



PROTECTION FOR WOMEN IN NAMIBIA'S COMMUNAL LAND REFORM ACT: IS IT WORKING?

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1. Introduction

Land and property rights are not an end in themselves, but a means for a better livelihood for women and their families. If women are not economically capable of sustaining their livelihoods, they will not be able to maintain their land and property.

– *Report on the Proceedings of the National Conference on Women’s Land and Property Rights and Livelihood in Namibia with a Special Focus on HIV/AIDS*, Ministry of Gender Equality and Child Welfare, 2006, p. 17

In the introduction to the proceedings of the National Conference on Women’s Land and Property Rights and Livelihood (sic) in Namibia with a Special Focus on HIV/AIDS, held in 2005, it was stated that “rights to land and property are an issue of the fundamental human right to space and the means to one’s livelihood. In other words, it is an issue of power and control over one’s own life.” (Republic of Namibia (RoN) 2006c: 16)

Giving women land rights equal to those of men remains a challenge in Namibia and in all four north-central regions of the country, namely Omusati, Oshana, Ohangwena and Oshikoto, despite gender equality being addressed in various policies and laws since Namibia attained independence in 1990. The right of women to own land, and more specifically to inherit land in their own right, is an increasingly topical issue as the HIV/AIDS pandemic continues to take its toll.

Arguably, for the Namibian public and government, the single most important aspect of women’s rights to land, or the lack thereof, has been the eviction of widows from the land they have cultivated. No reliable empirical evidence exists to suggest how widespread this practice is. Based on newspaper reports and activist accounts, Gordon was led to write in 2005 that widow dispossession seemed to be reaching “epidemic proportions” (2005: 16). However, he cautioned that many of these assertions were based on hearsay, and empirical evidence was too weak to substantiate them. He drew attention to the fact that such assertions were “part of an international discourse which provides not only a vocabulary which is gaining acceptance but is easy to surf on to attract funds” (ibid.). He observed that cases of widow dispossession were frequently “recycled time and again”, and that many long-term researchers did not find this practice to be as prevalent as is suggested (ibid.: 17).

Notwithstanding these critical observations, there should be no doubt that the dispossession of widows remains an issue. Lebert’s (2005) work in Ohangwena as well as Participatory Poverty Assessments conducted in Omusati, Oshana and Oshikoto in 2005/06 and fieldwork conducted for this study confirm that this practice still occurs, although increasingly rarely. However, what emerged in the fieldwork for this study is that, while eviction of widows is no longer regarded as a major issue, the ‘grabbing’ of property and assets following a husband’s death is generally regarded as such.

The decrease of evictions is undoubtedly due to a general policy and legal framework that seeks to promote gender equality. More specifically, the National Land Policy and the Communal Land Reform Act 5 of 2002 aim to improve gender equality in land rights and tenure security. Regrettably, no mechanisms are in place to monitor the impact of gender policies and laws on gender equality. Circumstantial evidence suggests that progress has been made in improving gender equality in access to land and tenure security, but discrepancies between the provisions of the Communal Land Reform Act and practices on the ground continue to exist. The question thus arising is whether the provisions of the Act pertaining to women generally and widows in particular are being implemented effectively. In an attempt to throw some light on this question, the Legal Assistance Centre commissioned this study in the most densely populated regions of the country, being Omusati, Oshana, Ohangwena and Oshikoto.



This study investigates the extent to which the provisions of the Act are known to women, and whether those who do know the provisions are able to claim their rights as stipulated in the Act. Are the regional Communal Land Boards and Traditional Authorities supportive of widows' rights, and are they able to enforce the provisions of the law? This study also investigates a wider range of issues relating to women's land rights and rights of inheritance, in an attempt to answer the following questions:

- Are widows under family or social pressure to refuse allocation of their deceased husband's land, and if so, who exercises this pressure?
- What happens when a widow elects not to stay on the land or there is no widow to inherit the land? What are the possible gender implications of land going to the children of the deceased identified by Traditional Leaders?
- How are polygamous marriages dealt with since the Communal Land Reform Act does not specifically provide for this?
- Are widows being charged for reallocation, and if so, how does the payment compare to normal land allocation fees?
- What happens to land rights when a widow who inherited the land rights of her deceased husband remarries?

These questions will be contextualised by placing them in the wider socio-economic and socio-political environment. This report will thus begin with a brief overview of policy development and some reflections on the Communal Land Reform Act. These will be followed by some background information on household characteristics and land and livelihoods in the four regions studied. This background serves to verify the centrality of women in agricultural and domestic production and reproduction in these regions. A final section will discuss institutional aspects of policy implementation.

The starting point in this study was a survey of secondary literature on gender rights to land and inheritance. This was complemented by in-depth interviews with key stakeholders as well as focus group discussions and case studies in the four north-central regions. The results presented here should be regarded as indicative and not exhaustive nor statistically representative. As will become clear, regional and intra-regional differences exist in all aspects of land rights, inheritance and property grabbing. Despite these limitations, it is hoped that this study will flag some important issues requiring further study for more informed inputs into gender-sensitive policies.

2. Women and livelihoods

2.1 Demographic background

The Population and Housing Census of 2001 found that two thirds of the Namibian population lived in rural areas in that year. More specifically, 43% lived in the crop-growing regions of Omusati, Oshana, Ohangwena and Oshikoto (RoN 2003a: 3-4). In Ohangwena and Omusati, 99% of the population was classified as rural. The corresponding figure for Oshana was 69% and for Oshikoto 91% (ibid.: 12-16).

The majority of the 136 136 households in the north-central regions were headed by women. These regions have the highest number of female-headed households in the country. According to the 2001 Census, the percentage of female-headed households ranged from 50% in Oshikoto to 62% in Omusati, placing these regions well above the national average of 45% (RoN 2003a: 4). Figures provided by the Namibia Household Income and Expenditure Survey (NHIES) of 1993/94 indicate that the proportion of female-headed households in the study area has increased since the mid 1990s. Table 1 summarises the situation.

Table 1: Female-headed households in the north-central regions, 2001

Region	1993/94 NHIES (%)	2001 Census (%)
Oshikoto	40	50
Oshana	52	54
Ohangwena	55	60
Omusati	53	62

Source: RoN 1996c: 41; RoN 2003a: 12, 14-16.

It is not clear from the 2001 Census how many households were headed by widows and how many were headed by women whose husbands worked and lived away from home. The Census simply defined the household head as “the person of either sex who was looked upon by the other members of the household as their leader or main decision-maker (ibid.: 81). As it stands, this definition theoretically includes households headed by women whose husbands are in fact physically present in the household. While these households are probably a minority, it cannot be assumed that women can only be defined as head of household when their husbands are absent. Despite these caveats, the figures suggest that the majority of households in the study area were managed by women, who took decisions on land management and domestic reproduction.

The notion of a single decision-maker on land and livestock issues is also a serious oversimplification. Recent research has shown that people other than the head of household are involved in decision-making. Evidence supporting this finding will be discussed below.

Although the average household size in the study area was about 5.5 persons, numerous households supported more people than the immediate offspring of the head of household and his or her spouse. Offspring of the household head and/or his or her spouse accounted for approximately one third of the household population. Grandchildren of the household head and/or his or her spouse accounted for 22% except in Ohangwena where they constituted 29% of the total household population. Other relatives of the household head and/or his or her spouse averaged at about 16% (RoN 2003a: viii-ix).

2.2 Livelihoods

Livelihoods in all four regions consisted of several different income streams. However, subsistence farming was the main source of income for many households. The Household Income and Expenditure Survey of 2003/04 found that 80% of households in Omusati regarded subsistence farming as their main source of income. The corresponding figures for the other regions were Ohangwena 58%, Oshikoto 50% and Oshana 48% (RoN 2006a: 17). Access to land thus was and continues to be a crucial component of the livelihoods of more than half the households in the study area.

During the 1996/97 cropping season, female-headed households accounted for 37% of all households planting in the four north-central regions. By the 2002/03 season this percentage had increased to 44% (RoN 2004: 9). Female-headed households accounted on average for 40% of all households that planted during seven cropping seasons since 1996/97. The Annual Agricultural Surveys conducted in each cropping seasons showed that female-headed households planted larger areas than male-headed households, and that average fields of female-headed households were larger than those of male-headed households. Table 2 provides a summarised comparison.

Table 2: Average area planted: female- and male-headed households, 1996/97-2002/03

SEASON	FEMALE-HEADED HOUSEHOLDS			MALE HEADED-HOUSEHOLDS		
	Number of households	Area planted (hectares)	Average area (hectares)	Number of households	Area planted (hectares)	Average area (hectares)
1996/91	30 058	80 014	2.7	50 417	162 970	3.2
1997/98	30 770	165 780	5.4	50 716	80 850	1.6
1998/99	32 864	172 461	5.2	49 275	84 347	1.7
1999/2000	35 544	154 440	4.3	46 224	88 111	1.9
2000/01	32 048	146 517	4.6	51 793	72 273	1.4
2001/02	39 638	147 144	3.7	47 566	96 419	2.0
2002/03	39 350	148 035	3.8	49 257	89 913	1.8

Source: RoN 2004: 9; 25

Despite female-headed households having planted larger areas on average, their output of cereal crops was slightly lower than that of male-headed households. While cereal output per female-headed household was only slightly lower than that per male-headed household, yield per hectare for the former was much lower at 333 kg compared to 468 kg for the latter in the 1997/97 cropping season. In the 2002/03 season the yields were 105 kg/ha and 333 kg/ha respectively.

Table 3: Average production of cereal crops: female- and male-headed households 1996/97-2002/03

SEASON	FEMALE-HEADED HOUSEHOLDS			MALE-HEADED HOUSEHOLDS		
	Number of households	Production (tonnes)	Average production (tonnes)	Number of households	Production (tonnes)	Average production (tonnes)
1996/97	30 058	28 210	0.9	50 417	77 552	1.5
1997/98	30 770	16 137	0.5	50 716	35 756	0.7
1998/99	32 864	28 342	0.9	49 275	63 273	1.3
1999/2000	35 544	20 321	0.6	46 224	39 097	0.8
2000/01	32 048	27 983	0.9	51 793	59 704	1.2
2001/02	39 638	17 381	0.4	47 566	25 126	0.5
2002/03	39 350	15 511	0.4	49 257	28 511	0.6

Source: RoN 2004: 9, 28.

¹ It would appear that the figures for areas planted by female- and male-headed households for the 1997/97 cropping season have been swapped.

An important factor that probably contributed to lower yields in female-headed households was that they had access to fewer ploughs and draught animals. As will be discussed below, this is partly due to the fact that it is fairly common for a deceased husband's family to take livestock and farming equipment away from the widow's homestead. This practice is more pronounced in households affected by HIV/AIDS. Female-headed households certainly have fewer implements. Only about 33% of female-headed households owned ploughs compared to about 60% of male-headed households. Table 4 summarises the situation.

Table 4: Ownership of ploughs: female- and male-headed households, 1996/97-2002/03

SEASON	FEMALE-HEADED HOUSEHOLDS			MALE-HEADED HOUSEHOLDS		
	Number of households	Households owning ploughs	Percentage	Number of households	Households owning ploughs	Percentage
1996/97	30 058	10 348	34.4	50 417	29 088	57.7
1997/98	30 770	11 274	36.6	50 716	31 763	62.6
1998/99	32 864	11 717	35.7	49 275	29 146	59.1
1999/2000	35 544	11 587	32.6	46 224	28 864	62.4
2000/01	32 048	10 721	33.5	51 793	32 043	61.9
2001/02	39 638	13 230	33.4	47 566	31 281	65.8
2002/03	39 350	13 902	35.3	49 257	30 042	61.0

Source: RoN 2004: 9, 15.

Another contributing factor was that female-headed households had less labour available than male-headed households for agricultural production. Labour is a crucial asset in subsistence farming, as "the area planted, i.e. the size of the field, is directly related and proportional to the number of people available to the household in the preparation, clearing, ploughing, fertilising and seeding/planting of the fields" (ibid.: 14). During the 1996/97 cropping season, 34% of the population active in agriculture² was working in female-headed households, compared to 65% in male-headed households. During the 2002/03 cropping season this ratio was 40:60, while female-headed households planted 62% of the land (ibid.: 13).

The largest part of agricultural production is carried out by females. Even in male-headed households, females are the main producers of crops. In their analysis of agricultural survey data, LeBeau and Schier (undated: 21-22) concluded that

in all regions, when examining the sex of the worker, regardless of household head, females predominate in all cropping activities, except in land preparation where the majority of work is done by males. ... *These data clearly indicate that females are almost solely responsible for crop production* (original emphasis).

The data presented above also suggests that lifting women out of poverty is not merely an issue of access to land. Becker (1997: 5) drew attention to the concern that gender equality could not be achieved simply by changes in customary laws and procedures or increasing women's access to land. A wider-ranging agrarian reform is necessary to enhance women's capacity to manage and benefit from land and other resources. Moreover, a redistribution of socio-economic roles and responsibilities is required.

² The active population is defined as "comprising of all persons providing labour to produce economic goods and services on an agricultural holding" (RoN 2004: 13).

3. Gender equality in land policy and policy development

At the formal political level, the promotion of gender equality has been a guiding principle in policy development. Article 95(a) of Namibia's Constitution commits the state to "enact legislation that will ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society". Article 23 on Apartheid and Affirmative Action recognises "the fact that women in Namibia have traditionally suffered special discrimination and ... need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation". In enacting legislation promoting the advancement of people who were previously disadvantaged socially, economically or educationally, special regard should be had to women.

In accordance with these constitutional principles, a number of policies and laws have been passed since Independence to promote gender equality. These include the Married Persons Equality Act 1 of 1996, the Affirmative Action (Employment) Act 29 of 1998, the Combating of Rape Act 8 of 2000, the Communal Land Reform Act 5 of 2002, the Combating of Domestic Violence Act 4 of 2003 and the Maintenance Act 9 of 2003 (Committee on CEDAW 2007: 1).

3.1 Land policy development

A number of formal consultative conferences preceded the development of Namibia's land policy and legislation. Two of these were initiated by the Government, another by Traditional Authorities in the north-central regions and another by an NGO Working Committee on Land Reform. These initiatives will be briefly discussed below.

3.1.1 The National Conference on Land Reform and the Land Question, 1991

The National Conference on Land Reform and the Land Question ('Land Conference') was held in 1991 under the auspices of the Office of the Prime Minister. The aim of this conference was to achieve broad-based consensus on land reform in Namibia, both in the freehold and the non-freehold or communal sector. To this end, 500 participants representing civil society organisations and the farming community across the country were invited to discuss the land question and land reform. The conference was consultative in nature, implying that no binding decisions were taken.

In his opening address, the Prime Minister highlighted the importance of gender equality in obtaining and securing land rights:

This is most urgent in the case of female-headed or *de facto* female-headed households in which the male is absent most of the year. A woman should be as eligible to have the land use title in her name as the man, even if she and her husband live together, and to inherit and bequeath land. This would appear to be required by the Constitution. (RoN 1991: 16)

A number of wide-ranging consensus resolutions were taken at the conference, many of which were taken up in policy and legislation. Participants acknowledged that women formed the majority of agricultural producers in communal areas, and resolved that:

- women should have the right to own the land they cultivate and to inherit and bequeath land and fixed property;

- a programme of affirmative action should be introduced to assist women through training, low interest loans and other mechanisms so as to compete on equal terms with men;
- all discriminatory laws, whether statutory or customary, and all discriminatory practices which disadvantage women should be abolished or amended with immediate effect; and
- women should be fairly represented on all future district councils, land boards or other bodies which deal with the allocation and use of land in the communal areas.

(RoN 1991: 37)

3.1.2 Consultative conference on customary law, Ongwediva 1993

Broadly coinciding with the Land Conference of 1991 was a process of reviewing customary laws in the four north-central regions. This process started in 1989 with amendments to the Laws of Ondonga (*ooveta*). These amendments introduced changes to the land inheritance concept linked to matrilineal kinship by granting widows the right to stay on the land they occupied with their husbands, subject to the payment of a maximum amount of N\$600, depending on the size of the land (Traditional Authority of Ondonga 1994: 31). Following appeals to Traditional Leaders by Namibia's Founding President, Dr Sam Nujoma, to stop the eviction of widows and their children from the land they occupied during the lifetimes of their husbands, and a motion to that effect in the National Assembly in August 1992, the stipulation that widows had to pay for the right to stay on the land that they occupied with their husbands was deleted from the *ooveta* (ibid.: 35).

A customary law consultation conference was held in Ongwediva in 1993, which was attended by 79 Traditional Leaders. The primary aim of the conference was to agree to and adopt a set of rules on land inheritance that would apply across all Traditional Councils in the four north-central regions. These rules were based on the revised Laws of Ondonga enacted in 1993. The rules provided for significant protection of widows and the property belonging to the households of widows and their deceased husbands. Importantly, the revised laws abolished the requirement that widows pay for the land of their deceased husbands if they wanted to remain on that land. All Traditional Authorities in the north-central regions agreed at the Ongwediva conference to follow the position of the Ondonga King's Council and to revise their respective laws accordingly (ibid.: 37). On a formal level, therefore, the eviction of widows from their land after their husbands' deaths as well as the payment for the right to stay on that land were deleted from the customary laws of all Traditional Authorities in the north in 1993.

3.1.3 People's Land Conference, Mariental 1994

The People's Land Conference held in Mariental in 1994 under the auspices of the NGO Working Committee on Land Reform also reflected on gender equality in land reform. The initiative to organise this conference arose out of a concern that civil society was not consulted on the drafting of the Agricultural (Commercial) Land Reform Bill, and that there had been no progress on land reform since the Land Conference in 1991. A concerned group of NGOs formed the Working Group on Land Reform to review progress on land reform and provide a forum for debate on the land question. Participants resolved that

women should be considered as equal partners with men in all aspects of development, including natural resources management and land reform, especially since they are a majority population in rural areas and are engaged in many farming activities. (NGO-WCLR 1994: 13)

While civil society organisations debated the land issue in Mariental, government discussed the Agricultural (Commercial) Land Reform Bill in Parliament. The Bill became an Act in 1995.

3.1.4 Consultative Conference on Communal Land Administration, 1996

In 1996 the Government hosted a consultative conference on land issues in communal areas. The objective of the Consultative Conference on Communal Land Administration was to consult all stakeholders on communal land administration “with a view to finding a common ground on how to proceed further in bringing communal land in the main stream of national development programme” (sic) (Malan & Hinz 1997: 11). The Minister of Lands, Resettlement and Rehabilitation hailed this conference as the second most important event since the Land Conference of 1991 (ibid).

However, gender issues did not feature in the Minister’s short address to the conference. Instead, she focused on the perception that communal areas retarded development. She ascribed this to the inability of communal farmers to use communal land as collateral for raising capital for investments and development. In addition she noted that land degradation and the enclosure of communal land needed to be controlled (ibid.: 12).

President Sam Nujoma placed gender issues on the conference agenda. In his opening address (ibid.: 14) he observed the following:

[M]ost women were effectively denied an opportunity to acquire and utilise land. In some instances, widows have even been summarily evicted from land that was allocated to their husbands. Such acts are inhumane and should not be allowed to continue. It is of utmost importance that appropriate structures, whose values are not dictated by gender or ethnicity, are put in place to democratically administer the process of land allocation and resolve land disputes. Such structures, to be known as Land Boards, should be representative.

Discussions at the conference were dominated by concerns regarding the powers of proposed land boards and the impact they might have on the functions and powers of Traditional Leaders. Judging from the minutes of the conference, gender issues with regard to land and customary law did not receive much attention. Little discussion appears to have taken place and the minutes reflect only generic affirmations of the demand that women should have full rights to land (ibid.: 118-119). The only input dealing specifically with women and land rights, i.e. Becker’s paper on “Women and land rights” (1997: 56-59), served as a background document and was not presented at the conference.

3.2 National Land Policy

In 1997 the National Resettlement Policy was introduced, followed in 1998 by the National Land Policy. Neither the original National Resettlement Policy nor its revised version of 2001 referred to gender at all. Beneficiaries and selection criteria were described in ‘gender-neutral’ terms.

The National Land Policy, on the other hand, made specific reference to women’s rights. Based on Article 95(a) of the Constitution, the Policy accords women “the same status as men with regard to all forms of land rights, either as individuals or as members of family land ownership trusts. ... Every widow (or widower) will be entitled to maintain the land rights she (or he) enjoyed during the spouse’s lifetime”. The Policy went on to state that in practical terms this meant that:

- women would be entitled to receive land allocations and to bequeath and inherit land;
- government would actively promote the reform of civil and customary laws which impeded women’s ability to exercise rights over land; and
- policy would promote practices and systems that took into account women’s domestic, productive and community roles, especially in regard to housing and urban development, agricultural development and natural resources management.

(RoN 1998a: 1-2)

In terms of the new Land Policy, certificates of land rights under customary tenure would be introduced. These would provide more tenure security and could be inherited by immediate family members, i.e. husband or wife and 'natural children', but would not be mortgageable or transferable outside the limits of consanguinity (ibid.: 12).

3.3 Draft National Land Tenure Policy

The Draft National Land Tenure Policy (RoN 2002: 17-18) has gone through several stages of consultation and amendment. It states that customary rights for arable, residential and grazing land will be held by the head of the family in trust for the rest of the family. Heads of households may not dispose of such rights without the consent of their spouses and dependent children. The Draft Policy refers to the Constitution and the Married Persons Equality Act in respect of the protection of the rights of women, particularly with regard to inheritance practices. In addition, Traditional Authorities and regional Communal Land Boards are called upon to ensure that gender discrimination does not occur in inheritance cases involving communal land. The possibility of appealing to a Land Board against a decision of a Traditional Authority is also provided for.

3.4 Conclusion

The development of Namibia's land policy and legislation on communal land was characterised by a number of consultative conferences in which a large cross-section of stakeholders participated. It is reasonable to conclude that the interests of organised farming communities and Traditional Leaders were strongly represented at these conferences. The same cannot be said about the representation of women's rights. While individual women attended and provided inputs to these conferences, attendance registers do not show any organised women's group articulating gender issues. This might explain why the Draft Communal Land Bill circulated at the Consultative Conference on Communal Land Administration in 1996 "did not contain any reference to gender aspects" (Becker 1997: 58), and why none of the conferences came up with recommendations going beyond the assertion of equal rights for women in obtaining and retaining land rights.

4. The Communal Land Reform Act

In 1998 Cabinet approved a revised Draft Communal Land Reform Bill which was forwarded to the Council of Traditional Leaders for further input (*The Namibian* 9.2.2000). In August 1999 the Draft Bill was sent to the Regional Governors with a request that they distribute it in the regions. Despite the Minister of Justice stating that several workshops were held to familiarise the general public, especially in the communal areas, with the contents of the Bill (*Die Republikein* 17.1.2000), the Parliamentary Standing Committee on Natural Resources found after 29 public hearings on the Draft Bill in all regions that “very few people were in fact aware of the contents of the Bill. The greater majority, especially in the rural areas, indicated that they had never been informed about the Bill” and “very little input was received from stakeholders and the public at large” on the new Bill (RoN 2000a: 2). It recommended that the Bill be withdrawn and introduced at a later stage. This recommendation was rejected and the National Assembly approved the Bill in February 2000 before it was passed to the National Council for debate. NGOs criticised the haste with which the Bill was rushed through Parliament, particularly in view of the Parliamentary Committee’s finding that few people knew what it was about. Despite these concerns, the Bill was approved in 2002 and the Communal Land Reform Act came into force in March 2003.

Fieldwork conducted in mid 2007 confirmed that the majority of people in the communal areas of the north-central regions were unaware of the Act and its provisions. While Traditional Authorities did know the provisions, this knowledge decreased as one descended through the hierarchy of Traditional Leaders. Some Senior Traditional Councillors and many Headmen had heard of the Act, but did not fully understand its contents. Focus group discussions with women revealed that most did not know the specific rights accorded to women in the Act and requested more information. Although the Legal Assistance Centre had prepared a simplified version of the Act in English and an Oshiwambo translation, these documents were available only at Traditional Authority and Land Board level. It was claimed that the Oshiwambo translation was not easily understandable and needed revision.

4.1 The role of Traditional Leaders in land administration

In terms of the Communal Land Reform Act of 2002, the primary powers to allocate and/or revoke customary land rights are vested in the Chief of a ‘traditional’ community, or, if (s)he so decides, with the Traditional Authority of the particular community (LAC 2003: 9). This represents a compromise on the provisions of the Draft Communal Land Bill of 1996, which sought to vest all the powers, duties and functions of Traditional Leaders in relation to communal land in regional Communal Land Boards (Malan & Hinz 1997: 181). While Traditional Leaders continue to allocate and/or revoke customary land rights under the Communal Land Reform Act, such rights only become legal rights after they have been ratified by Communal Land Boards. The powers and functions of the Land Boards are limited to the ratification of land rights after ensuring that such allocations comply with regulations and national policies. Once ratified, the Land Boards register such rights in the name of the land rights holder in a register and issue a certificate of registration. Some Traditional Leaders expressed the view that the Communal Land Reform Act incorporated the revised Laws of Ondonga adopted in 1993.

In confirming Traditional Leaders’ role in the allocation and administration of customary land rights, the Act does not attempt to bring about any changes in customary laws, and more specifically it does not lay down any obligations of Traditional Leaders towards land claimants. In considering an application for customary land rights, a Traditional Leader may investigate the application by consulting persons in the community concerned, but is not obliged to do so. The Act

therefore does not interfere in the relationship between land claimants and Traditional Leaders. Instead, it regulates the relationship between Traditional Authorities and Communal Land Boards (Chiari 2004: 9). The primary function of the Land Boards is to supervise the allocation and cancellation of customary land by Traditional Leaders.

With no specific provisions in the Communal Land Reform Act on the land rights of women, Traditional Leaders face a difficult task in striking a balance between customary law and the requirements of the Constitution and common law. On the one hand, the Traditional Authorities Act 25 of 2000 stipulates that Traditional Authorities and their members are responsible for the administration and execution of the customary laws of specific communities, and must “uphold, promote, protect and preserve the culture, language, tradition and traditional values” of these communities. They are also responsible for hearing and settling disputes among members of a specific traditional community in accordance with customary laws. Chiefs and Headmen, in turn, are expected to “exercise [their] powers and perform [their] duties and functions ... in accordance with ... customary law”. At the same time they are called upon to promote affirmative action as required by Article 23 of the Constitution, “in particular by promoting gender equality with regard to positions of leadership” (Articles 3 and 7).

As Chiari (2004: 90) points out, this twofold role is particularly pertinent with regard to women’s land and property rights. The Communal Land Reform Act fails to address the fact that in terms of customary law, access to land and its transfer after a spouse’s death is subject to power relationships that are based on gender roles. An example will illustrate the point.

As the discussion below will show, the grabbing of property by relatives of a deceased husband is considered by the perpetrators to be legitimate in terms of customary law, in so far as this law is claimed to follow matrilineal inheritance rules. However, statutory law regards such an act as theft and thus a criminal offence. When cases of property grabbing were brought before the Traditional Authority of Ondonga, for example, the Authority attempted to negotiate acceptable solutions but did not fine the perpetrators because their actions were not regarded as criminal offences – unlike stock theft. Instead, the Traditional Authority views property grabbing as falling within a matrilineal system of inheritance, whereby the family of a deceased husband claims his property and assets.

The Traditional Authorities Act emphasises the importance of customary laws and practices in administering the affairs of traditional communities without questioning the inequalities that such laws and practices may perpetuate, particularly in the case of women. This vacuum provides opportunities to continue some practices that are unconstitutional. The Communal Land Reform Act does not provide much guidance in this respect either. As Chiari (*ibid.*: 19) points out, the Act pays “insufficient attention ... to the concepts of rights and legitimacy”, and appears to be too legalistic in the way that it seeks to address gender issues. Because the Act is administered from the top down, statutory provisions that conflict with customary laws run the risk of being ignored. As will be shown, this compromises the good intentions of the Act to address gender inequality. Chiari (*ibid.*) pleads for an approach that encourages

community participation in implementing and controlling land tenure reform as a key factor in contributing to increase social security and to reverse the material and non-material social sanctions taken against women – and, particularly, divorcees and widows

4.1.1 Payment for land allocations

Prior to the introduction of the Communal Land Reform Act, it was the custom to pay about N\$600 to the village Headman for the allocation of customary land rights. The amount changed with the size of land allocated, and increased to N\$1 000 in the Okatana area, north of Oshakati (*ibid.*: 10; own research). Moreover, widows were required to make a payment for continuing to stay on the land that they cultivated with their husbands. These payments constituted an important

source of income for village Headmen. However, the Communal Land Reform Act prohibits payment, be it in cash or kind, for any consideration of the allocation of a customary or any other land right (LAC & NNFU 2003: 36), with the exception of an administrative fee of N\$25 for all applications.

It came to light during fieldwork in 2007 that the impact of the provisions of the Act on demanding payments for customary land allocations has been negligible. The Chairman of the Omusati Communal Land Board said that some village Headmen were continuing to demand payments while others had stopped the practice. King Taapopi of Uukwaludhi, for example, stated that all new applicants for customary land had to pay a consideration of N\$600 for an allocation. This was confirmed by the Senior Traditional Councillor of Oshikuku and by a group of women in Okatana who stated that prices went up to N\$1 000 for an allocation. It was said in Omusati Region that where village Headmen no longer received payments, they appear to have become indifferent to the administration of customary land. Therefore, land rights holders with grievances approach Senior Traditional Councillors directly. To the extent that village Headmen become indifferent to the administration of customary land as a result of not receiving any payments, the consequence in terms of the Communal Land Reform Act would be weaker land administration institutions at local level.

The Communal Land Board of Omusati supported a request by Traditional Leaders to be permitted to request payments unless other arrangements could be made to compensate for them. The reason for this support was that Headmen perform important functions at local level, such as heading traditional courts, but receive no compensation from the state for carrying out such functions. In terms of the Traditional Authorities Act, only one Chief or Headman of a traditional community, and no more than six Senior Traditional Councillors and Traditional Councillors, receive allowances from the state, and all of these persons have to be recognised in terms of the Act. Village Headmen therefore do not receive any payments from the state.

4.2 Communal Land Boards

A new institutional framework in the form of regional Communal Land Boards is also provided for in the Communal Land Reform Act. Communal Land Boards have been established in all regions except Khomas. The Act prescribes that at least four members of the Land Boards – which are typically constituted by at least 12 members – have to be women, and two of the four women must farm in the area of the Land Board's jurisdiction.

The functions of Communal Land Boards include the supervision of customary land allocations and cancellations. They have powers to investigate confirmations of existing and new applications for customary land rights to ascertain that no other persons hold any rights over such land, and that the size of the land held or applied for does not exceed 20 hectares. Where land rights holders apply for the confirmation of customary land rights, the Land Boards have the power to find out when and how such land was acquired and to confirm its boundaries (LAC 2003: 12, 18). Provision is made in the Act for the Minister of Lands and Resettlement to appoint an investigating committee to ascertain claims to existing land rights.

The intent of the Act appears to be to improve transparency in the process of customary land allocations. Traditional Leaders' reaction to the introduction of Communal Land Boards appears to have been mixed. One King expressed a concern that politicians were reducing the powers of Traditional Authorities. More specifically, he complained that it was not clear who had authority in rural areas: politicians or Traditional Leaders. His perception was that politicians tried to reduce the authority of Traditional Leaders. However, he admitted that Traditional Leaders were still allocating land without the interference of Regional Councillors or politicians. At the same time, there was a perception that the Land Boards made Traditional Leaders' work easier in so far as the Land Boards surveyed land parcels and registered rights over them. This reduced land disputes and helped to resolve disputes more easily.

The Act does not deal with land disputes among customary land rights holders. In practice, a dispute is first brought to the attention of the village Headman. Only if it cannot be resolved at village level will it be referred first to Senior Traditional Councillors and then to the Traditional Authority. If the Traditional Authority is unable to resolve the dispute, it refers the matter to the Land Board. Where a dispute is brought directly to a Land Board, the Board asks the Traditional Authority if it is aware of the dispute. If not, the dispute is referred back to the Traditional Authority.

If the parties locked in dispute are unhappy with the Traditional Leaders' decision, the matter is referred to the Land Board for investigation. If the solution proposed by the Land Board still does not satisfy the aggrieved parties, Section 39 of the Communal Land Reform Act provides for an appeal to be lodged against the Land Board's decision, and the Minister of Lands and Resettlement appoints an appeal tribunal to hear the case.

4.3 Registration of land rights

A second and major function of Communal Land Boards is to improve the security of tenure of customary land rights holders. The Act stipulates that all existing and new customary land rights have to be registered with a Communal Land Board, and prescribes the procedure for registration. The Land Boards have to establish and maintain appropriate land registers for the registration of such rights. Since 2003 the majority of land rights holders in Uukwaludhi have applied for the registration of existing customary land rights. According to King Taapopi, people were flocking to the Land Board in Outapi. The Board's Acting Secretary estimated that 12 630 applications for confirmation of customary land rights were pending. Only a few customary land rights have been registered so far because the Land Boards are overwhelmed by the number of applications that need processing. Delays of at least two years were reported in Omusati, Oshana and Oshikoto. The Traditional Authority of Ondonga claims to have submitted applications in 2003 which have not yet been processed.

To enable the reader to appreciate the problems faced by Communal Land Boards, it is useful to briefly describe the application process.

Traditional Authorities distribute the relevant application forms to village Headmen. In turn, the Headmen assist with the registration of land rights in their villages. Once completed, the forms are returned to the Traditional Authorities. The Traditional Authority of Ondonga uses its own funds to employ two clerks to check the forms and enter the details into a computer database. Once this has been done, the applications are forwarded to the Land Board.

To register customary land rights, staff of the Ministry of Lands and Resettlement have to visit each parcel of land applied for to determine its size and boundaries, using a handheld Global Positioning System (GPS). They have to be accompanied by the owner/applicant, neighbours and the Headman. While the Headman demarcates the field (where this is necessary), the ministry staff member notes the coordinates. As the team has to walk along the entire boundary of a field, it is only possible to survey six to eight homesteads per day. At this rate it takes an estimated four days to complete one ward. The process is frequently delayed by land parcels not having been demarcated before the arrival of the ministry teams.

Staff of the Traditional Authority of Ondonga dealing with application forms cited another reason for delays which is relevant to this report. According to them, application forms can only be signed by male heads of households. If they are not present, their wives cannot sign. Where land is registered in the name of a married woman, she needs the consent of her husband to sign the application form, whereas single women can sign forms on their own. A significant number of single women were said to have registered land in their own names in Oshana and Oshikoto.

The Communal Land Reform Act is gender neutral in discussing the registration of land rights. It states that any person who held a customary land right before the Act commenced will continue to hold this right, and will be required to register such land (LAC 2003: 16-17). In terms of customary law, men apply for customary land rights upon marriage and hence are regarded as the rights holders. The Act does not make provision for the registration of land rights in the name of

both husband and wife, thus it is not surprising that the husband's name normally appears on the registration application form. However, the regulations issued in terms of the Communal Land Reform Act require that the name of the applicant's spouse also appears on the form.

4.3.1 Impact of land registration on women's land rights

The impact of the registration of land rights on women's land rights cannot be assessed yet, as the Communal Land Reform Act will take some time to permeate customary tenure regimes. However, it may be instructive to briefly summarise experience with land privatisation and registration in other parts of the continent.

Hilhorst (2000: 188-189) draws attention to some possible effects of the individualisation of land rights by way of titling or registration. She argues that "secondary" rights holders such as women may run the risk that their customary rights to land and natural resources will be denied, and cites possible reasons:

- Land rights holders – usually men – may fear that land rights will be registered in the name of the tiller – usually women.
- Registration programmes usually collapse a number of secondary claims to natural resources such as trees, fuel wood and fruits into one single category of rights.
- Registration of land rights may also maintain and reinforce traditional male control over land.
- Registration of land rights in the name of individuals may weaken local institutions and mechanisms that provide economic security to all members of village communities and hold economic differentiation in check.

The Act also does not lay down any criteria for land rights entitlement. In whose name should household land be registered, for example: husband or wife? This is an important consideration in a context where power relations are structured along gender lines. Households are generally assumed to be homogenous and egalitarian. However, this view ignores the power relationships in patriarchal households that place women in marginal and vulnerable positions. To address these issues, land policy and legislation should take the individual, not the household, as its unit of analysis. Land policy and legislation thus need to seek mechanisms to protect and extend the rights of women within households (Walker, 2001: 100).

In the absence of such protection, the registration of land rights may further erode women's chances of obtaining more secure rights to land and natural resources. As yet there is no empirical evidence to suggest that this has occurred in Namibia. Research in other parts of Africa, however, points to some such dangers.

Because many women continue to obtain rights to land and natural resources through men, these rights are generally referred to as "secondary" tenure rights. Hilhorst (2000: 181-182) argues that, like the secondary rights of others such as migrants, these rights are often of short duration, not well defined and subject to change.

5. Women's rights to land and livestock

Much of the discourse on women and land rights in Namibia is characterised by a generic conceptualisation of the problems. Issues are simplistically cast as men versus women, to put it bluntly. While there can be no doubt that women generally are subservient to men and derive their rights to land and resources largely through their relationships with men, it is too simplistic to state that "Owambo custom discriminates against women because women are not allowed to own property; they are not allowed to make decisions ..." (LeBeau et al 2003: 6).

To start with, the situation of women heading households is different to those in households headed by men. Without property rights to land and powers to take decisions about the land and other assets, female-headed households would not be able to function. As the discussion in section 2.1 has shown, at least 50% of households in the north-central regions are headed by females. In addition, women's rights to land are shaped by regional and intra-regional differences. Such differences include settlement patterns. Areas that were settled permanently fairly recently, such as large parts of eastern Oshikoto and parts of Ohangwena, are characterised by neo-local settlement patterns as opposed to patri-local settlement in areas that were settled generations ago. Christianisation also appears to have shaped customary practices with regard to inheritance and polygamy. The extent of Christianisation appears to vary across and sometimes within regions.

Finally, it must be recognised that gender relations and customary laws are dynamic. There is abundant evidence to suggest that, particularly since Independence, progress has been made in bringing about more gender equality. But a lot more needs to be done. In the context of this study, it is recommended that reforms in other sectors regarding gender equality be more explicitly integrated into land policy and law reform. In view of inter- and intra-regional differences regarding the role of women in society, a flexible approach to gender reform that places women in the centre of transformation may be more appropriate than a top-down approach.

5.1 Women's access to land

Despite the progress made in promoting gender equality, it is still true to say that land rights of women are generally obtained through men, who could be husbands or fathers. Men are generally regarded as the owners of land (ibid.: 44-45). Women's rights to land and other resources thus continue to be "determined by their marital status, by the laws of inheritance and divorce and institutions that are themselves deeply embedded within local perceptions of the role that women should play in society" (Hilhorst 2000: 182). An important implication of this is that a change in a woman's marital status, be it through divorce or the death of her husband, could be catastrophic (Hubbard & Cassidy 2002: 356).

Traditionally, women were not supposed to live without a man. According to Williams (1991: 44-45) usufructory rights to land were held mostly by men in pre-colonial times. They distributed their land among their wives where polygamy prevailed, or among their wives and married sons or cousins residing in their homesteads. Husbands claimed the largest and most fertile portions of the land. Women were required to cultivate their own plots as well as those of their husbands. In most cases the harvests of women sustained the household while the granary of their husbands served as a symbol of wealth, enabling them to buy cattle, among other things.

In its conclusion, *The National Gender Study* (Iipinge et al 2000: 14) appears to confirm this state of affairs:

The man controls and has authority over the household resources. The man allocates land for cultivation to his wife/wives on the smaller and less fertile ground, while he

takes the larger and more fertile one. It is the man who decides when to plough and normally his fields are ploughed first.

Although men are still widely perceived to be the owners of land and other assets in households headed by men, this situation appears to be changing, as was suggested by the Participatory Poverty Assessments carried out in Omusati, Oshana and Oshikoto in 2005/06 (RoN 2007a; 2007b; 2007c). In Oshikoto, some participants stated that the ownership of land still rested largely with men in male-headed households. This was explained by referring to the fact that men generally identified fields and obtained land rights from the Traditional Authorities. Women followed their husbands (RoN 2007b: 93). In other instances participants stated that men and women owned the land more or less equally.

These contradictory findings and perceptions of who owns the land can be attributed to several factors. The first is the methodology employed to analyse the situation. The questionnaire-type research employed for *The National Gender Study* arguably allows little room for discussion. The Participatory Poverty Assessments, on the other hand, allowed for much more time to discuss various aspects of ownership, control and access to land and other resources. But even then, definitions and correct translations of these three concepts remains a difficulty.

However, perhaps more significantly, contradictory indications suggest that sole ownership rights to land held by men are being contested, signalling a gradual change towards a more equal system. Many participants in the Participatory Poverty Assessments supported their arguments regarding such changes by referring to the fact that the practice of dividing fields into smaller portions for women and larger ones for men had all but disappeared. As a rule, fields as a whole belonged to households with men and women taking decisions about different tasks such as when to commence with preparing land, sowing and weeding, for example (ibid.). Many people cited the disappearance of polygamy due to Christianity as a major factor having led to these changes, even though the Namibia Demographic and Health Survey of 2000 found that 12% of married women were in polygamous unions (RoN 2000b: 80).

Lebert (2005: 73) observed similar changes in Ohangwena Region, where some married couples viewed their fields and land as joint assets, while others continued the practice of dividing fields into unequal shares. Where land was regarded as a joint asset, “husband and wife tend[ed] to share decision-making responsibilities”. But, despite these changes and the fact that women continued to perform most of the agricultural activities, husbands remained the sole ‘owners’ of fields.

The information obtained in Oshana Region was very similar to that in Oshikoto. Land was said to be owned almost equally by men and women. Though men were perceived to own agricultural land more frequently than women, men and women had equal control over it. Livestock was owned and controlled more by males, but with an increasing number of female-headed households, more and more women also owned livestock (RoN 2007c: 59).

By contrast, both men and women in Omusati indicated that husbands, as household heads, owned most assets, particularly land, ploughs, fences and wells. Men controlled most resources and took decisions. But women stated that they had some ownership over these resources, albeit very little (RoN 1997a: 96-97).

It should be noted that western legal concepts of ownership and private property have to be applied with caution in situations governed by customary tenure regimes. What is commonly referred to as ownership in this context refers to certain powers (a right) “that society allocates to its members to execute a range of functions in respect of a given subject matter” (Okoth-Okendo, cited in Cousins 2007: 292). It is only where such power amounts to exclusive control that one can talk about ‘ownership’ or ‘private property’. However, “it is not essential that power and exclusivity of control coincide in this manner” (ibid.). A right and its control are thus distinct. A number of social and cultural rules define rights and control (ibid.). In practice this means that the registration of a land right in the name of a man does not necessarily imply that he has exclusive control.

The discussion above appears to support this view that although land is perceived to be 'owned' by men, control is often exercised by men *and* women to varying degrees. In addition, the extent of control exercised by men and women over resources also depends on the type of asset referred to.

5.1.1 Rights to land held by unmarried women

Although most women still obtain rights to land through a man, most often their husbands, they are able to apply for land in their own right. Lebert (2005: 74) found that anybody in Ohangwena Region, regardless of age, status or gender, was entitled to be allocated land.

This finding was confirmed during fieldwork in 2007. King Taapopi of Uukwaludhi claimed that single women were able to apply for land, and that he had observed a rising trend in this regard, particularly after the passing of the Communal Land Reform Act. Although not many single women applied for land in Uukwambi, the King stated that the situation was changing. A gradually increasing number of women applied for land, claiming their legal right to do so. The Acting Secretary of the Omusati Communal Land Board remarked that it was common for women aged between 50 and 70 years to apply for land.

In principle, single women are allowed to apply for land in the jurisdictional area of the Ondonga Traditional Authority. However, as this Authority's Senior Traditional Councillor responsible for Women and Child Affairs explained, this was not easy due to a number of social pressures emanating from custom. Among older people the perception prevails that it is against tradition for young single women to apply for land in their own right. According to custom, young women did not have their own households unless their parents had died. Lebert (*ibid.*) found that it was customary in Ohangwena for people under 35 years of age, particularly women, to remain in their parents' homesteads and not to be allocated land until they married. Men normally look for land.

According to Lebert (*ibid.*), although these perceptions were gradually changing, people in villages were still said to be ridiculing unmarried women. In addition, Traditional Leaders were still posing a lot of questions to single women applying for land. Such enquiries typically pertained to the reasons for the women not being married and wanting their own land. In some instances, Traditional Leaders expressed the opinion that by establishing their own homesteads, young single women would be encouraging violence as lots of men were likely to visit them.

Traditional Leaders gave the following reasons for rejecting applications made by single women:

- Single women living in their own homesteads might encourage men to visit and in so doing may become prostitutes.
- Single women applying for land may be running away from their homes.
- Parents are expected to take care of young single women.

While Traditional Leaders could and occasionally did refuse to allocate land to single women, the Chairman of the Omusati Communal Land Board was not aware of any case of a single woman's application for land being turned down. One official in the Ministry of Lands and Resettlement observed that attitudes towards single women applying for land were changing, at least as far as local Headmen were concerned.

The provisions of the Communal Land Reform Act and changes in customary laws may have contributed to this change, but the overriding reason cited by informants for the increased ability of single women to obtain land was their ability to pay for that land. In Ohangwena, single women could obtain land provided that it was available and that the applicant "has the financial means to persuade the village sub-headman" (*ibid.*).

During fieldwork conducted for this study, it was established that single women who had obtained land generally had to give up their land rights upon marrying. As custom dictated that a man had to go and find land, he was unlikely to move to reside on the land of his new wife.

In the Ondonga traditional area, a man who moved to his wife's land was regarded as a coward. An associated reason was that a man who moved to the land of his wife could be chased away at any time.

5.1.2 Rights of widows to land

Until Independence, widows enjoyed little protection against eviction from the land that they and their deceased husbands had utilised. Though the extent of this phenomenon was never empirically quantified, its impact was sufficiently strong and widespread for respondents in a survey in the area then known as Owamboland (today's four north-central regions), conducted for the National Conference on Land Reform and the Land Question in 1991, to identify it as a major source of injustice (RoN 1991: 216-217). The survey revealed widespread dissatisfaction with the customary system of land allocation in the area. More specifically, "it [was] seen to be inequitable and unfair, especially to women" (ibid.: 224). Women's rights to land were found to be fragile and insecure.

The continued importance of this issue should not be belittled, but it must be stated that recent interviews conducted in the north-central regions indicated that the eviction of widows from their land has declined dramatically since Independence, and is no longer as widespread a practice as in the early 1990s. Cases of eviction were almost uniformly regarded as the exception rather than the rule.

This confirms Lebert's findings that widows in Ohangwena generally stayed on the land after their husbands' death, "but only if she pays the sub-headman" (2005: 74). In the event of the widow being unable to pay, her eldest son may make the payment and assume ownership of the land. Whether she will be allowed to stay on that land depends on, among other things, whether the wife of the son wants to share the homestead with her mother-in-law. If not, the widow is either evicted or permitted to build a smaller homestead on her son's land. Lebert concluded that regardless of whether or not the widow was able to pay, "the fields (*epya*) (and perhaps even the land (*edu*) in its entirety) are considered to belong to the eldest son, but only if he is considered clever" (ibid.: 73-74). Normally, land is given to the youngest son as the eldest sons are expected to look for their own land/fields.

But evictions continue to occur. The Deputy Director of Land Boards, Tenure and Advice in the Ministry of Lands and Resettlement said that in most eviction cases reported, the land in question was regarded as valuable on account of the presence of water or fruit trees, for example. Those involved were mainly siblings claiming parts of the land (Maria Kasita, pers. comm., 1.8.2007).

Where widows were able to stay on the land, their rights continued to be determined by custom. Evidence on what happened to the land rights of widows upon remarrying appeared contradictory. One informant stated that widows who remarried could keep rights to household land in their own names or transfer these to their new husbands. According to King Taapopi of Uukwaludhi, neither of these courses of action has ever been taken. Instead, it is more common for widows who remarry to move to the homesteads of their new husbands. Many informants claimed that it was unheard of and even impossible for a man to move to the homestead of the woman he married. Where a widow left her land to live with her husband, she lost her land rights, which would be transferred to the children of her late husband. If the children were too young, they would stay on the land and be cared for by relatives. During a focus group discussion with women in Oshana, it was stated that if a widow left adult children behind, they would be allowed to stay on her land provided that they paid the Headman. In the event that a young widow with young children opted to move to her new husband's land, her land would revert to the Headman for allocation to a new person.

Not all cases of widows leaving their land for that of their new husbands were reported to Headmen, thus they retained rights to their land in their own name. This appeared to be some kind of insurance in the event that their new husbands kicked them out.

5.1.3 Rights of divorced women to land

The rights of a divorced woman to land appear to depend on whether she divorced her husband or her husband divorced her. Hubbard and Zimba (in LeBeau et al 2003: 24) stated that attempts to resolve marital disputes generally involve the families of the two spouses along with community elders and in some cases other community members. If the differences cannot be resolved, “divorce is usually accomplished by an informal procedure which takes place without any intervention from Traditional Leaders, who are more likely to become involved if there are issues which cannot be resolved between the couple and their families”. During a focus group discussion with some women at Onathing village in Oshikoto Region, it was said that if a man divorces his wife, he has to leave the common homestead and she retains the land rights, whereas if the wife divorces her husband, she has to leave without anything.

5.2 Impact of new laws

There is no doubt that the revision of customary laws for communities in the north in 1993 combined with the Communal Land Reform Act played a major role in making the land rights of widows more secure. The Act provides that upon the death of the land rights holder, the land may be reallocated to a spouse or another dependant. In the text box on the right is a summary of the Act’s provisions on land reallocation prepared by the Legal Assistance Centre. In all scenarios of reallocation, land reverts back to the Chief or Traditional Authority who/which then allocates the land rights to a surviving spouse or child of the deceased. In Namibia, most customary law systems have followed male primogeniture in terms of which the eldest son inherits the land rights of the deceased. This is likely to place girls at a disadvantage and perpetuate gender inequalities (LAC & NNFU 2003: 13).

Several informants stated that the majority of village Headmen were aware of the formal rights of widows and the risks of ignoring them. Headmen were said to consult with Senior Traditional Councillors before taking a decision regarding a widow rather than risk taking a wrong decision on their own. One informant stated that a wrong decision could cost a Headman his/her village (*omukunda*) and status. How widespread such sanctions were could not be ascertained in this study, but undoubtedly most Headmen are aware of the unlawfulness of evicting widows.

Notwithstanding this fact, reports of transgressions perpetrated by family members continue. An important factor facilitating such transgressions is that in many cases, the widow is fearful of reporting her eviction to the Headman. As many widows came to be close members of their husbands’ extended families during their marriages, they feel reluctant to report the family to the Headman. They feared for the wellbeing of their children because a paternal uncle, for example, may decide to withdraw his support for a widow and her children once she has reported him to the Headman.

There have also been reports of deceased husbands’ families not physically evicting widows from their land, but rather resorting to indirect means to accomplish this. Witchcraft appears to be a potent force in manipulating decisions about land – and other issues. Some families will intimidate the widow into leaving the land by putting a curse on her. In a variant mentioned, the extended family of the deceased husband will allege that the widow bewitched her husband, thereby causing his death. This story will be taken to the Headman, who in all likelihood also believes in witchcraft. He will evict the bewitched woman from the land out of fear of the “Big Man”, i.e. the witch. These practices were said to be fairly common.

A recent study conducted by the United Nations Food and Agricultural Organisation (FAO) found that in the context of HIV/AIDS, some families take care of AIDS orphans to use them “as a way of inheriting the deceased’s property under the guise that it will be used to support the orphaned children” (FAO & AIMS 2003: 8). This appears to happen despite clear provisions in the Communal Land Reform Act on the reallocation of land to children.

Summary of the provisions on land reallocation in the Communal Land Reform Act 5 of 2002

What happens if the person to whom the right was allocated dies?

1. The right immediately reverts to the Chief or Traditional Authority for reallocation.
2. The Chief or Traditional Authority must allocate the right to:
 - the surviving spouse, who must consent to the allocation of the right to her/him; or
 - a child of the deceased if there is no surviving spouse or if the spouse does not accept the allocation of the right.

What happens if the right is allocated to a surviving spouse who marries again and then dies?

1. The right reverts to the Chief or Traditional Authority for reallocation to either:
 - the surviving spouse of the second or further marriage, but only if that spouse consents to the allocation of the right; or
 - if there is no surviving spouse, or if the spouse refuses the allocation, the child of either the first or a later marriage. Again, the Chief or Traditional Authority must determine which child is entitled to the allocation of the right in accordance with customary law.

What happens when the surviving spouse of a second or later marriage, to whom the customary land right has been allocated as outlined above, dies?

1. The right reverts to the Chief or Traditional Authority who determines to whom the right must be allocated. Before allocating the right, the Chief or Traditional Authority must consult the members of the family or families concerned, in accordance with customary law.
2. The following people may be considered:
 - The surviving spouse of the deceased person who was allocated the right on the basis that he or she was married to the original holder of the right.
 - Any child of any of the marriages mentioned above.
 - Any other person.

What happens when there is no surviving spouse nor any children to whom the right can be allocated, or if the surviving spouse and children refuse to accept the allocation of the customary land right?

- The customary land right becomes available to the Chief or Traditional Authority to allocate to any person.

Source: LAC & NNFU 2003: 13-14

Contrary to the stipulations of customary and statutory laws, payments made by widows for continued usufructory rights to land are common. This was borne out by the Participatory Poverty Assessments referred to above and a focus group discussion with women at Okatana. Participants in that discussion said that widows were required to pay between N\$600 and N\$800, or even up to N\$1 000, for the continued right to stay on the land that they and their husbands utilised. In cases where widows were unemployed and did not have the necessary cash to pay the Headman, they were forced to leave, and subsequently the Headman reallocated the land to a person who was able to pay.

Other informants claimed that the practice of forcing widows to pay for the continued use of their land had stopped altogether. This is undoubtedly true in many parts of the study area. It should be mentioned in this regard, however, that straight questions about payment are not likely to be answered reliably in all cases, as payments nowadays are referred to as a “voluntary token of appreciation”. The extent of voluntarism appeared to depend on how well widows knew and understood the law. Where Headmen were confronted with the legal provisions prohibiting any form of payment as a token of appreciation, they were said to back down. Where widows did not know their legal rights, Headmen would insist on such payments.

In the event of a widow dying, her son or daughter inherited the assets, but was required to pay N\$400 to the Headman for the land. Where there were one or more heirs, the one able to pay the N\$400 would obtain the field and other assets (RoN 2007a: 99-100; RoN 2007b: 99).

5.2.1 Implementation and awareness

A fundamental problem in implementing the Communal Land Reform Act provisions on women's rights to land was that the majority of women in rural areas appeared to be ignorant of the law. To start with, women do not seem to have been consulted about the Act. Some Traditional Leaders have made attempts to explain the Act to their communities, but discussions have revealed that many women who participated in these sessions have forgotten the contents of the Act. Information on land rights is not disseminated in a form and language that ordinary people are able to understand, and translations of important policy and legal provisions in the vernaculars are not readily available. Consequently, many women (and men) were not aware of the rights that they may claim in terms of the Act.

Traditional Leaders are also limited in their ability to enforce the provisions of both the Act and the revised Laws of Ondonga adopted in 1993. Although these revised laws are widely known, evidence suggests that Traditional Leaders find it difficult to enforce them, particularly when land and inheritance disputes arise. This is due partly to many Traditional Leaders not knowing the provisions of the Act, and partly to the fact that an increasing number of people hire lawyers to defend their claims, which is said to intimidate Traditional Leaders. In addition, allegations of bribery of Traditional Leaders persist.

Traditional Leaders are also unsure about who should prosecute offenders. This conundrum has been particularly acute in cases of illegal fencing, which was alleged to be perpetrated mostly by politicians, senior government officials and wealthy and powerful people. In some instances these people are said to have bribed Traditional Leaders to obtain a piece of land. Once obtained, they fence it. When asked to remove the fences, they respond that the Traditional Leader gave them permission to erect them.

The police do not intervene in land disputes as they regard such disputes as traditional matters. They are also not familiar with the provisions of the Communal Land Reform Act. The Ministry of Lands and Resettlement was thin on the ground which limited its capacity to enforce the law.

Women are also largely unaware of the role of Communal Land Boards, but a steadily growing number of widows are seeking the Land Boards' assistance to solve eviction disputes. This is reflected in the Annual Reports of Land Boards. The Acting Secretary of the Omusati Land Board was of the view that cases of eviction of widows brought before the Land Board could be

solved easily, as the Communal Land Reform Act is very clear on this issue. In his opinion, land rights holders had direct access to Communal Land Boards without fear of retribution, and the Traditional Authorities respected the Land Boards.

While theoretically this may be true, many women do not have the necessary resources to take advantage of the Land Boards – see, for example, the report on the National Conference on Women’s Land and Property Rights and Livelihood in Namibia with a Special Focus on HIV/AIDS (RoN 2006c: 22; 61-62). Distances to Land Boards were cited as a major inhibiting factor. Moreover, according to the Acting Secretary of the Omusati Communal Land Board, the ability of the Land Boards to solve disputes promptly is hampered by resource constraints. Land Boards sit only twice annually and it takes a long time to attend to disputes, with the result that many complainants drop their cases.

5.2.2 Changing inheritance practices

The changes observed must be traced to the adoption in 1993 of the revised Laws of Ondonga for all four north-central regions as well as the Communal Land Reform Act. As discussed above, these revised customary laws provided protection for widows and the property belonging to the household. Widows were not only allowed to stay on the land of their husbands, but also they were no longer required to pay to acquire his land rights (Traditional Authority of Ondonga 1994: 35-36). The Communal Land Reform Act in turn codified these provisions in law. The revised customary laws also responded to a dynamic and changing social and economic environment which has brought about changes in inheritance systems and practices, which will be discussed briefly in the next section.

The point was made above that women’s land rights are shaped not only by marital status but also by laws of inheritance and divorce. These rules and practices in turn are shaped by changes in the wider socio-economic sphere. As Hinz and Kauluma (1994: 33-34) pointed out, hardships and injustices arising from the matrilineal inheritance system emanated from economic changes that brought about gradual changes. As small-scale farming is gradually commercialised and the individual accumulation of wealth becomes a necessity, matrilineal inheritance patterns, and consequently the role of extended families, decrease (see also Hilhorst 2000: 187). The implication for women and children was that these social systems increasingly failed to take care of them after they were evicted from their land. This section will briefly discuss this process.

The reckoning of descent and hence inheritance rules in the north-central regions was matrilineal. Ownership rights under this system vested in the extended maternal family or *ezimo* (Ashekele 2001: 276). In practice this meant that upon the death of a husband, his matrilineal relatives claimed all property, particularly the land. Widows and children could not inherit from their husbands and fathers, and “all property left behind intestate by the husband would go to the family of the deceased” (Hinz 2006: 25). This, in short, caused widows to be evicted from their land, as they were not part of the same *ezimo* as their husbands. Widows returned to their natal families who looked after them.

Malan (1980: 83-84) pointed out that matrilineal rules of descent reckoning have been gradually weakened in favour of a patri-local system. One factor that contributed to this process was that residence patterns changed towards a neo-local system. An increasing shortage of land, particularly in the Cuvelai, probably caused more and more young men to have to find land away from their families (Cox & Behnke 1998: 3). One consequence was that “a young man does not stay with either his patrilineal or his matrilineal relatives after marriage, but establishes his own household in a new locality” (ibid.). The result of this process was that “members of matrilineages are geographically dispersed between different localities, and this accounts for the weakening of kinship bonds between them” (Malan 1980: 83).

The absence of matrilineal nephews in their homesteads due to the geographical dispersion of extended families meant that fathers involved their own sons much more in the management of livestock and other property, posing a challenge to the customary matrilineal system. Malan

ascribed the disputes over the division of estates to the conflicting interests arising between patri-local and matrilineal groups. More specifically, sons of a deceased father defended the rights obtained under the patri-local system against their matrilineal nephews who laid claim to the deceased man's property according to matrilineal inheritance practices (ibid.: 83-84).

A direct consequence of the weakening matrilineal system was that assets of economic importance "have increasingly been shifted away from a matrilineal system of inheritance to a system whereby one's primary heirs are one's (only) spouse and children" (Lebert 2005: 89). In other words, the rights of extended families were restricted to and subsumed by those of nuclear families. The result of this process seems contradictory. On the one hand the rights of widows and children were strengthened as members of nuclear families, while on the other hand, as the rights of extended families to clan property were reduced, the "commitments and responsibilities traditionally assigned to these members have weakened" (ibid.). Traditionally, the obligations of kin networks ensured that women and children were cared for after the marital status of women changed, but "in many communities these mechanisms are no longer adequate or no longer functional" (Hubbard & Zimba in LeBeau et al 2003: 24). Lebert (2005: 89) points to the absence of care for orphans and the increasing number of child-headed households as a manifestation of these changes.

This is the background against which the revised Laws of Ondonga were developed and adopted by all Traditional Authorities in the north-central regions as the rules governing widows' access to land. This process represents an adaptation of customary laws to a changing socio-economic and socio-political environment, and confirms that customary laws are dynamic and not cast in stone. Hinz (2006: 25) argued that such "reforms from within are fully owned by the community". However, evidence suggests that even though these changes have come from within traditional communities, they continue to be contested.

This may help to explain the wide variations in inheritance practices in the north-central regions confirmed by recent research. Lebert (2005: 88-89) found the following based on extensive fieldwork in Ohangwena Region:

The clearest discernible rule is that variability and malleability are the norm in customary practices of property rights and inheritance. Patterns of asset management and inheritance are heavily influenced by the nature of family relations and the personality of individuals involved. How a husband and wife relate to one another, the type of relationship they each maintain with their respective extended (especially matrilineal) families, and the nature of a woman's relationship with her children (and sons in particular) often determine which family members will assume which rights and responsibilities upon the death of an individual.

The Participatory Poverty Assessments conducted in Oshikoto, Oshana and Omusati Regions in 2005/06 confirmed Lebert's findings. Traditionally, the son of the sister of the male head of household inherited the assets of the deceased man. Widows had to move out of the homestead with no assets. More recently, however, and particularly since Independence, the settlement of who would inherit the property of the deceased man was said to vary from family to family. Much of the settlement was negotiated between members of extended families of deceased husbands and their widows. Fields and *omahangu* (millet – a staple food in these regions) were generally inherited by the widows and could not be taken by the extended family. (RoN 2007a: 99-100; RoN 2007b: 99).

5.3 Access to livestock and other resources

The focus on land rights has largely deflected attention from wider property rights of widows. Lebert (2005: 90) noted that

fewer widows may be chased from their land upon the death of their husbands ...[but] the deceased's matrilineal family relatives may still descend upon the homestead to reclaim *moveable* assets that belonged to the husband.

This process, referred to during fieldwork in 2007 as 'property grabbing', is widely regarded as a major issue. Needless to say, if women lose moveable assets to extended families, the gains made by securing their rights to land are compromised in so far as the loss of assets leaves them without the necessary resources to use their land productively. Before discussing some aspects of this problem, it is instructive to briefly look at property rights and access of women to livestock and other resources.

Traditionally, men owned and were responsible for livestock, but women historically were entitled to acquire their own livestock. For example, women may have acquired livestock as a gift from their fathers upon marriage, or their husbands may have bought livestock for them. In addition, women were able to buy livestock during their marriages. Lebert (ibid.: 74 n.4) quotes historical sources suggesting that wives did not have to obtain permission from their husbands for a livestock transaction, "be it sale, swapping or slaughter".

In Oshikoto and Omusati, women are able to buy their own cattle, including draught animals and goats. Women increasingly generate incomes of their own from formal employment or informal activities such as making and selling crafts and *kapana* (grilled strips of meat), and other activities that enable some women to purchase livestock (LeBeau et al 2003: 14). But the fact that women owned cattle was known only by their husbands. As far as the general public was concerned, such cattle 'belonged' to their husbands. Despite being able to own cattle and goats in their own right, women had to obtain their husbands' consent if they wanted to slaughter or sell an animal. If the husband declined, the woman could not slaughter or sell. Women were permitted to take decisions on their own only if their husbands were not present. In cases of divorce, both parties took what belonged to them. In the event of both husband and wife owning goats, they discussed whose goats should be sold (RoN 2007a: 96-97; RoN 2007b: 94).

Although men were still generally regarded as the owners of important economic assets of their households, evidence suggests that decisions on the management of those assets are increasingly taken by husbands and wives. Lebert (2005: 79f) observed in Ohangwena that "The management of immovable and moveable homestead assets depend, perhaps most importantly, on the nature of the relationship between husband and wife."

Notwithstanding the fact that Lebert cites cases of men still having their own containers for storing millet and maize, men took decisions on their millet and maize reserves in conjunction with their wives. Sorghum, on the other hand, was owned by both husband and wife. Women owned marula trees, but decisions on the harvesting and management of those trees were taken jointly. Other natural resources co-owned by husband and wife and subject to joint decisions included *omwandi* fruit, *embe* fruit, fig trees, palm trees and palm tree oil, groundnuts and chicken (ibid.: 80-81).

In Oshikoto men were said to consult their wives before they sold or slaughtered cattle. Some people stated that responsibilities with regard to cattle were shared by men and women. Due to the regular absence of many men, women frequently looked after cattle. This was also true for milking cows, an activity traditionally carried out by men, with women milking only when men were unavailable. As for ploughing, in male-headed households, males were mostly responsible (RoN 2007b: 94).

These findings broadly support those of *The National Gender Study*. Based on questionnaire research, the overall study finding on livestock ownership was that both men and women owned

and had control over livestock. However, some categories, such as cattle, goats, sheep, donkeys and horses, were “mainly in the hands of male household members”, while women owned mainly pigs and poultry (Iipinge et al 2000, Vol. 1: 138).

5.3.1 Property grabbing

Despite the changes in women’s access to and control over important assets and resources, many widows continue to lose all or part of their homesteads’ livestock. Recent research on the impact of HIV/AIDS casualties has provided some indicative data on the extent of the problem. A study conducted by the Food and Agricultural Organisation (FAO) in 2003 on the impact of HIV/AIDS in northern Namibia found that in Ohangwena Region, 52% of households in which the husband or father had died had lost cattle, 31% had lost smallstock and 38% had lost other farm assets. “In some cases households lost all of their productive assets in this way” (FAO & AIMS 2003: 10).

The extent of property grabbing varies from household to household and is often negotiated between the widow and the family of her deceased husband. But this does not appear to apply in all cases and to all forms of property. A senior official in the Ministry of Gender Equality and Child Welfare in Oshakati stated that extended families in some cases removed the poles of traditional homesteads, as well as clothes, pots, cars, fridges and millet containers. She was of the view that relatives frequently do not differentiate between the rightful property of the widow and that of her late husband, but just take whatever they can lay their hands on. This was confirmed by the Traditional Authority of Ondonga’s Senior Traditional Councillor responsible for Women and Child Affairs.

Information obtained in the Participatory Poverty Assessments of 2005/06 painted a similar picture. In Oshikoto participants stated that household goods and assets accumulated during the marriage generally remained with the widow and her children. Assets that the widow bought with her own money, such as livestock, could also not be claimed by in-laws, whereas assets that the husband brought into the marriage were taken by his family. In most instances this was livestock (RoN 2007b: 99). The situation in Omusati was very similar in that relatives of deceased husbands in many cases continued to take all the livestock (RoN 2007a: 100). Based on her research in Ohangwena, Lebert (2005: 75) stated that livestock acquired by a widow before her husband’s death could not be claimed by the latter’s family, and ultimately belonged to the widow’s children.

In instances where widows could not prove that they had acquired an asset, particularly livestock, with their own money, or that they had brought the asset into the marriage, disputes arose. It was not uncommon in such cases for the extended family to assume that all livestock belonged to the deceased man and to claim it (RoN 2007a: 100).

Cases have been reported of husbands leaving oral wills and even testaments. It was not possible to ascertain how common this practice was and how effective it was in securing the property rights of widows. A father of four sons who lived with him and his wife on his land said that he had left a will, but he was not sure whether the family would respect it. A member of the Woman and Child Protection Unit of the Namibian Police in Oshakati was of the opinion that many people ignored wills, but information obtained during fieldwork indicated that oral wills are generally respected. It was reported that there is a saying that the wishes expressed by a person must be respected after his death, and people are scared to ignore these wishes for fear of being cursed. This information confirms Lebert’s finding that relatives of a deceased husband could not defy the will of the latter by taking livestock which he had set aside for his wife and/or children. However, widows can defend such entitlements only if their late husbands made them public (Lebert 2005: 75).

Informants reiterated the necessity of witnesses to oral wills. However, sometimes witnesses to an oral will are not prepared to come forward and confirm the will. In such instances, stronger and more influential family members are able to get their way and take whatever they believe is due to them.

Widows who want to object to property grabbing face an uncertain situation. They are required to go the same route as with all other disputes, i.e. initially to the village Headman and then upwards through the traditional leadership hierarchy. But Traditional Leaders face a difficult situation, their only option being to try to negotiate a solution. As discussed above, the problem faced by Headmen and Traditional Authorities is that property grabbing is justified by referring to the matrilineal inheritance system. With regard to the ownership of livestock in particular, that system continues to be justified by the fact that many men obtained a few head of livestock from their fathers upon marrying, which thus belonged to the family and not to the wife who hails from another matrilineage. It is argued that if the wife inherits the livestock, she would soon marry again and the livestock would then be lost to the family of her new husband (RoN 2007a: 100).

It appears that there are no clear procedures for dealing with cases of property grabbing outside the structures of Traditional Authorities. Aggrieved parties seek assistance from the nearest office of either a Regional Councillor, the Ministry of Gender Equality and Child Welfare, the Woman and Child Protection Unit of the Namibian Police (Nampol), or Nampol directly. If cases of property grabbing are reported to its offices, the Ministry of Gender Equality and Child Welfare liaises closely with the Woman and Child Protection Unit whose officers attempt to negotiate more equal distributions of property between the parties. They advise transgressors that they could face criminal charges. In approximately one third of the cases brought to the Oshakati Unit since it started to deal more frequently with property grabbing, a more equal distribution of assets was achieved. Where negotiations failed, the widow was advised to hand the matter over to the Nampol Criminal Investigation Department, and hence the Magistrate's Court.

Like Traditional Authorities, the Woman and Child Protection Units have tried to bring about negotiated solutions in the absence of an appropriate policy and legal framework. As noted above, Traditional Authorities do not regard property grabbing as a criminal offence as this act is perpetrated in terms of customary inheritance practices. To the extent that this is the case, property grabbing cannot be defined simply as theft, as the perpetrators feel that they are entitled to the property in terms of matrilineal inheritance rules.

6. Conclusion

The Communal Land Reform Act is an important step forward in securing customary land rights and providing for some degree of decentralised land administration. As Communal Land Boards become more established and develop their capacities in land administration, they are likely to play an increasingly important role in certifying customary land rights, both old and new.

The general impact of the Communal Land Reform Act on land tenure security and land administration is difficult to assess. On the one hand, Traditional Authorities in the north-central regions adopted revised customary laws in 1993 which were aimed at securing the land rights of widows. This appears to have brought about more secure rights to land for widows. On the other hand, the Communal Land Reform Act has been implemented for only four years. The registration of land rights is proceeding slowly, as most Communal Land Boards are faced with human and financial resource constraints. Suffice it to say, therefore, that many Traditional Leaders have welcomed the provisions of the Act to define customary land rights geographically and register them with a Communal Land Board. They are hoping that this will, among other things, make easier their tasks of allocating land and solving land disputes.

Customary land rights of widows appear to be much more secure now than at the time of Independence. This was borne out by fieldwork in mid-2007 and in the Participatory Poverty Assessments of 2005/06. Although evictions of widows still occur, informants were unanimous in their assessment that this no longer features as a major issue. It should be pointed out, however, that there is still no empirical data indicating how common this practice is.

What did emerge as a major issue is that, while land rights of widows are now much more secure, they remain vulnerable to what was referred to in this study as 'property grabbing', meaning the practice of families of deceased husbands claiming moveable property from the homesteads of widows. This is commonly justified by referring to matrilineal inheritance rules which are customary. This practice leaves many widows without the means necessary to cultivate their land, and sometimes even without adequate shelter.

A major issue in the successful implementation of the Communal Land Reform Act is that the majority of customary land rights holders appear to be unaware of their rights in terms of the Act, and hence cannot claim these rights. Awareness of the roles and functions of Communal Land Boards appears to be equally poor. For as long as land rights holders are unaware of their rights, customary laws, particularly with regard to gender, are likely to take precedence over statutory law. To the extent that this happens, the social structures that relegate women to a subordinate position are likely to remain in place.

- We recommend³ that the Ministry of Lands and Resettlement embarks on an **information campaign to popularise the provisions of the Communal Land Reform Act**. This must allow for a process of facilitation around and extensive discussion of gender equity and the status of women, which is time-consuming and expensive.
- We further recommend that the **support of NGOs** be enlisted in launching the information campaign in the regions and mobilising rural communities around land and gender rights. In addition, they can provide training to legal practitioners and paralegals to support rural land rights holders. Financial support should be given to the Legal Assistance Centre to continue the paralegal work that it was forced to abandon in the north-central regions due to financial constraints.

³ The author is indebted to the work of Prof. Ben Cousins of the University of the Western Cape in formulating some of these recommendations.

- We also recommend that **law reforms relating to gender and land be implemented by involving people at local level**. The outcomes of such reforms should be communicated to local communities.

Apart from the need to improve information dissemination on the provisions of the Communal Land Reform Act, the question remains whether the Act goes far enough to bring about the anticipated benefits of more secure land rights, particularly for women. The Act does not lay down any “criteria for land right entitlement” (Chiari 2004: 15), nor does it define the content of land rights. At present, the Act provides little protection from arbitrary decisions taken by those who wield authority over land allocation and land use. This is most apparent where new town lands are proclaimed on land held under customary tenure, but also it applies to the land and resource rights of women.

- We recommend that **the Communal Land Reform Act be amended to explicitly enable single women to obtain land in their own names**. This provision would also give women who get married added protection from dispossession of their land without their consent or adequate compensation.
- We also recommend that **the Communal Land Reform Act spells out the content of land rights more clearly**. The spectrum of rights to be considered in this context includes the right to occupy and use land, to bequeath and transact, and to evict others.

Traditional Leaders play a central role in customary land administration without any provisions that challenge patriarchal power relations. It was argued above that the Communal Land Reform Act merely regulates the relationship between Communal Land Boards and Traditional Leaders, by does not provide for downward accountability of Traditional Leaders. Neither the Communal Land Reform Act nor the Traditional Authorities Act of 2000 contain provisions aimed at improving governance and accountability at local level.

- We recommend that **the relevant legislation (i.e. the Communal Land Reform Act and Traditional Authorities Act) be amended to separate land ownership and governance issues** so that holders of land rights have an independent say in who should administer their land. This would enable popular Traditional Leaders to continue to play a role in land administration, while the authority of unpopular ones would be constrained, not by decree but by popular consent.

The Communal Land Reform Act does not go far enough in creating an institutional framework to advise and support land rights holders and to facilitate their active use of the law. Communal Land Boards have been created to ensure that customary land allocations and cancellations comply with certain legal provisions, but they are not in a position to advise and support land rights holders. The Act does not give them powers to address land disputes, although an increasing number of people turn to Communal Land Boards for assistance. As a result of this lack of a legal mandate to deal with land disputes, the Land Boards frequently refer disputes back to Traditional Leaders. This situation is leading to a watering down of dispute resolution mandates which is likely to weaken local institutions. Apart from this concern, the Land Boards are out of reach for many land rights holders who reside far away from the Land Boards and/or lack the means to travel to the Land Boards. Moreover, the mechanisms for dispute resolution provided for in the Communal Land Reform Act are not practical as they require aggrieved parties to make written representations to the Permanent Secretary of Lands and Resettlement within a prescribed time period. Not only does this place illiterate land rights holders at a disadvantage, but even for those who can read, the logistical problems involved in getting a complaint to the Permanent Secretary must be considerable.

- We recommend that **if a Chief, Traditional Authority or Communal Land Board fails to mediate a land dispute successfully, the dispute be referred to the Lands Tribunal for a ruling.** For this purpose, the Communal Land Reform Act must be amended to allow any person aggrieved by a decision of a Chief, Traditional Authority or Communal Land Board to appeal to the Lands Tribunal under Sections 63-75 of the Agricultural (Commercial) Land Reform Act No. 6 of 1995. This would give people living in communal areas the same rights as those living in commercial areas, which includes the right to appeal to the Lands Tribunal regarding land disputes. Section 67(3) of the 1995 Act provides that the Lands Tribunal has the jurisdiction to execute any decision, order or determination as if it were made by the High Court of Namibia. This means that neither Chiefs nor Traditional Authorities, nor the Government, would be able to interfere with the workings of the Court. The Lands Tribunal would be responsible for determining restitution and compensation for those who lost land as a result of forced removals. The Lands Tribunal would be required to be accessible to everybody and to establish processes that enable it to make decisions speedily.

At present, Traditional Authorities are providing some important land administration services, particularly with regard to the registration of land rights, and their role in land administration is explicitly recognised by the Communal Land Reform Act. However, they receive no financial compensation for services provided, nor any training or skills transfer.⁴ The assumption is that Communal Land Boards will provide most of these services. However, as observed above, the Land Boards are overwhelmed by the volume of work, particularly with regard to the confirmation and registration of existing customary land rights.

- We therefore recommend that the **Government provides more financial and technical support to Traditional Authorities and Communal Land Boards.** Traditional Authorities need financial support and training, particularly in view of the fact the Communal Land Reform Act prohibits any payment to Traditional Leaders for land allocations.
- We further recommend that the **Government implements strategies for speeding up the process of demarcating existing and new customary land allocations.** In this regard, the feasibility of engaging students at the Polytechnic of Namibia in land administration could be investigated.

Land and tenure reform have an important role to play in transforming gender inequality and making women's land rights more secure. However, there are limits to what can be achieved by tenure reform. The discussion above has shown that while land rights of women and widows in particular have become more secure since Independence, widows remained vulnerable to losing important household and agricultural assets to relatives of their deceased husbands. Where this occurs, it is legitimised by reference to matrilineal inheritance practices. However, the practice is facilitated by the fact that under customary tenure regimes, household assets are not tied to land as is the case under western notions of property. Customary rights to land and assets vest in different social groups. Land legislation and policy on their own cannot prevent the grabbing of household assets by the relatives of a deceased husband.

- We therefore recommend that **local communities and Traditional Authorities develop guidelines to regulate property dispossession and prevent the current form of property grabbing.** By involving local communities, these guidelines are likely to have the legitimacy required to confront aspects of customary law that presently disadvantage widows.

⁴ For example, as noted above, the Traditional Authority of Ondonga distributes land registration forms down to village level. Once the completed forms are returned to the Traditional Authority, they are checked. Once checked, two clerks enter the details on the forms into a computer database before forwarding the forms to the Communal Land Boards. All this is done at the expense of the Traditional Authority.

- We further recommend that where relatives of a deceased husband lay claim to household assets to the detriment of widows and their dependants, the **claim should be negotiated in the presence of Traditional Leaders or a forum chosen by local communities**.

The policy framework on gender in general and women and land in particular provides the general framework for addressing gender inequality. However, the policy framework does not adequately reflect “the link between reforming and modernising domestic relations in land-holding on the one hand and sustainable development ... on the other” (Odida 1999: 2). Land and resettlement policies should spell out in more detail why gender equity in land reform is important in order to arrive at more conceptual clarity on how gender and land relate. From this, a vision of gender equity in relation to land matters should be developed. In developing such a strategy, it is important to be very clear on whether land policies aim for “equal participation and equal access” or “equal and independent control and the transformation of unequal power relationships” (Hargreaves & Meer 2000: 269). The latter implies a shift in gender relations at the institutional level: households, family, community and the market. Practices which inhibit women’s full participation in land reform should be challenged. This is ultimately a question of power.

- We recommend that **land policy and legislation spell out more clearly the objectives of land reform in relation to gender equality**.
- Officials in the Ministry of Lands and Resettlement need **training on gender issues**.
- In addition, **policies and laws that deal with gender equality should be integrated and operationalised** to enable officials at regional and local level to apply them effectively.

Finally, Becker (1997: 59) argued that an improved gender balance in land rights was a necessary but insufficient condition for the empowerment of women: **a more thorough agrarian reform** was necessary to give female farmers the support they needed to utilise their land more optimally.

It is not only a redistribution of land or land rights that is important, but also a redistribution of socio-economic roles and responsibilities as well as the necessary support services and facilities such as credit schemes, technologies, inputs, extension services and training. Women’s access to and control over these resources has to be enhanced as part of a wider-ranging *agrarian* reform in communal agriculture (ibid.: 59, original emphasis).

- We recommend that the Ministry of Agriculture, Water and Forestry reviews the **extension and support services** that it currently provides to small-scale communal farmers. We further recommend that the Ministry develop, in collaboration with community-based organisations, a **comprehensive programme of service provision** (seeds, fertilisers, credit, market access, extension) that explicitly ensures women’s access to these services.

Persons met

Aamaambo, E. (Ms)	Senior Traditional Councillor responsible for Women and Child Affairs, Traditional Authority of Ondonga
Akawa, J.	Elenga Enene, Traditional Authority of Ondonga
Amakali, J.	Elenga Enene, Traditional Authority of Ondonga
Andowa, A.	Chairman of the Omusati Communal Land Board and Chief Executive Officer of the Omusati Regional Council
Angugo, M.	Secretary of the Uukwambi Traditional Authority
Hauliyondjaba, S.	Detective Sergeant in the Woman and Child Protection Unit of Nampol, Oshakati
Hausiku, J.	Community Liaison Officer in the Ministry of Gender Equality and Child Welfare
Hilukilua, P.	Regional Editor for the North, <i>Die Republikein</i> , Oshakati
King Ipumbu	Uukwambi
Mweendeleli, B.	Chairman of the Ondonga Traditional Authority
Nambulu, H.	Senior Traditional Councillor for Oshikuku
Ndahafa, A.	Regional Councillor for Uuvudhiya Constituency
Nepembe, J.	Secretary of the Oshana Communal Land Board and Control Officer in the Ministry of Lands and Resettlement
Nkolo, J.	Acting Secretary of the Omusati Communal Land Board and Development Planner in the Ministry of Lands and Resettlement
Nuule, A.	Senior Traditional Councillor for Uukwambi
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King Taapopi	Uukwaludhi

Focus group discussions were held with women at Onathing village in Oshikoto Region and Okatana in Oshana Region.

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