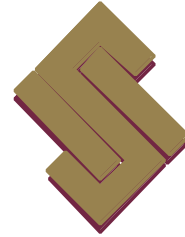

BANK OF NAMIBIA

RESEARCH DEPARTMENT



P O Box 2882, Windhoek, Namibia
Tel: +264-61-283 5111
Fax: +264-61-283 5231
E-mail: research@bon.com.na

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PROPERTY RIGHTS AND ACCESS TO CREDIT¹

by

**Esau Kaakunga
Vitalis Ndalikokule**

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Enquiries related to this publication should be directed to:

The Chief Economist and Head of Research Department

P O Box 2882

WINDHOEK

NAMIBIA

Tel: +264 61 283 5111

Fax: +264 61 2835231

e-mail: research@bon.com.na

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ABSTRACT

The paper attempts to assess how well secure property rights can increase access to credit and improve the living standard of the people owning or residing on the land. The land tenure system in Namibia is divided into three different categories, namely, customary, freehold and leasehold. Customary tenure system could be held for the following purposes: residential, grazing, forests and other resources. In the commercial farming area, a freehold tenure system is maintained in which the administration of land is vested in the registered owner. Tenure system in the leasehold areas is based on non-freehold where the government provides long term leases of up to ninety-nine (99) years to current holders and future generations.

The results of the field survey show that land and properties standing on it in the commercial farming area is acceptable by financial institutions to be used as collateral security while land in the communal and leasehold (resettlement) areas. Thus, there is a need to survey and demarcate large part communal areas where there are no people and lease it to private individuals with more livestock or firms.

The paper further recommended that the leasehold tenure system be arranged in such a way that the resettled people could use the Lease Agreement as collateral to get loans from lending institutions for agricultural production purposes. Lease agreement should ensure that the financial institution that lent the money is empowered to repossess the lease agreement if the borrower defaults and sell it to another potential lessee.

1. INTRODUCTION

Land is suggested in the literature to be one of the best collateral assets available. However, for land to fulfil that function, clearer property rights and greater ease of exchange should be addressed, as this would likely improve the accessibility of credit to the majority of people, particularly in the rural areas. Land rights are an important issue in many developing countries including Namibia where land is a major asset for most people as a source of income and livelihood.

Land tenure system in Namibia is divided according to three different categories of land, namely customary, freehold and leasehold. The customary land tenure has two major components, firstly, arable and residential land rights. Secondly, it makes provision for grazing, forests and other resources. Authority over this land is vested in the Government which holds up all communal land in trust for the people. The Ministry of Lands and Resettlement continues administering communal land through the Regional Land Boards and Traditional Authorities.

A freehold land tenure for all commercial farms of all sizes is maintained. The title and administration of land in commercial farming areas is vested in the registered owner of each farm. Resettlement areas are a product of the post independence government policy to acquire commercial farms and resettle the landless population mainly from the communal areas and formerly disadvantaged people. Tenure system in the leasehold areas is based on non-freehold where the government provides long term leases of up to ninety-nine (99) years to current holders and future generation.

While commercial land has been and continue to be used as collateral for ensuring access to credit, customary land was not used for the same purpose due to its ownership structure. The land tenure in the area under the customary rights (communal) is not well defined. Hence, this hampers the development of the communal areas and thereby adversely affects the living standard of the inhabitants. It is also sad to note that the people who have been resettled acquire only leasehold right for 99 years and cannot use this land as a collateral if they want to obtain some loans from financial institutions. The fact that resettled people do not have the right to trade over this land and thus cannot use it as collateral, makes it difficult for commercial banks to lend money to these people. This suggests a need to look at the tradability of land in the communal and resettlement areas.

The main purpose of the study is to examine the effects of property rights (land rights) on access to credit, and investigate how to improve property rights in Namibia in order to facilitate access to credit, hence, enhance investment and the living standard of the people. The remainder of this paper is organised as follows: Section two surveys theoretical and empirical literature on the relationship between property rights and access to credit and economic development. Section three covers the legal framework governing land in Namibia. Section four contains methodology, and the analysis of the results obtained from the field survey. Section five draws lessons from Botswana and South Africa. Section six gives conclusions and policy recommendations.

2. LITERATURE REVIEW

It is generally accepted that private property rights play a positive role in the development of market-based economies. This has been documented particularly by economic historians in the context of Western Europe (North and Thomas, 1973; and Rosenberg and Birdzell, 1986). Besley (1995) shows the role of property for investment incentives and provides evidence of the importance of property rights in the context of land ownership by farmers in Ghana. In the case of the post-communist countries, Johnson, MacMillan and Woodruff (2002) show that for a sample of firms weaker property rights discourage the reinvestment of firm earnings, even when bank loans are available, suggesting that secure property rights are necessary for entrepreneurial investment.

It has been also argued that in developing countries, the lower degree of investment in non-tangible assets may be due to weaker protection of property rights. More generally, the institutional economics literature (North 1990) suggests that investment in assets with more protected property rights will be higher. A fundamental link in the theory of property rights and economic development is that strengthening property rights encourages lenders to accept land as a collateral and thereby reduces credit rationing and wealth inequalities in financial markets (Field and Torero, 2003).

Land registration is primarily linked to financial development through two channels; the role played by land registration in enabling land to become a collateral asset which enhances financial development by expanding the market base for loans and by reducing financial intermediation costs; and the role of land registration in unlocking land resource potentials and making them available for mobilisation by the financial intermediaries. It has also been argued that the ability to use land as collateral in formal credit markets is a benefit that is more significant where formal title exists and land transactions are feasible. Improved tenure security brought about by individualised land rights is associated with greater benefits, such as the incentives for long term investments and the supply of credit.

The results from a number of studies that have investigated the investment-enhancing effect of tenure security is that under formal as well as informal regimes, tenure security as measured by the extent of rights possessed by the owner significantly affects the farmers' investment decisions. Besley (1995) found that greater tenure security at the plot level significantly increases the probability that individuals will plant trees and undertake a wide range of other investments such as draining, irrigating mulching etc. In China the transition from collective to private cultivation has been associated with large increases in productivity (Lin et al 1994, Lin, 1992 and McMillan et al 1989). Other important benefits from better defined long term property rights are the incentives for long term investments, the incidence of productivity-enhancing transfers and the supply of credit to make such investments. Field and Torero (2003) found that land titling is associated with a 9-10 percentage points increase in loan approval rates from the public sector bank in Peru.

A study by Rozelle et al (1996) on China confirms the importance of tenure security for access to credit and investment. Comparing plots planted with the same crop within the same household but under different tenure regimes, it is found that farmers tend to apply more manure and labour, and obtain significantly higher yields, on plots that are privately owned and therefore more secure (Rozelle et al 1996). Altson et al (1995 and 1996) in their study on the impact of higher tenure security through land titling in the Brazilian Amazon yields similar results and there is considerable amount of more evidence on a positive association between availability of title, access to credit and investment. Land registration and the associated collateral reduce the costs of contracting and supervising a loan as they eliminate the asymmetry of information between the lender and the borrower (Jaffee and Russell, 1976).

The evidence reviewed in the preceding paragraphs demonstrates that secure land rights are crucial for access to credit and longer-term investment. Land registration and titling systems are often perceived as an important element in policies seeking to promote tenure security and to facilitate more effective land markets. This is because official documentation provides better protection to an owner's property rights and eliminates the asymmetric information that curtails land market transactions.

3. LAND TENURE SYSTEM IN NAMIBIA

The land tenure system in Namibia is based upon the principles enunciated in the Constitution and the subsequent legislations. The national commitment to redress the social and economic injustices inherited from the colonial past also forms part of these fundamental principles. Land is the most important means of production, and without an equitable restoration to its real owners, independence will remain a paper tiger (Hunter, 2004). It is against this background that this chapter will discuss and assess the land tenure system in Namibia, with particular focus on land rights in communal, commercial, resettlement and urban areas.

3.1 COMMUNAL AREAS

“Communal area”, in relation to a traditional community, means the area comprising the communal land inhabited by members of that community. Further, communal land means the land referred to in Section 15 of the Communal Land Reform Act, 2002. This section of the Act states that a communal land consists of:

- The areas described in Schedule 1 to the Act;
- Any area which is declared to be communal land under Section 16(1)(a) of the Act, i.e. unalienated state land;
- Any land which is incorporated as part of the existing communal land area.

In terms of Section 17 (1) of the Communal Land Reform Act (2002), communal land is vested in the Government of Namibia. In this regard, under the communal ownership of land, tenants only have the right to use the land, but do not own it. This indicates that the title deeds are not available in communal areas. These shortcomings relating to property ownership and transfer of land in communal areas reduce the value of land as collateral.

Government has undertaken to administer the communal land in trust for the benefit of traditional communities residing on such land and for the purpose of promoting economic and social development. The National Land Policy (1998) states that the administration of land in communal areas is vested in Land Boards and Traditional Authorities. The Land Boards are responsible for surveying and registration of all approved forms of land title in their area of jurisdiction.

People living in communal areas have been provided with equal access to all forms of tenure specified in the Communal Land Reform Act, 2002 (No.5 of 2002). Tenure rights allocated according to the land policy and the above mentioned Act, include renewable natural resources on the land. These natural resources comprise of wildlife, tourist attractions, fish, water, forest resources and vegetation for grazing. Section 19 of the Communal Land Reform Act states two forms of rights that may be allocated in respect of communal land, namely, customary land rights² and rights of leasehold. Customary land rights refers to three (3) types of rights that may be allocated in respect of communal land, namely,

- A right to a farming unit;
- A right to a residential unit;
- A right to any other form of customary tenure that may be recognized and described by notice in the Government Gazette.

² Customary land rights are also allocated on a leasehold basis.

The power to grant customary land tenure is vested in the chief of any traditional community in consultation with the land board. Tenure rights allocated according to the Communal Land Reform Act are exclusive and enforceable by law. These customary land rights includes right for residential and subsistence farming purposes. A certificate of occupation is issued which confer that the right of the person to occupy the customary land is registered. A customary land right allocated to a holder under the above Act remains in existence for the natural life of the person to whom it is allocated. These rights are secure and inheritable by immediate family, i.e. husband/wife and natural children. However, the sharing of land and natural resources to mutual benefit between neighbours is allowed, particularly in times of drought and other stress.

The certificate mentioned above is not mortgageable or transferable outside the family members. The Act further stipulates that all approved forms of land tenure will be accorded equal recognition and status, and the rights thereto are entitled to registration by the appropriate Land Board. The Act prevented the privatization of communal land fearing that it would lead to many people becoming destitute.

The right of leasehold in respect of a specific portion of the demarcated communal land that is not occupied is granted by the land board in consultation with the respective traditional authority for agricultural purposes as provided for by Section 30(1) of the Communal Land Reform Act (2002). Right of leasehold may only be granted in respect of communal land which is situated in the designated area of each traditional community as stipulated in Section 30(2) of the Communal Land Reform Act (2002). Furthermore, Section 34(1) states that the right of leasehold may be granted for a period not exceeding ninety-nine (99) years. The Land Policy states that leases will only be granted if the Land Board is satisfied that people seeking such leases do not have existing rights to land.

3.2 COMMERCIAL AREAS

“Agricultural (commercial) land”, refers to any land or an undivided share in land, other than land situated in a local authority area, land situated in a settlement area or land of which the state is the owner or which is held in trust by the state. Ownership of land in the commercial farming areas is done by virtue of freehold title. This means that land as a “private property” in these areas denotes property owned by individuals holding rights to use, dispose of, and exclude others from the resources. Unlike in communal areas, land in the commercial areas is well developed. The reason why agricultural commercial land is developed is because it is privately owned. Owners therefore developed the land to ensure a high market value for their property.

3.3 RESETTLEMENT AREAS

Resettlement is defined as the movement of people from an area with insufficient resources to the one which is more likely to provide a satisfactory standard of living (National Resettlement Policy, 2001). Resettlement is a voluntary programme for which people apply and choose the preferred area for resettlement, which can either be in communal or commercial areas. In principle there are no restricted areas for resettlement except those that are declared as such by law or those considered too marginal for productive use. The policy states that land acquired for resettlement purposes is provided to the beneficiaries on lease hold of 99 years.

The National Resettlement Policy (2001) states two core objectives of resettlement: first, to enhance the welfare of the people through improvement of productivity and second to develop destination areas where people are supposed to earn a living. The policy emphasises that resettlement does not only mean providing people with land, housing, infrastructure, knowledge and skills to maintain and develop their new environment, but also it means establishing an innovative attitude. In this case, land with sufficient resources becomes the most important and decisive factor in resettlement. The problem with resettlement leasehold not being tradable is

because the lease agreement did not allow for resettlement land to be tradable. However, the lease agreement is being amended in order to make tradable and become registerable with the deed office.

3.4 URBAN LAND

The National Land Policy (1998) defines urban land as all land in human settlements, of any size, under the jurisdiction of a separate authority other than a traditional authority, such as a municipality, town or village councils. Prior to independence many urban areas developed and due to discriminatory policies then, those areas were never proclaimed as municipalities or towns and no local authority administration existed. During the post-independence era, urban land administration was entrusted upon the local authorities. Freehold title is the only form of secure and registerable title available for urban land. It affords the holder ownership that is transferable and inheritable.

The urban permission to occupy (PTO) issued by the Ministry of Regional, Local Government, Housing and Rural Development is the form of a license allowing the holder to occupy government land. These PTO's were used then in previously unproclaimed towns. It conveys no rights of ownership but it does contain an option for the holder to obtain secure title to land if at any time during the prevalence of the PTO such title becomes available. The PTO system in urban areas has recently been phased out.

3.5 SUMMARY

The land tenure system in Namibia is based upon the principles enunciated in the Constitution and the subsequent legislations. Land is the most important means of production for which most people depend for livelihood.

The Communal Land Reform Act provides that communal land in Namibia is vested in the State in trust for the benefit of the traditional communities. In this regard, under the communal ownership of land, tenants only have the right to use the land, but do not own it. There are two forms of rights that may be allocated in respect of communal land, namely, customary land rights and right of leasehold.

In the commercial farming land, ownership of land is by means of free hold title. This type of ownership facilitates the easy tradability of this land, because it is registered in the name of the owner and as such have the right to use it or dispose it of.

The National Resettlement Policy states two objectives for resettlement. Firstly, to enhance the welfare of the people through improved productivity, and secondly, to enable them to earn a living. Land acquired for resettlement is provided to the beneficiaries on leasehold of 99 years. Freehold title is the form of secure and registerable title used for urban land. It affords the holder ownership that is transferable and inheritable. PTOs issued by the Ministry of Regional Local Government and Housing are forms of licenses allowing holders to occupy government land in previously unproclaimed urban centres. They convey no rights of ownership, but give the holder an option to obtain secure title to the land if at any time during the occupancy of the PTO such title becomes available.

4. PRESENTATION AND ANALYSIS OF THE FIELD SURVEY

This chapter presents the results of the interviews with the relevant stakeholders. Its main objective is to discuss the opinion of the stakeholders on land rights and access to credit. The interviews were conducted during the period 24th May – 30th July 2004 in Windhoek. A questionnaire was administered to the people interviewed. Analysis of the survey results is discussed in the subsequent sections.

4.1 THE RESULTS OF THE FIELD SURVEY

The main focus of the interview was on the use of land as a collateral and security of different land tenure systems in the country. It further concentrates on the relationship between land right and access to credit. It is observed that the land value in terms of collateral differs according to different tenure systems. It is also noted that land value in terms of collateral differs according to geographical areas. In this regard, north central Namibia is regarded to have high value land than southern Namibia. This disparity is because of several factors which include, rainfall, fertility of the land and arid/semi desert. It is observed that there are only two registries of land rights in Namibia, namely, Rehoboth³ and Windhoek. The analysis of the results is based on the three land tenure systems found in Namibia, namely, freehold, customary and leasehold.

4.1.1 Freehold (Commercial Area)

The results of the survey have shown that there is a positive relationship between secure land rights and access to credit in the commercial area. They also further revealed that land and the properties standing on it in this area is acceptable by financial institutions to be used as collateral security. In commercial farming areas, land is one of the most important assets that the farmers have used as collateral. This is mainly due to the freehold title type of land ownership that exists in these areas. The commercial area is divided into two (2) parts, the commercial farming land and the urban land. The interview also revealed that urban land can also be used as collateral when a customer wants to borrow money from financial institutions.

It is also found that residents in the informal settlements areas of the main cities acquire a piece of land as a group⁴. The land is registered in the name of the group at the deeds office. However, members of the group allocate the land among themselves. Nevertheless the land can be inherited by the family of the occupant. These group schemes does improve people's ability to obtain credit and should be encouraged to eventually lead to free hold titles.

A number of factors have contributed to the positive relationship between land titling and access to credit. These include (i) free hold title deed over the commercial farming land is tradable; (ii) the land is registered in the name of the individual(s) who may want access to credit from financial institutions; (iii) the structure of ownership of land in these areas is secure (iv) the land is proclaimed in case of urban areas and (v) the market value of the land can easily be determined and land can be sold without difficulty in the market.

4.1.2 Customary (Communal Areas)

The results show that land in the communal area cannot facilitate access to credit, this is mainly due to insecure land rights in this area. This tenure system makes it difficult for financial institutions to accept land as collateral security. Specifically, reasons which contributed to insecure land rights are: (i) the ownership of communal land

³ The registry office came after Rehoboth was declared self governing by the South African Government in its self government Act, 56 of 1976.

⁴ The group is either registered with the Shack Dwellers Federation of Namibia (SDFN) or Ministry of Health and Social Services. Each member of the group contributes a certain amount of money which is used to purchase the land.

is entrusted in the state on behalf of communities; (ii) the land is registered in the name of the government and not in the name of private individuals. This problem could be addressed by the lease hold of ninety nine (99) years to be introduced in communal areas. If this leasehold is registered with the deeds office, financial institutions may accept it as collateral and hence will improve the communal farmers' access to credit. In this regard, all leaseholds will be registered, currently there no leaseholds yet.

Hence, communal land still remains the most under developed land in Namibia. Given the fact that the communal land is not acceptable as a collateral security, this makes it difficult for people living in communal areas to have access to credit from financial institutions. However, banks do extend credit to the people in the rural/communal areas but require other forms of collateral, such as life policy, value of investment and movables. In addition to the insecure land tenure system, the other problem that hinders the use of land as collateral is the underdevelopment of land in the communal areas. This is attributed to the fact that the people living on this land do not have means to develop it. The Ministry of Land and Resettlement indicated that surveying of all communal areas and transform them into registerable leaseholds is desirable but could be an expensive exercise.

4.1.3 Leasehold (Resettlement Area)

The survey results indicated that land in the resettlement area cannot improve access to credit. They also demonstrated this land cannot be used as collateral security in case the resettled person wants to borrow money from financial institutions. This is due to the fact that (a) the land is owned by the government and not the resettled people; (b) this ownership structure makes it difficult for the banks to reposes this land in case the borrowers in the resettlement area default on their loans; and (c) the leasehold of ninety-nine (99) years granted by government is not tradable, because it is not registered in the deeds office.

Nevertheless, it is worth to mention that the lease agreement is being amended in order for it to become tradable. It was also noted that the Ministry of Lands and Resettlement provides support to the resettled farmers. It is found that the Ministry of Lands and Resettlement together with other stakeholders have revised the lease agreement in order for it to become tradable as well as registerable with the deed office. The results also indicate that the national resettlement prohibits the sub-leasing of the resettlement land by the resettled farmers.

In summing up, the survey has shown that land rights in the commercial areas have an impact on access to credit because financial institutions are willing to accept land in the commercial area as collateral security. This is attributed by the secure land rights in this area. While on the other hand, land in the resettlement and communal areas does not facilitate access to credit. The land in these areas cannot be used as collateral security, because the land rights are not secure, not registered in the name of the individual and thus not tradable. The underdevelopment of the land in the communal area also hinders the use of land as collateral security in the communal areas.

5. LAND RIGHTS: LESSONS FROM OTHER ECONOMIES

This chapter draws lessons on land rights from two neighbouring economies, South Africa and Botswana. It also attempts to answer the questions, how land rights can be improved in Namibia; which land tenure systems in the communal and resettlement areas of Namibia are needed in order to use the land in these areas as a secure collateral.

5.1 SOUTH AFRICAN EXPERIENCE

The land in South Africa was held under a variety of tenure systems, including freehold and customary tenure and various other forms of tenancy. Until a decade ago, black South Africans were prohibited from registering ownership rights and were subject to arbitrary removal and relocation. In order to rectify the injustices of the past, the Department of Land Affairs has launched a White Paper on South African Land Policy. The White Paper emphasises the importance of local participation in decision-making, gender equity, economic viability and environmental sustainability in the implementation of the land reform programmes. It is not only focusing on the urban areas but also on the rural areas. In the White Paper the redistribution programme was envisaged to provide the disadvantaged and the poor with access to land for residential purposes.

The South African land reform programme has started with three types of reforms. These are restitution, redistribution and tenure reforms. Land restitution involves returning land lost since 1913 because of racially discriminatory laws, or compensating victims for loss of land due to racially discriminatory laws. Land redistribution makes it possible for poor and disadvantaged people to buy land with the help of a settlement/land acquisition grant. Land tenure reform is aimed to bring all people occupying land under a unitary, legally validated system of landholding. In the long-run, as part of the land tenure reform programme, government is committed to transfer the land that is in the nominal ownership of the state to its real owners.

Communal Land was owned by individuals or a group of people as a community. These land tenure rights were not legally secured. This is due to the fact that the land tenure rights were not registerable in the Deeds Office in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937). Hence, land in the communal areas and informal settlement could not be traded or used as collateral when the owner of the land wants to borrow money from a financial institution. The communal land rights Act, 2003 provides two tenure reforms, namely, commonhold title⁵ and individual freehold ownership.

A community that opts to receive its communal land from the state would be enabled to hold such land in terms of the commonhold title. In this regard, the Act provides for the outer boundary of the land to be registered in terms of the Deeds Registries Act, in the name of the relevant community and not in the name of an institution or structure of governance. This means that a community would be an owner of communal land in full and free property/all rights or title or freehold ownership as the juristic persona.

Within the framework of commonhold title, the members of a traditional community may by a majority decision opt for the formal subdivision of residential and business stands with no consequent registration of the internal boundaries of land.

Persons are also enabled to hold land in terms of individual freehold title subject to the conduct of a land rights inquiry in order to eliminate any competing or conflicting rights in land. This tenure form is a response to many

⁵ The Department of Land Affairs is drafting regulations and procedures to guide individual free hold title and common hold title.

demands coming from various communities, groups and individuals for the individual freehold ownership of land. Therefore, it is clear from the above discussion that communal land in South Africa could improve access to credit and also could be used as secure collateral.

Commercial land tenure rights in South Africa is registerable in the Deeds Office in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937). The rights are well covered by the formal legal surveying, conveyancing and registration systems. It could be used as collateral when the owner of land wants to borrow money from any financial institutions.

5.2 BOTSWANA CASE STUDY

Botswana has total land area of 582 000 km². The government has adopted an approach of land use planning for urban as well as rural areas. The practice is that the public is made aware of the implications of land use plans before land is zoned for various uses. Botswana has a rich tribal culture, therefore, the legal system consists of local tribal courts which adjudicate traditional matters and Tribal Land Boards which rule on land use matters in tribal lands and traditional villages. Town Councils are responsible for land use matters in urban areas.

The land tenure system is divided into three categories viz; Customary/tribal land which accounts for 72 percent; State land accounting for 23 percent and Freehold accounts for only 5 percent. **Customary land**, before independence was allocated free and each family was entitled to land for residential, livestock grazing and arable farming. The families were given exclusive rights to residential and arable land and these rights were secure, inheritable and transferable. Customary land was administered under customary law by the chiefs of the respective areas. At independence the government saw the need to give urgent attention to the administration and management of customary land. It took a bold decision to put in place structures, in the form of laws, institutions and policies that would improve the management of customary land.

Two years after independence the government enacted the Tribal Land Act. It provided for the establishment of the Land Board, transferred to the Land Board all the powers that had hitherto vested in the Chief under customary law in relation to land. The Act also introduced leasehold in customary land. In 1993, the law was amended to facilitate establishment of a Land Tribunal. The Land Tribunal hears appeals against the decisions of the Land Boards. It is currently determining appeals on matters affecting customary land only.

The Land Boards were initially entitled to make customary and common law grants, for residential, grazing or cultivation purposes to members of the different tribes living in the specified territories, but since the amendment of the Act, any citizen of Botswana is entitled to apply for these rights. The land boards are entitled to issue certificates or customary grants or certificates of occupation. Provision has been made for the conversion of these certificates into titles registerable in the deeds registry once demand arises to deal with these certificates in the commercial lending market. Any change in right-holder must be reported to the land board in order to maintain the accuracy of the record system of the land board.

State Land is administered under the State Land Act (1966) which empowers the President of Botswana to make and execute grants of any state land or any interest therein. In urban areas, land rights are granted under ninety nine (99) year Fixed Period State Grant (FPSG) for residential, and fifty (50) years for commercial and industrial purposes. FPSG is a once off lease where rent is paid once on acquisition and not periodically over the lifetime of the lease.

Freehold land consists mainly of farms administered under the Land Control Act. Freehold land has been reduced as it is bought to augment urban state land and smaller districts. The latest trend is that freehold farms near urban areas are being gradually converted to urban land use such as residential, commercial, industrial etc.

Valuation of land in Botswana is based on the different land tenure systems. Land under the customary rights is valued according to the improvement on the land. The land itself is not taken into account when the valuation is being done. However, land under customary rights/tribal land rights which is converted into common law leasehold as well as the state land is valued according to the open market valuation method which takes both land and improvements made into consideration. Freehold land is priced on the basis of open market valuation. This suggests that the valuation of leasehold and freehold are essentially the same, albeit under different ownership.

Land use and Land Development Policies, the government has also adopted policies and programmes that would assist to address the land related problems such as range degradation. These are tribal grazing land policy (TGLP) and leasehold policy in the arable land. Tribal grazing land policy was aimed at addressing the range degradation problem. Through this policy, part of the communal grazing land was designated commercial ranches and allocated to individual citizens for fifty (50) year leases. It is expected that large cattle owners who could afford to develop and manage ranches would transfer their large herds into ranches and leave the remaining communal grazing to the subsistence farmers. As result about 892 ranches have been demarcated and allocated to the farmers. Furthermore leasehold has been extended to arable farming in customary land.

5.3 LESSONS FOR NAMIBIA

Political changes experienced in the Southern African economies have moved property rights and privatisation issues to the centre of many policy discussions. It is clear from the two case studies that the land reform programmes have put emphasis on reforming land tenure system in the communal areas. There are lessons that Namibia can learn from the land reform programmes of the two countries. The case studies show that Namibia can improve land rights in rural areas by restructuring ownership.

First, the ongoing efforts to make the 99 year leasehold tradable in the communal/resettlement areas are steps in the right direction. This could be done by registering the leasehold/lease agreement in the deeds office in the name of the lessee. Second, the amended lease agreement would authorise financial institutions lending money to the lessees to take possession of the leasehold and sell it to other potential lessee if the leaseholder defaults to repay the debt. Third, there is also a need to demarcate large part of communal areas where there are no people and lease it to individual with more livestock who would be able to develop it and pay the rental expenses.

On the resettlement and communal areas, the study draws lessons from customary land rights in Botswana where the occupants get a certificate of occupation. It is recommended that current efforts that are under way to convert the lease agreement in the resettlement and communal areas into registerable leasehold which can be traded in the commercial lending market when demand arises be speeded up. The study also suggests that any change in leaseholder must be reported to the land board in order to maintain the accuracy of the record system of the land board and deeds office register.

An important lesson from the South African Government is that it is committed to transfer land to its real owners. This suggests that people will be granted freehold titles and registered leaseholds. This is what Namibia should strive towards, to integrate the registration of lands in one registry.

6. CONCLUSIONS AND POLICY RECOMMENDATIONS

The aim of this study was to assess how well secure property rights can increase access to credit and improve the living standard of the people owning or residing on the land. It also draws lessons from neighbouring economies in an attempt to improve land tenure systems in Namibia. The analysis is based on the questionnaire which was administered to the relevant stakeholders and the literature reviewed in the previous sections.

The results of the review (survey and literature) have shown that there is a positive relationship between secure land rights and access to credit in the freehold (commercial) area. They also further revealed that land and the properties standing on it in this area is acceptable by financial institutions to be used as collateral security. This is mainly due to (i) free hold title deed over the commercial farming land that is tradable; (ii) the land is registered in the name of the individual(s) who may want access to credit from financial institutions; (iii) the structure of ownership of land in these areas is secure (iv) the land is proclaimed in case of urban areas and (v) the market value of the land can easily be determined and land can be sold without difficulty in the market. It is also found that residents in the informal settlement areas of Windhoek and other major towns acquire land as a group. Like the South African case the common hold title ownership or group ownership of land poses a number of challenges and cannot easily be used by individual members of the group as a collateral who want to acquire credit. However, the South African Government is currently working on procedures to make this kind of land ownership which is largely common among the poor to become a feasible collateral for lending transactions with financial institutions.

However, on the other hand, the results show that land in the communal area cannot facilitate access to credit mainly due to insecure land rights in this area. This tenure system makes it difficult for financial institutions to accept land as collateral security. Other reasons which have been affecting the land rights are: (i) the ownership of communal land which is entrusted in the state on behalf of communities; (ii) the land is registered in the name of the government and not in the name of private individuals; (iii) another factor that hinders the use of land as collateral is the underdevelopment of land in the communal areas. This is mainly due to lack of funds and commitment from the people who are living on the land, because, it is not owned by them.

Furthermore, the results indicated that land in the resettlement area cannot improve access to credit. They also demonstrated this land can not be used as collateral security in the case the resettled person wants to borrow money from financial institutions. This is due to the fact that (a) the land is owned by the government and not the resettled people; (b) this ownership structure makes it difficult for the banks to reposes this land in case the borrowers in the resettlement area default on their loans; and (c) the lease hold of ninety-nine (99) years granted by government is not tradable. At present Namibia has only two registries for land rights, namely, Windhoek and Rehoboth.

The case drawn from the neighbouring countries indicates that more than 70 per cent of the land in Botswana is held under customary/tribal land tenure system, while 23 per cent and 5 per cent are under state land and freehold tenure systems respectively. The valuation of the land is based on these tenure systems. On the contrary, the land policy in South Africa, is putting more emphasis on full ownership over the land by the community and free property/all rights or free hold ownership as the juristic persona. This tenure reform is a response to many demands coming from various communities, groups and individuals for the individual freehold ownership of land.

More specifically the study is making the following recommendations:

- The Ministry of Lands and Resettlement should survey and demarcate large part communal areas where there are no people and lease it to private individuals with more livestock or firms who would be able to develop

it and pay the rental expenses. This would not only facilitates increased investment but also send a powerful signal and stimulate the development of the agricultural sector. It is worth to note that the Ministry is currently busy working on the demarcation of unused land in the communal areas to transform it into leaseholds.

- The government should mobilise and direct more support towards the development of infrastructure such as boreholes, dam, kraal, fencing material among other in the communal land as well as in the resettlement area. The Ministry of Lands and Resettlement should permit the subleasing of the resettlement area under the government control.
- The government should speed up the amendments of the lease agreement in the resettlement areas. More importantly, the Ministry should ensure that the lease agreement (used as collateral) should be allowed to be repossessed by a financial institution in case the borrower defaults and to be sold to another potential lessee. In the same vain, commercial banks must be consulted and made aware of this arrangement.
- The Ministry of Land and Resettlement should start working on integrating the registration of land rights into one registry. This would mean surveying all land in communal areas to convert them into either freehold or leasehold. This could be an expensive exercise, but resources can be mobilised from donors.

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APPENDIX 1: PROPERTY RIGHTS & ACCESS TO CREDIT - QUESTIONNAIRE

A. FINANCIAL INSTITUTIONS

1. Name of the Person Interviewed:

2. Position :

3. Name of the bank:

4. What has served as the major collateral for the loans extended from your bank for the past year?
.....
.....

5. Does your institution take land as collateral when customers want to borrow money?
.....
.....
.....

6. What is the size of land that your company can take as collateral?

- Commercial
- Communal
- Resettlement

7. Which type of land has served as the major collateral for the loans extended from your bank for the past year?

a. Urban.....

b. Farming

8. Does your institution give loans to full-time communal farmers?
.....
.....

9. If yes, what forms of collaterals do you accept?
.....
.....
.....

B. OTHER STAKEHOLDERS

10. Does ownership of land in communal areas have any impact on access to credit?

.....
.....

11. Do you think that the lack of secure land tenure in communal areas inhibits the development of these areas?

.....
.....

12. How can the land tenure be improved in the communal areas and resettlement areas?

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.....
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