Establishing Communal Land Registration in Namibia: The Process, Benefits and Challenges

1 Summary:
The Communal Land Reform Act, Act No 5 of 2002 established both the communal land registration and the Communal Land Boards. There are many role players in the registration process; government ministries, tradition authorities, tourism enterprise and the land right holders, residing communal areas. The aim of registering land rights in communal areas is to bring about tenure security and promote investment in land. The registration is however, constrained by cultural, financial, logistical and manpower challenges.

2 Background for the Land Registration
More than two thirds of Namibians live in communal areas. Since 1990 their development has been a key objective of the Namibian government. Although much developmental initiatives have been directed to these areas, the imbalances inherited from a century of colonialism are too large to be overcome even after two decades of independence. There has been a constant need to find creative ways in which the lives of the rural poor living in the communal areas can be improved. One such way was to introduce land registration in the communal areas for the purpose of tenure security for the people holding land rights in those areas. The registration of such rights is made possible by the Act of Parliament known as the Communal Land Reform Act, Act No. 5 of 2002.

Land registration is the process of making and keeping records about who has what rights to which individual parcels of land. In order to protect these land rights, accurate and clear records are mapped and stored in a Land Registry for easy retrieval. The records stored in the land registry can be used in land dispute resolution when necessary. The registration of communal land right is important to provide tenure security and consequently increases investment in land.

2.1 Land tenure system in Namibia
Land in Namibia is divided into 44% freehold, (commercial) 36 % communal and 20 % state land. These tenure categories evolved mainly from the privatization of communal land into freehold during colonial time and from the proclamation of state land as parks for conservation and mining exploration. As it can be seen in the distribution of tenure categories, land
distribution is very much unequal, and it has been the effort of the government to bring equity in land ownership, through land redistribution and tenure reform.

**Land Tenure Map of Namibia**

![Land Tenure Map of Namibia](image)

**Figure 1**: Map of State, Communal and Commercial Areas in Namibia. Source: MLR, M. Meijs (2008)

The redistribution of freehold is address by the Agricultural Land Reform Act, Act No 6 of 1995, aimed at redistribution of freehold agricultural land, whereby the government buys freehold farms and resettle landless Namibians in those farms under state leasehold tenure. The land redistribution is aimed at redressing past imbalances in land access among Namibians while empowering the majority economically by equalizing income distribution.

The communal land reform on the other hand is governed by the Communal Land Reform Act, Act 5 of 2002 which stipulates powers of the Traditional Authorities and Land Boards in the administration of communal lands.
3 Communal Land Administration

While the commercial or freehold land is surveyed and registered in the Deed Registry in Windhoek, the communal land is not surveyed and is unregistered. This creates tenure insecurity presenting itself in self allocation, boundary disputes, land grabbing, low investment and poor land management.

To eliminate tenure insecurity in the communal areas, the government of Namibia had introduced the registration of land rights in the communal areas through the Communal Land Reform Act, Act No. 5 of 2002. The Communal Land Reform Act deals with access to land in communal areas, by regulating land right allocation to residents in those areas and it provides for the establishment of Communal Land Boards (CLB) which is the institution tasked with land administration in the communal areas. The Ministry of Lands and Resettlement (MLR) supervises the work of the Land Boards.

3.1 Organization of Communal Land Boards

There are twelve (12) Land Boards in Namibia. Each political region has one Land Board except the Khomas region where there is no communal land. A Chairperson, who directs the activities of the Board, heads each Land Board. Membership to the Communal Land Boards is as follows:

- One representative from each Recognized Traditional Authority within the Board's area.
- One member from the organized farming community in the Board's area representing the interests of farmers.
- A regional officer of a regional council in the Board's area
- Two women engaged in farming activities within the Board's area.
- Two women with expert knowledge relevant to the functions of the Board.
- One person representing a conservancy(s) jointly.
- One representative from each of the following Ministries:
  (a) Ministry responsible for land affairs
  (b) Ministry responsible for agriculture
  (c) Ministry responsible for regional government
  (d) Ministry responsible for environmental matters
3.2 The relationship between the CLB and MLR

- The Ministry is responsible for all the Land Boards countrywide i.e. all Land Boards countrywide fall under the overall control and supervision of the MLR. The Division of Land Boards, Tenure and Advise within the Ministry is tasked with this responsibility.
- The Division guides, directs, co-ordinates and controls the activities of the Boards. It also provides financial assistance to the Boards for the running of the Board activities.
- The Division further has a direct involvement in certain Land Board matters such as the appointment of an Appeal Tribunal in appeal cases. The Minister approves applications for land allocation exceeding the maximum prescribed sizes (i.e. land over 20 hectares for Customary Land Rights and over 50 hectares for Leasehold Rights). The Minister is tasked with the approval of Leasehold Rights for land situated outside designated areas and leases longer than 10 years, as stipulated under the CLRA Section 30 (3). The Minister also has the power to appoint an arbitrator according to Section 30 (6) of the Act.

3.3 The Relationship between the CLB and other line Ministries

The main duty of the line Ministries is to render technical advice to the Board in the area of their specialty. Some line Ministries, as members of the Board represent the interests of their Ministries in line with regional development plans, land-use plans, forestry management plans, and conservancy management plans. The following line Ministries have a representative in each Land Board:

a) Ministry of Agriculture, Water and Forestry (MAWF)

The role of this Ministry is to give technical advice on different agricultural land uses, various farming technologies, the management of forests and water. The MAWF representative in consultation with the different directorates within the Ministry; advises the Board on issues that could compromise the productivity of land such as carrying capacity, water management, soil erosion and deforestation.

b) Ministry of Environment and Tourism (MET)

The role of the MET representative on the CLB is to represent the interests and functions of the MET and provide technical advice on such issues as the environment, wildlife, tourism, Protected Areas, and Conservancies. Perhaps the most important component of this role is
to ensure that the CLBs conform to the legal requirements of the Environmental Management Act in its processing of and decision-making on applications for land rights. To this end the MET has developed an Environmental Checklist to be used by the CLBs in their decision-making process. Using this Environmental Checklist will ensure that: (a) Environmental Clearance Certificates are obtained when required before the CLBs make their decisions; and, (b) that their decisions will be environmentally sound.

b) The Ministry of Regional, Local Government, Housing and Rural Development

The role of this Ministry is to offer advice on where development in the public interests can be effected e.g. schools and hospitals etc. It also safeguards town (urban) land that does not fall under the jurisdiction of the Ministry of Lands and Resettlement.

3.4 Relationship between the CLB and TA

Part 1 Section 20 of the CLRA gives the primary power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community to the Chief of that traditional community; or where the Chief so determines, in the Traditional Authority of that traditional community. Such an allocation has no legal effect unless it is ratified by the relevant Land Board in accordance with the provisions of Section 24.

3.5 Legal assistance in land disputes

Land allocation could lead to disputes and conflicts. Common amongst them are:

(a) Boundary disputes between one or more parties

These normally occur when one or more party in the process of developing their land either by design or mistake encroaches onto their neighbor’s plot.

(b) Self extensions

These occur whenever someone self extends his/her plot beyond the legally allocated dimensions. This results in blocking public roads, water points or encroachment into other people’s properties.

(c) Double Allocation

These occur when the Land Board mistakenly allocates one piece of land to two parties. This is normally the case when one’s portion of land does not clearly show its boundary or due to none existence of proper records.

(d) Illegal Fencing
This is when an individual or group of people erects a fence(s) around their portions of land resulting in blocking entrances to public utilities.

The approach of the Communal Land Reform Act in settling land disputes is to include powers and procedures within the application process, rather than investigate a dispute outside the application process. If a decision by a Chief, TA or CLB on a land right has been made, an aggrieved person has 30 days to lodge an appeal to the Minister of Lands who appoint an Appeal Tribunal to reconsider the decision.

4 Communal Land Allocation Procedures

Since 2008, the government of Namibia through the Ministry of Lands and Resettlement (MLR) has embarked on a program of systematic land rights registration in communal areas in accordance with the provisions of the Communal Land Reform Act, Act No. 5 of 2002. The registration is aimed at providing tenure security for people in the communal areas. Two types of land rights are possible within the communal areas of Namibia; the customary land right, and the right of leasehold. The customary land right is for a natural life of a holder and can be inherited by surviving spouse and the children. The leasehold is for a maximum of 99 years and is also transferable as per Section 38 (2) of the Act.

4.1 Allocation procedures for Customary Land Rights

The Customary land rights may be existing or new applications. In the case of existing customary land right, a person who held a Customary Land Right before the commencement (1 March 2003) of the Act should apply in writing on the prescribed form (Form 3) for recognition and registration of his/her right under the Act. Application forms are available and obtainable from Traditional Authorities, Communal Land Boards Secretaries (MLR) and the Division of Land Boards, Tenure and Advice in Windhoek (Head Office).

Customary Land Right holders are required to apply for recognition and registration of their existing Customary Land Rights within three years as from 1 March 2003. The Minister of Lands had extended this period twice in a Public Notice; the new deadline is March 2012.

For the recognition and registration of existing customary land rights, the applicant submits the application to the Communal Land Board Secretary (on the prescribed Form 3). The Secretary should then check the application to ensure that all relevant documents are attached and completed. If the applicant did not provide some relevant information, the Secretary is required to request for such information to ensure that the form is correctly completed. The Board may
investigate the application and in the process consult with other people to establish; when and how the right was acquired and whether other people claim any rights to the same land.

The Boards also verify the size and boundaries of the land by sending a Land Use Planner to the place to physically inspect and measure the parcel of land applied for. During verification of land rights, the procedures and activities are explained to all the land users. Subsequently, the team starts with the mapping of the individual plots using the orthophotos and or GPS.

The Communal Land Board, on the basis of the data collected during the field verification, will in an official Land Board meeting veto, approve or refer the application back to the Chief or to Traditional Authority for correction. Parcels that are larger than 20 hectares will be referred to the Minister of Lands and Resettlement for his written approval. It is a requirement that the applicant and the TA submit a motivation together with the application for consideration by the Minister.

*Land right verification*

![Figure 2: Land Board staff during field verification. Photo: R. Witmer (2008)](image)

Additionally, the application must be displayed on the notice board for seven (7) days in order to offer persons with adverse claim the opportunity to lodge a complaint against the application.
The CLB can also use its discretion to ensure that the “notice of Application” reaches the majority of the residents in whose area the piece of land is situated by; displaying the notice for more than the minimum seven days or making use of the electronic media, as for instance, the local radio. If satisfied with the investigation regarding the validity (correctness) of the claim to the existing Land Right, the Board then recognizes the land right so applied for.

The Board may also conduct a hearing into the matter if there are conflicting claims or doubts about validity of the claim. If not satisfied, the Board will refer the matter to the Chief or Traditional Authority to deliberate and decide as though it were a new application. However, the Board can decide to grant allocation of right over another portion of land or affirm claim with changes.

Once the Communal Land Board recognizes the existing Customary Land Right, the Board Secretary must ensure that particulars of the rights are recorded in a digital, computer based database known as the Namibia Communal Land Administration System (NCLAS). The NCLAS is a user-friendly registration system that is developed to store data on communal lands for the whole country in such a manner that will accommodate future integration with the commercial registration system (Deeds System). It stores all land rights and land parcels related data for communal areas in a secure form. NCLAS enables the user to produce certificates, reports, indexes and village maps. Besides it can be used to analyze land allocated to women, parcel size, and average ha for a settled village.

This Customary Land Right lasts for the natural life of the holder. It comes to an end only when the occupant dies, or decides to give up (relinquish) the right before his or her death, and the right is cancelled in accordance with the Communal Land Reform Act (Section 27).

Upon completion of the allocation process, the applicant is issued with a Certificate of Registration. Certificates are prepared in duplicate with a copy remaining with the Land Board for record purposes. Certificates are signed by the Land Board Chairman or Secretary and stamped.
Sample of the certificate of registration- Front and back

4.2 Allocation procedures for Leasehold Rights

A right of leasehold gives the right to a specific commercial activity on the land parcel as described on the certificate. The business activities may be agricultural, tourism or any other that the Land Boards approve.

Before the enactment of the Communal Land Reform Act, Act No.5 of 2002, the Ministry of Lands and Resettlement had been issuing Permission to Occupy (PTO) certificates. PTOs are legal documents that have been used by the Ministry to regulate business establishment in communal areas.

The Ministry has been cooperating with other Ministries such as the Ministry of Environment and Tourism, Ministry of Agriculture, Water and Forestry in issuing PTOs. For example all wildlife and/or tourism related applications have been referred to the Ministry of Environment and Tourism for their recommendation. Presently, PTOs have been phased out and existing PTOs are to be converted into the Right of Leasehold, which is more secured and can serve as collateral for holders to acquire loans if the lease is for a period of 10 years or more.

Section 30 of the Communal Land Reform Act empowers the Communal Land Boards to grant Rights of Leasehold to any portion of Communal Land, but this Right of Leasehold may only be granted if the Traditional Authority of the traditional community, in whose area of jurisdiction the
land is situated, gives consent. An application for a Right of Leasehold must be made in writing on the prescribed form (Form 5).

This application must contain all the relevant documentation that the Board may require in order to decide on the application. A letter of information from the Chief or Traditional Authorities, giving indication of the location, size and use of land should be attached.

The application is then submitted to the Communal Land Board Secretary for the area in which the land is situated. The Board Secretary must attach the Environmental Checklist and forward the application to the Ministry of Environment and Tourism, which will ensure that the application process meets the requirements of the Environmental Management Act. The Ministry of Environment and Tourism should go through each Step of the Environmental Checklist, make comments to be submitted to the Secretary before the application is forwarded to the Board. In due course the Board will review the Environmental Checklist and the comments before making its recommendation on environmental grounds. If the land to be allocated falls within a Conservancy, the use of the land must be in conformity with the Conservancy’s management or utilization plan.

The Communal Land Board may carry out investigation regarding the size of the land and to ascertain whether the applicant is a leaseholder of another piece of land or has an existing right over communal land that is not held under customary law, for example a PTO. In case the applicant has land somewhere, the application for recognition of the right is refused under Section 35 of the Act.

The maximum size of land to be granted by the Board is 50 hectares, as prescribed in Regulation 13. For example, if the Right of Leasehold is granted for a community campsite and the area is larger than 50 hectares, the Minister must approve the application in writing before the Right of Leasehold is granted.

If an application is to be referred to the Minister for approval, the original application must be kept by the Board Secretary and only a copy should be sent to Head Office together with a covering motivation/recommendation letter. The submission to the Minister should include all necessary supporting documents such as report on investigations carried out by the relevant Committees and/or MLR Head Office. The Minister will then approve or disapprove the application and send it back to the CLB in the shortest time possible.
After an application of Right of Leasehold is granted, and a Deed of Leasehold is signed, the Board Secretary ensures that the Right of Leasehold is registered the name of the applicant in the prescribed register, Upon completion of the allocation process, the applicant is issued with a Certificate of Leasehold. Rent is paid periodically by the leaseholder to the Communal Land Board. The leaseholder is required to adhere to the conditions of the right of leasehold as prescribed by the Act.

5 Stakeholders in the Communal Land Registration

The stakeholders to the registration process are the Chiefs, Headmen and Traditional Authorities who used to allocate land rights to individuals before the enactment of the CLRA of 2002 and are still doing it. The communities holding land rights in the communal areas interest can be made more secured through registration and certification. The Communal Land Board is another stakeholder mandated to take charge of the registration processes and later keep the registers and maintain the information. The Ministry of Land and Resettlement is the stakeholder that has the responsibility of overseeing the registration and coordinating the activities of other institutions such as the Regional Councils, the Ministry of Environment and Tourism, the Ministry of Agriculture Water and Forestry, Conservancies, Tourism businesses operating in the communal areas. These institutions all have a stake in the registration of communal land.

The other stakeholders are the Development Partners who have supported the communal land registration; technically, logistically and financially. The aerial photos being use for land rights registration was acquired through the EU-funded Rural Poverty Reduction Program (RPRP) which also funded the Olukonda Pilot Project. The GIZ has likewise supported the communal registration in form of vehicles, computers, GPSs and also funded technical training programs to increase the capacity for communal land registration.

The Millennium Challenge Account Namibia (MCA-N) is involved in the registration of the 6 Northern Communal areas. The focus of MCA-N funded registration project is on areas with low to medium density of land parcels and with substantial remaining commonage worth preserving. The project goal is to provide support to the CLBs and TAs to adjudicate, verify, and register land rights in terms of the CLRA. It also aims at the development of mechanisms for the registration of group rights in order to promote the sustainable use of commonage for grazing, tourism and other purposes. The MCA funded project is being carried out in close collaboration with and in support of the Communal Land Boards, the Traditional Authorities and the Ministry of Lands and Resettlement.
6 The Impacts and Benefit of Land Registration

The registration of customary land rights in the communal areas is very important because it:

- gives security to land holders, their spouses, children and/or dependants.
- ensures that a land holder has documentary proof of their right to land and know the boundaries and exact size of the legally allocated land parcel.
- allows each parcel of land to be owned by one person at a time which rules out any form of land grabbing.
- It gives an indication to the communal land boards and the traditional authority as to which land is occupied and which land is available for allocation.
- avails a right for compensation when the parcel or part of it is claimed by the government for building of new roads or town expansion.

Land registration therefore means that there will be no oral transfer of land rights anymore and land-related disputes such as double allocation of the same piece of land will be a thing of the past. Boundary disputes, unauthorized extensions of allocated land and illegal fencing will not exist anymore. In view of the above, there is no doubt that communal land registration will accelerate social and economic development in the communal areas because people will be willing to invest in their own permanent land parcels without fear of eviction.

The Leasehold on other hand grants the lessee the opportunity to access financial capital to invest in their properties and this improve their living standard. The leaseholds given to tourism establishment and other businesses in the communal areas provide employments which in the long run equip the local residents with skills and competencies necessary for development and the growth of the local economy.

7 Achievements to Date

There are about 300,000 communal land rights to be registered in the communal areas. A total of 32,423 customary land rights have been verified in the field and 18,400 certificates of customary land rights had already been registered and issued. There are about 270,000 land rights still to be verified in the field and 290,000 land rights to be registered and certificates to be issued.
The difference between the number of land rights verified and certificates issued is caused by the fact that some of the land right holders are yet to apply for their land rights. The reasons for not applying relate to cost of the application (N$25) and lack of information about the registration process. It is equally costly for the rural people to travel to the TA offices to collect their certificates and pay N$50 registration fee.

8 Communal Land Registration Plan, April 2011 – March 2012

It was initially planned for the registration to be outsourced to private companies, however only two inexperienced companies tendered for the work and as a result the registration could not be outsourced anymore. Consequently, the Ministry has come up with a different methodology for the registration of communal land rights. This methodology was also used within previous pilot projects for registration of communal land during the past three years. In this approach the MLR is to register communal land rights with the assistance of hired temporary staff, mostly Polytechnic of Namibia Land Management graduates. The total budget to complete the registration is estimated at N$122.1 Million. The table below indicates the resources needed for the Ministry’s three year financial plan 2011/2014.

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Figure 3: Land Registration estimates for 2011-2014: MLR, M. Meijs. (2011)
9 Challenges

To be able to complete the registration of the existing land rights the Ministry of Lands and relevant stakeholders need to inform the people of their rights and obligations concerning the communal land registration. This can be achieved by embarking on awareness creation programs using a multi-media approach. The purpose of awareness rising is to furnish the public with the correct and accurate information on the processes and the values of land registration in the communal areas. Giving correct and accurate information is crucial to remove fears and misconception from the communities holding land rights by making them an understanding of what land registration is all about and the tenure security it will bring to them.

It is worth noting that communication or information dissemination alone will not speed up the registration process; it should be accompanied by adequate resources in the form of finance and technical manpower to perform the actual registration.

In summary, the challenges to the registration include:

- The process of creating understanding about the new law prescribing communal land registration among rural population with a high illiteracy rate.
- The customary practice of shifting cultivation among some communal members makes people reluctant to register their land parcel.
- Misconception that this process is a mechanism for the government to commercialise the communal areas.
- Many people have still not applied for their existing land rights to be recognised due to lack of understanding.
- Limited skilled manpower may hamper the plan to register all the existing customary land rights within the time frame allocated, 2011 to 2014.
- Natural events such as floods and harsh weather conditions might limit the efficiency of the land verification process as areas become inaccessible.
- Need for financial resources estimated at N$ 122.1 million to cover communal land registration may not be available if priorities are to change.
Conclusion
Despite many challenges, the Namibian government through the Ministry of Lands and Resettlement is committed to bring tenure security to the settlers in the communal areas of Namibia. It is believed that security of tenure promotes socio-economic development of the people as well as encourages natural resource management like grazing and water.
Reference


