



NAMIBIA REPORT

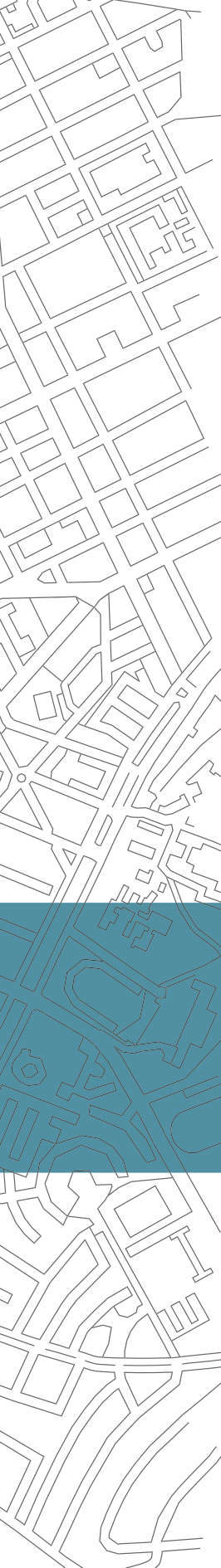
ASSESSMENT OF NAMIBIA LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

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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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Assessment of Namibia Legislation through the Urban Law Module of the Law and Climate Change Toolkit

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

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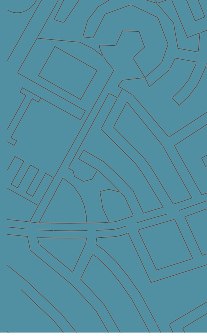
Arid landscape of Namib-naukluft National Park in the Namib Desert by SteveAllenPhoto999 source: envato elements.



National Validation Workshop with Key Namibian Stakeholders on Law and Climate Change. Monday, 13th June 2022, Avani Hotel, Windhoek, Namibia. Photos by Samuel Njuguna (UN-Habitat).



TABLE OF CONTENTS



- INTRODUCTION..... X
- 1 GOVERNANCE FRAMEWORK FOR URBAN AND CLIMATE PLANNING 1
- EXECUTIVE SUMMARY 1
- 1.1 MULTILEVEL INSTITUTIONAL COORDINATION 4
- 1.2 PARTICIPATORY GOVERNANCE.....10
- 1.3 DATA COLLECTION AND SHARING14
- 1.4 LOCAL GOVERNMENTS’ MANDATE FOR URBAN PLANNING IN URBAN AREAS..... 15
- RECOMMENDATIONS..... 17

- 2 URBAN AND TERRITORIAL PLANNING 21
- EXECUTIVE SUMMARY 21
- 2.1 NATIONAL TERRITORIAL PLANNING23
- 2.2 REGIONAL TERRITORIAL PLANNING25
- 2.3 SPATIAL PLANS FOR URBAN AREAS 28
- RECOMMENDATIONS..... 31

- 3 PLANNING FOR ADAPTATION35
- EXECUTIVE SUMMARY35
- 3.1 CLIMATE RISKS AND VULNERABILITY FOR PLANNED AREAS
AND INFRASTRUCTURE 40
- 3.2 IDENTIFICATION AND PRIORITIZATION OF ADAPTATION OPTIONS 43
- 3.3 IMPLEMENTATION OF IDENTIFIED ADAPTATION OPTIONS..... 46
- 3.4 ADAPTATION OF SLUMS AND OTHER VULNERABLE SETTLEMENTS 49
- 3.5 PLANNED RELOCATIONS FROM AREAS AT RISK OF CLIMATE CHANGE 50
- 3.6 SECURITY OF TENURE.....51

TABLE OF CONTENTS

3.7 DEVELOPMENT APPROVAL AND ADAPTATION.....	55
RECOMMENDATIONS.....	57
4 PLANNING FOR MITIGATION.....	63
EXECUTIVE SUMMARY.....	63
4.1 URBAN PLANS AND GREENHOUSE GAS EMISSIONS.....	65
4.2 URBAN FORM AND REDUCTION OF GREENHOUSE GAS EMISSIONS FROM TRANSPORT AND INFRASTRUCTURE.....	66
4.3 GREEN SPACES FOR ENVIRONMENTAL AND CLIMATE SERVICES.....	68
4.4 NEIGHBOURHOOD DESIGN AND ENERGY SAVING IN BUILDINGS.....	69
4.5 DEVELOPMENT APPROVAL AND MITIGATION.....	70
RECOMMENDATIONS.....	72
5 ECONOMIC AND NON-ECONOMIC INSTRUMENTS FOR CLIMATE-FRIENDLY URBAN PLANNING.....	76
EXECUTIVE SUMMARY.....	76
5.1 RESOURCES FOR URBAN PLANNING AND CLIMATE CHANGE.....	77
5.2 INCENTIVES FOR MITIGATION AND ADAPTATION IN URBAN PLANNING.....	81
5.3 INCENTIVES THAT PROMOTE UNSUSTAINABLE URBAN LAND USES.....	81
RECOMMENDATIONS.....	82

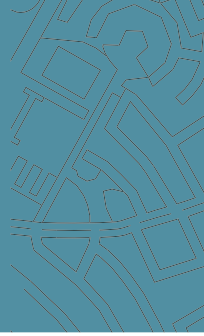
LIST OF FIGURES

Figure 1: Rating matrix for Namibia on governance framework for urban and climate planning	1
Figure 2: Structure of the main body of the Namibia Vision 2030 report.....	13
Figure 3: Rating matrix for Namibia on planning instruments.....	21
Figure 4: Katima Mulilo Land use plan.....	25
Figure 5: Structure of Namibia Development Plan IV (NDP4)	28
Figure 6: Rating matrix for Namibia on planning for adaptation	36
Figure 7: Flexible land tenure system Namibia - continuum of rights.....	49
Figure 8: Rating matrix for Namibia on planning for mitigation	64
Figure 9: Some of the interlinked issues that threaten sustainable development in Namibia.....	70
Figure 10: Rating matrix for Namibia on economic and non-economic instruments for climate friendly urban planning.....	77
Figure 11: Types of infrastructure and sources of funding.....	80

LIST OF TABLES

Table 1: Referenced legislation and policies (Governance framework for urban and climate planning)	18
Table 2: Referenced legislation and policies (Urban and territorial planning).....	33
Table 3: Referenced legislation and policies (Planning for adaptation)	61
Table 4: Referenced legislation and policies (Urban planning and design for mitigation)	74
Table 5: Referenced legislation and policies (Economic and non-economic incentives for climate - friendly Urban planning).....	83
Table 6: Annex. legislation and policies	84

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.

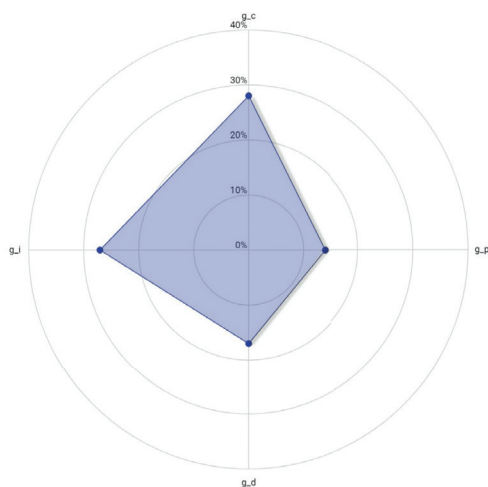
This report is the legal assessment made for Namibia. The structure mirrors the categorization in the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit which has five assessment areas, namely a) Governance framework for urban and climate planning; b) Urban and territorial planning; c) 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 with an executive summary and recommendations for each section.



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. Multilevel governance characterized by intergovernmental (between different levels of government) and intragovernmental (within the same level of government) cooperation built around broad consultative processes 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.¹

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, and in the **Regional Councils Act**, which makes provisions for regional councils to coordinate with both national-level authorities and local authorities. 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. The **Environmental Management Act** requires all levels of government to coordinate and consult one another as needed when drafting environmental plans affecting the area under their jurisdiction. The **Disaster Risk Management Act** establishes the Disaster Risk Management Committee to ensure effective disaster risk management at all levels of government. Furthermore, the Urban and Regional Planning Board, under the direction of the Minister of Urban and Rural Development, works to coordinate and integrate spatial plans developed at all levels of government to ensure coherence, in accordance with the **Urban and Regional Planning Act**.

¹ United Nations Environment Programme, United Nations Framework Convention on Climate Change, UN-Habitat and the Commonwealth Secretariat, *The Law and Climate Change Toolkit*, Urban Law Module, p. 19.

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.

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, the Biosafety Act, Nature Conservation Ordinance, the Petroleum Products and Energy Act, the Minerals (Prospecting and Mining) Act** and the **Prevention and Combating of Pollution of the Sea by Oil Act**. In addition, the **National Policy on Climate Change** establishes the ability of the Ministry of Environment, Forestry and Tourism to ensure all government departments at all levels of government are working together to combat climate change. This would include 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. However, more explicit provisions could be made requiring coordination among local authority councils in the same region as well as among different line departments in local authority councils in the same region. Legal provisions should also be made to better ensure coordination between neighbouring 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 on important issues, to enable them to participate in important debates affecting them. Despite having this constitutional provision, 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 specific and/or 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. **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. **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 plan 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. 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 which explicitly grants the public the right of access to information, nor does the Urban and Regional Planning Act grant 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 mechanism for participatory governance, especially with regard to 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**, the **Environmental Management Act** and the **Urban and Regional Planning Act**. While the **Deeds Registries Act** provides mechanisms for certain land disputes, Namibia does not have a dispute-resolution mechanism dealing with land disputes more generally.

Namibia lacks explicit provisions in legislation 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", 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. In an effort 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. The status of being an authorized planning authority with an approved structure plan empowers such an authority to hear and determine applications for rezoning of land, the alteration of approved township boundaries and 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.

Legislation 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 adaptation and mitigation of investments on climate change and associated activities, including capacity building. 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. 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. However, collaborations such as these are not explicitly prescribed in the urban and infrastructure planning powers of local authorities in other pieces of legislation.

1.1 MULTILEVEL INSTITUTIONAL COORDINATION

In Namibia, climate change and spatial planning governance is spread across the national, regional and local governments and is dictated by legislative frameworks as well as policy documents, including **Namibia Vision 2030**, national development plans, short-term plans such as Harambee Prosperity Plan II, and cabinet directives. In these frameworks, climate change is addressed through provisions on sustainable development, environmental protection and a green economy. The 2011 **National Policy on Climate Change**, in particular, dictates

intergovernmental coordination on climate change between the national, regional and local levels of government.

The **Constitution and the Assignment of Powers Act** of 1990 demarcate persons and entities responsible for the governance of human settlements at the national, regional and local levels of government. At the national level, ministers are appointed by the President from members of the National Assembly “for the purposes of administering and executing the functions of the Government”² and “for the administration of any law or of all such laws entrusting powers, duties or functions to the President or to [the Prime Minister or a minister] as the case may be”.³ As an extension of the executive branch, ministers serve as the policy heads of matters falling within their province of public administration; their powers and functions are further dictated by specialized policy, legislation and performance agreements entered into with the President. The ministries most involved in climate and spatial planning issues in Namibia are the Ministry of Agriculture, Water and Land Reform; the Ministry of Environment, Forestry and Tourism; the Ministry of Works and Transport; the Ministry of Mines and Energy and the **Ministry of Urban and Rural Development**. **The National Planning Commission**, established in Article 129 of the Constitution, also plays a large role in spatial planning and climate governance since it is responsible for “plan[ning] the priorities and direction of national development”. The Director General of Planning, appointed by the President, is considered “the principal adviser to the President in regard to all matters pertaining to economic planning”⁴ and serves on the Cabinet alongside the Prime Minister and appointed

2 Constitution of the Republic of Namibia, Article 35.

3 Assignment of Powers Act (1990), Section 3.

4 Constitution of the Republic of Namibia, Article 129.

ministers.

Also at the national level, the Constitution establishes the **National Council**, which has power to, inter alia, “consider...all bills passed by the National Assembly; (b) investigate and report to the National Assembly on any subordinate legislation, reports and documents which under law must be tabled in the National Assembly and which are referred to it by the National Assembly for advice; [and] (c) recommend legislation on matters of regional concern for submission to and consideration by the National Assembly”.⁵ The composition of the National Council, consisting of two members from each regional council, fosters multilevel coordination between the regional governments and national Government on legislative matters, including those which may concern the environment and spatial planning.

At the subnational levels, regional and local government are constituted by a freely elected **regional council** or **local authority council**, which the Constitution designates as the principal governing body for the region or local authority area, respectively. Like national line ministries, these councils have an executive and administration which carry out all lawful resolutions and policies adopted by the National Council.

The **Regional Councils Act** of 1992 further specifies the powers, duties, functions, rights and obligation of regional councils. Notably, regional councils have the power to undertake “the planning of the development of the region for which it has been established with a view to:

The physical, social and economic characteristics of such region

- The distribution, increase and movement and the urbanization of the population in such region
- The natural and other resources and the economic development potential of such region
- The existing and planned infrastructure, such as water, electricity, communication networks and transport systems, in such region
- The general land utilization pattern
- The sensitivity of the natural environment”⁶

These planning powers must be exercised by regional councils “with due regard to the powers, duties and functions of the **National Planning Commission**...and any other law relating to planning”.⁷ This requirement ensures that regional councils plan the development of their regions in coordination with the national development priorities and plans issued by the **National Planning Commission**.

Regional councils also coordinate with national level authorities by making “recommendation[s] to the minister [of Urban and Rural Development] in relation to the exercise...of any power conferred upon the minister under [law]” in relation to a local authority situated within the council’s region. Regional councils may also “advise the President or any minister on any matter referred to the regional council by the President or such minister”. They may also be consulted and make recommendations “in relation to all proposed legislation or submission made to the Cabinet by any ministry on any matter which may have any effect in its region”; furthermore, regional councils “have the right to make submissions on

.....
5 Ibid, Article 74.

.....
6 Regional Councils Act (No. 22 of 1992), Section 28(1)(a).

7 Ibid.

its own motion to the Cabinet or the minister in relation to the administration of any provisions in any law which confers or imposes any power, duty or function on the minister [of Urban and Rural Development], or on any matter peculiar to its region”.⁸ The President can also delegate powers, duties and functions to regional councils to be exercised in connection with their region.⁹ Regional councils’ ability to “assist any local authority council in the exercise or performance of its powers, duties and functions”¹⁰ can also foster coordination between regional and local levels of government.

The **Local Authorities Act** of 1992 describes the powers, duties and functions of local authority councils and enables local authority councils to make agreements with the Government or regional councils in relation to the exercise or performance or powers, duties and functions of local authority councils, government or regional councils.¹¹

The **Environmental Management Act** of 2007 requires “any office, ministry or agency of State or administration in the local or regional sphere of government”, or “any other functionary or institution” to consult other current environmental plans when writing a new environmental plan.¹² The Act does not explicitly require government entities at the national level to consult all local and regional environmental plans when writing their new plans. However, Section 44 of the **Environmental Management Act** requires the Minister of Environment, Forestry and Tourism or the Environmental Commissioner to consult any governmental jurisdiction that would be affected

by the implementation of a new environmental plan. Consultation is satisfied if an attempt is made and no response is received “within a reasonable amount of time”.¹³

Several other sector-specific laws create frameworks for multilevel coordination between ministries at the national level and regional and local government. The **Disaster Risk Management Act** of 2012 establishes the **Disaster Risk Management Committee** to ensure effective disaster risk management at all levels of government.¹⁴ The **National Housing Development Act** of 2000 requires regional and local authority councils to establish a housing revolving fund to support the provision of affordable housing within their jurisdiction.¹⁵ The Act establishes a “Decentralized Build Together Committee” for each region to conduct local outreach and serve as local focal points for the local housing revolving fund.¹⁶ Members of these committees may be both locally elected and appointed by the **Minister of Urban and Rural Development**.¹⁷ These committees coordinate with national-level ministries while also fostering local-level coordination amongst local authorities within their region on housing issues.¹⁸ In the **Land Survey Act** of 1993, the Minister of Agriculture, Water and Land Reform¹⁹ must consult with the relevant local authority council before assigning what taxes the local government must pay to the State concerning State land within the local jurisdiction.²⁰

8 Ibid, Section 28(1(d) and 28(2)(a) and (b).

9 Ibid, Section 29(1).

10 Ibid, Section 28(1)(f).

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

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

13 Ibid, Section 44.

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

15 National Housing Development Act (2000), Section 8.

16 Ibid, Section 27(1).

17 As of 2021, the Ministry of Regional, Local Government and Housing, and Rural Development has been renamed the Ministry of Urban and Rural Development.

18 National Housing Development Act (2000), Section 27(3).

19 The Ministry of Urban and Rural Development has since been renamed the Ministry of Agriculture, Water and Land Reform.

20 Land Survey Act (No. 33 of 1993), Section 22(2).



Wildlife at a busy waterhole in Etosha National Park in Namibia by SteveAllenPhoto999 source : envato elements

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. The **Atomic Energy and Radiation Protection Act** of 2005 establishes that an objective of the Atomic Energy Board is to advise the Minister of Health and Social Services on all matters relating to radiation protection.²¹ The Board consists of six members made up of officials from ministries responsible for land, health, environment, mining and labour, and a chairperson who is a radiation expert appointed by the Minister for Health and Social Services. The **Biosafety Act** of 2006 provides protections for the conservation and sustainable use of biological diversity by establishing the Biosafety Council, which consists of seven members who are officials with expertise in environmental health, public

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

health, animal health, biology, research, science and law, appointed by the Commission on Research, which is in turn under the direction of the Minister of Higher Education, Technology and Innovation.²²

While most of these Acts were passed after the country's independence in 1990, Namibia has a history of legislation enacted prior to independence that addresses issues of sustainability, such as the **Nature Conservation Ordinance** of 1975. The **Conservation Ordinance** protects wildlife and their habitats, and, according to Section 11, this Ordinance also establishes the Nature Conservation Board. In coordination with the Minister for Environment, Forestry and Tourism, the Nature Conservation Board manages and maintains game parks and reserves and ensures the safety of all animal and plant life within the designated areas.

22 Biosafety Act (2006), Section 6.

The **Petroleum Products and Energy Act** of 1990 is another piece of legislation that engenders coordination between various government entities at the national level. The **Petroleum Products and Energy Act** brings together the **Minister of Mines and Energy** and the **National Energy Council**. The Energy Council consists of the Minister for Mines and Energy or designated official, officials nominated by ministers responsible for trade, energy, finance, agriculture, water, transport and fisheries, as well as officials nominated by the President and from the national planning commission, the **National Petroleum Corporation of Namibia**, Nampower and TransNamib (the latter three are public enterprises). Together, these entities have measures in place for using petroleum products sustainably.²³ According to Section 12 of the **Energy Act**, the objective of the **National Energy Council** is to advise the minister on matters concerning the supply of energy in Namibia and the development, exploitation and use of the energy resources. The Council also advises the minister on the administration of the National Energy Fund.

The **Minerals (Prospecting and Mining) Act** of 1992 functions in a similar manner. The **Minerals Act** is administered by the Minister of Mines and Energy, with coordinated support and input from the Mining Commissioner, the Minerals Board and the Minerals Ancillary Rights Commission. The purpose of the **Minerals Act** is to provide reconnaissance, prospecting and mining for, the disposal of and the exercise of control over minerals in Namibia. Section 10 of the **Minerals Act** establishes the Minerals Board, an advisory group for the minister in all matters of policy pertaining to minerals in the country. The Board consists of the Minister of Mines and Energy or a person designated by the minister, two people

from the Chamber of Mines and Energy who represent the prospecting and mining operations sectors, two people appointed by the Minister for Mines and Energy representing the small-scale prospecting and mining sector, one person representing the interests of trade unions relating to mining, and two officials nominated from the Ministry of Mines and Energy. The Board may also co-opt officials from ministries responsible for agriculture, health, fisheries, the environment and finance. The Mining Commissioner is appointed by the minister according to Section 4 of the **Mining Act**, with the commissioner's function being a primary observer for all mining activities and to conduct any required due diligence on all mining activities.

Similarly, the Minister for Works and Transport works with the Directorate of Maritime Affairs to administer the **Prevention and Combating of Pollution of the Sea by Oil Act** of 1981. The Act seeks to prevent oil pollution from ships, tankers or offshore installations. Section 13 of the Act details the responsibilities of the Executive Director of the ministry and their role in ensuring that safety regulations are adhered to, and to work with the Directorate of Maritime Affairs to monitor all activities in the ports of Namibia.

Several pieces of legislation enacted after 2000 involve multilevel coordination with local authorities, especially the **Public and Environmental Health Act** of 2015 and **Forest Act** of 2001. The **Public and Environmental Health Act** enables the Minister of Health and Social Services to transfer ministerial duties to the competent local authority council once it has been determined that council has the capacity and resources to execute the role.²⁴ **The Forest Act** requires the Minister of Agriculture, Water and Land Reform to

23 Petroleum Products and Energy Act (1990), Section 2A.

24 Public and Environmental Health Act (2015), Section 3.

consult the Minister of Environment, Forestry and Tourism, the competent local authority council and the relevant traditional authority to establish a protected forested area.²⁵ **The Forest Act** also encourages horizontal coordination at the national level by requiring the Minister of Environment, Forestry and Tourism to consult with the Minister of Agriculture, Water and Land Reform before declaring any non-communal and/or communal land a classified forest.²⁶

Other policy provisions and legal requirements also exist for coordination across ministries and national level agencies. The **Namibia Country Programme Document** 2008-2009 requires the Ministry of Urban and Rural Development, the Ministry of Agriculture, Water and Land Reform, the **Namibia Housing Action Group** and the **National Housing Enterprise** to coordinate to ensure the “successful implementation of the new **Flexible Land Tenure System**”.²⁷ The work of these entities in this area is overseen by the Resident Coordinator.

Similarly, the **Agricultural (Commercial) Land Reform Act** of 1995 requires that the Land Reform Advisory Committee makes recommendations to the Minister for Agriculture, Water and Land Reform in relation to any acquisition of agricultural land by the State.²⁸ The Act also authorizes the minister to impose a land tax on the value of agricultural land, with advice and consultation from the Advisory Commission.

Namibia’s National Policy on Climate Change of 2011 makes the Ministry of Environment, Forestry

25 Forest Act, Section 21(1).

26 Forest Act, Section 13(1) and 13(2). The Ministry for Agriculture, Water and the Ministry for Land Reform have since been merged.

27 Namibia Country Programme Document (2008-2009), “Implementation Arrangements”.

28 Agricultural (Commercial) Land Reform Act (1995), Section 20.

and Tourism responsible for all environmental issues in the country and the climate change coordinating ministry through the Climate Change Unit established within the ministry as supported by the National Climate Change Committee.²⁹ The Parliamentary Standing Committee on Economics, Natural Resources and Public Administration advises the Cabinet on all policies relating to climate change at the national, regional and local levels.³⁰ The same section establishes local- and regional-level infrastructure and coordination mechanisms once policies have been decentralized at the ministries’ level. This requires the relevant local jurisdictions to coordinate with one another. The **National Policy on Climate Change** also 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. This would include 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.

The **Urban and Regional Planning Act** of 2018 is an excellent example of legislation that emphasizes coordination at all levels of government. The Act imposes obligations on the Minister for Urban and Rural Development to prepare national spatial planning frameworks; on regional councils to prepare structure plans related to the national spatial plans; and on local authorities to prepare urban structure plans in accordance with the regional and national spatial plans.³¹ Section 41 of the Planning Act empowers local authority councils to prepare

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

30 Ibid, Section 7.

31 Urban and Regional Planning Act (No. 5 of 2018), Sections 19, 21, and 25.

zoning schemes for its local authority areas. The Urban and Regional Planning Board, under the direction of the minister, works to coordinate and integrate spatial plans developed at all levels of government to ensure coherence.

1.2 PARTICIPATORY GOVERNANCE

Article 95(k) of the **Constitution of Namibia** imposes a positive obligation on the Government to develop policies that educate people on important issues to enable them to participate in debates affecting them. Despite having this constitutional provision, there is not an overarching law or policy in Namibia 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 specific and/or sectoral policies and legal frameworks.

The **Environmental Management Act** of 2007 outlines legal provisions that require stakeholder and community identification. Section 7 of the Act states that the Advisory Council must “promote cooperation between the State, non-governmental organizations, community-based organizations and the private sector”,³² implying an opportunity for community stakeholders to be brought to the table.

In the **National Policy on Climate Change** there is an emphasis on the need to ensure the participation of women, children and other vulnerable, marginalized groups in the planning process and the use of appropriate local knowledge for adaptation is encouraged.³³

The **Communal Land Reform Amendment**

32 Environmental Management Act (No. 7 of 2007), Section 7.

33 National Policy on Climate Change (2011), Section 3(3).

Act of 2013 stipulates that “the granting of the occupational land right will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community”.³⁴ The **Access to Biological and Genetic Resources and Associated Traditional Knowledge Act** of 2017 protects the rights of local communities over their genetic resources and associated traditional knowledge.³⁵ Administered by the Minister of Environment, Forestry and Tourism, the Act provide for the conservation, evaluation and sustainable use of biological and genetic resources by relying on indigenous traditional knowledge to maintain and improve biodiversity in local ecosystems.

Provisions of the Flexible Land Tenure Act of 2012 consider specific communities’ needs, especially tenure options for low-income communities, however stakeholders have expressed concern regarding the effectiveness of the law due to its stringent requirements for establishing a land hold and starter title schemes which delays giving ownership of plots to the community. Flexible tenure applies to urban areas, including land located inside municipalities, towns or villages as defined in the **Local Authorities Act** of 1992 and settlement areas as established under the **Regional Authorities Act** of 1992.

In other laws, stakeholder identification is left to the discretion of the functionary identified in the law. The **Disaster Risk Management Act** of 2012 provides for the establishment of stakeholder networks for disaster risk management, however specifically identified stakeholders are not mentioned.³⁶ While Decentralized

34 Communal Land Reform Amendment Act (2013), Section 36A(4)(a).

35 Access to Biological and Genetic Resources and Associated Traditional Knowledge Act (2017), Section 2.

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

Build Together Committees are composed of members elected by constituents of the geographic area they represent, the **National Housing Development Act** also allows the Minister of Urban and Rural Development to appoint, in writing, members of such committees “if it is in his or her opinion necessary or expedient for the purpose of fair representation”.³⁷ In the **Public and Environmental Health Act** of 2015, there is emphasis on the need for the community to be present for initiatives relating to the Act’s overall objectives. It specifically mentions the need to “protect individuals and communities from public health risks; [and] encourage community participation in order to create a healthy environment”.³⁸ When the **Environmental Management Act** requires the minister or Environmental Commissioner to conduct consultations, he or she “may, where appropriate, consult any other interested or affected person”.³⁹

The **National Policy on Climate Change for Namibia** reflects the clearest provisions with respect to the consideration of community demands and priorities. The policy highlights the need to “raise awareness, build capacity and empower stakeholders at the local, regional and national levels,⁴⁰ and to ensure that communities can participate meaningfully in the planning, testing and roll-out of adaptation and mitigation activities.”⁴¹

The **Urban and Regional Planning Act** includes public participation as one of the principles of spatial planning. The principle requires that “during the preparation, amendment

and review of policies and plans dealing with spatial planning, a transparent process of public participation must be followed which process must afford the general public and persons affected by such policies and plans, access to the relevant information in order to provide inputs on matters affecting them”.⁴² In order to uphold this principle, the Act has legal provisions that require consultations with Government Offices, Ministries and Agencies (OMAs) and stakeholders identified by the functionary as affected by or likely to be affected by a national development framework regional structure plan, or urban structure plan. There are also mandatory procedures for drafting national spatial development frameworks, urban and regional structure plans and draft zoning schemes which require public notice and participation. National spatial development frameworks, for example, are prepared by the Minister of Urban and Rural Development and then made available for public inspection through a public notice posted by the Executive Director to “invite written comments and objections from the general public and persons and institutions identified by the minister”.⁴³ Any comments and objections are submitted to the Urban and Regional Planning Board, which makes recommendations to the minister based on the draft framework and the accompanying comments and objections.⁴⁴ The minister “must consider the Board’s recommendations and may make changes to the framework” before submitting it to Cabinet for approval.⁴⁵ This process of public notice and participation for regional and urban structure plans mirror that prescribed for the national development framework, only differing in the entity responsible for preparing the plan (regional

37 National Housing Development Act (2000), Section 27(3).

38 Public and Environmental Health Act (2015), Section 2(c) and (d).

39 Environmental Management Act (No. 7 of 2007), Section 44(1)(b).

40 National Policy on Climate Change (2011), Section 3(4).

41 Ibid, Section 4(18).

42 Urban and Regional Planning Act (No. 5 of 2018), Section 3.

43 Ibid, Section 22(2)(a).

44 Ibid, Section 23(2).

45 Ibid, Section 23(3)(a).

councils and local authorities, respectively). For all types of plans, the minister is given discretion to prescribe by-laws describing exactly how “the public participation process [is] to be followed during the preparation of the [national development framework/regional structure plan/urban structure plan]”.⁴⁶

Access to dispute-resolution mechanisms is an important mechanism for participatory governance, especially regarding vulnerable or historically marginalized populations. In the context of Namibia, this would include people who continue to suffer disadvantages due to pre-independence racial policies, laws and practices. Vulnerable groups can also constitute women, young people, people with disabilities and marginalized communities such as the San. In this sense, the **Traditional Authorities Act** of 2000 and especially the **Community Court Act** of 2003 make provisions for resolving disputes involving traditional communities through, for example, restitution and compensation claims in accordance with customary law.

Legal provisions for resolving disputes can also be found in the **Constitution of Namibia**. Article 25 of the Constitution provides people who are aggrieved by actions of the executive and laws by Parliament and other law-making functionaries with the right to approach a competent court for a remedy. Article 80 of the Constitution states that the High Court of Namibia is the court of first instance for interpretation, implementation and upholding of the Constitution and implementation of the rights and freedoms. Article 79 states that the **Supreme Court of Namibia** will hear all appeals “which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights and freedoms guaranteed

thereunder”.

The **Environmental Management Act** of 2007 outlines the process by which citizens may lodge an appeal with the Minister of Environment, Forestry and Tourism. Section 50 states that anyone who wishes to appeal to the Environmental Commissioner must send such an appeal to the minister and Section 51 stipulates that any who wishes to appeal a decision of the minister can appeal to the High Court, which must treat this appeal as coming from the lower courts.

The **Urban and Regional Planning Act** makes provisions for an appeal process whereby a notice of appeal can be lodged with the Minister of Urban and Rural Development and the relevant functionary within 21 days of the date on which the action or decisions was taken and decided on by an Appeals Committee. However, the right of appeal does not apply to grievances associated with the planning process for the national development framework, regional structure plans or local structure plans.

The **Deeds Registries Act** of 2015 provides that the Registrar performs all the functions of the taxing officer of the High Court of Namibia in any disputes relating to fees charged by conveyancers, notaries public or legal practitioners. However, in cases dealing with the cancellation of certain registered rights relating to land, the Registrar has no authority to proceed without the court order.⁴⁷ As opposed to the **National Housing Development Act**, the relevant minister, the National Housing Council and the Local Housing Revolving Fund first manage disputes before heading to court.⁴⁸ Lastly, the **Agricultural (Commercial) Land Reform Act**

46 Ibid, Sections 22(3)(b) and 34(3)(b).

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

48 Ibid, Section 31.

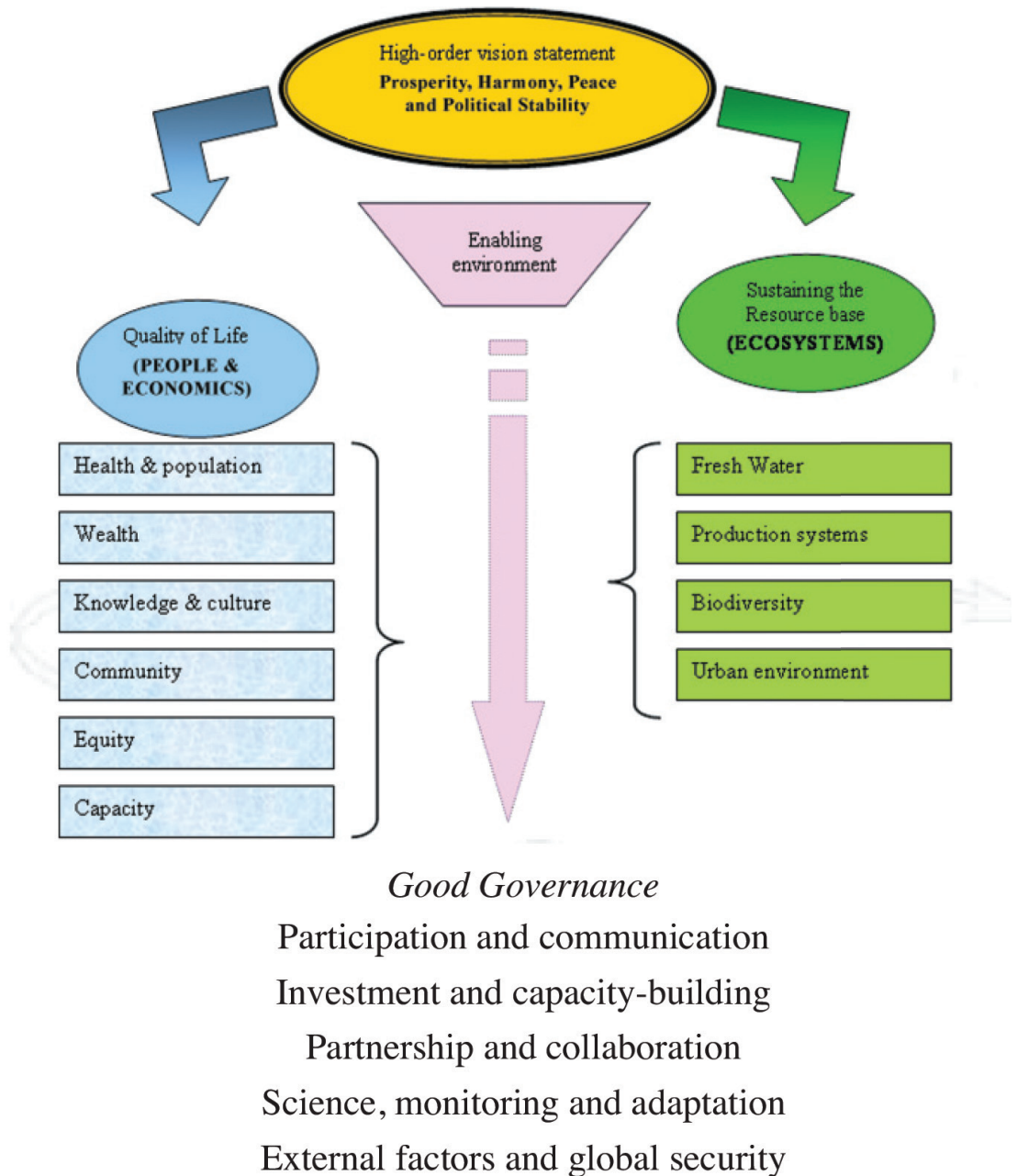


Figure 2. Structure of the main body of the Namibia Vision 2030 report. Source: Namibia Vision 2030.

outlines a complex appeal process⁴⁹ which only relates to disputes emanating from application of that Act. Namibia does not have a dispute-resolution mechanism dealing with land disputes more generally.

1.3 DATA COLLECTION AND SHARING

The **Constitution of Namibia** does not provide for the right to information, nor is there any access to information legislation in force in the country as of 2022 which would allow for coordinated sharing of information by Government Offices, Ministries and Agencies (OMAs) to the public. However, the Constitution does guarantee some level of information sharing through the right to freedom of speech and expression given in Article 21. Moreover, the Access to Information Bill is currently (2022) making its way through Parliament, having been passed by the National Assembly; it will become law once approved by the National Council, signed by the President and published in the Gazette. However, the commencement of this Act further depends on the Minister of Information and Communication Technology issuing regulations and the publication of a notice in the Gazette.

The **Environmental Management Act** of 2007 does not require the sharing of collected data, however it does require that all environmental plans, environmental certificates of appointment and other decisions are to be accessible on request by any person.⁵⁰ Through this provision, data can be made available to people at the local, regional or national level.

49 Agricultural Commercial Land Act, Section 74.

50 Environmental Management Act (No. 7 of 2007), Section 25(3).

The **National Statistics System for Namibia** is meant to collect, compile, produce, analyse and disseminate official and non-official statistics. The **Statistics Act** of 2011 requires that “government bodies, private sector entities, researchers, research institutions, training institutions, international or regional organizations, or any other person making use of statistics” be components in the **National Statistics System**.⁵¹ This provision thus allows for data collection and sharing amongst various types of institutions, including those in the private and public sector, as well as those operating at multiple levels of government.

A provision of the **National Policy on Climate Change for Namibia** of 2011 requires the creation of 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”.⁵² Though the Government seeks to participate in regional and international platforms to enrich this collaboration in dealing with climate change, it has yet to make any provision that explicitly ensures the sharing of data collection across local, regional, national and international scales. The Policy provides for the Meteorological Services Division within the Ministry of Works and Transport, which carries out the functions of climatic monitoring, research and assessment, to serve as the national Climate Analysis Unit to support the Climate Change Unit, the Ministry of Environment, Forestry and Tourism, the National Climate Change Committee (NCCC), and Government Offices, Ministries and Agencies (OMAs) with information required for decision making about climate change issues.

Namibia’s Updated Nationally Determined

51 Statistics Act (2011), Part I.

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

Contribution of 2021 further encourages coordinated multilevel governance modalities which facilitate data collection and sharing; one of its goals is to “strengthen coordination across national and international stakeholders to fast-track decisions and interagency collaboration”.⁵³ The Nationally Determined Contribution promotes cross-sectoral data management at the local, regional and national levels to combat climate change as effectively as possible. Data sharing is included in every step of the country’s climate change response (mitigation, adaptation, implementation, monitoring and reporting), however this document is not legally binding.

The **Flexible Land Tenure Act** of 2012 mandates that certain information be recorded in the land hold title register; this information can be shared between different forms of government.⁵⁴ In the **Disaster Risk Management Act** of 2012, the **National Disaster Risk Management Committee** is tasked with supporting and directing resources for improved quality of information and data on disaster risk and aligning warning systems in line with a regional disaster risk information database.⁵⁵

In the Auas Valley Judgment of 2022, the Supreme Court declared the environmental clearance certificate issued by the Environmental Commissioner to a property developer to be invalid because the certificate included a condition contrary to the applicable town planning scheme.⁵⁶ Sharing of relevant information and coordination between the Ministry of Environment and the Municipal Council of Windhoek, or a better understanding

53 Namibia’s Updated National Determined Contribution (2021), Section 1.4.

54 Flexible Land Tenure Act (No. 4 of 2012), Section 6.

55 Disaster Risk Management Act (No. 10 of 2012), Sections 5 and 14.

56 Auas Valley Residents’ Association v Minister for Environment, Forestry and Tourism, NASC 24 2022.

of the applicable laws, could have led to informed decision making.

1.4 LOCAL GOVERNMENTS' MANDATE FOR URBAN PLANNING IN URBAN AREAS

Several legal texts and provisions outline the institutional roles and responsibilities of local government for urban planning in Namibia. Chapter 12 of the Constitution outlines the creation, purpose and powers of local authority councils.⁵⁷ This section specifies the powers of such councils to administer daily needs and impose taxes, the elections of the council members and other incidental workings of the local government. As of 2022, there are approximately 57 local authority councils and 14 regions in Namibia.

In 1992, two key pieces of legislation were enacted to enable the implementation of Chapter 12 of the **Constitution in regional and local government**: the **Regional Councils Act** and the **Local Authorities Act**. These two Acts of Parliament define regional and local authorities as is required by the Constitution. The **Regional Councils Act** of 1992 outlines the powers, duties, functions, rights and obligations of the regional councils in relation to the National Planning Commission and the Minister of Urban and Rural Development.⁵⁸ The **Local Authorities Act** of 1992 defines local administrative areas or jurisdictions based on financing and governance capacity. These areas include municipalities, towns and villages. The municipal, town and village councils can establish management committees for different areas of service provision. Additionally, local authority councils are responsible for the planning of public

57 Constitution of the Republic of Namibia, Article 111(2).

58 Regional Councils Act (No. 22 of 1992), Part V.

transport systems and waste management, the supply of water and electricity, and the provision of sewerage and drainage within their respective local authority areas.

The **Urban and Regional Planning Act** of 2018 assigns local authority councils and regional councils the mandate for urban planning in their respective local authority and settlement areas. In terms of this Act, local authority and regional councils are mandated to prepare urban structure plans in respect of their respective local authority and settlement areas. To decentralize urban planning functions to regional and local government, the Act introduces a concept of declaring certain local authority councils and regional councils as authorized planning authorities conditional upon the local authority council or regional council (i) having an urban structure plan which has been approved in accordance with the Act, and (ii) having the capacity to deal with matters relating to spatial planning. The Minister of Urban and Rural Development determines whether a local authority council or regional council has adequate “capacity” as defined in the relevant by-laws to the Act. A local authority council or regional council which is declared an authorized planning authority “may exercise powers and perform functions imposed on or assigned to an authorized planning authority” as prescribed in the Act. The status of being an authorized planning authority with an approved structure plan empowers such an authority to hear and determine applications for rezoning of land, alteration of approved township boundaries and subdivision of land on its own, while all other applications must be recommended to the minister for approval on recommendation of the Urban and Regional Planning Board. When a local authority council or regional council fails or refuses to prepare an urban structure plan the

Executive Director of the ministry may do so. Section 18 of the Act empowers the minister to establish joint committees in respect of two or more local authorities for the joint exercise of spatial planning functions.

The **Disaster Risk Management Act** outlines the institutions of disaster risk management in Namibia and their roles. It further describes how local authorities should collaborate on inter-municipal agreements relating to disaster risk management.⁵⁹ The **Public and Environmental Health Act** of 2015 allows local authority councils to establish health committees to aid in implementing their mandate related to public health. The Act enables two or more local authority councils to come together to form a single health committee.⁶⁰

The **National Policy on Climate Change** provides clear definitions of stakeholders’ institutional roles and responsibilities and the local government’s role in dealing with climate change. Local government officials are responsible for working with local stakeholders such as the general public, the private sector, non-governmental organizations, faith/community-based organizations, training and researching institutions, media and international development partners regarding climate change intervention in urban areas.⁶¹ Furthermore, the National Policy on Climate Change refers to “local levels”, which are representative of local government, and requires the Government to secure funding to build and improve its capacities to effectively respond to climate change in accordance with the Policy.⁶² It sets out the objective of “provid[ing] secure and adequate funding resources for effective adaptation and

59 Disaster Risk Management Act (No. 10 of 2012), Section 54

60 The National Policy on Climate Change (2011), Section 4

61 Ibid, Section 7.1

62 Ibid, Section 7.4, Objective 4

mitigation investments on climate change and associated activities (e.g., capacity building, awareness and dissemination of information)". To achieve this goal, the Government is tasked with ensuring that the country leverages access to available climate change funding for capacity building through external resources and international bodies such as the United Nations Framework Convention on Climate Change. The Government is also obliged to provide funding through the country's treasury budgetary allocation using set procedures. The **National Policy on Climate Change** states: "It is imperative that adequate funding resources are secured for short-, medium- and long-term adaptation and mitigation for climate change".⁶³ Furthermore, the section on infrastructure in the **National Policy on Climate Change** encourages local governments to adopt town planning standards and principles to prepare cities and cities to become more climate resilient.⁶⁴

The **Urban and Regional Planning Act** includes provisions that facilitate inter-municipal collaborations for urban and infrastructure planning when administrative boundaries do not correspond to functional and morphological boundaries. Section 18 of the Act empowers the minister to establish joint committees in respect of two or more local authorities for the joint exercise of spatial planning functions.

RECOMMENDATIONS

Multilevel institutional coordination:

- More explicit provisions could be made in the Local Authorities Act requiring coordination among local authority councils belonging to the same region as well as among different line departments in local authority councils

⁶³ Ibid.

⁶⁴ Ibid, Section 4.8(d).

in the same region

- Regional council and local authority council member representation in the national council as well as the Urban and Regional Planning Board must be implemented.

Participatory governance:

- Members of local authority councils and regional councils in all constituencies in Namibia should be educated on the importance of climate change and planning, such that they in turn can educate the residents in their respective constituencies on climate change.
- The **Regional Councils Act** and **Local Authorities Act** must be amended to introduce mandatory public participation requirements when regional councils and local authority councils take certain actions.
- The legal framework should incentivize local authority councils and regional councils to educate inhabitants on climate change in order to promote ownership and accountability for climate change on a local level.
- A bottom-up approach to developing policies and legal frameworks should be adopted in order to promote the buy-in of the community in government climate change policies and legal frameworks.
- Public participation in planning processes, as given in the **Urban and Regional Planning Act**, should be amended to include pre-emptive public consultation conducted prior to plans being drafted. As of 2022, public participation is limited to commenting on already drafted plans, which does not enable community stakeholders to inform the initial

drafting of plans.

Data collection and sharing:

- Coordinate functions of the Meteorological Division and Statistics Agency to collect environmental statistics regularly.

Local governments’ mandate for spatial planning in urban areas:

- The **Local Authorities Act** should be amended to include provisions that require local governments to build and improve their capacities to implement their mandates.
- There are numerous horizontally structured

regional organizations with strictly defined compositions, however, local authority council representatives/liaisons are not always identified in the relevant legislation. Specifying a local authority point-person for various sectoral issues can aid in regional communication chains and ensure communication lines remain after people move on from their jobs.

See table 1 for a summary of the main laws, regulations and policies referred to in this chapter.

TABLE 1. Referenced legislation and policies (Governance framework for urban and climate planning)

Legislation	Year
Nature Conservation Ordinance	1975
Prevention and Combating of Pollution of the Sea by Oil Act	1981
Constitution of Namibia	1990
Assignment of Powers Act	1990
Petroleum Products and Energy Act	1990
Ombudsman Act	1990
Minerals (Prospecting and Mining) Act	1992
Regional Councils Act	1992
Local Authorities Act	1992
Land Survey Act	1993
The Agricultural (Commercial) Land Reform Act	1995
Public Service Act	1995
Decentralization Enabling Act	2000
National Housing Development Act	2000
Traditional Authorities Act	2000
Forest Act	2001

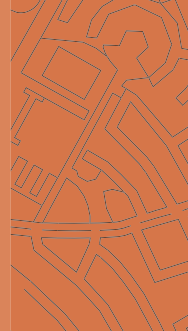
Community Court Act	2003
National Heritage Act	2004
Atomic Energy and Radiation Protection Act	2005
Biosafety Act	2006
Environmental Management Act	2007
Statistics Act	2011
Flexible Land Tenure Act	2012
Disaster Risk Management Act	2012
Communal Land Reform Amendment Act	2013
National Planning Commission Act	2013
Deeds Registries Act	2015
Public and Environmental Health Act	2015
Whistle-blowers Protection Act	2017
Access to Biological and Genetic Resources and Associated Traditional Knowledge Act	2017
Namibia Urban and Regional Planning Act	2018
Policy	Year
Namibia Country Programme Document 2008-2009	2009
National Policy on Climate Change for Namibia	2011
Namibia's Updated National Determined Contribution	2021



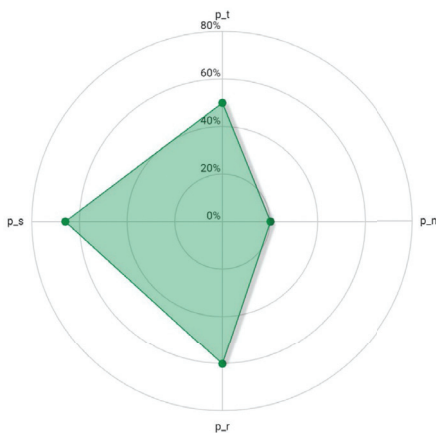
Dramatic landscape in Damaraland in Northern Namibia, Africa. by SteveAllenPhoto999 source : envato elements

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 3: Rating matrix for Namibia on Planning Instruments

Urban and territorial planning establishes long-term, sustainable frameworks for social, territorial and economic development.⁶⁵ 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.⁶⁶ In Namibia, a three-tiered planning hierarchy exists at the national, regional and local levels and is

65 United Nations Environment Programme, United Nations Framework Convention on Climate Change, UN-Habitat and the Commonwealth Secretariat (2022). “The Law and Climate Change Toolkit: Urban Law Module”, p. 29

66 New Urban Agenda (2016), para. 101.

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”.⁶⁷ 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. 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”⁶⁸; 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 an integrated national inland and coastal transport and infrastructure network. Regarding national land-use classification, one of the purposes of the national 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

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

68 Ibid, Section 3(b).

economic development and land use patterns of Namibia”.⁶⁹ 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) or rural (land which is not situated in a township or settlement). 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”.⁷⁰ 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.⁷¹ 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”.⁷² However, regional structure plans must comply with both extant land-use plans for the regions and the objectives of the national spatial development framework. 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

69 Ibid, Section 20.

70 Ibid, Section 3(c).

71 Ibid, Section 25.

72 Ibid, Section 26(e).

66

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.

99

plans. 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”.⁷³ There is no legal requirement to assess the climate vulnerability or greenhouse emissions associated with the implementation of the regional structure plan provided for by the **Urban and Regional Planning Act**. The **Environmental Management Act** states that “[environmental] assessments must be undertaken for activities which may have a significant effect on the environment or the use of natural resources”.⁷⁴ 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.⁷⁵

The **Urban and Regional Planning Act** mandates

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

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

75 Ibid, Section 27(1) and (2).

local authority councils with preparing, or causing to be prepared, urban structure plans in respect of the local authority area under their jurisdiction.⁷⁶ 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.⁷⁷ 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”.⁷⁸ 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 plan⁷⁹ and considers the environmental implications of the zoning scheme.⁸⁰ 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”.⁸¹

76 Urban and Regional Planning Act (No. 5 of 2018), Section 31(1).

77 Ibid, Section 32(e).

78 Ibid, Section 41(1)(c).

79 Ibid, Section 41(2) 43(1).

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

81 Ibid, Section 38(2).

2.1 NATIONAL TERRITORIAL PLANNING

The **Urban and Regional Planning Act** of 2018 includes explicit provisions requiring the formulation of a “national spatial development framework”. The National Spatial Development Framework must “deal with spatial aspects of Namibia’s social and economic development; (b) consist of a statement of policies, plans, background studies, reports or maps; and (c) contain documents and information which may be prescribed”.⁸² The given purpose of the National Spatial Development Framework is to, inter alia, “give effect to the relevant national policies, plans and laws”, such as the **National Climate Change Policy**, as well as to give effect to the principles of spatial planning prescribed in the Act.⁸³ While these principles do not explicitly refer to climate change adaptation or mitigation, they do, in effect, support climate resilience. One principle holds that “spatial planning must contribute to sustainable development by enhancing the natural environment and ensuring that development takes place within environmental limits”.⁸⁴ Another principle is that spatial planning “must be aimed at protecting and respecting Namibia’s environment...including its biological diversity, for the benefit of present and future generations”.⁸⁵ Furthermore, the principles state that “spatial planning must optimize the use of existing resources and infrastructure” and “decision-making procedures relating to spatial planning must minimize negative... environmental impacts”.⁸⁶

At the national level, land is primarily classified

82 Ibid, Section 21.

83 Ibid, Section 20(b) and (c).

84 Ibid, Section 3(b).

85 Ibid, Section 3(c).

86 Ibid, Section 3(e).

as either urban or rural, with certain legislation having greater detail. Rural land is defined as “land which is not situated in a township or settlement”,⁸⁷ while urban land includes land which is located within a “local authority area”; that is, within municipal, town or village boundaries.⁸⁸ Each of the overarching classifications has a specific law governing it – the **Urban and Regional Planning Act** for urban land and the Agricultural (Commercial) Land Reform Act for rural land. While the prescribed contents of the National Spatial Development Framework in the **Urban and Regional Planning Act of 2018** do not specifically include national land-use classifications, the Act does state that a purpose 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”.⁸⁹ This obligation to classify lands throughout the country ensures national, urban and regional plans/policies are aligned. The **Agricultural (Commercial) Land Reform Act** of 1995 further supports this, as it requires that agricultural land is specified for beneficial uses, such as “the practice of sound methods of good husbandry” or “the proper care and maintenance of improvements on the farming unit”.⁹⁰

The **Urban and Regional Planning Act** does not explicitly require the National Spatial Development Framework to establish an integrated national inland and coastal transport and infrastructure network. However, the Framework should, in line with Namibia’s

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

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

89 Ibid, Section 20.

90 Agricultural (Commercial) Land Reform Act (1995), Section 44(2).

spatial planning principles as defined by the Act, endeavour to “optimize the use of existing resources and infrastructure”. Furthermore, the Framework should serve to “facilitate the coordination, integration and alignment of national, urban and regional policies and plans relating to spatial planning”. This provision effectively serves as a legal requirement for the Framework and other spatial plans to coordinate national plans and policies related to climate change.

One such policy is the 2018 **Namibian Transport Policy** (2018-2035). Its content covers roads, road transport, sustainable mobility, railways, maritime and air transport. It also provides that “road network planning and classification will be structured and will take into account the developmental objectives of government and integrated land-use planning principles”.⁹¹ Furthermore, the Policy seeks to promote sustainable mobility “provid[ing] connectivity between and within urban and rural areas in an efficient, reliable, affordable and safe manner by means of public transport and non-motorized transport”.⁹² As such, according to the **Namibian Transport Policy**, railways in particular must be continuously improved and expanded. Provision 6.4.3 of the Policy states that inland waterway access must be provided to remote locations, such as northern Namibia and the Zambezi River. However, there is no specified plan for coastal transport efforts.

The **Namibian Transport Policy** was also the first transport-specific law or policy to explicitly take climate change into account in Namibia. It states the following as a point of departure for environmental policy: “The transport

91 Namibian Transport Policy (2018), Section 2.3.

92 Ibid, Section 3.2, p. 13.

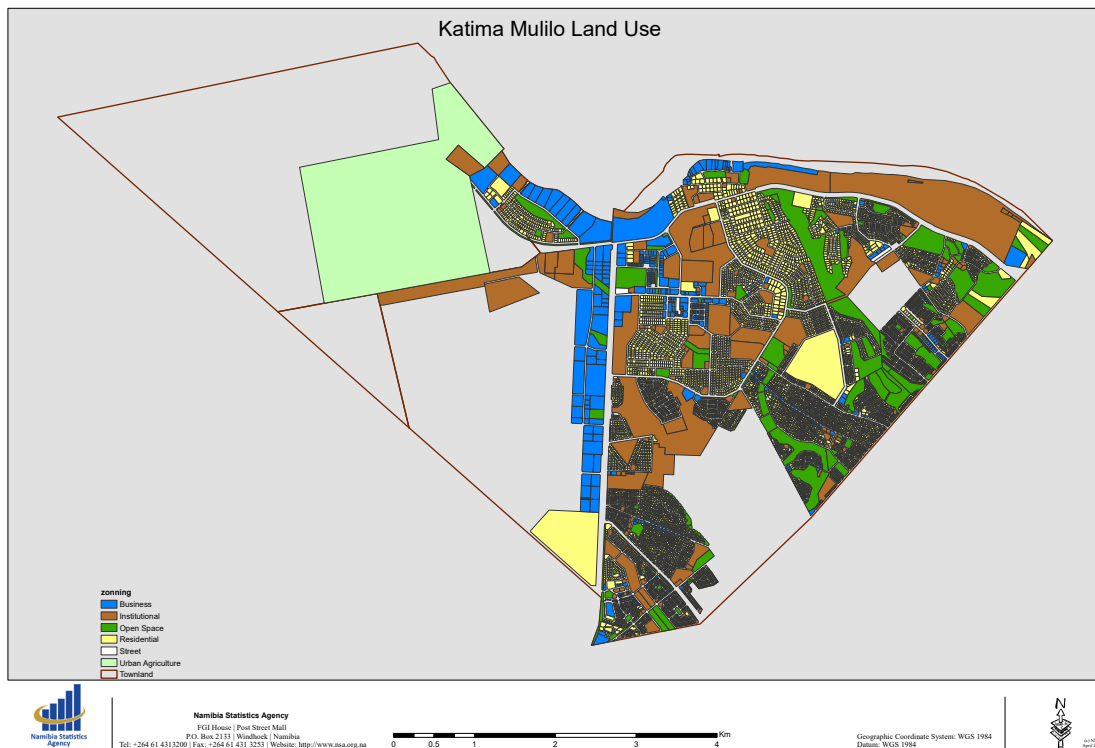


Figure 4: Katima Mulilo Land Use Plan. Source: Namibia Statistics Agency

sector aims to protect the environment and to respond to the challenges of climate change.”⁹³ It goes on to describe specific climate change adaptation and mitigation objectives of the transport sector, namely “design transport infrastructure in such a way that would cater for more intense rainfall and/or which might help to support communities through long periods of drought” and “greenhouse gas reduction measures must be considered in the transportation planning process”.⁹⁴

Another policy related to spatial planning which the National Spatial Development Framework should take into consideration is the **National Policy on Climate Change** of

2011. The aim of the overall framework of the Policy is to “implement adaptation measures to reduce the vulnerability of the population to impacts of climate change by enhancing their adaptive capacity whilst pursuing sustainable development”.⁹⁵ This non-binding statement establishes that it is the country’s goal to provide tailored responses, such as mitigation and adaptation, for “local, regional and national conditions” to fight the effects of climate change efficiently.⁹⁶ It is expressed in the Policy that infrastructure will be impacted by climate change, especially flooding, in the future. Section 4.8 recognizes that infrastructure development standards must be established

⁹³ Ibid, Section 9.1, p. 37.

⁹⁴ Ibid, Section, 9.2.

⁹⁵ National Policy on Climate Change (2011), Chapter 2.

⁹⁶ Ibid, Section 3.6.

and monitored for roads, housing and water infrastructure, but does not specify guidelines or requirements.

While 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**, it states in a more general fashion that spatial planning must have a focus on “protecting and respecting Namibia’s environment, its cultural and natural heritage, including its biological diversity, for the benefit of present and future generations”.⁹⁷ In **Namibia’s Updated Nationally Determined Contribution** of 2021, on the other hand, sectors are identified that have been assessed and flagged as most vulnerable to climate change and greenhouse gasses; these are “water resources, agriculture, forestry, coastal zones, tourism, human health and disaster risk management”.⁹⁸ However, **Namibia’s Updated Nationally Determined Contribution** pledges that the country will reduce its greenhouse gas emissions by 91 per cent by 2030. 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.

2.2 REGIONAL TERRITORIAL PLANNING

The **Urban and Regional Planning Act** of 2018 obliges regional councils to “prepare or cause to be prepared” a regional structure plan in respect of the region under their jurisdiction.⁹⁹ The

97 Urban and Regional Planning Act (No. 5 of 2018), Section 2(b) and (c).

98 Namibia’s Updated National Determined Contribution (2021), Section 3.2.

99 Urban and Regional Planning Act (No. 5 of 2018), Section 25.

content of the regional structure plan is required to “(a) deal with spatial aspects and potential for social and economic development of the region concerned; (b) consist of a statement of policies, plans, background studies, reports or maps; and (c) contain documents and information which may be prescribed”.¹⁰⁰

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”.¹⁰¹ However, the law qualifies that the land-use classifications in regional structure plans are required to “be aligned to the land-use plans [in force] prepared by the regional council in consultation with the ministry administering matters related to land reform”.¹⁰² This provision, which includes individual regional councils and the Namibian Urban and Regional Planning Board, ensures synchronization between regional and national land-use objectives.

Moreover, regional structure plans must align with the objectives of the National Spatial Development Framework. The law specifically states that regional structure plans should give effect to the “relevant national policies, plans and laws”,¹⁰³ which would include the Framework. The **National Climate Change Policy**, Namibian Transport Policy as well as Namibia’s Updated Nationally Determined Contribution can be considered relevant national policies and plans which the regional structure plan should seek to implement in this context. Finally, the regional structure plan is also required to give effect to the objects of the **Urban and Regional Planning Act** as well as to the country’s spatial planning principles and standards, as stated in Sections

100 Ibid, Section 27.

101 Ibid, Section 26(e).

102 Ibid, Section 26(d).

103 Ibid, Section 26(a), (b) and (c).

2 and 3 of the Act.

The **Environmental Management Act** of 2007 also facilitates the coordination of regional territorial planning with national climate goals and environmental plans. The Act mandates the Environmental Commissioner to monitor compliance with environmental plans and obliges “every organ of State [to] exercise every function it may have.... that may significantly affect the protection of the environment, substantially in accordance with the environmental plan prepared and approved in accordance with this [Act]”. The Minister of Environment and Tourism is empowered to identify and list by notice in the Gazette or regulation organs of State which are exercising functions that may affect the Government, and every organ so identified must prepare an environmental plan and report annually to the minister on the implementation of its adopted environmental plan. Regional councils, which are responsible for drafting regional structure plans, are considered organs of State in terms of the **Environmental Management Act**.¹⁰⁴ In addition, the Climate Change Unit is directed by the **National Policy on Climate Change** of 2011 for Namibia to assist with developing and implementing climate change activities at the local, regional and national levels.

There are no legal provisions that 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”.¹⁰⁵ Meanwhile the **Urban and Regional Planning Act** outlines the objective of regional structure plans as being

104 Environmental Management Act (No. 7 of 2007), Part I, Section 1, “Organ of State”.

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

to provide guidelines for integrated social and economic development which should, implicitly, include infrastructure and transport networks.¹⁰⁶ Additionally, the **National Policy on Climate Change** of 2011 includes establishing and enforcing standards for infrastructure development such as roads, housing and water infrastructure through monitoring and reporting systems.

There is no legal requirement to assess the climate vulnerability or greenhouse gas emissions associated with the implementation of the regional structure plan provided for by the **Urban and Regional Planning Act**. The **Environmental Management Act** of 2007 states that “[environmental] assessments must be undertaken for activities which may have a significant effect on the environment or the use of natural resources”.¹⁰⁷ However, the preparation of the National Spatial Development Framework, regional structure plans or urban structure plans is not listed as one of the activities requiring an environmental assessment.¹⁰⁸

In a broader context, **Namibia’s Updated Nationally Determined Contribution 2021** is a call for action in response to climate vulnerability in water resources, agriculture, forestry, coastal zones, tourism, human health and disaster risk management.¹⁰⁹ Additionally, within **Namibia’s National Policy on Climate Change** of 2011, sections dedicated to “Vulnerability of Namibia to Climate Change” and “Mainstreaming Climate Change into Policies, Legal Framework and Development Planning” outline the climate

106 Urban and Regional Planning Act (No. 5 of 2018), Section 26(e).

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

108 Environmental Impact Assessment Regulations (No. 4878 of 4 February 2012).

109 Namibia’s Update Nationally Determined Contribution (2021), Section 3.2.

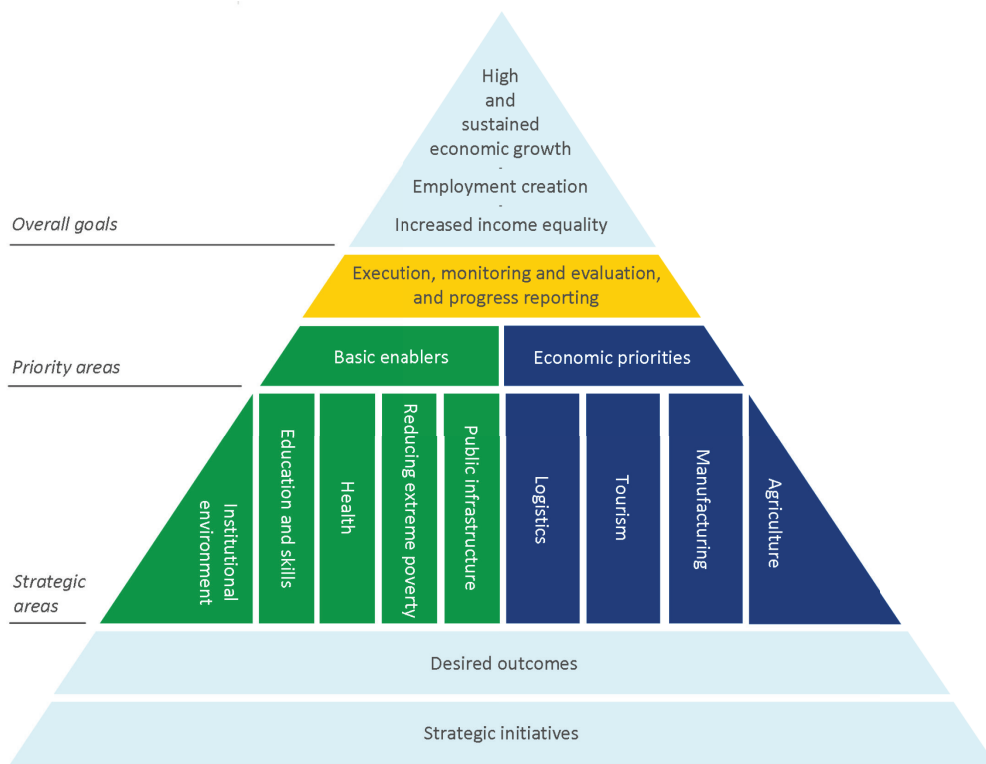


Figure 5: Structure of Namibia Development Plan IV (NDP4). Source: *Master Plan for Development of an Internal Logistics Hub for SADC Countries in the Republic of Namibia, Final Report, March 2015.*

vulnerability areas of concern in the country and mention the need to mainstream climate change within its legal provisions.¹¹⁰ In addition, the **National Policy on Climate Change** includes provisions pertaining to greenhouse gas emissions which instruct the Government to promote sustainable energy and the exploration of low carbon development through “renewable forms of energy (wind, solar, bio-gas, etc.) at all levels to reduce greenhouse gases”.¹¹¹ However, neither the Nationally Determined Contribution nor the National Policy on Climate Change are legally binding in and of themselves, nor do they explicitly correlate these provisions to the regional structure planning.

2.3 SPATIAL PLANS FOR URBAN AREAS

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.¹¹² According to the Act, an urban structure plan must “(a) deal with spatial aspects and potential for social and economic development of the relevant local authority area; (b) consist of a statement of policies, plans, background studies, reports or maps; and (c)

¹¹⁰ National Policy on Climate Change (2011), Section 1.2.

¹¹¹ Ibid, Section 4.9(a).

¹¹² Urban and Regional Planning Act (No. 5 of 2018), Section 31(1).



Desert meets ocean at the arid coastline at Sandwich Bay in Namibia. by SteveAllenPhoto999 source: envato elements

contain documents and information which may be prescribed”.

Like the National Spatial Development Framework and regional structure plans, urban structure plans should give effect to the objects of the Act as stated in Section 2, the principles and standards of spatial planning referred to in Section 3, and the relevant national policies, plans and laws. The latter requirement serves to ensure that urban structure plans implement the objectives of the **National Spatial Planning Framework**. Even more explicitly, however, the Act states that 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.¹¹³ The Minister of Urban and Rural Development can ensure the local authorities aligns urban structure plans to the Framework and regional structure plans since he or she has the power to approve or withhold approval of these plans.¹¹⁴

The provisions of the **Environmental Management Act** cited with respect to regional structure plans hold true for urban structure plans as well; local authorities may be obliged to draft an environmental plan for the area under their jurisdiction and, if so, would also be required to report annually to the Minister of Environment, Forestry and Tourism on the implementation of its adopted environmental plan. Environmental plans are stated to “coordinate and harmonize the environmental policies, plans, programmes and decisions of the various organs of State that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment, in order

113 Ibid, Section 32(e).

114 Ibid, Section 31(2).

to (i) minimize the duplication of procedures and functions; and (ii) promote consistency in the exercise of functions that may affect the environment”.¹¹⁵ Thus, while there is no provision in either the **Urban and Regional Planning Act** or the Environmental Management Act which explicitly requires the coordination of urban structure plans and environmental plans, such coordination is facilitated by the Environmental Management Act requiring “organs of State” to draft environmental plans.

The law in Namibia uses zoning schemes, previously known as town planning schemes, to classify land in urban areas based on what is and is not allowed within each category. The **Urban and Regional Planning Act** 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”.¹¹⁶ It provides that a zoning scheme must “(a) define the area to which the zoning scheme applies; (b) contain a scheme map, containing prescribed matters; (c) contain scheme clauses, indicating the zoning; and (d) contain prescribed documents and information”.¹¹⁷ The zoning scheme is prepared by a local authority and required to conform to the applicable urban structure plan.¹¹⁸ The Minister of Urban and Rural Development must approve any zoning scheme, and when making a decision he or she is required to take into account, inter alia, “the likely impacts of the zoning scheme on the environment, socio-economic conditions and cultural heritage”, “the protection or preservation of cultural and natural resources, unique areas or features and biodiversity”, and “the natural

and physical qualities of the area.”¹¹⁹ Local authority councils are required to review their zoning scheme after five years have elapsed from the date of the scheme’s commencement.

In addition, the **Namibia Transport Policy** (2018-2023) specifies that roads must be classified “in terms of the current Roads Ordinance and proposed Roads Bill...and classified into economic roads and developmental roads”.¹²⁰ The **Master Plan for Development of an International Logistics Hub for SADC [Southern African Development Community] Countries in the Republic of Namibia** of 2015 requires enough land to be set aside in urban areas for future road development.¹²¹

The **Communal Land Reform Amendment Act** of 2013 issues legal requirements which grant regional councils the power to control land use and, specifically, grant occupation land rights. It states that a “board [Communal Land Board], upon application, may grant to a ministry, agency, office, church or any other institution providing public services an occupational land right in respect of a portion of communal land, but an occupational land right for agricultural purposes may be granted only in respect of land which is situated within a designated area”.¹²² While these provisions do not apply to urban land per se, it may apply to peri-urban land situated immediately outside approved townships, which is nonetheless covered by urban structure plans.

Further stipulations are placed on land within **Namibia’s National Policy on Climate Change** of 2011. The aim of Section 4.5 (“Biodiversity and Ecosystem Services Section”) is to promote

115 Environmental Management Act (No. 7 of 2007), Section 23(1).

116 Ibid, Section 41(1)(c).

117 Ibid, Section 42(1).

118 Ibid, Sections 41(2) and 43(1).

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

120 Namibia Transport Policy (2018), Objective 2.3.

121 Master Plan for Development of an International Logistics Hub for SADC Countries in the Republic of Namibia (2015), Section 6.6.2

122 Ibid, Section 36(a).

the conservation and sustainable use of the country's biodiversity as well as to preserve ecosystems through land use stipulations. It specifically states that government entities are to "identify biodiversity hotspots where no development should be allowed", enabling the country to limit the amount of land developed if deemed a biodiversity hotspot.

The **Urban and Regional Planning Act** lacks provisions 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. Though, more broadly, the plan must "deal with spatial aspects and potential for social and economic development of the relevant local authority area". The Act also includes spatial planning principles which urban structure plans are legally required to "give effect to", one of which states that "spatial planning must be aimed at protecting and respecting Namibia's environment, its cultural and natural heritage including its biological diversity, for the benefit of present and future generations".¹²³ As such, all urban structure plans must endeavour to preserve the country's natural environment, biodiversity and cultural heritage sites for future generations.

This objective is echoed in Part II of the **Environmental Management Act**, which outlines the principles of environmental management, one of which is to ensure that "Namibia's cultural and natural heritage including its biological diversity [is] to be protected and respected for the benefit of present and future generations".

¹²⁴This is explicitly reiterated in the **National Policy on Climate Change** of 2011 which

¹²³ Urban and Regional Planning Act (No. 5 of 2018).

¹²⁴ Environmental Management Act (No. 7 of 2007), Section 3(2)(g).

states "the Government recognizes the need for Namibia to develop in such a way as not to compromise the ability of current and future generations to meet their needs".¹²⁵ The **National Policy on Climate Change** is not legally binding, however, the **Environmental Management Act** contains legally binding provisions that the Sustainable Development Advisory Council is responsible for executing the principles of environmental management and ensuring coordination between the national, regional and local levels of government.¹²⁶

The country's **Updated Nationally Determined Contribution** of 2021 reiterates this commitment with the Minister of Environment, Forestry and Tourism's statement of the need to achieve sustainable growth. There is an expressed statement of the need to consider growth management strategies; however, legally binding requirements are vague and do not list any specific person(s) or government institution(s) responsible for executing growth management strategies for future land use needs.

Namibia lacks provisions of 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. It specifically requires the review of urban structure plans once 10 years have elapsed from the date of their commencement. Moreover, local authority councils are given the power to "at [their] own initiative review [their]... urban structure plan".¹²⁷

¹²⁵ National Climate Change Policy (2011), Section 3(2).

¹²⁶ Environmental Management Act (No. 7 of 2007), Section 7((a), (b) (ii)).

¹²⁷ Urban and Regional Planning Act (No. 5 of 2018), Section 38(2).

RECOMMENDATIONS

National territorial planning:

- The **Urban and Regional Planning Act** should clarify and define “the relevant national policies, plans and laws” which the National Spatial Development Framework must “give effect to”. This can be done within the text of the law itself or through a piece of subsidiary legislation. Policies and law related to climate change and transport, such as the **National Climate Change Policy** (2011) and **Namibia Transport Policy** (2018), should be considered “relevant” in this context.
- The requirement for the national spatial development framework 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” in the **Urban and Regional Planning Act** should explicitly reference the types of land-use classifications which the Framework can prescribe.
- The contents of the National Spatial Development Framework should be more precisely defined in the **Urban and Regional Planning Act**. They should include the design of an integrated inland and coastal transport and infrastructure network.
- The **Urban and Regional Planning Act** and/or the **Environmental Management Act** should include the legal requirement to assess the climate vulnerability and greenhouse gas emissions associated with the implementation of the National

Spatial Development Framework. Vulnerability assessments should link to the climate vulnerabilities identified in **Namibia’s Updated Nationally Determined Contribution** (2021).

Regional territorial planning:

- The contents of regional structure plans should be more precisely defined in the **Urban and Regional Planning Act**. They should include the design of an integrated transport network and infrastructure system, thus aligning with and further clarifying the powers granted to regional councils in the **Regional Councils Act** to plan and develop the infrastructure of “transport systems in such a region”.
- The **Urban and Regional Planning Act** should explicitly require regional structure plans to coordinate with environmental plans drafts at the national and regional levels. The **Environmental Management Act** should require that environmental plans be drafted at the national and regional level, and that such plans are shared with regional councils and any other public entity involved in drafting regional structure plans.
- The **Urban and Regional Planning Act** should explicitly require regional structure plans to implement the objectives of the national spatial development framework (as required for urban structure plans in the Act).
- Regional governors should exercise their constitutional powers to establish a Climate Change Unit focused on regional issues and coordination between the three levels of government.

- The Urban and Regional Planning Act and/or the Environmental Management Act should include the legal requirement to assess the climate vulnerability and greenhouse gas emissions associated with the implementation of the regional structure plans. Vulnerability assessments should link to the climate vulnerabilities identified in **Namibia's Updated Nationally Determined Contribution** (2021).

coordination with the Directorate Disaster Risk Management, the Meteorological Division, the Ministry of Urban and Rural Development, the Ministry of Environment and Tourism, and the National Planning Commission where possible.

See table 2 for a list of the main laws, regulations, and policies referenced in this chapter.

Spatial plans for urban areas:

- The contents of urban structure plans should be more precisely defined in the Urban and Regional Planning Act or otherwise defined in a separate piece of legislation dedicated to spatial planning for urban areas.
- The **Urban and Regional Planning Act** should explicitly require that urban structure plans assess future land needs and identify land safe from the effects of climate change adequate to meet these needs.
- The **Urban and Regional Planning Act** (or otherwise a specialized legislation for urban planning) should also include provisions that require the setting of urban growth boundaries or other growth management strategies, making sure that the amount of buildable land within the boundary is adequate to meet current and future land needs. In this respect, the law should create opportunities for scenario planning.
- Legal provisions in the **Urban and Regional Planning Act** regarding the review of urban structure plans should require local authority councils to review urban plans if new climate risks or new climate adaptation options are identified. A mechanism for identifying new climate risks and climate adaptation options should also be established, in

TABLE 2. Referenced legislation and policies (Urban and territorial planning)

Legislation	Year
Constitution of Namibia	1990
Regional Councils Act	1992
Land Survey Act	1993
The Agricultural (Commercial) Land Reform Act	1995
Decentralization Enabling Act	2000
Forest Act	2001
Environmental Management Act	2007
Communal Land Reform Amendment Act	2013
Public and Environmental Health Act	2015
Namibia's Urban and Regional Planning Act	2018
Policy	Year
National Policy on Climate Change for Namibia	2011
Namibian Transport Policy	2018
Namibia's Updated Nationally Determined Contribution	2021

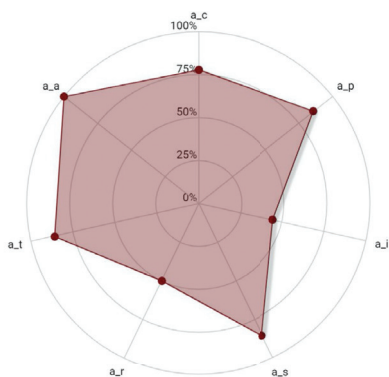


Dusty Road Through the Namib Desert, Namibia. by imagexphoto source: envato elements

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 6: Rating matrix for Namibia on planning for adaptation

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”.¹²⁸ 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

¹²⁸ 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).

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”.¹²⁹ These environmental impact assessments can facilitate the consideration of climate risks and vulnerability for planned areas and infrastructure since activities flagged by the 2012 **EMA** and **EIA Regulations** include rezoning of certain land, resettlement schemes and transport infrastructure planning. 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** 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

¹²⁹ Ibid, 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.

of identifying and prioritizing adaptation options for climate risks and vulnerabilities may take place through the environment assessment process foreseen in the Environmental Impact Assessment Regulations, which requires project proponents to “describes how activities that may have significant effects on the environment are to be mitigated, controlled and monitored”.¹³⁰ The **National Policy on Climate Change** also has explicit provisions concerning climate change adaptation which identify prioritized ecosystem-based¹³¹ and infrastructure-based¹³² adaptation options. Nonetheless, neither the Policy nor other pieces of policy or legislation explicitly require that identified adaptation options, actions or strategies be assessed and prioritized according

¹³⁰ Environmental Impact Assessment Regulations of 2012.

¹³¹ National Policy on Climate Change (2011), Section 4.5.

¹³² Ibid, Section 4.8.

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 and verifiable benchmarks against which progress can be assessed are not provided for in 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 the country’s 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**, as well as the **Flexible Land Tenure Act**, and the Communal Land Reform Amendment Act, 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 to ensure that development is veered away from hazard-prone areas. 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 largely not provided in Namibian environmental and spatial planning legal frameworks. While provisions are not explicitly provided for in local authority or urban and regional planning legislation requiring local authority councils to plan the location of essential infrastructure out of flood-prone areas, the **Flexible Land Tenure Act** and **Communal Land Reform Act** includes 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.¹³³

The **National Policy on Climate Change** acknowledges that climate change is expected to disproportionately impact vulnerable groups. Nonetheless, the only 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 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 calls for “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”. 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 made 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 Namibia’s laws or policies. 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

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

and for the purposes of land reform.¹³⁴ In the urban context, the 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”.¹³⁵ The law also makes provisions for any local authority council to establish an “emergency camp for the purpose of the accommodation of homeless persons”¹³⁶ which can be governed by regulations which “contain different provisions in respect of different areas, categories or classes of persons”.¹³⁷ Evidently, these provisions fail to ensure the safety and health of evictees after all reasonable on-site alternatives and solutions have first been explored. 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.¹³⁸ Statutory law, namely the **Communal Land Reform Act** of 2012, has affirmed the validity of various types of customary tenure rights over communal land. 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.¹³⁹ However, a **draconian, apartheid-era legislation, 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”.¹⁴⁰ Section 4(1) and (3) of this Proclamation 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 someone defaults on their home loan from the Housing Revolving Fund. Numerous provisions regarding expropriation or compulsory acquisition of land are made in Namibian laws, 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, however, the law does not provide compensation in respect of informal rights and interests and livelihoods. Formal grievance, review and dispute-resolution mechanisms for land and property disputes are primarily addressed in the **Flexible Land Tenure Act, the Deeds of Registries Act, and the Agricultural (Commercial Land Reform) Act**.

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

135 Section 2(3)(b)(ii).

136 Squatters Proclamation (AG 21 of 1985), Section 8(1).

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

138 Constitution of the Republic of Namibia, Article 66(1).

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

140 Squatters Proclamation (AG 21 of 1985).

The developmental approval process in Namibia takes place primarily at the local level through building permit applications submitted to the local authority council, which will assess the proposed construction for compliance with the municipal building regulations as well as the local authority council 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 law. 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, the Urban and Regional Planning Act, and the Deeds Registries Act.**



Dead valleys in Sossusvlei, Namibia. Photo by estivilliml source: envato elements

3.1 CLIMATE RISKS AND VULNERABILITY FOR PLANNED AREAS AND INFRASTRUCTURE

Several of the country's statutes include mechanisms that facilitate climate risk and vulnerability assessments, though they are not strictly required as part of the planning process with respect to the national spatial planning framework, regional structure plans or urban structure plans.

The **Environmental Management Act** of 2007 specifies the purpose, conditions and process of conducting assessments which evaluate the environmental risks and vulnerabilities associated with certain activities. One of the principles of environment management given in the Act is that "assessments must be undertaken for activities which may have a significant effect on the environment or the use of natural resources".¹⁴¹ These assessments serve "to prevent and mitigate...significant effects of activities on the environment by (a) ensuring that the significant effects of activities on the environment are considered in time and carefully; (b) ensuring that there are opportunities for timeous participation of interested and affected parties throughout the assessment process; and (c) ensuring that the findings of an assessment are taken into account before any decision is made in respect of activities".¹⁴² The Minister of Environment, Forestry and Tourism is empowered to list, by notice in the Gazette, activities which may not be undertaken without an environmental clearance certificate, notably including activities related to spatial planning such as land use and land use transformation as well as transport.¹⁴³ The

"list of activities that may not be undertaken without Environmental Clearance Certificate" issued under **Government Gazette No. 4878** of 6 February 2012 specifically includes "the rezoning of land from (a) residential use to industrial use to heavy industrial use; (v) light industrial use to heavy industrial use; (c) agricultural use to industrial use; and (d) use for nature conservation or zoned open space to any other land use"; "the establishment of land resettlement schemes"; and "the route determination of roads and deign of associated physical infrastructure where it is a public road; the road reserve is wider than 30 metres; or the road caters for more than one lane of traffic in both directions".¹⁴⁴ As such, regional or urban structure plans are not in and of themselves subject to mandatory environmental assessments according the **Environmental Management Act** and its regulations, however, certain zoning schemes and transport infrastructure planning associated with urban or regional structure plans may require an environmental assessment and clearance.

The process of applying for an environmental clearance certificate and undertaking an environmental assessment is given in Part VIII of the **Environmental Management Act** and, in greater detail, the **Environmental Impact Assessment Regulations** of 2012. The latter requires the project proponent to designate an environmental assessment practitioner to manage the environmental assessment process, which begins with submitting an application for an environmental clearance certificate to the relevant competent authority. Following this, "the proponent must:

A. Conduct a public consultation process [...]

141 Ibid, Section 3(e).

142 Environmental Management Act (No. 7 of 2007), Section 2.

143 Ibid, Section 27(1) and 27(2)(a) and (g).

144 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).

- B. Open and maintain a register of all interested and affected parties in respect of the application in accordance [...]
- C. Consider all objections and representations received from interested and affected parties following the public consultation process...and subject the proposed application to scoping by assessing (i) the potential effects of the proposed listed activity on the environment; (ii) whether and to what extent the potential effects [...] can be mitigated; and (iii) whether there are any significant issues and effects that require further investigation
- D. Prepare a scoping report
- E. Give all registered interested and affected parties an opportunity to comment on the scoping report"¹⁴⁵

Upon completing these steps, the proponent submits several documents to the relevant competent authority, namely "the scoping report; the management plan; copies of any representations, objections and comments received in connection with the application or the scoping report; copies of the minutes of any meetings held by the proponent with interested and affected parties and other role players which record the views of the participants; and any responses by the environmental assessment practitioner to those representations, objections, comments and views".¹⁴⁶ The competent authority forwards the application and cited assessment documents, if and when completed, to the Environmental Commissioner, who determines if the scoping report has been undertaken correctly and, if so,

whether the proposed activity requires a detailed assessment. The commissioner determines the scope, procedure and methods for such an assessment. The assessment must be prepared by the environmental assessment practitioner and include, inter alia:

- a detailed description of the proposed listed activity
- a description of the environment that may be affected
- a description of the need and desirability of the proposed activity and identified potential alternatives to the activity
- an indication of the methodology used in determining the significance of potential effects
- a description and comparative assessment of all alternatives identified
- a description of all environmental issues that were identified along with their significance and potential mitigation measures
- an assessment of each identified potentially significant effect.¹⁴⁷

The detailed assessment is submitted to and considered by the Environmental Commissioner who determines if the report complies with all legal requirements, and if so, issues a decision within seven days of reviewing for compliance.

The public consultation process foreseen by the **Environmental Impact Assessment Regulations** requires giving notice to all potential interested and affected parties of the environmental clearance application. In addition to providing public notice via a notice board and at least two

145 Environmental Impact Assessment Regulations (No. 30 of 2012), Section 7(1).

146 Ibid, Section 7(2).

147 Ibid, Section 15(2).

widely circulated newspapers, written notice must be specially issued to “the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site; (ii) the local authority council, regional council and traditional authority, as the case may be, in which the site or alternative site is situated; (iii) any other organ of State having jurisdiction in respect of any aspect of the activity”.¹⁴⁸ The public consultation process must ensure that “[...] all potential and affected parties are provided with a reasonable opportunity to comment on the application”.¹⁴⁹ Furthermore, those who are included in the register of interested and affected parties are entitled to comment in writing on all written submissions made to the Environmental Commissioner by the applicant, including the scoping and assessment reports, and bring to attention any issues which may be of significance to the consideration of the application.

As such, while the **Environmental Management Act** makes provisions for assessing the environmental impact of certain activities which may pose significant environmental risks and aggravate existing climate vulnerabilities, there is no legal provision in Namibia which requires planning authorities to make sure that a risk and vulnerability assessment is carried out for the planned area when preparing spatial development plans. Neither are there provisions requiring planning authorities to make a list of potential climate hazards that need to be identified and assessed. Nonetheless, several other pieces of legislation enable planning authorities and other public bodies to undertake assessments of environmental sensitivity and disaster risks.

148 Ibid, Section 21(2)(b).

149 Ibid, Section 21(6)(b).

Regional councils are empowered through the **Regional Councils Act** of 1992 to undertake the duties of the **National Planning Commission** related to planning the development of their respective regions with a view to, inter alia, “the sensitivity of the natural environment”.¹⁵⁰ Though this provision does not explicitly require regional councils to conduct climate risk and vulnerability assessments when preparing or revising regional structure plans, it can empower them to do so in order to ensure the sensitivity of the natural environment is accounted for in regional planning and development processes. The **Flexible Land Tenure Act** of 2012 empowers the relevant authority to conduct a “geological, environmental or any other scientific study relating to the block(er) [piece of land] in question”¹⁵¹ when a starter title or land hold title scheme is being established.

Climate risks and vulnerabilities may also be assessed through provisions of the **Disaster Risk Management Act** of 2012. It empowers the **Directorate of Disaster Risk Management** to facilitate and coordinate disaster risk assessments in partnership with stakeholders, regional councils and local authorities. These assessments are primarily conducted by the **Settlement Disaster Risk Management Committee** or the **Local Authorities Disaster Risk Management Committee**, which operate in each settlement or local authority area, respectively. As specified in the Act, the **National Disaster Risk Committee** is responsible for “supporting and mobilizing resources for improved disaster risk assessment, the quality of information and data on disaster risk and for strengthening early warning systems”.¹⁵² Finally, the Act establishes the Namibia Vulnerability

150 Regional Councils Act (No. 22 of 1992), Section 28(1)(vi).

151 Flexible Land Tenure Act (No. 4 of 2012), Section 11(7)(b).

152 Disaster Risk Management Act (No. 10 of 2012), Section 5(f).

Assessment Committee, however, none of its duties specifically pertain to assessing environmental or climate change-related vulnerabilities. Moreover, the Act does not include an environment or climate change-related organization, such as the United Nations Environment Programme, as one of the associations, organizations or institutions which can nominate a representative to the Vulnerability Assessment Committee.¹⁵³

As for the identification of people, property and economic sectors exposed to risks arising from climate change, the **National Policy on Climate Change** of 2011 for Namibia states that plans to make budgetary provision per sector are based on needs assessments to address aspects of climate change adaptation and mitigation. **Namibia's Updated National Determined Contribution** highlights the increased vulnerability of women to the impacts of climate change due to systemic barriers to their access to capital, productive land and education. It also details the possibility for assessment of the vulnerability of world heritage sites to climate change impacts and the potential implications of tourism.

3.2 IDENTIFICATION AND PRIORITIZATION OF ADAPTATION OPTIONS

Since there are no legal provisions in Namibia 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.

¹⁵³ Ibid, Section 13(1)(c).

However, a process of identifying and prioritizing adaptation options for climate risks and vulnerabilities may take place through the environment assessment process outlined in Section 3(1) of the **Environmental Management Act** of 2007. Projects and activities which require an environmental impact assessment, including certain zoning schemes and transport infrastructure planning, also require a "management plan" which "describes how activities that may have significant effects on the environment are to be mitigated, controlled and monitored".¹⁵⁴ As such, environmental risk assessments can facilitate the identification and prioritization of climate adaptation options through mandatory management plans when the anticipated environmental impacts relate to climate vulnerabilities.

The law requires a draft management plan to be included in the scoping report prepared by the project proponent's Environmental Assessment Practitioner. And while the management plan is not explicitly required to include climate change adaptation measures, in a similar vein it is required to include "information on any proposed management, mitigation, protection or remedial measures to be undertaken to address the effects on the environment that have been identified including objectives in respect of the rehabilitation of the environment and closure". Closer in terms to climate mitigation, the plan is also to include a description of the manner in which the applicant intends to modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation.¹⁵⁵

The **National Policy on Climate Change for Namibia** of 2011 makes explicit provisions

¹⁵⁴ Environmental Impact Assessment Regulations (No. 30 of 2012), Section 1.

¹⁵⁵ Ibid, Section 8(j).



concerning climate change adaptation which identify and prioritize both ecosystem-based¹⁵⁶ and infrastructure-based¹⁵⁷ adaptation options. Objective 1 of the Policy aims to “to develop and implement appropriate adaptation strategies and actions that will lower the vulnerability of Namibians and various sectors to the impacts of climate change”.¹⁵⁸ Infrastructure-based adaptation strategies identified include encouraging “the integration of climate change issues into development planning strategies” and developing “a national strategy for infrastructural developments that take into account the risk related to climate change”.¹⁵⁹ Moreover, the **National Policy on Climate Change** specifies that the Government should encourage “the adoption

of town planning standards and principles to make cities and towns more climate resilient”.¹⁶⁰ Ecosystem-based adaptation measures provided for in the **National Policy on Climate Change** include encouraging the “involvement of local communities in the conservation and sustainable use of biodiversity through provision of conservancies” and identifying “biodiversity hotspots where no development should be allowed”. It also mandates the Government with ensuring that “any mining activity within and in the vicinity of national parks does not compromise the wellbeing of the ecosystem”.¹⁶¹

Regarding requirements to assess identified adaptation options, the **National Policy on Climate Change** requires “strategies and action plans for climate change adaptation and

156 National Policy on Climate Change (2011), Section 4.5.

157 Ibid, Section 4.8.

158 Ibid, Section 2.2(1).

159 Ibid, Section 4.8(b) and (c).

160 Ibid, Section 4.8(d).

161 Ibid, Section 4.5.

mitigation [to] be evidence-based, as informed by research findings”.¹⁶² **Namibia’s Updated Nationally Determined Contribution** of 2021 says that the implementation of adaptation actions depends on “upfront capital costs, ongoing maintenance costs, capacity-building or training and human resources needed”.¹⁶³ Based upon the costs, barriers and benefits of the adaptation actions, the Nationally Determined Contribution has a timeline for the implementation of these measures. However, these provisions do not explicitly require that identified adaptation options, actions or strategies be assessed and prioritized according to their costs, benefits, implementation period and barriers to implementation.

Neither are requirements for stakeholders’ engagement in the process of identifying and prioritizing adaptation options found in Namibia’s laws or policies. Broadly, Principle 3.3 of the **National Policy on Climate Change** for Namibia mandates that all climate policy implementations include stakeholder engagement. Section 4.12 supports public awareness and access to information on climate change issues, which specifically instructs the Ministry of Information and Communication Technology to provide detailed descriptions of adaptation and mitigation measures that are up to date. This broad-based participatory approach is echoed in **Namibia’s Updated Nationally Determined Contribution** 2021, which states in Section 1.7 that “(successful resilience planning) will require the creation of institutional arrangements for long-term planning, supportive legal frameworks and stakeholder engagement”. However, it is not specified how such engagement takes place. Though the **Regional Councils Act** of 1992

does not specifically address decision-making regarding climate change adaptation, it gives the council chairperson discretion to “convene a meeting of the regional council to which the public is invited by notice in any newspaper circulating within the region”.¹⁶⁴ Such a law denotes an optional, not mandatory, stakeholder engagement. In the **Namibia National Planning Commission Act** of 2013, the Namibia National Planning Commission is encouraged, but not required, to invite stakeholders to important Commission meetings. If the Commission chooses to do so, stakeholders are expressly denied the right to vote on major decisions.¹⁶⁵ These provisions underscore the need to strengthen stakeholder engagement requirements in spatial planning and governance legislation.

Along with mandating incremental improvements of specific geographies, climate adaptation can be greatly enhanced via the unification of local, regional and national-level objectives. The **Environmental Management Act** 7 of 2007 addresses this directly, as one of its aims is to “coordinate the environmental policies, plans, programmes and decisions of various ministries, departments and government organizations”.¹⁶⁶ Section 24 further addresses these organs of State, with the mandate that they “must, in preparation of an environmental plan, take into consideration every other document already adopted with a view of achieving consistency among such legislation”. Such organization requires authority, a necessity which is addressed in the **Namibia National Planning Commission Act** of 2013. This Act grants, the National Planning Commission the

162 Ibid, Section 4.11.

163 Namibia’s Updated Nationally Determined Contributions (2021), Section 4.

164 Regional Councils Act (No. 22 of 1992), Section 41(1).

165 Namibia National Planning Commission Act (2013), Section 10(5).

166 Environmental Management Act (No. 7 of 2007), Section 23.

power to formulate short-, medium- and long-term national development plans. Designed to address climate adaptation, these plans were then used as a benchmark at the regional and local level, resulting in unified adaptation goals at all levels of the country's governance.

3.3 IMPLEMENTATION OF IDENTIFIED ADAPTATION OPTIONS

While there are no provisions in the Namibia's law which require the implementation of adaptation options for planned areas and infrastructure, certain law and policy provisions may facilitate the implementation of climate adaptation measures related to urban planning and management.

Several pieces of law in Namibia limit development in hazard prone areas through land-use restrictions enforced by the competent local authority. The **Urban and Regional Planning Act** of 2018 prohibits those "building operations permanently on the basis that, by reason of the situation or nature of the land, the construction of buildings on that land would be likely to involve danger to life or danger or injury to health or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services".¹⁶⁷ This provision implicitly applies to climate hazards since they pose danger to life, injury and/or the health of affected people. This planning principle regarding development in hazard-prone areas should inform judicial interpretations of subsidiary laws and policies. Moreover, the **National Policy on Climate Change** of 2011 would likewise prohibit any development on lands classified as or zoned in biodiversity hotspot areas.¹⁶⁸ It also clarifies that

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

168 National Policy on Climate Change (2011), Section 4(5)(c)

hazard-prone zones and biodiversity hotspots can overlap or be mutually exclusive.

The specific actors designated to enforce development restrictions in hazard-prone areas are primarily local authorities or their counterparts at the local level. For example, the **Flexible Land Tenure Act** of 2012 enables the relevant local authority council to ensure all land tenure schemes are in accordance with local plans and requirements. This includes ensuring that prospective land tenure and/or ownership rights are not established in hazard-prone areas.¹⁶⁹ In case this high risk land development nonetheless occurs, the **Communal Land Reform Amendment Act** of 2013 enables the relevant **Communal Land Board** to withdraw any occupational land rights if the owner fails to adhere to local plans and policies – this includes zoning requirements and restrictions.¹⁷⁰ The Board is composed of local traditional authorities, representatives of national, regional and local governments, and agriculture sectors within the area in question.¹⁷¹ Another actor involved in land development restrictions is the **Regional Disaster Risk Management Committee**, whose authority is derived from the **Disaster Risk Management Act** of 2012.¹⁷² The charge of the Committee is to aid in community engagement and outreach programmes that educate people on the disaster risk programmes available, and ensure development within hazard prone areas are veered away at the regional level. One exception to local enforcement on this issue is the Ministry of Fisheries and Marine Resources which guides development on coastal-flood

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

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

171 Ibid, Section 4.

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

plain areas. **Namibia's Updated Nationally Determined Contribution** of 2021 instructs the ministry to describe and enforce restrictions and prescribe a coastal buffer zone,¹⁷³ however, this mandate has not been entered into law in Namibia. Concerning flooding hazards related to the development of dams, the **Water Resources Management Act** of 2013 requires the minister responsible for water affairs to take into account the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams".¹⁷⁴ As a consequence, the minister has the ability to restrict or limit development in consideration of protecting people and their property from flooding hazards.

Environmental and spatial planning legal frameworks in Namibia lack provisions that establish a public land buffer between sea, rivers and land. They also fail to explicitly require the establishment of riparian or coastal setbacks. However, the **Flexible Land Tenure Act** of 2012, states that the Minister for Lands and Resettlement can mandate height and setback restrictions.¹⁷⁵ This enables ministry authorities to establish riparian or coastal setbacks in practice, albeit in the context of individual tenure schemes rather than on the scale of urban or regional planning. As such the country's development policy should endeavour to highlight the benefits of coastal and riparian setbacks and planning and/or environmental law should explicitly require urban and regional structure plans to establish these setbacks.

The **National Policy on Climate Change for**

173 Namibia Updated Nationally Determined Contributions (2021), Section 3.2.3.

174 Water Resources Management Act of 2004 was never put into operation and was eventually repealed by Water Resources Management Act of 2013, which in 2022 is currently not in force.

175 Flexible Land Tenure Act (No. 4 of 2012), Section 13(6)(a).

Namibia of 2011 addresses the need to develop integrated coastal zone management plans that focus on climate change adaptation. Specifically, it recommends that the Government "strengthen and encourage integrated coastal zone management plans for the protection of marine life."¹⁷⁶ There is a 2012 **National Policy** on Coastal Management which supports integrated coastal management, however there is no law specifically addressing coastal zone management. The Updated Nationally Determined Contribution 2021 lists adaptation objectives for "coastal land-use planning"; these include "protect[ing] the 1,500 km coastline beaches against erosion", "update[ing] the agroecological zones to include ocean industries and areas", and establishing a "Coastal Vulnerability Index to sea-level rise".¹⁷⁷ The document also has a list of adaptation actions for coastal zones, namely: "introduce legislation to reduce property and infrastructure development in environmentally sensitive areas and areas at risk of sea-level rise"; "undertake vulnerability mapping"; "rehabilitate wetlands and estuaries", and "install sea walls barriers and barrages".¹⁷⁸ However, the Government has yet to introduce legislation to reduce property and infrastructure development in environmentally sensitive areas and areas at risk of sea-level rise, as foreseen in the Nationally Determined Contribution.

The law includes provisions which empower certain local authority councils to withhold permits and other authorizations necessary for infrastructure installations in hazard-prone areas, however it does not specifically require local authority councils to plan the location of essential infrastructure out of flood-prone

176 National Policy on Climate Change (2011), Section 4(7).

177 Namibia's Updated Nationally Determined Contribution (2021), Table 3.2.

178 Ibid, Table 3.1.

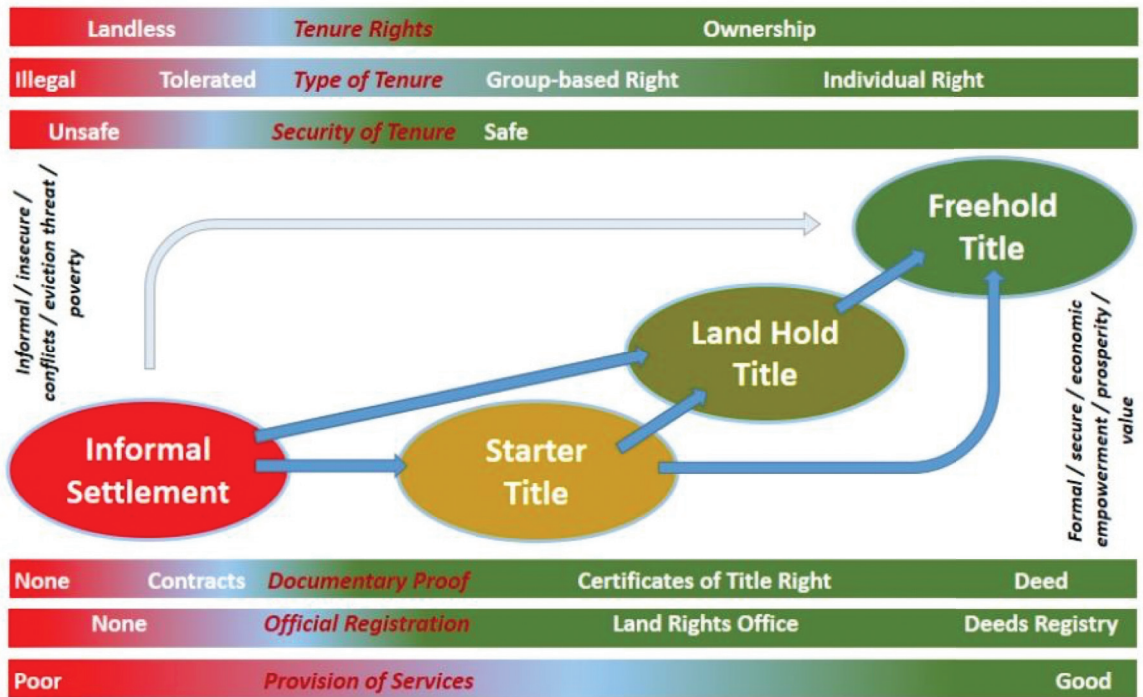


Figure 7. Flexible land tenure system Namibia- continuum of rights. Source: University of Michigan

areas. The legal power to regulate infrastructure placement is primarily established in laws relating to land tenure and land reform. The **Flexible Land Tenure Act** of 2012 enables the relevant local authority council to ensure that all starter title and land hold title schemes adhere to local climate plans, conduct environmental impact assessments, and require alterations based on subregion and/or regional plans.¹⁷⁹ The **Communal Land Reform Act** of 2002 requires any sub-lease of land to conform to the activities and specifications of local boards¹⁸⁰ composed of local traditional authorities, representatives of national, regional and local governments, and agriculture sectors within the area in question.¹⁸¹

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

180 Communal Land Reform Amendment Act (No. 13 of 2013), Section 5(7).

181 Communal Land Reform Act (2012), Section 4.

It is further established in the **National Policy on Climate Change for Namibia** of 2011, which “encourage[s] the adoption of town planning standards and principles to make cities and towns more climates resilient” specifically water infrastructure and infrastructure needed for dwelling units.¹⁸²

Namibia lacks provisions of law which require planning sewerage systems, storm drains and wastewater treatment plants based on predicted rainfall, flooding (sea/river) and densification with a time horizon of at least 20 years. It 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.

182 National Policy on Climate Change (2011), Section 4.8.

Regarding evacuation routes and low-risk safety areas, the **Updated Nationally Determined Contribution** of 2021 does not require the establishment of evacuation routes or the identification of low-risk safety areas, but strongly recommends the “establishment of early warning systems” and “designing evacuation strategies” guided by the Ministry of Urban and Rural Development.¹⁸³ **The Disaster Risk Management Act** of 2012 effectively mandates the establishment of evacuation routes, as it states that “specif[ic] procedures [are] to be taken for the safety or evacuation of persons in a disaster area” and that each government entity must create these “procedures” in a plan.¹⁸⁴

3.4 ADAPTATION OF SLUMS AND OTHER VULNERABLE SETTLEMENTS

The **National Policy on Climate Change** of 2011 acknowledges that climate change is expected to disproportionately impact vulnerable groups like the poor, the disabled, those with HIV, the elderly, orphans and vulnerable children. The Policy describes the requirement to take action that ensures vulnerable groups are empowered to effectively and adequately respond to the impacts of climate change and to support sustainable adaptation models. Nonetheless, Namibia largely lacks provisions of law or regulations to support the adaptation of slums and other vulnerable settlements to the effects of climate change.

There are limited examples of tools for urban expansion, infill and redevelopment that call for changing the configuration of plots. The **Environmental Management Act** of 2007 tasks

the Sustainable Development Advisory Council to support Namibia in meeting its Sustainable Development Goals through infill and other development strategies that steward the environment for the next generation. The **Urban and Regional Planning Act** of 2018 outlines zoning schemes and how they can be used to change existing subdivisions and layouts of land to meet local, regional and national planning goals. However, the law fails to include provisions that empower and direct local authority councils in using zoning schemes to regularize and adapt slums and other vulnerable settlements. The **Flexible Land Tenure Act** of 2012, however, does create flexible tenure standards for informal settlements by establishing starter title and land hold title schemes. The process for establishing these calls for “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”. This process also calls for the cancellation of other rights in rem (property rights) pertaining to the land concerned, such as any mortgage, usufruct or fideicommissum rights.¹⁸⁵ Informal tenure holders can incrementally formalize their tenure rights through these schemes which, taken on a large scale, can regularize and facilitate the adaptation of slums and vulnerable settlements. 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.

There are no legal requirements in the statutes reviewed that call for community-led surveys or

183 Namibia Updated Nationally Determined Contributions (2021), Appendix 2, No. 38

184 Disaster Risk Management Act, Section 23(2)(b)

185 A fideicommissum is a type of bequest in which the beneficiary is encumbered to convey parts of the decedent's estate to someone else.

household enumerations to facilitate adaptation of slums and other vulnerable settlements. There are no legal requirements to maintain affordability in slum regularization and adaptation. However, the **Master Plan for the Development of an International Logistics Hub for SADC Countries in the Republic of Namibia** refers to establishing a robust and effective housing programme that focuses on affordability and aims to house 60 per cent of the population.

3.5 PLANNED RELOCATIONS FROM AREAS AT RISK OF CLIMATE CHANGE

Namibia lacks provisions of law or regulations that support the relocation of populations from areas at risk of the effects of climate change to ensure their safety and health (after all reasonable on-site alternatives and solutions have first been explored). Indeed, the World Bank noted in its climate risk profile of Namibia that while the Government and other levels of government identified areas where extreme weather or climate events could occur, these areas were not identified with the relocation of susceptible communities in mind nor the infrastructure they require.

In 1995, the **Agricultural (Commercial) Land Reform Act** was established 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.¹⁸⁶ The **National Resettlement Policy** of 2001 later facilitated these resettlements to expropriated land with the objectives of enhancing the welfare of the people through improvement of productivity and developing the destination areas where people are supposed to

earn a living.¹⁸⁷ The land in resettlement areas remained under the ownership of the State, while those persons resettled were given 99-year leases registered in the name of an individual, a group or as a cooperative holding.¹⁸⁸

In the urban context, the **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 district”.¹⁸⁹ The law also makes provisions for any local authority council to establish an “emergency camp for the purpose of the accommodation of homeless persons”.¹⁹⁰ The President is authorized to make regulatory provisions for the administration, maintenance, sanitation, health and control within said camp. These regulations are allowed to “contain different provisions in respect of different areas, categories or classes of persons”,¹⁹¹ an apparent violation of the Article 10 of the Constitution barring discrimination on the grounds of sex, race colour, ethnic origin, religion, creed or, notably, social or economic status. The Supreme Court has not made a ruling on the constitutionality of the aforementioned provision of the Squatters Proclamation, and as such it remains in force.

The use of Housing Revolving Funds and the Decentralized Build Together Committees, which are established in the **National Housing Development Act** of 2000, may provide an opportunity for the Government to anticipate and implement planned relocations in response to climatic risks. Housing Revolving Funds are to help people acquire low-income housing units, buy land to construct low-income housing

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

187 *Ibid.*, p. 24.

188 *Ibid.*

189 *Ibid.*, Section 2(3)(b)(ii)

190 Squatters Proclamation (AG 21 of 1985), Section 8(1)

191 *Ibid.*, Section 8(2)(b).

units, obtain materials needed for housing construction, and fund other projects related to the housing people in need.¹⁹² Each regional and local authority is required to create, fund and operate such funds,¹⁹³ though the national Government also allocates some money for Housing Revolving Fund operations.

The Decentralized Build Together Committees are responsible for communicating policy and other issues with residents from the local Housing Revolving Fund.¹⁹⁴ Thus, the committees are responsible for community outreach, engagement and communication, and are composed of community members and experts in the housing sector; there can be multiple committees within the Housing Revolving Fund district.¹⁹⁵ These committees are well situated to coordinate planned relocations related to climate change. It is recommended that the Government pass specific legislation mandating these entities to oversee planned relocation efforts and increasing their funding.

3.6 SECURITY OF TENURE

The **Constitution of Namibia** upholds the validity of customary law in force on the date of independence to the extent that such customary law does not conflict with the provisions of the Constitution or any other statutory law.¹⁹⁶ Statutory law, namely the **Communal Land Reform Act** of 2012, has affirmed the validity of customary tenure rights over communal land. It defines a "lawful resident" as a person who holds customary land rights in a particular traditional community".¹⁹⁷ Communal land is primarily governed and managed by traditional

192 National Housing Development Act (2000), Section 9.

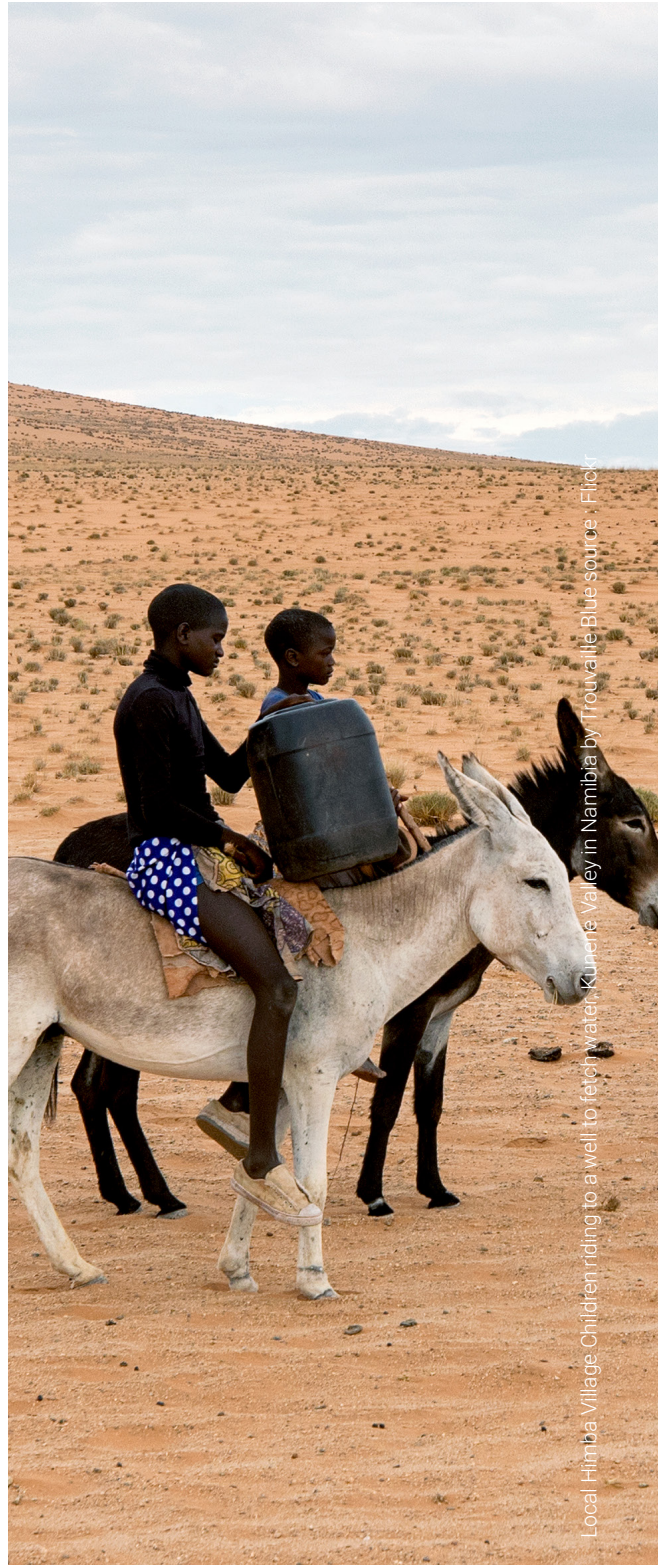
193 Ibid, Section 8.

194 Ibid, Section 29.

195 Ibid, Section 27(3).

196 Constitution of the Republic of Namibia, Article 66(1).

197 Communal Land Reform Act (2012), Section 1.



Local Himba Village Children riding to a well to fetch water, Kunene Valley in Namibia by Trouville Blue source: Flickr

communities and their representative(s), though formally it is vested in the State for the benefit of the relevant traditional communities and “for the cause of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities”.¹⁹⁸ The Act specifically recognizes “customary land rights”, which include “a right to a farming unit; a right to a residential unit; and a right to any other form of customary tenure that may be recognized and described by the minister [of affairs relating to land matters] by notice in the Gazette”.¹⁹⁹ The law also recognizes grazing rights and leasehold rights over communal land. Each of these rights are susceptible to registration in the “prescribed register”.²⁰⁰

The **Flexible Land Tenure Act** of 2012 serves as a tool to recognize and regularize informal tenure and occupancy rights. Specifically, the law was enacted to (1) create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; (2) to provide security of title for people who live in informal settlements or who are provided with low-income housing; and (3) to empower the people concerned economically by means of these rights.²⁰¹ The law enables the relevant authority to establish a “starter title scheme” or “land hold title scheme” on a piece of land, either on its own motion or on an application from the land owner or “one or more persons who reside on a piece of land”.²⁰² As such, people with informal occupancy rights are able to regularize their land tenure by establishing a starter title or land hold title scheme. The law

does not prescribe a minimum occupancy/possession period to acquire, or be eligible to acquire, legal rights to the land in question, as is the case for acquisitive prescription of land. The establishment of a land hold title scheme specifically is facilitated on a contractual basis: the requesting person (relevant authority, landowner, or association of occupants) must prepare a list of people with whom contracts have been concluded to transfer individual plots of the piece of land concerned.²⁰³ Title holders able to erect a dwelling on their plot as long as it remains compliant with the zoning (“specified size and nature”) of that area. Both starter title schemes and land hold title schemes are formally registered in the **Deeds Registry**, and as such can be used to incrementally formalize their land tenure rights. Other significant property rights granted by the **Flexible Land Tenure Act** of 2012 include title transfer by death, use of civic services and the sale of property.

In Namibia, evictions of informal tenure holders continue to be governed by the **Squatters Proclamation** of 1985. This is apartheid-era legislation which makes provisions “in relation to the prevention and termination of unlawful squatting and matters incidental therefore”.²⁰⁴ The Proclamation allows for criminal proceedings to be instituted against a person who enters and/or “is on” any land, building or structure without the consent of the owner or lawful occupier.²⁰⁵ If a court finds a person guilty of unlawfully entering or being on another’s property, the court can order their “summary ejection” and impose fines and/or imprisonment. The local authority council enforcing the order to “bring about the removal of the said person and his family and dependents” can relocate the evictees to “any

198 Ibid, Section 17(1).

199 Ibid, Section 21.

200 Ibid Section 25.

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

202 Ibid, Section 11(1).

203 Ibid, Section 11(5).

204 Squatters Proclamation (AG 21 of 1985).

205 Ibid, Section 2(1).

other suitable place determined by him, within or outside his district".²⁰⁶

Until 2013, when the **Supreme Court of Namibia** declared Sections 4(1) and (3) of the Squatters Proclamation of 1985 unconstitutional, a property owner could demolish and remove squatter shelters and constructions without the prior approval of any court or local authority.²⁰⁷ Again until 2013, the law also prevented squatters from having recourse to any court of law in any civil proceedings regarding the owner's decision to demolish and remove squatter constructions "unless a person first satisfies the court on a preponderance of probabilities that he is lawfully entitled to occupy the land...".²⁰⁸ In fact, the courts were forbidden to "grant any [injunctive] relief in any such proceedings" to squatter plaintiffs. This application of the "doctrine of clean hands" violated the constitutional right to a fair and public hearing by an independent impartial and competent Court of Tribunal"²⁰⁹ and as such was invalidated.²¹⁰

Outside of the context of informal land tenure, the **National Housing Development Act** of 2000 provides guidance on eviction processes when mortgagees default on their loan from the **Housing Revolving Fund**. The law authorizes the **Minister for Urban and Rural Development** to prescribe procedures for the repossession of any property sold by the Fund to any person who "falls in arrear with any payments he or she is obliged to make to such Housing Revolving Fund or is unable to fulfil his or her obligations in terms of an agreement relating to such property". These procedures include the evaluation of the

property and any improvements made thereto and the procedures for the registration of the transfer of the property (back) to the **Housing Revolving Fund** when the person fails to sign the requisite papers for such a transfer. These procedures should define the extent to which one can be refunded for the mortgage payments already made.²¹¹

The **Constitution of Namibia** includes provisions for land acquisition for public interest "subject to the payment of just compensation in accordance with requirements and procedures to be determined by **Act of Parliament**".²¹² However, statutory provisions regarding compulsory acquisition, also referred to as expropriation, do not consider and compensate the loss of informal rights and interests and livelihoods for slum dwellers.

The **pre-independence Expropriation Ordinance** of 1978 vests any local authority council with the power to expropriate property for public purposes. Meanwhile, the **Local Authorities Act** of 1992 provides local authority councils with rights of pre-emption to purchase any immovable property with the prior authorization of the minister. The **Agricultural (Commercial) Land Reform Act** of 1995 also provides a statutory procedure for the expropriation and redistribution of privately owned farms. The minister is required to exercise pre-emptive purchase rights on a willing seller-willing buyer basis prior to resorting to compulsory acquisition of land and property via expropriation. In conducting expropriations of land, an expropriation notice is served upon the legal owner of the land and copies of the notice are served upon any person who holds a registered mineral licence, mining claim or mining licence. The law also requires the **Land**

206 Ibid, Section 2(3)(b)(ii).

207 Ibid, Section 4(1).

208 Ibid, Section 4(3)(a).

209 Constitution of the Republic of Namibia, Article 12(1)(a).

210 Shaanika & Others v Windhoek City Police & Others, 2013 (4) NR 1106 (SC).

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

212 Constitution of the Republic of Namibia, Article 16(2).

Reform Advisory Commission, when advising the minister in relation to an expropriation, to “consider the interest of any persons employed and lawfully residing on such land, and the families of such persons residing with them” and “make any recommendation in relation to such employees and their families as it may consider fair and equitable in the circumstances”.²¹³ Compensation under the law is only provided to the landowner and/or any unregistered lessee(s) of the property. The law states that all rights in respect of expropriated land which are not registered or recorded in the title deed (excepting mineral rights or mining claims and licences) “shall terminate on the date of expropriation and the State shall not be obliged...to pay any compensation for such rights”.²¹⁴

The **Local Authorities Act** of 1992 states that residents must be compensated for suffering any damage or loss in consequence of closure of any public place or any alteration of a street. The **Flexible Land Tenure Act** of 2012 further supports this; when upgrading a land hold title or starter title to full ownership, if 75 per cent of the stakeholders involved agree to an upgrade, “the relevant authority may pay fair compensation to holders of rights that do not agree with the upgrading”.²¹⁵ While all these provisions consider and compensate for loss of rights and interests, they are not specifically linked to slum dwellers and resettled and host communities.

Compensation is further discussed in the **Urban and Regional Planning Act** of 2018, which aims to reimburse landowners for costs incurred due to the implementation of zoning schemes and permits negotiation of the compensation award (“repayment”) between the local authority council

and the title holder.²¹⁶ If an agreement cannot be reached within 90 days, the case is referred to the **Minister of Urban and Rural Development**, who sends the case to the Urban and Regional Planning Board for a valuation decision. The Board conducts a hearing and then sends its recommendations back to the minister, who then makes a final decision. This process is designed to grant private landowners fair repayment awards and prevent legal disputes that are common in relocation and rezoning projects.

The **Communal Land Reform Amendment Act** of 2013 specifies that occupational land rights over communal land may not be granted away unless the title holder agrees to relinquish their land right.²¹⁷ However, a person who holds customary rights over a piece of land is able to turn over the land as long as there is “payment of compensation” and “suitable arrangements for his or her resettlement on alternative land”.²¹⁸ This is under the purview of the Communal Land Board. It should also be noted that a foreigner can gain customary rights if authorized by the minister.

Formal grievance, review and dispute-resolution mechanisms for land and property disputes exist in several pieces of Namibian legislation, however these do not include alternative dispute-resolution mechanisms such as customary institutions negotiation, mediation and arbitration. According to the **Flexible Land Tenure Act** of 2012, a registrar has the power to hold an official hearing “in order to determine any matter that is in dispute between two or more parties” when it cannot make a determination in respect to a starter title or land hold title scheme

213 The Agricultural (Commercial) Land Reform Act (No. 6 of 1995), Section 21(6).

214 Ibid, Section 32.

215 The Flexible Land Tenure Act (No. 4 of 2012), Section 15(4).

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

217 Communal Land Reform Act (No. 13 of 2013), Section 36B(2).

218 Ibid.

within its jurisdiction.²¹⁹ The registrar may also contribute and use their opinion to correct the transaction that is of concern if it is found that inaccurate information has been reflected in the register. Similarly, the Deeds of Registries Act of 2015 has structured provisions that give the registrar the authority to act as the taxing officer of the court in all disputes relating to property fees charged by legal practitioners, notaries and conveyancers. The **Agricultural (Commercial Land Reform) Act** of 1995 establishes the Lands Tribunal which resolves disputes and determines the compensation awards due to owners of expropriated property. The decisions of the Tribunal can be appealed to the **High Court of Namibia**. The **Communal Land Reform Act** of 2002 enables any person aggrieved by a decision by a chief or a traditional authority or a Communal Land Board under the Act to appeal against that decision at an appeal tribunal.

3.7 DEVELOPMENT APPROVAL AND ADAPTATION

The development approval process in Namibia primarily takes place at the local level through building permit applications submitted to the local authority, which will assess the proposed construction for compliance with the municipal building regulations. This assessment also ensures compliance with the municipality's 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 country's law. The **Urban and Regional Planning Act** of 2018 (Act 5 of 2018), for example, highlights various provisions pertaining to zoning schemes,

219 The Flexible Land Tenure Act (No. 4 of 2012), Section 8(1)(d).

however these zoning scheme largely fail to consider and link to climate risk or vulnerability in their formulation processes. Other types of land development operations, however, fall under specialized legislation which requires some type of environmental assessment prior to granting development or land-use rights.

The **Communal Land Reform Amendment Act** of 2013, for example, describes a process of applying for leasehold or occupational land rights "in respect of land which is wholly or partly situated in an area which has been declared a [natural] conservancy". In deciding whether to grant such occupational land rights, the board is required to consider "any management and utilization plan framed by the conservancy committee concerned" and the board "may not grant the occupational land right if the purpose for which the land in question is proposed to be used under such right would defeat the objects of such management and utilization plan".²²⁰

The **Environmental Management Act** and Environmental Impact Assessment Regulations of 2007 requires environmental impact assessments to be undertaken for certain land use and development activities, including the rezoning of land, the establishment of land resettlement schemes, as well as the construction of veterinary protected areas or game-proof and international boundary fences. Environmental impact assessments are also required for, inter alia, certain infrastructure activities, the construction of cemeteries, camping, leisure and recreation sites, and other tourism development activities. The **Flexible Land Tenure Act** of 2012 also enables the local authority council to conduct an environmental assessment of the piece of land in question

220 Communal Land Reform Act (No. 5 of 2002), Section 31(4) and 36B(4)



Walvis Bay Salt Works in Namibia, Africa. Photo by imageXphoto, source: envato elements

which would be susceptible to a starter title or land hold title scheme.

The charging of developers through conditions that are attached to the approval of their planning applications for infrastructure costs associated with their development is a tool that can be used to avoid overburdening public services infrastructure and ensure that developers contribute to the costs that their development produces. Within Namibia, there are no examples of legal provisions which enable authority councils to charge developers, either in cash or in kind, for infrastructure costs associated with their development. However, the **Urban and Regional Planning Act** allows the minister or the local authority councils to impose conditions when a township is established, and this includes conditions of making an endowment to local authority council or a future local authority council.²²¹ This endowment can include payment of money to a local authority. Moreover, 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.

Mechanisms of enforcement are key in ensuring that development remains compliant with the approved development standards and conditions. The **Environmental Management Act** of 2007 makes undertaking development activities flagged under the Act's regulations without the requisite environmental clearance certificate a criminal offense that can be sanctioned by fines and/or imprisonment.²²² The Minister of the Environment, Forestry and Tourism is mandated to ensure compliance with the **Environmental**

²²¹ Urban and Regional Planning Act (No. 5 of 2018), Section 66

²²² Environmental Management Act (No. 7 of 2007), Section 27(4).

Management Act, while environmental officers are empowered to issue a compliance order to a person whom the officer has a reason to believe has contravened the Act and/or a condition of an environmental clearance certificate.²²³ The person receiving a compliance order must comply with the order within the specified time period; the failure to do so is sanctioned by significant fines and/or imprisonment.²²⁴

The **Urban and Regional Planning Act** of 2018 specifies that “a staff member of a local authority or an authorized planning authority... may, with the permission of the occupier or owner of land and at a reasonable time, enter land or enter a building for the purposes of ensuring compliance with this Act or compliance with the zoning scheme”.²²⁵ Wilful obstruction of such inspections are considered an offence by law and sanctionable by fine or imprisonment or both.²²⁶ The Act also includes provisions to enforce the compliance of pre-existing buildings with new zoning schemes by allowing the local authority to apply to the courts for an order to remove the non-compliant structure/structural element, prohibition of land use, or execute the work which the owner is obligated to execute under the zoning scheme.²²⁷

The **Deeds Registries Act** of 2015 allows the deeds registrar authority to “require the production of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in his registry”.²²⁸

223 Ibid, Section 20(2).

224 Ibid, Section 20(5) and 20(8).

225 The Urban and Regional Planning Act (No. 5 of 2018), Section 125(2).

226 Ibid, Section 125(4).

227 Ibid, Section 54(5).

228 Deeds Registries Act (2015), Section 4(1).

RECOMMENDATIONS

Climate risks and vulnerability for planned areas and infrastructure:

- Spatial planning legislation, namely the **Urban and Regional Planning Act (and its regulations), the Regional Councils Act, and the Local Authorities Act**, should include provisions which incorporate climate risk and vulnerability assessments into the process of formulating the national spatial planning framework, regional structure plans and urban structure plans.
- Subsidiary legislation in the form of regulations be developed on the adoption of the aforementioned legal provisions in primary legislation prescribing risk and vulnerability assessment. The regulations should describe a process of conducting climate risk and vulnerability assessments featuring mechanisms for inclusive public participation. It should also include a list of potential climate hazards that need to be identified in the risk and vulnerability assessments and include a legal requirement to identify the places where climate hazards are most likely to occur through climate hazard maps. Such climate hazard maps should be publicly accessible and reviewed within a period of at least 10 years. Finally, it is recommended that the proposed regulations include the requirement to identify people, property and economic sectors exposed to risks arising from climate change.
- Alternatively, or complementary with the aforementioned recommendation, the **Namibia Vulnerability Assessment Committee** established by the **Disaster**

Risk Management Act should be required to assess environmental and climate change-related vulnerabilities and produce climate hazard maps for Namibia. Legislation for this should also include financial considerations, if possible, to facilitate community engagement, and should ensure that multiple different local and traditional authorities' views are taken into consideration. Additionally, the Act should be amended to include an environment or climate change-related organization, such as the United Nations Environment Programme, as one of the associations, organizations or institutions which can nominate a representative to the Vulnerability Assessment Committee.

- The **Environmental Management Act** and its subsidiary the **Environmental Impact Assessment Regulations** should explicitly require the assessment of activities which are planned in areas susceptible to climate change risks, vulnerabilities and hazards; this would complement the extant requirement of assessing activities that “may have a significant effect on the environment or the use of natural resources”.

Identification and prioritization of adaptation options:

- Subsidiary legislation (to the **Urban and Regional Planning Act**) prescribing the assessment of climate risks and vulnerabilities should also include provisions for the identification and prioritization of adaptation measures which address the risks and vulnerabilities identified. These provisions should require stakeholder engagement in the process of both identifying and prioritizing adaptation

options. Moreover, it is recommended that specific provisions be included for assessing the identified adaptation options based on time, cost, benefits and barriers to implementation.

- Stakeholder engagement requirements in spatial planning and governance legislation, notably the **Regional Councils Act** and the **National Planning Commission Act**, should be strengthened such that stakeholder engagement is not optional or discretionary.
- Legal provisions regarding prioritized adaption options should endeavour to build on the ecosystem-based and infrastructure-based adaptation measures identified and prioritized in the **National Policy on Climate Change**.
- The **National Planning Commission** should be mandated by the **National Planning Commission Act** to formulate short-, medium- and long-term national development plans which include measurable climate adaptation targets. These can be used as benchmarks at the regional and municipal levels to promote unified adaptation goals at all levels of governance.

Implementation of identified adaptation options:

- The **Local Authorities Act** should include provisions explicitly to empower the **Local Authority Council** or any other relevant local authority to impose total and partial restrictions on land use and development in areas prone to climate hazards. The Act should also require local authorities to plan the location of essential infrastructure out of flood prone, high-risk areas and 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.

- It is recommended that the regulations of the **Urban and Regional Planning Act** include provisions requiring the establishment of public land buffers between seas, rivers and land; riparian and coastal setbacks; nature-base stormwater management strategies; and coastal zone/water comprehensive management plans. The latter in particular will support climate change adaptation by also supporting growth management scenarios which take water-security issues into account.
- The Minister of Agriculture, Water and Land Reform should bring the **Water Resources Management Act** of 2013 into operation.
- The **Disaster Risk Management Act** should, upon its provisions regarding evacuation routes, also require authorities to identify low-risk safety areas in case of extreme weather events.

Adaptation of slums and vulnerable settlements and security of tenure:

- While the **Flexible Land Tenure Act** can be used to collectively formalize informal settlements, Namibia may consider adopting planning-based legal mechanisms which more easily foster informal upgrading and adaptation on a larger scale.
- Provisions regarding zoning schemes in the **Urban and Regional Planning Act**, for example, can include mechanisms for rezoning informal settlement areas. These rezoned areas can have flexible infrastructure

standards to enable their incremental regularization and land management tools such as land readjustment could be used to change the shape and configuration of plots. Such provisions for rezoning informal settlements with a view to adaptation and upgrading should also include legal requirements for community-led surveys and/or household enumerations and measures to ensure affordability in the rezoned areas (e.g., through development restrictions).

Planned relocations from areas at risk of climate change:

- Considering the increasing frequency of climate change-related impacts, hazards and disasters, it is recommended that Namibia develops legal provisions that support the relocation of people from areas at risk of the effects of climate change to ensure their safety and health. Such measures should require relocations only after all reasonable on-site alternatives and solutions have first been explored. Such provisions can be developed as amendments or subsidiary legislation to the **Disaster Risk Management Act**, for example, or be developed as a stand-alone piece of legislation, potentially linked to legislation on the adaptation of slums and other vulnerable settlements.
- These provisions should include requirements to identify and, if necessary, set aside land for relocation in case of extreme weather events; such land should itself be safe from current and future climate hazards and have access to livelihood opportunities, water and food security, sanitation, education and health facilities.

- Provisions regarding planned relocations should require the inclusive consultation and engagement with the affected resettlement and host communities.
- The Squatters Proclamation should be repealed and new provisions for the resettlement of informal settlement inhabitants should be made in line with the aforementioned requirements. These legal provisions should be required to undertake planned relocations of informal settlement residents only as a last option, after all reasonable on-site alternatives for regularization, adaptation and upgrading have been considered through a feasibility study.

Security of tenure:

- It is recommended that the Squatters Proclamation be repealed and replaced by law or regulations prescribing how evictions and relocations should be conducted with a view to upholding international standards on forced evictions. These standards support eviction safeguards such as the preparation of an eviction impact assessment, extensive consultations with the affected people and effective recourse mechanisms for those who are adversely affected by the eviction decision.
- It is recommended that Namibia recognize the right to adequate housing in the Constitution. This can also be facilitated through the progressive jurisprudence of the courts recognizing the right to adequate housing as an element of the right to privacy and non-interference in one's home.
- It is recommended that the various pieces of legislation facilitating the expropriation of land and property for public purposes

recognize informal tenure and customary occupancy rights, as well as damages caused by loss of livelihood, in compensation awards.

Development approval and adaptation:

- It is recommended that the **Urban and Regional Planning Act** and/or the **Local Authorities Act** include legal provisions which enable local authority councils to charge developers, either in cash or in kind, for infrastructure costs associated with their development. This could take the form of a provisions that enable local authority councils to require a developer to dedicate land free of cost; pay a monetary contribution; or both, where the proposed development will or is likely to increase the demand for public amenities and public services within the area.

See table 3 for a summary of the main laws, regulations, and policies referred to in this chapter.

TABLE 3. Referenced legislation and policies (Planning for adaptation)

Legislation	Year
Constitution of Namibia	1990
Regional Councils Act	1992
Local Authorities Act	1992
Land Survey Act	1993
National Housing Development Act	2000
Communal Land Reform Act	2002
Water Resources Management Act	2004
Environmental Management Act	2007
Environmental Investment Fund Act	2008
Flexible Land Tenure Act 4	2012
Disaster Risk Management Act	2012
National Planning Commission Act	2013
Communal Land Reform Amendment Act	2013
Deeds of Registries Act	2015
Road Administration Act	2015
Urban and Regional Planning Act	2018
Urban and Regional Planning Regulations (No. 7327 of 6 September 2020)	2020
Policy	Year
National Policy on Climate Change for Namibia	2011
Master Plan for Development of an International Logistics Hub for SADC Countries in the Republic of Namibia	2015
Namibia's Updated Nationally Determined Contribution	2021



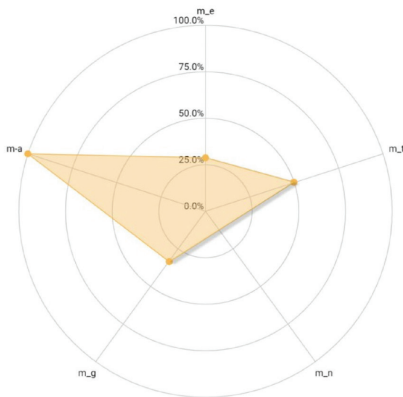
Authentic huts in african desert, Namibia. Photo by Galyna_Andrushko, source: envato elements

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 8: 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. Climate 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 (MTCO_{2e}). The **National Policy on Climate Change for Namibia** 2011 identifies “enhanced carbon sinks” as one of three prioritized actions and strategies for climate change mitigation in Namibia. 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 schemes and building regulations/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

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

economic development and land-use patterns in the local authority area concerned".²²⁹ **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; however, the regulations do not 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 an issued model building code and/or zoning scheme 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.

²²⁹ Urban and Regional Planning Act of 2018 (No. 5 of 2018), Section 32(e).

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 a park or greenspace). Larger greenspaces (parks and nature reserves) are discussed extensively in the Forest Act of 2001, which both encourages their creation 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 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 “development approval and 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.

4.1 URBAN PLANS AND GREENHOUSE GAS EMISSIONS

Urban plans play a key role in determining the patterns of land use and transport of a particular jurisdiction. These have implications for energy consumption and greenhouse gas emissions that contribute to climate change. Legal provisions that require the assessment of greenhouse gas emissions in different urban planning scenarios can help local authorities make urban development and zoning decisions that advance climate change mitigation goals. 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 (MTCO_{2e}). The **National Policy on Climate Change for Namibia** 2011 identifies “enhanced carbon sinks” as one of three prioritized actions and strategies for climate change mitigation in Namibia. However, neither the greenhouse gas emissions goal nor its policy provisions on carbon sinks have been accompanied by legislation or regulations which promote, evaluate or implement changes to practically achieve these objectives.

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. Accompanying planning scenarios and development plans with estimates of greenhouse gas emissions or carbon sink potential related to each alternative scenario can substantially improve the ability of local authorities to make informed decisions that mitigate climate change. Namibia’s Updated Nationally Determined Contributions includes examples of this approach which can be considered in future legislative drafting. Moreover, in the policies assessed, there is no clear language establishing the legal requirement for urban plans to have targets to reduce greenhouse gasses with measurable and verifiable benchmarks against which progress can be assessed.

The **Namibia National Planning Commission Act** of 2013 includes provisions which mandate the **National Planning Commission** to “formulate short-, medium- and long-term national development plans in consultation with regional councils”.²³⁰ These national

²³⁰ Namibia National Planning Commission Act (No. 2 of 2013),

development plans should endeavour to give effect to Government socio-economic policies, including those related to the environment and climate change. As such, national development plans should be drafted with a view to achieving national climate change mitigation goals, while also “coordinat[ing] the development of government socio-economic policies to ensure consistency”.²³¹ The Commission should also mobilize, manage and coordinate international development cooperation”,²³² which again can and should take place with a view to climate change mitigation.

4.2 URBAN FORM AND REDUCTION OF GREENHOUSE GAS EMISSIONS FROM TRANSPORT AND INFRASTRUCTURE

The **Urban and Regional Planning Regulations** of 2020 require that zoning schemes must include references to streets and “their grades, widths and intersections with other streets; the function, volume and character of the traffic which it may be expected to carry in the future, and measures to ensure the safety of the traveling public; the closing, deviation or alignment of existing or new streets”.²³³ The same provision continues to discuss the needs of “street planting, street furniture, ornamental works...to improve the appearance and functions of streets”. However, precise standards or guidelines for drafting regulations which promote a connected, accessible and dense urban form that reduces car trips and promotes walkability and the efficient use of public infrastructure are not given; local authorities are left to regulate the zoning

schemes and building regulations/standards of their local authority areas and settlements as they see fit. The absence of national-level guidance on these issues can limit the ability of settlements to develop a compact and connected urban form since not all cities have the capacity to hire a transport planner, the time to review a comprehensive street-tree/street-design manual for all developers and to conduct the necessary community engagement to acknowledge local and traditional authority needs. Providing a base zoning code and/or model building regulations or standards applicable to different climate and topological needs could greatly influence the standardization of sustainable urban forms in Namibia.

While the **Urban and Regional Planning Regulations** of 2020 do not include specific provisions regarding street design, they do include a notable provision requiring the zoning of pedestrian and cycle corridors.²³⁴ This is a positive example of national use of power to create sustainable, walkable and safe communities for pedestrians and cyclists. Building on this provision to include street design standards could be effective in implementing the goals of the Namibian Transport Policy, notably the recommendation of “drafting of a formal public and urban transport policy and legislation oriented towards development of sustainable transport systems, featuring public transport and non-motorized transport”.²³⁵ The Policy further elaborates the need to use existing infrastructures, organizations and institutions for capacity building towards ensuring successful implementation of non-motorized transport goals. Thus, directives or legislation establishing a regional point-person for issues related such transport and clarifying who within the relevant

Section 4.

²³¹ Ibid.

²³² Ibid.

²³³ Urban and Regional Planning Regulations, Part 2 of Annexure 1 Section 1.

²³⁴ Ibid, Annex 1, Section 6.

²³⁵ Namibian Transport Policy (2018), Section 3.3.

local and traditional authorities are responsible for its regional coordination would be beneficial.

Regulations guiding zoning schemes or model building regulations and standards should also include provisions on plot design rules for a walkable streetscape, and mixed land use to facilitate accessibility to jobs, housing, services and shopping. While explicit provisions regarding plot design rules, mixed land use and density have not yet been made in the country's spatial planning legislation, the **Urban and Regional Planning Act** of 2018 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".²³⁶ Government Notice No. 222 and 223 of the Urban and Regional Planning of 2018 states that zoning schemes must include "land utilization, with maps illustrating usages and different activities of the area, such as residential, commerce, industry, public buildings, open spaces, parks, recreation grounds, conservation, transportation and areas and percentages or usages to be calculated".²³⁷ However, these land-use provisions do not mandate mixed-land use in zoning schemes. The National Policy on Climate Change states the need to "establish and enforce standards for infrastructure development such as roads, housing and water infrastructure".²³⁸ The **Namibian Transport Policy** describes the country's goals to develop connectivity between and within urban and rural areas in an efficient, reliable, affordable and safe manner by means of public and non-motorized transport.

Promoting optimal urban density is a key tool

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

237 Government Notice No. 222 and 223 of the Urban and Regional Planning (2018), Annex 1, Section 3.

238 The National Policy on Climate Change (2011), Section 4.8(a).

to reducing sprawl, energy consumption and greenhouse gas emissions. While urban density is mentioned in certain pieces of legislation, none of the laws and policies reviewed included legally binding language pertaining to optimizing urban density within Namibia. **Government Notice No. 222 and 223 of the Urban and Regional Planning** of 2018 states that zoning schemes must include "population and densities, with particular reference to growth of population, various densities, such as number of people per hectare in residential areas, number of people per dwelling unit, number of dwelling units per hectare or square metre".²³⁹ More broadly, the **Regional Councils Act** of 1992 prompts regional councils to consider the distribution and urbanization of the population. As such, while measures promoting optimal urban density are not made, urban density is a factor that must be considered in regional planning and urban zoning schemes.

Urban law and policy should also leverage the link between densities and infrastructure planning to promote "transit-oriented development".²⁴⁰ Such development uses integrated transport and infrastructure planning to promote connectivity between high-density areas. The **Regional Councils Act** of 1992 empowers regional councils to carry out planning for development that has an established view to the existing and planned infrastructure, which can include transit infrastructure.²⁴¹ Additionally, the Namibian Transport Policy describes "land passenger transport planning" as "a comprehensive and integrated process for generating a plan relating

239 Government Notice No. 222 and 223 of the Urban and Regional Planning of 2018, Annex 1, Section 5.

240 United Nations Environment Programme, United Nations Framework Convention on Climate Change, UN-Habitat and the Commonwealth Secretariat (2021). "Urban Law Module", The Law and Climate Change Toolkit, p. 76.

241 Regional Councils Act (No. 22 of 1992), Section 28(a)(iv).

to the regulation and management of transport infrastructure". These provisions can be used, and further built upon in spatial planning legislation, to ensure that the consideration of existing and planned transport infrastructure informs determinations of allowed population densities near said planned or existing infrastructure.

4.3 GREEN SPACES FOR ENVIRONMENTAL AND CLIMATE SERVICES

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. While the term "green space" is not included in the **Land Survey Act** of 1993, this legislation more broadly protects public spaces via planning regulations relating to the alteration, amendment or partial/total cancellation of any general plan. It states that "the Surveyor-General shall not approve the plan until he/she has been notified by the relevant local authority that the provisions of the **Local Authorities Act** 1992 (Act 23 of 1992) relating to the permanent closing of a public place or a portion thereof have been complied with".²⁴² This enables the **Minister for Agriculture, Water and Land Reform** to either prevent the destruction of pre-existing public green spaces or impose standards for the replacement of green space at the onset of new development.

The **Forest Act** of 2001 grants the Minister of Agriculture, Water and Land Reform further powers to define forested green spaces as "public spaces" while also providing standards on land acquisition/use. The document discusses

three types of green space in particular: (1) State forest reserves, (2) regional forest reserves, and (3) community forests. Regarding the first type, **the Forest Act** asserts that any State land designated as needing control for the purposes of managing forest resources, preserving ecosystems and/or protecting biodiversity can be designated as a State forest reserve. It must be noted that such a declaration requires a process involving invitations for objections from the community/stakeholders, management plans and compensation to the party which holds legal claim to the land in question. The other two types of green spaces – regional forest reserves and community forests – require a similar designation approval process but feature different management structures. While State forests are cared for by a management authority appointed at the time of forest designation, regional forests are operated by the appropriate regional council. Conversely, community forests are managed by a group representing the chief/traditional authority of a local area, providing equal use of land and equal access to forest produce to residents of the communal land. In defining the physical boundaries, management structures, and distribution of benefits of forested public green spaces, the **Forest Act** of 2001 plays a key role in providing standards for green spaces, notably in peri-urban areas.

However, **Namibian urban law** fails to make explicit provisions regarding urban green spaces, either via quantitative standards or distribution standards. The **Urban and Regional Planning Regulations** 2020 only state that zoning schemes must address population and densities, with particular emphasis on the connection between residential growth and changes in built form. These regulations should also include provisions that require connecting and planning together networks of green areas and water bodies.

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

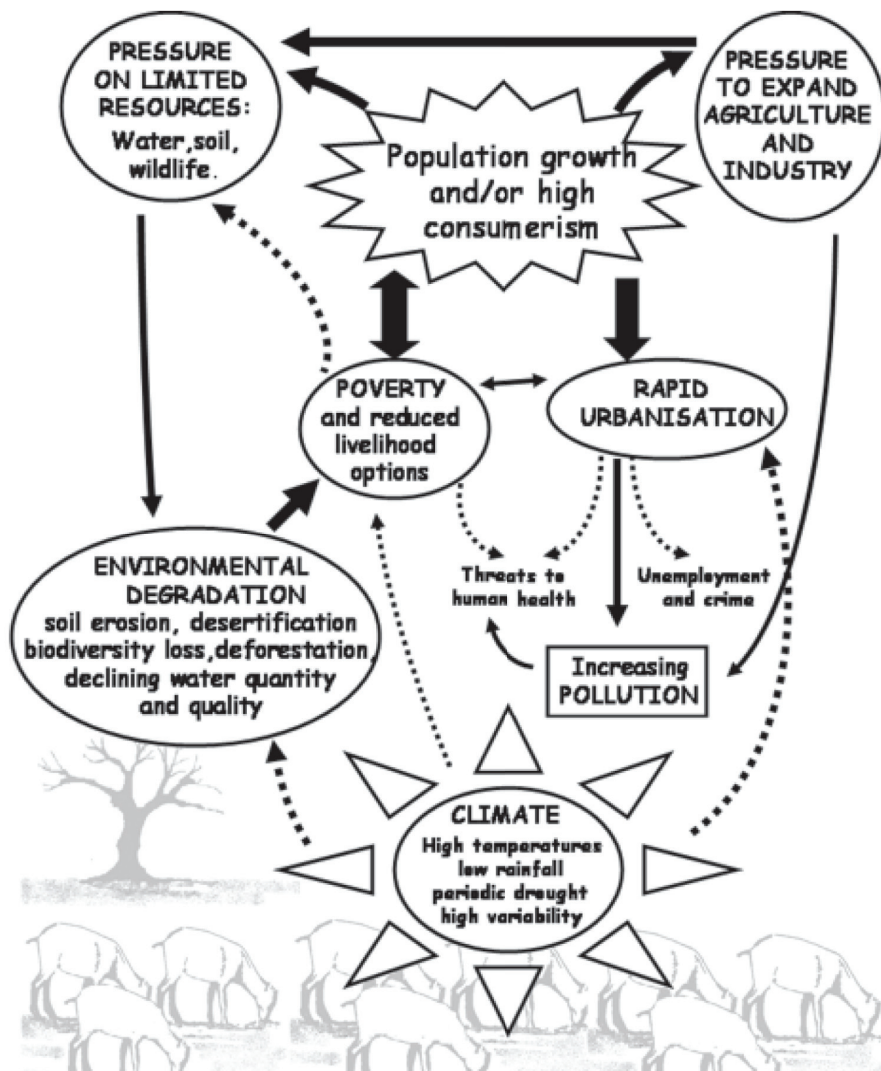


Figure 9: Some of the interlinked issues that threaten sustainable development in Namibia. Source: Namibia Vision 2030

4.4 NEIGHBOURHOOD DESIGN AND ENERGY SAVING IN BUILDINGS

Urban and environmental law in Namibia lacks provisions addressing neighbourhood design and energy savings in buildings. The **Guidelines for Building in An Energy Efficient Manner** provide some non-binding policy guidance on these issues which could be incorporated into formal

regulatory provisions. The document addresses sunshine hours, orientation of buildings and saving energy. One guideline, for example, is that windows should face north to obtain maximum solar gain for cooler days during the winter season. The introduction of regulations providing model building regulations or standards and zoning schemes (“National Building Standards”) can build upon the aforementioned guidelines to

address current gaps in neighbourhood design, such as considering wind and sun direction when deciding the orientation and layout of streets, thermal properties of urban surfaces, and evaluating plot design to achieve optimal orientation of buildings for the purpose of energy savings.

4.5 DEVELOPMENT APPROVAL AND MITIGATION

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 of law which seek to enforce compliance with legally approved urban plans and zoning regulations. These are largely the same provisions which were described in Section 3.7 (“Development Approval and Adaptation”) of this report, however, they are reviewed again below.

The **Urban and Regional Planning Act** of 2018 specifies that zoning schemes must conform to urban and regional structure plans as well as the national spatial development framework. All development works and projects, in turn, must conform to the applicable zoning scheme. While the building permitting process is regulated at the local level through municipal building regulations, the Urban and **Regional Planning Act** includes several overarching provisions to enforce compliance with urban structure plans and authorized zoning schemes. The law states that “a staff member of a local authority or an authorized planning authority... may, with the permission of the occupier or owner of land and at a reasonable time, enter land or enter a building for the purposes of ensuring compliance

with this Act or compliance with the zoning scheme”.²⁴³ This staff member has a right to be accompanied by an interpreter or a member of the police force to question the person on the land regarding developmental planning and legal compliance. Wilful obstruction of such inspections is considered to be an offence and sanctionable by fine and/or imprisonment.²⁴⁴ The Act also includes provisions to enforce the compliance of pre-existing buildings, land plots and land uses with new zoning schemes by allowing the local authority to apply to the court for an order to remove the non-compliant structure/structural element, an order prohibiting the uncompliant land use, or a warrant to execute the work which the owner is obligated to execute under the zoning scheme.²⁴⁵

The **Environmental Management Act** and **Environmental Impact Assessment Regulations** of 2007 require environmental impact assessments to be undertaken for certain land use and development activities, including the rezoning of land, the establishment of land resettlement schemes, as well as the construction of veterinary protected areas or game-proof and international boundary fences. Environmental clearance following an environmental impact assessment is also required for, inter alia, certain infrastructure activities, the construction of cemeteries, camping, leisure and recreation sites, and other tourism development activities. Undertaking development activities flagged under the **Environmental Management Act** Regulations without the requisite environmental clearance certificate is deemed to be a criminal offense sanctionable by fines and/or imprisonment.²⁴⁶

243 The Urban and Regional Planning Act (No. 5 of 2018), Section 125(2).

244 Ibid, Section 125(4).

245 Ibid, Section 54(5).

246 Environmental Management Act (No. 7 of 2007), Section 27(4).

The **Land Survey Act** of 1993 stipulates a penalty not exceeding a fine of N\$ 2,000 for the contravention of any regulation of the Survey Regulations Board.²⁴⁷ Regarding developer's fees, the Act also states that the **Minister of Agriculture, Water and Land Reform** can "prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the Surveyor-General's office".²⁴⁸ Likewise, the **Deeds Registries Act** of 2015 grants the Minister of Agriculture, Water and Land Reform the authority to make regulations relating to the charging of fees for the preparation, passing and registration of property deeds.²⁴⁹

Several other pieces of legislation include provisions that enable local governments to charge developers in cash through conditions attached to the approval of planning applications, however these fees are not necessarily linked to the infrastructure costs associated with relevant development. The **Urban and Regional Planning Act** of 2018 specifies that applications must be submitted to the local authority in order to undertake, inter alia, the rezoning of land, the subdivision or consolidation of land, and the alteration, suspension or deletion of conditions relating to land.²⁵⁰ Applications for any of these activities must be "accompanied by the fees determined by the authorized planning authority...if any".²⁵¹ Moreover, the Minister of Urban and Rural Development, or any local authority council with the authorization of the minister, is empowered to make regulations in relation to "the fees, if any, to be charged in respect of any act, matter or thing required or permitted to be done under

[the **Urban and Regional Planning Act**]"²⁵²

While the **National Policy on Climate Change of Namibia** of 2011 does not include provisions regarding charging developers through conditions attached to the approval of planning applications, it does cite the need for a "strategy to finance mitigation and adaptation activities". Charging developers through the development approval (permitting or licensing) process in relation to prospective greenhouse gas emissions and energy consumption of development works represents one strategy to incentivize and finance climate change mitigation.

Regarding monitoring compliance with the conditions of development approval, the **Environmental Management Act** mandates the Minister of the Environment, Forestry and Tourism with ensuring compliance with the Act, and empowers environmental officers to issue compliance orders to any person whom the officer has a reason to believe has contravened the Act and/or a condition of an environmental clearance certificate.²⁵³ The person receiving a compliance order must comply with the order within the specified time period; the failure to do so is sanctioned by substantial fines and/or imprisonment.²⁵⁴ Likewise, the **Disaster Risk Management Act** of 2012 empowers the local authority council to "monitor compliance with any disaster risk management policy...and ensure the integration of such policies into development planning at regional level".²⁵⁵

One of the objectives of the **Namibia National Planning Commission Act** of 2013 is to "develop monitoring and evaluation mechanisms to ensure effective implementation of the

247 Land Survey Act (No. 33 of 1993), Section 5(4).

248 Ibid, Section 6(a).

249 Deeds Registries Act (No. 14 of 2015), Section 93(1)(c).

250 The Urban and Regional Planning Act (No. 5 of 2018), Section 97(1).

251 Ibid, Section 97(3)(c).

252 Ibid, Section 131(1)(g).

253 Ibid, Section 20(2).

254 Ibid, Section 20(5) and 20(8).

255 Disaster Risk Management Act (No. 10 of 2012), Section 17.

national development plans”.²⁵⁶ The National Planning Commission’s Annual Report of 2019-2020 indicates that the country’s score in the Environmental Performance Index improved from a baseline of 43.7 in 2014 to 58.43 in 2018. The **Local Authorities Act** of 1992 provides that the mayor shall respect the local authority council when it comes to “closely monitor[ing] the implementation of the policies....[to] initiate and formulate planning and development policies”.²⁵⁷ The **Deed Registries Act** of 2015 provides additional legal provisions for enforcing compliance. In the context of transferring ownership deeds, the Act states that the owner of the deed, the person to whom the deed is being transferred to, and the Minister of Agriculture, Water and Land Reform are the key actors involved in ensuring compliant development.²⁵⁸

RECOMMENDATIONS

Urban plans and greenhouse gas emissions:

- It is recommended that the **Urban and Regional Planning Act** includes provisions requiring the assessment of greenhouse gas emissions and estimation of carbon sinks associated with existing and draft spatial plans (national spatial planning framework, regional structure plans and urban structure plans). Accompanying planning scenarios and development plans with estimates of greenhouse gas emissions, or carbon sink potential related to each alternative scenario can substantially improve the ability of local authority councils to make informed decisions that mitigate climate change.
- The **Regional Councils Act** can be used,

256 Namibia National Planning Commission Act (No. 2 of 2013), Section 4(c).

257 Namibia Local Authorities Act (No. 23 of 1992), Section 11(5)(a).

258 Deed Registries Act (No. 14 of 2015), Section 62(7).

and further built upon in spatial planning legislation, to ensure that the consideration of existing and planned transport infrastructure informs determinations of allowed population densities near said planned or existing infrastructure.

- The short-, medium- and long-term national development plans developed by the Namibia National Planning Commission should be required, under the **Namibia National Planning Commission Act**, to establish targets to reduce greenhouse gases with measurable and verifiable benchmarks against which progress can be assessed.
- It is recommended that the **Environmental Management Act or Local Authorities Act** requires the elaboration of local climate plans for each local authority area, which can include greenhouse gas emission targets against which urban structure plans can be assessed.

Urban form and reduction of greenhouse gas emissions from transport and infrastructure:

- It is recommended that Namibia introduces regulations establishing model building standards and zoning schemes (“**National Building Standards**”). These standards should include provisions on street design standards and plot design rules for walkability and cycling, mixed land-use zoning to facilitate accessibility to jobs, housing, services and shopping, and optimal density standards and distributions around existing and planned transport infrastructure to promote “transit-oriented development”.
- Capacity building and public engagement

opportunities should be made more inclusive by increasing their accessibility through provisions for the funding of food, day care and transport for community members to attend meetings or trainings. Creating capacity building opportunities that involve this engagement, along with citizen science education and local government support are needed. This is especially critical in Namibia since not all local authority councils can afford to engage a transport engineer.

Green spaces for environmental and climate services:

- Existing urban planning legislation, such as the **Urban and Regional Planning Act** and its subsidiary regulations, and/or proposed **“National Building Design Standards”** should include provisions which establish minimum quantitative standards for green spaces, require the adequate distribution of green spaces across a local authority area, and require connecting and planning together networks of green areas and water bodies.

Neighbourhood design and energy saving in buildings:

- It is recommended that **National Building Standards** be developed and enacted, which include provisions promoting neighbourhood design and building standards for energy saving. These provisions should include requirements for neighbourhood plans to consider wind and sun direction when deciding the orientation and the layout of street; plot design to achieve optimal orientation of the buildings for the purpose of energy saving in buildings; and for the consideration of the thermal properties of urban surfaces and building materials.

- Considering the role of building standards (e.g., building materials, setbacks, street design and layout, etc.) in mitigating the risk of disasters in urban areas such as fire and flooding, the **Disaster Risk Management Act** also represents an opportunity to better regulate building design and zoning standards such that cities are more climate resilient.
- Capacity-building training for architects, engineers and designers which disseminates information and strategies for green buildings and energy saving design are needed.
- Financial incentive mechanisms should be put in place to promote the application of energy efficient technologies and, as a consequence, resolve market failures which otherwise inhibit the development of energy efficient technologies in Namibia.
- The central Government should create a set of guidelines that are easily accessible and malleable for different local authority councils and their needs. This is a major opportunity to address longstanding infrastructure problems and develop awareness of techniques to build climate-resilient infrastructure.

Development approval and mitigation:

- Legal provisions, potentially through the **Urban and Regional Planning Act** or **Local Authorities Act**, should be introduced to enable local authority councils to charge developers through the development approval (permitting

or licensing) process in relation to prospective greenhouse gas emissions and energy consumption of the relevant development works.

- The **National Planning Commission Act** requires all socioeconomic policies to be evaluated. The evaluation criteria are not mentioned, however, and it is recommended that a literature review is conducted on the process, methods and approaches to generate an evaluation process that meets the country’s climate-mitigation goals.

See table 4 for a summary of the main laws, regulations, and policies referred to in this chapter.

TABLE 4. Referenced legislation and policies (Urban planning and design for mitigation)

Legislation	Year
Constitution of the Republic of Namibia	1990
Regional Councils Act	1992
Local Authorities Act	1992
Land Survey Act	1993
Forest Act	2001
Environmental Management Act	2007
Environmental Investment Fund Act	2008
Flexible Land Tenure Act	2012
Disaster Risk Management Act	2012
National Planning Commission Act	2013
Deeds of Registries Act	2015
Urban & Regional Planning Act	2018
Urban and Regional Planning Regulations (No. 7327 of 3 September 2020)	2020
Policy	Year
Guidelines For Building in An Energy Efficient Manner	2008
Namibia’s National Policy on Climate Change for Namibia	2011
Namibian Transport Policy	2018
Updated Nationally Determined Contribution	2021

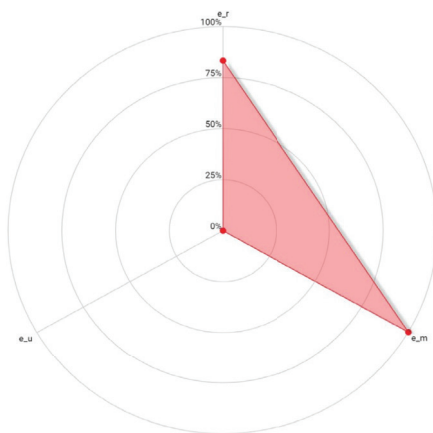


The arid landscape of Damaraland in Namibia by SteveAllenPhoto999, source : envato elements

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 10: 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. 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, borrowing and development assistance.²⁵⁹ Article 125 of

259 UNEP, UNFCCC, UN-Habitat, and the Commonwealth Secretariat, "Urban Law Module", The Law and Climate Change Toolkit (2021), p. 84

the Constitution explicitly provides for inter-governmental fiscal transfers ("subsidies") to local governments. Despite this, 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. 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. The **Trust Fund for Regional Development and Equity Provisions Act** of 2000 establishes the Trust Fund for Regional Development and Equity Provisions to assist local authority councils with the development of local authority areas and to implement decentralization programmes at the local authority level. Other inter-governmental transfers which can potentially be used to finance climate change adaptation and mitigation at the urban level are 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. Other sector specific legislation, such as the **Flexible Land Tenure Act** and the **Land Survey Act**, also creates an opportunity for local revenue generation through service fees. Local authority councils have discretion in how they spend their

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.

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. There are no provisions in law which require local governments to earmark resources for urban planning and climate change. There is a **Public Private Partnership Act** of 2017 which empowers Government Offices, Ministries and Agencies (OMAs), regional councils and local authority councils to enter into public private partnerships. Other policy documents such the **Solid Waste Management Strategy, the National Renewable Energy Policy** and the **National Policy on Climate Change** also refers 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 (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 references increasing 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.

5.1 RESOURCES FOR URBAN PLANNING AND CLIMATE CHANGE

The Constitution includes provisions for inter-governmental fiscal transfers to local governments, stating that "where necessary, subsidies [may] be allocated to regional or local authorities" through the enactment or application of any law of Parliament which provides for such transfers.²⁶⁰ These transfers are not 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 of Urban and Rural Development

The **Environmental Investment Fund of Namibia Act** of 2008 establishes the Environmental Investment Fund of Namibia consisting of "moneys appropriated by Parliament for the Fund; moneys collected in respect of levies

²⁶⁰ Article 125(3)(c).

imposed under [the **Environmental Investment Fund Act**]; moneys donated or accruing to the Fund from any source; and interest and other income derived from the investment of moneys standing to credit of the Fund”.²⁶¹ The objective of the Fund is to allocate income to activities and projects aimed at promoting, inter alia, “the sustainable use and management of environmental and natural resources” and, notably, “economic improvements in the use of natural resources for sustainable rural and urban development”.²⁶² While the Act does not specifically mandate regular, earmarked transfers to local governments for climate change mitigation and adaptation in urban planning, it enables inter-governmental transfers. The Act anticipates fiscal transfers to “governmental and non-governmental organizations and institutions, private organizations and individual persons” for climate change mitigation and adaptation strategies.²⁶³ The Act specifically foresees the allocation of moneys for the “development and implementation of environmental policies and strategies”,²⁶⁴ which would implicitly require transfers to local authorities since policy and strategy implementation tends to take place at the local level.

To complement the Environmental Investment Fund, the **National Policy on Climate Change** of 2011 establishes the objective of developing a fund specifically for “climate change emergencies at regional and national levels to support the affected sectors and people of Namibia”. However, this policy objective does not explicitly foresee measures for conducting fiscal transfers from said fund to local governments for climate change mitigation and adaptation

261 Environmental Investment Fund of Namibia Act (No. 13 of 2001), Section 3.

262 Ibid, Section 4(a) and 4(d).

263 Ibid, Section 6(f).

264 Ibid, Section 25(d).

within the urban planning sector. Similarly, the National Disaster Fund, established in the **Disaster Risk Management Act** of 2012, has the objective of building capacity and awareness in local, regional and national governments to prepare and respond to disasters. While the Act does not explicitly relate to climate change, the funding structure has the potential to be used to allocate resources towards mitigation and adaptation at subnational levels.

One of the aims of the **Namibian Transport Policy** (2018-2035) is to improve environmental protections Namibia by developing “fiscal and other incentives aimed either at the use of low emission vehicles and/or greater use of public and non-motorized transport/rail modes”. Though 80.6 per cent of the total allocation of the Road Fund is dedicated to the National Road Network, it is foreseeable that funds would also be allocated to local authorities who are responsible for managing the country’s urban road network. The **Road Fund Administration Act** of 2015 includes specific provisions for subnational authorities to utilize the Road Fund to defray the cost of “(i) the planning, design, construction and maintenance of any major urban arterial road; and (ii) the traffic-related maintenance in respect of any road, in any local authority area, as defined in Section 1 of the **Local Authorities Act**, or any settlement area, as defined in Section 1 of the **Regional Councils Act**, not being a road which is part of the national road network”.²⁶⁵

Though the **Namibia Vision 2030** does not include provisions regarding fiscal decentralization, Section 6.6 states the overarching objective of empowering “local authorities to improve their revenue-generating capacities and exercise

265 Road Fund Administration Act (No. 18 of 2015), Section 17(1)(c)

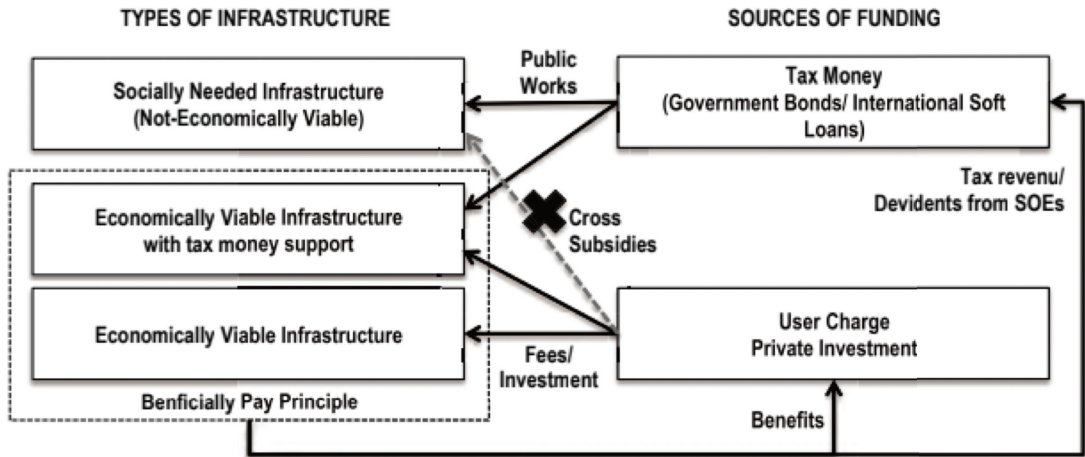


Figure 11: Types of infrastructure and sources of funding. Source : Master Plan for Development of an Internal Logistics Hub for SADC Countries in the Republic of Namibia, Final Report, March 2015.

control over the management of their affairs”. The document also discusses the importance of allocating more resources to regions that have been historically neglected, a factor which should be taken into account when drafting and proposing new legislation or legal provisions related to earmarking resources for urban planning and climate change.

However, Namibia currently lacks legal or policy provisions related to allowing local governments to receive a public credit guarantee by the national Government.

In addition to inter-governmental transfers, Namibian law includes provisions for local authority councils to collect locally generated revenues. The **Local Authorities Act** of 1992 states that the funds of a local authority council comprise of, inter alia, “the rates, charges, fees and other moneys levied under any provisions of [the **Local Authorities Act**] and received by the local authority council”, “any interest or dividends derived from investments made” using

any unexpended portion of its funds, and “any fines imposed in respect of any contravention of or failure to comply with any provisions of [the **Local Authorities Act**] or any other provision administered by a local authority council”.²⁶⁶ Rates levied by the local council include annual property taxes calculated as either (a) a general rate; (b) a site value rate; (c) an improvement rate; or (d) a site and improvement rate.²⁶⁷ The local authority council is also empowered to levy a penalty rate “on rateable property which has remained unimproved for a period of two years or more”.²⁶⁸ The law also provides for an additional 5 per cent of the property tax rate to be imposed for the benefit of regional council funds.²⁶⁹ Other charges, fees and moneys payable may be imposed by the local authority council in respect of any service, amenity or facility established and provided for including

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

267 Ibid, Section 73(1).

268 Ibid, Section 76A(a).

269 Ibid, Section 77(1).

basic services provision to immovable property and police services.²⁷⁰

Regarding the discretion given to local authority councils in deciding how to spend locally generated revenues, every management committee (for the relevant municipal or town council) or town council must submit a statement of its estimated income and expenditure for the following financial year. This submission must be submitted to the local authority council for adoption and subsequent approval by the Minister of Urban and Rural Development.²⁷¹ The local authority council cannot apply its money other than in accordance with an approval granted by the minister.²⁷²

The **Flexible Land Tenure Act** of 2012 includes provisions for the relevant local authorities to levy and collect fees for performing land tenure upgrades. In upgrades from starter title to land hold title, the relevant authority may “require that every holder of rights in the starter title scheme concerned deposit a sum of money with it...in order to defray its expenses relating to the upgrading of the scheme concerned”.²⁷³ In upgrading from starter title or land hold title to full ownership, the Act states that the “costs of such upgrading must be borne by the holders of rights in the scheme concerned”.²⁷⁴

The **Land Survey Act** of 1993 stipulates provisions for charging fees to defray the costs of resurvey of a given township. It states that though “all costs of and incidental to such resurvey shall (except in respect of State land) be borne by such local authority”, the “local authority may, notwithstanding anything contained in any other law, levy a special rate payable by the registered

owners of land within the resurveyed area, in proportion to the value of the land (including any non-rateable land other than State land) of each such owner in order to cover such costs of the resurvey or any portion thereof”.²⁷⁵ The Minister of Urban and Rural Development is responsible for determining the costs which the central Government must pay for resurveying conducted in respect of State land situated in the township, after consultation with the local authority council concerned.²⁷⁶

Regarding the mobilization of investment capital, the **Local Authorities Act** of 1992 enables “a local authority council may invest an unexpended portion of its funds with a banking institution ..., a building society..., the savings bank ..., or such other financial institution as may be approved by the minister”.²⁷⁷ The application and authorization for the investment of moneys must be signed by a town clerk or village secretary (“chief executive officer”) and co-signed by the chairperson of the management committee (or in the case of a village council, by chairperson of the village council) or otherwise by the chairperson of the local authority council when specially authorized to do so.²⁷⁸

The **National Renewable Energy Policy** of 2017 provides for multiple policies that highlight the mobilization of investment capital through measures such as net metering, wheeling to renewable energy funds, and infrastructure subsidies. The **Road Fund Administration Act** of 2015 provides that road funds can be sourced from “any capital gains made and interest or dividends earned on investments” via the Road Fund Administration.

270 Ibid, Section 30(u)(iii) and (iv).

271 Ibid, Section 83(1).

272 Ibid, Section 84(1).

273 Flexible Land Tenure Act (No. 4 of 2012), Section 14(6).

274 Ibid, Section 15(6).

275 Land Survey Act (No. 33 of 1993), Section 22(1).

276 Ibid, Section 22(2).

277 Local Authorities Act (No. 23 of 1992), Section 80(3).

278 Ibid, Section 3A.

There are limited legal or policy provisions in Namibia regarding public-private partnerships. The **Solid Waste Management Strategy** of 2017 highlights such partnerships which have been developed to facilitate specific waste collection routes. The **National Renewable Energy Policy** of 2017 establishes a subsidy framework that describes how to work through public means to create private capital for public benefit, however, it does not detail the financial aspects of these partnerships. The **National Policy on Climate Change for Namibia** of 2011 states that the establishment of public-private partnerships is necessary to “contribute both monetary and human resource capacity to address climate change adaptation and mitigation”.²⁷⁹ The policy document further provides a broad framework that includes the private sector investing in mitigation and adaptation measures, allocating resources equitably among sectors and management of those allocated resources.

5.2 INCENTIVES FOR MITIGATION AND ADAPTATION IN URBAN PLANNING

The aim of the Rural Energy and Mini-Grids section of the **National Renewable Energy Policy** of 2017 is to increase renewable energy and local grid resilience for Namibia. By focusing on grid resilience at the local level, the policy promotes incentives to implement grids as these systems not only generate renewable energy sources that mitigate and adapt to climate change through increased energy storage and capacity, but they can also save residents the cost of energy overtime.

While climate change mitigation and adaptation are addressed throughout Namibia’s national policies, there is a lack of provisions which

create incentives to implement such strategies. **Namibia’s Updated Nationally Determined Contribution** 2021 references the lack of incentive mechanisms as a barrier to attracting investment. The **National Policy on Climate Change for Namibia** of 2011 includes a subsection dedicated to financial resource allocation, mobilization and management which discusses developing a strategy to finance mitigation and adaptation activities but does not describe any incentives, economic or non-financial, to do so. This is similar to the **National Drought Policy and Strategy** of 1997, in which successful drought mitigation programmes are expected to be successful only when farmers are incentivized, however the policy does not specifically identify what incentives should be created and how. Additional provisions regarding improving fiscal incentives for climate change interventions, such as low emissions vehicles, public transport, waste management and pollution control, can be found in the **Namibian Transport Policy** (2018-2035), the **Solid Waste Management Strategy** of 2017 and the **Namibia Vision 2030**, but the adoption of such incentives is not necessarily mandated. While the **Solid Waste Management Strategy** of 2017 touches on the country’s push to provide more access to a range of hazardous waste management facilities, more information is needed to plan and implement such a strategy successfully.

5.3 INCENTIVES THAT PROMOTE UNSUSTAINABLE URBAN LAND USES

The **Namibia Vision 2030** recognizes that negative incentives have contributed to problems such as desertification and states that desertification has “occur[ed] as a result of incorrect policies, incentives and regulations that encourage inappropriate land management

²⁷⁹ National Policy on Climate Change (2011), Section 8.3.

practices". This is the only explicit example found in the country's urban law and policy in respect of incentives that promote unsustainable land uses.

RECOMMENDATIONS

Resources for urban planning and climate change

- Legal provisions regarding fiscal transfers from the national Government to local authority councils should be clarified, strengthened and expanded in the **Local Authorities Act**.
- It is recommended that the local authority councils be legally obligated to earmark a percentage of their funding for climate change adaptation and mitigation. This may be included in the statement of estimated income and expenditure during the following financial year which, according to the **Local Authorities Act**, must be submitted for ministerial approval. However, local authority councils should be given greater discretion in deciding how to allocate locally generated revenues; in other words, these decisions should not be subject to ministerial approval.
- Legal provisions should be introduced to allow local authority councils to receive a public credit guarantee from the national Government.
- It is recommended that programming and policies be established with the direct aim to strengthen the most vulnerable areas and their populations against climate emergencies. More specifically, establishing fiscal transfers to local authority councils for climate change mitigation and adaptation within the urban planning sector is

recommended.

Incentives for mitigation and adaptation in urban planning

- Incentives for climate change adaptation and mitigation should be expanded and strengthened - there are immense opportunities for Namibia to increase programming pertaining to these issues. In order to make climate adaptation and mitigation practices more widespread, the use of incentives such as tax relief legislation, subsidies, and trade programmes are recommended as these can offer Namibia the opportunity it needs to integrate these mitigation strategies into its policies and legislations.
- The **National Renewable Energy Policy** of 2017 presents an entry-point for incentivizing energy grid resilience at the local level.

Incentives that promote unsustainable land use

- A comprehensive survey of the role of law and policy in promoting unsustainable land uses should be undertaken to inform future law and policy decisions surrounding urban development and climate change adaptation and mitigation.

See table 5 for a summary of the main laws, regulations, and policies referred to in this chapter.

TABLE 5. Referenced legislation and policies (Economic and non-economic incentives for climate-friendly urban planning)

Legislation	Year
Local Authorities Act	1992
Land Survey Act	1993
National Drought Policy and Strategy	1997
Trust Fund for Regional Development and Equity Provisions	2000
Environmental Investment Fund Act	2008
Flexible Land Tenure Act	2012
Communal Land Reform Act	2013
Road Administration Act	2015
Policy	Year
Namibia Vision 2030	2004
National Policy on Climate Change for Namibia	2011
National Renewable Energy Policy	2017
Solid Waste Management Strategy	2017
Namibia Transport Policy	2018
Namibia's Updated Nationally Determined Contribution	2021

ANNEX. Referenced legislation and policies

Legislation	Year	Mentioned in
Constitution of Namibia	1990	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation
Regional Councils Act	1992	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation
Local Authorities Act	1992	Planning Adaptation Urban Planning and Design for Mitigation Economic and Financial Instruments
Land Survey Act	1993	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation Economic and Financial Instruments
The Agricultural (Commercial) Land Reform Act	1995	Governance and Institutional Arrangements Urban and Territorial Planning
National Drought Policy and Strategy	1997	Economic and Financial Instruments

Decentralization Enabling Act	2000	Governance and Institutional Arrangements Urban and Territorial Planning
National Housing Development Act	2000	Governance and Institutional Arrangements Planning Adaptation
Forest Act	2001	Governance and Institutional Arrangements Urban and Territorial Planning Urban Planning and Design for Mitigation
Communal Land Reform Act	2002	Governance and Institutional Arrangements Planning Adaptation
Water Resources Management Act	2004	Planning Adaptation
Environmental Management Act	2007	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation
Environmental Investment Fund Act	2008	Urban Planning and Design for Mitigation Economic and Financial Instruments
Statistics Act	2011	Governance and Institutional Arrangements
Flexible Land Tenure Act	2012	Governance and Institutional Arrangements Planning Adaptation Urban Planning and Design for Mitigation Economic and Financial Instruments

Disaster Risk Management Act	2012	Governance and Institutional Arrangements Planning Adaptation Urban Planning and Design for Mitigation
National Planning Commission Act	2013	Governance and Institutional Arrangements Planning Adaptation Urban Planning and Design for Mitigation
Communal Land Reform Act	2013	Urban and Territorial Planning Planning Adaptation Economic and Financial Instruments
Public and Environmental Health Act	2015	Governance and Institutional Arrangements Urban and Territorial Planning
Deeds of Registries Act	2015	Governance and Institutional Arrangements Planning Adaptation Urban Planning and Design for Mitigation
Solid Waste Management Strategy	2017	Economic and Financial Instruments
National Renewable Energy Policy	2017	Economic and Financial Instruments
Road Administration Act	2015	Planning Adaptation Economic and Financial Instruments
Urban & Regional Planning Act	2018	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation

Policy	Year	Mentioned in
Guidelines For Building In An Energy Efficient Manner	2008	Urban Planning and Design for Mitigation
Namibia Country Programme Document 2008-2009	2009	Governance and Institutional Arrangements
National Policy on Climate Change for Namibia	2011	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation Economic and Financial Instruments
Master Plan for Development of an International Logistics Hub for Southern African Development Community Countries in the Republic of Namibia	2015	Planning Adaptation
Namibian Transport Policy	2018	Urban and Territorial Planning Urban Planning and Design for Mitigation Economic and Financial Instruments
Government Notice No. 222 and 223	2018	Planning Adaptation Urban Planning and Design for Mitigation
Namibia's Updated Nationally Determined Contribution	2021	Governance and Institutional Arrangements Urban and Territorial Planning Planning Adaptation Urban Planning and Design for Mitigation Economic and Financial Instruments
Namibia Vision 2030	2021	Economic and Financial Instruments

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, 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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