the Local Authorities Act. In addition to linking the development approval process to legally approved urban plans and zoning regulations, these laws include mechanisms to monitor compliance with the approved development and its conditions, and also establish mechanisms for enforcement in the event developments are not compliant with the submitted application and its conditions. In most cases, these take the form of on-site inspections and compliance orders, while non-compliance is punishable by fines and imprisonment.

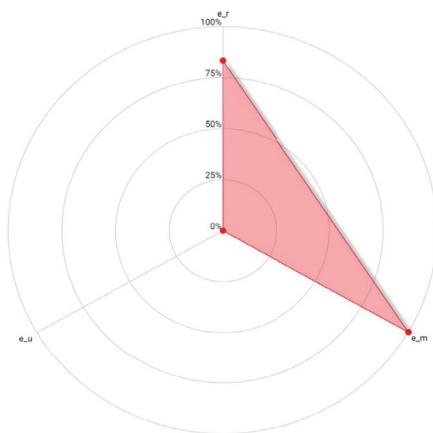


The arid landscape of Damaraland in Namibia by SteveAllenPhoto999, source : envato elements

CHAPTER 5.

ECONOMIC AND NON-ECONOMIC INSTRUMENTS FOR CLIMATE-FRIENDLY URBAN PLANNING

EXECUTIVE SUMMARY



Economic & Financial Instruments

e_r	Resources for Urban Planning and Climate Change
e_m	Incentives for Mitigation and Adaptation in Urban Planning
e_u	Incentives that Promote Unsustainable Urban Land Uses

Figure 5: Rating matrix for Namibia on Economic and Non-Economic instruments for Climate-Friendly Urban Planning

Effective climate change action in urban areas requires local governments to be adequately financed to undertake their functions.⁹¹ Local authority finance can be divided into two categories: internal revenue which is collected by local authority councils according to Section 30(1) of the Local Authorities Act, and which mostly constitute property taxes and user fees; and external revenue from outside sources, which includes inter-governmental transfers,

91 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for Climate-Smart Cities: Urban Law Module", Law and Climate Change Toolkit, p. 104.

borrowing and development assistance. Article 125 of the Constitution explicitly provides for inter-governmental fiscal transfers in the form of "subsidies" to local governments. In practice, local authorities are allocated funds through the Ministry of Urban and Rural Development. These transfers are not specifically earmarked for climate change mitigation and adaptation in urban planning; however, a local authority council may choose to use them for such purposes if their expenditure forecast is approved by the minister.⁹² The Environmental Investment Fund of Namibia Act enables, without specifically mandating, regular, earmarked transfers from the Fund to local authority councils for climate change mitigation and adaptation in urban planning.⁹³ Other inter-governmental transfers which can potentially be used to finance climate change adaptation and mitigation at the urban level are the Trust Fund for Regional Development and Equity, the National Disaster Fund and the National Road Fund. Namibia lacks legal or policy provisions to allow local authority councils to receive a public credit guarantee by the national Government, however, through the Local Authorities Act local governments are empowered to collect locally generated revenues.⁹⁴ Other sector specific legislation, such as the Flexible Land Tenure Act and the Land Survey Act, also creates opportunities for local revenue generation through service fees. Local authority councils have discretion

92 Local Authority Council Act (No. 23 of 1992). Section 84 (1).

93 Environmental Investment Fund of Namibia Act (No. 13 of 2001). Sections 3 and 4.

94 Local Authority Council Act (No. 23 of 1992). Section 80 (1) (b), (d) and (e).

It is recommended that the local authority councils be legally obligated to earmark a percentage of their annual budget for climate change adaptation and mitigation.

in how they spend their revenues to the extent that their statements of estimated income and expenditure for the following financial year must be approved by the Minister for Urban and Rural Development.⁹⁵ There are no provisions in law which require local governments to earmark resources for urban planning and climate change. The Public Private Partnership Act of 2017 serves to empower Government Offices, Ministries and Agencies (OMAs), regional councils and local authority councils to enter into public private partnerships. Such partnerships can be used to finance, build and operate climate-resilient infrastructure, for example. Other policy documents such as the Solid Waste Management Strategy, the National Renewable Energy Policy and the National Policy on Climate Change also refer to public-private partnerships.

Behavioural change through incentives and disincentives also plays a relevant role in promoting or discouraging specific adaptation and mitigation activities. However, limited examples of economic and non-economic incentives for climate change adaptation and mitigation were identified in Namibia's urban law and governance framework. In fact, Namibia's Updated Nationally Determined Contribution references the lack of incentive mechanisms

as a barrier to attracting investment. Likewise, incentives that promote unsustainable land use were not readily identified in the country's law or policy. Namibia's Updated Nationally Determined Contribution mentions increased desertification taking place in the country as being a result of "incorrect policies, incentives and regulations that encourage inappropriate land management practices." However, these policies, incentives and regulations were not identified specifically in the document.

⁹⁵ Ibid. Section 84 (1).

PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

ASSESSMENT OF NAMIBIA LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

Urban areas account for two thirds of greenhouse gas emissions and energy consumption, making them major contributors to climate change. In particular, Namibia cities are already suffering from extreme weather events, flooding, heat waves, water scarcity, among other climate change effects.

Urban law has an important role to play in supporting climate action, increasing cities' resilience and in reducing emissions. Law defines urban forms, where infrastructure and basic services can be built; lays out rules for planning and decision making; and sets the context within which urban authorities, local governments and communities are expected to fulfil their mandate and react to emerging challenges.

UN-Habitat, the Konrad-Adenauer-Stiftung Regional Programme Energy Security and Climate Change in Sub-Saharan Africa (KAS), and the University of Michigan (US), through the project on Urban Law for Resilient and Low Carbon Urban Development, were able to assess the capacity of climate laws and policies in Namibia to adapt to climate change. The assessment was done through the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit – an innovative online tool designed to help countries establish legal frameworks necessary for effective domestic implementation of the Paris Agreement. The assessment was based on the five key performance indicators namely, i) governance framework for urban and climate planning; ii) urban and territorial planning; iii) urban planning and design for adaptation; iv) urban planning and design for mitigation; and v) economic and non-economic instruments for climate friendly urban planning. It is hoped that this assessment will be instrumental in fulfilling the potential of urban areas in Namibia to lead the way and be truly transformative spaces for climate action.

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