Altering Regulatory Frameworks in Namibia:
Merging Informal and Formal Land Tenures

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Gareth A Jones
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To Carwyn

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Altering Regulatory Frameworks In Namibia:
Merging Informal and Formal Land Tenures

Clarissa Fourie Augustinus

This chapter is an overview with examples of a much larger body of research (Alberts et al. 1995, 1996; Christensen, Werner and Hojgaard 1999). Gratitude is expressed to the Ministry of Lands, Resettlement and Rehabilitation, Government of Namibia, for permission to publish the findings of my research and that of my colleagues, R. Alberts, J. Shitundeni, A. Corbett, J. Latsky, P. Hojgaard and D. Palmer.

When Namibia became independent from South Africa in 1990, 43 percent of the land was held under customary tenure. In these areas, it was not possible to acquire any form of residential title aside from a permission to occupy (PTO), a weak form of title that was available only for commercial purposes. Moreover, the majority of customary land was located in the north of Namibia, where 45 percent of the country's population live, and had been under extended military occupation by the South African army. The urban areas there were essentially military creations that had not been established to cater for the local population in any formal sense. Consequently, informal settlement in the north was widespread, and more than 30,000 families had no secure tenure, while in most of the rest of the country a deeds registration system gave secure tenure (Christensen, Werner and Holgaard 1999).

The new government of Namibia decided that secure tenure had to be extended to the whole population. The Ministry of Lands, Resettlement and Rehabilitation instigated a program whereby the existing regulatory framework was reviewed against urban development needs. What Munkner (cited in GTZ 1998, 184) calls a "(p)articipatory law making" process was put in place, and a new land registration system was designed. This chapter examines that process and the design of a regulatory framework in Namibia.

ALTERING REGULATORY FRAMEWORKS

There are numerous aspects of regulatory frameworks that can only be altered at the national level. Often these aspects are linked to, and symbolized by, the technical processes associated with surveying and registration (Fourie 1998a; McLaughlin and de Soto 1994), which is the key reason why land registration systems are so complex and central to the issues under discussion. These technical processes include the formal subdivision of land and land readjustment processes that are key to urban land delivery, and other dealings in land, such as transfers, inheritance, donations, sales and mortgages. The technical processes also include first titling or first registration, when land (vacant or with customary or informal settlement) is brought into the formal land registration system.

These technical processes are often specifically linked to central government regulations with regard to:

- Land use controls of different government departments, which are triggered by the surveying and registration of land.
- Inheritance, marriage and divorce laws and administrative processes.
- Gender policies and issues.
- Conflict resolution processes in regard to land.
- Deceased estates.
- Bankruptcies.
- Formal service and housing delivery.

- Declaration of town lands, which in Namibia is when urban status is formally conferred upon an area, for local land administration purposes.

All these processes have an informal form that can, and does, destroy the currency and usefulness of the formal land registration and/or land delivery system. There is now an extensive body of literature on the causes of informality and how to deal with it (Fernandes and Varley 1998; Payne 1989, 1997; UNCHS 1996a). Studies range from when these areas were considered to be peripheral and were only incorporated into the city after regularization on an ad hoc basis to today, when the issue is how to incorporate informal areas in terms of a holistic, inclusive city approach. They also examine the role of the state and its officials in perpetuating informal settlement, and the understanding that the production of urban law is a political process.

To design a workable system, the informal and formal processes should be merged. As the UNCHS argues, "diversity of land-delivery systems and land-development actors...(exist, including)...those which are informal...(and)...they should be recognized as an asset and not a liability" (UNCHS 1996b). This means that the informal forms of these technical processes and the formal forms, promulgated and administered at the national level, must somehow be integrated. Such integration is critical both to urban land management and security of tenure for the poor, as well as the creation of sustainable cities as informal urban areas are generally linked to unauthorized housing and are usually not serviced. Presently "600 million urban residents in developing countries...live in housing of such poor quality and with such an inadequate provision of water, sanitation and drainage, that their lives and health are under continuous threat" (UNCHS 1999). For example, in India alone "27 percent of the total urban population…have no access to safe water, and nearly 70 percent are...without basic sanitation" (Ansari and von Einsiedel 1998, 5).

One approach, argued by Durand-Lasserve (1998), is for a "legal engineering" to include forms of behavior in "'residual' legal systems," such as customary law, that are presently classified as outside of state law, to be accepted under the law as a legal equivalent. The type of legal engineering approach advocated by Durand-Lasserve is appropriate for Namibia, largely because the country's deeds registration system is a relic of a colonial past under South Africa and had been organized to support the white middle-class farming and commercial interests. That is, the way the majority of ordinary Namibians conduct themselves in relation to land was not taken into account when the deeds registration laws were effected. Their social land tenure, although it has its roots in the customary systems, has had to be adapted to the modern state of Namibia (where customary tenure and leadership is still under debate) and to urban settlement.

The legal engineering challenge, therefore, was to merge the present practices, associated with the customary and/or informal systems of land transfers, subdivisions, use and delivery, with the formal system, in a way that involved a review of the existing registration and survey laws and their relevance to Namibian society. Such a review was broadly similar to the approach advocated by McAuslan (1998) in his overview of law and development. It took the form of a range of participatory workshops involving the full spectrum of the land agents in Namibia, as well as the use of outside consultants. An outcome of the review process was the design of a new, more inclusive registration system, which suggested the introduction of local registration and record offices and land information systems, and the retraining of professionals and local land administrators (Fourie 1998b, 1997). Only in this way could the informal and formal land tenure systems of Namibia be integrated.

This conclusion was reached by examining a local land record office in Rehoboth and assessing how to integrate the existing formal processes with the social land tenure system found elsewhere, by examining the area around Oshakati and Ondangwa in Northern Namibia (Alberts et al. 1995; 1996). Such an examination of the social land tenure system was similar to a study undertaken by Razzaz

(1998) of tribal land in Jordan. Razzaz used detailed case studies to describe the informal processes associated with the arbitration of land disputes in a peri-urban customary area, in the absence of the legal instruments usually associated with property rights. However, in Namibia, this approach was taken further. The intention of the study was to understand the existing social land tenure behavior, which was outside of the formal legal instruments associated with property rights, in order to redesign the formal legal instruments so as to incorporate this behavior.

In addition to the technical process identified above, other issues had to be addressed in the design of the new system.

- Central government policies or actions have encouraged the allocation of land titles to developers, despite the fact that the land is already occupied by customary right holders and/or informal settlement residents (Fourie and Hillerman 1997; Mekvichai 1998).
- Land registration and land record systems, in general function at a central level and are serviced exclusively by land professionals for the middle class and business (Alberts et al. 1995; Mitullah and Kibwana 1998).
- Usually technical personnel are only trained in the formal legal system and have a general perception that the informal settlement system is illegitimate and unacceptable, rather than an asset (UNCHS 1996b).
- Regulations and administrative procedures governing civil servants' jobs are written in such a way that a government official may only carry out the law. This means that the official cannot always be innovative when dealing with informal settlements (ICLTA 1996).
- There are inadequate adjudication procedures both for first titling and subsequent dispute resolution, and the capacity of trained personnel to carry them out. At first registration, it is particularly difficult to record informal loans, the nested rights of women within the family, extended family inheritance, informal land use rights including rental agreements, and group rights.
- In general, regulatory frameworks, such as inheritance laws, approaches to conflict resolution that require lawyers or laws and technical procedures put in place using donor funds are costly to the user and to the country (UNCHS 1996b).
- Registration systems are generally designed for individual users rather than groups and families (Larsson 1991).
- The records of marriage, death, divorce, identity, bankruptcy and registered land rights are often inadequate, are held by different departments, or are only accessible in the capital city. In some instances, such records are not accessible at all, even to the parties involved in a land transaction, for legal or non user-friendly reasons. (Alberts et al. 1996; Mendis 1998).

THE REHOBOTH DEEDS REGISTRY: A LOCAL LAND RECORD OFFICE

People who call themselves Basters occupy Rehoboth. By the 1990s, Rehoboth consisted of a large area to the south of Windhoek, with a population of about 35,000 people living either in the town or on the surrounding farms. The Basters first occupied the area in the late 1860s, and by 1895, the Baster Raad (Council) was keeping an embryonic book register of land titles. The Basters' land claims, within what is now Namibia, were recognized by the German administration and later by the South African colonial authorities. Proclamation No.35 of 1923 made the South West African (now Namibia) deeds registry system applicable to Rehoboth, although only with respect to land that had already been registered in the National Deeds Registry in Windhoek, the capital city. A government commission set up to investigate Baster land in 1930 raised concerns about the costs of conveyancing and the condition of the local registers. These concerns resulted in Proclamation No. 1 of 1937 to allow special certificates of registered title to be issued as evidence of title in Rehoboth. Although a local register was kept for transfers and the allocation of *erven* (sites) in the town, farm title deeds

were registered in the Windhoek registry, mostly in the 1950s, although according to regulations that were specific to Rehoboth deeds (Alberts et al. 1995).

In 1976, the history of Rehoboth's land claims and local autonomy was used by the South African colonial authorities as a basis for the introduction of the apartheid system. That is, Rehoboth became a homeland or *bantustan*. At the same time, the new Registration of Deeds in Rehoboth Act (No. 93 of 1976) provided for the creation of a deeds registry in Rehoboth. Some 318 live title deeds and 152 uncancelled mortgage bonds were transferred in 1977, from Windhoek to the Rehoboth registry (Alberts et al. 1995). The registration of deeds in Rehoboth was significantly different from that of the rest of the country, where property lawyers would guarantee property rights in the deeds system. In Rehoboth, the Rehoboth Deeds Act did not require conveyancers (lawyers) for the registration of transactions. Instead, transfers could be registered by endorsement, and separate certificates of title could be issued for undivided shares held in the same property without surveying. All these characteristics made it much cheaper for users than the central deeds registry system.

When Namibia became independent in 1990, the new government canceled Rehoboth's homeland status, but the registry remained in operation. The new Ministry of Lands, Resettlement and Rehabilitation considered it had important characteristics that might better serve the majority of Namibia than the national registry based in Windhoek, and that it should continue to exist so that it could be studied and its best aspects replicated (Alberts et al. 1995). Subsequently, a team of consultants—consisting of a land lawyer, conveyancer, deeds registrar, land surveyor and this author, (a social anthropologist)—undertook this research on the Rehoboth registry. The research indicated that a locally based office, which is user friendly, can facilitate access to land, security of tenure, land information flows and local land management for all income groups, although not for strangers.

Lessons Learned from Rehoboth: Problems and Successes

The Rehoboth registry supplies varying degrees of security of tenure for individuals (including the poor and illiterate), the banks, and, to date, against the state (which can allocate land already occupied to someone else). Sometimes security of tenure has been undermined by accuracy problems in the registry, because of skill levels and because there is no liability built into the system in regard to correctness of information in the registry. I identify four points around which it is possible to assess the successes and problems of the registry.

Information flows from the registry

Historically, registry information has been used to fulfill a range of functions for the poor largely because the information is held at a local level and is therefore accessible. These functions relate to dispute resolution, land management, estate management, adjudication of rights and legal advice, none of which are usual functions for a registry office. There is no formal management of this information, and its flow between the various role players is based on the locally known needs of the community and a historically cohesive community structure. The normal transaction relationships between the different major role players are built up over time, based on power relations, small group dynamics and community cohesion, rather than on administrative procedures and an executive division of functions and structure of information flows (Alberts et al. 1995). An example of such information flows concerns the local police, who, for example, often come to the registrar to obtain information on farm boundaries and ownership before intervening in a dispute over cattle grazing rights. As this is a semi-arid area, herders tend to cross farm boundaries with some impunity to obtain grazing for their cattle.

Linking registry information to contracts and legal advice to the public

It is often the case that registry staff know where problems arise in the registration process and attempt to preempt these by assisting people in drawing up appropriate contracts (marriage, sales

agreements, wills) and discussing such issues with other people involved in the flow of information that will end up in the registry (Alberts et al. 1995). As one of the major interpreters of customary land tenure uses, the registrar includes aspects of what could be termed indigenous interpretation of the law into these contracts. For example, where a number of farmers have pooled land at the junction of their borders, perhaps to set up a community school, the registrar will treat the properties involved differently in the case of a subsequent transfer, even though the community school might not be recorded in the registry. The registrar's interpretations have special significance in relation to women's land rights, the interpretation of inheritance, setting up of usufructs and advice on adjudication.

Linking registry information to planning and urban management
Low-level land administration officials based in the municipality have access to registry information, surveyor's plans and maps, simple surveying equipment, and can have monuments pointed out to them by a land surveyor when the original survey is done. This simple system allows the officials to undertake most land management later, within terms of the legal restrictions and rights defined (and held as evidence) by the wider society. For example, if one person encroaches on the property of another, under the national system, only a professional is considered to have the competence and legal right to demarcate the boundaries of the properties. In Rehoboth, it was not necessary to call in such a professional because of the role played by local knowledge (Alberts et al. 1995). Of course, for this to work, the local role players who supply information for land management, such as the registrar, adjudicator, pointer out of pegs and witness to transactions must have credibility within the community. This credibility is usually taken for granted when professional land surveyors, lawyers and planners are used, but must be built into a locally managed system.

Linking registry information to the adjudication of rights and dispute resolution
The registry office in Rehoboth plays an historical role in dispute resolution. That is, because registry information is available, it has been possible to undertake conflict resolution over land, land management and the assisting of individuals and the community to come to new agreements about ownership and the implementation of land use controls without using professionals (Alberts et al. 1995). An example of this is the adjudication of inheritance. As a result of the system of undivided shares, inheritance disputes are frequent and create problems for the local estates office in winding up an estate. In turn, until the estate is finalized, there can be no dealing in the land. In Rehoboth, the local Department of Agriculture adjudicates the inheritance of farms. The department obtains information from the registrar on boundaries and who has rights in the land, and then influences the coheirs to reach an agreement. This agreement is then placed on record at the estates department and finally in the registry. The "man with the best horse" in the family tends to acquire the freehold rights to the land as he is seen as the most entrepreneurial.

Rehoboth Registry's Current Role
The Rehoboth registry is fulfilling a far wider range of services than that filled by a conventional registry office. These additional services relate broadly to the supply of registry information at the local level to local officials and the supply of legal advice, information and assistance to local people off the street. However, this range of additional roles undertaken by the registrar has sometimes led to conflicts and even to court proceedings, where the registrar has had to defend himself in court. The registrar's endorsement of title deeds with respect to the inheritance of property, for example, has led to a number of court cases. Considering that the registrar is largely acting on his own, without any direction or audit control from the Deeds Registry in Windhoek, it is not surprising that such problems have arisen.

For people off the street, the atmosphere of the office means that ordinary people are happy to use this local resource. They not only come in for formal transactions, but they also often rely on the

registrar to help them with legal advice about their options in relation to their land. They also obtain legal aid in relation to estates, marriage, sales agreements and possibly even whether they can afford to bond their properties. The cost and time required to perform a transaction makes it extremely attractive to the poor and illiterate. The cost is a flat fee of U.S.$5 (N$25) and transactions can be registered quickly, often within a day of application. Finally, the other officials in the area also use the registry to try and obtain more information about development processes, land management and line function responsibilities of the various officials at different levels of government.

INTEGRATING SOCIAL LAND TENURE WITH A LAND REGISTRATION SYSTEM

Before proposing the introduction of a local land registration system for the urban areas of Namibia, an assessment was made of informal and/or customary land tenure systems to ensure that the proposed system was appropriate in regard to existing social processes. This is because there is always concern "... that the establishment of a land register strongly changes or manipulates autochthonous land tenure" (GTZ 1998, 184). In addition, a land registration system, to be effective and sustainable and to protect people's property rights, needs to be able to have access to a range of records, such as divorce, marriage and death records, and requires a set of well-established routines for the transfer of land. Consequently, the extent to which these records and routines already existed was assessed to evaluate whether a local land registration system could work.

It became clear from the research that there were many issues that would cause problems if a Rehoboth-type land register was integrated with the existing social land tenure system, and the only way forward was to drastically adapt the land registration system even further. Social land tenure issues relating to death, inheritance, marriage and informal unions, group rights, oral records and the role of customary functionaries in land designated as urban all had to be taken into account when making these adaptations to the land registration system.

To take marriage as an example, first, customary marriages often occur within the family and are not recorded in such a way that the information is freely available to a state official for the purposes of transferring title deeds. Second, marriages are not an event that happens on one day, but are rather a process that takes place over time, sometimes years. Third, to what extent some informal unions are unfinalized marriages is not always clear to an official, and this also has implications for the inheritance rights of children born of informal unions (Bekker 1995; Bekker and Hinz 1995; Hinz 1995).

Taking this further, among many Ovambo-speaking people, who probably make up about 40 percent of the population, there is often a conflict between the law and practice in relation to their matrimonial property regimes, which directly affects the way land is inherited. Conventionally, Ovambo-speaking people are matrilineal: a man's sister's son inherits his land and not his own son. Put another way, a man inherits land from his mother's brother (his uncle) and not his own father (Becker and Hinz 1995; Hinz 1995). In law, Ovambo-speaking people in the north of Namibia have tended to be married out of community of property, which ties in with the structure of a matrilineal inheritance system. But people marrying in church were often encouraged to marry in community of property, although some managed to live out of community of property, especially in relation to land, because of the matrilineal system. This meant that instead of the wife inheriting the land when her husband died, because they were married in community of property, her husband's sister's son would inherit the land, in defiance of the marriage contract and the national law.

As long as this land remains customary and unregistered, it is outside of the jurisdiction of the magistrate responsible for settling an estate. However, when the land is registered, it would form part of the estate and become the responsibility of a magistrate. In this situation, the wish of a husband in a matrilineal system to leave his land to his nephew, and the claims of his family to their family land

would contravene the law, if the man had been married in community of property. The probable result of this complex tangle of law would be that the registered property would be transferred informally to the husband's family, as it would not necessarily be in the interests of the parties involved to formally transfer the land. On a large scale this would both disrupt the social land tenure system *and* put a question mark over the usefulness and sustainability of the entire land registration system.

To avoid this problem, an unconventional regulatory approach would have to be adopted to ensure, on the one hand, minimum disruption of the social land tenure system, and on the other hand, the correctness of the land records. The parties to such a dispute would need to reach an agreement about the land prior to the estate being finalized, and then the legal agreement would inform the land registry officials on how to transfer the registered land rights. That is, the registered rights would have to be transferred in such a way as to make sure that the legal situation represented the situation on the ground as agreed to by the parties (Alberts et al. 1996).

Other groups in Namibia are patrilineal, or both matrilineal and patrilineal, and some groups have a range of different customs in relation to marriage, inheritance and the rights of children from informal unions (Bekker 1995; Bekker and Hinz 1995; Hinz 1995). The Ovambo-speaking problem outlined above is only one example of the dysfunction between Namibian social land tenure and a land registration system. Given this, the way forward is not to codify customary or informal land tenure practices. A more viable approach is to rely on local knowledge and expertise to arrive at a locally accepted consensus in both cases of dispute and/or routine cases. This could be achieved, for example, by a local land records office being able to refer cases to a committee with local expertise or by using a community court structure. Such a forum could apply civil law and local custom, be aware of local alterations in custom, possess knowledge over time and achieve a credible resolution of the dispute. Such forums already exist informally on an ad hoc basis, both within the magistrates system and the customary system, to deal with inheritance and other issues that arise on a daily basis. However, it could be argued that these officials are going beyond their legal mandate and that such processes need to be formalized in order to cover the full range of requirements, to routinize procedures and to enable financial and human capacity to be developed to undertake these routines. Finally, the courts of Namibia would have to allow the admittance of unconventional evidence in the case of a dispute.

To conclude, the material from Namibia shows that social land tenure systems will be altered over time by the introduction of even an adapted form of land registration system and the regulatory frameworks associated with it. It is not possible to have access to land and secure tenure supplied by a registration system without such adaptation of the social land tenure system.

DESIGN FOR A DECENTRALIZED LAND REGISTRATION SYSTEM

Before the outside consultants were brought in to undertake the in-depth research described above and, later, the technical design of the land registration system, all stakeholders and community representatives attended a series of workshops and consultations to address the problem of insecure tenure in urban areas. The process conformed to what Munkner describes as "(p)articipatory law making...[where]...laws...[are]...developed and finally shaped in a series of successive meetings on different levels in a dialogue involving" professionals and users (quoted in GTZ 1998, 184).

However, at the last Namibian workshop in 1994, it became clear that the research methods and knowledge development associated with such consultations and workshops were no longer creating new knowledge or delivering progressive iterative solutions, specifically in relation to the land registration system and its linked regulatory frameworks. Yet, the workshop participants saw these frameworks as central to the security of tenure and access to land issues. At that time in Namibia's

history, the expertise in the country was not sufficient to redesign some of the legal-technical aspects of the regulatory frameworks, some of which were decades, generations and centuries old. Consequently, the final workshop did not meet participants' expectations (Christensen, Werner and Hojgaard 1999), I would argue, because the knowledge base represented at the workshop was not wide enough. A small, focused group of so-called expert consultants in property law, surveying and tenure was needed to take the investigation to the next step and to work through the complexity of the regulatory frameworks and the matrix of associated variables. It was presumed that once this step had been completed the design would again become part of some form of participatory law making.

The Namibia experience highlights some conceptual limitations of Munkner's approach to the adaptation of land registration systems. While participatory law making is necessary and useful, and is frequently articulated at conferences on land matters, we need to rethink the process of participatory law development in relation to the role of experts and the post expert participation by stakeholders and citizens. In addition, we need to be aware that small expert groups are adapting cadastres and land registration systems all over the world without any participatory law making at all, precisely because it seems the only feasible thing to do in the face of complexity.

A FLEXIBLE LAND REGISTRATION SYSTEM

With respect to the design for a new land registration system in Namibia, the policy framework, but not the draft law itself, was put together by the consultants, based on the existing national laws of the country. However, the policy introduced a parallel system for the urban poor that would run inside the existing system, but also be a stand-alone system at the local level. Two additional types of titles were suggested, namely "starter" title and what came to be termed "landhold" title (Christensen, Werner and Hojgaard 1999).

Starter title

Alberts et al. (1996) describe how a starter title is a new statutory form of tenure registered in a block consisting of 40 to 100 families, which can be owned by a local authority, private sector developer or an NGO. The outside boundary of the block would be surveyed in accordance with existing regulations to protect occupants' rights against the state and outside groups. But group cohesiveness would be important because there will be no survey of the internal boundaries, and the outside boundaries are not designed to protect people from encroachment by their immediate neighbors. In practice, general boundaries such as hedges and fences will provide a measure of certainty as to the location of sites, or a community map could be used. The block will be registered in freehold ownership in the national deeds office, and the starter title would be recorded at the local property office.

The starter title would provide the holder with the following rights:

- The right to perpetual occupation of a site within the block or in a similar block.
- The right to transfer or to otherwise dispose of the right subject to local custom or a constitution of the group occupying the site to restrict transfer; and
- The right to be able to build a permanent structure without fear of being moved, but only once a layout plan for the area has been approved by the responsible government bodies.

The starter title would facilitate transfers within the block based on customary or local forms of evidence, which would obviate the problems raised in relation to the example given of the Ovambo-speaking matrilineal inheritance systems. In any case, a property lawyer does not need to prepare the documents. Rather, a local land record office should assist people with the preparation of transfer agreements and other simple transactions. This is a key issue in regard to the cost and user friendliness of the system.

Landhold title
Alberts et al. (1996) also describe landhold title, which is proposed to be a statutory form of tenure with all of the most important aspects of ownership, but without the complications of full ownership. The title would provide the owner with the right to occupy a defined site in perpetuity, to be sold, transferred and otherwise disposed of, as well as mortgaged. The landlord title would be recorded in the local land records office; registered without using property lawyers as the range of transactions would be limited and the local office staff would be trained to recognize these transactions; and allow the boundaries of the sites to be mapped by a technician, with less accuracy, rather than a professional.

The system allows for upgrading from starter title to landhold or freehold, but only where the whole group within a block decides in favor. As already noted, the starter title does not require adjudication as the title is a form of family title and boundaries will not be surveyed. But, as the landhold title is substantially more individualized, a process of adjudication would need to take place in order to ensure that the right parties become landhold owners on upgrading.

It is intended that starter title would give occupants immediate security of tenure and the Namibian government, using this approach, would be able to give legal land rights to 30,000 people living in informal settlements. People could move to landhold title or freehold later, when and if they wanted to, and if they had sufficient funds. The advantage of both starter and landhold title is that they are much less expensive and easier to use than freehold, and also accommodate better the social land tenure of Namibia. Finally, the law for the creation of a parallel registration system has been written by a local Namibian law firm and went before the Namibian Parliament in 2000. As of April 2002, however, the draft act was still subject to revision and debate, and its future is uncertain.

CONCLUSION
Previously, it seemed that people had secure tenure in terms of their own land tenure systems, and that they did not need any form of land registration. Over time, it became clear that the land rights of the poor become vulnerable when investors move into an area and urban development takes place (Mekvichai 1998). It now seems apparent that the only way to give the urban poor security of tenure is through adapting the wider regulatory frameworks for the use of the poor and ensuring that they do not only serve the elites.

The recent research in Namibia recounted here indicates that it is not possible to simply merge a social land tenure system into a regulatory framework linked to a land registration system without altering the social land tenure system. Therefore, it is not possible for the poor to have access to land and security of tenure unless aspects of their social land tenure systems adapt. Many African land tenure systems have shown an ability to adapt over time to many and various external factors (Fourie 1994). Thus, the most important design criterion for emerging regulatory frameworks and a land registration system is that they should be able to be used and manipulated by the poor for their own ends (Davies and Fourie 1996), just as elites use land professionals to manipulate the existing regulatory frameworks.

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