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**INNOVATIVE LAND SURVEYING AND
LAND REGISTRATION IN NAMIBIA**

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PREFACE

Niels Bentzen will write the preface. It will include the background information on why Ibis and the Ministry of Lands, Resettlement and Rehabilitation decided to publish their proposal for an affordable land registration system to benefit particularly poor informal urban settlers.

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Søren Fauerholm Christensen
Husum
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ABSTRACT

Namibia has a problem of land surveying and registration which an unusual method is tackling. This paper attempts to describe and evaluate the experiences a Danish donor funded project had, what resulted from them, and what others can learn from them.

Needs

The present Namibian land surveying and registration system covers only part of the country. In many previously unproclaimed towns there is frustration at the inability to survey and register land rights and ease access to credit for investment and development. In the rapidly expanding urban areas, many poor people have no official rights to the land on which they have settled and it is difficult for the influx of poor rural people, who come to the urban areas in search of jobs, to find vacant land on which to settle. Others are uncertain about how their long standing traditional land rights on the edges of growing towns will be affected by the expansion of urban boundaries and the establishment of municipalities. Such problems affect more than 30000 families in Namibia or approximately 10 percent of the population. The solution for these families is a cheap, accessible and creditworthy secure form of tenure.

The current context

Land in Namibia falls into two broad categories: registered and unregistered land. These two categories are commonly referred to as commercial and communal land respectively. The paper starts by providing a description of land tenure in communal areas generally and more specifically in urban areas. The lack of, and the need for, secure tenure in large sections of the rapidly growing urban areas are outlined. The paper deals with the lack of, and the need for, secure tenure in large sections of the rapidly growing urban areas. The obstacles that have prevented the need for secure tenure from being met are discussed. They include legislation prescribing time consuming and expensive procedures, a shortage of people with the required skills to carry out land surveying and registration, and the limited financing mechanisms available to anyone other than freehold borrowers.

Options for responding to the problems are categorised according to perspectives of individuals and government, and three options for responding are outlined. It was decided to develop a parallel interchangeable property registration system for Namibia where the initial secure right is simple and affordable but may be upgraded according to what the residents and the government need and can afford at any given time. This became the subject for a two-years research programme in the Ministry of Lands, Resettlement and Rehabilitation with consultative workshops with stakeholders, pilot testing of a model for an upgradeable land registration system and finally preparation of a proposal.

Consultation

The success of development and implementation of a new tenure system was crucially dependent on support and acceptance of all stakeholders: communities, professionals, government officials and local authority officials. Consequently, the only way to achieve this was to bring them together in a process of consultation. The Ministry of Lands, Resettlement and Rehabilitation organised two workshops. The workshops created awareness of the importance of land registration among relevant communities, authorities and professionals and a forum was established for discussions and evaluation of possible solutions on how to provide secure tenure for urban settlers. It was decided to investigate proposals for a parallel interchangeable land tenure system. Working groups were formed and they identified solutions for how to provide secure tenure for informal settlers.

Based on the working groups achievements and criteria of fundamental design requirements for a land registration system, the Ministry of Lands, Resettlement and Rehabilitation designed a model for a parallel interchangeable property registration system. In addition, the design of the model drew extensively on existing methods of registering ownership and what was considered possible in terms of human resources, equipment, finances, etc.

Investigation and final design of new system

The model for a parallel interchangeable property registration system was tested in a series of pilot projects and pilot studies. The minimum requirements for parallel interchangeable property registration systems were ascertained and appropriate methods, procedures, standards and required qualifications for land surveying and registration were determined.

In the final design of the system two new types of tenure was proposed introduced besides the existing freehold:

- X Type 1 - starter title - a new basic form of tenure, registered parallel to the freehold title in the National Deeds Registry;
- X Type 2 - landhold title - a new, more advanced form of tenure, registered parallel to the freehold title National Deeds Registry. Landhold title is a statutory form of tenure with all of the most important aspects of freehold ownership but with certain important restrictions;
- X Starter title and landhold title are interchangeable with freehold title;
- X Starter title and landhold title are registered electronically in a computer-based registry, managed and, in respect of landhold title, audited by the National Deeds Registry; and
- X The establishment of local property office which will remain as a local resource to process transactions with respect to starter and landhold title.

A local property office is staffed with a land manager, linked to a registration officer and a land measurer (both para-professionals). With respect to a formalisation of informal settlements para-professionals linked to a land manager, will bring an informal land delivery system into the wider urban management system. This partnership would link the local community and the built environment professionals and the various authorities involved in the land delivery process. The para-professionals will speak the local language and link the system to local customs and practises. This will create incentives to register rights over land in order to maintain a complete register.

The new land registration system was named: A Flexible Land Registration System for Namibia.

The lessons of experience

The flexible land registration system in Namibia is not yet in operation. The Namibian Government in 1997 adopted it and is in the process of implementation. The lessons learnt so far, therefore, relate to the process of consultation and the investigations in the pilot projects and studies which led to the design of the system.

The investigation was carried out parallel to the preparation of a National Land Policy and to a large extent the model for a parallel interchangeable property registration system influenced the Land Policy. Many important lessons were learnt during the execution of the pilot projects. The most important lessons to emphasize are the positive experiences of using para professionals for land surveying tasks. It was found that para professionals could operate perfectly in conjunction with a land manager, who supplied the overall supervision to the work on the ground. It was found that the partnership of a land manager, and para professionals would be the local.

The investigation evaluated the present land registration system in Namibia. The conclusion was that there were inadequacies in the systems and the flexible land tenure system was proposed as an alternative to address these inadequacies. With respect to cost, simplicity, accessibility and appropriateness to the local context, it was felt that the proposed flexible land tenure system was a more appropriate system. On a superficial level the creation of local property offices would clearly be cheaper and more in line with human resource constraints than the establishment of regional deeds registries. The simplified surveying and registration procedures would be cheaper certainly for the user. Perhaps most importantly however and difficult to quantify would be the downstream economic benefits of providing secure tenure to thousands of people in a relatively short time. It was estimated that the proposed flexible land tenure system would be able to provide secure tenure to informal settlers in Namibia in 10 years time, while freehold based on current constraints and procedures would take up to 25 years.

Implementation

The Ministry of Lands, Resettlement and Rehabilitation has commissioned an attorney company to prepare the legislation. In addition, a course for para professionals has begun and the Ministry of Lands, Resettlement and Rehabilitation has secured government funding to start the implementation in 1998.

1. INTRODUCTION

Namibia has developed a flexible land registration system which offers different levels of tenure (*parallel*) at different costs with the ability to move from one level to the other (*interchangeable*). The flexible land registration system aims at addressing the need for urban land for all sectors of the community. This is achieved by providing access to affordable land for the poorest and most disadvantaged sectors of society while at the same time the existing well functioning freehold title system is maintained.

When Namibia gained its independence from South Africa in 1990 it found itself with a land distribution emanating from the apartheid policies of South Africa. Almost 40% of the Namibian population derive an income from subsistence farming, which takes place on land which is held under various forms of customary tenure and covers roughly 43% of the total land area. Another 42% of the land area is comprised of large scale commercial farms, which are held under freehold title by about 4,200 farmers. (RoN, National Agricultural Policy, 1995, pp. 1, 4). It was only allowed for the white population to register rights over land in the Register of Deeds.

The freehold title registration and delivery system worked well with the rather limited demand for title. However, with the Namibian Constitution, which was written after Independence, it became the right of all persons in Namibia to acquire, own and dispose of immovable property. This created a demand for land which the existing system was not geared to cope with.

1.1 The need for land and registration of rights over land

Independence meant free movement of all citizens and a resulting high rate of influx to the capital, Windhoek, and to the urban centres in the former homelands. The new urban residents are seeking jobs and a better lifestyle for their family and relatives.

The growth rate of many Namibian towns is above five percent per annum. The local authorities who are faced with the responsibility of providing land and services to the residents in their towns cannot cope with the rapid urban migration. The formal land delivery processes are slow and cumbersome and owing to strict requirements for planning, land survey and registration, and services provision, land can only be delivered at high costs.

Low income families are thus forced to pursue a different strategy to the orthodox land delivery process (Planning, Servicing, Building, Occupation) to acquire land on which to settle. They become part of the informal land development process which often follows the reverse sequence, namely Occupation, Building, Servicing and finally Planning. This reverse sequence gives the families a place to stay but the system cannot cope with their demand for securing rights of occupation and providing access to services. For the local authorities the main problem is that the towns develop outside their control and often on areas difficult to service.

Global experience shows that whilst rapid urbanisation may be slowed or reduced, in a free society it cannot be stopped. When adequate land cannot be made available in an orderly fashion informal ghettos will emerge producing a stream of negative social consequences. Upgrading, redevelopment and rehabilitation of such areas will eventually have to be tackled. And at that time there will be costs, not only in respect of improving the built environment but also for the re-structuring of the social fabric which has resulted from the ghetto scenario. Such costs are estimated to be far greater than those projected for the implementation of the land tenure system recommended in this Paper.

1.2 The Namibian solution

It was therefore considered essential to provide access to affordable land for the poorest and most disadvantaged sectors of society. A National Land Policy for Namibia was formulated and it calls for rethinking the conventional methods of official planning, servicing, land surveying and registration, in

other words land delivery, to make it fit the demand rather than continuing to hope that eventually the reverse will occur. (RoN, 1997.)

The land policy stresses that account should be taken of the fact that not all citizens can afford freehold title immediately and that a number of different types of secure title, that may be held by groups as well as individuals, should be introduced as a matter of urgency. The titles aimed at the lower income groups must be upgradeable, as and when the owner's financial circumstances permit, by stages and if so desired eventually to freehold. For the informal settlements that have emerged in and around the urban centres the policy proposes that government should support the present multi-sectoral programmes to upgrade the settlements. This should be achieved by ensuring that additional local land is available to settle those displaced by the formalised planning of such settlements and by the provision of secure tenure through an upgradable tenure system and registration based on local land registries.

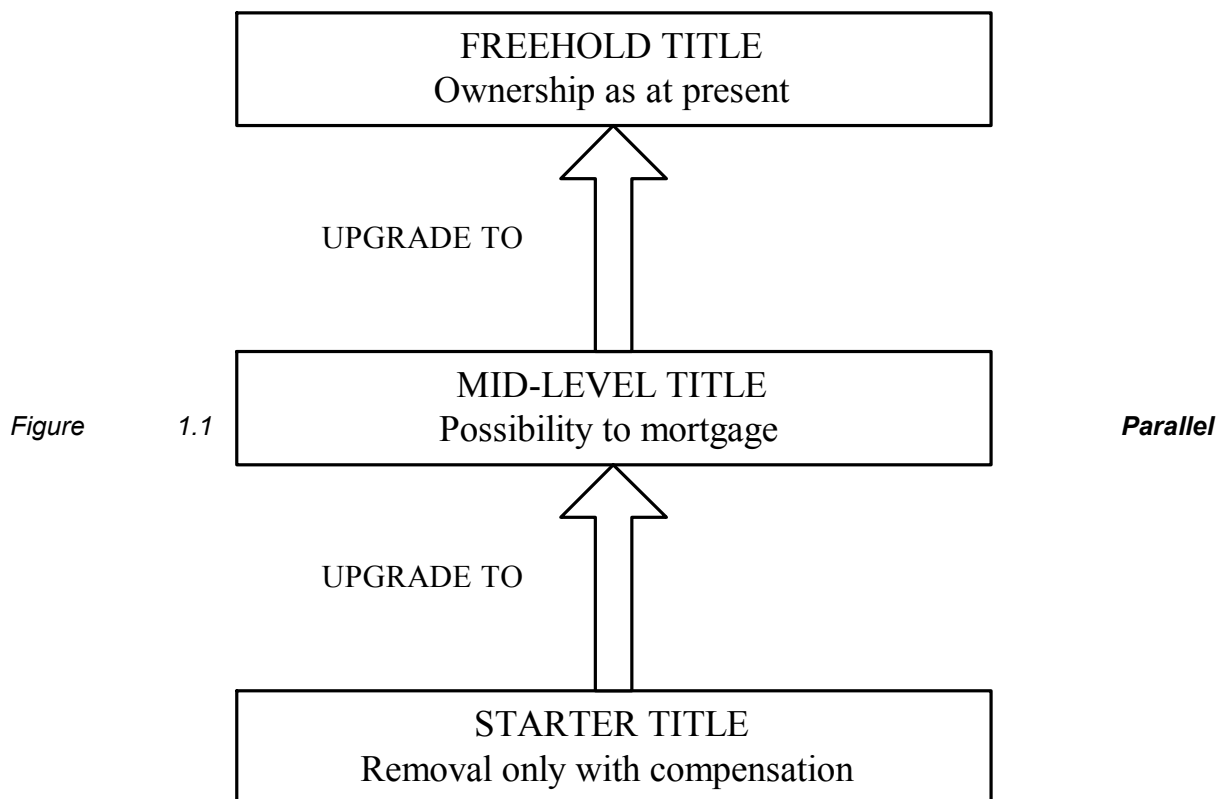
Parallel to the formulation of the National Land Policy initiatives were taken to discuss the present land delivery system and possible options for improvements in more detail. The Ministry of Lands, Resettlement and Rehabilitation arranged workshops with community representatives, private professionals, local authorities and other government ministries. Following these workshops a pilot programme to investigate options for **a parallel interchangeable property registration system** was designed.

The approach of the pilot programme was to study the local situation and incorporate relevant elements of the existing social processes, capacity and local customary and informal practices into the design of the land registration system.

1.3 The principles of the flexible land registration system

Through the consultations and investigations of the programme it became clear that the perception of freehold title as the only vehicle for economic development must be changed. Poor families with freehold title will seldom qualify for a bank or building society loan owing to their lack of creditworthiness resulting from no formal employment or wages, no previous repayment record, etc. Usually they do not need freehold title, they just need the security that will ensure they will not be evicted from their land without compensation. Once this security is established, they are more likely to invest their savings in improvements to their house. However, just because they are poor at this point in the process, they should not be precluded from upgrading their tenure as their situation improves.

A land tenure system must thus offer different levels of tenure (*parallel*) at different costs with the ability to move from one level to the other (*interchangeable*).



interchangeable property registration system.

It cannot be stressed too strongly that at the lowest entry point of this system the goal must be security of tenure. To build up expectations among recipients that it will also open the door to easy loans is to sadly and recklessly mislead the people it is intended to help.

Another principle adopted for the flexible land registration system is the principle of decentralisation of the registry to make it accessible and to make its information available to the local people. This way it is believed that informal transfers, subdivisions, land use and land delivery can be limited and land records kept up-to-date. By introducing para-professionals into the land registration system for specified functions the limited human resources in Namibia can be utilised at its optimum.

1.4 Relevance elsewhere

Namibia can be said to be in a fortunate position in that the population is fairly small in global terms. Nevertheless, the size of the problem of limited access to secure tenure and spontaneous unplanned urban settlement is, in Namibian terms, a large and serious one. Whilst the problem is small from a pure numbers perspective compared to other countries in the region it still means that more than ten percent of the population, or put differently, a third of the urban population live in spontaneous settlements with no access to secure tenure. Procedures and methods for solutions to the problem can

be developed and piloted in Namibia without the risk of the scheme being overwhelmed by the weight of numbers or sinking without trace under the magnitude of the national problem. With the right assistance and a positive, cooperative approach the problems of limited access to secure tenure for the poorest part of the urban settlers, can be solved and a sustainable land delivery and land tenure system established.

The process of consultation and the design and execution of the pilot programme was carried out by consultants to the Ministry. The conclusions and findings of the programme were combined into the proposal for a flexible system of land tenure for Namibia, which has been workshopped with communities and professionals and finally adopted by the Namibian Parliament. Based on the conclusion and findings of the pilot programme and comments from stakeholders a bill has been drafted.

1.5 Outline of the Paper

This paper is in seven chapters. Following this Introduction, Chapter 2 starts off by providing a brief description of land tenure in communal areas generally and more specifically in urban areas. A discussion of socio-economic issues will follow this to situate the project area and its participants within the wider national and regional context. Some obstacles which have prevented the needs for secure tenure from being met are also discussed. These include inappropriate legislation prescribing time consuming and expensive procedures, a shortage of people with the appropriate skills to carry out land surveying and land registration tasks and the limited financing facilities available to anyone other than freehold owners. Finally, the present land registration system and the National Land Policy are described.

Chapter 3 concentrates on the need for consultation with stakeholders to accommodate for anticipated resistance. The consultation process is described as well as the output prepared. The Chapter reviews the criteria of fundamental design requirements for a land registration system. The output and design requirements are combined and a model for a parallel interchangeable property system is presented.

Chapter 4 focuses on the model for a parallel interchangeable property registration system. The model was tested in a series of pilot projects and pilot studies. It included practical land surveying and planning related issues for the land surveying process, as well as an in-depth investigation of the present land registration system in Namibia. The outcome of the pilot programme was combined in a proposal for a flexible land tenure system for Namibia. The system includes two new forms of tenures which is briefly touched upon. The subsequent consultation with professional groups and beneficiaries is discussed.

Chapter 5, of the paper describes the content of the rights and obligations of the proposed tenure types. It explains the registration and survey procedures for the establishment of the various tenure types, as well as for the upgrading of one type of tenure to another. The proposed institutional model that lays out the on the ground requirements to get the system up follows this and running is outlined.

Chapter 6, examines the lessons of experiences so far with regard to the pilot programme implementation and the following consultation with stakeholders and beneficiaries. It goes further discussing additional experiences which are visible when an overall view is taken, an overall view of both the system and of the lessons already drawn out. The strengths and weaknesses are discussed and the most important principle of the system is presented.

Finally, Chapter 7 is the conclusion, which pulls together all of the important elements of the paper.

2. NAMIBIA URBAN SECTOR IN CONTEXT

Land in Namibia falls into two broad categories: registered and unregistered land. These two categories are commonly - and arguably erroneously - referred to as commercial and communal land respectively. This Chapter will start off by providing a brief description of land tenure in communal areas generally and more specifically in urban areas. This will be followed by a discussion of socio-economic issues in order to situate the project area and its participants within the wider national and regional context. The discussion will touch on demographic trends as well as economic developments since independence. It will be concluded that the overall effect of these developments has been an increased demand for urban land and a gradual increase in the value of urban land combined with a limited capacity to pay for essential land management services.

Some of the obstacles which have prevented the needs for secure tenure from being met are also discussed. These include inappropriate legislation prescribing time consuming and expensive procedures, a shortage of people with the appropriate skills to carry out land surveying and land registration tasks and the limited financing facilities available to anyone other than freehold owners. Finally, the present land registration system and the National Land Policy are described.

Within the communal areas, the term 'formal' is used to denote urban areas which have been planned and surveyed in accordance with existing legislation. In these areas most houses have been built by government for its staff. These houses continue to be owned by the state. Private people who wished to built their own homes or shops in these areas were issued with a Permission To Occupy (PTO). Formal townships are normally serviced with water, sewage, roads and electricity.

By contrast, 'informal' areas are areas where human settlement has taken place without prior planning. As a result, such areas are generally badly serviced, with access to services being restricted to a few communal water taps and pit latrines. These areas occur mostly on the peripheries of formal urban areas or towns on communal or unregistered land. The majority of informal settlers have been allocated land rights by a traditional leader. While these rights have not yet been formalised within statutory law, informal urban settlers on unregistered land cannot be described as squatters on account of the fact that they enjoy customary rights. However, many informal settlers around towns in the former 'white' or registered areas have to be classified as squatters, as they settled on land belonging to private individuals or the local authority on a freehold title basis.

2.1 Land tenure in Namibia

As indicated above, Namibia has inherited a dualistic land tenure system. Roughly half of the total land area is held under freehold title, while the remainder is commonly referred to as 'communal' land. The category 'communal' land subsumes a number of different land tenure systems ranging from individual rights to residential and arable land to communal rights to grazing. Until recently, all communal land - whether rural or urban - shared one important characteristic: it could not be held under freehold title. As a result 'communal' land could not be sold or mortgaged.

It is important to point out that until the early 1980s, black Namibians could not obtain title to any land, whether urban or rural, communal or commercial. In a very real sense, ownership of land under freehold was reserved for whites until that time.

While freehold title could not be obtained in 'communal' areas, land tenure arrangements differed slightly for rural or agricultural land and urban land. The following two sections will discuss these differences briefly.

2.1.1 Land tenure in rural areas

In terms of Schedule 5 of the Constitution of the Republic of Namibia, all communal land vests in and is formally controlled by the Government of Namibia. In addition, Article 100 of the Constitution stipulates

that all land which is not >otherwise lawfully owned= shall belong to the State.¹ It is for this reason that some people refer to communal land as state land.

All rural land in the communal areas is held and managed according to customary tenure systems. Generally, land rights are allocated by traditional leaders. With regard to residential and arable land, an allocation confers use rights, usually for life. Upon the death of the holder of a customary land grant, the rights either revert back to the traditional leader for reallocation, or are passed on in terms of customary laws.

Access to grazing, while open to the entire community, is regulated to a greater or lesser degree by customary range management rules. As a result of population pressure, socio-economic changes, notably the increasing commercialisation of production on communal land and technological innovations, customary land tenure systems are gradually being eroded. The most obvious manifestation of this in many parts of the country is the privatisation of grazing land through enclosures.

This process is facilitated by the fact that customary land rights are not protected by statutory legislation. Article 16 of the Constitution protects the rights of Namibians >to acquire, own and dispose of all forms of immovable and moveable property=. Since moveable and immovable property in the communal areas cannot be owned and disposed of in a legal sense, the Constitution does not protect customary rights in the same way as outright ownership. In a very profound sense, then, people in the rural areas occupy such land at the discretion of the state, with little or no protection from statutory law.²

It follows from this that customary land rights are not registered in the formal registry. However, in some areas land records of allocations made for enclosures by tribal authorities have been established at the local level and are being maintained by the tribal offices concerned.

The main impact of the erosion of customary land management and tenure arrangements on communal land users has been that the gradual enclosure of communal pastures is limiting access to seasonal grazing areas. The process does not seem to have had any negative impact on existing rights to residential and crop land, so that tenure on agricultural land continues to be reasonably secure.

2.1.2 Land tenure in urban areas

Urban settlements in Namibia only developed during the colonial era. The process of establishing villages and towns was not uniform in the country. Formal urban centres developed first in the central and southern parts of the country. This was directly linked to the pattern of colonisation and land dispossession, first by the Germans until 1915 and then by the South African colonial regime until 1990.

¹ A Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned. @ (Article 100, the Namibian Constitution.) Schedule 5 of the Namibian Constitution sets out procedures for transfer of unalienated state land to be the property to the Government of Namibia.

² Recent attempts to evict the Koe community from land allocated to it along the Kavango river illustrates the point.

Access to these towns by black Namibians was strictly controlled through pass laws and a prohibition on property ownership by blacks. Only white people could obtain freehold title to their plots or *erven*. As a result, towns and villages in the southern and central parts of Namibia were predominantly white areas. The black workforce lived in separate locations with inferior service and housing facilities.

In the northern communal areas formal urban areas did not develop until the 1960s, and then mainly in response to the administrative and military requirements of the colonial state. Similar to towns in the south, urban areas in the northern communal areas were effectively segregated, consisting for the most part of two separate sections: one formal and fully serviced white town, and another, less or undeveloped formal township for blacks, including informal settlements. (Tvedten et al., 1995, pp. 4-5) After independence these towns were proclaimed under the Local Authorities Act, 1992. In terms of the Act, the entire town area was registered in the name of the Government or a local authority. In accordance with the Townships and Division of Lands Ordinance No. 11 of 1963, the land will eventually be subdivided to create erven or plots of urban land. These will be serviced and sold to the public to be held under freehold title.

Permanent structures in unproclaimed towns on communal land were in most cases owned by the state. People, whether white or black, had to rent these houses from the government. However, the South African government had introduced a peculiar form of tenure which, although falling far short of the security provided by freehold title, provided more formal security than a customary allocation or a rental agreement with the government. This form of tenure became known as PTO, short for Permission to Occupy.

PTOs were issued in terms of section 25 of the Administration Act 38 of 1927 read with section 21(1) and 48(1) of the Development Trust and Land Act 18 of 1936, and deemed to be granted in terms of section 18 of the Development Trust and Land Act 18 of 1936. (Alberts et al., 1995, p. 46.) PTOs were generally issued within the planned portions of urban areas and are based on surveyed plans and are given in respect of surveyed parcels. (Alberts et al., 1995, p. 46.) While the Development Trust and Land Act provided for the issuing of PTOs for arable land, this does not seem to have happened. However, since Independence, the Ministry of Lands, Resettlement and Rehabilitation has taken on the responsibility of issuing PTOs for rural land. In most instances this concerned unsurveyed land which did not fall within the boundaries of towns in communal areas. (Howard, 1995, Appendix III.)

PTOs provide a limited personal right to occupy an identified site for 20 years with an option to renew for a further 5 years. While occupation is reasonably secure, the Schedule attached to the PTO form sets out the conditions and limits of a PTO. These include a prohibition on the transfer, mortgage, cession, lease, sub-letting or alienation of rights, except with the permission of the Permanent Secretary of the Ministry of Regional and Local Government and Housing. Such permission can only be denied with just cause. In reality, therefore, PTOs are freely traded. The form which this takes is that the holder of a PTO will hand in the original PTO to the Ministry of Regional and Local Government and Housing and a new PTO will be issued to the purchaser of the PTO. Although the only formal fee paid by the purchaser is an annual royalty to the Government, PTOs (particularly in commercial areas) are being traded for thousands of dollars. However, no data exists on the extent of this informal land market, nor on how it operates.

Records of PTOs issued are reasonably up-to-date and reflect who is entitled to the property. Problems do arise occasionally, such for example, when several different people have been granted PTOs to the same parcel or when boundaries have been inadequately defined. These problems have usually been resolved through informal mediation without recourse to the courts. The capacity thus exists within government to deal effectively with the allocation and control of PTOs and maintain appropriate registers.

It appears that many holders of PTOs view the system as an inferior form of tenure which was used historically to deny black people access to full property rights. For many, the value of the PTO is the expectation that the holder will have an option to purchase the parcel once the town is proclaimed. The fact that the PTO is not a freely marketable title constrains financial lenders from expanding the credit market.

Co-existing with the system of PTOs and state owned property, is the system of customary tenure. In the mid-1990s all four main informal settlements in Oshakati had their own headman and/or -woman. Although they acquired their position by having been the first to settle in a particular area rather than by election or inheritance, they were integrated into the traditional authority structure through their Senior Headmen. (Tvedten and Hangula, 1993, pp. 19-20.). Their main tasks include the following. (Ibid, pp. 210-21.):

- X Land allocation. People wishing to settle in a particular informal area had to approach the respective headman and apply for the right to settle. Upon granting such a right, they were expected to pay a small fee to the headman.
- X Acting as councillor in local court cases. While this function is gradually declining in favour of formal law courts, headmen were central in settling various categories of cases by co-operating closely with elders in the community.
- X Maintaining law and order in the community. This task included controlling the selling of meat in the shanty areas.

The headmen of these areas continue to play important roles in the newly elected Community Development Committees. At their inception in the early 1990s, at least two CDCs were chaired by the respective headmen, who had been elected into these positions. (Ibid, pp. 21-22.).

The security of tenure provided by customary grants came under threat when local authorities were established in terms of the Local Authorities Act in 1992. With the proclamation of towns and the establishment of such authorities, all land falling within the boundaries of these newly proclaimed towns officially belonged to the government and was placed under the jurisdiction of local authorities. Residents in the informal settlements feared that their land rights would not be recognised by the local authorities.

After initial problems of working out compensations for informal settlers who had to be moved, local authorities now seem to accept informal settlers.³ However, they would like to formalise these areas and grant formal rights to residents on the land in order to collect taxes and charges for utilities. Such moves are hampered, however, by inappropriate legislation. The Townships and Division of Land Ordinance No.11 of 1963 pre-supposes a clear site, rather than a parcel of land which has been settled in an un-planned and uncoordinated manner. In other words, the legislation was not intended to provide rapid answers to a pressing uncoordinated urbanisation process. (Howard 1995, pp. 4.)

Formalisation may be held up by another problem, namely the unavailability of vacant land within the boundaries of proclaimed townlands for development. Much of the land which seems to be vacant has been allocated to people by the traditional authorities for farming purposes. At present the government and local authorities have no clear policy on how to acquire such land. For now, both seem to be unwilling to use legislation to gain possession of the land, clear it and determine compensation for the extinguishment of existing rights. (Howard 1995, pp. 4.) Government and local authorities in the north have accepted that existing customary rights cannot be summarily extinguished and holders ordered to leave. At present, the compensation package approved by Cabinet will only solve the problem in a few areas. It is thus of great importance that government addresses the issue of compensation seriously in order to develop an appropriate policy and legislative framework.

³ A caveat should be entered here. Recent research in Oshakati suggests a negative attitude towards the so-called informal and squatter communities in general. Some informants went so far as to claim that such people are of a 'lower class' . in addition, the perception seems to exist that land occupied by 'squatters' implied temporary occupation - "They are not seen as a permanent fixture of the urban landscape and a factor which has to be accommodated and planned for, but are rather viewed as a temporary phenomenon which will have to be removed to make way for more formal development." It should be emphasised that such remarks have only been observed in Oshakati, Namibia's second fastest growing town, and may therefore not be representative of other localities. (Frayne, 1997, pp.20.).

2.2 Socio-economic trends in urban areas

2.2.1 Demographic development

In the mid 1990s, the total population of Namibia was in the region of 1,5 million people. This figure represented about 250 000 households. 71% of this population (66% of households) were living in the rural areas and the remainder in urban areas. (RoN 1995, p. 6, 12.) However, the population is highly unevenly distributed. In terms of aggregate figures, four regions in the north of the country (Omusati, Ohangwena, Oshikoto and Oshana) accommodate 45% of the total population or 37% of households. Windhoek has 34.5% of Namibia's total urban population and the average annual growth rate from 1991 to 1995 has been 5.44%. (Tvedten, et al., 1995, pp. 6-9; Municipality of Windhoek, 1996, p. 7.) This has led the UNDP to comment that >no other country in Southern Africa has such a large proportion of its urban population living in the capital=. (Quoted in Tvedten, et al., 1995, p. 9.) The degree of urbanisation in the 4-O regions was 26% in Oshana Region and 13% in Oshikoto Region in the early 1990s. The other two regions had hardly any urban areas. (Tvedten et al., 1995, p. 8.) Of the urban population in Oshakati and Odangwa, 60% and 50% respectively were classified as informal settlers in the mid-1990s. (Tvedten, et al., 1995, p. 14.)

The urban areas of Namibia are growing at the rapid rate of 3.75% per annum on average. The fastest growing towns (Walvis Bay, Katima Mulilo and Rundu) are estimated to grow at a rate approaching 6.5%. Estimates of urban growth rates in communal areas seem to be conflicting. Based on 1991 census figures, one study has argued that urban population increases in communal areas seem to be lowest for the three major towns in the 4-O regions: Oshakati, Ongwediwa and Ondangwa. This has been ascribed to several factors. In the first place, these towns owe a lot of their existence to the South African army during the liberation war. Since Independence, a large number of soldiers have left these towns. In addition, the development of secondary centres with basic social services such as Outapi and Eenhana seem to have slowed the rate of urbanisation in the major centres. (Tvedten, et al., 1995, p. 12.)

By contrast, a recent survey of Oshakati's informal settlements, has found that the population has increased by 50% over a 3-year period. It should be emphasised that these figures are not based on a formal census and too much importance should not be attached to their accuracy. However, they seem to suggest that the informal settlements are growing very fast, and it is an important factor to consider for planning and development purposes. (Frayne, 1997, p. 13.)

Urban areas, specifically on communal land, cannot be understood in isolation from the surrounding rural areas and economies. In the 4-O regions, for example, the urban economy - formal and informal - forms an important source of additional income for the largely subsistence based rural agricultural economy. As a result, the relationship between urban and rural is characterised by >a continuous transfer of resources between the urban and rural household units=. (Tvedten, et al., 1995, p. 14.) In addition, people vacillate between urban and rural and therefore frequently regard their stay in the urban area as temporary. Tvedten et al (ibid) have observed that many people move back to the rural areas when they are getting older.

This has important implications for settlement and housing. In the first instance, the >temporary= nature of many people=s stay in the urban areas results in an unwillingness to make long term investments in an urban life. (Tvedten, et al., 1995, p. 14.) This seems to be partly reflected in the nature of dwellings found in the informal settlements of Oshakati, where in the mid-1990s 64% of households were found to live in shacks, >with many of the brick houses being in poor condition=. (Tvedten, et al., 1995, pp. 14-15.)

Urbanisation in Namibia is directly correlated with the increasing inability of agriculture in the communal areas to feed a growing number of people. Apart from declining agricultural production, employment opportunities in rural areas are limited, which leads an increasing number of people to migrate to major urban town in search of jobs, education and better social services.

2.2.2 Economic developments

The strong urban-rural links and resultant >temporary= nature of urban residence in Oshakati only partly explain the lack of investment in informal settlements. Widespread poverty is a major contributing factor towards urban underdevelopment.

In 1997 Namibia=s per capita GNP at constant 1990 prices was US\$ 992⁴, placing the nation in the lower end of medium human development countries (RoN, 1998, National Accounts, p. 5.) However, this indicator masks an income distribution which is among the most skewed in the world. As an example, 8.5% of the population consumes 50% of the private consumption. The average annual per capita consumption for this small group of the population is US\$2620, while the average annual per capita consumption for the remaining 91.5% of the population is US\$240. (MRLGH, 1996, Section 6.4.) The distribution of income is further differentiated according to regions. Khomas Region, for example, within which the capital city is located registered the highest income in the mid-1990s: accommodating only 11,6% of the total population, its residents consumed 37% of all income. This stands in sharp contrast with Oshana Region, for example, within which Oshakati falls. While accommodating the same percentage of the population as Khomas Region, the Region only earned 6,5% of total income. (RoN, 1995, p. 12).

Several other indicators confirm vast regional differences not only to income but also to services. Table 2.1 below summarises these differences for the Khomas, Oshana, Oshikoto, Omusati and Ohangwena regions.

Table 2.1: Regional distribution of income and access to services

Region	% of Population	% of Total income	Lighting without electricity	Bush or bucket as toilet	No pipe or well within 5 minutes	TV	Phone	Motor vehicle
Khomas	11,6	36,9	21	7	4	60	56	48
Oshana	11,6	6,5	90	65	62	7	7	15
Oshikoto	8,4	4,2	85	72	64	10	5	15
Omusati	11,0	4,8	98	83	85	2	1	13
Ohangwena	13,7	4,4	99	94	80	1	0	7

Source: Republic of Namibia, 1995, pp. 30-31.

Un- and underemployment in the communal areas is very high. At a regional level, 47% of the economically active population was under- or unemployed in the Oshana Region in the mid-1990s. This compared to 58% for Oshikoto, 56% for Omusati and 63% for Ohangwena Regions. (RoN, 1995, pp. 26.) With regard to Oshakati specifically, the unemployment rate was estimated at 31%, while 33% of the adult population depended on informal employment. Only 20% were formally employed, often in menial low-paid jobs. Income levels were correspondingly low, with 60% earning US\$100 or less per month and 40% earning US\$100 or more. (Tvedten, et al., 1994, pp. 14.)

The socio-economic situation in Windhoek is not very different. Only 15% of its population lives in informal settlement areas. However the unemployment rate in these areas is 33% compared to 22% for the whole of Windhoek. The level of income in the informal areas is very low too. The average monthly income is US\$85 per month and 85% of the households here earn less than US\$170 per month which is estimated to be the primary household subsistence level. The population in informal areas can thus

⁴ Exchange rate: 1 US\$ = 5 Namibian Dollars

only afford marginal monthly repayments for land and housing. 92.5% of these will not be able to afford more than US\$9 per month. (Municipality of Windhoek 1995, Vol. 1 and 2.)

Despite relatively low levels of income and employment, the northern communal areas appear to have a thriving informal economy in which large amounts of money change hands outside the formal banking and financial structures. The most prominent forms of economic activity in the informal sector are Cuca shops (small shops usually selling a few essential foodstuffs and alcohol) and hawking of various commodities and foodstuffs. (Tvedten, et al., 1995, p. 14.)

Indications are that both the formal and informal economies are developing at an increased rate. Economic opportunities are likely to grow as the number of formalised parcels of land increases. Amongst the factors which contributed to increased economic activity is the fact that since independence increasing amounts of government spending have been directed to the northern regions. By 1996 just over 46% of Namibian public expenditure went to six of the seven northern regions. (NPC, 1998, p. 46.) An additional factor is that cross-border trade with Angola has increased rapidly since the signing of the Lusaka Peace Accord in 1994. Such trade was estimated to be between US\$ 2-5 million monthly. (ibid, p. 48.) Other sectors that have mushroomed are the taxi sector and indigenous construction companies which are winning an increasing share of contracts especially from the public sector. (Ibid, p. 49.)

As a result, all the major commercial institutions represented in Windhoek appear to be looking for a piece of the action. Several banks have opened branches in the north and the regional chamber of commerce located in Oshakati is already the largest regional chamber in terms of number of members. Prospects of peace in Angola are likely to stimulate further economic development in the north as this region is viewed as a springboard to other countries in southern and central Africa.

2.2.3 Increased need for land

The tendencies just outlined will increase the demand for serviced land not only for residential purposes but also for business. At the same time, the housing backlog is huge in Namibia terms. In 1994 it was estimated to be in the region of 37000 units nationally. (National Planning Commission, 1995, p. 464.) In the National Plan of Action for Habitat II access to affordable serviced land for the low-income groups was singled out as one of the main constraints in the housing process. (MRLGH, 1996, Sections 2.4 and 2.5). Estimates put the number of families presently living in urban areas without secure tenure to the land at 35000⁵. With an estimated household size of 5 persons this amounts to 175000 people, which is equivalent to 12.5% of the Namibian population and more than a third of the urban population.

At the same time, the cost of developed land is unaffordable to most low-income groups. The market price is as high as US\$ 12 per m². (MRLGH, 1996, Section 6.5.1.) This figure must be seen in relation to the socio-economic characteristics of urban areas in Namibia discussed above. This high cost of serviced land is due to the procedures involved in the planning and development of land and the high standards of infrastructure demanded by local authorities. (MRLGH, 1996, Section 2.5.) To alleviate these problems it will be necessary to plan less expensive residential areas with a lower provision of services, but where people can still be granted secure tenure.

While economic development will increase the demand for serviced land, it is likely that urban development in the northern communal areas will accelerate due to the fact that these areas seem to enjoy a comparative advantage for future settlement over Windhoek, in the sense that water is more readily available. Water is more easily accessible in the northern areas than in Windhoek as it is

⁵ This figure is based on a combination of dwelling unit estimates, average household size, and numbers provided by the Namibia Housing Action Group (A Namibian NGO). The figure is not exact, however, it appears to give a reasonable estimation for the urban informal settlements. Without a full census the actual numbers cannot be ascertained. (Frayne, Oct. 1997, p.6.)(Tvedten, et. al., 1995, p.11.)(Hoejgaard, 1993, pp.33-36.)

sourced from large northern rivers - the Kunene in the 4-O regions, the Kavango in Kavango region and the Zambezi in Caprivi. Furthermore, a railway line is planned to Oshakati and digital satellite communication will be available in the region during 1998. Such initiatives will fertilise the economic climate and it is expected that the economy will continue to grow for the northern areas. (Frayne, 1997, p. 18.)

2.3 Present problems experienced in Namibia

Several obstacles have prevented the needs for secure tenure from being met in much of the country. Indeed, the benefits of formal tenure, with the exception of the highly limited PTO mentioned above, are almost non-existent in the northern portions of Namibia which is home to about half the population.

At present, several initiatives are under way to address the fundamental problems associated with this lack of secure tenure in the former homelands. In respect of the planned portions of northern Namibian towns, a few have already been proclaimed and a number of others are in various stages of the proclamation process. As set out before the formalisation is a slow process which is primarily hampered by outdated legislation but also human resources and administrative capacity; a capital city syndrome and financing mechanisms adversely impact on the whole operation. These are discussed in more detail below.

2.3.1 Legislation

Both statutory and customary legal systems present problems in Namibia.

The planning and development of residential erven have not been able to keep up with the level of influx to the towns because the planning and township establishment procedures are too slow and cumbersome. The procedure for the establishment of townships takes between 18 and 24 months. The major delays are more often than not waiting for a survey and the post survey administrative process but also bureaucratic and cumbersome planning requirements take many months. (Howard, 1995, Appendix 1.) The present legislation does not cover regularisation and formalisation of existing settlements, and the development of procedures for this has not been a priority. Township proclamation procedures, as set out in the Town Planning Ordinance, 1954, and the Townships and Division of Lands Ordinance, 1963, contain lengthy, time-consuming requirements for proclaiming and formalising urban areas and delays are exacerbated by limited human resources. The procedures are designed for development areas (green-field) and not built-up areas such as existing informal settlements.

The reality therefore is, that much of the urban development in Namibia has taken place outside of the prescribed sequence of Planning, Servicing, Building, Occupation (PSBO) of the orthodox planning model. The sequence of the urban development process has practically been the reverse: Occupation, Building, Servicing and Planning (OBSP). (Baross, 1990, p. 63.) This reversed sequence generates its own problems. For the low-income families who pursue this strategy the obstacles are related to securing their occupation of the land and with difficulties getting access to services. For the authorities the main problems are that the town develops outside their control and often on areas difficult to service.

The Survey Regulations refer to the old Survey Act dating from 1927 and the prescriptions of survey methods and accuracy requirements are outdated. New restrictive survey regulations with relation to the Survey Act of 1993 have been drafted but are not put into operation yet. The Ministry of Lands, Resettlement and Rehabilitation does recognise the need for more surveyors and the possibility of persons other than registered land surveyors carrying out parts of a formalisation process. The Minister requested in 1996 the Survey Regulations Board to take these factors into consideration when drafting the new Survey Regulations. However, this was not recognised as a priority for the Survey Regulations Board.

Legislation controlling banks and building societies limit their flexibility when financing development. Banks are governed by the Banks Act, 1965 (Act No. 23 of 1965) which sets strict liquidity requirements and prescribe the risk weightings that are allocated to different forms of lending. In practice, for small

loans (say under N\$10,000), a bank may be satisfied with the title being lodged; for larger loans, risks are likely to be managed by registering a mortgage bond.

Building Societies are governed by the Building Societies Act, 1986 (Act No. 2 of 1986) which also sets liquidity requirements and risk weightings. In addition, building societies are restricted to lending on the security of mortgages over urban immovable property which is defined as:

- X Any piece of land registered as an erf, lot or stand in a deeds registry, and situated in an approved township as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963), and includes every defined portion, not intended to be a public place, of a piece of land laid out as such a township, whether or not it has been formally recognised, approved or proclaimed as a township.
- X a registered long term lease of not less than twenty years (in which case a cession of the lease is regarded as a mortgage).
- X land granted in terms of section 18(4) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936).
- X any other land or rights thereover approved by the registrar of building societies..

Although the above definition potentially provides a range of options for the provision of security, the building societies do however restrict lending to mortgages over land registered in a deeds registry and within proclaimed townships. At times there are exceptions: building societies have lent money in the town of Rehoboth which is not yet a proclaimed township.

A number of different formal regimes and customary practices govern marriage, divorce and inheritance in Namibia. The complexity of these regimes means that decisions as to the transfer of property arising from marriage, divorce or death are not easily resolved and that disputes may arise frequently. One large problem to highlight is the provision of secure tenure is also complicated by the differing matrimonial property regimes applicable in different parts of the country. The Married Persons Equality Act, once in full operation, should rationalise these different regimes and the subordinate status of women in marriage and property laws can be removed.

2.3.2 Human resources

Substantial bottlenecks occur because of limited capacity regarding land surveyors, conveyancers and town planners in both the public and private sectors in Namibia.

In 1992 the staff situation in the Division of Survey and Mapping (the Division was in December 1997 upgraded to a Directorate) was at its most critical stage. About 20 years ago there were approximately 100 posts for officers on the organisation diagram of the Directorate. This number had been drastically reduced to 13 officers of which only two were land surveyors in 1992. As a result of the decrease in the number of surveyors and a dramatic increase in surveying tasks there was an urgent need for surveyors.

Interviews with government officials and private sector personnel indicated that the Surveyor-General would be under increasing pressure to provide data in a format which was acceptable for modern technology. There was, however, a severe lack of resources (adequately trained personnel as well as equipment) which were needed to facilitate the supply of data to the customers. Furthermore there were a limited number of survey staff who had appropriate training in surveying. The age profile of those that had received appropriate survey training was such that they were near retirement.

There was a period where the Directorate of Survey and Mapping had to operate without a professional land surveyor. Although the situation has improved in the Directorate, the office has however not been able to attract Namibian staff. Presently only one Namibian land surveyor works in the office whereas the remaining surveyors are all foreigners working temporarily in Namibia. Even simple subdivisions take a considerable length of time, in part because they must be approved at a central government level and because there is a lack of human resources for the examination process. In the case of township proclamation, the current delay is three years. Given that increased pressures will be placed on the proclamation process, it is probable that this delay will not decrease and may in fact increase.

These severe constraints were observed by the Ministry of Lands, Resettlement and Rehabilitation. In early 1995 the Directorate of Survey and Mapping prepared a development strategy including a new organisation structure. The Public Service Commission approved the structure in 1997.

The Directorate of Survey and Mapping has over the period of the last eight years double the number of examined and approved new erven per year. Table 2.2. below gives the number of examined and approved erven.

Table 2.2 Number of examined and approved erven.

APPROVED	1990	1991	1992	1993	1994	1995	1996	1997
SURVEY RECORDS	157	158	153	175	233	N/A	N/A	N/A
DIAGRAMS	754	706	600	599	585	986	973	779
GENERAL PLANS	15	4	11	23	34	43	49	43
ERVEN ON G.P.	3064	1564	2068	4947	7105	6480	6909	7422
TOTAL	3818	2270	2668	5546	7690	7466	7882	8201

Source: The Ministry of Lands, Resettlement and Rehabilitation annual reports and Survey Record Books.

The small number of private land surveyors is hard-pressed to meet the demand for surveying. Almost all private land surveyors have their office situated in Windhoek, and there is no easy access by the population to land surveying services. Due to a pressing demand for getting land surveyed, South African land surveyors have applied for membership of the Namibian Survey Council. This will enable them to carry out cadastral surveys in Namibia.

The Directorate of Deeds (the Directorate of Deeds was upgraded from a Division in December 1997) maintains two offices where deeds are lodged. One is in Rehoboth which only deals with land transactions in that area according to the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976). The other is in Windhoek which records land transactions for the rest of the country according to the Deeds Registry Act, 1937 (Act 47 of 1937).

The number of deeds in the Office in Windhoek has during the last five years been stable. In 1995 the office had a number of unfilled posts and that additional demands without subsequent additional staffing and a backlog were encountered. Table 2.3 below gives the number of transfers, bonds, section titles, etc. approved by the Directorate of Deeds in Windhoek and Rehoboth.

Table 2.3 Number of examined and approved erven.

	1993	1994	1995	1996	1997
Deeds Windhoek	25658	28568	30661	20321	23413
Section title	1334	1319	2456	2015	2036
Deeds Rehoboth	N/A	N/A	610	396	531

Source: The Registrar of Deeds.

The Rehoboth Office was established in 1976 as a part of the home rule of the Rehoboth Bantustan. When compared to the Windhoek Deeds Office there are some similarities in operations, but in general land transactions are simpler and less expensive for the parties involved. A marked difference between the two offices is the absence of a conveyancing profession in Rehoboth. In Rehoboth contracts of sale

are prepared and presented to the Registrar by the parties. Outside the Rehoboth area, land transactions can only be registered by operating through a conveyancer⁶. It is conveyancers who do the practical work and the function of the Directorate of Deeds is to ensure correctness and keep the documentation.

The conveyancing profession is relatively better equipped to meet an increased demand for professional services than the surveying profession. However the majority of conveyancers are located in Windhoek and a traditional lack of legal practitioners and conveyancers in the north has isolated the population there from the legal profession.

In many areas in the north, local authorities have only recently been established and lack the capacity to manage the land and its resources. According to the Local Authorities Act, 1992 (Act 23 of 1992) local authorities will provide a broad range of services to all citizens, and these services are paid for through local taxes and government grants. Elected local authority councils are responsible for roads, water, sewage, fire protection, rubbish collection and other services. Local authority councils also have an essential planning and coordinating role. However, most of these responsibilities have not been put into operation yet. Some of these authorities have, however, demonstrated their administrative capabilities not only in respect of their own areas but also by managing on an agency basis some functions (such as the APermission To Occupy@ system) for areas destined to become administered by other, as yet uncreated local authorities.

Town planning is for most local authorities carried out by the Division of Town and Regional Planning in the Ministry of Regional and Local Government and Housing on an agency basis. New planning developments are normally contracted (no tender requirements) to the private town planning profession. Thus no capacity building within local authorities. Consequently, it is difficult for local authorities to fulfill their responsibility to coordinate town planning.

2.3.3 Capital city syndrome

Windhoek, like most capitals in developing countries, holds almost all the country's commercial infrastructure. Government agencies such as the Directorate of Deeds and the Directorate of Survey Mapping are concentrated in Windhoek along with many land surveyors, conveyancers and the head offices of all major financial institutions.

2.3.4 Financing resources

Financing mechanisms impact on formalisation of property rights in several ways. First, finances are needed for the creation of formal property rights and associated improvements to homes and the provision of utility services. Second, formal property rights may serve as collateral to secure credit for a variety of purposes in addition to those related to property, for example, to pay education fees and the like. The secured interests of the lender will be registered in a registry office. A number of organisations provide credit against security of a property right but this source of finance is not available to the majority of the urban settlers without secure tenure, as described below. The need for sustainable financing, that is sources of credit that will exist and replenish themselves for several decades and which are available to the majority of urban settlers, is enormous.

In Namibia there is a general tendency to associate access to formal land tenure with access to a loan.

⁶ A conveyancer is a legal practitioner who holds a certificate as having passed an examination in conveyancing set and held by the Board of Legal Education. (Legal Practitioners Act, 1995 (Act 15 of 1995.))

This is, however, far less certain. Finance institutions will not be satisfied solely with the land as collateral, they will also assess the ability of the potential borrower to pay back the loan. Thus formalisation of land tenure will not automatically give access to credit on mortgaging terms for the large groups with low or informal incomes. (Haldrup, 1995, p. 22-23.)

Due to the difficulties for informal settlers in getting access to credit from formal credit institutions, groups of low-income people have started to organise and manage saving and loaning programs to enable them to control their own housing process. The groups are being assisted by Namibian Housing Action Group (an Namibian NGO) and financial assistance is provided by donors.

2.4 Focus on the land issue

Soon after independence, the Namibian Government focused its attention on the question of land distribution and land ownership. This was necessary in view of the highly skewed distribution of land in Namibia and to give meaning to the provisions of the Namibian Constitution. In the first instance, Article 16 of the Constitution states that all Namibians have the right to acquire, own and dispose of property.⁷ In addition, Article 21 enshrines the right to reside and settle in any part of Namibia as one of the fundamental freedoms to be enjoyed by all Namibians. Given the sensitive nature of the land question and demands for a more equitable distribution of land, government decided to convene the National Conference on Land Reform and the Land Question in 1991. The primary aim was to consult as many stakeholders as possible on future land policy and land reform and come up with a number of consensus resolutions which would guide government in formulating its policy.

The Land Conference succeeded in bringing together 500 participants from all regions of the country. After five days of deliberations and debate Conference participants agreed to 24 resolutions dealing with communal and commercial agricultural land. Urban land was not discussed at all.

Regrettably, the process of countrywide consultations lost its momentum after the Conference. For another four years no obvious progress in coming up with a land policy could be detected. Non-governmental organisations and a number of academics became impatient with government's seeming reluctance to formulate and implement a new land policy. The former therefore took the lead in organising the People's Land Conference in 1994. In addition to agricultural land, the need for urban land was discussed for the first time in a public forum. One of the conference resolutions in this regard states that:

There must be secure access to urban plots for all, especially women and low income households, with different possibilities of ownership and/or long term occupancy. (NGO Working Committee 1994, p. 14.)

The issue of land security was identified as one the most crucial issues with regard to urban land. As one working group put it, >the other problems are irrelevant until we have security to land=. (NGO Working Committee, 1994, p. 28.) Acknowledging that land was available in many local authority areas, participants felt that the cost of such land so high that many people could not afford it. Amongst several recommendations made by the Conference was that government should speed up the proclamation of towns and the demarcation of land as cheaply as possible. In addition, it was recommended that local

⁷ AAll persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.@ (Article 16, the Namibian Constitution.)

communities be given legal powers at the local community level to undertake land management tasks. (NGO Working Committee, 1994, pp. 28-29.)

For present purposes, the upshot of these deliberations is that in order to increase access to urban land three major issues need to be looked into:

- X the planning procedures must be adjusted to cater for the high rate of urban influx;
- X the level of infrastructure requirements must be appropriate to people's needs and financial means; and
- X procedures for a more speedy and affordable provision of secure tenure must be developed.

The current paper will focus attention on the last issue.

While a National Land Policy was slow in coming, Cabinet approved the National Housing Policy in July 1991. Its central goal is

to make resources available and to direct their use into the production of infrastructure and facilities so that every Namibian will be given a fair opportunity to acquire land with access to potable water, energy and a waste disposal system, and to have access to acceptable shelter in a suitable location at a cost and standard which is affordable to the individual on the one hand and to the country on the other hand. (RoN, 1991, p. 11.)

2.5 National Land Policy

Despite the absence of a comprehensive national land policy, the National Assembly passed the Agricultural (Commercial) Land Reform Act in 1995. The main objective of the Act was to provide a legal framework for the acquisition and allocation of commercial farm land for land reform. It did not deal at all with urban land or land tenure issues.

Simultaneously with the implementation of the Act, the Ministry of Lands, Resettlement and Rehabilitation began the process of drafting a national land policy. In July 1996 a draft Outline of a National Land Policy was released for public discussion. More specifically, the Ministry decided that the Outline should be subjected to a process of national consultations before finalisation and submission to Cabinet. The Namibia Non-Governmental Forum (NANGOF), an umbrella organisation for non-governmental organisations, was requested to facilitate regional consultations. At the end of regional consultative meetings, a national Consultative Conference on Communal Land Administration was held in September 1996 in Windhoek. The majority of participants were traditional leaders from all regions.

Critical inputs from this consultative process were integrated into the initial Outline where possible. The end result was a draft White Paper which was submitted to the National Assembly without further public discussion. This caused disappointment among non-governmental organisations who had been looking forward to a second consultation phase. After brief debate in the National Assembly the Policy was approved in April 1998.

The National Land Policy identifies =access to and tenure of land= as the most important concerns of people in Namibia. It sets out to >redress the social and economic imbalances inherited from the colonial past=. In keeping with these concerns and the Namibian Constitution, the National Land Policy *inter alia*

provides for a *unitary land system* for Namibia, in which all citizens have equal rights, opportunities and security across a range of tenure and management systems. Under the colonial regime there were, in effect, first and second class systems of land tenure, divided along racial lines. In independent Namibia, the full range of tenure and management systems will be given equal status and validity before the law. (RoN, 1997, p. 6.)

Thus, in a significant departure from pre-independence policies and practices, the National Land Policy provides for different forms of land rights which will be given equal status before the law. These are detailed as follows:

- X customary grants;
- X leasehold;
- X freehold;
- X licences,
- X certificates or permits; and
- X State ownership. (RoN, 1997, pp. 8-9.)

In addition, the National Land Policy proposes different categories of land right holders. These categories will be:

- X individuals;
- X families which are legally constituted as family trusts in order to assure specified individuals and their descendants of shared land rights;
- X legally constituted bodies and institutions to exercise joint ownership rights;
- X duly constituted co-operatives; and
- X the State. (RoN, 1997, pp. 9.)

The National Land Policy attempts to deal with all land, rural and urban. With regard to the latter, it recognises that >many poor people have no official rights to the land on which they are trying to exist=. (RoN, 1997, p. 4.) Acknowledging that the need for urban land of all sectors of the population should be addressed, the main aim of National Land Policy is >to overcome inequalities in the system and provide access to affordable land for the poor and disadvantaged sectors of society. (RoN, 1997, p. 12.)

One of the problems identified in the National Land Policy is that not all citizens can afford freehold title, but that they may aspire to it and the advantages it confers. At present, freehold title is the only form of secure, registrable title available in urban areas. As such it is the only title that provides the holder with ownership that is transferable, inheritable and provides collateral for a loan. While all people are not necessarily looking for rights to mortgage their land for example, most people wish to obtain some form of secure tenure. (RoN, 1997, p. 13.) In order to satisfy these various demands, the National Land Policy proposes to introduce a number of different types of secure title. These types of title may be held by groups as well as individuals. The National Land Policy also proposes to amend the existing titling and registration procedures in order to reduce costs, thus enabling government to provide a starter title at a cost low enough to enable the poorest owner to benefit. Starter title will be upgradable in stages according to the financial circumstances of the owner. (RoN, 1997, p. 14.)

Together with the envisaged provision of secure tenure on a much wider scale the National Land Policy aims to bring more control and direction of land matters to the communities affected. It will therefore be necessary to increase the registration capacity and to decentralise it. (RoN, 1997, p. 15.) Government will establish Regional Land Registries as and where the volume of transactions dictates. Furthermore, Local Land Registries in each urban area will be established in terms of legislation which will introduce an upgradable land registration system. In order to avoid the duplication of task, the establishment of Local Land Registries will be co-ordinated with the establishment of Land Boards responsible for the administration of rural land. (RoN, 1997, p. 15.)

The National Land Policy proposes that programmes for upgrading informal and squatter settlements will be supported on the one hand by ensuring that additional local land is available for settlement of those people who may be displaced by the formalised planning of informal settlements and the provision of secure tenure through the upgradable tenure system and registration based on local land registries on the other. In addition the National Land Policy proposes that each informal housing structure, where not situated on public land, will be upgraded rather than be removed against the will of those people occupying it. Informal settlers will participate in this process. (RoN, 1997, p. 16.)

2.6 Options for responding to the problems

The desire for a more secure form of tenure and a wide array of property-related needs have been expressed from various sides of Namibian society as outline above. One way of analysing these needs is to categorise them according to the perspectives of individuals and government as shown below. (Alberts, et al., 1995.)

The individual=s perspective of the needs:

- X Assurance that the person and family will not be evicted without compensation;
- X Assurance that the person can improve the house to protect against weather, thieves, etc.;
- X Assurance that the children can inherit the property;
- X Ability to sell or otherwise transfer the property;
- X Ability to borrow money using the property as collateral;
- X Reduction of property disputes;
- X Implementation of services to the property (e.g. water, electricity, and upgrading of roads);
- X An inexpensive and easily accessible system of administering property interests;
- X A flexible system of administering property interests, e.g. the ability to accommodate individual and group rights; and
- X Assurance that the legal form of property rights (e.g. title) acquired will not be regarded as inferior.

The government=s perspective of the needs and problems:

- X Foundation for implementing a just system of taxation;
- X Foundation for implementing land use and building control;
- X Foundation for constructing infrastructure;
- X Ability to deliver land to the people on titles that are not perceived as inferior;
- X Ability to strengthen land control for decision taking and land management;
- X Ability to deliver social justice in relation to land reform and resource allocation; and
- X The building of social stability through citizens owning part of, and having a stake in their country.

As discussed earlier many obstacles have prevented these needs form being met in much of the country. The core problem is:

Limited access to secure tenure in urban areas for low-income families create problems for individuals and government.

The solution to the problem is to extend the present formal property registration to the whole country. However, factors such as legislation (e.g. requiring time-consuming, expensive procedures or limiting the flexibility of certain actors); a shortage of people with required skills in the public and private sector; the fact that many people in informal settlements are self-employed or unemployed and lack a regular income; the concentration of facilities in Windhoek; and the limited financing mechanisms available, hinder the extension of the existing formal system.

Three options for responding to the problem were considered:

- X To do nothing whilst waiting for many years for the existing system to slowly cover the nation;
- X To have rapidly expanded the present land surveying and registration system with massive inputs of expatriate labour and external funds; or
- X To develop a parallel interchangeable property registration system for Namibia where the initial secure right is simple and affordable but may be upgraded according to what the residents and the government need and can afford at any given time.

The first two options were not considered feasible for obvious reasons. The last option became the subject for a two-years research programme in the Ministry of Lands, Resettlement and Rehabilitation with consultative workshops with stakeholders, pilot testing of a model for an upgradable land registration system and finally preparation of a proposal. The following Chapter will discuss the process.

3. DEFINING THE REQUIREMENTS FOR A LAND REGISTRATION SYSTEM

This Chapter outlines the need for consultation with stakeholders to accommodate for anticipated resistance. To overcome the resistance it was decided to bring stakeholders together in a process of consultation which should also increase their support and acceptance. The consultation process is described as well as the output prepared. In addition the criteria of fundamental design requirements are discussed. The output and design requirements are combined and a model for a parallel interchangeable property system is presented.

3.1 The need for consultation

In view of the need to devise a new tenure system affordable by and accepted to low income communities it was considered necessary to invite them to participate in the process. Experiences from all over the world show that formalisation of informal settlements as a planning solution is widely supported by communities. Through the formalisation process usually takes time, the existing community structure is minimally disrupted and hence the settlers show better willingness to cooperate with planning, mapping and demarcation of boundaries.

In addition, it was also anticipated that resistance to a new land surveying and registration approach could be expected from the planning, surveying and conveyancing profession. Moreover, ideological resistance, i.e. government providing second class tenure security for the disadvantaged people, could be anticipated from black communities. The sources of resistance is briefly discussed below.

3.1.1 Resistance from the survey profession

In Chapter 2 the capacity in the Directorate of Survey and Mapping was outlined. During a 20-years period the capacity in Surveyor-General's Office was reduced drastically. In 1992 the office could only undertake examination of cadastral work performed by private land surveyors. The office was out-of-date, expensive to maintain, largely ineffective in practice and irrelevant for modern conditions and requirements. The Office was under increasing pressure to provide data in formats which were acceptable to modern technology. Global positioning systems had not been introduced in the organisation neither any expertise created to formulate specifications for the private industry which had started using such equipment. In addition, the Surveyor-General's Office was under pressure to accelerate the examination of surveys carried out by the professional surveyors who found the Office as the main bottleneck in delivering surveyed plots to the new proclaimed towns.

To accelerate the surveying and examination process was not easy because the Namibia cadastral system is rooted in concepts and practices dated back to 1927 (Land Survey Act No. 9 of 1927)⁸. Such survey traditions do not easily change. Discussions were undertaken with the private surveying profession and the Surveyor-General where options to accelerate delivery of land surveys were discussed. Some of the topics for discussion included:

- X community surveyors upgrading informal townships within accurate beaconed blocks;
- X relaxed survey standards for specific purposes;
- X cadastral surveying by photogrammetry;
- X massive input by foreign land surveyors; and
- X upgrading of title.

⁸ Namibia got its own Land Survey Act in 1993 (Land Survey Act No. 33, 1993). However, the survey regulations remained the same and by June 1998 only draft survey regulations have been sent for comments.

Community surveyors

A way of increasing the capacity for executing the cadastral surveys could be to introduce a system by which technical surveyors, survey technicians or "community" surveyors can carry out cadastral surveys. A community surveyor could be anybody who has been trained on-the-job for 6-12 months by a professional land surveyor or by the Directorate of Survey and Mapping, and who has passed a test set by the Surveyor-General. In order to ensure a certain quality and reliability, all surveys carried out by a community surveyor ought to be checked or at least accounted for by a registered surveyor who is either a private surveyor paid for this service or a surveyor employed in the Directorate of Survey and Mapping.

The advantages and disadvantages were discussed with the Surveyor-General and the private land surveyors. They felt that unnecessary workload would be added on the Directorate of Survey and Mapping on surveyed carried out by the community surveyors because they would not be able to deliver to the required standards. Furthermore, there would be a high risk of errors in the surveyed performed by them.

Relaxed survey standards

Relaxed standards for cadastral surveys were also discussed with the Surveyor-General and the private land surveyors. When discussing the standards it is important to look at what is the minimum standard of survey that can be accepted without compromising the integrity of the cadastre.

Various users have various demands for levels of accuracy of the description of boundaries. For record management purposes, an unambiguous parcel identifier is the only characteristic that is needed. When boundaries are disputed, adjudication, followed by good demarcation, solves many problems. It has to be noted that land disputes are an integral part of any administrative system securing rights in land. Therefore, procedures for adjudication of disputes will have to be designed and made operational. Also for other purposes good-quality mapping of boundaries is necessary in the long term. The degree of precision that is needed for such boundary survey is less clear - the traditional solution has been to work according to the limits of current technology rather than on a cost effective basis.

The private land surveyors felt that with the technological development in survey methods taking place, this discussion was not an issue. Especially GPS equipment offers high accuracies with minimal effort and cost compared to the traditionally applied methods of surveying, i.e. using theodolite and electronic distance measurements. In their opinion accuracy does not cost and there was strong resistance for downgrading the standards for land surveys. The argument was that Namibia has first world class survey standards and it should not be downgraded to third world standards.

Cadastral surveying by photogrammetry

Concrete proposals to accelerate delivery of surveyed parcels were also discussed with the Surveyor-General and the professional land surveyors. These discussions were based on examples from Bophuthatswana and Kenya where cadastral surveying had been done by photogrammetry. Although these countries had excellent experiences with photogrammetry it was however felt that it was not an option for Namibia because it presupposes the existence of features like fences and hedges. No beacons were placed hence the principle of general boundaries was applied. General boundaries were not considered feasible for Namibia because it would increase boundary disputes which could be an complicated process. Furthermore, it was argued that using photogrammetry would not be cheaper than conventional survey methods.

Massive input by foreign land surveyors

Generally the land surveyors and the Surveyor-General accepted the argument that there were too few land surveyors to undertake the demand for providing surveyed parcels for the new proclaimed towns. However, some Namibian land surveyors felt that only South African land surveyors could be permitted to undertake land surveys in Namibia because they would have the same recognised qualifications as their Namibian counterparts. Professional foreigner land surveyor could also be permitted carrying out land surveys in Namibia. However, to keep the high standards among land surveyors, a foreign land surveyor had to be supervised by a Namibian registered professional land surveyor for 9-12 months, pass a practical examination set by the Surveyor-General and pass a law examination also to be set by the Surveyor-General. Only foreign land surveyors in government service could afford such requirements.

Upgrading of title

Upgrading of title was also discussed with the Surveyor-General and the private professional land surveyors. The discussion was based on an Act which had been introduced in Republic of South Africa. The Act defines the upgrading of title and it stipulates ways to upgrade the tenure in an existing settlement area to titles. The only requirement is that a layout plan is existing, alternatively that existing boundaries are marked on an orthophoto or on a line map, and that the erven are numbered. No survey is required for upgrading to title. Only when the existing land occupant wishes to sell his erf a cadastral survey is required for the transfer of ownership.

The Surveyor-General and the private professional land surveyors did however not consider upgrading of title as an option because it would be more expensive and cumbersome if a land surveyor had to visit the site twice. The high cost for surveys was also often used as an argument for lowering standards and introducing community surveyors. However, the land surveyors found the fees for the planning and conveyancing process relatively more expensive.

3.1.2 Resistance from other professions

Similar concerns towards improving the land delivery system was encountered among other professionals such as town and regional planners and conveyancers. The conveyancing profession felt, that the role of the conveyancers in facilitating and administering the process provided an interface of skills and expertise between the public and the registration authority in a complex and changing area of law, was in jeopardy. Concerns were in particular raised with regard to the government's positive attitude towards the Rehoboth registration system which provided freehold title without assistance of a conveyancer. This was found to be the root to undermine Namibia's long-standing tradition of private ownership.

3.1.3 Ideological resistance

The government cannot afford to provide freehold title for all its citizens and neither is it technically feasible. Thus it will be necessary to create an acceptance in society that a new upgradable land tenure system does not reflect first class and second class versions, but rather the one that can be afforded at any given time by the tenure holders and the government. This is however not generally accepted among particular politicians and the new élite who regard an upgradable land tenure system as second hand and inferior title.

To some extent based on historical experience when black people could not obtain, at best the Permission to Occupy (PTO), which did not confer same rights as a freehold title. PTO illustrates the first and second class system. Many holders of PTOs view the system as an inferior form of tenure which was used historically to deny black people access to full property rights.

This type of ideological resistance had to be overcome.

3.2 Consultation with professionals and communities

The success of development and implementation of a new tenure system was crucially dependent on all the support and acceptance of all stakeholders: communities and various professionals. The only way to achieve this was to bring all of them together in a process of consultation.

3.2.1 Form taken for consultation

The Ministry of Lands, Resettlement and Rehabilitation organised two workshops within six months of 1994.

The first workshop increased awareness of the importance of land registration among the relevant communities, authorities and professionals, and a forum was established for discussions and evaluation of possible solutions on how to provide secure tenure for informal urban settlers. The workshop concluded that to increase the delivery of, and access to secure tenure in urban areas alternatives to the present system of land delivery and registration had to be investigated. Participants proposed to investigate proposals for a parallel interchangeable land tenure system⁹. The aim was defined to be an efficient and transparent system of land registration where the level of tenure at any time would be dependent on what the government and the people could afford. (Hoejgaard et al., June 1994.)

Ministries, local authorities, non-governmental organisations, community based organisations and non-governmental professionals participated in the workshop. Three working groups were formed with participation of above participants to develop the ideas which had been introduced in the fields of planning, land surveying and land registration. To encourage the private professional sector to be involved, it was decided at the workshop, to appoint them as chairpersons for the three groups. The groups were tasked to elaborate a report on options for parallel interchangeable property registration systems. The proposals from the three working groups were presented and discussed at the second workshop in October 1994. (MLRR, October 1994.)

Basic terms of references were prepared for the working groups during the workshop. The groups were requested specifically to investigate the following five aspects:

- X the roles of different actors;
- X options for a parallel property registration system;
- X implications of options on legislation, finance and manpower;
- X suitable monitoring and evaluation system; and
- X management and sustainability.

All working groups met 2-6 times during a four-months period and each of them prepared a report identifying solutions for how to provide secure land tenure to the informal settlers.

The second workshop discussed the proposals from the working groups. The working groups had only three months to tackle the five complex questions set to them above. The time constraint meant that their recommendations were not all fully researched or explored nor had there been time to resolve all outstanding questions. Moreover they had not had the opportunity to combine their work and thus the workshop was presented with a number of different approaches to choose from.

The second workshop specified the goals for the formulation and implementation of pilot projects. It was decided that the goals and the options presented at the workshop should form the foundation for the Ministry of Lands, Resettlement and Rehabilitation to design a model for a parallel interchangeable property registration system. However, the goals were not explicitly formulated and they were difficult to use for the design of a parallel interchangeable property registration system. On the other hand it gave the Ministry of Lands, Resettlement and Rehabilitation an excellent opportunity to design a model which

⁹ *Parallel* indicating a system with different levels of tenure and *interchangeable* indicating the possibility to move from one level to the other.

it considered the best option for providing security of tenure for the low-income urban settlers.

3.2.2 Methodologies applied for workshops

The methodology applied during the workshops was based on elements of the Object Oriented Project Planning approach. (NORAD, 1990.) The method consisted of three elements:

1. External moderation;
2. Permanent visualisation; and
3. Group work.

If the Logical Framework Approach is followed slavish the analysis¹⁰ would have been conducted in four consecutive steps, identifying the most direct and essential causal relationships, followed by the planning steps. However, due to the complexity of the subject and time limitations, it was decided to focus on the problem analysis and objectives analysis.

Two different moderators were facilitating the workshops. This proved to be very important to sustain constructive dialogue between non-governmental professionals and the government. However, for the second workshop the moderator turned out to create more confusion than being of assistance for the workshop, and together with all the other difficult issues to address, the workshop never found its momentum, which had been the characteristic of the first workshop which was facilitated by a highly professional moderator.

The workshops attempted to have widely participation of the Namibian private as well the public sector in order to establish a forum where all aspects of a future land tenure system could be discussed. Therefore the Ministry of Lands, Resettlement and Rehabilitation invited the Ministry of Regional and Local and Government and Housing, local authorities, non-governmental organisations, community based organisations (CBO)¹¹ and non-governmental professionals. The interest for attending the workshops exceeded the Ministry's expectations and it was necessary to limit the number of participants.

More than 35 people attended each workshop, which was found to be the maximum number of people for this kind of participatory workshop. The participants came from very different backgrounds - some with hardly any schooling and others who had been studying for their whole life. It was observed that the academic participants were more involved in the discussions than their partners from the informal settlements. To avoid translations it was decided to invite participants with reasonable understanding and command of English. However, the language barrier between communities and academics was a problem, which should have been understood and recognised by the organisers before the workshop.

¹⁰ The analysis steps are: Participation analysis; Problem analysis; Objectives analysis; and Alternatives analysis.

¹¹ Community Based Organisation (CBO) means a committee representing the community and will throughout be the expression used for similar organisations eg Community Development Organisation (CDO), non-profit companies, housing associations, etc. Whatever form is chosen, members must be exclusively accountable to the community.

The Ministry of Lands, Resettlement and Rehabilitation tried to invite people with an interest in urban land matters and people who the organisers expected could continue to provide assistance to the Ministry. It appeared later that the invited participants did not cover all groups concerned with land matters in Namibia. It would also have been an advantage (if time had been available) to have conducted two workshops: one with selected communities and non-governmental organisations and one with academics and ministries, because it turned out that the professionals focussed on technicalities instead of the wider perspective and common goal.

All working groups established during the first workshop intended to canvas their views with the other groups. The chair persons did however not meet each other before the second workshop due to other important commitments in their private companies. The possibility for one combined proposal was unfortunately not prepared. Had a combined proposal been prepared it would have increased the cooperation between the institutions rather than, as it turned out, to be suspicion.

3.2.3 Issues raised

The three working groups formed during the first workshop were tasked to develop the ideas which had been introduced in the fields of planning, land surveying and land registration. Key topics to be discussed by the groups were set out at the first workshop. Many interesting discussions and issues were raised which are discussed below.

3.2.3.1 Land surveying

The key topics to be discussed by the Land Surveying Group included: Adjudication, positioning, consolidation, maintenance of cadastre, spatial information, mapping, data accessibility, dissemination and standards. It appears from the minutes of the Group that there were great difference of opinion between the representatives of the private sector and government sector. The key topics were therefore not dealt with in a systematic manner by the Group. However, the four proposals prepared by different members of the Group addressed most of the key topics. The complexity of the topic as well as the variety of backgrounds of the members of the Group was reflected in the fact that the Group was unable to come up with one solution only.

The first two proposals advocated that the existing survey procedures did not need to be changed but that in order to meet the demand for formalization of the informal urban settlement areas the government must allocate more funds for planning, survey and registration. The planning of the areas must be carried out by the local authority with community participation to ensure acceptance. Moreover, approval procedures must be decentralized to the local authorities. In order to streamline the survey process the planning must be approved prior to the survey. The options presuppose the existence of recent aerial photography preferably orthophoto maps.

The third proposal was based on the assumption that no recent aerial photography was

available for the area. It was proposed to carry out the planning on the ground and mark boundaries with materials visible from above. When the planning is accepted by the community and the local authority the area can be covered by aerial photography. From this point there are two alternatives: The first alternative is to produce an orthophoto, on which the planned boundaries are annotated as a basis for planning approvals. Thereafter a survey to the existing procedures can be carried out and a General Plan produced. The second alternative is to use photogrammetric methods to determine the coordinates of the premarked boundaries thus producing a General Plan straight away which can form the basis for final planning approval.

The fourth proposal was also based on the assumption that aerial photography was not available. This proposal outlines an upgradeable land registration process. In the first phase the residents in an area are registered and a point is established and marked outside each house. The area is covered by aerial photography and these points are coordinated by photogrammetric methods. The points can serve as an address code (spatial reference) for the registration of the residents. On this basis tenure documents can be issued by the local authority providing a first step of tenure security to the residents of the area. The second step entails the planning and the following documentation of the planned boundaries. In this proposal it was proposed that land measurers¹² carry out the survey by simple measuring techniques that will provide an accuracy of the survey to standards that are required for issuance of freehold title in first world countries. The option emphasises the capacity building by training of land measurers to carry out the survey as well as community participation in the planning process.

The order of the proposals does not represent a prioritising of the proposal. They are merely listed from the proposals that propose less changes to the existing property registration system to the proposal that proposes most changes. The Survey Group discussed the proposals in length and some of the important points raised are elaborated below.

The private sector acknowledged that there was pressure on the current cadastral system and the system was not performing as it was intended. However, the reason was not caused by the functionality of the present cadastral system, but was a result of weak administration of the existing system. If the present system was properly resourced it would facilitate tenure. The system had proven in the past but might not deliver at present due to lack of maintenance, funds and players. The private professionals warned not to introduce a parallel registration system which would double the workload for the administration bearing in mind that only limited resources were available in the ministries. The argument for doubling the workload was that surveyed performed by, e.g. a land measurer would always have to be redone later by

¹² The Survey Group realized that the term "community surveyor" did not include the type of qualifications which were needed for the person performing planning, surveying and registration. The Group therefore developed the term "land measurer" which means a person with grade 12 qualifications with a pass mark in mathematics. The land measurer is trained by a land surveyor/land manager.

a professional land surveyor. In addition, the Surveyor-General's Office would have to check both surveys which was considered impossible taken account of limited resources in the Office. In other words, not only would it require double administration to have a parallel registration system but land surveys would also double in cost. Instead the private land surveyors recommended to look at the current registration system which should be simplified to accommodate the demand for land delivery.

The area of particular concern for private land surveyors was the planning requirements for town developments which were found far too bureaucratic and time consuming. Furthermore, private professionals found it more important to discuss the function between level of title, accuracy and cost involved to provide security of tenure. The professionals said that the freehold system had proven to provide excellent security of tenure at low cost. The cost for land surveyed were in fact only less than 10% of the total cost involved in the land delivery process. Concerning the accuracy issue it was argued that Accuracy does not cost@ because it is solved by technological improvements.

The land surveying profession's role was often discussed in the group. The land surveyors did not include communication to community, participatory planning approach, etc. among their responsibilities, because it should have been carried out before the land surveyors were requested to peg and survey an area. The land surveyors argued that their task was to peg and survey an area and the best way to achieve this was if they were provided with a detailed layout plan from the town planner before commencement of the job. The layout plan should include measurement and coordinates to enable the surveyor to perform an accurate job.

3.2.3.2 Land registration

The key topics to be discussed by the Land Registration Group included: Conveyancing, Government guarantee, documentation, deduction, accessibility, maintenance, legal drafting and standards. The work and discussion in the Land Registration Group seems for a moment to have been more effective than the Land Surveying Group and focused particular on the following issues:

- X difference between the Windhoek and Rehoboth deeds system; and
- X registration requirements for lending institutions purposes: Minimum requirements of diagrams, etc.;

The Rehoboth Deeds registry system (ref to Chapter 2 where Rehoboth is discussed) was of great concern for the conveyancing profession due to the systems inability to provide secure title. The Rehoboth registry faces limitations when serving those outside the community, and especially financial institutions. As a result of litigation regarding titles registered in Rehoboth, there is a consequent reluctance on the part of banks and building societies to accept mortgages on properties. Although banks continue to lend money against Rehoboth properties they regard it as high risk lending and tend to look for other forms of additional security. There are a number of factors which have contributed to these problems:

- X The relatively lower level of skills and an associated lack of liability in the registry

office. It is not necessary to use conveyancers.

- X Difficulties in winding up estates and ensuring accurate records of testamentary conditions of title.
- X Registry personnel have, for a long period of time, not been given proper training nor has there been adequate outside supervision.
- X The informality of the system, and a lack of separation of functions, places tremendous pressure on the Registrar as he becomes drawn into contractual disputes and is put under pressure to register disputed sales.
- X Lack of proper indexing and record keeping means that information cannot be obtained without the Registrar's assistance or from a distance.
- X The endorsement system has been criticised in that conditions of title have sometimes not been clearly endorsed or endorsed at all on the title deed. On occasion subdivisions have not been endorsed on a parent deed leaving an inaccurate extent reflected on the title deed.
- X Holding undivided shares in separate title deeds has increased their illegal tradeability and has led to a confusion of co-owners with a number of titles for the same piece of land.

The Group did however, acknowledge that the registry provides valuable local services. Information is readily available to a number of land administrators for use in development, management and conflict resolution in the area; ordinary people in the community also find the registry to be a useful resource.

On the other hand the Group praised the present operation and functionality of the Windhoek Deeds system (which has proven one of the best systems in the World), and very few issues were regarded as problem areas. The Registration Group found the transfer and conveyancing fee for low-income people high. The conveyancers had forwarded the problem to the Law Society of Namibia which later approved a significant decrease of the conveyancing fees for first transfer.

Unfortunately did the Group not thoroughly address the issue of registration requirements for lending institutions purposes, e.g. minimum requirements of diagrams. Banks and Buildings Societies will only be prepared to finance developments on the strength of secure and undisputable title, and if the property concerned has been surveyed to standard acceptable to the Surveyor-General. The standards must be acceptable for registration in the present, albeit streamline Deeds Registration system. The Banks and Building Societies must also be satisfied as to the credibility of the mortgagors.

3.2.3.3 Planning

The first workshop had defined key topics to be discussed by the Planning Group. These included: Zoning, contouring, physical structure, future service plan, geology, safety, demographic data, environment, peoples participation, transparency, economy, legal drafting and standards. It appears that these issues were not addressed and discussed by the Group.

However, the Group focused almost exclusively on the conceptualisation of a parallel planning,

survey and registration model. The model was based on practical activities in Oshakati and Rundu carried out by the Ministry of Regional and Local Government and Housing and donor organisations. The Group concluded that, within the limitations of existing legislation and procedures, a workable parallel land registration system for low-income informal communities was possible. The model was based on three types of tenure security, namely, security of planning, security of boundaries and security of tenure.

Security of planning is provided when the proposed boundaries of plots are approved by the Township Board. When this is achieved, the individual or community can feel secure that nobody will be able to tamper with his/her planned boundaries without his/her involvement or consent. At the new informal level, planning standards would be more flexible and less stringent in recognition of the fact that planning proposals are dealing with existing development. Existing standards on erf sizes and road widths in particular, should be applied more flexibly by the Townships Board. Where appropriate, the delegation of approval power by the Townships Board to local authorities could be considered, but this is unlikely in the short term.

Security of boundaries is provided when the surveyed boundaries are approved by the Surveyor-General and a diagram or general plan framed. When this is achieved, the individual or community can feel secure that nobody will be able to tamper with the surveyed boundary. At the informal level communities rather than individuals would be given security of boundaries through a block survey. The block diagram may be diagrammatically include proposed subdivisions, so that it may be used to record individual interests.

Security of tenure is provided when the surveyed boundaries and the owner are registered in the Deeds Office in one legal documents call a Deed. When this is achieved, the individual or body can feel secure that nobody will be able to dispute his/her legal ownership. At the informal level communities could register group ownership over a block or, alternatively (preferably), ownership would be registered in the name of a local authority who would pass on tenure rights in an appropriate manner. Individual rights would be allocated by and through the registered owner, probably using the block diagram and planning boundaries as a reference.

The Planning Group proposed that it should be possible to upgrade. The conceptual model provided for this in two ways:

1. Once a block is registered in the name of a group or local authority, individuals may take individual title by causing survey and registration at their own initiative; and
2. Should communities as a whole wish to take individual title simultaneously, a full survey could be undertaken within a block.

Provided that the above individual plot survey does not deviate from the planning layout already approved, it would not be necessary for this process to re-involve the Townships Board.

The Planning Group considered the role of different actors, implications on resources and monitoring and management aspects only indirectly, these are not elaborated on in this paper.

3.2.4 Outputs

The second workshop specified the goals for the formulation and implementation of pilot projects. It was decided that the goals and the options presented at the workshop should form the foundation for the Ministry of Lands, Resettlement and Rehabilitation to design a model for a parallel interchangeable property registration system. The goals were not explicitly formulated and they could not directly be used for the design of a parallel interchangeable property registration system. However, the proposals prepared by the working groups proposed many valuable specific issues to take into consideration in the design of a parallel interchangeable property registration system. The second workshop's inability to formulate explicit goals did not create problems for the Ministry of Lands, Resettlement and Rehabilitation in the design of the system - it rather gave the Ministry an excellent opportunity to extract what it considered the best option for providing security of tenure for the low-income urban settlers.

The work performed by the working groups had few discussions on generally accepted requirements for a land registration system. During the first workshop such generally accepted requirements had only been briefly discussed. It was therefore decided to formulate the criteria of fundamental design requirements to be included in an upgradable land registration system. The criteria to be discussed in the next Section included security, simplicity, accuracy, expediency, cheapness, adaptability, completeness, access to information, and integrity of information.

3.3 Design criteria for a land registration system

A land tenure system should provide the following: (Haldrup, 1994)

- X *The identity of the land (Where?).* The security of registered rights to land is dependent upon a reliable system of the definition of land units. That is, an effective system of land registration depends upon the establishment and preservation of an efficient form of a cadastral system. In essence, the cadastral system enables people to determine the spatial nature (i.e., location and limits) of rights.
- X *The identity of the person(s) holding the rights (Who holds them?).* The registry must reflect the identity of the holder of title or other real right to the relevant unit of land, or the identity must be readily ascertainable with reference to other related deeds in the registry (as in the case of limited real rights such as mortgages or servitudes). In order to be complete, particulars of the identity of the holder of a right should also refer to marital status, in order to show whether the asset forms part of the common estate in the case of a marriage in community of property. In a system which is complete in this respect, the identity of the spouse is also reflected.
- X *The identity of the right (What rights?).* The registry must reflect the nature of real rights. In order to be complete, all the real rights (i.e., ownership, some other form of

title, servitudes, mortgages, etc.) held in respect of a specific unit of land should be recorded.

Furthermore, access to the above mentioned information is very important. A registry and cadastral office must serve the publicity requirement by providing a register of units of land properly numbered and identifiable and efficiently indexed in order to ensure ready access to registered information. Moreover, a registry should be located so that it is easily accessible by members of the public and/or their agents.

Chapter 2 of this document described how the property rights of much of the population are held outside the formal land registration and administration systems. Incorporating these informal rights into the formal systems has been complicated by the fact that people within a settlement such as a local authority area has diverse needs. The limited capacity to implement traditional formalisation processes has also impeded progress. Consequently, fundamental design requirements for a formal registration system in historically disadvantaged areas should include the criteria set out below. Depending on circumstances, it will be necessary to prioritise which criteria should have precedence when designing the system. (Twomey, 1987; Barnes, 1994; Barry, 1995; Alberts et al., 1995.)

3.3.1 Security

Perhaps the most fundamental aspect of the relation between people and the land they use is certainty or security of tenure. However, demands for security, even within an informal community, are not homogeneous. For convenience they can be categorized as:

- X *ALow-level@ needs*: Such needs include assurances that the person and family will not be evicted (and so can begin investing in immovable improvements) and that the rights and property can be inherited by the children. Here, the system must look at protecting the rights of the poor and weak, including rights of women, those with irregular incomes, and the unemployed.

- X *AHigh-level@ needs*: This category includes transactions with people outside the settlement when one party in a transaction (such as a borrower) may have more information about the property than another party (such as the lender). In particular, the system must look at providing security to lenders who provide credit secured against registered property. This service is already required by entrepreneurs in the commercial centres of newly proclaimed towns and those in salaried employment who enjoy relatively high incomes. These incentives control the landholder's willingness to invest resources in the land, whether this is labour or capital.

Although there is a need for the evolution of further forms of tenure, clearly individual tenure should remain available as one of the forms of tenure. Besides individual tenure, interest may be shown in at least two additional forms.

The first alternative to individual tenure involves the need, even in the urban housing context, for families to be able to choose legal tenure subject to certain conditions of *Afamily tenure@*.

Sometimes traditional tenure perceptions have been brought to urban areas by families. In this situation, people perceive the content of ownership to imply at least two key responsibilities:

- X The responsibility on the part of the registered owner to keep the house in the family, at least for one generation, so that those in the immediate family who are unable to find alternative accommodation can remain in the family home and aged parents can be cared for in the family home (subject of course to space limitations). In essence, this responsibility amounts to a restriction on alienation.
- X The responsibility on the part of the registered owner to provide accommodation (subject to limitations in terms of space) to close blood relatives. Essentially, this is equivalent to a restriction upon the normally unfettered occupation rights of an owner. The rights of family members could be compared to a registered personal servitude of occupation.

A second alternative to individual tenure is to allow for the possibility of the election by groups of people in appropriate circumstances to arrange *communal tenure* among members in a housing project.

Regardless of the form of legal rights, security must be available and enforceable against the claims of third parties such as neighbours, municipalities, and the state within the limitations of the law. In part, security must be seen within a risk management framework where risks may be assumed by different parties. For example, to reduce their risk, lenders presently require that the boundaries of the parcel must be adequately defined. They also require the services of a conveyancer to ensure that their interests are protected. (Alberts et al., 1995.)

3.3.2 Simplicity

Simplicity is essential not merely for the effective operation but for its initial acceptance. The law has to be capable of being translated into the language which people speak. Simple forms must be used and the procedures have to be plain and straightforward.

Factors which determine simplicity include:

- X level of information technology systems required;
- X education and training required to create, operate and maintain the tenure system;
- X procedures and techniques used for demarcating, delineating, mapping and registering land rights;
- X extent to which land legislation is fragmented across many different acts;
- X information content (data items) in the tenure system; and
- X amount of information required at various stages.

For example, simplicity of title can be achieved by the establishment of a more user-friendly deeds registry process by: (Alberts et al., 1995.)

- X adopting standardized short forms;

- X for some tenure types minimising the need for survey information within well defined blocks;
- X simplifying extending clauses in title deeds;
- X making reference to (rather than duplicating) restrictive conditions, in favour of the state and local authorities prescribed by law in a Government Gazette, in title deeds;
- X simplifying the description of parties where this can be done without derogating from their proper identification;
- X minimising the lodging of supporting documents which instead could be kept by the conveyancer in a protocol and retained as part of the conveyancer=s responsibility; and
- X computerizing aspects of the registration system.

Similar, simplicity of the surveying process can be achieved by:

- X introducing flexible survey regulations;
- X adopting standards of cadastral survey which conform to the environmental conditions they operate under;
- X adopting a participatory approach for the adjudication and demarcation process; and
- X introducing random survey examination rather than the complete checking of all surveys.

Simplicity is essential, not merely for the effective operation of the system, but for its initial acceptance. Procedures must be transparent and straightforward. Rules must be perceived as fair and must apply equally to the different users.

The system must be easily accessible. If the users of the system have to perform many tasks, i.e. ill in various forms, go to different offices, etc., then the system will be perceived as too complex and will not be used.

3.3.3 Accuracy

Once formal property records have been created through formalisation processes, they must be updated to reflect changes in recorded conditions. Indeed, a system of managing information about property rights is accurate only if it is kept up to date, i.e. if people use the system to register transactions. This will happen only if those people consider the benefits of using the registry to outweigh the costs of not doing so. For example, a system in which information entering is examined so precisely that it is exceedingly expensive and difficult to use will not reflect actual proofs of ownership (i.e., informal titles) used and accepted by the community. Increasingly, the registers of such a system will show the dead to be registered owners of land if high transaction costs discourage heirs and other subsequent owners from seeking formal recognition of transfers.

Accuracy can be dealt with in many ways. The question is how accurate has the system to be without being too accurate. However, to make the system acceptable to the users it must include the following:

- X the unambiguous definition of land units;

- X the unambiguous definition of rights and interests in a specific unit of land; and
- X the unambiguous definition of the person, persons or body enjoying specific rights in specific units of land. (Jones, 1964, p. 76.)

Conflicts between ground demarcation, cadastral data and deed must be avoided. Accuracy therefore relates to the unambiguous and consistent demarcation, delineation and recording of rights to land. It does not specify that we should strive for a high level of spatial accuracy. Rather, survey accuracy standards should be evaluated in terms of what is necessary for the environmental conditions in which they operate. High absolute accuracy is not an option if it takes 25 years to implement and is significantly more expensive than less accurate alternatives. Although the location of boundaries is important to the legal cadastre, there is, in general, little need for precise measurement. The primary objective is a system for recording of rights in land to standards which ensure the good management of the land and the people who occupy it. The system should be capable of solving most of the problems most of the time at the minimum of cost. (Barnes, 1994, p. 284.)

Higher accuracy is frequently only achievable by more sophisticated and complex technology. The criterion can in this sense run counter to the criterion of simplicity.

3.3.4 Completeness

Needless to say: the register must be complete. Completeness can be viewed in two ways: Firstly, the register must be complete in respect of all land because, until it is complete, unregistered pieces of land will continue to be intermixed with registered erven with different laws applying to each. Important benefits which should accrue from registration of tenure will subsequently not be achieved. Secondly, the record of each individual erf has to be complete, which means that the land register reflects the actual up-to-date situation. The reality must be reflected in the register.

Completeness of the record, furthermore, relates to two separate stages in the implementation of a cadastral system. The first relates to the initial survey and registration of rights and the second to the continued maintenance of the system. The second stage is the most crucial stage. If the holders of right do not have an incentive to register transfers or other changes, the system will become a mere historical snapshot of the tenure situation and not a reflection of the current tenure status.

3.3.5 Expediency

The expediency criterion is very important for if the system cannot keep up with the demand for registration and transfer of land rights an informal system will emerge. It is however closely linked to other criteria such as simplicity, accuracy and completeness. Expediency can be increased with increased simplicity, however, accuracy can be negatively affected. On the other hand, if an informal system emerges due to low expediency of the formal system, the completeness of the formal system will deteriorate.

When looking at expediency in a Namibian context, one must assess the available human resources to carry out the functions of the land tenure system. An upgradable land registration system for Namibia has to be able to cope with the demand for land registration as well as over a short time be able to decrease the existing backlog. At the same time should be realistic of what is considered possible in terms of human resources, equipment and finances.

3.3.6 Cheapness

Cheapness is relative and can be assessed only comparatively in terms of the possible alternatives. The cost of registration of land tenure must be affordable (within reach of all poor people) and feasible (affordable for the society). The cost of transactions has to be relative to the value of the land. The benefits of the system (access to credit, tenure security, marketability, etc.) must outweigh the costs of the system (registration fees, taxes, conveyancing, survey costs, etc.).

The cost of registering transfers and changes due to subdivisions, consolidations, etc., can be measured in financial terms as well as in terms of time. When the registry office is far away in the capital city, the costs increase. By making registry offices more accessible, for example by establishing regional or local offices, the costs of registration can be lowered for the individual. However, the solution must also be feasible for the government in terms of trained staff, access to housing, higher management costs, etc.

3.3.7 Adaptability

This criterion in general means that the system must be able to adapt to changing needs within the community.

As outlined in Chapter 2 of this paper there are in Namibia certain limitations to extending the present land tenure system to the whole country. The limitations include outdated legislation, lack of human capacity, procedures incapable of coping with the high rate of urban migration, lack of finances, etc. A new land tenure system must be able to overcome these limitations and answer to the needs of the community for secure tenure.

The present land tenure system is not understood by the population in the former homelands, because it did not apply there in the past. Introducing a flexible land registration system will require an awareness campaign and continual follow-up information. Furthermore, the system must be user-friendly. What constitutes a user-friendly system will depend on local conditions and available resources but in general, issues to be addressed include:

- X cost of transactions must be relative to the value of the land;
- X access to the system either by being close at hand or by having an agent near by;
- X community involvement and acceptance that the system is responsive to its needs;
- X a corporate culture that encourages the use of the system; and
- X transparency of the system.

Finally, the system must be designed so it is flexible to adapt to new circumstances in the future. For example, the survey procedures often define how many arcs a surveyor must measure or the manner in which distances are to be measured or to what accuracy. Technology is constantly developing and the survey regulations will need to be changed to reflect the use of new technologies in the land registration process. The survey regulations should rather define the quality of the end product, and leave decisions on how and by which means the end product is reached to be the responsibility of the person who carries out the survey. (Alberts et al., 1995.)

3.3.8 Access to information

Information must be easily available to functionaries and the public for purposes such as:

- X local urban land management and planning;
- X formalising and upgrading of land tenure;
- X adjudication and dispute resolution;
- X economic development;
- X resolution of legal aid problems which impact registration;
- X facilitating cost recovery through rates and taxes; and
- X building local capacity.

The information management system must be flexible enough to provide information in different forms (e.g. textual information and maps) and over time, in different formats (e.g. hard copy, computer files, on-line access). (Alberts et al., 1995.)

3.3.9 Internal administrative controls to ensure integrity of information

Confidence in the system is crucial. At least three aspects must be addressed:

- X *Particular risk*: Checks and balances must be incorporated in the procedures to guard against loss or destruction of individual records, and any changes to the status of individual records through fraudulent action, negligence, or simple errors. One aspect of this involves separating responsibilities that place an official in a position of conflict of interest or which may provide opportunities for corruption to occur.
- X *Systemic risk*: Precautions must be taken to prevent destruction of all records (or even a substantial portion of them) through perils such as fire, floods, explosions, civil unrest, industrial action, etc. At one level, procedures must address the prevention of a peril occurring. At another level, procedures must minimize the effects of a peril if it does occur.
- X *Personnel requirement*: The human resource problem has been mentioned several times in this document. The necessity for expanding the number of people performing land registration is obvious. However, continued confidence in the system will require that the educational background for the new operatives be supported by recognised

training institutions with a curriculum that has been discussed and agreed with the relevant authorities. Furthermore, staff already employed but who have not been exposed to the new responsibilities will require additional training to be able to carry out their new tasks. (Alberts et al., 1995.)

3.4 Model for a parallel interchangeable property registration system

The development of a model for a parallel interchangeable property registration system was based on the various proposals presented at the second workshop and the design criteria elaborated above. In addition, the design of the model drew extensively on existing methods of registering ownership and what was considered possible in terms of human resources, equipment, finances, etc.

In the next Chapter we will discuss how the model was investigated. During the investigation it was necessary to make changes to the different processes as we gained more experiences. However, the concept of the model remained the same. The model for the final design is shown graphically on the next page.

Figure 3.1 This figure shows the model for the formalisation process which was adjusted after completion of the investigation.

Source: MLRR, February 1997.

4. THE PILOT PROGRAMME

The model for a parallel interchangeable property registration system was tested in a series of pilot projects and pilot studies. The programme commenced in June 1995 and was completed in November 1996. The investigation team consisted of three Danish land surveyors based in Rundu, Oshakati and Windhoek respectively. The team worked closely with the Ministry of Lands, Resettlement and Rehabilitation but was solely responsible for preparation and reporting on the pilot projects and pilot studies. For issues beyond the capacity of the investigation team, consultants from Namibia, South Africa and overseas were utilised.

An outline of the programme to investigate options for parallel interchangeable property registration systems was prepared by the investigation team in consultation with the Ministry of Lands, Resettlement and Rehabilitation. The outline gave a specific description of the pilot projects and pilot studies. However, as the investigation team gained experience and new information became apparent, the pilot project and study descriptions were changed accordingly. The outline was forwarded for comments to ministries and to those who had participated in the two workshops mentioned earlier. The Ministry of Lands, Resettlement and Rehabilitation did not receive comments on the outline.

The objective for the pilot programme was defined: (MLRR, May 1995.)

- X To ascertain the minimum requirements for parallel interchangeable property registration systems to enable the Government of Namibia to determine appropriate methods, procedures, standards and required qualifications for land surveying and land registration in order to increase access to secure tenure for informal urban settlers.

The outputs for the programme were defined as:

- X A review of the accuracy requirements of survey with regard to what is needed to keep a complete and consistent survey register and propose minimum requirements.
- X A review of the requirements for land surveying and registration in relation to what is required to maintain an unambiguous property registration system and propose minimum requirements.
- X Identification of constraints in the existing legislation and to propose necessary changes.
- X Assessment of the eventual cost of freehold title following the various paths.
- X Outline of a training programme for land measurers.
- X For various survey methods an evaluation of the required cost, time and skills demand in relation to the accuracy obtained and comparison with the present system.

Besides those outputs the pilot programme dealt with the following issues:

- X Alternative surveying methodologies (e.g. using land measurers, simple survey equipment, global positioning system, aerial photography, etc.).
- X Alternative boundary approaches (block system, spatial identifier, general boundaries, etc.).

- X Training needs to support a cost-efficient land registration system.
- X Balance between roles of public and private sector in land surveying and registration.
- X Non-discriminatory adjudication processes.
- X Community participation in the adjudication and planning process.
- X Low cost registration systems (local authority, community registration, internal community land administration, etc.).
- X Impact on the disadvantaged groups such as women.

4.1 Pilot projects

The pilot programme included three pilot projects. The projects mainly included practical land surveying and planning related issues for the land surveying process. (MLRR, May 1995; MLRR, December 1996; MLRR, February 1996.) They covered identification of different surveying and registration approaches for upgrading of tenure in different environments, see Table 4.1. The absolute and relative accuracy of different survey methods under different environmental conditions was ascertained as well as the time consumption, the materials cost and the skills demand for each of the applied survey methods was specified. Computers were introduced and the pros and cons of using computers for land surveying recording were assessed. The new approaches for land surveying were compared to the methods of the present land surveying system and the cost efficiency in relation to time consumption, materials cost, skills demand and accuracy were assessed.

An important element in the pilot project programme was that land measurers could be trained to perform survey work under supervision of land surveyors. Thus land measurer trainees were selected and involved in the pilot projects to assess the required level of education for recruits and to identify the training needs.

Participation of the community in the adjudication and planning of an area is an important principle of the formalisation process. The establishment of a CBO in an informal settlement to represent the residents was required for the execution of a pilot project.

The pilot projects were carried out in three different settlements with characteristics as summarized in Table 4.1.

Table 4.1: Characteristics for the test areas.

Pilot Project	Town/Area	Size (ha)	No. of Parcels	No. of Residents	CBO Established	Building Density
1	Oshakati/ Evululuko	8	110	605	Yes	Normal
2	Oshakati/ Kandjenge	12	127	740	Yes	Dense

	di					
3	Rundu/ Kehemu	27	207	500	Yes	Open

Source: The Ministry of Lands, Resettlement and Rehabilitation; Report on a Flexible Land Tenure System for Namibia.

4.2 Outcome of the pilot projects

The outcome of the pilot projects can be summarized under the following headings: (MLRR, November 1995; MLRR, May 1996; Jeppesen, July 1996.)

4.2.1 Planning and surveying

A common conclusion from the three pilot projects is that base maps are prerequisites for the planning exercise. Experience shows that maps are indispensable in the communication with the residents, e.g. illustration of consequences for physical planning proposals. For the planning of areas in pilot project 1 considerable time had to be spent on updating outdated orthophotos¹³. However, where a new orthophoto was acquired for pilot project 2, significant advantages were obvious in having an up-to-date map. For pilot project 3 no up-to-date maps were available. It was therefore necessary to prepare basic base maps. This was very time consuming and it was later concluded that they did not serve their purpose. The base maps were produced by pacing and sketching and with the uneven sizes and shapes of plots the base maps produced were inadequate for planning purposes.

It was observed in the pilot projects¹⁴ that it is imperative that the formalisation process involved the target communities. There is a capacity and desire within communities to participate in the planning and demarcation of their settlements, and community involvement secures a better understanding of the process within the community. When the community understands and accepts the process the planned layout is more likely to be followed.

The physical planning of the area for pilot project 1 and the demarcation and survey of plot

¹³ Orthophoto maps were the only base maps used in the planning process. Other types of base maps have not been investigated in the pilot projects. However, it is considered that aerial photographs, line maps or plots of the midpoints and the surveyed outside figure can also be used.

¹⁴ The formalisation of the area in pilot project 1 was carried out by the Oshakati Human Settlement Improvement Project (OHSIP). This Project provided social and physical infrastructure to shanty town residents in Oshakati. OHSIP occurred during Namibia's transition from apartheid rule, and instilled concepts of community organisation and democracy into civil society. OHSIP provided new methods for land registration and urban planning in settlement areas. Lastly, OHSIP improved living conditions by assisting shanty dwellers to construct sanitary facilities, roads, electricity, infrastructure, water points and community centres.

boundaries was carried out six months before the pilot project was carried out because the informal settlement was included in donor funded upgrading project. In the intervening period some pegs had been removed and replacement was difficult. The plot boundaries were measured by a steel tape to objects identified on the orthophoto map. Moreover, whenever a coordinated peg in the outside figure was near, measurement to this point was included to strengthen the accuracy of the map constructed. However, later calculations found that the absolute accuracy was poor. In some areas the absolute accuracy was 2 - 4 metres and in others below 1 metre. It was concluded that the poor accuracy could be attributed to the following reasons:

- X the enlarged orthophotographs were out of date and although they were made up-dated, it never became accurate. Furthermore there was a shift in the coordinate system;
- X many pegs had been removed and had to be replaced;
- X not enough control measurements had been carried out;
- X pegs had been moved due to planning changes without a subsequent change of related measurements; and
- X lack of motivation was shown by the employed sub-consultant.

Different desk calculations were carried out to see whether the poor survey accuracy could be improved. It was found that an improved field method can increase the absolute accuracy to below 1 metre for 95 percent of the points if sufficient reference points are established or if selected beacons are surveyed by more accurate method, e.g. Global Positioning System.

Pilot project 2 included the planning and surveying process of a densely populated area. The project was implemented by two land measurer trainees and two community representatives assisted by one land surveyor and one trained land measurer. In the planning process the major roads were aligned and drawn on an orthophoto. The plan was presented to the residents for approval by the community representatives at a public meeting and to the municipality for consent. The roads were demarcated with iron pegs as prescribed in the present survey regulations. Steel tape and survey rods were used to set out parallel road boundaries.

The Global Positioning System Trimble RS4000 was used to survey the roads. The survey was performed by the land measurers trainees and the community representatives assisted by a survey officer from the Directorate of Survey and Mapping. The absolute accuracy of the survey was ∇ 5 centimetres. The surveyed points were plotted to scale and transferred to the orthophoto.

Next the individual boundaries were planned and discussed with the residents and demarcated with iron pegs. This activity was carried out by the land measurer trainees, the community representatives and the trained land measurer. The land surveyor assisted when needed to give basic advice such as general planning guidelines, e.g. each plot should not be less than 300 square metres and all plots must have road access of at least 4 metres.

The boundary points were measured with a steel tape in relation to surveyed road pegs or to objects visible in the orthophoto in order to be drawn on the orthophoto. This work was carried out by the land measurer and the land measurer trainees with limited control by the

land surveyor. In order to control the quality of the map some of the individual boundaries were surveyed with a total station by a Survey Technician from the Directorate of Survey and Mapping . The surveyed points were plotted to scale and the map was then compared to the map prepared by the land measurer trainees.

It was found that the drafting skills of the land measurer trainees were not sufficient for accurate map production. Furthermore, there were too many gross errors where distances had been recorded wrongly. The accuracy in regular areas with a low density of houses was adequate but in high density areas, where there were many houses planned for relocation, the structures obstructed the measurements and gave the land measurer and trainees some problems. The deviations in these areas were far too big and too many.

In pilot project 3 the irregular sizes and shapes of the plots in informal settlements, as well as obstacles such as mahangu fields, hedges and buildings, make the survey by using a pentagon prism almost impossible. The survey methods must thus be flexible to adapt to local conditions.

Based on experiences from the pilot programme the following example compares different survey methods of individual boundaries. Based on the survey methods the total time and cost for 500 points are calculated:

- X Method I: Based on an orthophoto with a scale of 1:1000 the boundaries are mapped using a steel tape to measure distances from houses, etc. visible in the orthophoto. Three distances are measured to each point. No reference points are used. Based on experience it is possible to obtain an absolute accuracy of \forall 1 - 2 metres depending on visible objects on the orthophoto and a relative accuracy within 50 cm.
- X Method II: Global Positioning System survey of all 500 points using real time kinematic mode with two observations in each point. Expected absolute accuracy \forall 5 centimetres.
- X Method III: Global Positioning System survey of 100 of the points as reference points using real time kinematic mode with two observations to each point. Points transferred to orthophoto scale 1:1000. Based on these points and other objects visible in the orthophoto the boundaries are mapped using a steel tape for measurements. Based on experience it is possible to obtain an absolute accuracy on \forall 0.5 - 1 metre and a relative accuracy within 50 cm.
- X Method IV: Global Positioning System survey of 100 of the points as reference points using real time kinematic mode with two observations to each point. Based on these points boundaries are surveyed by a total station with two observations to each points. Expected absolute accuracy \forall 5 centimetres.

Table 4.2: Summary of calculations of time expenditure, labour cost and equipment cost for

survey of 500 points.

Comparison of methods with relation to time and cost of labour and equipment		Method I	Method II	Method III	Method IV
Reference points	Time	-	-	14 hours	14 hours
	Labour cost	-	-	US\$257	US\$257
	Equipment cost	-	-	US\$177	US\$177
Other points	Time	109 hours	70 hours	78 hours	96 hours
	Labour cost	US\$960	US\$1317	US\$911	US\$1429
	Equipment cost	US\$255	US\$554	US\$250	US\$216
Total	Time	109 hours	70 hours	92 hours	110 hours
	Total cost	US\$1215	US\$1871	US\$1593	US\$2079

Source: Ministry of Lands, Resettlement and Rehabilitation; Description of Pilot Project 2.

The first method where only an orthophoto and a steel tape were used is by far the cheapest method, and it can be carried out without sophisticated equipment. The accuracy in absolute terms is not so good, however, and there are no coordinates to place the area into the overall cadastral map of Namibia.

The Global Positioning System method (method 2) is the fastest and it produces accurate results, so judging by accuracy and time consumption this method is the best choice. The cost is however nearly as high as for the total station survey method (method 4).

The mapping of individual boundaries based on the orthophoto (method 3) is a faster method than survey by a total station (method 4) when some of the points are surveyed by Global Positioning System. Furthermore, the cost of using a total station is higher than using a steel tape and an orthophoto. However, the survey by a total station produces more accurate results.

4.2.2 Land measurers

4.2.2.1 Entry qualifications

A land measurer trainee must have a good knowledge and understanding of mathematics,

especially geometry. The person needs good skills in communication to be able to carry out work in cooperation with communities and liaise between the community and the local authority. The most crucial skill for a land measurer is to be meticulous and committed to his/her work.

Three land measure trainees were trained during the pilot projects. Two land measurer trainees had just passed grade 12 examinations. Neither had taken mathematics in their last year but both of them had good basic skills and would be able to pass the matric exam if tried. The third land measurer trainee had passed a grade 12 examination with high level mathematics. He quickly acquired sufficient knowledge to carry out many of the tasks envisaged for a land measurer.

4.2.2.2 Training provided

The land measurer trainees were given training through practical activities and through handouts which were explained and followed up by exercises. The training was related to practical issues such as interpretation of an orthophoto, measurement with a steel tape, establishment of a line with survey rods, setting out of parallel lines, intersection of two lines, drawing to scale on the orthophoto, etc. The more theoretical issues taught included area calculation and planning regulations to be considered such as road widths and distances between buildings.

In one pilot project the land measurer trainees were also exposed to use the Global Positioning System. They did not distance themselves from the sophisticated technique, and they showed interest and understanding of the principles for surveying with the equipment and quickly learned to operate the survey controller. However, the calculation of the observations was to be carried out by a more qualified person, i.e. a survey technician.

During the short time available for the pilot projects it has been impossible to train the land measurer trainees to an appropriate standard. More time must be spent on training in planning, measurement/survey and mapping to enable the land measurer to perform his/her job to an acceptable standard. It is estimated that the time spent on training of the land measurer trainees was 15 hours on theoretical issues and three weeks on practical training over a period of three months. The trainees were not employed by the local authority or the Ministry of Lands, Resettlement and Rehabilitation, but made their assistance available for the benefit of the community without proper payment.

4.2.2.3 Results achieved

It was found that the drafting skills of the land measurer trainees were not sufficient for accurate map production. It was concluded that in order to improve on this, land measurers either had to be better trained or consideration be given to use computers, at least to plot beacons by coordinates and draw boundary lines between beacons.

Many gross errors, where distances had been recorded wrongly, were found in areas where

accurate measurement was difficult due to the high density of houses. In areas with few obstructions it was easier for the land measurer trainees to measure accurately. Therefore, if a system of double recording of measurements is adopted and more rigid control procedures are implemented, it can be anticipated that a land measurer can produce a map of individual boundaries of a better standard.

4.2.2.4 Control procedures

Even with improved training it will be necessary to introduce control procedures to ensure accuracy of the data collected by a land measurer¹⁵. The time available for the pilot projects did not made it possible to study how the land measurers could use computers for controlling their measurements. However, it is important to be aware that a computer will not solve the problems but it could probably assist in the control function. The most important aspect of control is that the land measurer has to find his/her own mistakes. This is not a technical skill one can be taught, but it is an attitude the person has to develop independently.

To assure correctness of the measurements and the map, a person with significantly better qualifications than a land measurer can carry out the control of the work. A land surveyor could be envisaged for this task and could be responsible for the whole formalisation process.

A characteristic for more advanced survey methods is that control becomes easier to carry out for a third person, e.g. a land surveyor. Sophisticated equipment, such as Global Positioning System equipment and total stations, records the observations automatically on an electronic medium and the user friendliness is constantly increasing. It has been observed that land measurers can carry out a survey with a limited amount of training when using advanced survey equipment. The advance equipment has the advantage to store the observed data electronically. A land measurer cannot easily change such data because it requires special technical knowledge to do such corrections. In other words, the land measurer cannot correct the observations without it will be discovered by the land surveyor.

4.2.3 Household register

In two pilot projects information for a household register was collected. For one project the information was entered into a Microsoft Access Database and linked to a number on the orthophoto, whilst in another the data was kept in an analogue form, the parcel linked to a number on the final layout map. The household register was divided into information about the person, the land and additional information.

¹⁵ Control procedures are not only required for land measurers. Everyone performing land surveying tasks needs to include control procedures when carrying out surveys.

4.2.3.1 Description of the person

The information concerning the identity of the individual head of household or plot owner can often be ambiguous. Confusion about the spelling of names occurs frequently, and a person can have a different spelling in different official documents. Thus, recording names only does not necessarily give a unique identification of a person. Additional information is therefore important about the person such as an ID number, Passport number or Birth Certificate number. It is intended in Namibia that every citizen will have an ID card in the future¹⁶, and it is estimated that half of the adult population possess an ID document. The ID number could thus become a unique identification of a person in the future. In cases where people have not got an ID card, the accuracy of the description of the person can be improved by a Passport or a Birth Certificate number.

According to the Married Person's Equality Act married women may possess property and inherit property from their husbands. This calls for registration of the person's marital status and the identity of the spouse.

A register for a settlement area should, if possible, include the above mentioned data. In cases where people do not have any official papers to document their identity, it should be accepted that the registration will be less accurate. If the system demands official papers it is likely that the process could be halted or delayed. It could however be an option to demand official papers for identification of the person at subsequent transfers of the land rights which will increase the accuracy of the register over time. The person who is registered with an ID will be in a stronger position than a person registered by only names in the event of disputes. It is thus of interest to the individual to increase the level of unambiguity of his/her registration. Another possibility to improve the accuracy of the register is to have other community or family members testifying someone's ID.

4.2.3.2 Description of the land

In pilot project 2 the description of the area in the database referred to a plot number in a specified sub-block. The latter information is not necessary if the plot number in itself is unambiguous. If the description contains information stating in which part of town a plot is situated, it will increase the usefulness of the register for other tasks such as planning, collection of revenue, etc. Such information can be included as a part of the plot number. Within the surveyed outside figure it should be an option to allocate proper erf numbers once the area is planned, to prevent future confusion.

The extent of the plot can be shown with measurements on the map making it easy to determine the boundaries on the ground. The map must be stored and kept up-to-date by a responsible organisation.

¹⁶ In the headman's register for Kandjengedi 65 percent of the household heads were registered with ID numbers. However, an investigation in Rundu shows that the percentage of persons in possession of an ID card is lower there.

4.2.3.3 Additional information

Additional information is not necessarily a part of the household register. It could be a separate register which is linked to the household register by the plot number. The additional information will be most useful to a local authority for land management and administration and the initiative to collect the information and the storage and upkeep must be the responsibility of the local authority.

Additional information could include: number of residents in the household, whether there is a toilet on the plot, whether there is a private water connection or not, which type of building(s) is on the plot, and what the land use is (business, residential, manufacturing, etc.).

4.2.3.4 Updating and management of the household register

Maintaining the map and the household register is a complicated task. The register and map must at all times be accurate, comprehensive and reliable. This means that a system has to be set up to ensure that any change of ownership, residents, boundaries, etc. is immediately reported to the register and accurately registered. If the register is not accurate, comprehensive and reliable, the register becomes useless. Maintaining the register is the most crucial precondition for the success in providing secure tenure.

In the pilot projects two slightly different models have been investigated for the creation and maintenance of household registers. In pilot project 3 the land measurer had to create and maintain the household register by recording the changes reported to him. In a developed society the seller and the buyer of a piece of property have an essential interest in registering change of ownership to secure his or her investment on the land. This incentive was not found to exist to the same degree for the informal settlers in pilot project 3, who have invested nothing but time when constructing the houses. In the event of settlers heaving to move their houses, they dismantle them and transport them to another location. They therefore see no compelling reason to register such a change. A possible solution to this problem could be to assign one person in each area who is responsible for reporting any change, within for example a week, to the land measurer. This reporter must have a close knowledge of the area, and must know all the residents.

Maintenance of the digital household register was done slightly different. It was decided in a meeting between the Municipality of Oshakati and the Community Committee of Kandjengedi that the Committee, assisted by the headman, would record all changes regarding transfer of plots and houses and changes to boundaries. The changes would then be communicated to the Municipality which is responsible for updating of the map and register which are kept by them on computer and as paper copies. The Committee can obtain new copies from the Municipality after changes have been made.

Above mentioned models can work if the Municipality, the Committee and the land measurer carry out the agreed functions. If, however, one of the parts fails, the whole system fails. It will probably be possible to make campaigns where the community in a limited area is

approached and requested to report changes. This way the residents will be kept aware of the need for reporting of changes.

4.2 Pilot studies

In addition to the three pilot projects were three pilot studies. However, as the programme proceeded it was found that the envisaged third pilot study on an adjudication institution was not essential in defining options for parallel interchangeable property registration systems at the outset and could be investigated at a later stage.

The pilot studies were carried out as consultancies with participation of consultants from Namibia, South Africa and overseas. The studies evaluated the present land registration systems in Namibia with regard to certainty of title as perceived by the users. Minimum requirements for the maintenance of an unambiguous property registration system were also assessed. Moreover, the possibilities of a local authority, a CBO, or other, issuing tenure documents based on a locally held registry map, were investigated.

The first pilot study investigated the existing Rehoboth and Windhoek registry systems, along with the *Permission To Occupy* (PTO) system in order to gain insights necessary for the development of a model for a parallel interchangeable property registration system. The Rehoboth registry system provides a registration service in a developing area. The area has certain similarities to the northern portion of the country, which is where the majority of informal urban settlers are located. The pilot study proposed that a system of tenure registration be introduced for registering urban tenure in informal settlements with the following characteristics.

X Parallel: in the sense that parallel institutions will be responsible for the registration of different tenure types.

X Interchangeable: in the sense that the different tenure types catered for in the parallel registries should be upgradeable, over time, from an initial base offering basic security of tenure, into individual full ownership or *Freehold* title, as it is currently known to the common law and registration statutes of Namibia.

Finally the pilot study proposed that two new types of tenure be introduced in addition to existing freehold.

This proposal became the subject for the second pilot study. In this study the new tenure types were fine-tuned and the implementation of the system were thoroughly discussed.

4.3 The outputs of pilot studies

The outcome of the pilot studies can be summarised under the following headings. (Alberts, et al., 1995; Alberts, et al., 1996.)

4.3.1 Analysis of the Rehoboth registration system

The Rehoboth registration system is a community-oriented system located in Rehoboth although it is administratively under the Windhoek deeds registry. A short description of the Rehoboth deeds registry can be found in section 2.3.2.

The Rehoboth registry faces limitations when serving those outside the community, and especially financial institutions. As a result of litigation regarding titles registered in Rehoboth, there is a consequent reluctance on the part of banks and building societies to accept mortgages on properties. Although banks continue to lend money against Rehoboth properties they regard it as high risk lending and tend to look for other forms of additional security, e.g. guarantees from wealthier family members. There are a number of factors which have contributed to these problems:

- X The relatively lower level of skills and an associated lack of liability in the registry office.
- X It is not necessary to use conveyancers.
- X Difficulties in winding up estates and ensuring accurate records of testamentary conditions of title.
- X Registry personnel have, for a long period of time, not been given proper training nor has there been adequate outside supervision.
- X The informality of the system, and a lack of separation of functions, places tremendous pressure on the Registrar as he becomes drawn into contractual disputes and is put under pressure to register disputed sales.
- X Lack of proper indexing and record keeping means that information cannot be obtained without the Registrar's assistance.
- X The endorsement system has been criticised in that conditions of title have sometimes not been clearly endorsed or endorsed at all on the title deed. On occasion subdivisions have not been endorsed on a parent deed leaving an inaccurate extent reflected on the title deed.
- X Holding undivided shares in separate title deeds has increased their illegal tradeability and has led to a confusion of co-owners with a number of titles for the same piece of land.

However, the registry provides valuable local services. Information is readily available to a number of land administrators for use in development, management and conflict resolution in the area; ordinary people in the community also find the registry to be a useful resource. For example, the registrar and his staff assist with:

- X Drawing up of contracts (e.g., mortgages, marriage contracts, sales agreements, and wills.);
- X Planning, urban management, and land use control;
- X Agricultural extension;
- X Winding up of estates;
- X Adjudication of rights and dispute resolution;
- X Finance; and
- X Valuation.

The Rehoboth registry has successfully promoted the multipurpose use of registered information because of its ease of access (both in terms of physical location and Acorporate culture@). It indicates that registry personnel can perform a range of functions under certain conditions, and demonstrates relationships between registry information and land use controls. Furthermore, it illustrates broader social issues such as a Amoral responsibility@ of a registrar (e.g. ensuring that the rights of the weak are protected) and how relationships between the individual and the community affect the registry. However, certain problem areas (e.g. conflict of interest situations and structural tensions) should be addressed.

4.3.2 Social processes and registration systems

A number of social processes within the Rehoboth community make it possible for the Rehoboth registry to undertake its range of functions. A similar registry elsewhere, to be successful, would require a large number of similar social processes to be present in the community it serves. It appears that social processes considered to be important as linkages to the Rehoboth registry exist in a similar fashion in the north of Namibia in one form or another, for example:

- X The role of local non-professional persons with credibility to point out boundaries;
- X The role of those in power with respect to the land in helping the public with their land-related problems and information requirements;
- X The existence of adjudication and conflict management procedures in relation to land; and
- X The existence of informal property registers.

4.3.3 The final design of proposed system

The final design of the system two new types of tenure was proposed to be introduced in addition to the existing freehold:

- X Type 1 - starter title - a new basic form of tenure, registered parallel to the freehold title in the Windhoek Deeds Registry;
- X Type 2 - landhold title - a new, more advanced form of tenure, registered parallel to the freehold title Windhoek Deeds Registry. Landhold title is a statutory form of tenure with all of the most important aspects of freehold ownership but with certain important restrictions;
- X Starter title and landhold title are interchangeable with freehold title;
- X Starter title and landhold title are registered electronically in a computer based registry, managed and, in respect of landhold title, audited by the Windhoek Deeds Registry, although in parallel to the main registry; and
- X The local property office remains as a local resource to process transactions with respect to starter and landhold title. However, in order to increase the accuracy and reliability of particularly landhold title records, registration of transactions, should take place electronically.

Additional details of the system are described in Chapter 5.

4.4 Proposed tenure system discussed with stakeholders

4.4.1 Cabinet approval

Based on the pilot programme the Ministry of Lands, Resettlement and Rehabilitation prepared a report titled "A Flexible Land Tenure System for Namibia" which set out the vision and implementation strategy for a land registration system. It was stressed in the report that although certain of the ideas might be able to be used for rural areas, further investigation would be necessary before using the system in this way. (MLRR, February 1997.)

The first step in implementation of a flexible land tenure system was to agree to the concept of the system. The two new tenure types were therefore sent to Cabinet for approval. Before it was discussed in Cabinet, the Minister of Lands, Resettlement and Rehabilitation was called to the President to explain the system. He gave his wholeheartedly support and the later discussion in Cabinet appeared to have been easy.

Cabinet further endorsed the request from the Ministry of Lands, Resettlement and Rehabilitation to have the new tenure types discussed with all stakeholders. A three-month publicity and consultation campaign therefore had to be undertaken. The comments received during the consultation period were compiled and attached to the Flexible Land Tenure report and sent to Cabinet for final approval.

4.4.2 Consultation campaign

The consultation campaign was divided into two phases, namely workshops with beneficiaries in informal urban settlements and one workshop with other stakeholders interested in the new tenure system who have contributed to the pilot programme.

4.4.2.1 Workshops with beneficiaries

The Namibian Housing Action Group, a Namibian based NGO, was commissioned by the Ministry to undertake consultative meetings with selected communities by organising workshops with the beneficiaries. Two community facilitators were selected and trained. Workshops were undertaken in nine larger towns and approximately 1100 settlers attended the workshops. The workshops were generally a success and the new tenure system was positively received by the participants.

The consultation with communities had to identify possible changes to the proposed system in order to enable the Ministry of Lands, Resettlement and Rehabilitation to write the proposal before sending it to Cabinet for final approval. Only constructive criticisms and comments were received from the beneficiaries. The beneficiaries generally felt that the new system

would improve the accessibility to obtain permanent rights to land; Moreover, they felt that a local property office will provide them with inevitable information. The beneficiaries comments can be summarised under the following headings. (MLRR, March 1998.)

Town planning issues

Many communities live under constant threat to be evicted from the land they occupy by the local authority. Communities have conflicts with local authorities about land problems and there is little or no cooperation between the parties. The proposed tenure system and the participatory town planning approach can provide a powerful means by which to open communication channels with the local authority. Furthermore, community involvement will minimize town planning expenses as well as accelerate the development of proper townships.

Financial issues

One of the recurring debates at the workshops concerned the responsibility of different role-players in financing different aspects of the system. The Ministry of Lands, Resettlement and Rehabilitation had provided the facilitators with a summary of different aspects of the system and the financing thereof. Table 4.3 next page provides an outline of the cost. These figures were discussed and were found within the financial ability of informal settlers. However, communities found that the government should also subsidise basic service cost and they should develop a low income housing scheme for the people who would have the right to occupy a site in perpetuity. It should be noted that under the last heading 'Upgrading from landhold to freehold', Government does not subsidise. However, the total cost includes the Deeds registration fee and the Surveyor General fee, for which the beneficiary has to pay.

Table 4.3 Financing the different aspects of the flexible system of tenure estimated by the Ministry of Lands, Resettlement and Rehabilitation. The columns propose the distribution of cost between Government, local authority and beneficiary .

Source: MLRR, January 1998.

Land issues

Land was for obvious reasons the issue that concerned the participants most. In the past the power to allocate parcels of land lay exclusively in the hands of the traditional headmen who then distributed the land. Although local authorities have taken over such responsibilities within the proclaimed towns, traditional headmen do however continue the practise of allocating land for some informal settlements. The informal settlers fear that when land allocation has been fully integrated in local authorities responsibilities, they will have to pay for the land again. The participants of the workshops were of the opinion that, it would be inconsistent, unwise, undemocratic and far from realistic, should the local authorities come and ask them to buy the land again which they have already bought from traditional headmen albeit, at a minimal rate of payment. They feel that their individual plots should be transferred to them without or with less financial involvement if any and that each plot holder should be issued with a formal secure land tenure document without going through complicated and expensive procedures.

The participants described also how communities are on the edge to be broken up due to pressure from local authorities to move from their plots. Sometimes the local authority is not able to provide the informal settlers with another site and one local authority proposed the informal settlers to return to their rural areas.

Implementation

Many communities felt that the government had taken too long to address the issue of security of tenure and some communities were sceptical whether the government will have the ability to implement the new tenure system. However, all communities endorsed the system and the Ministry of Lands, Resettlement and Rehabilitation was urged to begin immediately to prepare legislation and get the tenure system operational before more people were evicted.

4.4.2.2 Workshop with other stakeholders

The workshop with other stakeholders included organisations involved with land registration, and organisations and persons who have shown an interest in the new tenure system and contributed to the pilot programme. The beneficiaries were also represented by their organisation.

The workshop intended to increase awareness of the proposed flexible land tenure system among relevant authorities, professionals and communities. In addition the participants were requested to identify possible changes which could be used by the Ministry of Lands, Resettlement and Rehabilitation to improve the proposed new tenure system before it was sent to Cabinet for final approval. The Ministry proposed a forum to be established for discussion and evaluation of the implementation of a flexible system of land tenure.

The new tenure system was generally positively received by the stakeholders. Valid and constructive criticisms were received which need to be considered in the legislation to be

drafted. The debate at the workshop could not be described as 'vigorous' but it gave the participants a good chance to exchange views with the Ministry's representatives. The discussion mainly concerned technicalities of the system and no substantial revisions were recommended. The most important issues are summarised below. (MLRR, January 1998.)

Town planning issues

The proposed tenure system envisages a preliminary feasibility study to be undertaken prior to the registration of starter title. This feasibility is not intended to be a detailed investigation as for an ordinary township establishment procedures. It is suggested that a detailed investigation only be undertaken when applying for the approval of a landhold development. Some of the workshop participants felt that more detailed planning should take place at the starter title stage. In reviewing this suggestion it was felt that the feasibility study should not be made more detailed but it should remain essentially a checklist of factors to be taken into account when deciding whether starter title should be registered. The information gathered during the registration of starter title such as numbers of families in an area, number of children, etc. would be invaluable when planning the upgrading of a settlement or the conversion to landhold. One must remember that starter title is aimed at the poorest community and as such there must be a minimum of obstacles to registering such form of title.

Inheritance issues

Various issues were raised regarding the restrictions that would be placed on starter and landholder title, particularly with regard to the inheritance of such forms of title in undivided shares or the registration of usufructs arising from wills.

In order to keep the system simple so that it can be run from a local property office it was felt that the restriction against the registration of servitudes or the inheritance of property in undivided shares should be maintained. This restriction in particular in relation to the inheritance of property in undivided shares would need to be written into the proposed legislation. The Subdivision of Agricultural Land Act 70 of 1970 contains a similar restriction, which could be appropriately adapted.

The impact of this restriction should be tested in the community consultation workshops. If it emerges as an important issue this issue could be revisited even if only in future modifications of the system. This issue also underlines the importance of thorough training of the local property office staff as they will have to explain the implications of not being able to register servitudes to the users of the office.

Advisory Board on flexible land tenure

At the suggestion of the Ministry of Lands, Resettlement and Rehabilitation the workshop proposed to establish an Advisory Board to include all major stakeholders plus independent experts. The Board should act both as a contributor and a sounding board for the

implementation and a coordinator of various interests and organisations which would play a part in the implementation in order to enhance the principle of local ownership of the implementation of a flexible system. The objective and functions of the Advisory Board were discussed and the proposal was accepted with a few amendments. Regrettably, the Ministry later abandoned its previous attitude.

5. THE PROPOSED FLEXIBLE LAND TENURE SYSTEM

This Chapter outlines in detail the content of the rights and obligations of the proposed tenure types. The registration and survey procedures for the establishment of the various tenure types, as well as for the upgrading of one type of tenure to another, are explained. The basic concept is illustrated graphically in figure 5.1 on this page and figure 5.2 on page 94 the details are visualised of the proposed registration system. Following this the proposed institutional model is described. (MLRR, February 1997.)

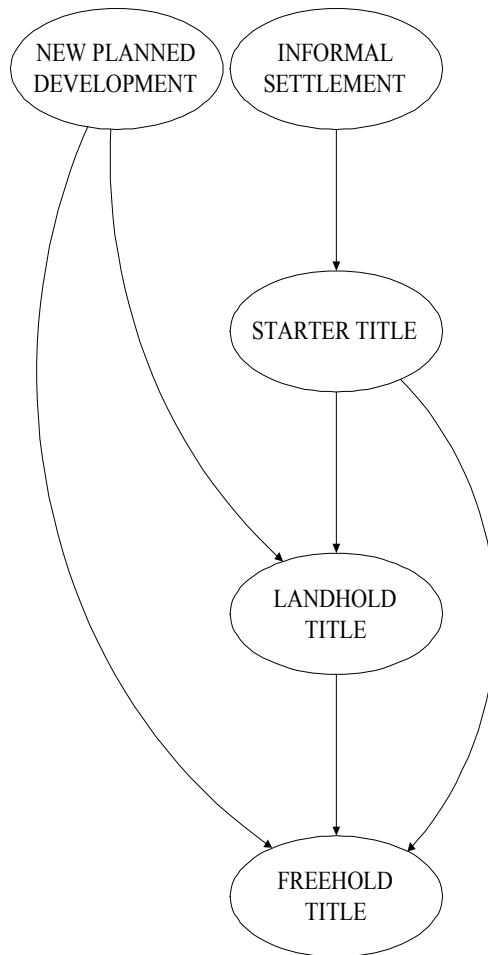


Figure 5.1 Schematic illustration showing the possible routes to follow when upgrading an informal settlement or when planning a new development.

Based on the analysis in the pilot studies, it is proposed that a system of tenure registration be introduced for the purpose of registering rights in informal urban settlement which has the following characteristics:

The system would operate *parallel* to the existing registration system in the sense that parallel institutions will be responsible for the registration of different tenure types. This means that the same land parcel would be the subject of registration in both the starter and landhold title registry and the main Windhoek registry. However, the main Windhoek registry would only

reflect the ownership of the whole block of land and the fact that a starter and landhold title registry exists. Individual starter title and landhold title rights within that block would not be visible in the main registry, but only in the starter and landhold title registry.

The system would be *interchangeable* in the sense that the different tenure types catered for in the parallel registries should be upgraded, over time, from an initial base offering basic security, into individual full ownership or freehold title, as it is currently known to the common law and registration statutes of Namibia. In other words, starter title would be *interchangeable* in the sense that starter title rights would be able to be upgraded in accordance with certain prescribed procedures to landhold title or freehold title.

5.1 Starter title

Starter title is proposed as a new basic form of tenure. The purpose of starter title is:

- X to create an inexpensive and simple form of land registration which provides a degree of security of tenure to existing urban dwellers in the context of an upgrading project or to new occupants in an area earmarked for development in a Agreen fields@ context;
- X to provide a tool for land management at the local government level;
- X to provide a record of families and individuals occupying land in a defined area;
- X to underpin a system of fair taxation;
- X to establish a rational basis for planning the layout of the area and the installation of engineering services; and
- X to establish a basis for the further upgrading of tenure over time.

It is suggested that there are certain advantages to registering starter title electronically in a nationally uniform computer based registry located in Windhoek for overall management purposes but allowing full access for the registration of transactions and updating at the local property office. This would not detract from the importance of the local property office but rather provide a means to improve the accuracy and reliability of transactions processed by the local property office as well as facilitating the upgrading of the different tenure types.

It is proposed that a typical scenario should be administered in the following manner:

- X Deciding to use starter title in a particular settlement.
- X Deciding on the suitability of the site for formalisation and further development.
- X Defining and registering the block of land constituting the settlement area.
- X Defining and recording the rights of occupants of land within the boundaries of the block.

These steps are described more fully below.

5.1.1 Deciding to use starter title in a particular settlement

At some stage, decision will be made by the local authority to upgrade or establish an urban

settlement. At that time, it should also be decided whether starter title will be granted to the occupants of such settlement. This decision would depend on:

- X nature of the development;
- X group cohesiveness;
- X resources available to formalise the development; and
- X affordability of other forms of tenure.

A local authority, CBO or other private sector organisation or the community themselves may for all or any of the reasons mentioned above decide to use starter title.

If it is decided that starter title will not be registered, then the only form of tenure that can be formally registered will be landhold title or freehold title (will be discussed below).

5.1.2 Deciding on the suitability of the site for formalisation and further development

Before conferring any rights on potential starter title holders, a basic evaluation of the site=s suitability for future development and formalisation needs to take place. In most cases it is likely to be the local authority that undertakes such an evaluation, although a private developer or non-governmental organisation could seek the local authority=s consent to develop or formalise a site and provide the required information.

Certain investigations with regard to the site will be absolutely critical and no further development or formalisation of tenure rights should be allowed without these steps being undertaken. Consideration should be given as to whether the Township and Division of Lands Ordinance, 1963, and the Town Planning Ordinance, 1954, should be amended in order to make provision for these minimum feasibility requirements. The following investigations should take place:

5.1.2.1 Geological suitability

A preliminary investigation must determine whether the site is suitable for low-income housing development in respect of soil or other geological conditions or whether the site would be unsafe or extremely costly to develop. Flood lines would also need to be ascertained to prevent development from taking place within areas that may be flooded.

5.1.2.2 Bulk service feasibility

The local authority will need to be satisfied that rudimentary bulk services will be able to be provided to the site at some point in the future. This would entail both a physical and financial feasibility investigation. An immediate lack of finance on the part of a local authority or other bulk service provider should not prevent the formalisation of existing settlements or the provision of land where other alternatives do not exist.

5.1.2.3 Environmental evaluation

A preliminary investigation of the suitability of the site should be undertaken from an environmental perspective. The criteria for such an evaluation should be carefully specified in order to ensure that costly and lengthy studies are not undertaken. As the social feasibility of the development will be considered as an overall consideration, this environmental evaluation should focus on the fauna and flora aspects and essentially determine whether there are any reasons why settlement should not take place on the proposed site.

5.1.2.4 Underlying rights

A preliminary investigation should be undertaken as to whether any underlying rights would be contradicted or sterilised by the development of the site. At this stage the purpose of considering underlying rights is to establish the feasibility of further formalisation and development of the site. The actual removal of restrictive conditions or obtaining the consent of mineral rights holders will be dealt with as part of the definition and registration of the entire block within which starter title will be registered.¹⁷

If the entire block falls within a proclaimed township, the block would be subject to the conditions of establishment applicable to erven within that township. For example, where the erf is reserved for residential use it is likely to be subject to building line restrictions or a condition that livestock cannot be kept on the property. While it is unlikely that these conditions would contradict the establishment of starter title on a block, the applicable conditions should be studied in each case in order to confirm this.

Other possible underlying rights which would need to be investigated are:

¹⁷ See 5.1.3 below (Registration of entire block).

- X the existence of mineral rights, if any¹⁸;
- X the existence of servitudes;
- X the existence of PTO=s or other long term leases;
- X the existence of restrictive title deed conditions;
- X the existence of communal rights;
- X road reservations;
- X tourism concessions;
- X statutory electricity servitudes; and
- X statutory water reticulation servitudes.

While some rights need to be ascertained through a process of adjudication, others are recorded in several different registries. Certain of these rights are easily ascertainable from a perusal of the records in the Windhoek Deeds Registry. While, road reservations, for example, may not be immediately apparent from the Deeds Office although a search of the Department of Roads should reveal this information. PTO=s are recorded by the Ministry of Regional and Local Government and Housing in respect of urban areas and by the Ministry of Lands, Resettlement and Rehabilitation in respect of rural areas. Many local authorities also keep records of PTO=s in respect of areas within their jurisdiction. In certain areas, however, PTO records may be poor.

Although the existence of PTO=s should be investigated, they are unlikely to affect the feasibility of the development. PTO=s in urban areas are generally issued in relation to surveyed plots within surveyed areas. The establishment of starter title blocks will in most cases be in unsurveyed informal areas.

It should be noted that most of the land in the north on which starter title would be established is unproclaimed state land with no statutory underlying rights, however in other parts of the country underlying rights may exist which would need to be cancelled or removed prior to the registration of starter title rights.

People with communal tenure rights may already be settled on land which the local authority has earmarked for development. The potential conflict that can arise in these circumstances may affect the feasibility of the formalisation and further development of an area. This process should therefore be taken into account in assessing the timing and feasibility of the proposed development. Starter title, being group based could facilitate the integration of such groups into urban areas.

5.1.2.5 Local authority jurisdiction

It is important that in urban developments, the willingness of a local authority to take responsibility for the management of settlements and service provision is established. Where

¹⁸ While the reservation of mineral rights is unlikely to arise in respect of properties in Northern Namibia, mineral rights may be held separately in properties elsewhere. A Deeds Office search should reveal any separately held mineral rights.

the local authority is the promoter of the development, this is not likely to be the subject of any debate. Where a CBO or private developer proposes developing or upgrading a site, the commitment of the local authority is required.

5.1.2.6 Additional sites

During the pilot programme it was found that additional land for allocation to those displaced by planning, reduction of overcrowding, etc. was very limited. As starter title will give the holder the right to be accommodated within a surveyed block or in another block preferably in the near vicinity, the local authority or the CBO would need to establish that there are sites that can be used for this purpose within the block or in the vicinity or as a last resort in another local authority area. Unless land is available for new starter developments, continuing migration will put pressure on existing blocks of starter and landhold settlements in the form of squatters. The individual and community integrity of those blocks will then be compromised to the detriment of the whole system.

5.1.2.7 Group cohesiveness

In order for starter title to work within a block it is necessary that there is some group cohesiveness in that block. This is important as the outside boundary will protect occupants' rights against the state and wider society but it will not protect people from encroachment by their immediate neighbours who might for example allow for backyard squatters. This protection would have to be supplied by the group itself. It is suggested that the group should:

- X consist of not more than up to 100 households.
- X have a leadership structure, either formal or capable of being formalised. A range of legal entities exist which could be used for this purpose such as co-operatives, section 21 companies, and trusts¹⁹. It should be borne in mind that the simpler and cheaper legal entities are more appropriate for starter title.
- X not be in contravention of the Namibian constitution in terms of being deliberately constituted along racial or ethnic lines to the exclusion of other groups.
- X be based on existing groups such as kinship, employment, areas of common origin, religion, producer groups, housing associations, etc.

If a group is not in existence then specialised community development techniques could be used in order to build group cohesiveness. That is, before starter title is instituted in a block a social assessment should be made as to whether a group as such exists; and whether it is sufficiently cohesive in relation to boundary maintenance and land dispute resolution, for starter title. If such a group does not exist then a starter title block should not be created until community development techniques, designed to create group cohesiveness, are put in place.

5.1.2.8 Types of groups which could use starter title blocks in urban areas in the north

¹⁹ See Alberts et al., 1996, Chapter 4 for a discussion of the pros and cons of these legal entities.

Many of the existing informal settlements have established Community Development Committees, known as CDCs. These are generally democratically elected bodies which undertake land administration in these areas. In a few of the areas they have been appointed. Although such CDCs function with different degrees of efficiency and/or effectiveness, they are building group cohesiveness in informal settlements. Often their areas are divided again into sub-CDC areas under one of the CDC committee members. This structure could well be the proto-type for the operation of starter title within a block.

In many informal settlements there are groups of people who are related to each other by blood, marriage or informal unions, either closely or at some distance. These kinship networks, often complemented by friendship networks, are a result of the urbanisation process where over time many people come to town and stay with relatives. Studies have shown that many informal settlements in the Oshakati area are in fact reception areas for these people. Such groups of people would be sufficiently cohesive to run a starter title within a block.

There are a number of non-Namibian groups in the north, such as Angolans and South Africans. These people already live as cohesive groups within one area. Whether one would want to encourage such enclaves would have to be a policy decision by the local authority making blocks available for starter title.

In some areas there are groups of people who live together because of previous political affiliations. In a lot of other areas people are no longer living together because of these old political affiliations but because they have inter-married or have informal unions, share children and have become friends. These areas, at the discretion of the local authority, could also become starter title blocks as they form a cohesive group.

The proclaimed settlement, village and town lands of many urban areas include clans and people who have been living there previously under traditional authorities. These groups are extremely cohesive and could be given blocks of land under starter title. This would make it much easier for local authorities to deal with the customary areas under their jurisdiction and to integrate these areas over time into the local authority procedures.

It is a common practice in Namibia for employers to make accommodation available to groups of their employees, for example in hostels in Windhoek. Employers could make an arrangement with the local authority for a block of starter title to be made available for its employees. They could even be involved in the servicing of such a block at some stage. This however does not mean that the employer should own the block or have the right to evict people if they lose their jobs. Rather, the point is that all the people work in one place and therefore should have sufficient group cohesiveness for starter title to work. The block should still be owned by the local authority and if a person loses his/her job and acquires another job, the local authority should remain unaffected and the person able to continue to reside.

One of the most marginalised groups in the north are single unmarried women with children. They would in most cases form part of the blocks and be integrated into other groups. However, a number of them might have to be catered for separately. It is not suggested that they are allocated a block on their own as single women as it is doubtful if sufficient

cohesiveness exists for starter title to function. However, if a Women's Rights NGO acquired, organised and administered such a block for single women with children it might make a major contribution to the security of tenure of these people.

A number of groups have set up associations in order to acquire land and/or housing. They have also created constitutions for these groups; and they are in the process of developing their dispute resolution procedures. These groups would be able to use such a starter title block immediately.

Without extensive investigation it is impossible to identify the entire range of types of groups operating in the north. It is even more difficult to assess to what extent the different types of groups operate, that is how many of which type exist and where. It is absolutely impossible to state categorically that most poor people will be able to fit into one or other of these groups and can therefore be accommodated by starter title.

However, it is possible to suggest that probably a significant proportion of poor people living within non-formal urban areas could fit into at least one, if not more, of the groups described above, with CDC's, urban based kinship and friendship groups and customary clans probably being the most common groups found within non-formal urban areas in the north.

5.1.3 Application to the local authority

The foregoing considerations for determining the initial feasibility of a development should be included as a check list in an application (for approval by a local authority) for upgrading of an existing informal settlement. This application should however be simple with the minimum of costs associated with it, in keeping with the nature of the rights granted in terms of starter title. It should be remembered that starter title would only give the holder rights to be located within a block or a similar block in near vicinity.

5.1.4 Defining and registering the block of land constituting the settlement area

If the decision is to proceed with the registration of starter title, the first step would be to identify the large block of land constituting the settlement area by defining its outside boundary or perimeter. (The large block could consist of a number of smaller blocks to be immediately subdivided or to be subdivided at a later stage). Preplanning of the internal layout and or development of the block is not required.

This step will result in the subdivision of the block from the surrounding land and the registration of its ownership as a separate piece of land in the relevant main registry. In certain areas this may entail the subdivision of existing portions and their consolidation into a block. The creation of the new block will entail the full survey of the outside boundary of the block and any conditions of title or underlying rights that are inconsistent with urban residential use must be cancelled in accordance with the conventional procedures applicable to ownership recorded in the main registry. Currently this would entail an application in terms of the Removal of Restrictions Ordinance (Ordinance No. 15 of 1975).

As explained previously, in the northern parts of Namibia, such blocks would most often be established on unalienated state land which is not normally subject to existing conditions of title, aside from services servitudes and customary rights. This means that the division of the block from the large surrounding area will in most cases not be a complicated procedure.

5.1.4.1 Registration procedures in respect of the entire block

The entire block must be registered in accordance with the existing Deeds Registries Act, 1937 as applicable to freehold title. In most cases this would entail an application by the owner of the block for the registration of a Certificate of Registered Title in respect of the newly created block in terms of section 43 of the Deeds Registries Act, 1937. The owner is likely to be the local authority or it may be a private developer or a CBO.

An application will also be made for the freehold title deed of the property to be endorsed to the effect that starter title rights have been registered in respect of the property and that the records in this regard are held in the starter title registry, see Section 5.5.1. The endorsement of the title of the entire block is needed to protect the integrity of the main registry and to avoid the development of an 'invisible' cadastre on top of the formal cadastre reflected in the main registry. Without this protection potentially disastrous consequences may occur such as the registration of mortgage bonds in respect of the underlying land in the main registry, while the value of the security offered for the bond is in reality sterilized by the fact that starter title has been registered in respect thereof.

The effect of such an endorsement will be that the block may not be dealt with in any manner save as may be required in terms of the applicable legislation in order to upgrade starter title into landhold title or freehold title. In other words, the block may not be further alienated or encumbered unless in accordance with the prescribed upgrading procedures. The owner of the property should however be entitled to register servitudes over the property without the permission of the starter title holders in order to allow construction of roads, installation of services, etc.

In theory the owner of the block should be able to mortgage the property as it is a full freehold title. In practice however the value of the freehold title holders' rights is worthless as starter title holders have the right of occupation of the property in perpetuity. In theory, the holder of the block and all the starter title holders could together mortgage the property to its full extent, however this is unlikely to be attractive to a commercial financier.

The entire block could also be zoned in accordance with applicable town planning procedures. This is likely to be a 'special' zone permitting a range of land uses in combination.

5.1.4.2 Survey procedures in respect of the entire block

The outside figure of the block(s)²⁰ should be surveyed by a registered land surveyor in accordance with procedures specified in the Land Survey Act, 1993, and the survey regulations. The survey should be connected to the existing Namibian geodetic network.

While the land surveyor is surveying the outside figure it could be an option to require establishment and survey of additional reference points within the figure which the land measurer can connect to while surveying for landhold title. This will save an extra trip to the area by the land surveyor and will increase the accuracy of the internal survey by the land measurer.

The land surveyor should prepare a diagram or a general plan of the block(s). The diagram or general plan should be lodged for approval at the Directorate of Survey and Mapping following existing procedures. When approved by the Surveyor-General, the diagram or general plan is sent back to the land surveyor, and the Registrar of Deeds and the local authority should be notified. The subdivision of the block(s) will be noted on the noting plan at the Directorate of Survey and Mapping. The diagram or general plan should be endorsed to indicate that the erf/erven is/are subject to starter title.

The creation of an unambiguous outside figure surveyed by a registered land surveyor ensures that inaccuracies, which might occur in the survey of internal boundaries by land measurers, do not affect adjacent parcels and the integrity of the cadastre is thus maintained.

The community should, as far as is practical, be consulted in the determination of the boundaries of the block(s). As argued earlier, the occupants of a block should display a minimum degree of cohesiveness between the occupants of the block. The boundaries of the block should be clearly demarcated in a visible manner.

5.1.5 Defining and recording the rights of occupants of land within the boundaries of the block

Starter title is an *individual* type of tenure in that one person, as a custodian for a family or a household, is allocated a right to an unspecified site. It is, however, *group based* in that each household within a block must abide to the rules of the community, be that traditional customs or rules laid down by a CBO.

5.1.5.1 Content of rights and obligations in terms of starter title

²⁰ If the settlement area is larger than 100 households smaller contiguous blocks might be created simultaneously.

It is proposed that starter title is a standard, nationally uniform statutory form of tenure for proclaimed urban areas. This standard form of tenure would be registered in respect of all starter title situations, while the block may be held in ownership for example by a local, central or regional government body, or even by a private sector developer or CBO in particular circumstances.²¹

Registration as an occupier within the block would vest in such a beneficiary the right to occupy in perpetuity, subject to custom or a constitution that may restrict the right of disposal, a site within the boundary of the block or in another block, preferably in the immediate vicinity. An individual specific parcel to which the occupier may eventually acquire landhold title or freehold title is at this stage not defined.

In practice, informal sites may have been laid out within the block without proper survey by the local authority or the community themselves. This informal lay-out does not however affect the nature of the right and the fact that it does not include a right to a specific site.

Only a defined number of starter title's should be permitted in a block so as to provide security against overcrowding through the continuous addition of relatives and newcomers.

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, for example, from 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 the allowable transactions should be kept to a minimum and it is suggested that the holder should not be allowed to register personal servitudes, including fideicommissum, usufructs, etc.

It would also be impossible for such tenure to be encumbered by mortgage, lease, or praedial servitudes since the site has not yet been defined. Group oriented financial institutions may develop to cover this market. However, based on surveys in the north of Namibia, it appears that very few residents of informal settlements want or would qualify to borrow money from a financial institution and would rather take loans from within the family and group.

Starter title holders should be advised that they should not erect permanent structures before their rights have been upgraded to landhold title rights or a layout for the area has been approved. If they should 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.

The manner in which the block may be dealt with by its owner should be described in legislation and starter title would be conferred subject to these rules. Therefore, starter title is not autonomous, but is tenure derived from the ownership of the owner of the block,

²¹ Alternatively additional rules may be prescribed by a CBO in accordance with a constitution or the block members could form a body which could lay down additional rules. See 5.1.5.2 below.

constituting a restriction on the block owner=s right of ownership.

5.1.5.2 Group rights in relation to starter title

By not having individual land registration and by making mortgages less impressive, it makes it possible to make land registration costs much cheaper, simpler and sustainable, both in terms of the initial registration, as well as the subsequent transfers. This type of group approach is becoming much more popular world wide as a way of protecting poor people's property rights, while giving them access to land and security of tenure.

The National Land Policy provides that a variety of legally constituted groups should be entitled to hold rights in land. In respect of starter title it is suggested that usually the head of the household, whether male or female should be registered as the holder of starter title rights as custodian for other people who may hold rights recognised by the group. If the head of household is married in community of property, the details of the spouse should also be recorded on the starter title certificate. Large entities, holding starter title rights, may threaten group cohesiveness although in theory other legally constituted entities such as companies, cooperatives, trusts and family trusts (if legislation should be introduced providing for the formation of such entities) should be entitled to be the holder of starter title rights.

Besides the restrictions on the starter title holder=s rights mentioned above, which will be set out in statute, the block members have to form a body to manage and control the block. That body may decide to restrict the rights of starter title holders in accordance with a unique set of rules or a constitution. For example, block members may through the body, and most likely an elected leadership, specify that a starter title holder may not dispose of his/her starter title right freely but that he/she must first offer to sell his/her rights to the body at a reasonable price (if the financial ability exist to purchase the starter title). This body could therefore play a key role in the allocation of sites and most probably in the solving of disputes within the block.

The constitution and operational rules of such bodies would have to be in keeping with the Namibian national constitution and would not be able to discriminate on the basis of race, ethnicity or gender. Should the government wish to regulate the constitution and rules of such bodies it could consider the introduction of legislation (as seen in South Africa). Such legislation would regulate the formation and registration of such bodies and provide for government assistance and monitoring of the establishment of such bodies. The success of this approach will depend heavily on government resources and it may not be appropriate in the current Namibian context. A less resource intensive approach would be to offer organisations and communities a standard constitution that can be adapted to their needs as well as information as to how to set up and manage such bodies. This information should be made available through the local property office.

When presented with a registrable transaction the local property office (see Section 5.5) would be required to enquire as to the existence of such a constitution and apply such rules, if any. In the absence of a written constitution imposing rules regarding disposal, and a dispute arising which could not be resolved by the local property office, then the aggrieved party would be entitled to approach the magistrate having jurisdiction in the area to arbitrate the

dispute. The magistrate would be entitled to make use of traditional authorities in the area to assist him/her in resolving the dispute.

5.1.5.3 Registration procedures for starter title rights

Once the demarcation and registration of the block as a separate piece of land is completed (Section 5.1.4 above), the identities of existing occupiers within the block must be recorded, or in a *Agreen fields* context, newly identified occupiers must be admitted to the block. A local authority, CBO or private developer may decide only to admit people to the development once rudimentary planning has taken place or roads have been graded or communal taps installed for example in order to provide a rudimentary basis for planning.

In an initial application for starter title, the applicant would fill in an application form at the local property office, which would specify all the information required in order to register starter title. The applicant would have to appear in person at the local property office in order to verify the information. The local property office may ask the applicant to bring community members to act as witnesses in respect of the information presented to the local property office. The application form would mirror the fields that would appear on the computer system and in which the property officer would be required to enter the data. In practice, applicants will probably not be able to verify all information required by the local property office. In respect of starter title, and in order to facilitate use of the registry, this should not prevent the property office from registering starter title.

The applicant would be the head of the household, whether male or female and his or her spouse, if any, and their matrimonial regime would be recorded. In subsequent transfers, in the case of marriages in community of property, the head of the household together with his or her spouse would undertake any transactions in relation to the property, subject to any group right as discussed above.

Starter title should be recorded in writing in the local property office and the data entered into the computerised registry system. The beneficiary should be entitled to a *Aholder=s copy* of the starter title certificate. The computer record will exist in the Windhoek main registry and permanent copies will be backed up from the computer and archived. The registry records would be easily available for inspection throughout Namibia. A statutory and enforceable right to open access to all records should be created in favour of members of the public.

Starter title should only be initially conferred or subsequently transferred upon registration thereof in the computer based registration system. In other words, starter title is delivered by means of registration and any agreement or other judicial fact giving rise to delivery (such as death, marriage, or divorce) should serve merely as the legal cause for delivery. Nevertheless, the system should be *Anegative* in the sense that it merely records the existence of legal rights as an objective and independent fact, rather than being *Apositive* in the sense that registration constitutes the legal rights. Put differently, registration is merely the best evidence of facts existing externally of the registry but does not constitute those facts. Therefore it remains capable of rectification, for example in the case of errors or independent events (such as expropriation or prescription), or intervening judicial facts (such as changes in matrimonial

regime) which will be corrected in the registry only on the occasion of the next registrable transaction. Because registration is a prerequisite to delivery or transfer, the system will tend towards accuracy but, as in the case of the Windhoek registry, accuracy is not guaranteed by the state.

The extent to which it will be practical to register the above mentioned range of transactions depends on the following factors. Wherever possible, the identity of the beneficiary should be registered with the same degree of accuracy as currently applies in respect of ownership in the Windhoek registry, including descriptions of judicial persons such as companies and reference to the matrimonial property regime, and where the marriage is in community of property, the same personal particulars in respect of the spouse.

Where a transfer takes place both the transferor and the transferee should appear at the local property office in order to register the transfer. This would counteract fraud and coerced transfers.

It should not be necessary for starter title documents to be prepared by a conveyancer or legal practitioner. Instead a standard transfer agreement would be available at the local property office for parties to use. This is not to say that if parties wish to make use of legal practitioners that they should not be able to do so. The local property office should assist beneficiaries in the preparation of documentation, the administration of deceased or divorced estates, the conclusion of sales, etc. This assistance should be provided by government on the basis of minimal charge. It is strongly suggested that a different individual assists parties in the preparation of agreements to the individual who enters and will be responsible for the accuracy of the data in the computer based registry.

5.1.5.4 Updating of register

If the register of starter title rights is to be useful it must be kept up to date and communities must be educated about the importance and benefit of reporting changes.

Although the local authority processes transactions in relation to starter title, CBOs and headmen could play an important role in reporting changes and ensuring that parties appear at the local property office in order to record changes. CBOs and headmen must be able to obtain a summary print out of the register on a regular basis in order to assist them in this task. This will also build local knowledge and capacity in respect of land registration and administration. The registration officer is also likely to have to play a proactive role in this regard. It should be noted that unlike in the case of a household register which many local authorities have maintained in respect of informal settlements, the starter title register is a record of starter title rights which are capable of being transferred. Parties to transactions must therefore appear at the local property office in order to ensure that transactions in relation to starter title rights are recorded.

The collection of outstanding service charges should not be linked to the registration of transfer, i.e. there should be no necessity for the transferor or transferee to produce a rates clearance certificate. This is in order to encourage people to register transfers. If transfers and

service charges recovery are linked, many people will simply avoid registering transfers. The local authority will have to make use of alternative methods to ensure recovery of service charges. In most cases the communal nature of services provided such as communal taps would enable the local authority to recover costs from the group or through group enforcement without stopping the registration of individual transactions in respect of starter title.

5.1.5.5 Community map

In practice, it may be expected that a system of general boundaries based on physical features such as hedges, fences or other agreed boundaries would serve to provide a measure of certainty on the ground regarding the location of individual sites. A community map prepared by the community, or a land measurer, could indicate these boundaries. For administrative purposes houses could also be identified by numbers to assist the local authority in management of the area. These house numbers could form part of the record. As discussed earlier, however, starter title does not entitle the holders to a specific site.

The information mentioned above could be used as a basis for adjudication when upgrading starter title to other tenure types. The community map and related records should be held at least in copy by the local property office and should be available for administrative purposes for the local authority.

5.2 Landhold title

Landhold title is proposed to be a statutory form of tenure with a limited range of transactions associated with it. The most important aspects of ownership, including mortgages would be allowed without the full range of transactions (with resulting complexities) that might arise in freehold ownership.

Landhold title, like starter title, would be registered in a computer based deeds registry (see Section 5.5.1) which would remain parallel to the Windhoek registry. The underlying parcel of land on which landhold title rights are registered would remain registered in the Windhoek registry, but endorsed to the effect that it is subject to the registration of landhold title recorded in the landhold title register. As is the case with starter title the effect of such an endorsement will be that the block may not be dealt with nor further encumbered in any way whatsoever. The owner should however be entitled to register servitudes in respect of service servitudes over the property in order to facilitate the installation of services.

Transactions would be processed by the registration officer or a conveyancer in accordance with standardised computer based forms, increasing the accuracy and reliability of the register and decreasing the opportunity for fraud.

5.2.1 Content of rights and obligations

The rights and obligations of landhold title would be set out in legislation creating this statutory form of tenure. Landhold title should be capable of being sold, donated and inherited. It should be subject to all applicable changes in matrimonial regime. In contrast to starter title it should be capable of being mortgaged and therefore sold in execution.

The limited, but important and most commonly used range of transactions allowed in respect of landhold title means that the registration officer can be trained to recognise and record the range of transactions that may arise in respect of landhold title. This does away with the need for extensive legal training.

The cadastral map (see below at 5.2.3) showing landhold title sites should be capable of amendment in order to ensure subdivisions and consolidations of sites.

It is suggested that bonds be registered by means of an endorsement on the title deed. This could be facilitated by banks lodging standard bond conditions at the Windhoek Deeds Registry office. The endorsement could then merely refer to the amount in respect of which the bond has been granted and incorporate, by reference, the standard conditions as lodged in Windhoek.

Landhold title, like starter title, is a statutory form of tenure and it offers a far greater degree of security than the current PTO system and all of the most important features of ownership. Landhold title provides the owner with a right to occupy a defined site in perpetuity. Unlike a PTO, the owner may dispose of his/her rights freely without the permission of central government. 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, subject to applicable building regulations, without fear of having to be moved. Should the state require such a site for public purposes it would have to compensate the owner in accordance with the applicable expropriation laws.

5.2.2 Registration procedures

Landhold title would be registered either as the outcome of the upgrading of starter title rights or it may be registered as the first form of tenure recognised in a particular settlement.

In both an upgrading from starter title as well as an initial registration of landhold title, the owner of the block would have to apply for the opening of a landhold title Atownship@ register. This will be carried out in accordance with existing town planning procedures or new simplified procedures, once introduced. Three steps should precede such and application:

- X the outside boundary of the underlying land on which landhold title is to be established would have been fully surveyed by a professional land surveyor;
- X the erf would have been registered as a single erf in the name of a single owner, i.e. any subdivisions or consolidations in order to create a single erf would have had to have taken place; and
- X any title deed conditions or underlying rights inconsistent with the envisaged use of the property would have to have been removed, cancelled or the holder=s consent obtained.

Once these initial steps have been completed, the owner of the underlying title can make application for the opening of a landhold title *Atownship@* register. This application will be similar to an application for the opening of a township register in terms of the Townships and Division of Land Ordinance (Ordinance 11 of 1963). However, it is hoped that it will follow a somewhat simplified procedure. If landhold title is to achieve its aim of providing a less expensive yet secure form of tenure for low-income communities, then the town planning procedures including infrastructure standards will have to be made more appropriate.

In essence, the approval of a landhold title development would entail the approval of a map indicating the boundaries of all of the erven in respect of which landhold title will be registered and the imposition of conditions of establishment in respect of such erven. It is suggested that such conditions of establishment should not be registered against each landhold title deed (as provided for in Ordinance 11 of 1963) but that the existence of such conditions be noted on the title deed and that such conditions are recorded separately at the local authority in question. The practical implications of this would be that the registration officer or other local authority staff would have to make sure that people settling on the sites were aware of and adhered to any physical building constraints.

The approval of a landhold title *Atownship@* register would not have the effect of subdividing the block. The owner of the block would continue to be the owner of the block and the cadastral map would *Afloat@* on top of the block. The block would only be finally subdivided if landhold title rights are upgraded to freehold title.

Once the landhold title *Atownship@* register has been approved, the local property office could issue landhold title deeds. This would be a computer generated document indicating an erf size and erf number by reference to the cadastral map.

Unlike starter title, it is suggested that the registration of landhold title transactions could be linked to the payment of outstanding service charges, i.e. a landhold title owner would have to provide a rates clearance certificate to the local property office before the transaction could be registered by the local property office.

5.2.3 Survey procedures in respect of landhold title

As for starter title, the outside boundary of the block should be fully surveyed by a registered land surveyor in accordance with the Land Survey Act, 1993. In the case of an upgrade from starter title to landhold title this will already have happened and the description will here concentrate on the additional surveys to be carried out.

Landhold title is based on a *cadastral map* which is prepared by a land measurer.

The cadastral map should be produced at a certain scale, possibly 1:1000 or 1:500. The map should show the boundaries of the individual plots as they have been agreed upon by the residents. It must be shown which kind of beacons are placed and the coordinates must be listed. Distance measurements along boundaries must be indicated. There should be no need

for directions as these can be calculated from the coordinates. Areas should be calculated and indicated for each plot. The approval from the planning authorities should be based on this map.

A cadastral map differs from a general plan in the following ways: the general plan is prepared by a land surveyor and the cadastral map by a land measurer, servitudes should not be indicated on a cadastral map but will be shown on the parent diagram of the whole block. Finally there should be no need for directions on a cadastral map.

The survey procedure will not be specified here. It is expected that new survey regulations will include minimum requirements in terms of connection to reference points and specification of the final accuracy. The final accuracy of the survey carried out by a land measurer within a defined outside figure should meet the required accuracy for freehold. (See section 5.3 for further discussion of required accuracy).

It is proposed that the survey and map drawing process for the production of a cadastral map could be as follows:

- X The land measurer surveys the boundaries (while placing the beacons) and hands in the survey data to either:
 - a. a section within the Directorate of Survey and Mapping, or,
 - b. a private land surveyor, who calculates the coordinates for the beacons based on the collected survey data and a report from the land measurer including a sketch of the survey.
- X A map (or a disk) with the calculated coordinates (and possibly areas) is given back to the land measurer with a certificate stating the accuracy of the calculation signed by the land surveyor who carried out the calculation.
- X The land measurer then prepares the cadastral map, which he or she signs.
- X The land measurer would lodge the cadastral map, together with the survey data and the certificate from the calculating land surveyor, for approval with the Directorate of Survey and Mapping.
- X The accuracy of the survey would be examined in the Directorate of Survey and Mapping by looking at the survey data collected by the land measurer and the calculations carried out.
- X When approved by the Surveyor-General the cadastral map is filed with a reference to the block (outside figure).

Approval by the Surveyor-General of the cadastral map will be subject to planning approval by relevant town planning authorities (see Section 5.4.1.1 on this).

The parent diagram (or general plan) of the block is annotated to the effect that the cadastral

map is approved and filed. In the survey register at the Directorate of Survey and Mapping a note to that effect will also be included.

The Registrar of Deeds, the local property office, the local authority and the Ministry of Regional and Local Government and Housing will be notified of the approval of the cadastral map.

It should be possible to sub-divide and consolidate erven shown on a cadastral map. This could be done by submitting amendments to the cadastral map, prepared by a land measurer, for approval by the Surveyor-General in a similar manner to the original approval of the cadastral map. This process would be subject to planning approval, and for the sake of efficiency it is proposed that planning approval of minor changes, such as sub-divisions and consolidations, should be delegated to the Secretariat of the Townships Board or a local authority planning section.

5.3 Freehold Title

The existing land registration system brings considerable benefits but consideration should be given to streamlining and simplifying it. For example simplicity of title can be achieved by the establishment of a more user-friendly deeds registry process by:

- X adopting standardised, short forms;
- X simplifying extending clauses in title deeds;
- X making reference to (rather than duplicating) restrictive conditions in favour of the state and local government prescribed by law in a Government Gazette in title deeds;
- X simplifying the description of parties where this can be done without derogating from their proper identification;
- X minimising the lodging of supporting documents which instead could be kept by the conveyancer in a protocol and retained as part of the conveyancer's responsibility; and
- X computerising aspects of the registration system.

The above recommendations are not critical for the implementation of a flexible land registration system which can provide tenure for a wide range of the population in Namibia. When the Government decides to make changes to the registration of freehold title rights the recommendations should not be considered.

In relation to survey procedures a few changes are needed to adapt to a flexible land tenure system and the provision of starter title and landhold title as well as for upgrades to freehold title.

The most important change relates to which categories of registered practitioners can carry out land survey for the description of property. The proposal is motivated by the rapid change in technology which has made it possible to collect survey data electronically and thereby eliminate the risk of wrong recordings as well as making it possible to evaluate the standard of the survey by calculations performed in the office. It is proposed that a new category of practitioners called land measurers be included in the survey profession. Land measurers will

carry out surveys for landhold title within an accurately defined outside figure, which is surveyed by a registered land surveyor. For the upgrading of landhold title to freehold title a land surveyor should frame a diagram or a general plan based on the survey data collected by the land measurer. This means that a land surveyor should be able to sign a diagram based on a survey carried out when he or she was not present in person. The proviso will be that the surveyor, based on the data, is confident that the survey was carried out to the prescribed standard.²²

The second proposed change relates to the required standard for the survey of beacons in residential areas. In practice the actual requirement of the Surveyor-General's office is much less than the requirement stated in the survey legislation in Namibia. It is suggested that the specified minimum requirement be lowered to, say 20 cm. The land surveyor could within his or her discretion apply a higher standard when surveying in central business districts and other areas of high density and/or high property values. The required survey accuracy for landhold title and freehold title is thus proposed to be a maximum mean square error of 7 cm, leaving room for deviations between coordinates and actual position of up to maximum 20 cm.

5.4 Upgrading of tenure types

5.4.1 Upgrading of starter title to landhold title or freehold title

It should be possible for starter title to be upgraded whether by way of conversion to landhold title or directly to freehold title depending on the available resources at the time and the wishes of the residents.

It is suggested that an upgrade from landhold title should only be possible where the whole group within the block or a group within a smaller block (for that matter one plot) sub-divided from the bigger block decides to upgrade.

Upgrading of starter title to landhold title or freehold title will only be possible once the layout planning of the block in question has been finalized and approved and it has therefore become possible to grant rights in respect of defined sites.

Adjudication²³ would be one of the most important aspects of upgrading starter title rights to landhold title or freehold title. In the most simple case, the holders of landhold title rights would be entitled to have the site which they occupy registered in the landhold title registry and to have the right which they previously held in relation to an undefined site pinned down to a particular site. In practice however upgrading may be more complex.

²² It is proposed that a registered land surveyor can sign for any work carried out by a technical surveyor, a survey technician or a land measurer who is in his or her employ. The responsibility for the accuracy of the work will rest with the land surveyor who should be the holder of compulsory indemnity insurance.

²³ Adjudication is the process whereby existing rights in a particular parcel of land are finally and authoritatively ascertained.

Where there is limited access to land the adjudication process can be difficult and may take place in an atmosphere of potential conflict. The property office and the local authority would have to play a key role in the resolution of these conflicts. In certain instances people may have to be persuaded to occupy smaller plots or to be moved to new settlement areas.

5.4.1.1 Procedures for adjudication and survey of boundaries

The alignment of roads, service corridors and individual boundaries should be planned and demarcated by a land measurer, who could be employed by the local property office, local authority, the Ministry of Lands, Resettlement and Rehabilitation or a private land surveyor acting as consulting land manager for a local authority. The adjudication of boundaries should be carried out in cooperation with the existing community structures (CDCs, CBOs, etc.) adhering to planning requirements set by the local authority in co-operation with the Ministry of Regional and Local Government and Housing's Town Planning Section. Residents should be included as much as possible in the process. A community map will be a useful tool at the beginning of the adjudication process. Furthermore an aerial photograph (e.g. an orthophoto), if available, could be used.

While adjudicating the boundaries the land measurer will produce a map - here called a *cadastral map*. If only a part of the block is upgraded the outside figure of this part must be surveyed by a land surveyor and subdivided from the block on a diagram. As part of the upgrading process, final erf numbers must be assigned to the newly defined individual parcels.

The cadastral map, produced during the adjudication period, will for an existing informal area also be the proposed layout plan that must be approved by the Townships Board and NAMPAB in accordance with existing or simplified procedures that may be introduced. When the layout plan is approved and the necessary changes have been carried out on the ground and agreed by the community, the cadastral map is updated and lodged for approval at the Directorate of Survey and Mapping.

This process should result in the proclamation of the area, often as a new extension of the town.

Upgrading from starter title directly to freehold title will require a land surveyor to frame a general plan of the block (or part of the block) which is upgraded. The survey within the outside figure to be upgraded can still be carried out by a land measurer who is working for the land surveyor. Adjudication of boundaries must follow the same path as for upgrade from starter to landhold title.

5.4.1.2 Procedures for adjudication of rights

The starter title register may not be up to date with regard to transfers, deaths, etc. if they have not been reported to the local property office. One possible way of dealing with this adjudication is to specify detailed procedures according to which rights can be upgraded. As this can be a costly and lengthy procedure it is suggested that a simple administrative

procedure be provided for in legislation with an appeal to the Magistrate=s Court having jurisdiction in the area.

The essential elements of such a procedure would be:

- X The local authority or owner of the site would advertise their intention in simple English and local languages of upgrading starter title rights into either landhold title or freehold title rights. The advertisement could advise interested parties that a list is available at the local property office. In addition the advertisement has to indicate the people and the erf to whom it is proposed that these rights be allocated. To a large extent this would entail the publication of the starter title register with erven allocated by reference to a proposed cadastral map.
- X Interested parties should be able to approach the local property office if they disagree with the allocation and the local property office would try to mediate a solution between parties, using local knowledge and customs to assist them. The local property office could draw on an individual or organisation with particular expertise. If the local property office is unable to reach agreement on the allocation of the property, the matter would be referred to the Magistrate=s Court having jurisdiction in the area. The Magistrate would play the role of arbitrator and may ask traditional authorities in the area to assist him/her in reaching a decision. This role should be authorised in terms of the proposed legislation.
- X The adjudication process should have a definite cut-off point where after the upgrading should take its course and any further disputes would have to be referred to the relevant court having jurisdiction in the matter.

For upgrading to freehold title a townships register must be opened as described in section 5.4.2.

5.4.1.3 Upgrading of PTO=s

Although it is possible to upgrade PTO=s to landhold title rights it is suggested for simplicity=s sake that PTO=s are upgraded to freehold title in accordance with the existing process on proclamation of the townships. If a township is not proclaimed the local authority could consider granting landhold title rights to PTO holders when the time span of the PTO lapses. It is further suggested that after a particular cut off date that no further PTO=s are issued but rather that where applicable landhold title rights are registered over the property. This implies that local authorities will have to continue administering a shrinking number of PTO=s until the proclamation of the relevant townships, when the PTO holder=s can exercise their option to purchase the property, or, if the PTO holder does not wish to exercise his/her option, until the period of the PTO has expired or it is cancelled in accordance with the cancellation provisions contained in the PTO.

5.4.2 Upgrading of landhold title to freehold title

Landhold title will offer sufficient security of tenure particularly in residential developments to obviate the need for extra expense in upgrading to freehold title. However, residents should be entitled to upgrade of their tenure to freehold title at their personal expense. The local authority may also, if resources exist, wish to embark on a process of upgrading landhold title.

As landhold title rights are already defined by reference to a particular site and some level of adjudication will have taken place prior to the allocation of landhold title rights, the process of upgrading from landhold title to freehold title should be a relatively simple process.

Two routes would be open to an individual holder of landhold title rights. On the one hand, the individual could apply for the subdivision of his/her individual erf from the surrounding block and pay for the subdivision costs. Once the property exists as an individual erf, the holder of the landhold title right would be entitled to apply for the upgrading of his/her title into freehold title. On the other hand, the individual owner could wait for the upgrading of a block of erven and share the cost for sub-division.

A township register will be opened in respect of the whole or part of the block, in accordance with the applicable town planning procedures, currently the Townships and Division of Land Ordinance (Ordinance 11 of 1963) and a diagram or a general plan would need to be framed by a land surveyor based on the data from the survey carried out by the land measurer. If the data is not up to standard the land surveyor must carry out a re-survey to produce a diagram or general plan. When the Surveyor-General has approved the diagram or the general plan the sub-division will be noted on the noting plan and the land surveyor, the Registrar of Deeds, the local authority and Ministry of Regional and Local Government and Housing will be notified of the approval.

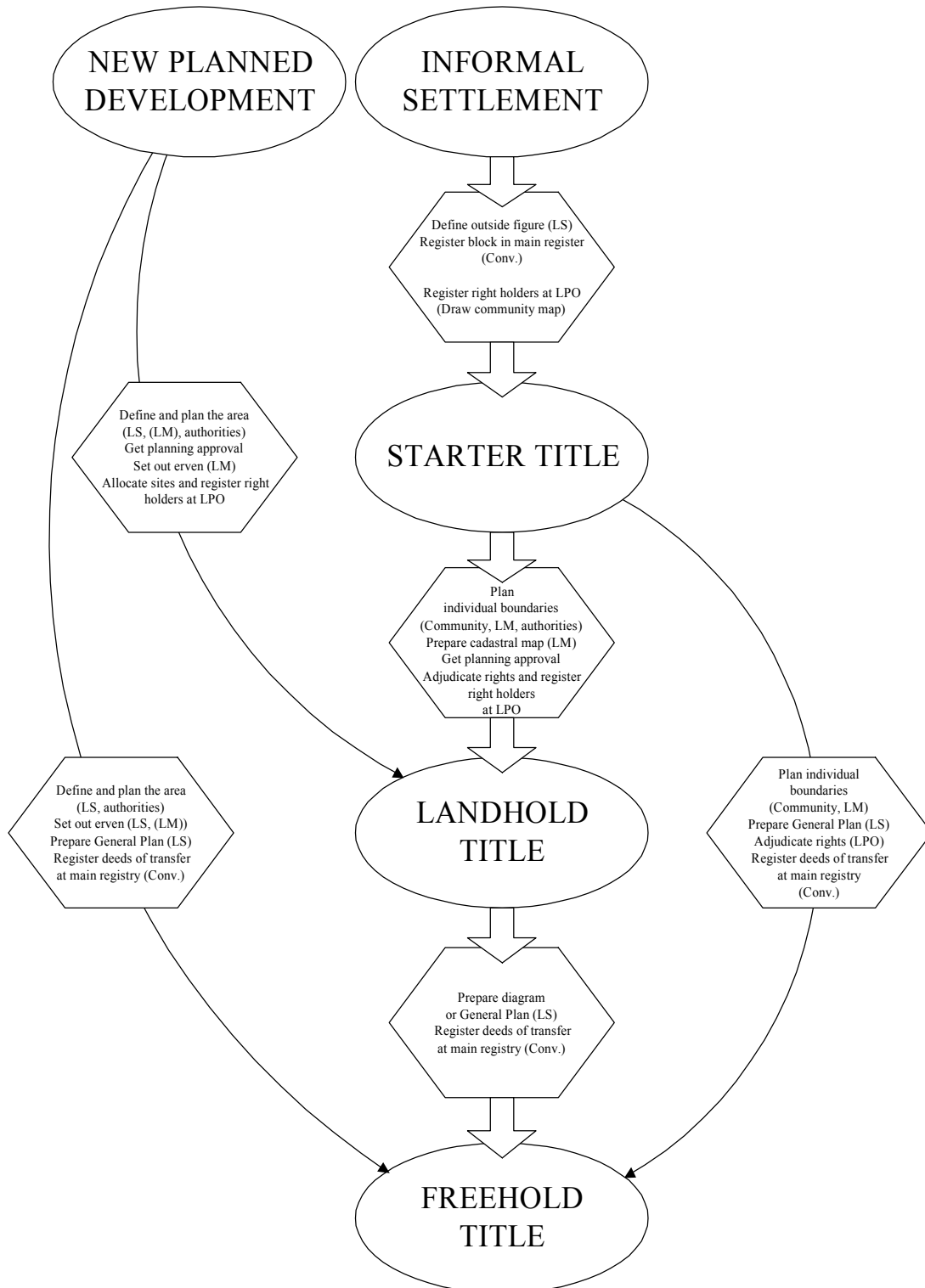
The approval by the Surveyor-General of the diagram or the general plan will have the effect of subdividing the property and the transfer of the individual erven will divest the owner of the underlying block or blocks of any rights in the property.

Transfers would be effected by the issuing of a title deed on which the title deed conditions and any other encumbrances attached to the erf are brought forward. Such a title deed would be prepared by a conveyancer and registered in the main registry.

Landhold title deeds would be endorsed to the effect that they had been superseded by a freehold title deed of a particular number. Bonds over landhold title would either have to be cancelled or brought forward and registered over the freehold title. For this reason the bondholder over a landhold title would either have to consent to the upgrading or agree to the cancellation of the bond.

Figure 5.2 Illustration showing the possible routes to follow when upgrading an informal settlement or when planning a new development.

Abbreviations: **LS:** Land Surveyor; **Conv:** Conveyancer; **LPO:** Local Property Office; **LM:** Land Measurer.



Source: MLRR, February 1997.

5.5 Institutional model

The legislative and social context as well as the proposed tenure system have influenced the design of the institutional model through the two forms of tenure should be implemented. The following elements are proposed for the institutional model:

- X a computer-based registration system;
- X an audit in respect of landhold title by the Windhoek Deeds Registry; and
- X a local property office, drawing on local expertise to resolve disputes and increase accessibility, whilst carrying out the registration process.

5.5.1 A computer based registration system

During the course of pilot study 2, it was suggested that a computer based registration system be used for the registration of starter title and landhold title. The advantages of such a system would be that:

- X the accuracy and reliability of starter title and landhold title records would be increased;
- X starter title and landhold title records would be accessible throughout the country and could be easily used when upgrading from one tenure type to another;
- X a nationally uniform system introduced without local variation, again facilitating upgrading;
- X benefits of regional registry offices would be achieved without the expense of setting up a completely new infrastructure in the regions;
- X the need for regional or branch offices of the Windhoek registry avoided (with attendant problems such as dividing records between offices); and
- X a basis is created for a land information system in respect of areas not yet on the cadastre.

Although the technical specifications would need to be carefully designed some of the most important elements of the system would be the following:

- X The entry of data have to be in accordance with specific predetermined fields. These fields would reflect the nature of the particular tenure type. For example, with regard to starter title, the computer would only allow the registration officer to choose from sale, donation, inheritance, marriage or divorce as being the cause of the transaction.
- X In respect of landhold title, the registration officer would be legally responsible (to the same extent as a conveyancer would be in respect of freehold title) for the accuracy of the information entered by him/her, while in respect of starter title, the officer's liability would not extend beyond the accurate recording of information presented to him/her.
- X In order to avoid simple typing errors, the same data could be entered by two different people in the local property office and the computer would then alert the registration officer and the local property office manager to any discrepancies between the two sets

of data.

- X Each computer in the local property office would be linked to the overall register for starter title and landhold title, managed electronically by the Windhoek Deeds Registry.
- X Although most transactions would be recorded via the local property office, in principle there is no reason why computer access to the system should not be provided at the Windhoek Deeds Registry or through accredited conveyancers, although the latter is not recommended in the initial phase. The conveyancer would then, in respect of landhold title, record the transaction in the same way as the registration officer in a local property office and would be responsible to the same extent as the registration officer for the accuracy of the data. The system should alert the registration officer on a daily basis to transactions that have taken place within his/her area of jurisdiction but which may have been processed elsewhere. Starter title should in the initial phase only be recorded via the local property office.
- X The source material for the transactions such as an agreement of sale would be archived by the local property office, in order to facilitate the auditing of the register. In addition, the records of landhold title deeds should be backed up from the Windhoek computer and stored in a static form, for example, they could be printed and micro-filmed and archived in Windhoek.
- X The Windhoek Deeds Registry would audit the accuracy of the information recorded in respect of the landhold title register by a senior official visiting local property offices on a regular basis.
- X The holder of a starter title certificate or landhold title deed would receive a print out of his/her certificate or title deed as soon as all the required details have been entered in the system and have been checked by the computer. The computer would reject a transaction where insufficient or legally incorrect data was provided or where the data provided did not accord with data already within the system.
- X The system would provide a unique certificate or title deed number for every starter title and landhold title registered within the local property office's area of jurisdiction.
- X Bonds, in respect of landhold title, could be registered by means of an endorsement against the title deed. This would be facilitated by banks and building societies lodging the standard conditions of the bonds in the Windhoek registry. The registration of the bond on the computer based registry could then take place by means of an endorsement against the title deed. The registration officer would be entitled to process a bond registration in respect of landhold title although the banks may for large bonds, prefer to use their own conveyancers in order to process such transactions.
- X Each change in relation to the certificate or title deed such as a transfer or, in respect of landhold title, the registration of a bond, would require the local property office to withdraw the original owner or holder's copy of the certificate or title and to issue a

new certificate or title with the amended details. Similarly a conveyancer would have to make sure that the original title deed is returned to the local property office.

It is envisaged that, for the number of deeds that will be registered and the volume of transactions, such a system could be set up using PCs and one of the well-known software packages, suitably modelled.

5.5.2 Audit of landhold title register

As an additional safeguard for the accuracy and reliability of the landhold title system it is suggested that an officer from the Windhoek Deeds Registry travel to the local property office and audit the landhold title register on a regular basis.

The audit would not amount to an examination of the deeds in the legal sense, as is currently required for freehold title, but would merely entail the following:

- X certification, in respect of the initial grant of landhold title, that the owner of the underlying land is the same person as the person purporting to grant the title;
- X that the details in the source document for the transaction are correctly entered in the computer, for example, the nature of the transaction, sale or transfer pursuant to inheritance, identities of the parties, description of the property; and
- X in respect of a mortgage bond over landhold title, that the bond document is correctly described in the title deed.

If during such an audit, an error is discovered, it is suggested that such errors be dealt with in a similar manner as prescribed by section 4(1)(b) of the Deeds Registries Act, 1937, namely that an error in the name or the description of any person or property mentioned therein, or in the conditions affecting any such property may be rectified by the auditing registrar, if the rectification would not have the effect of transferring a right. The section further requires that each person interested in the rectification should consent thereto in writing. It is proposed that any other rectification of the landhold title register would have to take place by order of a magistrate's court having jurisdiction in the area.

Should the auditing registrar uncover an error which cannot be rectified as described above then the auditor will endorse the title deed and other affected title deeds with a caveat that it cannot be dealt with in any way until the rectification of the error, which would take place in accordance with a magistrate's court order.

Although rights in respect of the property will arise immediately on registration of the document on the computer based system, the system will indicate that the title deed has not been audited. This would alert third parties, particularly banks who could search the system to ascertain whether an audit has been performed. Over time as the reliability and accuracy of the records is tested the need for an audit in respect of every transaction may disappear.

5.5.3 The local property office

5.5.3.1 Land administration at the local level

The future design of a land administration system at the local level is still not clear. For land use and environmental planning, policy dictates that regional land use and environmental boards will be introduced. Similarly, the draft Communal Land Bill introduces the concept of regional land boards for the administration of rural communal land. Regional councils are also vested with powers concerning development planning in their regions, including those in relation to the general land use pattern and environmental factors. In addition, regional councils have direct administrative authority over settlement areas which are situated on communal land. Local authorities, on the other hand, are land administrators in the urban context.

Should local property offices be established they would be part of the Deeds Office in Windhoek which falls under the Ministry of Lands, Resettlement and Rehabilitation. The proposed regional land boards and the regional land use and environmental boards are also under the same Ministry. However, the regional councils and local authorities report to Ministry of Regional and Local Government and Housing, but then again the National Land Policy proposes that land officers (presumably employed by Ministry of Lands, Resettlement and Rehabilitation) be placed in regional centres to service groups of local authorities in the regions. It is thus unclear as to how these various land administration institutions will co-ordinate their activities so as to avoid duplication and to ensure that the rural and urban components and the information held by both are properly integrated.

There are no easy solutions to this complex situation. It was recommended that the land officers, who will be working in the secretariat of the land boards, be utilised as local property office managers. This was seen as strengthening the integration of land administration in rural and urban areas into one system. Moreover, if the Ministry of Lands, Resettlement and Rehabilitation is tasked with such responsibility it will ensure proper information flow between land boards, Directorate of Deeds and Directorate of Survey and Mapping. Lastly, it is a well known tenet of national policy that ways must be found to accelerate land delivery. The establishment of land boards for this purpose in respect of communal land is a high priority. To attach the local property office to this process will ensure its early inception and operation, something that is unlikely if a separate structure has to be created and financed. The concept of a local property office is illustrated on figure 7.3 page 104.

5.5.3.2 Location

In order to facilitate the registration and transfer of the tenure types described above it is suggested that local property offices should be established in local authority areas as well as in regional councils. The local property office should be geographically located where the pressure for land registration is greatest. However, locations should be selected carefully in the initial phase to ensure a reasonable regional balance between the north and south of the country.

It is suggested to begin on a small scale with one office located in Windhoek and establish other offices as capacity in terms of human resources and funds become available. The office

in Windhoek will make it possible to test hardware and software for registration of starter title and landhold title before it is implemented far from the central registry. Furthermore, this prototype office will benefit from working with a properly resourced Municipality, but in a location where the urban drift creates significant problems and is perhaps at its greatest.

5.5.3.3 Functions

The local property office would have the following functions:

- X the processing and entering of data in relation to transactions in respect of starter title and landhold title;
- X the archiving of source documentation in relation to the above mentioned transactions;
- X ensuring the accuracy and reliability of the records through interviewing parties to the transaction, obtaining independent verification of details presented by the parties, through checking ID documents and taking responsibility for the accuracy of such details;
- X assisting members of the public in the drawing up of standard agreements of sale and offering information and advice in relation to property related transactions;
- X maintaining the PTO register for areas within its jurisdiction, (subject to the phasing out of the PTO system in due course);
- X facilitating the resolution of property related disputes through using local knowledge and custom, always provided that parties should be entitled to refer disputes to the Magistrate=s Court or the proposed Community Court if established; and
- X ensuring that information about land is accessible to the public.

Traditional authorities and community development committees play an important role in the adjudication of property related disputes in particular in the solving of disputes related to inheritance. It is suggested that this resource be used to assist the local property office in resolving disputes and to enhance its credibility in dispute resolution.

5.5.3.4 Staff of the local property office

In order to fulfill the functions mentioned above, it is suggested that the local property office has the following personnel:

1. A land measurer;
2. A registration officer; and
3. A local property office manager.

A local property office will be staffed with personnel from the Ministry of Lands, Resettlement and Rehabilitation. In certain local authorities or regional councils these functions might have to be combined and/or performed by seconded employees, who have other existing functions. However, in the long term such employees should be transferred to the establishment of the Ministry of Lands, Resettlement and Rehabilitation. As already recommended above, the local property office managers should be seconded on a part-time basis from the secretariats of the

regional land boards. For larger local authorities or regional councils the post of local property office manager will gradually become full time and thus the shared responsibilities would disappear.

Land measurer

The functions of the land measurer would be:

In respect of starter title (some tasks may also apply to landhold title):

- X assist the land surveyor in visibly marking the outside boundary of the block;
- X carry out, in conjunction with the registration officer, the registration of residents within surveyed blocks;
- X in new settlements, assist the local authority, residents and or community structures in allocating and marking new sites;
- X monitor transfers or other changes taking place in respect of starter title rights and proactively encourage residents to update the starter title register;
- X point out servitudes to residents and ensure compliance with same, where required;
- X liaise with the local authority and the community with regard to the planning of service corridors and or roads and assist the local authority in marking such boundaries where necessary; and
- X where required, plan and execute a numbering system for houses within the block and prepare a map of such households.

In respect of landhold title:

- X carry out planning (in conjunction with town planning officers in local authorities) and the mapping of existing informal settlements in accordance with the prescribed survey regulations;
- X plan and peg informal settlements and new areas for settlement;
- X prepare a cadastral map of the settlement for lodging with the Surveyor-General's Office, attend to corrections/adjustments and ensure registration of cadastral map;
- X assist registration officer to ensure registration of landhold title holders in accordance with cadastral map;
- X assist residents and the local authority by monitoring compliance with planned boundaries;
- X assist residents and the local authority in the resolution of boundary disputes;
- X monitor and encourage owners to register changes in ownership arising from transfer, death, marriage or divorce, etc.; and
- X point out servitudes and building restrictions to residents and ensure compliance with same.

The qualifications for a land measure should be a grade 12 school leaving certificate with

mathematics, including geometry, or mature and experienced candidates with grade 10, who have the ability to pass a grade 12 school certificate with mathematics, including geometry. Land measurers who show flair and ability in their work should be assisted with further courses leading eventually, if they have the capacity, to become fully qualified land surveyors or other professionals in land disciplines.

Registration officer

The functions of the registration officer would be to:

- X assist parties who appear before him or her to fill in the necessary application forms and agreements;
- X identify and distinguish the range of transactions permitted in respect of starter title and landhold title and advise parties in this regard;
- X enter the data initially in respect of starter title and landhold title transactions and maintain the starter title and landhold title register thereafter;
- X maintain the PTO register and continue to perform required functions in respect of PTO=s;
- X pro-actively monitor and encourage the recording of starter title and landhold title transactions within the local property office=s area of jurisdiction;
- X file and archive source documentation in respect of starter title and landhold title transactions;
- X facilitate access for the public to information about land; and
- X assist residents and the local authority in resolving disputes in respect of boundaries and/or refer disputes to the property office manager.

The qualifications for a registration officer should be the same as for land measurers. Again it should be possible for registration officers to further develop their careers through assisted studies to become fully qualified deeds registrars or legal practitioners.

Local property office manager

The functions of the local property office manager would be to:

- X supervise the work of the land measurer and the registration officer;
- X in respect of landhold title, re-enter and check the data entered by the registration officer and take responsibility for the accuracy of the information entered into the deeds registry system;
- X to facilitate the resolution of disputes in respect of the boundaries, rights and any other disputes that may arise in respect of starter title or landhold title;
- X to ensure the registration of starter title and landhold title takes place in accordance with the prescribed procedures;
- X liaise with the Windhoek Registrar of Deeds to ensure, inter alia, the registration of the block in the freehold register, the endorsement of the title deed in respect of the block;
- X liaise with the appropriate planning authorities to ensure Atownship approval@ in

- respect of a landhold title development;
- X liaise with the Surveyor-General to obtain final erf numbers and to ensure the correct information is recorded by the Surveyor-General's office;
 - X ensure the endorsement of landhold title deeds with conditions of establishment; and
 - X establish and extend networks between the local authority, CDC's, headmen and other stakeholders in the land registration system.

The local property office manager should be a person with professional qualifications. It could for example be a town or regional planner, land economist, legal practitioner, or land surveyor with the appropriate professional experience. Taking the human resource capacity into consideration, it is proposed that a lands officer from the regional land board carry out the functions of local property office manager in the initial phases. In the medium to long term, as more trained personnel can be recruited and formalisation increases, full time posts may become necessary in certain areas.

Alternatively, this function could be carried out on an agency basis by a government ministry such as the Ministry of Lands, Resettlement and Rehabilitation or the Ministry of Regional and Local Government and Housing, or a private consultant working as a land manager.

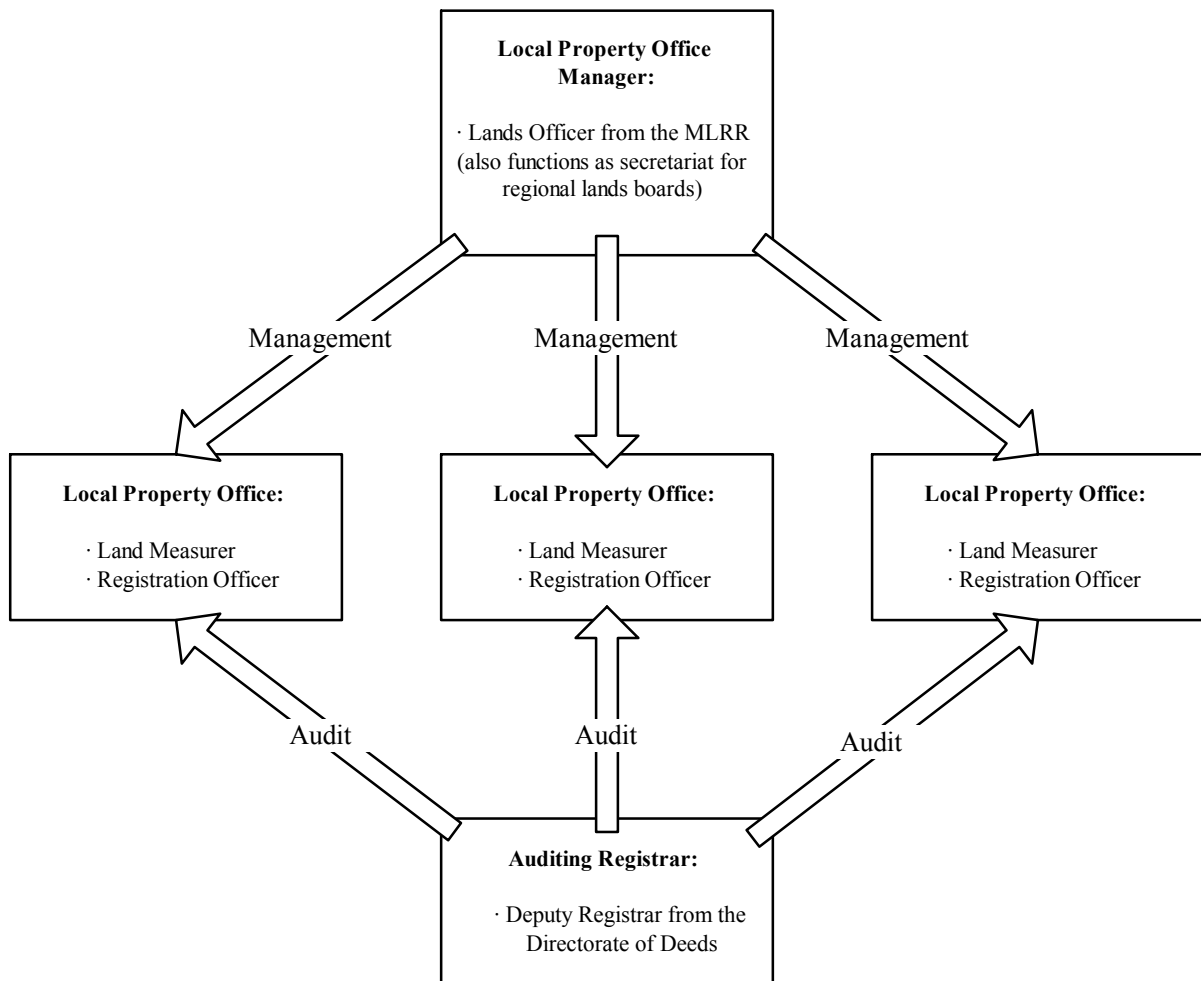
5.5.3.5 Other staffing requirements for the proposed system

The model proposes that the Windhoek Deeds Registry takes responsibility for the auditing, on a regular basis, of the landhold title register. This would entail an officer at the rank of Deputy Registrar visiting the local property offices throughout the country on a monthly basis in order to perform the audit described at 5.5.2 above.

It was suggested earlier that the initial establishment of local property offices should be where the pressure for land registration is greatest and in a phased sequence rather than attempt to service all areas at once. Gradually the number will grow particularly as more and more local authorities get land proclaimed. In this context, the job of an auditing registrar may become a full time one. It is therefore proposed to have several deputy registrars doing audits on a rotating basis. This will ensure an equal distribution of the workload as well as increased security against possible fraud and mismanagement.

Initially, it is proposed that the audit function should be undertaken by a person currently within the employ of the Registrar of Deeds= office and that the demands of this function be evaluated once the system has been running for one or two years.

Figure 5.3 The concept of local property offices.



Source: MLRR, February 1997.

6. THE LESSONS OF EXPERIENCE

The flexible land registration system in Namibia is not yet in operation. It was adopted by the Namibian Government in 1997 and is in the process of implementation. The lessons that have been learnt so far, therefore, relate to the process of consultation and investigations which led to the design of the system.

The process of system design included workshops with stakeholders pinpointing the needs for secure tenure, pilot projects testing possible survey and planning procedures, pilot studies evaluating the existing land registration system through desk studies and interviews, and finally, in-depth discussions in the research teams and with officials from the Ministry of Lands, Resettlement and Rehabilitation. The lessons learnt from this process are outlined below.

The system design was based on an evaluation of the existing land registration systems in Namibia. Principles from the existing system and local customary practises were adopted and included into the proposal for a flexible land registration system. However during the final round of consultation with stakeholders, and at international fora where the proposal has been discussed, concerns have been raised as to how these principles have been incorporated for a successful implementation of the system. These concerns are outlined below.

Another issue of concern is that the process of developing the system has been driven by consultants to the Ministry and not from within the Ministry. How well the system is rooted within the national context can thus be discussed.

Finally, areas of co-operation with other institutions and dependency on changes in related land delivery processes which are considered vital to the long-term success of the system are mentioned.

6.1 Consultation with stakeholders

The consultation process can be split into three phases. The **first phase** was to create awareness of the limited access to secure tenure for urban poor settlers and the inability of the established system to cope with the demand for urban land.

Initially the problem was not acknowledged among officials within the Ministry of Lands, Resettlement and Rehabilitation. However a report by (partly) the authors of this paper quantifying the need for survey and land registration convinced the top officials of the Ministry that this was a serious matter which demanded urgent attention.

The Ministry invited community representatives, private professionals, local authorities and other government ministries for consultations on the issue during 1994. At the workshops the participants were divided between those who worked within the established land registration system and found it to be a good and capable system and those who experienced the problems with limited access to urban land with secure tenure. Through good moderation the workshops recommended that the Ministry of Lands, Resettlement and Rehabilitation should investigate options for a parallel interchangeable property registration system.

The working groups presented options for the interchangeable property registration system. It would probably have been better if the working groups had presented principles and ideas early in the process rather than options because it made the discussion very specific from the beginning and less innovative. The reason was that both the Ministry of Lands, Resettlement and Rehabilitation and the funding donor organisation were too keen on providing specific results.

The workshops brought out clearly the two main contradicting views on the issue. On the one hand professional groups questioned why it was necessary to make changes to the present system because it works perfectly (ANamibia has the world best land registration system@). On the other hand beneficiaries demanded access to secure tenure where the initial secure right is simple and affordable. With hindsight possibly more consultation with the two groups should have been undertaken to improve mutual understanding. However, it was at the time decided to prepare a proposal for a property system on which to base the further consultation.

The **second phase** concerned the design and execution of the pilot programme. The outline of the programme was circulated among the participants of the workshops for comments before the commencement of the investigations. There was hardly any response, which should have alarmed the Ministry and the investigators who had been charged by the Ministry with the execution of the programme. However, the view Alet=s get something substantial to discuss@ was prevailing.

At the same time work on a National Land Policy began (Section 2.5). The design of the pilot programme and the following investigations were carried out parallel to the formulation of the National Land Policy. This created some problems as not all stakeholders were aware of the principles of the proposed land policy and therefore did not perceive the pilot programme ideas as legitimate. This was partly the reason for the poor communication with the local private sector professionals who saw the pilot programme as a threat to their business. Had the National Land Policy been in place prior to the execution of the pilot programme, these problems could have been avoided.

On the other hand, the investigations of the pilot programme fed information and ideas into the development of the Land Policy. The processes were thus of mutual importance.

The consequence of not including Namibian private professionals to a greater detail in the research is a lack of understanding on their side of the proposed system. This in turn has resulted in a lack of interest in participating in the implementation of the system. This lack of interest constitutes a problem for the Ministry which itself has a shortage of professional staff and thus depends on co-operation with the private sector as consultant land managers, etc.

Namibia is not a typical developing country. There are many formalised structures, e.g. professional groups, which one does not find in other developing countries. The Project relied on these established structures among professional groups, and documents were sent through the chairmen or secretaries who then were supposed to distribute them and inform the members. It did not always happen and there have been cases where members of professional groups spoke on behalf of their organisation without having been mandated to do so.

On the positive side it can be mentioned that the local communities took the ideas of the pilot projects to their hearts. Communities were positive and participated throughout the pilot projects without payment for their time. During the pilot projects (and the interviews during the pilot studies) it was found that community members understood the principles of land registration and secure tenure. It was generally found that local customary practises were beginning to merge with new modern ways of life and that the powers of the traditional leadership were crumbling. The land rights allocated by traditional leaders were not perceived as secure and the need for acknowledgement of existing rights by the new local authorities was clear.

Officials from local and regional authorities were positive and helpful during research of the existing capacity for land management within the present public structures. They were also very open about the relationship and possible areas of conflict between local chiefs and headmen and a new emerging democratically elected second tier of government.

The final proposal for a flexible land tenure system was approved in principle by Cabinet in 1997. Cabinet did also endorse the proposal of having the tenure system discussed with all stakeholders in Namibia. A second round of consultations took place and more than 1200 stakeholders participated in this **third phase** of the process.

The consultative process was of paramount importance. If the implementation is to succeed the contents of the tenure system has to be endorsed by Namibians at every level. However, time did not allow for:

- X translating the functions of the tenure system into all major Namibian languages;
- X explaining the tenure system in relation to local customs and practises;
- X the tenure system to be discussed in radio and television programmes (except short features on the News Programme); and
- X meetings to be held with the Regional Councils which act as local authority for villages and settlements.

More time should have been allocated to the consultation process to ensure that the proposed tenure system had been understood by stakeholders. Stakeholders were invited to send their comments on the tenure system to the Ministry of Lands, Resettlement and Rehabilitation. However, neither professional groups nor NGOs representing communities made use of these opportunities. Questions and problems might arise during the implementation which the Ministry will then have to deal with. The implementation of the system will show how successful the Ministry has been with its consultation.

Through the second round of consultation concerns were raised, mainly by the legal profession, that certain issues were not properly scrutinised. The Ministry of Lands, Resettlement and Rehabilitation did acknowledge the importance of these constraints. It was felt, however, that continuing research could be misinterpreted by beneficiaries. The Ministry wanted to show the disadvantaged groups its willingness to improve their daily life. Through the consultation process, the community at large was made aware of the initiatives for increased access to secure tenure to urban land. This has created public pressure on the Ministry not to fail in

implementing the flexible land registration system.

At the workshop with professional groups it was suggested to establish an Advisory Board which should have created a forum of major stakeholders and independent experts that could have acted as a sounding board for the implementation and a co-ordinator of various interests and organisations which must play a part in the implementation. Regrettably the Ministry did not endorse the establishment of the Advisory Board.

6.2 Focus of research

In the past, the development and design of land registration systems in other countries around the world has often been carried out without prior investigation of existing social processes and local customary and informal practices²⁴. Throughout the investigations in Namibia, the approach has been to study the local situation closely in advance in order to incorporate relevant elements in the design of the land registration system. The system has thus been adapted to the society and not the reverse.

The existing Windhoek and Rehoboth land delivery systems were evaluated. And especially the Rehoboth system which works in an environment similar to the other former homelands gave ideas for the system design. Desk studies and interviews were undertaken in the north of the country to assess the capacity for managing local level registries and to understand local practices for (informal) land management.

The pilot programme concentrated most of its work on the Northern part of Namibia. The implementation of a fourth pilot project in the former communal areas in the southern, eastern or western parts of Namibia was discussed. However, due to the limited number of investigators and the scheduled deadline it was impossible to do this. It would have been shrewd if a consultancy had been prepared covering one of these areas and a private professional land surveyor had been commissioned to undertake the task. This might have enhanced the outcome of the pilot programme and it might have improved the understanding and cooperation with the small land surveying profession in Namibia.

The land registration system design described in this Paper is a national system. An investigation of local customs and practices was not carried out for the whole country. The north was used as an area of focus because:

- X most of the population without titles in Namibia lives in the north;
- X more than half of Namibia's population lives in the north;
- X the vast majority of informal settlements are in the north; and
- X it was considered to be representative of the capacity, remoteness and size of other

²⁴

During the pilot projects an anthropologist formed part of the consultancy team. The argument has been based on discussions with her.

areas in Namibia, allowing national comparison of this crucial issue in regard to the development of a land registration system.

Customs and practices are not homogeneous in Namibia. Although the north is representative in respect of possible capacity constraints and remoteness, customary practises relating to land are different to other areas. Questions about whether the new tenure types are to be governed by the common law of Namibia or by customary law are therefore indeed valid and important.

It the research it was found that the local chiefs, or as an institution of appeal (the Magistrate Court), in the present informal and semi-formal (PTO) context, solve problems caused by death, separation, sub-division and partition of interests in land. For the proper implementation of the land tenure system a decision would have to be made as to whether it is necessary to simplify and codify common law. This needs further investigations as envisaged in the recommendations for implementation. An unclear set of legal rules governing the new tenures will confuse those holding under the tenures, cause innumerable disputes far beyond the capacity of officers in the local property office to settle, cause knock-on problems for the Deeds Registry which it is not equipped to deal with and deter lenders. (McAuslan et al., 1997.)

6.3 Urban bias

The tenure system is focussed almost exclusively on land registration for urban areas because this was the objective for the pilot programme. No attempt was made to change this urban bias and if the Namibian Government wishes to extend the system to rural areas, the particular issues and problems relating to rural areas will have to be investigated.

The urban bias is a result of a political decision at the time to narrow the focus of the investigation to avoid problems with resettlement issues and land rights in the commercial farming areas, as well as in the communal areas. However many of these problems are addressed in the National Land Policy. It seems there is a need for a tenure form similar to the landhold title, especially for the rural resettlement schemes, and an effort should be done to investigate the possible options to extend the flexible land registration system to rural areas.

6.4 Multi-disciplinary research team and foreign consultants

Another important principle of the pilot programme was to engage a multi-disciplinary research team (social scientists, lawyers and land surveyors) for the pilot studies. Individual academics involved with land tenure and land rights from Namibia, South Africa and overseas were commissioned to work in a team. Detailed terms of reference set out the tasks to be undertaken by the team.

It is often assumed that to contract one consulting company to deliver a specified output is more safe than commissioning independent academics because the latter can create problems with regard to co-operation, different opinions on how to work together, different attitudes towards solving the specified task, etc. However, the approach and the composition of the

multi-disciplinary research team was a success. No problems were encountered and the work of, and discussions among, the research team members at all times embraced the many aspects of the needs and solutions. This in turn ensured the thorough design of the proposed land registration system.

Most of the team members were foreign academics with a busy time schedule and it was only possible to have the team members together for the two pilot studies lasting three weeks each. The short period of time available made it necessary to select which issues to pursue in the research with the resulting limitations outlined in this Chapter. The research of existing systems and processes could have been done more thoroughly and the design of a new system could thus have been done better if more time had been available. However, donor funded projects have nearly always strict time limitations which do not accommodate for longer time to research existing systems and processes.

The conveyancers in Namibia were successful in lobbying the Ministry of Lands, Resettlement and Rehabilitation. Shortly after the first pilot study had commenced, a delegation from the Conveyancing Committee forwarded the Ministry of Lands, Resettlement and Rehabilitation a submission on the Rehoboth Deeds Registry System. The handover was followed by a request to have one conveyancer included in the team selected to undertake the consultancy. Whilst this was neither appreciated by the investigation team nor the consultants, however, the Ministry decided to include one lawyer. Funds could not be made available from the Ministry, and the Law Society of Namibia funded on its own the assisting lawyer. It should be noted that the assistance turned out to be of significant assistance for the consultants.

Throughout the process of consultation, investigation and system design the Ministry of Lands, Resettlement and Rehabilitation was assisted by a donor funded project staffed by two/three Danish land surveyors who worked as consultants to the Ministry. The consultants ensured the full backing from the Ministry for all projects carried out, however, the initiative came from the consultants. The Ministry did not participated directly in the investigations and the system design, and consequently the expertise and resources to implement the system are not available. Only the last half year of the project period a counterpart/project manager was attached to the project. Regrettably he resigned before the project was completed.

The investigation team generally received full support from the Ministry of Lands, Resettlement and Rehabilitation during the implementation of the pilot programme. When problems occurred it was mainly due to inappropriate information (documentation not read properly) or concerned differences regarding the appointment of consultants. Appointment of foreign consultants was always a difficult subject. Namibia has many very qualified researchers, however, it was difficult to select Namibian land tenure and land registration specialists. Foreign/regional experts were required and that always caused strong resistance from the Ministry.

It was mentioned earlier that the investigation worked closely with the Ministry but was solely responsible for preparation and reporting on the pilot projects and pilot studies. The Ministry intended to have counterparts attached to the projects, but as outlined earlier, there was a lack of capacity in the Directorate of Survey and Mapping. No qualified counterparts were in the established structure until recently when a new structure was approved for the organisation. It

is therefore understandable when the implementation of the pilot programme is criticized for being too influenced by expatriate thinking.

6.5 Existing procedures and social processes

In the pilot study of the Rehoboth registration system many strengths were found. The decentralised registration system gave many ideas on how to limit informal transfers and subdivisions, and how to improve land use and land delivery by making its information readily available to the local people. The most important strengths of the Rehoboth registration system which have been adopted in the new tenure system are as follows: (Fourie, 1996.)

- X It was found that the system has made land information (conditions of title and ownership description, survey information, land use control/zoning and valuation information) for land management (agricultural and urban, planning and adjudication) available for many years to a local community of about 35.000 people. It has provided this service most significantly in a developing world context.
- X It was found that the Registrar of Deeds plays a crucial role in ensuring that any prospective owner of land has made a will so that the heirs will not be left with any intestate estate. In addition, he has an important role in explaining the registration system, witnessing and recording transactions, keeping a register and even registering births for the community. A prime reason why the local land registry in Rehoboth functions so well is that the Registrar is trusted by the community and familiar with events within it.
- X Information from the Rehoboth registry indicates that if a local level land records office or registry makes information accessible to the public it is possible to:
 - X build local knowledge about property rights, thereby improving the legitimacy and sustainability of the system; make land use controls more sustainable;
 - X improve currency in the land records; build local land management capacity to the point where people are not entirely dependent on professional outsiders; and
 - X get poor people to legally transfer and subdivide their land; and avoid some of the lengthy legal and administrative delays that are linked to land delivery procedures driven from the centre.

It was proposed that it might be possible to duplicate the positive aspects of having such a local deeds registry (physical location close to the users and the corporate culture) across the country in a national uniform land registration system. The second study therefore paid a visit to the north of the country, to assess to what an extent similar social processes existed there. If they existed would it then be possible to establish a land registration system which would be integral to a local level land administration. It was found that capacity existed in the areas of conflict management over land matters, land registration records, both formal and informal and in general land management.

The local level land administration and land record management found in Rehoboth is

definitely not sufficient for a modern decentralised land registration system. The pilot studies indicated the type of problems which could arise from local level land record management. With respect to land record management, the Rehoboth Deeds registry showed that when land records are kept at the local level unreliable record keeping is more likely. This is because of the lack of administrative capacity, training, and adequate supervision and due to ascertain of political pressure.

To avoid malfeasance and to maintain the integrity of the land records the following measures are proposed:

- X The data capture performed by the registration officer will be checked by the land manager. In addition, staff from the Windhoek Deeds Registry will travel to the local property office and audit the landhold register on a regular basis.
- X The land records will be kept on an electronic medium in the main register in Windhoek. Paper copies of transfer documents etc. will be kept in the local offices.

The concern was raised that no public law rules governing the activities of the officials implementing the new systems exists. This is necessary to ensure that any malfeasance on the part of officials do not bring the system into disrepute. In this connection, the private legal profession has an important role to play in making of a good title and ensuring that proper legal procedures are followed. This role will increase the marketability and mortgageability of a landhold title.

6.6 Cooperation between local authority and community

Two examples should be mentioned where public information and awareness are required. Firstly, the formalisation process will only be successful if there is understanding, respect and cooperation between the community and local authority. This has to be constantly worked on in order to create a positive environment for future development of the area. The pilot projects demonstrated that the local authority and the community have to discuss the formalisation process thoroughly before it is started. The local authority should not view the community as an antagonist struggling for power, but rather as a partner in development. It should also be understood that the communities can carry out functions for a local authority which can free resources in the local authority administration for other pressing tasks. On the other hand the communities should also be aware of the limitations of the local authority, especially financial, in that they do not demand service improvements which neither they nor the local authority can afford.

There are three issues in particular which merit mention in this regard:

- X The local authority and the community should agree in advance on the procedures and conditions for the planning and relocation of residents. This should enable the parties to avoid disagreements, such as where a majority of settlers prefer a plan that violates the rights of a minority in the area. Vacant plots for relocation of residents within the settlement or in the vicinity must be identified otherwise the formalisation process should not be started.

- X It has to be made perfectly clear to the residents what the purpose of formalisation is and especially what is not included in the formalisation process. If the residents get the impression that formalisation also includes servicing the area, discontent and general disbelief in the process and dissatisfaction with the local authority is likely to arise.
- X For the residents to assimilate the importance of the formalisation process some meetings are required with the whole community. However, to facilitate the decision making for day to day activities, an elected community committee is required which is exclusively accountable to the community. The committee will assist with the adjudication and demarcation, collection of information for the household register, etc.

Secondly, during the whole time span of the pilot projects the iron pegs for the demarcated boundaries along the main roads were removed. There is no reason to believe that the iron pegs were removed due to dissatisfaction with the specific demarcation or the pilot projects in general. The pipes and pegs were most probably removed by people passing through the area who found the iron pegs useful for their own purposes.

It created problems for the survey when the pegs were removed. Frequently the pegs planned for further demarcation were removed or the pegs were not present when the plot-holders wanted to inspect their plots. In areas with high rainfall the problem will disappear once the plot is occupied, because nearly all plot holders immediately fence their plots with quick growing hedges, such as is seen in Rundu. However, in areas with low rainfall and where the boundary will not immediately be marked with permanent structures, it will create problems if the pegs are removed.

The problem of removal of beacons is partly caused by lack of awareness of the function and importance of demarcated boundaries. It can be concluded that although the residents within the settlement are informed, similar information should be given to surrounding settlements which will be formalised later. The local authority where possible could prepare general information for all inhabitants including a priority list to enable the inhabitants to see when their area is expected to be formalised.

If an awareness campaign does not reduce the problem another solution would be to place the beacons in concrete. This solution will however increase the workload and cost of demarcation considerably.

6.7 Human capacity

The survey and registration system must be accessible to the poor, readily understood by lay public and it must acknowledge and improve upon traditional tenure patterns. In order to achieve this, the new tenure system will require a large number of locally based land measurers, registration officers and land managers. The question is - will it be possible to guarantee the availability of qualified land measurers, registration officers and land managers?

6.7.1 Land measurer

A new land measurer course has been developed by the Ministry of Lands, Resettlement and Rehabilitation, the International Institute for Aerospace Survey and Earth Sciences (ITC), the Netherlands, and the Polytechnic of Namibia with input from the Mangosuthu Technikon in Durban, South Africa. The course will last 11 months and is structured in modules, with approximately 50% theory and 50% practice. At the end of the course participants who pass all subjects will be awarded a National Certificate in Land Measuring by the Polytechnic. The course is in the process to be institutionalised at the Polytechnic of Namibia and it is accredited by the relevant Namibian authorities. This training will form the first step of a career path (via further Polytechnic or University training) for technical surveyors and land surveyors. (MLRR, ITC and Polytechnic of Namibia, 1997.)

The course curriculum includes the following modules:

- X Basic knowledge;
- X Land surveying and surveying knowledge;
- X Legal and institutional knowledge;
- X Planning knowledge; and
- X Language and communication skills.

All applicants need at least a secondary school diploma at IGCSE level with passes in English, mathematics, physics and preferably geography. A particular emphasis is laid on the proficiency in English.

Ten students have participated in the course and another ten are presently enrolled. All trainees are employed by the Ministry of Lands, Resettlement and Rehabilitation at the beginning of the course. Only five students of the first group passed all subjects. The low pass rate is due to the following reasons:

- X trainees did not have the required qualifications but they were persuaded by the Ministry of Lands, Resettlement and Rehabilitation to start the course;
- X trainees had poor proficiency in English;
- X trainees were poorly motivated; and
- X some lecturing materials were developed along the road and had not previously been tested on trainees with a similar background as the land measurers.

With regard to the qualified land measurers= performance in formalisation of informal settlements there are no experiences yet. However, it is expected that they will not be able to work without direct supervision within their first year(s). A land manager will have to supervise the land measurers. This relationship will be dealt with in the next section.

Coming back to the question whether the Ministry of Lands, Resettlement and Rehabilitation can guarantee the availability of qualified land measurers, registration officers and land managers, it will be necessary to re-appraise the selection criteria. The skills taught at the land measurer course are not found to be too difficult or outside the scope of what a land measurer could be exposed to. Selecting the best qualified trainees is necessary not to undermine the

concept of the whole new land tenure system.

6.7.2 Registration officer

A curriculum has been developed for the registration officer course but it has not been formalised yet. Whilst much of the present on-the-job training in the Deeds Registry would be relevant, the University of Namibia, Faculty of Law, and the Justice Training Centre have been identified as possible training centres. A training course for registration officers would consist of theory and supervised work in the central Deeds Registry and in a local property registry. The basic areas to cover will include the following:

1. Basic preparation - theory of law and private law;
2. Basic land tenure data records;
3. Deeds and mercantile law.

It was proposed that the entrance qualifications were the same as for land measurers. Again it should be possible for registration officers to further develop their careers through assisted studies to become fully qualified deeds registrars or legal practitioners.

The experiences from the land measurer course will be very useful for the registration officer's course. Questions have been raised whether the qualifications of the registration officers in the local property offices are sufficient. Only time will show whether they are able to handle the complex legal questions that will be presented to them at the local property offices.

6.7.3 Local property office manager

The local property office manager should be a person with professional qualifications. It could for example be a town or regional planner, land economist, legal practitioner, or land surveyor with the appropriate professional experience. Taking the human resource capacity into consideration, it is proposed that a lands officer from the regional land board carry out the functions of local property office manager in the initial phases. In the medium to long term, as more trained personnel can be recruited and formalisation increases, full time posts may become necessary in certain areas.

Alternatively, this function could be carried out on an agency basis by a government ministry such as the Ministry of Lands, Resettlement and Rehabilitation or the Ministry of Regional and Local Government and Housing, or a private consultant working as a land manager.

6.7.4 Partnership between para-professionals and professionals

To improve administrative capacity in a local property office it was proposed that the registration officer and the land measurer should operate in conjunction with either a land manager from the government, or a private sector land manager, who should supply overall guidance for the work on the ground. Experienced people should be trained to fulfil these

roles in order to improve land and service delivery for the historically disadvantaged in the urban areas. The land manager, linked to a registration officer and a land measurer (para-professional), could become an effective communication channel which may improve participatory management and assist the transformation of the regulatory frameworks to the point that the informal and formal systems can merge. (Fourie, 1996.)

These roles would however require a new relationship between the para-professional and the professionals involved in land delivery. In the conventional scenario the professional would have all the knowledge and skills and the para-professional would merely behave as a routine assistant. There is a need for a change in the professional behaviour towards para-professionals. The professionals should recognise the para-professionals' accountability to the community, as well as the skills of the para-professional in working with the community.

With respect to formalisation of informal settlements, a registration officer and land measurer, linked to a land manager, will bring an informal land delivery system into the wider urban management system. This partnership would link the local community and the built environment professionals and the various authorities involved in the land delivery process.

To conclude, legislation, service standards, family law, surveying, planning approaches, titling and transfer procedures, all of which presently serve as a hindrance to formal systems being used by the poor, would have to be adapted through ongoing negotiation by a registration officer, land measurer and land manager. They will work as change agents within local communities on the one hand, and with their fellow professions and other organisations on the other hand.

This complex task is the real challenge to the legal, planning and surveying professions in Namibia. This partnership could provide the engine room of change to develop the new regulatory framework advocated by Habitat II, which would be participatory, transparent, accountable and responsive to emerging changes in developing countries. Some professionals in Namibia are already undertaking this role without any formal training as are registration officers and land measurers.

On the other hand, issues such as legal and ethical rules, the protection of professions and their norms, conflict of interest and disclosure of information, are all thorny issues that have to be worked through for this new relationship to be able to take shape.

6.8 Finance

The extent to which the financial institutions will accept landhold title as security is still open for debate. Only one institution has clearly indicated its willingness to use the landhold system as it is felt to provide sufficient security. The other financial institutions have also participated intensely in the pilot programme, however, it has not been possible to get any indication whether they can endorse landhold title. Such an acceptance will probably not be forthcoming until the landhold title system has proven that it works and that the risks are no greater than for freehold system. The extent of the security which will be required by financiers will, of

course, differ according to the size of the loan, their own legal and policy requirements and their assessment of the risk entailed in lending to that person in respect of that property. One lending institution in Namibia which is lending money to low-income urban settlers, stated that the repayment rate on loans to poor people was higher than to middle income people.

It is possible that the new tenure system has not been properly explained to financial institutions, and thus not been adjusted to ensure that they are persuaded to embrace the new tenure system by lending to landholders or the new freeholders.

6.9 Reforms needed for other areas of the land delivery process

Other areas of the land delivery process on which the land registration system depends need reform. The extent to which this can or will happen is not in the hands of the Ministry of Lands, Resettlement and Rehabilitation. The Ministry will however have to utilise its resources to lobby for changes as failure to reform these areas will have serious effects on the success of the flexible land registration system.

6.9.1 Compensation for access to additional land for urban development

During the investigation of the existing system it was found that additional land for allocation to those displaced by planning, reduction of overcrowding, etc. was very limited. Unless land is available for new starter and landhold developments, continuing migration will put pressure on existing blocks of starter and landhold settlements in the form of squatters. The individual and community integrity of those blocks will then be compromised to the detriment of the whole system.

In the urban centres of the former homelands the only land available to address the problem is likely to be communal land on the edge of urban areas. Although it is commonly assumed that the State owns such land and should be able to deal with it as it sees fit, it is necessary to formally establish the rights that people may hold thereto. These are usually communal tenure rights to reside, plant crops and graze stock, which were allocated by the traditional authority of the area.

Attempts have been made by certain local authorities and central government to gain access to land held under customary tenure and utilised for farming purposes. The authorities have learnt that these rights cannot be extinguished and the holders removed from the land merely by being ordered to leave without adequate compensation.

To tackle this problem it is necessary that government develops a policy, backed with legislation, for how to deal with this issue. It should contain at least the following components:

- X identify an institutions and persons to be responsible;
- X guidelines for how to plan the removal of the community;
- X guidelines for procuring land for displaced people to settle, in consultation with them

- and, where relevant, those into whose area they are moving;
- X development of compensation packages covering not just the loss of a hut or kraal²⁵ but also:
 - X long term loss of livelihood;
 - X breakdown of community cohesion; and
 - X loss of social and welfare elements.
- X identifying options for funding the resettlement process; and
- X examine existing legislation on expropriation, the Expropriation Ordinance No. 13 of 1978, with a view to amend the Act incorporating the components mentioned above.

If these compensation elements are not being addressed properly the whole concept of an upgradable land tenure system is put in jeopardy. However, land must not be made available at the expense of destroying existing self sufficient, functioning communities, as these will then become a financial burden on government.

6.9.2 Planning law

It is widely recognised that the planning process is a major factor in delaying urban development. Reforming the planning law and practises is thus a precondition for the success of implementation of the new tenure system.

Work is on-going to reform the Township and Division of Lands Ordinance, No. 11 of 1963 and the Town Planning Ordinance, No. 18 of 1954. However, it is not certain that the planners have taken sufficient account of the fact that delays in the planning process are widely regarded as being an important cause of the slowness of getting land to urban settlers and thus the need to ensure that the reforms in those two laws and the administrative systems they provide for produce a simpler and speedier process of obtaining permission for the laying out and development of urban lands and hopefully to allow for the possibility of more realistic planning and building standards to be applied to individual erven to be developed by and for low-income housing.

The present delays in the planning process increase the costs for private developers and eventually lead to 'illegal' development. These costs and delays are at least as, if not much more, serious and in need of more attention than the costs and delays associated with surveying and conveyancing. It is thus a major concern that it is at present envisaged that a new town planning law will not be ready for another two years. It is difficult to see how the flexible land registration system will be able to ensure the delivery of erven with landhold or freehold title to new urban settlers if these two laws and practices under them remain as they are.

It is vital to the long-term success of the project that the process of reform is sped up, i.e. in draft regulations or Bills or new procedures on these matters.

²⁵

AKraal@ is Afrikaans and means livestock enclosure.

In addition, evidence suggests that where starter titles do not give individuals and families within a block a title to a defined piece of land, they tend to act as if they do have such title. It may be necessary therefore to begin the process of subdivision immediately upon settlement within the block, which places even more pressure on the reform of the planning processes.

7.CONCLUSION

This paper examines the problem of limited access to secure tenure in urban areas for low-income families. It sets out a possible solution which has been investigated through an extensive pilot programme, and this Chapter now describes all the most important elements of the paper.

The proposed flexible land registration system

Two new forms of tenure are proposed in addition to the existing freehold as it is currently known to the common law and registration statutes of Namibia:

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

The **starter title** provides the holder with the following rights:

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

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

The **landhold title** provides the owner with the rights:

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

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

Starter and landhold title documents need not be prepared by a conveyancer or legal practitioner. The range of transactions is limited and the local property office staff (registration officer) will be trained to recognise each of these transactions. The local property office staff will furthermore be trained to assist people with the preparation of transfer agreements and other simple transactions.

A landhold title site will be indicated on a cadastral map. This is a map prepared by a land

measurer, based in a local property office, in accordance with procedures and to a standard prescribed in new survey regulations.

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

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

A local property office is staffed with a land manager, linked to a registration officer and a land measurer (the latter two para-professionals). With respect to formalisation of informal settlements para-professional linked to a land manager, will bring an informal land delivery system into the wider urban management system. This partnership would link the local community and the built environment professionals and the various authorities involved in the land delivery process. The para-professional will speak local language and understand local customs and practise.

The process of developing the flexible land registration system

The proposal for the flexible land registration system was developed through a process of consultation with professional groups and beneficiaries. Extensive research of existing land registration systems and practises, formal as well as informal, was undertaken. In addition, investigations of possible options for establishment of local property registers and training of para-professionals to manage part of the land registration system were researched. The initial consultation with professional groups and beneficiaries resulted in an outline of a pilot programme to investigate options for parallel interchangeable property registration systems prepared by the Ministry of Lands, Resettlement and Rehabilitation.

The pilot programme was a useful exercise and was a big step forward in identifying the issues to be considered and to test various ideas. In the proposal for the new land registration system most of these very wide ranging issues have been considered and answered to. However, it is evident that the land tenure system cannot be divorced from the land policy, which itself is meshed into the whole fabric of society and devolved through the social, political, and economic history of its peoples. The disparity of the Namibian society evidently means different needs for land tenure and different means of acquiring so. The particularly interesting feature of the pilot programme was its contribution to the incorporation of developing world realities into the existing developed world landholding and registration models so well protected by the *status quo*.

The model for parallel property registration systems provides only a parallel path to freehold tenure. The pilot programme restricted itself to the analysis of the feasibility of techniques, their cost, effectiveness, etc. The programme did not enter the sphere of land tenure policy.

But it was very close in doing so because the model provides for options as to tenure form and content and this in itself was already controversial in the Namibian context. The pilot programme, however, affected the formulation of a National Land Policy. The pilot programme and the following investigations were carried out parallel to the formulation of the Policy. On the one hand this was an advantage that the principles of the model for a parallel interchangeable property registration system were adopted by the National Land Policy. On the other hand it created problems as not all stakeholders were aware of the principles of the proposed land policy and therefore did not perceive the pilot programme ideas as legitimate. Had the National Land Policy been in place before the execution of the pilot programme, these problems could have been avoided.

Many important lessons were learnt during the execution of the pilot projects. The most important lesson to emphasize is the positive experiences of using para professionals (land measurers) for land surveying tasks. It was found that land measurers could operate perfectly in conjunction with a land manager, who supplied the overall supervision to the work on the ground. About registration officers similar pilot tests have not been carried out. However, it was found that local authority personnel is already doing similar tasks satisfactorily. The partnership of a land manager, land measurer and registration officer would link the local community and professionals and the various authorities involved in the land delivery process and by that bring the informal land delivery system into the wider urban management system.

The prospect for implementation

Since Independence Namibia has made considerable progress in consolidating democracy and establishing the institutions necessary in an independent country. Despite economic constraints, central government is trying to restructure its spending priorities and increase expenditure on the social sectors. This has already led to an improvement in access to public services and enhanced human development indicators. However, much still remains to be accomplished.

The land question is probably one of the most burning issues, however, it did not get the attention as it ought to in the years after the Independence. Recently there has been a change in government's priorities and it seems government is giving more attention to both rural and urban land problems. When the implementation of the proposed flexible land tenure system was discussed with the Ministry of Finance, it was allocated an amount of US\$600.000 for the 1998 financial year to begin the implementation immediately. If the Ministry of Lands, Resettlement and Rehabilitation can deliver the promised outputs, it would not be unrealistic to believe the funding to be continued.

However, money does not automatically provide informal settlers with security of tenure. The Ministry seriously lacks the experienced staff in management positions which is required to implement the flexible land registration system.

The Ministry of Lands, Resettlement and Rehabilitation has commissioned an attorney company to prepare the legislation. In addition they will do their outmost to get the Bill before Parliament as a matter of urgency. The land measurer course will also continue and the next class of students have been employed. However, there are many more task to undertake, just

to mention the most important: to establish a training course for registration officers; find positions for trained staff in the system; establish local property offices in some local authority areas; and develop a computer hardware and software for the new digital registration system.

The Ministry has realised that to be successful it needs to engage the private sector and academics at the University and research institutions. The professionals can act as managers in local property offices and provide training for land measurers and registration officers. The academics can assist with development of training courses and software and with management tools. With this approach starting the implementation process will be possible for the Ministry. Likewise, with US\$600.00 allocated for the implementation in 1998 there is no direct hindrance for the Ministry not to start immediately to implement the flexible system of land tenure.

The private professionals are thus suddenly holding the key to the solution of the problem. However, this will create a sound climate for development and cooperation with the private sector. This would still be within the strategies with general governmental approaches in Namibia which do emphasise the role of the private sector in furthering economic development.

Should the Ministry of Lands, Resettlement and Rehabilitation fail to continue the implementation of the flexible system of tenure there is a factor which should not be under-estimated. During the consultation with stakeholders, workshops were held with the beneficiaries of the system with the objective to get constructive criticisms and comments which could be used by the Ministry to improve the proposed new tenure system. The workshops were attended by many people and did create an expectation among the disadvantaged communities that they will get security of tenure fast. They are not expected to be sitting patiently waiting for the Ministry to deliver security of tenure. They are supported by their NGOs which want to lobby and pressure the government to its maximum. Should such a situation arise the NGOs will be in a strong position to press the Ministry for being incapable of spending the budget allocation for the fiscal year.

Apart from the human capacity problems mentioned above the weaknesses of the proposed system and dangers to its successful implementation are in areas of co-operation with other institutions and dependency on changes in related land delivery processes. For example the flexible tenure system depends on having land available, or moving people when necessary, to plan a settlement. Existing procedures for establishment and planning of new townships are slow and cumbersome and there has been no or little progress in developing new planning legislation. The Ministry of Lands, Resettlement and Rehabilitation will be required to pursue this aspect vigorously with the Ministry of Regional and Local Government and Housing.

It is important to ensure the acceptance by financial institutions of landhold title as collateral for security of a mortgage. The financial institutions have been consulted on all matters related to the landhold title system during the design phase. One institution has taken a positive approach to landhold title and considered that it could work within it. However, the other lending institutions are not as positive and they are patiently waiting observing how well the landhold title works before they make a final decision.

Can the system benefit other countries?

It is believed that the experiences gained during the pilot programme and the proposed tenure system can be of benefit for other developing countries. With respect to developing countries with a colonial history it might even be more important.

This approach can assist indigenous professionals in developing countries not to focus on the professional norms in the Western world, which serve the business world and middle-class. Instead they should take the point of departure in local custom and informal practise which are used so extensively by the poor and are often the most dominating land delivery system in developing countries.

First, with regard to the stakeholder participation needs to be emphasizing. The private and government professional groups, beneficiaries, NGOs, etc. participated in a mutual dialogue with the Ministry of Lands, Resettlement and Rehabilitation. They all contributed in the formulation of the flexible land tenure system. However, more could have been done to get them to take ownership over the new tenure system which is a necessity for successful implementation.

Second, another important issue is the proposal of having para-professionals in one local property office to perform planning, surveying and registration. The present land delivery system requires three different professional groups to undertake such tasks, namely town planner, land surveyor and conveyancer. However, these tasks are not more complicated than para-professionals can perform it if they are properly supervised and they use modern equipment.

Thirdly, the experiences in Namibia could make an input when rethinking decentralisation and land administration. In this regard a locally based registry office, which is user-friendly, can facilitate land information flows and local land management. Suitably trained land measurers, registration officers, working with specially educated land managers, could provide the change management and technical skills necessary to boost sustainable urban development, land registration and information management in developing countries.

The tenure system developed in Namibia is certainly foreign-inspired. However, compared to other systems designed by foreigners for developing countries the system proposal in Namibia has managed not to displace indigenous institutions and approaches but to include the strengths of these into the new system.

The relevance of the ideas brought forward in this paper are worthy of attention, however, they remain proposals. The pilot projects and development of the proposals for the new tenure system provided lessons of experience, which are the most unique contributions to be made to efforts by other countries. They are also the most valuable contributions which the work in Namibia so far can provide.

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