



Land Governance in Namibia

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Abstract

It is well established that a well-functioning land sector and land governance system in any country is key: to the achievement of economic growth and development; to fostering social development, to securing the rights of landholders and users, especially vulnerable groups; and it is the underpinning key to sustainable development and poverty reduction. Good land governance is characterised by effective, equitable, inclusive and transparent policies, processes and institutions. Weak land governance on the other hand undermines effective protection of land rights and results in adverse consequences for society. This chapter is a desktop review assessment of land governance in Namibia.

Since independence, Namibia has established a multi-institutional, legislative and scale approach to land governance, which speaks to the diversities in the land sector. These all form part of land reform, a programme that was instituted to address historical injustices in the land sector. The diversities in the land sector exist in terms of land tenure systems which inform the types of institutions, legislation, dispute resolution mechanisms, valuation and taxation, land use planning and control and land information management. Namibia has registered successes in land governance and are herein described under their respective tenure systems. On communal land tenure system, the development of the Communal Land Reform Act, Act no. 05 of 2002, the establishment of the regional Communal Land Boards and the launch of the land rights registration process remain key in terms of the inroads made towards good land governance. On the freehold land tenure system, the development of the Agricultural (Commercial) Land Reform Act, Act no. 06 of 1995, the establishment of the Land Reform Advisory Commission and the institution of the Affirmative Action Loan Scheme and the Resettlement Programme are also key inroads made towards good land governance.

While Namibia has made some strides in land governance, key and critical challenges in land governance and especially in terms of implementation and/or the effectiveness, equitableness and inclusiveness of the above instruments still exist. The current status of the land question in

Namibia is that it remains an unresolved question. A multitude of injustice still exist, hence the question of the effectiveness of the governance system persist. Almost three decade after independence, land continues to be concentrated in the hands of a few and the redistribution programmes are taking a slow pace and thus awaking emotions from the landless groups. In addition to the continuation of racial inequalities in land distribution and ownership, the current land reform and, in particular, the resettlement programme has produced class inequalities. Other challenges relate to calls to attend to ancestral land claims, calls to address the plight and tenure security of the farm workers and the need for an efficient and effective land valuation and taxation system. The communal land sector is also tainted with land governance weakness whereby in some of the regions, securing of tenure through customary land rights remains to be desired. With the increasing competition over land and land concentration through illegal fencing witnessed in the communal areas, lack of legal protection of customary land rights exacerbate vulnerabilities and precariousness in access to land. While the Communal Land Reform Act 2002 treat communal land as a safety net for the rural poor, there is an illegal and informal land market emerging. This practice is proving to pose challenges to the function as safety net that communal land serves and hence it is a new challenge for communal land governance. While land reform has largely concentrated on freehold (commercial) agricultural and communal land, urban land has recently entered the land reform debates. Key challenges herein pertain to the availability of serviced land, the inability of urban dwellers to access affordable land and therefore housing, increased speculation in land and insecure tenure of urban informal settlers.

These challenges warrant redress if Namibia is to achieve a well-functioning land sector for the desired goals of economic development, security of tenure and comprehensive social development.

Key Words: Urban land governance, communal land governance, freehold (agricultural) land governance, land valuation and taxation



List of Abbreviations

ACLRA	Agricultural (Commercial) Land Reform Act
CAMA	Computerised Assisted Mass Appraisal
CDRS	Computerised Deeds Registration System
CLIP	Community Land Information Programme
IRLUP	Integrated Regional Land Use Plan
LGAF	Land Governance Assessment Framework
MAWF	Ministry of Agriculture, Water and Forestry
MET	Ministry of Environment and Tourism
MLR	Ministry of Land Reform
MURD	Ministry of Urban and Rural Development
NAMPAB	Namibia Planning Advisory Board
NCLAS	Namibia Communal Land Administration System
NDP	National Development Plan
NGO	Non-governmental Organisation
NHE	National Housing Enterprise
NSA	Namibia Statistics Agency
NSDF	National Spatial Development Framework
NSDI	National Spatial Data Infrastructure
SEA	Strategic Environmental Assessment
TB	Townships Board
TPS	Town Planning Scheme
URP	Urban and Regional Planning



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1. Background

Namibia borders Angola in the north, South Africa in the south, Botswana in east, Zambia in the north-east and the Atlantic Ocean in the west. The territories of Namibia, Botswana, Zambia and Zimbabwe converge almost at a single point at Kazungula (Zambia). The total area of Namibia is 824,292 km² (NSA, 2018) with a coastline of 1,570 km (Mendelsohn, et al. 2003).

Namibia is the second sparsely populated country in the world after Mongolia with a population of approximately 2.4 million (NSA, 2018)). About 60% of the population is concentrated in the northern and north eastern regions of the country (NSA, 2018). 70% of the population rely on agriculture in communal farming areas and freehold agricultural lands. Freehold land makes up 43% of the land mass, communal farming areas under customary land tenure occupy 39% of the land, and 18% is government land (Mendelsohn et al. 2003).

Ownership of freehold land is private, while communal land is held in trust by the State of Namibia, but traditional communities have customary rights of occupation and use. About 104 610 of a total of 169 984 agricultural holders farm with 'crop and livestock' only, whereas 50 194 holders combine crop, livestock and forestry holdings, 8 505 holders were for crop production only, and 6 450 holders farmed with livestock only (Namibia Statistical Agency, 2015). Most agricultural holders reside on communal lands. The Communal Land Reform Act of 2002 allows for these residents to register individual land rights through their respective traditional authorities. The law makes provision for registration of land parcels encompassing residential areas (homesteads) and crop fields. Grazing camps (fenced) are only registered where fences existed before the Act; its regulations came into force in March 2003. Several traditional leaders have raise concerns about the relevance of the Act for two reasons mainly: firstly, the Act was perceived to threaten the tenure security of crop fields seasonally used only or those left fallow for years and located away from homesteads; secondly, the Act classified all communally used land within a traditional community as open-access commonage. These would mainly be grazing lands, seasonal waterbodies and forests. On the contrary, some traditional authorities regarded

the grazing areas as owned by their respective communities, therefore the Act is perceived as threatening the security of group rights and protection of commonages. Subsequently, the registration of land rights in Namibia's communal land remains incomplete. To-date only 302 423 communal residents have applied for customary land rights (land parcels) (Ministry of Land Reform).

The Ministry of Land Reformed embarked on land redistribution programme to redress past injustices of land expropriation and dispossession by successive colonial governments. The Resettlement Programme has transferred 443 farms covering 3,021,959.91 hectares to 5,352 landless Namibians by June 2018. In addition to the Resettlement Programme, government has enabled the Agricultural Bank to provide Affirmative Action Loan Scheme to previously disadvantaged Namibians. A total of 882 farms were acquired through the Agricultural Bank from 1992 to 2018 (NSA. 2018). The Government of Namibia uses the principle of willing-seller willing-buyer to acquire agricultural land for redistributive purposed. Article 16(2) of the Namibian Constitution makes provision for expropriation of property with just compensation.

Urban land and settlement development falls under the auspices of the Ministry of Urban and Rural Development, and managed by municipalities, town councils and village councils. Once an area is proclaimed for urban land development or urban expansion, those land owners/users affected are compensated and relocated where necessary or incorporated in the new structure plan of the urban land.

Namibians are increasingly migrating from rural areas to towns and major settlement areas in search of employment opportunities and improved social amenities. The current annual rural-urban migration rate is at 4%, leading to a situation whereby 47.9% of the population is urbanised (Namibia Statistical Agency, 2017).

2. Institutional Framework on Land Governance and Administration

Several institutions are involved in governance and administration of land at national, regional and local level. This chapter describes the responsibilities of the different institutions and provides clarity on the mandates concerning the regulation and management of the land sector.

2.1. 2.1 Ministry of Land Reform

To ensure equitable access to the country’s land resources, the Ministry of Land Reform (MLR), formerly known as the Ministry of Resettlement and Rehabilitation, was established after Independence with the jurisdiction of land reform and administration. See Figure 1 below for an illustration of the structure of the Ministry.

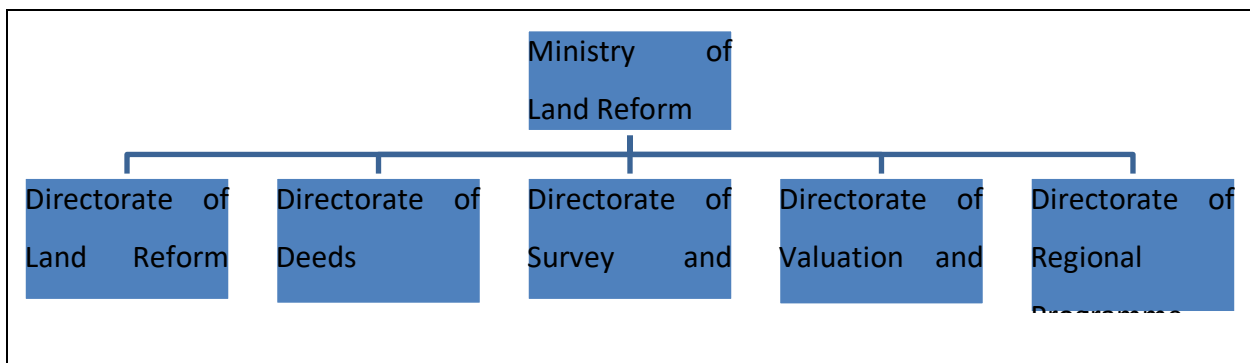


Figure 1: The structure of the Ministry of Land Reform.

The implementation of the National Land Policy, land reform, registration of land rights and land surveying are thus the mandate of the Ministry of Land Reform. The Ministry consists of a number of directorates which are described below.

Directorate of Land Reform and Resettlement

The Directorate of Land Reform and Resettlement is mandated to implement the land reform programmes which consist of a rural land reform and an urban land reform. As superior to the Communal Land Boards the Directorate is the overall responsible for coordinating the land boards, to assist the development of communal areas and provide advisory services on land tenure systems. Development of Integrated Regional Land Use Plans (IRLUP) is allocated to the

Directorate; the plans are constituting the instrument to manage the national land resources. The rural land reform programme is mainly guided by the National Land Policy, Agricultural (Commercial) Land Reform Act (ACLRA) and the Communal Land Reform Act. The urban land reform is guided by the National Land Policy and the Flexible Land Tenure Act.

Post-Independence the rural land reform programme was initiated and is still ongoing. Formalisation of rights to communal land was one of the initiatives. Another major component of the reform is to transfer commercial farmland from ‘white’ European descendants to previously disadvantaged ‘black’ Namibians. To underpin this redistribution the Agricultural (Commercial) Land Reform Act provides for the State to acquire agricultural land for purposes of land reform and it also provides for regulation of foreigners’ acquisition of agricultural land. Although not yet applied in practice, the Act also provides for compulsory acquisition of agricultural land by the State for purposes of land reform.

Commercial agricultural land acquired by the State on a willing seller/willing buyer basis is used to resettle previously disadvantaged Namibians. The purchased farms are divided into smaller farms and allocated on a leasehold agreement. The programme is designed and developed in a bid for farmers from previously disadvantaged communities to acquire farms in commercial areas. Training and support programmes to support the emerging farmers are conducted by the Ministry of Land Reform. The land reform programme also embraces an Affirmative Action Loan Scheme which provides loans to previously disadvantaged part- and full-time farmers purchasing commercial farms. Loans are given with subsidised interest rates and favourable repayment conditions. The scheme is intended for large-scale communal farmers to obtain commercial farmland and thus decrease the pressure on communal land (Fuller, 2006, p. viii). Prices follow the established market mechanisms. Significant critique has been raised towards the rural land reform programme. Several well off and high-level public office bearers have been allocated resettlement farms which has caused public debate about the administration of the programme and in particular about the selection criteria for acquiring a resettlement farm. Critique has also

been raised towards the training programmes and that the financial support is not enough for people to get established.

For historical and political reasons, Namibia has so far mainly focused on the rural land reform aspect. Government is only slowly and reluctantly recognising that the situation and circumstances have changed significantly since Independence and the need for urban land reform and addressing the housing challenges has become equally important and a highly politically pressing issue. The negligence of the change of circumstances is obvious since the country does not yet have an urban land policy and that the Flexible Land Tenure System (FLTS) has just come into force in 2018 after having been shelved for 20 years. However, the government has several times reiterated its declaration of housing as a development priority (Ministry of Regional and Local Government, Housing and Rural Development, 2009) although the implementation has not yet fully materialised.

Several housing projects and programmes have been initiated but few have been implemented to completion. The Mass Housing Development Programme was commenced in 2013 to provide 185,000 housing units by 2030 (NHE, 2013); it was discontinued in 2016 but has currently re-emerged. Several sources are reporting about incompleteness of house construction and rampant vandalism on unoccupied houses. The low-income urban residents who were a pertinent section of the target group were completely excluded as beneficiaries due to an unattainable price level. A Massive Urban Land Servicing Programme was drafted in 2016 (Affirmative Action, 2016) to expedite the servicing of land but has not yet reached the stage of implementation. A self-help housing programme, the so-called Built Together Programme, was initiated in 1992 to provide shelter to low and very-low income earners (MURD, 2007). Apart from the Built Together Programme the projects have largely fallen short with low-income residents still marginalised and left without tenure security.

More recently attention is however being paid to urban land issues in Namibia, including the provision of tenure security to urban informal settlers. To address the challenges with an

increased urban low-income population a flexible land tenure system was invented in the mid-1990s. However, the act was only enacted in 2012 and the regulations in 2018; hence implementation of the Flexible Land Tenure System only commenced in 2018, 20 years after the development of the system. The Flexible Land Tenure System is an upgradeable land tenure system which is parallel to the Deeds Registry. The aims of the system are to create alternative forms of land title which are simpler and cheaper to administer than existing forms of tenure, provide tenure security to low-income and informal settlers and to economically empower the people by means of the rights (Flexible Land Tenure Act, art. 2).

Directorate of Deeds Registration

The Registrar of Deeds is appointed by the Minister of Land Reform and is responsible for duties and functions about the registration of a variety of formally recognised land rights. The duties include recording of land rights and transfers of land rights, registration and cancellation of mortgage bonds, registration of leasehold agreements, servitudes and other real rights as well as to register general plans for plots and sub-divisions within the different land tenure systems. A general plan represents the relative positions and dimensions of two or more parcels of land and depicts many land parcels, public open spaces, etc. To become a legal document, it must be signed by a professional land surveyor and then approved by the surveyor-general (Deeds Registries Act (SA), 1937, s. 102).

Lodgement of documents for registration in the deeds registry requires the mandatory involvement of lawyers specialised in and registered as conveyancers. Prior to registration in the Deeds Registry all documents must be examined and quality controlled by the Deeds Registry. See Figure 2 below for an illustration of the process for registration of land rights from the time that a land transaction was concluded to the time of registration in the Deeds Registry. The examination and approval process in the deeds office takes about five working days. In order to determine the validity of ownership the conveyancers usually only review and assess the claim to ownership of the seller of the property and do not investigate the chain of title further

backwards, hence the owner in whose name a property is registered is not necessarily the legal owner of the property. The State does not guarantee that the information captured in the system is correct and do not pay compensation for incorrect registration.



Figure 2: Process for Preparation of Documents to be Lodged and Registered in the Deeds Registry. (Source: MLR 2019)

The Directorate of Deeds Registration is also the overall responsible authority for the quality and accuracy of the registration of land rights within the Flexible Land Tenure System. The Directorate is therefore mandated to establish so-called starter and landhold title registers. The Flexible Land

Tenure System is introduced by the Flexible Land Tenure Act 4 of 2012. It is a land tenure system operated parallel to the Deeds Registry. It is specifically developed to provide tenure security to the urban low-income and informal settlers. The Flexible Land Tenure System is further described in Section 3.1. The Directorate is further responsible for establishing the new institution, land rights offices (LROs). Land rights offices are mandated with registration and management of starter and landhold title rights. The duties include verification of compliance with the requirements to acquire a starter title right. The Directorate must inspect and audit the starter and landhold title registers and develop directives to guide and ensure that appropriate and correct registration procedures are applied by the land rights office.

Directorate of Survey and Mapping

The Directorate of Survey and Mapping is the national authority for surveying and mapping. It is the Directorate's mandate to conduct geodetic, topographical and cadastral surveying; it is responsible for producing topographical maps, aerial images and a broad variety of maps in digital and analogue formats. The Directorate is also responsible for quality control and approval of cadastral survey records, diagrams and general plans prior to registration in the Deeds Registry. The conduct of surveys of State land and facilitation of allocation and utilisation of land through the conduct of land surveying and mapping in regard to the rural land reform programme also falls under the Directorate of Survey and Mapping. Cadastral surveys are carried out by private licensed surveyors and cadastral data are lodged in analogue form to the surveyor-general for quality control and approval after which the documents are handed over to the conveyancer. Currently, the cadaster is undergoing digitisation of data and maps implying that both the digital and the analogue system are currently being kept.

Directorate of Valuation and Estate Management

Valuations of agricultural land with the aim of administering and collecting land tax is the responsibility of the Directorate of Valuation and Estate Management. The Directorate is partaking and supporting local authorities without sufficient capacity to conduct valuations of



urban properties although the mandate for the valuations and tax collection is in principle allocated to the local authorities. Furthermore, it assesses rents of resettlement farms on leasehold agreements and compensation when land is acquired for township development by government, regional or local councils. It also establishes valuations in regard to commercial farms.

Directorate of Regional Programme and Implementation

Administration and management of the Communal Land Boards are core functions of the Directorate of Regional Programme and Implementation along with providing support and assistance to the land boards and traditional authorities on administration and allocation of communal land. Another role of the Directorate is to administer resettlement farms owned by the State as well as small scale commercial farms in communal areas. Coordination and monitoring the implementation of Regional Integrated Land Use Plans are also duties of the Directorate. Regional offices are established in each of the 14 regions.

2.2. 2.2 Ministry of Urban and Rural Development

The Ministry of Urban and Rural Development (MURD) is the superior organisation to the local authorities and regional councils and it is its mandate to ensure appropriate town-planning, infrastructural development and land use management as well as to provide support services to the local authorities and regional councils in delivering services such as water, electricity, sewerage and infrastructure to their communities. It is also the role of the Ministry to support capacity building and empowerment of the local authorities and regional councils.

The Flexible Land Tenure System is considered as a tool suitable for supporting the implementation of The National Housing Policy and the planning mandate of the Ministry of Urban and Rural Development to deliver on their obligations to provide adequate and affordable housing for all Namibians. This also involves allocation of financial resources and capacity building of local authorities and regional councils to implement the Flexible Land Tenure System at local level.

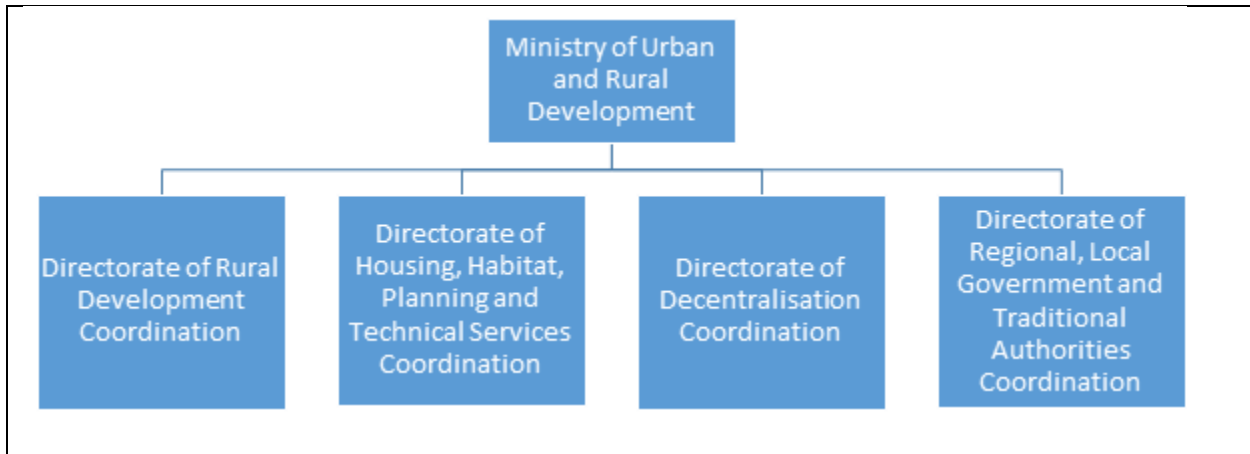


Figure 3: The structure of the Ministry of Urban and Rural Development

A strategic theme of the Ministry of Urban and Rural Development is to develop human settlements so as to ensure that people have access to land, housing, roads and basic services. An ongoing decentralisation of public functions to regional councils, local authorities and traditional authorities is spearheaded by the Ministry. Functions in this regard encompass capacity building, advisory services and technical support along with drafting policies and legislation to ensure a holistic and harmonised facilitation of development and good governance. The Ministry consists of five directorates which are briefly described below.

Directorate of Rural Development Coordination

It is the responsibility of the Directorate of Rural Development Coordination to ensure implementation of development programmes in rural areas to ensure that poverty is reduced, livelihoods sustainable, and that shelter and living conditions improved and the rural to urban migration is mitigated (MURD, 2008). It is also the duty of the Directorate to monitor and evaluate the programme implementation.

Directorate of Housing, Habitat, Planning and Technical Services Coordination

The Directorate is overseeing regional and urban planning at a country-wide level and is supervising regional and local authorities concerning planning and development issues. This includes provision of basic services and infrastructure. The Namibia Planning Advisory Board

(NAMPAB) provides advisory services to the Minister regarding needs and desirability of township development and plays an advisory role in regard to approval of applications for subdivision and consolidation of land, rezoning and town planning schemes. The approval by NAMPAB serves as a recommendation for the Minister. The application subsequently goes to the Townships Board (TB) for further processing. It is responsible for public display and suggest conditions in its recommendation to the Minister who eventually approves or rejects the application. A new Urban and Regional Planning Act will guide planning activities once entering into force. By the new Act NAMPAB and the Townships Board are replaced with the Urban and Regional Planning Board.

Directorate of Decentralisation Coordination

The Directorate is providing support services to other line ministries and facilitates the handover of functions to regional and local authorities in regard to decentralisation; the services encompass technical services and capacity building.

Directorate of Regional, Local Government and Traditional Authorities Coordination

The Directorate carries out the function of supporting and coordinating activities conducted by regional, local and traditional authorities about effective governance, development and delivery of services (MURD, n.d). A fifth directorate: the Directorate of Finance, HR, Administration and IT is in place and its role is to provide supervisory services and support to ensure effective and efficient execution of the Ministry's mandate (MURD, n.d.). Due to its irrelevance to land governance, this directorate is not further described in this document.

2.3. 2.3 Local Authorities

14 regional councils are responsible for regional government, e.g. development and planning in rural areas and management of settlement areas. Local authorities and regional councils are responsible for land administration, detailed town-planning and provision of land for development at affordable prices, reallocation, etc. Regional councils and local authorities play a



key role in implementation of the Flexible Land Tenure System, which is addressing the need for urban tenure security to low-income residents.

Local authorities are defined as municipal councils, town councils or village councils and are established in urban areas only. Three local authorities are declared autonomous municipalities and 13 are semi-autonomous, implying that they are accountable to the central government. Windhoek, Walvis Bay and Swakopmund municipalities are autonomous. Autonomous municipalities have the authority to raise own revenues and appropriate resources to perform general public functions whereas semi-autonomous municipalities receive financial support from central government.

Local authorities are responsible for local public functions and social and economic development. Their duties include provision of public services, construction and maintenance of drainage and sewerage systems and roads, waste removal and housing provision. Local authorities are also responsible for issuing building permits, deciding on zoning and to plan for and allocate affordable land for development.

2.4. 2.4 Traditional Authorities

Concerning land governance and management, the traditional authorities are responsible for the allocation and cancellation of customary rights to communal land. Within the framework given they also determine the land use and management of communal land. Supposing the land is used for other purposes than intended, is left dormant for three consecutive years or the right was fraudulently obtained, the traditional authorities have the power to revoke such right. On commonage land the traditional authorities are mandated to allocate grazing rights to outsiders. It is further their prerogative to determine the kinds and number of stocks that are allowed to graze on the commonage and which areas are used for rotational grazing in order to avoid overgrazing.

Despite clear procedures for allocation and registration of customary land rights, disputes concerning land administration in communal areas still occur about, for example, double



allocations of land, illegal fencing and unauthorised extensions. In 2014 a High Court order was issued to stop a traditional authority from cancelling a customary land right which a person had formally and procedurally been allocated by the very same traditional authority. In this case the allocation of the land right was rightfully approved by the relevant Communal Land Board which had also registered the right and issued a Certificate of Registration. Conversely the traditional authority allocated the very same plot to another person and informed the lawful right holder about the cancellation of the allocated land right (Menges, 2014).

Many traditional authorities benefit financially or in kind from illicit selling and leasing of communal land by evading the involvement of the communal land boards. Such land allocations are neither formally recognised nor registered in the Namibian Communal Land Administration System. Further hereto, there are numerous incidents where traditional authorities have allocated land to people in areas that have been proclaimed as urban areas and hence are under the mandate of the local authorities. This causes conflicts between the traditional authorities, the local authorities and the people to whom land rights have been allocated. Those to whom land rights have been allocated believe they have acquired recognised land rights when in fact they do not have any rights at all, since the land right was unlawfully allocated. Disputes on transfer of land rights also occur when settlement areas expand into communal land; this means that local authorities impinge upon land under the jurisdiction of the traditional authorities. The declaration of such land as local authority administered areas, withdraws the land from the pool of communal land and transfers it into local authority land. Thus, the declaration impacts directly on the extent of powers and jurisdiction of traditional authorities whose territory is geographically under pressure.

The implementation of the Communal Land Boards has significantly diminished the power of the traditional authorities in terms of administration and management of land in communal areas. This causes unclear procedures and overlapping powers of different authorities which are often fundamental problems in customary systems with no clear checks and balances between the

executive, legislature and judiciary which makes it difficult to hold authorities accountable. However, the fact that applications for communal land rights are submitted to the relevant traditional authority means that they basically” [...] have the ultimate power to decide whose application is to be passed on to the land boards” (Behr et al., 2015, p. 464).

2.5. 2.5 Communal Land Boards

The Communal Land Reform Act (2002) is only applicable in communal areas and not in proclaimed towns (urban areas) located in communal areas (LAC, 2005, p. 21). The Communal Land Reform Act (2002) provided for the establishment of new institutions in the form of Communal Land Boards in all regions with communal land. The Communal Land Boards are responsible for controlling the allocation and cancellation of the customary land rights as allocated by the traditional authorities. Hence, they have to verify and ratify allocations and cancellations before they become legally effective; this implies “[...] ensuring that such allocations comply with regulations and national policies” (Werner, 2008, p. 13).

The Communal Land Boards must be composed in such a way that they represent all parties in the region concerned with the administration of communal land, and must be constituted by each traditional authority in the region, the farming community, regional council, four women (two farmers and two with land administration expertise), a civil servant from the Ministry of Land Reform, Ministry of Urban and Rural Development, Ministry of Environment and Tourism and Ministry of Agriculture, Water and Forestry. Provided any conservancies exist in the region a representative should be part of the Communal Land Board. The chairperson is elected amongst its members.

Allocation of leasehold rights is the prerogative of the Communal Land Boards which should also establish and maintain a system for registration of allocations, transfers and cancellations of customary land rights and leasehold rights. The Ministry of Land Reform has established a digital recording system with the Communal Land Boards being responsible for updating the data. The Ministry of Land Reform is recording the first registration of land rights. It is unclear whether

subsequent transfers of communal land rights are registered in the recording system. A Communal Land Board has the right to veto land rights allocated by the traditional authorities if the land is already allocated to another person, exceeds the prescribed size or the land is reserved for commonage or other use.

3. Legal Framework on Land Tenure in Namibia

At Namibia's Independence land tenure was regulated by common law and customary law respectively. Formal registration systems only existed in respect of tenure rights to commercial land while no formal registration or recording of communal tenure rights occurred. Prior to Independence freehold land was predominantly held by 'white' settlers through title deeds, while most of the indigenous people did not have any title deed to land. After Independence and pursuant to Article 23(2) of Namibia's Constitution, which provides for the enactment of policies, legislation and implementation of programmes to correct past discriminatory laws and practices, several pieces of legislation were promulgated to correct the redistribution of and access to land. Namibia's contemporary legal framework on land tenure therefore comprises of common law, customary law, Namibia's Constitution and several acts, like the Agricultural (Commercial) Land Reform Act, 1996; the Communal Land Reform Act, 2002 and The Flexible Land Tenure Act, 2012. Table 1 in Section 3.1 provides a broad overview on Namibian land tenure. Aspects touched upon in Table 1: Land Tenure in Namibia, like the legal foundation of tenure regimes, land registration and enforcement of tenure rights are discussed in more detail in Sections 3.1, 3.2 and 3.4 below.

3.1. 3.1 Legal foundation of tenure regimes

The major tenure regimes can be classified as private ownership/ freehold tenure, sectional title tenure, communal tenure and flexible land tenure. The legal framework for the tenure regimes in Namibia is briefly discussed below under common law, Sectional Titles Act, Flexible Land Tenure Act; Agricultural (Commercial) Land Reform Act and the Communal Land Reform Act.

Common Law

Private ownership of a parcel of land, also called freehold title, has its basis in common law. The concept was introduced by ‘white’ settlers in Namibia (Amoo, 2014, p. 20). Freehold title, as originally understood in the Namibian context, underscores the idea that an owner of land has absolute control over a specific surveyed parcel of land, called an erf in an urban setting or a farm in a rural setting, which can be used, owned, disposed of, alienated, or destroyed by the owner without interference from another (Amoo, 2014, p. 42). Article 66 of the Constitution of Namibia recognises the common law in Namibia, unless it conflicts with the Constitution or any other legislation in force. Article 16 of the Constitution of Namibia (2010) reiterates the concept that any person may own, hold or dispose of property. The registration of ownership in the Deeds Registry provides the title holder with the most comprehensive real right recognised in law (Amoo, 2014, p. 42).

A land-owner can provide another person with rights, such as a servitude or a leasehold. Such a right is seen as derived from an owner’s rights and is limited because it does not provide full ownership rights to the holder (Amoo, 2014, p. 42). Limited rights also have their basis in common law. Both comprehensive and limited real rights are formally recognised through registration in the Deeds Registry, as regulated by the Deeds Registries Act of 1937 as well as the Registration of Deeds in Rehoboth Act of 1976 (Amoo, 2014, pp. 42-46). The private owner and the holder of a limited right obtain a title deed subsequent to registration.

As said earlier private ownership can be enjoyed on both urban and rural land. The use of agricultural land is restricted to agricultural purposes. Commercial farmland can only be transferred when the land was first offered to the State. Sale of commercial farmland to a foreigner requires the consent of the Minister (Agricultural (Commercial) Land Reform Act, 1995, ss. 17, 58). Transfer or a bequest may further not be in respect of a portion of land only, it must be the whole land (Subdivision of Agricultural Land Act of 1970).

State land has its basis in the common law. Land belonging to the State is also deemed as public land. Examples of State land on either urban or rural land include Parks, dams, natural resources

not otherwise legally owned; public Institutions like hospitals, schools. State land is not necessarily surveyed and registered in the deeds office. Article 100 and Schedule 5 of the Namibian Constitution (2010) confirms the common law position in providing that all land and natural resources belong to the State, unless otherwise lawfully owned. See the discussion on the management of public land in Section 7 below.

Sectional Titles Act

Sectional title ownership was introduced in the 1970's through the Sectional Titles Act of 1971, which was later replaced by the Sectional Titles Act of 2009 (Amoo, 2014, p. 46). In terms of this legislation, a person obtains title to land, but ownership is understood as fragmented. Fragmented ownership in the sectional title context means that an owner obtain individual ownership of the structure, joint ownership with others to the land on which the sectional title scheme, consisting of the land and the building on it, and has to be a member of an association, namely the body corporate (Sectional Titles Act, 2009, ss. 2, 18, 38; Amoo, 2014, p. 46). These three elements form one entity and cannot be dealt with separately from each other. Unlike the traditional concept of freehold title, the fragmented ownership concept limits an owner's rights to use, alienate, dispose and destroy the land owned, as members of the body corporate have a say as joint owners of the common property of the use and alienation thereof (Sectional Titles Act, 2009, ss. 17(3), 18). The fragmented ownership concept allows for more than one person to have ownership rights to a specific parcel of land, while having individual ownership of a structure. An example is where a person owns an apartment on the third story of a building, yet also have ownership of the land on which the apartment building is erected. The property, which consists of the land and the building is managed by all the owners in association. Sectional Title ownership is only applicable to urban land. Sectional title ownership is formally recognised through registration in the Deeds Registry (Sectional Titles Act, 2009, ss. 2, 3, 16).

Flexible Land Tenure Act

The tenure regimes which existed at the time of Independence of Namibia did not provide for access to land in urban areas to all people. Registration of title in terms of the Deeds Registries Act and the Sectional Titles Act is deemed as expensive. People who were excluded from formal urban tenure, were those with lower incomes living in informal urban areas. Subsequently the Flexible Land Tenure Act of 2012 was promulgated to remedy this situation. The Act provides for a right holder to upgrade title from starter title, to landhold title to freehold title. With each upgrade, a right holder enjoys more rights and tenure security. Starter title right holders are part of an association and have use rights over the land owned by the association, but the plots are not geographically specified. Holders may erect a dwelling and can bequeath the right but may not mortgage it. A person owning immovable property elsewhere in Namibia is not eligible for starter title rights (Flexible Land tenure Act, 2012, s 9). Landhold title rights define each right holder's plot of land. The land hold title right holder must be a member of an association which manages the scheme, has joint ownership to the erf of the association, but has an exclusive use right on a specified plot of land. In addition to the rights a starter title right holder has, a landhold title right holder further has all other rights and may perform all such actions a person having private individual ownership or freehold has, including mortgaging the right (Flexible Land Tenure Act, 2012, s. 10). Starter title and land hold title right holders' rights are registered in the Land Rights Office which runs parallel to and under the authority of the Deeds Registry. Holders of rights obtain a certificate issued by the Land Rights Office. See Appendix A for an illustration of the registration process.

Agricultural (Commercial) Land Reform Act

The Agricultural (Commercial) Land Reform Act of 1995 was one of the first legislations promulgated after Independence to ensure land reform in rural areas. This legislation provides for the State to acquire agricultural land, other than communal land, to resettle Namibians. Those who are resettled can either acquire a leasehold (limited real right) or ownership (unlimited real right), which should both be registered in the Deeds Registry. The State allocates mostly

leaseholds to resettled people. A leasehold has the effect that the State remains the owner of the land. The holders of leaseholds' use of the land is limited by legislation or conditions imposed by the State. Examples of limitations are that the land can only be used for agricultural purposes, no sub-leasing may take place and mortgaging can only take place with written consent by the Minister (Agricultural (Commercial) Land Reform Act, 1995, ss. 44-46). Holders of leasehold obtains a title to the right if it is registered in the Deeds Registry. The registration is regulated by the Deeds Registries Act of 1937 (Agricultural (Commercial) Land Reform Act, 1995, s. 42).

Leasehold rights awarded in terms of the Agricultural (Commercial) Land Reform Act are seldom registered (Harring and Odendaal, 2007, p. 25; Werner, 2007, p. 31). The result is that double allocation of the same parcel of land takes place. An example of such double allocation can be found in *Kandombo v The Minister of Land Reform* A 352/2015 [2016] NAHCMD 3 (18 January 2016). The further consequence is therefore tenure insecurity.

Communal Land Reform Act

Tenure on communal land is termed customary tenure. Article 66 of the Constitution of Namibia (2010) confirms the validity of customary tenure unless it is in conflict with the Constitution or any other legislation. The State is the owner of communal land and keeps the land in trust for the benefit of the people occupying the land (The Constitution of Namibia, 2010, Schedule 5; Communal Land Reform Act, 2002, s. 17). The implementation of the Communal Land Reform Act of 2002 meant that specific customary tenure rights, leaseholds and occupational land rights on communal land are formally recognised. These rights are to be allocated and administered by Traditional Authorities under the supervision of Communal Land Boards, as discussed under Communal Land Boards in Section 2.5 above.

Customary tenure in the form of a residential or a farming unit can be granted to a member of a community for their lifetime; but prohibitions on mortgaging and alienation exist (Communal Land Reform Act, 2002, ss. 26, 38, 42). In the event of expropriation or cancellation of rights, the holder of the right is entitled to compensation for improvements (Communal Land Reform Act,



2002, s. 40). The Communal Land Reform Act (2002) further makes provision for inheritance. The use of the land by a right holder is determined by the specific right allocated, for example farming, residence or grazing on commonage, as well as the provisions of the Communal Land Reform Act of 2002.

Leasehold in terms of the Communal Land Reform Act, 2002, can be acquired by individuals; a community-based organisation consisting of members of the community, like a conservancy or a co-operative; or any other individual, provided the leasehold right will be used to the benefit of the community (Communal Land Reform Act, 2002, s. 30; Werner, 2015, pp. 26, 42). This leasehold can be granted for a period of 99 years (Communal Land Reform Act, 2002, s. 34). No prohibition exists on the mortgaging of the leasehold right. It can however not be sold, because no compensation may be paid for such a right (Communal Land Reform Act, 2002, s. 42). Leasehold rights and customary tenure rights do not co-exist (Werner, 2015, pp. 30, 33). Leasehold rights granted to community-based organisations, like conservancies and co-operatives; therefore, extinguishes customary tenure rights. This becomes a problem for those not forming part of a conservancy or a co-operative (Werner, 2015, p. 34).

An amendment in 2013 to the Communal Land Reform Act of 2002 created further rights on communal land, namely occupational land rights. These rights can be granted for any period to institutions, for public services like schools and hospitals which should benefit the community. No prohibition on mortgaging or transfers exist.

Group Tenure on communal land exist either in the form of commonage or through wildlife management in a conservancy. Grazing rights on commonage are provided for in the Communal Land Reform Act of 2002. The creation of a conservancy for wildlife protection is published in the Government Gazette. Group tenure is granted to a specified group or community for the use of natural resources such as water, fauna and flora only. The State remains the owner of the resources (The Constitution of Namibia, 2010, Article 100). Leaseholds granted to community-



based organisations, like a conservancy or a co-operative, can have a negative influence on grazing rights on commonages (Werner, 2015, p. 35).

The Communal Land Reform Act of 2002 further provides for the registration of rights allocated on communal land. The purpose of initiating the registration of customary land rights in communal areas is to reduce the number of land disputes, strengthen tenure security, to provide a uniform land tenure system for all communal land areas in the country and to provide a formal land tenure system which can, beside other functions, deliver land information in a transparent way. See Appendix B for an illustration of the registration process. A certificate of a right to communal land is issued to the holder (Communal Land Reform Act, 2009, s. 25). Individual title deeds to communal land is not allocated (Communal Land Reform Act, 2002, s. 17).

Appendix A illustrates tenure in urban, rural and communal land, which were expanded beyond freehold title and are formally recognised in legislation and through various registration processes. The registration of tenure rights enhances the enforceability, which is further discussed in Section 3.3 below.

3.2. Land Registration

There is a wide range of tenure options on both urban and rural land in Namibia which have not been addressed in Table 1 on Namibian Land Tenure Legislation. Those tenure options include tenure of marginalised social groups, such as farm workers, informal settlers and women. Farmworkers' tenure to adequate housing is provided for in the employment context in the Labour Act of 2007; Informal Settlers are regulated by the Squatters Proclamation; and women's rights are provided for in terms of Article 10 of the Namibian Constitution as well as the National Land Policy providing that everyone is equal before the law. These rights are not registered or recorded.

The registration of the various tenure rights in Namibia has been briefly discussed in Section 3.1 above, as well as highlighted in Table 1 in Section 3.1 above. In summary, Namibia has five different land registration systems, namely:

- the Deeds Registration system, regulated by the Deeds Registries Act of 1937;
- the Rehoboth Deeds Registry system regulated by the Rehoboth Deeds Registration Act of 1976;
- the Sectional Title Registration system, regulated by the Sectional Titles Act 66 of 1971;
- National Communal Land Administration System, regulated by the Communal Land Reform Act of 2002;
- Flexible Land Tenure system regulated by the Flexible Land Tenure Act of 2012.

The Rehoboth Deeds Registry system is only applicable to the area of Rehoboth. Transfers take place by way of endorsement. Both the Deeds Registries Act of 1937 and the Registration of Deeds in Rehoboth Act of 1976 will be replaced by the Deeds Registries Act of 2015 once the regulations are promulgated.

Though ownership in respect of the Sectional Titles Act is registered in the Deeds Registry, a different system and registers are used than for private individual ownership, due to the fragmented characteristics of ownership under the Sectional Titles Act.

The Communal Land Registration system overlaps with the deeds registry system when leasehold is allocated for longer than ten years and for a specific piece of land which needs to be surveyed for purposes of the leasehold. In these instances, the leasehold need to be registered in the Deeds Registry in terms of the deeds registry system.

As discussed above the Flexible Land Tenure registration system for starter and landhold title rights run parallel to the Deeds Registry. Prior to the allocation of any starter or landhold title rights, starter title and land hold title schemes first need to be established. The schemes are established on land surveyed and registered in the Deeds Registry.

Registration of land rights provides security of tenure as information is made public. Certainty is further enhanced as all registration systems, as can be seen from the above discussion as well as that in section 3.1 above, are linked to each other through the Deeds Registry.

3.3. 3.3 Enforcement of Land Rights

Deininger, Selod, Burns (2012) discussed that tenure security is acquired through the progressive acquisition of tenure rights and the extent to which tenure rights are formalised. One aspect of tenure security is therefore the recognition of tenure rights. Tenure security is further determined by amongst others eviction procedures (Deininger et al., 2012, p. 17), remedies and land administration practices, in other words the protection of tenure rights. Enforcement of rights is a key area to assess land governance (Deininger et al., 2012, p. 28). Enforcement of rights or the protection of land rights are therefore two-fold. Firstly, it is necessary to recognise a tenure right and secondly, tenure holders should be able to defend their rights should it be interfered with (Deininger et al., 2012, p. 29), like for instance by approaching a court or an administrative body (Thiele, 2012).

Thiele (2012) argued that the minimum standard of tenure security would be established by providing for procedures in legislation to prevent arbitrary eviction. Deininger et al. (2012) explains that procedures preventing eviction should take into consideration, amongst others, consultations, justifications for the eviction decision, notification of eviction, compensation or possible relocation (p. 17). Procedures prescribed in legislation to prevent arbitrary eviction are therefore a way to protect or to enforce tenure. Prescribed eviction procedures would be significant especially for those who enjoy tenure rights which are usually not formalised through registration or another process of recording, like for example tenants, farm workers and informal settlers.

The degree to which tenure rights are recognised in Namibian law, which include the characteristics regarding use rights, transfer rights by way of commercial transactions, inheritance or in another way recognised by law or to use tenure as collateral for a loan or a

mortgage bond, was illustrated in Table 1: Table on Namibian Land Tenure, third column. The second column of Table 1: Table on Namibian Land Tenure, further shows the proof the holder of the tenure right will acquire. Apart from obtaining the necessary recognition in law or proof of a tenure right, a holder should also be able to defend tenure rights through an appropriate institution, as can be seen from column 4 in Table 1 above.

The Constitution of Namibia guarantees a fair trial in determining any civil right or obligation (Article 12), a fair administrative procedure (Article 18), as well as equality and the freedom from discrimination (Article 10). Article 1(6) provides that the Constitution is the supreme law in the country. This has the implication that all other laws, whether common law, customary law or legislation, should not conflict with the Constitution. It is therefore guaranteed that any person who holds tenure may approach a court should the holder of the tenure right wish to defend this right. Tenure rights can therefore be enforced irrespective of the provisions or lack of provisions in legislation regulating specific tenure rights. Table 1 on Namibian Land Tenure illustrates the mechanisms put in place to assist tenure holders to defend or enforce their rights.

Legislative regulation of eviction is a further mechanism to ensure some tenure security (Thiele, 2012). This is especially important for people from marginalised social groups, like farm workers and informal settlers, who do not have registered tenure right. Apart from sections 31-32 of the Rent Ordinance 13 of 1977 and section 28 of the Labour Act 11 of 2007 providing for requirements of eviction of a tenant and a farmworker respectively, with a notice to vacate, there is currently no Namibian legislation regulating eviction per se. Prevention of arbitrary eviction is therefore mostly regulated by common law. In recorded cases of arbitrary eviction, that is eviction without a court order, evictees relied on the common law remedy of spoliation (mandament van spolie) (*Likuwa v Municipality of Windhoek* 2017 (2) NR 460 (HC); *Kandombo v The Minister of Land Reform* A 352/2015 [2016] NAHCMD 3 (18 January 2016); *Witvlei Meat v Agricultural Bank* 2016 (2) NR 547 (HC)). This remedy allows an evictee to be restored into possession of property until the merits of possession or tenure has been resolved. The Namibian

court's attitude is that the law cannot be taken by a person into their own hands (*Kandombo v The Minister of Land Reform* A 352/2015 [2016] NAHCMD 3 (18 January 2016) [38]; *Witvlei Meat v Agricultural Bank* 2016 (2) NR 547 (HC)[13]-[14]). A court order needs to be obtained before eviction can take place (*Likuwa v Municipality of Windhoek* 2017 (2) NR 460 (HC) [53]; *Kandombo v The Minister of Land Reform* A 352/2015 [2016] NAHCMD 3 (18 January 2016) [38]). A person who brought a spoliation application will only be able to defend her tenure if the period of possession was enough to qualify as peaceful and undisturbed possession. In the *Likuwa V Municipality of Windhoek* 2017 (2) NR 460 (HC) [53] cas, Ms Likuwa alleged that she was in occupation of the land for more than three years, but she could not prove it. The court did not decide in this matter or in other Namibian court cases, as to what would be a sufficient period of occupation. The implication of the *Likuwa* matter is that should a court not deem a period of undisturbed possession as enough in a particular case, then eviction can take place without a court order. It was further found in *Shaanika and Others v Windhoek City Police and Others* (SA 35/2010) [2013] (15 July 2013) that informal settlers who do not have consent to occupy land, may approach a court to defend their tenure, more specifically preventing the demolishing of housing structures. The right to approach a court is guaranteed by the Namibian Constitution. It has been expressed in Namibian literature that a need exists for the legislative regulation of eviction, especially for vulnerable and marginalised groups (Werner, 2004, p. 41).

It would however not be of much use to have measures in place to restore tenure if the holder of tenure does not have access to legal services or would be unable to afford it (Deininger et al., 2012, p. 17). This aspect will be addressed under Conflict Management in Section 4.2 below.

3.4. Expropriation

Deininger et al. (2012) pointed out that an aspect of good land governance is that expropriation procedures should be justified, time efficient, transparent and fair (p. 33). For expropriation procedures to be fair and transparent, it should include consultations and mechanisms for

appeal, be based on agreement and have fair compensation as an outcome (Deininger et al., 2012, p. 33).

Article 16(2) of the Namibian Constitution provides that the State may expropriate property when in the public interest and against just compensation and in accordance with the requirements and procedures determined by an act of parliament. Should legislation relevant to a given situation not prescribe expropriation procedures and the compensation to be paid the Expropriation Ordinance No 13 of 1978 is applicable. Compensation should be paid when expropriating movable and immovable property as well as for rights acquired in the property expropriated in terms of a contract (Expropriation Ordinance, 1978, ss. 1, 2, 10). Compensation must further be in line with the consideration a person would have received on the open market for the relevant right or property (Expropriation Ordinance, 1978, s. 9). Compensation Policy Guidelines for Communal Land are in place and provide the basis for calculation of compensation. These guidelines also provide for criteria and methods for the payment of and calculation of compensation for rights to communal land when it is acquired for townland and for public sector development.

To illustrate the effect of expropriation, two examples related to land reform in the context of the Agricultural (Commercial) Land Reform Act as well as the Communal Land Reform Act are described below.

The Agricultural (Commercial) Land Reform Act of 1995 provides for expropriation procedures for commercial agricultural land for land reform purposes, more specifically resettlement purposes (Agricultural (Commercial) Land Reform Act, 1995, Preamble, s. 20). In the judgement of *Kessl v Ministry of Lands and Resettlement and Others and Two Similar Cases* 2008 (1) NR 167 (HC) (hereafter *Kessl*), the High Court found that the expropriation procedures as prescribed by the Agricultural (Commercial) Land Reform Act must comply with Article 18 of the Namibian Constitution which provides for a fair administrative procedure ([47]-[49]). A fair administrative procedure implies that consultation between the expropriator and the expropriated should



always be part of the expropriation procedures. The court found that true consultations did not take place. Section 23 of the Agricultural (Commercial) Land Reform Act further prescribes for the payment of compensation to the owner of a farm expropriated. *Kessl* is an illustration that though the necessary legislative procedures for the expropriation and compensation of agricultural commercial land exist, it is not always followed in practice.

The application of the rules of the resettlement process, which one can deem as the outcome of the expropriation process in terms of the Agricultural (Commercial) Land Reform Act, has been criticised for the lack of transparency (De Villiers and Tuladhar, 2010, p. 25). The expropriation process for purposes of resettlement has further been described as not fulfilling its public interest purpose, namely, to ensure access of land to Namibians who cannot otherwise afford it (Ikela, 2018, p. 1).

Irrespective of procedures and guidelines for the payment of compensation to communal right holders when a portion of communal land is withdrawn from a communal area, it has been reported in the media that these guidelines are not always followed (Shinana, 2018). Compensation should be paid for the use, improvements and displacement of a person as well as the allocation of alternative land in the instance where communal land acquired for the development of townland is used for farming activities. Communal land right holders were removed from communal land for the purpose of development of a town, without being paid compensation and without being provided with alternative land as provided for by the guidelines policy (Shinana, 2018). Legislative provisions and guidelines were not adhered to. The results were that customary land rights holders making a living from agriculture had no other option than to move to informal settlements without the means of land to be used for agricultural purposes (Shinana, 2018). As it appears above expropriation in Namibia may provide for consultations and fair compensation, but the practical reality is that these requirements are not always complied with.

3.5. Equity and Non-discrimination

The process of developing policies in Namibia is in general highly participatory and consultation with community members, traditional authorities and local authorities are conducted. Despite the participatory approach to developing policies and legal framework the implementation of such legislation and policies along with the decision-making processes are often rather a political decision than an administrative decision. Recently critique has been raised by the Ombudsman concerning the criteria applied for selection of resettlement beneficiaries and several government officials in high positions have benefitted from the programme, i.e. former ministers, permanent secretaries and directors (likela, 2018).

Constitutional Framework

Article 10 of the Namibian Constitution provides for fundamental rights and freedom for all natural and legal persons, equality before the law and non-discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. The Constitution further stresses in Article 21(1) (g) that all people have the freedom to move, reside and settle in any part of the country. More specifically in regard to land and property it recognises the right for all persons “[...] to acquire, own and dispose of all forms of immovable and movable property individually or in association with others” in any part of the country (The Constitution of Namibia, 2010, Article 16(1)).

To realise some of the values underlying the Namibian Constitution, the Ministry of Land Reform was established immediately after Independence (Ministry of Lands, Resettlement and Rehabilitation, 2001, p. 1). Its jurisdiction was and remains land reform, which includes a more equitable distribution and access to the country’s land resources and land administration and several policies were developed to guide the future development of the country. These policies include the National Land Policy from 1998, the National Resettlement Policy from 2001, National Land Tenure Policy from 2005 which is still in draft form only, National Land Use Planning Policy (which still only exist in draft form) from 2002, the National Housing Policy from 2009. These

policies as well as legislation promulgated are briefly discussed in the subsequent section which highlights women's access to land and property and rights of minority groups.

Women's Access to Land and Property

Article 95 of the Constitution highlights that the State shall actively promote and adopt, amongst others, policies and enact legislation aimed at gender equality and ensure “[...] equality of opportunity for women [...]” (The Constitution of Namibia, 2010, Article 95), which includes equal rights to land and property during marriage and on dissolution of it. Hence, the Constitution provides for equal rights to women and men about acquisition, inheritance, ownership and disposal of land and immovable property. Additionally, several policies and acts specifically highlight gender equality. Some provisions are highlighted below.

According to the Married Persons Equality Act, spouses must obtain mutual consent before conducting transactions such as mortgaging of property if they are married in community of property; this assures the protection of women's rights during marriage (Married Persons Equality Act, 1996, s. 7). Furthermore, the Deeds Registries Act delineates that immovable property, mortgage bonds and notarial bonds that are considered as joint estate of people married in community of property or owned in community of property must be registered in the name of both persons (Deeds Registries Act, 1937, s. 17).

A representation of four women of whom two must be farmers and two must have expertise in land administration are required in the Communal Land Boards (Communal Land Reform Act, 2002, s. 4(1) (d)) who are controlling and approving the allocation of customary rights to communal land.

Concerning inheritance of rights to land and property the Constitution states that all persons have the right to “[...] bequeath their property to their heirs or legatees [...]” (The Constitution of Namibia, 2010, s. 16(1)) which means that all persons are free to make over their property to heirs who according to the law of inheritance include women. Even though the Constitution, the National Land Policy and the Communal Land Reform Act provide no limitations on women's

rights to own and inherit land some communities still practice traditional customs where women are abandoned from inheriting land rights from their late husband. This disadvantages women who may not acquire land themselves nor inherit the land rights they are entitled to in case of the husband's death or in case of divorce. However, the security of women's and children's land rights about inheritance have bettered much partly due to a change in local customs and partly due to the Communal Land Reform Act and the Constitution (Mendelsohn, 2008, p. 81).

The Flexible Land Tenure Act does not specifically mention women's rights, but it states that a starter title right may only be held by one person except for persons who are married in community of property (Flexible Land Tenure Act, 2012, s. 9(8)). To some degree this protects married women from the spouse registering a land right in his name only; she will be inheriting the land rights and property and in case of divorce the property must be divided between the two spouses.

Equity for Minority Groups

The rights of indigenous people are not specifically mentioned in the Constitution and no separate legislation is specifically dealing with the rights of indigenous people, but only general provisions are stated in the legislation. However, the Constitution "[...] prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of indigenous peoples or minorities" (Dieckmann, Thiem, Dirkx, & Hays, 2014, p. 20). Dieckmann et al. (2014) further elaborates that in policies the term 'marginalised' is preferred over 'indigenous' and provides for certain rights about access to land, leadership, management of natural resources and education (p. 20). According to the National Planning Commission, four ethnic groups are recognised as marginalised: San, Ovahimba, Ovahimba and Ovazemba (National Planning Commission, 2015).

3.6. Land Markets

A well-functioning land market exists in the formalised parts of the rural and urban areas. Commercial farms and residential properties are being sold at market prices. Property registered

in the deeds registration system provides for access to credit and can be used for mortgaging. Security of tenure provided by the registration in the deeds registry is considered as a solid and robust foundation on which banks and financial institutions are in general willing to give loans and mortgages although they most often requires proof of evidence for a stable income in addition to the ownership rights.

To make land more accessible to low-income residents some local authorities sell land to group schemes at a reduced price compared to the normal market value, e.g. the land price is subsidised when sold to low-income residents. The Flexible Land Tenure Act provides for residents with landhold titles to use it as collateral for taking up a loan (Flexible Land Tenure Act, 2012, s. 10(5) (b)). However, the vast majority of residents in low-income urban areas are de facto excluded from leveraging a bank loan with their property as security for the loan since they do not have a stable income. In 2014 “[...] only 8.9 percent of Namibian households could afford to get a mortgage” (Chiripanhura, 2018, p. 9) leaving about 91 per cent of households excluded from the formal land market. A vivid informal land market exists in some of the informal settlement areas.

The Deeds Registries Act provides for leasehold rights acquired under the Agricultural (Commercial) Land Reform Act to be subject to a mortgage bond provided that the lease is valid for longer than 10 years and registered in the Deeds Registry (Agricultural (Commercial) Land Reform Act, 1995, s. 42(2)). However, often the leasehold rights are not registered in the Deeds Registry and furthermore the Agricultural (Commercial) Land Reform Act provides that the Minister can cancel a leasehold right, upon which the property will vest in the State and that compensation will only be payable for buildings and improvements on the land (Agricultural (Commercial) Land Reform Act, 1995, ss. 45, 50). It in effect means that should a mortgagor default, then the bank cannot repossess the property.

Leasehold rights to communal land can be used as collateral for leveraging a loan. Banks and financial institutions are, however, often reluctant to accept leasehold rights as collateral due to the lack of formal ownership and consequently derived lack of tradability. The inability to trade

land rights are considered to severely limit the incentives for investment (Werner & Bayer, 2016, p. 5). As a result, limited development is taking place in communal areas under customary tenure. Leasehold rights can be cancelled, and no compensation will be paid for the land, except for improvements, thereby in effect providing a bank or financial institution with no security. Despite the State considering customary land rights providing the same level of tenure security as freehold ownership the legal framework does not allow to use it as collateral; hence the rights are restrained compared to freehold rights. It also implies that without secure land rights there will be no sustainable development due to a lack of willingness by local people and by foreigners to make long-term investments.

No formal land market exists in the communal areas since it is at the full disposal of the traditional authorities and since land right holders do not own the land itself it cannot be used as collateral. By default, customary land rights to communal land “[...] cannot be used as collateral to secure bank loans” (LAC, 2005, p. 28). Customary rights to communal land do not enable access to credit via mortgaging of the right. Despite the prohibition to sell communal land Mendelsohn, Shixwameni and Nakamhela claim it occurs frequently on an informal market (2013, p. 8).

4. Land Dispute Resolution

4.1. Assignment of Responsibility

The dispute resolution management system is differentiated according to the land tenure system. The dispute resolution system and the mechanisms by which tenure rights can be enforced are the same. The same principles underlying the enforceability of tenure are applicable to dispute resolution systems. In addition to the constitutional principles as discussed under enforceability, legislation regulating specific tenure rights may provide for dispute resolution systems. These systems are illustrated by Table 1: Table on Namibian Land Tenure, fourth column.

Apart from Table 1: Table on Namibian Land Tenure, fourth column, it was further illustrated in Section 2.1 of this chapter that the Minister of Land Reform takes responsibility for the

Directorate of Land Reform and Resettlement as well as the Deeds Registry. Having regard to these discussions, the assignment of responsibility for disputes can be summarised to say that though the ultimate responsibility lies with the Minister of Land Reform, the initial responsibility lies with the authority allocating the rights (like a Traditional Authority or a Communal Land Board) or registering it, such as the Deeds Registrar or the Land Rights Office. Should any matter need to go on appeal, the appeal will be heard by an arbitrator or for matters dealing with Communal Land Rights and leasehold under the Agricultural (Commercial) Land Reform Act of 1995, the appeal will be heard by the Lands Tribunal of the Ministry of Land Reform. All matters not otherwise resolved as well as matters arising from the common law, the Deeds Registries Act of 1937 and the Sectional Titles Act of 2009 will be dealt with by the civil court system of Namibia through the Magistrate's and High Courts.

4.2. Conflict Management

Proper conflict management depends on accessible mechanisms and institutions to effectively deal with disputes (Deiningner et al. 2012, p. 35). As illustrated by Table 1: Table on Namibian Land Tenure, fourth column, legislation providing for tenure like the Sectional Titles Act, 2009; the Flexible Land Tenure Act, 2012 and the Communal Land Reform Act, 2002 provides for mechanisms to allow easy access to dispute resolution systems. A constitution or rules of an association, as well as a traditional authority, would for example provide for the internal resolution of disputes. Such internal resolution of disputes makes a system physically accessible and more informal. This should make the process more cost effective.

Unless an act prescribes specific mechanisms to deal with land disputes, it would, according to Odendaal & Tjiramba (2005) be dealt with through the civil court systems (p. 62). Civil court systems and other mechanisms which might be prescribed and provided for by legislation to resolve disputes are not always accessible, especially by vulnerable and marginalised groups, like farm workers and informal settlers. Illiteracy is widespread amongst farm workers who are often unaware of their rights, living in isolated areas and poorly paid, which has the result that they do



not have access to and support of legal services (Werner, 2004, p. 30; Thiem, 2014, p. 428). Urban informal settlers rather deal with disputes among themselves through internal leadership structures, than the civil court system (Odendaal & Tjiramba, 2005, p. 62). Informal settlers described the civil court system as too complicated and expensive; thus, making it inaccessible (Odendaal & Tjiramba, 2005, p. 62).

5. Valuation and Taxation

Valuation of land or property is the practice of developing an opinion of value of real property, usually its market value. The market value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction. This happens after proper marketing and where the parties acted knowledgeably, prudently and without compulsion. It must be stated that valuation applies basic legal, economic, physical and social principles affecting real estate to estimate its value. There are many possible reasons for valuing property such as, to: buy or sell; let or take a lease or agree a rent review; estimate insurance value; obtain a compensation payment; borrow money using property as 'security or collateral'; show its value as a fixed asset on a company balance sheet; and develop or redevelop a piece of land or property.

Some valuations need assessment on a frequent or recurrent basis, others only very occasionally. In addition to the term 'market value' already defined, there are numerous other types of property value that exist. The following types of property value can be calculated: freehold value; leasehold value; alternative use value; compulsory purchase value; fair value; asset value; depreciated value; rateable value; rental value; forced sale value; and unimproved site value.

The Property Valuers Profession Act, 2012, governs the valuation practice in Namibia. The act was enacted to provide for the establishment of the Namibian council for property valuers profession; to provide for the registration of professional valuers, associate professional valuers, valuers in training, student valuers in training and specified categories in the property valuation profession; and to provide for incidental matters. This act is meant to regulate the professional conduct of both public and private valuers in the country.

The Agricultural (Commercial) Land Reform Act 6 of 1995 (ACLRA) in conjunction with the Land Valuation and Taxation Regulations of 2007 gives power to the Valuation and Estates Management Directorate in the Ministry of Land Reform (MLR). The ACLRA requires that any land

acquired by the State for resettlement and other purposes must be valued so that the state pays fair and reasonable market values for the land and property. Therefore, the Ministry of Land Reform oversees the valuation of land and properties for either for sale, purchase, compensation or tax purposes. The Directorate of Valuation and Estate Management is divided in two divisions, namely, General Valuation and the Rating and Taxation.

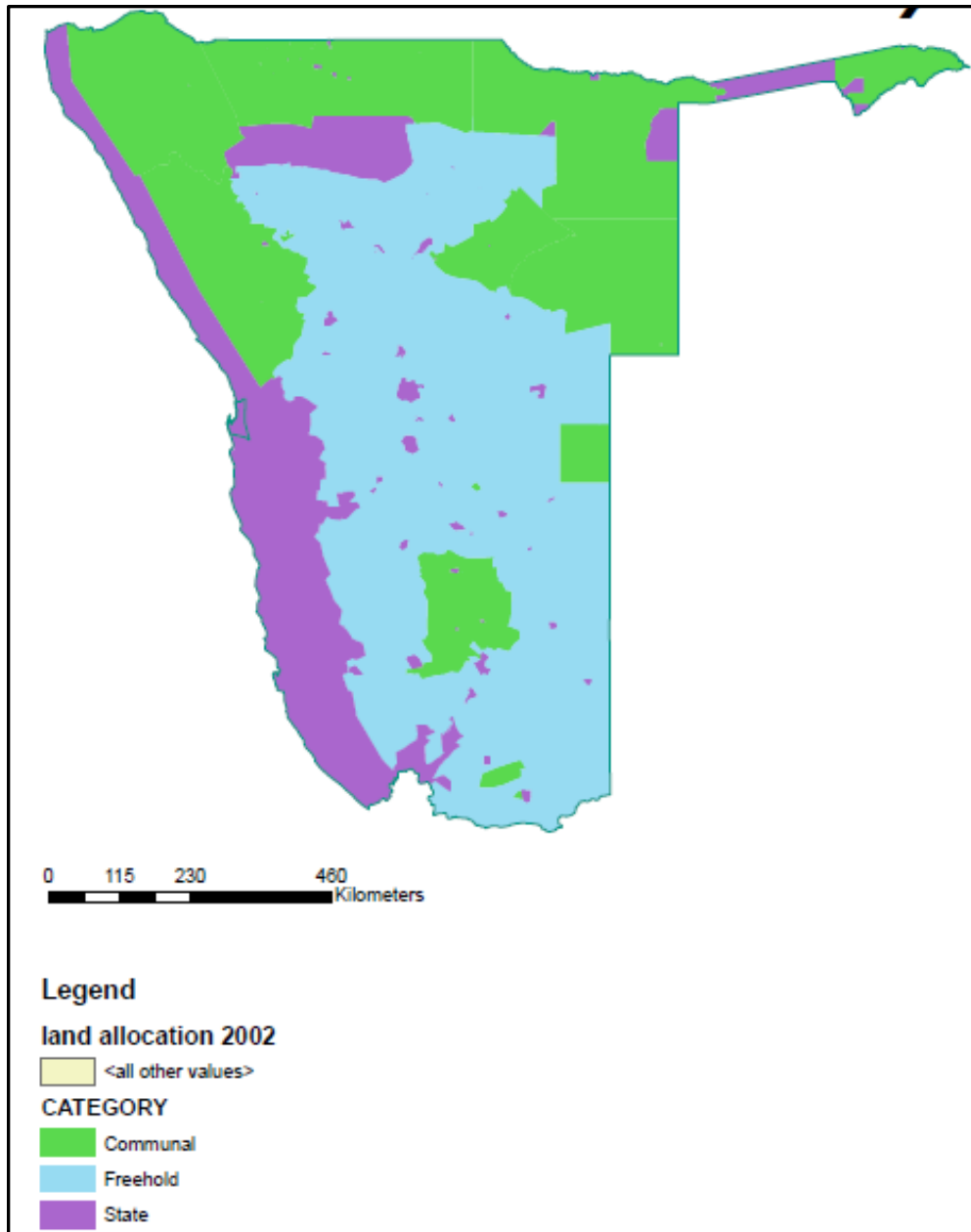
General valuation encompasses immovable and moveable assets that fall both in urban and rural areas and it is divided into three subdivisions. These are: Subdivision Urban Valuation, Subdivision Rural Valuation, and Subdivision Market Research – to be described below.

Subdivision Urban Valuation: This subdivision is involved in the valuation of all urban properties, rental assessment of leasehold units and assessment of compensation for land and improvements (buildings) where land is acquired for township development as requested by the state.

The urban properties referred to include but are not limited to residential, commercial, specialised (filling stations, hotels, cinemas), institutional (schools, hospitals) properties.

Subdivision Rural Valuation: The main function of this subdivision is to ensure that the state pays a fair price (value) for properties acquired for land reform purposes, and equally that the government disposes off its properties within prevailing market values. In addition, the department provides valuations for rental properties for resettlement units and other rural state land. The map below shows the jurisdictions of communal and freehold land.

Subdivision Market Research: This unit has been assigned the role of carrying out up-to-date market research and valuation standards, production of quality property market reports to support and inform the valuation process and decision-making purposes within the entire directorate.



Map 1: Land tenure categories in Namibia (Source: MLR, n.d.)

Subdivision Taxation: Property taxes are generally levied on all types of properties – residential, commercial, industrial as well as agricultural properties. Property tax in Namibia of freehold properties apply on both land and improvements (buildings). Therefore, the subdivision develops

and improves the land tax system and provides guidance on the development of property taxation policies.

Subdivision Rating: Property tax, as an annual tax on the ownership (or occupation) of immovable property (i.e. land and/or buildings) is an important source of revenue to local authorities. It should however be stated that income from use, acquisition and/or alienation of immovable property are generally also taxed by means of other property-related taxes. The role of the subdivision is to provide property-rating services for real property taxation and support urban local authorities in property rating. The Local Authorities Act of 1992 provides for the general revaluation to be completed every five (5) years for all rateable properties in municipal areas.

6. Land Use Planning and Control

Urban land use planning in Namibia as it is understood today can be traced to the early colonial times, which started in the late 1800s with the German occupation. It was during this time that the establishment of the cadastral system and the deeds office can be placed (Simon, 1991). With the establishment of the cadastre and deeds office meant that real right was granted to land owners and they could now use land for various designated use as stipulated in the conditions of establishment. When Germany lost the First World War, South Africa took over the administration of the territory. One of the key historical points for land use and socio-spatial development in Namibia was the Odendaal Commission of 1963, which was given the mandate to restructure the territory to comply with the Apartheid policy (Delgado, 2018). It is here where land use had its most significant impact in how we understand Namibia today, particularly with regards to its segregated structure. After independence in 1990, despite significant political changes, the legislation governing spatial development remained largely unchallenged. Namibia's first national spatial plan is set to be developed in the coming years after new legislation making provision for it has been recently passed. Namibia today is predominantly urban, and estimates show the urbanisation trend will continue, placing enormous pressure in

urban areas and with significant consequences to the way land is administered in the country (Luhl & Delgado, 2018).

This section attempts to present the reader with the actually-existing land use planning realities in Namibia. While Namibia's spatial development can be said to be professionalised and standards-oriented, the actual reality on the ground reveals a discrepancy between the framework in place and the way that spatial development unfolds. The key example of this is the astounding growth of informal settlements in Namibia, which have passed from being a rare or emerging phenomenon in the 1990s (Peyroux & Graefe, 1995), to a point where most of those living in urban areas find themselves inhabiting within an informal settlement¹. There are some elements of this section that entail a description and others that entailed an assessment. For the latter, several experts in the field were consulted in order to calibrate the assessment made.

6.1. Land Use Planning Framework and Process

6.1.1. 6.1.1. Legal Framework Governing Land Use Planning in Namibia

Land use planning in Namibia is sometimes seen to be cross-sectoral in the sense that different entities have certain aspects of their planning that relates to land use planning. For instance, the Ministry of Land Reform focuses on land use planning by use of integrated land use plans, while the Ministry of Urban and Rural Development focuses on spatial planning aspects in towns as well as on a regional scale. The different pieces of legislation presented below are some that play a pivotal role in terms of land use planning in Namibia. Rural land use planning in Namibia has not been in the spot light as opposed to the urban land use planning. Since there are various land uses/activities in the rural areas, there are also several public institutions as well as non-

¹ Through the self-enumeration efforts that the Namibia Housing Action Group and the Shack Dwellers Federation of Namibia conduct, it is estimated that about 2/3 of the urban population in Namibia lives in a shack. This is according to their recent "Profile of Informal Settlements 1998-2008".

governmental institutions that are either mandated and/or that are involved in matters of land use planning with the aim of protecting and preserving the environment. In fact, most practitioners have observed that Namibia does not have an approved Land Use Planning Policy and Land management is a largely uncoordinated activity (Jones, 2009, p. 8). The reality is that the National Planning Commission focus is on development planning in the country and hardly concern with the coordination of land use planning as this function is directed to the Division of Land Use Planning and Allocation of the Ministry of Land Reform. Though the National Land Policy is weak laying down land use planning regulations, it gives responsibility for land use planning to the Land Use and Environmental Board, Regional Land Board and Regional Councils. However, interesting to note is that the Land Use and Environment Board do not exist, Regional Land Board do not initiate land use planning activities and Regional Councils in most cases focuses on the preparation of development plans (Jones, 2009, p. 13).

The diagram below illustrates the various responsibility that relates to land use planning but, which are found in various ministries within the government structure. The diagram below illustrates some of the responsibilities that relates to land use planning. As per the diagram the National Planning Commission is tasked with the overall Coordination of Policy Development as well as supporting the Ministry Urban and Rural Development (previously Min. of Regional, Local Government, Housing and Rural Development). In terms of urban land use planning the Ministry of Urban and Rural Development is the lead agency and moreover it tasked with the compilation of Regional Development Plans that serves as the foundation for the compilation of land use plan. While the Ministry of Environment and Tourism is responsible for the Environmental Affairs especially for Environmental Impact Assessments for sustainable land use and management. The formulation of the Argo- Ecological Zone and Quantification of land productivity assessment is a crucial element in terms of rural land use planning this tasked is within the Ministry of Agriculture, Water and Forestry. The real mandate of land use planning in Namibia lies with the Ministry of Land reform (previously Min. of Lands and Resettlement) and is undertaken by the Division of Land Use Planning and Land Allocation.

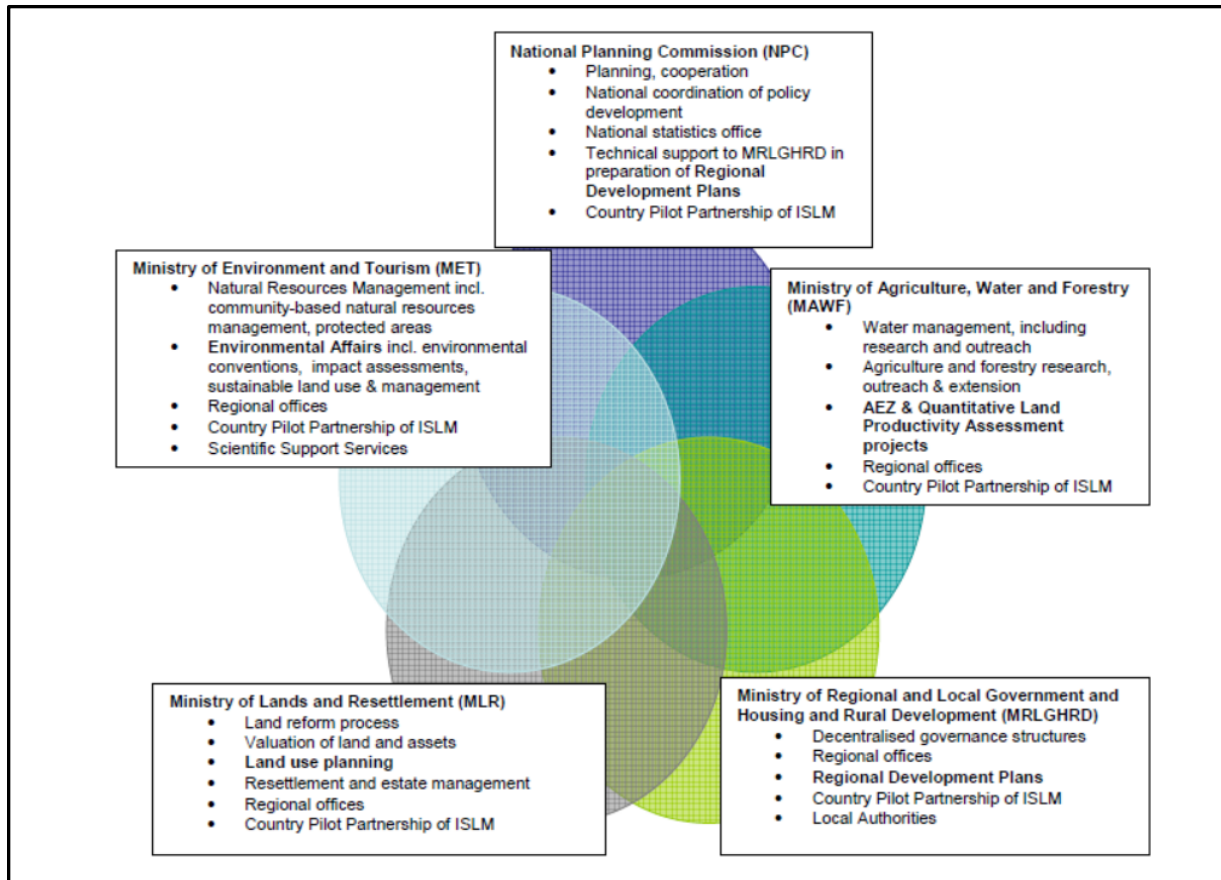


Figure 4: Institution responsible for Land use & Development planning in Namibia (Source: Zeidler, 2007)

The Town Planning Ordinance 18 of 1954 provides for the preparation of town planning schemes by local authorities and establishes the Namibia Planning Advisory Board, particularly sections 1 to 7. The purpose of Ordinance 11 of 1963 is to guide on the establishment of townships and to provide for the regulation and control of the development and subdivision of land and for matters related thereto (Township Ordinance 11 of 1963). The Urban and Regional Planning (URP) Act 5 of 2018 will replace the two abovementioned ordinances, the only thing that is pending now before it becomes operational is the regulations. The objectives of Urban and Regional Planning Act of 2018, are to:

- provide for legal framework for spatial planning in Namibia;
- provide for principles and standards of spatial planning;

- establish the urban and regional planning board;
- provide for the preparation, approval and review of the national spatial development framework, regional structure plans and urban structure plans;
- provide for the preparation, approval, review and amendment of zoning schemes;

and the establishment of townships;

Therefore, in summary the proposed Planning Board under the Urban and Regional Planning Act of 2018 will take over all the administrative functions as well as statutory provision of the previous boards (namely Namibia Planning Advisory Board & the Townships Board).

6.1.2. Acts and resulting Institutions

Urban Planning

- Town Planning Ordinance 18 of 1954 establishes the Namibia Planning Advisory Board (NAMPAB).
- Township and Township Establishment Ordinance 11 of 1963 establishes the Township Board.
- The Urban and Regional Planning Act will replace the above two Acts/ordinance once the regulations have been finalised and are enforceable. This Act establishes the Planning Board.

Rural Planning/Regional Planning

In terms of legal instruments that relate to planning at a regional or rural level there are a number of acts and institutions that play specific roles as in the following instances:

- Urban and Regional Act with reference to the Regional Structure Plans as indicated in the Act will contribute towards the management of land at regional levels.
- Communal Land Reform Act of 2002 establishes the Communal Land Boards that are tasked with the allocation and control of land uses in communal areas (section 3).

- Traditional Authorities Act 25 of 2000 establishes the Traditional Authorities. This Act is vital in terms of land administration/planning as it complement the Communal Land Reform Act by appointing traditional authorities that allocate and control the use of land in their traditional communities.

6.1.3. Planning Process at Various Levels of Government

National Spatial Development Framework (NSDF)

Section 19 (1) of the Urban and Regional Planning Act 5 of 2018 provides for the preparation of the National Spatial Development Framework (NSDF). The Act directs that the NSDF be approved by Cabinet. The key objective of NSDF is to provide for a uniform, effective and integrated regulatory framework for spatial planning. The NSDF additionally provides for principles and standards of spatial planning.

Integrated Regional Land Use Plans (IRLUPs)/Regional Structure Plans

Section 26 of the Urban and Regional Planning also provide for the preparation of the regional structure plans with the purpose of providing for a uniform, effective and integrated regulatory framework for spatial planning at regional level.

Since the Regional Structure Plans are new instruments it is worth noting that in regions where an Integrated Regional Land Use Plan (IRLUP) is prepared, the Act directs that Regional Structure Plans must be aligned to the land use plans prepared by regional councils in consultation with the ministry administering matters related to land reform, if such plans have been prepared for the regions concerned, in this case, the Ministry of Land Reform. IRLUP provides guidelines for the integrated social and economic development and land use patterns.

Urban Structure Plans



Urban structure plans differ from the Regional Structure Plans **only** in terms of the spatial extent they cover. The Regional Structure Plans cover the whole region of concern, while the Urban Structure Plans are prepared for cities, towns and villages only which are proclaimed urban areas. Section 31 (subsection 1 to 5) deals with the preparation of the urban structure plan. Subsection (1) of Section 31, directs that a local authority must prepare or cause to prepare an urban structure plan in its area of jurisdiction. It further provides that this plan must be approved by the Minister of Urban and Rural Development.

Town Planning Scheme (TPS)

The Town Planning Scheme (TPS) is a statutory document that confers specified land use rights in accordance with the provision of the Urban and Regional Act 5 of 2018. The TPS is also referred to as the “zoning scheme”. In terms of section 41 of the Act, the purpose of the TPS is to promote the orderly development of the area to which the zoning applies, to determine land use rights and provide for control over the rights for which the zoning scheme applies² (Republic of Namibia, 2018). Any declared urban area (local authority) is obliged to prepare a zoning scheme.

Amendment Schemes

Section 55 (2) of the Urban and Regional Planning Act, directs that a local authority must review its zoning scheme after five years from the date of commencement. Therefore, in a nutshell an amendment scheme is a document that indicates the changes that have been made on the zoning schemes. The changes can sometimes result in an increase or decrease of the land value as well as its development potential. This means that changes to the existing zoning schemes will only be considered when there is need and desirability, in such case, an amendment scheme can be therefore prepared.

² Section 41 of the Urban and Regional Planning Act 5 of 2018



6.1.4. Assessing the Land Use Framework in Urban and Rural Areas

Here it is important to discuss whether IRLUPs and TPSs are justifiable and whether the need for them is well established. These, however, are generally a weak practice, as there is no legislative backing and are generally not implemented. With regards to TPSs, these are generally prohibitive vis-à-vis the socio-economic reality of Namibia, having often negative consequences on most of the urban poor.

A more specific discussion can be to ask whether IRLUPs, TPSs and amendments are undertaken in an efficient manner. However, since IRLUPs have been only recently developed, there is currently not much experience in undertaking amendments to them. However, so far it can be said that IRLUPs are indeed undertaken in an efficient manner, but TPSs and amendments less so. This nevertheless varies between local authorities, and although they do facilitate land use, they currently don't encourage the best possible use of the land.

Another discussion is whether IRLUPs, town planning schemes and amendments to it are undertaken in a transparent manner. IRLUPs are undertaken in a transparent manner. However, town planning schemes and amendments tend more to be less transparent, as in some cases it is not easy to get hold of the plans. Currently the act prescribes what is 'transparent' (e.g. publishing notices in newspapers), but the scope for input is reduced and the implications may not be understood by many.

Another question is whether IRLUPs, town planning schemes and amendments to it are undertaken in a participatory manner. While IRLUPs can be said to be undertaken in a participatory manner, town planning schemes and amendments less so, as consultation is not as far-reaching as it could be; it is only reduced to what the legislation prescribes instead of identifying the extent of the need for consultation per case ('checklist approach').

6.2. Delivery of Services

Namibia will need to accommodate 2 million additional urban inhabitants by 2050 (Delgado & Lühl, 2018). According to recent counts by the Shack Dwellers Federation of Namibia, there are

almost a million people living in ‘shacks’³. This represents almost half of the national population and two-thirds of the urban population. In this section, to evaluate the efficiency of the actors, we have considered central, regional and local governments, as well as civil society and the private sector. Universities have also demonstrated to play a role in spatial development (ILMI, 2017), however, the sustainability of their contributions remains to be further explored, as sometimes funding limitations and academic calendar imperatives sometimes complicate their contribution.

To exemplify this, it is relevant to ask whether IRLUPs and TPSs support the urban growth that Namibia is expected to have by 2050. However, IRLUPs in general do not deal with long term urban growth, as they are only valid for 5 years. On the other hand, TPSs can be considered a weak practice in this respect, as they are highly static documents and in the case of Namibia, they support extremely low densities, hence urban sprawling makes provision of services costly per capita.

It is also important to ask whether Namibia is able to deliver the housing opportunities as prescribed in the country’s long-term vision and other planning frameworks. In views of the current pace of housing and serviced land delivery (Delgado & Lühl, 2018), it is highly unlikely that the goals set in the national plans will be met. Some of these goals are listed in the table below:

Planning framework	Delivery of Services and housing
Vision 2030	To facilitate access to adequate shelter for 60% of low-income population by 2008.

³ According to the latest numbers of the Community Land Information Programme by SDFN, about 995,000 people live in shacks in 308 settlements across the country; many of which are in proclaimed urban areas.

	To build 9,590 houses by 2006 under BTP; that all LAs have operational revolving funds by 2005; NHE to build 7,937 houses (at a value of N\$419 million) and to develop 3,371 plots by 2006.
Harambee Prosperity Plan	To develop 20,000 new houses nationwide; 26,000 new residential plots countrywide; 50,000 rural toilets; and to eliminate inadequate sanitation ('the bucket system') by 2017.
National Development Plan 5	Expected outcomes are to identify "policies that impedes [sic] synergies in the implementation of projects, development of structure plans for all local authorities and densification of existing urban areas to combat urban sprawl".

Table 1: Delivery of Housing and Services in Accordance with Namibian Planning Frameworks

It is also important to ask whether the infrastructural issues in informal settlements will be addressed within the existing plans' timeframe and framework. This is also unlikely vis-à-vis the scale of the challenge and the projected growth of informal settlements in Namibia. Recent literature presents scenarios in which the number of informal structures ('shacks') will overtake the number of 'formal' (i.e. built with durable materials and potentially with legal tenure) structures in the next decade (Weber & Mendelsohn, 2017, p.19).

It is important to discuss whether the different actors demonstrate effectiveness and/or efficiency in the delivery of services. Here, it is necessary to highlight a general lack of monitoring and evaluation taking place after implementation, as well as the lack of binding regulations that would be required to enforce concomitant action in cases of lack of performance. Central government performance is generally regarded as limited due to the cumbersome nature of administrative procedures. Regional government is also generally limited in capacity, although this varies according to the region. Local government is generally regarded as more efficient, but this again varies according to the urban area in question; what can be said is that there is also great inequality between urban areas, as some larger centres (e.g. Windhoek, Walvis Bay, Swakopmund) have Local Authorities that are much better equipped technically and financially than most of the rest. Civil society, such as Shack Dwellers Federation of Namibia and the Namibia Housing Action Group, are generally regarded as more efficient, but that their contribution is limited due to the resources (land and funds) that Local Authorities afford them. A new NGO in

the sector (DW-Namibia) is currently developing affordable land extensions, and there are already signs of promising results. Lastly, while the private sector is generally perceived efficient, their drive to maximise profit makes their contribution to the urban poor limited to corporate social responsibility and other charity modalities.

In terms of rural land use planning various institution such as the Ministry of Land Reform has decentralized some of the function to increase the delivery of the services. What is noteworthy is that the function of Land Use Planning within the Ministry of Land Reform has been decentralized to all the 14 regions. (Republic of Namibia, 2016, p. 2). While, within urban areas, various non-governmental organization have placed strong emphasis on the importance of actively engaging the community with the view of providing an amicable solution to the robust urban growth in informal settlement as well as addressing the question of adequate housing for the urban poor. Weber and Mendelsohn (2017, p. 11) asserts that Namibia is undergoing a major transition from a rural- based society to one based largely in urban areas, its urban areas now has an estimated 140, 000 households that lives in the informal settlement. Given this reality the City of Windhoek had developed several strategies that are aimed at addressing the rampant growth of the informal settlement. Thus, in 1999 the City of Windhoek developed a strategy that is known as the City`s Development and Upgrading Strategy with key aspects such as:

- To focus on the low and ultra-low-income population;
- To introduce services that are affordable for residents;
- To provide guidelines on upgrading of low and ultra-low-income townships in terms
- of physical structure, land tenure and services;
- To provide guidelines for the promotion and facilitation of self-help development (Weber, 2017, p. 81).

The paramount importance of the City`s Development and Upgrading Strategy has been that of formalization the tenure arrangement while they provide for several basic services that are needed by the informal settlement`s residents (Weber & Mendelsohn, 2017).



6.3. Development Permits

There are various examples of development permits common in Namibia. There are building plans, which vary depending on whether they are single residential, industrial, etc. There are change of use permits, which vary if they are intended for a development less than 10 plots, or more than 10 plots. There are consolidation and subdivision permit, which may vary if the process consists of plots with the same land use or not. And there are also township establishments, which vary depending on whether it includes less than 300 plots or more than that. However, to simplify the process, the panel of subject-matter specialists was only prompted to give a general assessment for each process.

To give an indication, Namibia's monthly average of approval of building plans is about 150 (IJG Research, 2018); and the Deeds Registry at the Ministry of Land Reform processes an average of 520 documents (including documents registered, namely transfers, bonds, bond cancellations, ante-nuptial contracts, servitudes, copies of titles, general power of attorneys and sectional titles) per week (MLR, 2018).

Costs of development permits are generally reasonable vis-à-vis the objective in question, although considering national wages averaging less than N\$8,000 per month (NSA, 2019) costs can be said to be out of reach for most of the population. There is little evidence that the costs of the process of application have a considerable impact on land development. However, to discuss the toll that development permits represent it can be asked whether the required documents to submit an application for land development are reasonably easy to obtain. It is worth mentioning that only few of the processes required to obtain development permits are digitalised, which causes hindrances in submissions and processing. While it is generally easy to gather the necessary documents for building plans and subdivision applications, this is less so for those required for a change of use. On the other hand, gathering the necessary documents for land consolidation and township extension applications is a much more difficult task. Another important factor in this respect are the delays in the processing of an application for land



development, which are generally expected to exist in all kinds of applications. At the same time, the estimated time of processing an application for land development is generally predictable, except in some cases (e.g. change of land use, land consolidation, or township extensions).

6.4. Land Use Control

A unique aspect of land delivery in Namibia is that it is not governed by a single piece of legislation, but by several acts and ordinances that are not widely understood. These acts/ordinances include the Town Planning Ordinance 18 of 1954, Townships and Township Establishment 11 of 1963, Urban and Regional Planning Act 5 of 2018 (new), Deeds Registry Act of 2015 (new one replaced the one of 1937) and the Land Survey Act 33 of 1993, just to mention some of the key acts. This means it becomes extremely difficult to outline the steps that are normally taken in terms of land delivery as this mainly depends on the type of development that requires approval. However, to provide a snapshot of the generic steps an application for a subdivision or rezoning/ (change of use) is illustrated below.

The Town Planning Manual (Simon, 1995) outline the steps below as part of the land delivery process in Namibia.

- i. The applicant/owner will apply to the local authority in which the property is situated to obtain approval for a subdivision of land or change of use.
- ii. Once the application has been received by the local authority it is firstly circulated within the various technical department of the local authority (municipal, town, village council) for technical evaluation. If no major concerns are raised by these departments the application is then recommended by the Council and forwarded to the Ministry of Urban and Rural Development (MURD).
- iii. Once the application is received by the MURD it is forwarded to the Namibia Planning Advisory Board or Township Board depending on whether an application is for the change of use or is an application for subdivision of the land (e.g. township establishment).

- iv. NAMPAB and Township would then deliberate on the application and approved, reject or refer to the applicant with comments on what should be included.
- v. If approved in case of subdivision of land the applicant now appoints a Land Surveyor to undertake the survey and later the subdivided property should be approved by Surveyor General Office and consequently registered in the Deeds office.
- vi. In case of change of use (rezoning) the applicant can now start with actual development of the area for intended purpose upon approval of application by NAMPAB.
- vii. In case of a change of use the concerned local authority can now apply to the Minister of Urban and Rural Development to charge betterment fee to the applicant if there has been an increase in the value of the property, after the change of use.

Here it is pertinent to ask whether the existing planning provisions were well-monitored and enforced, and whether these are occasionally revised. Currently, existing provisions were not well monitored and enforced, and the occasional revision of planning provisions is a weak practice. Enforcement of town planning provisions focuses only in ‘formal’ areas, therefore leaving large areas outside their scope. Furthermore, it is important to remember that in the case of Namibia existing planning provisions are a result of Apartheid planning; therefore, the implications of enforcement needed to be seen in such light.

According to the Regional Council Act of 1992, Regional Councils are required to monitor and enforce existing planning provisions. Regional Councils focus on implementation of development projects; therefore, the monitoring and enforcement component is minimal. The existing provisions for subdivision and consolidation of agricultural land are provided for within the National Policy on Subdivision and Consolidation of Agricultural Land of 2018. The monitoring of subdivision of farmland is done by Ministry of Agriculture, Water and Forestry (MAWF). On the other hand, it is the Ministry of Environment and Tourism (MET) that regulates the environmental clearances. However, its success in regulating clearances, as there are reports of activities that are undertaken without clearances (e.g. sand mining).

6.5. Climate Change and Environmental Management

Namibia has done well in terms of the formulation of the various legal and policy documents that aims to guide the undertaking of activities that could have possible impact on the environment as well as on climate change. The Environmental Management Act of 2007 and the National Policy on Climate Change for Namibia of 2011 are some of the tools that ensure that aspects of environmental and climate change are given due consideration when undertaking land use planning activities at various level.

The Environmental Management Act 7 of 2007 amongst many things aims to promote sustainable management of the environment and the use of natural resources by establishing principles for decision -making on matters of the environment. Moreover, the act provides for a process of assessment and control of activities which may have significant effects on the environment. (Republic of Namibia, 2007, p.1). The Environmental Management Act 7 of 2007, is supported by the National Policy on Climate Change in Namibia. The National Policy on Climate Change in Namibia aims to manage climate change response in a way that recognizes the national development goals and promotes integration and coordination of programmes from various sector, so that benefits to the country are maximized and negative impacts are minimized (Republic of Namibia, 2011, p.8).

Thus, to integrate environmental matters and planning, Ziedler (2007, p. 15) argued that in considering land use options it is important to recognise and understand the impacts and ramifications of such options in terms of their environmental suitability, social acceptability and economic feasibility. Additionally, making land use planning decisions and implementing in view of identifying sustainable land management options is highly dependent on the availability of information about the level of environmental sustainability of current and potential land uses (Zeidler, 2007, p. 16). Therefore, with the available tools such as Environmental Act and the National Policy on Climate Change different sectors ought to use these tools when implementing various activities that could have a possible impact on the environment. However, when one can

ask whether adaptability to climate change and environmental sustainability is considered in the different planning instruments in Namibia (regional, local). It can be said that adaptability to climate change of planning instruments is rather low. Environmental sustainability is not addressed in the planning instruments, particularly in the longer term. Some instruments of urban planning that relate to densities and service requirements are detrimental to environmental sustainability; an example can be the minimum size of 300m² for single residential plots of land mentioned in the National Housing Policy of 2009, which creates horizontal development requiring more land instead of encouraging compact city development. While the large-scale environmental impact is in theory considered by strategic environmental assessments (SEA) encompassed in development processes, these have proven not to have significant effect vis-à-vis the various other elements of the planning framework that create unsustainable urban growth (Lühl & Delgado, 2018).

7. Management of Public Land

Public land is State land, comprising of communal land, conservancies, national parks, commercial farms acquired for resettlement as well as land parcels surveyed and registered in the Deeds Registry in the name of the State, a regional authority or a local authority. According to Kasita, State land comprised about 56% of the total land area (Kasita, 2011, p. 1).

7.1. Public land inventory

There is not a public record or inventory of all State land available. The Deeds Registry falls under the mandate of the Directorate of Deeds Registration and provides a public record of surveyed land and ownership of such land, including land registered in the name of the State, a regional authority or a local authority. Un-surveyed land belonging to the State, like communal land, would therefore not be reflected in the Deeds Registry. The Namibian Constitution further provides that all land and natural resources not otherwise lawfully owned, belong to the State. The Deeds Registry is the only place of record of lawful owners. Any land thus not recorded in

the Deeds Registry as belonging to someone other than the State, a regional authority or a local authority, thus belongs to the State.

Namibian legislation further provides that all land declared communal land vests in the State for the benefit of the communities residing thereon. Borders to and changes of borders of communal land and national parks in the country are published in the Government Gazette.

7.2. Public Land Administration

In Section 2 of this Chapter, Institutional Framework on Land Governance and Administration, the various institutions responsible for the administration of land have been discussed. Management of the respective types of public land is regulated by legislation. The legislation, managing body and the type of public land managed are as follows:

Legislation	Type of Public Land	Management
Local Authorities Act 23 of 1992	Land within an urban area	Local Authority; Regional Council
Regional Councils Act 22 of 1992	Land within a region, including settlements and communal land	Regional Council
Communal Land Reform Act 5 of 2002	Communal Land	Communal Land Board; Traditional Authority
Agricultural (Commercial) Land Reform Act 6 of 1995	Commercial land acquired for resettlement	Ministry of Land Reform
Nature Conservation Ordinance 4 of 1975	Conservancies; National Parks	Ministry of Environment and Tourism; Wildlife Council; Conservancy Council

Table 2: Management of Public Land (Sources: Local Authorities Act, 1992; Regional Councils Act, 1992; Communal Land Reform Act, 2002; Nature Conservation Ordinance, 1975.)

The auditor-general audits the financial statements of the local and regional councils to ensure compliance with legislation and sound financial practices. Issues of non-compliance to legislation and sound financial practices by the local authorities have been reported on.

Public land can be allocated or transferred in various ways. One way is by transferring surveyed land by reason of commercial transactions. Such transfers are then recorded in the Deeds

Registry and the subsequent owner is awarded a title deed. Portions of commercial farmland acquired by the State for resettlement purposes can either be sold to a beneficiary or leasehold can be awarded to a beneficiary. The re-allocation of commercial farmland acquired by the State for resettlement purposes has however not been seen as transparent or compliant with legislation in all respects. It was reported that no leasehold certificates to commercial farmland awarded in terms of the resettlement programme have been registered in the Deeds Registry, even though it is required by the Agricultural (Commercial) Land Reform Act (Werner & Odendaal, 2010, p. 43; Haring & Odendaal, 2007, p. 6). Allocation of rights to communal land has as discussed in Section 2, Institutional Framework on Land Governance and Administration, given rise to disputes, due to double allocations and the allocation of leasehold rights to foreigners. According to a report by the Ministry of Land Reform on the State of Land Reform since the 1991 Land Conference and Land Question (2018) the aim is to register 245,000 communal land rights (p. 50). According to the said report, 119,227 communal land rights have been registered to date, including leasehold (p. 48). The implication is that only about 49 per cent of the Ministry's goal has been reached to date. The report mentions that the Kavango East and West regions refuse to register communal rights (p. 50). If these regions are not considered, then 59 per cent of all communal land rights have been registered in a period of 15 years. Subsequent transfers of communal rights are not recorded.

8. Land Information

Information about land is a mainstay of government and is essential for informed policy decision making in the public and private sectors (Williamson, Enemark, Wallace, & Rajabifard, 2010). In Namibia, various organisations at national, regional and local levels are responsible for the production, management and distribution of land information.

8.1. Public provision of land information

At national level, the Ministry of Land Reform (MLR) has an overall mandate to manage, administer and ensure equitable access to Namibia's land resource (<http://www.mlr.gov.na>). The

Ministry is host to four directorates, namely Survey and Mapping, Deeds Registration, Land Reform and; Valuation and Estate Management that are primary and direct players in land administration functions.

Through the Namibia Statistic Agency (NSA), the Government has enacted the Statistics Act, 2011 (Act No. 9 of 2011) and the National Spatial Data Infrastructure (NSDI) Policy of 2015. The Act makes provision for the establishment of a National Spatial Data Infrastructure (NSDI) which is a national technical and institutional framework aimed at amongst others “facilitating the capture, management, maintenance, integration, distribution and use of spatial data” and “[...] to promote the use and sharing of spatial data in support of spatial planning, socio-economic development and related activities” (GRN, 2011, Section 47). In addition, the Spatial Data Infrastructure Policy stipulates the benefits of an SDI that it will help the nation in “[...] linking the impact of spatial data sharing to the ultimate utilisation of spatial data” (GRN, 2015, Schedule 1(iii)). NSA as a coordinating agency, has set up a spatial data portal where spatial datasets and metadata can be retrieved and some of them can be downloaded. The Namibia Statistics Agency is the custodian for national statistical data, hence the custodian for statistical mapping units/data frame. NSA is a coordinating agency; therefore, the accuracy, completeness and currency of the data is the responsibility of the data custodian and producers. The NSDI policy provides for the establishment of a committee for checking standards of different datasets. Further, the Namibia Statistics Agency has agreements with line ministries and agencies to make data and metadata available to the public through the National Spatial Data Infrastructure.

8.2. Services

The Directorate of Survey and Mapping is guided by the Survey Act, Act 33 of 1993 and is responsible for the collection, processing, maintenance and dissemination of up-to-date and accurate geospatial data to the public. The Ministry through the Directorate of Survey and Mapping is the custodian of all fundamental cadastral datasets for all surveyed land in the country and topographic maps of various spatio-temporal coverages. The topographical maps

are available in different scale coverage ranges from large scale of 1:50,000 to small scale of 1:1,000,000 and in hardcopies and in digital portable document format (pdf). The public can request the maps in their preferred format. Cadastral data is mostly kept as hardcopies of survey diagrams and coordinate lists. The Directorate is currently in the process of digitising the cadastral datasets into a geodatabase. The Directorate of Survey and Mapping also provides value added services on customised maps. Clients can make over the counter requests or in writing for customised maps of their area of interest. The Directorate has in-house databases of datasets from other organisations that can be integrated to create customised products.

The Directorate of Deeds Registry is guided by the Deeds Registries Act, Act 47 of 1937 and regulations and the Registration of Deeds in Rehoboth Act, Act 93 of 19 as responsible for the registration of real rights to land and record keeping of property right information in land and immovable properties in Namibia. The Deeds Registry keeps records of ownership rights in mostly hardcopy and digital scans of the records. There is a Computerised Deeds Registration System (CDRS) where documents are scanned and stored for record keeping but for internal use, and only accessed by internal staff members.

The Directorate of Land Reform is responsible for land reform and resettlement. The Directorate is guided by the Agricultural (Commercial) Land Reform Act, Act 06 of 1995 and the Communal Land Reform Act, Act 05 of 2002. The Directorate is responsible for the communal land registration programme where a digital communal land registry, the Namibia Communal Land Administration System (NCLAS), is established. The registry is server based and only accessed by internal staff members. The Directorate also keeps a register of resettlement beneficiaries on an Excel database which can only be accessed by internal staff members.

The Directorate of Valuation and Estate Management is responsible for valuation of agricultural land for administering of land tax on agricultural land in line with the Agricultural (Commercial) Land Reform Act, Act 6 of 1995. The Directorate also carries out general valuations of urban land.



The Directorate has a server based digital Computerised Assisted Mass Appraisal (CAMA) which is only accessible for internal use and the valuation rolls are made public in hardcopies on the date of publishing.

In addition, the Shack Dwellers Federation of Namibia together with the National Housing Action Group, Non-Governmental Organisations (NGOs), have a database of informal settlement land and socio-economic information; Community Land Information Programme (CLIP). The database has both socio-economic data and a spatial extent of informal settlement registered saving groups.

9 Identification of Key Challenges to be Addressed

In the Namibian context some imminent land governance challenges have been identified and are described in this chapter. Four major challenges that have been identified pertain to urban and rural land governance, governance of agricultural freehold land and valuation and taxation of land. The descriptions of the challenges are centred around the cross-cutting issues of policies, processes and institutions in place to manage and administer land, property and natural resources.

9.1 Urban Land Governance

Following independence and the fall of the apartheid laws, the indigenous population was allowed to own real property and land and settle anywhere in Namibia. This caused many people to flock from rural areas to towns and cities where they settled on un-used and unplanned land in peri-urban areas; thus beginning informal settlement in Namibia. A lack of human capacity within the local authority institutions caused a disastrous planning and land supply system which could not keep up with the demand on planned and surveyed land and in consequence people took it by themselves (Haldrup, 1995, p. 10). This challenged the planning control and still today the vast majority of middle and low-income people can neither afford to purchase urban land nor to register land or immovable property in the freehold land registration system.

Initiatives to deal with the challenges embrace a policy framework outlining the overall long-term national development agenda which was developed in 2004, well-known as Vision 2030, which sets the overall goal to attain the status of an industrialised and developed country by 2030 (Office of the President, 2004, p. 33). Vision 2030 is articulated through five-year national development plans (NDPs) which orchestrate economic development and prosperity. The NDP5 running until 2022 specifically mentions an increase in servicing of land, upgrading of informal settlements and to increase the housing stock as targets (NDP5, 2017, p. 59). Furthermore, the parastatal organisation National Housing Enterprise (NHE), established in 1993, is responsible for providing housing solutions to eliminate the national housing need, e.g. to provide affordable



housing to low and middle income residents. The financing of such housing is also their responsibility.

Projects that are more concrete were also developed in the form of a self-help housing programme, the so-called Built Together Programme, which was initiated in 1992 to provide shelter to low and ultra-low income earners. Furthermore, a Mass Housing Development Programme was established in 2013 with the aim to provide 185,000 housing units by 2030. The target for the Mass Housing Programme was also low-income earners; however the houses were too expensive and therefore out of reach for the target group, but more accessible to the middle-class. The Harambee Prosperity Plan was developed in 2016 to amongst other give rise to the construction of 20,000 new houses and to service 26,000 new residential plots country-wide (Office of the President, 2016, p. 41). Its implementation plan called the Massive Urban Land Servicing Project was subsequently developed in 2016 to expedite the servicing of land. However, the land and housing programmes that are supposed to deliver tenure security and low-cost housing are unaffordable to the vast majority of low-income people and are rather addressing the housing needs of the middle-income residents. Hence, the low-income urban residents are still left without secured access and security of tenure and are therefore residing in informal settlements. Due to a significant backlog in provision of affordable land and housing also the middle-income earners are affected in the sense that land and housing prices in their category is in many instances also out of reach and therefore fall back on the programmes aimed for the low-income earners.

For historical and political reasons, Namibia has so far mainly focused the 'land question' on rural land reform and resettlement of previously disadvantaged citizens. The government of Namibia is only slowly and reluctantly recognising that the situation and circumstances have changed significantly since independence. The various plans, projects and institutions in place to handle land and housing provision to the middle and low-income segment of the population altogether indicate that significant focus and attention are paid to national land and housing development

issues. It is only recently that attention is being targeted to urban land issues, although progress is slow and the benefits for the low-income residents are still to be proven in reality. In January 2019 informal settlements were declared a humanitarian crisis by the President in his new year's speech.

Slow progress in program implementation is characterising the access, tenure and housing provision projects and likely caused by weak or poor program management in general and a lack of available funding and weak financial management in particular. Despite policies, frameworks and guidelines in place the implementation of the programs is challenging for the responsible public parties. To enhance programme implementation the programs should be more closely monitored and evaluated in more detail. An evaluation should establish the shortcomings and reasons why programmes are falling short in implementation progress, in particular when it comes to programme management and financial management. By learning from those ongoing programmes proper project management and financial management procedures should be established to improve the success rate and also to avoid similar challenges and shortcomings in future programmes and projects.

With the current urban land administration and planning setup, Namibia is ill equipped to respond to the urban land, housing and livelihoods challenges; the non-availability of serviced land in urban areas (Owoses-/Goagos, 2013, p. 2), outdated laws and regulations that are by far too cumbersome, expensive and slow to implement excludes low-income settlers from acquiring formal land tenure security (Matthaei & Mandimika, 2014, p. 18; Ministry of Regional and Local Government, Housing and Rural Development, 2009, p. 15). The urbanisation forecast suggests that by 2030 about 61 per cent of the population will be living in urban areas and it is expected to increase to 72 per cent by 2050 (United Nations, 2018). This puts additional pressure on weak and understaffed institutions and calls for strengthening of the human capacity as well as budget allocations to avoid a disastrous development in informal settlements and poor living

conditions if the challenges are not dealt with as a matter of urgency and a workable solution is found.

A rural-urban migration rate of about 4% per annum causes rapid growth of the informal settlements because local authorities have not prepared and planned well for the high migration rate. The rapid increase of urban informal settlements causes unplanned development with very limited provision of services and tenure security if any. The contemporary urbanisation trend puts immense pressure on the land resources but also requires a well prepared government (national, regional and local level) and well-functioning infrastructure to cope with the increased need and to avoid conflicts and violent collisions. Good land governance and to have well-functioning institutions to deliver affordable land and services is pertinent because a rapid increase in the population puts further pressure on the institutions. Failing to provide tenure security and affordable housing to its citizens not only disadvantages the residents but it is also a setback for the local authorities in generating tax revenue to finance development, enhance the living standard of its citizens as well as proper management and administration of its land resources. The above described scenario highlights the urgency of which the urban land tenure issue should be dealt with to avoid the current challenges to accelerate and get out of control.

The Flexible Land Tenure System is intended to provide tenure security to informal settlers and low-income residents but due to the complex, time consuming and bureaucratic procedures as outlined in the Flexible Land Tenure Regulations it is questionable whether it will accelerate access to land and tenure security for low-income and it is dubious whether the system will bring access to more affordable land. The Flexible Land Tenure System does provide for incremental upgrading of the level of tenure security but there is a need to relax on the very high building and planning standards which do not facilitate provision of land and housing to the low-income people.

9.2 Communal Land Governance

The main challenge that has long characterised communal land is the lack of security of tenure. Since 2002 with the enactment of the Communal Land Reform Act (Act No. 05 of 2002), the government through the Ministry of Land Reform has been implementing communal land reform through which rights on communal land are registered. Land registration provides statutory recognition and protection of land rights allocated in the communal areas ratified by the Communal Land Boards. While landholders in most regions of Namibia have registered their land rights and received statutory recognition (nationally, a total of number of 119,227 customary land rights have been registered). This is about 49% of existing customary land rights, meaning that there are still landholders without state recognition (see full report (Ministry of Land Reform, 2018, p. 72). Worse off are some of the north-eastern regions (Kavango East and West regions) where customary land rights are not registered. Only rights of leasehold are registered in these regions, for a period between 10 years and 99 years, however, none of these are registered in the Deeds Registry. Without registration of customary land rights, which gives legal protection to landholders in the communal areas, “households ... will become increasingly vulnerable to losing access to land” (Werner, 2015, p. 67). Access to land and rights over land especially for marginalised, indigenous people and women remains a challenge. For women in particular, some traditional authorities still maintain traditions and customs that disadvantage women and additionally, while these institutions are mandated by the Communal Land Reform Act to be responsible for land allocation, the representation of women in these structures is very low.

Registration of land rights on communal land considers a diversity of rights including customary land rights. The definition of customary land rights include rights for residential unit, farming unit (crop land) and a right to any other form of customary tenure that may be recognised and described by the minister by notice in the *Gazette*” (Republic of Namibia, 2002). The challenge remains that this definition “[...] does not do justice to the complexity of natural resources rights in communal areas” (Liz Alden Wily and Uda Nakamhela, 2013 as cited in Werner (2015, p. 78). Natural resources in the communal areas such as water sources, plants and plant-based by-



products, thatching grass amongst many others are not included in this definition. This definition therefore “potentially compromises the objectives of removing uncertainty about legitimate access and rights to communal resources” (Liz Alden Wily and Uda Nakamhela, 2013 as cited in Werner (2015, p. 78).

There is a high volume of land related disputes on communal land which are reported to the communal land boards. Some of the disputes are between landholders or between family members, and others are between traditional authorities. Disputes between traditional authorities result from unclear boundaries and overlapping areas of jurisdiction (Ministry of Land Reform, 2018, p. 52). This challenges the progress of land registration when it comes to getting consents for the applications process, or when it comes to dealing with land disputes.

Illegal fencing on communal land continues unabated. Illegal fencing is a form of land grabbing that directly affects access to land for other farmers, especially smaller farmers. Illegal fencing does not only limit access to grazing resources but it also makes inaccessible resources such as firewood, building poles, thatching grass, veld food, water resources etc. that the poorest dwellers of communal areas e.g. the San people depends on for their livelihoods (Odendaal & Hazam, 2018). Illegal fencing is a challenge for the legal and institutional frameworks to manage and address it – it is a challenge for land governance in Namibia. The Communal Land Reform Act 2002 does not provide regulations and measures to those found guilty of illegal fencing. While the Communal Land Reform Act 2002 gives power to the Traditional Authorities their actions are hampered by capacity constraints. The processes of removing illegal fences are long and cumbersome and can be described as ‘justice delayed is justice denied’. Fences rendered illegal in accordance with the Communal Land Reform Act, may be considered legal by the Traditional Authorities. This underlines the contradicting challenges that sometimes exist between the statutory and the customary laws and practices but that challenges land governance.

The future of communal land is precarious. Many competing uses are emanating. There is an emerging informal land market where landholders are actively trading land rights. Land trading is prohibited by the Communal Land Reform Act 2002, as communal land is a safety net for the rural poor. However, this prohibition has not stopped trading in land rights which is proving to pose challenges to the function of safety net that communal land serves. The emerging land market pose challenges to land governance, future land use planning and it may as well pose environmental challenges.

9.3 Freehold (Agricultural) Land Governance

The freehold land question is contentious because of the continuing unequal distribution and ownership of land. After twenty-eight years of independence, land continues to be concentrated in the hands of a few and the redistribution programmes are taking a slow pace and thus awaking emotions from the landless groups. Previously advantaged groups still own 27.9 million hectares of freehold agricultural land, which equals to 70%, while the previously disadvantaged groups only own about 16% of the land - that is 6.4 million of agricultural land. The rest of the land – that is 5.4 million (14%) is owned by the State (Namibia Statistics Agency, 2018). The current status of the land question in Namibia is that it remains an unresolved question. Concerns have been raised that in addition to maintaining racial inequalities in land distribution and ownership, the current land reform and in particular the resettlement programme has produced class inequalities.

While agricultural land reform is high on the political agenda, the financial resources allocated do not correlate to the bigger challenge the rural land question is. Similarly, land prices are exorbitant such that this coupled with the already limited financial resource allocations, land acquisition is severely hampered. Land tax stands to be the effective strategy for addressing the land question. However, there exist loopholes in the procedures, legislation and institutional frameworks to implement a progressive tax regime on freehold agricultural land. Now and then

cases are launched with the courts whereby commercial farmers object the valuation rolls on the basis of alleged flaws in the assessments for land tax (see for example The Namibian (2018).

Since independence, the Ovaherero, Nama and Damara people has demanded for the recognition of ancestral land claims, calls that remain unresolved to date. The ancestral land claims are launched to bring about justice regarding land dispossession during colonial times. During the Second National Land Conference that was held in October 2018, the issue of ancestral land claims was a key theme. The issue of ancestral land claims is a key challenge to land governance that requires innovative approaches to resolve. In 2019, the President of the Republic of Namibia instituted a Commission of Inquiry into the Claims of Ancestral Land Rights and Restitution with a mandate to investigate ancestral land claims, an investigation which will guide Namibia to effectively address this very issue.

As at 2018, the government of the Republic of Namibia has acquired more than 3 million hectares of land for the National Resettlement Programme which has benefited a total number of 1030 households (Namibia Statistics Agency, 2018). Most of the resettled farmers have not been issued with secured land rights. Only 442 lease agreements have been issued for resettlement beneficiaries. Lack of land rights “creates tenure insecurities and negates the benefits of resettlement” (Werner & Bayer, 2017, p. 1).

The plight of farm workers on freehold agricultural land remains a serious challenge. Labour conditions are inhuman and their security of tenure is precarious. Cases have been reported of farm workers evicted from farms which they and their families have lived for generations. During the 1st National Land Conference in 1991, a consensus was passed to protect the security of farm workers, however 28 year of independence their conditions remain a challenge. The current legislative frameworks do not cater for the rights, needs or future of the farm worker in cases of change of ownership or when the current farm owner decides to evict them.

9.4 Land Valuation and Taxation

The framework for the valuation and taxation of land in Namibia is marred with both structural and procedural challenges. These challenges negate the objective of correcting past colonial wrongs by redistributing productive land to previously disadvantaged Namibians. The taxation of land, both in commercial and communal areas, ensures that, (i) there is efficient use of land; (2) raising of revenue to fund land reform programmes such as resettlement and (3) reduce poverty by resettling indigenous people on the freed up commercial agricultural land (Republic of Namibia, 2018). However, to be able to impose a just and fair tax on land, the value of land must be determined in the most objective manner based on widely accepted standards and practices. In the absence of internationally accepted standards, there is bound to be conflicts between individuals as well as individuals and the state (Tagliarino, 2017). In addition, the state does not capture much needed revenue to sustainably implement its programmes for the betterment of the country. The following are some of the pressing challenges that Namibia currently faces in terms of land valuation and taxation.

9.4.1 Acquisition of Commercial Agriculture Land

In a bid to redistribute unused or underutilised commercial agricultural land, by law, the Republic of Namibia has the right of first refusal with respect to acquisition of agriculture land. The challenge is that while the majority of economically disadvantaged Namibians have no access to productive land, the government does not have readily available land to redistribute. As earlier stated in the report, 44% of the country is freehold which is sparsely populated. The overwhelming majority of freehold agriculture land is in private ownership. Therefore, the ability for the government to make land available to people that desperately need it, is not entirely in the government's control. Since the commencement of the land acquisition programme in 1990 to date, the Ministry of Land Reform has purchased a total of 549 freehold farms translating into 3.2 mill. hectares through the "willing seller, willing buyer" and expropriation principle (Republic of Namibia, 2018). Another contrast identified and documented is the process of land acquisition. In their report titled, "Livelihoods after land reform" of 2010, Werner and Odendaal asserted that

acquiring land for resettlement takes at least 411 days to complete. Hence, the goal by government to successfully redistribute land to the landless is largely dependent on freeholders selling their land, at the price they deem right, whether that price is exorbitant or not. The bureaucratic nature of the process of acquiring land does not help matters too. In effect, this failure to make land available to the less privileged continues to perpetuate poverty, food insecurity and inequality in the country.

9.4.2 Absentee Agriculture Land Owners and Land Tax

Within commercial areas (freehold land), Namibia has huge swaths of land that are suitable for agricultural and tourism purposes. In order to discourage huge agriculture landowners from underutilising their land, the state has proposed the enactment of a law that would persuade landowners to sell off excess unused land. Numerous reports and research have recommended the introduction of a punitive tax policy to induce owners of unused agricultural land to either pay high land taxes or sell some land. The only challenge here is that, this would contradict other statutes, including the constitution, which guarantees ownership of property for every Namibian. In some part, the willing seller-willing buyer principle will be in contravention of such a tax policy.

9.4.3 Regulation of valuation profession or lack thereof

The main objective of having uniform national valuation standards is to create confidence in the valuation process by those (individuals, businesses and the state) who rely on land/property valuations for raising finance, investments, taxation, compulsory acquisition, expropriation and other financial decisions (IVS, 2012). The main challenge in Namibia is the lack of a functioning regulatory body for property valuation. The implication is two pronged, (i) that there may be a risk that certain financial decisions are made based on valuations that are not correct (over or under valuations) and (ii) increased litigations due to erroneous tax assessments for instance. Point (ii) is very fresh in the Namibian case, were transactions on agriculture properties were halted by the High Court due to an injunction by an aggrieved land owner on the basis of inconsistent valuation rates.

These inconsistencies are present because practitioners carrying out such valuations are neither qualified nor have the requisite experience to do valuations or that valuers may be experienced in undertaking valuations using wrong methodologies. Therefore, without a regulating body to monitor the valuation practice in Namibia, the financial risk to individuals, business and the state will continue.

9.4.4 The Economic Dilemma of Communal Land

Since independence in 1990, the Namibian government has consistently proclaimed the need to reduce poverty and increase production of agriculture enterprises. This lofty goal has been focused largely on communal land where potential for increased primary production has been assumed promising and where approximately 70% of the rural population derive their livelihood (Bank of Namibia, 2012). On the contrary, the law does not permit the transferability of communal land rights, hence communal land rights have minimal economic value and neither can it be used as financial instrument. This is a challenge, as communal land cannot be used as collateral for raising finance with banks except for the state owned agriculture bank known as the Agricultural Bank of Namibia. This widely accepted discourse of commercialisation of communal land has been received with mixed feelings. Certain quarters of the Namibian society are of the opinion that the registration of communal land will ultimately leave rural and poor people in a worse off situation than they are currently while enriching the elites (Subramanian cited in Bruce, 1996).

Another challenge and contentious issue is the sale of communal land despite the fact that there are no transferrable rights other than usufruct rights. A study by Mendelsohn and Nghitevelekwa (2017) revealed that land markets in communal areas are active, diverse and growing. They assert that the illegality of land sales is a consequence of legal prescriptions that are at variance with the realities of a monetised society. However, the caution they offer is that not all members of the rural society have access to monetary income, and therefore whatever is to be done regarding the informal land market, must be done in ways that do not affect the ability of people

especially poor people to access land. This market is fuelled by the need for land for development due to the pressure on land as well as speculative motive by urban dwellers. There is clear evidence of profiteering from land sales by the traditional authorities at the expense of local communities. This is made possible, as the Communal Land Reform Act of 2002 gives authority to chiefs and traditional authorities to control and cancel customary land rights among other provisions.

9.4.5 Valuation and Compensation Policies in Communal Areas

Increase in natural population, the need for infrastructure development and domestic and foreign direct investment have brought communal land into the current land discourse. The proclamation of new local authority areas and expansion of existing one's result in the appropriation of communal land, thus, involving a lot of compensation cases. The major challenge is the approach currently used to determine the value of communal land in cases of expropriation or compulsory acquisition. Research shows that the amount of compensation granted to affected landholders is often insufficient to reconstruct their livelihoods subsequent to expropriation. In Namibia, the amounts as stipulated in the policy are way below market valuation rates. The Compensation Policy Guidelines for Communal Land of 2009 provides for N\$ 600 and N\$ 250 per hectare (USD 42 and 17) for cultivated and uncultivated land respectively. These amounts are not anywhere close to the prevailing market rates for land.

The other challenge is the lack of appropriate methodologies to value communal land. This is because the fundamental pillar of property or land valuations are predicated on the transferability of ownership and informed willing sellers and buyers, which tend not to be present for communal land. Therefore, government valuers tasked to value communal land rely on the conventional methods of valuations to value communal land, thereby grossly under valuing such land/property and creating a precedence for future valuations.

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Appendix A: Land Tenure in Namibia.

Tenure Type	Legal Recognition, registration system, proof and costs	Characteristics and completeness	Enforceability and Dispute Resolution	Overlaps and potential issues
Urban Land				
Private Ownership/ Freehold	<p>Legal recognition: Common Law</p> <p><i>Registration model/system:</i> Deeds Registries Act 47 of 1937; Rehoboth Deeds Registries Act</p> <p><i>Proof:</i> Title Deed.</p> <p><i>Costs:</i> Expensive.</p>	Comprehensive ownership. Perpetual, transferable, can be bequeathed, mortgaged.	Rights can be enforced, and disputes be resolved through either the Magistrate's Court or the High Court of Namibia.	Possible disputes on title. See discussion at the end of Directorate Deeds Registry in 2.1 above.
Sectional title ownership.	<p><i>Legal recognition:</i> Sectional Titles Act 2009.</p> <p><i>Registration model/system:</i> Sectional Titles Act of 2009.</p> <p><i>Costs:</i> Regulated by the Transfer Duty Act, 1993; Stamp Duty Act, 1993 and</p>	Perpetual, transferable, can be used as collateral. Limited by conditions registered against title deed, the relevant act and the resolutions or rules of the specific association.	The Sectional Titles Act prescribes arbitration to enforce rights and to resolve disputes. Appeals to be heard by the civil court system (Magistrate's or High Court).	Possible disputes on title. See discussion at the end of Directorate Deeds Registry poses.

	<p>the Sectional Titles Act, 2009.acquisition of a unit in a scheme.</p> <p><i>Proof:</i> Title deed for the section and an undivided share in the common property.</p>			
Flexible Land Tenure System	<p><i>Legal Recognition:</i> Flexible Land Tenure Act of 2012</p> <p><i>Registration Model/System:</i> Flexible Land Tenure Registration System.</p> <p><i>Costs:</i> Fees are prescribed by regulation 33 of the Flexible Land Tenure Act.</p> <p><i>Proof:</i> Title deed of land on which scheme is established; Certificate issued to each holder of starter title or landhold title right within a scheme.</p>	<p>Co-ownership of land; perpetuity; no joint ownership, unless married in community of property; can be bequeathed, leased and transferred; cannot use it as collateral; limited by the Flexible Land Tenure Act and constitution of association.</p>	<p>The Flexible Land Tenure Act; Procedures for dispute resolution can be prescribed by an associations' rules; Magistrate's Court or High Court of Namibia.</p>	<p>Cumbersome process; Controlling who has rights to land elsewhere in Namibia. Relocation of starter title holders who do not agree to upgrading to land hold title. Provision is not made for compensation.</p>

State Land	<p><i>Legal recognition:</i> Article 100 and Schedule 5 of the Namibian Constitution; common law.</p> <p><i>Registration Model/System:</i> Deeds Registries Act 47 of 1937 (when applicable)</p> <p><i>Proof:</i> Title deed for all surveyed land</p>	When surveyed and a title deed exists, rights/land can be transferred and mortgaged.	Rights can be enforced and disputes be resolved through the civil court system (magistrate's court or High Court of Namibia).	
Rural Land				
Private Ownership/ Freehold	<p><i>Legal recognition:</i> Common Law; Article 16 of the Namibian Constitution; Section 58 Agricultural (Commercial) Land Reform Act of 1995.</p> <p><i>Registration Mode/System:</i> Deeds Registries Act 47 of 1937.</p> <p><i>Costs:</i> Costs are prescribed by the Deeds Registries Act</p>	Can be acquired on commercial farmland. In general no limitation on the use of the land; can be transferred and bequeathed, subject to the conditions of the Agricultural (Commercial) Land Reform Act; the Subdivision of Agricultural Land Act; can be used as a collateral for a mortgage.	Enforcement of rights and resolution of disputes takes place through the civil court system.	Possible disputes on title. See discussion at the end of Directorate Deeds Registries Act

	<p>47 of 1937 Regulations, Transfer Duty Act and the Stamp Duties Act.</p> <p><i>Proof:</i> Title Deed.</p>			
Leasehold:	<p>Legal recognition: common law; Agricultural (Commercial) Land Reform Act, 1995; Communal Land Reform Act, 2002.</p> <p>Registration Mode/System: Leaseholds longer than 10 years on a surveyed parcel of land- Deeds Registries Act 47 of 1937; otherwise leasehold under the Communal Land Reform Act 5 of 2002 if it is not on surveyed land - communal land registration..</p> <p><i>Costs:</i> Costs prescribed by the Communal Land Reform Act of 2002 (if</p>	<p>Leasehold is a limited right. Limitations are prescribed either by the owner or relevant legislation in terms of duration, use, transferability and commercial transactions.</p>	<p>Disputes under the Agricultural (Commercial) Land Reform Act would be heard by the Lands Tribunal. Appeals will be heard by the High or Supreme courts of Namibia.</p> <p>Communal land: Disputes attended to by the Traditional Authority or a Communal land board; appeals by a tribunal appointed by the Minister of Land Reform.</p>	<p>Overlapping rights; double allocation of leaseholds to the same land.</p>

	<p>applicable); Regulations to the Deeds Registries Act of 1937, the Transfer Duty Act and the Stamp Duty Act (if applicable).</p> <p><i>Proof:</i> Registered deed if registered in the deeds office; otherwise a certificate issued by the CLB proving a leasehold in terms of the Communal Land Reform Act, 2002.</p>			
Customary Tenure	<p>Legal recognition: Article 66 of the Namibian Constitution; Communal Land Reform Act 5 of 2002.</p> <p>Registration Mode/System: Communal Land Reform Act 5 of 2002.</p> <p>Costs: Minimal costs prescribed by the Communal Land Reform Act Regulations.</p>	Granted for life; restrictions on sale; can be bequeathed.	Traditional Authorities Act 25 of 2000 provides for the Traditional Authority to attend to disputes.	Development of townships encroaching on communal land. Customary tenure holders are not compensated for the use of rights (Shinana,2018). See also the discussion on Traditional Authorities under Section 2.4 above.

	Proof: Certificate issued by Communal Land Board.			
Group Tenure	<p>Legal recognition: Article 100 and Schedule 5 of the Namibian Constitution; Communal Land Reform Act 5 of 2005; Nature Conservation Amendment Act 5 of 1996.</p> <p>Registration Mode/ System: None.</p> <p>Costs: Not prescribed.</p> <p><i>Proof:</i> No proof for grazing on commonage; Government Gazette publication of conservancy; Constitution of conservancy.</p>	Tenure is granted on communal land; Tenure is granted to the use of resources only; Resources to be used by a specific group or community.	Traditional Authorities Act 25 of 2000, provides for the hearing of disputes between community members by the Traditional Authority. Further dispute procedures might be prescribed by the constitution of a conservancy.	Leaseholds can have a negative influence on grazing rights on commonages. See the discussion u earlier in this section.
Occupational Land Rights	Legal recognition: Communal Land Reform Amendment Act 13 of 2013.	Granted for any period for public services like schools and hospitals which should benefit the	Disputes to be heard by an arbitrator appointed by the Minister of Land reform. Appeals to be	Interference with the rights of community.

	<p>Registration Mode/ System: Un-surveyed and/or shorter than 10 years: Registration with Communal Land Board; Surveyed and longer than 10 years- Deeds Registration Act 47 of 1937.</p> <p>Costs: Issuing of certificate prescribed the Regulations to the Communal Land Reform Act, 2002.</p> <p><i>Proof:</i> Registered with the CLB- certificate of an occupational land right; If registered in the deeds office, a registered occupational land right.</p>	<p>community. No prohibition on mortgaging or transfers.</p>	<p>heard by the lands tribunal/ the High Court of Namibia.</p>	
State Land	<p><i>Legal recognition:</i> Common Law; Article 100 and Schedule 5 of the Namibian Constitution</p>	<p>When surveyed and a title deed exists, rights/land can be transferred and mortgaged.</p>	<p>Rights can be enforced, and disputes be resolved through the civil court system (Magistrate's</p>	

	<p><i>Registration Model/System:</i> Deeds Registries Act 47 of 1937 (when applicable)</p> <p><i>Proof:</i> Title deed for all surveyed land.</p>		<p>Court and the High Court of Namibia).</p>	
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Sources: Deeds Registries Act, 1937, Sectional Titles Act, 2009; Communal Land Reform Act of 2002; Agricultural (Commercial) Land Reform Act; Flexible Land Tenure Act, 2012; The Traditional Authorities Act 25 of 2000; The Constitution of Namibia, 2010; Werner 2015, p 30-35; Werner, 2007, p 31; Shinana, 2018; Haring and Odendaal, 2007, p 25.



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