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Integrated Land Management Institute  
(ILMI)

13 Storch Street  
Private Bag 13388  
Windhoek  
Namibia

T: +264 61 207 2483  
F: +264 61 207 9483  
E: [ilmi@nust.na](mailto:ilmi@nust.na)  
W: [ilmi.nust.na](http://ilmi.nust.na)

Working Paper No. 6  
**The Flexible Land  
Tenure System in the  
Context of the Sustainable  
Development Goals**

**Åse Christensen**

Department of Land and Property Sciences  
Namibia University of Science and Technology

## ABSTRACT

The purpose of this study is to investigate whether the Flexible Land Tenure System (FLTS) in Namibia is in line with the Fit-For-Purpose (FFP) land administration approach which is developed in order to implement the Sustainable Development Goals (SDGs) at national and local level in developing countries by providing tenure security to poor people and creating country-wide land recordation systems. The FFP approach is based on a Minimum Viable Product focusing on the specific local tenure security needs, flexibility on survey accuracy, legal and institutional frameworks and an incremental improvement as a foundation for further development. The study is based on a literature study of the SDGs, the FFP approach and the FLTS in Namibia. The literature study is based on contemporary theories on land administration and how access to tenure security can contribute to poverty alleviation. The study indicates that certain elements of the FLTS are complying with the characteristics of the FFP approach and thus has potential to contribute to fulfilling the SDGs in Namibia. There is however a need for further in-depth academic research.

**Keywords:** Sustainable Development Goals, Fit-For-Purpose Land Administration, Secure Land Tenure in Namibia, Flexible Land Tenure System in Namibia.

**Åse Christensen**

Namibia University of Science and Technology  
Department of Land and Property Sciences  
[achristensen@nust.na](mailto:achristensen@nust.na)

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## 1. Introduction

The present working paper is work in progress and based on a literature review conducted in regard to the development of a Ph.D. proposal and is an elaboration of an extended abstract submitted to the Institutional Research Week at Namibia University of Science and Technology in November 2016. The purpose of this working paper is to briefly explain and create the link between the current global development agenda as stipulated in the Sustainable Development Goals (SDGs) and the overall tenure security context in Namibia and further associate it to the Flexible Land Tenure System (FLTS) as developed in Namibia and stipulated in the Flexible Land Tenure Act (FLTA). The study is based on contemporary international theories on land administration, poverty alleviation and tenure security which have replaced the “conventional” land administration paradigm introduced in many Sub-Saharan African countries during the colonial period. The “conventional” approach was centred on traditional Western style land registration and cadastral mapping which has proved not to be “conducive to local conditions and capacities” and most often favours the elite only, while being biased against the poor and low-income people (Simbizi, Bennett, & Zevenbergen, 2016, p. 19). The paradigm shift is thus considered to be more appropriate for low-income and informal settlers who are most often excluded from the conventional land registration systems.

The conventional land registration systems are considered inappropriate and unaffordable for the vast majority of the World’s population due to high registration costs, it’s time consuming and slow and do not address the global majority’s need in regard to the provision of tenure security. Enemark, McLaren, & Lemmen estimate that it will take several decades, and more likely centuries, to establish land administration systems in developing countries in order “to achieve anywhere near full global coverage” (2015, p. 7). Furthermore, when considering the current global rapid urbanisation rate and expansion of slum areas, social polarisation and environmental challenges etc. the conventional registration systems are not able to provide countrywide data and information needed within a reasonable timeframe and at affordable cost. The Fit-For-Purpose Land Administration Guiding Principles are specifically developed to address the implementation of the SDGs in national and local contexts in developing countries as well as in developed countries with incomplete land registration and administration systems. The FFP approach is based on experience from projects in Rwanda, Ethiopia and Kyrgyzstan (Enemark et al., 2015, p. 116).

It is now well recognised that secure tenure and property rights are fundamental for the reduction of poverty and to underpin economic development, social inclusion, and sustainable development. It is recently clearly stipulated by Enemark, McLaren, & Lemmen, (2015, p. 7) that “solutions to the global land issues relate to alleviation of poverty, social inclusion and stability, investments and economic development, and environmental protection and natural resource management.” The Millennium Development Goals (MDGs) were setting the global agenda from 2000 to 2015 with the overall agenda of reducing poverty and improve poor people’s life. Although the MDGs did not specifically mention land (Enemark, 2016, p. 4) some of the MDGs were indirectly related thereto. The MDGs were replaced by the SDGs by 2016 and set the international development agenda for the next 15 years. The SDGs have a number of goals and targets that are directly related to poverty alleviation, land, tenure security, urban development, land governance etc. which makes it interesting and necessary to investigate the SDGs in a Namibian context.

Namibia obtained independence in 1990 after which the indigenous people were allowed to settle anywhere in the country. This caused many people to migrate to urban areas and since then the urban population has increased on an annual basis. This has provided for the development of a policy framework that outlines the overall long-term national development agenda. The development framework is stated in the Namibia Vision 2030 (Vision 2030) and further concretised in a number of national development plans. The Mass Housing Development Initiative was settled in 2013 and in 2016 the Harambee Prosperity Plan (HPP) was developed along with the initiation of an implementation plan for the Massive Urban Land Servicing Project (MULSP). The various plans and projects indicate that significant focus and attention has been paid to national development issues since Independence. However, in regard to land issues attention has previously mainly been concerning rural land reform and resettlement of previously disadvantaged citizens despite the fact that since Independence rural to urban migration has increased significantly. According to the most recent Population and Housing Census Report from 2012 42% of the population lives in urban areas compared to 2001 where around 33% lived in urban areas (Namibia Statistics Agency, 2012, p. 38). During recent years more attention is paid to urban land issues, including the provision of tenure security to urban informal settlers. The increased urbanisation and tenure insecurity to indigenous people caused the development of the Flexible Land Tenure System in the mid-nineteen nineties. Nevertheless, the Flexible Land Tenure Act (FLTA) was only enacted in 2012 and the regulations are still pending. The FLTS is specifically designed to cater to the provision of tenure security to urban low-income and informal settlers. Thus, this working paper briefly describes the relation between the international agenda as stipulated in the SDGs and the FLTS in Namibia.

## **2 The Global Agenda**

The MDGs underpinned and encouraged global awareness and were measures of “important social priorities worldwide” that could be used to promote political accountability and improved performance via the creation of incentives to national governments in the overall reduction of poverty (Sachs, 2012, p. 2206). For example, Goal 7, Target 11 stated “By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers” (UN-Habitat, 2003, p. 2). Goal 3 on promoting gender equality and empowering women were also linked to tenure security and property rights (Enemark, 2016, p. 4). Globally the MDGs were not fully achieved by the end of 2015 which, according to Sachs, are due to operational failures in both the implementing countries as well as the donor countries that have not fulfilled promises on development assistance (Sachs, 2012, p. 2206). Despite the incompleteness in achieving the goals, there was widespread consensus to continue the fight against poverty beyond 2015 and this led to the development and agreement on the Sustainable Development Goals (SDGs).

Since around 2010 the global development agenda increased focus on current international challenges such as climate change, including natural disasters, water and food insecurity and environmental degradation (United Nations, 2015b, p. 61). In addition, high urbanisation rates have become common and cause significant negative impacts on climate change (Enemark, 2016, p. 4) which have been considered in the development of the SDGs. The SDGs, which were finally agreed upon in September 2015, have replaced the MDGs. The SDGs are a set of 17 Goals and 169 associated targets to be implemented at a local level by the UN

member states during the next 15 years (United Nations, 2015a, paras 2–3). The overall purpose of the SDGs is to “end poverty, protect the planet, and ensure prosperity for all” (United Nations, 2016). The 17 SDGs are illustrated in figure 1 below. The successful implementation of the SDGs is reliant on the active contribution by many different participants, including government institutions at national and local level, NGOs, corporate business, educational institutions, as well as private individuals (United Nations, 2016). Namibia, as a member of the United Nations, was part of the development of the MDGs as well as the SDGs and has thus committed to work towards the achievement of the two sets of goals.

In general, the entire set of MDGs and SDGs are supported and reinforced by access to land, which constitutes the foundation for development in all aspects. The MDGs and SDGs are non-binding agreements, and act as a set of “soft laws” guiding moral and practical commitments by the member states (Sachs, 2012). However, the MDGs and the SDGs have also been criticised for not sufficiently consulting with and involving the low-income groups but rather being too centred on the role of international agencies and national governments. Moreover, it has been suggested that more attention should have been paid to the support of local democratic processes and to develop capacity amongst the local residents and empower them during the development of the goals (Satterthwaite, 2003, p. 182). Lack of measurability of success or failure is another critical point that has been subject to criticism for some of the targets outlined in the SDGs (Pichel, 2015).

A number of the SDGs include goals and targets with direct reference to land and tenure security. For example, Goal 1 calls for ending poverty in all forms, target 4 shapes equal rights for men and women in regard to access to basic services, ownership and control over land and property. Goal 2 target 3 states the doubling of agricultural productivity by, for example, more equal access to land. Goal 5 target 5a forms the undertaking of reforms to provide equal rights to ownership and control over land and other forms of property, financial services and inheritance. Goal 11 target 1 outlines access to adequate, safe and affordable housing and basic services for all and the upgrade of slums. Target 3 is on inclusive, sustainable and participatory sustainable urbanisation, and target 11 is on supporting links between urban, peri-urban and rural areas by improved planning, inclusion, climate change and disasters. Goal 15 is on sustainable management of forests, combating desertification and land degradation and Goal 16 calls for reducing corruption, development of effective, accountable and transparent institutions, inclusive and participatory decision-making, public access to information, and the strengthening of institutions (United Nations, 2016).



Figure 1: illustrates the set of 17 Sustainable Development Goals (SDGs) that are agreed upon by the world leaders with the overall purpose to end poverty, protect the planet, and ensure prosperity for all. Source: (United Nations, 2016).

From a land tenure perspective, issues such as tenure security, equal access to land, and good governance in land administration are prerequisites to reach the SDGs (Columbia Center on Sustainable Investment [CIESIN]/Sustainable Development Solutions Network [SDSN], 2016; Enemark, 2016; USAid, 2015). Capacity assessment, institutional development, and development of human resources are essential tools in this regard. More specifically, the provision of geographical information, secure tenure systems, as well as systems for land management, land valuation, and development of land are key issues in the effort to reach the MGDs (Enemark, 2007, p. 1) and SDGs. International recognised organisations within the land sector have developed the so-called Fit-For-Purpose Land Administration Guiding Principles as to how the SDGs can be implemented in national and local contexts and which is described in the following section.

### 3 Fit-For-Purpose Land Administration

The development of the SDGs indicates a new way of dealing with the global development agenda to improve the lives of people, particularly in developing countries. Good land governance is considered crucial for the achievement of the new global development agenda and has caused the development of the so-called Fit-For-Purpose Land Administration Guiding Principles (FFP). The FFP are jointly developed by the Global Land Tool Network (GLTN), UN-Habitat and Kadaster as a response to the current global sustainable development agenda, as outlined in the SDGs. The FFP Guiding Principles are materialised in the publication *Fit-For-Purpose Land Administration Guiding Principles* by Enemark, McLaren and Lemmen and describe how the SDGs can be implemented at a practical level while still considering the national and local context in each country. In 2014 The International Federation of Surveyors (FIG) together with the World Bank (WB) published a booklet on *Fit-For-Purpose Land Administration*, which is the first time the approach is described and thus considered as the initiation of the concept. Therefore, the below description of the FFP approach is mainly based on the two said publications.

Various scholars and international organisations have for many years suggested implementing consolidated property systems that provide the foundation for sustainable development and land management since they are crucial in order to address different needs amongst different groups of people (Chitonge & Mfuné, 2015; Durand-Lasserve, 2006; Enemark et al., 2015; FIG, 1999; FIG & UN, 1996; Kohli, 2014; Payne, 2001; Tebbal & Augustinus, 2003). Likewise, in 2012, the Food and Agriculture Organization (FAO) published the Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security. These guidelines acknowledge tenure security and equitable rights to land, fisheries and forests as a foundation for sustainable development, alleviation of poverty and hunger, food security, environmental protection, housing security, and social stability (Food and Agriculture Organization of the United Nations (FAO), 2012).

The FFP approach is a relative new concept and so far very limited literature is published on it albeit it is partly based on existing knowledge achieved during research conducted during the past 10-20 years although the specific FFP concept is encompassing a more holistic and thorough approach.

The FFP approach is basically about building countrywide land administration systems while at the same time providing tenure security for all within a short timeframe, in an incremental manner, and at affordable costs. It is described as “a game changer for developing countries and offers a viable, practical solution to quickly and affordably provide security of tenure for all and to enable control the use of all land” (Enemark et al., 2015, p. 8). The authors further state that unresolved land issues provides an increased number of land conflicts and causes a lack of investment and economic development in many developing countries (p. 9). The FFP concept is thus developed with the purpose to enable for the implementation of the SDGs and identifies three key characteristics that should be considered in this regard. The characteristics are as follows:

**Focus on purpose:** Prior to designing a land tenure system the purpose of it should be determined and focus should be on the expected outcome of the system, i.e. providing tenure security for all, and, secondly; how can it best be achieved. It should be designed in the best possible way to fit the specific purpose so that it provides “as little as possible – as much as necessary” (Enemark et al., 2015, p. 9 & pp. 33-34).

Regardless of the purpose of the land tenure system it will require some kind of spatial framework, in the form of mapping of the area, to ensure its proper operationalization. When designing and establishing the spatial framework the focus should also be on the purpose and issues such as the requirements for identification of land parcels must be determined (Enemark et al., 2015, pp. 33–34). In many instances it may be sufficient to apply a general boundary approach rather than a fixed boundary approach. General boundaries requires no accurate land surveying of the boundaries whose approximate line is all that appears in the land registration system and no on the ground adjudication of the boundaries is required (Dale & McLaughlin, 2003, p. 50). General boundaries are usually shown on a large-scale topographic map. This is contrary to fixed boundaries which require determination of the precise boundary between parcels and usually involves a licensed land surveyor (Williamson, Enemark, Wallace, & Rajabifard, 2010, p. 360).

**Flexibility:** Land tenure systems should be flexible enough to accommodate the current societal needs which will likely change over time. The flexibility should concern both the function of the system as well as the location; hence the survey accuracy (spatial framework) as well as the legal and institutional frameworks shall be flexible in order to address the various types of tenure security existing in a specific country, including e.g. social or customary tenure, private ownership and leasehold tenure. The flexibility should also apply to the recording and thus allow for both legal and natural persons, including a family, a tribe, a community, etc. to be registered as the holder of a right (Enemark et al., 2015, p. 34).

**Incremental improvement:** Land tenure systems should be designed to provide initial tenure security in line with current requirements in a specific country yet carefully balancing the costs, accuracy, and time involved: a so-called “Minimum Viable Product” (MVP) is recommended. At the same time the system should still provide for the opportunity to incrementally improve the level of tenure security, in the form of upgrading to a higher level, if or when social and legal needs arise and economic opportunities emerge (Enemark et al., 2015, p. 34). The design of a FFP land administration system should therefore encompass the entire range of the continuum of land rights in the specific country.

### **3.1 *Fit-For-Purpose Concept***

The FFP concept is made up of three different yet fundamental components, which are the legal and regulatory, the spatial, and the institutional frameworks, respectively. Please see figure 2 below for an illustration of the three components of the FFP concept. The three components are mutually dependant and “interrelated and form a conceptual nexus” (Enemark et al., 2015, p. 35), hence the components “need to be carefully coordinated to ensure that the frameworks are mutually reinforcing” (Enemark et al., 2015, p. 35). The three characteristics described above (the focus on purpose, flexibility and incremental improvement) should be considered and critically analysed for each of the fundamental components when designing and developing a FFP land administration system so as to ensure sufficient space and flexibility to accommodate the entire range of present tenure security needs and available financial resources and it must also be applicable within “different geographical, judicial, and administrative contexts” (Enemark et al., 2015, pp. 34 & 35).

It is crucial that the FFP characteristics concerning focus on the purpose, the flexibility and the incremental improvement of the FFP approach are incorporated in the national policies, land laws and the regulatory framework (the legal and regulatory framework) and hence will be implemented and applied by the relevant institutions. Certainly, in order for the involved institutions to provide transparency and cost effective services to all citizens there will be a need for continuous capacity development at technical level as well as on-going enhancement of human resources.

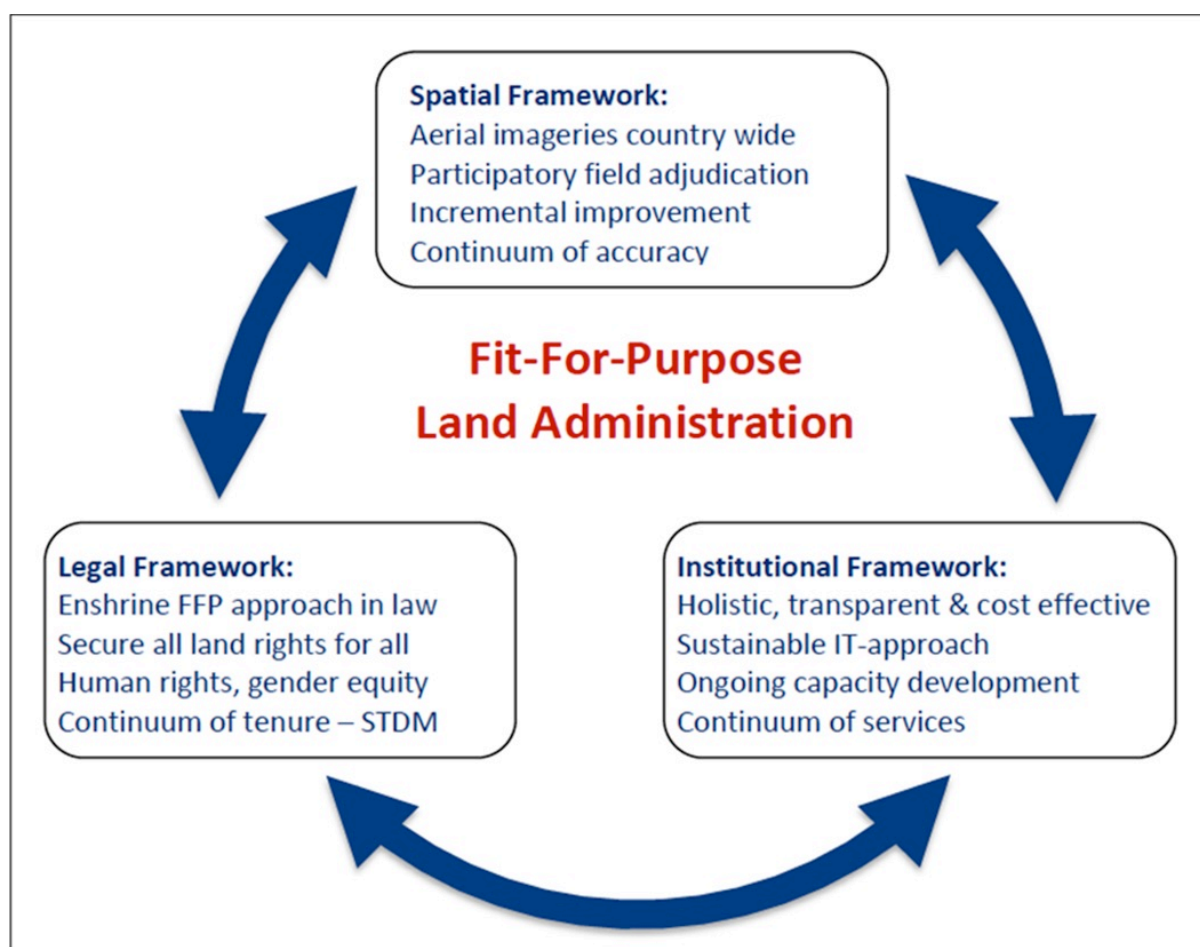


Figure 2 illustrates the three fundamental components in the Fit-For-Purpose Land Administration concept. Source: (Enemark, 2016, p. 10; Enemark et al., 2015, p. 35).

Design and development of a FFP land administration system will in many developing countries call for reforms of the current spatial, legal and regulatory, and institutional frameworks and will in many instances also require significant development of the existing capacity within the land sector.

Each framework within the concept must be flexible enough “to meet the actual needs of today and can be incrementally improved over time in response to societal needs and available financial resources” (Enemark et al., 2015, p. 34). Please see figure 2 above to get an overview of the three different frameworks in the FFP land administration concept and figure 3 below for the four key principles linked to each framework. The three frameworks are described below.

**Spatial framework:** The spatial framework is a spatial representation of “the way land is occupied and used” (Enemark et al., 2015, p. 35). It should be in compliance with the specific needs in each country in order to underpin the requirements for registration of the various types of tenure security as well as the management of the land use and rights allocated and the existing natural resources. The scale and accuracy of the data and information captured in the spatial framework will differ due to fluctuating needs but must in all circumstances be up-to-date and should be accessible to the relevant institutions to ensure integrated, transparent, user-friendly and appropriate management (Enemark et al., 2015, p. 35). The spatial

framework should be using a fast, affordable, and participatory approach in order to accelerate the process of recording land rights. Large-scale mapping (satellite and / or aerial images) is considered sufficient and appropriate for determining the vast majority of land rights boundaries. In areas with high value land and properties conventional land surveying techniques can be applied. The use of large-scale mapping will significantly reduce the costs and time compared to the use of conventional land surveying. The approach is considered adequate to suit the requirements for basic land administration functions such as service delivery, administration of natural resources and land use, as well as land taxation (Enemark et al., 2015, pp. 37 & 42). During recent years technological development has caused significant reduction of the costs for i.e. aerial images by the use of drones and which in many cases will provide a sufficient level of details for determination of boundaries as well as for mapping purposes.

**Legal and regulatory framework:** The legal and regulatory framework should accommodate all the different existing tenure types and thus be flexible, simple and designed specifically to cater for the societal needs in a particular country. All the existing tenure systems should be enshrined in the legal and regulatory framework, which should be appropriate for decentralised administration and recordation. The human rights should be applied, and special attention should be given to gender equality despite local customs and tradition (Enemark et al., 2015, p. 37 & pp. 59–64).

**Institutional framework:** The institutional framework should be designed for the administration of land rights and comply with the principles of good governance. This encompasses transparency, legitimacy, accountability, equitability, and integrity. It calls for proper national land policies along with appropriate and conducive acts, laws, and regulations. In order to capture the full range of tenure forms the institutional framework should support the continuum of land rights (Enemark et al., 2015, pp. 37 & 104).

KEY PRINCIPLES		
Spatial framework	Legal framework	Institutional framework
<ul style="list-style-type: none"> <li>• Visible (physical) boundaries rather than fixed boundaries;</li> <li>• Aerial/satellite imagery rather than field surveys;</li> <li>• Accuracy relates to the purpose rather than technical standards;</li> <li>• Demands for updating and opportunities for upgrading and on-going improvement.</li> </ul>	<ul style="list-style-type: none"> <li>• A flexible framework designed along administrative rather than judicial lines;</li> <li>• A continuum of tenure rather than just individual ownership;</li> <li>• Flexible recordation rather than only one register;</li> <li>• Ensuring gender equity for land and property rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Good land governance rather than bureaucratic barriers;</li> <li>• Integrated institutional framework rather than sectorial silos;</li> <li>• Flexible ICT approach rather than high-end technology solutions;</li> <li>• Transparent land information with easy and affordable access for all.</li> </ul>

Figure 3 illustrates the three frameworks embedded in the FFP Land Administration concept and outlines the four main principles of each of the three frameworks. Source: (Enemark et al., 2015, p. 36).

The FFP approach has been successfully implemented in Rwanda, Kyrgyzstan, and Ethiopia, where country wide land administration solutions have been applied within short timeframes and at affordable cost (Enemark et al., 2015, p. 11). Within a period of five years, all private land in Rwanda was registered by applying a first-time systematic registration approach based on general boundaries (Simbizi et al., 2016, p. 11) “with the aim of creating a complete public record of landholdings” (Biraro et al., 2015, p. 10). According to Enemark, around 10 million parcels were, over a five year period, demarcated, adjudicated and registered at a cost of around USD 6 per parcel (Enemark, 2016, p. 12).

In order to investigate whether the FLTS in Namibia has the potential to contribute to fulfilling the SDGs it is important to understand the overall context of land and tenure security in the country; hence this is described in the following section.

#### **4 Secure Land Tenure in Namibia**

After Independence in 1990, the indigenous population in Namibia was allowed to own real property and land and settle anywhere for the first time. This caused people to flock to towns and cities where they settled on un-used land in peri-urban areas; thus began informal settlement in Namibia. Still today, the vast majority of middle and low-income people cannot afford purchasing and registering land and immovable property in the freehold land registration system. According to a study in 2011 by the Bank of Namibia they concluded that more than 73% of Namibians are excluded from access to credit and therefore “cannot afford to buy urban land and housing” (National Planning Commission (NPC), 2017). In 2013 Namibia was ranked number four of countries with the highest increase in house prices “making it increasingly difficult for low and middle income groups to acquire housing” (National Planning Commission, 2017). The NPC further states that the inequality between the demand for and the supply of serviced land; high land, construction and land servicing costs are excluding many people from acquiring formal land and property rights. From a local authority perspective informal settlements causes “that the towns develop outside their control and often on sites difficult to service” (Christensen, Werner, & Højgaard, 1999, p. 1).

Land in Namibia is classified in three categories of which urban and rural land can be classified; state land, communal land and commercial land (Legal Assistance Centre, 2009, p. 1). State land is the property of the state and all land that is not otherwise lawfully owned belongs to the state. It is used for nature conservation, game parks, agricultural research farms and military bases and also includes urban land owned by local authorities. State land constitutes around 16% of the total geographical area of the country (UN-Habitat, 2005 as cited in Jakobsen & Christensen, 2007, p. 130). Commercial land can be privately owned urban land within proclaimed boundaries or rural commercial farmland or freehold agricultural land (Legal Assistance Centre, 2005 as cited in Jakobsen & Christensen, 2007, p. 130). Commercial land constitutes circa 44% of the entire Namibian geographical area (UN-Habitat, 2005 as cited in Jakobsen & Christensen, 2007, p. 130). Communal land includes all land used by the indigenous Namibian communities but is owned by the state, who held it in trust for the indigenous communities. Communal land constitutes about 40% of Namibia’s total land area.

Namibia currently has four different formal land tenure systems addressing different needs and interests. These apply in different areas of the country. The systems are the Deeds Registration System, the Deeds Registration of Rehoboth, the Communal Land Registration System (CLRS) and the Flexible Land Tenure System (FLTS).

Commercial land is registered in the Deeds Registration System, which was established around 1905 during the German colonial period to cater to the white settlers. The system consists of a farm register and a commercial land register. Namibia became a British protectorate under South African mandate in 1915 which caused the conversion of all land formerly held by the German administration into Crown land / state land of South Africa (UN-Habitat, 2005, pp. 29–30) who maintained the system until independence in 1990. Property registered in the deeds system must be surveyed by a professional land surveyor and the transaction (from seller to buyer) is recorded in the system and considered as proof of the ownership. The system also captures leasehold agreements valid for periods exceeding 10 years on commercial and communal land (Legal Assistance Centre, 2009, p. 2).

The Deeds Registration System of Rehoboth was established in 1976 to provide people in the Rehoboth Gebiet with tenure security. The system was established to mainly cater to the so-called Baster ethnic group (Beukes as cited in Sasman, 2013) in regard to the implementation of home rule in the Rehoboth Bantustan (Christensen et al., 1999, p. 12). The Rehoboth registration system has similarities to the Deeds Registration System although simpler and cheaper procedures of transactions are applied (Jakobsen & Christensen, 2007, p. 106). The Deeds Registries Act No. 14 of 2015 has been passed by Parliament but since the regulations are still pending it has not yet entered into force. This new act suggests that the Deeds Registration of Rehoboth should be merged with and become part of the Deeds Registration System once the 2015 Act is entering into force and the system is therefore not described in further detail in this paper.

The registration of communal land rights was commenced after the enactment of the 2002 Communal Land Reform Act. The recording of rights is captured in the Communal Land Registration System (CLRS) and entails identification of the land rights holder as well as mapping of the plot (Werner & Bayer, 2016, p. 1). Registration is mandatory and still ongoing; recent figures indicate that around 84% of the communal land rights have been registered so far (Shapwanale, 2017, p. 5). Ownership of land is not permitted in communal areas; hence communal land can neither be bought nor sold. Land rights allocated on communal land are customary land rights and rights of leasehold (Government of the Republic of Namibia, 2002, para. 19). Leasehold rights can be for agricultural use or other purposes and rights valid for more than 10 years should be registered in the Deeds Registration System (Werner & Bayer, 2016, p. 12). A customary land right is a usufruct allocated for a specific period of time. Until 2002 the allocation of land in communal areas was exclusively dealt with by the traditional authorities and no formal records were kept. The enactment of the Communal Land Reform Act in 2002 provided for the establishment of communal land boards to control the allocation and cancellation of customary land rights by chiefs and traditional authorities. Furthermore, the communal land boards are responsible for the registration of customary land rights and transfers, cancellations, and allocations. The role of chiefs and traditional authorities is still to allocate and cancel customary land rights after which the land board must ratify before legal effect is made (Government of the Republic of Namibia, 2002, para. 24).

The FLTS was developed in Namibia between 1992 and 1998 by the then Ministry of Lands, Resettlement and Rehabilitation (present day the Ministry of Land Reform) as an alternative to the freehold system. It is “flexible and therefore simpler and more accessible to the broad community” (Christensen et al., 1999, p. iv). The system is specifically developed to address upgrading and formalisation of urban informal settlements and new urban settlements for low-income people. The FLTS provides for a step-wise formalisation of land tenure and is comprised of a starter title, landhold title and the common freehold title. Upgrading can take place if or when need arises and economic affordability allows.

The FLTS is the focal point of this paper and is described in more detail in chapter 5 below.

The different tenure systems provide different levels of tenure security with the Deeds Registration System (a so-called freehold system) providing ownership to land and property, and the Communal Land Registration System provides a right of use for a specific period of time while the FLTS provides an initial level of tenure security protecting people against eviction without compensation. The FLTS is specifically designed to cater for urban low-income and informal settlers and thus complement the other tenure systems in achieving countrywide tenure security for all, albeit at different levels within the continuum of land rights. Likewise, in order for the Namibian government to fulfil its Harambee Prosperity Plan and Vision 2030 regarding the achievement of a living standard corresponding to developed countries for all Namibians by 2030, the upgrading and formalisation of informal settlements is considered necessary. This calls for something extraordinary to be done when considering the expected population growth (Jakobsen & Christensen, 2007, p. 194) and for that purpose the FLTS may be a useful alternative to the existing tenure systems. This calls for a description of the FLTS in order to understand whether it provides the basic foundation for a FFP approach and thus a proper foundation for contributing to poverty alleviation and the achievement of the SDGs.

## 5 Flexible Land Tenure System

The Flexible Land Tenure System (FLTS) was developed in Namibia in the mid-nineteen nineties to cater to the middle and low-income people who were excluded from the formal freehold land tenure system that was “developed by and for the privileged few in the “white” areas” (Christensen et al., 1999, p. iv). Pilot projects were carried out in Oshakati and Windhoek. Nevertheless, the Flexible Land Tenure Act (FLTA) was only passed by Parliament in 2012 and the regulations are still pending. Initiation of four pilot projects is planned for 2017 and the four pilot sites are Outapi, Windhoek, Gobabis and Oshakati, respectively. Please see Annexure A; Localities with informal settlements in Namibia which illustrates the distribution of informal settlements in Namibia as well as an outlining of the planned pilot projects.

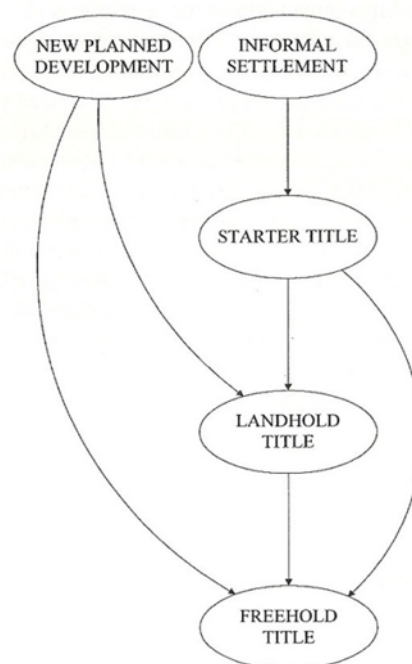
Currently there are 279 informal settlements in Namibia. The total urban population is estimated at 885,500 persons (42%) in 2011, which is an increase of 9% since 2001 (NSA, 2012, p. xiv). The urban growth rate is estimated at 5.6% per annum and is mainly caused by rural-to-urban migration of particularly young people in search for education, jobs, and better social and economic opportunities. The rapid increase of urban informal settlements most often causes unplanned development with very limited provision of services and tenure security if any. Since independence in 1990 the population has increased with 695.000 (to 2.1 mill.) and a total population between 2.98 and 3.49 million is envisaged by 2030. Based on the

current urbanisation trend it is foreseen that 75% of the population will be living in urban areas by 2030 (Namibia Vision 2030, 2004, p. 48). At the same time the average household size is on a decline, which calls for additional land and housing to cater for the people concerned.

The FLTS is specifically dedicated to provide tenure security to urban residents since it only allows for implementation within the boundaries of established municipalities, towns, village councils, and settlement areas (Government of the Republic of Namibia, 2012, para. 3). Thus, the FLTS is designed to provide tenure security to low-income people and informal settlers via creating alternative forms of tenure that are considered to be cheaper and simpler to administer (Christensen et al., 1999). Furthermore, it is anticipated that people will be economically empowered by means of the rights acquired via the FLTS. More specifically, the objectives of the FLTA are as follows:

- “to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title;
- to provide security of title for persons who live in informal settlements or who are provided with low income housing;
- to empower the persons concerned economically by means of these rights” (Government of the Republic of Namibia, 2012, para. 2).

The FLTS property rights are intended to ensure that all persons with rights to land or immovable property have access to the benefits that come with registration of those rights. The FLTS is a parallel interchangeable property recording system that is intended for implementation in existing informal settlements and new areas planned for low-income residents. It provides for three different types of tenure; the starter title, landhold title, and freehold title, respectively. Starter title and landhold title can be stepwise upgraded to “the next level” and eventually to freehold title if need arises and affordability allows. They both provide an initial tenure security that protects people from forced eviction without compensation. The new title forms entail the right to transfer rights and the landhold title furthermore allows for mortgaging and establishment of servitudes. In this regard it is worth mentioning that the UN-Habitat is considering the FLTS as innovative and one of the pro-poor land tenure systems in developing countries that provides the most solid legal framework and foundation for further development (Gitau, 2015). Please see figure 3 below for an illustration of the principles of the FLTS, which are described in more detail below.



*Figure 3 illustrates the principles of the Flexible Land Tenure System (FLTS) and the possible routes for establishment of a new settlement or for upgrading of an informal settlement. The FLTS allows for incremental improvement of tenure security according to peoples need and economic affordability. Source: (Christensen et al., 1999).*

## 5.1 *Starter title*

This section, along with section 5.2 Landhold title, is almost verbatim replication of section 3.1 of the book *Urban housing crisis in Namibia: A youth perspective* contributed by the author and published by the National Youth Council of Namibia.

A starter title provides initial tenure security and is particularly applicable in regard to upgrading of existing informal settlements (Jakobsen & Christensen, 2007). The erf is registered as a blockerf in the Deeds Register and the scheme members possess the right to occupy an undefined plot within the blockerf for perpetuity. However, it does not provide ownership to a specific plot within the block parcel. The starter title holders can agree upon and establish interior boundaries, which are however not registered in the Deeds Register. A starter title holder is allowed to erect and occupy a dwelling on a blockerf in perpetuity and to transfer all related rights to his/her heirs or to any other person as well as to lease to another person (Government of the Republic of Namibia, 2012, para. 9(1)(a-e)). Additionally, a starter title holder has the right to be a member of the association of the scheme in question as well as to utilise possible services provided to the scheme as a whole. The registration of a transaction is considered as proof of the transaction and any transfer of rights must be informed to the Land Rights Registrar (LRR) by the transferor and the transferee (Government of the Republic of Namibia, 2012, para. 9(5-7)).

A starter title right may only be held by one person except for persons who are married in community of property and no juristic person is allowed to hold a starter title right. Furthermore, no natural person who owns any immovable property or a landhold title right in Namibia is allowed to acquire a starter title right of which it is only allowed to hold one (Government of the Republic of Namibia, 2012, paras 7–10).

Prior to the establishment of a starter title scheme the specific land must be subdivided or consolidated to ensure the land is situated on one portion of land and registered as such in the Deeds Registry. Furthermore, mortgages, usufructs, fideicommissum or other rights must be cancelled prior to the establishment of a scheme. The relevant authority may also require the owner of the land, the association or the occupiers to pay an amount of money to cover the costs relating to the establishment of the scheme (Government of the Republic of Namibia, 2012, para. 11(3)). A list of persons who have committed themselves to become members of a scheme shall be submitted to the authority together with the plot numbers (Government of the Republic of Namibia, 2012, para. 11(4-5)). The relevant authority is furthermore allowed to cause the conduct of a feasibility study to investigate the feasibility and desirability of the creation of the scheme. This can include the conduct of i.e. geological, environmental or any other scientific study considered relevant to the specific blockerf. Town planning schemes applicable to the area or any other relevant legislation must also be considered prior to the establishment of a scheme (Government of the Republic of Namibia, 2012, para. 11(6-7)).

The process of establishing a starter title scheme can be initiated by one or more residents, or by the relevant authority or the legal owner of a piece of land (Government of the Republic of Namibia, 2012, para. 11(1)). Once the relevant authority has confirmed that a starter title scheme is desirable the local LRR and the Registrar of Deeds must be informed and make an endorsement on the title deed of the relevant blockerf regarding the establishment of a starter title scheme (Government of the Republic of Namibia, 2012, para. 12(1-3)). The establishment of a starter title scheme is required for each blockerf and entitles persons to acquire starter

title rights over the specific block erf. The notice to be forwarded to the deeds registrar and the LRR must include the number of the title deed of the block erf, a list of the heads of households residing on the block erf, and the conditions imposed by the authority. The information is entered into the particular scheme in the starter title register (Government of the Republic of Namibia, 2012, paras 7–8) after an investigation of the compliance with requirements for being a scheme member. Once the investigation is completed successfully the persons stated on the list are to be considered as starter title holders and the LRR shall issue a certificate to each scheme member.

Authorities in whose jurisdiction a starter title scheme is created or any other person may agree to provide services to the scheme as a whole (Government of the Republic of Namibia, 2012, para. 9(2)) in which case the constitution of the association of the scheme must determine the rights and duties of every holder in the scheme. The relevant authority may impose conditions upon a starter title scheme in regard to i.e. the nature of buildings and structures that may be erected on a block erf, limit the number of persons to acquire starter title rights in a scheme, and the laying and maintenance of pipes and sewerage, etc. under or over the block erf (Government of the Republic of Namibia, 2012, para. 6).

Starter titles can be upgraded to landhold title or free hold title. If a minimum of 75% of the right holders consent a starter title scheme can be upgraded to landhold title under the condition of approval by the relevant authority. Right holders who do not want upgrading must be granted a starter title right in a similar scheme and the authority can then sell the plots to interested persons (Government of the Republic of Namibia, 2012, para. 14). Both starter title and landhold title can be upgraded to full freehold ownership if situated within the area of an approved township. Upgrading to freehold requires that all right holders have agreed in writing and the block erf must then be surveyed and subdivided in accordance with applicable laws. A quorum of minimum 75% of the right holders shall agree with the upgrading and the authority may pay fair compensation to the holders that do not agree with the upgrading. The authority can then sell the erven to interested parties. All costs for such upgrading must be borne by the right holders proportionally to the size of the plot (Government of the Republic of Namibia, 2012, para. 15).

## **5.2 Landhold title**

A landhold title holder has all the same rights in the plot as an owner has in respect of his/her erf under common law and may perform all juristic acts as an owner may in respect of common law. Furthermore, a landhold title holder has an undivided share in the common property and is limited by possible servitudes in favour of the owner of any other property over the block erf (Government of the Republic of Namibia, 2012, para. 10(1)(a-b)). The landhold title is equally registered as a block erf in the Deeds Register. The landhold title holder obtains the right to a defined plot within the block erf in perpetuity along with the right to transfer the right to another holder, create or cancel a mortgage, right of way, and servitudes relating to provision of basic services (Government of the Republic of Namibia, 2012, para. 10(5)). All transactions must be updated and registered in the landhold title register. Registration of any transaction of a landhold title right is the same as the legal effect of registration in the deeds registry and the failure to register transactions is also the same as failing to register a similar transaction in the Deeds Registry (Government of the Republic of Namibia, 2012, para. 10(8)(a-b)).

Prior to the establishment of a landhold title scheme the specific land must be subdivided or consolidated to ensure the land is situated on one portion of land registered as such in the Deeds Registry as is the case for the starter title schemes. Furthermore, mortgages, usufructs, fideicommissum or other rights must be cancelled prior to the establishment of a scheme. The relevant authority may also require the owner of the land, the association or the occupiers to pay an amount of money to cover the costs relating to the establishment of the scheme (Government of the Republic of Namibia, 2012, para. 11(3)). Moreover, the plots to form part of a landhold title scheme must be measured by a land measurer and the physical boundaries must be indicated on the blockf and a description of the plot boundaries along with the plot numbers allocated is to be prepared by a land measurer. A list of persons who have committed themselves to become members of a scheme shall be submitted to the relevant authority together with the plot numbers (Government of the Republic of Namibia, 2012, para. 11(4-5)). The relevant authority is furthermore allowed to cause the conduct of a feasibility study to investigate the feasibility and desirability of the creation of the scheme. This can include the conduct of i.e. geological, environmental or any other scientific study considered relevant to the specific blockf. Town planning schemes applicable to the area or any other relevant legislation must also be considered prior to the establishment of a scheme (Government of the Republic of Namibia, 2012, para. 11(6-7)).

If the result of the above investigation is positive and the scheme is desired the scheme can be approved and the Deeds Registrar and the LRR must be noticed. The Deeds Registrar then makes an endorsement of the title deed of the blockf that a landhold title scheme is established (Government of the Republic of Namibia, 2012, para. 13(1-4)). In addition to the conditions that can be imposed by the relevant authority on the starter title schemes there can also be restrictions such as prohibition of transfer to another person before a specified period of time and without the permission of the relevant authority (Government of the Republic of Namibia, 2012, para. 13(6)(c)). The above mentioned notice to be sent to the Deeds Registrar and the LRR is similar to the information to be recorded in the landhold title register and includes the number of the title deed of the blockf, all conditions imposed by relevant authorities, a description of the physical boundaries of the plots and plot numbers allocated, a list of persons who have concluded contracts including the full names and identity numbers of the plot holders (Government of the Republic of Namibia, 2012, para. 13(9-10)). Upon successful establishment of a landhold title scheme persons receive a certificate indicating that he/she is the holder of a landhold right.

Interior boundaries are surveyed by a para-professional land measurer and registered in the landhold title register as established by the Deeds Registrar. During so-called adjudication, where the interior boundaries are agreed upon, a description of the boundaries and numbers allocated to the plots is produced by the land measurer (Government of the Republic of Namibia, 2012, para. 11(4)(a-b)) and this makes it out for the layout plan.

A landhold title can be upgraded to freehold title if/when all right holders in the scheme agree in writing on such upgrading. Upgrading requires that the scheme is located within an approved township and the blockf must be surveyed and subdivided in accordance with the applicable laws. It can take place if minimum 75% of the landhold title holders agree upon the wish to upgrade and the relevant authority may compensate fairly the right holders who do not want to upgrade. In such incidents the relevant authority may for its own account sell the vacant erven to interested persons. The costs related to upgrading to full ownership must be borne by the right holders themselves (Government of the Republic of Namibia, 2012, para. 15(4-6)). The last step in the FLTS is equal to a freehold title within the Deeds Registry.

The above all indicates on-going reforms of the land registration and tenure approach in Namibia, which is becoming more formalised during recent time. The approach indicates some similarities with the FFP approach which suggests recordation of all land in different tenure systems specifically designed to address different needs and purposes under different spatial, legal and institutional frameworks.

### **5.3 *Fit-For-Purpose framework embedded in the Flexible Land Tenure System***

This section is providing a brief overview as to how the FFP land administration framework is embedded in the FLTS and also raises a few challenges in regard to the implementation of the system.

#### **The legal framework**

The legal framework for the FLTS is enshrined in the FLTA, which was enacted in 2012 although the attached regulations are still outstanding and the act has therefore not yet entered into force. The commencement of the pilot projects is postponed until the completion of the regulations and the full operationalization of the act. It is expected that the regulations will be completed and approved by the second quarter of 2017.

The FLTS provides for a continuum of land rights due to the fact that it encompasses two new forms of tenure security in addition to the existing freehold title. Acts and regulations that are effecting the implementation of the FLTS are however an issue that prolongs the provision of tenure security. The conduct of feasibility studies, approval by Namibia Planning Advisory Board (NAMPAB) and Townships Board, town planning, and surveying of exterior boundaries. The FTS underpins the human rights and allows for legal persons, incl. women, youth and elders, to acquire tenure security provided they do not own immovable property or possesses a landhold title.

#### **The institutional framework**

The implementation of the FLTS entails the establishment of a number of new institutions, including so-called Land Rights Offices, Land Rights Registrar, land measurer, starter and landhold title registers, etc. It is of utmost importance to ensure the efficiency and effectiveness of those new institutions as well as the development of technical and human resources to successfully manage the FLTS implementation. It also calls for capacity development within the existing institutions such as the Deeds Office as well as the local authorities. The blockerf must be registered in the Deeds Registry and the starter title and landhold titles along with names and ID numbers of members are captured in the starter and landhold title registers, respectively. According to Lewis, many local authorities do not have capacity to approve layout plans for upgrading to landhold title and it may to necessary to contract private town planners or architects to approve the plans or it could be done by the Ministry of Urban and Rural Development (MURD) (Lewis, 2014, p. 4). Valid concerns have been raised in regard to the creation of the new institutions and organisations and the complexity and costs in regard to the implementation of the FLTS. It is suggested rather to make “changes and amendments to the existing institutions and organisational structures to address the current weaknesses” (Bayer, 2012) than creating new institutions.

### **The spatial framework**

The spatial requirements for the starter and landhold title differ significantly. The starter title provides permission to erect a dwelling on an undefined plot within the blockerf. Exterior boundaries of the blockerf must be surveyed by a professional land surveyor and registered in the Deeds Registry. However, there are no formal requirements to the accuracy of interior boundaries and thus leaves it up to the group members to adjudicate and decide upon via a participatory approach. The group members themselves are also supposed to mediate on possible disputes arising (Government of the Republic of Namibia, 2012, para. 12(b)). On the other hand a landhold title provides permission to occupy a defined plot within the blockerf and an undivided share in the common property. Exterior boundaries are surveyed by a professional land surveyor and interior boundaries are demarcated by a para-professional land measurer. It is allowed to mortgage a landhold title as well as to create servitudes for i.e. service provision and a right of way (Government of the Republic of Namibia, 2012, para. 5). This indicates incremental improvement of the spatial framework as well as a continuum of accuracy.

## **6 Conclusions and discussion**

This brief literature review presented above is creating the link between the current global development agenda as outlined in the SDGs via the application of the FFP Land Administration approach to the FLTS in Namibia. The FLTS is an enabler for providing tenure security to urban low-income and informal settlers and the purpose of the system is to provide simpler and cheaper access to land and property for low-income and informal settlers, and the system provides for incremental improvement of tenure security according to people's needs and affordability. The system is flexible in the sense that tenure security can be upgraded stepwise over time and the different types of title; starter title and landhold title, provide for increasing levels of tenure security as well as the option for mortgaging. The FLTS thus seeks to provide tenure security for different purposes, i.e. a starter title would satisfy the need for people interested in acquiring tenure security only while a landhold title is an option for people interested in leveraging a loan on the strength of their property. The FLTS thus contributes to a more holistic approach to land tenure security in Namibia by complementing the freehold land registration system and the Communal Land Registration System in the achievement of providing tenure security for all.

The implementation of the FLTS will put additional pressure on institutions that are already straining to deliver services to cater to the current needs and requirements. This may be a challenge and needs specific attention and will call for considerable capacity development within the involved institutions. In addition to the new institutions to be created a number of existing key stakeholders play essential roles in regard to the successful implementation, including the MLR, Ministry of Urban and Rural Development (MURD) and local authorities etc. Yet another challenge may be to establish and ensure a close collaboration amongst these institutions, which is paramount and should ideally be established prior to the initiation of the implementation. It would be a hindrance for the implementation if key stakeholders apply a mind-set of "silo" thinking rather than focusing on the end target group and the purpose of providing tenure security for low-income and to empower the persons concerned. These possible challenges reinforce the need for additional research.

The preliminary study indicates that there is a clear link between the SDGs, via the FFP approach, to the FLTS in Namibia. This makes it interesting and necessary to conduct further in-depth analysis as to whether the FLTS is indeed “Fit-For-Purpose” in all aspects and thus can contribute to the achievement of the SDGs in Namibia. It is also crucial to consider the applicability of the FLTS in other Sub-Saharan African countries as well as other developing countries. The potential of FLTS as a foundation for the administration and management of food and water security, disaster management, climate changes, and environmental changes in Namibia should also be further investigated from an academic perspective. This however calls for further academic research.

### Namibia – Localities With Informal Settlements (2009)

**Legend**

**Informal Settlements**

No. of inhabitants

- Red circle: < 500
- Orange circle: 500 - 9,999
- Yellow circle: 10,000 - 9,999
- Green circle: 10,000 - 49,999
- Blue circle: 50,000 - 100,000
- Dark blue circle: > 100,000

Main Road (grey line)

Trunk Road (thick grey line)

Town Without I.S. (blue square)

**Ministry of Land Reform and GIZ / Support to Land Reform (SLR)**

**Map Compilation: Sascha Picard (2016)**

Data Sources:

- Community Land Information Program (CLIP)
- Profile of Informal Settlements in Namibia (2009)
- Ministry of Land Reform
- OpenStreetMap (www.openstreetmap.org)
- Environmental Information Service Namibia (www.eis-nsi.com)

*Source: (Picard, 2016)*

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