

# UNDERSTANDING LAND ACQUISITIONS IN NAMIBIA'S COMMUNAL LAND: IMPACTS AND POLICY IMPLICATIONS

## KEY ISSUES: LAND ACQUISITIONS



- Legislative framework for communal land management in Namibia
- Community consultations and involvement
- Resistance to and acceptance of potential irrigation projects
- Local capacity to lobby and advocate for the protection of land rights

## SUMMARY

- 1** Namibia is one of the few African countries with a progressive legal and institutional framework governing natural resources and land. The Communal Land Reform Act (Act No. 5, 2002) defines the roles and responsibilities of the actors involved.
- 2** However, members of the rural communities often lack a basic understanding of what their user rights and responsibilities are, and they are also unaware of their rights to object to a proposed land allocation or to appeal a decision once made.
- 3** The large-scale acquisition of land for agriculture and conservation projects often displace local communities or reduce their access to, control and ownership of key resources (land, water, forest and wildlife) due to the gaps between good legislation and inadequate implementation and enforcement.
- 4** Policymakers, civil society organisations and communal land administering (oversight) institutions (such as Communal Land Boards) need to do more to raise awareness among rural communities of land rights and governance requirements.
- 5** Policymakers and Communal Land Boards need to ensure that all land-based investments follow the procedures laid down in Namibian laws and that they comply with regional and international voluntary guidelines on land tenure.

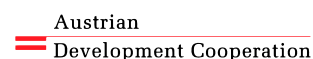
## 1. INTRODUCTION

Large-scale land acquisitions by both foreign and local investors for agriculture, forestry and wildlife purposes, among others, remain a major challenge for African governments. Between 2000 and 2011, the Namibian government, through various ministries, received proposals from multinational agribusinesses to develop large-scale agricultural irrigation projects (Odendaal, 2011). While only a few of these proposed large-scale projects have materialised, the magnitude of their impacts on rural communities are significant and require urgent measures. This policy brief investigates these acquisitions in Namibia's communal land. The purpose is to determine the impacts of such deals on communities, whether legal requirements were met before acquiring land for such deals, and whether community members can protect their land rights or oppose such deals. It identifies all the role players and captures the experiences and perceptions of affected and concerned community members towards such undertakings.

The four potential irrigation projects discussed here are situated along Namibia's water-rich, north-eastern regions of Zambezi and Kavango East. These are: Katondo Farming Project, Fumu Mbambo Irrigation Project and HJM AGRI Farm Ndiyona Irrigation Project <sup>1</sup>, all in Kavango East Region, and

<sup>1</sup> In 2014 the investor commissioned an Environmental Impact Assessment (EIA), resubmitted a new application for leasehold and has since changed the name of the project to Ndiyona Mills. The size has been reduced from 2 000ha to 778ha.

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Namibia Agriculture and Renewables (NAR) Project in Zambezi Region. In all four cases, the major finding included the lack of consultations with the local communities who are likely to be affected by land acquisition deals. The decisions to grant leases to local or foreign investors were done at the highest decision-making level, such as the Traditional Authorities (TAs), Communal Land Boards (CLBs) and Ministry of Land Reform (MLR) and, in some cases, in collaboration with the local politicians. Another finding was that compensation to affected communities remains unclear; the community members lack basic information regarding their land rights and thus are subjected to less or unbeneficial investment decisions in the long run.

In order to understand the impacts of land acquisition for land-based investments in Namibia, it is important to get a sense of the national legislation which governs communal land areas, as provided in the following section.

## 2. LEGISLATIVE FRAMEWORK FOR COMMUNAL LAND MANAGEMENT IN NAMIBIA

The Communal Land Reform Act (CLRA) (Act No. 5, 2002), which came into effect in 2003, is intended to ensure 'fair and reasonable administration' as per article 18 of the Namibian Constitution. The CLRA determines which rights can be conferred on occupiers of communal land and regulates the mode of occupation. The rights that may be allocated in respect of communal land include customary land rights, rights to leasehold, and occupational land rights. The CLRA defines the roles and responsibilities of the parties involved in the allocation and administration of communal lands. The key players include CLBs and the TAs, institutions created in terms of the CLRA and Traditional Authorities Act (Act No. 25, 2000) respectively. The functions and powers of CLBs and TAs follow a system of checks and balances. Chiefs or TAs have the primary powers to allocate or cancel any customary land rights, provided these powers are exercised in accordance with the CLRA and its regulations. However, any right conferred by the Chief or TA is of no legal force or effect until ratified by the relevant CLB. On the other hand, CLBs are tasked with the allocation of rights of leaseholds, but they can only do this when the relevant TA has consented to it.

Nonetheless, the CLRA does not provide enough security over communal areas, which in some regions have been prone to high rates of fencing off by the local elite (Sulle, Thiem and Muduva, 2014). It is also silent about different land-use practices found in Namibia, such as pastoralism, shifting agriculture, seasonal crop fields and shifting cattle posts that use grazing areas communally. These challenges are further heightened by the Traditional Authorities Act (Act No. 25, 2000), which does not make provision for Chiefs to be democratically elected and, as a result, are not necessarily accountable to affected communities.

Theoretically, all of the above provisions presuppose that a TA should consult with his or her community before directing or giving consent to a CLB to allocate a particular leasehold right to any investor. But, in reality, the research findings from

the four cases presented below indicate varying results, with most projects deviating from the provisions of the legislation discussed above.

## 3. THE CASE STUDIES OF LARGE-SCALE LAND ACQUISITIONS IN NAMIBIA

### 3.1 Katondo Farming Project

This estimated 10 000ha project, situated in Bwabwata National Park in Kavango East Region, was aimed at large-scale intensive agriculture, focusing on water-intensive crops: maize, wheat, rice, sunflowers and canola (Van den Bosch, 2010). The Kyaramachan Association (KA), a local community-based organisation (CBO) which represents the residents (mainly Khwe San people) in the Park, rejected the project on three grounds:

- a) the planned project would hinder their access to bush food;
- b) lack of a proper consultation process with the Park inhabitants (*The Namibian*, 9 March 2010); and
- c) vague promises of potential benefits to the Park inhabitants.

Similar concerns were also raised by the German Development Cooperation (GIZ) and the German Development Bank (KfW). The two institutions provided financial support to the development of the Bwabwata National Park and other NGOs like the Working Group of Indigenous Minorities in Southern Africa (WIMSA) and the Namibia Nature Foundation (NNF) (Weidlich, 2010).

### 3.2 Fumu Mbambo Irrigation Project

It was envisaged that the 891ha project, situated in Kavango East Region, would plant various crops like maize, beans, cabbage, sorghum and nuts, and that it would extract water from the Okavango River and distribute it through a pivot sprinkler system (Du Toit, 2013). All the legal requirements to secure a lease, as stipulated in the CLRA, were followed. The project plan was initiated by a community member. He engaged the community about the idea of approaching potential investors for an irrigation project in the area and, after receiving support, an investor was brought on board. Together with the investor, they held consultation meetings with the community members, Headman and the Chief of the Hambukushu Traditional Authority. The Chief and his TA gave consent and forwarded the application to the Kavango CLB for approval. Unlike the other projects, which have not followed the proper procedures, this project has not been offered a leasehold right yet, causing tension within the community as they want the project to be implemented as promised.

### 3.3 HJM AGRI Farm Ndiyona Irrigation Project

This 2 000ha project, envisaged to grow maize, potatoes and vegetables, was initiated by the councillor, governor, TA and the investor(s) without proper consultation with affected community members. As a result, communities were divided into two camps: those who supported the project against those opposing it. Subsistence farmers, whose livelihoods are mainly based on farming, and unemployed youth supported the project. This group of farmers has limited income-generating opportunities (Thiem and Muduva, 2015). The drought of 2013 in Namibia seemed to have influenced some of the communal farmers to give up their crop fields to this project as they could not get enough yields from the fields to make a living. However, the group which supported the project is likely to be concerned with deriving immediate benefits rather than the long-term vision of securing their land rights for future generations (Thiem and Muduva, 2015).

But the spokesperson of the communities opposed to the project was quoted, stating 'no consultation took place with field owners at Ndiyona, Shikoro, Rucara, Hoha and Kashipe villages that will be affected' (Sasman, 2013a). The opposing group consists of well-off and better informed members of the community, some of them occupying formal positions like teachers and clerks, as well as business people. These individuals, who form the middle to upper class of rural farmers, have diversified income which they reinvest in agriculture (Hall et al, 2015). Some are rural farmer bourgeoisie with more or considerable numbers of livestock and numerous crop fields to justify their need and dependency on the commonage. Their main argument against the project is that they will lose their land rights, especially the rights of future generations, as they would not be able to use the commonage as before (Thiem and Muduva, 2015). Eventually, due to pressure from the community and later the Kavango CLB, the investor was instructed to stop his operations pending further investigations (Sasman, 2013b).

### 3.4 Namibia Agriculture and Renewables (NAR) Project

It was envisaged that the 29 873ha project, situated in Zambezi Region, would grow a variety of crops, with lucerne as the main crop. The MLR identified this area as 'underutilised land' and hence recommended an irrigation project. The MLR claimed that the TA fully supported the project and had consented to it, and that there were no official objections received from affected communities, conservancies or anybody else opposing the project. The leasehold right for the project was granted in 2010 by the MLR. However, during an awareness-raising workshop held in April 2014, participants indicated that there were no consultations done with community members. Those who spoke at the workshop openly rejected the project, stating that they did not support it because of their expected displacement and the subsequent loss of their land. They further claimed that because they cultivate their crop fields seasonally and this was also their grazing area, they were not ready to lose them in an enclosed area.

## 4. COMMUNITY CONSULTATIONS AND PARTICIPATION IN LAND ACQUISITIONS

While the CLRA stipulates the essential procedures to be followed to ensure effective participation of the affected communities, our field research found limited consultation with regard to the acquisition of communal land. This was evident in three projects: Katondo Farming Project, HJM AGRI Farm Ndiyona Irrigation Project and NAR Project. For example, the NAR Project was discussed in a single workshop organised at Katima Mulilo, attended by a few selected representatives. Surprisingly, even the local conservancies and the constituency councillor in whose jurisdiction the project would have been implemented were not aware of the contents of the agreement. As a result, issues regarding compensation were not discussed nor understood, raising concerns in the relevant communities.

In most cases, the investor was rarely seen in the initial stages of the project. Consultations seem to only occur at the top (leadership) level, especially the relevant TA and CLB. Consequently, the leaseholds are approved (at least in one of the projects) without consulting the local people who are later affected by such undertakings. Community members are often not aware of the contents of the agreement signed by the investor and the TA on their behalf. But, even where consultation took place, community members were merely promised benefits once the projects were implemented. The most promised benefits include the creation of employment opportunities, transfer of skills, income for the TAs, food security, improvement in the local economy and that of the region at large. However, experience shows that some similar projects have in the past failed to deliver on their promises in these regions (Mendelsohn, 2011). As a result, community members, traditional leaders, government officials and regional councillors have become sceptical of project proposals like this (Sulle, Thiem and Muduva, 2015).

Yet, the negative impacts of such projects are not communicated well to affected communities during the consultation processes. At the time of the research, for at least one of the potential projects, an Environmental Impact Assessment (EIA) was not undertaken. Also, due to the lack of communication among the involved parties, community members and other stakeholders were often not aware of the status of the projects, causing uncertainties and tensions among them.

The only exception is the Fumu Mbambo Irrigation Project in Kavango East Region, where procedures for obtaining leasehold were followed, including holding sufficient consultations with the community members who initiated the project in the first place. The investor conducted and submitted the EIA. Yet, even on this project, affected community members did not receive regular updates in terms of project progress. The project is currently awaiting issuance of the environmental clearance certificate at the Ministry of Environment and Tourism (MET). The MET has raised issues arising from the EIA report, which need to be addressed by the investor and his environmental consultant.

## 5. THE CAPACITY TO LOBBY AND ADVOCATE FOR THE PROTECTION OF COMMUNAL LAND RIGHTS

Amid these controversial land deals, local communities lack platforms to voice their grievances because the management of communal land is handled by the TAs and CLBs. In addition, there is inadequate awareness among the rural communities about the legal and institutional framework that governs the allocation of land in communal areas. They also lack legal and technical expertise to negotiate with investors. But, in addition to national legislation, there are regional and international guidelines which provide several principles on how the tenure of rural communities' land should be protected and the governance of land-based investments.

Key guidelines include the African Union's (AU) *Guidelines on Land Policy in Africa* (African Union et al, 2010) and the United Nations Food and Agriculture Organization's (FAO) *Voluntary Guidelines for the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security* (FA, 2012). Both the African Union and FAO's guidelines advocate for well-articulated land reforms in developing countries. The former emphasises the need to ensure that the ongoing land reforms in Africa, most of which are pro-market solutions, do not jeopardise the rights and access of vulnerable groups such as women, indigenous communities and youth, and that these groups are not in any way affected by expensive right transfer systems. Both guidelines are at different stages of implementation in different countries in Africa. Although it was apparent during the fieldwork that communities in the two regions (Kavango East and Zambezi regions) of Namibia were unaware of these guidelines, they are useful tools that local NGOs and civil society organisations can use in advocacy and awareness-raising campaigns.

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## RECOMMENDATIONS

- 1 Conduct awareness-raising campaigns to ensure rural Namibians understand the national legislation related to natural resource use, transfer and its management. These should include information regarding their rights and responsibilities, and legal remedies, as well as the roles and responsibilities of their governing bodies such as TAs, CLBs and the MLR.
- 2 Speed up law reform processes to accommodate the registration of communal resources and group rights, in this way ensuring that many options are available for tenure security to different communities. This could help to accommodate different land-use practices across the country.
- 3 All stakeholders implementing land-based investments must conduct effective community consultation, as provided in Namibia's national legislation and regional and international guidelines.
- 4 Ensure investors' promises and commitments to affected communities by land-based investments are honoured and enforceable by law.
- 5 In project areas, conduct social and environmental impact assessments with full participation of the local communities.
- 6 Avoid investments that displace local communities and, whenever it happens, ensure there is fair and prompt compensation payment that takes into account intergenerational impacts and the real value of land.

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