

Independent Land Newsletter (June 2004)

LAND REFORM HIGHLIGHTS IN SOUTHERN AFRICA, 2003-4

Introduction

In March 2003 a small group of land experts met in Pretoria, South Africa, to discuss ways out of what they termed the 'impasse' on land reform in Southern Africa. A report of this land reform 'think tank' group has been widely circulated with the intention of facilitating dialogue and consultation.¹ As a follow up, a series of meeting with key stakeholders was held in South Africa in June 2003 by some of the 'think tank' group members.² A major recommendation of the group was the initiation of an electronic newsletter which would provide news of current land reform developments in the region. This is the first issue of that imagined newsletter.³ The level of detail varies from one country to the other, partly as a result of methodological limitations, partly because there has been much more activity in some countries than in others. A number of future options are being considered, including the strategy for data collection in individual countries, frequency, format and structure of the newsletter. Therefore, any comments on the usefulness of this newsletter, and of ways in which it might be improved, would be greatly appreciated. Please contact Nelson Marongwe, who is the principal writer (nmarongwe@yahoo.com) or Robin Palmer (rpalmer@oxfam.org.uk), who takes full responsibility for the final version. Needless to say, land is a highly contentious issue!

Angola⁴

The 'grace period' created by the 2002 cease-fire agreement in Angola, has been disappearing in recent months. The joy of 'repossessing a vast country, of being able to travel again', the strong hope of every Angolan in a better tomorrow, applied in the belief that this time peace would stay and allow the creation of better living conditions - were largely unfulfilled. The majority of families are probably not in better, and a vast quantity are in worse situations than two years ago, primarily because of the reduction of aid; the 'spontaneous return' of refugees and the displaced, people tired of waiting for support to go home; and the 'Clean Luanda' government campaign, which, in the eyes of many, is 'fighting the poor, not poverty'.⁵ Two different kinds of land conflicts have been increasing in recent years: occupation by powerful people of high quality land held by rural communities with good access to water; and evictions of the urban poor from the areas where they have settled in Luanda.⁶ Those in power, NGOs believe, seem to want to acquire assets urgently and to settle legal matters before the next elections. In spite of civil society weakness, there has been some mobilisation around the land issue. For example, Rede

¹ <http://www.oxfam.org.uk/resources/learning/landrights/downloads/impasertf.rtf>;
<http://www.sarpn.org.za/documents/d0000287/index.php>

² <http://www.oxfam.org.uk/resources/learning/landrights/downloads/SADialog.rtf>

³ It was compiled principally by Nelson Marongwe, with particular support from Henry Machina, Q.C. Selebaló, Rosário Advirta, Ben Cousins, Robin Palmer, Richard White, Mike McDermott and others. The 'think tank' has still to decide whether to continue its virtual existence. Not all of its members contributed to this newsletter.

⁴ This section was drafted by Rosário Advirta and represents the NGO perspectives of Oxfam International and Rede Terra.

⁵ 'Reflexões e Mapa: Advocacia Social em Angola', Oxfam International, Joint Oxfams Advocacy Initiative, 2004 (English translation available soon).

⁶ With some four million of an estimated total of twelve million, Luanda has about one third of the country's population.

Terra in Luanda, Forum Terra from Huíla and some smaller coalitions and associations, in both rural and urban communities, have been following some of the legal concerns raised in various fora and also unfair practices against the poor.

The draft land law project presented by the Government in 2002 was discussed by several sectors and major flaws were identified, which has delayed its approval. From September 2003 to March 2004, Rede Terra - a network of twelve national and international civil society organisations – consulted rural citizens on the draft law. This consultation, supported by Oxfam International, started with the creation of a manual explaining in clear terms, and in the principal national languages, what questions arose from the project. Activists were then trained, and the process of consultation was initiated in selected communities in 10 of the country's 18 provinces.

Following this consultation, in December 2003 the Government presented to the National Assembly a revised land law project which contained several improvements over the previous one. Notable improvements included recognition of and partial protection of the traditional collective rights of rural communities. However, there are also changes which could have very negative implications. For instance, expropriating rural communities' land would now become a legal possibility because of 'private utility' motives – rather than just for public interest, as before. Further, all citizens, families and communities would have to complete the official process of legalising their land tenure situation (i.e. getting their 'titles') within one year. Several key problems and gaps also persist, with the risk that e.g. there is a difference in status between people living in rural communities and all other citizens; that all the investments of the urban poor would be wasted, and the majority of them would become illegal; and that new - stronger and more discretionary - powers are given to the state, and to a lesser degree to traditional rural authorities. This has the potential of creating new problems for the future, as experience in other countries amply demonstrates.

In response, civil society and other actors initiated a '*Towards a Fair Land Law*' Campaign ('*Por uma Justa Lei de Terras*') which is aimed at avoiding the problems this law would create if approved in its present form. On 8 April Rede Terra sent an open letter and a position statement to the National Assembly, accompanied by the report with the results of the consultation with the communities. (This last document had been presented previously in a meeting chaired by the American Ambassador). At the same time, there was also participation in seminars and debates on Luanda radio stations.

Following the consultation process, Rede Terra and other stakeholders made submissions to commissions of Parliament based on the findings of the studies and opinions collected from diverse experts. The Campaign took various forms, including a Gala held on 16 April, the use of T-shirts and stickers for cars or shop windows, distributed in Luanda and in several other Provinces, and participation by members of the network in ongoing debates on these issues. Rede Terra is planning to continue and improve the Campaign through other tools in order to have a wider impact, particularly outside Luanda. However, NGOs are concerned that the media has up to now given poor coverage both to the issues addressed by the land reform project and to the Campaign.

But as a result of these efforts, debate and approval of this problematic land law by the National Assembly, which was expected to be discussed and approved in April, was postponed indefinitely,

and there are diverse opinions by individual MPs on when it will be discussed. This is an achievement on the 'right to be heard' slogan championed by Rede Terra and other actors on behalf of very poor Angolan rural and urban families (who are estimated to represent about 90% of the total population). In the meantime, the evictions in Luanda, characterised by violence and destruction of property, are continuing, starting in a new location almost every week. At the same time families in the rural areas continue to be dispossessed of their land although little is known about this.

Botswana

Since the completion of the Land Policy Review early in 2003,⁷ the Government has conducted a public consultation exercise through the medium of the Kgotla in all the main centres in the country. From this exercise it is clear that one or two recommendations relating to land administration in areas occupied by Basarwa (always a sensitive subject) are unlikely to be taken further. The Government is currently engaged in ongoing internal consultations concerning the final form of the White Paper. There are a number of contentious issues still to be resolved, relating to proposed amendments to the right of avail, customary tenure rights and the issue of privatisation of the commons.

Also under review is Government's policy on Community Based Natural Resource Management. A consultative workshop was held by the Ministry of Wildlife, Environment and Tourism in May 2004, at which major stakeholders made inputs. The revised policy is expected to relax (slightly) government control over CBNRM and give communities (some) greater powers over resource management. The main thrust of the revision is likely to be a clarification of institutional relationships and the rights and obligations of the stakeholders.

Lesotho

The development of a Land Code is in progress and a notable achievement to date has been the completion of the final draft of the National Land Policy in September. It is hoped that Cabinet will adopt this once the Land Bill 2004 is passed through Parliament. The final draft of this was also completed in September 2003, and this was followed by consultations on technical issues with the Parliamentary Counsel. Amendments to the Local Government Act 1997 which affect the structures of the local authorities have also been captured in these consultations; thus the Bill is ready for tabling in Parliament. The Draft Land Acquisition and Compensation Act, which provides for equitable and prompt compensation for land acquisition, was completed in October. The Draft borrows some of the concepts used in the acquisition of land for the Lesotho Highlands Development Project. Consultations with stakeholders on the draft have been undertaken and the Bill will be tabled in Parliament following the adoption of the Land Bill, which is meant to become the principal land law. Consultations with stakeholders are ongoing on the revised Town and Country Planning Bill following completion of the draft in February 2004. Legislation to provide for Land Use Planning activities is currently being developed by a DFID-funded consultant.

Notable achievements have also been accomplished in land administration. In this regard, software development for the land registration system, comprising management of Lease database, Planning database and Survey database was completed in July 2003. Operators were

⁷ <http://www.oxfam.org.uk/resources/learning/landrights/downloads/botissue.rtf>

also trained on the system operations within their area of duty. Construction of 3 decentralised land management offices was completed in the districts of Butha-Buthe, Berea and Mafeteng in December. Furniture and equipment for these offices was also procured and will be delivered soon.

Malawi

The Malawi National Land Policy, adopted by government in January 2002,⁸ has finally been transposed into a costed, prioritised Land Reform Programme. The Programme objectives include resurrecting the National Development Plan and recording individualised customary land rights and the buying out of estate owners and re-vesting land in land poor, smallholder cultivators. Support for the Land Reform Programme amongst government, private sector and donor elites has been consolidated over the past year by - in the eyes of some - carefully managed consultations. Meanwhile implementation of the Land Reform Programme has also accelerated over the past twelve months. A Special Law Commission on Land Law Reform, funded by the EU, has almost concluded its work, apparently without drawing on any external technical or stakeholder inputs to date. The Special Commission has already drafted a Bill restricting the land tenure available to foreigners to terms not exceeding 50 years without ministerial consent. The Bill was unanimously passed in the National Assembly earlier this year. The resulting legislation has been grudgingly accepted by key export industry groups, some of whom have expressed reservations about the prudence of further increasing political discretion in relation to land administration decisions.

Other projects are due to be mobilised this year including a small holder resettlement project funded by a grant from the World Bank of US\$30 million and a customary land tenure regularisation project to be funded by a loan from the African Development Bank. Several more projects based on the EU commitment to support capacity strengthening for ongoing land policy elaboration and for land administration are well down the pipeline. Despite a so far low-key public awareness raising campaign about the National Land Policy and the Land Reform Programme, supported by DFID, land issues were not prominent during the just completed national election campaign. Part of the explanation for this could be the outgoing government's successful cultivation of bipartisan support for its land reform agenda. The elections did however reveal strong regional party alignments suggesting that partisan prioritisation of different land reform issues related perhaps to differing regional population densities may well come to the fore in future political discourse in Malawi.

Mozambique

Land reform in Mozambique is basically about implementation of the 1997 Land Law, a process that is led by the 'land component' of the Government agriculture sector programme PROAGRI, implemented by the Ministry for Agriculture and Rural Development (MADER). The process mainly focuses on land administration, with issues of land management in the wider rural and economic policy context fading into the background. Critical land management issues that include the rights and roles of communities inside or near national parks and reserves are now dealt with by the Ministry of Tourism (MITUR), while a training programme for judges and public prosecutors on the Land Law (and the Forest and Wildlife, and Environmental Laws) is

⁸ <http://www.oxfam.org.uk/resources/learning/landrights/downloads/malnlp.htm>

bringing the judiciary more strongly into the implementation picture. A new Territorial Planning law developed by the Environmental Coordination Ministry (MICOA) also threatens to complicate the wider 'land programme' and implementation of the progressive and widely regarded 1997 Land Law.⁹

The focus of the PROAGRI 'land component' is a new programme to digitalise the national cadastre, with Italian bilateral funding, and a pilot survey of land use and occupation carried out by private surveyors contracted to the government land administration (DINAGECA). A central objective of both processes is to simplify and speed up access to land by private investors, already given high priority with the requirement to process new land rights claims within a maximum of 90 days. A pilot project that seeks to issue 64kb 'smart cards' to selected farmers is being developed for purposes of holding information about their land use. This targets the estimated 300-400,000 commercially-minded family farmers who, it is hoped, will use the card as a kind of ID to prove they have the resources needed for production, either in outgrowing schemes and/or through credit raised from participating banks.

In this context, community consultations and other more progressive elements of the 1997 Land Law have generally been relegated to second place, at least in official programmes, and there is some risk that parallel and not necessarily compatible approaches to community rights issues will emerge in areas under the jurisdiction of either MADER or MITUR. 'Community issues' are seen as something for NGOs to deal with, effectively meaning that core elements of the law are not being prioritised by public agencies. A recent report for DFID estimates that since 1997, just 180 community delimitations have been done, in a possible total of several thousand; and that over 10,000 new private requests for land have been processed.

Public cadastral services often do community consultations in a rushed manner and cannot secure the best deal for the community, but rather facilitate the processing of the new private sector land rights. Nevertheless, the Land Law has established the principle that new investors must consult with local people first to check that the land they want is not being used already. This is a remarkable development compared to the situation before 1997. A new National Land Strategy aimed at improving Land Law implementation is in the making. Under this new approach, greater attention is paid to the relationship between communities and investors, through partnerships and other contractual arrangements that allow local people to secure some greater economic benefit from ceding their land rights. A proposal to create an independent fund to support community land delimitation and rights registration is being advocated by DFID, and this seems to be moving ahead with support from several other bilateral donors. While private investment continues to capture large areas of the best and most valuable land, with little real return to the communities who nominally hold the use rights over these resources, there are signs of positive new developments that can offer lessons for other countries in the region.

Namibia

⁹ See, among many other positive views posted on the Oxfam GB website, Robin Palmer. 'Struggling to secure and defend the Land Rights of the Poor in Africa', *Journal für Entwicklungspolitik*, XIX, 1, 2003, 6-21, <http://www.oxfam.org.uk/resources/learning/landrights/downloads/struglin.rtf>

Conflicts over land have certainly intensified in Namibia during the year, with events in Zimbabwe appearing to have played a strong influence. An additional factor has been uncertainty surrounding the future intentions of President Sam Nujoma and the forthcoming elections. In the event, Nujoma agreed to step down but ensured that Lands Minister Hifikepunye Pohamba would succeed him as leader of SWAPO and almost certainly as the next President. Some observers believed that Pohamba strongly 'played the land card' in his campaign for the leadership, though he himself denied this.

There has been extensive media coverage in Namibia of (1) a series of evictions of farm workers (finally banned by Government on 18 March); (2) of strong reactions to these by trade unions and by some politicians, including repeated threats of farm invasions; (3) of confrontations between Government and white commercial farmer organisations, blamed by some for blocking 'willing seller, willing buyer' land reform by effectively pushing land prices up; (4) of splits between 'moderate' and 'hard line' white farmers; (5) of the Prime Minister's declaration (25 February) 'to accelerate the land reform process'; and (6) finally of the announcement that Government would start to expropriate some farms for resettlement. A land tax has also been mooted and the Lutheran Churches have expressed concerns about a general lack of transparency surrounding land issues.

The first organised farm occupations occurred in October 2002 when a group of SWAPO Youth League members occupied a commercial farms as a protest against the retrenchment of 30 farm workers. Government removed the demonstrators, mobilising the police force. In November 2003, the Secretary General of the Namibia Farm Workers Union (NAFWU) warned that the union was going to resettle 6 farm workers back to the farm from which they had been evicted. Negotiations started between NAFWU and Namibia Agriculture Union (NAU) / Agricultural Employers Association (AEA) in December but collapsed shortly after. In January 2004, NAFWU gave 10 days notice to the commercial farmer in dispute, warning that if she would not resettle the workers within the period, the union would resettle them back. The response by NAU emphasised the legality of the farm owner's reaction, arguing that a court order for the evictions had been acquired.

In a related event, the Namibian Government issued its first notices of expropriation against two farms on which farm workers had been controversially fired and evicted in 2003. Their owners were 'invited to make an offer to sell the property to the state and to enter into further negotiations in that regard.' To date, about 15 white farmers have been served with expropriation notices and given 14 days to respond with their asking price, while the Minister said 'many farms' had been targeted by Government (*The Namibian*, 1 June).

A useful new book is Justine Hunter (Ed), *Who Should Own the Land? Analyses and Views on Land Reform and the Land Question in Namibia and Southern Africa* (Konrad-Adenauer-Stiftung and Namibia Institute for Democracy, 2004).¹⁰ See also Robin Sherbourne's important 'A Rich Man's Hobby'¹¹ and the IRIN special report on land reform in Namibia.¹²

¹⁰ http://www.nid.org.na/pdf/land_reform_namibia.pdf

¹¹ Institute for Public Policy Research, Opinion No.11, December 2003 available at <http://www.ippr.org.na/> and http://www.oxfam.org.uk/resources/learning/landrights/downloads/ippr_opinion_11_rich_mans_hobby.rtf

South Africa

In South Africa, debate has centred on the Communal Land Rights Bill,¹³ the threats issued by the Landless People's Movement to forcibly occupy white owned commercial farms, and the enactment of a new legal provision that allows expropriation of land.

An amendment to the 1994 Restitution Act was passed late last year to empower the Minister of Agriculture and Land Affairs to expropriate commercial farms required for restitution purposes, if negotiation with a commercial farmer failed. However, the amendment still obliged the Government to pay compensation at the market price as provided for in the Constitution, thus protecting the property rights of commercial farmers. The laws affecting farm dwellers' rights - the Extension of Security of Tenure Act and the Land Reform (Labor Tenants) Act - are reportedly to be amended, and possibly consolidated into one. It is not clear in what ways this will affect the content of their tenure rights and the draft legislation has not been made public.

The Communal Land Rights Bill was finally passed by Parliament in February 2004 and has been forwarded to the President to be signed into law. However, the President has not yet assented to it and so it is not yet an Act. It appears, though this is not officially confirmed, that the President is seeking further legal opinion on its constitutionality, so further delays are possible. At the same time, the Department of Land Affairs has stated publicly that it cannot begin to implement the Bill until 2005. One of the most controversial aspects of the Bill is the one that imposes traditional councils as the bodies that will administer communal land. This aspect was first introduced on 17 October and public hearings around the bill were held within three weeks of this date. Concerns have been raised on whether or not the Bill has been properly debated either within the rural branches of the ANC or within rural society within such a short timeframe. In essence, the Bill gives traditional leaders power over rural land, and thereby power over the lives of the people who live on the land. For this reason, it has been criticised for potentially negatively affecting the plight for rural women who suffer severe discrimination under current customary systems. Many civil society critics, in their submissions on the Bill, pointed out that a critical omission was the absence of community consultation on whether or not they desired a transfer title, or on the form and content of land rights. Elaborate analyses of the concerns raised during the consultation phase are provided, among others, by Ben Cousins¹⁴ and Aninka Claassens of PLAAS¹⁵ and Sibongile Ndashe of the Women's Legal Centre,¹⁶ while Cheryl Walker has written

¹²http://www.irinnews.org/report.asp?ReportID=39582&SelectRegion=Southern_Africa&SelectCountry=NAMIBI

¹³ http://land.pwv.gov.za/legislation_policies/bills/_docs/CLRB-DLA-D.LS-9.10.03Approved_by_Cabinet8.10.3.doc

¹⁴ Ben Cousins, 'Debating communal tenure legislation in South Africa: The Communal Land Rights Bill of 2002', June 2004 and generally at <http://www.uwc.ac.za/plaas/>

¹⁵ Aninka Claassens, 'Report on the Parliamentary Process – Communal Land Rights Bill', PLAAS/NLC Project on the Communal Land Rights Bill, December 2003; Claassens. 'How the Communal Land Rights Bill undermines democracy', *Cape Times*, 9 February 2004.

¹⁶ Women's Legal Centre, 'Submission on Communal Land Rights Bill before Land Affairs Portfolio Committee', November 2003.

a very useful paper on ‘what is redistributive land reform for, and who should benefit?’¹⁷

On 10 January the Landless People’s Movement (LPM) issued a press statement entitled ‘Ten years of failed land reform is enough’, launching a ‘No Land, No Vote’ campaign towards the forthcoming election. The LPM demanded a national land summit to discuss the fundamental constraints to effective land reform and an immediate moratorium on all forced removals and evictions. In April while South Africa was holding its national elections, about 62 members of the Gauteng LPM were arrested as they tried to stage a peaceful protest. Those arrested included the core leadership of the LPM in the province and other activists.

In terms of progress, a total of 2,493,566 hectares of land has been transferred through all aspects of land reform since 1994. This amounts to 2.9% of commercial agricultural land (excluding the former homelands). The target remains to transfer 30% of this land by 2015. Of the 2.5m ha, 810,292 ha have been transferred through restitution and 1,683,275 ha through redistribution and tenure reform. In the latter category, just under 12% of households benefiting are female-headed. Overall, the budget for land reform has been increased in the financial year 2004/5, now amounting to a little under 0.5% of the national budget: R1.4 billion. Within this, the budget for ‘restitution’ (most of which has in the past been spent on cash compensation rather than land acquisition) accounts for R933 million and the budget for ‘land reform’ to fund redistribution and tenure reform stands at R474 million. Although the latter has been growing slowly, the capital budget for land acquisition has been declining in real (and nominal) terms and is only due to return to 2001/2 levels by next financial year. In the meantime, approved projects have been put on hold, and land cannot be transferred in a number of provinces due to a lack of funds. This is in direct contrast with previous years, when the budget was regularly under-spent.

Swaziland

Swaziland continues to experience delays in almost all of its land-related reform programmes as a result of delays to the promulgation of its new Constitution. The Constitution is currently timed for release in July, but is being criticised on many fronts. In the meantime, previously reported disputes remain, together with the worsening economic conditions inevitable with equivocation concerning the rule of law. The new Prime Minister has repeatedly confirmed his commitment to the rule of law, which rule was severely called into question by defiance of court orders and other actions during the tenure of the previous Prime Minister.

The Constitutional Review Process has also examined the contents of the Draft Land Policy. Several of the recommendations within that draft are consistent with the recommendations in the Draft Constitution. In particular, sections 212 and 213 directly address land, section 213 establishing the Land Management Board as recommended in the Draft Land Policy. Section 20 is intended to ensure protection from deprivation of property: compulsory deprivation will be permitted only via court orders, which are also to ensure prompt payment of fair and adequate compensation. Section 21 is intended to ensure full equality before the law in all matters, including landed property rights. Section 27 provides for the right to reside in any part of

¹⁷ Cheryl Walker, ‘What is redistributive land reform for? And who should benefit?’, Harold Wolpe Memorial Trust Conference on *The Land Question in South Africa: The Challenges of Transformation and Redistribution*, Cape Town, 25-27 March 2004.

Swaziland. Section 35 is intended to protect the inheritance of the property rights of spouses, no matter whether the marriage was under civil, common or customary law. Under section 40, all such property-related provisions of the Draft Constitution relate just as much to Swazi Nation Land as to freehold. In other words, the Draft Constitution intends to ensure the full protection of property rights under the rule of law - a key principle of the Draft Land Policy.

Because of the urgency of some reforms, they have been decoupled from the Land Policy process. For example, the introduction of long-term leases on Swazi Nation Land is being brought forward by the Ministry of Housing and Urban Development. The Ministry of Agriculture and Cooperatives has developed Forestry and Agricultural Policies, and several other land-related initiatives are proceeding on a piecemeal basis. The Government recognises that the potential for success of such initiatives is constrained by the absence of the integrated framework that the National Land Policy is intended to provide: 'the absence of a National Land Policy hinders development on land generally for the whole country.' The Draft Policy was developed as an integral part of the National Development Strategy, which has been similarly stalled for years.

Swaziland is threatened by the highest rate of HIV/AIDS in the world, as well as economic stagnation largely caused by rejection of key provisions of the National Development Strategy, including the compromising of the rule of law. An essential part of the implementation of the Draft Constitution will be by means of the National Land Policy and associated initiatives, in particular the National Development Strategy. Other policies that have lain dormant for years pending the resolution of constitutional issues - for example the Peri-urban Growth Policy - are equally critical in terms of the general social and economic empowerment required for the nation's health.

Zambia

Major land reform developments in Zambia have centred around the Draft Land Policy Review Process and the Constitutional Review Process. The Zambian Government is consulting Zambians on the 1999 Draft Land Policy,¹⁸ through a joint Land Policy Technical Committee, in conjunction with the Zambia Land Alliance (ZLA). This ongoing process has involved rural and urban communities through community and district workshops in all provinces of Zambia. There has been an overwhelming response from these workshops so far. However, in ZLA's view, there is still need to collect more views from strategic stakeholders such as women's groups, the urban poor, HIV/AIDS groups, and people with disabilities. The Committee is still collecting views and will come up with a redrafted Land Policy document by July, which will be discussed at a national conference to be held later this year.

The Zambian Government is also reviewing the national Constitution. This process has been ongoing for about a year. The Constitutional Review Commission has consulted the public in all provinces. The Zambia Land Alliance reports that apathy surrounded the sittings of the Commission in Lusaka before it went to other provinces mainly because of the controversy surrounding the adoption of the redrafted constitution. Most members of the public want the Constitution to be adopted through a Constituent Assembly, while the Government argues that it has no funds to support such an exercise. For this same reason, the Government is reluctant to

¹⁸ <http://www.oxfam.org.uk/resources/learning/landrights/downloads/zamdlpol.rtf>

review the Bill of Rights as doing so would require a costly referendum. In this light most civil society organisations are either in a dilemma as to whether or not to submit their views to the Commission or have categorically refused to do so. For them the process would not address the real human rights issues but would just be a window dressing exercise. It has been proposed that Zambia might consider adopting from the 1988 Brazilian Constitution the notion that land must perform a ‘social function’ – that is, that it is not politically acceptable for vast tracts of land to lie idle in the legal hands of absentee landlords, neither producing anything nor providing jobs.

Following the 1998 research on land tenure insecurity on the Copperbelt,¹⁹ Oxfam has been carrying out a programme of advocacy and mobilisation to influence government, councils, mine owners and private individuals to unlock unused land and enable the poor to access it. This has met with some success. There is now much less fear of eviction of so-called ‘squatters’ than hitherto; the mining company Mopani, which initially threatened to evict 9,000 households in Mufulira, has dropped its threat and allocated land to the poor. The District Councils’ standard policy of always first advertising vacant plots in the press has been successfully challenged; in Mufulira and Chingola they now consult first with local organisations working with poor communities before advertising. Kitwe is being lobbied to follow suit. When Chingola Council reverted to the former practice, people marched to its office and demanded that priority be given to squatters – and the decision was rescinded. Local district land alliances on the Copperbelt have helped people to organise and articulate their concerns and have provided a strong base for the Zambia Land Alliance to engage effectively at national level on behalf of poor communities. The new Copperbelt Land Rights Centre, opened in March, will serve as an advice and information centre and hopefully consolidate and build on the advocacy work that has taken place at community level. It has just made a written submission to the Constitutional Review Commission.

Zimbabwe

Zimbabwe’s Fast Track land reform programme continues to be hugely controversial. It has aroused strong emotions and heated debate within the country, regionally and internationally. The announcement (in *The Herald* of 8 June) by John Nkomo, Minister of Special Affairs in the Office of the President in charge of Lands, Land Reform and Resettlement, that ‘farms [are] to be nationalised’²⁰ sparked a flurry of Western media comment. Nkomo was reported as saying that land reform was a process, not an event, that ultimately all land would be resettled as State property, and that the Government would no longer waste its time on title deeds because 99-year leases would act as good enough collateral. ‘There will be no such thing called private land’ he said, adding that the State should not waste its time and money on acquisitioning farms. Western media were divided between those believing this was a radical departure, those who felt it was inevitable, and those who cautioned wait and see because there had been many past ministerial statements which had subsequently been reversed. The *Daily Telegraph* (9 June) was alone in arguing that the decision ‘marks an attempt to wrench land from new multiple farm ‘owners’ and quell divisions in Zanu-PF before elections in March.’ The ‘wait and see’ approach appears wise, for as this newsletter goes to press, an article appeared in *The Herald* (15 June) entitled ‘No

¹⁹http://www.oxfam.org.uk/resources/learning/landrights/downloads/full1998_landtenureinsecurityreport.pdf

²⁰<http://www.herald.co.zw/index.php?id=32773&pubdate=2004-06-08>

policy change on land tenure, ownership'²¹ which said exactly that. It came from the Department of Information and Publicity in the Office of the President and Cabinet, and said:

‘Apart from existing forms of land tenure which remain in force and legally valid, land acquired under the fast-track and current phase of land reforms automatically reverts to the State, with beneficiaries accessing it under 99-year lease agreements with the State for general agricultural use, and 25-year lease agreements for conservancies. It is emphasised that this position only applies to land acquired by the State under land reforms, and does not in any way invalidate or supersede other lawful forms of tenure which, in any case, are recognised and protected by the laws of the land.’

But in reporting the same story, *The Guardian* (15 June) attributed this statement directly to Jonathan Moyo, the controversial Minister of Information, under a heading ‘Zimbabwe factions fight over farms’ and claiming that ‘his statement suggests factions within Mr Mugabe’s government are vying with each other over land policy’ and that ‘confusion has surrounded Mr Mugabe’s land seizures, with the government saying one thing but doing another.’

(The above amply demonstrates the difficulty of seeking to interpret a complex ongoing situation, full of political ambiguity. An excellent book which seeks to unravel some of this complexity has recently been published in Harare,²² while relevant new publications on Zimbabwe, including website references where available, was posted on the Oxfam GB *Land rights in Africa* website in March).²³

Over 90% of previously white owned commercial farms has now been transferred to black Zimbabweans, the majority under the Fast Track resettlement programme which was initiated in 2000.²⁴ Despite earlier announcements that land acquisition was over, the process has intensified over the last couple of months. In April and May, around 454 commercial farms with a total of 413 072 hectares were gazetted for acquisition by the Government, concentrated in the 3 Mashonaland provinces (East, West and Central), Manicaland, Midlands and to a less extent Masvingo. Farms targeted for acquisition in Masvingo are mainly the 28 properties measuring almost 6000 hectares owned by the sugar producing Hippo Valley Estates. Recent press reports indicate that since January 918 farms have been listed for compulsory acquisition, including both a re-listing of farms that Government had failed to acquire from previous attempts and new farms.

This process has been facilitated by the enactment of various new legal instruments. Statutory Instrument 273A of 2003 was put in place to facilitate acquisition of farm equipment and materials on acquired farms by the Government. Land Acquisition Amendment No.1 of 2004 introduced methodological changes in the acquisition of farms, especially the process of serving of Notices for the acquisition of farms and opening up of the type of land that can be

²¹ <http://www.herald.co.zw/index.php?id=32951&pubdate=2004-06-15>

²² Amanda Hammar, Brian Raftopoulos and Stig Jensen (Eds), *Zimbabwe’s Unfinished Business: Rethinking Land, State and Nation in the Context of Crisis* (Harare: Weaver Press Ltd, 2003).

²³ http://www.oxfam.org.uk/resources/learning/landrights/downloads/new_pubs_on_zim_with_website_refs.rtf

²⁴ *Report of the Presidential Land Review Committee on the Implementation of the Fast Track Land Reform Programme, 2000-2002*, (‘The Utete Report’, 2003) available at http://www.sarpn.org.za/documents/d0000622/P600-Utete_PLRC_00-02.pdf

compulsorily acquired for resettlement purposes. In terms of the new legal framework, the period over which a preliminary notice of intention to acquire land shall remain in force has been extended from 2 to 10 years. The new Act also reduces from 30 to 5 days the period within which a land owner whose land is being acquired may object to the service of a fresh preliminary notice where such notice is being re-issued. Controversial land acquisitions, exemplified by the cases of Kondozi farm and Charleswood estate in Manicaland Province and part of the land belonging to Hippo Valley Estates which represents one of two of the country's major sugar producers, have continued unabated.

The displacement of white commercial farmers has seen some of them migrating to Mozambique, Zambia and even as far as Nigeria and Uganda where they have reportedly been given land to start farming. Press reports have indicated that some 100 former Zimbabwean farmers settled in Zambia and have reportedly produced about 70% of Zambia's 2003 maize crop. AFP (12 May) revealed that the central Nigerian state of Kwara agreed to lease 15 farms of 1 000 hectares each (on 50-99 year lease periods) to former Zimbabwean farmers. The farmers are to be supported with basic infrastructure that included roads, dams, telecommunications, security and houses.

Whatever the controversies concerning the merits in principle and practice of Fast Track, and the current 'war about numbers' over vastly disparate estimates of forthcoming food production, there are sufficient reports from the pro-Government *Herald* and *Sunday Mirror* to indicate that there are a significant number of problems emerging in the 'new resettlement areas'. These include:

- Significant and growing levels of conflict between large (A2) & small (A1) farmers, with the richer generally evicting the poorer;
- Much corrupt land grabbing and multiple ownership which is now openly talked about and (linked to that) significant conflicts between leading politicians over who should be the main beneficiaries of Fast Track;
- Serious conflicts over labour, with strong pressures that former farm workers be coerced to work, if necessary below minimum wage, for the new farmers;
- A desperate plight for the majority of former farm workers;
- Still unresolved questions around ownership and tenure and who will pay for services e.g. water, electricity, telephones;
- The spread of tsetse fly, foot and mouth etc. as controls and fences have broken down;
- Massive environmental degradation (e.g. tree cutting, gold panning, the killing of wild life, pollution of water resources, silting up of rivers, etc);
- Wholesale stripping of assets and destruction of farm machinery;
- Breakdown of various services, including health;
- Still confusion over foreign owned plantations, game conservancies etc, which the Utete Commission had recommended be left alone, but are now being taken over;
- Widespread but – like everything else in Zimbabwe - contested reports of 'under production'.

Supporters of Fast Track would describe these as teething problems, comparable to major radical land reforms elsewhere in the world; critics would have a different interpretation. But the

launching of Fast Track has undeniably made a major impact on the perception of many black Africans in Namibia and South Africa, since it has demonstrated that a massive expropriation of white farms by the state could be an option to the dominant - and painfully slow - 'willing seller and willing buyer' market transfer approach.