

An enquiry into land markets in Namibia's communal areas



Parcel Boundary_Nuunyango
Unauthorised Plots

Ministry of Land Reform
Tsumeb Office
Tel. 067-220684

May 2016



Final Report
25 February 2017

Acknowledgements

The help and generous information provided by dozens of informants in all communal areas of Namibia is greatly appreciated.

Institutional context

This report was prepared by the Namibia Nature Foundation for the Ministry of Land Reform (MLR).

This publication has been produced with the assistance of the German Government and the European Union through the Programme for Communal Land Development. The content of this paper are the sole responsibility of author and can in no way be taken to reflect the views of the donors or the Managing Authority of the Programme.

Authors: John Mendelsohn & Romie Nghitevelekwa

Reviewers: Angus Middleton & Britta Hackenberg

Date: 25 February 2017

Cover image:

A customary land right (marked with green borders) outside Onethindi that had been divided into small parcels (red borders) sold for housing.

Enquiries

Namibia Nature Foundation
76 – 78 Frans Indongo Street

Windhoek, Namibia
Tel: + 264 61 248345
Email: info@nnf.org.na



Contents

Executive Summary	4
1. Background	5
2. Methods	6
3. The character of the market, and changing values in communal areas	8
Definition of concepts	9
4. Regional trends and patterns	11
5. Main types of land sold or leased	13
Small holdings for commerce and housing	13
Large farms	15
Unoccupied land	16
Expropriated land.....	16
Family land	16
4. Sellers, agents and speculators	17
Traditional authorities	17
Estate agents or local facilitators	18
Ordinary residents	18
Wealthy individuals.....	18
Speculators.....	18
5. Nature of transactions	19
6. Land values, prices and lease fees	20
7. Traditional authorities: contestations and tensions	22
8. Conclusion and key policy questions	23
9. Bibliography	26
10. Appendices	27

Executive Summary

The main finding of this study is that land in communal areas is widely traded for a wide range of specific purposes. Land was found to be used increasingly as an economic commodity with associated monetary and investment value. The growing number and value of commercial enterprises in communal areas has transformed the character of land value and use, as well as creating new sources of income and investments for a wide range of actors, including local residents, traditional authorities, and business people.

The most active land markets are in the communal areas of Omusati, Oshana, Ohangwena, Oshikoto, Kavango West and East, Zambezi, Otjozondjupa and Omaheke regions. By contrast, land trading is largely absent in the southern and western communal areas in //Karas, Hardap, Erongo and Kunene. Within regions with active land markets, most buying and selling occurred close to towns and trunk roads, and in areas where large farms could be established or bought.

The geographic variation was attributable to differences in demands for land and the processes that drive the market. Currently the growth is driven largely by demands for properties to be used for business enterprises, farming, housing and investments, often in and around emerging commercial and service centres. The increased availability and flow of money in communal areas is another factor that appears to have fuelled land markets. Different people are capitalise on these changes in land use and the presence of markets to increase their incomes by buying, selling and/or leasing land.

The great majority of transactions reported during this study were simple sales, with buyers paying money for land rights to sellers. The transactions were not *gratis* transfers of land rights between people; neither were they payments for improvements to land. Sales were seldom brought to the attention of Communal Land Boards, and rarely were they accompanied by the registration or re-registration of customary land rights.

The development and vitality of land markets are a consequence of a number of changing circumstances. Firstly Namibians are embracing the market economy and therefore increasingly abandon age-old subsistence livelihoods. Secondly Traditional Authorities function as *de facto* owners of communal land which they now increasingly sell and lease, and so other people do likewise. And thirdly, increasing numbers of economically active people want land to live on, to invest in, as large farms and to develop businesses. Land markets will continue to expand in response to these developments and the economic growth of communal areas.

It is recommended that measures be implemented to recognise and regulate land markets. This will enhance the value of land and economic activity in communal areas. Regulated land markets should permit a variety of transactions which are checked and certified as fair and legitimate. In support of this goal, a programme to educate and empower participants in the market, in particular poorer and more vulnerable members of society is a precondition for the operation of a fair land market.

One way in which land markets could be legitimised is by allowing for the conversion of registered customary land rights into tradeable leaseholds. As the economic nature and use of communal land develops consideration should be given to the benefits of accountable and modern institutions to manage land.

1. Background

Namibia has two quite different forms of land tenure, freehold and communal. The freehold tenure regime provides for land to be marketable and tradable. This means that landholders in freehold areas have full legal rights to acquire, own, or dispose of land in the market, giving the land intrinsic economic and investment value. Nowadays, freehold land is largely allocated through formal markets. In the communal tenure regime, the land is vested in the State, ostensibly for the benefit and use of rural residents. The Communal Land Reform Act (2002) which is the guiding law for communal land, provides for transfers of land rights with written consent of traditional authorities and/or the communal land boards. The Act prohibits the trading of land rights, and only allows compensation payments for improvements to land. Economic activities that may be developed from tradable land rights are thus legally precluded in communal areas.

The prohibition of land trading comes from the intention that communal land should provide a “safety net or means of security for the rural poor” (Nghitevelekwa 2014:1). It is further assumed that the prohibition protects naïve landholders who would dispose of land rights in ways that would leave them poorer if their land rights were tradable. The prohibition also helps traditional authorities to control land transactions and thus to secure the income they obtain from land allocation and taxation.

Debate is often polarised between arguments for tradability of land rights as a means towards efficient and productive use of land (see de Soto 2003), and those attributing it to inequities (see also Colin & Woodhouse 2010). Notwithstanding the legal prohibition of the trading of land rights, it is a known fact that land rights are often traded in communal areas by selling and leasing properties. Not only in Namibia, but it has been reported elsewhere that “land markets in Africa have proliferated” (Colin & Woodhouse 2010:4). One interviewee in this study put it convincingly that: *‘sales of land are taking place to the top of the roof, the demand is very high.’* Most interviewees agreed that the land market started to develop about 10 years ago, and has grown ever since. They also predicted that land markets will continue to escalate.

While the existence of land markets is now well-established, information on the extent, the hotspots, motivations, actors, even-handedness and many other aspects of the land markets were not known. The Ministry

of Land Reform (MLR) through the Programme for Communal Land Development (PCLD) therefore commissioned this study to fill gaps concerning the land market in Namibia’s communal areas. The Terms of Reference for the study described its specific objectives as “to assess, document and to understand the variety of ways in which land is being traded, how this trade has been evolving and what the aspirations of the land right holders are in this regard. The information will help the Ministry of Land Reform to better respond to change, and to create a regulatory framework that meets the needs of land owners (if so

Box 1 Key Questions

1. What kind of land is sold and bought most frequently?
2. What motivates landholders to sell their land? Who are the sellers?
3. What motivates people to buy land? Who are the buyers?
4. What procedures and negotiations accompany transactions?
5. What determines the sales value of land?
6. Are land sales generally agreed by family members?
7. Are traditional authorities involved in sales and leases?
8. Do traditional authorities take commissions on sales?
9. Are any other authorities involved in transactions (as agents or mediators, and are there any regulators of ‘fair play’)?
10. Where do land sales mostly take place, and to what extent is that influenced by proximity to roads, local authority areas and other concentrations of economic activity?
11. How have land sales changed in the recent past?
12. In what ways are land sales likely to change in the future?
13. What may be done to protect the rights of sellers (and buyers)?

warranted), as well as to ensure that communal land is used effectively in reaching the goal of supporting livelihoods". The study was guided by a set of key questions as described in the box above.

Land is increasingly viewed as an economic commodity with monetary and investment value. Purchasing power has become a necessary - if not sufficient - condition for many people wishing to have land (Chimhowu & Woodhouse 2010:15). The growing number, type and value of commercial enterprises in communal areas has transformed the character of land value and use, and opened up sources of incomes and investments not only for traditional authorities, but also for landholders, business people and land speculators.

The main use and value of communal land is no longer limited to subsistence farming for residents, and traditional authorities no longer control all aspects of land distribution.

The majority of people living in communal areas nowadays obtain most of their incomes from non-farming sources e.g. pensions, business earnings, wages and remittances (Keyler 1995, Namibia Statistics Agency 2013). Cash now makes up much more of most residents' income than home-grown food. The growing cash-based economy in communal areas means that the commercial values and purposes of land are developing, proliferating and diversifying. Thus, communal land is now used for commercial farming and horticulture, hospitality, industry, housing, private schools and clinics, retail and wholesale trade, investments, and other purposes.

These emerging commercially-oriented uses of land in communal areas have thus created markets and new scales and forms of land allocation and taxation by traditional authorities. These transactions by their nature and extent differ from *gratis* transfers of land rights with payments for improvements to land, as provided for in the Communal Land Reform Act (2002). This is explained further in section 3 of this report. Market transactions also occur with little or no involvement or regard for customary land right certification, Communal Land Boards and traditional authorities.

2. Methods

The study was undertaken in all communal areas of Namibia which were visited by one or both of the investigators between June and August 2016. The field investigations were conducted in close collaboration with Regional staff of the Ministry of Land Reform, who were critical entry points into their respective regions, for it was through them that many market hotspots and knowledgeable people were identified and later examined. A total of 105 people were formally interviewed, some of them at different times to re-visit and cross-check particular aspects regarding transactions:

Roles and positions of interviewees	Number interviewed
Legal experts	3
Local traditional authority headmen	10
Local land sellers / buyers	15
Local leaders and knowledgeable people	11
MLR staff	24
Non-government organisation staff	2
Police officers	3
Town planners	1
Traditional chiefs, <i>ngambelas</i> and senior councillors	27
Traditional authority staff	5

Tourism operators	5
Farmers' association leaders	3
Totals	105

Regional distribution of respondents	Number interviewed
Central-north plus Kunene	31
North-east of Namibia	27
Central and eastern of Namibia	27
Southern areas	12
National experts	8
Totals	105

The enquiry was qualitative in nature. Data were collected via interviews, informal discussions and observations. A combination of random and purposive sampling methods were used to identify the respondents who came from varied backgrounds, each with their own perspectives and experience. Many of the respondents occupied positions of leadership and authority, but care was also taken to gather perspectives from ordinary landholders: men and women, farmers and shop owners, older and younger residents, et cetera.

Due to the sensitivity of the topic, contacts in the field often did not give their names but nevertheless provided detailed information and reflections, and also suggested other people knowledgeable about local land sales. A small survey by email was conducted to collect information on payments made by tourism establishments, but it was clear that many lodge owners were reluctant to divulge much information. All interviewees were assured of the anonymity of their responses, and their identities and the names of certain locations, institutions and organisations have been omitted in the presentation of this report.

3. The character of the market, and changing values in communal areas

This section discusses the character of the market in which buying and leasing are the main transactions. But what do these terms mean in practice?



Ongha in central-northern Namibia showing the substantial growth in small retail shops, services and houses between 2004 (above) and 2016 (below).

Definition of concepts

Definitions help clarify answers to such questions as (i) what are buyers paying for: land, land rights or improvements to land; and (ii) what was observed: was it land trading or illegal transfer of land rights?

Communal land belongs to the State, as provided for by Article 100 of the Constitution (Republic of Namibia 1990). What is allocated to land users by the traditional authorities and ratified by the Communal Land Boards are land rights, not land as a tangible commodity. Thus, what is being traded are land rights, not land as a tangible asset; what is sold are rights to use the land, which remains the property of the State. Through trading, sellers lose their rights over land (user, management, exclusion and alienation rights) while buyers gain those rights.

One of the critical questions is whether buyers are paying for land rights, or for the improvements to land, such as fences, boreholes and buildings?

Payment for improvements is allowed in Section 40 of the Communal Land Reform Act (2002) and this is further supported by the Compensation Policy Guidelines of 2009. What was clear in the field during this study was that most transactions were simple payments of money for land rights as purchases or rentals. Payments were not made for improvements alone, although the presence and nature of improvements sometimes influenced prices.

Section 38 of the Communal Land Reform Act provides for the transfer of land rights with written consent from traditional authorities and/or from the Communal Land Boards. Thus, the other question surrounding the land market debate is whether this is indeed land rights trading or the illegal transfer of land rights. Findings from the study indicate that most transactions involve both: land rights are traded and transferred, but without authorization and registration.

The main point is that sellers relinquish rights over their landholdings while buyers obtain those rights. A central focus of debate should therefore be on the analysis of the socio-economic and governance implications of the developing market forces over land. Like in many other African countries, market forces have become entrenched in communal areas. A question for the immediate future is: how to manage the impacts of land market forces?

Traditional authorities in most northern communal receive payments for allocating a piece of land, be it a small holding or an area for a new village. These payments have a long history and were usually paid in cattle, tobacco or other goods before the advent of money. Today they are called service fees, compensations, loyalties or royalties, happiness fees, thanking fees, bribes or *ombadu yekaya* (from a roll of tobacco). In areas where boundaries between traditional authorities are contested, payments for land (allocations) are also regarded as 'selling or buying allegiance'. By paying a fee to a certain traditional authority the resident helps confirm that his/her land indeed lies within the respective traditional authority's jurisdiction.

The story of a seller and buyer in Ongha.

She bought land which was once someone's small-holding. She bought it for \$15,000 in 2011. Now she wants to divide it into two and sell one part for \$15,000 in order to recover her money. She is building a private school and will use the money for that purpose. The land is about 1,000 square metres. She states that open plots in Ongha are finished; most of those now for sale are from people who bought and are now selling their existing plots. People subdivided their omahangu fields into plots and sold them. People buy land in Ongha because it will soon become a town. Most people buy plots in Ongha for residential and also for business purposes. Businesses in towns such as Ondangwa are very saturated, therefore business people are flocking to emerging areas places such as Ongha. Business is starting to boom there, and because of the need, land is in demand.

Payments for allocations are usually modest, such as \$600 or a cow for a small holding in the central-north, and \$1,000 or a cow for a village in Zambezi.¹ Moreover the fees were always regarded as a legitimate payment for the various services provided by traditional government; services beyond land allocation.

Consternation followed the promulgation of the Communal Land Reform Act in 2002, since allocation fees were then interpreted as payments for land, and thus illegal. However, the political leadership of the MLR agreed in 2004 to allow the payment of *ombadu yekaya* in central northern Namibia.²

Although payments for land allocations are never called sales, in effect people are buying land because (a) traditional authorities assert that they own the land, and (b) a village is unequivocally owned by the person who established the village, or his direct descendants. This is true across much of Africa.

Payments for land allocations (and taxes) are therefore long established practices which set precedents for traditional authorities to engage in land markets. The greatest change now is in the amounts charged; only the price differs. Allocation fees of \$600 are raised in relation to the perceived wealth of the 'buyer'. The \$15,000 charged for a plot to establish a general dealership is ten times more, but functionally equivalent to the payment of \$150 for the small shop (*okandingosho*) next door. Likewise and in practice, the purpose of a household tax of \$20 is equivalent to that of a lease fee of \$2,000 or \$20,000.

Given the similarity of purpose and process between allocating and selling, or leasing and taxing land, it can be argued that there has always been some form of land market in existence, at least for hundreds of years. These land markets have traditionally been controlled by and arguably for the benefit of, traditional authorities. This is also a consequence of the long, widely held (incorrect) view that traditional authorities actually own the land, as is often promulgated in customary law (see Hinz *et al.* 2010, 2013, 2016).

Even land transactions and transfers which historically took place on the basis of kinship relations are increasingly becoming monetized. Several research participants put it that '*no matter what relations are, no one can give you land for free anymore, there is always money involved.*' Sales also take place under the guise of kinship relations. Traditional authorities complain that, '*a landholder may come to us asking for a small piece of land for a family member to erect a homestead, just to see later the new person putting up a big business.*'

While historically people acquired land through traditional authorities alone, landholders are increasingly becoming important sellers of land, generally with minimal or no involvement of traditional authorities. This is an important finding of this study, as discussed further below.

¹ In most communal areas in Namibia a village is an area occupied by an extended family. Payments for land on which to start the village would have been made by the original founder, and the village and cluster of homes would then have expanded over the years. The village headmen is usually a descendant of the founder, so that leadership and ownership remain within the original, core family.

² Confirmed by ex-Deputy Minister of MLR Izak Katali in a telephone conversation (2 September 2016) that he and then Minister Hifikepunye Pohamba agreed during meetings with traditional authorities in the 'North' to permit the payments of *ombadu yekaya*. This was part of compromise so that the \$25 and \$50 payments for land rights certificates would be kept by the MLR and the traditional authorities could charge *ombadu yekayas*. The value of an *ombadu yekaya* then dropped from \$800 to \$600.

4. Regional trends and patterns

The scales, frequencies and types of trade in communal land can be differentiated into four zones as follows:

1. Regions in which there is little trading (//Karas, Hardap, Erongo and Kunene).
2. Regions where traditional authorities control the trade as the main sellers and lessors (Zambezi, Kavango East and Kavango West).
3. Regions where both private individuals and traditional authorities are active sellers of land (Oshana, Oshana, Oshikoto and Omusati).
4. Regions where land trading is largely in the form of sales by private individuals and speculators (Otjozondjupa and Omaheke).

Comparing zones where land markets are active, much of the trade in the north-east (Kavango East and West and Zambezi) focuses on the tourism industry and large agricultural projects from which considerable sums may be earned by traditional authorities, mainly in the form of lease fees. There is considerable competition for earnings between levels and members of certain traditional authorities, for example between the chief, the traditional councilors (and council), senior headmen and headmen (see pages 21-22).

The Kavango regions are the only regions in Namibia where residents are often displaced and lose their small-holdings so that traditional authorities can sell or lease the land to wealthy people most of whom are from outside these regions. Informants reported that up to 15 large surveyed large farms (called SSCFs – small scale commercial farms) in Kavango have also been sold by people who had the farms as registered, long-term leaseholds.

Some large farms and sub-divisions have also been sold in Oshikoto and Omusati. But in central-north Namibia much of the trade occurs close to big commercial centres (such as proclaimed towns), inside commercial centres which are developing into towns that may later be proclaimed, and along major roads where commerce is concentrated. The main sellers of land are land-holders themselves, businessmen, speculators and traditional authorities. Most bought land is used for business enterprises and housing. Small-holdings or sub-divisions are often sold when one or more of the elderly original owners dies.

What the results of this study do show, however, is the considerable potential for land trade when there is a demand for land, and when buyers and sellers are available to meet that demand. The study also shows how rapidly trading activities develop. By all accounts very few properties were being bought 10 years ago, but in some areas probably hundreds of properties are now traded each year. The demand is growing and so are land markets.

5. Main types of land sold or leased

This section describes the variety of land types now being sold or leased in Namibia. The types are mainly differentiated by size, purpose and ownership.

Small holdings for commerce and housing

These are small holdings previously and customarily used for crops and as residences but that are nowadays subdivided into plots for sale (as in the map on the cover page of this report). Often just one or two small plots are sold so that the remaining area of the small holding is retained, at least initially and in the short term. The plots sold are normally used for commercial purposes, for example to establish retail shops and/or bars, or to build single homes. These are generally along major arterial roads, the best examples being between Omuthiya and Ondangwa, Ondangwa and Oshakati and Helao Nafidi, or in peri-urban areas. A substantial number of small-holdings have been subdivided into housing plots, particularly around large towns such as Katima Mulilo, Ongwediva, Helao Nafidi, Eenhana, Omuthiya, Otjinene, Okakarara and Opuwo.

An inspection of the area described by the interviewee described in the adjacent text box revealed that 13 houses were being developed on plots between 200 and 400 square metres. Another 20 plots were demarcated and fenced. One of the plots has a block of apartments and a shop. One buyer reported that the landowner charges between \$10,000 and \$15,000 per plot, while other buyers indicated that he sold larger plots for between \$40,000 and \$80,000. Prices have been increasing due to the high demand for housing close to this urban area. Most of the

Comments of a small-holding seller

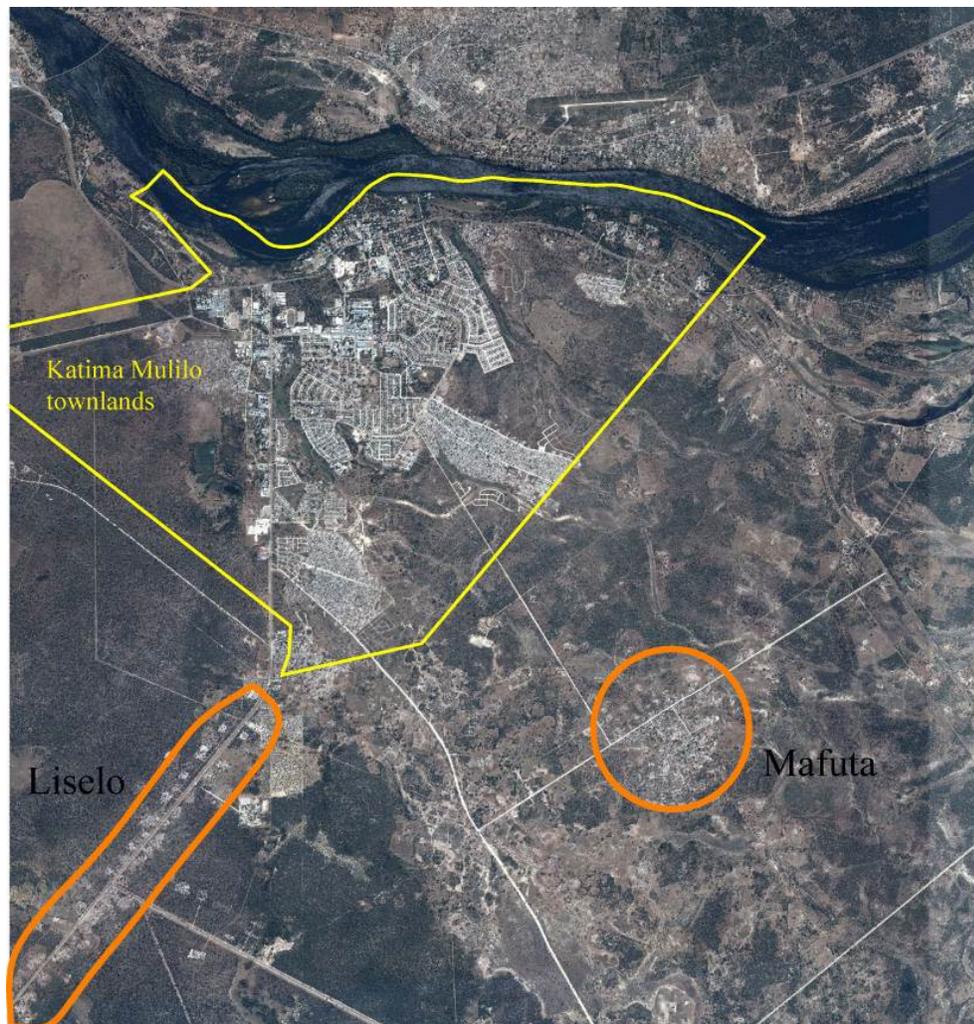
I am 56 years old. I acquired this landholding 12 years ago. I have a certificate for my land. My land is big, I think it is about 12 hectares. I was using this land for my homestead and crop field. However, I was not making much from the land in terms of productivity, so I thought hard on how I can use my land efficiently. I therefore decided to sub-divide my land into small plots for residences which I sell. These plots are on demand – the town is the regional centre for government services – there are many government officials. Thus my buyers are civil servants working for government. People want to live near towns services, but do not want to pay for rates and taxes charged in towns. Therefore they find relief in communal areas close towns. For me I decided to take on that opportunity. I know that the town is expanding and will soon reach this place. By the time the town's boundary reaches here, I have already ripped benefits from my land. Because I know the compensation they give is little. I intend to demarcate roads on the land. I have already put in a transformer which I bought together with some plot owners. There is water supply. I even plan to give it a name. This is going to be the Klein Windhoek of the fast expanding town. It is purely a residential area.

I got permission for this use from the senior headman but not from the village headman – the village headman is against it because he said I cannot sell land, but I know that it is just because the money is not going to him. In addition to that, I have my certificate which certifies that this is my land, therefore I can do anything I choose to with this land. I pay the individual subdivisions' ombadu yekaya (N\$ 600) into the bank account of the traditional authority. There are no agreements between me and the buyers. But a certain lawyer advised me to get an affidavit from Ondangwa court. I am in the process of getting that. The Ondangwa court will be the mediator in the transactions, so that the buyers may feel at peace with their lands. Through the sales of these plots, I have managed to buy three farms (still in central north) and many cattle, and I have good infrastructures at these farms and I employ other people. I employed 12 people through my businesses.

transactions are informal and/or 'under the carpet' as the interviewees put it, and so transactions are only reported to authorities when disputes arise.

The existence of vibrant land markets around declared urban area is not surprising. And the prices paid for small plots which have no title or services demonstrate the substantial demand for land close to urban areas. There are several reasons for this. First, people living or doing business close to urban areas enjoy the same access to markets and services as those who live and work inside declared urban areas. Second, surveyed land in proclaimed townships is generally more expensive than nearby communal land. Third, urban land is also taxed and land owners may be required to pay for services – such as refuse removal – which they perceive as unnecessary. Fourth, land close to urban areas is likely to increase in value, especially if it is later incorporated within expansions of urban areas. Peri-urban land therefore has considerable investment value around towns that are likely to grow.

The benefits of living in a peri-urban area were clearly expressed by an interviewee who said: *People do not like to live in towns, but they like the services that towns avail. Thus they choose to live close to towns and still benefit from services that towns have to offer. People that have landholdings in peri-urban areas realise the way of making money and therefore capitalise on these opportunities.*



Katima Mulilo townlands (in yellow) and the neighbouring Mafuta and Liselo areas (orange) where hundreds of plots are sold for housing and commerce.



Close-up of Mafuta settlement, showing the high density of low and middle income houses

Large farms

While these land holdings typically each cover hundreds, or more usually thousands of hectares, they have different origins. Some were acquired by self-proclamation and appropriation, others were allocated by traditional authorities and later designation as small scale commercial farms (SSCFs), and yet others were allocated by administrations prior to independence. Most large farms are in Oshikoto Mangetti and its surrounds, Otjozondjupa, Omaheke, Omusati, Kavango West and Kavango East.

Many of the farms are sold whole, while others are subdivided into portions for sale. The traditional authority in one area decreed that large farms should be reduced to 3,600 hectares, allowing for the remaining portions to be sold.

Sales of sub-divisions in other areas were for different reasons. Some farms were apparently planned intentionally to cover very large areas so that they could be divided and sold off into smaller farms. In other cases, farms established decades ago have been subdivided and sold off among relatives of the people to whom the farms were originally allocated. These sales usually occur when the original owner dies or becomes too old to farm.

Most of the surveyed SSCFs in Kavango West and East that have been sold were purportedly allocated to people with little intention to ever farm. Some other farmers who have not developed their own land have partnered with 'investor farmers' who install boreholes and fences in return for say 10 years of grazing rights. Once the 10 years end, the original farmer or the 'investor tenant' may claim ownership and the right to sell the farm and/or value of the infrastructure. The investors are reportedly largely from the central-north.

Unoccupied land

Substantial areas of so-called ‘virgin’ land exists – or existed – in parts of Omaheke and Otjozondjupa. The land is not formally claimed, allocated or fenced, although very often San people live, hunt and gather in these areas. Speculators and agents familiar with the areas travel around identifying and staking-off apparently vacant land into large farm units. The availability of the farms for sale are then made known to prospective buyers, the great majority of whom have been from other regions, especially the central-north.

Little virgin land now remains. Nearby residents have sometimes attempted to exploit these sales and the probable naiveté of buyers. The local people place signs or small informal shops in strategic and visible places on the newly sold farms, and then use the signs/shops as evidence to prove that they are the actual owners, at least of some of the land. It is not known how often these attempts to wrest or gain compensation are successful.

Expropriated land

Traditional authorities have sold, or sometimes leased, substantial areas of occupied land used for commonage grazing, hunting and gathering and residential purposed in Otjozondjupa, Kavango West and East.³ In certain areas this is justified by asserting that the villages occupy royal land which must therefore be vacated.

The selling of conservancy land in West Tsumkwe has been well documented (for example, see Namibia’s High Court judgement: *The Na-Jaqa Conservancy Committee v The Minister of Lands and Resettlement (A 276-2013) [2016] NAHCMD 250 (18 August 2016)*, with reports of some portions being sold for between N\$2,000 and N\$10,000. Substantial numbers of villages and their surrounding commonages have also been expropriated in Kavango West and then sold as large farms mostly to people from other regions. Different informants reported that members of one traditional authority had sold about 50 farms outside designated areas in this way. At least one such farm even included a government school and borehole.

The allocation of hundreds of large farms between 1992 and 2010 (later called small-scale commercial farms by the Ministry of Land Reform) by traditional authorities in Kavango West and East resulted in residents in those farming areas losing also their homes and commonage land. Although that land was generally not sold, the farm owners now effectively lease as well as paying tribute and allegiance to the traditional authorities. Removals of local residents by the TA continue nowadays, for example with the allocation of new farms, for example along the Omatako River.

Residents have also been dispossessed of homes and land in smaller areas along the Okavango River, particularly for the development of agricultural projects. Much of the land has then been leased to the developers, but some land has been sold as well. For instance, land on the Namibian side of the Okavango River was sold to the owner of a lodge on the Angolan side. By clearing the bought area of houses, visitors on the Angolan side reportedly had more pleasing views across the river into Namibia.

Family land

This includes the many small-holder properties used customarily as family homes together with surrounding fields, fruit trees, and small areas of grazing. These are the properties generally registered

³ Since the completion of the field investigations, the selling of land from which people are evicted began to be reported in central-north Namibia ([see Appendix 1](#)). It remains to be seen how the practice spreads to other areas.

under customary land rights. Circumstances leading to their sale for commercial and housing purposes were described earlier (see the section above on *Small holdings for commerce and housing*).

Ideas of selling off family properties normally arise when older parents stop farming, or when they die. By then their mature descendant children are often working elsewhere, usually in urban areas, and often have priorities other than taking care of a small-holding in a rural environment. Some of the children may also wish to boost their standards of living, and therefore contrive plans to convert at least some of their family land into cash. Uncles and nephews of the deceased often have yet other plans for the family estate.

The divergent views very often lead to friction and squabbles, members of the family having different views on whether the land should be sold, what should be kept or sold, who should benefit from the sale, how much it should be sold for etc. Members of the family may then pursue separate courses, even to the extent that same portions of land may be sold to different buyers by different family members! And sometimes whole properties are sold immediately once the parents die, often by the senior son or purported heir and family head. Land may even be sold while it is occupied by a member of the family. In one instance, a respondent reported that: *A case has been reported where a couple has been cohabiting. The male partner sold the land for \$30,000 without the wife's consent or not knowing. The wife only noticed this while she was in the process of harvesting, when people that bought the land came to settle on the land.*

By contrast, some family members also buy their own 'family land'. These are often people living outside communal areas who want land they can call their own, but without being involved in family disputes to obtain inherited portions. The buyers are comparatively wealthy and thus able to buy several hectares on which they can build a home. Some of the large houses – indeed mansions – seen along roads in central northern Namibia were built for this purpose. The owner of a large farm in Oshikoto divided his farm into portions which were sold to non-residents people wishing have their own family homes.

4. Sellers, agents and speculators

Buyers of communal land have various motives, such as to develop housing and businesses, to acquire speculative investments, or to own large farms. Sellers are likewise motivated by a variety of circumstances. Some need incomes to meet unexpected expenses, others want funds to subsidise farming or businesses. Farm owners may sell when they lose motivation or the means to farm, or suffer the consequences of declining land productivity. Yet other people seize chances to pursue profitable opportunities, such as by selling their small-holdings close to urban areas or their farms to wealthy people. The different actors who sell and facilitate sales are described in this section.

Traditional authorities

Traditional Authorities act as lessors, sellers and market agents. Different levels of traditional authorities are involved: local village headmen, senior or district councillors, traditional councils, and chiefs. Traditional authorities are most active in land trading and leasing in the north-east of Namibia, especially where there are many tourism facilities and large farms to sell and/or lease. Most commonly, lease fees are paid to traditional councils, the funds being deposited in the accounts of the councils or in the pockets of individuals. Competition and conflicts are common between different levels of authority, each level trying to maximize or command all the income.

Estate agents or local facilitators

Estate agents or local facilitators are available in certain areas to help prospective buyers to find land for sale. The agents are most active in areas where markets are active, for example in places destined to become proclaimed as urban land.

Ordinary residents

Ordinary residents who sell land because of changed priorities and needs. These include people who no longer need farmland because returns from agriculture are discouraging, or they lack the energy and motivation to continue farming, or their non-farming sources of income are adequate to buy cereals and other foods. Or in other cases such as those described above, when circumstances change when landholders die or become incapable of managing their properties.

Local resident seller:

I inherited this land from my parents. I started selling plots in my land in 2010. My son bumped someone's car, and was required to pay \$90,000. My son only had part of the money, so I had to add on what he had. That is how I started selling land. In addition to that, I have to pay university fees for my other children. I generate this money from land sales. I have sold 15 plots on this land each for N\$ 15,000. Before I started to sell, I went to the headman where I got permission to sell. I pay \$600 to the headman for each of the plots I sell and pay the annual tax of \$20. I have all the cards for the plots I sold. I no longer sell because the headman say it is now prohibited.

I am not the only one selling land. I am surrounded by others who sell their land too. One of my neighbours inherited the land from her husband. The husband initially got the land from his brother. When the widow started selling the land and making money, the brother in-law want his land back. Even the step-children also wanted part of the land. The problem now is that most of the land is sold and I am sure she does not have the money. Now the lady is scared that people will say she should pay back the money she earned from the sales.

Circumstances often dictate unexpected or urgent needs for money. ***The land sold as a result of such unforeseen needs is often described as a distress sale, but in reality few cases of sales as a result of real distress were encountered during the study.***

Wealthy individuals

Wealthy Individuals perhaps purchase more land – at least in size – than other buyers, for example of large farms, family land, or land for business. The great majority of these buyers live in large towns, often far from communal areas. Many are businessmen or senior civil servants.

A resident in western Mangetti said: *People have money and they do not mind even paying for a 1 hectare of land N\$100,000. For example, one of the private farms in Mangetti area was sold for N\$400,000. Some farmers there are renting out part of their farms to others – in these cases people bring in their cattle for grazing and they pay to owners of the farms. Renting of farms result from pressure from people who do not have land and need grazing land for their livestock. Owners of the farms therefore take advantage of these opportunities to generate income. Within the private farms, people have also sold parts of land for crop production. In many cases there no papers involved. It is only the owners and the people inside their farms who know what kinds of arrangements they have. In these cases, people do not pay to own, but pay to use.*

Speculators

Many buyers of land are effectively speculators, purchasing land and then selling it on at higher prices. This is the case for people who proclaim large farms and then sell them off soon after as whole farms (for example, in Omaheke, Otjozondjupa and perhaps Kavango West and Kavango East) or after subdividing portions for sale (in Omusati, Oshikoto and Ohangwena).

Speculation over land is commonplace in and around urban areas, both those that are formal towns and those that are developing into commercial and service centres. For example, speculators buy up land, often small holdings at low prices from naïve owners, and then subdivide and sell them off as plots for housing and retail businesses. This kind of sub-dividing and selling is particularly rife in Ongha which is destined to be proclaimed an urban area in 2017. The same plots may be sold twice or the areas of plots sold separately may actually overlap (see the example in the image on the cover page).

While not quite speculation, residents in communal areas sometimes move and establish themselves close to developing centres where they hope to receive good compensation when their land becomes townland. Residents have lobbied for Otjinene's borders to be expanded for this reason.

5. Nature of transactions

Respondents reported that sales are usually negotiated privately, mainly for the sellers to keep information on their earnings confidential. For example, informants reported that traditional authority members who sell land for residential properties close to town do not wish other members to know the relatively handsome sums paid. The same may happen when chiefs sell land to wealthy outsiders, so that the total price paid is not same as the amount deposited into the account of the traditional council.

Sales of small-holdings are also often conducted in private, particularly when one family member wishes to sell off the family property, or part of the property. The seller then has a better chance to keep all the money or a significant part of the sum paid for the land.

Traditional authorities are seldom involved in negotiations between private buyers and sellers, but the authorities may be requested to sanction or support the sales once they are concluded. And occasionally they become involved as mediators when transactions are disputed.

In most cases there are no paper trails for land sale transactions, but lawyers are sometimes engaged to draw up sales contracts to certify the exchange of payment for land. Few examples of bought land being registered were encountered, probably because private transactions are preferred by buyers and sellers and because they perceive little value in registering properties. Indeed, it may be more cumbersome and risky to be involved in sales of land registered as customary land rights or leaseholds than in unregistered land.

Disputes over rights to sell land often result in lawyers being engaged by aspirant sellers to prove ownership of land they wish to sell. Customary land right (CLR) certificates are then submitted as proof of ownership, and this raises the question of how the certificates encourage a sense of ownership. This was virtually the only mention ever made about the role of customary land right certificates in land markets.

High demand for land leads to rising prices. Double sales also increase when there are more buyers than plots for sale. One interviewee explained double selling thus: *Double sales where a piece of land is sold to more than one person take place. Here, the seller sold land to one lady working for finance ministry in Windhoek. He later sold part of the already sold plot to someone else. The lady working for finance went to complain to the headman, but he could not do anything, and did not want to get involved because the whole transaction is illegal.*

The value and size of land may be reported in different ways. For example, a piece of land In Otjozondjupa was acquired by an outsider for a supposed purchase fee of \$20,000 paid to a senior councillor. The councillor claimed that he had only allocated this person 3.7 hectares, but a letter signed by the traditional authority chief (or with his signature) gave a figure of 3,000 ha. This is the letter that went to the Otjozondjupa Communal Land Board to support an application for a customary land right. The application

was apparently approved but the certificate for a customary land right put the property's size as 1.4 hectare. The farm apparently covers some 5,000 hectares in reality.

6. Land values, prices and lease fees

Prices paid for land depend on several factors: the size of the property, its intended use, the origins of buyer or lessor, his or her ability to pay, the value of improvements on the land, market values established as precedents by previous sales and lease agreements, and values set by traditional authorities.

Land values are sometimes set by traditional authorities, but may also be negotiated. Prices for land sold privately are normally negotiated. Buyers and sellers may differ in their negotiating positions, buyers sometimes being stronger and vice versa. For example, amounts offered by knowledgeable businessmen to poorly educated, elderly small-holder in rural areas would be lower than those accepted by more experienced land sellers. Conversely, sales agents and traditional authorities can charge naïve buyers more than people who understand the land market.

GOFUTO DHEVI UUNA OMUNTU A HALA EHALA.

1	Lodge	N\$ 15000-00
2	Complex	N\$ 15000-00
3	Serves Station	N\$ 15000-00
4	Mini Market	N\$ 3500-00
5	Flats	N\$ 3500-00
6	Open Market	N\$ 3500-00
7	Market	N\$ 3500-00
8	Ositola	N\$ 3500-00
9	Bottle store	N\$ 800-00
10	Bar	N\$ 800-00
11	Oshini	N\$ 800-00
12	Restourant	N\$ 800-00
13	Epya/Land right	N\$ 600-00
14	Okakefe	N\$ 150-00
15	Barbershop	N\$ 800-00

A property price list established by one traditional authority

Prices charged by one traditional authority for business properties vary between \$150 and \$15,000 in the example shown above. This price list also gives a value of \$600 for a small-holding to be used for domestic crop production and residence, which is the established cost in central-north Namibia where the payment is called *ombadu yekaya*. Someone wishing to establish a new village in Zambezi would pay \$1,000 or one head of cattle to the traditional authority (see footnote on page 9).

Other than in central-northern Namibia, no fees are charged for small plots allocated to people with local origins. But amounts charged to people originating from other areas who wish to establish themselves in these communal areas range greatly. On the one hand, poor small-holders may be given land for free while well-off people seeking large tracts of land may pay substantial sums. For example, large farms in former Hereroland may each cost several hundred thousand dollars. One 2,500 hectare farm fenced and equipped by the Ministry of Land Reform as a model SSCF farm in the Kavango region was later sold for \$1.3 million. This transaction was not vetted by the Communal Land Board and the Minister.

The variety of prices for small residential properties probably largely reflects differences in supply and demand. Around Katima Mulilo, residential plots cost a few thousand dollars, while outside Ongwediva and Omuthiya plots have been sold for between \$15,000 and \$80,000.

Land is usually not sold to lodges and large formal businesses, these institutions instead being required to pay lease fees, especially in Zambezi and Kavango East and West. However, exceptions were found: small plots sold for service stations, large retailers, wholesalers and even agricultural land to be used for small-scale irrigation (an example being shown in the figure below). One traditional authority sold a plot

of several hectares for \$65,000 for the establishment of a lodge, and another traditional authority sold 30 hectares to a parastatal for \$75,000.

Fees paid privately for leases to traditional authorities vary as greatly as do sales prices, and distinctions between taxes and lease payments are sometimes not clear. Rural small-holdings pay no taxes in some communal areas but modest amounts in others, such as \$20 in the central-north and \$30 per year to some traditional authorities in Kavango West and East. Properties used for commercial purposes are taxed or leased out for much higher sums. For example, small retail shops pay \$2,500-3,000 per year in Kavango East and West, or \$50 per year in the central-north. Businesses pay once-off costs of between \$1,000 and \$10,000 for the allocation of land in Zambezi, where only really big businesses such as lodges pay lease fees. The owners of large farms in western or Oshikoto Mangetti pay lease fees of \$2,000 for each of their farms, while the owners of large farms in Kavango West and East pay between \$100 and \$250, the amount varying from one traditional authority to another.

Most lodges in Zambezi, Kavango West and East pay annual lease fees of between \$4,000 and \$5,000 per year. In one area, however, the annual payments are \$22,500 per lodge.

The payments go to the traditional council, although at least one lodge pays two fees: one to the local headman and the other to the traditional council. Most lodges have written lease agreements with their traditional authority lessors. An example is given in the Appendix.

Pressure – sometimes purportedly to the extent of coercion – is used on lodges and other local substantial businesses to make *ad hoc* payments to traditional authorities. Failure to oblige can have disagreeable consequences, and many lodge owners are mindful of the precarious nature of their investments.

Lease agreements are also developed between traditional authorities and large agricultural projects. The lease agreement for one significant project stipulated that the holding company would pay approximately \$360,000 per year to the traditional authority, another \$144,000 to a separate fund administered by the traditional authority, and then an additional 5% of all profits.⁴ If and when the project is implemented, this traditional authority would earn millions of dollars per year.

TAX INVOICE / BELASTINGFAKTUUR 17

From Van: [redacted] 16-03-2015
 To Aan: Uukwilonkacathi T/A

Quantity Hoev.	Description Beskrywing	Amount Bedrag
	plot 16-03-2015	N\$ 35 000.00
	deposit	N\$ 5 000.00
	remind	30 000.00
	A-A Johannes	35 000.00
	TOTAL TOTAAL	35 000.00

TERMS TERME

Receipt for the sale of a plot to be used for irrigated farming in central northern Namibia

⁴ This traditional authority first proposed keeping only 2% of the profits, while the remaining 3% would be divided equally between three other traditional authorities. This was then reduced from 3% to 2% to be shared with the other

7. Traditional authorities: contestations and tensions

Land markets are characterised by tensions between land 'owners' and traditional authorities. The tensions brew from the potential gains to be made as land becomes a commodity with monetary value. Traditional authorities often assert that they should control all transactions since they both own (as stipulated in customary law) and manage (as stipulated by the Communal Land Act of 2002) all communal land.

In a few localities, traditional authorities have stopped all land sales, for instance around Ondobe in Ohangwena. Elsewhere, traditional authorities have become involved in private sales. In one example a buyer requested that the local traditional authority witness the transaction, which amounted to \$25,000 for a property. The traditional authority then took control of the transaction, taking \$ 22,000 and giving only \$2,000 to the seller (affidavit in Appendix 1). The seller/landowner then reported the case to the Anti-Corruption Commission.

Contestations also arise between leadership levels within a traditional authority. Senior councillors and chiefs require that big businesses and wealthy buyers negotiate with them, not local headmen or headwomen. Senior leaders also require greater involvement in sales close to urban areas, where there are more sales and prices are higher than elsewhere.

While headmen in the central-north are allowed to receive the \$600 *ombadu yekaya* payments for small holdings, the allocation of leasehold properties and large farms is increasingly the preserve of senior headmen.

The difficulties traditional authorities have with land markets was explained by one interviewee thus: *Sales of communal land are a problem that our traditional authority is facing. The most abuse is taking place in the Omaalala area. The buyers promise people, especially the elderly – that they will build them houses with corrugated irons on top of the money, which in some cases they do not do – they cheat people. Traditional authorities are pushed in the corner by the lawmakers because of the certificates. Landholders are now using the customary land right certificates as proof of ownership of their landholdings and that they can use it for purposes they deem fit, including selling their lands. Traditional authorities are even receiving letters of support from lawyers defending their clients in cases where a dispute over sale arise. The land rights certificates are encouraging the concept of ownership and that owners can now sell their land.*

Another interviewee declared that: *the current law on communal land is not equipped to deal with these sales, which makes it difficult for us.*

Further problems arise because traditional authorities don't go into the field to check on boundaries and the identities of the people involved in allocations and land right applications. Not surprisingly, the authenticity of transfers, borders and beneficiaries is then easily compromised.

traditional authorities. Finally, it was decided that the leasing traditional authority would take all 5% because it claimed that the other traditional authorities did not share their incomes.

8. Conclusion and key policy questions

This study revealed that land markets are active, diverse and growing in communal areas. A substantial part of the market is controlled by traditional authorities, while private individuals control the rest of the market. The vitality and size of the market is almost certainly a direct consequence of the socio-economic and cultural transformation that comes with increasing monetization of society in communal areas. It is also an indirect product of dynamism in contemporary rural Namibia. This transformation and dynamism is well captured by Winterfeldt (2013, p. 9) who put it that: *'The centuries' old tradition of practicing and depending on agrarian economy was and is not left unaffected by the exposure for more than a century to colonial capitalism and post-independence market-economy. What this means is that homesteads can no more be happy islands of traditional self-sufficiency in a sea of commodified consumption. School fees, social events and family celebrations, traditional and religious rites of passage, emergencies, and not least the call of fashionable consumer goods – all require monetary resources that most rural households generally lack.'*

More money than before is now available to push and meet increasing demands for land, especially for housing, commerce, large farms and investments. The link between money supply and demand for land drives the land market.

The illegality of land sales is a consequence of legal prescriptions that are at odds with the realities of a monetized society in the 21st Century. The Communal Land Reform Act of 2002 was designed to serve individuals whose nutritional and economic needs were met by subsistence from a few hectares and small numbers of livestock. The Act is also based on the assumption that traditional government and its customary systems manage land appropriately. As this study has shown, many traditional leaders now profit from the land market, sometimes at huge cost to local residents.

While subsistence and customary land management might have been appropriate decades ago, they are not suited to the needs of modern, monetized societies. It is people in these societies that are the agents of development and change in communal areas. Current legal prescriptions are therefore at odds with processes embedded in society.

Land therefore increasingly serves purposes that go beyond simple crop production and home, and people in communal areas adopt values, aspirations and livelihoods similar to people elsewhere in Namibia. It is neither possible nor desirable to hold that people and their needs in communal areas differ from those elsewhere. No matter what measures are taken to quash land markets, the buying and selling of land is certain to continue and increase. This point was reiterated by many interviewees, saying: *'We cannot stop land sales but need to find ways to regulate it'*.

Those conclusions lead to the following policy question: *should the policy and legal environment be amended to regulate a land market that promotes land based economic activity and development in communal areas?* During the 14th Annual Symposium organised by the Bank of Namibia, the then Minister of Land Reform Alpheus G. Naruseb noted that: 'Communal land is a public good that should benefit the less privileged communities residing in communal areas. It is a wonderful thing to unlock the economic assets of communal land but we should be mindful of the consequences that may result from a poorly designed 'unlocking of dead capital' of the communal areas, let us have a demand driven process and not an indiscriminate supply of tradable tenure in the communal areas that may result in destitution of the majority of our people. Rather increase tradability and ensure access to land as capital goods through leasehold rights' (Bank of Namibia 2012).

We concur with the approach advocated by the former Minister. This study has demonstrated that communal land has economic value that goes beyond subsistence. Land markets could be legitimised by

allowing for the conversion of registered customary land rights into tradeable leaseholds⁵, and creating a controlled framework that protects the rights of the vulnerable and avoids elite capture.

So far, the supply of tradable tenure has developed informally, without legislation and without measures that solve another challenge: "... how are we going to protect the most vulnerable people and ensure that they do not lose their land rights" (Bank of Namibia 2012:11)?⁶

Many arguments against land being allowed to be tradable are based on the assumptions that land holders are ignorant and gullible. They are thus easily pushed and/or cheated into selling the land under the market price, leaving them destitute. While the above is a risk, it is the task of governments to ensure that land holders are not ignorant and that they are protected against unscrupulous practices. Therefore regardless of whether measures are taken for or against land markets, a programme to educate citizens on the purpose of land as an investment would have substantial value. The same programme would help people avoid being cheated and ensure that land transfers are properly documented.

In addition, it is clear from this study that a land market also creates opportunities for poor people, to step out of the poverty trap that subsistence farming has become. It enables children to study, it creates capital for diversification of income and it creates access to land for people working in towns that would otherwise have no land to live on.

As the value of land increases, so too will competition over land escalate. Already many conflicts occur when close relatives compete for land, especially after the parents and their wishes are lost. Many of the conflicts develop from hearsay and competing claims which are not substantiated in writing. In this respect, could a programme be introduced to encourage the use of written wills that stipulate what should happen to inherited property?

The development of the tourism industry is limited by the considerable charges and strictures levied by traditional authorities. In the case of the tourism industry some of these problems have been reduced where lodges now pay dues to conservancies or other associations that represent the interests of local residents. Conservancies are less likely to stifle tourism, and tourism enterprises, jobs and revenues are therefore more likely to grow and benefit people directly. Where justified, conservancies and other community associations can pay dues to traditional authorities. Further improvements to development of an inclusive land market should be considered.

The most active land markets encountered during this study are those in peri-urban areas. Here land holders enjoy the benefits of proximity to services and markets without bearing the costs of taxation, and without paying exorbitant amounts for land. They also anticipate that the value of their peri-urban land holdings will increase. Enhanced economic activity is perhaps always to be expected around towns, but the high demand for land around many towns is now a consequence of current policy and practice that maintains a limited supply of urban land affordable to lower and medium income people.

⁵ Leaseholds can be implemented in multiple ways, with varying lease fees, lease periods and lease conditions. And leases may or may not be registered in deeds offices, be tradable or be used as collateral. While it is often assumed that leaseholds require the regular payments of lease fees - say monthly or annually - leaseholds can also be issued upon payment of a single once-off amount, and the leases can be valid for 99 or more years. Thus, customary land rights could be converted into long-term economically useful leaseholds that are issued and registered upon payment of a once-off modest token amount.

⁶ The same challenge holds for vulnerable people in urban areas.

The Land Bill

If there is a need to modify the legal environment to accommodate existing change, to promote economic activity and to protect the rights of vulnerable people, then the current Land Bill provides just that opportunity for change. Here we offer some observations regarding provisions in the September 2016 draft of the Land Bill.

Regarding communal land, the general purpose of the Bill concentrates almost entirely on tenure control, especially with regard to upholding traditional governance and power, limiting rights to communal land, and controlling its use. As a result, little in the Bill seeks to facilitate economic activity and development and poverty reduction or to accommodate social and economic changes, especially promoted by government policy (such as poverty reduction, economic growth as outlined in National Development Plans and the Harambee Prosperity Plan) and which are inevitable in the years ahead.

The Bill does not limit uses of land held as customary land rights. This is an important improvement which allows residents to use their land for purposes beyond crop farming and residence, without needing to change the type of rights they hold.

However, freehold ownership of any communal land remains forbidden, although the Bill does provide for leaseholds to be traded (but only with the approval of the Minister). Importantly, Section 18 recognizes that communal land rights do indeed have monetary value, since sub-section 4 states ‘...The President may not withdraw any land from any communal land area ...unless just compensation forany right acquired in respect of such land....is paid’.

Nothing in the Bill recognizes the *de facto* existence of a vibrant land market in which land rights are sold and bought and/or leased. As a result, there are no provisions in the Bill to regulate or promote trade, or protect buyers and sellers from unfair trade practices. However, the Bill acknowledges the right of traditional authorities to sell land by charging fees for land allocations. Thus Section 24 (11) states that ‘.....a traditional authority may charge a fee that is customarily charged in the area for the allocation of a customary land right....’

The current Bill’s provisions generally continue to discourage economic investments⁷ in communal land, for example by forbidding freehold ownership, by maintaining the system of land being managed by traditional governance. For example, Section 19 (1) statesthe ownership of all communal land areas vest in the State and such areas are entrusted in the custody of the traditional authorities....’

Finally, Section 3 (b) describes one purpose of the new legislation as ‘....to provide for a unitary land system, where Namibian citizens have equal rights, opportunities and security with regard to land, irrespective of where the land is situated. However, many provisions in the Bill perpetuate differences in economic opportunities between communal and other land.

⁷ Investments are generally made in assets that may be sold one day, either by the current owner or his/her heirs. Additionally, investments are made where the presence of market forces may increase the value of an asset. Finally, investments are made in assets which can be used as collateral to raise capital. These three conditions are now disallowed in communal areas. The Land Bill, however, introduces the possibility of leaseholds being tradable. This is a major improvement.

9. Bibliography

- Bank of Namibia. 2012. Unlocking the Economic Potential of Communal Land. Bank of Namibia.
- Chimhowu, Admos & Philip Woodhouse. 2010. Forbidden but Not Suppressed: A “Vernacular” Land Market in Svosve Communal Lands, Zimbabwe. *Africa* 80(1): 14–35.
- Colin, Jean-Philippe & Philip Woodhouse. 2010. Introduction: Interpreting Land Markets in Africa. *Africa* 80(1): 1–13.
- De Soto, Hernando. 2003. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books.
- Hinz M.O. (ed.), assisted by Ndateelela E Namwoonde, 2010. Customary law ascertained. Volume 1. The customary law of the Owambo, Kavango and Caprivi communities of Namibia. Windhoek, Namibia Scientific Society in association with the Human Rights and Documentation Centre, Faculty of Law, University of Namibia.
- Hinz M, Alexander Gairiseb (eds.) 2013. Customary Law Ascertained Volume 2. The Customary Laws of the Bakgalagari, Batswana, and Damara Communities of Namibia. UNAM Press.
- Hinz M, Alexander Gairiseb (Eds.). 2016. Customary Law Ascertained Volume 3. The Customary Laws of the Nama, Ovaherero and Ovambanderu, and San Communities of Namibia 2014. UNAM Press.
- Keyler, S. 1995. Economics of the pearl millet subsector in northern Namibia: a summary of baseline data. International International Crop Research Institute for the Semi-arid Tropics. Working Paper 95/03.
- Namibia Statistics Agency. 2013. Namibia 2011: Population & Housing Census Main Report. Namibia Statistics Agency, Windhoek.
- Nghitevelekwa, Romie 2014 Identifying, Streamlining Existing Land Rights and Providing Tenure Security as Fundamental Conditions for the Development of Namibia’s Communal Areas. Windhoek, Namibia: Ministry of Land Reform.
- Thiem M. & Muduva T. June 2015. Commercialisation of Land in Namibia’s Communal Land Areas: a critical look at potential irrigation projects in Kavango East and Zambezi regions. Research Report 49. PLAAS. Institute for Poverty, Land and Agrarian Studies, University of Western Cape, South Africa.
- Republic of Namibia. 1990. *The Constitution of the Republic of Namibia*.
- Winterfeldt, Volker. 2013. Social Implications of a Total Removal of the Veterinary Cordon Fence. Windhoek: Ministry of Agriculture, Water and Forestry.

10. Appendices

LETTER FROM A PARASTATAL TO THE OMUSATI LAND BOARD REQUESTING THE REGISTRATION OF 30 HECTARES PURCHASED FOR \$75,000 FROM A TRADITIONAL AUTHORITY.


NamPower (Pty) Ltd.
NamPower Centre, 15 Lubbe Street, P.O. Box 2854, Windhoek, Namibia. Tel: +264 61 204111, Fax: +264 61 212025, E-mail: registrar@nampower.com.na

The Chairman
omusati **Kunene Communal Land Board**
Private Bag 507
Outapi

Your Ref :
Our Ref : 7 6/03/11/11
Enquiries : C van den Berg
Date : 18 February 2014

Dear Sir

AQUIRING OF LAND FOR A REACTOR AND NEW SUBSTATION IN KUNENE REGION
omusati

NamPower needs land for a 400/330/132kV substation near Ruacana. An area of approximately 500x600m, that is 30 hectares, is needed.

A site was chosen approximately 5km south of the Ruacana Powerstation. Negotiations followed with Senior Chief Daniel Shooa of the Uukolonkadji Traditional Authority and it was agreed that NamPower could acquire the land at a price of N\$75000-00. The site was surveyed and the money was then paid over to the Uukolonkadji Traditional Authority.

Due to access problems the abovementioed site is not suitable for a substation and a new site was identified close to Otjekwa Village approximately 25km south of the Ruacana Power Station, right next to District Road D3640 under our 330kV Ruacana to Omburu power line.

The Uukolonkadji Traditional Authority was willing to make the new site available to NamPower in exchange for the old site. The new site was then surveyed and an Environmental Impact Assessment study was done.

It is now the wish of NamPower to register the 30 hectares into it's name.

Included please find the Application for Right of Leasehold, a copy of the letter of consent from the Uukolonkadji Traditional Authority, a copy of the NamPower Business Registration form, a diagram of the surveyed land, a map indicating the position of the site, proof of payment of the Landboard fee as well as the clearance certificate from the Ministry of Environment and Tourism.

Yours faithfully


MR P. SHILAMBA
MANAGING DIRECTOR

PAGE 1 OF AN AFFIDAVIT DESCRIBING THE CIRCUMSTANCES OF LAND PURCHASE

Pikoia Frans Levid states under oath: ID 5003220048 Namibian, a builder by profession in Namibia, residing at Windhoek, Papavar street Erf 2973, Khomasdal, cell 0811277366, my home language is Afrikaans, but I state in English.

1
During March 2011 I was in the north between Oshakati and Ondangwa when I decided to pass at place called Omaalala to check the land which I like since I always drive pass that area.

2
On my arrival on that land I met Mr. Joao Batista whom I introduced myself to and informed him that I liked his land. Mr. Joao Batista and I agreed that I will buy the land N\$ 6 000-00 and we agreed.

3
The next time I came back trying to prepare the land for service, but I was approached by Mr. Joao Batista who called Mr. Shimanya (second headman) and Maria Nangolo wife to the headman to his place to come and listen and witness the transaction.

4
I was with my secretary Julia Kawela. After discussion Mr. Shimanya phoned the head man and after his telephone conversation with the headman he informed me that I can buy the land for N\$ 25 000-00.

5
After negotiation Mr. Shimanya came down to N\$ 22 000-00. I immediately produce the amount of N\$ 22 000-00 which I paid in cash to Mr. Shimanya as a second headman of the land, in which the land I was buying from Joao Batista is located

6
Mr. Shimanya handed the money (N\$ 22 000-00) to Mrs. Maria Nangolo the wife of the headman who was in Windhoek at that time. Mr. Shimanya said that they will first take the money to the King of Ndonga who will then pay Mr. Joao Batista his share.

7
At the same time Mr. Shimanya gave Mr. Joao Batista N\$ 2 000-00 from the N\$ 22 000-00 and Mr. Joao Batista stated complain that at least he suppose to be given N\$ 3 000-00 but Mrs. Maria Nangolo and Mr. Shimanya refused to give him say first the money have to be taken to the Ndonga king who will decide. I then decided to give an extra N\$ 1 000-00 to Mr. Joao Batista since he was complaining and I bought the land from him, so in total Mr. Joao Batista received N\$ 3 000-00.

8
I attached an agreement which was signed by the second headman F. T. Shimanya, Maria Nangolo, Julia Kawela my secretary and myself, and the amount of money paid for (N\$ 22 000-00) the land I bought at Omaalala from Mr. Joao Batista see "DFL(1) and DFL(2)".

**I know and understand the content of this statement.
I have no objection in taking the prescribed oath.**

PAGE 2 OF THE AFFIDAVIT WITH SIGNATURES OF THOSE INVOLVED IN THE NEGOTIATIONS AND AGREEMENT, AS WELL AS THE STIPULATED PRICE OF \$22,000.

DFL(2)
2011/11/11

FRAS DIKWA RAVI
WINDHSEK
PRIVATE BAG 10705
0812202884

THOMAS FERDINAND
SHIMANYA

42090210017

22,000.00

Amaalala villege
plot price
Ordangwa

22,000.00

7 F.T. Shikwaga
7
7 JULIA KAWELA
7

22,000.00

FIRST OF 5 PAGES OF A LEASE AGREEMENT BETWEEN A TRADITIONAL AUTHORITY AND THE OWNERS OF A LODGE.

REPUBLIC OF NAMIBIA

MBUKUSHU TRADITIONAL AUTHORITY

MEMORANDUM OF AGREEMENT ENTERED INTO AND BETWEEN
THE MBUKUSHU TRADITIONAL AUTHORITY
(HEREINAFTER CALLED THE LEASOR)

AND THE COMMUNITY OF DINAVA IN A JOINT VENTURE
WITH MELCHIOR ALBERS HENR AND CHERYL BARRY.

MARITAL STATUS: BOTH DIVORCED

ADDRESS: Simonsville Farm, Klipmuts. PO Box 269, Klipmuts
(HEREINAFTER CALLED THE LEASEE) PARL
7625

Permission is hereby granted to occupy THE STAND KNOWN AS ERF / PLOT
..... situated at DINAVA
in the DISTRICT OF MBUKUSHU for the purpose of a LODGE AND CAMPSITE

The rights, privilege, duties and obligations of the holder and any right in or over the allotment shall be determined and exercised in accordance with such general and special conditions and with such rules, regulations or laws as are already or may be in force in the MBUKUSHU DISTRICT in which the allotment is situated.

Subject to the amendments of the said conditions, rules, regulations or laws, this permission issued subject of the following conditions;

1. DURATION

The right to occupation shall be for a period of 25 years, commencing on
28TH day of FEBRUARY 2011 and terminating on
12TH day of FEBRUARY 2036
unless otherwise agreed upon in terms of clause 1.1 hereunder.

- 1.1 The holder shall have the option to:
renew the permission to occupy for further period of at least 5 (five) years
reckoned from date of termination.
- 1.2 Should the option be exercised in terms of clause 1.1 hereof, royal escalation or
such further period shall be in accordance with the provisions of clause 7
hereunder.

2. PERMISSION TO OCCUPY RIGHTS

Ownership based on permission to occupy right. Which means **THE LAND REMAINS THE IMMOVABLE FIXED ASSETS OF THE MBUKUSHU COMMUNITY. THE LEASEE HAVE ONLY THE LEASE RIGHT FOR THE PERIOD AGREED ABOVE.**

3. TRANSFER

The leasee shall not have the right to transfer this agreement to a tenant or his successor in title, or grant any portion of the allocated Land to any person, unless he has obtained the written permission of the **TRADITIONAL AUTHORITY OR LAND AND FARMING COMMITTEE.**

4. WHEN SELLING THE PROPERTIES ON THE LAND

When selling the Assets on the Land being it immovable fixed properties or movable fixed Assets the first option to purchase thereof will go to the lessor less 10 % from the Cost price, the price being equivalent to the average of two sworn valuers, one to be appointed by the lessor and the other by the leasee. If the property is sold to any person rather than the lessor 10 % of the cost price will be paid to the **MBUKUSHU TRADITIONAL AUTHORITY** hereby the lessor.

5. ACCESS TO PREMISES

The lessor or any person authorised in writing to do so, shall at all reasonable times have the right to enter the premises to **INSPECT** the allotment and any building thereon hereby occupied for the purpose of ensuring compliance by the leasee.

6. DECLARATION OF INTEND

For the duration of this right of occupation the allotment at ERF / PLOT

..... DINANA (or name of village) shall be used solely for the

purpose of a LODGE AND CAMP SITE site and for **NO OTHER PURPOSE** without prior written consent having been obtained from the **MBUKUSHU TRADITIONAL AUTHORITY** together with the representative of **LAND AND FARMING COMMITTEE** of **MBUKUSHU DISTRICT** and the representative of the **LEASEE**.

7. ROYALTY

The royalty shall be the sum of R..... per year, payable annually in advance on or before the 15th January, each and every year during the currency of the this permission, provided that the royalty shall not escalate by more than 10 % per year.

All royalties in this agreement are subject to revision by the lessor and any amendments there to shall be made known by means of a written notice given at least 1 (one) month before coming into force.

8. TAXES

All rates and taxes, licence fees, water and electricity accounts (if any) under the allotment (s) or any income accrued to the Government of the Republic of Namibia shall be paid by the leasee himself.

9. BEACONS

The leasee shall keep in good order at his/her own expenses the boundaries of the allotment and the lessor shall have the **RIGHT** at any time to call upon the leasee to effect or replace the dilapidated or damages beacons.

10. BUILDING ON ALLOTMENT

The leasee shall have the right, subject to the existing building regulations, to erect such further buildings as he / she may think fit for his / her own use and benefit at his / her own expence.

11. EMPLOYEES ON THE ALLOTMENT

11.1 The employees shall have the right to freedom of association, including the right to form or to join trade unions. This right extends to agriculture, domestic servants and all other economic sectors.

11.2 Guarantee of their constitutional rights.

11.3 Normalization of relationship between the Employer and Employee.

11.4 Local Namibian citizens should be given preference when employing or recruiting people.

12. AMENDMENTS

The leasor shall have the right to amend any of the conditions of this AGREEMENT, or to lay new conditions, should public interest demand it, after having given the leasee 1 (one) month's written notice of his / her intend.

13. CANCELLATION

This permission to occupy may be cancelled in the event the leasee;

13.1 waives it rights to the allotment in writing;

13.2 has obtained the rights to occupy in a deceptive manner or under false pretences;

13.3 for one year fails to pay royalties or any other monies payable in respect of the permission to occupy rights of the allotment;

13.4 is in breach of any condition of this agreement after notice has been given to

him / her;
13.5 does not use the allotment for BONA FIDE trade purposes for an uninterrupted period of 2 (two) years, in the case of business allotments.

14. ADDRESS

14.1 The domicilium citandi et executandi of the lessor shall be MUKWE TRADITIONAL CENTRE, KAVANGO east, RUNDU and all royalties, levies and deposits shall be payable at this address.

14.2 The domicilium citandi et executandi of the leasee shall be

AT THE SHAMETU LODGE

This was done and approved on 28TH OF FEBRUARY day of 2011 by or on behalf of the leasee in the presence of the undersigned witnesses.

AS WITNESS:

- 1. [Signature]
- 2. [Signature]

[Signature]
LEASEE

And by or on behalf of the lessor.

On this 28TH day of FEBRUARY 2011 at MUKWE, Tribal Office

CHAIRPERSON
LAND AND FARMING COMMITTEE

SECRETARY
LAND AND FARMING COMMITTEE

FUMU
MBUKUSHU DISTRICT

12. Appendices

Land markets in the news

Illegal communal land sales

[Ileni Nandjato](#)

Thursday, February 25, 2016 - 08:00

With communal land being sold in large numbers service providers like the Northern Regions Electricity Distributor (NORED), NamPower, NamWater and Roads Authority say it gives rise to a hazardous state of affairs that may cost lives, as houses are built over main water pipes, some are built under overhead powerlines, while some are built too close to main roads. This has caused a blame game with regional government and the service providers blaming traditional authorities, traditional authorities are blaming land owners, while land owners are blaming government and traditional authorities for the growing incidents of illegally selling communal land. Omusati regional governor, Erginus Endjala told traditional leaders in his region that nobody has the right to sell communal land as it belongs to the state. "If you are given that land by the traditional authority and feel you have no use for it any longer, just give it back because you don't own it and have no right to sell it," said Endjala. Shatipamba Paulus Nangolo a junior traditional leader from Oukwanyama Traditional Authority told the gathering that government is doing an injustice to those with communal land. "Municipalities and commercial farmers are making a lot of money from land sales, but us traditional leaders and communal land owners are told that we are not allowed to sell that land. We also want to enjoy land money," he said.

NORED public relation officer, Herman Ngasia said that land allocation in rural areas is a serious concern to them because houses and other buildings are denying them access to electricity facilities. "Some people built facilities such as transformers and transmission boxes within their premises, but when there is a power failure it is very difficult for us to attend to it on time. Buildings are not allowed to be built within a six-metre distance from overhead powerlines, but they are not complying," said Ngasia. According to residents, the Road Authorities have issued demolishing orders to people building too close to roads. Ngasia continued that traditional authorities need to involve NORED in the allocation of land. According to Ou-kwanyama Traditional Authority, communal land sales were done without their consent as people started selling their mahangu fields for plots without their knowledge. "After learning what was happening, we told people to stop that, but they are still selling," said senior leader Nghidinwa Ndilula. However, the farmers selling plots are saying the traditional authorities are aware of the practice as for every plot sold, they pay N\$600 to the traditional authorities.

Illegal land sale problem at Oniipa

<http://www.leramobile.com/content/66770/Illegal-land-sale-problem-at-Oniipa/>
16 Feb 2017 11:40am

ONGWEDIVA, 16 FEB (NAMPA) – The Oniipa Town Council in the Oshikoto Region has warned residents to desist from illegally selling and buying land. In a media statement issued Tuesday, the council said a lot of effort has been put into curbing illegal land development and sales within the town boundaries without the council's permission and yet the

problem persists. Some residents sell and buy land illegally, while others construct buildings without approved building plans on sites they have claimed as theirs without following the proper procedures. The Oniipa leadership pointed out the mandate of selling land, which by proclamation falls within the town boundaries, rests with the council. A person can only sell land for which he or she has a title deed," reads the statement. The council started taking aerial photographs of the whole town on Monday and will do so until Friday. These photographs will be used in the re-planning and subsequent formalisation of the proposed Onethindi Extensions 2, 3 and 4. The township of Onethindi Proper that comprises of 251 erven of which 195 are zoned for residential purposes; 43 for businesses; three for local authority; four as public open spaces; and six as undetermined land, is currently being serviced. These are some of the developments the council has embarked upon to accelerate the economic development of the town and respond to the high demand of residential erven and that of business," the council stated. It commended community members who buy and develop land legally, and urged the general public to consult the town's Planning and Technical Services Division for advice prior to acting on any land deals and development activities. The statement says three community and two headmen sensitisation meetings were conducted in consultation with the Ondonga Traditional Authority on the issue. Oniipa Mayor Mannetjies Kambonde told Nampa during a community meeting last week by Ondonga traditional senior councillor John Walenga on the same matter that illegitimate land development and sales are prevalent in the Onethindi and Onamungundo settlements. Oniipa was placed under the authority of the town council after the last Regional and Local Authority Election. (NAMPA)

Oniipa council enters Ondonga fray

17 February 2017 | [Local News](#)

<https://www.namibiansun.com/news/oniipa-council-enters-ondonga-fray/>

Influential members of the Ondonga Traditional Authority who have been accused of confiscating land are reportedly also grabbing municipal land. The Oniipa town council this week announced that town land at Onethindi and Oniipa had been seized by Ondonga King Immanuel Kauluma Elifas, his wife Cecilia, as well as village headman Oscar Sheehama. It was reported that Onethindi, Onamungudo and Ondonga villagers wrote letters to the Ondonga Traditional Authority alleging that they were losing their land to a group of powerful people from the palace led by the king's wife Cecilia, her son Toteya Elifas, daughter Katrina Elifas, Sheehama as well as a certain Thomas Amuthenu. The traditional authority directed senior headman John Walenga to meet with the community members and hear what their complaints were. He was informed at the meeting that their land deeds were confiscated and that their land was sold without their consent using the king's name. The town council's CEO, Junias Jakob, said the council had observed similar cases and they had advised the culprits to cease such illegal activities immediately as it might have dire legal consequences for them. "As per the Local Authorities Act, Act 23 of 1992, we wish to state that the land in question is the property of the council from the time it was so proclaimed. The communal land rights that existed before the proclamation were terminated when the land was so proclaimed and it became Oniipa town council land," Jakob said. "The communal land rights holders are however entitled to be compensated for the loss of usage of such state land and the improvements, and that is the process the council is busy with." Following reports on this matter in Namibian Sun, a group of people who had received land from the traditional authority approached the town council to ask what would happen to their money. Jakob said they were not going to favour any one person because the law was very clear and the council would obviously apply the law where it is applicable. "Communities are aware and were well informed not to get involved in illegal dealings of selling land, but it seems like some of them are ignoring the authority. "These people that have purchased the land in question and those that are still buying land from other people who claim to be the owners of the land, the council cannot help them.

“The land that they have bought belongs to the council and they do not have ownership (title deeds) for it. Therefore, they may lose their land without being compensated,” he said. Oniipa was proclaimed a town in 2015. Jakob said the traditional authority and community members were fully informed of what that entailed. However, the council continues to see illegal land sales and development without approved building plans. Some members of the community are even building without plans at sites that they proclaim as theirs. The secretary of the traditional authority, Joseph Asino, told Namibian Sun they were not yet prepared to comment on the matter. “Yes, we have received all the complaints and we have directed John Walenga to host a meeting with the community and the town council. Once this is completed, we will make a statement,” he said. Jakob added that the council was servicing the township of Onethindi proper, which is comprised of 251 erven of which 195 are zoned for residential and 43 for business. ILENI NANDJATO

Ondonga royal family accused of illegal land sales

09 Feb 2017 09:30am

<http://www.leramobile.com/content/66643/Ondonga-royal-family-accused-of-illegal-land-sales/>

Oscar Sheehama, a member of the Ondonga Traditional Authority (OTA)’s Olukonda District leadership, has denied any involvement in the alleged illegal sale of land at Onethindi. At a community meeting held at the settlement near Ondangwa on Tuesday, Sheehama was named as one of the members of the Ondonga royal family allegedly involved in the sale. Sheehama also attended the meeting, which was chaired by John Walenga who is the OTA senior councillor for the Ondangwa District, under which Onethindi falls. Several people during the meeting alleged that members of the Ondonga royal family grab their land, fence it off and sell it to wealthy people. They said this mostly happens at Onethindi and Onamungundo, situated some five kilometres from the Ondonga palace. Complainants indicated that plots are being sold at prices ranging from N.dollars 17 000 to N.dollars 75 000. Sheehama, who is said to be a nephew to King Immanuel Kauluma Elifas of Ondonga, believes those accusing him of illegal land allocation are doing so to tarnish his image.

You will get what you are looking for!” Sheehama shouted in front of Walenga towards the end of the meeting. He went on to say the rumours were started by some Ondonga senior councillors who are not happy with the dismissal of their fellow senior councillor, Wilbard Lidker of the Uukwanambwa district. King Elifas on 16 January this year fired Lidker on accusations that he attempted to torch the bedroom of his ex-girlfriend at the Omutsegonime village. They are falsely accusing me because they realised that I am throwing sand in their food, and I will continue doing just that,” Sheehama said in an interview with Nampa at the end of the meeting. He declined to explain and walked off. A daughter to King Elifas, Katrina, who was also accused during the meeting of selling plots illegally at Onethindi and Onamungundo, declined to give her side of the story when approached to do so on Wednesday. (NAMPA)