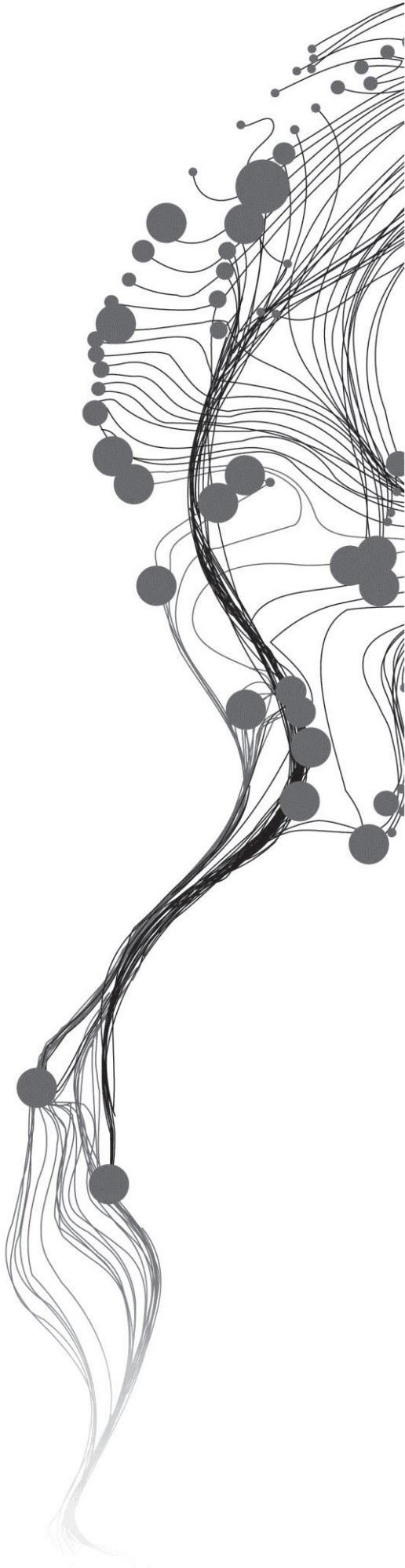


**ASSESSING THE IMPACT OF
CUSTOMARY LAND TITLING ON
TENURE SECURITY IN NAMIBIA
THE CASE OF OMUSATI REGION**

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February, 2014

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ABSTRACT

Many authors have reflected on the impacts of customary land registration and titling overtime and come to the realization that, although the titling system increases tenure security and brings about social and economic benefits, the administration of customary land entrusted with traditional authorities and the non-interference of government in traditional authority's management is still questionable in practice.

The Government of the Republic of Namibia is engaged with the customary land registration and titling process since May 2003. The main purpose is to bring about tenure security to customary land communities. By conducting a study in Omusati Region (Namibia), this research aimed at assessing the match between the stated objective of the land titling and the perceived actual output and impacts of the titles on the livelihood of customary land right holders.

During fieldwork, interviews were conducted with customary land rights titles holders and traditional authorities. The study reveals that title holders could not say whether or not customary land titles have an impact on their security of tenure. The main reason is the lack of awareness and understanding among title holders and traditional authorities of the purpose of titling from the onset. This finding contradicts the general beliefs and empirical evidence from other countries and scholars that customary land registration and titling system increases security of tenure for local communities.

The findings also suggest that customary land titling also did not bring about social and economic benefits regarding the livelihood of the land right holders. This situation in Namibia resembles many countries in Sub Saharan Africa. The situation can be improved by the introduction of clear and understandable laws and regulations by customary administrative authorities and the implementation of strategies that are appreciated by the local communities, which ensures that local traditions and customs are not infringed upon.

Key words: Customary Tenure, Traditional Authorities, Customary Land Title/Certificate, Tenure Security, Land Conflicts

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DEDICATION

To my parents:

Tate Onesimus R. Nekondo and Meme Mansueta Nekondo

Considering the distant and length of time being away from home for eighteen (18) months, (September 2012 – March 2014), you have been my stalwarts both spiritually and socially. Your continuous advices of how to honour God, do His will and praise Him will always reflect in me. Your persistent and ambitious commitment had always been to provide the best education for me, I will always be grateful for your sacrifices.

I have therefore decided to dedicate this work to you for your motivation, guidance and support, for without it, this work may not have been materialized. I will always honor you my parents!

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ABBREVIATIONS

CLB	-	Communal Land Board
CLR	-	Communal Land Reform
CLRA	-	Communal Land Reform Act
FLTA	-	Flexible Land Tenure Act
FLTS	-	Flexible Land Tenure System
GPS	-	Global Positioning System
GRN	-	Government of the Republic of Namibia
LBTA	-	Land Board Tenure and Advice
MLR	-	Ministry of Lands and Resettlement
TA	-	Traditional Authorities
TAA	-	Traditional Authorities Act
UPI	-	Unique Parcel Identifier

1. INTRODUCTION

1.1. Background and Justification

Secured customary tenure rights are frequently considered to be both an impediment and a fundamental principle in the land administration domain (Meijs *et al.*, 2009). The National Land Policy and the Namibia development vision 2030 recognize the importance of registering customary land in order to bring about security of tenure for customary land right holders, both new and those with existing land use rights. 43% of land in Namibia is held under customary tenure and about half of the Namibian population lives in these customary areas. 90% of this population lives in rural areas and depends on subsistence farming and livestock for their livelihood.

Most of the traditional authorities in the northern Namibia have been in place for hundreds of years. As a result, they have well established lineages of leadership, customary laws and general boundaries between customary communities that are well known and respected. Mendelsohn (2008), indicated that by contrast, the remaining and existing traditional authorities in the northern Namibia were probably formed in the 19th centuries.

Soon after independence in 1990, the government realized that there was a need to develop a comprehensive land tenure system which would define and provide a clear position on customary tenure system specifically, in such a way that it has a significant impact not only on intended tenure security but on economic and social benefits and interests of customary land right holders. In the 20th century, after independence, the government introduced a law that all customary land is owned by the state, administered by traditional authorities in trust for the benefit of the local communities residing on these lands. However, the insistence of the Namibian government that the State “owns” the customary lands is a position that is not universally accepted in the customary communities, a sentiment that will take years for the local communities to change their mind-set and believe that the land they have been residing on is indeed owned by the state.

The objective of the customary land registration is to ensure that new and existing land rights are legally secured in order to enable efficient and effective customary land administration and management. Although the government relies on expectations that documented land rights will increase tenure security, experience gained and observations made have shown that the same principle is not true for the case of customary landholders living in places with recognized traditional authorities in Namibia.

Customary land tenure can be referred to as traditional landholding rights, which are results of the relationship between indigenous people and the land. These land rights are controlled and managed by customary law, which in most cases is oral and not written (Rugege *et al.*, 2008).

Namibia operates under a system of legal pluralism that consists of both statutory law and customary law, functioning simultaneously. Customary land tenure and administration is entrusted in the traditional authorities by the state through the Traditional Authority Act No. 25 of 2000. This Act provides for the establishment of traditional authorities, defines their powers, duties, functions and provides for matters incidental thereto.

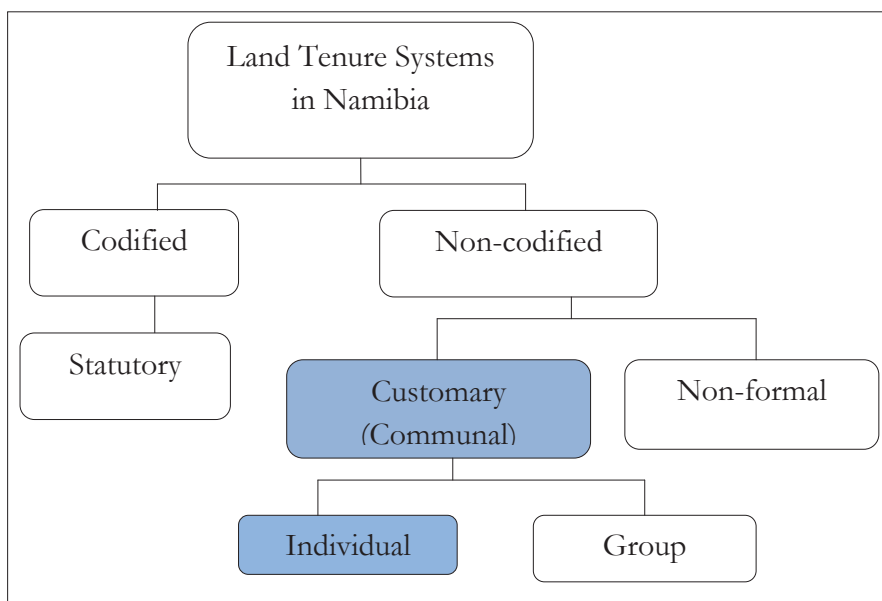


Figure 1-2: Classification of land tenure systems in Namibia

1.2. Research Problem

The importance of formalizing customary rights has been emphasized by the government since independence in 1990. Before and few years after independence customary lands were not surveyed and documented. This created tenure insecurity resulting in self-allocation, boundary disputes, land grabbing, low investment and poor land management (Meijs *et al.*, 2009). As stipulated in the Communal Land Reform Act No. 5 of 2002, the government of Namibia is the custodian of all customary land of which traditional authorities are administrators.

According to Mendelsohn *et al.* (2009) the Namibian land laws accord recognition of customary land tenure, but the minimal government intervention and control over communal land which is governed under customary law is one of the major concerns that need immediate attention. De Soto (2003)'s theory has given rise to the idea that the absence of state recognition for customary rights affects people's tenure security and impedes development. Efforts to legalize land tenure have traditionally emphasized individual customary titling and registration. The basis of the theory is that customary land institutions should recognize the titling system, which will increase security of tenure, use rights, and consequently owners will then optimize their use of the land.

The use rights granted through land titling to occupiers of the communal land have been recognized under the provisions of the Communal Land Reform Act No. 5 of 2002 as customary land use rights. However, there is insufficient empirical evidence that provides proof that customary land titles brought about tenure security. Based on De Soto (2003)'s theory, there is inadequate attestation proving that customary land titling has an impact on tenure security in Namibia.

One of the major challenges of the 21st century is the introduction of customary land recordation and formalization through a titling system that provides for a unitary land system where all Namibian citizens have equal rights, opportunities, and security across a range of land tenure irrespective of whether such land is customary or commercial land. A system that will ensure that customary form of tenure is equally recognized and protected by the national laws and that customary land is administered according to a

uniform system. In addition, the government is faced with another challenge on how a customary land registration system best be designed, to protect existing rights, allow the development of an efficient land market and be affordable to poor local people.

This research will seek to assess the impact of customary titling on tenure security, taking into consideration the intended purpose of customary land titling and the actual output, identify existing conflicts and propose measures required (if any) to strengthen the significance of customary land titles in order to be recognized and be used as evidence through which conflicts within customary land administration could be addressed.

While the customary land registration process and titling might have increased tenure security for many land use right holders Feder (1998), the observable situation is that, local people in possession of customary titles are not able to use them for any beneficial purpose such as entitlement to fair compensation, minimal or no chance of evictions, evidence in cases of conflicts and securing loans from financial institutions for investment. It further created challenges such as confusion and heavy criticism over the main purpose of the registration process and the titles in specific. Therefore the research intends to assess by means of interviews whether customary land titling process brought about tenure security for land use right holders and support the findings with literature.

1.3. Research Objectives

1.3.1. Main Research Objectives

The main objective of the research is to assess whether the customary land registration and titling system in Namibia brought a significant impact to the tenure security of land use right holders.

1.3.2. Sub Objectives

In order to fulfil the aim of the research, the following sub-objectives have been drawn from the main research objective above:

1. To determine the benefits of customary land titles in determining evidence of ownership;
2. To assess the mechanism of customary land titling by traditional authorities;
3. To evaluate the extent to which land conflicts are related to customary land titling and management.

1.4. Research Questions

In order to realize the above-mentioned objectives, the following questions need to be answered:

1. To determine the benefits of customary land titles in determining evidence of ownership.
 - (a) What are the perceived benefits of customary land titles?
 - (b) How confident are holders of customary land titles towards the titles conferred to them?
 - (c) What measures (if any) could be adopted to strengthen the significance of land titles?
2. To assess the mechanism of customary land titling by traditional authorities.
 - (a) How do traditional authorities in Omusati region administer land, including land titles?
 - (b) What is the level of compliance of customary land authorities towards the granting of titles?
 - (c) What is the position and understanding of traditional leaders regarding customary laws and principles?

3. To evaluate the extent to which land conflicts are related to customary land titling and management/administration.
 - (a) What type of land conflicts exist in the customary lands of Omusati Region?
 - (b) How are traditional leaders in Omusati Region handling customary land conflicts?
 - (c) To what extent can the customary land title be tendered as evidence for land conflict resolution?

1.5. Research Approach

The research approach shows the general process of how the study has been conducted. It started with the identification of the problem, definition of research objectives and formulation of research questions (see also research matrix, table 1-1). With the support of literatures, this phase also served as the stage for the identification of required data and data collection methods. The fieldwork phase of the research is the crucial stage which focuses on data collection and gathering. Primary and secondary data sources were used. The post-field phase of the study presented the results, analysis and discussions of the data collected. Conclusions and recommendations have been made subjective to refinement and how the end results can be related to scientific literatures. The research approach is illustrated in Figure 1-3 below.

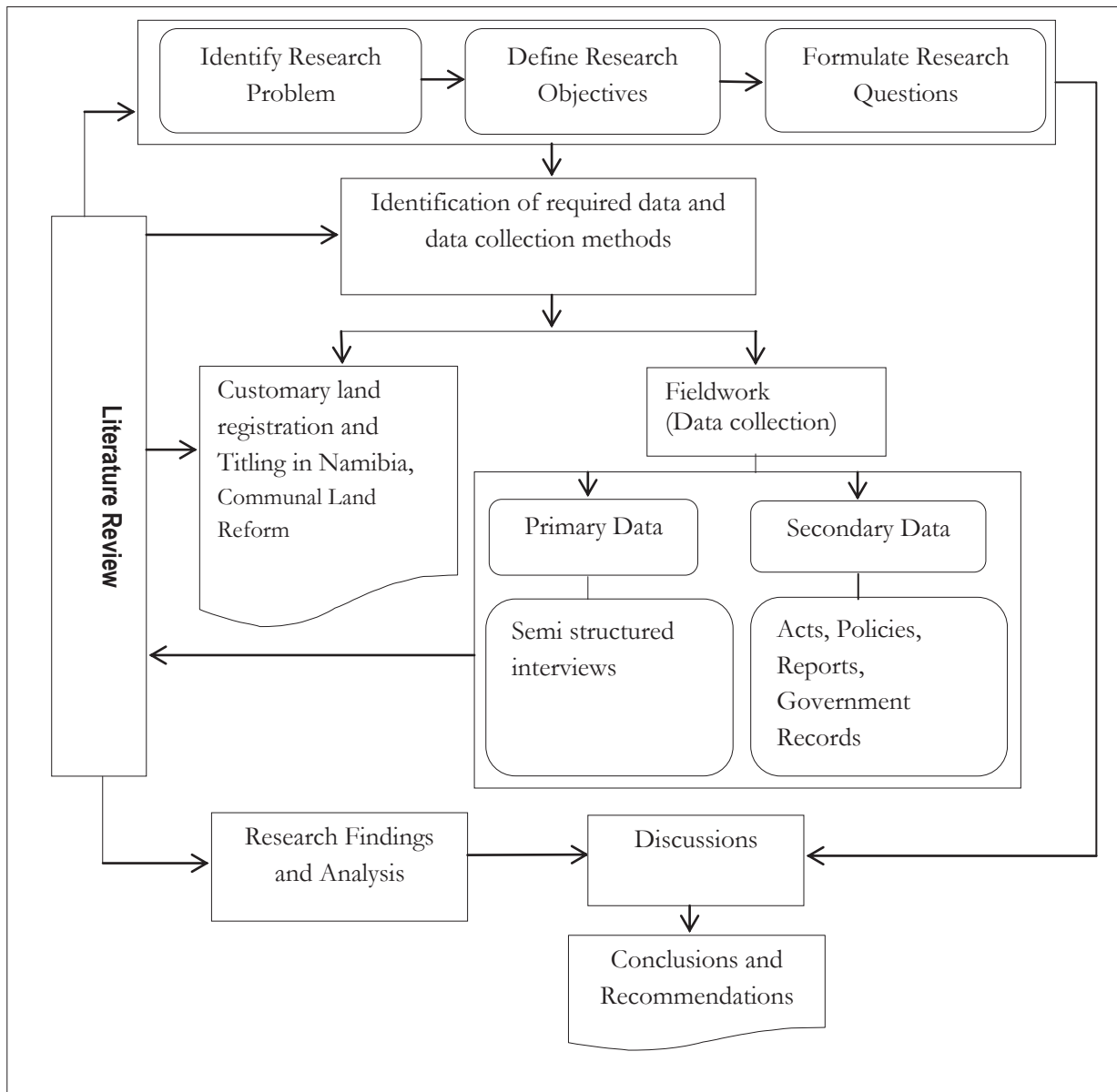


Figure 1-3: Research approach

1.6. Research Matrix

The research design matrix is basically a guideline consisting of rows and columns that direct the researcher to think through the logic of a proposed study, ensuring that the various components of a study link together in a logical manner and that no essential parts of the study are omitted (Choguill, 2005). The approach is relevant in most fields of social sciences, making it appropriate to utilize the concept of a research matrix in land administration studies.

Table 1-1 below shows the research matrix which outlines how the research approach has been operationalized. It contains the data sources, data collection methods and expected output in relation to the research objectives and question.

Main	To assess whether the customary land registration and titling system in Namibia brought a significant impact to the tenure security of land use rights holders.									
Sub	1. To determine the benefits of customary land titles in determining evidence of ownership			2. To assess the mechanism of customary land titling by traditional authorities			3. To evaluate the extent to which land conflicts are related to customary land titles and management			
Research objective										
Research Question	(a) What are the perceived benefits of customary land titles?	(b) How confident are holders of customary land titles towards the titles conferred to them?	(c) What measures (if any) could be adopted to strengthen the significance of land titles?	(a) How do traditional authorities in Omusati region administer land, including land titles?	(b) What is the level of compliance of customary land authorities towards the granting of titles?	(c) What is the position and understanding of traditional leaders regarding customary laws and principles?	(a) What type of land conflicts exist in the customary lands of Omusati region?	(b) How are traditional leaders in Omusati region handling customary land conflicts?	(c) To what extent can the customary land title be tendered as evidence for land conflict resolution?	
Data Source	Primary data: Interviews Secondary data: Literatures	Primary data: Interviews	Primary data: Interviews Secondary data: Literatures	Primary data: Interviews Secondary data: Literatures	Primary data: Interviews Secondary data: Literatures	Primary data: Interviews	Secondary data: Literatures	Primary data: Interviews Secondary data: Literatures	Secondary data: Literatures	
Expected Output	Communities' views on how beneficial titles are to them	Expectation of communities' satisfaction	Principles that lead to improved land titles' significance	TA's views on administration and titling process	TA's expectations meet or do not meet titling rules and procedures	Views and expectations of TA	Types of land conflicts	TA's views on conflict management and resolution	Land conflict resolution mechanisms	

Table 1-1: Research matrix

1.7. Thesis Structure

Chapter 1: Introduction

This chapter provides an overview of the research, background of the study, research problem, research objectives, research questions, expected results and the structure of the thesis.

Chapter 2: Literature Review

This chapter describes the concepts of customary land titling, tenure security and its relevance to the study and research. It also outlines the customary land registration process in Namibia, institutions and policies involved in order to bring about the customary land titles. This will include the situation before and after the titling system.

Chapter 3: Methodology and Study Area

This chapter explains the criteria used to select the study area, methodology used to collect primary and secondary data, validity and limitation of data collection.

Chapter 4: Results and Data Analysis

This chapter presents the results of the collected data from field work and supported by literature review. The results will then be analysed and used as an outcome in the discussion part.

Chapter 5: Discussions

This chapter discusses the results presented in Chapter 4. In addition the gap found in the research will be discussed in this chapter, as to whether customary land titling indeed have an impact on tenure security.

Chapter 6: Conclusions and Recommendations

This chapter presents conclusions on research findings and discussions, a summary/overview of the answers to the research questions and recommendations on how to improve the customary tenure security and for further research.

2. LITERATURE REVIEW

2.1. Introduction

This chapter deals with the concept of customary land issues, land administration in general and customary land titling and its role tenure security. In addition, the overview of customary land registration in Namibia is also discussed in this chapter. Apart from customary land registration and its intended objective of bringing about tenure security for land use right holders, actors, laws and policies involved are also explained in support of literature.

The literature was reviewed in order to give an overview of the main concepts that are related to this research, taking into consideration what the main authors state about the concepts of customary land, titling transactions, nature of land conflicts within the customary areas, the contribution of land titling to tenure security and the alternative mechanisms of minimizing the conflicts during and after the land registration process.

2.2. The Concept of Customary Land Registration

While international land policy trends emphasize the importance of recognizing customary tenure systems with the aim of achieving equitable land management in developing countries, the equity of customary systems under the control and administration of traditional leaders is still under heavy criticism (Ubink *et al.*, 2008). To date, the majority of African countries hold land under customary tenure while owning land in a private or freehold basis in held in a minimum.

In addition, Pereira (2007) argues that customary tenure encumbers commercialization; it is insecure, lacks certainty and frustrates rural land markets. This has led to the call for land tenure reform, attempting to replace customary tenure with a modern secure tenure. Land tenure security is often associated with land titling and land registration.

Before proceeding into more detail of customary land, there is a need to define land, based on literature. Tuladhar (2004) defined land as any portion of the earth's surface where land rights are exercised and such rights are just not ownership to the surface, it includes every object attached to it, below, or on the surface. This definition can be looked at in a wider sense, from a legal point of view. Land can also be defined as the earth's surface, the air above, the material beneath and all the things that are permanently fixed and attached to it. This implies that it is more than just land, it includes permanent structures like buildings, trees, etc. (Van der Molen, 2002). Within the context of the above, this study shall look at the definition of land as stated by (Tuladhar, 2004).

From the definition above, one can conclude that customary land registration is a subject matter of great importance as it touches on secure and affordable access to and enjoyment of land and resource rights, and is a significant matter in the pursuit of poverty reduction and food security. This entails that access to land as a natural resource is important in ensuring citizen's contribution to and benefits from economic growth.

Chauveau *et al.* (2007), emphasized that most African governments are trying to find means of how to increase customary tenure security through customary land registration, as 80% of their people hold land under customary tenure system. This makes land to be the most crucial resource to societies, because it constitutes the main livelihood basis for a large population. Namibia is not an exception.

2.2.1. Land Registration

UN (2004), defines land registration as a process of recording rights in land, either in the form of deeds registration and other documents associated with the ownership of land rights, or else in the form of a register of titles to land. The primary function of land registration is to provide a safe environment and lay a foundation for the acquisition and disposal of rights with respect to land. The registration of land should provide in a wider context stability and order, in such a way that it creates security for registered titles to facilitate and support investments, through mortgages as one of the major benefit derived from land registration and titling.

Registration of land tenure adds value to those who are in possession of registered rights therefore making them certain that their rights will be valid as long as they are not revoked in any legal and comprehensive manner (Van der Molen, 2002). One way of implementing land registration is through land titling. This can be referred to as a process whereby recognized interests (ownership/use) in land are legally recorded (Dale *et al.*, 1999). In support of the UN (2004) definition, part of this study is going to assess whether customary land registration in Namibia is a means to provide for the recognition and formalization of land rights and regulation basis of how these rights can be transferred and management.

2.2.2. Customary Land Tenure

For the purpose of this research, customary land tenure shall be defined in line with Nkwae (2006) who define customary tenure as a tenure deriving or in accordance with customs, has evolved locally, and this does not connote time or history. The rules are not recorded in writing but are generally known. In referring to customary tenure, Arko-Adjei (2011) added that the main characteristic of customary tenure is the reciprocal relationship between membership of the family, tribe or clan and access to land. This in a simple form translates that this is a mode of holding rights in land through historical agreements between people within a community, based on unwritten laws that are usually based on the experience of the elders.

During the formulation of modern states systems and during colonization, land in most African states was governed by traditional procedures, rules and principles. Being traditional, the procedures, rules and principles were based on social constructs whereby their essential component were passed either by way of practice or example or verbally from generation to generation belonging to a certain tribe or community. This type of practice is commonly known as customary land tenure. Kalabamu (2000), pointed out that the essential feature of customary land tenure systems is characterized by what is commonly as the “right to avail”. This means the benefit were automatically shared by all people belonging to a particular tribe or community and all land acquired through allocation by the chiefs or headmen remained in perpetuity, the exclusive property of the concerned households, on condition that the allotted belong to the community and the community actively utilize that land.

In the past, customary tenure was administered by the chiefs, headmen, tribal elders and kings, while ownership was vested in the respective community such as a clan or tribe, which was by then not

recognized by the state. However, nowadays legal recognition of customary land rights is increasing in Ghana, Namibia, South Africa, Mozambique and Uganda, with the states taking ownership of the customary areas (Burns *et al.*, 2007).

2.2.3. Tenure Security

Security of tenure is the assurance that individual's rights to land are recognised by others and therefore protected in cases of any challenge. Tenure security can be referred to as the assurance of the land right for a period of time to use land economically and willing to invest in it (Deininger *et al.*, 2011). A landholder has security of tenure if she/he perceives little or no likelihood of losing physical possession of the land anytime.

According to Dekker (2003) land tenure security can be defined as the way people are holding the land. More specific, land tenure is the perceived institutional arrangement of rules, principles, procedures and practices, whereby a society or community defines control over, access to, management of, exploitation of, and use of means of existence and production. However, Place *et al.* (1994) describe land tenure security as the perceived right to hold land rather than the simple fact of holding land. In this context, security of land tenure is concerned with the rights, restrictions, and responsibilities people have with respect to the land.

In support of the definition by Deininger *et al.* (2011), one major aspect to take into consideration is the benefits of customary land titles, through land rights holder satisfaction. Tuladhar *et al.* (2003), stated that one of the major principles that can be used to measure how beneficial land titles are, is customer satisfaction. This refers to the situation whereby communities' wishes, expectations, needs and pleasure are fulfilled and derived from a service rendered. In these situations, satisfaction constitutes a construct of vital importance, not only in benefits derived from a service rendered, but also in the explanation of any type of relationship between organizations and customers.

Based on the views of (Arko-Adjei, 2011; De Soto, 2003; Tuladhar *et al.*, 2003), it can be concluded that the result of land titling is the increased and improved security of tenure for customary land right holders. However, (Sharma *et al.*, 2006) cautioned that the planned formalization of customary land use rights through land titling alone is not always beneficial. In support of this view, this research is going to evaluate whether customary land titles are practical and beneficial, especially in the northern areas of Namibia whereby the nature of the existing customary land rights and the possible impact of registration and the benefits of the land titles are not well understood by the society. In this research, the terms "local people", "local communities" and "customary land right holders" are used to refer to the group of interacting people living in a particular customary area. In this view, it should be clear that the terms are used to refer to the same people and can be used interchangeably.

2.2.4. The Concept of Land Titling

Atuahene (2006), refers to land titling as a form of privatization in such a way that public asset such as land is transferred to private families and individuals. In support of the definition, Williamson *et al.* (2010) added that land titling does not only cover the aspect of individual ownership, it also involves the creation of infrastructure to run the processes for delivering registration, valuation, taxation, planning and development, therefore emphasizing that land titling brings about benefits like increased land tenure security, increased access to credit, improvement of land market, long term land investments and working capital, environmental benefits and access to land information. (Deininger *et al.*, 2011; Feder, 1998), added

that customary titles are said to be beneficial and economic worthwhile when they provide the following benefits for the poor:

- Enable the newly titled owners to use their property as collateral for obtaining formal credit
- To invest in home-based activities, and promote mortgage finance,
- Stimulate and secure private investments
- Unify land markets and promote land and property markets,
- Reduce transaction costs for property transfers, improve land administration,
- Increase government revenues, through improved land and property taxation,
- Encourage/promote home improvement and construction,
- Ensure better access to services and contribute to the enforcement of planning decisions.
- Evidence for land conflict resolution.

Taking the objective of this study in to consideration, (Atuahene, 2006)'s definition will be utilised as it is in line with main aim of this research.

The World Bank (2007) is of the opinion that tenure security can not only be achieved or improved through adopting means of replacing customary land tenure systems with modern systems; it can also be achieved through legal recognition of existing rights and institutions. Legal recognition of land rights implies that customary land titles can be recognized as evidence of ownership. (Feder, 1998) emphasizes that titles can be regarded as evidence when the risk of challenges to the ownership is reduced and likelihood of incur high costs in defending one's possession of land is lower. In this research, evidence of ownership constitutes the officially documented and verified customary titles that cannot be disputed in any situation.

In view of the above, Firmin-Sellers *et al.* (1999) argued that land titling does not increase tenure of security because local communities residing in customary areas have tried registering their lands but they find it not interesting and beneficial at all since it does not offer any access to credit for investment purposes. In view of this, a point can be drawn that titles need to be significant. This is constituted by the worthiness and magnitude of these titles in the determination of ownership in all situations. This is only the case when titles are registered and recognized at local, regional and national levels. Therefore the significance of customary land titles depends on the benefit which land right holders perceive to derive from the titles as well as the confidence which land owners repose in these titles. Therefore this study is going to assess whether the same applies in the Namibia customary titling case.

In support of the argument, Namibia has opted to adopt the latter approach, by providing customary land rights a legal recognition, thereby initiating customary land titles to be recognized as evidence of ownership and designation of existing and newly traditional authorities and leaders as customary land administration authorities, through customary land titling.

As indicated earlier in this research, the terminologies "land titling" and "land certification" refers to the process of registration of land use rights holding in land, whereas "title" and "certificate" are terms used to describe the evidence of individual's holding or use right's to land. In this view, it should be clear that the terms titles and land titling are used.

2.2.5. Land Conflicts

One of the major aspects in tenure security is land conflicts. Tenure can be considered to be secured when there is minimal or no land conflicts and appropriate land conflict resolutions mechanisms are in place. Ciparisse (2003) defines land conflict as a social fact in which at least two parties are involved, the roots of

which are different interests over the property rights to land, the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land. In support of this definition, unsecured land tenure rights may lead to conflicts in cases whereby the rights in question are limited, too short in duration, not well or clearly defined. This will sustain unresolved disputes between formal state law and informal/customary claims, and lead to situations whereby land use rights are overlapping. In this study, land conflicts are also considered to include disagreements as a result of boundary disputes, double allocations, tribalism and forced evictions.

Wehrmann (2005), stated that, in order to resolve land conflicts, it is important to be aware of different types of land conflicts that exist, and the type of conflict resolution mechanism to utilise in resolving the conflict. One difference is found in the identity of the actors involved, some of them being justified to act in the way they were supposed to, while others not. A customary land conflict mechanism is therefore characterised by the reach for consensus based on the social norms regarding proper conduct and communal values. Its aim is to reach a solution in a harmonious way and attain peace. The mechanism should be rooted in the culture and history of that particular community which might be vary in different communities. This therefore implies that the mechanism for conflict resolution in this study is considered to be driven by appropriate administrative structures which facilitate compliance from part of all stakeholders involved.

According to Quinn (2004), customary land conflict mechanisms cannot be uniformly accepted by all citizens and could bring more conflicts between citizens and customary institutions since their substantive and procedural rules are imprecise, unwritten and pluralistic. The system in Namibia has often been seen to lack legal legitimacy, authority and enforceability as well as weak accountability of the traditional authorities. Therefore conflict resolution is considered in this research to be made possible if the conflict land in question is/can be contested with adequate and reliable evidence tendered by parties in the conflict.

2.2.6. Traditional Authorities

Traditional authority constitutes an aggregate institution which can include the position of the traditional leader or king, the deputy, the royal family, the secret advisory body, the headmen of small villages, and the traditional council (Arko-Adjei, 2011). This refers to the form of leadership in which authority derives from tradition or custom. As part of culture, this form of leadership is passed from person to person or generation to generation, which might be different in detail from family to family. In addition, this entails that the legitimacy of the authority comes from tradition, usually from the royal families.

The only real issue that distinguishes traditional leaders from other types of leaders is that they are appointed by members of a relatively closed community, usually defined in terms of some form of ethnic criteria, and that they are appointed by means of the legitimate customs of that community. Hence, considering the type of rulership in customary areas, in Namibian context, *traditional authorities* can instead be defined as “individuals that are appointed by members of a specific, ethnically-defined community by means of the accepted customs of the community, to preside over that community.

According to Arko-Adjei (2011), these tribal chiefs or heads of clans exercise trusteeship over the land on behalf of a group. They are therefore entrusted with managing the land within their territory and making decisions regarding the land allocated to community members. They are the starting point in facilitating customary land registration and titling process. For the process to take place, there are mechanisms in

place that traditional leaders should abide to in the titling process. In this research mechanism constitutes procedures by which traditional authorities follow in the facilitation of bringing about customary land titles, in accordance with the Land Reform Act and Traditional Authority Act. These among others include the awareness, allocation, verification and record keeping.

The operations of the systems should be highly dependent on the relationships that land registrars have with their local communities in order to reduce uncertainty (Tuladhar *et al.*, 2003). This is based on the competence, openness, dependence, communication, trust and respect on parties involved in the process. According to Feder (1998), one way of reducing and eliminating uncertainty is to provide land owners with customary land titles, backed by a legal system capable of enforcing the land rights, following necessary mechanisms in place. Taking the above into consideration, this research is going to examine if traditional authorities are indeed following the mechanisms in place in both titling process specifically and customary land administration and management in general.

2.3. Customary Land Registration in Namibia

The historical background to customary land registration in Namibia is quite a complicated issue. Soon after independence in the year 1990, the government was faced with a lot of problems pertaining to land issues and one of the imminent challenges was the formulation and reformation of land policies for both customary and commercial land (Meijs *et al.*, 2009). In the past, any person could clear land and settle on it without prior permission, provided that other people's rights were not infringed.

The situation at hand was brought about by two factors that influenced how today's customary areas were first delineated (marked out). The first factor is the historical distribution and movement of individual ethnic groups in the country, and the second factor is the privatization of what used to be customary land, commonages and declaration of state land (mining areas, parks) by the pre-independence colonial regimes. These factors then leaves someone with a vital question, *why customary land registration?*

The availability of land is very crucial for human survival; therefore it is essential that people have access to land. As access to land itself is not enough, it is of the utmost importance to have access to land which its tenure is secured. According to Meijs *et al.* (2009) this can only be achieved through customary land registration and titling. As land registration is a process of making and keeping records about who has what rights and to which parcel of land, this simply mean that in order to protect the land rights, records must be accurate, clear and must be stored and kept in a secured manner.

According to Hunter (2004), one of the major issues in southern Africa is the failure to integrate land reform policies into land tenure reforms, resettlement programmes and meaningful land-use policies that cover all land, i.e. not just rural land, but urban land as well. Land reform policies should, therefore, cover all land, i.e. including non-agricultural land, because fertile land is simply too scarce a resource in many countries to be made available to everybody who wants to make a living on rural land.

The registration of new and existing customary land rights has been going on since March 2003. The first step that results in land title is land registration, a process which defines title and opens it up for its purpose and benefits to local communities. However, in general, the formalization of customary land use rights as it is now in Namibia is impractical, resulting in unsecured tenure, due to the fact that the responsible institutions are not realistic about what customary land titles can and cannot achieve. While on this point, customary land registration is only taking place at the regional level, without any records in the central deeds office database, making it unrecognized at the national level. Following the observations

made by Firmin-Sellers *et al.* (1999) regarding “significance” of land titles, this could render titles “insignificant” in Namibia.

In Namibia, customary land tenure concepts developed from the need of poor marginalized societies who depend on small stock and crop cultivation for their livelihood (Mendelsohn, 2002). In general, this is based on the notion that land initially belonged to the person who cleared it.

Van der Molen P. (2008), emphasizes that without the knowledge about who owns what and where, even in customary areas, land management will be hardly possible to the government. Based on this emphasis, a conclusion can be drawn that customary land registration itself is a valuable aid to land reform in Namibian context, therefore very essential for good land administration.

2.3.1. Actors involved, their Roles and Responsibilities

Delivering services to the public sector implies that certain actors are required in the process in order to deliver services, process modifications and ensure that plans in place are incorporated and then implemented. The above is not an exemption to customary land registration in Namibia. Several actors, their roles and responsibilities are outlined and shown in a use case diagram in Figure 2-1 below.

1. Applicant (customary land holders, both existing and new)
2. Traditional Authorities
3. Communal Land Board
4. Ministry of Lands and Resettlement
5. The Minister (Ministry of Lands and Resettlement)

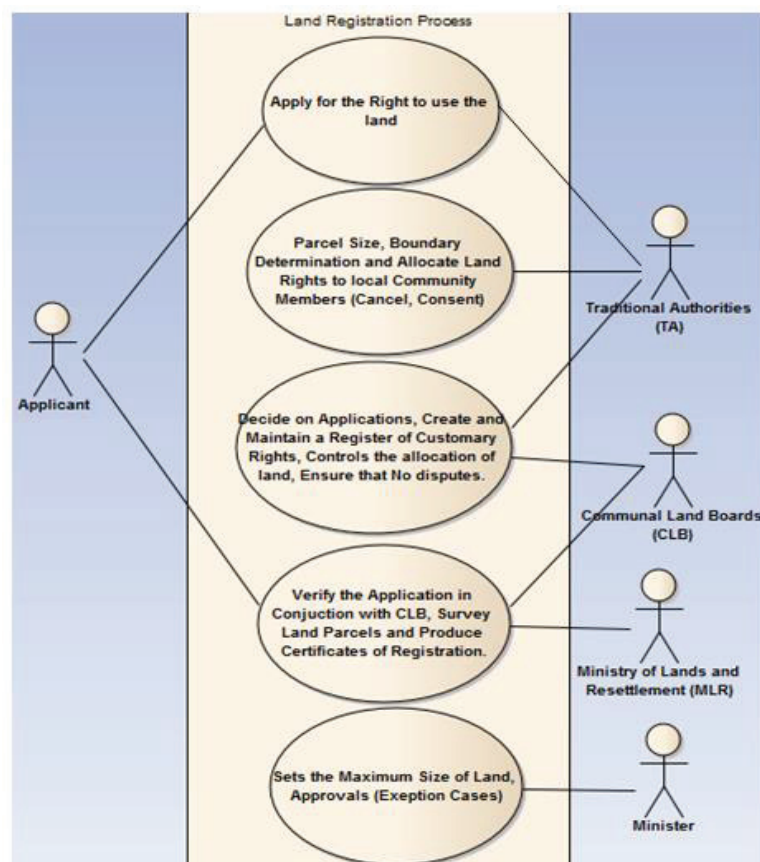


Figure 2-1: Use case diagram: Actors and their responsibilities

1. Applicant

How does one apply for customary land use rights?

In terms of Section 22, an application for a customary land right must be made in writing, on the prescribed form (**Appendix 3 A and B**) and handed to the Chief of the traditional community, where the land is situated. Additionally, this application must contain all the relevant documentation that the Chief or Traditional Authority may require in order to decide on the matter.

Any citizen of Namibia can apply for a communal (customary) land right (existing or new) to be registered in his/her name. An applicant must:

- ensure that he or she has to apply for the right to use a particular piece of land of his/her interest or choice;
- ensure that the application is in writing, on the correct prescribed form(s);
- ensure that the application forms are filled out properly and that all information is complete and accurate;
- cooperate in the process of verification (showing to be true) of the application;
- pay the prescribed application and certificate fees; and
- verify the registration certificate before accepting it.

2. Traditional Authorities

Applications for customary land rights have first to be handed over to the chief or TA of the community where the land that is to be registered is situated. Chiefs or TAs have the primary power to:

- allocate and cancel customary land rights;
- allocate land rights to members of the local community and give their consent for any leasehold right to be registered;
- determine the size and boundaries of the areas of land over which rights will be granted;
- forward the application to the CLB;
- issue the certificate to the applicant after approval.

3. Communal Land Boards

There are 12 CLBs (one for each region except Khomas Region, since it does not have any communal land). After receiving application forms from the TAs each CLB is responsible for:

- controlling the allocation and cancellation of customary land rights by chiefs and/or TAs;
- deciding on applications for the right of leasehold;
- controlling the erection and maintenance of fences in communal areas;
- creating and maintaining a register for the allocation;
- transfer and cancellation of customary land rights and rights of leasehold; and
- ensure that no unresolved disputes exist before a registration certificate is issued, by resolving conflicts between neighboring land users over boundary locations.

4. Ministry of Lands and Resettlement

The MLR is the principal administrator of land in Namibia. Its Directorate of Land Reform, Division: Land Board Tenure and Advice (LBTA) is responsible for ensuring that land registration takes place in all communal areas. The MLR takes responsibility for the following aspects of customary land registration process:

- secretarial activities of the CLB (minutes, finances, administration, secure keeping of registration documents);
- keeping a register of all land rights;
- verifying the applications for land parcels in conjunction with CLB staff;
- surveying all land parcels and calculation of parcel sizes;
- producing certificates of registration; and
- ensure that all applications are submitted in accordance with the law.

5. The Minister

The Minister of Lands and Resettlement has a role to play in the customary land registration process. As stipulated in the Act, the minister is required to give approvals in exceptional cases, recognize and prescribe any other land right as is deemed appropriate or necessary. The minister has the primary power to:

- sets the maximum sizes of land that may be allocated with a customary land right or a leasehold right;
- grant approval in a written form.

If the applicant applies for a size of land that exceeds the prescribed size, the chief/TA must refer the matter, together with adequate reasons and motivations by the applicant and the chief/TA, to the Minister of Lands and Resettlement for written approval. The maximum sizes have been set at 20 ha for customary land rights and 50 ha for leaseholds.

2.3.2. Procedures for customary boundary survey and registration

The technique used in Namibia for customary land boundary surveying and registration is aerial photographs. Geometrical correctness of the photograph is a great *advantage*. This method has been used for mapping and registration of land rights in customary areas. The process takes about ninety days (three months) from the application lodgement, to the issuing of a title as indicated in the activity diagram, Figure 2-2 below.

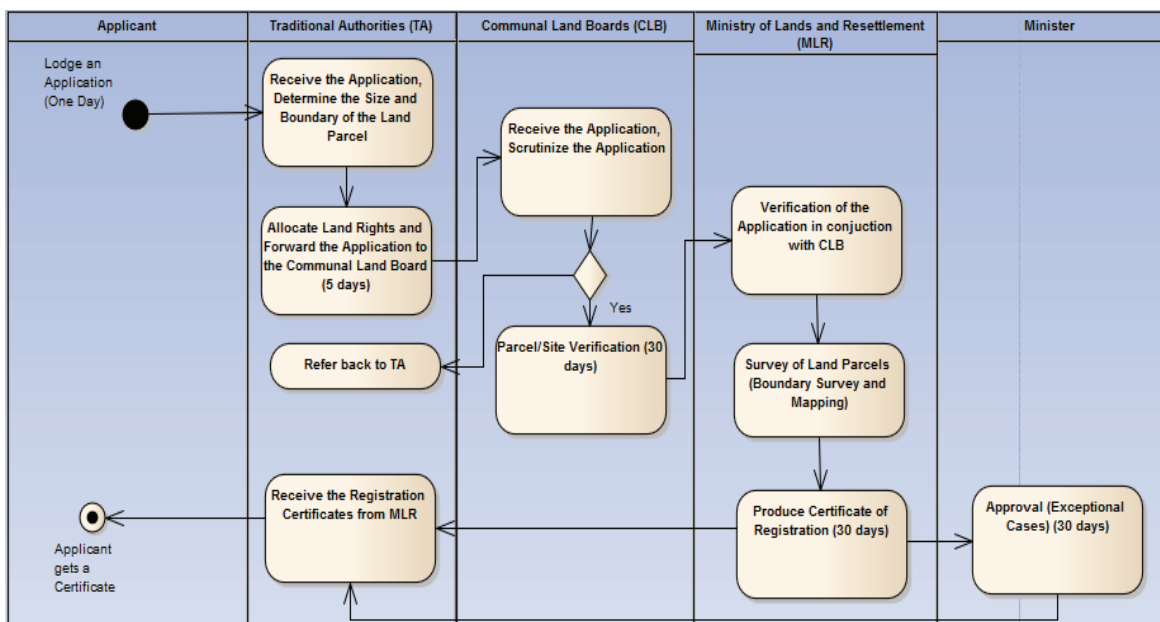


Figure 2-2: Activity diagram: Actors and their activities in the registration process

Meijs *et al.* (2009), pointed out that the accuracy of aerial photos is higher and more precise compared to hand held GPS especially in communal areas where high precision boundaries are less needed. One of the major reasons of using aerial photos for the registration of land rights in Namibia is because high resolution aerial photos are available for the whole country. In addition, they are considered to be cheap and efficient. The advantage of using an image is that it allows some level of interpretation and provides for a permanent recording.

2.3.3. Laws and Policies governing Customary Land Registration and Titling Process

According to Lamba (2005), a good land administration system comprises of legal, organizational and administrative framework. With the above mentioned frameworks it is not possible to achieve good land administration without laws and policies in place. Van der Molen (2002), stated that land administration is not a purpose in itself; moreover, it aims at serving the society through the implementation of land policies by way of land management activities. Therefore land administration is a tool for policies implementation. The laws and policies governing customary land titling in Namibia are discussed below.

1. National Land Policy 1998

The National Land Policy identified the lack of credit facilities in communal areas due to reluctance of lending institutions to accept communal land as security, as one of the major problems and constraints in as far as customary tenure is concerned. The Policy also made for provision for the establishment of Land Boards, whose functions include the establishment and maintenance of a register and a system of registration for recording the allocation, transfer and cancellation of customary land rights and rights of leasehold.

Consequently, the policy made provision for communal land residents to be given formal perpetual rights over land and all resources in each village. This recommendation came to live in the form of section 25 of the Communal Land Reform Act, which provides for the registration of customary land rights.

In the same light, Palmer *et al.* (2009), also contends that, recognition of formal title did not necessarily mean increase in tenure security and that, many studies have raised questions about the effects of title registration.

Taking that in to consideration, a conclusion can be made that the National Land Policy is rather vague on how this ought to be interpreted. While it acknowledges these fundamental rights, it points out that they do not amount to land ownership nor property rights.

2. Communal Land Reform Act, No. 5 of 2002

The overall objective of the Communal Land Reform Act is to provide for the allocation of rights in respect of communal land; to establish Communal Land Boards; to provide for the powers of Chiefs and Traditional Authorities and boards in relation to communal land; and to make provision for incidental matters.

One of the primary functions of the act is to improve the administration of land in the communal areas and to protect the land rights of people. As stated earlier, the Communal Land Reform Act provides for the registration of customary land use rights. The provisions relevant to the registration process are contained in sections 19-28 of the act.

Although some key elements and components of the customary land use rights registration are clearly outlined in the act, Werner *et al.* (2004), pointed out a disappointing feature of the CLRA, that it does not address the issue of property rights to grazing areas on communal land.

Section 19 of the Communal Land Reform Act sets out two broad categories of land rights: customary land rights and rights of leasehold. The rights that may be allocated under the first category are twofold: rights to residential units and rights to farming units. The Act however, does not clearly state or propose any changes in the vesting of communal land.

Despite some weaknesses in the act, a conclusion can still be made, that it regulates the allocation of land rights and the establishment of Communal Land Boards in all communal areas of the country. The act clearly states the powers of chiefs, traditional authorities and land boards with regard to the allocation of land use rights in customary areas.

3. Traditional Authorities Act, No. 25 of 2000

The overall objective of the Traditional Authority Act is to provide for the establishment of traditional authorities and the designation, election, appointment and recognition of traditional leaders; to define the powers, duties and functions of traditional leaders; and to provide for the matters incidental thereto.

Section 22 of the Act indicates clearly that, although government is the custodian (formal/legal owner) of all communal (customary) land, the allocation of rights to land will continue to be made by traditional authorities as in the past. This implies that the allocation of customary land rights vests in the chiefs or traditional authority of the respective community, of which allocation should be ratified by the Land Board of that respective area.

Section 22 sets out the powers of the Chief or Traditional Authority, when considering an application. This includes, *inter alia*, the right to make investigations and consult people in connection with the application. If any member of the traditional community objects to the allocation of the right, the chief is to convene a hearing. During the hearing, the applicant and the objector should be afforded an opportunity to make representations in connection with the application.

Once the Chief or Traditional Authority has considered the matter, they may either refuse the application, or grant the application. According to the Act, this implies that the entire administration of customary areas lies with the traditional authorities.

2.4. Flexible Land Tenure System (FLTS)

After Independence it was acknowledged and identified that security of tenure is one of the most crucial issues with regard to land access, therefore making it possible that the majority of Namibians would be able to purchase land and thus acquire title deeds. Measures to simplify the costly and inflexible formal property registration procedures were proposed. As a consequence, a second property registration system parallel to and interchangeable with the existing system was developed, a “Flexible Land Tenure System”. This system was made possible and is guided by the Flexible Urban Land Tenure Act, No. 4 of 2012.

The overall objective of the Flexible Land Tenure Act (FLTA) is to legally mandate and provide for the creation of new forms of title to immovable property; to create a register for these forms of title and registrars to register these forms of title; to provide for the nature of the rights conferred by these forms of title; and to provide for matters incidental thereto.

The FLTS is intended to provide an affordable, more secure, but also simple land right which can be upgraded according to the needs and financial capabilities of the holders and the government alike. The

system was designed to address the tenure security needs of both poor rural communities living in customary areas and poor urban communities living in informal settlements (De Vries *et al.*, 2009).

This system introduces two new types of tenure, namely a starter title, which is a statutory form of tenure registered in respect of a block of land, and the landhold title, a statutory form of tenure with all the important aspects of a freehold title, but without the lengthy procedures and complications. The first tenure allows for perpetual occupation of a plot as part of a group managed block, with somewhat restricted rights of transfer. Most importantly, the upgraded tenure system brought some investment benefits such rights to mortgages and thus registered land can be used as collateral. Juma *et al.* (2001) emphasized that while the block of land in its entirety is registered under a centrally registered freehold ownership, the sub-plots are registered locally only, thus simplifying and shortening the registration process and making land registration cheaper while still providing security of tenure.

One major conclusion that can be drawn on this tenure system is that, though it is not yet implemented, it brought about some investment benefits, such as mortgages, until recently, communal (customary) land in Namibia could not be held under freehold title and could therefore not be sold or mortgaged.

2.5. Conceptual Framework

The relationship between concepts in this research is shown in Figure 2-3. The overall objective of the government in the whole process of customary land registration is to increase tenure security for customary land right holders through *granting* of titles. As custodian of customary land, they *regulate* all activities of traditional authorities. In the process, traditional authorities are administrators of customary land and they *facilitate* the process of land titling to bring about customary land titles which its intended purpose is to *lead to* tenure security.

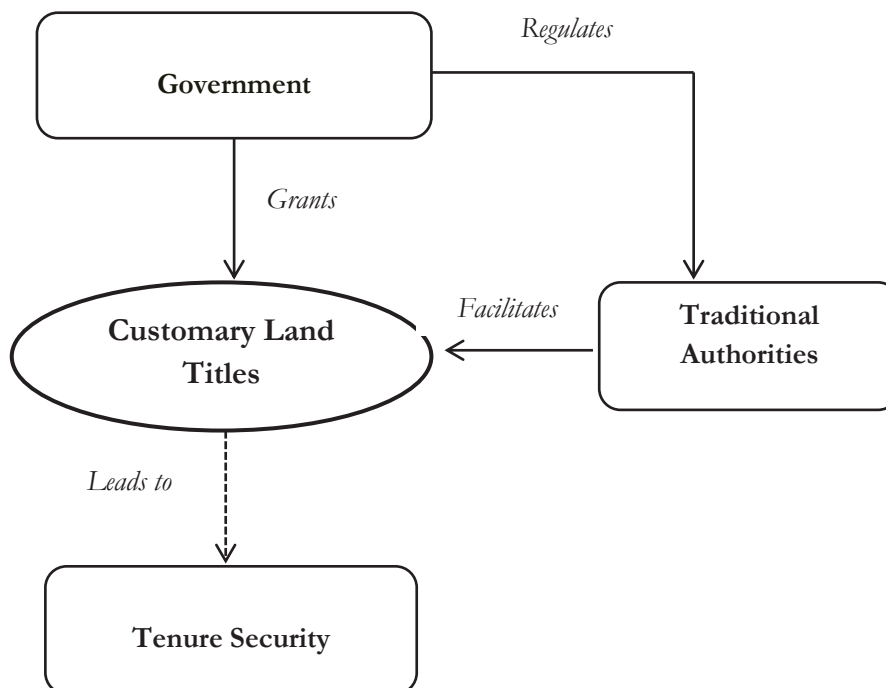


Figure 2-3: Conceptual framework

2.6. Summary

The above literatures indicates generally, that there are mixed feelings about customary land titling. Specifically, the literatures on land tenure and customary titling indicates that the process is extensive and growing, leaving researchers with a task to seek for a definitive understanding of the impact of these on the poor communities of developing countries, which Namibia is one of them. For some authors, it is an acceptable practice which creates security of tenure in customary areas, enhances crop production and economic growth. Other authors caution against the insecurity created by the realm of customary laws. In the same light, I also contend that, customary titling did not necessarily mean increase in tenure security, it can also increases uncertainty and conflict over land rights.

The dominant views of (Arko-Adjei, 2011; De Soto, 2003; Deininger *et al.*, 2011; Tuladhar, 2004) emphasized that the result of all is the increase and improved security of tenure for customary land right holders. This entails that local communities has been satisfied, thus determined by the significance of customary land titles issued to them. However, whether the same result from the dominant views of scholars applies to the Namibian case, it will be shown and indicated in the discussion component of this study.

3. METHODOLOGY AND STUDY AREA

3.1. Introduction

This chapter describes and outlines the methodology that has been used in the research phase for this thesis, study area and hence, provide the description for the choice. The methodology was drawn to give answers to the research objectives, its flexibility to respond to research questions and relevant issues noticed during literature review, the fieldwork phase and finally the analysis phase of the fieldwork research. In addition, this chapter outlines the theoretical realization of the research and the actual methods of the research in general. As considered to be part of ethical considerations, some constraints and limitations are also outlined and discussed in this chapter.

3.2. Sampling Design

Sampling is very crucial in both qualitative and quantitative research especially in cases whereby it is impossible to include the whole population in a research project. In this research, a non-random sampling (judgmental or purposive) technique was used, and this did not give every household in the selected village an equal opportunity and chance of being included in the sample.

According to Kumar *et al.* (2005), this is the judgment of the researcher as to who can provide the best information to achieve the objectives of the study. The researcher therefore goes to the people who in his/her opinion are likely to have the required information and be willing to share it. In this research it was applied specifically to homesteads within the villages that fall along the boundaries of the selected traditional authorities for ease of accessibility and time. This makes this type of sampling extremely useful in situation whereby a researcher wants to describe a phenomenon about which only little is known.

A total number of fifty (50) interviews were conducted over a period of three (3) weeks. This translates to ten (10) traditional authority leaders from five (5) villages within four (4) traditional authorities and forty (40) local community people (customary land rights holders) from the same traditional authorities and villages. The number of traditional leaders selected helped in answering the research questions in such a way that each village is headed by one village headman and one or two deputy headmen and the number of households within a village is within a range of forty (40) to fifty (50) households. The traditional authorities, districts and villages of the study area are indicated in Table 3-1 below.

Table 3-1: Indication of TA, districts and villages of the study area

Traditional Authorities	Districts	Villages
Ombalantu	Anamulenge	Oluvango
	Outapi	Omalunda
Ombandja	Okalongo	Olupandu
Uukwambi	Oshikuku	Omagalanga
Ongandjera	Okahao	Ombwata A

3.3. Research theoretical realization

The basis of this research is constructivist type of research. This refers to a theory of knowledge explaining when information comes into contact with existing knowledge that had been generated from previous experiences. It also entails that the research utilizes a method or approach whereby ideas generated are refined through the interaction between the respondents and the researcher. This research was conducted from an inductive point of view, which is associated with the qualitative data. This approach was selected to be the most appropriate because it best suits the characteristic of the research objectives and questions, as it tries to assess and understand people's perceptions about the customary land titling system and registration process.

3.4. Research Methods

A collection of relevant semi structured open and closed ended questions was used to guide the interview process. As this research is more qualitative, there was free interaction between the researcher and respondents in acquiring relevant in-depth information and data that is discussed in chapter five (Discussion) of this thesis.

Questions were asked in a non-predetermined order and answers collected formed the basis of primary data. Due care was taken on certain aspects discussed which were not considered by the researcher but were of crucial importance to the respondents. In this case, "flexibility" was adopted.

3.5. Data Collection

Literatures are considered to be the base upon which this research is built. During the initial stage of the research process, reference was made to books, journals, articles publications and non-published papers. They provided a framework on which identified problems were then assessed during fieldwork and research.

3.6. Primary Data

Primary data were collected from different sources, using interviews to traditional authority leaders and local community people (customary land right holders).

Interviews formed an integral part of the research process; hence, it is the main tool/method for primary data collection. Interviews were conducted with various local community people and traditional authority leaders. A choice of closed and open ended question was made because, besides their ability to provide flexibility and situation adjustments, they also allow for a greater understanding of the respondents point of view (**Appendix 1**). This also ensures that the respondents don't feel intimidated or pressured, while at the same time ensures that the key questions were appropriately addressed.

Respondents were informed that their involvement is voluntary and it is their rights to decline to participate and to withdraw from the research at any time, should they feel uncomfortable and are no longer able to continue. They were further provided with information about how their data, photos and recordings will be used, and secure their consent at the same time upholding their privacy and confidentiality.

The interviews were conducted in Oshiwambo, whilst translations and filling of interview question forms and notes was made in the English language. The photo below shows one of the interview sessions.



Photo: Interview session

3.7. Secondary Data

Secondary data obtained from the regional office of the Ministry of Lands and Resettlement, responsible for customary land registration in Outapi were the list of registered customary land rights holders and spatial data related to the study area. This includes district boundaries shape files to visualize the districts and locate the villages where the research has taken place.

Due to security measures and principles in place, the list of all registered customary rights holders could not be obtained, only for the homestead where the household head had been interviewed.

3.8. Results and Analysis Presentation

Having captured responses for interview questions, the data obtained was analyzed using a descriptive method of analysis. Since this is a qualitative type of research, the data obtained will then be presented using a text based method, verbatim response approach. This approach according to (Walsh, 2003) is necessary in taking certain aspects and ideas of interview outcomes and sorting the information in different categories following discussed topics. In this research, data presentation will be done with the support of literature review.

3.9. STUDY AREA

The research was conducted in one of the thirteen regions in Namibia, called Omusati Region. The region is located in the northern part of the country, sharing borders with Angola on the northern side. According to the housing and population census National Planning Commission (2011), the region has a population of 242 900 inhabitants and a total area of 26 551 km².

It is the second highest populated region after Khomas region, with the northern part more densely populated than the south. The region comprises of eight (8) traditional authorities and twelve (12) districts or constituencies. This is a predominantly agricultural region (with both crop and small livestock farming) in which mahangu is cultivated successfully during a rain season. The region is transverse by high standard trunk roads which provide a direct link to adjacent regions and the rest of the country. The study area map is indicated in Figure 3-1 below.

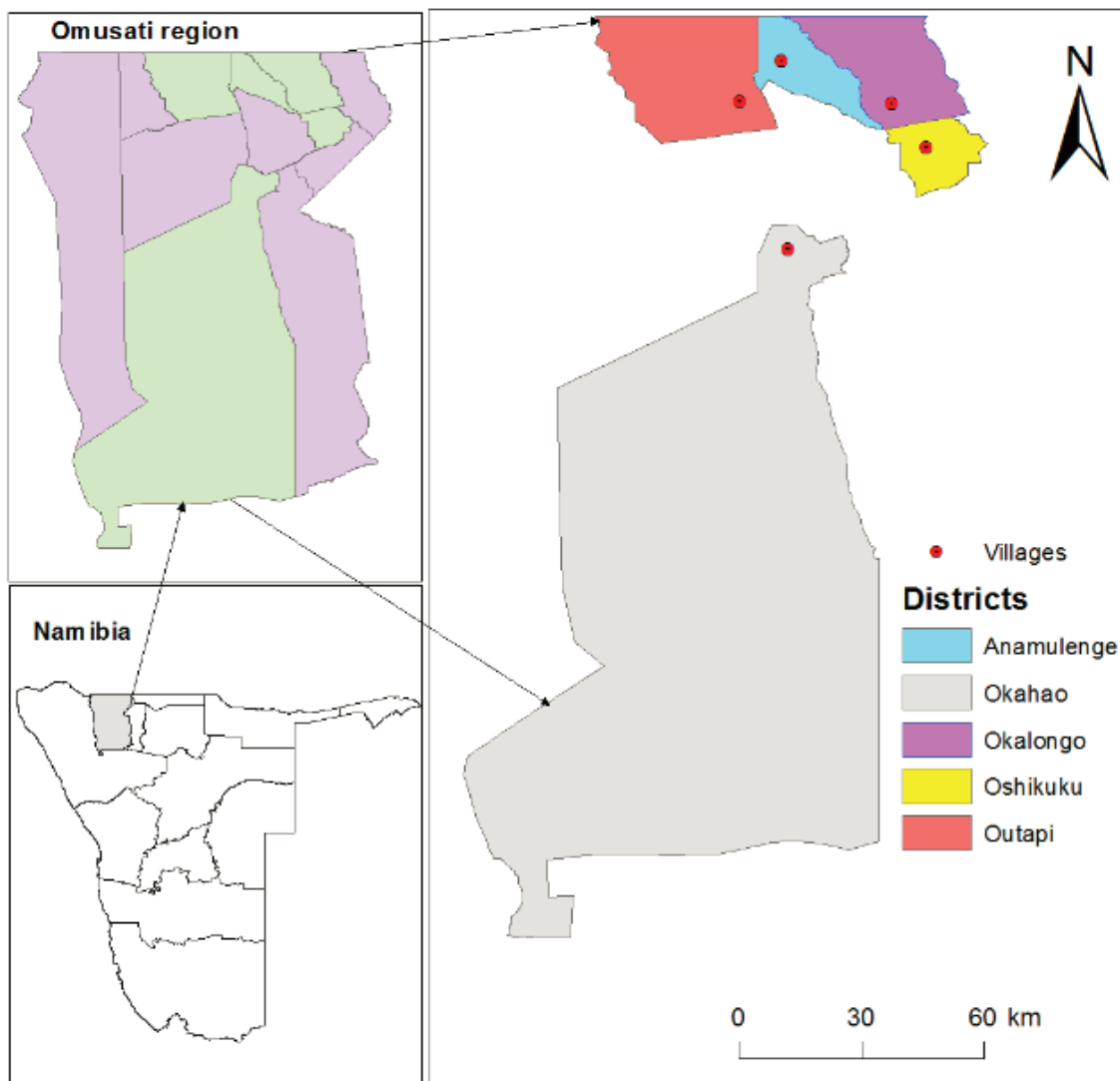


Figure 3-1: Study area

3.10. Data Processing

The data collected were entered into the excel spreadsheet and analysis has been done using the same spreadsheet. This research has also utilized the application of software to visualize and present the work in a better way.

3.10.1. Software used

- Enterprise Architect: To create conceptual diagrams (use case and activity diagram) for the customary land registration and titling process.
- ArcGis 10.1: To produce maps for study area visualization.

3.11. Constraints and limitations

The primary constraints encountered was time and finances. The time allocated was too short. Fieldwork allowances were not enough to cater for the duration of the fieldwork phase, considering the distances between villages and the type of roads within the study area. Another challenge was the change in the study area. This affected the data collected in such a way that objective three could not be well answered. Based on experience, the district which involves cases of conflicts could not be accessed. This was caused by the withdrawal of titles by the government due to some mistakes that have to be rectified.

Although the targeted number of samples has been completed, some interviews had to be rescheduled several times. In addition, there are little literatures available on customary tenure in Namibia, therefore making the research to rely more on literatures from other African countries with similar customary aspects. Upon personal observations and experiences, some respondents, despite having the required information, were still anxious and suspicious that the information they provide might be used against them in the future. Taking this factor into consideration, recording and taking of photos were strictly prohibited, due to the current political tension in the country prior to upcoming elections.

4. FIELDWORK RESULTS AND ANALYSIS

4.1. Introduction

One of the key issues in the customary land administration and management system is the registration and certification of both new and existing landholdings in order to secure land use rights. To this end, the customary land registration project has been ongoing since the 2003 with the objective of registering all land holders in all customary areas in the country, in order to increase local people's security of land use rights.

One of the objectives of this research was to find out land use right holders' perception about the benefits of customary titles, in terms of determining evidence of ownership. Therefore, it is important to conduct an investigation and examine the benefits brought about by the customary land titles, the confidence of land use right holders towards the titles and measures to be adopted (if any) to strengthen the significance of the titles.

The results of the research for both traditional local community people (customary land right holders) and traditional authorities are discussed below. For each table, in the frequency column, N refers to the total number of respondents.

4.2. Land right holder's opinions

4.2.1. Land right holders' opinion on benefits of customary land titles

One of the major benefits of land titling is the enhancement of the significance of customary land titles for land rights holders to derive benefits from them. Table 4-1 indicates that 23 out of 40 respondents do not know whether customary titles are beneficial, 15 respondents believe that the titles are beneficial, while the remaining 2 respondents are of the opinion that titles are not beneficial at all. Concerning the clarity of the registration process and procedures, 29 respondents indicated that the registration process and procedures are not clear, while the remaining 11 confirmed that the process and procedures are clear.

One aspect assessed was the appreciation of the customary land registration process and procedures specifically, and the titles in general. On this issue, 5 respondents gave their views that they feel good about the registration process and procedures, whereas 35 respondents indicated that they have no idea.

While asking the reason why the titles are not beneficial, most respondents indicated that since they got the titles, they did not use it for anything that impacted positively on their livelihood. Based on the results obtained, it can be explained that the information concerning titling process and procedures is not clear and well explained to the local communities. This implies that customary titles does not add any benefit to the livelihood of the right holders and if it does, is to a very low extent.

Table 4-1: Land right holders responses on benefits of land titles

Measuring tools	Responses	Frequency (N = 40)
Whether customary title is beneficial	Yes	15
	No	2
	I do not know	23
The clarity of customary titling process and procedures	Yes	11
	No	29
How they appreciate the customary registration process and procedures	Excellent	0
	Very good	0
	Good	5
	Fair	0
	Poor	0
	No idea	35

It was found that barrier in the English language constituted an impediment to effective communication between customary title holders and institutions administering these land rights. Documents and official procedures in the administration of customary land rights within the study area are written in English such that it becomes difficult for the local tribes with low level of proficiency in the English language to understand their contents, let alone derive meaningful interpretation from these documents.

4.2.2. Land right holders' opinion on tenure security

From the tenure security perspective in Table 4-2 below, 23 out of 40 respondents in the sample of land title holders do not know if they feel more secured after receiving titles. Whereas 14 respondents expressed confidence of secure tenure arising from their land titles, 3 of them have a contrary opinion. All land right holders received titles on the same hectares of land they occupied before registration. On the issue of tenure security conferred by the title, 26 respondents confirmed that they have no idea, while the remaining 14 respondents are of the opinion that they feel secure.

Table 4-2: Land right holders responses on customary tenure security

Measuring tools	Responses	Frequency (N = 40)
Whether they feel more secured after receiving a title	Yes	14
	No	3
	I do not know	23
Level of tenure security conferred by the title	Very Secured	0
	Secured	14
	Unsecured	0
	No idea	26
Whether they received the title on the same hectare of land they occupied prior to registration	Yes	40
	No	0
	I do not know	0

Although all landowners interviewed have received title document conferring land rights over the same size of parcel they occupied prior to customary land registration, majority of them are not certain and could not say whether their land rights are secure. It can be observed from the survey that local

communities are not aware of the main purpose of titles since they did not experience any change after receiving titles, compared to the situation before titling.

4.2.3. Land right holders' opinion on customary land administration and management

Although it is clearly stated in the Communal Land Reform Act No. 5 of 2002, that the government is the custodian of all customary land, of which traditional authorities (TA) are administrators, the survey result shows that 32 respondents are of the opinion that traditional authorities are the custodian of the customary land, with the remaining 8 indicating that the government is the custodian of customary land. Furthermore, 11 respondents confirmed that TA informed them about their tenure rights, 5 are of the contrary opinion, while 24 could not say whether they were informed or not. As it can also be observed from these results, 11 respondents confirmed that TA inform local communities about their tenure rights once in three months, while 29 respondents indicated that they do not know. The results are shown in Table 4-3.

Based on these survey results, it can be explained that the lines of responsibilities within the management of customary land, (between government and traditional authorities) about who does what, when and to what extent are not clear. This indicates that the level of knowledge about customary land management among land rights holders is very low.

Table 4-3: Land right holders responses on customary tenure administration and management

Measuring tools	Responses	Frequency (N = 40)
Custodianship of customary land	Traditional Authorities	32
	Government	8
	King	0
Whether TA inform people about their tenure rights	Yes	11
	No	5
	I do not know	24
How often TA involve local community and inform them about tenure rights	Once a month	0
	Once in 3 months	11
	Once in 6 months	0
	Once a year	0
	I do not know	29

4.2.4. Land right holders' opinion on customary land conflicts

One of the most important aspects to be considered when addressing tenure security is conflicts, its sources and the mitigation mechanisms. As indicated in Table 4-4 below, all respondents confirmed that the source of conflicts between TA and local community people is tribalism. In considering the issue of forced evictions, 39 respondents indicated that they are not aware of any forced evictions of local people by TA, while the remaining single respondent confirmed being aware.

On the other hand, 38 of the respondents are of the opinion that in cases of conflicts with TA, they report to others (not indicated in the respondents' choices), in this case referring to TA, while the remaining 2 indicated that they report to the ministry/government.

Table 4-4: Land right holders responses on customary land conflicts

Measuring tools	Responses	Frequency (N = 40)
Sources of conflicts between TA and local people	Forced evictions	0
	Land grabbing	0
	Double allocations	0
	Tribalism	40
Awareness of forced evictions of local people by TA.	Yes	1
	No	39
	I do not know	0
Who they report to in case of conflicts with TA	Ministry	2
	CLB	0
	Village Committee	0
	Others	38
Whether they get an opportunity to give their opinion in TA courts	Yes	7
	No	1
	I do not know	32
Perception about the influence of titles in conflict situations	Greatly reduces	7
	Reduces to some extent	7
	No any impact	2
	No opinion	24

Additional aspects considered in the research were to capture local people's opinion about their chances of getting opportunities to give their opinions in TA courts and the influence of the titles in conflict situations. The survey results shows that 32 of the respondents indicated that they do not know, 7 are of the opinion that they do get an opportunity, while the remaining 1 respondent confirmed that they do not get an opportunity to give their opinions in TA courts.

In regard to the question of their perception of influence of titles during conflict situations, 24 respondents confirmed that they have no opinion, 7 feels that it reduces to some extent, 7 are optimistic that it reduces greatly, with the remaining 2 respondents reporting that there is no any impact, implying simply that the certificate is not influential at all in any customary conflict situations.

From the results, it can be pointed out that tribalism is the main source of conflicts because of movement of people from different tribes searching for places to settle within the country. Furthermore, it can also be mentioned that the majority of those respondents who have no opinion about the influential of the title in conflict situations is due to the fact that they were not involved in any conflict cases whereby the title can be tendered as an evidence to settle these conflicts and this gives an insight on how sensitive the issue of conflict is and the way it is being solved.

One of the important finding was the unavailability of the total number of customary land rights holders in all selected villages. This is because there are still local people who did not register their lands, therefore made it difficult for the regional office to provide the exact total number of inhabitants for every village in the selected traditional authorities.

4.3. Traditional authorities opinions

In order to fulfill the objectives of the research, traditional authorities whose customary administration and management task is entrusted in them by the government were also interviewed in order to capture their perceptions and understanding on the customary tenure. Interviews with the traditional authorities brought out the following findings.

The traditional authorities in the study area for this research are structured as indicated in Figure 4-1 below.

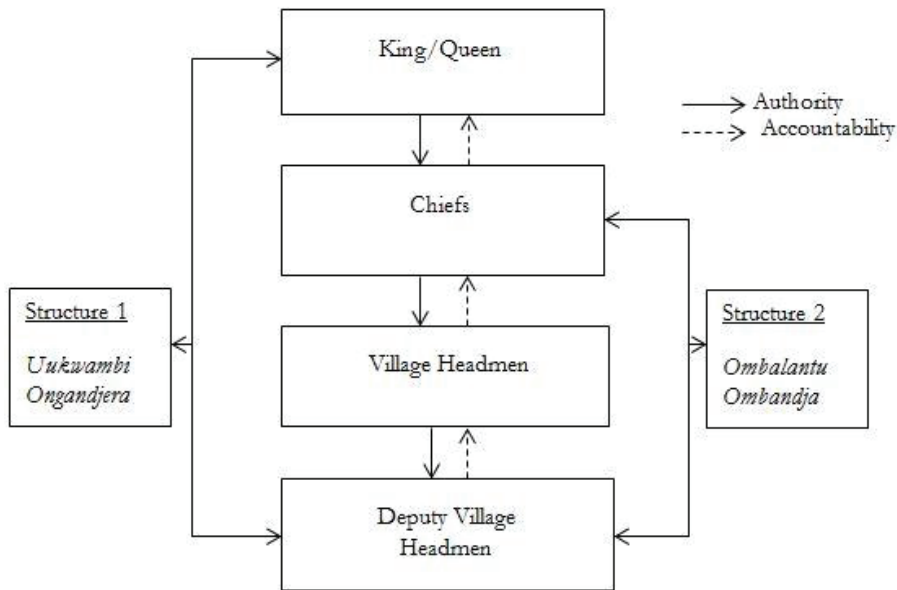


Figure 4-1: Structures and hierarchy of traditional leadership

Structure one applies in the traditional authorities (TAs) where the highest authority is either a king or queen (Uukwambi and Ongandjera traditional authorities), whilst structure two is applicable in TAs where the highest authority is a chief (Ombalantu and Ombandja traditional authorities). These same structures constitute the members of the traditional authority courts.

4.3.1. Traditional authorities' opinion on customary land administration and management

TA leaders interviewed were all involved in the customary land registration and titling process and confirmed their participation and involvement. However, it can also be observed from the survey results that all respondents did not get any training on customary tenure administration and management from the government.

Table 4-5 below, shows that 8 of the respondents are of the opinion that traditional authorities are the custodian of customary land, while the remaining 2 respondents indicated that the custodianship lies with the government.

Based on the survey results, it can be explained that lack of capacity building, support from the government and ignorance of their obligation to supervision, is the major problem. Therefore government is not fulfilling its task of training traditional authorities on how to administer customary areas. In addition, it has been observed that the mechanisms to ensure compliance with formalized limits of delegation and standards of administration are weak, especially that they are not strongly exercised.

Table 4-5: TA's responses on customary land administration and management

Measuring tools	Responses	Frequency (N = 10)
Custodianship of customary land	Traditional Authorities	8
	Government	2
	King	0
Whether they were involved in customary land registration process	Yes	10
	No	0
	I do not know	0
Whether they received training from the government on customary tenure administration	Yes	0
	No	10
	I do not know	0

4.3.2. Traditional authorities' opinion customary laws and principles

One of the most important aspects to be taken into consideration is the documentation of laws governing customary land administration with respect to the Traditional Authority Act. Table 4-6 below indicates that, all traditional leaders interviewed confirmed that their customary laws are not documented. In addition, 9 respondents confidently confirmed that customary rules are not consistent, while the remaining respondent indicated that concepts are not defined. It can be noted based on the results that TA have no databases to keep their records and documents, and this results in inconsistency in their understanding of norms and principles and the way they implement them.

Table 4-6: TA's responses on customary laws and principles

Measuring tools	Responses	Frequency (N = 10)
Whether their customary laws are recorded or documented	Yes	0
	No	10
	I do not know	0
Their understanding of the principles and norms of customary tenure	Their concepts are not defined	1
	Their logical order exists more by chance not on principles of structure	0
	Rules are not logically complete	0
	Rules are not mutually consistent	9

4.3.3. Traditional authorities' opinion customary land conflicts

As indicated in Table 4-7 below, a total of 9 respondents confirmed that the source of conflicts between TA and local community people is tribalism, while the remaining 1 respondent indicated that forced evictions is also one of the source of conflicts. In considering the issue of forced evictions, 9 respondents said that they are not aware of any forced evictions of local people by TA, while the remaining 1 respondent indicated awareness.

On the other hand, all respondents are of the opinion that in cases of conflicts with local people, they report to others (not indicated in the respondents' choices), in this case referring to themselves. Additional aspects considered in the research were to capture TA's opinion about their chances of giving opportunities to their people in order to give their opinions in TA courts and as to who makes the final

decision in conflict situations. All respondents indicated that they do give opportunities to their people to explain and give their opinions in TA courts.

With regard to the question of who makes the final decision, in terms of conflict situations, 6 respondents confirmed that chiefs makes the final decision, with the remaining 4 respondents reporting that kings do make final decisions on all customary conflict situations.

Table 4-7: TA's responses on customary land conflicts

Measuring tools	Responses	Frequency (N = 10)
Sources of conflicts between TA and local people	Forced evictions	1
	Land grabbing	0
	Double allocations	0
	Tribalism	9
Awareness of forced evictions of local people by TA.	Yes	1
	No	9
	I do not know	0
Who they report to in case of conflicts with TA	Ministry	0
	CLB	0
	Village Committee	0
	Others	10
Whether local people get opportunity to give their opinion in TA courts	Yes	10
	No	0
	I do not know	0
As to who makes the final decision in terms of conflict	Village headman	0
	Chiefs	6
	King	4

From the survey results, it can be observed that although the traditional leaders are aware of the extent of their decision making power, they tend to ignore and opt to continue their usual activities in the traditional way.

4.4. Land use rights holders satisfaction towards customary land titles

One of the objectives of the research and data collection was to find out how customary land titles played a role in improving the beneficiary's perceived tenure security. As the respondents were already provided with titles by the government, through customary land registration programme, the concern was to find out their satisfaction with these titles.

From this point of view, three options (questions) were assessed through open ended interview questions with the aim of giving respondents a chance to give free responses, solicit additional information and give meaningful answers based on their knowledge and feelings.

The three queries were

- Opinion about customary land certification initiative
- Suggestion for the improvement of the titles
- What needs to change in the administration of customary tenure (from government and TA)

4.4.1. Local people's opinion about customary land titling initiative

From the respondent's opinions, key words were noted and used as common answers in order to draw up a measuring tool. On this issue, 25 respondents viewed it as a good initiative from the government, 12 of them have no idea and the remaining 3 are of the opinion that the procedures are not clear, as indicated in Figure 4-2 below. One land right holder reflected this: *"It is a good idea but procedures are not clear enough to make people understand. We don't understand the purpose clearly, but since everyone else is doing it, we have no choice as it is an initiative from the government"*. The majority of the respondents view the titling initiative as a good idea because it provides assurance that the land is registered in their names, hence, they accept it that way.

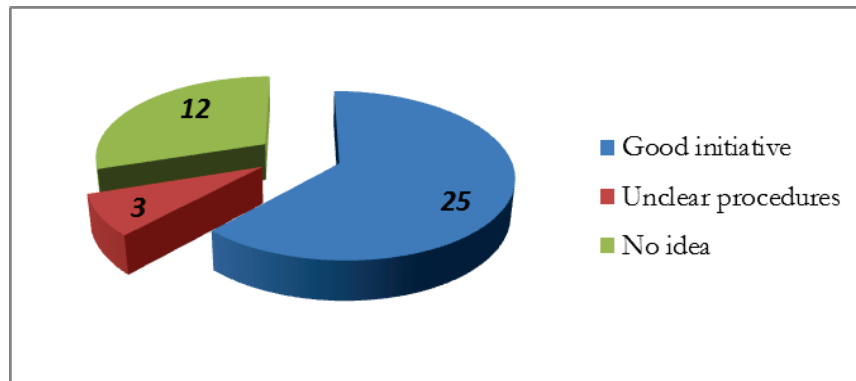


Figure 4-2: Opinions about customary land titling initiative

4.4.2. Suggestion for the improvement of customary land titles

As indicated in Figure 4-3 below, 7 respondents indicated that the family members' names should appear in the titles, 4 respondents claimed that they need clarity from the government still, 2 asked for the recognition of titles by financial institutions, 2 asked for the reduction of the amount payable for the titles during application period, 1 respondent encourages for the indication of the time they first occupied the land in the title, 1 respondent expressed satisfaction, not suggesting for any improvement and 23 indicated that they have no idea. On asking the reason why they have no idea, one respondent said, *"No idea, because the titling process was not explained from the beginning, so, I don't know what is good and wrong and where improvement is needed"*.

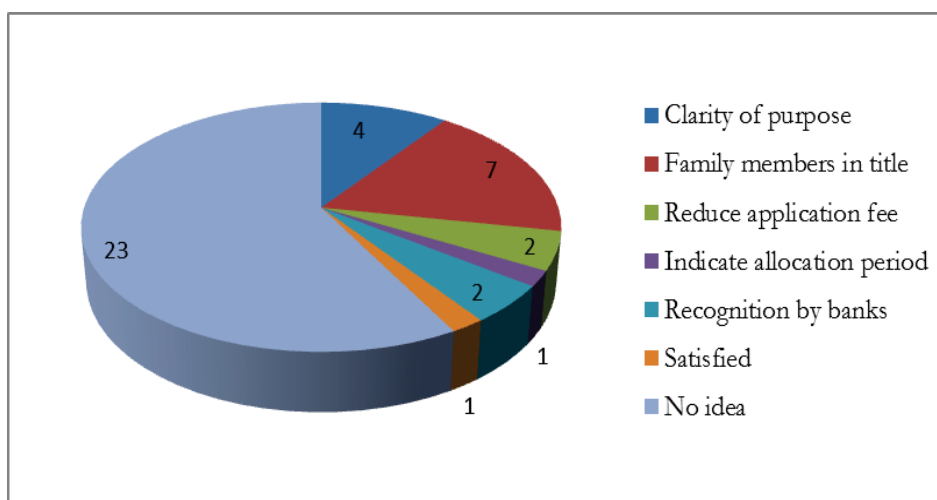


Figure 4-3: Suggestion for the improvement of customary titles

4.4.3. Suggestion for change in the customary land administration (from government and traditional authority)

From the survey results obtained, it can be noted that some responses are similar with the ones in the previous search. As it can be seen in Figure 4-4 below, 13 respondents indicated that they are satisfied with the current administration, 1 respondent is of the opinion that government should clarify the purpose of the titles, 2 indicated that titles should be recognized by financial institutions, 3 have asked for titling fees payable to be reduced and the remaining 21 did not give any response.

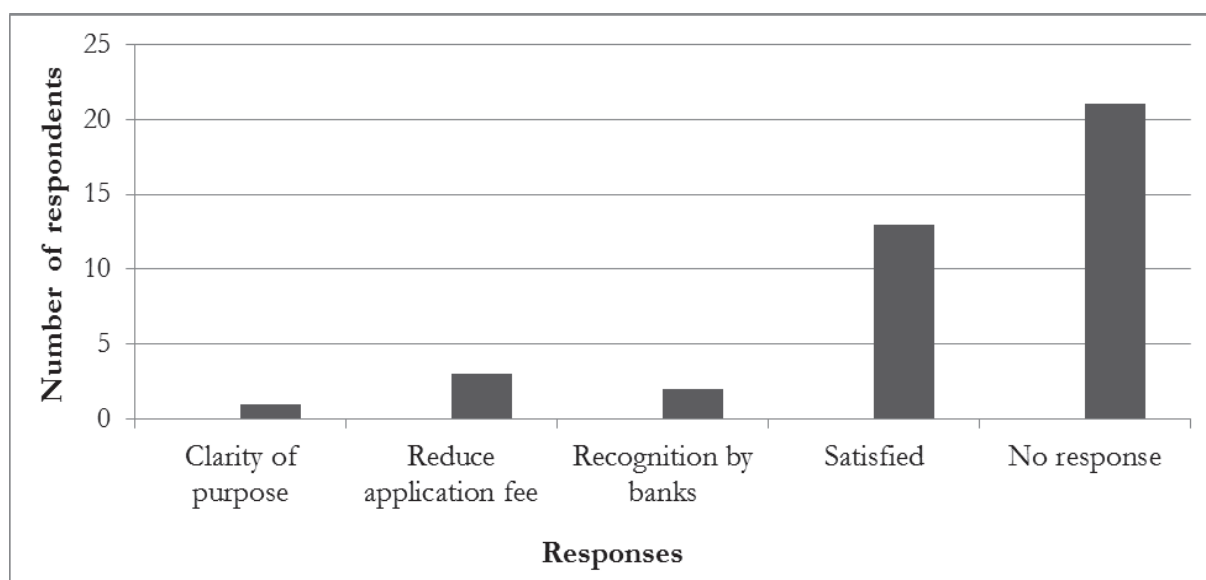


Figure 4-4: Suggestion for change in the administration of customary tenure (from GRN and TA)

The same exercise was repeated once more, but in this case with TA to capture their opinions about the same objective. In this case, assessment was done on four searches (questions), three different, with the last search similar to the one done with local people.

The queries were

- Whether they call meeting to inform their people about customary tenure rights
- The final decision maker in terms of land conflict situations
- Members of their traditional courts
- Suggestion for change in the administration of customary tenure (from government side)

4.4.4. Traditional authorities meetings about customary tenure rights

All respondents confirmed that since the registration process begun; only two meetings were held. They all indicated that the first meeting was to inform customary land rights holders about the registration and what is expected from them and the other meeting was to inform them to come and collect their titles.

4.4.5. Final decision maker in conflict situations

From the survey results, 8 respondents from TAs indicated that the final decision making responsibility lies with the TA, while the remaining 2 traditional leaders confirmed that they refer conflict cases to the government for decision.

One traditional leader stated: *“We as traditional leaders have the power to make our own decisions without reporting to anyone. We solve our issues with our local people in a traditional way”*.

From the survey results, it appears that TA believes that they are the final decision makers in conflict situations because of the lack of effective control upon TA administration of land and unwillingness of government to challenge behaviors of traditional leaders.

4.4.6. Suggestion for change in the administration of customary land (from government)

As indicated in Figure 4-5 below, 5 traditional leaders indicated that they feel that their powers have been seized, 3 are of the opinion that government should only issue titles, leaving the administration fully in the hands of the traditional authority, One traditional leader said: *“In the past, there were no titles, but we lived in a harmonious way with our people. I think the government wants to take over our powers and start controlling/ administering our traditional land through the provision of these titles. I suggest they should just provide titles and the administration should be left in the hands of the traditional authorities, like before”*. One respondent suggested that the government should consider giving salaries or allowances to village headmen and their deputies, while the remaining respondent confirmed their satisfaction and opted for no change.

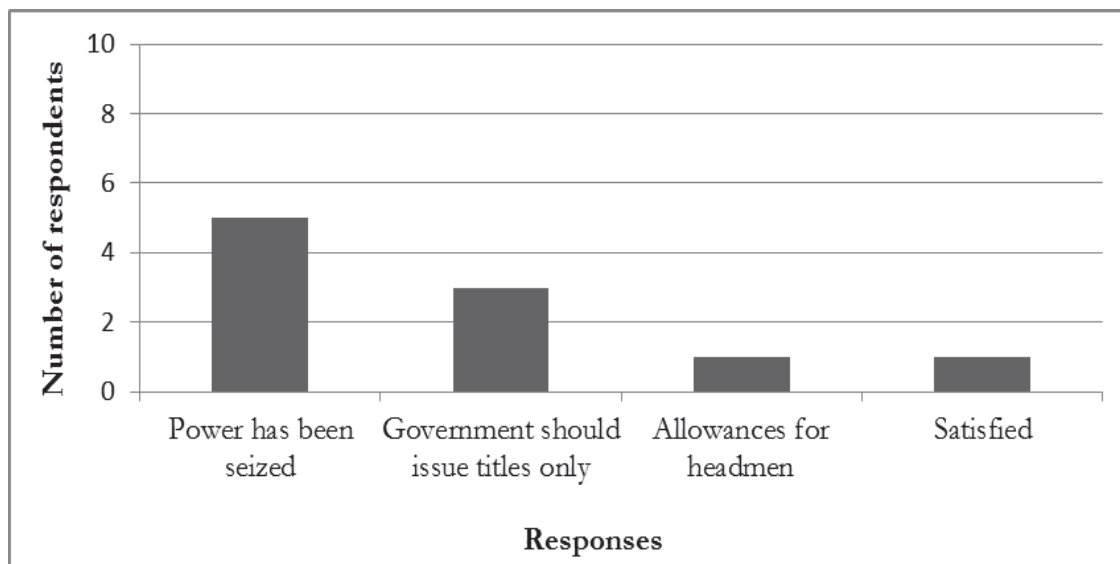


Figure 4-5: Suggestion for change in the customary tenure administration (from government)

4.5. Summary

The above has presented our research findings. The study has revealed that majority of the customary land title holders could not say whether their titles are beneficial, they have no idea of whether they appreciate the customary land registration and titling programme and indicated that the titling process and procedures are not clear. In this view, customary land residents and traditional authorities are of the opinion that traditional authorities are the custodian of customary land which is not the case because ownership vests in the state. The land in respect of which the title was issued does not belong to the holder of the title.

In general, it can be concluded from the findings of this survey that there is a huge variations in the understanding of customary practice between customary land right holders, their traditional authorities and the government. In addition, language barrier and effective communication among actors involved is a big challenge that needs urgent attention in the realm of customary norms in Namibia.

5. DISCUSSIONS

This chapter discusses the analysed and interpreted results based on the research objective and research questions, as well as contemporary realities presented in literature review. The research intended to assess whether customary land registration and titling process brought security of tenure to both existing and new land rights holders. Therefore the integral part of the discussion is comprised of the following main components addressing research questions therein, namely;

1. The perception of customary land right holders on the benefits derived from customary titles on security of tenure.
2. The mechanism of customary land titling by traditional authorities.
3. Evaluate the extent to which land conflicts are related to customary titling and management.

5.1. Perceived benefits of customary titles

The formalization of customary land rights is grounded on a set of assumptions that titles constitute an essential component for poverty eradication in developing countries. In view of that, it brings about benefits in such a way that titled properties can be transformed into collateral, collateral into credit and credit into income (Williamson *et al.*, 2010). On the contrary, Deininger *et al.* (2011), added that titles are economical worthwhile and beneficial to the land right holders.

Based on the survey results, majority of the respondents do not know whether the titles are beneficial. While asking the reason why the titles are not beneficial, most respondents indicated that since they got the titles, they did not use them for anything that impacted positively on their livelihood.

In addition, from the results obtained, it was found that the information concerning titling process and procedures is not clear and well explained to the local communities. Contrary to this, it is important to note that language performs a crucial role in fostering communication among the local population especially when it is commonly spoken and understood. However, it has been realized that the majority of customary land communities are not domiciled in English, and the dominance of English language in all official documents makes it difficult for land right holders to understand since English is not their local language. This on one hand implies that customary titles does not add any benefit to the livelihood of the right holders and if it does, is to a very low extent.

Feder (1998), pointed out that customary systems usually evolve to handle transactions within the communities and they can function effectively. However, for this to be applicable it depends on the policies, tradition and culture of that specific country. The same literature highlighted the effect of land titles on access to formal credit as one of the major benefit since titles are often a mandatory precondition for commercial or official bank loans.

In this view, it was found that customary land titles are not recognized by financial institutions in Namibia therefore making it difficult for land right holders to secure loans to invest in their land. In a nutshell, it can be highlighted that due to the fact customary land is managed by traditional authorities, land use rights

are conferred to individuals through a lifelong title and legal ownership rests with the state, the benefits of customary land titles in Namibia is not substantial.

In view of that, with the absence of properly stated validity of rights records on customary property and whether or not the government guarantees them in any situation, some land right holders who seem not to worry about the impact of customary formalisation (positive or negative) started developing and investing in their land, building expensive houses as indicated in the photo below.



Photo: Expensive house in customary area

In view of this, it has been observed that titles seen during research fieldwork only indicates the plot location (on the aerial photograph), size, boundaries, unique parcel identifier (UPI) and the name of the owner, without specifying the word “lease” and a time period for which the title will be valid (**Appendix 2**).

It is found that one of the major challenges attributed to the successfulness of the customary land registration and titling process is the nature of the rights and administrative practices associated with customary land tenure.

Based on that, it has been noted that due to the fact that both customary laws and state laws prohibits customary land to be tradable, cannot be privatized, low land values, infertile land, lack of formal land registry, unclear procedures laws and regulations, stringent regulatory restriction of customary land transactions and the fact that production in customary areas are done at the subsistence level (production for maintaining oneself), these are major factors that leads to financial institutions not to accept customary land to be used as a collateral, therefore making it impossible for customary land right holders to benefit from the titles conferred on them.

Finally, our data describing the perceived benefits of customary land titles supports the idea that responsible institutions in customary land administration and management does not always play a major role in terms of defending and reshaping customary laws in order for local communities to be able to capitalize on their customary rights to land.

5.2. Confidence of customary land right holders towards the titles

Firmin-Sellers *et al.* (1999) examined the changes proposed by the government on customary land registration and titling and emphasized that for customary titles holders to have confidence in the titles granted to them, customary titles should be granted and facilitated in a manner that is acceptable and appreciated by the communities.

Although, the level of clarity in land information consisting of rules, customs and usage surrounding customary land registration and titling is not appreciated by the local communities, one significant finding made is the variance in the level of clarity of registration procedures since issues regarding registration and titling is uniform across all areas of customary land.

Apart from the perception that customary titling system increases tenure security, the communities perceive titles as threats to their rights in land. Although they expressed their appreciation in the process and have registered their land, they claim that at the same time, the system encourages them to lose their full ownership of their land to the government.

Based on the survey results of this study, a conclusion cannot be made as to whether customary land right holders are confident towards the titles. They argued that although the initiative is from the government, they don't need initiatives that are obligatory, they prefer a titling system where local communities are motivated and participate in the process on their own. In this view, they claim the titles to be made obligatory because the intentions are not appreciated and well received by the community. Based on that, it is found in this research that the behaviour of local communities is highly influenced by the availability of clear procedures, regulations and rules on how the titling process/system operates.

5.3. Measures (if any) to to be adopted to strengthen the significance of customary titles

Also influential has been De Soto (2003) which emphasized that titling can work to the advantage of the poor by formalizing their rights to land and the rights should be recognized at all levels. Ubink (2011), added that a large threat to long-established customary rights derives from the fact that most states claim ultimate ownership of land, even though in most African countries rural land has continued to be managed under various forms of customary tenure. In this view, titles are considered to be significant if customary communities have confidence and derive benefits from the titles.

The results of the survey indicate that majority of the customary land right holders derive no benefits from the titles conferred on them by the government. They further pointed out that lack of political support, recognition of titles by financial institutions and the fact that TA are not held accountable for their administration are some problems that compromise the significance of titles.

It was found that there is no appropriate process by which the rights of customary land communities can be adjusted to changed circumstances, therefore compromising the significance of the titles. In addition, there is overlap in the mandates of the customary authorities' policies in place. The government is the custodian of laws and policies that intend to provide greater security of rights for the customary communities, at the same time, traditional authorities have been the custodians of oral and unwritten customary land laws and regulations that govern the same customary communities.

At this point, it is important to note that customary titles are only registered at a regional level; there are no records of customary land in the central office. This means that the titles are only recognized at a regional level. Furthermore, it can be mentioned that unless the laws and policies governing customary

land from both authorities are harmonized, it is obvious that the titles are unlikely to be significant, in order to make a difference on the livelihood of the land right holders. Therefore a conclusion can be made that titles are not an obstacle and the major problems are not the form of land tenure rights but broader social and political-economic and legal frameworks at local, regional, and national levels.

Strengthening the rights of customary land right holders is an essential aspect of customary land registration and titling system. To respond to the demand for secure tenure, a flexible land tenure system has been devised. Considering the current land registration systems in the country, they require high and complex expertise in magnitude that is not adequately affordable by the majority of the citizens. Customary land right holders are uncertain about how their long standing traditional land rights will be affected by the titling system in the long run.

One of the solutions to the uncertainty is the flexible land tenure system. Once the system is implemented, it will be able to integrate customary land records in all regional offices with the central office, enabling the customary land records to be easily shared and made accessible throughout the country. This will also create a uniform national system that can be maintained without local variations and therefore facilitate data integration and consistency.

The system will unify the easiness to convert and upgrade tenure types once the data is available in a digital form. Therefore the implementation of the FLTS will enhance the parallel interchangeable property registration system nationwide. This will provide the basis on which customary land titles will be beneficial and made a significant impact on the livelihood of the customary land right holders.

5.4. Traditional authorities' administration of land including titling

Although customary land registration and titling rules and regulations are set by the government, with the TA being the first officials in the titling process, with the majority of TA claiming that the custodianship lies with them, it became evident that TA has begun to increasingly maintain their authority and power to speak on behalf of their local communities. On this issue, (Arko-Adjei, 2011; Ubink, 2011) stated that although TA are entrusted with the responsibility of administering and managing customary land, in accordance with policies and customary laws, local communities should also have significant power over the management of their land and be able to speak on their behalf.

Based on the survey results, it can be revealed that the role of customary land right holders is ignored and their suggestions and decisions concerning their land issue is not considered to be of the crucial important, since the final decision responsibility lies with TA.

Although the Communal Land Reform Act, No. 5 of 2002 vests all customary lands which constitute approximately 43% of the land in Namibia in the government, in trust for their local people, and confirms that such lands be managed according to the fiduciary duty of the traditional authorities towards their local people on the basis of customary law, the survey results indicates that there has been no or minimal practical effort from the government to strengthen and enhance the TA in charge of customary land administration, leaving TA with the mandate to administer customary land as they so wish.

Part of their administration duty is to ensure that no land in customary areas can be alienated or allocated without prior approvals of the village headman in whose area the land is situated. At this point, it can also

be noted that money raised from land allocation in customary areas goes to the central government, therefore not directly benefiting the TA.

5.5. The level of compliance of customary authorities towards granting of titles

One of the objectives of developing more efficient and effective customary land administration and management is the compliance of customary institutions towards delivering land titles to the local communities. Tuladhar *et al.* (2003), emphasized that to maintain a good land administration and management; systems should be designed in such a way that their operations should be highly dependent on the interrelation between administrators and local communities. On the same vein, Ubink (2011) confirmed that customary tenure administrators embody important principles concerned with equity, social security and the maintenance of ecological balance, and that they are built on core values of negotiation and consensus-building, claiming that customary land administrators should offer the best security of tenure to individuals, families and local communities and that there should be reasonable checks at the local level on almost everybody through customary laws.

Ubink (2011), stated that customary tenure administration is under high pressure and customary norms and rules are contested in numerous struggles and negotiations in which TA often play a role. Notably, from the survey results, it can be noted that the absence of rules that clearly outlines the roles and tasks of chiefs, headmen and deputy headmen based on their positions is one major challenge that accounts to such a pressure. On the contrary, it has become evident that the government control over TA is inhibited by the close ties between them and traditional elites.

In view of that, the survey results describing the aspect of customary land administration and management by TA support the absence of government policies to regulate customary land management and administration overtime and this resulted in the weak and poor relationship between TA and government. The amount of administrative power of TA does not necessarily correspond with one's expectation after a thoroughly study of the institution's power and obligations in the laws and policies, hence affecting the compliance of both institutions towards the process of granting customary titles.

At this point, it is also important to note that when enhancing security of tenure through customary titling formalisation, it is just not a matter of name, birth date, parcel size and location registration, but it also involves a question of law. Taking into account that customary land in Namibia is not marketable and not subject to economic exploitation, it has been realised that adaptations by the local communities seems not to stem to any significant impact (positive or negative) that customary land titling system might have on their tenure security in the future.

Based on the survey results, it has been noticed that the level of understanding and mind-set of all actors involved in customary land registration and titling programme is not aligned towards addressing challenges of customary land formalization in the 21st century. Traditional authorities and local communities tend to follow the traditional way of customary land management which is predominantly 19th century-oriented in all aspects, whilst the government on the other hand channel their resources towards formalizing customary tenure from its traditional state to a state which are operated based on 20th century mind-set drawn from legislations introduced soon after independence of Namibia in 1990.

The results of the survey with respect to interviews contained some intuitive elements. On the basis of the survey results, it cannot be concluded whether customary land authorities are fully complying with the

process of granting titles. This was confirmed by the interview with customary land right holders who could not say whether their tenure is secured.

5.6. The position and understanding of traditional leaders of customary laws and principles

Ubink (2008), emphasized that customary laws and principles should be documented, well understood by the community they regulate and traditional authorities (TA) should be held accountable for the way they handle and implement customary laws. The same study added that although a trend can be discerned in customary laws towards more power to the (TA) as administrators, to ensure effective customary administration, this cannot be interpreted to mean that TA has the power to deal with customary laws and principles as they so wishes, without taking into consideration the local communities' interests.

On the contrary, the results of the survey indicates that majority of the TA interviewed confirmed that their customary laws are not documented and not mutually consistent. (Inconsistency in this case translates that in case two local members are found guilty of the same offence at different times, fines given as punishment are not the same and this also depends to which leader presides and made a decision over the matter). They further pointed it out that the customary laws evolved from tradition and drawn up by TA. In addition, they reiterated that based on tradition and customs, customary rules do not make them accountable to the government in all aspects regarding their laws and principles.

It was found that the fact that traditional authorities are regarded and well respected in the communities and by the government as administrators of customary land gave them a powerful position to define customary law in a way that suits their power over customary land. In this view, lack of government control over TA encourages them to manipulate and divulge the translation of customary land laws contrary to the purpose of protecting the interests of their local communities.

Taking all that into consideration, a conclusion can therefore be made that there is no specific provision in both acts governing customary land on how it should be managed by TA. Therefore with this loophole in the system, it on one hand serves as an encouragement for TA to develop a perception of themselves that they are the owners of customary land, not administrators acting on behalf of the state. This is still worrisome as it is not clear whether customary land titling is designed to deliver greater security of tenure to local communities or greater control of customary land by the TA in such a way that it empowers them to exercise their power over land rights holders.

5.7. Types of land conflicts that exist in customary land

According to Fonmanu *et al.* (2003) the main types of customary land conflicts are; land ownership, land grabbing, land boundaries, double allocation, forced evictions and the administration of customary land itself. Taking the Namibian case into consideration, tribalism is also one of the conflict aspects that need to be considered. This refers to the behaviour and attitudes that stem from strong loyalty to one's own tribe or social group.

The survey results revealed that the major conflict in customary land is tribalism, despite other possible causes of conflicts outlined in the literatures. Tribalism in customary areas of Namibia, especially in Omusati region can be related to the increase in the population and shortage of unoccupied customary land in some areas, forcing the landless to move and look for land elsewhere out of their ethnic areas, but within the boundaries of customary land.

Fonmanu *et al.* (2003), emphasized that laws and regulation associated with how customary land administration should take place must be clear and understandable in order to receive the full understanding and appreciation of the local communities. Based on the survey results, it has been realised that tribalism and negative mind-set of local people pose as impediments to social cohesion and land allocation in areas outside their places of origin, notwithstanding that laws and regulations encourages land allocation irrespective of places of origin.

Tribalism causes conflict among residents in such a way that specific local communities believe that different ethnic groups should live in their ethnic area of origin and this contravenes Article 16 of the constitution that states that every Namibian citizen has a right to settle anywhere within the boundaries of Namibia, and people should not be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Article 16 of the Namibia Constitution states as follows:

16(1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees; provided that Parliament may by legislation prohibit or regulate as it seems expedient the right to acquire property by persons who are not Namibian citizens.

Responses received however proved that though local communities expressed their dissatisfaction with the allocation of land to outsiders, this practice is still existing and on-going, leaving the local people with no decision to make as they fear for punishment by their TA.

In addition, it is important to note that one aspect that constitute to conflict is language barrier. Language is an important aspect in communication and it relies upon a common shared local language/s, and in this case, it is a pre-requisite that does not exist in customary areas.

While on this point, it can also be noted that in Namibia the customary circumstances includes the fact that there are lots of ethnic groups which practice different cultural customs such as shifting cultivation, therefore tribalism being the main conflict experienced, results from such because laws and policies in place aimed at governing customary land have not taken into account such circumstances. In some instances, customary land allocation to other ethnic groups in the study area is not appreciated by the local communities. One major feature associated with tribalism in customary land includes poor clarity of land information and non-compliance with customary land allocation.

5.8. Traditional authorities' handling of customary land conflicts

Wehrmann (2005), emphasized that customary land conflicts should be dealt with and handled in such a manner that consensus reached should be based on social norms, regarding proper conducts and communal values. In addition, Quinn (2004) argued that traditional authorities' way of handling customary conflicts cannot be uniformly accepted by all citizens because customary laws and rules are imprecise and unwritten.

In cases of how TA deal with land conflicts, the results of the survey indicated that traditional authorities usually take decisions and solve conflicts themselves. They further pointed out that they sit as leaders, discuss and then call a meeting with the aggrieved parties and inform them of a decision made. One

traditional leader said, “*Any land related conflict is being dealt with by the local people and their traditional leaders. The final decision is made by leaders and there is no objection after the decision is made*”.

It is important to note that land held under customary tenure works on the principle of traditional rulership. On this point, it can be mentioned that although traditional authorities (TA) are entrusted with the responsibility of administering customary land, they don't actively involve and consult local people in the process of seeking solutions to conflicts.

5.9. The extent to which customary land titles can be tendered as evidence for land conflict resolution

One major aspect of this research was to find out how influential the customary land titles are in conflict situations. Deininger *et al.* (2011), indicated that one of the benefits of customary land titles is the ability of being tendered as evidence for land conflict resolution. Feder (1998), also added that customary titles can be regarded as evidence when they are documented, verified and cannot be disputed in any situation.

The results of the survey showed that majority of the respondents have got no opinion of the extent to which their titles can be tendered as evidence in terms of conflicts. They further could not mention whether by registering their land and getting titles will ensure, protect and guarantee their rights in cases of conflicts.

It was found that majority of the respondents were not involved in conflict situations whereby their customary titles could be tendered as evidence of ownership. In this view, a conclusion can be made based on the responses that, tribalism is not one conflict aspects that require a title to be tendered as evidence to prove ownership in whatever form. Therefore, this study could not provide a ground of the extent to which customary land titles can be tendered as evidence for land conflict resolutions.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. Introduction

The main objective of the study conducted on customary land right holders and TA in Namibia was to assess the adequacy between the stated objective of land titling and the perceived outputs and impacts on the livelihood of the land right holders. The conclusions are discussed sequentially as per research sub objectives.

6.1.1. Benefits of customary land titles in determining evidence of ownership

The integral part of this study has been to identify and capture customary land right holders' perception about the benefits brought about by the land titles through satisfaction towards the titles.

The advantage of customary land registration and titling is that once a person registers, they cannot move and will be confined to that piece of land for as long as they live. To this end, there is no evidence that proves the benefits associated to customary land titles in determining the evidence of ownership in Omusati region.

In the basis of lack of awareness and clarity of land registration objectives, customary land right holders are living in fear of what will be the result of registering their land. Some of them are of the opinion that should they register their land, in the end the government might ask them to pay certain fees that they might not be able to pay, and consequently lose their land, whilst on the other hand, they are doubtful about the consequences of not registering their land.

In addition, language barrier is also one of the challenges, because all acts, laws and policies governing customary land are written in English, and the majority of the local communities are not familiar with the language. On this point, an interpretation can be made that what local communities don't know, scares them.

Some of the solutions proposed includes the translations of acts, laws and policies into local languages, encouragement of political will through the review, replacement and perhaps the removal of impracticable, obsolete and redundant laws with the ones that creates benefits in customary land, increase tenure security, promotes investment incentives and institute awareness programmes that will help educate local communities in order to create a society where individual not only knows the governing laws, but also their rights, obligations and entitlements. In addition, the implementation of a "Flexible Land Tenure System" will enable the integration of customary land records and enhance the properties registration system recognition at a national level.

6.1.2. Assessing the mechanism of customary land titling by traditional authorities

Customary land registration and titling is being carried out by institutions of which traditional authorities (TA) are the major actors, therefore part of this research was to assess whether the TA mechanism of facilitating land titling conforms to the laws and policies in place.

Traditionally, TA's most important power has been the allocation of land in customary areas. This means that the power to grant permissions to occupy land cannot be exercised without the blessings of the TA. Although section 27 of the Communal Land Reform Act states that TA may in accordance with customary laws, cancel customary land rights in case the holder of the right fails to observe or respect any condition or restriction attached to the rights, this is only applicable in cases where the land is used predominantly for a purpose not recognised under customary tenure, but based on the observations made, this seems not to be the case.

Key problems and weaknesses associated with the TA's management includes; overlapping and unclear mandates between government and TA, unwritten nature of customary laws, non-remuneration incentives of village headmen and their deputies by government, lack of management training skills of TA, lack of proper communication and co-ordination between administrative authorities.

A primary trend at present is to reconcile legality provided by the state with the legitimacy long existed, provided by traditional institutions for the administration of customary land tenure. The level of consensus between customary administrative authorities (TA and GRN) needs improvement in order to ensure that titling process is well understood and appreciated by the local communities, thereby being able to identify clearly the responsibilities of the two authorities.

6.1.3. Evaluate the extent to which land conflicts are related to customary land titling and management

One important aspect of secured customary tenure is its ability to minimise land conflicts. This study sought to identify the types of conflicts within customary areas and how they are related to the process of customary land titling in specific, and management in general.

In addition to security of tenure, land registration and titling has been hailed as a mechanism which reduces land conflicts in customary land.

Tribalism is a conflict type that may arise when "outsiders" gain access to a community's land in a manner that does not follow customary rules. Based on some observations made, CLR is aiming to remove discrimination among different ethnic groups and ensure an equitable distribution of land that will recognise ethnic differences.

Under TA, people belonging to certain ethnic groups are discriminated against in the allocation of land, the major problem that leads to tribalism. While on this point, it can be mentioned that none of the two acts governing customary land tenure clearly stipulates how conflict should be handled and resolved. A conclusion can therefore be made that each conflict case is however treated on its own merits.

6.2. Overall conclusions

This research cannot provide evidence for customary land titling to be economical worthwhile in Namibia at this stage of development, as it does not appear to enhance tenure security nor promote any investment incentives. In view of this, it can be viewed as an exception in cases compared to foreign examples when the government relinquish its custodianship and grant full privatisation of customary land use rights. The observations made can lead to a suggestion that security of tenure does not arise from titling alone, but also from the perception of the local communities supported by legitimate and capable institutions.

On customary tenure it is important that the nature of the existing customary land rights and the possible impact of registration are well understood by the society as well as the government, before a decision is made on whether or not to include customary areas in the land registration process. Whilst on this point, it is worth mentioning that it is justifiable to advocate for a tenure system that is founded on the culture and norms of society and provides for universal entitlement to land. If the prospective impact of the titling system is uncertain, as it is currently, customary areas should not be included in the registration process until such a time that provision are made to enable benefits to customary land right holders.

On the other hand, one of the challenges from a legal perspective is that the acquisition of commercial land for the land reform programme is very expensive, while the state could acquire land in customary areas for nothing because the law has vested landownership rights in the state. This could potentially fuel abuse of power among levels of government, communities and their traditional leaders in the sense Namibian citizens might not be accorded equal treatment with respect to land ownership in customary areas. This in some instances translates that someone whose commercial land is acquired for land reform purposes will receive “just compensation” while someone who occupies communal land may not likely receive this “just compensation”.

This evidence from customary land right holders and the literatures provides a support in the bases of concluding that there is no evidence that proves that customary land registration and titling enhance and increase security of tenure in Omusati Region. In addition, absence of active land market which facilitate the easy transfer of land through collateral is the major problem and where informal recognition and lending predominates, collateral will be of little or no value. To this end, the impact of customary land titling does not designate in the Omusati Region. In the wider context, our customary tenure system is still in many instances 19th century oriented, attempting to answer 21st century challenges, with 20th century mind-sets.

6.3. RECOMMENDATIONS

The research was done in the customary area of Omusati region, Namibia and has found that there is no evidence to conclude that customary land titling has impact on tenure security to the livelihood of customary land right holders. Unclear laws and regulations associated with customary land administration and management, lack of co-ordination between authorities and lack of awareness by the communities are some of the factors that contribute to the insecurity of customary tenure in Namibia.

There is a need for more research to study and identify strategies that can be implemented on how customary tenure rights can be brought into a simple and accessible system of documentation and evidence in order to increase tenure security and enhance investment incentives for customary land right holders. While this study was conducted in Omusati region, the same study should be extended to other regions of customary land in the country. A specific study can be conducted to find out the main interest of the government in providing titles. While on this point, it is therefore important to emphasize that there is a need for further consultations between policy makers, implementing authorities and targeted population.

Our customary system is still in many instances 19th century oriented, attempting to answer 21st century challenges, with 20th century mind-sets!!

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APPENDICES

Appendix 1 (A): Field Interview Questions: Customary Land Rights Holders

Field interview Questions: Local Communities

Name: Village Name

Traditional Authority Name: Date:

1. When did you receive your land title?

2. What is your opinion about the customary land titling process?

3. Is customary land title beneficial to you?

Yes

No

I do not know

4. (a) Do you think that the land titling process and procedure is clear enough?

Yes

No

(b) If yes, how do you appreciate it?

Excellent

Very Good

Good

Fair

Poor

(c) If No, why?

5. Did you receive a title on the same hectare of land you occupied before?

Yes

No

I do not know

6. Do you feel more secured that your land is titled?

Yes

No

I do not know

7. How would you assess the level of tenure security once the title is issued/parcel is titled?

Very secured

Secured

Unsecured

No idea

8. (a) Are you aware of any case of conflict between traditional authorities and local communities members?

Yes

No

(b) If yes, justify

9. What kinds of conflicts did/do you experience in your areas?

10. What is your perception about the impact of land titles in conflict situations?

Greatly reduces

Reduces to some extent

No any impact

No opinion

11. What is your suggestion for improvement of the customary land titles?

12. In your views, who is the custodian of customary land?

- Traditional Authorities
- Government
- King

13. What is the major source of land conflicts between traditional leaders and local communities' members?

- Forced evictions
- Land grabbing
- Double allocations
- Tribalism

14. There are several reported cases of forced evictions of local people by the traditional leaders. Are you aware of any of such cases?

- Yes No I do not know

(b) If yes, justify

15. Are there any local people who were evicted from your area, (Who evicted them, How many?)

16. (a) In cases of conflicts with traditional leaders, who do you report to? (What do you do)

- Ministry
- Communal land board
- Village committee
- Others

(b) If others, elaborate:

17. (a) How do traditional leaders inform and involve local community to/and inform them about customary tenure rights?

Yes No I do not know

(b) If yes, how often

Once a month
 Once in 3 months
 Once in 6 months
 Once a year

18. (a) In cases of conflicts, do you get an opportunity to give your opinions in traditional authority courts?

Yes No

(b) If yes, how?

19. In your views, what do you think needs to change in the administration of customary tenure? (From both traditional authorities and government).

20. Any other additional comment you would like to add on customary land administration?

Appendix 1 (B): Field Interview Questions: Traditional Authorities

Field interview Questions: Traditional Authorities

Name: Position

Traditional Authority Name: Date:

16. What is the structure of your Traditional Authority?

17. How do you understand the principles, norms and practices of customary tenure?

- Their concepts are not defined
- Their logical order exists more by chance not on principles of structure
- They are not logically complete
- Rules are not always mutually consistent

18. (a) Are your customary laws documented, (written, recorded somewhere in the book)?

- Yes No I do not know

(b) If yes, justify

4. In your views, who is the custodian of customary land?

- Traditional Authorities
- Government
- King

5. Do you call meetings with your local community to/and inform them about customary tenure rights?

6. (a) Were you involved in the process of customary land titling?

Yes No I do not know

(b) If yes, how were/are you involved

7. (a) Are you aware of any case of conflict between traditional authorities and local communities members?

Yes No I do not know

(b) If yes, justify

8. What is the major source of conflicts between traditional leaders and local communities' members?

Forced evictions

Land grabbing

Double allocations

Tribalism

9. (a) There are several reported cases of conflicts that lead to forced evictions of local people by the traditional leaders. Are you aware of any of such cases?

Yes No I do not know

(b) If yes, what do you know about it?

10. How do you deal with land conflicts?

11. Are there any local people who were evicted by traditional leaders from your area, How many?

12. Who makes the final decision in terms of conflicts/evictions and how are the decisions taken?

- Village headman
- Chiefs
- King

13. In case of use right changes, what happen to the certificate/title of registration?

14. (a) In cases of conflicts with local communities, who do you report to?

- Ministry
- Communal land board
- Village committee
- Others

(b) If others, elaborate:

15. There is a provision for traditional authority courts. Who are the members of your traditional authority courts and do they operate?

16. (a) Are local community people given opportunity to give their opinions in traditional authority courts?

Yes No

(b) If yes, how?

16. (a) Since the establishment of the traditional authority, did you get any training on customary tenure administration from the government?


Yes No I do not know

(b) If yes, elaborate

18. In your views, what do you think needs to change in the administration of customary tenure?

19. Any other additional comment you would like to add on customary land administration?

Appendix 2: Customary Land Rights Title



REPUBLIC OF NAMIBIA

MINISTRY OF LANDS AND RESETTLEMENT

Certificate No: **OCLB-CU000274** Form 4

CERTIFICATE OF REGISTRATION OF RECOGNITION OF
EXISTING CUSTOMARY LAND RIGHT
As in the Communal Land Reform Act (Section 28, Regulation 8)

IT IS HEREBY CERTIFIED THAT

Farming (Crop) and Residential Unit

(description of customary land right which has been recognised, as described on the back)

in respect of

Eenghala Village in Onamutal Traditional District

(proportion of land in respect of which customary land right has been allocated)

measuring

4.8 ha

has been recognised to be held by

Mr Vilho Shidolo


(full names of person to whom the right concerned has been allocated)

of

Eenghala

(residential address of person to whom right has been allocated)

Signature of Chairperson/Secretary of the Board _____ Date _____



The figure above represents the customary land right for Vilho Shidolo
ID card 240430101099
The Unique Parcel Identifier (UPI) is EENGSHLD00033

The parcel is situated within:
Eenghala Village
Onamutal Traditional District
Ongwediva Constituency
Oshana Region
Registration Division A
The parcel has been approved by:
Oukwanyama Traditional Authority
Oshana Communal Land Board

The parcel covers an area of 4.8 ha

Legend

- Corner points
- Parcel boundary

The area of the parcel was calculated by plotting the dots into the following equation:
Perimeter method: Simpson's Rule
Edge Coding: 0200C
Have Number: 0000000
Oshana's Area: 17
Tab size of page: 0
Universal Transverse Mercator
Scale factor: 1
Datum: WGS84

Corner points as identified in the table are in UTM Easting and Northing (meters) using the WGS84 datum.

Point#	Easting	Northing
1	17 000 274	15 027 000
2	17 000 336	15 027 042
3	17 000 387	15 027 044
4	17 000 349	15 027 086
5	17 000 356	15 027 042
6	17 000 349	15 027 044
7	17 000 341	15 027 041
8	17 000 374	15 027 049
9	17 000 336	15 027 041
10	17 000 300	15 027 028
11	17 000 279	15 027 027
12	17 000 336	15 027 041

Appendix 3 (A): Customary Land Rights Application Form (New Land Rights)



MINISTRY OF LANDS AND RESETTLEMENT

FORM 1

**APPLICATION FOR CUSTOMARY LAND RIGHT
(Section 22 and regulation 2: CLRA, 2002)**

To: **The Chief**
Traditional community of:
Region:
Constituency:

Office stamp:

I,

the undersigned, Identity Number Sex

Nationality Name of Spouse

Names of other Dependants.....

of

(State Residential Address)

(State Postal Address)

hereby apply for a right to

.....(state a right to a farming unit or a right to a residential unit or such other right to any other form of customary tenure which the Minister has recognized and prescribed by notice in the *Gazette*)

in respect of:

(a) Approximate size of land applied for

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:

The land is currently being used for

.....

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is "Yes":

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

(c) Is any compensation payable in this regard?

Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No

Is the applicant a holder in respect of any other portion of land granted under the Act or does the applicant occupy any communal land under a right referred to in section 28(1) of the Act?

Yes No

If the answer to the question above is “Yes”, give a description of the portion of land:

.....
.....

and of the right:

.....

I hereby declare that the information submitted in this Form is true and correct. The fees, namely N\$....., has been paid, for which receipt no..... dated was issued.

.....
Signature of applicant

.....
Date

***Forms must be filled in triplicate**

Appendix 3: (B) Customary Land Rights Application Form (Existing Land Rights)



MINISTRY OF LANDS AND RESETTLEMENT

FORM 3

**APPLICATION FOR RECOGNITION AND REGISTRATION OF EXISTING CUSTOMARY LAND RIGHT
REFERRED TO IN SECTION 28 (1) AND FOR AUTHORIZATION FOR RETENTION OF FENCE
(Section 28 and regulation 7: CLRA, 2002)**

To: **The Chairperson**
Communal Land Board of:
Region:
Constituency:

Office stamp:

I,

the undersigned, Identity number: Sex:

Nationality: Name of Spouse:

Names of children/dependants.....

of:

.....
(State Residential Address)

.....
(State Postal Address),

Hereby, apply for recognition of the existing

.....
(state a right to a farming unit or a right to a residential unit)

Which was allocated to me on: in respect of:

(a) Approximate size of land applied for:

(b) Communal area of traditional community in which land is situated:

.....
.....

(c) Region in which communal area is situated:

What is the current use of the land?

.....

Does any other person hold a customary land right in respect of the portion of land?

Yes No

If the answer to the question above is “Yes”:

(a) State the name and address of the holder concerned, as well as the type of right:

.....
.....
.....

(attach a separate list if this space is not enough)

(b) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

(c) Is any compensation payable in this regard?

Yes No

(d) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No Not Applicable

* I hereby attach the following documentary evidence in support of my claim:

.....
.....
.....
.....

Attached please find a letter from the Chief or Traditional Authority of the traditional community, furnishing the prescribed information.

The land has been fenced as follows:

.....
.....
.....
.....
.....

(state how the land is fenced, if any)

* I hereby apply for authorization to retain the whole fence or any part of the fence concerned:*

.....
.....
.....
.....

I hereby declare that the information submitted in this Form is true and correct. The fees, namely N\$., has been paid, for which receipt no:, dated, was issued.

.....
Signature of Applicant

.....
Date

*Delete whichever is not applicable.