

# **BRINGING THE INFORMAL SETTLERS UNDER THE REGISTER – THE NAMIBIAN CHALLENGE**

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**Key words:**

## **1. INTRODUCTION**

The present land surveying and registration system covers only part of Namibia. In many newly created towns, there is frustration at the slow pace of the present methodology to plan, survey and register land rights and ease access to credit for investment and development. In the rapidly expanding urban areas, many poor people have no official rights to the land on which they have settled. Their long-term security and that of their children to occupy their land holding is not guaranteed. It is even more difficult for the influx of poor rural people, who come to the urban areas in search of better opportunities, to find vacant land on which to settle. Others are uncertain about how their long-standing traditional land rights on the edges of growing towns will be affected by the expansion of urban boundaries and the establishment of municipalities. Such problems affect more than 45,000 families in Namibia.

It might take the existing freehold system up to 20 years to cover the urban settlements in the communal areas, because it requires high and complex expertise in a magnitude that is not adequately available. To address such problems, it was decided to develop a parallel interchangeable property registration system for Namibia wherein the initial secure right is simple and affordable but may be upgraded according to what the residents and the government need and can afford at any given time. This became the subject for a two-years research programme in the Ministry of Lands, Resettlement and Rehabilitation featuring consultative workshops with stakeholders, pilot testing of a model for an upgradeable land registration system and finally preparation of a proposal – the Flexible Land Tenure System. The final proposal was completed in 1997.

The implementation of the proposed system has not progressed well as anticipated. The Project has not managed to move beyond the consultation and design phase since 1997. There are now concerns that the Project is losing its momentum.

This paper looks into some of the underlying principles of the proposed system, the ongoing efforts, achievements and the challenges that have to be addressed. It finally suggests a strategy that can help to accelerate the implementation process and bring the desired results.

The views presented in this paper are those of the authors in their personal capacities and may not necessarily represent the official views of their respective employers.

## **2. NAMIBIA AND ITS URBAN AREAS**

In the mid 1990s, the total population of Namibia was in the region of 1.5 million people, with 71% of this population (66% of households) living in the rural areas. (Republic of Namibia 1995:6, 12) The population is highly unevenly distributed. Four regions in the north of the country accommodate 45% of the total population. Windhoek, situated at the centre, has 34.5% of Namibia's total urban population and the average annual growth rate from 1991 to 1995 has been 5.4%. (Tvedten, et al., 1995:6-9; Municipality of Windhoek, 1996:7)

Non-agricultural employment opportunities in rural areas are limited, which leads to an increasing number of people migrating to major urban towns in search for jobs, as well as education and better social services.

Widespread poverty is one of the major reasons for the lack of investment in informal settlements. In 1997 Namibia's per capita GNP at constant 1990 prices was US\$ 992, placing the nation in the lower middle-income group of countries. (National Planning Commission, 1998:5). However, this indicator masks an income distribution, which is among the most skewed in the world. As an example, 8.5% of the population accounts for 50% of the private consumption. (MRLGH, 1996, Section 6.4). In addition, people continually move between urban and rural areas and therefore frequently regard their stay in an urban area as temporary. Consequently, for some there is an unwillingness to make long-term investments in an urban life. (Tvedten, et al., 1995:14)

## **3. URBAN LAND TENURE ISSUES**

Land in Namibia falls into two broad categories: registered and unregistered land. Roughly half of the total land area is held under registerable freehold title, while the remainder is commonly referred to as communal land. The category communal land subsumes a number of different land tenure systems ranging from individual rights to residential and arable land to communal rights to grazing. Until recently, all communal land – whether rural or urban – shared one important characteristic: it could not be held under freehold title. As a result communal land could not be sold or mortgaged.

All rural land in the communal areas is held and managed according to customary tenure systems. Because of population pressure, socio-economic changes, notably the increasing commercialisation of production on communal land and technological innovations, customary land tenure systems are gradually being eroded.

Urban settlements first developed in the central and southern parts of the country following colonisation and land dispossession. Access to these towns by black Namibians was strictly

controlled through pass laws and a prohibition on property ownership by blacks. In fact, until the early 1980s black Namibians could not obtain title to any land, whether urban or rural, communal or commercial. Consequently, towns and villages in the southern and central parts of Namibia were predominantly white areas. The black workforce lived in separate locations with inferior service and housing facilities.

In the northern communal areas, formal urban areas did not develop until the 1960s. (Tvedten et al., 1995:4-5) Like towns in the south, they were effectively segregated. After independence in 1992-98, the entire areas of these towns were registered in the name of the Government or a local authority to eventually be subdivided into plots, serviced and sold to the public to be held under freehold title.

The South African government had introduced a peculiar form of tenure which, although falling far short of that provided by freehold title, provided more formal security than a customary allocation or a rental agreement with the government. Known as PTO, short for Permission to Occupy, this was given for surveyed plots within the planned portions of urban areas (Alberts et al., 1995:46). A PTO is for 20 years with an option to renew for a further 5 years. While occupation is reasonably secure, there is a prohibition on the transfer, mortgagee, cession, lease, sub-letting or alienation of rights, except with the permission of the Government.

Co-existing with the system of PTOs and state owned property, is the system of customary tenure. The traditional authority system includes land management among the main tasks of its headmen and women. This authority system has been extended into urban areas. Customary grants came under threat when additional local authorities were established in 1992, because land falling within the boundaries of the local authorities was now placed under the jurisdiction of local authorities. Residents in the informal settlements feared that their land rights would not be recognised by newly created local governments.

After experiencing problems with compensations to informal settlers who had to be moved, local authorities now seem to accept informal settlers. However, they would like to formalise these areas in order to collect taxes and charges for utilities. (Howard, 1995: 4) Moreover, government and local authorities in the north have accepted that existing customary rights cannot be summarily extinguished and holders ordered to leave.

As the urban population grows, there is a greater demand for serviced land not only for residential purposes but also for business. At the same time, the housing backlog is already huge, estimated to be in the region of 37,000 units nationally in 1994. (National Planning Commission, 1995:464). Estimates in 1997 put at 30,000 the number of families presently living in urban areas without secure tenure to the land, which is equivalent to 12.5% of the Namibian population and more than a third of the urban population. (Christensen, 1999:9)

At the same time, the cost of developed land is unaffordable to most low-income groups. The market price is as high as US\$ 12 per m<sup>2</sup>. (MRLGH, 1996: Section 6.5.1) Part of this

high cost is attributed to the procedures involved in the planning and development of land and the high standards of infrastructure demanded by local authorities (*Ibid.*: Section 2.5).

Official provision of residential plots has not been able to keep up with the level of population influx to the towns because the procedures for establishing a township are too slow and cumbersome, taking between 18 and 24 months. The necessary processes of planning, land surveying and the post survey administrative process, take many months to be concluded.

Substantial bottlenecks occur because there are not enough land surveyors, conveyancers and town planners in both the public and private sectors in Namibia. Most local authorities that have recently been established in many areas of the country lack the technical and financial capacity to manage the land.

#### **4. RESPONSES TO THE NEEDS**

Soon after Independence, the Namibian Government gave attention to questions of land distribution and land ownership. This was necessary in view of the highly skewed distribution of land in Namibia and to give meaning to the provisions of the Constitution which states that all Namibians have the right to acquire, own and dispose of property. Two lands conferences were organised and security of tenure was identified as one of the most crucial issues with regard to urban land. Acknowledging that land was available in many local authority areas, participants stressed that its cost was more than many people could afford. The last conference recommended that government speed up the proclamation of towns and the demarcation of land for development. In addition, it proposed that local communities be given legal powers to undertake land management tasks. (NGO Working Committee, 1994:28)

The most obvious solution was to extend the present formal property registration to the whole country. However, factors such as legislative requirements (e.g. procedures which are time-consuming, expensive and limit the flexibility of certain actors), a shortage of the required skills in the public and private sectors, the lack of regular incomes among the many self-employed or under-employed in informal settlements, the concentration of skilled services and government offices in Windhoek, and the limited financing mechanisms available, all hinder the extension of the existing formal system.

Three options for responding to the problems were considered:

1. To do nothing whilst waiting for many years for the existing system to slowly cover the nation;
2. To rapidly expand the present land surveying and registration system with massive inputs of expatriate labour and external funds; or

3. To develop a second property registration system for Namibia which is parallel to and interchangeable with the existing system, one providing an affordable, more secure, but simple right which can be upgraded according to what the holders of it and the government need and can afford at any given time.

The first two options were considered not feasible for obvious reasons. To explore the third, the Ministry of Lands, Resettlement and Rehabilitation undertook a two-year programme of research involving workshops with stakeholders, pilot testing of a model for an upgradable land registration system and finally preparation of a proposal.

Based on the consultation process it was concluded that to increase the delivery of, and access to, secure tenure in urban areas, alternatives to the present system of land delivery and registration had to be investigated. Participants proposed to explore proposals for a parallel interchangeable land tenure system<sup>1</sup>.

## **5. THE PILOT PROGRAMME**

The model for a parallel interchangeable property registration system was then tested in a programme of pilot projects and pilot studies from June, 1995 to November, 1996.

The pilot projects addressed practical land surveying and related planning issues, covering identification of different surveying and registration approaches for upgrading of tenure in different environments. The absolute and relative accuracy of different survey methods under different environmental conditions was ascertained, as well as the time consumption, the materials cost and the skills demand for each of the applied survey methods. The pros and cons of using computers for land surveying recording were assessed. New approaches for land surveying were compared to the methods of the present land surveying system, and the costs of time, materials, skills and accuracy were assessed. To achieve community participation in the adjudication and planning of an area, community based organisations from informal settlements were involved in the pilot projects.

An important hypothesis tested was that properly trained para-professional land measurers could perform adequate survey work under the supervision of experienced land surveyors. Land measurer trainees were selected and involved in the pilot projects to gauge the backgrounds required of recruits and to identify any additional training requirements.

The pilot programme did also evaluate the present land registration systems in Namibia with regard to certainty of title as perceived by the users. Minimum requirements for the maintenance of an unambiguous property registration system were also assessed. The

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<sup>1</sup>*Parallel* indicating a system with different levels of tenure and *interchangeable* indicating the possibility to move from one level to the other.

possibilities were investigated of a local authority, a community based organisation or another body issuing tenure documents based on a locally held registry map.

Finally it was recommended that two new types of tenure be introduced in addition to the existing freehold tenure. They are:

- Starter title, a statutory form of tenure registered in respect of a block of land.
- Landhold title, a statutory form of tenure with all of the most important aspects of freehold ownership, but without the complications of full ownership.

The starter title provides the holder with the following rights:

- to perpetual occupation of a site within a block or in a similar block (the exact site within the block is not defined); and
- to transfer, or to otherwise dispose of, the occupation right subject to custom or a constitution restricting transfers drawn up by the group occupying the site.

As the site is not yet defined and in order to ensure simplicity, one will not be able to register servitudes or mortgages.

The landhold title provides the owner with the rights:

- to occupy a defined site in perpetuity; and
- to transfer or to dispose of the above right; thus it would be able to be mortgaged.

While a whole block as a single entity is registered in freehold ownership in the Deeds Office in Windhoek, the starter and landhold title will be recorded at a local property office sited in the district. The data will be transferred via modem connections to the computer record held in the Directorate of Deeds, and permanent copies will be backed up on the computer and archived. Registry records should be easily available for inspection throughout Namibia. The transfer agreements and old copies of titles deeds will be kept at the local property office which is audited by the Windhoek Deeds Office.

A conveyancer or legal practitioner needs not prepare starter and landhold title documents. The range of transactions will be limited and a registration officer (a para-professional) will be trained to process each of these transactions. Furthermore, the local property office staff will be trained to assist people with the preparation of transfer agreements and other simple transactions.

A landhold title site will be indicated on a cadastral map. This is a map prepared by a land measurer, based in a local property office, in accordance with procedures and to a standard to be prescribed in the survey regulations.

Recognition of the starter and landhold titles will remain parallel to the existing registration system. This means that the same land parcel will be the subject of registration in both the starter or landhold title computer based registry and in the main Windhoek registry. However, the main Windhoek registry will only show the ownership of the whole block of land and the fact that a starter title or a landhold title registry exists. Individual starter or landhold title rights within that block will not be visible in the main registry, but only in the starter or landhold title registry in a local property office.

Starter and landhold titles are interchangeable in the sense that starter title can be upgraded to landhold title or freehold title in accordance with certain prescribed procedures.

A local property office will be staffed with a land manager, linked to a registration officer and a land measurer (the latter two para-professionals). Formalisation of informal settlements will be performed by the para-professional working with a land manager, bringing an informal land delivery system into the wider urban management system. This partnership should link the local community and the built environment professionals and the various authorities involved in the land delivery process. It is expected that the para-professional will speak the local language and understand local customs and practise.

## **6. CURRENT STATUS**

Cabinet approved the principles of the new system in 1997 and the Ministry established a Project to commence the implementation. The Flexible Urban Land Tenure Bill was prepared in 1999. The Bill is still in its consultative stage. It is expected that the Bill will be promulgated during 2002. The Ministry has made advanced preparations for the initial application of the system. The Project has opened a local property office in Oshakati in line with the requirements of the proposed system. Meanwhile the training of para-professionals has been secured through an established course at the Polytechnic of Namibia.

The Flexible Land Tenure System has clearly become established within Government, particularly in the Ministry of Lands, Resettlement and Rehabilitation. The Government has been committing some funds to the Project since 1998. However, the continued decline in financial allocation to the Project and the delay in putting up the necessary legislative framework is now a matter of serious concern. There has been a dramatic decrease in budget allocation to the Project since 1998. While there is no doubt on the Government commitment to the Project, the severe shortage of funding constitutes a major threat to its successful implementation.

## **7. THE WAY FORWARD**

The introduction of the concept of a parallel land registration system that has the potential to address the tenure security needs of the poor communities living in informal urban settlements in Namibia brought high hopes to many urban inhabitants since its inception in the mid 1990's. The enthusiasm and support for the Project shown during the various

consultation forums gave a clear indication of the urgent need to take appropriate measures that will address the security uncertainties facing thousands of urban dwellers in informal areas.

Unfortunately, the implementation of the Project has not yet proceeded as anticipated and the stakeholders are yet to see any tangible results. The Project has not managed to move beyond the consultation and the pilot Project phases in the last three years. There is now a growing impatience and disappointed due to what the stakeholders see as a slow pace of progress. Despite various efforts by the Ministry of Lands Resettlement and Rehabilitation to keep the Project on track, there are still a number of institutional, technical, legal and financial issues that have to be resolved before the implementation process can proceed forward.

## **7.1 Institutional Issues**

Land use planning, surveying and land registration is under the responsibility of the Ministry of Lands, Resettlement and Rehabilitation. Regional Land Boards are to be established under the same Ministry. However, Regional Councils and local authorities fall under the Ministry of Regional and Local Government and Housing. In addition, regional councils have direct administrative authority over settlement areas which are situated on communal land. Local authorities, on the other hand, are land administrators in the urban areas. Furthermore, the National Land Policy proposes that land officers be placed in regional centers to service groups of local authorities in the regions. It is thus unclear as to how these various land administration institutions will coordinate their activities so as to avoid duplication and to ensure that the rural and urban components and the information held by both are properly integrated.

One of the most fundamental conditions of success for the Project will be the understanding and cooperation between the various stakeholders. The Project can only be successfully implemented through a close cooperation between the Ministry of Lands, Resettlement and Rehabilitation, Ministry of Regional and Local Government and Housing, local authorities, traditional leaders and the affected communities. The Ministry of Regional and Local Government and Housing is expected to play a key role in assisting the planning of informal settlements as few local authorities have the capacity or the required skills.

There should be a clear understanding of the intentions, the conditions and procedures involved in the Project. The purpose and conditions for the planning and relocation of residents must be discussed and agreed in advance. The local authorities and regional councils must be prepared to identify and set aside vacant land to relocate some residents within the settlement area or in the vicinity before any formalization process commences. It has also to be made clear to the project participants as to what final result they can expect and what are their obligations.

Considering the legislative, technical and social context of the proposed tenure system, the following elements form the integral part of the institutional model:

- A local property office, drawing on local expertise to resolve disputes and increase accessibility, while carrying out the planning, surveying and registration process;
- A computer-based registration system; and
- An audit in respect to land hold title by the Windhoek Deeds Registry

The use of a computer-based registration system has been proposed to handle the registration of the starter titles and landhold titles. Among the main arguments for such an approach are that:

- The Starter titles and landhold titles records would be easily shared and made accessible throughout the country;
- It will be easy to convert and upgrade the tenure type once the data is available in digital form;
- A nationally uniform system can be maintained without local variation and therefore facilitate data integration and consistency; and
- A basis is created for a national land information system outside the areas not yet in the national cadastre.

The local property office will be part of the main Deeds Office in Windhoek, which falls under the Ministry of Lands, Resettlement and Rehabilitation. It is suggested that local property offices should be established in local authority areas as well as in regional councils. The establishment of these offices should take into consideration areas where the pressure for such services is greatest while carefully ensuring sensible regional balance between the various parts of the country.

It is proposed that the first local property office be established in Windhoek so as to test the procedures and the computer system before being replicated in other local authorities.

A land measurer, a registration officer and a local office manager will be responsible in running a local property office. It is expected that each local property office will be staffed with personnel from the Ministry of Lands, Resettlement and Rehabilitation. In certain local authorities or regional councils, these functions might have to be combined or performed by seconded employees with the necessary skills. For larger local authorities, the post of a local property office manager may require a full-time employee.

## **7.2 Technical Issues**

There is currently a serious lack of qualified personnel in the areas of planning, land management and land registration within the Ministry of Lands, Resettlement and Rehabilitation. The Ministry has realized this deficit and the need to develop its capacity in the respective fields of specialization. Considerable progress has been made in the last

three years through the introduction of special training programmes that have been initiated to develop the required skills locally. With the institutionalization of these training programmes at the Polytechnic of Namibia, the technical capacity can be improved in the very near future.

There will still be some expertise that will have to be drawn outside the Ministry through short-term and long-term consultants, especially in the initial phase of implementation. This will basically entail the involvement of the private sector in the areas of planning, conveyancing, surveying and on-the-job training of registration officers. The development and implementation of a proposed computer-based registration system to handle the registration process will definitely require specialized skills which may not be available within the Ministry.

### **7.3 Legal Issues**

Survey and registration of any rights as proposed in the Flexible Land Tenure system will require the existence of a legal framework that will give legal credibility to the processes and the different rights that will be created and conferred.

There is also a need to harmonise the cadastral survey requirements as stipulated in the existing legislation with the survey needs of the informal settlement areas. Provisions need to be put in place to allow the land measurers to do the major work of adjudication, demarcation and survey of land for land hold titles. There is also the issue of credibility and acceptability of the survey data and records compiled by a land measurer without the direct supervision of a professional land surveyor. The current survey legislation requires that an assistant who carries out any cadastral work must be under the direct supervision of a professional land surveyor. If the data and plans compiled by a land measurer are to be used in future to register a freehold title, questions may be raised on the legality of the procedures and the data obtained.

There are also concerns caused by delays in the planning process and the eventual approval of Township layouts. The implementation of the Flexible Land Tenure System will require a more flexible approach to layout design and planning. It is not certain whether the review that is made to the planning legislation will take into consideration the need to use para-professionals such as the land measurers to carry out planning work in informal settlements. There is a need to produce a simpler and speedier process of developing layout plans and obtaining permission to develop urban lands. The legislation should allow more realistic standards for developing individual plots in areas such as informal settlements.

There will also be a need to review the legislation governing land registration to allow the registration of the proposed tenure types using simple procedures with the registration officers in the local property offices being the major role players. The current initiative within the Ministry of Lands, Resettlement and Rehabilitation to review and consolidate

the land registration legislation should also consider the best ways to accommodate the registration of the new tenure types.

#### **7.4 Financial Issues**

The implementation of the proposed Flexible Land Tenure System is an expensive undertaking. The Project will require a massive injection of resources if it has to cover all the affected towns in Namibia and be completed in a reasonable period of time. Earlier estimates of the cost of implementing a nation-wide land registration system that will confer titles to thousands of informal settlers suggested a figure of well over US\$6 millions. (MLRR, February, 1997) The Government has been committing substantial amount of funding to the Project since 1998. However, considering the current annual allocation of funds and other available resources to the Project, it may take at least two decades before the benefits of secure title are extended to the majority of poor people living in informal settlements.

It is important that the Project is introduced in a way that the benefits can be realized within reasonable time so as to maintain the support and Project momentum. This is necessary to ensure that the social and political support is maintained and the participants do not lose faith and start to doubt the real objectives of the Project.

Despite Government firm commitment to address the land question, it may be unrealistic to expect such a huge financial investment to come entirely from the normal government budget provisions. There have been earlier recommendations to seek for external assistance from major financial donors to extend the system to the whole country. This proposal seems to be the only realistic funding option for the Project of this magnitude.

It is thus logical to suggest that a concrete proposal needs to be prepared with detailed financial implications and submitted to possible funding agencies that may indicate interest in the implementation of the Flexible Land Tenure System on a national scale.

### **8. CONCLUSION**

The mushrooming and expansion of informal settlements is a major problem in many cities and towns of the developing world. Namibia is not an exception to this phenomenon. In Namibia, thousands of families from the poor section of the population live in unplanned settlements without any form of security of tenure. These informal settlements are typically characterized by lack of basic infrastructure, lack of development and poor living conditions.

The Government of the Republic of Namibia, through the Ministry of Lands, Resettlement and Rehabilitation, is fully committed, among other things, to extend the rights to land ownership to the informal settlers, and assist to improve the living conditions of this poor sector of the society. The implementation of the Flexible Land Tenure System is expected

to assist the Government in achieving this goal. There are, however, major obstacles to be overcome. There is a lack of the required technical skills. The financial implications for the exercise are enormous while the limited Government resources must be shared to cater for all other developmental and social needs.

It is fortunate that the political support has been secured at the highest level of Government after Cabinet approved the idea in 1997. The stakeholders are eager to participate in the Project. It seems therefore that, the challenge is, to find the means and take the necessary steps to expedite the implementation of the Flexible Land Tenure Project and lift the hopes and aspiration of thousands of poor families living in informal settlements. This paper presents some thoughts on a path that can be taken towards that end.

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