



URBAN LAW DAY VIRTUAL DISCUSSION: CLIMATE- SMART URBAN PLANNING

| A REPORT

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PANELISTS/DISCUSSANTS

Gianluca Crispi,
Legal Officer, UNFCCC



Benjamin Ojoleck,
Associate Legal Officer, UN
Environment Programme



Prof. Anel du Plessis,
Research Chair in Cities, Law
and Environmental Sustainability
(CLES)



Anne Amin,
Legal Specialist, Policy
Legislation and Governance
Section, UN-HABITAT



Samuel Njuguna,
National Officer, Policy
Legislation and Governance
Section, UN-Habitat



Zione Ntaba,
Malawi High Court Judge



Felicity Owoses,
Legislative drafter, Namibia
Ministry of Justice



Shamiso Mtisi,
Deputy Director, Zimbabwe
Environmental Law Association



SUMMARY

Urban areas account for two-thirds of greenhouse gas emissions and energy consumption, making them major contributors to climate change. They also stand to be severely affected by the negative impacts associated with climate change. Already cities suffer from extreme weather events such as flooding, subsidence, storms, heat waves, water scarcity, droughts, and sea-level rise among other climate change effects.

Recognizing the magnitude of the climate crisis facing urban areas, and particularly in the Global South, the **9th Urban Law Day** acted upon the call of the New Urban Agenda 14. c (“building urban resilience, by reducing disaster risks and by mitigating and adapting to climate change”) and SDG 13 (“integrate climate change measures into national policies, strategies and planning”) by exploring the concept of climate-smart urban planning and discussing the strategies and tools that can address the effects of climate change in urban settings and reduce the GHG emissions of urban dwellers. The event specifically considered the entry points for city involvement in climate change action and looked at what action is required at different levels to create legal and policy frameworks that protect and safeguard the world’s natural heritage, improve air quality and municipal waste management, mitigate, and adapt to climate change and improve resilience to disasters (SDG Goal 11).

With over 50 multidisciplinary professionals in attendance, presenters and participants together had the opportunity to examine the relationships between the environment, climate change and urban development processes which underpin climate-smart urban planning. The Urban Law Day presentations especially focused on climate-smart urban planning legislation and the [Law and Climate Change Toolkit](#) as a tool to build enabling legislative frameworks for effective domestic implementation of the Paris Agreement. Legal professionals and researchers from the South African region presented on the achievements and challenges their countries face in applying principles of climate smart planning through urban law, policy and governance. These discussions promoted learning, knowledge sharing and exchange of experiences which will better inform the creation of “climate friendly cities” that are more resilient and sustainable.

INTRODUCTION



Dr. Maria Mousmouti (IALS)

Urban Law Day is a forum for discussion between practitioners, academics and anyone interested in urban law issues. The partnership behind this event between UN Habitat and the Institute of Advanced Legal Studies (University of London) originated with the mission of exploring the niche issues of urban law and examining the quality of urban legislation in regions around the world. The subject of this year's Urban Law Day focuses on the very topical issue of climate change in the urban context and considers **how can improved policy, legislation and governance make urban plans more responsive and sensitive to climate change issues?**

OPENING REMARKS



Dr. Constantin Stefanou (IALS)

This marks the 9th Urban Law Day, and the subject matter of today's forum reflects a shift in approaching the issue of urban law. Until now, Urban Law Day has focused on the superstructure of urban law and promoting the recognition of urban law as something closer to a sub-discipline amongst academic and professional circles. Today, however, we are not focusing on general problems of urban law, but on the specifics. By now, we recognize the importance of urban law and urgency of climate change. And so, we are not just looking at climate change, we are looking at smart urban planning for climate change. This is the way forward, from the general to the specific.



Anne Amin (UN-Habitat)

Reflecting on one of UN Habitat's key priorities for 2022-2023, "Cities and Climate Change", this year's Urban Law Day reflects on climate change as a key parameter for urban planning. Cities stand to be severely affected by climate change and the brunt of its adverse impacts will be borne by the most vulnerable and poorest residents. Urban law specifically has an important role to play in climate action since it defines urban form, determines where infrastructure and basic services can be built, lays out rules for planning and decision making; and sets the context within which local governments are expected to fulfil their mandate and react to emerging challenges. In many countries, however, the laws, institutions, and policies governing urban planning restrict cities' capacities to adapt to the changing climate and promote urban forms that increase GHG emissions. The 9th Urban Law Day provides an opportunity to identify the interrelationships between planning and climate change, as well as explore the entry points for city involvement in climate change action through climate-smart planning.



Climate Change Goals and Links with Urban Planning – *Gianluca Crispi (UNFCCC)*

The landmark Paris Agreement (2016) created procedural obligations for States Parties to adopt and communicate their Nationally Determined Contributions (NDCs) to collectively keep global temperature increase well below two degrees Celsius. However, the content of NDCs is self-imposed and not legally binding at the international level. As such, the success the Paris Agreement will largely depend on States' ability to effectively implement their NDC commitments. Legislative approaches to do so include reforming extant legal frameworks which privilege carbon-dependent development through the introduction of both overarching climate change legislation as well as the incorporation of climate considerations into sectorial laws. Country-to-country sharing of approaches can complement a "bottom-up" approach to legislative interventions on climate change issues that considers the specificities of different legal systems and cultures. Capacity building for legal drafters also represents an essential step towards an enabling environment for climate-sensitive legislation. .



The Law and Climate Change Toolkit – *Benjamin Ojoleck (UN Environment Programme)*

Since 2016, the Law and Climate Change Toolkit (LCCTK) has served as a global online resource to help countries put in place the legal frameworks necessary for effective implementation of Paris Agreement and their NDCs. Considering that law related to climate change is fundamentally interdisciplinary, four modules of the Toolkit have been developed focusing on distinct legal areas affecting matters related to climate change: energy, agriculture, urban planning, and dedicated climate law. The guided assessment approach of the modules enables users to identify areas of law that can be strengthened vis-a-vis the Paris Agreement and NDCs. Moreover, the Toolkit provides examples of legal provisions from jurisdictions around the world which have filled the legislative gaps identified by the Toolkit's legal assessment. The body of climate change-related legislation inventoried on the Toolkit provides policy makers, lobbyists, and legislative drafters an opportunity to evaluate various legal provisions and consider what type of measure would function best in their national context. The LCCTK, as an ongoing project situated at the centre of an expanding network of multidisciplinary partners, will continue to evolve to support legislative development in a greater variety of sectors such as transport, water, industrial processes, health, and climate finance..



Urban Law Module, Law and Climate Change Toolkit – *Samuel Njuguna (UN-Habitat)*

The Urban Law Module of the Law and Climate Change Toolkit, developed by UN-Habitat in partnership with UNEP, UNFCCC, and the Commonwealth Secretariat, aims to facilitate regular assessments of the adequacy and effectiveness of urban law frameworks in responding to climate change. The methodology of the Module necessitates a preliminary baseline mapping of the relevant laws to be assessed, including the Constitution, primary, secondary, and subsidiary legislation as well as urban and territorial plans and any applicable international legal instruments. The identified legal framework is then evaluated using the Module's five assessment areas: Governance Frameworks for Urban and Territorial Planning; Urban and Territorial Planning; Urban Planning and Design for Adaptation; Urban Planning and Design for Mitigation; and Economic and Non-Economic Instruments for Climate Friendly Urban Planning. In Malawi, Namibia, and Zimbabwe, this methodology has been applied in ongoing projects promoting resilient and low carbon urban development.

PANEL

Dr. Maria Mousmouti (moderator)

- From your assessments, how well does climate change legislation fare in your jurisdictions?
- What are the lessons learnt from your assessments and what would you do differently if you had to do it again?



What is Climate Smart Urban Planning? – Professor Anel du Plessis (CLES)

International climate change law and policy has been gravitating towards subnational authorities and their role in climate mitigation and adaptation. In support of this global turn towards local governance, the research on Cities, Law and Environmental Sustainability (CLES) in South African countries (Zimbabwe, Botswana, Namibia, Republic of South Africa) seeks to examine national legislation related to climate change and its implications for the involvement of cities in effective climate governance. Following local law and policy developments in the cities of Durban, Cape Town, Harare, Bulawayo, Swakopmund, Windhoek, Francistown, and Gaborone since 2020, the research found, *inter alia*, that the legal recognition and constitutional authority given to municipalities correlates to the effectiveness of climate governance at the local level. Of the four countries assessed, local government is only formally acknowledged in the constitutions of the Republic of South Africa (RSA) and Zimbabwe, and only in the former is local government explicitly recognized as a third sphere of governance. As such, all the cities studied except Cape Town and Durban have limited law and policy action directed specifically at climate change. RSA cities, for example, can pass bylaws on a range of climate-related matters and have a dedicated department in the city that is responsible for climate governance; in Zimbabwe, a national act must confer law-making power to city-level authorities and in Botswana the government remains highly centralized with almost no powers allocated to subnational authorities.



Action on Climate Change in Malawi – Zion Ntuba (Malawi High Court Judge)

There is a strong legal and policy framework in Malawi with recent legislation, such the Land Act (2016), taking climate change issues into account. However, an LCCTK assessment revealed that coordinated multilevel governance which ensures the participation of all stakeholders is not sufficiently grounded in law to ensure compliance with climate change measures. Data sharing is also critical; Malawi legislation provides a legal basis for access to information (Access to Information Act, 2020), however, in practice data collection on climate change issues is limited. Furthermore, incentives promoting climate change innovation in Malawi were observed to come primarily from the private sector or civil society rather than through the government's law and policy framework. Using findings such as these, the LCCTK can serve as a tool to justify and advocate prioritizing climate change response in urban areas. However, the LCCTK would be improved by considering the context and nuances of the assessed country to more accurately determine the extent to which policy and legislation is being implemented.



Action on Climate Change in Namibia – *Felicity Owoses (Namibia Ministry of Justice)*

Action on climate change in Namibia is primarily enforced through the Namibian government's legal obligation to develop policies that improve the standard of living of the Namibian people, such as the Climate Change Policy of 2011. However, the Namibian Constitution does not recognise explicit rights to the environment, housing, water, or access to information. As a result, individual and community access to the courts for redress of grievance is hindered when, for example, environmental or public participation standards are not upheld. Regarding multilevel governance, acts of Parliament empower subnational authorities to respond to climate change by apportioning them extensive local governance and spatial planning responsibilities. However, such measures are undermined by insufficient budget allocations to subnational government. Weak financial and human resource capacity also limits the scope of data collected and shared by the national statistic system, and there is no central hub where environmental information is maintained. Due to the detailed nature of the LCCTK assessment, efficiently communicating these and other findings to stakeholders and the public at large may be difficult, as preliminarily observed in Namibia's LCCTK national validation workshop.



Action on Climate Change in Zimbabwe – *Shamiso Mtisi (Zimbabwe Environmental Law Association)*

There is a multiplicity of distinct pieces of legislation related to environmental management in Zimbabwe. Both the Constitution and the Environmental Management Act (EMA) enshrine environmental rights, albeit without specifically mentioning climate change. Likewise, urban planning laws refer to environmental management standards but without making provisions explicitly related to climate change. EMA regulations from the 1990s governing ozone depleting equipment and substances, form the basis of climate change mitigation in Zimbabwe and establish the Climate Change Management Office ("Ozone Office"). Climate change adaptation measures, on the other hand, are not provided for in urban planning law and must be extrapolated from other legal sources such as laws on natural resources or agriculture. Environmental impact assessment (EIA) legislation in Zimbabwe is highly controversial primarily due to a lack of adequate community consultation. Moreover, energy-related investments are marked by a lack of transparency and accountability, as seen in a PPP waste management and energy production project in the city of Harare.

QUESTION & ANSWER DISCUSSION

Q: Does the LCCTK offer the possibility to show evidence of localization of national legislation in city level action plans? Or would this fit better in an ancillary resource?

A: The Toolkit is generally used at the national level, but also has been used successfully in the past to assess sub-national legislation. Given that the Toolkit is a non-prescriptive resource used to offer ideas on how best to strengthen legislation by identifying gaps in addressed topics, it can also offer insight at the sub-national or city level into topics related to climate change that may be addressed in city plans, identifying similar gaps or topics that may have been left out of plans in the past to strengthen other instruments. A strong and robust legal framework is of paramount importance to addressing issues around climate change.

Q: Does the Urban Law Module consider urban migration, informal settlements, or disaster displacement as a factor for reference?

A: Yes, these issues are considered in the Module, namely the section on Urban Planning and Design for Adaptation. Adaptation is all about cushioning ourselves from the impacts of climate change. The module encourages evidence-based vulnerability assessments of people inhabiting disaster-prone areas. The identification of vulnerable people and places can then be addressed through the most appropriate adaptation option such as public land buffers, coastal and riparian setbacks, sea walls, etc. This might also include planned relocations, which must follow international human rights law guidelines such as ensuring that relocated persons are not exposed to new risks and that new or existing livelihoods are restored. Informal settlement upgrading and land regularization are also common adaptation options in urban areas. Security of tenure is also an important dimension to not only guarantee full land rights for all but also to ensure that those deprived of tenure rights are not displaced and move to even more risky zones.

Q: Does the LCCTK assess whether NDC's (or national climate laws in general) are currently building on existing city climate and resilience plans and actions? Are states aligning their NDCs with existing urban laws, policy, strategies etc.?

A: The Urban Law Module has a local aspect. Through the Urban and Territorial Planning section, we look at the consistency of plans across the planning hierarchies because this is crucial for coherence and coordination. The same mechanisms that promote consistency between national and regional plans may also be applicable to consistency between national and local plans. These include requiring that urban plans be compatible with the directions of the national plan; urban plans receive a non-binding opinion of the national authority that develops national plans; or urban plans be approved by the national authority that developed the national plan. This applies the same way for climate change laws made at the national level as well as city level climate plans and strategies. Thus, the development of NDCs and set of national priorities should entail the collaboration of the other levels of governments, especially cities.

Q: What are some of the gaps or deficiencies you have identified with regards to the adoption of "climate-smart" technologies considering the research conducted?

A: There are some interesting water technologies addressing water scarcity being developed in Namibia which are relevant to climate adaptation. There is also a sea viewer technology in use by the city of Cape Town which checks on sea level rise. However, such developments are largely ad hoc since most of the larger technologies that one would need depend on national infrastructure, which is still problematic across the Southern African region.

KEY LESSONS: CLIMATE-SMART URBAN PLANNING

Both overarching climate legislation as well as the mainstreaming of climate considerations into sectorial laws are necessary to promote climate smart urban planning.

Climate change is an all-encompassing phenomenon, the impacts of which are felt in all sectors of society. As such, it cannot be addressed in one single climate change legislation. Overarching climate change laws provide a critical source of climate action by establishing institutional mechanisms for coordination amongst different ministries and play a vital role in monitoring GHG emissions across different sectors. Climate-responsive sectoral legislation in areas such as urban planning, energy, and agriculture, ensure that sector-specific climate change considerations are given a legal basis. Since urban planning is situated at the intersection of several distinct legal regimes, both overarching and sectoral climate change legislation is needed to cover the gaps in climate smart urban plans.



Legislative interventions on climate change issues best develop through a bottom-up approach that accommodates the specificities of different legal and cultural contexts and utilizes country-to-country knowledge sharing tools. There is no "one-size-fits-all" legal solution to climate smart urban planning. Ready-made templates from other jurisdictions, notably in the Global North, to support law making and review in low-income countries rarely work. Instead, the process of reforming and developing climate-smart legal frameworks should make use of inter-country knowledge sharing but remain defined by national ownership and broad stakeholder participation. Moreover, legal assessment tools, such as the LCCTK, should take the context and nuances of the assessed country into account to foster a localized process of legislative strengthening.

Using the Urban Law Module of the Law and Climate Change Toolkit, countries can regularly assess and reform their urban law regimes to better achieve their Nationally Determined Contributions (NDCs) under the Paris Agreement. Policy makers, legislative drafters and technical advisors on climate change can utilise the two-tier methodology (baseline mapping and legal assessment) developed under the Urban Law Module of the LCCTK to

identify opportunities to incorporate climate responsiveness into urban law frameworks. The Module has identified key issues which are essential to promoting climate smart urban planning: **multi-level governance** characterized by intergovernmental and intra-governmental cooperation, participation of urban stakeholders, data collection, sharing and dissemination and local authorities with urban planning mandates; **urban and territorial planning** which prescribes urban land classifications and urban growth strategies, identifies locations safe from climate change, sets urban planning horizons and harmonizes urban plans with national territorial plans; **adaptation measures** which identify and climate risks and vulnerable areas, prioritize adaptation measures to address vulnerabilities, enable the adaption of slums and other vulnerable settlements, facilitate planned relocations from areas at risk of climate change, and recognize diverse forms of land tenure; **mitigation measures** such as assessing the GHG emissions of urban plans, promoting low-carbon urban forms, providing green spaces for environmental and climate services, incentivizing energy saving in building design, and requiring compliance with climate mitigation measures when giving development approvals; and **economic and non-economic instruments** which enhance municipal finance through different income streams, focus on public finance and drive behavioural change through incentives and disincentives.

Multi-level governance structures which foster horizontal and vertical coordination and data sharing on climate change issues are crucial to drive climate action in urban planning and land management. In the context of climate change, multi-level governance is essential to state and non-state actors working together to assist urban areas enhance their resilience and grow in climate-friendly ways. Country experience affirmed that coordination between national and subnational governments must be grounded in law; and intersectoral coordination should ensure that urban planning authorities collaborate with ministries involved in sectors affected by climate change such as infrastructure, housing, finance, energy, agriculture, transport, land and environment. Reforming the mandate of national statistics agencies to include data collection on climate change issues in urban areas can ensure that urban authorities have sufficient information to develop climate smart plans. Moreover, the public should have a constitutional right of access to information. UN-Habitat's newly published guide on [Multi-Level Governance for Effective Climate Action in the Global South](#) can serve as a normative tool in comprehensively strengthening governance frameworks on climate response.

Law and governance frameworks need to empower local decision-makers with sufficient legal authority, financial autonomy, and human resource capacity to address climate change at the city level. The principle of subsidiarity stipulates that authority and resources should be at the level of governance that is closest to the people most affected by decisions to ensure effective, appropriate, and cost-effective delivery. Accordingly, governance frameworks must be sufficiently decentralised to ensure that national climate change policies can be implemented by urban authorities at the local level. National constitutions should recognize the local governance while territorial planning legislation should vest local governments with the mandate for urban planning. Country experience demonstrates that legal provisions empowering subnational government must be complemented with the necessary financial and budgeting measures to give effect to their mandate and facilitate localized climate action.

