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# Communal Land Tenure Security for Widows in the Eenhana Constituency of the Ohangwena Region, Namibia

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## **Communal land tenure security for widows in the Eenhana Constituency of the Ohangwena Region, Namibia**

By Ndapewa Fenny Nakanyete<sup>1</sup>, Romie Vonkie Nghitevelekwa<sup>2</sup>, Mark M. Matsa<sup>3</sup>, John Mendelsohn<sup>4</sup>, Selma Lendelvo<sup>5</sup> and Fanuel Shikale<sup>6</sup>

### **Abstract**

Namibia is characterized by a history of discriminatory customary practices against women with regards to access to land, rights over land, and security of land tenure. Since independence in 1990, the country has adopted policies and legislative frameworks to bring about gender equality in all spheres of life, including the transformation of land tenure rights. These policies and acts give effect to the constitutional provisions that accord both men and women equal opportunities for access to land, rights over land and security of tenure. Widows are a particularly singled-out social group for legal protection, land security and rights to land enjoyed during their spouses' lifetimes, and are granted protection, at least on paper, from discriminatory practices such as unlawful land evictions. This article evaluates and analyses the current status of land tenure security for widows in the Eenhana Constituency of the Ohangwena Region in Namibia. The study employed both quantitative and qualitative methods through questionnaires, interviews and focus group discussions with widows, as well as key informant interviews with Communal Land Board representatives, members of the traditional authorities, as well as the Ministry of Land Reform's regional office officials. Through this case study, the findings establish that even though Namibia acclaims progressive policies and legislative frameworks on gender equality, there are still pockets of discrimination against widows where they continue to be at risk of losing their land rights in some of Namibia's communal areas. Addressing the land tenure insecurities and a guarantee of legal land rights for widows is key to reducing vulnerabilities within female-headed households in the communal areas. Traditional authorities remain a key governance structure in communal areas, particularly in relation to access to land, and land rights inheritance issues, amongst others. Similarly, the Communal Land Boards are statutory institutions mandated to ensure implementation of the provisions of the Communal Land Reform Act of 2002, including the protection of land rights for widows. The study therefore recommends three main measures: the removal of all forms of discriminatory customary practices against widows; continued awareness-raising initiatives on the rights of widows; and full implementation of legal provisions for the protection of widows' land rights and security of tenure.

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## **Introduction**

There are limited, global, gender-specific statistics on land tenure and ownership. However, during the 2017 Annual Meeting of the World Economic Forum, it was estimated that less than 20% of the world's land is owned by women (Villa, 2017). Such gender disparities in secured land rights expose a vast majority of women to various forms of vulnerabilities such as poverty, food insecurity and gender-based violence. This discriminating distribution of land rights is despite the fact that women make up just under half (43%) of the agronomic labour force (FAO, 2014), a significant proportion that urgently requires new and more effective land redistribution policies.

When it comes to land tenure and ownership, Africa is generally regarded as one of the continents with the highest gender inequalities in the world. Since their inception in the 1960s, programmes for securing land tenure on the continent have predominantly focused on the premise of agricultural development and general social progress. Little attention was given to addressing gender inequalities inherent in customary practices, especially discrimination against widows. According to Doss, Kovarik, Peterman, Quisumbing and van den Bold (2013), women in North Africa and Sub-Saharan Africa only make up less than 5% to 15% of the total agricultural landholders in those regions, respectively.

Lack of security in customary land rights for women has contributed to different forms of conflicts through land grabbing and invasions (Augustinus & Deininger, 2006). In various African countries, land under customary systems rendered restricted access to women, with minimal or no possibilities to be landholders or to inherit land rights from their deceased husbands (Knights, 2010). Statutory laws find difficulties in addressing some of these forms of injustices emanating from patriarchal customary systems. Widows in rural areas are among the most disadvantaged people, with widespread gender-based discrimination, land grabbing and invasions (Carpano, 2010). Statutory policies and laws have been passed to enable landholders to have the freedom to use, develop or bequeath land to heirs. However, statutory laws also experience challenges in addressing some forms of injustices emanating from patriarchal customary systems, resulting in the persistence of land tenure insecurities for widows. The International Justice Mission (2014) points out that the payment of bride-price, which is frequently practised in many African countries, presents a perception of women as purchased property who are not eligible to own property of their own, including land.

Changes and debates on security of land tenure have been widespread over the years and have been accompanied by policy and institutional reforms to ensure security of land tenure across different land types, targeting different social groups. After independence, many African countries including Namibia changed their respective policies and legal landscapes of land governance to bring about gender equality and protect the land rights of women, and in particular, widows. These are legislations that more governments in Africa need to pass to ensure continuous, progressive change.

Strengthening land ownership or tenure has the capacity to contribute greatly to economic growth. Secured communal land tenure affords landholders the freedom to use, develop or bequeath land to heirs. Secured land rights also allow owners to restrict unlawful access to that land, while using and protecting natural resources located within it. According to Knights (2010),

legal systems for land rights are important for land governance in providing land security or regulation of its use thereof.

Many constitutions in African countries today provide modern, fundamental principles for women to have equal rights to land (Kameri-Mbote, 2006). Through effective laws, women could access land, register land rights and acquire land titles independently with no authorization from husbands or male relatives. However, in the customary settings, widows still lose access or rights to communal land. In some occasions, a woman is only allowed to remain on her matrimonial land and/or home until her husband's death; otherwise, only through (re)marriage to a family member of her deceased husband (Kameri-Mbote, 2006). It is further argued by Carpano (2010) that widows in rural areas are among the most disadvantaged as a result of discrimination based on traditional customs and practices.

In Sub-Saharan Africa, there are few published regional cases where progress has been made on equal distribution of land rights, based on gender and marital status. One of those few cases is Tanzania's current legislation that is noted to be an exception because it guarantees equal rights to acquire, hold, use and deal with land for both women and men. Even in communal land areas, a village council may not adopt discriminatory practices or attitudes towards women who have applied for a customary right of occupancy (Dancer, 2017). Such a system could be appropriate for Namibia, where communal areas are regulated by customary practices that generally still favour men as preferred land rights holders.

In pre-independent Namibia, women faced several land injustices (Werner, 2008). In general, women could only access land through their male affine. As such, they mainly had access to the use of land but were not allocated land rights. During the colonial times, husbands left their "homelands" for contract labour jobs in other locales, leaving the wives to farm and manage the land even though the land rights still remained with absentee husbands (Hishongwa, 1991). Some husbands never returned to their matrimonial lands, as they remarried and remained in urban areas while others died. After the death of their husbands, widows would be evicted from the lands they once accessed in matrimony. There were no laws to protect them against such injustices. It is a custom in several societies in Namibia for land to be taken over by the husband's male relatives, usually a nephew of those in matrilineal systems, who is appointed by the next of kin to take control and manage the assets left by the deceased. The surviving spouse and the children may have little to no rights to inherit such assets, even if the spouse and the deceased had acquired the land jointly. Female spouses are not regarded as members of the deceased's matrilineage, and their children are generally regarded as belonging to their mother's lineage and therefore lacking the right to inherit from their father's estate (Meijs & Kapitango, 2012).

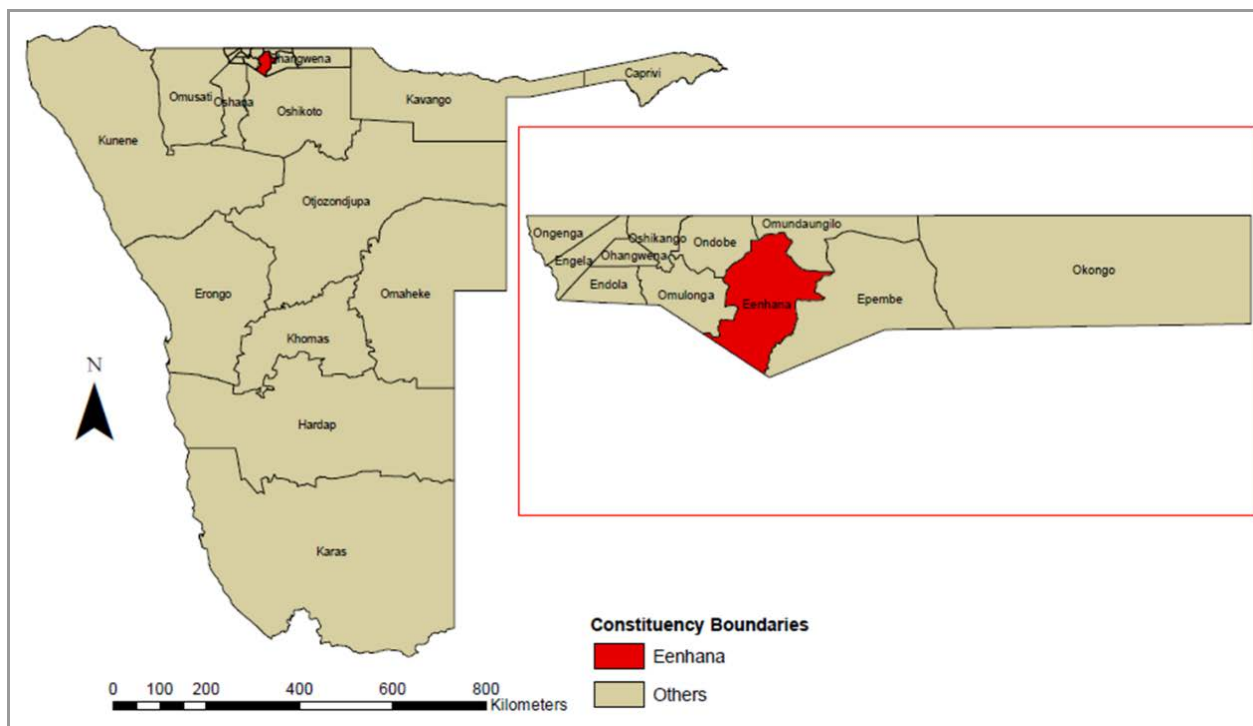
However, policies and the legal landscape in independent Namibia have made it favourable for women's rights, including widows, to be protected (Werner, 2008). The protection of women, widows in particular, is provided for in the country's Constitution, as well as in policies and laws such as the National Gender Policy 2010-2020, the National Land Policy and the Communal Land Reform Act of 2002 (Act No. 05 of 2002). Before such policies and laws were enforced, injustices against women were perpetrated not only in terms of access to land and/or land rights but also in decision making processes and institutions. There were minimal representation and participation of women in decision-making institutions that control and regulate access to land. To this date, women's representation in traditional authorities, which are the primary institutions controlling access to land in communal areas, is very low. The Communal Land Reform Act of 2002 provides for a quota of four women out of an average of

12 members of the Communal Land Boards. Communal Land Boards are institutions established through the Communal Land Reform Act of 2002 to ratify land rights that are allocated by the traditional authorities (Republic of Namibia, 2002). Land rights that are allocated by the traditional authorities, but not subsequently ratified by these Communal Land Boards, do not have legal effect. The Communal Land Boards, therefore, give statutory recognition of land rights allocated in communal areas. This is an effort by the government to close the gender gap in such governance structures over land, and a platform to provide an efficient and fair decision-making position for women in policies and legal reform.

While it can be celebrated that Namibia has passed progressive laws that attempt to close gender gaps in decision-making and protect the rights of women in general, there are still some pockets of injustice against women, especially widows. Widows remain vulnerable to evictions and land grabbing at the expense of their deceased husbands' families. This study aimed to evaluate and analyse the current status of communal land tenure security for widows, based on current legislation and institutional reforms, in Eenhana Constituency of the Ohangwena Region, in Namibia.

### **Description of the study area**

The study was carried out in Eenhana Constituency, Ohangwena Region in north-central Namibia (Figure 1). Eenhana Constituency is home to the town of Eenhana, the regional administrative capital of Ohangwena Region. As such, government agencies and service sector industries are concentrated in this town. The region is largely under the jurisdiction of the Oukwanyama Traditional Authority, with a few villages falling under the Ondonga Traditional Authority. Ohangwena Region is predominantly rural with more than 80% of the population living in rural areas (Namibia Statistics Agency, 2012). Being predominantly rural, the main land tenure regime is communal, where access to land is the responsibility of the Traditional Authorities. Traditional Authorities in Namibia function under the Traditional Authorities' Act of 2000, in addition to their own respective customary laws. They are also given the legal mandate as primary institutions responsible for land allocation in communal areas, by the Communal Land Reform Act of 2002. Traditional authorities are hierarchical institutions comprising of the supreme leaders locally called *ohamba* (pl.) in Oshikwanyama language or *omukwaniilwa* (pl.) in Oshindonga, under whose rule senior traditional councillors and village headmen are found. It is the village headmen that allocate land.



**Figure 1:** Location of the study area within Namibia

Like many other rural areas within Namibia, land is an important asset and is one of the main bases of households' livelihood. Ohangwena is one of two regions in Namibia with a large proportion of households (27 %) that are dependent on subsistence farming as the main basis of livelihoods (Mouton & Dirkx, 2014).

According to the Namibia Statistics Agency (2012), there were 21,089 people living in 4,203 households in Eenhana Constituency, of which 73.8% of households were in communal areas. 27% of these households indicated subsistence farming as the basis of their livelihoods, followed by wages and salaries that account for 29% (Namibia Statistics Agency, 2012). Furthermore, the Region was estimated to have 6,603 widows, of which 626 lived in Eenhana Constituency (Namibia Statistics Agency, 2012). The high proportion of land under communal land justifies the large percentage of households indicating subsistence farming activities and related income as their main source of income.

## Data collection methods

### *The mixed-methods approach*

The study followed a mixed-methods approach, which allows for the application of a parallel data collection process involving both quantitative and qualitative methods and integrating these different forms of data into the analysis (Creswell & Clark 2011). As an advantage, the approach gives extensive and in-depth knowledge on the subject at hand through the integration of numeric tendencies from the quantitative techniques and the descriptive evidence from the qualitative methods (Creswell 2014). A mixed-method approach enables researchers to identify aspects more accurately by approaching them from different perspectives with context-specific approaches or instruments (Bryman 2006). As such, qualitative approaches

maintained the acquisition of detailed effective information, while with quantitative approaches, statistical data was obtained for generalizable predictions of cause and effect. Methods used in this study included key informant interviews, focus group discussions (FGDs) and questionnaires. Since this study involved a vulnerable and difficult to reach the population of widows, various research techniques were triangulated to the desired and adequate information.

### *Sampling*

The non-probability snowball sampling method was used for the selection of participants for interviews and survey, as interviews were primarily conducted with widows who had not registered their land rights with the relevant authorities such as the Ohangwena Communal Land Board in Eenhana. This technique was chosen for its convenience in facilitating the tracing of hard-to-reach populations like the unregistered widows as most of them could only be located through references from other widows. Two widows who were randomly identified and initially interviewed were asked to help locate other widows they knew in their villages or constituency. This sampling technique was used for both the key-informant interviews and questionnaire survey.

The same snowball sampling technique was also employed to generate a chain referral for respondents, due to the fact that the targeted sub-group of the population was sporadically distributed across the constituency. Although this sampling technique is primarily common to qualitative research design, its use in quantitative methods such as questionnaire surveys for concealed populations becomes relevant above probability random sampling procedures (Frank & Snijders, 1994). The significance and rationale for applying snowball technique was to establish a sample diversity of the widows which can be termed “a difficult-to-reach or hidden population” (Valerio et al., 2016; Kirchherr & Charles, 2018). Snowball technique normally takes advantage of well-known social networks of the targeted group (Valerio et al., 2016). Samples from hidden populations using snowball sampling technique are generally smaller, which is a limitation of the technique but should not disqualify the use of quantification of these hard-to-reach populations (Kirchherr & Charles, 2018).

### *Data collection procedures*

Qualitative data collection methods were key-informant interviews and FGDs, which documented a variety of experience-based perspectives based on actual dynamics, probing for an in-depth comprehension of issues of land tenure security for widows. This also allowed for the construction of abstractions, concepts and hypotheses from details collected (Creswell, 2013). Key-informant interviews allowed for in-depth individual views of the widows, while group discussions provided a platform for the widows to share their experiences including similarities and differences. A sample of 15 widows was interviewed in the study area. Representatives from both the Ohangwena Communal Land Board, Ministry of Land Reform and the local level members of the traditional authorities of Ondonga and Oukwanyama were also interviewed as key informants. They were selected as key informants primarily because their functions are at the core of communal land allocation and administration in Namibia. They provided an opportunity for the study to document the views of government and traditional leadership on land security issues related to widows.

Furthermore, two focus group discussions involving 15 participants each were conducted. One of the groups comprised exclusively of widows. Given that this study was particularly gender-sensitive and involved a vulnerable group in the community, such a platform was

essential to enable the widows to participate as freely and confidentially as possible. The other group was mixed comprising of widows and widowers. The purpose of the mixed groups was to allow interacting discussions among the two involved parties, in terms of land tenure security upon losing their partners. Participants in these group discussions were selected from diverse backgrounds to encourage multi-dimensional interactions among members and therefore provide diverse information. Unlike interviews, where only widows without land rights certificates were interviewed, focus group discussions comprised of both widows and widowers with or without certificates. The focus groups were prepared such that those who had certificates shared their success stories, while those who had no certificates shared their challenges registering for land rights.

In addition to interviews and discussions, questionnaires were deployed to determine a proportion of the widows' demographic data, elicit their predetermined viewpoints, and to obtain quantifiable information (Welman, Kruger & Mitchell, 2005). A sample of thirty-five (35) widows within Eenhana Constituency was therefore identified for the questionnaire survey, which consisted of both open-ended and closed-ended questions. The semi-structured questionnaires were conducted face-to-face. The small sample was due to the limited and sparse nature of the population, which led to difficulties in locating widows for interviews. This was also the main reason for employing a non-probability snowball sampling method, especially considering that some widows were not registered with relevant authorities.

## **Findings**

### *Social status aspects*

Of the total 35 widows who participated in a survey as respondents, only eight were aged between 35 and 55, the rest (26) were above the age of 56. This means that the majority were senior citizens with limited to no available avenues of waged-employment. This is corroborated by the results which reveal a 94% rate of unemployment among the respondents. Unemployment is a serious social problem in Namibia, with a recent national report estimating the total unemployment rate at 34% of the national population (Namibia Statistics Agency, 2018). The Ohangwena Region, where this study was undertaken, has one of the highest unemployment rates. The unemployed widows indicated farming and selling pearl millet (*Omahangu*) as a source of sustenance. This means that land remains important as one of the bases of their livelihoods in addition to remittances, social protection grants, and income from small retail businesses. Widows above the age of 60 indicated receiving a monthly old-age social grant of N\$ 1100 from the government (equivalent to US\$ 79.41).

Although unemployed, widows in the study area were found to be highly involved in voluntary community initiatives such as HIV/AIDS women support groups, school-based initiatives and church activities as committee members. No allowance was given for this volunteer work, so the widows were simply doing these jobs for the well-being of their communities. While such activities had no monetary returns for the women, they remain significant societal roles to various women.

### *Land inheritance, eviction and division*

The survey results revealed that the majority (83%) - had not been evicted from the respective lands they occupied with their late husbands. The high proportion of widows remaining on their matrimonial land and home is a significant reflection of the improved protection of widows' land rights in post-independent Namibia. It also reflects the fact that statutory laws like the National Land Policy, the Communal Land Reform Act of 2002 and Namibia's overall move towards greater gender equality is yielding positive results. However, a sign of vulnerability to eviction from matrimonial land, as well as the occurrences of it, were shown by six respondents who reported to have lost occupation of such land after the death of their husbands. Among these six widows: four moved from the villages of their matrimonial land to other villages but remained within Eenhana Constituency. The other two moved to two separate constituencies. Our interest here is the experiences of these remaining pockets of injustices against widows, which may be subsumed and therefore underplayed as a result of the above positive statistical findings. The interview extract in Box 1 below is an example of how a widow was evicted from the land she once shared with her husband:

*"On 17 December 2014, my husband died in my hands while on our way to the hospital. After his passing, they came with machetes ready to fight and remove me from the land. They took our marriage certificate claiming that they needed it to go and register his death for a certificate the same day he died. The most painful thing is that they refused to even provide me with a copy of the death certificate. It was really tough during that period after his death. I got evicted from the land by his relatives and the headman was in support of my in-laws. It was very bad. Every time I go to the headman, he just keeps on sending me back without listening to my problem."*

**Box 1:** Unremorseful eviction of a widow from her matrimonial land by relatives of her deceased husband

Another widow narrated how not bearing children in the marriage was used as a reason for her eviction:

*"...if the widow didn't have children with the deceased, it's a very big problem. In my case, I didn't have any children with my husband, and his relatives believed I was the one who could not have children even though I had children before I married him. They felt that I did not have the right to inherit the land because I did not bear a child into our matrimony...."*

**Box 2:** Widow evicted for not bearing children with husband

Eviction of widows was not just done physically. In one case, a widow was allowed to remain in the matrimonial homestead, but land tenure rights were given to and registered under a different person's name; a male member of her late husband, as shown in the excerpt below. *"My husband and I settled somewhere else in 1969 before we moved here 10 years later to look for better land. A few years later, he got a second wife and made her 'okaumbo' (a little house) on our land. The two had a son. Before he passed away, he went to the headman to request that his land be registered in the name of his son who does not even live here. I am allowed to live here in my homestead, but the land is not under my name. I do not know what will happen to my grandchildren when I am gone."*

**Box 3:** Lost land rights coupled with concurrent retention of the homestead

Furthermore, the study established that close to a third of the widows that participated in the survey had their matrimonial land divided upon the passing of their husbands. In most of the cases, widows were allocated the smallest parcels of the newly divided land. The individuals living on the bigger parcels were usually the deceased's relatives. The excerpt below (Box 4) narrates how a widow's matrimonial land was about to be sub-divided to accommodate her late husband's relatives until a headwoman intervened. This reflects variances in the legal understanding, and inclination towards the protection of legal rights of widows, within members of different Traditional Authorities. A further extrapolation is that women as traditional leaders may be more empathetic and politically empowered to protect widows from unlawful land evictions.

*".... one of my husband's relatives came to our house. He found me busy selling fat-cakes, with my friend who was also a widow... She had also been evicted from the land by the relatives of this same man. He came with his son, angrily claiming that the land where I was living on was not my mother's land and that it belonged to his mother. He then informed me that the field must be divided. I refused to agree to his command and told him the field was already too small to be divided. He then started insulting me and calling me all sorts of names... then we went to the headwoman. As a solution, the headwoman made it clear that she was never going to accept payment for the land because if she does, she would have violated my rights as a widow as well as the laws that protect widows".*

**Box 4:** Calling for sub-division of land by the husband's surviving relatives

The above excerpt highlights the remaining gaps in addressing traditional inheritance issues. Even where the relevant statutory laws are protective of widows' rights to land, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country. Eviction from land of widows created situations of vulnerability as widows try to search for available land elsewhere, which can be difficult to obtain. Widows interviewed complained of diminishing land availability while traditional authorities complained of limited land for allocation. Land evictions mean the widows are left destitute and/or left to seek refuge in the land of extended family members.

*Payment of "ombadu yekaya"*

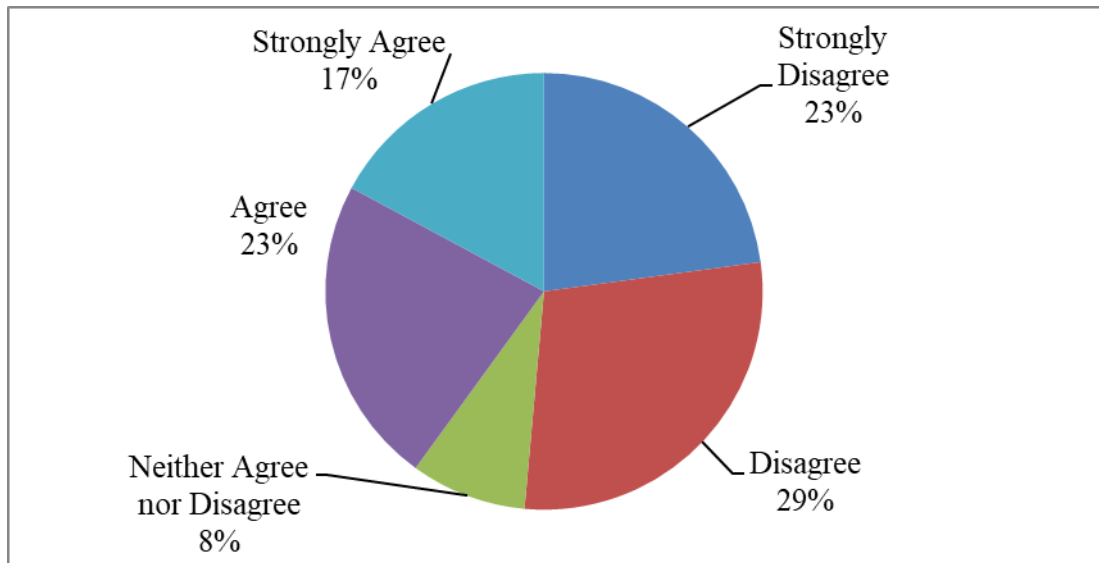
*“Ombadu yekaya”* is a term derived from the traditional custom of the Ovakwanyama people. It represents a token of appreciation to the traditional authority for allocated land. Currently, access to land in communal areas is not paid for; however, it is custom for landholders to give *ombadu yekaya*. *“This custom came about during the contract labour system during the colonial era, where people who obtained jobs would present tobacco or snuff to the traditional authority, local leaders or parents as appreciation”*, says one key informant from Oukwamyama Traditional Authority. Over the years, this custom has been instituted within customary regulations and enforced by the traditional authorities. Based on the survey findings of this study, the majority (60%) of widows reported that they did not pay any fees to the headmen to remain on their matrimonial land. However, 40% of the respondents indicated that they paid money in respect of *“ombadu yekaya”*. The indicated amounts paid ranged between N\$50 and N\$600, with the majority indicating the exact amount they paid as N\$600. Although the practice was initially voluntary, some widows now do it out of fear of losing their land. Some of the widows were of the impression that the payment to the traditional authorities to get the certificate was required by statutory law, as narrated by a widow in Box 5 below:

*“...I think the headwoman did register it under my name because it’s my name that is always called since then whenever there is something that has to do with this land; but I don’t have the land certificate because I cannot afford to pay for it.”*

**Box 5:** Limited knowledge of the land registration process after the death of a spouse

#### *Perceptions of respondents on security of land tenure*

Security of land tenure and the attendant disputes for widows after the death of their husbands are both handled differently by the Traditional Authorities. The interviews with widows revealed that 40% of the respondents believed that traditional authorities apply more traditional norms when dealing with disputes, while 52% of them felt that traditional authorities did not necessarily use the traditional point of view to resolve the disputes, rather choosing to apply state laws (Figure 2). The rest of the respondents (8%) were indifferent regarding how such disputes were handled. While there have been advances in securing widows’ land rights, the implementation of such laws remains challenged and hindered by traditional norms and practices.



**Figure 2:** Perceptions of widows on whether or not Traditional Authorities apply customary laws during communal land disputes

Respondents further listed three main factors that contributed to communal land insecurity for widows upon the passing of their husbands. These included the wealth of the husbands, polygamous traditional marriages/relationships, and occupation of long generation-held family land. Wealth was identified by fourteen (14) widows as a cause of disputes due to relatives competing for equal rights with the widow to inherit from deceased estates. Although polygamous marriages are not legally approved in Namibia, these marriages occur customarily and are recognised by various Traditional Authorities (Ovis, 2005). Secondly, ten (10) respondents indicated that polygamous marriages contributed to disputes and land insecurities after the passing of the husband. 29% of these widows agreed that losing a husband within a polygamous marriage brings about several complications for women because the widows are then expected to share the land, financial resources and other assets. A male representative of the Oukwanyama Traditional Authority contributed to the group discussion as follows (Box 6):

*“There are men in our communities who have more than four traditional wives. In that case, the traditional authority would choose the older woman as the rightfully married one. If the husband passes on, the other three would then be chased away from the land, because they don’t have marriage certificates. Even in the case where the husband had assets, these three widows would not get any share. The reference letters from the traditional authorities do not really give power to widows. Statutory laws and traditional customs contradict one another; they do not always protect everyone’s land rights.”*

**Box 6:** Example of how Traditional Authorities deal with widows from polygamous marriages

Lastly, it was perceived by 31% of the respondents that land disputes with widows are as a result of men not officially registering the land that was allocated to them from family acreage – in other words, land that has been held by the family from one generation to the next. It emerged from the group discussions that it is a common custom in northern Namibia for fathers to allocate a portion of land to their sons. Although the Communal Land Reform Act of 2002

made provision for the registration of such portions, people had a tendency of delaying this registration process. It was indicated in the group discussions that some widows who stayed with their husbands on unregistered or inherited family land were evicted.

#### *The Role of Traditional Authorities, Ministry of Land Reform and Communal Land Boards*

During key informant interviews with the Ministry of Land Reform, the Oukwanyama and Ondonga traditional authorities, it was shared that the changing of roles in land administration between the traditional authorities, the Communal Land Boards and the Ministry of Land Reform had weakened the traditional authorities' ability to handle land-related disputes. Traditional authorities in some cases were expected to solve land-related disputes before they went to Communal Land Boards, but in many cases where people obtained their land right certificates, it became difficult for the respective traditional authorities to intervene. The discussions emphasized the order in the regulations of the Act when dealing with land disputes, which assist the traditional authorities to work together with the Communal Land Boards and the Ministry of Land Reform. In Box 7 below, a representative of the Ondonga Traditional Authority poses a question:

*"What does a certificate really represent? I am asking because nowadays, it is all that matters for one to claim their land rights. When we start questioning some irregularities, one basically claims "this is my land right proof", and that is it. Currently, there is a significant difference between how we used to deal with matters traditionally and how we are expected to deal with them along with the government today."*

**Box 7:** The importance of land tenure certificates in communal areas.

As much as the traditional authorities had been actively involved in resolving disputes to secure land rights for widows, especially in the case where extended family members of the deceased attempted to evict a widow, some traditional authorities still faced difficulties in resolving such land disputes. Communal Land Reform Act stipulates that communal land belongs to the state, but the right to divide and allocate land to people in the communities under its governance is under the functional jurisdiction of the traditional authorities. The representatives of the traditional authorities emphasized that the role of traditional authority is to protect its people. They also indicated that the Communal Land Reform Act is relatively new as it was only passed in 2002 and requires the application of modern societal concepts. A land rights offender at State level may not be considered the same from the perspective of customary law, due to traditional practices such as polygamous marriages. People were advised to seek professional legal representation; however, the view from the group discussions indicated a distinct lack of fairness in that avenue (Box 8):

*"The legal way of dealing with disputes does not provide fairness, even when Section 28, Subsection 14 clearly clarifies the inheritance procedures of land rights. Lawyers just say things that they did not even see, but the traditional way is fair because there are witnesses to what happens in our community".*

**Box 8:** Respondents' perceptions of lawyers involved in land disputes

It was further commented by both widows and leaders that the Communal Land Reform Act was very clear; however, it was likely to take many years for the traditional authorities to fully understand and incorporate its requirements into local customs. The Oukwanyama Traditional Authority, in particular, had been without *ohamba* (a king or queen) for a very long time, and people had been doing whatever they pleased. It was said by FGD participants that even with the coronation of the current *ohamba* (Queen), traditional customs were still not being properly followed because traditional leaders in different places applied what suited them. Such a leadership crisis and uncertainties could contribute to land insecurity and vulnerability among widows, which might exacerbate poverty among women in the Ohangwena region. Traditional authorities do not always have the power to regulate land grabbing and the eviction of widows from matrimonial lands. This often left a number of widows and their children destitute and without shelter, as expressed by the widows' excerpts in section 4.2 of this paper.

The marital status of a woman hugely influences her control and access to land for most rural areas. Widows face widespread discrimination with regard to land rights upon the deaths of their husbands. In some countries including Namibia (Chifamba, 2012; Hannay, 2014; Werner, 2008), in-laws forcefully evict widows. Gender-based violence and discrimination are generally common in numerous African cultures. Despite improved widows' land rights by common law, widows' rights to control and inherit land are still often delayed. One of the senior widows had this to say:

*“The government should get involved in such disputes because people would only have fear for the government; they are not scared of us. Both the government and the traditional authorities should therefore work hand-in-hand to fully protect our rights.”*

**Box 9:** Suggested collaboration between Traditional Authorities and the government.

## Discussion

The aim of this study was to evaluate the current status of communal land tenure security for widows in Eenhana Constituency of Ohangwena region. The results revealed that even though communal land is currently regulated by statutory laws, some widows continued to lose their land rights while others were challenged with securing their land rights upon the death of their husbands. This is supported by Kafumbe (2010) who indicated that even where the relevant statutory laws are protective of widows' rights to land, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country.

It is clearly stated by the Communal Land Reform Act of 2002 that women should have equal rights in applying for customary land rights as men. Additionally, the Act's intention is to protect the surviving spouse of a deceased holder of customary land rights by re-allocating such rights under her or him. However, the results obtained from this study indicated that some widows in Eenhana Constituency lost their land rights through evictions, while other widows who could remain on the land had to allow the division of the said land and/or present a payment of “*ombadu yekaya*” to acquire the land rights. Land disputes and “*ombadu yekaya*” offerings were usually made only a few days or weeks after the death of the land rights holder, putting widows under immense pressure and stress. Recently reformed laws do not always make provision for traditional norms that are prominent in customary land practices. Widow abuse is still visible across ethnic groups, income, class and education (United Nations, 2001). Parallels

are drawn in other countries like Zimbabwe, where Chifamba (2013) explains that widows become victims of patriarchal traditions when in-laws evict them out of their matrimonial homes. Many who remain on such land do so at the goodwill of their in-laws or traditional leaders.

Despite the improvement of widows' land rights by statutory laws, their rights to secure land tenure is sometimes hindered through customary practices that are often not recognised or accounted for by these laws. Practices such as polygamy bring conflict among widows, in the form of disputes about who should inherit the land in cases where the deceased husband had more than one wife, and specifically when one widow was married legally and the other(s) customarily. Although polygamous marriages are not legally approved in Namibia, instances of such marriages have been reported in Eenhana Constituency and are actually recognised by some traditional authorities. Le Beau (2005) reported that about 12.5% of women in Namibia acknowledge their husbands to have more than one wife, which can be a source of post-funeral conflict. Research findings revealed cases where legally-married wives had become separated from their husbands without a legal divorce, only to return and claim the land after the husband's passing, leaving the second widow disenfranchised. The laws often ruled in favour of these "legal" widows since they had a legally recognized marriage certificate. On the other hand, this meant that traditional authorities would be less likely to make decisions based on common law and would likely rule in favour of traditionally married wives if land rights authority was reversed. The Communal Land Reform Act of 2002 does not specifically indicate what should happen in cases where a husband had more than one wife. This is, however, one of the most difficult disputes that the surveyed traditional authorities indicated dealing with.

## **Conclusion**

In conclusion, marital status continues to be a significant determinant of communal land access for women in Eenhana Constituency of Ohangwena Region. Widows do not automatically inherit land rights of the land that they lived on with their deceased husbands. Land tenure security for widows generally depends on the type of relationship widows have with maternal relatives of their late husbands. Matrimonial land access and tenure through husbands' parents or other maternal relatives possess a significant chance of a widow being evicted or threatened to be evicted upon losing her partner. Meanwhile, even in instances where land is acquired jointly by spouses, customary beliefs of land right and control to be male-led, puts women in vulnerable positions after their husbands have died.

In this study, various other factors that determine secured land rights widows', were revealed, namely: wealth, polygamous marriages/relationships, and discrepancies in the registration of inherited family land. Current practices on land tenure and rights of land remain significantly influenced by customary norms that community members still conform to. Some interlocutors were of the view that the eviction of widows from customary land cannot be simply defined as theft or discrimination against widows, due to complexities involving multiple of actors on household, family and traditional authority levels. Traditional authorities or the Communal Land Boards have limited power to control land eviction of widows. Similarly, the provisions of Communal Land Reform Act have not yet been fully applied to uproot these injustices. Meanwhile, complexities at household and family level, of widows' evictions are explained within the context of long-generation held family lands. More research is needed to unpack these complexities specifically to include the voice of the perpetrators of evictions.

Understanding these complexities will allow better resolutions of these injustices against widows.

### **Recommendations**

In light of the findings and conclusions of this study, the following recommendations are suggested:

- The Ministry of Land Reform and the land boards should continue conducting information campaigns on the provisions of the Communal Land Reform Act involving, inclusively, all members of the society to ensure that even widows and other vulnerable groups have access to information and understand their rights;
- A review should be conducted on the Act to allow for amendments that would better protect communal land rights for widows including those married customarily.
- Traditional leaders, in collaboration with local Ministry of Land Reform entities, land boards and law enforcement agencies, should protect widows during unlawful land grabbing and other related disputes, ensuring that cases are dealt with fairly and lawfully.
- The Ministry of Land Reform and the land boards together with the traditional authorities, should embark on an aggressive information campaign to educate widows about their communal land rights after their husbands have become deceased. This can be done by organizing public talks with community members in rural areas.
- The Communal Land Board, or some other separately established body, should be empowered to specifically deal with communal land rights for widows in rural areas and improve service delivery.
- There is a need for the government and Traditional Authorities to identify common understanding of land and customary matters in order to reduce contradictions between customary and common laws, to reduce insecurities and vulnerabilities among the widows.

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