

PRESENTATION

Report on the Laws that Impede and or
Retard Development in Namibia: Access
to Housing and Urban Land

By: Ministry of Justice/Law Reform
And development Commission

OBJECTIVE OF THE REPORT Pg3

- To provide for a mechanism of assessing Namibia's developmental policy framework vis-a-vis the administrative and legal framework.
- To identify synergies between legislative and administrative interventions, as tools to enhance development, and to propose for the removal of impediments where they are found.
- To provide for a holistic approach, by understanding the entire value chain of a social problem and consolidating views to address such a problem, through the appropriate interventions.
- To assess laws that are relevant to housing and urban land, and to recommend for their review, repeal or development.

IMPORTANCE OF THE REPORT Pg4-5

- It identifies 8 important components of the housing value chain and creates a holistic understanding of the social problem.
- It consolidates various challenges identified and the recommendations made to address such challenges. In so doing, finds a bridge for high impact interventions.
- It identifies laws that need to be reviewed, amended or developed to address identified problems.
- The report may not be an end in itself but a means to the end in addressing the housing challenges in Namibia.

PROJECT PROCESSES UNDERTAKEN Pg6

- Understanding national goals on housing;
- Identifying and mapping out components of the Namibian housing value chain;
- Identifying and consolidating key recommendations made by various stakeholders on the housing challenges in Namibia;
- Consultations with stakeholders involved in the housing value chain;
- Listing key findings;
- Identifying high impact administrative and legislative interventions; and
- Assessing Namibia's legislative backdrop of laws relevant to housing.

CONSULTATIONS Pg127-128

OMA's Consulted (2016-2017)

Targeted Consultations (2020-2021)

- Ministry of Urban and Rural Development
- National Planning Commission
- National Housing Enterprises
- City of Windhoek
- Bank of Namibia
- Private Developers (Ongos Project Developers and Atenu Developments)

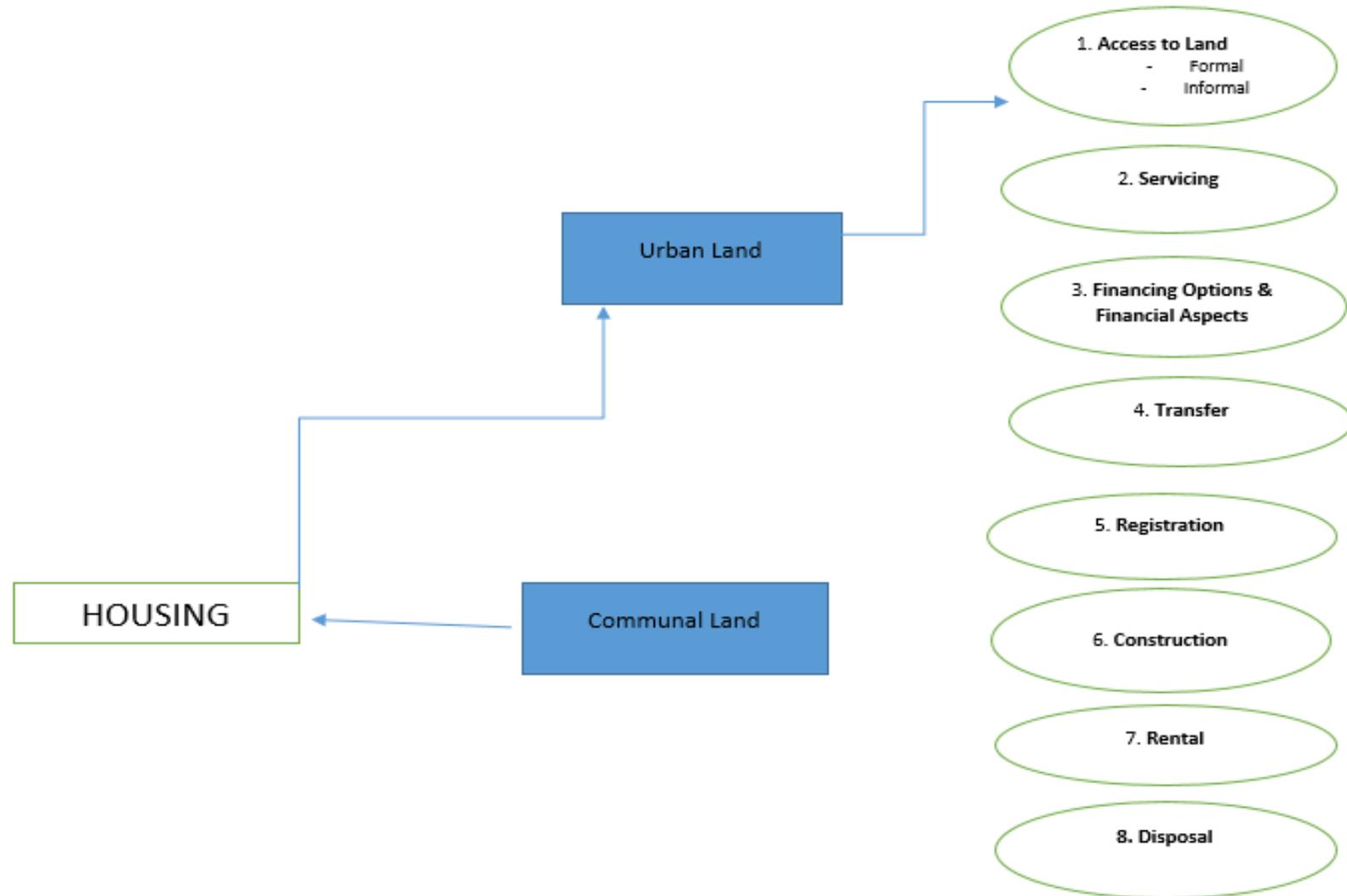
Other consultations attended

- 2nd National Land Conference (1 – 5 October 2018) Safari Hotel.
- Stakeholders Consultative meeting on Land and Housing delivery targets of the Harambee Prosperity Plan (19 May 2021) NIPAM.
- World Bank IFC Stakeholder Consultative Meeting on Affordable Housing (29 January 2020) AVANI Hotel.

COMPONENTS OF THE NAMIBIAN HOUSING VALUE CHAIN

VALUE CHAIN Pg12-14

The various challenges identified over the years, and the recommendations made regarding housing and urban land, were categorised under eight components



PREVIOUS RECOMMENDATIONS Pg20-61

Past recommendations made regarding the challenges of housing and urban land:

- Recommendations of the High-Level Panel on the Namibian Economy (HLPNE) Final Report (February 2020);
- Resolutions of the 2nd National Land Conference, 1st - 5th October 2018: Thematic Area: Urban Land Reform and related matters;
- Recommendations of the Special Cabinet Committee on Land and Related Matters. (Cabinet Decision No. 1st SP/17.02.15/001);
- Recommendations made at the Bank of Namibia 13th Annual Symposium (2011), on Housing in Namibia;
- Recommendations in IPPR Reports on Housing in Namibia and Housing Policy and Delivery; and
- Recommendations made by various institutions that were consulted on the project.

KEY FINDINGS OF THE REPORT Pg 62

- lack of a holistic approach in assessing, recommending, and implementing measures to address the housing problem, including a lack of a single strategy.
- Non-implementation or lack of coordinated implementation of past recommendations.
- Lack of desegregated data and information on the extent of certain challenges, the likely impact-of interventions, financial implications, and availability of funds to implement interventions.
- laws and administrative processes relevant to housing are scattered across pieces of legislation and institutions. *(fertile ground for silo approach and challenges with coordination of interventions)*
- Lack of clarity on the overall mandate for housing delivery, especially in a situation of a housing crisis. *This affects policy direction and may lead to conflicting policy positions.*
- The law is not necessarily the problem in most instances, but rather the implementation thereof or slow administrative processes (lack of capacity and human factor)
- Alternative Building Material (Not necessarily an issue of lack of provision but rather that of compliance)

STRATEGIC/HIGH IMPACT INTERVENTIONS Pg63-67

ACCESS TO LAND

Develop land delivery master plans for LA's.

- Each LA must develop a 20 Year Master Plan for land delivery
- LAs must develop strategies to formalise the various informal areas and should involve all stakeholders in this process

Develop a clear strategy on the formalization of Informal Areas and Prevention/Control of new or the expansion of existing Informal Areas.

- LAs must develop strategies to formalise, while curbing and preventing the expansion of informal areas

Fast track township establishment processes.

- All stakeholders involved in Town Establishment processes must come together to assess the problem in a holistic manner (BPR)

Introduce mechanism/automation in the land acquisition processes.

- Map out the various processes involved in land acquisition (**Deeming Provisions**)
- Develop templates for Village/Town and Municipal councils on the land acquisition process.

Targeted/Accelerated Land Delivery Projects.

- Develop a framework for undertaking targeted land and housing delivery projects by central government. (Exemptions)

SERVICING (WATER, ELECTRICITY & SEWERAGE)

Develop a Bulk Infrastructure Plan (Blueprint) and source of financing.

- LAs must develop long-term bulk infrastructure plans, considering the projected population growth and that must be reviewed at specific intervals.
- Integration of the bulk infrastructure plans with the national plans for water and electricity infrastructure and the spatial development plans.

Subsidize LA's for the provision of services (Funding Formula).

- Develop a funding formula for LAs for the provision of serviced land which must be sustainable and financed through Housing Levy/Targeted Corporate Social Responsibility (**Housing Levy**)

Capacity and assistance for LA's to enter into PPP's for the provision of land services.

- There is a need for capacity building at LAs on PPP arrangements.
- There is a need to develop a standardized approach to capacitating LAs to understand PPP arrangements

Develop a framework for the pre-allocation and sale of land before services.

- Make provision for the pre-allocation of land pre- surveying, services, registration to individuals, private developers and NHE

Develop sustainable and equitable plans for the provision of services for existing informal areas.

- There is a need for LAs to develop a mechanism of providing basic sanitation and power in a dignified, environmentally, and people-friendly manner, as a temporary measure in informal areas.

FINANCING OPTIONS & FINANCIAL ASPECTS

Enhance access to housing finance for individuals.

- There is a need for a multi-stakeholder approach to finding solutions to enhance access to housing finance

Access to housing in terms of end-user funding to purchase houses (Debt Rehabilitation & Housing finance for low - ultra low-income earners)

- There is a need to create avenues for access to housing finance for persons in the low to the ultra-low-income groups (**Financing Packages below thresholds, Tier 2 Banking Institutions**)

Introduce mechanisms to promote equity, fairness, and accountability in the housing market.

- Both public and private institutions that provide services or have specific responsibilities in the housing industry, must be guided by principles of equity, fairness, and accountability (**Valuations, Estate Agents, Project Financing, Corruption**)

Develop a housing subsidization framework for central government.

- Government support in the provision of housing for the indigent population must be structured and targeted
- There is a need to develop a clear framework for government subsidies in the provision of housing
- There is a need to assess the extent of the population needing government assistance, the extent of such assistance, when and where such assistance is needed

CONSTRUCTION

Develop various housing models catering to the various housing programs and needs.

- LAs should develop building regulations that accommodate various housing needs and that considers the socio-economic situations of communities.
- There is a need to review, develop and amend town planning schemes in a manner that considers the socio-economic dynamics of communities.

Develop the industry of local building material and standards for alternative building material.

- Develop and make clear the standards for alternative building materials, for housing construction
- Develop the industry of local building material to reduce cost and create employment

Establish an overarching and integrated program supporting self-help initiatives in communities, to construct their own houses.

- Central government should play a pivotal role in establishing avenues for subsidies, grants, technical, logistical, administrative support, and ensuring accountability for community self-help initiatives to construct houses.
- There is a need to establish a mechanism that identifies the beneficiaries or potential beneficiaries, that integrates the various subsidized programs aimed at providing housing in informal settlements, that monitors the progress, and ensures accountability

Enable the NHE to cater to a wider variety of housing needs.

- The NHE should be placed in a position to develop accommodation and housing units that cater to different needs, particularly in the ultra-low to low segments.
- NHE should be able to develop multi-story flats/high-rise residential units and units in informal areas

REGISTRATION

Review of all land acquisition and registration process.

- There is a need to streamline the land acquisition process by ensuring that administrative and legal procedures are simplified and mechanisms are established to fast track the process and create transparency.

Registration of land titles and PTO's in informal areas.

- There is a need to develop strategies to stop the expansion and establishment of informal settlements and the erecting of illegal structures.
- There is a need to assess the extent to which the Flexible Land Tenure Act has been implemented.

Empower individuals to launch registration of immovable property by themselves in the Deeds office.

- There is a need to empower members of the public to execute transfer and registration of their immovable property by themselves, through programs aimed at educating the public.

Implementation of the Flexible Land Tenure Act, 2012 (Act No. 4 of 2012).

- There is a need to assess the extent to which the Flexible Land Tenure Act has been implemented.

TRANSFER

Empower individuals to launch transfers of immovable property by themselves in the Deeds office.

- There is a need to empower members of the public to execute transfer and registration of their immovable property by themselves, through programs aimed at educating the public.

Develop a framework to waive transfer associated costs for programs aimed at formalizing informal settlements.

- There is a need to develop a framework to remove any financial burden on the beneficiaries that may arise through the process of formalization of informal areas.

RENTAL

Develop a Policy for Rent-to-Own.

- There is a need for policy guidance for a rent-to-own model to guide public bodies such as LAs, NHE, and government to provide for housing and to ensure that such a model has sufficient safeguards to protect the intended beneficiaries

Develop a framework for government-assisted rental programs.

- There is a need for a clear framework for government-assisted rental programs specially to make provision for person in the low-income earning categories or those in need of social housing and accommodation
- There is a need to broaden the government house/apartment rent program, improve its administration and streamline governments assistance to benefit more people or groups under this program, including student accommodation and social rental accommodation.
- The program must be managed in a manner that is self-sustaining, that a database of all beneficiaries is maintained and there is a process of entry and exit into the program to allow more people to benefit

Enhance the regulatory framework for the rental market.

- There is a need to review the Rent Ordinance 13 of 1977 in a manner that considers contextual understanding of the problem, and by undertaking in-depth situation analysis, collection, and assessment of data relevant to the rental market, and assessing the impact of market regulation and control.

DISPOSAL

Develop mechanisms to give preferential treatment to nationals in the buying of land/housing.

- There is a need to articulate the issue of restrictions on foreign ownership of immovable property in Namibia, in a policy and to carefully harmonize such a policy with the foreign/investment promotion policies and legal instruments, to balance the different interests.
- The policy position must be clear on whether foreign nationals should be barred from owning land or there should be some restrictions and preference given to nationals.
- The policy position should then be translated into law for it to be implemented.

Develop mechanisms for restricting the resale of certain land and housing under certain initiatives.

- Government and public bodies such as LAs and the NHE must develop programs for social housing and subsidized housing for persons who meet certain criteria and who qualify to benefit under such programs.
- Automated Mechanisms must be developed to ensure that beneficiaries do not end up selling off these land and houses within a specified period. This should enable the automatic flagging out of incidents or attempt to sell out property which are under this special program.

Develop mechanisms to give preference to first-time buyers.

- There is a need to afford first-time buyers preference to buy immovable property whenever a development is completed by LAs and NHE.
- Some developments, must be reserved for first-time buyers to participate or to compete with each other.

LAWS RECOMMENDED FOR REVIEW, AMENDMENT, DEVELOPMENT Pg88-125

| S/N | Law | Comment |
|-----|--|---|
| 1 | National Housing Development Act, 2000 (Act No. 28 of 2000) | Outdated |
| 2 | National Housing Enterprise Act, 1993 (Act No. 5 of 1993) | Review to enhance access to finance for low to ultra-low-income group, Expand and repurpose Mandate |
| 3 | Credit Agreements Act, 1980 (Act No. 75 of 1980) | Review to enhance access to housing finance & Debt Rehabilitation |
| 4 | Usury Act, 1968 (Act No. 73 of 1968) | Review to enhance access to housing finance & Interest Rates |
| 5 | Banking Institutions Act, 1998 (Act No. 2 of 1998) | Review to enhance access to housing finance & Conduct of Banks & Provision for Low to Ultra-low financing |
| 6 | Microlending Act, 2018 (Act No. 7 of 2018) | Enhance access to housing finance & Debt Rehabilitation |
| 7 | Insolvency Act 1936, (Act No. 24 of 1936) | Review to enhance access to housing finance & Debt Rehabilitation |
| 8 | Credit Bureau Regulations issued in terms of Section 59 read together with Section 3 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997) | Review to enhance access to housing finance & Debt Rehabilitation |
| 9 | Building Societies Act, 1986 (Act No. 2 of 1986) | Review to enhance access to housing finance & Conduct of Banks & Provision for Low to Ultra-low financing (Tier 2 Banking Institution) Empower and Protect Building Societies |
| 10 | Estate Agents Act, 1976 (Act No. 112 of 1976) | Review to better protect clients and curtail agents pushing price of housing units high. Promote transparency and Accountability |

LAWS RECOMMENDED FOR REVIEW, AMENDMENT, DEVELOPMENT Pg88-125

| S/N | Laws | Comment |
|-----|---|--|
| 11 | Local Authorities Act, 1992 (Act No. 23 of 1993) | Review to provide adequate provisions for the handling of land (acquisition and disposal) by LA's. Currently only about three sections in the Local Authorities Act deal with the handling of land (Sec 30, 63, and 64). |
| 12 | Regional Council Act, 1992 (Act No.20 of 1992) | Foreign Ownership. There may be a need for the issue to be first articulated in policy before being regulated. |
| 13 | Rent Ordinance, 1977 (Ordinance 13 of 1977) | Outdated |
| 14 | Squatters Proclamation AG, 1985 (Pro No. 21 of 1985) | Outdated, certain section already declared unconstitutional |
| 15 | Prescribed Rate of Interest, 1975 (Act No. 55 of 1975) | Review to enhance access to housing finance & Interest Rates |
| 16 | Price Control Act, 1964 (Act No. 25 of 1964) | Explore particularly on building material |
| 17 | Property Valuers Profession Act, 2012 (Act No. 7 of 2012) | Enforce to promote accountability and fairness in the property market, curtail collusion and artificial pricing |
| 18 | Decentralisation Enabling Act, 2000 (Act No. 33 of 2000) | Review to enhance and fast-track land delivery processes through quicker decision making |
| 19 | Public Procurement Act, 2015 (Act No. 15 of 2015) | Enhance to provide methods that are less cumbersome and faster for land & housing delivery |
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LAWS RECOMMENDED FOR REVIEW, AMENDMENT, DEVELOPMENT

| S/N | Laws | Comment |
|-----|---|---|
| 20 | Promulgate a law to provide for the exemption of Targeted/Accelerated Land Delivery Projects (i.e. Massive Urban Land Servicing Project) from compliance with specified legal or administrative provisions. | Currently, programs meant for accelerated results are still subject to normal processes |
| 21 | Promulgate provisions for the pre-allocation of un-serviced land. | Currently, land may not be registered in the Deeds office without the general plans and diagrams which have been approved by the Surveyor-General and only freehold title, sectional title, and leasehold titles can be registered in the Deeds Office. These titles are usually not issued on un-serviced land (subdivisions). |
| 22 | Review/develop Building Regulations, and Town Planning Scheme in a manner that takes into account the socio-economic dynamics of communities. Provide standards for affordable and safe ABM. | Currently some township schemes are not pro poor and current ABM standards make such materials to be more expensive than conventional materials (This also makes NHE housing models to be expensive) |
| 23 | Develop restrictive conditions for the resale of houses under government subsidised programmes to prevent speculation. | |
| 24 | Implement provisions enabling individuals to cause for transfer and registration of properties in the Deeds office. | Deeds Registries Act and came into force on 23 April 2021. (Case Challenge) |
| 25 | Develop provisions for the waiving of certain costs, related to transferring of land in the case of a community build together scheme. | Currently this schemes are subject to subdivision costs etc |
| 26 | Review the amendment introduced in the 2018 Local Authorities Amendment Act (Act No. 3 of 2018). | These amendments provide that the Minister may determine the method of sale of immovable property by LA,s “excluding a sale by auction, letting or hypothecation” These exclusions are rather limiting and LA’s tent to use auctions as the preferred method of sale. |

RECOMMENDATIONS

- Incorporate the recommendations on Strategic/High Impact Interventions into the Strategic Plan of the National Housing Policy.
- Appointing and assigning an agile team, who will be tasked with steering the implementation of the High Impact and Targeted Interventions identified in the report, in a manner that is systematic, coordinated, and holistic, with clear terms of reference.
- Initiate the reform of the listed laws, where such reform have not already been undertaken/completed.

END