

**Customary and legislative aspects of land
registration and management
on communal land in Namibia**

John Mendelsohn
(RAISON – Research & Information Services of Namibia)

December 2008

**Report prepared for the
and the**

**Ministry of Land & Resettlement
Rural Poverty Reduction Programme
of the European Union**

Contents

| | |
|---|----|
| Summary | 3 |
| Abbreviations and definitions | 5 |
| Acknowledgements | 5 |
| Introduction | 6 |
| Methods | 7 |
| Functioning and structure of traditional authorities | 9 |
| Recommendations | 14 |
| Customary land registration | 14 |
| Misunderstandings, confusions and objections | 15 |
| Focus on higher levels of traditional authority | 17 |
| Other aspects | 18 |
| Recommendations | 19 |
| The management of communal land | 22 |
| Access to land | 22 |
| Inheritance | 23 |
| Commonages | 25 |
| The capture of land values by the elite | 26 |
| Recommendations | 29 |
| APPENDICES | |
| 1. Caprivi | 33 |
| 2. Damara | 40 |
| 3. Herero | 47 |
| 4. Kavango | 56 |
| 5. Nama | 65 |
| 6. Owambo | 74 |
| 7. San | 84 |
| 8. Tswana | 88 |
| 9. Dates and locations of meetings | 92 |
| 10. Literature reviewed | 93 |
| 11. Further suggestions on the management of commonage pastures | 95 |
| 12. Further suggestions on the ownership of commonages | 96 |

SUMMARY

Senior members of the 46 recognized traditional authorities in Namibia were consulted to gather information on how communal land is managed and on the registration of customary land rights. The following major points emerged from the study.

The traditional authorities (TAs) all have similar hierarchies: from local (usually village) headmen, to councillors or senior headmen and then to chiefs. There is, however, substantial variation in the sizes and histories of the TAs. Some have tens of thousands of households, while others have fewer than a hundred families under their jurisdiction. Several TAs do not have communal land, their communities being scattered in towns and on the land of other authorities. Most TAs in northern Namibia have existed for hundreds of years, have clear boundaries and well-established customary laws. By contrast, most recently formed TAs suffer from quarrels over boundaries and power struggles, and do not have customary statutes.

With respect to the management of land, TAs are much weaker than is generally assumed. And they are further being weakened by the strengthening role of central and regional government, the creation of new local management institutions, the loss of constituents and land to urban areas, and the increasing numbers of wealthy, educated and influential people who have little regard for customary authority.

The registration of customary land rights (CLR) for residential and farmland began in 2003 as a result of the Communal Land Reform Act of 2002 and Regulation No. 37 of 2003. Most people appear well informed of the need to register their land rights, but considerable confusion and misunderstandings were encountered, especially with regard to the 20-hectare limit on each property, the type and definition of farmland that may be registered, the size of a hectare, and the number of plots that can be registered as one property.

Political affiliations, border disputes and encroachments by one traditional community onto land held by another community have led ten TAs to object to CLR. A variety of technical issues and loopholes were used to justify their objections, for example the payment of application fees for CLR amounts to people having to buy their land, that communal land will now be marketed, that grabbing of unregistered land will ensue, and that freedoms to occupy and clear new land will be curtailed.

The lack of clear information and limited ability of the MLR to process CLR applications has meant that progress in registering land rights has been very slow: of some 70,000 applications submitted since 2003 for CLR, only about 4,000 have been approved. There is an obvious need for the MLR to accelerate its work on CLR, and to issue clear guidance to dispel the many misunderstandings and potential for grievances that have nothing to do with land registration. Other recommendations include the importance of using lower, local levels of traditional authority to check and endorse applications for customary land rights, and to find ways of handling the land rights of people living in national parks and places which do not have recognized TAs.

With few exceptions, TAs only involve themselves in land management by controlling applications for people to reside on communal land. The ways in which these applications are assessed is governed largely by the relatedness and familiarity of the applicant and the need to avoid future disputes. TAs are therefore mainly gatekeepers and peacekeepers on communal land. Only Damara and Nama TAs consider the availability of water and grazing before allowing newcomers customary residential and farming rights, and only two San TAs place limits on the number of livestock that residents may keep.

Most property on communal land is inherited by the spouse and offspring of the deceased. However, the fate of an estate is decided on the basis of three considerations: (a) land and a husband's assets belong, to a greater or lesser degree, to his relatives in the village where he was born and spent his married life; (b) the future of the widow, particularly in relation to her prospects of remarrying, her social acceptance and fitness to manage her home and farming activities; and (c) the attitudes and customs of the deceased husband's relatives.

The government symbolically owns all communal land of which TAs are symbolic custodians. There is also good agreement between the requirements of CLR (as stipulated by government legislation) and customary controls over access (as exercised by traditional authorities) for residential and small farm (crop) land. But neither government legislation nor traditional law has much control over commonages. The resulting vacuum has allowed influential people with substantial non-farming incomes to acquire and privatise large areas of commonage, and to over-exploit grazing in commonages shared with permanent residents who depend largely on stock farming for their livelihoods. Large areas of communal land thus suffer from the 'tragedy of the commons' where the rich get richer, the poor become poorer, and environmental degradation intensifies.

Considerable changes are needed to limit the capturing of resources and land values by the elite, and to give local residents both *security of tenure* and *security over resources*. It is proposed that the ownership of commonages be vested and registered in local management institutions in which local residents have both control and shares. Good models founded on these principles are provided by conservancies, community forests and water point associations.

It is also recommended that tenure systems be developed to give long-term leaseholds to all residents on communal land. The leaseholds would provide people with the same economic opportunities and incentives for investment and savings now enjoyed by owners of freehold urban properties and farms.

Abbreviations and definitions

CLR = customary land registration; the process of registering residential and farmland in communal areas, as prescribed by the Communal Land Reform Act of 2002 and Regulation No. 37 (Regulations made in terms of the Communal Land Reform Act) issued on 24 February 2003. In the absence of special motivation from the applicant and the permission of the Minister of Lands & Resettlement, properties may not exceed 20 hectares. The endorsement of a recognized traditional authority is required to confirm that the applicant has a customary right to the land. Other communal land may be registered as leaseholds or remain unregistered commonage to which local residents have rights of access and use.

CLB = communal land board. Each region has a communal land board which, among other things, assesses and approves applications for CLR covering properties less than 20 hectares. Members of the CLB serve in a voluntary capacity and are drawn from various sectors. CLBs operate under provisions of the Communal Land Reform Act of 2002 and Regulation No. 37 (Regulations made in terms of the Communal Land Reform Act) issued on 24 February 2003.

MLR = Ministry of Lands & Resettlement; the agency of government responsible for implementation of all provisions of the Communal Land Reform Act of 2002. Regional staff of the MLR are required to serve as secretaries to the CLBs and to process all CLR applications and the issuing of CLR certificates. As part of this process, the staff have to visit each property to map its boundaries and to confirm its ownership.

MRLGH = Ministry of Regional & Local Government & Housing; the agency of government responsible for traditional authorities, and the provision of allowances to certain of their leaders.

TA = traditional authority is the customary leadership of a traditional community. For purposes of this study, TAs are those 46 authorities (see Appendix 9) that have been officially recognized by the MRLGH in terms of the Traditional Authorities Act No. 25 of 2000.

Traditional community: a group of people that share common ancestry, culture, language, communal land and traditional authority.

Acknowledgements

The work reported here drew on information and opinions provided by a great number of people. Those who participated in of traditional authorities are listed at the ends of Appendices 1-8. Within the Ministry of Lands & Resettlement, particular support was provided by Hannu Shipena (Under Secretary for Land Reform), while Richard Witmer, Robert Ridgway and Harald Rojahn gave encouragement and direction on behalf of the Rural Poverty Reduction Programme of the European Union. Louise Brown read dozens of reports as part of a literature review. Beavan Munali, Ulrich David, Uhangatenua Kapi and Toini Niilonga accompanied me as informants and interpreters to many meetings. I am extremely grateful to all these people for their significant help and support.

INTRODUCTION

The Communal Land Reform Act of 2002 requires people having customary rights to occupy land to register their properties. This is termed the Registration of Customary Land Rights (CLR), and provides the first steps in giving property owners security of tenure. The properties are limited to those used for residential and/or farming purposes. In terms of Regulation No. 37 (Regulations made in terms of the Communal Land Reform Act) issued on 24 February 2003, the Minister of Lands & Resettlement set the maximum allowable size of properties that may be approved by the CLB at 20 hectares. Other communal land may be registered as leaseholds or remain unregistered commonage to which local residents have rights of access and use.¹

Applications for CLR must be submitted through the recognized traditional authority (TA) deemed to be the custodian of local communal land. The central purpose of this is to ensure that the applicant indeed has customary rights to the property, and that its borders are valid. The local TA therefore has to check and endorse each application before it is submitted to the regional office of the Ministry of Lands & Resettlement (MLR). Staff of the office must then survey each property before the application is finally placed before the regional Communal Land Board (CLB) for its approval and the issuing of a CLR certificate.

Applying for, and completing the CLR process thus entails several steps to be taken by different people or organizations. This is one reason why limited progress has been made in registering properties. In addition, the whole concept of CLR is new, which means that protocols, offices and responsibilities had to be established afresh. Other factors to have hampered the CLR process are described elsewhere in this report.

With the assistance of the Rural Poverty Reduction Programme (RPRP), the MLR recently embarked on a set of activities to accelerate the registration. However, to do so required information on the capabilities and attitudes of TAs with respect to their obligations in the CLR process. It also became clear that an understanding of how TAs exercise their custodianship of communal land was needed, particularly in relation to the concept of individuals having customary rights to farm and/or residential land. In short, information was needed on how TAs manage access to communal land and its use. The work reported here was done in response to these needs.

The main report is divided into three sections, respectively dealing with characteristics of the traditional authorities, the process of land registration (CLR), and aspects of how land is managed and allocated by traditional authorities. Much of the remainder of the

¹ All communal land fits into one of the following categories:

- a. exclusive residential and crop farming parcels which are the main focus of CLR.
- b. exclusive large farms ranging in size between 2,500 and over 8,000 hectares.
- c. business properties which are mainly used by small shops, but also by large registered companies and lodges
- d. public service properties for schools, clinics, community projects, quarantine and other government farms, national parks etc
- e. commonages close to residential properties or in distant grazing areas, many of which are managed as conservancies and community forest areas.

document offers more detailed observations for each of eight groupings of TAs (Appendices 1-8). The groupings and their names follow those used by the Ministry of Regional & Local Government & Housing. Unless stated otherwise, the use of masculine pronouns includes the feminine equivalents.

METHODS

Senior members of all of the 46 TAs recognized by the government were interviewed during meetings held between July and October 2008. The locations of the TA offices or places where meetings were held are shown in Figure 1.² Appendix 9 lists the dates and locations of all the meetings.

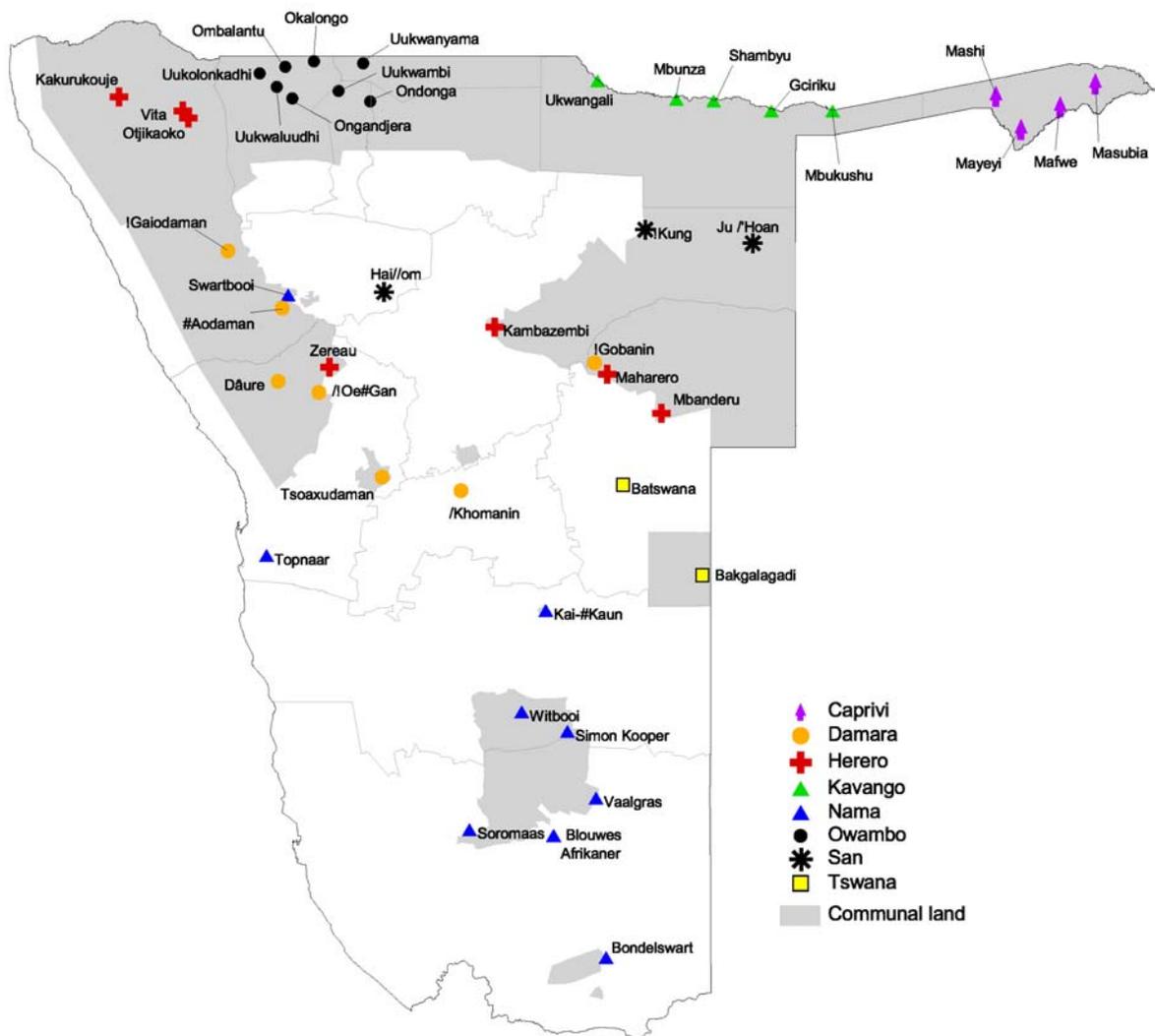


Figure 1: Communal land in Namibia, regional boundaries and the offices or locations of interviews with the 46 recognized traditional authorities.

² Not all TAs have established central offices. Some operate from private homes, and some have offices in several places.

Each meeting generally lasted two to three hours, and was attended by two or more traditional councillors and headmen and the Secretary of the TA. I did not ask for, or encourage the attendance of Chiefs because of their frequent domination of discussions. However, 16 of the meetings were attended by Chiefs.

The following topics were covered to a greater or lesser degree in each meeting. Some topics were skipped when they were irrelevant to local circumstances. By contrast, other topics sometimes required lengthy investigation.

1. The nature and use of allocated land?

- Are allocated parcels clearly identified and mutually exclusive?
- Are borders clearly determined and known to the owner/TA/neighbours etc?
- Are allocations made for different uses, e.g. residential, fields, grazing, gathering/hunting?
- Is the use specified together with the allocation?
- Who controls commonages, and are their borders known?
- Who controls grazing systems and pressures?
- What are water point associations doing, and how are they developing?
- Allocation and uses of Odendaal farms
- Who controls distant cattle posts, seasonal pastures?
- What kind of fencing is happening?
- Are there any special allocation rights, e.g. on water points, fruit trees etc

2. Land allocations:

- How do people apply for land?
- To who is the land allocated, e.g. man, couple etc?
- Who makes the decision on allocation, e.g. local headman and what are the roles of senior levels of the TA?
- What is paid for an allocation, and to who?
- Is allocation permanent, or is some renewal/reconfirmation needed?
- How are properties for businesses obtained and approved?
- How are new villages established?

3. Changes and inheritance of allocations:

- What happens to the land when the 'owner' dies, divorces, moves away?
- What role does the headman and/or TA play in controlling inheritance?
- Can anyone ever lose their allocation?
- Can 'owners' sub-divide their land?
- Can people transfer their land and/or rights?
- How are the transfers done, approved and registered?
- How often is land sold on the informal market?
- Does the TA play any role during informal sales/transfers?

4. Land registration in terms of the Communal Land Reform Act

- What do people know about requirements for registration?
- What are their attitudes towards land registration?
- What linkages and relationships do TAs have with communal land boards?
- How were residents informed about registration?

- What has been done with respect to registration so far: number of parcels processed or registered, what problems were encountered, what solutions were implemented, and what are perceived to be the biggest constraints
 - What staff, processes, equipment, files etc are available in the TA offices
 - Where are the files and/or application forms for registration?
 - Is there a need to register different types of parcels in different ways?
 - What would help make the registration process run smoothly?
5. **General**
- Structure of the TA
 - Incomes for the TA
 - Boundaries of the TA
 - How are chiefs, councillors, headmen appointed?
 - What taxes are paid for households, livestock and/or businesses?
 - Factors that threaten or diminish the authority of a TA?

A weakness of this study was its failure to obtain the views of lower levels of authority and those of residents on communal land. Some information reported here may thus show TAs as having more authority than they really have, since the people interviewed could be expected to report their roles in an elevated light. These potential exaggerations are however likely to be limited. A wide range of literature was remarkably scanty on the role of TAs in managing communal land (see Appendix 10), but it also did not reveal any major discrepancies with information provided during the meetings.

In addition, no major disagreements were found in comparing the results with those found in broader assessments of land management and farming practices that I had done previously. Exaggerations by senior TA members would also have been corrected during my discussions with various other informants, for example local MLR staff and interpreters that accompanied me to the meetings. The names and positions of these other informants are given in tables at the end of the appendix covering each group of TAs.

FUNCTIONING AND STRUCTURE OF TRADITIONAL AUTHORITIES

Although all TAs are considered have similar status and roles in terms of the Traditional Authorities Act, Act 25 of 2000, there is huge variation between them. The variability covers several aspects.

History

Most of the Owambo, Kavango and Caprivi TAs in northern Namibia have been in place for hundreds of years. As a result, they have well-established leadership lineages and customary laws, and boundaries between the traditional communities are generally well-known and respected. By contrast, most TAs in the remaining areas of Namibia were formed more recently. The first of these were probably formed during the 19th Century, while the youngest TAs were only created during the last two decades. Frequent struggles

over leadership, political affiliation, identity and community boundaries occur among these younger TAs.³

Size and land areas

Figure 2 shows where a variety of uncertainties and difficulties associated with communal land and TAs occur. While most TAs have jurisdiction over clearly defined areas of communal land, three authorities (Topnaar, /Khomani and Hai-//Om) have no communal land. And although another three TAs do have some land (Kai-#Kaun, Afrikaner and !Gobanin), the great majority of their communities live in assorted towns or in areas assigned to other TAs. Several TAs have appointed councillors living in those towns to represent their local communities (for example, see page 66). The largest TAs, for example Ondonga and Uukwanyama, have tens of thousands of families on communal land, whereas the smallest TAs, such as Gobanin and Afrikaner, are responsible for less than one hundred communal households.

The stretch of Kuiseb River valley in which the Topnaar people live partially falls in the Namib Naukluft National Park and on unproclaimed state land adjacent to Walvis Bay. Most of the Khoe traditional community also live in Bwabwata National Park, but are not represented by a recognized TA. Communities living in a broad area of communal land around the town of Berseba likewise do not have a recognized TA.

Two TAs (Kai-#Kaun and Batswana) are uncertain about the status of surveyed farms. The TAs believe that the farms are under their control, but no one has informed them officially that the farms are the property of the government and are thus managed by the MLR.⁴ If this point is made clear to the Batswana TA, then the only area of communal land that they could claim is in the Aminuis area. That area is deemed by the Bakgalagadi TA to be under its jurisdiction, however. Most of the many other such disputes over land and/or communities were found in areas where new TAs have been recognized by the government. During discussions over borders and areas of jurisdiction reference was often made to Schedule 1 in the Communal Land Reform Act of 2002 where areas of communal land are described in terms of the old ethnic homelands. For example, the Otjikaoko and Aodaman TAs claim that the areas they control must correspond to land previously set aside for their own ethnic groups.

³ Leadership systems throughout the world are generally oldest and strongest among communities that grow crops and trade, whereas pastoral and hunter-gatherer societies have weaker, very local or no leadership structures. This may explain the difference between TAs in northern Namibia and the rest of the country. Another factor may be the imposition of colonial laws and administration in the so-called Police Zone in southern and central Namibia from 1919 onwards, while law and order was left largely in the hands of traditional authorities in the northern areas of the country.

⁴ The farms were acquired by government as resettlement farms or were previously purchased by second-tier ethnic administrations before independence.

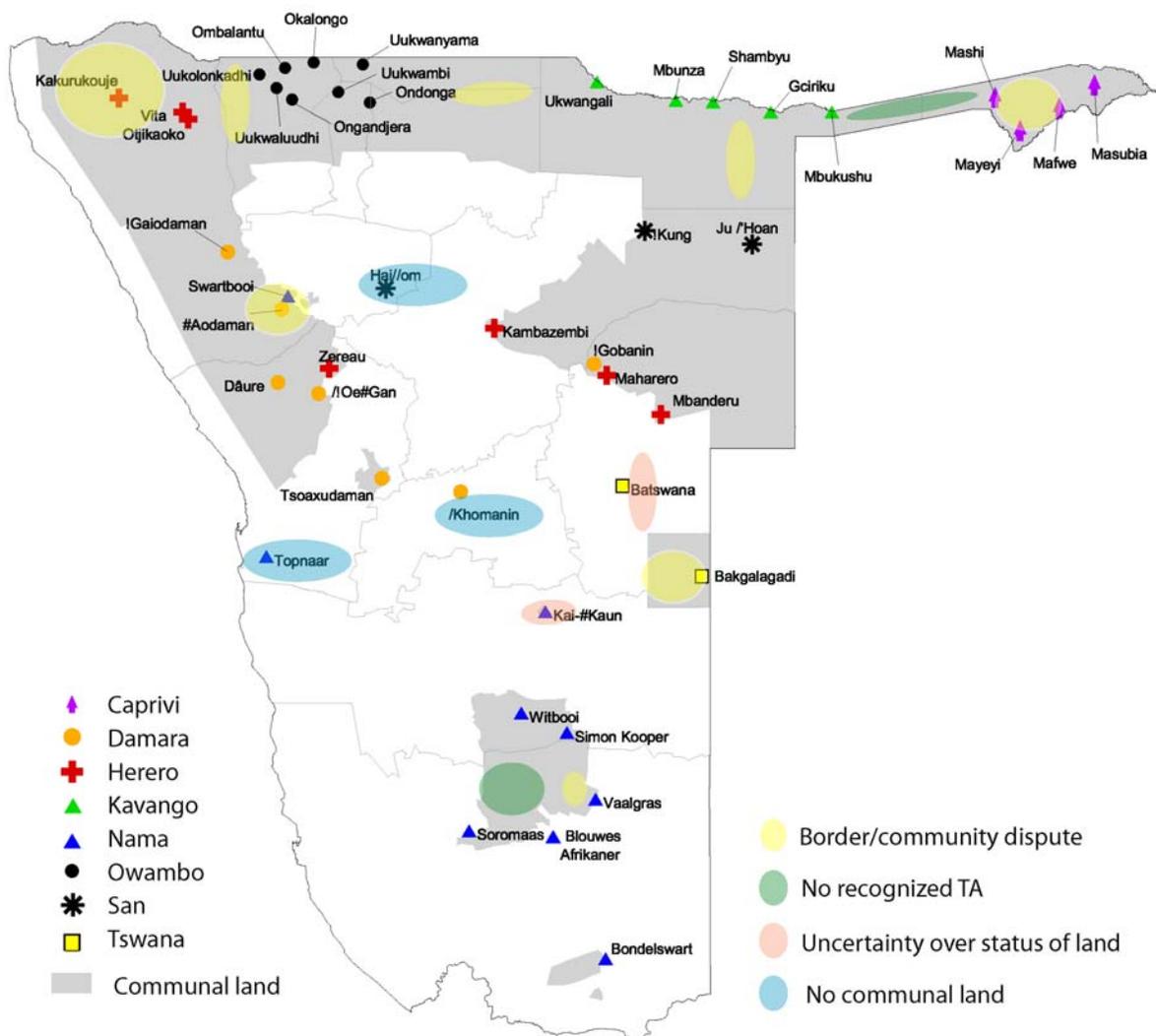


Figure 2. Areas where problems associated with boundaries, jurisdictions over communities, the status of land or a lack of communal land occur in Namibia.

Administrative facilities

Most of the older, bigger TAs have substantial buildings which provide offices, storage space and areas in which public meetings can be held. By contrast, the majority of other TAs have no offices and run their affairs from private homes or offices that belong to other organizations. There is also considerable variation in how the TAs function administratively. Some offices are equipped with computers, fax machines, filing cabinets, chairs, desks and other furniture, and they function in an orderly fashion, having filing systems, record books and several staff members appointed to perform defined functions. But many other TAs lack all or most of these facilities and most administrative information is therefore retained only in the memory of secretaries and chiefs.

Each TA has a secretary who is fully or partially paid with funds provided by the Ministry of Regional & Local Government & Housing (MRLGH). Most secretaries work as administrative or clerical assistants, and are thus proficient at only basic tasks. Some other secretaries, including notably all those in Kavango, are obviously influential and competent members of the TAs administration.

Structure of TAs

The senior levels of authority are structured along similar lines in all TAs, presumably following and in accordance with provisions of the Traditional Authorities Act of 2000 and the allocation of allowances by the MRLGH.⁵ Each TA is headed by a chief who may be locally known as a king, queen, captain, *homba*, *fumu*, *omaukwaniilwa*, *elenga*, *ohamba*, *munitenge*, *litunga*, *shikati*, *hoofmankgosi*, *kgosi-kgolo*, *ombara*, *h'aiha* or *//aiha*. The traditional council usually consists of 12 members: six senior and six junior councillors. However, many councils have additional members who are appointed in their own capacity as advisors or as ward representatives. These extra ward representatives generally serve in places where the traditional community is divided into more than 12 wards.

The chief and council are supported by an advisor (*natamoyo*) and prime minister (*ngambela*) in Caprivi, while many other TAs also have chief councillors and/or deputy chiefs to advise and deputize for chiefs. Most chiefs and councillors are men. Chiefs normally inherit their roles from within a royal family, while councillors are appointed as individuals because of their leadership abilities or knowledge. Councillors are either appointed by a chief or elected by the community they serve.

The smallest TAs do not normally have lower levels of authority, each councillor serving as the sole local authority in a village or cluster of villages. However, this is the exception, and all villages in larger TAs have a headman. As the name suggests, this is usually a man who is often the patriarch of the original or extended family occupying the village. The position of headman is therefore usually inherited. Some big villages, or those in which two or more large, unrelated families live, may have more than one headman, or one headman and several junior headmen.

It is indeed from, and on the basis of family relatedness within villages that traditional authority has its origins, from which headmanship over extended families later evolves into chieftainship over larger areas. As discussed below, that relatedness has a substantial bearing on access to land and the inheritance of property (see pages 22-24).

Levels of influence

At the risk of being accused of making a value judgment, my overall impression was that the TAs are much less influential than is generally assumed. While lower levels of authority indeed appear to play important functions in resolving local disputes and maintaining discipline, the role of more senior members of TAs seemed less than clear. A variety of factors were reported to threaten and steadily weaken the influence of TAs.

⁵ The MRLGH pays allowances for the chief, 12 councillors and the secretary, and also provides funds for stationery and communications.

With respect to custodianship and management of land, a host of newly created institutions either challenge the role of TAs or are gradually taking over certain of their functions. The most prominent are water point associations, farmers' associations, conservancies, community forests, village development committees, regional councils and communal land boards (CLBs). Many of the TAs were puzzled – and indeed annoyed – by the contradiction between stipulations of the Traditional Authorities Act, which confirms their role as custodians of the land and advisors to the President on matters concerned with communal land, and those of the Communal Land Reform Act, which places CLBs as the final arbiters on access to their land. How can CLB members who are often young, disrespectful bureaucrats, with limited local knowledge and no customary authority, make decisions that overrule those of the TA? Questions of this kind were asked repeatedly, and were hard to answer!

These perceptions fuel antagonism towards customary land registration since CLR is then seen to be a government or political programme that rides roughshod over the very custodianship that TAs have on land.

Two other factors undermine TAs. Firstly, TAs lose authority over land and communities that fall within the boundaries of declared settlements or towns. These urban areas are administered by local councils supervised by central government through the MRLGH. Further dissatisfaction arises when members of other traditional or ethnic communities settle in these urban areas but then use surrounding communal land for farming.

People who leave rural areas to live in towns are largely lost to the traditional authority because they live far away and in urban societies that pay little attention to customary practice. Some TAs have appointed representative councillors in urban areas, but it is doubtful that these people play much of a role in representing their urban constituents.

Secondly, it is obvious that more educated and affluent community members often ignore or bypass TAs. Many of these people see no reason to respect old-fashioned traditional authority when they visit rural areas, or wish to build a home and farm on communal land. One poignant example of this kind of threat came from the chief of a TA who requested my help in arranging police protection to prevent abuse and insults when he visited members of his community.

Educated, wealthy people have other impacts that go beyond ignoring or abusing TAs. These include their increasing privatization of land and command over commonages (as described on pages 26), their growing importance as influential role models, and sources of help to poorer local residents. As one informant advised, “never bark at a rich man; he is the only person in the area with a car, and one day the car will be needed to transport your sick child to a hospital”.

Recommendations

Two obvious aspects need to be clarified. The first is to ensure that TAs are quite clear about the status of government-owned farms in their areas. It appears that the MLR now considers them all to be resettlement farms. If this is indeed the case, that information should be relayed to the TAs in writing. However, there may be merit in proclaiming some farms as communal land, especially if they adjoin existing communal areas.

Secondly, there is an urgent need for the government, through the MRLGH, to resolve border and community disputes between TAs. Failure to do so will further fuel mistrust of the government and antagonism between communities and their authorities. It will also delay the process of customary land registration because many residents are left in the dark as to where they should send their CLR applications. In addition, TAs will be reluctant to endorse applications in areas over which their jurisdiction is equivocal, and some TAs will continue to use grievances over borders as a measure of protest to land registration. Ways in which CLR has thus been politicized are described in the following section.

CUSTOMARY LAND REGISTRATION

It was clear that information on CLR has been made widely available to residents in all areas of the country. Most Namibians are therefore aware of the need for CLR and large numbers of applications have been submitted. Public meetings and announcements over the radio have been used to inform residents about the CLR process. Councillors often held meetings with headmen who then informed people living in areas under their control. However, the information given to TAs and later to their constituents by TAs has obviously been highly variable in quality. Indeed, much of the information has been wrong since so many misunderstandings were reported. These are discussed below.

However, confusion and misunderstandings were also created by TAs that opposed land registration. This was encountered among 10 TAs: all four of the Caprivi TAs, all five of the Kavango TAs, and the Otjikaoko TA in northern Kunene. It should be stressed that the reluctance of these TAs to support CLR stemmed from grievances that were not directly related to registration. Furthermore, the views expressed during my meetings were clearly those of the senior leaders, and there was little or no evidence that local residents held the same attitudes or were against applying for CLR. The reasons for these grievances are presented elsewhere: page 34 for Caprivi, page 58 in the case of Kavango, and page 48 for Otjikaoko.

All these TAs clearly used arguments about CLR as political tools to protest over broader issues concerned with land, especially disputes about boundaries between communities, and land grabbing and expansions by neighbouring traditional communities (see page 28). However, for purposes of this study many of the arguments were also useful in highlighting weaknesses in the legislation governing CLR, dissemination of information on CLR and overall management of communal land.

Uncertainties over boundaries between traditional communities had a number of consequences for the CLR process. Some TAs were reluctant to deal with CLR

applications from areas where their jurisdiction was disputed. Residents in these areas were left in the dark as to where they should apply to register their properties. And some TAs used CLR to reinforce claims to equivocal areas by encouraging residents in those areas to apply through their offices rather than those of neighbouring, competing TAs.

Despite these problems, the process of using TAs to assemble and endorse applications for CLR has worked well, both for logistical reasons in collecting the forms and in ensuring that applications for land have customary validity. No other group of organization or group of people could have reasonably done this. The most effective ways of generating interest and demands for registration, and of having application forms completed, checked and collected were documented among the Owambo TAs (see Appendix 6)..

Misunderstandings, confusions and objections

Definition of land for CLR

The Communal Land Reform Act of 2002 and Regulation No. 37 of 2003 effectively limit applications for CLR to properties used for *residential and farming* purposes. Those that can be approved by the CLB can be no bigger than 20 hectares; applications for larger areas have to be especially motivated and can only be approved by the Minister of the MLR. The word *farming* has created many problems, especially when read in conjunction with the 20 hectare limit.

While it is obvious that *farming* really means crop production – since farming livestock on such a small area using normal husbandry practices is impossible – it has taken massive debate, argument and contention for most people to reach that conclusion. The problem was most severe in livestock farming areas where residents live in villages from where cattle, sheep and goats graze outwards on commonage pastures between one settlement and another. Thus, for example, many people were alarmed at now having to limit all their grazing within 20 hectares. Others were concerned at what would become of access to commonage pastures if all residents in a village were allocated 20 hectares. This was related to the frequent assertion found in all areas that everyone would be allocated 20 hectares, or should attempt to obtain 20 hectares since this would be the last chance that anyone would have of registering a property.

Likewise, many objections were made in Caprivi and Kavango that no land would be available for shifting cultivation or for future generations.⁶ For example, “Where will my children living in Windhoek be able to settle when they are old and want to return to this village? And what land will be available for my grandchildren?” The very idea of residents being ‘limited’ to a registered property is therefore hard for many people to accept, particularly in Kavango and Caprivi where there appears to be an abundance of open land.

⁶ It is often said that farmers in Caprivi and Kavango practice shifting cultivation. While much land has been cleared and is no longer used, the frequency and extent of fields being shifted has not been properly measured and is probably exaggerated. One positive effect of CLR is that clearing will be reduced if land must first be registered before it can be cultivated. This should lead to less slash-and-burn losses of woodlands, especially due to clearings that are never or seldom used.

These kinds of claims and arguments were generally settled in livestock farming areas when it was realized that only residential properties could be registered together with adjoining vegetable gardens and livestock pens (*kraals*). However, some communities and their traditional leaders remain unclear about what land may be registered for CLR.

Twenty hectares

Perhaps more discussion was generated by the 20 hectare limit than any other aspect of CLR. In addition to aspects noted in the section above, the arbitrary nature of the 20 hectare limit and the hurdles placed before applicants wishing to register larger properties raised many objections.⁷ No firm statistics are available, but there must be thousands of customary properties ranging between 21 and a few hundred hectares. They are all therefore much smaller than the big farms which can be registered as leaseholds, such as those acquired informally in the Owambo and Herero TA areas or being developed as 'small-scale farms' in Kavango (see page 26). Indeed, obtaining CLR over 21 hectares seems more difficult than getting a 99-year leasehold over several thousand hectares of communal land. There is also a double standard: someone with less than 20 hectares only gets a certificate confirming his customary rights to a piece of land, whereas another person with more land can have 99-year leasehold.

It was evident from many discussions that few people had a clear grasp of the area covered by one hectare, let alone 20 hectares. Some TA members said that 20 hectares was equivalent to the size of a large, freehold cattle farm. Aside from that extreme misconception, confusion and disappointment occurred when the surveyed areas of properties turned out to be different from those noted on CLR application forms. For example, a resident would state on the form that he is applying for a property covering 10 hectares, and that figure would be endorsed and approved by the TA. However, the area later surveyed would then amount to less than 1 hectare.

Payments for land

Claims were made – and often spread where political motives were used to undermine CLR – that the application fee of \$25 for CLR was actually a payment for land. That idea raised protests because (a) communal land had always been for free, (b) the payments signified the beginning of communal land being placed on the market and (c) poor people would thus soon be 'sold off their land' and be left homeless.

The only other problem encountered with application payments was the difficulty that some poor residents had in actually paying the sum of \$25. Payments were then usually waived by the TAs.

One or more properties

Residents in many areas use more than one plot of land. For example, the home is located on one plot while other pieces of land, often located in different directions or places are

⁷ For example, people are often first persuaded to reduce the areas being applied for. Failing that, they need to make special written applications to justify their claims, and the applications need to be approved by the Minister of MLR.

used for crop cultivation. Neither the legislation nor the regulations explicitly prohibit the registration of more than one property, but the singular word *portion* is used throughout the two documents and on the prescribed application forms.⁸ Moreover, no guidance has been provided on how multiple properties should be registered. As a result, most people assumed that plots would have to be registered separately, requiring \$25 application payments to be made for each plot.

Commonages

Again in the absence of clarity in the legislation and regulations on how commonages were to be registered or otherwise managed, much anxiety was encountered over what would happen to these open lands. For example, there were politically motivated complaints that the commonages would be registered by Oshiwambo-speakers as favoured allies of the (SWAPO)-government. These fears were fuelled by the observations of members of Owambo traditional communities expanding their land holdings and use of pastures into neighbouring Kavango and Kunene (see pages 58 and 48, respectively).

Leaseholds

This study paid limited attention to the question of leaseholds over commercial and other non-farming properties. However, it was clear that few TAs had any idea that applications for leaseholds would have to be made for all business properties. There was an even greater vacuum of opinion concerning land used by schools, government agricultural projects and other public or community services.

It is only in Kavango that applications for leaseholds over ‘small-scale’ farms, each covering thousands hectares, have been made and approved. Some leases are for 25 and others for 99 years. TAs in Kavango fully supported these leaseholds, which give their owners security of tenure over their ranches, while paradoxically being against CLR for local farmers who really are small-scale.

Group versus individual registration

One TA in Otjikaoko and two in Caprivi expressed the firm view that land should be registered as a group right, rather than as individual properties. The main arguments for group registration were that it would preserve opportunities and flexibility for the future, grazing areas could be clearly incorporated and owned by a village or ward, and that registration would be much simpler.

All three of the TAs were among those opposed to CLR. However, two other TAs in Caprivi who were also against CLR, argued that group registration would be ill-conceived because the rights of local residents would be open to abuse by whoever controlled the groups, most obviously local headmen.

Focus on higher levels of traditional authority

⁸ The use of singular portion must have been accidental, since the legal drafters of the Act and Regulations had to have known that a portion of land would consist of more than one plot in many areas of the country.

Article 20 of the Communal Land Reform Act of 2002 states that “the primary power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community vests: (a) in the Chief of that traditional community; or (b) where the Chief so determines, in the Traditional Authority of that traditional community”.

Although this wording implies that a chief may delegate authority to other levels of the TA, it is clear that the process of CLR is intended to have endorsement from senior levels of leadership. Other aspects of the process confirm this focus. For example, \$25 application fees are paid to the head office of the TA, and applications are forwarded by and through this office to the MLR for further processing. None of the procedures therefore directly mention, require or imply the participation of the local headman in the sequence of events needed to establish CLR. It was also clear from information obtained during this study that authority is seldom delegated to headmen, and only in some areas were headmen required to separately endorse applications

The omission of headmen is a serious problem, and one that arguably defeats the very purpose for involving TAs in land registration. This is because applications are based on the *customary* rights of residents, and it is local headmen who are best placed to confirm those rights. Indeed, they are often the only people in the hierarchy of traditional leadership who can provide confirmation, and only they would know if boundaries claimed around properties are valid. Neither chiefs, nor members of the traditional council can be expected to have adequate knowledge of these matters.

Other aspects

As discussed above, most people appear aware of CLR. Current estimates indicate that as many as about 70,000 CLR applications have been received for surveying by the MLR, but only about 4,000 registrations have been approved and certificates issued. Demand for CLR therefore far outstrips the ability of regional offices of the MLR and the CLBs to process and approve applications.

This has obviously slowed the whole exercise of registering all communal land properties in the country, which are estimated to exceed 230,000. However, the tardiness has had several other effects. Notably, large numbers of people are extremely dissatisfied at having had no response to applications submitted two, three or even four years ago, especially after having made the effort to complete and submit their applications and pay the application fee of \$25 (in some areas, applicants paid the application fee and a further \$50 for the registration certificate at the same time). Such dissatisfaction has further led to the process, MLR, CLB and the legislation losing credibility. As one person put it, “The Communal Land Reform Act is now a hollow law”.

Note was taken during the meetings on how records of applications and the issuing of registration certificates are kept by TAs. The great majority of offices used invoice or receipt books as the only record of applications, and it was only in a tiny handful of other TAs that this information was kept in dedicated files, either on paper or computer. Short of a complete change in administrative procedures and facilities, it was thus clear that

TAs can not be expected to have, or to retain good records of applications and certificates of registration.

It was surprising but clearly evident that aside from communal land boards, regional government officers, governors and councillors play little or no role in the land registration process. All these people appear to have been excluded from the process or have chosen not to be involved. This is curious since it is the CLB – as an instrument of regional government – that has to assess and approve applications for CLR.

Customary land registration is clearly confined to properties on communal land, and the legislation provides no directives on the customary rights of residents in Bwabwata and Namib Naukluft National Parks. The same is true for people living in places where there are no recognized TAs. Cumulatively, there are probably several thousand families that find themselves in all these areas, and there is an obvious need for the MLR to address the rights of all these people.

Recommendations

A variety of changes are needed to smooth, improve and speed-up the process of land registration. Some of these can be made without difficulty, especially those that require good, clear information to be made widely available. Specifically, information and instructions are needed on:

1. The nature of land that may be registered in terms of CLR. It should be made clear that this is confined to residential and other land that has been clearly *allocated to a single resident household*. Any land that forms part of the commonage or that is not considered to be anyone's property may not be registered. CLR is thus for the recognition of the land rights of individuals which require endorsement by an appropriate, local traditional leader.
2. That there are no limits on the number of land parcels or plots that can be registered under one application, subject to the provisions given above.
3. Reasons why TAs are involved in land registration, and the need to involve the most local and appropriate levels of leadership to check and endorse applications for CLR, especially in verifying boundaries when properties are surveyed.
4. The roles and obligations of regional offices of the MLR and CLBs with respect to processing applications, surveying boundaries, and assessing and approving applications, and the issuing of registration certificates. (It is recommended that all administration and documentation be the responsibility of the MLR since TAs lack resources to handle these matters).
5. No one may be denied the right to apply for CLR
6. Once a certificate of registration is issued, there will be no further need for the involvement of traditional leaders as long as the boundaries and owner remain unchanged. In the event of any such change, the approval of local traditional leaders will again be required since they remain custodians of customary rights.
7. The advantages of CLR and how tenure systems in Namibia are expected to evolve.
8. How the customary rights of people in national parks and areas without recognized TAs will be handled.

The requirement that CLR applications only be accepted from formally recognized authorities should be changed in the light of complexities arising from boundary disputes and the quandary people face in knowing where to apply for CLR. To solve these problems it is recommended that the CLB in each region determines which traditional authorities should verify CLR applications and boundary demarcations.

To diffuse politically motivated tensions over land registrations, it may be advisable to make applications for CLR voluntary. This would negate protests over TAs being forced into new tenure systems, or ‘selling’ their land, for example. It would also lessen the urgency to complete all registrations within a predetermined period. The suggestion made above to provide information about the advantages of land registration is also in line with this proposal. In short, rather than forcing CLR on Namibia, it may be desirable to have the process being led by voluntary demand. However, it would then also be incumbent on the MLR to create and sustain that demand.

To follow this approach, it would also be useful to leave TAs to decide on the question of payments for CLR applications. And since headmen should check and endorse applications, it is advisable that any payments be made to headmen. An option would be for the \$25 application fee to go to the headman and for the \$50 certificate fee to be paid to the main TA office. It is that office, strictly speaking, that issues the certificate of registration.

Most properties have so far been surveyed individually, the survey team moving from one mapped property to another. It is recommended that this be changed to mapping properties village by village using the high resolution aerial photographs. Most boundaries can be demarcated on these photographs; those that are not can be mapped by GPS. All residents in a village could be called to a meeting where each resident can then mark the boundaries of his property on large prints of the photographs. A host of benefits stem from this approach: the village headman can verify all the boundaries and rights at the meeting with everyone present, all residents will have the same opportunity to assess the boundaries marked by their neighbours, there are fewer chances of a selfish individual claiming land that is not his, and residents will be able to debate and feel ownership of the whole process.

The MLR should consider obtaining so-called Quickbird satellite images for areas not covered by the recent aerial photography. The images are equivalent in resolution to the aerial photographs recently acquired for northern Namibia by the Rural Poverty Reduction Programme. Two methods can be used to acquire the images. The first is to order images that have already been taken. These archived images are sold at a cost of US\$18 per square kilometre. Their clarity can be assessed before being ordered by downloading ‘quicklooks’ of the images. Many of the archived images are also available in Google Earth, an example of which is given in Figure 3.



Figure 3. An example of a Quickbird image of a village in Erongo. Most boundaries could be easily marked, especially on a bigger print of this image. The area covered by this village and image is less than one square kilometer.

Finally, there is the urgent need for the MLR to expand its resources to respond more effectively and rapidly to demands for CLR and the Ministry's legal mandate, as prescribed in the Communal Land Reform Act of 2002. Aside from obtaining Quickbird images for some areas of the country, much greater use should be made of the aerial photography covering the northern regions. The photographs have only been used for pilot testing of field techniques, and they must now be provided to all the regional MLR offices, from where their staff must make the best use of the photographs while they remain reasonably up to date.

There is a similar need for the performance of communal land boards to improve, especially in meeting more frequently to assess and approve applications for CLR. As noted above, failure to improve services required of both the MLR and CLBs will continue to retard the process and credibility of reforming communal land tenure in Namibia.

MANAGEMENT OF COMMUNAL LAND

Matters concerned with land have been widely and often hotly debated since independence in 1990. However, discussion has dwelt very largely on freehold land, resettlement and the redistribution of land from white to black owners. Perhaps because of this focus there has been almost no appraisal of how communal land is managed or used. This section attempts to add information on those aspects, in particular how they relate to the roles of traditional authorities and existing policy and legislation on registration and tenure.

Access to land

Every TA was asked how new residents gain access to communal land (see page 8). The answers given revealed surprisingly little variation across the country, with all TAs using procedures that follow several simple principles. The first of these is the relatedness (literally familiarity) of an applicant to existing residents. Thus, close relatives need little or no permission to build a house and establish themselves in a village; any permission that is needed is given by the headman. This easiness is logical for two reasons. Most villages consist largely of relatives and grow as families expand, with the family patriarch being the village headman. And relatives have more common interests, are more likely to share resources, and are less threatening than non-relatives.

Someone belonging to the same traditional community but coming from another village would require more authorization. This be obtained first from the headman and often the village community, and then the local councillor and perhaps finally from the chief and/or the traditional council. These steps would also be required by an applicant from a different traditional community, but such an unfamiliar applicant would usually be required to produce a letter of introduction from the chief of his own community. Each level of authority would question the motives and background of the applicant, and he may also be interviewed by the traditional council. In essence, a move from one community to another would be treated with circumspection, since such an applicant may be moving away from a misdemeanor. Ju /'Hoan communities even require residents from different communities to serve probations lasting five years before being fully accepted as village members.

A second principle is that the assessments are guided by the need to avoid social disputes. Character and background are therefore important aspects to be appraised. In relation to this – but as a somewhat peripheral observation – it appears clear that dispute resolution and related disciplinary measures are by far the most important functions of traditional leadership, from the lowest to highest level. It was indeed hard to find other functions that could be termed core business. As gatekeepers who assess applications for residence, TAs are actually peacekeepers.

The third principle among most TAs is that applications and assessments focus only on residence, rather than the use of resources. As discussed below, most TAs pay scant attention to the use of resources. Thus having applied for and gained permission to live in a village, residents are free to use local commonage resources as they please.

Exceptions that go beyond assessing applications for residence were found amongst all nine Nama and seven Damara TAs. These authorities also assess the availability of water and grazing at places where applicants hope to live, and also the number of livestock that an applicant intends introducing. Extension officers of the Department of Agriculture may be asked to provide advice on grazing capacity and water availability. It is significant that these traditional communities occupy the most arid areas of the country where water and grazing is most limiting.

Although TAs control access to most land by most people, there are cases where the TAs are ignored. This is most frequent in Herero traditional communities, especially if newcomers are affluent or influential. In addition, there are cases of traditional leaders being manipulated with incentives to give people access to land.

It is widely believed that applicants need to pay for access to land. This is however only customary practice among Owambo traditional communities, where rights to establish a home cost \$600.⁹ In the geographically very large TAs of Uukwanyama and Ondongo, headmen pay a once-off service fee to the chief when they establish new villages. The headmen are then free to keep all subsequent payments, perhaps because so many of the villages are in places too distant for the chief to control. Payments are also required by people wishing to start a new village in three of the Caprivi TA areas (see page 36) and by non-San applicants who wish to live in a Ju/'Hoan village (see page 86).

Although cases of land being sold are known, these are evidently rare and forbidden in terms of customary practice. However, many TAs agreed that houses and other assets developed on a piece of communal land could be sold. Land that is abandoned normally reverts to the TA, while land may be transferred from one resident to another as long as everyone in the community and the headman is informed. This may require a payment to the headman in Owambo TAs.

Only in Owambo and Kavango do residents pay household taxes to the TA. Grazing fees are paid to some Nama TAs, but these are now generally paid to water point associations. Taxes, or really perhaps leases, are paid for businesses to some TAs.

Inheritance

Most property on communal land is inherited smoothly, the estate going to the spouse and offspring of the deceased. Increasingly, estates are also executed according to written wills and to whether the couple was married in, or out of community of property. In the absence of these legal provisions, however, the division of an estate may be subjected to several considerations which are applied in different ways by TAs.

The first of these is the principle that land and a husband's assets are often seen as belonging – to a greater or lesser degree – to his relatives in the village where he was born and spent his married life. It is general practice for men to settle in their parental

⁹ The costs are evidently fixed, although there are reports of more being paid for particularly large pieces of land. These payments are now outlawed by provisions of the Communal Land Reform Act of 2002, but traditional leaders often find ways to circumvent this legislation (see page oo).

village, whereas their wives often come from other villages. A married couple therefore usually lives on land belonging to the husband's immediate family. In addition, young men often start farming with guidance and gifts or loans of livestock from their fathers or uncles. The agricultural assets of a deceased husband may therefore also be considered as belonging – at least in part – to his own blood relatives which are determined most reliably through matrilineal ties.

The second principle refers to the future of the widow. Since she normally comes from a different family, and given the principle that the estate belongs in some part to the family of the deceased, decisions need to be made about her fate and inheritance. These decisions will be affected by whether she is socially integrated into the village community, whether she will or can find another husband, her fitness to manage her home and farming activities, and whether she has grown sons who can continue to farm and support her.

The attitudes and customs of the deceased husband's relatives are a third factor to influence the distribution of an estate. Complications and disputes therefore often occur when a widow's husband has come from a traditional community with inheritance practices that favour the husband's relatives. Similarly, disputes arise when some heirs are greedier than others.

These are the principles that generally govern inheritance. As mentioned above, most communities accept that the widow inherits the full estate and for her continued role as a member of the village. Other communities treat each case individually, assessing the widow's character and her future, and which parts of the estate should go to the family of the deceased husband. The widow is then sometimes treated as part of the estate that the young brother of the deceased should inherit. This will provide her with resources and security to continue to raise her children, in whom the young brother (as an uncle) has obvious genetic interests.

And in yet other communities, the estate is inherited automatically by the matrilineal family of the deceased, leaving the widow in a precarious position. This is in contradiction of the Communal Land Reform Act of 2002, which stipulates that all land property should be inherited by the surviving spouse. In fact, this provision creates potential problems in all communities when a widow marries a new husband who is unrelated to the family. In the event of her death and according to the Act, her second husband would inherit all the property accumulated by her first husband. Many people object to this. Firstly, children of the first husband will inherit little or nothing. Secondly, the original property provided by the village family then passes into unrelated or unfamiliar hands. To guard against that possibility, Kavango, Herero and Caprivi communities follow customary practices to encourage widows to select new husbands that are familiar and acceptable to the village community.

Traditional authorities only become involved in aspects of inheritance when disputes occur or in cases where there is a suspicion that widows may not be treated fairly.

Commonages

Two sets of laws can be said to control tenure and use of communal land: the Communal Land Reform Act of 2002 and customary law.¹⁰ Most provisions of the two sets are in agreement with respect to individual properties, customary systems giving people access to residential and farm land while the Communal Land Reform Act allows registration to confirm 'ownership'. The two laws also vest ownership of communal land in similar, symbolic ways. Thus, the Act states that all communal land is owned by the state, while customary laws hold that chiefs own all land on behalf of their traditional communities. What, however, do the laws say about commonages, which are the areas that make up the great majority of communal land?

In essence, the Communal Land Reform Act of 2002 and Regulation No. 37 (made in terms of the Communal Land Reform Act) provide only a few weak stipulations on commonages. As shown below, the main rulings regarding fencing, livestock numbers and the use of commonage pastures by the owners of private farms are widely ignored. Provisions that empower TAs to regulate grazing are also disregarded.

Most customary laws are equally vague or lacking in controlling the use of commonages. Having gained individual rights to land areas on which homes may be built and crops grown, residents are then free to use surrounding commonage more or less as they please.

Unrestricted, unlimited use of commonages is thus the norm. But three exceptions to this were found. The first are customary laws that limit the use of particular resources, such as fruit trees, thatching grass, live timber trees, fish and wildlife reserved for kings. Many of the regulations have been described in two recent books¹¹, but it is significant that the laws focus mainly on resources that have particular high value, or that are available only locally (for example, special fruit trees) or sporadically (such as fish during floods in Owambo).

These laws do not relate to commodities that are widespread and used by the majority of people: grazing, water, firewood, common veld foods and building materials, although at least two Kavango TAs have regulations regarding bush fires. And this brings us to the second exception: among members of the 46 TAs interviewed this study, 44 confirmed that they have no restrictions on the number of livestock that residents may keep. The exceptions were two San TAs: Ju /'Hoan and !Kung (see page 87).¹² These are amongst the most recent TAs to have been formed in Namibia. Only in recent years has livestock been incorporated into the economy of these communities which was traditionally based on gathering and hunting.

¹⁰ The Nature Conservation Amendment Act of 1996 and Forestry Act of 2004 give residents of communal land legal commercial rights of use over natural resources to which they were previously denied.

¹¹ Hinz, M.O. 2003. *Without chiefs there would be no game*. Out of Africa Publishers, Windhoek; and Hinz, M.O & Ruppel, O.C (eds). 2008. *Biodiversity and the ancestors: challenges to customary and environmental law; case studies from Namibia*. Namibia Scientific Society, Windhoek.

¹² The Witbooi TA is a possible third exception in having a clause that stipulates that residents may have to reduce their livestock holdings if so required by the TA.

The third exception is that commonages may only be used by livestock from neighbouring communities with the agreement of traditional leadership and/or the village community. This is, however, only of slight relevance to the argument because the animals belong to another village, and these emergency requests only occur during droughts or when sources of water dry up.

Notwithstanding these three exceptions, it is clear that there are no customary limits on the use of most natural resources by most residents on most commonage.

The capture of land values by the elite

The lack of control over commonages is particularly true for forage and water, the two commodities of highest value used by all livestock on all commonages. This has not gone unnoticed by the wealthy and elite who increasingly secure commonage resources for their personal benefit.

This happens in two ways. The first is by fencing off large tracts of land (see Figure 4), which is accomplished in various ways in different areas: by paying a local headman in Owambo to secure his agreement for the allocation of land to be enclosed (see page 81); by forming land and farming committees to plan and allocate farms in each of the Kavango TAs (page 63); and by drilling boreholes and then fencing off private farms in eastern Herero areas (page 52). In total, there are about 190 such farms in Owambo, over 500 in Kavango and an unknown, but significant number in eastern Herero.¹³ All the farms are substantial, most varying between 2,500 and 10,000 hectares. While some farms have been acquired in unoccupied or unused areas, others have led to local residents losing commonages, seasonal or emergency grazing areas and probably even their homes.¹⁴

The second way in which commonage resources are exploited is through domination by livestock. Livestock ownership is highly skewed in most communities, with the result that most animals are owned by a few farmers (see Figure 5). The majority of large herds or flocks belong to 'weekend farmers' who are wealthy businessmen or salaried employees that spend much of their time living in towns. They often make up 15 to 25% of all livestock owners in any one area, but cumulatively they may own 70 to 90% of all animals. As a result 70-90% of pasture and water is used by animals belonging to wealthy, mostly absentee farmers, leaving 10-30% of these resources for local permanent residents who depend largely on livestock farming.

¹³ Another 77 farms, each covering 2,500 hectares are being planned in Caprivi.

¹⁴ The problem with fencing lies in the way in which owners acquire their land, and the dispossession of customary rights that other people have to land. In actual fact, potential land uses that result from privatization are probably economically and environmentally preferable to traditional slash-and-burn crop farming and over-exploitation of commonages.

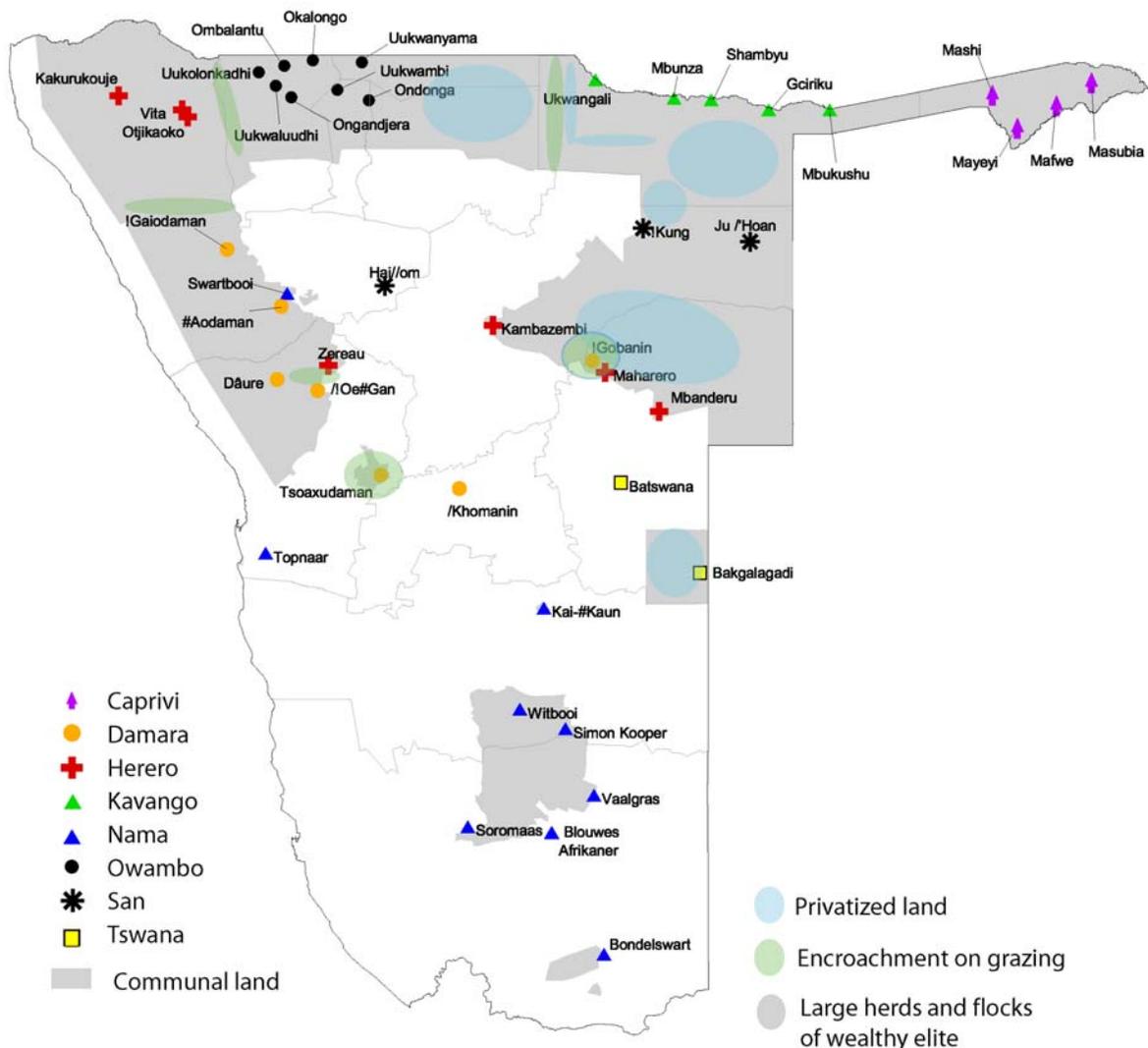


Figure 4. The loss of commonage resources as a result of land that is being privatized, one community encroaching on the pastures of another, or large herds and flocks of wealthy people exploiting the only pastures available to local residents.

There is obviously substantial competition for grazing between rich and poor farmers when their animals graze on commonages around permanent water points. Once this grazing is depleted, however, livestock of wealthier farmers are moved further away to pastures that have not been grazed. These are far from permanent water, and the wealthier farmers then use vehicles to cart water to their animals. Lacking means to transport water, the livestock of poor residents have to remain close to permanent sources of water. With little to eat, the growth and production of their animals suffers.

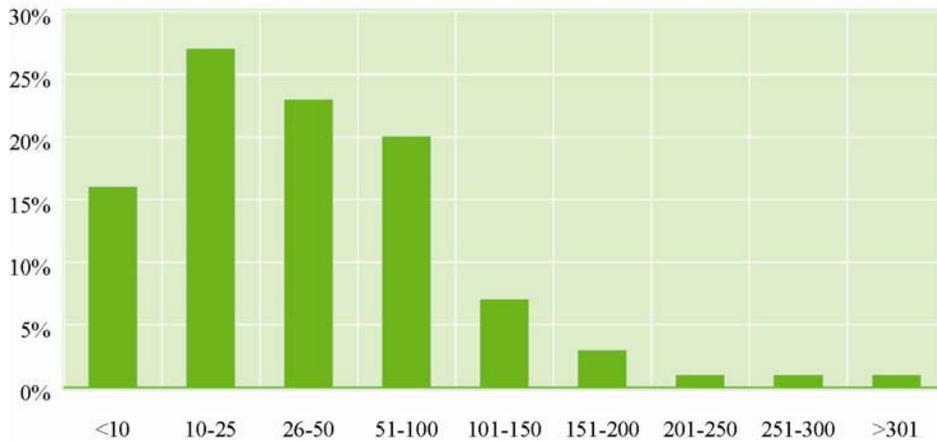


Figure 5. An example of how cattle ownership varies in communal areas. These are percentages (y-axis) of farmers owning different numbers of cattle (x-axis) in 2001 in eastern Otjozondjupa.¹⁵

Poorer farmers both lose pastures and lack resources to cope with shortages of grazing. By contrast, the wealthy and elite not only have funds for transport, but also for labour, water tanks, new livestock, and to erect fences and kraals. Their status and connections are helpful in finding buyers for their animals and in bypassing customary law. All these things place them at a substantial advantage in the use of land, particularly when there are no controls in place.

Commonage pastures are also used by livestock belonging to farmers on resettlement, affirmative loan scheme and other private, freehold farms. This happens widely in eastern Herero and perhaps elsewhere. Large herds are moved on to commonages at the end of summer when pastures are best, and left there until the grazing has been depleted at the end of winter. Having consumed much of the commonage grass and browse, the animals are then moved back to the farms of their owners where the pastures have yet to be grazed. These farmers thus benefit from two sets of grazing resources.

Local, resident and poorer farmers are generally unable to compete or offer any resistance to the exploitative practices of wealthy people. Defensive fencing, in which local farmers fence off small areas around the villages, has increased exponentially in some places, one enclosure leading to another as residents are forced to secure for themselves some part of the dwindling commonage (see page 51). The benefits of flexibility and mobility provided by large areas of commonage grazing are thus diminished.

Most wealthy, elite people have their farming enterprises in areas belonging to their own traditional communities. However, there are a number of places where farmers from one traditional community move their livestock into those of neighbouring communities (Figure 4). These encroachments cause considerable grievance, threats and counter-threats, and mostly involve impingements by Owambo farmers into adjoining Herero (see

¹⁵ From Mendelsohn, JM. 2006. *Farming systems in Namibia*. Raison, Windhoek.

page 48) or Kavango areas (page 58), and by Herero farmers into areas of traditional Damara communities (page 41).

Such cross-border encroachments are viewed much more seriously by TAs than the exploitative practices by members of their own communities. With the exception of incidents in Kavango, little violence has so far resulted from the incursions. However, Namibia has enjoyed relatively good rainfalls over the past decade, with the result that there have been no major shortages of grazing. The government and traditional authorities should be prepared for many more serious instances of protest and violence that are certain to occur when the next drought sets in.¹⁶

Recommendations

From observations and conclusions made here, it is clear that there is little or no government or traditional control over the use of most communal land. Much of it is a free-for-all that does not serve the stated intention of communal land being a safety net for the poor. Quite the reverse is true: it is more a poverty trap where the rich get richer, and environmental resources are exploited. Most communal land is a veritable example of Hardin's 'tragedy of the commons'. What can be done to fix this situation?

Debate and legislation

First, there is an obvious and urgent need to encourage public debate on the management and use of communal land. The debate should involve traditional authorities, political leadership, farmers and their unions, economists, social anthropologists and the media. Emphasis must be placed on *security over resources*, rather than the present focus on *security of tenure*.

This dialogue should move towards the revisions and tightening of existing regulations, legislation and customary law. Policies that create assumptions about tenure and the use of communal land being free for everyone need to be revised. Ways are needed to secure resources on commonages which can not be parceled into individual properties. Traditional authorities should be encouraged to evaluate carrying and other capacity before land is allocated, to assess economic needs of applicants, and to consider the ways in which they can control the use of commonage grazing. Further suggestions on this aspect are provided in Appendix 11.

Communal tenure

While the CLR process seeks to formalize and document 'ownership' of residential and individually-owned farmland, people in many communities have no agricultural land to claim as their own. Their residential plots are also really of little consequence because they are small and have to be placed close to water points. For these people, it is their shares in commonage grazing that makes land valuable and worth 'owning', especially in the face of the land grab by the wealthy and elite. What is therefore needed is a system to formalize and legally register 'ownership rights' to commonage pastures.

¹⁶ For example, extreme differences of opinion will surface during the next drought in Kavango when people realize that water, pumps, storage tanks and grazing set aside for emergency grazing have been incorporated into 20 twenty private farms.

Several options are available. Individual ownership is a desirable first option, but most commonages cannot be divided up into units that are economically viable since options for grazing diminish exponentially as farm size declines. Commonages need to be kept open to allow livestock to move between pastures; the larger the commonage the more options there are for movement between grazing areas.

This means that some kind of group ownership and/or control should be developed, which raises questions of who would control the group, how rights of use can be assigned to legitimate ‘owners’, and what kind of legal title would be accorded jointly-owned land.

It is recommended that the following model be considered:

1. Local management institutions, such as conservancies, water point associations¹⁷, farmers’ associations, community forests etc should be registered as companies that have full control over areas of common property. All these management institutions have – to a greater or lesser degree, and according to local circumstances, proved their potential to organize communities for better decision-making and collective management of their surrounding resources, including grazing for domestic livestock. Further suggestions with respect to conservancies are provided in Appendix 12.
2. Boundaries between common property areas should be surveyed and registered in as long-term leaseholds.
3. Legitimate residents and/or users of the common property should be registered as shareholders of the companies. The shares would amount to capital assets which will thus provide people on communal land with the opportunity of benefiting from the capital value of land.¹⁸ As shareholders, residents will then have more reason to care for and develop the value of their land.
4. Each community should decide how newcomers can be admitted: as shareholders, free residents with their own residential properties, or whether newcomers may not be admitted. Pockets of commonage can be left open and available for free access at the discretion of TAs as a safety net and for retirement homes
5. Measures should be implemented at the beginning to avert the risk of management of commonage tenure being misused by the elite.
6. This model of group ownership should be vigorously encouraged and promoted, but not imposed. The system should grow according to demand and create management and shareholding systems that are most appropriate for local circumstances.

¹⁷ For example, these committees manage the maintenance of fences in and around the 22 Korridor farms (see page oo) and also assess applications from people wishing to settle on the farms.

¹⁸ This will also rid Namibia of the last substantial vestige of apartheid discrimination which legally forbids a large section of its population from having capital assets on their land, not because of their race but because of where their homes are located.

Towards a seamless tenure system

Namibia's history of forced separation between ethnic groups came to an end when the country became independent in 1990. The same history provided mechanisms for the rich to benefit at the expense of the poor. While many of these mechanisms also came to an end in 1990, others are perpetuated by the country's dual tenure system and lack of control over communal land.

Freehold land provides security, capital, and incentives for investment. It is a system which provides for the generation of wealth and economic health. Communal land provides homes to the poor, using a tenure system that supposedly benefits from the freedom of open access, and direction provided by traditional leadership and customary law. But the tenure system sustains poverty because it provides no incentives for the poor to get out of poverty.¹⁹ And in parallel, the vacuum of management of the commons provides opportunities for the rich to be enriched. This happens at the expense of the poor, and also at the cost of environmental health. In the words of one traditional leader "We will die communal".

Namibia has embarked on a process to improve security of tenure through customary land registration (CLR). That process should be accelerated to provide CLR for all residents on communal land, and it should also speed towards a unitary system where rights, security, accountability and asset values are the same on all Namibian land. Some steps to be taken along that road include:

1. Providing legal rights and ownership of all land, the ownership being vested either in individuals or in groups (through local management institutions) according to what is best for the area of land in question.
2. All ownership may be registered in the form of freehold or as 99-year leasehold title.
3. Freehold and 99-year leasehold title should be equivalent in value and status for purposes of capital, mortgage and security of tenure.
4. Customary land registrations should be converted into long-term leaseholds.
5. Beneficiaries of resettlement land should be given long-term leaseholds.
6. Lease fees should be charged for all leaseholds, but the charges per hectare should vary so that the poorest and smallest land holders pay nothing while the wealthiest pay reasonable rates.

The effect of adopting these recommendations would be to:

- provide clear guidance on how communal land is to be treated in Namibia
- bridge the gap between communal and freehold land, and between economic opportunities available to occupants in the two tenure systems
- provide security of tenure to all land holders
- provide opportunities for land holders in communal areas to develop the capital asset values of their properties

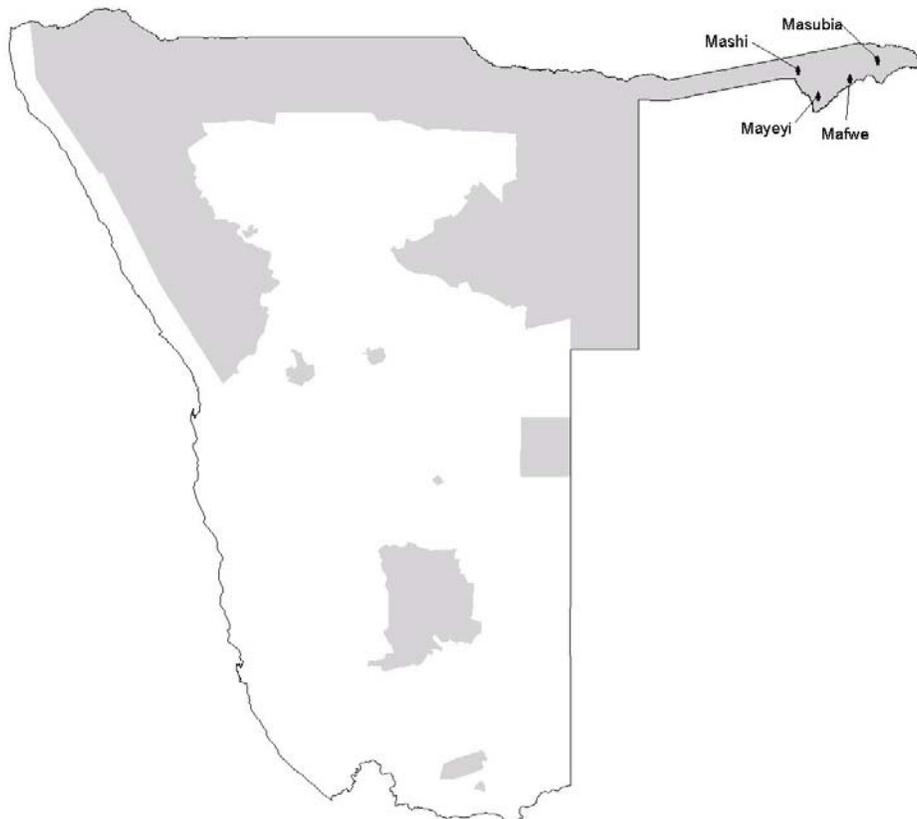
¹⁹ The Communal Land Reform Act of 2002 reinforces the disparities by giving poorer farmers mere certificates of customary right while providing larger land owners with leaseholds that extend up to 99 years!

The social and economic benefits should greatly exceed any disadvantages, the most significant of which is a possible reduction in land being available as a safety net for the poor. However, the degree to which this may happen remains uncertain. Moreover, economic benefits from communal land having investment and capital value would extend to the so-called poor through multiplier and linkage effects in the broader Namibian economy.

“Individual registration should continue, and let us see the outcome”

Appendix 1

Caprivi traditional communities



1. Features of traditional administration²⁰

From bottom to top, tribal leadership consists of village headmen (*indunas*; large villages may have deputy headmen), ward headmen, ward representatives (who are equivalent to traditional councillors), the chairman of the council (called the *ngambela*) and the chief. The traditional council is called the *kuta*. In addition, the chief is served by an advisor (the *natamoyo*) who is a member of his family. The *ngambela*, by contrast, is an elected position filled by a person from outside the royal family because an important function of the *ngambela* is to represent members of the community before the chief. The *ngambela* may also deputize for the chief. Ward representatives are also elected.

²⁰ Beaven Munali accompanied me to all meetings as a guide, interpreter and informant. He is a close relative of two royal families and has worked with traditional authorities over many years in his capacity as a senior staff member of IRDNC (an NGO: Integrated Rural Development and Nature Conservation). I also met Sylvester Majakube of the Ministry of Lands & Resettlement (MLR) where he also serves as Secretary of the Caprivi Communal Land Board

Ward and village headmen form a sub-*kuta* having powers over the ward, while the chief, *ngambela*, *natamoyo* and ward representatives form the overall tribal council or *kuta*. The ward representatives/councillors are also given portfolios for health, education, land and environment, for example. The size of a ward depends on the number, size and dispersion of villages, but normally consists of between 10 and 30 villages. There is also considerable variation in the size of villages, which range from a single home to massive settlements. For example, the town of Linyanti remains a village in its social context.

There were only two TAs before independence: the Mafwe and Masubia. The Mafwe was then divided, first by the recognition of the Mayeyi in 1993 and then by recognition of the Mashi TA in 2005. However, the borders of these two new TAs have never been determined, and the Mafwe TA has never agreed to cede parts of its traditional area to the two new TAs.²¹ In addition, the government proposed a new border between the Mafwe and Masubia shortly after independence. However, this border is not accepted locally.

Uncertainty over all these borders causes considerable displeasure among all the TAs, and it also affects programmes or activities that require the participation of the TAs. For example, the TAs are reluctant to be involved in areas which may be contentious, or they may stall progress if they feel that decisions are made by other groups in areas which they believe to be their responsibility.

2. The process of land registration

The process of CLR has suffered significantly as a result of ambiguity and antagonism over borders and the recognition of TAs. Residents do not know to which TA they should submit their applications, for instance, and ward headmen are reluctant to encourage applications from villages that lie in contentious zones. The TAs are also not enthusiastic about supporting a programme that involves land registration when their authority over land has been compromised. This is further exacerbated by the role of the CLB as an instrument of regional governance rather than traditional administration, and the fact that the CLB can overturn or ignore decisions made by the TAs. The idea that a TA may not evict someone once his land had been allocated by the CLB is particularly galling, and it is unfair that TA get no funds from leaseholds in their areas of jurisdiction. All these issues are also perceived to be part of the general undermining of the role and authority of TAs.

Information on CLR appears to have been made widely available, and most people seem aware of the need for CLR. However, many people also have a poor understanding of the reasons for registration and its implications. A variety of reservations were raised as a result:

1. Alarm at the idea of ‘buying’ land by having to pay the \$25 application fee and then the registration fee of \$50.

²¹ The Mafwe TA continues to claim all of west Caprivi i.e. all the way to the Okavango River at Bagani, while the Mbukushu TA in Kavango claims the same area, i.e. all the east to the Kwando River. West Caprivi has now been proclaimed as the Bwabwata National Park. People from a variety of ethnic origins live in the Park, but it is also generally accepted as being the ‘home’ of the Khwe (or Barakwena) people. Their leadership has not been recognized by the Namibian government, however.

2. Displeasure due to the assumption that each separate field or plot would have to be registered and paid for. Most households would then have to register at least three properties: a *letapa* on a floodplain, a plot around their house, and a dryland field (*masimu a mushita*) on high ground away from the floodplain.
3. Disagreement with the perceived requirement that properties may be no bigger than 20 hectares. The limit was considered to be both arbitrary and unnecessarily restrictive, but the concern was also voiced about land availability being limited if everyone now registers 20 hectares. For example, “What will happen when my children return to Caprivi one day and want a place to live and farm?”
4. The fear that people will attempt to register individual ownership over land that does not belong to them, perhaps even bypassing the TAs to get allocations directly from the regional CLB.
5. Concern that many people are unable or unwilling to pay the fees of \$25 and \$50.

As in Kavango, some of the reservations appear to stem from the assumption that there is an abundance of open land in Caprivi. The very idea of residents being limited to a registered property is therefore hard for many people to accept. Interestingly, no one raised the possibility that CLR might limit the clearing of new fields. Perhaps there is less need to clear new fields frequently in Caprivi than in other crop-growing areas?

Some TAs were annoyed by the lack of progress with registration, especially the slow pace of response to applications submitted to the MLR and CLB. According to the Secretary of the CLB, no properties have been approved by the CLB.

The TAs clearly have limited processes and facilities – such as trained clerical staff, computers and filing systems – for the administration of CLR.

Two TAs (Mashi and Mayeyi) held the strong view that land registration be done on a group basis, all land belonging to a village or ward being registered as a unit. By contrast, the Mafwe and Masubia TAs were adamantly opposed to group registration. The main arguments in favour of group registration were that it would preserve opportunities and flexibility for the future, grazing areas could be clearly incorporated and owned by a village or ward, and that registration would be much simpler.

The dominant counter argument to group registration was based on the assumption that allocations could be abused by whoever controls or leads the group. For example, a headman might deny certain people their customary rights to land, or allocate greater and better areas to people he prefers. And while rights and fair play may be guaranteed in the beginning, there is the concern that protections would erode in the future. The Mafwe and Masubia TAs also suggested that individual ownership was desirable and inevitable in the light of economic and social change which sees people functioning more as individuals with less group adherence.

The following statistics on CLR were reported by each TA²²:

²² I did not probe how many applications were outstanding since that would have required a debate on the boundaries and extent of each TA.

Mashi – less than 100 applications have been received
Mayeyi – about 1,500 applications have been sent to the MLR office in Katima after being recommended by the TA
Mafwe – claim that over 10,000 applications have been submitted – this figure is a gross exaggeration
Masubia – about 2,000 CLR applications have been submitted.

The Secretary of the CLB reported that a total of 3,700 CLR applications had been submitted. However, the TAs have now stopped submitting applications because they are annoyed that no registrations have been issued. The regional council of Caprivi is poorly informed about the CLR process and its associated difficulties. One reason for this is that the Chief Executive Officer of the Council seldom attends meetings of the CLB.

3. Land management and allocation by traditional authorities

Land allocations are largely organized around family relations. Thus, villages are normally started by a family, land is usually allocated through family connections, and villages grow as families expand. A person who leaves his village can always return to claim a piece of land and a place to build his home as long as his close relatives still live there. An important principle that stems from this is that local rights to land are inherited. Everyone living in a village is free to clear and cultivate land close to the village. Boundaries between villages are not determined or demarcated because there is no perceived need to do so.

Villages are more social units than geographical entities. A new village may therefore be far from, or adjacent to the village from which its founder stems. New villages are generally started as a result of disagreements or divisions within a family or family clan. In the past, a new village could only be started if several men collaborated to do so because it was then impractical for one person to establish a new village. However, it is now possible for a single man to start a new village, which would usually consist of his household alone. The founder would be the headman of the village, and future headmen would inherit that role through the family of the original founder.

The idea of starting a new village would first be discussed with the ward headman before being presented to the *kuta* for its approval. The TA would also assess the viability of the area where the new village is planned. As a member of the Mafwe, Mashi or Mayeyi traditional communities, the founder of a village would pay \$500 or one cow to the TA, but no payment is required by the Masubia TA. No taxes or tributes are paid by individual households or businesses in any of the TAs.

Parcels of land are administered in similar ways by the four traditional authorities.²³ Allocations are for life, and normally made to men since they usually live close to their parental homes when they marry. Properties in any local area therefore tend to be owned by closely related men. Properties may not be sold and land that is permanently

²³ The principles for land allocation are similar to those in Kavango but quite different from those in north-central Namibia. This may be due to the apparent abundance of open land in Kavango and Caprivi, whereas little arable land remains available in the north-central regions. Land allocations in Kavango and Caprivi also appear to be looser, easier and cheaper than in north-central Namibia.

abandoned would revert to the traditional authority. Someone wanting to abandon their land would have to explain his decision to the whole leadership hierarchy to avoid misunderstandings in the event of any come-back.

As in Kavango, the level and kind of permission required for any change to land ownership is governed by the degree to which an applicant is known by, or related to the local community. The more familiar a person is, the lower the level of authorization needed for any change in ownership or allocation. A young man wishing to build his own house and to farm on his own would choose a site for the house and then simply get the village headman to show him where he can clear a field. Likewise, an existing resident can enlarge his property or clear a new piece of land nearby as long as his neighbours know this is happening. Land may be transferred from one resident to another local resident by informing the local headman.

By contrast, an immigrant from another tribe who wishes to occupy a piece of land would require the agreement of the headman, ward headman, *kuta* and chief. The applicant would also need a letter of introduction and explanation of circumstances from the TA of the area of his origin. In essence, the more familiar a person is, and the more his credentials, character and origins have been assessed by the members and leadership of the community, the lower the chance of disputes occurring.

Cattle may graze anywhere within a ward. In the event of a drought or other circumstances requiring grazing elsewhere, this would be arranged and agreed to by the headmen of the affected wards.

A woman typically moves to live in her husband's village when she marries. Upon his death, her adopted community evaluates her position and social acceptability. In most cases she is allowed to continue using her husband's property if her character is agreeable since this would be in the interests of his children. The community will also offer her the option of marrying again. The new husband assumes the role of custodian or manager of the property and its assets, which would belong to the children of the late husband in terms of traditional law.

A widow judged to have an unacceptable disposition would be obliged to return to her parental village if she was in the Mafwe, Mashi and Mayeyi areas. This is, however, not so for a widow who may always remain in her adopted village in the Masubia community. Her eldest son would assume ownership of his father's property, but this would be under the guidance of his mother.

The Ministry of Agriculture, Water & Forestry plans to establish 77 commercial farms in a block of land broadly extending from north to south between the Kongola-Katima Mulilo and the Linyanti-Katima Mulilo roads. This area was offered and approved for the formation of large farms by the Mafwe TA; the other TAs stated that they did not have any free land for large farms.

Each farm covers 2,500 hectares. Friction over these farms is now developing for a number of reasons. Firstly, some of the area covered by the proposed farms is claimed by the Mayeyi and Mashi TAs as being within their tribal areas. These two TAs were therefore surprised and annoyed when they suddenly saw farms being established in their areas. Second, there is concern that some people to be allocated farms will not have traditional rights to land in that part of Caprivi. For example, what would happen if someone from Masubia was given a farm in an area that both the Mafwe and Mashi TAs consider to be under their jurisdiction? Third, the formation of the farms will lead to some local villagers losing grazing rights, and certain villages may have to be moved. Finally, the TAs assert that they have not been consulted adequately, especially since the farms impinge on their traditional land, and that the allocations of the farms will be done by the CLB.

4. Recommendations

The most pressing problems regarding land in Caprivi stem from the impasses created by border disputes. It is hard to imagine how the full involvement of TAs in the CLR will be obtained unless these ambiguities are resolved. At the very least, for example, it will be impossible for TAs to endorse customary rights in many areas. Furthermore, the TAs will feel compromised when they see members of their communities being obliged to have their CLR applications being ratified by a neighbouring TA.

The best and lasting solution will be for the MRLGH to solve the border problems. However, this is likely to take a long time. In the light of the elections next year, it is also unlikely that the MRLGH would now embark on a process of negotiation and mediation that may create considerable political heat. Nevertheless, it is recommended that the MLR make representations to the MRLGH to have borders between the TAs resolved and recognized.

To expedite the CLR process it may be prudent for the MLR to obtain only the approval and endorsement of the local village headman for each application. This would avoid the problem of 'testing' which *kuta* should ratify applications from each village. In addition, any pilot testing of field procedures for CLR should be done in any areas which are not contentious, for example in places far from where borders may be called into question. For example and to engage all four TAs in good faith, the MLR might consider surveying land parcels within a short distance of each TA's office, i.e. Bukalo, Chinchimane, Sangwali and Choi.²⁴

Senior staff and the Minister of the MLR should visit Caprivi to discuss the CLR process with the TAs. This specific request was made by the Masubia TA. Furthermore, the Secretary of the CLB made the point that the TAs often do not believe what MLR technical staff say, and that there is a need for senior leaders of the MLR to come to Caprivi to provide clear information on what needs to be done for CLR.

²⁴ The meetings were conducted and the report written at a time when the MLR was hoping to launch a pilot project to speed up the CLR process.

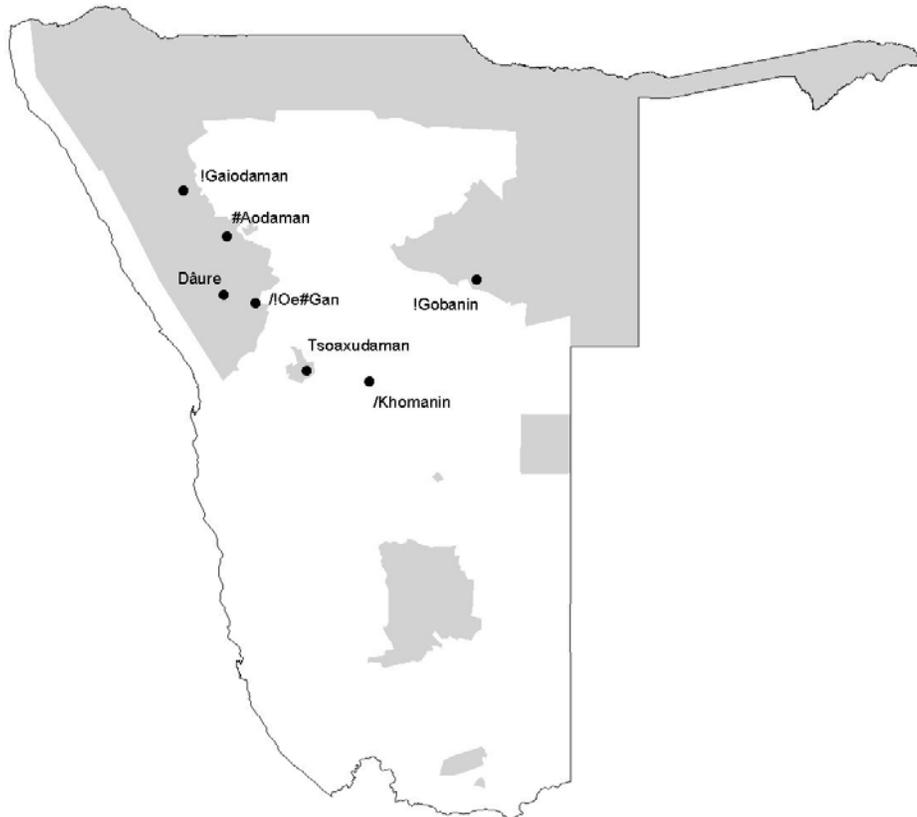
Key informants in Caprivi

| Surname | First name | Tel. number | Organization |
|----------------|-------------------|--------------------|----------------------------------|
| Munali | Beaven | 081 206 1950 | IRDNC, informant and facilitator |
| Majakube | Sylvester | 081 218 3940 | MLR |
| Limbo | S. | | Ngambela Mafwe TA |
| Kawana | P. | | Natamoyo Mafwe TA |
| Mubu | E. | | Induna Mafwe TA |
| Munikonzo | | | Induna Mafwe TA |
| Manyemo | | | Induna Mafwe TA |
| Mayuni | J.T. | | Chief Mashi TA |
| Limbindo | B. | | Natamoyo Mashi TA |
| Ntonda | | | Natamoyo Masubia TA |
| Mwala | | | Induna Masubia TA |
| Munyaza | | | Induna Masubia TA |
| Songa | | | Induna Masubia TA |
| Sasindi | | | Induna Masubia TA |
| Shufu | Enox | | Natamoyo Mayeyi TA |
| Milili | Brendon | | Induna Mayeyi TA |

“Our homes are built in the hills to leave the better lowland pastures for grazing”

Appendix 2

Damara traditional authorities



1. Features of the traditional authorities

As the map indicates, the TAs are scattered across central Namibia. Many are small, representing only a few hundred families. All seven TAs find themselves in difficult situations due to (a) border or land disputes, (b) encroachment by Herero farmers or (c) competition between TAs for the allegiance of communities. Many of the problems are due to the way in which the TAs were formed and recognized. The former second-tier Damara community was ruled by a king and 13 chiefs, each of whom was responsible for a ward. The new Namibian government decided that only eight TAs could be recognized, which meant that the old well-established headmen and borders between wards had to be reformulated. Of the seven TAs so far recognized, two were recognized only during 2008 (Dâure and #Aodaman).

Prior to these recent reorganizations, however, many of the communities were also shifted and placed in difficult situations as a result of policies of the South African

administration. For example, the /Gobanin community was moved from the Gobabis area to a small enclave of what was eastern Hereroland during the 1940s. The /Khomanin community was forced off its traditional land in what is now the Khomas region. Most of the community was then settled in areas now considered to be under the jurisdiction of the Dâure, #Aodaman and /!Oe#Gan TAs. The /Khomanin TA has no communal land under its jurisdiction, and its chief and most councillors are now based in Windhoek. Considerable numbers of its community have been placed on resettlement farms in central Namibia, and some councillors reside on the farms as /Khomanin TA representatives.

Additional problems arose when many Herero farmers were shifted from the Otjiwarongo district into the previous Damaraland, where the only community of Herero farmers to have a recognized TA is that of Zeraua at Omatjette.²⁵

All these changes and displacements have caused continuing strife over boundaries and authority over communities. One unexpected consequence of the disputes and competition is the use of CLR as a tool to gain influence or to undermine the power of competing traditional authorities, irrespective of whether they are officially recognized or not. For example, it is claimed that the Swartbooi TA (representing a Nama community) encouraged applications for CLR from people living in an area that then had no recognized authority. This allowed the Swartbooi to collect considerable revenue from the \$25 application fees, and to claim that these residents were under its responsibility.²⁶ The expansion implied by these activities later angered the new #Aodaman TA when it found that its area was potentially much smaller than it assumed. Similarly, two unrecognized Herero TAs in the Otjimbingwe area have sought to promote their interests by deterring people from applying for CLR through the Tsoaxudaman TA, which is Damara. One way of doing this was to spread the idea that people who applied for CLR would not be eligible to apply for resettlement farms.

With respect to control over land, people in many areas indicate that they suffer encroachment from members of Herero communities, who generally have more livestock which use more water and grazing than those of Damara farmers. This was reported as a very serious problem in the Tsoaxudaman, !Gaiodaman and !Gobanin areas, while simmering tensions were evident from the #Aodaman and /!Oe#Gan TAs.²⁷ Most difficulties were stated as being due to Herero farmers not having permission to settle permanently or to graze their livestock temporarily in commonages under the control of the Damara TAs. Large areas of commonage pastures in the !Gobanin area have also been fenced off into private enclosures by Herero farmers. This was the only TA area in which fencing was reported to be a problem.

²⁵ Many Herero farmers live elsewhere in the communal areas of Erongo and southern Kunene.

²⁶ In defence of the Swartbooi TA, people who had no recognized TA requested help from the Swartbooi TA to apply for CLR.

²⁷ As a result of poor rainfall in the 2006/2007, farmers from the Omatjette area threatened to move 7,000 cattle and 6,000 small-stock into the /!Oe#Gan traditional community area. Negotiations between the /!Oe#Gan and Zeraua TAs led to an amicable solution which allowed a smaller number of animals to graze in the /!Oe#Gan TA.

Each TA is headed by a chief and a traditional council, which is made up of six senior and six junior councillors, and the secretary of the TA. All these people receive allowances from the government. The 12 councillors and varying numbers of other unpaid councillors (also called headmen) represent different areas or wards within the TA area, and they provide the lowest level of local authority. Their areas typically comprise a number of villages or settlements. In contrast to most other TAs, each village or settlement therefore does **not** have its own traditional head.

Small-stock farming with goats and sheep is the predominant land use in all the communal areas of the Damara TAs. Since these areas are arid, water is the most important factor to determine the distribution of settlements and farming. Almost all water is provided from boreholes using diesel pumps or windmills. Each village is typically clustered around one or more boreholes. Short-lived, ephemeral river flows provide the only other water.

As in other areas of Namibia, the authority of TAs and their roles in local affairs are gradually weakening. This is partly due to the growing influences of central and regional government and of wealthy residents. While water point associations and committees have been formed in all the TA areas, these management units are generally perceived to be weak or at an early stage of development. The water point committees do not, therefore, play significant roles in the management of water supplies, grazing or any other aspects of local organization. Several TAs expressed frustration at the poor services supplied by local offices of the Directorate of Rural Water Supply.

Substantial proportions of households are occupied by people who do not farm. For example, the Tsoaxudaman TA estimates that 60% of residents in Otjimbingwe do not farm. There are also many households and livestock in all the Damara TA areas that belong to weekend farmers who have other incomes. The !Gaiodaman TA estimates that 25% of all farmers in its area are normally thus absent.

2. The process of land registration

With the exception of the /Khomani TA which has no communal land, all the TAs reported some progress with respect to CLR. Residents had been informed about the need to register and procedures at meetings and through radio broadcasts. Only in the Dâure area were complaints encountered that some residents were unable to pay the N\$25 application fee. This TA also noted the high costs incurred by absentee farmers who live far away when they have to travel to Uis to apply for CLR.

The TA secretaries have used receipt or invoice books to keep track of who has applied for CLR. Some TAs have computers, but none was noted as being used for the administration of CLR. The TA councils apparently both checked and endorsed applications. The !Gaiodaman TA additionally formed a special committee for this purpose, named the Resettlement & Screening Committee.

Almost all properties being registered consist of a home, the area immediately surrounding it and any vegetable gardens and kraals associated with the home. Most

properties are therefore very small. As in other areas of the country, considerable problems associated with the so-called 20 hectare limit were described by most TAs. Only the !Oe#Gan TA indicated that no misunderstandings were encountered because the concept and purpose of the limit had been clearly explained to everyone at the outset. The confusion had several consequences.

1. There was unhappiness at the idea of large areas of commonage being owned individually. For example, up to 300 hectares of grazing would be lost if each of 15 households in a village had 20 hectares.
2. The anticipated spatial layout of properties was perplexing. How, for instance, could each household be assigned 20 hectares if homes are clustered in small villages?
3. The expectation was raised that this would be the only opportunity of registering your own property, and thus every effort had to be made to maximize and capitalize on this option to obtain as large an area as possible. Many people then considered it a 'right' to have 20 hectares.
4. Residents were confused when they found that the surveyed areas around their homes turned out to be much smaller than the figure of several hectares that they had written on their application forms. Moreover, these larger areas had after all been 'approved' by the TAs when the applications were sent to the MLR.

Perhaps in response to these perceptions, some married couples in the Dâure area submitted separate CLR applications for different pieces of land. These applications were however rejected by the TA. Some people in the !Oe#Gan area applied to register their homes and vegetable gardens separately

The following statistics were provided by each TA:

1. Tsoaxudaman: about 300 applications for CLR have been received, of which 106 have been sent to the MLR office in Swakopmund; no certificates have been issued.
2. /Khomani: not applicable because the TA has no communal land
3. !Gobani: 81 applications have been sent to Gobabis MLR office, and some certificates have been issued
4. Dâure: about 325 applications have been submitted and a similar number is still expected; the MLR have not surveyed any of the properties
5. !Oe#Gan: the great majority of residents have applied for CLR.
6. !Gaiodaman TA: 1,336 applications have been received, of which about 400 have so far been approved by the TA. Only about 20 properties have been surveyed, and no certificates have been issued.
7. #Aodaman: reported that some 2,000 applications had been received, of which approximately 1,000 had been sent to the MLR offices in Opuwo. This information is probably incorrect because there are fewer households in the TA area.

Several TAs stated that many people are extremely frustrated at the lack of response to their applications and the slow pace of overall progress with implementing CLR. It was

also indicated that a considerable number of applications submitted earlier would now be out-of-date because the residents have since moved or died.

3. Land management and allocation by traditional authorities

While many Namibian settlements typically consist of close relatives with the patriarch of the extended family usually being the village headman, levels of relatedness within Damara villages appear to be much lower. This may be the reason that the lowest level of authority extends over several local villages. And while young men generally build their own homes near those of their parents, they may not establish themselves as readily and automatically as in most other Namibian settlements. Young men, therefore, have to formally request permission from local headmen for land on which to build their homes. In the view of the Dâure TA, 'land rights should not be regulated by family relationships' and 'households should be independent so that they do not collapse when the family patriarch dies'. Eighteen year-old boys are therefore encouraged to start their own homes and livestock holdings.

Applications from outsiders – from different villages or communities – are assessed more strictly. In addition to obtaining agreement from headmen, applicants would need to consult residents of the villages in which they hope to reside.²⁸ Both the headmen and residents would consider the background, character and motives of the applicants, as well as the availability of water and grazing (see below). Applications from people of non-Damara origin would normally be finally approved by the traditional councils and chiefs.

Applications to live on communal land are strictly speaking for residential rights, but it was clear from many discussions that the availability of water and grazing are also considered very seriously when assessing requests for land allocations. For example, resident farmers are consulted about available water and pastures, and the opinions of agricultural extension officers are sometimes sought to gauge whether additional livestock can be accommodated in an area.

Someone wishing to move his livestock to a grazing area around another village would need permission from the headman or councillor, a requirement that is in line with the overall principle of controlling access to land, water and grazing. These controls are also deemed necessary to prevent disputes, and to reduce the chances of crime and influential farmers bribing local residents for grazing. It is thus logical that TAs object to other traditional communities encroaching to use water and pastures perceived to be for their own Damara people.

However, if pressures on water and grazing are so carefully considered when someone applies for access to a traditional community area, it is less understandable why all levels of authority exercise no control on existing livestock numbers. That conclusion was very clear from responses given to different questions on limits to cattle, goat and sheep

²⁸ Depending on the area, an applicant would first approach the headman or the residents at a settlement. In the latter event, the applicant would then take a letter giving the agreement of the residents to the local headman.

numbers. All the TAs stated that they do not monitor or attempt to contain stock numbers. In essence, each farmer is free to have as many animals as he wishes, and to graze them anywhere within the accepted commonage of his village. While many people said that controls were needed, it was the view of one member of the Dâure TA that controls were definitely not the responsibility of traditional authorities, but rather that of the government. In his view, regional councils and the Ministry of Agriculture, Water & Forestry should be responsible, since it is government that determines the supply of water and land!

In summary, the TAs assess applicants and supplies of water and grazing at the places they intend to live or move, but then play no role in how water and pastures are used or pressured by residents.

Much, or all the communal land under the jurisdiction of the !Gaiodaman, #Aodaman, !Oe#Gan and Dâure TAs originally consisted of fenced freehold farms. These so-called Odendaal farms were purchased by the South African administration and handed over to the Damara royal house during the 1970s. Several families were then apparently allocated to a farm, each family being placed at a water point (*pos* in Afrikaans) or at the main farmhouse. For example, there are 103 *poste* on the 44 farms in the !Gaiodaman area. Farming conditions on the Odendaal farms are considered better than those on open commonages because the fenced camps allow for more controlled grazing, and more water points are available on the farms.

No payments are made for land, and none of the TAs reported the payment of grazing fees. Most TAs agreed that homes may be sold, but not the land on which they are built. Land that is abandoned reverts to the TA, and someone wishing to return to the village in which he previously lived would again have to apply for residential permission. Lifelong automatic rights to residence are therefore not guaranteed.²⁹

All TAs agreed that property is normally inherited by the surviving spouse and/or children. Allocations between a spouse and children are generally done amicably. Complications occur most frequently when the deceased husband is from another community with differing perspectives on rights over the estate. Occasional difficulties also arise when influential, wealthy relatives claim more than their reasonable share. The local headman/councillor may then be required to intervene to ensure fair play.

People requiring land on which to start shops need permission from the local headman/councillor. No taxes or lease fees are paid by such businesses to most TAs, but the !Gaiodaman TA requires payments of \$150/year for shops and liquor stores, \$100/year for *cuca* shops and \$200/year for shebeens.

Informants of the Damara TAs

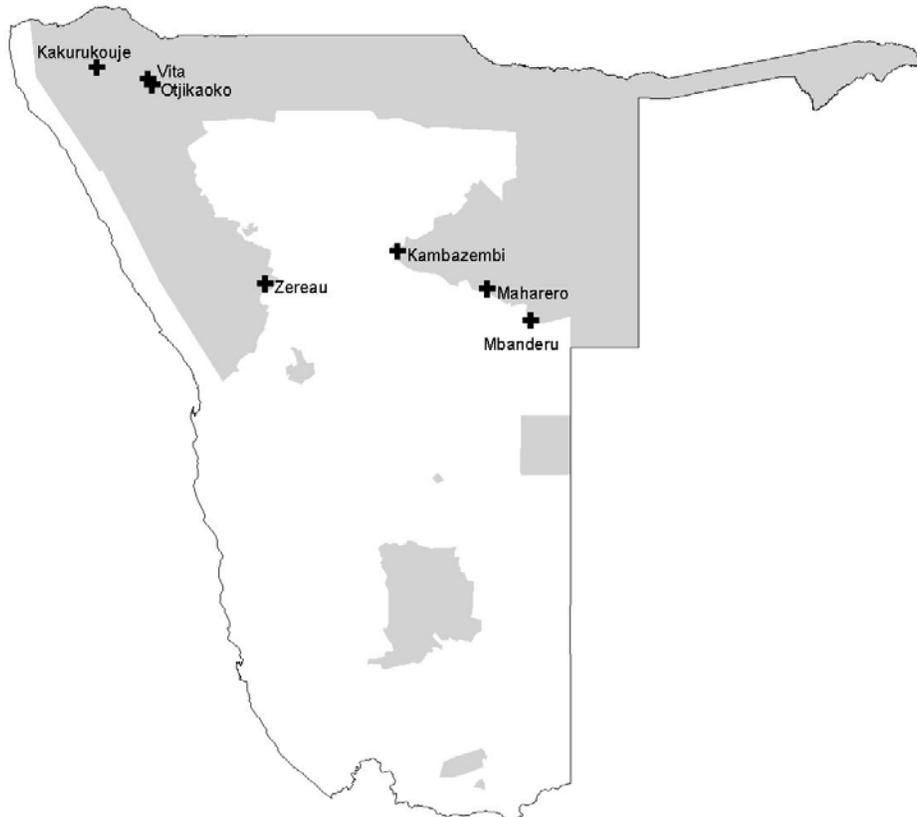
²⁹ As among Nama communities, there are differing perspectives on permanent homes built of bricks or stone and those built of materials that can be easily moved, such as corrugated iron. For example, it was said that a permanent home can always be reclaimed. Some Nama TAs require that special permission be sought before a permanent house is erected.

| Surname | First name | Telephone | Organization |
|----------------|-------------------|------------------|--|
| Gurirab | Adam | | !Gaiodaman Councillor |
| Gooxab | Thitus | | !Gaiodaman Councillor |
| Eiseb | Isak | | !Gaiodaman Councillor |
| Seibeb | Nico E. | | !Gaiodaman Councillor |
| Uwiteb | Daniel | 081 374 2070 | !Gaiodaman Councillor |
| /Hoxobes | Elfriede | | !Gaiodaman Councillor |
| Uwites | Monica | | !Gaiodaman Councillor |
| Harseb | Alfeus | | !Gaiodaman Councillor |
| /Gomeb | Michael T. | 081 358 9345 | !Gaiodaman Senior Councillor |
| /Nawaseb | Kale | | !Gaiodaman Senior Councillor |
| Tsaneb | Paul | | !Gaiodaman Resettlement & Screening Committee |
| /Gaseb | Sedekias | | !Gaiodaman Resettlement & Screening Committee |
| /Guidao≠sab | Mathias | | !Gaiodaman Secretary (Erwee) |
| /Goâagaseb | Dawid | 081 360 8853 | !Gaiodaman TA and Agricultural Extension Officer |
| Ukongo | Petrus | 081 261 4142 | #Aodaman Chief |
| Hendricks | Johannes Isak | | #Aodaman Senior Councillor |
| /Aseb | Festur | | #Aodaman Senior Councillor |
| /Ganes | Anna | | #Aodaman Councillor |
| Namaseb | Festur | | #Aodaman Councillor |
| Keib | Staniscousi | 081 375 7713 | !/Oe#Gan Secretary |
| Gurirab | Johannes | 081 314 2919 | !/Oe#Gan Councillor |
| Haraseb | Bethuel | | Tsoaxudaman Chief |
| Seibeb | Joshua | | Tsoaxudaman Senior Councillor |
| Gamaseb | Hendrick | | Tsoaxudaman Senior Councillor |
| Tsuseb | Augus | | Tsoaxudaman Senior Councillor |
| Neumbo | Jonathan | | Tsoaxudaman Secretary |
| Goweses | Clautled | | Tsoaxudaman Assistant |
| ≠Eixas | Isabella | | Tsoaxudaman Communal Land Board member |
| Gawanab | Josephat | | /Khomanin Chief |
| Gawanas | Juliane | | /Khomanin Senior Councillor |
| Hansen | Dawid | | /Khomanin Senior Councillor |
| Doëseb | Nick | | /Khomanin Senior Councillor |
| !Kharuchas | Verona | | /Khomanin Councillor |
| ≠Nareses | Lina | | /Khomanin Councillor |
| Gariseb | Stefanus | | !Gobanin Chief |
| Kandoroza | Christof | | !Gobanin Councillor |
| Manulek | Willem | | !Gobanin Councillor |
| Kafine | Frans | | !Gobanin member |
| Garises | Christella | | !Gobanin Secretary |
| Taurob | Isaskar | 081 331 0272 | Dâure: Senior Councillor |
| //Gaseb | Ismael | | Dâure Councillor |

“And so one fence leads to another”

Appendix 3

Herero traditional communities



1. Features of the traditional authorities

Three of the TAs in eastern Namibia represent residents in Otjozondjupa and Omaheke on communal land previously known as Hereroland and the Aminuis reserve. The remaining four TAs are in the west, one of which is in Erongo while the remaining three are in northern Kunene. Most of the TAs also have members of their communities living in towns, especially the larger and central ones of Otjiwarongo, Okahandja and Windhoek, and in other areas of communal land such as Otjimbingwe and Ovitoto. These include areas that other traditional communities and TAs indicate to be under their jurisdiction (see Appendix 2 the on the position of Damara TAs).

Included in this description of so-called Herero TAs are the groups known as Mbanderu and Himba. The Mbanderu community is itself a traditional authority that is often portrayed as being at a higher level of organization than the other Herero TAs. The northern Kunene Himba community (which includes the Zemba and Akaona) is represented to a greater or lesser extent by the Otjikaoko, Vita and

Kakurukouje TAs. The latter TA was formally recognized very recently in 2008.

Many of the TAs suffer from power struggles within and between them and unrecognized TAs. Boundaries between the TAs are therefore often unclear, and some are disputed. The three TAs in northern Kunene were all formed after independence as amalgamations or reformulations of traditional headman wards (locally called *hoofmanwyke*). As a result, some of their borders are vaguely known, and they lack much of the long-established influence apparent among TAs having longer histories. The mandates and purposes of the newer TAs will thus probably take some time to develop.

It was reported at several meetings that the CLR process had become politicized and was being used as a tool by competing TAs to gain influence and endorse claims to areas of land. Perhaps the best example is in the border area between the Uukwaluudhi TA (representing an Owambo traditional community) and the Otjikaoko TA. The former group is accused of expanding its control by soliciting CLR applications from Owambo residents who settled illegitimately in areas claimed to be under the jurisdiction of the Otjikaoko TA.³⁰ But the Otjikaoko TA raised a multitude of objections to the requirements of CLR which stem directly from its political disagreement with the government, as well as encroachment by Owambo residents. The TA has therefore taken the stance that it will not process applications for CLR from any members of its community. The Otjikaoko TA was also of the view that individual CLR was contrary to the tradition of its people, and that the only acceptable registration would be group registration over the old headman wards.

Each TA is headed by a chief and a traditional council made up of six senior and six junior councillors, and the secretary of the TA. All these people receive allowances from the government. The 12 councillors and varying numbers of other unpaid councillors represent different areas or wards within which there are many villages. Each of these settlements is under the control of a headman, which is the lowest level of authority. Some villages, however, have more than one headman because of competing power interests among resident extended families. Village headmen evidently have little authority over the management of their communities and land.³¹

While most small villages consist of people that are related to each other, larger settlements are often home to several unrelated families. Perhaps as a result, family members who have moved away to other areas may not simply claim residence rights if they wish to return. As is required of other Herero immigrants, they would instead have to ask the local headman for permission to live in the village.

³⁰ The Otjikaoko TA defends its position by pointing out the disputed areas fall within the zone termed “Kaokoland” in Schedule 1 of the Communal Land Act of 2002.

³¹ This assertion was made by the members of the Mbanderu TA, and also by Stahl, U. 2000. “At the end of the day we will fight”: Communal land rights and “illegal fencing” in the Otjozondjupa Region. In Bollig, M. & Gewald, J-B. (eds). 2000. *People, cattle and land: transformations of a pastoral society in southwestern Africa*. Köppe, Köln.

Most settlements rely on water pumped from boreholes, or on springs or water points connected to pipelines. The village homesteads are typically clustered around one or more of these water sources, from where cattle, goats and smaller numbers of sheep graze outwards into village commonages that provide grass and browse. The animals normally only go as far as they can walk in one day, the small-stock returning each night to be kraaled and the cattle each day for water.

Pastoralism is thus the predominant form of agriculture, but small maize fields are sometimes cultivated in years of good rain by eastern communities. The majority of Himba households also have small gardens in which maize is planted in most years. The gardens generally cover less than one hectare and apparently belong to women, whereas residential land and livestock are the preserve of men. Although livestock are often moved on a semi-nomadic basis during the dry season, every Himba family has a permanent home.³² However, many of the large, circular homesteads are occupied by more than one family, and some men have two or more spouses.

A high proportion of farming enterprises are run by weekend farmers, especially so in the eastern communal areas and in southern Kunene and Erongo. Many of the largest herds and flocks, and the biggest fenced farms (see below), belong to these farmers who are generally wealthy urban businessmen and wage earners. The use of large areas of communal land is therefore closely connected to, and dependant upon sources of urban wealth.

Some water point associations and committees are working effectively in the eastern 'Hereroland' areas, and several of these new, local management institutions are extending their mandate to the management of grazing, as reported by the Maharero TA.

2. The process of land registration

As in other areas of the country, the so-called 20 hectare limit on the area of a property has caused much confusion and argument. On the one hand, incorrect and inconsistent information was given to the TAs on this matter, and concerns were raised as to what would happen to commonage pastures if all households were allocated 20 hectares. Some residents were also dismayed when their claims for large pieces of land around their homes were turned down. Several TAs asked that the MLR provide very clear information on the land areas for which CLR applications can be made.³³ The newly recognized Kakurukouje TA has requested, and is waiting for training from the Opuwo office of MLR on the process and requirements of CLR.

It was clear that all TA offices lacked the skills and equipment to keep efficient track of all CLR applications and certificates. Some TAs have computers, and one was used to generate a list of people who had submitted applications for CLR. Most TA secretaries,

³² Several useful articles on Herero traditional communities are to be found in Bollig, M. & Gewald, J-B. (eds). 2000. *People, cattle and land: transformations of a pastoral society in southwestern Africa*. Köppe, Köln.

³³ One TA made a request for the MLR to provide 'honest' information.

however, used their receipt or invoice books as a record of applications. No resistance to the \$25 application fee for CLR was mentioned.

The following statistics were provided by each TA:

8. Mbanderu: between 200 and 300 applications have been received
9. Kambazembi: approximately 85% of residents have applied for CLR
10. Maharero: between 400 and 500 CLR applications have been received; none of the properties have been surveyed by the MLR
11. Zeraua: about 40% of residents have applied and the MLR has surveyed some properties
12. Otjikaoko: the TA was unwilling to discuss how many applications had been received or what had happened to them
13. Vita: no information could be obtained
14. Kakurukouje: the TA has not processed any applications but is eager to get the process started once they are informed on the necessary procedures.

Difficulties may be encountered in the registration of properties where more than one family lives in the same homesteads. One solution would be to register all the property associated with the homestead in the name of its head. However, it is unknown whether this would be acceptable to women who 'own' their own garden areas, as described above.

The Communal Land Reform Act of 2002 requires that registered land be inherited by the surviving spouse. Over and above problems that may arise between this legal requirement and the customary inheritance practices described below, note should be taken of other complications that may occur in Himba families. For example, what happens when the husband of more than one wife dies, and each of the widows owns different gardens which may have been jointly registered as 'belonging' to their deceased husband?

3. Land management and allocation by traditional authorities

A young man reaching an age at which he will marry and start his own home usually starts his farming enterprise with, and under the guidance of his father. The site on which he will build a new home is dictated by his father, who will often also give or loan the son some livestock. A son may thus establish himself with minimal permission; the Kambazembi TA noted that agreement from the headman and local residents was needed, while no such permission was needed in the Vita and Kakurukouje traditional communities, for example.

Applications from outsiders to settle in a village are theoretically always assessed, the most rigorous consideration being given to people from other traditional communities. For those people wishing to move within a community to another village, permission would be given after the local headman and resident villagers have been consulted. However, the Mbanderu TA said that even this was unnecessary, and the headman could simply be informed about the move. If a young man belonging to a Himba family wanted to move to another village, his father would first visit the village to assess if its residents were acceptable.

Applications from complete outsiders would be assessed by the local headman, the village residents and the chief, who would make a final decision on the matter. None of the TAs said that the number of livestock to be introduced by a new resident was considered a factor, irrespective of whether the applicant was from near or far. Neither was the availability of water and grazing at a prospective residence considered.

Notwithstanding these customary procedures for assessing applications for land, some wealthy, influential people establish farms without any permission or knowledge of the TAs in former Hereroland (see below).

No payments are made for land, and none of the TAs reported the payment of grazing fees.³⁴ Most TAs agreed that homes may be sold, but not the land on which they are built. Land that is abandoned reverts to the TA, and someone wishing to return to the village in which he previously lived would again have to apply for residential permission. Lifelong automatic rights to residence are therefore not guaranteed.

People requiring land on which to start shops need permission from the local headman/councillor. Most TAs do not require payments for land allocations for businesses, but the Kakurukouje TA reported that two or more goats (depending on the size of land) are paid to the village headman when land is made available for a business. These once-off payments are then forwarded to the chief. Shops and other businesses do not normally pay tax or lease fees to most TAs.

As described earlier, cattle, goats and sheep graze outwards from their villages into commonage pastures that can be said to belong to each village. The boundaries of the commonages are generally known to everyone. Someone wishing to move his livestock to a grazing area around another village would require the permission of the headman of that village.

With the exception of two large farms fenced by Owambo owners in the Otjikaoko area, fencing or the expropriation of land was not reported in areas under the jurisdiction of Herero TAs in western Namibia. This is in stark contrast to the eastern areas where fencing has occurred on a very substantial scale. However, unlike the widespread fencing of land in Owambo and Kavango, no figures are available for the eastern regions on the number of people who have fenced farms and the sizes that have been privatized.

There are two kinds of fencing.³⁵ The first is the enclosure of camps close to villages. These are called *ozokamba* (singular *okamba*) in Otjiherero, which typically vary in size between several tens of hectares to up to three or four hundred hectares. Each resident fences his camp in a direction extending out from the village centre. The *ozokamba* are used to protect animals against theft, to reduce the need for herders and to control the

³⁴ The idea of paying for land among Himba communities is an anathema because ‘people would be moving to land belonging to a relative’.

³⁵ Stahl, U. 2000. “At the end of the day we will fight”: Communal land rights and “illegal fencing” in the Otjozondjupa Region. In Bollig, M. & Gewald, J-B. (eds). 2000. *People, cattle and land: transformations of a pastoral society in southwestern Africa*. Köppe, Köln.

movements of bulls. The *ozokamba* also provide for the protection of pastures to be used once grazing on the commonages has been depleted. The *ozokamba* are therefore functionally similar to the smaller *unyanda* or *ekove* pastures found in enclosures in Owambo.

Much bigger fenced farms (called *outemba*, singular *okatemba*), each typically covering thousands of hectares, have been established over large areas of the former Hereroland, and all the TAs confirmed their existence as a problem. In these respects, the enclosures are the equivalent of the large, ‘illegally’ fenced farms in Owambo, and those more ‘legal’ farms in Kavango established by Land & Farming Committees of the local TAs and with the support of the MLR.

Fencing has evidently been happening for a long time in former Hereroland, and the creation of large farms was probably a response to precedents created by the South African administration’s allocation of farms in 1966 and 1979. These consisted of the 91 Rietfontein farms that were incorporated into Hereroland following recommendations of the Odendaal Commission, and the 65 Okamatapati farms that were formed at the same time as the Mangetti farms in Kavango and Owambo. Since the Okamatapati and some Rietfontein farms were allocated for free to select individuals, many other people wanted their own large, free farms, and this led then to fencing off their own *outemba*. One fence therefore led to another, and the same runaway process has been documented for *ozokamba* camps around villages.³⁶

While each of the Okamatapati and some Rietfontein farms were initially occupied by single farmers, the number of families on these farms has since increased. Different families have their homes at their own water points, and each family tends to graze its livestock over predetermined pastures within the farm. Most farms are thus run rather like the Odendaal farms in southern and western Namibia (see the chapters on Nama and Damara TAs).

A clear conclusion from interviews with the TAs and a study near Okakarara is that traditional authorities exert little or no control over fencing. Village headmen are not consulted when residents decide to fence an *okamba* camp, and the wealthy elite establish their large *outemba* farms without formal permission from anyone.³⁷ Whereas many of the fences were erected secretly in the past, for example being placed away from roads so that they were not visible, they are nowadays erected openly.

Perhaps in an attempt to justify their absence of control over land privatization, TAs indicate that they lack both traditional laws and government mandates and procedures to

³⁶ Stahl, U. 2000. “At the end of the day we will fight”: Communal land rights and “illegal fencing” in the Otjozondjupa Region. In Bollig, M. & Gewald, J-B. (eds). 2000. *People, cattle and land: transformations of a pastoral society in southwestern Africa*. Köppe, Köln.

³⁷ Sometimes permission is requested from the TA to establish a borehole, which is often a forerunner to the formation of a farm.

deal with fencing.³⁸ Whatever the reason, the lack of control by TAs is congruent with two other features. The first is that the authorities play no role in the regulating the number and distribution of livestock belonging to residents. This matter is quite different from control over who settles in an area and who may move into an area to graze his livestock temporarily.

A second feature over which frequent resentment is heard is the use of pastures by farmers that have their own large *ovokamba* camps or exclusive farms: the Okamatapati and Rietfontein farms, the *outemba* farms, and resettlement and affirmative action loan farms in freehold areas. Many of these farmers move their livestock onto commonage at the end of the rainy season when pastures have grown, and leave them there until the commonage grazing is exhausted. The animals are then herded back to the exclusive farms to graze pastures that have remained protected and abundant. Resident farmers who depend wholly on commonage pastures are then left with nothing, the majority of forage having been taken by the large herds owned by the farm owners.

In terms of customary law, a man's property is normally inherited by his younger brother who then acts as both heir and executor in deciding what may be allocated to different members of the family. Formally, the younger brother also inherits the widow and may be expected to marry her. However, if he does not marry the widow and depending on how her character is judged, she may remain living as a single person in her home or be asked to return to her parental village. Likewise, the estate may be divided in different proportions among the widow, her offspring or other members of the deceased husband's family. These allocations are decided after negotiations between members of the families involved, and the village headman may oversee the process to see that the widow is treated fairly.

Many of the principles that determine inheritance stem from the fact that the deceased husband started his life and marriage within his parental village. It was thus on land provided by the village that the couple built their home, and it was with the assistance and supervision of his father that the husband became a farmer. These historical circumstances are considered as significant in deciding the fate of a widow and estate.

4. Recommendations

The MLR should respond to requests from the newly recognized Kakurukouje TA for training on the process and requirements of CLR.

An important consequence of the small and large scale fencing described above is that the MLR needs to decide how they should be handled in terms of land registration. There is also an urgent need to document the extent, distribution and number of *ozokamba* and *outemba* farms.

³⁸ It was stated that the Communal Land Act is perceived as a 'hollow' law, the provisions of which are easily ignored or circumvented. In addition, attempts to challenge owners of large *outemba* farms are met with legal defence provided by lawyers engaged by the wealthy owners.

More information and study is needed to determine aspects of land registration for Himba households, with special regard to the apparent ownership of maize gardens by women, polygamous families, and households being home to more than one family.

Informants regarding Herero TAs

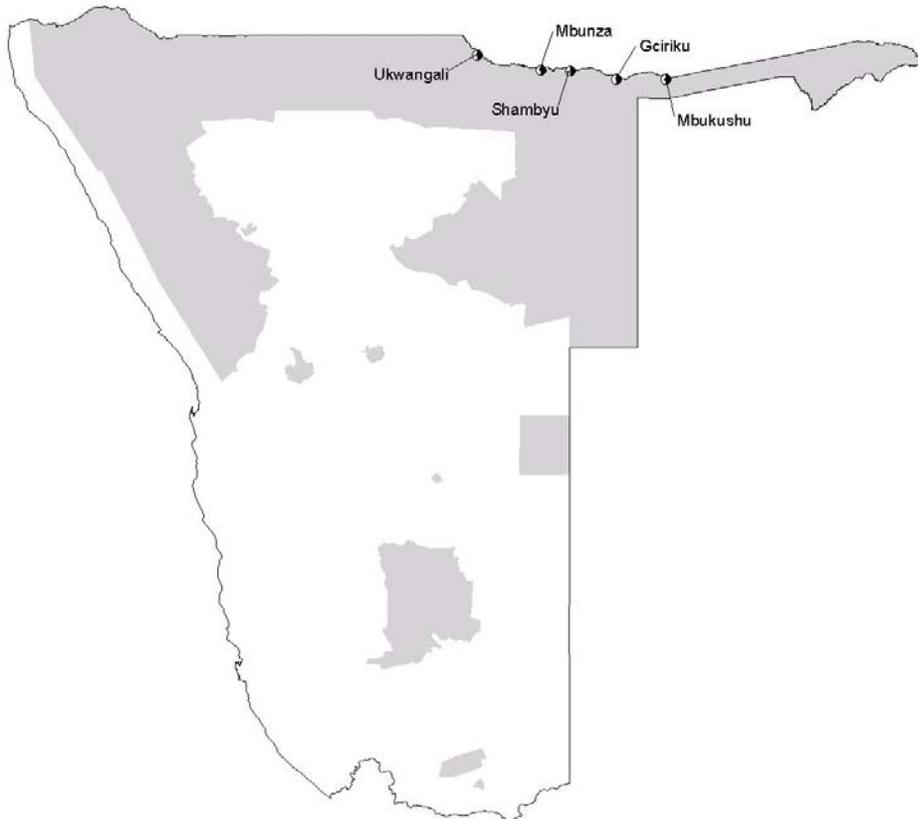
| Surname | First name | Telephone | Organization |
|--------------------|-------------------|------------------|-------------------------------|
| Kambazembi | Uaakuṭjo | | Kambazembi: Chief |
| Karita | E.F. | | Kambazembi: Senior Councillor |
| Kambai | Fanuel | | Kambazembi: Councillor |
| Nguherimo | C. | | Kambazembi: Councillor |
| Ngawjowe | Gustafine | | Kambazembi: member |
| Tjizepa | Lesly | | Kambazembi: member |
| Maharero | Vetondouva | | Kambazembi: member |
| Himumuine | Liselothe | | Kambazembi: member |
| Ngaveru | Kaoronga | | Kambazembi: member |
| Maharero | A. | | Maharero: Chief |
| Mbinda | B. | | Maharero: member |
| Karbetenja | J. | | Maharero: member |
| Karuaihe | N.P. | | Maharero: member |
| Tjituka | E. | | Maharero: member |
| Keja | F. | | Maharero: member |
| Kavimaka | L. | | Maharero: member |
| Nguvauva | Peter | | Mbanderu: Acting Chief |
| Katjirua | Gerson | | Mbanderu: Senior Councillor |
| Hirokoherua | Daniel | | Mbanderu: member |
| Tembo | Kuzeeko | | Mbanderu: member |
| Muzeu | Thobias | | Mbanderu: member |
| Muranui | Piet | | Mbanderu: member |
| Hoveka | Plelka | | Mbanderu: member |
| Ngaruka | Hizembi | | Mbanderu: member |
| Hengari | Joseph | | Mbanderu: member |
| Muzeu | Usiel | | Mbanderu: member |
| Mbaeva | Isai | | Mbanderu: member |
| Muranui | Karl | | Mbanderu: member |
| Kanguatjivi | Eben Jeree | | Mbanderu: member |
| Katjitore | Nguatoko | | Mbanderu: member |
| Kahevita | Kayetire | | Mbanderu: member |
| Zeraua | Christian | | Zeraua: Chief |
| <u>Uaseuapuani</u> | Fabianus | | Zeraua: member |
| Zeraua | Manuel | | Zeraua: member |
| Tjindumba | David | | Zeraua: member |
| Haakuria | Juda | | Zeraua: member |
| Urivani | Immanuel | | Zeraua: member |
| Kasikeho-Katjimune | Edward | | Zeraua: member |
| Tjavra | Paulus | | Otjikaoko: Chief |
| Muundjua | Havenjanda | | Otjikaoko: Chairman |
| Mburura | Kasita | | Otjikaoko: member |
| Kavari | Hijakarukura | | Otjikaoko: member |
| Tjिताura | Kapanda | | Otjikaoko: member |
| Mutambo | Motjinouika | | Otjikaoko: member |

| | | | |
|-------------|-----------------|--------------|--------------------------------|
| Tjिताura | Karabongenda | | Otjikaoko: member |
| Tjiteura | Mbuze | | Otjikaoko: member |
| Muhenje | Mike | | Vita: Senior Councillor |
| Muhenje | Karungoojo | | Kakurukouje: Senior Councillor |
| Tjambiru | Tjituere | | Kakurukouje: Senior Councillor |
| Ngumbi | Hiakoutjo | | Kakurukouje: Councillor |
| Tjimbua | Tori | | Kakurukouje: Councillor |
| Ndiamombe | Haijende | | Kakurukouje: Councillor |
| Omutambo | Tjoanakambendje | | Kakurukouje: Councillor |
| Muhenge | Vreimuje | | Kakurukouje: Secretary |
| Tjipetekera | Cyrlus | 081 212 7847 | MLR, Opuwo |
| Kavetu | Robert | 081 337 8966 | MLR, Opuwo |
| Tjipepa | Uerikambuga | 081 274 1841 | MLR, Opuwo: Head |
| Kapi | Uhangatenua | | Informant and interpreter |

“If we register our residential and cropland, who will register and take the grazing areas?”

Appendix 4

Kavango traditional authorities



1. Features of traditional administration³⁹

From bottom to top, tribal leadership consists of community leaders, headmen, senior headmen and chiefs. Community leaders (sometimes called junior headmen) are often the patriarchal leaders of extended locally-resident families. They are also the people who first established homesteads around which villages developed in the inland area to the south of the Okavango River. Headmen have responsibility for several communities or

³⁹ Although aspects of land administration and registration are obviously sensitive in Kavango, all meetings were conducted in a friendly, open atmosphere. Indeed, the acknowledgment was expressed on a number of occasions that this was the first time that ‘someone seemed interested in issues and practices that are important to traditional authorities’. Alfons Siyere accompanied me to all meetings as a guide, interpreter and informant. He had previously served as the Chairman of the Shambyu Land & Farming Committee, and had also been a member of the Kavango Communal Land Board. The Governor of Kavango and Acting Deputy Director of the Ministry of Lands & Resettlement (MLR) in Rundu were consulted in separate meetings.

villages, and they are elected by community members before the chief ratifies their appointment.

Tribal areas are divided into wards, each of which is headed by a senior headman who is appointed by the chief. In addition, there is a TA council consisting of 12 or more traditional councillors, some of whom are senior headmen while others are appointed in their individual capacities. One councillor is appointed as the chief traditional councillor, with a position akin to that of a prime minister. His role is to advise the chief and also deputise when needed.

Tribal chiefs (called *hompas* in Uukwangali, Mbunza, Shambyu and Gciriku, but the *fumu* in Mbukushu) are normally members of the 'royal family', having been appointed as leaders by their deceased predecessors. Nowadays, however, headmen may elect a chief from among several candidates within the royal family.

Prior to independence the chiefs of the five TAs would regularly confer at meetings called by the Commissioner for Kavango. Since then nothing was done to encourage the continuation of the meetings, but the dispute over Owambo cattle in Uukwangali (see below) apparently led the chiefs to meet again for the first time about one year ago.

2. The process of land registration

Most people seemed well-informed about the requirements for CLR, but there was widespread uncertainty, antagonism and misinformation about the process and consequences of CLR. These negative views were either of a technical or political nature, although the two were often confused as a consequence of one objection being used to justify the other. For example, both political and technical considerations cause the fear that commonages will be registered by Oshiwambo-speakers once the Kavango residents have registered their small individual farms.

The most acute technical reservations were as follows:

1. Disagreement with the perceived requirement that properties can be no bigger than 20 hectares. The limit was considered to be both arbitrary and unnecessarily restrictive.
2. Displeasure with the idea that more than one plot could not be registered. The majority of people living close to the Okavango River appear to have two or more separate plots. One of these would be around their homes close to the river, while other plots would be some kilometres 'inland'. (The term 'inland' is commonly used by Kavango residents for areas south of the river.)
3. The concern that residents may not clear and occupy new land for agriculture in the future. This idea stems from the assumption that land registration is a once-off activity and that people will be unable to acquire new plots, for example once soils on their existing crop-lands lose their fertility.
4. The idea that the payment of N\$25 to accompany the CLR application amounts to residents now having to buy their land. Many people held this as a contradiction of the principle that land was always for free. Moreover, there is the suspicion that

these payments mark the beginning of a process of people being ‘bought off their land’.

5. That the CLR process appears dysfunctional since the MLR has seemingly not attempted to register any customary parcels and the CLB seldom meets.

Some of these reservations are due to misinformation or ignorance, but others stem indirectly from the assumption that there is an abundance of open land in Kavango. The very idea of residents being ‘limited’ to a registered property is therefore hard for most people to accept or understand.

Concerns based on political considerations were:

1. That land registration is part of a ploy by Oshiwambo-speakers (through SWAPO and the government) to occupy Kavango land. Many people see the land and grazing dispute in Uukwangali as clear evidence that Kavango is being ‘invaded by the Owambos’. Moreover, the lack of official efforts to stop this ‘illegal grazing’ amounts to government/SWAPO supporting the invasion. These feelings were particularly acute in Uukwangali where the tribal leadership has apparently taken the stance of refusing to support any government programmes until the Ondonga cattle are removed. However, the threat of an ‘Owambo invasion’ emerged in discussions with other authorities as well. What is most relevant and problematical for CLR registration is that everyone knows that the Owambo cattle are in Uukwangali because of ‘illegal’ fencing in Ondonga by individuals with strong positions in government and SWAPO.⁴⁰ People thus ask why the problem of a lack of land in Ondonga should become a problem for Uukwangali. And they further assume that land registration to be a government strategy to limit land ownership and access to Kavango farmers.
2. A second reservation to land registration stems from the undermining, indeed disregard of TAs. There are several dimensions to this. Traditional authorities believe that they are not paid the respect due to them, especially by government officials and politicians. While they are supposed to be the custodians of the land and indeed to advise the President on matters concerned with land, their authority

⁴⁰ The Owambo cattle were removed from Kavango shortly after this report was compiled, and the dispute may therefore have ended for the time being. The main causes of the Owambo/Uukwangali grazing dispute are seldom fully acknowledged or reported and both sides are at fault. First, it is true that seasonal grazing which has been used for decades, perhaps even hundreds of years, by Ondonga cattle is no longer available as a result of the fencing off of about 144 farms north of Mangetti West in Oshikoto. When access to these traditional pastures became restricted in the early 1990s, Ondonga cattle owners moved east into Kavango. But this was done with the agreement of local Uukwangali residents. The agreements were mutually beneficial, Uukwangali farmers being paid a heifer in return for grazing rights each season, for example. The Uukwangali farmers were all residents in local villages living as small-scale, mostly subsistence farmers.

The main dispute began when the Uukwangali Land & Farming Committee resolved to allow the fencing of about 50 large farms along the border between Kavango and Oshikoto/Ohangwena. The presence of Owambo cattle was one limit to the creation of these farms, but a much more aggravating factor was that Owambo herders cut newly-erected fences to gain access to pastures to which they had secured prior agreed access. In essence, the dispute is therefore between and about wealthy, influential people fencing off large farms in Ondonga and Uukwangali, farm acquisition by the former group having limited the opportunities of the latter group to do the same.

- is subservient to the CLBs. Furthermore, TAs are expected to allocate land for government projects (such as the Green Scheme) but no financial benefits are returned to the TAs. Allocations promised to the TAs from regional development funds have also not been paid.
3. Considerable disapproval was often voiced over the Kavango CLB. Not only does the Board seldom meet, but TAs also objected to its composition and mandate. The claim was made that some members are young and disrespectful of TAs, and that they have little knowledge of the region and matters concerned with land management. It therefore annoys TAs when they are treated as subordinate to the CLB and have their decisions overturned. The same sentiments sometimes hold for relations between local headmen and Village Development Committees.

These perceptions fuel antagonism towards land registration which is then seen to be a government or political programme that rides roughshod over the very custodianship that TAs have on land. A complaint voiced at all five meetings with TAs provides the best example of how TAs are disregarded by senior politicians on land registration. The complaint is that the Deputy Minister of Lands & Resettlement has yet to respond to questions which he promised to answer two years ago.

As a result of these problems, the five TAs reported that CLR had been stopped. Some TAs stated that they would not allow residents to apply for CLR (for example, Uukwangali) while others would allow applications to go ahead but would not support the process.

Under these circumstances, it was not appropriate to investigate the technical capacity of the TAs to administer CLR applications and registrations in any detail. However, it was observed that the TAs had limited administrative processes and equipment, such as trained clerical staff, computers and filing systems. Of significance is the fact that the secretaries in the five TA offices command much more senior roles compared to their counterparts in other Namibian TAs.

No customary land registrations have been processed by the MLR, approved by the CLB or issued to residents. The TAs reported that they had received the following numbers of CLR applications:

- Uukwangali – about 100
- Mbunza – about 100
- Shambyu – about 2,000
- Gciriku – about 200
- Mbukushu – fewer than 100

Shambyu is evidently the only TA to have taken CLR reasonably seriously. Senior headmen attended a workshop on the requirements of CLR, and they then informed their constituents on what had to be done. CLR application forms submitted by the Shambyu TA to the MLR office in Rundu have, however, now been returned to the TA office.

3. Land management and allocation by traditional authorities

Residential and crop land

Parcels of land are administered in very similar ways by the five traditional authorities.⁴¹ Allocations are for life, and nothing is paid when land is allocated. Land is normally allocated to men, since men usually live close to their parental homes when they marry. Properties in any local area therefore tend to be owned by closely related men. Land is also seen as traditionally being a 'male preserve'. Properties may not be sold and land that is permanently abandoned reverts to the traditional authority.

The level and kind of permission required for any change to land ownership is governed by two principles. The first is the degree to which an applicant is known by, or related to the local community. The more familiar a person is, the lower the level of authorization needed for any change in ownership or allocation. A father can subdivide his land to provide a parcel to his son without telling anyone, but will have to inform his neighbours and the local community leader if he is to allocate an adjoining piece of virgin land to his son. Likewise, an existing resident can enlarge his property or clear a new piece of land nearby as long as the neighbouring community knows that this is happening. Land may be transferred from one resident to another local resident by informing the local headman.

By contrast, an immigrant from elsewhere who wishes to occupy a piece of land would require the agreement of members of the community, the community leader and headman. The applicant would also need a letter of introduction from the headman of the area of his origin. If the immigrant was from a distant area or another tribe, he would also require agreement from the senior headman and chief, and his letter of introduction would need to come from his tribal chief.⁴²

The second principle is that the more unusual the land allocation or change, the more permission is needed. For example, someone wishing to use a piece of land for business purposes requires authorization from all levels of the traditional authority. He would also be called to discuss the intended business with the chief so that the need for tax payments to the TA is unambiguous. Similarly, the creation of large farms (see below) has been planned at the highest TA levels.

The intended value of the two principles in governing land lies in avoiding disputes or misunderstandings in the future. Thus, the more familiar a person is, and the more his credentials, character and origins have been assessed by both community members and various levels of leadership, the lower the chance of disputes occurring.

While no payments are made for land, tribal authorities collect taxes from each person aged over 18 years and over. These amount to N\$24 per year for everyone (Uukwangali,

⁴¹ The principles for land allocation are similar to those in Caprivi but quite different from those in north-central Namibia. This may be due to the apparent abundance of open land in Kavango and Caprivi, whereas little arable land remains available in the north-central regions. Land allocations in Kavango and Caprivi also appear to be looser, easier and cheaper than in north-central Namibia.

⁴² This system also held for properties allocated to immigrant Angolans, although it must have been applied somewhat loosely when large waves of people arrived during particularly turbulent times of warfare in Angola.

Mbukushu, Gciriku), or to N\$15 for people who do not work and N\$30 for people who are employed (Shambyu and Mbunza). No other payments or tributes are paid to chiefs. Up until the 1970s, each household was expected to provide a portion of their harvest to the chief with the intention that the food be kept as a reserve for the community in the event of a famine. Prior to that, community members were required to first cultivate the fields of the chief and local headmen before tending to their own fields.

A great number, perhaps the majority, of residents have more than one parcel of land, and given the relative abundance of open land, farmers often clear new fields when the soil fertility of current fields is exhausted (very few farmers take measures to add nutrients to soils). Cleared fields that are not planted have either been abandoned or left to lie fallow. Residents would presumably attempt to register all cultivated, fallow and abandoned fields when offered the chance to demarcate their properties for CLR.

Commonages and grazing areas

While headmen have authority over open pastures and woodlands, levels of control are rather lax since these resources are perceived to be abundant. Livestock owners require no special permission to graze their cattle and goats in local commonages as long as the animals cover areas within daily walking distance from the homes of their owners. Livestock resident along the Okavango River are expected to move within a zone that is perpendicular to the river, thus going down to the river to drink and then grazing in directions directly away from the river.

Livestock owners from other villages or communities need authority from a headman if they require temporary access to local grazing or water.

Inheritance

A woman typically moves to live in her husband's village or community when she marries. Upon his death, her adopted community evaluates her position and social acceptability. In most cases she is allowed to continue using her husband's property because her character is agreeable and this would be in the interests of her children. The community will also offer her the option of marrying again, often presenting her with several potential partners from whom she can select a new husband. The new husband assumes the role of custodian or manager of the property and its assets, which would belong to the children of the late husband in terms of traditional law.

However, if the bereaved woman is judged to be unacceptable, she would return to her parental community and her husband's property would be inherited by her children. In the event of a mother dying, the father and her children will continue living on their property.

Large farms

Several large farms were allocated to individuals in each tribal area during the 1980s as part of an effort to develop and encourage commercial farming activities. The same effort led in 1989 to the bigger development of 44 farms in the Mangetti Block. The Mangetti

farms are just north of the quarantine fence, and it was then intended to move the fence to a line along the northern border of these farms.

Over the past few years, however, there has been a great increase in large-scale farming (euphemistically and officially called ‘small-scale’). The Mangetti farms are in the Uukwangali area and this led other TAs to plan farms for themselves. In the late 1980s and early 1990s, Land & Farming Committees were formed by each TA with the function of demarcating areas that could be fenced into large farms. There are now over 540 of these private farms which range in size from between 2,500 and over 8,000 hectares. Adjoining farms are often allocated to the same person, giving him an even bigger farming unit. Cumulatively, the farms now cover over 30% of the region. An account of large-scale farms in each tribal area is given in Annexure 1.

Most of the farms have been surveyed by the MLR and 25-year or 99-year lease-hold certificates have been issued to the owners of some farms. While all the TAs were unwilling to support the CLR process, paradoxically they viewed the demarcation and registration of leaseholds over these large farms as being important and urgent. It was further obvious that most senior leaders had been allocated large farms, and they were now eager to gain leasehold security over their free farms.

4. Recommendations

There are several ways to help break the current impasse over CLR. Firstly, the performance and reputation of the MLR must be improved by:

- Answering questions put to the Deputy Minister of the MLR as a matter of urgency. The longer they remain unresolved, the longer the MLR will be seen as disinterested and unable to provide clear information on CLR.
- Starting dialogue with the TAs on CLR as soon as possible. The discussions need to be open, focusing on information that is technically correct and reliable so as to rid the region of the many misconceptions and rumours about CLR. Political agendas must be avoided at all costs, and it was strongly recommended that the MLR only use technically competent people in these discussions.
- Taking selected members of TAs on a study tour to Botswana to discuss and view aspects of land management there. Again, this would establish good faith and foster transparent discussion on land registration.
- Expanding and strengthening the staffing in the Rundu MLR office.
- Accelerating the demarcation and registration of large farms. This will establish ‘good faith’ on the part of the MLR since the owners of the large farms are influential people, many having strong connections to the TAs and their Land & Farming Committees. This would also undermine their objections to CLR, since it would be very unfair for the owners of large farms to continue objecting to the registration of small farms.

Consideration should be given to the abolition of payments of N\$25-00 for application and N\$50-00 for registration. This would solve misconceptions over the need for people ‘to buy their land’, and it would ease the burden on people who are really poor. Financial

allocations could be made to the TAs to pay their administrative costs in handling CLR applications and registration certificates.

The possibility of making CLR voluntary should be explored. This would take some pressure off the urgency of the process and in the light of attitudes in Kavango, it would negate the assumption that CLR is being forced upon people by the government and ruling party. Greater ownership and acceptance of individual land ownership and registration might also result if the process is led by voluntary demand.

In view of attitudes towards the Kavango CLB, the composition of the Board might be reviewed and more harmonious linkages should be forged between the TAs and CLB.

Informants consulted in Kavango

| Surname | First name | Tel. number | Organization |
|----------------|-------------------|--------------------|---------------------------------|
| Aupindi | Theresia | | Shambyu Senior Headman, |
| Kalihonda | Gottfried | | Gciriku TA Secretary |
| Kandjimi | Olavi S. | 081 260 7942 | Uukwangali TA |
| Karakadje | Rupert | 081 336 0514 | Mbukushu TA Senior Councillor |
| Lipoyi | Paulinus | | Gciriku TA headman |
| Maulisu | Alexander | | Uukwangali TA |
| Mukoya | Dagobert | 085 560 5506 | Mbunza TA Secretary |
| Mutuku | Namwira Abisai | | Uukwangali TA Secretary |
| Muyota | Matheus | 081 294 9179 | Mbukushu TA Secretary |
| Shonga | Raphael | | Gciriku Land & Farming Chairman |
| Sikerete | Edward | 081 343 1973 | Shambyu TA Senior Councillor |
| Siyere | Alfons | 081 227 2482 | Informant and farmer |
| Thighuru | John | 081 129 6426 | Governor, Kavango |

Annexure 1: Comments on large farms in Kavango

There are now approximately 116 farms in Uukwangali, of which 48 are Mangetti and other farms established in the 1980s.⁴³ The remaining new farms are along the northern border of the Mangetti Block and along the regional border between Kavango and Oshikoto/Ohangwena. It is the planning and fencing of the farms along the regional border that stimulated the grazing dispute between Uukwangali and Ondonga, as described above.

Three farms were allocated in the 1980s in the Mbunza tribal area, and all remain occupied. The Land & Farming Committee has since allocated 62 new farms to the south-east of the Mangetti Game Reserve. Twenty of these had boreholes, pumps and storage tanks installed in 1992 to provide water for livestock in event of a drought and need for emergency grazing. Each of the 20 farms is about 8,100 hectares in size. The remaining new farms are to the east and south of this 'drought-relief' zone.

⁴³ Owners of Kavango Mangetti farms do not pay grazing fees, unlike their counterparts on the "Owambo Mangetti farms".

Eight large farms were established during the 1980s in the Shambyu area. Each is about 5,000 hectares. Another 228 new farms have now been allocated to individuals. Most of the farms are 2,500 hectares in size. However, 42 of the farms are in a border area that is disputed by the Shambyu and Gciriku TA. The Gciriku TA has also established 99 other new farms that range between 2,500 and 5,000 hectares. In addition, there are eight older farms in Gciriku which date from the 1980s.

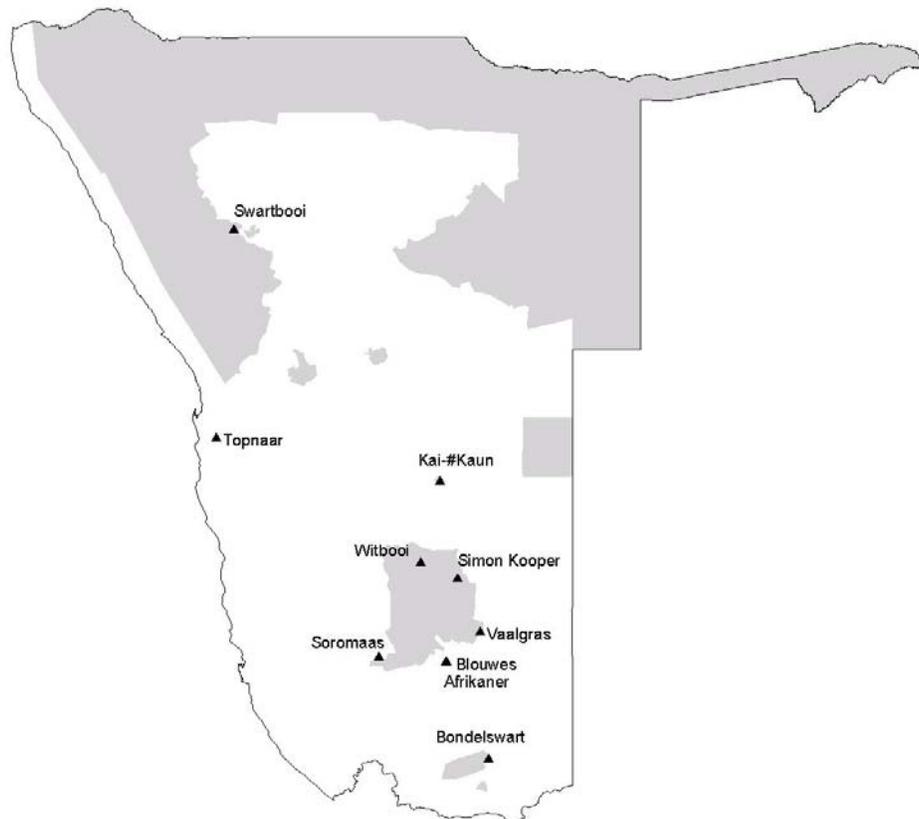
The only large farms in the Mbukushu area are three occupied and operational farms near Shashasho. Another 18 newer farms, each of 2,500 hectares, have been planned but not implemented because they overlap some existing farms and would displace certain local villagers.

Finally, a number of farms that were part of the Kavango Cattle Ranch run by the Namibia Development Corporation (NDC) have been allocated to war veterans and/or the Namibia Defence Force. The nature of occupation on these farms is not known.

“Farm land should be for farmers”

Appendix 5

Nama traditional authorities



Seven of the 10 TAs are in southern Namibia, mainly in and around the former homeland known as Namaland, while three others are further north where there are fairly small and isolated traditional Nama communities. The Simon Kooper TA was recognized only recently in early 2008.⁴⁴

1. Features of the traditional authorities

Several features characterize the Nama traditional authorities. Many are very small, representing less than 100 local rural families. Factional or political disputes are frequent, and several traditional authorities are not recognized as a result. The most significant of

⁴⁴ Ulrich David accompanied me as a facilitator, interpreter and informant to all the meetings. He is locally resident as the manager of programmes of the Namibia Development Trust, an NGO that focuses on rural and community development. I also held discussions with Alfred Sikopo, the Deputy Director of the Ministry of Lands & Resettlement for Hardap and Karas.

these in limiting large numbers of people from applying for customary land rights are in the large Berseba area where there are two unrecognized authorities.⁴⁵

The areas of jurisdiction for many of the authorities are also not clearly defined. For example, there is a boundary dispute between the Vaalgras and Blouwes TAs, and people living in the broad Gibeon area belong to at least five traditional communities (Witbooi, Afrikaner, Topnaar, Kai-#Kaun and Bondelswart). Certain areas around Windhoek are considered to be the ancestral lands of the Afrikaner TA but are now urban, state or freehold land. In lieu thereof, six Odendaal farms⁴⁶ near Gibeon were given to this TA by the Witbooi, Bondelswart and Topnaar communities to enable the Afrikaner TA to have an area of its own.⁴⁷ In the words of the Chief of the Afrikaner TA, the six farms however amount to an ‘artificial homeland’

Between 80 and 120 households or three-quarters of the rural Topnaar community live along the Kuiseb River in the Namib Naukluft Park. The remainder of the rural community lives on state land adjacent to Walvis Bay which is shortly to be incorporated into the Namib Naukluft Park. As a result, all these residents cannot obtain CLRAs. Most of the settlements along the Kuiseb each have 6-10 households.

There are also substantial numbers of the Topnaar community in Walvis Bay, where the TA has three councillors to represent their interests. Other TAs have likewise appointed councillors to represent people who live far from their traditional community areas. For example, the Afrikaner TA has six councillors resident in Windhoek, the Witbooi TA has a councillor in Maltahöhe, Simon Kooper TA has four councillors in Gochas, the Bondelswart TA has a councillor near Asab, and Kai-#Kaun TA have two councillors in the Kriess area.

Compared to TAs in northern Namibia (Owambo, Kavango and Caprivi), the southern TAs are notable having few or no customary laws to deal with crime. Several of the TAs reported that they are now awaiting approval from the Ministry of Justice to introduce traditional laws.⁴⁸

⁴⁵ These are known as the Chief Goliath and Chief Isaaks clans (Blockstein, P. 2008. Farming in a politically divided community: a case study of Berseba. In Hinz, Mo.O. & Ruppel, O.C. (editors). *Biodiversity and the ancestors: challenges to customary and environmental law*. Namibia Scientific Society, Windhoek.)

⁴⁶ As a result of proposals made by the Odendaal Commission in 1964 many freehold farms which had been considered unsuitable for commercial farming were bought by the government and incorporated into what were then the new homelands of Damaraland and Namaland. The farms had been previously surveyed and fenced, and many had fenced internal camps.

⁴⁷ Seven Odendaal farms near Gibeon were originally allocated to the Topnaar as part of an effort to relocate this community from the Kuiseb River area into what was then Namaland. The Topnaar TA hopes to “swap” four of these farms for one freehold farm adjacent to the Namib Naukluft Park, and they would then use the farm for trophy hunting.

⁴⁸ Many of the functions of traditional leaders were assumed by commissioners and magistrates of the South African administration, and this is probably one reason why TAs south of the Police Zone (see page 10) did not have customary laws. Surprisingly, these administrative officials also assessed applications from people wanting to live in certain of the then homelands. This would have also curtailed controls by traditional leadership over access to areas under their jurisdiction.

Each TA is headed by a chief (often called the Captain) and a traditional council of six senior and six junior councillors, and the secretary of the TA. One councillor is usually appointed as deputy chief and/or council chairman, while another is the vice-chairman of the council. All these people receive allowances from the government. To deal with day-to-day matters, some TAs have a senior Captain's Council consisting of the chief and three or four senior councillors. Additional councillors who do not receive government allowances have been appointed by several TAs. For example, the Witbooi and Kai-#Kaun TAs each have a total of 24 councillors.

Councillors are nominated by community members and then formally appointed by the chief. However, the chief also has the right to appoint select councillors at his own discretion. The chief normally comes from a royal family to maintain the leadership blood-line, but communities may elect someone from a different family if no suitable candidate is available from the royal family.

Most of the large traditional community areas are divided into wards, each of which is the responsibility of one or more traditional councillors. The councillors are expected to resolve minor disputes locally, only the most serious problems being brought before the full traditional council. The Swartbooi community area is made up of people from several language groups, and councillors have been appointed to represent each of the Herero, Damara, San and Owambo groups.

As in other areas of Namibia, the authority of TAs and their roles in local affairs are gradually weakening. This is partly due to the growing influences of central and regional government and of wealthy residents. But two other developments have had significant impacts on TAs in southern Namibia. The first is the proclamation of villages and settlements as areas to be administered by local councils of the MRLGH. TAs then lose authority over the management of these areas. For example, the Kai-#Kaun TA is discontented because the Hoachanas village council has allowed many people who are not members of the Kai-#Kaun community to settle in the town. Moreover, these new residents bring livestock which graze on the Kai-#Kaun communal pastures that surround the settlement. More legitimate residents and farmers therefore have to compete for grazing with unwelcome newcomers.

Secondly, water point committees now have significant roles in managing local areas. This is because all residents, livestock and other farming activities depend on the water that the committees control. Grazing fees that were previously paid to TAs are now also paid to the committees.

2. The process of land registration

In general, the process of land registration appears to have gone smoothly in the southern regions. Indeed, many of the TAs hope to have all properties registered by the deadline early next year. According to Mr Alfred Sikopo, about 600 CLR applications have been fully processed in Karas and about 500 applications in Hardap. All these CLR applications have been checked and the properties surveyed by the MLR offices in Keetmanshoop and Mariental. The CLBs must now approve the applications after which

the registration certificates will be issued.⁴⁹ The two MLR offices therefore do not have backlogs of applications, and now intend to encourage more applications to be submitted.

Radio announcements and meetings in each ward were used to inform people about the need for CLR. Initial misunderstandings over the payment of application and registration fees were apparently easily and rapidly clarified. Unlike other regions of the country, most applicants paid the full amount of N\$75 when they submitted their applications, thus covering the application fee of N\$25 and certificate fee of N\$50. No complaints were reported about the payments, although one comment was made that the payments introduce a precedent for the buying and selling of land, and for taxation on land.

No applications for CLR have been submitted to the Topnaar TA because all of its residents live on government land. The Swartbooi TA evidently mounted a vigorous programme to encourage residents to apply for CLR, and this included people living in adjoining areas that lacked representation by a recognized TA. This led to subsequent complaints that the Swartbooi TA had done this to make money from the \$25 application fees (see page 41).

The TA secretaries used receipt/invoice and other record books to keep track of who has applied for CLR. Some TAs have computers, at least one of which was noted as being used to record the names of people who had applied for CLR. The TA councils have apparently both checked and verified applications, and the Witbooi TA had posted the names of applicants for public scrutiny on a window to their office.

The following statistics were provided by each TA:

| | |
|---------------|--|
| Witbooi: | about 500 applications for CLR have been submitted, and perhaps about another 400 households have not yet sent in their applications |
| Bondelswart: | about 1,000 applications have been submitted, and another 1,000 are expected (these figures are probably far too high) |
| Soromaas: | 190 applications have been submitted and another 70 or so are expected. |
| Kai-#Kaun: | about 20-30 applications have been submitted and a similar number is outstanding |
| Simon Kooper: | perhaps over 100 applications have been submitted, and it is not known how many households have yet to submit applications |
| Blouwes: | about 200 applications have been submitted and another 200 are expected |
| Vaalgras: | 75 applications were received and another 100 are expected |
| Afrikaner: | 35 applications have been received, while another 10 have yet to be submitted because the people are members of the Witbooi and Bondelswart communities. |
| Topnaar | No applications have been submitted because of the uncertain nature of the land on which the community lives |
| Swartbooi | About 800 applications have been received, and approximately 400 more are expected. Certificates were issued to about 10 residents. |

⁴⁹ Many registration certificates were actually issued earlier in the year, but these have been withdrawn when it was found that they did not include survey diagrams of the properties.

Almost all properties being registered consist of a home, the area immediately surrounding it and any vegetable gardens and kraals associated with the home. Most properties are therefore very small and do not include more extensive cropping fields found in northern Namibia. As a result, few people question the merits or need to register, or to be limited to 20 hectares.

3. Land management and allocation by traditional authorities

While applications to live on communal land are strictly speaking for residential rights, what is increasingly important to TAs is whether the applicant is a serious farmer, has the resources to farm, has rights to do so, and the availability of grazing for the applicant's livestock. Land management in southern Namibia is therefore not about residential or crop land, but focuses rather on farming the open access pastures that are available within a ward or Odendaal farm.

The ways in which nine of the ten TAs administer land and pastures are similar; the Swartbooi TA, as the tenth, has somewhat less stringent requirements that are more akin to those used by Damara communities (see page 44). The TA is the custodian of land under its jurisdiction, and land is allocated to men for purposes of farming. Applications to farm have to be submitted in writing to the TA council which then often calls the applicant to be interviewed. The interview would include discussions on where the applicant intends to live and farm, his credentials and options in the light of the availability of water and grazing in different areas. The main criteria considered by the TA are the acceptability of the applicant in the community and his ability to farm. For example, the Witbooi TA requires all applicants to have at least 50 head of stock and to be married. A young man who does not meet these criteria may live with an existing farmer from whom he would learn while building up his own stock of animals.

The Witbooi and some other TAs oblige applicants to sign an agreement that they will abide by various conditions. For example, the letter of authorization for someone to farm in the Witbooi area stipulates the number of sheep, goats, horses, donkeys and cattle that may be introduced, and requires the following of the farmer:

1. To recognize and respect the authority of the Chief and Councillors
2. To reduce the number of livestock if need be, and so requested
3. To take care of the infrastructure of the farm
4. To be responsible for the cost of damages caused by negligence
5. To report any damages to Traditional Councillors
6. To report any illegal hunting and help to promote the conservancy
7. To inform the Traditional Authority in advance if the farm is to be vacated
8. No costly alterations should be incurred without written consent
9. To submit prior written consent of former Authority of a new comer (sic)
10. Not to remove or sell any permanent structure without the consent of the Traditional Authority.

The stringent procedures of applying for farming rights are compulsory both for people from outside the traditional community and for the sons of resident farmers who may

want to start their own farming enterprises. In the past, however, local residents did not have to go through the same strict application process.

No payments are made for land, but grazing fees are paid to some TAs. For example, the Soromaas TA charges 30 cents/year/goat or sheep and \$3/year/large stock animal, while members of the Vaalgras community pay 20 cents /year/goat or sheep and 50 cents/year/large stock animal. Grazing fees that used to be paid to TAs are now also increasingly paid to water point committees, and are now normally referred to as water fees. Thus, each household pays \$10/month to the committee in the Kai-#Kaun and Simon Kooper areas where there are no fees for grazing. Farmers in Soromaas pay the following to water point committees: \$10 for pensioners without animals, \$50 for commercial garden projects, \$20 for farmers with less than 200 animals, \$30 for between 200 and 400 animals, and \$40 for 400 to 600 stock, and \$50 for larger livestock holdings. This is in addition to the grazing fees noted earlier.

The Blouwes TA fund receives \$200/year from each water point committee, as well as a significant donation from the !Khub !Naub conservancy. The Afrikaner TA expects its community members to pay \$1 or \$2 per month, and also to donate money and meat for festivities. Businesses are apparently not charged fees by any of the TAs. Only the Simon Kooper and Swartbooi TAs indicated that residents needed permission from their councils to start businesses.

Most TAs reported that land would revert to the traditional authority if it was abandoned permanently. Houses that are left standing may be sold, but most homes are built of corrugated iron and wood and are therefore dismantled when their owners leave. Interestingly, people need special authorization to build a permanent home of bricks or stone from the Witbooi TA, but do not need permission to construct a corrugated iron and wood home.

All TAs agreed that property is normally and automatically inherited by the surviving spouse or eldest child. In some cases, the property may nominally revert (as is actually provided for in the Communal Land Reform Act of 2002) to the TA, and its council would then formally reallocate it to an appropriate heir. This is deemed necessary so that the TA can ensure that the property is justly inherited, especially if both parents die at the same time or in the absence of a written will.

Complications concerning inheritance may occur when the deceased husband is from another traditional community, especially one from the Owambo or Herero communities. Relatives of the husband sometimes then lay claim to some or all of the property, and this requires the intervention of the TA councils.

Homes are typically located close to sources of water (usually boreholes) from which livestock walk out to graze pastures close enough for the animals to return home each evening. Everyone may graze their livestock freely within the area surrounding their homes or within the Odendaal farm on which they live. However, permission would be needed to graze in another area or to use a neighbouring water point. Getting this

permission is considered easy since the need to graze or obtain water elsewhere would only arise under dire straits with which everybody would sympathize.

Farming conditions on open communal land and those in the old Odendaal farms evidently differ quite significantly. The farms are considered better because the fenced camps allow for more controlled grazing, and have more water points are often available on the farms. As a result, people applying farming rights often state a preference to be allocated a position on one of these farms.

Each Odendaal farm was apparently and originally allocated to one family, and some of the farms remain as 'family enterprises' even though they now support several households of relatives. However, most farms now support several unrelated families, and some of the TAs have taken measures to break family monopolies over the farms.

Confusion appears to have arisen over legality of fences within the Odendaal farms. Some people have argued that they should be removed because fencing is prohibited by the Communal Land Reform Act of 2002. This may seem correct, but the Act limits barriers erected to demarcate a property for the exclusive use of an area by its owner. Internal fences in the Odendaal farms are not used for that purpose, but are rather used for managing and rotating grazing.

TAs are increasingly debating just how many livestock can be accommodated on commonage pastures. In particular, questions are raised about how many, and what kinds of new farmers can be given farming rights in these open access pastures. This is perhaps the main reason for applications being assessed more stringently than before. The Kai-#Kaun TA has indeed taken the novel step of refusing any further applications for farming rights.

Several factors have caused this situation. First, there is now greater pressure on pastures as a result of the mounting number of livestock. Second, the TAs are receiving substantial numbers of applications for farming rights, most of which come from people who live in town and have other livelihoods.⁵⁰ Third, there is a growing realization that the rights of full-time and part-time farmers are not equal, especially if their livestock compete for the same food. Fourth, TAs recognize that some farmers have very much larger herds or flocks than other farmers who use the same pastures. Many informants agreed that farmers with over 500 or 600 animals should move to freehold farms, perhaps making use of the affirmative action loan scheme to do so. This would make more grazing available to the small herds or flocks of disadvantaged farmers.⁵¹

⁵⁰ For example, about 20 applications are received per month by the Witbooi TA, while the Vaalgras TA has been getting approximately 30 applicants per year. Many applications are for farming rights on the old Odendaal farms, but these applications are also assessed more critically.

⁵¹ Wealthier people having hundreds of goats and sheep make up perhaps 10-15% of farmers, and many are absentee or weekend farmers. Substantial competition for grazing occurs between them and poorer farmers when the richer farmers graze their large flocks around established water points after rain has fallen and fresh pastures are available nearby. Once the grazing is depleted, however, their flocks are moved further away to areas that have not been grazed. These are far from permanent water, and the wealthier farmers then use vehicles to cart water to their animals. Poorer farmers do not have means to transport water, and so

In effect, what is happening here is subtle land acquisition, equivalent to the fencing of large farms in northern Namibia except that it is grazing rather than hectares that are being acquired. In both cases, acquisition is by wealthy people who normally live elsewhere and have lucrative non-farming incomes. Much of this is made possible by the ideas that (a) anyone with origins in a traditional community has the right to resources assigned to the TA of that community and (b) people may live anywhere in Namibia and (c) that commonages are available for everyone and anyone to use.

3. Recommendations

The main recommendation is for the MLR to find ways to secure the rights and grazing resources of legitimate farmers. By 'legitimate', I mean people who really depend on farming for their livelihoods, as opposed to those for whom farming is a pastime which may bring revenue or security to add to their main non-agricultural incomes. There may be several ways of securing rights and grazing:

1. To strengthen the responsibility and authority of TAs to control the number of farmers and animals.
2. To strengthen the responsibility and authority of water point committees to control the number of farmers and animals.
3. To broaden and strengthen the mandate of conservancy committees to control the number of farmers and animals.⁵²
4. To assign legal ownership of commonage pastures and/or farms to water point committees, conservancy committees or other associations. The latter might consist of all the farmers resident within a ward on an old Odendaal farm, for example.
5. Where viable and desirable, to develop ownership associations into shareholding groups to allow members to benefit from the capital asset value of their land, and to create incentives for investment and development.

Further detail and rationale on this recommendation is provided in the form of a project proposal (in Appendix 11) which could be submitted to a development programme.

their flocks remain close to permanent sources of water. Having little to eat, the growth and production of their animals suffers.

The Swartbooi TA reported a converse problem. Wealthy farmers first use up the grazing around their own water point (*pos*) and then move their stock on to communal grazing around villages consisting of poorer people with smaller flocks.

⁵² There are six conservancies in the southern communal areas of Namibia. Cumulatively, they make up 59% of that communal land.

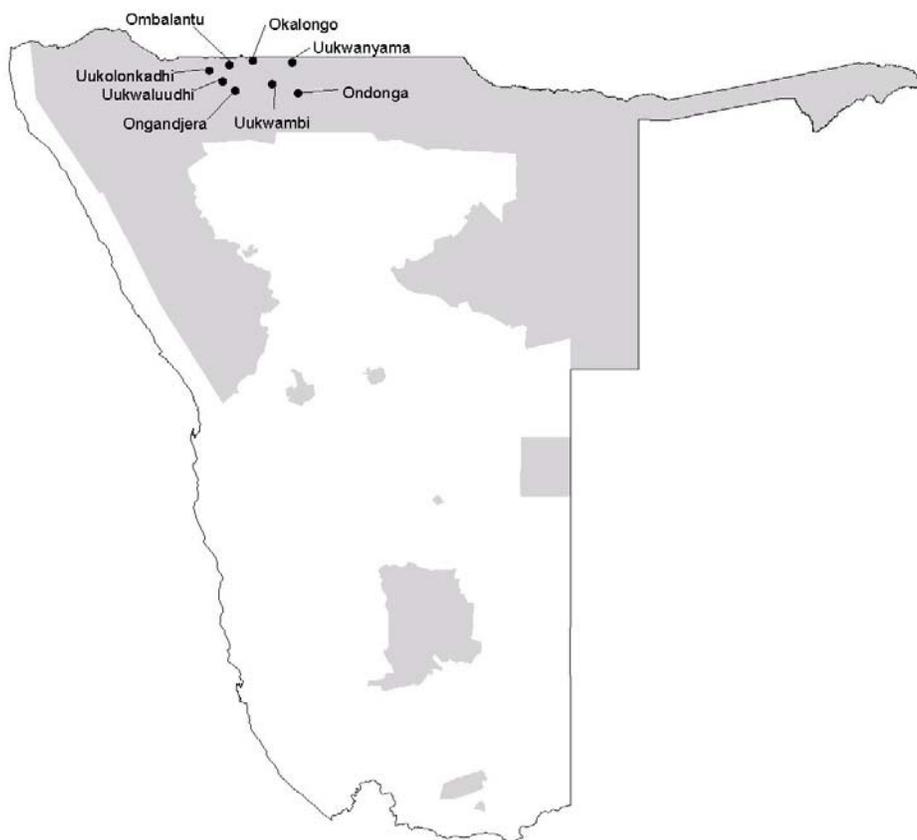
Informants consulted for Nama TAs

| Surname | First name | Tel. number | Organization |
|----------------|-------------------|--------------------|-------------------------------|
| Hanse | David | | Simon Kooper Secretary |
| Afrikaner | Anna | | Simon Kooper Councillor |
| Goliath | Samuel | | Simon Kooper Councillor |
| Hanse | Frederik | | Simon Kooper Chief |
| Wessels | Alwina Victoria | | Simon Kooper Councillor |
| Plaatjies | Martha | | Simon Kooper Councillor |
| Afrikaner | Lucas | | Witbooi Councillor |
| April | Juliana | | Witbooi Secretary |
| Dâusab | Johannes | 081 316 8256 | Kai-#Kaun Secretary |
| Jager | Abram | | Kai-#Kaun Councillor |
| Kooper | Petrus Simon | 081 216 4156 | Kai-#Kaun Chief |
| Christiaan | Josef | 081 299 6641 | Bondelswart Acting Chief |
| Freyer | Richard | 081 355 9481 | Bondelswart Councillor |
| Jossop | Corneels | 081 229 3930 | Bondelswart Councillor |
| April | Johannes | 081 320 9351 | Bondelswart Councillor |
| Basson | Willem | 081 148 1059 | Bondelswart Councillor |
| Bloedstaan | August | 081 359 3083 | Blouwes Councillor |
| Swartbooi | Salamon | | Soromaas Councillor |
| Nassau | Fredrika | | Soromaas Councillor |
| Frederik | Petrus Isak | | Soromaas Councillor |
| Frederik | Hendrik | | Soromaas Councillor |
| Apollus | Willem | | Vaalgras Councillor |
| Topnaar | Sepholine | | Vaalgras member of CLB |
| Louw | Willem | | Vaalgras Councillor |
| Jantze | Frooi | 081 400 1878 | Afrikaner Councillor |
| Cloete | Gert Edward | 081 283 3389 | Afrikaner Councillor |
| Afrikaner | Gaos Hendrina | 081 221 4041 | Afrikaner Chief |
| Kesper | Lena | | Topnaar Councillor |
| Cloete | Fransina | | Topnaar Councillor |
| Kham | Ernst | | Topnaar Councillor |
| !Khurisas | Beulah | 064 207103 | Topnaar Secretary |
| Anamab | Stoffel | | Topnaar Deputy Chief |
| Kooitjie | Seth | | Topnaar Chief |
| Uirab | Essegiël | | Swartbooi Deputy Chief |
| Ihuhua | Anna | | Swartbooi Councillor |
| Bave | Cornelius | | Swartbooi Councillor |
| Bamm | Titus | | Swartbooi Councillor |
| Pienaar | Essegiël | | Swartbooi Councillor |
| Nerongo | Ingrid | | Swartbooi Secretary |
| Sikopo | Alfred | 081 122 3442 | MLR Deputy Director |
| David | Ulrich | 081 286 1501 | NDT informant and interpreter |

The fencing of the field shall be done in appropriate consultation with the traditional leader as to where the fence shall end. Article 9.1, Laws of Uukwanyama, 2005.

Appendix 6

Owambo traditional authorities



1. Features of the traditional authorities

As in other areas of Namibia, each TA has three levels of leadership: local headmen, senior headmen or councillors and chiefs. The chiefs of the Ondonga and Uukwaluudhi TAs are called kings, while the Uukwanyama TA is headed by a queen. The chieftaincies are normally inherited positions, as are those of headmen. Councillors are however elected by local communities and their appointments are ratified by their chief.

Each TA has six senior and six junior councillors who serve on the traditional council together with the chief and secretary. All these people receive monthly allowances from the MRLGH. Many traditional councils also have serving advisors who are people with special experience or knowledge.

Every traditional community area is divided into districts, which are equivalent to wards in other communal areas. For example, the Oukolonkadhi TA has 10 districts within

which there are 87 headmen, the Okalongo TA has four districts and 44 headmen, while the Uukwaluudhi TA has 92 headmen in four districts. A headman is responsible for a village, which generally consists of 50 to 100 households. It is only in the eastern areas of the Uukwanyama and Ondonga communities and in south-western of Owambo that homes are clustered into discrete villages. Elsewhere, villages or their limits are not obvious because households are scattered across the landscape.

Seven of the TAs have long histories that go back hundreds of years. They thus have long-established customary practices and laws, and their chiefs trace their roots through long royal lineages. The eighth of the TAs, Okalongo, was established more recently when substantial numbers of the Ombandja community settled in Namibia during the Angolan civil war. They were allocated an area by the Uukwanyama TA which some people content is an interim arrangement that should one day end.

Several factors weaken the authority and status of traditional leadership. These include the growing role of central and regional government, the representation of constituencies by regional councillors, and the emergence of water point associations and conservancies as local management institutions. Perhaps the strongest factor is the increasing number of educated, affluent and influential people in the region. Many of the traditional leaders complain that they are ignored and sometimes abused by these people who have little regard for tradition or customary regulation.

2. The process of land registration

Knowledge and attitudes about CLR

Most people seem well-informed about CLR. The only problems noted were that some headmen did not know what had to be done because they could not read (by the Ondonga TA) and certain remote communities had not been informed of what to do (Uukwaluudhi TA). A variety of ways have been used to inform and urge residents to apply for CLR. Radio announcements and word-of-mouth have been important, while many senior councillors held meetings to inform headmen within their districts. The headmen then told their constituents how to apply to register their land.

There appeared to be considerable enthusiasm for CLR, the only substantial reservations expressed being about the sluggish process of registration. Many people are thus unhappy about the slow pace and lack of response once applications have been lodged, especially in view of their payment of \$25 application fees. This applied to both the registration of existing and new properties. For the latter, considerable annoyance was noted by the Uukolonkadhi TA since communal land boards have to approve new properties before they may be occupied. Some people submitted applications as long ago as 2003 but are apparently still unable or reluctant to occupy their land. While this legal requirement is often ignored when people go ahead with the occupation of their new properties, it remains a legal problem that requires a solution.

Other reservations were noted as a result of land owners using CLR as an opportunity to claim larger areas than were originally allocated them. This was considered to be a

serious problem in Uukwaluudhi, and was also mentioned by one headman from Uukwanyama.

A good level of knowledge of other legal provisions of the Communal Land Reform Act was encountered. For example, the great majority of people know that charges may not be levied for land, and that widows and orphans may not lose their rights of inheritance or succession. Many people, however, do not agree with these new laws and thus find ways around them, as discussed below.

Applications for CLR

It is clear that large numbers of residents have already applied for CLR, and that more people have submitted applications than those who have not. The following figures are illustrative of the number of applications for CLR:

- Ondonga: A total of 42,041 applications for CLR are reported to have been received.⁵³ The great majority of CLR applications have been sent to the MLR offices for Oshikoto and Oshana. These include some CLR applications for large, fenced farms and leaseholds for business properties. About 6,000 CLR applications were being checked and noted in the Ondonga TA office early in July 2008.
- Uukwambi: 6,493 applications of which 4,913 have been sent to the MLR offices for Oshana and Omusati. A total of 400 villages had sent in all their applications. Certificates of registration had been issued to all residents in 10 villages.
- Okalango: about 1,500 out of the approximately 2,000 households in the TA have applied for CLR.
- Uukolonkadhi: about 30% of all residents have applied for CLR, but only about 20 registration certificates have been issued.
- Ongandjera: between 1,800 and 2,000 CLR applications were received and sent to Uutapi.
- Ombalantu: about 3,000 CLR applications have been received and sent to the Omusati MLR office in Uutapi. A 'few' residents have still not applied for CLR. About 150 properties have been approved and registered.
- Uukwanyama: could not say how many applications have been received, but about 400 properties have been approved and registered.
- Uukwaluudhi: could not say how many CLR applications have been received.

As for the four MLR regions, the following numbers were reported by MLR staff:

- Ohangwena Region: about 15,000 CLR applications were received; of these 561 have been approved by the CLB.
- Omusati Region: about 18,000 CLR applications have been received; of these 710 have been approved by the Omusati CLB.
- Oshikoto Region: about 8,200 CLR applications were received; of these 1,195 have been approved and registered.
- Oshana Region: about 13,100 received; of these, 252 have been approved and registered

⁵³ This figure seems very high, and may in fact represent an estimate of the total number of households in the Ondonga TA area.

Offices of Uukwambi and Ondonga TA are the only ones that compile lists of individual applications. The other offices use the carbon copies in their invoice or receipt books as records of who has applied, since these books record the payment of the \$25 application fee. The Uukwanyama TA reported that secretaries who work for councillors in each district may have lists of the names of applicants.

Most applications for CLR reach TA offices in one of two ways: (a) residents (or their headmen) deliver their applications to the offices or (b) TA staff go out to villages to collect application forms and fees and to help residents complete the forms correctly.⁵⁴ The former is clearly more passive and takes longer, while the latter is proactive, engaging and quicker, and it is this approach that most TAs have taken. This has been done using either district secretaries or the TA's own secretarial staff. Radio announcements have been used to mobilize people to apply and to announce the impending arrival of secretaries at villages. As an incentive for their work in collecting applications, district secretaries in Uukwanyama and Ondonga (and perhaps elsewhere) are allowed to keep 10% of each \$25 application fee.

The level and method of checking the validity of each application varies from one TA to another. Some applications are accompanied by signed, stamped statements of recommendation from headmen, while in other cases the approval of headmen is taken as given when they submit the applications for residents of their villages to the central TA office. At Uukwaluudhi, villagers bring their applications to the TA office and then all headmen and councillors attend palace meetings during which the names of applicants are announced to allow anyone to lodge objections.

Each TA has a Secretary (paid by the MRLGH) and one or more secretarial assistants. Office equipment typically consists of furniture in one or two administrative offices, a computer, printer, photocopier and filing cabinets. The overall level of organization in the offices ranges between mediocre and rather chaotic.

With the exception of Uukwambi and Ondonga TA, all the offices have simply immediately sent on the CLR application forms to the MLR regional secretaries of the CLBs. The Ondonga TA has accumulated thousands of application forms which it appears to be checking, listing in MS Word tables and then endorsing before they go on to the CLB secretary. The Uukwambi TA has rapidly checked, endorsed and listed the applications in a MS Word file before sending them on to either the Uutapi or Oshakati MLR office.

Most TAs therefore receive application forms in batches, recommend and endorse them, and then deliver the forms to the secretary of the CLB, and then wait patiently for a response. As mentioned above, the over-riding conclusion is that the TAs are extremely

⁵⁴ For example, The Uukwambi TA sent out six secretaries employed by the central TA to villages to help complete and collect applications. Uukwanyama senior councillors and their secretarial staff were used to distribute and collect applications, which were then sent to the main TA office for checking, stamping and onward submission to the MLR office in Eenhana.

frustrated at the slow pace of processing after the forms leave their offices. Most TAs realize that this is due to the shortage of staff, transport and other resources needed by the regional MLR offices to map and check each property.

Most TAs are clearly not aware of any responsibilities to maintain registers of communal land properties. They either do not recognize the need to keep records, or implicitly expect that this will be done by the MLR and/or the CLBs.

Some TAs keep copies (Uukolonkadhi) or lists (Uukwambi and Uukwanyama) of issued registration certificates, while other TAs use their invoice books as a record of who has received their certificates after paying the \$50 registration fee.

3. Land management and allocation by traditional authorities

The allocation of residential and crop land

The way in which these parcels of land are allocated by the eight TAs is very similar. Thus, parcels are always allocated to individuals to avoid the possibility of disputes which may arise from multiple ownerships. The boundaries are clearly known to owners, headmen and neighbours, and the parcels should not include locally important common-property resources such as public roads, paths or water points. Boundary markers (poles in the ground, marks on trees etc) are placed in some areas (reported in Uukolonkadhi and Uukwaluudhi, for example); neighbours are informed and their agreement is obtained. A headman can simply allocate a piece of vacant land to a person, or the prospective property owner may be invited to look for a suitable parcel which is then checked by the headman and neighbours before being allocated.

Parcels are allocated for life, although there is the theoretical provision that a property may be lost if it is not occupied within three years of being allocated. Although communal land is formally owned by the state, through the eyes of traditional authorities it is variously owned by kings or headmen, and it is they who obtain compensation when land is allocated for the use of an individual. In similar vein, any parcel that is given up reverts automatically to the headman, who may then 'sell' rights to the parcel to another person at a later stage. Property owners may therefore not sell or transfer their land to other people, although this does happen with the (paid for) agreement of a headman and with the new owner paying for improvements to the land. Parcels may be subdivided, but only with the agreement of the headman, and again this would usually require some kind of payment.

Payments for land have become a sensitive issue because the Communal Land Reform Act of 2002 specifically forbids them. Many traditional leaders are indeed unhappy at having potentially lost a source of income. Payments for land are not regarded as direct transactions that involve money and land, but are rather considered to be service fees or *ombanduyekaya* (from a bundle of tobacco). The term 'service fee' – rather than a payment – is now more useful because of the prohibition on charging for allocations. The service fee can more legitimately be considered an honorarium or gift to the headman for his help in identifying land, obtaining agreement for its use, and for his future services, for example in settling disputes.

Although \$600 per parcel is considered to be normal these days, the value of a service fee has always been negotiable according to need and willingness to pay, indeed to the point that poor people may be allocated land without a fee. The law against payments has perhaps encouraged greater discretion and has now made matters even more negotiable.⁵⁵

In the geographically very large TAs of Uukwanyama and Ondongo, headmen pay a once-off service fee to the chief when he allocates them the right to establish new villages (similar payments to establish villages are made in some areas of Caprivi – see page 36). The headmen are then free to keep all service fees from local residents for themselves, perhaps because so many of the headmen are in places too distant for the chief to control. Elsewhere, *ombanduyekayas* are shared between headmen and higher authorities in various ways. In Uukwambi, for example, the sum of \$600 may be divided equally between a headman, councillor and chief. By contrast, the whole cash payment (or its equivalent in tobacco, goats and cattle) is received by a Uukwaludhi headman who gives it to his councillor. He, in turn, gives the *ombanduyekaya* to the king, who then decides how to share the fee between himself, the councillor and headman. The goods offered in payment may be divided, or their value shared using other goods or money.

A consequence of the sharing of service fees with higher levels of authority is that these more senior leaders also ratify the land allocations made by headmen.

Interestingly, amounts paid for service fees may not be related to the size of parcel allocated, which is more a consequence of the area that a prospective land owner believes that he needs and can manage. Larger, wealthier households therefore have more resources to manage bigger areas, and they have the resources to pay service fees to progressively increase the size of their parcels.

Each residential and farming unit (*epya*, plural *omapyas*.) pays an annual tax of \$10 to the central fund of its TA.

Commonages and grazing areas

There are two main kinds of open commonage: the *oshanas* in the Cuvelai drainage system and the woodlands that surround villages in eastern Ohangwena northern Oshikoto. Soils in both areas are not suited to cultivation and this is why they remain as commonages used by local residents for grazing, fishing, and gathering fuel wood and fruit, for instance.

These and more distant grazing areas are under the ultimate control of local headmen. Any person arriving from another village or community must obtain permission from the headman before his livestock can graze local pastures. The person needs to carry a letter from his own headman which would confirm his identity, origin and the number of animals he wishes to graze and water. Permission would also be given for the herder to establish a cattle post.

⁵⁵ For example, until a suitable sum is offered a headman may offer excuses of being too busy to help a prospective land owner.

These customary controls are being changed as a result of the establishment of water point, conservancy and community forest committees which are now responsible for control over access and use of common property water, wildlife, grazing and other vegetation resources. The authority of TAs diminishes as these committees become increasingly influential in implementing their statutory responsibilities. For example, the laws of the Uukolonkadhi TA states that anyone who wishes to fish in Olushandja Dam must obtain permission from the local conservancy committee, which must also report this to the TA.

Four conservancies (King Nehale at Okashana, Uukwaluudhi, Uukolonkadhi and Omatendeka in Ongandjera), two community forests (Okongo and Uukolonkadhi) have been registered in north-central Namibia, as well as many water point committees.

Business properties

These consist mainly of small shops (typically *cuca* shops or *kambashus*), but also large registered companies. The authority of a local headman is needed before a person can establish a business outlet such as a *cuca* shop or *kambashu*. A service fee, usually of \$150 is paid for an allocation to the headman, and an annual tax of \$30 is charged thereafter by the central office of the TA. The headman would also be responsible for nominating and approving the general area (*okalanda*) where shops can be erected.

From a survey conducted in 1998, I estimated there to be about 7,000 small shops in north-central Namibia.⁵⁶ Many of these would now be in newly declared urban settlement areas (and therefore outside the ambit of CLR), but considerable numbers of new shops have obviously since been established. It is therefore quite possible that properties for 10 thousand or more shops will need to be registered as leaseholds, as is required by the Communal Land Reform Act of 2002.

Parcels larger than 20 hectares and large farms

The whole process of land registration has focused on parcels smaller than 20 hectares. However, there are many larger farms. For example, staff of the Eenhana MLR office estimate that about 35% of all CLR applications have been for parcels larger than 20 hectares. The equivalent estimate in Omusati is 5-7%, while about 10% of properties in the Olukonda Constituency are larger than 20 hectares (R. Witmer pers. comm.).

No information is available on the proportions of parcels of different sizes, but there might be as many as 5,000 properties of between 20 and 100 hectares, another 500 parcels up to 1,000 hectares, and about 300 larger farms. Of these biggest farms, 106 are so-called Mangetti farms each of which is between 1,100 and 1,300 hectares. They were allocated during the 1970s to selected individuals who pay nominal lease fees based on their number of cattle.

⁵⁶ Mendelsohn, J.M., el Obeid, S & Roberts, C.S. 2000. *A profile of north-central Namibia*. Gamsberg Macmillan, Windhoek. 80 pp.

The remaining farms were obtained less formally during the 1990s by influential businessmen, public servants and political leaders. Most – perhaps all – of the farms were allocated by headmen who were paid for the allocations. There are 144 of these farms in Ondonga, 24 in Uukwanyama, 14 in Ongandjera and one or two in Uukwambi. The majority are less than 3,600 hectares, the maximum size determined as permissible by the Ondonga TA. But several farms each cover over 8,000 hectares, the largest being reportedly over 13,000 hectares. The Ondonga TA has submitted applications for the registration of most of these farms, but has received no response from the MLR or CLB.

Inheritance

A recent study commissioned by the Legal Assistance Centre⁵⁷ provides a thorough review of progress and challenges in how inheritance rights of women are changing. Three key aspects emerge from this study and my survey.

First, the rights of inheritance for widows' and surviving children are now much more secure than before 1993. This was the year when 79 senior representatives of all the TAs in north-central Namibia met at Ongwediva and resolved to abolish the customary practice of widows being evicted from land and homes of their deceased husbands. The customary, matrilineal inheritance system previously determined that the property of a deceased husband was to be inherited by people directly related to him through his mother. The 1993 Ongwediva resolution was later translated into a statutory requirement in the Communal Land Reform Act of 2002 which now applies throughout Namibia.

Second, while the statutory provisions of the Communal Land Act now bind TAs to respect widows' rights to land, the Traditional Authorities Act and Namibian Constitution state that TAs are also expected to maintain customary laws and practices, of which matrilineal inheritance is part. These contradictory requirements place headmen in a quandary, since they are still expected to manage and ratify all land transfers or allocations. Their position is also compromised by the fact that they are no longer supposed to obtain incomes when reallocating parcels to widows. Furthermore, relatives often feel aggrieved if they have invested in the property of the deceased father, but then lose rights to their investments once the widow takes ownership. The idea of a widow inheriting property is also complicated by polygamous associations even though these are nowadays relatively uncommon.

The upshot of these predicaments and complexities is that inheritance and the transfer of property ownership is often not simple, and ways are found to circumvent the statutory provisions. For example, a widow is often compensated by being allocated a different, usually smaller (and possibly inferior) parcel of land, which could be registered in her name in terms of CLR. This is justified by the need to keep her husband's property within the matrilineal clan and by the claim that an elderly widow would be unable to maintain the original, larger 'family farm'. A compromise is thus achieved: customary inheritance is maintained while the widow is given security. Just how secure her new circumstances are may be debatable, but efforts are also made to ensure fairness. For example, the

⁵⁷ Werner, W. 2008. *Protection for women in Namibia's Communal Land Reform Act: is it working?* Legal Assistance Centre, Windhoek.

Uukwaluudhi king may dispatch his agents (called ‘boys’) to inspect a widow’s new property to be certain that she has been accommodated reasonably.

Third is the conclusion that the ways in which properties are inherited are clearly in transition. While many widows and children will inherit land and have it registered in their names as required by the Communal Land Reform Act, there will remain instances that will have to be resolved through compromise and arbitration. The role of headmen and CLBs in resolving these difficulties will be important. The Legal Assistance Centre study makes several recommendations to promote fair inheritance practices.

Disputes

It is hard to assess how frequently disputes over land occur, but it is obvious that they are taken seriously. For instance, cases concerned with land and cattle theft make up most disputes heard by the Uukolonkadhi traditional court. Matters concerned with land are also covered by several articles in each traditional authority’s statutes. Disputes over land are first assessed by local headmen, and then taken to successively higher levels of authority if they cannot be settled to the satisfaction of the claimants or defendants. Disputes may even be taken beyond the highest court of a traditional authority to be heard and settled in a magistrate’s court.

A major reason for the high demand for CLR is the widespread hope that registration will lead to greater security of ownership and fewer disputes over land.

4. Recommendations

There is a need to clarify the use of the \$25 application and \$50 registration fees. Some TAs simply use the money for their running expenses and/or to help with the CLR process (for example, Uukwanyama, Uukwaluudhi, Uukwambi, and Uukolonkadhi).⁵⁸ But the Ondonga and Ombalantu TAs have kept the fees in separate accounts because they are unsure if they are allowed to keep and use the funds. Other TAs were also uncertain about the funds, and this aspect should be clarified by the MLR. The Ondonga TA had written to the MLR requesting clarification but had yet to receive a clear response.

The recommendation was made that some aspects of the application forms used for CLR and leasehold applications could be simplified.

⁵⁸ The Uukwanyama and Ondonga TAs have allowed staff of the senior councillors to keep 10% of each \$25 collected as a payment or incentive to collect as many applications as possible.

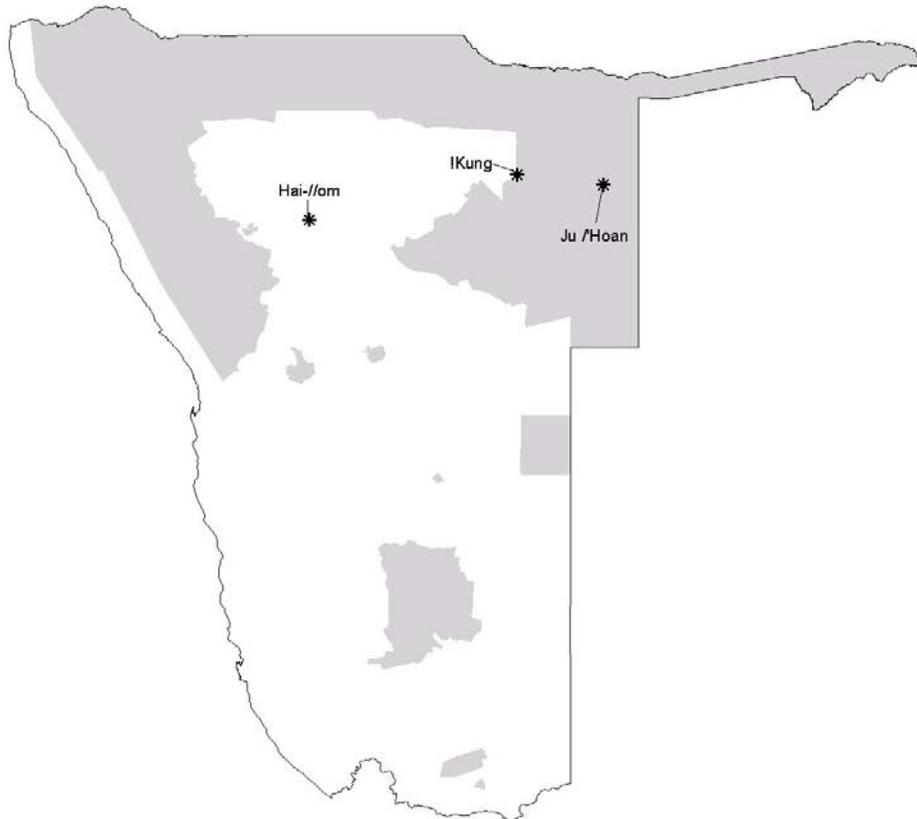
Informants for Owambo TAs

| Surname | First name | Tel. number | Organization |
|---------------------|-------------------|----------------------------|-------------------------------|
| Shaanika | Peter | 081-149 2798 | MLR (retired, Tsumeb) |
| Haufiku | Peter | 081-281 1052 | MLR, Eenhana |
| Mwahaha | Johanna | 081-308 5814 | MLR, Eenhana |
| Meijs | Marcel | 081-351 0350 | MLR, Oshakati |
| Nepembe | J | 081-129 2003 | MLR, Oshakati |
| Nghishiitende | Maija | 081-260 2224 | MLR, Oshakati |
| Kapitongo | Donata | 081-296 3638 | MLR, Tsumeb |
| Amunyela | Leesias | | MLR, Uutapi |
| Nkolo | John | 081-255 1718 | MLR, Uutapi |
| Hinayeleye | Saima | 081-274 4190 | Okalango, Secretary |
| Shilimetindi | Anna | 081-255 3147 | Ombalantu, Secretary |
| Mueendeledi | Boas | 081 124 4920, 085 553 4264 | Ondonga, Senior Councillor |
| Nantinda | Ester | 081-286 0750 | Ongandjera, Secretary |
| Shikongo | tate | 081-257 7683 | Ongandjera, Senior Councillor |
| John | Irja | 081-222 5699 | Ongandjera, Vice-secretary |
| Malakia | Shoombe | 081-291 0003 | Uukolonkadhi, Secretary |
| Nashilongo Taaipopi | Helvi | 081-252 3786 | Uukwaluudhi, Secretary |
| Angungu | Maria | 081-297 2991 | Uukwambi, Secretary |
| Hikumwah | Georg (Rev.) | 081-274 9088 | Uukwanyama, Headman |
| Nghiipandulwa | Trescia | 065-260084 | Uukwanyama, Secretary |
| Nelulu | George | 081-279 6930 | Uukwanyama, Senior Councillor |
| Niilonga | Toini | 081-295 7466 | Interpreter |

“Each village may have a maximum of 100 cattle”

Appendix 7

San traditional communities



Although there are numerous groups of San people in Namibia, each speaking a distinct language and living in a different area, only the three shown on the map have recognized traditional authorities.

1. Features of the traditional authorities

It is only in recent years that groups of San people have seen the establishment of high level traditional authorities with chiefs and traditional councils, similar to those of other groups in Namibia. For example, the Ju /'hoan TA only started in about 1990 and the Hai-//Om in 1992. However, local levels of authority within villages have been established for a long time. Each village thus has a headman, often called the *eienaar* (Afrikaans for owner).

Each TA is headed by a chief and a traditional council of six senior and six junior councillors, and the secretary of the TA. Councillors of the !Kung and Ju/'hoan TAs represent different wards of the community area, while most councillors of the Hai-//Om

TA are based in towns and settlements where large numbers of people live: Oshivelo, Outjo, Otavi, Kombat, Grootfontein, Tsumeb and Tsintsabis.

Whereas the majority of the Ju/'Hoan traditional community live in the broad area known as eastern Bushmanland (equivalent to the Nyae Nyae Conservancy), members of the other two TAs are more widely distributed. The !Kung community is concentrated in western Bushmanland (equivalent to the N~~z~~a-Jaqua Conservancy) but many of its other members work on freehold farms elsewhere in Otjozondjupa.

The Hai-//Om community is particularly widely scattered across freehold farms in eastern Kunene and northern Otjozondjupa, and in the towns and settlements noted above. In addition to the traditional councillors there are also local councils representing Hai-//Om interests in these towns. The TA has high expectations that the government will acquire a number of farms between Oshivelo and Etosha, which can be assigned as communal land for their community. It is hoped that the land will be used for farming and as a conservancy.

While San people often move substantial distances while hunting and gathering or working as migrant labourers, all three TAs were clear in stating that every family has a permanent home which can be registered in terms of CLR.

Commonages (known as *!nore*) around each village are used for grazing, hunting and for gathering plant foods and other resources. There are no restrictions on movements within the commonages, but permission from neighbouring village headmen is needed if village residents seek resources in areas adjoining their *!nore*. An exception to this are localized resources, such as baobab and mangetti trees from which fruits and nuts are harvested annually by people coming from widely spaced villages.

Residents within in a village are normally close relatives, and closely located villages share more relatives than more distant villages. Young men usually establish their homes close to their parents, while young wives typically come from other villages. However, Ju /'hoan wives may also have their own homes in their parental villages. The homes are built by the parents and young married couples may spend a few months living there each year. Villages typically number 10 to 20 households.

2. The process of land registration

!Kung is the only TA to have pursued CLR. The Hai-//Om TA has no communal land, while the process has never started in the Ju /'hoan area as a result of misunderstandings. Most of these were due to the assumption that all commonage was to be divided into individually demarcated and registered properties if each household was to be allocated 20 hectares. This was considered to be a total departure from the traditional use and maintenance of commonages or *!nore*, and it also led to the fear that resources would be

lost to 'land grabbers'. Moreover, many people misinterpreted the actual spatial extent of 20 hectares, assuming this to be similar in area to large freehold farms.⁵⁹

About 100 CLR applications have been received by the !Kung TA. These were assessed, endorsed and sent to the MLR office in Otjiwarongo. Interestingly, the TA agreed that each plot could cover between 10 and 15 hectares. While some properties along the Omatako Omuramba have fields of several hectares, most !Kung villages do not have fields. Areas of 10-15 hectares would therefore extend over much more than the residential area occupied by each household.

Of the 100 applicants, approximately half were unable to pay the application fee of \$25, but the TA nevertheless accepted their applications. Invoice books are used to keep a record of who applied for CLR. The TA reported that about another 150 applications are expected. Staff of the MLR in Otjiwarongo have not surveyed any of the properties.

3. Land management and allocation by traditional authorities

Land allocations are mainly made by village headmen. Applications follow the system of being easiest for close relatives and increasingly stringent for people from other villages and communities. Thus, village headmen would routinely allocate sites where young men can build their own homes in their parental village, whereas immigrants from other San villages would have to have to motivate their applications to headmen, who would also consult members of the village before reaching decisions. Applications by people from non-San communities would be considered most rigorously, careful attention being given to the motives and background of the applicant. A final decision would be made by the chief and traditional council in the case of the !Kung TA. Immigrants to Ju/'hoan villages would have to pay fees to the headmen, and would also be required to pass a probationary period of five years before becoming fully accepted village members. The TAs reported that these fees are the only payments ever required for land.

Any land that is abandoned reverts to the control of the TA, and someone who leaves a village would have to re-apply for a land allocation if he were to return.

No large fenced farms have been established in either the !Kung or Ju/'hoan areas. However, it is widely rumoured that there are plans to establish big farms north of the main east-west road in the !Kung area. Whether these plans have MLR endorsement is not known.⁶⁰ The view of the !Kung TA is that the farms may be established as long as they are allocated to members of the !Kung community.

In complete contrast to all other TAs encountered during this study, both the !Kung and Ju/'hoan TAs indicated that careful control is kept over numbers of cattle (other livestock are of less concern because their numbers are only increasing now). Someone asking permission to move their cattle into a neighbouring *!nore* would have to indicate the

⁵⁹ This was yet another example of the whole CLR process being misled and derailed by poor information and silly misunderstandings. The three members of the Ju/'hoan TA were amazed when told what the CLR process really meant, the need to register only residential and cropland, and the true extent of 20 hectares.

⁶⁰ One application submitted to the MLR office was for a farm covering 32,000 hectares.

number of cattle involved. Cattle herded without permission into rich pastures along the Omatako Omuramba are driven back to where they originate. !Kung farmers that have very large herds are instructed to sell some of the animals to Meatco. The instructions are given by both the TA and farmers' association.⁶¹ The Ju/'hoan TA maintains a rule that no more than a combined total of 100 cattle may be kept by all the families in a village. It is left to village members to decide how they should dispose of excess animals.

Water point associations have been started in the !Kung area, but not yet in the area of the Ju/'hoan TA.

The !Kung TA reported that all marriages are registered and marriage certificates are issued by the TA. The three TAs agreed that property is normally and automatically inherited by the spouse, who would also decide what should be given to her children. For example, hunting weapons and cattle are often inherited by the eldest sons since these are the 'preserve of men'. However, complications arise when a widow marries again, since much of the property she inherited may be construed as belonging to the village and relatives of her late husband. Headmen and traditional councillors are then often required to intervene to solve disputes related to the estate.

Permissions to start businesses are provided by village headmen. No payment to establish a business is required, but monthly taxes/leases are paid to village headmen. These amount to \$30 per month in the !Kung TA area.

Informants consulted for the San TAs

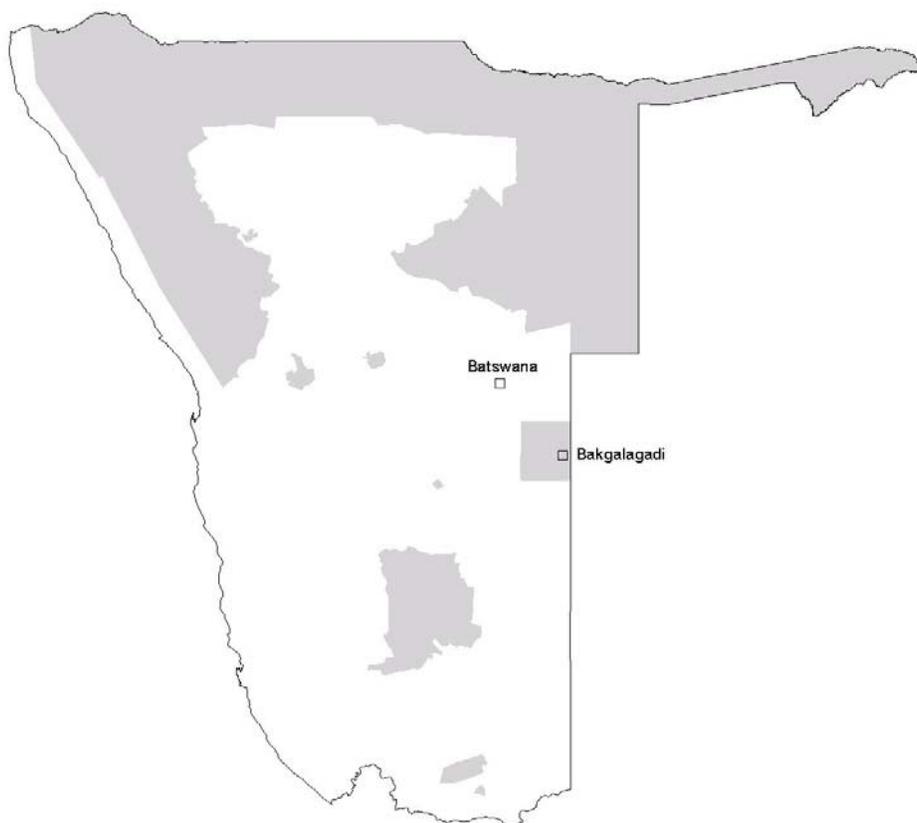
| Surname | First name | Tel. number | Organization |
|----------------|-------------------|--------------------|-----------------------------|
| Khamuxab | David | 081 290 0406 | Chief: Hai-//Om |
| Komob | Petrus | | Councillor: Hai-//Om |
| Hanes | Petrina | | Councillor: Hai-//Om |
| Aib | Albert | | Advisor: Hai-//Om |
| Chisswata | Joao Samba | | Senior Councillor: Ju/'hoan |
| N!ani | Kagece Kallie | | Councillor: Ju/'hoan |
| !Kaece | G#kao Martin | 067 244 032 | Secretary: Ju/'hoan |
| Ngavetene | Au+b #oma | | Senior Councillor: Hai-//Om |
| Gauseb | Agarob Alla | | Secretary: Hai-//Om |

⁶¹ It was proudly recounted that even the white principal of the school at Omatako had been forced to sell off part of his large herd of cattle.

“Poor people never bark at a rich man”

Appendix 8

Tswana traditional communities



Two traditional authorities in Namibia are recognized as representing members of the Tswana traditional community: the Batswana and Bakgalagadi. Both are located in the southern areas of Omaheke Region,

1. Features of the traditional authorities

The two TAs are small compared to many others in Namibia, and therefore represent rather few people. Many of their community members are also scattered in towns, on freehold and resettlement farms and in settlements in the Aminuis Block.

There is currently a high level of animosity between the the Batswana and Bakgalagadi TAs. Much of this is due to competition between them for jurisdiction over the Aminuis Block, which is the only area of land in southern Omaheke which is clearly communal. The Batswana TA sees itself as the legitimate successor to the pre-independence second tier Tswana authority, and contends that farms acquired by the Tswana authority are communal land as well. However, these farms are not listed in Schedule 1 of the

Communal Land Reform Act of 2002. In the absence of the Aminuis Block, this would mean that the Batswana TA may not have any communal land it can call 'its own'.

In addition, many members of the Batswana traditional community live in the village of Aminuis RC, which has now been declared an urban settlement and is therefore no longer strictly communal. As a result, the Batswana TA has lost the opportunity of claiming the village membership as part of the Communal Land Registration process. Perhaps in an attempt to divert the debate over the nature of people in the Aminuis Block, the Bakgalagadi TA claims that it represents a traditional community quite separate from the Batswana TA, and that its members speak a language that is completely different.⁶² The village of Korridor Pos 13, where the Bakgalagadi TA has its offices, has also been proclaimed an urban settlement.

As was reported by certain Damara TAs (see page 41), Batswana/Bakgalagadi residents in the Aminuis Block also suffer encroachment from members of Herero farmers who have fenced off large areas of communal grazing. The Mbanderu and Maherero TAs both have resident traditional councillors in the Aminuis Blocks to represent their community members. This too fuels uncertainty over which TA has jurisdiction in the Block.

Almost all residents live in settlements clustered around water points, locally known as *poste* (singular *pos*), and their livestock (goats, sheep and cattle in roughly equal proportions) graze the surrounding commons. Each settlement in the Aminuis Block has a headman or a *voorman*, (plural *voormanne*) whose primary duty is to settle local, minor disputes. Most if not all settlements have water point committees with the purpose of managing and maintaining the supply of water and the associated infrastructure. The responsibilities of these committees have expanded on some of the 22 Korridor farms.⁶³ For example, the committees manage fencing in and around the farms and also assess applications from people wishing to settle on the farms. It is clear that the role and importance of water point committees as local management institutions is growing rapidly.

Each TA is headed by a chief and a traditional council, which is made up of six senior and six junior councillors, and the secretary of the TA. All these people receive allowances from the government. Responsibilities for different areas or wards are divided among the traditional councillors. As in other areas, the authority of TAs and their roles in local affairs are gradually weakening, mainly for reasons of the growing influences of central and regional government and of wealthy residents. The presence of Herero and

⁶² The Bakgalagadi are not recognized as an ethnic group in Botswana, where the great majority of Bakgalagadi people live, and they are obviously seeking to assert their identity in Namibia. For example, they are lobbying for more than the 30 minutes per week that the Namibia Broadcasting Corporation (NBC) now allocates for broadcasts in their language. There is also no written version or orthography of the language.

⁶³ The 22 so-called Korridor farms lie between the original Aminuis Block and the Botswana border. The farms were made available to individual farmers as a result of the Odendaal plan of 1964. Each of the farms is now occupied by several families. Residents of some of the farms have divided them into sections for Herero and non-Herero residents. It was reported that about half the families actively farm while the other half simply reside on the farms.

many members of the Nama community in the Aminuis Block further dilutes the authority of TAs since these residents often have little allegiance to local *voormanne*, councillors or the chiefs of the two TAs.

2. The process of land registration

The process of land registration appears to have gone relatively smoothly. Herero residents were initially reluctant to apply for CLR through the Bakgalagadi TA in the Aminuis Block because that would imply their recognition of the TAs authority. However, many of these people later applied for CLR through the Bakgalagadi TA.

It was reported that between 50 and 70 CLR applications had been received by the Bakgalagadi TA. These were submitted to the MLR office in Gobabis. However, the MLR has yet to do any field surveys for these applications, and so no CLR certificates have been issued.

The Batswana TA reported that about 40 applications for CLR had been received. Because of the uncertainty over the status of land in the new urban settlements of Aminuis RC and Korridor Pos 13, applications from residents of these villages were withheld for a while. However, the CLR applications will now be submitted to the communal land board (CLB).

No complaints were reported by the two TAs about the payment of the \$25 CLR application fee. The TA secretaries have used receipt/invoice books to keep track of who has applied for CLR. There was some initial confusion over the 20 hectare limit on land registrations, but this was soon clarified and everyone now accepts that land registration is limited to very small residential erven.

Both TAs were unable to estimate how many residents have yet to apply for CLR (note, making such an estimate would force the TA into decisions on who is expected to be under their jurisdiction).

3. Land management and allocation by traditional authorities

As in other areas where livestock farming predominates, residential rights are of less concern than rights and uses of commonage pastures. The borders of commonages are defined by farm fences in the Korridor farms and those acquired by the former Tswana second tier authority farms. Elsewhere, borders between grazing areas associated with different settlements are not defined. However, the informal fences and enclosures in the Aminuis Block obviously reduce the extent of commonage grazing.

The level of permission for someone to establish a home and to farm at a settlement depends very largely on how well he is known and his degree of kinship with people already living at a settlement. Taking two extremes, a young man who is the son of a resident can simply build his own house and begin farming without special authority from anyone in the traditional authority. He would often begin farming with, and under the supervision of his father or uncle.

By contrast, a person from outside the settlement would first approach the chief who would consult the local community living in the area where the outsider wishes to settle. The community would assess the character, motives and background of the applicant, as well as the number of livestock with which he intends farming. The water point committee would also consider the availability of grazing and the impacts of allowing a new farmer onto the commonage. The decision of the community and committee would be relayed to the chief.

No payments are made for land, and no grazing fees are paid to the TA. However, payments are made to water point associations.

Men usually reside in the settlement where they were born, while their wives typically come from other settlements. Property is normally inherited by the surviving spouse. The TA would only intervene in the event of a dispute or uncertainties to ensure that assets were fairly inherited and distributed. Growing numbers of couples draw up wills to determine what happens to their assets.

Residents are free to transfer and sell their dwellings and associated structures to other people. However, the chief should be informed about the transfers.

4. Recommendations

Much needs to be done to clarify the status of various areas and boundaries. For purposes of CLR, these confusions mean that residents are left in the dark as to where they should register. In addition, TAs are reluctant to check and endorse applications in areas over which their jurisdiction is equivocal. Thus, the Ministry of Regional & Local Government & Housing is urged to make land jurisdictions between the two TAs clear, and the MLR should clarify for the TAs the legal status of farms acquired by the previous second tier authorities. Residents and local authorities also need to be informed about the consequences of villages being proclaimed as urban settlements.

Informants consulted for the Tswana TAs

| Surname | First name | Tel. number | Organization/Position |
|----------------|-------------------|--------------------|-----------------------------------|
| Kgosimang | Constans Letang | 081-270 5711 | Chief: Batswana TA |
| Thelwane | P. | 062-564 742 | Secretary: Batswana TZ |
| Ditshabue | Hubert Tidimalo | 081-302 7598 | Chief: Bakgalagadi TA |
| Arikumbi | Ludwig | 081-398 1242 | Secretary: Bakgalagadi TA |
| Simana | Michael | | Councillor: Bakgalagadi TA |
| Masaka | Lucas | | Senior Councillor: Bakgalagadi TA |
| Mothibi | Aloys | | Senior Councillor: Bakgalagadi TA |
| Chaune | Jakob | | Councillor: Bakgalagadi TA |
| Chaune | Augustinus | | Councillor: Bakgalagadi TA |

Appendix 9. Dates and locations of meetings conducted during this study

| Group | Traditional authority | Location | Date of meeting |
|----------|-----------------------|------------------|-----------------|
| Tswana | Bakgalagadi | Korridor Post 13 | 10-Oct |
| | Batswana | Gobabis | 10-Oct |
| San | !Kung | Omatako | 26-Oct |
| | Hai//Om | Outjo | 27-Oct |
| | Ju /'Hoan | Tsumkwe | 26-Oct |
| Nama | Afrikaner | Keetmanshoop | 9-Sep |
| | Blouwes | Keetmanshoop | 8-Sep |
| | Bondelswart | Karasburg | 8-Sep |
| | Kai-#Kaun | Hoachanas | 11-Sep |
| | Witbooi | Gibeon | 10-Sep |
| | Vaalgras | Khoexas | 9-Sep |
| | Simon Kooper | Amperbo | 10-Sep |
| | Soromaas | Bethanie | 9-Sep |
| | Swartbooi | Fransfontein | 22-Oct |
| | Topnaar | Rooibank | 21-Oct |
| | Kavango | Uukwangali | Kahenge |
| Gciriku | | Ndiyona | 13-Aug |
| Mbukushu | | Mukwe | 13-Aug |
| Mbunza | | Kapako | 12-Aug |
| Shambyu | | Shambyu | 15-Aug |
| Caprivi | Mafwe | Chinchimane | 19-Aug |
| | Mashi | Choi | 18-Aug |
| | Masubia | Bukalo | 20-Aug |
| | Mayeyi | Sangwali | 19-Aug |
| Owambo | Okalongo | Okalongo | 8-Jul |
| | Ombalantu | Uutapi | 4-Jul |
| | Ondonga | Ondangwa | 2-Jul |
| | Ongandjera | Okahao | 10-Jul |
| | Uukolonkadhi | Onesi | 4-Jul |
| | Uukwaluudhi | Tsandi | 4-Jul |
| | Uukwambi | Uukwangula | 1-Jul |
| | Uukwanyama | Ohangwena | 3-Aug |
| Damara | !Gaiodaman | Erwee | 22-Oct |
| | !Gobanin | Otjinene | 9-Oct |
| | #Aodaman | Khorixas | 27-Oct |
| | !Oe#Gan | Okombahe | 21-Oct |
| | /Khomanin | Katutura | 7-Oct |
| | Dâure | Uis | 20-Oct |
| | Tsoaxudaman | Otimbingwe | 7-Oct |
| Herero | Kakurukouje | Etanga | 24-Oct |
| | Kambazembi | Okakarara | 8-Oct |
| | Maharero | Otjinene | 9-Oct |
| | Mbanderu | Epukiro Pos 3 | 9-Oct |
| | Otjikaoko | Opuwo | 23-Oct |
| | Vita | Opuwo | 23-Oct |
| | Zeraua | Omatjete | 21-Oct |

Appendix 10. Literature reviewed and bibliography

Adams, F., Werner, W., Vale, P. 1990. *The Land Issue in Namibia: An enquiry*. Namibia Institute for Social and Economic Research. University of Namibia.

Background research work and findings of the PTT studies. 2004. The Permanent Technical Team (PTT) on Land Reform, Ministry of Lands, Resettlement and Rehabilitation, Windhoek.

Blockstein, P. 2008. Farming in a politically divided community: a case study of Berseba. In Hinz, Mo.O. & Ruppel, O.C. (editors). *Biodiversity and the ancestors: challenges to customary and environmental law*. Namibia Scientific Society, Windhoek.

Bollig, M. & Gewald, J-B. (eds). 2000. *People, cattle and land: transformations of a pastoral society in southwestern Africa*. Köppe, Köln.

Bollig, M. 2005. *Inheritance and maintenance among the Himba of the Kunene Region*. In *The meanings of inheritance: perspectives on Namibian inheritance practices*. Legal Assistance Centre, Windhoek.

Danso, A.A. 1998. Design of a communal land tenure information system for Namibia. MSc. Thesis. University of Cape Town.

Fuller, B. & Turner, S. 1995. Resource access and range land management in three communal areas of Namibia. Report for Ministry of Lands & Resettlement. Social Sciences Division of the University of Namibia.

Hahn, CHL. 1928. The Ovambo. In: *The Native Tribes of South West Africa*. Cape Times Limited, Cape Town.

Hangula, L. 1995. Communal land reform in Namibia and the role of traditional authorities. Discussion paper no. 11. Social Sciences Division, Multi-Disciplinary Research Centre, University of Namibia.

Hinz, MO & Ruppel, OC (eds). 2008. *Biodiversity and the ancestors: challenges to customary and environmental law; case studies from Namibia*. Namibia Scientific Society, Windhoek.

Hinz, MO. 2003. *Without chiefs there would be no game*. Out of Africa Publishers, Windhoek.

Kavari, J.U. 2005. *Estates and systems of inheritance among the Ovahimba and Ovaherero in Koakoland*. In *The meanings of inheritance: perspectives on Namibian inheritance practices*. Legal Assistance Centre, Windhoek.

Keulder, C. 1997. Traditional authorities and regional councils in southern Namibia. Friedrich-Erbert-Stiftung, Windhoek.

Keulder, C. 1997. Traditional authorities and regional councils in southern Namibia. Friedrich-Erbert-Stiftung, Windhoek.

Lebert, J. 2005. *Inheritance practices and property rights in the Ohangwena Region*. In *The meanings of inheritance: perspectives on Namibian inheritance practices*. Legal Assistance Centre, Windhoek.

Mathieu, G. and Meline, V. 2005. Natural Resources Management rules and practices in a context of legislative changes in North Central, Namibia. Namibia National Farmers' Union, Windhoek.

Mendelsohn, JM. 2006. *Farming systems in Namibia*. Raison, Windhoek.

Mendelsohn, J.M., el Obeid, S & Roberts, C.S. 2000. *A profile of north-central Namibia*. Gamsberg Macmillan, Windhoek. 80 pp.

Talavera, P., Katjimune, J., Mbinga, A., Vermeulen, C., Mouton, G. 2000. Farming systems in Kunene North: A resource book. Ministry of Agriculture, Water and Rural Development.

Vedder, H. 1928. The Nama. In: The Native Tribes of South West Africa. Cape Times Limited, Cape Town.

Werner, W. 2004. *From communal pastures to enclosures: the development of land tenure in Herero reserves*. In: Bollig, M. & Gewalt, J-B. (Eds). *People, cattle and land: transformations of a pastoral society in southwestern Africa*. Rudiger Koppe Verlag, Koln.

Werner, W. 2008. *Protection for women in Namibia's Communal Land Reform Act: is it working?* Legal Assistance Centre, Windhoek.

Yaron, G., Janssen, G., Maamberua, U. 1992. *Rural development in the Okavango Region of Namibia: An assessment of needs, opportunities and constraints*. Gamsberg Macmillan Publishers, Windhoek.

Appendix 11. Suggestions to optimize the long-term health and equitable use of commonage pastures

The arid and ephemeral nature of much of Namibia's environment requires large areas for effective livestock farming so that animals can be moved when, and where pastures and water supplies become available. This is the reason for freehold ranches being large and why many commercial farmers either own or rent more than one farm. And for the same reason livestock farmers in communal areas move their herds and flocks over large areas of commonage which are usually around permanent settlements and water points.

Such communal use of commonages appears to have worked well in the past when livestock numbers were smaller. Nowadays, however, there is severe over-grazing on commonages because there are now many more cattle, goats and sheep. The majority of these animals belong to wealthy people who have lucrative off-farm incomes. As a result, there is substantial competition for grazing between the large herds and flocks belonging to wealthy owners and the much smaller holdings of poorer farmers who really depend on livestock production. Animals belonging to poorer farmers remain in bad condition and produce few off-spring, and the farmers remain poor as a consequence. Wealthy livestock owners also enjoy options not available to other farmers. For example, once communal pastures around established water points have been depleted after the summer rains, herds and flocks of wealthy owners are moved further away to areas that have not been grazed. Since these are far from permanent water, the owners employ herders and use vehicles to cart water to their stock. Poorer farmers do not have the means to transport water, and so their animals remain without good sources of food.

There are several reasons for these conditions, but perhaps the most pervasive is the notion that everyone with so-called traditional rights can keep as many animals as they wish in communal areas. This idea is embedded in government policy and is widely accepted by many traditional authorities. It also provides a classic example of the 'tragedy of the commons' where environmental resources are lost, and the rich get richer and the poor become poorer. A programme to reduce this tragedy is desirable, and this should include:

1. Further study of the problem to obtain a good understanding of its magnitude and the major players, and how these vary between different communal areas.
2. Raising public awareness and discussion on the problem, with a special goal of challenging and changing the 'free-for-all' attitude towards communal land and resources.
3. Investigating and implementing new rangeland management practices which will lead to less overgrazing and better livestock production.
4. Investigating and testing new land tenure options for group ownership and management of commonages by people who are legitimate users of local resources.

Appendix 12. Suggestions for the future of communal land and conservancies in Namibia⁶⁴

Communal land

Like many other African countries, Namibia has large areas of rural communal land on which hundreds of thousands of people reside. It is generally assumed that the majority of these people obtain most of their income from local resources. This is a fallacy, however, since cash incomes from wages, businesses, remittances and pensions far exceed both cash and in-kind incomes from locally harvested agricultural and natural resources. It is thus important to recognize that most rural Namibians are already strong participants in a cash economy, and that financial security is much more important than food self-sufficiency.

What are the problems with communal tenure? Most obviously, residents of communal land have no legal title to land. They thus run the risk of losing traditional usage rights, as has happened on a grand scale in Namibia.⁶⁵ More significantly, their land has no capital value, cannot be used as savings or collateral, and residents cannot sell or transfer any property or other assets that go with land. All of this has direct consequences on land productivity, mainly because occupants of communal land have little incentive to invest in assets tied to land. This is one reason for many people in communal areas being poor.

The claim is often made that communal land provides a ‘safety net’ for the poor. Perhaps this used to be true, but nowadays communal land is more of a ‘poverty trap’ because the informality of land allocation enables the rich to progressively take most resources, leaving less and less for the poor. This is the tragedy of the commons, which also leads to severe environmental degradation because it is in everyone’s interest to maximize their use of common resources, especially on commonages.

It is a legally defining consequence of communal land that residents are prohibited the option to develop capital wealth that everyone in freehold tenure systems takes for granted and seeks to accumulate. Indeed, this difference between communal and freehold is more than reminiscent of the discriminatory policies that held before independence. Those policies were based on colour, while current policy is based on place of residence. Namibia needs to ask if there is justification in maintaining this discriminatory dichotomous economy.

Namibia is fortunately making steady moves towards formalizing land ownership in communal areas. This is happening in two ways. Firstly, the MLR has embarked on a programme to map and register individual properties in communal areas. These activities provide recognition of individual rights and security of tenure over land. It is hoped – and

⁶⁴ This document was written to generate discussion amongst the variety of people and organizations that support conservancies, and is therefore not a direct product of the study on land management by traditional authorities.

⁶⁵ The main loss has been as a result of wealthy, influential people taking large areas of commonage as farms for themselves. Commonage pastures are also grazed disproportionately by the large herds and flocks of livestock belong to the wealthiest people. This results in the so-called Tragedy of the Commons.

logical – that each registration will later be upgraded into some kind of leasehold. The second process is an informal one, in which wealthy, influential people acquire large farms for free. Most of the thousand or so farms acquired in this way range between 2,500 and 5,000 hectares in size. Many of the farms have been surveyed by the Ministry of Lands & Resettlement (MLR), and some have been given long term leasehold. These informal and official processes are helping the country rid itself of communal tenure.

Conservancies

Many conservancies now generate considerable amounts of recurrent revenue, which is laudable and widely proclaimed. But there is a bigger benefit which is not appreciated. This is the substantial value that the conservancy programme has added to communal land. The great opportunity is now before us to think of how that value can be capitalized, and what that could mean to residents. Take the Nyae Nyae Conservancy as an example, which has some 2,300 residents and covers about 90,000 hectares. If each hectare had a capital value of \$500⁶⁶ as a result of freehold or long-term leasehold status, the whole conservancy would be worth \$45 million, or just under N\$20,000 per person. Of course, this is a **potential** capital value that someone in the conservancy could obtain and transfer if they so wished. At the moment, the communal tenure system **denies residents that possibility**.

It is also a capital value that should grow as time goes on and more value is added to the land. We can expect that people with that kind of potential investment would take measures to invest in and further improve the value of their land. Again, our tenure system **impedes incentives to improve the value of their land**.

Now imagine if the Nyae Nyae Conservancy was turned into a share-holding company and the tenure system was changed to allow for share-holders to trade assets in their land. A family of five could then have a potential asset worth \$100,000, which they would want to have grow and be well-managed. If the family so **wished** and a buyer were available, they could use that \$100,000 for another purpose, such as starting a small business enterprise in a neighbouring town. In short, this could make a big difference to the **wealth** of a family and its **options**.

With clear incentives for the generation of wealth now in place, additional capital could be raised. For example, new shares could be put up for sale, initially and most obviously to people or companies interested in joint-venture investments. Indeed, it is not hard to envisage that some conservancies could be listed on the stock exchange.

Some people will claim that rural Africans are too unsophisticated to function as formal share-holders of a company. Much of this stems from the view that rural Africans belong best in communities where they need support from NGOs and government supervision. That thinking often further implies that community members are unable to operate in cash economies, that food self-sufficiency is their main priority, and that social evils arise once people move outside traditional, tribal value systems. All of this is patent, patronizing and discriminatory nonsense. Any open-minded assessment of Namibia's

⁶⁶ This is the kind of price paid for adjoining freehold land in the Grootfontein area.

economic landscape reveals many examples of sophisticated cash-based enterprises functioning effectively and to the benefit of huge numbers of participants without any government or NGO support and control.

The development of conservancies as companies would breakdown the dichotomies now seen between communal and freehold conservancies, and between public and private conservation efforts. Communal conservancies would simply evolve into enterprises equivalent to many others that manage land for the benefit of their shareholders. The idea of shareholding in land can be extended to other common-property groupings now seen in communal areas, for example traditional authorities, water point associations and community forests. The approach also provides an equitable way of making a transition between traditional and modern forms of land tenure.

The functioning of conservancies would also be smoother, with greater accountability and better management if they were run along formal commercial lines, as would be required by shareholders of a registered company. Of course, there will be teething problems and irregularities, but enterprises improve as the incentives to do so become clearer to those who benefit from them.

Finally, the idea of shareholding over common-property is especially important where the nature of land use requires large areas to remain open for grazing, wildlife, tourism etc. This is the case in most arid areas where arable agriculture on small parcels of land is not viable, and where the only economically viable land units are large, open access areas.

In summary, communal tenure keeps many people poor while giving the wealthy room to enrich themselves further. In relation to freehold tenure, communal land is highly discriminatory, especially in denying residents the chance of developing capital land assets. Fortunately, the Namibian government is now registering private title to land. Rather than undermining the concept of community rights in conservancies, the registration of these private rights should be linked to shareholding so that residents further benefit from resources that are shared across conservancies. Incentives to do this are now available because land in many conservancies has gained considerable value which can be capitalized. The development of conservancies into corporations also provides an opportunity to move away from dichotomies that continue to provide lower standards for rural Africans. Failure to do so will perpetuate a patronizing (at best) or prejudicial (at worst) view of the many people in communal areas.

End of report