

Namibia: Good Practices and Lessons Learned for Gender and Communal Land



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**Namibia: Good Practices and Lessons
Learned for Gender and Communal Land**

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I. Executive Summary	1
II. Background	2
a. Demographic characteristics of Kavango and Oshana	3
b. Case study objective	4
c. Substantive scope.	4
III. Methodology	5
IV. Legal and Customary Framework	6
a. Constitution	6
b. Statutory framework for customary law	6
c. The CLRA and Traditional Authorities.	6
d. Kavango East: Shambyu Traditional Authority	8
e. Land bill	9
f. Married Persons Equality Act of 1996.	9
g. Estates and Succession Amendment Act, No. 15 of 2005	10
h. Marital and inheritance custom and practices	11
V. Oshana	12
a. Intervention: Registration of customary land rights in Oshana Region	12
VI. Kavango	18
a. Background: Kavango's decision to opt out of registering customary land	18
b. Kavango region and customary land rights.	19
c. Gender analysis	19
VII. Promising practices and lessons learned	21
a. General.	21
b. Formulation process	21
c. Substantive safeguards	22
d. Procedural safeguards	23
e. Data collection	24
f. Awareness raising/sensitization	24
Annex 1: Key Stakeholder Interviews	25
Annex 2: Validation Workshop List of Participants	26

I. Executive Summary

In the decade following independence, the government of Namibia undertook developing a series of policies and laws to address inherited and emerging land issues. The reform program concentrated on equitable redistribution of commercial land and tenure security in communal areas. The Agricultural (Commercial) Land Reform Act, 1995¹ addresses redistribution of freehold land, and the Community Land Reform Act (CLRA) focuses on tenure reform in communal areas.

This paper focuses on communal land. While it is not a comparative study per se, it attempts to better understand the intersection of gender, communal land, and land reform in Namibia. The paper concentrates on two regions that adopted different approaches to communal land governance. The Oshana region leads the implementation of the nationwide Communal Land Reform Act, 2002 that introduced the registration of customary land rights in communal areas, while the Kavango region declined to participate in the registration process and instead continues to independently administer customary land rights in accordance with its established customary system.

The case study uses a gender lens to systematically examine these two situations. Specifically, it assesses the different approaches taken by these communities to illustrate good or emerging practices and draw lessons learned from measures that have sought both to protect community rights to land and also protect the rights of women and men in those communities. The paper evaluates these measures in light of the primary objective, selected strategies, and outcome.

Ultimately, the case study attempts to illustrate what measures can be implemented in different political, legal, and cultural contexts to enable communities facing similar situations to benefit from the experiences of others. Both promising practices and challenges faced offer insights.

It is clear from this case study that promoting women's rights while also protecting customary land tenure systems through registration of rights is a complex and multifaceted process that touches on law, culture, economics, politics, and administrative capacity. Although every effort should be made to understand how such rights and values can be protected, it would be unrealistic to expect all eventualities to be accounted for from the onset. The Namibia experience offers both promising practices and constructive lessons about the process and content of promoting women's land rights while protecting customary land tenure systems. The following promising practices and lessons learned primarily focus on approach, substantive and procedural safeguards, data collection, and communication.

Key promising practices include:

1. Employ an iterative process to respond to needs and new information as it arises.

2. Capitalize on the relevant experiences of other countries in the region through study tours and technical advisory missions.
3. Recognize the diversity and complexities of customary tenure systems. Statutory provisions governing registration of communal land should accommodate cultural specificities across traditional systems.
4. Exploit the flexibility of customary systems and build on the gender-responsive aspects of customary tenure systems and practices to strengthen women's rights to land. The CLRA recognizes the legal authority of Traditional Authorities to administer communal land while reinforcing gender responsive customary laws and incorporating additional gender responsive safeguards.
5. Systematically incorporate gender responsive provisions in the statutory framework recognizing customary law.
6. Grant women independent rights to communal land regardless of their marital status and recognize that women's de facto rights to land are shaped by the type of household and women's socioeconomic position within their households and communities.
7. Allow for joint titling particularly where men traditionally apply for customary land rights for marital residence/farm-land and are regarded as right holders. Additionally, ensure regulations that implement the communal land act support equal recognition of the rights of each of the spouses.
8. Consider reinforcing the aim of joint titling and supporting the enforcement of each rights holder's rights by pairing joint titling with spousal consent to alienate, burden, mortgage, cede, or contract to alienate the property jointly held.
9. Accord explicit protection for vulnerable women.
10. In addition to mandating the inclusion of women in the communal land governance structure, periodically assess the gender-specific needs and barriers related to participation in communal land boards and provide targeted support for female members, including trainings.
11. Consider the underlying purpose for fees when abolishing long established customary fees and identify alternative sources of income or other arrangements for compensating traditional administrators who rely on the abolished fees for their livelihood. This would help ensure that related strategies for protecting women's land rights are feasible.
12. Exploit information gathered by aggregating key sex-disaggregated data and further disaggregating data on female applicants to facilitate nuanced understanding of the variables affecting women's land rights.
13. Continually disseminate information about the land intervention at all levels and through context appropriate mediums highlighting gender responsive provisions.

¹ Act No. 6 of 1995, as amended.

14. Ensure communication efforts are part of a broader strategy that includes addressing budgetary, human resource, and technical challenges associated with enforcing the law.
15. Promising practices should be considered bearing in mind the broader contextual dynamics and the potential interlinkages between the various promising practices.

II. Background

Namibia is a semi-arid and arid country situated between the Namib and Kalahari Deserts. It is among the least populated countries in the world, with a total land mass of 825,418 square kilometers and a population of only 2.2 million.² Its economy is dominated by agriculture, fishery, mining, and tourism. While Namibia is an upper middle-income country endowed with considerable natural resources including minerals (copper, uranium, zinc, gold, gemstones, etc.), fish, and wildlife, distribution of resources is highly inequitable.³ Namibia has one of the highest income disparities in the world.⁴ According to the official unemployment figures for 2012, the unemployment rate was 27.4%; however, non-government figures for the same period indicate unemployment figures as high as 50%.⁵ Moreover, a majority of poor households are concentrated in the north. Approximately 70% of the Namibia's population is concentrated on underdeveloped communal lands in the northern regions and depend on access to communal land for subsistence farming and livelihood.⁶

In Namibia, land is a contentious issue rooted in the legacy of a dual land tenure system conceived during a century of colonial and apartheid rule. During colonial rule, indigenous Namibians were systematically dispossessed of land and confined to underdeveloped communal lands in the northern regions, while European settlers were granted freehold rights to commercial areas in the central and southern parts of the country.⁷ Traditional Authorities retained control over communal lands in the northern region and the state assumed governance of privatized land.⁸ At independence in 1990, 6% of the national population owned 44% of the commercial land, and 70% resided on communal land.⁹

Regardless of race, women were precluded from owning property during colonial rule. Gender inequality was institutionalized through discriminatory colonial policies and laws.¹⁰

In addition to state-sanctioned gender discrimination, customary systems governing land rights of indigenous women generally favored men due to gendered power dynamics that underpin

2 Mandimika, Prisca, and Elke Matthai. 2013. *Ensuring Tenure Security for Women: A Case Study on Namibia's Communal Land Rights Registration Programme*. Paper presented at the Annual World Bank Conference on Land and Poverty, Washington DC: World Bank (April 8-11, 2013). <http://www.oicrf.org/pdf.asp?method=download&email=&ID=11808&submit=Get+document>.

3 United States Agency for International Development, *Property Rights and Resource Governance Profile*. 2010. <http://www.usaidlandtenure.net/namibia>.

4 *Ibid.*, 1.

5 Namibia Statistical Agency, Labour Force Survey, 2012.

6 Mandimika and Matthai, "Ensuring Tenure Security for Women," 6.

7 Fuller, Ben. 2006. *Improving Tenure Security for the Rural Poor: Namibia Country Case Study*. Food and Agricultural Organization of the United Nations (FAO), Windhoek, Namibia. <http://www.fao.org/3/a-k0787e.pdf>.

8 Communal land is inhabited by a recognized community. With the exception of commonage and communal land under leasehold or occupancy, communal land is often allocated to individual households, but remains under customary tenure governance. "Commonage" refers to the portion of the communal area of a traditional community which is traditionally used for the common grazing of livestock. Leasehold and occupancy rights in communal areas are outside the scope of this paper.

9 Thiem, Maarit. 2014. *A Decade of Communal Land Reform in Namibia: Review and Lessons Learnt, with a Focus on Communal Land Rights Registration*. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

10 See note 7 above.

many land governance systems and practices.¹¹ While gender relations are culture/context specific, Namibian women are generally assigned fewer and weaker land rights than men. More often than not, these rights are temporary and secondary to the land rights of men. Prior to the enactment of the Communal Land Reform Act (CLRA),¹² women primarily accessed land through their husbands, uncles, fathers, or other male relatives.¹³ Women's lack of independent rights to communal land is partially due to the patrilocal residence patterns in which wives move to the husband's village at the time of marriage.

Women were particularly vulnerable when their households changed due to the death of a spouse. Traditionally, women were not eligible to inherit communal land rights held by their husbands and found themselves at the mercy of the husband's family.¹⁴ Given the prevalence of widow dispossession and the high number of female headed households (or de facto female headed households), widow dispossession was flagged as a priority during the landmark National Conference on Land Reform and the Land Question in 1991.¹⁵

Land related disputes stemming from conflicting claims to land: double allocation, border disputes, and self-extension (i.e., individual extends his/her plot beyond the legally allocated dimensions), also posed a considerable threat to tenure security in communal areas.¹⁶ Women are often disproportionately impacted by land related conflicts due to their secondary status within their communities.

In the decade following independence, the new government undertook a series of policies and laws to address inherited and emerging land issues. The reform program concentrated on equitable redistribution of commercial land and tenure security in communal areas.¹⁷ The Agricultural (Commercial) Land Reform Act, 1995¹⁸ addresses redistribution of freehold, and the CLRA focuses on tenure reform in communal areas.

Land in post-independent Namibia is classified into three often overlapping categories: communal, state, and freehold. It is divided into 44% freehold (commercial land), 36% communal, and 20% state land (e.g., game parks etc.).¹⁹ All communal land vests in the state in trust for the benefit of traditional communities residing in those areas; therefore, customary rights cannot be alienated.²⁰

11 Ibid.

12 Act No. 5 of 2002, as amended.

13 Ibid.

14 African Development Bank (AfDB). 2006. *Republic of Namibia Country Gender Profile*, 23. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ADB-BD-IF-2006-206-EN-NAMIBIA-COUNTRY-GENDER-PROFILE.PDF>.

15 Werner, Wolfgang. 2008. *Protection for Women in Namibia's Communal Land Reform Act: Is it working?* Legal Assistance Center, 25. <http://www.lac.org.na/projects/lead/pdf/womencommlandra.pdf>.

16 Kasita, Maria. 2011. *Establishing Communal Land Registration in Namibia: The Process, Benefits and Challenges*. Paper presented at Annual World Bank Conference on Land and Poverty. Washington D.C.: World Bank. <http://siteresources.worldbank.org/INTIE/Resources/475495-1302790806106/EstablishingKasitaPres4.pdf>.

17 Ibid.

18 Act No. 6 of 1995, as amended.

19 Ibid., 1.

20 See note 15 above, 22.

This paper focuses on communal land. While it is not a comparative study per se, it attempts to better understand the intersection of gender, communal land, and land reform in Namibia. The paper concentrates on two regions that adopted different approaches to communal land governance. The Oshana region leads the implementation of the nationwide Communal Land Reform Act, 2002 that introduced the registration of customary land rights in communal areas, while the Kavango region declined to participate in the registration process and instead continues to independently administer customary land rights in accordance with its established customary system.²¹ This paper predominantly focuses on select communities in Kavango East and the Oshana region.

The case study is organized as follows: Section 2 presents the geographic scope of the case study. Section 3 defines the objective and the substantive scope of the case study. Section 4 outlines the methodology of the case study. Section 5 provides an overview of the legal framework governing women's land rights. Section 6 presents the gender responsive substantive and procedural safeguards of the CLRA and the gender analysis of the formation and enforcement of the CLRA. Section 7 summarizes Kavango Region's decision to opt out of the registration process. Section 8 presents the gender equitable customs and practices of the Shambyu Traditional Authority in Kavango East Region and analyzes those practices. Section 9 offers good practices and constructive lessons that might be adapted to other circumstances.

a. Demographic characteristics of Kavango and Oshana

The target regions of Kavango East and Oshana have common and diverse cultural, socio-economic, and environmental characteristics. Both regions have well established Traditional Authorities with structures, leadership lineages, and extensive customary laws in place. All five recognized Traditional Authorities of Kavango are well established and all but one (Ombadja Traditional Authority) of the eight recognized Traditional Authorities of the Oshiwambo-speaking communities in northern Namibia are similarly situated. The Ovambo ethnic group extends across four regions – Ohangwena, Oshikoto, Oshana, and Omusati, commonly referred to as “the O regions.”

The Kavango and Ovambo ethnic groups are matrilineal (in which members trace their descent through the female blood line) with patrilocal residence (in which wives relocate to the husband's village upon marriage).²² Women constitute a majority of the population in both regions, and the Ovambo ethnic group represents 93.7% of the population of Oshana.²³ The number of female headed households is also high in both regions: 54% in Oshana, which exceeds the national average of 44%, and 43% in

21 It should be noted that in 2013 the Kavango region split into Kavango East and Kavango West. This was intended to facilitate effective service delivery and advance inclusive economic development.

22 LeBeau, Debie, Eunice Ipinge, and Michael Conteh. 2004. *Women's Property and Inheritance Rights in Namibia*, University of Namibia: Windhoek viii.

23 See note 10 above, 50.

Kavango, just under the national average.²⁴ In addition, inhabitants of both regions engage in mixed-farming (crop cultivation and livestock rearing), and a considerable proportion of farmers are classified as smallholder farmers.

However, the regions differ considerably in terms of land mass, population density, residence pattern, and level of poverty. Oshana, the smallest region in Namibia, has a relatively high population density of 20.4 persons per square kilometer, as opposed to 4.6 persons per square kilometer for Kavango.²⁵

The two regions also differ significantly in their residence patterns. Whereas the residence pattern of the Kavango people is collective (extended family), the residence of the Ovambo communities is primarily nuclear family based with some extended family residence.²⁶

Prevalence of poverty also varies between the two regions. At 54.8%, the level of poverty in Oshana is slightly lower than the national average of 55.7% and considerably lower than that of Kavango.²⁷ Kavango has the highest incidence of poverty in the country, with 56.5% of its population classified as poor and 36.7% classified as severely poor.²⁸

b. Case study objective

This case study uses a gender lens to systematically examine two situations: (1) the enforcement of the CLRA in the Oshana region (Oukwanyama Traditional Authority) and (2) the operationalization of the customary system governing communal lands in Kavango East (Shambyu Traditional Authority). It assesses the different approaches taken by these communities to illustrate good or emerging practices and draw lessons learned from measures that have sought both to protect community rights to land and also protect the rights of women and men in those communities. The paper evaluates measures in light of the primary objective, selected strategies, and outcomes.

The case study considers the economic, social, and political context of each intervention or measure, the experience and treatment of men and women in the formal and informal laws governing communal lands, the treatment of men and women in the intervention design implementation, monitoring and evaluation, and the results in relation to women and men. It calls attention to the issues that affect women uniquely or disproportionately.

Ultimately, the case study attempts to illustrate what measures can be implemented in different political, legal, and cultural contexts to enable communities facing similar situations to benefit from the experiences of others. Both promising practices and challenges faced offer insights.

²⁴ Ibid.

²⁵ Ibid., 50 and 69. This figure reflects the population density prior to the region's division into Kavango East and Kavango West.

²⁶ Ibid., 71 and 57.

²⁷ Ibid., 50.

²⁸ Ibid., 71.

c. Substantive scope

The case study centers on two overarching questions: (1) why the two target regions selected different paths with respect to the registration of customary land rights, and (2) the emerging promising practices and lessons from measures that have sought both to protect community rights to land and also protect the rights of women and men in each of those communities. Promising practices are defined broadly to include a range of enabling factors that cumulate to strengthen women's rights to communal land.

The CLRA contains three categories of land rights: customary land rights, leasehold for business purposes (e.g., lodges for tourism, agricultural land), and occupational land rights for public services.²⁹ This paper limits analysis of the CLRA to registration of customary land rights within the Oukwanyama Traditional Authority.

Assessment of the customary systems in Kavango East primarily focuses on reasons for opposing registration of customary land rights, the structure and composition of the Shambyu Traditional Authority, and women's rights to land under the customary laws of the Shambyu Traditional Authority.

²⁹ Communal Land Reform Act No. 5 of 2002, sec. 19 (Namibia) (hereinafter "CLRA").

III. Methodology

The case study involved desk research and field research. The desk research entailed an iterative process that defined the research strategy and informed the case study analysis. The field research team (researcher and translators) undertook assessments in three locations: Khomas (Windhoek), Kavango East, and Oshana. The researcher in collaboration with key in-country stakeholders including the Ministry of Land Reform (MLR) selected Oshana based on the high number of registered plots, and selected Kavango East based on the region's decision to opt out of registering customary land rights.

The Uukwambi Traditional Authority in Oshana region was initially selected and agreed to participate in the field study. Unfortunately, they had a last minute scheduling conflict due to a communication breakdown within the Traditional Authority.

The field research took place over two and half weeks. Primary methods for obtaining information were semi-structured and open-ended interviews with representatives of government, Traditional Authorities (Shambyu Traditional Authority in Kavango East, and Oukwanyama Traditional Authority in Oshana), non-governmental organizations, donors, academic institutions, and communities.

The researcher conducted focus group discussions in three villages in Kavango East (Mayana, Kayengona and Utokota), and in the Onamutai village in the Oshana region. Criteria for selecting villages were location, size, and availability of community members. The researcher held focus group discussions with multiple women-only groups followed by a mixed-group meeting in each region. The average group consisted of eight to ten people. The focus groups were larger in Oshana region to compensate for a day lost due to circumstances beyond the control of the research team. While the groups are not intended to be statistically representative, the researcher explicitly included women with varied marital and economic status, age, etc. to reflect the heterogeneity of women, and attempted to be mindful of power dynamics during interviews. The research team also encouraged the participation of women by accommodating their needs during venue selection and scheduling. Most focus group discussions were held on weekends, and the research team travelled to various venues to reduce the travel time for participants. On average, the focus group discussions and key stakeholder interviews lasted three to four hours. Please refer to Annex 1 for the list of key informants interviewed.

In three out of five women-only focus group discussions, a headman participated. This did not appear to deter participation and may have facilitated more active discussions in two situations.

The scope of the case study is limited to the aforementioned regions and issues to allow for due consideration of the deliberated issues. Field work took place in rural areas surrounding urban and peri-urban areas and may not reflect the experiences

of women in remote rural areas. As the geographic scope of the case study is limited to two regions, it does not capture some pertinent regional and intra-regional variations across Namibia.

In addition, the substantive scope of the case study does not include dispute resolution or commonage-related issues within the context of the CLRA. However, the legal or customary provisions governing commonage and dispute resolution are noted, given the significance of these issues for women.

IV. Legal and Customary Framework

Namibia recognizes customary tenure in statutory law through the Constitution, the Traditional Authority Act, 2000, and the CLRA, 2002. The legal framework governing women's land rights in the target regions includes: the Constitution; the Traditional Authorities Act, 2000; the CLRA, 2002; the Shambyu Traditional Authority customary laws (Kavango East); the Native Administration Proclamation, 1928; the Married Persons Equality Act, 1996; the Estates and Succession Amendment Act, 2005; and marital and inheritance customs and practices.

The Government of Namibia is currently reviewing a number of land related laws including the Land Bill, the Administration of Estates Act, and marital property in civil and customary marriages.³⁰

a. Constitution

The Constitution grants women the same status as men before the law, and explicitly prohibits discrimination on the basis of sex.³¹ In recognition of the discrimination faced by women, Article 23 further stipulates that it “shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.”³² It also promotes the welfare of women by obligating the state to adapt policies aimed at “the enactment of legislation to ensure equality of opportunity for women.”³³

Gender-equitable provisions of the Constitution include broad property rights. Article 16 of the Constitution provides for the universal right to acquire, own, or dispose of all forms of moveable and immovable property. Moreover, women are granted equal rights during and at the dissolution of marriage as stipulated in Article 14. Finally, Article 66 recognizes customary law in force at the date of independence subject to its compatibility with the Constitution and other statutory laws. Article 66 also states that customary law may be repealed or modified by an act of parliament.

b. Statutory framework for customary law

The statutory framework for customary law includes the Traditional Authorities Act, 2000 and the CLRA, 2002. The Traditional Authority Act accords legal recognition to Traditional Authorities and defines their powers, duties and functions. However, not all Traditional Authorities are formally recognized under the act. Recognized Traditional Authorities are responsible for administering customary laws in their respective

30 Other land related legislation under review and amendment include the following: (1) Deeds Registries Bill, 2015 [tabled to Parliament on the 29th of October, 2015], (2) Valuers Act Regulations, (3) Amendments to the 2007 Land Valuation and Taxation Regulations, (4) Amendments to the Flexible Land Tenure Act No. 4 of 2012, and (5) Regulations to the Flexible Land Tenure Act No. 4 of 2012.

31 Constitution of the Republic of Namibia, 1990 art. 10.

32 Ibid., art. 23(3).

33 Ibid., art. 95(a).

communities and must “uphold, promote, protect and preserve the culture, language, tradition, and traditional values.”³⁴

Traditional Authorities must also act as arbitrators of disputes among community members.³⁵ As noted, gender-based discrimination in customary law is superseded by the constitutional principle of non-discrimination. In addition to their obligation to abolish customs and traditions that contradict the Constitution, Traditional Authorities have a duty to ensure “Affirmative Action is implemented in the community, particularly in respect to promoting gender equality in positions of leadership.”³⁶ A Council of Traditional Leaders assists the President with the administration and control of communal land.

c. The CLRA and Traditional Authorities

The CLRA recognizes and consolidates the legal authority of Traditional Authorities to administer communal land while reinforcing gender responsive customary laws and incorporating additional gender responsive safeguards. It codifies the gender equitable aspects of customary laws such as the protections provided to widows in the revised Laws of Ondonga. While not a codification of customary law per se, the Laws of Ondonga is a self-proclaimed written account of customary law pertaining to particular matters governing the Oshiwambo-speaking communities in northern Namibia.³⁷ Traditionally, women were not eligible to inherit communal land rights.³⁸ Through an amendment to the Laws of Ondonga, customary law was revised to grant women the right to occupy the land they shared with their husbands provided they paid a fee (maximum of N\$600/approximately US\$42).³⁹ All Traditional Authorities in the north subsequently abolished the fee for widows wishing to remain on the land.⁴⁰

While the primary power to authorize and cancel land allocation continues to vest in the chief/ Traditional Authorities, the state established Communal Land Boards (CLBs) in each region (except Khomas region where there is no communal land) to ensure customary rights are allocated in accordance with the CLRA and to issue land certificates. The 12 CLBs countrywide operate under the oversight of the MLR. The position of board secretary is a civil service position typically held by MLR staff or the Regional Council concerned. Although the secretary is not a voting member of the CLB, he or she holds a position of considerable influence. The CLB provides technical (legal and policy) guidance and accounts for public funding.

34 Traditional Authorities Act 25 of 2000, sec.3 (a).

35 Ibid., sec.12.

36 Pandeni, John A. 2005. *The role of the traditional authorities and their mandate in protecting women and children's property and inheritance rights in Namibia*, Republic of Namibia Ministry of Gender Equality and Child Welfare Report on the proceeding of the National Conference on Women's Land and Property Rights and Livelihood in Namibia, with a Special Focus on HIV/AIDS. Windhoek: July 6-8, 2005.

37 Hinz, Manfred. 1997. *Law Reform from within Improving the Legal Status of Women in Northern Namibia*, Journal of Legal Pluralism and Unofficial Law, 39: 69-79 (1997).<http://commission-on-legalpluralism.com/volumes/39/hinz-art.pdf>.

38 See note 16 above, 10.

39 Ibid.

40 Ibid.

Composition of the CLB is pre-determined and generally includes key stakeholders. The total number of members varies depending on the number of recognized Traditional Authorities and Regional Councils in the board's area.⁴¹ There are a minimum of 12 members (where there is a conservancy within a board's area) representing key stakeholders, including an organized farming community, four line ministries (MLR, Ministry of Agriculture, Water and Forestry, Ministry of Environment and Tourism, and Ministry of Urban and Rural Development), a representative from each recognized Traditional Authority; regional officer/s of the regional council/s concerned, representative of any conservancy within the board's area (single or jointly), and four women representatives (two engaged in farming within the board's area and two with expert knowledge relevant to the functions of the board).⁴²

The CLRA also prescribes the rights and procedures for registering communal land rights. Those who held communal land before 2002 continue to hold rights, but are required to apply for recognition and registration of those rights within a certain timeframe.⁴³ The MLR has extended this period on numerous occasions and continues to receive applications for existing customary land rights. Both men and women may apply for existing and new communal land regardless of their marital status (single, married, or widowed).⁴⁴

The CLRA employs a broad definition of spouse and does not require registration of conjugal unions. Spouse "includes the spouse or partner in a customary union, whether or not such customary union has been registered, and 'marriage' shall be construed accordingly."⁴⁵ The CLRA regulation theoretically allows for joint titling.⁴⁶ However, it is the recent amendment of the CLRA regulation that will provide for joint registration once the amendment enters into force.⁴⁷

The CLRA defines the permissible purposes and sets a maximum size for communal land allocation. Community members can apply for customary rights for subsistence farming and residence purposes.⁴⁸ The precise size restriction is specified in the corresponding regulation: 20 hectares for customary land rights and 50 hectares for leasehold rights.⁴⁹ Applications for customary land rights in excess of 20 hectares require approval from the Minister of Land Reform.⁵⁰ The regulation prescribing the size restrictions was amended following the field research for this case study. The maximum size was extended from 20 to 50

hectares for customary land rights and 50 to 100 hectares for leasehold rights.⁵¹

Under the CLRA, customary land rights are allocated for the natural life of a holder unless the rights holder relinquishes the customary right before his or her death.⁵² Though not automatic, it can also be inherited by a surviving spouse and his or her children with the deceased.⁵³ Upon the death of the holder, land reverts back to the Traditional Authority for reallocation to the surviving spouse.⁵⁴ In the event that the surviving spouse does not apply for reallocation of the right or in the absence of a surviving spouse, the Traditional Authority allocates the customary land rights to a child identified as the rightful heir.⁵⁵ The Traditional Authority determines the rightful heir in accordance with the customs and practices of the specific community. The heir often takes control of the inherited property as trustee, inheriting the land rights along with the corresponding familial responsibilities of the deceased.

Applicants initiate the registration process by identifying land and submitting an application to the headmen/headwomen of the village within the recognized Traditional Authority where the land is located. Once applications are received, the headman/headwoman assesses the situation in consultation with the relevant community. The process entails a background check on the applicant, verification of land availability, and verification that the requested land does not infringe on commonage among other things. The Traditional Authority then decides whether to refuse or grant an application for customary land rights. Where the headmen/headwomen confirm the applicant's customary right over the parcel of land or the availability of the specific land for allocation, a letter of consent is attached to the application. By attaching the letter, the headmen confirm the location and size of the land, and that the land rights are undisputed.

For an allocation to be legally binding, the relevant CLB must ratify the allocation of existing or new rights after verifying the information provided and ensuring compliance with the act. The CLB conducts an inspection to verify the size and boundaries of the land. The field work also includes an awareness raising component to explain the land allocation procedures and activities to all land users followed by mapping of the individual plots. The mapping exercise involves MLR staff, the applicant, neighbors, and the relevant headmen/headwomen. After the mapping, the CLB is required to display applications on a notice board for seven days to solicit objections by persons with adverse claims against the application for customary land rights.⁵⁶ The CLB will then review the findings of the field verification during an official meeting and veto, approve, or refer the application back to the Chief or Traditional Authority for correction. The CLB can

41 See note 10 above, 26.

42 CLRA, chapter II (4) (1).

43 Ibid., chapter IV 28 (3).

44 Organization for Economic Co-operation and Development (OECD), *Social Institutions and Gender Index*, accessed at <http://genderindex.org/country/namibia>.

45 CLRA, chapter I.

46 Regulations Made in Terms of the Communal Land Reform Act of 2002, sec.8 (Namibia) (hereafter "Regulation").

47 Republic of Namibia Ministry of Land Reform. 2015. *Application for registration of a Customary Land Right Form A*, MRL: Windhoek.

48 CLRA, sec. 21.

49 CLRA, sec. 23; Regulation, part 1, sec. 3.

50 CLRA, sec. 23 (1).

51 Republic of Namibia Ministry of Land Reform Assignment Memo (Internal), *Formal Introduction of Amendments to the Regulations of the Communal Land Reform Act: All Communal Land Boards, November 2015*.

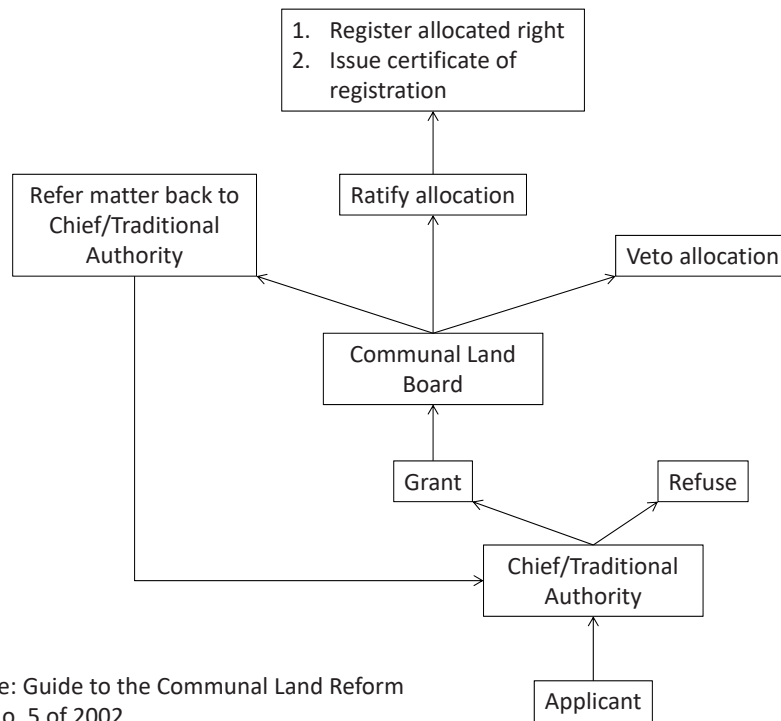
52 CLRA, sec. 26(1).

53 Ibid.

54 Ibid., sec. 26 (2)(a).

55 Ibid., sec. 26(2)(b).

56 Regulation, sec. 2(3b).



Source: Guide to the Communal Land Reform Act, No. 5 of 2002.

only veto applications on three grounds: (1) the land right has been allocated to someone else, (2) the plot exceeds 20 hectares (amended post field work to 50 hectares), or (3) the land is reserved for commonage.⁵⁷ Once ratified, the CLB enters the information into a register and provides the applicant a certificate of registration.

Applicants can appeal the decision of a Traditional Authority or a CLB within 30 days by filing it with an appeal tribunal appointed by the Minister of Land Reform.⁵⁸ The Appeal Tribunal is highest arbitration body under the CLRA and its decisions are binding. However, an aggrieved party can appeal the tribunal's decision with a competent court such as the High Court.

The Traditional Authorities retain the right to cancel a customary land right under three conditions. First, if the holder of the right fails to comply in a material respect with a condition or restriction attached to the right under the act. Second, if the land is used predominately for a purpose not recognized under customs. Third, if any other grounds as may be prescribed apply.⁵⁹ Cancellation would need to be ratified by the CLB.

Chapter IV of the CLRA governs grazing rights and use of commonage. It stipulates that all lawful residents have unrestricted access to commonage for grazing and other purpose.⁶⁰ Traditional Authorities have legal authority to impose conditions for grazing rights and enforce the conditions.⁶¹

d. Kavango East: Shambyu Traditional Authority

The Shambyu Traditional Authority is formally recognized under the Traditional Authorities Act, 2000, and like all Traditional Authorities, its legitimacy stems from custom. Jurisdiction of the Shambyu Traditional Authority is defined by a combination of factors including geography, taxpayer status (exception for pensioners, physically challenged individuals, and students), and connections to the region through resident relations or land possession.

The Traditional Authority is represented at three levels, with the ultimate power vested in the *Hompa* (Chief or Queen). The *Hompa* is typically elected according to the rules of matrilineal descent of the royal family. Accordingly, the *Hompa* is nominated by the predecessor before his or her passing or by the royal family in the absence of the former. Where the royal family is unable to agree on a nomination or otherwise fails to nominate a replacement, the Chief Council is invited to participate in the nomination process. Regardless of who nominates the *Hompa*, the nominee's identity is disclosed to the community to seek their approval. If the community does not accept the nomination, the Traditional Authority is required to propose an alternative candidate.

The Chief Council is composed of 12 senior headmen/headwomen nominated by the *Hompa* based on their skills and expertise. The Chief Council serves as an intermediary advisory body that acts on the instructions of the *Hompa*/Queen. They are responsible for up to five villages each and assist with administration and management of communal land.

57 CLRA, sec. 24(4) (c).

58 Malan, Johann. 2003. Guide to the Communal Land Reform Act, Act No 5 of 2002, Legal Assistance Centre and the Advocacy Unit, Namibia Farmers Union, 54(2003) <http://www.met.gov.na/Documents/communal%20land%20reform%20guide.pdf>; CLRA, sec. 39.

59 CLRA, sec. 27.

60 Ibid., sec. 29(1).

61 Ibid., sec. 29(1)(a).

Administration is further decentralized to headmen/headwomen who are assisted by thematic advisors (e.g., land). The Chief Council and *Hompa*/Queen appoint the headmen/headwomen at the village level either relying on recommendations of their respective predecessors or based on observed skills. These headmen/headwomen have considerable authority at the local level and play a substantial role in land allocation and dispute resolution. Disputes among community members are initially referred to the relevant headmen/headwomen. However, decisions by a headman/headwoman can be appealed to senior headmen/headwomen and ultimately, to the *Hompa*.

Across most Traditional Authorities in Namibia, customary rights for new residents are granted according to procedures that follow certain principles: (1) familiarity/closeness of an applicant to existing residents, (2) promoting social cohesion, and (3) residence considerations.⁶² Most villages consist largely of relatives and grow as families expand, which explains the direct correlation between familiarity of the applicant to the community and the level of scrutiny as well as the degree of permission required.⁶³ In the exercise of their gatekeeping and peace-building function, Traditional Authorities conduct a background check to ensure that the applicant is of good standing and require strangers to provide a letter of introduction from the headmen/headwomen of their area of origin.⁶⁴ Finally, most Traditional Authorities do not assess the availability of other resources (e.g., availability of water, grazing land) as part of the application process.⁶⁵

According to the Traditional Authorities interviewed, customary law of the Shambyu Traditional Authority does not vary for different conjugal relationships - civil and customary marriages, and cohabitation. Moreover, men and women, regardless of their marital status, are eligible to request residential and subsistence farming plots under customary law.

The process for requesting land is the same for both men and women. Women are not required to meet any additional procedural requirements that are not applicable to men. In determining whether to allocate customary rights to land, the headmen/headwomen consider numerous factors, including intended use and ability to use the land for the intended purpose.

As under the CLRA, allocation of customary land rights is for life. In line with current customary law, widows (and widowers) can remain on the land they shared with their deceased spouse and his family. Traditional Authorities also retain the right to cancel the rights where land is abandoned.

62 Mendelsohn, John. 2008. *Customary and legislative aspects of land registration and management on*

Communal land in Namibia, Report prepared for the Ministry of Lands and Resettlement 28.

63 *Ibid.*, 22.

64 *Ibid.*, 60.

65 *Ibid.*, 22.

However, whereas the CLRA allows land claimants to appeal a decision of the Traditional Authority or the CLB by filing with an appeal tribunal appointed by the Minister of Land Reform, under customary law residents cannot appeal land allocations outside the hierarchy of the Traditional Authorities.

All households within the community have access to commonage for grazing livestock and may use the pastures freely. Headmen/headwomen are tasked with regulating the use of commonage.

e. Land bill

Efforts are currently underway to consolidate the CLRA and the Agricultural (Commercial) Land Reform Act, 1995⁶⁶ into one act. The draft legislation will involve revising and harmonizing the two land acts.

f. Married Persons Equality Act of 1996

The Married Persons Equality Act (1996), which regulates civil marriages, abolished the unconstitutional powers of husbands acting as the sole head of the family. It affirms the legal capacity of a wife to enter into contract and litigation on her own behalf.⁶⁷ Civil marriages are governed by one of two marital property regimes: "marriage in community of property" or "marriage out of community of property." Under a marriage in community of property regime, all property, earnings, and debt acquired before and during the marriage are pooled into a joint estate.⁶⁸ Each spouse owns half of everything in the joint estate. Section 5 of the Act grants husband and wife married in community of property equal rights to dispose of assets of the joint estate, to incur debt for which the joint estate is liable, and to administer the joint estate.⁶⁹ However, the act requires spousal consent for particular financial decisions. Spousal consent is necessary to alienate, burden, mortgage, cede, or contract to alienate any immovable or movable property jointly held.⁷⁰ Although oral consent suffices for most of these decisions, consent related to deeds to land or other documents requiring registration at a deeds office must be in writing.⁷¹ Upon divorce or death, each spouse is entitled to half the joint marital property.⁷² In the event of death, the deceased spouse's half-share is distributed to heirs according to the terms of the law of succession or intestacy.⁷³

By contrast, in a marriage out of community of property regime, each spouse retains his or her separate property, earnings,

66 Act No. 6 of 1995, as amended.

67 Married Persons Equality Act, 1996, sec. 2.

68 Hubbard, Dianne. 2009. *Guide to the Married Persons Equality Act*, Legal Assistance Centre Gender Research & Advocacy Project, 6 <http://www.lac.org.na/projects/grap/Pdf/MPEAGuideENG.pdf>.

69 Married Persons Equality Act, 1996, sec. 5.

70 *Ibid.*, sec.7.

71 *Ibid.*, Sec.7.

72 Food and Agriculture Organization (FAO). *Namibia Country Profile*. Gender and Land Rights Database. http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/womens-property-and-use-rights-in-personal-laws/en/?country_iso3=NAM

73 *Ibid.*

and debt acquired before or during marriage.⁷⁴ A spouse is not required to consult with the other or obtain consent on the use of their respective property.⁷⁵

The default property regime for civil marriage is marriage in community of property.⁷⁶ However, the default property regime for civil marriages between indigenous/black Namibians married north of the old Police/Red Zone on or after August 1950 is out of community of property.⁷⁷ Although the marriage in community property regime does apply to such marriages, the parties may submit a declaration (one month prior to the date of the marriage) explicitly stating their intention to be married under a community of property regime, in which case the community of property regime applies.⁷⁸ Historically, the Police/Red Zone separated indigenous Namibians in the north from European settler areas (Central Southern Namibia), but some indigenous Namibians such as the Herero lived within the Police/Red Zone. The Legal Assistance Center suggests that the Native Administration Proclamation be repealed and Parliament enact a legal provision to enable black couples affected by the discriminatory provisions to change their marital property regimes within a given time period.⁷⁹

In addition, the aforementioned protections provided by the Married Persons Equality Act do not apply to women married under customs.

The Married Persons Equality Act is currently under reform. To ensure women and men understand the implications of the legal marital rights regimes and to allow couples more flexibility post marriage, local experts propose providing a choice of four pre-packaged marital property regimes and allowing for “post-nuptial changes to pre-marital contracts – with the safeguard that both spouses must demonstrate their understanding and consent to the proposed changes in separate consultations with the requisite government officials.”⁸⁰ They suggest that this be combined with a requirement that marriage officers offer a simple explanation of these four regimes. The proposed marital property law would also provide heightened protection for the marital home and its essential content by requiring written spousal consent to alienate, burden, mortgage, cede, or contract the marital home regardless of the couple’s marital property regime.⁸¹

Cohabiting couples are not protected under the existing legislation.⁸² “Cohabiting partners have no clear right to share indi-

vidually-owned assets when the relationship comes to an end, even if both made contributions towards them.”⁸³ This is likely to prejudice women since they are less likely to have their name on valuable assets. According to a national survey, 7 – 15% of Namibian adults cohabit with a partner.⁸⁴

g. Estates and Succession Amendment Act, No. 15 of 2005

The Estates and Succession Amendment Act, No. 15 of 2005, governs succession. It standardizes procedures for administering estates for all Namibians by repealing the 1941 Administration of Estates (Rehoboth Gebiet) Proclamation and some of the racially biased provisions of the Native Administration Proclamation.⁸⁵ Prior to the 2005 Act, the Native Administration Proclamation applied to both testate and intestate succession for black Namibians living in certain parts of Namibia, and the Administration of Estates Act and the Intestate Succession Ordinance governed testate and intestate succession for whites and “colored” Namibians.⁸⁶

The repealed provisions of the Native Administration Proclamation, however, continue to apply where the deceased dies without a valid will.⁸⁷ Mercedes Ovis argues, “Racially discriminatory laws are repealed but then brought back in all over again through the backdoor.”⁸⁸ The law allows for estates to be distributed according to civil or customary law with very different implications for rural women and children. Under civil law, the surviving spouse and children of the deceased have a right to inherit where the deceased died without a will providing for the surviving spouse and children, but neither can inherit under most customary systems in Namibia.⁸⁹ Similarly, daughters and sons have equal inheritance rights under civil law; however, daughters and some sons are more often than not precluded from inheriting under most customary laws.

The act is currently under revision to amend the gender discriminatory provisions and remove other barriers. Namibia’s Law Reform and Development Commission’s recommendations include ensuring that the laws of inheritance provide for the surviving spouse and children for estates distributed according to customary law.⁹⁰ Local experts underscore the value of retaining the dual system which incorporates the positive aspects of customary law while adding protections for the surviving spouse and children. The commission also recommends that the protection extend to all wives in polygamous

74 See note 69 above, 7.

75 Ibid.

76 See note 73 above.

77 United Nations Human Settlements Programme. 2005. *Namibia: Law, Land Tenure and Gender Review Series: Southern Africa*, UN-HABITAT: Nairobi 52. <http://unhabitat.org/books/law-land-tenure-and-gender-review-southern-africa-namibia/>.

78 Ibid.

79 Agnew, Leigh-Anne, and Diana Hubbard. 2008. *Apartheid Laws on Marriage: Sorting Out the Problem*, 3. <http://www.lac.org.na/projects/grap/Pdf/mariagenews.pdf>.

80 Hubbard, Dianne. 2012. *Law reform which promote women’s right to land and property: developments and proposals in Namibia*, Legal Assistance Center: Windhoek, 9.

81 See note 69 above, 9.

82 Ibid.

83 Ibid., 10.

84 Ibid., 9. This is likely to be an underestimation of the true figures.

85 Ovis, Mercedes. 2006. *Law on Inheritance – A Reform That Doesn’t Change Much*, The Namibian - Economic News, Windhoek. <http://www.namibian.com.na/index.php?id=19416&page=archive-read>.

86 Ibid. “The new law repeals the Administration of Estates (Rehoboth Gebiet) Proclamation and those provisions of the Native Administration Proclamation which apply rules of inheritance based on a complex interplay of race and (for a black person) on the part of Namibia where the person resides, on whether the person is or was a party to a civil or customary marriage, and on what marital property regime applied to the civil marriage.”

87 Ibid.

88 Ibid.

89 Ibid.

90 Law Reform and Development Commission (LRDC). 2013. *Report on Succession and Estates*, Windhoek.

households where the husband dies without a valid will.⁹¹ The need to address the practice of property grabbing is also emphasized in the commission's report.⁹²

h. Marital and inheritance custom and practices

As in other traditional communities, customs and practices surrounding marriage and inheritance have considerable impact on women's de facto rights to land.

Generally, inter-household customs related to wealth distribution (bride price, etc.) can create barriers for women's land rights as bride price can at times be considered as a daughter's portion of family wealth although the wealth is transferred to and controlled by her family. In Namibia, payment of *lobola* or bride price is at times perceived by the husband's family as "having purchased the rights of control over a women's domestic production, fertility and offspring, and the practice of wife and/or husband inheritance upon the death of a spouse is prevalent in most Namibian communities (with the exception of the Nama and to a lesser extent the Kavango)."⁹³ Paying *lobola* to the bride's family is often considered a pre-condition of customary marriages.⁹⁴ According to the 2011 National Population and Housing Census, approximately 11% of marriages in Namibia are customary.⁹⁵ *Lobola* often takes the form of cattle and/or cash.⁹⁶ In most communities where *lobola* is paid, unless the wife is found to be at fault for the divorce and has not had a child with the husband, *lobola* does not have to be returned upon divorce.⁹⁷

While polygamy appears to be on the decline, the Demographic and Health Survey of 2000 indicates that 12% of married women are in polygamous unions.⁹⁸ Polygamy is not recognized (neither protected nor abolished) under Namibian civil law, although polygamous relationships are arguably recognized by the CLRA as customary unions. Kavango tradition dictates that the person found to be at fault or responsible for a divorce has to pay a fine to the other.⁹⁹ Women are not likely to receive a fair hearing as the customary courts are often dominated by male relatives of the husband, and the prevailing social perceptions about gender roles favor men.¹⁰⁰

Prevailing as well as emerging residence and inheritance patterns shape women's land rights in target communities. The matrilineal descent system and nature of relationship often determine who has rights to which category of property when death or divorce occurs.¹⁰¹ Matrilineal nephews, uncles, and brothers

have significant control over land as key decision makers and usually approach traditional leaders to be allocated parcels of land.¹⁰² Within matrilineal systems, the deceased husband's family - traditionally his nephews, but in contemporary society all his male relatives in his maternal line - inherit the matrimonial property.¹⁰³ Today, increasing land scarcity and shifting residence patterns result in geographic dispersal of members of matrilineages and patrilineages and appear to undermine descent systems.¹⁰⁴

91 Ibid., 8.

92 Ibid.

93 Ibid., ix.

94 See note 23 above, viii.

95 Namibia Statistical Agency, 2011 Population and Housing Census Indicators.

96 Ibid., 37.

97 See note 23 above, ix.

98 See note 16 above, 19.

99 See note 23 above, ix.

100 Ibid.

101 Ibid.

102 Food and Agriculture Organization, Customary norms, religious beliefs and social practices that influence gender-differentiated land rights. http://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/customary-norms-religious-beliefs-and-social-practices-that-influence-gender-differentiated-land-rights/en/?country_iso3=NAM; Legal Assistance Centre and the Advocacy Unit, Namibia National Farmers Union, Land, Environment and Development Project Guide to the Communal Land Reform Act No. 5 of 2002, Windhoek, July 2003.

103 See note 23 above, ix.

104 See note 16 above, 25.

V. Oshana

a. Intervention: Registration of customary land rights in Oshana Region

i. The CLRA

The CLRA seeks to improve tenure security on communal land and adopts a strategy of incorporating gender responsive safeguards to facilitate equitable governance and deliver benefits to all stakeholders. This section outlines the gender responsive substantive and procedural safeguards.

The CLRA is consistent with the aims of the National Land Policy of 1993, which provides men and women equal rights with regard to all forms of land rights and calls on the government to actively promote the reform of civil and customary laws which impede women's ability to exercise their rights over land.¹⁰⁵

Gender responsive substantive safeguards

The CLRA: (i) codifies the land policy provision that allows for independent customary land rights for women, (ii) includes explicit protection for widows, (iii) contains a broad definition of the term spouse and does not require proof of the relationship through documentation, and (iv) recognizes joint titling (via CLRA regulation).

Gender responsive procedural safeguards

The CLRA: (i) mandates the representation of four women in the CLB - two engaged in farming activities within the board's area and two with expert knowledge relevant to the functions of the board, (ii) engages women in registration-related meetings as members of affected communities, and (iii) accords women the right to appeal decisions of the Traditional Authority and the CLB.

ii. Gender analysis

1. Formulation of the Communal Land Reform Act

The government employed several strategies to integrate gender issues into efforts leading to the CLRA. Shortly after independence, women's lack of independent rights to communal land and widow eviction received much attention. Widow eviction was later prioritized in discussions with Traditional Authorities.¹⁰⁶ Gender issues were also signaled as a key communal land issue during the 1991 National Conference on Land Reform and the Land Question; however, gender issues did not feature prominently in subsequent conferences on the matter.¹⁰⁷

Although gender was not explicitly called out in later CLRA-specific consultations, communities were consulted about the general principles of the CLRA, though on a limited basis. These consultations often took place within the context of meetings

between the regional councilors and Traditional Authorities.¹⁰⁸ The government assumed that information shared with senior Traditional Authorities would be disseminated to local communities through traditional structures and that communities would be represented through the same.¹⁰⁹ This strategy did not always result in ample transmission of information or adequate consultation with communities.¹¹⁰ The information disseminated to Traditional Authorities and later disseminated by them to their constituents was also not always accurate and appears to have contributed to misunderstandings about the CLRA.¹¹¹ Following a reassessment of the communication strategy during the CLRA implementation, the MLR and other key stakeholder began to engage in direct community outreach. Still, the CLRA-specific consultations focused on general principles and the broader audience, and did not sufficiently address the issue of women's land rights or specifically target women or women's groups.

Dialogue between the government and Traditional Authorities may have prioritized consensus building efforts while deferring focused discussions on women's land rights. The communal land discussions were taking place within a broader political context in which the post-independence Constitution declared that communal land was state land, and relations between Traditional Authorities and the state were less than optimal. Moreover, the period coincided with national debates regarding the restitution of ancestral land to particular ethnic minority groups (Herero, Nama, Damara) that had been disproportionately impacted by German colonial rule in central and southern Namibia (commercial land area) at the turn of the twentieth century. In short, the newly independent state was tackling competing demands within a sensitive political climate.

At a ministerial level, gender-specific technical and financial resources were limited during the CLRA formulation process. The MLR structure does not include a gender department or otherwise institutionalize gender-specific technical assistance. Consequently, gender related technical support was provided through the Ministry of Gender Equality and Child Welfare and short-term consultancies.¹¹² Civil society groups such as the Legal Assistance Centre provided input, including highlighting key gender issues, though civil society as a whole could have been better integrated into the formulation process.¹¹³

Moreover, there do not appear to be any systematic assessments of gender based barriers to communal land to inform the CLRA formulation process.¹¹⁴ Neither a permanent nor an ad hoc technical committee reviewed the potential implications of existing property-related laws (marital laws, inheritance, etc.) for the proposed CLRA provisions. A legal committee within the

¹⁰⁸ See note 63 above, 14.

¹⁰⁹ Interview with Marvin Sisamu, Deputy Director, Department of Land Reform.

¹¹⁰ See note 63 above, 14.

¹¹¹ Ibid.

¹¹² Interview with Maria Kasita, Deputy Director, Land Boards Tenure and Advice (LBTA) division.

¹¹³ Ibid.

¹¹⁴ Interview with Marvin Sisamu; interview with Maria Kasita and Winne Mwilima, Project Manager, Programme for Communal Land Development (PCLD), Department of Land Reform.

¹⁰⁵ Ibid., 11.

¹⁰⁶ Ibid., 10.

¹⁰⁷ Ibid., 9.

government structure, however, did review the CLRA provisions to ensure compliance with the Constitution of Namibia.¹¹⁵ In addition to the limited technical assistance and review, the MLR did not earmark funds to address the gender-specific dimensions of the CLRA.

Nevertheless, the CLRA contains numerous gender responsive provisions. Experience sharing between Namibia and Botswana in the form of study tours and technical advisory missions during the CLRA formulation is credited in part for the gender equitable provisions.¹¹⁶

2. Enforcement of the Communal Land Reform Act in Oshana Region

The CLRA has been enforced in the Oshana region since 2003. The Oukwanyama Traditional Authority supports the enforcement of the CLRA as a legal obligation, but they also note that the CLRA is well aligned with their customary system and way of life. In other words, the CLRA accommodates the practices on the ground.

Inclusive governance

Procedural safeguards of the CLRA provide women opportunities to actively engage at the institutional and community levels. At an institutional level, the act created a formal position for women by requiring a minimum of four women in the CLB. At a community level, the CLRA has built mechanisms to engage men and women in registration-related meetings in order to foster understanding of land allocation procedures.

CLBs facilitate representation and participation of women in communal land governance. Women currently hold 38% (five of 13) CLB positions in Oshana region and held 46% (six of 13) positions in the last CLB.¹¹⁷ The MLR could benefit from reviewing the CLB annual reports to determine trends over time and regions. Current figures for Oshana indicate a decline in proportion of female representatives and also signal the need for assessing the minimum quota for women in light of the fluctuating total CLB membership. While there are a minimum of 12 CLB members (where there is a conservancy within a board's area), the total number of members varies depending on the number of recognized Traditional Authorities and Regional Councils in the board's area.

Numerical representation is necessary but is not sufficient for attaining meaningful participation of women. In terms of leadership, the chairperson of the current CLB was not elected at the time of this case study, but women have held the position in the past suggesting an openness to women holding positions of leadership.

Status associated with rank and educational attainment influences participation in CLB meetings. According to the regional

CLB secretariat, women's participation in meetings is similar to that of their male counterparts. Women are engaged and often offer a perspective informed by their experiences. While cultural norms do not appear to inhibit women from articulating their preferences in the company of male CLB members, it was reported that both men and women are reluctant to challenge or disagree with individuals in senior positions or those who have benefited from higher education. This may appear gender neutral on its face; however, it is likely to have gendered impact given that women are often overrepresented among the less educated and underrepresented among those holding positions of power. While not identified as an issue in the Oshana region, undue influence of Traditional Authorities in CLBs has also been known to pose a challenge in other regions.

To counter these and other challenges faced by CLBs across Namibia, the MLR recently issued a call of interest to recruit CLB members with higher educational background and skills. This approach could produce advantages and disadvantages. On the one hand, setting minimum standards of education may mean that all CLB members will feel that they can participate fully (addressing a psychological barrier). On the other hand, setting this minimum requirement may exclude some of the very people the CLBs are intended to represent, including rural women. Women in general and rural women in particular are likely to be disproportionately affected as they often have fewer educational opportunities.

The MLR could systematically and periodically assess the gender-specific needs and barriers related to CLB participation and provide targeted support for female CLB members, including training. Women could also be encouraged to hold periodic meetings to discuss their priorities and concerns with their respective female CLB representatives prior to CLB meetings.

Relatively infrequent meetings (every two months) and remuneration for attending meetings may encourage increased participation of women. However, remuneration can skew selection of female participants. Rather than selecting women for their capacity and interest to play a role on the CLB, some women were selected because of their particularly disadvantaged economic position or their affiliation with persons involved in the selection process.

Interestingly, the representation of the line ministries does not include the Ministry of Gender Equality and Child Welfare. This is of particular importance given the subject matter and the lack of a gender department or focal point in the MLR. The CLB would benefit from the active participation of the Ministry of Gender Equality and Child Welfare.

Regarding women's engagement at a community level, the choice of venue to post notice of applications for land allocations was not optimal as it was not a place frequented by men and women. Women interviewed were not well informed about the location and content of the notice of applications. While constituency offices, which are used as a main venue

¹¹⁵ Interview with Maria Kasita and Winnie Mwilima.

¹¹⁶ MLR interview with Marvin Sisamu.

¹¹⁷ Women held 31% (four out of 13) CLB positions at the time of the case study field work.

Table 1. Oshana Application Figures (June 2015): Inter-Gender Dimensions.

Classifications	Total Applications	Male Applicants	Female Applicants
Applications Received	17,028	9,904 (58.2 %)	7,124 (41.8%)
Married Applicants	7,524	7,241 (96.2%)	283 (3.78 %)
Unmarried Applicants	9,504	2,663 (28.0%)	6,841 (72%)

Table 2. Oshana Applications Figures (June 2015): Intra-Gender Dimensions.

Classifications	Total Applications	Married Applicants	Unmarried Applicants
Male Applicants	9,904	7,241 (73.1%)	2,663 (26.9%)
Female Applicants	7,124	283 (4%)	6,841 (96%)

for displaying maps, are socially and physically accessible to male and female respondents, these offices are not necessarily frequented by either. Women suggested that posting notices at small neighborhood shops or church boards would be a more effective means for reaching women. The seven-day timeframe was not a focus of discussions as many women were not familiar with the postings.

Awareness raising

Generally, the CLRA-related communication strategy and associated efforts evolved to respond to identified needs. Initially, the efforts by the MLR focused on the procedures using multi-channel booklets on the registration process in vernacular languages, video clips following the actual process, registration team visits, etc.¹¹⁸ However, these efforts had limited success in improving knowledge of women's rights under the law due to the limited scope of the content and limited geographical reach of the materials. Generating understanding of the prescriptive laws was also a challenge given the low literacy in target communities.¹¹⁹ Cognizant of the shortcomings of the awareness raising efforts, the MLR, in collaboration with other stakeholders, amended the approach, developed a coherent communication strategy, and introduced a publication campaign. It attempted to find a balance between communicating the CLRA content (aims and benefits) and communicating procedures. The initial approach was adjusted to incorporate the content of the CLRA and highlight benefits of registration for inhabitants of communal land.¹²⁰ These efforts also highlighted some key issues related to women's land rights and began tackling critical issues preventing people from registering their rights. These communication efforts were part of broader strategy that included addressing budgetary and human resource as well as technical challenges associated with implementing the CLRA.¹²¹

Applications for customary land rights

According to the Oshana CLB data, the CLB has received a total of 17,028 applications for customary land rights as of June 2015. They received more applications from men (9,904 applicants or 58.2%) than women (7,124 or 41.8%), with more applications received from married men than unmarried men. Of 7,524 applications received from married couples, only 283 (3.78%) were submitted by married women listed as applicants, and of 9,504 applications received from unmarried persons, women account for the majority of applicants at 6,841 (72%). See Table 1.

While the disparity across marital status is significant for both sexes, the disparity between married and unmarried females is considerably higher with very few married female applicants and a considerable number of unmarried female applicants. Of the 9,904 applications received from men, 7,241 applicants or 73.1% indicated they were married and 2,663 or 26.9% indicated they were unmarried. Of the 7,124 female applicants, 283 (4%) indicated married status while 6,841 (96%) declared unmarried status. See Table 2.

It is difficult to interpret the results for different categories of women without further disaggregation and aggregation. Applications from unmarried women include applications from widows. Although the application form indicates whether the application is for an existing or new customary land right, this information is not aggregated and shown alongside the data on the status of applicants. Disaggregating information by the nature of rights (existing vs. new rights) and specific marital status of applicants (married, single, widowed, etc.) could help uncover important differences among female applicants. For instance, it would reveal what proportion of the applications received from women are for new versus existing rights, and what portion of the latter reflect applications for reallocation by widows versus other groups of women. In short, it would more accurately capture the circumstances on the ground and expose the distinct experiences of various categories of women.

Similarly, it is difficult to interpret the results for married applicants. The current application form simply states applicant and applicant's spouse, making it difficult to ascertain which of the

¹¹⁸ See note 10 above, 45.

¹¹⁹ See note 17 above, 14.

¹²⁰ See note 10 above, 48.

¹²¹ See note 17 above, 14.

applicants intended to apply as joint applicants and which were merely disclosing the name of his or her spouse as a family member.

Nonetheless, available data suggests inequitable distribution of customary land rights. Women represent a majority of the population of Oshana and female headed households account for 54% of households.¹²² Still, fewer women than men apply for customary land rights, and few married women apply for land rights. Accounting for joint applications could potentially increase the number of married women applicants, but is not likely to eliminate the considerable disparity between married and unmarried female applicants.

Intra-gender dimensions

Results from implementing the CLRA in Oshana region (Oukwanyama Traditional Authority) suggest that despite progressive laws in Namibia, some women continue to lack customary rights to land while others have limited tenure security. Further analysis suggests that this is primarily a consequence of the customary practices around marriage, cultural views on the proper role of women, and economic barriers, but there may also be a regulatory matter.

Specific land issues women face are often determined by the type of household and by women's status and roles in the household and community. The Namibia experience is no exception.

Married women. Although married women can be allocated land under the CLRA, communal land is typically allocated to husbands in practice. Given the patrilocal residence, the source of allocated land, and the fact that men are culturally considered heads of households and responsible for land matters, husbands traditionally apply for customary rights for the marital residence and are likely to be solely named on certificates. Many female respondents complained that married women do not benefit from CLRA-based registration as husbands often register existing rights in their name only.

Married women's ability to exercise their customary rights to communal land under the CLRA is also socially constrained. They are typically economically better positioned than unmarried women, but often encounter greater social resistance when applying for land. Securing land for the family is considered a man's responsibility, and some perceive a married woman applying for land as an offense against a husband's manhood. One respondent explained that headmen may refrain from granting a married woman's request for land on the assumption that some shortcoming of the husband necessitated the wife's application, leading the headman to conclude that the couple is not likely to use the land for the intended purpose.

Women do not perceive *lobola* as negatively influencing married women's rights to land. Women interviewed viewed the practice of bride wealth as a positive gesture that demonstrates

a groom's appreciation to the bride's parents and explicitly renounced the negative connotations that others have assigned to this practice. It is not clear if their male counterparts shared their perspective on the potential implications for married women's land rights or lack thereof.

The CLRA alone is not sufficient to address cultural norms that give men preference in land rights or social pressures that prevent women from asserting their rights. Rather, additional sensitization and affirmative measures are needed to address these cultural norms for women's rights to customary land to be registered alongside those of their husbands. This would align with the Constitutional recognition that women have faced historical discrimination which may warrant such affirmative action. Respondents suggest that additional measures include targeted sensitization of women and men on the importance and benefits of women's rights to land being registered alongside those of men.

In addition, enforcing the regulation that implements the CLRA-related provisions may be insufficient to ensure married women's rights are registered with men's. While the CLRA regulation recognizes joint titling, it does not support equal recognition of the rights of each of the spouses. In accordance with the regulation, the registration form requires applicants to list the name of a spouse, but does not indicate that the listed spouse is a co-applicant, and the non-applicant spouse is not legally considered as a joint rights holder. If the regulation is changed so that the legal effect of listing all spouses on the registration form makes each spouse a joint-rights holder to the property in question, it would better recognize women's rights to the land.

After the case study field work and prior to the in-country validation of the case study, the MLR amended the application form to provide for joint titling. The new form provides monogamous couples with the option of applying jointly.¹²³ Voluntary joint titling coupled with outreach is likely to strengthen women's rights to land. Requiring both husband and wife applicants to attend special information sessions on the value and implications of joint titling and giving them the discretion to decide whether to apply jointly may prove more effective than mandatory joint titling in this context. Experience elsewhere found that in most cases the couples selected joint titling after attending the required sessions. The new form also provides for the signature of both husband and wife applying jointly.¹²⁴ However, it only designates a single signature line for an applicant and another for the signature of a spouse, which suggests that the effect of this change will not necessarily equally protect the rights of each spouse as a joint rights holder. Pairing joint titling with spousal consent to alienate, burden, mortgage, cede, or contract to alienate the property jointly held could reinforce the aim of joint titling and support enforcement of each rights holder's rights.

¹²³ Republic of Namibia Ministry of Land Reform. 2015. Application for registration of a Customary Land Right

Form A, MRL, Windhoek.

¹²⁴ Ibid.

¹²² See note 10 above, 50.

In addition, the form allows for group applications.¹²⁵ For group applications, the new form only requires the signature of a representative of the group. To the extent that the named representative is accorded any special treatment, or decision-making power with regard to the rights documented on the certificate, this could disadvantage other adult group members not listed on the title, including subsequent wives in polygamous households. The new application form is ready for implementation pending its official launch by the MLR minister sometime this year.

The effectiveness of the CLRA to protect the land rights of women in civil marriage also depends on the Married Persons Equality Act (which governs civil marriages and defines types of marriages and marital property regimes) and the Native Administration Proclamation. In the event of a divorce, statutory law protects women in the target regions married under civil law with a declaration expressing their intent to enter into a marriage under a community of property regime. Almost all married women interviewed in the Oshana region were married under formal law, but they would not automatically benefit from the default statutory protections for civil marriages as the relevant discriminatory provisions of the Native Administration Proclamation have not been repealed. Similarly, those who are married under custom would not be protected under the Married Persons Equality Act.

Polygamous households. Women in polygamous unions are unlikely to be equally protected by the law. The CLRA employs an inclusive definition of the term spouse to include customary unions, but is not clear whether this definition extends to customary unions of a polygamous nature or if it is restricted to monogamous unions.

Where polygamy is practiced within Oshana, the residential arrangements vary from shared residential compounds to separate compounds or some combination in which several wives share a residence plot with the husband, and others, often subsequent wives, live elsewhere. Some respondents suggest that polygamy is not recognized under the CLRA, and therefore the CLRA may exclude polygamists' opportunity to be registered on communal land certificates as wives or landholders.

Recent changes to the registration certificates allowing for group rights to communal land may address the mechanism for registering multiple wives, though as highlighted earlier, the requisite selection of a group representative has the potential to restrict the rights of the other group members.

Unlike first wives married under civil law (with marriage in community of property declarations), subsequent wives in polygamous households would not be entitled to the protections of the Married Persons Equality Act.

Widows (and daughters). Widows are accorded considerable protection within the CLRA and appear to have significantly benefited from its implementation.

More broadly, studies indicate that the incidence of widow dispossession in the four north-central regions have declined considerably since independence.¹²⁶ Successful enforcement of the protection of widows from eviction can probably be attributed to evolving attitudes and the momentum for change within some customary systems.¹²⁷ Widows in target regions reported substantial improvement in their tenure security.

Despite considerable reduction in the number of widow evictions, some widows continue to be harassed by their husband's family and may underreport evictions to headsmen/headwomen.¹²⁸ Reporting eviction could result in retaliation or jeopardize other support from the family.¹²⁹ In addition to losing possession of land and immovable property, it is not uncommon for a husband's family to seize movable property from the marital home upon the death of the husband.

Provisions of the CLRA which accord surviving spouse/widows the right to retain the reallocated land upon remarriage depart considerably from customary practice and have not been successfully adopted in practice.¹³⁰ Traditional Authorities are legally obligated to honor the widow's (or widower's) rights to reallocation of customary land on the death of her/his spouse, but they are also authorized to cancel existing rights in accordance with customary law. According to customary law, Traditional Authorities retain the authority to cancel customary land rights where the land is not used for three years. This usually applies to newly cleared land, but may apply to other circumstances. The authority to cancel an existing right where the land is not used for three years puts widows who remarry at risk of losing the rights to their land upon remarriage as wives typically move to the husband's villages at marriage. Under customary law, land rights of a remarried widow are often reallocated to the children of the marriage or to other relatives living on the land.

Furthermore, widows belonging to polygamous households may not be accorded the same protections as widows in monogamous households. Where the deceased was married under civil law (marriage in community of property declaration) and subsequently married a second wife under customs, the law may not recognize the second wife for land reallocation purposes.

With regard to the inheritance of customary land rights, daughters may be disadvantaged under the CLRA. The CLRA allows Traditional Authorities to determine the rightful heir under customs when a registered rights holder dies. Land inheritance customs in the target communities favor the youngest son, and therefore older sons and all daughters could be excluded. However, communities reported that it is not uncommon to allocate the land to the child deemed most capable regardless of gender. While this practice suggests a more inclusive

¹²⁶ See note 16 above, 21.

¹²⁷ See note 81 above, 1.

¹²⁸ *Ibid.*, 2.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*, 1.

¹²⁵ *Ibid.*

approach to selecting an heir, it also results in less clarity about the specific identity of the heir among the deceased's children. This has at times resulted in intra-family conflict. Also, where the widow remarries, the new spouse automatically becomes her heir under the CLRA, thus excluding children from an earlier marriage. This can be another source of conflict.

Cohabiting and separated households. Inconsistencies and gaps between land-related statutory provisions result in fewer protections for some women. Cohabiting couples are recognized by the CLRA; however, they are not covered by the marital property laws that would make joint rights between spouses obligatory under community of property regime.

Similarly, neither the CLRA nor laws governing marriage cover situations where couples separate but are not yet divorced. While marital separation does not typically trigger a division of property, the permanent nature of these separations (without divorce) may require a legal response. The law could create a presumption of divorce where couples are separated for a certain number of years without expressing intent to remain married. However, this suggestion should be further assessed for potential broader implications.

Unmarried women (single, divorced). Unmarried women's ability to exercise their land rights is considerably restricted by their limited financial means. Single women reported a lack of livelihood options as their greatest obstacle to claiming and exercising new customary land rights under the CLRA. They expressed serious concerns about the numerous costs associated with registration. Under the CLRA, mandatory fees include an application fee of N\$25 and a registration fee of N\$50. In practice, in addition to the legally set fees, respondents are expected to pay a N\$600 fee (approximately US\$42) to the village headman/headwoman followed by an annual fee of N\$10.

Some respondents believed the CLRA was silent on the question of whether this N\$600 fee was legal. However, Article 42 specifically prohibits payment for registering customary land rights outside of the administration fees set by law. Nonetheless, it is unlikely that unmarried women or others can refuse to pay the N\$600 fee because of the potential social cost of offending a headman/headwoman, who plays a decision-making role in land and other matters in the community.

Respondents suggested that the CLRA would be more effective if fees were abolished for widows and children as the husband or parent has already paid fees for the initial allocation. They also suggested that there would be less need for the N\$600 fees if headmen/headwomen had an alternative source of income.

Other respondents expressed opinions on the issue as well. Some assert that Traditional Authorities are essentially asked to subsidize the government. They reported that the Traditional Authorities carry out a considerable amount of land administrative work on behalf of the government and have been

demanding budgetary allocation from the central government. Regarding the N\$600 fee, while the exception for widows is consistent with the Law of Ondonga and the subsequent decision of all Traditional Authorities in the north to abolish the fee for widows, a representative of the Oukwanyama Traditional Authority explained that the N\$600 fee is customarily paid to a headman/headwoman at the village level to enable them to recoup the considerable mandatory fee they paid to take on the role of headman/headwoman. The fee is determined by several factors, including the number of households in the headmen's area and the location of the land in question. The senior headman noted that exempting the reallocation fee for widows and children would interfere with this strategy and is not likely to take effect given the limited number of new allocations in this land-scarce region.

On the other hand, some respondents note that additional funding from the central government is not necessary as the N\$600 fee provides ample income and expressed concern about the limited fiscal accountability mechanism within Traditional Authorities. They hold that this is an issue of limited accountability, not limited resources.

Regardless of whether the N\$600 fee is justified or not, in practice the fee is harder for single women to pay than others, so it has the effect of excluding them from the potential benefits of registered rights to communal land. One option would be to consider a fee scale, where lower fees might be available to those in need. It was reported that some Traditional Authorities employ a sliding scale for fees, but it does not appear to be common practice, and the women interviewed did not seem to be informed about this option.

In addition, unmarried women also highlighted other related costs such as the cost for clearing the land, which can cost N\$450 per hour for tractor rental fees. They acknowledged the government's support in the form of subsidies of N\$200, but noted it was insufficient to meet demand for subsidies. Lack of livelihood and income options is likely to discourage some unmarried women from applying for land as they often do not have the means to demonstrate their ability to use the land or pay allocation related fees. This suggests unmarried women need targeted assistance to access economic opportunities and agricultural services (agricultural extension, access to fertilizer, technology, markets, etc.) in order to attain and sustain their rights to land. Unmarried women repeatedly requested income-generating opportunities to better position themselves to claim and exercise their rights to land.

As indicated in earlier studies, older female pensioners appeared to be better positioned to claim their rights to land.¹³¹

Quality and quantity of land allocation. Quantity and quality of land allocated appears to correlate with timing and mode of acquisition and the sex of the applicant. Not surprisingly,

¹³¹ See note 16 above, 20.

long-term residents often have existing rights to prime land. Therefore, the rights to prime land are often held by men or reallocated to their widows, or possibly their children, often the youngest sons.

Currently, both men and women encounter challenges associated with increasing land scarcity in the region. However, women also face additional gender based barriers. Some women expressed frustration with a strong perception among some headmen that allocating rights to single women encouraged female headed households, which are perceived as a threat to social stability. Women indicated that sometimes when they apply for rights to certain land with high value, some headmen falsely claim that the land is occupied, only to subsequently allocate it to male applicants.

Notwithstanding the above challenges, women reported that new customary rights to communal land are often granted on a first-come basis. On balance, women continually noted that the Traditional Authorities were accessible to women and generally addressed their concerns regarding land allocation and other matters.

3. Monitoring enforcement of the Communal Land Reform Act

More broadly, limited monitoring mechanisms and inadequate institutional capacity appear to have resulted in insufficient monitoring of the enforcement of the CLRA. It was reported that there are incidents across Namibia where Traditional Authorities have allocated land outside of the CLRA process. To the extent that the CLRA provides for certain opportunities for women to gain rights to communal land, limited monitoring means that it is difficult to know how effective those provisions are, and makes it more difficult to understand how they might be amended or improved to best serve the different needs of women and men.

VI. Kavango

a. Background: Kavango's decision to opt out of registering customary land

While the state and the relevant Traditional Authorities have been implementing the CLRA in Oshana and other parts of Namibia, Kavango (East and West) decided to opt out of registering customary land rights and continues to operate independently under their established customary system. The Kavango experience provides insight into the land tenure practices of the Shambyu Traditional Authority and offers other promising practices and lessons learned from measures that have sought to both protect community rights to land and also protect the rights of women and men in those communities.

The Traditional Authorities of Kavango (East and West) contend that the CLRA is designed to solve problems extraneous to their situation, including challenges related to women's land rights. As one senior headman put it, "Why fix what is not broken?"¹³² They assert that their customary system contains mechanisms for effective land governance and that the CLRA is duplicating efforts.¹³³ They also state that their customary system protects the land rights of women.

Alternatively, they assert that registration of customary land rights under the CLRA does not accommodate their reality and is therefore not in the best interest of the people of Kavango.¹³⁴ They articulate interrelated ecological, cultural, and political grounds for opting out of the nationwide customary land rights registration process.

Traditional Authorities fear that the CLRA will result in a loss of available land. Registration would deny them their right to clear new land for agriculture and will confine applicants to a registered plot. They believe implementation of the CLRA would also disrupt their collective residence pattern. It is the general practice for men to settle in their parental village, and registration would limit available land in the vicinity of the extended family residence for future generations, forcing sons and their families to settle elsewhere.¹³⁵ Some also view the 20-hectare size restriction (which will increase to 50 hectares when the aforementioned amendments take effect) in the CLRA regulation as arbitrary and unnecessary.¹³⁶ It was reported that many Traditional Authorities across Namibia have suggested that Traditional Authorities be given the task of setting the size restriction based on customary practice and land availability in close consultation with their respective communities.

¹³² Interview with Shambyu Traditional Authorities.

¹³³ Namwoonde, Ndatelela Emila. 2008. *A Rejected Import: Registration of Customary Land Rights in Kavango, A dissertation submitted in partial fulfilment of the requirement for the degree of Bachelor of Law*, Windhoek, Namibia, November 2008.

¹³⁴ Ibid.

¹³⁵ Interview with Shambyu Traditional Authorities.

¹³⁶ See note 63 above, 57.

Kavango Traditional Authorities stress that the CLRA does not accommodate other cultural specificities of the Kavango people. The registration mechanism does not account for the group rights oriented customs of the Kavango people.¹³⁷ Registration would deny the land rights of other rights holders to the same parcel of land, which is a feature of Kavango customary tenure. Individualized registration and corresponding exclusive rights to a plot also hinders Traditional Authorities' oversight of plots being allocated, used, or abandoned. They underscore that this would interfere with the customary resource management system.¹³⁸ (Again, it should be noted that the issue of group rights is being addressed by the recent CLRA amendment scheduled to take effect soon.) Finally, they maintain that registration does not accommodate their traditional land use practices, such as the allocation of multiple plots to individuals. Most residents across rural Kavango use more than one parcel of land; however, applicants can't register more than one plot under the CLRA.¹³⁹

Stakeholders in Kavango are unclear on and somewhat suspicious of the potential consequences of registration. Some perceive registration as an attempt by the government to identify available land for allocation to others outside of their community.¹⁴⁰ While there is a general perception of abundant land, there is also recognition of the increasing demand for land. "Land is finite, but populations grow; we need to preserve land for our children," noted one headman. Others view registration as commodifying communal land and perceive registration as a precursor for land taxation or other land-related fees.¹⁴¹ The administration fee of N\$25 (approximately US\$1.75) is interpreted by some as purchasing their existing right to communal land, violating an underlying tenet of communal land systems.¹⁴²

The CLRA is also perceived by some as a government program designed to further undermine the power of Traditional Authorities in the area of land administration and management.¹⁴³ Traditional Authorities' power has declined significantly since independence, and some believe that civil servants in regional offices no longer hold chiefs and traditional systems in high regard.¹⁴⁴ In addition, some believe that plot-based territorial governance involving Traditional Authorities is inappropriate for communities whose membership is defined by factors other than territorial jurisdiction.

Critics of the recusing Traditional Authorities argue that the ability to appeal decisions of the Kavango Traditional Authorities outside the traditional system may be a contributing factor to the Traditional Authorities' resistance to registering customary land rights under the CLRA.

Discussions between the Kavango Traditional Authorities and the government are ongoing. The national government continues to explore registration mechanisms to better respond to diverse customary systems within Namibia.

b. Kavango region and customary land rights

The Shambyu Traditional Authority notes that they have an inclusive governance structure and gender responsive customary laws. The following section outlines these gender-equitable customs and practices.

According to the customary law of the Shambyu Traditional Authority, women can: (i) request communal land regardless of their marital status, (ii) remain on the land they shared with their husband upon his death, (iii) be recognized as partners within a civil, customary, polygamous, or cohabitation context, (iv) appeal allocation of customary rights within the customary system, and (v) hold all positions within the Shambyu Traditional Authority (the *Hompa* is typically elected according to the rules of matrilineal descent of the royal family regardless of gender).

c. Gender analysis

i. Inclusive governance

The decision-making structure of the Shambyu Traditional Authority is inclusive, with women well represented at all levels. At the time of the case study, the highest office was held by the late Hompa Angelina Matumbo Libebe, women made up a majority of the Chief Council (8 out of 12 members), and approximately 50% of the village headmen were women. Historically, both men and women have served in the capacity of *Hompa*.

Participation in meetings appears to be influenced to some extent by hierarchy, which is in turn linked to lineage. There does not appear to be any gender bias.

Women reported that they are able to access and present their own interests to the relevant traditional authority representatives at all levels.

ii. Broad definition of conjugal relationships

Customary law of Shambyu Traditional Authority defines conjugal relationships broadly to include cohabitating and polygamous unions. Additionally, they do not require documentation as proof of customary unions; however, they are currently encouraging cohabitating couples and polygamous households to obtain a declaration that recognizes such couples as customary unions in order to facilitate administrative processes. According to the regional office of the Ministry of Gender Equality and Child Welfare, many cohabitating couples do not perceive the lack of documentation as an obstacle to exercising their rights, as these unions are historically recognized

¹³⁷ See note 10 above, 73.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

under custom; hence they have been slow to request for declarations.¹⁴⁵

iii. Requests for customary land rights

Like other customary systems, the customary system of the Shambyu Traditional Authority is based on principles, not rules. Within this system, it is need, rather than age or gender, that often determines when one requests for land. In general, candidates are at least 18 years of age, but it is not unusual for youth to wait until 21 to request land. There is no direct fee for land rights allocation; however, the Traditional Authority collects taxes from each person over 18 years of age with the exception of pensioners, persons with disabilities, and students. Taxes are currently set at approximately N\$24 (approximately US\$1.68).

However, while the aforementioned customary principle guiding requests for new customary land rights appears gender-blind, it is likely to have gendered results. Upon the request for land, the headman/headwoman inquires about intended use and ability to use the land requested. Women's limited productive and financial resources are likely to deter them from requesting land and may negatively affect the probability of securing an affirmative response for women requesting virgin land. While women did not flag this as an issue of considerable concern during focus group discussions, one unmarried respondent reported that she relinquished her rights to land because she did not have the resources (money and labor) to maintain it. Women's limited resources may threaten their ability to retain their rights to land. Women did note that securing residential plots is easier than obtaining farmland as the latter is often considerably larger and requires more resources. Again, this suggests that women need targeted interventions to facilitate access to economic opportunities and agricultural services so they can both claim and benefit from their land rights. The high level of poverty in this region suggests a greater need for such interventions.

Also, women and men who are not native to the community could experience more challenges securing customary rights to land as the level of scrutiny and permission required for applicants from outside the specific community is considerably higher. Women are more likely than men to fall in this category due to the prevailing patrilocal residence.

iv. Intra-gender dimensions

Shambyu Traditional Authority customs allocate land rights to women in different ways. Single or married women can be allocated customary land from their kin group or can independently acquire land from the appropriate Traditional Authority upon request. The land allocated to women in their natal village remains their land irrespective of subsequent changes in their marital status. This assumes couples are married under custom or formally married without a declaration expressing an intention to be married under in community of property regime. Women

indicated that married women retain the right to natal land as a fallback strategy in the event that a marriage fails or should they encounter economic hardship as a result of marrying into a family with limited economic means.

Women may also have rights to the land of their spouse or partner, though these rights are limited. Under custom, married and cohabitating women have limited rights to the marital residence and farmland. However, land acquired during marriage is likely to originate from ancestral land of the husband's family given the patrilocal and extended family residence, and the woman is not likely to have claim to such land. Therefore, this is a source of vulnerability for women's land rights.

However, married women have decision-making rights over farming land during marriage. Women reported having strong decision-making authority over crop and garden plots used by the household. The majority of women indicated that intra-household farming decisions were either shared between spouses or made exclusively by women.

However, married or cohabitating women are vulnerable when the household changes as custom does not provide sufficient safeguards to withstand changes to the family. According to custom, the "outsider" vacates the land upon divorce or separation. This disadvantages women who are often "outsiders." The contemporary shift in residence patterns, in which men are increasingly settling in communities other than their natal village, may undermine the inheritance systems which advantage men. However, this shift in settlement patterns lags behind the prevailing patrilocal residence pattern at this time.

Cohabitating women and women married under custom are accorded some protection where the husband is found at fault for the breakdown of the marriage or relationship. In this case, the husband could be ordered to pay a considerable financial compensation to enable the wife to resettle elsewhere. Traditionally, the party who initiates a divorce is considered at fault. However, a wife can initiate a divorce without "fault" where a husband repeatedly refuses to comply with headmen/headwomen's warnings to alter behavior such as physical abuse and extramarital affairs. In practice, it is not clear to what extent women can successfully solicit the support of headmen in such matters as the answers of some respondents reflect a level of acceptance for such offenses.

Where the land in question was not inherited from or otherwise provided by the husband's family and the wife is not found to be at fault for the divorce, the Traditional Authority can ask the husband to vacate the land upon divorce. This is an unlikely scenario given the extended family residence arrangement common in Kavango. Women married under civil law with a declaration stating their intention to be married under a marriage in community of property regime are also within the scope of statutory provisions.

¹⁴⁵ Interview with Benedikta Kamunoko, Chief Community Liaison Officer, Ministry of Gender and Child Welfare, Kavango.

In the less common situation where both parties are “insiders,” the wife may be disadvantaged given that the land in question was likely obtained from the husband’s family (extended family residence arrangement) and given the relatively high incidence of customary marriage.

Widows have the right to remain on the land they shared with their husband (and his family) upon the husband’s death. Also, it should be noted that wills, both oral and written, are becoming more common. Oral wills are generally observed because of a culture of respect and fear of the dead.

Barriers to rights created by inter-household customs related to wealth distribution such as *lobola* do not appear to influence women’s land rights. While the custom of *lobola* has infiltrated Kavango from neighboring communities, the community members interviewed did not engage in this practice. However, they reported that *lobola* could be paid within the context of intermarriage between ethnic groups. The communities visited also reported that the practice of widow inheritance is no longer common practice in their respective communities.

Upon the death of a spouse, widows can remain on the land they shared with their husband and his family.

VII. Promising practices and lessons learned

It is clear from this case study that promoting women’s rights while also protecting customary land tenure systems through registration of rights is a complex and multifaceted process that touches on law, culture, economics, politics, and administrative capacity. Although every effort should be made to understand how such rights and values can be protected, it would be unrealistic to expect all eventualities to be accounted for from the onset.

The Namibia experience offers both promising practices and constructive lessons. This section outlines the extracted promising practices and lessons organized under overarching themes. Each promising practice is followed by at least one example to illustrate its application within the Namibian context. Most promising practices are also paired with factors hindering application of element/s of the relevant promising practice. As the factors hindering application suggest ways to improve promising practices, they are presented with recommendations for addressing the pending challenges. Recommendations are framed in the form of responses. While the responses in section A refer to the response of the Government of Namibia and other stakeholders, the responses in sections B through F reflect the case study recommendations.

Promising practices should be considered bearing in mind the broader contextual dynamics and the potential interlinkages between the various promising practices.

a. General

Promising Practice 1: Employ an iterative process to respond to needs and new information as it arises.

Factors Hindering Application: The CLRA did not accommodate cultural specificities across traditional systems of Namibia.

Response: Government of Namibia is incorporating group rights in the CLRA to accommodate the diversity and complexities of customary tenure systems.

Factors Hindering Application: The initial communication strategy did not sufficiently inform communities about the content of the CLRA, including its gender responsive provisions.

Response: The revised communication strategy and associated efforts evolved to respond to identified needs. This required identifying a balance between communicating CLRA content (aims and benefits) and CLRA procedures. The content specific efforts highlighted key gender responsive provisions of the CLRA.

b. Formulation process

Promising Practice 2: Capitalize on the relevant experiences of other countries in the region.

Application: Experience sharing between Namibia and Botswana in the form of study tours and technical advisory missions during the CLRA formulation is credited in part for the gender equitable provisions.

Promising Practice 3: Review the statutory provisions of the relevant communal land act to ensure compliance with gender-specific constitutional safeguards.

Application: A committee of legal experts within the government structure reviewed the draft CLRA to ensure compliance with the Constitution.

Factors Hindering Application: The scope of the aforementioned review was limited to the Constitution. Neither a permanent nor an ad hoc technical committee reviewed the potential implications of existing property-related statutory laws on the proposed CLRA provisions. Inconsistencies and gaps in land-related statutory provisions resulted in inadequate legal protection for some women. **Response 1:** Determine the potential implications of existing property-related laws (marital laws, inheritance, etc.) on the CLRA provisions and address negative implications for women's land rights. **Response 2:** Harmonize laws governing women's land rights. While co-habiting couples are recognized by the CLRA, they are not covered by the marital property laws that would make joint rights between spouses obligatory under community of property as default or optional regimes. **Response 3:** Address gaps in the law. The CLRA is silent on situations where couples are separated but not divorced at the time of the spouse's death.

c. Substantive safeguards

Promising Practice 4: Exploit the flexibility of customary systems and build on the gender responsive aspects of customary tenure systems and practices to strengthen women's rights to land.

Application: The CLRA codifies the gender equitable provisions of customary laws such as the protection provided to widows in the revised Laws of Ondonga.

Factors Hindering Application: While the CLRA builds on the gender equitable aspects of customary law, it does not reinforce some aspects. **Response:** Fully exploit the pre-existing provisions customary tenure systems make for women. For instance, women under the Shambyu Traditional Authority are recognized as partners within a civil, customary, polygamous, or cohabitation context.

Promising Practice 5: Use gender equitable practices to highlight interpretations of customary law that are more favorable to women's land rights.

Application: The youngest son typically inherits land under the customs of one of the selected communities. However, community members reported that it is not uncommon for the child deemed most capable to be nominated heir regardless of gender.

Promising Practice 6: Systematically incorporate gender responsive provisions in the statutory framework recognizing customary law.

Application 1: The Namibian Constitution recognizes customary law in force at the date of independence subject to its compatibility with the Constitution and other statutory laws. Article 66 also states that customary law may be repealed or modified by parliament where a court has declared it unconstitutional.

Application 2: According to the Traditional Authority Act, Traditional Authorities have an obligation to abolish customs and traditions that contradict the Constitution as well as a duty to ensure that "Affirmative Action is implemented in the community, particularly with respect to promoting gender equality in positions of leadership."

Application 3: The CLRA recognizes and consolidates the legal authority of Traditional Authorities to administer communal land while reinforcing gender responsive customary laws and incorporating additional gender responsive safeguards.

Promising Practice 7: Employ an inclusive definition of spouse and do not require registration of unions.

Application: The CLRA employs a broad definition of spouse and does not require registration of conjugal unions. Spouse "includes the spouse or partner in a customary union," whether or not such customary union has been registered.

Factors Hindering Application: The CLRA definition of spouse may not include women in polygamous relationships. **Response:** Extend the definition of spouse to include all women, including women in polygamous relationships. If polygamy is customarily practiced and recognized, but not recognized by the statutory framework for communal land, all subsequent wives may not be registered on communal land certificates as wives or landholders, potentially compromising the tenure security of multiple households. It would be important for the law to protect the first as well as subsequent wives living under various arrangements. Global experience indicates that requiring land registration in each wife's name or jointly with her husband offers protection for wives living on separate plots. All adults can be registered in cases where land is held communally. The recognition of group rights could allow for the latter.

Promising Practice 8: Grant women independent rights to communal land regardless of their marital status.

Application: The CLRA codifies the land policy provision of independent customary land rights for women.

Factors Hindering Application: Women's varied experiences and land related needs and vulnerabilities were not always systematically accounted for or addressed. **Response 1:** Acknowledge that women's de facto rights to land are shaped by the type of household and women's socioeconomic position within their households and communities. **Response 2:** Recognize the

pronounced threats to women's land rights and understand the interrelated rights that have the greatest impact on women and girls: (1) rights women/girls hold in marriage, (2) rights to land when household changes (e.g. divorce, polygamy), (3) right to receive land through inheritance (daughters and wives), and (4) right to purchase or lease land.

Factors Hindering Application: The CLRA is not strategically linked to broader poverty alleviation efforts. This has considerable implications for women's land rights. For instance, single women reported a lack of livelihood options as their greatest obstacle to claiming and exercising new customary land rights under the CLRA. **Response:** Situate interventions on women's land rights within broader poverty alleviation interventions to better position women to claim and exercise their rights to land. Specifically, provide targeted support to unmarried women to enable them to better access economic opportunities and agricultural services (agricultural extension services, access to fertilizer, technology, and markets, etc.).

Promising Practice 9: Allow for joint titling particularly where men traditionally are the applicants for customary land rights for marital residence/farmland and are regarded as right holders.

Application: The CLRA regulation theoretically allows for joint titling.

Factors Hindering Application: Enforcing the regulation that implements the CLRA-related provisions may be insufficient to ensure married women's rights are registered with men's. The registration form requires applicants to list the name of a spouse, but does not indicate that the listed spouse is a co-applicant. The non-applicant spouse is not legally considered to be a joint rights holder. It should be noted that the recent amendment to take effect soon provides a husband and wife the option of applying jointly and includes two signature lines on the registration form. However, it provides a single signature line for an applicant and another for a spouse, which suggests that the effect of this change will not necessarily equally protect the rights of each spouse as a joint rights holder. In addition, the recent amendment allows for group rights. However, the new form only requires the signature of a representative of the group. To the extent that the named representative is accorded any special treatment, or decision-making power with regard to the rights documented on the certificate, this could disadvantage other adult group members not listed on the title, including subsequent wives in polygamous households. **Response 1:** When a husband and wife opt to apply jointly, support equal recognition of the rights of each of the spouses. To this effect, amend the revised registration form to equally protect the rights of each spouse as a joint rights holder and a co-applicants. **Response 2:** Consider promoting voluntary joint titling coupled with outreach. Require both husband and wife applicants to attend special information sessions on the value and implications of joint titling and let them decide whether to apply jointly. Experience elsewhere found that in most cases the couples selected joint titling after attending the required sessions. **Response 3:** Reinforce the

aim of joint titling and support the enforcement of each rights holder's rights by pairing joint titling with spousal consent to alienate, burden, mortgage, cede, or contract to alienate the property jointly held. **Response 4:** Ensure that the rights of all adult group members are protected when applying as a group.

Promising Practice 10: Accord explicit protection for vulnerable women.

Application: Widows are afforded considerable protection through the CLRA.

d. Procedural safeguards

Promising Practice 11: Mandate inclusion of women and require a minimum quota for their representation in communal land governance structures.

Application: The CLRA facilitates representation and participation of women in communal land governance by providing them opportunities to engage at the institutional and community level.

Factors Hindering Application: The quota for female representation in the CLB assumes 12 members. While there are a minimum of 12 CLB members, the total number of members varies depending on the number of recognized Traditional Authorities and Regional Councils in the board's area. **Response:** Establish a minimum quota for women accounting for the fluctuating total membership of the CLB.

Factors Hindering Application: The Ministry of Gender Equality and Child Welfare is not represented on the CLB. **Response:** Include the Ministry of Gender Equality and Child Welfare in the CLB given the significance of gender issues and women's land rights in communal land administration.

Factors Hindering Application: Status associated with rank and educational attainment influence participation in CLB meetings. It was reported that both men and women are reluctant to challenge or disagree with individuals in senior positions or those who have benefited from higher education. This may appear gender neutral on its face; however, it is likely to have a gendered impact given that women are often overrepresented among the less educated and underrepresented among those holding positions of power. **Response 1:** Weigh the value and loss of setting minimum requirements around education level and/or employment for CLB membership against the CLB's aim of including representatives of affected communities. It would be helpful to ensure an enabling environment for participation of all people of different occupations, education levels, and interests in the CLB. To this end, systematically and periodically assess the gender-specific needs and barriers related to CLB participation and provide targeted support for female CLB members including trainings. **Response 2:** Encourage women to hold periodic meetings to discuss their priorities and concerns with their respective female CLB representatives prior to CLB meetings.

Promising Practice 12: Facilitate procedural fairness for men and women by requiring notice for demarcation, registration, and meetings of decision-making bodies.

Application: The CLRA requires that applications be displayed on a notice board for seven days in order to solicit objections by persons with adverse claims against the application for customary land rights.

Factors Hindering Application: While constituency offices, one of the main venues for displaying maps, are socially and physically accessible to male and female respondents, they are not necessarily frequented by either. **Response:** Ensure that the selected venue for displaying notices is not only physically and socially accessible, but also frequented by women. Women suggested small neighborhood shops or church boards as alternative venues for reaching women.

Promising Practice 13: Minimize administrative costs for applying for customary land rights to strengthen women's land rights.

Application: Article 42 specifically prohibits payment for registering customary land rights outside of the administration fees set by the law.

Factors Hindering Application: Legal measures alone may not be enough to address financial barriers in practice. The N\$600 customary fee for registering or reallocating land is paid to a headman/headwoman at the village level to enable them to recoup the considerable mandatory fee they paid to take on the role of headman/headwoman. The fee is determined by several factors, including the number of households in the headmen's area and the location of the land in question. **Response:** When abolishing long established customary fees, consider the underlying purpose of the fees and identify alternative sources of income or other arrangements for compensating traditional administrators who rely on the fees for their livelihood. This would also help ensure that related strategies for protecting women's land rights are feasible.

Factors Hindering Application: In practice, the customary fee of N\$ 600 is harder for single women to pay than for others. **Response:** Consider the financial burden placed on economically disadvantaged members of the community, including widows and single women. Given the complexities and sensitivities around the N\$600 fee paid to Traditional Authorities (headmen/headwomen) in the Oshana region, one option would be to systematically consider a sliding fee scale, where lower fees could be available to those in need.

Factors Hindering Application: Misalignment between delegated governance responsibilities and operational considerations (e.g., budget allocation, accountability mechanisms) may affect the availability of support for women and men. Some reported that Traditional Authorities carry out a considerable amount of land administrative work on behalf of the government and have

been demanding budgetary allocation from the central government. Others reported that this is an issue of limited accountability within the Traditional Authorities, not limited resources. **Response:** Ensure alignment between tasks delegated by the central government, budgetary resources, and accountability mechanisms. In addition, ensure that gender-specific needs are reflected in budget plans and expenditure reports.

e. Data collection

Promising Practice 14: Collect sex-disaggregated data.

Application: The MLR collects sex-disaggregated data on applicants.

Factors Hindering Application: It is difficult to interpret the results of the CLRA implementation for different categories of women without further disaggregation and aggregation. For instance, applications from unmarried women include applications from widows. Although the application form indicates whether the application is for an existing or new customary land right, this information is not aggregated and shown alongside the data on the status of applicants. This shortcoming is likely to skew interpretation of available data on women's land rights.

Response: To uncover important differences between women and reveal possible variables affecting women's land rights, aggregate data on existing or new customary land rights applications and present it alongside data on the status of female applicants (e.g. single, married, etc.).

Factors Hindering Application: It was reported that some Traditional Authorities across Namibia allocate land outside of the CLRA process. **Response:** More broadly, strengthen monitoring mechanisms and institutional capacity to more effectively monitor enforcement of the CLRA. To the extent that the CLRA provides for certain opportunities for women to gain rights to communal land, limited monitoring means that it is difficult to know how effective those provisions are, and it makes it more difficult to understand how they might be amended or improved to best serve women's and men's different needs.

f. Awareness raising/sensitization

Promising Practice 15: Continually disseminate information about the land intervention at all levels and through context-appropriate mediums highlighting gender responsive provisions.

Application: The MLR in collaboration with other stakeholders employed various strategies to raise awareness about the CLRA.

Factors Hindering Application: The government assumed that information shared with senior Traditional Authorities would be disseminated to local communities through traditional structures and that communities would be represented through the same. This strategy did not always result in ample transmission of information or adequate consultation with communities. The information disseminated to Traditional Authorities and later disseminated by them to their constituents was also not always

accurate and appears to have contributed to misunderstandings about the CLRA. Following a reassessment of the communication strategy, the MLR and other key stakeholders began to engage in direct community outreach. **Response:** Engage through traditional leaders and in direct community outreach explicitly calling out the gender dimensions of communal land rights and governance.

Factors Hindering Application: Women expressed frustration with a strong perception among some headmen that allocating rights to single women encouraged female headed households. Some perceive female headed households as a threat to social stability. **Response:** Identify negative gender-based assumptions that underpin practices and contribute to inequality. Successful enforcement of the CLRA hinges on women's awareness of their land rights, their ability to invoke such rights, and society's acceptance of the laws governing their rights. Continual sensitization is essential for facilitating attitudinal and behavioral change in favor of gender-equitable communal land governance.

Factors Hindering Application: The gender dimensions of communal land governance are not fully understood by key stakeholders, including some tasked with enforcing the CLRA. **Response:** Identify strategic persons for raising the profile of gender issues and promoting gender sensitization in day-to-day governance of communal lands. CLB secretaries have considerable influence and are well positioned to promote gender sensitization in daily operations.

Promising Practice 16: Ensure communication efforts are part of a broader strategy that includes addressing budgetary, human resource, and technical challenges associated with enforcing the law.

Application: The MLR revision of the communication strategy took place within the context of reviewing the budgetary, human resource, and technical challenges related to enforcement of the CLRA.

Annex 1: Key Stakeholder Interviews

Ministry of Land Reform, Windhoek

- Dr. Nashilongo Shivute, Acting Permanent Secretary
- Ms. Prisca Mandimika, Special Advisor to the Minister
- Mr. Marvin Sisamu, Deputy Director, Department of Land Reform
- Ms. Maria Kasita, Deputy Director, Land Board Tenure and Advice (LBTA) Division
- Ms. Winnie Mwilima, Project Manager, Communal Land Right Registration, Programme for Communal Land Development (PCLD)

GIZ, Windhoek

- Ms. Martina Roemer, Team leader
- Mr. Matthias Wiegand, Development Advisor, Support to Land Reform

Millennium Challenge Account (MCA), Windhoek

- Ms. Louise Shixwameni, Director

Legal Assistance Centre (LAC), Windhoek

- Mr. Willem Odendaal, Coordinator/LEAD
- Mr. John Hazam, Advisor
- Mr. Peter Watson, Lawyer
- Ms. Drew Aiken, Fellow

University of Namibia (UNAM), Windhoek

- Dr. Kletus Likuwa, Director, Multidisciplinary Research Centre (MRC)
- Ms. Cecilia Endunde, Graduate Student
- Ms. Sophia Isala, Graduate Student

Ministry of Land Reform, Kavango East

- Mr. Lazarus Kahaka, Acting Deputy Director/Chief Development Planner
- Mr. Fernando Marungu, Secretary to the Kavango East Communal Land Board

Shambyu Traditional Authority

- Senior Council and Headwomen/Headmen

Ministry of Gender Equality and Child Welfare (MGECW), Kavango East

- Ms. Benedikta Kamunoko, Chief Community Liaison Officer

Ministry of Land Reform, Oshana Region

- Mr. Andreas Ndeyapo, Acting Deputy Director
- Mr. Vaino Nuunyango, Secretary of the Oshana Communal Land Board
- Mr. Paulus Nghipondoka, MLR Surveyor and Ondonga Traditional Authorities

Oukwanyama Traditional Authority, Oshana Region

- Headmen and headwomen

Focus Group Discussions (select communities)

Annex 2: Validation Workshop List of Participants

Ministry of Land Reform, Windhoek

- Mr. Peter Amutenya, Permanent Secretary
- Ms. Prisca Mandimika, Special Advisor to the Minister
- Mr. Justine K Milinga, Acting Deputy Director, Land Board Tenure and Adviser
- Ms. Winnie Mwilima, Project Manager, Programme for Communal Land Development

Ministry of Land Reform, Kavango East

- Mr. Fernando Marungu, Secretary, Kavango East Communal Land Board

Ministry of Land Reform, Oshana

- Mr. Vaino Nuunyango, Secretary, Oshana Communal Land Board

Ministry of Gender Equality and Child Welfare, Windhoek

- Ms. Penoshinge Shililifa, Deputy Director

Oukwanyama Traditional Authority, Oshana Region

- Mr. Djeimo Popyeinawa, Sr. Traditional Authority Representative

Shambyu Traditional Authority, Kavango East Region

- Mr. Makanga K. Kosmos, Sr. Traditional Authority Representative

Legal Assistance Center, Windhoek

- Mr. John Hazam, Advisor
- Mr. Theodor Muduva, Paralegal (Case Study: Logistics Consultant/Translator)

GIZ, Windhoek

- Ms. Martina Roemer, Team Leader

University of Namibia, Windhoek

- Mr. Martin K. Shapi, Researcher, Multidisciplinary Research Centre

Independent Participant

- Ms. Maria Kasita, Former Deputy Director, Department of Land Reform



The Landesa Center for Women's Land Rights is an initiative of Landesa, an international non-governmental organization committed to the power of land rights as a pathway to eliminate extreme poverty, reduce conflict, and build more gender-equal and just societies. Given the centrality of women's land rights to a host of sustainable development and human rights outcomes, the Center partners with governments and global networks to champion women's land rights in high-level and strategic norms-setting fora, and by leveraging innovative solutions for stronger gender-responsive land rights on national and regional levels.



Resource Equity was founded in December 2014 as a women-run, women-first non-profit which focuses exclusively on gender issues related to land and resource rights. We work in concert with other organizations worldwide to advocate for social and policy change that will enable women to have secure rights to land, and develop the capacity of others to do this work around the world.