



**NAMIPIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY OF NATURAL RESOURCES AND SPATIAL SCIENCES

DEPARTMENT OF ARCHITECTURE AND SPATIAL PLANNING

QUALIFICATION: Bachelor of Town and Regional Planning Bachelor of Regional and Rural Development	QUALIFICATION CODE: 07BTAR 07BRAR
LEVEL: 6	
COURSE CODE: IRF620S	COURSE NAME: Institutional & Regulatory Framework
SESSION: November 2019	PAPER: Theory
DURATION: 3 hours	MARKS: 100

FIRST OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	N Korrubel, Contact Details: (061) 207 2570, nkorrubel@nust.na
MODERATOR:	P Genis, Contact Details: (061) 207 2640, pgenis@nust.na

INSTRUCTIONS
<ol style="list-style-type: none">1. Answer ALL the questions.2. Write clearly and neatly.3. Number the answers clearly.4. Answer in full sentences; not only bullet points or phrases.

PERMISSIBLE MATERIALS: Pens, ruler, pencil & eraser
THIS QUESTION PAPER CONSISTS OF 8 PAGES (including this front page)

QUESTION 1

Describe the key functions of Parliament's National Council. (5)

[5]

QUESTION 2

a) Magistrates' courts and Community courts are classified as "lower courts". Discuss Community courts. (5)

b) During a class discussion of newspaper articles regarding the Community courts, various problems were identified. Identify any two of the problems highlighted in the articles. (2)

[7]

QUESTION 3

Answer only ONE of the following TWO questions. Provide a heading to indicate which one your answer refers to.

The Namibian Constitution is the supreme law of Namibia, in addition to the Constitution there are three different sources of law in Namibia. Explain only one of the following sources of law:

A] Common Law (4)

OR

B] Customary Law (4)

[4]

QUESTION 4

The first step in the law-making process is to prepare a bill, which is a proposal for a new law. Describe the compilation and approval process of a new law (bill). (10)

[10]

QUESTION 5

Answer only ONE of the following TWO questions. Provide a heading to indicate which one your answer refers to.

- A] Housing is a subject that affects the whole of society and involves economic, social and political considerations. As is to be expected from such an important issue, there are a wide number of stakeholders. Report on Civil Society and their housing initiatives. (8)

OR

- B] Discuss the following two pillars of the NDP5, namely Economic Progression (5 marks) and Social Transformation (3 marks). No marks will be allocated for the “goals” of the respective pillars. (8)

[8]

QUESTION 6

“Deputy higher education minister Becky Ndjoze-Ojo says her ministry has prioritised technical, vocational education and training as a way to tackle the high levels of youth unemployment in the country.”

Source: “Vocational training gets priority to fight unemployment”, The Namibian, 21/09/2018

Recognise the relevant game changer this article, and statement of the deputy minister, relates with (1 mark). Include a description of this “game changer” for an additional 3 marks. (4)

[4]

QUESTION 7

Discuss only ONE of the following TWO Strategies. Your answer must refer to the supportive initiatives (as included in the section “How we’re getting there”). Provide a heading to indicate which one your answer refers to.

- A] Rural Economic Development. (9)

OR

B]	Housing and Land.	(9)
		[9]

QUESTION 8

The National Resettlement Policy identifies 3 different models/holdings of resettlement. Describe the Individual holding & Project Farming holding. (7)

[7]

QUESTION 9

In the newspaper article titled “Only 11 illegal fences removed in 2018” it is mentioned that the Legal Assistance Centre (LAC) had pointed out during the Second National Land Conference, that illegal fencing in the communal areas has serious implications on the communities (In certain instances the erection of illegal fences has even led to conflict between the communal farmers and the guilty parties.). (New Era, 3 May 2019).

WINDHOEK - Despite President Hage Geingob’s call last year on the Ministry of Land Reform to put its shoulder to the wheel in starting to implement laws prohibiting illegal fencing, the ministry said yesterday it has only removed 11 illegal fences from the 307 reported between 2012 – 2015.

According to statistics presented during the 2nd National Land Conference late last year, Ohangwena tops the list with 107 cases of illegal fencing reported between 2012-2015.

It is followed by Otjozondjupa with 58 cases recorded during the same period, Omaheke (48), Omusati (42), Kavango East and West (36), and Oshikoto (16). Geingob, just after the second national land conference, said that he was gravely disturbed by incidents of illegal fencing that are prevalent across communal areas ...

In the past, wealthy politicians have been accused of fencing off massive tracts of land, at times measuring over 3 000 hectares, in communal areas.

Section 18 of the Communal Land Reform Act (Act 5 of 2002), enacted in 2003, takes a strong position against the erection of fences on communal lands, ... “A sensitisation and consultation process should start before law enforcement agencies move swiftly to enforce the law without fear or favour,” presidential press secretary Alfredo Tjiurimo Hengari, in a statement, quoted Geingob as having said. ...

The Legal Assistance Centre (LAC) coordinator on land, environment and development, Willem Odendaal, during the second land conference strongly called for the removal of illegal fences in communal areas, ...

Source: <https://neweralive.na/posts/only-11-illegal-fences-removed-in-2018>

- a) Identify four of the negative impacts the occurrence of illegal fences have in the communal areas. (4)
- b) The article mentions “wealthy politicians have been accused of fencing off massive tracts of land, at times measuring over 3 000 hectares”. The Communal Land Reform Act sets a limit on the size of land that can be allocated for (i) a Customary Land Right and (ii) the Right of Leasehold. Indicate the maximum size for both the land tenure types. (Your answer must indicate clearly 9(i) and 9(ii)). (2)
- c) Integrated Regional Land Use Plans (IRLUPs) in Namibia focus on four different “aspects”. Describe the aspects Conflict and Potential. (4)
- d) One of the main objectives of the revised IRLUP process is to correct previous shortcomings/deficiencies. Repeat four shortcomings experienced with previous IRLUP documents. (4)

[14]

QUESTION 10

Read the following newspaper article titled “Landmark communal land rights victory” and answer the following questions. (The Namibian Sun, 10 March 2019).

A Zambezi woman has won a landmark Supreme Court appeal on the issue of communal land and her right to legal ownership and compensation under customary laws.

In his judgement, Supreme Court Deputy Chief Justice Petrus Damaseb pointed out the broad implications of his ruling when he addressed the fact that the government of Namibia, the third respondent cited alongside the Katima Mulilo town council and six others, “chose not to participate in the litigation although this case raises an important constitutional issue.”

He said their decision not to participate “is a matter for regret because the issues raised in the case have far wider ramifications than the litigants before court.”

Willem Odendaal of the Legal Assistance Centre, who represented appellant Agnes Kashela, said the judgement overruled a High Court ruling by giving people who live under customary law land rights the same rights as people living under common law.

Odendaal argued the case from a constitutional point of view, in that the constitution should apply equally to all in Namibia, whether a person lives on communal or commercial land, with regard to “just compensation as provided for in Article 16 in the Namibian constitution”.

Kashela approached the Supreme Court after the High Court ruled against her in a dispute that arose when the Katima Mulilo town council rented and later offered to sell portions of the communal land without compensation.

She argued she had rightfully inherited the land under customary laws.

Her father was allocated a portion of communal land by the Mafwe Traditional Authority in 1985.

After independence, all communal land in Namibia became the property of the state and in 1995 portions of the communal land was transferred to the Katima Mulilo town council.

At the time, Kashela's father was still alive and continued to live on the land until his death in 2001.

Kashela accused the town council of unlawfully taking portions of her land and unlawfully renting those to a business and four individuals.

She said the council had thus been “unlawfully enriched” at her expense.

In her second claim, she argued that the town council had unlawfully expropriated her land without just compensation at market value.

She asked the High Court to award her the rent received by the council, which amounted to N\$720 000 over three years, plus the amount for which the land was offered for sale, totalling N\$2.415 Million, as reasonable and just compensation.

Overruled

Damaseb set aside the High Court's ruling that Kashela was not entitled to be compensated for land which had been legally transferred as town land to the town council.

The land in question had ceased to be communal land, the High Court ruled, and Kashela had no claim to any communal land tenure rights.

Damaseb's judgment noted that the council's High Court plea was “silent on the allegations made in support of Kashela's second claim, which is predicated on the right to compensation”.

He further noted that the council had admitted that it had offered compensation to Kashela, but she had wanted more than their offer.

Further, that it was the council's policy to “compensate persons similarly situation as Ms Kashela”.

Damaseb noted that this should have “put the matter to bed and a judgment given in favour of Ms Kashela”.

He said Kashela had acquired a right of exclusive use and occupation of the land in dispute after her father's death under customary laws, and had thus acquired a right of exclusive use and occupation of the land even after its proclamation as town land.

He said this right is enforceable by the courts of law which must, in the case of a breach, tailor a remedy to meet the circumstances of the facts. ...

Damaseb added that the state had an obligation to “respect the interest held by affected communities in communal land, for most of whom it was, and remains, the only means of livelihood and survival”.

Damaseb set aside the High Court ruling He did not rule on just compensation, which he said was a matter for the High Court, based on his judgement.

The matter was remitted to the High Court for Damaseb to designate a judge to preside over and finalise the matter, especially on compensation.

- a) "After independence, all communal land in Namibia became the property of the state and in 1995 portions of the communal land was transferred to the Katima Mulilo town council."
Identify in which two instances expropriation of communal land can take place, according to the Compensation Policy Guidelines for Communal Land. (2)
- b) Repeat the fundamental principle of compensation. (2)
- c) Define the term "expropriation". (2)
- d) Describe how gender equality, as stipulated in the Constitution, is emphasised, encouraged and achieved in relation to communal land and the relevant legislation. (3)
- e) Explain the following statement: "Communal land is vested in the State by the Constitution". (3)
- f) It is possible that the Katima Mulilo town council could approach Ms Agnes Kashela again with the options for compensation as stipulated in the Compensation Policy Guidelines. Describe the "money and erven" compensation option as a possible compensation option. (8)
- g) State what happens to the customary land right, if the person to whom the right was allocated dies? (2)

[22]

QUESTION 11

Describe the establishment/declaration of Authorised Planning Authorities. (2)

[2]

QUESTION 12

Explain the general approval process of an application submitted with an Authorised Planning Authority, in terms of the approved Urban and Regional Planning Act if the application is in accordance with the relevant forward planning document. (8)

[8]

TOTAL**[100]**



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FIRST OPPORTUNITY EXAMINATION MEMORANDUM	
EXAMINER(S)	N Korrubel, Contact Details: (061) 207 2570, nkorrubel@nust.na
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INSTRUCTIONS
1. The model answers are used as guidelines only. 2. The information presented by the students will be evaluated on merit.

THIS MEMORANDUM CONSISTS OF 18 PAGES (Including this front page)

- ix. *There is a right of appeal from community courts to magistrates' courts, and from there to the High Court.*
- x. *This means that traditional courts are now integrated into the overall judicial system of Namibia.*

Answer Question 2(b)
(1 mark each, for any 2 answers)

- i. *The community court does not have a standing budget to operate from (allowances for court assessors, messengers and clerks).*
- ii. *The lack of funding for community courts / small allowance the chief receives.*
- iii. *A lack of empowerment for traditional authorities in dispensing justice (people willingly ignore summons).*
- iv. *The traditional guards do not have the necessary facilities to arrest accused persons & the courtroom is too small.*
- v. *nor do they have the skills to effect an arrest. The guards need training on how to conduct some of these activities.*
- vi. *Thus community members ignore community courts and rather register their cases with the police.*
- vii. *Official being abused/attacked when they deliver summons or during proceedings*

[7]

QUESTION 3

Answer only ONE of the following TWO questions. Provide a heading to indicate which one your answer refers to.

The Namibian Constitution is the supreme law of Namibia, in addition to the Constitution there are three different sources of law in Namibia. Explain only one of the following sources of law:

A] Common Law (4)

OR

B] Customary Law (4)

Answer Question 3A
(1 mark each, for any 4 answers)

Common Law

- i. *Is the law developed over time through the decisions of judges*
- ii. *in individual court cases (IOW court rulings).*

(1 mark each, for any 10 answers)

The idea for a bill can be suggested by the:

- i. *President, By Cabinet*
 - ii. *By a minister, By any member of parliament*
 - iii. *By the law reform and development commission or even*
 - iv. *By a non-governmental organization or*
 - v. *An interested member of the public working through a minister/MP*
-
- i. *A new bill starts when someone, usually a Minister, decides a new law is needed*
 - ii. *The idea is discussed (Attorney-General) and then a bill is drafted (legal drafters of Ministry of Justice).*
 - iii. *The draft bill goes to the Cabinet Committee on Legislation for consideration, and*
 - iv. *then to the full Cabinet for approval.*
 - v. *If Cabinet approves the bill, then the Attorney-General must certify that it appears to be consistent with the Constitution and the laws of Namibia.*
 - vi. *The bill will then be "introduced" or "tabled" (officially "put on the table" for discussion) in the National Assembly.*
 - vii. *The National Assembly will debate the bill as it goes through three "readings" (three different levels of debate). Many bills are sent to a committee of the National Assembly for special study.*
 - viii. *If the National Assembly approves the bill, it is sent to the National Council.*
 - ix. *The National Council follows a similar process of three "readings" and sometimes a committee stage.*
 - x. *If the National Council approves the bill, it is sent to the President for his "assent", which means approval.*
 - xi. *The bill is then published in the Government Gazette. It is now an "act" which is part of Namibian law.*

[10]

QUESTION 5

Answer only ONE of the following TWO questions. Provide a heading to indicate which one your answer refers to.

- A] Housing is a subject that affects the whole of society and involves economic, social and political considerations. As is to be expected from such an important issue, there are a wide number of stakeholders. Report on Civil Society and their housing initiatives. (8)

OR

- B] Discuss the following two pillars of the NDP5, namely Economic Progression (5 marks) and Social Transformation (3 marks). No marks will be allocated for the "goals" of the respective pillars. (8)

- iv. *The expected outcome is improvement in Human Development Index. For Ex. Norway (1st) with 0.95 HDE out of 188 countries Namibia (125th) 0.64) & RSA (119th) 0.67*
- v. *Definition: The Human Development Index (HDI) is a statistical tool used to measure a country's overall achievement in its social and economic dimensions. The social and economic dimensions of a country are based on the health of people, their level of education attainment and their standard of living.*

[8]

QUESTION 6

“Deputy higher education minister Becky Ndjoze-Ojo says her ministry has prioritised technical, vocational education and training as a way to tackle the high levels of youth unemployment in the country.”

Source: “Vocational training gets priority to fight unemployment”, The Namibian, 21/09/2018

Recognise the relevant game changer this article, and statement of the deputy minister, relates with (1 mark). Include a description of this “game changer” for an additional 3 marks. (4)

Answer Question 6

(1 mark each, for any 4 answers)

- i. **Invest in Quality Technical Skills Development**
- ii. ~~Vocational Education and Training (VET) is critical for expanding manufacturing and value addition, incl. reducing unemployment rate (No marks – part of question)~~
- iii. *TVET training centers will be expanded & upgraded (incl equipment & new programmes.*
- iv. *New training centers will be established in areas where there are none.*
- v. *Include reintroduction of pre-vocational subjects in schools, attracting qualified artisans and upskilling current trainers.*
- vi. *TVET will also be rebranded to increase its appeal to career-minded young people.*

[4]

QUESTION 7

Discuss only ONE of the following TWO Strategies. Your answer must refer to the supportive initiatives (as included in the section “How we’re getting there”). Provide a heading to indicate which one your answer refers to.

A] Rural Economic Development. (9)

OR

B] Housing and Land. (9)

Answer Question 7B**(1 mark each, for any 9 answers)****Housing and Land**

- i. Accelerate Housing Delivery through Stakeholder Involvement and Development of Alternative Housing Construction Models
- ii. Scale up support for peoples` housing processes, delivery through PPPs, and
- iii. new financial resources for rural housing scheme.

- iv. Develop public-private partnerships to provide land servicing
- v. Develop Public Private Partnerships to provide land servicing and infrastructure
- vi. construction (water, roads, sewer and electricity) in all Local Authorities.

- vii. Monitor national progress in housing provision.
- viii. Through the development of a database of the newly-built houses.
- ix. The Ministry of Urban and Rural Development in partnership with the Namibia Statistics Agency will develop a framework on data collection
- x. and will disseminate these statistics.

- xi. Ensure Coordinated Urban and Regional Development
- xii. Identifying policies that impedes synergies in the implementation of projects, development of structure plans for all local authorities and densification of existing urban areas to combat urban sprawl.

- xiii. Desired Outcomes: By 2022, Namibian households living in improvised houses reduced from 19% in 2016 to 12%.
- xiv. 6500 Number of erven serviced by 2022
- xv. Number of Informal Settlements upgraded per annum 2
- xvi. Number of Local Authorities provided with improved sanitation systems per annum 4
- xvii. Number of new houses constructed nationwide 7200 per annum.

[9]

QUESTION 8

The National Resettlement Policy identifies 3 different models/holdings of resettlement. Describe the Individual holding & Project Farming holding. (7)

Answer Question 8**(1 mark each, for any 7 answers)**

- i. **Group holdings / Project farming:** A formal or informal group,
- ii. which consists of more than one person, that cannot form a cooperative
- iii. but is interested in agricultural or related activities as a group.

The Legal Assistance Centre (LAC) coordinator on land, environment and development, Willem Odendaal, during the second land conference strongly called for the removal of illegal fences in communal areas, ...

Source: <https://neweralive.na/posts/only-11-illegal-fences-removed-in-2018>

- a) Identify four of the negative impacts the occurrence of illegal fences have in the communal areas. (4)
- b) The article mentions “wealthy politicians have been accused of fencing off massive tracts of land, at times measuring over 3 000 hectares”. The Communal Land Reform Act sets a limit on the size of land that can be allocated for (i) a Customary Land Right and (ii) the Right of Leasehold. Indicate the maximum size for both the land tenure types. (Your answer must indicate clearly 9(i) and 9(ii). (2)
- c) Integrated Regional Land Use Plans (IRLUPs) in Namibia focus on four different “aspects”. Describe the aspects Conflict and Potential. (4)
- d) One of the main objectives of the revised IRLUP process is to correct previous shortcomings/deficiencies. Repeat four shortcomings experienced with previous IRLUP documents. (4)

Answer Question 9(a)

(1 mark each, for any 4 answers)

Illegal fencing is usually a form of land grabbing - without authorisation.

- i. *Reduces the commonage area for grazing - increasing grazing pressure*
- ii. *and degrades the remaining commonage further – negative cycle.*
- iii. *Grazing is not the only commonage resource that becomes inaccessible – firewood, building poles, thatching grass, veld food, etc. that the poorest members of traditional communities eg. San depend on for their livelihoods.*
- iv. *Interferes with the movement of wildlife -causing increased HWC.*
- v. *If ignored illegal fencing is effectively rewarded*
- vi. *Leading others to fence off areas to ensure they have access to some part of the commonage.*
- vii. *Increased inequality between Namibians – those that can afford fencing materials (the already advantaged) and those fenced out (formerly and currently disadvantaged).*
- viii. *These barriers restrict the movement of livestock.*

Answer Question 9(b)

(2 marks)

Customary Land right: Maximum size of land - 20 hectares.

Right of Leasehold: Maximum size of land - 50 hectares.

Odendaal argued the case from a constitutional point of view, in that the constitution should apply equally to all in Namibia, whether a person lives on communal or commercial land, with regard to “just compensation as provided for in Article 16 in the Namibian constitution”.

Kashela approached the Supreme Court after the High Court ruled against her in a dispute that arose when the Katima Mulilo town council rented and later offered to sell portions of the communal land without compensation.

She argued she had rightfully inherited the land under customary laws.

Her father was allocated a portion of communal land by the Mafwe Traditional Authority in 1985.

After independence, all communal land in Namibia became the property of the state and in 1995 portions of the communal land was transferred to the Katima Mulilo town council.

At the time, Kashela's father was still alive and continued to live on the land until his death in 2001.

Kashela accused the town council of unlawfully taking portions of her land and unlawfully renting those to a business and four individuals.

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Overruled

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The land in question had ceased to be communal land, the High Court ruled, and Kashela had no claim to any communal land tenure rights.

Damaseb's judgment noted that the council's High Court plea was “silent on the allegations made in support of Kashela's second claim, which is predicated on the right to compensation”.

He further noted that the council had admitted that it had offered compensation to Kashela, but she had wanted more than their offer.

Further, that it was the council's policy to “compensate persons similarly situation as Ms Kashela”.

Damaseb noted that this should have “put the matter to bed and a judgment given in favour of Ms Kashela”.

He said Kashela had acquired a right of exclusive use and occupation of the land in dispute after her father's death under customary laws, and had thus acquired a right of exclusive use and occupation of the land even after its proclamation as town land.

Answer Question 10(b)
(2 marks)

To put the claimant in as near as possible to the same position as he or she was before the acquisition of displacement.

Answer Question 10(c)
(2 marks)

- i. When the right to property is taken away by the State*
- ii. without the agreement of the owner,*
- iii. but with the payment of just compensation / Government has to pay back (compensate) the owner of the commercial farm a fair (just) price for the land that is taken away.*

Answer Question 10(d)
(3 marks)

Regarding Women: The following demonstrates Government's commitment to improving women's position in society.

- i. Giving women the right to be allocated communal land in their own names,*
- ii. To remain on the land after the death of their spouses, and*
- iii. To provide for a minimum of 4 women on Communal Land Boards.*

Answer Question 10(e)
(1 mark each, for any 3 answers)

- i. Means that the state has rights over communal land*
- ii. and has to administer the land*
- iii. In trust for the benefit of the people living on that land.*
- iv. And for the purpose of promoting the economic and social development of the Namibian people.*

The following answers can also be considered:

- i. As the trustee of communal lands, the State has the following obligations in respect of those lands:*
- ii. The State must look after the communal lands and administer the land in the best interests of the people.*
- iii. The State must act in a way that will benefit the communities living in communal areas. In other words, the people living in communal areas must get the benefits of the communal lands, not other people.*
- iv. The reason why the State holds the land in trust is to promote the economic and social development of the people of Namibia, particularly those people who do not have land, as well as those who have no other income and who rely on the land for their livelihood.*

Answer Question 11**(1 mark each, for any 3 answers)***The Minister may by notice in the Gazette*

- i. *declare a local authority which has an urban structure plan which has been approved in terms of this Act; and*
- ii. *which has the capacity to deal with matters relating to spatial planning, as an authorised planning authority for the local authority area concerned.*
- iii. *The Minister must by regulations determine what constitutes "capacity".*

[2]

QUESTION 12

Explain the general approval process of an application submitted with an Authorised Planning Authority, in terms of the approved Urban and Regional Planning Act if the application is in accordance with the relevant forward planning document. (8)

Answer Question 12**(1 mark each, for any 8 answers as indicated)****Submission & Notices**

- i. *The application must be lodged by the owner of the land or a person authorised in writing by the owner. The application must be lodged with the chief executive officer (CEO) of the APA*
- ii. *On receipt of a complete application the CEO of the APA must request the applicant to give notice of the application to (a) the prescribed persons; and (b) the general public, for objections.*
- iii. **Hearing Procedure in terms of Article 100**
- iv. *On the expiry of the period for the lodging of objections, the APA must within the prescribed period determine the date, place and time for the hearing of an application.*
- v. *The APA must hold a hearing for every application in respect of which written objections have been lodged.*
- vi. *The APA may itself hold the hearing*
- vii. *OR may establish a committee consisting of three members of the APA to hold the hearing*
- viii. *and to make recommendations to the APA.*
- ix. *The hearing is open to the public.*
- x. *At the hearing the APA OR a person who lodged a written objection may personally or through a legal practitioner (or any other person or institution nominated in writing by that person) state their case.*

Decision on Application & Appeal

- xi. *The APA may - (a) approve the application, with conditions or without conditions;*
- xii. *Or (b) decide not to approve the application and give reasons for the decision.*

November 2019

IRF620S

Institutional and Regulatory Framework

Included:

Moderator's report

1st Opportunity question paper

1st Opportunity Memorandum