



Integrated Land Management Institute

COMMUNAL LAND

Background

Communal land is one of the land tenure systems in Namibia, the other being freehold land tenure system. At independence in 1990, Namibia resolved to retain communal land on the basis that majority of the population derived their livelihoods from communal land. Notwithstanding the increasing urban population in the country since independence, the majority of the Namibian population still lives in the communal areas, and many of the urban-based population continue to have close relations in rural areas. Similarly, while sources of livelihoods in the communal areas have been diversified, communal land continues to serve as an important basis of people's livelihoods. It serves as a safety net for many, particularly the rural poor. Hence, 28 years of independence communal land still matters. Communal land is not only used to meet the minimum subsistence, but it is increasingly being commercialised. The uses of land in the communal areas go beyond homesteads, crop production and livestock rearing, but uses now range from tourism and hospitality facilities, filling stations, conservation areas, small-scale farming geared towards commercialisation, green schemes, diverse business enterprises and many others. Communal land is also increasingly being re-appropriated for other uses for instance local authority areas' development and expansion. In that light, the geographical landscape of communal land boosts and thrives with diverse land uses that could be viewed in a positive light, but also in a negative light as diverse uses also mean competition for land.

What has been done?

- Before independence and 12 years into independence, there was no legal framework for communal land. Communal land was administered by the Traditional Authorities on the basis of their respective customary laws.
- In 1996, a conference on Communal Land Administration was held where the participants deliberated on the Communal Land Bill that addressed many issues but most importantly security of tenure on communal land, the roles of Traditional Authorities and the Communal Land Boards in the administration of communal land.
- The bill was in circulation back and forth between the different houses of parliament, and it has also benefited greatly from inputs from civil society. In 2002, the Communal Land Reform Act (Act No. 05 of 2002) (CLRA) was finally passed.
- The CLRA defines the powers and functional jurisdiction between the Traditional Authorities and the Communal Land Boards with regards to the administration of communal land.
- The Traditional Authorities are mandated with the primary function and powers to allocate land rights, while the Communal Land Boards are mandated with the function and powers to ratify the rights allocated by the Traditional Authorities.
- The two institutions' functional jurisdiction are separated from each but complementary to one another. For examples, rights allocated by the Traditional Authorities have no legal effects until ratified by the Communal Land Boards. Equally, the Communal Land Boards cannot ratify land rights without consent from the Traditional Authorities. Thus their relationship is a complementary one.
- With the institutions of Traditional Authorities and Communal Land Boards – institutional structures are in place and function.
- The institution of Communal Land Board comes in to give statutory recognition of land rights on communal land, which was not the case in the past. Land rights have always been allocated by word of mouth and ended with the legitimisation by the Traditional Authorities. They remained outside the realm of statutory system.
- The CLRA provides for security of tenure for different land uses on communal land (e.g. customary land rights, rights of leasehold for business purposes, rights of leasehold for agricultural purposes and occupational land rights).
- Customary land rights are granted for the uses of residence and crop production, rights of leasehold for business purposes are granted for uses for commercialisation, rights of leasehold for agricultural purposes are granted for small-scale commercial farming purposes that are oriented towards commercialisation and occupational land rights are granted for public institutions such as schools, hospitals and others.
- With the CLRA, security of tenure is not measured by the type of right but by the longevity of the rights granted and the potentiality of threats towards these rights.
- The ratification of land rights by the Communal Land Boards, is done through the land rights registration process that is currently ongoing in the communal areas. From the 240,000 estimates communal land parcels, about 160,00 have been mapped and 82,000 have been registered with certificates .

Evidence so Far

- Competition for communal land is high
- While efforts have been made to secure land rights on communal land, tenure security is still at threat as a result of many factors: the logic of local authorities' areas proclamations, the emerging informal land market or illegal transactions of land rights in exchange for money.
- With unaffordability of housing and slow land delivery in the urban areas, many urban dwellers have rerouted their investment to communal land for housing development. This is an addition to the pressure on the availability of communal land.
- While efforts are in place to secure land rights e.g. for farming (crop production), commonages and rangelands remain unsecured.
- Illegal fencing on communal land remain unresolved, threatening the very livelihoods of mostly poor communal land users and of the marginalised groups.
- There are still some pockets of discrimination against women and especially in terms of eviction of widows from the lands they ones shared with their husbands.
- Women married in the customary setups remain unprotected, and therefore their rights are often trumped upon after the death of their partners.
- Illegal land market thrives in communal areas with high population densities. Here land holders are transacting their land rights in exchange for money. This threatens the safety net of the people as the process is understood to leave people destitute if they dispose of their rights.

Missing evidence

- Comprehensive audits of land allocated by local authorities for housing, the nature of beneficiaries, and the impact on their development.
- Audit and review of the Build Together Programme, nature and extent of beneficiaries, and the impact on their development.
- Evaluation of the adequacy of the 'waiting list' approach of allocating land in urban areas.
- The extent of evictions and forced displacement in urban areas.
- Opportunities for inner-city affordable rentals.
- Government position on housing subsidies.
- Government position on densification.

References

¹ Matthaei, E. (2014). Case Study: What Does Registration of Communal Land Mean to Namibians? Retrieved January 2, 2018, from <http://www.focusonland.com/countries/case-study-what-does-registration-of-communal-land-mean-to-nambians/>

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