

**NAMIBIA: GOOD PRACTICES AND LESSONS LEARNED
FOR GENDER AND COMMUNAL LAND**

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Abstract

This paper attempts to better understand the intersection of gender, communal land and land reform in Namibia. While this paper is not a comparative study per se, it focuses on two regions that adopted different approaches to communal land governance. The Oshana region leads the implementation of the nation-wide Communal Land Reform Act, 2002, which introduced the registration of customary land rights in communal areas, while the Kavango region declined to participate in the registration process and instead continues to independently administer customary land rights in accordance with its established customary system. The case study uses a gender lens to systematically assess the different approaches taken by these communities to illustrate good or emerging practices and draw lessons learned from measures that have sought both to protect community rights to land and also protect the rights of women and men in those communities. The paper evaluates these measures in light of the primary objective, selected strategies and outcomes. Ultimately, the case study attempts to illustrate what measures can be implemented in different political, legal, and cultural contexts to enable communities facing similar situations to benefit from the experiences of others. Both promising practices and challenges faced, offer insights.

Key Words: Case study, communal land governance, gender, land reform in Namibia, women's land rights

I. Background

Namibia is a semi-arid and arid country situated between the Namib and the Kalahari Deserts. It is among the least populated countries in the world, with a total land mass of 825,418 square kilometers and a population of only 2.2 million. Its economy is dominated by agriculture, fishery, mining and tourism. While Namibia is an upper middle-income country endowed with considerable natural resources including minerals (copper, uranium, zinc, gold, gemstones, etc.), fish and wildlife, distribution of resources is highly inequitable. Namibia has one of the highest income disparities in the world. According to the official unemployment figures for 2012, the unemployment rate was 27.4%; however, non-government figures for the same period indicate unemployment figures as high as 50%. Moreover, a majority of poor households are concentrated in the North. Approximately 70% of the Namibia's population is concentrated on underdeveloped communal lands in the northern regions and depend on access to communal land for subsistence farming and livelihood.

In Namibia, land is a contentious issue rooted in the legacy of a century of colonial and apartheid rule constructed on a dual land tenure system. During colonial rule, indigenous Namibians were systematically dispossessed of land and confined to underdeveloped communal lands in the northern regions while European settlers were granted freehold rights to commercial areas in the central and southern parts of the country. Traditional authorities retained control over communal lands in the northern region and the State assumed governance of privatized land. At independence in 1990, 6% of the national population owned 44% of the commercial land and 70% resided on communal land.

Regardless of race, women were precluded from owning property during colonial rule, and gender inequality was institutionalized through discriminatory colonial policies and laws.

In addition to state sanctioned gender discrimination, customary systems governing land rights of indigenous women generally favored men due to gendered power dynamics that underpin many land governance systems and practices. While gender relations are culture/context specific, Namibian women are generally assigned fewer and weaker land rights than men as rights assigned to women are typically temporary and secondary to those of men. Prior to the enactment of the Communal Land Reform Act (CLRA), women primarily accessed land through their husbands, uncles, fathers, or other male relatives. Women's lack of independent rights to communal land is partially due to the patrilocal residence patterns in which wives move to the husband's village at the time of marriage.

Women were particularly vulnerable when their households changed due to the death of a spouse. Traditionally, women were not eligible to inherit communal land rights held by their husbands and found

themselves at the mercy of the husband's family. Given the prevalence of widow dispossession and the high number of female headed households (or de facto female headed households), widow dispossession was flagged as a priority during the landmark National Conference on Land Reform and the Land Question in 1991.

In the decade following independence, the new Government undertook a series of policies and laws to address inherited and emerging land issues. The reform program concentrated on equitably redistribution of commercial land and tenure security in communal areas. The Agricultural (Commercial) Land Reform Act, 1995 addresses redistribution of freehold and the CLRA focuses on tenure reform in communal areas.

Land in post-independent Namibia is classified into three often overlapping categories: communal, state, and freehold. It is divided into 44% freehold (commercial land), 36% communal, and 20% state land (e.g., game parks, etc.). 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.

This paper focuses on communal land. While it is not a comparative study per se, it attempts to better understand the intersection of communal land, gender, and land reform in Namibia. The paper concentrates on two regions that adopted different approaches to communal land governance. The Oshana region leads the implementation of the nation-wide CLRA, 2002 that introduced registration of customary land rights in communal areas, while the Kavango region declined to participate in the registration process and instead continues to independently administer customary land rights in accordance with its established customary system. This paper predominantly focuses on select communities in Kavango East and the Oshana region.¹

The case study is organized as follows: Section 1 presents the geographic scope of the case study followed by an outline of the objective and the substantive scope of the case study. Section 2 describes the methodology of the case study. Section 3 provides an overview of the legal framework governing women's land rights. Section 4 presents the gender responsive substantive and procedural safeguards of the CLRA and the gender analysis of the formation and enforcement of the CLRA in Oshana region. Section 5 summarizes Kavango Region's decision to opt out of the registration process, which is followed by a presentation and analysis of the gender equitable customs and practices of the Shambyu Traditional Authority in Kavango East Region. Finally, section 6 offers good practices and constructive lessons that might be adapted to other circumstances.

¹ It should be noted that in 2013 the Kavango region split into Kavango East and Kavango West. This was intended to facilitate effective service delivery and advance inclusive economic development.

a. Geographic Scope and Demographic Characteristics of Kavango and Oshana

The target regions of Kavango East and Oshana have common and diverse cultural, socio-economic, and environmental characteristics. The regions share similar demographic profiles, descent systems and livelihood options. The regions differ considerably, however, in terms of land mass, population density, residence pattern, and degree of extreme poverty.

Table 1: Geographic Scope and Demographic Characteristics

	Oshana Region	Kavango Region
Customary System	Well established Traditional Authorities (TAs) (8 TAs in O regions- Ovambo ethnic group extends across 4 regions – Ohangwena, Oshikoto, Oshana and Omusati/ O regions)	Well established Traditional Authorities (5 TAs)
Descent Blood Line & Marital Residence	Matrilineal with patrilocal residence	Matrilineal with patrilocal residence
Livelihood	Mixed-farming (crop cultivation and livestock rearing)	Mixed-farming (crop cultivation and livestock rearing)
Demography	Women constitute a majority of the population (Also, high FHHs - 54%)	Women constitute a majority of the population (Also, high FHHs - 43%)
Land Area	Smallest region	One of the larger regions
Population Density	20.4 persons per square kilometer	4 .6 persons per square kilometer
Residence Pattern	Primarily nuclear family	Primarily collective /extended

	residence	family residence
Poverty	54.8 % (national average - 55.7%)	56.5% of population classified as poor (Kavango has the highest incidence of poverty - 36.7% of population classified as severely poor)

b. Case Study Objective

This case study uses a gender lens to systematically examine two situations: (1) the enforcement of the CLRA in the Oshana region (Oukwanyama TA) and (2) the operationalization of the customary system governing communal lands in Kavango East (Shambyu TA). It assesses the different approaches taken by these communities to illustrate good or emerging practices and draw lessons learned from measures that have sought both to protect community rights to land and also protect the rights of women and men in those communities. The paper evaluates measures in light of the primary objective, selected strategies and outcomes.

The case study considers the economic, social, and political context of each intervention or measure; the experience and treatment of men and women in the formal and informal laws governing communal lands; the treatment of men and women in the intervention design implementation, monitoring and evaluation; and the results in relation to women and men. It calls attention to the issues that affect women uniquely or disproportionately. Ultimately, the case study attempts to illustrate what measures can be implemented in different political, legal and cultural contexts to enable communities facing similar situations to benefit from the experiences of others.

c. Substantive Scope

The case study centers on two overarching questions: (1) why the two target regions selected different paths with respect to the registration of customary land rights, and (2) what promising practices and lessons can be drawn from measures that have sought both to protect community rights to land and also protect the rights of women and men in each of those communities. Promising practices are defined broadly to include a range of enabling factors that cumulate to strengthen women’s rights to communal land.

The CLRA contains three categories of land rights: customary land rights, leasehold for business purposes (e.g., lodges for tourism, agricultural land), and occupational land rights for public services. This paper

limits analysis of the CLRA to registration of customary land rights within the Oukwanyama Traditional Authority in Oshana region.

Assessment of the customary systems in Kavango East primarily focuses on reasons for opposing registration of customary land rights, the structure and composition of the Shambyu Traditional Authority, and women's rights to land under the customary laws of the Shambyu Traditional Authority.

II. Methodology

The case study involved desk research and field research. The desk research entailed an iterative process that defined the research strategy and informed the case study analysis. The field research team (researcher and translators) undertook assessments in three locations: Khomas (Windhoek), Kavango East, and Oshana. The researcher in collaboration with key in-country stakeholders including the Ministry of Land Reform (MLR) selected Oshana based on the high number of registered plots, and selected Kavango East based on the region's decision to opt out of registering customary land rights.

The field research took place over two and half weeks. Primary methods for obtaining information were semi-structured and open-ended interviews with representatives of government, Traditional Authorities (Shambyu Traditional Authority in Kavango East, and Oukwanyama Traditional Authority in Oshana), non-governmental organizations, donors, academic institutions, and communities.

The researcher conducted focus group discussions in three villages in Kavango East (Mayana, Kayengona and Utokota), and in the Onamutai village in the Oshana region. Criteria for selecting villages were location, size, and availability of community members. The researcher held focus group discussions with multiple women-only groups followed by a mixed group meeting in each region. The average group consisted of eight to ten people. While the groups are not intended to be statistically representative, the researcher explicitly included women with varied marital and economic status, age, etc. to reflect the heterogeneity of women, and attempted to be mindful of power dynamics during interviews. The research team also encouraged the participation of women by accommodating their needs during venue selection and scheduling. Most focus group discussions were held on weekends and the research team travelled to various venues to reduce the travel time for participants. On average, the focus group discussions and key stakeholder interviews lasted three to four hours. Please refer to Annex I for the list of key informants interviewed.

The scope of the case study is limited to the aforementioned regions and issues to allow for due consideration of the deliberated issues. Field work took place in rural areas surrounding urban and peri-urban areas and may not reflect the experiences of women in remote rural areas. As the geographic scope

of the case study is limited to two regions, it does not capture some pertinent regional and intra-regional variations across Namibia.

In addition, the substantive scope of the case study does not include dispute resolution or commonage related issues within the context of the CLRA; however, the legal or customary provisions governing commonage and dispute resolution are noted given the significance of these issues for women.

III. Legal Framework

Namibia recognizes customary tenure in statutory law through the Constitution, the Traditional Authority Act, 2000, and the CLRA, 2002. The legal framework governing women's land rights in the target regions includes: the Constitution; the Traditional Authorities Act, 2000; the CLRA, 2002; the Shambyu Traditional Authority customary laws (Kavango East); the Native Administration Proclamation, 1928; the Married Persons Equality Act, 1996; the Estates and Succession Amendment Act, 2005; and marital and inheritance customs and practices.

The Government of Namibia is currently reviewing a number of land related laws including the Land Bill, the Administration of Estates Act, and marital property in civil and customary marriages.

a. Constitution

The Constitution grants women the same status as men before the law, and explicitly prohibits discrimination on the basis of sex. In recognition of the discrimination faced by women, Article 23 further stipulates that it "shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation." It also promotes the welfare of women by obligating the state to adapt policies aimed at "the enactment of legislation to ensure equality of opportunity for women."

Gender-equitable provisions of the Constitution include broad property rights. Article 16 of the Constitution provides for the universal right to acquire, own, or dispose of all forms of moveable and immovable property. Moreover, women are granted equal rights during and at the dissolution of marriage as stipulated in Article 14. Finally, Article 66 recognizes customary law in force at the date of independence subject to its compatibility with the Constitution and other statutory laws. Article 66 also states that customary law may be repealed or modified by an act of parliament.

b. Statutory Framework for Customary Law

The statutory framework for customary law includes the Traditional Authorities Act, 2000 and the CLRA, 2002. The Traditional Authority Act accords legal recognition to Traditional Authorities and defines their powers, duties and functions. Recognized Traditional Authorities are responsible for administering customary laws in their respective communities and must “uphold, promote, protect and preserve the culture, language, tradition, and traditional values.” Traditional Authorities must also act as arbitrators of disputes among community members. As noted, gender-based discrimination in customary law is superseded by the constitutional principle of non-discrimination. In addition to their obligation to abolish customs and traditions that contradict the Constitution, Traditional Authorities have a duty to ensure “Affirmative Action is implemented in the community, particularly in respect to promoting gender equality in positions of leadership.” A Council of Traditional Leaders assists the President with the administration and control of communal land.

The CLRA recognizes and consolidates the legal authority of Traditional Authorities to administer communal land while reinforcing gender responsive customary laws and incorporating additional gender responsive safeguards. It codifies the gender equitable aspects of customary laws such as the protections provided to widows in the revised Laws of Ondonga. While not a codification of customary law per se, the Laws of Ondonga is a self-proclaimed written account of customary law pertaining to particular matters governing the Oshiwambo-speaking communities in northern Namibia. Traditionally, women were not eligible to inherit communal land rights. Through an amendment to the Laws of Ondonga, customary law was revised to grant women the right to occupy the land they shared with their husbands provided they paid a fee (maximum of N\$600/approximately US\$42). All Traditional Authorities in the North subsequently abolished the fee for widows wishing to remain on the land.

While the primary power to authorize and cancel land allocation continues to vest in the Chief/Traditional Authorities, the State established Communal Land Boards (CLBs) in each region (except Khomas region where there is no communal land) to ensure customary rights are allocated in accordance with the CLRA and to issue land certificates. The 12 CLBs countrywide operate under the oversight of the MLR. The CLB provides technical (legal and policy) guidance and accounts for public funding.

Composition of the CLB is pre-determined and generally includes key stakeholders. The total number of members varies depending on the number of recognized Traditional Authorities and Regional Councils in the Board’s area. There are a minimum of 12 members (where there is a conservancy within a board’s area) representing key stakeholders, including an organized farming community, four line ministries (MLR; Ministry of Agriculture, Water and Forestry; Ministry of Environment and Tourism; and Ministry

of Urban and Rural Development), a representative from each recognized Traditional Authority; regional officer/s of the regional council/s concerned, representative of any conservancy within the Board's area (single or jointly), and four women representatives (two engaged in farming within the Board's area and two with expert knowledge relevant to the functions of the Board).

The CLRA also prescribes the rights and procedures for registering communal land rights. Those who held communal land before 2002 continue to hold rights, but are required to apply for recognition and registration of those rights within a certain timeframe. The MLR has extended this period on numerous occasions and continues to receive applications for existing customary land rights. Both men and women may apply for existing and new communal land regardless of their marital status (single, married or widowed).

The CLRA employs a broad definition of spouse and does not require registration of conjugal unions. Spouse “includes the spouse or partner in a customary union, whether or not such customary union has been registered, and 'marriage' shall be construed accordingly.” The CLRA regulation theoretically allows for joint titling; however, it is the recent amendment of the CLRA regulation that will provide for joint registration once it enters into force.

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 residence purposes. The precise size restriction is specified in the corresponding regulation — 20 hectares for customary land rights and 50 hectares for leasehold rights. Applications for customary land rights in excess of 20 hectares require approval from the Minister of Land Reform. The regulation prescribing the size restrictions was amended following the field research for this case study, extending the maximum size for customary land from 20 to 50 hectares.

Under the CLRA, customary land rights are allocated for the natural life of a holder unless the customary right is relinquished before death. Though not automatic, it can also be inherited by a surviving spouse and his or her children with the deceased. Upon the death of the holder, land reverts back to the Traditional Authority for re-allocation to the surviving spouse. In the event that the surviving spouse does not apply for re-allocation of the right or in the absence of a surviving spouse, the Traditional Authority allocates the customary land rights to a child identified as rightful heir. The Traditional Authority determines the rightful heir in accordance with the customs and practices of the specific community. The heir often takes control of the inherited property as trustee, inheriting the land rights along with the corresponding familial responsibilities of the deceased.

Applicants initiate the registration process by identifying land and submitting an application to the headmen/headwomen of the village within the recognized Traditional Authority where the land is located. Once applications are received, the headman/headwoman assesses the situation in consultation with the relevant community. The process entails a background check on the applicant, verification of land availability, and verification that the requested land does not infringe on commonage among other things. The Traditional Authority then decides whether to refuse or grant an application for customary land rights. Where the headmen/headwomen confirm the applicant's customary right over the parcel of land or the availability of the specific land for allocation, a letter of consent is attached to the application. The letter confirms the location and size of the land, and that the land rights are undisputed.

For 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 CLB will then review the findings of the inspection during an official meeting and veto, approve, or refer the application back to the Chief or Traditional Authority for correction. The CLB can veto applications on only three grounds: (1) the land right has been allocated to someone else, (2) the plot exceeds 20 hectares (amended post field work to 50 hectares), or (3) the land is reserved for commonage. Once ratified, the CLB enters the information into a register and provides the applicant a certificate of registration.

Applicants can appeal the decision of a Traditional Authority or a CLB within 30 days by filing it with an appeal tribunal appointed by the Minister of Land Reform. The Appeal Tribunal is the highest arbitration body under the CLRA and its decisions are binding, although an aggrieved party can appeal the Tribunal's decision with a competent court such as the High Court.

The Traditional Authorities retain the right to cancel a customary land right under three conditions. First, if the holder of the right fails to comply in a material respect with a condition or restriction attached to the right under the Act. Second, if the land is used predominately for a purpose not recognized under customs. Third, if any other grounds as may be prescribed apply. Cancellation requires ratification by the CLB.

Chapter IV of the CLRA governs grazing rights and use of commonage. It stipulates that all lawful residents have unrestricted access to commonage for grazing and other purpose. Traditional Authorities have legal authority to impose conditions for grazing rights and enforce the conditions.

c. Kavango East: Shambyu Traditional Authority

The Shambyu Traditional Authority is formally recognized under the Traditional Authorities Act, 2000, and like all Traditional Authorities, its legitimacy stems from custom. Jurisdiction of the Shambyu Traditional Authority is defined by a combination of factors including geography, taxpayer status (exception for pensioners, physically challenged individuals and students), and connections to the region through resident relations or land possession.

The Traditional Authority is represented at three levels, with the ultimate power vested in the Hompa (Chief or Queen). The Hompa is typically elected according to the rules of matrilineal descent of the royal family. Accordingly, the Hompa is nominated by the predecessor before his or her passing or by the royal family in the absence of the former. Where the royal family is unable to agree on a nomination or otherwise fails to nominate a replacement, the Chief Council is invited to participate in the nomination process. Regardless of who nominates the Hompa, the nominee's identity is disclosed to the community to seek their approval. If the community does not accept the nomination, the Traditional Authority is required to propose an alternative candidate.

The Chief Council is composed of 12 senior headmen/headwomen nominated by the Hompa based on their skills and expertise. The Chief Council serves as an intermediary advisory body that acts on the instructions of the Hompa/Queen. They are responsible for up to five villages each and assist with administration and management of communal land.

Administration is further decentralized to headmen/headwomen who are assisted by thematic advisors (e.g. land). The Chief Council and Hompa/Queen appoint the headmen/headwomen at the village level either relying on recommendations of their respective predecessors or based on observed skills. These headmen/headwomen have considerable authority at the local level and play a substantial role in land allocation and dispute resolution. Disputes among community members are initially referred to the relevant headmen/headwomen; however, decisions by a headman/headwoman can be appealed to senior headmen/headwomen and ultimately, to the Hompa.

Across most Traditional Authorities in Namibia, customary rights for new residents are granted according to procedures that follow certain principles: (1) familiarity/closeness of an applicant to existing residents, (2) promoting social cohesion, and (3) residence considerations. John Mendelsohn notes that most

villages consist largely of relatives and grow as families expand, which explains the direct correlation between familiarity of the applicant to the community and the level of scrutiny as well as the degree of permission required. In the exercise of their gatekeeping and peacebuilding function, Traditional Authorities conduct a background check to ensure that the applicant is of good standing and require strangers to provide a letter of introduction from the headmen/headwomen of their area of origin. Finally, most Traditional Authorities do not assess the availability of other resources (e.g. availability of water, grazing land) as part of the application process.

According to the Traditional Authorities interviewed, customary law of the Shambyu Traditional Authority does not vary for different conjugal relationships — civil and customary marriages, and cohabitation. Moreover, men and women, regardless of their marital status, are eligible to request residential and subsistence farming plots under customary law.

The process for requesting land is the same for both men and women. Women are not required to meet any additional procedural requirements that are not applicable to men. In determining whether to allocate customary rights to land, the headmen/headwomen consider numerous factors, including intended use and ability to use the land for the intended purpose.

As under the CLRA, allocation of customary land rights is for life. In line with current customary law, widows (and widowers) can remain on the land they shared with their deceased spouse and his (or her) family. Traditional Authorities also retain the right to cancel the rights where land is abandoned.

However, whereas the CLRA allows land claimants to appeal decision of the Traditional Authority or the CLB by filing with an appeal tribunal appointed by the Minister of Land Reform, under customary law residents cannot appeal land allocations outside the hierarchy of the Traditional Authorities.

All households within the community have access to commonage for grazing livestock and may use the pastures freely. Headmen/headwomen are tasked with regulating the use of commonage.

d. Land Bill

The Land Bill seeks to consolidate the CLRA and the Agricultural (Commercial) Land Reform Act, 1995.

e. Married Persons Equality Act of 1996

The Married Persons Equality Act (1996), which regulates civil marriages, abolished the unconstitutional powers of husbands acting as sole heads of families. Civil marriages are governed by one of two marital property regimes: "marriage in community of property" or "marriage out of community of property." Under a marriage in community of property regime, all property, earnings, and debt acquired before and

during the marriage are pooled into a joint estate. Each spouse owns half of everything in the joint estate. Spousal consent is necessary to alienate, burden, mortgage, cede, or contract to alienate any immovable or movable property jointly held. Upon divorce or death, each spouse is entitled to half the joint marital property. In the event of death, the deceased spouse's half-share is distributed to heirs according to the terms of the law of succession or intestacy. By contrast, in a marriage out of community of property regime, each spouse retains his or her separate property, earnings and debt acquired before or during marriage. A spouse is not required to consult with the other or obtain consent on the use of their respective property.

The default property regime for civil marriage is marriage in community of property; however, the default property regime for civil marriages between indigenous/black Namibians married north of the old Police/Red Zone on or after August 1950 is out of community of property.² Though not automatic, the marriage in community property regime applies to civil marriages between indigenous Namibians married within the specified geography and timeframe provided the parties submit a declaration (one month prior to the date of the marriage) explicitly stating their intention to be married under a community of property regime. The Legal Assistance Centre suggest that the Native Administration Proclamation be repealed and Parliament enact a legal provision to enable indigenous/black couples affected by the discriminatory provisions to change their marital property regimes within a given time period.³

In addition, the aforementioned protections provided by the Married Persons Equality Act do not apply to women married under customs.

Cohabiting couples are not protected under the existing legislation. "Cohabiting partners have no clear right to share individually-owned assets when the relationship comes to an end, even if both made contributions towards them." This is likely to prejudice women since they are less likely to have their name on valuable assets. According to a national survey, 7 – 15% of Namibian adults cohabit with a partner.

f. Estates and Succession Amendment Act, No. 15 of 2005

The Estates and Succession Amendment Act, No. 15 of 2005, governs succession. It standardizes procedures for administrating estates for all Namibians by repealing the 1941 Administration of Estates (Rehoboth Gebiet) Proclamation and some of the racially biased provisions of the Native Administration Proclamation. Prior to the 2005 Act, the Native Administration Proclamation applied to both testate and

² Historically, the Police/Red Zone separated indigenous Namibians in the north from European settler areas (Central Southern Namibia), but some indigenous Namibians such as the Herero lived within the Police/Red Zone

³ The Ministry of Justice commenced procedures to repeal the Native Administration Proclamation following the publication of this case study. The Married Persons Equality Act is also currently under reform.

intestate succession for black Namibians living in certain parts of Namibia, and the Administration of Estates Act and the Intestate Succession Ordinance governed testate and intestate succession for whites and “colored” Namibians.

The repealed provisions of the Native Administration Proclamation, however, continue to apply where a decedent does not leave a valid will. Mercedes Ovis argues “racially discriminatory laws are repealed but then brought back in all over again through the backdoor.” The law allows for estates to be distributed according to civil or customary law with very different implications for rural women and children. Under civil law, the surviving spouse and children of the deceased have a right to inherit where the decedent does not have a will providing for the surviving spouse and children, but neither can inherit under most customary systems. Similarly, daughters and sons have equal inheritance rights under civil law; however, daughters and some sons are more often than not precluded from inheriting under most customary laws.

The Act is currently under revision to amend the gender discriminatory provisions and remove other barriers.

g. Marital and Inheritance Custom and Practices

As in other traditional communities, customs and practices surrounding marriage and inheritance have considerable impact on women’s de facto rights to land.

Generally, inter-household customs related to wealth distribution (bride price, etc.) can create barriers for women’s land rights as bride price can at times be considered as a daughter’s portion of family wealth although the wealth is transferred to and controlled by her family. In Namibia, payment of lobola or bride price is at times perceived by the husband’s family as “having purchased the rights of control over a women’s domestic production, fertility and offspring, and the practice of wife and/or husband inheritance-upon the death of a spouse – is prevalent in most Namibian communities (with the exception of the Nama and to a lesser extent the Kavango).” Paying lobola to the bride’s family is often considered a pre-condition of customary marriages. According to the 2011 National Population and Housing Census, approximately 11% of marriages in Namibia are customary. Lobola often takes the form of cattle and/or cash. In most communities where lobola is paid, unless the wife is found to be at fault for the divorce and has not had a child with the husband, lobola does not have to be returned upon divorce.

Polygamy is customarily practiced, but not recognized (not protected or abolished) under Namibian civil law, although polygamous relationships are arguably recognized by the CLRA as customary unions.

While polygamy appears to be on the decline, the Demographic and Health Survey of 2000 indicates that 12% of married women are in polygamous unions.

Kavango tradition dictates that the person found to be at fault or responsible for the divorce has to pay a fine to the other person. Women are not likely to receive a fair hearing as the customary courts are often dominated by male relatives of the husband and the prevailing social perceptions about gender roles favor men.

Prevailing as well as emerging residence and inheritance patterns shape women's land rights in target communities. The matrilineal descent system and nature of relationships often determine who has rights to which category of property when death or divorce occurs. Matrilineal nephews, uncles and brothers have significant control over land as key decision makers; for example, they usually approach traditional leaders regarding the allocation of land parcels. Within matrilineal systems, the deceased husband's family - traditionally his nephews, but in contemporary society all his male relatives in his maternal line - inherit the matrimonial property. Today, increasing land scarcity and shifting residence pattern has resulted in geographic dispersal of members of matrilineages and patrilineages, which appears to undermine descent systems.

IV. Oshana

Intervention: Registration of Customary Land Rights in Oshana Region

Oshana region leads the implementation of the nation-wide CLRA, which introduced the registration of customary land rights in communal areas. The CLRA seeks to improve tenure security on communal land and adopts a strategy of incorporating gender responsive safeguards to facilitate equitable governance and deliver benefits to all stakeholders. This section outlines the gender responsive substantive and procedural safeguards of the CLRA and the gender analysis of the formation and enforcement of the CLRA in Oshana region.

a. CLRA Safeguards

Gender Responsive Substantive Safeguards

The CLRA: (i) codifies the land policy provision that allows for independent customary land rights for women; (ii) includes explicit protection for widows; (iii) contains a broad definition of the term spouse

and does not require proof of the relationship through documentation; and (iv) recognizes joint titling (via CLRA regulation).

Gender Responsive Procedural Safeguards

The CLRA: (i) mandates the representation of four women in the CLB - two engaged in farming activities within the Board's area and two with expert knowledge relevant to the functions of the Board; (ii) engages women in registration-related meetings as members of affected communities; and (iii) accords women the right to appeal decisions of the Traditional Authority and the CLB.

b. Gender Analysis

1. Formulation of the Communal Land Reform Act

The Government employed several strategies to integrate gender issues into efforts leading to the CLRA. Shortly after independence, women's lack of independent rights to communal land and widow eviction received much attention. Widow eviction was later prioritized in discussions with Traditional Authorities. Gender issues were also signaled as a key communal land issue during the 1991 National Conference on Land Reform and the Land Question; however, gender issues did not feature prominently in subsequent conferences on the matter.

Although gender was not explicitly called out in later CLRA-specific consultations, communities were consulted about the general principles of the CLRA, though on a limited basis. These consultations often took place within the context of meetings between the regional councilors and Traditional Authorities. The Government assumed that information shared with senior Traditional Authorities would be disseminated to local communities through traditional structures and that communities would be represented through the same. This strategy did not always result in ample transmission of information or adequate consultation with communities. Following a reassessment of the communication strategy during the CLRA implementation, the MLR and other key stakeholders began to engage in direct community outreach. Still, the CLRA-specific consultations focused on general principles and the broader audience, and did not sufficiently address the issue of women's land rights or specifically target women or women's groups.

Given the sensitive political climate, the newly independent State may have postponed discussions on women's land rights to prioritize consensus building efforts. The communal land discussions were taking place within a broader political context in which the post-independence Constitution declared communal land state land, and relations between Traditional Authorities and the State were less than optimal.

At a ministerial level, gender-specific technical and financial resources were limited during the CLRA formulation process. The MLR structure does not include a gender department or otherwise institutionalize gender-specific technical assistance. Consequently, gender related technical support was provided through the Ministry of Gender Equality and Child Welfare and short term consultancies.

Moreover, there do not appear to be any systematic assessments of gender based barriers to communal land to inform the CLRA formulation process. Neither a permanent nor an ad hoc technical committee reviewed the potential implications of existing property-related laws (marital laws, inheritance, etc.) on the proposed CLRA provisions. In addition to the limited technical assistance and review, the MLR did not earmark funds to address the gender-specific dimensions of the CLRA.

Nevertheless, the CLRA contains numerous gender responsive provisions. Experience sharing between Namibia and Botswana in the form of study tours and technical advisory missions during the CLRA formulation is credited in part for the gender equitable provisions.

2. Enforcement of the Communal Land Reform Act in Oshana Region

The CLRA has been enforced in the Oshana region since 2003. The Oukwanyama Traditional Authority supports the enforcement of the CLRA as a legal obligation, but they also note that the CLRA is well aligned with their customary system and way of life. In other words, the CLRA accommodates the practices on the ground.

Inclusive Governance

Procedural safeguards of the CLRA provide women opportunities to actively engage at the institutional and community level. At an institutional level, the Act created a formal position for women by requiring a minimum of four women in the CLB. At a community level, the CLRA has built mechanisms to engage men and women in registration related meetings in order to foster understanding of land allocation procedures.

CLBs facilitate representation and participation of women in communal land governance. Women currently hold 38% (five of 13) CLB positions in Oshana region and held 46% (six of 13) positions in the last CLB. The MLR could benefit from reviewing the CLB annual reports to determine trends over time and regions. Current figures for Oshana indicate a decline in proportion of female representatives and also signal the need for assessing the minimum quota for women in light of the fluctuating total CLB membership. While there are a minimum of 12 CLB members (where there is a conservancy within a board's area), the total number of members varies depending on the number of recognized Traditional Authorities and Regional Councils in the Board's area.

Numerical representation is necessary, but is not sufficient for attaining meaningful participation of women. In terms of leadership, the Chairperson of the current CLB was not elected at the time of this case study, but women have held the position in the past suggesting an openness to women holding positions of leadership.

Status associated with rank and educational attainment influences participation in CLB meetings. According to the regional CLB Secretariat, women's participation in meetings is similar to that of their male counterparts. Women are engaged and often offer a perspective informed by their experiences. While cultural norms do not appear to inhibit women from articulating their preferences in the company of male CLB members, it was reported that both men and women are reluctant to challenge or disagree with individuals in senior positions or those who have benefited from higher education. This may appear gender neutral on its face; however, it is likely to have gendered impact given that women are often overrepresented among the less educated and underrepresented among those holding positions of power.

To counter these and other challenges faced by CLBs across Namibia, the MLR recently issued a call of interest to recruit CLB members with higher educational background and skills. This approach could produce advantages and disadvantages. On the one hand, setting minimum standards of education may mean that all CLB members will feel that they can participate fully (addressing a psychological barrier). On the other hand, setting this minimum requirement may exclude some of the very people the CLBs are intended to represent, including rural women. Women in general and rural women in particular, are likely to be disproportionately affected as they often have fewer educational opportunities.

The MLR could systematically and periodically assess the gender-specific needs and barriers related to CLB participation and provide targeted support for female CLB members, including training. Women could also be encouraged to hold periodic meetings to discuss their priorities and concerns with their respective female CLB representatives prior to CLB meetings.

Interestingly, the representation of the line ministries does not include the Ministry of Gender Equality and Child Welfare. This is of particular importance given the subject matter and the lack of a gender department or focal point in the MLR. The CLB would benefit from the active participation of the Ministry of Gender Equality and Child Welfare.

Regarding women's engagement at a community level, the choice of venue to post notice of applications for land allocations was not optimal as it was not a place frequented by men and women. Women interviewed were not well informed about the location and content of the notice of applications. While constituency offices, which are used as a main venue for displaying maps, are socially and physically

accessible to male and female respondents, these offices are not necessarily frequented by either. Women suggested that posting notices at small neighborhood shops or church boards would be a more effective way to reach women. The seven-day timeframe was not a focus of discussions as many women were not familiar with the postings.

Awareness Raising

Generally, the CLRA-related communication strategy and associated efforts evolved to respond to identified needs. Initially, the efforts by the MLR focused on the procedures using multi-channel-booklets on the registration process in vernacular languages, video clips following the actual process, registration team visits, etc. These efforts, however, had limited success in improving knowledge of women's rights under the law due to the limited scope of the content and limited geographical reach of materials. Generating understanding of the prescriptive laws was also a challenge given the low literacy in target communities. Cognizant of the shortcomings of the awareness raising efforts, the MLR, in collaboration with other stakeholders, amended the approach, developed a coherent communication strategy and introduced a publication campaign. It attempted to find a balance between communicating the CLRA content (aims and benefits) and communicating procedures. The initial approach was adjusted to incorporate the content of the CLRA and highlight benefits of registration for inhabitants of communal land. These efforts also highlighted some key issues related to women's land rights and began tackling critical issues preventing people from registering their rights. These communication efforts were part of a broader strategy that included addressing budgetary and human resource, as well as technical challenges associated with implementing the CLRA.

Applications for Customary Land Rights

According to the Oshana CLB data, the CLB has received a total of 17,028 applications for customary land rights as of June 2015. They received more applications from men (9,904 applicants or 58.2%) than women (7,124 or 41.8%), with more applications received from married men than unmarried men. Of 7,524 applications received from married couples, only 283 (3.78%) were submitted by married women listed as applicants, and of 9,504 applications received from unmarried persons, women account for the majority of applicants at 6,841 (72%). See Table 2.

Table 2. Oshana Application Figures (June 2015): Inter-Gender Dimensions

Classifications	Total	Male Applicants	Female Applicants
Applications Received	17,028	9,904 (58.2 %)	7,124 (41.8%)
Married Applicants	7,524	7,241 (96.2%)	283 (3.78 %)
Unmarried Applicants	9,504	2,663 (28.0%)	6,841 (72%)

Table 3. Oshana Applications Figures (June 2015): Intra-Gender Dimensions

Classifications	Total Applications	Married Applicants	Unmarried Applicants
Male Applicants	9,904	7,241 (73.1%)	2,663 (26.9%)
Female Applicants	7,124	283 (4%)	6,841 (96%)

While the disparity across marital status is significant for both sexes, the disparity between married and unmarried females is considerably higher with very few married female applicants and a considerable number of unmarried female applicants. Of the 9,904 male applicants, 7,241 applicants or 73.1% indicated they were married and 2,663 or 26.9% indicated they were unmarried. Of the 7,124 female applicants, 283 (4%) indicated married status (4%) while 6,841 (96%) declared unmarried status. See Table 3.

It is difficult to interpret the results for different categories of women without further disaggregation and aggregation. Applications from unmarried women include applications from widows. Although the application form indicates whether the application is for an existing or new customary land right, this information is not aggregated and shown alongside the data on the status of applicants. Disaggregating information by the nature of rights (existing vs. new rights) and specific marital status of applicants (married, single, widowed, etc.) could help uncover important differences among female applicants. For instance, it would reveal what proportion of the applications received from women are for new versus existing rights, and what portion of the latter reflect applications for re-allocation by widows versus other

groups of women. In short, it would more accurately capture the circumstances on the ground and expose the distinct experiences of various categories of women.

Similarly, it is difficult to interpret the results for married applicants. The current application form simply states applicant and applicant’s spouse, making it difficult to ascertain which of the applicants intended to apply as joint applicants and which were merely disclosing the name of his or her spouse as a family member.

Nonetheless, available data suggests inequitable distribution of customary land rights. Women represent a majority of the population of Oshana and female headed households account for 54% of households. Still, fewer women than men apply for customary land rights and few married women apply for land rights. Accounting for joint applications could potentially increase the number of married women applicants, but is not likely to eliminate the considerable disparity between married and unmarried female applicants.

Intra-gender Dimensions

Results from implementing the CLRA in Oshana region (Oukwanyama TA) suggest that despite progressive laws in Namibia, some women continue to lack customary rights to land while others have limited tenure security. Further analysis suggests that this is primarily a consequence of the customary practices around marriage, cultural views on the proper role of women and economic barriers, but it is also a regulatory matter.

Table 4: Specific Barriers to Women’s Customary Land Rights

Category of Women	Barriers
Married Women	<p><i>Social Barriers:</i></p> <ul style="list-style-type: none"> • Married women’s ability to exercise CLRs is socially constrained. They are typically economically better positioned than unmarried women, but often encounter greater social resistance when applying for land (“man’s domain”). <p><i>Legal Barriers:</i></p> <ul style="list-style-type: none"> • Regulation that implements the CLRA related provisions may be insufficient to ensure married women’s rights are registered with men’s. CLRA

	<p>regulation theoretically recognizes joint titling, but it does not support equal recognition of the rights of each of the spouses in practice (registration form).</p> <ul style="list-style-type: none"> • The effectiveness of the CLRA to protect the land rights of women in civil marriages also depends on the Married Persons Equality Act and the Native Administration Proclamation. Almost all married women interviewed in the Oshana region were married under formal law, but they would not automatically benefit from the default statutory protections for civil marriages as the relevant discriminatory provisions of the Native Administration Proclamation have not been repealed. Similarly, those who are married under custom would not be protected under the Marital Equality Act.
	<p>Polygamous Households</p> <p><i>Legal Barriers:</i></p> <ul style="list-style-type: none"> • Women in polygamous unions are unlikely to be equally protected by the law. The CLRA employs an inclusive definition of the term spouse to include customary unions, but is not clear whether this definition extends to customary unions of polygamous nature.
<p>Widows</p>	<p><i>Social Barriers:</i></p> <ul style="list-style-type: none"> • Despite considerable reduction in the number of widow evictions, some widows continue to be harassed by their husband’s family and may underreport evictions to headsmen/headwomen. Reporting eviction could result in retaliation or jeopardize other support from the family. • Provisions of the CLRA which accord surviving spouse/widows the right to retain the re-allocated land upon remarriage depart considerably from customary practice and have not been successfully adopted in practice.⁴ Under customary law, land rights of a remarried widow are often reallocated to the children of the marriage or to other relatives living on the land.
<p>Cohabiting Households</p>	<p><i>Legal Barriers:</i></p> <ul style="list-style-type: none"> • Inconsistencies and gaps between land-related statutory provisions result in fewer protections for some women. Cohabiting couples are recognized by the CLRA; however, they are not covered by the marital property laws that would make joint rights between spouses obligatory under community of property regime.

<p>Unmarried Women (single, divorced)</p>	<p><i>Economic Barriers:</i></p> <ul style="list-style-type: none"> • Unmarried women’s ability to exercise their land rights is considerably restricted by their limited financial means. Single women reported lack of livelihood options as their greatest obstacle to claiming and exercising new customary land rights under the CLRA. They expressed serious concerns about the numerous costs associated with registration. Under the CLRA, mandatory fees include an application fee of N\$25 and a registration fee of N\$50. In practice, in addition to the legally set fees, respondents are expected to pay a N\$600 fee to the village headman/headwoman followed by an annual fee of N\$10.⁵
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3. Monitoring Enforcement of the Communal Land Reform Act

More broadly, limited monitoring mechanisms and inadequate institutional capacity appears to have resulted in insufficient monitoring of the enforcement of the CLRA. It was reported that there are incidents across Namibia where Traditional Authorities have allocated land outside of the CLRA process. To the extent that the CLRA provides for certain opportunities for women to gain rights to communal land, limited monitoring means that it is difficult to know how effective those provisions are, and makes it more difficult to understand how they might be amended or improved to best serve the different needs of women and men.

V. Kavango

a. Background: Kavango’s Decision to Opt out of Registering Customary Land

While the State and the relevant Traditional Authorities have been implementing the CLRA in Oshana and other parts of Namibia, Kavango (East and West) decided to opt out of registering customary land rights and continues to operate independently under their established customary system. The Kavango experience provides insight into the land tenure practices of the Shambyu Traditional Authority and offers other promising practices and lessons learned from measures that have sought to both protect community rights to land and also protect the rights of women and men in those communities.

The Traditional Authorities of Kavango (East and West) contend that the CLRA is designed to solve problems extraneous to their situation, including challenges related to women’s land rights. As one senior

⁵ Article 42 specifically prohibits payment for registering customary land rights outside of the administration fees set by law. Nonetheless, it is unlikely that unmarried women or others can refuse to pay the N\$600 fee because of the potential social cost of offending a headman/headwoman. Some respondents suggested that there would be less need for the N\$600 fees if headmen/headwomen had an alternative source of income.

headman put it, “Why fix what is not broken?” They assert that their customary system contains mechanisms for effective land governance and that the CLRA is duplicating efforts. They also state that their customary system protects the land rights of women.

Alternatively, they assert that registration of customary land rights under the CLRA does not accommodate their reality and is therefore not in the best interest of the people of Kavango. They articulate interrelated ecological, cultural and political grounds for opting out of the nation-wide customary land rights registration process.

Traditional Authorities fear that the CLRA will result in a loss of available land. Registration would deny them their right to clear new land for agriculture and would confine applicants to a registered plot. They believe implementation of the CLRA would also disrupt their collective residence pattern. It is the general practice for men to settle in their parental village and registration would limit available land in the vicinity of the extended family residence for future generations, forcing sons and their families to settle elsewhere. Some also view the 20 hectare size restriction (which will increase to 50 hectares when the aforementioned amendments take effect) in the CLRA regulation as arbitrary and unnecessary. It was reported that many Traditional Authorities across Namibia have suggested that Traditional Authorities, through close consultation with their respective communities, be tasked with setting the size restriction based on customary practice and land availability.

Kavango Traditional Authorities stress that the CLRA does not accommodate other cultural specificities of the Kavango people. The registration mechanism does not account for the group rights oriented customs of the Kavango people. For example, registration would deny the land rights of other rights holders to the same parcel of land, which is a feature of Kavango customary tenure. Individualized registration and corresponding exclusive rights to a plot also hinders Traditional Authorities’ oversight of plots allocated, used or abandoned. They underscore that this would interfere with the customary resource management system.⁶ Finally, they maintain that registration does not accommodate their traditional land use practices, such as the allocation of multiple plots to individuals. Most residents across rural Kavango use more than one parcel of land; however, applicants cannot register more than one plot under the CLRA.

Stakeholders in Kavango are unclear on and somewhat suspicious of the potential consequences of registration. Some perceive registration as an attempt by the Government to identify available land for allocation to others outside of their community. While there is a general perception of abundant land,

⁶ It should be noted that the issue of group rights is being addressed by the recent CLRA amendment scheduled to take effect soon.

there is also recognition of the increasing demand for land. “Land is finite, but populations grow; we need to preserve land for our children,” noted one headman. Others view registration as commodifying communal land and perceive registration as a precursor for land taxation or other land related fees. The administration fee of N\$25 (approximately US\$1.75) is perceived by some as purchasing their existing right to communal land, and therefore, violating an underlying tenet of communal land systems.

The CLRA is also perceived by some as a Government program designed to further undermine the power of Traditional Authorities in the area of land administration and management. Traditional Authorities’ power has declined significantly post-independence and some believe that civil servants in regional offices no longer hold chiefs and traditional systems in high regard. In addition, some believe that plot-based territorial governance involving Traditional Authorities is inappropriate for communities whose membership is defined by factors other than territorial jurisdiction.

Critics of the recusing Traditional Authorities argue that the ability to appeal decisions of the Kavango Traditional Authorities outside the traditional system may be a contributing factor to the Traditional Authorities’ resistance to registering customary land rights under the CLRA.

Discussions between the Kavango Traditional Authorities and the Government are ongoing. The national Government continues to explore registration mechanisms to better respond to diverse customary systems within Namibia.

b. Kavango Region and Customary Land Rights

The Shambyu Traditional Authority notes that they have an inclusive governance structure and gender responsive customary laws. The following section outlines these gender equitable customs and practices.

According to the customary law of the Shambyu Traditional Authority, women can: (i) Request communal land regardless of their marital status; (ii) Remain on the land they shared with their husband upon his death; (iii) Be recognized as partners within a civil, customary, polygamous or cohabitation context; (iv) Appeal allocation of customary rights within the customary system; and (v) Hold all positions within the Shambyu Traditional Authority (the Hompa is typically elected according to the rules of matrilineal descent of the royal family regardless of gender).

c. Gender Analysis

i. Inclusive Governance

The decision-making structure of the Shambyu Traditional Authority is inclusive, with women well represented at all levels. At the time of the case study, the highest office was held by the late Hompa

Angelina Matumbo Libebe, women made up a majority of the Chief Council (8 out of 12 members), and approximately 50% of the village headmen were women. Historically, both men and women have served in the capacity of Hompa.

Participation in meetings appears to be influenced to some extent by hierarchy, which is in turn linked to lineage. There does not appear to be any gender bias.

Women reported that they are able to access and present their own interests to the relevant traditional authority representatives at all levels.

ii. Broad Definition of Conjugal Relationships

Customary law of Shambyu Traditional Authority defines conjugal relationships broadly to include cohabitating and polygamous unions. Additionally, they do not require documentation as proof of customary unions.

iii. Requests for Customary Land Rights

Like other customary systems, the customary system of the Shambyu Traditional Authority is based on principles, not rules. Within this system, it is need, rather than age or gender that often determines when one requests for land. In general, candidates are at least 18 years of age, but it is not unusual for youth to wait until 21 to request land. There is no direct fee for land rights allocation; however, the Traditional Authority collects taxes from each person over 18 years of age with the exception of pensioners, persons with disabilities and students. Taxes are currently set at approximately N\$24 (approximately US\$1.68).

However, while the aforementioned customary principle guiding requests for new customary land rights appears gender-blind, it is likely to have gendered results. Upon the request for land, the headman/headwoman inquires about intended use and ability to use the land requested. Women's limited productive and financial resources are likely to deter them from requesting land and may negatively affect the probability of securing an affirmative response for women requesting virgin land. Women's limited resources may also threaten their ability to retain their rights to land. One unmarried respondent reported that she relinquished her rights to land because she did not have the resources (money and labor) to maintain it. In addition, women noted that securing residential plots is easier than farm land as the latter is often considerably larger and requires more resources. Again, this suggests women need targeted interventions to facilitate access to economic opportunities and agricultural services so they can both claim and benefit from their land rights. The high level of poverty in this region suggests a greater need for such interventions.

Furthermore, women and men who are not native to the community could experience more challenges securing customary rights to land as the level of scrutiny and permission required for applicants from outside the specific community is considerably higher. Women are more likely than men to fall in this category due to the prevailing patrilocal residence.

iv. Intra-gender Dimensions

Shambyu Traditional Authority customs allocate land rights to women in different ways. Single or married women can be allocated customary land from their kin group or can independently acquire land from the appropriate Traditional Authority upon request. The land allocated to women in their natal village remains their land irrespective of subsequent changes in their marital status. This assumes couples are married under custom or formally married without a declaration expressing an intention to be married under the in community of property regime. Women indicated that married women retain the right to natal land as a fallback strategy in the event that a marriage fails or should they encounter economic hardship as a result of marrying into a family with limited economic means.

Women may also have rights to the land of their spouse or partner, though these rights are limited. Under custom, married and cohabitating women have limited rights to the marital residence and farm land. Land acquired during marriage, however, is likely to originate from ancestral land of the husband's family given the patrilocal and extended family residence; a woman is thus not likely to have claim to such land. This is a source of vulnerability for women's land rights.

However, married women have decision making rights over farming land during marriage. Women reported having strong decision making authority over crop and garden plots used by the household. The majority of women indicated that intra-household farming decisions were either shared between spouses or made exclusively by women.

Married or cohabitating women are vulnerable, however, when the household changes as custom does not provide sufficient safeguards to withstand changes to the family. According to custom, the "outsider" vacates the land upon divorce or separation. This disadvantages women who are often "outsiders." The contemporary shift in residence pattern, in which men are increasingly settling in communities other than their natal village, may undermine the inheritance systems which advantage men. However, this shift in settlement pattern lags behind the prevailing patrilocal residence pattern at this time.

Cohabitating women and women married under custom are accorded some protection where the husband is found at fault for the breakdown of the marriage or relationship. In this case, the husband could be ordered to pay a considerable financial compensation to enable the wife to resettle elsewhere.

Traditionally, the party who initiates a divorce is considered at fault. However, a wife can initiate a divorce without “fault” where a husband repeatedly refuses to comply with headmen/headwomen’s warnings to alter behavior such as physical abuse and extramarital affairs. In practice, it is not clear to what extent women can successfully solicit the support of headmen/headwomen in such matters as the answers of some respondents reflect a level of acceptance of such offenses.

Where the land in question was not inherited from or otherwise provided by the husband’s family and the wife is not found to be at fault for the divorce, the Traditional Authority can ask the husband to vacate the land upon divorce. This is an unlikely scenario given the extended family residence arrangement common in Kavango. Women married under civil law with a declaration stating their intention to be married under a marriage in community of property regime are also within the scope of statutory provisions.

In the less common situation where both parties are “insiders,” the wife may be disadvantaged given that the land in question was likely obtained from the husband’s family (extended family residence arrangement) and given the relatively high incidence of customary marriage.

Widows have the right to remain on the land they shared with their husband (and his family) upon the husband's death. Also, it should be noted that wills, both verbal and written, are becoming more common. Verbal wills are generally observed because of a culture of respect for and fear of the dead.

Barriers to rights created by inter-household customs related to wealth distribution such as *lobola* do not appear to influence women’s land rights. While the custom of *lobola* has infiltrated Kavango from neighboring communities, the community members interviewed did not engage in this practice.

VI. Promising Practices and Lessons Learned

It is clear from this case study that promoting women’s rights while also protecting customary land tenure systems through registration of rights is a complex and multifaceted process that touches on law, culture, economics, politics, and administrative capacity. The Namibia experience offers both promising practices and constructive lessons about the process and content of promoting women’s land rights while protecting customary land tenure systems. The following promising practices and lessons learned primarily focus on approach, substantive and procedural safeguards, data collection, and communication.

Promising practices should be considered bearing in mind the broader contextual dynamics and the potential interlinkages between the various promising practices.

Key promising practices include:

- (1) Employ an iterative process to respond to needs and new information as it arises.
- (2) Capitalize on the relevant experiences of other countries in the region through study tours and technical advisory missions.
- (3) Recognize the diversity and complexities of customary tenure systems. Statutory provisions governing registration of communal land should accommodate cultural specificities across traditional systems.
- (4) Exploit the flexibility of customary systems and build on the gender responsive aspects of customary tenure systems and practices to strengthen women's rights to land. The CLRA recognizes the legal authority of Traditional Authorities to administer communal land while reinforcing gender responsive customary laws and incorporating additional gender responsive safeguards.
- (5) Systematically incorporate gender responsive provisions in the statutory framework recognizing customary law.
- (6) Grant women independent rights to communal land regardless of their marital status and recognize that women's de facto rights to land are shaped by the type of household and women's socioeconomic position within their households and communities.
- (7) Allow for joint titling particularly where men traditionally apply for customary land rights for marital residence/farm land and are regarded as right holders. Additionally, ensure regulations that implement the communal land act support equal recognition of the rights of each of the spouses.
- (8) Consider reinforcing the aim of joint titling and supporting the enforcement of each right holder's rights by pairing joint titling with spousal consent to alienate, burden, mortgage, cede, or contract to alienate the property jointly held.
- (9) Accord explicit protection for vulnerable women.
- (10) In addition to mandating the inclusion of women in the communal land governance structure, periodically assess the gender-specific needs and barriers related to participation in communal land boards and provide targeted support for female members including trainings.
- (11) Consider the underlying purpose for fees when abolishing long established customary fees and identify alternative sources of income or other arrangements for compensating traditional administrators

who rely on the abolished fees for their livelihood. This would help ensure that related strategies for protecting women's land rights are feasible.

(12) Exploit information gathered by aggregating key sex disaggregated data and further disaggregating data on female applicants to facilitate nuanced understanding of the variables affecting women's land rights.

(13) Continually disseminate information about the land intervention at all levels and through context appropriate mediums highlighting gender responsive provisions.

(14) Ensure communication efforts are part of a broader strategy that includes addressing budgetary, human resource and technical challenges associated with enforcing the law.

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Annex I: Key Stakeholder Interviews

Ministry of Land Reform, Windhoek

Dr. Nashilongo Shivute, Acting Permanent Secretary
Ms. Prisca Mandimika, Special Advisor to the Minister
Mr. Marvin Sisamu, Deputy Director, Department of Land Reform
Ms. Maria Kasita, Deputy Director, Land Board Tenure and Advice (LBTA) Division
Ms. Winnie Mwilima, Project Manager, Communal Land Right Registration, Programme for Communal Land Development (PCLD)

GIZ, Windhoek

Ms. Martina Roemer, Team leader
Mr. Matthias Wiegand, Development Advisor, Support to Land Reform

Millennium Challenge Account (MCA), Windhoek

Ms. Louise Shixwameni, Director

Legal Assistance Centre (LAC), Windhoek

Mr. Willem Odendaal, Coordinator/LEAD
Mr. John Hazam, Advisor
Mr. Peter Watson, Lawyer
Ms. Drew Aiken, Fellow

University of Namibia (UNAM), Windhoek

Dr. Kletus Likuwa, Director, Multidisciplinary Research Centre (MRC)
Ms. Cecilia Endunde, Graduate Student
Ms. Sophia Isala, Graduate Student

Ministry of Land Reform, Kavango East

Mr. Lazarus Kahaka, Acting Deputy Director/Chief Development Planner
Mr. Fernando Marungu, Secretary to the Kavango East Communal Land Board

Shambyu Traditional Authority

Senior Council and Headwomen/Headmen

Ministry of Gender Equality and Child Welfare (MGE CW), Kavango East

Ms. Benedikta Kamunoko, Chief Community Liaison Officer

Ministry of Land Reform, Oshana Region

Mr. Andreas Ndeyapo, Acting Deputy Director
Mr. Vaino Nuunyango, Secretary of the Oshana Communal Land Board
Mr. Paulus Nghipondoka, MLR Surveyor and Ondonga Traditional Authorities

Oukwanyama Traditional Authority, Oshana Region

Headmen and headwomen

Focus Group Discussions (select communities)