

New Innovations – Old Problems
The Case of the Flexible Land Tenure System and the Namibia Communal Land Registration System

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Abstract

Reform of land tenure arrangements in many countries through the adoption of institutional innovations is seen as key to turning around the non-performance of land administration functions in many countries in the developing world. In Namibia the adoption of the Flexible Land Tenure System and the Namibia Communal Land Registration System were seen as exiting new institutional developments that could help to overcome the problems of the past. Using an institutional innovation approach to provide a framework for understanding the drivers of institutional change we can better understand the success or failure of these innovations. This paper concludes that institutional innovation is less likely to succeed in the land administration domain, if the underlying problems with regards to the application, governance and commitment to task completion is not first overcome, and that incremental change is more feasible, including identifying functional sources for innovations.

Key Words: institutions, innovation, land administration, land tenure, land reform

1 Introduction

After independence in 1990, the Government of Namibia introduced a number of new institutions in order to address the skewed distribution of land. Colonialism and apartheid land administration systems were used to concentrate and segregate land ownership along “racial” and ethnic lines resulting in black citizens being largely excluded from land ownership. Addressing the unequal access to land and other resources became a cornerstone of the newly elected non-racial government after independence. A major land conference, the “1991 National Land Conference on Land Reform and the Land Question” was held in order to serve as a broad-based stakeholder conference to develop policies and a national programme of action to address land problems (Ministry of Lands, Resettlement and Rehabilitation, 1991). It was estimated that at the time of independence approximately 52% (69.6 million hectares) of agricultural land was owned by just 4200 (0.3% of the total population) predominantly white farmers with freehold rights, known locally as the commercial farmland. In contrast it is was estimated that the remaining 48% (33.4 million hectares) of agricultural land was owned by approximately 1,000,000 (70% of the total population) largely subsistence black farmers with no formal land rights (communal land) (Ministry of Lands, Resettlement and Rehabilitation, 1991).

The 1991 Land Conference and as evidenced by the subsequent resolutions focussed almost exclusively on the issue of agricultural land in communal and commercial areas. While there was no direct mention of informal settlements or urban land and housing provision, the Ministry of Lands, Resettlement and Rehabilitation (MLR) soon realised that urban land and the growing informal settlements needed urgent interventions as well. By 2017 it is estimated that there were approximately 140,000 household living in informal settlements in Namibia (Weber & Mendelsohn, 2017) amounting to approximately 564,000 people living in informal settlements. Weber & Mendelsohn (2017) project that by the year 2025, informal structures and residents will outnumber formal structures and residents.

As such the Government of the Republic of Namibia commissioned several studies and expert groups that led to the development of the Flexible Land Tenure System (FLTS) for implementation in urban areas. The FLTS was while not fully implemented, was used as a blueprint for a number of housing and land access activities in urban areas. These initiatives will be considered as part of the FLTS evaluation. At the same time the Agricultural (Commercial) Land Reform Act, Act No. 6 of 1995 was developed to facilitate the access of previously disadvantaged Namibians to acquire commercial agricultural land. Similarly the Communal Land Reform Act, Act No. 5 of 2002 (CLRA) was developed as the major legal instrument to provide formal rights and protections for communal land owners and to administer communal land rights. The Namibia Communal Land Administration System (NCLAS) was designed for the purpose of administering the rights and spatial locations of all communal land parcels.

This research considers the case of the NCLAS and FLTS institutions in terms of their design innovativeness and the programme outcomes. Both the NCLAS and FLTS were designed to address the lack of access to land, housing and economic opportunities for previously disadvantaged citizens. This is premised on the

assumption that the formal land administration institutions in place at the time are deficient and as such not able to provide access to land, housing and economic opportunities to the majority of citizens. The commercial land (rural and urban) in Namibia that is subject to an enhanced deeds registration whereby rights are registered in the Deeds Registry. The deeds registry is linked to a parcel-based cadastre, for every parcel in the commercial areas providing a trusted land administration system that was used and trusted by financial institutions for the normal range of mortgaging, leasing and other transactional activities. This formal registration system did not cover the communal areas, and with the abolishment of movement restrictions after independence and the subsequent growth of informal settlements in urban areas were also not covered. It was theorized that the formal enhanced deeds registration system of Namibia was not able to extend coverage to communal areas and informal settlements, thus the need for an innovative new institutional framework. The research seeks to understand the impact of these innovations and examine their outcomes. This case study draws on previous research on small scale farmers and the Flexible Land Tenure system conducted earlier (Werner & Bayer, 2016).

2 Flexible Land Tenure System

The Flexible Land Tenure System as enacted in the Flexible Land Tenure Act No. 4 of 2012¹ (Ministry of Land Reform, 2012) aims to i) *“create alternative forms of title that are simpler and cheaper to administer than existing forms of title”*; ii) *“provide security of title for persons who live in informal settlements or who are provided with low income housing”*; iii) *“to empower the persons concerned economically by means of these rights.”* These rights may only be applied within a proclaimed urban area and requires the establishment of *“Land Rights Offices”* in the areas of jurisdiction. Provision is made for two new types of title, *starter titles* and *land hold titles* in addition to the existing, *freehold titles*, *sectional titles* and *leasehold titles*. The sectional title allows for the ownership of apartments and houses with an element of commonly owned property such as stairwells, passages, outside spaces for recreation such as a swimming pool or barbecue area.

The starter title allows the right holder to erect a dwelling within an approved location within the boundaries of a formally surveyed erf² held by freehold title. There will be multiple starter title right holders within one block erf. The freehold title for the block erf³ may be held by the state, juristic or natural individual or association. This applies to a block erf for starter title rights and land hold title rights. These rights are able to be bequeathed and transferred, subject to the rules of establishment, and may not be held by a juristic

¹ It is worth pointing out that the FLTS was inspired in part by the Rehoboth Deeds System, which allowed for low cost registration of urban and rural land without requiring extensive surveys. It made provision for a local registrar and records office to manage the land rights of this particular community. The legislation was developed prior to independence and the apartheid stigma of this land administration system meant that it was politically not feasible. The act has since been scrapped.

² An erf is a formally surveyed and registered parcel of land.

³ A block erf is a formally surveyed and registered parcel of land held under freehold ownership over which starter title rights have been registered.

person. No natural person may hold more than one starter title right and no person may hold a starter title right if they are in possession of any other statutory land right in Namibia.

The spatial extent of each starter title rights holder is identified by means of a single coordinate identifying the location of the most significant building of the right holder. The starter title rights holders within a block erf must form an association to manage the affairs of the block erf, such as payment of services to local authorities and to mediate disputes between members of the association.

The land hold title right holders are entitled to erect a dwelling on a plot⁴ within a block erf, and shall be entitled to all the rights that a freehold owner has over his property. The plot owners (there are also multiple land hold title rights holders within a block erf) shall have an equal share in the common property contained within the block erf, irrespective of the size of their plot. A holder of a land hold title right may bequeath and transfer their rights, subject to the rules of establishment. In addition, the rights may be mortgaged or used for any other form of security for a debt executable on the property.

3 Namibia Communal Land Administration System

The passage of the CLRA provided for the recognition and registration of customary and leasehold rights, while explicitly forbidding the granting of freehold rights to communal land. Three types of customary rights are provided for, namely a residential, a farming right (individual rights) and a grazing right, which is a communal right. These rights are not to be bequeathed and are not mortgageable. However, the act states that the rights revert back to the Traditional Authority for reallocation in accordance with the criteria set out in the act.

Leasehold rights may be allocated for business purposes or for agricultural purposes in the communal areas. Agricultural leasehold rights may only be issued in designated agricultural areas, unless the relevant minister gives permission for a leasehold right in any other area. The leasehold right may be surveyed and registered in the deed's office, making them eligible for use as collateral.

4 Institutional Innovation

Institutions are the rules by which societies organise themselves; these rules can be formal (laws) or informal (customs) (North, 1990). When a parcel of land is transacted, we can refer to the physical parcel as the brute fact and the document (Title or Deed), which is the descriptor and representative object of the transaction, as the institutional fact (Searle, 1995). Thus we can see that in terms of land administration we are largely pre-occupied with the institutional representations of property. As such understanding institutional innovation and change is critical for developing our understanding of land administration functions. While we expect that institutions to be stable and to provide certainty for exchanges, they also need to be flexible

⁴ A plot is a surveyed spatial extent of land, but distinguished from an erf, by being contained within a block erf.

and change over time in order to provide for new relationships. This view is re-enforced by Yoshikawa, Tsui-Auch, & McGuire, (2007) who state that institutional change and innovation does co-exist with continuity.

Such change must be deliberate and ideally should promote efficiencies and further development. There are several ways in which to understand institutional innovation, Oliver (1992) contends that the source of institutional innovation can be seen as functional, political and social. A slightly different view, and that used in this research is that institutional innovation can be driven by technical changes, changes in resource endowments or changes in cultural endowments (Ruttan & Hayami, 1984). Technical change and changes in resource endowments are considered as endogenous or as a demand for institutional change while changes in cultural endowments are seen as exogenous or supply of institutional innovation by Ruttan & Hayami, (1984).

The Marxian view holds *“technological change as the primary source of institutional change”* as cited in Ruttan & Hayami, (1984). Technological change and changes in resource endowments as described by Ruttan & Hayami, (1984) demonstrates how changes in agriculture such as improved crop production and high yielding cultivars fundamentally altered the patterns of land occupation and drove the demand for changes to private land tenure. Similarly, the changes in demand for wool and rice equally drove the demand for change in property rights in such diverse countries such as England, Japan and the Philippines⁵.

Changes in the cultural endowments are necessarily reflected in the political power structures of the interested parties. Where institutional changes are seen to be bolstered by prevailing cultural practices, the gains may exceed to cost of developing new institutions. However, when the power structure is such that *“the political entrepreneur efforts introduce institutional innovation with a high rate of social return are adequately rewarded by greater prestige and political support”* then it is likely that the innovations will take root (Ruttan & Hayami, 1984). On the contrary, if *“the innovation is expected to result in a loss to a dominant political block, the innovation may not be forthcoming even if it is expected to produce a large net gain for society as a whole”* (Ruttan & Hayami, 1984).

5 Innovations in FLTS

The population of Namibia was estimated to be 1,400,000 at independence in 1990, with higher growth rates for urban areas and a declining rural population with Namibia (Integrated Land Management Institute, 2017) having crossed over from a majority rural population to a majority urban population in 2019. This rural to urban transition has seemingly caught planners off-guard, with informal settlements having become normal in all urban areas of the country. It is estimated that the number of informal houses numbered about 10,288 in 1990, but that number has now increased to about 140,000 units (Weber & Mendelsohn, 2017) comprising

⁵ For a full treatise on the demand for institutional innovation driven by changes in resource endowments and technological changes see Ruttan & Hayami, (1984)

about 541,119 residents (NHAG & SDFN, 2017). This growth in urban settlements has been largely informal. While numerous attempts have been made to address the growth of informal settlements, the FLTS was expected to be the culmination of these disparate initiatives.

The National Housing Enterprise (NHE) is expected to supply houses for the low- and middle-income earners in Namibia. The target is to for the NHE is to deliver 1,200 per year while it has delivered on average over a twenty-year period (1993-2013) only 400 houses per year. This is 33% of its target mandate. As the backlog was growing the NHE was given the mandate to build 185,000 houses at an estimated cost of N\$ 5,000,000,000 to eradicate the backlog of housing and eliminate informal settlements resulting in the Mass Housing Development Programme. Estimates differ but it is reported that only between 3,555 houses (Integrated Land Management Institute, 2017) and 4,204 (Weber & Mendelsohn, 2017) houses were built. This constitutes about 2% of the target number of houses. The programme was suspended and has effectively been stopped. The Decentralized build together Programme (DBTP) most obviously mirrors the FLTS system in that it made allowance for the flexible access to land and the incremental upgrading and construction of housing units. The DBTP, while not fully implemented, and not having any fixed target, managed to construct 41,934 units during the period from 1992-2013. The Shack Dwellers Federation of Namibia (SDFN) with provided financial support from funds collected by members through saving schemes and contributions from central government constructed 1,331 housing units since 1992. During this time the housing backlog has increased steadily with fewer people than ever before not having access to adequate housing or secure tenure to land. It is estimated that at the current rate Namibia will have more people (2,540,000) living in urban areas (predominantly in informal settlements) by 2050, than are currently living in Namibia.

There are four key innovations in the FTLS that can be regarded as innovative. The FLTS was a **flexible** land tenure regime that provided security of tenure that would theoretically allow people to upgrade incrementally from a “basic” form of ownership to a more “complete” form of ownership. This would allow low income families to have secure access to land rights without the perceived costs associated with formal land ownership. The second key innovative aspect of this FLTS related to the **technical design** of the land administration system so that it would reduce the costs associated with the cadastral system as it would forego some of the surveying and planning aspects that are normally required in formal land tenure system. The third key innovation was that the FLTS would contribute to poverty alleviation through enabling even the poorest land right holder to have documented rights that could be used for social and economic development, including **investment/credit and inheritance** purposes. The fourth major innovation was the **decentralization** of local property offices that are expected to increase access to land rights and improve governance and transparency at the same time. While each of these expectations would have their critics, and with good reason, it was generally thought that the innovations encapsulated by the FLTS could serve as an example for tenure reform in other developing countries (Christensen, Werner, & Hojgaard, Working

Paper #93: Innovative Land Surveying and Land Registration in Namibia, 1999), (De Vries W. , 2004), (Christensen, 2004), (Meijs & Kapitango, 2009) (Augustinus & Deininger, 2005).

The first innovation is the incremental transition from partial to more comprehensive land rights for informal settlement residents. The source of this innovation is considered technical and is external. Unfortunately, this approach has had limited success in implementation. Since 2005 no settlements have been upgraded to freehold rights. The last settlement to be upgraded to individual freehold rights was Okahandja Park in 2005. However even then there was limited success, as only a few (9 out of 260) residents were able to sign contracts and get deeds registered (Muller, 2019). The informal settlement of Greenwell Matongo C is typical of the where the upgrading process stops. The settlements have been partially upgraded but cannot meet the requirements for the road width of 12 metres and as such cannot proceed with individual rights. This is despite the fact that cadastral surveys have been carried out and survey diagrams prepared. The situation is such that while the ownership rights may be incrementally upgraded there is no provision made for the incremental upgrading of services, engineering standards in accompanying institutions. Engineering and planning for services have not been made incremental. There is reference in the act to allow incremental upgrading of ownership rights. No equivalent provision is made for the provision of incremental service, or non-standard services, or varying standards for different types of settlements.

Similarly, ministerial discretion is required for erven smaller than 300 square metres. The erven in the informal settlements are generally smaller than 300 square metres, and after regularisation the express permission of the Minister is required for the final step of formalisation to be completed. This means that although the settlements have been demarcated and regularised in terms of the legal framework, the upgrading is often not possible, or is dependent on the whims of the serving Minister for approval. Even where the Minister provided an exemption for the erf size, there are often other criteria that are not met, and for which the Minister does not provide an exemption or approval. This makes the upgrading process fraught with risk and insecurity as it is managed by exemption, rather than statute. Other problems cited include the apparent inability of the municipal billing system to cater for individual bills on erven that are not subdivided within the formal system. Thus, the starter title and land hold title rights holders, who have an individual site in a common erf are not able to receive individual bills for services rendered. This results in informal settlement residents heading into a bottleneck with regards to the suitability for the rights to be individualised as they do not meet the engineering standards and other specifications. This has been referred to as the inflexibility of the flexible land tenure system⁶ (De Vries & Lewis, 2009).

⁶ For a very interesting perspective on the role of land tenure institutions as seen from another perspective it is worth reading the paper by De Vries and Lewis (2009) on whether the innovative FLTS system is really a solution or the problem.

The second innovation is the technical design of the land administration system in terms of survey standards and the registration of deeds. While the survey requirements have been relaxed for the starter title and land hold title, it has not contributed to an increase in access and tenure security. As has been argued, the survey cost is not the major cost associated or impediment associated with land development and upgrading (De Vries, Georgiadou, & Lewis, 2003). Planning and service costs are much higher and a more significant barrier to upgrading (De Vries, Georgiadou, & Lewis, 2003). Provision is made for the storage of parcel records for starter titles and land hold titles at the local level, but this is not fully trusted. There is a demand that the records should be held at the national level to accord them the same privilege and perceived security as freehold rights. This perceived second class of rights creates not only an impression of lesser protection, but is also as of yet not recognised by any banking institution as being secure for the provision of mortgages. This is aside from the question of whether the potential applicants would be considered eligible for a loan. There also still no access to public land record at the Local Property Offices (LPO), although at the moment this has more to do with the disfunction of the LPO's. Perhaps it is instructive to look at the access to the NCLAS, and if we do, it does not provide much hope that records will be more accessible at the local level. Records of the starter title rights should perhaps have been recorded in the cadastre. As they are not recorded in the cadastre and only the block erf is recorded in the deeds office it sends out the message that the right is not as secure as the other rights that are recorded. Technical adjustments to the registration system should have been made to ensure that all records are captured in one integrated system, rather than in separate systems.

The third major innovation is that the documentation (formalising the institutions) would be available in support of economic development initiatives. It is expected that the documentation is stored at the local level and is therefore more easily accessible by the affected communities. The downside is that the documentation is not accepted or trusted by financial institutions and there is no evidence to suggest that the documentation is any more accessible. In fact, it would appear that information is likely to be less transparent and will be more difficult to access. However, this might be an irrelevant point as most residents are not considered bankable or creditworthy. Out of 8,000 members of the Shack Dwellers Federation, only 8 have applied for loans (0.1%). It is not clear whether they would qualify for loans or whether any loans have been granted. People that have acquired loans have done so as private loans and have loaned small amounts for residential improvements from the savings fund. Property rights have not been used as security in any transaction thus far. We are aware of only one instance in which a loan was granted for the upgrading of a house, with financial assistance from a bank, and that was for a salaried employee, and their property was not considered for collateral (Muller, 2019). The SDFN is predominantly run and managed by women, and that they are not very keen on credit or loans and risk losing their properties.

Finally, a decentralized approach to decision making as envisaged in the FLTS should enable increased local relevance and increased access. Instead local authorities have found themselves increasingly restricted by national legislation and regulations that do not allow for local variation and differentiation as was

possible prior to the enactment of the FLTS. The evidence suggests that prior to the implementation of the FLTS system, there was more leeway for LA and informal settlement groups to undertake formalisation activities. The act has ironically forced activities to become more centralised and makes no provision for local authorities to act as they saw fit previously.

6 Innovations in NCLAS

Provision is made for leasehold rights and communal rights in the Communal areas of Namibia⁷. The communal land registration system seeks to improve land administration, increase equal access to land rights and promote economic activity in communal areas. The MLR recognizes that land administration is a complex process requiring stakeholder coordination and capacity building (MLR, 2018). In 2009 it was estimated that there was a total of approximately 300,000 land parcels (rights) that needed to be registered in Namibia, with 76% of these rights located in the six northern regions and the remaining 24% located in the six southern regions. (Meijs & Kapitango, 2009). Aerial photographs were used in the surveying process, even though the aerial photographs only covered part of the country (roughly 75% and only of the northern region) (Meijs & Kapitango, 2009). During the pilot phase of the project about 29 parcels were mapped on average per day for a total of 8862 parcels. It was expected that working in six teams of two persons, about 150 parcels could be mapped per day. In its report on the state of land reform, the MLR (2018) reported that in the period 2003 up to 2018, the Ministry of Land Reform managed to register 119,227 communal land parcels. This constitutes just short of 40% of the total estimated parcel in 2009. The MLR estimates that in fact 59% of communal rights have been registered, but they have opted not to include the communal rights in the Kavango East and West region's. This is due to political opposition by the traditional authorities who forbid communal land registration. In addition 1,204 communal leasehold rights were registered in the same period (MLR, 2018). This researcher could find no evidence that the communal leaseholds were registered however, although the MLR has signed leasehold contracts with communal land residents. A report on the impact of land reform on poverty estimates that another 5.2 million hectares was to be transferred to smallholder farmers (Government of the Republic of Namibia, 2010). It is stated that each parcel would be approximately 2,500 hectares, of which 563 were surveyed and allocated with signed leasehold agreements, the majority being in the Kavango and Oshikoto regions (Government of the Republic of Namibia, 2010). Previous research has pointed out that the MLR seems to assume that the signing of leasehold contracts is equivalent to the registration of a leasehold contract, which is not the case under Namibian law. Real rights in property are only transferred upon the registration of the leasehold rights in the deeds registry⁸ (Bayer, 2018). The Poverty

⁷ Communal areas are gazetted areas of land under the jurisdiction of a variety of officially recognized traditional authorities.

⁸ All leasehold rights longer than ten years must be registered in the Deeds Office according to the revised Deeds Registries Act, Act No 14 of 2015.

Report also confirmed that beneficiaries of communal land rights certificates have not shown any economic development as a result of the certificates but that it has *“improved security of tenure, even though the residents did not feel that their tenure was insecure”* (Government of the Republic of Namibia, 2010). The reaction from the Kavango region indicates that there is a possibility that for some, these certificates bring tenure insecurity instead, and that this is aligned with the accompanying changes in cultural endowments.

The first key innovation of the NCLAS was the introduction of a **new and flexible land tenure regime** that provided security of tenure for what were considered undocumented communal land rights. There was a system, not uniformly implemented by traditional leaders, to provide written records of land allocations. Theoretically it was argued that the NCLAS system would improve land administration and ensure equal access to land as well as open up the communal areas for economic development (Government of the Republic of Namibia, 2010) (MLR, 2018) (Meijs & Kapitango, 2009). This system made allowance for a flexible system of customary rights, which are not intended to be mortgageable, and leasehold rights, which are intended to be mortgageable and would drive economic development in the communal areas. A uniform digital communal land rights register, where none had existed before, would also be established, expected to make communal land records more secure. The second key innovation of the NCLAS system was the **technical design** of the communal land administration system. The formal cadastre does not make provision for the use of orthophotos to be used to depict parcel boundaries, and this innovation would be accepted under the NCLAS system. The use of orthophotos was seen as cheaper, quicker and preserve the same degree of accuracy. The third innovation of the NCLAS was the provision of a range of documented land rights, communal and leasehold, that could be used for **social and economic development**. The act made provision for the rights to be bequeathed and mortgaged as well as formalising the rights of women to acquire and inherit communal land. The last innovation was the introduction of the **decentralised NCLAS database** to all the regional offices of the MLR where residents would be able to have easier access to land related data, including the spatial as well as attribute data. These innovations are not without support from the international community and are generally described as examples of the typical innovations that are needed in many developing countries.

While the NCLAS was expected to increase security of tenure, through the new flexible tenure regime, it is not entirely clear whether this is in fact the case. Traditional authorities and their subjects in some regions (Kavango East and Kavango West) have resisted registration of their communal land rights (Republic of Namibia, 2018), (New Era, 2017). This is ascribed to the fact that they do not see a benefit or increased value of the land after registration. This could be interpreted to mean that the Kavango Region community see no point to land registration unless it has a value as a mortgageable or tradable commodity. This issue is particularly relevant given that communal rights are not registerable and that leasehold rights, while issued in some instances, are almost never registered with the deed's office, and therefore useless for credit purposes. The issue of security of tenure then becomes a moot point as they do not consider their traditional

rights as insecure to start with. There is also a sense that the registration of these rights could lead to more insecurity and a loss of local political control. Other factors such as rotational crop ownership, rather than the fixed patterns that we see in the north central regions are also contributing factors. The registration of communal land is seen as being aligned with a dominant approach to land allocation in the north central regions by those traditional authorities and also forming a majority of the governing party. Thus, the institutional innovation is seen as being driven and contested by the politics of government and the traditional authorities. This perception is amplified by the establishment of administrative organs such as communal land boards, which have a prescribed role in the allocation of communal land rights, and that are perceived to be instruments of government control.

The registration of communal land, and perhaps partial commodification, has not yet gained sufficient traction amongst traditional communities or the government itself. As such the registration is voluntary and therefore coverage is unlikely to be complete ever. This is also manifest in the Government inability, or refusal, to compel registration of communal land. As such the innovation has not yet entered social life. Neither has there been a sufficient change in resource endowments to make the commodification of property a pressing issue for society. There is a significant shortage of cash, extensive rural poverty, limited commercial agricultural activities, which could drive such an innovation.

The use of orthophotos, while innovative and arguably cheaper (Meijs & Kapitango, 2009) was not incorporated into the existing survey standards for cadastral surveying. A new standard was created that was not described in the surveying act or regulations, or in any other act or regulations. No provision was made for accuracy standards that should be maintained by law. Thus, the fact that the survey standards were neither described in a new act or regulations, and were not provided for in the existing legislation, meant that the surveying of communal land fell outside of the jurisdiction of the deed's office or the surveyor general, the recognised entities for managing land rights and the associated spatial extent. This creates an immediate concern about the legitimacy of these new institutions. Financial institutions thus do not concern themselves with the registration of communal land rights, and will only consider a leasehold right if it were registered in the deed's office. Despite the fact that the use of orthophotos was seen as being able to overcome the cumbersome and expensive cadastral surveying, less than fifty percent of parcels were surveyed over a period of 16 years. It is not clear how many changes of ownership were subsequently recorded and this raises serious questions, not only about the completeness of the register, but also its currency. The cost and speed of surveying could not get the required coverage over the communal land parcels, and the number that have been surveyed is largely due to the donor funding that covered a significant part of the surveying activities.

The NCLAS did make explicit the range of communal land rights that could be allocated under the law. This is an important step as it provided protections for women with regards to land ownership, and protects the rights of spouses and children to inherit the land rights. However, that innovations have not delivered the

expected results in terms of socio-economic developments. The rural land dwellers in communal areas remain amongst the most impoverished Namibians (Government of the Republic of Namibia, 2010) (Integrated Land Management Institute, 2017). The limited economic use of the leasehold rights and the restrictive process for the acquisition of leasehold rights have resulted in few economic opportunities opening up for communal land residents as a result of the registration of communal land rights. The Minister of Land Reform needs to give permission for each leasehold right that is to be acquired, including if it is to be used to access credit. There is no evidence that a single communal leasehold right has been used to access some form of credit. Neither the banks and financial institutions, nor the communal land residents have, or envisage, sufficient need for economic opportunities derived from property as a marketable commodity, to act as a driver for fundamentally changing the institutional regime required for creating a formal land and property market in communal areas. The attempt to develop a land market in communal areas is frustrated by the inability to register communal leaseholds in the deed's registry. Prior research by Werner & Bayer (2016) and Bayer (2018) has shown that the major shortcoming is not the leasehold process or institutions, but rather the governance of these processes.

Having information available locally about land information is a significant development, including the establishment of a communal cadastre and title register. Thus the establishment of the NCLAS system was of the type that was promoted by the international community as the type of development needed in countries with insufficient parcel registration and coverage. As the NCLAS system is not rooted in the significant history of the deeds registry, including its adherence to the principle of open access of information, one of the key benefits is lost. Access to information in the NCLAS system is not described in law, as is the case with the deeds registry, and as such written permission is required to get information from the NCLAS database. One has to provide a reason for access, to be assessed by the relevant official, although it is not clear what would constitute a good reason. The NCLAS system is also not publicly available and is only available for access at the headoffice of the Ministry of Lands. It has not achieved the intended objective of making land information more accessible. Introducing the NCLAS which is delinked from the established surveying, procedures, the deeds registry and the history of Namibia's parcel registration system based on the registration of deeds is a critical factor in the failure of the land administration systems for communal land registration in Namibia.

7 Findings

Preliminary results indicate that the proposed innovations have not yet been able to achieve many of the stated objectives. It is further argued that while there are some innovative aspects to these new land administration institutions, these aspects are largely undermined by the pre-existing old problems. In the FLTS we see that induced technical changes were brought about to improve the land allocation process, but these changes were not uniformly adopted by the related agencies charged with housing development. The processes also maintain the existing centralised structure of the previous legislation and does not really defer

to the local level. Most other formal processes have to still be complied with and the FLTS has thus added a layer of institutions on top of the existing layer. The flexible land tenure system seeks to shorten the planning process, but instead built a new layer of institutions on top of, or parallel to, the existing institutions. The process was also driven by the politics of the MLR rather than through a change of the underlying technical innovations. As such the speed of surveying and demarcation has not improved, because the underlying problem was not a lack of technology with regards to surveying, but rather the continued inefficiency of the government to complete the surveying and registration and housing development processes. As the new institutions have not gained sufficient social acceptance, they have not managed to displace the pre-existing ones. The institutions are not sufficiently stable and have not gained broader social acceptance. Some communities reject the registration of communal land rights while financial institutions do not accept these titles for mortgages. The institutional innovations that are proposed have not done enough in the way of building on the existing institutional infrastructure or technology. Instead it was premised on the view that these innovations would be able to overcome the current problems by effectively circumventing them.

The de-linking of the new flexible land tenure titles and the communal land titles from the registration activities of the deeds office is a critical factor in the failure of the private sector to accept these titles. The assurances that come with the registration of title deeds in the deeds registry are absent in both the flexible land tenure system as well as the NCLAS. The banking sector therefore does not provide finance based on these titles and this limits the potential for increasing economic activity. In addition, there is no formal land market for these titles, severely limiting the ability of the private sector to play a more meaningful role in capturing the benefits of these innovations. Changes in resource endowments are needed to drive some of these innovations. At the moment that is not happening. Poverty and inequality are extreme in Namibia, with about a million residents living in absolute poverty. Unless economic changes take place that allow no more than 7% of the population the ability to afford a home (Integrated Land Management Institute, 2017), no amount of institutional innovation in urban or communal areas can compensate for the poverty that prohibits participation in the formal property market.

Not only is economic development important for the existence of a property market, but political power must be brought to bear in the commodification of property. Political power has been largely absent in driving the institutional change to make communal land rights mortgageable with the reasonably free transfer of property rights. The political and cultural landscape is such the commodification of presents a dilemma for the various power brokers, traditional as well as formal, that they have not yet managed to resolve, and thus the lip service to development of a property market.

The innovations have not overcome the problems inherent in the formal system, namely poor administration and the inefficiencies that derive from a lack of application to the task at hand, even with limited competencies. The research has shown that the innovations discussed in this case did not solve the underlying functional problems, such as the perceived cumbersome planning processes. Instead it has added an additional layer of complexity to an already overwhelmed system, risking further developmental setbacks. This paper concludes that institutional innovation is less likely to succeed in the land administration domain, if the underlying problems with regards to the application, governance and commitment to task completion is not first overcome, and that incremental change is more feasible, including identifying functional sources for innovations.

8 Bibliography

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