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Women's Tenure Rights Across the Rural-Urban Continuum: Implications for a Gender-Responsive Urban Land Reform in Namibia.

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Abstract

Namibia is considered as one of the most unequal societies where poverty is prevalent. The land question and its role in development remains a pivotal source of livelihood to get people out of poverty. The country is also fast urbanizing with issues of urban informality and security of tenure becoming a concern more than a third of the population residing in informal settlements. In the absence of concrete interventions the informal settlements could become the dominant form of housing by 2025. Consequently, at the recent second National Land Conference the President declared the housing needs a “national emergency”. The Flexible Land Tenure Act is targeted to provide security of tenure in informal settlements. This paper will provide an overview of the land reform agenda and the purposive policy and legal framework adopted by the Government to promote gender equality in this regard. These reforms have led to an effective protection of women from forced evictions and arbitrary decisions as well as improved their access to property and land, and extended women’s capabilities in decision making and critically serving as a social protection initiative to gender-based violence. The paper concludes on applicable lessons from the rural land reform for urban areas and the Flexible Land Tenure Act.

Key Words: Gender Equity, Secure Tenure, Property Rights, Urban Land Rights, Urbanization, Informal Settlements, Migration, Land Reform, Flexible Land Tenure System.

1. Introduction

The paper investigates Namibia's currently predominantly rural-focused land reform process in terms of securing women's tenure rights as well as relevant characteristics of the country's urbanization to draw gender-focused lessons for the recently commenced urban land reform.

Namibia is still considered as one of the most unequal societies in the world, second only to South Africa, poverty is particularly prevalent in communal areas where 70% of the population reside and eke out a living from agriculture. The land question and the role that land plays in development remains important in Namibia, it is a pivotal source of livelihood and is regarded key for social and economic upliftment out of poverty. However, questions around land and its access are not only concerned with agrarian issues of productivity but with social issues too. The Swedish International Development Cooperation Agency [SIDA] points out the role and responsibility that women in developing countries have in food production where between 60 and 80 percent are involved as agricultural labor but rarely own the land and have no control over it. The Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) noted that the "right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

At independence, Namibia, informed by the Resolutions adopted at the 1991 "National Land Conference and the Land Question" committed itself to address land issues through policy and legal reform. A new Constitution that entrenched principles of democratic good governance, human rights and freedom was adopted. Key principles on land were also enshrined in the Constitution and found expression in policy and legislation. The main objective of the land reform program was to address the skewed nature of land distribution and bring about equity in land ownership through the acquisition and redistribution of land and effect tenure reforms in communal areas.

Despite its wide and scarcely populated landscapes, Namibia is fast becoming a predominantly urban society, with most of the population residing in urban areas. At the time of the first National Land Conference in 1991, issues of urban informality and security of tenure in urban

areas were basically not existent. Ever since, informal settlements have seen immense expansion, with the last census counting 10 times as many “shacks” [informal houses] as far back as 1991. The current estimates according to recent studies are pegged at close to one million people whom are residing in informal settlements, which is about 40 percent of the Nation’s populace and about 60 percent of the urban population (New Era 2019, Lühl and Delgado 2019). Projections estimate that in the absence of concrete interventions these substandard structures in informal settlements could become Namibia’s dominant form of housing by 2025 (Weber and Mendelsohn 2017). Consequently, in the recent second National Land Conference in early October 2018, the President declared the resulting housing needs a “national emergency”.

A key approach of the Namibian Government to address the issue of informal settlements is based on the implementation of the Flexible Land Tenure Act, which introduces alternative forms of land titles specifically targeted to provide security of tenure for persons living in informal settlements or who are provided with low-cost housing. The implementation of the Act is currently being piloted by the Ministry of Land Reform in selected locations with the support of GIZ, to inform the intended upscaling of the approach. One of the many aims of the piloting is to ensure the tenure rights of women in this process.

In Namibia, traditional practices and lack of gender equity principles prior to independence inhibited women from obtaining equal access to land and resources. Since 1991, the Government, through the Ministry of Land Reform has tried to address this issue through various policy and legal interventions. The Ministry has managed to promote the reform of statutory and customary laws which in the past have impeded women’s ability to exercise rights over land. The reforms have also extended to land governance institutions at village and national levels pitting customary and statutory laws against each other in some instances. These reforms have led to an effective protection of women from forced evictions and arbitrary decisions as well as improved their access to property and land. The framework of reforms has also extended women’s capabilities in decision making and critically serving as a social protection initiative to gender-based violence.

This paper will provide an overview of the main elements of the land reform agenda and the purposive policy and legal framework adopted by the Government to promote gender equality in communal areas. It reviews the lessons that can be drawn from communal land reform

regarding gender equality, to conclude on the applicability of these lessons for the emerging land reform for urban areas.

The scope of review is focused on the communal and urban land reform, as both are targeting large portions of the poorer population and are approaches that secure land rights which are held informally or customarily respectively. The commercial Namibian land reform instead is redistributive, essentially moving secure rights from historically advantaged to historically disadvantaged farmers, which despite high emotional value to the Namibian society only pertains to several thousand households.

2. Land Reform in Namibia

Land Reform in Namibia is synonymous with the acquisition of freehold land and the redistribution of that land to formerly disadvantaged Namibians. Under apartheid laws only white people could hold 'land titles' and thus only whites had a 'legal right to their land'. Black people held land but only under customary law, not under legal title (Amoo, 2000). On one side was the freehold sector, which had well defined and enforceable private property rights, inclusive of the basket of rights associated with private property ownership and secure tenure which was predominantly the domain of the white minority. Then the non-freehold communal sector, which excluded individual ownership of land and any right, could be revoked by the authorities (*ibid*).

Namibia's land reform process is guided by equity, poverty reduction concerns and it occupies a prominent position in the Namibian society. A century of colonial segregatory policies and legislative frameworks was characterised by a systematic dispossession of land by black Namibians, which ensured that 52% of all agricultural land was under freehold title by the white minority, whilst 48% was in communal areas under customary law. This skewed distribution of land and land rights prompted the Government to pursue land reform to address the shortcomings.

Land reform was conceived as a means by which the Government would provide redress for past injustice and promote development. These goals would be implemented through the restoration of land rights to those dispossessed by segregation laws through a comprehensive land tenure reform programme. Each of the components of the land reform programme in

Namibia is provided for under the Namibian Constitution. The Ministry of Land Reform (MLR) has been mandated to plan, implement and oversee the land reform process in Namibia.

In 1990 the Government prioritised the disparities on land through a consultative process that was designed to achieve consensus on the land question, which resulted in the National Conference on Land Reform and the Land Question in 1991. This conference is regarded as the hallmark in addressing land issues in Namibia. Twenty-four resolutions were taken and these formed the basis for all current land-related policy and legislation. The conference resulted in the enactment of legislative instruments that are supported by various policies to facilitate implementation. The conference was widely attended by civil society, farmers, academics and traditional leaders.

After independence, the land reform programme performed an important symbolic function, whereby the redistribution of land sought to address historical injustice as part of a wide process of nation-building (Hall, 2004). The land reform process was envisaged to transform existing political and economic relations of the former disadvantaged populations (Werner, 2001). The process sets out to redress the injustices of the colonial legacy in order to transform the structural basis of racial inequality. In broad terms the land reform process in Namibia seeks to:

- bring about equity and access to land
- promote sustainable economic growth
- lower income inequalities
- reduce poverty

However, implementing land reform is considered as one of the most challenging reformative processes, as it requires the transformation of property rights in impoverished racially divided agrarian societies through legal means (Klug, 1996). To date, some landowners are critical of the land redistribution programme, citing declining agricultural outputs on resettlement farms and political bias in the selection criteria of resettlement beneficiaries. To the disadvantaged Namibians the continued skewed ownership of land symbolises the structural inequalities of the colonial legacy, and the official targets of the programme still fall short of public expectations.

Until recently, Land Reform concerned commercial and communal land. ‘Commercial Land Reform’ can be understood as a progressive transitional justice mechanism aiming to undo colonial injustices. ‘Communal Land Reform’ mainly focuses on the registration of customary land rights, which involves demarcating and titling of parcels of non-freehold land. Communal land rights registration is seen as a possible first step in individualizing and commercializing communal land use rights which are presently non-transferable and administered by traditional authorities. The policy and legal framework guiding land reform consists of the following:

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

The Constitution of the Republic of Namibia

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

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

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

- State land - used for nature conservation, game parks military bases
- Urban land - where standard concepts of state, municipal and private ownership apply within proclaimed boundaries under statutory law

- Commercial farm land or all freehold agricultural land which is privately owned
- Communal land or all land used by Namibia's communities but owned by the state in trust for those communities

Agricultural [commercial] Land Reform Act, 1995

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

National Land Policy, 1998

The National Land Policy of 1998 is informed by the Constitution and the Resolutions of the 1991 National Land Conference. The policy recognises various forms of land tenure and ascribes equal status under the law to several forms of land rights and several categories of land rights holders (LAC, 2005). The policy is based on a unitary land system which provides for equal rights and opportunities across a range of tenure systems, irrespective of whether the land is located in communal or urban areas. Namibia's unitary system¹ accords full and equal security to all land rights regardless of the form of tenure, gender or race of the rights holder (Republic of Namibia, 1998).

The National Resettlement Policy, 2001

One of the main objectives of this policy is access to land with secure tenure. The policy's other objectives are to redress the past imbalances in the distribution of economic resources especially land and secure tenure; and offer Namibians an opportunity to reintegrate into society, the main target groups being individuals with no land, income and livestock (Republic of Namibia, 2002).

¹ Under the unitary system the Government ensures that all forms of land tenure are recognised and protected by law and that the land is administered in a uniform system.

The Communal Land Reform Act, 2002

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

3. Rural-Urban Transformation and the Emergence of Urban Land Reform

Namibia's vast arid landscapes host one of the world's lowest population densities, with proclaimed urban areas covering far less than one percent of the country's surface. As there is seemingly enough land for everyone, it doesn't strike immediately as a typical example of urbanization. Prior to independence, colonial urban policy had created towns for exclusive white residential, recreational and business purposes, and investment was channelled to these areas only. The black majority were denied access to urban land ownership and were only allowed to enter towns as contract labour.

At independence in 1990, apartheid policies were abolished and Section (21)(1) of the new Constitution introduced the right of all Namibians to reside and settle in any part of the country (Matthaei and Mandimika 2014). This commenced a rural urban transformation, which saw the share of the urban population grow from roughly 25 percent to 50 percent within less than 30 years, with 2018 marking the first year that the majority of people were living in urban areas (Lühl and Delgado 2018). A further projection of the trend would result in about 75 percent living in urban areas by 2050, potentially further increased by impacts of climate change to the country.

Opportunities for employment in the rural areas are very limited, with the employment-relevant agricultural sector struggling with droughts in general, limited infrastructure development in the communal north and limited access to commercial farmland for historically disadvantaged groups. As elsewhere in Africa and the world, the urban areas create hopes for access to cash

income and markets, to jobs, education and health, but also to entertainment and different lifestyles.

The rural-urban migration triggered by these factors in correlation with the new constitutional provisions at independence, resulted predominantly in informal urban growth, with the most recent estimate counting about 228,000 informal structures with a projected number of 995,000 residents (New Era 2019). Trend projections based on the past developments estimate those structures to become Namibia's dominant type of housing by 2025, with roughly two million people residing in such structures by 2030 (Weber and Mendelsohn 2017) – a figure which is almost reflecting Namibia's entire population in 2010 and contradicting the country's target to become a developed country by the year 2030 (Vision 2030).

Even though evictions have been limited in Namibia, without formal tenure, settlers are not allowed to erect permanent structures, thus leaving them in precarious living conditions, which are further aggravated due to insufficient basic services. Namibian newspapers commonly report the miseries occurring in informal settlements, such as shacks being hit by flash floods, fires in informal settlements caused by candles (used in the absence of electricity) or a hepatitis e outbreak.

However, Lühl and Delgado also pointed out, that urbanization should not be considered a threat, but an opportunity to find innovative solutions to harness skills and knowledge within communities', civil society and the private sector, and strengthen the state's capacity to provide services to reduce poverty (2018). In the same line of thought the *Global Report on Human Settlements* states, that urban informality should not be seen as an obstacle to development, and it is recommended that the positive role played by urban informal development is recognised, to respond effectively to urban informality, in addition to adopting revisions to laws, policies and regulations to support informal sector operations (UN Habitat 2009: v). If urban regulations were more supportive than exclusive, more achievable by poor people and developed in consultation with communities, social protection of the vulnerable could be improved, as they will be less open to exploitation and abuse under the law as informal settlers (Watson 2009: 176).

One of the objectives of Vision 2030 is “to achieve integrated rural and urban development in which living conditions and social and economic opportunities are adequate for all” (2001: 50).

Securing tenure for informal settlers would address the poverty eradication aspects that were found to be underrepresented in the commercial land reform and would enable rural migrants to cities to access economic opportunities in the urban centres. While the 1998 National Land Policy already had provisions regarding urban land, further strategic policy targets remained scarce.

Formal land delivery processes represented a relevant source of revenue for local authorities that otherwise had limited means. Upgrading of informal settlements that had grown in an unplanned manner however, was expensive and the costs could hardly be recaptured from the predominantly poor residents. Outdated, low density urban development models further aggravated the costs of such development. State interventions, such as the Mass Urban Land Servicing Programme and the Mass Housing Programme, utilised formal land delivery approaches, thus needed to be highly subsidized and only reached a small share of the intended number of units (Lühl and Delgado 2018). It could be argued that the most successful land delivery programme since independence was the bottom-up and community-driven approach by the Shack Dwellers Federation Namibia, that established more than 700 saving groups country-wide, which built more than 4000 housing units, though usually without reaching formal tenure security.

In October 2018, a long-awaited second National Land Conference took place. The conference under the leadership of the President dealt openly with the many emotive land questions, but despite land reform for the decades since independence having being perceived as a matter pertaining mostly to the rural areas, the most resolutions were developed for the area of “urban land reform”, indicating a new understanding for the scope and urgency of the issue. While the 55 respective resolutions (RoN: 2018) reflect also the diversity of actors and opinions in the sector, they clearly pave way for a more diverse and target-group oriented approach to land delivery for the urban poor.

While generally being targeted towards the urban poor in informal settlements, the various strategies reflected in the resolutions comprise concepts such as incremental upgrading, affordability and community-driven development, but also address more institutional issues such as the (procedural and regulatory, but not very strategic) current urban planning legislation. As a key governmental strategy to address the tenure insecurity in informal settlements, the role of the Flexible Land Tenure System was emphasized.

4. Piloting of the Flexible Land Tenure System

The Flexible Land Tenure System (FLTS) looks back at a history of development, which is almost as old as the independent Namibian nation. From the investigation of alternative forms of land tenure back in 1994 and following first field tests, the drafting of a respective bill commenced. Funding issues as well as uncertainties over the mandate for the instrument (given that it covered elements of planning as well as of surveying and registration, which were and are housed in different ministries) prolonged the consultative processes for the bill (Matthaei and Mandimika 2014: 18-20).

When being introduced to the Namibian Parliament in November 2011, the then Minister of Land Reform welcomed the Act as “an alternative form of tenure that addresses the core issues of imbalance and discrimination against low-income communities” (Ministry of Land Reform 2016: iv). The Regulations that would put the Act into force saw another six years of changing developments, before being gazetted in May 2018, thus putting the FLTS on the Namibian legal map after roughly 24 years.

It is not farfetched to assume that the lengthy process did cost the FLTS reputation across government, civil society and academia. However, with increased commitment from ministerial side, and supported by a GIZ project from middle of 2017 onwards that dedicated its support to the piloting of the Act, momentum for the FLTS could be slowly rebuild. Besides the gazettelement of the Regulations, a Land Rights Office was established in the Ministry of Land Reform that is responsible for the scheme internal surveying and registration during the pilot phase. Currently three towns have embarked on the implementation of the Act in a total of four pilot areas, while the steering mechanism for the approach sees improved collaboration between the two concerned line ministries and involvement of the pilot authorities. While standards and details of the process are being adapted to the still recent final Regulations, the FLTS has been gaining further ownership within the Namibian government and found itself addressed by two resolutions of the second National Land Conference in October 2018 aiming for securing tenure in informal settlements.

The concept of the FLTS is to establish a parallel, interchangeable system complementary to the current formal system of freehold tenure, which is transparent, fair and just, and that

contributes to economic empowerment of communities at household level. The priority is to ensure tenure security that allows people to hold and occupy land without fear of eviction. The system enables land holders to defend their rights to the land in court and allows access to credit for investment and development (Ministry of Land Reform 2016: iii).

The Flexible Land Tenure Act creates two new forms of secure urban land tenure: the starter title and the land hold title. These forms of land title are simpler and cheaper to administer than existing forms of land title. The new types of secure land tenure can provide security of title for people who live in informal settlements and people who are provided with low-income housing. The starter title and land hold title are held by individuals, but they are also group-based. Each holder has individual rights within a block of land (a “blockerf”). The whole block of land is initially owned under freehold tenure by the State, a private individual or a group of individuals (Ministry of Land Reform 2016: 4).

As part of the objective of the Act to empower the target group, the management of the affairs on a block is put into the hands of the community. For this matter the right holders form an association, which adopts a constitution and elects a committee that takes responsibility for the rights and obligations arising from the Act. A second institution that is created by the Act, are “Land Rights Offices”, which are mandated to carry out block internal surveying activities and the registration of rights. For the piloting period, a single Land Rights Office has been established in the capital city, mandated to respond to inquiries from the entire country. It seems reasonable to anticipate that this will change as part of the optimisation and upscaling of the approach, given the discretionary space provided by the Act to the Minister of Land Reform.

Security of tenure in Namibia is particularly relevant to vulnerable groups, such as women. It further provides the right to develop the own plot and improvements thereon within the time and means available to the right holder. With rental prices and practices often being unreasonable and discriminatory, the right to the own plot also strengthens the right to a self-determined life. By allowing incremental improvement of the plot over time, it further supports intergenerational wealth generation, building the land as a family asset, which can also be mortgaged, rented out or sold.

Aside of the aforementioned benefits connected with secure land tenure in general, the potential benefits associated specifically with the FLTS can be split in two groups. Firstly, it eases access

to and affordability of formal tenure. This aspect of the approach is commonly associated with the simplification of procedural requirements, which yield a reduction of costs and time. In nature resembling ideas of the “Fit for Purpose” approach, the different title schemes would require reduced (for the Land Hold Title) or significantly reduced (for the Starter Title) surveying standards, with only the outside boundaries of settlement blocks requiring the services of a professional surveyor and respective accuracy. Being applicable only to residents living in informal settlements or to households to be provided with low-cost housing, the initial registration of rights under the FLTS is free of charge. Same as costs for internal surveys, these are covered by the Land Rights Office and thus unburden local authorities and recipients of title.

Considering that Namibia has seen the grassroots formation of far more than 700 saving groups, of which a relevant share was able to acquire blocks of urban land to settle upon from local authorities, a large potential for a better access to formal tenure stems from the stipulation in the Act that such groups can become the initiator of the process due to their right to apply with the local authority for the consideration of the establishment of a (Starter or Land Hold Title) scheme (FLTA 2012, Sec.11(1)). Even for communities aiming for a Freehold title, this can provide an empowering lever, as any community within a FLTS scheme can decide themselves over an upgrade to Freehold. Given sufficient awareness and understanding, communities themselves might be the ideal actor to drive the strategy for an upscaling of the approach.

Aside of the access to and affordability of formal tenure, the FLTS does also affect the aspects of town planning. It is important to point out, that the subdivision and consolidation processes which are required to formally register the settlement blocks (“blockerven”) in the Deeds office remain under the applicable town planning legislation, which to navigate successfully appears to be among the key competencies of professional town planners in Namibia, and which has a reputation of being prone to delays in a variety of approval mechanisms. While the blocks are basically treated as parcels in this process, they potentially complicate the subdivision process due to questions of common property and represent an additional layer between parcel and township. Also, with the strong emphasis on participatory planning, the process for planning of settlement layouts doesn’t necessarily become faster. More likely this specific aspect will extend the overall required time.

Still, besides the emphasis on participatory planning, which brings about an opportunity for more democratic and inclusive settlement development, the FLTS brings about certain town planning related benefits. There is a reduction of national level approval requirements, as all internal layouts of blocks are approved by the responsible local council. This does reduce fees on the national level and carries the potential to deliver larger numbers of portions in shorter time. It also generates more flexibility for changes within the blocks and leaves decisions over internal layouts with decision-makers who are (more likely to be) familiar with the site. As there is no formal requirement for professional town planners for the internal layouts, such urban designs could also be developed with skilled civil society experts, architects or other professionals. This would likely increase competitiveness in this area, as town planning fees don't need to be applied.

Finally, the FLTS provides community ownership over the public spaces that compliment the residential plots of a settlement block. The benefits of such will depend on how the respective individual site potential is utilised in the design of the layout. In principle it allows for community-driven development of public spaces, or even more when figuring in the aspect of community organisation, could enable the target group to become partners of local authorities for inclusive urban settlement development.

At the beginning of this chapter it has been indicated that the long wait for the arrival of the FLTS as well as current policy developments are putting significant pressure and expectations on the speedy delivery of titles – after all, that is a key promise of the approach. It is important though, to emphasize the importance of a thorough learning process during the piloting of the approach. The ability of the FLTS to live up on it's promises requires a well informed optimization of the approach (further minimizing costs and time requirements, while not compromising qualitative aspects) and the potentials and risks in the current version of the Act and Regulations thereon (with regard to gender, upgrading to freehold or the resulting tax regime) need to be addressed, following an evaluation with pilot communities and authorities. Building capacities of communities, local authorities and concerned professionals is likely to be one of the greatest challenges at the begin of rolling out such a new approach.

5. Women and Land in Namibia

During the introduction to the proceedings of the National Conference on Women's Land and Property Rights and Livelihoods, held in Windhoek in 2005, it was stated that "[l]and and property rights are not an end in themselves, but a means for a better livelihood for women and their families. If women are not economically capable of sustaining their livelihoods, they will not be able to maintain their land and property" (Werner 2008: 3).

The importance of ensuring secure tenure for women is reflected in the 2001 population census for Namibia, which showed that the percentage of female-headed households in the most densely populated communal areas in the North of Namibia ranged between 50 and 60 percent (Werner, 2008). The total number of female-headed households in Namibia reached 45 percent in 2001 (FAO, nd). The 2011 Namibian Population Census indicates that there are slightly more females in the country than men, with 51 percent of the population being female (National Planning Commission, 2012).

70 percent of Namibia's population depends on access to communal land for subsistence farming for their livelihood (Republic of Namibia, 2006: 49). According to the FAO, women accounted for 59 percent of people engaged in skilled and subsistence agriculture in 2001 in Namibia, which indicates the central role of rural women in agriculture, and the necessity of securing their participation in agricultural development efforts (Republic of Namibia, 1995:12).

Gender roles and expectations are usually rooted in existing customary gender power relations. In Africa, gender relations are largely informed by a patriarchal orientation. In this regard, women are often discriminated under customary and formal systems of land tenure due to culturally embedded discriminatory practices and the control of inheritance systems by males. This also indicates that in many developing countries, women and men's access to land is often not only regulated through formal legal systems, but also through customary law. In most African countries, customary systems for property tenure account for nearly 75 percent of the land (SIDA, nd: 2).

Literature demonstrates the commitment and affirmation by most African countries through their constitutions towards women's rights, although customary practices pose a challenge to these constitutional provisions. In Namibia and Southern Africa in general, women acquire land rights in a secondary nature through their husbands and male relatives. As a result, women's ability to own inherit and bequeath land or property is limited. The challenges

associated with this divergence have a negative impact on production; especially in Africa where women form the bulk of the full time farmers (Deininger, 2003 and Walker, 2008).

Colonial policy precluded the right to freehold property and the empowerment that was ascribed to immovable property. The situation was more acute in the case of women, including white women, as their property rights were under the general law that only allowed men to own property. Traditionally, women's rights were found to be insecure as women were seen to live only through their male relatives or spouses. Amoo (2006) argues that these institutionalised and legally respected discriminating policies constitute the history of gender inequality in Namibia, enhanced by other customary practices. Prior to the amendments under customary law, women in Namibia had access to land through their husbands and male relatives and widows had no secure rights to remain on their communal homes and land, but could apply for re-allocation at a fee (Hubbard, 2012: 1). Widows' property and assets were grabbed by relatives of the deceased in line with customary practices and laws (Chiari 2004: 90). Any changes in marital status have an impact on the livelihood of the women, and often widows or divorced women were forced off the land² (Werner, 2008: 18).

Usufructory rights to land were held through men who distributed them to wives and female relatives, sons and other relatives. Women worked in their own small fields and those of their male relatives. Men mostly decided on the time to work in the fields and what was to be planted. Women's harvests were for consumption at household level, whilst men's harvest was traded and used to acquire cattle and other commodities that would be registered in the men's name (William, 1991: 44-45 in Werner, 2008: 18; Ipinge et al, 2000: 14). These customary practices negatively affected the productive capacity of women and their ability to own property. However, Okoth-Ogendo (in Cousins 2007: 292) warns against ascribing the western understanding of the notion of private property and ownership to property regimes that are administered under customary law and tenure. It is argued that within customary law there is a distinction between a right and its control, meaning that the "registration of a land right in the name of a man does not necessarily imply that he has exclusive control but holds the rights in trust of the family (Werner, 2008: 19).

² Forced evictions is defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (Gomez, 2012: 27).

After the passing of the Communal Land Reform Act of 2002, and the enactment of purposive policies and legislation to support the principles enshrined in Namibia's Constitution, more single, divorced and widowed women are able to apply, pay and register their rights to communal land in their own right

6. Synopsis of Gender Equity in Land Policy its Development

The promotion by the Namibian Government of gender equality principles in policy consultations and development concerning land issues has been demonstrated through the enactment of specific targeted legislation and policies since Namibia's Independence in 1990. At Independence, the Namibian Government moved to enshrine gender equity in the supreme law of the land. Article 95 (a) of the Constitution of Namibia commits the state to "enact legislation that will ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society." Thus the Namibian Government attempted to mainstream policies that addressed women's contribution to the economy and policies that strengthened women's access to land.

At Independence, Namibia initiated a comprehensive Land Reform process with the objective of redistributing land and addressing tenure reforms in communal areas. These reforms were a prerequisite for social and economic development and premised on the National Conference on Land Reform and the Land Question of 1991 (Dienst 2011). This conference is the backbone of all current legal and policy frameworks on land in Namibia (Adams and Devitt 1991: 2). The decision to implement tenure reforms in communal areas has had a direct impact on the majority of the population living in communal areas; especially women and vulnerable persons. The Government was aware of the influence of patriarchy and customary practices on social systems and its perpetuation of discriminatory practices on women in resource ownership, control and access.

The Government, through Constitutional provisions, paved way for the enactment of gender sensitive policies and laws that were in conformity with its national vision on women and men in development. In addition to addressing gender in various Namibian laws, emphasis was also placed on gender equity in the processes of formulating land policies to promote land reform after Independence. A United Nations report notes that "[c]ontinued efforts are needed to promote gender sensitive legislation, enforce existing legislation, make judicial systems more

accessible and responsive to women, and provide legal aid to women seeking to claim their rights” (United Nations, 2009: viii).

The National Conference on Land Reform and the Land Question, 1991

The Land Conference, which was held under the Office of the Prime Minister, sought to find consensus on how to proceed with Land Reform in Namibia after Independence in 1990. These consultations were widely attended by civil society, farmers and academics. Lessons on best practises on how other countries had proceeded with the land question were highlighted (Werner, 2008).

In his opening address at the Land Conference of 1991, the then Prime Minister highlighted the importance of gender equality in obtaining and securing land rights:

“[...] this is most urgent in the case of female-headed or de facto female-headed households in which the male is absent most of the year. A woman should be eligible to have that land use title in her name as the man, even if she and her husband live together, and to inherit and bequeath land.” (Republic of Namibia, 1991: 16).

The following resolutions on gender equity were made at the 1991 Land Conference:

- Women should have the right to own the land they cultivate and to inherit and bequeath land and fixed property;
- A programme of Affirmative Action should be introduced to assist women through training, low interest rate loans and other mechanisms so as to compete on equal terms with men;
- All discriminatory laws, whether statutory or customary, and all discriminatory practices which disadvantage women should be abolished or amended with immediate effect; and
- Women should be fairly represented on all future district councils, Land Boards or other bodies which deal with the allocation and use of land in the communal areas (Republic of Namibia, 1991: 37).

These resolutions were adopted and articulated by the then Ministry of Lands, Resettlement and Redistribution in policies and legislation under its mandate, in processes that are highlighted below.

Consultative Conference on Customary Law, Ongwediva 1993

A customary law Consultative Conference for 79 Traditional Leaders was held in Ongwediva, Northern Namibia, in 1993, and was spearheaded by Government and the National Assembly. The objective of the conference was to address and reform customary laws as they pertain to inheritance issues under the Laws of the Ondonga Traditional Authorities that were enacted in 1993 (Werner, 2008). The objective was achieved; as the provisions that promoted the customary practice of evicting widows from their land after the death of their husbands was formally deleted and the requirement for widows to pay for the right to stay on land was abolished from the customary laws of all Traditional Authorities (Werner, 2008).

The outcome of this conference is regarded as one of the most important policy decisions made by the Government towards gender equity and secure tenure in communal areas.

People's Land Conference, Mariental 1994

This conference was organised by civil society to specifically address progress made on gender equality in land reform. This conference undertook the following resolutions; in consideration of constitutional provisions, the 1991 Conference Resolution and those decisions on customary laws made by the Traditional Authorities in 1993:

“women should be considered as equal partners with men in all aspects of development, including natural resources management and land reform, especially since they are a majority population in rural areas and are engaged in many farming activities” (NGO-WCLR 1994: 13 in Werner, 2008:10).

Consultative Conference on Communal Land Administration, 1996

This conference was initiated by Government to consult communities on communal land administration. President Sam Nujoma's opening remarks demonstrated Government's political will to address gender issues, when he remarked in his statement that:

“[M]ost women were effectively denied an opportunity to acquire and utilise land. In some instances, widows have even been summarily evicted from land that was allocated to their husbands. Such acts are inhumane and should not be allowed to continue. It is of utmost importance that appropriate structures, whose values are not dictated by gender or ethnicity, are put in place to democratically administer the process of land allocation and resolve land disputes. Such structures, to be known as Land Boards, should be representative” (Malan and Hinz, 1997:11 in Werner, 2008:11).

However, despite the fact that the development of Namibia's land policy and legislation on communal land was characterised by a consultative process, especially involving stakeholders from farming communities and Traditional Leaders, women's groups were not always adequately represented. This leads Werner to assume “why the Draft Communal Land Bill circulated at the Consultative Conference on Communal Land Administration in 1996 “did not contain any reference to gender aspects” (Becker 1997: 58), and why none of the conferences came up with recommendations going beyond the assertion of equal rights for women in obtaining and retaining land rights” (Werner 2008: 12).

International Initiatives on Gender and Land

Namibia is a party to several international, continental and regional legal instruments that prohibit sexual discrimination and guarantee the right to property ownership. In particular, Namibia is party to the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and People's Rights, as well as the Convention on the Elimination of All Forms of Discrimination against Women. Additionally, Namibia has ratified the Universal Declaration of Human Rights. These international instruments have been adopted to promote gender equality. The positions of regional and continental bodies on gender equity in access to land also played a role in informing land policies and policy development in Namibia, and the inclusion of gender aspects in land policy. Such initiatives include the Southern African Development Community

(SADC) ‘Land Reform Support Facility’, which provides a platform for collaboration on land issues, including gender aspects. At continental level, the African Union (AU) has finalised ‘Framework and Guidelines for Land Policy for Africa’ and the AU Agenda 2063.

In addition, the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed in May 2012, which embrace gender equality as one of the main guiding ‘principles of implementation’, are taken into account by the Ministry. The VGGT are being used to mainstream gender related processes and legal framework especially the current on-going work on the National Land Policy and Resettlement Policy review. Through the VGGT an inclusive multi-stakeholder group is involved in this process which will enhance current efforts to enhance women’s land rights.

Despite protections for gender equality provided for in continental, international and domestic law inequality between men and women remains a pervasive issue. Due to the ineffectiveness of existing laws, Namibia enacted additional legislation to improve gender equality. Specifically, the country adopted Namibia’s Gender policy as well as the National Gender Plan of Action. The following are some of the additional policies and laws that were enacted to address gender equity:

- Namibian Constitution – Article 23 (3) [commitment to address gender equity at highest level]
- National Land Policy (Fundamental Principle 1.5)
- National Gender Policy [2010-2020]
- National Human Rights Action Plan [2015-2019]
- Resettlement Policy supported by the ACLRA -1995)
- Married persons Equality Act 1 of 1996
- The Affirmative Action (Employment) Act 29 of 1998
- The Combating of Rape Act 8 of 2000
- The Communal Land Reform Act 5 of 2002
- The Combating of Domestic Violence Act of 2003
- The Maintenance Act 9 of 2003

Initiatives taken by the Government to Promote Gender Equity within the Land Reform Framework

Following the involvement of several consultative forums on the land question as highlighted above, the Government resolved to adopt and implement various policy and legal reforms that addressed gender equity issues identified in the communal areas. The Ministry of Land Reform (MLR) developed several programmes and projects that were also aimed at addressing identified gender gaps in policy and legislation through the implementation of purposive projects and programmes in communal areas. The current Communal Land Rights Registration (CLRR) process, allocation of commercial leaseholds and the development of small-scale commercial farms are such programmes where policy has shifted towards 'local land rights recognition' (Delville, 2002). National Land Policy forms the backbone of all the activities of the Ministry of Lands and Resettlement.

National Land Policy

The National Land Policy of 1998 is premised on the Constitution and the consensus reached at the 1991 National Land Conference. The National Land Policy continues to define basic principles for urban and rural land in Namibia; ensuring the sustainable use of the natural resources, promoting transparency and accountability in the administration of multiple forms of land rights and emphasising the protection of the rights of the poor and women (Republic of Namibia 1998 in Dienst 2011).

The National Land Policy is based on a unitary land system, which provides for equal rights and opportunities across a range of tenure systems, irrespective of whether the land is located in a communal or commercial area.

Under this policy, women are accorded the following rights:

- Entitled to receive land allocations and to bequeath and inherit land;
- Promote the reform of civil and customary laws which impeded women's ability to exercise rights over land;
- Promote practices and systems that took into account women's domestic, productive and community roles, especially in regard to housing and urban development, agricultural development and natural management.

- Equality before the law with regard to access to land; Ensure that women have the same status as men with regard to all forms of land rights, whether as individuals or as members of a family. This means that women are entitled to land allocation and can bequeath and inherit land in their own right. Widows/widowers are entitled to maintain the land rights that they enjoyed while their spouses were alive;
- Ensure equal access to land and security of tenure of all individuals;
- Ensure environmentally sustainable use of natural resources including land (Republic of Namibia, 1998: 1-2).

The 1998 Land Policy made provisions for the introduction of the issuance of certificates of land rights under customary tenure. According to Werner, these certificates were envisaged by Government to address tenure security issues, as they could be bequeathed but could not be traded, mortgaged or transacted outside the limits of consanguinity (2008:12).

7. Gender Aspects in the Communal Land Reform

Communal Land Rights Registration Process

At Independence, Namibia inherited a dual property system which recognised private, freehold land rights and the customary system which is based on indigenous law and underpins communal tenure (Amoo, 2010). Communal Land Rights Registration (CLRR) is a tangible programme that addresses tenure security issues for communities holding land rights in communal areas. It was envisaged that such tenure reforms would result in increased agricultural productivity and ultimately reduce poverty through improved income. Addressing land ownership would also stimulate funding for agriculture and related investments through access to credit. On another level, CLRR is aimed at reducing conflicts around land use in communal areas, and improving the cadastral system of the country.

Schedule 5 (1) of the Constitution of Namibia vests the administration of communal land in the state, thus the state administers the land in trust for the benefit of the communities. This position informed the underlying provisions in the Communal Land Reform Act, 5 of 2002. The Communal Land Reform Act (Act No. 5 of 2002) (CLRA) was guided by the National Land Policy and deals with access to rural land in communal areas. It was passed in 2003 to provide greater tenure security in communal areas and addresses land administration issues.

The Act creates the specific legal framework to enact and implement the provisions of the National Land Policy with regards to communal land. The objective of CLRA are directed at reducing conflicts from land grabbing and fencing-off of commonages and it creates principles for sustainable allocation, development and management of natural resources in communal areas. The Act also creates a statutory right of leasehold in communal areas, which can be registered and can be used as collateral for loans. The Ministry of Lands and Resettlement is responsible for the enactment, amendment and implementation of the CLRA. The Ministry's mission is "to ensure that Namibia's land resource is equitably allocated, efficiently managed, administered and sustainably used for the benefit of all Namibians"(MLR 2011).

Prior to the enactment of the CLRA, there were uncertainties around the administration of communal land that stemmed from lack of authority over communal land. The role that Traditional Authorities played in communal land required clarification in terms of land allocation and utilisation. The chaos created by the Traditional Authorities resulted in self-allocation, land grabbing, illegal fencing and tenure insecurity for the majority of the communities; with women and other vulnerable members of communities being affected most. Thus the Ministry noted shortcomings in the in the following areas:

- The absence of records on land allocation;
- Double allocation of land rights which caused conflicts at village and national level;
- Bias in allocation to different groups especially women and vulnerable groups;
- The credibility of some Traditional Authorities in their efficacy in land allocation was brought to question by communities.
- Individuals were self-allocating land which resulted in tenure insecurity for the majority.

To eliminate tenure insecurity in communal areas, the Ministry introduced a project in 2003 to register land rights in the communal areas. The land rights which can be registered are customary and leasehold³, and may be existing rights or new rights. Under this project, customary land right holders are required to apply for recognition and registration of existing

³The Act also provides for leaseholds on 'unused' land in Communal areas for allocation to individuals to promote agriculture. The Act empowers the Minister of Lands and Resettlement to designate portions of communal land for granting long-term leases. This designation is preceded by wider consultations from village level, Traditional Authorities, Communal Land Boards and the Ministry. The Communal Land Boards only grant rights of leasehold on consent by Traditional Authorities and if refused, the issue is referred for arbitration. Leaseholds are surveyed at the owner's expense and once surveyed they are registered in the Deeds Office under the Deeds Registries Act, 1937.

customary land rights. Existing land rights are those rights that were allocated before the enactment of the CLRA, and the new land rights are those that were allocated after the law was passed. The maximum sizes have been set at 20ha for customary land rights and 50ha for leaseholds, but can be increased upon request to the Minister of Land Reform. A customary land right is for the natural life of a holder and can be inherited by a surviving spouse and in the absence of the surviving spouse; the right is inherited by the children. Whilst the period and duration of the leasehold vary according to land use and is transferable as provided under the CLRA. These rights are an occupation in perpetuity and the holders are supported by legislation from eviction or expropriation without just compensation.

The Ministry managed to create gender equality by formally recognising women's individual land rights and women's land rights within the family and marital system through joint registration of rights that previously were only vested in men in the CLRA. The husband or another family member previously had to sign the registration form when applying for a land right certificate, thus under the CLRA, a women could only hold an individual land title when she was widowed, single (but with permission from relatives) or inherited land. However, the Ministry introduced a new CLRR application form in 2013 that now provides for joint and individual land registration of women, thus enabling women to apply for a land rights certificate in their own names, regardless of her marital status.

The main Stakeholders in the Communal Land Registration Process are the following:

- Land Boards,
- Traditional Authorities,
- Communities with land rights,
- Ministry of Land Reform,
- Ministry of Agriculture, Water and Forestry,
- Ministry of Environment & Tourism,
- Regional Councils,
- Tourism operators and conservancies,
- Development Partners in the natural resources management GIZ and KfW.

The Communal Land Boards

To effectively manage land in the communal areas, the Government established Communal Land Boards (CLBs). The CLRA sets out the following functions of Communal Land Boards with regard to communal land administration:

- Control over the allocation and cancellation of customary land rights by Traditional Authorities;
- Decide on applications for rights of leasehold;
- Create and maintain a register on land allocations, transfers and cancellations;
- Resolve land disputes in consultation with Traditional Authorities;
- Advise the Minister on regulations and actions to meet the objectives of the CLRA; and
- Report regularly to the Ministry.

There are 12 Communal Land Boards responsible for the registration of Communal Land Rights. In addition to representatives from relevant line ministries and other stakeholders, at least five women have to be represented in each Land Board. The proportion of women on the Boards has been questioned, resulting in the inclusion of amendments advocating gender balance in all Land Boards. The following members and organisations have to be represented in the Land Boards:

- Traditional Authorities representative;
- A representative from the farmers union;
- Regional council;
- 2 women engaged in farming;
- 2 women with expertise in CLB issues;
- Conservancy representative; and
- 4 representatives of the line Ministries (MAWF, MET, and MURD)⁴

The Ministry has also translated the empowerment of women through increasing their representation in decision making bodies on land issues. According to the 2016/2017 Annual Reports, all 12 CLBs have 5 or more women representatives compared to 2012/13 where only 2 CLBs had 4 women represented. There is a significant rise in the number of women

⁴ MAWF- Ministry of Agriculture, Water and Forestry; MET- Ministry of Environment and Tourism; MURD Ministry of Rural and Urban Development

participating in land matters and representation in the CLBs. Women are now also fully represented in the Land Reform Advisory Commission (LRAC) where out of the 16 members 6 are women and in the Regional Resettlement Committee out of the 229 members in the 14 Regions 77 are women and 152 are men. Although gender mainstreaming is an essential part of land reform in Namibia there are other institutions that continue to affect women's access to land, these include the formal legal system, access to finance, formal education and traditional/customary norms and religion.

Impacts of Communal Land Rights Registration Programme

Out of an estimated total of 295,000 communal land parcels that are envisaged to be registered, the CLRR programme has already achieved the following results since 2003:

- 164,807 communal land titles verified (i.e. number of received applications that have been mapped);
- 118,885 communal land titles registered;
- Out of the 118,885 certificates (for communal land rights) issued 36% are for women in their own right and 64% are men;
- Capacity of CLBs and Traditional Authorities has increased through training;
- Namibian Communal Land Administration System (NCLAS) has been established to track and store land related data;
- Budget allocation had increased from N\$800,000 [2013] to more than N\$26.3 Million [2017/18].

8. Conclusions on Gender Equality in the Communal Land Reform

Innovative practices and programming have been developed to facilitate gender-equitable property rights in many parts of the world. These innovations provide valuable examples of how the complex issue of women's rights to access and own land can be addressed in different contexts. A few broad recommendations can be made based on lessons learned while implementing the communal land reform programme in Namibia:

Since 2013 women irrespective of their standing have been able to apply for land rights in their own right and no longer depend on a male relative to access land. This is particularly relevant

as 59 percent of Namibian women are unmarried and for those who are married different marriage regimes exist that include statutory, customary, undocumented customary and informal cohabitation which is common. One of the immediate impacts of these legal initiatives is the fact that Namibia has witnessed more than 40% of women who have benefitted from the land registration program.

There are both economic and social benefits when women have secure land rights. Property rights in land, whether customary, formal, or religious provide economic access to key markets and social access to non-market institutions, such as household and community-level governance structures (Boudreaux and Sacks, 2009). Secure land rights confer direct economic benefits because land is a key input into agricultural production and enterprise development; it can be used as a source of income from rental or sale; and can provide collateral for credit where strong, well-regulated land markets and credit infrastructure exist.

Various studies undertaken in Namibia indicate an increase in the number of women participating in decision making bodies. There has been a significant increase in female participation in land administration bodies that includes the Communal and Board, the Regional Resettlement Committees and the Land Reform Advisory Commission as demonstrated above. This is due partly to the precedent that has been set in Namibian legislation for requiring that a body have a gender balance, Hubbard, 2018 [Unpublished]

Literature concurs that women encounter other cultural obstacles in the way that administrative rules on agrarian reform are set, in the attitudes and practices of the officials in charge of applying these rules, and in the selection process for possible beneficiaries. It is also imperative that Government officials responsible for the formulation and implementation of land related policies are trained on gender issues and specifically get an understanding of the obstacles to women's land tenure and to act appropriately to eliminate these obstacles. The training must be appropriate and accessible to women, and must take into account the need to modify practices and customs that are discriminatory. It is essential that the rural women who have struggled for years for access to land are included in the planning and execution of these policies if they are to be at all effective.

Studies in Namibia indicate that the customary land rights of widows appear to be much more secure now than at the time of Independence (Werner, 2008). However, a major factor preventing the successful implementation of the CLRA is the lack of awareness of women to

their rights in terms of the CLRA, and thus women often do not claim their rights. Similarly, there remains a lack of awareness on the role that Communal Land Boards play in the registration and arbitration process. As Werner states; “as long as land rights holders are unaware of their rights, customary laws, particularly with regard to gender, are likely to take precedence over statutory law. To the extent that this happens, the social structures that relegate women to a subordinate position are likely to remain in place” (2008: 30). Thus, a major obstacle to the implementation of the CLRA is the fact that it appears that women in rural areas are unaware of the legal provisions on women’s right to land. As Werner (2008) points out, information of land rights is usually not distributed in a way that ordinary people understand it. The Act is not translated into a form or language that enables people to easily understand it.

Despite the importance of legislation, laws alone do not suffice in securing women’s access to land. Laws can only be effective when there is proper awareness about them, capacities to implement them, and to what extent cultural norms and traditions are practiced in relation to statutory law (SIDA, nd: 3). In many cases, the rights to assets of female farmers in communal areas in Namibia are not secure. Lebert notes that even when widows inherit the land upon the death of their husbands or other family members, “the deceased’s matrilineal family relatives may still descend upon the homestead to reclaim moveable assets that belonged to the husband” (2005: 90 in Werner, 2008: 28). This traditional practice, often referred to as ‘property grabbing’, is considered as a major issue for most women in communal and urban areas. Thus, even if women’s land and property rights are secured, their livelihoods are compromised due to the possibility of losing their assets, leaving women without the vital resources to use their land productively. In urban areas as a result of this practise most women are left homeless and destitute as they will be forced to move out of the house if the spouse died intestate.

Furthermore, many female farmers struggle to maximise the productivity of their land because in many cases they have less access to and means of purchasing agricultural inputs, such as technologies that improve soil fertility (Quisumbing and Pandolfelli, 2008: 2). Paradza (2011) points out that programmes aimed at securing land and property rights for women must also expand to include broader aspects of economic development interventions, thus incorporating educational development and economic empowerment opportunities that target the socially differentiated women citizenry. As Quisumbing and Pandolfelli (2008) note, interventions designed to address one aspect of women’s access to and control of land alone will not be successful. In addition to property rights, women are often constrained in access to other resources to successfully farm; such as seeds and fertilisers, access to agricultural extension

services, farm labourers, credit, and social capital (ibid). There are currently no statistics in Namibia of how many female communal farmers receive support from agricultural extension services. There are also no major governmental structures in place to support female communal farmers with agricultural inputs.

9. Applicability of Gender Lessons for Urban Land Reform

As can be determined from the above conclusions, many lessons can be learned from the Namibian communal land reform on the inclusion and promotion of women's rights in land policies. Through legislation and the implementation of the Communal Land Rights Registration Programme, the Namibian Government is actively seeking to ensure women have secure access to and control over land and resources in rural areas. Despite considerable advances that have already been made in including gender equality in land policies and ensuring that discriminating customary practices are addressed, many challenges still need to be addressed by the Government that go beyond policy development and legislation.

Viewing land and gender through a rural-urban perspective

Both, the urban and communal land reform, are formalising and securing existing rights of an insecure nature. In urban areas this comprises residential plots and public urban spaces complementing them, in the communal areas these are customary areas that are in particular also places of productivity, which ensure local food security. While the customary rights are a place of identification and belonging, the urban areas are recent places of occupation, driven by hopes for cash income and other benefits. The prevalence of ownership of land and of housing also differ from each other, between men and women and comparing rural and urban areas.

Despite these differences, both places have more in common than it might seem. In newly urbanized countries, such as those in Sub-Saharan Africa, the connection between urban and rural life is very strong. Rural-urban migration is often a strategy for income diversification at individual or household level, whereby cash earned in town is transferred to family members in the village, and farm products are brought to town for sale or consumption. Often times

urban dwellers go back to the village to help with the harvest and many still own land which their relatives farm for them (Tannefeldt and Ljung, 2006:35).

This is particularly the case in Namibia, since most urban dwellers in the country have strong links with their villages. On the one hand this is due to an inherent sense of belonging, and on the other it also secures their share of rural assets through traditional inheritance practices (Maanda, 2012). Many people in Namibia regard their villages or farms as good retirement places, whilst others still return there during holidays or for important occasions.

Urbanization is further influencing the composition of households, for example with one marital partner moving to the urban areas to seek employment. Urban areas might carry different hopes for women than for men as well. Independent, modern lifestyles are more easily imaginable in the urban than in the rural areas. Decision-making patterns within the households are also affected by urbanization, with women in urban areas being more likely to participate in relevant decision making. However, with the strong linkage of the informal urban and communal rural areas, customs are likely to survive the transition. Urban land titling programs need to take this into account, to have an effective impact on women's empowerment through secure tenure.

Conclusions for Gender Equality in Urban Land Reform

- Vulnerability of women is particular to changes in their marital status, or rather how their relation to a man is defined. To safeguard the rights of women to urban land in line with the Namibian National Land Policy, their relation to a partner must not interfere with their right to secure tenure. This means that titles should be issued jointly, for any kind of co-habiting, if both partners are contributing to the maintenance of the household. This should also apply despite a head of household concept for the starter title, which could be comparable to a communal land right application, for which afterwards both partners are listed on the certificate.
- Due to the high number of unmarried women in Namibia, household composition and decision-making patterns need to be better understood in particular for urban areas, to design measures for the likely changes in household composition vis-a-vis the permanency of secure land rights.

- Studies are further needed on adverse customary practices that affect women's property rights in urban areas. While there is some evidence for rural areas, the positive and negative effects of a rural urban transition on such customs is not known, which prevent the development of tailored safeguards.
- As shown for the communal land reform, women empowerment can be strongly increased through better representation on all levels of decision-making. On the specific case of the FLTS, this comprises women quotas for the committees elected among the settlement associations, for the committees reviewing and drafting the concerned legislation and as far as possible also for bodies that steer affirmative action programs in this regard.
- Good decision making starts for men and women alike with being well informed. Information on the FLTS should be widely disseminated, taking into account education levels and language barriers, but also be specifically targeted to women. Considering that saving groups in Namibia are mostly driven by women, it is not unlikely that the group-based FLTS approach, which provides the community with the possibility to develop its common spaces, is considerably more interesting for women than for men.
- Studies have found that women who have secure urban tenure are better able to participate in local committees and governance structures and are able to invest in their homes (Baruah, 2010). This could further strengthen women rights, as with the influence of the designs of the settlement and the participatory development of public spaces, female concerns such as safety or health are more easily promoted in the development of FLTS settlements.
- It has been pointed out that land tenure programmes must be complemented by educational development and economic empowerment opportunities for women, of the benefits of secure tenure shall take hold.
- The regular collection of gender-disaggregated data and statistics on land tenure would facilitate informed policy-making and encourage research on gender equity in rural and urban areas. The inclusion of gender-disaggregated data can also give more legitimacy to Government programmes and policies.
- Government officials responsible for the formulation and implementation of land related policies need to be trained on gender issues and specifically get an understanding of the obstacles to women's land tenure in order to act appropriately to

eliminate these obstacles. The training must be appropriate and accessible to women and must consider the need to modify practices and customs that are discriminatory.

- Platforms that foster dialogue between government representatives and civil society on gender equality should be established to increase commitments and accountability.
- Gender focal persons should be installed in relevant institutions, responsible for monitoring and evaluation, development of methods and trainings concerning gender equality

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