

Are urban land tenure regulations in Namibia the solution or the problem?

Abstract

Land tenure in Namibia is regulated by a variety of Acts, some of which date back to as far as 1937, and some of which are yet to be approved by Cabinet. This variety of Acts makes it difficult to evaluate the performance of land administration as a whole, and the appropriateness of coercive instruments with regards to urban land tenure in particular. In this article we evaluate how urban land tenure regularization practices are conducted in Namibia, and to compare new formal procedures, designed to address problems of efficiency and efficacy, to older existing procedures, supposedly not efficient or effective. This evaluation uses a theoretical framework of (Pritchett and Woolcock, 2004) , which deals with public service delivery and transaction-intensive services. Applying this framework for a comparative analysis of 5 different land subdivision practices – each relying on a different land-related act - we conclude that the degree of regulation and regularization is perhaps not so much a solution for urban land tenure problems but perhaps more of a problem in itself.

1. Introduction

Land tenure in Namibia has been regulated by a number of Acts and regulations. The oldest Act which is still in function is the Deeds Registries Act of 1937. According to this Act all land in Namibia must be surveyed before it can be registered. Any transactions resulting in change of ownership of land, including long leases and servitudes, must first be surveyed by a professional land surveyor, approved by the Surveyor General (SG), and then registered in the Deeds Office. Of more recent date is the Land Survey Act of 1993. Cadastral surveying of land is done in terms of this Land Survey Act, which is, however, an almost identical copy of the old Land Survey Act of 1927 of South Africa. Before land can be surveyed, an elaborate process of approval is often required, involving the use of professional consultants (generally town planners) and a series of intermediate approvals by various individuals and committees. Most planning procedures are based on the Townships and Division of Land Ordinance, Ordinance No. 11 of 1963, and to a certain extent the Town Planning Ordinance No.60 of 1954.

While the currently available Namibian surveyors, lawyers, government officials and even politicians have historically been thoroughly trained in these formal land registration systems (systems defined in the broad sense, including planning, surveying and registration), (Christensen and Høygaard, 1997; Fourie, 2000) argue that these have been highly effective in terms of accuracy and security, but totally ineffective in terms of cost, fitness for purpose, and equitability. The system is considered undeniably slow and expensive, and, most importantly, only serves a small percentage of the population (Odendaal, 2006; Werner, 2001). In Windhoek alone, less than half of the residents benefit from the formal land tenure system. Approximately 18 000 families (at least 25% of the city population) live in informal settlements without any permanent tenure¹. Furthermore, the majority of the low income residents in the northern suburbs of the city who do have freehold ownership, do not have access to the economic benefits of freehold, being mortgage finance and other land development transactions like subdivision, consolidation and rezoning. The situation in the rest of the country is similar (if

¹ Authors' estimate based on interviews with town planners at the City of Windhoek, and a City of Windhoek internal report (dated 2006) on the Windhoek Residents' Profile, which is based mainly on the 2001 National Census (Central Bureau of Statistics)

not worse) than in Windhoek, with more than 70 000 families living in informal settlements², and the majority of freehold land owners not having access to cadastral information and services.

To address this situation of inequality and inefficiency, a number of new Acts have been developed. These include the Flexible Land Tenure Bill and the Communal Land Reform Act of 2003. The implementation and effectiveness of these Acts has however been debated. For the FLTS (Christensen, 2005) notes that: *The Cabinet approved the principles of the new system in 1997 and the Ministry of Lands, Resettlement and Rehabilitation established a Project to commence implementation. The Flexible Urban Land Tenure Bill was in final version in July 2004 but has not yet been scrutinised by the legislative bodies. Further, detailed regulations were drafted in 2004 but have not yet been examined by a Regulation Committee, to be established with promulgation of the Act. The Ministry of Lands, Resettlement and Rehabilitation made advanced preparations for initial application of the system. The training of paraprofessionals (land measurers and land registration officers) has been secured through a certification course at the Polytechnic of Namibia, upgraded as from 2005 to a diploma course. The Flexible Land Tenure System has become established within the Namibian Government. However, there has been a dramatic decrease in budget allocation to the Project since 1998, constituting a major threat to its successful implementation.*

While for the Communal land reform Act, a rather critical report of (LEAD, 2006) concludes: ³

The Communal Land Reform Act of 2003 failed to secure occupational rights for the San in rural or communal areas. The stance of government that all communal land belongs to the state, and people need to turn to land boards and recognised traditional authorities for the right to occupy areas, complicates the land rights in Namibia, especially for the San.

Considering the limited success of new land tenure legislation, and the fact that most existing legislation date back as far as 1927 (with land surveying based on 1927 legislation, the deeds registration system based on Act 37 of 1937, and planning legislation dating back to as far as 1954.), it can be concluded that not much has changed in terms of land delivery during the past 40 – 80 years. Most systems and procedures in the Deeds Office and SG's Office have not changed significantly during the past 60 years. A major improvement is the current digitising of ownership data in the Deeds Office, and the implementation of a Cadastral Information System in the Office of the SG. However, these projects comprise mainly of digitisation of data, and no amendments of procedures are envisaged. Furthermore, most systems, procedures and institutional structures relating to land delivery in Namibia, have also not changed significantly during the last 60 years. Technological advances, global practices and the pressing need for land delivery and reform, have not been considered, which left Namibia with a costly and ineffective system of land administration, which often becomes an obstacle instead of an instrument for socio-economic development.

This paper takes a critical look at the processes involved in land delivery in Namibia. The focus is mainly on urban land delivery, with the subdivision of Agriculture land only mentioned in comparison. The administration of communal land is also not discussed. Communal land is administered in terms of the Communal Land

² Based on interview with Dr Anna Muller, National Coordinator of the Namibia Housing Action Group (NHAG)

³ See also media coverage <http://www.irinnews.org/report.aspx?reportid=70105>

Reform Act of 2003, and is administered by local Land Boards in the various regions. This act does not provide for free hold ownership, and only applies to communal land, and is therefore not discussed in this paper.

The paper starts with an explanation of the methodology, consisting of the theoretical framework to look at the reality of land tenure legislation (based on the theory of public service delivery), and a choice of sample cases where tenure legislation is implemented. Next, we provide the results of observing the cases with the theoretical concepts, followed by an interpretative analysis. The paper ends by a number of concluding remarks.

2. Methodology

To understand the differences between current and new legislation we considered it necessary to use a theoretical framework by which we could compare. This theoretical framework provides a number of criteria for comparison. Focusing on the extent of these criteria within processes as defined by legislation allows such a comparison. The theory of public services delivery by (Pritchett and Woolcock, 2004) provides such a framework. The cases of processes included land subdivision. The methods used for data collection included interviews, while the method used for data analysis was based on analytical interpretation. Each of these will be discussed shortly.

2.1. Theory of public service delivery

The historical and contemporary problems in urban land tenure in Namibia have been frequently reported on in various research and professional communities, with proposed solutions ranging from improving technological means (Barth, 2006; Hayford, 2004; Lewis, 2001), adaptation of land tenure legislation and regulatory framework (Payne and Majale, 2004; Christensen and Hojgaard, 1997), better legal embedding and security (LEAD, 2006), to more community participation (Kock, 2006). All these proposals are essentially based on a more efficient public services delivery. In other words, the solutions to the problems have often been founded in a service delivery in which a universal need was met by a technical supply solution and then implemented by an impersonal, rules-driven provider. (Pritchett and Woolcock, 2004) refer to this as the standard organizational algorithm for solving public services concerns: *need* as the problem, *supply* as the solution, *civil service* as the instrument. In the Namibian land tenure context this can be translated as historically unequal land rights as the problem, new or adapted legislation as the solution, and new (local and national) land institutions and systems as the means to achieve the solution.

However, the applicability of this (supply-driven) solution is often contested from various ideological perspectives, e.g.(de Soto, 2003; Scott, 1998), especially for public services which are *discretionary to the extent that their delivery requires decisions by providers to be made on the basis of information that is important but inherently imperfectly specified and incomplete* (Pritchett and Woolcock, 2004). The fact that a public service, as in our case, a service of land registration, contain many discretionary moments where extensive professional knowledge – often outside the public sector - is necessary, makes every instance of the service different. As a result, the transaction-intensive services of land registration are bound to clash with the imperatives of large-scale routine, administrative controlled services under any type of public sector institution (local or national).

The practice of land registration seems primarily idiosyncratic, so a successful practice gives immediate rise to search for other instances, or in other words, to search for other solutions.

If we may assume that land registration services in Namibia can be considered discretionary transaction-intensive services, similar to processes of providing loans by banks, the processes dealing with curative care or the processes of water allocation, then the framework of (Pritchett and Woolcock, 2004) can be further applied to conduct an empirical comparative analysis of these services. In this framework services are evaluated on the incentives facing providers and recipients, which are shaped by 5 central elements:

Elements of service delivery	Related issues to each element
Resources	Where does the budget of the service provider come from? Who retains control of budget flows at what level? - Central allocation to functions, or discretion at the point of service?
Information	Does information flow to and/or from the top? To whom (if anyone) is information disseminated? How accessible is that information?
Decision-making	What is the scope of decision-making? Over what items do providers have <i>de jure</i> and/or <i>de facto</i> control?
Delivery mechanisms	To whom is the service actually provided? – individuals, groups? By whom?
Accountability	To whom are service providers accountable? What power do they have? – hire and fire, reassignment, compensation?

Table 1. Elements of service delivery

2.2. Choice of sample cases

We decided to compare conventional land subdivision practices based on current laws to alternative land registration and subdivision practices based on flexible tenure law, using these 5 principle-agent theory factors of comparison. These processes included:

Processes based on current / older legislation	Processes based on new / proposed legislation
Subdivision of urban land	Flexible land tenure system
Subdivision of agriculture land	
Township establishment	
Subdivision of sectional title scheme	

Table 2. Comparison of processes

2.3 Method of data collection

For each of the processes a collection of data was established based on through personal contacts, interviews and investigations of project documents⁴. Most of the interviews were open, and iterative. The documents consulted included both formal (mostly from the Ministry and the municipality of Windhoek) as informal / white document (from contributors to policies, legislation, draft bills, academics, and professionals). Following (Yin, 2003) and (Richards, 2005) the validity of statements and responses was regularly checked with the respective stakeholders.

2.4 Method of data analysis

Each of the processes was translated into UML activity diagrams allowing a better comparison of the process sequence and contributors, and allowing a better description of how the different criteria of the theoretical framework were related to specific elements of the service delivery processes.

3. Results: Comparison of Procedures

The statutory procedures are mainly prescribed in the Townships and Division of Land Ordinance of 1963 (for Urban Land), the Subdivision of Agriculture Land Act No. 70 of 1970 (for Rural Land), and the Sectional Titles Act No. 66 of 1971 (for Sectional Title Schemes). The procedures for the main cases of land subdivision are discussed below.

1. Subdivision of Urban Land (Fewer than 11 erven, e.g. single subdivision)

A subdivision of urban land is normally initiated by a professional town and regional planner, who applies to the Local Authority. Such an application cost at least ⁵N\$7000 (for a single subdivision), which normally includes the cost for further application to the Townships Board. For a large municipality, like Windhoek, the application is evaluated by the town planning division, while it is also circulated to various other departments for comments, including the water, electrical, roads, and storm water divisions. This process typically takes about five months (including consultation with town planner, preparation and submission of the application, and approval by the local authority).

After the local authority has approved the subdivision, a similar application must be submitted to the Townships Board. This board comprises of officials from the Ministry of Local and Regional Government, Housing, and Rural Development (MLRGHRD), the National Railways (TransNamib), the Deeds Office, the SG's Office, and a representative of ALAN (Association of Local Authorities of Namibia) (ALAN is normally represented by the City of Windhoek). Townships Board applications are usually prepared by professional town planners, and must include a letter of approval from the local authority concerned. For applications approved by a major municipality like the City of Windhoek, the subdivision has already been approved by a team of professionals, including town planners, engineers and surveyors (including the roads, storm water and electrical divisions of the

⁴ A complete overview of all the information sources would not serve the purpose of this paper. Yet, acknowledgements go to the Polytechnic of Namibia, The MLRR and SG offices, the Municipality of Windhoek,

⁵ Exchange rate at time of publication: US\$1 = ±N\$7

local authority concerned) by the time it reaches the Townships Board. It is questionable whether approval by the Townships Board is really necessary, considering the process that the application has already been through by the time it reaches the Townships Board. Furthermore, after the application is approved by the Townships Board, the subdivision need to be approved first by the SG, and thereafter by the Registrar of Deeds. The presence of and approval by the SG and Registrar of Deeds at the Townships Board, is therefore also considered a duplication, as the subdivision will be approved by them in any case after it has been approved by the Townships Board.

The preparation of the Townships Board application, submission to and approval by the Townships Board, and obtaining the Townships Board Certificate (subdivision certificate), typically takes about three months. After the Townships Board Certificate has been obtained, the land can be surveyed. The survey typically takes about a month, with approval by the SG taking at least another six months. The whole process for a single subdivision therefore takes at least fifteen months.

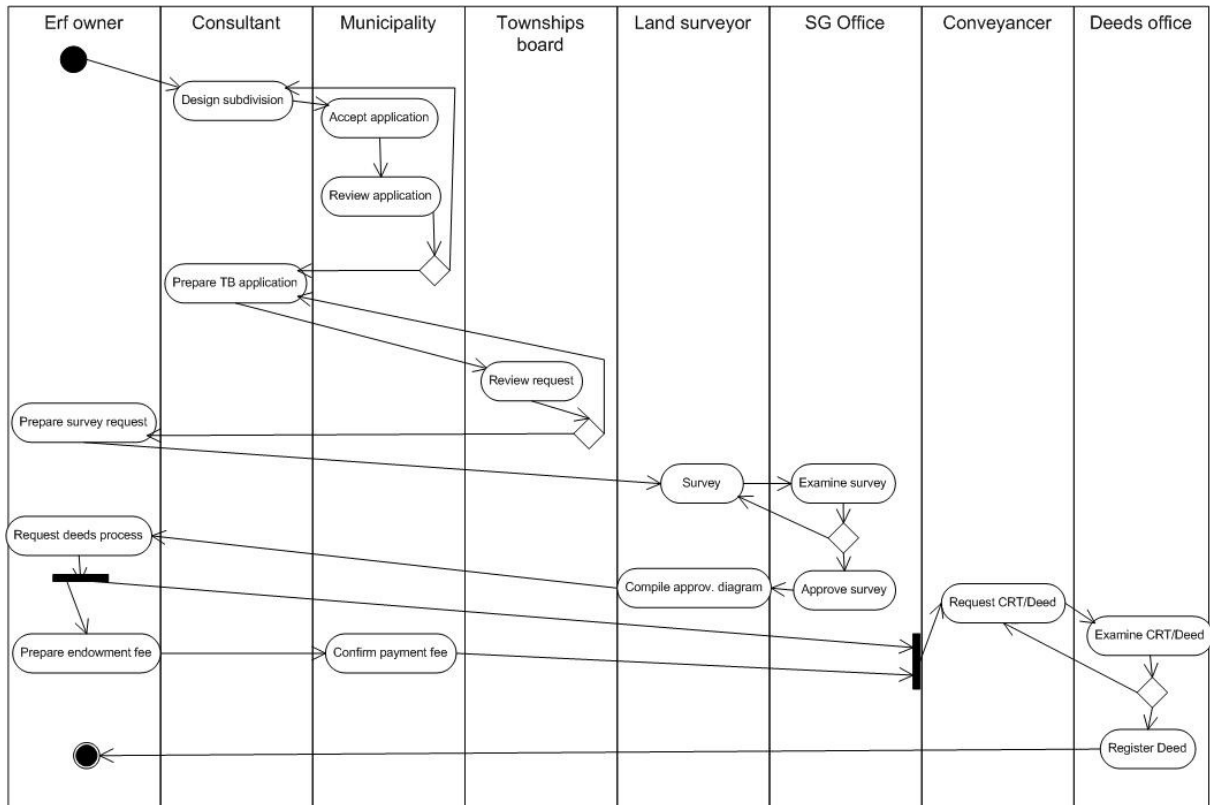


Fig. 1. Subdivision of parcel (erf) into less than 11 portions

2. Subdivision of Agriculture Land:

To subdivide a farm, a simple application is submitted to the Ministry of Agriculture, Water and Forestry, in terms of the Subdivision of Agriculture Land Act of 1970. This is often done by the land owner himself, and does not cost anything. A standard form is filled in, and a simple sketch plan is attached to indicate the proposed subdivision. Statutory approval is often obtained within a week or two, whereafter the land can be surveyed. Surveying typically takes about a month, and approval by the SG another six months (minimum). The whole process from application to approval by the SG therefore takes about eight months.

After the survey has been approved by the SG, a Certificate of Waiver is required from the Ministry of Lands and Resettlement, in terms of the Agricultural (Commercial) Land Reform Act, before the subdivision can be registered. In terms of this act, the land must first be offered for sale to the Government, for possible use in the Resettlement Programme. If the government finds the land unsuitable for resettlement purposes, they will issue a Certificate of Waiver, whereafter the subdivision can be registered. This process often takes several months, which causes a considerable delay in the process of subdivision and registration of agricultural land.

3. Township Establishment (subdivisions of 11 or more erven):

For any subdivision of eleven or more erven, the first requirement is to get approval for 'Need and Desirability' from the Namibia Planning Advisory Board (NAMPAB). NAMPAB comprises mainly of Permanent Secretaries from relevant ministries, and the NAMPAB secretariat (town planners from the MLRGHRD). For a small township of about 50 erven, the town planning fees for Need and Desirability application is in the order of N\$50 000. After NAMPAB approval, a professional town planner will do the township layout, and submit it first to the local authority concerned, and thereafter to the Townships Board. For a township of 50 erven, the town planning fee for this (layout planning and application to the local authority and Townships Board) will also be about N\$50 000. After the Townships Board approval has been obtained, the land can be surveyed. The survey could be done in about two months, while approval of the general plan by the SG will take at least another six months.

After the general plan has been approved, the township needs to be proclaimed in the Government Gazette. This will take at least another three months.

This whole town planning process (NAMPAB, local authority and Townships Board) typically takes about one year to complete. Adding another ten to twelve months for surveying, approval by the SG, and proclamation of the township, the total process for township establishment typically takes about two years to complete.

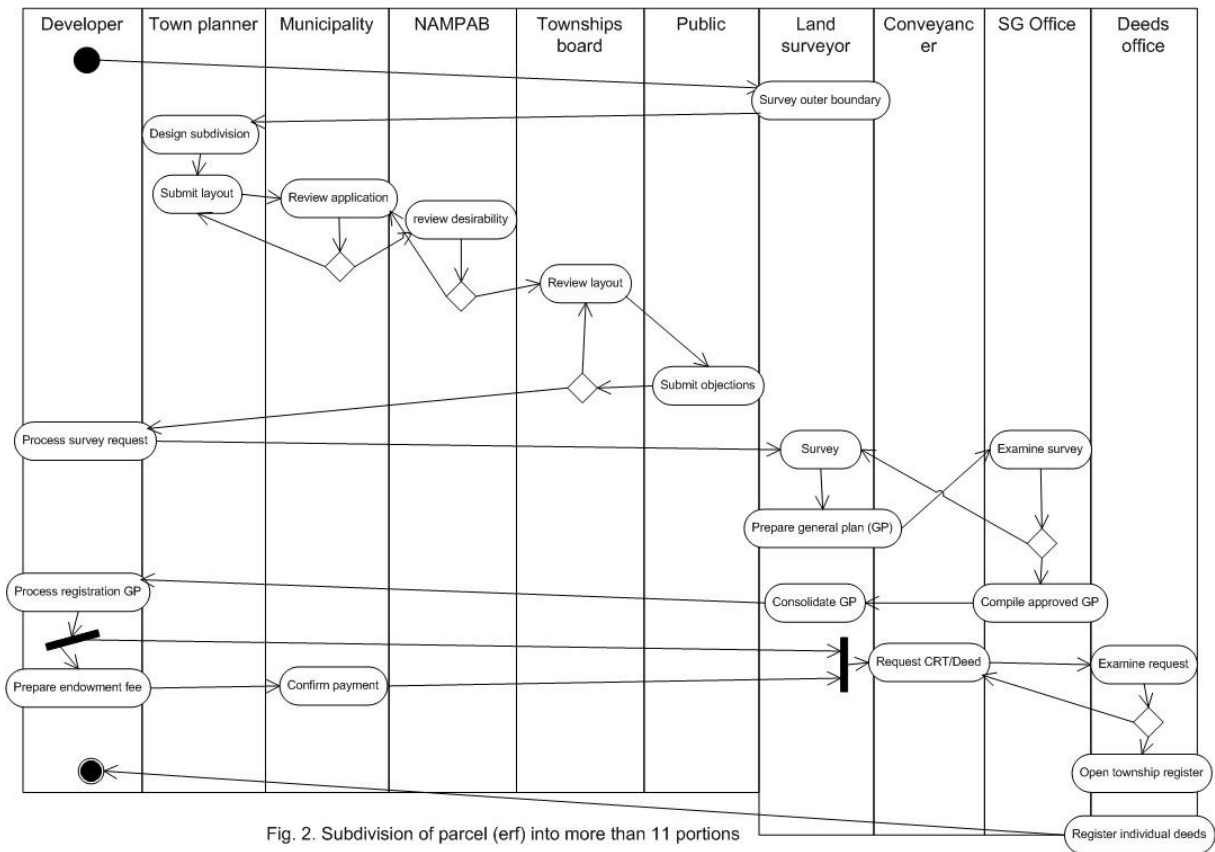


Fig. 2. Subdivision of parcel (erf) into more than 11 portions

4. Subdivision of a Sectional Title Scheme

The main purpose of the Sectional Titles Act of 1971 is to allow for the subdivision of buildings, enabling ownership of sections of building (e.g. offices or flats). However, sectional title is often used for townhouse developments, which does not differ significantly from a township establishment. In terms of the Act, sectional title schemes are allowed on any land under the control of a local authority, subject to zoning conditions as determined by the relevant town planning scheme.

The basic procedures for establishment of a sectional title scheme are as follows:

The layout of the scheme is usually designed by an architect, although it could also be done by architectural technicians, for smaller developments. This could take a month or two, but also includes the design of the houses. After the building plans have been approved by the local authority, construction can commence. Approval by the local authority is based on the approval of the building plans, and compliance with the town planning scheme. As the town planning scheme has already been approved by NAMPAB and has been Gazetted, no further approval from NAMPAB or the Townships Board is required.

Sectional title surveying of the scheme can take place immediately after construction has commenced, but is normally only done after the foundations have been completed. Surveying and drafting of sectional plans can be done by professional architects or land surveyors, except for the block plan, which can only be done by a professional land surveyor. The block plan indicates the position of the buildings relative to the cadastral boundaries, but does not include any coordinates. To reconstruct the position of the buildings from old sectional

plans, the plans often have to be digitised, as it is normally not possible to do so mathematically or graphically, due to the limited information on the block plan. The sectional plans can be approved by the local authority before construction has been completed. The local authority must approve (or reject) the sectional plans within a period of sixty days, in terms of the Sectional Titles Act.

After the local authority has approved the plans (often within a month), and the land surveyor has signed a completion certificate, the sectional plans are submitted to the Deeds Office by a conveyancer. The Deeds Office will approve the sectional scheme, open a sectional title register, and register the scheme. Approval and registration in the Deeds Office is done within a week, whereafter the units can be sold. The whole process of approval of a sectional scheme, can therefore be done parallel to the construction process. For a large scheme of some 50 units, the process could be completed in a year, but for a small scheme (e.g. two units, which is similar to a single subdivision) the whole process of subdivision can be completed in as little as three months (compared to 15 months for a single subdivision as described in 2.1 above).

Figure 1 shows an example of a sectional title scheme, which was planned, built and registered within a year (a similar township establishment would have taken at least three years, including planning and construction, and would have cost significantly more in professional fees).



Figure 1: Example of a sectional title scheme, comprising of 55 single storey town houses

The main disadvantage of sectional title ownership, is the inflexibility in allowing further land development transactions after the scheme has been registered. Normal transfer of units are done fairly efficiently (done by a conveyancer, similar to the transfer of single title properties in terms of the Deeds Registries Act), but any other transactions, like rezoning, building extensions, subdivision or consolidation are extremely timely and expensive, and generally requires the written permission of all the unit owners and mortgagees. For example,

the legal fees alone for registering a simple building extension of one of the units in the scheme in Figure 1 above, would cost the owner in the order of N\$20 000. For an owner to subdivide his/her unit from the sectional title scheme (which will generally improve the value of the property, due to the increased flexibility in developing it), is even more difficult and expensive – although it is legally possible, it has never been done in Namibia.

Another disadvantage of the system, is the apparent unfairness of the current levy system. The levy (which is used mainly to cover maintenance cost and rates and taxes), is based on the Participation Quotas (PQs) of the units. The PQs are determined by the floor area of the sections, excluding exclusive use areas. Although the current act does not provide for exclusive use areas (another weakness of the act), all units normally have some exclusive use area (e.g. a small garden used exclusively by that particular owner), but the size of these areas are not included in the PQ. For example, an owner of a flat of say 80m² without a garden, will pay a significantly higher monthly levy than an owner with flat of 60m² with an exclusive use area of 100m² (e.g. private garden). A major improvement would be to calculate PQs on total area owned, including exclusive use areas, as the exclusive use areas are often responsible for the highest cost (e.g. maintenance and land taxes).

5. Proposed Flexible Land Tenure System

The main goal of the proposed Flexible Land Tenure System (FLTS) is to provide simpler, more affordable and faster forms of secure tenure to low income communities and to informal settlers in particular (Christensen, 2005). The system is set to become a parallel land registration system alongside the current formal systems, and to decentralise the registration of land. The current formal registration system is centralised at the Deeds Office in Windhoek, with most conveyancers also based in Windhoek. The current system will not be able to effectively deal with the formalisation of the large backlog of informal settlements, most of which are in the rural areas of Namibia. The current system is also not capable of providing cadastral services to these communities. Even in Windhoek, low income residents do not have access to cadastral information and services. For example, a boundary dispute can only be resolved by appointment of a professional land surveyor and/or lawyers, which is beyond the financial means of most low income residents.

Under the FLTS, it is proposed to have several Land Rights Offices (LROs) close to communities, which will speed up the delivery of land and bring cadastral services closer to the people. The LROs will typically be staffed with registration and surveying officers, who will not only register starter and land hold titles, but will also assist the communities with queries and disputes regarding land ownership. The system provides for three types of ownership: Starter Title, Land Hold Title and Freehold Title. In terms of the draft bill, it would be possible to start with starter title, and later upgrade first to land hold title and eventually to freehold title. This seems like an extremely inefficient way of obtaining freehold ownership – instead of going straight to freehold, a much longer process of starter to land hold title is first gone through. However, the main aim of the system is to obtain Land Hold Title, and not freehold, and it is quite unlikely that many land hold schemes will follow the whole process to freehold.

The proposed Flexible Land Tenure System is essentially organised as follows (based on various sources and observations) ⁶:

A group of informal settlers organise themselves into a Saving Group, and approach the local authority to purchase a block of land. In most cases they will apply for the land they already live on, but the Savings Group could also include members from other areas, or the group could be allocated another block of land. At the same time they would normally start saving to buy the land from the local authority. After the application, a feasibility study is done by the local authority to determine if the land can be sold to the community, and what the social, economic and environmental impact of this would be. The feasibility study also determines the level of services that can be provided to the community, and the most (cost) effective way of providing these services, considering the affordability for the community concerned.

If approved by the local authority, the land is sold to the Savings Group. The purchase price is usually based on the level of services to be provided, as determined by the feasibility study. What follows in most cases is that a block survey first need to be done before the block can be transferred to the community. This process (survey and registration of the block in the name of the community) could take up to fifteen months, but at least it does not include the formal procedures for township establishment. For a township establishment, a block survey also has to be carried out, so the time for this does not have to be considered when comparing the two systems, as it is the same for both systems. The community will normally pay a deposit for the land at this stage, and the upgrading process can commence, regardless of the fact that the land has not been transferred to them.

Three different types of ownership is allowed under the proposed FLTS. Once the community has bought the land, all registered members of that community will be entitled a starter title in the block of land. Starter title ownership is similar to undivided share ownership, which is also allowed in terms of the Deeds Registries Act. The Starter title implies 3 rights:

- The right to perpetual occupation of a site within the purchased block,
- The right to transfer or otherwise dispose of the starter title, subject to local custom or the group constitution,
- The right, or perhaps better the obligation to respect the overall right, namely of an undivided share of a block parcel. The starter title is not geographically defined, i.e. the individual plots have not been surveyed at this stage.

While the whole block is registered in freehold in the Windhoek Deeds Office, the starter titles will be recorded on a computer based Land Information System (LIS) in the local Land Rights Office.

In addition, there is the *Land hold* title. A Land hold title will include the right to occupy a geographically defined site (plot) in perpetuity, and the right to transfer or otherwise dispose of the property. Land hold title is seen as the main goal of the FLTS. The main advantage of the proposed system is the social benefits resulting from communities obtaining full ownership of the land they live on, in a quicker, easier and cheaper way than

⁶ Note that the Act is still not approved, but the NHAG and several local authorities are already applying the principles of the FLTS, by allowing Savings Group ownership of block of land in informal settlements.

the current freehold system. The common perception that secure tenure will enable the owners to obtain mortgage finance against their properties, which will result in economic development, is unlikely to hold ground in the case of these low income communities. Although land hold titles will be legally capable of being mortgaged, it is unlikely that commercial banks will mortgage these low income properties, due to the perceived financial risk involved. The risk of mortgage defaulting will be considerably higher than with medium and high income areas, with limited changes of full cost recovery in case of liquidation.

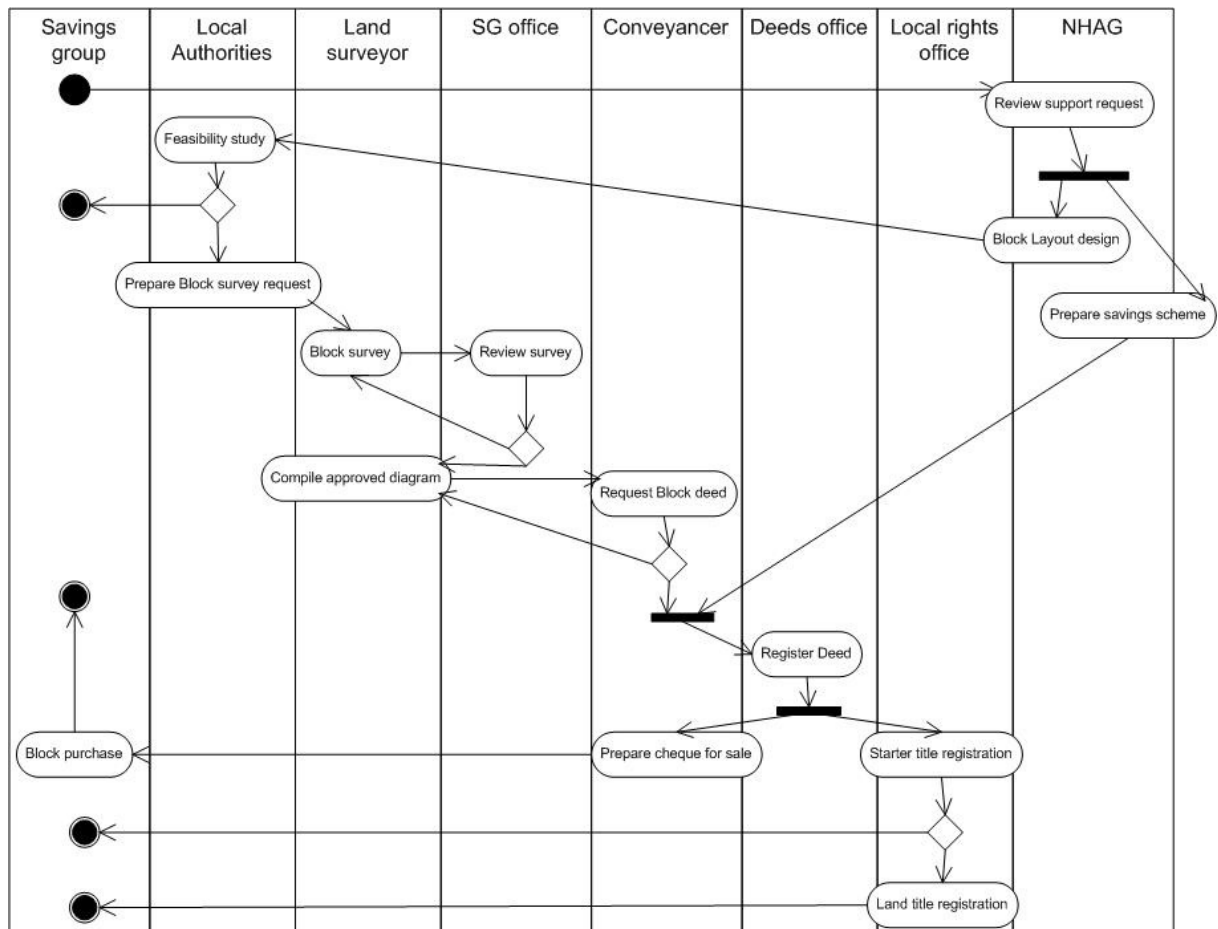


Fig. 4. Establishment of block and individual parcels based on FLTS

The social benefits of these types of tenure have been demonstrated with various Savings Group projects implemented throughout the country during the past few years. Although the Flexible Land Tenure System has yet to obtain a legal framework, the system has already benefited more than 4000 families in Namibia, who obtained group ownerships of blocks of land mainly with the help of the Shack Dwellers Association of Namibia and the Namibia Housing Action Group (NHAG). The social benefits of these schemes became immediately visible, especially after the individual plots have been surveyed. NHAG would typically help a community (savings group) to purchase a block land, whereafter a layout plan is drafted. The 'township layout' is normally planned with the help of the community, and drafted by NHAG. The layout design is done under the supervision of an architect or townplanner, and is approved by the local authority. Once the layout is approved by the local authority, the land is surveyed. In some cases survey students from the Polytechnic of Namibia did the drafting and surveying, but the community often does it all themselves, with the help of NHAG.

This group ownership of a block of land, and the ‘informal’ demarcation of the individual plots, often have immediate social benefits, including the following:

- The ‘township’ layouts are without exception a considerable improvement in terms of safety (e.g. proper access roads in case of fires) and delivery of services (e.g. water, sewerage, storm water and refuse removal), compared to the random layouts caused by informal settling.
- Security of tenure of a geographically defined and demarcated plot, enable plot owners to invest in their properties, without the fear of eviction. Immediately after surveying, the improvement in terms of fences, gardens and housing structures become visible.
- The process is community driven, which has definite social benefits, compared to individual freehold ownership. The sense of community in these schemes, and the management and constitutions of the schemes, facilitate development of infrastructure and services (communities take responsibility for the development of their savings group scheme, instead of just relying on Government to provide services and infrastructure). Other benefits like improved social conditions and security, could also be expected under these conditions.

The main disadvantage of the Flexible Land Tenure System, is that it is not flexible. The proposed system does not allow for land development transactions like subdivision, consolidation or rezoning of plots. Similar to the Sectional Title System, a new system will be implemented which is inflexible in terms of land development options, which will essentially defeat one of the main objectives of a new pro-poor system, considering that one of the main disadvantages of the current formal system is the lack of access to these transactions by the poor.

Furthermore, although the proposed system legally provides for upgrading to freehold ownership, this is unlikely to ever happen. The draft bill proposes that the whole community must agree to the upgrade to freehold, and it would therefore not be possible for an individual to improve his or her title from land hold to freehold. It is quite unlikely that a whole community would ever want to upgrade, but is more likely that individual plot owners would want to subdivide from the block erf, to obtain freehold ownership of his/her plot (e.g. to allow more freedom in developing the property, compared to the restrictions of land hold ownership).

Another weakness of the draft bill is that it does not prescribe how and by whom township layouts must be done. It is recommended that a section be included that addresses this issue. Not all local authorities have the capacity to draft and approve layout plans for upgrading to land hold title. Instead, these local authorities (small towns and villages) could contract private town planners to approve their layout plans, or it could be done centrally by the town planning division of the MRLGHRD. If such a condition is not included in the Flexible Land Tenure Act, the MRLGHRD could include a standard condition in all town planning schemes, prescribing that all layout plans for land hold title must be approved by professional town planners (or architects, for that matter), before it can be registered in a Land Rights Office.

Analysis

1. Resources: *Where does the budget of the service provider come from - Revenue from clients, budgetary allocations, some mix? Who retains control of the budget flows at what level - Central allocation for functions, discretion at the point of service?*

The article of (de Vries et al., 2003) offers a detailed overview of some of the cost issues involved in subdivision processes, and the opportunity costs lost as a result of delays. From the perspective of a beneficiary, there are costs incurred to different parties in the process, which are all specified by different acts and regulations.

The report of (Dearden, 2004) notes on the Namibian budget instruments in general:

“Although public expenditure management is strong there is a weakness in the implementation of budget guidelines, undermining the link between public expenditure and the government’s strategic objectives “

The underlying question is how the cost and fees incurred in the public service are redistributed in the system, either to improve the internal efficiency or to provide incentives to provide a better service. This remains unclear.

The current land delivery system can generally be considered as supply-side driven, with limited incentives for improvement of systems and service delivery. There is hardly any correlation between fees charged and ‘services’ delivered. Consider the following examples for a single subdivision:

- The local authority does not charge any fees for subdivision applications. On average, the processing time for local authority approval will take about three months. After a subdivision has been approved, a substantial endowment fee is paid to the local authority. The endowment fee can be seen as a type of tax payable by the developer to compensate the local authority for the expected increased cost of services and infrastructure development resulting from the subdivision (i.e. subdivision results in increased residential density, which requires more infrastructure and services).
- The fee for a Townships Board subdivision application used to be N\$22 for several years, but had been increased to N\$270 since May 2007. The application is processed by at least one MRLGHRD town planner, who makes recommendation to the Townships Board. After approval, the townships board certificate and subdivision conditions are prepared by the secretary of the Townships Board, before it is signed and send to the applicant (consultant in most cases). The process takes at least two months.
- The examination fee payable to the Surveyor General, is currently N\$144 per survey diagram. The process takes at least four months, where several people perform various stages of examination, ranging from double checking coordinates, calculations and field work, to the actual registration of the survey.

Apart from approval of surveys by the SG, the biggest delay in the land delivery process is generally caused by the process of obtaining statutory approval for the subdivision. Inefficiencies often get rewarded with larger budgets, seeing that more resources are required to performed the various processes of examination and control. No incentives exist for creation of value – e.g. all resources goes into control, and hardly any into value creation and service delivery.

2. Information: *Does information flow to and/or from the top? To whom (if anyone) is information disseminated? How accessible is that information?*

Current Formal Systems:

Information flow is mostly internal and upwards (towards the supply side). Although the current systems are supposed to be open and transparent (e.g. any member of the public can obtain cadastral data from the Deeds Office and Surveyor General's Office in Windhoek), flow of information to the 'demand side' (land owner) is generally limited, mainly due to the following:

- The cadastre is centralised in Windhoek. Both the Deeds Office and Surveyor General's Office are based in Windhoek, making it close to impossible for most poor people from rural areas to obtain cadastral information.
- Most land surveyors and town planners are based in Windhoek. For any professional services required from these professionals outside of Windhoek, contact between the professional and the client is often limited to a few telephone calls and/or one or two personal contacts. Flow of information is therefore limited – the client appoints a consultant, and after a couple of months the approved documentation is delivered to the client.
- Cadastral information is often in such a complicated form, that the general public often would not make much sense of it (e.g. a land owner could obtain copies of survey diagrams and title documents from the Deeds Office and SGO, but due to the format, terminology and complexity of these documents, it would often not help them much).

Proposed Flexible Land Tenure System:

The flow of and access to information in the FLTS could be a major improvement on the current systems, and this is seen as one of the main benefits of the new system. Land registration instruments, including title certificates and cadastral maps, should be as simple as possible, and should be designed with the clients (plot owners) in mind. Moreover, it is proposed that the system be computer based, which will largely improve the availability and usability of cadastral data. Information will not only be available to the public, but will also be more useable to the 'supply side'. An incentive for this to the supply side could be to charge (minimal) fees for any transaction or information.

The above shows not only empirical evidence of the existence of heterogeneous information processes, but also highlights the immediate difficulties of access to this information. This is very much in line with what is mentioned in literature on the difficulties of storing and managing information at and by different levels and agencies of public administration (Bekkers and Homburg, 2005; Harvey and Tulloch, 2006; Rajabifard et al., 2000). Information-technical solutions seem to have addressed only partial land information aspects, while a common problem of access and proactive access remains. (Katriina, 2005) mentions for example that (...) *one of the main points in the Namibian information society development is the problem of lack of proper context in which to utilize ICT.*" This is a multi-sectoral issue.

Critical in all processes is what information is actually used for critical decisions. For the FLTS, banks could theoretically provide mortgages on the basis of a land hold title. This decision is often based on an estimation of the perceived financial risk involved. Currently, there are no cases yet where this was actually done, and interviews with a number of banks reveal that most banks do not yet have

3. Decision Making: *What is the scope of decision making? Over what items do providers have de jure and/or de facto control?*

Currently, most decisions are made by few individuals (civil servants) and/or committees, with limited consideration of the 'client' or development needs. Although decisions are mostly based on policies and legislation (e.g. town planning schemes), it is generally control- and not customer oriented. It may happen that even when all formal steps are approved, certain individual preferences of individuals responsible for discretionary decisions may block the whole process. The reported typical attitude or question (during interviews) is normally 'what will happen if we approve this, and what reasons are there for not approving an application', instead of 'how can we approve this as quick and painless as possible, and allow a land owner or developer to achieve their objectives and contribute to national development'. The draft FLTS is not much different in this regard, and need to be amended to be more developmental and customer oriented, and less control oriented.

Under current practices, a survey can only be submitted to the SG after statutory approval has been. This process often takes at least eight months. As the approval of the survey also takes about eight months, the two processes can be done in parallel. It is recommended that surveys be accepted at the SG before it has been approved by the Townships Board or NAMPAB. The survey cost and lodging fee can then be paid at risk by the developer – if the application is rejected by the Townships Board, the survey will be withdrawn, and the developer will risk losing the survey fees already paid. Most developers will be prepared to take this risk, considering that hardly any Townships Board applications are ever rejected (especially those approved by major municipalities like the City of Windhoek). Furthermore, the savings in opportunity cost for the developer will normally far outweigh the survey cost, especially for single subdivisions, and a possible saving of up to six months in transaction time will therefore be attractive to most developers (De Vries et al, 2003). No legislative amendments are required for this, as long as the survey is not approved (signed by the SG) before Townships Board or NAMPAB approval is obtained. The full process of survey examination can therefore be completed, excluding the actual approval of the cadastral plan (signing of the diagram or general plan by the SG). Once the Townships Board Certificate is obtained, the survey can be approved immediately.

There are different alternatives to address the current overlaps of legislation. Generally, the proposed FLTS will function similarly to the current Sectional Titles Act, as it is based on the same principals, i.e. joint ownership and administration of the common property, and full ownership of individual, demarcated sections ('plots', in the case of the FLTS). Much of the planning and administration procedures applicable to Sectional Title Schemes could therefore also be used for planning and administration of land hold schemes. Layout planning should preferably be done under supervision of professional architects or town planners, and must be approved by them. A section should be added to the Flexible Land Tenure Bill, prescribing that all layout plans must be approved by a professional town planner or architect. Although the layout could be done by anyone, the final layout plan must be approved by a professional town planner or architect, which could be in the employ of the local authority concerned, the MRLGHRD, or in private practice. Small towns and villages without a town planning division, could then contract private town planners to approve their layout plans, or it can be done centrally by the town planning division of the MRLGHRD.

Another alternative (to including this condition in the Flexible Land Tenure Act), could be to include this as a standard condition in all town planning schemes. The MRLGHRD could include a standard condition in all town planning schemes, prescribing that all layout plans for land hold schemes must be approved by professional town planners or architects, before it can be approved by the local authority. No further approval by NAMPAB or the Townships Board should be required for a Land Hold Scheme, after it has been approved by the local authority. Blocks of land could be reserved (zoned) for land hold schemes in the local town planning schemes. Approval of a Land Hold Scheme would therefore be subject to the relevant town planning schemes. As the town planning scheme has to be approved by NAMPAB before it is gazetted, this will prevent uncontrolled registration of land hold schemes, and also possible abuse of the system (e.g. a local authority approving land hold schemes for commercial developments which are not aimed at informal settlements – this is quite likely to happen, due to the simplified procedures of establishing land hold schemes, compared to township establishment).

The outside block of a scheme will be subdivided according to the formal system (surveyed by land surveyors, and registered in the Deeds Office). This individual plots will be surveyed by survey technicians, supervised by land surveyors (either private or government employed). Relaxed survey procedures will be allowed, but ensuring accurate and reliable results (e.g. simplified cadastral plans and survey records, without the need for approval by the SG). This is similar to the system currently used for Sectional Title Schemes. In fact, the proposed Land Hold Plans will ensure better geometric accuracy than current sectional plans, as it will include coordinates of individual plots. The surveying and demarcation of plots will also be a major improvement on the sectional titles system, where only the individual buildings are surveyed (i.e. exclusive use areas are not considered).

4. Delivery Mechanism: *To whom is the service actually provided?- Individuals, groups? By whom? - Provider in large bureaucratic organizations? Are any third party intermediaries involved? - Small groups, staff of NGOs?*

Although the cadastre is open to the public, and the right to own property is an enshrined constitutional right, the current system is not really geared towards the general public, but rather land professionals who act as intermediaries. The system is generally too complicated for the general public, and for most applications and cadastral procedures professionals (land surveyors, townplanner and conveyancers) need to be contracted.

The proposed FLTS will also be a huge improvement in this regard. There will be no intermediaries – cadastral services will be delivered directly to the public. It is expected that NGOs will still play a large role under this new system, i.e. NGOs like the Namibia Housing Action Group and the Shack Dwellers Federation of Namibia, will continue to assist communities to upgrade their living conditions, through registration of Savings Schemes and formalisation and upgrading of their settlements.

Standard subdivision and rezoning procedures could be simplified. The subdivision of agriculture land, as described above, could serve as an example in this regard. Most subdivision and rezoning applications could be done by a simple procedure of filling in a standard form, with a sketch plan attached. Currently, town planners and land surveyors prepare very impressive reports, plans and maps to accompany their applications, and one

could question whether these are really necessary to the eventual result even though these are required by the Townships Board and NAMPAB. From within these authorities there have been discussions that professional consultants charge extremely high fees for these applications, and that the applications should therefore be of a certain professional standard. An alternative approach could, however, also be to investigate the whole application procedure, and verify where simplification could be possible. Although the application cost could then be considerably reduced, the consultants will probably still earn a reasonable income from this, as they will spend far less time on the same applications. Lowering of cost might also result in more applications, which could then generate more work for town planners. This could increase the support for the whole procedure.

Land Hold Schemes should be managed by a 'body corporate' (owners of all plots) and 'trustees of the body corporate' (elected by the body corporate), similar to administration of sectional title schemes. The Sectional Titles Act includes standard management rules ('Schedule 1 Rules'), which could be used for administration of Land Hold Schemes without much modification.

Additionally to the above, the following issues in the draft Flexible Land Tenure Bill have still given rise to questions:

- The bill does not seem to allow for land development transactions like subdivision, resurvey (substitution of a land hold plan with a new plan), consolidation or rezoning of plots. The relevant sections in the Sectional Titles Act could be consulted in this regard. If procedures could be simplified as far as possible, the weaknesses of the Sectional Titles Act could be improved on.
- Individual owners are not able to subdivide from the savings scheme block, to move from land hold to freehold, without requiring the permission of all group members. Similar requirements to those in the Sectional Titles Act could be prescribed, e.g. a special resolution by the body corporate (all plot owners) is required to support the subdivision (e.g. 75% of owners must agree to it). The permission of the local authority is required.

5. Accountability: *To whom are service providers accountable? What power do they have? - Hire and fire, reassignment, compensation?*

Accountability is limited, and internal. Accountability is generally viewed in the context of accuracy and reliability of cadastral data, compliance with policies and regulations, with limited consideration for level of service provided to customers. Government agents will seldom risk changing or simplifying existing system to make it more cost efficient, flexible, or 'fit for purpose' (from the citizen's perspective) – the opposite generally happens, as this is safer in terms of internal accountability. If policies, regulations or practices are relaxed, and anything 'goes wrong', they will be accountable. On the other hand, with strict policies, legislation and practices, the risk of anything 'going wrong' is much smaller. An example is the current revision of the Sectional Titles Act – Although this is probably the most efficient system of land tenure at present, mainly because sectional title surveys are not approved by the Surveyor General, the latest revision, which will probably be promulgated during the next year, will require all sectional title surveys to be approved by the SG, before it is submitted to the Deeds Office. This will probably add at least five months to the transaction time, without adding any value to the process. Ironically, none of the current weakness of the Sectional Titles Act is being addressed – No

coordinates will be indicated on the sectional plans, and development options will still be severely limited by the act

There have been calls by the private surveying professionals to eliminate the examination of surveys by the SG altogether. The argument would be that considering the high qualifications, strict registration requirements, and professional competency of land surveyors in Namibia, it does not make sense that surveys are examined (for as long as six months) before they can be approved and registered by the SG. Self-regulating regimes could make land surveyors be held responsible for the accuracy and reliability of their own work, as prescribed in the acts and regulations concerned. In such a scenario the quality control could be carried out as follows: Each new survey is always based on some previous survey(s), often carried out by different surveyors. Incorrect or inaccurate surveys could be detected by surveyors connecting to previous surveys. Spot checks could be done by examining some surveys, especially if it is suspected that a particular surveyor does not produce acceptable surveys, or for newly registered surveyors. The registration process of land surveyors, technical surveyors and survey technicians, is strictly controlled by law, and by their statutory control body, SURCON. Strict disciplinary action could be taken against surveyors found guilty of unprofessional work. Land surveyors, like most other professionals, should take full responsibility for the quality of their work. It is argued that if examination of surveys by the SG is limited, land surveyors could produce higher quality work, as the quality control will then be carried out by them instead of the SG.

For the planning procedures, legislative and institutional reform with regard to statutory control of the land delivery processes could be reviewed. Proposals which are already being developed by the Town Planning profession (Watson, 2006) include for example the consolidation of government advisory boards determining land use and subdivision. It is proposed that the Townships Board and NAMPAB be combined, which will be a significant improvement (although not major – it will reduce the whole process of townships establishment by about 3 months only). Delegation of authority on subdivision to suitably qualified local authorities. This could be a major improvement for large municipalities like the City of Windhoek, if it would eliminate the need for Townships Board and NAMPAB applications. Such a modification was estimated to reduce the whole process of land delivery by as much as 12 months for a township establishment (Watson, 2006).

Conclusion

From the above we can derive some general observations:

- Decision making, delivery processes and accountability are distributed among many parties, and is often different per process. While the flexible land tenure promotes simpler and faster procedures, this distribution of authorities and accountabilities and the discretionary nature of a number of process steps do not seem to have changed in the current version of the Act.
- The information related to the subdivision process is managed and stored at different locations, and is owned by different parties. This may not necessarily constitute a problem as long as the main beneficiary of the information has access directly or indirectly. Currently, however, much of the information is fragmented, and seems difficult to aggregate in any physical or virtual way.

- The resources needed for the execution of the processes seem to be allocated without much coordination and comprehensive forms of evaluation.
- Accountability in FLTS is likely to flow from the LROs upwards to the National Ministry (of Lands). This means that the accountability measures to the beneficiaries, mostly citizens, is not very different as compared to the other legislations.

From the observations it seems that the FLTS is largely based on similar institutional governance principles as previous legislations, namely that of a strong, centrally-led public sector based institution (despite the fact that implementation takes place at local level). It is therefore not unlikely that current problems of fragmentation may persist. An alternative principle of introducing more self-regulation in the local governance of land is only partially introduced by the FLTS. Yet, the question is whether this could also not have been done with adapting current legislation. With regards to surveying of land, this is regulated by the Land Survey Act of 1993. This act, together with the Professional Land Surveyors', Technical Surveyors and Survey Technicians' Act of 1993, provide for cadastral surveys being performed by professional land surveyors, which forms one of the pillars for the accuracy and security of the land tenure system of Namibia. The act does not prescribe procedures for approval of surveys by the SG, while the accuracy, procedures and products of cadastral surveying are prescribed by the Regulation of the Land Survey Act. A new regulation to provide for cheaper surveying of land hold schemes, for example, is therefore not necessarily required, as amended survey regulations could be gazetted for this purpose as well.

When reviewing the urban land delivery from a public service perspective, than we can notice that the delay in harmonization of legislation is becoming crucial for the success or failure. While there are a number of experiments – in anticipation of the final approval of new legislations - the heterogeneity of responsibilities still remains a major bottleneck for social acceptance. The alternative, of modifying existing legislation to cater for the same needs while improving internal process efficiencies, was addressed above as a partial solution to current problems.

References

- Barth, A., 2006. Nationwide collection, recording and provision of geo-scientific data: Examples from Ghana, Namibia, Germany and Kosovo- An experience report, Promoting land administration and good governance. 5th FIG regional conference. FIG, Accra, Ghana.
- Bekkers, V.J.J.M. and Homburg, V.M.F., 2005. The Information ecology of e-government : e-government as institutional and technological innovation in public administration. Informatization developments and the public sector 9, 193 p pp.
- Christensen, S.F., 2005. Flexible land tenure in Namibia. GIM International, 19(3).
- Christensen, S.F. and Høygaard, P.D., 1997. Report on a flexible land tenure system for Namibia,, report prepared for the Ministry of Lands, Resettlement and Rehabilitation, Windhoek, Namibia.
- de Soto, H., 2003. mystery of capital : why capitalism triumphs in the west and fails everywhere else. Basic Books, New York, 275 pp.
- de Vries, W.T., Lewis, J. and Georgiadou, Y., 2003. The cost of land registration: a case study of cost efficiency in Namibia, The Australian Surveyor. The Australian Surveyor, 48(no. 1): 7-20.
- Dearden, S.J.H., 2004. An assessment of the EU's Namibia country strategy paper.
- Fourie, C., 2000. Capacity building for Sub-Saharan Africa: Towards a more relevant approach, Capacity building in land administration for the developing world, ITC, Enschede.
- Harvey, F. and Tulloch, D., 2006. Local-government data sharing: Evaluating the foundations of spatial data infrastructures. International Journal of Geographic Information Science, 20(7): 743 - 768.
- Hayford, S.A.K., 2004. Design of a land value information system to support land reform programme : case study of Namibia, ITC, Enschede, 109 pp.
- Katriina, M., 2005. Bridging the digital divide? Development of information society in Namibia - conceptions of the local actors. Master's thesis Thesis, University of Tampere, Tampere, 86 pp.
- Kock, J.d., 2006. Security of land tenure: Meeting expectations through a community driven process, Decision makers meeting: Good administration of lands. Land administration for poverty reduction and economic growth. OICRF, Windhoek, Namibia.
- LEAD, 2006. Our land they took. San rights under threat in Namibia. Land, Environment and Development Project - Legal assistance Centre, 77 pp.
- Lewis, J.C., 2001. Conceptual design of a cadastral land information system for the Republic of Namibia, ITC, Enschede.
- Odendaal, W., 2006. The SADC Land and Agriarian Reform Initiative. the case of Namibia. , For community technology development trust. African Institute of Agriarian Studies.
- Payne, G.K. and Majale, M., 2004. The urban housing manual: Making regulatory frameworks work for the poor., 168 pp.

- Pritchett, L. and Woolcock, M., 2004. Solutions when the solution is the problem: Arraying the disarray in development. *World Development*, 32(2): 191-212.
- Rajabifard, A., Escobar, F. and Williamson, I.P., 2000. Hierarchical spatial reasoning applied to spatial data infrastructures. *Australian Cartography Journal*, 29(2): 41-50.
- Richards, L., 2005. *Handling qualitative data : a practical guide*. Sage, London etc., 207 pp.
- Scott, J., 1998. *Seeing like a state: how certain schemes to improve the human condition have failed*. Yale University Press.
- Watson, B., 2006. *Comments on the Flexible Land Tenure Bill*. report prepared on behalf of the Council of Town and Regional Planners of Namibia, Council of Town and Regional Planners of Namibia.
- Werner, W., 2001. *Land reform and poverty alleviation: Experiences from Namibia*, NEPRU, Windhoek.
- Yin, R.K., 2003. *Case study research : design and methods /*. *Applied social research methods series ; vol. 5*. Thousand Oaks, CA [etc.] : Sage, XVI, 181 p pp.