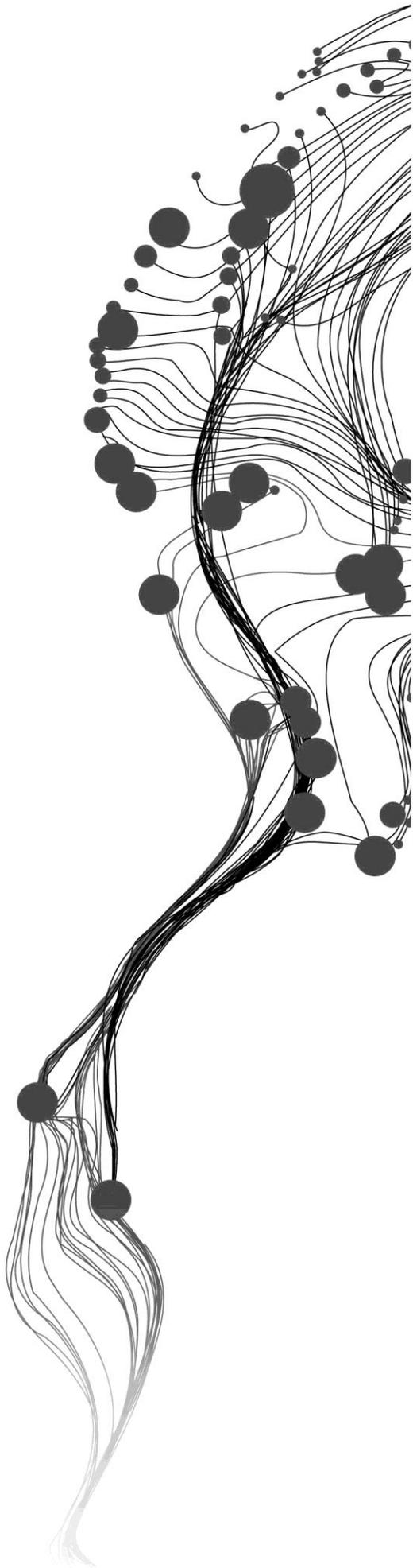


# **EVALUATION OF INSTITUTIONAL MODELS FOR MANAGING COMMUNAL LAND IN NAMIBIA**

MELANIA TEGERERENI IIPINGE  
March, 2011

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Enschede, The Netherlands, March, 2011

Thesis submitted to the Faculty of Geo-Information Science and Earth Observation of the University of Twente in partial fulfilment of the requirements for the degree of Master of Science in Geo-information Science and Earth Observation.

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*This thesis is dedicated to my beloved husband and sons*



## ABSTRACT

At independence (1990) Namibia like other African countries inherited a dual land tenure system and a related management system consisting of customary land tenure administered by traditional leaders and statutory land tenure administered by central government. Before the passing of Communal Land Reform Act 5 of 2002 (CLRA), Chiefs/Traditional Authorities (TA) allocated rights in accordance to customary land tenure. These allocation procedures were not documented and were considered to be unfair by some residents of communal areas, i.e. some people were allocated larger portions of land while others received smaller parcels, some people were allowed to fence, and others were not. Double allocation of land rights has been identified as a results of poor land administration. In this research a framework for evaluating communal land administration (after introduction of CLRA) in Namibia focusing on the process of land allocation, registration and recognition of existing and new land rights as described in the act vs. as practiced on the ground has been developed. The framework is based on three aspects i.e. management, operational and *de jure* vs. *de facto* aspect. It has been used to evaluate *de jure* as well as *de facto* land management in the three northern Namibian (Oshikoto, Omusati and Oshana) regions. Land allocation practice has been compared to the problems prior to the CLRA introduction. The research results show that there is a difference between the processes as defined by the act and as practised on the ground in all three regions. Human and technical resources, complexity of the processes are some of the core challenges highlighted by this study. Proposed models identify use of a headman as one of the key actors, this could reduce the complexity of the processes and it could enhance participation of land users within the communal land administration. Due to time limitation this work has focused only to three organizations such as MLR, CLB and TA in the three regions.

**Key words:** Land management, Communal land, customary land rights, Land administration, Institution *de jure, de facto.*

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## LIST OF ABBREVIATIONS

---

CLAS	Communal Land Administration System
CBP	Cross-organizational Business Process
CLS	Communal Land Support project
CLRA	Communal Land Reform (Act No 5, of 2002)
CLB	Communal Land Board
CLRF	Communal Land Reform Fund
GIS	Geographical Information System
GPS	Global Positioning System
GTZ	German Technical Assistance Agency
ID	Identity Document
IT	Information Technology
LAC	Legal Assistance Centre
LBTA	Land Boards Tenure and Advice
LB	Land Board
LA	Land Administration
LAS	Land Administration System
LIS	Land Information System
LUPA	Land Use Planning, Allocation and Administration
MAWR	Ministry of Agriculture, Water and Forestry
MET	Ministry of Environment and Tourism
MLR	Ministry of Land and Resettlement
MRLGH	Ministry of Regional Local Government and Housing
NCLAS	Namibia Communal Land Administration System
NNFU	Namibia National Farmers Union
NNWR	North North Western Region
PTO	Permission to Occupy
PoN	Polytechnic of Namibia
OSHICLB	Oshikoto Communal Land Board
RPRP	Rural Poverty Reduction Project
SDI	Spatial Data Infrastructure
SWOT	Strength Weaknesses Opportunities Threats
TA	Traditional Authority
TAA	Traditional Authority (Act 25, of 2000)

## GLOSSARY

---

**Arbitration:** settling a dispute or disagreement between people by using a third party or person called an arbitrator, who listen to all people involved in the dispute and then decide on the matter (N. LAC, 2009).

**Chief:** is a supreme traditional leader of a traditional community who is from the royal family of a Traditional community (N. LAC, 2009)

**Traditional community:** a community recognized as such under the Traditional Authority Act. It means a member of such community share a common ancestry, language, culture, customs and traditions they recognize same traditional authority and in habit a common communal area (N. LAC, 2009).

**Conservancy:** geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values (N. LAC, 2009).

**Leasehold:** A form of land tenure under which leased land is held (N. LAC, 2009).

**Sitting allowance:** An allowance given to CLB members when they are executing their duties as described in CLR(N. LAC, 2009).

**Subdivision process:** is a process followed when a parcel/any piece of land is being split or divided into two or more parcels

# 1. INTRODUCTION

## 1.1. Background

Tenure security is a fundamental factor for sustainable development and good land management practice. In this regard every state needs to ensure that efficient and effective land administration instruments are in place. Land administration systems provide a country with the infrastructure to implement land related policies and land management strategies. UNECE (1996) in their “Land Administration Guidelines” define land administration as the process of determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies. The Bathurst Declaration argued that sustainable development requires a sound land administration system. The United Nations-Economic Commission for Europe (UNECE) in their Land Administration Guidelines stated that land administration systems support efficient land markets, they are also concerned with the administration of land as a natural resource to ensure its sustainable use and development and are as such concerned with the social, legal, economic and technical framework within which land managers and administrators must operate (Enemark, 2004; UN-ECE, 1996).

The relationship between human beings and land is significant in every society and is evident in the form of property rights. This relationship is dynamic in various ways, e.g. from full state control, through communal form of tenure, to the individual property right (Dale & McLaughlin, 1999). Land Administration concerns with the administration of land as a natural resource to ensure its sustainable use and development (Chimhamhiwa., 2010). In Africa, until recently, up to a quarter of the total land is held as common property. It is defined as areas over which communities still exercise de jure or de facto customary tenure (Alden Wily, 2008).

Since independence many eastern and southern African countries have introduced various kinds of land reform intending to integrate indigenous land tenure practices and those introduced by colonial regimes. The reform have mainly focused on revision of tenurial rules on access, ownership, administration and transfer of land rights tied with land redistribution and /or restitution in some countries (Kalabamu, 2000). The need for land administration is mainly determined by a community need for proper land management and security of tenure (de Vries, 2004). Most of the challenges found in Namibia’s communal land management are also found elsewhere in the world and are concerned with financial, human, and logistic resources (Kapitango & Meijs., 2009). Both developed and developing countries recognize the need to evaluate land administration systems to identify areas for improvement and to find whether their systems are able to address future needs. Many countries in the world are frequently re-engineering and implementing various aspects of the cadastre, comparing systems and trying to discover best practices within nations of the same socio-economic status (Rajabifard et al., 2007).

Research has shown that much work has been done considering land administration evaluation or performance measurement from different perspectives. For examples (Chimhamhiwa et al., 2009) has looked at measuring performance for organizational business processes, (Stuedler. et al., 2008) evaluates Spatial Data Infrastructure (SDI) by looking at the weaknesses and strengths of LA programs, policies, personnel, product and management, (Stuedler et al., 2004) also evaluated LAS based on five aspects, policy level, management level, operational level, review process and external factors, (Bandeira et al., 2010) focused on evaluating administration structure and budgetary/ management arrangements.

Evaluation is very important in land administration to assess where we are to determine the future. Most of the evaluations in land administration studies are done for the purpose of building good practices that can be shared by similar organizations in the world. However, little work is done on the evaluation of communal land administration systems. Therefore this research will evaluate both the *de facto* processes as well as the *de jure* processes in communal land management hereby Oshana, Oshikoto and Omusati regions in Namibia as case study areas. Further it has been evaluated how communal land is being managed to achieve its objectives. The study further focused on the legal framework, and how this facilitates the delivery of communal land rights, through the involvement of some institutions such as the Ministry of Land and Resettlement (MLR), the Communal Land Board (CLB) and the Traditional Authorities (TA). In this context institution refers to “the rule of the game in a society” this may include the organization, rules and regulations. This can be seen as a framework which a certain society operates (North, 1991).

*De facto* is defined as Rights that exist in reality or “on the ground” such as those acquired by the long existing customs of communities settled on land, while *de jure* is defined as rights that exist because of formal law. The work concentrates on the organizational business processes associated with (1) transfer and registration of existing rights, (2) allocation of rights to new users, and (3) allocated rights in relation to the size. The evaluation is emphasizing on modelling and analysis of business processes of organizations, based on the developed framework. The developed framework is based on the three evaluation aspects, i.e. management, operational and *de jure* vs. *de facto* aspects. Due to time limitation this work has focused only to three organizations such as MLR, CLB and TA in the three regions.

## 1.2. Research problem

At independence (1990) Namibia, like most other African countries, has inherited a dual land tenure and a management system consisting of customary land tenure administered by traditional leaders and statutory land tenure administered by central government. Before the arrival of European colonialists and the creation of the modern nation state, land in many African countries was governed by conventional procedures and rules on land utilization, access and transfers commonly known as tribal, traditional or customary land tenure. It is well known that until recent decades customary tenure systems have not been legally recognized in many African countries, because of colonial policies that discriminated against African customary tenure (Kalabamu, 2000).

The government of Namibia has established the (MLR) as an institution mandated to deal with land acquisition, administration and distribution and it has been working on establishing both legal and institutional frameworks within which the land question is to be addressed. Legal instrument and policies such as the Communal Land Reform Act No 5 of 2002 (CLRA), the Traditional Authority Act of 2000 and the National Land policy are in place. Relevant ministries, CLBs and Traditional Authority are empowered to administer and allocate land rights and new rights under customary land tenure in communal areas. With the passing of the CLRA of 2002, Chiefs/TA, in conjunction with the CLB were tasked by the MLR to register all leasehold rights, as well as existing customary land rights in their respective communal areas. The registration of customary land rights and the leasehold rights is a continuous process. The recognition and registration of existing customary land rights was given a time period of three years for its completion but three years lapse without completed.

Before the passing of the CLRA of 2002, Chiefs/TA used to allocate different rights in accordance with customary tenure systems (National Land Policy, 1998). These allocations were not documented and were sometimes considered to be unfair by some residents of communal areas i.e. some people were getting

larger pieces of land whereas some were getting less, some people were allowed to fence, whereas others were not. Double allocation of land rights has been identified as one of the problems identified as a result of poor land administration. This land tenure system was also characterized by a lot of land-related disputes such as boundary disputes, self-extensions and illegal fencing, due to the absence of a law that regulates them (Adams, 2000). In 1995, the MLR (herein referred to as the Ministry) drafted the Communal Land Reform Bill in order to regulate the management and administration of communal lands. The CLRA (herein referred to as the Act) was passed in August 2002 and became operational on the 1<sup>st</sup> of March 2003. The Act was passed with the aim to facilitate proper and uniform land administration system and tenure security that will result in the minimization of land disputes in communal areas (Adams, 2000). The registration of communal land rights became necessary, serving as a tool for proper land administration and management. By doing so, the MLR and TA are able to know about ownership, size, and tenure securities as registered people were issued with certificates of registration. However since the implementation of the CLRA started, no evaluation has been carried out to assess the success of the act. This research therefore is evaluating the *de facto* processes as well as the *de jure* process in communal land management taking three of Namibia's regions as case study areas.

### **1.3. Significance of the study**

This research will be necessary for reviewing the policies and institutions in place in order to inform the politicians/ policy makers of what could be done to improve the current situation. It will also propose good practices which may be adopted by similar organizations elsewhere. The research focuses on the institutional model governing communal land, concentrating on the tenure component e.g. application of existing, new and lease rights, within the customary framework taking the three of Namibia's regions as case study.

### **1.4. Research aim**

The main aim is to evaluate the transfer, registration and recognition processes as defined in the act versus processes as implemented/exercised on the ground. It also compares practices between the three regions, and tries to find out if there are any differences between the practices and the act, and if there are differences, what are the causes of such differences. The research concentrates on the application process for existing rights, new rights and lease rights.

### **1.5. Research objectives and questions**

#### **Objective 1**

To develop comparative criteria based on literature review, and then apply them to Namibia as case study.

#### **Research question**

1. What are the concepts which can be used to evaluate communal land management?
2. Which are the criteria that best suit the situation of Namibia?

#### **Objective 2**

To carry out a comparative evaluation for communal land administration based on (1) comparing the land allocation processes as defined in the act versus how they are proposed on the ground, (2) Extracting the strength and weakness of *de facto* and *de jure* processes, (3) comparing the current land allocation practice versus the problems that were encountered before the act was introduced.

#### **Research Questions**

3. What are the processes in *de jure* as well as in *de facto* communal land delivery (allocation, transfer, registration and recognition)?
4. What are the benefits and challenges in the *de facto* processes as well as in *de jure* process?

5. Are there any differences or similarities in practices between the three regions as well as the de jure process?

### Objective 3

To propose the way forward based on the findings of the research.

### Research question

6. What is the way forward (based on input from this research)?

## 1.6. Conceptual research framework

Since the main objectives of this research are to evaluate land allocation, transfer, registration and recognition processes as they are defined in the act versus the processes as they are being practiced on the ground and to find out if there are differences between the practices and the legislation. Based on the objectives a conceptual framework for this research has been developed see figure 1.1. This objective forms the basis of the conceptual framework. The developed framework has been used to evaluate the de jure processes against the de facto processes and finding out the weaknesses and strengths of both processes. It has also being used to assess the current processes against the problems which were encountered before the act was enacted. Possible suggestions for addressing the gaps are discussed. Discussion identifies some issues which need attention and there after alternatives are being proposed.

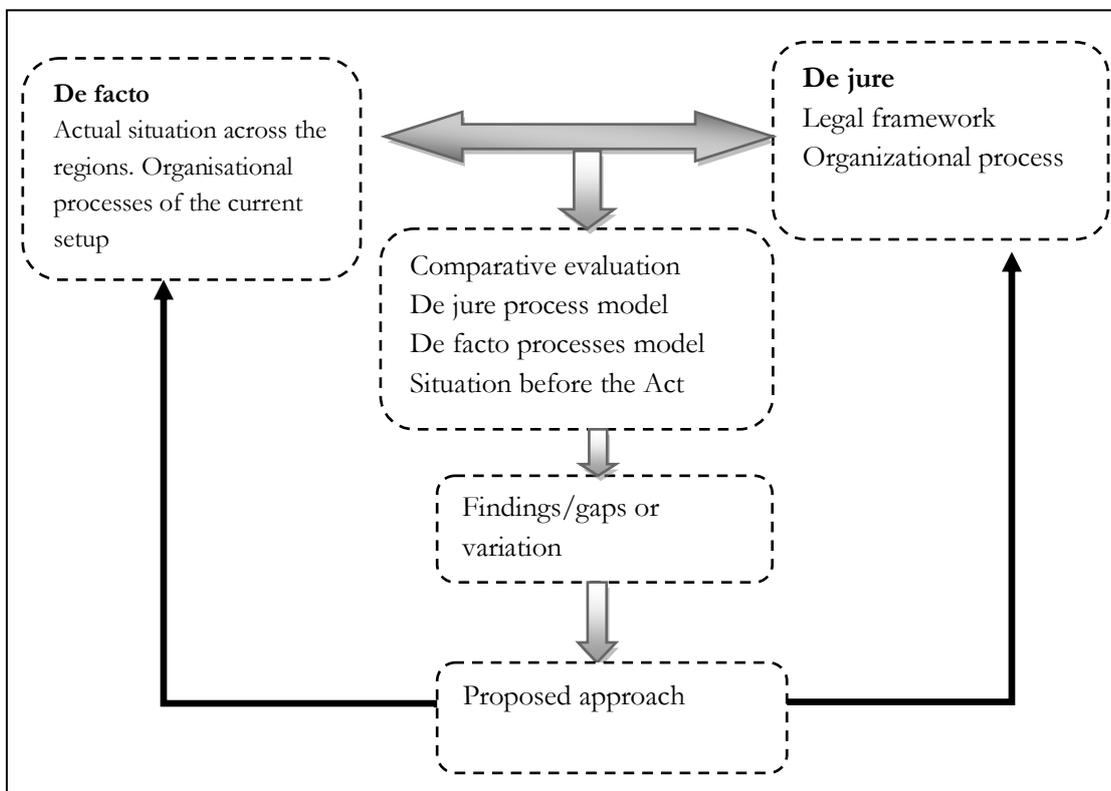


Figure 1.1: Conceptual research framework for evaluating communal land management in Namibia

The complete research activities have been categorized in three phases as follows: pre-fieldwork phase, fieldwork phase and post fieldwork phase as they are shown in (Figure 1-2). A short description of the activities executed in each phase is being discussed next.

**Pre-phase** activities start with research proposal, defining the research problem and formulating research objectives and questions. The proposal defence was carried out in this phase to allow the executions of the

second phase. An extensive scientific literature search and analysis has been used to enhance the knowledge and in depth understanding of how communal land management, and how evaluation of institutional frameworks are being handled and give an indication of communal land management possible indicators during field data collection. Questionnaires for the research were designed and tested. Appointments with key informants were arranged and scheduled with the list of relevant stakeholders was produced.

In the **fieldwork phase** a three week fieldwork has been carried out in Namibia. During the fieldwork interviews with key informants such as MLR staff, CLB members and TA members has been carried out. Observations of a CLB meeting, TA disputes resolution meeting and a regional councillor's workshop has been made as part of data collection. **Note.** Regional councillors are the political leaders elected every five years by the citizens in each region. They are members of local government. Questionnaires were given face to face to the key informants and have been translated in Oshiwambo for the CLB and TA members. Remainders for interviews appointment were done through the Polytechnic of Namibia (PoN) and Communal Support Project (CSL).

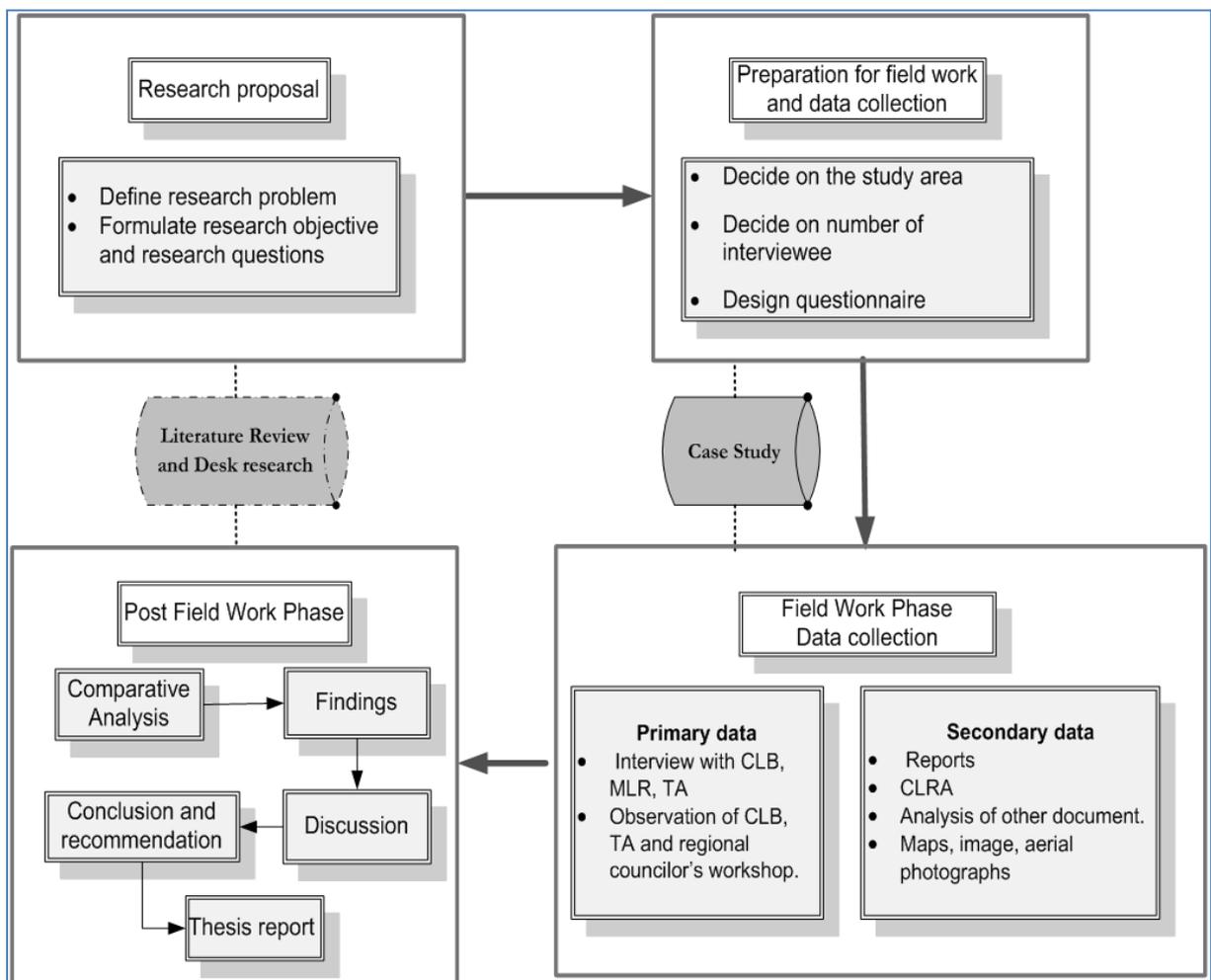


Figure 1.2: Overview of the research activities

Lastly **post-fieldwork** phase start with data processing and analysis, of the data collected from the field. Findings, reporting, discussion, conclusion, recommendations and finally the whole thesis writing forms part of this phase. A complete overview of the research activities is presented in the figure 1.2 above

Data obtained from fieldwork comprised of descriptive data (interview transcripts, documents and notes of observations) research matrix is shown in the table 1.1 below

Table 1.1: Research matrix

<b>Objectives</b>	<b>Research question</b>	<b>Research techniques</b>
To develop comparative criteria based on literature review, and then apply them to Namibia as case study.	<ol style="list-style-type: none"> <li>1. What are the concepts which can be used to evaluate communal land management?</li> <li>2. Which are the criteria that best suit the situation of Namibia?</li> </ol>	Literature review
To carry out a comparative evaluation for communal land administration based on (1) comparing the land allocation organizational processes as defined in the act versus as they are executed in the three regions, (2) Extract the strength and weakness of de facto and de jure processes, (3) comparing the current land allocation practice versus the problems that were encountered before the act was introduced.	<ol style="list-style-type: none"> <li>3. What are the processes in de jure as well as in de facto communal land delivery?</li> <li>4. What are the benefits and challenges in the de facto processes as well as in de jure process?</li> <li>5. Are there any differences or similarities in practices between the three regions as well as the de jure process?</li> </ol>	Interviews, questionnaires, and document analysis
To propose the way forward eventually if needed (innovative approach) based on the findings of the research.	<ol style="list-style-type: none"> <li>6. What is the way forward (based on input from this research)?</li> </ol>	Analysis of findings

## 1.7. Thesis structure

### Chapter 1: Introduction

This chapter provides an overview of the research phenomena, the background information and why is necessary to be carried out. The research questions and objectives are stipulated. A quick tour of the outcome of this research based on the specific data collection methods and techniques is provided.

### Chapter 2: Land Policy and Land administration

This chapter offers the descriptive synthesis on the current state of literature on land administration, land policy and performance measurement. It further elaborates on the current status of land administration in Namibia. It describes why we need to evaluate and review some evaluation framework and methods around the world.

### **Chapter 3: Research Methodology**

This chapter describes the methods and methodological approach employed by the research in collecting data. This chapter includes selection of the case study areas, approach of questionnaire designing, the tools and techniques used for data collection and the approach used for data processing.

### **Chapter 4: Results, Analysis and Discussion**

This chapter develops a framework for assessing institutional models for managing communal land in Namibia based literature review. It analyse the data collected from the case study areas. The chapter develop models for registering, recognition and allocation of new and existing land rights in Oshana, Omusati and Oshikoto region in northern Namibia. It evaluates the implementation of communal land management in Namibia using the developed framework and compares it across the fore-mentioned regions. The chapter compares the developed processes in de jure as well as in de facto across the three regions. Finally the chapter discusses the results against literature to understand why there are differences or similarities between practices across the regions.

### **Chapter 5: Conclusion and Recommendations**

The chapter concludes by presenting the issues discussed in this research. Recommendations for future research are highlighted in this chapter



## 2. LAND POLICY AND LAND ADMINISTRATION

### 2.1. Introduction

This chapter offers the descriptive synthesis on the current state of literature on land administration, land policy and performance measurement. It further elaborates on the current status of land administration in Namibia. It describes why we need to evaluate and review some evaluation framework and methods around the world. The chapter aims to review literature to build a foundation for the research. Section 2.2 give a general introduction about Land Policy and how is linked with land administration. In section 2.3 gives details on land administration and how is being evaluated. This section further discusses land administration and communal land management in Namibia. It further presents importance of evaluation and reviews the evaluation framework in the area of land administration and presents some evaluation examples see (Annexure.11).

### 2.2. Land Policy and how is linked with Land Administration

Land is described in a wider sense from the legal viewpoint which refers to any piece of the earth surface where land rights are applied and such rights are not just ownership to the surface, but it include everything attached to it above or below the surface (Tuladhar, 2004). In his paper (van der Molen, 2002) defined land as the “surface of earth the material beneath, the air above and all things fixed to the soil so it is more than just ‘land’ alone it include building etc.” In view of the fact that land has a multi-dimensional impact on every society, effective and efficient management is significant, for economic development and environmental sustainability. Consequently, Land Policy of a country whether developed or developing have a vital role, to make sure sustainable development and the way government deal with land is an important issue of government development policy.

Land Policy is a guideline to use land for economic development, equity and social justice, environmental protection and sustainable land use (UN-ECE, 1996). Törhönen (2004) looked at Land Policy as a governmental tool that state the strategy and objectives for the social, economic and environmental use of land and natural resources of a country. Equally Land Policy is a concept of drafting all aspects of land management including setting standard for acquisition or disposal of land, social and legal tenure regimes, the distribution structure and mechanisms, the regulation and forms of land use, management, administration systems and adjudication of land dispute. Consequently, Land Policy requires securing land rights for all land users and serving the rights and use. Additionally, Land Policy reform offer a number of reasons, which may include improvement of security of tenure and determining the methods for delivering land rights among citizen, support for social stability by providing understandable statement of government goals and objectives towards land, basis for economic development because decision making is based on expectation and certainty, ensuring sustainable land use and sound land management and lastly regulation for the development of legislation and institutions to execute the policy and monitor its impact (Bell, 2006). Contemporary, Land Policy and administration in most African countries offer no guarantees. Central government have neither the capacity nor local knowledge to implement a national land registration system (Toulmin, 2009).

According to the Namibian Land Policy all land rights have equal status before the law. However, the National Land Policy and the legislation for the Communal Areas (i.e. the Communal Land Reform Act)

are in place. CLRA provides for the allocation of rights in respect of communal land, for the establishment of CLB and sets out the powers of Chiefs and TA and CLB in relation to communal land. The fore said act also deal with the following problems: the need to guarantee land to local people, to abolish land allocation fees demanded by chiefs, to grant land to women in their own right, to establish a system of land administration, to control illegal fencing of grazing areas, and to move the group of wealthy farmers living in communal areas to commercial farms (Namibia, 1998). Commercial farms are at the southern part of the country where farming is mostly for commercial purposes and the government of Namibia have a willing buyer willing seller program, resettlement program and Affirmative Action Loan scheme. **Note:** Affirmative Action Loan scheme is a program providing loans to the previous disadvantaged individuals or group for the purpose of buying freehold land for farming in the commercial areas.

### **2.3. Land Administration systems and evaluation**

This section seeks to review some land administration work, land administration in the case study and identify the scope and elements of evaluation. In this regard, firstly the section will give a review on land administration in general in sub-section 2.3.1, then it will narrow it down to land administration in Namibia in section 2.3.2, it will further explain how land administration can be evaluated. The importance of evaluation and evaluation framework, then defines the scope of the evaluation and finally it will identify the areas and aspects of evaluation.

#### **2.3.1. Land Administration: an overview**

There are many different definitions of what a land administration system is. United Nations (UN-ECE, 1996), define land administration system as the “processes of recording and disseminating information about the ownership, value and use of land and its associated resources”. Dale and McLaughlin (1999) add land use regulation and land tax collection to this definition. The United Nation- Economic Commission for Europe mentioned in their Land Administration Guidelines that land administration systems are concerned with the administration of land as a resource to ensure its sustainable use and development and are as such concerned with the social, legal, economic and technical framework within which land managers and administrators must operate (UN-ECE, 1996). The definitions above reveal that land administration is a process, which brings bring into play process-modelling and associated topics e.g. (workflow management, application of process modelling and system support) inside the scope of land administration. More over the definition makes it very clear that the land administration activity is not an end in itself, but it helps the implementation of land management policies. Consequently the way land facilitate administration should work depends on the way it's defined by different instruments, which are put up by governments to allow proper implementation of its policy (van der Molen, 2003). Institutions are defined as the "rules" in any kind of social structure, i.e. the laws, regulations and their enforcement, agreements and procedures (Helmer et al., 1997). In his paper (van der Molen, 2003) argued that without rules land administration is not possible, as it will be without a societal and legal meaning, thus institutional aspects are significant. Land management includes all activities related to management of land and natural resources that are mandatory to realize sustainable development. Real properties and natural resource are part of land concept. The way land management organized it varies from one jurisdiction to the other worldwide, it reflect local cultural and legal background of every country. The institutional structure may possibly change ultimately, to enhance the implementation of land policies and good governance. (van der Molen & Österberg, 1999) depict land management activities by three components such as Land policy, Land Information Infrastructures and Land administration Functions in support of sustainable Development.

In recent decades the global drivers of sustainable development, environmental sustainability, globalization, urbanization, economic reform and technology have influenced the development of

different land administration policies and models adopted by governments (Williamson et al., 2010). However the relationship of humankind to land varies across a country from urban areas, with dynamic land markets and regularly several informal settlements, to both titled and non-titled rural areas, to areas under traditional or indigenous rights with no land market, to areas under a range of different common property tenures (Williamson, et al., 2010). In developing countries, where productivity and specialization are low and most exchanges take place on an individual basis, the need for a formal land administration system is not challenging. Nevertheless, in order to improve specialization and productivity, and hence economic development, it is essential that the market size grows based on impersonal exchanges. To get this, a formal system that defines, regulates and enforces property rights is required. However most land in Sub-Sahara Africa has no formal records of who owns it or has the right to use it. A variety of project are underway to address this in the belief that land registration and titling can promote investment, reduce poverty and encourage better natural resources management. However many attempt at settling up conventional land registration system have not worked well. They are usually expensive , complex and slow to implement (Deininger., 2003). Having clarified the need for a public tool that administers the rights and obligations of an asset as fundamental to society as land is, it makes sense to consider whether this public tool is practical or not and whether it is fulfilling the objectives for which it is designed (Bandeira, et al., 2010).

#### 2.4. Land Administration in Namibia (case study)

In Namibia, land is classified for administration purposes as **State land, communal land and commercial land** (LAC et al., 2009). **State land** is land that belongs to the state. Under the constitution, all land, water and natural resources belongs to the state, unless owned by individuals. As the owner of the land the state can decide what to do with the land. A large amount state land is classified as protected areas or National parks; game parks In a Namibian context state land is not statutory. **Communal land** is vested in the state by the constitution. The state has an obligation to administer communal land in trust for the benefits of the communities residing on this land and for the purpose of promoting the economic and social development of the Namibian people living. Communal land cannot be bought or sold but can be leased by the state. **Commercial land** is freehold land that can be bought by private individual people who then became owners of the land. All land transactions for commercial land are registered in the national deeds office and cadastral system. During the colonial era commercial land allocations were reserved for whites' settlers. About 44% of the country is freehold, occupied by surveyed and fenced commercial farms. While 43% is communal land which is not surveyed and a large portion of it located on the northern part of the country, the remaining 13% classified as state land, which is unsuitable for agriculture and designated as desert and mostly located on the western part of the country. Each of these classes presents certain rights and responsibilities on the people who are using the land. Both urban and rural may fall within any of these classes (Kapitango & Meijs., 2009). The state land on the western part of the country is classified as such originally for the purpose of diamonds it contains. There are different laws and regulations that are guiding each of the above mentioned categories. The map (map2-1) below illustrates the distribution of the different categories.

##### 2.4.1. National Land Policy of Namibia

In terms of schedule 5 (1) of the constitution communal land is vested in the Government of the Republic of Namibia. The Government undertakes to administer this land in trust for the benefit of traditional communities residing on such land and for the purpose of promoting the economic and social development of the Namibian people. The administration of land in communal areas shall vest in CLB and TA. The CLB is responsible for the survey and registration of all approved form of land title in their area of their jurisdiction(Namibia, 1998).

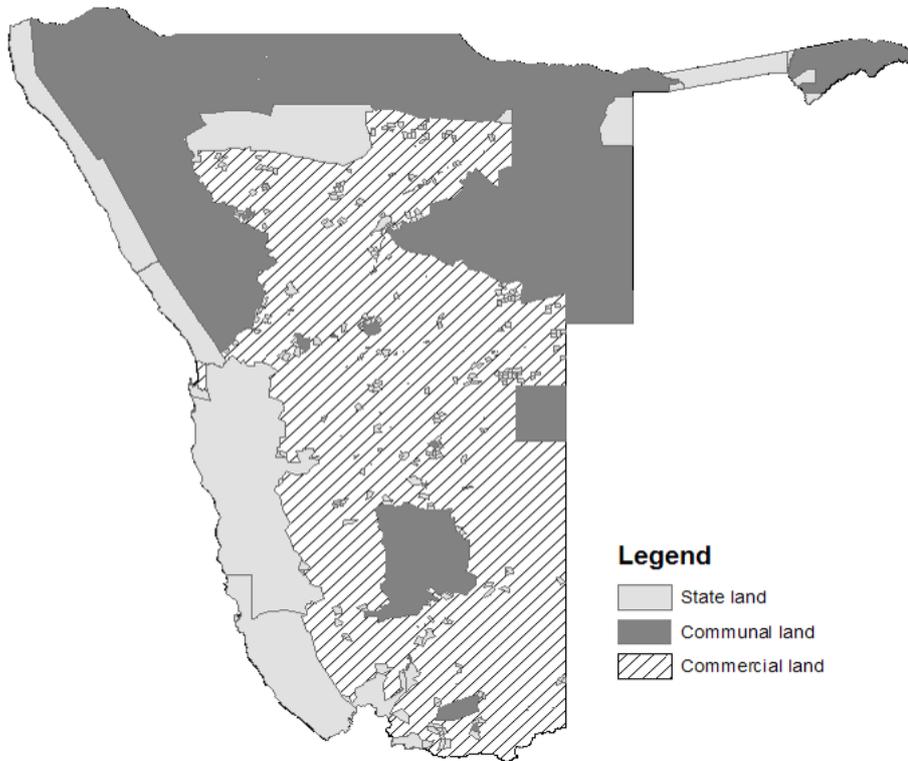


Figure 2.1: Land categories in Namibia (Meijs-. et al., 2009)

## 2.5. Communal land management in Namibia

Land management points out the distribution and management of key benefits of any society. Its central land administration element aims to deliver efficient land market and effective management of the use of land in support of economic, social and environmental sustainability. Planning and regulation of land activities crosscut tenure and the rights they supports (Deininger & Feder, 2001) . Before the enactment of the CLRA chiefs and TA played a significant role in Communal Land Allocation (CLA). They have implemented this function according to their customs and traditions, which unfortunately not written. Regularly their administrative measures relating to land allocation have been challenged as unfair (MLR, 2006c).Communal land has not been registered or surveyed up to 2002. Upon the implementation of CLRA Chiefs/TA, in conjunction with the CLB were assigned by MLR to register all leasehold rights, new and existing customary land rights in their respective communal areas. Registration of customary land rights for residential and farmland began in 2003 as a result of the CLRA and regulation No. 37 of 2003.

According to CLRA 5 of 2002 all people having customary rights are required to register their properties. This is termed the registration of customary land rights and provides the first steps in giving property owners security of tenure. The rights are limited to those of residential and farming purposes. According to Regulation 37(N. LAC, 2009), a Regulation made in term of CLRA issued on 24 February 2003, the Minister of Land and Resettlement set the maximum allowable size of properties that may be approved by the CLB at 20 ha. Other communal land can be registered as leaseholds or remain unregistered

commonage to which local residents have rights of access and use. Communal land registration has been the major component of communal land management in Namibia.

FIG (1995) defined land registration as the official recording of legally recognized interest in land. Such interests are usually recorded through deeds or as titles on property. Land registration means there is an official record (land register) of rights on land or of deeds concerning changes in the legal situation of a defined unit of land (Henssen, 1995). It provides the means for recognizing formalized property rights and for regulating the character and transfer of these rights. The land rights have been described as a bundle of sticks with each stick representing something, which may be done with land. Land registration system documents such rights in land including information about the nature and the spatial extend of these interests of these interests and the names of individuals to whom the interest relate (Dale & McLaughlin, 1999).

CLB with the help of the relevant TA were given first a period of three years (March 2003-March 2006) to register all existing customary land rights and transfer permission to occupy (PTO) certificates into leasehold land rights. Three years lapse without the registration being completed. The MLR has designed a project through Rural Poverty Reduction Project (RPRP) to register customary land rights in communal areas using aerial photographs made available by the European Union (EU)-funded project, in some regions. These aerial photos were taken at 9 km flying height. Orthophotos were rectified and georeferenced in 10×10 km tiles with a ground pixel size of about 75 cm. This was done to improve and speed up the registration process in communal areas, since higher boundary accuracy is not very much required in communal areas (Kapitango & Meijs., 2009). The author further claim that registration with aerial photographs speed up the registration eight times faster than when it was done using hand held Global Positioning System (GPS). This method was also considered more accurate and more cost effective compare to GPS.

Currently, although about 70 000 people submitted their applications during the above mentioned period, the registration period have been extended with another three years up to the end of February 2014 (Mendelsohn, 2008). Ministry of Land and Resettlement (2006a) in their report stated that there are still numerous number of people who did not apply and most of the submitted applications were not processed due to many administrative problems such as lack of field support officers from MLR, unpaid sitting allowances, meals and accommodation for board members not in the employment of public service, insufficient funds of which all the CLBs have to operate limited budget for sitting allowance, meals and accommodation of the previous financial year have to be paid first. The remaining amount only lasts for a few months, leading to the postponement of all land board activities until the next financial year, shortage of skilled staff to do the verification of applications. The approval of the budget in March/April of each year, meaning that CLB meetings can only be held after the budget is approved. As a result, CLB meetings are held within the first three or four months of the financial year. (MLR, 2005). The lack of transport at most land board offices has led to the piling up of applications because verifications that go before the approval could not be done more frequent as its planned. It is estimated that by all customary land rights will be registered by 2012 (Kapitango & Meijs., 2009).

## **2.6. Traditional Authorities**

Despite a lot of colonial and post –independence legislation, customary powers continue to play a major role in land relation in various parts of Africa, since they tend to be more accessible to the local people mainly in the rural areas. Customary powers administer land management systems that maintain to draw the legitimacy on the traditional practical time immemorial. The responsibility of customary authorities varies across countries depending on each country's historical trajectory and sociopolitical context

(Toulmin, 2009). Currently Namibia has about 86 recognized TAs, of whom only two are women (LAC & LEDP, 2005). They all have almost the same structure in hierarchies, from village headman, councillors or senior headman to chief and kings or queens. The chieftaincies are normally inherited positions within the royal families, as are those of headmen. Councillors are however elected by local communities and their appointments are ratified by their chief. Each TA has six senior and six junior councillors who serve on the traditional council together with the chief and secretary. All these people receive monthly allowances from the MRLGH. Many traditional types of council also have serving advisors who are people with special experience or knowledge.

Every traditional community area in the north is divided into districts, which are equivalent to wards in other communal areas. For example, the Oukolonkadhi TA has 10 districts within which there are 87 headmen, the Okalongo TA has four districts and 44 headmen, while the Uukwaluudhi TA has 92 headmen in four districts. A headman is responsible for a village, which generally consists of 50 to 100 households. The responsibilities include land allocations and transfer. The allocation and transfer of land procedures is done in accordance with the tribe customs (Mendelsohn, 2008). According to Owambo customs land cannot be allocated or transferred to a female likewise headman or senior headman or chief position cannot be given to a woman. It is against this background that for one to get a TA positions according to the customs one has to pay to the next level in the structure. For example if somebody want to be a village headman such person have to pay a certain amount of money or number of cattle to the senior headman/councillor, like wise for no to become a senior headman/councillor such person have to pay some amount of money or number of cattle to the Chief/King/Queen. The figure 4 below is showing the structure of TA in the study area.

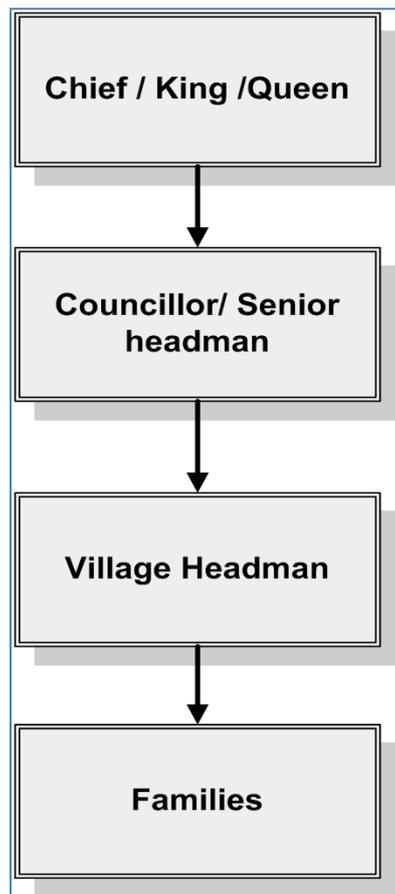


Figure 2.2: TA structure according to traditional customs

### **2.6.1. Communal Land Board**

The passing of CLRA gave birth to CLBs. There are 12 CLB in Namibia one for each Region except Khomas region, since it does not have communal land. CLRA prescribes the functions and composition of the CLB. With regards to land rights in communal areas each CLB have the following responsibilities: Controlling the allocation and cancellation of customary land rights by the chief/TA, deciding on the application of leasehold, controlling the erection and maintenance of the fences in communal areas, creating and maintaining the land register for the allocation, transfer and cancellation of customary land rights and rights of leasehold, the CLB further ensure that no unresolved disputes exist before a registration certificate is issued, by resolving conflicts between neighbouring land users over boundary locations.

### **2.6.2. Composition of Communal Land Board members according to CLRA**

Section 4 of the CLRA offers a detailed composition of CLB this has led to CLB membership varying between 10 and 17 see (Annexure 10). CLB members serve for a period of three years and may be reappointed to the Board in terms of section 6 of the CLRA. According to the CLRA, a CLB must have the following members: One representative from each Traditional Authority within the area of the CLB, One person representing the organized farming community within the area of the CLB, The regional officer of the particular region/s affected by the CLB, Four women. Two must farm in the CLB's area and two must have experience relevant to the functions of a CLB, if there is a conservancy in the area, one person must be nominated by that conservancy. Where there is more than one conservancy in the CLB's area, they must jointly nominate a member to represent them on the Board, Four staff members from the Public Service, respectively nominated by:

- The Minister of Regional and Local Government and Housing.
- The Minister of Lands, Resettlement and Rehabilitation.
- The Minister of Agriculture, Rural Development and Water.
- The Minister of Environment and Tourism.

According to CLRA, (GRN, 2002)The Minister of Lands and Resettlement must in writing request the Ministers above, the TAs, and the conservancies concerned to nominate people to be appointed as the CLB members. If the TA or conservancies fails to nominate someone, the Minister of lands and resettlement may appoint ant suitable person. The CLB members must elect their chairperson. Section 5 of the CLRA state that the following people are not permitted to be members of CLB:

- A member of parliament or a Regional council.
- Chief
- An unrehabilitated insolvent and
- A person who has been found guilty of criminal offence and sentenced to imprisonment with no choice of paying a fine (Republic of Namibia, 2002).

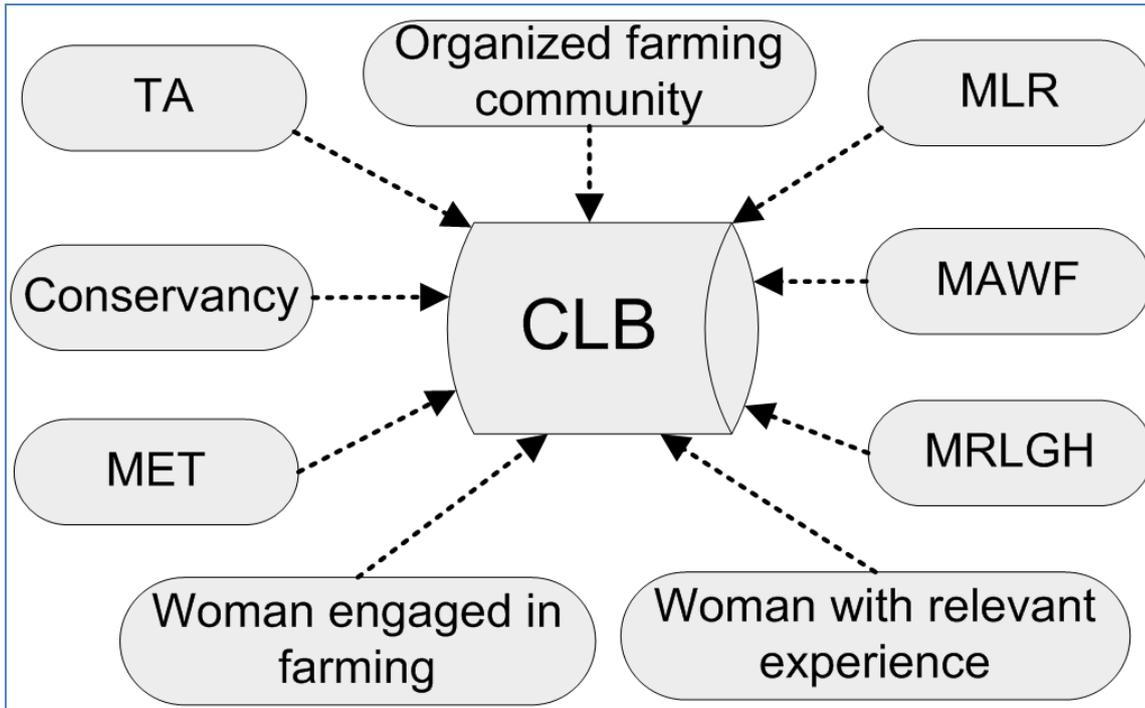


Figure 2.3: Composition of CLB members according to CLRA

## 2.7. Need for evaluation and evaluation framework

Evaluation of a system is a basic requirement for improving its productivity, efficiency and performance. It helps understanding the way how things can be done in a right way and how the lesson learnt from previous experience can be useful in this regard (Steudler, et al., 2004). In land administration context, an assessment/evaluation is very significant, especially for policy makers, as land administration systems requires enormous financial resources, human resource and political will (Datar et al., 2009). Results from land administration systems assessment could be helpful for policy makers, for choosing the appropriate approach that can fulfil the planned objectives of the system with less investment on the resources and better political support. Given the above situation (Chimhamhiwa, et al., 2009) in their paper stated that Land administration delivery problems, especially in developing countries are normally logical and difficult. Hence evaluation in land administration institutions is significant. Evaluation is concerned with questions like, what do we want to achieve, are we doing the right thing, and what lesson can we learn from the experience? Evaluation is very important to any business/organization for it to know the present situation to predict the future. However evaluation of land administration systems is not based on a homogeneous technique that is globally conventional, the evaluation literally depends on the environment and knowledge of the commissioned consultants and the particular project aim (Steudler, et al., 2004). There are numerous element of land administration which can influence how it's being evaluated. Thus one can evaluate different components of land administration e.g. organizational aspect, policy aspects, institutional arrangements etc. Some very useful work has been carried out by (Williamson, et al., 2010) calling for land administration systems to be re-engineered, to better meet sustainable development objectives. This can only be possible once an evaluation of the current situation has been carried out to determine the future. In their paper they develop a framework to measure and compare the performance of land administration systems. Their framework has been base on four evaluation elements – objectives, strategies, and outcome and review process and by linking them with the different stakeholder within the organizational pyramid. In their paper (Steudler, et al., 2004) suggested a land administration evaluation framework which is based on four central fundamentals parts of objectives, strategies, outcomes and

review processes. This framework was used to present a management model that links land administration operational aspects with policy. This framework has been tested in Switzerland, while (Chimhamhiwa, et al., 2009) have suggested a across multiple organizational conceptual model for detecting, assessing and improving land administration processes, based on six measurement dimensions. Their model was tested on parcel subdivision processes in six municipalities across Namibia, South Africa and Zimbabwe.

A comparative method for evaluating national a land administration based on qualitative and quantitative indicators with benchmarks for each one of them that signal possible venue to improve the administration's structure and budgetary/management arrangement, in order to bring about the following goals: to contribute to public sector financing through taxes, to encourage the productivity and sustainable use of land, to promote access to land for low income household. Their method was applied to Honduras and Peru land administration systems (Bandeira, et al., 2010). In the Namibian case we are going to evaluate processes of communal land allocation, registration and transferring new and existing land rights as it defined in the CLRA and compare it to how is being implemented in the case study regions, it will further look at how well are the problems which were inexistence before the act have been tackled by the act. (Kalabamu, 2000) has written an important paper on evaluation of land tenure and management in east and southern Africa. He used Botswana as a case study. In his paper he stated that Botswana has been successful in its implementation of land reform; however it is also experiencing some land tenure problem, especially at the outskirts of the cities and in the low-income areas.

In the Namibian case evaluation is needed to asses if CLRA has been implemented as it was planned or stated in the act. A comprehensive framework that defines a guideline or set of standards for comparing and evaluating land administration system is required for the purpose of carrying out an evidence-based evaluation in a consistent way. In their paper (Crisp et al., 2007) stated that an assessment carried out in the absence of a formalized assessment/evaluation framework leads to a subjective assessment criteria and fail to include core information. Thus, a well-designed and formalized assessment/evaluation framework that can bring broad and required information in full is necessary.

### **2.7.1. Scope of evaluation**

Prior to performing any evaluation, it is very critical to determine the evaluation scope which will indicate to what extend is the evaluation is going to be carried out. As the main objective of this research is to carry out an evaluation of how well is CLRA is being implemented, it is very important to look up at what extend, can one realize that CLRA has really implemented according to what is written in the legislation. In this regard, a review is significant to know what are the processes involved when allocating, registration and transferring of new and existing land rights are carried out during the implementation and according to the CLRA. An implementation is considered, carried out according to the act if all processes and steps of allocating, registration and transferring, new, and existing rights are followed as defined in the act. It can be seen that the extent of evaluation include communal land administration based on comparing the organizational processes as defined in the act against as they are implemented in the Oshana, Oshikoto and Omusati region, comparing the weaknesses and strength of the de facto against de jure and lastly comparing the current process against the problems which were uncouncted before the act was enacted. Furthermore the evaluation will focus only to the three major organizations which facilitate communal land administration in Namibia such as CLB, MLR and TA.

### **2.7.2. Evaluation areas and aspect**

In the previous section, the scope of evaluation has been identified as comparing the organizational processes as implemented against the organizational processes as is defined in the CLRA, concentrating on the transferring, registering, revocation and allocation of new and existing land rights. Now in this

section we will define evaluation areas and aspects of CLRA in the de facto as well as in the de jure processes. My evaluation is going to base to the following areas and aspects as shown in (Figure 2.4).

### 2.7.3. Reviewing evaluation framework and methods

There is no internationally standard framework and method available for evaluating land administration systems for communal land administration to be specific which could be adapted in this research. There are evaluation frameworks available in literature, but they are developed based on the specific objectives. Thus, it is necessary that evaluation framework and method must be developed from the scratch. For the purpose of developing an evaluation framework and method to be used in this research literature were used to derive ideas and references. This research evaluation framework and method is developed based on (Stuedler & Williamson, 2005) other evaluation method such as (Chimhamhiwa, et al., 2009; Stuedler, et al., 2004) were also reviewed for this purpose see (Annexure 11).

#### 2.7.3.1. Framework and methods for evaluation

Under this section we will evaluate and review the framework and method developed by Stuedler (2005). There is no internationally adopted evaluation method for evaluating land administration systems apart from (Stuedler, et al., 2004). Therefore land administration evaluation are done based on individual approach, knowledge and context, ultimately there is no standardization in land administration evaluation. (Stuedler & Williamson, 2005) in their paper they developed a framework and method that can be applied in any environment and purpose which cover the complete land administration system. The frame work was tested in Switzerland. Below the element of evaluation as identified by (Stuedler, et al., 2004)

#### 2.7.3.2. Element of evaluation

- Well defined objectives –to know where to go
- Clear strategy –to know how to get there
- Outcomes and monitorable indicators –to know if on track and
- Evaluation of results – to gain input for improvements

Evaluation of these elements includes the following (Table 2-1)

Table 2.1: Evaluation element for land administration organizations or systems (Stuedler, et al., 2004)

Element	Functions	Assessment
<b>Objectives</b>	Defining target for the whole system	Historical and social aspects Cultural heritage Political, legal and economic basis
<b>Strategy</b>	Defining the way forward to reach and satisfy the objectives	Set –up of the institution and organization and their functioning structures Strategic plan
<b>Outcome and indicators</b>	Not any function but outcomes are the result of the activities performed based on the objectives and strategies and indicator give feedback to evaluate the system.	Results or outcome of the activities
<b>Result evaluation</b>	Evaluation and review of the objectives and strategies, based on the outcome and indicators.	The achievements of the objectives and targets.

Evaluation of outcomes must be carried out on a regular basis to monitor the performance and reliability of the system. This will give an ideal of whether the systems objectives are accomplished through the planned strategies. These evaluation elements were linked with different levels of organization in order to discover the areas of evaluation in the next section.

### **2.7.3.3. Evaluation areas**

Evaluation model developed by (Stuedler, et al., 2004) could be used to evaluate land administration broadly. The different levels of organizational levels provide the basis of evaluation areas of any system. These are policy level, management level and operational level. The evaluation discussed above can be linked with these different levels. Evaluation elements are can be linked as follow objective is related with policy level, strategy to management and outcome and indicators are related to operational levels. Additional to the three levels are review process and external factors, these two can also be used to assess the system. Under review process, results are evaluated to see whether all objectives and strategies are realized as planned; moreover external factors that influence the performance of the system can also be evaluated e.g. human resource, human capacity, and technology. Hence land administration framework comprises of these five evaluation areas.

### **2.7.3.4. Evaluation method based on Good practice/benchmarking criteria**

Good practice criteria that support the above discussed framework has been extended, which correspond to a presumed ideal system for the evaluation of land administration systems. The methodological procedure for evaluating land administration as suggested by (Stuedler & Williamson, 2005) is adopted for this research. The four steps suggested are as follow:

- Review of evaluation areas and aspects in the evaluation framework
- Establishment of good practice, for each aspect according to international best practices, but respecting the context of evaluated system
- Identification of performance gaps
- Summary profile with –for example –Strength, Weaknesses, Opportunities and Threats (SWOT) matrix.

For the purpose of this research a review has been carried out during the fieldwork in Namibia were interviews, observation, with key informants and documents has been collected while visiting the case study areas. Consequently the method suggested by (Stuedler & Williamson, 2005) is suitable for this research since it's stated that review for evaluation areas and aspects can be undertaken in different ways. These can include country visit, interviews with key stakeholders, gathering and study of indicators or revision of reports, papers and other reference material. Establishment of good practice can be done after the evaluation of different aspect or can be done during the evaluation.

Declaration of good practice can be based on the international best practice but it depends very strongly on the local situation e.g. social and cultural context of land administration system to be evaluated (Stuedler & Williamson, 2005). In our case good practice has been developed based on the CLRA and other relevant legislation and guideline provided for the management of communal land in Namibia. In their paper (Stuedler & Williamson, 2005) stated that identification of performance gaps is the main step in the evaluation process. Furthermore it discovers the gaps between the real performance of the system and the potential possibility for each evaluation aspect. For this research we find this method useful because it will help us to identify the gaps between the written law and the actual implementation on the ground. It will further used to identify gaps between the practices across the regions, thus adopting of this method is very significant for this research.



## 3. RESEARCH METHODOLOGY

### 3.1. Introduction

In chapter 2 an overview of relevant literature has been presented. This chapter (chapter 3) describes the research approach by capturing the numerous techniques and strategies utilized for collecting necessary data. Thus the chapter hinges on how we made operational, the various research question into the most feasible way of gathering enough evidences to answer them. The justification for the selection of the case study method is given the selection of the study area is presented and primary data and secondary data sources are described. Finally the methods for data analysis are presented.

### 3.2. Operationalization of research problem: research design

To be able to rationally conduct this research there was the need to translate the formulated objective into operational measurable variables. The variables aid as the guide for investigation for this study and assisted us to appropriately measure and interpret.

### 3.3. Research approach

Yin (1994) identifies a case study research to be the best strategy if the research questions are explanatory, when the research is on the contrary issue and when behavioural events within the research environment occurs within a real world context and outside our control. A case study “is an empirical enquiry that investigates a current phenomenon within its real-life situation, particularly when the boundaries between phenomenon and context are not clearly evident. It relies on multiple sources of evidence. Moreover it typically combines data collection techniques such as interview, observation, questionnaires, document and text analysis (Darke et al., 1998)

The nature of communal land management and the environment they operates involve social, cultural, institutional and organizational issues which make case study ideal for the research. (Yin, 1994) further differentiates between single and multiple case methodologies. The multiple case approaches are the basis of this evaluation. The choice of using multiple cases to investigate the phenomenon is to be able to find out if the implementation of the CLRA has been consistently applied across the regions. These have given us an in-depth understanding and a better exposure to enable us to give the reasonable description for the evaluation. The case study approach engaged both qualitative and quantitative methods. Evaluation at all times seeks to measure the level of performance of a certain system, organization or institution to facilitate decisions to be made whether its productivity, performance and efficiency is acceptable to its various stakeholders. However, there is no internationally accepted standard methodology specifically for land administration, thus evaluation depends on the aim and the agenda of the person doing (Stuedler, et al., 2004).

As recognized by (Stuedler, et al., 2004), three organizational levels such as Policy level, management level and operational levels offer the bases for defining the areas for evaluation. This research has focused on the de jure versus de facto processes, management and operational level. Focusing on the key variables such as available human and technical resources involved in the process of communal land allocation, registration, transfer and revocation of land rights, the CLRA objective focusing on level of problems which were in existence before the act was introduced and lastly the overall implementation of the act in comparison with the actual practice.



### 3.5. Data collection

The evidence sources are grouped into primary and secondary sources they are elaborated below.

**Primary Data:** Interview, questionnaires, observations and focus group are the sources of evidence relied upon to capture empirical evidence for answering some of the research questions see (Table 3.1).

Table 3.1: Research primary data sources

Methods	Place	Region	No. of interviewee	Response
Interview	1. Windhoek Ministry of Land and Resettlement (MLR) 2. Communal land support project Oshakati. 3.MLR Tsumeb	Khomas	4 staff	
		Oshana	2 employees	
		Oshana	2 staff	
		Oshikoto	1 staff	
Questionnaires	CLB (CLB)	Oshana	14	10
	MLR Oshakati	Oshana	7	4
	Traditional authority(TA) Uukwambi	Oshana	16	10
	TA Uukwaluudhi TA Ombandja	Omusati	10	6
			5	1
	CLB	Oshikoto	12	10
	MLR Tsumeb MLR Windhoek	Oshikoto	2	2
		Khomas	10	4
	TA in Oshikoto		10	2
	CLB MLR Outapi	Omusati	17	0
		3	0	
Observation and focus group	Regional council's meeting on information concerning communal land registration. CLB monthly meeting in Oshakati. TA traditional court and resolution of disputes in Uukwambi TA.	Omusati	Non participation	Non participation
		Oshana	observation	observation
		Oshana		

**Interviews and questionnaires:** information has been collected for sample see (Annexure 12) by interviews on how the CLRA has been implemented in different regions and in different TAs, from respondents through structured and unstructured interviewing techniques. Interviewing investigate the facts and opinions about CLRA implementation and processes involved when allocating, transferring and registering new and existing customary land rights. This source of information depends on information provided by the individuals in the organizations. Interviewing was found relevant in understanding the despondence perception, experiences and feelings as expressed by their words (Kumar et al., 2006).

Open ended and closed ended questions were posed to obtain facts and detailed information about the application (*de facto*) of the CLR A and whether it has been applied as it is written in the act (*de jure*).The interviews response were recorded and noted. Recorded interviews were transcript and send to the interviewee to certify that the interview have been transcribed correctly, samples of interviews transcript is in Annexure 3. Follow-up questions were posed where necessary, to get full understanding of the concept investigated. Questionnaires were translated in Oshiwambo since most of the respondents could not speak English well and then given to the respondents to fill.



Figure 3.2: Interviews with Uukwambi chief



Figure 3.3: Interview with Uukwambi TA and headmen

**Observation:** non participation observation of CLB meeting, land dispute resolution of Uukwambi TA and regional council workshop were carried out while taking note of what has been observed. Observation method captures the reaction. Wall posters and pile of documents were also observed. Processes of resolving land disputes, illegal fencing and decision making by the CLB and TA were also part of the observation these were supplemented by the information obtained from verbal interviews.

### 3.5.1. Secondary sources

An overview of secondary data sources is presented in table 3.2 below

Table 3.2: Research secondary data sources

Documents collected	Content	Concept addressed
Communal land reform Act, guide and regulation.	Explaining the power and duties of CLB and TA on communal land management	De jure
Operational manual	Stating how CLB TA and MLR must operate when delivering land rights.	De jure(simplified)
Communal Land registration booklet, CD and Maps	Providing information on why and how communal land must be registered	Communal land registration
CLB annual reports	Stating what has been done every year by the CLB.	De facto
Ministry of land and resettlement annual reports and maps	Stating the operation of the MLR in a specific financial year.	De facto
Traditional Authority act	The mandates and duties of TA in general.	De jure
Report on capacity assessment	Stating the training and technical support that TA need to implement CLRA effectively.	De facto

### 3.5.2. Validation

This section gives details of justifying why case studies approach was chosen for data collection. The following measures were employed to ensure the validity of the research design. The test included as suggested by (Yin, 1989), are validity, external validity, and reliability. Table 3 below shows the test aligned with the strategy and measure taken.

Table 3.3: Validation of method for the research

Test	Case studies strategy	Measure	Research phase
Construct validity	Use multiple source of evidence	Source of evidence collected: Questionnaires, interviews, observations and secondary data.	Fieldwork
	Establish a chain of evidence	Notes of facts, opinion and observation for every interview. Explanation of situation upon which evidence was collected	
Internal validity	Explanation building	Drawing conclusions based on documentation, interview and workshops and meetings.	Data analysis

External validity	Use replication	Questions in the questionnaires were rephrased without changing the meaning.	Fieldwork
Reliability	Develop case studies database	Raw data from questionnaires and coded responses are entered into SPSS. Interviews data and document extracts are put in Micro soft Excel sheets for analysis.	Data analysis
	Verify responses	Interview responses have been to the interviewee for verification. Some key informants were interviewed telephonically for the second time.	Fieldwork

### 3.5.3. Data preparation

Inconsistency was checked during data collection phase by going through the questionnaires and interview transcripts, checking if there are any missing information and where necessary changes were made to clarify the questions to the informants. Questionnaires' responses were entered into SPSS software and categorized according to variables. The responses from unstructured interviews have been transcript and they will be entered into SPSS.

### 3.6. Fieldwork limitation

The only CLB the researcher met physical is Oshana CLB since they were having a meeting scheduled during the fieldwork time. For Oshikoto the researcher managed to send questionnaire through by email and got most of the response back. For Omusati the researcher also sends the questionnaire by email but the researcher did not get the responses. Transport to the rural areas was one of the major problems, since there are no public transports going deep into rural areas and hire ring a car is quiet expensive because it will require that the researchers have to hire a pick-up which is unaffordable with the fieldwork allowance provided.

### 3.7. Process modelling and evaluation

Chapter 4 present models for land allocation and registration of rights for existing and new land rights based on the CLRA, 5 of 2000 (de jure) and the actual practice (de facto) within three regions ( Omusati, Oshana and Oshikoto) in Namibia. The Chapter (4) further present the description the models that reveal how the same processes is prescribed and carried out in practice across the three regions. To analyse the process for customary land allocation, and registration, of rights organizational processes were modelled as prescribed by CLRA as well as practiced in the regions. A model then was proposed based on the common practice as well as the good practice. This research have used the three northern Namibian regions; Oshana as (case 1), Oshikoto (case 2) and Omusati (case3) as case study.

### 3.8. Developing process models

Organizational and individuals linked to various process activities were identified and interviewed during site visits. The interviews were mostly open and unstructured this was done to capture process in practice

Meanwhile the CLRA and regulation was also used to capture the processes as prescribed by the law. Additional information was obtained through process observation and through documents such as reports. From the above information then the processes were developed and described using Unified Modelling Language (UML) activity diagram in Enterprise Architecture program.

### **3.9. Comparing the organizational process**

Comparison of this case is aimed at evaluating the differences and similarities between the practice in the three regions as well as between the de facto and the de jure processes. Various variables can be considered when evaluating similarities; in this research we limit ourselves to the common activities between the processes in de facto as well as in de jure. In addition the framework adapted from (Steudler & Williamson, 2005) is used to compare the similarities and differences to the good practice based on the developed indicators and extract the weakness and strengths of the de facto and de jure processes. It is further used to compare the practice to the problems which were in existence before the act (CLRA) was introduced to find out if the problem has been reduced or not.

#### **3.9.1. Application of the developed framework**

The framework developed in Chapter 4 has been used to extract the weaknesses and strengths in the de jure as well as in the de facto processes. The actual application of the framework has been done by comparing the actual practice in each regions against the good practice based on the developed indicators and find out how individual region have scored against the good practice. In this regards performance gaps has been then identified.

### **3.10. Concluding remarks**

This chapter has explained the tools and techniques used for data collection and indicated and show such information has to be analyzed. Each of the technique use has contributed to the comparative evaluation of de facto and de jure communal land management in the case study areas. The subsequent chapter gives details of the results, analysis, and discussions of the study bearing in mind the research objectives.



## 4. RESULTS ANALYSIS AND DISCUSSION

### 4.1. Introduction

Chapter 3 described the data collection techniques and methods used and types of data collected. A framework for assessing CLRA have been developed with respect to *de jure* as well as *de facto* processes in chapter 2 and it will be applied in this chapter. The results include process of land allocation, registration, transfer and revocation of new and existing customary land rights in the *de jure* as well as in the *de facto*. It also present the impact of CLRA implementation towards the illegal fencing, land disputes as problems which were in existence before CLRA was introduced. It will further, show the CLRA implementation across the three region (Oshikoto, Oshana and Omusati) to find out if there are variations between them, finally it will compare the weakness and strengths of the *de jure* as well as the *de facto* processes and finish with discussion of the results. These will answer research objective 2. The analysis is therefore dictated by developed evaluation aspects (i.e. management, Operational, *de jure* and *de facto* processes). Revocation and transfer did not happened in practice since the implementation of CLRA started. Therefore they will not be included in the analysis of this study. This research have used the three northern Namibian regions; Oshana as (case 1), Oshikoto (case 2) and Omusati (case3) as case study. The results of the study are split into four main sections (1) towards a framework for managing communal land case for Namibia, (2) Comparative evaluation between the regions using developed indicators, (3) analysis of the organizational process and development of models and (4) discussion.

### 4.2. A framework for managing communal land case for Namibia (based on steudler et al, 2005)

In this research a framework with attention to Management aspect, Operational aspect and De jure vs. De facto processes is developed. In the next sections the aspects indicators and good practices are introduced with the overview in table 4.1.

#### 4.2.1. Defining evaluation aspects

##### 4.2.1.1. Management aspects

Under this aspect evaluation of TA, CLB structures and the manner they interact with MLR to facilitate the overall communal land administration is done. Evaluation is emphasising on how they handle allocation, transferring, registration and revocation of land rights. The- management aspect focuses on the strategies employed to execute the fore mentioned duties. According to (Steudler & Williamson, 2005) this aspect is formed to institute hierarchy of authority between operational and policy level. Management aspect of land administration fits in the task of defining strategy, institutional and organisational arrangements and resource arrangements. Evaluation of management aspect is significant because for the effective and efficient achievements, appropriate management is necessary and proper improvement can be made in case of any weakness. This aspect can be assessed based on the three key indicators as outlined below, however in this research we will only emphasise on one indicator which is availability and management of resources.

**Number of organization in the chain of land allocation, registration, transfer and revocation:** CLB, TA and MLR are the central organization in the land allocation, registration, transfer and revocation of rights. The number of CLB members depends on the number of TA exist within a particular region. According to CLRA every TA within a region must be represented in the CLB (GRN, 2002).

**Institutional and organizational arrangement:** Proper institutional and organizational arrangements such as assigning roles and responsibilities to the organizations involved in the implementation of CLRA, mechanisms of coordination among them, preparations of implementation guidelines, coordination among stakeholders could be done for effective and efficient implementation of the CLRA. The number of organizations in the chain of land allocation, transfer, registration and revocation of customary land rights has a very big influence in CLRA implementation. The more organizations involved the more complex the processes are from interorganizational workflow perspective. Decentralization of all organisation involved in communal land management is necessary, to provides better access to information and services to citizens.

**Availability and management of resources:** Sufficient resources such as human, physical and financial are needed as they play a very central role in the timely success of any program. Consequently availability and management of resources plays an important role in the assessment of communal land management Sufficient resources such as human, physical e.g. (cars, offices, computers etc) and financial are needed as they play a very essential role in the timely success of any program. Consequently this component also plays an important role in the assessment of communal land management where the speed of the workflow is concerned. Therefore, it is assumed in this study that if resources are sufficient and well managed and allocated in to relation the rights to be registered and responsibilities then, all land information will be up dated regularly, there will be less or no application pending verification, mapping or approval, subsequently, the processes are likely to run well. This means if resources are not well allocated then the number of pending applications and land disputes is assumed to be high in that region. In this study, this is measured by looking at the number of MLR staff doing mapping, verification, digitizing and data capturing, the number of cars allocated to fieldwork, the number of applications received, processed and pending, the number of meetings held by CLB, the number of TA to be served by the CLB and MLR, transport available for the CLB to investigate and resolve land disputes, availability of computers, capability of the database and licences to update the data.

#### 4.2.1.2. Operational aspects

Under this aspect the processes of land allocation is going to be evaluated as it has been carried out by different regions and it will be compared to what is written in CLRA. Under this aspect it will be identified if there are gaps in the processes. This aspect form the base of any organization where providing of services and producing of products is found in (Steudler & Williamson, 2005). Operational aspects are regarded as part of the implementation of CLRA based on the National Land Policies, objectives, and strategies to achieve desirable results. Adaption of good practices in implementation of land administration while respecting the local environment of the system would enable the desirable outcomes in an efficient and effective way (Steudler & Williamson, 2005). Operational aspects are going to be assessed based on the land allocation organizational processes as executed in the three regions and will be compared to land allocation processes as written in the CLRA. This assessment will only focus on land allocation and registration due to the fact that there is no transfer or revocation done in *de facto* in the regions. This aspect will be also assessed by comparing the weaknesses and strengths of the *de jure* verses *de facto* processes. Furthermore, the assessment will compare the current practice versus the problems that were encountered before the CLRA was introduced. The research will only focus on the problems of land disputes and illegal fencing in the three regions.

**Number of land disputes:** A reduced level of land disputes implies that the implementation of the CRLA is better understood by the community members. Under normal conditions disputes should be decreasing. According to CLRA the implementation of the act aimed at reduction of land disputes in communal areas. This is measured by looking at the number of land disputes in each of the three regions (Oshana, Oshikoto and Omusati). It could also be measured from the number of people registered and

having certificates issued to them, since it is assumed that if there are more people with certificates then disputes in that region will be reduced.

**Level of security of tenure:** The increase in the number of people willing to register their land and acquire land is an indication that citizens feel secure with the registration system. In this research the level of security is a perception which can be measured by the volume of application received, meaning the higher the volume the likely the secure the tenure. It could also be measured by looking at the number of people who feel that registering the certificates is protecting them against eviction without fair compensation. Moreover, it can also be measured by looking at the land information system if the data in the system are protected against damage and alternation. Meaning if many people are willing to register their land, which means they feel secure within the registration system and vice versa. However level of security of tenure generally is refers to security of the system to allow for e.g. mortgages; certainty of ownership and parcel identification; secure against physical damage and data alteration.

**Number of cases of illegal fencing:** Reduction in the percentage of illegal fencing cases indicate that the CLRA has been implemented well in a region. It can also mean that the CLB, TA and the community members got enough knowledge about the CLRA therefore the act is implemented accordingly. Good practice according to CLRA illegal fencing should be reducing under normal circumstances.

**Number of institutions represented at CLB level:** Balance representation of the institution within the CLB is critical, the more members in a group the likely the board suffer from attendance. The researcher assume that the board with few members is likely to produce better systems and process that will bring better results and the larger the group the likely to have challenges.

#### **4.2.1.3. De jure and de facto processes**

The assessment under this aspect includes comparing if there is any variation between the written law and the actual practice/ implementation of CLRA as it has been carried out in the past six years. It further identifies the strength and weaknesses in both de jure and de facto processes. Furthermore the assessment aims to compare practices across the three regions and see if there are differences associated with the CLRA implementation in various regions. This evaluation focuses on allocation, transferring and registration of new and existing land rights.

**Number of steps in land allocation, transfer, registration and revocation of new and existing rights in the de jure as well as in the de facto:** Same numbers of steps in land allocation, transfer, registration and revocation of new and existing rights in the de jure as well as in the de facto will indicate that there is no different between the practice and written law. We assume that practice must be informed by the law.

**Variation between practice and the CLRA as it is written:** Researcher assumption is that if there is no variation between practice and the written law, this can mean, information on the implementation of the legislation has been well disseminated and the law is well understood by all parties involved. It can also mean that all stakeholders were consulted during the formation process of the legislation.

#### **4.2.1.4. Legal aspect (CLRA no. 5 of 2002)**

Communal land is regulated in terms Communal Land Reform Act, No. 5 of 2002. The main goal of the CLRA is to provide for the allocation of rights in respect of communal land, to establish CLBs, to provide for the powers of the Chiefs, TA and CLB in relation to communal land. The CLRA came into effect on 1 March 2003 (LAC, et al., 2009) CLRA also intend to improve communal land tenure systems by restoring

the powers of chiefs and TA and by establishing land boards as new statutory bodies with the following functions: controlling the allocation and cancellation of customary land rights by chiefs or TA, deciding on applications for rights of leasehold, creating and maintaining registers for the allocation, transfer and cancellation of customary land rights and rights of leasehold, Advising the Minister of MLR on Regulations to be made to meet the objectives of the CLRA, Give effect to the provision of CLRA.

Section 7 of CLRA regulates the meeting of CLB and how they operate and make decisions. The Minister of Lands and Resettlements must call the first meeting of CLB thereafter CLB must meet every two months. Special meeting may be called either by the Minister of Lands and Resettlement or chairperson of the CLB if the Minister of Land and Resettlement agree.

#### 4.2.1.5. Evaluation Framework and method

As explained in section in chapter 2, the method developed by Steudler (2005) for evaluating land administration has been adapted as a reference for the purpose of this research. According to the adapted method, the aspects of evaluation need to be identified prior to the evaluation as it has been done in this section **Error! Reference source not found.** Identification and development of indicators for each evaluation aspect need to be done. This is shown in Table 4.1 below.

#### 4.2.1.6. Developing indicators and good practice

Evaluation of the outcome must be carried out regularly to measure performance and reliability of the system and to measure how well are the set objectives have been achieved. These aspects have been matched with different evaluation areas and the appropriate indicators. Good practice criteria have been also developed for each indicator. However, in this research we limit ourselves to one indicator for management and three for operational.

Table 4.1: Evaluation framework for CLRA adapted (Steudler, et al., 2004)

Area	Evaluation Aspects	Indicators	Good practice
Organization	Management	Number of organization in the chain of land allocation, registration, transfer and revocation	Possible shortest chain of organization involve in allocation, revocation, transfer and registration of land.
		Institutional and organizational arrangement	The Clear role and responsibility the higher the success of the implementation.
		Number of human and physical resources available	A well balance and allocated of human and physical resources in a region
	Operational	Number of land disputes	Reduction in the number of dispute.
		Level of security of Tenure	Increase in the number of people willing to register and get land.
		Number of cases of illegal fencing	Reduction in the percentage of illegal fencing problem.

Legislation	De jure and de facto processes	Number of steps in land allocation and registration of new and existing rights in the de facto as well as in the de jure.	Same number of steps in land allocation and registration of new and existing rights in the de jure as well as in de facto.
		Variation between the practice and the CLRA	No variation between the practice and CLRA as it's written.

### 4.3. Comparative evaluation between the regions using indicators and good practice

Number of organization in the chain of land allocation, registration, transfer and revocation and Institutional and organizational arrangement are not included in the comparative evaluation.

#### 4.3.1. Availability and management of resources (see figure 4.6)

Oshana MLR has 2 staff members doing mapping, verifications, data capturing and digitizing for the region, in land management; it has 3 TA to be served by MLR and CLB, it has a total land area of 8,682 km<sup>2</sup>, it has 3 TA and 1 car for fieldwork, no car allocated to CLB to investigate and resolve land disputes, no filling cabinets and proper documentation for applications and land disputes documents.

Omusati regional office has 3 MLR staff members responsible for mapping , verification, digitizing and data capture, these staff members are the one that attend to all land disputes reported in the region, they are also responsible for preparing and attending CLB meeting. Omusati has 2 vehicles for mapping and verification, 8 TA to be served, 2 computers, it has a total area size of 26 558 km<sup>2</sup>. It has no car for transporting CLB members to investigate and attend to land disputes within the region, no cabinets and proper documentation, filling of applications and land disputes records. Omusati regional office have received 21058 application and 20613 applications are still pending.

Similarly, Oshana regional office has received 33016 applications and 32732 are still pending, comparable to that, Oshikoto regional office have recieved 25552 and 21949 applications are still pending. Oshikoto has 2 MLR staff members who are exactly doing similar tasks as MLR staff in Oshana and Omusati regions. Oshikoto has 2 TA but only 1 TA to be mapped and verified since the other TA is in a settlemet which is outside the communal area. Oshikoto has a total area size of 26,607 km<sup>2</sup>, but part of the land is falling under the commercial area, hence it doesn't need to be served by the CLB and TA. The region has 1 car assigned for fieldwork, it has no car for CLB to investigate and resolve land disputes, paper archive not organized (no filling cabinets, no proper documentations of applications and land disputes documents) see figure 4.22.

There is some IT support for processing applications in all three regions. Spatial data are managed in GIS enviroment, legal administrative data can be included in the relational database. Spatial data and legal administrative data can be linked using parcel identifiers. Application software has been dveloped for this purpose. This application software combined with GIS and database functionalities can be used to produce maps with parcel and list of names of users. It is possible to perform spatial queries. Staff members working in MLR regional offices have been trained in using National Communal Land Administration System (NCLAS) software. NCLAS has comprehensive functionalities. Computers are available

There is 1 ArcGIS license for digitizing for each MLR regional office, that means only one staff member can digitize at a time. A uniform database have been established across the three region. This database has

no user rights and privilege assigned to specific staff members (data security), thus every staff can modify the data in the database anytime. Indications of how much resources is available per region is shown on the figures (figures 4.1). It is also seen by comparing the number of applications received, processed and pending and the total number of parcels registered in the system since 2003 to date. So far there are only 5812 parcels registered in Omusati digital database, 1700 parcels for Oshana region and 1270 parcels for Oshikoto. Hence we can say the resources in the region is not propotionally allocated compare to the number of TA and the area size of 26 558 km<sup>2</sup> and a population size of 228 842 of the region. It is also assumed in this research that due to constrain mentioned above the registration system process is viewed very slow and cumbersome. Please note: There is no assessment for staff perfomances.It is possible that this can be improved.

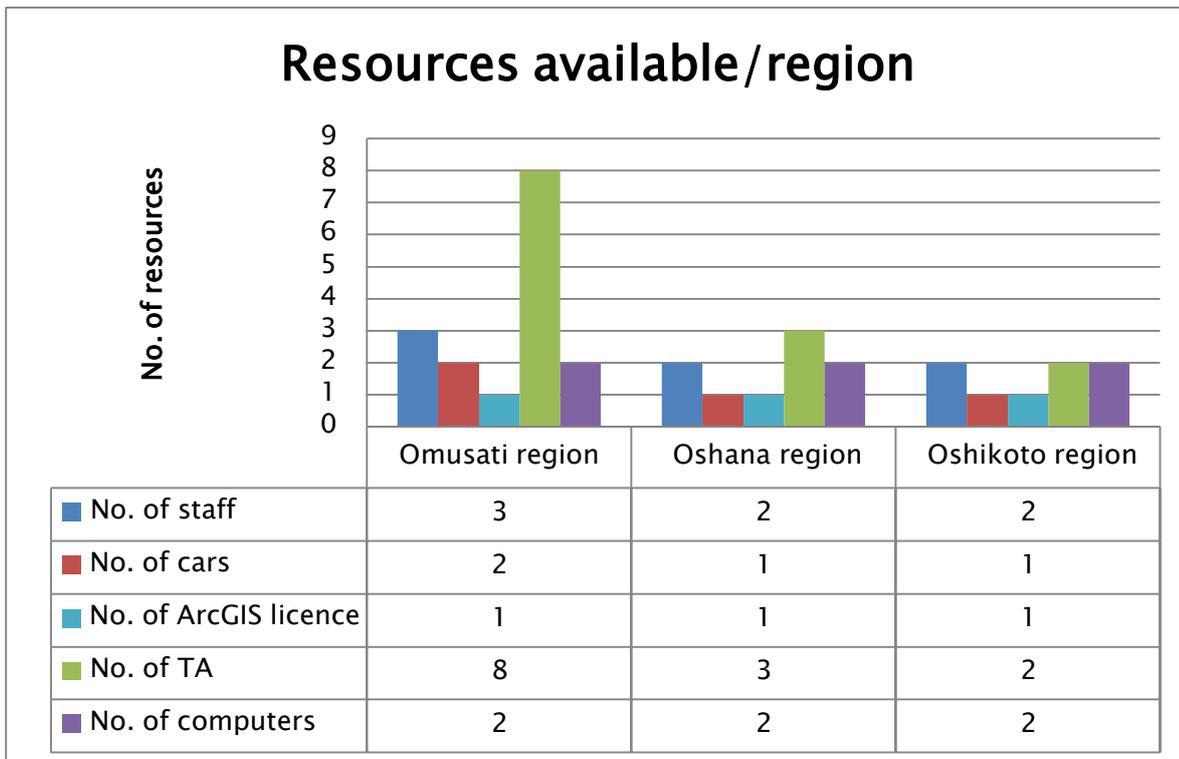


Figure 4.1: Available human and physical resources in Oshana, Oshikoto and Omusati regions

**4.3.2. Number of land disputes:**

From 2005-2008 Oshana have recorded, 22 land disputes cases in 2005, 25 in 2006, 25 in 2007 and 22 in 2008. Oshikoto have recorded (for the total number see figure 4.3) land disputes cases from 2005-2008, which were as follows 24 land disputes cases reported in 2005, 3 cases in 2006, 4 cases in 2007 and 9 cases in 2008. Omusati have 29 land dispute cases in 2005, and then it increased to 33 cases in 2006, reduced to 19 cases in 2007, and later to 10 cases in 2008. Oshana region has a very high number of land disputes cases compare to Omusati and Oshikoto regions. Land disputes are mostly caused by double allocation, boundaries between neighbouring parcels and between widows and her late husband’s family (Annexure 7). In the Omusati region most of the disputes are between, family members after the head of household passed away. Oshikoto has (or had) a large reduction in land disputes cases (from 2005-2006) three year after CLRA introduction. The disputes cases had increase with one case only in the year 2007 and with 5 in 2008. The number of land disputes in Oshikoto has gone down even though it has again increasing lately comparing to Oshana region. Land disputes cases in Omusati has been the highest since 2005, comparing to Oshana and Oshikoto. Land disputes have increased in the year 2006 then decrease by theyear 2007. See figure 4.2. Figure 4.3 shows an overlap between proclaimed local authority land and communal land.

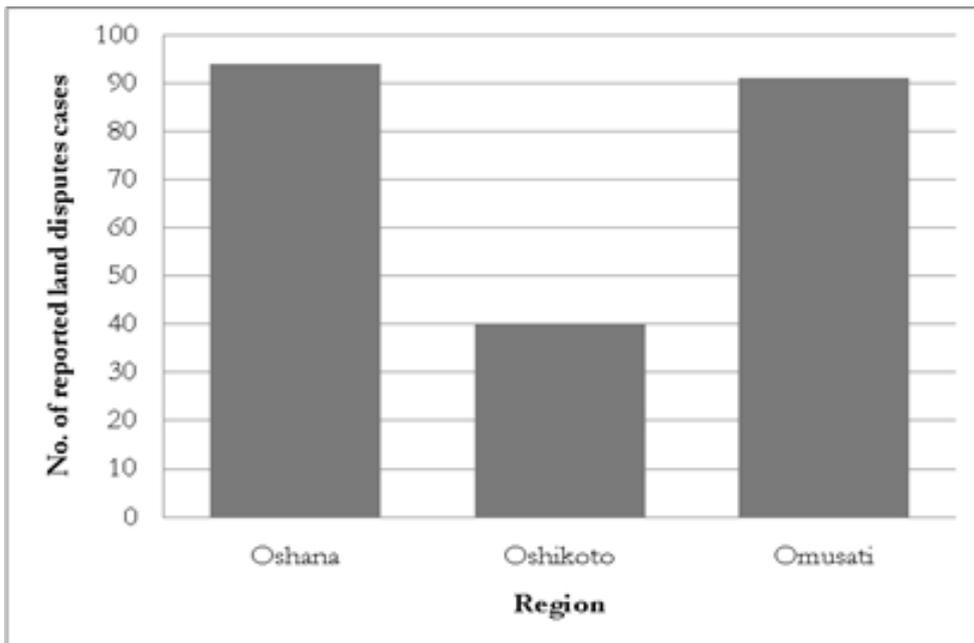


Figure 4.2: Number of reported land disputes in Omusati, Oshana and Oshikoto 2005-2010

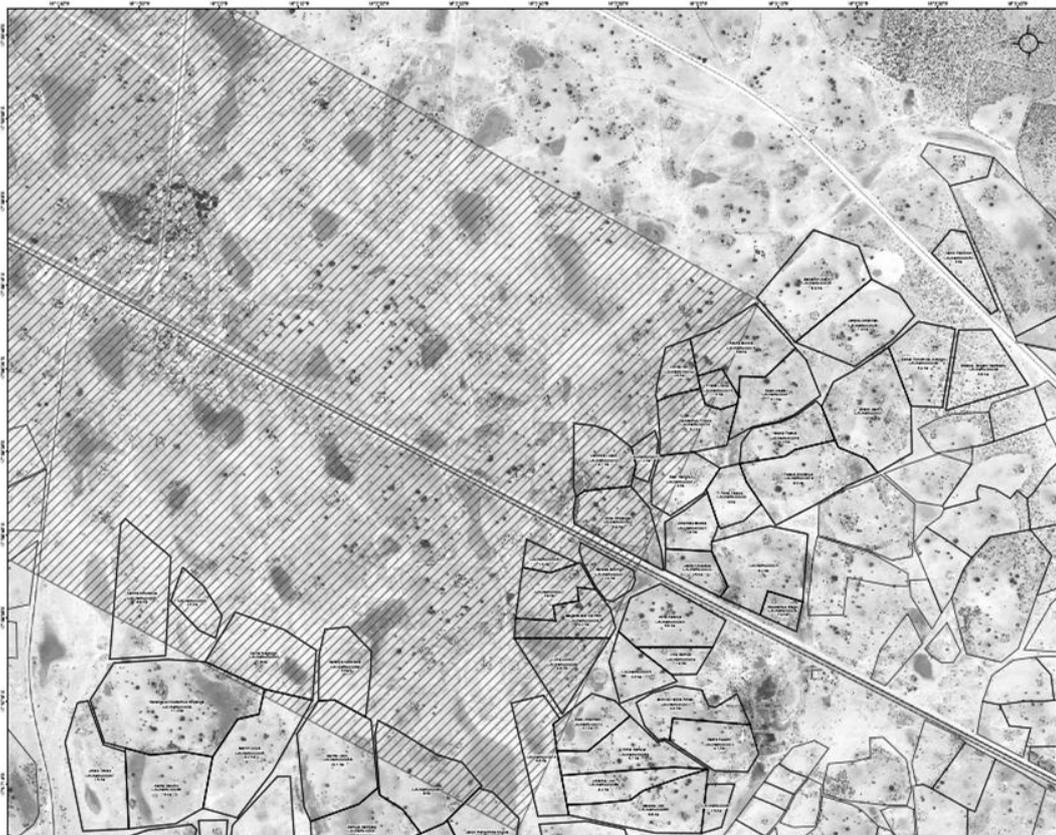


Figure 4.3: Some of mapped parcel with disputes falling within a proclaimed town land

#### 4.3.3. Level of security of tenure:

Field data shows that all three regions have high increase in the number of people applying for land registration, recognition and allocation, of land, this can be seen from number of application submitted every year for the past years since the registration process have started, however no progress or

registration done in the year 2003, and no proper documentation was done in 2004 and for 2009 records were not compiled by the time of fieldwork, therefore the study only based on the application received between from 2005 to 2008. Oshana receive a very higher number of applications compare to Omusati and Oshikoto region (see figure 4.4 below). Oshana and Omusati have received very higher number of applications in 2007 and 2008 (see figure 4.6) compare to 2005 and 2006 while Oshikoto received a very low number of applications in 2008 compare to 2007 (see figure 4.5). Oshikoto and Omusati had pilots project to register customary land rights using aerial photographs during the year 2007, however Oshana have never had any project all applications are from the normal operation of MLR Looking this we assume that inhabitants of Oshikoto and Omusati have felt secure at the beginning of registration. It is assumed that community in Oshana region feels more secure compare to the ones in Oshikoto and Omusati. Therefore we assume that Oshana have very higher security of tenure compare to Omusati and Oshikoto, however Omusati we can also say Omusati have higher security of tenure compare to Oshikoto. Nevertheless it is possible that the number of applications might have gone down now that some people in those regions have to wait for their certificates for up to 4-5 years.

For compensation out of 20 respondents only (2/20) feels that registration will protect them from eviction without fair compensation while 17/20 respondent feels that's registration will protect them from eviction without fair compensation. This is indicated by the figure 4.7. Respondents said "*compensation is determined according to the fruits trees and buildings which a right holder has on the land and it is determined by agreement between the right holder and the government*". The majority (17/20) of respondents feel that when they have land rights certificates it is easier to prove what rights one has on a specific piece of land rather than a word of mouth as it was before enacting of CLRA. However, there limited Land Information System (LIS) in place but it could be improved to maintain and protect the data in the entire three regions studied. Both paper and computer based land information are not protected against any kind of damage. There is a Namibia Communal Land Administration System (NCLAS) it is not linked to one database each region has its own separate database. Copies are made on regular bases for all regional databases and saved into the main database in Windhoek.

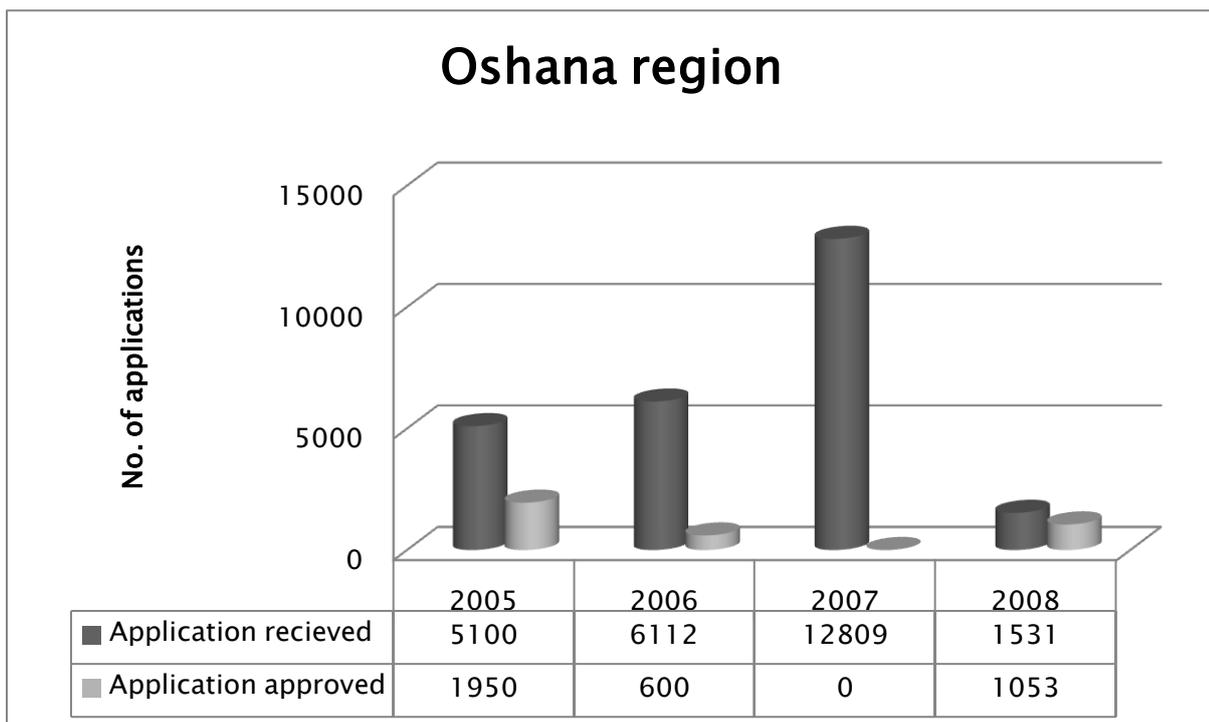


Figure 4.4: Trends for application received and approved in Oshana region from 2005-2008

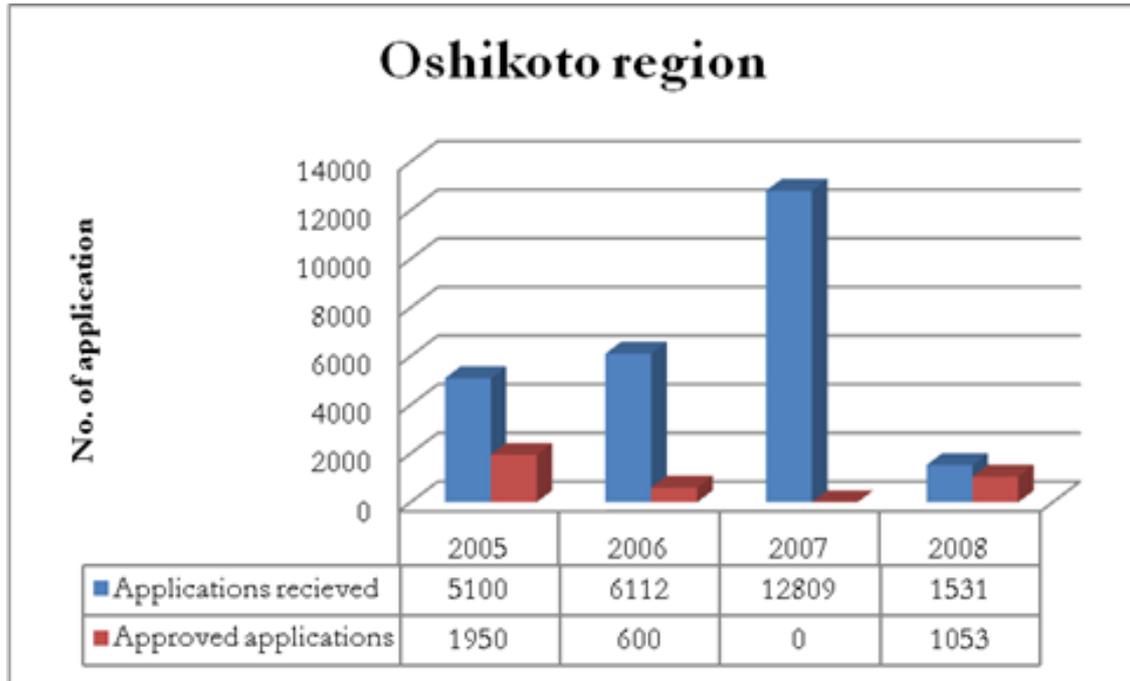


Figure 4.5: Trends for application received and approved in Oshikoto region from 2005-2008

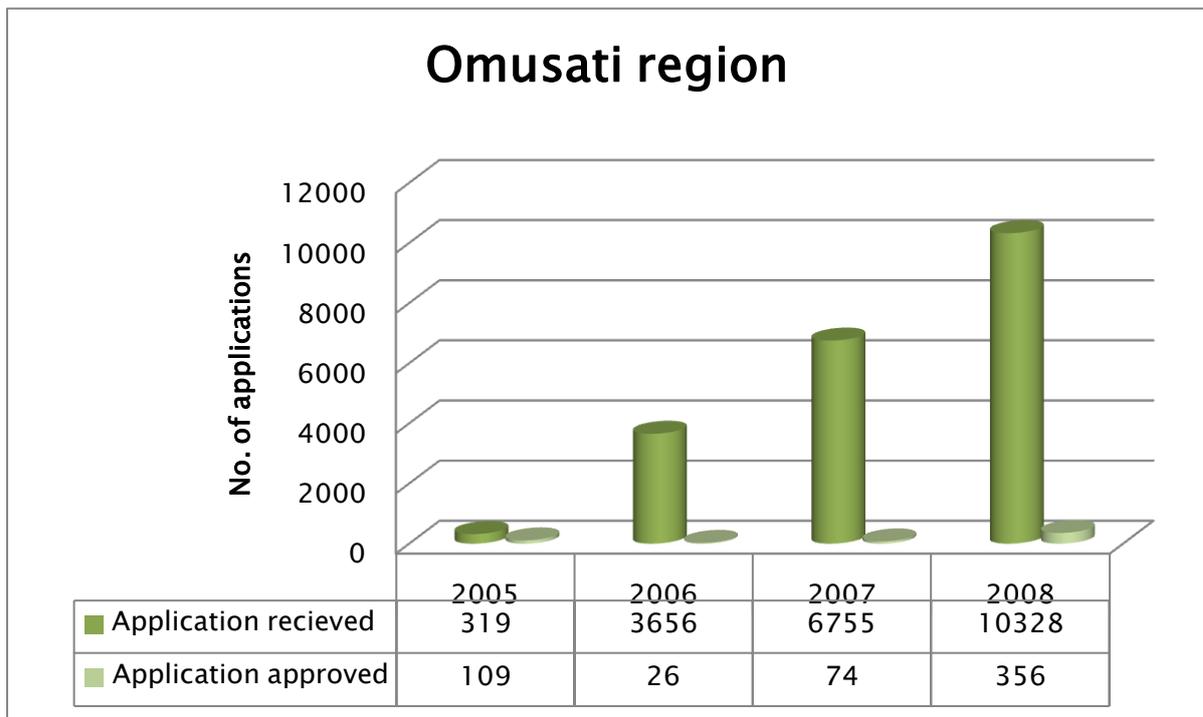


Figure 4.6: Trends for application received and approved in Omusati region from 2005-2010

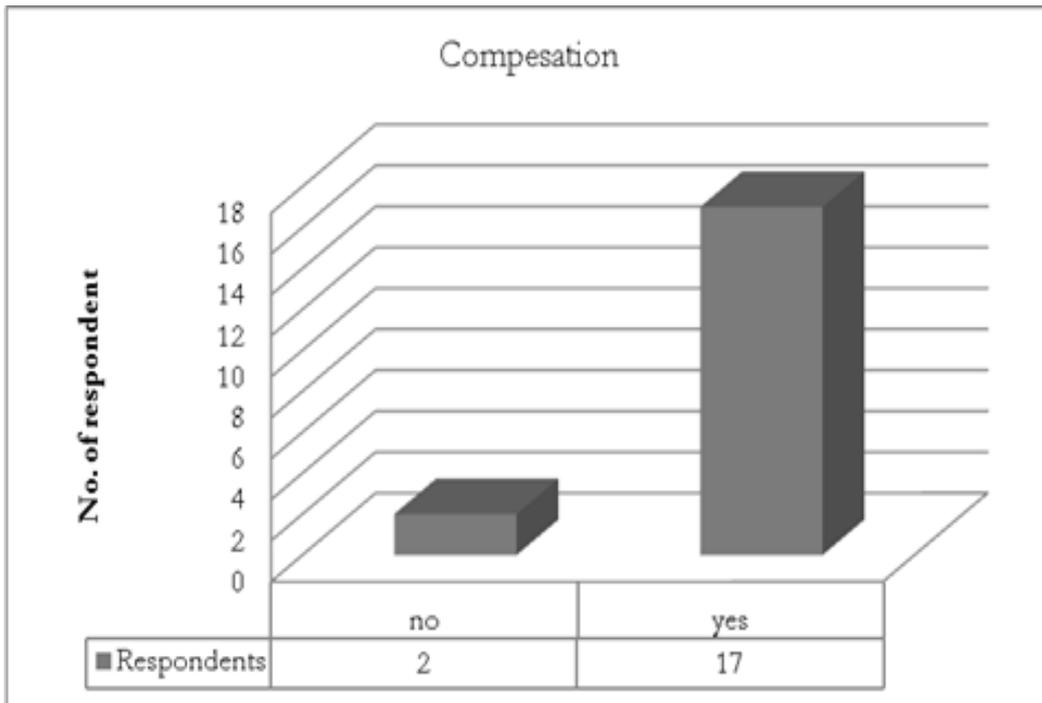


Figure 4.7: Response on secure against eviction with fair compensation

**4.3.4. Number of illegal fencing:**

Since the enacting of CLRA illegal fencing cases were only reported in Oshana and Oshikoto regions. There were no illegal fencing cases reported in Omusati region up-to-September 2010. Based on MLR staff interview there was no illegal fencing cases reported in Oshana region since the year 2006 to September 2010. Figure 4.6 below shows trends of illegal fencing in the past years.

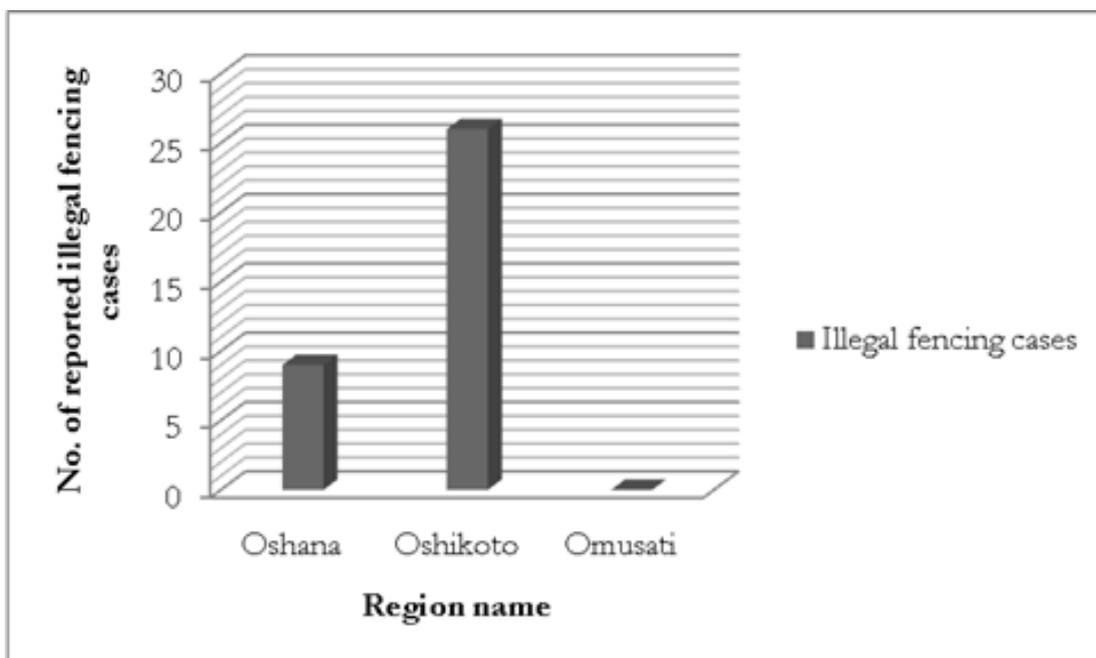


Figure 4.8: Number of illegal fencing in Oshana, Oshikoto and Omusati region from 2005 -2010

Nevertheless according to my observation of the Uukwambi TA disputes resolution meeting on 06 October 2010 in Uukwangula, (Annexure 5) there are some cases of illegal fencing but they are not reported to the CLB, hence they are not recorded. According to CLB members and MLR staff in Oshana region there are many illegal fencing cases but they are not reported and they further stated that it is very difficult to determine which fence is illegal. The MLR staff further mentioned that illegal fencing is a very sensitive issue in Oshana region.. Evidence of how the illegal fencing has been reported is indicated in figure 4.8.

#### **4.4. Analysis of the organizational processes and development of model**

For easier representation and comparison models of the same process are placed next to each other. For the *de facto* similar application processes such as application procedure for new land allocation, recognition of customary land rights, new leasehold and procedure for the recognition of existing rights to occupy communal land and for the granting of right of leasehold for the three region (cases) are combined for the three regions are compiled in one model for each set and similar activities are indicated with a black solid outline in the models and a word (all) in brackets while those activities which are specific to the case are indicated in solid red line and the case number in brackets. The description of the *de facto* process is based on the interview done with CD, TA, MLR and CLB during fieldwork while the *de jure* process is based on the CLRA

##### **4.4.1. Application process for new allocation for customary land rights**

Activities related to the application procedure for new customary land allocation in *de facto* as well as in *de jure* are shown in figure 4.9 and figure 4.10. CLRA can allocate two types of rights: customary land rights and rights of leasehold. According the *de jure* process the Chief or TA first must decide whether to or not grant an application for a customary land right. This is the primary power of the Chief or TA. Section 21 of CLRA gives the types of rights which can be granted and allocated under customary land rights 1) right to farming unit, 2) right to residential unit, 3) right to any other form of customary tenure that is recognized and described by the MLR in the Government Gazette. The third right is flexible, allowing the different tribes to suit their land use, since the right to farm and residential rights are mostly applicable to the northern part of the country (Republic of Namibia, 2002).

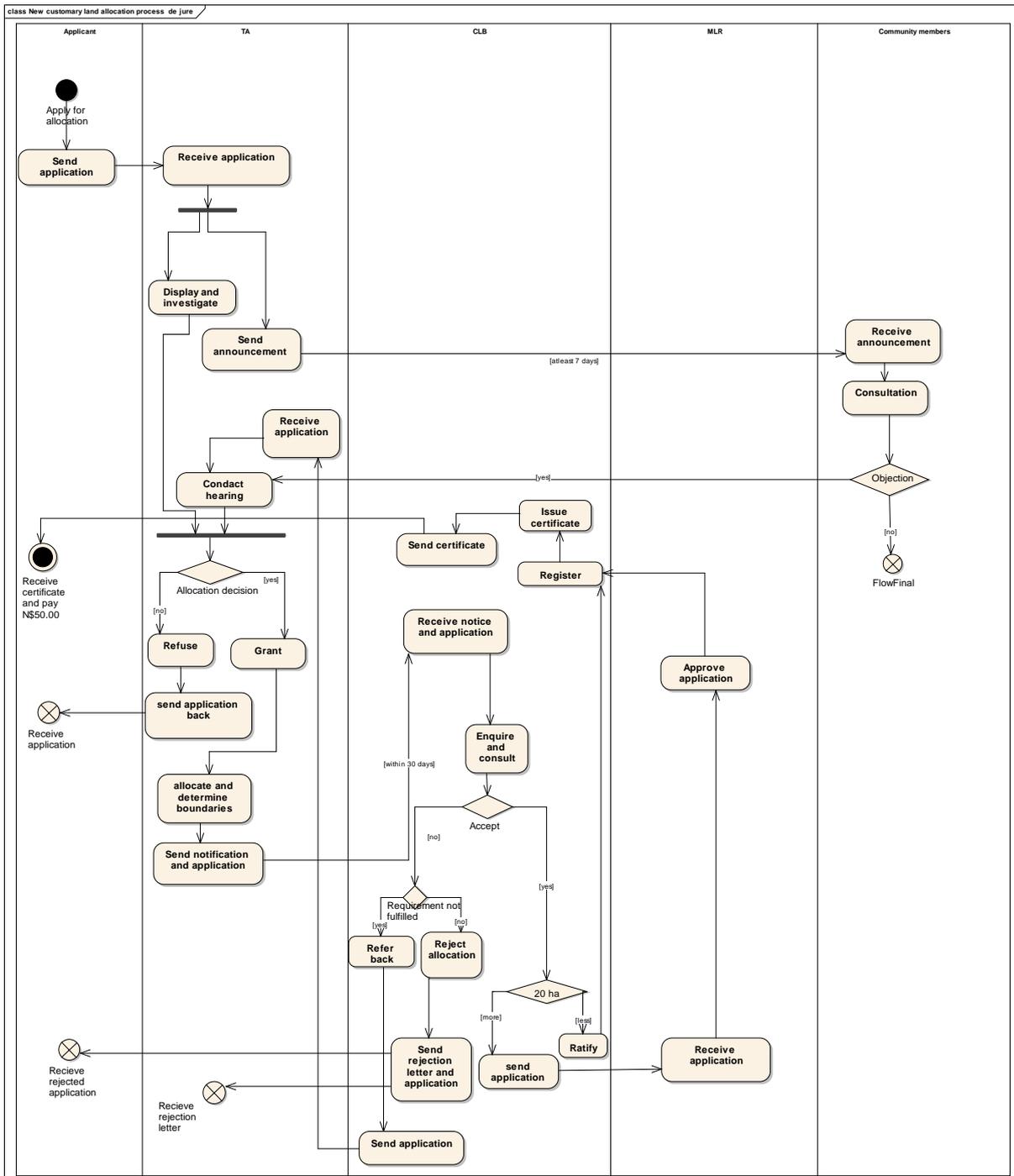


Figure 4.9: Application process for new customary land right allocation (*de jure*)

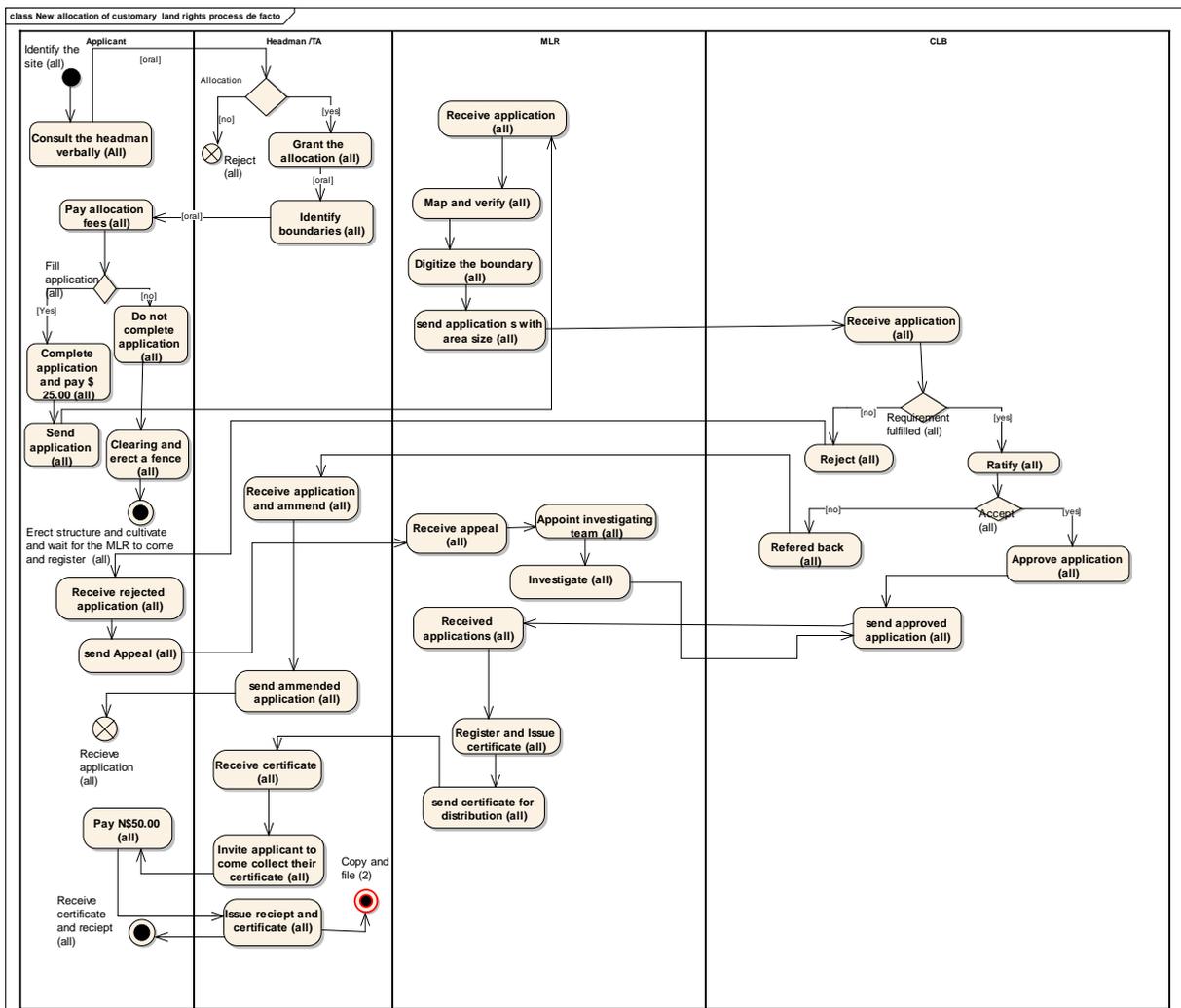


Figure 4.10: Application procedure for new customary land right allocation (*de facto*)

In both *de jure* and *de facto* in all cases (case1 refers to Oshana, case 2, Oshikoto and case 3 omusati) the applicant approaches the Chief/Traditional Authority (headman for *de facto*) of the area concerned for application. In *de jure* it is not stated whether the first consultations have to be done orally or in written. On the other hand in *de facto*, according to the TA members interviewed in Oshana and Omusati, it is done orally. Similarly, interviews with CLB and MLR in Oshana and Oshikoto also confirmed that the applications is done orally to the headman in *de facto* see (Annexure 8). There after form (Annexure 2. Form 1) must be completed and must be submitted in triplicate for *de jure* (in *de facto* according to MLR staff, CLB members and TA interviewed only one form is submitted, this is uniform in all three regions) with required documents attached, such as Identity Document (ID), passport, TA consent and headman consent. For *de jure* and *de facto* (case1, 2, and 3) every application submitted must be accompanied by a recommendation letter from Chief/Traditional Authority or community leader of the area concerned. In *de facto* in all cases the two consents are provided one from village headman and another one from TA. The information to be filled in the application form includes the name, residential address and the geographical location of the portion of land applied for. In *de jure* TA/chief displays the information for the concerned applicant on the notice board or in any newspaper which is circulated in the region or to be broadcasted in the radio for at least 7 days. In *de jure* if any objections arise TA must carry out an investigation which is carried out before the allocation while in the *de facto* in all cases investigation is done after land allocation. On the contrary, in the *de facto* in all cases the village headman can grant or

refuse the allocation and identify the plot boundaries together with the applicant before investigation. In *de facto* in all cases there is an allocation fees which is paid to the headman by the applicant, then the applicant decide to fill in application or not. If the applicant decides to fill in the application form (in case 2 and 3 (Uukwambi TA) applicant pays the application fee to the headman) while in case 2 applicant pay the application fees directly to TA office. In *de facto* in all cases the headman determines the boundary of the plot while in *de jure* the chief or TA must determine the boundary of the plot to be allocated. After the allocation and boundary determination however in *de jure* applications are submitted to the CLB of the respective region by TA within a period of 30 days for consideration. In *de facto* there is no timeframe used for sending the application in all cases. In *de jure* the allocation done by the Chief/TA/headman has no legal meaning until the allocation is ratified or approved by the CLB while in *de facto* the allocation is assumed to be legal once the applicant pays the allocation fees in all cases. In *de facto* in all cases as well as in *de jure*, N\$25-00 non-refundable application fee is payable by the applicant. In *de jure* the Chief/TA of the area concerned either rejects or approves the application. In *de facto* the applicant clearing the plot and erecting the fence and occupy the land in all cases. *De facto* in case 2 and 1 the applicant send application to TA office via the village headman, in case 3, the applicant applies and pays directly to TA office, s/he only brings the consent from the village headman. In *de jure* TA must send applications to CLB but in *de facto* in all cases the applications are to be send to MRL regional offices, due to the fact that CLB have no offices where the application can be delivered. Upon receiving of the application in *de jure* the CLB must enquire and consult the concerned TA to find out if the allocation was done according to CLRA, while in *de facto* in all cases MLR verifies and maps and then digitizes and calculates the area of the plots applied for, MLR then sorts the application according to the size to prepare them for the CLB meeting. The mapping and verification is not done immediately in *de facto* in all cases, it is done systematic village by village. In case the applicant village is far from the area in which the team is currently mapping the applicant has to wait until his/her village is reached.

The CLB can reject, approve or refer application back to the Chief/Traditional Authority in *de jure* as well as *de facto* (in all cases). In *de facto* in all cases the application is rejected when the land applied for is more than 20 ha. Then CLB sends the application to the concerned TA to go and find a solution with the applicant on what should be done to reduce the size of the plot, if they cannot come to an agreement then the applicant just turns down the application. Similarly in *de jure* the CLB can reject if the land applied for is exceeding 20 ha. Land Boards are only allowed to allocate customary land rights from 1 to 20 hectares (ha). More over in *de jure* all applications that exceed the prescribed size are referred together with reasons from the applicant and recommendation from the traditional authority to the Minister of Lands and Resettlement for his written approval before the allocation is affected. Nevertheless, in *de facto* in all cases application referred to TA for corrections are send to the applicant for correction and resend via TA. In *de jure* for the approved/ratified application the CLB carries out a site visit. This is done for size verification and taking of coordinates to prepare a map of the site while in *de facto* in all cases approved/ratified application the CLB uses the size and the map provided by the MLR.

For *de jure* the CLB registers allocated rights and lastly issues the certificate of registration, on the centrally, in *de facto* (all cases) MLR registers allocated rights and issues certificates of registration. An amount of N\$50-00 for the certificate of registration is paid to the TA to cover administrative costs in *de facto* (all cases) however the amount payable for the certificate is not specified in the CLRA regulation 37 nor in the act its self. Figure 4-2 above is illustrating the application procedures for allocation and registration of new customary land rights.

#### **4.4.2. Application for recognition of existing customary land right**

Activities related to the application procedure for recognition of existing customary land allocation in *de facto* as well as in *de jure* are shown in figure 4.16 and figure 4.18. Applications for CLR must be submitted

through the recognized traditional authority (TA) considered being the custodian of local communal land (*de jure*). The central purpose of this is to ensure that the applicant indeed has customary rights to the property, and that its borders are valid. Application is done in form 3 in both the *de jure* and *de facto* (Annexure 1) In *de facto*, before applying to TA, the MLR have to organize a community awareness meeting/campaign for case 2 and 3 (case1 refers to Oshana region, case 2 refers to Oshikoto and case 3, refers to Omusati).

The community are informed via the radio or churches or through their headman for case 1 .While in *de jure* the applicant starts with requesting the evidence of land right from the TA. In *de facto* for case 3 the TA sets up a mobile office under a tree and the affected community members living near that area are informed to go and apply for recognition of their existing rights of their plots. Applications for communal land rights are filled with the help of village secretaries from the affected villages, headman are also gathered together with their village members. TA members inform the gathered community members of the procedure to be followed during the recognition and registration process. Applications are filled by the village secretaries asking information from the applicant and using the applicant identity documents, or driver's licence or election voter's registration card. In case 1 the application is filled by the applicants with the help of TA on the day of mapping and verification by MLR. In case 2 applications are filled voluntarily by the applicant at TA office. The figure (figure 4.11) below shows community together with MLR staff identifying their plot boundaries.



Figure 4.11: MRL and community members' identifying plots boundaries in the aerial photographs

In all cases *de facto* TA and headman consents are given but at different stages. For case 2 headman consent is collected before applying and is taken to TA office to prove evidence of occupying an existing plot while in case 3 headman is given at the mobile office. For case 1 headman consent is given on the day of application TA consent is given at TA office. In *de jure* as well as in *de facto* in all cases N\$25.00 application fee is payable and the application is not valid until N\$25.00 is paid. *De facto* in all case a receipt is attached to the application form. However in *de jure* it is not mentioned to whether a receipt must be attached to the application or not. For *de jure* applications have to be made within a prescribed time which can be extended similarly in *de facto* in all cases application time has been extended three times. *De jure* application have to be send by the applicant to CLB on contrary, in *de facto* in all cases every application must be submitted through the recognized TA considered being the custodian of local

communal land. The local TA therefore has to check and approve each application by (attaching their consent) before it is submitted to the regional office of MLR. Staff of the office must then map, verify, digitize boundaries ( for digitising see figure 4.13 below) and capture each property before the application is sorted and finally placed before the regional CLB for its approval. Figure 4.12 below shows the aerial photographs with drawn, mapped and verified plots; figure 4. 14 and 4.15 show the mapped parcels with parcel sizes.

In *de jure* CLB upon receiving application forms they can investigate, inquire and consult with the applicant in any matter related to the application. CLB may display the application information on the notice board at least for 7 days and invite interested parties to lodge their objection with CLB. Invitation can be done via the local newspaper or to be broadcasted on any radio station in the region. If the application has no problem CLB accepts and checks if the plot size is less than 20 ha, if the size is less than 20 ha CLB approves, if it's more than 20 ha CLB refers it to the Minister of MLR for his approval. For the plots where CLB has doubts, CLB may inform the applicant in writing the reasons of holding the hearing, the date, the time and the place where the hearing will be held. CLB also must ask the applicant to produce at the hearing any documentary evidence or to lead any verbal evidence in support of his/her claim. CLB must also inform the applicant to ensure that any witness he/she intends to call in support of his/her claim will be present at the hearing.

If conflict or doubt is cleared with evidence provided by the involved parties CLB may accept the evidence and confirm the claim, where correction is needed the claim is approved with amendments and referred back to TA for correction, then it will be resend again like a new application. In *de facto* in all cases CLB ratifies the applications that are less than 20 ha and send those one that are more than 20 ha to the Minister of MLR for approval. Applications with minor problems are referred back to TA for correction. The names of the approved applications then are displayed at the TA office notice board, MLR regional office, Cuca shops, churches and schools and any other known accessible place for 7 days – but no details of parcel only the name of the applicant. This is only done for the applicant to check if their names are spelled correctly. Community members are informed via the Oshiwambo radio announcement. *De facto* in case 2 and 3 (Oshikoto and Omusati region) plots with problems are mapped and verified but they are not discussed in the CLB meeting until the TA solves the disputes while in case 1 (Oshana) plots with disputes are left unmapped until the TA solves the disputes.



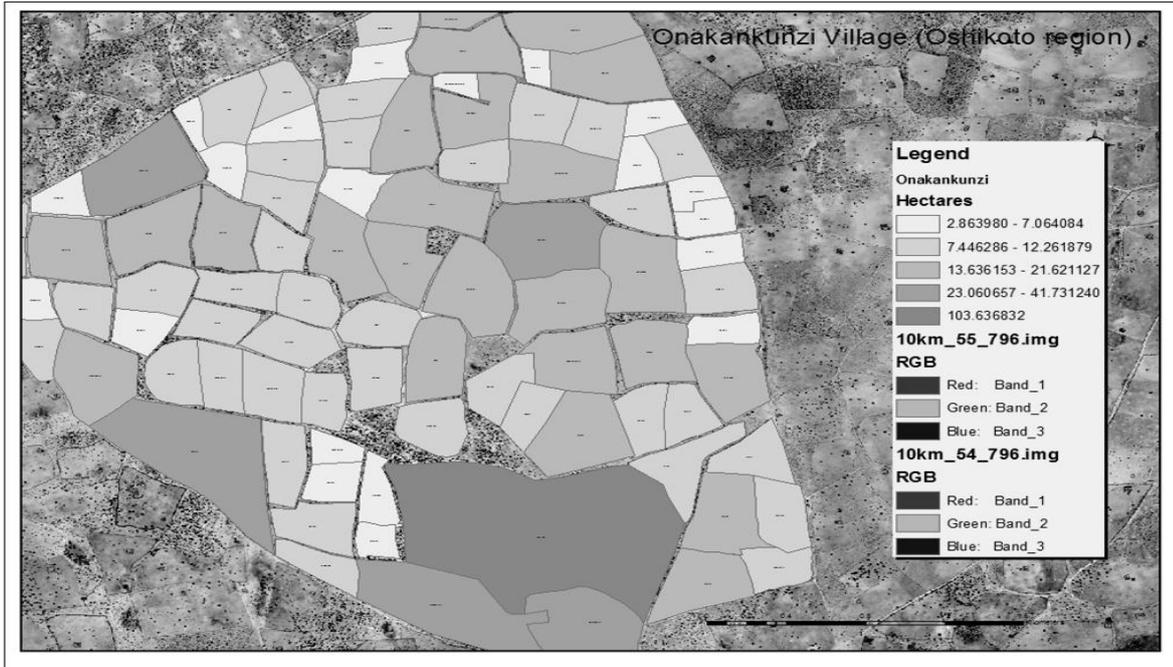


Figure 4.14: Aerial photographs with a digitized parcel

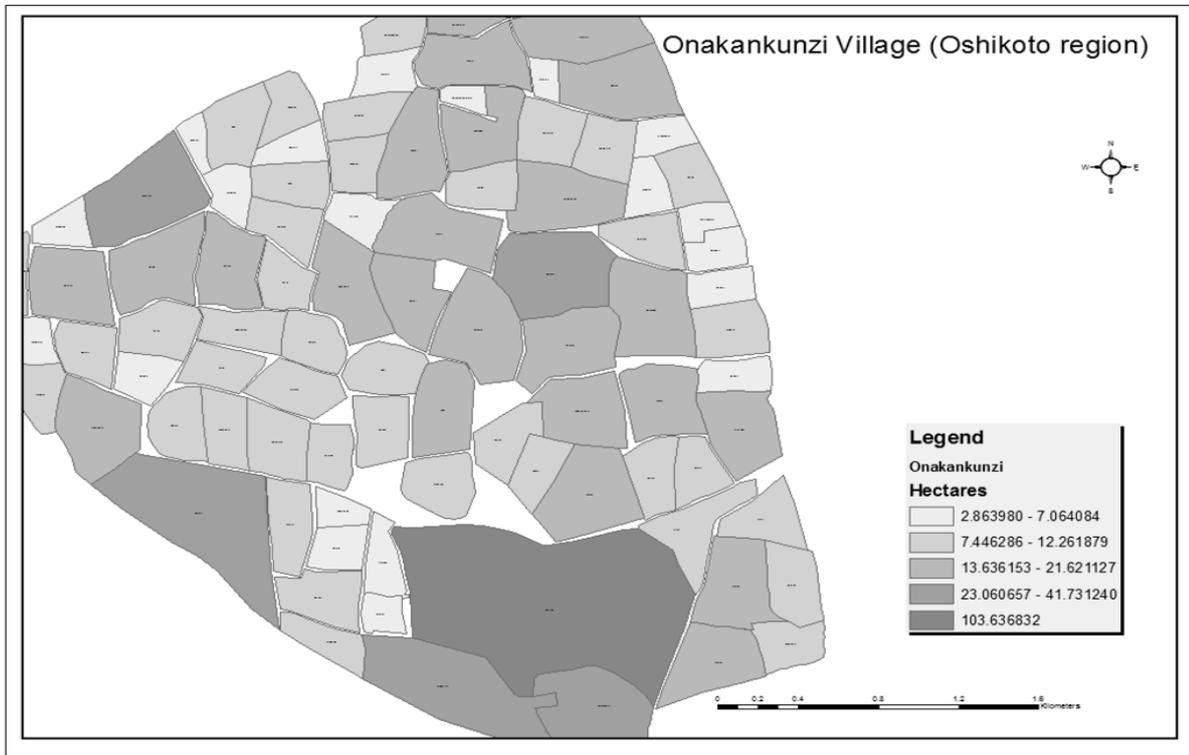


Figure 4.15: Village map indicating parcel sizes

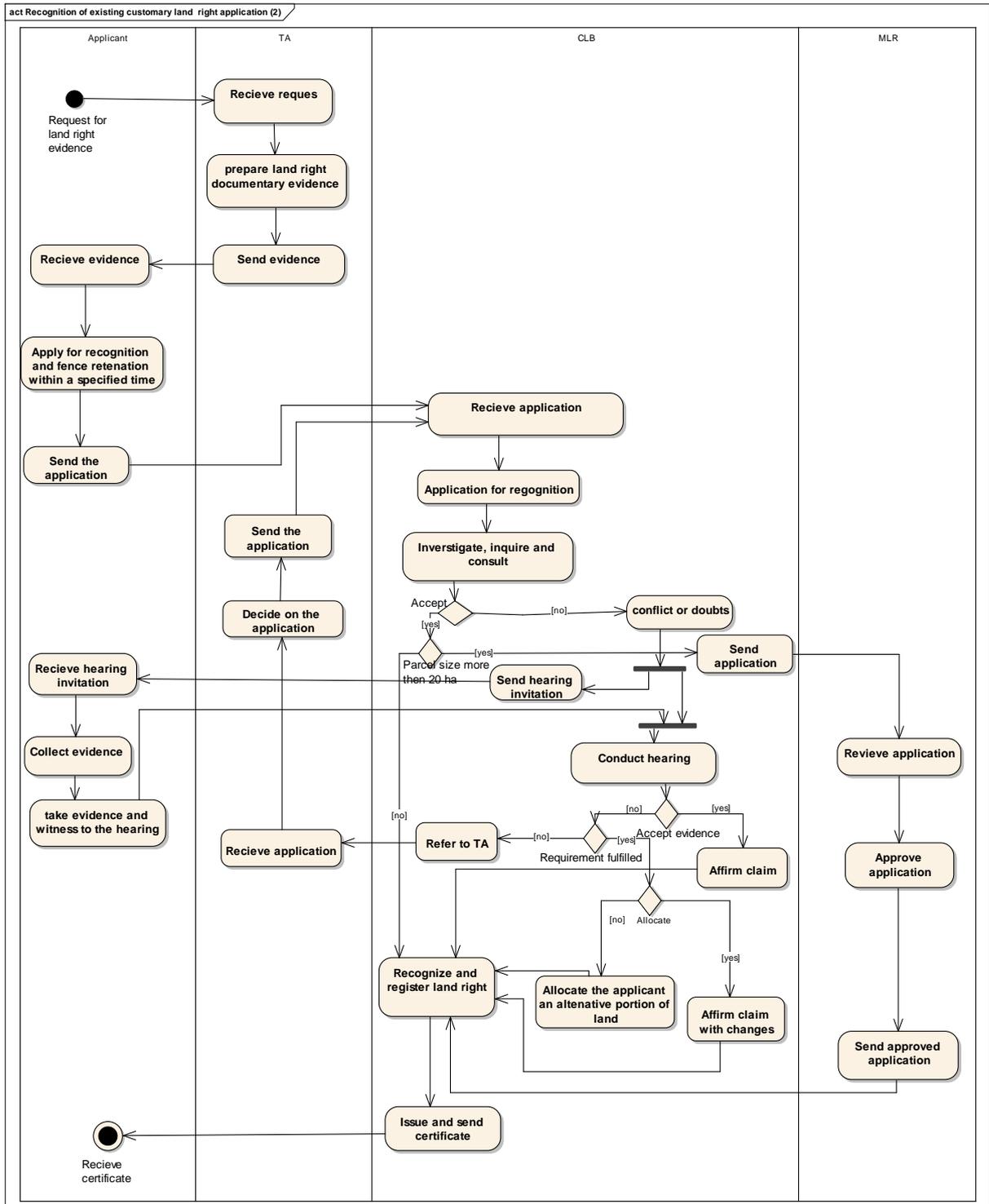


Figure 4.16: Application procedure for recognition of existing customary land rights (*de jure*)

In *de facto*, in case where objections are lodged, the CLB conducts a hearing (writing to the applicant as stated above in the *de jure*). In all cases objections caused by two applications claiming the same plot in the hearing the CLB allocates a new plot to the applicant who is not working on the land at the time of the application (affirmed claim with changes) and CLB confirms the claim for the applicant already occupying the land. After consideration of the application, in *de jure* the CLB must recognize the right to the land and register the right, in the land register. Once the CLB has recognized an existing right, all information

related to such right must be entered into the register (manual and digital, for digital register see figure 4.17)

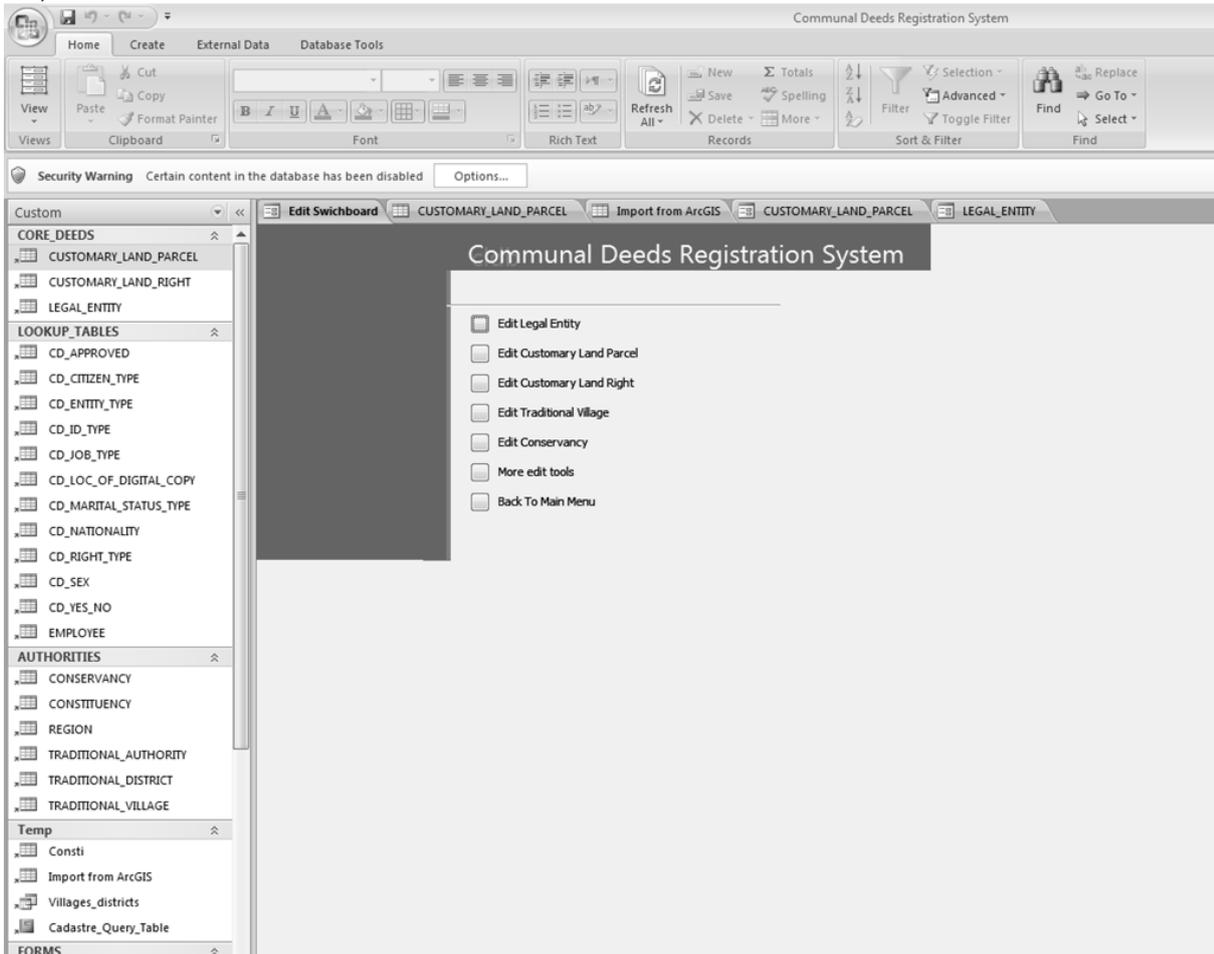


Figure 4.17: Communal land rights database in MLR

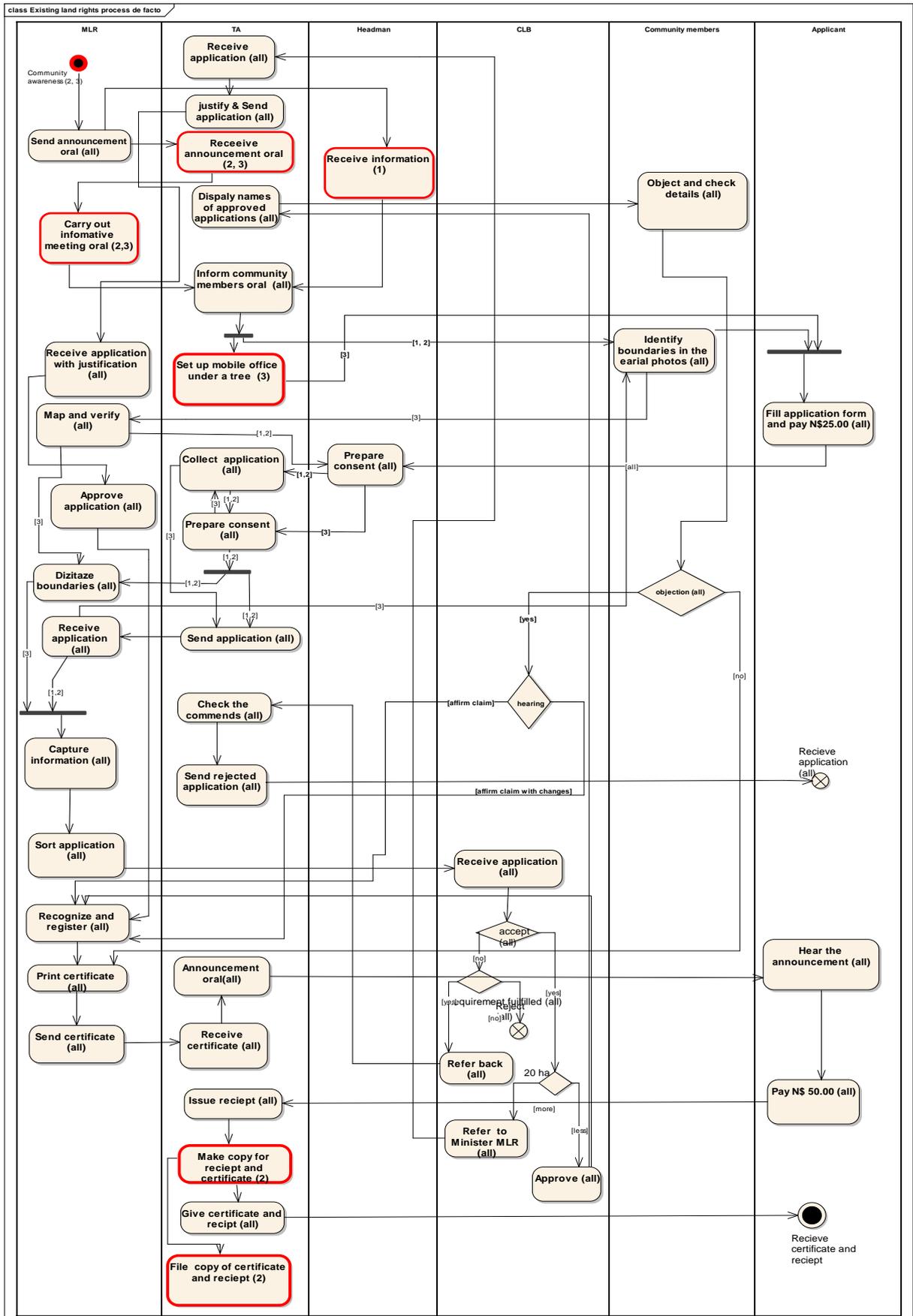


Figure 4.18: Application procedure for recognition of existing customary land right (*de facto*)

Opposing to that (*de jure*) *de facto* in all cases CLB recognizes the right to the land and MLR registers the right and all information related to such right into the register. In *de jure* the applicant is issued with a certificate of registration by the CLB while in *de facto* certificates are printed by MLR and send to TA office for distribution. TA sends an announcement to the radio to inform the applicant to collect their application. Each applicant pays N\$50.00 to TA office and a receipt is issued. For Case 2 a copy for each certificate is made and attached to one copy of the receipt, the original certificate is then given to the owner and the copy is filed in TA office. Before the certificate is finally given to the owner, the owner has to identify him or herself. For case 1 and 3 no copy is made by TA, the right holder is expected to provide their N\$50.00 receipt if their certificates are lost or destroyed while for case 1 the right hold must only provide his/her identity document in case the certificate is lost or destroyed.

#### 4.4.3. Application for land allocation for new leasehold right

Processes for the application procedure for new leasehold land allocation in *de facto* as well as in *de jure* are shown in figure 4.19 and figure 4.20. In *de facto* in all cases the applicant first identify the parcel s/he intend to apply for and prepares a business plan stating what s/he intend to use the land for. In both *de jure* and *de facto* in all cases application for leasehold is made using form 5.

In *de jure* applications for leasehold rights are made to the CLB while in *de facto* in all cases (case1 refers to Oshana region, case 2 refers to Oshikoto and case 3, refers to Omusati) application for new leasehold right are made to the concerned headman verbally. Headman can then grant or refuse the allocation. If the headman grants the allocation the applicant together with the headman identifies the parcel boundary. Consequently the applicant then has to pay allocation fee to the headman. In *de facto* case 2 and 3 applicants always have to fill in the application form before they occupy the land while in case 1 the applicant either fills the application before s/he occupies the parcel or occupies the parcel first and then fills the application later. If the applicant decides to fill in application form in both *de jure* and *de facto* in all cases a N\$25.00 application fee must be paid on the regional development account and in *de facto* in case 2 and 3 the application is send to the concern TA. For case 1 applicant starts clearing the parcel and erecting of fences and building a house. Applicant then sends the application to TA after occupation of the parcel. In *de facto* in all cases the local TA therefore has to check and endorse each application before it is submitted to the regional office of the MLR. In *de jure* CLB upon receiving the application must request the consent from relevant TA, the local TA can give the consent or reject. If TA rejects they consult the applicant too inform them on the rejection. Applicant upon receiving of rejection can decide to appeal or not. If applicant decides to appeal s/he sends the appeal to the MLR to ask arbitrator/tribunal to investigate the matter. This has to be done within 30 days from the day rejection was granted in *de jure* however in *de facto* in all cases the number days are not considered. In *de jure* the appeal tribunal must in writing set out the ground for the appeal. Appeal tribunal must hear an appeal within 30 days after the date from which it has received the appeal. The decision taken by the appeal tribunal is final.

For *de facto* in all case MLR staff of the regional office upon receiving of applications must then map, verify, digitize, calculate the area, and enter applicant as well as parcel information in the database for each property. This must be done before the application is finally placed at the regional CLB (CLB) for its approval and the issuing of a land rights certificate. Leasehold is mapped and verified as soon as the application is submitted unlike customary land rights whereby individual application have to wait until their villages are reached by the systematic mapping for their village. In *de facto* process in all cases MLR staff further sorts the applications and prepares them for CLB meetings and investigations. In both *de jure* and *de facto* all cases CLB upon receiving application can accept or reject the application. In both *de jure* and *de facto* rejected applications are send back to the applicant through their respective TA. CLB checks if the application fulfils all requirements, if it doesn't fulfil the requirement applications are referred back

to the respective TA, those ones fulfilling the requirement are then recognized by CLB. Before granting their approval they must be checked. On plot size (more than 50 ha) or leasehold agreement (more than 10 years or leasehold is for agricultural purposes). Any leasehold falling under the fore mentioned categories is then referred to the MLR head office for the minister approval. For the applications that are not falling under the fore mentioned categories CLB ratifies/approves them and MLR registers leasehold agreements and sends the agreement to the deeds office in Windhoek for determination of lease price in de facto all cases while in de jure CLB registers and sends leasehold agreements to the deeds office in Windhoek for determination of the leasehold price. In both de jure and de facto in all cases MLR deeds office then prepares a leasehold agreement with a price and in de facto a copy is send to the MLR regional office and original agreement to the applicant directly while in de jure deeds office sends the lease agreement to CLB then they print the certificates and send it to the applicant. In *de facto* MLR regional office upon receiving of the lease agreement copy then prints the leasehold certificate and sends it to the applicant. In both *de jure* and *de facto* all cases a N\$50.00 registration fee is payable to the regional development account. This is an account established for the development of each region.

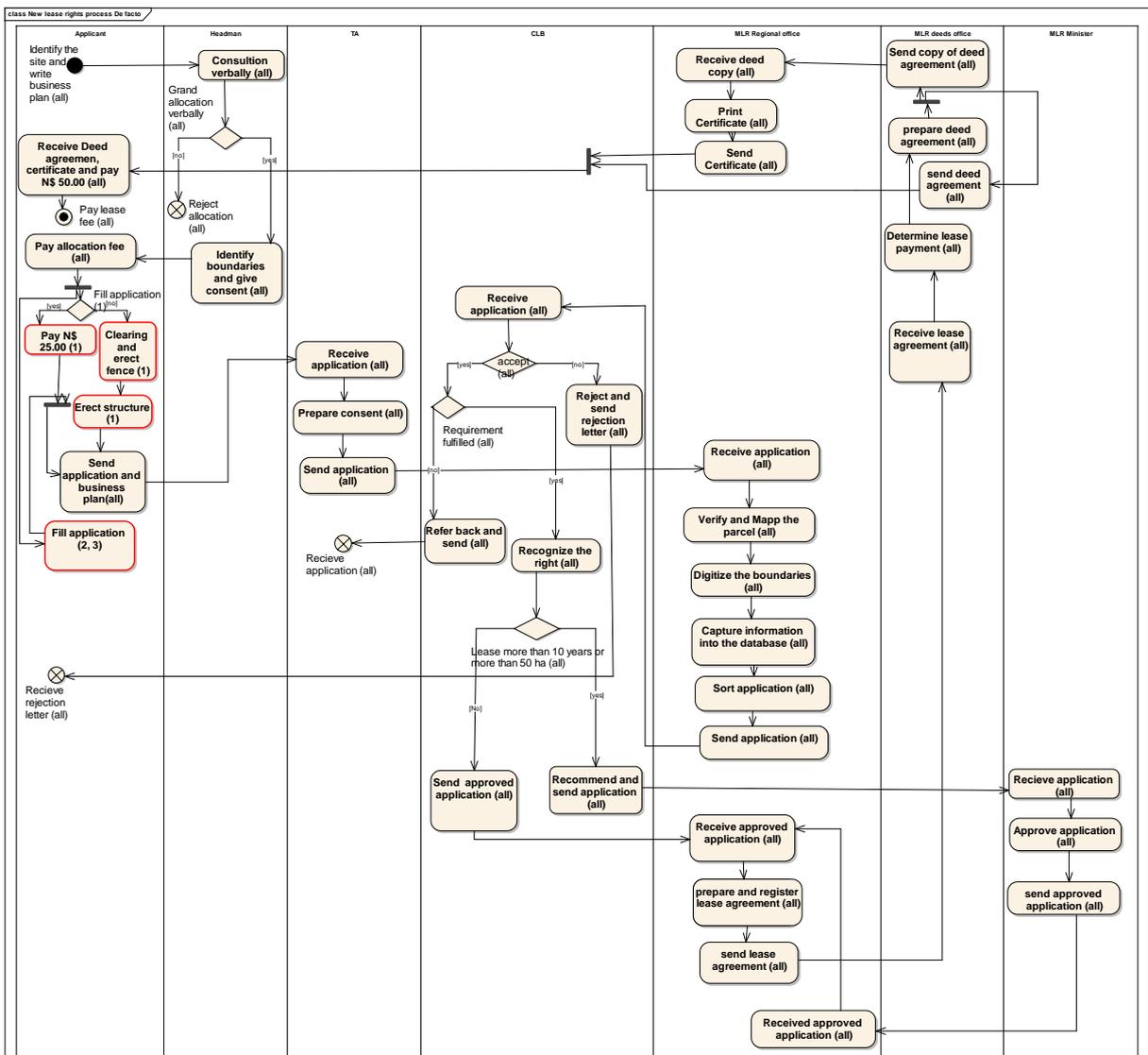


Figure 4.19: Application process for allocation of new leasehold right (*de facto*)

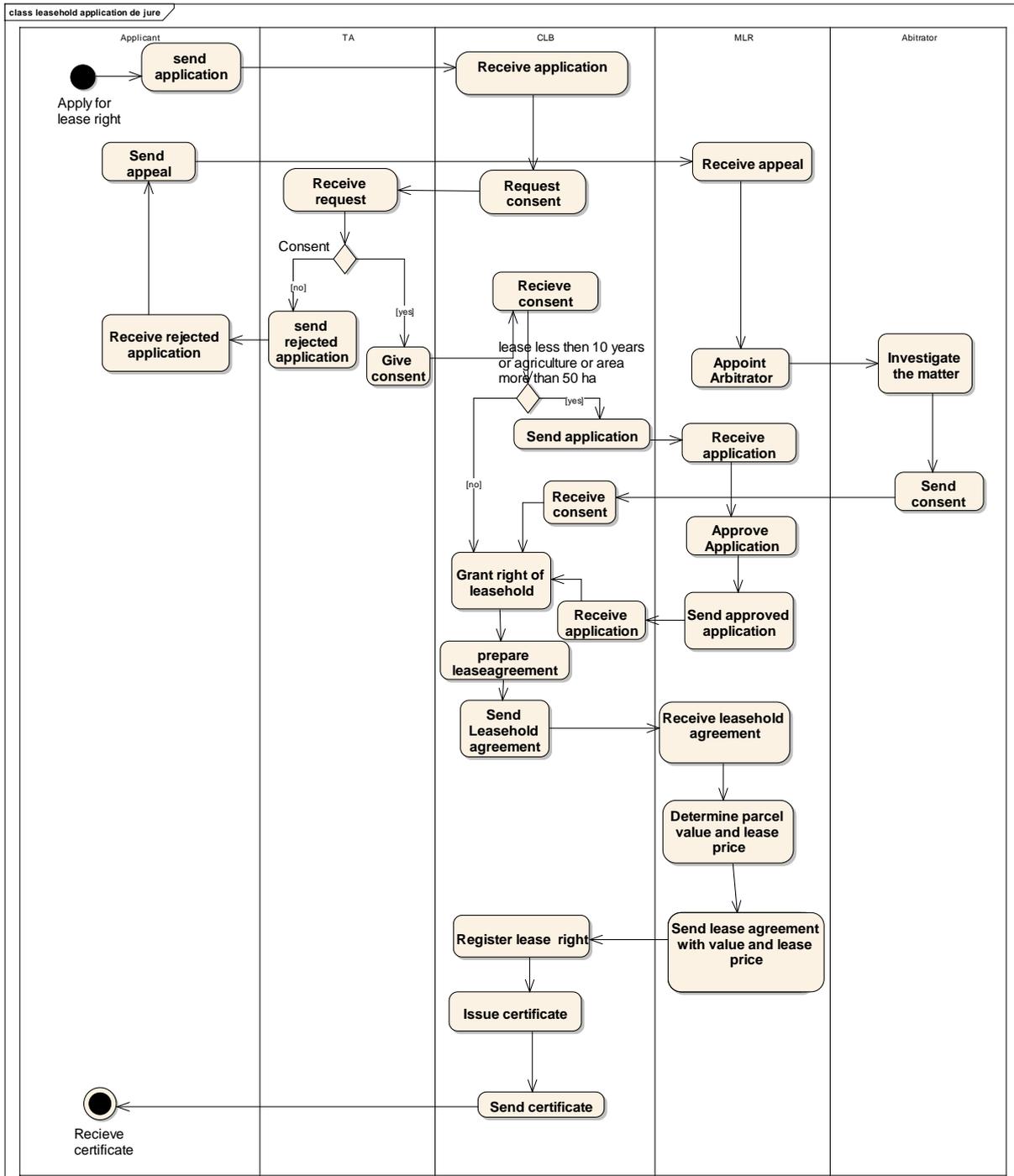


Figure 4.20: Application process for allocation of new leasehold right (*de jure*)

**4.4.4. Application process for recognition of existing rights to occupy communal land and for granting of rights of leasehold (*de facto* and *de jure*)**

Like in the previous applications processes, activities related to the application procedure for recognition of existing rights to occupy communal lands and granting of rights of leasehold in *de facto* as well as in *de jure* are shown in figure 4.21. Applications for recognition of existing rights to occupy communal land and for granting of rights of leasehold are made in form 8 and are send by the applicant to CLB in *de jure* while in *de facto* all cases (case1 refers to Oshana region, case 2 refers to Oshikoto and case 3, refers to Omusati) applications are send directly to MLR to gather with the Permission to Occupy (PTO) certificate. In both *de jure* and *de facto* a N\$ 25.00 application fee is paid to the respective regional development account for *de facto* and to CLB for *de jure*. Application for recognition of leasehold must be

submitted to MLR regional office in *de facto* and to CLB in *de jure*. In *de facto* MLR upon receiving the application they go for mapping and verifying the parcel, thereafter digitizing parcel boundaries, calculating parcel size and capturing applicant as well as parcel information into the database. In *de jure* CLB upon receiving the application and N\$25.00 in both *de jure* and *de facto* CLB then checks if the claim is valid or not. If the claim is valid in both *de jure* and *de facto* CLB sends an offer to the applicant, which s/he can accept or reject. If the applicant rejects the offer then the land is reverted back to the state. If the applicant accepts the offer then s/he must send the acceptance to CLB. In *de jure* if there is any doubt about the claim, then the application is sent to TA to conduct hearing. TA can decide to accept or reject the claim, if TA accepts the claim they send an offer to the applicant like in *de facto* then it will follow the same procedure.

In both *de facto* and *de jure* if the offer is being accepted by the applicant CLB will receive the offer and check if the leasehold is more than 10 years or if the parcel size is more than 50 ha or leasehold is for agricultural purposes. If leasehold falls under the above mentioned categories then CLB sends the application to head office MLR for the Minister approval. However if leasehold doesn't fall under the above mentioned categories CLB will recognize and grant their approval. In *de jure* leasehold is being registered, and issue certificate is done by CLB while in *de facto* leasehold is being registered and issue of certificate is done by MLR regional office. Finally applicant has to pay N\$50.00 for the certificate and lease agreement in both *de jure* and *de facto*.

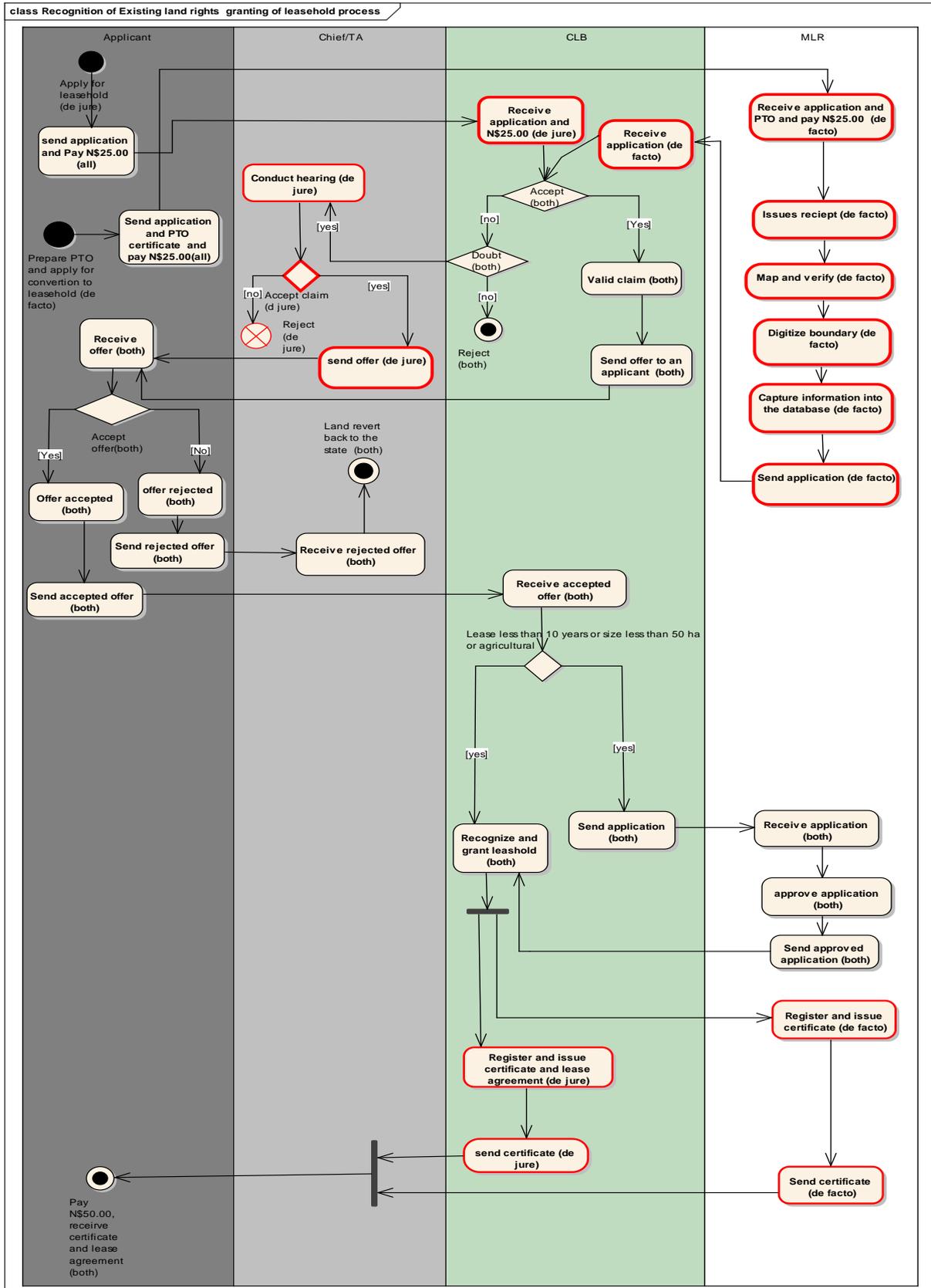


Figure 4.21: Application procedure for the recognition of existing rights to occupy communal land and for the granting of right of leasehold (de jure and de facto).

#### 4.4.5. Discussion

This section relates the findings of the research to the existing literature.

#### 4.4.6. Management aspects

This aspect is related to the activities that support land administration. Normally if the management aspect is functioning well then processes and operation are likely to run well. Hence analysis of this aspect is necessary prior to the workflow/process and operational aspect analysis.

##### **Availability of resources for land management**

Most communal land in Sub-Sahara Africa has no formal records of who owns or uses it. Many projects are underway to address these issues with the premise that land registration promote investment, reduce poverty and encourage better natural resources management. However, many attempts aimed at setting up land registration have often not worked well as they have resulted in expensive , complex and slow systems (Deininger., 2003). Namibia is no exception hence most challenges found in its communal land management systems are common elsewhere. Financial, human and logistic resources (MLR, 2006b, 2007) are core challenges (in the Namibian system) with all three (3) regions studied not having enough human (only 2 or 3 staff per region) and physical resources (section 4.3). Therefore one could argue that, under-resourcing contributes to the large amount of pending land rights applications in the three regions (section 4.3). Such shortages hamper registration progress (MLR, 2008) .Outsourcing of some registration activities could be one option that can be explored. In addition, since most skilled personnel prefer to work in the capital city (Kapitango & Meijs., 2009) skilled personnel to work in remote communal areas is often difficult to attract. Increasing salaries and or benefits for remotes locations are options that can be considered.

From a resources perspective (1) the CLA database doesn't support concurrent use of the system by several persons. There is thus a need to establish integrated databases and Information Technology which support concurrent use within the regions and across. (2) Each regional office has a limited IT support (single ArcGIS licence). Such limited support means that (a) only one person can digitize at a time, (b) information will not be updated regularly, (c) applicants will wait long for their application to be processed. Paper based archive not well organized (see figure 4.22) leading to inaccessibility of land information. Therefore, there is agent need to establish a well-organized LIS (manual and digital archive) and data security. This can lead to citizens losing hope in the land administration system. Therefore lack of human and IT support are resource limitations of the Namibian system that need to be improved in order to accelerate land registration process. Similar challenges were noted elsewhere in Africa by (Toulmin, 2009).

While decentralization of customary tenure activities to for example land boards (see e.g. (Fitzpatrick, 2005) for case of Botswana) have been lauded elsewhere, in this study (section 4.1) financial resources to transport CLB members to attend to land disputes was viewed as big problem, contribute to the heavy work load of the MLR staff in mapping and verification of the land parcels which is by *de jure* a CLB responsibility. Therefore, we can conclude that availability of resources is very low in comparison to number of land rights to be administered in Oshana, Oshikoto and Omusati.

Another contributing factor, to the slow registration process is that the responsibly and mandate of different organizations involved in the process is not well defined and some of the legal frameworks are conflicting i.e. the TAA and CLRA. Harmonization of the two piece of legislation governing communal land management is significant. Moreover some of the responsibility given to CLB is beyond their capabilities. Clear and well defined responsibilities are advised. Consequently it has increased the work

load of MLR staff. For example mapping and verification is the responsibility of CLB in *de jure*, however in *de facto* CLB members most of them are old people, others are working for other government ministries therefore it make it difficult for CLB to carry out mapping and verification of the parcel. Lack of transport for the CLB to attend to land disputes, in the three regions is also a factor contributing to long standing land disputes cases. More over the CLB lack dispute resolution skills. The CLB as diverse body of stakeholders created for addressing communal land affairs, faced challenges in handling those responsibilities (MLR, 2008). There is a strong need for improvement and establishment of clear goals and strategies in the current setup. Long term budgetary commitment is needed from government and donors.



Figure 4.22: Pending applications waiting for site and size verification

#### 4.4.7. Operational aspects

##### Land disputes cases

Land disputes have been one of the reasons the government of Namibia have decided to introduce CLRA. However, the act did not establish a land disputes system that could be used. For example this study assumed disputes must be decreasing if a higher number of people are being registered within a region, Oshana has received the highest number of application yet the number of approved is (see Annexure 9) very low compare to Omusati and Oshikoto this can be seen on figure 4.4 and 4.5.

That means number of people with registration certificates is very low in Oshana compare to Omusati and Oshikoto, hence it is expected that Oshana will have higher number of land disputes cases compare to Omusati and Oshikoto. This have confirmed by (LAC & LEDP, 2005) which stated that the expansion of urban centres is increasing the pressure in traditional land rights in communal areas. Oshana has the largest towns in the northern part of the country which are expanding at a very fast rate. As a result competition for access to communal land around urban land is very high. A strategy to develop other regional urban centre is needed to reduce the pressure in Oshana region. Figure 4.23, 4.24 and 4.25 present the cases of land dispute from 2005-2010.

Another challenge according to MLR staff is lack of Mechanism for land dispute resolution, so that discriminatory practices against women by the TA can be reduced. An unexpected case of an old woman whose land was cut out of her piece of land by her son was also observed during fieldwork. This has given

a right hand evidence that land disputes are still entails and that women are still being threatened even after the act has been implemented which supposed to overcome most of these problems. Consequently there is lack of a legal mandate or guidelines to deal with land disputes, CLB frequently refer disputes back to TA. A study by LAC & LEDP (2005) stated that CLRA doesn't give power to CLB to address land disputes, although an increasing number of people turn to CLB for assistance. A method for resolving land disputes in a communal area which is fair for all citizens could be explored. Moreover, Strategy and goals for TA and CLB could be revised. Boundaries between TA could be mapped and registered. CLRA could develop procedure for registering common properties and underutilized land to avoid disputes in future. Recent rising of number of land disputes cases within the region is due to double land allocation by the headman. This are the people at the lowest level of TA nevertheless they are not on the government payroll like the chief, senior councillors and junior councillors therefore charging for land allocation fees has been their source of income. Furthermore, they are the people who are carrying out most of the TA tasks during land registration process, hence working with no pay is discouraging most of the headman to involve in the process. This findings concur with (Mendelsohn, 2008) who also highlighted exclusion of the headman within a land registration process as a serious problem. There is a need to establish fixed payment of headman by the government to prevent headmen from charging allocation fee (Ombandu yekaya) when allocating land to new users. Government could increase tax rate in urban areas to fund rural development. Alternatively, a certain amount of money from application fees could be used to fund headmen's payment.

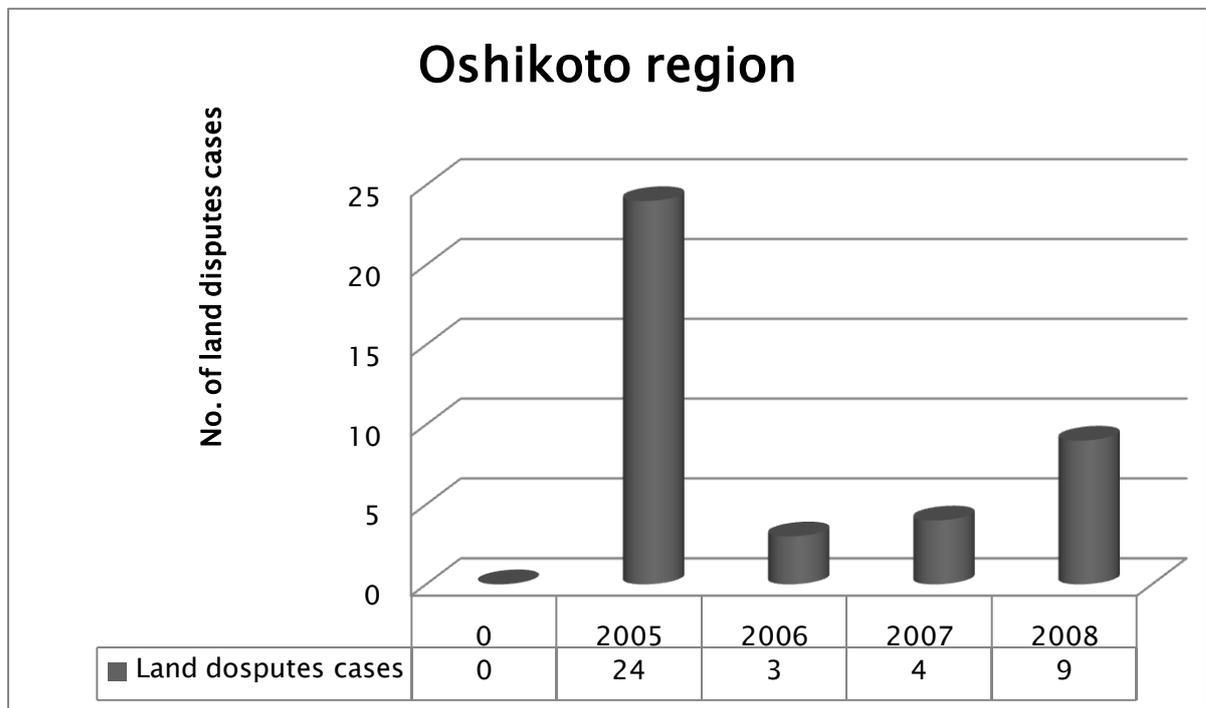


Figure 4.23: Reported land disputes cases in Oshikoto region 2005-2010

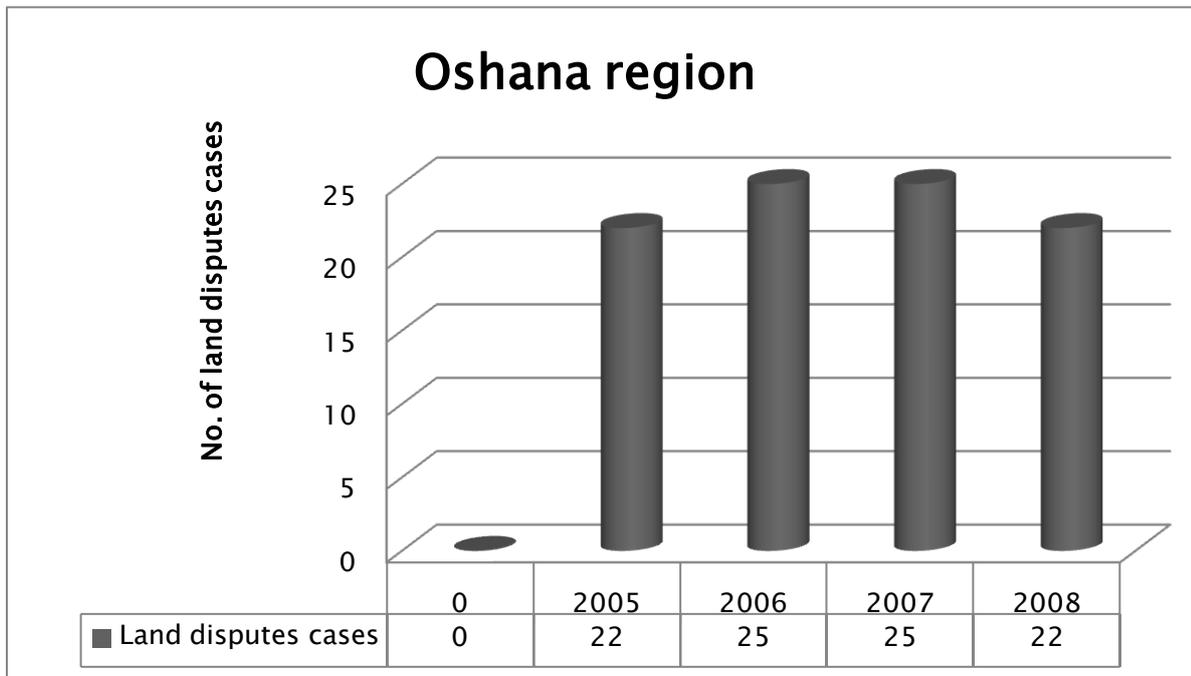


Figure 4.24: Reported land disputes cases in Oshana region 2005-2010

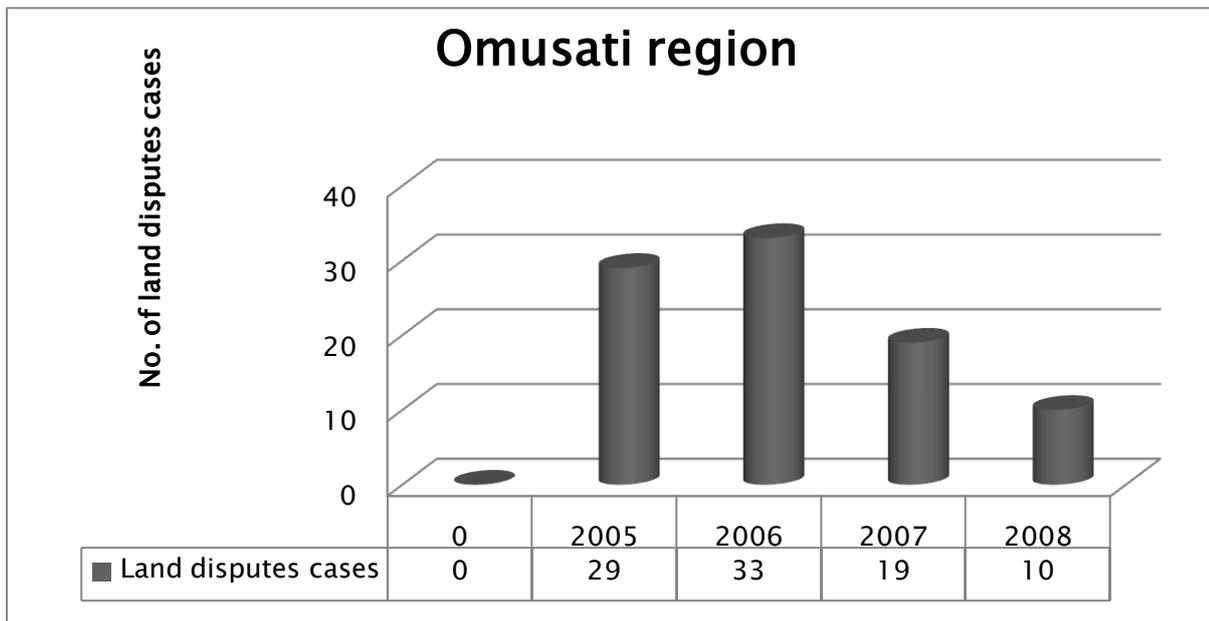


Figure 4.25: Reported land dispute cases in Omusati region 2005-2010

#### Security of tenure

Securing property rights requires a combination of two forms of validation at both local and state level. At the local level rights are secured if neighbors and others in the vicinity recognize a particular claim as being legitimate, according to their knowledge and set of values (Toulmin, 2009). A lot of applications have been submitted, however a lot of them are still pending verification and mapping this is a trend across the three regions. Mendelssohn (2008) stated that inability of MLR to process communal land registration applications has meant the processes to be slow. As a result 70 000 applications have been submitted (whole country) since 2003 however only about 4000 is approved. This means the citizens will lose faith in the system and this can lead to insecurity of tenure. Deininger (2003) argued that many attempt at setting

up conventional land registration system have not worked well. Normally they are expensive, complex and slow to implement. Therefore it is not surprising for land registration in Namibia to be slow. According to the CLB and MLR staff members this is due to the number of reasons (see section 4.3.1) and lack of funds to pay CLB sitting allowance when approving the applications (see section 4.4.6). No budgetary framework provided to the CLB and sitting allowance and travelling allowance are subjected to long bureaucracy resulting in a slow processing of CLB cheques. Similarly, a study by (deSoto, 2000) noted that many countries in sub-Saharan Africa have long and difficult procedures, which slow property transactions and encourage corruption. LAC (2005) stated that CLRA is an important step in securing customary land rights and providing for some degree of decentralized land administration. However the general impact on the CLRA on land tenure security is difficult to assess. Increase in the number of staff and provision for transport is urgently needed to speed up the registration process. Government could ensure that transport and funds are available to carry out field verifications and approve applications.

By looking at the number of application received in the years under review one can say that the level of security of tenure is very high see figure 4.4, 4.5 and 4.6. However, from the land information system perspective there are number of challenges (see section 4.3.3). The database is similar across the three region and therefore, the fore mentioned land information system challenges applies to all three regions. Therefore, based on the above mentioned situation, in this study, it is assumed that from the citizen perspective we can say level of security is high considering the number of applications received, however from the land information management perspective, level of security is viewed as very low. This is due to a number of reasons; Oshana has more urban centres which means there are better services and facilities, the land around urban centres tend to have high value compare to the remote areas. Findings for the research shows that right holders are given compensation when they are being relocated or when a piece of the land they are using is being taken by the government with the purpose of public use example road, railway construction etc. This study assumes that, this is one of the reasons which make the community members in the three regions to feel more secure about land registration system. The affected right holder agrees with the involved Ministry on the price to be paid to and the government allocate a new piece of land to the affected citizen. Based on the research findings compensation is calculated based on many factors such as the number of trees on the land, number or size of buildings and any other types of improvement that could be available on the land during the government acquisition time. The Namibian compensation system is slightly different from the Ghanaian. In Ghana for example compensation is always in a form of land (Gyapong, 2009) while in Namibia compensation is always in a form of cash plus a piece of land

Another factor contributing to the increase of security of tenure is inheritance system which has changed since the registration of communal land commenced. Before registration started inheritance used to be done based on Oshiwambo traditional customs, where by man relatives inherit land after he died and the widow and her children goes back to her relative's house. The act introduced a system where by widow inherit land from their late husband and based on the interview, the practice is more effective when you have a certificate of registration (LAC & LEDP, 2005)..

### **Illegal fencing**

Many illegal fencing cases involve politician, therefore they require a legal mechanism to resolve them. Mechanism for identifying illegal fencing is very weak. This study concur with (Delville, 1999) who stated that current African land administration practices seem to favour politician and administrative class. A standardized procedure of categorizing fences that are illegal is a major challenge to TA, CLB and MLR. Hence a legitimate, flexible and uniform standardized mechanism for identifying/classifying illegal fences.

According to the interview with CLS project staffs, the illegal fencing is mostly caused by the TA, who want to make money out of communal land.

#### **4.4.8. De jure and de facto processes**

van der Molen (2003) argued that without rules land administration is not possible, as it will be without a societal and legal meaning, thus institutional aspects are significant. Communal land administration processes are guided by three pieces of legislation administered by different institutions. There are in total six organizations in the process of allocation and registration of land rights. Coordination between the organizations is very poor due to hierarchical structure of government which render horizontal communication and due to lack of integrated policies on land e.g. TAA and CLRA. MLR offices are only found in hand full towns. This is often implied long distances of travel by the applicant. Therefore the delivery processes has been criticized for being long and cumbersome. Land delivery processes mainly in developing counties are normally logical and complex (Chimhamhiwa, et al., 2009). In all processes whether is lease or customary land rights new or existing number of steps in de facto are all more than the number of steps in de jure process. This is mostly because the de jure process did not consider some key players in the process such as village headman. The de jure process also did not include use of technology such as use of aerial photograph, community awareness, use of computer to digitize and store data in the database. (Sagashya & English., 2009) viewed aerial photo as an effective tool in the case of Rwanda.

De jure process allocation of new customary land has 32 steps versus de facto 38. Subsequently recognition of existing customary land rights, allocating new leasehold rights, recognition and granting of leasehold right has 33 versus 45, 30 versus. 44 and 29 versus 35, respectively. A more simplified and faster registration procedure is needed. Effective and efficient management of the process is significant, for economic development and environmental sustainability (Tuladhar, 2004). Business process modelling is used for improving the current business by identifying possible ways to make the business more effective (Aldin & de Cesare, 2009). Effective refers to acceptance by the citizen.

Concerning the variation between de jure and de facto there is variation between the processes as defined in the act and how it is being practiced on the ground across the three regions. Field data shows that the variation between the de facto and the de jure processes have been caused by different factors such as the exclusions of key players in the process (See section 4.4.7). There is a bit of unclear information in the CLRA on how many pieces of land can be registered on one person's name. However in de facto many people has more than one land parcel and they are registered individually with in the current registration system. CLRA doesn't make provision of commonage registration or group registration, making it difficult for the MLR to register such kind of piece of land within the system. Mendelsohn (2008) stated that many people appear to be well informed of the need to register their land, however, considerable confusion and misunderstanding were in counted especially with regard to the 20 ha limit of each property, the type of land and definition of farmland that maybe registered the size of a hectare and the number of plots that can be registered as one property. Similarly, the registration approach in Ethiopia has slightly different benefits compares to the Namibian one for example simple technology used in Ethiopia doesn't allow documentation of the size, boundaries and location of the plots, which limits the usefulness of land registration (Toulmin, 2009).

The process for a leasehold right application is a little different from that one for customary land rights. The reason being that leasehold is more prone to have a major impact on the land than a customary land right, since the land to be leased out will be used for commercial purposes. More over application for leasehold right regularly comes from outside the district while application for customary land rights more often originate from the district. In another words extra precautions are put in place to protect local communities (NID, 2010). The central purpose of TA to endorse every application is to ensure that the

applicant indeed has customary rights to the property, and that its borders are valid. The local TA therefore has to check and endorse each application before it is submitted to the regional office of the (MLR). Staff of the office must then survey each property before the application is finally placed before the regional CLB (CLB) for its approval and the issuing of a customary land registration certificate. Applying for, and completing the customary land registration process thus entails several steps to be taken by different people or organizations. This is one reason why limited progress has been made in registering properties. In addition, the whole concept of customary land registration is new, which means that protocols, offices and responsibilities had to be established afresh. Simplified processes, which are flexible and faster to execute were extracted from both *de jure* and *de facto* as good practices. Headman/woman has been used across the three region as main actor in the process therefore he/she was considered as reference for the proposed workflow (see table 4.3 and 4.3, and for the workflows see figure 4.26 and 4.27) for details. A similar case has been observed in Ethiopia whereby simple low cost and accessible land record are handled by the lowest level of local government as a result the process is transparent and accessible to most of land users (Toulmin, 2009).

Table 4.2: Proposed simplified registration and recognition of existing customary land rights process

<b>Process steps</b>	<b>Actors</b>	<b>Responsibilities</b>
Conduct awareness	MLR	Make land user aware about land registration process
Boundary identification and marking on the aerial photos	MLR/headmen/land users	Collect existing boundary information in the aerial photos.
Map and verify boundaries in the field	MLR/headmen/land users	Map the boundary on the ground which are not clear in the photographs and verify them.
Fill applications for land rights recognition	Land users	Collect land users information in the field
Give consent	Headman	Give prove of existing right to land users.
Plot and digitize boundary	MLR	Digitalization and calculation of plot sizes.
Check for rights overlap with GIS	MLR	Checking if there are plots falling within a proclaimed area of local authorities.
Legal investigation	CLB	Verification of legal status and sizes of plots.
Display names for claims objection	CLB	Collect objection
Conduct hearing and investigate objection	CLB	Affirm claim or affirm claim with changes and verification of real user
Determine ownership	CLB	Approval and determination of ownership
Recognize and register land rights	MLR	Registration and recognition of existing land rights.
Issue certificate	MLR	Issuing of certificate of land rights

Pay N\$50.00 and collect certificate	Land users	Receiving of certificate of land right
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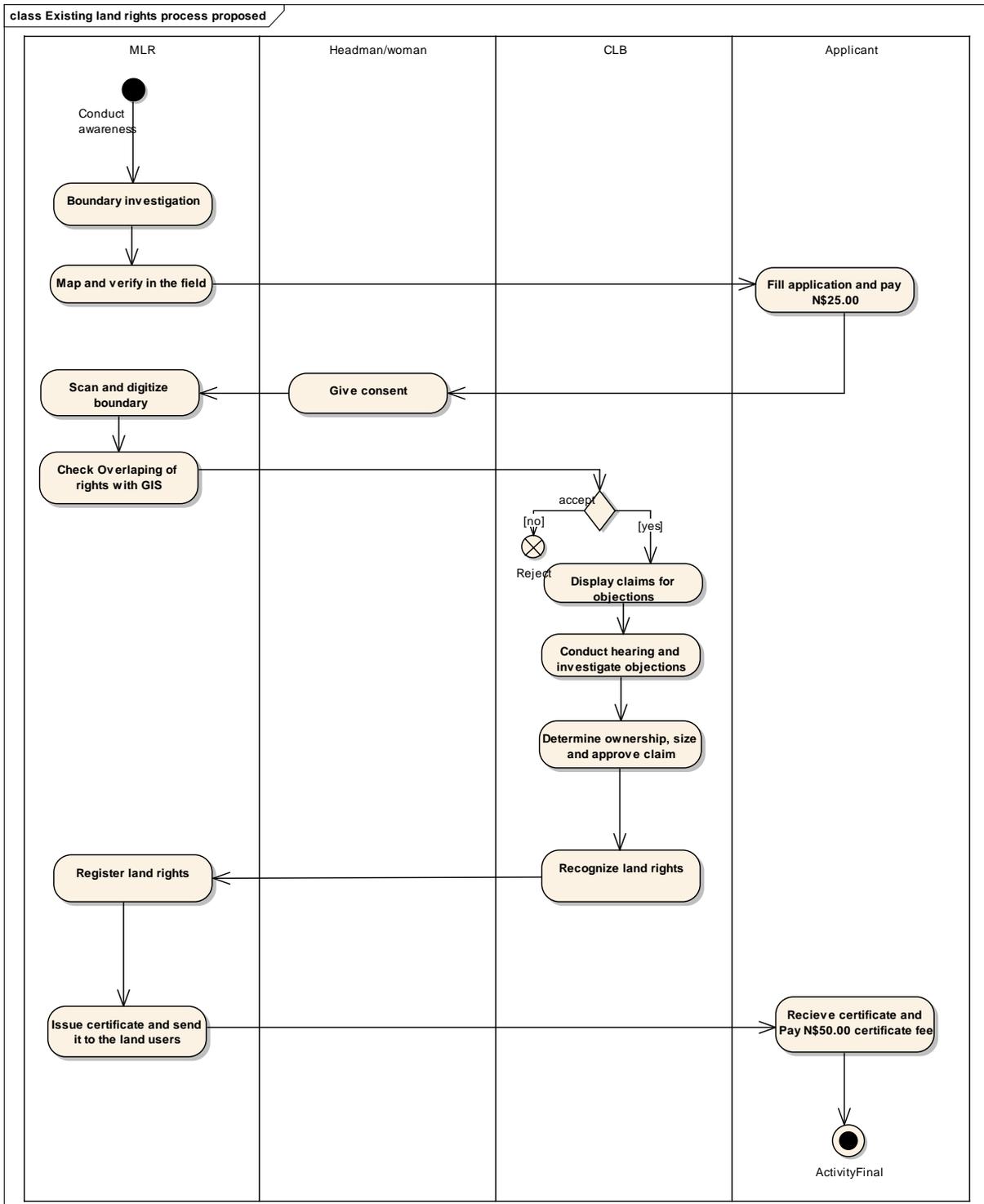


Figure 4.26: Proposed simplified workflow for recognition of existing customary land rights

Table 4.3: Proposed and simplified workflow for new registration and allocation of land rights

<b>Process steps</b>	<b>Actors</b>	<b>Responsibilities</b>
Identify parcel	Applicant	Identification of parcel
Consult headman/woman	Applicant	Consultation with the headman/woman regarding the allocation
Inform village members	Headman/woman	Informing the concern villagers/community regarding the intention of new allocation
Grand/ refuse allocation intention	Community	Deciding on the allocation
Fill application and pay application fee	Applicant	Completing land registration form
Map and verify	MLR	Mapping of parcel boundary and determine the parcel size
Scan and digitize boundary	MLR	Scanning and digitizing parcel boundary
Check rights overlapping	MLR	Checking of plots that are falling within proclaimed local authority land using GIS
Legal investigation	CLB	Verify the legal status and the size of the parcel
Display the claim	CLB	Collection of objections
Conduct hearing	CLB	Approve /reject application
Determine ownership	CLB	Determination of ownership
Confirm allocation	CLB	Confirmation of new allocation
Register land right	MLR	Registration of land rights
Issue certificate of registration	MLR	Issuing of certificate for land rights registration
Pay N\$50.00 and receive certificate	Applicant	Payment of certificate fees and receiving of certificate

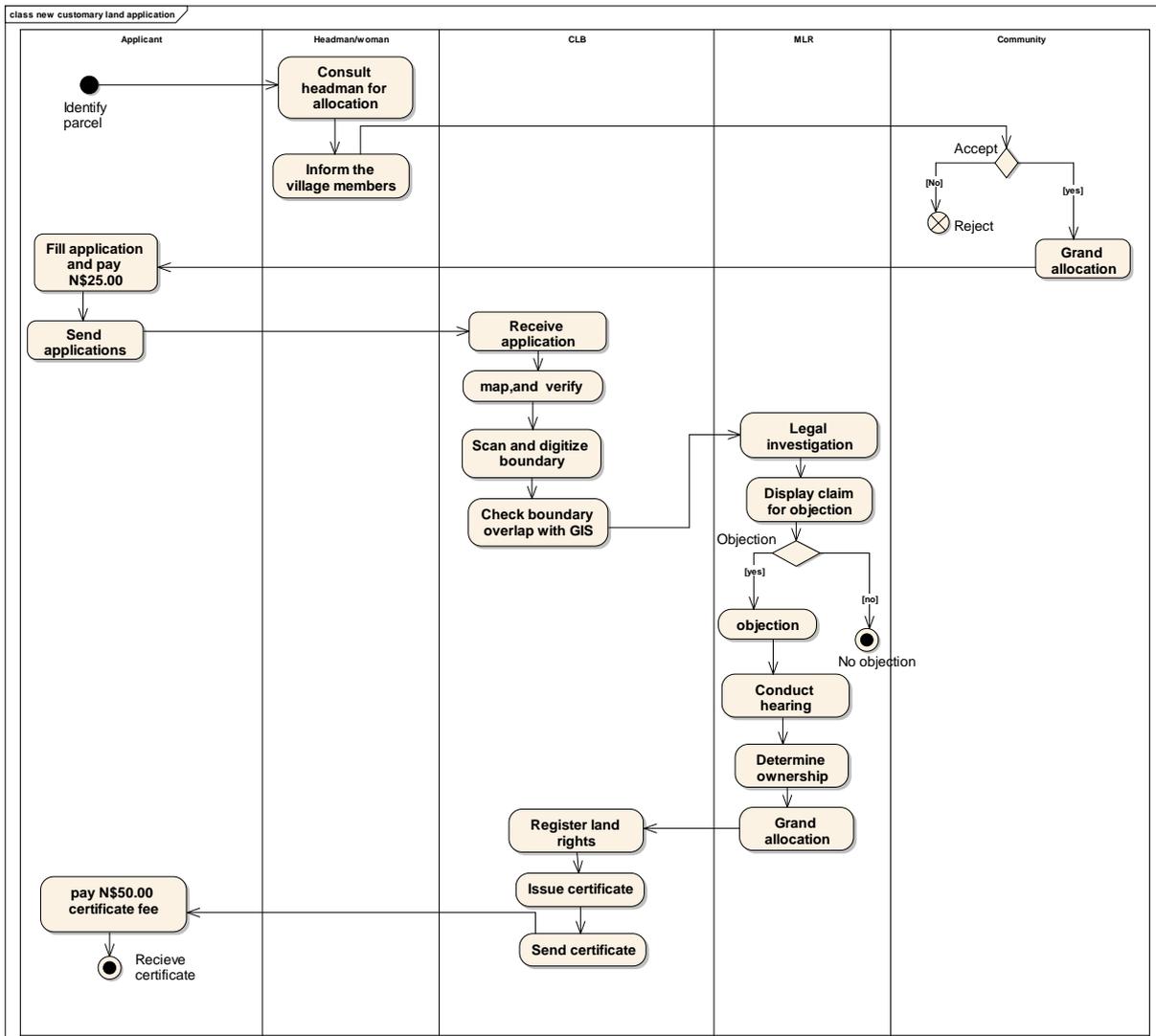


Figure 4.27: Proposed simplified workflow for new allocation of land rights

#### 4.5. Concluding remarks

In analysing the communal land management in Namibia challenges associated with management and operations are hampering the land registration process in all three regions. Similarly, there is a need for the performance of CLB to improve especially in their meeting more frequently (see. Annexure 4) to assess and approve customary land rights applications. As it is indicated earlier, failure to improve services required of both CLB and MLR will continue to delay the process and credibility of reforming communal land tenure in Namibia. There is a need to develop proper integrated LIS to allow sharing of data so as to reduce redundancy in the system. Moreover a standardized mechanism to identify illegal fencing could be developed urgently to deal with illegal fencing cases. CLRA need to be flexible to adapt to the de facto environment for it to be effective. There is very large variation between the processes as defined in the act vs. the processes as executed in the three regions, therefore one can conclude that there is need to adjust the de jure processes to fit into the de facto as proposed models in figures 4.24 and 4.25 above.

## 5. CONCLUSION AND RECOMMENDATIONS

The main aim is to evaluate the processes as defined in the act (*de jure*) versus processes as implemented/exercised on the ground (*de facto*). It also compares practices between the three regions, and tries to find out if there are any differences between the practices and the act, and if there are differences, what are the causes of such differences. The research concentrates on the application process for existing rights, new rights and lease rights. Due to time limitation this work has focused only to three organizations such as MLR, CLB and TA in the three regions.

### 5.1. Conclusions

In this research we explore the concepts of land administration, and land police to understand how land policy and land administrations are linked. Land administration in Namibia has been also the centre-stage of this review to bear its fundamental characteristics and how it operates. We explore different land administration evaluation frameworks, and methods so as to develop a framework for assessing communal land administration in Namibia. Evaluation area of organizational and legislations has been identified. Based on above mentioned review an evaluation framework and method for assessing management, Operational and de jure vs. de facto aspect has been developed

#### 5.1.1. Objective 1

The first objective was to develop comparative criteria based on literature review, and then apply it to the case study. Evaluation frameworks see (figure 2.4) has been adapted and applied to the case study to assess the practice and management of the communal land. Various evaluation areas has been developed with it specific indicators and matching good practice to assess the organizational and legislation as evaluation areas.

#### 5.1.2. Objective 2

Objective 2 was to carry out a comparative evaluation for communal land administration based on (1) comparing the land allocation organizational processes as defined in the act versus as they are executed in the three regions, (2) Extract the strength and weakness of de facto and de jure processes, (3) comparing the current land allocation practice versus the problems that were encountered before the act was introduced. Organizational processes for land allocation, recognition and registration of new and existing land rights has been studied and compared to find out if there are differences and similarities between practices in the three regions (Oshana, Omusati, and Oshikoto). A further assessment has been done on the process to asses if there are differences between de jure and de facto and point out their weakness and strength. Land allocation practice has been compared to the problems which were in existence before CLRA was introduced. The research results show that there is a different between the processes as they are defined in the act and as they are being practised on the ground in the three regions. This has been mostly caused by the use of technology and by CLRA which did not consider some of the key actors in the processes. However there are no much differences between practices across the three regions. Mostly because there three regions are occupied by the same tribe (Owambo). The only different is that some similar steps are executed at different stages within the process, similarities and differences are shown in the activity diagrams in chapter 4.

Major weaknesses of the *de facto* situation; financial, human and technical resources are some of the core challenges within the Namibian system. Lack of proper land information system and paper based archive within the MLR regional offices has cause a lot of delays within the registration process. The strength of *de facto* MLR has outsourced some of the registration activities to several projects to speed up the process e.g. CLS project is contracted for 4 years to complete the registration process. The use of headman/women who have knowledge on all parcel boundaries and users in his village. Use of aerial photograph which allow dispute to be resolved during the fieldwork. Weakness of *de jure* approach is the exclusion of headman in the government payroll and in the process of registration i.e. more than 20ha and more than 10 years, and 50ha leasehold parcel. The headman is the key person when it comes to parcel boundary within the village. There is a lack of standardized procedure for resolving land dispute and lack of guidelines on identifying illegal fences. Lack of required skills within the CLB members and TA members. Too much bureaucracy within the process of land registration resulting in an unnecessary piling of application. The act did not consider the reality on the ground when it was established. Centralized power of some activities within the registration process. No clear indication on how many parcel should be registered as one parcel under one person's name. No provision for registering commonage or group tenure. De jure strength establishment of CLB in every region which includes TA members and represents the interest of the citizens. Procedures for land allocation, recognition and registrations are outlined in the act and it includes part of traditional procedure. The overall effectiveness of CLRA could not be achieved due to the fact that some of the powers and responsibilities are in the hands of the minister MLR, therefore it would be best if such power and responsibility are delegated to the lower level of the organization.

Despite the awareness of the CLRA by the citizens problems which were inexistence before the act was introduced still persist, however some of them have reduced. Current practice could not change much since the CLRA did not give clear guidelines on how some of the problems should be dealt with. Abolishment of allocation fees could not be solved due to exclusion of headman on the government payroll.

### **5.1.3. Overall conclusion**

The thesis discusses how CLRA is being implemented across the three regions and compare the practice against the legislation. It further compares the practice against the problems which were in existence before CLRA was introduced. It identifies the similarities and differences between the practice and the legislation it further identify the weakness as well as the strength of *de facto* as well as *de jure*. It suggests how the practice as well as legislation can be improved through several strategies. The research therefore fills the gap in understanding how *de jure* as well as *de facto* land management can be balanced to achieve an effective communal land administration. Through the results of the thesis as discussed in chapter 4, it can be distinguished that the aim of the research has been achieved. This thesis review various land administration concepts/framework and it identify the concept (see figure 2.4) as suitable for evaluating communal land administration in Namibia. Good practice with relevant performance indicators have been developed and matched to asses' organization as well as legislation evaluation areas.

## **5.2. Recommendations**

There is a strong need for improvement and establishments of clear and well formulated goals and strategies within the current setup of communal land administration. Clear responsibilities and performance measures could be encouraged. Data security and IT support which encourage integrated LIS which allow data sharing by different regions and easily accessible across the entire country is suggested. Open source software could be used to reduce data redundancy within the MLR offices. Village cadastral could be advanced. Recruitment of skilled technical and legal staff could be considered as a matter of agency.

Requirement for CLB members should be revised to consider members with technical skills to reduce the work pressure from MLR staff. CLRA and its regulation could be reviewed to reflect the reality on the ground. Powers and responsibility of the MLR Minister within the registration, recognition and allocation process could be delegated to the lower level of organization. A standardized guideline on resolving land disputes and identifying illegal fences is advised. Headman could be included in the process of allocation, registration and recognition of land rights instead of TA. Government would consider collecting tax in urban area to fund rural activities such as payment of village headmen. Workflows could be improved or simplified to reduce the number of steps in the process. This can be done by combining some steps of *de jure* and *de facto* to balance and represent the reality. Proposed registration, recognition and allocation procedure is presented on table 4.2 and 4.3 above, and the workflows are also presented on figure 4.26 and 4.27 respectively.

Findings of the research could be used as a departure point for further research on assessing the practice against the legislation for the whole country. In this regard, numerous issues emerge from the present study. This research has explored part of management, operation and *de jure* vs. *de facto* aspects within an organizational and legislative area of evaluation. However, a full management, operation and *de jure* vs. *de facto* aspect is not explored in this research. Since there is variation between the process as prescribed in the act and how they are being implemented in the three regions, a further assessment for land registration, recognition and allocation process of the whole country is needed. From the workflows developed, transparency, access to information and customer satisfaction need to be explored and assessed. This research looked at security of tenure by looking at the number of applications; a detailed security of tenure assessment is needed to get the full view of whether the citizens feel secure or not.



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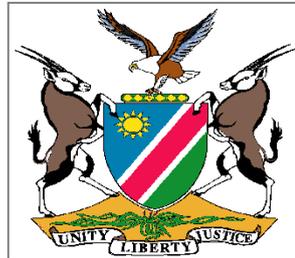
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# ANNEXURE

## ANNEXURE 1



REPUBLIC OF NAMIBIA

---

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 THE FENCE

(Section 28 and regulation 7)

To: The Chairperson  
Communal Land Board  
Of .....  
Region.....  
Constituency.....

I .....

The undersigned, identity number.....Sex.....

nationality .....name of spouse.....

.....

Names of other dependents.....

.....  
.....

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 the Traditional Authority 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 the type of right

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

(Attached 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 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)

\*I hereby apply for the 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  
concerned, namely N\$....., has been paid , for which receipt no.....  
dated.....was issued

.....  
Signature of applicant Date

\*Delete whichever is not applicable



*REPUBLIC OF NAMIBIA*

**MINISTRY OF LANDS AND RESETTLEMENT**

ANNEXURE 2  
stamp

Form 1

Office

To: The Chief  
Traditional Community  
of.....  
Region.....

APPLICATION FOR CUSTOMARY LAND RIGHT  
(Section 22 and regulation 2)

I.....

the undersigned, identity number.....Sex.....

nationality.....name of spouse.....

names of dependents.....

.....

.....

of.....

(state residential address)

.....

(state postal address)

hereby apply for a right to.....

(state a right to a farming unit or 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)

(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 the applicant

Date

### ANNEXURE 3: Interview Transcript

Interview transcript for Communal Land Board members

**Location:** Ministry of lands and Resettlement  
**Setting office:** Office  
**Date:** 30/09/2010 Time 14 00-15 00  
**Respondents:** Communal Land board members



The transcript is for Communal Land board members in Oshana region on the question what are the steps involved in land allocation, transfer, registration and cancellation of communal land rights?

**Interviewer:** For existing parcel first we start with printing aerial photographs and together with the applications forms we take them to the field. Village headman and his secretary joint the verification team and go to the applicant's house one by one. The applicant, the headman, secretary and MLR staffs identify the boundaries in the aerial photographs together. The headman also gives some details of restrictions on the land. For example tell the verification team that boundary of the parcel must be measured along the road but not in the road although the land user knows that his/her boundary is in the road. If there are no objections during boundary identification then the plot boundary is marked in the aerial photograph. Finally a transparent plastic based on one hectare scale is placed on top of the aerial photo to determine the size of the plot.

#### Scan and digitizing

Data recorded in the field are being entered into the computer by means of two different programs. Spatial data is processed using the program Arc GIS while non-spatial information is entered in Microsoft Access database. Every plot is given a Unique Parcel Identifier (UPI) all individual application information is connected to the UPI. With all this details then the size of a plot of land is calculated. The UPI assigned to a particular applicant is written on the application form. The size of the plot as computed in the computer is also written on the application form.

#### Entering data into Microsoft Access

These data include applicant particulars and his/her family. Details about the plot are also entered into the system then finally the MLR staffs check if all necessary documents are attached. Applications then are forwarded to CLB secretary who is a MLR staff for sorting them for the meeting.

#### CLB approval

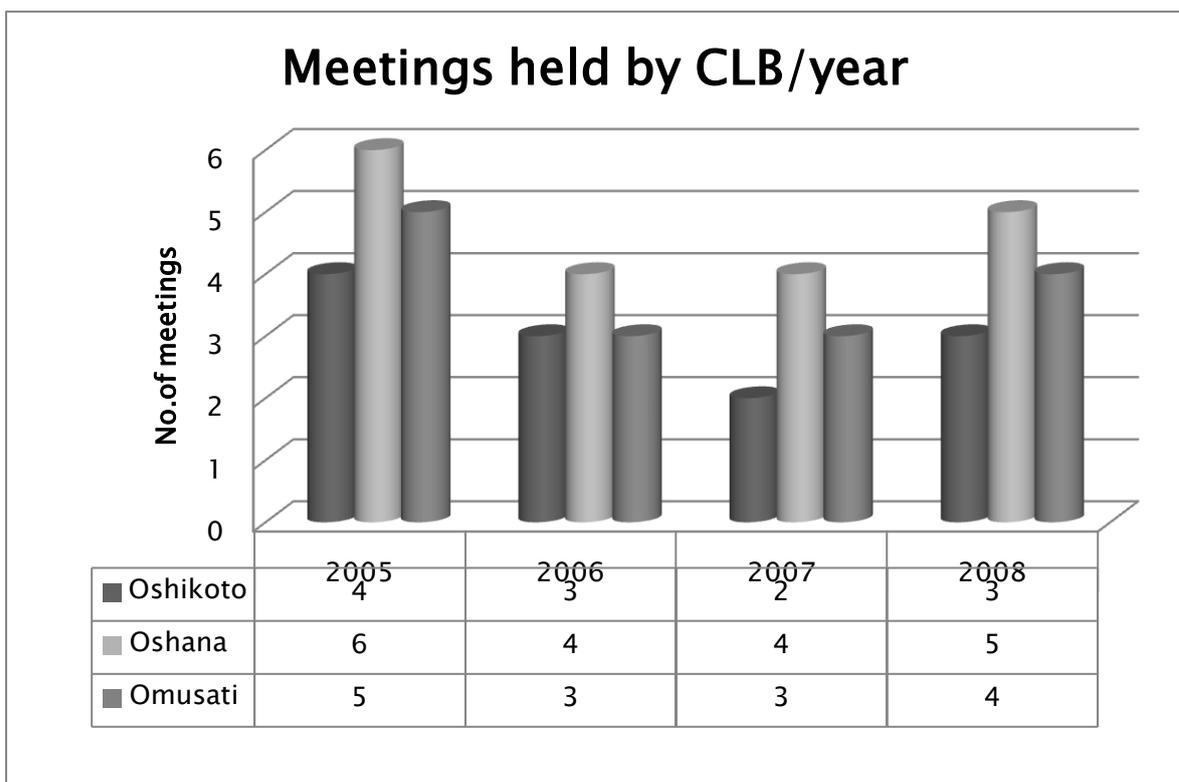
Applications are discussed by the CLB members so as to decide whether to confirm or refuse. Application less than 20 hectares can be approved or rejected while application larger than 20 ha are referred back to Traditional Authorities (TA) for their recommendations on how a compromised of excess land can be achieved. If agreement cannot be reached then the application is forwarded to the Minister of MLR for his approval. Similarly **must settle land dispute that are reported to them during the meeting.** Upon approval every application is signed by the board secretary.

Names of those applications that are approved are displayed at TA office for at least 7 days. Here the applicant checks if their details are correct, if not then they complain to CLB. If seven days pass and no reported incorrect details then MLR print the certificates. At the back of the certificate there is a map of the plot which the applicant has the right of use on the front of the certificate you having personal data and the

plot size. After printing the certificate the certificate and the applications are checked together and personal data and plot data are entered into the register. The certificates are stamped and signed by CLB secretary and send them to TA for distribution. TA via the headman informs the applicants to come and collect their certificates. When collecting certificates in Ondonga TA, the TA make a copy of the certificate, receipt and identity document for filling purposes in the rest of TAs no copy is made. TA gives the originals to the owners and the applicants pay N\$50.00for the certificates. The applicants are told that if their certificates are lost they can come back to MLR office and get a copy through their TA and the copy is signed by the user at the back.



**ANNEXURE 4:**



**ANNEXURE 5: Fenced land parcel**



**ANNEXURE 6: Response on the question (Did you apply for retention of the fence)**

**erection/retention**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	17	89.5	89.5	89.5
	Not applicable	1	5.3	5.3	94.7
	Yes	1	5.3	5.3	100.0
	Total	19	100.0	100.0	

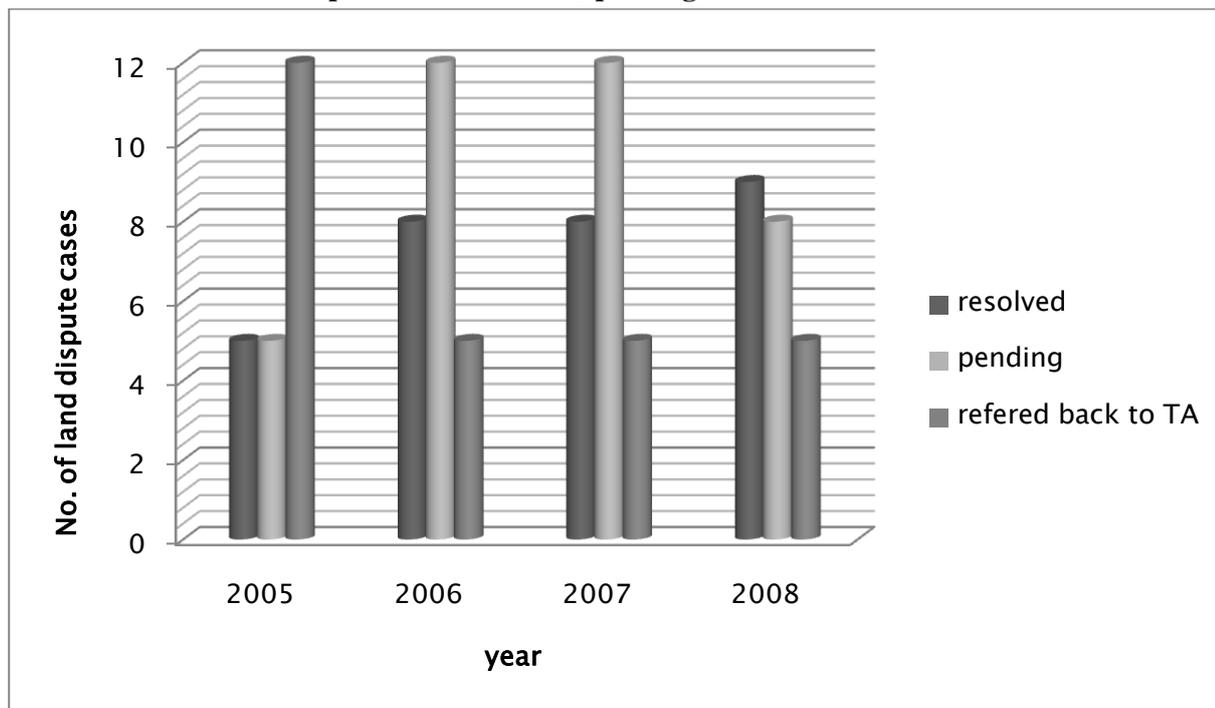
**ANNEXURE 7: Number of responded on the causes of land disputes in Uukwambi and Uukwaludhi traditional areas**



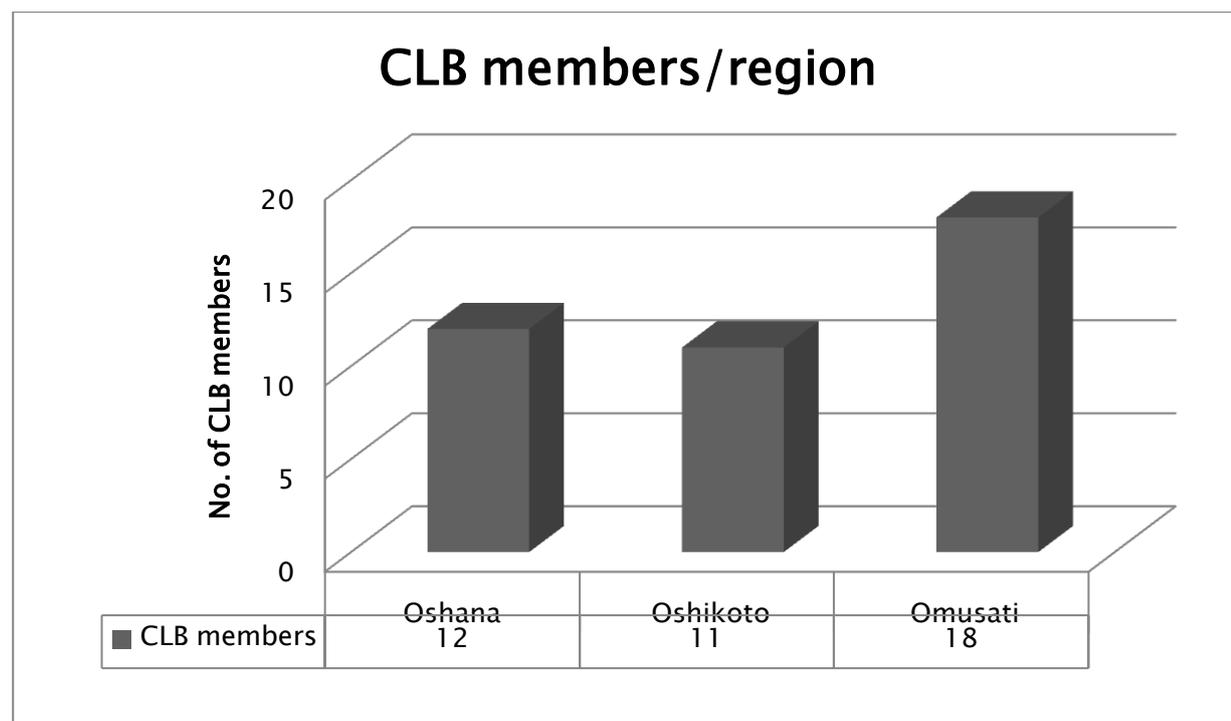
**ANNEXURE 8: Response on the question (Do you apply for land allocation in writing or verbally?)**

		Mode of applications			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Not applicable	1	5.3	5.3	5.3
	application done verbally	15	78.9	78.9	84.2
	WRITTEN	3	15.8	15.8	100.0
	Total	19	100.0	100.0	

**ANNEXURE: 9 Land disputes cases resolved, pending and referred back to TA**



**ANNEXURE 10: Number of CLB members per region**



## ANNEXURE 11: Some examples of evaluation methods

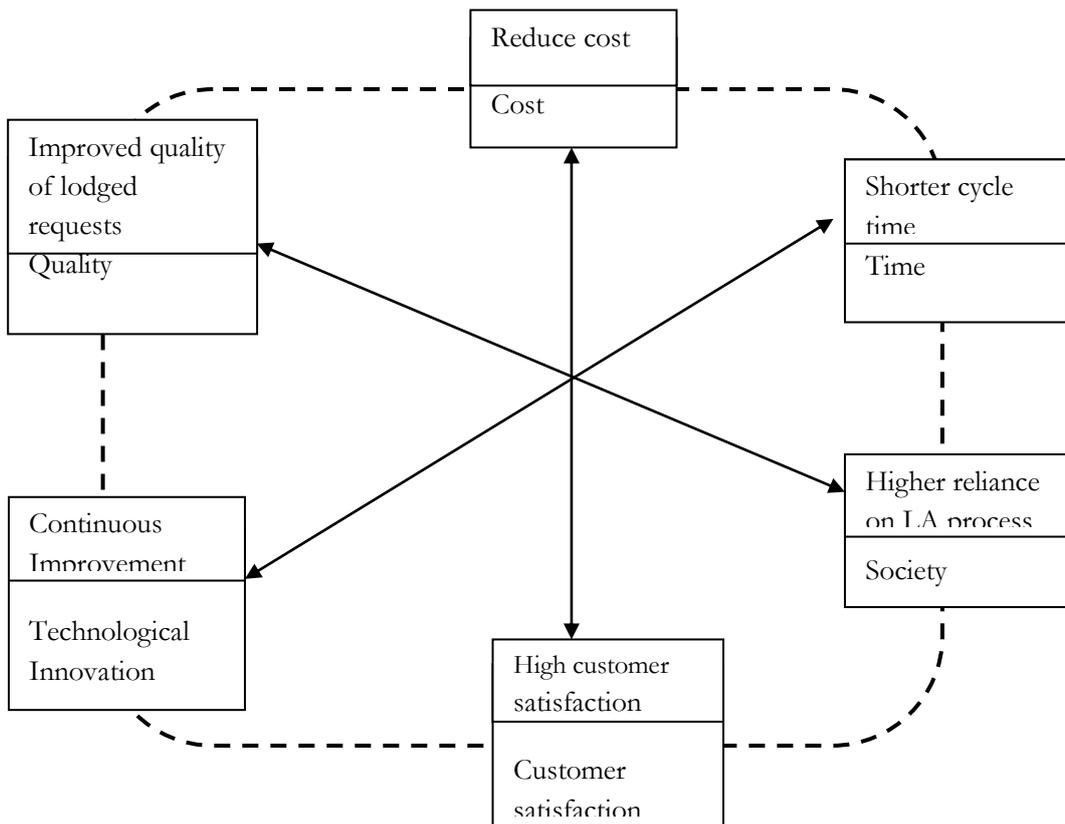
### Comparative evaluation

In their paper (Bandeira, et al., 2010) have developed a comparative methodology for evaluating land administration systems. The authors have determined the main goal or expected results of the system and the tools available to reach these goals. In their method they present three results and four tools. A sets of qualitative and quantitative indicators related to each goal has been developed. The developed indicators have been matched against the qualitative and quantitative benchmarks that have been defined to conclude whether the set goals have been achieved ultimately. Benchmark can be best defined based on broader global agreement or what know as best practice. A similar approach is good practice criteria which developed by (Steudler, et al., 2004). Qualitative benchmark can be based either on international standard for a specific indicator or the aim of the project. This method is known as structure + management +budget → output model. The table 2.2 below is illustrating the framework of Bandeira’s method.

Goals	Indicators	Benchmark (BM) (Yes/No/...%, value)	Source (Best practice or literature or project results, etc)
Goal1	indicator 1 for goal 1 indicator 2 for goal 1 2.1 Indicator 1 for goal 2 2.2 Indicator 2 for goal 2	BM1 BM2 BM4 BM5	Best practice (e.g. ) ..... ..... .....

### Example of a Cross-Organisational Business Process (CBP) approach

Chimhamhiwa (2009) developed a multi organizational approach to identify, evaluate and improve land administration processes. While designing the model measurement areas and performance indicators for land administration processes have been developed simultaneously. The model was build based on six measurement areas. The approach has been tested across three Southern African countries such as Namibia, South Africa and Zimbabwe. This model can be used to aid the end to end measurement and comparison of cross –organizational business processes in land administration.



### Example of a Logical Framework Analysis (LFA) approach

According to (Groenendijk & Dopheide, 2003) LFA is the basic management instrument in the implementation of a project and assessment of its performances. It is broadly adopted by development organization to evaluate their projects and programs. Various examples of such organizations as follow the German Technical Assistance Agency (GTZ), the Swedish International Development Agency (SIDA), Canadian International Development Agency (CIDA) and the Australian Development Agency (AusAID). This approach identifies key aspects of the project and arrangement them in such a way that anticipated inputs, planned activities and expected results are linked rationally (Steudler, et al., 2004)

ANNEXURE 12: Interview questionnaire sample

# Evaluation of Institutional Models for managing communal land (Case study Namibia)

Research interview Questionnaire (Regional offices MLR)

Master of Science in Geoinformation Management for Earth Observation in Land  
Administration

Prepared by M.T Ipinge

Sept-Oct 2010



**ITC**

Faculty of Geo-Information Science and Earth Observation

UNIVERSITY OF TWENTE.



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

4. Have you ever revoke any rights from the holders? Indicate the appropriate answer with a cross in the right box.

Yes       No

5. Do you experience any problem when executing these processes? **Indicate the appropriate answer with a cross in the right box.**

Yes       No

If yes, (a) what are the problems have you experienced?

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

(b) And which processes is mostly experiencing problems mentioned in (a)?

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

6. (a) Are the right holder allowed to fence their piece of land? **Indicate the appropriate answer with a cross in the right box.**

Yes       No

(b) If yes, is there any procedure to be followed if somebody wants to fence his/her piece of land? **Indicate the appropriate answer with a cross in the right box.**

Yes       No

(c) If yes, what is the procedure to be followed if a right holder wish to fence his/her piece of land?

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

7. (a) Do you have a standard size of land which is applied to all right holder?

Yes  No

(b) If yes, what is the standard size of land to be given to right holder?

.....  
.....

8. How do you ensure that every person only allocated a piece of land once?

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

9. How do you ensure that boundaries are not extended without permission?

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

