

# LAND REFORM IN NAMIBIA

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## INTRODUCTION

1. This status report on land reform in Namibia has been prepared as an adjunct to the Evaluation of the Country Strategy for the European Commission. Until now, the EC has not been funding land reform in Namibia. Nonetheless, questions as to whether and how the EC might assist land reform are expected to arise in forthcoming work on the Rural Development Profile and Strategy Framework.<sup>1</sup>
2. This paper aims to answer three questions:
  - What has been the experience with the land reform programme over the last decade?
  - How is land reform expected to develop in the coming decade in Namibia in the communal and the commercial areas?
  - What might be the role of donors in Namibia's future land reform programme?
3. The topic of land reform has been on the development agenda in Namibia since before Independence. On coming to power in 1990, the SWAPO government announced its intention of transferring land to 'the landless majority' and agreed to a constitution in which the property of citizens could not be taken without just compensation. With the support of the opposition parties, it conducted a national consultation on the land question, culminating in the National Conference on Land Reform and the Land Question in Windhoek in June 1991.
4. As this review will show, despite a promising start, little progress has been made with land reform over the last decade, a reflection of the low priority it has received. However, the events that unfolded in Zimbabwe in March and April 2000 have reverberated throughout the region and resulted in a huge increase in interest in land reform in Namibia. The President has announced that land reform is to be greatly accelerated. Donors are being asked to contribute to the resolution of the problem.
5. This confronts donors with new and very difficult challenges. Both South Africa and Namibia provide an opportunity for devising and testing options, which are more sensitive of the historical circumstances and the dilemma faced by governments. The overarching rationale for donor assistance to land reform would be to support a more equitable redistribution of land and power and avoid an agrarian conflict which could disrupt the rest of the economy.

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<sup>1</sup> To assist in exploring these issues, DFID-UK consented to the assignment of a regional specialist on land reform to the mission for four days (6-9 November 2000).

6. The central agrarian issue in all three countries is the repossession of land alienated by European settlers. Despite the great differences between Zimbabwe, South Africa and Namibia, there are reasons for believing that similar land invasions could, sooner or later, take place across the region. In the absence of a concerted and sustained effort by government to redistribute land, there is a danger that land invasions could again be used as a rallying point to mobilise political support.
7. It is important that donors are sensitive to the historical context and underlying cause of the current problems. In 1980, ZANU reluctantly accepted the willing seller, willing buyer formula for land reform. Subsequently, compromises over property rights were also reached by SWAPO in Namibia in 1990 and by the ANC in South Africa in 1994. As a result, existing property rights were protected in both new constitutions.<sup>2</sup>
8. These settlements effectively legalised more than a century of land grabbing by whites, in the course of which millions of people were uprooted from their ancestral lands, almost always without compensation. Henceforth, to change the colonial land apportionment maps required the willing consent of the beneficiaries of past expropriation. Redistribution was not to occur from the 'haves' to the 'have nots' (as in land reforms in East Asia), but from public revenues to the 'historically disadvantaged', spent in the context of a market transaction in which land prices had risen as a result of the stability accompanying majority rule.
9. In the new states of Southern Africa, the question of land redistribution has never been adequately addressed, despite liberation rhetoric about fighting for lost land. This is for a variety of reasons, including the constitutional constraints, but also because significant numbers among the new ruling elite acquired land for themselves in various ways. Further, the attention of politicians has been more often occupied with other concerns. Thus the early enthusiasm for land reform waned and tended to be revived only when there was an election to be fought.
10. In both Namibia and in South Africa, following the land crisis in Zimbabwe in 2000, there is a basic disjunction between the governments' renewed public commitment to land redistribution and the financial and administrative resources available for realising it.
11. Namibia's land reform challenges might be summarised as follows:
  - Finding harmonious solutions in the context of the political and ethnic divisions inherited from the colonial and apartheid past;

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<sup>2</sup> This is not to say that SWAPO, unhindered by independence negotiations, would not have opted for willing seller/buyer. Likewise in South Africa, Anthony Sampson, in his authorised biography of Nelson Mandela, describes how ideas of nationalisation to redress decades of dispossession and destruction of black property and economic rights were abandoned by the ANC leadership in 1992. Returning exiles opposed nationalisation and expropriation because of negative experiences from elsewhere (e.g. Mozambique, Soviet Union). The negotiated settlement and the 'property' clause inevitably meant 'negotiated' land reform. Nonetheless, politicians have subsequently tended to blame 'the exigencies of constitutional negotiations' for the continuing racially skewed land ownership and their inability to do anything about it.

- Devising solutions to land-use problems posed by the need to achieve land reform in a semi-arid pastoral environment;
  - Overcoming the institutional tensions:
    - obtaining agreement on land policy (economic production versus poverty alleviation) in the communal and commercial areas;
    - deciding what should be the role of stakeholders (national, regional, traditional leaders, local users and occupiers) and deciding in whom land rights and decision making should be vested and who should enjoy the benefits.
12. **Political and ethnic challenges:** These tensions surfaced at the National Conference on Land Reform and the Land Question in Windhoek in 1991. In the run up to the meeting, political groups, representing minority ethnic interests, were pressing for the restitution of ancestral lands. In the case of the Herero, Nama and Damara people, these had been lost to the German colonisers at the turn of the century in the drier central and southern parts of the country. After three days of tense debate, broad agreement was reached that the restitution of particular areas of land to specific groups was not possible because their claims overlapped and to resolve them amicably would be impossible. Land redistribution had to be based on need.
  13. Minority groups whose ancestral lands were mostly alienated by the whites have continued to contest the conference decision. A major challenge for the government is to devise and implement a land policy that avoids favouring one particular group, thereby exacerbating age-old political tensions.
  14. **Environmental constraints:** In the humid tropics as well as more temperate climates, where rain-fed crop production is feasible, family-sized farms are normally more efficient than larger units on which wage labourers are employed. However, in semi-arid and savanna pastoral environments, the subdivision of large commercial ranches (or communal range land) into productive family stock farms has not been a success.
  15. In the light of experience with pastoral settlement schemes in Africa, neither the subdivision of commercial ranches into family livestock farms, nor group or co-operative ranching have proved viable options. The costs of settling families with small herds and flocks on individual farms, with reasonable standards of social and economic infrastructure, are very high and the economic return is almost certainly negative.
  16. In addition to the economic consequences of sub-division, there are likely to be far-reaching negative environmental effects. Small herds and flocks are difficult to manage as commercial units on fenced farms in dry savanna areas, primarily due to the uneven spatial distribution of rainfall and the likely unavailability on a small ranch of fall back areas in times of drought. In the narrow confines of a family farm, grazing

pressure is intense and continuous, to the detriment of the animals, the pastures and, in some areas, the soils.

17. **Institutional tensions:** Both local custom and studies of optimal range use usually point to one simple, low-cost solution to problems of pastoral land use in semi-arid parts of the region, namely to remove the fences and extend communal grazing. However, while some progress may have been made in Namibia with community based natural resource management (CBNRM)<sup>3</sup>, there is still little agreement about arrangements for land allocation and range management on communal land. In the circumstances, the extension of Communal Areas may not be a satisfactory solution in Namibia.
18. A major challenge for government is to obtain agreement on the role of traditional leaders. In some areas, they undertake land administration with varying degrees of efficiency and legitimacy. In others, there is no clear or broadly accepted authority over land allocation and management. There is growing tension between poor residents and those who are fencing large areas for private use.
19. The long and contentious history of the drafting and passage of the Communal Land Bill<sup>4</sup> bears witness to the failure to resolve questions over who should allocate and hold land and for what purpose.
20. The National Land Policy White Paper (1998) of the Ministry of Lands, Resettlement and Rehabilitation (MLRR) states that 'government policy will at all times seek to secure and promote the interests of the poor'. These are defined as 'the landless or those with little or insufficient access to land who are not in formal employment or engaged in non-agricultural business activities'. This provides the MLRR with its mandate to 'resettle' the poor on farms acquired and retained by government in terms of the *Agricultural (Commercial) Land Reform Act*.
21. At the same time, the Ministry of Agriculture, Water and Rural Development (MAWRD) has another objective, namely to use the land to maintain and increase the productivity of Namibia's agricultural sector. MAWRD emphasises technical efficiency and the need to assist farmers to work on their own land, in their own time for their own profit. This, of course, tends to conflict with the settlement of the landless poor on state-owned land, sustained by public services.
22. Differences are not encountered over land use and tenure arrangements only in the commercial areas. The division of opinion on the fencing of rangeland in the Communal Areas was clearly demonstrated by the research carried out by NEPRU on attitudes to

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<sup>3</sup> 'The legal aspects of governance in CBNRM in Namibia' by Andrew Corbett and Brian Jones, paper prepared for the CASS/PLAAS Second Regional Meeting on the legal aspects of governance in CBNRM, University of the Western Cape, 16-17 October 2000.

<sup>4</sup> Passed by the National Assembly in February 2000, but subsequently rejected both in principle and for amendment by the National Council.

land.<sup>5</sup> At the 1991 Land Conference the more egalitarian view won the day and the majority of participants recommended that the communal areas should, for the present, be retained, developed and extended where necessary. It was further recommended that the fencing of land by wealthy stockowners be halted and illegal fences removed. Despite this, the MAWRD went ahead with a credit scheme with the purpose of helping farmers subdivide the communal land. The declared aim was to 'reduce poor environmental management and degradation as farmers discover that their economic life must start and end on their plots'.<sup>6</sup>

23. Notwithstanding the coherence of the land reform policy set out in SWAPO's 1999 Election Manifesto (Box 1), tension continues between the MLRR and the MAWRD, arising from different approaches to land redistribution and rural development.

### **LAND REFORM IN NAMIBIA OVER THE LAST DECADE**

24. Land reform is generally accepted to mean the redistribution and/ or confirmation of rights in land for the benefit of the poor. They may be tenants, farm workers and other disadvantaged groups whose tenure is legally insecure because they use and occupy land belonging to other persons, including land registered in the name of the state.
25. Agriculturally usable land in Namibia is subdivided into the commercial farming area (approximately 36.2 million ha) on freehold land and the so-called Communal Areas on state land (approximately 33.5 million ha). Thus the land reform debate focuses on (a) the redistribution of commercial farms which are mostly owned by whites and (b) tenure reform in the Communal Areas
26. **Redistribution of commercial farms:** The 1991 National Land Conference recommended that foreigners should not be allowed to own farms, that absentee landlords should be expropriated and that ownership of very large farms and/or several farms by one person should not be allowed.
27. A Technical Committee was established to: *evaluate the facts regarding under-utilised land, absentee ownership, viable farm sizes in different regions and multiple ownership of farms; to make appropriate recommendations for the acquisition and reallocation of such land identified; and to assess possible forms of taxation on commercial farmland and the economic units to which taxation should apply*.<sup>7</sup>

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<sup>5</sup> Socio-economic conditions and attitudes to land issues. Briefing paper number 7, National Conference on Land Reform, NEPRU, Windhoek, 1991.

<sup>6</sup> New Era, Ministry of Information and Broadcasting, Windhoek, Vol 1, No 71, 26, November 1992.

<sup>7</sup> Para 9, 'Consensus of the Conference', National Conference on Land Reform and the Land Question.

**Box 1 SWAPO's Land Reform Policy (1999)**

Since the country's independence, the SWAPO government has been involved in addressing the problem of land hunger. In 1992 (sic), the SWAPO government held a consultative conference on land, attended by representatives of all the communities of our nation. Resolutions adopted at that conference have formed the basis of our policy initiatives to address this problem.

Subsequently, the SWAPO government saw the Agricultural (Commercial) Land Reform Act through the Parliament, has acquired numerous farms to resettle a number of communities, has formulated land policy, and has tabled the Communal Land Bill in the Parliament.

As promised in the 1994 SWAPO Manifesto, the SWAPO government allocated N\$20 million annually to acquire land in commercial farming areas to resettle the landless. This was done. As a result of these efforts, some 150,000ha of commercial land has so far been acquired, on which 14,000 landless citizens have been resettled.

Within the framework of the SWAPO Party policy of availing commercial land to formerly disadvantaged and landless Namibians, different models of resettlement have been designed to cater for the different needs of the landless. Our overall objectives in this regard are:

- To bring smallholder farmers into the mainstream of the Namibian economy;
- To redress past imbalances in the distribution of land as a resource;
- To create employment through full-time farming; and
- To offer an opportunity to our citizens to reintegrate into society after many years of displacement, the war of liberation, and other adverse circumstances.

The SWAPO government's resettlement programme is also tied to our policy of human resource development for the sustainable use of our natural resources.

In addition, the SWAPO government is committed to the policy of land use management. To that end, the SWAPO government has decided on a five-year programme of assessment and development of communal areas. The main objective of the programme is to identify virgin lands and develop them in order to make them available to communal area inhabitants. It is the SWAPO government's conviction that land administration, survey and mapping, valuation, use and planning are indispensable tools in the land reform process. Communal lands need as much attention of the government as the care given to commercial land reform of our country in order to minimise the disparity between communal and commercial land use management.

In the years ahead, the SWAPO government plans to accelerate the acquisition of land to resettle communities and provide them with the necessary productive and environmental management skills. Towards this end, the SWAPO government has already finalised the Land Valuation and Taxation Regulations as a part of the Agricultural (Commercial) Land Reform Act that should result in increased availability of land that is not being used by the commercial farmers.

source: [www.swapo.org.na](http://www.swapo.org.na)

28. Many of the findings of the Technical Committee were incorporated in the *Agricultural (Commercial) Land Reform Act, 1995*.
29. A view that received prominent attention at the conference was that freehold farms should be made available on favourable terms to black farmers. The pressure for this reform came from a number of quarters:
- from whites keen to recruit rich and politically influential black farmers into their ranks;
  - from black businessmen and government officials who aspired to own farms themselves;
  - and from small farmers in the communal areas who resented the pressure on communal grazing exerted by the large herd owners.
30. One of the first measures to be announced following the conference was the **Affirmative Action Loan Scheme**, which was administered by the then Land and Agricultural Bank (later 'Agribank'). It was introduced in 1992 as a result of a Cabinet decision. The five-year scheme aimed to provide full-time black farmers with access to subsidised loans of between R400 000 and R500 000, repayable over 25 years with a three-year grace period and an interest rate ranging from 2% in year four to 16% from year ten. Such a highly favourable arrangement was no more generous than a similar scheme provided for white farmers up to independence. Nonetheless, it represented a huge subsidy to a small group. In the first nine months, 70 to 80 farms were reported to have changed hands under this scheme.
31. The stated justification for the Affirmative Action Loan Scheme was that it would relieve grazing pressure on the communal range to the benefit of the pastures and the remaining small farmers. It has been reported that applications for affirmative action loans in Namibia tended to be monopolised by part-time farmers. At the same time, there was a marked reluctance by owners of the larger herds in the communal areas to move their stock entirely from the communal areas where they continued to enjoy free grazing, water, drought relief and veterinary services and freedom from income tax.<sup>8</sup>
32. The Affirmative Action Loan Scheme was amended in 1996. Its fundamental objective was retained, namely to resettle more established and strong communal area farmers. An applicant must:
- be a farmer in the communal area;
  - own a minimum of 150 large stock or 800 small stock units (or equivalent) and obtain verification of that fact from the authorities in the communal area;

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<sup>8</sup> Similar environmental and equity arguments for moving larger livestock owners to fenced farms were advanced as a major justification for the Tribal Grazing Land Policy in Botswana in 1975. The policy had a negative impact on both counts and led to the emergence of iniquitous 'dual grazing rights' under which ranch owners keep their cattle on the communal lands, only to withdraw them to their farms when grazing was exhausted.

- furnish proof that all his/her stock have been removed from the communal area;
  - lodge the title deed of the farm with the Agribank as collateral for the loan;
  - and manage the operation of the farm personally.
33. Since its inception in 1992, 300 black farmers have been granted loans (40% underwritten by the state) by Agribank (amounting to about \$190.5 million) for the purchase of commercial land.<sup>9</sup> The process has accelerated recently in response to a scheme, which allows communal area farmers to sell their stock north of the veterinary cordon fence ('the red line') and to purchase equivalent stock to the south of the fence.
34. The extent to which these farming enterprises continue to be viable in the present economic climate and the extent to which the loans represent a justifiable use of resources need to be further investigated. For several years now, falling producer prices have been undermining the beef industry in the region. Farmers have been forced to cut back on capital investment and refurbishment, to cannibalise internal fences for repairs to perimeter fencing and to shed farm labour. Farmers are increasingly adopting the low-input, low-output system traditionally used by indigenous producers in the Communal Areas.
35. Without a more detailed study of the Affirmative Action Loan Scheme, it would appear to have been remarkably successful and have much to recommend it. Its attributes include:
- the resolution of the skewed racial ownership of freehold farm land and support the emergence of African entrepreneurs (i.e. it resolves 'the central agrarian issue' in the region);
  - relatively low transaction costs for government;
  - a farming system which is well understood and appreciated by the beneficiaries and therefore low risk;
  - avoids undue dependency on land holding by the State and free government services.
36. **Resettlement programme:** In 1995, shortly before the general election, the *Agricultural (Commercial) Land Reform Act* was hurried through. It provides for the acquisition by the State of very large, under-utilised and foreign-owned freehold farms for resettlement. The Act also grants the State the right of first refusal on farmland offered for sale. Compensation has, nonetheless, to be at market prices. A Land Reform Advisory Commission (LRAC) was established in terms of the Act to advise the Minister of Lands on the suitability for settlement of

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<sup>9</sup> Source: Agribank data provided to Dr Wolfgang Werner of NEPRU on 9 November 2000. This contrasts with an announcement by Agri-bank CEO, 7 November 2000 on TV news, that 266 farms had been redistributed to black farmers under the scheme.



the land on offer. The Act also provides for the imposition of a land tax to be paid by the owners of agricultural land.<sup>10</sup>

37. The passing of the Act accelerated the acquisition of commercial ranches. While the government had acquired only 17 farms in the commercial sector by early 1996, this number had more than doubled by mid 1997, by which time government had acquired 39 farms. In July 1995, the Prime Minister announced that N\$100 million would be committed for land acquisition over the next five years. Namibia's First National Development Plan (1995/96-99/2000) set targets for land redistribution for the first time. It was reported that some 14 000 people were to be resettled on 150 000 hectares of redistributed land by the year 2000. The number of households settled on acquired land cannot be given with any confidence, but it is likely that there were relatively few due to the low production potential of the semi-arid grazing land over much of the country.
38. It is not possible to be sure of the figures, which change frequently in government reports. However, it seems that in the period 1991 to late 1997, the State acquired approximately 230 000 ha of commercial farmland at a total price of N\$30 million, or N\$130 per hectare, equivalent to some N\$80 000 per household.
39. The land rights of households in the MLRR land settlement projects would appear to be very weak. They are comparable to those of people living on the so-called Odendaal farms of the 1960s, arising from the purchase of 'white' farms in a homeland expansion scheme. The title remains with the State. Settlers may have a right to use and occupy the land, but not to transact (e.g. to mortgage, rent, bequeath) areas of exclusive use, or to exclude others. Settlers' rights contrast unfavourably with those of farmers acquiring land with Agribank loans.
40. In August 2000, the Division of Co-operative Development in MAWRD and the LRAC commissioned a detailed survey of the MLRR's 'resettlement co-operatives'.<sup>11</sup> The survey contains an account of nine projects in five regions. In summary, it concludes that:
  - none of the projects were economically viable; some remain welfare schemes dependent on food rations;
  - the morale, motivation and commitment of the participants was poor;

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<sup>10</sup> Most of the information in this section on land resettlement is based on the work of Dr Wolfgang Werner of NEPRU, former Director of Lands. There are two important papers: 'Land reform in Namibia: the first seven years' NEPRU Working Paper No 61; and *Namibia 1990-2000*, 'Agriculture and Land' NEPRU, 2000.

<sup>11</sup> 'Resettlement Co-operatives in Namibia: Past and Future', background document for a workshop to discuss the findings of the study conducted by NEPRU for the Division of Co-operative Development, MAEARD, Greiters Conference Centre, 1 August 2000, NEPRU.

- there was little evidence of participants being involved in the planning and the actions necessary to satisfy their needs because decisions were made by officials;
  - MLRR staff assigned to the projects were unsuitable in terms of their qualifications and experience;
  - there was undue dependence on a limited number of foreign technical assistants;
  - the settlers had reasonable access to some services (health and education), given access to government transport.<sup>12</sup>
41. If the findings of the survey are valid it would be difficult to avoid the conclusion that the resettlement programme as currently conceived should be suspended. The programme seems to have been dogged by a confusion of aims. The officials involved seem to lack the required practical agricultural and organisational skills.
42. In mitigation it can be said that the staff of the MLRR have been loaded with responsibility for a number of difficult tasks which arose from the conflict, which preceded Namibia's independence, and from major droughts since that date. These tasks include the rehabilitation of returnees and displaced people (e.g. San people) and the management of drought relief. These are tasks which have little to do with land reform and for which the MLRR is poorly equipped.<sup>13</sup>
43. **Land tenure reform in the Communal Areas:** Almost half the recommendations of the 1991 National Conference related to the resolution of land-related issues in Communal Areas. Problems included:
- the need to guarantee land to local people,
  - to abolish land allocation fees demanded by chiefs,
  - to grant land to women in their own right,
  - to establish a system of land administration,
  - to control 'illegal fencing' of grazing areas,
  - and to move the herds of wealthy farmers to commercial farms.
44. In the years following the conference, land tenure reform received little attention. Illegal fencing of grazing by powerful members of the community continued. The MLRR remained weak and understaffed and progress with tenure reform was very slow.
45. However, the National Land Policy and the legislation for the Communal Areas (i.e. the *Communal Land Reform Bill*) did go through a process of public consultation. The draft law provides for the allocation of rights in respect of communal land, for the establishment

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<sup>12</sup> At the debriefing meeting organised by the EC on 9 November to discuss a draft of this document, the Spanish representative expressed reservations about the findings of the NEPRU report in the context of the settlements at Excelsior and Queen Sophia.

<sup>13</sup> They are also tasks with which neighbouring Botswana has long been struggling unsuccessfully under their Remote Area Dweller Programme. Criticism of MLRR must not be too harsh.

of Communal Land Boards and sets out the powers of Chiefs and Traditional Authorities and boards in relation to communal land.

46. It touches on issues that are sensitive among a large and powerful rural constituency, including traditional leaders and the Oshivambo-speaking people who have their roots in the relatively densely populated Communal Areas in the north and provide the bulk of SWAPO support. However, when the *Communal Land Reform Bill* was finally passed through the National Assembly on February 17, 2000 to the second chamber, the National Council, it was reported that the proposals from communal area farmers, particularly on the composition of the land boards, had been ignored. Elected regional councillors clearly felt that the proposed law did not deal adequately with illegal fencing already erected on communal land. Opponents of the bill argued that the legislation ran contrary to the government's decentralisation policy and CBNRM initiatives by the Ministry of Environment and Tourism.

#### **LAND REFORM IN THE COMING DECADE IN THE COMMUNAL AND THE COMMERCIAL AREAS**

47. Following the land crisis in Zimbabwe in 2000, the political leadership of both South Africa and Namibia announced that land reform was to be greatly accelerated. At the same time, they have given undertakings that land reform would proceed according to the agreed constitutional principles that protected private property rights.
48. In both countries, however, there is a basic disjunction between the governments' renewed commitment to land reform and the institutional capacity available for its realisation. A similar decline in capacity for the planning, implementation and administration of land reform was noted in Zimbabwe in the early nineties.<sup>14</sup>
49. There is evidence that, over the next few years in Namibia, increasing numbers of freehold farms will become available for redistribution. The average age of white farmers is reported to be about 55 years. Few of them have pension schemes and are obliged to stay where they are. The majority would leave if they could obtain what they feel to be a reasonable return for a life's investment. More and more farmers are unable to service their debts. In most cases, banks will be prepared to reschedule a loan on the grounds that repossession would be difficult and costly. Repossessed farms quickly deteriorate unless sold or auctioned in a depressed market. At the same time, the staff capacity of the MLRR to handle a larger programme of land purchase is seriously constrained.

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<sup>14</sup> The collapse of institutional capacity goes a long way in explaining why land reform by 'due process of law' (i.e. the Land Acquisition Act of 1992) ceased in Zimbabwe after about 1993 from which time the relevant sections of the Ministry of Lands and Water Resources were seriously understaffed.

50. There are a number of MLRR proposals are on the table. These include:
- the introduction of a land tax;<sup>15</sup>
  - the creation of a land acquisition development fund to allow the roll over of funds provided for land acquisition;
  - the leasing of land acquired by government in terms of the Agricultural (Commercial) Land Reform Act to those unable to qualify for Affirmative Action Loans;
  - an amended Communal Land Reform Bill.
51. There are also proposals for an integrated 'master plan' which is under consideration by MAWRD in terms of a '2030 vision'. This is described as an attempt to harmonise the development of the Communal and Commercial Areas. It includes an expansion of the Affirmative Action Loan Scheme<sup>16</sup> (for an agreed target of African farmers), as well as proposals to provide technical support (mentoring) to those who are entering the commercial areas.
52. The master plan includes plans to identify and develop water resources (underground and perennial) and other infrastructure in the unutilised and sparsely populated parts of the Communal Areas to the north of the veterinary fence (see Box 1). According to the MAWRD, these areas would be leased to commercial farmers over a 20-30 year period in order to repay for the investment costs. Whether this plan will include the Mangetti ranches (some 360,000 ha fully developed, high quality land, managed by the State-owned company AMCOM and used as state farms) needs to be clarified.

### **SCOPE FOR DONOR SUPPORT TO LAND REFORM<sup>17</sup>**

53. **Principles:** At the World Bank's Rural Week, at the end of March 2000, representatives from eight national and multilateral donor organisations, met to discuss their strategy related to land policy and administration as well as possible next steps and joint actions to implement these strategies. These included the objective of establishing a sound legal and institutional framework, improving the functioning of land markets, and helping the poor gain and maintain access to land and other critical assets.<sup>18</sup>
54. Among other principles, all of the agencies agreed on the following:

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<sup>15</sup> A progressive tax on large land holdings is often proposed for the purpose of increasing the availability of parcels of land for small farmers, but international experience indicates that progressive land taxes have never yet effectively functioned to redistribute land from large to small producers. Economic theory does not give an unambiguous answer to the question of how a progressive land tax would contribute to land reform.

<sup>16</sup> Minimum livestock holdings per applicant of 400 cattle (LSU) or 2400 small stock (SSU).

<sup>17</sup> See *Breaking Ground: Development Aid for Land Reform*, by Martin Adams, ODI London, October 2000.

<sup>18</sup> World Bank (2000), 'Aide Memoire on Donor Collaboration on Land Policy and Land Administration', March 2000.

- Land policies and institutions are a critical determinant for the ability of the poor to accumulate assets, sustainable resource use, agricultural productivity, financing of local government, the development of financial markets, and in many cases a post-conflict reconstruction.
  - Without having a good governance structure and a coherent and consistent policy framework, complemented by an institutional environment to implement such a policy, interventions in the area of land policy will not achieve their objectives and can actually do more harm than good.
  - Policy formulation needs to involve civil society at large, with a strong element of capacity building. Experience shows that community-based approaches at the local government level have great potential to demonstrate how even politically very sensitive issues of land access and conflict resolution can be resolved.
55. Given the promising start made in 1991 with the national consultative conference on land reform, Namibia's performance in the area of land policy development and land reform implementation has been a disappointment. A particular concern is the weak legal and institutional framework. Ten years after independence, the security of tenure of farm workers, tenants and their families on freehold land has not improved. In the Communal Areas, people still have no right independent of the will of the State to use and occupy the land.<sup>19</sup>
56. Progress has undoubtedly been made in providing loans for black entrepreneurs to acquire freehold land, but this scheme hardly falls under the rubric of land reform as commonly understood (see paragraph 24).
57. If government heeds 'the wake up call' occasioned by events in Zimbabwe, there will be worthwhile opportunities for donor assistance. If such an offer is indeed welcome, then options should be examined in more detail in the forthcoming Review of the Rural Development Sector to be conducted by the EC.<sup>20</sup>
58. As in South Africa, assistance might contribute to:
- The more efficient and effective implementation of rights-based legislation (e.g. the proposed Communal Land Act);
  - The decentralisation of land reform implementation to regional government level, in order to increase its relevance and widen its scope and application;

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<sup>19</sup> See 'Land Tenure and Economic Development in Rural South Africa: Constraints and Opportunities', by Adams, M., Cousins, B. and Manona, S. in *At the Crossroads: Land and Agrarian Reform in South Africa into the 21<sup>st</sup> Century*, ed. B. Cousins, pp. 111-128. Cape Town: PLAAS and NLC.

<sup>20</sup> It should not be assumed that the MLRR would welcome donor assistance as it has shown a certain reluctance to open its doors to help so far.

- A continuing programme of training and capacity building;
  - The broadening of African ownership of commercial agriculture.
59. Based on experience of land reform elsewhere, a case can be made for fostering the co-operative action of a number of key stakeholders, government as well as a wide range of civil society organisations: NGOs, CBOs, farmers' unions, business firms, and academic institutions involved in training and applied research.
60. **Land redistribution in the Commercial Farming Areas:** The Affirmative Action Loan Scheme may not be a high priority for the purpose of poverty alleviation, but it is undoubtedly of importance in ameliorating racially skewed land ownership. Assistance could be provided to re-capitalise the Agribank fund for land purchase and/ or capital improvements, as well as for technical assistance and operating costs.<sup>21</sup>
61. There can be little doubt that options need to be further explored for broadening access to land for smaller producers. Using the *Agricultural (Commercial) Land Reform Act*, the MLRR is in the process of acquiring land for leasing to those unable to qualify for Agribank loans. These initiatives need to be examined.
62. A more satisfactory alternative might be for the Agribank to lease repossessed farms to qualifying applicants, with an option to buy. For this purpose, a trust could be established within the Agribank for receiving both state and donor funds for developing farms for leasing (and for rental payments by lessees).
63. **Municipal commonage:** According to MAWRD, in 1991, municipalities and Peri-urban Boards owned a total of 349 998 hectares of agricultural land in the commercial districts.<sup>22</sup> Most of the municipal lands are fairly well developed into grazing camps and stock watering points. The land or camps are generally leased to stock farmers for grazing on a short-term basis (through tender or public auction).
64. In South Africa, municipal land of this nature is being made available to poor landless people for productive purposes. The national Department of Land Affairs provides grants to enable municipalities to develop and manage land for leasing to poor people for agricultural or other productive purposes, usually grazing. Grants are also provided for municipalities to extend or create commonage for poor and disadvantaged residents located within the jurisdiction of the

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<sup>21</sup> Some experience has been obtained with a similar type of operation in South Africa, under which the EC funds the Land Reform Credit Facility (under the Land Reform Pilot Programme) to assist banking institutions to fund commercially viable land transfer projects.

<sup>22</sup> 'Current land tenure system in the commercial districts of Namibia, 1991', by the Department of Agriculture and Rural Development, Ministry of Agriculture, Water and Rural Development, National Conference on Land Reform and the Land Question, Windhoek, 1991, Vol1, Research papers, addresses and consensus document.

municipality. They may be farm workers and former farm workers who have technical expertise and need land in order to get a foot on the first rung of the farming ladder. Whereas the national government provides grants to the municipality for land acquisition and/ or the development of infrastructure,<sup>23</sup> the municipality is encouraged to contribute to the costs of planning, development and management of the municipal commonage.

65. The feasibility of developing a municipal commonage scheme in the commercial farming districts of Namibia should be considered. Such a scheme might avoid many of the problems reportedly associated with the MLRR settlement schemes and facilitate local-level management, preferably by the users. Such a commonage scheme could also circumvent some of the problems of land allocation and management that would be encountered by extending Communal Areas in the absence of the required land tenure reforms.
66. **Land tenure reform:** At this stage it is difficult to make constructive proposals for donor assistance for the implementation of the proposed Communal Land Reform Act. Proposals must await agreement between the National Assembly and the National Council on the content of the legislation and on arrangements for its implementation.
67. It remains to be seen whether the legislation will prove effective for tenure reform in dense informal settlements on communal land, outside municipal authority areas. It is in such locations where the resolution of tenure problems is likely to be most pressing (see Box 2) and where resources for its implementation will be most needed.

### **Box 2 Tenure needs in informal settlements on communal land**

**Family members** need to be assured that they will not be evicted without compensation; that they can improve their house to protect themselves against weather, thieves, etc; that their children can inherit the property or that they can sell or otherwise transfer it. They may need to borrow money using the property as collateral. They may seek a reduction in property-related disputes and their properties to be serviced with water, electricity and upgraded roads. They need an inexpensive and accessible system of administering their property rights.

**Government** needs the system to be nationally uniform and sustainable. It needs a basis for implementing local taxation, land use and building control and for the provision of infrastructure. It requires a flexible means of administering property rights (e.g. the ability to accommodate individual and group rights, the rights of the middle class, business and poor people). It needs to deliver land titles to the people in an accessible and user friendly manner and to allocate land titles that are not perceived as inferior and can be upgraded to full freehold.

Source: Alberts, R., Fourie, C., Dahl Højgaard, P., Shitundeni, J., Corbett, A. and Latsky, J. (1996) *Land Management and Local Level Registries*. Ministry of Lands, Resettlement and Rehabilitation, Windhoek.

<sup>23</sup> e.g. livestock water, stock handling facilities and basic crop production equipment.

68. There is little evidence that the financial implications of the proposed communal land reform legislation have yet been taken into account. An important lesson arising from such land legislation in other countries (e.g. Uganda, Tanzania) is that the financial, organisational and training implications of implementation (e.g. for establishing local land registries) and enforcement are never adequately considered in advance of enactment.
69. Tenure reform changes the terms and conditions on which land is held, used and transacted. The proposed communal land reform law is sure to be challenged by those with vested interests in retaining the *status quo*. Opposition to tenure reform measures may stem from traditional leaders who are reluctant to abide by constitutional principles or from rent-seeking public officials who seek to control and profit from land allocation. Such legislation generates a whole host of problems, challenges and opposition, which will need to be addressed if the reform is to have any chance of success. Capacity building should focus not only on those whose land rights are being legally confirmed and officials who are to staff the new institutions, but also on all those elements of existing organisations which will be undergoing the change mandated by the new law.
70. Technical assistance, training and community facilitation are likely to be needed for these tasks.
71. **Land Development in the Communal Areas:** As stated in SWAPO's 1999 manifesto (Box 1), the government has decided on a five-year programme of assessment and development of communal areas, for which EC assistance will no doubt be sought. The main objective of the programme is to identify virgin lands and develop them in order to make them available to communal area inhabitants. A sound land policy framework for these new areas will contribute to the success of the programme. Without a good governance structure the investment is unlikely to be worthwhile. Land tenure options for the proposed developments need to be reviewed in the light of the proposed Communal Land Reform Bill.
72. **NGO Sector:** No programme of assistance should overlook the important role played by civil society organisations. They are very often the 'foot soldiers' of land reform as well as a force for exposing abuses of human rights and political freedom, which repress agrarian movements.
73. Those who stress good governance and transparency and argue for their participation, see a role for civil society beyond mere deliverers of services to land reform beneficiaries. They seek to involve NGOs and CBOs in the policy dialogue and in decision making.



74. The contribution of NGOs in Namibia to land reform research and advocacy over the last decade has been substantial.<sup>24</sup> Government's proposal to accelerate the pace of land reform in Namibia is expected to place a greater burden on their limited resources. Donor assistance may need to be expanded to assist them to recruit, train and deploy personnel to work at community level.

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<sup>24</sup> Notable contributions have been made both by the Legal Assistance Centre and by the Namibian Economic Policy Research Unit.

## **Appendix 1**

### **Rural Development Profile and Strategy Framework**

#### **Proposed TOR for the land reform component**

##### **Introduction**

1. The review of opportunities for EC assistance to Namibia's land reform programme will be part of a comprehensive assessment of the rural sector. This will include macro-economic studies of current systems of agricultural and livestock production and related investment opportunities in rural areas, including ecotourism, as well as analysis of information on land prices and other inputs and outputs.
2. The assessment will also include a review of government policies relating to the provision of infrastructure and support services to producers.
3. The EC review of the rural development sector will also provide an up-to-date assessment of the decentralisation process and the powers and responsibilities which will be subsumed by Regional Councils in the near and medium term. All this information will provide an essential backdrop to the review of options for EC assistance to the land reform programme.

##### **Work programme**

4. Review the National Land Policy White Paper and related policy statements and research on land reform in Namibia. Review land-related legislation and progress with implementation. Consider current government policies and priorities as reflected in recent government statements about the future pace of land reform, especially in the commercial farming areas.
5. Review the various elements of the current land reform programme in terms of economic and financial costs, benefits and their social and environmental sustainability.
6. In discussion with government and civil society organisations, assess the human rights implications of current government policies and programmes, especially the impact on farm workers, tenants, informal settlements and other beneficial occupiers of state land.
7. Assess the capacity (including budgetary and personnel resources) of the Ministry of Lands, Resettlement and Rehabilitation.
8. Assess the capacity of other government agencies (including the Ministry of Agriculture, Water and Rural Development, Agribank and Regional Councils) to support land reform in both the Communal Areas and the Commercial Farming Districts.

9. Conduct an assessment of civil society organisations (e.g. NGOs, CBOs farmers' organisations) concerned with, and involved in, the land reform programme. Assess their requirements for support.
10. Examine options for external assistance to a number of ongoing activities and possible new initiatives.

In particular, in the commercial farming districts:

- (i) the MLRR's land resettlement programme;
- (ii) the leasing of farms, acquired by the State, to small farmers, as well as alternatives involving the establishment of a trust fund linked to Agribank, as outlined in the accompanying paper;
- (iii) the Affirmative Action Loan Scheme;
- (iv) the possibility of developing a municipal commonage scheme to assist the poor.

In the Communal Areas:

- (v) a comprehensive survey of the financial, economic, training and organisational implications of the Communal Land Reform Bill in the Communal Areas of Namibia;
- (vi) the implementation of the new tenure reform law, including training, communications, technical assistance, etc.