

Country Report 2003

(Based on the PCGIAP-Cadastral Template 2003)

Namibia

Country/state for which the indications are valid:	Namibia
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I. Country Report

A. Country Context

Geographical Context

Namibia is located on the southwestern corner of Africa and covers an area of 834,295 square kilometers, which makes it the 31st largest country in the world. It shares long borders with Angola in the north, Botswana in the east and through the Caprivi Zipfel touches Zambia and Zimbabwe. Its natural boundaries are the Kunene, Kavango and Zambezi River systems in the north and the Orange River in the south. These are also Namibia's four perennial rivers.

Topographically, Namibia can be divided into three distinct regions: the Namib and Kalahari Deserts, the Central Plateau and the northern Savannah Grasslands. It is a country with unique beauty and scenery; of wide, open spaces; of constantly moving golden sand-dunes; of arid and barren terrain; of hardy flora and fauna; of thick layers of terrestrial sand and limestone but also of flowing grasslands and warm and hospitable people. It boasts of beautiful bird life, abundant fish, gem diamonds, semi-precious stones and other metals and minerals as well as magnificent wildlife and game.

The country is demarcated into 13 regions, namely the Caprivi, Kavango, Kunene, Omusati, Oshana, Oshana and Oshikoto Regions in the north, the Omaheke, Otjozondjupa, Erongo and Karas Regions in the central areas and the Hardap and Karas Regions in the south.

Namibia's projected current population is 1,8 million and the current growth rate is 3.1 percent. According to the 1991 Population Census the country has a relatively youthful population with 43% of the population under 15 years of age and only 3,6% over 65. Despite rapid urbanisation, Namibia is still a mainly rural society with around 30% living in urban areas. Regional population densities vary enormously with almost two-thirds of the population living in four of the northern regions and less than one tenth of the population living in the south.

Historical Context

The first Europeans to set foot in modern day Namibia were the Portuguese explorers Diego Cao who landed at today's Cape Cross in 1486 and Bartholomew Diaz who erected a cross at today's Lüderitz. Further European explorations were kept at bay by the forbidding desert coast until the 18th century.

The discovery of huge amounts of guano on the islands scattered along the Namibian coast around 1840 led to the first European settlement in Namibia at Angra Pequena, today known as Lüderitz. Angra Pequena became a bustling port for ships on the way to Europe from the Cape of Good Hope, but even then the Namib Desert kept the early Europeans from moving inland.

In 1878 Britain annexed the Walvis Bay enclave and administrative authority was transferred to the Cape Colony in 1884. Also in 1884, at the urging of German trader Adolf Lüderitz, the present day Lüderitz was declared a German protectorate. By 1886 the boundaries of what was to be known as German South West Africa were confirmed by treaties between Germany and Portugal in 1886 and Britain and Germany in 1890. Namibia formally became a German colony in 1890 under Kurt von Francois as first governor.

After the discovery of diamonds at Lüderitz in 1908 the Germans strengthened their presence in the country and by 1913 they elected a "whites-only" parliament. In 1915 German colonial rule came to an end when troops of the Union of South Africa attacked the territory and annexed the country as enemy property. In 1919 Germany renounced all colonial rights at Versailles.

By 1920 the League of Nations nominated the Union of South Africa the holder of a C-class Mandate over the area named South West Africa (SWA). In 1922 Walvis Bay was transferred to the SWA administration. In 1925 the South African parliament granted whites in SWA a measure of political autonomy and created the SWA legislative assembly, which lobbied for the incorporation of SWA into South Africa.

With the creation of the United Nations Organisation (UN), the successor to the League of Nations, the international opinion was that SWA should be transferred to the UN, something South Africa disputed until the 1980's.

On 19 April 1960 the South West African People's Organisation was formed with Sam Nujoma as first president in Dar es Salaam, Tanzania. In June of 1960 Sam Nujoma, as president of SWAPO, appeared before the UN Committee on SWA.

The judicial struggle to get South Africa's mandate status over South West Africa revoked started in 1961. In 1966 the UN General Assembly adopted resolution 2145 revoking the SA Mandate and in 1968 the territory's name was changed to Namibia. On 21 June 1971 South Africa's continued presence in Namibia was declared illegal and in 1976 the UN General Assembly recognised SWAPO as the sole and authentic representative of the Namibian people.

In 1978 the Western Contact Group composed of Britain, Canada, France, West Germany and the United States of America submitted a proposal to the United Nations to settle the Namibian dispute. The settlement plan, known as Resolution 435, was accepted by South Africa, Swapo, the Front Line States being Angola, Botswana, Nigeria, Tanzania, Zambia and Zimbabwe and most internal parties.

Resolution 435 provided for a peaceful transition to independence after free and fair elections for a constituent assembly, under United Nations supervision and control. Elections took place in November 1989 and the country finally gained independence on 21 March 1990, after more than 40 years of petitioning to the international community and 20 UN resolutions on Namibia.

Current Political and Administrative Structures

The Republic of Namibia was established as a sovereign, secular, democratic and unitary State. In accordance with the doctrine of separation of powers, the government is divided into three organs:

- The Executive
- The Legislative
- The Judiciary

Each organ is responsible for a different function of the government. The legislative branch is responsible for making laws that are implemented by the executive and interpreted by the judiciary branch.

Historical Outline of Cadastral System

Before Hauptmann Kurt von Francois in 1889 arrived to Namibia with his 21 soldiers and proclaimed *Deutsche Schutzgebiet Südwest-Africa* had inventiveness German settlers occupied large areas from the indigenous people for a few bottles of *snaps*. There were no requirements for survey and boundaries were only described in vague and ambiguous phrases. It soon became too much for the German sense of order, and in 1904 a regiment German *Feldvermessungstruppen* arrived to establish control points and undertake topographical mapping of the protectorate.

Shortly after it became compulsory to survey and register all subdivisions and land transactions. At the beginning of the First World War the control network was completed, however, only for areas occupied by white settlers.

When South Africa took over the responsibility in 1915 and Namibia came to inherit the South African cadastral system, though many elements of the German system are still obvious. The parts of the country where the white farmers settled were surveyed out thoroughly, and as accurate as the survey methods allowed, and the survey records and diagrams of even the oldest surveys are kept in the Directorate of Survey and Mapping.

All officially recognized boundaries are "fixed boundaries" as opposed to "general boundaries". The Namibian cadastre only recognises physical features, not fences and hedges but beacons.

Considering numerical accuracy there is no doubt that Namibia has one of the best cadastral systems in the world. However, it seems that there has been little discussion about how accurate, and why. The standards of cadastral surveys were based on the level of accuracy, which has been possible to obtain, and not from what has been necessary or desirable.

B. Institutional Framework

Government Organizations

The agencies responsible for land registration and cadastral surveying fall under the Ministry of Lands, Resettlement and Rehabilitation. These include Surveyor-General and Registrar of Deeds, each with their own jurisdiction of administration. Both agencies are organised as Directorates and they are located in Windhoek. A second deeds registry is established in the area of Rehoboth. However, the Ministry of Lands, Resettlement and Rehabilitation is presently preparing legislation for abolishing the registry and include the area within the national system.

Private Sector Involvement

These include qualified and registered private practicing professional land surveyors on the surveying side and registered attorneys qualified to carry out conveyancing activities. Land surveyors submit the survey documents to the Surveyor-General for examination and approval. The conveyancers thereafter lodge the approved survey documents and registration documents to the Registrar of Deeds for registration.

The number of practicing professional surveyors as well as conveyancers is small and almost all of them are located in the capital.

Professional Organization or Association

Professional land surveyors have to register with the Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians in terms of Act No. 32 of 1993. There are approximately 20 professional land surveyors, but the average age is high.

Licensing

There is no licensing system in Namibia. Registration with the Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians is required for performing cadastral surveys. In order to qualify for registration, candidates must have a four-year university degree in land surveying, followed by a practical articulated period and the passing of a survey law exam.

When the new land registration system – the Flexible Land Tenure System – is promulgated (see later), it will be possible also for Survey Technicians to perform cadastral surveys within the frame of the system.

Education

There are no universities in Namibia offering a land surveying degree. Students have to go overseas or to South Africa to obtain a degree. There is average one person per year graduating.

The Polytechnic of Namibia introduced in 1996 a certificate course in land measuring. The course has been developed into a three years cadastral diploma course. Approximately 15 land measurer have graduated every year from the Polytechnic of Namibia.

C. Cadastral System

Purpose of Cadastral System

The primary function of the Cadastral System in Namibia is to define (delineate and document) ownership rights. According to the Constitution any land that has not been transferred from the state to a juristic person remains the property of the state. Any juristic person that has been granted freehold rights is free to trade (transfer at market value) that immovable property.

Types of Cadastral System

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

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

While freehold title could not be obtained in “communal” areas, land tenure arrangements differed slightly for rural or agricultural land and urban land.

Land tenure in rural areas

In terms of the Constitution of the Republic of Namibia, all communal land vests in and is formally controlled by the Government of Namibia. In addition, the Constitution stipulates that all land which is not ‘otherwise lawfully owned’ shall belong to the State.

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

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

most obvious manifestation of this in many parts of the country is the privatisation of grazing land through enclosures.

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

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

When the Communal Land Act is fully implemented land administration and land management will be controlled by Government.

Land tenure in urban areas

Urban settlements in Namibia only developed during the colonial era. The process of establishing villages and towns was not uniform in the country. Formal urban centres developed first in the central and southern parts of the country. This was directly linked to the pattern of colonisation and land dispossession. Access to these towns by black Namibians was strictly controlled through pass laws and a prohibition on property ownership by blacks. Only white people could obtain freehold title to their plots.

In the northern communal areas formal urban areas did not develop until the 1960s, and then mainly in response to the administrative and military requirements of the colonial state. Similar to towns in the south, urban areas in the northern communal areas were effectively segregated, consisting for the most part of two separate sections: one formal and fully serviced 'white town', and another, less or undeveloped formal township for blacks, including informal settlements.

After independence these towns were proclaimed under the Local Authorities Act, 1992. In terms of the Act, the entire town area was registered in the name of the Government or a local authority. The land is intended to be subdivided, serviced and sold to the public to be held under freehold title.

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

Co-existing with the system of PTOs and state owned property, was the system of customary tenure. The security of tenure provided by customary grants came under threat when local authorities were established in terms of the Local Authorities Act in 1992. With the proclamation of towns and the establishment of such authorities, all land falling within the boundaries of these newly proclaimed towns officially belonged to the government and was placed under the jurisdiction of local authorities. Residents in the informal settlements feared that their land rights would not be recognised by the local authorities. After initial problems of working out compensations for informal settlers who had to be moved, local authorities now seem to accept informal settlers. However, they would like to formalise these areas and grant formal rights to residents on the land in order to collect taxes and charges for utilities. Such moves are hampered, however, by inappropriate legislation.

Cadastral Concept

The Cadastral system in Namibia is organised as follows:

- the cadastral index register identifies the properties by cadastral number(s) and area;
- the noting plans shows the land parcels graphically;

- the diagram (one parcel) or general plan (two or more parcels) shows the legal survey measurements to precisely identify all new parcels determined by cadastral surveys such as subdivisions; and
- the Deeds Registry identifies the legal rights based on the cadastral identification.

The Directorate of Survey and Mapping in Windhoek examines and approves all diagrams and general plans prior to them being registered in a Deeds Registry.

Content of Cadastral System

The cadastre covers the total of about 150,000 land parcels. It consists of an index register and an analogue, but country wide, cadastral maps (noting sheets). There is a national coverage of control points (about 3,200 points). There is an archive of the legal survey measurements. The cadastre is updated daily. The cadastral index register and the noting plans are not yet computerised.

The Deeds Registry records legal rights in land such as ownership, mortgage and servitudes. The Deeds Registry includes the paper archives of the legal documents. The Deeds Registry is based on the cadastral identification (unique cadastral number) of the land parcels. However, the noting sheets and the legal survey measurements are held at the Directorate of Survey and Mapping and are not available at the Deeds Registry. The Deeds Registry has been computerised and the information will be available on-line.

D. Cadastral Mapping

Cadastral Map

The noting sheets representing the cadastral map at various scales showing all land parcels and administrative boundaries. It shows the relationship of every piece of land to those adjoining it. In addition other surveyed real rights, such as servitudes, is also included in this map.

Example of a Cadastral Map

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Role of Cadastral Layer in SDI

It is planned during 2004-05 to create a national seamless computerized map of all land parcels and administrative boundaries in Namibia.

It is expected that the Namibian cadastral map will provide a basic infrastructure for managing economic interests in land as well as supporting environmental and development interests.

The interaction between the cadastre and the Deeds Registry operates efficiently even though the two systems are maintained in different organisations. A digital cadastral map as the backbone for a national land information system will certainly further improve the interaction between the cadastre and the Deeds Registry.

E. Reform Issues

Cadastral Issues

The Namibian Cadastre may theoretically be of a high international standard, but it has some severe deficiencies:

- it is unable to meet the demands for surveyed plots in the informal settlements;
- there is not a single, uniform land rights system and the system is incomplete. Almost half of the country is held under communal ownership where the land, in principal is non-marketable and the cadastre is, at best, sporadic;

- office procedures and structures in the Directorate of Survey and Mapping are outdated, though the survey examination time is kept reasonably short; and
- a digital and seamless cadastral coverage of all land parcels and administrative boundaries does not exist in Namibia.

Current Initiatives

Urban areas

The Government of Namibia started investigating alternative forms of land tenure aimed at the lowest income sectors of community. The Ministry of Lands, Resettlement and Rehabilitation launched the Lands Project to look for innovative solutions to this formidable challenge. An approach referred to as "**Flexible Land Tenure System for Namibia**" was developed and aimed at providing simpler, more affordable and faster forms of secure tenure to low income communities and to urban informal settlers in particular. The legal provision for the new system is almost in place for providing two new tenure forms, which are locally maintained, affordable for the disadvantaged groups and can be operated with para-legal personnel.

The system is based on two new types of tenures: Starter Title and Land Hold Title. The lowest level of title assures the people of the right to live on a piece of land in perpetuity without fear of being evicted without providing them with an alternative piece of land. The next level of tenure provides them with almost all the rights entailed in the freehold title under the common law. The flexible tenure forms will be recorded in a computer system, however all transactions will be handled through a land rights office in order to place the land registration close to the people. Land rights offices will be established in local authority areas as well as in regional councils in respect of areas falling outside proclaimed local authority areas. The land rights offices should be geographically located where the pressure for land registration is greatest. Para-legal personnel under the supervision of a land rights registrar perform the planning, survey and registration. Legislation is prepared and is ready for Parliament.

Rural areas

The Ministry of Lands, Resettlement and Rehabilitation is responsible for the overall administration of state land, including communal areas. Currently, the traditional authorities are responsible for the allocation and cancellation of land rights for customary utilisation. They are also informally responsible for the allocation of land rights for business purposes in communal areas. For the smooth administration of communal land, the Ministry is establishing Regional Land Boards throughout the country. These statutory bodies strengthen those institutions that are already involved in matters related to the administration of communal land.

When the Agricultural (Commercial) Land Reform Act No. 6 of 1995 and the Communal Land Reform Act has been fully operational, the land administration and management in communal and commercial areas will become fully under the control of Government.

Seamless cadastral coverage

Initiatives on are way to generate a computerized coverage of all cadastral and administrative boundaries to the benefit for valuation, land taxation, development planning, flexible land tenure system, land administration, etc.

References

Ministry of Lands, Resettlement and Rehabilitation; Report on a Flexible Land Tenure System for Namibia; prepared by Christensen, Soren and Hoejgaard, Pia; Windhoek February 1997.

Innovative land surveying and land registration in Namibia; prepared by Christensen, Soren; Husum 1999 (available on www.oicrf.org).

Homepage of the Government of Namibia: <http://www.grnnet.gov.na>

II. Questionnaire

1. Cadastral Principles

Deed or title registration

1.1 Is your cadastral system based on deeds registration or on title registration?

- deeds registration
- title registration
- other:

Registration of land ownership

1.2 By law, is registration of land ownership compulsory or optional?

- compulsory
- optional
- other:

1.3 If felt necessary, please, comment how registration works in practice, and what the legal consequences are for not registering a land ownership title:

Approach for the establishment of the cadastral records

1.4 Are landowners required to register their properties systematically during the initial establishment of the cadastre or is registration sporadic, i.e. triggered only by specific actions (such as for example sale) ?

- systematic
- sporadic
- both
- all properties are already registered
- other:

2. Cadastral Statistics

Population

2.1 What is the **population** of your country ?

1.8 million

2.2 Please, estimate the **population distribution** between urban and rural areas.

urban:	...30... %
rural:	...70... %
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total:	...100... %

Number and distribution of land parcels

2.3 Please, estimate the approximate **total number of the smallest uniquely identified land units**, often called "land parcels" in your country, including urban and rural areas ?

150,000

The total number would include all freehold and state owned land, regardless of registered, non-registered or informal holding.

2.4 What is the approximate **total number of registered strata or condominium units** ? This number would be in addition to the number of land parcels indicated in 2.3 ?

7,000

2.5 For **URBAN areas**, please, estimate the **distribution between the smallest uniquely identified land units, often called "land parcels"** (i) that are legally registered and surveyed, (ii) that are legally occupied but not registered or surveyed, and (iii) that are informally occupied without any legal title (this may include illegal occupation or squatting).

legally registered and surveyed:	...60... %
legally occupied, but not registered or surveyed:	...2... %
informally occupied without legal title:	...38... %
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total:	...100... %

If the estimation is too difficult or complex using land parcels, you may base your estimation alternatively on the number of people occupying these forms of land parcels.

2.6 For **RURAL areas**, please, estimate the **distribution between the smallest uniquely identified land units, often called "land parcels"** (i) that are legally registered and surveyed, (ii) that are legally occupied but not registered or surveyed, and (iii) that are informally occupied without any legal title (this may include illegal occupation or squatting).

legally registered and surveyed:	...20... %
legally occupied, but not registered or surveyed:	...10... %
informally occupied without legal title:	...70... %
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total:	...100... %

If the estimation is too difficult or complex using land parcels, you may base your estimation alternatively on the number of people occupying these forms of land parcels.

Number of professionals

Please estimate the total number of *academic professionals* that are active within the cadastral system and the proportion of the time that they actually commit for cadastral matters (as opposed to work outside of the cadastral system) ?

2.7	Total number of professional land surveyors , such as licensed surveyors active within the cadastral system:	20
2.8	Proportion of the time that these land surveyors commit for cadastral matters:	...80...%
2.9	Total number of lawyers/solicitors or equivalent active within the cadastral system or land market:	40
2.10	Proportion of time that these lawyers/solicitors commit for cadastral matters or land market:	...90...%

Remarks and Comments

Please, identify the best aspect of this questionnaire ?

Please, suggest the area in the questionnaire that could be improved?