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PROMOTING DIALOGUE AND RAISING AWARENESS: LAND REFORM AND THE ARTS IN NAMIBIA

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Abstract

The authors provide an overview of the main elements of land reform in Namibia initiated by a 1991 high-level conference on land issues to undo past discrimination and to foster socio-economic development for all Namibian citizens. The responsible Ministry of Lands and Resettlement launched several art projects to promote the land reform agenda or specific aspects of it in communal and commercial areas. Besides reviewing the main achievements and challenges in implementing the reform 25 years after independence, the paper will discuss the purpose, concept and approaches of these projects. The authors will take into account relevant literature on the relationship between the arts, outreach and social change. The interplay will be examined between art and artistic expression on the one hand, and the educational side of discussing land-related technical and political issues on the other. By examining relevant project reports and analyzing the corresponding media coverage, the paper will attempt to assess the contribution of the art projects in fostering awareness and dialogue on such highly contentious and technical topic such as land reform in Namibia.

Key Words: Land Reform, Arts, Outreach, Land Registration, Land Tenure

PROMOTING DIALOGUE AND RAISING AWARENESS: LAND REFORM AND THE ARTS IN NAMIBIA

1. Introduction

‘All over the world land and land possession has always and will always be a thorny issue. Great wars have been and are fought over land. Land has always been possessed, expropriated, re-possessed. Land creates a sense of belonging, identity and produces a livelihood. In Namibia, throughout history borders and ownership were changed and adapted by tribes’ claims to land. In colonial times, borders were demarcated on official maps, giving possession to individuals, at the same time taking away from tribes. Today it is generally accepted that this unjust land distribution has to be rectified.’

These are the words an artist used to describe her contribution to an artistic competition entitled ‘Land Matters in Art’ that the Namibian Ministry of Lands and Resettlement (MLR) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) organized in 2012/13. Urte Remmert’s light box with collage is entitled ‘Light on a Thorny Issue’ and expresses very well the intention of the organizing institutions to foster dialogue and to raise awareness on land reform issues in Namibia (NAGN and GIZ, 2013).

This paper will provide an overview of the main elements of the (rural) land reform agenda and its main achievements and challenges 25 years after Namibian independence. As part of the post-independence nation-building process, a high-level conference on land issues was held in 1991 to initiate a comprehensive land reform to undo past discrimination and to foster socio-economic development for all Namibian citizens. Implementation is based on a Land Reform Action Plan developed in 2005, which sets out specific targets to be achieved in various land reform issues.

Taking into account relevant literature on the relationship between the arts, communication and social change, the paper will also discuss the purpose, concept and approaches of two art projects organized to promote dialogue and raise awareness on land reform. In addition to ‘Land Matters in Art’, a dance project was performed in various communities to support communal land rights registration. The interplay will be examined between art and artistic expression on the one hand, and the educational side of discussing land-related technical and political issues on the other. The paper will end with the attempt to assess the contribution of the art projects in fostering awareness and dialogue on such a highly contentious and technical topic such as land reform in Namibia.

2. Land Reform in Namibia

A central agrarian discourse in Namibia as in many other Southern African countries concerns the repossession of land that remains inadequately addressed despite the prevailing liberation rhetoric. The demand for land redistribution in terms of redressing historical inequities has been a consistent feature of regional politics and policy-making (Adams et al, 1999; Moyo, 2005). Land redistribution is seen as one cornerstone of achieving income equality and to contribute to pro-poor development policies. Yet, Southern African land reform initiatives continue to face difficulties in fulfilling that promise, as land holdings continue to be formed by colonial agricultural policies perpetuated at independence (Fortin, 2005).

Namibia is still to resolve the challenge of making its land reform activities benefit the population at large. 70% of the Namibian population lives in rural areas and derives its income mostly from farming, whether this is subsistence or commercial farming or through employment in the agricultural sector (Werner, 1993). Access to land and effective control over productive resources is crucial for securing livelihoods of the poor who spend more than 60% of their income on food. 28% of all Namibian households are classified as poor (Namibia Statistics Agency, 2011).

Namibia's history is key to understanding the country's land reform agenda. The highly political reform aims to rectify the divided land distribution patterns inherited from its colonial predecessors. National reconciliation requires that the legacy of unfair distribution of land along racial lines is gradually undone. The same applies to the sharp division in land governance between the commercial central and southern regions, and the communal northern regions of the country. In 1990, 44% of the territory was commercial farmland owned to 98% by the White minority. More than 70% of the population lived and lives on communal land that covers 36% of the whole country.¹ Different ownership structures continue to influence greatly the way of life of inhabitants. They also play a significant role in shaping post-independence national unity and identities.

Securing national acceptance for the reform is difficult given that land dispossession concerns different Namibian people unevenly. Indigenous pastoral communities who are livestock farmers such as the Ovaherero, Nama and Damara argue that they were more affected than those communities living in the northern and north eastern parts of the former South West Africa. They contend that the communities living north of the veterinary fence were only marginally affected by colonial dispossession (Werner, 1993).

Whether and to what extent particular communities should be prioritized within the land allocation process remains controversial. One of the main resolutions of the mentioned national land conference, *i.e.* the non-restitution of ancestral land rights, plays an important role in this context. In 1991, policy makers found there were too many overlapping claims by different communities to be able to return land to those who possessed it before colonization. Unlike in South Africa land restitution as such was not made a component of Namibian land reform. Yet, the said communities claim they should be prioritized with in the below-mentioned National Resettlement Programme.

Land Reform concerns both commercial and communal land. 'Commercial Land Reform' can be understood as a progressive transitional justice mechanism aiming to undo colonial injustices. 'Communal Land Reform' mainly focuses on the registration of customary land rights, which involves demarcating and titling of parcels of non-freehold land. Communal land rights registration is seen as a possible first step in individualizing and commercializing communal land use rights which are presently not freely transferable and administered by traditional authorities. The German Government through its GIZ 'Support to Land Reform' Programme provides assistance to the MLR in conceptualizing and implementing the national land reform agenda since 2003.

¹ The remaining 20% is state land used for conservation or mining purposes.

3. Land Redistribution (Commercial Land Reform)

With its Strategic Plan for 2011-2016, the MLR set itself the target to redistribute altogether 15 million hectares (*i.e.* 43%) of commercial farmland to formerly disadvantaged Namibians. Redistributive land reform consists of two sub-programs: the Affirmative Action Loan Scheme (AALS) and the National Resettlement Programme (NRP). Whereas the AALS provides subsidized loans to previously disadvantaged Namibians to acquire commercial farms, the NRP targets small-scale farmers who do not meet the AALS requirements due to insufficient assets. 10 million hectares are to be sold under the AALS and 5 million under the NRP, thus aiming to reduce the disparity in land distribution between landowning and landless Namibians from 79% in 2011 to 67, 7% by 2016 (MLR, 2014).

Affirmative Action Loan Scheme (AAL)

The main objective of the AALS is to resettle productive black farmers from the communal areas on commercial farms. This program was established not only for redistribution purposes but also to reduce pressure on over-crowded and over-grazed communal areas. It intends to turn small-scale communal farmers into owners of freehold land hoping that they will be able to market their produce and contribute to the economy.

The AALS is implemented by the Agricultural Bank of Namibia (Agribank), which provides funding to previously disadvantaged farmers at subsidized interest rates. Loans can be taken for the purchase price but also for farming infrastructure and equipment. Farmers apply for entry into the scheme in much the same way as they would apply for a regular loan from a commercial bank. Applicants are required to pay 10% of the farm's purchase price before they can qualify for an AALS loan. They also must already own at least 150 large stock or 800 small stock units, or the equivalent in cash. Interest rates differ per category of farmers, based on a sliding scale of formal sector income. Full-time farmers receive a 3-year exemption from repayment, whereas part-time farmers may choose for the first 3 years whether they repay only the interest portion and thereafter the capital amount, or whether they capitalize the interest portion for the first 3 years and thereafter pay the capital amount (MLR, 2014). AALS beneficiaries are also eligible to be exempt from up to 85% of the land tax discussed below.

The AALS enjoys the support of key stakeholders including farmers' organizations and landowners. From 1992 to 2013, a total of 624 farms with a total size of approximately 3,4 million hectares of freehold land had been acquired through the AALS.

National Resettlement Programme (NRP)

While the AALS is geared towards productive emerging farmers who possess the means for commercial agricultural production, the NRP targets those Namibians who are lacking these means, *i.e.* an estimated 243,000 households with land needs. The NRP is guided by the 2001 National Resettlement Policy, which categorizes NRP beneficiaries into three different groups: Beneficiaries can be Namibians who have neither land, nor income, nor livestock; who have neither land, nor income but few livestock; and those who do not have land but income or livestock. In implementing this policy, the MLR set the maximum line for resettlement to 150 cattle or to 800 goats. The MLR selects resettlement farmers with a point scoring system to evaluate and prioritize applications. Special consideration is given to members of

the San community, ex-soldiers, displaced/destitute persons, persons with disabilities, and farmers who live in over-crowded communal areas (MLR, 2002).

The National Resettlement Policy's primary objective is to resettle eligible persons 'institutionally, sociologically, economically and environmentally sustainable' and to allow beneficiaries to become self-supporting. The Policy intends (1) to redress imbalances in the distribution of natural resources especially land; (2) to give opportunity to the target group to produce their own food; (3) to create employment through farming and other income generating activities; (4) to bring smallholder farmers into the country's mainstream economy; (5) to alleviate human and livestock pressure in communal areas; and (6) to offer citizens an opportunity to reintegrate into society (MLR, 2002).

The NRP is implemented in individual, group or cooperative holdings. While all three schemes were implemented during the NRP inception phase, focus changed in recent years on resettling individual households on demarcated allotments. This concept involves planning for and subdivision of one farm into smaller allotments depending on the agro-ecological zones. Resettlement farmers receive a 99-year leasehold right over the allocated farming unit. These leases are registered in the Deeds Registry and can serve as collateral for low-interest agricultural credit through a post-settlement support program administered by Agribank. Management rules are attached to every lease agreement trying to ensure usage in accordance with the NRP objectives.

Since 1990, 213 lease agreements were issued while there are altogether 5008 resettlement beneficiaries (MLR, 2014). These figures are very low and do not meet the public expectations in the NRP (Walker, 2001). The current resettlement process is found to be very complex and multidimensional, involving not only beneficiary selection and allocation procedures but also various (regular) land management activities such as surveying, valuing and registering the farming unit. Thinking has begun within the MLR how some of these activities could be simplified, made more efficient or linked better. Further, resettlement farmers and commercial banks tend to find the lease agreements' management rules to be too rigid and to unduly curtail lessee rights. Their main point of contention is that these rules prescribe that beneficiaries must seek prior authorization by the Land Reform Advisory Commission for permanent infrastructural development and for change of land use or business purpose.

Generally, a more synergistic inter-Governmental approach is required to make NRP successful. Land reform should not be understood as a sectoral program merely transferring farmland to individual beneficiaries. Instead, land reform should be integrated in a comprehensive rural development policy implemented with proper inter-ministerial planning, coordination and funding. This should include integrated land use planning, extension services and post-settlement support, and policy-making. The below-mentioned 1998 National Land Policy had envisaged that a Board be established to coordinate land use planning, land administration, land development and environment protection at a national and regional level. These boards were unfortunately never set up.

At this point, insufficient attention is paid to the fundamental challenge how the land reform objectives to increase economic productivity levels and to alleviate poverty can be reconciled. In recent consultations on a National Human Rights Action Plan, many voices were raised to focus more on economic productivity and food security instead of allocating to the rural poor who, in many cases, are not able to contribute to the country's economic development. Sub-dividing large-scale commercial farms into small-

scale farming units in semi-arid conditions is threatening the viability and livelihoods of emerging farmers. Too often, post-settlement support, for example in providing water infrastructure, is insufficient and resettlement farmers lack the means and knowledge to make sustainable investments. To some extent, insufficient farming knowledge of resettlement beneficiaries is addressed with the Farmers' Support Project, jointly run by Agribank and GIZ, offering mentoring and other capacity-building services to emerging farmers. Yet, even if this project and various other post-settlement support activities are successfully running, the NRP is criticized for impeding growth in the agricultural sector. Land acquired for resettlement purposes is generally suitable for livestock ranching, however, land use can only be intensified through diversification including not only agriculture but also game farming and tourism (Werner, 2004).

Land Acquisition and Land Tax

A more positive picture of land reform in Namibia appears looking at the fulfillment of redistribution targets. Depending on which figures are included, up to 2/3 of the set target of 15 million hectares had been redistributed in a peaceful and constitutional manner by January 2015. In addition to the 5,9 million hectares redistributed through the AALS and the NRP, 2,5 million hectares changed ownership from 'White' into 'Black' hands through private sales with Agribank-funded commercial loans. Loans granted for property transfers by other banks may be estimated to another 600,000 hectares, increasing the figures to approximately 9 million hectares. The Namibia Agricultural Union considers that an additional 1 million hectares State-owned land could be included in the calculation, making the total redistribution amount to 10 million hectares. These numbers are impressive by regional comparison. Commercial land reform is said to be using a carrot-and-stick-method providing incentives to farmers to offer their land. Pointing at the Zimbabwean experience, the MLR argues that landowners must also support its redistribution process to ensure that it continues to be carried out in a lawful and transparent manner (Werner, 2004).

Reaching the set targets for Government-purchased farmland has, however, become increasingly difficult for a number of reasons. Attractive land that the MLR would interest is scarce and land prices are skyrocketing in Namibia as all around the world. Whether or not categorized as 'land grabbing', land prices have also risen because of increasing foreign and elite investments in and control of prime agricultural land. These developments are threatening the Government's ability to acquire more land for resettlement purposes. In 2005, the parastatal Agribank even placed a temporary moratorium on the AALS, arguing that farm prices were too high. The issue is of such concern that the MLR commissioned the FAO to conduct a study on land prices in 2011. Its findings are still to be discussed and implemented.

Until today, land acquisition is based nearly exclusively on the 'willing-buyer-willing-seller' principle although the Namibian Constitution and the 1995 Agricultural (Commercial) Land Reform Act also allow expropriations for redistribution purposes. 'Willing-buyer-willing-seller' means that if a commercial farm is put up for sale, the Government has the first option to buy it. The MLR follows a predominantly market-based approach supported by landowners and farmers' organizations. The Ministry is a somewhat reactive buyer that responds to the offers of landowners who identify and supply the land available for resettlement. Landowners are found to be able to sell above the (private) market value (Lahiff, 2007), since the MLR is interested to acquire farms to fulfill its targets.

At the same time, commercial farmers are at times reluctant to offer their farms for sale because of the formalized price negotiation process envisaged by the Agricultural (Commercial) Land Reform Act. Some farmers do not want to enter into negotiations with the MLR because they fear the latter will impose an unacceptable price on them. If both parties do not reach agreement after the offer and counter-offer were presented and the MLR valued the farm, the case is to be referred to a Lands Tribunal that will decide on the price. The commercial farming community tends to find this process lengthy, cumbersome and too uncertain in outcome. The MLR reacted to this criticism by setting up an administrative arrangement by which farmers can engage in informal price negotiations with the MLR. Unlike in the formal process, farmers are allowed in these proceedings to withdraw their offer if the MLR counter offer is not agreeable to them. Legislative amendments are currently considered to further develop this approach by establishing a MLR Negotiation Committee and to give farmers the opportunity to withdraw their offer within 14 days after having received the MLR counter offer.

Notwithstanding these developments, critical thinking is presently emerging to increase public weight in land acquisition by integrating community-driven agendas into the process. Local communities should be more consulted and involved in identifying, planning farm models and the necessary institutional infrastructure, as well as the pricing of land (compare: Moyo, 2000). Technical assistance and cooperation with the private sector support are crucial to make such approach sustainable (Deininger, 1999).

To date, 397 large-scale commercial farms have been acquired for the NRP, a figure that translates into approximately 2,5 million hectares (MLR, 2014). Even though Namibia is often praised for progressing land reform in accordance with its constitutional and legal framework, voices are raised this policy is also contributing to what they find is a slow pace of land redistribution (Werner, 2004). Fear is growing that pressure will mount from different communities, particularly the youth, to set aside the legal framework in the interest of accelerated land redistribution (Bankie and Ithete, 2014). At the same time, it is clear that the Government should increase its budgetary allocations to land acquisition and post-settlement support to reflect the importance of land redistribution for the economy.

In addition to regular Government funds, land acquisition is financed through the land tax introduced by the Agricultural (Commercial) Land Reform Act. The tax is based on the (unimproved site) value of the land in question and does not take into consideration any infrastructural improvements. Revenue generated from the land tax accrues to the Land Acquisition and Development Fund which serves land acquisition and farm infrastructure development. Roughly speaking, the land tax covers nearly half of available budget for land acquisition. Figures vary from year to year. For example, no tax was collected in 2013 because of the serious draught that year.

Besides funding farm acquisition and development, the tax was levied to discourage multiple farm ownership –progressive tax rates apply in such cases– and to encourage efficient utilization of commercial agricultural land. Under- or non-utilized land is to be brought into production and discourage use of land beyond recreational use.

With approximately N\$40 million collected annually and 95% collection rate, the tax has generally been successful in terms of revenue collection. Of the N\$230 million collected since its introduction in 2005, approximately N\$15 million were spent on tax administration, overall a modest amount.

Land tax is based on the valuation of agricultural land carried out by the MLR in a valuation roll. Since 2012, the roll's readjustment to present-day market prices has, although in principle done in accordance with the applicable Land Valuation and Taxation Regulations, become subject of legal proceedings. Various issues are currently pending before the Namibian High Court. Among them is the question whether or not land valuation should be based on the market value, as is stipulated in present legislation. Skyrocketing land prices would result in tax increases of up to 900% for individual farmers. Contending that such excessive taxation would threaten their economic basis, nearly 3,000 farmers launched objections against the respective provisional valuation roll of 2012. Farmers' associations argue that the productive value of the land, including its carrying capacity, should be the main determinant for land valuation. This situation also led to a lawsuit on constitutional issues raising fundamental questions on the land taxation system and wider land reform agenda. Applicants claim that the Namibian Government needs to reform its valuation and taxation system, make it more equitable and affordable to the majority of commercial farmers, pay more attention to productive farming and food security, and critically review the affirmative action principle in this context (GIZ, 2013). They argue the MLR has to seek a better balance between acquiring sufficient funds for the implementation of the land reform, and adequate taxation rates for the farming community. The Court's decision is still pending.

4. Communal Land Reform

Like many other African countries, Namibia also possesses a dualistic land tenure system that differentiates between statutory, or 'formal', and customary tenure. The former mostly consists of private ownership ('freehold'), whereas the latter concerns different forms of land use rights governed by customary law and allocated by traditional authorities. Customary tenure is essentially communal tenure and has often been associated with 'agricultural backwardness' (Amoo, 2010; Cousins, 2002). Formal tenure governs land rights in the commercial central and southern regions of Namibia, whereas customary tenure prevails in the communal northern areas and also in the former homelands south of the veterinary fence.

Since independence, the Namibian Government is trying to gradually overcome the legal pluralism in the country. The country's constitution recognizes customary law as one of the sources of law. It also stipulates that all land (including communal land) belongs to the State unless otherwise lawfully owned. Its schedule 5 (1) determines that communal land administration is 'vested' in the State who holds it in trust for the benefit of the communities. In 1998, a National Land Policy was adopted that contained guidelines for legislation governing both commercial and communal areas. The Policy presumes a 'unity land system' recognizing all existing forms of tenure. It denies the necessity of converting customary rights into full ownership rights to cope with the weaknesses of communal land tenure, in particular the lack of tenure security.

Although tenure reform in communal areas was a component of land reform from the start, it was not prioritized because the redistribution agenda was dominant in the public discourse on land reform. While there is thriving economic activity in some communal areas, overall Government tends to neglect them and is facing challenges in providing essential State services (Werner, 2004).

Persistent land disputes are one result of the weakness of State institutions in communal areas. The policy and legal vacuum that existed prior to the adoption of the 2002 Communal Land Reform Act allowed

local elites to fence off large parts of communal lands (Odendaal, 2011). There were uncertainties around its administration in particular with respect to the role of traditional authorities in allocating land rights and in managing the commonage. Many cases were reported where traditional authorities were double- or self-allocating land, or where they were involved in land grabbing and/or illegal fencing activities. Problems were also caused by conflicts between different traditional authorities disputing their jurisdiction over particular territories. Often, it was women and other vulnerable community members who were affected most by the prevailing tenure insecurity. The lack of documentation of land allocations, in line with the oral tradition of customary law, made it difficult for aggrieved parties to prove their land rights.

Communal Land Rights Registration

The 2002 Communal Land Reform Act intends to mend the situation by codifying communal land allocation and registration. Guided by the National Land Policy, the Act seeks to improve tenure security by better defining rights and by making them enforceable in the judicial system. The Act introduces a uniform land administration system for all communal areas inhabited by different peoples with their own customary laws and traditional authorities. By making land tenure clear and secure, it intends to help reduce land disputes. Two types of communal land rights can be allocated under the Act, the customary land right and the leasehold right (Annex 1). The former is a user right for a farming and/or residential unit; the lease is a more formal right granted for business purposes (including agriculture) in specific geographic areas designated by the MLR for that purpose. With formalizing leasehold rights, the Act also intends to foster development of un- or underused communal land.

The communal land rights registration program allows any Namibian to apply for the registration of a customary land right allocated by the responsible traditional authority before or after the enactment of the Act. The application must be approved in writing by the traditional authority and is then forwarded for verification and ratification by a Communal Land Board (see Annex 2). These boards are multi-stakeholder organs established by the Communal Land Reform Act in every region of the country. Members consist of representatives from the relevant line ministries and other stakeholders including responsible traditional authorities and the organized farming community. At least five women have to be represented in each Communal Land Board whose minimum number of members is twelve (depending on the number of traditional authorities in the region).

The establishment of Communal Land Boards embodies the State's attempt to harmonize the State's claim over communal territory with the de facto governance powers of traditional authorities. Communal Land Boards control the allocation and cancellation of customary land rights made by the responsible traditional authorities. They thus counterbalance the primary decision-making power remaining with traditional authorities in customary land rights administration and commonage management. With leaseholds it is somewhat the other way around: The Communal Land Boards have jurisdiction to decide on applications for a right to leasehold in communal areas but the responsible traditional authority must give nevertheless give its consent. Communal Land Boards are also charged to maintain a register on communal land rights, to map the registered plots, and to verify that no unresolved disputes exist before a registration certificate is issued. The MLR supports the work of Communal Land Boards with secretarial and cadastral services and set up an appeals procedure against the boards' decisions.

To limit land grabbing, a maximum size for land allocations was set at 20 hectares for customary land rights and at 50 hectares for leaseholds. Any exceeding allocation must be authorized by the Minister of Lands and Resettlement. Customary land rights are allocated for the natural lifetime of the holder but can be inherited by a surviving spouse or, in her absence, by the children. Leasehold rights are granted for maximum 99 years; the Minister must give his approval in writing if the leasehold period is longer than 10 years the respective parcel is larger than 50 hectares. Both rights protect their holders from illegal eviction and from expropriation without just compensation.

The Ministry managed to create gender equality by formally recognizing women's individual land rights and women's land rights within the family and marital system through joint registration of rights that previously were only vested in men in the CLRA. The husband or another family member previously had to sign the registration form when applying for a land right certificate, thus under the CLRA, a women could only hold an individual land title when she was widowed, single (but with permission from relatives) or inherited land. However, the Ministry introduced a new CLRR application form in 2013 that now provides for joint and individual land registration of women, thus enabling women to apply for a land rights certificate in their own names, regardless of her marital status.

Of the approximately 245,000 parcels to be registered, 160,000 parcels have been mapped, 140,000 parcels digitalized, and 85,000 parcels had been registered in the Namibia Communal Land Administration System (NCLAS) in January 2015. These numbers are quite impressive and demonstrate the concerted efforts by the MLR and several donors to make the program work.

Challenges with Kavango Land Registration

A serious challenge to the communal land registration program remains, however, that in particular the traditional authorities of the Kavango regions in north eastern Namibia refuse to collaborate. Traditional authorities are well established in these two regions and fear that the registration program would take away their jurisdiction and custodianship in land administration. They have thus openly opposed Government-promoted land rights registration, refused to participate in MLR-organized training courses and spread misinformation about the Communal Land Reform Act and its objectives (GIZ, 2014). In 2013, the situation escalated so much that the Minister of Lands and Resettlement and other high-ranking MLR officials visited Kavango and held extensive consultations on the matter. The traditional authorities demanded, as they had already done during the preparatory work for the Communal Land Reform Act, that communal land rights registration would be amended to allow customary rights be registered as group rights in their name for the benefit of their communities. The MLR subsequently did not indicate its willingness to discuss such an approach.

While this dispute may be special and also influenced by the personal interests involved, it does reveal a basic challenge unifying land allocation practices in a culturally diverse society. Critical voices hold that the Communal Land Reform Act is best suited to the customary law of the majority population living in the northern regions but that it does not cater for the cultural norms and specific land use practices of other groups (GIZ, 2014). The land registration program arguably works better for settled farming communities than for pastoralists with extensive rangeland management or shifting cultivation. Moreover, plot-based territorial governance involving traditional authorities is extremely difficult in scenarios with

chieftaincy conflicts or when community belonging is not based on territorial jurisdiction but on membership (Mendelsohn, 2008).

Women's Land Rights

Research indicates that the communal land rights registration program is having a positive impact on women's land rights (Werner, 2008). To date, 41% of all applications for customary land rights are women. A major factor hampering legal protection for all women is, however, their lack of awareness of their rights in terms of the Communal Land Reform Act. As a consequence women often do not claim their land rights and remain in their disadvantaged position. It does not help that also Communal Land Board members are not always fully informed of the gender issues involved. This is even though they are receiving related training by the MLR.

Although the position of women has improved with the Communal Land Reform Act, land rights registration alone does not suffice to secure women's access to land. Even if women are aware of their rights, they might still not actually do so if cultural norms and traditions forbid. Cases are also known that traditional authorities did not support applications by women to have their rights registered because female ownership is not envisaged in their traditional setting (GIZ, 2014). Land rights of women, in particular widows, remain insecure despite the progress made in protecting them. This also relates to the traditional practice of 'property grabbing' where the deceased's matrilineal family relatives reclaim all assets that belonged to the deceased husband. Even if the widow inherited the customary land right, she might still be left with nothing and lack the resources to use her land productively. Many female farmers are struggling because they lack the means and equipment for successful farming (Quisumbing and Pandolfelli, 2008). Thus, programs aiming to secure land rights for women should be designed more holistically and include broader development interventions such as education and other capacity-building, as well as economic empowerment opportunities (Paradza, 2011). For example, even though statistics are missing on how many women farmers benefit from agricultural extension services, it can be assumed that their access is more limited.

Agricultural Productivity and Commonage Protection

When establishing the communal land registration program, it was assumed that creating tenure security would be an essential factor for increased economic activity and as such contribute to poverty reduction in communal areas. Secure land rights would stimulate agricultural productivity and allow access to credit of communal farmers. However, in Namibia as in other African countries, developments show that these assumptions are questionable (Quan, 2000). Research findings covering all Namibian regions conclude that communities perceive communal land rights registration as having 'minimal economic value' to them (Mendelsohn, 2008). Registered customary land rights do not suffice as security for commercial banks, partly because they are not registered as legal deeds and because they are not freely tradable. Some argue that communal land rights registration should be seen as a first step in the individualization and privatization of communal lands to allow that the land can be used as collateral for economic development (Mendelsohn et al, 2012). Others find that individual titling has in practice benefitted powerful interests and led to an increasing concentration of land in the hands of political and local elites at the expense of the communities (Quan, 2002). Communal land registration is at times viewed as impeding economic growth and local livelihoods.

What is clear is that communal land registration as such cannot produce good land use practices and enhance economic productivity. Other measures such as capacity-building for farmers have to accompany registration to fulfill its far-reaching goals (GIZ, 2014). Besides, it is doubtful to what extent a decade of communal land registration could indeed change local traditions and behavior acquired over generations. Research from Kenya demonstrates for example that land titling did neither stop the sub-division of holdings nor customary allocation and inheritance patterns (Quan, 2002) – a situation that also exists in Namibia’s communal areas.

Communal land reform has not yet brought its desired return in terms of economic development and poverty alleviation. Instead there is rapid rural-urban migration with in particular the young leaving communal lands. Lack of formal employment in communal areas but also different life aspirations in the ‘born-free’ generation make young people seek their luck in Windhoek and other urban centers (GIZ, 2014).

Research from Kenya indicates that land registration programs worked better where the poor were specifically targeted as beneficiaries and prescribed parcel sizes were enforced. They only yielded results if embedded in wider rural development intervention including measures to secure market access and to provide required agricultural support. Finally, as in all development programs, local participation needs to take place in the design, implementation and enforcement of titling initiatives (Quan, 2000). In recent years, customary land tenure systems have been receiving increasing attention as effective systems capable to accommodate changing circumstances. While Namibian communal land rights registration does not abolish customary land tenure, the MLR should not forget to engage all different communities and try to integrate their concerns as much as possible. The Kavango refusal might indicate the need for the Namibian Government to review its communal land reform policies and to ensure their more participatory and decentralized implementation in the future.

Of serious concern for the communities is the relatively recent phenomenon where local elites privatize the commonages through unilateral fencing of customary land for private use. Such land grabbing is often done in collaboration with traditional authorities that collect payments for their allocation services. Commonages are increasingly eroded and fail to fulfill their function as safety net for vulnerable groups in the communities. One solution proposed to cope with this situation is to register and to legalize current ‘illegal fences’ as small-scale commercial farms under leasehold rights. This thinking is based on the assumption that it would be politically, legally and economically too costly to remove all fences deemed ‘illegal’ by the Communal Land Reform Act. However, any legalization of ‘old’ fences should be accompanied by a strict enforcement of the prohibition to erect unauthorized new fences (Mendelsohn et al, 2012). Another approach to protect the commonage might be to strengthen the communities’ rights over their commonage by registering them as group rights. The MLR is currently working on a respective policy.

5. Land Reform a Burning Issue?

To conclude this brief overview of land reform in Namibia, the country may be commended for having succeeded so far in carrying out the reform in a peaceful, constitutional and transparent manner. By creating stakeholder organs like the National Land Reform Forum, the MLR ensured that all relevant stakeholders are included in the land reform process and that appropriate compromises are found.

However, even if the Namibian Government can point at redistribution figures impressive in regional comparison, a number of ‘burning issues’, to cite one of the participating artists below, warrant serious attention and policy action.

Among them is the above-mentioned question how the NRP can become more economically sustainable and contribute to food security. Another major issue is to bring together rural and urban land reform in the country. If many resettlement farmers are unable to farm productively but primarily seek a place to live, consideration could be given to provide landless Namibians with low-cost housing instead of a resettlement farm. Serious thinking also needs to go into developing a vision for communal lands. Does Namibia want to perpetuate its schism in communal and commercial land governance? Shall communal land registration be understood as a first step in individualizing and commercializing this land? What role should traditional authorities play in the future and what shall be left of the commonage?

Land matters are often ‘burning issues’, to cite one of the contributing artists below. This is why land and land reform must not just be discussed among functionaries and within expert circles. Land reform can only achieve its objectives of social stability and economic viability if its relevant issues are also communicated to and discussed by the population at large. Outreach campaigns need to be launched to involve land reform beneficiaries throughout the country including communities in remote rural areas without adequate literacy. Such campaigns should also provide sufficient room to address and to reflect on controversial issues in the communities concerned. In addition to conventional outreach activities involving the production of information materials, their dissemination through the media, the establishment of help desks and hot lines, the MLR decided to make use of two artistic projects to promote its land reform.

6. Promoting Social Change Through the Arts

It is no news that the arts can play a useful role in bringing about social change. For example, the arts can be a progressive force to promote recognition or improvements in the lot of disenfranchised and oppressed groups (Belfiore and Bennet, 2010). Artists are seen as change agents who can help communities to strengthen its resources and identity and to explore new ways of living together (Levine, 2011). Further, the arts can make important contributions to promoting dialogue and conflict resolution among communities or concerning specific contentious issues (Knill, 2011). Art projects can enhance public discussion, raise individual awareness, and help to understand different positions on particular issues. Recent neuroscientific research reveals that arts-based approaches, in particular those involving the body such as dance and music, help to ‘loosen up’ hardened positions and should increasingly be used in peace-building processes around the world (Le Baron, 2013).

In developing countries, it is important to avoid any pitfalls of eurocentrism, for example by ignoring underlying power relations or by disregarding social, economic and political contexts in which the project is undertaken (Belfiore and Bennet, 2010). To reach their target groups, art projects need to adjust their methodologies to the cultural particularities involved. Western culture generally distinguishes between high and low culture and separates arts from traditional crafts. In contrast thereto, indigenous cultures tend to apply a more functional and pragmatic approach to the arts, linking them to everyday life (Flolu,

1996; Hester, 2000).² Artistic expression, in particular music and dance, are used as rituals and means of communication. Especially African dance often has a strong narrative role with the dancer possibly serving as teacher, historian, social commentator, storyteller etc. (Onwuekwe, 2009; Adegbite, 2010). Given its participatory nature, its affinity to oral culture, and its linkage to the communities' religious, political and cultural systems and traditions, African music (and dance) can generate deep social experiences of the communities involved. As such it can possess strong transformative powers.

Recognizing the power of arts in fostering dialogue and raising awareness, the MLR and GIZ jointly undertook the above-mentioned dance project and artistic competition (and side program) to promote the Namibian land reform agenda and to stimulate public discourse around it.

Dance Performance in Support of Communal Land Rights Registration

In 2012, the MLR launched a public communication campaign in support of its communal land rights registration program (GIZ, 2014). At that point, the registration deadline was 31 December 2012 and registration numbers were below target. This situation was largely explained with traditional communities' lack of faith in the registration process and limited understanding of the benefits of registration. As previously stated, in some regions, traditional authorities openly opposed the reform and a number of misconceptions existed concerning crucial elements of the communal land reform. In terms of outreach, it was felt that existing flyers and information brochures did not adequately reach a mostly illiterate population in rural areas that generally is not sufficiently familiarized with government policies and programs.

Positive experiences had been made with a dance company carrying out outreach projects in remote communal areas raising awareness on HIV/AIDS issues. The good reputation and positive record of the Ombetja Yehinga Organization, OYO, made the MLR and GIZ approach this organization in autumn 2011 to develop a non-verbal piece of expressive physical theatre addressing the advantages of communal land rights registration.³ While the project targeted the communities at large, special attention was given to traditional authorities who are in charge of issuing customary land rights certificates.

The dance piece 'If Only' consisted of two parts: The first part showed a family in a rural area that decided not to register their customary land rights. When the husband passed away, the wife was unable to prove her residential rights and was chased out of the homestead by greedy family members. In the second part, the same story was told with the family deciding to register their land. When the husband died, the widow could show her 'customary land right certificate' which proved her and her daughter's right to remain on the land after the husband's death. The message delivered was that communal land rights registration made the widow and her dependents safe by allowing her to stay on the land.

The dance piece was conceived to kickstart a discussion between different communities and MLR representatives on communal land reform and its registration process. During these sessions, an MLR representative acted as facilitator, explained the objectives and process of registration and answered questions by community members. At the same time, information material was distributed and registration forms made available to those community members willing to proceed with registration.

² Hester describes for example the scenario of a plaintiff singing his/her case before traditional courts and being judged in terms of the quality of the performance (without referring to guilt or innocence).

³ For more information on OYO, see: <http://www.ombetja.org>

The MLR had done a lot of advertising in the different communities to ensure proper attendance. It was decided to pilot the dance performance in 23 rural communities/villages in the Oshana and Omaheke regions in January and February 2012. After an overall successful beginning, a parallel programme was subsequently organized for the Otjozondjupa region in June and July, and for the very remote Kunene region in October and November 2012. OYO adjusted the piece with props and costumes to match it to the different communities. When attending one of the sessions in Omaheke, a region that is critical vis-à-vis communal land rights registration, the Deputy-Minister of the MLR addressed the community by stating: ‘We need people to start talking, discussing, thinking and maybe even dreaming about land and land registration. Only then, we can say we have reached all Namibians; and that in future our laws and procedures should be modeled on the true needs of our nation and that all Namibians will follow our laws’ (GIZ, 2012). The Minister of Lands and Resettlement repeated this message at an OYO dance performance undertaken at the occasion of an Communal Land Board inauguration in the Erongo region a few weeks later.

Whether or not the piece was received well or the discussions fruitful depended not only on the quality of facilitation but also on the number of women attending the piece. Participant numbers and gender were recorded in every session. The organizers found that the more women attended the performance and meetings, the more willing the community was to register its land (OYO, 2012-2).⁴

Notwithstanding these findings, it also became apparent that the communal land rights registration program as such is not accepted by all communities to the same extent. While the population in the Oshana region in the north of the country clearly supports the program, many communities located in the eastern Namibian region of Omaheke but also in central Otjozondjupa and in the north western Kunene region, mostly reject communal land rights registration in principle (OYO, 2012-1; GIZ, 2014). Other groups, such as the indigenous Ovahimba and San people tend to have a more positive stance but have often not heard of it. This is the case in particular in remote Kunene where people are in many cases cut off from modern media such as television or radio.

In these cases, the dance performance and subsequent discussion was a very useful tool of sensitizing the traditional communities and engaging them in a dialogue on communal land reform and its customary rights registration. But even in cases where the communities were against land registration, the performances generally put the respective audiences in a good mood and open the floor for a constructive discussion with the MLR officials (OYO, 2012-2). It certainly helped that the piece ‘If Only’ had a clear message and was easily understood by most communities. That the facilitators posed questions on the content and meaning of the performance after its first part, helped the communities to follow and to focus. The dance piece served a catalyst to highlight the main benefits of communal land registration and triggered the respective target audiences to pose critical questions on the advantages and disadvantages of the program.

⁴ However, it might also be concluded that women attendance was a consequence of the particular community’s general acceptance of the communal land registration program. In communities more hostile, women might not have been allowed to attend the ‘political’ performance and discussions.

Artistic Competition 'Land Matters in Art'

In 2012, the MLR and GIZ initiated a second arts project, an artistic competition entitled 'Land Matters in Art' with focus on a wide range of land-related issues. It was felt that land reform in commercial and communal areas was progressing relatively well but that the media coverage on successes achieved and challenges remaining was inadequate. By involving the arts scene as mediator between Government-induced policies and the public, the organizers intended to initiate more public dialogue on critical issues such as the future development of communal areas or the objectives of land redistribution. Not only Government officials, academics, experts and stakeholders were to understand the intricate issues involved and to judge the progress made and the decisions to be taken. Also civil society and the population at large was to be made aware of what was going on in the field and is relevant to its livelihood (Land Matters in Art, 2013).

The project applied a multi-level approach by using art as a catalyst and inspiration in regard to the land reform process; by visualizing land-related issues; and by promoting citizen participation and community development. The exhibition gave opportunity to Namibian artists of various ethnic and social backgrounds to share their views on land and land reform. The contributing artists were seen as change agents who address and provide a snap shoot of civil society opinion on controversial topics relating to land reform and land use.

'Land Matters in Art' was launched at the Katutura Community Art Centre located in Windhoek's main township Katutura on 5 October 2012. The Minister of Lands and Resettlement, in presence of a Member of Parliament, the GIZ Country Director and other dignitaries, announced the competition and invited Namibian artists to submit artworks relating to land and land reform until 25 January 2013. 270 art works of all sorts were submitted of which a jury selected 152 to be shown in the exhibition. The jury consisted of altogether six members who represented different participating institutions including artists and land experts. When selecting the artworks to be shown, the jury discussed every contribution with respect to its artistic value but also with a view on the topic addressed and the manner presented. Fierce discussions took place in several sessions during which the jury needed to make decisions on the at times controversial submissions.

'Open the Farm Gates' was the name of the exhibition organized as the project's center piece on 27 March 2013. Over 350 visitors came to attend the exhibition's opening in the National Art Gallery of Namibia (NAGN), a number that topped all previous NAGN events in recent years. The Minister of Lands and Resettlement and the German Ambassador opened the event and emphasized the important role artists can play in fostering dialogue and bringing about social change. The third speaker, the artist Papa Shikongeni, also welcomed the initiative and stressed the need to provide artists with sufficient means to live up to the expectations.

The artworks of various media, styles and topics all relating to land issues were shown at the NAGN, the Goethe Centre and the Franco Namibian Cultural Centre. In the light of great interest in the exhibition, the NAGN even extended it for four weeks until the end of May 2013. Aiming to increase outreach, the project included a land art installation in the West Namibian provincial town Omaruru involving more than 5000 blue flags stuck in the Omaruru river pointing at the need to sustainably use the scarce water resources in Namibia. In addition, a walk-in pyramid installation was set up at Katutura's Soweto market to show the multifaceted 'legacies of a colonial town'.

‘Land Matters in Art’ entailed a variety of side events during which specific land-related issues were discussed with experts in more detail and from a political perspective. Art talks were organized during which participating artists discussed their work with experts and the interested public. During these panel discussions, selected artworks served as basis for wider discussion on land-related issues as well as on the relationship between society and the arts. The exhibition’s side program also involved the public screening of film documentary ‘Land Matters’ which portrays different perspectives and social change brought about by the Namibian resettlement program. Finally, exhibition works were used to discuss land issues with history, social science and art pupils of the 10th and 12th grade in various sessions at the German private school (DHPS) in Windhoek.⁵

‘Land Matters in Art’ was so successful that it was decided to transfer it to Berlin in 2015. By showing it at the occasion of 25 years of diplomatic relations between Germany and Namibia, is intended to initiate and to intensify bilateral dialogue and knowledge-transfer on best practices and lessons learnt in land reform and land administration after the end of Apartheid and the fall of the Berlin wall. Another objective is to foster an understanding of German diplomats, politicians and the interested public on current developments in Namibia. The project also aims to promote thinking on progressive and future-oriented approaches in coming to terms with the legacy of past grievances and racial discrimination.

7. Conclusion

Was it worthwhile carrying out the two art projects? Did they achieve what they were supposed to? Measuring the impact of such arts project is hardly possible for a number of reasons. Aesthetic experiences are highly individual and context-driven, which makes it very difficult to derive meaningful generalizations from them. Art projects will always only be one element to foster transformation and change. Complex developments are influenced by so many different factors that it is impossible to establish with any certainty that experiences with the arts had been a decisive element in bringing them about (Belfiore and Bennet, 2010). What can be observed in favor of the OYO dance project is that the number of customary land rights mapped and registered increased tremendously in 2012. Whereas only 75,827 land rights had been mapped (with 38,810 deeds entries) in the Financial Year 2011-12, numbers jumped up to 111,389 (with 52,973 deeds entries) in 2012-13. With regard to ‘Land Matters in Art’ it can be stated the competition project had high media coverage with altogether 33 newspaper articles on it from October 2012 to May 2013. The project was presented and discussed in six television programs and in various radio programs. It also appears that media reporting on land reform has become more substantiated and informed in recent years. However, despite these facts and observations, it can only be speculated to what extent the OYO dance campaign itself contributed to the registration success. Similarly, it remains unclear in how far ‘Land Matters in Art’ did indeed foster public reflection on land reform and its way forward.

When arts projects are ‘functioning’, when they are ‘with it’ and ‘sexy’, the benefits of initiating them for the purpose of dialoguing and raising awareness are apparent to all who witness the process and shows. But is also clear that such projects are no stand-alone projects. As the OYO case demonstrated in communities hostile towards the government and its programs, arts projects by themselves cannot change

⁵ This school traditionally educates a large percentage of farmers’ children of German descent. It has a German-language and an English-language branch, the latter of which mainly serves Black pupils.

people's views and behavior. They can only be part of a comprehensive communication strategy and must be accompanied by dialogue on the political level, if needed.

Organizing arts projects within the context of development cooperation or, more generally, within a public policy framework is difficult. Even though the objectives, contents and approaches might be agreed upon and understood by all parties, the ways of cooperation, project planning and implementation tend to be very different in the various sectors. It is easily conceivable that the different modus operandi of the development (or governance) world clash with approaches commonly applied in the arts scene. When engaging in such collaborations, development program managers will usually have to familiarize themselves somewhat with the different ways of thinking and operation of artists and the creative sector.

Undertaking arts projects with a political and educational impetus runs the danger of overloading the arts with too much predetermined content. If public sector institutions prescribe in too much detail how an artwork must promote a particular political idea or portray a particular topic, the artwork's quality and artistic expression might suffer. Often time compromises need to be found between artistic prerogatives and political or educational objectives. For example, when OYO was in the process composing the dance piece, the MLR and GIZ intervened to include a dance character representing a traditional authority (in addition to a communal land board representative as responsible organ for the registration). Adding another character not only challenged the dance troupe's ability to perform, it also risked complicating the narrative dance plot and confusing the audience. Luckily, OYO could manage and everyone was content in the end. However, this incident demonstrates that particular forms of art have their limits which should be observed if the artwork is to 'function'.

Intervening in the freedom of artistic expression might compromise the artworks concerned; it might also lead to producing something 'half-baked' or 'uncool' that nobody likes to see. Of course, development agencies and political actors also need to safeguard their own interests. It is understandable that a development partner organizing an arts project would have to be sensitive not to insult its very partner ministry, for example by showing pornographic or insulting artworks in the show. At the same time, it is clear that artworks are generally appreciated when they hit the tone of time and contribute to an ongoing discourse in society. Provocation is certainly one means of artistic expression in this context.

Using the arts for political and educational purposes must find the right balance in observing aesthetic basics and artistic freedom on the one hand and relaying technical or political messages on the other. What proved to be successful in the two arts projects described in this paper was to split the artistic show from the political and technical discussions in the side program. When talking about multifaceted arts and dialogue projects, a side program should complement and build on the artworks or performance presented. Ideally, this would also entail excellent workshops and discussion fora that are artworks by themselves. Successful discussion events are usually characterized by an impressive composition of topics and presentations, speakers, participants and audience, as well as facilitation, venue and timing. It is the right mix that makes it.

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Annex 1: Overview of Different Tenure Types in Communal Areas of Namibia

| TYPE | CHARACTERISTICS | LEGAL BASIS |
|-----------------------|---|---|
| Customary Land Rights | <p>-Communal land is state land, administered in trust for the benefit of traditional communities residing on that land. A Traditional Authority has the power to allocate customary land rights. However the Communal Land Board in which areas the traditional community is located must ratify the allocation before it is legally valid.</p> <p>-Customary land rights include a user right to a farming unit, a residential unit and these are transferable (with TA approval); can be inherited; can be held jointly or individually.</p> | <ul style="list-style-type: none"> - Schedule 5(1) of the Namibian Constitution - Communal Land Reform Act , No. 5 of 2002 |
| Leasehold Title | <p>-Secure long-term registered leases maybe transferred, inherited, renewed or mortgaged. These are available in both communal and commercial areas.</p> <p>-Leaseholds issued for business purposes and are for varying period starting for 3 years – 99 years.</p> <p>-Communal Land Boards may grant rights of leasehold for any portion of communal land but only if the relevant Traditional Authority and Community consents.</p> <p>-Shared leasing is also possible under the Close Corporation Act 26 of 1988. A right of leasehold can be obtained for agricultural purposes or for establishing a tourist camp in a communal area as a joint venture that has registered itself as a close corporation.</p> | <ul style="list-style-type: none"> - Common law - Communal Land Reform Act, No. 5 of 2002 - National Resettlement Policy. - National Land Policy. |

Annex 2: Registration Process for Customary Land Rights

