



NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

Land tenure and governance on communal land in Namibia

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Aim

- Explain tenure and governance
- Identify a few issues for dicussion



What is land tenure and governance?

Land tenure:

- A right to hold land (conditions, duration, access...)
- Typically a bundle of rights and duties that different levels of society (individuals, households, family etc.) enjoy regarding natural resources)

Governance

- Governance is concerned with the processes by which citizens participate in decision-making
- It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled
- It includes the formal institutions of government but also informal arrangements
- Governance, how government is accountable to its citizens, and how society obliges its members to observe its rules and laws



Tenure and governance framework: the CLRA, 2002

- Tenure arrangements and governance frameworks were in disarray in 1990
- Policy development process started with the 1st Land Conference in 1991
- Culminated in the CLRA, 2002
- Provisions on tenure:
 - Make customary tenure more secure registration process
 - Tenure reform : leaseholds →
- Provisions on governance:
 - Central role of TAs
 - Communal Land Boards
 - Dispute resolution and appeals procedures



Governance: traditional leaders

- TAs continue to play a central role in administering land rights
- Their powers and mandates were ill-defined and contested in many areas up to 2002
- CLBs introduced to improve transparency and accountability by defining roles and functions more adequately
- Problems remain



Definition of TAs in CLRA

- CLRA refers to recognised Chiefs and Traditional Authorities
- Unrecognised TAs cannot perform any functions under the CLRA such as validating and approving customary land rights
- Leads to difficulties in registering customary land rights
- Some recognised TAs do not have defined areas of jurisdiction
- Different TAs allocating or verifying land rights in the same geographic area
- No recognition of tiered nature of TAs
- Each tier has different responsibilities and functions
- Village headmen are a central land management institution in this hierarchy



No guidelines for local level land governance

- But no guidelines to headmen on the allocation and cancellation of land rights or procedures for dispute resolution
- Functions of land allocation, cancellation and dispute resolution not separated
- TAs are often the cause of disputes
- Appeals against decisions of TAs provided for in the Act
- Need to be in writing and directed to PS
- Excludes many people who may not be sufficiently proficient in the official language or
- Appeals procedure may also not be easily accessible due to remoteness of many rural households



Customary practices vs statutory requirements

- CLRA does not interfere in customary practices of land administration at village level
- TAs have to implement customary and statutory provisions
- Impacts negatively on land rights of women
- CLRA provides for equal rights of women to access land in their own right
- Customary practices often undermine this equality
- Widows should no longer be evicted after husbands death
- But in term of matrilineal inheritance practices they often lose moveable property



Governance at higher level

- CLRA improves accountability: CLB
- To oversee whether customary land right allocations and cancellation are within the law
- TAs account upwards – to CLB
- No legal obligation to account and consult downwards about major land rights decisions
- Makes customary land rights holders vulnerable to large-scale projects and privatisation of communal land



Improving tenure security

- CLRA facilitated increased security of customary land rights to some extent – mapping and registration
- Problem: limited to private rights (homesteads, fields and stock pens)
- Size limit 20ha for new customary land rights – size limit not applicable to existing land rights
- Impact limited to crop growing areas
- In non-crop growing semi-arid parts of the country the 20ha limit resulted in insecurity and uncertainty
- Commonage not covered – groups of people have no legal protection to areas used communally
- A draft policy on group rights has been in existence since 2005



Local level management

- PCLD encourages establishment of legal entities (co-operatives) to protect group rights in project areas through leasehold
- Co-operatives provide an institutional framework for local level management
- New land policy should provide for this without the necessity to establish legal entities
- CLRA does not provide for it but other legislation (conservancies, community forests and water user associations)
- Different laws not always complementary
- Need to harmonise them



Privatisation of communal land

- Since the 1970s large tracts of communal grazing land have been fenced for private use
- Commonly referred to as 'illegal fencing'
- This description only fits fencing that occurred after 2002 neatly
- Before 2002: legal and policy framework too ambiguous to judge a fence to be legal or illegal
- Official privatisation implemented through PCLD (c. 62 land parcels surveyed)
- Unofficial fencing should be regularised
- Requires an adjudication process



‘Bankability’ and land markets

- ‘Bankability’ widely shared demand – also in the small-scale farming resettlement sector
- Leaseholds and customary land rights cannot be traded
- Negates the collateral value of land – without a market there is no collateral
- Asset poor farmers
- Informal land markets are growing
- Little empirical data on nature and extent
- Land markets for small scale farmers both in communal areas and on resettlement land should be encouraged
- Needs careful regulation



Concluding remarks

- Evidence-based policy development is needed
- Must include an independent review of what worked and what did not
- Many issues need much more empirical information / data which we do not have
- Subject matter specialist reports needed
- My recommendation:
 - that this Conference be regarded as the beginning of a longer policy development process; and
 - that participants take a decision to request higher authorities to provide the space after the Conference to explore issues in more depth
 - that such a process is well-planned and adequately resourced



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Thank you