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SECURING CUSTOMARY LAND RIGHTS FOR DEVELOPMENT IN NAMIBIA: LEARNING FROM NEW APPROACHES, OPPORTUNITIES AND SOCIAL SETTINGS

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Abstract

Communal land in Namibia extend over 33.4 million hectares supporting 70% of the population but due to historical legacy and unresolved land issues continue to face lack of investment in farming infrastructure. Tenure insecurity persists in communal areas as very few communities have title to land outside informal traditional tenure arrangements. Although Namibia has made strides towards socio-economic and political development a majority of the population still depend on the land for livelihoods making it increasingly urgent to provide for mechanisms that safeguards land rights within the community social settings. The paper is informed by the Project for Communal Land Development in efforts to secure customary group rights in Kavango East and Kavango West. Strategies and lessons learnt from other Regions and projects are explored. Formalising group rights over commonages is expected to spread infrastructure investment across a larger group of people and facilitate economic diversification for improved livelihoods.

Key Words: Group Rights, secure tenure, property rights, participatory approaches; land tenure

Introductory Background

The land issue in Sub-Saharan Africa has remained pivotal and contentious despite efforts to find consensus. This is due to the fact that the majority of the population's livelihoods are land based production activities and secure tenure is of fundamental importance. Within this context there is an increased focus on growth and the need for increased productivity ensuring a resurgence of the discussion about whether the traditional land tenure systems and the current efforts to transform the agricultural sectors are in tandem.

Today, even with the emphasis by most Governments on tenure reforms in communal areas very few communities have documentation to land outside informal traditional tenure arrangements. Several studies have demonstrated the importance of customary land rights although there is imminent threat from disintegration due to commercialization, increased production and the canvassing by local elite Migot - Adholla et al [1994]. These challenges are prevalent even in cases where customary tenure rights are recognised and provided for by law. Although Namibia has made significant strides in socio-economic and political development a majority of the population continue to depend on land for livelihood making it urgent to provide for a mechanisms that safeguards land rights within the community social settings.

Communal land in Namibia extend over 33.4 million hectares, supporting 70% of the population but due to the historical legacy continue to face lack of investment in farming infrastructure. Tenure insecurity persists in communal areas but studies by the World Bank and others indicates that tenure insecurity is not an inherent characteristic of indigenous property systems but of the dislocation of these systems from the social and institutional context that defines and sustains them, Okoth-Ogendo, [2002]. The nature and content of land rights under indigenous laws have been misinterpreted in public policy even though indigenous laws are clear on the distinction between individual and collective land rights. Today in Namibia communal land is designated as state land and Government has the power to allocate rights based on current property laws. Indigenous land governance institutions have been ignored and replaced by parallel institutions for land administration thus suppressing indigenous ones [Ibid, 2002].

In the context of Sub-Saharan Africa the negative distributional consequences of documenting rights to land, with an emphasis on absolute individual ownership in rural areas governed by customary tenure, have been articulated. Entitlements based on customary rights to land have been rendered vulnerable when title holders assert their rights of ownership against unregistered family members. Evidence based facts are overwhelming where statutory provisions are used to dispense judgement in favour of title holders, ignoring the reality that the majority of communities regulate their property relations based on custom even in the case of registered land. The paper is based on the experience of the Project for Communal Land

Development [PCLD] in Namibia in exploring the current policy and legal framework, the social settings, the opportunities and costs of securing group rights to communities in Kavango East and Kavango West. Various strategies are considered in order to ensure inclusivity, social protection and participation by all stakeholders using lessons learnt from other regions and PCLD projects. Formalising group rights over commonages is expected to spread infrastructure investment across a larger group of people and facilitate economic diversification for improved livelihoods, MLR, [2017].

Communities in Kavango East and Kavango West Regions have opted out of the communal land registration programme as it is viewed not to be in conformity with the norms and cultural values of the peoples. The current efforts by Government to document land rights were ignored due to incompatibility with the social and cultural milieu in which it is applied, [RoN, 2014]. The response to land registration by these communities is viewed as a missed opportunity by Government to work with the community, correct public policy prejudices against the development of land resources under customary law and provide capacity and resources to safeguard customary land rights systems as informed by the cultural norms and belief. The Kenyan experience has learnt credibility to the merits of customary tenure systems as effective and capable of evolution to accommodate changing circumstances. In the case of Namibia for the land registration programme to benefit the communities and to be accepted by the other communities there is need for continued transparency in the processes, participatory and decentralised policies, reviewing of the programme to incorporate the cultural diversity as demanded by the communities and the enhancement of capacity for institutions for land and land rights management capable of delivering sustainable benefits for the poor.

Land Reform in Namibia

At independence, African Governments that experienced enforced land alienation took a decision to redress the contentious land issue by prioritising policies that addressed inequitable land distribution. Yet these initiatives continue to face challenges due to colonial legacies, Adams et al, [1999]; Moyo [2005]. Land reform also encompasses tenure reform, post settlement support to land beneficiaries and property restitution in the case of South Africa, Middleton et al [2016].

In Namibia land reform is a means to redress past injustice, income inequality and socio-economic development. In the commercial areas the focus is on the acquisition and redistribution of land through a willing buyer – willing seller principle. The Agricultural [Commercial] Land Reform Act, Act No. 5 of 1995 guides this process. In Communal areas the focus is on reforming tenure, through the Communal Land Reform Act 5 of 2002. In addition the Government is also implementing the Programme for Communal

Land Development [PCLD] to support objectives of the land reform programme through economic development targeting infrastructure, tenure reform and post-settlement support.

A national Conference on Land Reform and the Land Question held in 1991 resolved to undertake a comprehensive Land Reform programme to foster socio-economic development in the Country. In 2005 the Land Reform Action Plan was adopted which sets the specific targets to redistribute 15 million hectares of commercial agricultural land to landless Namibians by 2020 and to date 9 million hectares has been distributed.

Land in Namibia is classified in three categories that often overlap; communal, state and freehold. It is divided into 44% freehold commercial land, 36% communal where 70% of the population derives income from farming or employment in the agricultural sector and 20% state land comprising game parks and national parks. Communal land vests in the State in trust for the benefit of traditional communities residing in those areas; thus customary land rights cannot be alienated Werner, [1993]; Carlowitz et al [2015]; Girma [2017].

Namibia is a semi-arid country located between the Namib and the Kalahari Desert with a total land mass of 825, 418 square kilometers. The population is 2.2 million making it among the least populated in the World. The economy is dominated by agriculture, fishery, mining and tourism. Although Namibia is ranked as an upper middle income country it has one of the highest income disparities in the world. Access to land is important for securing livelihoods of the poor who spend 60% of their total income on food, NSA, [2011]. Today there is a general consensus that the benefits of the Land Reform programme are not yet apparent to the population at large.

Communal Land Reform

The Communal Land Reform Act, 2002, Act No. 5 of 2002 provides three categories of land rights; customary, leasehold for business purposes [lodges for tourism, agricultural land] and occupational land rights for public services. This paper focuses on efforts towards securing group rights in Kavango East and Kavango West informed by the strategies and lessons learnt from other Regions where the PCLD is being implemented. Formalising group rights over commonages is expected to spread infrastructure investment across a larger group and facilitate economic diversification for improved livelihoods. This is important as the majority of the population live and eke out a living on communal land. To increase tenure security in communal areas the Government embarked on a programme to register customary land rights, leaseholds, development of small scale farms and infrastructure. Under PCLD communal land rights registration

involves delimiting, documenting land parcels and contributing towards improved management of natural resources RoN, [2014].

Securing customary Land Rights in Namibia - Legal Framework

Namibia recognises customary tenure in statutory law through the Constitution, the Traditional Authority Act, 2000 and the Communal Land Reform Act, 2002. Schedule 5(1) of the Constitution stipulates that all land including communal land belongs to the State unless lawfully owned. A National Land Policy, 1998 was adopted that guides legislation governing commercial and communal areas and presumes a 'unitary land system' recognising all existing forms of tenure. It denies the necessity of converting customary rights into full ownership rights to cope with the weaknesses of communal land tenure in particular the lack of tenure security. Although tenure reform is a component of Land Reform it was not prioritised because the redistribution agenda was dominant in the public discourse. Werner, [2004].

Persistent land disputes are a result of the weakness of state institutions in communal areas. The policy and legal vacuum that existed prior to the adoption of the CLRA allowed local elites to fence parts of communal lands depriving others of commonage, [Odendaal 2011]. There were uncertainties around land administration and the role of Traditional Authorities in allocating land rights and in managing the commonage. Cases were reported where Traditional Authorities [TA's] double or self-allocating land involved in land grabbing and illegal fencing activities have been reported in the media. Problems involving conflicts between different Traditional Authorities disputing their jurisdiction over particular territories were common. Often women and vulnerable community members were the most affected. The lack of documentation in line with the oral tradition of customary law made it difficult for aggrieved parties to prove their land rights, Ibid, [2011].

The CLRA makes provisions for customary land rights and use of commonage in Namibia. Commonage within the Act refers to grazing rights but to the communities the commonage is important and synonymous with accessing a range of other resources such as firewood, food, medicine and grass. The utilisation of resources is overseen by the TA's to ensure sustainability. Although the CLRA empowers the TA's to administer the commonage only a few manage to restrict over-utilisation or enforce the Act due to other reasons leading to exploitation. This gap in monitoring led MCA-Namibia, [2013] to call for a coordinated joint effort by Government and TA's to ensure the sustainability of the commonages.

Although group rights are under discussion the CLRA does not preclude Government from granting group rights within communal areas. These are currently registered as leaseholds for a specific period of time and not as customary group rights for commonage usage. The fact that Regulations are still under discussion

undermines a range of customs and land-use or livelihood practices found. The diverse customs and practices of the communities in Namibia is a key reason for Government to make a provision for customary group rights. Various groups in Namibia live differently to the way of life for which the current legal framework provides. For instance, the San use land and resources collectively mainly for hunting and gathering while the Ovahimba and Ovaherero depend on livestock farming rather than crop cultivation, thus they require large secure grazing areas; others live in family clans who customarily require shared rather than “individual” access to resources; other communities have an interest in using shared areas for small-scale agricultural activities. Registering a customary land right as a group right effectively converts a de facto right into a de jure right that would enhance the security of community members.

The absence of regulations for customary group rights weakens the legal protection of commonage areas on which communities in Namibia rely for subsistence. The rationale for the provision of a legal framework has been articulated as far back as 1998 in the National Land Policy, the Draft National Land Tenure Policy of 2008 and recently through the consultations on the draft Land Bill, 2017. The need for legal protection and security of group rights on communal land remains high on the agenda. MCA-Namibia, [2008] proposed new regulations under the CLRA to grant village communities formal jurisdiction over the commonage and to allocate each village a customary or leasehold title to the commonage parcel. The proposals are still under discussion as an analysis of lessons learnt from other initiatives is still to be undertaken.

Communal Land Rights Registration

Guided by the National Land Policy the Act seeks to improve tenure security by defining rights and by making them enforceable in the judicial system. The Act introduces a uniform land administration system for all communal areas inhabited by different peoples with their own laws and TA's. By making land tenure clear and secure it intends to help reduce land disputes.

The communal land rights registration programme allows any Namibian to apply for the registration of a customary land right allocated before or after the enactment of the Act. The application must be approved in writing by the TA and forwarded for verification and ratification by the CLB. These boards are multi-stakeholder organs established by the CLRA in every region. Members consists of representatives from Government, stakeholders, TA's and the organised farming community. Out of the 12 CLB members five have to be women. RoN [2014].

The establishment of CLB's embodies the State's attempt to harmonise its claim over communal territory with the de facto governance powers of TA's. CLB's control the allocation and cancellation of customary

land rights upon submission by the TA's. They counter balance the primary decision making power remaining with TA's in customary land rights administration and commonage management. With leaseholds it is the other way round: the CLB's have power to decide on applications for a right to leasehold in communal areas but the responsible TA's must give its consent. CLB's are also charged with the maintenance of a register on communal land rights, map the registered plots and to verify that no unresolved disputes exist before a registration certificate is issued. The Government supports the work of the CLB's with secretarial and cadastral services and an appeals procedure against the decisions of the Boards.

In terms of gender balance women's individual land rights and rights within the family and marital system through joint registration are recognised in the CLRA previously they were vested in men. The husband or another family member had to previously sign the registration form when applying for a land right certificate, thus under the CLRA, a woman could only hold an individual land title when she was widowed, single (but with permission from a relative) or inherited land. However the Ministry introduced a new Application Form in 2013 that provides for joint and individual land registration for women thus enabling women to apply for a land right certificate regardless of their status. Of the approximately 245,000 parcel to be registered, 164 807 parcels have been mapped, 177 861 parcels digitized and 118 885 parcels registered in the Namibia Communal Land administration System (NCLAS) by February 2017. These numbers demonstrate the efforts by the Government and Development Partners, KfW, EU and GIZ to accelerate the programme for improved livelihoods.

Challenges with Kavango East and Kavango West decision to opt out of Registering Customary Land

As this paper is premised on the current discussions on group rights to address the outstanding land registration project in Kavango east and west it is imperative that the region's reasons for opting out be interrogated.

A serious challenge to the Communal Land Registration programme remains as the TA's IN Kavango Region refused to collaborate in documenting rights to land. In 2008 Mendelsohn observed 'widespread uncertainty', "antagonism" and "misinformation" about the process and consequences of customary land rights registration. This situation has not yet changed and as a result only leasehold rights on small scale farms have been registered. TA's decided to continue to operate independently under the established customary system due to various reasons discussed below. TA's in these two regions are well established and fear that the registration programme would take away their jurisdiction and custodianship in land administration. They contend that the CLRA is designed to solve problems extraneous to their community and situation including challenges related to women's land rights.

Women expressed concern about the numerous costs associated with registration and most felt that their customary system contained mechanisms for effective land governance and that the CLRA is duplicating efforts. “Why fix what is not broken”, one of the Chiefs asked? Girma, [2017]. They also state that their customary system protects the land rights of women. They argue that registration of customary land right under CLRA does not accommodate their reality and is therefore not in the best interest of people of Kavango. They articulate inter-related ecological cultural and political grounds for opting out of the customary land rights registration process. They fear that the CLRA will result in a loss of available land, that registration would deny them their right to clear new land for agricultural purposes and would confine families to a registered plot. They believe that the implementation of the CLRA would 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 Girma, [2017].

Other community members view the 50 hectares size restriction in the CLRA Regulations as arbitrary and unnecessary. Girma, [2017] noted that many TA’s across Namibia have suggested that TA’s in close consultation with their communities be tasked with setting the size restriction based on customary practice and land availability. Kavango TA’s 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 an important feature of the customary tenure in Kavango. Individualised 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. Finally they maintain that registration does not accommodate their traditional land use practices such as the allocation of multiple plots to individuals.

Stakeholders in Kavango are unclear and 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 it should be noted that the issue of group rights is being addressed by the 2013 CLRA amendments and also found expression in the draft Land Bill. There is also a general understanding that land is finite, populations grow and that land must be preserved for future generation. 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 (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 RoN, [2014]; Girma, [2017].

The CLRA is also viewed as a programme designed to further undermine the power of TA's in land administration and management. TA's power has declined significantly post-independence and some believe that civil servants in Regional Offices no longer held traditional systems in high regard. In addition, some believe that plot based territorial governance involving TA's is inappropriate for communities whose membership is defined by factors other than territorial jurisdiction. Critics of the recusing TA's argue that the ability to appeal decisions of the Kavango TA's outside the traditional system maybe a contributing factor to the TA's resistance to registering customary land rights. Discussions on this matter are ongoing as Government continues to explore registration mechanisms to better respond to diverse customary systems within Namibia. In 2013, the situation escalated so much that the Minister of Land Reform held extensive consultations with TA's in Kavango on the matter. The TA's demanded as they had already done during the preparatory work for the CLRA that communal land right registration be amended to allow customary rights to be registered as group rights in their name for the benefit of their communities, Ibid, [2017]; [2014].

Literature is replete with the reasons behind the apprehensions ascribed to the five TA's in Kavango, Okoth-Ogendo,[2002] likens the Kavango impasse to the experiences by most TA's to colonial land administration systems where all commonages were placed under systems of management over which Africans had no control over thus destroying and disrupting indigenous social systems. This thinking validates the views and concerns of the TAs as they are wary of the system of land registration that is not in conformity with their norms, custom and culture. They have expressed doubts on some sections of the CLRA being in contravention of their way of life and trying to usurp their power, RoN, [2014].

While this dispute maybe influenced by personal interests it does reveal a basic challenge unifying land allocation practices in a culturally diverse society. TA's contends that the CLRA is best suited to the customary law of the majority populations living in the northern regions and does not cater for the cultural norms and specific land use practices of other groups, GIZ, [2014]. The land registration programme works better for settled farming communities than for pastoralists with extensive rangeland management of shifting cultivation. Moreover, plot-based territorial governance involving traditional authorities is difficult in scenarios with chieftain conflicts or when community belonging is not based on territorial jurisdiction but on membership Mendelsohn, [2008]. This discussion is open but efforts to articulate the concerns and factors precluding land documentation in Kavango region are being explored within the Ministry with a view to inform eventual policy and legal framework.

Agricultural Productivity and Commonage Protection

The term commonage is used in this paper to denote land resources available to a specific community, lineage or families operating as corporate entities. Commonages are said to be protected by a social hierarchy and are held as a transgenerational asset and used in function specific ways including cultivation, grazing, hunting, recreation, fishing among others, Okoth-Ogendo, [2002].

It was assumed at the establishment of the communal land registration programme that the provision of tenure security would be an essential factor for increased economic activity and as such contribute to poverty reduction. Secure land rights would stimulate agricultural productivity and open access to credit for communal farmers. However, developments show that these assumptions are questionable, Quau, [2000]. To Mendelsohn, [2008], communities perceive land registration as having ‘minimal economic value’ as registered customary land rights do not suffice as security for commercial banks. This is because they are not registered as legal deeds and they are not freely tradable. Some argue that registration of land rights should be seen as a first step in the individualisation and privatisation of communal lands to allow the land to be used as collateral for economic development, Mendelsohn et al, [2012]. Others point out that individual documentation has in practice benefited powerful interests and led to an increased concentration of land in the hands of political and local elites at the expense of the communities, Quan, [2002].

At times registration is viewed as impeding economic growth and local livelihoods. What is clear in all these discussions is that communal land registration on its own cannot produce good land use practices and enhance productivity. Other measures such as capacity building for farmers have to accompany registration to fulfil its far reaching goals GIZ, [2014]. It is also doubtful to what extent a decade of communal land registration could indeed change local traditions and behaviour acquired over generations. Research in Kenya demonstrates that land documentation did neither to stop the sub-division of holdings nor customary allocation and inheritance patterns, Quan, [2002] a situation that exists today. There is also a general sentiment that communal land reform as a policy is yet to deliver the returns of economic development and poverty alleviation. Instead there is rapid rural-urban drift with the youth leaving communal lands. Lack of formal employment coupled with different life aspirations make the youth seek better livelihoods in urban centres, GIZ, [2014].

Research in Uganda, Kenya and Malawi informs that land registration programmes worked better where the poor were targeted as beneficiaries and prescribed land sizes were enforced. Elsewhere the programme only yielded results when it was embedded in wider rural development interventions including measures to secure market access and to provide required agricultural support. Finally as in all development programmes local participation needs to take place in the design, implementation and enforcement of land documentation initiatives Quan, [2000]. Recently, customary land tenure systems have been receiving

attention as effective systems capable of accommodating changing circumstances. While the communal land rights registration process in Namibia does not abolish customary land tenure the Government should engage all communities to integrate their concerns. The opting out of a Government initiated land registration process by TA's in Kavango might be an indication for the need to review communal land reform policies and to ensure a decentralized implementation process in the future.

Commonages are increasingly eroded and fail to fulfil their functions as a safety net for vulnerable groups in the communities. One solution proposed to address this situation is to register and legalise current 'illegal fences' as small scale commercial farms under leasehold rights. This thinking is based on the assumption that it would be politically, legally and economically costly to remove fences deemed "legal" by the Act. However, any legalisation of 'old' fences should be accompanied by a strict enforcement of the prohibition to erect unauthorised new fences Mendelsohn et al [2012] Another approach offered to protect the commonage is to strengthen the communities rights over their commonage by registering customary rights which is a subject of this paper.

The nature and scope of Group Rights in Kavango East and Kavango West Traditional Areas

A study to establish the nature of group rights under different TA's was undertaken by the Ministry to explore and develop a vision for communal areas in Namibia In each sampled community TA's were consulted on the nature and scope of group rights in the traditional area. Seven kinds of group rights were identified in 25 TA's although focus is on Kavango Region.

Kavango Region was split into two Regions [West and East] in 2013 following the recommendations of the Delimitation Commission. The split was necessitated by the need to improve service delivery due to the vastness of the region and the growing population. [Mendelsohn, 2009]. There are five recognised TA's namely; Ukwangali, Mbunza, Shambyu, Gciriku and Mbukushu and these TA's are represented in one CLB. The responsibilities of the TA's is to protect communities, resources, adjudicate, and solve disputes and to allocate or withdraw land, RoN, [2014].

The majority of people in Kavango are subsistence farmers who practice mixed farming and sedentary pastoralism. Livestock is regarded as a saving and can be sold or used as payment and thus very important for sustainable livelihoods within that social setting, NSA, [2013]. Community livelihoods depend also on crafts, sand mining, wild fruit harvesting and cropping. The formal sector absorbs some and income derived is invested in farming. Kavango is classified as one of the poorest regions. Several group rights were identified and these are over land based resources such as water, grazing and land for cropping, Brown, [2010]. These rights include village group rights within a single ethnic commonage, group rights of

commonage across villages and group rights over the conservation areas. The management of these rights fall under the TA's except the Group rights over the core conservation areas and community forests. Management of these areas are governed by the Forestry Act, 2001 (Act 12 of 2001) and membership is open to community members although management of the commonages rests with the TA's in terms of the CLRA

Programme for Communal Land Development [PCLD]

The Ministry with support from the German Government through KfW and GIZ and EU has been spearheading the development of communal areas to ensure provision of secure tenure, establishment of land use plans and economic development by providing infrastructure. A set of core principles have been developed to guide the implementation of the PCLD across 7 regions.

Figure 1: Map of the PCLD intervention sites

The objective of the PCLD project is to address development challenges in communal areas that impinge on the productive capacity by farmers. Livestock production in communal areas is one of the identified economic drivers. The livestock industry contributes 11% of the country's GDP and accounts for 90% of all agricultural production in Namibia. 60% of households own livestock including 40% of poor households. Population pressure in communal areas has increased stress resulting in degradation, bush encroachment and poor range lands thus negatively impacting on livestock markets. As a result farmers have no incentive to sell livestock commercially. The PCLD together with Government saw an opportunity for intervention through projects aimed at investments in communal areas in infrastructure development and provision of water aimed at improving range land, livestock husbandry and management for better livelihoods.

The design concept of the project entails the registration of legitimate rights in a specific intervention area and this forms the basis for participatory planning and infrastructure investment. The provision of publicly funded infrastructure in communities can be safeguarded when the resulting benefits are tangible and provide the required utility for people to actually look after the given infrastructure. However, secure rights, jointly prepared plans and physical infrastructure alone does not ensure a successful farmer as such targeted advisory services underpin the prior investments.

It is these terms of reference and the programme's focus on communal land that makes it the focus of this paper to juxtapose experiences on what has worked and not worked under the PCLD intervention sites in terms of the documentation and issuance of group rights under leasehold and apply it to the discussions on group rights in Kavango. The PCLD provide the basis for improved land inventory, administration, informed planning, private investments on the land, and in the long-term potentially unlocking the economic value of land for communal farmers.

Implementation process

The PCLD supports the Ministry in implementing the Land Reform Action Plan component addressing tenure reform and land development in the communal areas. The role of the Ministry is predominantly strategic, setting standards and executing programmes while regional offices are responsible for programme implementation and ensuring close collaboration with relevant parties at intervention sites. Existing regulatory provisions and working practices ensure close collaboration with local governance structures that include the TA's and CLB's

Through project implementation various policy and regulatory issues emanating from community engagement and activities are identified to underpin lessons towards an improved land administration and management framework for Namibia. Advisory services are rendered through GIZ's experiences with the Farmer Support Programme. GIZ has also extended the current mentorship programme being implemented in commercial areas to cover the communal areas. It is foreseen that other service providers from the private sector will be contracted for advisory services.

Local level Participatory Planning, a modality for Local Level Development

To facilitate meaningful engagement and articulate the views of the communities on the creation of development plans for the designated areas the Local Level Participatory Planning process was developed, tested, piloted and implemented in three selected designated areas. Following its success the LLPP was adopted as a working tool for developing community projects. The process appeals to communities' as it makes use of visual aids and facilitates a process which allows the local adaptation of programme objectives and eligibility criteria.

The LLPP process is applied in all processes including in the participation of the prevailing TA's, the CLBs, local residents and local and regional based stakeholders. The process is integrated with the mapping and registration of communal land rights, regional planning activities as well as the development of physical infrastructure. This facilitation process comprises essential elements that borrows from the concept of free prior informed consent in order to ensure transparency in decision-making and local ownership of programme outputs. It refers to informed consent by all affected parties to land tenure arrangements, infrastructure developments, resource use rules and other key livelihood decisions made.

LLPP provides a platform for all stakeholders to:

- Streamline overlapping land uses
- Adjudicate land tenure (depicting the location of both legal and illegal land occupants)
- Determine and secure access rights
- Selection of the beneficiaries
- Shape use rules to selected infrastructure
- Define development plans in line with a given budget

General guidelines were designed to ensure that all stakeholders will be able to participate fully in the process.

LLPP Stages

The LLPP process consists of four sequential stages. While stages have a fixed content, they are implemented in a flexible way and adjusted to local circumstances. This means that where needed different methods can be used to reach the desired outcomes.

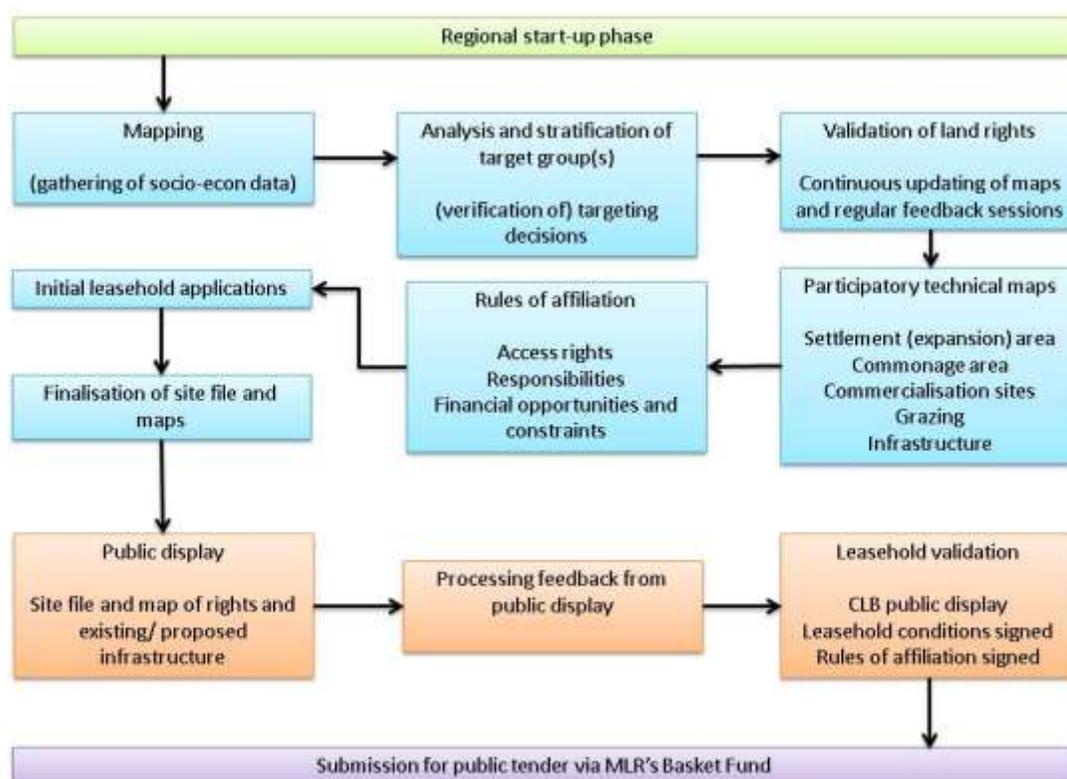


Figure 1: Illustration of core elements of the LLPP process

The LLPP process starts with a scoping visit to a selected designated area to ascertain the level of readiness by the regional and local communities to proceed with the process and the implementation of the PCLD. If the stakeholders are ready an inception workshop is conducted to introduce the PCLD and the LLPP process. During the inception workshop the institutional setup around the LLPP is discussed which normally leads to the appointment of an organizing committee. The inception workshop is followed by the mapping of the entire area. In most instances initial mapping is generic and captures the following elements.

- Registered land rights
- Villages
- Dwellings
- Fences and cattle handling facilities
- Livestock numbers

- Major land use zonations
- Water points and boreholes
- Roads, schools, clinics
- Conservancy and community forest boundaries

From the collected data a baseline map is produced and presented in the following workshop.

The second stage is the core of the LLPP process and starts with site specific detailed mapping which includes a survey to assess the socio-economic conditions of the local farmers. Maps will be produced during group sessions and meetings to scenarios to indicate the type of infrastructure required. This information is digitized and evaluated on economic viability, practicality and budget availability. The results of this internal consultation will be brought back to the community for final validation. The selection of beneficiaries which is guided by the CLRA is adopted. Throughout the process the implications on the selected tenure type and development scenario is explained by project experts. These include the leasehold conditions, lease fees and co-funding for economic investments. This stage can take six months.

The third stage involves the finalization of the site file that includes all decisions made in all the workshops as well as the lists of people who participated. The completed site file is circulated to stakeholders such as the TA, RC, MLR, and CLB for consideration and feedback. The leasehold applications are publicly displayed as well as advertised in the newspapers inviting objections in writing to the CLB. The following diagram illustrates the process of validation.

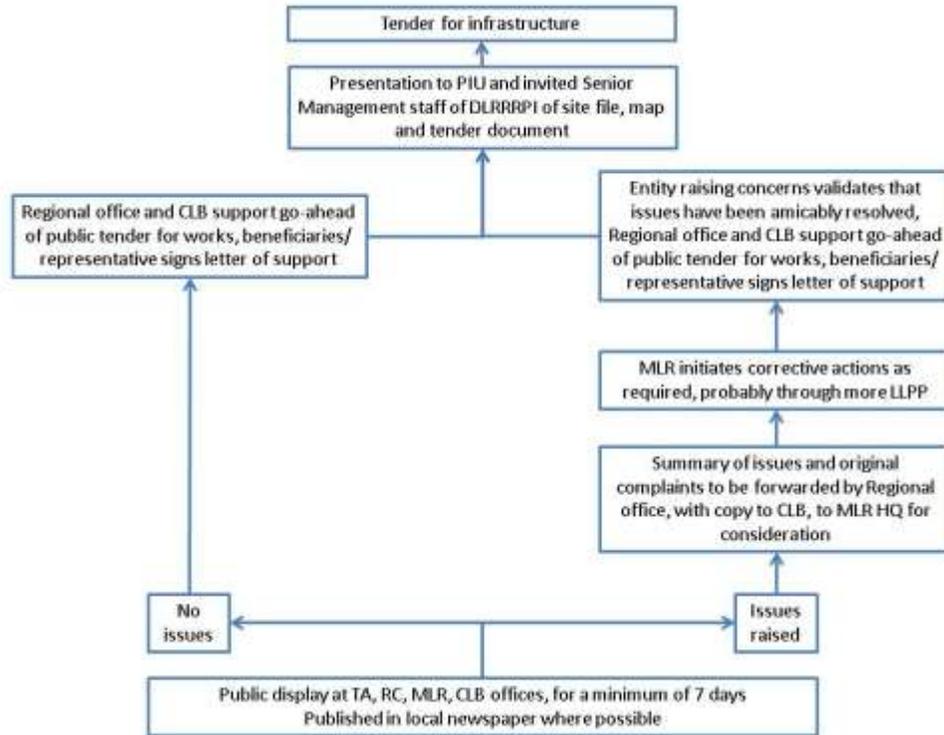


Figure 3: Validation process in Stage 3 of LLPP

Upon validation of the LLPP results and in the absence of objections or those lodged have been amicably resolved the Ministry and the CLB will initiate the tender process for the work in line with the development plan yielded from the LLPP process. Concurrently the CLB will process the application(s) for leaseholds. The Ministry through PCLD will monitor and supervise the construction process up to handing over of the infrastructure to the community. Upon completion of LLPP planning advisory services are offered to enable the community to make use of the investments and commercialize production.

To ensure proper technical designs for the infrastructure to be developed and to complement other areas of expertise the PCLD maintains a pool of experts who compile comprehensive needs assessment, detailed site surveys, designs, specifications, cost estimates and the tender documents. The experts also supervise all works and supply activities by contractors during construction and the defects liability period including reporting and certification of payment requests. This process ensures that the community is empowered with the best possible investments to ensure productivity.



Figure 4: Map of the LLPP pilot areas

In the selected areas, the LLPP approach has proven to be an important tool for ensuring locally grown development plans which underpin all investment decisions. It has also played a vital role in the adjudication and formalization of land rights in the selected areas. Three PCLD case studies are outlined below:

The Otjetjekua example

The Otjetjekua designated area covers 47.000 hectares and is sparsely populated. The area receives an average of 300mm of rain a year. The main agricultural activity is livestock farming. The area has 2.800 cattle which is the main source of income for 133 households. There are no clearly defined traditional authority boundaries and conflicts with neighbouring cattle farmers encroaching onto the Otjetjekua area are frequent especially in dry seasons. Through the LLPP process residents have registered as a cooperative and applied for a leasehold over the larger Otjetjekua area. As a community they developed a business plan, fully constituted cooperative boards, bylaws and rules of affiliation for the shared infrastructure.

A few challenges have been experienced in this area that pertain to the insurance of the inclusion in the LLPP process of all the relevant local residents as well as the definition of the boundaries under leasehold without creating major conflicts. The final infrastructure agreed upon through the LLPP is a boundary fence, internal fences for better grazing management, multipurpose kraals auctioning facilities

for better management and marketing.

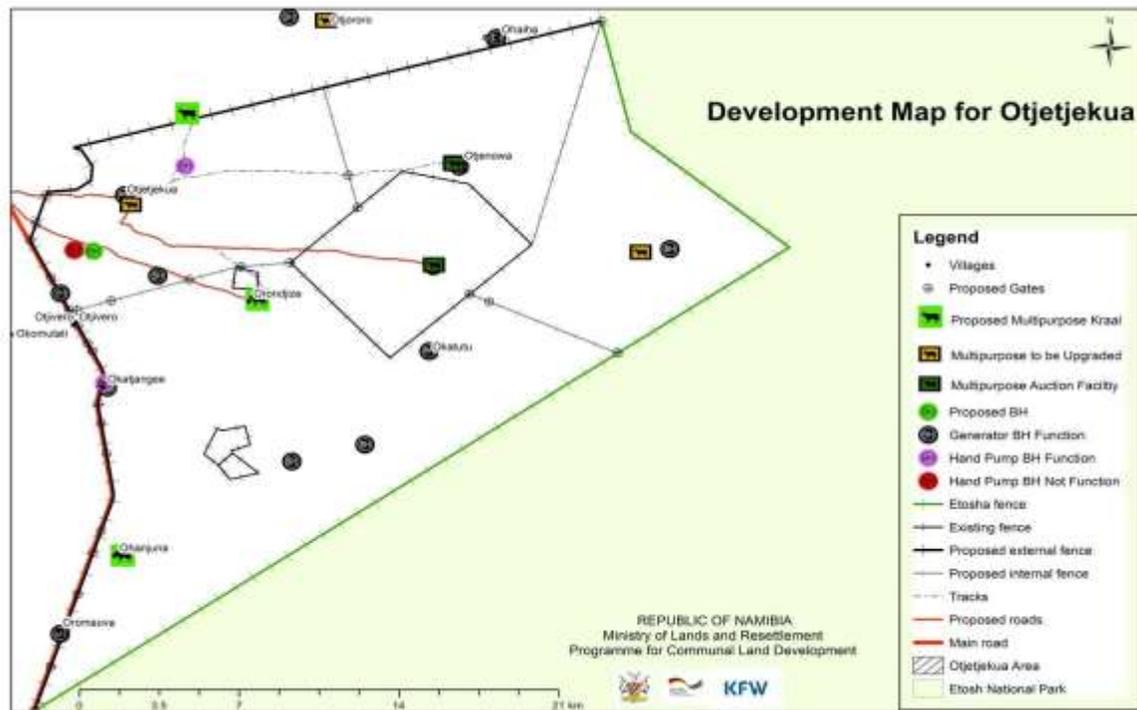


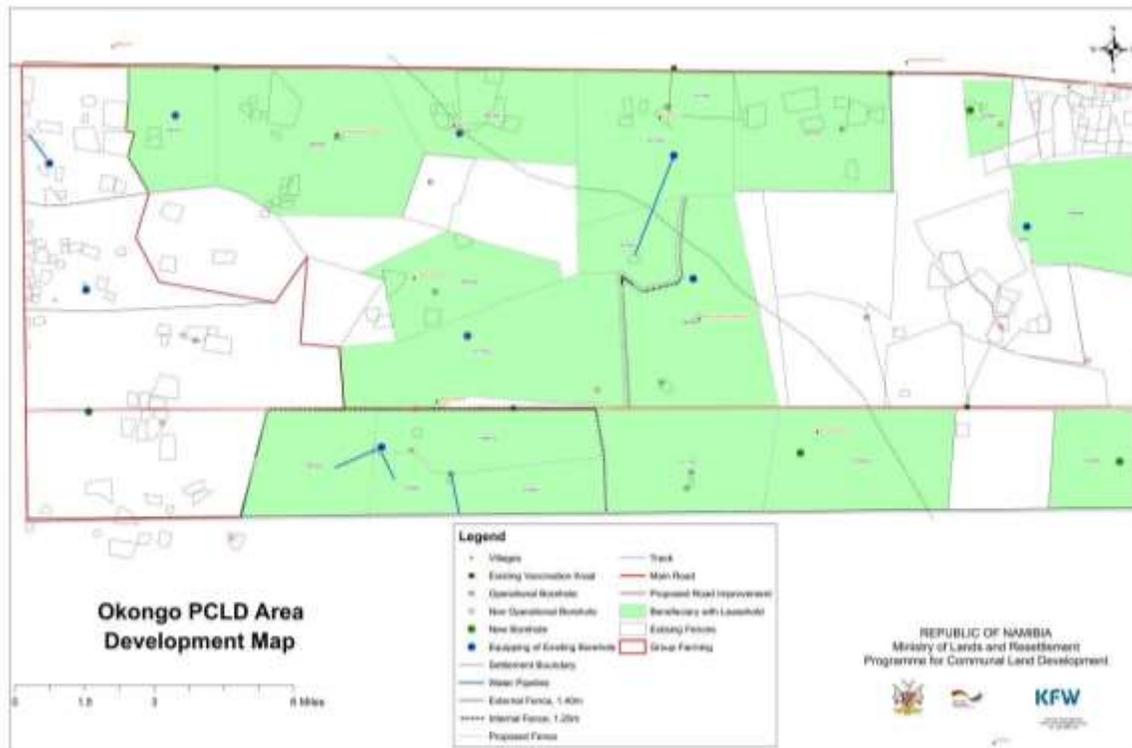
Figure 5: The Otjetjekua example

The Okongo example

The Okongo designated area covers 60.000 hectares and receives on average 550mm of rain a year. The area is used for grazing of small stock and cattle with small patches of crop land. Most of the land is occupied by 24 individual farmers and three. The three villages comprise of 150 households where the farms support 100 households. The area is disputed between the Ndonga and Uukwanyama Traditional Authorities both claiming primary jurisdiction over the area.

Of the 24 farms 15 are having consent from TAs and were considered eligible for leaseholds and infrastructure support. These 15 farms support 80 households and have a total of 3.200 cattle. Leaseholds for the 15 farms have been approved and developments are being implemented. The LLPP process for the three villages started and is steering towards the registration of a cooperative and a group right over the larger area thus securing the commonage for the local population.

Figure 6: The Okongo example



The main challenges in this area were to adjudicate the existing farmers while there is a land conflict between two TA's. The final infrastructure agreed upon through the LLPP is a boundary fence, internal fences for better grazing management, multipurpose kraals, auctioning facilities for better management and marketing water abstraction and reticulation was augmented.

The Ongandjera East example

The Ongandjera area is 148.000 hectares in size. The areas to be developed were chosen due to their lack of conflict as well as their high water potential. The Ongandjera east is 40.000 hectares with two permanent settlements occupied by the San Community. The rest of the area is used as commonage for seasonal grazing for 120 livestock owners from the Owambo tribes. The area receives 400mm of rain per year which supports an open savanna vegetation. There are 3.400 cattle grazing on the commonage.

The area will be leased to a cooperative of local residents. The larger area has been zoned into three land use systems, which are:

- Permanent village settlements mainly for san communities
- Commonage areas for san communities as well as grazing of small herds of cattle.
- Business area which will be sub leased for commercial cattle farming.

The planned development includes piping water from the main distribution network, fencing of the business area, external fences and multipurpose kraals.

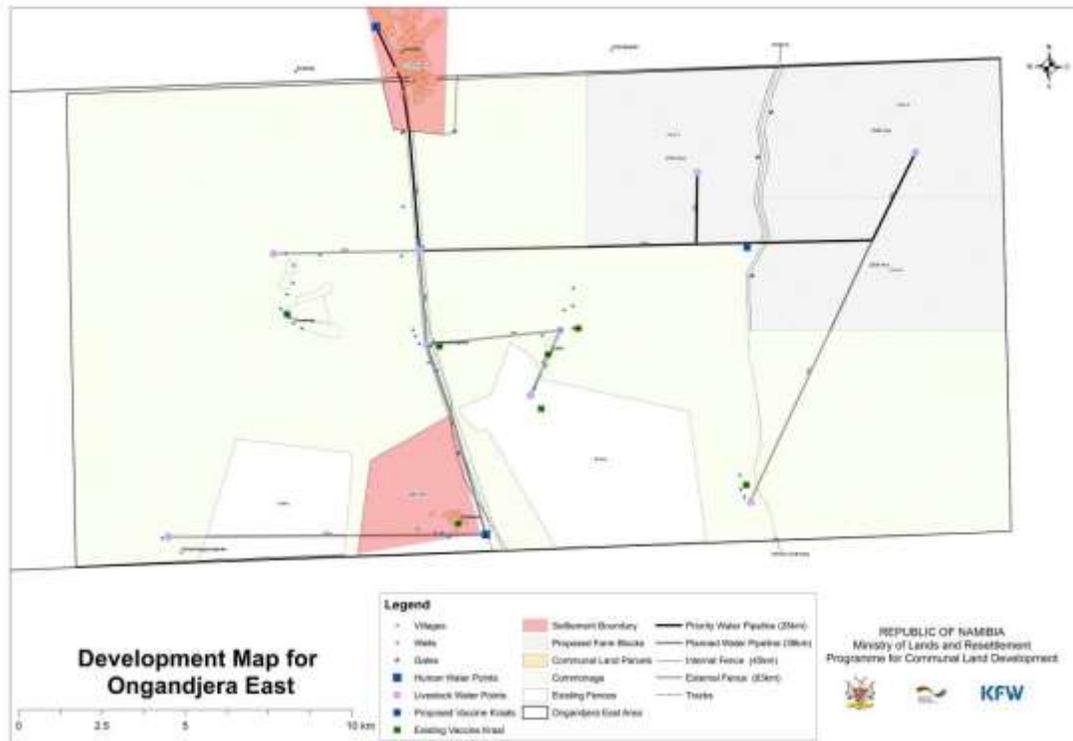


Figure 7: The Ongandjera East example

Challenges

The PCLD project has met with a host of challenges that could also serve as lessons to the discussion on group rights, these include a lack of congruence between TA's and CLBs as regards the interpretation of the legitimacy of land rights; attempts of eviction of certain ethnicities in programme areas; allaying decade-old boundary disputes between competing TA's and as a mechanism to negotiate and secure land rights for groups of local residents to harness local ownership and decision-making. The process has yielded local level development plans that are adapted to the local needs and available budget with a focus on promoting the commercialization of land based economic activities. A number of challenges were encountered during the planning process; challenges at which the LLPP methodology, and its embeddedness in the Ministry has provided solutions. These include overlapping Traditional Authorities, overlapping land uses, the adjudication of fences, group rights and a concerted effort to diminish the rights of certain groups. Below are some of the challenges that inform the learning process.

Customary land rights and leasehold

Namibia is witnessing the rapid erosion of the commonage. The commonages are located in marginal areas where 70% of the population resides and rely on land based activities for livelihoods. Most of the communities have experienced the dissolution of their principle livelihood source and safety net. On-going efforts in the registration of customary land rights are a positive development but commonages remain under threat. Communal land allocations were not documented; transferred orally resulting in boundary disputes that are still present today. Communities witnessed and experienced unauthorized extensions of allocated land accompanied by unregulated and illegal fencing of the commonage. Widows and orphans were often deprived of their land rights, Matthaei et al, [2013].

The co-existence of customary land rights and leasehold require further clarification as the two sets of rights cannot exist on the same land, RoN, [2014]. Through the Communal land Reform Act the granting of leaseholds over designated areas abolishes all customary land rights, the principle being that ‘two sets of rights cannot exist on the same land’ Ibid, [2014]. While no customary land rights have been extinguished as a result of registering lease agreements, the legal situation needs to be clarified not only to avoid possible future disputes over jurisdictions, but also as this has a direct bearing on the respective roles of TA’s and co-operative boards in managing land rights. Experience to date suggests that communal access to commonages is important to a majority of farmers, and that the separation of customary and leasehold land may not be acceptable as it would reduce the commonages.

Definition of customary land rights and role of TA’s.

Interventions aimed at making customary land rights to the commonages more secure require that some of the shortcomings in the CLRA be addressed. The CLRA provides a narrow definition of customary rights to commonages. Secondary resource rights are not acknowledged in the legislation.

The LLPP is premised on the participation of local residents and locally based institutions and plays an important role in the adjudication process between the TA’s and the CLB’s who are land administration bodies. The tools and results of the LLPP process highlight the commonage boundaries, potential conflict areas, numbers of households and livestock in an area and the proportion dependent on the commonage, fenced-off sections and other important planning elements. This information generates a solid platform for informed discussion about prevailing practices, as well as possible future decisions. Such decisions may pertain to the need for secured group rights, alignment to or negotiation with other land uses; adjudication processes on fences and water infrastructure regulations as to the use of jointly held infrastructure for exclusive use.

Tenure insecurity and a period of transition between customary and modern land administration has led to ‘defensive’ fencing by some relatively well-off citizens. These fences reduce the commonage in spite of growing population pressure and increasing livestock numbers and have led to a proliferation of land disputes. The process has brought together local residents, affected parties, CLBs, TA’s and support institutions to amicably mediate and resolve such situations. Following interventions to remove certain fences, reduce certain land holdings, regularize land portions or issue formal leasehold certificates in line with current policy and legal framework, the resolutions and decisions are recorded and actions taken.

The role of the TA’s in administering land rights and related issues in areas held by cooperatives still require further interrogation and clarification. Currently the rules of affiliation limits the role of TAs to assist cooperatives in enforcing internal rules and solve disputes. Another area of contestation is in instances where multiple TA’s lay claim to one area where successions are disputed or where residents pay allegiance to different TA’s. In these situations the LLPP process by virtue of its structures that allow wider inclusive consultations has proved useful in bringing conflicts to the fore allowing for a multitude of interventions in overcoming such conflicts in the interest of advancing development in an area.

A lot of discussion is on-going pertaining to the extent to which the registration of legal entities and long-term leases will protect the resource rights of individuals and communities in designated areas. In most cases the rights are customary land rights that have been obtained by virtue of one being a member of a traditional community. These rights are layered to accommodate different land uses and social aspects. In most communal areas people make use of the commonage without having property in that area. Formal and informal arrangements can exist to obtain access to resources on the commonages. These practices have a bearing on who should be permitted to apply for membership. MCA-Namibia [2014], advocates for the identification and ratification of all rights as a way to provide protection to the holders of commonages.

The current lease is an important mechanism to provide long-term security to groups over land. It is a legal right over a demarcated area and vests the legal entity that holds the lease with powers of inclusion and exclusion as well as land use management. These powers are a necessary condition for groups to maintain the infrastructure investments made by the PCLD and allow them to reap the benefits. It provides powers to control the use of natural resources to bring about more sustained use of pastures in the interest of improved return for livestock farming. However the lease agreement is under legal scrutiny in terms of its ability to provide protection to existing customary land rights in designated areas.

New approaches and opportunities for enhancing Group Rights in Kavango East and West – Lessons from PCLD

Sub Saharan Africa is home to half of the world's arable, uncultivated land but the continent has not been able to develop the land for poverty reduction, economic growth, and jobs and shared prosperity. The World Bank noted that Africa could effectively end "land grabs", grow more food and transfer development prospects if it can bring change to the complex governance procedures on land ownership and management. Improving land governance is vital for economic growth and opportunities to benefit from land ownership. More than 90% of rural land in Africa is undocumented making it vulnerable to expropriation with poor compensation and land grabbing. However evidence from Ghana, Malawi, Mozambique, Tanzania and Uganda suggests new thinking and opportunity in agricultural production and poverty reduction programmes. Most African countries have in place land laws that recognise customary land rights and gender equality which are essential to reinforce the required reforms. The World Bank cautions that unless communal land and individual land rights are registered and land governance improved the recent surge in foreign direct investment in Africa will not generate shared prosperity and sustained growth. Byamugisha, F, [2015] shares this thinking and notes that the findings by World Bank provide a useful policy roadmap for Africa to secure land rights for improved livelihoods a notion recognized by the African Union Commission through the recent development of a land policy framework for implementation in Africa

In Namibia tenure reform through securing the current customary land rights will facilitate decisions and actions by all Stakeholders. It will benefit rural livelihoods, facilitate infrastructure and service provision and economic development. However, others argue that tenure reform by itself will not be enough although positive impact on production and investment could be noted. The case studies and experiences of the PCLD programme could be used as a vehicle to accompany socio-economic changes for better livelihoods especially in response to the impasse in Kavango East and Kavango West through the replication and reframing of some of its result areas taking into consideration the culture and norms exemplified by the social setting.

The tenure reform debate has in some cases focused narrowly on the merits or otherwise of converting informal traditional systems of communal rights into "modern" formal systems. This view obscures opportunities for reform to strengthen the land rights of communities and ensures that their land cannot be alienated or used without consent by Government or investors. Although Governments recognise the merits of customary and communal systems of tenure there is also a tendency to generalise due to lack of evidence or selective interpretation of it Hunt, [1999] in Adams et al [1999]. To Hunt [1999], customary tenure systems are prone to manipulation by elites for personal gain as exemplified by fencing of commonage in most parts of Africa but in Botswana customary tenure systems have managed to be integrated within a modern and democratic system of land administration. Namibia, for Kavango Region could benefit from

Botswana's careful pursuit of land tenure policy that responds to particular needs with specific tenure innovations, Ibid, [1999].

Botswana's experience demonstrates the flexibility of customary forms of tenure. Kavango Region has one of the highest levels of poverty and in this instance poverty is not only understood in terms of low income and consumption but also in relation to people's ability to cater for basic needs, opportunities for social and economic development. Membership of kin groups provide essential support to those in extreme poverty. In the absence of financial resources, social capital can provide a number of livelihood opportunities including customary access to land and natural resources for farm production and opportunities for paid work. In a time of economic recession retrenchments, secure access to land and natural resources is vital and hence the importance by Governments to sustain customary land tenure by reforms which clarify rights and benefits. Whilst individual freehold tenure is fully protected in law and in practice, communal systems of land rights have suffered from legal protection and administrative support in Zimbabwe, Namibia and South Africa, Adams et al [1999].

Expectations of the PCLD have to be seen against the rapidly changing situation in communal areas. The effectiveness of customary governance structures to administer access to and management of commonages has been undermined over a period of time. The CLRA is addressing this matter by providing a framework for communities to verify, map and register individual customary land rights. Namibia has also seen the deterioration of customary governance structures through the fencing of commonages for private use. This phenomenon is compounded by the absence of spatial planning and a growing population which demands access to land. As a result grazing lands are shrinking restricting livestock production near water points thus negatively impacting on production.

Having outlined the nuances of the PCLD process the following are some of the lessons learnt and best practices garnered during the implementation process. It is envisaged that the current discussion by the Ministry, CLB's TA's community and all stakeholders could assess, review, and reframe in line with the social setting in an effort to bridge the current challenges on the documentation of customary group rights for enhanced secure tenure in Kavango Region.

Communal Land Right Registration

One of the tenets of PCLD is to promote commercial farming through the provision of secure tenure to farmers. This can be individual or group rights as demonstrated in Ongandjera, Okongo, Otjetjekua and what is beneficial is the fact that the type of right is usually decided during LLPP, thus encompassing all community inputs. Efforts to secure tenure ties in with the Ministry's mandate to address tenure reform in

communal areas by registering customary land rights for rural communities. The PCLD has already implemented group rights under leasehold in the form of cooperatives in four of the designated areas for agricultural production. This model could be replicated at village level in Kavango where the village members could decide to protect their land with an occupational land right in the name of the village. The LLPP process will take the community through all the policy and legal processes to empower them in managing their land, enforce rights of access to commonages but leave the management and administration of commonages with the TA's.

In this respect it should be pointed out that one of the concerns of the TA's is their dwindling role in land administration vis a vis the creation of the parallel institutions like the CLB's which the Act gives powers of ratifying the decisions made on land. A PCLD, 2013 Report cautions against disempowering the TAs, a finding that is collaborated by Girma, [2017] in Kavango. This finding reaffirms the current stalemate in Kavango since the TA's feel the policy and legal framework has left them out without power to determine and make decisions on land in their areas of jurisdiction. Formalising group rights over commonages as a customary right would be protected and registered under Section 21(c) of the CLRA and it would be considered a new right. In this respect, MCA-Namibia proposed an iterative approach to group rights to commonages which builds on existing current structures. This thinking and application would address one of the concerns of the TA's as their local structures are available and require confirmation. The traditional village was seen as the most basic form of a group and the traditional leaders forming the new governance structures of the commons at all levels which would manage land and natural resources in the interest of all members of the community. The Ministry of Land Reform in developing a policy on group rights could benefit from the practical experience offered by MCA-Namibia and PCLD in the current designated areas.

Through the LLPP, not only individual leaseholds are being registered but there is an increasing request for the registration of leaseholds for groups of people. The formalisation of group rights over commonage, over cattle posts or over any other designated land holding, holds significant promise for the PCLD not only to be able to support farmers in more densely populated areas but also to spread investments across larger groups of beneficiaries and allow a more diverse socio-economic stratification amongst beneficiaries. However, the pursuit of formalising group rights in communal areas is a largely uncharted territory with a multitude of possible legal implications that are still to be unpacked for discussion and applicability.

Local level participatory planning (LLPP)

LLPP is a decision making tool at local level which the PCLD deploys to assess infrastructure investment needs at community level. It provides the causal and procedural link between baseline data (maps), local

conditions, local aspirations, the design of required infrastructure and the spatial arrangement of the infrastructure to enable farmers to improve productivity and market linkages.

LLPP promotes democracy, transparency and inclusiveness in the decision making process so that the decisions are home grown. In the formulation of group rights this tool can be used to make collective decisions on how the group right will be governed and in whose name it will be registered, the extent of land and the desired tenure security. The LLPP process is well suited for Kavango since the TA's share similar concerns on the current land documentation process. LLPP process will address and assist the TAs and communities to find consensus on the issues of concern and incorporate the norms, cultural aspects as informed by the social setting and all community members.

Meijs et al, [2014] argue that methodologically the approach has evolved long enough to be replicated in other parts of the country. The process is said to be flexible making it easy to apply in different contexts making the LLPP process suitable to tackle the Kavango issue. The processes' integrity is paramount as it derives its integrity from transparent processes, conducted in the public domain; from taking the time to take communities through decision making processes about their livelihoods; to fostering inclusive decision-making which, limits rent-seeking by the elites

Close collaboration among stakeholders and open communication is important to LLPP implementation. Collaboration requires that there is a common understanding of challenges, opportunities, scope and clearly defined roles and responsibilities. It would be interesting whether the communities in Kavango would open up and express their views and contribute in the presence of their TA's. LLPP requires a high degree of flexibility and situational intelligence from the relevant decision makers to adequately respond to different circumstances between sites without jeopardising the integrity of the process.

However, LLPP is also a costly exercise both in terms of required human resources and means to mobilise expertise, to hold consultative workshops at various levels, the time it requires and the inherent risk of participation revealing latent conflicts and yielding demands outside the scope of a programme. This factor must be considered when consulting large communities comprising of two regions Kavango East and Kavango West. In these instances the possibilities are high as LLPP will be working on navigating customs and norms of communities and traditional authorities who want certain aspects of the policy and legislation changed to suit their way of living and social setting.

Infrastructure development

The vast majority of households in communal areas are no longer able to support themselves from agricultural production. The contribution of agriculture to GDP suggests that agriculture is focused on

providing for household needs rather than engaging the market. An increase in agricultural production is premised upon the improvement and provision of infrastructure such as water and markets, extension services and range land management. In this respect Meijs et al, [2014] points to the challenges associated with the current unregulated livestock numbers, access to grazing, over-grazing vis a vis the absence of legally protected rights to commonages which serve as disincentives to infrastructure investments on land.

In Kavango Region it is expected that the documentation and formalisation of Group rights over commonages will spread infrastructure investment to benefit a larger group of farmers and facilitate economic diversification. The infrastructure development has a provision for capacity development mainly on water management. This provision, although is being implemented through the water sanitation programme under the Ministry of Agriculture Water and Fishery could be strengthened to include management plans, record keeping, financial management and the actual infrastructure maintenance. Capacity will determine the long-term success and viability of the project. Experiences of the PCLD in the implementation process will also inform best practices and how challenges were dealt with thereby improving land management and administration framework in the country, Meijs et al 2014.

The Use of GIS and Maps in LLPP

Maps are essential in land registration, land use planning and LLPP processes. Since the introduction of orthophoto maps and the NCLAS (Namibian Communal Land Administration System) the CLBs have become equipped and are able to detect and address double allocations, land grabbing and illegal fencing. However due to capacity issues in the CLBs and the Ministry the full potential of the NCLAS is yet to be utilized.

During the LLPP process it became clear that development of an area will not be possible without solving the land disputes, assessing the legality of land claims and the removal of illegal fences. Thus it has become paramount that during the LLPP process the NCLAS, GIS tools and the use of maps be fully utilised to facilitate land use and investment planning in designated areas. It would be interesting to learn from the four project sites how similar issues pertaining to land disputes and counter land claims were dealt with. The basis of many of the LLPP processes informs the mapping of all infrastructure and claims to land in the selected area. This is done by collecting data from stakeholders, mapping from orthophoto and satellite images as well as through site surveys with hand held GPSes. The maps produced are then validated through the LLPP process after which the land tenure issues are discussed and recommendations to the CLB made.

The results of the planning are again captured in the GIS and validated in public LLPP meetings. In many cases, maps are not easily translated by local stakeholders. In these cases, the results of the maps are again verified in the field by using hand held GPSes. Through community involvement a high buy in and

understanding from the local population will be achieved. Involvement of communities in technical issues would also be critical in Kavango to address some of the community's apprehensions and fears on land documentation.

The maps are also used in the public display period, when people have the chance to lodge an objection to the outcome of the LLPP process. Finally the resulted plans are translated into land rights as well as investment plans. The limitation of these maps is that they may be rather intimidating and extra care needs to be taken to ensure that people have understood the map and its consequences to the reality on the ground.

Sustainability of results of the PCLD

One of the fundamental tenets of the PCLD project is the assurance that no community member will be dispossessed of any right as a result of infrastructure planning and investments. This assurance is pertinent in getting community buy-in as one of their fears relates to the mapping process which they think would expose all unoccupied land which would then be parceled out to 'outsiders'. Programme beneficiaries, with improved tenure security and full understanding of their rights, will not only feel safe to invest in their land but have a greater incentive to influence the overall development of their areas in the long term. At the local level the process of participatory land use planning propagated by the PCLD, performed from within a secured tenure base, is a developmental and empowerment process contributing to sustainability. Besides the LLPP, Integrated Regional Land Use Plans are valuable across institutions for concerted and informed planning processes. The maintenance and periodic update of the data underpinning these plans is supported by the Ministry in the regions and it strengthens the longevity of the plans.

Measures to overcome Constraints and Way Forward

The PCLD project through its various tenets supports the need to have the rights on communal land legally clarified and confirmed, established practices and procedures recognised and recorded. This will create greater certainty for rights holders and third parties that enter into economic transaction with them. It is imperative to note that rights are best vested in the land users, who have a clear interest in utilising resources for their own benefit rather than in institutions such as the Traditional Authorities which in some cases have been high jacked by elites for personal gain. Others contend that tenure reform needs to address the administrative chaos in relation to land rights which currently prevail in communal areas.

Experience elsewhere in Africa suggests that this is done most effectively and cheaply by placing responsibility in local level decision making structures. This facilitates decisions that are appropriate to the economic realities of the land users which is seldom the case when these are made for example by agricultural extension officials, a view that finds resonance with the TA's in Kavango and within the LLPP

process itself. Tenure reforms should also ensure that local structures remain accountable to the rights holders that they represent. Reforms should encourage the establishment or reconstitution of such structures where they do not exist or have become dysfunctional. Tenure reform must provide for right holders to make new tenure rules [eg.to govern new kinds of land use or to regulate relationships with investors] or to modify existing rules since these may not be adequate when new economic opportunities or needs arise, this is the objective of the LLPP process.

The provision of training to TAs, headmen and community members should be regular using lessons learnt from LLPP to enhance cooperation and build trust and overcome antagonism between all stakeholders. It is important for the Ministry to get the buy in of the TAs in Kavango in the land documentation process especially in the manner in which they advocate. According to Mendelsohn, 2008 the benefits of land registration should be made clearer to induce a mind-set shift among the TA's.

A study on investment on communal land by the Legal Assistance Centre and the Institute for Poverty, Land and Agrarian Studies [PLAAS] found that communities in Kavango are keen to register in order to have a stronger position when it comes to negotiating with investors. The challenge is that all the TA's concur that the CLRA has to be amended to give them back their power which has been usurped. The TA's ownership of the registration process is important and might be realised if there are tangible benefits attached to the land rights making the PCLD investment drive a viable option to explore. There is no doubt that there is an opportunity for all stakeholders to reconstitute a forum to discuss and contextualise the Kavango issue in terms of escalating the current exploratory work on group rights. The experience offered by the PCLD offers opportunities to learn and lessons for further policy and legal exploration that takes into consideration the contextual realities in Kavango East and Kavango West. Exchange visits with other countries undergoing similar reforms or who have already implemented policies that address tenure reforms in communal areas could be looked at to share what could work and applicable to Namibia. Such countries include Uganda, Kenya, Mozambique, Malawi, and Cameroon among others.

The objective of the PCLD is to provide rural communities with infrastructure support to encourage increased commercial agricultural production. A fundamental part of this process is that such communities have legally secured tenure to both their 'private' land parcels and to commonages that continue to form an important part of their livelihood strategies. The LLPP methodology has enabled the PCLD to facilitate agreements in target communities on infrastructure needs and the location of new infrastructure as well as the preferred type of farming. In addition to the original individual farming models the PCLD has introduced mutations which include continued farming on a communal basis or a mixture of limited

individual farms together with communal farming within a polygon. These alternatives have worked due to their inclusivity.

Across designated areas with the exception of Kavango East and West communities opted for a multipurpose co-operative as a legal entity as it was well suited to a business enterprise that involved groups of people. Cooperatives offered governance structures that are prescribed in law thus facilitating proper management of their livestock business. The resource rules lay down the rights and obligations of members of the co-operative with regard to the utilisation of commonages primarily for livestock farming. These rules are criticised for not adequately protecting the customary resource rights of households that depends on access to commonages for other reasons besides livestock farming. However the establishment of co-operatives is important as it has empowered rural communities to take an active role in development and providing them with a legal framework within which to develop rules regarding the management of their land parcels and their land rights. .

Although there are visible livelihood changes and tangible results under the PCLD areas, the project cautions on the need for legal review and advice with regard to the co-existence of existing customary land rights and leaseholds vis a vis the responsibilities of co-operatives and traditional authorities in managing customary land rights. This also applies to the lease agreement that requires review to include commonage-based activities other than livestock farming.

The participatory approach that is the cornerstone of the PCLD intervention although costly and time consuming is regarded by many as the most appropriate strategy to obtain broad consensus on issues pertaining to needs and key decisions affecting a group or community. Going forward the suggestion by MCA-Namibia, 2008 for the Ministry to establish a Working Group on Group Rights is imperative. This group would 'investigate, consider and determine the policy and legal framework to implement group rights learning from the current experiences from PCLD. The PCLD governance structure places the project in a unique position to support the Ministry in extending the scope of securing land and resource rights of groups of people who do not necessarily require formal legal entities like the example of Kavango East and Kavango West.

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