

OFFERING REGISTRATION TO INFORMAL SETTLERS

Flexible Land Tenure in Namibia

The land surveying and registration system in Namibia covers only part of the country. There is frustration at the slow pace of planning, survey and registration of land rights and access to credit for investment and development. Many poor people lack any long-term security of tenure, having no rights to the land upon which they have settled in rapidly expanding urban areas. The author, an advisor to the Namibian Government, discusses the current situation.

Poor rural people coming to urban areas in search of better opportunities have difficulty in finding vacant land on which to settle. Others are uncertain about how their traditional land rights on the edges of growing towns will be affected by expanding urban boundaries and the establishment of municipalities. Such problems affect up to 100,000 families in Namibia.

Tenure Issues

The existing freehold system requires high levels of complex expertise, and since this is not available in Namibia the freehold system is not an option. Urban land tenure in Namibia involves the following issues.

- Roughly half the land area is held under freehold title eligible for registration; the remaining communal land resides under tenure systems ranging from individual rights to residential and arable land, to communal rights, to grazing.
- Until recently no communal land, whether rural or urban, could be held under freehold title and, until the early 1980s, black Namibians were unable to obtain title to any land.
- After independence in 1992-98, towns were registered in the name of the Government or a local authority, eventually to be subdivided into plots, serviced and sold to the public to be held under freehold title.
- The co-existing system of customary tenure includes land management among the main tasks of its headmen and women. This system of authority was extended into urban areas. Customary grants came under threat in 1992, when land falling within local authority boundaries was now placed under their jurisdiction.
- Problems with compensating informal settlers who had to be moved led to local authorities finally accepting them.
- The growth in urban population has led to a growing demand for serviced land and business.
- Official provision of residential plots has failed to keep pace with population influx because procedures for establishing a township are too slow.
- Lack of land surveyors, conveyancers and town planners in the public and private sectors cause substantial bottlenecks. Local authorities have been established which lack capacity to manage the land.

Pilot Programme

The most obvious solution was to extend the freehold system to the whole country. However, extension was hindered, among other things, by legislative requirements, shortage of skills in private and public sectors, and lack of regular income. A second system was therefore developed parallel to and interchangeable with the existing system. This provides an affordable, more secure, but simple right, which can be upgraded according to what the government needs and can afford at any given time. The system was tested in a pilot programme in 1995-1996 that addressed practical land surveying and related planning issues covering identification of different surveying and registration approaches for upgrading of tenure in different environments. The absolute and relative accuracy of different survey methods under differing environmental conditions was ascertained, along with time consumption, cost of materials and skills demanded. The pros and cons of using computers for [land surveying](#) recording were assessed. New approaches for land surveying were compared with present ones. Importantly, the assumption that properly trained paraprofessional land measurers could perform adequate survey work under the supervision of experienced land surveyors was validated. Land survey trainees were selected and involved in the pilot projects to gauge the backgrounds required of recruits and to identify any additional training requirements.

Two New Tenures

The pilot programme also evaluated the then land registration systems in Namibia with regard to certainty of title as perceived by the users. Minimum requirements for the maintenance of an unambiguous property registration system were assessed. The possibilities were investigated of a local authority, a community-based organisation, or another body issuing tenure documents based on a locally held registry map. Finally, it was recommended that two new types of tenure be introduced *in addition* to the existing freehold tenure:

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

The Cabinet approved the principles of the new system in 1997 and the Ministry of Lands, Resettlement and Rehabilitation established a Project to commence implementation. The Flexible Urban Land Tenure Bill was in final version in July 2004 but has not yet been scrutinised by the legislative bodies. Further, detailed regulations were drafted in 2004 but have not yet been examined by a Regulation Committee, to be established with promulgation of the Act. The Ministry of Lands, Resettlement and Rehabilitation made advanced preparations for initial application of the system. The training of paraprofessionals (land measurer and land registration officer) has been secured through a certification course at the Polytechnic of Namibia, upgraded as from 2005 to a diploma course. The Flexible Land Tenure System has become established within the Namibian Government. However, there has been a dramatic decrease in budget allocation to the Project since 1998, constituting a major threat to its successful implementation.

Starter Title

A 'starter title' is an *individual* type of tenure, in that one person, as custodian for family or household, is allocated a right to an unspecified site. It, however, is group-based in that each household within a block parcel must abide by the rules of the community laid down by a community association. This standard form of tenure would be registered in respect of all starter-title situations, while the block parcel may be held in ownership by a local, central or regional government body, or even by a private sector developer or community organisation. In practice, informal sites may have been laid out within the block parcel without proper survey by the local authority. This informal layout does not, however, affect the nature of the starter-title right and the fact that it does not include right to a specific site. Only a defined number of starter titles should be permitted, to secure against overcrowding. The starter title should be capable of being sold, donated and inherited, subject to restrictions that may be imposed by constitution drawn up by the group or other rights recognised by the group. It should be subject to changes in matrimonial property regimes flowing from, for example, marriage, divorce or the dissolution of marriage upon the death of a spouse. The nature of starter title and the fact that it is not defined in space would imply that allowable transactions should be kept to a minimum, and it be impossible to register personal servitude, including fidei commissum, usufructs, etc. It would also be impossible for such tenure to be encumbered by mortgage, lease or praedial servitude, since the site has yet to be defined. If starter title-holders erect permanent structures and then be required to move in order to allow for roads or service provision, they will not be entitled to any compensation. There are advantages, for overall management purposes, to the electronic registration of starter titles in a nationally uniform computer-based registry located in Windhoek. However, full access should be allowed for the registration of transactions and updating at the land-right office.

Landhold Title

A landhold title – described in the Bill as a statutory form of tenure – would, like the starter title, be registered in a computer-based deeds-registry, existent in parallel with the Windhoek Deeds registry. The underlying parcel of land on which landhold title rights are registered would remain registered in the Deeds registry but be endorsed to the effect that it is subject to the registration of landhold title recorded in the landhold-title register. As with the starter title, the effect of such an endorsement would be protection for the block parcel against being dealt with or further encumbered in any way whatsoever. The owner should, however, be entitled to register servitude over the property in order to facilitate the installation of services. The land-registration officer or conveyancer would be responsible for processing transactions in accordance with standardised computer-based forms, increasing the accuracy and reliability of the register and decreasing the opportunity for fraud. A landhold title can be sold, donated and inherited. It should be subject to all applicable changes in matrimonial regime. In contrast to the starter title, it should be capable of being mortgaged and therefore sold in execution. The cadastral map, which is an integrated part of the cadastral information system, showing landhold-title sites should be capable of amendment in order to ensure subdivision and consolidation of sites. The land measurer is legally permitted to undertake the adjudication, land survey and mapping of these plots. The fact that landhold title is issued in relation to a specific site implies that the owner will be entitled to build a permanent structure there. In the case of the state requiring such a site for public purposes, it would have to compensate the owner in accordance with applicable expropriation laws.

Institutional Model

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

Concluding Remarks

There is a lack of the technical skills required, and the financial implications of this exercise are enormous, whilst Government resources are limited and must be shared to finance all other developmental and social needs. It is fortunate that political support was secured at the highest level of Government after Cabinet approved the idea in 1997. The stakeholders are eager to participate in the Project. It seems, therefore, that the challenge is to find the means and take the necessary steps to expedite implementation of the Flexible Land Tenure Project, thereby raising the hopes and aspirations of thousands of poor families living in informal settlements.

Further Reading

- Christensen, S.F., Mattingly, M., Werner, W. Højgaard, P., 1999, Innovative Land Surveying and Land Registration in Namibia, Working Paper 93 of the Development Planning Unit, University College London.
- Christensen, S.F., Højgaard, P., 1997, Ministry of Lands, Resettlement and Rehabilitation, Report on a Flexible Land Tenure System for Namibia.