

AN OVERVIEW OF COMMUNAL LAND TENURE IN NAMIBIA: UNLOCKING ITS ECONOMIC POTENTIAL

John Mendelsohn, Louise Shixwameni and Uda Nakamhela

Corresponding author: John Mendelsohn (Research & Information Services of Namibia (RAISON), PO Box 1405, Windhoek, Namibia; john@raison.com.na)

ABSTRACT

Tenure systems in communal areas of Namibia, which affect some 38% of the country's surface and half its citizens, provide fewer opportunities for economic development than elsewhere. Incentives for investment are limited by several factors, including complex procedures to acquire commercial land rights; land rights not being tradable; most residents not being able to use their land for commercial enterprises; and land rights not being suitable for collateral to generate capital. In addition, commonage land used by local residents has been appropriated to a large extent because 'ownership' of commonages is vested in the state and traditional authorities. This has resulted in the loss of resources which are important to the livelihoods of many of the poorest people in Namibia. Economic opportunities are further constrained by poor soils and climatic conditions for agriculture, limited infrastructure, and inadequate access to banking and other services.

Substantial opportunities for economic development lie in the use of individual property rights as investments and financial instruments if land rights can be traded, sub-divided, assigned and used for commercial enterprises if the owners so wish. The provision of secure tenure over commonage land rights would help safeguard their resources for local residents. The implementation of these and other recommendations will help develop the current customary, subsistence economy into one that allows communal land residents to participate in the economy of the 21st century.

CONTENTS

Introduction	2
Communal land and livelihoods	3
Economic conditions and options	4
Rights over commonage land and resources	7
Reforming tenure and land values	10
Conclusion	14
References	15

INTRODUCTION¹

Namibia has two main land tenure systems: freehold in declared urban areas and so-called commercial farms, and customary tenure on communal land, all of which is rural. Commercial farms were originally reserved for private ownership by white people during the colonial period, while homelands or tribal lands for non-whites were re-designated as communal land at Independence in 1990. Nowadays, about half of Namibians live on communal land and the other half on freehold property, largely in towns.

Land reform has received much attention since 1990, but most of this has been devoted to debate and measures to reallocate land from whites to previously disadvantaged Namibians. Tenure and land reform in communal areas has received little attention, by contrast.

Over the past 22 years, the Government of Namibia has aimed to reduce poverty and increase the production of agricultural and non-agricultural enterprises. Here, the goals have been focused largely on communal land where the potential for increased primary production has been assumed to be promising and where the majority of poor Namibians live. However, two fundamental constraints that stem from communal tenure have hampered progress towards achieving these aims. The first is that communal land rights have minimal economic value or use as financial instruments. Secondly, the absence of rights over commonage land has resulted in the loss of resources for local residents because large areas have been allocated for the use of wealthier people who normally live elsewhere. Much of this loss has occurred because the state and traditional authorities have been able to privatise commonage land at their discretion. The appropriation by wealthy whites of 'native lands' into large farms during the colonial period has been continued, but is nowadays by wealthy non-whites.

All these constraints place residents who depend upon communal land for their livelihoods at a severe disadvantage compared to other Namibians who enjoy tenure that is largely managed in their personal interests and those of the community in which they live. This leaves Namibia with a dual economy, now divided by where people live rather than colour.

Despite these realities, it is noteworthy to recall the noble intentions recorded in Article 16 of the Constitution of the Republic of Namibia which states "All persons shall have the right in *any* part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees."

This paper reviews circumstances in communal areas, particularly those pertaining to tenure and economic opportunities. Comments are then offered on aspects that constrain investments and the economic and financial values of land rights. Challenges facing commonages are explored, with

¹ This paper draws on parts of a review of communal land tenure prepared by JM Mendelsohn, U Nakamhela, W Werner and BJ Jones in 2011 for the Communal Land Support project of the Millennium Challenge Account.

particular reference to the loss of resources for local residents. Finally, recommendations are made to improve the economic, financial and resource value of communal land in the interests of its residents and the country as a whole.

COMMUNAL LAND AND LIVELIHOODS

About 38% of Namibia is designated communal land. Much of the remaining land is allocated for freehold farmland (44%), national parks (17%) and declared urban areas (1%). Some 1.1 million people live in communal areas. This is just over half the total population; whilst the remaining people are in urban areas (42%) and on freehold farms (6%). Matters pertaining to tenure in communal areas thus concern high proportions of Namibia’s land and people.

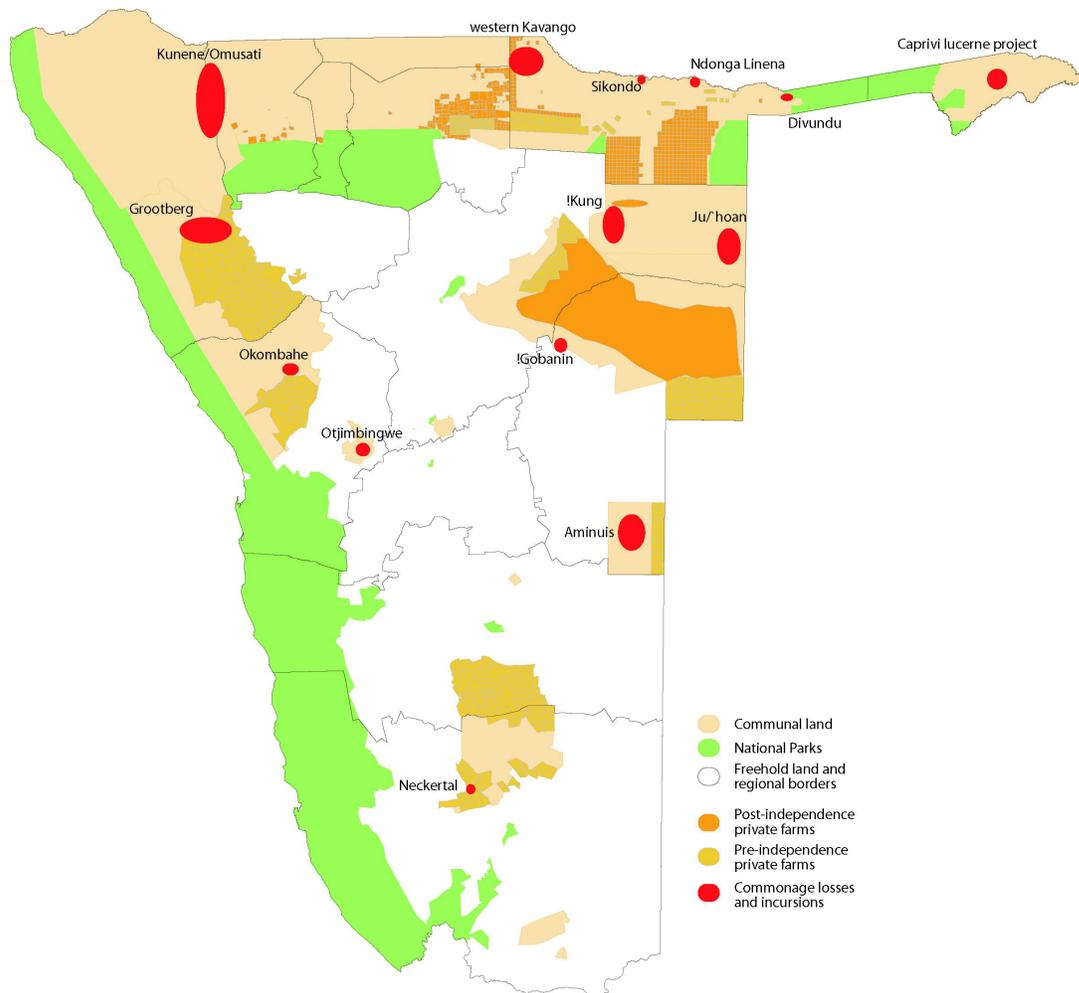


Figure 1. Communal areas in Namibia. Post-independence private farms are those allocated by traditional authorities or privately appropriated, mainly in Kavango, Oshikoto, Otjozondjupa, Omaheke and Omusati, while pre-independence farms were allocated by the then administration or second-tier authorities as the so-called Odendaal, Mangetti, Okamatapati, Rietfontein and Korridor farms. Places where large areas of commonage have been lost or threatened are described in the text.

Uses of communal land vary as a result of differences in soil fertility, types of vegetation and aridity. Agro-pastoralism is the predominant use of land in the somewhat semi-tropical climates in north-eastern and central northern Namibia. Residences with nearby fields usually have a single, clearly defined property while households with fields further away often have several parcels for crops. In some regions there are also large areas of remaining commonage which are used for grazing, hunting and the harvesting of plant products, including timber, fruit, firewood and thatch. Staple foods are pearl millet, maize and sorghum, while small areas of vegetables are also planted. About half of all families have no livestock or just a few goats and cattle (Mendelsohn 2006).

By contrast, pastoral livestock farming predominates in more arid areas in the west, south and central areas of Namibia. The majority of people live here in small villages, with their livestock foraging in surrounding commonage pastures. Again, most households have small herds or flocks of less than 10 cattle, goats or sheep.

ECONOMIC CONDITIONS AND OPTIONS

Although it is widely assumed that residents in communal areas are dependent on farming, this is not usually the case. Various household surveys indicate that income is largely derived from off-farm or non-agricultural activities, such as pensions, business earnings, wages and remittances. Naturally, there is substantial variation between families and many very poor households indeed largely rely on farm and commonage resources. Most other residents, though, live on rural farms but live off non-rural enterprises and jobs.

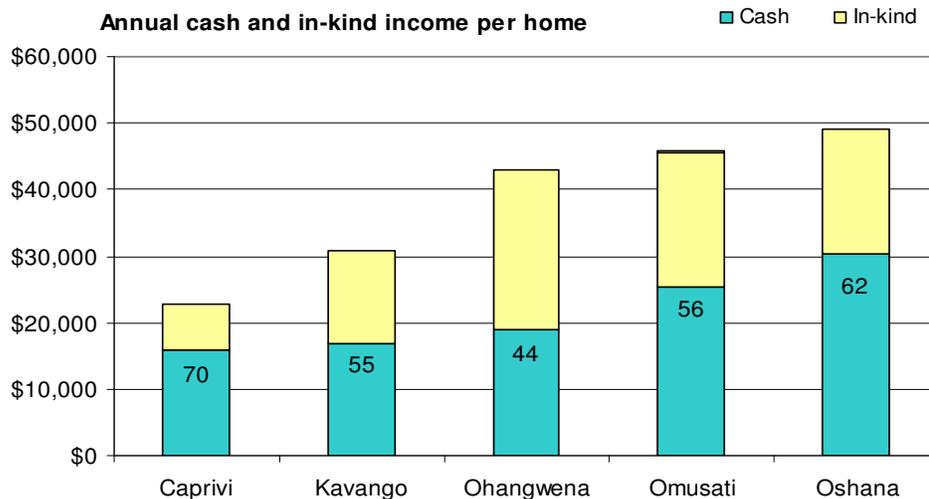


Figure 2. Annual income in cash and in-kind by rural households in northern Namibia measured during the 2009/2010 Namibia Household Income & Expenditure Survey. The percentages are the proportions that cash make up of all expenditure (which is a proxy measure for income) per year.

Dependence on non-farming incomes is largely due to the inherently low productivity of most farm land. Only people with large farms or the resources to provide high-cost inputs such as irrigation, fertilisers and a significant labour-force can produce surpluses which can be sold for cash incomes. The produce of most other farmers is so small that it is only used for domestic consumption, and so their households have to depend on other sources for cash incomes which usually make up more than half of all household income (Figure 2). Furthermore, Namibia's small population and considerable distances to the few sizeable urban markets makes the selling of any farm surplus extremely difficult.

The relative absence of cash incomes in communal areas has a variety of consequences. Foremost is a high level of poverty. For example, results of the 2010 National Income & Expenditure Survey (NHIES) showed that 27% of households in rural areas were classified as poor, compared to 9% in urban areas. For those classified as severely poor, the comparative figures were 14% and 4%, respectively (Namibia Statistics Agency 2012).² Average per capita expenditure in rural homes is about three times lower than in urban families.

Another consequence is the very high rate of emigration by people who seek incomes in towns. Urban populations have thus grown much more rapidly than rural populations (Figure 3), and if the current rate of urbanisation continues, about 80% of all Namibians will be living in towns 20 years hence. Much greater attention to urban development will thus be required from now on.

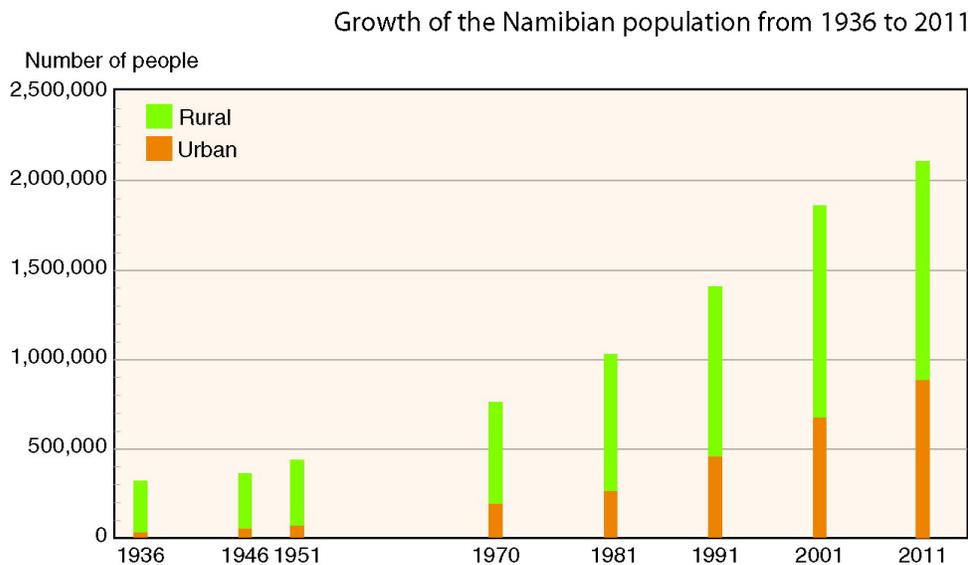


Figure 3. The growth of Namibia's rural and urban population over the past seven decades, as recorded during official population censuses.

² Differences between urban and communal areas are actually much greater because these analyses include rural households on freehold farms where living conditions are considerably better than in communal areas.

As a consequence of emigration, there are also fewer able-bodied, working-age people (especially men) in many rural areas. This, too, constrains farm and other labour-based production in communal areas.

Such circumstances make the need to find ways in which land rights can improve livelihoods ever more pressing. Residents are dealt a triple-blow: land productivity severely limits income, land rights are not suitable for use as financial instruments and registered customary land rights discourage land uses which can generate cash incomes. These aspects are explored below.

Secure tenure over land and options to use its inherent value provides incentives for land holders to invest time, effort and money in developing and managing their land. Tenure that provides those incentives underpins economic development throughout the world. However, there are four ways in which provisions of the Communal Land Reform Act of 2002 inhibit economic development and the improvement of livelihoods.

Collateral and capital: Customary land rights cannot be registered as legal deeds. As a result, the rights may not be assigned as collateral security, thus prohibiting access to capital secured on land for development. Arguably, 50% of the population can therefore not use their land rights as security to obtain collateral funds, a right and benefit that most of the other half of Namibia takes for granted.³ This also means that the 38% of the country's land that is communal has no capital value. The land is 'dead capital' (Shiimi 2011).

Tradability: Residents (and others) assume that land rights may not be traded (as a result of Section 42 of the Communal Land Reform Act of 2002) and also because communal land is vested in the state, and Section 17 (2) stipulates that 'No right conferring freehold ownership is capable of being granted by any person in respect of any portion of communal land'. Even though Section 38 actually allows for the transfer of customary land rights and leaseholds, transfers are subject to the permission of traditional authorities. This further impedes and complicates transactions, while also reinforcing perceptions that land rights are owned by these authorities and are therefore not to be traded. The same applies when an occupant dies: his/her land then has to be returned to traditional authorities, even if it is then re-allocated to the heirs.

The prohibition of land rights being tradable is a substantial deterrent to investment; put simply, there is little reason to invest savings or capital in land if there is no prospect of being able to liquidate the investment in the future. (Consider the reaction of urban property owners if a new law prohibited the selling of their assets, even if the owners could retain secure tenure. This would be unthinkable, but the identical condition holds for residents in communal areas).

³ To this can be added another 7% of the population who live in informal urban settlements where they, too, do not have land in which to invest and use as collateral security.

Rights for commercial use: People wishing to invest in formal business enterprises, such as agriculture, tourism and fish production are discouraged by the stringent, lengthy and complex procedures to gain secure tenure for commercial use. Examples are the number of permissions that investors have to negotiate and/or obtain; the variety of formal and informal, private incentive payments that need to be made;⁴ and the generally short duration and restrictive terms of leasehold rights. Investors not only find it difficult to abide by these conditions, but banking institutions are reluctant to advance capital for investments under these circumstances. As a logical consequence, it is easier for investors to use their capital elsewhere in Namibia or other countries.⁵

Uses of land are constrained by the type of tenure. Allocations of customary land rights are interpreted as being only for residential and domestic crop production. This is the intention of the provisions of the Communal Land Reform Act of 2002 and its Regulations which stipulate that any land used for commercial activity has to be registered as leasehold. This means that holders of customary land rights, who make up by far the great majority of residents, are deterred from using their land for income-generating enterprises unless, of course, they go through lengthy processes of converting their land rights to leaseholds. Similar obstacles face residents who wish to subdivide their properties, making some parts available for enterprises or even for sale to generate incomes. Customary land rights registered in terms of the Communal Land Reform Act of 2002 are thus designed for a subsistence economy, but most households aspire to livelihoods that are not subsistence in nature, as shown by their substantial off-farm cash incomes (Figure 2).

As a reflection of the disconnection between reality and tenure constraints, many customary land right holders do use their properties for commercial gain, most usually and visibly through small retail shops. Likewise, it is clear that land rights are sold in communal areas to an extent that is widely agreed to be frequent.

RIGHTS OVER COMMONAGE LAND AND RESOURCES

Commonage provides local residents with a variety of resources, many of which are crucial for their livelihoods, such as grazing, firewood, building materials, fruits, bush meat and water. However, there are no mechanisms for residents to protect land rights over commonage which the state and traditional authorities may privatise at their discretion. With the exception of certain resources in conservancies and community forests, residents are also unable to gain revenue benefits, such as grazing fees, from non-residents who use commonage resources commercially.

⁴ For example, the owners of 12 lodges in eastern Kavango each paid N\$500 for their leaseholds to the state in 2011 but \$22,000 per year (in total N\$264,000) to the Chief of the Mbukushu Traditional Authority.

⁵ One set of estimates indicate that if tourism establishments could be developed readily in communal areas, about 40,000 new jobs could be created between now and 2022 within communal areas. These would generate incomes of about N\$900 million per year, again within communal areas. About N\$2,400 million would be spent in these areas on infrastructure and equipment over that period. These figures are in 2011 values and assume an annual growth of 6% in the tourism industry (CJ Brown, personal communication).

A noble policy aim of government is for communal land to be available for free to people wishing to settle there, particularly poorer people who lack the means to live elsewhere. This is clearly spelt out in the Communal Land Reform Act of 2002, where Article 17 (1) states that “Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, *in particular the landless and those with insufficient access to land* who are not in formal employment or engaged in non-agriculture business activities.”.

But communal land is also free for people who are not poor, and many wealthy people have used their influence to acquire large farms. The extent of privatisation of communal land into large farms is significant, as shown in Figure 1. Broadly, most farms were acquired in one of three ways:⁶ (a) from the South African administration or second tier authorities before independence, (b) through allocation by traditional authorities and (c) by unilateral fencing off of land by private individuals.

Indeed, the privatisation of commonage has been, and continues to be rampant, often fittingly described as a modern land grab. As a consequence, the customary value of commonage being a free-range resource for local residents has been eroded in many areas where communal land no longer provides a safety net for the poor.

Other than according residents places to live, most traditional authorities play an insignificant role in the daily *management* of communal land, particularly commonage. With very few exceptions, traditional leaders do not manage or control stocking rates or the harvesting of timber, thatch, fish, firewood, wildlife, water or wild fruit, for example (Mendelsohn 2008).

Uncontrolled, open access to commonage means that it is in everyone’s interest to exploit resources as much as possible. If one person does not use the grazing, timber or firewood, another person will. This has two obvious effects: the poor get poorer and environmental degradation accelerates, fittingly described as the Tragedy of the Commons (Hardin 1968). In addition to land grabbing, commonage grazing is also often appropriated by people who live and earn their income from salaries and businesses elsewhere (Mendelsohn 2006). It is these people who own most livestock in communal areas, not local residents. Pastures are also ‘grabbed’ through dual grazing when the owners of large communal and freehold farms move their animals on to commonage until pastures and water sources are depleted. The livestock are then moved back to feed on the pastures that have remained protected within the private enclosures of the farmers.

The absence of secure tenure over commonage renders local residents incapable of defending their rights against alliances between influence (from traditional authorities) and wealth (from the

⁶ (a) This category comprises mainly of the so-called Odendaal, Mangetti, Okamatapati, Rietfontein and Korridor farms. While most of the farms were originally allocated to individuals, the majority are now occupied by several families. (b) Most of the new farms in Kavango and Oshikoto are in this category. (c) The majority of farms in southern Omusati, Otjozondjupa and Omaheke.

non-resident owners of farms and large numbers of livestock). It is in the interests of these influential and wealthy people that management and rights over commonages remain unregulated, and it is due to these influences that no action has been taken against people who appropriated large farms, despite the practice being prohibited by the Communal Land Reform Act of 2002 (Werner 2011). Even state water points and large areas set aside by government for emergency drought relief grazing have been appropriated into private farms. In the face of such spheres of influence, local poor residents hold little sway.

Power imbalances and the lack of defined and enforceable rights over commonages have also led to numerous encroachments by stock owners from one tribal grouping into the grazing grounds of another. Examples are farmers that moved from Gam into the Tsumkwe area, from Omatjette into Okambahe, from western Omusati into eastern Kunene, and from Ohangwena/Oshikoto into Kavango. Other land invasions have occurred or been threatened around Otjinene, Omatako, Otjimbingwe, Aminuis, Divundu and Grootberg (Mendelsohn 2008).⁷

As the formal 'owner' of communal land, the state claims the right to expropriate commonages for economic development projects regardless of existing customary usage rights to such land. This is borne out by the government's guidelines (of 2009) which make provision for compensation for land, buildings and trees that lie within individual properties. But no compensation is available for grazing and other commonage resources that are lost when land is allocated for other purposes by the state. Such losses have occurred or will occur as a result of the establishment of large irrigation schemes at Ndonga Linena, Sikondo, Neckertal Dam and the Caprivi lucerne project,⁸ for example, and on about 1.3 million hectares that were privatised into more than 500 large farms with government sanction by traditional authorities in Kavango. Smaller commonage resources have also frequently been lost when senior traditional authorities allocated and leased out land for business enterprises without compensating the local users of the commonage.

Conservancies and community forests are telling exceptions. Here, communities have legal rights over certain resources and therefore obtain incomes (for example from rentals and jobs) when

⁷ Significantly, many civil wars, including the Darfur war, have started in various countries because rights over community-based land holdings were not firmly in place, allowing one group of people to invade or seize the land of another (Alden Wily 2008, 2010).

⁸ Circumstances surrounding the development of this project sum up many of the challenges described in this paper. The project area covers 30,000 hectares. A leasehold agreement with the Ministry of Lands & Resettlement requires the payment of an annual lease fee of N\$86,500. A separate lease agreement with the local traditional authority provides for annual lease fees which would amount to about N\$504,000 and perhaps considerably more, depending on profits. If this land was in a freehold area, it would probably have a sale value of at least N\$15 million, but people now using the 30,000 hectares will receive no compensation for their usage rights, either from the state or traditional authorities. About 3,000 cattle now graze the area. With an annual off-take of about 300 head, the cattle owners would have an annual income of about \$1.5 million. It is hard to imagine where other grazing will be found for these cattle since the whole of the Caprivi Region is already over-stocked. It is thus possible the revenue and other values of the 3,000 cattle will be lost as well.

their commonages are used commercially by non-residents for tourism, to harvest game meat and for trophy hunting, for example.

REFORMING TENURE AND LAND VALUES

The current system of tenure regulation has created conditions in communal areas that are (a) not conducive to economic development, and (b) cause local residents to lose their commonage resources. The former largely concerns the rights of *individuals* to use and invest in their properties to create wealth, while the latter focuses on the rights of *groups* of local residents to the commonage resources they share.

Seemingly, the two issues appear unconnected, the first being about individual and the second about group land rights. However, there are several reasons why solutions to the two challenges need to be implemented in tandem. The first is that measures to increase the value of individual land rights would certainly lead people to rush to claim as much land as possible, especially if the rights become tradable. Land obtained for free, which would comprise of remaining commonage, will then be available for sale at market values, with the potential to generate immediate profits. The loss of commonage would be at the expense of local residents, and so parallel measures to prevent such losses are necessary. This could be achieved by introducing secure group tenure land rights.

Second, new economic benefits would be available to groups of local residents if they had secure tenure over their commonages. This fits with the government's desire to develop the economic value of commonage resources through community-based pasture management, conservancies and community forests. For example, residents would be able to enter into rental agreements with people who wish to use their commonage. This could include farmers seeking temporary or long-term grazing, and companies or individuals intending to establish businesses such as agricultural projects, lodges and shops, or to erect cell phone towers or harvest sand or timber. In the event that commonage land is expropriated and/or allocated to other users by the state, local residents as *de facto* users would also have a legal basis to seek compensation.

The recommendations offered below to enhance tenure rights and increase the economic value of communal land rest on several principles.

1. The type of tenure should not determine how land is used. Currently, it is accepted that leaseholds are needed for commercial uses while customary land rights can only be used for residences and cropping for domestic consumption. These divisions are unnecessary, cause confusion and limit initiatives when a land holder wishes to use his or her land for a different purpose. In freehold areas, subject to land zoning and other applicable limits in urban areas, land holders are free to use their land as they wish. Residents in communal areas should have the same opportunities.

2. Likewise, individual tenure should allow for the different and changing desires of people to have security but also to potentially use their land as investments and financial instruments. Forcing everyone to continue to abide by a customary system of land governance designed for subsistence and that serves the interests of senior traditional authorities and their allies is no longer practical. Some people are content simply to have a place and home to call their own, others wish to develop their properties as capital assets which can be later liquidated or inherited by their children, while yet other people want to use their land for commercial gain, for example. Tenure systems should accommodate this variety, foremost by creating *options* for residents to develop or maintain their properties according to their wishes. These aspirations will alter over the years, and tenure arrangements should accommodate such changes.
3. Rather than being ‘owners’ of communal land, traditional authorities and the state should act as trustees that actually protect the ownership of land rights by individuals and groups of local residents. This will ensure that the transition from customary to statutory tenure systems occurs smoothly and justly. Ways other than selling or leasing land can be found to compensate for traditional authorities for their valuable functions in maintaining local justice and social order.⁹

Many of these principles are already rooted in existing government policy, especially the Constitution. To repeat Article 16, “All persons shall have the right in *any* part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees.”

The National Land Policy of 1998 builds on Article 16 by stating that ‘all citizens have equal rights, opportunities and security *across a range of tenure and management systems*’ and that ‘several forms of land rights’ will be accorded *equal status before the law*. It also makes provision for different categories of holders of land rights including ‘legally constituted bodies and institutions’. This definition enables groups of communal area residents to become holders of land rights. Such groups include conservancies, community forest management bodies, water point associations and other bodies constituted to serve the interests of communities of residents.

Further, the National Land Tenure Policy (2008) makes provision for residents of villages to demarcate and register their village land and legally constitute themselves as a group which holds rights over land and resources within the village boundary. In addition, Cabinet took the following decisions on 11 April 2006:

⁹ For example, levies paid by households and enterprises could be used to compensate all levels of traditional authority (from local headman to the chief). Such payments are already made to many traditional authorities in Namibia.

- In the medium term, sectoral policies on natural resources management, water, *land*, forestry and agriculture must be revised to give decision-making and management authority to resource-users at a local level;
- That community-based policies on resource management are expanded beyond wildlife and tourism to incorporate other natural resources like water, *land and land-based economic activities;*"

These policy provisions clearly indicate that government recognises the need for strengthened economic rights and secure tenure for communities. It is on the basis of that recognition and the principles established above, that the following recommendations are offered.

1. Procedures should allow for land holders to transfer, sell, assign and sub-divide land easily. However, measures should be considered to guard against speculation and to protect land owners from unfair price offers. Several potential safeguards are discussed below.
2. Properties in communal areas should be legally registered with deeds and surveyed according to appropriate standards so that they can be used as collateral.¹⁰
3. Individuals should be allowed to use their customary land rights for commercial uses, or they should be able to easily alter these into leasehold rights.
4. In instances where leaseholds are considered necessary, lease agreements should be concluded which optimise the commercial viability of enterprises, for example by allowing leasehold rights for as long as possible, subject to single initial rental payments and unencumbered by provisions that limit land uses too stringently. This will also increase the potential for leaseholds to be used as security for credit.
5. Rental and other payments associated with trading land rights should not be made to traditional authorities.
6. Where appropriate, the thousands of 'illegal fences' in communal areas should be given legitimacy to encourage their development as small-scale commercial farms which form an integral part of Namibia's commercial agricultural sector. At the same time, the Ministry of Lands & Resettlement must implement serious measures to stop further fencing.¹¹

¹⁰ The Ministry of Lands & Resettlement has begun to revise the Deeds Registries Act 47 of 1937 and Land Survey Act 33 of 1993 to allow for the registration of communal land properties as deeds, reduce the costs of conveyancing and use cheaper and quicker ways of surveying properties.

¹¹ It should be accepted that it is far too costly politically, legally and economically to remove the very large number of properties that are held to be 'illegally fenced' by the Communal Land Reform Act of 2002. The owners of these properties should be encouraged to register them as legal land rights once the properties have been adjudicated by local residents as being acceptable or requiring modifications to their boundaries. Processes and procedures for local adjudications have been developed by the Communal Land Support Project of the

7. Communities who are *de facto* users and partially depend on commonages for their livelihoods should have *de jure* rights to commonage resources (Knight 2010). It is recommended that these *de jure* rights be provided as soon as possible to protect local residents against further ‘land grabbing’ especially that which may result from land becoming tradable.
8. Ways should be found to secure and formalise group tenure rights, possibly through the designation and registration of ‘local authorities’ for communities wishing to register and manage their land rights.¹²

Reforms to communal tenure are not in everyone’s interests, especially those who now wield power to trade and appropriate land. Poorer people may also suffer if they are unable to acquire land rights or to trade them for fair value. This already happens to a substantial degree in urban areas, where shortages of land, high land values and unfair practices are common-place; these problems were addressed in the 2011 Bank of Namibia’s Annual Symposium.

The most frequent, indeed adamant objection to allowing the trading of land rights comes from those who believe that residents – especially those who are poor and financially inexperienced – will sell off their land recklessly. There are several weak or paradoxical aspects to this belief, especially in the way it is applied to everyone who lives in communal areas.

First, poor people are generally much more astute and cautious in managing their assets than wealthier observers assert. For example, studies show that people who earn less than US\$2 per day use a variety of financial instruments simultaneously to manage cash flows, savings, debtors and creditors. Faced with low and usually intermittent incomes, poor people manage their meagre resources more carefully than many wealthier people (Collins *et al.* 2011). Second, the very same residents who are supposedly incapable of protecting their land assets in communal areas are freely allowed to trade land once they move and acquire land in urban areas. If there is commitment to protecting poor people, surely policies to do so should be applied everywhere?

Third, land rights are already traded in communal areas to a significant extent. However, buyers and sellers conclude the trades informally, in the absence of any oversight or documentation. Under these circumstances, there is ample opportunity for the exploitation of poor people. The

Ministry of Lands & Resettlement and Millennium Challenge Account. This forms part of a process for each traditional authority to set threshold land areas and criteria for the assessment of all applications for registration.

¹² The concept of group rights is not new. Land rights have been allocated to communities in dozens of developing countries in South America, south-east Asia and Africa. Likewise, strong support or precedents for group land rights within Namibia are to be found in the National Land Policy (1998), the National Land Tenure Policy (2008), the emergence of village committees to help administer land allocations, in central northern Namibia; the fencing-off by local residents of community areas to protect grazing around many villages in Otjozondjupa and Omaheke; the Cabinet decision (on 11 April 2006) that community-based policies on resource management be expanded to land and land-based economic activities; and the use of declared Settlement Areas as units of local governance and land management (while these are urban zones, the intentions and principles behind their establishment are the same as those recommended here for rural areas).

question thus arises: do we continue to turn a blind eye to the reality of land sales and do nothing to protect sellers, or do we allow and legitimise sales and implement measures that are in the interests of the poorest members of society? Put another way, does Namibia wish to see land trading that already happens – and will increase – occur transparently, and does it wish to allow titling systems that promote orderly transactions?

Perhaps it is an unwillingness to develop protective measures which helps support the view that poor people cannot be trusted to trade their land rights fairly. In other words, it is easier to prohibit land sales than implement measures which protect sellers. Similar thinking underlies arguments that the financial costs of surveying and registering property rights are prohibitively high, which is another way of saying that spending so much money is not a priority. Likewise, a reluctance to develop order and controls over land transactions is in the interests of wealthy and influential buyers and traditional authorities who stand to benefit from informal and opaque land markets.

What measures can be taken to protect the poor against unfair sales, to limit social exclusion and to ensure that land rights are available as a social safety net?

Much could be done to improve awareness so that sellers are better equipped to guard against unscrupulous buyers. Likewise, programmes are needed to build awareness against injudicious land allocations by traditional authorities and land grabbing of commonages. This goes together with our previous recommendations to protect commonage land rights. Indeed, the continued availability of commonage is crucial if communal land is to provide a safety net for people unable to acquire land elsewhere. Zoning and effective management of local land use would ensure the continued availability of land for the poor, and at the same time help protect their rights.

Various direct measures could be implemented to increase the chances of land rights being traded fairly. For example, sales may require approval by Communal Land Boards, perhaps after the Boards have valued the properties. In addition, a moratorium on sales for several years after owners first obtain their land rights would guard against hurried, reckless trading. Likewise, sales may only be allowed after the properties have been developed to a certain degree to limit speculative trading. The City of Windhoek has such a provision for ervens which they sell to first-time, low income buyers.

This symposium is concerned with areas of the country that are defined by particular tenure characteristics, which is why this paper has focused almost entirely on the effects communal tenure. The fact that these areas are communal also means that their development was neglected prior to Namibian independence. Although many improvements have since been made, further development of infrastructure, in particular transport, communication and electricity, would also help unlock the economic potential of communal land. The same is true for public and private services, especially banking services which are beyond the reach of many residents in communal areas.

While farmers with pastoral traditions market livestock to a substantial degree in communal areas, those from agro-pastoral backgrounds generally keep livestock as security or capital assets. Hundreds of thousands of cattle and goats therefore have limited productive value because few are sold. Incentives (and disincentives) are required to add these animals to Namibia's livestock production sector. One way of doing this is to provide the owners of large, private farms with secure tenure on condition that the animals are farmed productively. (There is the interesting possibility that farmers may treat their cattle more as productive units than as security if their land rights had capital value.)

New land uses should also be promoted, notably through tourism and wildlife farming which now contribute a high proportion of Namibia's GDP, but mainly only in national parks and on freehold farms. Large areas of communal land have substantial potential for tourism as well as for game meat production and trophy hunting. It would be easier to unlock that potential if tenure arrangements were changed so that investments in these sectors were easier to make.¹³

CONCLUSION

Environmental and living conditions for people living in communal areas are challenging, especially for those that lack access to incomes from other sources. Communal tenure arrangements conspire in a number of ways to add further difficulties which limit the economic value of communal land. However, these challenges might be reduced by encouraging changes from the existing customary, subsistence economy to one that allows residents to participate fully in the modern economy. Measures to help such a change could result in:

1. Individual land holders in Namibia having equal *options* to use their land rights for economic purposes irrespective of where they happen to live. Half of the Namibian population may then be able to participate equally in the modern economy.
2. The many severely poor people living in communal areas having new opportunities to create wealth.

¹³ Professor S. Moyo and Dr W. Werner argued at the 2012 Bank of Namibian Annual Symposium that agrarian reform would do much to improve the economic value of communal land in Namibia, perhaps to an extent that holds greater promise than land tenure reform. While agricultural production can be improved, the scope for achieving substantial increases is limited because of the small properties, and very poor soil, climate and market conditions, as described earlier in this paper. There is also the ironic risk that the promotion of agrarian reform will increase poverty. This would happen if communal land residents are persuaded to continue farming in the vain hope that their livelihoods will improve, rather than taking the common-sense course of seeking sources of cash income. This does not discount the fact that farm production can be increased, but measures to do so need to be implemented with caution and only under circumstances where the probability of improving incomes are high. It is simply wrong, and perhaps harmful to suggest that the majority of rural residents can make a decent living as farmers.

3. Over one-third of Namibia's land being transformed from dead into functional capital.
4. Increased incentives to develop the value of communal land.
5. The rights of local residents to their common-property resources being secured with opportunities available to gain economically from commonages.
6. The thousands of farms now deemed to be illegal becoming legitimate commercial producers.

Other than bringing direct economic benefits to individual residents and investors, reforms to the tenure system in communal areas can be expected to make a major contribution to Namibia's economy (Shiimi 2011).

In summary, the challenge is to create conditions that *permit* land rights to generate wealth while guarding against the loss of rights for the poor. The greatest opportunities for economic development lie in the use of individual properties as investments and financial instruments, while the protection of commonages will better safeguard the land rights of the poorest residents in communal areas.

REFERENCES

- Alden Wily L. 2008. *Whose Land Is It? Commons and Conflict States. Why the Ownership of the Commons Matters in Making and Keeping Peace*. Rights & Resources Initiative, Washington DC.
- Alden Wily L. 2010. *Fodder for War: Getting to the Crux of the National Resources Crisis*. Rights & Resources Initiative, Washington DC.
- Collins D, Morduch J, Rutherford S & Ruthnev O. 2011. *Portfolios of the Poor: how the world's poor live on \$2 a day*. Princeton University Press, Princeton, USA.
- , Hardin G. 1968. The Tragedy of the Commons. In Hardin G & Baden J. 1977. *Managing the Commons*. W H Freeman & Company, New York.
- Knight R. 2010. *Statutory recognition of customary land rights in Africa. An investigation into best practices for lawmaking and implementation*. FAO Legislative Study 105. Rome FAO.
- Mendelsohn JM. 2008. *Customary and legislative aspects of land registration and management on communal land in Namibia*. Report for Ministry of Lands & Resettlement, Windhoek.
- Mendelsohn, J.M. 2006. *Farming systems in Namibia*. RAISON, Windhoek.
- Namibia Statistics Agency. 2012. *Namibia Household Income & Expenditure Survey (NHIES) 2009/2010*. Namibia Statistics Agency. Windhoek.
- Shiimi I. 2011. *Enhancing Access to Finance in Namibia through an improved Land Tenure System*. Annual Address of the Governor of the Bank of Namibia, Windhoek, 27 October 2011.
- Werner W. 2011. "What has happened has happened". *The complexity of fencing in Namibia's communal areas*. Legal Assistance Centre, Windhoek.