

**A CRITICAL REFLECTION ON THE FORMALISATION OF COMMUNAL  
LAND RIGHTS IN NAMIBIA:  
WHY LOCAL CONTEXTS MATTER FOR BRIDGING THE DICHOTOMIES  
OF TENURE RIGHTS**

by

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*Dissertation presented for the degree of  
Doctor of Philosophy in the  
Faculty of Arts and Social Sciences at  
Stellenbosch University*

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December 2018

## **DECLARATION**

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## SUMMARY

Struggles over access to, and control of, land have a long history in Sub-Saharan Africa. Since precolonial times, land has material and symbolic significance, with rights to land having been exchanged, negotiated and fought over in the course of political, demographic and economic change. Based on the belief that access to land and the registration thereof leads to prosperity, land reforms have gained prominence on national and international development agendas in recent decades. It is estimated that more than 428 million rural poor depend on access to customary land in Sub-Saharan Africa. Secure property rights, economists and policymakers hope, will increase access to credits and allow reinvestment and upkeep of resources. Several international conventions and declarations underscore the importance of land rights for sustainable rural and urban development.

Similarly in Namibia, the Government's rationale behind securing tenure in communal areas is to encourage investment in land, thus increasing agricultural productivity and ultimately reduce poverty through improved income and access to credit. After Namibia gained independence in 1990, a comprehensive land reform programme was initiated which also focussed on the formalisation of communal land rights. The Communal Land Reform Act (Act No. 5 of 2002) (CLRA) creates the specific legal framework regarding communal land. The CLRA aims to improve the sustainable allocation, development and management of natural resources in communal areas.

Yet there is hesitance from communal farmers in some regions of Namibia to register their land parcels, whilst others have adopted this process without contestation. Land has always played a very significant role in the livelihoods and identities of especially Namibia's rural inhabitants. Within culturally different landscapes, there will be differences in the ways people identify with, manage and use their land. Attempts to replace customary law with statutory law have proven to be expensive and divisive in many countries.

Land reform programmes and research on land rights are still based on two typical 'schools of thought' - one that argues for land policies to be rooted in theories of social capital, and the other that individualised tenure systems are more desirable. Being able to gain an insight into how rural populations regard the formalisation of their tenure is an important step towards challenging the way tenure security is understood through various ideologies of property ownership. Gathering more comprehensive information on land rights and uses of land is important to be able to contribute towards debates about land governance.

In the context of the above discussion, this research was carried out in Namibia to gain a better understanding of how the ultimate beneficiaries of communal land rights registration, the farmers living on communal land, use their land. This has an impact on how they understand tenure security and what their needs are regarding forms of ownership.

The dissertation will concentrate on findings based on research conducted in selected case study villages in four regions of Namibia. The case study villages are located in the Kavango East, Omusati, Hardap and Otjozondjupa regions, thereby enabling a comparative analysis of the formalisation of land rights within different cultural and geographical contexts. By using such a comparative analysis, the impacts of formalising communal land rights can be better understood, since land use and the significance people attribute to land for their livelihoods can vary greatly.

As will be illustrated in the Namibian case, rural livelihood strategies and their relationships to land are diverse. It is argued that even though there are several commonalities between communal areas in Namibia, there are also significant differences in land uses and the role that land plays for livelihoods. Therefore, the formalisation of land rights, as is currently being pursued in Namibia, is unable to address all these different needs. Thus, a singular ‘one size fits all’ approach to formalising land is not feasible. Providing tenure security is undoubtedly important, as it does secure access and use of land. However, the current approach does not support the multiple communal land uses and needs within a broader territory.

By looking at a specific area through the lens of a territory, one is also not merely inhibited by looking at the borders around the land, as these do not always consider the multiple functions of the space or area. By doing this, researchers and policy-makers alike will gain a better insight into the pluriactivities of local production systems and the multifunctionalities of land uses, expressed in both the management of and the various production systems on the land. This in turn influences their land tenure needs, if using the typology as represented by the ‘continuum of land rights’. Therefore, this research adds a further dimension to the concept of the continuum of land rights, by linking this to factors of production and farm management styles; highlighting how important different land uses are to determine tenure needs. Such research can thus lead to a better understanding of the policy requirements needed to enable land reform programmes to better contribute towards poverty reduction and economic development in Africa.

## **KEY WORDS**

Namibia, communal land rights, tenure security, land reform, territorial development, production orientation, management styles, continuum of land rights

## OPSOMMING

Stryd oor toegang tot, asook beheer oor, grond het 'n lang geskiedenis in Sub-Sahara Afrika. Reeds vanaf die voor-koloniale tydperk het Afrikane baie waarde, beide materieel en simbolies, aan die belangrikheid van grond geheg. Regte tot grond is verruil, onderhandel en het selfs gelei tot gevegte in periodes van politiese, religieuse, asook demografiese en ekonomiese veranderinge. Gebaseer op die feit dat geglo is dat toegang tot grond, asook die registrasie daarvan, tot voorspoed sou lei, het grondhervorming toenemend meer prominent geword op die agendas van nasionale en internasionale ontwikkelingsorganisasies in onlangse dekades. Daar word voorts geskat dat meer as 428 miljoen plattelandse behoeftige mense afhanklik is van toegang tot tradisionele grond in Sub-Sahara Afrika. Verskeie internasionale konvensies en verklarings onderstreep die belangrikheid van grondregte en grondbestuur vir volhoubare rurale en stedelike ontwikkeling.

Insgelyks in Namibië, is die rasionaal van die regering om deur die sekuriteit van verblyfsreg in kommunale gebiede belegging in grond aan te moedig. Gevolglik is die denke dat landbouproduktiwiteit dus gestimuleer word, wat groei tot gevolg sal hê en uiteindelik sal lei tot die vermindering van armoede deur vergrote inkomste en toegang tot krediet. Nadat Namibië in 1990 onafhanklikheid verkry het, is 'n omvattende grondhervormingsprogram geïnisieer wat ook gefokus is op die formalisering van kommunale grondregte. Die Kommunale Grondhervormingswet (Wet Nr. 5 van 2002) skep die spesifieke wetlike raamwerk met betrekking tot kommunale grond. Die wet het ten doel om volhoubare toekenning van grond, ontwikkeling en bestuur van natuurlike hulpbronne in kommunale gebiede te stimuleer.

Tog is daar 'n huiwering by kommunale boere in sommige streke in Namibië om hulle grond te registreer, terwyl ander die proses sonder teenstand aanvaar het. Grond het nog altyd 'n baie belangrike rol gespeel in die lewensonderhoud en identiteit van veral Namibië se rurale bewoners. In kultureel diverse landskappe, sal daar verskille wees in die wyses waarop mense identifiseer met hulle grond asook die manier waarop die grond bestuur en benut word.

Grondhervormingsprogramme en navorsing oor grondregte word steeds gebaseer op twee tipiese denkrigtings – een rigting is ten gunste daarvan dat grondbeleid gebaseer moet wees op die teorieë van sosiale kapitaal, en die ander dat geïndividualiseerde verblyfsregstelsels meer wenslik is. Om in staat te wees om insig te kry in hoe die rurale bevolking die formalisering van hulle verblyfsreg beskou, is 'n belangrike stap om die manier te bevraagteken waarop verblyfsreg en sekuriteit verstaan word deur verskillende ideologieë oor eienaarskap van eiendom.

In die lig van die voorafgaande diskussie, is ondersoek in Namibië uitgevoer om 'n beter begrip te verkry van hoe die uiteindelijke begunstigdes van kommunale grondregregistrasie, die boere wat

op kommunale grond woon, hulle grond benut. Dit het 'n impak op hoe hulle verblyfsreg beskou en wat hulle behoeftes met betrekking tot verskillende vorme van eienaarskap is.

Die tesis sal fokus op bevindinge gebaseer op ondersoek wat gedoen is in selektiewe gevallestudies wat in vier streke van Namibië uitgevoer is. Die gevallestudies is gedoen in dorpie in die Kavango Oos, Omusati, Hardap en Otjozondjupa streke, wat 'n vergelykende analise van die formalisering van grondregte in onderskeie kulturele en geografiese kontekste moontlik gemaak het. Deur gebruik te maak van so 'n vergelykende analise, kan die impak van die formalisering van kommunale grondregte beter begryp word, omdat grondbenutting en die waarde wat mense aan grond heg vir hulle lewensonderhoud baie kan varieer.

Soos aangetoon sal word in die geval van Namibië is die strategieë om in lewensonderhoud te voorsien en die verhoudinge tot grond baie divers. Daar word geargumenteer dat selfs al is daar heelwat ooreenkomste tussen kommunale gebiede in Namibië, daar ook beduidende verskille in die gebruik van grond is en die rol wat grond speel in lewensonderhoud. Daarom is die formalisering van grondregte, soos tans in Namibië nagestreef word, onvoldoende om die diverse behoeftes aan te spreek. Die voorsiening van verblyfsregsekuriteit is ongetwyfeld belangrik, maar die huidige benadering ondersteun egter nie die veelvoudige benutting van grond en die behoeftes binne 'n groter gebied.

Deur na 'n bepaalde area deur 'n wyer territoriale bril te kyk, word mens nie beperk tot die grense van die gebied nie, aangesien sulke grense nie die veelvoudige funksies van die lewensruimte of area in ag neem nie. Deur hierdie breër insig sal beide navorsers en beleidsmakers 'n beter insig kry in die meervoudige aktiwiteite van lokale produksiesisteme en die multifunksionaliteit van grondbenutting. Dit, op sy beurt, beïnvloed die behoefte aan grondverblyfsreg, en die tipologie wat verteenwoordig word deur die 'kontinuum van grondregte'. Daarom dra hierdie navorsing by tot 'n verdere dimensie in die konsep van die kontinuum van grondregte, deur dit te koppel aan faktore soos produksie en boerderybestuurspraktyke; en deur te beklemtoon hoe belangrik diverse grondgebruik is in die behoefte aan verblyfsreg. Sodanige navorsing kan dus lei tot 'n beter begrip van die vereistes om beleid te bepaal om 'n meer sinvolle bydrae te lewer tot ekonomiese ontwikkeling en die vermindering van armoede.

## **TREFWOORDE**

Namibië, kommunale grondregte, verblyfsregsekuriteit, grondhervorming, territoriale ontwikkeling, produksie-oriëntering, bestuurstyle, kontinuum van grondregte

## ACKNOWLEDGEMENTS

I would like to dedicate this dissertation to my grandfather Goswin Matthaei, lovingly known and remembered as Grappi. Unfortunately he is no longer here to give all his opinions on this dissertation- as he would have surely had many things to say. Grappi was a visionary, always thinking of innovative ways to make the world around him a better place (and sharing them far and wide for all who wanted to listen). He is so very missed, but his legacy lives on in every tree he planted along the highways in the Western Cape and beyond. Grappi sadly passed away midway through one of the field trips for this research, but it makes me smile knowing how much it meant to him that one of his grandchildren was pursuing a PhD. Das ist für dich Grappi!

First of all I would like to thank my supervisor, Prof. Ronnie Donaldson for his support (and endless patience) during these years of my PhD. What was supposed to be a three year research project ended up taking (quite) a bit longer, and I thank Ronnie for his continued support even though I was mostly on a different continent throughout the whole duration of writing this dissertation. Supervising me could not have been an easy task!

A huge thank you goes out to my research assistants/translators, without whom I would have never been able to conduct my fieldwork. Theodor Muduva, your limitless insights into land in the Kavango astounded me (nearly as much as your endless list of relatives up North). Thank you for what was the most memorable 2 weeks of research in the Kavango- even the many hours under the tree on the first day at Shipando village. Panduleni Hailundu, you brought such a refreshing dimension to the fieldwork in Omusati and I very much appreciated your different views and insights into land issues in the O-Regions. Then dear Nancy Gamathan, you were a ray of sunshine and joy to work with during the time in Hardap. I will not forget our long conversations on Nama and Damara traditions (and weddings) during the long hours in the car to Kries every day. You showed me a whole different side to the South. Last but not least, dearest Kaveri Zatzirua- thank you for taking such good care of me during what was not always an easy field trip. Your humour and laughter lightened the mood after difficult days of conducting interviews and some tricky off-road driving. I felt like a friend in your home.

To the residents of Shipando, Omahalya, Kries and Okamatapati. You are inspiring in so many ways. Thank you for inviting this stranger from Windhoek into your homes, trusting me with your stories and the genuine kindness you showed me.

My sincere gratitude also goes to the Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, for their unconditional support during my studies. Not many organisations are willing to support full-time employees for embarking on long-term studies. The GIZ supported me both

financially, by enabling me to conduct my fieldwork, and by allowing me some weeks off during the field trips. Most of all, my gratitude goes out to all my wonderful colleagues and especially my former boss and mentor during my time at the GIZ in Namibia, Martina Roemer, and my current boss in the GIZ headquarters in Germany, Dr. Helmut Albert. Working for a large international development organisation and a busy travel schedule whilst trying to finish a dissertation was not always easy, but it allowed me a different- and maybe at times more balanced or practical- perspective on land governance.

This research was partially funded through a generous scholarship from the Canon Collins Educational and Legal Assistance Trust (CCELAT) in 2015. I would specifically like to thank Victoria Reed and all her colleagues for the constant support throughout the scholarship, the regular alumni updates and especially the incredibly inspiring CCELAT conference in Cape Town in July 2015.

I would also like to thank the Oead (Austrian Agency for International Cooperation in Education and Research) for awarding me the Ernst Mach Grant for short-term study in Austria for the 2<sup>nd</sup> half of 2015. Through this grant, I was able to spend an insightful 4 months as a visiting PhD at the Institute for African Studies, University of Vienna. Thank you to Univ.-Prof. Dr. Kirsten Rütter for her wonderfully kind and generous supervision during my short stay at the Institute. Taking some time off work to delve a bit deeper into academia during 2015 was not always easy for me, and her gentle supervision and support was incredible.

During my time with the GIZ in Namibia, and again after starting at headquarters in Frankfurt, I had the incredible privilege to meet with Dr. Steven Lawry on several occasions and have in-depth discussions with him. Thanks to his inputs and guidance, and at times mentoring, I was able to broaden my theoretical knowledge on land governance. His inputs and suggestions have been invaluable to this work and to my personal understanding of what it means to work on land reform.

Most of all, I want to thank my family, who have been the steadfast rock I needed during these last few years. I honestly do not know how to express my gratitude for all you have done for me and how much you mean to me. You have supported me from day one; throughout my time in Namibia and my field trips, my short stays in South Africa and Austria, the unsure waters after 2015 and then the move to Germany 2 years ago. You have encouraged me when I did not have the time or energy to invest in my PhD, motivated me not to give up just yet and stood proudly behind me with every step I took (backwards and forwards). Your prayers, skypes, WhatsApps, emails and visits have been invaluable for my mental wellbeing (and saneness). Papa, words cannot describe how much you have done to get this PhD off the ground and looking good on paper. Danke für alles Papa, ohne dich hätte ich es nie geschafft! Mama, for being the language fairy you are, in

addition to a strong shoulder to lean (and complain) on. Irma & Cobus, and Peter & Manda- for your words, jokes, glasses of wine (and craft beer), good food and making me realise how lucky I am to have such inspiring siblings to look up to. To the next generation- Michi, Aidan, Julia and Louis- I love you so much and your pictures, photos and videos constantly surround me and make me smile every day.

This work has been presented at the following events:

Matthaei, E. 2018. Linking the continuum of land rights with agricultural aspects of production orientation and management styles. World Bank Conference on Land and Poverty, March 2018. Washington DC: USA.

Matthaei, E. 2016. Secured, but still poor: A comparative analysis of the formalisation of communal land in Namibia. Research Workshop: Communal Land Matters, January 2016. Namibia University of Science and Technology. Windhoek: Namibia.

Matthaei, E. 2015. A comparative study on the formalisation of land rights in Namibia: Lessons learnt for national land policy and the post-2015 SDGs. Africa Colloquium, October 2015. University of Basel: Switzerland.

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## ACRONYMS AND ABBREVIATIONS

AALS	Affirmative Action Loan Scheme
AfDB	African Development Bank
AU	African Union
CFS	Committee on World Food Security
CIRAD	Centre de coopération internationale en recherche agronomique pour le développement
CLB	Communal Land Board
CLR	Communal Land Right
CLRA	Communal Land Reform Act, Act 5 of 2002
CLRC	Communal Land Rights Certificate
CLRR	Communal Land Rights Registration
CLS	Communal Land Support
EC	European Commission
EESC	European Economic and Social Commission
EPA	Economic Partnership Agreement
EU	European Union
FAO	Food and Agricultural Organization of the United Nations
FDI	Foreign Direct Investment
FFP	Fit-For-Purpose Land Administration
FIG	International Federation of Surveyors
FSP	Farmers' Support Project
GDP	Gross Domestic Product
GDPRD	Global Donor Platform for Rural Development
GDWGL	Global Donor Working Group on Land
GIS	Geographic Information System
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
GLTN	Global Land Tool Network
GPS	Global Positioning System
GRN	Government of the Republic of Namibia
HDI	Human Development Index
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development
ILC	International Land Coalition
IMF	International Monetary Fund
IT	Information Technologies
KfW	Kreditanstalt für Wiederaufbau
LAC	Legal Assistance Centre
LGAF	Land Governance Assessment Framework
MAWF	Ministry of Agriculture, Water and Forestry
MCA-N	Millennium Challenge Account Namibia
MCC	Millennium Challenge Corporation
MDG	Millennium Development Goal
Meatco	Meat Corporation of Namibia
MET	Ministry of Environment and Tourism

MLR	Ministry of Land Reform (formerly Ministry of Lands and Resettlement)
MLRR	Ministry of Lands, Resettlement and Rehabilitation (first name of current MLR)
MRLGHRD	Ministry of Regional and Local Government, Housing and Rural Development
MURD	Ministry of Urban and Regional Development
NAD	Namibian Dollar
NAU	Namibia Agricultural Union
NCLAS	Namibian Communal Land Administration System
NECFU	Namibia Emerging Commercial Farmers' Union
NGO	Non-Governmental Organisation
NNFU	Namibian National Farmers Union
NPC	National Planning Commission
NSA	Namibia Statistics Agency
OECD	Organisation for Economic Co-operation and Development
RPRP	Rural Poverty Reduction Programme
SDGs	Sustainable Development Goals
SIDA	Swedish International Development Cooperation Agency
SLR	Support to Land Reform (GIZ programme)
SSFC	Small Scale Commercial Farms (Development Programme)
SWAPO	South West Africa People's Organisation
TA	Traditional Authority
TIPEEG	Targeted Intervention Programme for Employment and Economic Growth
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
USAID	United States Agency for International Development
USD	United States Dollar
VCF	Veterinary Cordon Fence
VDC	Village Development Committee
VGGT	Voluntary Guidelines on Responsible Governance of Tenure
WB	World Bank
WPC	Water Point Committee

## CHAPTER 1 INTRODUCTION

*“In many projects aimed at implementing land reform, one important level of decision-makers is often neglected. This level is the lowest decision making level; that of the individual farmer.”*

(Dekker 2005: 227)

### 1.1 BACKGROUND

The struggles over access to and control of land in Sub-Saharan Africa has a long history (Kameri-Mbote 2013; Peters 2009; Moyo 2008; Cotula 2007; Hammond, Antwi and Proverbs 2006; Dekker 2005; Peters 2004; Mafeje 2003; Berry 2002; Greenberg 2002). Land was one of the main points of contention during the colonisation of Africa- both for the colonial regimes and their African subjects- as a means of control and authority (Berry 2002). As economic opportunities and new patterns of production and trade arose, the colonialists and the local populations struggled over the allocation and use of land and land-based resources (Kameri-Mbote 2013). In many countries in Africa, colonial administrations enforced land policies which inherently seized all so-called ‘vacant’ lands and vested the property rights thereof in the government to be redistributed to the advantage of the Europeans. Simultaneously, Europeans were dependent on African labour and could thus not alienate them by taking full ownership and control of their land (Amanor 2012; Hammond et al. 2006).

Between the 1930s and late 1950s, colonial economic policies shifted their focus from the extraction of natural resources, to creating regulations on how Africans should use resources (Bassett and Crummey 1993; Chanok 1991a). Especially after the Second World War, with renewed funds channelled into Africa, officials attempted to modernise African agriculture with the hope that Africans would “rapidly evolve into modern commercial farmers” (Berry 2002: 647). It was specifically during this period that colonial regimes started to reimagine the idea of ‘native lands’, whereby individual farmers were assigned specific plots of land through specifically created ‘schemes’. This resulted in a new division being created which shifted from classifications of ‘non-natives’ and ‘natives’, to the idea of ‘progressive’ and ‘traditional’ African farmers, whereby the registration of property defined the ‘progressive’ African farmer (Berry 2002; Bassett and Crummey 1993).

Colonial administrators across the continent attempted to create ‘one-size-fits-all’ categories for governing ‘tribal’ lands, basing their understanding of ‘custom’ on timeless and static models. Thereby, colonialists failed to understand the changing and diverse nature of so-called ‘customs’

and enforced and nurtured distorted notions of customary tenure (Berry 2002; Chanock 1991b; Cheater 1990).

After African countries had gained independence, most countries continued the legacy of colonial land policies by implementing individual titling programmes. This can be attributed to what Stead (2017) calls the “ideology of landownership” which had by then already become institutionalised in the newly formed independent governments as a major impetus for development. Berry states that despite Africa's new rulers repudiation of the colonial legacy, “they enthusiastically embraced the late-colonial project of managed development” (2002: 648). In the 1980s and 1990s, neo-liberal economic policy reforms were implemented to liberalise markets, specifically also in the land and agrarian markets (Moyo 2008). Amanor (2012) thus argues that post-independence land titling programmes have continued to marginalise the poor and undermine the informal rights to land for the rural poor by transferring customary management of land to those with economic and political powers. In Africa, as in many other countries worldwide, struggles for and pressure on land have increased in the last three decades as a result of population growth, intensification over commodities such as minerals and water, the expansion of conservation areas and the need for rural households to produce more food and cash crops (Matthaei 2016; Moyo 2008; Cotula 2007; Cotula 2006; Dekker 2005).

After Namibia gained independence in 1990, a comprehensive land reform process was initiated through a lengthy public consultation process, which culminated in the National Land Reform Conference held in 1991. Through the land reform programme, the Government of Namibia aimed at redistributing land from the commercial agricultural sector to landless Namibians and those with marginal access to land. The reform was seen as the precondition for social and economic development (Dienst 2011). The National Land Reform Conference held in 1991, ignited the process of developing and implementing all current land policies through the various land reform programmes (Adams and Devitt 1991).

The National Land Policy (NLP) of 1998, which resulted from the Land Conference, lays the foundation for land ownership and reform in Namibia. The NLP forms the basis for a unitary land system with the aim of providing equal rights, opportunities and tenure security to Namibian citizens across a range of tenure systems, irrespective of whether the land is located in a communal or commercial area (Ministry of Lands, Resettlement and Rehabilitation 1998). The NLP continues to outline basic principles for both urban and rural land in Namibia; with a strong emphasis on the protection of the rights of the poor and women, the sustainable use of the natural resources and the transparent and accountable administration of land rights (*ibid.*).

Since the Land Conference in 1991, the land tenure structure in Namibia is as follows:

- *Communal land* is envisaged for the use of Namibian citizens but owned by the state. Communal land accounts for approximately 41% of Namibia's surface (Werner and Odendaal 2010), with most communal land located in the more fertile northern parts of the country. Estimates indicate that 70% of Namibia's population is dependent on access to communal land for their livelihoods (Ministry of Lands and Resettlement 2010).
- *Freehold tenure* up to now mostly includes commercial farms on agricultural land and covers nearly 44% of the country's surface (*ibid.*).

It however took the government more than a decade to initiate action to provide greater tenure security to citizens in communal areas. The Communal Land Reform Act (Act No. 5 of 2002) (CLRA) creates the specific legal framework to enact and implement the provisions of the NLP regarding communal land. According to article 100 of the Constitution of the Republic of Namibia, all land is vested in the state, i.e. the state has rights over communal land to administer it in trust for the community. The CLRA aims at reducing conflicts which result from land grabbing and improve the sustainable allocation, development and management of natural resources in communal areas. The Ministry of Land Reform (MLR)<sup>1</sup> is the responsible government institution for the enactment and implementation of the CLRA. The MLR's mandate is to "ensure that Namibia's land resource is equitably allocated, efficiently managed, administered and sustainably used for the benefit of all Namibians" (Ministry of Lands and Resettlement 2013: 7).

Since the commencement of the Communal Land Rights Registration (CLRR) process in 2003; over 73,000 communal land titles have already been registered, (thereof 41% have women as beneficiaries) out of an estimated total of 245,000 communal land parcels that are envisaged to be registered<sup>2</sup>.

## 1.2 PROBLEM STATEMENT

Estimates indicate that three out of every four poor people in the global south live in rural areas and are dependent on agriculture for their livelihoods (Graham et al. 2010). Despite high rates of urbanisation, most of Africa's population live in rural areas and are reliant on smallholder and subsistence agriculture, and it is predicted that the number of rural poor in Sub-Saharan Africa will rise in the coming years (Beegle et al. 2016; Nwanze 2016). It is estimated that more than 428 million rural poor depend on access to customary land in Sub-Saharan Africa (Alden Wily 2012a). The main evidence of 'ownership' under customary tenure is the active occupation and usage of a respective land parcel (UN-Habitat 2003: 2).

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<sup>1</sup> Formerly known as the Ministry of Lands and Resettlement (name changed in 2015)

<sup>2</sup> This data is based on information at the beginning of March 2014.

Since most African economies are highly dependent on agriculture and the sector employs approximately 65 percent of the active population, land is considered as the most important resource for overcoming poverty (United Nations Economic Commission for Africa 2016). Fair access to land and sustainable resource use is thus seen to be the basis for improved livelihoods in agricultural societies (Dienst 2011). Tenure security is often referred to as a prerequisite in solving ecological, social and economic problems (United Nations Economic Commission for Africa 2016; International Land Coalition 2015; World Bank 2015; Magel 2014; UN-Habitat and Global Land Tool Network GLTN 2008; Deininger 2003).

Historical political processes have significantly shaped African land policies and understandings of land tenure and forms of ownership. Land tenure is the system of rights and institutions that governs the access to and use of land. Institutions and mechanisms to administer land, its property rights and rights of land use exist in most societies. It can be further defined as the terms and conditions under which land is held, used and transacted (Dienst 2011; Adams, Kalabamu and White 2003). As a result of these historical processes, the land rights situation in Africa is largely defined through the dichotomy between customary land tenure systems and statutory laws, which are based on western legal models and ideologies (Tarimo 2014). A unique feature of colonialism was that customary land was redefined through superimposed statutory and private values. Thereby a new dimensions of land ownership structures through land titling and management and the rights and responsibilities related to land were introduced (Moyo 2008). Chimhowu and Woodhouse (2006) argue that current debates about tenure reform in Africa echo discussions around tenure during the colonial period; arguing for customary land rights to be replaced by transferable individualised forms of tenure or strengthening non-transferable land ownership under the control of traditional authorities.

The two dominant ideologies existing in land reform debates today are based on ideologies of capitalism (Dekker 2005). Most economists tend to either support forms of tenure where farmers own the land they cultivate, or they support more shared tenancies where land is seen as a communal resource. This lack of consensus partly stems from ideological differences and the complexities that exist around land tenure (Currie 1981). Thus tension exists between land tenure strategies that aim to be 'pro-poor' and ones that are concerned with enhancing productivity. Hernando de Soto's (2000) influential book "The Mystery of Capital" has re-invigorated support for individual titling programmes, arguing that by formalising rights to land and other property, the poor can take full advantage of capitalism. Even though international development organisations such as the World Bank emphasise the registration of customary land, they regard this as a first step in a process to introduce individualised property rights with formal titles and

physically demarcated boundaries (Currie 1981). The current global understanding of ‘land reform’, of which the registration of land rights forms an important component, is embedded in the capitalistic tendencies that have emerged in the agriculture sector since the 1950s. Thus most land reform approaches in less developed countries are still based on the perceived need for economic development and planning (United Nations Economic Commission for Africa 2016; World Bank 2015; Magel 2014; Deininger 2003).

Secure property rights, economists and policymakers hope, will increase access to credits and allow reinvestment and upkeep of resources (Sompolvorachai 2004). Several World Bank studies over the last two decades have been undertaken worldwide to prove this correlation between formal land titling and investment (e.g. see Ali, Deininger and Duponchel 2016; Ali, Deininger and Kemper 2015; Binswanger-Mhkize et al. 2009; Deininger and Feder 2009; Deininger and Jin 2007). Hence, securing land ownership through land titling is seen by many as a fundamental cornerstone for poverty reduction and economic growth in rural areas (Ali et al. 2016; United Nations Economic Commission for Africa 2016; International Land Coalition 2015; World Bank 2015; Deininger and Jin 2006).

Similarly in Namibia, the Government’s rationale behind securing tenure in communal areas is to encourage investment in land, thereby increasing agricultural productivity and contributing towards poverty reduction through improved income and access to credit. In addition, CLRR aims to reduce land use conflicts in communal areas and improve the country’s cadastral system. Thus the main rationale behind CLRR in Namibia fits in with debates on mainstream economic theory, where it is assumed that by partitioning communal areas into private plots with secure land titles, land rights holders will be induced to invest more into their land, as they are expected to reap the fruits from their investment. More secure land tenure is thus seen to lead to agricultural intensification and increase overall output (Ali et al. 2016; United Nations Economic Commission for Africa 2016; International Land Coalition 2015; World Bank 2015; Deininger and Jin 2006).

During the last three decades several land reform programmes have been implemented in Sub-Saharan African countries which focus on land titling on customary land. However, many critics caution that land reform policies can be misused as a means to rent seeking and commodification and point out that privatisation of land, which includes titling of individual parcels of land, can have severely negative consequences (Peters 2004; Sender and Johnson 2004). Instead of leading to increased production and equality, privatisation of land can increase inequality and reduce overall production. In some African cases, no positive effect on investments in land could be shown as a consequence of privatisation (Brasselle, Gaspart and Platteau 2002).

The CLRR process in Namibia is progressing at a very slow rate. This can only partly be attributed to lack of capacity on the side of the MLR and regional offices, e.g. through understaffing and lack of technical knowledge and skills. A study by Mendelsohn (2008) shows that there is considerable hesitance on the side of the Namibian population to register communal land. Through research with Traditional Authorities (TA), he concluded that “people do not feel that secured communal land rights serve the intention of being a safety net for the poor” (Mendelsohn 2008: 7).

Furthermore, attempts to replace customary law with statutory law have proven to be expensive and divisive. Across rural Africa, it is a struggle to properly implement land legislation, and most resource users continue to gain access to land on the basis of local land tenure systems. In recent years, it is increasingly being recognised that land policies and laws must build on local practice, instead of replacing “customary” with “modern” tenure systems. However, this does not mean that a romanticised or idealistic view of local practices is reinforced. Local processes do not take place in a vacuum, however people will negotiate local processes so that they are adapted to their new conditions. It merely means that this shift in policy thinking requires a better understanding of what is happening to land tenure systems on the ground (Cotula 2007).

Polarised debates in academia and practice continue about “what kinds of land rights should be secured, by what means, and for whom” (Chimhowu and Woodhouse 2006: 362). Neither individual titling nor the ratification of systems of ‘customary’ land rights are considered to be feasible solutions for comprehensive land reform policies that aim to address rural poverty and promote agricultural development. Therefore it is clear there is a strong need for evidence-based research on the impacts of titling programmes, so as to engage policymakers with empirical realities of customary land rights and land reform programmes. There is a need to understand and recognise how land is socially constructed, used and valued- thereby acknowledging the multiple purposes of land (Davy 2014). Thus land policies should be developed that are flexible, take into account different uses, geographical variations and societal needs of land (Enemark, McLaren and Lemmen, 2015).

Land and agrarian questions in Africa are rooted in specific historical tendencies and contemporary expressions which the international development community does not often understand and recognise, partly because the situation in Africa is qualitatively different from the experiences in other parts of the global South (Moyo 2008: 2). Moyo (*ibid.*) argues that the core of these land questions have not yet been sufficiently analysed.

Gathering more comprehensive information on land rights and uses of land is important to be able to contribute towards debates about land governance. However, Whitehead and Tsikata (2003)

caution that research should not continue promoting idealised and generalised models of tenure as either ‘African/traditional/good versus Western/new/bad.

There is currently little to no comparative research on the perceptions and attitudes towards the formalisation of tenure in communal areas by the different language and regional groups of Namibia. Mendelsohn (2008) already excluded that hesitance to register communal land is attributed to lack of knowledge or awareness of communal farmers. Being able to gain an insight into how communal farmers regard the formalisation of their tenure and how local contexts influence the linkage between land use and land rights could be an important step towards challenging the way tenure security is understood through Western ideologies of property ownership. As Mojo (2008: 17) states, “[t]he fact that African social formations and their adaptation since colonialism predispose the continent to a unique land question in the global context is certain, albeit poorly defined in the literature.”

### **1.3 RESEARCH AIMS AND OBJECTIVES**

In the context of the above discussion, the primary aim of the research is to gain a better understanding of how the ultimate beneficiaries of the communal land rights registration programme in Namibia- the farmers living on communal land- use their land and the meanings they attribute to land in their various local contexts and specific realities. This will have an impact on how they understand tenure security and what their needs are regarding forms of ownership, especially reflecting their specific local contexts.

The study therefore aims to achieve the following objectives:

- Gain an understanding of the different and context-specific land uses and land needs of rural populations dependent on, and living in, communal areas.
- Identify the importance that diverse rural communities place on tenure security and gain an understanding of their perceptions thereof by conducting a comparative study.
- Analyse the implications of these findings within debates on tenure security and explore to what extent the current schematic on the continuum of land rights needs to be adapted to take into account local contexts.

### **1.4 RESEARCH DESIGN AND METHODOLOGY**

The mixed-method methodologies used for this research are chosen based on the best possible ways of meeting the research objectives, and incorporate both qualitative and quantitative approaches. Research conducted in multidimensional settings requires the use and adaptation of several methodologies to suit the specific conditions (Jackson 2000). According to Whittal (2008),

mixed methodology is particularly suitable for research in complex systems. Mingers (1997) states that a multi-methodological approach is able to comprehensively look at research issues in a world that is increasingly becoming more complex and multidimensional. Such an approach thus enables the researcher to focus attention on different aspects of the situation, thereby gaining a more holistic insight into the researched topic (*ibid.*) Therefore, the mixed methodology is best suited to capture the complexity of tenure studies, which involves social, economic and environmental dimensions and is situated within a highly political context.

The primary data collected was based on fieldwork conducted in selected villages in four regions across Namibia and stakeholder interviews, hence the study followed a case-study approach. Secondary data is based on literature reviews, media reports and archival research. Figure 1.1 below illustrates the research design which will be described in more detail in the following paragraphs.

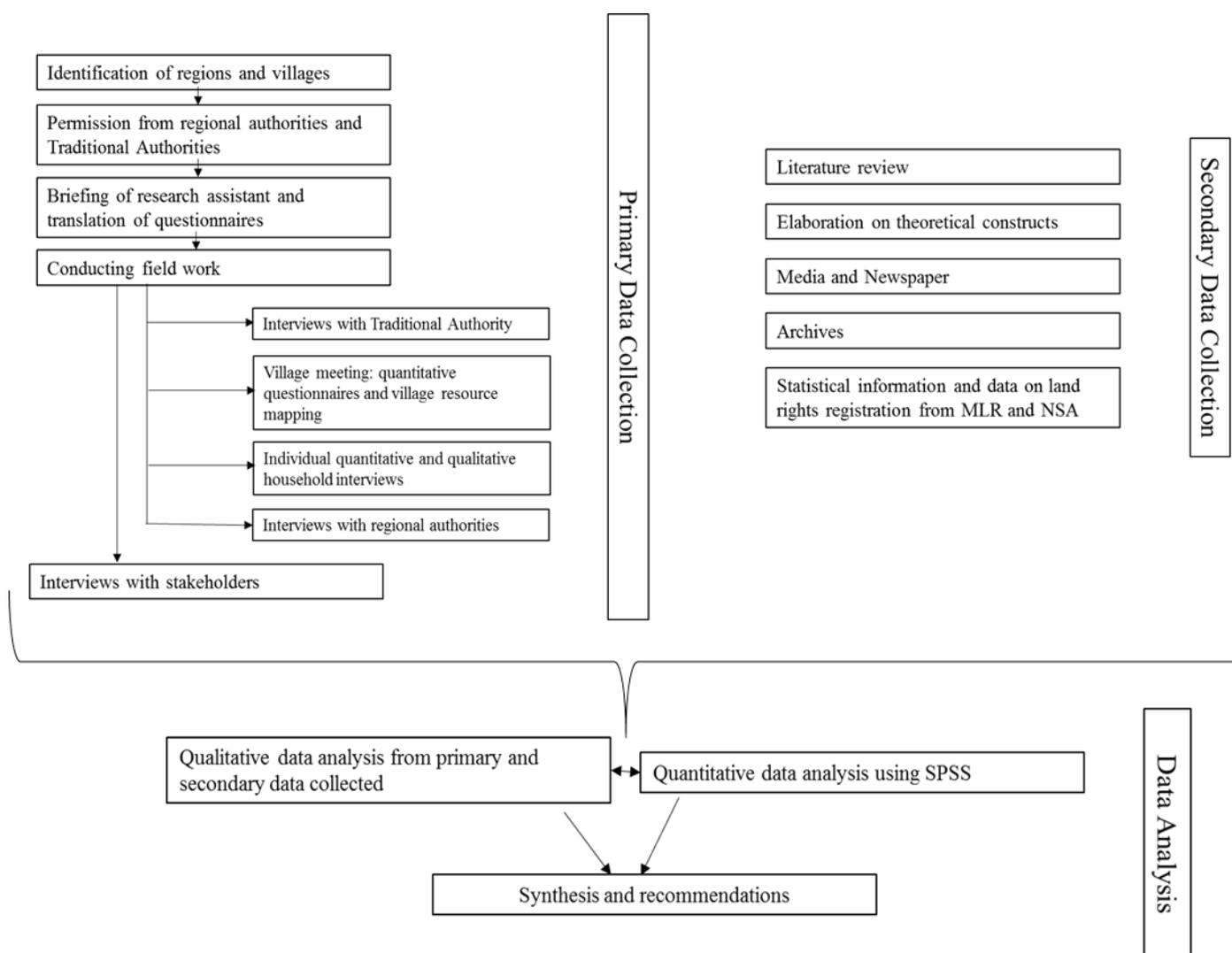


Figure 1.1 Research design

(Own design)

### 1.4.1 Primary data collection

The following qualitative approaches were used in collecting primary data for the research:

(a) Key-stakeholder interviews

Qualitative data was gathered using a combination of different interview techniques. In order to determine stakeholder opinions, semi-structured interviews (see Appendix A for semi-structured questionnaire) were conducted to gain a better insight into their thinking on communal land reform. The interviews differed based on the interviewee's position and background, however the main questions were focussed on the interviewee's opinion and potential assessment on communal land rights registration in Namibia. The loosely pre-determined questions focussed on the interviewee's insights into the potentials, opportunities and challenges of communal land rights registration—whether from an agricultural, economic or social perspective. This allowed for an insight into how different stakeholders, ranging from government officials to the private sector and civil society view land titling in Namibia. The interviews usually ended by asking the interviewees about their personal outlook for the future of communal land in Namibia. The stakeholders interviewed include:

- Senior management from the Ministry of Land Reform in Windhoek
- Regional staff from the Ministry of Land Reform
- Researchers at the Land, Environment and Development department at the Legal Assistance Centre
- Representatives from the farmers' unions of NNFU and NECFU
- Development practitioners involved with the implementation of land policies in Namibia (civil society and NGOs)
- A representative from Standard Bank
- A manager from MEATCO (Meat Corporation of Namibia)

The interviews with selected communal households were based on a predetermined questionnaire and had a strong biographic-focus so as to give a better insight into people's relationship and history with the land (See Appendix B for example of questionnaire). However, even though the interviews were structured, opportunities were given to communal farmers to voice aspects not addressed during the interviews. "Before and after" sketches drawn by registered farmers during the interviews will be especially useful to illustrate if changes have occurred after having registered their land parcels. Maps can also be used to illustrate the concerns of how people perceive their environments to change, should they register. Since the village questionnaires were based on quantitative information, the Statistical Package for the Social Sciences (SPSS) was used to

analyse the quantitative primary data. The personal data that was generated from the survey and is summarised in the case study chapters helps to provide some background information, thereby giving the reader an impression of the area and the interviewees. See sub-section (d) below for more detail about this survey.

(b) Village meetings

In each case study area, a village meeting was organised so as to allow the villagers to get to know the researcher, to provide a platform to express themselves on the topic and to ask questions on the research. These meetings were pre-announced by the village headmen and took place at the main village meeting point within the first two days of arriving for the field visit. The meeting points differed between the regions, e.g. in Kavango the meeting was held under a tree, in Hardap it took place in the village school hall, in Otjozondjupa in the town hall and in Omusati at the main water points. The village meetings normally took about 2-3 hours, however in Kavango it took nearly half a day as the community had several questions about the intention of the research. During these village meetings, short self-administered questionnaires (See Appendix C for example of questionnaire) were handed to those in attendance, which each household could fill in. These questionnaires were translated into the respective languages before the field trips, however the research assistants<sup>3</sup> were always present to assist the villagers with filling in the questionnaires should they be illiterate or have difficulties with the questions. The main aim of the village feedback forms was to obtain a counter-balancing sample to the individual household surveys. This was to be able to determine whether the findings from the individual interviews were representative to those from the community.

(c) Village resource map

The village meetings also served as a platform to create village resource maps with the villagers. These maps provide an insight into people's perceptions of their own environment, help to establish the number of households in the community, and identify the value they place on resources in their community (Food and Agriculture Organisation 2001). This exercise proved to be quite valuable, as it created a better understanding of the village, land uses and their sense of belonging to the place. As will be shown in Chapter 6, two case study villages were not willing or

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<sup>3</sup> The assistants' main tasks were to translate the village questionnaires into the respective local languages, arrange meetings with the local traditional leaders and provide information on what to be aware of before the fieldwork commenced in terms of cultural sensitivity. During the fieldwork, the assistants were present during all meetings and interviews to provide translation and advice on cultural conduct, e.g. when meeting a senior traditional leader. The assistants were:

Kavango- Theodor Muduva  
Omusati- Panduleni Hailundu  
Hardap- Nancy Gamathan  
Otjozondjupa- A.K. Zatjirua

able to draw a resource map showing where each household was farming, and in one case there was considerable conflict and uncertainty in the area. In comparison, in those areas where the villagers were eager to draw a map of their surroundings, there was greater attachment to their neighbours and the community in general and more dependence on shared resources.

(d) Case studies

As already alluded to, primary data collection is based on information gathered from pre-determined case study areas. Case studies provide rich and empirical descriptions of a specific example or occurrence and are typically based on a range of data sources (Yin 1994). Theory that builds on case studies is likely to be more accurate, interesting, and testable (Eisenhardt and Graebner 2007).

Because Namibia is a culturally diverse country, the study areas were chosen to reflect representivity of the diverse language (ethnic) groups in the country. Thus a comparative approach is used to analyse the case study areas. A comparative analysis focusses on the similarities and differences between the areas and people being researched (Mouton 2001: 154). This furthermore allows the research to be spatially and demographically more representative and reflective of the issues regarding communal land rights registration in Namibia.

Within the scope and time of the research, it was viable to conduct in-depth interviews in the field in four (4) regions where communal land is predominant. At the macro level, the selection of these regions was based on the following criteria:

- Majority of communal land used for small-scale agriculture
- Ethnically and demographically diverse
- Geographically spread across Namibia
- Varying degrees of progress in terms of already registered communal land parcels
- Different political affiliations
- Different environmental landscapes and land use patterns

Based on the above-mentioned criteria, the research is based on the following macro level case study regions (Figure 1.2 - circles indicate approximate case study areas): Omusati, Kavango<sup>4</sup>, Otjozondjupa and Hardap. These regions are distributed geographically across Namibia and have achieved varying levels of progress in respect to the registration of communal land rights. They

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<sup>4</sup> After the research had commenced, the Kavango region was split in two at the end of 2013 due to administrative and political reasons, becoming the new Kavango-East and Kavango-West regions. The case study area focusses on the Kavango-East region, however, due to still missing demographic data and information on the two separate regions, this research will still make use of the information on the Kavango region before it was split.



At a micro level, communal farms have to be identified in these four regions at village level. Due to the ever-changing nature of land rights registered across the country, the case study villages were only identified approximately 6 to 8 weeks before commencing with each field trip. The villages were randomly selected after compiling a list of potential suitable villages for each region. Suitability was determined based on the following criteria:

- (i) Representation- a typical village in the region where the main land use is small-scale or subsistence agriculture on communal land, thereby focussing on rural farming systems.
- (ii) Size- selected case study villages should be of regional average size and thus representative of other villages.
- (iii) Registration- mix of registered and unregistered communal farms (except in the Kavango region, where communal land rights registration is still not being implemented). The villages should not be part of small-scale commercial farm<sup>6</sup> development schemes.
- (iv) Location- selecting case study villages which are representative of the spatial development of the region is important; thus it includes looking at village location in terms of access to roads, water infrastructure and proximity to larger towns.
- (v) Clear boundaries and permission- Traditional Authorities (TA) have been tasked by the Namibian Government to act as custodians over communal land. However, in some areas there are contestations over which TA has control and responsibility over a specific area. This power play between TAs has resulted in several cases where there is ambiguity over TA boundaries. This impacts the registration process as communal farmers do not know whom to approach regarding the registration of their land parcels. In addition, this makes it difficult to gain permission to conduct fieldwork in the areas where the TA boundaries are unclear and the sensitivity of land ownership and use is heightened.
- (vi) Historical origins- targeted infrastructural development was undertaken on communal land by the apartheid administration in Namibia so as to become so-called 'Odendaal' farms. These Odendaal farms were located in certain communal areas in the central-east and southern regions of Namibia. Thus, to be able to gain a better insight into the effects that historical developments and the provision of infrastructure have on perceptions of tenure and investment, villages in these former Odendaal farm areas should also be selected.

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<sup>6</sup> In Namibia, small-scale commercial farms (SSCF) refer to larger communal lands with considerable agricultural and infrastructure development, producing mainly for the commercial sector. SSCFs are also part of the Communal Land Reform Act 5 of 2002, however the conditions, registration process and outcomes differ from those of communal land rights. SSCFs are registered as leaseholds and mostly developed through targeted interventions on under-utilised or virgin land by the Government and donors.

In consultation with Ministry of Land Reform staff and other stakeholders<sup>7</sup>, four villages in each of the four selected case study regions were selected and then one village in each region was randomly chosen (Table 1.2).

Each of the four case study villages was visited for a duration of two weeks between November 2013 and December 2014. In each village, a meeting was organised which all villagers (who are communal farmers) could attend on a voluntary basis. At this meeting the research aims were discussed with them, and they were asked whether they would be willing to complete a short quantitative questionnaire (see Appendix C for example of questionnaire). It was requested that each household only submit one questionnaire. Farmers were also given the opportunity to voluntarily sign up for the more in-depth interviews.

During the two weeks, in-depth structured qualitative interviews were conducted with twenty (20) farmers from each village. The interviews were recorded and transcribed with the help of the research assistants (see page 10). In each region, interviews were also conducted with the relevant staff from the Ministry of Land Reform and members of the Traditional Authority under whose governance the selected village would fall.

Table 1.2 Selected case study villages and dates visited

Region	Village	Dates visited
Kavango	Shipando	15.11.2013 - 28.11.2013
Omusati	Omahalya	22.04.2014 - 05.05.2014
Hardap	Kries	25.09.2014 - 06.10.2014
Otjondjupa	Okamatapati	21.11.2014 - 05.12.2014

## 1.4.2 Secondary data collection

In addition to the primary data collection, secondary data was collected from a range of sources which include secondary literature, documents from the archive in Namibia, media sources and statistical information from various agencies in Namibia, including the National Statistics Agency (NSA) and the Ministry of Land Reform.

### (a) Literature review

The first section of the research (Chapters 2 and 3) consists of a literature review and a more in-depth focus on the theoretical point of departure. The literature review focusses primarily on the importance of land as a social and economic resource, the historical processes that have influenced how we understand land tenure, current trends on land reform policies in the international development sector and an overview on land rights registration in Namibia. To narrow the scope

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<sup>7</sup> The stakeholders consulted consisted of lecturers at the Namibia University of Science and Technology (formerly the Polytechnic of Namibia), development practitioners working on land reform in Namibia, and work colleagues from the GIZ.

of research, emphasis is placed specifically on land issues in Sub-Saharan Africa. The theoretical point of departure looks at debates on the policy approaches towards securing customary land rights. More specifically, it discusses the duality in ideologies regarding land reform policies. On the one hand, formalising land rights is seen as a prerequisite for ensuring tenure security and consequently unlocking economic development in communal areas. Such notions have a long history in western understanding of property, and have been popularly revitalised by de Soto (2004; 2000). On the other hand, it is argued that customary, traditional land rights should be based on social capital and local relationships, and that traditional land management processes inherently secure land rights for the populations living on customary land.

(b) Media

Newspapers and the media are one of the most prominent sources through which to voice opinions and discuss topics that are important to society in Namibia. Issues on land reform, including communal land rights registration, are regularly reported on. Thus the media plays an important source in determining opinions and attitudes towards communal land rights registration. Newspaper reports on this topic have been collected and provide an important secondary source for this research. Articles related to land reform in the main local newspapers, mainly from *The Namibian*, *Die Republikein*, *Die Allgemeine Zeitung* and *The New Era*, were collected between 2013 and 2018.

(c) Registration and statistical data

In addition, secondary data was collected from the Ministry of Land Reform's Head Office and Regional Offices, including the latest communal land rights registration data. The Communal Land Boards were also an important source of information, as they are mandated to gather all information regarding conflicts, arbitrations, registration, mapping and community concerns in their respective regions.

Upon request, the Ministry also provided Geographical Information Systems (GIS) maps on the case study areas based on the latest registration data they received from the regions. The demographic information used in this research is based on the latest Population and Housing Census in Namibia from 2011, as compiled in various reports by the Namibia Statistics Agency (NSA) in 2013. Certain specific demographic information on the selected case study villages was additionally requested from the NSA, as case study villages were too small for the data to be included in the Census reports.

### 1.4.3 Reliability of data

It is important to briefly discuss the issues regarding the reliability of the primary data collected in the case study areas and from stakeholders. Babbie and Mouton define the reliability of collected data as “whether a particular technique, applied repeatedly to the same object, would yield the same result each time” (2009: 119). If the data collected is reliable, other studies posing the same questions should thus yield the same responses and outcome. Since the data collected for this research is based on quantitative and qualitative questionnaires, the issue of reliability of the data is of particular importance.

When discussing the reliability of the data, two issues should be considered:

(a) Sample size

When developing the methodology at the beginning of the research, consideration needs to be given to data coverage (Mouton 2001). Due to practical reasons, it was not possible to collect data from the complete targeted study population, thus data for this research is based on samples in the selected case study areas.

Table 1.3 provides an overview of the representative percentages of the collected data within the case study areas. As can be seen, the individual in-depth household interview sample represents nearly 30% of the total case study population, whereas the self-administered village questionnaires represent over half of the sample size in the case study areas.

It was evident that in some research areas, villagers from certain regions were more willing to participate in the village meeting and fill in the questionnaire than in other regions. In Omahalya, the responsiveness was high, since the population in general does not oppose communal land rights registration and the topic is not seen to be problematic. In Shipando, the responsiveness exceeded expectations and neighbouring areas requested to participate in the village meeting and fill in the questionnaires. This is a direct result from the sensitive nature of communal land rights registration in the Kavango and the anticipation that the people have about how registration might affect them. In Kries and Okamatapati, there was significantly less to no interest in this topic and most villagers living in those areas regard communal land rights registration with a sense of apathy. However, through the coherence of answers given by those in attendance in the less-responsive case study areas, it can be deduced that the answers given by the non-responsive villagers would not have been too dissimilar to those received.

Table 1.3 Case study villages and overview of sample representation

Village	Number of households	Number of household interviews	Percentage representation	Number of village questionnaires	Percentage representation
Omahalya	44*	20	45.5%	36	81.8%
Shipando (and neighbours <sup>8</sup> )	115 <sup>9</sup> *	20	47.6%	74	64.3%
Kries	66**	20	30.3%	27	40.9%
Okamatapati	138**	20	14.5%	24	17.4%
<b>Total</b>	290	80	27.6%	161	55.5%

\* Number of households based on information gathered through village resource mapping, since the data provided by the NSA proved to be incorrect.

\*\* Number of households taken from data requested from the NSA. The number of households in the NSA data relatively accurately reflected the actual number of households, unlike for Omahalya and Shipando where the data showed significant discrepancies.

### (b) Biased responses

When conducting interviews and distributing questionnaires, there is always a certain degree of danger that the information collected can be biased. To avoid antagonism or refusal to participate, sensitive or threatening questions, e.g. about income and expenditures, should be minimised (Mouton 2001: 104). Particularly the qualitative and in-depth questionnaires for the household interviews were constructed in such a way that participants would not feel threatened or become confused. During none of the household interviews did participants stop the process or refuse to answer a question.

However, this does not exclude the so-called ‘social desirability effect’, whereby respondents answer what they think would please the interviewer rather than what the respondent really believes (Mouton 2001: 107). To minimise this effect, before each interview it was made clear to the respondent that the researcher had no political or other motivations and was conducting this research purely from an academic point of view. In some areas, such as Shipando and Okamatapati, the researcher was requested to present proof of studying at the University of Stellenbosch, as well as proof that the Ministry of Land Reform had given permission for research to be done on this topic. Once the respondents felt confident of the motivations of the researcher, no further doubts were encountered from the respondents.

The fact that the respondents could answer in their own languages and that the research assistants were mostly from those areas, enabled the respondents to answer more freely and feel more

<sup>8</sup> The inclusion of the neighbouring villages for Shipando is due to the fact that, during the village meeting, neighbouring villages also requested to participate. This reflects the high interest that the communal land rights registration process evokes in the Kavango region, where it continues to be a very sensitive topic. This point will be further elaborated in Chapter 5.

<sup>9</sup> Shipando village itself has 42 households, based on information gathered during the field trip. Shipando is directly surrounded/located next to Kashira village. From observation, Kashira is slightly larger than Shipando. According to data obtained from the NSA, there are 73 households in Kashira. Thus it can be roughly assumed that together with Shipando, there are about 90 households in the direct area of Shipando.

comfortable with the process. Ensured anonymity also meant that the respondents felt confident to openly discuss their views on the Traditional Authorities, the Government and land conflicts in their community.

#### **1.4.4 Philosophical framing**

The research is primarily focussed to contribute towards more empirical policy decision-making, which is reflected in the case-study oriented methodology with in-depth household interview. Geographical knowledge is a significant contributor towards the development of research-specific decision models, projects and ways of their implementation (Chojnicki 2011). The philosophical approach of emancipatory empiricism, which aims to establish empirical foundations for more equitable social policy and improved lives for the rural poor, is therefore the most suited philosophical approach within which this research is framed.

Especially relevant for this research is the notion that geographical inquiry is practice-oriented and focusses on problem-solving which incorporates designing and planning spatial-economic and environmental policy at both local, national and global scales (*ibid.*). The increasingly practical significance can be attributed to several factors:

“[G]eographical knowledge when pursued as an empirical science assumes a more exact, general, as well as factually and theoretically richer character, which reinforces its cognitive functions and, in effect, its practical functions. This relation is often mutual, because solving practical problems requires cognitive knowledge. Another major factor is the expansion of the subject matter of geography to include issues of greater social significance, which by itself gives them a socially useful, i.e. practical, character” (Chojnicki 2011: 19).

The effect of empiricism could already be found in 19th-century geography, where it was proclaimed that notions and knowledge rest on sensory experience and observation (Chojnicki 2011). However, as in other disciplines in the social and natural sciences, geographers continue to debate the philosophical foundations of their research (National Research Council 1997). Besides empiricism, some of the philosophical approaches include positivism and neo-positivism, humanism, phenomenology, idealism, structuralism, Marxism and neo-Marxism, post-modernism and feminism (Akrofi 2013; Chojnicki 2011; Whittal 2008; National Research Council 1997).

In summary, Marxist approaches focus on the role of political and economic structures in determining the actions of human agents and draw on traditions of thought that emphasise the effect of frequently unobservable structures and mechanisms on individual actions and societal and human-environmental dynamics. Realism recognises the role that higher-level conceptual structures play, insisting that theories account for the very different observed outcomes that a process may give rise to. Feminist epistemologies believe that mainstream geography fails to

acknowledge white masculine bias in its questions and perspectives and continues to exclude or marginalise women in its research analysis. Postmodernist philosophies are based on the assumption that all geographic phenomena are social constructions and that understandings of these are a consequence of societal values and norms and of the experiences of the researcher. Postmodernism is skeptical of specific theories, as it questions the notion on unbiased or independent researchers and therefore the relative accuracy of any representation of the study area or context (Akrifor 2013; Whittall 2008; National Research Council 1997).

The 'positivist' epistemology is one of the most extensively used philosophical approaches within many fields of study, especially in research on environmental dynamics and spatial analysis and representation (Akrofi 2013). According to positivism, in order to be regarded as scientific, any field of study must be nomothetic and therefore contribute towards discovering universal or general laws. It is presupposed that knowledge and information are derived from sensory experiences but interpreted through reason and logic. Thereby it is maintained that reality is objective and independent of the researcher (Akrofi 2013; Pelto and Pelto 1978; Susman and Evered 1978). Pelto and Pelto (1978) describe positivism as dualist and objectivist, whereby the observer and the observed are independent to ensure neutrality from researcher bias or personal values.

This assumption of objectivity is one of the main reasons why positivism is frequently critiqued, as value neutrality and objectivity are very difficult to attain (Susman and Evered 1978; Pelto and Pelto 1978). As Mingers notes, most research problems are the outcome from human activity, which are in themselves value laden (2006, in Akrofi 2013: 73). Therefore, solutions that do not consider these human values are not realistic or feasible. Particularly in the context of conducting customary tenure, a philosophical approach that does not take into account values and seeks objectivity is unviable. Land reform is based on complex political and socio-cultural systems and at local levels, access to land is marked by complex relationships on several levels.

As already mentioned, emancipatory empiricism is seen as being able to most adequately frame this research on tenure security. As Akrofi (2013) notes, positivism can be used to develop models for natural aspects such as boundary surveys or land information systems. Yet the observation of complex socio-cultural systems and their interactions with their natural environment cannot be neutrally analysed or controlled (Whittall 2008). Empiricism is "the doctrine that all knowledge is derived from sense experience. The philosophy behind empiricism is that all knowledge of matters of fact derives from the experience. [...] Empiricists are of the opinion that knowledge must be deducted or inferred from actual events that people can experience through their senses" (Ntgrty 2016).

Emancipatory empiricism takes it a step further by adding a strong focus on the ethical role of the researcher as being responsible for the consequences and impacts of the researched communities (Alker 1996). One of the most famous studies that can be described as being framed by emancipatory empiricism was conducted by the sociologist W.E.B. Du Bois on Black rural communities in the United States of America in the early 1900s. Du Bois' studies were part of a focused, purposeful research agenda that empirically informed policy and sociological theory about the real conditions of rural Black communities (Jakubek and Wood 2018). Therefore, Du Bois' empirical rural sociology can be seen as emancipatory empiricism, as it aimed at providing an empirical foundation for more equitable social policy and improved lives for African Americans (*ibid.*).

Based on the above, it can be concluded that emancipatory empiricism best frames this research on tenure security, as it takes into account that knowledge is derived from experiences and acknowledges human values and subjectivity. In addition, by framing the research within emancipatory empiricism, it highlights that the research outcomes are oriented towards practical problem-solving and policy-making regarding tenure issues, and less towards the development of theoretical model on tenure security.

#### **1.4.5 Ethical considerations**

As already stated previously, this research involves interaction with people on numerous sensitive issues; including identities, political affiliations, economic status, and potential conflicts over land. Throughout the research process, research ethics were adhered to by ensuring that respondents' rights to privacy, anonymity and confidentiality were not tampered with. Before arriving in a village for the fieldwork, the Traditional Authorities and village headman were informed of the research purpose and methods of data gathering. Upon arrival at the villages, the research purpose was again explained to all interested participants.

All respondents were asked permission prior to commencing the interviews, and it was explained to them by interpreters (if required) that their names would remain anonymous. Respondents were informed that participation in village meetings and personal interviews was voluntary and that should they feel uncomfortable with a question, they did not have to answer or could end the interview. Permission was also requested prior to taking photos.

Since this topic could be categorised as being politically sensitive, written consent and clearance was requested and received by the Minister of Land Reform in 2013 prior to commencing with fieldwork and interviews. The consent letter (Appendix D) also indicated that the Government of

Namibia would not misuse the information presented in the dissertation for political or any other reasons.

## 1.5 STRUCTURE OF THE DISSERTATION

The dissertation is structured into 8 chapters; whereby Chapters 2 and 3 provide an overview of the literature and the theoretical point of departure. Chapter 4 looks at the historiography of the land question in Namibia. Chapters 4 to 7 describe the findings from the case study areas. Chapter 8 provides a synthesis and discussion of the findings.

*Chapter 2* encompasses the main literature review of the dissertation. This chapter provides an overview of the importance of land as a key asset for livelihoods and the agricultural sector, specifically in Africa. As global and local pressures on land increase, land grabbing and tenure insecurity also become more frequent. However, the demand for land is not new, as historical processes have had significant impacts on how land tenure is perceived and understood. Colonialism, the post-independence movements and ideologies in international development have all shaped land reform policies, particularly on customary tenure. Chapter 2 continues by providing a discussion about customary tenure; including definitions and the conceptualisation thereof by international actors and academia. The penultimate section looks at the role of the international development community in land reform programmes, critically analysing the main views of the international aid organisations regarding land and the consequent land reform policies they promote. The chapter ends by taking a closer look at the land rights registration programme in Namibia, and how it ties into the international development agenda.

*Chapter 3* takes a more in-depth look at ideologies that influence discussions around land tenure. Polarised views on land rights continue - those, who like de Soto (2006; 2004; 2000), argue that the individualisation of land is important for economic growth, marketability of land and agricultural production, and others who believe that land should remain under traditional governance structures that emphasise social capital and social values of land. The chapter examines both these dualistic views, concluding that debates should move away from the stereotypical understanding of land. Instead, it is argued that a more 'fit for purpose' approach is needed, which takes into account the multiplicity of land uses on customary land and allows for different tenure systems which correspond to the needs of the ultimate beneficiaries of tenure programmes- the communal farmers.

*Chapter 4* provides a brief historiographical overview of land in Namibia. Historical processes have had a significant impact on land and traditional land administration. The communal areas of Namibia have been shaped by colonial and apartheid policies, marginalising traditional

communities in the country and creating a dual tenure system. At the time of independence, most of the land in the country belonged to a small minority of white farmers for commercial agricultural purposes, whilst the majority of the population were living in poverty in communal areas. After independence, a comprehensive land reform policy was introduced to redress this imbalance. However, during the first decade of the new land reform programme, the redistribution of commercial agricultural land was at the forefront of the programme. Since 2003, the communal land rights registration programme has been implemented to ensure tenure security in communal land.

*Chapters 5 and 6* give an overview of the main findings of the research done in the case study areas. Chapter 5 focusses on the Kavango East and Omusati regions in the northern communal areas, also known as communal land ‘north of the Veterinary Cordon Fence’ (VCF). The northern communal areas are often said to be dissimilar to those south of the VCF: population density is higher, subsistence agricultural is more predominant, environmentally this area is wetter and crop production is more predominant. Chapter 6 in turn presents the findings from the central and southern communal areas, namely the Otjozondjupa and Hardap regions. The central and southern communal areas are less densely populated, often drier and there is a bigger emphasis on livestock production. These two chapters will present the findings from the field research in these four regions, and will look at aspects from perceived tenure security, gender, livelihoods, traditional practices and local land management practices to land uses and the meaning of land. The findings are discussed both qualitatively and quantitatively.

*Chapter 7* provides further field research data, however instead of focussing individually on the four case study villages, it provides a comparative overview on the data. This chapter also includes broader discussions on rural development in Namibia, based on newspaper articles and interviews with stakeholders.

*Chapter 8* is the synthesis chapter and provides a discussion on the findings from the research. It is argued that even though there are several commonalities between communal areas in Namibia, there are also significant differences in land uses and the role that land plays for livelihoods. Therefore, the formalisation of land rights, as is currently being pursued in Namibia, is unable to address all these different needs. It is argued that since uses of land differ, a singular ‘one size fits all’ approach to formalising land is not feasible. Providing tenure security is undoubtedly important, as it does secure access and use of land. However, the current approach does not support the multiple communal land uses and needs within a broader territory. Therefore, the chapter concludes by providing an extended schematic on the continuum of land rights, which links different tenure types with land uses and livelihood approaches.

## CHAPTER 2 LITERATURE REVIEW: LAND MATTERS

*“Just like heaven. Ever’body wants a little piece of lan’ ”*

John Steinbeck, *Of Mice and Men*

### 2.1 INTRODUCTION

Poverty reduction in developing countries has been at the forefront of international debates for the past decades. The international community has pledged support to reduce poverty through committing to various programmes and initiatives such as the Post-2015 Sustainable Development Goals. Tenure security is seen as a key component of international development programmes. The United Nations, The World Bank and most development organisations endorse the secured tenure as an important element for food security and improved livelihoods (Land Portal 2017; UN-Habitat 2017; United Nations Economic Commission for Africa 2016; International Land Coalition 2015; World Bank 2015; Magel 2014; UN-Habitat and Global Land Tool Network GLTN 2008; Deininger 2003).

This chapter will commence by briefly discussing the different roles land plays as a social value and economic asset. However, global and local processes are increasingly placing pressure on the availability of and access to land, thereby highlighting the vulnerability of communities dependent on land- particularly those living under customary tenure regimes.

The chapter will continue by looking at the history of land reform and the significant role it has played in political and economic policymaking, particularly in Africa. Land played a key role in the colonisation of Africa, and even in post-colonial African countries land continues to shape national agendas, as it is often at the core of social, political and economic life in most parts of the continent. Ironically, there still exists a lack of clarity regarding property rights across much of the African continent, and land tenure is still widely contested (Huggins and Clover 2005). Centuries of ideologies, perceptions and policies have shaped the way we understand and regard land, property and tenure.

Based on the belief that access to land and the registration thereof leads to prosperity, the literature review will continue by examining the role that land plays on the international development agenda. As a result of these inequalities and structural barriers for many people to access land, governments and development organisations have introduced policies and programmes to address these issues. Several international conventions and declarations underscore the importance of land governance to achieve sustainable rural and urban development. Lastly, the chapter will zoom in and conclude by providing an overview on the land rights registration programme in Namibia.

## 2.2 THE IMPORTANCE OF LAND

Geographically, land has an immense physical presence, as approximately 30 percent of the Earth's 510 million km<sup>2</sup> surface is dry land (Davy 2012). However, land policymakers are not so much concerned with the geosciences of this land mass, but more in how stakeholders interpret or understand the land and how they make use of it. Land<sup>10</sup> is often seen as the central subject for public debate because of its key role in socio-economic development, cultural traditions and social relations (Tarimo 2014). The Economics of Land Development Initiative succinctly described the importance of land:

“All human life ultimately depends on land including the soil and water found there. From land, food is grown, on it protective shelters are raised, and through and across it the fresh water we drink is purified and delivered. Land provides humans with the means to live, and from the first steps tread upon it, has been a patient provider of vital resources” (2015: 8).

Land is a unique resource which attracts specific meanings, feelings, interests and socio-political relations (Caron et al. 2017; Davy 2012; Anseeuw and Alden 2010; Lund 2008; van den Brink et al. 2006; Bruce and Migot-Adholla 1994; Dickerman and Barnes 1989). Individuals, groups and communities form their identities around the concept of land. People tend to be attached to the place where they were born, as it signifies the foundation of their identity- who they inherently are and where they belong (Tarimo 2014). Simultaneously, land is also regarded to be about economic values and production areas such as food, energy, housing, commodities, borders, etc. (Caron et al. 2017; GIZ 2016; Davy 2012; Sassen 2005). Land is considered as one of the main “weapons” in the “battle” against rural poverty and food insecurity (Dekker 2005), as access to land can support the farming household and contribute towards improving their livelihoods (Deininger 2003). Different perceptions and understandings attributed to land which play a significant role in land policy, which form part of what Davy calls “polyrational property” (2014; 2012), can be summarised as follows into four categories:

1. Land is seen as a commodity on which economic activities take place.
2. Land as the basis for human uses and practices, e.g. for shelter or production. Land is also associated with place-making and community building.
3. Land as territory, as boundaries can be created to demarcate power or land rights allocated to confirm ownership.
4. Land as environment, which refers to ecological aspects of the Earth and includes functions such as ecosystems.

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<sup>10</sup> In this dissertation, the term ‘land’ is used as a generic term to encompass all real property, in agreement with international professional custom. Real property is used in Common English Law and refers to land which is the property of a person, and includes all structures on or associated with the land (such as crop fields, houses, machinery, wells etc.) (Stoebuck and Whitman 2000).

Since the beginning of the 21st century, more than 60 percent of the Earth's land surface has been developed, of which approximately 60 percent of that land is for agricultural production (ELD Initiative 2015). According to the African Development Bank, the size of agricultural land in Africa is estimated to be about 1 billion hectares (UNECA 2016). The agricultural sector employs about 65 percent of Africa's labour force, which accounts for over 32 percent of Gross Domestic Product (GDP) (*ibid.*). Despite off-farm and incomes from urban areas (such as remittances from relatives) playing an increasingly important role in livelihood strategies, access to land is still one of the most important asset-bases for the majority of poor households in Sub-Saharan Africa (Dienst 2011; Dekker 2005; Huggins and Clover 2005; Deininger 2003).

An estimated 80 percent of all farms in Africa are made up of small-scale farms of less than 2 hectares that account for 25 percent of the agricultural land (Lowder, Scoet and Raney 2016). Estimates indicate that three out of every four poor people live in rural areas and are dependent on agriculture for their livelihoods (Graham et al. 2010). Despite high rates of urbanisation, most of Africa's population live in rural areas and are reliant on smallholder and subsistence agriculture, and it is predicted that the number of rural poor in Sub-Saharan Africa will rise in the coming years (Graham et al. 2010; Huggins and Clover 2005). When estimating the number of customary landholders, experts normally count populations in areas where more formal types of landholdings have not significantly replaced local indigenous forms of land tenure. It is estimated that rural poor customary landholders exceed 2 billion in Asia (excl. China), Latin America and Africa, whereby more than 428 million live in Sub-Saharan Africa. In terms of scale, customary lands- excluding forest and wildlife reserves and where access and rights are governed by traditional community norms- may exceed 1.4 billion hectares (Alden Wily 2012a). Furthermore, given that

“only 12-14 million hectares of Sub-Saharan Africa are under permanent cultivation, it may safely be assumed that most of the customary sector comprises unfarmed forests, rangelands, and marshlands. These lands may be referred to as the commons of customary tenure, those assets in the customary sector which are not owned and used by individuals or families but by all members of the community” (Alden Wily 2012a: 3).

Even though Sub-Saharan Africa has approximately half of the world's usable uncultivated land, totalling 202 million hectares, and is thus gifted with agricultural land and other natural resources (Deininger et al. 2011), the region still has the world's highest poverty rate and accounts for more than a third of the world's extremely poor (Olinto and Uematsu 2017). Deininger et al. (2011) attribute this high poverty rate to the fact that the region has not yet adequately leveraged the agricultural land and the natural resources for development and poverty eradication. This disconnect between land and development in Sub-Saharan Africa is considered to be due to:

- Increasing landownership inequalities and landlessness, which can undermine growth and social cohesion, as is the case in Zimbabwe and may happen in Côte d'Ivoire, Kenya, Liberia, and Southern Africa;
- Customary laws excluding women, who are the main subsistence producers, from owning land;
- Land, forest and wetland degradation; and
- The proliferation of urban slums (Byamugisha 2013: 1).

Land also plays an important role in achieving gender equality, as women are responsible for between 60 to 80 percent of food production in developing countries, yet only an estimated 1 percent of the world's women have ownership over the land they work on and most have limited decision-making powers over how the land is used (GIZ 2016; Gomez 2012; FAO 2002; Swedish International Development Cooperation n.d). The International Land Coalition emphasises the importance of tenure security:

“There is widespread recognition that land rights are fundamental to address the major challenges facing humanity: achieving gender equality, overcoming rural poverty, building fair and sustainable food systems that recognise small-scale producers, peace-building, managing ecosystems, mitigating and adapting to climate change and reversing land degradation” (2015, online).

The World Bank states that “[r]ights to land and natural resources increase a woman's bargaining power within the household, which results in increased allocation of household resources to children and women as well as increased household welfare” (in Gomez 2012: 3). In recognition of the importance of land, land reform strategies to address tenure insecurity are being implemented across the developing world, including in Sub-Saharan Africa.

Since land is such a unique resource, the question should thus be asked whether land can be dealt with like any other resource: “Is the influence of donor agencies, cooperation partners, NGOs and of science on decision-making meanwhile stronger on land than in other policy fields of development cooperation as it is embedded in numerous value judgments on justice, fairness, equity and inclusion of the poor and other disadvantaged groups like indigenous people and women?” (GIZ 2016: 6). This question is particularly important in light of growing pressures on land and access thereof.

In most African tenure regimes, the right to access land and resources has remained an important principle. Countries in the developing world, including in Africa, are experiencing increasing problems with tenure insecurity (Alden Wily 2012a). This is of great concern, since access to agricultural land serves as the basis of income for more than half a billion people (Huggins and Ochieng 2005). The main sources of tenure insecurity in Africa include the contradictions between statutory and customary tenure systems, population growth resulting in the scarcity of land, environmental degradation and the growing commodification of land as a result of globalisation,

capitalism and neoliberal policies promoting large-scale agriculture (Alden Wily 2012b; Tarimo 2014; Huggins and Ochieng 2005). Furthermore, experts repeatedly point out the relationship between land and local and national claims for authority and power (Peters 2007). This often results in competition and conflict around access to and ownership over land, even leading to violence and war, as can be seen in Somalia, Darfur and Sierra Leone. These political economic struggles evolve around competing claims on the use and control over land and natural resources (Bruce and Boudreaux 2013; Peters 2007).

As a result of population growth, the demand for food and agricultural commodities has significantly increased over the past decades. By 2050, the world's population is expected to reach eight billion people, with most of the population growth occurring in developing countries (Dekker 2005: 3). Mark Twain is famously quoted as having said 'Buy land, they're not making it anymore'. Thus conflicts over access to resources have also risen as these resources have become scarcer and their values have increased (Flintan 2011). Access to land has been at the forefront of wars and conflict since nearly the beginning of mankind, especially after people started to settle and permanently cultivate the land and land thus started becoming increasingly scarce (Dekker 2005). In Africa, conflicts and competition over land are growing due to the intensification over commodities such as minerals and water, the expansion of conservation areas and the need for rural households to produce more food and cash crops, even though inputs are declining (Cousins 2007). These factors have resulted in Africa being transformed from a continent with abundant land in the first part of the 20<sup>th</sup> century to a continent where land is becoming increasingly scarce (Berry 2002).

In recent years, developed countries dependent on food imports have acquired land in developing countries for food production (GIZ 2016; Matthaei 2016; Fitzpatrick 2015; Cotula et al. 2009; IIED 2009; Oakland Institute 2009). Similarly, foreign investors, specifically large multinational corporations in the bio-fuel industry, have obtained large tracts of land with the outputs being exported for the international market (Fairhead, Leach and Scoones 2012; Hilhorst and Zoomers 2011). As a result, these trends have led to land grabbing from small-scale farmers and public land reserves (Michler and Ginten 2016; Tarimo 2014; Borras Jr., Franco and Wang 2013; Anseeuw et al. 2012; Cotula et al. 2009). More precisely, Foreign Direct Investment (FDI) in the agricultural sector in Africa has rapidly grown. Data from the United Nations Conference on Trade and Development (UNCTAD) in 2009 indicates that total FDI flows have grown from less than USD 1 billion per annum between 1989-1991, to more than USD 3 billion per annum by 2005-2007 (Graham et al. 2010). Oxfam has estimated that international investors have sold or leased more than 200 million hectares of land in developing countries (Wiggerthale 2011). These large-scale

investments in land are driven mainly by food security as a result of the growing world population and energy prices in investor countries:

“The first factor is a cumulative effect of limited availability of water and land in investor countries, bottlenecks in storage and distribution, expansion in biofuel production, and increasing urbanisation and changing diets. The second factor refers to expectations of rising returns in agriculture and land value, and policy reforms in African countries that have improved the attractiveness of the investment climate in Africa through e.g. a growing number of investment treaties and reforms of legislation on land, banking and taxation” (Cotula et al. 2009, in Matthaai 2016).

Consequently, these global processes have put stress on land and the ownership and control over land for over 500 million small-scale producers and 230 million indigenous peoples who are dependent on land, and are thus becoming endangered as land is becoming concentrated in the hands of multinationals and states for agricultural production (ILC 2015). This renewed interest in land in Africa and often resultant land grabs are dubbed by some as the "second scramble for Africa" (Cotula et al. 2009), with land grabbing being projected to increase in the foreseeable future (GRAIN 2016). The World Bank has assessed that more than 90 percent of rural land in Africa is undocumented, thereby making the majority of land on the continent vulnerable to land grabs and expropriation (UNECA 2016). Byamugisha (2013) argues that weak land governance and the often incoherent processes by which land rights are defined and administered by law in Sub-Saharan Africa are an obstacle to tenure security.

As can be seen by this short discussion: “Land matters - more than ever!” (GIZ 2015: 6). However, this insatiable demand for land is not a recent phenomenon. Throughout human history, land has been at the forefront of national and individual interests- often also negatively impacting the land rights of rural communities, just as current global processes do. The next section will provide an overview of how contemporary land policies in Africa have been shaped by historical processes, and what impacts this has had on access to and use of land in Africa.

### **2.3 HISTORICAL OVERVIEW ON LAND IN AFRICA**

Struggles over access to, and control of, land have a long history in Sub-Saharan Africa. Since precolonial times, land has material and symbolic significance, with rights to land having been exchanged, negotiated and fought over in the course of political, demographic and economic change (Davy 2012; Berry 1992). Despite the current land policies and practices being rooted in geo-historical processes, it is surprisingly difficult to find more recent detailed literature on the history of land policies at a continental scale. The most referenced literature on this topic still

remains Sara Berry's comprehensive 'Debating the Land Question in Africa' (2002), therefore the historical overview focusses strongly on her work (summarised in Figure 2.1).



Figure 2.1 Main historical phases influencing land policies in Africa

(Own figure, based on Berry 2002)

### 2.3.1 Land during colonialism

Unsurprisingly, land was one of the main points of contention in colonial Africa - both for the colonial regimes and their African subjects - as a means to control labour and asserting authority and power (Berry 2002). European officials and settlers, as well as African traditional authorities and family heads, vied to extend usage rights to resources to both outsiders and community members in exchange for loyalty and often also labour. Berry notes that as economic opportunities and new patterns of production and trade arose, "colonizers and colonized both struggled to position themselves advantageously with respect to the allocation and use of land and land-based resources. Whether colonial regimes appropriated land outright, or sought to control it indirectly through 'traditional' authorities, their efforts linked the exercise of power to the control of territory in new ways, and encouraged the concentration of both wealth and power in the hands of colonially sanctioned elites" (2002: 640-641).

In 1895, the then British Prime Minister, Lord Salisbury made the intentions of the colonial administration very clear, writing that:

"It is our business in all these new countries to make smooth the path for British commerce, British enterprise, the application of British capital, at a time when other paths, other outlets for the commercial energies of our race are being gradually closed by the commercial principles which are gaining more and more adhesion. In a few

years it will be our people that will be masters, it will be our commerce that will prevail, it will be our capital that will rule... this is a tremendous power, but it requires one condition. You must enable it to get to the country where its work is to be done” (Lord Salisbury, as quoted in Hammond et al. 2006: 22).

This statement in particular has strong impacts on the dispersion of colonial land nationalisation policies. In the 1890s and the beginning of the 1900s, military and administrative colonial officials swept across most of the African continent and used force or threats to impose European rule, whilst claiming authority over the land in their newly appropriated territories (Berry 2002). As interest in Africa for its natural resources and labour increased, so too did an interest in apparently ‘empty’ and ‘underdeveloped’ commonage areas such as rangelands (Mwangi 2005). During the process to establish their legal and administrative rules, colonial officers also initiated steps to formalise land tenure on lands previously considered to be governed by ‘native’ laws and customs. This resulted in “racialized systems of property rights, under which non-Africans owned land as private property, while Africans held theirs collectively, as members of customary communities, or ‘tribes’” (Berry 2002: 642).

In many countries in eastern, central and southern Africa, colonial administrations enforced land policies which inherently seized all so-called ‘vacant’ lands and vested the property rights thereof in the government to be redistributed in such a way that would allow maximum gain for the Europeans. As Hammond et al. (2006) notes, white settlers and private firms were the main beneficiaries of such land policies. Kaniki (1985) describes how at a certain time, the colonial administrations’ redistribution policies were so generous that the European entrepreneur Lord Delamere was able to own more than 400,000 hectares of land in Kenya and Europeans owned 12,500,000 hectares in southern Rhodesia (now Zimbabwe) by 1925 at hardly any costs.

However, European colonialists were dependent on African labour and could thus not alienate them by taking full ownership and control of their land which they wanted to bring under cultivation. In addition, the colonial governments, often unsuccessfully, attempted to introduce measures that would force African communities to abandon what was considered primitive farming methods, such as shifting cultivation, livestock movements and foraging. They believed that these methods were the cause of increasing environmental degradation. This in turn resulted in colonial regimes that enforced labour and land policies that were oppressive and unstable. These policies impacted Africans’ relationship to land in several ways:

- Physical displacement, e.g. through resettlement schemes
- Delineation of land and social boundaries
- Creation and reinterpretation of rules related to the governance of access to land, its transfer and use, including mechanisation of agriculture (Berry 2002: 643-647).

From the 1940s to the late 1950s, colonial economic policies shifted their focus from the extraction of natural resources by Europeans and Africans, to creating regulations on how Africans should use natural resources. Especially after the Second World War, when there were renewed funds to be channelled into Africa, officials attempted to modernise African agriculture with the hope that Africans would “rapidly evolve into modern commercial farmers” (Berry 2002: 647). During this process, colonial regimes started to reimagine the idea of ‘native lands’ by experimenting with schemes, whereby individual farmers were assigned specific plots of land.

Berry (2002) describes how Kikuyu farmers in Kenya were relocated to such new resettlement schemes and forced to cultivate the land based on the officials’ instructions. In an attempt to prevent uprisings in Kenya, the infamous ‘Swynnerton Plan’ of 1954 was introduced with the aim to create a class of landholding peasants in a former native reserve, whereby the peasants were required to register individual holdings and then they were issued with titles and encouraged to farm with ‘modern’ tools. Thus Alden Wily (2012c: 3) argues that Kenya was the frontrunner in launching large-scale privatisation, whereby tenure security became dependent on “the promised sanctity of title deeds and the incorruptibility of remote government-held registers, not on community assurance.”

This resulted in a new division being created which went beyond classifications of ‘non-natives’ and ‘natives’, but between ‘progressive’ and ‘traditional’ African farmers, with the registration of property defining the ‘progressive’ African farmer (Berry 2002: 647). This individuation of land did not go without opposition from African society, especially since communalism was a way through which Africans felt they could certify their control and use of their land against the colonial regime. By being allocated individual plots, Africans became more resentful and anxious since they saw this as a way for the Europeans to increase their landholdings over former (and often large tracts of) communal land by limiting African control over land to small demarcated individual land parcels (Cousins 2007; Chanock 1991b). In Botswana, peasants who were too poor or marginalised to legitimise their claim over the lands they lived on and the commonage areas on which they depended, were not included in the privatisation processes (Taylor 2007, in Berry 2002). Ultimately, the privatisation of land during the colonial period resulted in a shrunken resource base and increased land insecurity (Mwangi 2005).

Colonial administrators attempted to create ‘one-size-fits-all’ categories for governing so-called tribal lands. In trying to understand the local customs, the colonial rulers based their knowledge on the notion that custom was timeless and static and failed to understand the changing and diverse nature of so-called customs (Berry 2002). Similarly, Cheater (1990) describes how colonial administrators nurtured and enforced distorted notions of customary tenure and Chanock (1991b)

questions how accurate the models of customary land tenure are that were developed during the early colonial period. Even after colonial administrators commenced to introduce “economic men and future property-owning citizens” (Berry 2002: 648), they continued to enforce the stereotypical ideas that African societies were “closed, corporate and consensual communities” (Ranger 1983, in Berry 2002: 648) with strong cohesiveness and shared customs. Thus, most notably, “Africans were being asked to act like economic men and tribesmen at the same time: to build a modern, commercial agrarian order on the foundations of tribal solidarity” (Berry 2002: 648).

In summary, colonial rule and the integration of modern westernized agrarian economies had a significant impact on customary land tenure and indigenous social relations in southern Africa, which resulted in several changes in and adaptations of tenure systems that had existed before the colonial era. More specifically, these changes included a greater emphasis on individual and family rights. It had furthermore resulted in the degradation of accountability mechanisms that had limited the influence of traditional leaders, as these were substituted by ‘upward accountability’ mechanisms to the state- thereby creating gaps for corruption and abuse of traditional leaders (Cousins 2007: 299-300).

### **2.3.2 Land after independence**

After most African countries had gained independence from the 1950s onwards, most countries continued to advocate individual titling in order to address the tenure dualism created during the colonial period. However, despite believing that individual titling would lead to economic growth for titled landholders, this approach was not as successful as had been hoped for (Flintan 2011). The autocratic policy processes which were institutionalised by colonial administrators merely became legacies for the successive postcolonial regimes. As Hameso (2002) notes, political plurality was considered to be ‘bottlenecks’ for establishing national unity. One of the main objectives of these new nationalist governments was to ensure the consolidation of power over national resources in order to institute centralised and state-controlled planning (Hammond et al. 2006; Berry 2002). During the 1960s and 1970s, thirty-two of the fifty-four African countries adopted single party political systems (Hammond et al. 2006).

Hammond et al. (2006) summarise the early decolonisation period as an era of single party political economy whereby policies on the regulation and distribution of land and natural resources introduced by the colonial autocratic regimes were expanded and strengthened. Hameso (2002) stated that these policies created a culture of coercion rather than consensus regarding the distribution of key resources, including land. These single party regimes created anxiety amongst citizens as they had hoped for improvements and economic welfare after the wave of independence

spread across the African continent, a time which Berry (2002) called a time of 'great expectations'. Instead, opposition had become criminalised in many countries and this ultimately instigated military takeovers in response to the growing frustrations and dissatisfaction of citizens (Hammond et al. 2006; Berry 2002). As Africans became more disillusioned by the failure of postcolonial development, many turned to land as a key asset for livelihoods and future security. This increasing value of land during the time of insecurities resulted in the wealthy, state officials and local businesspeople to 'land grab' to secure their own futures and livelihoods (Berry 2002).

However, the land policies which the military regimes had enacted were similar to those of the previous autocratic regimes and gave the militaristic government the right to take landownership away from indigenous owners and redistribute land and resources as they deemed necessary and the right to regulate free trade of property commodities (Hammond et al. 2006; Berry 2002). In Nigeria, the government introduced the Land Use Decree of 1978, demanding people living on customary lands to obtain certificates of occupancy from the government and pay land rent to the government. In Ghana, legislation enacted during this period still exists, granting the government the right to bring any land in the country under their control. Towards the end of this period of militaristic intervention in Africa, half of all countries in Sub-Saharan Africa had nationalised land and enabled their governments to redistribute these lands as they wanted (Mabungunje 1989, in Hammond et al. 2006).

At the time of independence, chiefs in Africa were by custom still regarded as the main political leaders of their communities and the custodians of the land and its resources. During the colonial period the status of chiefs and other traditional leaders had been elevated in order to gain support for and ease enforceability of colonial policies, many of which were related to land and natural resources. The decolonisation process provided a platform for traditional leaders to try to gain further influence and political power and they thus often supported opposition parties (Hammond et al. 2006). In order to weaken these growing powers and sometimes revolts by the opposition, Ghanaian leader Kwame Nkrumah was one of the first post-colonial statesmen to infiltrate customary law and practice and remove chiefs who were known sympathisers of the opposition from their positions. In particular, Nkrumah introduced an Act which reduced the functions of traditional leaders over land and in the process limited their income from community land revenues (Hammond et al. 2006). Not only in Ghana, but across Africa, governments enacted laws and policies that entrusted the management of customary lands and the allocation thereof to government officials.

After decades of monopolised policy processes, the democratisation of policies started to proliferate across Sub-Saharan Africa from the mid-1980s onwards. Advocates for democracy on

the continent, such as the World Bank and a plethora of international development organisations, believed that democratisation would result in stronger opposition which would in turn provide checks and balances and a sense of accountability towards government powers (Hammond et al. 2006). Even though African governments had to a large extent introduced democratic systems, few practical changes had been done regarding land policies. Redistribution programmes had been introduced to address inequitable landownership structures inherited from the previous decades, however most land policies shaped by the previous colonial and early post-colonial regimes remained in place (Hammond et al. 2006). In addition, conflict over land did not abate at the end of colonial rule in Africa. Instead, competition over land has intensified in the late 20<sup>th</sup> century (Berry 2002).

### **2.3.3 The Era of neoliberalism**

Elsewhere in the world, land reform has signified other processes over the last century. Between 1917 and 1970, more than 50 countries had introduced ‘land to the tiller’ reforms (Ho and Spoor 2006), with the aim to redistribute farmland to address landlessness in feudal systems (Alden Wily 2012c):

- In Russia, China, Vietnam, and Cuba, private ownership was abolished in favour of the creation of state collectives;
- In Honduras, Mexico, and El Salvador citizen-owned collectives were created; and
- In Egypt, Bangladesh, Nepal, and Afghanistan a ceiling was set on landholdings, with surplus land being redistributed to tenants and workers of landlords.

Approximately 350 million households, mostly in China, had gained land for the first time as a result of these state collectives. However, Alden Wily (2012c) argues that these reforms were not convincingly implemented and did not have a lasting effect. By the 1970s, states started to abandon these land reform initiatives and in return private land rights were introduced. The process of de-collectivisation was most evident in communist countries such as China and the former USSR, and its satellite republics, including Hungary and Romania. The process was also widespread across Latin America. Communist regimes autonomously developed their land reform programmes, in contrast to most other countries where the United Nations Development Programme, the Food and Agriculture Organization and other development agencies promoted land reform to stimulate agricultural growth (Alden Wily 2012c). These reforms promoting private land rights were widely encouraged by the World Bank’s belief that a free land market was a prerequisite for economic growth.

The 1980s are regarded as a decade of market liberalisation and neoliberalism, led by the International Monetary Fund, the World Bank and other international banks and development agencies. In a concerted effort to bring African governments’ debt, which had significantly

mounted during the early 1980s, under control, states were urged to devalue their currencies, cut budgets and government spending, adopt free trade and encourage foreign investors and privatise public assets and services (Berry 2002). Structural Adjustment Policies were introduced which expected governments to adopt these neoliberal principles as a prerequisite for further loans and debt re-scheduling (German, Schoneveld and Mwangi 2011). In order to achieve market liberalisation, the World Bank (1996, in Berry 2002: 653) advocated that markets could only allocate resources if “property rights are clear, complete, enforced and transferable”, which they believed could only be done through comprehensive land reform programmes of registration and titling which would enable a shift away from peasant farming towards industrial agriculture (Graham et al. 2010). Yet despite these neoliberal policies and strategies, the number of poor Africans continued to rise, as did foreign debts (Berry 2002).

Thus land reforms between 1960 and 1990 were either based on nationalisation policies by autocratic states, or more often privatisation, advocated by the international development community (Alden Wily 2012c). The aim was to eliminate ‘outdated’ customary land tenure and lands held in common, thereby creating a land market which was independent from local social and collective relations. Nationalisation more or less remained the norm in Sub-Saharan Africa after independence in most countries, meaning that governments and state leaders made themselves the ultimate landowners, not dissimilar to what the colonial predecessors had done (Alden Wily 2012c). Flintan (2011) argues that the state has predominantly been the most powerful actor in the custodianship and management of land, including the environment and animals, in nearly all countries. This comes from an apparent ‘universal cultural perception’ that the state is best suited to safeguard national and international interests and heritage (Flintan 2011: 7).

Understanding the history of land tenure systems as they were shaped by pre-colonial, colonial and post-independence forces is a prerequisite in understanding current debates about land reforms today.

## **2.4 CONCEPTUALISING LAND AND TENURE IN THE AFRICAN CONTEXT**

As has been illustrated in the previous discussion, historical political processes have significantly shaped African land policies and understandings of land tenure and forms of ownership. As a result of increasing tenure insecurity and the plethora of different land reform programmes worldwide, it is important to have a clear understanding of what stakeholders really mean by the term ‘customary land tenure’. Pottier (2005) states that as simple as the term might sound, it has been (mis)used for over decades, as much of our understanding of customary tenure originated from the simplification of the concept since the colonial era.

One of the fallacies about indigenous law constructed by colonial and post-colonial administrations was that indigenous law did not confer property in land, thus it was asserted that indigenous communities did not use and occupy land in such a manner which would constitute a system of property worth recognising under state law (Okoth-Ogendo 2008). This stems from the Western notion that property only exists if exclusive rights of use, abuse and disposition were vested in individuals, in contrast to communal usage and management of land and natural resources as a privilege and not a property right (*ibid.*). This allowed colonial administrations to justify declaring land as vacant and ownerless (*ibid.*).

This simplification of the understanding of customary land practices continues even today in contemporary policy arenas. Berry (2002: 648) states that

“Africa's departing colonial rulers left behind not only a congeries of invented traditions and ‘artificial’ boundaries, but also on-going debates over their meaning, which complicated both the political relationship between popularity and legitimacy for newly independent African regimes, and the practical meanings of property and citizenship in the daily lives of their constituents.”

#### **2.4.1 Understanding land tenure**

It is challenging to characterise and define non-Western land tenure systems. As Cousins (2008: 110) notes, the use of certain terminologies is contentious as a result of the historic nature of legal concepts derived from European systems of law that are not always appropriate in non-European contexts. Biebuyek (1963: 15) observed that “[c]ommon general formulae like [...] ultimate or sovereign rights, rights of allocation or of control, or rigid oppositions between ownership, possession, use and usufruct [...] have often obscured the understanding of the scope and nature of rights and claims relating to the land”.

As a result of colonialism and post-independence policies, the land rights situation in Africa is largely defined through the dichotomy between customary land tenure systems, which are most prominent on the continent, and statutory laws which are based on western legal models and ideologies (Tarimo 2014). These western systems predominantly see property rights as individual private ownership. As Huggins and Clover (2005: 9) describe it, “the rights to exclude others from land is a key feature of statutory systems, whereas African customary arrangements tend to be more inclusive.” Statutory tenure refers to laws made at national government level, normally by parliaments (Alden Wily 2012d). Therefore it is important to have clear definitions of tenure, access to land and land rights, as these form the basis of most national land reform policies in African countries.

*Land tenure* comprises of a bundle of rights and can be divided into “the rights to use, enjoy the fruits of, and dispose of (or alienate, sell) property. In other words, there is a proprietary aspect

(the right to ‘hold’ land) and also a management aspect” (Huggins and Clover 2005: 8). Land tenure rights can be held by individuals or groups. Having tenure security is the most important aspect of any tenure system, however achieving tenure security and perceptions thereof may vary. Land tenure is culture-specific, as it is determined by the history, social organisation and land use patterns of a certain community, which may also reflect the geographic and ecological characteristics of that area (Huggins and Clover 2005). As a result of the plethora of norms and regulations that make up property rights, these rights are ultimately “relationships between people” (Huggins and Clover 2005).

According to the European Union (EU) Land Policy Guidelines, land tenure is broadly defined as “the system of access to and control over land and related resources”, thereby defining the rules and rights through which appropriation, cultivation and the use of natural resources on a given piece of land are governed” (in Hilhorst and Zoomers 2011: 25). It is not the land itself that is owned, but the rights and duties related to it. Land tenure is often defined as certain rights to land over a well-defined period of time; which can range from short-term to permanent use rights (Dekker 2005; Lund 2000). There are also considered to be different degrees of tenure security (Bruce and Migot-Adholla 1994), where shared use rights are regarded as weaker than exclusive use rights and longer or permanent use rights being stronger than short-term use rights (Lund 2000).

Bruce and Migot-Adholla (1994: 19) define land tenure security as existing when “an individual perceives that he or she has the right to a piece of land on a continuous basis, free from imposition or interference from outside sources as well as the ability to reap the benefits of labour and capital invested in that land, either in use or upon transfer to another holder.” Alden Wily (2012a: 1) defines *customary land tenure* as “the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer. Unlike introduced landholding regimes, the norms of customary tenure derive from and are sustained by the community itself rather than the state or state law (*statutory land tenure*). [...] Customary land tenure is as much a social system as a legal code and from the former obtains its enormous resilience, continuity, and flexibility.” Customary land tenure can also be referred to as ‘community-based tenure’ (Alden Wily 2012d), as this acknowledges the fact that customary rights are under the jurisdiction of a community (Alden Wily 2012e). Indigenous and customary land tenure have the same meaning, as both describe systems that are locally derived (Alden Wily 2012d).

The use of the terminologies ‘communal’ and ‘customary’ are also misleading in debates on land rights. Walker (2004, in Cousins 2008: 11) states that these two terms are often used

interchangeably, however communal tenure systems are not always based on customary law. Communal tenure systems can support poor people's livelihood strategies without being based on traditional, 'customary' institutions (*ibid.*). In this dissertation, these two terminologies will be used interchangeably, due to the fact that customary institutions still have a significant influence on governance in communal areas in Namibia (which will be discussed in the following chapters).

Customary or indigenous tenure is not confined to Africa alone, and it can even be found in developed economies such as in the rural commons in Spain or Italy, as well as in territories belonging to indigenous minorities in parts of Europe, Oceania and North America (Alden Wily 2012a). Customary tenure regimes are most predominant in agrarian economies where most of the population derive their livelihoods from land-based production and are dependent on land uses (*ibid.*).

*Land access*, on the other hand, is a wider ranging term and goes beyond the strict legal definitions of land tenure. Huggins and Clover (2005: 9) define access to land as "the right or opportunity to use, manage, and control land and its resources. It includes the ability to reach and make use of the resource.". The Swedish International Development Cooperation Agency regards access to land and property as "a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Land is also a social asset that is crucial for cultural identity, political power and participation in decision making" (SIDA n.d.: 2).

*Land rights*, like property rights, are entitlements which are socially-mediated and establish a relationship between the holder of property and a certain set of resources. Land rights are legitimised through the norms and institutions of societies, whether state or non-state, formal or informal, which also protect the right against interference or trespassing (Huggins and Clover 2005). Table 2.1 provides an overview of the various rights, responsibilities and restrictions of different types of property regimes, as defined by a wide range of economists and planners and summarised by Needham (2006).

Table 2.1 Overview of property regimes

<b>Property Regime</b>	<b>Rights, Responsibilities and Restrictions</b>
State or Public Property	Individuals have the duty to observe access, use and management rules by (state) land authorities. The legislator has the right to determine these use and access rules, to define an eminent state domain (e.g. by expropriation) or compulsory purchase for the public interest.
Private Property	Individual land owners or legal persons, such as companies, have the right to undertake legally (and socially) acceptable uses; they can exclude third parties from the use. Others (non-owners or the government) have legal responsibilities to refrain owners from socially unacceptable uses.
Common or Communal Property	The management group (landowners) has the right to exclude non-members. Non-members have the responsibility to abide by the exclusion. Members of the management group (co-owners) have rights and responsibilities with respect to use rates, rents, and maintenance costs of the property owned.
Non-property or "open access" (terra nullius)	No defined group of users exists. The income stream, e.g. rents, is available to everyone. Individuals have no rights with respect to use rates and maintenance. The property can be defined as "open-access resource" such as the Cyberspace or Antarctica in the past.

(Quoted from Needham 2006: 42)

As the table indicates, access to and usage of land depend on the type of property regime, which also vary across and within countries. The following section will focus on communal tenure, specifically in Africa.

#### **2.4.2 Overview of communal land**

During the 20<sup>th</sup> century, many anthropologists, political geographers and political scientists propagated the idea that indigenous forms of tenure were static and prevented capitalist transformation (Alden Wily 2012a; Berry 2002; de Soto 2000; Berry 1992; Alchian and Demsetz 1973; Dobb 1963). The international development community in the 1950s regarded customary tenure as an obstruction to modernisation. Harding (1968) famously further advocated the idea that communally held lands would lead to the “tragedy of the commons”, whereby open-access regimes would lead to land degradation. As Alden Wily (2012a: 6) notes, “[t]hese positions played admirably into the hands of resource-grabbing post-colonial administrations, who could safely sustain the myth that landholding rights existing under customary tenure could not be legally accepted as amounting to more than occupancy and use rights (‘possession’). Unfarmed forests and rangelands in particular were treated as un-owned and were taken by governments”.

In policy circles today, discourses range from discussions on encouraging customary forms of tenure to evolve and modernise, to advocating land management systems that build upon local processes. The problem however, is that both these policy approaches regard customary tenure “as if [it] were a homogenous and clearly defined body of rights” (Pottier 2005: 64). During the colonial era, the authorities interpreted customary land tenure practices to suit their own purposes, and passed this on to post-colonial governments. This resulted in customary land tenure systems being perceived as static, coherent and homogeneous (Chimhowu and Woodhouse 2006; Pottier 2005; Berry 1992; Okoth Ogenido 1989).

Furthermore, due to population growth, technological advancements and the penetration of the global capitalist economy into even remote rural areas, land tenure systems are continuously and rapidly changing across the world, including Sub-Saharan Africa (Huggings and Clover 2005). This is best summarised by Okoth-Ogenido:

“Customary land tenure is an organic system, which responds to a range of internal and external pressures...thus, the process of codification and integration [of customary and statutory systems] must not assume that land tenure is static or immune to change and should allow for a degree of flexibility and customary legal development” (n.d., in Huggings and Clover 2005: 10).

In contrast, several scholars now acknowledge that there are many diverse practices related to land and access thereto; and that such practices are not seen as a 'law' by communities, but are processual and socially embedded (Pottier 2005).

Anthropologists attempted to study the main features of pre-colonial African land tenure systems during the early to mid-20<sup>th</sup> century. During his fieldwork in what is now the Democratic Republic of the Congo, Biebuyck summarised three main principles of such land tenure:

Principle 1: “[L]and was plentiful and exploitation of resources was generally extensive; land was essential for livelihoods but had little exchange value; land was ‘vested in groups’ (chiefdoms, villages, lineages or other social groupings) represented by their chiefs, elders and/or councils. There was ‘a close relationship between features of social and political organisation and principles of land tenure’” (1963: 52, in Cousins 2007: 294).

Principle 2: All group members had rights to access land, which was dependent on membership in the group and sometimes also on the allegiance to a political authority, e.g. a chief (Biebuyck 1963, in Cousins 2007: 294).

Principle 3: Land rights were also obtainable through marriage, migration, acquaintance and formal transfer, however dependent on certain obligations. If the ethical code of the group was respected and adhered to, individual rights were greatly secured. “Effective use and appropriation were generally required for the maintenance of individual and family rights in a particular piece of land. Often a number of individuals, households or larger social units exercised rights and claims in the same piece of land. Land tenure was everywhere both ‘communal’ and ‘individual’” (Biebuyck 1963: 54-55, in Cousins 2007: 294).

One of the key social features which distinguishes the situation of African land tenure from other places is that most rural African societies are based on communal structures of political authority and social organisation. In such a structure, access to land is dependent on usufruct<sup>11</sup> rights allocated to households, mostly belonging to a certain lineage grouping. This is in contrast to land allocation based on serfdom or similar variants under a feudal system, such as was the case in India and several countries in East Asia (Mafeje 2003). Land is used mainly for the household's own consumption, and in part also for social or communal purposes (Moyo 2008).

There are several features of customary tenure systems in Africa. The most common attribute is that an individual's or family's right to hold land and other resources in a specific area is based on bona fide membership in the community- which can be a cultural group, family or tribe- that looks after the land in common trust. Thus there is a community-based jurisdiction over land. Once household or individual rights have been given, these rights tend to be secured and in most instances the rights can be inherited. In addition to these rights to land for shelter and crop

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<sup>11</sup> The right to enjoy the use and advantages of another's property short of the destruction or waste of its substance.

production, the collective rights include access to communal resources such as forests, rangelands and marshlands. Land sales are generally prohibited in customary tenure systems, particularly to people who do not belong to the group or community, as it would alienate land from the group's control and ownership. Outsiders may acquire land rights through marriage to a person who is a bona right holder in that community. This system is aimed at ensuring that the social and economic rights to the land are secured for the community in the future. Most customary rights are not always recorded in official registries, as the proof of landownership by someone is often in the memories and minds of the community and traditional authorities. Written records are considered to be obsolete as they are not needed to affirm a change in landownership of the number of known beneficiaries in the community. The size of customary areas can also vary greatly: Hunter-gatherer groups such as the San move over a vast area of land and settle at different places over a year and consequently also use different resources. Some pastoralists, e.g. in East Africa and the Sahel have a permanent home base which is recognised by other groups, however they tend to migrate and are dependent on access to land and resources along their routes and at the areas where they settle seasonally (Lawry 2013; Alden Wily 2012a; Cousins 2007; Dekker 2005; Okoth-Ogendo 1989).

As was mentioned in the previous paragraph, certain aspects of individual rights can also be found in communal customary tenure systems. Observing the Tswana in the 1930s, Schapera noted that "a homestead once built remains the exclusive property of the family occupying it; and is handed down from one generation to another. [...] Without their permission, no-one may occupy it; and they can return there at any time to live in it again" (1955: 199, in Cousins 2008: 115). With approval of the traditional authority, the male head of a piece of land had the right to give away or lend some of the land, as long as it was not a monetary transaction (*ibid.*). Thus even in communities where land was communal, there was a certain degree of individual ownership before the imposition of colonial rule.

African tenure systems are characterised by the existence of multiple tenures. This means that users can have access to a wide range of different resources on the land- one can farm, gather wood for fuel, herd cattle and let them graze, etc. (Lund 2000). Access to common property resources such as grazing, water and other natural resources remains an important feature of customary tenure systems (Alden Wily 2012b). Access to natural resources such as wood for fire and fences, grass for thatching, wild fruits, medicinal plants and other natural building materials such as sand and clay are essential for the survival of many rural communities. The right to access of these common property resources was an integral part of the communal tenure regimes during the colonial period. Kingwill (1996, in Cousins 2008: 122) recorded that even in areas where the colonial administration attempted to impose individual forms of land rights, e.g. in the Eastern

Cape in South Africa, the commonage areas continued to play a central role for grazing and other uses.

More recent studies have revealed that access to commonages remains essential for the livelihoods of rural populations (Alden Wily 2012c; 2012d; Cousins 2008). Most communities have well-recognised rules and regulations concerning the use of common property resources, which are normally enforced by traditional authorities or locally elected committees. The usage of these resources is guaranteed through the right to land in that area, however outsiders generally have to request permission and often pay for the right to use these (Cousins 2008). However, many local community members often do not understand their land and resource rights, which can lead to the exploitation of commonage areas by local elites or outsiders and result in tensions between local groups (*ibid.*). This issue is furthermore exacerbated by often poorly defined boundaries of the village or community, which can lead to tensions between neighbouring villages or traditional authorities (Cousins 2008).

It is estimated that about 90 percent of the land mass in Sub-Saharan Africa that does not form part of national parks, reserves and private land is governed under customary tenure (Lawry 2013). Okoth-Ogendo (2008: 100) suggests that in order to better understand indigenous land rights systems, one first has to clarify how property in land is defined in the African social order. The source of property rights in Africa still remains contentious. Writers such as Colson (1963) and Biebuyck (1963) believed that land rights were vested in the group, with chiefs and senior traditional authorities primarily responsible for maintaining peace between the land-using units, protecting their community and ensuring productivity of the land. According to studies by Colson (1963), individuals in Zambia at the time had rights over land if they brought it under cultivation and there was no specific authority within the community responsible for the allocation of land. In contrast, Gluckman (1965) argued that access to land is dependent on membership of society, and thus a form of citizenship. As a result of this membership, citizens are entitled to claim land from a traditional authority or a similar political unit (*ibid.*).

Customary tenure rights have been treated as inferior to more individualised or formalised land tenures by colonial and post-colonial policies. However, even though agricultural production in communal areas only amounts to a small portion of household income, communal homesteads continue to have significant social and economic values to poor people in southern Africa (Lawry 2013). In an uncertain economic environment, e.g. increasing pressure on land and the proliferation of land grabbing, customary land rights have remained one of the few assets on which poor people can rely and have control over:

“Rural land holdings may be small, grazing land may be overstocked and degraded and the farming enterprise may be severely under-capitalized but the family’s customary land right ensures the ability to build and maintain a home and engage in at least a limited range of agriculturally productive activities. Customary rights also ensure membership in a community of extended family and kin, similarly poor, but also sources of vital social capital and mutual assistance” (Lawry 2013: 5).

Even though western ideologies and policy interventions are based on the notion that customary tenure systems provide an obstacle to agricultural modernisation and economic growth, customary tenure still remains largely popular across most of Sub-Saharan Africa (Lawry 2013). However, the introduction of colonial rules in southern Africa did result in several changes and adaptations of local systems, which include:

- More stress on individual and family land rights
- Traditional authority, such as chiefs and headman, being used by the colonial administrators as instruments of indirect rule
- Weakening of women’s land rights
- Removal of mechanisms that ensured accountability of traditional leaders to rights-holders, thus creating opportunities for corruption and abuse (Cousins 2008: 127).

As a result of colonialism, new dimensions of land ownership structures, land titling and management, and the rights and responsibilities related to land were introduced. A unique feature of colonialism was that customary land was redefined through superimposed statutory and private values (Moyo 2008). At independence, most African countries had inherited “a dual, unequal and hierarchical system of land tenure in which freehold and leasehold land rights were treated as superior to customary land rights” (Moyo 2008: 59). This belief that customary rights are inferior remains a dilemma which many land tenure reform programmes continue to face.

Despite these changes, certain aspects of communal land tenure systems proved to be relatively robust over time, and Okoth-Ogendo (2002) argues that indigenous norms and structures tended to be remarkably resilient despite their subordination to colonial and post-colonial policies. This can be ascribed to certain persistent elements and relationships of individuals and communities in relation to land tenure. Firstly, land tenure is strongly embedded in social relations in many non-Western societies, where land rights are inclusive in nature (Cousins 2008). The capitalistic notion of private property only emerged through a process of disembedding property from social relations (Hann 1998, in Cousins 2008: 128). In most non-Western and pre-capitalistic societies, land rights are embedded in social relations and thereby tend to be inclusive in nature (Peters 1998, in Cousins 2008: 128).

Thus, despite predictions that customary landholdings would disappear, a majority of land in the developing world, specifically so in Sub-Saharan Africa, is still under customary governance. However, customary land has been put under severe pressures as a result of:

- “chronic encroachment since the 1890s as a result of specific land-takings to provide areas for white settlers; government and private-sector developments for rubber, cotton, sisal, and food crops; and more recent expansion of agricultural, biofuel, and carbon-trading enterprises;
- the withdrawal by the state of prime forests, rangelands, and marshlands for protection purposes (terrestrial protected areas);
- the removal of other assets from customary landholders through the nationalisation of water, foreshores, minerals, oils, wildlife, and often forests or at least the trees growing on those lands;
- the suppression of customary rights through policies and laws that deem such rights to be less than ownership, and
- titling programs designed to replace customary interests with introduced European forms of tenure, and mainly freehold and leasehold rights” (Alden Wily 2012a: 4).

The introduction of colonial rules resulted in significant changes in land tenure, which involved “a growing scarcity of land due to increased population, agricultural development, the development of new markets and the demand for good quality land; new ideologies of inheritance and economic cooperation; new legislation and interventions by the courts; and large-scale resettlement of people” (Cousins 2008: 116). In order to deal with this new scarcity of land, chiefs often had to restrict families to a defined area and a specific size of land (Sansom 1974; Gluckman 1961).

Despite many changes in local tenure systems as a result of colonial and apartheid rules, residents in communal areas in South Africa still firmly believe in the underlying principle that communal land cannot be bought or sold (Alcock and Hornby 2004). In some areas of KwaZulu-Natal, landholders may allocate, lend and bequeath their land and have the right to sell the structures on their land. Hornby (2000, in Cousins 2008) found that in these cases the allocations were always made to relatives and that no sales or allocations were done with outsiders. Vacant land is allocated by the local headman in consultation with the neighbours (*ibid.*).

Importantly, Cousins notes that “[c]ontemporary case studies suggest that many occupants of communal land enjoy de facto tenure security. This is because existing systems, many of them now informal in character, work reasonably well on a day-to-day basis” (Cousins 2008: 118). However, in-migration, overcrowding, corruption by traditional authorities and local elites, lack of women’s rights, informal individualisation and most significantly, the unclear roles between government and traditional authorities all put considerable strain on this informal customary administrative system (Peires 2000, in Cousins 2008: 118). According to Cousins (2008), this causes people to feel insecure and anxious about their land rights. Therefore, Cousins argues that a tenure reform must “address the breakdown in the formal land administration system and create greater certainty over the legal status of land rights- but at the same time allow the many local variations in the definition of rights and duties to be recognised in law” (2008: 118).

Lawry describes customary tenure as intact systems of economic, social and cultural rights which are “under our feet” (2013: 2). He thus believes that the main task for land policymakers is not to create rights which do not exist, but rather to protect and deepen the rights that are already present (Lawry 2013).

The way land rights are understood and secured through national land reform programmes in Africa is still largely based on historical (colonial) contexts, as described above, but have also been influenced by international development processes. The ideology of land reform programmes, as they are enacted and implemented in many countries today, can in many cases be traced back to American agrarian reforms, which was later also propagated through foreign policy and the international development community.

## **2.5 ACCESS TO LAND ON THE INTERNATIONAL DEVELOPMENT AGENDA**

The concept of land reform originates from the idealisation of the Jeffersonian tradition toward family farms in the United States of America (USA), where farmland was seen as the most common and useful form of private property and thus support had to be rendered to create small or family farms (Tuma 1965). According to classic American political theory of the family farm, family farmers were seen to be “the most precious part of a state” (Griswold 1948, in Tuma 1965: 9). The idealisation of small family farms was not unique to the USA, as Griswold states that many countries, including Germany and France, “have put a premium on family farming and the agrarian way of life” (1948, in Tuma 1965: 9). Despite the persistence of the ideal of family farms, the concept of land reform has become more comprehensive since the Cold War to include agricultural policy and production efficiency, thereby the terms ‘land reform’ and ‘agrarian reform’ are often used interchangeably (Tuma 1965). This is partly a result from the USA’s foreign policy in 1950, which included land reform as an answer to Communism:

“Now a new conception of land reform comes from America, which advocates reform as a comprehensive policy, including not only “opportunity or ownership”, but also a variety of other measures to assist farmers by means of greater agricultural advisory services and education, and so on. This conception flowered in the course of the cold war, as an answer to Communism. The United States first made advocacy of land reform part of its official foreign policy in 1950, when it supported the Polish resolution in favour of land reform in the General Assembly of the United Nations, and thereby challenged the Communist claim to leadership in the use of land reform as a political weapon” (Warriner 1947, in Tuma 1965: 10).

It is important to note that the way land reform is generally understood today in both the developing and developed world not only originated from traditional Jeffersonian thinking and cold war policies, but also from the increasing capitalistic tendencies in agriculture since the 1950s.

Tuma's book "Twenty-Six Centuries of Agrarian Reform" (1965) still provides one of the most comprehensive analyses and overviews on the history and evolution of agrarian reform in the global context. Since land reform or agrarian reform are very broad concepts and encompass many different dimensions, as indicated by the definitions and Figure 2.2, Tuma thus states that agrarian or land reform is "a rapid improvement in one or more of the sectors of the agrarian structure" (1965: 14). This can be broken down into more specific terms to address improvements in a particular area of agrarian development, which includes 'land tenure reform', referring to the improvement in the tenure system, and 'land operation reform', which addresses patterns and scale of cultivation (Figure 2.2).

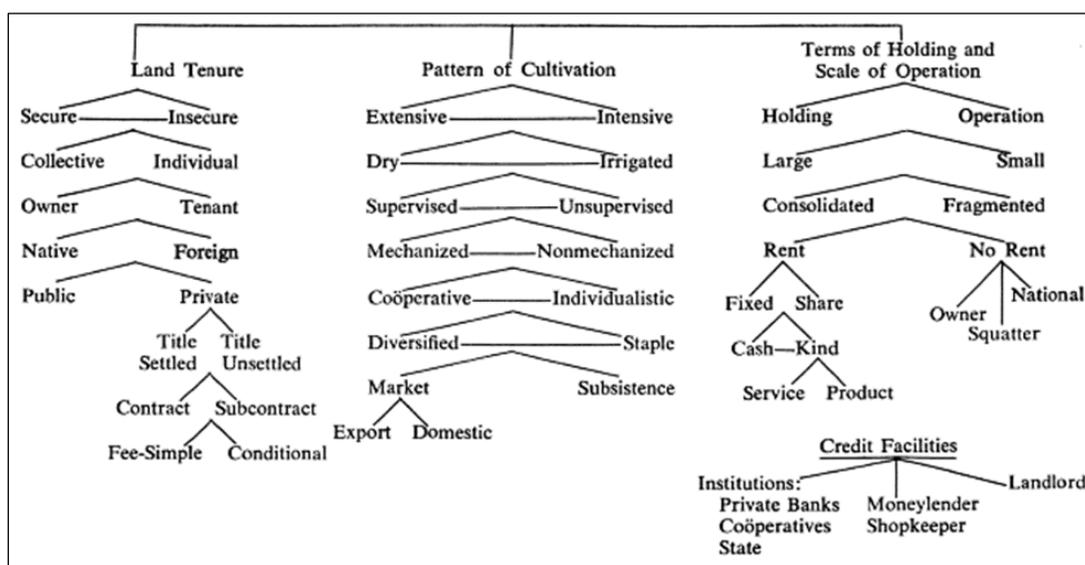


Figure 2.2 Components needed for agrarian development

(Tuma 1965: 13)

Most definitions on land reform by western reformers promote private ownership. These definitions describe a wide range of impacts:

"[C]hange for the better", change in "rental terms" or "resource ownership", greater equality and resource allocation, economic development, change in agricultural institutions, change in economic organization, [and] redistribution of land in order to promote political stability" (Tuma 1965: 8).

Tuma argues that despite the many different definitions and meaning attributed to land reform, the concept has two things in common:

"1. It is invariably a more or less direct, publicly controlled change in the existing ways of land ownership (i.e., a change of the agrarian status quo). 2. It invariably involves a "diffusion" or "spreading" of wealth, income or productive capacities" (1965: 8).

Land reform in Africa has undergone a long journey. During the independence period from the 1950s to the 1970s, many countries embarked on land reform processes to redress colonial and post-independence landownership inequalities- mostly by nationalising land. The quest for land

reform continues today, as previous policies have not always been successful and/or new global and local pressures threaten tenure security across the continent (and beyond). Consensus is growing amongst development specialists on the need to formalise property rights and address inequity in ownership (Byamugisha 2013). Contrary to neoliberal thinking in the 1970s and 1980s, where it was assumed that title deeds were a prerequisite for tenure security, there is now a general acceptance that once customary tenure systems are also formalised, they can provide individuals and communities with secured tenure, thereby contributing towards poverty reduction (Byamugisha 2013; Bruce and Mighot-Adholla 1994). More than 32 Sub-Saharan African states have introduced land reform processes since 1990 (Alden Wily 2012c). Yet despite acknowledging the importance of tenure security and advocating for the recognition of customary land rights, Alden Wily (2012c) laments that land reform programmes in the region have always been initiated by states and influenced by donor agencies.

Effective land administration is regarded as a key component of sustainable development, as the relationship between land and human societies has economic, social, political and environmental impacts (Williamson and Grant 2002). Thus there is considerable dialogue amongst stakeholders in the international development community on land reform programmes in developing countries. The formalisation of land tenure is regarded as a key issue for policy and development, particularly at present as a result of the growing pressure on land (GIZ 2016; Davy 2012). The problems facing the rural poor and the impacts of global processes on these populations require more effort and a need to scale-up land policies than in the past (Byamugisha 2013).

Land policy reforms are back at the top of the agenda for many African governments and international donors. Concern over ensuring tenure security has received renewed attention as the link between land reform and poverty reduction has taken centre stage in land policy debates in the last few years. Even though land reform has always played an important role in development, it “has moved up and down the ladder of development priorities” (Peters 2007: 2), losing its status as a priority area, especially after the failure of Structural Adjustment Policies.

There have been many developments in the African land sector over the past few years to address these urgent issues. The African Union (AU) has implemented the ‘African Land Policy Centre<sup>12</sup>’ since 2006, which is a joint programme between the African Union Commission (AUC), the African Development Bank (AfDB) and United Nations Economic Commission for Africa (ECA). The Land Policy Initiative has the function to “enable the use of land to lend impetus to the process

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<sup>12</sup> Formely known as the African ‘Land Policy Initiative’

of African development” (UNECA 2016, online), and aims to support national and regional land policy processes.

The strong renewed focus on tenure security on the international agenda can be seen in several processes over the past few years. Firstly, the endorsement of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) by the Committee on World Food Security (CFS) in May 2012 was seen as a major step forward in putting land rights back onto the international development agenda. The VGGTs are the first internationally negotiated and agreed soft-law instrument on land tenure governance (Global Donor Platform for Rural Development 2018). These Voluntary Guidelines strongly endorse securing tenure rights and equitable access to land and other natural resources, and are considered by land practitioners to be the most visible and publicised international initiative to regulate land tenure and large-scale agricultural investments. The United Nations, G20, Rio+20 and many other platforms have officially endorsed its implementation. The main principles addressed in the VGGT include the recognition and protection of tenure rights, even under informal systems; developing best practices for land rights registration; creating affordable and efficient land administration systems; addressing past injustices regarding land distribution; promoting responsible and transparent investments in land and dealing with urban expansions into rural areas (FAO 2012).

The endorsement of the VGGTs in 2012 was followed by the establishment of the Global Donor Working Group on Land (GDWGL) in 2013. The GDWGL is comprised of the Food and Agriculture Organisation of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the World Bank, the UN Human Settlements Programme (UN-Habitat), the International Finance Corporation (IFC), European government agencies and development agencies of the US, Japan, and Canada. Furthermore, the Group of Eight (G8)<sup>13</sup> has been supporting the acceleration of land governance programmes in specific partner countries since 2013; including Tanzania, Nigeria and Ethiopia (Global Donor Platform for Rural Development 2018).

Another relatively recent global initiative to draw attention to land governance and improve development policies regarding land is the Land Governance Assessment Framework (LGAF). LGAF is a participatory tool developed by the World Bank and a wide range of partners and stakeholders to assess legal frameworks, policies and practices regarding land governance at country level (World Bank 2015). The need for such a tool comes from the recognition that land

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<sup>13</sup> Since the suspension of Russia in 2014, it is now the G7. The G7 is currently comprised of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States and representation from the European Commission.

governance is increasingly playing a vital role in the overall development of countries- from addressing environmental issues to urbanisation to managing the land rush (World Bank 2015; Deininger 2011).

In 2015, the United Nations launched the Post-2015 Sustainable Development Goals (SDGs) to follow and expand on the work of its predecessor policy, the Millennium Development Goals (MDG). The SDGs consist of 17 goals and 169 associated targets, which came into effect on 1 January 2016. Land is prominently featured in the SDGs, and after a lengthy consultative process, access to land has been included as a specific target under 3 of the 17 goals. The targets are listed under the relevant goals below (Box 2.1).

**Goal 1. End poverty in all its forms everywhere**

**1.1** By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance

**Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture**

**2.3** By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment

**Goal 5. Achieve gender equality and empower all women and girls**

**5.a** Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

(UN 2015)

<https://sustainabledevelopment.un.org/?menu=1300>

Box 2.1 Land in the Post-2015 Sustainable Development Goals

The most important indicator for the international land governance community is the sub-indicator 1.4.2 of the SDGs: “Proportion of total adult population with secure tenure rights to land, with legally recognised documentation and who perceive their rights to land as secure, by sex and by type of tenure” (UN-Habitat 2017, online article). At the end of 2017 the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) reclassified the tenure security Indicator 1.4.2 from Tier III to Tier II (Land Portal 2017). This means that the IAEG-SDGs is in agreement that the methodology and standards whereby data on tenure security is gathered and monitored is conceptually clear and internationally recognised (*ibid.*).

The World Bank estimates that it will cost African governments, their international development partners and the private sector approximately USD 4.5 billion to scale-up land policy reforms and investments over the next decade (UNECA 2016). One of the first approaches to scale-up land reform programmes is improving tenure security over communal lands, which can include titling of individual or group rights (Byamugisha 2013). Communal land rights registration programmes have been introduced worldwide over the past decade, and with renewed vigour in the last few years, to ensure that all remaining communally owned land in most countries is registered (*ibid.*). Ho and Spoor (2006: 581) state that the registration of land rights tends to boil down to the following three questions: Whose land; how much land; and where is it located?

This renewed invigoration in this field also comes from the propagation that scaling-up efforts to ensure secured tenure of communal land has made considerable progress over the last few years as a result of several factors. This includes the introduction of new technologies, e.g. satellites, which can greatly reduce costs of land administration and make efforts to digitise land registries and other processes more efficient and cheaper (Byamugisha 2013). Rwanda is currently used as one of the best examples of how a communal land rights titling programme was completed at minimal cost in a short period by making use of new technologies and streamlined processes. Other countries with considerable progress in terms of registering communal lands include Ghana, Ethiopia, Uganda, Tanzania etc. The registration programmes differ across countries- as community (or village) rights are registered in some countries such as Tanzania and Mozambique, and in other countries such as Namibia and Ethiopia they are mostly registering individual or household land titles. In addition to these communal land reform programmes, many countries worldwide are also busy with commercial land reforms, including resettlement, redistribution and restitution programmes (The Global Donor Platform for Rural Development 2018; Land Portal 2017; GIZ 2016; Obeng-Odoom 2012).

It is estimated that if the registration of communal land is scaled-up from 10 to 50 percent, it would have a significant impact on the development of the agricultural sector and the general economy in Sub-Saharan Africa. Development practitioners believe that if land tenure security for individual landholders on communal lands is improved and backed by proper land governance frameworks; investments in land and productivity will increase and gender equity will be promoted, which is apparently starting to happen in Ethiopia and Rwanda (Deininger, Ali and Alemu 2011a; Ali, Deininger and Goldstein 2011). There is a general agreement amongst development experts that unless people feel secure on their land, they will not make long-term investments (UN 2013). Thus improved land policy reforms and scaling-up land administration will result in economic growth,

poverty reduction, conflict prevention, gender equality, social cohesion, improved governance and environmental sustainability (Byamugisha 2013).

An impact evaluation of the land certification programme in Ethiopia in 2007 showed that titling had reduced people's fear of losing land by more than 10 percent, which resulted in farmers' tendencies to invest more on their land to increase by 20 to 30 percent (Deininger, Ali and Alemu 2011a). Similarly in Rwanda, it was found that when landowners had registered, their tendency to invest in soil conservation measures on their land increased. In addition, households that had registered were more than twice as likely to make investments on their land as those who had not registered (Ali, Deininger and Goldstein 2011).

Byamugisha (2013) argues that such successes indicate that these countries are following in China's footsteps. China famously dismantled its collective farming system in 1978 in favour of long-term leases which conferred land rights on households. This process had resulted in significant growth in agricultural productivity over a prolonged period, thereby transforming rural China (Byamugisha 2013; Deininger and Jin 2007). Furthermore, by registering land, the fluidity of land markets - for sales and rentals - is believed to promote the transfer of land to the most productive users and those who are in the greatest need thereof. This allows mobility of people, as they can migrate away from the rural areas if greater opportunities for off-farm activities exist elsewhere by leasing their land and being able to get it back once they return. When tenure security was strengthened in rural China in the 1980s and 1990s by introducing land use certificates and eliminating the reallocation of agricultural land as they had done before, millions of landowners were able to rent out their land and migrate to economically booming areas and urban centres where they could earn higher wages (Deininger and Jin 2007). Thereby migrant workers were able to earn more from off-farm activities whilst renting their land to other people who could make better use of it (Byamugisha 2013).

Alden Wily (2012c: 3) summarised the main trends that have influenced land reform outside of Africa since 1990:

- a. Many reforms (e.g. in Thailand, Albania, Lithuania, and Croatia) focus only on improving *land administration*, with privatization retained as a target, and there is a tendency to sidestep issues of tenure.
- b. There is continuing but partial or ambivalent *privatization* from decollectivization (e.g. in China, Vietnam, Armenia, Belarus, Uzbekistan, and Mongolia), especially relating to the ownership of formally traditional collective lands like forests and rangelands.
- c. Reforms have been triggered as part of *post-conflict reconstruction* (e.g. in Afghanistan, the Balkans, El Salvador, Timor-Leste, and Guatemala), reflecting the significant role of land-related injustice in causing civil wars.

- d. New attention is being paid to *unregistered occupancy*, as witnessed in the expanded horizon of reformism to embrace the concerns of millions of untenured occupants ('squatters') in the world's multiplying cities.
- e. *Rights-based reforms* have emerged, as demonstrated in reforms improving *indigenous rights* in Australia, New Zealand, Norway, and most widely in Latin America, where 18 states have changed their laws to acknowledge the existence and authority of indigenous people and bringing several hundred million hectares of native territories under native title.
- f. There has been a steady rise in *popular land-rights movements*, including transnational movements, again most prominently seen in the peasant agrarian movements of Latin America. The most influential movement has been *La Via Campesina*, which established regional and then global campaigns."

The importance that land plays in the recognition of women's rights has also gained considerable attention in the development sector in the past decade. Since women are responsible for more than 70 percent of farming activities in Africa, securing their access to and ownership of land is also believed to be important in achieving agricultural productivity and food security (Byamugisha 2013). Recognising women's land rights is considered by many development practitioners as the first step in addressing gender discrimination (Deininger 2003). Implementing gender-sensitive land laws has been a challenge in many countries, as discrimination against women is often as a result of customary laws and practices (*ibid.*). There are some countries where the registration of women's land rights has already shown impacts. In Rwanda, land rights registration has proven to improve inheritance practices for women and addressed cultural biases (Ali, Deininger and Goldstein 2011). In Namibia, more than 40 percent of registered land parcels belong to women, who have also benefitted from increased tenure security in terms of more equitable inheritance procedures and increased involvement in land governance processes (Mandimika and Matthaei 2013). In West Bengal, land rights programmes have also resulted in positive impacts on women, as they perceive higher tenure security over their land parcels, which is expected to lead to increased food production and long-term investments in land- not just for women (Santos et al. 2014).

However, despite this new shift towards a greater emphasis on poverty reduction, debates continue about the merits of formal and informal, community and individual tenure systems (Peters 2007). Despite approaches to tenure reform in Africa increasingly drawing on the notion of adapting systems of customary land rights instead of attempting to replace such systems with Western forms of private ownership, advocacy of land titling has made a come-back in the early 2000s (Cousins 2008). Many still regard customary tenure as being irreconcilable with a modernised economy, for which registered plots and clearly established landownership are seen as a prerequisite for land market transactions (Ho and Spoor 2006). This comeback can be attributed to Hernando de Soto's influential book 'The Mystery of Capital'. De Soto (2000) believes that by providing formal land

titles to the poor in developing countries, they become part of the modern economy. Land, buildings and businesses that lack formal rights are seen to be ‘dead capital’, as they are unable to function as collateral for bank loans and prevent investment and capital accumulation which ultimately inhibit poverty reduction (de Soto 2000). De Soto has a considerable following worldwide amongst policy-makers and politicians who support free-market ideologies.

Besides the purported economic impacts, land reform also plays a significant symbolic function in countries such as South Africa, as it provides a nation with tangible evidence that historical injustices are being addressed, thereby also forming part of the bigger process of nation-building (Hall 2004). Furthermore, land reform has the potential to contribute towards rural restructuring by transforming social and economic relations and providing a fundamental basis for pro-poor development (*ibid.*). These are important functions, especially considering consistent rural poverty across much of Sub-Saharan Africa and in many other parts of the world. This can also be said for Namibia, where a comprehensive land reform policy was implemented after independence- with the aim to both address inequality, nation building and promote development.

## **2.6 LAND REFORM IN NAMIBIA**

Namibia is a predominantly dry country, with a land mass of 825,418 square kilometres and supporting a population of 2.2 million (USAID 2010; National Planning Commission 2015). This makes Namibia the second least populated country in the world with an approximate population density of 2.6 people per square kilometre. The Namibian economy is reliant on agriculture, fishery, mining and tourism. As a result of economic growth in the country from its considerable natural resource asset-base, which includes minerals such as copper, uranium, zinc and gold (Girma 2015), the country has been classified as an upper middle-income country by the World Bank since 2009. In 2016, Namibia was ranked as the fourth most prosperous country in Africa (The Legatum Institute 2016). Yet Namibia still has one of the highest income disparities in the world, and over the last few years poverty measures have worsened (USAID 2010). The Namibian Statistical Agency (NSA) places the official unemployment rate for 2012 at 27.4 percent (2012); however, some non-governmental figures for the same period indicate unemployment rates can be as high as 50% (Girma 2015).

Land in Namibia remains a contentious issue as a result of the legacy of a century of colonial and apartheid rule built on a dual land tenure system. During the German colonial period (1884-1915), “indigenous Namibians were dispossessed from rights to both land and resources, [whilst] first German and then white South African settlers were encouraged to migrate to Namibia and establish commercial farms” (Fuller 2006: v). These settlers were granted freehold rights to land, mostly in the central and southern parts of the country. The establishment of these farms resulted

in the expropriation of land from indigenous communities and their confinement to underdeveloped communal areas (Fuller 2006).

After the First World War, then South West Africa was placed under the official mandate of the South African Government by the League of Nations. During the apartheid regime, further displacement of pastoral communities was enforced and land was given to white settlers. By the time Namibia became independent in 1990, a mere six percent of the Namibian population owned more than 44 percent of the commercial land and 70 percent of the population lived on communal land (Girma 2015).

Land in post-independent Namibia is classified into three main categories, namely communal, state and freehold land. Specifically, this is divided into “44 percent freehold (commercial land), 36 percent communal, and 20 percent state land (e.g. game parks [and conservancies]). All communal land vests in the state in trust for the benefit of traditional communities residing in those areas; therefore, customary rights cannot be alienated” (Girma 2015: 3).

Similarly as in other African countries, the newly independent Namibian government saw the introduction of new land reform policies as an important “reconquering” issue, and land has since then also played a key element in electoral propaganda (Garcia 2004). This is based on the fact that the country inherited an extremely skewed distribution of land, which has led to political pressures to address this social imbalance (Garcia 2004). In the decade after independence, the Namibian Government embarked upon a series of policies and laws to address the inherited inequities in access to land and other emerging land issues. At the National Conference on Land Reform and the Land Question in 1991, it was decided that a comprehensive two-fold land reform programme should focus on the equitably redistribution of commercial land and ensuring tenure security in communal areas.

Much of the public focus around land reform continues to be on the government’s commercial land reform programme, which focusses on the redistribution of commercial land through a resettlement programme. As a result of large-scale land dispossession during the German colonial era and under the apartheid regime, most of the commercial farmland belonged to white settlers at the time of independence. Therefore, Werner (2015) states that it is not surprising that the first decade post-independence was almost exclusively dedicated towards the redistribution of land in the freehold or commercial farming sector, particularly in the spirit of reconciliation. As Table 2.2 shows, progress on commercial land reform has advanced at a slow pace, with only 22 percent of the freehold area having been redistributed to previously disadvantaged households in the first two decades after independence. The Ministry of Land Reform blames the slow pace of land reform on the lack of land being offered on the market by white farmers through the Willing Buyer Willing

Seller (WBWS) principle (Werner 2015). However, other factors such as inability of the government to purchase farms that are on the market, due to the rising costs of land in Namibia, also play a role (*ibid.*).

Table 2.2 Distribution of freehold area

Year	Type of acquisition	No. of farms	Total freehold area (ha.)	Distribution % of freehold area
Before 1990	Land belonging to 'black farmers'	181	980 260	3
1991-2014	National Resettlement Programme	371	2 264 462	6
	Farms transferred by MAWF to MLR	54	411 257	1
1992-2013	Affirmative Action Loan Scheme	649	3 412 431	9
1992-2013	Land acquired by previously disadvantaged Namibians outside the AALS (private purchases)	?	2 200 000	6
<b>Sub-total 1991-2012</b>			<b>8 077 163</b>	<b>22</b>
<b>Sub-total including 1980-1990</b>			<b>9 057 423</b>	<b>25</b>
<b>Total freehold area</b>			<b>36 164 880</b>	<b>25</b>

(From Werner 2015)

The need for land redistribution in the commercial agricultural sector was widely agreed upon at independence, and the process was started early on to develop a comprehensive redistributive land reform programme. However, land reform in the communal areas was more contested, particularly by Traditional Authorities (TAs) whose powers would have been stripped in the original conception of communal land reform in Namibia:

“The first draft of the Communal Land Reform Act was modelled on land policy in Botswana, where communal land was taken out of the jurisdiction of traditional leaders and vested in Land Boards. At a consultative workshop in 1996, a majority of traditional leaders from across the country rejected these proposals, which would have resulted in stripping them of all powers over communal land. This forced the Ministry of Land Reform to review the Bill. The result was the Communal Land Reform Act (CLRA), which became law in 2002. The Act acknowledged the continued role that traditional leaders should play in the allocation and cancellation of customary land rights and defined their powers, in particular vis a vis Communal Land Boards. The latter were established in terms of the Act to register customary land rights and oversee the activities of traditional authorities” (Werner 2015: 18).

The Namibian government has on multiple occasions stated that poverty reduction in the communal areas is one of its main aims. Thus the Rural Poverty Reduction Programme (RPRP) was also involved in assisting the Ministry of Land Reform in developing an appropriate registration process to formalise communal land rights (Ministry of Lands and Resettlement 2010). Formalising communal land rights is also seen by the government as the first step towards dismantling the apartheid legacy rights (Ministry of Lands and Resettlement, 2010).

Fundamentally; “the loss of land symbolised the loss of power in this country by Africans” (Republic of Namibia 1994: 11).

In Namibia, the words customary and communal are used interchangeably and have the same meaning. Communal land remains vested in the state, however TAs have retained control over communal lands after independence in 1990. More than 70 percent of Namibia’s population live in communal areas in the northern regions of Namibia and are dependent on access to communal land for subsistence farming and livelihood (Mandimika and Matthaai 2013; Girma 2015). Communal land parcels, with the exception of commonage and communal land under leasehold tenure, is allocated to individual households whilst remaining under customary tenure governance. Thus much of the CLRA is focussed on the provision of individual rights, through customary and leasehold rights, in the communal areas of Namibia (MCC 2011). Commonage refers to the portion of the communal area of a traditional community which is traditionally used for the common grazing of livestock. Leasehold rights in communal areas fall outside the scope of this dissertation and will thus not be discussed.

The policy and legal framework guiding land reform in Namibia consists of the following (see Box 2.2 for a detailed description):

- The Constitution of the Republic of Namibia, 1990
- Agricultural [Commercial] Land Reform Act, 1995
- National Land Policy, 1998
- National Resettlement Policy, 2001
- Communal Land Reform Act, 2002

One of the aims of the CLRA was to facilitate a proper and uniform land administration system with the ultimate goals to provide tenure security to all inhabitants of communal areas, in the hope to reduce land disputes and promote economic development through increased investments on the land (Werner 2015; Meijs, Kapitango and Witmer 2009). Kasita (2011) lists the land-related disputes in Namibia, which include the double allocation of land, border disputes and self-extension- whereby an individual extends his or her land parcel beyond the legally allocated dimensions. She notes that these issues pose a considerable threat to tenure security in communal areas and should thus be addressed through proper land governance systems (*ibid.*).

*The Constitution of the Republic of Namibia, 1990*

The Constitution of the Republic of Namibia, 1990, is the supreme law of the country. All other legislation and policies that are passed have to be in conformity with the basic provisions as stipulated in the Constitution. The Constitution promotes an equitable and free society that is free from poverty and discrimination. Impediments to the acquisition of individual land rights are removed through the protection of such rights. The following Articles in the Constitution make specific provisions to access to land:

Article 16 (1) recognises the right of all persons to acquire, own and dispose of all forms of immovable and movable property in all parts of Namibia, individually or in association with others, and to bequeath their property to their heirs or legatees.

Article 100 states that the land belongs to the state if it is not lawfully owned. Rights to the land have been assigned to four categories:

- State land - used for nature conservation, game parks military bases
- Urban land - where standard concepts of state, municipal and private ownership apply within proclaimed boundaries under statutory law
- Commercial farm land or all freehold agricultural land which is privately owned
- Communal land or all land used by Namibia's communities but owned by the state in trust for those communities

*Agricultural [Commercial] Land Reform Act, 1995*

Agricultural commercial land is governed by the Agricultural (Commercial) Land Reform Act, Act No. 6 of 1995, which provides for the acquisition of agricultural land by the Government for land reform purposes and redistribution to Namibians. This Act provides the Government with the necessary legal tools to acquire land for resettlement purposes under the land reform programme. Amongst other provisions the Act also prescribes the way in which agricultural land is to be planned and allocated.

*National Land Policy, 1998*

The National Land Policy of 1998 is informed by the Constitution and the Resolutions of the 1991 National Land Conference. The policy recognises various forms of land tenure and ascribes equal status under the law to several forms of land rights and several categories of land rights holders (LAC, 2005). The policy is based on a unitary land system which provides for equal rights and opportunities across a range of tenure systems, irrespective of whether the land is located in communal or urban areas. Namibia's unitary system<sup>1</sup> accords full and equal security to all land rights regardless of the form of tenure, gender or race of the rights holder.

*The National Resettlement Policy, 2001*

One of the main objectives of this policy is access to land with secure tenure. The policy's other objectives are to redress the past imbalances in the distribution of economic resources especially land and secure tenure; and offer Namibians an opportunity to reintegrate into society, the main target groups being individuals with no land, income and livestock.

*The Communal Land Reform Act, 2002*

Communal land is administered through the Communal Land Reform Act, Act No. 5 of 2002. It provides for the allocation of rights to communal land outside the boundaries of proclaimed towns. It establishes the Communal Land Boards and regulates the powers of Traditional Authorities in relation to communal land. The Communal Land Boards control the allocation of customary land rights by chiefs and the administration of the entire system of granting, recording and cancelling land rights in consultation with chiefs. The council of Traditional Authorities assist in the administration and control of communal land.

Box 2.2 Overview of legal framework regarding land reform in Namibia

(Mandimika and Matthaei 2014: 5-6)

Customary systems governing land rights generally favour men as a result of power dynamics that underlie many land governance systems and practices. Similarly in Namibia, women tend to often be assigned fewer and weaker land rights in comparison to men (Girma 2015). Before the CLRA was put into force, women generally had access to land through their husbands or male relatives. Girma (2015) notes that this is partly due to patrilocal residence patterns in Namibia where wives move to the husband's village after marriage. This makes women particularly vulnerable when the husband dies as they are traditionally not eligible to inherit communal land rights held by their husbands, thereby placing them at the mercy of their spouse's family (AfDB 2006). During the

landmark National Conference on Land Reform and the Land Question in 1991, the dispossession of widows was highlighted as a priority area (Werner 2008).

Summarised broadly, the Agricultural (Commercial) Land Reform Act, 1995 (Act No 6 of 1995) addresses redistribution of freehold and the Communal Land Reform Act, 2002 (Act No. 5 of 2002) focusses on tenure reform in communal areas. Thus communal land in Namibia is governed by the Namibian Constitution of 1990 and the Communal Land Reform Act (Act No 5 of 2002) (CLRA). Namibia recognizes customary tenure in statutory law through the Constitution, the Traditional Authority Act, 2000 and the CLRA, 2002.

The statutory framework for customary law includes the Traditional Authorities Act, 2000 and the CLRA, 2002. The Traditional Authorities Act accords legal recognition to Traditional Authorities and defines their powers, duties, and functions. However, a significant point of contestation amongst some communities is the fact that not all Traditional Authorities are formally recognised under the Act. Recognised Traditional Authorities are responsible for the administration of customary laws in their respective communities and must “uphold, promote, protect and preserve the culture, language, tradition, and traditional values” (The Republic of Namibia, 2000: Traditional Authorities Act 2000 (Act No. 25 of 2000), sec. 3(a)). The responsibilities of Traditional Authorities also include their role as arbitrators of disputes among community members. A Council of Traditional Leaders assists the President with the administration and control of communal land (Girma 2015).

While the primary power over the authorisation and the cancellation of land allocation continues to be vested in the Chief/ Traditional Authorities, Communal Land Boards (CLBs) were established in each region (except for the central Khomas region, as there is no communal land in this region) to ensure that the allocation of customary rights is done in accordance with the CLRA and to issue land rights certificates. It is compulsory for people already living on or planning to live on communal land to register their land right. Traditional Authorities must approve the application for land rights. In Namibia, customary land rights are not fully transferable (Alden Wily 2012d). Therefore the powers of CLBs are limited to the ratification of land rights once they have confirmed that the applied for allocations comply with the regulations and national policies (Werner 2008).

The 12 Communal Land Boards countrywide operate under the oversight and guidance of the Ministry of Land Reform (MLR). The position of board secretary is a civil service position typically held by MLR staff or the Regional Council concerned. Composition of the CLB is pre-determined and has to include a variety of key stakeholders, which include representatives from the organised farming community (such as agricultural unions), the four line ministries - Ministry

of Land Reform (MLR); Ministry of Agriculture, Water and Forestry (MAWF); Ministry of Environment and Tourism (MET); and Ministry of Urban and Rural Development (MURD); a representative from each recognised Traditional Authority; the responsible regional officer of the regional council; a representative from the conservancy, if any fall within the Board's area; and four women representatives (The Republic of Namibia 2002: CLRA Chapter II (4) (1)).

The CLRA also prescribes the rights and procedures for registering communal land rights. While those who held communal land before 2002 continue to hold rights, they are required to apply for recognition and registration of those rights within a certain timeframe (The Republic of Namibia 2002: CLRA Chapter IV 28 (3)). The MLR has extended this period on numerous occasions- currently no new deadline has been set- and thus continues to receive applications for existing customary land rights.

The CLRA defines the permissible purposes and sets a maximum size for communal land allocation. Community members can apply for customary rights for subsistence farming and/or residence purposes (The Republic of Namibia 2002: CLRA, sec. 21). The CLRA also specifically specifies the size restriction of communal land parcels at 20 hectares for customary land (The Republic of Namibia 2002: CLRA, sec. 23; Regulation Part 1 sec. 3). Applications for customary land rights which exceed the 20 hectares cap require approval from the Minister of Land Reform (The Republic of Namibia 2002: CLRA, sec. 23).

Under the CLRA, customary land rights are allocated for the natural life of a titleholder and be inherited by a surviving spouse and his or her children, unless the right is relinquished before the titleholder's death (The Republic of Namibia 2002: CLRA, sec. 26(1)). If the right is relinquished, it is reverted to the TA for re-allocation according to the procedures for registering a new customary land right.

Figure 2.3 illustrates the registration process for obtaining a customary land right. Applicants initiate the registration process by identifying land and submitting an application to the respective headman or headwoman of that village where the land is located. Once the application is received, the headman or headwoman consults the situation with the relevant community. This process includes doing a background check on the applicant (can be done informally by communicating with the headman or headwoman in the village from which the applicant is moving), verifying the availability of land, and ensuring that the requested land does not trespass on commonage land. The Traditional Authorities then decide whether to refuse or grant an application for customary land rights. When the headman or headwoman confirms the applicant's customary right over the parcel of land, a letter of consent, confirming the location of the land, its size, and that the land is undisputed, is attached to the application (Girma 2015; Mendelsohn 2008).

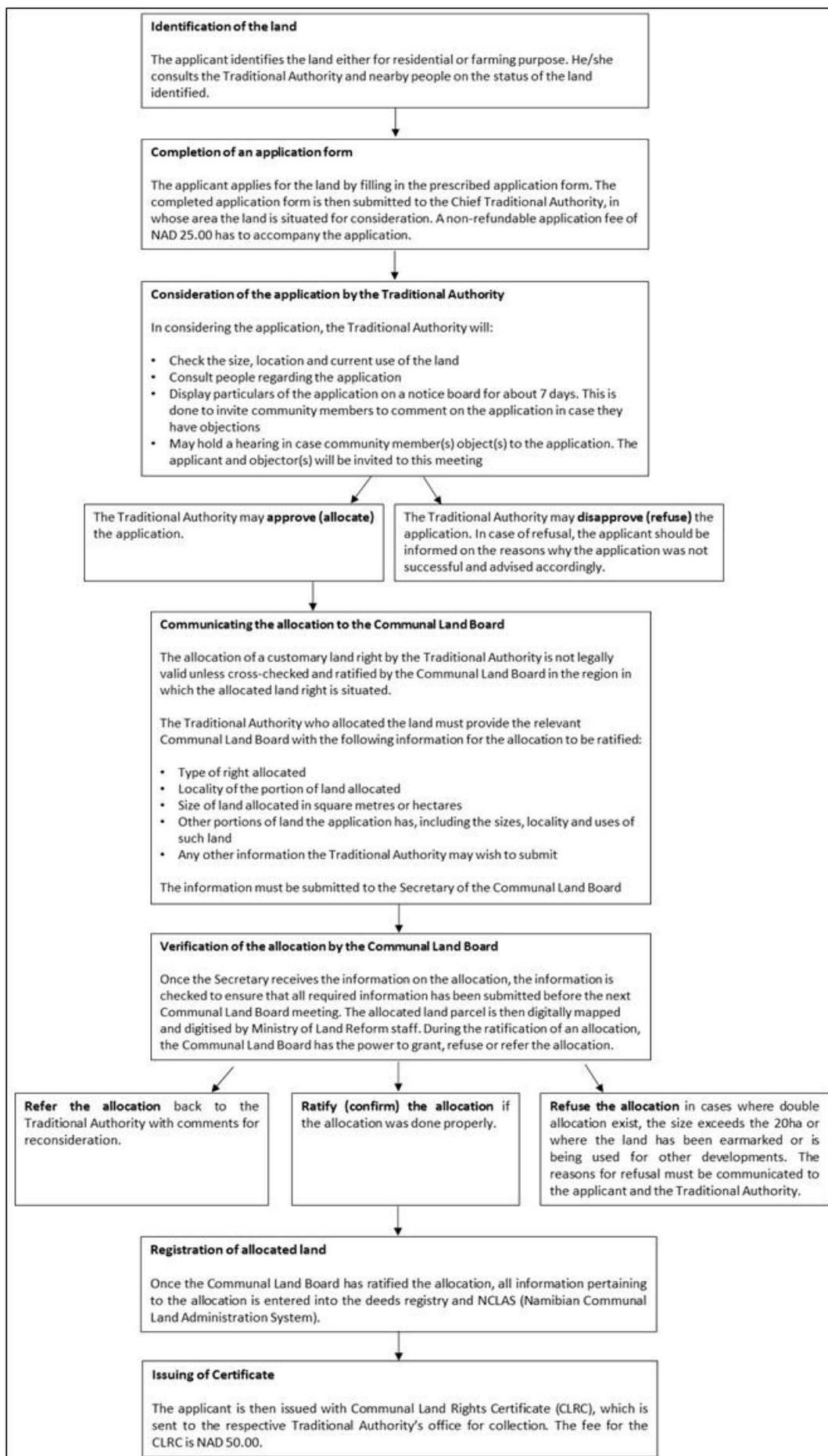


Figure 2.3 Communal Land Rights Registration process

(Own illustration)

According to the CLRA, “[f]or an allocation to be legally binding, the relevant CLB must ratify the allocation of existing or new rights after verifying the information provided and ensuring compliance with the act. The CLB conducts an inspection to verify the size and boundaries of the land. The field work also includes an awareness raising component to explain the land allocation procedures and activities to all land users followed by mapping of the individual plots. The mapping exercise involves MLR staff, the applicant, neighbors, and the relevant headmen/headwomen. After the mapping, the CLB is required to display applications on a notice board for seven days to solicit objections by persons with adverse claims against the application for customary land rights” (The Republic of Namibia 2002: CLRA, sec. 2 (3b), in Girma 2015: 7).

After that, the CLB will “review the findings of the field verification during an official land board meeting and veto, approve, or refer the application back to the Chief or to the Traditional Authority for correction. The CLB can only veto applications on three grounds: (1) the land right has been allocated to someone else, (2) the plot exceeds 20 hectares and (3) the land is reserved for commonage” (The Republic of Namibia, 2002: CLRA, sec. 24 (4) (c)). Once the CLB has ratified the application, the information is entered into a register maintained by the CLB. The Communal Land Rights Certificate (CLRC) is given to the responsible TA, for collection by the applicant. An administrative fee of NAD 25 has to be paid for all applications, and another NAD 50 for the issuing of the certificate.

Appeals against a decision taken by the TA or the CLB can be made within 30 days, for which an appeal tribunal will be called in session. The Minister of Land Reform is responsible for the appointment of the Appeal Tribunal, which is the highest arbitration body under the CLRA, as its decisions are binding (Legal Assistance Centre and Namibia National Farmers Union Advocacy Unit 2009).

Estimated numbers of communal land rights vary considerably across the country; specifically between the northern communal areas (often referred to as ‘north of the Veterinary Cordon Fence’) and the southern and more central communal areas, and also between the different northern regions (Thiem 2014). In 2008, it was projected that a total of approximately 300,000 communal land rights would have to be registered; of which 24 percent were estimated to be located in the central and southern regions and 76 percent in the northern regions. However, this projection had to be amended about two years ago, as figures were originally used from the 2001 Population Census which did not differentiate between communal and commercial areas in the southern and central regions. This resulted in the predictions for Omaheke and Otjozondjupa being much higher than the actual numbers of communal land parcels to be registered (Thiem 2014).

In 2014, based on the results from the 2011 Population Census, the total communal land rights to be registered was amended to approximately 245,000 (Thiem 2014: 40). By March 2014, applications for only 41 percent of all projected land parcels had been submitted to the CLBs. Thus after a decade of implementing the CLRA, not even half of all Namibians living in communal areas had applied to have their communal land rights registered. However, MLR had already mapped more than 65 percent of all parcels (Table 2.3).

Table 2.3 Communal Land Rights Registration progress

Indicator	Progress (March 2014)	Overall progress (%)	Overall target (#)
Applications handed in	101 115	41%	245 000
Parcels mapped	158 156	65%	245 000
Parcels digitised	124 020	51%	245 000
Deeds entered	73 287	30%	245 000

(Thiem 2014: 4)

The first deadline the Ministry of Land Reform had set was March 2006. However, application for less than 15 percent of the estimated number of communal land parcels had been received by this deadline, and even fewer land parcels had been registered (Thiem 2014). It was assumed that the two main bottlenecks were that the objectives of the CLRR were not communicated clearly in the regions and that the processing of the applications was too slow. Yet there have been widespread information and communication campaigns since the enactment of the CLRA to inform Namibians about the need to register a communal land right. Communication of the registration programme was done through radio and television broadcasts, public meetings, trainings of TAs and regional councils etc. However, confusion and misunderstanding regarding the registration remained, and TAs who opposed or were reluctant of the registration programme were often criticised for not properly conveying the information to their communities (Thiem 2014; Mendelsohn 2008).

Several donor agencies started to support the registration process financially and technically from 2006 onwards. The budget allocation for the communal land rights registration programme had also increased from the original sum of NAD 800,000 at the start of the process, to NAD 11 million by 2013 (Mandimika and Matthaei 2013).

Since then, the 2006 deadline had to be extended for another three years to March 2009 and has since then been extended twice more; first to the end of 2012, then to the end of February 2014, as the registration process has not met the set targets (Thiem 2014). A new deadline has not yet been determined.

During a policy review on communal land rights registration by the Millennium Challenge Account in Namibia (MCA-N), a fund established between the Namibian and US governments to support development and economic growth in the country, it was argued that there are considerable differences in how residents in communal areas view the formalisation of their land rights:

“Many individuals have definite wishes to have secure, tradable title and to be able to use their land for economic gain. Other properties are regarded as belonging to the families which may not normally be transferred to individuals who are not relatives. In some areas, there is a resistance to the idea of spatially defined properties because those imply limits to the future expansion of their fields. And for many people, their main wish is to have a small area to live in retirement and on which to grow some food for domestic consumption” (MCA 2011: 10).

Surveys have indicated that a large part of incomes from those who live and farm in communal areas is derived from off-farm and other non-agricultural activities; which include pensions, remittances and business earnings (MCA 2011). However, the study did acknowledge that there are major differences in income structures, as most poor households remain completely dependent on farm and commonage resources (*ibid.*).

The policy review by the MCA-N argued that communal land reform in its current tenure form was not sufficient for enabling economic growth in the communal areas, since customary land rights have no capital value and are not tradable. The MCA-N believes that land rights should be fully tradable to be able to unlock investments and development in land:

“In short, making a living in rural communal areas is not easy, mainly because cash revenue from local resources is seldom available. While livestock and social relations provide security, capital based on land for commercial applications is also not available. Arguably, 50% of the population can therefore not use their land rights as security to obtain collateral funds, and this also means that the 38% of the country’s land surface that is communal also has no capital value. This land is ‘dead capital’. [...] Directly and indirectly, several provisions in the Communal Land Reform Act of 2002 further inhibit the use of land rights for commerce and provide little room for the kind of flexibility that produces economic growth. [...] Put simply, there is little reason to invest savings or capital in land if there is no prospect of being able to sell or liquidate the investment in the future. (One way to understand this constraint is to consider the reaction of freehold land owners in towns if they were suddenly prohibited from ever selling their properties, even though they retained secure tenure. This would be unthinkable, but that is exactly the condition that holds in communal areas). In the same way, secure tenure over the land and its natural resources provides the necessary incentives for land holders to invest time, effort and money in actively managing the land sustainably. In the long term, that is what underpins economic development. For people who wish to invest in formal business enterprises, such as intensive agriculture, tourism and fish production, the Act and its Regulations effectively discourage investment by providing stringent, lengthy and what have proved to be complex procedures for investors to gain secure tenure over land that can be used commercially. The general impression created by these provisions is that it is hard to invest in communal areas” (MCA 2011: 12).

According to the MCA-N, the CLRA has created a widespread impression that communal land rights only provide individuals with rights to live and grow food for domestic consumption on their land (MCA 2011). Furthermore, communal farmers have expressed concern about the fact that each residential or farming unit is described in the singular- especially since many farmers in some parts of the country have two or more fields. Communal farmers have also voiced their fears

that once all properties have been registered in an area, people from other communities will be allocated the unoccupied or unclaimed land in their community (MCA 2011).

The Namibian government symbolically owns communal land, over which TAs have symbolic custodianship (Mendelsohn 2008). However, neither national legislation nor traditional law sufficiently protects the commonages, which has resulted in over-exploitation and over-grazing of commonages, as well as land grabbing by local elites and wealthy individuals of commonage areas (Mendelsohn 2008; MCA 2011; Werner 2015). Grazing rights and the use of the commonage is regulated in Chapter IV of the CLRA, stating that all lawful residents have unrestricted access to commonage for grazing and other purpose (The Republic of Namibia 2002: CLRA, sec. 29(1)). TAs have the legal authority to impose conditions for grazing rights and enforce the conditions (*ibid.*: CLRA, sec. 29 (1)(a)). However, Alden Wily (2012d) criticises the CLRA for not explicitly protecting the unregistered commons, as large pieces of commonage have already been captured and fenced-off by mostly local elites. In many such cases, the local community loses access to the commonage.

Garcia observes that the agrarian sector in Namibia reflects the country's general economic conditions, as characterised by the duality between the commercial and communal subsectors:

“These are defined by two extremely divergent conceptions of agriculture and rural environments. While commercial agriculture is characterized by a heavily capitalized farming system, mainly oriented towards raising livestock, in northern Namibia subsistence farming relies on basic agricultural production, almost exclusively oriented towards home-consumption” (Garcia 2004: 44).

This separation is also physically visible, and symbolized by the separation of the largely communal land in the north from the commercial land in the south by the Veterinary Cordon Fence (VCF) or so-called ‘Red-Line’ (also referred to as the ‘Police Line’ before Independence). The ‘Red Line’ was erected in 1896 for disease surveillance, separating northern and central Namibia from southern Namibia. The VCF's main purpose continues to be the control of animal and meat movement from the north to the south of Namibia. Since the VCF affects the marketing of animals that come south from the VCF with a different disease status as those from the northern communal areas, the Meat Corporation of Namibia (Meatco) regards the VCF as “fundamental for the export business as it allows for complete adherence and compliance to protocols and regulations required by major international clients like the European Union (EU)” (Meatco 2018).

Garcia (2004) has found that the Namibian land reform programme is driven and motivated more by political reasons than as a strategy to promote socio-economic development; in addition to providing tenure security, it does not adequately address farmers' need for technical assistance in agricultural production. She believes that the South West Africa People's Organisation (SWAPO)

continues its current land reform programme “mostly because of the widespread perception that formerly disadvantaged Namibians will not be owners of their country until they own its land. Thus the reform is not only for economic, but also for sociopolitical reasons” (Garcia 2004: 51). Therefore, it is argued that political and academic debates should move away from discussions about the importance of land reform, to a more pragmatic dialogue on what needs to be done to transform the land reform strategy so that it addresses the needs of those dependent on the land (Garcia 2004).

Studies from across Africa have shown that even though tenure security is important, it is not a sufficient condition for economic development (Werner 2015). Instead, evidence has shown that customary systems which have not yet been formalised are in fact able to provide people with enough perceived or sufficient security to develop their lands (Werner 2015). In order to promote rural development and address poverty, farmers need to have access to input and output markets, proper water and road infrastructure, extension services, agricultural technology etc.

Werner notes that the government and development partners are aware of the fact that communal land rights registration has not yet delivered on the desired development outcomes:

“If a recent advertisement for a consultant “to identify and harness wider potential benefits of communal land rights” is anything to go by, “the benefits of registering the communal land rights have not, as yet, been tangible for many communal land holders” and the “uptake on the potential use of registered land rights by the public and private sector” .... rather low” (The Namibian, 14.11.2014, quoted in Werner 2015: 19).

Thus from the discussion it can be concluded that the land reform process in Namibia, specifically regarding the registration of communal land rights, can be placed within broader debates of land policy in Africa. The colonial and apartheid legacy left behind a skewed land system in the country, marginalising the rural population in the communal areas (a more detailed description on the historiography of land can be found in Chapter 4). To address tenure security and within the broader context of rural development and economic growth, the Namibian government enacted the CLRA to formalise land rights- following the same land governance approach as many other countries in Sub-Saharan Africa. This approach, whilst intending to be pro-poor, is embedded in wider ideas of the individualisation and formalisation of land tenure for economic development.

## **2.7 CONCLUSION**

This chapter commenced by looking at the different roles land plays as a social value and economic asset. Land is a unique resource which attracts specific meanings, feelings, interests and socio-political relations. Land is both the basis for shaping identities and has cultural significance, as well as being the basis for economic opportunities and livelihoods. Therefore the question arises

whether land can be dealt with like any other resource, specifically in view of the global and local processes that are increasingly placing pressure on the availability of and access to land.

The chapter continued by looking at the history of land reform and the significant role it has played in political and economic policymaking, particularly in Africa. Contemporary land policies in Africa have been shaped by historical processes, as land was one of the main points of contention in colonial Africa. These processes started in the 1890s when European settlers started claiming authority over land in their newly appropriated territories, and continued well into the 1980s with the introduction of neoliberal policies focussing strongly on privatisation through land titling programmes after most African countries had gained independence.

Therefore, centuries of ideologies, perceptions and policies have shaped the way we understand and regard land, property and tenure. These ideologies range back to the Jeffersonian tradition of family farms in America and capitalistic tendencies in agriculture since the 1950s. In policy circles today, discourses range from discussions on promoting customary forms of tenure to advocating for privatisation and title deeds.

Despite these dichotomies, the importance of secured access to land is highly regarded within the international development community. Several international conventions and declarations underline the importance of land rights and land management to achieve sustainable rural and urban development. Tenure security is also an indicator in the Post-2015 Sustainable Development Goals.

Namibia has also adopted a comprehensive land reform policy after independence in 1990. In the decade after independence, the Namibian Government embarked upon a series of policies and laws to address the inherited inequities in access to land and other emerging land issues. At the National Conference on Land Reform and the Land Question in 1991, it was decided that a comprehensive two-fold land reform programme should focus on the equitable redistribution of commercial land and ensuring tenure security in communal areas. By law, communal land parcels, with the exception of commonage and communal land under leasehold tenure, are allocated to individual households whilst remaining under customary tenure governance.

This chapter discussed how historical processes have shaped how governments and the international development community have come to understand land and how it has influenced policy-making. Chapter 3 will look deeper into the different debates that have originated around land rights, specifically on the dual idealisms that exist around tenure security.

## CHAPTER 3 THE DEBATE CONTINUES: THE IDEOLOGICAL DUALITY OF LAND RIGHTS

*“Democracy is when the indigent, and not the men of property, are the rulers”*

Aristotle

### 3.1 INTRODUCTION

*“Because human beings live on the surface of the earth, systems of law and custom which regulate property in land, and so establish the foundation of virtually all human activity, have sparked often fierce and monolithic ideological commentary” (quoted from Ellickson 1993)*

Land is considered as one of the most valuable resources for survival. Not only does it provide food, water and energy, but it is a major resource through which people all over the world make a living. Yet, despite this central role that land plays, challenging questions about distribution, ownership and management have not been sufficiently addressed (Tarimo 2014: ix).

It can be assumed that all governments have an interest in land policy and efficient land use. However, the implementation of land policies often results in inefficiencies and unhappiness, as land governance authorities struggle to find a balance between individual and collective preferences (Davy 2012). Contemporary debates on land in Africa continue to be polarised between proponents of tenure reform through state-led registration programmes of individual land titles, and those who believe that customary land tenure is the best way to address rural poverty and that land policies should strengthen customary land rights (Chimhowu and Woodhouse 2006).

Thus, in most of the literature on property rights, a dichotomy remains between individual and communal land rights. The literature focusses on determining which of these systems “has gained the upper hand” (Berry 1992). The opposing views also reflect international development objectives: On the one hand policies aim to modernise the agricultural sector and increase productivity, on the other hand governments and donors have committed themselves to poverty reduction by maintaining access to land for the rural poor- including access to commonage resources (Chimhowu and Woodhouse 2006). Differently put, these views can also be categorised into two ‘schools of thought’: the belief that land policies should be rooted in theories of social capital, the other that they should be based on individualised tenure models (Obeng-Odoom 2012). Debates concerning land in development are no longer merely focussed on having or not having property, but about the importance of individual, state or communal property, thus ultimately these debates are about the appropriate property rights systems to promote development (GIZ 2016).

Dekker (2005) states that even though capitalism and socialism are emotionally loaded terms, they best describe the two dominant ideologies of today. Most economists tend to either support forms

of tenure where farmers own the land they cultivate, or they support more shared tenancies where land is seen as a communal resource. This lack of consensus partly stems from ideological differences and the complexities that exist around land tenure (Currie 1981: 2).

There are various camps within the land policy sector that believe that government should play a strong role in land governance, others insist on privatisation and yet another group advocates towards community-led land initiatives:

“There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world in total exclusion of the right of any other individual in the universe” (Radin 1993: 131).

### 3.2 RE-EVALUATING TENURE SECURITY REFORMS

These narratives around different property regimes find their origins in political-historical processes. Flintan describes how such narratives are “formed as a result of how a particular group of actors understands the world, understands ‘development’ and understands ... ‘pastoralism’. This understanding is influenced by different underlying agendas and goals, based on different value systems” (Flintan, 2011: 7).

To be able to fully understand the discussions about land rights, the concepts of property, land tenure, and secure tenure should be well understood. Obeng-Odoom gives a brief but precise definition for these concepts:

“Generally, *property* is seen as a broad term denoting tangible things, relationships, or rights to the use and ownership of those things. It is when ‘property’ is qualified by ‘real’ or ‘landed’ - as in ‘real property’ or ‘landed property’ that it becomes narrowly focused on land and the rights therein. Property rights are therefore land rights: certain rights that are exercised over land which, in turn, entail an enforceable duty on others not to interfere with those rights. *Land tenure* refers to the system of institutions or rules of land ownership, use, and management, obligations, responsibilities and constraints on how land is owned and used. It is commonly said to be ‘*secure*’ if it assures owners that their rights will be free from expropriation, encroachment or forced eviction” (2012: 162).

Land has played a central role in many debates of many of history’s most famous philosophers. Thomas Hobbes emphasised the role of government to protect its citizens and regulate affairs, including property, as he believed that society could not function without the existence of the state. In Hobbes’s 1651 work *Levithian*, he describes the second law of nature as being a state of nature where all men have a natural right to all things, however to ensure peace and stability, men have to relinquish some of these rights (Davy 2012).

In contrast, John Locke responded to Hobbes’s assumptions on property in his book *Second Treatise of Government* in 1690 that individuals could own property even in this state of nature. Locke

argued that property rights were not endowed by government, but in fact pre-existed government. Therefore, man has the right to his own property and shares the right to access to all resources. Yet by working on a piece of land and applying one's labour, a person can turn a common resource into private property. Thus Locke writes that "[a]s much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property" (Locke, quoted in Wright 2009). Since Locke believes that rights over property exist with or without government, it is merely the government's responsibility to ensure that the property is more, and not less, secure (Wright 2009). The French philosopher Jean-Jacques Rousseau strongly believed in the idea that property is linked to the community and its general will (Davy 2012). Rousseau argued that it should be left to the communities themselves to decide whether land should be used for communal purposes or allocated individually. In his book *Discourse*, Rousseau wrote:

"The first man who, having enclosed a piece of land, thought of saying 'This is mine', and found people simple enough to believe him, was the true founder of civil society. How many crimes, wars, and murders; how much misery and horror the human race would have been spared if someone had pulled up the stakes and filled in the ditch and cried out to his fellow men: 'Beware of listening to this impostor. You are lost if you forget that the fruits of the earth belong to everyone and the earth itself belongs to no one!'" (Rousseau 1755, in Davy 2012: 18).

Thus each community has the right to determine its own land policy that was "indestructible", as he believed that strong social cohesion amongst the community would override individual or contradictory interests (Davy 2012). However, general preconceptions that individual, private ownership is superior to communal tenure forms has been historically entrenched for centuries, despite narratives questioning this assumption (Peters 2007). A book on land tenure in the British colonies, published by Liversage in 1945, reiterated the widespread (mis)conception that communal land has no rules and regulations and thus there was no incentive for individuals to exercise control over the communal resources (Liversage 1945). As Peters rightly states, these ideas about communal land in the former colonies "have long bedevilled understanding of non-European systems of rights and practices around land. The conventional logic was/is that communal tenure entails an absence of individual rights and a domination of group rights, so that the individual land user faces insecurity of tenure which, in turn, constitutes a disincentive to the investments needed for increasing productivity and efficiency on which agricultural development and general social progress must be based" (Peters 2007: 5).

Similarly, in the 1940s, Lugard believed the only way agriculture could be commercialised was through individualising tenure (Peters 2007). Even throughout the 1960s to 1980s, land policies in Africa were based on the notion that communal land systems were not sufficient to ensure investments in land and agricultural productivity (Lund 2000; Shipton 1994; Okoth-Ogendo

1976.). A lack of ‘properly’ defined and enforceable property rights was blamed for tenure insecurity in communal areas. Thus, it was assumed that individual property rights were needed to follow the trajectories of economic growth and modernisation. Hence states adopted land policies to create such rights, echoing the policies first introduced by European colonialists (Peters 2007). By the late 1990s, there was consensus that the land reform policies up until then had not achieved the expected results, which gave rise to an acceptance of the advantages of building land reform programmes around communal land tenure systems; which were more human-centred, focussed less on economic prescriptions and were ultimately more pro-poor (Toulmin and Quan 2000; Deininger and Binswanger 1999; Bruce and Mighot-Adholla 1994).

However, support for individual titling programmes has re-gained considerable traction as a result of Hernando de Soto’s influential book “The Mystery of Capital”. De Soto argues that by formalising rights to land and other property, the poor can take full advantage of capitalism. This “old idea clad in new language” has placed the formalisation of land rights back into debates about economic and political change in Africa and notions of pro-poor policies, thus leading to a “new wave” of land reforms (Peters 2007: 10-11). De Soto’s arguments have received widespread acclaim in the development community, and has been endorsed from a wide variety of people, including Bill Clinton and former UN Secretary Generals. Goldfinch (2015) believes that de Soto has proposed a very simple but yet charismatic and ideologically appealing solution for economic underdevelopment, and has thus garnered such support from many in the international development community. In South Africa, an ANC discussion document “bemoans the failure to title land and houses of the poor because it sterilizes the enormous value of these existing assets, which could so easily be turned into collateral to secure access to capital” (quoted in Kingwill et al. 2005:3, in Peters 2007: 10).

De Soto further argues that property rights are fundamentally linked to the rule of law:

“If you’re poor, and all you’ve got basically is a piece of land and a place where you work, whether you’re street vending or milking a cow, there is nothing more precious to you than your property. But to preserve it without the law you’ve got to satisfy tribal chiefs, crooked cops, corrupt politicians, bad judges, your difficult neighbors, and even the terrorists. But if the law comes in and says those rights are now recognized, not only by the neighbors but by the police and the whole nation, now you can trade them nationally and even internationally and the law will protect you, then people become interested in the rule of law. Soon they’ll ask, what happens if they have a dispute and go to court? Then they want a good judiciary system. And eventually they will realize that the laws can be changed, so they’ll ask, who makes the laws? And they will care about the political process. So the origin of the rule of law- which will allow a modern nation to grow and so bring peace, stability, and prosperity to the world- is property rights. And the rule of law will actually generate prosperity” (2004: 5).

Thus there is a certain amount of tension between strategies and approaches that aim to be ‘pro-poor’ and ones that are concerned with enhancing productivity (Chimhowu and Woodhouse 2006). The tension was furthermore heightened when a High-Level Commission on Empowerment of the Poor, hosted by the United Nations Development Programme, and co-chaired by de Soto, recommended that the formalisation of poor people’s property rights was a key element for poverty reduction (Chimhowu and Woodhouse 2006). The outcome sparked considerable criticism amongst those who oppose such titling programmes, arguing that it will only marginalise the poor further.

Across Africa, individualisation of property rights has been promoted and strengthened over collective and communal land rights (Flintan 2011). Many governments follow this trend in tenure reform, by converting customary rights into property rights recognised by the state (Chimhowu and Woodhouse 2006). Many states in Africa are implementing land reform policies which in the short-term include both individual tenure models and customary property regimes in plural legal (or dual) land reforms. In the long run, most land reform policies tend to aspire to endorse private property rights regimes through land titling (or registration) programmes- thereby following an individualist-evolutionary perspective of land rights (Obeng-Odoom 2012).

Many researchers argue that individualising and titling land has resulted in a skewed distribution of land leading the powerful and wealthy to acquire more land than others, specifically if the marginalised were not able to contest the land acquisition (Lumumba and Kanyinga 2003; Huggins and Clover 2005). This leads researchers to believe that land reform programmes focussing on individualised titling, have led to more conflicts and has ultimately decreased people’s security of tenure (*ibid.*). This can be seen in Tanzania, where the government introduced ‘village titling’ in the 1980s in order to promote investment in land as a result of the perceived security provided through individualisation. This system allowed villages to obtain titles for 99 years, however instead of leading to agricultural growth and investment, resulted in increasing conflicts and litigation due to the relocation of villages and redrawing of boundaries and disregarding the existing customary land tenure system (Moyo 2008: 65).

In the past, land reform programmes on the one hand either put absolute faith in the individualisation of land and the free market or on the other hand focussed on socialist-inspired social engineering (Huggins and Clover 2005). However, despite lessons learnt over the past decades, the appropriateness of various land reform policies across the world remain controversial. As a result of neoliberalism and market penetration in rural Africa, it is sometimes stressed that governments have to play a more active role in protecting rural inhabitants through formal titling programmes. In contrast, many others argue that titling is not required nor effective, and that local

institutions and reliance on local norms should be strengthened, since they are also adapting to respond to the changing rural economy (Huggins and Clover 2005: 10).

Lawyers generally agree that property is the ultimate comprehensive right a person can have in a thing, such as for example land. Legal theory considers property as “a bundle of rights, including the right to possess the right to use, the right to convey, or the right to bequeath land” (Davy 2012: 10). Even though property relations are based on law, they also originate from local property cultures or power relationships such as between individuals and governments. Property is thus not only a legal concept, as some argue that it is foremost a social construct (Davy 2012). Okoth-Ogendo (2008) argues that the ways in which people obtain their livelihoods in rural areas continue to be influenced by the values and norms of their culture and history. He notes that despite the intervention of state law and the introduction of complex systems of property law in many African countries, these values and norms continue to directly and indirectly determine land relations (*ibid.*). Yet Davy states that “[y]our property may be local, but the *idea* of property is embedded in international human rights treaties as well as [...] legal systems” (2012: 26-27).

According to Currie (1981), the diversity in land tenure systems raises several important issues, specifically on whether one can derive meaningful conclusions about the respective qualities and advantages of different forms of tenure. Currie asks whether “[I]t is possible to demonstrate that one institutional arrangement is ‘better’ [...] than some other, or even that one form is ‘best?’” (1981: 1-2). Comparisons and analyses of land tenure systems have taken a central role in the history of economic thought, and still continues to attract significant attention today, specifically in light of the numerous land reform programmes worldwide.

### **3.3 INDIVIDUALISATION OF LAND**

It is important not to confuse the term ‘property’ with the term ‘privatisation’, as is often the case in discussions about land reforms. Privatisation generally refers to the transfer of property rights “from one person to another and also from the government to new private individual or communal owners” (GIZ 2016: 11), often in the form of a title of ownership. Private landownership is regarded as the most comprehensive right a person can have in immovable or movable goods, and rights in land can include the rights to use the resource below or above the land- such as minerals, water, timber, air etc. (GIZ 2016).

In his much quoted article “Towards a theory of property rights”, Demsetz (1967) has used a historical example to describe how the allocation of individual property rights can protect the resource rights of communities. Demsetz describes how before the arrival of colonialists, the Montagnes Indians in Northern America had no restrictions on hunting wildlife, which was considered a common property good. Shortly after the arrival of the colonialists in the 18<sup>th</sup> century,

the value of beaver furs increased significantly due to the high demand by the colonialists. This resulted in a big drop in the beaver population and little regard for the sustainability of the wildlife. However, once the community had realised that the declining wildlife populations effected their livelihoods, individual territories were allocated to families, clearly demarcating boundaries to each household. This resulted in more ownership regarding the sustainability of the wildlife populations.

The benefits of private property have been advocated since the Enlightenment era in Europe, and has generally been accepted as the dominant tenure regime worldwide (GIZ 2016). The significance of land ownership was already alluded to in the pioneer of political economy Adam Smith's book 'The Wealth of Nations' in 1776. Smith alluded to the 'three great orders' of the economic system, which was based on three socio-economic groups- namely landowners, capitalist tenant farmers and landless labourers (Smith 1970). Quesnay stated that "the ownership of landed property and movable wealth should be guaranteed to those who are their lawful possessors; for security of ownership is the essential foundation of the economic order of society. In the absence of surety of ownership the territory would remain uncultivated" (1767, quoted in Currie 1981: 7).

As has already been mentioned in the previous chapter, the 1954 Swynnerton Commission in Kenya argued for the privatisation of land in Africa. The Commission recommended that tenure security through an indefeasible title was a prerequisite for farmers to invest their labour and resources into the development of their farms. As Devitt notes, this argument is persuasive, "particularly to Western ears" (1981, in Odell 1982: 3).

De Soto has reiterated the view that unclear and undefined property titles hamper development and deepens poverty and inequality: "Property is the realm where we identify and explore assets, combine them, and link them into other assets. The formal property system [...] is the place where capital is born. Any asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the market" (de Soto 2000: 47).

During an FAO conference on land reform in Rome in 1966, it was largely agreed that customary tenures had to be changed or at least adapted to be able to accommodate the requirements of modern agriculture (Dekker 2005). Individually secured land rights are generally based on economic theory emphasising greater incentives for investing in land, increased land transfers, reduced land disputes and increased productivity as a result of improved tenure security (*ibid.*). From personal experience, Dekker observes that "[h]aving been engaged in privatization related activities on most of my assignments abroad, I noticed that privatization was believed to be the wonder drug and that hardly anyone ever questioned privatization" (Dekker 2005: 136).

The *Property Rights School* approach has been very influential in orientating discussions on land tenure in Africa. The main theory advocated by the *Property Rights School* is that tenure security is best achieved through individualised ownership with formalised titling promoted by government (Ho and Spoor 2006; Lund 2000). The theory argues that a shift towards individualised titles will be brought about in itself independently of policy. Population pressure and market conditions such as the commercialisation of agriculture, which create a need for investment in agriculture and land development, place significant pressure on property regimes, inevitably forcing them to change (Lund 2000). Thus many policymakers use this line of thinking to justify titling programmes (*ibid.*). Platteau has summarised the theoretical contribution of the *Property Rights School* in Sub-Saharan Africa in what he has termed the *Evolutionary Theory of Land Rights (ETLR)*. The ETLR focusses on changes in land tenure and is based on two fundamental notions:

- “1) social and economic institutions adapt to circumstances in order to be as economically efficient as possible;
- 2) the property form which generally implies the lowest transaction costs (in terms of addressing ‘free-rider’ problems and the like) is private ownership” (Lund 2000: 10).

Therefore it is reasoned that individualised land ownership increases tenure security which leads to increased investment and ultimately increased productivity, hence the *Property Rights School* believes that there is a causal and positive relationship between property form and investment (Ho and Spoor 2005; Lund 2000). It is also believed that when a person has secured access to land, he or she will also care more for the land, work it intensively and make capital improvements, ultimately also leading to environmental sustainability (Dekker 2005; Ho and Spoor 2006). The argument brought forth by the *Property Rights School* has provided considerable legitimisation for the individualisation of land as the single most efficient and secure institutional arrangement (Ho and Spoor 2006).

Broadly summarised, this assumption can be illustrated as follows:

Individualised property → tenure security → investment → agricultural productivity

Posner has described the ultimate superiority of private property rights as follows:

“The proper incentives [for economic efficiency] are created by the parceling out among the members of society of mutually exclusive rights to the exclusive use of particular resources. If every piece of land is owned by someone, in the sense that there is always an individual who can exclude all others from access to any given area, then individuals will endeavor by cultivation or other improvements to maximize the value of land.... The foregoing discussion suggests three criteria of an efficient system of property rights. The first is universality. Ideally, all resources should be owned or ownable by someone, except resources so plentiful that everybody can consume as much of them as he wants without reducing consumption by everyone else.... The

second criterion is exclusivity.... The third criterion of an efficient system of property rights is transferability. If a property right cannot be transferred, there is no way of shifting a resource from a less productive to a more productive use through voluntary exchange” (1977: 10-13).

The arguments of the Property Rights School have remained influential up to today and continue to influence policies and debates on land (Ho and Spoor 2006). In 2006, the National Assembly in Namibia debated the modernisation of property rights in Namibia, specifically aimed at providing title deeds to communal land parcels. With reference to the historical reasons for the design of communal land areas, and its consequences on the distribution of wealth in Namibia, it was argued that enhancing existing property rights will unlock wealth, redress inequalities of the past and empower the citizens in the communal areas through using that which they already own (Ministry of Lands and Resettlement 2010).

Article 17 (1) of the Communal Land Reform Act of 2002 stipulates that: “Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the *purpose of promoting the economic and social development* (own emphasis) of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities” (The Republic of Namibia 2002: CLRA).

According to the Ministry of Land Reform, “[t]oday people in communal areas are treated as though they own nothing due to the fact that their property does not hold a value as collateral for loans”, and thus is said to prevent the country from transforming into a modern society (Ministry of Lands and Resettlement 2010: 6). The Ministry of Land Reform asserts that the “secret behind Western economics lies in its 200 years of continuous reform of the private property market so that today almost everyone in North America and Europe has their property in the official market” (Ministry of Lands and Resettlement 2010: 6).

However, the Ministry states that during public hearings opinions generally revolved around two views: those who believed titling of communal land could lead to further development, and those who disagreed as they believed it would disturb present family set-ups, deprive the poorer people further, and enrich a few (Ministry of Lands and Resettlement 2010).

A large body of studies on land in Africa has provided evidence that the formalisation of land rights has not always had significant impacts on investment behaviour and farm income (Ho and Spoor 2006). Dekker (2005) blames the fact that many land reform programmes have performed poorly on the rush to create individual ownership of land without properly understanding the local situation. Hence it is argued that there is sufficient evidence from developing countries across the

world to demonstrate that introducing western style land tenure, targeted for a market economy and a capitalistic system, has not been convincing (*ibid.*).

The link between private property and investment is not yet conclusive. In the late 1980s, Feder et al. (1988) concluded that private property significantly increased tenure security and investment in two out of three provinces in Thailand. In Africa however, Migot-Adholla et al. (1993) found that individualised land rights regimes did not generally have an impact on agricultural productivity in Ghana, Kenya and Rwanda, and finding that other factors besides land tenure limited agricultural development.

A most recent systematic review on property rights interventions and impacts on investments and agricultural productivity by Lawry et al. (2016) concluded that even though tenure security is a vital precondition for productivity gains and investments, the impacts vary greatly between continents. In Latin America and Asia, tenure formalisation led to significant increases in investments and agricultural outputs. However, formalisation had much weaker impacts in Africa, something they term the “Africa effect”:

“[This can be explained due to] the fact that most farms in sub-Saharan Africa are held under customary tenure arrangements, which generally provide long-term tenure security to qualified members of land-holding families, groups or communities. As such, customary tenure may provide a level of pre-existing tenure security without formalization, something that is not typical in Latin America or elsewhere. As a result, gains to formalization in Africa may be more limited because tenure insecurity, which formalization seeks to remedy, is often not present to the degree that designers of reform programs assume” (Lawry et al. 2016: iv).

Yet the World Bank and other organisations have been criticised by others for continuing to advocate for clearly defined and enforceable property rights as a necessary prerequisite for investment and economic growth, including not differentiating between regions (Quan 2000). Whitehead and Tsikata have remarked on “the almost routine way in which reform to individual land titling appears in many country-level documents” and the significant financial support governments receive who promote land reform programmes based on individual land rights (2003: 83).

Already in the 1990s, Sjaastad and Bromley have also argued that the ‘security-leading-to-investment’ paradigm could be counter-argued:

“The common assertion that tenure security is necessary to promote investment may - in many cases - be reversed. That is, investment is necessary to obtain security. Investments in trees, irrigation furrows, buildings or other fixed structures may provide a litigant in a land dispute with an unassailable case. Thus, although insecurity of tenure is a disincentive to invest, it is - paradoxically - often also an incentive because investment in itself increases security [...] If one accepts that certain types of

investment in land are a legitimate way of claiming more secure rights to land, and that investments may be recovered even when land is lost, the assertion that insecurity of land rights in indigenous tenure systems is a serious impediment to investment seems less convincing” (1997: 553).

Davy (2012) argues that “the tragedy of the individualist” is created when policymakers set defined boundaries in community land, whereby the private landowners can use their land as they want. This often comes at the expense of the community, as the individual may decide on land uses that are in contrast to the interests of community members. Similarly, Davy (2012) accuses “monorational policymakers” for establishing individualised land management systems that do not take into account the relationship between individual liberties and community values. In practical terms, this can mean that some farmers overstock cattle on their own pieces of land and thus affect the carrying capacity of the communal grazing areas.

Therefore it is argued that the main tragedy of individualising property rights is that the landowners become “unable to provide for spatial commons or other public goods and cannot maintain property relations that are essential in a world of interdependencies” (Davy 2012: 12). This idea was already famously promulgated in 1888 by Marx and Engels in *The Communist Manifesto*, advocating that land ownership should not be restricted to private individuals or be controlled by government, as it will lead to high social costs and inequality.

### 3.4 LAND AS A COMMUNITY RESOURCE

*“Private property has made us so stupid and one-sided that an object is only ours when we have it- when it exists for us as capital, or when it is directly possessed, eaten, drunk, worn, inhabited, etc.,- in short, when it is used by us” (Radin, 1993: 214).*

Naturally, the argument that one is more ensured of benefits from individual held property rights than from communally held resources is persuasive, as these resources are more secured. However, this assumption has several discrepancies. It discounts the fact that property is not merely a thing or an asset, but that it is based on often strong social relations and local contracts that determine which rights and duties exist to use and distribute resources (Lund 2000). Lund criticises the fact that “the idea that property is a ‘thing’ seems often to prevail; either you have it alone as exclusive private property, or it is shared in some obscure way, or it is not yours at all” (2000: 17). The political economist Polanyi observes that land, which was once an intrinsic asset for survival and wellbeing has been transformed into a marketable commodity: “What we call land is an element of nature inextricably interwoven with men’s institutions. To isolate it and to form a market out of it was perhaps the weirdest of all undertakings of our ancestors” (1944: 178).

Those who hold the view that land reform should be based on customary land rights, tend to favour the communitarian school, which is based on the idea of ‘social capital’. Social capital is generally

referred to as the advantages that individuals get from their social networks, and is normally based on a strong sense of trust amongst a group of people (Coleman 1988). Furthermore, social capital is strongly rooted in the notion that people will act in such a way that it does not harm others in their community and thus act in favour of the common good (*ibid.*). Therefore some social scientists believe that because of the strong network of trust in these societies, these non-economic relationships play a key role in development (Obeng-Odoom 2012). According to communitarians, social capital enhances local tenure security and empowerment. Tenure insecurity is a direct result from state-led policies that discount traditional values, and the individualisation of property rights that further marginalise the poor (*ibid.*).

As already mentioned in the previous chapter, the term ‘communal’ can be used to describe land tenure in a variety of situations:

- “where a resource is used by virtually anyone, a situation better characterized as ‘open access’; the unusual situation where land is utilized collectively, with production actually organized and carried out by a community or descent group;
- where land is utilized co-extensively and simultaneously or serially by members of a defined group of users and/or owners, as with a grazing commons (the ‘common property’ situation); and
- where there are social institutions, which allocate and reallocate common land among households, as they consider necessary” (Dekker 2005: 161).

Even though tenure forms in Africa may seem intangible for foreign observers, they make sense to the immediate stakeholders. The problem with an over-emphasis on individual ownership is that there is too much focus on economic development incentives, often ignoring broader societal objectives that take into account the different values people place on land (Bruce in Dekker 2005). Land rights are not negotiated in a vacuum, but are based on a ‘social contract’ that legitimises the specific form of landholding (Sjaastad and Bromley 1997). Similarly, Platteau argues that “if property has no social legitimacy, it is no property because it lacks the basic ingredient of property, recognition by others” (1995: 46, in Lund 2000: 18). Differently stated, it is not always being ‘private’ which legitimises a right to a piece of land, but it can also depend on the existing social, institutional and legal consensus at the local level.

The term ‘communal tenure’ can be misleading and thus remains contentious in policy debates. ‘Communal tenure’ implies both collective ownership and use of the land and natural resources. However, most indigenous property systems are based on clearly demarcated individual and family rights to land, e.g. homesteads and crop fields, as well as clearly defined shared common property resources such as grazing and water (Cousins 2008: 5). Some ambiguity on the meaning and interpretation of ‘individual rights’ in land remains in the literature. African land tenure, as is typical with most so-called ‘indigenous’ communities, is linked to political and social status.

Gluckman states that “[b]y virtue of membership in the nation or tribe, every citizen was entitled to claim some land, from the king or chief, or from such political unit as exists in the absence of chiefly authority” (1965: 78). Cousins (2009; 2007) explains how the term ‘individual rights’ is used in anthropological literature to describe how family units or extended households control and use residential and arable land. Sansom found that family assets were demarcated as ‘house property’ in many southern African societies (1974, in Cousins 2007: 295). Hunter sketches how a married woman in Pondoland designated her own fields for cultivation as long as she did not trespass on another person’s field. Once the woman had worked on her field, she was granted exclusive cultivation rights thereof, regardless of how long she would leave that land fallow (1979, in Cousins 2007: 295).

Customary tenure systems should not be romanticised, as historical inequities to access land in peasant communities existed even in pre-colonial times, such as feudal-like tenure with landlordism and the exclusion of the poor (Alden Wily 2012a: 9). Furthermore, the use of ‘custom’ in the literature and practice is contentious due to its connotation with an unchanging social and moral order. As Cousins (2008: 11) asks, is it still acceptable to use the word ‘customary’ or ‘traditional’ when describing land rights in contemporary Africa? Many academics talk about ‘living custom’, which sees customary laws and systems as being negotiated and constantly changing within fluctuating social and political settings (Dekker 2005; Oomen 2005; Alden Wily 2012a). Moore (1998) and Dekker (2005) have critiqued the static, essentialist and reductionist views on African land relations, as it ignores the changing, adapting and multiple practices in rural Africa. Alden Wily (2012a) points out that by focussing too much on traditionalism in customary tenure regimes, we become blinded to the heterogeneity of rural populations and the reality of major land insecurity.

Land is a political space where a diverse group of actors negotiate and deliberate over access, use and management thereof. These processes are a keystone for resource sharing, and thus play an important role in the development of social capital and strengthening the social fabric among rural communities (Cotula 2006). Boundaries set by communities are often stronger and less disputed than those determined through formal policymaking. Particularly where communities are close-knit, they often create land regimes that are adapted to local situations (Ellickson 1993).

Okoth-Ogendo (2008) believes that a distinction needs to be made between how access to land is obtained and how land resources are controlled and managed. Access to land is based on membership, thus essentially available to any individual who forms part of that membership based on family, lineage or community. By participating in the production processes at various stages, thereby taking on an active and contributory role as a member, access to land is maintained (*ibid.*).

Therefore it is difficult to define indigenous tenure systems through Anglo-European property law, as access to land and the use of natural resources cannot be equated to formal ownership of property. Instead, as Okoth-Ogendo (2008) argues, rights of access under several indigenous tenure systems are ‘secured’ as long as they are being asserted.

Anthropologists have repeatedly concluded that forms of communal tenure in Africa do not inherently exclude individual rights. Max Gluckman famously conducted research in the former Northern Rhodesia (now Zambia) in the 1950s, and found that “in so-called communal ownership [...] every member of a certain social group can claim the right to be given a garden [...] and to make certain use of public lands or water [...] The working of the land and the appropriation of its products in this system of land tenure are highly individualistic” (1965: 101). Dekker (2005) argues that a sense of individual ownership is not dependent on a formal title, but instead involves a sense of individual proprietorship- the sense that this land is ‘mine’. Thus a strong sense of individual proprietorship exists under many communal tenure systems.

Critics of the individualisation of land have argued that tenure reforms need to be primarily based on customary land uses and resources. One of the main critiques against individualised land parcels is that it mainly involves securing primary (e.g. cultivation and residential) land rights, ignoring secondary rights- such as access to grazing, rangeland, community forests etc.- which are regarded as important ‘safety-nets’ to the rural poor (Chimhowu and Woodhouse 2006). They argue that the registration of individual land has thus resulted in the sedentarisation and fragmentation of commonages and has had negative social, economic and environmental impacts for communal farmers, ultimately increasing their vulnerability (Flintan 2011). In many areas, livestock movement has become restricted due to an increase in fencing which marks boundaries or encloses grazing lands. Individualised tenure reforms have also restricted movement of pastoralists, who have now become restricted to one area in fear of losing their land should they migrate (Flintan 2011).

Alden Wily (2012a) has noted that despite many land reform programmes focussed on the individualisation of land, customary land tenure has persisted; due to the fact that there is often a strong gap between what national laws prescribe and what actually exists on the ground and the significance of customary norms and patterns of land use and rights and its interconnectedness with social relations:

“Many communities feel more confident relying upon customary norms for their tenure security. This is because the socially-embedded nature of customary land norms means they are accessible, largely cost-free [...] and inseparable from the realities of present-day land use. The arbiter of norms is always the living community, obviously acutely responsive to changes in conditions that affect its land-based livelihood. Although accountability can be an issue, control is retained in the community rather

than removed to unreachable and unaccountable government authorities and who charge fees for their services. The intertwining of customary norms and actual land use also provides greater nuance and flexibility; communities can more easily differentiate rights to land, such as distinguishing between primary ownership and secondary access rights, which may be necessary to regulate seasonal access among and by pastoralists” (Alden Wily, 2012a: 5).

Alden Wily (2012a) furthermore argues that customary tenure regimes are better suited to integrate cultural aspects. The way people make use of a place goes beyond the neoclassical assumptions of consumption and purchase. People do not discard a place after it has been purchased and used. Instead, “places have a certain *preciousness* for their users that is not part of the conventional concept of commodity” (Logan and Molotch 2007: 17). The value of land cannot merely be measured by the amount of profit which can be generated from it or the market price value of the land itself. The value of land should be regarded as more than just a market commodity, because land has meaning and function to people beyond that which can be calculated arithmetically (Tarimo 2014). In Kenya, the Kikuyu believe that “land is sacred because it feeds the child for life and nurses the dead for eternity” (Kenyatta 1938, in Tarimo 2014: 4). This illustrates that people place both material and non-material value on land, thus land does not only have economic value, but cultural attributes are also deeply embedded in the value people place on land.

Place in itself is indispensable, as human activity needs to take place somewhere (Logan and Molotch 2007). In addition, the use of a specific place allows for access to further use values; such as the location of one’s home to other social institutions such as schools, shops, employment. The place where you reside “connects people to a range of complementary persons, organisations, and physical resources” (Logan and Malotch 2007: 18). The relationships people have to a place reflect a diversity of material, spiritual and psychological connections to the land and its environment. According to Relph, “places represent the focussing of experiences and intentions onto particular settings [...] full with meanings, with real objects, and with ongoing activities” (1976: 141). People tend to develop individual relationships with a place, whereby they develop long-term commitments towards the place as well as multifaceted social and material attachments (Logan and Molotch 2007).

Logan and Molotch (2007) argue that the material significance and use of a place cannot be separated from the psychological use, as these uses combined are a contributing factor to create feelings of ‘community’ and belonging. Thus the use values of a place address a complex set of needs, which are both material and non-material. Land ownership “correlates to identity, belonging, community, and autonomy because it is connected to social relations stretched over a certain territory” (Tarimo 2014: xi).

Land is also believed to be embedded in religious dimensions. The origin of land is often described as being a divine gift entrusted to human beings:

“When the ‘sacredness of property’ is talked of, it should always be remembered, that any sacredness does not belong in the same degree to landed property. No man made the land. It is the original inheritance of the whole species. Its appropriation is wholly a question of general expediency. When private property in land is not expedient, it is unjust” (Mill 1886: 142)

Thus as a divine gift from God or other deities, it cannot be used to the benefit of only a few privileged. Instead, land is entrusted to the entire community who have the moral responsibility to ensure its just distribution and use. The collective needs of the community are promoted, whilst simultaneously challenging the ideology of privatisation of land (Tarimo 2014). In biblical tradition, the management of land is summarised according to three points: Firstly, land is sacred and belongs to the entire community as a gift from God; secondly, people must act as stewards for the land which they have been entrusted with; and thirdly, land must be used in such a way that it generates basic livelihoods for everyone (*ibid.*).

Despite the considerable criticism on many tenure programmes, Dekker (2005) admits that there is no blue-print or easy solution to achieve sustainable land tenure change. However, he believes that it should be possible to design an individual ownership system that acknowledges all the characteristics of communal tenure and takes into account concerns for both social security and societal values as well as economic growth and investments (*ibid.*). This can be done by looking at the broader territories in which people live, and which influence, amongst others, their understanding and need for certain tenure types and their economic activities.

### **3.5 LAND RIGHTS AND LIVING TERRITORIES: BEYOND THE VACUUM**

There are voices within the lands sector who point out that land uses should be discussed within a pluralistic framework, as different people have differing needs and interests, based on varying sets of values and assets (Flintan 2011). The functions attributed to land and land policy vary greatly; from the use of land for anthropogenic reasons such as human wellbeing or culture heritage, to preserving land for ecological reasons or for economic use. Land uses are often categorised in policies and discussions; demarcating between agricultural land, urban land, public land, residential land etc. However, even though such categories can be useful for statistical purposes, they can mislead land policymakers because neither scale nor temporality is considered and the social construction of land tends to be left out (Davy 2012).

There is a need to place more emphasis on how land is socially constructed, used and valued within policy processes, since land is mostly used for multiple purposes. Davy (2014), advocates for each

land use to have its own property “fingerprint”, whereby lawmakers should take into account the multiple ways in which land is used, as well the considerations and opinions of the general public. Land policymakers are thus urged to take into account both rights and uses of land (Davy 2012). It is important to acknowledge these pluralistic ways in which people access land and resources (Flintan 2011). Most land tenure reforms do not consider the long-term vision or strategies of land users and do not account for their different needs; different levels of authority, perceptions and trust; interests and dynamics (*ibid.*).

The preamble to the Vancouver Action Plan of the United Nations Conference on Human Settlements states that land cannot be treated as an ordinary asset due to the important role it plays in human development (United Nations 1976). Interestingly, it also states in the preamble that private land ownership can contribute towards social injustice and does not always take into account the interests of society as a whole (*ibid.*). Instead, it is recommended that “the pattern of land use should be determined by the long-term interests of the community, [...that] public authorities require detailed knowledge of the current patterns of use and tenure of land [... and lastly that ] Governments must have the political will to evolve and implement innovative and adequate urban and rural land policies, as a corner-stone of their efforts to improve the quality of life in human settlements” (United Nations 1976).

The role the state has in guiding institutional change regarding land is critical yet complex, particularly where there are opposing demands on modern and traditional institutions. This is often the case in areas where the commercial or at least commoditised agricultural sector starts to expand its influence into traditionally governed areas (Ho and Spoor 2006). Dekker argues governments who want to promote agricultural production and rural development should “pay attention to the behavior of individual farmers”, as this is the level where the main decisions regarding land use are made (2005: 227).

On 11 April 2006, the Namibian Cabinet approved the following decision with regard to the policy framework on land reform: “In the medium term, sectoral policies on natural resources management, water, *land*, forestry and agriculture must be revised to give decision-making and management authority to resource-users *at a local level*” (own emphasis, quoted in MCA 2011: 16). Thus the Namibian government showed an awareness that decision-making should be based at local level to be able to take into account local needs and land uses, yet there is still a discrepancy in implementing institutional visions.

This is where the concept of territorial development or the ‘territory’ could play an important part in bridging sectoral and institutional gaps, as well as ensure that tenure types are more responsive to local needs. Bringing in the concept of the territory is important when discussing tenure security,

as the different modalities of land rights cannot be understood in a vacuum. Land rights are built on a bigger social, economic and environmental landscape, and therefore tenure needs cannot be understood without broadening the scope.

How boundaries are made and what constitutes the territory can differ greatly. Territories can be imposed and demarcated by administrative or political boundaries, e.g. those of traditional authorities, or by the identification of the inhabitants, e.g. a specific cultural group. In other cases, the territory is defined by specific infrastructural facilities, e.g. fences, and constituted around the management of resources, or based on biophysical characteristics such as watersheds (Valette et al. 2017). All of this can in some cases lead to multiple and embedded territories, which also affect land tenure dynamics (*ibid.*).

Toulmin understands and defines the term ‘territory’ as follows:

“The term ‘territory’ is necessarily imprecise, since the exact scale or geographical space depends on the purpose chosen. We live in a less-than-ideal world, so pragmatism is important to identify the lowest scale at which we can achieve many of the goals sought. As an Anglo-Saxon, the term ‘territory’ risks misunderstandings, but I take it to mean a geographical space as appropriated and perceived by individual or collective actors, rather than the much more limited meaning it normally has in English, describing an area fought for and protected by an animal, bird or conquering power” (2017: 5).

Valette et al. (2017) compliment this view and elaborate that the concept of the territory is based on social, economic, cultural and political processes within a given geographical space. Social geography is specifically concerned with the territory’s dimension of identity, looking at relationships of belonging and anchoring. Understanding processes by looking at the territory helps to celebrate identity by building on the positive aspects of rootedness, identity and cultural traditions (Toulmin 2017). Territories are therefore also often referred to as ‘peoplescapes’ (Valette et al. 2017).

Additionally, “approaches to the territory as ‘ecological subject’, ‘agroecological subject’ or ‘technical subject’ are not far behind, and give rise to the exploration of the diversity of the biological and technical processes that take place there and the actions implemented to steer and act on these processes” (Valette et al. 2017: 256).

The various factors that play a role in a territory, or a specific geographical space, are illustrated in Figure 3.1. Cultural, economic and ecological aspects are important in defining places. The term ‘territory’ should therefore be perceived as dynamic, whereby territories allow of pluralistic and alternative models of development and new forms of governance, going beyond monorational models focussed on economic growth (Valette et al. 2017).

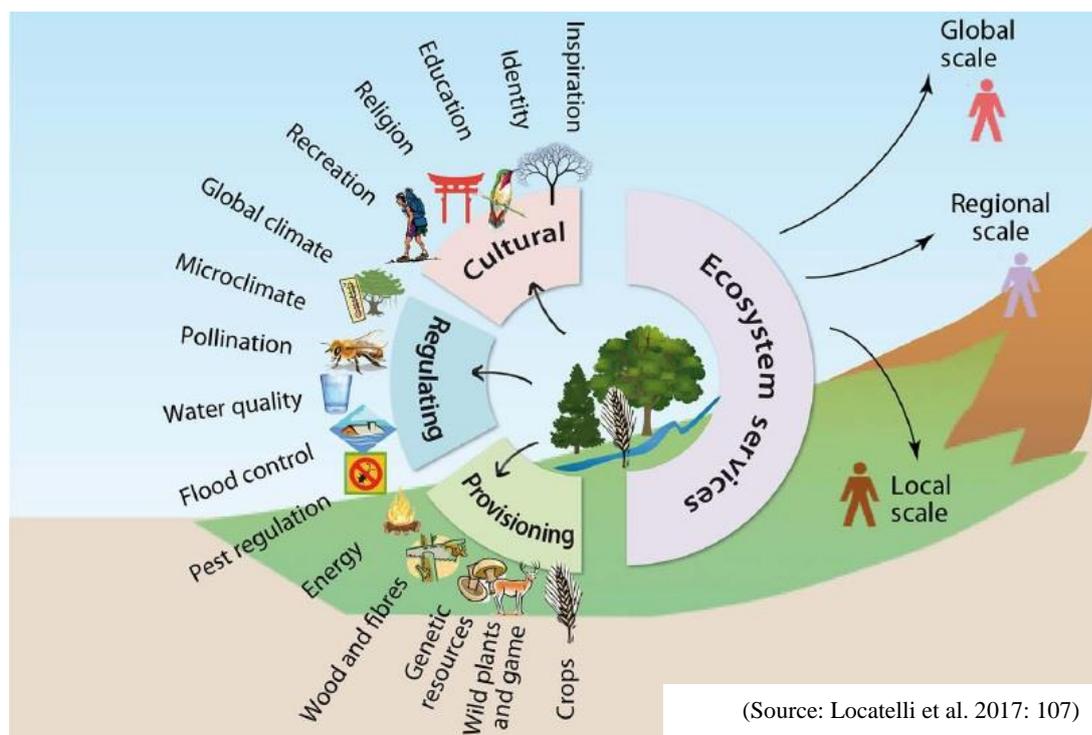


Figure 3.1 Territorial services, regulations and provisions at various scales

The Fit-For-Purpose (FFP) approach to land administration was developed as a solution to address inadequate and unresponsive land policies in developing countries, with the key goal being to ensure secured land rights. (Enemark, McLaren and Lemmen, 2015). The main idea behind the FFP approach is that land administration systems should be more flexible and serve the needs of rural communities regarding tenure security and control over land use (Enemark et al. 2015). By emphasizing flexibility, FFP approaches take into account different uses, geographical variations and societal needs of land (*ibid.*). The process of conceptualising a FFP approach started in 2008 through a cooperation between the International Federation of Surveyors (FIG) and the World Bank, and was formally presented in 2014.

The first step in building a ‘fit for purpose’ land system is by determining the purpose(s) that a land administration should serve in meeting the needs of the people. Thus such a system should be designed to meet or fit the purposes of the people, instead of following more formalised systems that are rigidly regulated and continues imposing land systems as in colonial times (Enemark et al. 2015). The three main characteristics of the FFP approach are focus on the purpose; flexibility; and incremental improvement (Enemark et al. 2015):

**Focus on the purpose:** FFP is mainly focussed on providing tenure security for all. Therefore, an approach has to be designed that is most “fit” to achieve this purpose, instead of following mainstream procedures and notions about property regimes, which are often technocratic and rigid.

**Flexibility:** A responsive land administration system needs to be accommodating towards societal needs. The FFP should be flexible so as to meet the need for securing a wide range of tenure types; from more social or customary to formal property types such as private ownership.

**Incremental improvement:** The FFP approach should be designed to initially meet the basic needs of society, and balancing the costs, accuracy and time involved. Upgrading and improvement can then be undertaken incrementally over time to respond to emerging or new needs and opportunities.

However, the system can still be criticised for ultimately envisioning land rights to be upgraded to be developed into ‘modern’ property regimes that are formal and individualised, with a continued focus on tenure security for amongst other access to credit and investments (Enemark, McLaren, and Lemmen 2015). Yet by acknowledging the importance of informal and social kind of tenures and developing tenure programmes that focus first on local needs, with the possibility of upgrading should such a need arise, the FFP is already a positive step towards more inclusive and appropriate views on land reform. It allows multiple tenure regimes to be acknowledged within one country or region, instead of categorising all land needs into a ‘one size fits all’ policy. Furthermore, it provides an initial attempt to prevent regarding customary land as static, as it allows for flexibility in formalising land rights should communities feel they need to improve their tenure regime or require different forms of tenure for new economic opportunities. Thereby the changing nature of rural areas is acknowledged, whilst respecting local conditions and environmental factors.

Complimentary to the FFP approach, the continuum of land rights, as developed by UN-Habitat in 2012, illustrates the range of possible forms of tenure along a continuum (Figure 3.2). As Fennel states, “[p]roperty, as experienced on the ground, is never wholly individual nor wholly held in common, but instead always represents a mix of ownership types” (2011: 16).

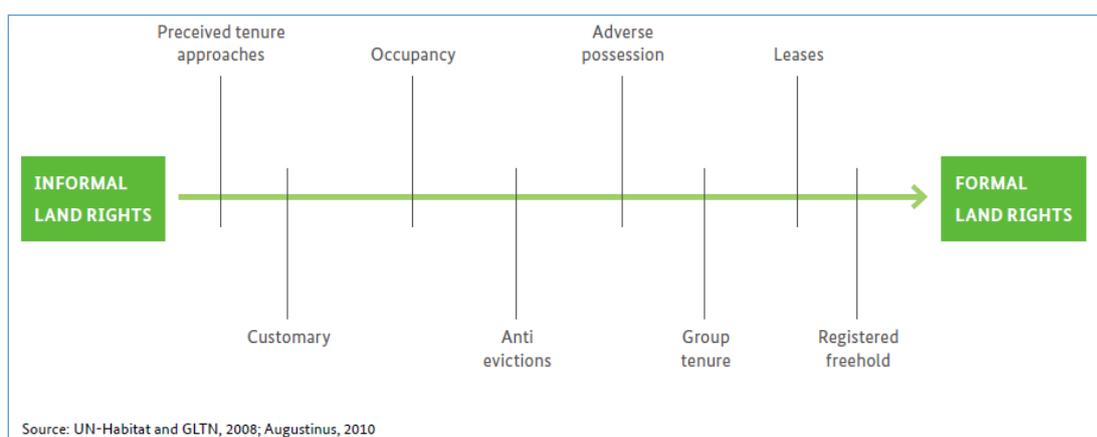


Figure 3.2 The Continuum of Land Rights

(GIZ 2016: 19)

The ownership and cultivation of agricultural land vary significantly between and within countries and different cultural groups. Institutional arrangements with respect to land range from individual private ownership, forms of collective ownership or social ownership. Even within these institutional arrangements, forms of ownership can differ. The continuum of land rights is currently the most widely recognised illustration of this differentiation in forms of ownership within the development community. The continuum of land rights illustrates how important it is that land policies and land governance programmes take into account the various land needs- which is why understanding a territory and its various dimensions is so important.

From lessons learnt regarding tenure programmes in Africa, Chimhowu and Woodhouse (2006) conclude that the registration of individual titles does not necessarily advantage the poor, but that customary ownership vested in traditional authorities can also leave the poor vulnerable. Ultimately a polarised debate continues about “what kinds of land rights should be secured, by what means, and for whom” (Chimhowu and Woodhouse 2006: 362). Thus neither individual titling nor the ratification of systems of ‘customary’ land rights are feasible solutions for comprehensive land reform policies that aim to address rural poverty, as well as achieve agricultural development. As Cousins observes:

“The picture that emerges from these studies is not one of steady evolutionary change towards individualized forms of property and the disappearance of ‘customary’ identities and claims to land. Mathieu et al. (2003, 126–7) suggest that where land becomes scarce and has increasing economic value, ‘there is a social demand for more individualized, precise and formalized land ownership rights’, but that ‘this change is not so simple, nor is it linear or automatic’. The process is ‘totally embedded in social relationships’ and hence ‘contradictory, complex and ambiguous’, since past meanings of land ‘retain their significance in the local social reality” (Cousins 2007: 307).

One of the positive outcomes of this debate is that there is a strong need for evidence-based research on the impacts of titling programmes, so as to engage policymakers with empirical realities of customary land rights and land reform programmes (Chimhowu and Woodhouse 2006). However, one should also be cautious so as not to continue promoting idealised and generalised models of tenure, in order to avoid reinforcing stereotypes of ‘African/ traditional/good versus Western/new/bad’ discourses (Whitehead and Tsikata 2003: 101).

Enemark, McLaren and Lemmen (2015) highlight the need for gathering more comprehensive information on land rights and uses to be able to contribute towards debates about land governance. It is important to determine whether there is a link between theories and implementation, and between outcomes and theories. Several detailed country case studies already exist- from Africa, to South America to Asia. This dissertation aims to enrich this body of literature and contribute towards the debate through evidence-based research on this topic.

### 3.6 CONCLUSION

Contemporary debates on land in Africa continue to be polarised between proponents of tenure reform through state-led registration programmes of individual land titles, and those who believe that customary land tenure is the best way to address rural poverty and that land policies should strengthen customary land rights. Thus, in most of the literature on property rights, a dichotomy remains between individual and communal land rights.

Differently put, these views can also be categorised into two ‘schools of thought’: the belief that land policies should be rooted in theories of social capital, the other that they should be based on individualised tenure models. Debates concerning land in development are no longer merely focussed on having or not having property, but about the importance of individual, state or communal property, thus ultimately these debates are about the appropriate property rights systems to promote development.

To be able to fully understand the discussions about land rights, the concepts of property, land tenure, and secure tenure should be well understood. These concepts have over centuries been influenced by philosophical thinkers, including Hobbes, Locke and Rousseau. More recently, support for individual titling programmes has re-gained considerable traction as a result of Hernando de Soto’s influential book “The Mystery of Capital”. De Soto argues that by formalising rights to land and other property, the poor can take full advantage of capitalism. Across Africa, individualisation of property rights has been promoted and strengthened over collective and communal land rights. At one stage in 2006, the Namibian Government debated on whether it should rather pursue individualised titles above customary land rights.

In contrast to the so-called Property Rights School, those who favour the communitarian school hold the view that land reform should be based on customary land rights, which is based on the idea of ‘social capital’. According to communitarians, social capital enhances local tenure security and empowerment, and thus land is more than merely an economic asset or commodity.

However, there is no blue-print or easy solution to achieve sustainable land tenure change. There are voices within the lands sector who point out that land uses should be discussed within a pluralistic framework, as different people have differing needs and interests, based on varying sets of values and assets. Thus debates on land rights should not be defined by limiting them to these two schools of thought. This can be done by looking at the broader territories in which people live, and which influence, amongst others, their understanding and need for certain tenure types and their economic activities. The concept of territorial development or the ‘territory’ could play an important part in bridging sectoral and institutional gaps, as well as ensuring that tenure types are more responsive to local needs. Bringing in the concept of the territory is important when

discussing tenure security, as the different modalities of land rights cannot be understood in a vacuum. Land rights are built on a bigger social, economic and environmental landscape, and therefore tenure needs cannot be understood without broadening the scope.

There have been attempts by the international development community to address tenure security in a more holistic way. The Fit-For-Purpose (FFP) approach to land administration was developed as a solution to address inadequate and unresponsive land policies in developing countries. The main idea behind the FFP approach is that land administration systems should be more flexible and serve the needs of rural communities regarding tenure security and control over land use. Complimentary to the FFP approach, the continuum of land rights, as developed by UN-Habitat in 2012, illustrates the range of possible forms of tenure along a continuum. The continuum ranges from informal tenure such as approaches focussed on perceived tenure, to formal land rights such as registered freehold. The continuum of land rights illustrates how important it is that land policies and land governance programmes take into account the various land needs- which is why understanding a territory and its various dimensions is so important.

In order to gain a better understanding of land in Namibia, the next chapter (Chapter 4) will provide an overview of the historiography of land in Namibia. Historical processes in the country have shaped and continue to shape land uses, customs and policies.

## CHAPTER 4 HISTORIOGRAPHY OF LAND IN NAMIBIA

### *“The liberation of Namibia was among others centred on land”*

Former Land Reform Minister !Naruseb (in Thiem 2014)

At independence in 1990, Namibia inherited a distorted land system. Land was disproportionately divided between white and black farmers, whereby 44 percent of land belonged to a very small proportion of the total population- approximately 4500 white farmers were in possession of over 34 million hectares of land (Thiem 2014; Garcia 2004; Odendaal 2010). On the other hand, over 90 percent of the black population depended on access to a mere 40 percent of agricultural land, farming mostly for subsistence under customary tenure (Ministry of Agriculture, Water and Rural Development MAWRD, 1991). The current pattern of land ownership and distribution in Namibia can be attributed to German colonial strategy and land policies under the South African apartheid regime (Garcia 2004).

In Namibia, pre-colonial agricultural production and land use can be divided into two systems. Communities in the northern regions of the country, mainly Oshiwambo speaking population but also Kavango, Himba and Caprivians, were mostly settled on their land and farmed with animal husbandry. The population density was quite high in this region. Advantageous climatic and arable soil conditions in part enabled them to remain in one area to farm. Their traditional political structures were generally more centralised (Behr, Haer and Kromrey 2015; Werner 1993). The Ovambo traditional political structures are characterised by a historically grown kingdom structure, generally maintaining control over communal land (Behr, Haer and Kromrey 2015; Hinz 2008).

In contrast, the communities in southern and central Namibia, such as Nama, Herero, Damara and Baster populations, followed a more pastoral existence. Due to the scarcity and unpredictability of pastures in the sparsely populated southern and central regions, these communities were required to disperse more widely and thus migrate across the territory in order to access the necessary resources such as water and pastures (Behr, Haer and Kromrey 2015; Fuller 2004; Werner 1993). Amongst these communities, there were no fixed boundaries and areas of jurisdiction by small chiefs were loosely defined yet still recognised. This meant that in contrast to more permanently settled communities, a high degree of mobility correlated to a generally low degree of political centralisation. This indicates in these southern and central regions, well-defined traditional authority structures with a chief at the top only came into existence later through the creation of the colonial regime (Werner 1993). As can be seen, a common feature amongst communities across the country prior to colonialism was that the whole community owned land. In the pastoral regions, land utilisation was

communal, whilst usufruct rights were granted to land parcels in the north. These two systems present the situation which German colonialists encountered when they first arrived in Namibia.

#### **4.1 THE FIRST WAVE OF DISPOSSESSION: COLONIALISM**

European influence over customary land in Africa was legally strengthened in international law during the colonial era through the General Act of the Berlin Conference on West Africa (the “Berlin Act”). The Berlin Act was signed in 1885 by 13 European states, Turkey and the USA, as these countries were desperate to establish markets in Africa and to gain access to raw materials and products to reinvigorate their industries affected by the Depression from 1873-1898 (Alden Wily 2012b). During the 1890s, the expansion of colonialism throughout Africa resulted in the capture of land ownership for Europeans, consequently denying that indigenous possession amounted to ownership for those living on customary lands, leaving indigenous rural populations disempowered and vulnerable (*ibid.*).

Colonialism in Namibia began in 1884, when the territory came under European rule as a German protectorate. Chancellor Bismarck had previously avoided becoming involved in the rush to colonise lands overseas. However in 1884, he declared vast tracts of land under German “protection”; mainly the region between the Portuguese Angola and the British Cape Colony and some other regions in present-day Tanzania and Cameroon. The new German colony was named südwestafrikanisches Schutzgebiet, i.e. South West Africa Protectorate (Garcia 2004). The German colonialists’ rationality for exercising control over land in Namibia was not dissimilar to other colonialists. In general, colonialists had a competitive agenda to create as much economic influence on their territories as possible, thereby exploiting resources and labour in favour of European economies (Alden Wily 2012b). As lands were granted to German and South African settlers at very low prices, farming became an attractive activity. Garcia (2004) notes that the development of huge tracts of land for farming by the colonisers represents the first major cause for the current land issues. Fig. 4.1 illustrates the allocation of land in Namibia in 1902.

Werner (1993) states that colonial land policies can only be understood within the context of capital accumulation processes in Namibia. Capital accumulation was mainly facilitated by the creation of so-called ‘native reserves’. As was the case in other African countries under colonial rule, access to land had an important impact on the supply and cost of African labour to the colonial economy. The German colonial administration thus dispossessed land from black Namibians not only to re-allocate the land to white settlers, but to deny them access to land for agricultural production, inherently forcing them into wage labour (Behr, Haer and Kromrey 2015; Odendaal 2010; Garcia 2004; Werner 1993). Similar to South Africa, these reserves did not only provide cheap labour to the settlers, they further allowed the colonial administrators to exert significant

political control over the black population by appointing local leaders as 'lower-level bureaucrats' in charge of administering these native reserves on behalf of the colonial state in return for monetary remuneration (Werner 1993).

These native reserves were clearly demarcated, thus protecting them from the advances of white settlers. The reserves were under the system of communal land tenure, ensuring access to land for all households and keeping subsistence farming in existence (Werner 1993). On the flip side, this meant that communal farmers in the reserves were not able to accumulate their own capital and were thus dependent on wage labour to supplement incomes and harvests so as to secure their livelihoods (*ibid.*). The colonial administration felt that since the workers' dependents had access to land in the reserves and could thus provide for their own livelihoods, the colonial state was not obligated to pay wages that would assist entire households- thereby cash wages paid to labourers from the reserves were very low. This line of thinking was not only theoretical, as Werner points out that it was clearly formulated in documents referring to the implementation of a 'native reserve' strategy in colonial Namibia:

“From the onset of South African rule in 1915 native reserves were to provide labour to the colonial economy, particularly settler agriculture, rather than lay the foundation for successful small scale farming. Indeed, colonial officials regarded the unconditional possession of small numbers of livestock as a threat to the labour market. Captain Bowker, the Officer in Charge of Native Affairs observed in 1916 that 'there is a marked tendency among the natives to shirk work the moment they become the possessors of a few head of goats and cattle.' To overcome this 'problem', he suggested that taxes in the form of grazing fees be levied as 'an incentive to labour.' He 'submit(ted) that a little financial pressure must always produce a more wholesome affect than the best police methods' to procure labour” (Werner 1993: 136).

Colonial administrators made it clear that the development of specific areas of land for use by black Namibians had not been intended to establish reserves to which so-called tribes could go to practice their traditional customs under their Traditional Authorities (Werner 1993). Instead, reserves were considered to be places where women and children could reside and derive a subsistence livelihood from the resources of the land whilst the men were away to work; and a place for the elderly, sick and unemployed to live.

The alienation of land in Namibia had in fact already begun in 1883, when the first tracts of land were acquired in the south of the territory from chief Joseph Fredericks by German trader Adolf Lüderitz. This only marked the beginning, as thereafter large pieces of land were obtained by German colonialists through signed protection treaties with indigenous rulers. These treaties offered individual indigenous rulers protection from their rivals by the colonialists in return for control and use over land. Those who had signed these treaties were not allowed to give away the land to any other person or entity without the consent of the German Emperor, and indigenous

leaders were prohibited from entering into treaties with foreigners (Werner 1993). Nearly the whole southern and central territories inhabited by pastoralists had been conferred to only eight concession companies by 1893 (*ibid.*). However, indigenous rulers originally resisted directly selling land to the Europeans, and were only forced to do so after the rinderpest in 1897 wiped out nearly all the cattle. This meant that many pastoralists in the southern and central regions were required to look for wage labour for the first time (*ibid.*). Furthermore, land had become an object for trade and barter, enabling settlers and companies to take advantage of the problems of the pastoralists and consequently acquiring large pieces of land at very low prices:

“By means of unequal trade they acquired large tracts of land and substantial numbers of the livestock which had survived the rinderpest. By 1902 only 31.4 million hectares (38 per cent) of the total land area of 83.5 million hectares remained in black hands. White settlers had acquired 3.7 million hectares, concession companies 29.2 million hectares and the colonial administration 19.2 million hectares” (Werner 1993: 138).

This all did not only mean that local populations had been dispossessed from their ancestral lands, but that new forms of tenure were introduced through European appropriation. The concept of private land ownership had started to replace communal land uses and introduced clearly demarcated boundaries for the first time (Behr, Haer and Kromrey 2015; Werner 1993). These mainly unfair trading practices and the significant loss of land contributed towards the Herero and Nama resistance war in 1904, which many now regard as the first German genocide (Sarkin 2011). The war resulted in the loss of 75 to 80 percent of the Herero and 50 percent of the Nama populations by German forces (Sarking 2011; Werner 1993). After the war in 1905, the victorious colonial administration issued regulations that all lands under indigenous control of the Nama and Herero were to be expropriated. Those communities who had shown loyalty during the resistance, such as the Baster and some Nama and Damara communities, were given secured access to small reserves (Werner 1993). After 1905, native Namibians were not allowed to own land in what was called the ‘Police Zone’- the area under control by the colonialists which encompassed the areas where the railway and main roads were- unless the German Governor himself granted them special permits (Breytenbach 2004). The first permit was however not granted until as late as 1912, when the first native reserve was created (Behr, Haer and Kromrey 2015; Garcia 2004; Werner 1993).

In the northern regions, as already mentioned, the Rinderpest of 1897 had forced local populations into wage labour. Yet in contrast to the more southern regions, the rural populations were able to keep their land as the pandemic had not had an impact on crop production (Werner 1993). The northern region was given the colonial designation “Ovamboland” in South West Africa (SWA), describing the territory of independent polities that shared several economic, cultural and political traits and whose populations spoke closely related languages, collectively called Oshiwambo (Behr, Haer and Kromrey 2015; Dobler 2014; Dierks 1999). Even though SWA was declared a

German protectorate in 1884, Ovamboland was for the large part not directly under colonial rule as other parts of the country (Dobler 2014). Mission stations existed in Ovamboland, and there was considerable migration of men to work as labour on settlers' farms, but there was no permanent government post before the First World War. When the area was declared a native reserve by the German colonial administration in 1906, pass laws were introduced to regulate travel to and from Ovamboland (*ibid.*).

Hence the northern regions were mostly not as affected by colonial land policies expropriating lands in southern and central Namibia on which pastoralist communities lived. A comparison of Figure 4.1 illustrates how much land had been dispossessed from local populations in favour of white settlers, particularly in central and southern Namibia. Protection treaties had also been largely rejected by Ovambo chiefs in the northern areas. Original considerations before 1904 to

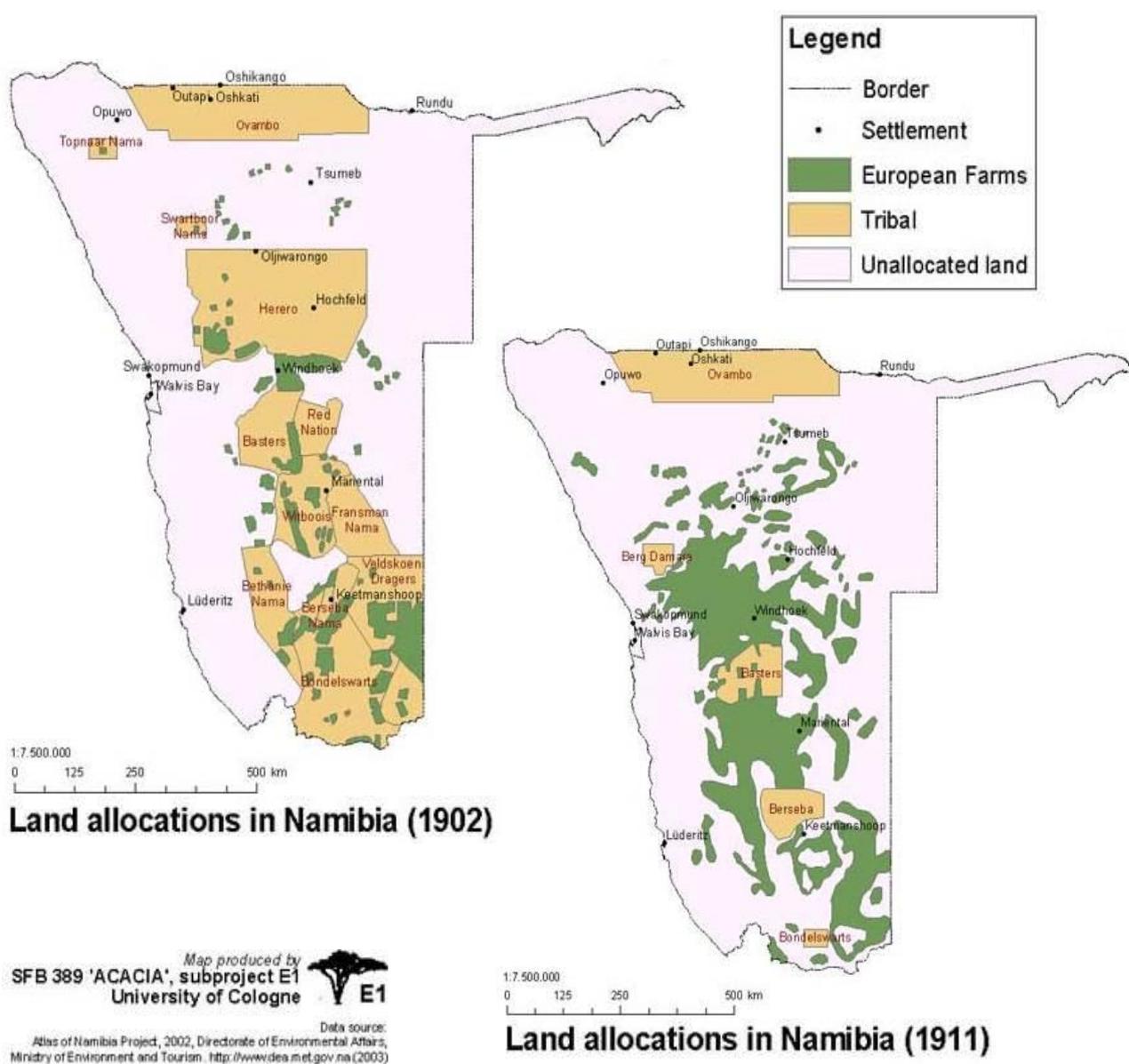


Figure 4.1 Land allocations in Namibia 1902 and 1911

(Atlas of Namibia Project 2002)

gain control over land in the Ovambo and Kavango territories were abandoned by Governor Leutwein; due to the fact that there was no perceived mineral potential in the northern areas, the areas were not regarded as being 'attractive' for white settlers and the administration felt that the German garrison was outnumbered by the militaristic capacity of the Ovambo kingdoms (*ibid.*).

The Police Zone was established to further control settlement in the colony. As the colonialists struggled to confront the northern Ovambo kingdoms, officials created the Police Zone which specifically separated the northern peasant communities, mostly the Kavango and Ovambo communities, from the southern areas settled predominantly by white farmers- who owned an estimated 90 percent of all cattle and 70 percent of small livestock in the Police Zone (Behr, Haer and Kromrey 2015; Werner 1993). The boundary demarcating the separation of the northern reserves from the mostly commercial southern farmland was called 'Veterinary Cordon Fence' (VCF) or 'Red Line'.

#### **4.2 THE SECOND WAVE OF DISPOSSESSION: APARTHEID**

During World War I, the German colonial forces in SWA were overpowered by the troops from the Union of South Africa (Werner 1993). Namibia was placed under the military rule of the Union of South Africa, until South Africa was officially granted the mandate over the country in 1919. This implied that all land held under the former German colonial government was transferred to South Africa, and that the Governor General of the Union had the power to allocate Crown Land (Werner 1993). A Native Reserve Commission was appointed in 1920 to examine the current situation in temporary reserves and the availability of wage labour. The Commission's findings resulted in the proclamation of several more reserves for the black population between 1923 and 1951- forcing many pastoralists to be settled on land in the eastern areas of the country- ensuring that most land in the Police Zone remained exclusively for white settlement (Odendaal 2010; Werner 1993). Simultaneously, a programme to resettle poor white South Africans on dispossessed land in Namibia was introduced.

The Great Depression and Drought in 1932 brought a halt to the expansion of white settlements on Namibian land, only to commence again in 1937 despite warning that land suitable for settlement was increasingly becoming scarce (Werner 1993). The Police Zone was shifted further north after World War II, making more farmland available for white settlement. As a consequence of the expansion of land for settlement for the white population, indigenous communities often had to vacate ancestral lands reclaimed after 1915 for resettlement onto peripheral lands. Figure 4.2 illustrates control over land in Namibia under the apartheid system in 1955, after the creation of the Red Line.

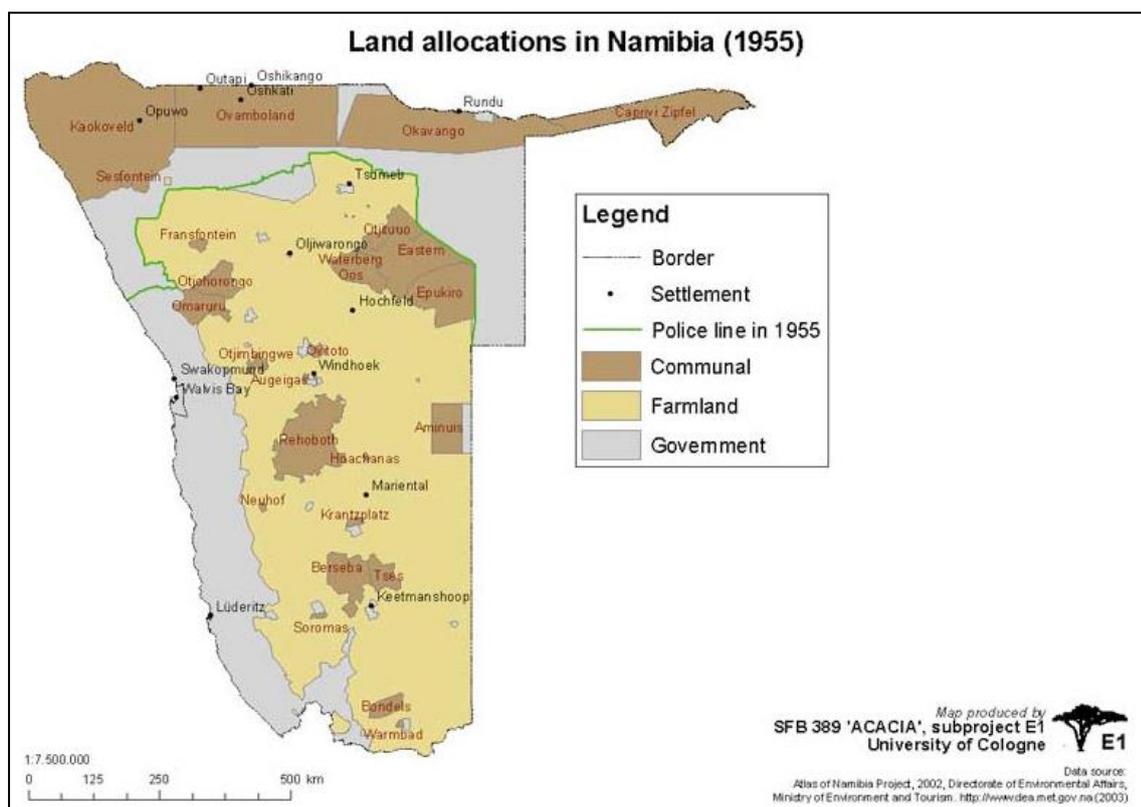


Figure 4.2 Land allocations in Namibia in 1955

(Atlas of Namibia Project 2002)

The penultimate phase of forced removals was introduced when government established the Commission of Enquiry into South West Africa Affairs, generally known as the Odendaal Commission (Miescher 2012). The Odendaal Commission was created during a time of heightened tensions and outbursts by local communities in Namibia against the apartheid regime which drew international attention to SWA. The visit by the Chairman of the UN Committee on SWA, Vittorio Carpino, to SWA and South Africa in 1962 provided an opportunity for Prime Minister Verwoerd to initiate a “Commission of Enquiry into the Affairs of South West Africa,” which became known as the Odendaal Commission. The Commission consisted of a group of ‘experts’ responsible for surveying SWA and creating 5-year plans for the development of “various non-White groups of SWA” (Werner and Odendaal 2010: 15), with the specific aim to

“ascertain how further provisions should be made [...] for their social and economic advancement, [...] proper agricultural, industrial and mining development in respect of their territories and for the best form of participation by the Natives in the administration and management of their own interests” (Republic of South Africa 1964: 3).

McCullers observes that the Odendaal Commission was thus strategically established by the apartheid government under Prime Minister Verwoerd as a “masterfully manipulated [...] stage for promoting a positivist development approach to SWA. Employing the rhetoric of trusteeship,

or “Sacred Trust,” the government cited its obligation to promote the physical and moral development of SWA’s indigenous peoples” (2012: 128).

The Commission concluded that nearly all reserves were unable to move beyond a subsistence economy, and recommended that the expansion and merging of some reserves, coupled with training opportunities for the farmers, could ensure that these homelands would become more productive (Werner 1993). This resulted in the consolidation of the existing reserves in the Police Zone into seven larger ‘ethnic homelands’ under the 1964 Odendaal Plan- however some of these reserves were formed on unusable or semi-desert land. Under the Odendaal Plan, “economic development was not envisaged as part of a wider national development strategy, but rather within the ethnic enclaves proposed by the Commission” (Werner 1993: 145-146). Thus the Odendaal Plan, as a tool to enforce and maintain the apartheid system, installed ethnically homogenous homelands to “protect Namibian settler society [...] from the threat of the African interior” (Miescher 2012: 11).

The Odendaal Plan also included the conversion of communal land into large commercial farms in the 1960s. Based on the recommendations by the Odendaal Commission, 200 farms on communal land were surveyed in the Mangetti areas of the Kavango West and Oshikoto regions and in Okamatapati in the Otjozondjupa region and allocated to selected beneficiaries (Werner 2015). This was considered to be a development approach through which ‘development’ was stimulated by allocating farmland to selected black beneficiaries for agricultural production. Part of the ‘modernisation’ of agriculture in the Odendaal’s 5-year plan was the transition of subsistence agricultural land into commercial farmland by converting customary land tenure systems into more individualised tenure systems (Werner and Odendaal 2010). During the 1960s and 70s, this plan became the mantra for apartheid policy development and implementation in SWA (McCullers 2012).

Once the Union of South Africa defeated the German troops in 1915 and were given the League of Nations mandate over South West Africa, the system of pass laws did not change in Ovamboland. Thereafter, the first administrative posts were established in Ovamboland. Between 1915 and 1932, the chiefs and headmen in the reserve- who up until that period were largely independent polities- were subjugated into a system of indirect rule and displaced if they did not follow the rules (Dobler 2014). In 1948, when the National Party came to power in South Africa, the SWA administration moved from segregatory policies to apartheid. Ovamboland became a ‘self-governed’ homeland in 1968, yet the homeland system was strongly opposed by the growing liberation movement since it did not allow any self-determination as eluded to in the beginning (Dobler 2014). The largest liberation movement SWAPO (South West Africa People’s

Organisation), constituting mainly of the Ovambo population, grew steadily since the 1960s and was able to use bases just across the border in the newly independent Angola (Dierks 1999). South Africa reacted by expanding its military and paramilitary presence in the area, and from the mid-1970s the reserve became occupied under de facto military rule (Dobler 2014; Dierks 1999). What followed was a long process of reforms, negotiations and periodic war across most of northern Namibia. Land ownership played a central political role during Namibia's liberation struggle (Behr, Haer and Kromrey 2015). SWAPO turned into a political party and won the first democratic elections in 1989, shortly after which Namibia gained independence in 1990 (Dobler 2014; Dierks 1999). The Ovambo population continues to be influential in Namibian politics due to their successful involvement in the liberation struggle (Hinz 2008).

During the resistance war, the inequitable distribution of land played a key role in gaining support for SWAPO. As a result of the promises made regarding the redistribution of land by SWAPO during the liberation struggle and the first electoral campaign, it came as no surprise that the land reform process started very soon after the inauguration of the first democratically elected President and SWAPO party leader, Sam Nujoma. The SWAPO Party's Election Manifesto of 1989 stipulated that the new Government led by the SWAPO Party would be "committed to land reform order to redress the imbalance created by colonial policies of land allocation on a racial basis" (quoted in !Naruseb 2012).

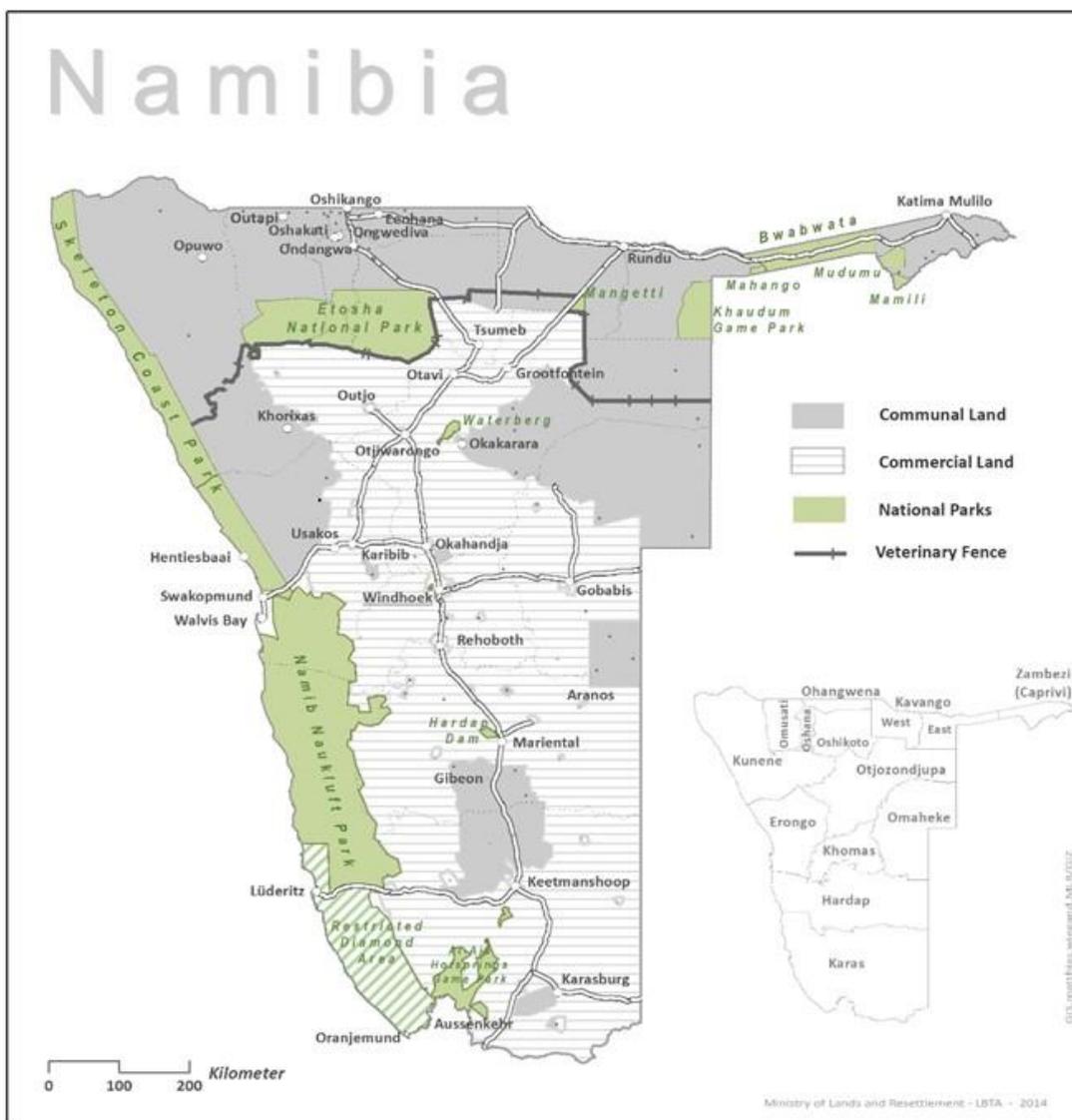
### **4.3 INDEPENDENCE AND A NEW ERA OF COMMUNAL LAND GOVERNANCE**

After independence, Namibia was divided into the 13 regions<sup>14</sup> and the reserves across the country ceased to exist. The distribution, location and size of land in contemporary Namibia is still essentially based on the boundaries created under the colonial and apartheid systems. Communal areas largely follow the boundaries of the old ethnic 'homelands' established by the Odendaal Commission under the apartheid regime. About 687 400 km<sup>2</sup> out of 824 000 km<sup>2</sup> of Namibia's total land surface is arable land, thereof 46 percent is communal and 54 percent is commercial land (Thiem 2014). The Veterinary Cordon fence still separates the communal land in the northern regions from the mostly commercial land in the south of the country (Figure 4.3). It is estimated that 800 000 Namibians reside in communal areas, many of them in poverty (Harring and Odendaal 2002).

Shortly after independence, the new government initiated a national conference to address the 'land question' of the skewed distribution of land due to the historical processes mentioned above.

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<sup>14</sup> In 2013, this became 14 regions as the Kavango region was divided in the Kavango East and Kavango West regions.



(Ministry of Lands and Resettlement, LBTA Division 2014)

Figure 4.3 Overview of communal and commercial land and national parks in independent Namibia

According to the former Minister for Lands and Resettlement (MLR), Hon. !Naruseb, the question of land is “among the most sensitive and complicated issues that Namibia strives to resolve since independence” (!Naruseb 2012). The right to settle on any land was firmly embedded in the new Namibian Constitution.

The Namibian Constitution came into force in 1990. In contrast to pre-independence, Article 21 (g) and (h) of the Constitution guarantees all persons the right to move freely throughout Namibia and reside and settle in any part of Namibia. Article 23 (2) of the Constitution implements affirmative action; enabling legislation that contributes towards the advancement of Namibians who have in the past been socially, economically or educationally disadvantaged by discriminatory laws or practices (The Republic of Namibia 1990). While property, and therefore also the ownership of commercial land, is protected under Article 16, the Constitution does not explicitly

mention customary land tenure rights in communal area (Odendaal 2011a). Article 100 states that land, water and natural resources, both below and above the surface, belong to the State, unless they are not otherwise lawfully owned (The Republic of Namibia 1990).

In 1991, the much anticipated *National Conference on Land Reform and the Land Question* took place under the patronage of the Office of the Prime Minister. The conference, which was attended by over 500 representatives from civil society organisations, the farming community and other stakeholders, wanted to reach consensus on land reform in independent Namibia (Thiem 2014). Even though no binding decisions were taken at the conference, it was seen as a major milestone for democracy and public participation on land matters in Namibia and provided the platform for all future decision-making regarding land reform. Many influential decisions on legislation and policy were taken at the conference, the most fundamental being that the full restitution of land rights was ruled out and has since never been included in Namibia's land reform policies (Thiem 2014).

At the conference it was also decided that a land reform policy had to promote secured access to land to local people. In the following years, communal land issues were not high on the government's agenda. Instead, more focus was placed on commercial redistributive land reform, and hence the *Agricultural (Commercial) Land Reform Act* was passed in 1995 to provide the guidelines for implementing the National Resettlement Programme and the Affirmative Action Loan Scheme. Two years later, in 1996, the government hosted a *Consultative Conference on Communal Land Administration* to discuss communal land administration with all stakeholders. The aim of the consultative workshop was to accelerate policy development on land reform in communal areas and to pre-empt the tabling of a Communal Land Bill in Parliament. The main focus of the discussion was about proposed 'Regional Land Boards', and the role of traditional authorities in land allocation and management. Thus the discussions at the conference were dominated by concerns about the powers of the proposed land boards and the consequences this might have on the functions and powers of traditional leaders (Werner 2008). Hinz (2008) notes that the importance that traditional authorities play in contemporary Namibia is reflected in their legal position in both constitutional and statutory law. The Namibian Constitution acknowledges the existence of traditional authorities and the Council of Traditional Leaders was established to advise the president on matters related to communal areas.

The *National Land Policy* was adopted in 1998, and contains guidelines for legislation regarding both the commercial and communal sectors. The Land Policy identifies the lack of secured land rights as a major constraint in Namibia, inhibiting the development of communal areas (Ministry of Lands, Resettlement and Rehabilitation 1998). Significantly, the Land Policy clearly states that

communal land should not need to be converted into freehold in order to redress the ‘weakness’ in current communal tenure systems (Ministry of Lands, Resettlement and Rehabilitation 1998).

The most important legislation regarding the management of communal land is the *Communal Land Reform Act, Act 5 of 2002* (CLRA), which was enacted in 2002 and came into force in 2003. The CLRA reaffirms that all communal land areas are vested in the state, and that the state is therefore responsible for ensuring that communal land is correctly administered and managed (Meijs, Kapitango and Witmer 2009). Through the enactment of the Communal Land Reform Act, communal land is now allocated through customary land rights which give individuals the right to use the land for a lifetime. Customary land rights include the rights to a farming unit, a residential unit and to any other form of customary tenure that may be recognised and described by the Minister in the Government Gazette (The Republic of Namibia 2002: CLRA, sec. 21). Many land reform policies in Africa, and similarly in Namibia, were adopted in order to redress the inherited skewed land ownership structures at independence. Overall, these policies are aimed at ensuring equity and decreasing poverty. However, Thiem (2014) argues that whilst these goals apply to commercial land reform, the main issue surrounding communal land reform in Namibia is to address tenure insecurity inhibiting productivity and development.

The CLRA consolidates often unwritten customary laws into statutory law based on constitutional principles. It codifies the system of land allocation and registration. This should lead to land tenure relationships being better defined and enforceable in a formal court of law. Furthermore, the CLRA should provide security to land holders, their spouses, children and dependants, ensure documentary proof, specify boundaries of allocated land parcels and prevent land grabbing. Further, equal access to all Namibians is ensured. The CLRA especially grants equal rights to women when applying for rights to communal land. Finally, the CLRA fosters the development of unused communal land as CLB and Traditional Authorities have a better overview over the allocated land. Commonages are not to be registered under the Act, as they are considered by the Act to be land belonging to all residents of a community for grazing livestock (Thiem 2014).

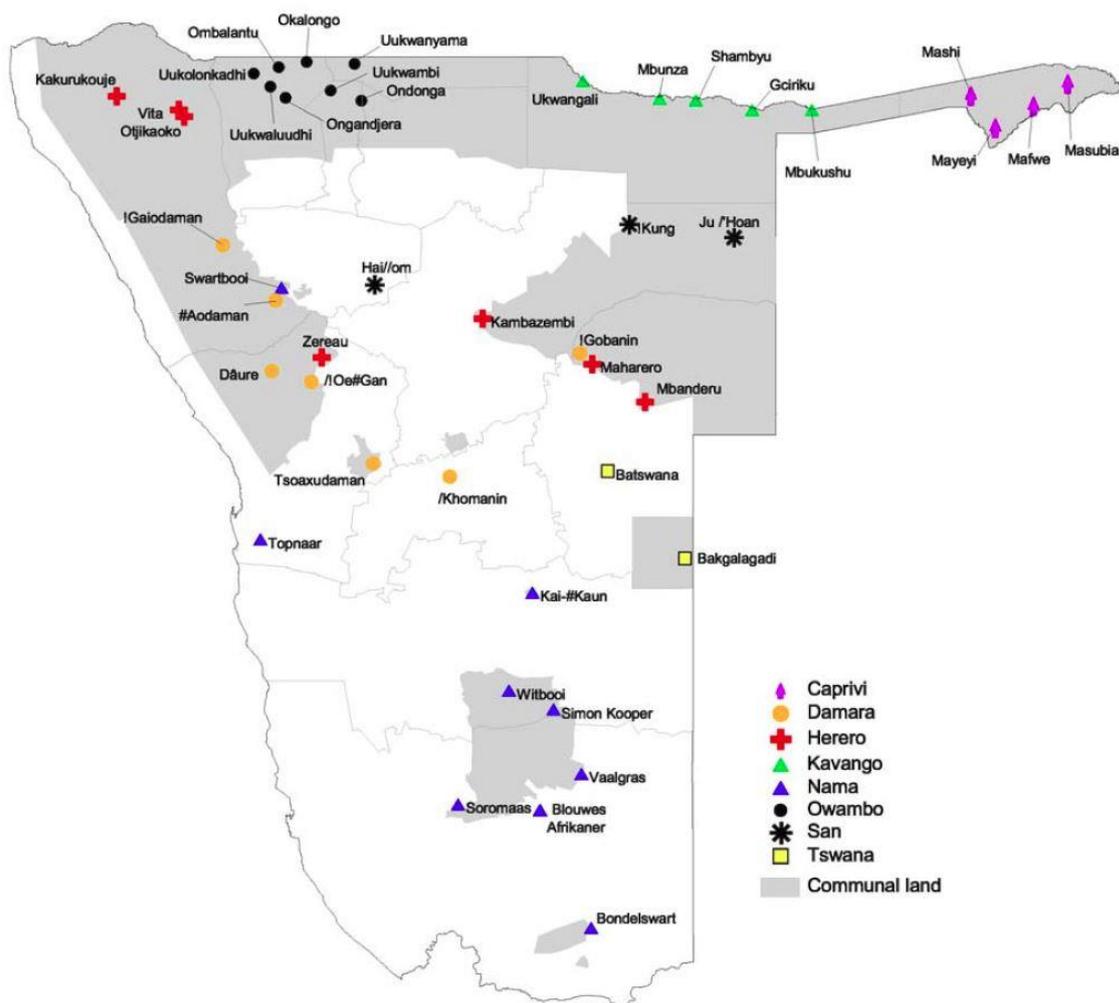
The CLRA follows the guidelines of the National Land Policy: It establishes Communal Land Boards (CLB) for each region containing communal land and incorporates the Traditional Authorities in the administrative structure. The members of the CLBs are appointed by the Minister of Land Reform and need to be representatives of specific groups; amongst others from traditional authorities, regional councils, women, farmers and conservancy members (The Republic of Namibia 2002).

The CLRA regulates the relationship between government, CLBs and the TAs. The competences of the CLBs and the TAs follow a system of checks and balances, whereby TAs still have the

primary power to allocate customary land rights. The CLBs control and ratify the decisions of the TAs.

The Ministry of Land Reform (MLR) is the custodian and main implementing agency of land reform. The Ministry is composed of two departments; namely the Department of Land Management, which is responsible for surveying, mapping, deeds, the valuation of estates and estate management, and the Department of Land Reform and Resettlement, whose tasks include co-ordinating and managing the activities of the communal land rights registration programme.

In 2003, the multi-stakeholder Permanent Technical Team on Land Reform (PTT) was established by the MLR to evaluate the progress up to that date of the land reform process and to develop a Land Reform Action Plan, which should become a strategy for the implementing of land reform in Namibia (Thiem 2014). The Land Reform Action Plan was adopted by government in 2005, and is the first comprehensive framework for a long term strategy on land reform (*ibid.*). Recommendations for the development of communal land emphasised that an urgent reassessment of underutilised or so-called ‘virgin’ land was required and that stronger linkages to other government initiatives such as the Rural Poverty Reduction Strategy, the Green Scheme and Community-Based Natural Resources Management had to be created. Further, the report recommended that community-based policies on resource management should go beyond wildlife and tourism to also include other natural resources such as water, land and land-based economic activities and to assess the impact of illegal fencing in communal areas (Ministry of Lands and Resettlement 2006). With the introduction of the CLRA, Namibian traditional authorities have different perceptions of the level of authority and power they maintain over the allocation and management of land. The traditional authority structure in northern Namibia, such as of Ovambo, Kavango and Caprivi traditional structures, have been in place for hundreds of years. Consequently, their lineages and customary laws are well established and boundaries generally known (Behr, Haer and Kromrey 2015; Mendelsohn 2008). In contrast, these structures have only recently been formed in the more central and southern regions of Namibia, probably between the 19<sup>th</sup> century until as recent as 20 years ago. Figure 4.4 provides an overview of the geographical distribution of the 46 recognised TAs in Namibia’s communal areas. The younger TAs more frequently experience struggles and conflicts over leadership, identity and community boundaries (Mendelsohn 2008).



(Mendelsohn 2008: 7)

Figure 4.4 Communal land in Namibia, regional boundaries and the offices or locations of the 46 recognized traditional authorities

During an analysis of the impacts of the communal land rights registration programme on traditional authorities in Namibia, Behr, Haer and Kromrey concluded the following:

“The Ovambo traditional authorities, who historically have close ties to the SWAPO government, expressed some fears of losing parts of their traditional powers due to the increasingly competitive jurisdiction with the land boards and the regional administration; yet they do not fully oppose the implementation of the CLRA. [...] The Nama authorities in the south, however, raised more concerns, which are also representative for other marginalized indigenous groups such as the San. Although not openly criticizing the government’s land policy, our interview partners indicated that the Nama feared losing the few remaining parts of their historical land that remained under their custody to an Ovambo-led state administration. [...] Moreover, Nama representatives indicated that they felt as if the CLRA was imposed upon them by the SWAPO government without prior consultation with non-Ovambo people. However, since they control only a small area of communal land, their political leverage in the power struggle and the chances of scaling up the simmering struggles are fairly limited. In stark contrast, other northern traditional authorities, like the Himba, Caprivians and Kavango people, which have historically had access to larger amounts of communal

land but lack the close SWAPO ties of the Ovambo authorities, have a more intense power struggle with the state. Faced with the alteration of power proposed by the CLRA, some of these northern authorities rejected the formal land registration procedure altogether and refused to cooperate in any communal land board. In sum, the CLRA could therefore not diminish power discrepancies in the communal land sector” (2015: 466).

Their conclusion importantly illustrates how the political climate; whether colonial, apartheid or post-independence, defines the relationship between traditional leaders and their control over land administration. In post-independent Namibia, some TAs feel another form of oppression and loss of power, be it by the democratically elected government. Interestingly, Alden Wily (2012b) poses the question of whether independence actually liberated customary tenure. Instead, she believes that class formation and the increasing commoditisation of land in post-colonial Africa has continued to increase the vulnerability of Africa’s communal farmers (Alden Wily 2012b). Furthermore, and most significantly, paternalistic and tribally-centred new nationalism policies, implemented by tribally-aligned one party governments, are argued to have continued to entrench poverty in communal areas (*ibid.*).

#### **4.4 CONCLUSION**

At independence in 1990, Namibia inherited a distorted land system. Land was disproportionately divided between white and black farmers. The current pattern of land ownership and distribution in Namibia can be attributed to German colonial strategy and land policies under the South African apartheid regime. Colonialism in Namibia began in 1884, when the territory came under European rule as a German protectorate.

In the subsequent decades, various colonial policies and the creation of so-called ‘native reserves’ severely influenced the land system in Namibia. The German colonial administration thus dispossessed land from black Namibians not only to re-allocate the land to white settlers, but to deny them access to land for agricultural production, inherently forcing them into wage labour. This all did not only mean that local populations had been dispossessed from their ancestral lands, but that new forms of tenure were introduced through European appropriation. The concept of private land ownership had started to replace communal land uses and for the first time introduced clearly demarcated boundaries. These mainly unfair trading practices and the significant loss of land contributed towards the Herero and Nama resistance war in 1904.

During World War I, the German colonial forces in SWA were overpowered by the troops from the Union of South Africa, and Namibia was placed under the military rule of the Union of South Africa, until South Africa was officially granted the mandate over the country in 1919. This implied that all land held under the former German colonial government was transferred to South

Africa, and that the Governor General of the Union had the power to allocate Crown Land. Several more reserves for the black population were proclaimed between 1923 and 1951- forcing many pastoralists to be settled on land in the eastern areas of the Namibia. The penultimate phase of forced removals was introduced when government established the Odendaal Commission, resulting in the Odendaal Plan. During the 1960s and 70s, this plan became the mantra for apartheid policy development and implementation in SWA.

The Odendaal Plan included the conversion of communal land into large commercial farms in the 1960s. This was considered to be a development approach through which ‘development’ was stimulated by allocating farmland to selected black beneficiaries for agricultural production. Part of the ‘modernisation’ of agriculture in the Odendaal’s 5-year plan was the transition of subsistence agricultural land into commercial farmland by converting customary land tenure systems into more individualised tenure systems.

Land ownership played a central political role during Namibia’s liberation struggle. During the resistance war, the inequitable distribution of land played a key role in gaining support for SWAPO. Shortly after independence in 1990, the new government initiated a national conference to address the ‘land question’ of the inherited skewed distribution of land.

Even though no binding decisions were taken at the conference, it was seen as a major milestone for democracy and public participation on land matters in Namibia and provided the platform for all future decision-making regarding land reform. At the conference it was also decided that a land reform policy had to promote secured access to land to local people. In 1996, the government hosted a further consultative conference to discuss communal land administration with all stakeholders, with the aim to accelerate policy development on land reform in communal areas.

The most important legislation regarding the management of communal land is the *Communal Land Reform Act, Act 5 of 2002 (CLRA)*, which was enacted in 2002 and came into force in 2003. The CLRA reaffirms that all communal land is vested in the state, and that the state is therefore responsible for ensuring that communal land is correctly administered and managed.

The following chapters will provide a more detailed overview on the case study areas in selected communal areas Namibia. The chapters will provide short background information on the respective regions, before going into details on the research findings.

## **CHAPTER 5      NORTHERN CONTRASTS: KAVANGO EAST AND OMUSATI REGIONS**

The following chapter provides a detailed analysis of the case study conducted in villages in the Kavango East and Omusati regions. These two areas are discussed in the same chapter, as they are both located in the northern communal areas, thus north of the Veterinary Cordon Fence (VCF). As will be discussed, the case study regions of Kavango East and Omusati both have common and diverse cultural, socio-economic and environmental characteristics.

Both regions have well established Traditional Authorities with structures, leadership lineages, and extensive customary laws in place. All five recognised Traditional Authorities of Kavango are well established and nearly all of the eight recognised Traditional Authorities of the Oshiwambo-speaking communities in northern Namibia are similarly situated. The Ovambo ethnic group extends across four regions – Ohangwena, Oshikoto, Oshana, and Omusati, commonly referred to as the O-regions. The Ovambo ethnic group represents the majority of the population in the O-regions (AfDB 2006).

Inhabitants of both regions engage in mixed-farming, mainly with crops and livestock, and approximately 50 percent of farmers in both regions are classified as smallholder farmers (Girma 2015).

However, the regions differ in terms of population density, residence pattern, and level of poverty. Omusati has a relatively high population density of 9.1 persons per square kilometre, in comparison to 4.6 persons per square kilometre for Kavango (prior to the split into Kavango East and Kavango West) and the national average of 2.6 persons per square kilometre (NSA 2013).

Furthermore, the residence pattern of the Kavango people is collective and includes extended families, whereas the residence pattern of the Ovambo communities is more individualised and primarily based on the nuclear family with some extended family residence (Thiem 2014).

Prevalence of poverty varies considerably between the two regions. At 28.6 percent, the level of poverty in Omusati is only slightly higher than the national average of 26.9 percent and significantly lower than that of Kavango. Kavango has the highest incidence of poverty in the country with a poverty incidence of 53.2 percent (NPC 2015).

## 5.1 KAVANGO EAST REGION

The first case study area is located in Shipando village in the Kavango East Region. This section will look at the regional and political context of Kavango East, before focussing on the data collected during the village interviews. The data will provide an overview on land in Shipando; such as farm background, the importance of land and perceptions and understanding of tenure security in the village.

### 5.1.1 Regional background

The Kavango East region is situated in north-eastern Namibia, with the Okavango River forming its northern border to Angola. This region covers an area of approximately 48 456km (Thiem 2014). Rundu is the administrative centre of the Kavango East region. Nearly half of this region consists of land used for communal farming; with the remaining areas used for agricultural green schemes, specifically government development small-scale farms and conservation (Brown 2010).

Kavango<sup>15</sup> is classified as semi-arid with generally warm temperatures, with average maximum temperatures above 30 degrees Celsius during the summer months (NPC 2007; Mendelsohn and El-Obeid 2003). The region experiences higher rainfall than many other areas of Namibia, yet the rainfall varies between the southern and northern areas of the Kavango, thus impacting the potential for agricultural development in some parts of the region (Mendelsohn and El-Obeid 2003). Mendelsohn and El-Obeid (2003) also note that the predominance of sandy soils that are low in nutrients furthermore constrain agricultural production, with mostly only the small areas next to the Okavango River being suited for crop production.

Based on the 2011 National Population and Housing Census, Kavango has a population of 223 352 (compared to 202 694 at the 2001 census). The Kavango has a relatively high population density of 4.6 persons per square kilometre, compared to the Namibian average of 2.6 persons per square kilometre (NSA 2013). There are 36 741 households in the Kavango, with an average household size of 6.0 persons. This represents the highest total number of people living in one household in Namibia (Thiem 2014). Male-headed households constitute 57 percent and female-headed households 43 percent, which is relatively close to the national average. The overall literacy rate in the Kavango is 79 percent of the population over 15, which is below the national average of 89 percent (NSA 2013).

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<sup>15</sup> Since the Kavango East and West regions were only divided into two regions in 2013, and most data is still based on the Kavango region before the separation, this chapter will provide background information on the Kavango region as a whole- referred to commonly as 'Kavango'.

The majority of the population in Kavango is engaged in various forms of small-scale farming, particularly *mahangu* (pearl millet) production on a few hectares and tending of a small number of goats and cattle (Thiem 2014). Only little income is derived from these crop-growing activities, as the fields are small and the soil is mostly unsuitable for proper cultivation, therefore yields also tend to be small (Brown 2010). There are also only few properly developed markets for agricultural products in the Kavango (*ibid.*). Most of the southern and western parts of Kavango have in recent years been developed into what is referred to as ‘Small-Scale Commercial Farms’- which are inherently a form of leasehold and most of which cover over 2 500 hectares per farm (Brown 2010; Mendelsohn and El-Obeid 2003). Livestock- mostly poultry and cattle- is an important asset for meat and milk, however most households regard livestock as a form of savings (Thiem 2014). Since many people live close to the perennial Okavango River, fishing is also a major source of protein for communities in the area, however over-fishing has become a problem in the Kavango (Thiem 2014; Brown 2010). As Thiem (2014) notes, the majority of the Kavango population relies on wages and salaries, pensions, and cash remittances to supplement their livelihoods, and most cannot make a sufficient living from their land itself. Brown (2010) has found that small-scale crop farms allow for some food self-sufficiency, however they do not adequately contribute towards food security or opportunities for economic development or poverty alleviation. The Kavango has the second highest share of the population in households that spend more than 60 percent of their total income on food (Thiem 2014).

According to the United Nations Development Programme (UNDP) Human Development Index (HDI), Kavango had the second worst life expectancy at birth, third highest illiteracy rate, sixth worst gross school enrolment ratio and the second lowest annual average per capita income in 2001 compared to all the other regions (Levine 2007). Hence Kavango, along with the Omusati and Oshikoto regions, had the highest Human Poverty Index of all Namibian regions (*ibid.*).

Nearly 70 percent of the entire population in Kavango lives within close proximity of the Okavango River. The first people settled here as there was sufficient water and soils and pastures were generally well-suited for farming. Thus many settlements have developed next to, or close to, the river (Thiem 2014).

Kavango is divided into six traditional authority areas: Kwangali, Shambyu, Mbunza, Gciriku, Mbukushu and Kxoe; only the first five authorities are officially recognised by the government (Mendelsohn 2009) (Fig. 5.1).



Figure 5.1 Traditional authority areas of Kavango

(Mendelsohn 2009: 12)

Some historical information indicates that all the five traditional groups of the Kavango region lived and travelled together from their country of origin to their present home along the Kavango River (Hinz 2010). These five tribes are the Gciriku, Shambyu, Kwangali, Mbunza and Mbukushu.

The case study village of Shipando lies within the boundaries of the Gciriku TA. The Gciriku people, who live on the eastern side of Rundu, migrated from the legendary place called ‘Mashi’, which is located in modern-day south-western Zambia, and arrived along the Kavango River around the 17th and 18th century (Hinz 2010).

The five recognised TAs in Kavango possess strong traditional power in the region. The tribal leadership in Kavango is made up from bottom to top of community leaders, headmen, senior headmen and chiefs. Chiefs are generally members of the royal family and selected by their predecessors, taking over the leadership once the former chief passes away. Headmen are elected by community members; whereby the chief ratifies the elected candidates. The senior headmen are appointed by the chief. In the past, TAs exercised control under customary law over natural resources in various ways. The authority over land in Kavango has always been in the hands of the chiefs, who had the ultimate authority over land in their areas of jurisdiction (Hinz 2010). The village headmen are responsible for the day-to-day administration of communal land. Thus they are also responsible for giving out rights to arable and residential land and dealing with land and other disputes. Only if the dispute cannot be solved at the local level is it referred to a senior headman or ultimately to the chief (Jones 2009).

The TAs in the Kavango have opposed the registration process for various reasons. While the State has been implementing the CLRA across Namibia, the Kavango regions (East and West) decided to not endorse the registration of customary land rights and continue independently managing land

under their existing customary system. The Kavango experience thus provides an interesting insight into customary land tenure practices and perceptions on the formalisation of land rights.

The Traditional Authorities of Kavango (East and West) argue that the CLRA is focussed on problems that are not based on their realities and customs. The TAs claim that their customary system contains mechanisms for effective resolution of land issues and that the CLRA is duplicating efforts and not taking into account their land practices and land needs. Thus they believe that registration of customary land rights under the CLRA does not accommodate their actual situation and therefore does not represent the interests of the Kavango people (Girma 2015).

The Kavango TAs emphasise that the CLRA does not accommodate the cultural practices of Kavango communities and feel that registration of communal land is not in line with their traditional land use practice, e.g. shifting agriculture, seasonal resizing of land and cultivation on several parcels of land. People in Kavango mostly utilise more than one parcel of land. Mendelsohn reports that people living near to the Okavango River have two or more separate plots; one close to the river and their homes, others would be located some distance away from the river. New fields are cleared when the soil fertility of cultivated fields is exhausted, and these fields are then abandoned or left to lie fallow. Under the CLRA, residents would probably have to register cultivated, fallow and abandoned fields in order to continue with shifting cultivation (Mendelsohn 2008). The CLRA only provides for one parcel of land to be registered per household (Girma 2015). Stakeholders in Kavango continue to be suspicious of the potential impacts of registration, and some perceive the Act and process of registering land as an attempt by government to identify open land for allocation to others from outside of their community (Mendelsohn 2008; Girma 2015). Furthermore, some TAs feel that CLRR is a government programme designed to further undermine the power of TAs in the area of land administration and management (*ibid.*). Discussions between the Kavango TAs and the government are ongoing, as the government is trying to encourage the Kavango TAs to support the CLRR programme.

It is exactly due to the fact that communal land rights registration is being rejected in Kavango, that it provides an interesting case study area. Much can be learned by studying the perception towards communal land rights registration in the Kavango region, and gaining an understanding of why people feel that the formalisation of their land rights is against their customs.

### **5.1.2 Personal data**

A small village just south of the Kavango River was selected as a case study area. The selection of this area was based on the acceptability of the TA towards research being done in their area, the village exists exclusively of communal lands and not of small-scale commercial farms or

leaseholds, it is close to the river- thereby reflecting traditional agricultural land uses for the region and the household size made it feasible to cover a considerable amount of the village during the research stay. Shipando village is located within the Gciriku TA boundary and less than 10 kilometres from the Okavango River (Fig. 5.2). The majority of the villagers are subsistence farmers, dependent on crop cultivation and some cattle farming. Shipando is situated within the Ndiyona constituency. As already mentioned, no existing or new communal land rights have been registered in the Kavango regions (even up until the time of publishing this dissertation). According to data obtained through a request at the Namibian Statistics Agency (NSA), there are 110 households in Shipando. However, based on information received beforehand by the research assistant familiar with the area and after personal verification during the research trip, there were 42 households in Shipando at the time the research was conducted. According to information received from the NSA, the average household size in Shipando is 5.6. The information received furthermore indicated that nearly 70 percent of the households depended on farming as their main form of income, followed by nearly 11 percent of incomes generated by government pension (NSA 2013, Pers com).

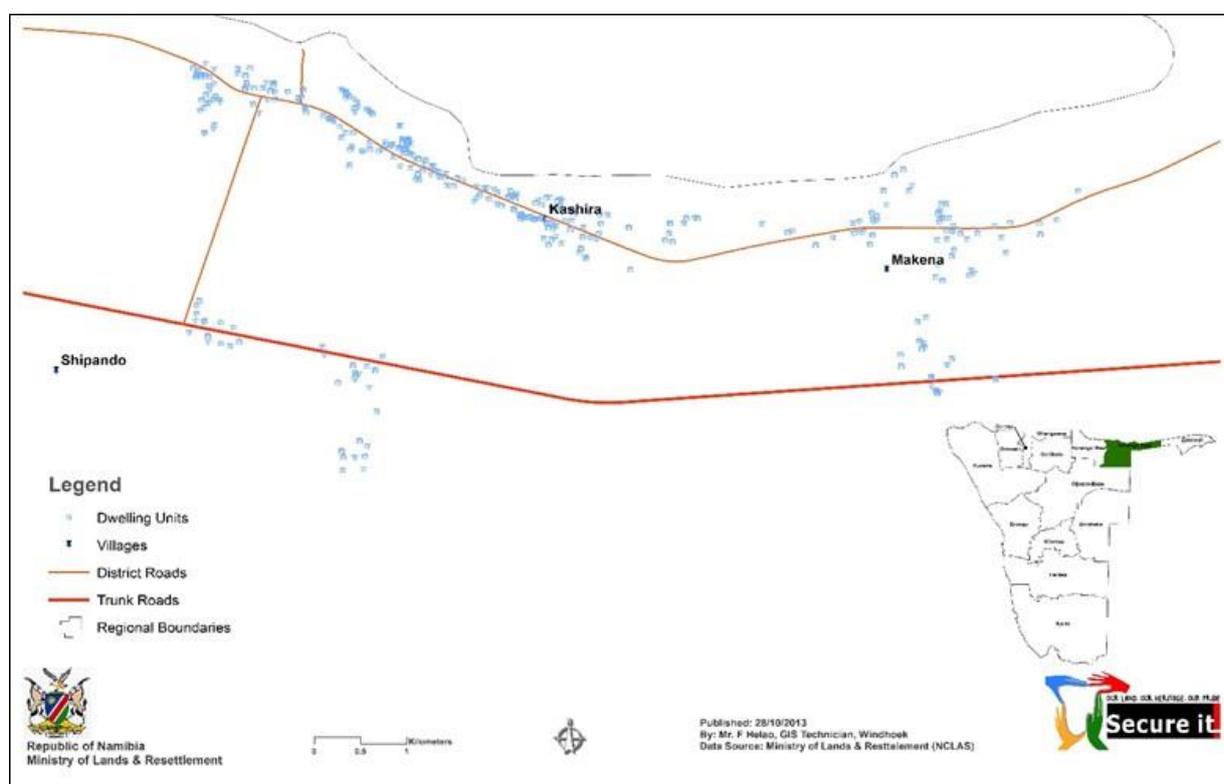


Figure 5.2 Location and dwelling units in Shipando and surrounding villages

(MLR 2013)

At the beginning of the field trip, a meeting was organised for the whole community to meet the researcher. During this village meeting, a general questionnaire was distributed to all those who wanted to participate in this session (see Appendix B for the questionnaire). The headman had requested that the meeting take place at the usual community meeting place, as the attendance was

anticipated to increase due to the sensitivity of land registration and the negative perception which was created by the people who had earlier brought the message about the land meeting to the community members. Thus the turnout for this village meeting was large, as expected, with 74 households from the area attending. More people attended this meeting than were at the water point meeting which was held just before that. Immediately after the start of the meeting, the community fired away with controversial questions regarding communal land rights registration, in addition to verifying that the research was not propaganda from the government. One man said that “we cannot commit ourselves to filling in and signing questionnaires without understanding who sent these people, it might be government using them to cause us to register our land” (translated, Shipando village meeting respondent 1, 2013).

The community members initially resisted the meeting and it quickly became clear that the community members are very territorial about their village and seemed certain about their position and that of their Traditional Authority regarding land registration. They seemed very loyal to their Traditional Authority and demonstrated unconditional support for the decisions of the local leaders. Their main concerns voiced regarding the research were that the findings could be misused for political purposes, as it was also very close to the national elections. They were also concerned that the research could be used by government to find a way to make them register their land. However, after a long discussion and clarification of the purpose, the community was very responsive towards assisting the research purposes, as they saw this as an opportunity to voice their concerns and opinions regarding communal land rights registration.

To get a better overview of the village, the community was requested to participate in a village mapping exercise. To enable the entire community to participate and make it easy to visualise, the mapping is done on the ground or in the sand, and then the final version is later converted onto paper. They were given materials and told they could illustrate their village just as they wanted, but ensure homesteads (where people live), places important to them in the village and surrounding area and land uses are also included.

Beyond wanting to get an overview of the village, village mapping gives the community an opportunity to show what resources and places are important to them where they live, thereby providing an insight into local value placement. The exercise took less than 15 minutes, and all those who participated were unanimously in agreement about the outcome, which is illustrated in Figure 5.3, and the drawing is reflected in Figure 5.4.

What was interesting to observe during this village mapping exercise was that the community knew exactly who lived where and could thus quickly locate all the homesteads. They also knew exactly who had small gardens directly at their homes, and what crop fields belonged to whom and

where they were located. Thus this exercise showed how well they knew their community and indicated a strong sense of spatial awareness of both the built and natural assets of the area. As can be seen further down, this was not the case in all case study villages.



Figure 5.3 Completed village map in Shipando

(Own photo, 18/11/2013)



Figure 5.4 Drawing of village map

(Own sketch produced on site during village meeting based on drawing made in sand by villagers on 18/11/2013)

Shipando is clustered around the main tarred road leading between the two towns of Rundu and Katima Mulilo, and they regard the road as a positive asset, as it allows them access to travel more easily should they need to get to Rundu or other villages and most significantly, they can sell their produce from their crop fields or garden, or even wood and other natural resources next to the busy

road. They also identified the smaller footpaths in the village, leading to the grazing areas, the crop fields and the water point.

During the next two weeks, 20 in-depth individual household interviews were conducted in the village. The majority of respondents interviewed were in their 40s and 50s (Figure 5.5), and 12 interviews were conducted with women. This was not surprising, as many men were away herding the cattle during the day and the women were either close by in the crop fields or tending to the homesteads. Fourteen interviewees were married and five were widowed. Reflecting the low literacy rate in Kavango, out of 20 individual persons interviewed, nine enjoyed a secondary school education, five had a primary school education while six persons had no formal education. Ninety percent of participants farmed permanently on the land, and ten percent farmed-full time. More than half of the participant's families (55 percent, mostly children or close relatives) lived with them on this piece of land, with 25 percent of family members living elsewhere- often in neighbouring villages or on communal farms not too far away, the remaining families having some members living on the farm and others elsewhere.

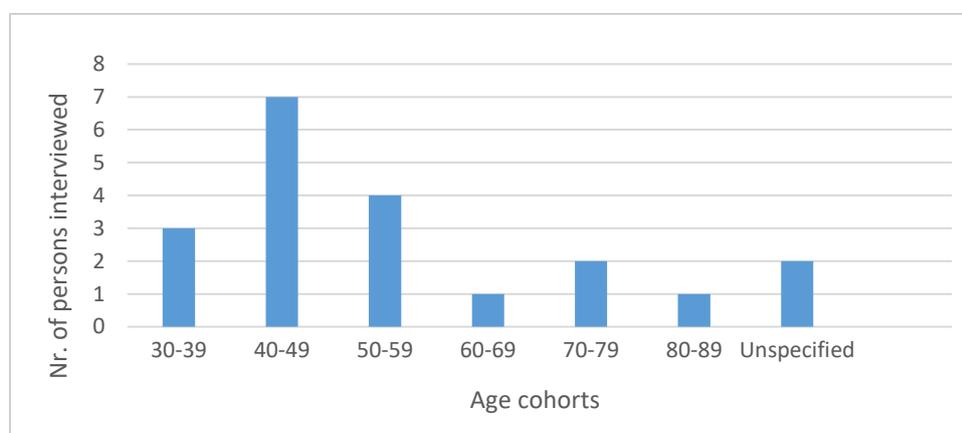


Figure 5.5 Age of persons interviewed

(N=20)

### 5.1.3 CLRR information<sup>16</sup>

As has already been mentioned, none of the farmers had registered their land rights. All interviewees were highly sceptical about CLRR, regardless of whether the process to register was easy or not. All of the participants had however heard of CLRR and were very aware of the government programme to register land. Most of them had heard about it either through the radio or from their TA, and some from other community members (Figure 5.6). All interviewees had

<sup>16</sup> As already indicated in the methodology section of Chapter 2, the fieldwork was based on both 20 qualitative and in-depth household interviews in each of the four case study villages. To obtain a broader overview and provide a counter-balance, short quantitative so-called 'village interviews' were done at the beginning of each field trip in each case study village. The questionnaires for the village feedback were short and based on multiple choice answers. In Chapters 5 and 6 both the individual household interviews and the village interviews will be presented. When a village interview graph or figure is discussed, it will be mentioned specifically. If not, it refers to the individual household surveys.

been dissuaded from registering by their TA and 90 percent also by their relatives and friends. All said that their TA and other community members would not support their decision if they should wish to register. It could be argued that the pressure exerted by the TAs not to register has played an important role in convincing people that registration would not benefit them. Yet during discussions, individuals could reason on a personal level why they did not support CLRR, and thus they did not just conform merely to the ideas of the TA. However, 25 percent of participants said they might register in future, particularly if the regulations would change so as to take into account their customs and ways of living. However, as expected, the majority rejected registration regardless of whether the Act would change or not.

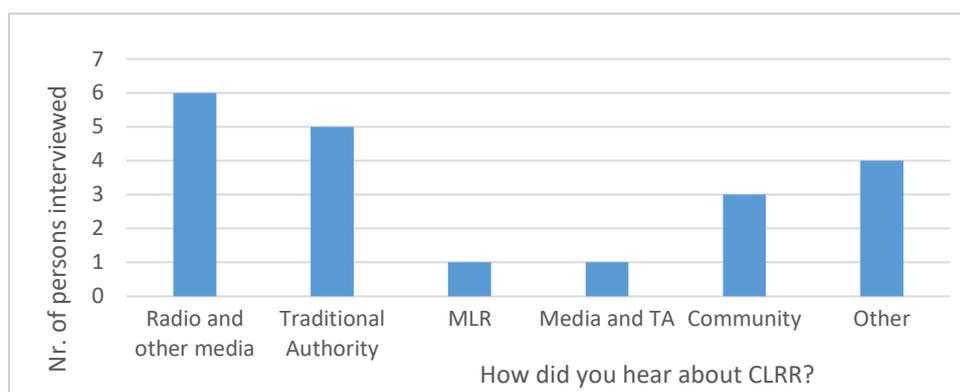


Figure 5.6 How did you hear about CLRR?

(N=20)

Based on feedback from questionnaires during the village meeting, most people in Shipando (and surrounding villages), rejected CLRR due to several factors; including that they perceived it to be a SWAPO (and thus Ovambo) programme, they trusted their TA and community to keep their land safe, it does not take into account their customs and traditional land uses and they could not see what benefits could be derived from registering (Table 5.1). One respondent explained that “I do not need a paper from the government to prove I can live here. I have lived here for a long time, people know me and will stand up for me if there is an issue” (Shipando respondent 1, 2013, Pers com, translated). During several interviews a recent incident regarding a communal farmer in the neighbouring village who had just registered his land under a leasehold was mentioned as a reason why they believed registration in any form was not desirable. In the past, children often went to play in the area around the homestead of the man who had recently registered for a leasehold, yet the farmer had apparently shot at one of the children who played in one of the trees, since he had claimed it was now his private land. For the community, this case illustrates that registration leads to privatisation and a loss of community. Thus, the case was mentioned on several different occasions as a reference to what will happen if people register their land.

Table 5.1 Reasons for not registering (village interviews)

	% (of persons not registered)
Lack of knowledge on CLRR Act	10.8%
Do not understand it	41.9%
Because it is a SWAPO programme	62.2%
Because I trust my TA	83.8%
Because I trust my community	70.3%
Because I see no need for it or nothing will change	68.9%
Because it does not make provision for the traditional ways of using land	81.1%

(N= 74)

As the chair of the Communal Land Board for the Kavango regions, Johannes Karondo, said: “Kavango Region is quite an exception at the moment in that traditionally land was open; people could live wherever they want for a particular year. If they are not happy they can move to any other piece within the Region or the constituency or district. You could go to live wherever you want to, especially if you foresee problems or experience difficulties so you were free to move. With that background, it is now a problem to bring them under the new rule of saying yes, land should be registered. At the moment all five Traditional Authorities [...] want to leave it the way it was before” (2013 Pers com). The MLR has held numerous talks in the Kavango regions to try and convince them to support CLRR, “but they are still saying it is best for them to live the old way or the traditional way. It [changing the way they traditionally manage land] makes them afraid” (Karondo 2013, Pers com). The resistance to register “is from the people themselves. The fear is I will register a piece today, my children that will come after won’t have any piece to get because all the pieces will go to people. They also ask now if we register, what will happen to the remaining land and will people from other regions come to live on this land? They want to preserve [land] for their own generations to come. They want to see this coming from the TAs themselves that you as my Hompa will register because we as people don’t see any benefits” (*ibid.*).

#### 5.1.4 Communal farm background

Most of the households interviewed did not know the size of their farms (which they regarded as being their crop fields). The size of those who guessed was indicated as being about 2-4 hectares, with a few between five and twenty hectares. Thus the land parcels on Kavango communal farms are quite small, which is already an indication that it will be difficult to produce surplus on such small pieces of land. In addition, the fact that many farmers did not know their exact crop field sizes shows that they do not see land as an inherently commercial asset. It is generally assumed that commercial farmers know the exact coordinates and size of their farms.

Land in Shipando is mostly used for crop production, with some also farming with livestock and hence making use of the grazing areas (Figure 5.7). Those who have livestock mainly possess chickens and some cattle and goats (Table 5.2).

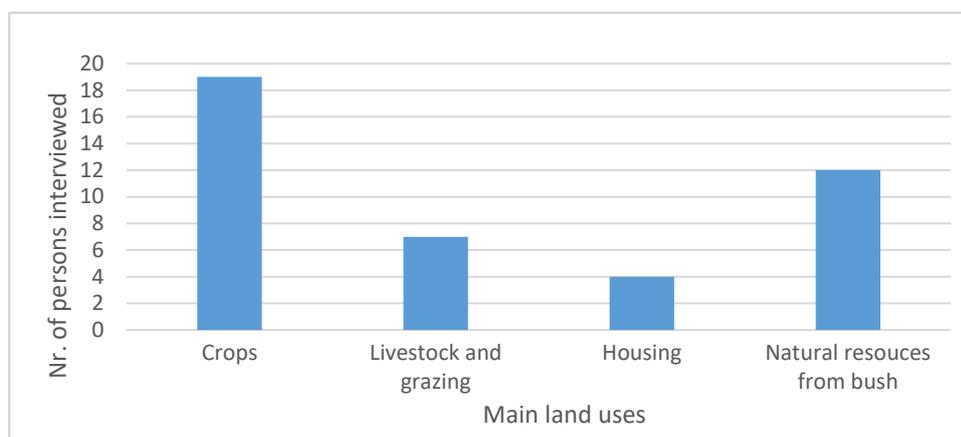


Figure 5.7 Main land uses (N=20, more than one answer possible)

Table 5.2 Livestock composition

No. of livestock	Cattle	Goats	Poultry
1-9	5	4	14
10-19	2	3	2
20-29	4	2	1
30-39	1		1
None	8	11	2

N=20

Very few farmers own more than 30 animals. A large number of interviewees stated that access to the natural resources and bush from the commonage area was essential for their livelihoods. They collect wood and shrubs for fuel, fencing and housing; sand and clay for building materials; natural fruits for additional food and some plants for traditional medicine. None of the livestock and crops produced were for sale only, as most depended on these to feed their own households. If there is any surplus, they will sell that- however this only rarely happens.

The Village Development Committee (VDC) plays a significant role in Shipando, and its members, who are elected by the community, are well respected. The main functions of the VDC are listed below:

- Responsible for assisting with land allocation, and regulating the use of natural resources in the community.
- Responsible (together with the TA) for disseminating information on sustainable resource use and prevention of veld fires.
- If there is a veld fire, the community is responsible for extinguishing it. The community then meets to find the culprit- if the culprit is not identified, every household needs to pay the fine of one cattle to the TA. But these days people no longer feel forced to pay fines to the TA and very few people still adhere to the punishments issued by the TA. The community itself will try to punish the culprit by not allowing him to cut wood anymore.

- Regulates usage of common resources such as wood, e.g. if a person from outside comes to collect wood in the village's common areas, he/she will be chased away.
- Only people from the village, or the villages that fall under the headman's jurisdiction, are allowed to use the natural resources in the communal areas, unless special permission is given.

The Water Management Committee, also elected by the community, ensures that the water point in the village is regulated. There are specific rules related to the use of the water point, which are conveyed to all villagers; including the opening times of the water point, the contribution of NAD 10 a month and an additional NAD 20 a month if you have cattle to use the water point, hours that washing is allowed at the water point etc.

The first most valued assets on the farms were considered to be houses and vehicles, with vehicles also being the second most valued asset, ahead of basic agricultural tools (Table 5. 3).

Table 5.3 Most valued assets on the farm

	First most valued asset	Second most valued asset
Houses	9	
Vehicle	9	16
Basic agricultural tools (plough, axe, hoe etc.)	1	4
Natural resources in commonage	1	

(N=20)

All homesteads in the village have houses made from traditional materials, there only being very few additional brick and corrugated iron houses in some homesteads. Most of these houses were built after 2003. The majority of homesteads consist of between 4-6 traditional houses, reflecting the relatively large household sizes of 5-9 people in the village and the fact that many relatives also lived there. Approximately half of the respondents intend making changes to their existing houses or build more traditional dwellings. The fact that most houses are made from traditional building materials such as clay, wood and grass is a further indication of the poverty level in Kavango. In addition, since none showed a desire to build brick houses, it could also be interpreted as a reflection of the strong customary ways of living of the majority of the communal populations in the Kavango.

Reflecting the general situation on communal land in Kavango, the main income in Shipando is from pension and remittances by family members (Table 5.4).

Table 5.4 Income on farm

	Main income	Additional income
Income from farm sales	2	5
Income from pension	6	
Income/remittances from family members	6	3
Income from employment (excl. piece work)	2	
Income from piece work	2	8
Income from selling natural resources from bush (e.g. poles, grass)	1	
Government grant	1	
Other (e.g. inheritance, rent)		3

(N=20)

Income from agricultural produce is an additional income for some, as is doing piece work- often for neighbours or others in the area, indicating that many do such additional work for a little bit of money.

The main expenses in Shipando were not for farming, but for supporting the household, as indicated by 19 out of 20 households. However, one third also stated agricultural production as a major expense, while two thirds mentioned education and family also being major expenses. Households do not provide enough food for themselves, thus they also need to buy food. Hence food security is relatively low in the area.

Sixty-five percent of interviewees have made use of a loan in the past. However, these loans were from family or friends, and nobody had yet taken a loan from a bank or formal institution. Having a 'formal' proof of ownership, such as a CLRC, was not a prerequisite for taking a loan. In fact, not a single participant said that they would want to take out a loan based on having a CLRC.

Even though the households in Shipando do not farm commercially, the majority (60 percent) feel that infrastructural development has hindered them from farming more productively. Ninety percent of farmers would like to expand and develop their farming operations, whereby all agreed that having or not having a CLRC did not have any impact on their decision to invest in farming. At the village meeting, only one respondent said that he would invest more in his land if he had a CLRC, and two said they were not sure.

During the interviews it became clear that labour itself is seen as an investment in land, and not just the actual structures and agricultural assets (such as a hoe, axe, plough, oxen etc.). Labour requires energy- and especially poor people who work hard the whole day on very little food do not have abundant energy. Hiring piece workers to do some work for the farmers is also considered as a form of labour- as it costs them money. Thus labour on all fronts is considered to be expensive and is seen as an investment. The communal farmers would not invest so much labour into building their homesteads and working in their crop fields if they did not feel secure on their land.

### **5.1.5 Understanding and importance of land**

Shipando villagers in general had a strong connection to the land they lived on. Even though most houses were built after 2003, and most people interviewed only settled on their specific piece of land after 2000 (Figure 5.8), 70 percent of the households interviewed had relatives already living in the village before them. The elders in Shipando could still clearly remember the origins of the village. The first permanent settler in what was later to become Shipando settled here in 1985 because he needed enough good grazing for his livestock. Since the land was still uninhabited with open fields, he could settle there without requiring special permission. Soon his brother followed

with his entire household, and settled on the land next to him. As more households arrived, mostly relatives, a formal village was established. The first school was erected in 2007 and the first water point was built in 2009.

Thus many moved to Shipando either because they had relatives there, or they had already lived in the village and had just moved to another piece of land in the village. None of the respondents wanted to move away from Shipando if they could help it.

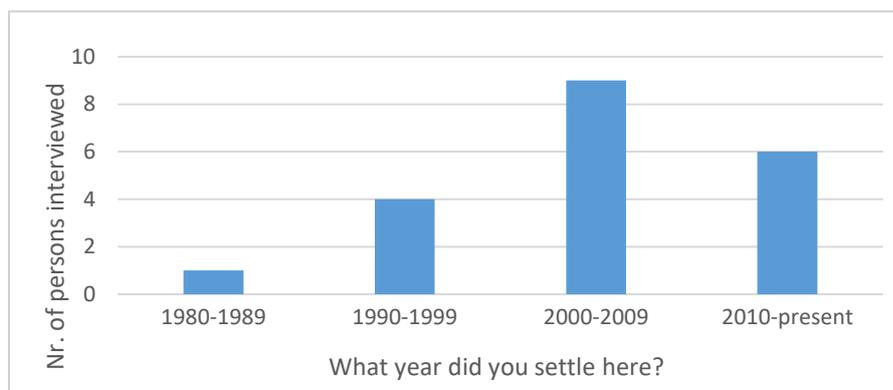


Figure 5.8 What year did you settle here? (N=20)

The fact that they have such a strong desire to stay in Shipando is furthermore reflected by the fact that 85 percent of respondents during the individual and over 90 percent from the village interviews stated that land was first and foremost something they valued because of its connection to family (Table 5.5). Land furthermore had other strong social values in that they emphasised the value of land with relationships- including friends. Land also has strong traditional values for people, as they see land as the place where they live their customs and traditions. This is reflected in the fact that more than 85 percent of respondents feel that the community supports each other. However, land does not only have a social value, as they also confirm the value of land as an economic asset from which to derive livelihoods. Most respondents agreed that land was a place to live (settlement), a means of production and the basis for development. One respondent said that “you cannot live on water or in air, you cannot live in nothingness, you need land to live on” (Shipando respondent 3, 2013, Pers com, translated).

Table 5.5 What importance does land have for you?

	(Individual interviews) (N=20)	(Village interviews) (N=74)
Religious	6	27
Ancestral	12	27
Friends	13	23
Traditional	17	68
Family	17	67
Financial	15	54

(More than one answer possible)

One respondent said that “one needs to have respect for the land, the land is what feeds us, the land is like a provider, just like the creator” (Shipando respondent 1 2013, Pers com, translated). Similarly, another respondent believes that “land has no individual owners, except God. God created land for us His children to benefit from, so nobody can just take it for themselves” (Shipando respondent 4 2013, Pers com, translated).

### **5.1.6 Tenure security**

There are mainly two ways to acquire a piece of land in Shipando, as was explained by the Traditional Authority and verified through the household interviews:

- If you are a foreigner to the village and do not have relatives or friends in this village, you are required to get a testimonial letter from the headman in whose village you live, and present this letter to the headman whose village you are moving to. The headman’s assistant mostly deals with these matters. Together with the community (and especially the Village Development Committee), they will then see where there is still land for a homestead and crop field(s).
- If you are introduced to the village by a local person (such as family or friend), you will not be requested to present such a testimonial letter. But this also depends on how close you are to the relatives (e.g. sister or parent) and on the credibility- as seen by the community- of the person in the village who has introduced/recommended you. In some cases, especially if you prefer to follow more formal procedures, you approach the headman about the land that your relatives have pointed out for you, and the headman then refers you to his assistant who then sits with the people whose land you are moving onto (unless you got a piece of land that does not belong to anyone) and he records the date you moved onto the land and the size of the land (depending on whether it is a homestead or crop field).

In the past, a yearly traditional tax payment of NAD 15 was required from each farmer, called “*Mutera*”. However, payment thereof is no longer strictly enforced or necessary.

Most of the land that a relative or friend makes available to the person who is moving there is adjacent to them- either their land is big and they have enough room for another homestead and crop field, or it is land they have vacated since it is not currently suitable for crop production and others can build their homestead on it. In many cases this allocation is done by approaching your relative who has an available piece of land (or the relative could have informed you that they have a piece of land after hearing you are looking for land somewhere) or asking them whether the piece of land you are interested in already belongs to someone else. The relatives sit together and discuss this allocation (if the land does belong to the relatives). Sometimes your relatives will tell you

someone else is interested in that land. If someone else has also shown intention to inhabit or use the land you are interested in, you must approach them and ask if they still intend to live on it, and if not, then you discuss again with the relatives and a verbal agreement is made that you can move onto that land. It is up to you whether you want to ask the headman's assistant to record the agreement. But such transactions strongly depend on relatives assisting each other.

Fifty-five percent from the individual household interviews had a verbal agreement as proof that they could stay on this land, and only ten percent had some form of written proof, or written proof plus verbal proof. In contrast, 88 percent of participants asked during the village meeting said they had at least a verbal agreement with the TA to live on their piece of land, with 19 percent also having written proof from the TA.

Asked whether people trusted their TA more than government, 11 respondents from the individual household interviews stated that they did. Significantly, a considerable number of respondents said that they did not trust their TA more than government, indicating that there is not always such a strong sense of loyalty towards the TA as one might think at first. The feedback from the village meeting showed a slightly different picture, as over 80 percent of respondents had said that they trust their TA. Feedback from the village meeting also showed that nearly 88 percent of respondents felt that the TA could protect their land rights more than a certificate could. Group pressure during the village meeting might have influenced this result in favour of the TA, yet it still shows that there is considerable support for traditional leadership structures in the community and that they respect traditional land administration processes.

Based on the individual household interviews, none of the respondents or their families had ever been threatened by eviction from their land, and only three have heard of cases where people lost land. Nobody had ever encountered problems with illegal fencing in the area before. Yet nearly half of the respondents from the village meeting stated that they were sometimes worried that someone would take their land away.

There have not been any major issues recorded regarding land grabbing in Shipando. The only recent issue of concern was the 50x50m piece of land which the George Makoya conservancy wanted to fence off for the construction of a hotel in the conservancy in 2013, which resulted in the local community being up in arms. The conservancy is next to Shipando village, and wanted 50mx50m to fence off the area so that they can build a small temporary structure there where they can off-load the equipment for the construction of the hotel for the conservancy. The conservancy approached the senior headman (a senior headman oversees several local village headmen) for consultations. The community was very concerned, since they were afraid that their grazing area would be affected. During a meeting, they came to an agreement that the conservancy could build

the temporary structure, but on the condition that if they needed workers, these would come strictly only from Shipando village.

The Gciriku TA under whose jurisdiction Shipando falls, strongly feels that their rights have been restricted after Independence. In an interview with the Chief of the Gciriku TA, Hompa Kasian Shiyambi, he explained that during apartheid the TA was stronger: “The Chiefs used to run the affairs of the TA very well. The TA is not very strong today, because of the so called ‘Human Right’ [locally called “ghuntu wamuntu”]. The South African government respected customary laws and they strengthened it. They agreed with the customary laws, they did not oppose it. That government was just ruthless in the formal settlements and not in the communal areas and to TAs in particular” (Shiyambi 2013, Pers Com, translated).

Inheritance practices in Shipando are largely based on family ties. Half the respondents said their spouse and children would inherit the land when they pass away, with the rest believing mainly that either only the spouse, a specific child or all children would inherit the land (Figure 5.9). Even though it was not always entirely clear exactly who would inherit the land (spouse or children, or spouse and children), 17 out of 20 individual household respondents and 95 percent of village respondents stated that they still preferred the traditional way of inheritance to that which is prescribed by the CLRA. However, it could be argued that this outcome is due to the fact that they might not have a clear understanding of the CLRA, since the Act regulates that the spouse should inherit the land, but there is also space to indicate that the children will inherit the land.

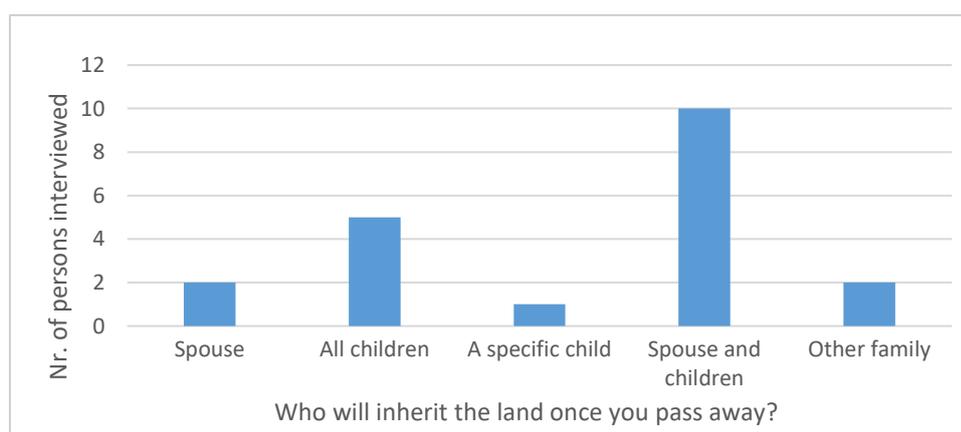


Figure 5.9 Who will inherit the land once you pass away?

(N=20)

### 5.1.7 Conclusion

The majority of the villagers in Shipando are subsistence farmers, dependent on crop cultivation and some cattle farming. Land in Shipando is mostly used for crop production, with some also farming with livestock. Access to the natural resources and bush from the commonage area play an essential role in their livelihoods.

None of the farmers have registered their land rights, and the majority of people are highly sceptical about CLRR. A small majority of villagers would be willing to register in future, particularly if the regulations would change so as to take into account their customs and ways of living. However, the majority reject registration regardless of whether the Act would change or not. There is furthermore quite a high degree of perceived tenure security in Shipando.

The majority of both individual respondents (80 percent) and those from the village meeting (90 percent) stated that they would vote against CLRR if they had a choice, especially because more than 85 percent believe that CLRR is against their traditional practices. According to one respondent in Shipando, he believes that registration will lead to individualisation of land. He said that he has heard that a child in *Owamboland* cannot even climb into someone else's tree anymore, because it is all now seen as private property. He thus stated that he hoped he would not be alive anymore when that should happen in his village (Shipando respondent 2 2013, Pers com, translated).

The main income in Shipando is from pension and remittances by family members. The main expense in Shipando is not for farming, but for supporting the household. Food security is quite low in the area. Most farmers would like to expand and develop their farming operations, regardless of having a formal land title or not.

Shipando villagers in general have a strong connection to the land they live on. Land has strong social and traditional values for people, as they see land as the place where they can live according to their customs and traditions. Support for traditional leadership structures in the community remains strong and there is still considerable respect for traditional land administration processes.

## 5.2 OMUSATI REGION

The second case study area in northern Namibia is Omahalya village, located in the Omusati Region. The following subsections will look at the regional and political context of Omusati, before focussing on the data collected during the village interviews. Similarly, as with the previous section, the data will provide an overview on land in Omahalya, including farm background, the importance of land and perceptions and understanding of tenure security.

### 5.2.1 Regional background

The Omusati region is situated in the north-central part of Namibia, bordering Angola to the north, and is part of the so-called O-Regions, with the majority of the population, more than 96 percent, speaking Oshiwambo (NSA 2013). As is the case with Kavango, Omusati forms part of the northern communal areas, i.e. north of the VCF. Omusati is the third highest populated region in the country, whereby 94 percent of the entire region is comprised of rural communal areas (Thiem 2014). The population density for the region is very high with 9.1 persons per square kilometre, in comparison to the national density of 2.6 (NSA 2013). The average household size of 5.2 persons

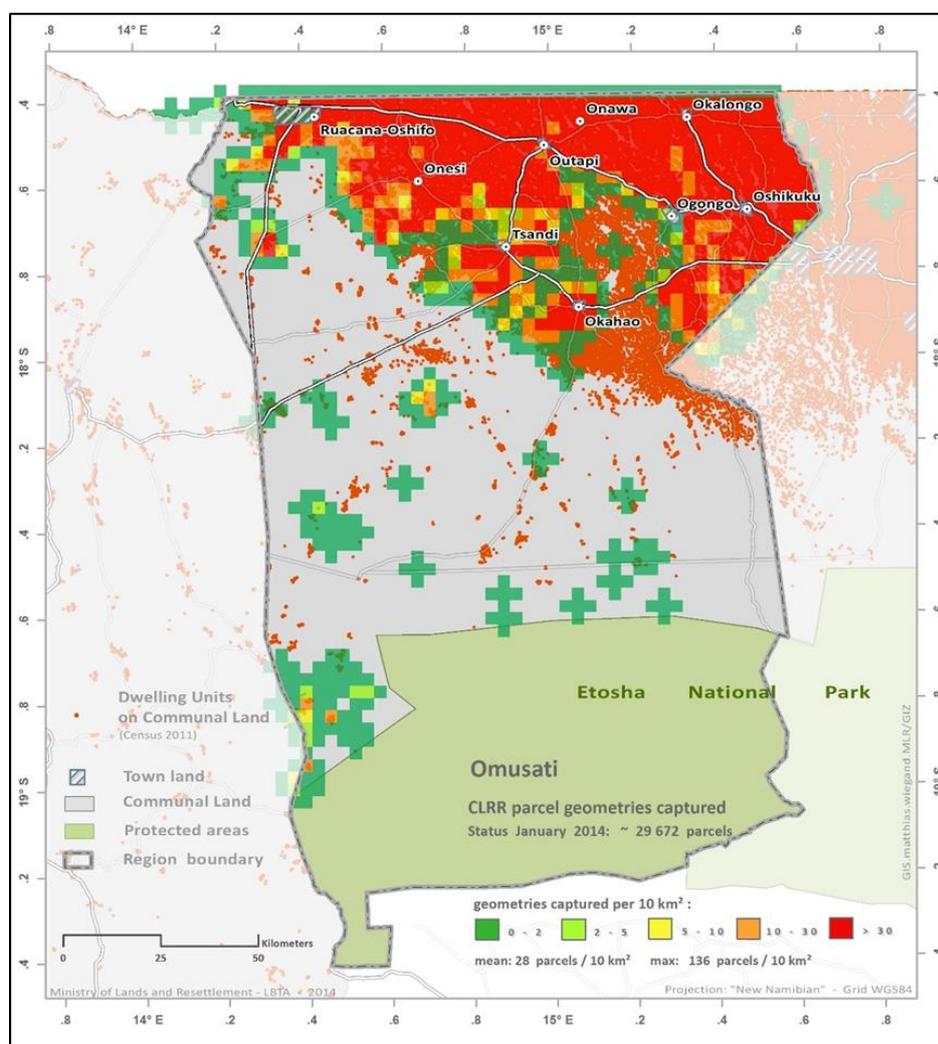


Figure 5.10 Communal land parcel densities

(MLR 2014)

in 2011 in Omusati region is also higher than the national average household size of 4.4 persons (NSA 2013). More than half of the households in the region are headed by females (NSA 2013). Figure 5.10 illustrates the high parcel density of the region in the northern area, where the area in red indicates that there are more than 10 parcels of land per 10 square kilometres.

The main economic activities in Omusati are based on agriculture, including rain fed crop farming, irrigated crop farming projects, livestock farming and fresh water fish farming (Thiem 2014). Even though most residents are engaged in subsistence farming on communal land, the main income source is wages and salaries (Thiem 2014). Omusati is amongst the country's five poorest regions, and based on data from the Human Development Index from 2001, it also had the fourth-worst life expectancy at birth, the sixth-worst literacy rate and the third-lowest annual average per capita income compared to the other regions (Levine 2007).

The O-Regions are characterised by the Cuvelai-Etосha Basin which reaches from southern Angola into Namibia, basically ending in the Etosha Pan. Besides this drainage system, the saline pans and central pans- reaching from southern Omusati via Oshana to Oshikoto- are filled mainly by local rainfall. The rainy period usually lasts from November to April, with significant rains falling between January and March. The average rainfall in Omusati is around 300mm (Mendelsohn, Jarvis and Robertson 2013). The average maximum temperatures range between 24°C and 36°C, with minimum temperatures varying between 7°C and 21°C. Climatic and geographical features influence population distribution and density in the region. Due to the lack of (surface) water the southern areas of Omusati and Oshana have very low population density and are mostly used for grazing (Thiem 2014). In other areas of the region, the presence of shallow groundwater means that water is more readily found and thus hand dug wells are a common feature (*ibid.*). The *oshanas*, which are a distinct feature of the O-Regions and are a type of drainage system, are part of the commonage areas as they are not suitable for cultivation. They are used by the community members for grazing, fishing, gathering wood and fruits (Mendelsohn 2008).

The residential patterns of the Ovambo are not always straightforward. Some units consist merely of close family- such as a husband, wife and children, whereas in other cases residential housing units can include an entire extended family (Malan 1995). A residential unit mostly consists of a cluster of huts and buildings, a crop field, kraal and potentially some unused land (*ibid.*). Most units measure less than 3 hectares in size (Mendelsohn 2007). Interestingly, in the O-Regions these units, and even the trees that grow there, are often fenced-off or enclosed (Thiem 2014). The main crop grown in O-regions is *mahangu*, but maize and sorghum are also commonly produced. Particularly *mahangu* is well suited to grow in this region, where the soils are often sandy. Even before the introduction of the CLRA, crop fields were regarded by people in the O-Regions as

belonging to the individual household, whilst grazing and other communal resources are shared by the community. If people who are not part of the village, so-called outsiders, want to let their livestock graze there, they need to write an application letter to the headman and Village Development Committee.

There are several Traditional Authorities in the Omusati region; namely Ombadja (Okalongo), Ombalantu, Ongandjera, Otjikaoko, Oukwanyama, Uukolonkadhi, Uukwaluudhi, Uukwambi and Vita Royal House. Most of these TAs have histories that go quite far back, and therefore their customary practices are well established (Mendelsohn 2008). As in other areas of the country, the TA structure amongst Ovambo communities consists of three levels of leadership; starting with the chiefs- whose positions are normally inherited, then the senior headman or councillors- who are generally elected by the community and then local headmen (*ibid.*).

It is generally agreed that the CLRA reflects several features of Ovambo culture, i.e. land tenureship, land uses and inheritance practises. Members from other areas of the country tend to believe that the CLRA was written with the O-Regions in mind (Thiem 2014). In general, most people in the O-Regions are considered to be well informed about CLRR, and in direct contrast to Kavango, mostly unconditionally accept the formalisation of their land rights.

### **5.2.2 Personal data**

In contrast to Kavango, there were no objections at any point to conduct research in this area. Omahalya village was selected as the case study area; due to its central location in the Omusati region, the fact that most land parcels had already been mapped and registered, its proximity to the regional capital of Outapi and accessibility- even in case of heavy rainfalls (since the *oshanas* can fill up quickly, some villages are cut-off as roads are flooded).

According to data received from the NSA (2014, Pers com), there are 57 households in Omahalya village, with the average household size being 4.7 people. As was the case in Shipando, only 44 households could be identified during the field research. More than half of the population in Omahalya are females. The biggest source of income in Omahalya is from wages and salaries, closely followed by farming (NSA 2014, Pers com).

Omahalya falls under the traditional governance of the Ombalantu TA. Ombalantu is the combination of two words “Ombala” and “aantu” and when tied together, form the word ‘Ombalantu’ which literally means the ‘palace for people’ (translated from the Ombalantu Traditional Authority Rules and Regulations booklet).

As can be seen from Figure 5.11, most of the communal land parcels around Outapi in the Omusati region have already been mapped (in red) and registered (in green). In the Anamulenge

constituency, under which Omahalya falls, more than 77 percent of all land parcels had been registered by mid-2015.

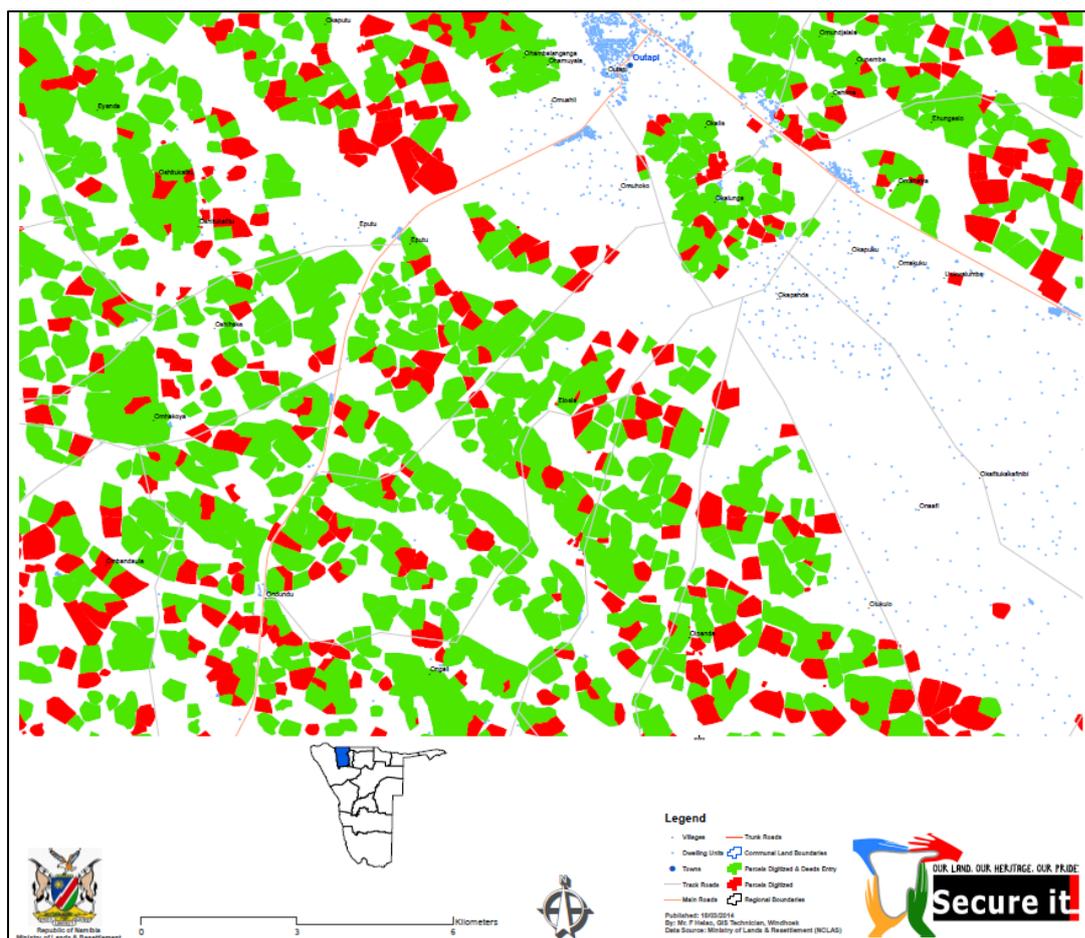


Figure 5.11 Overview of digitised and deeds entered communal land parcels around Outapi  
(Digitised = red, digitised and deeds entered = green)

(MLR 2014)

As was the case in Kavango, a village meeting was organised in Omahalya to introduce the research purpose, create a village map and get village feedback on some topics regarding CLRR. There were no significant discussions during the village meeting, which was attended by representatives from 36 households. This turnout meant that more than 80 percent of the village was represented, thus the answers from the questionnaires can be seen as being representative of the village. The fact that the meeting was held without any concerns being raised indicates that the topic of CLRR is much less controversial or emotional in this Region.

The village mapping exercise went quickly and, as in Shipando, the villagers could precisely point out who lived where. They also drew the water point, flood plains grazing areas, kindergarten, trees and smaller roads. The village is informally divided in Omahalya A and Omahalya B, as during the rainy season the two parts are separated by the floodplains and not easily accessible (Figure 5.12). This also indicates a strong awareness of their community and area, and is an indication that they know their community's social and natural boundaries.

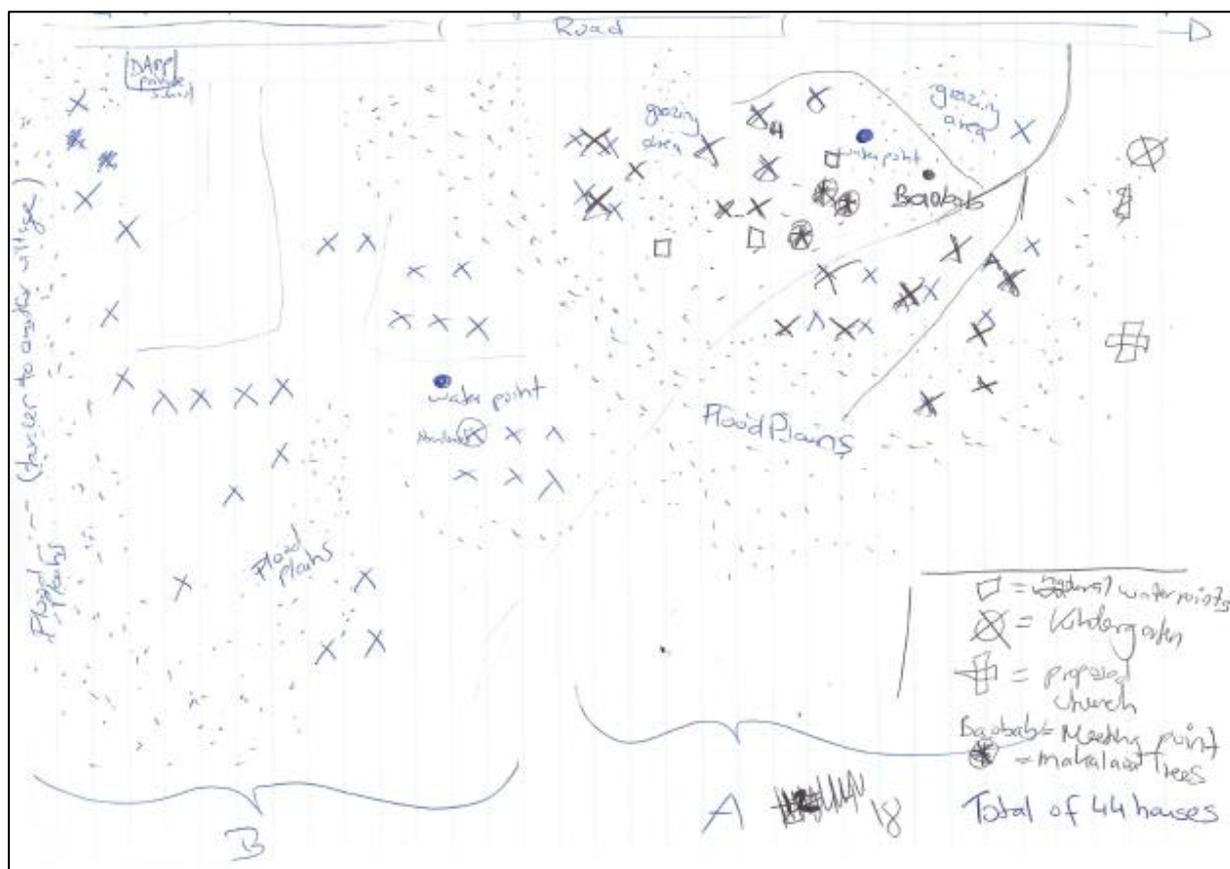


Figure 5.12 Village map of Omahalya

(Own sketch produced on site during village meeting based on drawing made in sand by villagers on 26/04/2014)

The majority of respondents in Omahalya are between 40 and 70 years old (Figure 5.13), and 16 out of the 20 respondents were female. Respondents were mostly married (11), widowed (5) or single (3). Half of the respondents went to high school and only one individual interviewee had a tertiary education. Three quarters of the family stay on this piece of communal land. Fourteen interviewees are full-time farmers, the rest farming part-time.

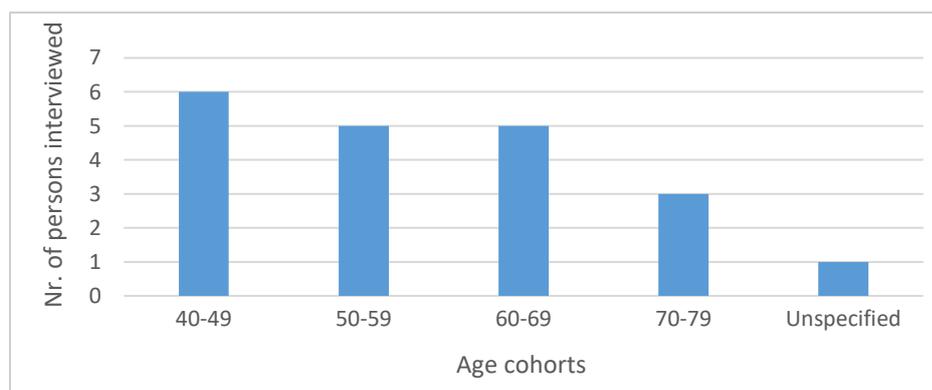


Figure 5.13 Age of persons interviewed

(N=20)

### 5.2.3 CLRR information

Around 90 percent of both individual household interviewees and village interview participants have registered their land rights. Forty percent of those registered their land between 2005 and 2009, not too long after the implementation of the CLRA. Another twenty percent registered between 2010 and 2014, while the rest were not sure of the date. The majority of respondents had heard about CLRR from their TAs (60 percent), the rest via the media (20 percent) and the community (20 percent). Ninety percent found the process uncomplicated. All respondents were supported in their decision to register by their TA, their family and their community in general. The approximately 10 percent of respondents who had not yet registered were still planning on doing so. The reasons they had not yet registered were mainly due to not properly understanding the CLRA and trusting their TA and community to protect their land rights.

Of those who participated in the village meeting and who had registered already, nearly 50 percent said they had spent more money on infrastructure since obtaining a CLRC, 25 percent felt that more fences had been erected as a consequence and 31 percent stated that productivity on their farms had increased (Table 5.6). The majority of the village respondents stated that they felt more secure after registering. Yet 37 percent said that for the most part they feel there were no changes.

Table 5.6 What changes were experienced as a result of CLRR?

	Response by persons who had registered)
Spent more money on infrastructure	15
Took out a loan for my house	6
Invested more money in farming	3
Increased productivity on the farm	10
More fences erected by farmers	8
Less conflicts between farmers	5
More conflicts between farmers	3
Feel more secure on my piece of land	23
No changes	12

N=32 persons registered out of 36 village interviews (more than one answer possible)

### 5.2.4 Communal farm background

Land allocation by the Ombalantu TA is clearly described in their guidebook, which each member of the TA leadership structure, including headmen, receives:

- By law it is only the TA which is granted the right to allocate land legally, and only the headman who is allowed to allocate land
- Whoever wishes to apply for a piece of land will have to consult the headman. Any person who wishes to use communal land has to apply for it through the respective TA in accordance with the CLRA. He or she must be clear about the boundary of the given piece of land
- He or she must invite the neighbours of that area; in order for them to know where the boundary starts and ends

- A new piece of land is only allowed to remain under-developed for a period of 3 years
- All decisions concerning communal land are only done by government representatives like Chiefs (Kings), Senior Traditional Councillors, headmen or MLR.

Any person who wishes to apply for a piece of land has to consult the headman first who has the clear knowledge about that particular place within his village. No one is allowed to settle on a piece of land without authorisation from the headman.

The main land use is undoubtedly crop farming, with only two out of twenty interviewees using land for livestock and grazing and three using it for the natural resources in the bush (Figure 5.14). The name ‘Omahalya’ is deeply reflective of the land use in the area: ‘Omaha’ in the Ombalantu dialect means ‘sorghum’, and ‘Lya’ in the dialect refers to crops in general.

Forty-five percent of farmers interviewed did not know the size of their land parcels, even though most have registered and the size is recorded on the CLRC. Yet they did not use the certificate to refer to the parcel size. Land parcels tend to be around 2-10 hectares in that area with 10 percent ranging up to 20 hectares. Cattle, goats and poultry are the most common types of livestock, and those who own cattle normally do not have more than 20 heads of cattle (Table 5.7). Ninety percent of the output from the farm is used for household consumption, and only very little is produced solely for selling. Houses and crop fields are considered to be the most valuable assets on the farms in Omahalya, with the second most valuable asset being the basic agricultural tools (Table 5.8).

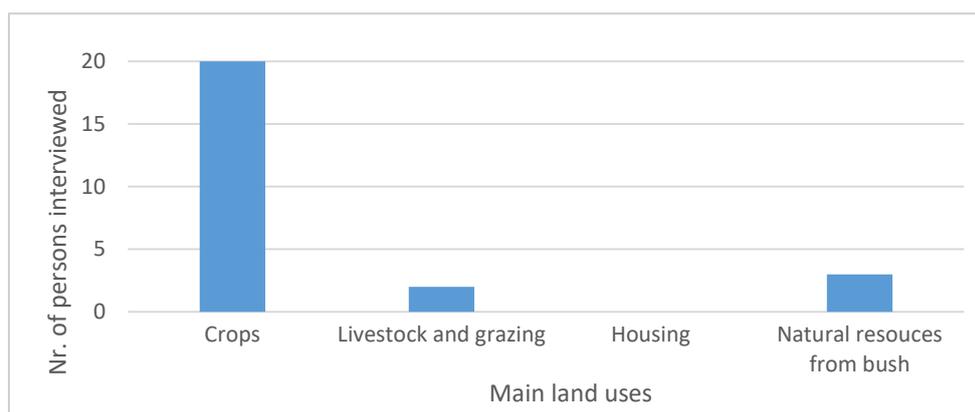


Figure 5.14 Main land uses

(N=20, more than one answer possible)

Table 5.7 Livestock composition

No. of livestock	Cattle	Goats	Donkeys	Poultry
1-9	6	5	12	7
10-19	7	2		5
20-29	1	2		5
30-39	1	1		
50-99				1
None	5	10	8	2

(N=20)

Table 5.8 Most valued asset on the farm

	First most valued asset	Second most valued asset
Houses	7	
Livestock	2	
Vehicle		1
Basic agricultural tools (plough, axe, hoe etc.)		17
Crop fields	8	
Land itself	2	
Natural resources in commonage	1	

(N=20)

All households have brick housing structures on their land, in addition to some corrugated iron (35 percent) or traditional structures (80 percent). The majority of households have between one and three brick structures, one to two corrugated iron houses and up to ten traditional buildings on their homesteads. In 60 percent of the cases the first houses were built before 2002 (with the enactment of the CLRA), with most brick houses being built in the 1990s and early 2000s. Seventy percent of respondents intend building more brick structures and 30 percent plan to expand or improve their current structures.

Households in Omahalya are quite big, with respondents indicating that 40 percent of households consist of 5 to 9 people, some households even exceeding 10 or 15 people per household.

The main income sources on the farms are from pensions, remittances and various forms of employment, often seasonal work on commercial farms. Only five percent of the main income is derived from the farm output. Forty percent of additional income is from remittances from family members (Table 5.9). In contrast to Shipando, none of the farmers depend on natural resources from the commonage areas for supplementary income.

Table 5.9 Income on farm

	Main income	Additional income
Income from farm sales	1	1
Income from pension	6	2
Income/remittances from family members	4	6
Income from employment (excl. piece work)	7	1
Income from piece work		3
Government grant	2	
Other (e.g. inheritance, rent)		2

(N=20)

As in Shipando, the main expense is for the household and food, education and supporting the family. Despite having their own crop fields and some livestock, families cannot support themselves from the land- especially not when climatic conditions affect crop yields. Yet 75 percent of respondents said they would never consider taking a loan to support themselves or for the farm. Of those who had taken a loan, it was mainly from the microfinance bank in the north, called Fides. It is one of the only microcredit lenders in the country. All participants (100 percent) agreed that the decision to take out a loan was not based on having a CLRC.

Sixty-five percent of respondents said that a lack of infrastructural development had hindered them from making progress with their farming operations and 70 percent would like to expand and develop their farming operations. Seventy-five percent of respondents said that the possession of a CLRC did not influence their decision to invest in their farm. During the individual interviews, having a CLRC was not seen as influencing current or future farming operations. Seventy-five percent of respondents said that there had not been any changes on neighbours' farms since they had registered, and 25 percent indicated that there were only minor changes, e.g. the extension of a crop field or the addition of a building.

All respondents during the individual interviews (100 percent) stated that they would not invest more money based on a CLRC, yet during the village session 75 percent of respondents stated that they would invest more based on having a CLRC. This can potentially be explained by people feeling that they have to support CLRR in front of other community members during the village meeting, thereby supporting the government (as Swapo has the most support from the northern O-Regions).

### **5.2.5 Understanding and importance of land**

In contrast to the Kavango, only 30 percent of the current residents' families had lived on this land prior to them settling there. Yet 70 percent said they would not consider moving away, whereas the other 30 percent of the respondents said they would only move away if they could find an area with better grazing. According to the headman of Omhalaya village, Paulus Mundjene, families do not really stay in the same place for generations in "vandag se tye" [these days], as they used to in the past (2014, Pers com)<sup>17</sup>. Yet, he believes that the current generation living on the land is more dedicated towards promoting development and production in communal areas than before: "Daar is nou 'n verskil tussen vandag se mense en die ou mense. Ou mense het nie dieselfde verstand as die jong mense as dit gaan oor die ontwikkeling van onse grond<sup>18</sup>" (Mundjene 2014, Pers Com).

Most of the respondents had settled in Omahalya first in the 1980s, then a second wave of newcomers settled in the 1990s and a few since the early 2000s (Figure 5.15).

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<sup>17</sup> It is not unusual for especially elderly people in rural areas to speak Afrikaans, since it was the main language used in schools and public administration during Apartheid.

<sup>18</sup> In English, this is translated to: These days there is a difference between 'today's' people and those in the past. Previously, people did not have the same understanding as young people with regard to the development of land.

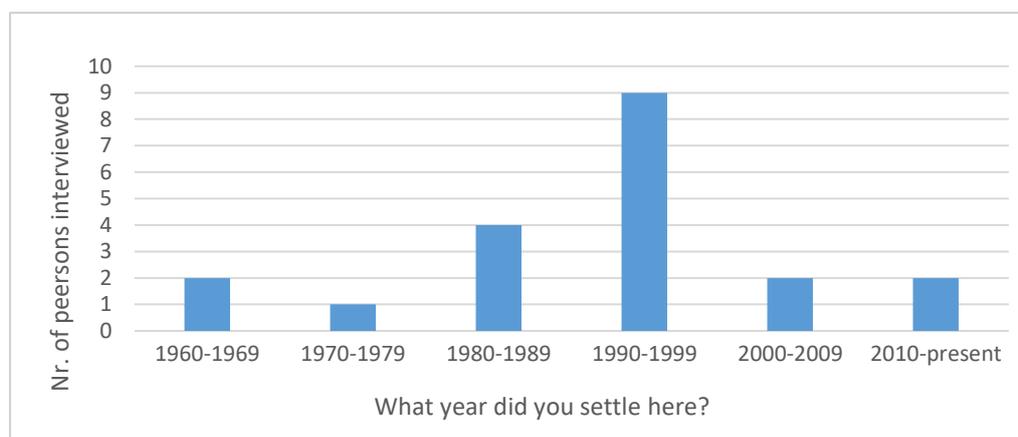


Figure 5.15 What year did you settle here?

(N=20)

The majority of interviewees said that land meant financial security for them, whilst playing just as an important social role in terms of being a place for families to be together (Table 5.10). Seventy percent of respondents in the village said that the community supports and helps each other whenever they can. One respondent believes that “land is the only thing you need in life. All other things build on having land” (Omahalya respondent 3, 2014, translated).

Table 5.10 What importance does land have for you?

	(Individual interviews) (N=20)	(Village interviews) (N=36)
Religious	0	1
Ancestral	0	11
Friends	0	2
Traditional	2	27
Family	15	31
Financial	15	12

(More than one answer possible)

### 5.2.6 Tenure security

All respondents, whether from the individual or village feedback, had written proof from their TA to stay on this piece of land in the form of the green TA cards. The CLRC was seen as an additional, but not the main form of proof. Yet despite the significance of the TA cards, 50 percent of the individual household respondents indicated that they did not trust their TA. However, in contrast, only eight percent of people said during the village meeting that they did not trust their TA more than government, but that instead most (70 percent) trusted the TA and government equally. Nearly 42 percent of respondents at the village meeting said the TA was not able to protect their land rights more than a formal certificate can. Once again this could be explained by assuming that people wanted to seem even more appreciative or supportive towards the CLRR during the village meeting- even if they had to fill in the questionnaires individually.

The biggest land-related conflicts that are brought to the Ombalantu TA are issues around land grabbing; boundary disputes and inheritance. Esther Ipinge, CLB Secretary in the Omusati region,

said that most land-related conflicts arising in the Omusati region are based on multiple claims to one piece of land- whether due to inheritance disputes or double allocations of land (2014, Pers com). Furthermore, illegal fencing and expansion of boundaries cause considerable conflicts in the area (*ibid.*). The TA felt that these problems were mostly successfully solved by the community courts, and did not require involvement from the state. Generally, problems arising are settled at the village level, where headmen are responsible for hearings related to their village. In general, headmen are involved with determining and marking boundaries together with the village committee. Thus the village committee is also present at land-related dispute hearings at village level. However, if the person who brought the claim feels that the hearing was unfair, the case is referred on to the district level, where the senior councillors discuss the problem. If no settlement is reached even at the district level, the community court is convened. The community court is mandated to find someone guilty, and also allows the involved parties to involve the police should there be need. Only if a dispute cannot be settled in the community court, is it ultimately referred on to the magistrate court. This whole process is recorded in a case file docket by the TA, for reference if needed. The TA said that since the introduction of the CLRA and CLBs, they do not need to refer land issues to the magistrate court anymore, as the new mechanisms have made the process easier and quicker. Regardless of whether a farmer has registered for a communal land right, the TA will refer a land dispute to the MLR after it has investigated the matter. MLR then analyses the dispute too, and assists the TA in making a decision.

From the interview with the Ombalantu TA, it can be seen that the TA is generally in favour of, or at least does not oppose, the registration of communal land rights. They even acknowledged that the CLRA has facilitated and eased their work, especially regarding solving land-related disputes. The TA also agreed that they had a very good relationship with the CLB in Omusati. They said that the CLB always assisted them when it came to dispute resolutions over land issues. They furthermore felt that the CLB had not interfered with, or reduced, the jurisdiction of the TA. The TA emphasised that the CLRR programme did not contradict their traditional practices, and instead complimented their work, since the interventions of the CLB had made their work easier and clearer when it came to land-related conflicts.

Interestingly, there have not been changes regarding land tax payments by communal farmers to TAs since the enforcement of the CLRA. The communal land rights certificates are seen as complimentary to the TA cards and are also an additional mechanism to solve boundary and land disputes. Furthermore, all TA members present during the interview agreed that they felt more strengthened after independence, especially because chiefs and kings can now communicate their concerns and interests directly to the State House (the President). Each residential and farming

unit still continues to pay an annual tax of NAD 10 to the TA, which is recorded in the green TA card that each farmer has. The money generated from TA tax is used for the maintenance of TA offices and the general work of the TA. The TA also said that some of the money collected from the land tax was used to assist vulnerable community members, e.g. people with disabilities and people affected by drought.

Furthermore, the process to acquire land within the Ombalantu TA's boundary has not changed significantly since the enforcement of the CLRA. A fee of NAD 600 still has to be paid to the TA when attaining a piece of land, referred to as *ombanduyekaya*, and this is seen as a once-off lease fee to the land. This form of payment, also seen to be a kind of service fee, was discussed at a national Traditional Council meeting some years back, so as to create a uniform way to allocate land traditionally. However, the TAs in the Kavango region rejected this form of payment, and thus it was decided that it would remain up to the TAs to decide whether they wanted to continue with this practice (Kashululu 2014, Pers com). All eight Ovambo TAs have decided to continue with the practice of *ombanduyekaya*.

Once a person has received a piece of land, the TA has to be paid this amount through the respective headman before one can apply for the CLRC. After the piece of land has been allocated, which involves the village committee and neighbours so as to prevent double-allocation or overlapping boundaries, and the NAD 600 has been paid, the TA will assist the person to fill in the application form to register for a communal land right. However, if the person does not settle on the land or cultivate it within 3 years, the TA will consult with the land 'owner'. If he or she is no longer interested in the piece of land, the money is refunded and the land re-allocated. As mentioned, this only applies if there is no cultivation or there are no houses yet on the piece of land.

The TA believes that there is not a real problem of people paying-off TAs to acquire land. According to them, every headman or headwoman has a book of rules and regulations, in which land allocation procedures are also clearly stipulated. They furthermore argue that all community members and those living in the area are aware of the amounts to be paid to the TA for a piece of land, thereby they can report cases that seem suspicious. The TA said that should a member of the TA not adhere to these rules, there will be consequences- in some cases headmen or headwomen may lose their positions.

Just over half of the village said that they were not worried that someone else would take their land away, this however means that the other half is concerned that they might potentially lose their land, which is still a relatively high figure. Therefore it is significant to note that 78 percent of households felt safer on their land after obtaining a CLRC. An elderly widowed farmer in

Omahalya stated that “[i]t is us women who work the hardest on the land. We raise our children, ensure that traditional values are passed on. We cultivate the fields. So why are we the most vulnerable ones who get chased off the land first when our husbands die? At least now with a certificate we can enjoy what we have worked so hard for until we are very old” (Omahalya respondent 4, 2014, translated).

Forty-five percent of respondents were aware of cases where illegal fences had caused problems. Yet land grabbing does not seem to be a big problem in the village, as 80 percent of interviewees stated that they did not know of anybody whose land had been taken away from them illegally or by force. Seventeen out of twenty individual interviewees stated that their families had never been threatened by eviction from the land. The remaining three interviewees had experienced certain conflicts regarding the land, mainly related to inheritance or family disputes regarding tenancy.

The headman was not sure how the community felt regarding land rights registration. Interestingly, during most of the interviews in the Omahalya area, it was evident that people do not really talk to each other about communal land rights registration. This is in stark contrast to the previous case study area in Shipando village in Kavango East, where it was a major topic of conversation. One could argue that there is a general feeling of complacency regarding communal land rights in Omusati, whereby people see it as a status quo which is neither bad nor good. Thus in contrast to the Kavango East, hardly anybody in Omahalya had seemingly discussed CLRR in-depth. Interestingly, when the villagers were asked to show their certificates, many of them could not immediately, or at all, locate their certificates, even though they had registered. They could however always produce their green TA cards, which were often in a better condition than the crumpled CLRC they finally found. When asked what makes people feel safe on their land, the headman said that the TA cards that people received once they were allocated land makes them feel most secure (Mundjene 2014, Pers com). He said that since people paid annual tax, and that was recorded on the TA card, it proved that you were living on the piece of land. According to the headman, the TA card and the CLRC are “alles een en dieselfde [all of the same]” (Mundjene 2014, Pers com).

In Omahaya, inheritance practices reflect that of the Ovambo people, as land will be inherited either by the spouse, the spouse and the children, or by the children (Figure 5.16). A significant 75 percent of respondents said they prefer that inheritance is provided for more formally in the CLRA, and thus prefer that above the traditional inheritance practices.

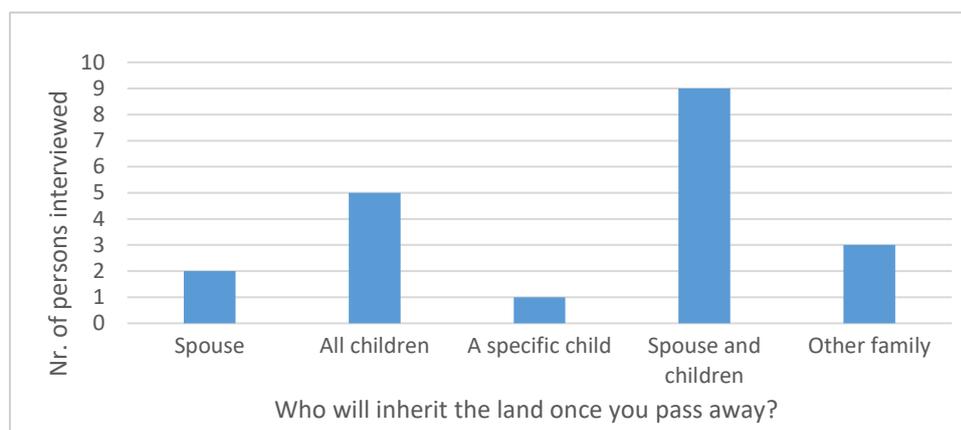


Figure 5.16 Who will inherit the land once you pass away? (N=20)

A majority 90 percent of individual and 100 percent village meeting respondents indicated that they would support CLRR if they had to choose. This support is also based on the fact that 90 percent of respondents agree that CLRR is not against their customs and traditional practices. One respondent stated that “[m]y boundaries are now clear. I have proof and government can back me up. I now have more confidence in my ownership to this land” (Omahalya respondent 2, 2014, translated). Similarly, another respondent said that “registration is good. The feeling of having your own land is very important” (Omahalya respondent 1, 2014, translation).

However, according to the MLR Deputy Director of the Omusati region, Rose-Mary Kashululu, many residents in the communal areas still did not have a clear understanding of why CLRC is beneficial to them, thus they do not regard it as urgent or important (2014, Pers com).

The headman complained that one of the main problems he encountered was that people ‘sold’ land to others once they left the village: “This is not the right practice- if you leave land and nobody in that family wants it, you give it back to the village and then I [the headman] will re-allocate it. You cannot just sell communal land” (Mundjene 2014, Pers com). This indicates that despite the clear rules from the TA and the legislation that communal land is vested in the state, there is still a certain ‘sense of ownership’ and feeling of individualism in the communal areas.

From observations in the village and during interviews it became clear that there is a stronger sense of individualism in Omahalya village than was the case in Shipando. Nearly all pieces of land were fenced-in, with locks on the gates. Despite this, the village mapping exercise and discussions showed that a strong sense of community persisted.

### **5.2.7 Conclusion**

It is generally agreed that the CLRA reflects several features of Ovambo culture, i.e. land tenure, land uses and inheritance practices. Most of the communal land parcels around Outapi in the Omusati region have already been mapped and registered, and there is hardly any resistance to the registration of land titles.

The main land use in Omahalya is crop farming, with nearly all the output from the farm being used for household consumption, and only very little is sold. Only five percent of the main income is derived from the farm output, with the main income sources on the farms coming from pensions, remittances and various forms of employment. As in Shipando, the main expense is for the household and food, education and supporting the family.

Houses and crop fields are considered to be the most valuable assets on the farms in Omahalya, with the second most valuable asset being the basic agricultural tools. The majority of interviewees said that land meant financial security for them, whilst playing just as an important social role. Traditional land administration processes are still followed; including how to acquire a piece of land and for conflict resolution mechanisms.

Most farmers regard communal land rights registration with general complacency, placing more emphasis on the TA's recognition of land rights. It is, however, significant to note that the majority of households felt safer on their land after obtaining a CLRC, especially amongst women.

## **CHAPTER 6 SOUTH AND SIMILAR? OTJOZONDJUPA AND HARDAP REGIONS**

The land south of the Veterinary Cordon Fence (VCF) is spatially dominated by commercial farms and national parks. Otjozondjupa and Hardap are very different case study regions compared to the previous two regions discussed. Communal land in these two regions is surrounded by commercial farms and is mainly situated in old ‘reserves’ where, unlike in the northern communal areas, the indigenous populations were forced to settle. Southern Namibia is also significantly drier compared to the more arable north, and farming is for the most part based on livestock production.

The following chapter will discuss two further case study villages or areas in communal land south of the VCF, so as to create a better understanding of different land uses and needs in communal areas that differ from one another.

### **6.1 OTJOZONDJUPA REGION**

The third case study area is Okamatapati in the Otjozondjupa Region in central Namibia. This subsection will commence with the regional and political context of Otjozondjupa, before focussing on the data collected during the village interviews. As with the previous case studies, the data will provide an overview on land in Okamatapati.

#### **6.1.1 Regional background**

Otjozondjupa is one of the largest regions in Namibia, covering 105 185 square kilometres, and is located quite centrally in the country. The Kalahari Basin characterises the region, with vegetation typical for the Kalahari sandveld- such as forest savannah, thorn bush savannah and bush encroachment species (Thiem 2014). This semi-arid area receives annual rainfall between 300 and 600 mm (NPC 2007). The Otavi Mountains, the Waterberg and Mount Etjo are significant mountain ranges that characterise the region. There are several sizable groundwater reservoirs and underground caverns and lakes in the region. Commercial farms make up over 70 percent of the region. Most of the communal land is located in the north eastern and eastern parts of the region, which are less densely populated than the northern regions of Namibia. This area includes parts of the former Hereroland reserve (Figure 6.1).

According to the latest census data, the total population of Otjozondjupa is 143 903, with 46 percent of the total population in the region living in rural areas. The population density is relatively low with 1.4 persons per square kilometre, thus below the national average of 2.6. The average household size is 4.4, identical to the national average (NSA 2013).

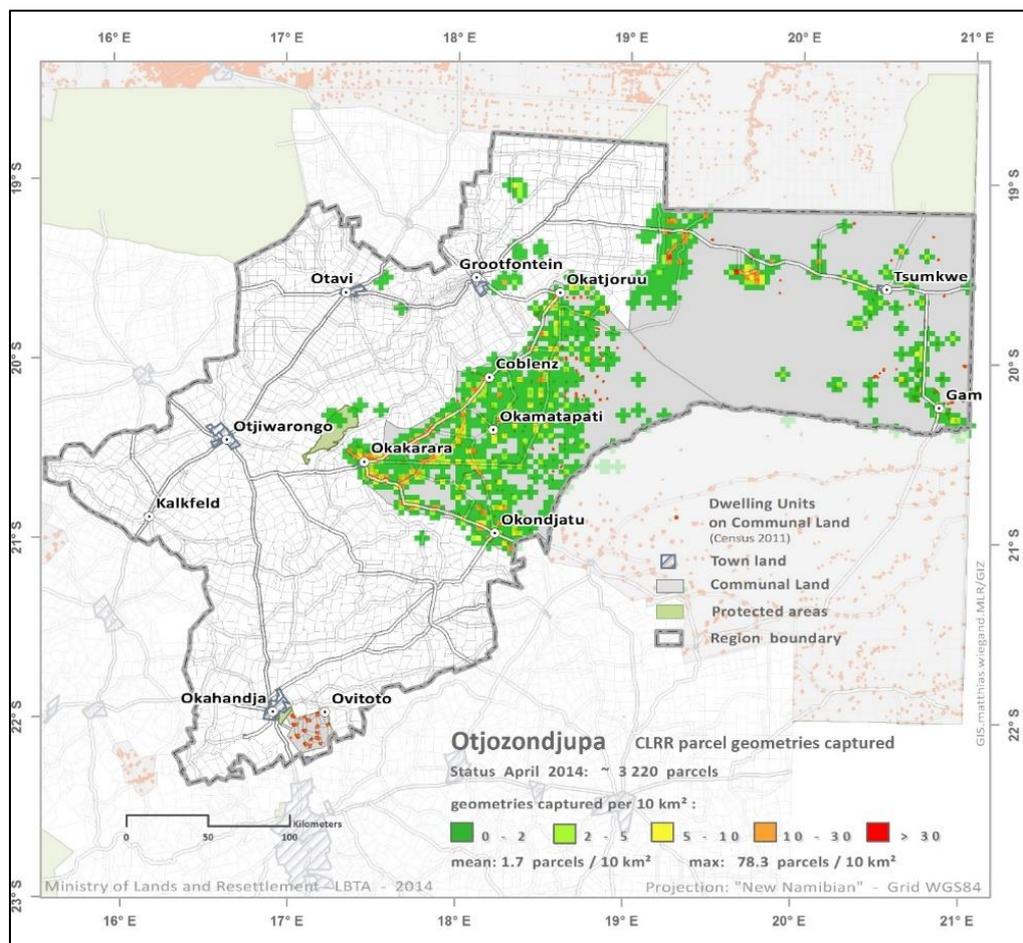


Figure 6.1 Location and parcel densities in communal areas in Otjozondjupa (MLR 2014)

Otjiherero is the main language spoken in the area, followed by Oshiwambo and Nama/Damara. Sixty percent of the main income source comes from wages and salaries, followed by 10 percent from farming, while business and pensions each make up 10 percent of the main source of income (NSA 2013). According to UNDP poverty indices, Otjozondjupa has a higher HDI ranking (0.638) than the national average of 0.557. It has the fourth-highest HPI ranking amongst all regions in the country (Levine 2007).

The Herero are traditionally pastoralists, yet if there is sufficient water, they may also cultivate small crop fields- mainly maize. Mendelsohn (2008) notes that many communal farms are run by weekend farmers and that the largest herds and flocks normally belong to these farmers who are generally wealthy urban businessmen and wage earners. Hence he argues that communal land in parts of eastern Otjozondjupa is dependent on sources of urban wealth (*ibid.*).

Since they predominantly farm with cattle, many areas are fenced off to create camps for their livestock management, even in communal areas. Most settlements in the communal areas depend on boreholes or water points connected to pipelines (*ibid.*). The *kraals* are located at the residential settlements, or homesteads, where the livestock can drink water. They can roam beyond the

homestead in the common grazing areas. As a result of poor management practises, many communal areas in the region are affected by bush encroachment and overgrazing (Thiem 2014). Traditional settlements amongst the Herero consist of large extended families, therefore even though one household is located on a residential land parcel, there will be several structures- often resembling a small settlement.

There are four TAs in the Otjozondjupa region, of which only the Kambazembi Royal House and the Ovaherero (in the Ovitoto area only) are recognised. Many TAs in the Herero communities in Otjozondjupa suffer from power struggles and unrecognised jurisdictions (Mendelsohn 2008). Similar to TA structures in other areas of the country, the TA is headed by a chief while senior and junior councillors make up the traditional council under the chief. The headmen are the lowest level of authority and are responsible for overseeing land administration on the ground in the villages (*ibid.*).

Inheritance practices are still mainly regulated by customary law, and once a man deceases, the younger brother acts as heir and executor to determine what is allocated to which family member. The widow is normally allowed to stay on and live in her home, unless she prefers to return to her parental village. However, as was confirmed during the fieldwork, widows are oftentimes chased from their homes after their husbands have passed away. A family estate can also be divided into smaller portions so that various family members, including the widow and children, may get a piece of land. Village headmen may oversee the process to ensure that the widow is treated fairly (Mendelsohn 2008).

Even though CLRR is contested amongst Herero, registration has made progress in the region. By October 2014, more than 56 percent of all communal land parcels (an estimated 5000) had been registered and deeds recorded. More than 60 percent of communal land parcels had already been mapped by the MLR.

### **6.1.2 Personal data**

The selected case study area in the Otjozondjupa region is the village of Okamatapati situated in the Okakarara constituency. This area formed part of the former Odendaal farms which were developed by the apartheid regime (see Chapter 4). The area was specifically selected to see how communal farmers now farm on these previously developed lands and whether these communal areas differ from the northern regions. In the Okakarara constituency, under which Okamatapati falls, nearly 74 percent of all communal land parcels in the area had been registered by mid-2015 (Figure 6.2). In Okamatapati itself, one can identify that most existing communal land parcels have also already been registered (Figure 6.3).

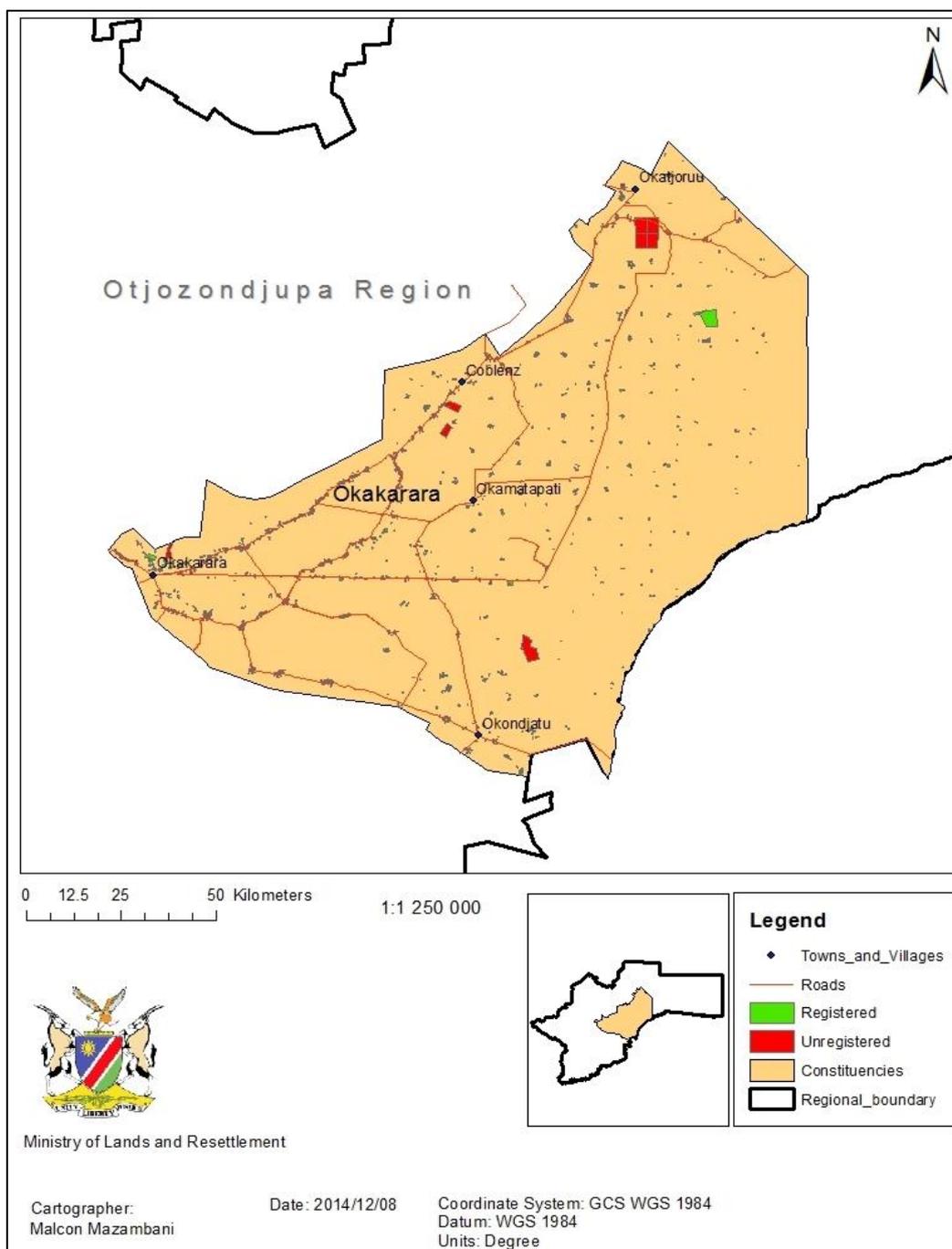


Figure 6.2 Communal land parcels mapped in Okakarara constituency

(MLR 2014)

According to data obtained from the NSA (2014, Pers com), there are 138 households in the Okamatapati area, which was more or less verified during the research trip, with an average household size of 4.2. The NSA data also indicates that the main source of income is from farming, followed by wages and remittances. The number of females and males in the area are approximately the same (NSA 2014, Pers com).

As with all case study areas, a village meeting was requested to introduce the research and to obtain some general feedback on CLRR in the area. However, the TA first convened a meeting to discuss

the matter. During this meeting, several questions were asked regarding the intentions of the research and what type of information would be gathered.

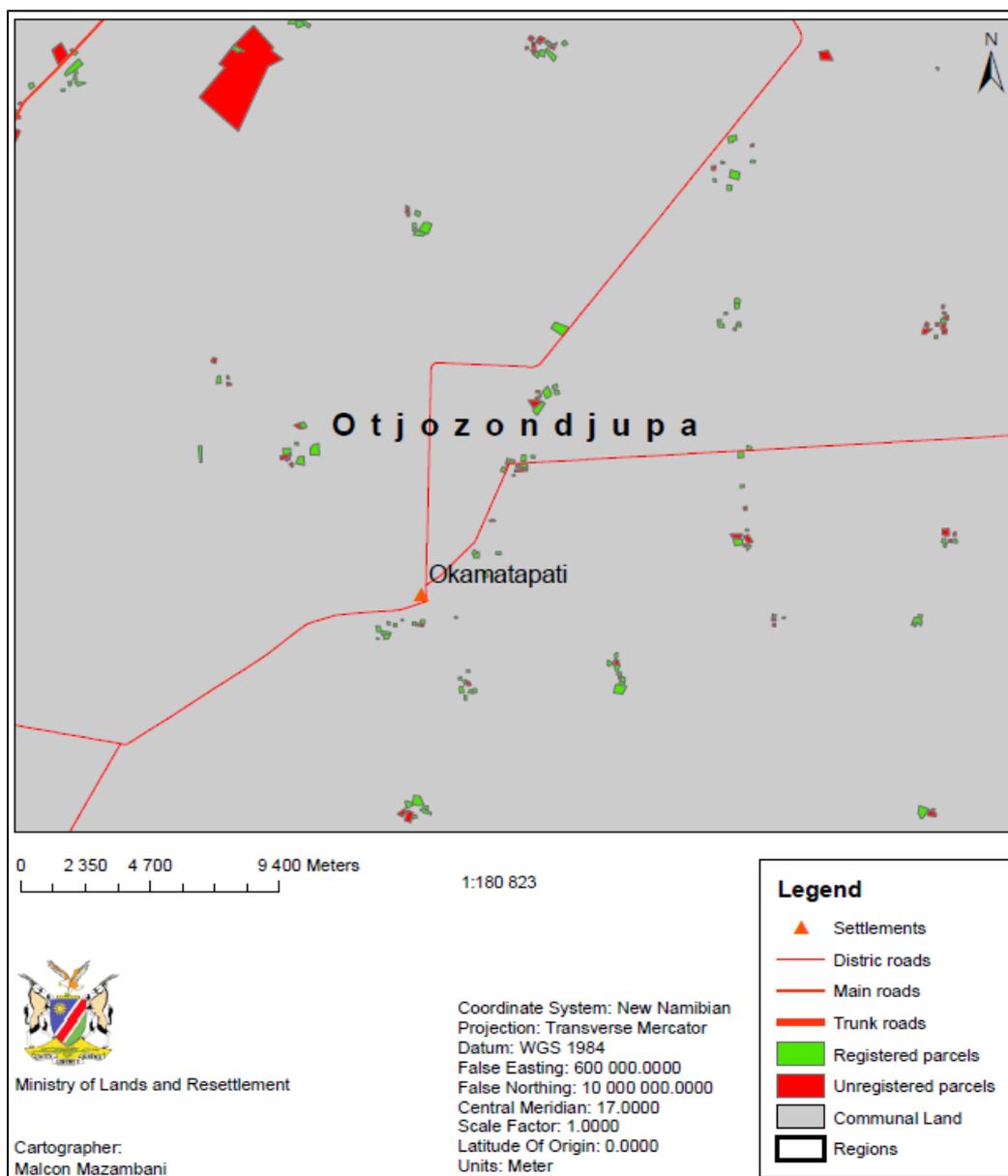


Figure 6.3 Communal land parcels mapped and registered in Okamatapati

(MLR 2014)

As in Kavango, but to a lesser extent, the TA members were at first sceptical of the research, highlighting that communal land rights registration was a sensitive issue for many in the area. It was also decided that it would not be possible to organise a village meeting during the research time, even though it had been requested in advance. Instead, some TA members would pass around the village questionnaires and return them at the end of the research period. Hence the objectivity of these answers cannot be guaranteed. However, the fact that there was no real motivation to organise a village meeting indicates that the TA members, who had made the decision, were not as responsive towards the topic of CLRR as for example people in Omusati had been.

When it was suggested to draw a village map, the TA members said that the area was too big and dispersed to draw such a map and that a proper map could be obtained from the government or TAs. This was in part understandable, since the Okamatapati area consists of a small urban settlement and several larger demarcated farms, being a former Odendaal area with many smaller settlements on the posts on these blocks of land.

Thus the most significant information collected during the field trip comes from the individual household interviews conducted over a period of two weeks. The majority of interviewees were between 50 and 70 years old (Figure 6.4) and 80 percent of interviews conducted were with males. Even though females were often present during the interviews, it was the men as head of the household who felt they needed to respond. Sixty-five percent of respondents were married and 20 percent widowed. Half of the respondents had reached secondary education, with only 1 interviewee out of 20 having received some form of diploma or further training. Most of the family members stayed elsewhere and not on this piece of land- mainly residing in urban areas and coming to the farm on some weekends. The majority of respondents, 75 percent, regard themselves as full time farmers, with only 25 percent seeing themselves as part time farmers.

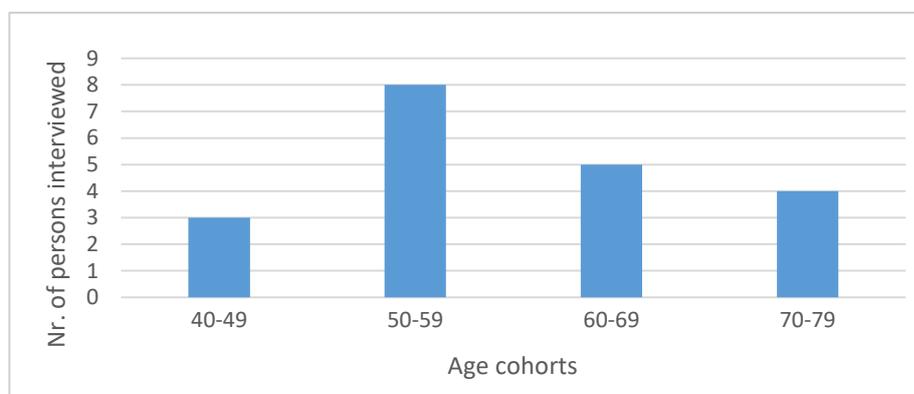


Figure 6.4 Age of persons interviewed

(N=20)

### 6.1.3 CLRR information

Of those interviewed, both through the distributed village questionnaire and individual households, approximately 65 percent had registered for a CLRC, with the bulk of registrations taking place between 2005 and 2014. The medium through which they had heard about CLRR was quite diverse, ranging from hearing it through the TA, MLR campaigns, radio and through the community (Figure 6.5). Sixty-five percent of those who had registered found the process uncomplicated and 30 percent said they were sceptical of CLRR, regardless of whether the process was easy or not. There is a discontent in Okamatapati about the lack of benefits that a CLRC can bring. Several farmers mentioned that one of the regional councillors had mentioned on the radio

that a CLRC can be used as collateral at banks, which resulted in further disillusionment about why people should register their land. There was furthermore a rumour that if they registered for a communal land right, it would disqualify them for a resettlement farm. It was unclear where these rumours started, however from observation, such rumours often resulted from misinformation by the TAs- whether this was strategically done by unrecognised TAs to discourage people from registering is a mere speculative rumour by some farmers.

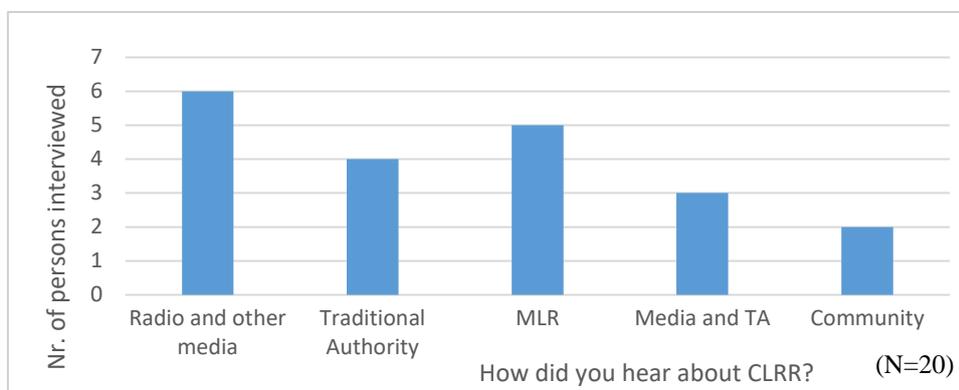


Figure 6.5 How did you hear about CLRR?

The majority of respondents were encouraged by their TA (88 percent) and/or family (67 percent) to register their land rights, with two out of three people not registered being dissuaded by other community members or friends. Nearly 29 percent of interviewees who had not yet registered were adamant that they would continue to refuse to register in future, the rest stating that they might consider registering in the future. The majority (over 75 percent) of those refusing to register said that they would not change their mind even if the regulations changed to be more responsive towards their land uses or if their TA encouraged them. The main reasons they did not want to register was because they felt they could trust their community members and TA and they did not believe registering would result in any change on their land (Table 6.1).

Table 6.1 Reasons for not registering (village interviews)

	Persons not registered
Do not understand it	3
Because it is a SWAPO programme	3
Because I trust my TA	6
Because I trust my community	6
Because I see no need for it or nothing will change	7
Because it does not make provision for the traditional ways of using land	4

N= 8 out of 24 village interviews (more than one answer possible)

Of those that had registered, the responses from the village questionnaires regarding changes experienced since registering vary quite considerably. Over 50 percent of respondents indicate that they have invested more in infrastructure and farming since registering, and 56 percent indicate that more fences have been erected since people have registered. Yet 75 percent of respondents

also believe that conflicts have increased as a result of CLRR. The biggest change was recorded in the perception of feeling more secure on their land now (81 percent) (Table 6.2).

Table 6.2 Which changes were experienced as a result of CLRR?

	Response by persons who had registered)
Spent more money on infrastructure	9
Took out a loan for my house	2
Invested more money in farming	10
Increased productivity on the farm	4
More fences erected by farmers	9
Less conflicts between farmers	5
More conflicts between farmers	12
Feel more secure on my piece of land	13
No changes	5

N=16 persons registered out of 24 village interviews (more than one answer possible)

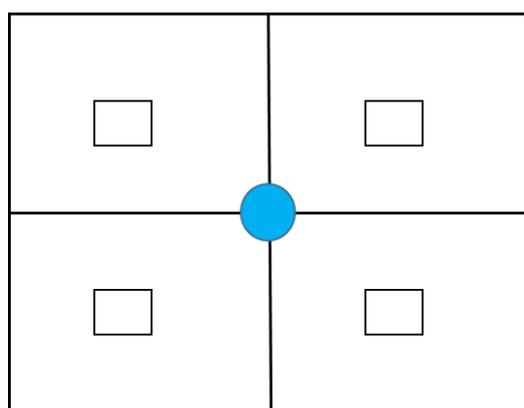
#### 6.1.4 Communal farm background

During the apartheid years, communal farmers could choose whether they wanted to live on a so-called Odendaal farm or live in the communal areas outside of it. Most farmers living on the former Odendaal farms agreed that it was beneficial to move onto these farms, as they were divided into different camps for better grazing and livestock management, had water points installed from the nearest large town (Grootfontein), and had proper roads between the farms. However, some farmers said that moving there during those days meant that you could be perceived as supporting the ‘white’ regime. Most farmers in the area have remained on this land since then, mainly because these Odendaal farms are considered by many to be more organised and efficient, as they are clearly camped (Shaanika 2014, Pers com).

Before independence, the allocation of land in the Otjozondjupa region was not much different than in many other areas of the country. If a person wanted a piece of land, they went to the respective TA under whose jurisdiction that land fell, and requested to settle there. Alternatively, they could approach the community where they wanted to settle, and they would in turn bring them to the TA representatives. The applicant also had to submit a request letter to the TA, stating where and why they wanted to settle on that land. The TA then had a discussion to determine whether there was still space available and, if no objections were made, the person was allocated that piece of land. The TA then recorded the name of the new land user and location of the piece of land into a register, and a verbal agreement was also made. On the Odendaal farms, the selection process for the blocks of land was the same as in the rest of the communal areas, however, once a household was allocated land in a specific block, the occupants had to decide amongst themselves who would settle on what specific land parcel within that block.

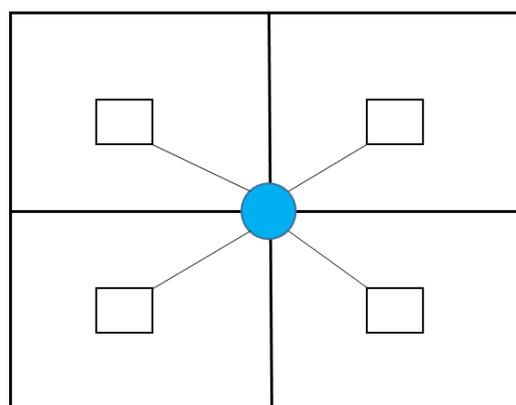
Since the farms in the Okamatapati area are all former Odendaal farms, they are divided into different blocks with fences separating the subdivided farm parcels. Different scenarios of household and commonage land uses exist on these farms.

The most common way water was accessed on these farms was through shared water points used by the surrounding households, which were installed as part of the Odendaal plan (Figure 6.6). However, since 2012 hardly any farms still have such shared water points. After 2012, NamWater started to install individual water lines to each house. This has reduced many conflicts about water, such as conflicts due to some people not contributing towards the water point committee fees (Figure 6.7).



(Own drawing)

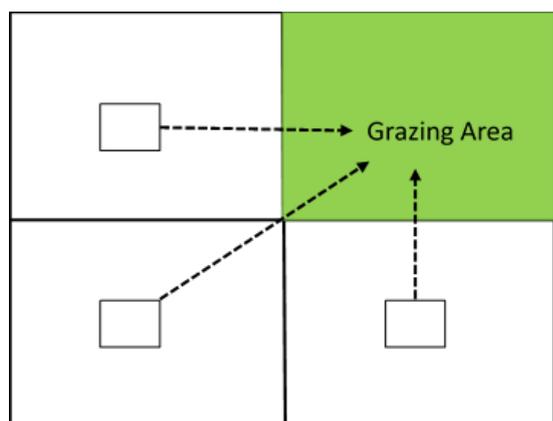
Figure 6.6 Communal water point



(Own drawing)

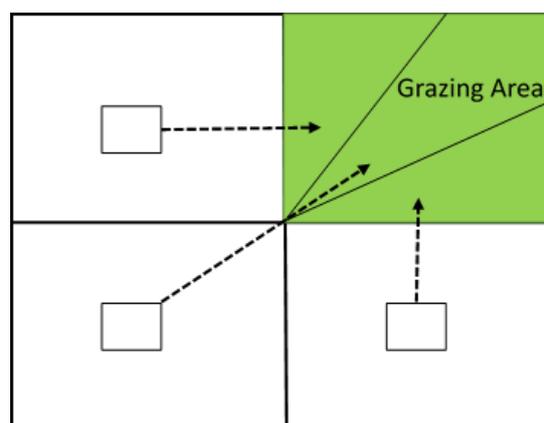
Figure 6.7 Individual water lines to homesteads

The main parcels are often around 3000-5000 hectares big, which are then subdivided into smaller parcels. As is the case in most of the communal areas, only the living areas are registered- thus they are under 20 hectares. The grazing area, i.e. the commonage, is accessible to all. In some cases, one block is used for grazing by all farmers (Figure 6.8). In other cases, the grazing area is subdivided and fenced-off, and each household has its own grazing area (which is still regarded as commonage and not registered- unless if registered as part of a leasehold) (Figure 6.9).



(Own drawing)

Figure 6.8 Shared grazing in commonage



(Own drawing)

Figure 6.9 Individual grazing in commonage

It should be noted that, in the drawings, a household is represented through one small block, however, there can be several households living in one area. Only a few people who farm in the Okamatapati area have vegetable gardens and crop fields, and if they do, they are normally very small maize fields. The main livelihood in the area is derived from livestock farming.

The cattle auctions take place in Okamatapati, Okakarara and Grootfontein. All farmers interviewed in the area use their land for livestock farming and grazing, with only 40 percent also growing crops. None of the farmers regard living on their land as a land use, and no-one makes use of natural resources. In contrast to both case study areas in the northern communal areas, only 20 percent of respondents did not know the size of their land in the Okamatapati area (Figure 6.10). Fifty percent indicated that their land was between 20-49 hectares, with some estimating their lands were as big as 5000 hectares. Since the respondents interviewed did not have leaseholds, and the maximum allowable limit for registering a land right was set at 20 hectares, these farmers generally saw the entire block of land as theirs, including the common grazing areas.

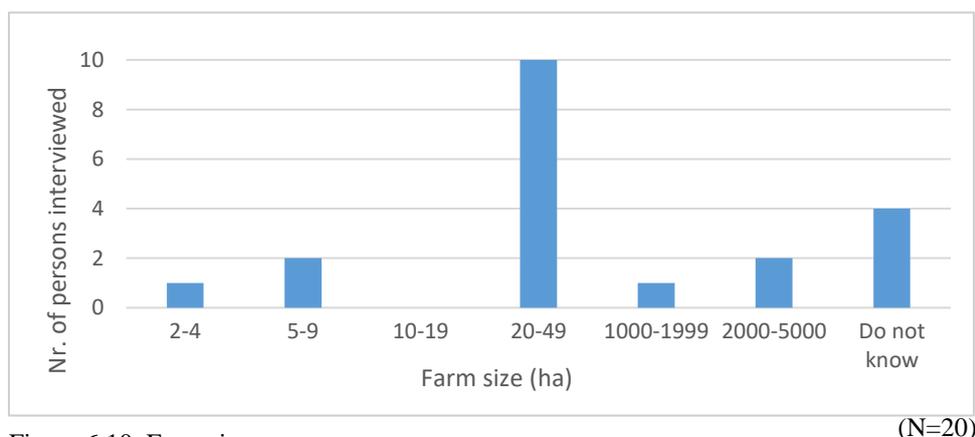


Figure 6.10 Farm size

Forty percent of the farmers owned more than 100 heads of cattle (Table 6.3). The number of cattle owned in this area is significantly higher than of those interviewed in the northern communal areas. Farmers generally also own some goats, several sheep, a few donkeys, horses and poultry. None of the respondents farmed merely for household consumption, and 65 percent used some of the outputs for their own consumption but sold the majority of livestock at auctions. A significant 25 percent of respondents farmed only to be able to sell their livestock on the market.

Table 6.3 Livestock composition

No. of livestock	Cattle	Goats	Sheep	Donkeys	Poultry	Horses
1-9		2	3	13	2	11
10-19	3		2	1	8	1
20-29	2	3	1		1	
30-39	3	4	2		2	
40-49		4	1		1	
50-99	4	3	4		1	
100+	8		1		1	
None	0	4	6	6	4	8

(N=20)

The desire to farm with livestock as a source of income was expressed by one farmer, who stated that “if you have land, you can have cattle and they can multiply and then you can get more money from that” (Okamatapati respondent 2, 2014, translated). Similarly, another farmer expressed that “with land, you can make many profits by selling livestock” (Okamatapati respondent 3, 2014, translated).

Unsurprisingly, 95 percent of respondents consider livestock as their most valuable asset, with the second most valued asset being fencing (Table 6.4). Water infrastructure and the land itself were also regarded as important secondary assets. This reflects the strong position that these communal farmers have towards livestock farming and wanting to farm more commercially. The fact that they regard fences as important also implies their seriousness towards cattle farming, yet these fences are often contentious in communal areas.

Table 6.4 Most valued assets on the farm

	First most valued asset	Second most valued asset
Houses	1	
Fences		9
Water and water infrastructure		2
Livestock	19	1
Basic agricultural tools (plough, axe, hoe etc.)		1
Crop fields		
Land itself		3

(N=20)

Only 50 percent of respondents had brick houses, and all had corrugated iron houses. There is a considerable variation in the number of houses built on the different farms, ranging mainly between one and four brick houses (where applicable) and one to six corrugated iron houses. However, from observation, there are many more houses on each residential area, and the answers given mainly refer to their own houses, and not to those of relatives also living on the piece of land. The fact that the first houses were mostly built before 1990 indicates once again that many of the farmers moved here during the time these Odendaal farms were developed. Since most of the houses are of the corrugated iron type, 70 percent of the respondents intend building more brick houses on their land.

Otjozondjupa was the only case study area where the majority (15 out of 20) farmers made use of piece or farm workers on their land. This is yet another indication that farmers in this area intend farming more seriously and not for subsistence purposes. Seventy percent said their income is mainly derived from sales of farm outputs, and 20 percent and 10 percent respectively from pensions and employment. In many cases pensions are a considerable secondary income to supplement income from farm sales.

The main expenses on the farms are for agricultural production (18 out of 20 responses) and farm maintenance (14 responses), yet household expenses (including food) are also considerable and

comparable to farm maintenance. Unlike in the northern regions, education was not regarded as one of the main expenses, as most of the attention is focussed on agricultural production.

Eighty-five percent of respondents have not yet made use of a loan, and those who have, had taken it either from the Agribank or a commercial bank (which can only be the case if they have formal employment and use some of the loan to invest on their communal farm). They unanimously agree that the decision to take a loan has nothing to do with CLRR, and 90 percent indicated that having or not having a CLRC has no influence on their decision to invest in their land and all of those who had already registered agreed that they had not invested more money in their farms as a result of registering. All respondents (100 percent) also perceived that no changes had occurred on their neighbours' farms once they had registered. This stands in contrast to the village questionnaire responses, where the majority had indicated that they had indeed invested more as a result of CLRR. Yet, as already mentioned, since these questionnaires were handed out by the TAs and returned later, the responses can be questioned.

Instead, all respondents (100 percent) said they would like to expand and develop their farming operations, regardless of CLRR. Seventy percent feel that infrastructural development has hindered progress of their farming operations. A member of the Ovaherero TA, one of the unrecognised TAs in the area, requested during the interview whether he could make some recommendations "from the people": He requested that the MLR investigate why not more people from the area were resettled into resettlement farms, since many people have applied as they want to farm more seriously (Ovaherero TA member 2014, Pers com). He also requested that registered communal land and the brick houses on it should be able to be used as collateral to take out loans. Lastly, he requested government to invest more in water infrastructure to help the farmers in the area farm more productively (*ibid.*).

### **6.1.5 Understanding and importance of land**

Most of the respondents' families (75 percent) had lived on the land before them, and only a quarter of farmers were first generation occupants of the land. Fifty percent of the farmers had settled on this land in the 1980s, with 25 percent moving there in the 1970s and 20 percent in the 1990s. In contrast to the northern regions, 80 percent indicated that they would be willing to move away, especially if they were granted a resettlement farm or could find better grazing and water.

An overwhelming 100 percent of respondents in the individual household interviews said that the value of land was financial, with only 30 percent indicating it also had familial value (Table 6.5).

Table 6.5 What importance does land have for you?

	(Individual interviews) (N=20)	(Village interviews) (N=24)
Ancestral	0	3
Friends	1	1
Traditional	0	1
Family	6	2
Financial	20	20

(More than one answer possible)

A communal farmer in Okamatapati said that “farming is our backbone, we survive on it” (Okamatapati respondent 1, 2014). The village questionnaires indicate that land has several values, mostly ancestral, traditional, family and financial. Despite most individual respondents indicating that land had mostly only financial value, 95 percent agreed that the community helped and supported each other during difficult times.

### 6.1.6 Tenure security

Most farmers (12 out of 20) have only verbal proof that they are the occupants of that piece of land, with six having a written agreement. This was interesting, since when asked, few people immediately thought of the CLRC as proof, and it was thus not captured as a form of written agreement by most respondents.

During the individual interviews it was established that 40 percent of farmers did not feel they could trust their TA more than government. Only 20 percent trusted the TA more, and 25 percent said they trusted both. The village questionnaires once again reflected a different outcome, with over 70 percent of respondents stating they trust the TA more than government and 58 percent indicated they trust their TA more to protect their land rights than government, which was not surprising since the questionnaires were handed-out and collected by TA members.

Before independence, only the Kambazembi TA was present in the area. However, after independence more people wanted political power and influence, and two more TAs were created. The Kambazembi TA is still the only recognized TA in the area, and thus the only TA that can approve requests to register land under the CLRA. This often poses problems for the MLR, as they should only provide training for, and deal with, recognized TAs (Shaanika 2014, Pers com). During an interview with a senior councillor from the Kambazembi Royal House (in the dissertation the Royal House is referred to as the TA), the diminishing power of TAs was mentioned several times. The councillor said that people do not respect their leaders as much as they used to (Kambazembi TA councillor 2014, Pers com). He stated that, after independence, TAs got power in writing, but when they want to implement anything, their hands are tied (*ibid.*). He mentioned that, when there is a dispute, the TA notifies the government, yet they never act on the TAs recommendations, and the CLB only passed by once a year. According to the TA

councillor, things were better before independence, because at least their land was being developed.

Yet there seems to be a relatively strong sense of perceived tenure security, as 80 percent of respondents said they do not feel or have ever been threatened by eviction from their land, and over 66 percent of respondents from the village questionnaires indicated that they were not worried that someone would take their land away. Eighty-five percent of the individual household respondents said that they did not know anyone close to them whose land had been taken away from them, and 80 percent stated that illegal fencing had not really been a major reason for concern in the area. Yet it was observed that there were significantly more land-related conflicts in the Okamatapati research area than in the other case study areas. Matthew Shaanika, CLB Secretary in Otjozondjupa, said that the two main problems regarding land in the area were from disputes related to inheritance issues and the erection of illegal fences (2014, Pers com). If people register their land rights, they can also apply to retain their fences according to the CLRA. However, many farmers feel it is their land and they have lived on it for a long time, and thus they can erect fences as they wish (*ibid.*). In terms of inheritance issues, problems tend to arise more regularly in the area because of the large households amongst Hereros. In most cases the head of a household will live on a piece of land with his brothers, uncles and other relatives. Customarily, when the household head dies, his brother or uncle will inherit the land, and sometimes the woman gets chased away (Shaanika 2014, Pers com). In addition, there are many shacks (informal dwellings) mushrooming on the borders of Okamatapati town, as newcomers squat there waiting to be allocated a piece of land in the area. However, as one respondent observed, “there is no space for new people, especially not for their cattle” (Okamatapati male respondent 1, 2014, Pers com).

Almost two thirds of farmers interviewed during the individual household discussions said they did feel safer on their land after obtaining the CLRC, the remainder indicating they felt just as safe.

Many respondents said they felt safe on their land because the TA had written down their names and where they were settled into a register. However, one of the unintended consequences of the research was the realisation by the TA, and later the community, that this register had disappeared and could not be found during the duration of the field trip. This illustrated how much trust was placed in the TA without significant accountability taking place.

In terms of inheritance practices, the majority of respondents said the land would either go to their children, or the children and the spouse (Figure 6.11). Only 30 percent felt that inheritance as regulated by the CLRA was better, 55 percent felt they preferred the traditional way of inheritance and 15 percent said it was basically the same.

Seventy percent of respondents agree that CLRR is not against their traditional practices, with 20 percent stating it is, and 10 percent being unsure.

Despite some criticism by the community regarding CLRR, more than half the respondents would still continue to support CLRR, but 25 percent being entirely against the registration of communal land rights. One farmer was adamant that “unless government clarifies the issue of registering land and not being able to resettle people if they have registered, we will not support registration” (Okamatapati respondent 4, 2014). Another farmer sceptically asked “why should we register now, after we have lived here for so many years? And as livestock farmers, we can hardly do anything within the limits set by the Act [CLRA]. We are on the losing side here” (Okamatapati respondent 5, 2014).

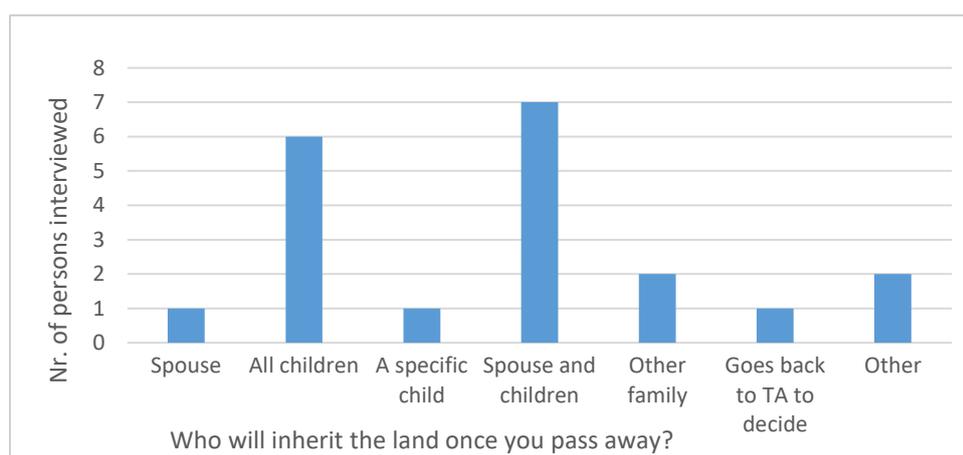


Figure 6.11 Who will inherit the land once you pass away? (N=20)

### 6.1.7 Conclusion

The Okamatapati area formed part of the former Odendaal farms which were developed under the apartheid system. The current communal farms are divided into different blocks with fences separating the subdivided farm parcels. Different scenarios of household and commonage land uses exist on these farms

The majority of communal land parcels in the area have already been registered. However, there is a discontent in Okamatapati about the lack of benefits that a CLRC can bring, especially regarding collateral. There is also a strong desire to rather move onto a resettlement farm. Those who had not yet registered believe registering would not result in any change on their land.

Only a few people who farm in the Okamatapati area have vegetable gardens and crop fields. The main livelihood in the area is derived from livestock farming. Nearly all respondents consider livestock as their most valuable asset, with the second most valued asset being fencing. Water infrastructure and the land itself were also regarded as important secondary assets. An

overwhelming 100 percent of respondents from the individual household interviews said that the value of land was financial, with only 30 percent indicating it also had familial value.

None of the respondents farmed merely for household consumption, and the majority of livestock is sold at auctions. Seventy percent said their income is mainly derived from sales of farm outputs, and only some from pensions and employment. The main expenses on the farms are for agricultural production and farm maintenance.

## 6.2 HARDAP REGION

The final case study area is located in Kries, a former Odendaal farm in the southern region of Hardap. The following subsections will commence with the regional and political context of Hardap, before focussing on the data collected during the household interviews. The data will provide an overview on land uses, farm background and tenure aspects in Kries.

### 6.2.1 Regional background

The two southernmost regions, Hardap and Karas, are known for their harsh environmental conditions, infertile soil and low rainfall with a high variability (Thiem 2014). The surface area of Hardap covers over 13 percent of the total land area of Namibia with 109 659 square kilometres, of which 75 percent is constituted of freehold commercial farms, 10 percent of communal land and the rest is national parks and protected areas. The communal land is governed by TAs and farmed by small-scale farmers (NPC 2007).

The largest population group in the Hardap Region is Nama/Damara (43 percent). The population density is very low with 0.7 people per square kilometre and an average household size of four (NSA 2013). The HDI for Hardap ranks in the middle of the UNDP poverty indices for the country, and resembles the national average for Namibia (Levine 2007).

Due to mainly dry climatic conditions, livestock farming is the predominant livelihood option for the region's communal inhabitants, however 64 percent of the main incomes are derived from wages and salaries (NSA 2013). Most Namas in the Hardap region live on communal land on the former Odendaal farms. As Mendelsohn (2008) explains, the Odendaal farms were generally allocated to families and not an individual, and have thus also remained a family enterprise supporting several relatives residing on the land. The commonages remain an important feature for farming in the region, as they are dependent on access thereto for their livestock. Therefore TAs in the area require new applicants to state precisely what and how they want to farm when potentially moving to the area, so as to try to manage the commonage areas (Mendelsohn 2008).

Traditionally, the Namas were nomads, however since the advent of colonialism and later apartheid, they were gradually forced to settle in identified areas. Some of the Nama TAs are relatively small, governing less than 100 families (Thiem 2014). The Nama TAs represented in the Hardap CLB are the Witbooi TA, Kai-//Khaun TA, Simon Kooper TA, !Khar'-Khoen and Afrikaners (Thiem 2014). The Odendaal farms were originally under the governance of the Witbooi, Bondelswart and Topnaar communities, however in recent years smaller TAs have also been included in the management of communal land on the former Odendaal farms (Mendelsohn 2008). The Nama TAs are headed by a chief, often called the Kaptein, and a traditional council of

senior and junior councillors. The TA Secretary assists the council. The chief normally comes from a lineage of royal families. Councillors are nominated by the community and appointed by the chief, and responsible for governing over specified ward areas (Mendelsohn 2008).

The TAs in the region generally support the registration of communal land rights and progress thereof has been relatively good in Hardap (Thiem 2014). The parcels registered in Hardap are generally quite small, consisting of one or more residential buildings which are surrounded by a vegetable garden and kraals. Communal land parcels in the south hardly have any considerable crop fields as in the northern and sometimes central parts of the country (Mendelsohn 2008). By mid-2015, more than 70 percent of the estimated 2000 communal land parcels had been mapped in the Hardap region. Figure 6.12 indicates the location of communal land in Hardap, and also shows that land parcels are considerable less densely distributed than in the northern regions.

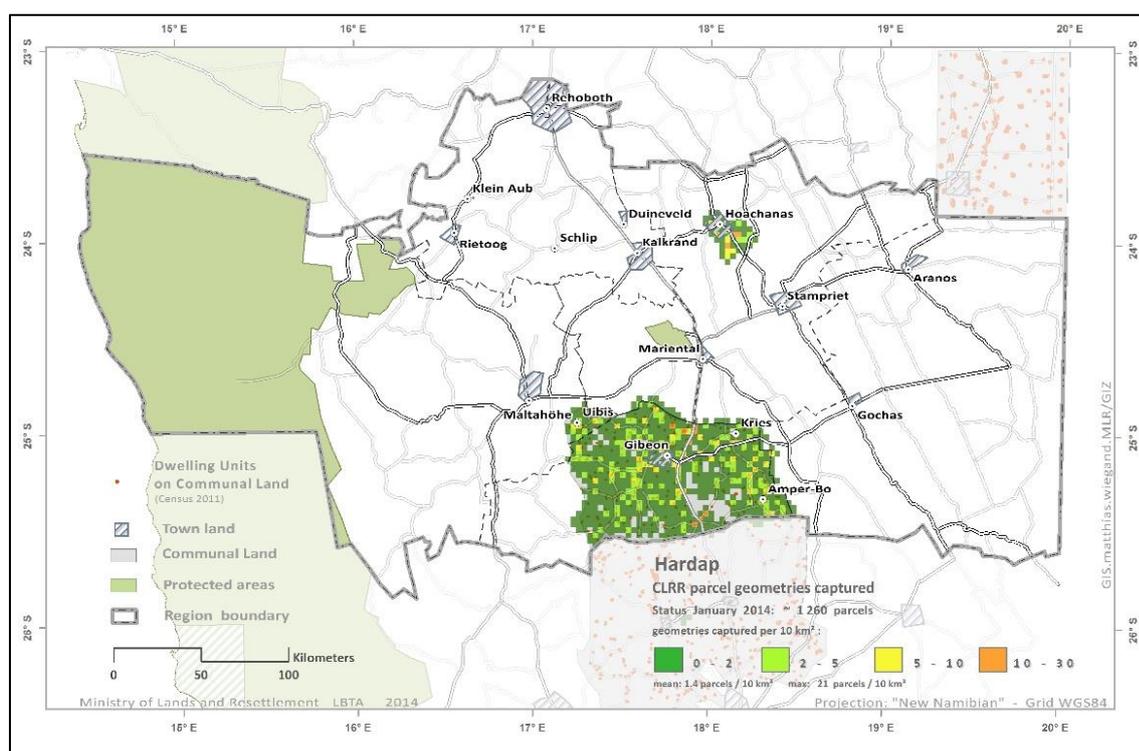


Figure 6.12 Location of communal land in Hardap and mapping of parcel densities

(MLR 2014)

## 6.2.2 Personal data

The case study area of Kries was selected for the Hardap region, and is located within the Gibeon constituency (Figure 6.13). Kries is part of the Hoachanas communal area, which falls under the representation of the Kai-Khaun TA (Figure 6.14, the purple area representing land under the jurisdiction of the Kai-Khaun TA). The Bondelwarts and Witbooi TAs are mainly responsible for the other areas, especially around Gibeon, and are also well-known and respected in the region.

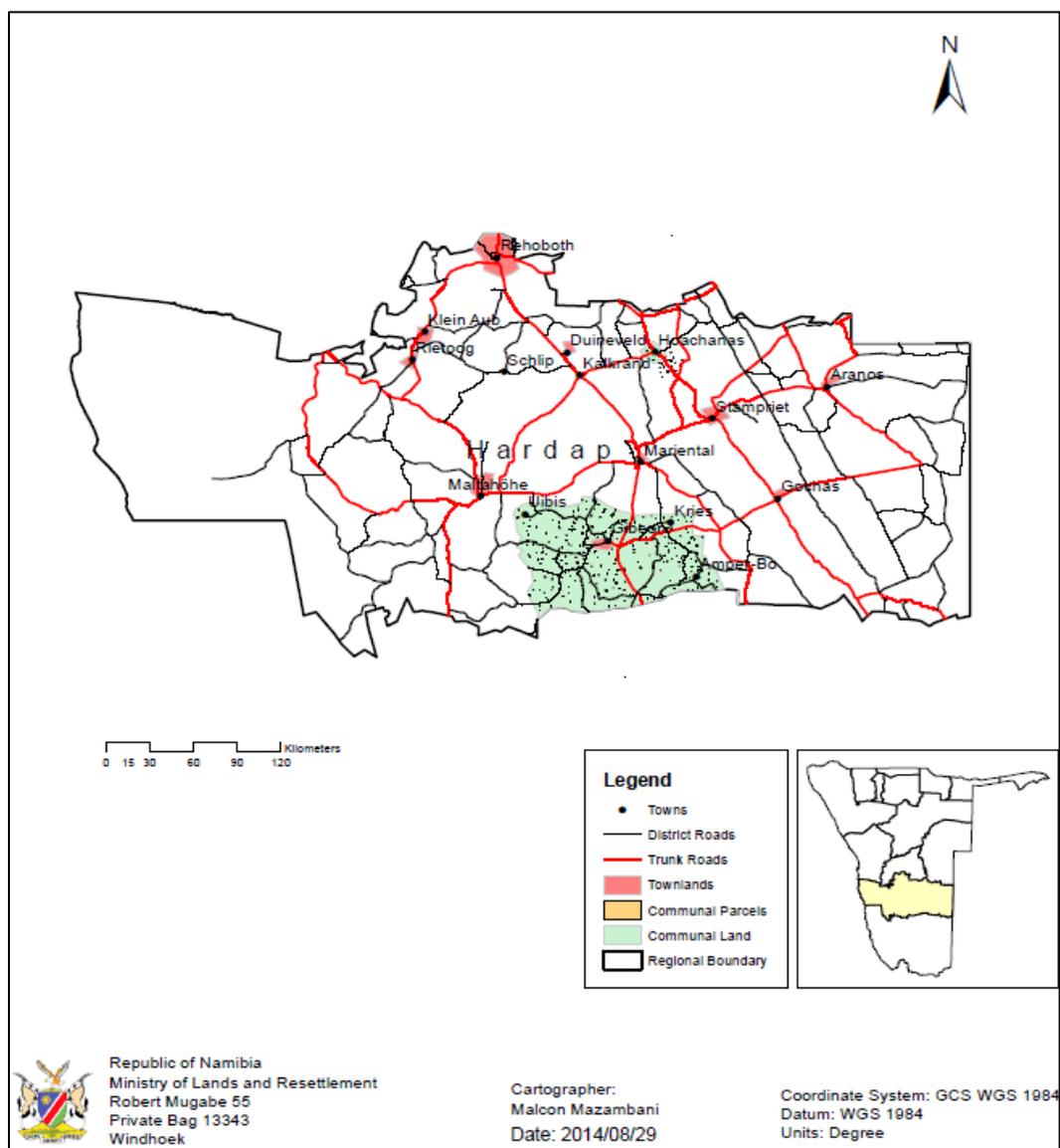


Figure 6.13 The communal areas that form part of the Gibeon constituency in Hardap (MLR 2014)

The farmers who live in the Kries area all reside here as a result of the development of the Odendaal farms in the 1960s. Kries, as an old Odendaal farm, is made up of 4 posts: Newcastle, Verloorsveld, Glencoe and Kries. At each of these posts there is a water point, run by the elected water point committee for each post. Thus the Kries area consists of a small settlement area located on a former Odendaal farm, with several posts distributed across the Kries area (Figure 6.15). Parcel boundaries incorporate the built structure (house), garden (normally with vegetables) and a *kraal*. Average parcel sizes are around 1 hectares, however the grazing areas around them are very big (Kandiba 2014, Pers com). Thus the land parcels registered are mainly the residential units, some small gardens and the enclosures (*kraals*) for their livestock, and around each post there is a water point and communal grazing area. Nearly 96 percent of all communal land parcels had been mapped and registered in the Gibeon constituency by mid-2015, with only 52 parcels not registered.

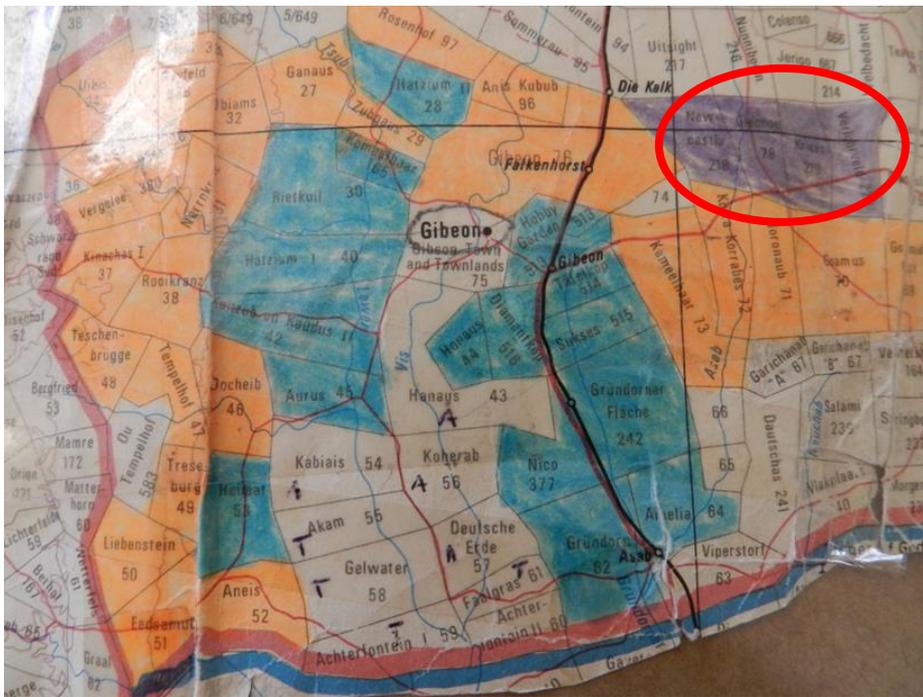


Figure 6.14 Communal areas on the former Odendaal farms (Own photograph)

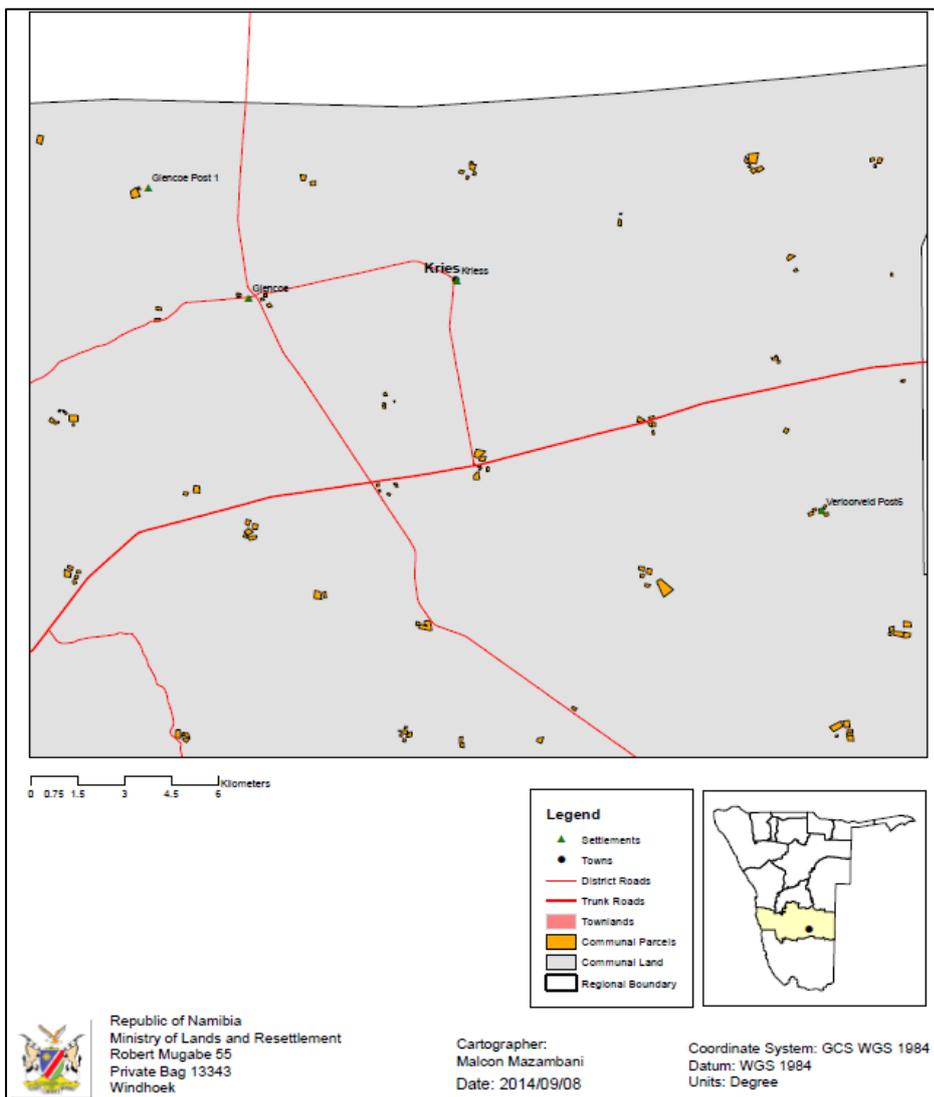


Figure 6.15 Kries communal area (MLR 2014)

According to the NSA (2014, Pers com), there are 66 households in the Kries area, with an average household size of 4.5. There is a relatively equal distribution of males and females. The main income in Kries was first from pensions, followed by wages and remittances and then farming activities (NSA 2014, Pers com). Most farmers depend on shared boreholes for water (*ibid.*).

In contrast to Okamatapati, 27 households attended a village meeting which was requested to introduce the research and to gather some basic opinions, as was done or envisioned in the previous case study areas. Unfortunately, this only represents about 40 percent of the community and was a significantly lower turn-out than in the northern regions, yet better than what was experienced in Otjozondjupa. No objections were raised to the research, however no real discussions took place and people did not seem too interested in the reason for this visit. This was already an indication that CLRR was neither objected to, nor regarded as a vital process in this area. In some instances the research assistant had to explain to people again what a CLRC was, as even though most people had registered, they had forgotten they had registered since it did not play a role in their daily lives and they mainly registered as it was required of them.

Similar to Otjozondjupa, it was decided by the community that it was not necessary to draw a village map, as they were spread out across the Kries area. Instead, as was later determined during the research, more significance was placed on the area around each post, as this was where people derived their sense of community from.

In comparison to the other research areas, the ages of respondents from the individual household questionnaires in Kries were more distributed, with many being younger than 50 (Figure 6.16). Sixty-five percent of respondents were female and married. Nine out of twenty respondents only had a primary school education, eight had attained secondary school level, with only one person having received tertiary education. Families did not always stay directly on this land, as 55 percent stayed elsewhere and 25 percent only sometimes lived on this land. Significantly, all respondents (100 percent) said they were full time farmers.

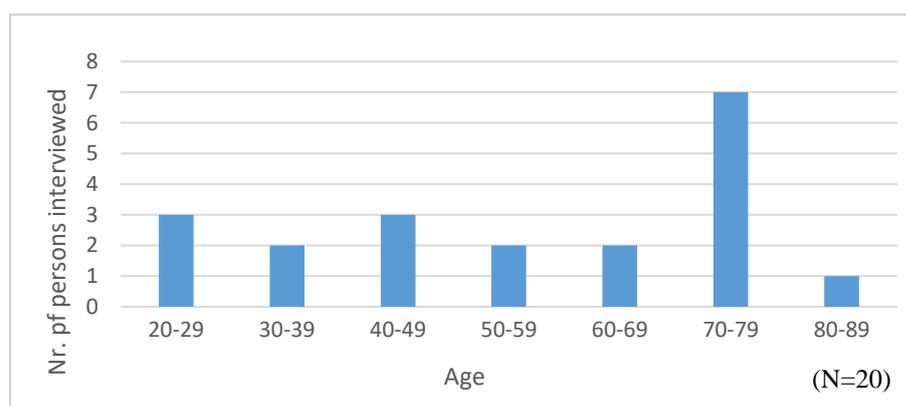


Figure 6.16 Age of persons interviewed

### 6.2.3 CLRR information

All respondents from the household interviews had registered for a communal land right, yet only about 56 percent of those who attended the village meeting had indicated that they had registered. As already mentioned, this figure should be taken lightly, since it was realised during the village meeting that many people needed to be reminded of what a CLRC was, as they had forgotten about it- indicating that most people never needed their CLRC once they had collected it from the TA office. At the start of each household interview, care was taken to clearly explain again what CLRR was, therefore eliminating incorrect responses from the beginning. Interestingly, even though all individual respondents had registered for a CLRC, seven out of twenty were not sure when they had registered, while eight respondents had registered shortly after the implementation of the programme (during the period 2005-2009). The majority of farmers had heard about CLRR from their TAs and over different media platforms, and all found the process uncomplicated. All respondents furthermore stated their TAs had encouraged them to register, and that the majority of family and friends had also supported them in the decision to register.

In terms of impacts experienced after registration, some respondents from the village meeting said that more fences had been erected and that there were marginally less conflicts between farmers as a result of CLRR. Yet nine out of fifteen persons registered responded that there had been no marked changes, except for a heightened sense of security on the land (see Table 6.6).

Table 6.6 Which changes were experienced as a result of CLRR?

	Response by persons who had registered)
More fences erected by farmers	4
Less conflicts between farmers	1
Feel more secure on my piece of land	12
No changes	9

N=15 persons registered out of 27 village interviews (more than one answer possible)

### 6.2.4 Communal farm background

When a person wants to apply for a communal land rights certificate, he or she writes a request letter to the TA Secretary. In the letter, the TA expects the applicant to indicate why he/she wants to request a piece of land in that area, how much livestock they have, where they are from and what they intend to do on that land. The TA Secretary then consults with the senior councillors on the available size of land and the grazing and water situation in the area where the land was requested. These requests are mostly approved and the official MLR procedure commences. The TA said that they try to accommodate all requests and where the farm is not suitable or already too populated, they will show the applicant another similar piece of land on a different farm. Most of the TAs in the broader area follow the same procedures for land allocation, and have managed to

maintain their traditional allocation procedures together with those of the CLRA. Since land is increasingly becoming scarce, especially for grazing, the TAs said that they require new applicants to clearly state their needs and purposes for the land they are applying for, especially with regard to grazing and living. This enables them to determine what land will be best suited and will be able to carry the additional load of more livestock.

Before independence, the TAs in the area administered *weifooie* (grazing fees), which were similar to the land tax in other communal areas. Communal farmers all had a *weifooikaart* (grazing fee card), which clearly captured the amount of livestock a farmer had and the amount paid for each head of cattle or small livestock. Generally, farmers had to pay a fee of 50 cents per small livestock and R1.00<sup>19</sup> for large livestock. The cards enabled TAs to keep track of how much livestock was in the area, so as to be able to better manage grazing. It also provided income to manage and maintain water points in the communal area- similar to the water point fees collected these days. The TA further used the money to finance a car, with which they drove around to all the farms to brand the livestock, allowing farmers to know exactly which animal belonged to them.

Already after independence, farmers started losing interest in the *weifooikaarte*, which the Bondelswarts TA laments, as the new generation no longer sees the value of (financially) supporting the TAs. The Witbooi TA members agreed that the loss of the *weifooikaart* has significantly impacted the land administration in the communal areas: “Dis nou ‘n problem, want daar is geen beheer meer oor hoeveel vee daar in die kommunale areas is nie. Destyds kon ons met die kaart beheer hê. Ons moet weer so ‘n kaart kry”<sup>20</sup> (Witbooi TA member 2 2014, Pers com).

Older farmers still regard the *weifooikaart* as proof that they may reside on their piece of land. In the past, a person wanting land went to the Kaptein or ‘Kommissaris’ (commissioner for the apartheid regime in the area) to request a piece of land. They then all went to look at available land together, and after having been allocated a piece of land, received the *weifooikaart* from the TA. The community generally feels that there is no difference in paying the water point fees or for the *weifooie*, since the money is collected and used for the same purposes in the community- to ensure proper conditions for livestock farming. NAD 20 is collected each month from each farmer by the water point committee for the maintenance of the water point. Once a month all the farmers from a specific post will come together for the water point committee, to not only discuss the water situations, but to also address any other problems that might be felt in the community, e.g. grazing issues.

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<sup>19</sup> Since the country was still under the South African regime, the currency was Rand until independence.

<sup>20</sup> In English: This is now a problem, because since the grazing fee cards are no longer in practice, there is little control over livestock in the communal areas. In the past this could be regulated through the cards. We want these cards to be re-introduced again.

The main land use in Kries is almost exclusively for livestock farming and grazing. Despite all having registered, and similar to Omusati, 11 out of 20 respondents did not know what their farm sizes were. Of those who knew, the farm size was generally between 2 and 9 hectares. The main livestock being kept in the area are goats and sheep, and only some cattle and poultry (Table 6.7). However most small livestock herds are not very large, mostly consisting of less than 40 each of goats and sheep. In general, what is done with farm outputs in Kries is quite distributed: either it is used for own household consumption or a little is sold. Seven out of twenty respondents mainly sell their farm output. One respondent said that if she thinks about land, the first thing that comes to mind is “boerdery“, or farming (Kries respondent 2, 2014). This connotation was made by many other farmers in the area.

Table 6.7 Livestock composition

No. of livestock	Cattle	Goats	Sheep	Donkeys	Poultry	Horses
1-9	8	5	3	11	5	12
10-19	1	2	3	1	2	2
20-29		4	1		2	
30-39		3	2			
50-99		4				
100+	1	1	2			
None	10	1	9	8	11	6

(N=20)

Similar to Okamatapati, ninety-five percent of the respondents indicated that their livestock was their most valuable asset on the farm (Table 6.8). The second most valued assets were houses, fences and especially water infrastructure.

Table 6.8 Most valued assets on the farm

	First most valued asset	Second most valued asset
Houses		4
Fences		6
Water and water infrastructure		8
Livestock	19	
Vehicle	1	
Land itself		2

(N=20)

Most of the houses (95 percent) are built from corrugated iron, with only 30 percent being brick and five percent built with some traditional materials (but not the entire house, only some elements were used). Normally those who owned a brick structure only had one such house, with the rest owning between one and four corrugated iron houses. Most of the houses were built before 2002. Seventy percent of respondents indicated that they would like to expand and improve their houses or build a brick house. As corresponds to the data received from the NSA, normally one to four people live on one piece of land, with no household interviewed exceeding eight people.

Fifty percent of the main income is derived from government pension, and 30 percent from farm sales. Remittances from family members are a significant source of secondary income (Table 6.9).

Table 6.9 Income from farm

	Main income	Additional income
Income from farm sales	6	5
Income from pension	10	1
Income/remittances from family members	2	7
Income from piece work		1
Government grant	1	1
Other (e.g. inheritance, rent)	1	3

(N=20)

In the past, some community members collected natural resources to supplement their livelihoods, such as aloe vera. However, collection thereof is now regulated by the government and farmers need permits from the Ministry of Agriculture, Water and Forestry.

The main expenses on the farm are for agricultural production (14 out of 20 respondents) and household expenditures, including food (17 respondents), while eight respondents also mentioned education and family as a major expense. Sixty-five percent of respondents said that, even if they needed more money, they would not want to take a loan. The only loans that the remaining 35 percent had taken were a small loan from Agribank and the rest was from the Namibia-German Special Initiative, which was developed to redress the colonial injustices inflicted on the Nama population by loaning goats at no cost for a specific period of time to allow people to breed with their small livestock.

All agreed (100 percent) that the decision to take a loan was not based on having a CLRC. Even though a lack of infrastructural development hindered progress of their farming operation (which all respondents felt), 75 percent said that having or not having a CLRC did not influence their decision to invest in their farm. Ninety-five percent of respondents said that there had been no infrastructural changes and that they had not invested more money in their farm since obtaining a CLRC. Eighty-five percent also stated that they were not aware of any changes on their neighbours' farms as a result of them registering.

### 6.2.5 Understanding and importance of land

According to narratives by the Bondelswarts and Witbooi TAs, the Witboois had already lived on small parcels of land in the Gibeon area. When the Odendaal farms were developed, Kaptein Swartbooi had asked the apartheid government to settle his people onto those previously white farms. The Bondelswarts moved to the Gibeon area during the apartheid era so as to also settle on the newly created Odendaal farms. People had been moved onto Odendaal farms regardless of TA affiliation, and only later did the South African government come to map the farms and decide which TA was in charge of which area.

The Bondelswarts said it had "hurt to move here", but they were made to feel welcome by Kaptein Witbooi, the Nama leader in the Gibeon area at the time. However they say that they have grown

to feel comfortable on this land and feel that they belong here, even though some members from the Witbooi TA community state that they are not the real inhabitants of this communal land. One Bondelswarts TA member said that “my family came here unwillingly, but now my parents have died here and my children have grown up on this land. My children don’t know any other place” (Bondelswarts TA Member 3 2014, Pers com). Furthermore, she said that “ons Namas sit nou op gronde waarvoor bloed gevloei het. Vir alle Namas- nie net vir die Swartboois of Witboois nie-nee, bloed het gevloei vir ons almal sodat ons hier in die suide kan bly. Die mense wie nou moeilikheid veroorsaak is mense wie nie weet hoekom ons voorvaders so hard geveg het nie<sup>21</sup>” (Bondelswarts TA Member 3,2014, Pers com).

Most of the respondents’ families (85 percent) had resided in this area before them, with 80 percent believing they would never want to move away from this area. A majority of the farmers expressed the wish to stay here because this is where their families live and their children were born. The majority of the current farmers settled on their specific pieces of land after 1990, mostly moving away from the parent’s place in the same area to settle on their own piece of land. The farmers also felt a relatively strong sense of community within their posts, and 80 percent believe that the community supports each other in the area. Most farmers agreed that they see themselves as a *gemeenskap*, or ‘community’, more than as individual farmers.

Land is regarded as an important link to family life, with 16 out of 20 individual respondents emphasising the value of land to family, and only nine stating that land had a financial value. Religion played an unexpectedly high role in people’s views of the importance of land (Table 6.10), as many said the land was given to them by God, and in the Bible He commanded them to be productive on it.

Table 6.10 What importance does land have for you?

	(Individual interviews) (N=20)	(Village interviews) (N=27)
Religious	17	4
Ancestral	1	8
Friends	2	0
Traditional	1	6
Family	16	16
Financial	9	2

(More than one answer possible)

The importance of land for livelihoods was emphasised by most farmers. “As jy nie grond het nie, het jy nie ‘n heengaan nie, en dan het jy ook nie ‘n toekoms nie<sup>22</sup>” (Kries respondent 1 2014).

<sup>21</sup> In English: We Namas are now here on this land for which blood has spilt. Blood has flowed for all Namas, not only the Bondelswarts or the Swartboois, in order for them to be able to stay and live in the south. The people who now cause trouble, or are difficult, do not understand what their forefathers have fought so hard for.

<sup>22</sup> This can be translated into English as “if you do not have land, you do not have a place to go to and consequently you do not have a future”.

In Afrikaans, the word *grond* is used to describe land. Yet *grond* can be described better by the English word ‘soil’, than by the term ‘land’. Symbolically, the Namas refer to their land as *grond*, referring to the actual soil they live and work on.

Many farmers also expressed the strong desire to be moved to a resettlement farm, since they could then divide up the land into camps for grazing and improve their livestock farming. However, most said they would then still not relinquish their communal farms, as that is the place where they grew up. One farmer said that he had put so much effort into his farm, he could not just give it up permanently.

It can be observed that in the Hardap region, land is seen both as a traditional value just as much as the basis for agricultural production- mainly small livestock farming. On the one hand the farmers in the region are proud to be Namas and have a strong sense of belonging, often based on their long historical struggle for land and continued displacements under the colonial and apartheid regimes (refer to Chapter 4). Yet, on the other hand, they are willing to move around in the area to find better grazing and better conditions for their livestock- noting though that they showed no desire to move to the northern communal areas. They did show a strong desire to be granted farms under the government’s resettlement programme, as they believe such farms would best allow them to become commercially competitive farmers.

### **6.2.6 Tenure security**

Similar to Okamatapati, the respondents did not automatically include their CLRC as a form of written proof to occupy a piece of land, with only 13 out of 20 stating they had written agreements to occupy that piece of land, even if they had registered for a CLRC, while six had a verbal agreement).

Interestingly, there was not an overwhelming amount of trust in the TA, with half of the individual household and village meeting respondents indicating that they did not trust their TA more than government. The TAs were also only slightly more seen to protect people’s land rights in comparison to government.

According to Albertina Kandiba, CLB Secretary for the Hardap region, the TA and farmers generally support CLRR, however conflicts sometimes arise when a newcomer to the community wants to register a new customary land right (2014, Pers com). The Bondelswarts TA noted that people who were already settled in the area felt uncomfortable with new settlers, however that this was more due to ‘interpersonal relationships’ than necessarily about grazing or water issues. Cloete (2014, Pers com), from the Bondelswarts TA, states that the farmers who are already settled on the land see land as an “inheritance issue”- meaning that they respect the TA rules because they

have been part of the land for generations. However, “nuwe mense wil hulle eie base wees en minag die raad”<sup>23</sup>, without respecting the existing structures and practices that have been there for generations (*ibid.*).

One major problem all the TAs in the area are witnessing is that the communal farms are becoming overpopulated, yet they cannot refuse people to get land. According to Cloete (2014, Pers com), the CLRA states that each farmer can have a certain number of large and small livestock on communal land, yet he wonders what will happen to the availability of grazing if more people come the areas and everyone wants to farm there with the maximum number of allowable livestock. According to the TA, the biggest dilemma is that government expects TAs to administer land properly, however they do not have the authority to override the CLRA or government’s land reform aims. They complain that neither the CLRA, nor the TA Act, states how they should administer the problem of the carrying capacity being exceeded in communal areas- especially if the CLRA sets the limit for livestock. Cloete expressed his frustrations by stating that “die arm mense wie nie eens geld vir pap het nie word net nog meer vertrap deur die ryk mense met al hulle vee”<sup>24</sup> (2014, Pers com). They state that overpopulation due to more people coming in, especially with their livestock, has resulted in the availability of land and grazing becoming less and less. Thus the TA says they would wish for government to consult more with them on certain management issues in communal areas.

Similar to the Bondelswarts TA, the Witbooi TA members complained about the overstocked communal areas, as the number of livestock on the land often exceeds the carrying capacity of the area. Simon Jacobs, the chairperson of the Witbooi TA council, said that the TA generally tried to encourage people to apply for resettlement farms when they have a lot of livestock, however few do that (2014, Pers com).

The main disputes that the Witbooi TA encounters are related to water and grazing issues. They said that many farmers have now started to put private water pipes from the communal water point to their homes, which has caused unhappiness amongst neighbours as they then use more water for the same price. They also complained that due to improper fencing and not being permitted to erect *kampe*, a formal enclosure for livestock surrounded by a fence, livestock easily roam onto other people’s farms for grazing. One Witbooi TA member said that if you want to be a farmer, you need proper *kampe*, and that the discussions of the MLR to remove all fences on the previous Odendaal farms to make it similar to other communal areas in the South was not feasible:

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<sup>23</sup> In English, it means that “new settlers want to be ‘their own bosses’ and disrespect the TA”.

<sup>24</sup> In English: Poor people who do not even have money for porridge are being dispossessed further by rich people with all of their livestock.

“Hoe moet ons die grond beheer as dit kaal is omdat die beeste van ander areas ons weivelde verwoes het? Op die ou Odendaal plase het ons ten minste grense en heinings. Hier boer ons ernstig. Daar in die suide by Berseba [southern communal area where many Nama reside in the Karas region] is die grond nie meer so goed want hulle het minder beheer oor hulle land. Die wet [CLRA] praat oor Wamboland. Die wet praat nie van hoe ons op die Odendaal plase boer nie. Kampe word afgebreek want dis mos communal areas hierdie. As jy ‘n boer wil wees, dan het jy kampe nodig”<sup>25</sup> (Witbooi TA member 3, 2014, Pers com). Another TA member added that the management of their land was facilitated because of the clearly demarcated boundaries and *kampe*, unlike in the northern communal areas, where everything was just chaotic [“alles daar is net deurmekaar en mens weet nie wat is waar”] (Witbooi TA member 2, 2014, Pers com). He said that if the government had taken a more systematic approach to land rights registration and development in communal areas, they would have erected fences and installed proper water infrastructure, and agricultural productivity would have been much higher in Namibia’s communal areas (*ibid.*).

None of the respondents or their families had ever been threatened by eviction from their land and they have not yet been aware of cases where land was taken or grabbed from people. Eighty percent also said that illegal fencing was not a problem in their area. Yet 44 percent of village households stated that they are sometimes worried that someone will take their land away. Eighteen out of twenty individual household respondents indicated that they did feel safer on their land after obtaining a CLRC, and two said they felt just as safe. “Noudat ek die papier [CLRC] het, voel ek beter” (Kries respondent 3, 2014), indicating that now that this farmer has formal proof of living here, he can rest more assured that nobody will take the land away from him.

In terms of inheritance, half of the respondents (10 out of 20) said that land would go to the children, seven said to a specific child and three stated the spouse and children. Interestingly, none of the respondents had indicated that the spouse alone would inherit the land.

During the individual interviews, 17 out of 20 respondents said the inheritance under the CLRA was the same as their traditional practices, with only three indicating it was better than before. In general, all except one of the individual household respondents felt that CLRR was not infringing on, or against, their traditional customs. However, feedback from the village meeting showed that 59 percent of respondents think inheritance under the CLRA is worse than in their own customs.

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<sup>25</sup> In English: How are we supposed to manage the land if it is degraded because of livestock from other areas? There were at least fences on the old Odendaal farms. We are serious farmers on this land. In the far southern communal areas of Berseba, the land is no longer as good because they have less control over their land. The act (CLRA) refers to the situation in ‘Ovamboland’. The act does not talk about how we farm here on the Odendaal farms. Fences are broken down because it is supposed to be a communal area. If you want to be a farmer, you need proper livestock enclosures.

According to the TAs interviewed, the inheritance practices of the Nama are inherently fair and protective of women's rights. It is Nama custom that once a husband passes away, his wife and children will inherit the land. They mentioned a case where a woman had lived with her boyfriend on his piece of land for many years. When he passed away, the community agreed that she should inherit the land, as "it is the number of years you live together that counts, not the marriage certificate" (Bondelswarts TA member 2, 2014, Pers com).

Ultimately, all respondents during the individual interviews said they would support CLRR. However, only 41 percent of respondents from the village meeting said they would vote for CLRR if they had a choice.

It is interesting to note how the Bondelswarts TA interviews started off on a very positive note towards the CLRR programme, yet became increasingly sceptical as the conversation progressed and they started to express their frustrations regarding certain aspects of communal land rights registration. Their main concerns are related to the management of livestock- the main source of income for many communal farmers in the Hardap region- and the pressures on communal areas. If they lose access to proper grazing or the carrying capacity is exceeded, most communal farmers' livelihoods will be severely affected. Thus they are very concerned about how CLRR impacts their land's productivity. "Baie mense verstaan nie wat 'boerdery' beteken nie. In die Noorde boer hulle met *mahangu*, maar hier op ons harde grond in die Suide kan ons net met vee boer"<sup>26</sup> (Bondelswarts TA member 1, 2014, Pers com).

"Hoe kan iemand wie nie fisies op die grond bly, weet hoe dit bestuur moet word? Ons het hier groot geword en ken ons mense en ons plase en weet hoe dinge gedoen moet word"<sup>27</sup>. This statement was directed at government, who the TA believes does not understand the situation of communal land in southern Namibia- especially in view of the fact that the government is made up mostly by representatives from the Ovambo community, who come from the northern communal areas. The Witbooi TA members stated that they would like government to take into account their water situation, land uses and land needs and agricultural production when making laws and policies.

### 6.2.7 Conclusion

The farms in the Kries area were all developed under the schemes of the Odendaal farms in the 1960s. Nearly all communal land parcels in the area have been mapped and registered in the

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<sup>26</sup> In English: Many people do not understand what 'farming' means. In the North they farm with mahangu, but here in the South the soil is hard and we can only farm with livestock.

<sup>27</sup> In English: How can anyone who does not physically live on this soil (in this area) prescribe how to manage it? We were raised here, we know our community and their farms, and thus have an understanding of how things need to be done.

Gibeon constituency and there is a general acceptance towards CLRR. Their main concern regarding CLRR is related to the management of livestock- the main source of income for many communal farmers in the Hardap region. Farm outputs in Kries are however still largely used for own household consumption.

As was similar in Okamatapati, nearly all of the respondents indicated that their livestock was their most valuable asset on the farm, with the second most valued assets being houses, fences and water infrastructure. The main expenses on the farm are for agricultural production and household expenditures, including food.

Land is regarded as an important link to family life. A majority of the farmers expressed the wish to stay here because this is where their families live and their children were born. In Kries, land is seen both as a traditional value just as much as the basis for agricultural production. Many farmers also expressed the strong desire to be moved to a resettlement farm, since they could then divide the land up into camps for grazing and improve their livestock farming. However, most would still not want to relinquish their communal farms.

The Bondelswarts TA said that they generally did not have a problem with the CLRA, as it ensured tenure security. However they feel that it does not take into account their land uses and land needs and thus it does not allow them to administer the land sustainably: “Al wat ons deesdae doen is om toekennings te gee vir mense om land te kry. Wat moet ons doen? Brand management is uit ons hande uit. Daar is nou wette soos die Bosbou wet- alles wat ons grond aanraak word nou deur wette gereël en ons kan net doen wat government sê<sup>28</sup>” (Bondelswarts TA member 2 2014, Pers com).

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<sup>28</sup> In English: All we do these days is to allocate land. What are we to do? Fire control is no longer our mandate. There is now legislation like the forestry act- everything that affects our land is now regulated by legislation and we can only do as the government says.

## CHAPTER 7 COMPARATIVE OVERVIEW

*“[W]e make a living from cattle, not gardens”*

(Ovaherero TA member, in Nunuhe 2012)

The previous two chapters closely examined the individual case study villages from the four selected regions of Kavango East, Omusati, Otjozondjupa and Hardap. By taking a closer look at each village’s land uses, land administration processes, the meanings attributed to land, their land needs and opinions regarding CLRR, it becomes clear that even though there are certain similarities between various communal areas, there are also differences. This chapter will create a broader overview of these differences and similarities, by providing a comparative overview of the findings which were discussed individually in the previous chapters.

### 7.1 REGISTRATION DATA

It can generally be said that, except for Shipando village, CLRR has progressed relatively well in recent years. All individual household interviewees had registered for a communal land rights certificate in Kries, and over 80 percent and 60 percent in Omahalya and Okamatapati respectively had already registered (Figure 7.1). Only in the Kavango regions has registration not progressed, since the TAs continue to oppose the formalisation of land rights, which seems to be supported by the majority of the population in those regions. Overall, even taking into account the non-registration in Shipando, the majority of the respondents in the four survey areas had registered.

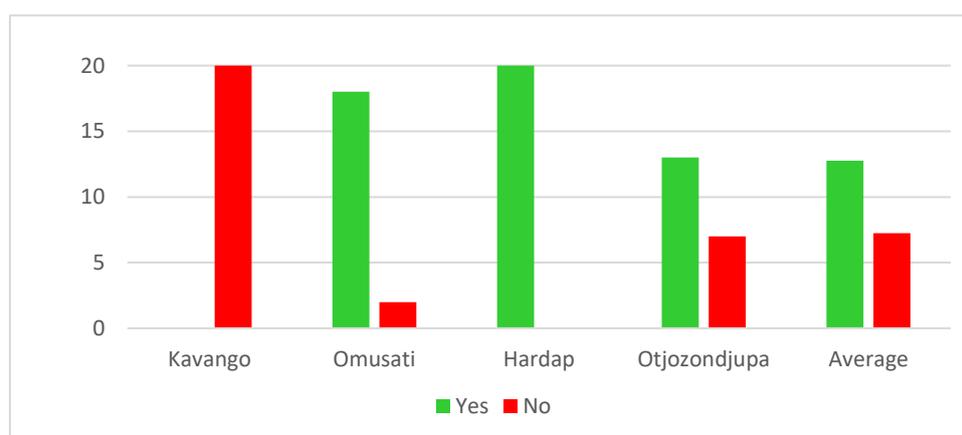


Figure 7.1 Registered for a CLRC (individual interviews)

(N=20)

The village meeting feedback also indicates that the majority of farmers in Omahalya village had registered, and many had also already registered in the Okamatapati area. Only in Kries was there a discrepancy between the individual household findings and those from the village meeting, as there was not a big margin between those who had and those who had not yet registered (Figure

7.2). As already discussed in Chapter 6, this could be due to the fact that there was a misunderstanding about what a CLRC was at the village meeting, and people had to be reminded once again about CLRR. This in itself was a significant observation, since people needed to be reminded about the land rights registration process, despite many people having registered in recent years. It is already an indication of a certain level of ignorance amongst the people in the Kries area regarding CLRR, since it has not made a significant impression on them and is not a regular topic of conversation.

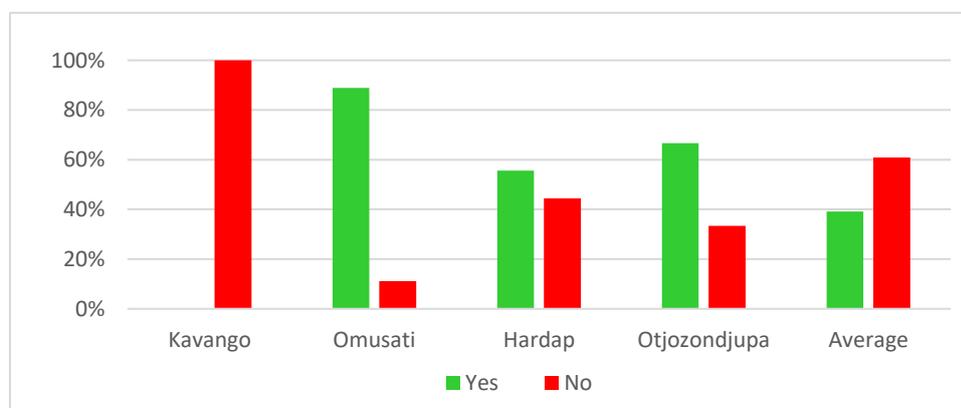


Figure 7.2 Registered for a CLRC (village interviews)

The findings from the field research, except for the village meeting feedback in Kries, generally correlate with the official number of registered land rights from the MLR, as by mid-2015 (Table 7.1). According to the MLR data, nearly all existing land parcels have already been registered in the Gibeon constituency area (under which Kries falls), and more than 70 percent of land parcels have been registered in the Okakarara constituency (of which Okamatapati is part) and the Anamulenge constituency (for Omahalya).

Table 7.1 Number of registered and unregistered land parcels in the research area constituencies

Region	Constituency name	Village name	Registered land parcels	Unregistered land parcels	Total land parcels	Total percentage of registered land parcels
Kavango East	Ndiyona	Shipando	Land parcels in this constituency have not been registered		92 leaseholds	N/A
Omusati	Anamulenge	Omahalya	1870	542	2412	77.5%
Otjozondjupa	Okakarara	Okamatapati	1908	665	2573	74.2%
Hardap	Gibeon	Kries	1139	52	1191	95.6%

(Based on information received by the MLR in July 2015)

Despite an initial assumption that a person with more years of formal education would be more likely to register, it seems that level of education and willingness to register are not necessarily correlated (Figure 7.3 shows the totals for the four individual household surveys). Since very few of the respondents had a tertiary education, the next highest education level reached was secondary school- even though many had not completed their final year of high school. Initially it seems like most people who had registered had at least some form of education, with most having reached secondary school. Yet the majority of those who had not registered had also reached secondary school. Thus an automatic assumption that the higher the level of education, whereby people might then better understand what benefits can be derived from registering, cannot be made.

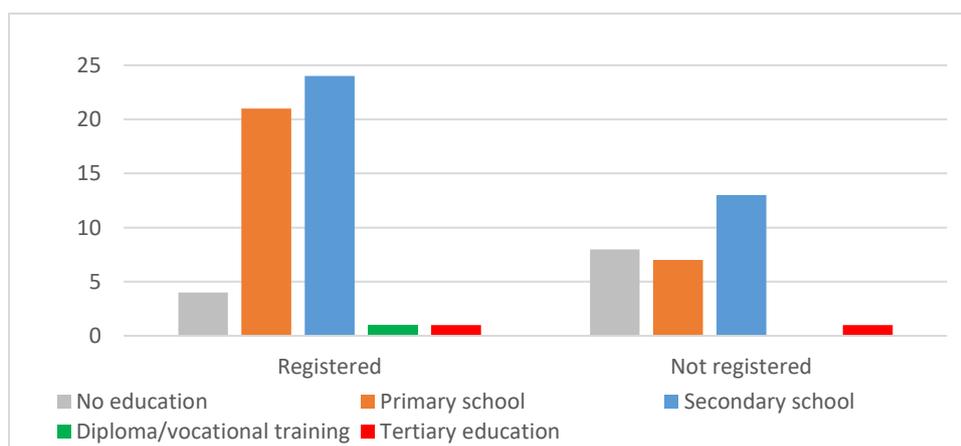


Figure 7.3 Registered for a CLRC (Education) (Individual interviews, total N=80)

## 7.2 FARMING BACKGROUND

The demographic situation in the four research areas is quite different. In the two northern areas of Omusati and Kavango East, the population density is significantly higher. In the southern regions of Otjozondjupa and Hardap, which is predominantly arid to semi-arid, the population density is lower. Figure 7.4 illustrates how, particularly in the O-Regions, there is a very high density of dwelling units, and to a lesser extent in the area directly next to the Kavango river. The dwelling unit density is much less south of the VCF.

Furthermore, the farm and village layouts in the four case study areas are different from another. In Shipando, the homesteads are clustered closely together in the village, with bushland, crop fields and grazing areas on the borders of the village (Figure 7.5)

In Omahalya, the homesteads are larger than those in Shipando as they include the crop fields directly at the homesteads. Land parcels are more clearly delineated and fenced-off. The village is bordered by *oshanas* and the grazing areas (Figure 7.6).

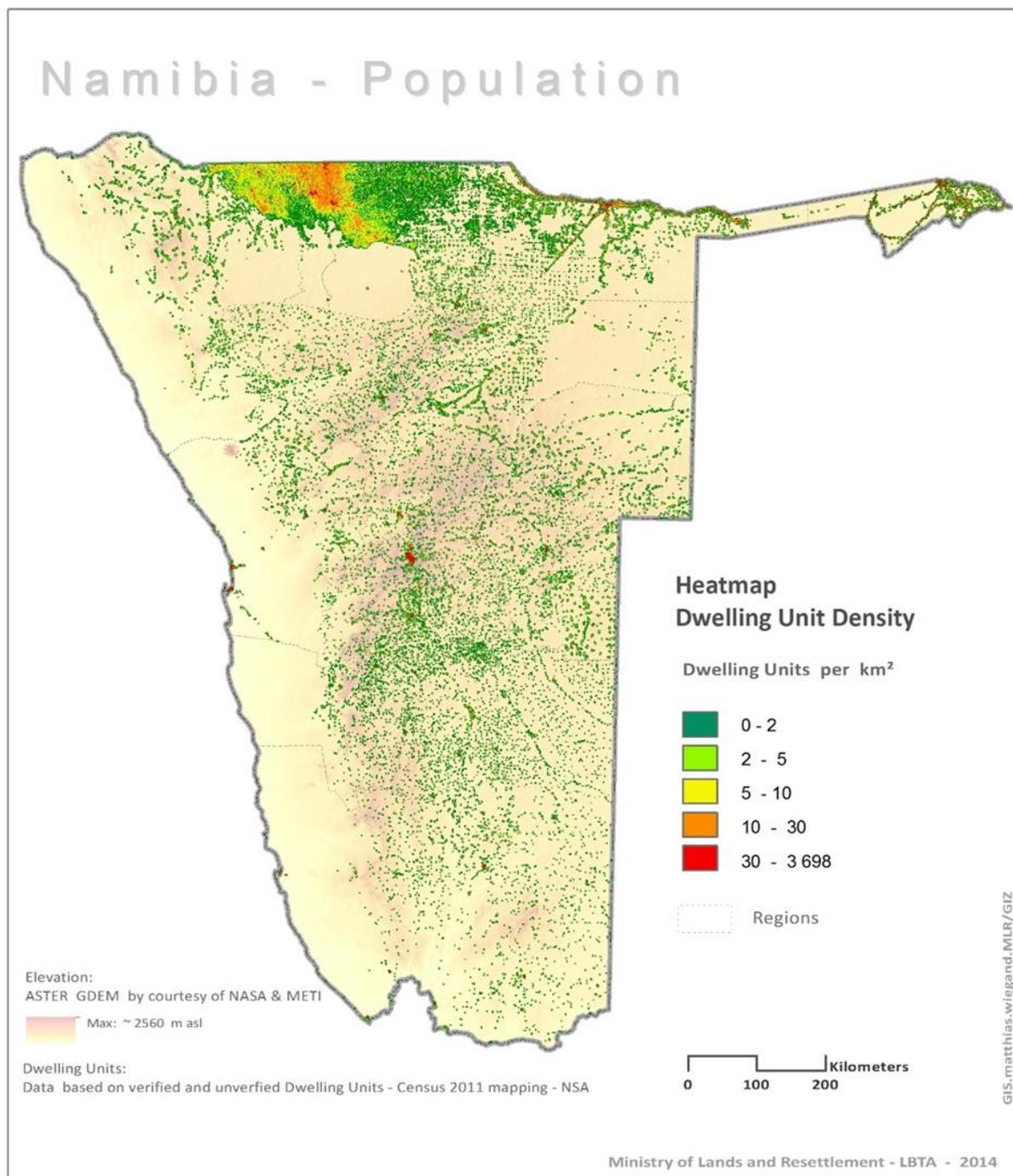


Figure 7.4 Heatmap of dwelling units in Namibia

(MLR 2014)

Communal farms on the former Odendaal farms in the Okamatapati area look very different from those in the northern communal areas. In this area, large pieces of farmland are divided into blocks, varying between 2000 and 5000 hectares. On each block, a few households have established their homesteads, with the kraals directly by their homes. The remainder of the land is used for grazing, which has clear fences (Figure 7.7).



Figure 7.5 Aerial image of Shipando village

(Google Earth)



Figure 7.6 Aerial image of Omahalya village

(Google Earth)



Figure 7.7 Aerial image of communal farms around Okamatapati

(Google Earth)

Lastly, the former Odendaal farms in the communal area of Kries are also quite dispersed and spread out across the area. Around each so-called 'post' are a few communal farms which share a water point and grazing areas. The homesteads are quite small, with sometimes a little garden adjacent to the home. The area is not as well fenced as in Okamatapati (Figure 7.8).



Figure 7.8 Aerial image of communal farms around Kries

(Google Earth)

As was found during the surveys outlined in the previous two chapters, most of the farmers living in the communal areas consider themselves to be full-time farmers, with only a few being part-time farmers. Yet the degree to which these farmers in the different communal areas make a living from their land varies greatly (Figure 7.9). It also highlights the fact that the term ‘farmer’ can take on many different forms- from farming for subsistence to wanting to farm predominantly commercially. In Shipando, most of the output generated from the land was for home consumption, and they only sold some of the output, mainly maize, if they had some surplus. In comparison to the other case study areas, the villagers from Shipando were also very dependent on natural resources from the commonage for additional income- such as wood, fruits and grass, which they sometimes sold next to the road or used to build houses for others for additional income. In Omahalya, even though the soil is well suited for crop production and people tend to have more cattle than in Shipando, nearly all food produced was for home consumption and hardly any farmers sold their outputs. If livestock was slaughtered in the area, it was mostly used for their own consumption or for social occasions. In Kries, the soil does not support crop farming, and most people farm with small livestock such as goats or sheep. What happens to their outputs is quite diverse, as there are even great differences within the community itself. There is a relatively equal distribution between those who only use the output for home consumption, those who mainly use it for themselves but sell a little, and those who sell most and only use some for themselves. Hence one cannot make as clear a distinction in Kries in terms of what farm output is used for, as one can make in the two northern communal areas. In contrast, most of the farm output in Okamatapati is sold. Livestock farming in the Okamatapati area is taken very seriously, and farmers in this area strive to be considered as commercial, and not communal, farmers.

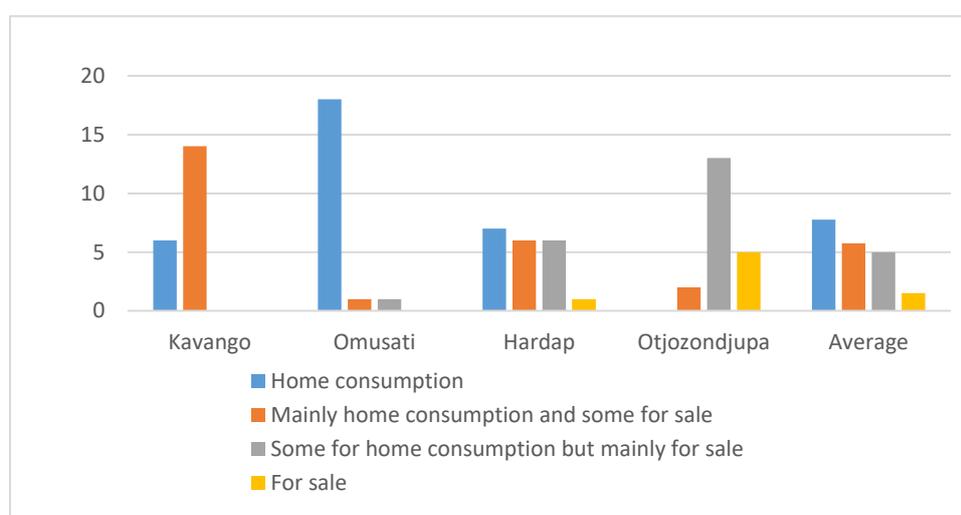


Figure 7.9 Farm output

(N=20 for each region)

The sources of main income on the communal farms in the case study areas reflect whether the farm output is generally used for household consumption or sale. In Shipando, the main sources of income are from pensions and remittances sent by relatives (Figure 7.10). The remaining income is generated from small jobs, piece work, selling of natural resources, some sales from farm output and government grants. Shipando was the only area where people make some additional money from selling natural resources from the commonage areas and doing piece work on farms in the area. In Omahalya, the main income comes from wage labour, often seasonal work on farms or in town, followed by income from pensions and remittances by family. In Kries, a significant amount of people derive their main income from pensions. Yet, compared to the case study areas in Kavango East and Omusati, income from sales plays a more important role, as more than 30 percent of households in Kries depend on farm sales as their main income. As expected, over 70 percent of farmers from Okamatapati derive their main income from their farm output, which is the highest figure in the case study areas. The rest of the income is either derived from pensions, or from wages- mostly by part time farmers who work in towns.

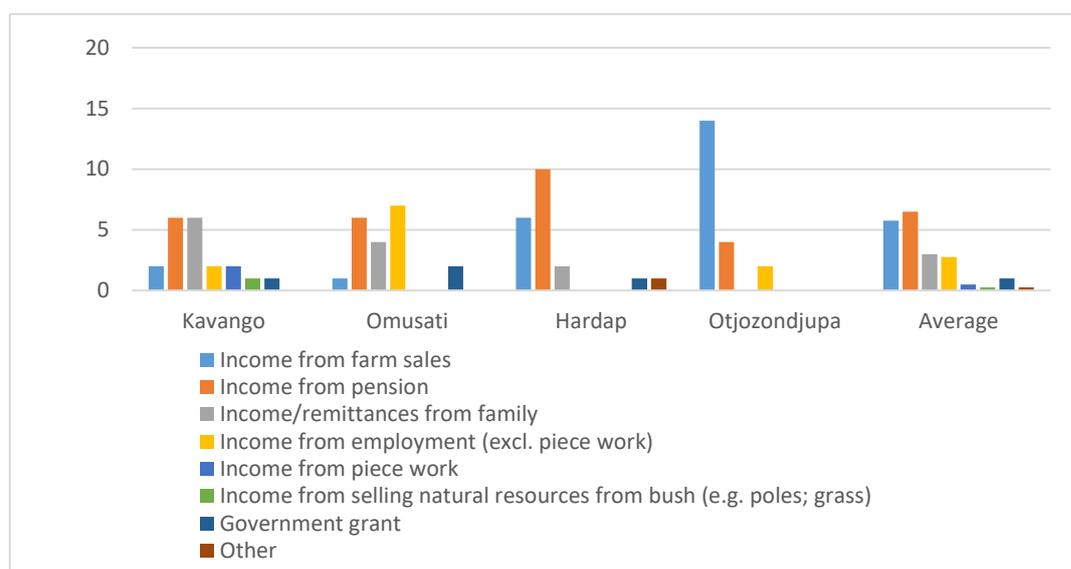


Figure 7.10 Main income on farm

(N=20 for each region)

The MLR management staff interviewed all mentioned that communal land was used differently across the board. Niita Iipinge, Deputy Director of Resettlement<sup>29</sup>, said that many different interests are represented on communal land: from those who have more commercial interests to those who merely live on the land for subsistence (2015, Pers com). Alfred Sikopo, former Director for Regional Programme Implementation at the MLR, said that there are farmers in communal areas who keep livestock for traditional reasons, and others who want to farm seriously with their livestock (2015, Pers com). Britta Hackenberg, former programme manager for the

<sup>29</sup> The Deputy Director is responsible for all regions across the country.

implementation of the CLRR at the MLR, agreed that every person would like to produce a surplus on their land, however that does not mean that everyone wants to strive to be more than subsistence farmers (2015, Pers com). She argues that many, especially in the northern regions, regard communal land as a ‘safety net’, as it can provide a place to live once retired or one can make a livelihood from it if unemployed (2015, Pers com).

Nearly all farmers in Kries and Okamatapati consider their livestock to be the most valuable asset on their farms (Figure 7.11). In Okamatapati, farmers feel that the second most valuable asset by far are fences, followed by the land itself and water infrastructure (Figure 7.12). The farmers from Kries stated that water infrastructure, fences and houses were their second most valuable assets.

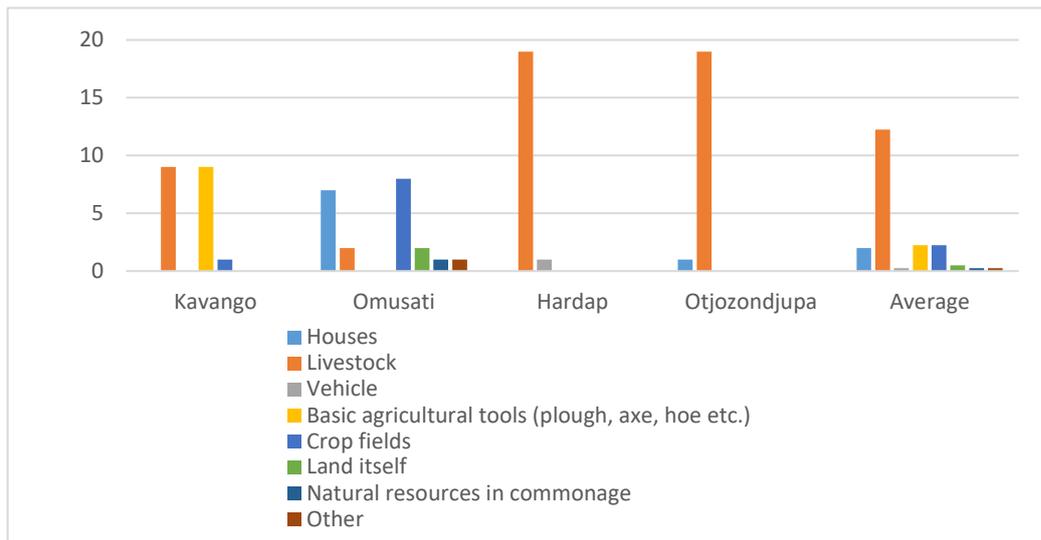


Figure 7.11 First most valued asset on the farm (N=20 for each region)

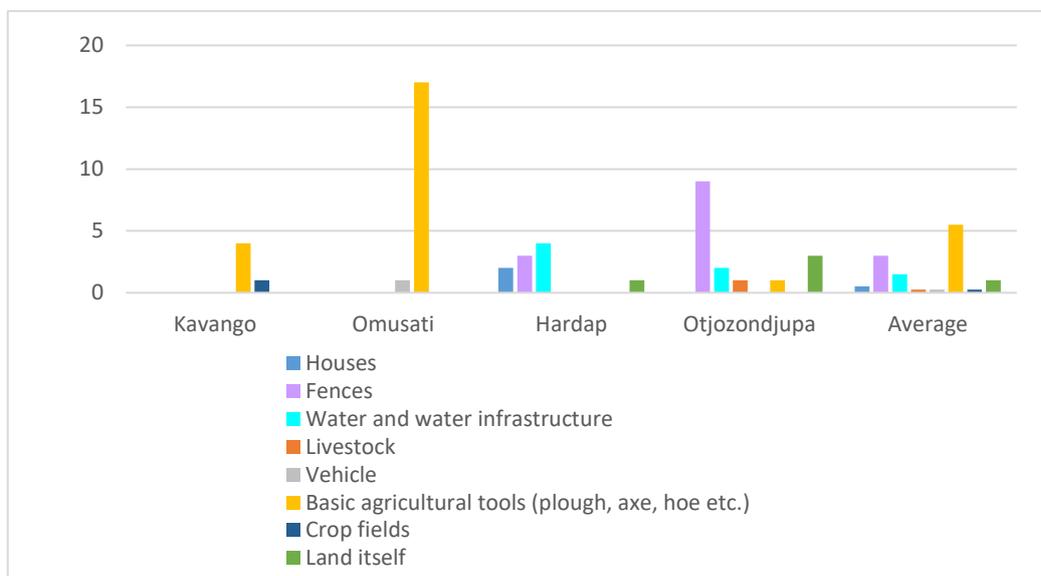


Figure 7.12 Second most valued asset on the farm (N=20 for each region)

These figures are yet another indication that the farmers from these communal areas place more significance on livestock farming and farming infrastructure. Interestingly, in addition to fences being an important asset to farm with livestock, Meijs- a consultant in the lands sector- believes that by putting up fences, people already indicate that they live there, therefore it is already a form of “local tenure security” (2014, Pers com).

Approximately half the farmers in Shipando also consider their livestock to be most valuable, with the other most valuable assets being their tools with which they farm and their crop fields. In Omahalya, crop fields and housing were regarded as the two most important assets on the farms. Agricultural tools were also regarded as important secondary assets for farming.

Nearly all farmers in the four case study areas indicated that they would like to expand or develop their farms (Figure 7.13). The farmers regarded developing one’s farming activities as a natural progression and a natural desire. However, the majority also indicated that a lack of infrastructural development had prevented them from farming properly or improving their farming operations (Figure 7.14) (N=20 for each region in the figures below).

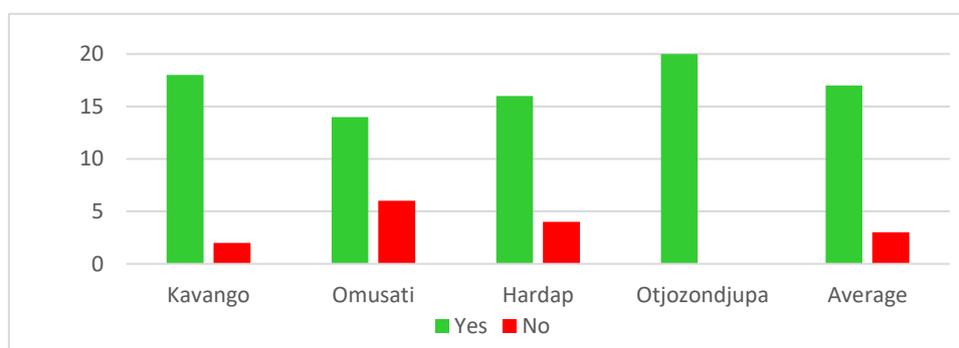


Figure 7.13 Do you have plans to further develop your farming operations?

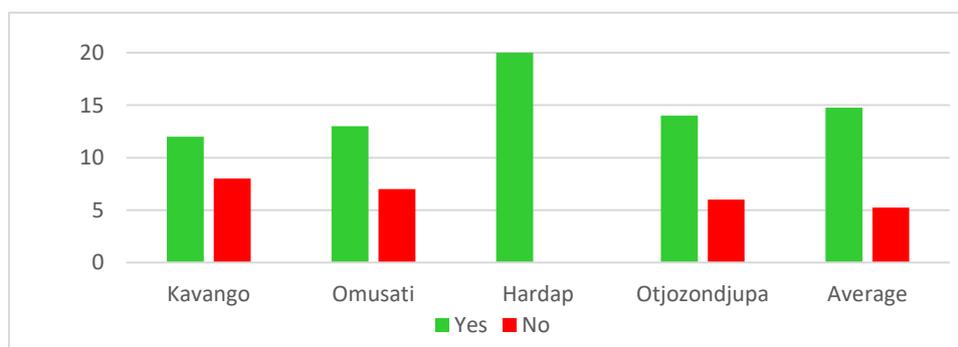


Figure 7.14 Has lack of infrastructural development hindered progress of your farming operation?

This is a significant finding, since a lack of infrastructural support was seen as the major prohibiting factor, and not other factors such as tenure insecurity. Sikopo said that some communal farms were underutilised, especially in southern Namibia, as a result of improper infrastructure

and lack of water (2015, Pers com). Similarly, communal farmers in the Okakarara Constituency generally expressed concern over the lack of development in the area, including insufficient or non-existent health and communication services (Nakale 2012).

This can be seen by the majority of responses which firmly stated that the possession of a CLRC had no influence over their decision to invest in their farms (Figure 7.15). As expected, everyone in Shipando stated that not having a CLRC had no impact on their investments in land. In the case study areas in Omusati and Hardap, nearly 80 percent had indicated that having a CLRC did not determine whether they would invest, and in Otjozondjupa nearly 90 percent of farmers stated that it had no influence at all.

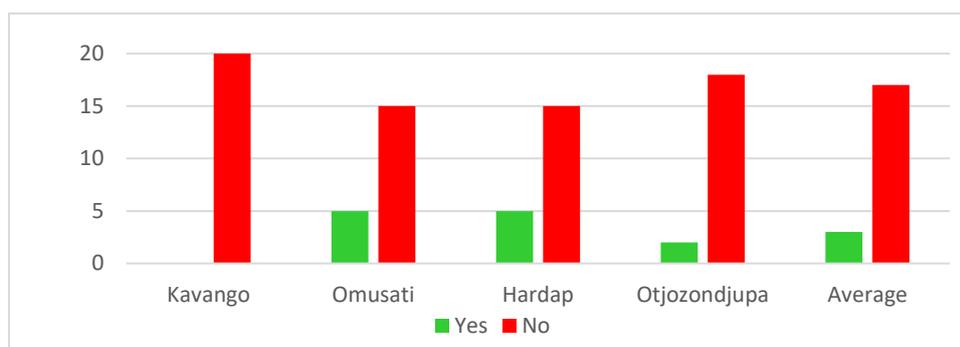


Figure 7.15 Does having/not having a CLRC influence your decision to invest in your farm?  
(N=20 for each region)

Similarly, the majority of respondents in Omusati and Hardap, and all in Otjozondjupa, stated that there had been no infrastructural changes on their land (Figure 7.16) and they had not invested more money on their farms since they had registered (Figure 7.17). This thus stands in direct contrast with general assumptions by many international development organisations and some economists, most notably de Soto, that the titling and investments go hand in hand.

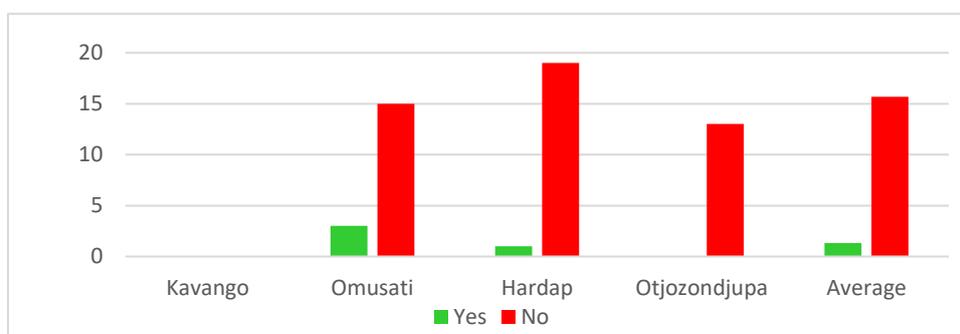


Figure 7.16 Have there been infrastructural changes since obtaining a CLRC?  
(N=20 for each region)

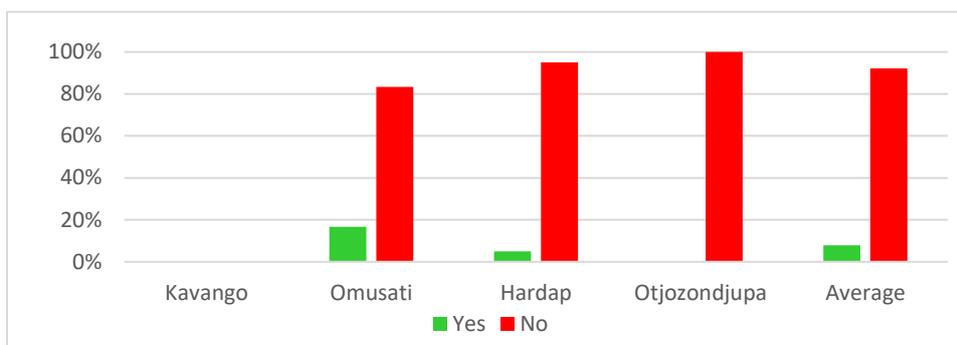


Figure 7.17 Have you invested more money in your farm since obtaining a CLRC?  
(N=20 for each region)

During the village meeting sessions, more than 60 percent in Omusati, nearly 80 percent in Otjozondjupa and all in Hardap stated that there had been no increases in productivity on their farms since they had registered (Figure 7.18). This feedback is of course based on people's opinions and their own perceptions of their land's output. It is also difficult to establish a direct correlation between registration and increased productivity, however as some farmers stated, it is their prerogative to expand and invest in their farms whenever they can, regardless of whether their land rights are formalised or not. Thus a lack of investments is not due to tenure insecurity, but mainly due to lack of finances to do so.

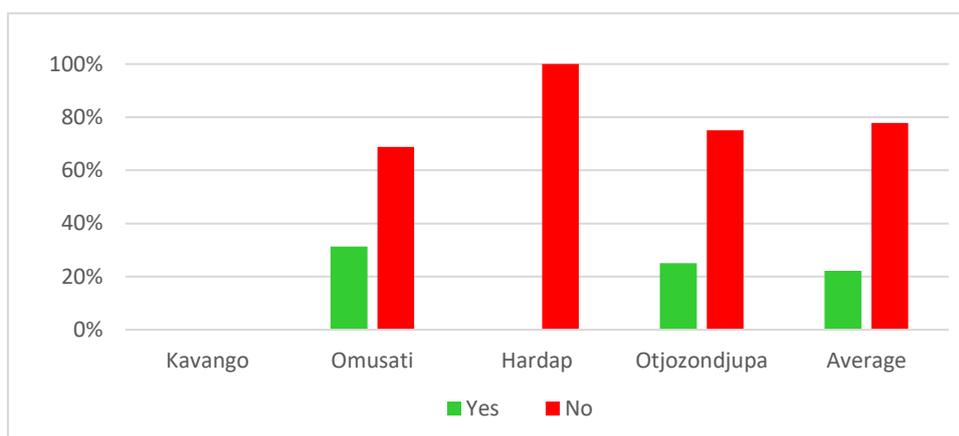


Figure 7.18 Has productivity on the farm increased since registering for a CLRC? (village interviews)

In terms of taking a loan, specifically for the farm, the majority of respondents said they had not (Figure 7.19). Only in Shipando had 60 percent made use of a loan, which was however made from friends or relatives during times of hardship. In Omusati, just over 20 percent had taken out a loan but, similar to Kavango, the loans were received from relatives. The loans in the Kries area were mainly from the German-Namibian Special Initiative to help with small livestock breeding. Most farmers agreed that taking a loan was too risky, as they had no guarantee of being able to repay the loan and they were too afraid they might lose any assets or even the land itself. Most

farmers were aware that they did not qualify to take out a loan. Even if they could get a loan with their CLRC- which they were aware was not possible, as banks do not regard the certificate as sufficient collateral since it is non-transferable land, in comparison to a title deed- 100 percent of all respondents in all four regions said they would not be interested in doing so. Thus all felt that even if it were possible, having a formal title was not a prerequisite to take out a loan.

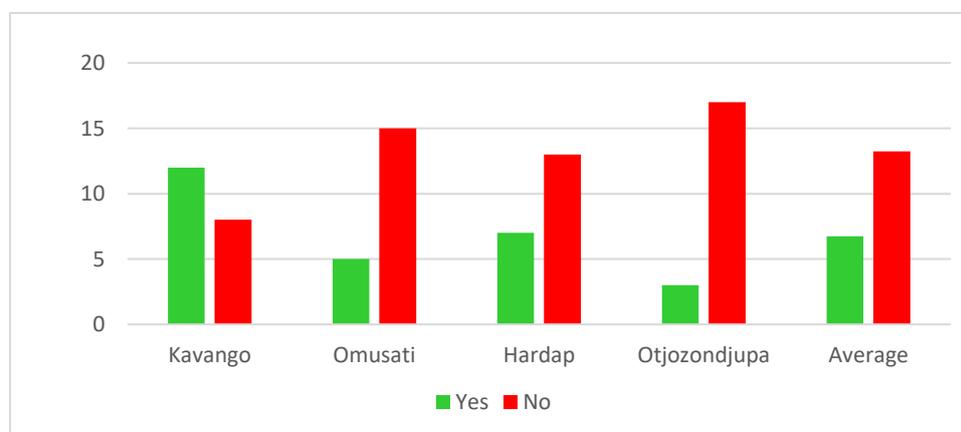


Figure 7.19 Have you ever made use of a loan? (N=20 for each region)

A further constraint to farm more commercially in communal areas is said to be the lack of access to credit. Financial institutions tend to perceive small-scale and communal farmers as high risk borrowers, even if these farmers had formal title deeds. “There is a minimum threshold below which banks are not likely to lend, whether they hold title deeds or not”, said Wolfgang Werner during a symposium on the economic potential of communal land in Namibia in 2012 (in !Hoaës 2012). Some banks do accept alternative forms of security loans, however the small sizes of communal farms are a constraint, as well as the fact that transaction costs are very high when extending small amounts of credit to remote and scattered farmers. According to Werner, this means that “the banks’ efforts compared to the interest earned are not going to be cost effective and will therefore not be commercially interesting to the bank” (in !Hoaës 2012). Werner also stated that even the only micro-financing bank in Namibia, Fides Bank, considers agricultural loans to communal and small-scale farmers too risky. Some banks accept non land-related assets such as a life insurance as collateral, however Werner rightly doubts whether a significant number of communal farmers own other assets such as life insurance policies. There are, however, a few instances whereby Namibian banks are willing to grant credit without securitised collateral, similar to Zimbabwe, where a few banks investigate the “perceived viability or bankability” of small farms to provide loans without collateral. In Namibia, some banks consider granting loans to applicants with strong balance sheets and a business plan, so as to ensure their repayment capacity (*ibid.*).

Gerhard Mukuahima, the head of agriculture at the Standard Bank Group in Namibia, said that banks cannot provide credits for land that is not transferable, i.e. that only has occupancy rights (2015, Pers com). Mukuahima said the biggest factor for the banks is that it is very difficult to estimate the value of communal land, since apart from it being vested in the state, the values are so different depending on the area and the land uses of the communal farmers (2015, Pers com). In addition, he said that one might still use livestock as collateral, however since most communal areas are not fenced, livestock can roam freely and thus does not provide a secured guarantee (*ibid.*).

In 2011, the Agricultural Bank of Namibia (AgriBank) approved loans to a mere 361 small-scale farmers in communal areas under the National Agricultural Credit Programme. Loans for farmers in the North-Central communal areas (or so-called O-Regions) constituted approximately seven per cent of AgriBank approved loans during 2011. AgriBank CEO, Leonard Iipumbu, attributed this small percentage to the fact that small-scale farmers in communal areas are not always able to meet the conventional collateral requirements (AgriBank disburses N\$192 million 2011).

Mukuahima said that a significant amount of loans taken by people who work in urban areas are in any case being re-invested into communal areas, as most people continue to have strong connections to communal farms even if they reside and work in towns (2015, Pers com). He used a personal example, saying that a friend of his had recently invested over NAD700 000 in his communal farm and that he knew of several similar cases (*ibid.*). Mukuahima said that he would roughly estimate that only 10-20 percent of overdraft facilities are for personal urban usage, as the rest is for farming, especially amongst the Herero and Damara populations (*ibid.*). He said one just needed to look at fuel stations leading out of the city at the end of each month- he described how there were lines and lines of bakkies (pickup trucks) packed with fencing materials, additional feed, and other materials which would be taken to communal areas (*ibid.*).

Mukuahima observes that there are different investment needs across the country- as people in the northern communal areas would rather spend money on expanding their crops fields, and in the central and southern communal areas more money would be spent on livestock (2015, Pers com).

Dr. Nghifindaka, the president of the Namibia Emerging Commercial Farmers Union (NECFU) believes that regardless of where one lives in the country and whether one is a commercial or communal farmer, farming is not just seen as a leisure activity (2015, Pers com). Asked why people apply to move to a resettlement farm, especially if they live in areas on the previous Odendaal farms with often similar conditions, she said that infrastructure was much better on resettlement farms and that people want to be able to say “this piece of land is mine” (Nghifindaka 2015, Pers com). According to several MLR senior management staff interviewed, the government’s

redistribution programme needs to go hand-in-hand with communal land reform, since resettlement can help to decongest communal areas by providing land to people with a lot of livestock who want to farm commercially.

However, one consultant working on land reform in Namibia said during an interview that there is no reason why communal land should be seen as inferior to commercial land, especially in parts of Otjozondjupa and some of the southern communal areas. Oloff Munjanu, the executive director at the Namibia National Farmers Union (NNFU), which represents communal farmers from across the country, states that there is a false perception that communal land is “backwards” in comparison to commercial agricultural land (2015, Pers com). Communal areas are in fact catchment areas for a significant amount of livestock that ends-up in the national market. Frans Kapofi, winner of the Namibian Meat Board (Meatco) award for the Producer of the Year in the Northern Communal Areas (NCA) in 2012 said that “[p]eople must understand that we who are farming in communal areas can produce the same quality of cattle as our competitors in the commercial areas. The only thing standing between us is this so-called Red Line. We are also farming commercially in the communal areas” (Communal farmers farm commercially in NCA, 2012).

It is assumed that over 60 percent of all livestock passing through auctions comes from communal areas (Tjimune 2015, Pers com). Only 800,000 of the national cattle herd in Namibia are based in commercial farm areas, the rest are all owned by communal or smallholder farmers (Cadilhon et al. 2014). There is thus huge economic potential in communal areas, however a lack of proper infrastructure in the communal areas and difficulty to market their cattle to demanding consumer markets in South Africa and Europe provide a challenge to capitalise on the assets in communal areas (*ibid.*).

### **7.3 RELATIONSHIP TO LAND**

As was seen in the previous discussion, there is a difference in how people make a living from their land in the various case study areas. In the two northern communal research areas, farm outputs are predominantly used for home consumption and people are largely dependent on subsistence agriculture. In contrast, some communal farmers in Hardap also earned an income from farm sales and many in Otjozondjupa farmed more seriously. Thus it is interesting to note that despite these differences, nearly all respondents in both the individual interviews and during the village meetings placed considerable value on land as a financial asset (Figures 7.20 and 7.21). Yet this has to be seen in context, since ‘financial’ can mean different things to different people.

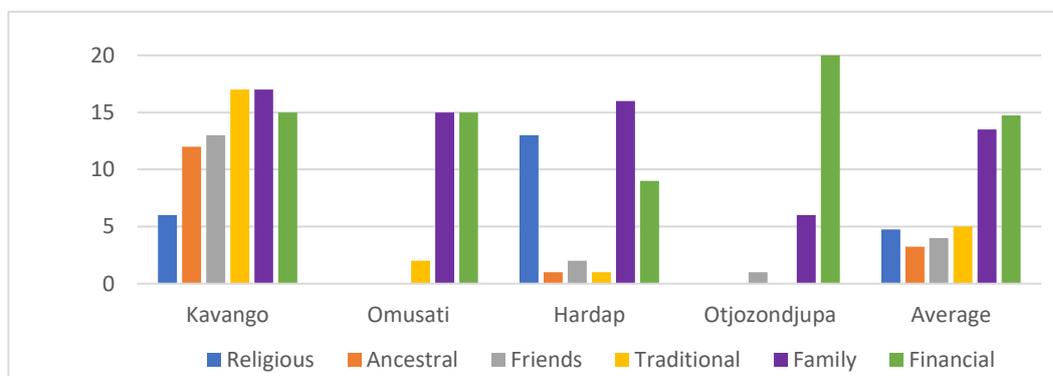


Figure 7.20 What importance does land have for you? (individual interviews) (N=20, more than one answer possible)

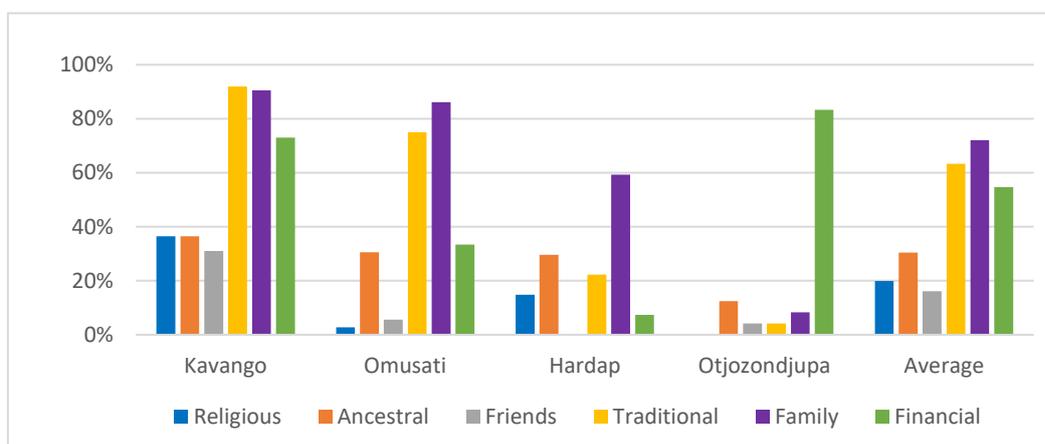


Figure 7.21 What importance does land have for you? (village interviews)

In Otjozondjupa, it was clear that land as a financial value meant that it was the main source of income for them. In the Kavango case study area, it was regarded as the foundation on which they made a subsistence living and from which they could earn some money, even if very little. In Kavango, Omusati and Hardap, emphasis was also placed on land as a family value, meaning that the land they lived on had strong links to their family and sense of belonging. Interestingly, in Shipando, and to a certain extent in Omahalya, land as an asset to live out traditions was highly valued. In these areas, people considered land to represent their customs and to be the place where they could live according to their traditions.

Thus, based on where people see the value of their land, they also have stronger ties to their piece of land. In the Kavango, where the value of land goes beyond financial to family and tradition, all respondents asserted that they would not want to move away (Figure 7.22). In Omahalya, most respondents would want to move away if they could find better grazing and possibly better water infrastructure. Yet they would remain in the Omusati or, at the furthest, in another O-Region. In Hardap, the main value of land was seen to lie in its connection to family, and interestingly the majority of respondents indicated that they would also not want to move away from this land. This is noteworthy, as it shows that even though more people in Kries make a living from their land

than in Shipando or Omahalya, they would not necessarily want to move away, as their meaning of land is deeply embedded in socio-historical relationships. Former MLR Minister !Naruseb believes that one should look beyond just the economic value of land, as “land is an important factor in the formation of individual and collective identity, and in the day-to-day organisation of social, cultural and religious life” (in !Hoaës 2012).

In contrast, most farmers in the Okamatapati area said they would like to move away to an area with better farming conditions and infrastructure. These farmers all stated that they would ideally like to receive a resettlement farm from government, as they believe that would provide them with a better chance to farm more productively and become ‘proper’ commercial farmers.

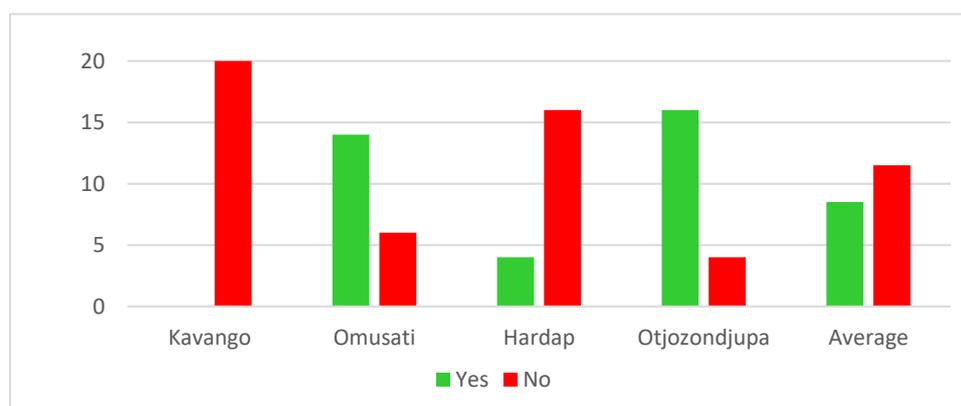


Figure 7.22 Will you ever consider moving away? (N=20 for each region)

#### 7.4 TENURE SECURITY

In terms of people’s relationships to their TAs, all regions, except Kavango, had similar responses during the individual household interviews. In Omahalya, Kries and Okamatapati, respondents generally did not trust their TAs more than government regarding land administration, or they said they trusted them equally (Figure 7.23). In Kavango, nearly 60 percent of respondents indicated they thought the TA was more trustworthy than government. Interestingly, the responses from the village meetings were quite different for some regions from the individual interviews (Figure 7.24). In Shipando, even more people stated they trusted their TA more than government, and in

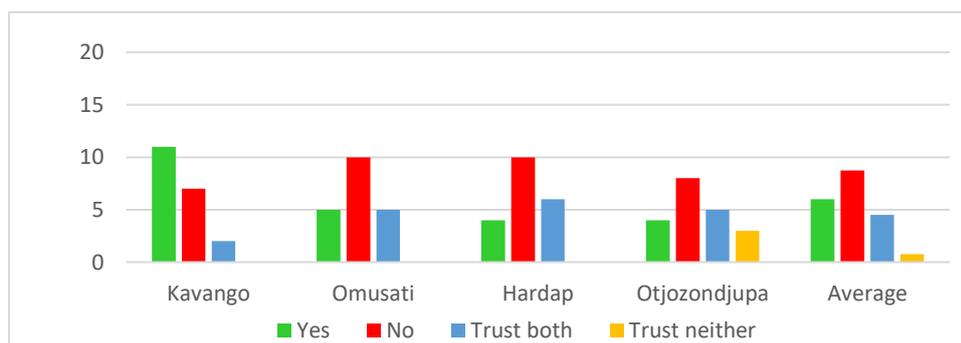


Figure 7.23 Do you trust your TA more than government? (individual interviews)

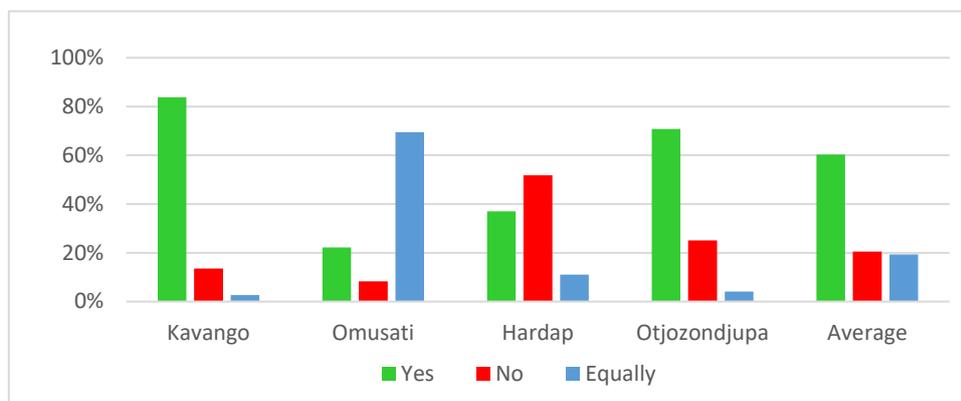


Figure 7.24 Do you trust your TA more than government? (village interviews)

Omahalya, the majority responded that they trusted both equally. In Hardap, a few more people had indicated that they did trust their TA more than government, and in Okamatapati the majority had said they trust their TA more. It is difficult to find precise explanations for these differences in answers, however a general assumption can be made that even though the village meeting questionnaires were filled-in individually and were anonymous, people experienced greater pressure to support their TA within a community setting. For Otjozondjupa, it has already been noted that because these questionnaires were taken by TA members to be filled-in separately and then returned, they are most likely not unbiased.

The majority of people had stated in the village meeting questionnaires in Shipando that they felt their TAs protected their rights to live on the land more than a CLRC can (Figure 7.25). In Omahalya, just over 40 percent had indicated that the TA could not protect their land rights as much as a CLRC could, but around 30 percent indicated that the TA was indeed able to, or was equally able to, secure their land rights. In Kries, the response was mostly similar in terms of people's perceptions whether their TA or the CLRC could better secure their land rights. In Okamatapati, just under 60 percent of respondents said the TA was better situated to protect their land rights.

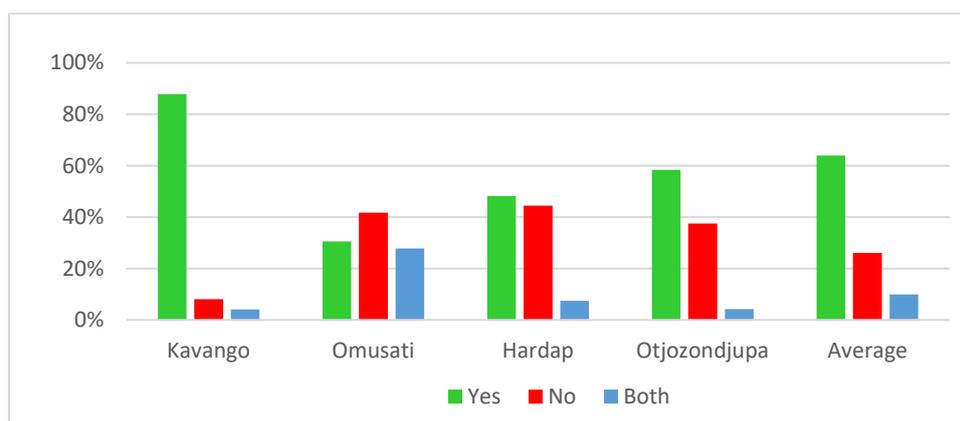


Figure 7.25 Does the TA protect your rights to live on this land more than a certificate can? (village interviews)

Interestingly, TAs across Namibia have come under crossfire from government over initiating or fuelling land conflicts in communal areas. Former President Hifikepunye Pohamba addressed land ownership during the 14th annual meeting of the Council of Traditional Leaders in November 2011. Pohamba reminded traditional leaders that communal land belonged to the state, and not to traditional authorities. Pohamba cautioned traditional leaders to stop instigating conflicts regarding land, asking “if leaders are the ones who instigate disputes, who then will solve such disputes? What then is the function of such leaders?” He continued by stating that therefore it was “not necessary for some traditional authorities to fight over land, the land which does not belong to them [...]. It has been realised that some traditional leaders are under a mistaken view that they own communal land. I must state that this is a mistaken impression” (in Shivute 2011).

There have continuously been reports in the media regarding cases of land grabbing in the Kavango Regions. Many of the cases involve accusations against traditional authorities giving large pieces of communal land to their own relatives or local elite. In one such case villagers accuse the leader of the Ukwangali Traditional Authority of giving land to his nephew, who then consequently fenced off the piece of land with the intention to develop a farm there. After some villagers had questioned this allocation and the erection of fences, they were fined several cattle “for insulting the traditional authority and its leader”. The traditional authority claims that the land had belonged to the nephew’s family and had been vacant for several years. The traditional authority furthermore insisted that permission to occupy the piece of land had been granted by the traditional authority’s land committee (Haikera 2012a).

In a similar case, allegations were made against a Deputy Minister for fencing off a large piece of communal land, measuring around 3000 hectares, in the Kavango Region to set up his own farm. Residents from the surrounding area, encompassing over 10 affected villages, complained that due to these fences, their cattle were not able to gain access to grazing areas and they could not access wild fruit on which they depend (Haikera 2012a; 2012b). Particularly poor villagers depending on access to the natural resources on the land have been severely affected (Haikera, 2012c). According to The Namibian newspaper, “[t]he practice of fencing off communal land is allegedly being done by wealthy individuals and high-ranking government officials with influence over traditional authorities” (2012b). In this case, it is alleged that the village headman was bribed by the Deputy Minister in question by being offered a job to assist with the fencing (Haikera, 2012c).

A further case where a large piece of land was allocated by traditional authorities without the consent of villagers happened in the Kavango West region. In 2013, traditional leaders in the region allocated over 90,000 hectares of land to a foreign company for the cultivation of *Jatropha*

for biodiesel. It is thus not uncommon for “traditional leaders to sell off huge tracts of land willy-nilly [...] at the expense of locals” (in Nakale 2013).

Yet in all regions, the majority or all respondents had indicated that their families had never been threatened with eviction from their land, or from so-called land grabbing (Figure 7.26). Yet both in Shipando and Kries, over 40 percent of respondents said that they were sometimes worried that someone would come and take their land away from them, and just over 30 percent in Okamatapati had indicated that they were sometimes worried they might lose their land (Figure 7.27). Only in Omahalya did 100 percent of respondents feel they were safe on their land and did not fear losing their land. Hence despite existing threats, as can be seen by the proliferation of land grabbing reports in the media, there is still a high sense of perceived tenure security amongst communities.

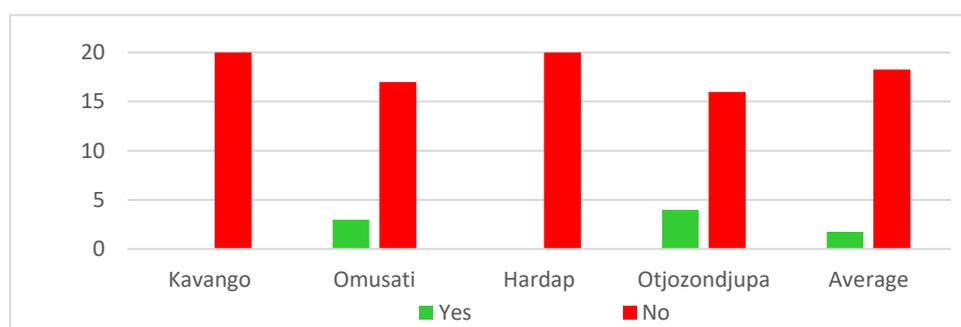


Figure 7.26 Has your family ever been threatened by eviction from this land?  
(individual interviews, N=20 for each region)

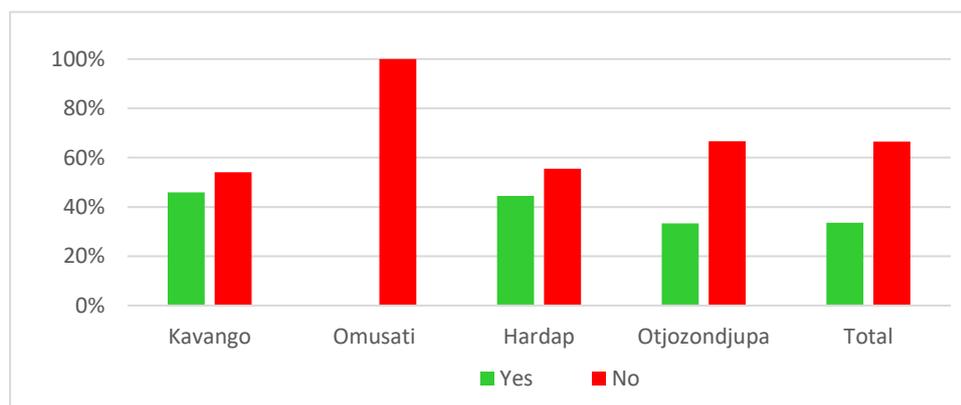


Figure 7.27 Are you ever worried that someone will take your land away? (village interviews)

Even though all respondents had felt safe on their land in Omahalya, nearly 80 percent of people indicated that they felt safer on their land after having obtained their CLRC, with the rest stating it did not make a difference and they felt just as safe as before (Figure 7.28). In Kries, nearly 90 percent of respondents said it made a significant difference for them in terms of tenure security. Just over 60 percent of respondents in Okamatapati said they felt more secure on their land, with 40 percent stating they felt just as safe as before. The village feedback indicated similar results, with between 70 and 80 percent of respondents indicating they felt safer on their land as a result

of land titling (Figure 7.29). Thus, despite there being a general perception of tenure security in these communal areas, regardless of CLRR, and most feel that CLRR has no influence on the productivity of their farms, the majority of respondents did feel that the CLRC provided some sense of additional security.

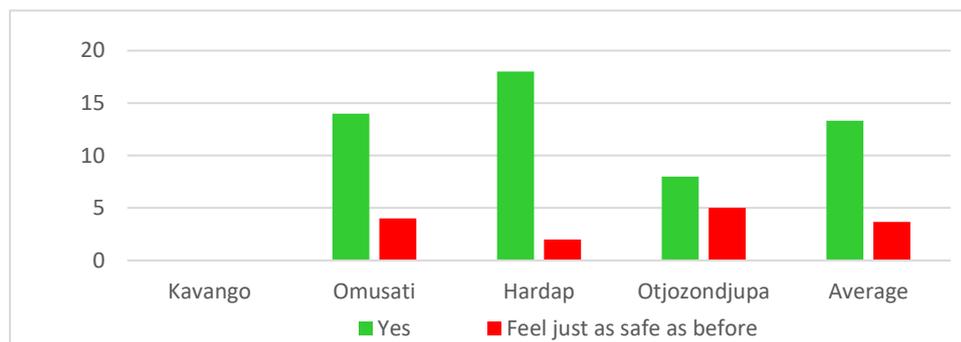


Figure 7.28 Do you feel safer on your land after obtaining a CLRC? (individual interviews, N=20 for each region)

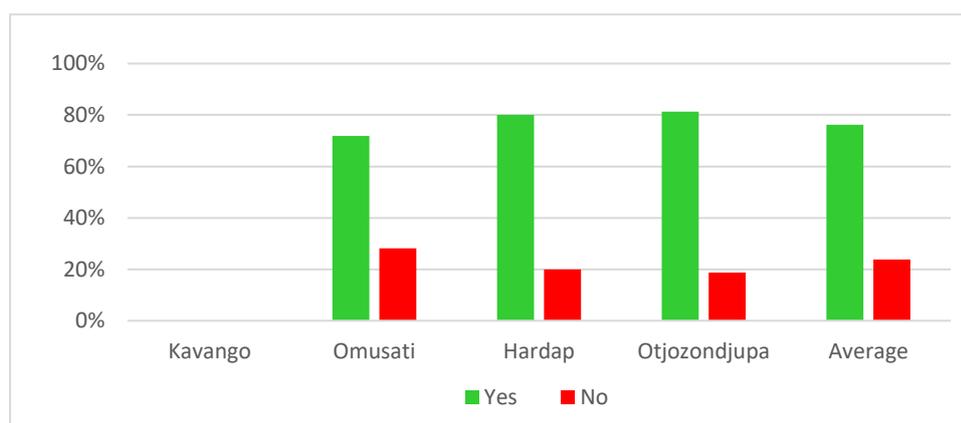


Figure 7.29 Do you feel more secure on your land as a result of CLRC? (village interviews)

According to Theo Muduva, outreach officer at the Legal Assistance Centre, people often only realise the value of registering their land once their land is threatened (2014, Pers com). Muduva states that, in general, people do not feel threatened on their land as most have lived comfortably without major land grabs (*ibid.*). However, he warns that conflicts will increase as population pressures are growing in the communal areas, as can already be seen by the growing amount of disputes over land in some areas (*ibid.*). Furthermore, Muduva believes that younger generations tend to value registration more than older farmers, as they often have more resources to farm and want to expand productivity (*ibid.*). In terms of gender, the majority of women and men feel safer on the land after having registered their land rights (Figure 7.30).

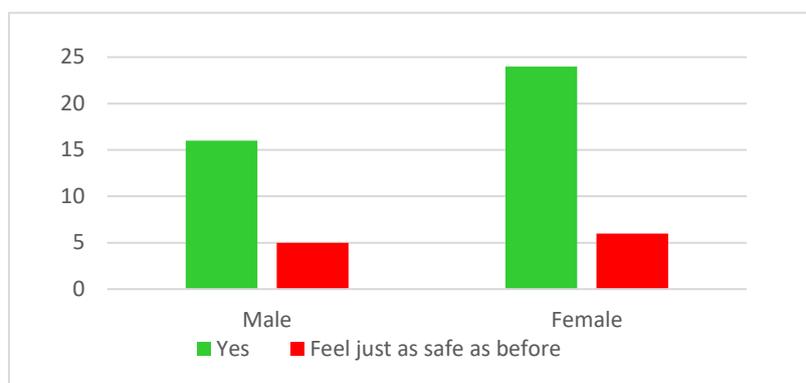


Figure 7.30 Do you feel safer on your land after obtaining a CLRC?  
(individual interviews, registered persons N=51)

The majority of respondents during the village meetings stated that contrary to one of the government's aims of land titling, CLRR does not necessarily lead to reduced conflicts between farmers (Figure 7.31). Conflicts regarding boundaries and fencing might be solved easier as a result of CLRR, however conflicts around water management, grazing and generally the governance around the commonages remain. In addition, as population pressures increase, so does pressure on the commonages. Furthermore, some communal farmers feel that disputes will increase if land is given away to people from outside. Erisa Verimuje, a senior councillor of the Ovaherero Traditional Authority said that “[w]e grew up on this land and had no problems in the past and if other people are brought in, then it will be chaos” (in Nakale 2012).

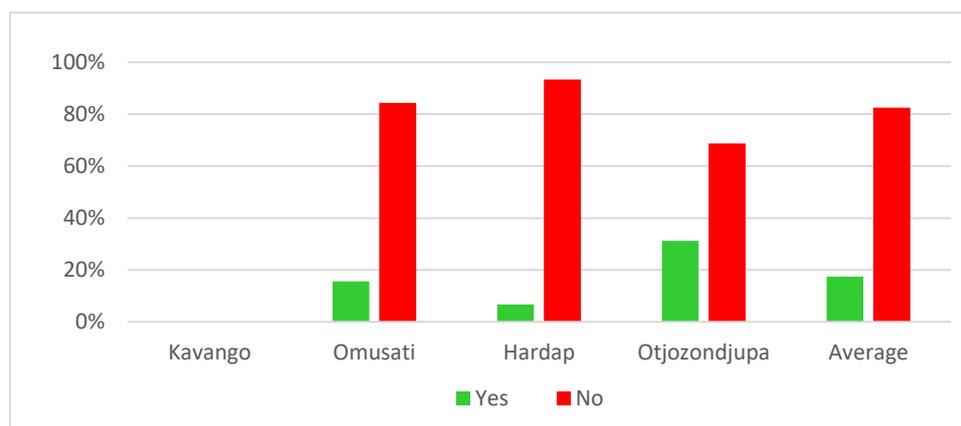


Figure 7.31 Is there less conflict between farmers as a result of CLRR? (village interviews)

In general, except for Shipando village, the majority of respondents do not feel that CLRR is against their cultural practices or tradition (Figure 7.32). Only in Kavango did more than 80 percent of people perceive CLRR to infringe on their traditions, as they feel it does not take into account their traditional land governance processes, their land uses and ways of cultivating their land. In the other case study areas, people felt that CLRR did not significantly impact their traditional land governance. Especially in Omusati, people felt it was not much different to the way they were

already administering their land. According to one development practitioner in the lands sector in Namibia, “it is no secret that the Act [CLRA] was developed with the North Central regions in mind” (Development practitioner 2014, Pers com). The development practitioner furthermore argues that the CLRR programme is biased towards those who grow crops in comparison to those who farm with livestock. Thus it is not surprising that the farmers in Omusati felt that CLRR does not contradict their customs and traditions.

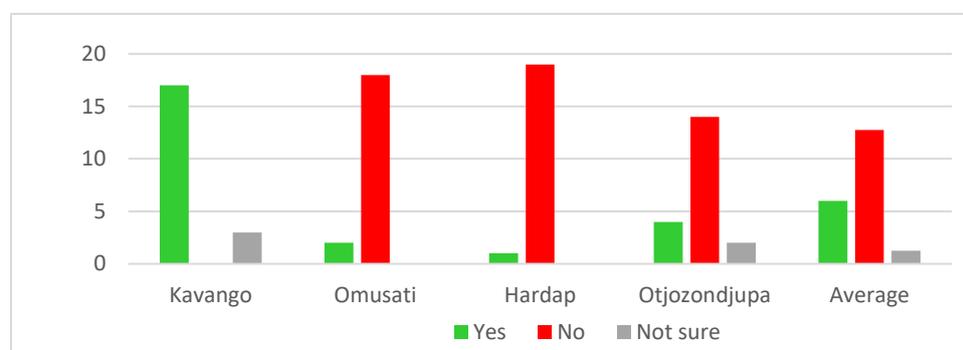


Figure 7.32 Is there any aspect of CLRR which is against your traditional practices?  
(N=20 for each region)

Furthermore, several communities in Namibia complain that communal land reform registration was implemented without proper consultations. Echoing this sentiment, a member of the Ovaherero Traditional Authority in the Omaheke region states that “[i]t’s a problem. The law was just introduced without consultation and then it was imposed on us”. Particularly the Ovaherero regard land rights registration as limiting their ability to farm productively and does not take into account their land uses. The Ovaherero TA member complained that “[...] we make a living from cattle, not gardens [...]. No proper research was done before the Land Reform Act was implemented” (in Nunuhe 2012).

During consultative meetings with traditional authorities in the Kavango regions, the then Minister of Land Reform, Alpheus !Naruseb emphasized the need for communal land rights registration to take into account the different norms and cultures of each community in the country (Haufiku 2013). These consultative meetings were organised as a result of the vehement and continuous rejection of the registration of new and existing customary land rights in the Kavango regions. Traditional authorities stated that they fear that the way communal land rights registration is currently implemented takes away their powers in terms of the allocation and administration of communal land. They furthermore claim that in its current form, land rights registration infringes on the customary ways in which communities live in communal areas. The traditional authorities are particularly wary of the allocation of duties between themselves and the Communal Land Boards. The Ministry of Land Reform repeatedly emphasises that, under the Communal Land Reform Act (Act No. 5 of 2002), Communal Land Boards are not able to allocate leaseholds of

customary land rights unless given approval by traditional authorities and that the land boards keep records on behalf of the traditional authorities. The then Director for Regional Programme Implementation at the Ministry, Alfred Sikopo, said that “the role of communal land boards is to allocate rights of leaseholds; cause the removal of illegal fences; advise the Minister on land matters; exercise control over the allocation and cancellation of customary land rights and to establish and maintain communal land rights registers” (in Haufiku 2013).

At the end of these consultations, the former Minister of Land Reform, Alpheus !Naruseb said that “after our discussions with all traditional communities, I am now convinced that we need to develop other forms of customary land tenure. These tenures will be informed by the way of life, customs and use of land by communities in different regions” (in Haufiku 2013).

Specifically in terms of inheritance, most participants felt there was not a big difference in how it was traditionally managed and how it was regulated under the CLRA. Yet interestingly, slightly more men preferred the traditional inheritance practices to the regulated CLRR process which seeks to protect women’s land rights once the man deceases (Figure 7.33).

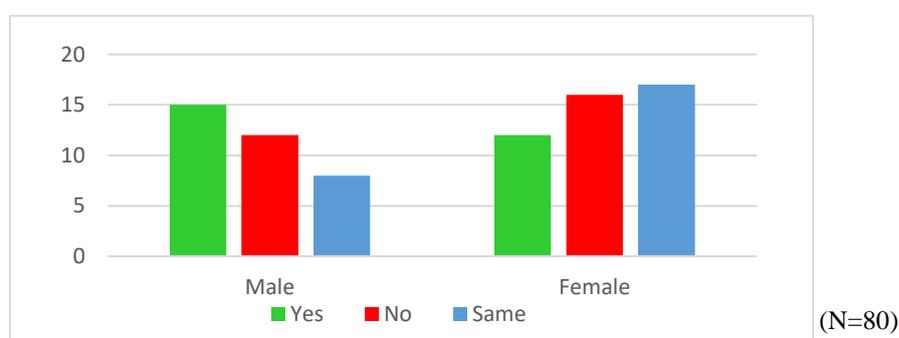


Figure 7.33 Do you prefer the traditional way of inheritance to that of the CLRA?

When asked whether respondents would theoretically vote for or against CLRR if they had a choice, the responses were mixed. Overall, CLRR is supported by the majority of respondents in the Omusati and Hardap research areas (Figure 7.34). In the Kavango, more than 80 percent of farmers outright rejected the idea. Only slightly more than half of the respondents in Otjozondjupa stated they would support it, with over 20 percent also rejecting it and 20 percent not having decided yet. The answers to this question from the village feedback were not dissimilar (Figure 7.35). Outside of Kavango, only in Hardap did more respondents feel that they would not support CLRR, and in Otjozondjupa the decision to support or reject CLRR was fifty-fifty.

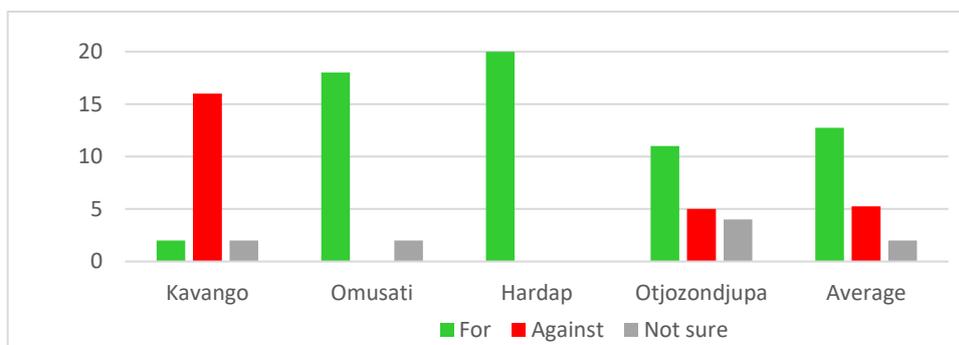


Figure 7.34 Would you vote for or against CLRR? (N=20 for each region)

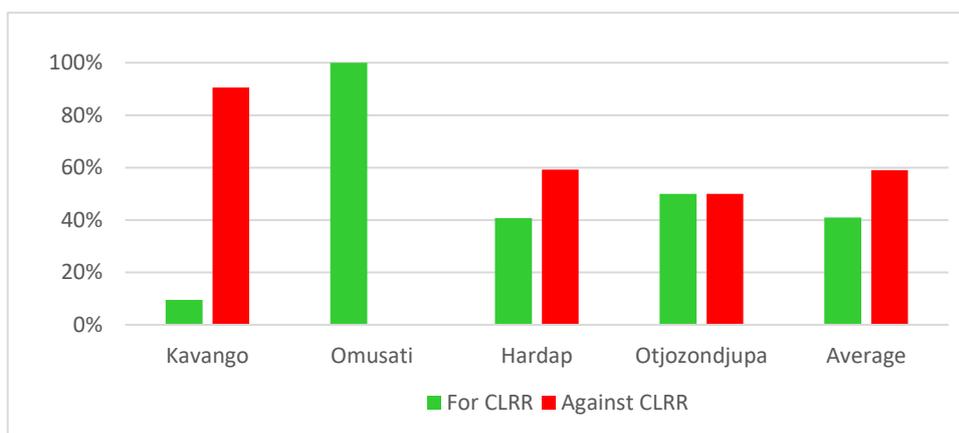


Figure 7.35 If you had a choice, how would you vote on CLRR? (village interviews)

If looking at the support for CLRR in terms of gender disaggregated data, it becomes clear that overall more women are in favour of CLRR than men (Figure 7.36). This can particularly be attributed to the fact that many women feel slightly more supported through the CLRA when it comes to inheritance, and as they tend to be more vulnerable towards being evicted from their land than men, CLRR provides them with an additional sense of security. Thus it can be argued that even though the formalisation of land rights does not have an impact on investment in land and thus does not contribute towards increased productivity in communal areas, it does play a role in providing farmers- and especially women- with an increased perception of tenure security.

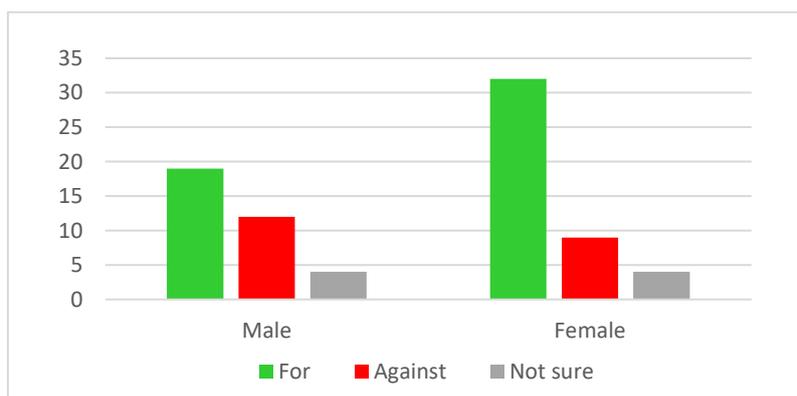


Figure 7.36 Would you vote for or against CLRR? (by gender) (N=80)

## 7.5 CONCLUSION

It can generally be stated that communal farmers, excluding the Kavango regions, are not opposed to titling. Yet it seems that many farmers are indifferent towards it. Instead, they would prefer infrastructural support. They acknowledge that land titles can provide them with security, however those who want to farm more commercially feel that real progress on their land cannot be achieved by registration. Even though the government has mentioned several times that development on communal land goes beyond titling, the registration programme has not yet linked land rights registration with other aspects of rural development.

There is a strong sense of awareness in the MLR that poverty reduction requires a comprehensive rural development approach. Former Ministry of Land Reform Minister, Alpheus !Naruseb told the National Assembly during a session in 2013 that “[t]he land reform process is foremost a national programme with political, social and economic impetus to our country. It is about redressing dispossession, equity and promoting productive and sustainable livelihoods targeted at poverty reduction” (in Matundu-Tjiparura 2013).

Sikopo said that the MAWF is assisting farmers through extension services which will help them to increase their farm outputs (2015, Pers com). According to Prisca Mandimika, advisor to the Minister in the MLR, land titling in itself does not automatically translate to poverty reduction, as she witnessed whilst working in Zimbabwe (2015, Pers com). Instead, Mandimika said that rural development should be inclusive so as to combine titling with other measures such as road and water infrastructure, energy, health and education services, access to markets and so forth (2015, Pers com). Hackenberg said there was potential in some communal areas for more commercially-oriented farming, however this would require more concerted efforts from the government to assist farmers in achieving higher outputs (2015, Pers com). Therefore Hackenberg argues that there is need for a more coherent policy or strategy on how CLRR can lead to poverty reduction, including better coordination and diversified livelihood strategies (2015, Pers com). More importantly, the current form of registration does not take into account or cater for different land uses. Hackenberg said that CLRR does not adequately respond to the needs and circumstances of all people in communal areas, even if the programme is based on the goodwill of government (2015, Pers com). Yet one MLR management staff said that “we [the MLR] are only responsible for providing entitlement to the land, what people do with it is not our responsibility” (MLR management staff member 2015, Pers com).

Munjanu states that even though the CLRR programme provides formal proof of habitation on a piece of land, and thereby tenure security, many communal farmers do not see the benefits thereof. Many farmers with more commercial interests want to know how it will benefit their farming

operations before registering (2015, Pers com). Munjanu complained that most government initiatives regarding agriculture continue to take a ‘commercial’ approach and are thus not responsive towards the situation on communal land (*ibid.*). He suggested that land titling programmes take into account what people really need on their land, so as to make it beneficial for people to register (*ibid.*). Similarly, Marcel Meijs, who has already worked on communal land rights registration in Namibia for several years, believes that registration needs to be linked to further benefits for communities, e.g. providing people with specific extension services if they have a certificate (2014, Pers com). Meijs argues that “so much money is being put into registration, that there needs to be some kind of value to that paper” (2014, Pers com).

In addition, many development practitioners interviewed during the research stated that there is a dichotomy between perceptions that communal land is an asset for economic growth versus communal land as a “safety net” for many Namibians, especially for retirement purposes. For the formalisation of land rights to have any impacts on poverty reduction or rural development, it needs to take into account the local situations of the ultimate beneficiaries, namely communal farmers, and create a better understanding of land and land uses in Namibia.

According to Willem Odendaal of the Legal Assistance Centre (LAC), it is important to note that the government keeps the land in trust for the community, and is thereby not merely ‘state-owned land’ (2014, Pers com). Hence the government theoretically does not have outright ownership of communal land and has to consult communities first (*ibid.*). Matundu-Tjiparua is critical as to what extent policy makers in parliament are informed by public opinion on land in their debates. He believes that “[o]ne is inclined to think debate and sentiments at the communal level find little expression in the National Assembly” (2013), since he says that the government is doing little to address the hopes and fears of the people regarding land. Ultimately, Matundu-Tjiparura is of the opinion that “we are still engaged in incremental changes to [land] laws that seem not to be delivering, if not mis-delivering and counter-delivering” (2013).

## CHAPTER 8 SYNTHESIS AND RECOMMENDATIONS

*“Context is crucial for impacting land rights”<sup>30</sup>*

### 8.1 INTRODUCTION

This research has illuminated the two typical ‘schools of thought’ characterising debates on land reform- one that argues for land policies to be rooted in theories of social capital, and the other that individualised tenure systems are more desirable (Obeng-Odoom 2012). Both of these theoretical approaches have some merit, however it was concluded that discussions should move away from merely categorising land tenure and its benefits towards taking into account the multiplicity of land uses on customary land, thereby allowing for different tenure systems which correspond to the needs of the ultimate beneficiaries of tenure programmes- the communal farmers. The aim of the dissertation is to provide evidence for such reasoning by analysing case study areas in Namibia.

This concluding chapter revisits the research objectives and methodology followed in the study, as well as providing a brief review of the relevant theoretical discussions. From the findings and discussions in the previous chapter, an extended schematic on land rights is developed. This chapter also acknowledges the limitations of the study and recommendations are made for further research in this area.

### 8.2 RESEARCH OBJECTIVES, APPROACHES AND LITERATURE

The core aim of the research was to gain a better understanding of the multiple ways people use land and associate with it in rural Namibia. It is important for effective land policies to take into account how people use their land and the meanings they attribute to land so as to be better able to respond to the needs of communal farmers and understand the tenure needs of different communities. Once it is better understood how people use their land and what they need to ensure or improve their livelihoods, land policies can be implemented or adapted that are more responsive and effective.

The study areas consisted of four villages in total, one each in the regions of Kavango East, Omusati, Otjozondjupa and Hardap. These regions, representing the four main language groups in the country, are distributed spatially across Namibia and have achieved varying levels of progress in respect to the registration of communal land rights. In the Kavango East region, no communal

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land rights have as yet been registered because of the refusal by Traditional Authorities and communities to support the process, as they argue it is against their customs and traditions. In the Omusati region, registration is generally well-accepted and no major resistance exists in registering land rights. These two regions are predominantly characterised by subsistence farming in relatively densely populated communal areas. In the Otjozondjupa and Hardap regions, registration is generally progressing well, yet registration is questioned by many as many communal farmers in these regions feel that it hinders their ability and desire to farm more commercially with their livestock.

The theoretical positioning of the dissertation is based on the dichotomy between individual and communal land rights, more specifically on the continuing debate about which land rights system should be preferred. Debates concerning land in development are no longer just focussed on having or not having property, but about which property rights systems are most suited in bringing about 'development'. Even though capitalism and socialism are emotionally loaded terms, they best describe the two dominant ideologies followed by academia and development practitioners today. Most economists tend to either support forms of tenure where farmers individually own the land they cultivate, or they support more shared tenancies where land is seen as a communal resource. This lack of consensus partly stems from ideological differences and the complexities that exist around land tenure, specifically based on political-historical processes regarding land tenure.

Findings have concluded that the registration of individual titles does not necessarily advantage the poor, but that customary ownership vested in traditional authorities can also leave the poor vulnerable. Thus a polarised debate continues about "what kinds of land rights should be secured, by what means, and for whom" (Chimhowu and Woodhouse 2006: 362). Ultimately, neither individual titling nor the ratification of systems of 'customary' land rights are seen to be feasible solutions for comprehensive and effective land reform policies that aim to address both rural poverty and promote agricultural development.

It is argued that land uses should be discussed within a pluralistic framework, as different people have differing needs and interests, based on varying sets of values and assets (Flintan 2011). The functions attributed to land and land policy vary greatly; from the use of land for anthropogenic reasons such as human wellbeing or culture heritage, to preserving land for ecological reasons or for economic use. Understanding these functions and attributes can be done by looking at areas as territories. Thus there is a strong need for evidence-based research on the impacts of and need for titling programmes, so as to engage policymakers with empirical realities of land rights and land reform programmes.

### 8.3 OVERVIEW OF MAIN FINDINGS AND RECOMMENDATIONS

As global processes are increasingly affecting rural areas, even remote places, it is becoming even more important that the needs and uses of local farmers on communal land are recognised. Tenure security is undoubtedly an important factor of rural development, and as the research has shown, perceived tenure security does not often reflect the real threats people could face due to land grabbing. In many parts of Namibia, local elites and political or wealthy individuals have easily managed to accumulate large pieces of land at the cost of local farmers. Thus it is argued that providing a form of title is necessary to ensure that communities in communal areas do not lose the land on which they so desperately depend for their livelihoods. The value that formal titles contribute towards a sense of security for particularly women was repeatedly identified during the research.

The question is thus not on the need for secured tenure, but rather what type of tenure is needed to best support the existing or desired livelihood strategies of farmers. As Lawry et. al (2016) state, policymakers should look at what models are most appropriate when designing tenure interventions in a given context. To be able to do this, more evidence is needed to ensure that tenure reforms are responsive to the specific contexts. This implies that policymakers, and the international development community, should resist seeking simplistic solutions as proposed by de Soto (Cousins et al. 2005).

Werner (2012) believes that the CLRR process in Namibia was initialised in a top down manner without proper consultation of what the population needed. Therefore, he concludes that it is “conceivable that while most households will be complying with the law and register their customary land rights, many will do so without appreciating the need for, and subsequent benefits of, this process” (Werner 2012: 89). Similarly, Thiem (2014) argues that the main shortcoming of the CLRR process is that the CLRA is a national instrument which does not take into account or acknowledge the different traditions and customs regarding land use and land management in Namibia. Since the CLRA is mainly modelled on the customary practices and conditions of the Ovambo people in the O-Regions, it is therefore unable to respond to local specifics in the rest of the country. Hammond et al. (2006) have come to the conclusion that inefficient land policies bring with them significant transaction costs; such as high costs to convince people of the need for the land reform activities. Thus the more responsive the beneficiaries and stakeholders are towards land policies and see the need for them, the less the transaction costs will be.

Moore emphasises that land practices in Africa are multiple and shifting (1998, in Cousins 2007). Therefore land tenure programmes should take into consideration the economically and potentially used natural resources in a specific area (GIZ 2016). Places also have different historical and lived

experiences which influence tenure regimes. The ELD Initiative (2015) states that the decision to invest or adopt different livelihood strategies depends on the options and preferences of the different types of ‘land managers’- including subsistence farmers or communal farmers who regard themselves more as commercial farmers. Therefore we need to focus on what land is used for at the local level and how it is governed. In most cases in the research areas, land is considered for both its social and economic values- they are not mutually exclusive and cannot be regarded as such. Land has multiple functions for people, and these cannot be clustered into categories of ‘economic use’ and ‘social value’. The research has shown that formalisation of land in most cases does not always lead to the expected outcomes wished for by the policymakers and international development agencies. For the farmers in Otjozondjupa, who want to be able to farm more commercially with their livestock, communal land rights registration brings no concrete advantages. It was found that a title alone does not mean anything to people- it does not necessarily add value to their livelihoods or existence, which is ironically one of the main impacts which individualisation advocates for.

Yet at the same time, formalising land rights does not break the fibre of communities, as in some areas communities continue to depend on each other and they continue to consider land as an inherently social asset. Titling can also undoubtedly lead to important outcomes such as more security for women and a general improved sense of tenure security, which is an important factor of well-being. Thus it is argued in this dissertation that instead of either abandoning the idea of formalising land rights, as some people call for, or over-emphasising its importance and impacts as others do, focus should be put on what kind of process is needed to ensure that titling builds on people’s needs and practices. Thus one could call this debate *‘Post-Formalisation’*, i.e. moving away from the validity of securing land rights, to focussing more on what is required to ensure that land rights are responsive to people’s needs. Land titling is ultimately a localised process, since the research has shown that there are differences even within one country, thus not even to mention at a regional, continental or global level. It can thus be agreed that land uses in Africa are not homogenous and thus land reforms cannot be homogenous either.

Polarised discussions are important in terms of highlighting the fact that land has several values, yet in most situations, especially in our industrialised and globalised world, we can no longer think in ‘either/or’ terms. Hardly any communities, regardless of whether they live in remote rural areas or in cities, are not un-affected by the global processes. Thus, as many researchers have rightly pointed out, we cannot romanticise the customs and practices of communities living in communal areas. Neither can we assume that all rural farmers want to partake in a capitalistic agricultural system. Thus debates on the formalisation of land rights should move beyond discussing the

validity of land registration, and they should especially move beyond trying to dichotomise the debate.

In these debates, the main decision-makers, the rural farmers, are forgotten. There is so much literature and such heated debates about whether land rights should be individualised or the traditional system preserved, that the situation on the ground is often overlooked: “Though ideological arguments on the best ways of organizing agriculture continue, no land tenure system can be judged best in the abstract. [...] Judgments must also consider what specific groups and individuals in that society are attempting to accomplish” (Dorner and Kanel 1971, in Dekker 2005: 4). Cousins (2007) states that the analytical challenge is to understand and define complex and dynamic local realities, so as to be able to better inform the design of policies and regulations. By focussing too strongly on the types of property rights, land policies fail to capture the diversity of land uses and are thus often incapable of adequately responding to the needs of those dependent on the land for their livelihoods. As Davy notes, “[m]onorational representations of either private or common property relations fail to capture the full range of rules developed for the many uses of land. No single kind of property rules fits the purposes of all types of land uses. Property theories do not always acknowledge this polyrationality of property relations” (Davy 2014: 487).

Dekker (2005) believes that instead of replacing existing inefficient land rights registration programmes with new systems, one should consider how the existing system can be improved and made more responsive towards the needs of local populations. Land policies should focus more on local land uses and needs, thus taking into account actor-oriented actions. Therefore we need to go beyond debates focussed merely on tenure regimes, towards debates about how to combine needs and tenure.

As was illustrated in the Namibian case, rural livelihood strategies and their relationships to land are diverse. We therefore need to celebrate this diversity in rural areas. This can be done by looking at local contexts as so-called ‘living territories’ or ‘peoplescapes’, whereby the interactions between resources and space and the cultural contexts are taken into account. By doing this, researchers and policy-makers alike will gain a better insight into the pluriactivities of local production systems and the multifunctionalities of land uses, expressed in both the management of land for production purposes and as a factor for cultural identity. This is an aspect not considered by de Soto when he analysed property regimes.

By looking at a specific area through the lens of a territory, one is also not merely inhibited by looking at the borders around the land, as these do not always consider the multiple functions of the space or area. For example, in Shipando village in the Kavango East, the community is the

border, and not the individual plot. Whereby in contrast in Okamatapati in the Otjozondjupa region, more emphasis is placed on the individual borders for cattle farming.

As previously mentioned, the term ‘territory’ is perceived as dynamic, whereby territories allow pluralistic and alternative models of development and new forms of governance, going beyond monorational models focussed on economic growth (Valette et al. 2017). Thus by looking at areas as territories, and not as larger homogenous areas, better policies can be made that understand the local contexts and reflect the different ways people live and use their land.

The schematic often used to inform policy makers on tenure types is the continuum of land rights. However, the continuum merely illustrates the various tenure types, and does in itself not incorporate the multiplicity of land uses which influence tenure needs. To assist policy makers and land governance practitioners, the findings from this research are used to expand the land rights continuum to include other factors that define the land rights needs. To do this, the concepts of production orientation and management styles were used. There are many aspects one can focus on when looking at the area or territory, however in the Namibian case one can summarise the findings into two main categories: production orientation (what do I farm with) and management styles (how do I farm).

Through his research on family farms, Bennett (1980) developed the concept of management style, which looks at how farmers develop decision-making styles based on both economic and social influences, acknowledging the ‘soft’ or informal aspects that influence how small family farms are run. Bennett emphasises that “[f]armers the world over, and at all levels of national development, have much in common. All must make decisions about production in relationship to available resources; all must balance opportunities against constraints; all must cope with uncertainty [... and] all must make a living to support themselves and kin” (1980: 204). Bennett (1980) furthermore believes that management styles are adaptive and dynamic, as they can change over time due to new demands, changing expectations or unforeseen circumstances.

For research on livestock development in Southern Africa, Bennett, Lawry and Riddell (1986) enhanced the concept of management styles to include production orientation as a factor influencing tenure models. Thus they argue that it is important to understand production orientation and management styles for land reform policies, so as to be able to make the most informed decision about appropriate tenure models in prevalent production systems (Bennett, Lawry and Riddell 1986). The two distinctions are defined as follows:

“On the most general level, "production orientation" divides along the lines of market and nonmarket production, but the actual situation is one of a broad continuum between these two extremes. "Management style" refers to the kinds of

herd management and enterprise investment practices typically characteristic of each production orientation. For example, a "commercial" production orientation would normally indicate a management style characterized by relatively high capital investment in water supply and ranch infrastructure, hired labor, and fairly large herd size. A small subsistence producer, on the other hand, would probably act to minimize expenditure on the herd, given that household cash requirements might be more efficiently secured by applying limited assets and labor to other activities, perhaps involving labor migration" (Bennett, Lawry and Riddell 1986: 139).

Even though Bennett and fellow researchers at the prominent Land Tenure Centre (University of Wisconsin-Madison) developed the concept of management style and production orientation in the 1980s- with the main focus on livestock- it remains relevant today. It is still a useful way to understand the linkages between tenure needs and on-farm production and management, and in the course of this research no other models or concepts could be found that so closely linked the findings from the case studies with tenure aspects. These concepts can be adapted beyond just livestock production, as the willingness or ability to invest in any farming operation is the same- whether it is for herding operations or crop production.

Since these concepts emerged in the 1980s, the model for the continuum of land rights by UN-Habitat was developed, as has been illustrated previously (see Chapter 3). This continuum provides an overview of various tenure types, ranging from informal to formal land rights. By using the continuum as the basis for different forms of tenure, and expanding it by combining it with the concepts of production orientation and management styles, a new model is created that can be used

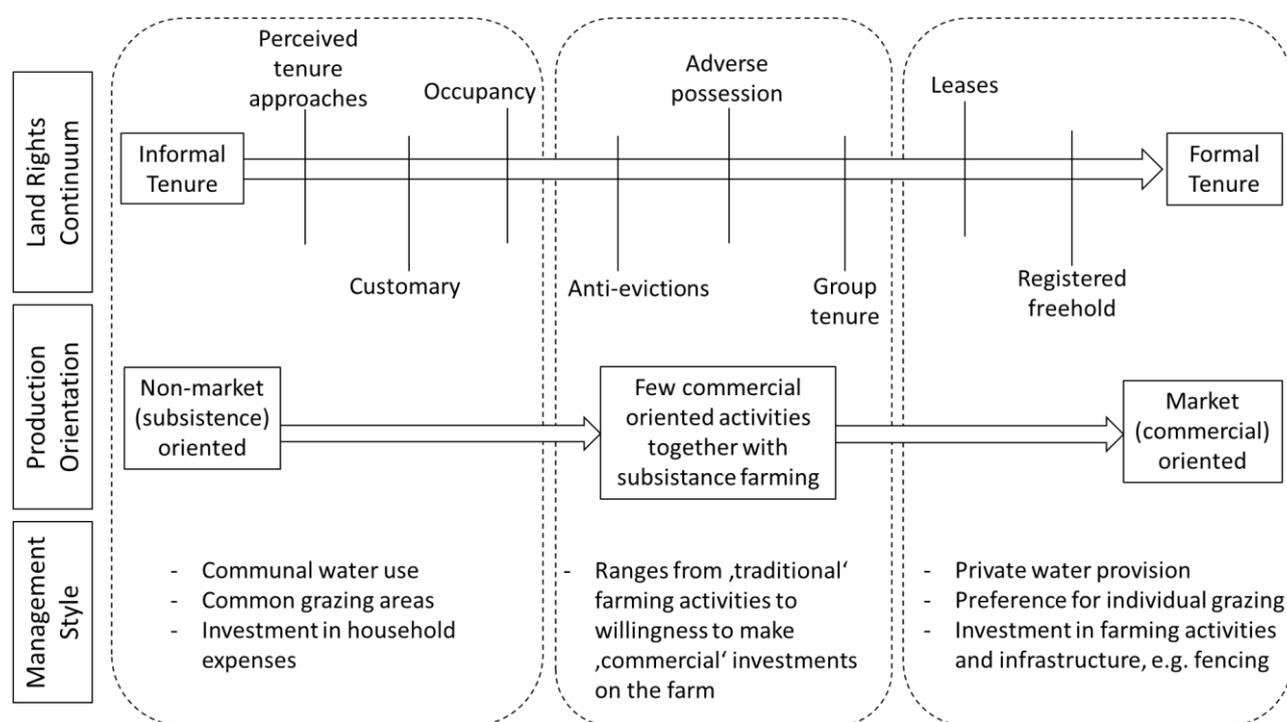


Figure 8.1 Expanded Continuum of Land Rights

(Own graphic)

as a decision-making tool when designing land policies and development interventions in rural areas (Figure 8.1). Thus the findings from the four case studies in Namibia can be contextualised within larger dynamics of tenure categories.

As the new 'Expanded Continuum of Land Rights' model illustrates (Figure 8.1), management style and production orientation influence the tenure needs. More customary forms of tenure tend to go hand in hand with more subsistence oriented agricultural production and less investments in infrastructure such as fencing and water. Instead, the management style tends more towards communal usage of resources, such as commonages for grazing and communal water points. Investments are made more on household expenses. This is particularly the case in the Kavango and Omusati case study areas, where the livelihood was based more on subsistence agriculture and household expenditures focussed particularly on education and the family.

On the other end, a strong market or commercial agricultural production orientation, with higher investments on agricultural infrastructure, tends to favour more formal tenure types such as freehold titles or leaseholds. The Otjozondjupa case is particularly applicable here, since they generate more income from farming commercially with livestock, and invest significantly in water infrastructure and fencing. The farmers in Okamatapati are not against customary land rights, however they would prefer to have land rights similar to those of resettlement farms, as 99 year leaseholds, or ideally title deeds. They would be particularly interested in more formal titles so as to be able to use their land for collateral to obtain credit from banks. In contrast, this was not a consideration at all in the northern case study areas.

Similar to Okamatapati, the Gibeon case study has also shown that farmers have the desire to farm more commercially with their small livestock. As in Okamatapati, they are not per se against customary land titles. However, when it comes to grazing arrangements and the usage of communal resources, they would prefer a different tenure type that would allow them to farm more commercially, which would, for example, allow them to erect more fences and regulate grazing and livestock breeding. In cases where production orientation and management styles are in between traditional and commercial practices, tenure models can include e.g. group titles.

Differently put, the higher your orientation towards commercial production and your willingness to invest in on-farm production is, the more likely it will be that a more formal tenure type supports the needs of the farmer (Figure 8.2). Thus as production orientation moves from being non-market (subsistence) to market (commercial) oriented, and the willingness to make on-farm investments also increases, the desire for more formal tenure types also increases. The graph in Figure 8.2 can provide a guideline whereby the degrees to which farmers are willing to invest and their degree of

market orientation can be used to determine which kind of tenure system might be most suited to the needs of the farmer.

However, it is important to note that the distinction drawn between ‘traditional’ and ‘commercial’ farmers relates more to their methods of management and production than to their attitudes towards their land. Even though the Hereros and Kavangos (or others) have different methods of management and production, it does not mean their attitudes towards their land have to be classified strictly as ‘commercial’ or ‘traditional’. You can still have more commercially oriented production and management styles, but still have strong traditional values and views towards your land. This is especially visible in Kries as well, where small livestock farming played a significant role and farmers desired more fencing and infrastructure, yet saw their land first and foremost as a social and religious asset.

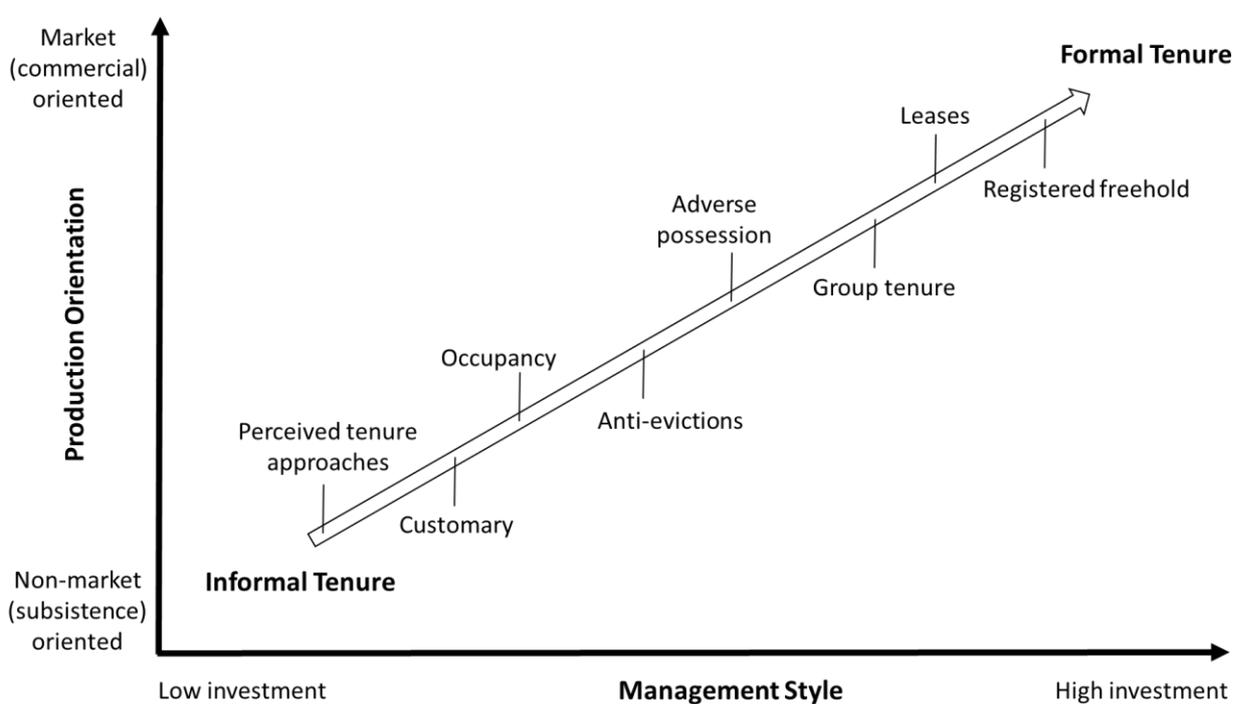


Figure 8.2 Land rights categories and investment willingness

(Own design)

Therefore, in what I term ‘*Post-Formalisation*’, land policies should look at what farmers require from the formalisation of land rights and what conditions should be created for them to achieve their land needs. *Post-Formalisation* can be defined as a way of thinking about how land policies can first of all support the actual land needs and land uses of beneficiaries of land titling programmes, i.e. the people living on communal land (Figure 8.3). Thus the line of thinking is

reversed, by first starting at the local level and deciding what type of land titling process would be most appropriate to strengthen the existing land uses and achieve the needs of the people (Figure 8.4). This requires a change in perception of how we understand or treat communal farmers, and allows for a closer integration between titling and rural development approaches in general.

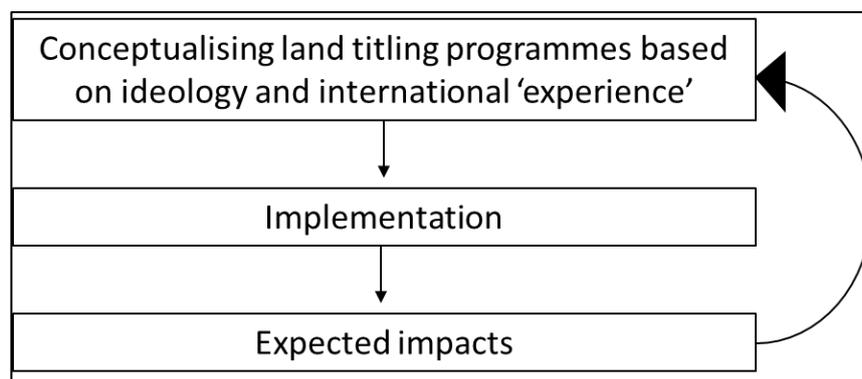


Figure 8.3 Traditional approach to the formalisation of land rights

(Own design)

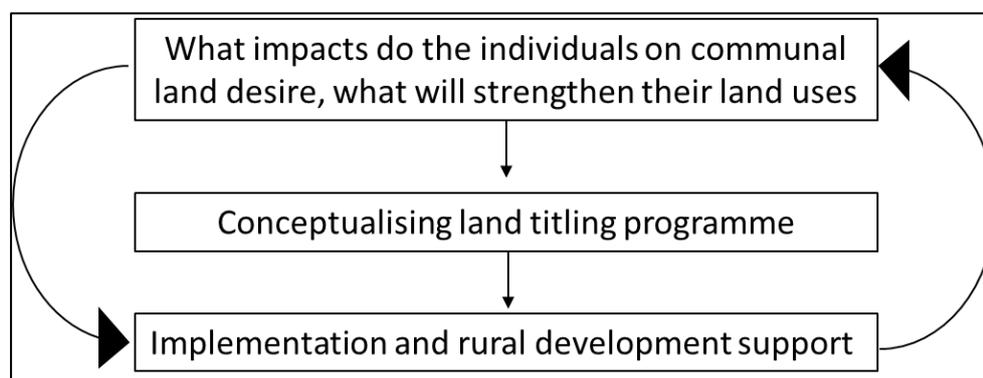


Figure 8.4 Post formalisation

(Own design)

In addition, the '*Post-Formalisation*' approach also takes into account and highlights that secure tenure and different forms of ownership alone do not ensure more productive use of land. It provides a more holistic view of what additional rural development approaches and interventions are needed to unlock socio-economic benefits for farmers who have access to secure tenure. This can therefore prevent an oversimplified understanding of expected impacts from access to land and tenure security.

Of course it has to be acknowledged that such an approach will initially be more time-consuming and potentially more expensive. Yet if one takes into account the amount of money that has been spent on poverty reduction initiatives in the rural development sector over the past decades that have not yielded overall successful results, an initial significant investment could result in greater returns in the long-term. Such an approach to developing tenure policies is also based on the 'fit for purpose' concept, as discussed in Chapter 3. Land titling processes based on such a fit for purpose idea start by first and foremost analysing and defining the purpose the system should

serve, and only then determining which approaches and steps are needed next. Therefore such land tenure systems are designed to meet the purposes of the beneficiaries, and are not dependent on following strict guidelines and regulations.

In Namibia, it is not necessary to completely re-invent the registration of communal land rights, as this would also be too disruptive and expensive. As has been argued, and in contrast to what some argue, legal tenure security through titling is important in Namibia. Focus should rather be placed on how the CLRA can be adapted to be able to better respond to the diverse needs and livelihoods of communal farmers across Namibia. A comprehensive study on different options and their implications will have to be made so as to determine an innovative and more flexible approach that corresponds to the various needs of the communal farmers. This would also encourage some communal farmers, especially those living on former Odendaal farms in Otjozondjupa and Hardap, from remaining on their land instead of applying for a resettlement farm, which has thus far not shown to contribute towards economic development in the country.

Lastly, *Post-Formalisation* does not only focus on the type of approaches needed to secure titles, but also on integrating land rights into rural development processes. Infrastructure development is important to create favourable development conditions, and should thus be integrated into regional and local land use planning strategies and processes. In the foreword of the first Guide to the Communal Land Reform Act in 2003, Hifikepunye Pohamba, former Minister of Lands, Resettlement and Rehabilitation wrote that “[t]he successful implementation of the CLRA will boost development in communal areas” (quoted in Thiem 2014: 128). Without the proper infrastructure and access to basic services, titling will not result in any significant impacts, beyond an increased sense of security. However, CLRR in itself will not lead to increased investments in land or agricultural productivity. Werner has succinctly noted that “... titling is at best a necessary but not sufficient condition to activate land markets and improve the livelihoods of rural inhabitants. [...] It is only through other, complementary interventions that the potential of communal land for the benefit of rural people can be unlocked” (2012: 79). He further notes that “with a few exceptions, tenure insecurity does not appear to be a major constraint in agricultural production in the small-scale farming sector. Available evidence suggests that other factors such as access to inputs, extension services and markets are more important issues to the poor section” (Werner 2012: 75).

As the research has shown, the biggest need for improved livelihoods is access to water and agricultural services and infrastructural development. This is not a new way of thinking and has been advocated by most land tenure specialists, yet too often land titling programmes and rural planning processes are done in isolation. Rural support services should be included from the start

when planning land reform programmes, and should become part and parcel of any initiatives. Even though this would fall under different mandates in Namibia, it should be the responsibility of the National Planning Commission to oversee the integration of titling programmes and rural support services.

Many other authors and practitioners have concluded that we need to develop land reform programmes in communal areas that are responsive to local contexts. Yet as Peters says, “[i]t continues to be a conclusion that needs restating” (2007: 6). By using in-depth case studies, researchers and practitioners can continue to contribute towards the body of growing literature on this. This dissertation thus seeks to contribute towards this body of literature and provide evidence of the need to understand and approach land policy differently.

#### **8.4 SIGNIFICANCE OF THE STUDY**

There is significant research on tenure security, poverty reduction and agricultural production in connection with land reform programmes, however, few researchers have sought to gain a deeper insight into how the people most affected by the registration process perceive and understand the formalisation of their tenure. Namibia is a culturally diverse country with more than eleven ethnic groups. Land has always played a very significant role in the livelihoods and identities of especially Namibia’s rural inhabitants. Within culturally different landscapes, there will be differences in the ways people identify with, manage and use their land. These differences can have an impact on how people perceive and understand the formalisation of their tenure. Simply put, this has an impact on what makes people feel safe on the land they inhabit. This is the first time that a comprehensive comparative study has been done on how communal farmers in Namibia perceive tenure security and the formalisation of their communal land rights, and how their land uses play a role in determining their tenure needs.

This study is important for the ongoing theoretical discussions about ownership and tenure security, which link up to larger questions about pro-poor policies and improved livelihoods in rural areas. The study aims to convince academia and practitioners in this field to move away from the continuous debates about individualisation versus social capital of land titling, since most communal farmers have multiple land uses and do not homogeneously place values on their land. Instead, focus should be placed on how land needs and uses can be supported by titling and be better integrated into rural and economic development processes.

Furthermore, the research is very relevant for informing more responsive land policies in Namibia and beyond, offering a model case for the complex issues surrounding formalisation of land tenure. Ultimately, this research will contribute towards the growing literature on finding alternative

definitions and models of tenure security and property that take into account the local realities and practices of the people living on communal land.

## **8.5 RECOMMENDATIONS FOR FURTHER RESEARCH**

Land governance reforms are quite difficult, as there is often a lack of clear solutions and no silver bullet approach. As this research has shown, land-related reforms are context specific and thus require comprehensive local and comparative research- which is time consuming and often expensive and therefore difficult for government institutions to undertake.

As has already been indicated, there is a need for further research on communal land reform in Namibia. More specifically, a detailed analysis of different land titling options should be conducted which is based on the land needs and uses of communal farmers across Namibia. It should also be evaluated how best such new options can be built into the existing legislation and government processes, and whether this is feasible.

Lawry et al. (2016) have proposed a research agenda on land which specifically looks at the interlinkages between customary tenure, wealth and income at household levels and investments in agriculture in the African context. Furthermore, it is crucial that research be done on how best to secure the commonages in communal areas, since this area is very important yet still mostly neglected in debates about communal land in Namibia- including in this study. Access to the commonages is vital for the livelihoods of the majority of communal populations, yet since it is currently not secure, access to the commonage is being threatened in many communities across the country.

The issues surrounding Traditional Authorities have been briefly touched on during this research, however the relationship between TAs and the government regarding the administration and governance of communal land is highly complex and controversial and goes beyond the objectives of this dissertation. In general, it can be said that there is still considerable support for TAs in the communal areas, and their work is still considered valuable by many. Yet there is increasing friction on the mandates and responsibilities of the government and TAs regarding communal land. The impacts of contemporary national processes on TAs and their functions and powers, specifically regarding land, is an important area for further research.

To conclude, it has to be said that the limitation to this study is that it has only addressed a small portion of topics related to communal land reform in Namibia. As has already been mentioned, issues such as commonages, TAs and fencing play a big role in debates about CLRR. Yet these topics fall beyond the scope of this research, but should be addressed nonetheless. In addition,

more in-depth focus should be given to the link between secured land rights and gender dimensions, especially gender equity and empowerment aspects.

There is currently considerable research being done in Namibia on communal land reform, with special mention of the research programmes of the Universities of Basel, Fribourg and Freiburg and the Namibian University of Science and Technology. The Network of Excellence on Land Governance in Africa (NELGA) which was established under the African Land Policy Centre in 2015 and provides numerous Masters and PhD scholarships for studies on land governance is another opportunity to broaden research on land in African countries, including Namibia.

Collaboration between institutions should be encouraged, as it contributes to a holistic overview of communal land reform, which one dissertation is unable to provide. Yet despite this limitation, the dissertation has aimed to provide a comprehensive and comparative overview of the formalisation of communal land rights in Namibia, and has intended to contribute further evidence-based findings to the debates surrounding land titling.

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## PERSONAL COMMUNICATIONS

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**APPENDICES**

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## APPENDIX A

### Questionnaire for semi-structured interviews

<p style="text-align: center;"><b>PARTICIPATION FEEDBACK FORM FOR PHD RESEARCH</b> <b>A critical appraisal of the formalisation of tenure in Namibia's communal areas</b></p>
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Interviewee..... Date of interview:.....

Position of Interviewee: .....

#### QUESTIONS (only as an orientation)

Question 1: What is your experience working in land reform in Namibia?

Question 2: What stands out to you when you think of land in Namibia?

Question 3: What do you think is the main reason the government pursues Communal Land Rights Registration (CLRR)?

Question 4: In your opinion, what are currently the main challenges with regards to CLRR?

Question 5: What are the main strengths and opportunities of CLRR?

Question 6: Where do you see the debate on CLRR heading in the future/ what is the future of CLRR?

Question 7: Do you have any literature/documents you can share regarding the work your organisation/department/institution is doing on land reform?

**APPENDIX B****Questionnaire for individual interviews**
**PARTICIPATION FEEDBACK FORM FOR PHD RESEARCH**  
**A critical appraisal of the formalisation of tenure in Namibia's communal areas**

Interviewer:..... Translator:.....

Date of interview:.....

**A. Personal Data**

1. Name and surname:.....

2. Year of birth:..... 3. Place of birth:.....

4. Gender: Male  Female  5. Marital status:.....

6. Children (and age of children):

1.....

2.....

3.....

4.....

5.....

7. Main language:..... 8. Other languages:.....

9. Ethnicity:.....

10. Education:.....

11. Full time farmer  Part time farmer

12. Occupation:.....

13. Where do children and spouse stay:.....

14. Contact Number:.....

**B. General Communal Land Rights Certificate Information**

15. Village Name:..... 16. Region:.....

17. Constituency:.....

18. Traditional Authority:.....

19. Registered for a CLRR: YES  NO       20. CLR Certificate No.:.....
21. Year Registered:.....      22. Farm Size:.....ha
23. How long did it take you to obtain the CLRC:.....

24. How did you find the process of obtaining a CLRC, including getting access to information?  
Tick all appropriate boxes:

	Tick	Explain
Getting hold of <i>information</i> about CLRR was easy and it was readily available		
Obtaining <i>information</i> about CLRR was difficult and I had to search for it		
Simple and easy process to register		
It was so easy to register I have encouraged others to do the same		
Semi-difficult process, but I would not give up		
Very difficult and complex process		
I wanted to register but the process was too complicated and I gave up		
I will not try to register again and have warned others from registering due to the complex process		
I am sceptic about CLRR and even if the process seems easy I will not register my land		

25. How did you hear about Communal Land Rights Registration (CLRR):  
.....

26. If you have registered, what made you decide to obtain a CLRC:  
.....

27. Did your family/ Traditional Authority/ friends support your decision to register?  
YES  NO

Explain:  
.....

28. If you have not registered yet, why:  
.....

29. Do you think you will ever register? Yes  NO

Explain:  
.....

**C. Communal Farm Background**

30. Main land uses:.....

31. What crop is produced? And has there been a change in output yield, since obtaining a CLRC? If 'YES', how much and why:

Crop produced	Original yield/ha	Current yield/ha	How has the change in yield been obtained?

32. Current livestock composition - please indicate if there has been a change in livestock since obtaining a CLRC:

Livestock	Current Quantity	Original Quantity (Year:.....)	How did you obtain the difference?
Cattle			
Goats			
Sheep			
Pigs			
Poultry			
Donkeys			
Horses			
Other:			

33. How many ha of the farm are used for the main land uses?

1. Livestock:.....ha
2. Crop Production:.....ha
3. Other (Specify): .....ha

34. What is the rest of the farm used for?.....

35. Farm output: home consumption  Sale

36. If for both: .....% for home consumption and .....% for sale

37. If sold, where:..... Distance from farm:.....

38. How do you get the produce to the point of sale?.....

39. What are other agricultural assets do you have on the farm (e.g. tractor, windmill, car)?

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

40. What assets are important to sustain a successful production?

.....

41. What are your most valued assets on the farm (incl. household assets)?

.....

42. Fill in the below housing information:

Housing type	Tick	Quantity on farm	Year built	Planned changes
Brick house (with foreign materials)				
Corrugated Iron house				
Traditional dwelling (using local materials, e.g. sun-baked clay bricks)				
Prefabricated				
Caravan				
Other (specify)				

43. How many farm workers are on the farm:.....

44. Where are the farm workers from? .....

45. Why did they move to the farm? .....

46. Are the farm workers: Permanent . Seasonal

47. If seasonal, what times of the year are they employed on the farm? .....

48. What do the farm workers assist with?.....

49. How many households:..... and people:..... live on the farm?

50. Who are the people living on the farm:

- 1..... Residing only  working on farm
- 2..... Residing only  working on farm
- 3..... Residing only  working on farm
- 4..... Residing only  working on farm

51. Income from farm (monthly/annually/seasonal):.....

52. Income from additional sources (e.g. from spouse, additional employment etc.) (state if per week/month/year):

- 1..... Amount:.....
- 2..... Amount:.....
- 3..... Amount:.....
- 4..... Amount:.....

53. Do you receive any other non-monetary payments for additional work you do? If yes, what and for what work?

.....

54. How many people (and who) are supported from this income: .....

55. What are the main expenses?

Expense for: (describe)	Tick	N\$ 0- 500	N\$ 500- 1000	N\$ 1000- 2000	N\$ 2000+	Week	Month	Year	Other
Household									
Salaries									
Agricultural Production									
Farm Maintenance									
Food									
Education									
Supporting Family									
Other									

56. Have you ever received external support: YES  NO

57. If yes, who provided which support to you?

- Government

Type of Support:.....

- NGOs

Type of Support:.....

- Farmers' Unions

Type of Support:.....

- Other

Type of Support:.....

58. Have you ever made use of the following:

	Tick	Amount	When and why/ how often?	If not, why?
Credit from commercial bank				
Credit from friends/ family				
Agricultural Bank Loan				
Other (specify)				

59. Would you have used any of the above options, if you did not have a CLRC? Explain:

.....

60. Has a lack of infrastructural development hindered the progress of your farming operations?

YES  NO

61. If yes, in what way and how can this be addressed?

.....

62. Do you have any plans to further develop your current farming operations? Elaborate:

- 1.....
- 2.....
- 3.....

63. On what does the implementation of these plans depend? Explain:

.....

64. Does having/ not having a CLRC influence your decision in developing your farm? Explain:

.....

65. Have there already been any infrastructural changes since obtaining a CLRC?

.....

66. How much money have you already invested on farm development since obtaining a CLRC?

.....

67. If you do not have a CLRC, do you think you will change your farming practices and/or invest more in your farm once you obtain a CLRC? Explain:

.....

68. How much more money will you be willing to invest in your farm, if you register:

.....

69. Are you aware if anything has changed on your neighbours'/ acquaintances'/families' farms since they have obtained a CLRC? Elaborate:

.....

70. Anything else you want to explain about the farm or inform me about?

.....

#### D. Understanding and importance of land

70. How long has your family lived on this farm?.....

71. How long have you been on this farm?.....

72. Why do you remain on this piece of land, and not move away (if you have always lived here)? What significance do you place on this piece of land?

.....

73. Where did you live before, if not on this farm?.....

74. What did you do there?.....

75. If you did not live on this farm, why did you move here?

.....

76. How do you feel about this piece of land in comparison where you lived before? What significance do you place on this piece of land?

.....

77. Will you ever consider moving away? Yes  NO

78. Explain (and state where you would like to move to if answered YES):  
 .....

79. Why do you prefer living on this land and not somewhere else?  
 .....

80. What importance does 'land' have for you? Tick all appropriate boxes:

Religious	<input type="checkbox"/>
Ancestral	<input type="checkbox"/>
Friends	<input type="checkbox"/>
Traditional	<input type="checkbox"/>
Family	<input type="checkbox"/>
Financial	<input type="checkbox"/>

Explain the above selections:  
 .....

81. What do you associate with 'land'?  
 .....

**E. Tenure Security**

82. Before CLR, did you have any documentation showing you are the rightful user of this land?  
 YES  NO   
 If YES, what documentation:.....

83. Have you ever heard of the CLRA (the Act) before?  
 YES  NO

84. If YES, what have you heard? And where did you hear about it?  
 .....

85. Do you understand the Act? YES  NO   
 If NO, why not? Tick all appropriate boxes

Language barrier	<input type="checkbox"/>
Complex topic	<input type="checkbox"/>
Too many legal words	<input type="checkbox"/>
Cannot read and there is nobody to explain it	<input type="checkbox"/>
Other:	<input type="checkbox"/>

86. Do you trust your Traditional Authorities/Chiefs/Headmen more than Government Officials?  
 YES  NO   
 Explain:  
 .....

87. Have you heard of Communal Land Boards? YES  NO

If YES, what do you think of CLBS:

.....

88. Has your family ever been threatened by eviction from this farm?

YES  NO

If YES, explain:

.....

89. If YES, how was the dispute handled? Who handled it?

.....

90. Do you feel that since obtaining a CLRC, you feel safer on this land i.t.o land grabbing?

YES  NO

Explain:

.....

91. Do you know of anybody close to you whose land has been taken away from them, and why (and state whether they had a CLRC at that time or not)?

.....

92. Who will inherit the land once you die?.....

93. What will happen to your family if you should die? How is inheritance organised in your traditional culture?

.....

94. Do you feel that the traditional way of inheritance is better  or worse  than the process of inheritance as stipulated in the CLRA? Explain:

.....

95. What are the benefits of CLRR (from what you experience or have heard)?

.....

96. What are the disadvantages of CLRR (from what you experience or have heard)?

.....

97. Why do you think the Government introduced CLRR?

.....

98. If you had a choice, would you vote for  or against  CLRR?

Explain:

.....

99. How do you regulate and administer land traditionally?

.....

100. Is there any aspect of CLRR which is against your traditional practices?

YES  NO

Explain:

.....

101. What have your community leaders/ Traditional Authorities/ Chiefs/ Headmen told you about CLRR?

.....

102. What do you think of the role of Traditional Authorities in land administration?

.....

#### **F. Resource Use**

103. How is the use of the commonage regulated?

.....

104. Do you have any other communal resource sharing areas besides the commonages? If YES, what is it/where is it/how is it regulated/who has access?

.....

105. What other resources (natural or household) are shared in your village/community?

.....

106. What is the most important natural resource in your community? Where is it located?

.....

107. Where do you get your water from and how is the usage controlled/regulated?

.....

108. What do you do in times of hardship, such as drought? How does the community respond, how are resources pooled or shared?

.....

109. Has it happened to you that by someone fencing off their property you have lost access to an important natural resource? If YES, explain:

.....

110. Can you please draw me a picture of your village: show on the map where you live, your commonage, where the resources are you use, and other important points to you in the village/area

## APPENDIX C

### Questionnaire for village interviews

**PARTICIPATION FEEDBACK FORM FOR PHD RESEARCH**  
**A critical appraisal of the formalisation of tenure in Namibia's communal areas**

1. Have you registered for a Communal Land Rights Certificate? YES  NO
2. Did your family/ Traditional Authority/ friends play a role in your decision to register?

	Encouraged you to register	Dissuaded you to register
Family		
Traditional Authority		
Friends		

3. Which of the following changes have you experienced due to CLRR?

I spend more money on infrastructure	
I have taken out a loan for my house	
I invest more money in farming	
Increased productivity on the farm	
More fences erected by farmers	
Less conflicts between farmers	
More conflicts between farmers	
I feel more secure on my piece of land	
No changes	

4. What are your reasons for not registering?

I have not heard about Communal Land Rights Registration or the ACT before	
I have heard about it but do not understand what it is about	
It is a SWAPO programme, thus I will not support it	
I trust my TA to administer the land honestly	
I trust my community to ensure my land is not grabbed	
I do not see the need for it, and think nothing will change if I register	
It does not make provision for the (traditional) ways I use my land	

5. Will you register your land in future, if

...you get more information on what CLRR is	
...the regulations change to take into account your land use practices and the way you live on the land	
...your TA encourages you to register	

6. Do you think you will invest more in your land if you had a CLRC? YES  NO

7. Do you trust your Traditional Authorities/Chiefs/Headmen more than Government Officials? YES  NO

8. Do you feel that your TA is protecting your rights to live on this land more than a certificate can? YES  NO

9. What proof do you have that you can live on this piece of land (in addition/complimentary to your CLRC)?

Written proof from my TA	
Verbal agreement with my TA	
No proof	

10. Are you ever worried that someone will take your land away? YES  NO

11. Do you feel that the traditional way of inheritance is better  or worse  than relying on the CLRC?

12. What importance does 'land' have for you? Tick all appropriate boxes:

Religious	
Ancestral	
Friends	
Traditional	
Family	
Financial	

13. If you had a choice, would you vote for  or against  CLRR?

**APPENDIX D****Letter of consent from the Ministry****REPUBLIC OF NAMIBIA****MINISTRY OF LANDS & RESETTLEMENT***Office of the Minister*

Tel: (061) 296 5371  
Fax: (061) 254 737

Brendan Simbwaye Square  
Block A  
P.O. Box 13343  
WINDHOEK

19 February, 2013

Ms Elke Matthaei  
P.O. Box 11129  
Windhoek  
Namibia

**RE: CONSENT TO CONDUCT PhD RESEARCH**

Dear Ms Matthaei,

The Ministry of Lands and Resettlement hereby grants you permission to conduct research for your PhD studies on Communal Land Rights Registration, as requested in your letter of the 11<sup>th</sup> of February 2013. We trust that you will conduct the research with an ethical conscience and to the best of your abilities.

The Ministry gives you official authorisation to conduct interviews with staff members of the Ministry of Lands and Resettlement based at Head office and in all our regional offices, Communal Land Boards and any other institutions related to the Ministry. You are also given permission to obtain and use information within the Ministry that is in the public domain, unless the respective departments feel that certain information is confidential. The information gathered should not be misused and should serve for the sole purpose of your PhD research.

As stipulated in your request letter, the Government of the Republic of Namibia will not misuse the information presented in the PhD for political or other reasons, and thus will not discriminate against or persecute any participants, villages or Regions involved in the research.

The Ministry would appreciate regular updates on the findings of the research, and looks forward to a final presentation on the finished PhD results.

We wish you all the best with your research.

Sincerely,

Alpheus G. Naruseb, (MP)  
**MINISTER OF LANDS AND RESETTLEMENT**

## APPENDIX E

### Example of Communal Land Rights Certificate



**REPUBLIC OF NAMIBIA**  
**MINISTRY OF LANDS AND RESETTLEMENT**

Certificate No: **OCLB-CU000274** Form 4

CERTIFICATE OF REGISTRATION OF RECOGNITION OF  
 EXISTING CUSTOMARY LAND RIGHT  
 As in the Communal Land Reform Act (Section 28, Regulation 8)

IT IS HEREBY CERTIFIED THAT

**Farming (Crop) and Residential Unit**

(description of customary land right which has been recognised, as described on the back)

in respect of

**Eenghala Village in Onamutai Traditional District**

(proportion of land in respect of which customary land right has been allocated)

measuring

**4.8 ha**

has been recognised to be held by

**Mr Vilho Shidolo**

(full names of person to whom the right concerned has been allocated)

of

**Eenghala**

(residential address of person to whom right has been allocated)

Signature of Chairperson/Secretary of the Board \_\_\_\_\_ Date \_\_\_\_\_



## APPENDIX F

### Photographs of case study areas

#### Shipando



Traditional house



Traditional houses at a homestead



Crop fields



Natural fruits in the bush



Oxen drawing straw for thatching



Kraal at homestead and footpath to commonage



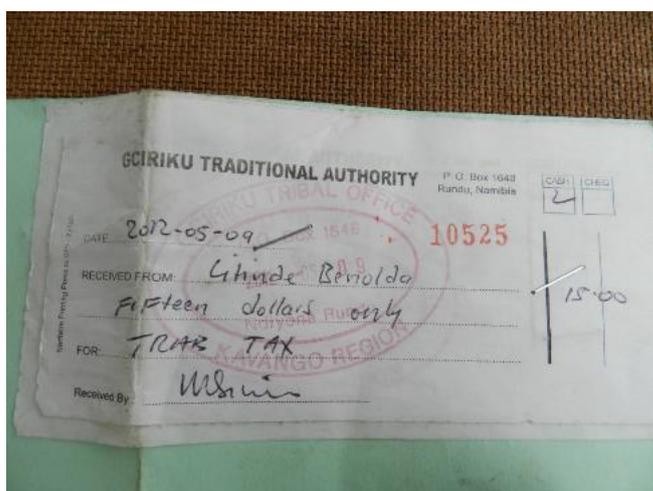
Neighbouring homesteads and local fencing



Communal water point



Homesteads of a neighbouring village next to the Kavango River



TA booklet indicating annual land tax payment

(own photographs, taken 15/11/2013 – 28/11/2013)

**Omahalya**



Traditional homestead



Houses at a homestead



Brick house at a homestead



Commonage with communal water point (middle right)



Typical gate with lock to homestead





Fence blocking access to local road



Crop fields leading to homestead



TA Booklets

(own photographs, taken 22/04/2014 – 05/05/2014)

**Okamatapati**



Farm (or homestead)



Corrugated iron and brick/cement houses



Brick house on a farm (homestead)



Cattle in a kraal at a farm settlement



Entrances to communal farms around Okamatapati



Individual water point

(own photographs, taken 21/11/2014 – 05/12/2014)

**Kries**



Road leading to Kries, illustrating fencing between former Odendaal farms



Entrance to a post on the Kries farm



Different housing structures on communal farms (above left and right and bottom left)



Small livestock kraal at homestead

(own photographs, taken 22/04/2014 – 05/05/2014)