

Namibia: Country Case Study Report

How Law and Regulation Support Disaster Risk Reduction

United Nations Development Programme

June 2014



IFRC-UNDP Series on Legal Frameworks
to support Disaster Risk Reduction



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NAMIBIA: COUNTRY CASE STUDY REPORT | How Law and Regulation Supports DRR | June 2014

About this report

This report was commissioned by UNDP and prepared by Mr Ewan Powrie. It is one of a series of case studies UNDP is undertaking with the IFRC as part of a global research project to learn about how law and regulation support disaster risk reduction. For more information about the project and various case studies as they become available, please visit:

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Website: www.ifrc.org/dl



**International Federation
of Red Cross and Red Crescent Societies**

International Federation of

Red Cross and Red Crescent Societies

P.O. Box 303

CH-1211 Geneva 19

Switzerland

Telephone: +41 22 730 42 22

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Executive Summary

The Republic of Namibia has been in existence since March 1990, gaining independence from South Africa following the Namibian War of Independence. During the last few decades the country has experienced economic growth and achieved significant improvements in many areas vital to development, including human rights, economic empowerment, gender equality and environmental sustainability. Recognizing the significant advances made, Namibia was recently named as the top emerging market economy in Africa, and 13th in the world, by Bloomberg.¹

Namibia is vulnerable to a range of natural hazards, especially drought and flooding. Flooding is an annually recurring event which is worsening each year, with the northern and northeastern regions being the worst affected. Drought is increasingly difficult to predict in the country. In 2013, Namibia experienced an extensive and prolonged drought throughout the country. Namibia is extremely susceptible to the impacts of climate change, especially the increased frequency and intensity of extreme weather events, which is exacerbating Namibia's already water-stressed situation.

Historically, Namibia's efforts to combat the impact of disasters have been focused almost exclusively on relief for flooding and drought. This strategy was governed by a legal framework (the Civil Defense Act and the Civil Defense Ordinances) which was inherited from the South African colonial administration. Namibia has a relatively new national framework for Disaster Risk Management (DRM) and Disaster Risk Reduction (DRR), which includes the Disaster Risk Management Act (DRMA) of 2012, the National Disaster Risk Management Plan of 2011, and the National Disaster Risk Management Policy of 2009. This framework is representative of the wider global paradigm shift away from a disaster response approach to one of comprehensive DRM that takes account of a wide range of hazards and stakeholders. The framework is aligned to relevant international agreements such as the Hyogo Framework for Action 2005-15, the Kyoto Protocol, and the Africa Regional Strategy for Disaster Risk Reduction.

This report assesses the content and implementation of this new DRM framework and related legislation. Legal frameworks for specific sectors are assessed to review the extent to which they support DRR. The integration of DRR and development goals in various national policies and strategies demonstrates the government's commitment to addressing the risks the country faces from natural hazards. However in the most recent National Development Plan DRR is given little attention.

Overall, Namibia's sectoral laws contain many provisions that are relevant to DRR; however the progressive content of laws and policies is often marred by inadequate or ineffective implementation. Resource and capacity constraints have hindered the establishment of the institutional structures and procedures proposed under law, especially at regional and local levels.

This report and its conclusions highlight the ways in which law and regulation in Namibia are supporting, or may in future support, DRR, and balances this against some of the main gaps that exist both in law and in practice. The observations and conclusions of this report are set out in full in sections 3 and 4, and are briefly summarized below.

Some of the **good practices** identified within this Case Study are:

New Disaster Risk Management Law & Structure: The development of a clear institutional structure for DRM and the explicit establishment of DRR as a concept in law is an extremely positive development. National and regional level structures are already established and the development of DRM policies and contingency planning is ongoing.

¹ Bloomberg Markets, *The Top 20 Emerging Markets*, <http://www.bloomberg.com/slideshow/2013-01-30/the-top-20-emerging-markets.html#slide9>, accessed 4 September 2013

As part of this structure it also appears that an increasingly effective system is being put in place for coordination and information management. The Directorate of Disaster Risk Management (DDRM) is the government's national DRM agency and has responsibility for most of the day-to-day DRM activities in Namibia. Its main function is the coordination of stakeholders (including both government and non-government actors) and to that end, at least at the national level, it has an effective system in place.

Environmental Impact Assessments: Although interviewees noted a relative lack of public consultation and difficulties in enforcing laws relating to Environmental Impact Assessments (EIA) due to capacity constraints, the overall legal framework for EIA is well-developed and presents an opportunity to mainstream DRR considerations into the environmental planning process.

Building Code Implementation & Enforcement: The robust system for implementation and enforcement of building codes in Windhoek is a clear example of a good practice which could be rolled out in other regional centers, subject to capacity and funding. Windhoek is also notable for its progressive and inclusive policy towards informal settlements. Namibia's adoption of the Flexible Tenure Act, which recognizes alternative forms of tenure, is a positive practice that directly contributes to DRR by bringing marginal communities within the formal legal framework.

Community-level structures & participation in legislation: The promotion of community-based natural resource management is an extremely positive practice that can contribute directly to DRR. That this is reflected in legal instruments, such as the Nature Conservation Amendment Act 1996 for communal conservation and the Water Resources Management Act of 2004 for WPUAs, provides a foundation for greater community ownership of natural resources, and gives communities the ability to have a more direct impact on their own resilience to natural hazards.

Some **areas of opportunities** which stand out are:

Although there are many positive practices in Namibia that are either already supporting DRR activities or have the potential to do so, there are also gaps in the legal framework and its implementation. Research has shown that there are two major reasons for these gaps: firstly, an institutional culture that is still heavily focused on disaster response rather than risk reduction, and secondly, inadequate financing for risk reduction activities. Whilst these gaps are being addressed to some extent by international organizations and NGOs in partnership with the Namibian government, the overall lack of financing means that, for example, the capacity-building of government officials and training on how to mainstream DRR into all government levels and departments is curtailed, resulting in a slow uptake of DRR efforts and programmes.

Implementation of Law & Policy: Many examples exist of well drafted policies and laws which have admirable principles and aims, and set out well-considered institutional structures and responsibilities. Yet it is clear that many of these aims and provisions have not been implemented. Both the Namibian government and external commentators have drawn attention to this issue. To a great extent, implementation depends on the capacity of the responsible institutions and the availability funds, which are both currently lacking in many areas.

Early Warning Systems & Risk Mapping: Early Warning System (EWS) and risk mapping activities are ongoing in Namibia, however they would benefit greatly from a relevant legislative or policy foundation. Whilst several different sectors are engaged in the production of high quality EWS information, the responsibility for collation and distribution appears divided between them, for example among the DDRM, the Ministry of Agriculture, Water and Forestry (MAWF) and to some extent the Ministry of Environment and Tourism (MET). Clarifying the institutional responsibilities relevant to Namibia's EWS via legislation or policy could reduce confusion and contribute significantly to a more efficient and effective system.

Establishment of Local DRM Institutions: Whilst Regional DRMCs have been established, this framework has yet to be extended to the local authority, settlement or village level, as required under the DRMA. Whilst some community level DRMCs have been instigated by and developed through partners, their long-term sustainability is uncertain.

Funding of DRR Activities: The implementation of DRR is hampered by a lack of clarity on how DRR activities are to be funded, as well as by the limited availability of funds in the first instance. Although there was a certain amount of funds allocated to the recently established national DDRM, they are almost exclusively devoted to disaster response efforts and there are no clear procedures for ensuring that funds reach regional and community levels. Some positive drafting in this regard is included in existing and proposed legislation, which will hopefully provide a future framework for the budgeting process. For this to happen, however, the government must use its best efforts to ensure the implementation of a robust and transparent process that allows for funding to extend beyond the national level and to benefit the communities who need it most. At present, the lack of financing available for DRR activities is one of the key reasons for the current gaps in implementation.

Community Involvement in Environmental Impact Assessments & Land Use Planning: Even though there are laws and policies which promote community participation, gaps in capacity and funding are contributing to the lack of implementation, which is especially apparent at community level. There is also evidence to suggest that developers and government actors' deference to traditional authorities and village headmen sometimes fails to take account of the views of other community members.

Acknowledgements

Partners:

This Case Study was undertaken in collaboration with UNDP Namibia, the Government of Namibia, and the Bureau for Crisis Prevention and Recovery (BCPR), UNDP, New York.

The study is part of a global project on legal frameworks to support disaster risk reduction at the country level, which was undertaken by the IFRC in partnership with UNDP.

Collaborators:

This report was prepared by Mr. Ewan Powrie, UNDP Legal Consultant, with assistance and support from:

- Julieta Ferreira – Regional Manager, Namibian Red Cross, Kavango region;
- Polly Helmut – Regional Manager, Namibian Red Cross, Zambezi region;
- Percias Masule – DRR Officer, Namibian Red Cross, Kavango region;
- Angelika Planitz - Advisor, Disasters & Governance, Disaster Risk Reduction & Recovery Team, Bureau of Crisis Prevention & Recovery, UNDP;
- Nelson Zapaati - Programme Assistant, Energy & Environment, UNDP;
- Esra Karikub - Driver for the project consultant;
- Alice Guinan - Intern, Disaster Risk Reduction & Recovery Team, Bureau of Crisis Prevention & Recovery, UNDP; and
- Lauren Konopacz – Disaster Risk Governance Intern, Bureau of Crisis Prevention and Recovery, UNDP

The case study report could not have been completed without the assistance of all the stakeholders who gave generously of their time and experience in interviews during the consultant's country visit. A full list of those consulted is provided in Annex A. However, we wish to particularly thank the Namibian Red Cross officials and volunteers, as well as the communities in Zambezi and Kavango provinces who gave their time to arrange and participate in community focus groups in the regions.

This report draws extensively on the *Background Report: Law and Regulation for the Reduction of Risk from Natural Disasters in Namibia - A National Law Desk Survey*, November 2012, prepared by Dung Ngo Luu on behalf of the IFRC, which was based on internet sources. The background report will be published separately.

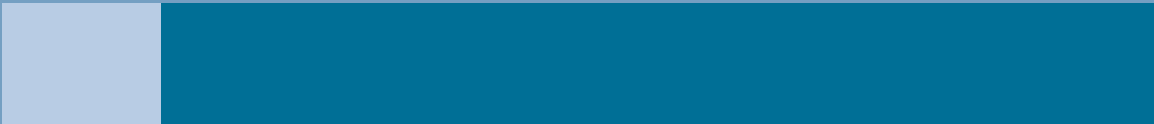
List of Abbreviations

CBNRM	Community Based Natural Resources Management
DDRM	Directorate of Disaster Risk Management
DRM	Disaster Risk Management
DRMA	Disaster Risk Management Act, No. 10 of 2012
DRMC	Disaster Risk Management Committee
Drought Policy	National Drought Policy and Strategy of 1997
DRR	Disaster Risk Reduction
DSM	Directorate of Survey and Mapping
EIA	Environmental Impact Assessment
EWS	Early Warning System
GRN	Government of the Republic of Namibia
IFRC	International Federation of Red Cross and Red Crescent Societies
ILUC	Integrated Land Use Planning
LWUA	Local Water User Association
MAWF	Ministry of Agriculture, Water and Forestry
MET	Ministry of Environment and Tourism
MICT	Ministry of Information and Communications Technology
MLR	Ministry of Lands and Resettlement

MRLGHRD	Ministry of Regional and Local Government, Housing and Rural Development
NDP4	Fourth National Development Plan 2012/13 to 2016/17
NDRM Plan	National Disaster Risk Management Plan 2011
NDRM Policy	National Disaster Risk Management Policy 2009
NDRMC	National Disaster Risk Reduction Committee
NGO	Non-Governmental Organization
NVAC	Namibia Vulnerability Assessment Committee
RDRMC	Regional Disaster Risk Management Committee
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VAC	Vulnerability Assessment Committee
WPUA	Water Point User Association
WRMA	Water Resources Management Act, No. 24 of 2004
WUA	Water User Association



1: Introduction

- 1.1. Law & DRR Project Background
 - 1.2. Country Risk Profile
 - 1.3. Governmental & Law-Making Structure
 - 1.4. Meaning of Key Terms
- 

1. Introduction, Background & Project Objectives

1.1 Law & DRR Project Background

In January 2005, a UN conference of over 4,000 representatives of governments, NGOs, the Red Cross and Red Crescent, UN agencies, academic institutes and the private sector adopted the Hyogo Framework for Action² which contained a set of commitments and priorities to take action to reduce disaster risks. The first of these was to “ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation,” notably through “policy, legislative and institutional frameworks for disaster risk reduction.”

Since 2005, a significant amount of legislation has been adopted in various parts of the world aimed at strengthening the focus on disaster risk reduction, yet important gaps still remain, particularly with regard to follow-through at community level. This was confirmed in a number of reports prepared around the time of the mid-term review of the Hyogo Framework for Action, including in country case studies by the United Nations Development Programme (UNDP) and the International Federation of Red Cross and Red Crescent Societies (IFRC).³ Communities were found not to be well enough informed, and insufficiently engaged and resourced to take an active part in reducing risks. It was also noted that rules to deter risky behaviours (particularly in construction and land use) often go unenforced. While legislation is certainly not the only way to address some of the issues, it can be an important part of the puzzle.

In 2011, the state parties to the Geneva Conventions took up this issue at the International Conference of the Red Cross and Red Crescent. Their resolution encouraged states, with support from their National Red Cross and Red Crescent Societies, IFRC, UNDP, and other relevant partners, to review the existing legislative frameworks in light of the key gap areas identified in the IFRC report to the Conference, and to assess whether they adequately:

- a. make disaster risk reduction (DRR) a priority for community-level action;
- b. promote disaster risk mapping at the community level;
- c. promote communities’ access to information about DRR;
- d. promote the involvement of communities, Red Cross and Red Crescent National Societies, other civil society actors and the private sector in DRR activities at the community level;
- e. allocate adequate funding for DRR activities at the community level;
- f. ensure that development planning adequately takes into account local variability in hazard profiles, exposure, vulnerability, and cost-benefit analysis;
- g. ensure full implementation of building codes, land use regulations and other legal incentives; and
- h. promote strong accountability for results in reducing disaster risks at the community level.

² ‘Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (Extract from the Final Report of the World Conference on Disaster Reduction)’, World Conference on Disaster Reduction. 18-22 January 2005, Kobe, Hyogo, Japan (Kobe, Hyogo, Japan: International Strategy for Disaster Reduction, United Nations, 2005).

³ See, for example, *Ethiopia: Country Case Study Report – How Law and Regulation Supports Disaster Risk Reduction*, IFRC, 15 May 2013, *Nicaragua: Country Case Study Report – How Law and Regulation Supports Disaster Risk Reduction*, IFRC, 15 May 2013, *Mexico Country Case Study Report - How Law and Regulation Supports Disaster Risk Reduction*, UNDP, January 2014, *Iraq Country Case Study Report - How Law and Regulation Supports Disaster Risk Reduction*, UNDP, January 2014 and *Kyrgyzstan Country Case Study Report - How Law and Regulation Supports Disaster Risk Reduction*, UNDP, January 2014.

1.2 Country Risk Profile

Namibia occupies 824,269 square kilometers of land in southern Africa. With a population of approximately 2,104,900,⁴ it has the second lowest population density in the world. It is also notable for having the lowest levels of rainfall in sub-Saharan Africa. It shares land borders with Angola and Zambia to the north, Botswana to the east, and South Africa to the south and east; while to the west lies 1,570 kilometers of Atlantic coastline. Namibia recently designated its entire coastline as national parkland (the Namib-Skeleton Coast National Park). The landscape in Namibia is divided into five geographical areas: the Central Plateau, the Namib Desert, the Great Escarpment, the Bushveld and the Kalahari Desert.

Table 1: Impact of natural disasters in Namibia, 1900 – 2013⁵

		No. of Events	No. Killed	Total Affected	Damage (USD '000)
Drought	Drought	7	-	1,083,200	51,000
Flood	Unspecified	1	-	5,000	-
	Flash flood	1	2	12,000	-
	General flood	11	262	1,082,450	20,490
Epidemic	Bacterial Infectious Diseases	3	30	511	-
	Parasitic Infectious Diseases	2	234	12,098	-
	Viral Infectious Diseases	1	10	47	-
Total:		26	538	2,195,306	71,490

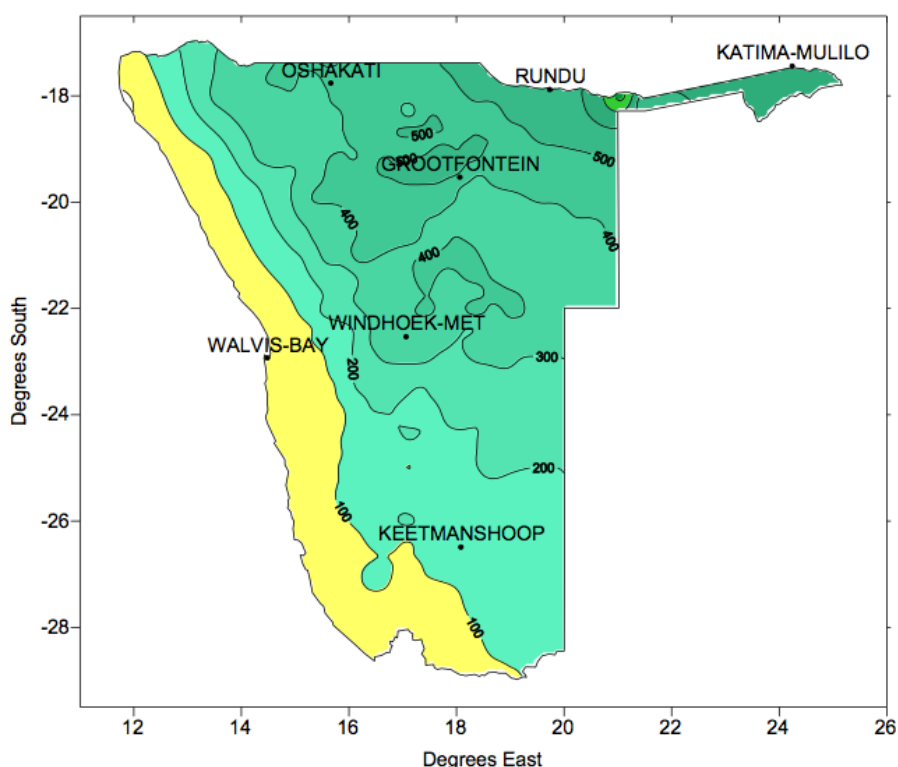
As acknowledged by the government, natural hazards are an unavoidable feature of the Namibian landscape, and are likely to intensify as a result of climate change. In a recent study undertaken by Alliance Development Works together with the United Nations University and The Nature Conservancy, Namibia was ranked 104 out of a total 173 countries in the World Risk Index.⁶ To put this in the context of the African continent, only Botswana is ranked above Namibia. Historically, the major recurring hazard is flooding, the effects of which are intensifying year-on-year. The north-eastern part of the country is particularly vulnerable to floods, as a result of a combination of factors including proximity to large perennial rivers along the country's international borders and continued deforestation. Since 2008, the impact of floods has been felt far beyond the north-eastern regions and currently 8 out of the 13 regions of Namibia are considered at risk of flooding. Because Namibia has extremely low rainfall it is also particularly vulnerable to drought. The country experienced a severe drought that was declared a National Emergency on 17 May 2013 and which continues to require a large relief effort.⁷

4 Government of the Republic of Namibia, Namibia 2011 Population and Housing Census – Preliminary Results, 2011

5 Source: EM-DAT: The OFDA/CRED International Disaster Database, www.emdat.be (accessed on 8 October 2013)

6 Alliance Development Works, United Nations University Institute for Environment and Human Security, and the Nature Conservancy, WorldRiskReport 2012. The World Risk Index ranks countries according to four key components: exposure to natural hazards; susceptibility; coping capacities; and adaptive capacities.

7 Reliefweb, Severe drought taking heavy toll in Northern Namibia, <http://reliefweb.int/report/namibia/severe-drought-taking-heavy-toll-northern-namibia>, accessed 2 September 2013

Figure 1: Spatial distribution of mean annual rainfall in Namibia (mm)⁸


Namibia also faces regular forest and veldt fires, especially in the north-eastern part of the country. In 2006 the Ministry of Agriculture, Water and Forestry estimated that fires damage between 3 and 7 million hectares of land annually.

The effects of flooding and drought put all groups of a community at risk, but are disproportionately burdensome to women and other vulnerable groups. For example, women generally hold primary responsibility for the rebuilding of households destroyed by flooding, and are required to travel longer distances to collect water in times of drought.⁹ Women also bear the risk of premature births and will generally be required to care for other vulnerable groups (namely, children and the elderly) in the event of sickness. However the key role and presence of women in communities means that they can generally make greater contributions to the adaptive capacity of households. The impact on men is more closely linked to livelihoods. For example, flooding may necessitate the relocation of livestock while drought can result in the death of livestock and a corresponding loss of income. As such, both hazards can result in men migrating ever farther from the community in search of work.

⁸ Source: Namibia Meteorological Services, 2011, reproduced in GRN, National Disaster Risk Management Plan, 2011

⁹ Africa Adaptation Project, Namibia: Drought and Flooding Risk Assessment Tool for Gender-Specific Decision-Making - Summary Report, 30 July 2011

1.3 Governmental & Law-Making Structure

Government – Executive, Parliament & Regions

The current governmental structure of Namibia was established under the country's Constitution of 1998. This created a system of executive presidency, where the President is both the Head of State and the Head of Government. Executive power is vested in the President-led Cabinet, the main function of which is policy-making.¹⁰

The Parliament of Namibia is bicameral and consists of the National Assembly and the National Council. The Assembly has a total of 78 members, 72 of whom are directly elected for five-year terms through a system of party-list proportional representation, with the remaining six appointed directly by the President. The Council (the upper chamber of the Parliament) has 26 members, with each of the 13 regional councils choosing 2 members for six-year terms.

Namibia's Constitution provides the legal basis for its system of local government. Chapter 12 of the Constitution divides Namibia into 'regional and local units,' which are governed by Regional Councils¹¹ and Local Authorities¹² respectively. The powers, duties and functions of these bodies were set out in the Regional Councils Act and the Local Authorities Act of 1992. Namibia is divided into 13 regions, each with its own Regional Council, and each region is divided into constituencies for electoral purposes (with each constituency electing one member to the Regional Council). Local authorities are established in all urban areas and are divided into municipalities, town councils, and village councils. Municipalities are categorized as Part I or Part II (Windhoek, Walvis Bay and Swakopmund are classified Part I). Part I municipalities possess the highest level of autonomy, with all others being subject to control and oversight by the MRLGHRD to varying degrees.

Namibia also has a system of traditional rule, which while technically having no specific role in 'formal' local governance, is recognized as the main system of authority in rural communities. Both the Constitution of Namibia as well as the Traditional Authorities Act of 2000 recognizes Namibian customary law, with the latter Act empowering traditional authorities to, among other things, administer and execute the customary law of its traditional community. In practice this extends to distributing land use rights, dispute resolution, and acting as the de facto intermediary between external stakeholders and the traditional community.

Law and Law-making

Namibia's legal system is a mixture of Roman law, Roman-Dutch law, common law inherited from South Africa, old English law and customary law (which is prevalent in rural areas). Namibia's legal system is notable for the integration of traditional, customary laws and structures into the formal legal framework, through both the Constitution as well as through the Traditional Authorities Act.¹³ The concept of legal pluralism (where more than one type of law or legal tradition operates simultaneously) is commonplace in Namibia.

In terms of the hierarchy of laws in Namibia, the Constitution is the supreme law of the land. The Constitution explicitly incorporates international and public international law, making it part of the law of the country with no need for transformation or subsequent legislation. However, to be applicable, international law must comply with the provisions of the Constitution, with the Constitution taking precedence in the event of conflict.

¹⁰ Article 144, Constitution of the Republic of Namibia

¹¹ Article 103, Ibid.

¹² Article 111, Ibid.

¹³ See Article 66(1), Constitution of the Republic of Namibia, 1990, and GRN, Namibian Traditional Authorities Act 2000, Act No. 25 of 2000, 21 December 2000

Legislative power in Namibia is vested in the National Assembly (subject to Presidential approval and National Council review). Acts of Parliament are first drafted as bills, which must be passed by a two-thirds majority in the National Assembly and confirmed by a majority in the National Council. The President must also provide consent and sign the bill, and it must be published in the Government Gazette.¹⁴

Judiciary

The formal court system in Namibia consists of the Supreme Court, the High Court, the Magistrates' Courts and the Community Courts. The Supreme Court is the highest court of appeal, and is also responsible for the constitutional review of legislation. Namibia applies the doctrine of *stare decisis*: decisions of the Supreme Court are binding on all other courts unless reversed by an Act of Parliament or the Supreme Court itself.¹⁵ Whilst Magistrates' Courts deal with civil and criminal matters at regional, district, sub-district, divisional and periodical levels (periodical referring to courts held in remote parts of Namibia at certain intervals¹⁶); the Community Courts cater for proceedings conducted under customary law.¹⁷ In Namibia the proceedings of the Community Courts are brought within the remit of the judiciary, and are subject to formal evaluation and review by the superior courts. However, the Community Courts Act has not yet been implemented. The Ministry of Justice has stated that the delay may be due to a lack of funds and trained staff in the area of customary law.¹⁸

1.4 Meaning of Key Terms

This report contains a number of key terms relating to the management and reduction of risks from disasters. These are defined below in accordance with widely used and accepted meanings:

Natural hazards, such as earthquakes, storms and floods are natural phenomena or events that only result in disasters when they negatively affect populations or property. Hence, in addition to the hazard, some vulnerability to the natural phenomenon must be present for an event to constitute a disaster.

Disasters are usually described as a result of the combination of: conditions of vulnerability that are present; insufficient capacity or measures to reduce or cope with the potential negative consequences; and exposure to a natural hazard. Disaster impacts may include loss of life, injury, disease and other negative effects on human physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption, and environmental degradation. The term 'natural disaster' is not quite accurate, since the conditions that lead to the catastrophic impacts of a natural hazard are linked to the prevailing socio-economic conditions which are not natural but, rather, determined by human actions and decisions.

Disaster Risk Reduction (DRR) is "The concept and practice of reducing disaster risks through systematic efforts to analyze and manage the causal factors of disasters, including through reduced exposures to hazards, lessened vulnerability of people and property, wise management of land and environment, and improved preparedness for adverse events."¹⁹

¹⁴ Article 56, Constitution of the Republic of Namibia

¹⁵ Article 81, Constitution of the Republic of Namibia

¹⁶ Section 26, GRN, Magistrates' Courts Act 1944

¹⁷ GRN, Community Courts Act, No. 10 of 2003

¹⁸ M. Hinz, *Traditional Courts in Namibia – part of the Judiciary? Jurisprudential Challenges of Traditional Justice*, in N. Horn and A. Bösl, 'The Independence of the Judiciary in Namibia'

¹⁹ UNISDR, *2009 UNISDR Terminology on Disaster Risk Reduction*, Geneva, 2009.

Disaster Risk Management (DRM) is “the systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster.”²⁰

Emergency management, which is also frequently referred to as **disaster management**, can be defined as the organization and management of resources and responsibilities for dealing with all humanitarian aspects of emergencies, in particular preparedness, response and recovery, in order to lessen the impact of disasters.

For the purposes of this study, the terms **legislation, law, legal framework and regulation** refer to acts of parliament, legislation, laws, regulations, decrees or similar, as well as their implementing policies and guidelines, at all levels of government. It also includes binding customary law at community and local levels that may not be formally documented. However the study seeks to make a clear distinction between legislation that is binding and policies that are non-binding.

²⁰ *Ibid.*



2: Methodology

2.1. Project Objectives

2.2. Methodology

2.3. Local & Community Visits



2. Methodology

Detailed legal research for this study, based on online resources, was undertaken in advance, and is summarized in a separate Namibia DRR National Law Desk Survey completed in November 2012. Preparation for the Country Case Study project began in September 2013 with a three-week mission to Namibia from 9-27 September 2013. This report was prepared during October 2013.

Given the relatively limited scope of the research, it does not attempt to be a comprehensive study of all legal and institutional frameworks relevant to DRR in Namibia. Rather, this report aims to provide an overview and analysis of the legal framework for DRR in Namibia, drawing out specific examples of good practice as well as identifying the major gaps and challenges in legislation and its implementation.

2.1 Project Objectives

The country case study has a dual purpose: firstly, to provide insights and forward-looking recommendations on law and disaster risk reduction in Namibia; and secondly to assist UNDP and IFRC in compiling a Global Synthesis Report on DRR and legislation. The data will also be used to inform the parallel development of a Checklist for Lawmakers. The synthesis study will be available as a tool for states and international actors, including UNDP and the Red Cross and Red Crescent Movement, by providing comparative data and examples of good legislative practices and their implementation. It will also be used to develop other tools as the basis for advocacy and capacity building in DRR.

2.2 Methodology

During the in-country mission the project consultant met with and interviewed a wide range of stakeholders (Annex A). These interviews were vital for providing the project consultant with, firstly, copies of laws, policies and other documents which were not publicly available for the purposes of the Desk Study, and secondly, with first-hand information regarding the institutional arrangements for, and implementation of, DRR and DRM activities. These interviews were the primary means of achieving the assigned objectives for the in-country mission, which were as follows:

- To identify and obtain copies of relevant laws and regulations relevant to DRR, including key national laws that were not included in the Desk Study report, as well as sub-national laws and regulations in the sample areas visited;
- To assess the extent to which the existing legal framework for DRR is adequate for the needs of the country, and whether there is sufficient institutional support and other resources allocated for effective implementation; and
- To identify good practices and gaps in the law and its implementation.

The project consultant met with government officials at national, regional and community levels, as well as United Nations representatives, stakeholders from NGOs, donors, academic institutions, private organizations, and community representatives. Given the time-frame, it was not possible for the project consultant to meet with all major government, national and international actors, and the absence of an organization from the list in Annex A may simply mean that their representative was not available in Namibia at the time.

The interviews were held as structured discussions based on the information and guideline questions provided in the project Terms of Reference (see Annex C). The interviews focused on legal issues surrounding DRR in Namibia, the

legal framework and its implementation, and current disaster risks and DRR practices, with special consideration of any good practices and gaps in the legal framework and its implementation.

The majority of the interviews were held over two weeks in the capital, Windhoek, where the headquarters of most of the relevant organizations are based.

2.2 Local & Community Visits

Essentially, the purpose of reviewing legal frameworks for DRR is to help communities reduce the risk of disaster. Therefore, an important part of the study was to gain the views of communities regarding gaps or good practices in legal frameworks and their implementation, as well as to consider within each sector of legal regulation relevant to DRR how the concerns of communities and civil society are incorporated.

In order to analyze the implementation of laws at the regional level, and to report on how existing laws may have helped support disaster risk reduction activities and establish where improvements might still be needed, the project consultant visited two regions in the northeast of Namibia: Kavango and Zambezi (the latter formerly known as Caprivi). These regions were chosen for a number of reasons. Firstly, many of the stakeholders who were interviewed in Windhoek had strong networks of contacts in these regions and were therefore able to facilitate introductions for the project consultant. Secondly, the regions were of interest because the Namibian Red Cross is currently engaged in disaster risk reduction activities in both Kavango and Zambezi, including the establishment of community disaster risk management committees, and were therefore able to facilitate community visits. Lastly, both regions suffer from recurrent flooding and were also affected by serious drought at the time of the research, meaning that regional and community stakeholders were able to draw on extensive experience of dealing with disasters. The community visit locations were as follows:

- Sikunga conservancy, Kabbe Constituency (Kalimbeza Area), Zambezi;
- Women's focus group (members of the community disaster risk management committee), Kabbe Constituency (Lisikili Area), Zambezi;
- Community disaster risk management committee, Mayana Community, Rundu Rural East Constituency, Kavango; and
- Community disaster risk management committee, Tjova Community, Mukwe Constituency, Kavango.



3: Findings on Regulatory Frameworks for DRR & their Implementation

3.1 DRR in Disaster Management Law & Institutions

3.3 Responsibility for DRM and DDR, Risk Financing and Transfer

3.4 Early Warning Systems & Risk Mapping

3.5 Regulation of the Built Environment

3.6 Regulation of the Natural & Rural Environment

3.7 Drought and Food Security

3.8 DRR Education & Awareness



3. Findings on Regulatory Frameworks for DRR & their Implementation

3.1 DRR in Disaster Management Law & Institutions

The Constitution of Namibia contains no explicit provisions relating to disaster management or risk reduction, referring instead to more general obligations, such as promoting and maintaining the welfare of the people (which the government has stated is the constitutional basis for recent DRM legislation and policy).²¹ Prior to 2011, DRM matters were governed by the Civil Defence Act, Proclamation and Ordinances;²² however following Namibia's independence from South Africa in 1990, these laws were largely regarded as products of the previous colonial administration and as such were disregarded. A clear commitment to disaster management was demonstrated in 2012 when the Namibian government passed the Disaster Risk Management Act (DRMA). Whilst the DRMA has not yet formally come into operation,²³ its structures and provisions are already being put in place. The DRMA has four main objectives: firstly, to provide for the establishment of DRM institutions in Namibia; secondly, to provide for an integrated and coordinated DRM approach that focuses on (among other things) preventing or reducing risks, emergency preparedness, response and recovery; thirdly, to provide for declarations of disasters; and fourthly, to establish the National Disaster Risk Management Fund.²⁴

The National DRM Policy of 2009 provided the necessary groundwork for the introduction of the DRMA. In 2011, a National DRM Plan was developed to provide guidance on disaster management to relevant stakeholders. Broader national development policies of relevance to DRR include the latest National Development Plan and the government paper 'Vision 2030 – Policy Framework for Long-Term National Development', issued in 2004.

National Development Policy Background

Whilst the impact of disasters on Namibia's population and economy is often noted in policies and government documents, DRR/DRM is not prioritized as an objective in its own right in either of the two major national policies that guide Namibian development: the Fourth National Development Plan 2012/13 to 2016/17 (NDP4), and the Vision 2030 Policy.

NDP4 focuses on four 'foundation issues': logistics, tourism, manufacturing, and agriculture. There is no explicit acknowledgement that effective DRR practices and legislation can contribute to the growth of these sectors. Some relevant references are included, for example responsibility is assigned to the Ministry of Agriculture, Water and Forestry (MAWF) for the high-level strategy for developing drought-resistant crops and livestock. Many interviewees in Namibia considered that continued economic growth, based on growth in these four foundation issues, would require effective implementation of the DRMA, as well as the development of DRR activities. Namibia's Third National Development Plan (NDP3), covering the period 2007/8 to 2011/12, was more explicit in its promotion of the need to develop DRR and DRM capacities, noting that 'disasters, both man-made and natural, undermine the

²¹ Article 95, Constitution of the Republic of Namibia

²² GRN, Civil Defence Act, No. 39 of 1966, GRN, Civil Defence Proclamation GRN, AG 54 of 1978, and GRN, Civil Defence Ordinance, No. 3 of 1979

²³ Article 60, GRN, Disaster Risk Management Act, No. 10 of 2012 states that the Act or parts of the Act will only come into operation on a date determined by the Prime Minister by notice in the Gazette.

²⁴ Preamble, *Ibid.*

country's development efforts and place communities at risk of displacement, hunger and poverty'.²⁵ The NDP3 prioritized issues such as improving drought monitoring and early warning systems under several of its stated goals, which included environmental sustainability, the eradication of extreme poverty and hunger, and the promotion of regional and global integration. It is curious that the emphasis on DRR and DRM activities has been largely omitted from NDP4. Government interviewees stated that the priorities still remain but do not require explicit mention in NDP4. However more critical stakeholders commented that the government has, for image purposes, made an active effort to downplay the impact of disasters and to use NDP4 to focus on the prospect of economic growth, without acknowledging the role of effective DRR and DRM legislation and activities.

Vision 2030, originally published in 2004, sets out a wider policy framework for Namibia's long-term development and makes several references to the challenges of disasters as well as the need, for example, to 'identify cost-effective, flexible and adaptable management approaches and national disaster response strategies to the potential impacts of climate change'.²⁶ NDP4 was developed within the broader vision of Vision 2030, so arguably the disaster management and response language used in Vision 2030 continues to guide Namibia's development, even if this is not explicitly acknowledged in the latest NDP.

Disaster Risk Management Act 2012

The DRMA is the main legal instrument governing disaster management in Namibia. It has four main objectives: firstly, to provide for the establishment of DRM institutions in Namibia; secondly, to provide for an integrated and coordinated DRM approach that focuses on (among other things) preventing or reducing risks, emergency preparedness, and response and recovery; thirdly, to provide for declarations of disasters; and fourthly, to establish the National Disaster Risk Management Fund.²⁷ The DRMA's specific content is organized around these four objectives. As previously noted, the DRMA will not technically come into force until the Prime Minister sets a date for such through the government Gazette. Interviewees at the DDRM expect that this will happen when the draft DRM Regulations (see the section on Draft Disaster Risk Management Regulations below) are finalized and passed. The main purpose of the DRMA is to facilitate organization and coordination, as is clear not only in the provisions on institutional arrangements and declarations of disaster, but also based on feedback from interviewees at the national level, who noted that the government remains focused on coordination structures and response rather than truly investing in DRR activities. Part of this, however, can be attributed to the fact that the DRMA is a very new piece of legislation, with a new organizational structure which, as one government interviewee pointed out, is taking some necessary time to "find its feet".

The DRMA contains several examples of good legislative drafting in relation to DRR. DRR itself is a clearly defined term²⁸ which corresponds to the internationally accepted definition of the term used by UNISDR.²⁹ Furthermore, the National DRMC's functions and powers includes: ensuring that the core concepts of disaster risk reduction are integrated into the activities of relevant government institutions,³⁰ that DRR is integrated into all development policies, strategies and programmes at national, regional, constituency and local levels³¹ promoting and strengthening scientific, research and technical capacity for DRR,³² and supporting the integration of DRR into tertiary and school education curricula.³³ The DDRM, meanwhile, is mandated to, among other things, facilitate and coordinate specific

²⁵ P. 284, GRN, Third National Development Plan 2007/8 to 2011/12

²⁶ Pages 146, 161 and 172, GRN, Vision 2030: Policy Framework for Long-term National Development, 2004

²⁷ Preamble, Ibid.

²⁸ Article 1, GRN, Disaster Risk Management Act, No. 10 of 2012

²⁹ UNISDR, 2009 UNISDR Terminology on Disaster Risk Reduction, Geneva, May 2009

³⁰ Article 5(c), GRN, Disaster Risk Management Act, No. 10 of 2012

³¹ Article 5(f), Ibid.

³² Article 5(h), Ibid.

³³ Article 5(n), Ibid.

DRR strategies,³⁴ whilst ‘National Focal Persons’ (officials of government institutions designated as DRM focal points) are charged with facilitating the training of national and regional staff in DRR.³⁵ Regional, Local Authority and Settlement DRMCs are mandated with similar responsibilities.

The fact that such progressive language is in place in a major piece of national legislation is an example of good practice. However, it is evident that gaps remain in implementation. Current government DRR activities are extremely limited in scope, and in practice the government relies heavily on international organizations such as the United Nations, and NGOs such as the Namibian Red Cross, for both DRR training and activities. Perhaps one of the best examples of this is the Red Cross programme to develop Community Disaster Risk Management Committees (Community DRMCs) in the Zambezi, Kavango and Omusati regions. In theory this project has the support of the national government and the regional councils, yet it operates largely independently because of gaps in government capacity and funding. Whilst Community DRMCs are not required under the DRMA; the National DRM Policy of 2009 states that they ‘must be established at local level’.³⁶ Therefore, although this is not a legal obligation, conversations with officials revealed that they still consider the establishment of Community DRMCs to be a firm requirement. However funding and capacity constraints mean that the government itself is not in a position to implement this. At present the Community DRMCs represent the only functioning DRMCs at local levels, as DRMCs are yet to be established in most constituencies, local authorities and settlements. It is anticipated that the Community DRMCs will coordinate with the ‘formal’ DRMCs once they are established. Currently the Namibian Red Cross provides training on disaster response, early warning and preparedness, and assists in the development of flood-resistant housing (in Zambezi). Both regional council and Red Cross representatives noted that most government officials, especially at local level, have very limited knowledge of DRR and focus only on response, and that any capacity building or training is generally conducted by external organizations such as the Red Cross or the United Nations, with little or no official budget available to expand skills or develop programmes in the area. This presents a gap in implementation under which the government’s stated law requires engagement with DRR, however it lacks the resources to implement it.

A number of provisions in the DRMA focus on the requirement for DRM plans, at national, regional and local levels, as well as the requirement that various bodies (including government ministries) develop their own DRM and contingency plans. While the language used in the DRMA imposes a significant legal obligation on these various entities, gaps remain in implementation. At the national level both a National DRM Framework³⁷ and a National DRM Plan³⁸ are required. A detailed National DRM Plan was developed in 2011, in parallel to the development process for the DRMA, yet the link between this document and the requirements of the DRMA are not entirely clear. Whilst the National DRM Plan states that it provides ‘a framework for sectoral and regional disaster risk management’, it does not appear to meet all the specific requirements of the DRMA. Taking one specific example, the DRMA requires the introduction of mechanisms for setting and implementing minimum building standards³⁹ and the National DRM Plan makes reference to the need to employ sufficient building standards. However the references are general (e.g. to ‘develop and enforce building codes and regulations for health and safety’⁴⁰) and no specific mechanisms are mentioned. Neither does the National DRM Plan technically meet the overly generalized requirement under the DRMA that it must comprise ‘all the disaster risk management plans developed for Namibia’⁴¹; although exactly what is meant by this requirement is unclear. This represents something of a gap in legislative provision, where the overarching legislation needs to be properly harmonized with underlying plans and programmes. One interviewee at

³⁴ Article 11(4)(d)(i), *Ibid.*

³⁵ Article 12(4)(i), *Ibid.*

³⁶ Section 8.4.1.1, GRN, National Disaster Risk Management Policy, 2009

³⁷ Article 20, GRN, Disaster Risk Management Act, No. 10 of 2012

³⁸ Article 21, *Ibid.*

³⁹ Article 20(2)(f), *Ibid.*

⁴⁰ Table 2, GRN, Namibian Government, *National Disaster Risk Management Plan*, 2011

⁴¹ Article 21(1)(b), GRN, Namibian Government, Disaster Risk Management Act, No. 10 of 2012

national level noted that this is an example of the Namibian government selecting detailed ‘best practice’ legislation, with little intention of fully implementing its provisions. It is, however, too early to tell whether such criticism is justified. Evidence from interviews suggests that most, if not all, Regional Councils have developed their own DRM programmes and plans. The only evidence of planning at lower levels is the community DRMCs, which developed basic contingency plans with support from the Namibian Red Cross, although these focus mainly on preparedness for response rather than DRR.

Commitments made in both the National DRM Policy of 2009 and the National DRM Plan of 2011 regarding funding and budgeting for DRM and emergency response were given a legal basis in the DRMA, which establishes a National Disaster Fund.⁴² The Constitution gives the government the right to establish funds designated for such special purposes.⁴³ The Fund is administered by the National DRMC and draws its income from various sources. Its objective is to serve as a contingency fund for the development and promotion of DRM in Namibia.⁴⁴ The Fund may be used, amongst other things, to fund research, capacity building and training programmes, acquiring relief, recovery and rehabilitation assistance, as well as land, materials and equipment acquisition.⁴⁵ No spokespeople for the Fund were available to meet with the project consultant during the field visit to Namibia, and as such the exact allocation of funds is unclear. However government officials in the sector pointed out that much of the Fund’s resources are currently aimed at ongoing drought response, and further that the relative lack of resources in the Fund means that DRR-relevant activities such as training, capacity building and community outreach work are not currently being prioritized. Therefore, even though the legislative provision for the Fund, as well as the proposed budgeting provisions in the draft Regulations, are examples of good legislation, in practice there is a gap in implementation. However this needs to be viewed in context: the Fund is a relatively recent development (and technically the law establishing it is not yet operational), so, as several interviewees pointed out, it is only reasonable to allow for a certain amount of time for its management and application to be developed.

Draft Disaster Risk Management Regulations

The Namibian government is currently in the process of finalizing a set of regulations that will complement the DRMA. Stakeholders at the DDRM expect that these regulations will be finalized and approved by the end of 2013, and that once this process is completed, both the DRMA and the DRM regulations will become formally operational.⁴⁶ For the purposes of this report, the project consultant was provided with the latest draft of the regulations by the DDRM. It is understood that the draft is presently being reviewed by the Ministry of Justice and there is as yet no clarity regarding how the draft may be amended before it goes to Parliament.

The draft regulations are intended not only to expand upon the provisions of the DRMA, but also to regulate new areas relevant to DRM (including customs exemptions, codes of practice, and the establishment of training institutions, and administrative penalties for officials who contravene provisions of the DRMA or regulations). The regulations set out in greater detail what is to be included in the DRM Plans required under the DRMA, including content detailing an inclusive and participatory approach to ensure the involvement of communities (although exactly how communities should be involved, and in what activities, is not specified), development of forecasting and early warning systems (EWS), establishment of coordination mechanisms and the promotion of partnerships with relevant stakeholders (including media, hydrology services, the UN), and more general requirements for disaster prevention and mitigation activities.⁴⁷

⁴² Article 45, *Ibid.*

⁴³ Article 125(3), Constitution of the Republic of Namibia

⁴⁴ Article 48, GRN, Disaster Risk Management Act, No. 10 of 2012

⁴⁵ Article 49, GRN, Disaster Risk Management Act, No. 10 of 2012

⁴⁶ As noted above, whilst the DRMA has been passed as legislation, it will not be operational until a date for such is published in the Gazette by the Prime Minister

⁴⁷ Article 2(1), GRN, Draft Disaster Risk Management Regulations, 2013

The regulations require both Regional Councils and other institutions involved in DRM to budget specifically for DRM activities.⁴⁸ At present, as noted in interviews with Regional Council stakeholders, the regional DRMCs are constrained by a lack of funding and absence of specific budgeting processes for DRM activities. Whilst theoretically formal lines of funding should be established, in practice it appears that finances are made available based on ad hoc requests from the regional DRMCs to the DDRM. It remains to be seen whether a legal obligation to budget for DRM can affect this situation, or help in addressing current funding gaps.

A full analysis of the details of the draft regulations is beyond the scope of this report. However some of the draft content represents good legislative practice and indicates that the Namibian government is committed to supporting DRR and DRM activities through legislation. Several relevant provisions of the draft regulations are explored further in sections 3.2 and 3.5 below.

National Disaster Risk Management Policy 2009

The National DRM Policy of 2009 provided the policy basis for the development of the DRMA. Whilst on a practical level the DRMA and the National DRM Plan of 2011 now supersede the Policy, it still contains several notable provisions relevant to DRR in Namibia and illustrates the wider policy justifications for the current legal framework. Although it is founded on the response-focused provision of Article 26 of the Constitution (which permits the President to declare states of emergency),⁴⁹ the objectives of the Policy are broader, including to ‘outline a coherent, transparent and inclusive policy on disaster risk management appropriate for the Government of the Republic of Namibia’⁵⁰, with the following goal:

‘To contribute to the attainment of sustainable development in line with Namibia’s Vision 2030 through strengthening national capacities to significantly reduce disaster risk and build community resilience to disasters.’⁵¹

The new National DRM Policy acknowledges that the existing legislation and plan focus only on disaster management rather than disaster *risk* management. It contains positive language including: promoting risk reduction approaches, sharing awareness with communities and workplaces, and seeking to give effect to co-operative governance on disaster-related issues.⁵² Overall, the 2009 Policy was an important milestone, symbolizing a shift in official thinking away from disaster response, and engaging with longer term issues of preparation, risk management and reduction. The Policy seeks to align itself with major international norms applicable to DRR and DRM, including the Hyogo Framework for Action 2005-2015, the Kyoto Protocol, and the Africa Regional Strategy for Disaster Risk Reduction.

The National DRM Policy was the basis for the practical transformation of Namibia’s former National Emergency Management System into the National Disaster Risk Management System.⁵³ Prior to the new framework being given legislative effect under the DRMA, this was achieved through a Cabinet Action Letter that effectively restructured the institutional provisions for DRM and DRR.⁵⁴ The Policy also sets out the proposed legal and regulatory framework that served as the basis for the DRMA and the draft DRM regulations.

⁴⁸ Part 5, *Ibid.*

⁴⁹ Article 26(1), Constitution of the Republic of Namibia

⁵⁰ Foreword, GRN, *National Disaster Risk Management Policy*, 2009

⁵¹ Section 4.2, *Ibid.*

⁵² Foreword, *Ibid.*

⁵³ The National Emergency Management System was a structure created by Cabinet Memorandum, issued by the President of Namibia in 1994

⁵⁴ GRN, Cabinet Action Letter 5TH/15.02.94/006

National Disaster Risk Management Plan 2011

The National DRM Plan is an extremely detailed document that is concerned with two major themes: providing an ‘all-hazard framework’ for DRM planning, and setting out the Emergency Management Operational Procedures to guide stakeholders in response activities. It is issued primarily under the auspices of the National DRM Policy, which requires the development and dissemination of a National DRM planning framework and guidelines to facilitate the development and integration of disaster risk management planning into the development plans and programmes of all sectors.⁵⁵

The National DRM Plan also contains many examples of positive language, prioritizing and supporting DRR efforts in Namibia. DRR is a guiding principle for the Plan,⁵⁶ which is intended to make DRR a priority at all levels in Namibia through the establishment of sound, integrated and functional legal and institutional capacity within the National DRM system.⁵⁷ Other provisions delegate various sectoral responsibilities. It is clear that, at least at this policy level, DRR has been actively considered and attempts have been made to provide for the mainstreaming of DRR at all levels in various sectors. For example, in the section on the health and nutrition sector’s roles and responsibilities, an analysis of gaps in local and national health capacities is to be conducted, with a focus on risk reduction,⁵⁸ and for the environmental sector, DRR should be integrated into climate change adaptation.⁵⁹

Institutional structure

At the highest level, current institutional responsibility for DRR in Namibia rests with the Office of the Prime Minister (OPM).⁶⁰ The DRMA also creates a number of specific institutions that are to be responsible for DRM in Namibia, namely:

- the National Disaster Risk Management Committee (National DRMC);
- the Directorate of Disaster Risk Management (DDRM);
- the Namibia Vulnerability Assessment Committee;
- the Regional Disaster Risk Management Committees (Regional DRMC);
- the Constituency Disaster Risk Management Committees;
- the Local Authorities Disaster Risk Management Committees; and
- the Settlement Disaster Risk Management Committees⁶¹

⁵⁵ Section 8.3.1, GRN, National Disaster Risk Management Policy, 2009

⁵⁶ Section 1.4.2, *Ibid.*

⁵⁷ Section 3.2, *Ibid.*

⁵⁸ Table 3, *Ibid.*

⁵⁹ Table 9, *Ibid.*

⁶⁰ Article 2, GRN, Disaster Risk Management Act, No. 10 of 2012

⁶¹ Article 3, GRN, Disaster Risk Management Act, No. 10 of 2012

Figure 2: Institutional framework for DRM in Namibia⁶²

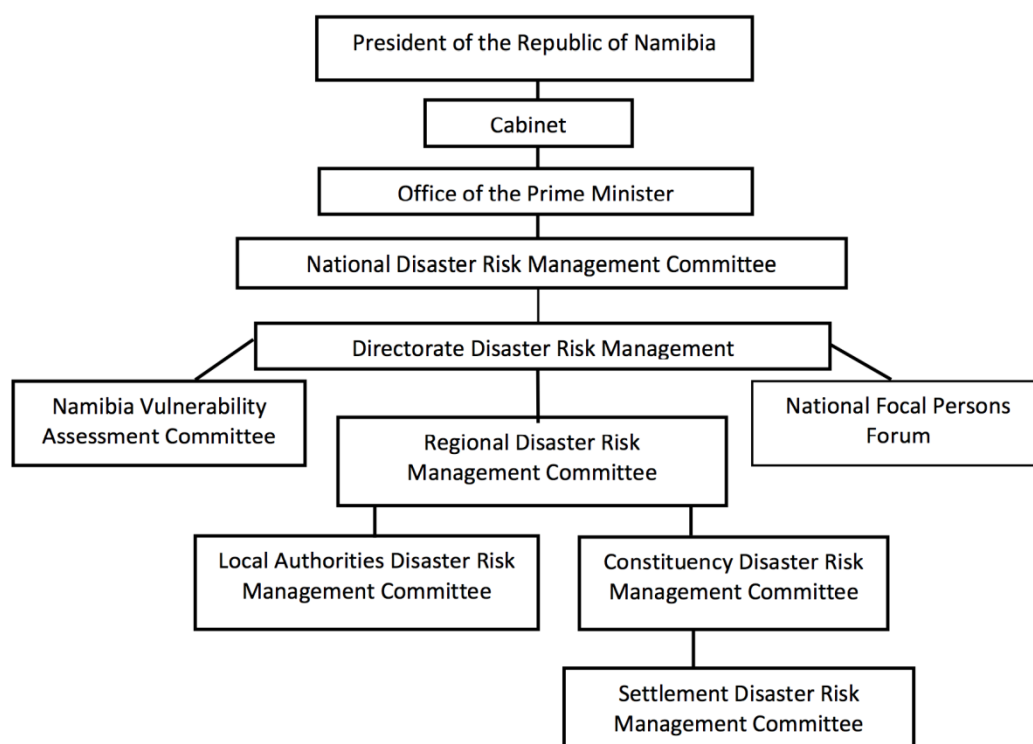
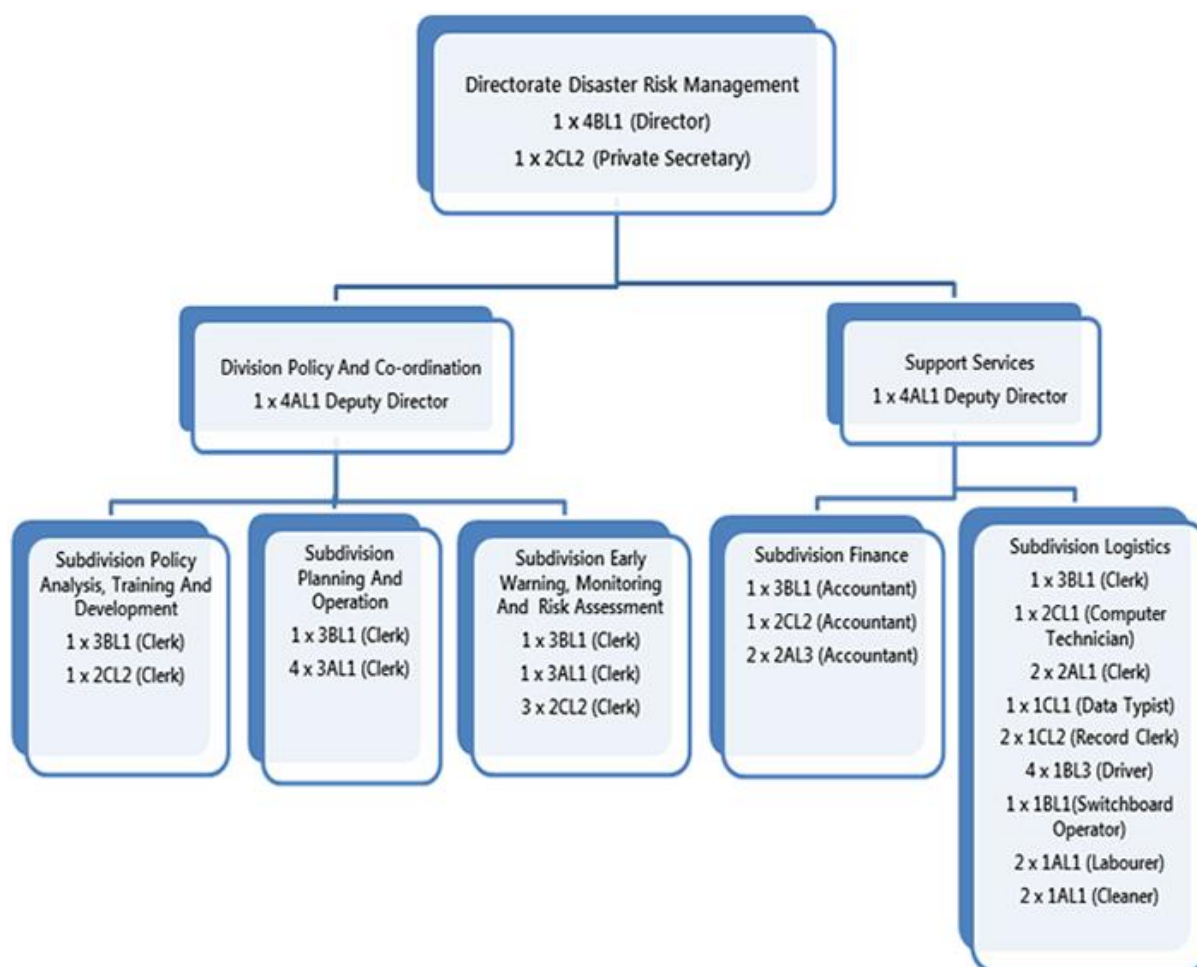


Figure 2 above sets out the current institutional structure and reporting lines for DRM in Namibia. Perhaps the most strategically important of these institutions is the DDRM, which is responsible for coordinating DRM activities and executing the decisions of the National DRMC. The current organizational structure of the DDRM is set out in Figure 3 below.

⁶² Section 4, GRN, *National Disaster Risk Management Plan*, 2011

Figure 3: Current organizational structure of the Directorate of Disaster Risk Management⁶³



At the regional level, the DRMA requires each Regional Council to establish a Regional DRMC, which is responsible for coordinating DRM among institutions in various sectors, local authorities, communities and other stakeholders in the region.⁶⁴ An active Regional DRMC is established in each region within Namibia, and evidence from the project consultant's field visits to Zambezi and Kavango regions indicates that these are fully functioning. The same cannot be said for the DRMCs required at constituency, local authority and settlement levels. Whilst some appear to have been established, they have been criticized as existing only on paper and for drawing members from existing structures, such as development committees, but never actually meeting. Many local authorities and settlements have no committees in place.

⁶³ Source: DDRM website, <http://www.ddrm.gov.na> - accessed on 30 September 2013

⁶⁴ Article 14, GRN, Disaster Risk Management Act, No. 10 of 2012

Good practices and Gaps in Disaster Management Law and Institutions

There was some consensus amongst interviewees regarding both the good practices and the major gaps in Namibian DRM/DRR law:

National Disaster Risk Management Act: The fact that a comprehensive and well-drafted DRMA exists in Namibia is clearly a good practice and cannot be underestimated despite the gaps in implementation noted above. Furthermore, the current gaps are in several cases understandable given the nascency of the legislation and its underlying policy, as well as the recent shift in focus from disaster management to disaster *risk* management. The draft Regulations also provide some examples of good legislative provisions relating to DRR, for example setting out more detailed financing and budgeting obligations, establishing a code of practice for individuals involved in DRM, and promoting DRM training programmes to mainstream DRM in areas such as medicine and engineering. Overall the DRMA, the Regulations, and the underlying National Plan and Policy provide a solid framework for the Namibian government to build upon.

National Level Coordination & Information Management System: Interviewees at national level made it clear that an increasingly effective system is being put in place for coordination and information management. The DDRM acts as the government's national DRM agency, with most of the day-to-day responsibility for DRM in Namibia. Its main function is the coordination of stakeholders and to that end, at least at national level; it has an effective system in place. Whilst the National DRMC is the highest-level body that drives policy and decision-making, the DDRM coordinates with both the Namibia Vulnerability Assessment Committee as well as the National Focal Persons Forum. Although not specified within law or policy, the DDRM also oversees several sector-specific working groups that feed into the Directorate's decision-making process and focus on areas such as health, education, water and sanitation. Although largely consisting of government representatives, the working groups also contain representatives from NGOs and civil society. For example, recent National DRMC meetings have been attended by the UN's Resident Coordinator as well as other UN agencies, the Namibian Red Cross and religious leaders.⁶⁵ Under the DRMA, representatives from the University of Namibia, UN organizations and the Namibian Red Cross are eligible to hold positions on the Vulnerability Assessment Committee⁶⁶. According to interviewees these structures work relatively well.

Regional Level Implementation: The DRM Committee structure at national level has been replicated in each of Namibia's 13 regions, ensuring that there is at least a mechanism for the coordination of DRM activities, if not a permanent office or staff. Evidence from field visits to Zambezi and Kavango regions indicates that the Regional DRMCs meet regularly and are utilizing limited resources to respond to the current drought. However a general lack of awareness of DRR and the need for long-term prevention and resilience was also displayed, partly because of a lack of training and partly due to the need to use limited time and resources to manage the current disaster response. Furthermore, interviews corroborated other commentators' findings that ownership of DRR programmes at sub-national level remains a challenge, and that regional/local DRR structures generally remain inactive until disasters and emergency situations occur⁶⁷ rather than meeting regularly to plan longer term activities and strategies. It is also apparent that not all members of Regional DRMCs approach their duties with sufficient commitment, as interviewees provided several examples of committee members consistently failing to attend meetings, or appointing proxies who were unable to contribute. This was explained partly by an attitude that Regional DRMC attendance is often seen as an extra burden on top of an already busy 'normal' workload. However good practice was at least evident in terms of regional coordination with the DDRM at national level, as communication lines between the DDRM and Regional DRMCs appears to be open and functioning. Representatives from the regional councils also praised the level of

⁶⁵ UNICEF Namibia, *Drought Situation Report 1*, 24 July 2013

⁶⁶ Article 13(1)(c), GRN, Disaster Risk Management Act, No. 10 of 2012

⁶⁷ Page 29, PreventionWeb, *National progress report on the implementation of the Hyogo Framework for Action (2009-2011)*, 30 September 2010

involvement that national staff take in regional matters. For example, during September 2013 a monitoring and evaluation mission to each region took place in order to begin preparations for establishing the Regional Emergency Operations Centre, with one of its key aims being to improve communications. There is a danger, however, that these examples of coordination are only present during times of emergency (and in any event relate only to disaster response rather than DRM/DRR) and that such efforts will decrease as regions revert to ‘normal’ operations.

Lack of Decentralized DRM Functions & Decision Making Capabilities: One major criticism levied by stakeholders at the regional level related to the lack of decentralization and delays caused by the need to seek national government approval. While admittedly a larger issue for specific ministries (as discussed later in this report), the Regional DRMCs also faced delays due to the need to seek approval from the DDRM. As noted in Namibia’s National Progress Report for the Hyogo Framework, sectoral budgets at regional levels are controlled at the national level. Furthermore implementation of the National DRM Policy regarding budgeting for DRR for local government activities is yet to be universally applied.⁶⁸

Local Level Implementation: It is clear that much remains to be done to prioritize and integrate DRR at local levels, as well as to implement the provisions of national legislation. The government at both national and regional level lacks the finances and capacity to be able to implement all the structures required under the DRMA. It is hoped that non-government organizations will help to build capacity in this respect and contribute to development in this area.

Community Involvement: Although community involvement in DRR is prioritized under the National Plan and Policy, it is not mentioned in the DRMA, other than in the context of the need to conduct community-based disaster risk assessments. In other areas (such as community-based resource management and the establishment of community conservancies) there has been progressive legislation encouraging community involvement, however similar principles are not applied to the national DRM legislation. The Draft Regulations refer to inclusive and participatory approaches for communities as part of DRM plans (although the current draft of the Regulations appears to have removed an existing provision stating that “community participation is the most key stakeholder [sic] in disaster or emergency response”⁶⁹). This is the only mention of community participation in the entire draft document.

A lack of provisions for community involvement in the legislation is reflected in practice, as community group interviews revealed that most community members have little awareness of DRR law and practice. Other than those already involved in the Community DRM Committees supported by the Namibian Red Cross’, community members generally feel disconnected and excluded from decision-making in both local and national government. However it is important to place this within the context of general community involvement in development issues in Namibia. Firstly many of the community interviewees were members of other committees such as village development committees and community health committees (although many interviewees were dubious about the effectiveness of such committees and their decision-making power within them, relative to that of traditional authorities and regional councils). Secondly, there is relatively widespread community involvement in resource management in Namibia. The history and tradition of promoting community-based management of natural resources is an extremely positive practice that is discussed in more detail in section 3.6.1. Communities are also heavily involved in managing water points and resources, as noted in section 3.6.3. There are also countless examples of international organizations and NGOs supporting and managing programmes designed to involve communities in their own development.

On the other hand, commentators noted that the slow pace and low degree of decentralization in Namibia has made it difficult to mobilize community participation, and that the political authority and financial and personnel resources which are required to support the work of different community committees (as part of the government’s general

⁶⁸ Page 7, PreventionWeb, *National progress report on the implementation of the Hyogo Framework for Action (2009-2011)*, 30 September 2010

⁶⁹ Article 2, GRN, Draft Disaster Risk Management Regulations, 2013

decentralization process) have not been delegated to the regional level.⁷⁰ While this situation is slowly changing, regional interviewees spoke of frustration at the slow pace of decentralization and the inability of regional officials to take their own decisions. Interviews with regional officials also revealed that in practice there is limited scope for communities to be involved in decision-making, with most officials consulting traditional authorities when required, who may or may not in turn consult their respective communities. Regional councils lack the finances and manpower to promote proper consultation and representation which contributes to feelings of exclusion on the part of communities.

Although the political will to change this situation exists, it is clear that gaps in both legislation and practice remain. The fact that DRR is a relatively new concept in Namibia, and that the necessary legislation, institutional framework and funding are still being put in place to support it, goes some way to explain why in many cases communities, as yet, have little or no involvement in DRR activities. However part of the answer must also lie in the fact that outside of the communal conservancy and environmental management framework, community participation is hindered by funding and capacity gaps at the regional level.

DRR and the Role of Women in Communities: The Hyogo Framework for Action recommends that a gender perspective should be integrated into all disaster risk management policies, plans and decision-making processes, including those related to risk assessment, early warning, information management, and education and training. Namibia has a relatively recent National Gender Policy (2010) and Strategic Plan (2011) in place, which demonstrates the government's commitment to promoting the welfare and inclusion of women. The National Gender Policy recognizes the importance of consulting women before deciding on effective management strategies but also that they do not currently play a significant role in natural disaster management.⁷¹ However this is not supported by clear and detailed provisions promoting gender and the role of women in DRM law or policy. The National DRM Policy of 2009 recognizes that mainstreaming gender in DRM is a 'pivotal component of disaster risk management implementation',⁷² and recommends that equal access to education and training opportunities are provided for women and vulnerable communities.⁷³ However, neither the DRMA nor the draft DRMA Regulations establish these ambitions in law.

It should be noted that one of the interesting features of all the community focus groups interviewed for this report was the representation of women among the groups. Indeed, one focus group (in Lisikili area, Zambezi region) consisted entirely of women. Although in part this can be explained by the fact that many men in village communities travel for work, often for extended periods of time, and were therefore unavailable during working hours, the prevalence of women on village communities (notably the Red Cross-backed community DRMCs) is a positive sign that the voice of women may be prioritized in local DRM planning and activities. This is especially important, as major international studies continue to prove that disasters affect men and women differently due to the inequalities between them caused by gender-based roles in society and their resulting levels of vulnerability. Essentially, women are more adversely affected by disasters than men.

Women interviewed for this report noted that in general they feel well represented in terms of decisions that affect the community; although several interviewees also commented that men in their communities often abstained from committees and decision-making on the basis that there was no 'reward' or payment involved in such processes and that their time was better spent either working or looking for work. Several interviewees from NGOs working with local communities pointed out that, more often than not, women are both the main points of contact for villages as well as the main beneficiaries. In general it was clear that women in these communities had high levels of risk

⁷⁰ Anne Larsen, 'Decentralization in Namibia: a Case Study of the Erongo Region', in *The International Journal of Interdisciplinary Studies*, No. 1, 2003

⁷¹ Section 2.1.11, GRN, *National Gender Policy*, 2010

⁷² Section 1.2, GRN, *National Disaster Risk Management Policy*, 2009

⁷³ Section 8.5.2, *Ibid*

awareness, combined with social networking practices, and extensive knowledge of their communities (often much more advanced than the men in the community). Women also appear to take active roles in the management of community conservancies, as in the Sikunga conservancy, Zambezi region, as well as in other community activities such as the water point user associations. However it was clear that despite what appears to be a strategic role in community matters, the traditional power structures were biased towards placing men in positions of ‘formal’ responsibility; for example, all representatives of traditional authorities at community focus group meetings were male, and often female interviewees would defer to these figures of authority before answering a question.

Interestingly, when asked whether they had any specific concerns or demands, women interviewees commonly responded with the need for financial and technical support for their own income-generating projects, the most common example being the development of local ‘gardens’ (small-scale vegetable and fruit farming). They also understood and highlighted the link between income generation and risk reduction capacity – for example, extra income enabling the building of flood-resistant housing or stockpiling of food produce to cover times of drought.

It appears that at the community level, women are already, and will continue to be, involved de facto in disaster risk management and reduction efforts. However in order to capitalize on this, the government must continue its efforts to mainstream gender issues not just within central government Ministries, but within regional and local authorities, with a focus on the vital role that women can play in reducing their communities’ risks from disasters.

Funding for DRR Activities: Interviewees were unable to provide much detail on how DRR activities are budgeted for and funded by the government at national, regional and local levels. Whilst at national level, the DDRM holds an operational budget under the authority of the OPM, it appears that there is no clear procedure for channeling funds to regional and community levels. However some positive drafting in this regard is included in existing and proposed legislation which will hopefully provide a suitable framework for the budgeting process. At present it appears that funds are available on an ad hoc basis, and are used almost exclusively for relief and response activities. Interviewees were unable to name any DRR activities that are currently being funded by the government. The National Disaster Fund is still in its nascent stages and in any event appears to be designed to provide funds for responding to disasters rather than for preventing them.

3.2 Responsibility, Accountability & Liability for Disaster Risk Reduction

The Constitution of Namibia contains no specific provisions that cover issues of responsibility, accountability and liability for DRR. Inferences can only be made at the most general level, namely that the State is required to actively promote and maintain the welfare of the people⁷⁴. This principle is also explicitly acknowledged in the National DRM Plan.⁷⁵ Namibian courts are empowered to invalidate any State actions that are inconsistent with the Constitution,⁷⁶ and the principle of judicial review of administrative actions is assured as a fundamental human right under the Constitution.⁷⁷ Furthermore, actions of the executive and its members in the course of their official duties are subject to scrutiny by the courts,⁷⁸ and the State Liability Act of 1957 provides for claims against the state in the event of wrongdoing by a ‘servant of the state’ (provided he or she was acting within the scope of their employment).

Whereas the National DRM Plan and Policy only refer to issues of responsibility in the most general terms, the Draft DRM Regulations detail issues of both personal and institutional accountability in a section on Administrative Penalties and Offences. Under the relevant Articles, the Prime Minister is empowered to impose administrative penalties on persons ‘responsible for disaster risk management’, disaster institutions, government institutions or statutory bodies, for contravening any provision of the DRMA or the Regulations.⁷⁹ The same article also states that penalties can be imposed ‘for any delay in complying with any provision’ of a wide range of policy and secondary documentation. The regulation also requires that prior to imposing any penalty, the relevant person or entity has the chance to comply with certain requirements set out in a notice within 14 days, and imposes a fine of N\$500 for each day of non-compliance (with a maximum fine of N\$10,000).⁸⁰ A presumably mis-numbered article in the same section of the regulation repeats similar wording to article 29(1),⁸¹ adding that administrative penalties may be imposed in the following circumstances:

- failure to comply with general or specific policy directives issued under Article 2(2) of the DRMA;⁸²
- failure to act in order to prevent a disaster or to vacate from an area declared a disaster which causes life to be endangered;
- ‘a person cause [sic] or prevent persons affected by disaster to be relocated’;
- action or omission endangering life, property or the environment; and
- failure to take remedial action within a specified period of time to prevent disaster.⁸³

Whilst the intention to provide a legal basis for accountability and liability for actions or omissions that contribute to the impact of disasters is commendable, it is clear that much work needs to be done on refining the draft. Importantly, the provisions that make it an offense to relocate in certain circumstances should be expanded to take into account important international standards and issues of human rights, namely the UN Office for the Coordination of Humanitarian Affairs’ Guiding Principles on Internal Displacement, which set out important safeguards and rights for internally displaced persons. Furthermore, as well as simple issues of mis-numbering, there is confusion between certain provisions and the article as a whole lacks clarity and, perhaps most importantly, is heavily weighted against the individual or institution.

⁷⁴ Article 95, Constitution of the Republic of Namibia

⁷⁵ Section 4.2, GRN, National Disaster Risk Management Plan, 2011

⁷⁶ Article 25, Constitution of the Republic of Namibia

⁷⁷ Article 18, Constitution of the Republic of Namibia

⁷⁸ Oliver C. Ruppel & Lotta N. Ambunda, *The Justice Sector & the Rule of Law in Namibia: Framework, Selected Legal Aspects and Cases*, 2011

⁷⁹ Article 29(1), GRN, Draft Disaster Risk Management Regulations, 2013

⁸⁰ Article 29(2) and (3), GRN, Draft Disaster Risk Management Regulations, 2013

⁸¹ The Article in question is also numbered 29(1) yet appears at the end of Article 29

⁸² Article 2(2) of the Disaster Risk Management Act 2012 allows the Prime Minister to give general or specific policy directives to persons or disaster institutions, which the person or institutions must comply with.

⁸³ Article 29(1) (mis-numbered), GRN, Draft Disaster Risk Management Regulations, 2013

The Draft Regulations also set out a number of offences which carry the penalty of a fine not exceeding N\$10,000 or 2 years imprisonment, or both.⁸⁴ There are 16 separate offences listed, and as such the entire list will not be repeated here. Some salient examples include:

- neglect of duties resulting in destruction to property and loss of lives;
- misrepresentation in the acquisition of funds for disaster operation, relief goods, etc.;
- willful obstruction of volunteers;
- falsification of data in support of the request for funding, relief goods, etc.;
- theft; and
- refusal to relocate for their own safety.

One of the main objectives of this provision is to combat corruption, as can be seen from the focus on offences such as misrepresentation, tampering, fraud and theft. Whilst the prosecution of such offences would (presumably) be subject to the standard rules and procedures of criminal justice in Namibia, the draft wording is in need of refinement and some sections need to be seriously reconsidered. For example the current draft makes it an offence not to return identification cards, but makes no reasonable qualifications regarding time periods within which one may do so. Also the offence of diverting relief goods makes no allowances for mistakes made in good faith. It is also notable that the Regulations make it an offence to refuse to relocate. Feedback from several interviewees at regional level showed that local officials want to have greater powers to forcibly relocate people at risk of flooding, owing to the difficulties and costs that arise each year due to families or, in some rare cases, whole villages that refuse to move and are consequently stranded in flooded areas. Legislation does, in this instance, adequately reflect the concerns of those at the forefront of disaster management efforts.

Several government officials involved in DRM noted that the sections on penalties and offences in the draft regulation will be subject to a detailed review and it is possible that the scope of these sections will be reduced. As noted above, redrafting of these provisions is certainly necessary in order to provide greater legal clarity; however it is hoped that much of the intention can be retained in order to provide a sound legal basis for ensuring accountability for DRR.

Interviewees were asked about issues of responsibility and accountability for DRR. Other than officials at the DDRM who referred to the provisions of the Draft Regulations, no other interviewees were able to point to legal instruments for responsibility and accountability. Several stakeholders noted that there are accepted moral norms to share information, and were aware of the consequences for a government official failing to discharge their duty properly (namely, disciplinary proceedings). Officials at regional councils were also relatively well acquainted with the disciplinary procedures available to the Regional Council Chair, but were unfamiliar with the idea of applying this to a DRR setting, and no examples of any such instances were provided.

3.3 DRR & Law on Specific Hazards

Namibia is one of the few countries in the world to have a specific policy on drought: the National Drought Policy and Strategy of 1997 (Drought Policy). Namibia has no other laws that deal with specific hazards, relying instead on the multi-hazard applicability of the DRMA, the National Plan and the National Policy.

National Drought Policy and Strategy

The Drought Policy acknowledges the shortcomings of previous relief efforts (for example, noting that drought is ill-defined, farmers have not been sufficiently incentivized to engage with risk minimizing practices, and certain drought

⁸⁴ Article 30(1), GRN, Draft Disaster Risk Management Regulations, 2013

programmes have led to unsustainable farming practices).⁸⁵ Ultimately the Drought Policy aims to shift responsibility for managing risk from the government to the farmer, with financial and food security interventions only being considered in extreme cases, and to move from a focus on emergencies to a broader, long-term approach. These general aims are backed by eight more specific policy objectives.⁸⁶ Considering that the Policy dates back to 1997 this represented a progressive and relatively novel approach for the Namibian government to take at the time.

The Drought Policy contains a large amount of detail on proposed actions to combat drought in Namibia. Of most relevance to the present study are the measures considered under the two main ‘actions’ of the Policy, which clearly link with or indeed directly contribute to DRR, even if that concept is not expressly referred to in the Policy:

1. **Promotion of drought mitigating technologies and practices:** Measures under this heading include:
 - on-farm risk minimization, for example crop diversification, small scale irrigation, water-conservation, agro-forestry;
 - diversification of income sources;
 - sustainable rangeland management; and
 - water supply and demand management, for example the conjunctive use of different water sources to form a supply network, aquifer management, and use of non-conventional water sources.⁸⁷
2. **Creation of an enabling policy environment:** Measures include:
 - decentralization;
 - land use rights;
 - poverty reduction;
 - water pricing;
 - tax provision;
 - agricultural research, extension and training, and veterinary services;
 - agricultural finance;
 - agricultural marketing; and
 - improved information gathering, analysis and dissemination.⁸⁸

This extensive list of proposed measures can serve as a useful reference against which to judge actual implementation and progress over the years following the introduction of the Policy. The National DRM Policy of 2009 openly acknowledges that ‘only certain aspects of the [drought] policy have been implemented’⁸⁹, an assertion backed by findings from interviews at national level. Interviewees were only able to speak in the most general terms about the Policy’s implementation and few examples of activities were pointed out.

Responsibility for drought response rests largely with the National DRMC and the DDRM, which acts as a coordinating body for all disaster responses. At regional, constituency, village and settlement levels, the corresponding DRMCs are responsible for providing input into long-term measures to combat drought and its impacts as well as managing local-level drought response. At national level, in terms of measures designed to increase resistance to drought and DRR, institutional responsibility should sit with the MAWF and its various directorates (for example, the Directorate of Rural Water Supply, Directorate of Resource Management (water), and the Directorate of Extension and Engineering Services (agriculture), each of which provides inputs into the MAWF’s efforts to combat drought. However, in practice there is no official form of guidance on this type of responsibility, and interviewees

⁸⁵ Executive Summary, National Drought Task Force, *National Drought Policy & Strategy*, November 1997

⁸⁶ Section 23, *Ibid.*

⁸⁷ Chapter 6, National Drought Task Force, *National Drought Policy & Strategy*, November 1997

⁸⁸ *Ibid.*

⁸⁹ Section 10.2.1, GRN, National Disaster Risk Management Policy, 2009

noted that in practice, coordination efforts between the various Directorates are often ineffective. This presents a gap in institutional arrangements. Whereas drought response organization is clearly defined, there appears to be no clear mandate for managing long-term risk reduction.

The Drought Policy is commendable as its content addresses key components of DRM and demonstrates a progressively DRR-focused approach. However this does not mean that drought response in Namibia is necessarily effective or timely. The chief of Namibia's meteorological service, for example, has stated publicly that Namibia's disaster response plan is far from ideal: "We have a drought at the moment in southern Namibia, but we are still rather reactive...we will not go into the affected areas to conduct intense [vulnerability] assessments. We do quick surveys to plan our response when a disaster is [going] on. We just don't have the capacity or the time to plan preventive measures."⁹⁰ Dr. Mary Seeley of the Desert Research Foundation of Namibia has been quoted as saying that the current drought does not meet the requirements under the Drought Policy for the declaration of an official drought,⁹¹ and the current problems owe more to mismanagement than to rainfall.⁹² This opinion was echoed by several other (non-governmental) interviewees in Namibia.

3.4 Early Warning Systems & Risk Mapping

National Early Warning System

There is no legally mandated requirement in Namibia to establish and manage a national Early Warning System (EWS). Whilst the DRMA makes reference to the National DRM Committee's role in supporting and mobilizing resources for an EWS, the DDRM's role in facilitating and coordinating DRM plans that align and consolidate EWS, and the National Vulnerability Assessment Committee's (NVAC) role in providing information for EWS, no institution is actually given responsibility for operationalizing an EWS. The National Policy of 2009 contains positive wording regarding EWS. It defines early warning as "the timely and effective collection and dissemination of information, through identified institutions, that allows individuals, households, areas and communities exposed to a hazard, to take action to avoid or reduce the risk and prepare for effective response".⁹³ The EWS is also required to include guidance for at risk areas, communities and households on the importance of heeding warnings and on how to act on those warnings, and the system is required to have the capabilities to enable, among other things, interpretation of disaster risk information, hazard and risk mapping, tracking, monitoring and forecasting of events, and processing and dissemination of warnings.⁹⁴

The National DRM Policy contains an objective to develop, implement and maintain an EWS for Namibia,⁹⁵ setting out proposed capabilities and technical inputs for the EWS. However the policy fails to assign clear institutional responsibilities for the collection and coordination of information. Meanwhile, the National DRM Plan of 2011 calls for the establishment of EWS at national, regional and local levels, and states that several different organizations (including the MAWF, Ministry of Health and Social Services, and the Ministry of Environment and Tourism (MET)) will contribute information to an EWS that will be led by the Ministry of Information and Communications Technology (MICT). This structure is not functioning at the moment and it appears that whilst the MICT fulfills a role in disseminating information through the media, it has no immediate plans to take on any greater responsibility for coordination. Furthermore, the Plan contradicts itself, as it designates the National Emergency Operation Centre under

⁹⁰ Franz Uirab, from IRIN News, *From drought policy to reality*, <http://www.irinnews.org/report/97673/from-drought-policy-to-reality>, accessed 2 October 2013

⁹¹ Under Annexure 1(A)(3) of the National Drought Policy and Strategy, disaster drought should only be declared if seasonal rainfall is below the lowest 7% of recorded annual rainfall in a particular area.

⁹² Namibian Sun, *This is not a drought – expert*, <http://www.namibiansun.com/disasters/is-not-drought-expert.55408>, (2 October 2013)

⁹³ Section 8.3.3, GRN, National Disaster Risk Management Plan, 2011

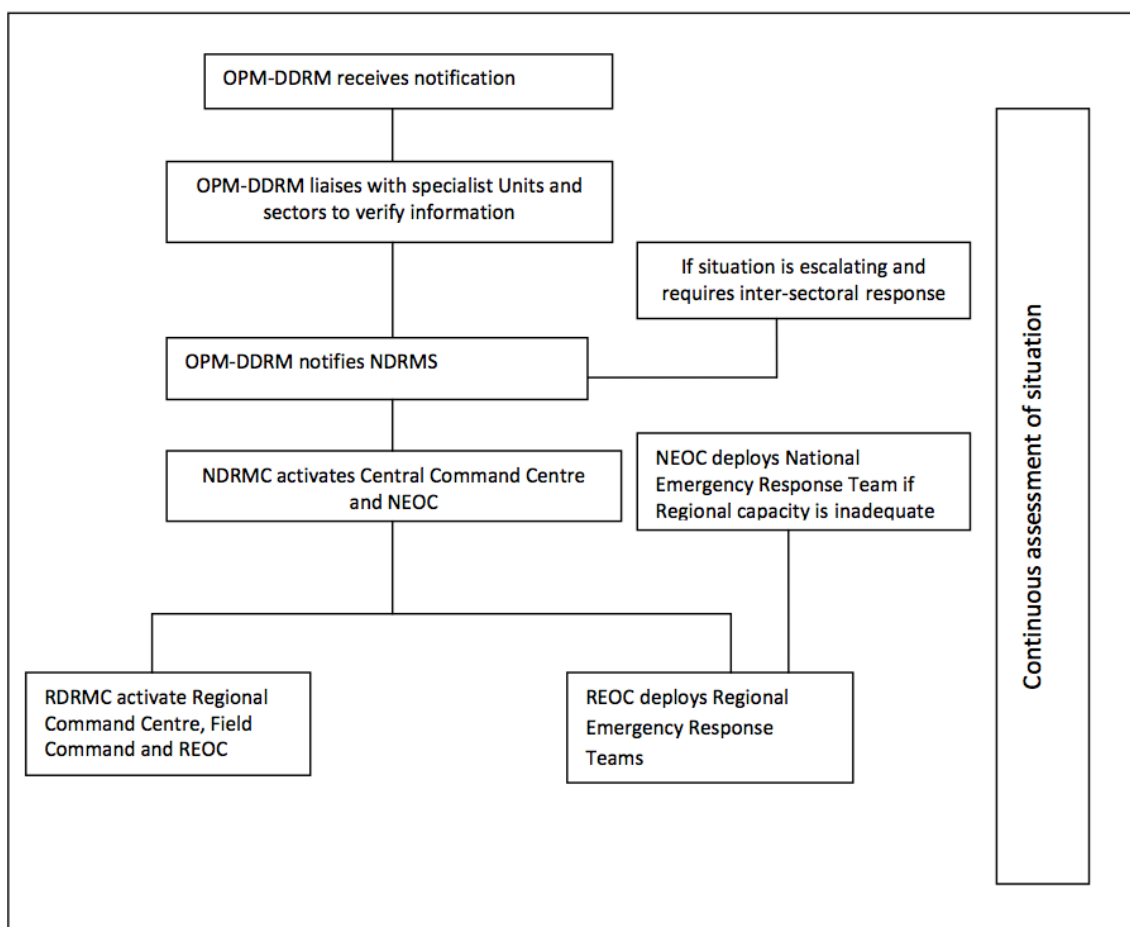
⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

the DDRM as the centre for coordinating the receipt, processing and delivery of early warning information at national level, with no mention made of the MICT.

A gap therefore remains in law and policy, namely that direct institutional responsibility for the management of the national EWS is unclear. In practice, early warning responsibilities are split between several different agencies and ministries, with the DDRM generally leading early warning efforts yet without clear lines of communication and coordination between other responsible entities. According to government sources, Namibia is in the process of establishing a more comprehensive early warning system (the Climate Risk Management Early Warning System) under the MET through the UNDP-supported African Adaptation Project. Within the MAWF, there is an Early Warning and Food Information Unit under the Directorate of Planning. There is also an Early Warning, Monitoring and Risk Assessment sub-division in the DDRM, which coordinates with the Regional DRM Committees. According to the DDRM, its EWS division is responsible for coordinating with the other early warning bodies, but the true extent of integration and cooperation between these three separate units is unclear (as is the issue of overall responsibility). Evidence from interviews and commentators suggests that the different information sources are not well coordinated. For example, the MAWF currently issues most crop production and flood warnings and has access to information databases, whereas the DDRM lacks capacity for geospatial analysis or the means to rapidly assemble disaster emergency and risk management information.⁹⁶ Figure 4 below shows the channels of communication detailed under the National DRM Plan and provides a clear overview of how information should flow in practice, although it is understood that this exact framework is not yet fully operational. As an initial recommendation, institutional roles and responsibilities for EWS in Namibia need to be clarified, and good practices (see below) formally integrated into a clear legal or policy framework.

⁹⁶ Section 8, InterSouth Development Consultants, *Design of an Improved Climate Risk Management Early Warning System and EWS Information Centers*, undated

Figure 4: Channels of communication for Early Warning information⁹⁷


Despite the lack of clarity in responsibilities and coordination for EWS, there are some good practices in place. Interviews at national level for the project revealed that effective EWS information gathering and dissemination processes are in place for both flooding and fires. The Division of Hydrology in the MAWF is responsible for the collection and dissemination of water and flood-related information, and whilst it is not technically an EWS in name, it is clear that its outputs feed into the national EWS. Prior to the flooding season, the team verifies stakeholder interest in receiving flood and water level information (information is sent automatically to government authorities at national and regional level, however anyone can opt in to the bulletins and large numbers of farmers and businesses receive the information). Information is gathered from various sources, including information provided via mobile phones and through satellite transmission of data, rainfall and water level monitoring stations, with field verification often undertaken by the River Basin Offices. Information is also immediately transferred to the DDRM. According to the Division of Hydrology, this is the only entity which can issue a formal early warning, although in practice the bulletins that are sent out will often contain information akin to a warning of impending flooding.

The National Remote Sensing Centre within the Directorate of Forestry in the MAWF has also developed an extremely robust EWS for forest fires. Satellite information and mapping data from NASA's AQUA satellite is received (via various international stations) by the Centre. The data is processed and analyzed and a daily Active Fire Bulletin is produced which is disseminated to stakeholders via email. The Bulletin is able to give early warnings of the

⁹⁷ Section 5.9, GRN, National Disaster Risk Management Plan, 2011

location and extent of spreading fires, which enables stakeholders, such as municipal fire authorities and farmers, to plan accordingly. As with the Division of Hydrology, information is shared with the DDRM in order to assist them with their own coordination activities.

Risk Mapping

Risk mapping to identify high risk areas, as well as vulnerability and capacity assessments, are included in Namibia's policy provision for DRM. Although the DRMA does not refer to a risk mapping process per se, the requirement for all DRMCs to develop DRM plans that include information on the types of disaster that might occur, their possible effects, and the communities and areas at risk, demonstrates that the essential building blocks of a risk map are catered for. However, a more explicit requirement in law for a risk mapping process would be beneficial. The Draft DRM Regulations contain a requirement that DRM Plans include "the development of up to date forecasting and early warning systems backed by responsive and robust communication and information technology"⁹⁸. They also recommend, obliquely, that some form of risk mapping process should be integrated into the DRM plans, and it is recommended that this should be the case

At the policy level, the National DRM Plan includes several national maps that show that at least a basic risk mapping process has been initiated.⁹⁹ It also contains several further provisions focusing on the need to conduct mapping exercises, which are in several cases aligned sectorally. For example, the need to conduct hydrological and geological mapping is included as part of the prevention functions of the 'Environmental and Technological Hazard Sector'¹⁰⁰, and the 'Infrastructure Development and Housing Sector' is charged with conducting vulnerability assessments and risk mapping.¹⁰¹ However the Plan fails to adequately define what is meant by risk mapping, the expected outcomes and what methodologies might be involved (for example, how to integrate community information and vulnerability assessments).

The National DRM Policy is perhaps slightly clearer in its approach to risk mapping, although it uses the term hazard mapping. It states that "there is a need for greater awareness of the characteristics of hazards, their dynamics and the varying potential impacts of hazards especially in relation to ever changing environments. Hazard mapping is thus critical to inform the NDRMS in planning and implementing DRM activities."¹⁰² 'Imperative 1' of the Policy calls for mechanisms to conduct comprehensive multi-hazard risk assessments to serve as a basis for DRM planning, which involves the development of 'national standards and guidelines' including the development of integrated hazard maps to identify and record geographical areas and communities at risk.¹⁰³ Furthermore it notes that a key capability of the EWS should be to facilitate hazard and risk mapping.¹⁰⁴ The Policy refers to other national policy documents, such as the National Drought Policy and Strategy and the National Health Emergency Preparedness and Response Plan, which also seek to address risk mapping. The extent to which these various policies, many of which have similar objectives including risk mapping, are being coordinated at national level is unclear.

According to interviewees, the coordination of efforts for risk mapping has had mixed results. The aims of the National DRM Plan and Policy are commendable, however there has as yet been little practical implementation in this area. Representatives from the DDRM did not think that a functioning national level database which sets out risk mapping information exists. Information generated for risk maps appears to fall under the remit of the NVAC which

⁹⁸ Regulation 2(1)(c), GRN, Draft Disaster Risk Management Regulations, 2013

⁹⁹ Section 2, GRN< National Disaster Risk Management Plan, 2011

¹⁰⁰ Table 9, *Ibid.*

¹⁰¹ Table 10, *Ibid.*

¹⁰² Section 7.3, GRN, National Disaster Risk Management Policy, 2009

¹⁰³ Section 8.2.1, *Ibid.*

¹⁰⁴ Section 8.3.3, *Ibid.*

gathers information during its annual assessment exercises. Although their main focus is on the agricultural sector, the annual assessment is technically a cross-sectoral process, and information is collected using an inclusive household economy approach in local communities. Some of the outputs of the assessment exercises include the spatial analysis of livelihoods, and this information is being used by the DDRM in their own mapping process. This process does not follow strict political boundaries but instead looks at the patterns of livelihoods in rural areas, based largely on the NVAC's zoning data, and the likely hazards and impacts in these areas. The DDRM's Food Security and Vulnerability Assessment and Monitoring Report 2012-13, produced by the NVAC, uses this livelihood-based approach, and demonstrates how assessment data feeds in to the development of short, medium and long-term strategies to address food security.¹⁰⁵ The DDRM pointed out that this data is being used to build risk mapping information, however this is taking time to develop and it is arguable that the lack of an overarching framework for a national risk mapping process is contributing to the delay.

There is also evidence to suggest that risk mapping is undertaken at sectoral level without being integrated into a more coordinated, multi-hazard risk mapping framework. The Early Warning and Food Information Unit of the MAWF produces a number of reports such as the Crop Prospects and Food Security Situation Report which contain a wealth of data that should contribute to the development of risk maps. However there is no clear indication that the data is being used in this manner, or whether they are effectively coordinating with other sectors that could also utilize the information. Another example of this is the early warning-focused efforts of the National Remote Sensing Centre which produces monthly and annual Burned Area Reports. This data can be used to build up risk maps and patterns of risk that can then contribute to further EWS efforts.

Regional and Community Level Early Warning Systems

Several references are made, in both the National DRM Policy and Plan as well as secondary sources from the Namibian government, that the EWS must be 'people-centred', although the exact definition of this term is not revealed. In the various documents, it appears that this means that the EWS must be able to integrate community information as well as to issue information to communities that is understandable and clear, and that communities know how to respond to a warning. The National DRM Policy also makes it the responsibility of the Regional Governors and the Chief Regional Officers to act as a conduit for early warning information from all regional sectors, institutions, constituencies, settlements and villages.

The structure set out in Figure 4 above is notable for the fact that community elements are not integrated. Whilst community-level data collection and integration into EWS is an aim of the overall policy,¹⁰⁶ in practice this is not yet in place and its achievement will depend heavily on increasing the capacity at national and local levels to implement these structures. However the fact that integration of community-level EWS with the 'formal' system is not yet in place can be differentiated from the existence of community-level EWS. Interviews with community groups revealed that, whilst most group members were unfamiliar with the concept of an EWS, most communities had their own traditional EWS in place, which ranged from simple monitoring of water levels to an awareness that the abundance of certain fruits and plants indicates a risk of impending floods. Most communities stated that they received early warning-type information through the radio, and more occasionally through public meetings instigated by the traditional authority. Meetings were used recently, for example, to warn of the impending drought and to share information regarding the Regional Council's proposals to distribute maize-meal to communities.

Several community members noted that communications can be a problem, and pointed out that if community committees, such as the DRM Committees or Village Development Committees, were issued with walkie-talkies or satellite phones then information could be transmitted between the regional council, traditional authorities and

¹⁰⁵ Section 3, Office of the Prime Minister, DDRM, Namibia Food Security and Vulnerability Assessment and Monitoring Report 2012-13, June 2012

¹⁰⁶ See, for example, Table 1 of GRN, *National Disaster Risk Management Plan*, 2011

communities in a much more effective manner. Whilst most people possessed mobile telephones, reception in remote areas is unpredictable. A major practical issue is that many community members can only afford to pay sporadically for phone credit.

3.5 Regulation of the Built Environment

3.5.1 Building Codes

Building control in Namibia is governed by two main laws, and one set of regulations: the National Building Regulations and Building Standards Act No. 103 of 1977 (the NBRSA), the Standards Act 33 of 1962, and the National Building Regulations 1991 (issued under the NBRSA). Notably, both of the Acts were adopted well before Namibia gained its independence, however they have remained on the statute books without being revised.

The NBRSA requires the adoption of building solutions that comply with the requirements of the relevant parts of SANS 10400,¹⁰⁷ which is shorthand for the South African Standard Code of Practice for the application of the National Building Regulations. Originally implemented in 1990, SANS 10400 has gone through two major revisions, in 2008 and 2011. For the purposes of this report, the 2008 version has been reviewed (the 2011 version is available from the South African Bureau of Standards).

In practice, the system of building control in Namibia is enforced by local authorities subject to oversight by the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD).¹⁰⁸ Local authorities in Namibia consist of municipalities, towns and villages.¹⁰⁹ Under the Local Authorities Act of 1992, municipalities operate largely autonomously, whereas towns and villages have far less control over their affairs and must report to the MRLGHRD. Municipalities are also entitled to pass their own building regulations, which generally consist of the adoption of the National Building Regulations subject to some specific amendments¹¹⁰. The city of Windhoek developed its own building regulations as early as 1969,¹¹¹ which it continues to update and amend.

Under the NBRSA and the National Building Regulations local authorities are empowered to review and approve or reject building plans within their jurisdiction. Any person in Namibia who intends to erect a building must submit a detailed list of plans to their local authority for approval.¹¹² Each local authority appoints a Building Control Officer as the main person responsible for building and construction control.¹¹³ Whilst the NBRSA sets out the general powers and duties of local authorities, the National Building Regulations set out details on applications, procedures and criteria. In terms of the legislation's applicability to DRR in Namibia, the NBRSA authorizes the Minister to make regulations regarding, among other things, resistance of buildings to floods and 'other injurious factors'.¹¹⁴ The Minister also has the power to order a local authority to submit a report on the adequacy of measures for buildings in its area of jurisdiction against fire, floods or other hazards.¹¹⁵

¹⁰⁷ Section AZ4, GRN, National Building Regulations 1991

¹⁰⁸ Article 2, GRN, National Building Regulations and Building Standards Act No. 103 of 1977

¹⁰⁹ Article 2, GRN, Local Authorities Act No. 23 of 1992

¹¹⁰ See, for example, the Government Gazette of the Republic of Namibia NO. 2821, 1 October 2002, which contains General Notice No. 276: *Rundu Town Council: Adoption of standard building regulations*.

¹¹¹ GRN, Building Regulations, Government Notice No. 57 of 1969

¹¹² Article 2(4), GRN, National Building Regulations and Building Standards Act No. 103 of 1977, and section A2, National Building Regulations 1991

¹¹³ Articles 5 and 6, GRN, National Building Regulations and Building Standards Act No. 103 of 1977

¹¹⁴ Article 17(f), GRN, National Building Regulations and Building Standards Act No. 103 of 1977

¹¹⁵ Article 16(1), *Ibid*.

The provisions relevant to DRR in national legislation are, therefore, relatively minimal. However interviews with stakeholders, particularly with the Building Control Division of Windhoek's City Council revealed that relevant DRR criteria and considerations are integrated into the building control process. The Building Control Division of Windhoek has two core functions, one of which is to ensure that buildings are properly designed and constructed so as to ensure the health, safety, welfare and convenience of inhabitants. Whilst this is not a specific mandate to consider issues of DRR, it is wide enough in scope to incorporate relevant considerations. In practical terms the town planners and inspectors responsible for reviewing applications do so against a list of criteria (not technically a legal document, but one which is binding insofar as it is issued under the general powers of Windhoek's city council, and its town planners and inspectors are obliged to follow it) which includes public safety, risk of flooding, drainage and access space for emergency vehicles. This process involves coordination with other sectors such as the fire department. Building control staff forward relevant details and plans to local departments dealing with fire and safety, architecture, road planning (storm water and transportation policy), town planning (to comply with the maximum land coverage requirements), health (ventilation, windows, and air), roads construction, and water and sewerage. Overall the city of Windhoek possesses an efficient and strong building control system, which is well staffed and well enforced – primarily because the capital is well funded compared to the rest of the country, allowing for the hiring and retention of a larger and better-skilled workforce. Windhoek also possesses its own set of building regulations dating back to 1969, although in practice these comply with national requirements.

Windhoek is something of a special case, however, as outside of Namibia's capital (save, perhaps for Swakopmund), a lack of trained staff and funding for building control mean that national laws are applied inconsistently, and in more remote areas not at all. Even for larger structures such as farms and warehouses in rural areas, interviewees noted that the building approval and inspection process is often ignored. Many local authorities are unable to support the role of a Building Control Officer and instead rely on external consultants if inspections or reviews are required. Some also turn to the MRLGHRD for assistance. Furthermore, local authorities in general lack enforcement capacity, not only for reasons of funding but also because many local authorities simply do not have the necessary staff available.

At lower levels, the application of building codes and regulation (and, by extension, the authority and enforcement capability of local authorities) is minimal to non-existent. One good reason for this is the fact that rural and village communities generally only build using traditional methods, with natural local materials such as wood, mud, and cow dung, combined with easily installed modern materials such as sheet metal for roofs. Such simple structures are not only more vulnerable to natural hazards, but are also difficult to integrate within more modern systems for assessment. Meetings with community groups indicated that there is also no local or customary regulation of building structures, and that there is little consideration of the resistance of such buildings to hazards. The permission of the community's traditional authority headman has to be sought prior to erecting a structure but once permission is received, the relevant person is more or less entitled to build as they please on their land (although as several community members noted, buildings are almost always constructed according to the locally accepted norms of construction, and any radically different designs or constructions would be a subject of controversy). The prevalence of this type of unregulated and vulnerable housing in Namibia makes a good case for the development of simple building guidelines that could be used both by local masons as well as local authorities to ensure dwellings are constructed according to basic guidelines that incorporate disaster resistance considerations.

3.5.2 Land Use Planning Laws

At the national level, overall responsibility for land use planning rests with the MLR, which is tasked with implementing the National Land Policy. The MLR's mandate was set out in the Cabinet-approved Strategic Plan 2006-2010. It states that the MLR "should primarily facilitate the effective allocation of land and create conditions, through dialogue, policies and legislation, for optimal land use."¹¹⁶ Various other sources have since confirmed this

¹¹⁶ Ministry of Lands and Resettlement, *Strategic Plan 2006-2010*, 2007

mandate.¹¹⁷ However whilst the MLR holds responsibility for land in general, it is possible to distinguish this from the responsibility for land use planning for urban land, which rests with the MRLGHRD. As urban planning is primarily a function of local authorities and, to a lesser extent, Regional Councils, it is the MRLGHRD (as the line Ministry for these bodies) that holds national-level responsibility. By extension, the MLR is directly responsible for rural land. There is no legislative basis for national-level land use planning in Namibia, nor is there any policy in place, which represents a clear gap in legislative provision, and which directly contributes to confusion over the responsibilities for and direction of land use planning.

At regional and local levels, responsibility for land use planning rests with Regional Councils and local authorities. Under the Regional Councils Act of 1992, Regional Councils hold responsibility for development planning for the region, including physical, social and economic aspects, management of natural and other resources, the economic development potential of the region, general land utilization pattern, and the natural environment.¹¹⁸ Local authorities are required under the Town Planning Ordinance of 1954 (as amended in 1993) to prepare and submit town-planning schemes. Schedule 2 of the Ordinance defines the matters to be dealt with by schemes, and while this sets out a long list of practical matters for consideration there is nothing of direct relevance to DRR. This is not entirely surprising as the Ordinance dates to 1954 with some minor amendments in 1993. A draft Urban and Regional Planning Bill is apparently under consideration by the government, with the aim of streamlining and clarifying systems of urban planning in Namibia, however a draft copy was not made available for the purposes of this report. This Bill should set out an integrated system of plans, including regional and urban structure plans that must fit within the framework of a national structure plan. This will have statutory status and will therefore be legally enforceable. However, practical issues such as the potential overlap of authority between the MLR and the MRLGHRD still need to be addressed.¹¹⁹ It is also not known whether this Bill seeks to integrate DRR or DRM considerations into its planning framework; however it is recommended that this should be the case.

A major criticism leveled at the land use planning institutions during interviews, and corroborated by secondary sources, related to the lack of coordination and integration in the sector, and the resulting lack of implementation. These shortcomings are preventing the formulation of clear laws and guidelines to facilitate land use planning that would in turn contribute to DRR efforts. Coordination between the MLR and other sectors was said to be ‘either non-existent or deficient’, with ‘overlapping or contradicting land use’ as a consequence.¹²⁰ The MLR’s Division of Land Use Planning and Allocation has pursued a policy of Integrated Land Use Planning however it appears that this has not translated into sectoral integration. At present, Integrated Land Use Plans have been developed for the majority of regions in Namibia. However the plans appear to have been drafted by the MLR without the input of other Ministries and sectors. They also overlap with conservation management plans prepared by the Ministry of Environment and Tourism. Further failings of the plans include a lack of zoning options and scenario modeling, an absence of appropriate stakeholder involvement, and no digital maps or data.¹²¹ As a result only two have been officially adopted, with questionable levels of implementation. The German government, through GiZ, is currently working with the MLR to enhance Integrated Land Use Planning practices and develop new Land Use Planning Guidelines.

Examples of good practices and local-level regulations do exist in Windhoek, which has higher levels of financing and more trained staff as compared to other local authorities in Namibia. Windhoek possesses a full Structure Plan and Town Planning Scheme (requirements for all municipalities and towns in Namibia), and has a system of municipal by-laws that regulate various matters within the urban area. Whilst DRR is not a specific consideration in the planning

¹¹⁷ For example, see the Ministry of Finance, *Medium Term Expenditure Framework 2008/09 – 2010/11*, and statements made at the Government Negotiations between the Republic of Namibia and the Federal Republic of Germany on 23 and 24 May 2011 (Summary record point 6.1)

¹¹⁸ Article 28(1)(a), GRN, Regional Councils Act, No. 22 of 1992

¹¹⁹ Jasmin Raith, *Legal Aspects of Land Use Planning in Namibia*, June 2011

¹²⁰ Annex A1, GiZ, *Land Use Planning: Concept, Tools and Applications*, February 2011

¹²¹ Olaf Haub, Ministry of Lands and Resettlement, *Namibia Land Management Series Number 1: Understanding of Land Use Planning and its Relevance in Namibia*, 2009

process (nor, for example, is it or related issues considered in the Structure Plan), the planning and zoning process contains a number of relevant practical considerations. For example, issues of groundwater conservation, the proper drainage of water to prevent flooding, the reservation of land for public use (which can be used in the event of an emergency) and access for emergency vehicles are also factored into the urban planning process. Environmental protection is an increasingly important consideration for the planning process that also has a direct effect on Windhoek's DRR capabilities. Windhoek's planning department takes a proactive approach to community participation. This was noted by commentators such as UN-Habitat, who state that 'Windhoek's land use and town planning policies acknowledge the importance of representative organizations, seeking to create and nurture them to strengthen local networks', and that 'the foundations are in place for a cost-effective and participatory strategy.'¹²² In accordance with local by-laws, all developments must be advertised and comments are invited from the public at the earliest possible stage. Public meetings are held which are open to the entire community, and in each constituency within the city, open 'planning meetings' are held at least once a year to provide information on any proposed development or to update on progress in existing projects. Whilst it appears that these processes are not formally legislated for, for example as by-laws or guidelines, the city of Windhoek has taken an inclusive approach which could serve as an example of good practice for other urban centers in Namibia.

Community participation

A major gap in the legal framework for land use planning in Namibia is the failure to adequately consider community participation. Whilst secondary documents refer to the need for a 'bottom-up approach' and the participation of communities in the planning process, there is no reflection of this requirement in either legislation or policy, nor does evidence suggest that community inputs are being properly integrated into the process. In some cases this is overcome through good practice, as described above in the city of Windhoek. But outside of the comparatively well-regulated urban centre of Windhoek, the voices of communities are frequently unheard. Interviews with community focus groups revealed that none of the members of the groups had ever been involved with or consulted on any local planning or zoning processes, despite the relatively recent establishment of farms and lodges in the area near two communities in Zambezi. Whilst in some cases this could be due to only members of, for example, village development committees taking part in such processes, both groups contained members of such committees.

Other commentators have noted that participatory instruments such as consultations are weak¹²³ and that it is possible that even if Traditional Authorities or chiefs are consulted on planning procedures, consultation does not filter down any further. There is relevant law on this point in the Traditional Authorities Act of 2000, which states that Traditional Authorities must keep the members of the traditional community informed of developmental projects in their area.¹²⁴ However despite the positive wording of this provision, there appears to be a gap in community participation, which was noted by several interviewees, and that is highlighted in other areas (for example, with the EIA process). Deference to a Traditional Authority representative or chief as the voice of the community for the purposes of authorizing a development can actually prevent the engagement of a wider representative body of the local community.

3.5.3 Land Tenure

Land tenure and property rights have been important and controversial subjects in Namibia since independence in 1990, when the end of the apartheid regime was swiftly followed by the initiation of a land reform programme. Indeed, access to and tenure of land were among the most important concerns of the Namibian people in their struggle

¹²² Page 68, UN-Habitat, *Land Tenure, Housing Rights and Gender in Namibia*, 2005

¹²³ Annex A1, GiZ, *Land Use Planning: Concept, Tools and Applications*, February 2011

¹²⁴ Article 2(b), GRN, *Traditional Authorities Act*, No. 25 of 2000

for independence.¹²⁵ The National Conference on Land Reform and the Land Question in 1991 resulted in the development of various policies and laws with a focus on land reform policy that remain applicable to this day. The Constitution of Namibia states that all land belongs to the state if it is not otherwise lawfully owned,¹²⁶ and that all persons shall have the right to acquire, own and dispose of all forms of immovable and moveable property.¹²⁷ Within these general provisions there are a number of different categories of land:

- State land: All land not otherwise lawfully owned belongs to the State. State land is typically used for nature conservation, game parks, agricultural research farms and military bases. It also includes local authority-owned land for development and sale to private developers.
- Private land: Land can only be held privately in rural areas, and in urban areas within proclaimed boundaries.
- Communal land: This land is technically owned by the state and held on behalf of the indigenous communities that live on the land.¹²⁸

Current estimations suggest that 20% of all land in Namibia is owned by the state, 44% is held in the form of freehold and commercial farms and the remaining 36% is communal land. Currently 70% of the population depends on access to communal land for subsistence farming and livelihoods.¹²⁹ The accepted forms of land tenure in Namibia are as follows:

- Freehold title: Ownership can be in perpetuity, transferable and alienable.
- Leasehold title: Secure long-term registered leases, primarily intended for agricultural business purposes, are available for both communal and commercial land.
- Customary land rights: Under the Communal Land Reform Act, a chief or traditional authority administers communal land for the benefit of the traditional communities on that land, and has the power to allocate customary land rights to the community. These rights primarily include the right to a farming unit and a residential unit.
- Starter title: Introduced under the Flexible Land Tenure Act, this gives the holder basic rights to perpetual occupation of a site in perpetuity, and to transfer or otherwise dispose of such right (subject to group consent).¹³⁰
- Land hold title: Also a provision of the Flexible Land Tenure Act, in basic terms this provides the most important aspects of freehold ownership without the complications of 'full' ownership.¹³¹
- Prescription: Under the Prescription Act of 1969, 30 years of uninterrupted possession can result in a claim of ownership. This is rarely used; as of 2005 only four cases of prescription had been taken.¹³²
- Informal: Various informal tenure types exist, such as shack/informal settlement dwellers, 'backyard' dwellers (i.e. often poorer family members living in shacks in relatives' gardens).

All other urban land that is proclaimed as part of a town under the Local Authorities Act 1992, but which is not held through any of the forms of tenure listed above, is registered in the name of the government or the local authority, and is, generally speaking, intended to be subdivided, serviced and sold to the public under freehold title. Under the National Land Policy of 1998, freehold title is the only form of secure, registered title available in urban areas.¹³³ A

¹²⁵ S.K. Amoo, 'Land Tenure and Land Reform in Namibia', in *Review of Southern African Studies*, Volume 3 No. 1 June 1999

¹²⁶ Article 100, Constitution of the Republic of Namibia

¹²⁷ Article 16(1), Constitution of the Republic of Namibia

¹²⁸ Article 17(1), Communal Land Reform Act, 2002

¹²⁹ Elke Matthaei, GIZ Namibia, *The Communal Land Rights Registration Process*, 2013

¹³⁰ Article 9, GRN, Flexible Land Tenure Act, No. 4 of 2012

¹³¹ Article 10, *Ibid.*

¹³² Legal Assistance Centre of Namibia, *A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia*, 2005

¹³³ Pages 7 and 8, Ministry of Lands, Resettlement and Rehabilitation, *National Land Policy*, 1998

recent law of 2012, the Flexible Tenure Act, established the categories of land hold and starter title in order to create a parallel interchangeable property registration system designed largely to help ‘formalise’ and provide security of tenure to those living in informal settlements (see section 3.5.4).

Registration and surveying of land

Title registration in Namibia is covered by two main laws: the Deeds Registries Act of 1937 and the Registration of Deeds in Rehoboth Act of 1976. The former applies to all regions of Namibia except Rehoboth. There has been a recent effort to draft a modern Deeds Registries Act. However this has attracted a certain amount of criticism and there is no indication when this Bill may be passed. The Bill appears to be focused on removing the need for the Registration of Deeds in Rehoboth Act of 1976, through which the indigenous Baster community manages their own title system. The introduction of the Flexible Land Tenure Act in 2012 created a legal obligation for the Registrar of Deeds to establish and maintain a land hold title register and a starter title register,¹³⁴ although curiously the registers may be recorded in a computer system “or in any other appropriate manner”,¹³⁵ which would seem to go against the current drive for modernization and computerization of Namibia’s land information system.

For communal land, registration is dealt with under the Communal Land Reform Act of 2002. Importantly, the allocation of customary land rights by a chief or traditional authority does not have legal effect until it has been ratified by the Communal Land Board¹³⁶ and formally allocated through registered certificates.¹³⁷ Leaseholds are subject to similar registration requirements.¹³⁸ It was not clear from research or interviews to what extent this registration system is integrated with the national system administered by the MLR. Commentators also pointed out that not all traditional authorities are formally recognized under the Traditional Authorities Act, and therefore fall outside the land tenure and registration system administered by the Community Land Boards (typically this applies to traditional authorities in informal settlements).¹³⁹ Many such traditional authorities refuse to acknowledge the Boards’ decisions and as such a parallel system of informal land administration develops which not only presents administrative issues but can have wider impacts on long-term development and community resilience.

Surveying of land is managed under the Land Survey Act of 1993, which established the office of the Surveyor General and the Survey Regulations Board. At the national level, the Ministry of Lands and Resettlement’s Directorate of Survey and Mapping (DSM), headed by the Surveyor General, is responsible for land surveying. The Surveyor General is, among other things, tasked with supervising and controlling the survey and charting of land for registration in the deeds registry.¹⁴⁰ Government officials have stated that the DSM’s ability to fulfill its mandate has been affected by the need to build its capacity almost from scratch following independence in 1990 (as most of the DSM’s functions had been previously performed by South African authorities).¹⁴¹ However efforts continue to further transform Namibia’s land information system, which only recently moved from a hard-copy manual to a computerized system. Whilst in practice, the DSM has no links with the DDRM or DRR; projects to improve and develop the capacity of the government in spatial data infrastructure will have benefits for those involved in DRR and DRM through the provision of more accurate mapping and land-holding information, which can feed into risk profiling systems.

¹³⁴ Article 6(1), GRN, Flexible Land Tenure Act, No. 4 of 2012

¹³⁵ Article 6(2), *Ibid.*

¹³⁶ Article 24, GRN, Communal Land Reform Act, No. 5 of 2002

¹³⁷ Article 25, GRN, Communal Land Reform Act, No. 5 of 2002

¹³⁸ Article 33, GRN, Communal Land Reform Act, No. 5 of 2002

¹³⁹ Page 45, UN-Habitat, *Land Tenure, Housing Rights and Gender in Namibia*, 2005

¹⁴⁰ Article 3(2)(b), GRN, Land Survey Act, No. 33 of 1993

¹⁴¹ Uzochukwu G.O. Okafor, Surveyor General of Namibia, *Country Report on the development and innovations of the Namibian National Geospatial Information System*, October 2011

On the face of it, Namibia appears to have a relatively progressive and well-established system of land registration and surveying that operates well and achieves its defined mandates, and as such can act as a support for DRR. The system of communal land registration, which aims to provide a proper and uniform land registration system for all communal lands in Namibia, is especially noteworthy. The Act was developed partly in response to a proliferation of land disputes resulting from ill-defined land, double allocations, as well as unauthorized extensions and the abuse of power by chiefs and Traditional Authorities in distributing land. While such issues persist, it is clear that the situation is improving. Namibia deserves credit for establishing a system that integrates traditional authorities and chiefs into the land registration system, and indeed builds on the system of tenure and use that these authorities and chiefs developed themselves. Other commentators have described Namibia as, “a promising example of a successful integration of customary and statutory land tenure systems, which contributes to legal security for the land users and helps to shape land allocation processes transparently.”¹⁴²

The shift to a system of clearly identifiable and registered land tenure can result in improved investment in DRR-relevant activities. An increased sense of ownership can incentivize communities and farmers to adopt better land use management practices.¹⁴³ Evidence from community interviews in Namibia suggests that many community members that have participated in communal land registration were pleased that their own rights of use were registered with the MLR, largely because this can help to prevent disputes. However as one community member in Zambezi pointed out (demonstrating a sound knowledge of the workings of the law), no one in the community really owns the land for themselves and in reality they depend upon the traditional authority, who are the real ‘owners’, for permission to use the land. Some communities even viewed the need for registration as an unnecessary intrusion of the state into matters that communities and traditional authorities are capable of dealing with themselves. This seemed to be largely based on a fear that the regional and national government are seeking to register land to sell on to third parties.

Institutional Responsibilities

Responsibility for managing the system of land tenure and registration in Namibia is shared between a number of different institutions. At the national level, the Ministry of Lands and Resettlement (MLR) takes the lead role in the planning and administration of land, with the overall mandate of managing, administering and ensuring equitable access to Namibia’s land resources.¹⁴⁴ The MLR is divided into two departments: Land Management, and Land Reform and Resettlement. Under the department of Land Management, the Directorate of Deeds Registration has responsibility for the national system of title registration, and the Directorate of Survey and Mapping (DSM) has responsibility for land surveys. The DSM contains three divisions: Mapping and GIS, Cadastral and Geodesic Surveys, and Planning, Marketing and Administration.

Regional MLR offices hold a similar mandate to the national Ministry within their respective areas. The MLR primarily acts as a conduit between the regions and the national government, and is responsible for registering land and ensuring that it is recorded in the national database. For this purpose the MLR is integrated into the Communal Land Board (CLB) for each region. CLBs were established under the Communal Land Reform Act of 2002, with their membership comprising representatives from relevant ministries and traditional authorities. Their main function is the allocation of rights in respect of communal land (including the power to grant leasehold land).

¹⁴² Tanja Pickardt, Christian Graefen, and Yvonne Müller (GiZ), *Land Registration supported by German Development Cooperation: Concepts and Practical Experiences*, April 2013

¹⁴³ Knowler, D. J. 2004. ‘The Economics of Soil Productivity: Local, National, and Global Perspectives’ in *Land Degradation and Development 15*, as referenced in World Bank, *Sustainable Land Management Source Book*, 2008

¹⁴⁴ Ministry of Lands and Resettlement website, <http://209.88.21.36/opencms/opencms/grnnet/MLRR/about/>, accessed 11 October 2013

Community impact

It has already been noted above that feedback from community groups suggests that, whilst some are content with the relatively new facility available for formal recognition of land rights, many are either indifferent or suspicious of government intentions. This is perhaps unsurprising in a society where land tenure has historically been such a divisive and emotional issue. However the attempt to define and register land and use rights in a communal setting is still considered a good practice in support of DRR, as it incentivizes communities to invest in the protection of their land. Furthermore, the ‘parallel’ land tenure system created under the Flexible Tenure Act is also considered good practice, as it provides greatly enhanced security of tenure for those who previously found themselves excluded from the formal land tenure system, and in doing so potentially creates a more stable foundation for future DRR efforts.

3.5.4 Informal & Precarious Settlements

Approximately 30% of urban residents live in informal settlements. Under the previous legal framework, ‘Permissions to Occupy’ were issued to residents. This system has now been phased out. Neither of the two major laws on land use planning and management (the Town Planning Ordinance of 1954 and the Townships and Division of Land Ordinance of 1963) specifically consider informal settlements; however it is possible to imply such consideration in the most general terms. For example, the recognition and regularization of informal settlements could be implied in the general duties of local authorities to redevelop areas to effectively promote health, safety and amenity. However these laws were passed under an apartheid regime which deliberately used land and housing to divide the population along racial lines, and as such they are inappropriate in terms of incorporating informal settlements into planning law.

It is clear that much good practice in terms of the management of informal settlements through law and urban planning processes has been developed in Namibia. The Flexible Land Tenure Act was introduced in 2012, which ultimately created two new forms of title aimed directly at the regularization of informal settlements. The objectives of the Act include to “provide security of title for persons who live in informal settlements or who are provided with low income housing,” and “to empower the persons concerned economically by means of those rights.”¹⁴⁵ Bringing informal housing within the ambit of the formal legal framework ensures that residents and communities can benefit from any positive legislation and practice that can help build resistance to disasters.

The Act provides for the creation of two new forms of tenure: starter title and land hold title. The registration of either is dependent upon the establishment of either a starter title scheme or a land hold title scheme which would be initiated by local authorities regarding land occupied by existing informal settlements, private developers or community organizations. Starter title enables, among other things, a holder to erect and occupy a dwelling on the block,¹⁴⁶ to transfer rights, and to benefit from services provided to the whole scheme. Effectively this establishes a basis for further upgrading over time. Land hold title also covers other aspects of ownership such as the right to mortgage land and the right to erect permanent structures (which is not permitted for a starter title). This provides a basis for eventually progressing to full freehold title. The system under the Flexible Tenure Act operates in parallel with the existing registration system (meaning broadly that the same land parcel would be subject to registration in the starter and land hold title registry as well as the National Deeds Registry), but with the possibility of title transferring to the ‘formal system’, i.e. freehold. However, it is too early to assess the impact of the legislation as its passage into law and piloting were delayed. The Act also provides for the establishment of Land Rights Offices which are expected to be rolled out on a regional basis, although the legislation permits the government to establish one for the whole country,¹⁴⁷ to deal largely with registration matters. The Act does not specifically address DRR.

¹⁴⁵ Article 2, GRN, Flexible Land Tenure Act No. 4 of 2012

¹⁴⁶ ‘Blocker’ is the term used in the Flexible Land Tenure Act 2012 to refer to a piece of land on which a starter title scheme or a land hold title scheme is established.

¹⁴⁷ Article 4(1), *Ibid.*

Officials at the Division of Sustainable Development for the city of Windhoek explained that the general policy towards informal settlements throughout the country is one of ‘regularization’, or upgrading, rather than eviction or relocation. This relatively progressive policy has been in effect for quite some time but is not set out in any national-level documentation. The city of Windhoek, however, has produced a Development and Upgrading Strategy. Evidence suggests that town planners across Namibia share the same perspectives, if not the same documentation, and are strict about adhering to legal processes and following recommendations from UN-Habitat regarding informal settlements and evictions. The common law also contains examples of the rights of informal settlement residents being protected. The case of *Shaanika & Others v Windhoek City Police & Others*,¹⁴⁸ proceeded to the Supreme Court after a High Court overturned the lower Magistrates’ Court ruling which had awarded an interdict to informal settlers seeking to prevent the Municipality of Windhoek from tearing down shacks, as well as a declaration that sections 4(1) and 4(3) of the Squatters Proclamation of 1985 were unconstitutional¹⁴⁹. The Supreme Court upheld the earlier Magistrates’ Court, finding that sections 4(1) and 4(3) of the Squatters Proclamation of 1985 were indeed unconstitutional.¹⁵⁰

It is also clear that DRR-relevant factors are taken into consideration when the process of formalization (or ‘upgrading’) is being developed. For example, for the upgrading of the informal settlement of Onyika, in Windhoek, the town planners took a fairly flexible approach towards planning the housing and land (so as to avoid extensive works and minimize disruption to residents), but made sure that, for example, access ways were a minimum of 8 meters wide and main streets a minimum of 10 meters wide to facilitate access for emergency vehicles. In Windhoek and Onyika the planning framework requires turning circles at various points to be large enough to allow for emergency vehicles such as fire engines. Town planners in both Windhoek and Zambezi confirmed that settlements would not be permitted in hazard zones, for example areas at high risk of flooding or slopes with a ratio higher than 1:5, but admitted that outside of urban zones there is little capacity for the enforcement of such rules – no clear national legislation exists to prevent this type of building, as it is instead left to town councils and local authorities to develop their own by-laws. Outside of Windhoek it is unclear to what extent this is regulated; evidence from interviews suggest such regulation is negligible.

The city of Windhoek is also notable for the engagement of the community as part of the informal settlement upgrading strategy, which involves intensive public participation facilitated by the City Council’s Community Development Division. The Division works with the Community Development Committees from the informal settlements. Socio-economic surveys are conducted and large public meetings are held to gain residents’ input on desired social services and proposals. Interviewees noted that there is a limit to how much participation can be organized, as well as to how much capacity exists to take on board all of the feedback. However those engaging with the community are forthright with regard to the extent of relocation that will be necessary as part of the upgrading process, as it is generally not possible to house all former residents in the same settlement due to planning and safety restrictions which apply to ‘formal’ land.

Three important conclusions can be drawn from this analysis: (i) the importance of community engagement in informal settlements cannot be underestimated, and if DRR is to be integrated into planning at this level then it must utilize entities such as the Community Development Committees; (ii) whilst good practices clearly exist, there is very little law regulating DRR in informal settlements. The Flexible Tenure Act is to be commended, however there is no

¹⁴⁸ *Shaanika & Others v Windhoek City Police & Others* 2011 (1) NR 64 (HC).

¹⁴⁹ Section 4(1) of the Squatters Proclamation, AG 21 of 1985, authorises an owner of land to “demolish and remove together with its contents any building or structure intended for human habitation or occupied by human beings which has been erected or is occupied without his consent on such land”. Section 4(3) of the Squatters Proclamation states that unless a person can satisfy the court on a preponderance of probabilities that he is legally entitled to occupy land on which he has erected a structure, he “shall not have recourse to any court of law in any civil proceedings founded on the demolishing or removal or intended demolishing or removal of such building or structure under this section and it shall not be competent for any court of law to grant any relief in any such proceedings to such last-mentioning person”.

¹⁵⁰ The Namibian, *Squatters Confused over Court Ruling*, 30 July 2013, <http://allafrica.com/stories/201307300877.html>, accessed on 20 December 2013

sound legislative provision for either community participation or DRR. At present these issues are dealt with in practice, but implementation varies throughout Namibia (and is notably weaker outside of Windhoek) and the issues are only partially provided for in local-level policies and strategies, or not at all; and (iii) the good practice developed by the municipal authorities of Windhoek should, as noted by a UN Special Rapporteur, be shared with other urban centers where the population living in informal settlements without access to services is growing.¹⁵¹

3.5.5 Urban Water & Flood Management

Namibia's overall legislative framework for water management was established in 1956 through the Water Act. Although the Water Resources Management Act of 2004 (WRMA) was passed by Parliament that same year, this Act has not yet been scheduled for publication in the Government Gazette and, therefore, the original Water Act of 1956 remains in effect. The fact that legislation has taken so long to develop and remains inoperative while colonial-era legislation remains in place has created a certain degree of institutional confusion and represents a gap in legislative provision.

Namibia has many policy and strategy papers relating to the water sector, most of which are progressive and of a very high quality. The Water Supply and Sanitation Policy of 2008 aims to ensure that essential water supply and sanitation services should be available and accessible to all Namibians at a cost which is affordable to the country as a whole.¹⁵² The Policy promotes community based social development, while taking the role of women into special account.¹⁵³ The 2010 Integrated Water Resources Management Plan for Namibia places water sector decisions in an 'integrated' framework, wherein the effects of water allocations and management decisions on all users of the system are considered, and which takes account of wider social and economic goals. Also included is the promotion of different, local-level user groups (see section 3.6.3). The Plan considers the development of a sustainable water resource management regime as vital to reducing the risk of flood and droughts, but also notes that flood management remains a significant challenge for a sustainable and affordable water supply.

Further, the Plan requires the development of several different plans and strategies, including 'integrated flood management plans'. It appears that whilst these are possibly under development, they are far from being finalized. Interviewees for this report were quick to emphasize the quality of the policies and legislation in place, but also highlighted the lack of implementation in the sector. For example, interviewees expressed concern that the WRMA has still not been made operational. Furthermore, aims to decentralize the functions and responsibilities expressed through national policies do not appear to have been realized because, as with many other sectors, decision making in the water sector is slow due to the time required for national-level review. The same situation applies to the parastatal water company, NamWater, which is controlled from Windhoek.

The Water Act of 1956 fails to take into account matters of environmental protection that are now provided for in the Constitution, with the result that over-abstraction of water is a serious concern which is not adequately regulated.¹⁵⁴ This situation is addressed in the WRMA, which creates a much more comprehensive regime for regulating water supply and abstraction in Namibia. The WRMA is primarily concerned with ensuring "that Namibia's water resources are managed, developed, protected, conserved and used in ways which are consistent with or conducive to the following fundamental principles."¹⁵⁵

¹⁵¹ Page 15, UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque*, 28 June 2012

¹⁵² Section 2.2, MAWF, Water Supply and Sanitation Policy, July 2008

¹⁵³ Section 2.3.1, *Ibid.*

¹⁵⁴ Page 6, *Ibid.*

¹⁵⁵ Article 2, GRN, Water Resources Management Act, No. 24 of 2004

- equitable access to water resources by every citizen, in support of a healthy and productive life;
- access by every citizen, within a reasonable distance from their place of abode, to a quantity of water sufficient to maintain life, health and productive activities;
- integrated planning and management of surface and underground water resources, in ways which incorporate the planning process, economic, environmental and social dimensions; and
- management of water resources so as to promote sustainable development.¹⁵⁶

Of most interest for the purposes of DRR is Part XIV of the WRMA, which concerns Dam Safety and Flood Management. This section prohibits construction activity that impounds, blocks or otherwise impedes the flow of water in a watercourse without the Minister's written approval, and failure to do so can result in an action for damages.¹⁵⁷ Safety measures for dams also come under scrutiny, requiring professional engineer's reports regarding the safety of dams and creating a 'duty of care' on the part of the engineer towards the public and the State, and requiring the owners of dams with potential safety risks to register them with the Minister. The Minister also has relatively extensive powers aimed at the prevention of flood risk, which includes the ability to:

- prohibit construction on submersible lands of dykes, levees or other structures likely to hinder the runoff of floodwater, or authorize the construction of such structures if they are necessary for the protection of already existing residences or other private structures;
- alter or demolish dykes, embankments, levees, structures or other works, irrespective of their legal status, if in the Minister's opinion, they hinder water runoff or extend the flood plain with harmful results;
- prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dykes, embankments or levees;
- consult with regional and local authority councils in determining the geographic extent of floodplain areas and assist such councils in regulating the development and use of lands within such areas; and
- prescribe measures for the control and management of storm and flood risk within local authority areas.¹⁵⁸

Feedback from interviewees involved in the water sector in Namibia suggests that in practice these powers are used somewhat inconsistently, depending on capacity. However their inclusion in national level legislation can certainly be viewed as a good practice. The WRMA also provides for the establishment of community-driven structures that will be active in water resources management, namely Basin Management Committees, Water Point User Associations and Local Water User Associations (see section 3.6.3 below).

Flood management committees, although established without any basis in legislation and policy, also appear to be in existence throughout Namibia. However research in Rundu, the capital of the Kavango region, revealed that its committee is largely ineffective and meets on an extremely irregular basis, with no real consideration given over to flood resistance and preparation activities. It is possible that this is because such duties are being managed by the Regional DRMC, however again its primary focus is disaster response and as such there is little official capacity for DRR activities.

3.6 Regulation of the Natural & Rural Environment

3.6.1 Environmental Management

There has been significant environmental degradation in Namibia as a result of unsustainable harvesting of wild plants and wildlife, soil erosion, water pollution, climate change and the impact of invasive alien organisms¹⁵⁹. These factors

¹⁵⁶ Article 3, *Ibid.*

¹⁵⁷ Article 78, *Ibid.*

¹⁵⁸ Article 84, *Ibid.*

not only contribute to the severity of natural hazards, but also hinder efforts to make communities and the nation as a whole more resilient. In order to prevent or mitigate the impact of these factors, Namibia has developed a relatively comprehensive body of legislation and policy that contains many provisions relevant to DRR.

Article 95 of the Constitution obliges the state to actively promote and maintain the welfare of the people by adopting policies aimed at the “maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.”¹⁶⁰ The Constitution obliges the state to adopt policies (which guide decisions) rather than laws (which can compel or prohibit behaviors). The Constitution is also explicitly linked to the binding nature of public international law and international agreements, bringing Namibia within the ambit of international environmental law.¹⁶¹ There are a number of statutory provisions for environmental law in Namibia¹⁶², the most relevant of which are:

- Environmental Management Act, No. 7 of 2007;
- Environmental Impact Assessment Regulations, Government Notice No. 30 of 2011;
- Environmental Investment Fund of Namibia Act, No. 13 of 2001;
- Nature Conservation Ordinance, No. 4 of 1975; and
- Soil Conservation Act, No. 76 of 1969.

Some of the relevant policies in Namibia include:

- Environmental Assessment Policy 1994;
- National Policy on Climate Change 2011;
- (Draft) Climate Change Strategy and Action Plan 2009; and
- Green Scheme Policy 2008.

Namibia’s National Policy on Climate Change 2011 specifically addresses the issue of disaster reduction and risk management, including a commitment to international risk reduction initiatives such as the Hyogo Framework for Action and the Africa Regional Strategy for Disaster Risk Reduction, and recognizes DRR as “a frontline defense in adapting to the impacts of climate change.” The government has committed to developing and implementing a “climate change induced DRM strategy,” establishing and strengthening climate change induced disaster management institutions at regional and national levels, as well as providing relief to the victims of climate change induced disaster.¹⁶³ At the policy level, therefore, the government has acknowledged and emphasized the links between climate change and DRR, and set objectives for DRR in a climate change context. These fit neatly within the first overall objective of the National Policy, which is 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.”¹⁶⁴ Disaster reduction and risk management is also noted as an important cross-cutting issue in Namibia’s proposed National Climate Change Strategy and Action Plan of 2009. Specifically the Strategy notes the general need to improve forecasting and EWS, disaster preparedness and post-response recovery, and to institutionalize and strengthen disaster risk management at all levels of government and communities.¹⁶⁵

¹⁵⁹ Page 101, Oliver C. Ruppel and Katharina Ruppel-Schlichting (Eds.), *Environmental Law and Policy in Namibia: Towards making Africa the Tree of Life*, Second Edition 2013

¹⁶⁰ Article 95(1), Constitution of the Republic of Namibia

¹⁶¹ Article 144, *Ibid.*

¹⁶² For a full list of applicable legislation, see page 105, Oliver C. Ruppel and Katharina Ruppel-Schlichting (Eds.), *Environmental Law and Policy in Namibia: Towards making Africa the Tree of Life*, Second Edition 2013

¹⁶³ Section 4.13, GRN, *National Policy on Climate Change*, 2011

¹⁶⁴ Section 2.2.1, *Ibid.*

¹⁶⁵ Section 4.3.4, GRN, *Proposed National Policy on Climate Change Strategy and Action Plan*, October 2009

The outcome of such policy objectives can be clearly seen in DRM-specific legislation such as the DRMA. However the Environmental Management Act of 2007 (which came into force in 2012) can also contribute to DRR efforts in Namibia. The Act establishes a new institutional structure under the Ministry of Environment and Tourism, and regulates Namibia's environmental assessment process (thereby giving effect to the Environmental Assessment Policy of 1994). It clearly defines the functions and powers of the Minister of Environment and Tourism (which centre on the creation of policy and coordination)¹⁶⁶, provides for the establishment of a Sustainable Development Advisory Council, as well as an Environmental Commissioner and Environmental Officers. The Environmental Commissioner was appointed by the Cabinet in February 2012, signifying the full operationalization of the Act. The Act's overall objective is to prevent and mitigate the impact of activities on the environment by ensuring that there are opportunities for interested parties to participate throughout the assessment process, and that assessment findings are taken into account before any decision is made.¹⁶⁷

The Act also provides for the development of Environmental Plans in order to coordinate and harmonize the environmental policies, plans and programmes of various state bodies.¹⁶⁸ The Minister for Environment and Tourism is able to require a state body to produce such a plan via a notice in the Government Gazette.¹⁶⁹ It is the duty of the Environmental Commissioner to monitor compliance with such plans, and each state body with a plan must use "every function it may have" to comply.¹⁷⁰ Although it is not clear whether any Environmental Plans have yet been developed or approved, these would appear to be a positive mechanism that could contribute to the streamlining of government environmental policy and actions, as well as providing a means for integrating DRR considerations into planning for separate government bodies. The MET has been extensively criticized for its lack of coordination with other Ministries and sectors. If stakeholders are fully and properly engaged, the Environmental Plans could provide a means of addressing the reasons for this criticism.

The MET holds ultimate responsibility for environmental matters in Namibia. Management is exercised through the Directorate of Environmental Affairs and the office of the Environmental Commissioner. Each region has a MET office, although staff numbers and capacity vary greatly from region to region.

Environmental Impact Assessment

The Environmental Management Act gives legislative effect to the Environmental Assessment Policy of 1994, and therefore places the environmental assessment process on a formal, legal footing. In doing so the government has greatly enhanced the ability to enforce the process of assessments, which in turn can contribute to DRR efforts (provided there is a willingness and capacity for such enforcement). The Act includes the following principles of environmental management:

- Community involvement in natural resource management and the sharing of benefits arising from the use of resources must be promoted and facilitated;
- The participation of all interested and affected parties must be promoted and decisions must take into account the interests, needs and values of interested and affected parties; and
- Assessments must be undertaken for activities which may have significant effects on the environment or the use of natural resources.¹⁷¹

¹⁶⁶ Article 4, GRN, *Environmental Management Act*, No. 7 of 2007

¹⁶⁷ Article 2, *Ibid.*

¹⁶⁸ Article 23, *Ibid.*

¹⁶⁹ Article 24, *Ibid.*

¹⁷⁰ Article 26, *Ibid.*

¹⁷¹ Article 3(2), GRN, *Environmental Management Act*, No. 7 of 2007

The Act prohibits certain ‘listed activities’ unless the person is the holder of an environmental clearance certificate for that activity.¹⁷² To contravene this provision is an offence and a conviction can result in a fine not exceeding N\$500,000 and/or imprisonment for a period not exceeding 25 years. The severity of the prison sentence indicates how seriously this issue is taken. The Act sets out general information regarding applications, which are detailed in two secondary pieces of legislation: the ‘List of Activities that may not be undertaken without Environmental Clearance Certificate: Environmental Management Act 2007’ (Government Notice no. 29 of 2012) and the ‘Environmental Impact Assessment Regulations of 2011’ (Government Notice No. 30 of 2012). The List of Activities is an exhaustive list of projects that require environmental clearance, including construction of facilities for waste management, mining, power generation, clearance of forest areas, certain types of land rezoning, construction of resorts, lodges and hotels, abstraction of ground or surface water, construction of dams, infrastructure, and so on.¹⁷³ It is interesting that the government chose to legislate based on activities that require clearance rather than based on their impact on the environment (by imposing a requirement for any project that has an impact to apply for clearance). However under the terms of the EIA Regulations, if an applicant is in any doubt as to whether an activity requires clearance, then they can consult the Environmental Commissioner. In practice, it appears that most project developers will initiate this contact regardless of how unclear their activity status is.

Following submission of a relatively brief application form, the applicant must then conduct a full public consultation, prepare a scoping report, and submit a management plan with copies of all representations.¹⁷⁴ The scoping report is one of the two most important documents in the process and it must include the following:

- descriptions of the proposed activity and the site;
- description of the environment that may be affected by the proposed activity and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed listed activity;
- identification of laws and guidelines that have been considered in the preparation of the scoping report;
- details of the public consultation process conducted in terms of regulation 7(1) in connection with the application, including:
 - the steps that were taken to notify potentially interested and affected parties of the proposed application;
 - proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the proposed application have been displayed;
 - a list of all persons, organizations and organs of state that were registered in terms of regulation 22 as interested and affected parties in relation to the application; and
 - a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
- a description of the need and desirability of the proposed listed activity and any identified alternatives to the proposed activity that are feasible and reasonable.
- a description and assessment of the significance of any significant effects, including cumulative effects that may occur as a result of undertaking the activity; and
- a draft management plan, 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;
 - measures to rehabilitate the environment affected by the undertaking of the activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and
 - 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.¹⁷⁵

¹⁷² Article 27(3), *Ibid*

¹⁷³ For an exhaustive list please see Annexure, GRN, List of Activities that may not be undertaken without Environmental Clearance Certificate: Environmental Management Act 2007, Government Notice no. 29 of 2012

¹⁷⁴ Regulation 7, Environmental Impact Assessment Regulations, Government Notice no. 30 of 2012.

The Environmental Commissioner may decide, on the basis of the Scoping Report, that a full Environmental Assessment Report is required. The requirements for the Assessment Report are similar to the Scoping Report,¹⁷⁶ although in practice the full assessment report is much more detailed and takes into account more detailed findings from public consultations.

The MET has set out further guidance on the Environmental Assessment process¹⁷⁷ which is intended to guide the structure and content of the reports. Whilst the assessment process can clearly benefit DRR efforts, there are no provisions that require, for example, special consideration for areas prone to natural disasters. Although it is reasonable to expect such consideration to be included by professional environmental assessment practitioners, an explicit provision would help to overtly integrate environmental law with DRR.

The government openly acknowledges that it possesses limited capacity to enforce Environmental Management Plans.¹⁷⁸ Gaps in capacity extend from national to regional level, and outside of Windhoek it is difficult to uphold official procedures. Officials in Zambezi, for example, noted that the MET must be involved in the Environmental Impact Assessment (EIA) process, but that this is generally organized through the central government and that whilst MET guidance on the EIA process recommends engagement with local communities and the MET office,¹⁷⁹ this does not always happen. In practice, assessments are handled by private consultants, who often work independently of local MET officials, and interviewees noted several projects which did not follow an environmental assessment process despite clearly falling within the ambit of the Environmental Management Act 2007. The reality is that very little official capacity exists to handle EIAs in Namibia. At the national level, only three staff are employed to review applications and reports, and there is no capacity for this function at regional or local levels. This means that the process is heavily centralized and slow, and is hindered by difficulties in coordinating with and seeking approval from other line ministries. Such coordination can also create confusion. One interviewee pointed to an example of approvals for irrigation schemes, where, at central level, the assessment process involved the MET and the MAWF's Directorates of Water and Forestry, with no clear delineation of authority between the three. If such issues are not adequately addressed there is a risk that the private sector will exploit loopholes that exist. At present some companies bypass the formal EIA process by acquiring permits from individual Ministries, which they present as a *fait accompli* to other authorities.

Community Participation

As early as 1995, the Environmental Assessment Policy stated that assessment procedures should “strive for a high degree of public participation and involvement by all sectors of the Namibian community.”¹⁸⁰ The Environmental Management Act is clear on its promotion of community participation in the environmental assessment process, and the Environmental Management Regulations contain language that requires and encourages applicants for environmental assessments to involve communities. Of specific note are requirements for public consultations, which were summarized above in terms of their integration into Scoping and Assessment Reports. Regulation 21 provides further detail on how a public consultation process should be run, including:

- fixing a notice board at a place conspicuous to the public at the boundary or on the fence of the site where the activity to which the application relates is or is to be undertaken;
- giving written notice to:

¹⁷⁵ Regulation 8, *Ibid.*

¹⁷⁶ Regulation 15(2), *Ibid.*

¹⁷⁷ MET, *Annex 4: Namibia's Environmental Assessment Process*, undated

¹⁷⁸ Section 4.1, GRN, *National Report to the United Nations Commission on Sustainable Development: Namibia*, 2012

¹⁷⁹ Page 49, MET, *Annex 4: Namibia's Environmental Assessment Process*

¹⁸⁰ Page 6, GRN, *Namibia's Environmental Assessment Policy*, January 1995

- the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site;
- the local authority council, regional council and traditional authority, as the case may be, in which the site or alternative site is situated;
- any other organ of state having jurisdiction in respect of any aspect of the activity; and
- advertising the application once a week for two consecutive weeks in at least two newspapers circulated widely in Namibia.¹⁸¹

Whilst effort has been made to establish the process for participation, both legislation and policy fall somewhat short in effectively ensuring that such participation occurs. For example, whilst local and traditional authorities are mentioned, there is no detail on how meetings should be organized or the importance of ensuring the participation of community members other than traditional authority leaders or chiefs. Interviewees pointed out that this is a gap in the legal framework that often translates into ineffective participation strategies. As with the land use planning process, the views of communities can be overlooked by relying on their supposed representatives, who may have vested interests in agreeing to developments.

Interviews with community groups in the Zambezi and Kavango regions highlighted their almost complete unfamiliarity with environmental regulations and practices, with no one present being able to give an example of having been involved in an environmental assessment process. Several representatives from traditional authorities corroborated the feedback noted above, namely that traditional authorities will be involved in assessments (the most common example given was the building of new tourist lodges) but that it is not necessary for them to ask for the community's input, as the traditional authority acts as the voice of the community. Analysis of a relatively recent EIA report from the mining sector¹⁸² demonstrates that the legal requirements regarding public participation were followed, yet only two people ever confirmed their attendance at public meetings. Whilst reasons for this could be manifold (it is possible that the local community were satisfied with the outcomes of the various 'interviews, one to one meetings and training courses' held), it indicates that perhaps more effective outreach is required when only two members of the public are interested in responding to the proposed development of a uranium mine.

There are other structures established under Namibian law that seek to involve local communities in the management of environmental resources, such as Namibia's Communal Conservancy framework. Under the Nature Conservation Amendment Act of 1996, "any group of persons residing on communal land and which desires to have the area which they inhabit, or any part thereof, to be declared a conservancy, shall apply therefore to the Minister..."¹⁸³ The Act does not refer to traditional authorities or other recognized local institutions. Instead, it takes a civil society approach which applies to individuals living in a particular area. While in doing so it, ostensibly, ignores relevant traditional governmental structures, practice shows that most, if not all, conservancies adhere to traditional territorial boundaries.¹⁸⁴ Each conservancy is required to develop a constitution, which become "striking examples for the potential of customary law to adopt statutory stipulations and to develop them in a creative manner."¹⁸⁵ Whilst the Nature Conservation Amendment Act really only provides for conservancies with respect to wildlife, many conservancies' activities go further by managing other natural resources in the area. These are often directly linked to the community-based natural resource management structures that govern forests and water resources. This is the case with the Sikunga conservancy in the Zambezi region, where the management of wildlife resources entails management of other natural resources in tandem with forest committees and Water Point User Associations in the area. However low government capacity and support means that the training and management of conservancies

¹⁸¹ Regulation 21, Environmental Impact Assessment Regulations, Government Notice no. 30 of 2012

¹⁸² Section 6.6, Zhonghe Resources (Namibia) Development (PTY) Ltd, *Environmental Impact Assessment Report for the proposed Uranium mining project in the EPL No. 3602, Arandis Area, Erongo Region, Namibia*, April 2011

¹⁸³ Article 24A(1), GRN, Nature Conservation Amendment Act, No. 5 of 1996

¹⁸⁴ Page 366, Oliver C. Ruppel and Katharina Ruppel-Schlichting (Eds.), *Environmental Law and Policy in Namibia: Towards making Africa the Tree of Life*, Second Edition 2013

¹⁸⁵ *Ibid.*

depends heavily on support from NGOs. This raises serious issues of sustainability, as without such support it is likely that most conservancies would not function.¹⁸⁶ Few conservancies have developed a sustainable income from their activities, as most are based on tourism which has been an unstable source. Commentators also gave examples of certain sectors of communities being excluded from conservancy development, for example agriculturalists in the Salambala conservancy in Zambezi were moved off their land by the conservancy.¹⁸⁷ Yet the existence of conservancies and the role they assume in the management of local natural resources is an extremely positive development, as it promotes local capacity in environmental management. For DRR purposes it incentivizes local communities to take a direct role in protecting their land, community and wildlife from the impact of natural hazards. In the Sikunga conservancy, a zoning plan was developed to map high risk areas. The legal requirement to develop management plans and to account for its activities has meant that the community has also involved itself with DRR planning through its ‘fisheries reserve plan’, as well as through its work on water storage and relocation from flood plains. Finally, the conservancies can be used as a format for community participation in environmental assessments, and legislation and policy should be used to promote this.

3.6.2 Forest Management & Exploitation

Forest management and exploitation in Namibia is primarily governed by the Forest Act of 2001, which replaced the Preservation of Trees and Forests Ordinance No. 37 of 1952 and the Forest Act of 1968, and built upon the content of the Forest Policy Statement of 1992. A Development Forestry Policy for Namibia was also published in 2001, however the Forest Act in affect covers each of these various policy documents.

The Forest Act’s overall aim is “to conserve soil and water resources, maintain biological diversity and to use forest produce in a way which is compatible with the forest’s primary role as the protector and enhancer of the natural environment.”¹⁸⁸ The Act also requires forest management plans to be developed for each type of forest¹⁸⁹ (forest reserve, community forest or forest management area). Whilst regional visits to Zambezi and Kavango did not provide any information regarding forest management plans having been developed for those regions, it appears from secondary sources that some are in place.¹⁹⁰ However the specified contents for the plans only appear to relate to basic information regarding the area covered, management objectives and measures to be taken to achieve them, with no mention of specific concerns regarding hazards such as forest fires. Whilst these may be included, the legislation would benefit from more overt mainstreaming of DRR considerations into the plans.

The Forest Act also establishes a regime for authorization of the harvesting of trees¹⁹¹ in order to combat deforestation and thereby prevent the exacerbation of related natural hazards such as flooding. Permits are relatively cheap (in Zambezi, for example, it costs N\$20 for a 7 day permit to transport wood and N\$10 for a permit to harvest wood for personal use). Feedback from interviews at regional levels showed that illegal harvesting is a major problem throughout Namibia, especially in north-eastern regions where forest cover is comparatively thicker. Large trees are routinely felled without authorization and are illegally shipped out of the country, often to South Africa. Despite the forestry offices often containing more staff than other sectors, the number of staff available to deal with these matters is still extremely small in relation to the scale of the problem. Part of the solution may be to expedite the decentralization process for the MAWF and the Directorate of Forestry which would enable regional offices to better prioritize their work, finances and workforce.

¹⁸⁶ Page 18, Sidney L. Harring and Willem Odendaal, Legal Assistance Centre, “*God stopped making land!*” – *Land Rights, Conflict and Law in Namibia’s Caprivi Region*, October 2012

¹⁸⁷ Page 41, *Ibid.*

¹⁸⁸ Article 10(1), GRN, Forest Act, No. 12 of 2001

¹⁸⁹ Article 12 and Part III, *Ibid.*

¹⁹⁰ Forest Management Planning Unit, Directorate of Forestry, MAWF, *List of Forest Management Plans*, December 2004

¹⁹¹ Article 27, *Ibid.*

The Development Forestry Policy of 2001 acknowledges the shortcomings in Namibia's framework for forest management by concluding that the implementation of effective property rights, a more supportive regulatory framework, the strengthening of extension services, and the promotion of community forest management, is critical to sustainable forest management in Namibia. To some extent, the implementation of the Forest Act 2001 and an increasing uptake of community forests have helped to change this situation. It is also clear that some good practices are being implemented that are directly contributing to DRR. In Zambezi, forestry officials are heavily involved in helping both community forests and other communities to combat forest fires, not only with training on fire-fighting and safety but also in the design of adequate fire breaks, as well as training on 'early burning' practices. Forestry officials were also keenly aware of bulletins and information produced at the national level by the Directorate of Forestry, based on satellite and geospatial data, and they actively disseminate such information to vulnerable communities. The gap here, however, is that such initiatives and practices have no firm legislative basis. The Forest Act, for example, does not require the promotion of DRR or community engagement of this sort.

Institutional responsibility for forest management and exploitation rests with the Directorate of Forestry within the MAWF. The Directorate is divided into two divisions: Forest Research, and Forest Management. The Forest Act of 2001 also established a Forestry Council, which is active and tasked with advising the Minister for Environment and Tourism on forestry matters generally.¹⁹² Regional Forestry Directorate offices are present throughout Namibia, sitting within the regional MAWF offices. Furthermore, several regions have more than one forestry office, which indicates that capacity and manpower gaps are less prevalent in this sector than in others. In Ojozondjupa region, for example, there are five separate forestry offices. However despite the relative breadth of cover for forestry officials, a major criticism leveled at the structure was that there is practically no decentralization for forestry matters, or often for the MAWF in general. All financial planning and control must come from Windhoek, with the regions unable to take even relatively minor decisions without seeking authorization from the national-level Directorate. For example, even relatively minor repairs for vehicles must be authorized in Windhoek. This greatly hampers the regional level's ability to implement programmes that would otherwise be able to support DRR. One official pointed out, millions of Namibian dollars are returned by the regional offices to Windhoek each year because decisions are not made in time to use the finances within the budgeting period.

Community Participation

While the Forest Act provides for the creation of state and regional forest reserves, the opportunity also exists for a community to establish a community forest.¹⁹³ There are an estimated 32 community forests that have been legally registered to date. The Minister is able to authorize "any body which the Minister believes represents the interests of the persons who have rights over that communal land and is willing and able to manage that communal land as a community forest" to establish one. This is done on a statutory basis through a notice in the Government Gazette. Part of the agreement with the Minister requires the community to develop a management plan and to establish a management authority. Use of the forest must be on an equal basis between all members of the relevant communal land.¹⁹⁴ The Minister can revoke community forest status for failure to comply with these conditions.

The MAWF and the government of Namibia have, with the help of partners, invested in making community forestry a viable industry, and have developed a comprehensive set of guidelines designed to assist stakeholders through each step of the process from application to implementation and monitoring.¹⁹⁵ Opportunities for community forests to develop their own by-laws and practices represent a positive example of integration between statutory and customary practices, and allow communities to tailor procedures to their own needs. Nonetheless, community forests have so far had mixed success. Studies have shown that forest management plans are sometimes prepared but not approved, and that communities' actual decision-making power over their resources is in practice limited by the interests of powerful

¹⁹² Article 3, *Ibid.*

¹⁹³ Article 15, GRN, Forest Act, No. 12 of 2001

¹⁹⁴ Article 15(2)(a) to (g), *Ibid.*

¹⁹⁵ MAWF, Directorate of Forestry, *Community Forestry Guidelines*, 2005

actors, including the Directorate of Forestry, traditional authorities, and village headmen.¹⁹⁶ Illegal foresters are just as active in community forests as elsewhere, and communities often lack the time and resources to seriously commit to schedules of patrols which are necessary to prevent such activities. Several interviewees also noted that revenue from legal harvesting is not enough of an incentive for a community to manage its own resources, and the administrative and bureaucratic burden of maintaining a community forest acts as a disincentive to establishing one.

All communities interviewed for this report were aware, albeit to differing extents, of the existence of the Forest Act. This is because of several reasons: firstly, communities depend heavily on forests for firewood, grazing of animals and other livelihoods activities, and as such have a direct interest in any measures that seek to regulate their access to and use of such resources. Secondly, in Zambezi and Kavango, forestry officials are engaged in community outreach activities and training. Thirdly, the prohibition of illegal harvesting in the Forest Act has been extensively publicized via Regional Councils and local and traditional authorities. It was also noted that communities often demonstrate much more awareness of laws that seek to limit their activities and impose punishments for contravention. What this shows is that knowledge of selected areas of the law does filter down to community level, and there is no reason why, given appropriate resources, this could not also apply to laws relating to DRR. Customary forestry practices are common in Namibia, and community groups pointed out various examples of the ways in which they regulate their own activities. For example, one community in Kavango emphasized the protections offered to a local variety of fruit tree, and the consequences for anyone who illegally harvested the fruit without the traditional authority's permission. Other communities demonstrated commitment to preventing illegal forestry, despite their relative lack of capacity to impact the local illegal trade, which raises the possibility that with local-level ownership and sufficient resources, incentivized through legislation and/or policy, significant efforts could be made to promote DRR for communities.

3.6.3 Rivers & Watercourses in Rural Areas

The regulatory framework governing rivers and watercourses in Namibia is based on the same legislation and policy documents as those for urban water discussed in section 3.5.5. A summary of the main points of interest in relation to legal frameworks for DRR in rural areas are set out below:

- The Water Act of 1956 is technically still in place while a date for implementation of the WRMA is established. It is however considered outdated and “above all, inconsistent with the country’s hydrologic reality.”¹⁹⁷ Significantly, it predicates the right to water on ownership of riparian land and as such excludes non-landowners from having adequate access to water.
- The WRMA is already being operationalized to a certain extent. Its provisions include the establishment of a Water Advisory Council as the nation’s supreme advisory authority in water resources, the establishment of units of water resources governance at the river-basin level, with broad-based stakeholder representation, the creation and regulation of Water Users’ Associations (WUAs) for the management of rural water supply services, and the formation and periodic review of a National Water Master Plan.
- The National Water and Sanitation Policy of 2008 sets out aims to ensure that essential water supply and sanitation services should be available and accessible to all Namibians at a cost which is affordable to the country as a whole and which promotes community based social development taking the role of women into special account.
- The Integrated Water Resources Management Plan of 2010 aims to place water sector decisions in an ‘integrated’ framework, where water allocations and management decisions consider the effects of each use on all users of the system, and on broader social and economic goals. The promotion of participation by local-level user groups is integral to this aim and is also referred to in the WRMA.

¹⁹⁶ Carsten Schusser, ‘Community Forestry: A Namibian Case Study’, in *European Tropical Forest Research Network News* 53, April 2012

¹⁹⁷ FAO Aquastat, *Namibia*, http://www.fao.org/nr/water/aquastat/countries_regions/namibia/index.stm, accessed on 20 September 2013

In terms of the institutions which hold responsibility for river and watercourse management in rural areas, the MAWF sets and oversees policy at the national level through the Directorate of Rural Water Supply, with regional Rural Water Supply Offices (under the overall authority of the MAWF) taking responsibility for the operation and maintenance of rural water supply infrastructure and the implementation of community-based management in rural areas. It also appears to be the case that Regional Councils have assumed some limited responsibility for water supply in rural areas.¹⁹⁸ Local authorities are concerned with water management in their own defined urban areas.

The WRMA also provides for the establishment of Basin Management Committees (BMCs), several of which were operative for some time prior to the development of the Act. For example, the BMC for the Kuiseb River Basin was formed in 2003, with its own water resources management plan being developed in 2007. It is expected that such BMCs will be officially authorized through a notice in the Gazette once the provisions of the WRMA are operational. Included in a long list of duties of BMCs are obligations to promote community participation in the protection, use, development, conservation, management and control of water resources, to promote community self-reliance including the recovery of costs for the operation and maintenance of waterworks, and to prepare a water resources plan which will feed into an overall Master Plan.¹⁹⁹ The establishment of BMCs is representative of a wider impetus for the decentralization of government functions in Namibia, especially relating to water resources management. This is a positive step in ensuring that local voices are heard. However the majority of river basins in Namibia currently have no BMC in place and only the Kuiseb BMC appears to have a management plan in place.²⁰⁰ Namibia's Integrated Water Resources Management Plan of 2011 consequently notes the need to increase the number and capacity of BMCs in order to improve equitable access to water.

Whilst certain structures and processes are being put in place which conform to the requirements of the WRMA, there is still a high degree of institutional uncertainty which has meant that investment decisions have been delayed. It also appears that the WRMA is currently being amended further. It was not possible to confirm exactly what amendments are being made, other than that the WRMA is being changed to reflect certain new institutional realities. Interviewees also pointed out that despite the high quality of the legislative and policy framework for the water sector (the Integrated Resources Management Plan and the National Sanitation Strategy were singled out for praise),²⁰¹ implementation is lacking. Of particular concern to interviewees was the fact that the Water Regulatory Board and Water Advisory Council (established under the WRMA) are not yet functional, leaving Namibia without effective and independent regulatory oversight.

Community Participation

The WRMA is notable for its emphasis on the participation of communities and local-level water users in the management of water resources. These provisions represent both the continuing promotion of a positive community-based management agenda in this sector as in the environment and forestry sectors, as well as the culmination of various inclusively-minded policy directions, such as the 2008 Water Supply and Sanitation Sector Policy, which contains a large amount of positive language promoting the involvement of communities. It states that “where possible, it should be left to the community itself to decide on internal priorities and the division of responsibilities. Community ownership and management of facilities should be adopted as the strategy of choice.”²⁰² Community members are considered “a complementary part of the administrative framework.”²⁰³ The Integrated Water Resources

¹⁹⁸ The Namibian, *Rural water supply to regional councils*,

http://www.namibian.com.na/indexx.php?archive_id=30240&page_type=archive_story_detail&page=4075, accessed on 20 September 2013

¹⁹⁹ Article 13, GRN, Water Resources Management Act 2004, No. 24 of 2004

²⁰⁰ Section 4.2, GRN, Integrated Water Resources Management Plan for Namibia, 2011

²⁰¹ Page 6, UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque*, 28 June 2012

²⁰² Section 2.5.2, GRN, Water Supply and Sanitation Sector Policy, 2008

²⁰³ Section 2.7.1, *Ibid.*

Management Plan of 2011 also notes the need to strengthen stakeholder capacity through increased community engagement in BMCs and Water Point Committees.²⁰⁴

The WRMA provides for the establishment of Water Point User Associations (WPUAs) and Local Water User Associations (Local WUAs).²⁰⁵ As with the BMCs, it is clear that despite the delay in enacting the WRMA, these entities are already in place in some areas and several of the communities visited for this report had active WPUAs. It appears that the impetus for this came out of the Community Based Management or Rural Water Supply Strategy, approved by Cabinet in 1997, and which originated in the 1993 Water Sector Policy. Indeed, by the end of 2003, 3,535 Water Point Committees and 2,217 Water Point Associations had already been established, with functions and powers similar to those under the WRMA.²⁰⁶ Article 16 of the WRMA allows “any group of rural households using a particular water point for their water supply needs [to] form a water point user association to maintain the water point and to manage water supply services at the water point.” A group of separate WPUAs are then allowed to join together to form a Local WUA to coordinate the activities and management of their water points and to protect the rural water supply scheme. The WPUAs and Local WUAs must elect a committee to manage their affairs.

The WRMA seeks to prohibit any use of water points or rural water supply schemes without the formation of a WPUA in accordance with the Act; failure to do so may result in the closure of the water point or supply scheme.²⁰⁷ WPUAs and Local WUAs must also be registered in accordance with Article 21 of the WRMA. The powers of WPUAs and Local WUAs include the ability to make rules for the use of the rural water supply scheme water point, the power to plan and control the use of communal land in the immediate vicinity of the water point in cooperation with the communal land board and the relevant traditional authority, and the power to prevent any person who does not comply with the rules or the constitution of a water point user association or local water user association from using such water point.²⁰⁸ The latter provision seems somewhat draconian given that preventing a community member from accessing a rural water point may effectively cut that person off from the water supply almost entirely. There appears to be no qualification to this power in the WRMA but it is possible that the required constitutions for WPUAs and Local WUAs would include more detailed provisions on this.

Overall, interviewees were highly positive about the tradition of community-based management in the water sector. Communities are encouraged to perform their own needs assessments prior to requesting the establishment of a water point, and government technical officials then participate in a feasibility study process to determine which water point technology should be used (generally either boreholes powered by hand pumps or, in areas where groundwater is deeper and/or demand is high, powered by windmills, diesel engines and solar installations, or pipeline schemes where groundwater is not suitable for consumption). Following this process the community is engaged in construction, is assisted to form committees and receives training on operation and management. Hand-over is done in two stages: firstly hand-over of operations and maintenance, with break-downs, repairs and replacements covered by the Directorate of Rural Water Supply, and secondly full hand-over. The hand-over process has been moderately successful, however many communities have fallen into arrears over their bills for NamWater, which itself is in a position where it cannot simply switch off supply to the communities in question due to its statutory obligation to supply water. The same situation has occurred with town councils and local authorities, as in practical terms NamWater is bound to continue its bulk supply despite many authorities being in arrears.

Several community groups interviewed for this report were aware of, and in some cases were members of, their local WPUAs. For those communities without WPUAs, interviewees generally noted the community’s concern over water provision and enthusiasm for the establishment of a community-managed water point. Representatives from the

²⁰⁴ Section 4.2, GRN, Integrated Water Resources Management Plan for Namibia, 2011

²⁰⁵ Article 16, GRN, Water Resources Management Act 2004, No. 24 of 2004

²⁰⁶ Chapter 5, Directorate of Rural Water Supply, MAWF, *10 Years: Directorate of Rural Water Supply 1993 - 2003*

²⁰⁷ Article 16(10), *Ibid.*

²⁰⁸ Article 19, *Ibid.*

Sikunga conservancy in Zambezi, for example, expressed concern at the delay in constructing three windmill-powered boreholes. Whilst the scheme has been authorized by the MET, delays over the tender for construction are ongoing. This raises an interesting point, even though the MET should not technically have responsibility for boreholes in rural communities (this is a matter for the Directorate of Rural Water Supply), the community representatives stated that their application was with the MET. It was not clear whether or not any WPUAs were legally registered (although to some extent this may be more of an academic point, given the status of the WRMA). For community members it seemed sufficient that the WPUA involved the traditional authority, indicating the importance of this institution in overseeing and authorizing many aspects of community life. Furthermore, one community group in the Rundu Rural East Constituency (Kavango region) indicated that their WPUA had far more dealings with a locally-based donor organization (SAREP, funded by USAID) than it did with the Government. However they were extremely clear on their obligations and activities as a WPUA including establishing processes for user monitoring, committee meetings, and the submission of a monthly report to SAREP outlining usage and activities. This is an interesting parallel to the Community DRMCs described in section 3.4, where it appeared that structures promoted under legislation can sometimes only be supported with the help of external donors. Whilst overcoming funding and capacity gaps in this way is commendable, placed in the context of the concerns over sustainability expressed by both interviewees and community groups, it is unclear how effective these measures will be in contributing to community-level DRR in the long-term.

Overall community awareness of the WPUA structure indicates some familiarity with legislation that can contribute to DRR, and by extension this legislation has contributed to supporting DRR at a community level by providing a structure for community activity and the management of resources. Community interviews also revealed that customary rules regarding water use were applied, and indeed in some cases were integrated into the 'rules' developed for use of community water points. Such rules included fishing restrictions in local rivers, anti-litter provisions, and requirements to keep grazing animals away from water points. The possible integration of customary rules and procedures into legal structures presents an excellent opportunity to ensure that community-level practices that promote or contribute to DRR can be preserved and enhanced within a formal structure.

3.7 DRR Education & Awareness

The Namibian Ministry of Education received the largest share of the national budget in 2012/13²⁰⁹, however no legal framework or provisions exist that specifically assign responsibility for DRR education and awareness in schools and/or communities. There are some notable projects in Namibia that either focus on, or include, DRR-related education and training but these are generally donor/NGO-led and funded and have no basis in legislation.

The policy framework for education in Namibia is somewhat sparse, with overall education policy being set and developed through a number of different documents, including the National Textbook Policy of 2008 and the School Cluster Policy of 2011. It appears that there is no single guiding policy covering the entirety of the education sector, and through which it may have been possible to mainstream DRR considerations. Statutory provision for education is however relatively well defined. Namibia's Education Act of 2001 is the major piece of legislation for the sector, and sets out various provisions regarding institutional arrangements for education, education development funding, the establishment and development of state and private schools, and adult education. There are, unsurprisingly, no specific considerations for DRR in the Act. Provisions regarding the national curriculum represent one means by which DRR may be mainstreamed into the education sector.²¹⁰ The Higher Education Act of 2003 has similar institutional and structural aims as the Education Act of 2001 (which is largely concerned with arrangements for the National Council for Higher Education, and arrangements for both public and private higher education institutions). It also contains no reference to DRR.

²⁰⁹ GRN, Fourth National Development Plan, 2012/13 to 2016/17

²¹⁰ Article 36, GRN, Education Act, No. 16 of 2001, states the Minister for Education, with the advice of the Advisory Council, determines the curricula and syllabuses for state schools.

The National Curriculum for Basic Education in Namibia includes laudable elements, including a curriculum designed to “provide the scientific knowledge and skills, and attitudes and values needed to ensure that the environment is respected and sustained; and to develop the ability to make environmentally wise choices in terms of family development, as well as in economic activities.”²¹¹ The provision for Environmental Studies in the curriculum represents an excellent opportunity to mainstream DRR into education. Feedback from interviewees at the Ministry of Education suggests that this has begun in earnest but that the focus remains on ensuring access to education during emergencies rather than on ensuring DRR is included in the school curriculum. Flooding can impact school attendance not only through physical barriers to access but also by affecting family’s financial circumstances, resulting in children having to work rather than attend school. Plans such as the Namibia National Education Contingency Plan (2009) have been developed to try to provide a framework for safe and continued access to education. The Plan also includes provisions for risk mapping for schools and simulation exercises but it is not clear to what extent these have been carried out.

The Namibian government and donor/NGO partners are nonetheless engaging in the promotion of emergency preparedness and DRR in schools. UNESCO, together with the Ministry of Education, developed a School Manual on Emergency Preparedness and Response in 2010 as a result of heavy flooding throughout the country, particularly in the north-eastern regions, with the manual being piloted in the Zambezi region and eventually rolled out to education officials nationwide. The Manual contains detail on both the need for mainstreaming DRR into school-level education as well as the active role that children can play in DRR, such as being able to identify disaster risks in their communities and taking an active role in risk mapping. It also suggests activities teachers may use to encourage child participation (such as appointing child focal persons for training and making early warning systems accessible to students), as well as promoting the involvement of the community (mainly by including parents in DRR education activities). The Manual, therefore, contains a large amount of extremely useful information that would help education officials and teachers provide DRR education in schools. However, whilst copies have been widely distributed and some teachers and school principals have been involved in training workshops, it appears that no monitoring and evaluation has been undertaken for the pilot study. As such it is impossible to say to what extent DRR is actually being provided for in schools as a result of the Manual.

The promotion of DRR training has been prioritized and integrated into the recent DRM legislation in Namibia. The DRMA requires the National DRMC to promote and support “the integration of disaster risk reduction training into tertiary education curricula and into school curricula,”²¹² whilst the DDRM’s responsibilities include making provisions for a national education, training and research strategy²¹³. The same responsibility extends to each level of the DRM structure, as DRM plans must contain provisions for “public education on risks to public safety and on disaster preparedness, response and recovery.”²¹⁴ The DDRM is currently in the process of developing a national strategy together with the Ministry of Education. Progress in integrating DRR education and public education into planning is less evident although interviews at the regional level suggested that awareness-raising activities are being carried out subject to limited funds and capacity. Often these activities are carried out on a sector specific basis (such as the Directorate of Forestry’s public training on forest fire prevention), vary in implementation from region to region, and are only loosely connected to the ‘formal’ DRM structure.

The Draft DRM Regulations reflect the need to prioritize DRR education. DRM Plans are required to include measures on “capacity building, training and education as a preparedness measure in disaster risk management.”²¹⁵ The Regulations also make specific provision for the establishment of training institutions that focus specifically on DRM, which may offer specialized DRM courses and provide for DRM as a specific component in professional

²¹¹ Section 2.2.5, Ministry of Education, GRN, *The National Curriculum for Basic Education*, 2010

²¹² Article 5(n), GRN, Disaster Risk Management Act, No. 10 of 2012

²¹³ Article 11(4)(h), *Ibid.*

²¹⁴ This applies to all relevant governmental institutions, (Article 22(1)(c), *Ibid.*), Regional DRMCs, (Article 24(1)(c), *Ibid.*), Settlement DRMCs (Article 26(1)(c), *Ibid.*) and local authorities (Article 28(1)(c), *Ibid.*).

²¹⁵ Regulation 2(1)(j), GRN, Draft Disaster Risk Management Regulations, 2013

courses, such as medicine, nursing, engineering, architecture and so on. The Prime Minister is given the authority to integrate DRM subjects into the education curriculum at primary and secondary levels.²¹⁶ The latter provisions are especially ambitious as they would necessitate the development and mainstreaming of appropriate curricula which would take a significant amount of resources, funding and training. As these Regulations are only in draft form, it is possible that these provisions will change significantly or even be removed completely, and as such it remains to be seen exactly what approach is taken to mainstreaming DRR into education. These legislative provisions for DRR and education (both adopted and proposed) reflect priorities established at the policy level. The National DRM Plan of 2011 contains a section on the education sector's responsibilities that include developing "the capacity of education authorities in preparing the education system, at all levels, to prevent, prepare for and respond to emergencies," and engaging "school administrators, staff, students and parents in ongoing school community disaster prevention activities."²¹⁷ Responsibilities also extend beyond the education sector. For example, the infrastructure development and housing sector is tasked with conducting "public education and awareness programmes to sensitize the community on structural fires and related issues."²¹⁸

In summary, Namibia is not lacking in legislative or policy provisions that both require and promote the integration of DRR into the educational curriculum and system, and it is notable that such provisions are covered on a statutory basis in the DRMA and the Draft DRM Regulations. However it is too soon to be able to assess the impact of these provisions. Whilst educational activities for DRR and public awareness are ongoing, and partners such as UNESCO have developed useful tools, these appear to be implemented according to the varying budgets and priorities of the regions and sectors rather than corresponding to a national plan. Gaps in both capacity and funding were noted by education officials in interviews as the major reasons for the lack of integration of DRR into the educational curriculum.

²¹⁶ Part 5, *Ibid.*

²¹⁷ Table 2, GRN, National Disaster Risk Management Plan, 2011

²¹⁸ Table 10, *Ibid.*



4: Conclusions & Observations

4.1. Good Practices & Examples

4.2. Gaps in the Legal Framework for DRR

4.3. Effectiveness of Community Level Implementation

4. Conclusions & Observations

Since gaining independence in 1990, Namibia has embarked on an ambitious development programme as set out in a series of National Development Plans. Significant progress has been made in reducing poverty, generating economic growth, promoting human rights, gender equality and equity, enhancing environmental and ecological sustainability, and combating the spread of HIV/AIDS. Even though natural hazards in Namibia continue to hamper progress towards these goals, the latest National Development Plan does not mention DRR as a concept, nor does it consider the specific hazards of drought or floods facing the country. The focus of the Plan is primarily on directing future economic growth whilst addressing major developmental issues such as extreme poverty.

It is clear from an analysis of the policy and law relevant to DRR in Namibia that the impact of natural hazards is taken seriously. Overall, there is a well-developed policy framework for DRR in Namibia, as well as a relatively substantial body of supporting legislation. However major gaps remain in the implementation of these laws and policies, as well as in the establishment of necessary institutional structures and capacities. The reasons for these gaps are manifold, but it is possible to draw some tentative conclusions based on the research and interviews carried out for this study. Firstly, DRR is still a relatively new concept, even if its broader aims have been present for some time. Also, as with many states that face seasonal disasters, Namibia has focussed its available capacity on disaster response and relief efforts. Whilst many interviewees noted that DRR is being increasingly discussed and planned for within the government and civil society in Namibia, it is yet to be fully adopted as a concept. This can be partly attributed to institutional custom as well as to a lack of resources to support and promote the integration of DRR planning into all levels of government. The DRMA and its associated secondary legislation demonstrate that a shift to a DRR-focused approach is being promoted at the highest level. However in order to implement the necessary paradigm shift, more finances must be allocated to DRR, to enable training and capacity-building throughout the country.

The development of the DRMA, and its basis in both the detailed policy framework of the National DRM Policy of 2009 and the National DRM Plan of 2011, is an extremely positive step in the promotion and institutionalization of DRM and DRR in Namibia. It is clear that the government is committed to tackling the impact of natural hazards through the implementation of a multi-hazard, multi-sector approach to preparation, response and recovery. The delegation of DRM responsibilities down to the community level, using the structure of the DRM committees, aims to ensure that regional and local-level actors are able to exert more control over DRM and DRR activities. Various legislative provisions provide a clear overview of roles and responsibilities as well as positive obligations, such as the development of DRM plans. Yet good policies and laws are worth little without effective implementation, and in Namibia the positive aims of the DRM-specific legal framework face challenges in realization due to a number of factors, including difficulties in the coordination and mainstreaming of DRR into other sectors, as well as gaps in capacity and financing for DRM and DRR activities. This means that in practice, DRM is still heavily focused on response activities and an effective institutional structure for DRM has yet to penetrate beyond the level of Regional Councils.

The following sections note some specific examples of good practices and gaps in the legal framework, and draw attention to the effectiveness of community level implementation.

4.1 Good Practices & Examples

New Disaster Risk Management Law & Structure: Namibia's promotion and legislative adoption of a clear institutional structure for DRM is an extremely positive development, as is the explicit promotion of DRR as a concept in the legislation. National and regional level structures are already in place and DRM and contingency planning is ongoing. Mention must also be made of the Draft DRM Regulations. Although they are yet to be finalized, it is likely that they will include provisions setting out issues of accountability and responsibility, which is to be

commended. In order to create an effective and implementable piece of legislation, it is recommended that these issues of accountability and responsibility are included in the Draft DRM Regulations. There is also an opportunity to use the Draft DRM Regulations to cover gaps in the existing framework: for example through clearer provisions relating to the role of women in DRR. Further improvements could also be made to the currently broad (and therefore ambiguous) drafting of some of the Draft DRMA Regulations.

National Level Coordination & Information Management System: An increasingly effective system is being put in place for coordination and information management. The DDRM acts as the government's national DRM agency, and takes most of the day-to-day responsibility for DRM in Namibia, with its main function being the coordination of stakeholders. Whilst the National DRMC is the highest-level body that drives policy and decision-making, the DDRM coordinates with both the NVAC and the National Focal Persons Forum. Although not specified in law or policy, the DDRM also oversees several sector-specific working groups which feed into the Directorate's decision-making process, and look at specific areas such as health, education, water and sanitation. The system could be strengthened, however, by providing a clearer definition of roles and responsibilities in legislation and policy, as well as clearer detail on the DRM planning process (which is relatively vague under current legislation), and by integrating the structure into a national EWS.

Environmental Impact Assessments: Although interviewees noted a relative lack of genuine public consultation and the difficulties in enforcing laws relating to EIA due to limited capacity, the overall legal framework relative to EIA is well-developed and presents opportunities to mainstream DRR considerations into the environmental planning process and to move beyond the general requirements of public participation to ensure genuine community involvement. This could be greatly strengthened by the development and adoption of more detailed EIA guidelines to ensure that projects take into account all relevant DRR considerations, and subject to funding, through the expansion of the currently over-stretched team responsible for the EIA process within the government.

Building Code Implementation & Enforcement in Windhoek: Even though outside of Windhoek the level of effective implementation and enforcement is weak, the fact that Namibia's capital city has such a robust system in place is a clear example of good practice, and one that could be rolled out to other regional centers subject to capacity and funding. The observance of relevant South African building codes means that a relatively well-developed system which considers matters such as seismic risk is incorporated into the Namibian legal framework, and whilst there are no Namibian codes in place that promote DRR, it is clear that DRR is considered in the planning and inspection processes. The process would however greatly benefit from having these considerations built in more explicitly, and from their adoption at a national level to ensure that over-arching standards are in place for regional and local authorities to implement.

Informal Settlements: Namibia's adoption of the Flexible Tenure Act, and its progressive attitude towards the upgrading and regularization of informal settlements, is a positive practice that directly contributes to DRR by bringing marginal communities within the formal legal framework, thereby ensuring that their living environments benefit from regulation. This could be further strengthened by the development of additional legislation to regulate DRR in informal settlements. There is no current solid legislative provision for either community participation or DRR in informal settlements. At present these issues are considered in practice, but implementation varies throughout Namibia (and is notably weaker outside of Windhoek) and the issues are only provided for in piecemeal in local-level policies and strategies, or not at all. It is recommended that the good practice developed by the municipal authorities of Windhoek should be shared with other urban centers where the population living in informal settlements without access to services is also growing and ensuring that their living environments benefit from regulation.

4.2 Gaps in the Legal Framework for DRR

Lack of Implementation of Law & Policy: Many examples exist of both policies and laws with commendable principles and aims, and which set out well-considered institutional structures and responsibilities. Yet it is clear that many of these aims and provisions remain unimplemented. Both the Namibian government and external commentators have drawn attention to this issue. Implementation depends to a great extent on the capacity and

finances of responsible institutions, which is presently lacking in many areas (see the section on ‘Funding of DRR Activities’ below for a fuller explanation).

Early Warning System & Risk Mapping: Whilst EWS and risk mapping activities are clearly ongoing in Namibia, they would benefit greatly from a relevant legislative or policy foundation. Several different sectors are engaged in the production of high quality EWS information; however collation and distribution activities are performed by various institutions with no clear delineation of responsibility. There is also no clear framework set out for the distribution of early warnings especially at the local level, and traditional EWS should be better integrated into the formal system. Clear responsibilities also need to be assigned for a comprehensive national risk mapping process which combines historical climate and geophysical data with livelihoods analysis, and which in turn will contribute to better targeted DRR programmes and response activities. It is recommended that as a minimum, the government of Namibia should firstly establish a legal basis for a national EWS and, secondly, clarify the roles and responsibilities of all actors involved in the EWS, ideally through legislation. This could also build on the existing good practice apparent in Namibia’s EWS, by integrating this into a truly national system which can be rolled out to regional and local levels where implementation is currently lacking.

Mainstreaming of DRR: Whilst the mainstreaming of DRR considerations into various government sectors has begun in earnest, progress has been slow. Some Ministries have not fully bought into the concept of DRR or DRM, with focal points retaining a traditional focus on disaster response. Training provided by organizations such as UNDP and the IFRC is sensitizing government stakeholders to the concepts and the need for institutional-level change but this has not resulted in any concrete outputs from the government ministries involved, and the process requires much more government commitment. It is recommended that a government agency such as the DDRM, subject to funding and capacity, develop a work-stream dedicated to DRR mainstreaming throughout the government.

Establishment of Local-level DRM Structures: Whilst Regional DRMCs have been established, this framework has yet to be extended to the local authority, settlement or village level as required under the DRMA. At present community level DRMCs are being initiated and developed through partners which raises questions as to their sustainability. The new national DRM structure will not be effective until it is properly extended to the local level with the appropriate integration of local communities and stakeholders, and it is recommended that this should be a priority action for the government of Namibia.

Funding of DRR activities: There is a lack of clarity over how DRM/DRR activities will be funded. Resources are currently almost exclusively devoted to disaster response efforts and there are no clear procedures for ensuring funds reach regional and community levels. Some positive drafting in this regard is included in existing and proposed legislation, which will hopefully provide a future framework for the budgeting process, but this could be expanded upon (perhaps in secondary rules and procedures). The government must ensure the implementation of a robust and transparent process for funding to extend beyond the national level and to benefit the communities who need it most. At present the lack of financing available for DRR activities is one of the key reasons for the current gaps in implementation.

Decentralization: Whilst the government has been implementing a process of decentralization for well over a decade, progress has been extremely slow and several regional-level interviewees expressed their frustration at the way that this can delay or frustrate decision-making at the regional level. This is most notable in individual sectors. For example, in the forestry sector, national-level delays in authorization can mean that regional authorities are unable to implement activities that could contribute to DRR in a timely manner. To facilitate the propagation of DRR throughout the country, it is recommended that the decentralization process is expedited and appropriate levels of authority are transferred to the regional level.

4.3 Effectiveness of Community Level Implementation

Good practices

The legal framework of Namibia contains many positive aspects regarding the promotion of community involvement in areas that can support DRR:

Community Level Structures and Participation in Legislation: The history and tradition of promoting community-based management of natural resources is an extremely positive practice that can contribute directly to DRR. This is reflected in legislation, including the Nature Conservation Amendment Act of 1996 for communal conservancies and the Water Resources Management Act of 2004 for WPUAs. This provides a foundation for greater community ownership of natural resources and the ability for communities to have a more direct impact on their own resilience to natural hazards.

Informal Settlements & Urban Planning in Windhoek: The regularization of informal settlements and the urban planning process in Windhoek promotes a community-centered approach which engages affected community members throughout the process, and ensures that local plans and services are adapted to community needs. This could be rolled out to other regional and local centers; albeit with a clearer focus on how informal structures can be best built or adapted to ensure an appropriate level of resilience.

Areas for improvement

Despite the positive language in legislation and policies noted above regarding community involvement, there is a notable lack of real involvement in processes, such as EIA and land use planning. Capacity constraints (see Section 4.2) are contributing to the lack of implementation of positive law, and this is especially apparent at the community level. There is also an over-reliance on communities' traditional representatives, such as traditional authorities and village headmen. The views of communities can often be overlooked by relying on their supposed representatives who may have vested interests in not objecting to developments.

There is also evidence to suggest that the various community-centered structures proposed under law, such as community conservancies and community forests, are not achieving their intended aims, due at least in part to ineffective support from local government. In some cases, NGOs and donors are effectively taking the role of the local government in supporting conservancy committees with capacity-building and management. Not only does this raise the question of how sustainable these structures are in the long-term, but the failure to follow through on the intended aims of the legislation puts at risk the ability of communities to contribute to their own local-level DRR.

Feedback from community focus groups revealed that there is limited awareness of relevant laws and legislation. Exceptions to this rule include laws that seek to prohibit and punish certain activities, such as the illegal harvesting of wood under the Forest Act of 2001. This reflects a wider concern within the community that the national and regional government is mainly focused on prohibiting and restricting their actions and this may explain why so many community members expressed fear over plans to register communal lands and land use rights with the Regional Councils. In order to fully engage communities in DRR, local governments must address this perception and engage not only with representatives from traditional authorities but also with community members more broadly.

Subject to the existing gaps in capacity and funding, it is recommended that the government of Namibia focus on how best to engage and utilize the resources of local communities to promote DRR and to implement the structures anticipated under the legal framework (namely the DRMA). This will require a concerted effort beginning at central level and extending all the way down to local officials, who must act as the key link between communities and the government. Support from the international community may play an important part in this process but it is important that this does not remove ownership from national stakeholders at all levels.



5. Annexes

Annex A: List of Persons & Groups Consulted

Annex B: Bibliography

Annex C: Project Terms of Reference

6. Annexes

Annex A List of Persons & Groups Consulted

Namibian Government – Windhoek

Office of the Prime Minister, Directorate of Disaster Risk Management

- Japhet Itenge, Director
- MacDonald Kadzatsa, Technical Advisor – Disaster Risk Reduction

Ministry of Agriculture, Water and Forestry

- Joseph Hailwa, Director, Directorate of Forestry
- Harald Koch, Director, Water Resources Management
- Paulus Shikongo, Senior Forest Officer, National Remote Sensing Centre, Directorate of Forestry
- Paulina Mufeti, Chief Hydrologist (Acting Head of Hydrology), Water Resources Management
- Jacobine Amutenya, Hydrologist, Water Resources Management
- Victoria Shifidi, Hydrologist, Water Resources Management

Ministry of Education

- Matthew Shimhopileni, Chief Inspector of Education, Directorate of Programmes and Quality Assurance
- Beans Uazembua Ngatjizeko, Director, Directorate of Adult Learning

Ministry of Environment and Tourism

- Dr. Sikambongo, Director, Environmental Affairs
- Dr. Hein van Gils, Environmental Assessment

Ministry of Gender and Child Welfare

- Theo Nambindo, Control Social Worker
- Simon Ilonga, Chief Development Planner
- Tommy Harris, Development Planner

Ministry of Regional and Local Government, Housing and Rural Development

- Florian Hangula-Kadedu, Head of Disaster Management Support Services Unit, Chief Control Officer
- Adri Snyman, Town Planner

National Planning Commission

- Sylvanus Nambala, National Development Activator, Division of Policy Coordination

City of Windhoek

Building Inspectorate

- Oloef Loots, Chief Building Inspector

Department of Planning, Urbanisation and Environment

- Gerhard de Klerk, Town Planner

Department of Sustainable Development

- Faniel Manda, Town Planner
-

Zambezi Region

Regional Council

- Regina Ndopu-Lubinda, Chief Regional Officer
- Jimmy Simataa, DRM Coordinator

Ministry of Agriculture, Water and Forestry

- Denis Sikambongo, Senior Forest Technician

Ministry of Environment and Tourism

- Ellen Simataa, Environmental Education Warden
- Morgan Saisai, Chief Control Warden

Ministry of Information and Communications Technology

- George Sanzila, Chief Information Officer

Ministry of Lands and Resettlement

- Charles Musiyalike, Acting Director

Namibian Red Cross

- Polly Helmut, Regional Manager, Namibian Red Cross
- Pablo [Suarez], Food Security Delegate, Spanish Red Cross

Integrated Rural Development and Nature Conservation

- Janet Motota, Director

Kavango Region

Regional Council

- Frans Kaunda, DRM Field Coordinator, Secretary to the Disaster Risk Management Committee

Traditional Authorities

- Marcus Kamburu, Secretary to the Headman, Mayana Community, Shimbuya Traditional Authority
- Dindungo Petrus, Headman, Tjova Community, Thimbukwa Traditional Authority

Ministry of Agriculture, Water and Forestry

- Timotheus Konrad Kakunyi, Senior Sanitation Officer, Directorate of Regional Water Supply

Ministry of Education

- Mr. A. Dikuua, Director

NamWater

- John Muremi, Area Manager

Namibian Red Cross

- Julieta Ferreira, Regional Manager, Namibian Red Cross
- Percias Masule, DRR Officer, Namibian Red Cross

United Nations

UNDP

- Nelson Zapaati, Programme Assistant, Energy & Environment
- Martha Naanda, Head, Energy & Environment

UNICEF

- Dr. Myo-Zin Nyunt, Chief, Maternal, Child Survival and Development Section

UNESCO

- Melanie Sato, Education Programme Specialist
- Catherine Wilcox, Consultant

UNFPA

- Cathline Neels, National Programme Officer, GBV and Humanitarian Response

NGOs, INGOs & Donor Agencies

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)

- Nadine Faschina, Technical Advisor

Namibian Red Cross

- Kuniberth Shamathe, National Coordinator for DRR

Namibian Association of Community Based Natural Resource Management Support Organizations (NACSO)

- Maxi Louis, Director

Others

University of Stellenbosch

- Professor Oliver Ruppel, Professor of Law

Insight Magazine

- Frederico Links, Editor

Rio Tinto (Rössing Uranium Limited)

- Bernadette Bock, Superintendent: Community Relations

Community Focus Groups

Four village communities were visited in the Zambezi and Kavango Regions:

- Community representatives of the Sikunga conservancy, located in Kabbe Constituency, Kalimbeza Area, Zambezi Region.
- A women's focus group in Kabbe Constituency, Lisikili Area, Zambezi Region.
- Community representatives of the Community Disaster Risk Management Committee from the Mayana Community, Rundu Rural East Constituency, Kavango Region.
- Community representatives of the Community Disaster Risk Management Committee from the Tjova Community, Mukwe Constituency, Kavango Region.

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C. Case Law

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Annex C Project Terms of Reference

Terms of Reference (TOR)

Services of an Individual

Through an Individual Contract (IC)

Project Title

Global Mainstreaming Initiative- Disaster Risk Reduction and Recovery Team, BCPR.

Consultant: Preparation of UNDP Namibia Country Case Study: Implementation of Laws and Regulations in Support of Disaster Risk Reduction.

B. Project Description

Background:

In January 2005, a UN Conference of over 4,000 representatives of governments, non-governmental organizations (NGOs), the Red Cross and Red Crescent, UN agencies, academic institutes and the private sector adopted the Hyogo Framework for Action 2005-2015 (HFA), consisting of a set of commitments and priorities to take action to reduce disaster risks. The first priority set out by the HFA was to “ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation,” notably through “policy, legislative and institutional frameworks for disaster risk reduction.”

In the years following, a significant amount of new legislation has been adopted in various parts of the world aimed at strengthening the focus on risk reduction. However, important gaps still remain, particularly with regard to follow-through at the community level. This has been confirmed in a number of reports prepared around the time of the mid-term review of the HFA and subsequently, including country case studies. Communities were found not to be well enough informed, engaged or resourced to take an active part in reducing risks, and it was noted that rules to deter risky behaviours (particularly in construction and land use) often go unenforced. While legislation is certainly not the only way to address some of these issues, it can be an important part of the puzzle.

In 2011, the state parties to the Geneva Conventions took up this issue at the International Conference of the Red Cross and Red Crescent. Their resolution encouraged states, with support from their National Red Cross and Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies (IFRC), the United Nations Development Programme (UNDP), and other relevant partners to review the existing legislative frameworks in light of the key gap areas identified in the IFRC report to the Conference, and to assess whether they adequately:

- make disaster risk reduction (DRR) a priority for community-level action;
- promote disaster risk mapping at the community level;

- promote communities' access to information about DRR;
- promote the involvement of communities, RCRC National Societies, other civil society and the private sector in DRR activities at the community level;
- allocate adequate funding for DRR activities at the community level;
- ensure that development planning adequately takes into account local variability in hazard profiles, exposure, and vulnerability and cost-benefit analysis;
- ensure full implementation of building codes, land use regulations and other legal incentives; and promote strong accountability for results in reducing disaster risks at the community level.

Purpose of the Country Case Study

The country case study has a dual purpose, i.e. (1) to provide insights and forward looking recommendations on law and disaster risk reduction in Namibia; and (2) to assist UNDP and IFRC in compiling a Global Synthesis Report on DRR and legislation.

C. Scope of Work

The country case study will build on a comprehensive national law desk survey of the main national laws, and some provincial or local laws where relevant and available. The desk survey findings will be then further analyzed by examining the laws' implementation and any gaps in the legal framework. This analysis of the effectiveness of legislation is to be based primarily on local knowledge and resources gained from an extended country visit of three weeks to conduct interviews with representatives of legislative authorities and institutions with DRR related mandates at national, sub-national and local levels.

Objectives and Deliverables

The objective of this assignment is to prepare a comprehensive study on the Implementation of Law and Regulations in Support of Disaster Risk Reduction in Namibia. The specific deliverables of the assignment include:

1. Analysis of findings from an existing UNDP National Law Desk Survey Report which provides an outline of the law and regulation in support of disaster risk reduction in Namibia, including the institutional framework. The consultant should conduct additional desk research as required. Then, based on independent research and advice from interviewees, analyse the relevant laws and regulations and their implementation at (a) national level, (b) within one state/province outside the capital, and (c) at the local government and community level within the same province.
2. Identification at national, state/provincial, local and community level:
 - a. Good Practices enabled or mandated by legislation that provide the basis for effective reduction of natural hazard risks, including good examples of wording/drafting, institutional structures, coordination and planning between sectors, and involvement of civil society and communities, and

b. Gaps in the legal, institutional and resources framework for DRR, and the views of stakeholders about what forms of regulation or implementation would be effective in closing these gaps, especially at the community level.

3. Preparation of a comprehensive Report on Implementation of Law and Regulations in Support of Disaster Risk Reduction in Namibia that is based on the analysis of findings of the desk survey, and series of interviews conducted.

Methodology and Scope

The National Law Desk Survey Report will be reviewed and amended as necessary. It will then be analyzed, and followed by in-country interviews with key stakeholders at national, state/provincial, local and community level, for the purpose of obtaining information on additional laws not included in the survey, and most importantly, gaining an understanding of issues in implementation of the laws and regulations, and any identified gaps. A detailed questionnaire to guide the interview is attached in Appendix: Research Questions for Country Case Studies. The table of contents for the report can be found in Appendix: Outline of Country Case Study Report.

The scope of legislation relevant to DRR at country level is much wider than disaster risk management or civil protection laws. In addition to the immediate prevention and mitigation measures often included in such laws, one of the main roles of legislation in support of DRR is establishing long-term risk reduction through public planning and regulation in areas relevant to the risks and hazards in the country, and in each state/province and local area within the country.

Therefore, for the purposes of this study, the terms ‘legislation’, ‘law’ and ‘regulation’ refer to laws, regulations, decrees or similar, as well as their implementing policies and guidelines, at all levels of government. However it is important in the presentation of the material to make a clear distinction between legislation which is binding and policies which are non-binding. Relevant laws may include matters such as building and construction regulation against fire and earthquake risks, regulation of emergency and transitional shelter, land use planning to avoid development on high risk land, fire regulations and services, management of rivers and forests to prevent flooding and landslides, improved communications infrastructure to support early warning systems in remote areas, or community involvement in information exchange in the identification and management of emerging hazards and risks.

These laws may be administered by a number of different government authorities, at national, provincial or local levels, and this requires clear institutional mandates, resources and coordination mechanisms which are also often defined in legislation. The extent to which these levels of government regulation are implemented, coordinated and resourced, impacts greatly at the community level and the research should have a clear focus on the effectiveness of implementation of legislation at all levels from national to local. It is important also to understand how communities perceive such regulation and its effects or effectiveness in assisting community level resilience against natural disasters. Communities may also have their own customary law or traditions concerning management and sharing of natural resources such as communal rivers and forests, or models/ standards of building, and these may be an important part of the community’s risk reduction strategies in the face of natural disasters.

Indicative Work Plan

Task 1: Review of the National Law Desk Survey Report and preparation for in-country visit (3 days)

Task 2: An extended country visit (15 days), during which the consultant will undertake meetings/interviews with key stakeholders based on the research questions set out in the terms of reference:

- a. at national level (government ministries and committees, national and international NGOs, international organizations, Red Cross and Red Crescent);
- b. with representatives from 2-3 communities outside the capital;
- c. with local government officials in the same communities;
- d. with state/provincial level officials and other organizations operating in the area, including civil society in the same communities.

Task 3: Drafting of Country Case Study Report (15 days)

Task 4: Finalizing report based on comments received (2 days)

D. Main Expected Outputs and Deliverables

#	Tasks	Deliverables/Outputs	Target Due Dates	Review and Approvals Required
a	0	Detailed work plan	02/09/2013	
b	1 & 2	Analysis of key findings from the review of the Desk Study.	05/09/2013	
c	3	Summary of findings from interviews at national, regional and community levels.	30/09/2013	
d	4	First Draft Report	14/10/2013	
e	1, 2, 3, 4	Final Country Case Study Report: Implementation of Law and Regulations in Support of Disaster Risk Reduction (45-55 pages not including annexes, structured according to the terms of reference). (September 30)	21/10/2013	

E. Institutional Arrangement

The assignment will be implemented under a short term consultancy arrangement with a clearly identified number of work days, work plan and deliverables. The consultant will report directly to the UNDP BCPR's Disaster & Governance Advisor and work under the technical guidance of the UNDP BCPR Regional Disaster Risk Reduction Advisor. An interim review with BCPR will be held midway through the consultancy and a subsequent review will be conducted of the first draft. The work with revisions based on these consultations will be completed no later than 21 October 2012

F. Duration of the Work

The duration of the consultancy will be over 35 working days and start on 2nd September 2013.

G. *Qualifications of the Successful Individual Contractor*

- A Master's degree or equivalent experience in one or more of the following:
 - law, obtained in the country to be studied, or in another state with a similar legal structure;
 - international and/or comparative law;
 - international development or other discipline relevant to disaster management or disaster risk reduction, such as public administration, governance and similar.
- A minimum of 7 years of professional experience in one or more of: legal practice; legal research; supporting governments in development, governance, disaster management or disaster risk reduction.
- Familiarity with institutional and legislative systems in Namibia.
- Excellent legal research and analytical skills, including a proven capacity to undertake research on national legislation and to analyse regulatory regimes.
- Demonstrated knowledge and understanding of institutional and legislative frameworks in the field of disaster risk management.
- Proven high-level policy skills and capacity to involve decision-makers, UN organizations and civil society.
- Demonstrated capacity to write clear and well-structured reports in accordance with agreed terms of reference and within specified time constraints.
- Ability to work independently towards reaching the expected objectives.
- Proven communication skills. Experience in interviewing stakeholders and/or in group facilitation or focus groups is desirable.
- Fluency in English with ability to convey ideas clearly in writing and orally is essential.

I. *Scope of Price Proposal and Schedule of Payments*

The applicants to this consultancy are required to submit a financial proposal together with their expression of interest. The financial proposal will consist of an "all inclusive" fee that indicates the total consultancy fee for the full preparation and completion of the product with a break-down by deliverables. The payment is subject to delivery of the agreed product/s as approved by the Supervisors and payments will be made in lump sum. The payment will be based only upon the certification and acceptance of the outputs by the relevant approval officer as stated in section D.

J. Recommended Presentation of Offer

The following minimum documents will be required when submitting an offer:

- a) **Letter of interest** using the template provided by UNDP;
- b) **Personal CV or P11**, indicating all past experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and at least three (3) professional references;
- c) **Brief description** of why the Candidate considers him/herself as the most suitable for the assignment;
- d) **“All inclusive” consultancy fee**

L. Approval

This ToR is approved by:

Signature _____

Function: DRT Disaster and Governance Advisor

Date of Signing _____