

**The SADC Land and Agrarian Reform Initiative**  
**The case of Namibia**

**For Community Technology Development Trust**  
**African Institute of Agrarian Studies**

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## Acronyms

AALS	Affirmative Action Loan Scheme
ADC	Agricultural Development Centre
Agribank	Agricultural Bank of Namibia
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe
CIM	Centrum für Internationale Migration
DED	Deutscher Entwicklungsdienst (DED)
DRFN	Desert Research Foundation of Namibia
EED	Evangelischer Entwicklungsdienst
EU	European Union
FAO	Food and Agricultural Organization (of the UN)
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IMSCLUP	Inter-Ministerial Standing Committee for Land Use Planning
InWEnt	Organisation für internationale Weiterbildung und Entwicklung
IPPR	Institute for Public Policy Research
KFW	Kreditanstalt für Wiederaufbau (KFW)
LAC	Legal Assistance Centre
LEAD	Land, Environment and Development (Project of the LAC)
LRAC	Land Reform Advisory Commission
LSU	Large stock unit
MAWF	Ministry of Agriculture, Water and Forestry
MLR	Ministry of Lands and Resettlement
MRLGHRD	Ministry of Regional, Local Government, Housing and Rural Development
NACP	National Agricultural Credit Programme
NASSP	National Agricultural Support Services Programme
NAU	Namibian Agricultural Union
NEPRU	Namibian Economic Policy Research Unit
NGO	Non-governmental organisation
NNFU	Namibian National Farmers' Union
NRP	National Resettlement Policy
SSU	Small stock unit
UN	United Nations
UNAM	University of Namibia
UNDP	United Nations Development Programme
UST	University of Science and Technology

WCC

Windhoek City Council





## 1. Background

### 1.1. Land Area and Geographical Location

The Republic of Namibia is situated in the south-western corner of Africa, bordering the Atlantic Ocean to the west, South Africa to the south, Angola to the north, Botswana to the east and Zambia and Zimbabwe to the north-east. Namibia has a landmass of approximately 824 000 km<sup>2</sup>, of which 114 500 km<sup>2</sup> (13.9% of total area) are national parks, 21 600 km<sup>2</sup> (2.5%) are a restricted 'Diamond Area', 469 100 km<sup>2</sup> (57.0%) are title deed in freehold land and 218 300 km<sup>2</sup> (26.5 %) are non-title deed in communal land. The latter two, freehold and communal land, totalling 687 400 km<sup>2</sup> or 83.5% of the country's landmass, are considered to be available for agricultural land use.<sup>2</sup>

Namibia as a whole has a dry climate with an annual rainfall ranging from 650 mm in the far north-east to less than 50 mm in the south-west. Based on rainfall and evaporation to determine the number of days favourable for plant growth, the country was divided into 11 growing-period zones, starting with No. 1 in the north-west and ending with No. 11 in the Namib Desert area. The national parks, Diamond Area and non-title deed (communal) land in effect all belong to the Government.<sup>3</sup>

### 1.2. Population

Namibia is Southern Africa's most sparsely populated country. The population estimate in 2001 was 1 830 330, or on average about two persons per square kilometre. According to the UNDP's *Namibia Human Development Report* of 1999, people living in rural areas have lower than average literacy rates (the national literacy rate in 1998 was 76%), and less access than urban dwellers to education, health care and employment opportunities.<sup>4</sup> The lack of access corroborates the extreme differences between rich and poor in Namibia. The income and wealth distribution is a factor contributing to the rural-urban migration process that makes urban land reform and development policies challenging.

Aspects that impact negatively on the Namibian economy are a high unemployment rate of 37% (Labour Force Survey 2004) and an overall HIV/AIDS prevalence rate of around 20% (2004 – Sentinel Report Ministry of Health and Social Services). Life expectancy as a result of the AIDS pandemic is set to drop between 2005 and 2010

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<sup>2</sup> Republic of Namibia, *The Draft National Land Use Policy*, "Annexure A: Applicable Legislation, Policies and Regulations on Land Use Planning", Ministry of Lands, Resettlement and Rehabilitation, 2002, at 2.

<sup>3</sup> Ibid.

<sup>4</sup> United Nations Development Programme, *Namibia Human Development Report 1999: Alcohol and Development in Namibia*, at 21; Republic of Namibia and United Nations Population Fund, *Programme Review and Strategy Development Report* (October 1998), at 2.

to just 45 years.<sup>5</sup> In 1999 HIV/AIDS was the number one cause of death, counting for 26% of all deaths in hospitals, while women counted for 54% of all new cases of infection. In 2000, 70 000 persons were diagnosed with HIV and 2 868 died of AIDS. The highest prevalence of HIV/AIDS in Namibia is in the urban areas of Oshakati (34%), Walvis Bay (29%), Katima Mulilo (29%) and Windhoek (23%).<sup>6</sup>

In 2001 an estimated 33% of Namibia's population lived in urban areas, an increase of 5% since the previous population and housing census in 1991.<sup>7</sup> Windhoek, the capital of and largest city in Namibia, with a population of 233 529, became the focal point of rural-urban migration after independence.<sup>8</sup> With an annual urban growth rate of 5.4%, of which 3.9% is due to in-migration, it soon became apparent that a substantial increase in serviced land delivery was needed, particularly in Windhoek's low-income housing areas.<sup>9</sup>

Urban areas in Namibia have relatively more people in the economically active age groups (15-59 years) than rural areas, whereas rural areas have higher proportions of both young (0-14) and old (60+).<sup>10</sup> These statistics suggest that it is mainly people in the economically active age groups migrating from rural to urban areas in search of better work opportunities. An indication of informal settlement growth in urban areas over recent years is the fact that improvised housing (shacks) has become the second most common form of housing in urban areas after detached and semi-detached dwellings.<sup>11</sup>

In 2000 the informal settlement population of Windhoek was estimated to be 57 000 people and 8 000 households.<sup>12</sup> This number excludes backyard squatters in formal areas and many more families (±30 000) living in inadequate housing without any basic services, even if they have legal secure tenure, meaning that, for example, a woman who cannot pay sewerage, electricity or water bills can be evicted by law. On the whole it is estimated that 30% of Windhoek's population live in informal, unplanned (unsurveyed) settlements, in sub-standard structures with weak legal title or none at all. Fewer than 20% of informal settlement households are connected to a sewerage system. Most of these households have access to potable water from communal taps within walking distance. Another category of residents are those with

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<sup>5</sup> United Nations Development Programme, *Namibia Human Development Report 2000/2001: Gender and Violence in Namibia*, at 10.

<sup>6</sup> *Ibid.*, at 10 and 11.

<sup>7</sup> Republic of Namibia, *2001 Population and Housing Census: National Report – Basic Analysis with Highlights*, July 2003, at 4.

<sup>8</sup> *Ibid.* at 21.

<sup>9</sup> Gold J, Muller A and Mitlin D, *The Principles of Local Agenda 21 in Windhoek: Collective action and the urban poor*, Urban Environment Action Plans and Local Agenda 21 Series Working Paper (December 2001), Human Settlements Programme, IIED, London, 2001, at 24.

<sup>10</sup> *Supra* note 24.

<sup>11</sup> *Ibid.* at 50.

<sup>12</sup> The World Bank, *Upgrading Low Income Urban Settlements: Namibia Country Assessment Report*, January 2002, at 22.

secure tenure who are not connected to services – meaning that only one aspect of their human right to adequate housing (legal security of tenure) has been provided for. Limited housing is provided by private and public sector developers, but only to middle- and upper-income households, while low-income households lack access to credit facilities for housing.

The second biggest city in Namibia is Oshakati, with a population of 42 649. Statistics for the period 1991-2001 indicate that Windhoek has widened the gap between itself and Oshakati. In 2001 Windhoek's primacy index was 4.3, meaning that Windhoek was 4.3 times bigger than Oshakati. Although about 60% of Namibia's population reside in the far north, only Oshakati, Ongwediva, Ondangwa, Rundu and Katima Mulilo can be categorised as 'urban centres'. Only Oshakati is among the five largest urban centres, while two coastal towns, Walvis Bay and Swakopmund, are the third and fourth largest respectively.<sup>13</sup> Rehoboth, the fifth largest urban centre, located about 90 km south of Windhoek, serves mainly as a commuter town for people working in Windhoek.

It is highly likely that Windhoek will maintain its urban centre primacy in the foreseeable future. National urbanisation management is essential for the development of new strategies to promote growth in rival towns and to balance urban growth within the country.

### **1.3. GDP**

Namibia recorded a GDP per capita of US\$1871 in 2004. On average, the Namibian economy grew by 4.6% over the period 2001-2004.<sup>14</sup> However, this growth rate had little impact on the unemployment situation, as many retrenchments and layoffs in some sectors have been recorded over this period. It is worth mentioning that high economic growth rate does not necessarily lead to more employment rates. Positive economic growth can only occur when real production or income is growing at a faster rate than the population and this can only have a positive impact if the distribution of income is evenly distributed. Namibia's Gini-coefficient is at 0.6 (NPCS/CBS, Preliminary results of the Household Income and Expenditure Survey 2003-04, March 2006) which is among the highest of the world.<sup>15</sup>

Agriculture and forestry recorded a growth rate of 10.7% during 2005 compared 0.9% in 2004.<sup>16</sup> The unpredictable climatic conditions have a large influence on Namibia's agricultural sector's economic growth that fluctuated over the past ten

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<sup>13</sup> Windhoek City Council, "Conclusions and implications of various statistical reports for urbanisation management in Windhoek", unpublished report, 2001, at 5.

<sup>14</sup> Republic of Namibia, Macro-Economic and Budgetary Framework 2006/07 – 2008/09, Ministry of Finance, March 2006 at 6

<sup>15</sup> Ibid at 7

<sup>16</sup> Ibid at 8

years.<sup>17</sup> Agriculture contributed 6.9% and 6.2% to GDP in 1995 and 2005 respectively with a low of 4.1% in 2001. Overall, the primary sector's contribution to GDP has been fluctuating around 20% during this period with mining being the main contributor.<sup>18</sup>

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<sup>17</sup> Ibid at 40

<sup>18</sup> Central Bureau of Statistics, 2006, National Accounts 1995 – 2005, September

## 2. Land and Agrarian Context

### 2.1. Evolution of Policy

After Namibia became a German Protectorate in 1884, the colonial administration negotiated a number of land purchases and protection treaties with local leaders to give the German Government and German companies rights to use land. Many of these agreements were speculative, made in the hope that the gold and diamond rush of the 1880s in South Africa would be replicated in Namibia. During this period, many European settlers in Namibia bought or leased land for commercial farming purposes, thereby formally defining the areas occupied by indigenous communities. By 1902, freehold farmland accounted for 6% of Namibia's total land service area while 30% was formally recognised as communal land. After the 1904-1907 war between Germany and forces of the Herero and Nama, large tracts of land were confiscated from the Herero and Nama by proclamation. By 1911, some 21% of the total land service area had been allocated as freehold farmland while the recognised communal land area had shrunk to just 9%.<sup>19</sup>

German colonial rule came to an end with the surrender of the German armed forces in 1915. South West Africa became a Protectorate of Great Britain, with the British King's mandate held by South Africa in terms of the Treaty of Versailles signed in 1919. Under the Treaty and the South West Africa Act 49 of 1919, land held by the German colonial administration effectively became Crown (or State) land of South West Africa. The Governor-General of the Union of South Africa had the power to legislate on all matters, including land allocation.<sup>20</sup>

During the intervening period of military rule from 1915 to 1920, no legislation existed under which land settlement could be carried out. When martial law came to an end in 1920, land settlement laws in force in the Union of South Africa were applied to South West Africa.

During the 1920s, South Africa followed a policy of settling poor South African whites in South West Africa, and the South West African Administration supported white settler farmers financially and logistically despite the drought conditions, lack of markets and financial depression prevailing at the time.<sup>21</sup>

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<sup>19</sup> John Mendelsohn et al., *Atlas of Namibia: A Portrait of the Land and its People*, David Philips Publishers (imprint of New Africa Books), Cape Town, 2003, at 134-137.

<sup>20</sup> Fiona Adams & Wolfgang Werner with contributions from Peter Vale, *The Land Issue in Namibia: An Inquiry*, Namibia Institute for Social and Economic Research, University of Namibia, Windhoek, 1990, at 94.

<sup>21</sup> Union of South Africa, *Report of the Commission on the Economic and Financial Relations between the Union of South Africa and the Mandate Territory of South West Africa* (Pretoria, 1935), U.G. 16, 1935, at 205-206, as quoted in Fiona Adams & Wolfgang Werner, op cit.

To clear land designated for white settlement, the Administration introduced the Native Administration Proclamation 11 of 1922. This law provided that natives not employed by land owners or lessees were not permitted to squat on land without a magistrate's permission. It also authorised the Administrator to set aside areas as "native reserves" for the sole use and occupation of natives generally or for any race or tribe in particular.

However, the Native Reserve Proclamation did not affect Owamboland, Okavango and a few other areas in the north located outside the white farming areas and under the administration of government-appointed Commissioners.<sup>22</sup> The South African Administration maintained the German colonial policy of using the term "Police Zone"<sup>23</sup> to distinguish between two areas in the country, and continued German policies restricting movement between the two areas.

While the South African Administration did everything in its power to support white farmers settling in Namibia, it paid little attention to the needs of the native black farmers living in native reserves. The Administration granted generous loans to white farmers to build dams, drill boreholes and buy livestock, and gave white farmers expert advice, back-up services, drought relief and regular access to the already subsidised South African marketing system. By contrast, almost nothing was spent on black farmers living in native reserves during the same period.<sup>24</sup> The Native Reserves Commission recommended in 1922 that 9% of the land within the Police Zone (5 million hectares) should be set aside for native reserves. However, by 1925 a total of just 2 813 741 hectares south of the Police Zone accommodated a black population of 11 740 people, while 7 481 371 hectares (880 holdings) were available for 1 106 white settlers.<sup>25</sup>

By 1946, land use in Namibia was well established in two areas. Areas within the Police Zone were identified as surveyed farms, urban areas, native reserves, the Rehoboth Gebiet, unsurveyed Crown land, prohibited areas and diamond areas. Areas outside the Police Zone, including Owamboland, Kavango, the Caprivi Zipfel, the Namib Desert and game reserves, were all identified as communal land.

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<sup>22</sup> United Nations Institute for Namibia, 1988, *Namibia: Perspectives for National Reconstruction and Development*, at 36.

<sup>23</sup> The boundary that divided the Police Zone from the northern and north-eastern parts of the country spanned the north-central sector of the country, extending from the Atlantic Ocean to Botswana in a northward-arching semi-circle. Administration in the "homelands" was left in the hands of the traditional leaders. Communities north of the Police Zone were formally incorporated into the colonial administration only after 1900.

<sup>24</sup> United Nations Institute for Namibia, *Perspectives for National Reconstruction and Development*, 1988, at 38.

<sup>25</sup> Statistical data obtained from Union of South Africa, "Administrator's Reports 1923-1925" and "Administrator's Report 1925", U.G. 26-26, 1926, at 59, in T. Emmett, 1999, *Popular Resistance and the Roots of Nationalism in Namibia, 1915-1966, Basel Namibia Studies Series 4*, P. Schlettwein Publishing, Switzerland, at 103; and United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*, 1988, at 39.

The process of allocating farms to whites was completed in 1960. At that time there were 5 214 farm units and the number of farmers was said to be 5 216. The total commercial farming area in 1960 was approximately 39 million hectares,<sup>26</sup> thus averaging approximately 7 500 hectares per farm. However, by the end of 1965 there were 8 803 farming units, suggesting that some farmers at the time owned more than one unit.<sup>27</sup>

One of the most significant events in the future of black Namibians was the appointment of a Commission of Enquiry into the Affairs of South West Africa, which came to be known as “the Odendaal Commission”. With apartheid policies already functioning in South Africa, Prime Minister H.F. Verwoerd appointed the Odendaal Commission in 1962 to advise the South African Government as to how a similar policy of separate development could be introduced in South West Africa.<sup>28</sup>

The Commission's report, publicised on 12 December 1963, recommended the granting of self-government to the “homelands” and the transfer of all land within homeland boundaries to all the respective ethnic Legislative Assemblies. This meant that the Assemblies would have the authority to release land for the alienation to individual ‘citizens’ of the various homelands, subject to permission from the South African Prime Minister. Alienation to a ‘non-citizen’ was allowed only with the permission of both the Legislative Assembly and the Prime Minister.<sup>29</sup>

The Odendaal Commission's directive in 1964 led to the establishment of 10 reserves (homelands) for black people of South West Africa, as proclaimed in the Development of Self-Government for Native Nations in South West Africa Act 54 of 1968. This Act recognised Owamboland, Hereroland, Kaokoland, Okavangoland, Damaraland and Eastern Caprivi as “native nations”. The Act was purportedly introduced in South West Africa to assist native nations in the territory to develop in an orderly manner towards attaining self-governance and independence.<sup>30</sup> In some ways the Odendaal Plan merely extended and rationalised an administrative system created in the 1920s by the Native Reserve Commission.

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<sup>26</sup> United Nations Institute for Namibia, 1988, op cit., at 39.

<sup>27</sup> “Report of the General Rehabilitation Commission”, at 1, in Fiona Adams and Wolfgang Werner with contributions by Peter Vale, op cit. (note 2), at 23, 24.

<sup>28</sup> Republiek van Suid-Afrika, *Verslag van Kommissie van Ondersoek na aangeleenthede van Suidwes-Afrika*, Pretoria, R.P. No. 12/1964, at 2, in G. Töttemeyer, *Namibia Old and New: Traditional and Modern Leaders in Owamboland*, C. Hurst & Co., London, 1978, at 49, 50.

<sup>29</sup> Odendaal Commission, at 85, 87, 97, 107, in Fiona Adams and Wolfgang Werner with contributions by Peter Vale, op cit., at 94-95.

<sup>30</sup> *Index to the Laws of Namibia (NAMLEX)*, Legal Assistance Centre, Windhoek, 2004 update, at 7.

Although the Odendaal Plan increased land available to black Namibians by nearly 50%, the agricultural potential of the newly 'received' land was very limited.<sup>31</sup>

Arguably, the whole concept of land "resettlement" facilitated by the Namibian Government exists in the shadow of the "resettlement" under the Odendaal Plan of thousands of Damara persons on 223 previously white-owned commercial farms acquired by the South West African Administration in the 1960s to create a "Damaraland". This resettlement experiment, still in operation, with the resettled Damara and their families still there, dwarfs in scale the hundred-odd farms purchased by the Namibian Government and resettled in Namibia's first eleven years of independence. While extensive research has been done on the Damaraland experiment, suggesting that it has been a failure,<sup>32</sup> current resettlement policy has not been influenced by that research.

Each family resettled in the new homeland was granted a section of a former commercial farm, usually a camp or two.<sup>33</sup> Here they were supposed to farm effectively, meaning that they were to sell off excess stock, maintain and repair infrastructure, employ scientific farming practices, and in short, invest capital so as to maximise income. The problem, however, was that hardly anybody possessed the resources necessary to do this. Most people were very poor, possessed very little stock and had no access to credit, either private or public. It is no surprise that they failed to farm "scientifically" and focused simply on trying to survive.<sup>34</sup>

The Representative Authorities Proclamation 8 of 1980, better known as "AG 8", provided for the establishment of "second-tier" governments for 11 ethnic groups, each having an executive and a legislative body with the power to issue ordinances relating to its area of jurisdiction.

AG 8 enabled Representative Authorities to become trustees of land in the homelands. Land ownership, however, continued to rest with the central government based in South Africa. AG 8 gave Representative Authorities the power to allocate, sell or lease communal land under their jurisdiction to a specific ethnic group, provided that the South African Cabinet issued a certificate confirming that such land was not required for public or official purposes.

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<sup>31</sup> R. Rohde, *Afternoons in Damaraland: Common Land and Common Sense in one of Namibia's Former 'Homelands'*, Occasional Paper No. 41, Edinburgh University, Centre for African Studies, 1993, at 18.

<sup>32</sup> In addition to Rohde above, see Sian Sullivan, *The Communalization of Former Commercial Farmland: Perspectives from Damaraland and Implications for Land Reform*, SSD Report No. 25, Multi-Disciplinary Research Centre, University of Namibia, 1996; and Jack Ratjindua Kambatuku, *Historical Profiles of Farms in Former Damaraland*, Occasional Paper No. 4, Desert Research Foundation of Namibia, 1996.

<sup>33</sup> Farms are usually sub-divided into 'camps' with their own boreholes and cattle is kept in a camp as long as the grazing allows.

<sup>34</sup> C. Botha, "The Odendaal Plan: Development for Colonial Namibia", University of Namibia, Department of History, accessed at <<http://namibweb.com/oden.htm>> (05/09/06).



AG 8 lacked the support of Namibians as well as international political observers. In effect a legacy of the Odendaal Commission principles, AG 8 nevertheless prevailed in Namibia until 1990 when it was repealed and replaced by the Constitution of the Republic of Namibia.

At independence the Namibian Government had little capacity to deal with land reform management, land reform planning and drafting legislation on land reform. The then Ministry of Lands, Resettlement and Rehabilitation<sup>35</sup> started from nothing after the formation of the initial Government. These factors arguably increased the delay in the land reform legislative process.

The first major piece of legislation on land reform, the Agricultural (Commercial) Land Reform Act, was not passed until 1995. This Act contained a number of provisions to ensure that the market would perform as expected. These provisions include:

- A requirement that any commercial farm offered for sale is offered to the Government first for the purposes of resettlement.
- A provision against ownership of multiple land holdings by a single individual.
- A provision against ownership of commercial farmland by non-Namibians.
- Creation of a Land Reform Advisory Commission to advise the Government on the suitability of farms it wants to purchase and to resolve disputes arising from other parts of the Act.

## **2.2. Institutional Framework<sup>36</sup>**

### **2.2.1. Ministry of Lands, Resettlement and Rehabilitation (MLR)**

The MLR was established in 1990 as the main actor in the planning and administration of land. The MLR presently coordinates land use planning through its Inter-Ministerial Standing Committee for Land Use Planning (IMSCLUP). The Agricultural (Commercial) Land Reform Act provides for the establishment of a Land Reform Advisory Commission composed of 16 members selected from the public and private sectors.

The MLR Directorate of Survey and Mapping provides services to support land use planning and administration of land in urban areas. It provides information for the

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<sup>35</sup> The Ministry of Lands, Resettlement and Rehabilitation was renamed the Ministry of Lands and Resettlement in March 2005.

<sup>36</sup> Most of the information on the Institutional Framework, unless otherwise indicated, was obtained from Republic of Namibia, *The First National Development Plan (Volume 1)*, Windhoek, National Planning Commission, (1995) and updated where necessary.

planning exercises of the Directorate of Lands in the MLR, but also to other governmental and private institutions as well as the general public.

The Directorate of Lands advises on land use planning and administration of land on a broad inter-sectoral level. This includes advising the MLR Directorate of Resettlement and Rehabilitation which is responsible for planning and implementing resettlement schemes. Currently these schemes provide mainly for agricultural land uses.

The MLR is also responsible for the administration of land in terms of cadastral boundaries, transfer and ownership. This work is done through the Office of the Surveyor-General and the Registrar of Deeds. In addition, the ministry aims to provide simple, affordable and faster forms of secure land tenure to low-income communities and informal settlers in particular.<sup>37</sup>

A major challenge facing the MLR is the legacy of different types of land ownership in Namibia, which represents a complex and sometimes inefficient legal framework for land use planning. Government officials often have to deal with numerous different systems within the jurisdiction of each authority at national, regional or local level. The difficulty of dealing with this legal legacy compounds the already difficult task of planning for sustainable, integrated and equitable land use and development in Namibia.<sup>38</sup>

#### **2.2.1.1. Directorate of Land Reform (MLR)**

The Directorate of Land Reform consists of two main divisions, namely the Division of Land Boards, Tenure and Advice, and the Division of Land Use Planning and Allocation, and another called the Valuation and Estate Management Unit. The directorate's main function is to administer the Agricultural (Commercial) Land Reform Act 6 of 1995 and the Communal Land Reform Bill passed recently by the National Assembly. The directorate also developed and is implementing the National Land Policy. The directorate's objectives are as follows:

- (1) To acquire land for resettlement and developmental purposes.
- (2) To guide the formulation of rural land development plans to ensure optimum beneficial use of scarce and fragile natural resources.
- (3) To prepare plans for specific land use options and to coordinate future land use planning in the country.
- (4) To allocate communal land for farming and business purposes.
- (5) To determine land value and other government properties for various uses.
- (6) To protect the inalienable right of every citizen to have access to land.
- (7) To collect and keep baseline data on natural resources.

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<sup>37</sup> Ministry of Regional and Local Government and Housing, "The National Housing Policy of Namibia" (5th draft), 2004, at 20.

<sup>38</sup> Republic of Namibia, "Draft National Land Use Planning Policy", Ministry of Lands, Resettlement and Rehabilitation, 2002, at 3.

The Division of Land Boards, Tenure and Advice is responsible for the overall administration of state land, including communal land. Currently the traditional authorities are responsible for allocating and cancelling land rights for customary utilisation. They are also responsible for allocating land rights for business purposes in communal areas. For the smooth administration of communal land, the ministry has planned for the establishment of regional land boards throughout the country. These statutory bodies will strengthen those institutions already involved in the administration of communal land. The division is also attends to land disputes and adjudicates in communal area conflicts.

The Division of Land Use Planning and Allocation is responsible for developing plans for commercial and communal land use. It is also mandated to execute the following functions:

- (1) Assessment and acquisition of land/farms for resettlement purposes.
- (2) Collection of baseline data on biophysical and socio-economic environments with the aim of evaluating the suitability of land for specific uses under certain levels of management.
- (3) Demarcation of farms into units as stipulated in the Commercial (Agricultural) Land Reform Act 6 of 1995.
- (4) Assistance and support of decision-makers at local, regional and national levels in all aspects of sustainable land use as a natural resource for development.
- (5) Testing of land utilisation against the overall development objectives, policies and appropriateness of implementation of land reform programmes.
- (6) Provision of guidelines for drafting legislation on land tenure, land administration and land use planning.

In accordance with the Cabinet decision to establish a centralised government unit to handle valuation and estate management, the MLR is in the process of establishing such a unit within its Directorate of Land Reform. The main objectives of this unit will be as follows:

- (1) Valuing commercial agricultural land/properties offered to the government for sale.
- (2) Providing professional advice on valuation to ministries, government agencies and parastatals.
- (3) Implementing land tax, and developing and maintaining an asset register.
- (4) Valuation for stamp duty and transfer duty, and developing estate plans.
- (5) Valuation for disposal/lease of state properties such as farms.

#### **2.2.1.2. Directorate of Resettlement (MLR)**

This directorate is primarily responsible for all resettlement activities in the MLR, including provision of basic amenities and facilities to landless and destitute Namibians.

It is also responsible for implementing development projects with the aim of improving the economic and social status of previously disadvantaged communities. During the last 10 years, projects such as the Excelsior Rural Development Project in Westfallen, Bernafey, Skoonheid, Drimiopsis, Mangheti Dune, Bravo, Tsintsabis,

Otjihao, Bagani, Onandandja, Omega and Chetto have been established under the jurisdiction of this division. Through the resettlement programme, some previously disadvantaged groups such as San communities, ex-combatants and displaced farm workers have received housing and land for agricultural activities.

The MLR has already introduced a long-term lease agreement with the incumbent resettlement programme beneficiaries. This has given new impetus to the programme in general and will raise revenue to secure the programme's long-term sustainability. Lease agreements will encourage beneficiaries to increase the productivity of their plots and to add value to the resettlement programme.

### **2.2.1.3. Office of the Surveyor-General and Directorate of Survey and Mapping (MLR)**

The Directorate of Survey and Mapping consists of three divisions: Division of Mapping and Geographical Information System; Division of Cadastral and Geodetic Surveys; and Division of Planning, Marketing and Administration. The directorate is the national survey and mapping authority in Namibia providing professional services and advice to the government, parastatals, private companies and the general public on all matters relating to land surveying and mapping. Its role is defined under the Land Survey Act 33 of 1993. The directorate's objectives are as follows:

- (1) Examination and approval of cadastral survey records, diagrams and general plans.
- (2) Digitising and revision of topographical maps.
- (3) Creation of digital cadastral database.
- (4) Acquisition of up to date aerial photography.
- (5) Capacity-building within the MLR.

### **2.2.1.4. Directorate of Deeds Registry (MLR)**

This directorate has two offices, namely the Windhoek Deeds Office and the Rehoboth Deeds Office. The directorate serves as the national cadastral authority in the country. The Deeds Registries provide professional services and advice to line ministries, parastatals, local authorities, legal practitioners and the general public on all matters relating to the registration of immovable and movable properties. The functions of the Deeds Registries are outlined in the Deeds Registries Act 47 of 1937 and the Registration of Deeds in Rehoboth Act 93 of 1976.

### **2.2.1.5. Communal Land Boards (MLR)**

According to section 4 of the Communal Land Reform Act, the Minister of Lands and Resettlement must in writing request the Minister of Regional and Local Government and Housing, the Minister of Agriculture, Water and Rural Development and the Minister of Environment and Tourism, as well as the traditional authority/ies and conservancy/ies concerned, to nominate people for appointment to a communal land board. Should the traditional authority/ies or conservancy/ies fail to nominate

someone, the ministers must appoint suitable people. The members of a communal land board elect the chairperson. Section 24 of the Act deals with ratification of customary land rights allocations. The chief or traditional authority has the primary power to allocate customary land rights, but a customary land right allocated by a chief or traditional authority does not suffice to give the applicant the right to use the land. Use of the land becomes a right only once the relevant communal land board has ratified the allocation. The chief or traditional authority must inform the board of a customary land right allocation within 30 days of making the allocation, and must give the board all pertinent information about the allocation. A communal land board has the following powers regarding a customary land rights allocation:

- (1) It can ratify the allocation if it is satisfied that the allocation was properly made.
- (2) It can refer the matter back to the chief or traditional authority to reconsider in the light of the Board's comments.
- (3) It can veto the allocation if the right is to an area of land to which another person has a right, or if the size of the land allocated exceeds the maximum prescribed size, or if the right has been allocated for land reserved for common usage or for any purpose in the public interest.

In summary, the board must decide whether the chief or traditional authority made the allocation in accordance with the provisions of the Regional Councils Act. To do this, the board may enquire into the matter and consult with other people. Once it has ratified the allocation of a customary land right, the board must do the following:

- (1) Ensure that the right is registered in the correct register in the name of the applicant.
- (2) Issue a certificate of registration to the applicant.
- (3) Keep a duplicate copy of all certificates of registration at the board's office.

Section 33 of the Communal Land Reform Act deals with the registration of leasehold rights. Once an application for a right of leasehold has been granted by the board, the board must do as follows:

- Ensure that the right is registered in the prescribed register and in the name of the applicant.
- Issue leasehold to the applicant.
- Register the right of leasehold under the Deed Registries Act 47 of 1937 if the land in question has been surveyed under the Land Survey Act 33 of 1993 and the duration of the lease is 10 years or more.

The maximum period for leasehold is 99 years, but the board and the person who applied for and received the right of leasehold must together determine the period. Leases for longer than 10 years are not valid unless approved by the Minister of Lands.

### **2.2.2. Ministry of Agriculture, Water and Forestry**

The focus of the Government in the agricultural sector before independence was mainly on supporting approximately 4,000 livestock commercial farmers in the southern, central and northern eras of Namibia.<sup>39</sup> Since independence the Government has embarked on a redirection of developmental efforts and resources towards smallholder farmers in the impoverished and under-developed communal areas, whilst seeking to sustain the performance of the economically important commercial sector.

This strategic shift led to the reorganisation of agriculture in Namibia and is reflected in the creation of five directorates – Research and Training, Extension and Engineering Services, Veterinary Services, Planning, and General Services. Since 2005, the function of Rural Development has been transferred to the Ministry of Regional, Local Government, Housing and Rural Development (MRLGHRD). The Ministry has in return taken on the function forestry management from the Ministry of Environment and Tourism (MET) and is now known as the Ministry of Agriculture, Water and Forestry (MAWF).

The Ministry's Programme objectives are to:<sup>40</sup>

- Strengthen agricultural planning and data collection through the provision of technical assistance
- Establishment of cooperatives development
- Strengthening of agro-ecological zoning and early warning services
- Execution of all feasibility studies for all projects; and
- Provision of associated buildings offices and other infrastructure

### **2.2.3. Ministry of Regional and Local Government and Housing and Rural Development (MRLGHRD)**

As the only ministry involved in housing provision, the MRLGHRD has the responsibility of facilitating the provision of housing, human settlement and development of shelter, and promoting development of sustainable human settlements combining economic, social and environmental protections. Development of urban areas involves numerous activities. The provision of urban land, housing and urban services is the direct or indirect responsibility of the MRLGHRD and the local authorities. Other services, such as education, health and creation of employment opportunities, are responsibilities of other ministries. However, they are all closely linked to urbanisation and urban development. Urbanisation policy is the responsibility of the MRLGHRD in collaboration with the National Planning Commission (NPC).

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<sup>39</sup> Republic of Namibia. *The First National Development Plan (Volume 1)*. Windhoek: National Planning Commission, 1995, at 18.

<sup>40</sup> Ibid

A substantial number of the activities of regional and local authorities are coordinated through the MRLGHRD. The ministry is subdivided into four directorates: the Directorate of Regional and Local Government Co-ordination; the Directorate of Housing, Habitat and Technical Services Co-ordination; the Directorate of Decentralisation and Co-ordination; and the Directorate of Finance, Human Resources and Administration. The Directorate of Regional and Local Government Co-ordination is subdivided into four Divisions, namely the Divisions of Local Government Co-ordination, Town and Village Administration, Regional Government Co-ordination, and Town and Regional Planning. In 2005, the Ministry also became responsible for rural development which was transferred from the Ministry of Agriculture, Water and Forestry (MAWF).

The main functions of the MRLGHRD regarding local government are:

- i) coordination and management of regional and local government;
- ii) rendering town and regional planning services to regional and local government (in accordance with the Local Authorities Act of 1992);
- iii) dealing with specific matters concerning towns and villages in terms of the Town Planning Ordinance and the Township and Division of Land Ordinance of 1963 (both amended);
- iv) acting as a secretariat for the Namibia Planning Advisory Board (NAMPAB);
- v) training officials of regional councils and local authorities; and
- vi) presenting development budgets to the NPC on behalf of regional, town and village councils.

### **2.2.3.1. Regional Councils (MRLGHRD)**

The functions, duties and responsibilities of regional councils in the land and housing delivery process are defined in the National Housing Development Act. These include:<sup>41</sup>

- reporting to the MRLGHRD on problems concerning housing in the different regions of the country;
- formulating regional housing policies;
- increasing and sustaining regional land and housing development, especially in neglected rural areas; and
- acting as the supervisor of village councils and settlement areas with regard to housing as contemplated in the National Housing and Development Act.

There seems not to be a clear perception of the role and responsibilities of regional councils for urban areas, and the Regional Councils Act of 1992 is not very specific on these. The Flexible Land Tenure Bill does not mention any role for the regional councils, but it is foreseen that when the Bill becomes law the local authority will still handle the land administration of each urban area, while the MLR, MRLGHRD and the local authority council may establish a Local Property Office to deal with registration under the two new tenure systems. The MRLGHRD provides financial support to

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<sup>41</sup> Ministry of Regional and Local Government and Housing, "The National Housing Policy of Namibia" (5th draft), 2004, at 15.

local authorities whose tax bases do not provide sufficient revenue for these activities. The impact of regional councils on urbanisation is potentially considerable because they are responsible for development in the regions as well as for the location and design of infrastructure and social services that influence urban migration.

### 2.2.3.2. Local Authority Councils (MRLGHRD)

Local authorities own most of the land in urban areas and formal rural areas. They are responsible for the development of land for housing, and for the sale of residential plots that are transferable with freehold title. The Local Authorities Act 23 of 1992 placed designated urban areas in the former “homelands” in a position to provide freehold title. The functions of local authority councils with regard to housing are defined in the Local Authorities Act and the National Housing Development Act. Some of the functions are:<sup>42</sup>

- to prepare local authority housing policies;
- to develop land for housing;
- to develop plots at a cost affordable by low-income people through subsidisation, community work and appropriate technology; and
- to oversee the housing construction process.

The Division of Land Boards, Tenure and Advice within the MLR Directorate of Land Reform is responsible for issuing Permission to Occupy (PTO) Certificates in rural communal areas. Local authorities are responsible registering urban PTOs in communal areas. Section 4(1) of the Flexible Land Tenure Bill provides that the Minister of Lands, Resettlement and Rehabilitation, after consultation with the Minister of Regional and Local Government and Housing, may by notice in the *Government Gazette* establish a land rights office for the area specified in the notice concerned as the area of jurisdiction of that office. In other words, local authorities will also be responsible for carrying out the provisions of the Flexible Land Tenure Act in terms of registering the two new tenure systems. Section 13(2) of the Bill provides that once the establishment of a starter title scheme has been approved, the relevant local authority must send a notice to that effect to the Registrar of Deeds and to the registrar of the local property office under whose jurisdiction the land falls.

The Local Authorities Act furthermore distinguishes between municipalities, towns and villages. Municipalities represent the highest level of local authority and are divided into Part I Municipalities such as Windhoek, Swakopmund and Walvis Bay, and Part II Municipalities such as Gobabis, Grootfontein, Karibib, Karasburg, Keetmanshoop, Mariental, Okahandja, Omaruru, Otjiwarongo, Outjo, Tsumeb and Usakos. Part I Municipalities have more administrative autonomy and more councillors than Part II Municipalities. Section 21(1) of the Local Authorities Act provides that every local authority council should have a management committee,

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<sup>42</sup> Ibid at 16.



and section 26(1) provides that the functions of the management committees should be:

- (a) to ensure that the decisions of the local authority council are carried out;
- (b) to consider any matter entrusted to the local authority council by virtue of any provisions of this Act or any other law in order to advise the local authority council on such matter;
- (c) to prepare and compile for the approval of the local authority council the estimates and supplementary estimates of revenue and expenditure of the local authority council;
- (d) to control the expenditure of moneys voted by the local authority council in its approved estimates and additional estimates and all other moneys or funds made available to the local authority council;
- (e) to report at meetings of the local authority council on the exercise of the powers and the performance of the duties and functions of the management committee;
- (f) to exercise any power conferred upon the management committee under any provision of this Act or any other law; and
- (g) to exercise any power of the local authority council delegated to the management committee by the local authority.

Further, a local authority “may establish from time to time such committees as it may deem necessary to advise it on the exercise of any of its powers or the performance of any of its duties and functions, and may appoint such members of the management committee or such other persons as it may deem fit to be members of such committees”.

### **2.2.3.3. Municipalities (MRLGHRD)**

A municipality is a legal body with its own assets, consisting of a proclaimed town layout with town lands for future extension.<sup>43</sup> All municipalities have an organised and formal administrative structure, performing the functions of a local authority. They are divided into departments for general administration, finance, health and engineering. Their functions include water supply, provision of sewerage and drainage systems, refuse removal, construction and maintenance of streets and public places, supply of electricity and gas, and facilitation of housing development. They are in principle independent of higher authorities, both administratively and financially. A municipality’s main sources of income are local rates, charges and fees for provision of urban services (water, electricity, sewerage, etc.), and sales and taxation of land. Central government contributes to municipal income by means of loans for development purposes and subsidies for roads, traffic control and fire brigades.

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<sup>43</sup> Republic of Namibia, *The First National Development Plan (Volume 1)*, Windhoek, National Planning Commission, 1995, at 452.

With the steady influx of people from the regions to Windhoek, especially to the informal parts of Katutura, the costs of developing urban services are likely to increase considerably in the next few years. There is also an influx to informal settlements of people who have lived in formal parts of Katutura for some time, and even some who were born there, presumably due to finding it increasingly difficult to pay home utility bills. Their presence in the informal settlements could further increase the cost of urban services.

#### **2.2.3.4. Towns and Villages (MRLGHRD)**

Towns are proclaimed and surveyed in accordance with the procedures laid down in the Townships and Division of Land Ordinance of 1963, while villages are not covered in this legislation.<sup>44</sup> Since independence several towns in communal areas have been proclaimed as municipalities, which allow them to generate additional income through charges for water, electricity, sewerage and rent paid for using land. In most towns the MRLGHRD is responsible for local authority administration and personnel. Most towns are not self-supporting and rely on central government to cover salaries and some maintenance costs.<sup>45</sup> The lack of development in most towns currently undermines the authority of the town councils, which could jeopardise their political legitimacy. All local authorities (municipalities, towns and villages) have some automatic powers, but a village may exercise these powers only if the Minister of Regional and Local Government and Housing and Rural Development consider it ready to do so. A village council elects a chairperson and vice-chairperson, who play a similar role to that of mayors and deputy mayors in larger local authorities. The central government can step in to help towns and villages that have difficulty providing adequate services to their residents.

Another point that should be noted is that there are headmen involved de facto in land administration in informal settlements, especially in proclaimed towns in communal areas where the headmen have a strong de facto influence on local authority affairs.

#### **2.2.4. Other Ministries**

The other ministries responsible for issues relating to land use planning, urban management and development are the Ministry of Labour, the Ministry of Health and Social Services, the Ministry of Education, the Ministry of Mines and Energy and the Ministry of Works, Transport and Communication and Ministry of Environment and Tourism. The NPC is responsible for national prioritisation in economic planning, including regional planning.

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<sup>44</sup> Ibid., at 453.

<sup>45</sup> Ibid.

The IMSCLUP is an MLR initiative intended to address the need for inter-ministerial coordination. The committee's primary objective is to coordinate land use planning in Namibia until such time that a central and recognised institution is established. Through IMSCLUP government raises awareness among the relevant ministries of the need for integrated planning in cooperation with communities.

### **2.2.5. Non-Governmental Organisations**

The two farmers unions, the Namibia Agricultural Union (NAU) and Namibia National Farmers Union, respectively represent the interests of freehold and communal farmers. Although these unions were established among colour lines, the two unions now start to work more closely on matters such as development, processing, marketing and more importantly, land reform strategies and initiatives.

### **2.2.6. Conclusion**

In order to implement a successful land reform and land use strategy for Namibia, it is essential that all the organisations mentioned in this section should coordinate their different efforts more closely. This remains perhaps one of the primary challenges of the land reform process in Namibia.

### 3. Current Situation

#### 3.1. Key Land Policy Issues

##### 3.1.1. Land Distribution<sup>46</sup>

There are approximately 10 900 title deed portions outside municipal areas, but for the purpose of extensive agriculture, as practised under Namibian climatic conditions, only those exceeding 3 000 ha are considered as economically viable farms. There are 6 010 of these title deed farms of more than 3 000 ha each, with a total surface area of 424 700 km<sup>2</sup> (the 4 890 remaining title deeds are plots and small farms, representing approximately 44 400 km<sup>2</sup> or 6.4% of the land normally referred to as 'agricultural land'). This figure (424 700 km<sup>2</sup>) forms the basis of the following discussion.

The distribution of this 424 700 km<sup>2</sup> is as follows:

- White individuals own 170 000 km<sup>2</sup>, or 40% of title deed land, 24.7% of agricultural land and 20.6% of Namibia's land surface.
- Companies own 63 200 km<sup>2</sup>, or 14.9% of title deed land, 9.2% of agricultural land and 7.7% of Namibia's land surface. In many cases the company ownership is not known, but could include any combination of white and black Namibians and foreigners.
- Black individuals who bought their own farms (especially after independence) either from own resources or through the Agricultural Bank of Namibia's Affirmative Action Programme to assist previously disadvantaged farmers, own 19 800 km<sup>2</sup>, or 4.7% of the title deed land, 2.9% of the agricultural land and 2.4% of Namibia's land surface.
- Black individuals live on 84 000 km<sup>2</sup> of the so-called "Odendaal farms", or 19.8% of the title deed land, 12.2% of the agricultural land and 10.2% of Namibia's land surface. These farms were bought out from white farmers in the 1960s to form part of the so-called "homelands". The Government of Namibia remains the title deed holder, while the black families resettled there have a right of occupation.
- Government owns another 13 600 km<sup>2</sup>, or 3.2% of the title deed land, 2.0% of the agricultural land and 1.7% of Namibia's land surface. This includes a few agricultural research stations and quarantine stations, but most of this additional land was acquired after independence for the purpose of resettling black Namibians.
- Non-Namibian citizens own 4 700 km<sup>2</sup>, or 1.1% of the title deed land, 0.7% of the agricultural land and 0.6% of Namibia's land surface. These owners include foreigners with temporary or permanent residence permits who live on the farms, and absentee owners who either have managers running the farms or keep the land completely unoccupied and agriculturally unproductive.

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<sup>46</sup> Statistics obtained from the Ministry of Agriculture, Water and Forestry, 2005.

- Municipalities, organisations (such as churches) and trusts (mostly of deceased estates) own 5 900 km<sup>2</sup>, or 1.4% of the title deed land, 0.9% of the agricultural land and 0.7% of Namibia's land surface.
- The ownership of the remaining 63 400 km<sup>2</sup> of title deed land (14.9% of the title deed land, 9.2% of the agricultural land, 7.7% of Namibia land surface) is unclear at present.

In total, title deed farms (of more than 3 000 ha each) constitute 61.8% of the agricultural land in Namibia.

The non-title deed areas or communal areas constitute 31.8% of the agricultural land. This land is held traditionally and is allocated according to the respective customary land laws of Namibia's indigenous peoples. More than half a million people live on this land, most in dire poverty.

Smaller title deed plots make up 6.4% of the agricultural land. This last portion consists mainly of smallholdings around towns, in many cases just in residential areas. The lack of adequate rainfall or irrigation water means that most plots are too small for farming enterprises.

A survey was carried out by the MAWF to gauge the potential for irrigation development in Namibia where land and water is available. The survey identified 46 754 ha in total for possible irrigation. The distribution of irrigation land is as follows: black Namibians own 76.8%, white Namibians own 13%, companies own 9.2%, and trusts, municipalities, churches and foreigners own 1%.

### **3.1.2. Introduction of land tax**

Namibia historically has had no tax on commercial farmland. As part of the current effort to achieve land reform, the Government passed a new land tax. The Agricultural (Commercial) Land Reform Act provides for the introduction of a land tax. Commercial agricultural land tax was introduced by the Agricultural (Commercial) Land Reform Second Amendment Act 2 of 2001.

Section 2 of the Agricultural (Commercial) Land Reform Second Amendment Act 2001 states that every owner of commercial agricultural land has to pay a land tax based on the value (known as the Unimproved Site Value) of the land. The value of the land is indicated on the main valuation role and calculated at a specific rate or progressive rate as may be determined by a notice under section 76 of the Act.<sup>47</sup> The desired outcome of imposing such a progressive tax on every additional farming unit is twofold: the first aim is to persuade individuals to give up some of their land

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<sup>47</sup> A single farm owned by a Namibian – 0.75% of Unimproved Site Value per hectare  
A single farm owned by a foreigner – 1.75% of Unimproved Site Value per hectare  
Additional farms owned by the same owner – the rate shall be increased by 0.25% of the Unimproved Site Value per hectare for each farm progressively, according to the number of farms owned.

units because they cannot afford to pay the tax; the second aim is to create much-needed revenue to boost the Land Acquisition and Development Fund to buy more commercial agricultural land for the resettlement programme.

The first collection of a land tax on commercial farmland took place at the end of the 2005/06 tax year. Government collected a total of N\$27, 9 million through land tax on commercial farms in 2005.

### **3.1.3. Land Expropriation**

In February 2004 the Namibian government announced that the expropriation of agricultural land is to be implemented in order to speed up the land reform process. The government's argument at the time was that the "willing buyer willing seller" approach was to blame for inflating market related land prices, which consequently led to the unavailability of productive agricultural land.

It is within the legal framework of the Agricultural (Commercial) Land Reform Act 6 of 1995 that land expropriation will run concurrently with the 'willing buyer willing seller' approach as a means to acquire land for the government's resettlement programme.

The Act, as amended in 2003, prescribes that the Minister of Lands and Resettlement may decide after consultation with the Land Reform Advisory Commission (LRAC) to expropriate *any* farm it identifies as suitable for the resettlement of the landless and poor.

Having decided to expropriate a property, the Minister must serve the owner with an expropriation notice which has to include a full and clear description of the property, the date of expropriation and the date on which the State intends to take possession of the property – no longer than six months from the date of the notice. On receipt of the notice, the owner has to prepare compensation claim for submission to the MLR as the acquiring authority. Once the owner states his/her price, the MLR has to send in a team to inspect and value the property before making a counter offer. An owner who has received an expropriation notice may submit a statement to the Minister communicating whether or not he/she has accepted the offer and the amount offered as compensation. This process has to be completed within 60 days of the date of delivery of the expropriation notice.

If the owner does not accept the Minister's offer, the Minister has to inform the owner that he/she has 90 days from the date of notice to make an application to the Lands Tribunal for the determination of compensation.

If the Minister and owner cannot reach agreement, the Land Tribunal will determine the compensation to be paid. An offer that has not been accepted will not be disclosed to the Lands Tribunal until it has reached its decision. The Tribunal can award an amount equal to or in excess of the amount last claimed by the owner, in which case costs will be awarded against the Minister. Alternatively, the Tribunal can award an amount equal or less than the amount last offered by the Minister, in

which case costs will be awarded against the owner. Finally, the Tribunal can award an amount less than the amount last claimed by the owner, but exceeding the amount last offered by the Minister, in which case the costs of the owner will be awarded against the Minister. The Minister may withdraw an expropriation notice, in which case he/she must notify the owner and everyone else to whom the notice was given.

While the Agricultural (Commercial) Land Reform Act is compatible with Article 16 of the Constitution, which provides firstly for all Namibians to have a right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property, and secondly for the State to expropriate property in the public interest subject to the payment of just compensation, the expropriation procedure as it stands in the Act is likely to be challenged under Article 18 of the Namibian Constitution, which states, *inter alia*, that "... persons aggrieved by the exercise of acts and decisions shall have the right to seek redress before a competent Court or Tribunal". Since Articles 16 and 18 of the Constitution are both applicable to the process of expropriation, it is likely that aggrieved commercial farm owners will challenge the Agricultural (Commercial) Land Reform Act in the High Court.

Article 16(2) of the Constitution provides that property may be expropriated "in the public interest". The Agricultural (Commercial) Land Reform Amendment Act 14 of 2003 amended section 14(1) of the principal Act by including the phrase "in the public interest". The section now reads as follows:

"Subject to subsection (2), the Minister may, out of moneys appropriated by Parliament for the purpose, acquire *in the public interest*, in accordance with the provisions of this Act, agricultural land in order to make such land available for agricultural purposes to Namibian citizens who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices."

Although fairly easy to define, the phrase "in the public interest" may be open to different interpretations. For example, land expropriation for land reform purposes could be interpreted as being in the public interest, but disputes may arise as to whether the expropriation of a particular piece of land is in the public interest. In this regard factors such as current and future land use patterns, the real and potential benefit of a piece of land to the public, the financial costs to the State of expropriating a piece of land, the environmental condition of that land and the availability of other land for the same or a similar purpose should be taken into account in reaching a decision on an expropriation.

It is evident that numerous factors must be considered in targeting land for expropriation. It is therefore recommended that land expropriation should be dealt with in accordance with set criteria. Ideally these would be contained in the Government's policy documents. The Government is bound to follow its own policy

guidelines in decision-making unless there is a justifiable reason or grounds to deviate from the guidelines by virtue of Article 18 of the Constitution. The flexibility of a government policy (as opposed to an Act of Parliament) would allow the Government, without great expense, to amend or adapt the policy as circumstances require. For the sake of clarity and certainty it might be appropriate to include a provision in the Agricultural Commercial Land Reform Act directing the Government to consider the provisions of the relevant government policies.

In addition to making provision for expropriation “in the public interest”, Article 16(2) of the Constitution concerns itself with the term “just compensation”.

Section 25 of the Commercial (Agricultural) Land Reform Act deals with the basis on which compensation for expropriation is to be determined. Section 25(5)(a) provides that the improved value of a property should be taken into account when compensation is awarded. However, section 25(5)(b) provides that compensation will not be granted for improvements made to a property after the date of delivery of the expropriation notice. Compensation will be granted only for the maintenance of existing infrastructure.

Section 25(1)(a)(i) stipulates that the amount of compensation for agricultural land should not exceed the aggregate of the amount that the land would have realised if sold on the date of notice on the open market on a ‘willing buyer willing seller’ basis. Subsection (ii), however, provides that an amount could be required by the owner to be fully compensated for the actual loss caused by expropriation.

The Act is not clear as to whether or not the compensation that must be paid in terms of Article 25 must reflect the actual market value of the expropriated property. Although the Government has on numerous occasions committed itself to carrying out land reform in accordance with the law, it has been criticised for not explaining the criteria for expropriation.

Section 14(2) of the 2003 Amended Act gives the Minister considerable powers to select *any* type of commercial agricultural land that could be expropriated for purposes of land reform. If *any* type of commercial agricultural land can be expropriated, this would include *anyone’s* property, black or white, Namibian or foreigner, absentee landlord or full-time farmer. According to the former Minister of Lands, even productive farms can be expropriated if the Government feels that “it can be used better”.<sup>48</sup>

There are also still unanswered questions as to whether the Government is targeting for expropriation the land of farmers who have been involved in labour disputes with their farm workers. Neither the Constitution nor the Agricultural (Commercial) Land Reform Act makes provision for the expropriation of commercial agricultural land on grounds of labour disputes.

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<sup>48</sup> Christoff Maletsky, “We take any farm we need: Govt”, *The Namibian*, 4 March 2004.



Expropriating land on this basis leaves the door open for arbitrary expropriation as it could reduce the expropriation process to a punitive measure whereas it is meant to be a means to achieve a just redistribution of land in the public interest. In addition it will lead to unequal treatment of current land owners.<sup>49</sup>

Expropriation is a restriction on the constitutionally guaranteed right to own property and is legitimate only if there is strict compliance with the legal requirements and procedures determined by an Act of Parliament.<sup>50</sup> Expropriation should therefore always be foreseeable, non-discriminatory and based on reason or principle.

### **3.1.4. The Land Reform Programme**

#### **3.1.4.1. Communal Land Reform Act 5 of 2002**

This Act provides for the allocation of rights to communal land outside the boundaries of proclaimed towns. It further provides for the establishment of regional communal land boards, and for regulating the powers of chiefs, traditional authorities and boards in relation to communal land. There are 12 communal land boards. Only one region, Khomas, has no board because there are no communal areas in this region, whereas all of the other 12 regions are either wholly or partially communal areas. The function of these boards is to control the allocation of customary land rights by chiefs or traditional authorities. The boards are tasked to administer the entire system of granting, recording and cancelling these rights in consultation with traditional authorities. Communal land boards consist of representatives of traditional authorities, the farming community, the regional councils, women, the public service and conservancies in the boards' respective areas of jurisdiction.

Customary land rights that may be allocated in respect of communal land include:

- the right to a farming unit;
- the right to a residential unit; and
- the right to any other form of customary tenure as recognised by the Minister.

Joint titling is possible with the registration of land allotments on resettlement projects and communal land allocations. Land allocations to resettlement beneficiaries are known as 'allotments'. The allotments and houses on resettlement projects can be registered jointly in both spouses' names. There are also a number of resettlement projects on communal land.

This Act provides for the recording and registration of all land rights in communal areas, either as customary land rights or rights of leasehold – a process central

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<sup>49</sup> Christina Treeger, "Legal analysis of farmland expropriation in Namibia", Konrad Adenauer Stiftung and Namibia Institute for Democracy, May 2004 at 5.

<sup>50</sup> Ibid.

government is funding. It also provides for the administration of customary rights along similar lines to those adopted in Botswana. In practice, national elites have enclosed large areas in which customary land rights prevail, but these rights are not surveyed and so lack effective legal protection. This is a problem in most communal areas. It is perhaps too early to detect how communal land boards are dealing with the issue of illegal fencing in communal areas, which the Communal Land Reform Act now deems a criminal offence.

#### **3.1.4.2. Agricultural (Commercial) Land Reform Act 6 of 1995**

The Agricultural (Commercial) Land Reform Act 6 of 1995 provides for the acquisition of agricultural land by government for the purposes of land reform and redistribution to Namibian citizens. The land reform and redistribution process is focused on those “who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices” (Preamble).

The land reform programme has two major components:

- The Resettlement Programme; and
- The Affirmative Action Loan Scheme.

#### **3.1.4.3. The Resettlement Programme**

Access to land with secure tenure is one of the aims of the National Resettlement Policy.<sup>51</sup> Other principal objectives of the policy and resettlement programme are:

- to redress the imbalances of the past in the distribution of economic resources, particularly land and secure tenure; and
- to offer citizens an opportunity to reintegrate themselves into society after many years of displacement by colonialism, the war of liberation and other adverse circumstances.

To date, 1 526 families or 9 156 persons (with an average of 6 persons per family) have been resettled on 142 farms of some 843 789 ha in total, at a total cost of N\$127 836 132. This means that on average approximately 610 persons have been resettled per year on commercial agricultural land over the last 16 years. If the total purchase cost of 142 farms is divided by the total number of people resettled since independence, then the average cost to resettle one person is about N\$14 000. This amount excludes food rations, housing and technical services that the MLR provides to resettlement beneficiaries.

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<sup>51</sup> Republic of Namibia, *National Resettlement Policy*, Ministry of Lands, Resettlement and Rehabilitation, 2001, at 3.

A number of these resettlement projects are dependent on Government drought aid. The National Resettlement Policy provides that the MLR must analyse applications for resettlement and judge applicants on the basis of their economic status. Government has classified the categories of settlers as follows:<sup>52</sup>

- a) People who have no land, no income and no livestock.
- b) People who have no land or income, but who have some livestock.
- c) People who have no land but do have income or livestock, and who need land on which to resettle with their families and graze their stock.

Through the MLR the government has to prioritise the groups of beneficiaries in the resettlement programme. The primary target groups are members of the San community, ex-soldiers, returnees (people who lived in exile when Namibia was under South African rule), displaced people, people with disabilities and people living in overcrowded communal areas.

#### **3.1.4.4. The Affirmative Action Loan Scheme**

#### **3.1.5. The Affirmative Action Loan Scheme (AALS)**

The Affirmative Action Loan Scheme (AALS), which is run by the Agricultural Bank of Namibia (Agribank) on behalf of the government, was introduced by Cabinet in 1992. The Agricultural Bank Amendment Act 27 of 1991 and the Agricultural Bank Matters Amendment Act 15 of 1992 introduced the AALS, among other things, with the main aim of resettling well-established and strong communal farmers on commercial farmland so as to minimise the pressure on grazing in communal areas.

The AALS involves granting subsidised Agribank loans to full-time and part-time communal farmers possessing over 150 head of large livestock or 800 head of small livestock. Loans are available for a period of 25 years. For full-time farmers the first 3 years are free of interest and capital repayment, and the capital amount is repaid over the remaining 22 years at an escalating interest rate. The Government can issue state guarantees not exceeding 35% of the purchase price of the land, including transfer fees and costs. Part-time farmers may choose for the first 3 years to repay the interest portion only, and thereafter the capital amount at the appropriate interest rate. Alternatively, part-time farmers may elect to capitalise the interest portion for the first 3 years, and thereafter pay the capital amount at the appropriate interest rate.

While the Resettlement Programme is aimed at the poorest of the poor, the AALS is aimed at the emerging black middle class. Since the AALS's inception in 1992, the Government has been subsidising the purchase of commercial farmland by formerly

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<sup>52</sup> Ibid.

disadvantaged farmers, with Agribank administering the loans. The policy underpinning the AALS has three fundamental rationales:<sup>53</sup>

- To promote ownership of Namibian farmland by formerly disadvantaged Namibians.
- To encourage communal farmers with large livestock herds to move to commercial farmland to free space for smaller upcoming communal farmers.
- To encourage formerly disadvantaged farmers to become strong and well-established commercial farmers able to contribute to the county's economy.

Agribank, which is subsidised by an annual government allocation, provides subsidised interest rates ranging from 2% below prime rate for part-time farmers to 4% below prime rate for full-time farmers. Full-time farmers enjoy an interest and capital repayment holiday for the first three years, while part-time farmers are given an income-based loan payment deferment.

The Agricultural Bank Act 5 of 2003 provides for the granting of long-term, medium-term and short-term loans to farmers.

- Long-term loans are used to purchase farmland or additional farmland, livestock and farming equipment, as well as for fixed improvements (deforestation, levelling of land, etc.), existing bond and debt consolidation, and demarcation of farmland. To acquire a long-term loan, a first mortgage on farmland in Namibia is required as collateral.
- Medium-term loans are used to purchase livestock, agricultural implements and farming equipment (tractors, machinery, etc.), and vehicles.
- Short-term loans are granted to meet crop production needs such as seed, fertiliser and fuel.

To date, approximately 580 farms have been bought by emerging black commercial farmers through the AALS; - nearly four times the number of farms that the MLR have acquired for its resettlement programme. Despite this impressive exchange of landownership from mainly white to black hands, the AALS has not been without its controversies. The AALS was briefly suspended from the last quarter of 2003 until the first quarter of 2004, when the government owed the Agribank millions of dollars in respect of interests on the AALS. In March 2004 it was reported that at least 199 out of 544, approximately 37% of AALS farmers, have defaulted on their payments.<sup>54</sup> In December 2004 the government suspended its 35% guarantee on AALS loans. This means that prospective farmers now first have to pay 10% of the purchase price before they can qualify for the AALS.

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<sup>53</sup> Information obtained from the Agricultural Bank of Namibia (Agribank), March 2005.

<sup>54</sup> The Namibian, *Angula Admits AA Loan Scheme Defective*, 23 March 2004

There is also evidence that the AALS on its own is not an adequate mechanism to ensure the transfer of white-owed land to black Namibians. Emerging black farmers report that by year eight they have consumed the capital they accumulated during the grace period and are unable to repay their loans. For many emerging farmers, if not most, the reality is that unless their loan is matched by some type of capital subsidy, their farm will fail. This would cause the AALS to be an economic drain rather than a creator of wealth. Another criticism of the AALS is that part-time farmers use their off-farm income to cross-subsidise the loan repayments, thereby diverting scarce capital from more productive investment opportunities.<sup>55</sup>

The formula used by Agribank for land valuation and assessment entails taking 35% of the artificial selling price and adding it to the loan value determined by the valuer, thus inflating the land prices. In other words, a government guarantee of 35% is added to the valuer's loan value. Thus, if Agribank determines the agricultural fair value of a farm to be N\$1.1 million against the asking price of N\$2.0 million, a 35% (N\$700 000) government guarantee is added to push the price up to N\$1.8 million. Then, an own contribution of 10% will bring the total to the asking price with little attention paid to the farm's production capacity to sustain the loan repayments.<sup>56</sup>

In addition, Agribank has assessed loan recipients as if they were at full production, and as such has approved loans, thereby stretching the recipients' repayment capacity even further.<sup>57</sup> For example, if the basic requirement to qualify for an AALS loan is 150 head of cattle (or 800 small animals), 150 cattle is the initial start-up capital needed to enable a loan recipient to stock the farm to its full production value. Thus, if full production requires 300 cattle, then a farmer has to have enough money available to purchase the additional stock over the grace period of 3-5 years. By the time the grace period has elapsed and repayment has started, it has become even more difficult to attain full production value.

In January 2005, the Agribank has put a moratorium on the AALS, stating that farm prices have gone out of control, mainly because buyers had access to large loans and were buying farms at inflated prices. For example, the Agribank found that the AALS has become neither sustainable nor affordable to buyers because the loan amount far exceeded the production value of many of the farms bought. In some cases, farms had less production value than quoted when loans were applied for, while in other cases the valuation was based on full production. In this regard, some of the AALS farmers are currently underutilizing their farms in that they have fewer cattle on the farm than what the farm can carry. This appears to have had a negative knock-on effect on the AALS, because full scale production is seen as critical to the success of the AALS.

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<sup>55</sup> Comment by Mr Mwazi, an Agribank Public Relations Officer, October 2004.

<sup>56</sup> Agricultural Bank of Namibia, newsletter, March 2005.

<sup>57</sup> *Ibid.*

### 3.1.5.1. The Permanent Technical Team on Land Reform

In 2001, the Government of Namibia had decided to take stock of and evaluate experiences within land reform programme to date and to prepare strategic options based on the results of this programme. In this regard, a team of Namibian consultants (referred to as the Permanent Technical Team, in brief PTT) has been appointed.

The PTT was expected to take stock of and evaluate land policies and actions to date; in order to assist the Namibian Government in the formulation of strategic options towards land reform. This should include communal land, commercial holdings as well as current state lands within the context of the development objectives as set in the NDP2.

The PTT made its finding available in August 2006. Among the most important of its findings are that the government will spend N\$3.7 billion over the next 15 years to acquire a targeted 10.3 million hectares of commercial farm land from white farmers to resettle 6727 black families by 2020.

### 3.1.6. Land Tenure

The National Land Policy accords equal status under the law to several forms of land rights and several categories of land rights holders. The types of lands rights are described in Table 1. The categories of land rights holders are: individuals; families that are legally constituted as family trusts in order to assure specified individuals and their descendants of shared land rights; legally constituted bodies and institutions to exercise joint ownership rights; duly constituted co-operatives; and the State.<sup>58</sup>

**Table 1 Tenure Types**<sup>59</sup>

TYPE	CHARACTERISTICS	LEGAL BASIS
<b>Customary land rights</b>	Communal land is vested in the government, which administers it in trust for the benefit of traditional communities residing on that land. A chief or traditional authority has the primary power to allocate customary land rights. However, the communal land board in which area the traditional community is located must ratify the allocation before it is legally valid.  Customary land rights in communal areas include (a) a user right to a farming unit; (b) a user right to a	Schedule 5(1) of the Namibian Constitution  Communal Land Reform Act 5 of 2002

<sup>58</sup> Republic of Namibia, *National Land Policy*, Ministry of Lands, Resettlement and Rehabilitation, 1998, at 3.

<sup>59</sup> Table adopted from "A Place We Want to Call Our Own" – a study on land tenure policy and securing housing rights in Namibia, a Legal Assistance Centre Publication, 2005, written by the author of this report.

	residential unit; (c) a user right to any other form of customary tenure that is recognised and described by the Minister in the <i>Government Gazette</i> . These rights can be transferred, inherited or held jointly by spouses.	
<b>Freehold title</b>	Ownership can be held in perpetuity, transferable alienable, and may be obtained through prescription. It may be seized (expropriated to serve the public interest on a just compensation basis).	Article 16 of the Constitution Section 14(1) of the Agricultural (Commercial) Land Reform Act 6 of 1995
<b>Leasehold title</b>	Secure long-term registered leases that may be transferred, inherited, renewed or mortgaged are made available in both <i>communal and commercial</i> areas, primarily for business purposes. These leases are all for a period of 99 years.  Communal land boards may grant rights of leasehold for any portion of communal land, but only if the relevant Traditional Authority consents.  Shared leasing would be possible under the Close Corporation Act 26 of 1988 if, for example, a right of leasehold is to be obtained for agricultural purposes or establishing a tourist camp in a communal area as a joint venture that has registered itself as a close corporation.	Common law Communal Land Reform Act National Resettlement Policy National Land Policy
<b>Permission to Occupy (PTO)</b>  to be phased out during the next two years.	PTOs can be cancelled administratively – no due process and security of tenure uncertain – and cannot be legally transferred.  The PTO certificates currently granted by the MLR will be phased out within three years after the introduction of the Communal Land Reform Act. Existing PTO holders will be entitled to apply to their communal land board for conversion of the title to leasehold.	Part I of the Local Authorities Act 23 of 1992 refers to various aspects of PTO rights held in communal areas. At independence several proclamations dealing with land rights issues in communal areas were repealed.  Communal Land Reform Act 5 of 2002
<b>Starter title</b>	This is a statutory form of tenure registered in respect of a block of land. It gives the holder the rights: (a) to perpetual occupation of a site within the block or in a similar block (the exact site within the block is not defined); and (b) to transfer or otherwise dispose of the occupation right subject to a group constitution requiring group consent to a transfer.	Section 10 of the Flexible Land Tenure Bill (4 <sup>th</sup> draft)
<b>Landhold title</b>	This is a statutory form of tenure with all of the most important aspects of freehold ownership but without	Section 9 of the Flexible Land Tenure

	the complications of full ownership. This title gives the holder the right to occupy a defined site in perpetuity and to transfer or otherwise dispose of such right. Thus the owner would be able to mortgage this title.	Bill (4 <sup>th</sup> Draft)
<b>Prescription</b>	Section 1 of the Prescription Act 68 of 1969 defines prescription as follows: "A person shall become the owner of a thing which he has possessed openly and if he where the owner thereof for an uninterrupted period of thirty years or for a period which together with any periods for which such a thing was so possessed by his predecessors in title, constitutes an uninteruptible period of thirty years."  The prescription period is 30 years (Prescription Act 68 of 1969). Since independence there have been four cases of prescription.	Section 1 of the Prescription Act 68 of 1969
<b>Informal tenure</b>	Various informal tenure types probably still exist in the form of permission to stay on land based on payment of utility bills, taxes, political patronage, perceived secure tenure, etc.	
<b>State ownership</b> – though not a tenure title, this category is included for the sake of comprehensiveness	Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and exclusive zone of Namibia belong to the State if they are not otherwise lawfully owned.	Article 100 of the Constitution

All other town/urban land (in communal and commercial areas) that is proclaimed as part of a town in terms of the Local Authorities Act, but which is not held through any of the forms of land right described above, is registered in the name of the government or a local authority. Such land is intended to be subdivided, serviced and sold to the public to be held under freehold title.

### 3.1.7. Land Administration

The MLR is also responsible for the administration of land in terms of cadastral boundaries, transfer and ownership. This work is done through the Office of the Surveyor-General and the Registrar of Deeds. In addition, the ministry aims to provide simple, affordable and faster forms of secure land tenure to low-income communities and informal settlers in particular.<sup>60</sup>

All communal land is owned or kept in trust by the government. Thus communal land cannot be used as collateral to secure bank loans. Communal land is administrated by traditional leaders and Communal Land Boards, who allocate the

<sup>60</sup> Ministry of Regional and Local Government and Housing, "The National Housing Policy of Namibia" (5th draft), 2004, at 20.



land (see discussion on Communal Land Boards and the Communal Land Reform Act 5 of 2002).

Towns are proclaimed and surveyed in accordance with the procedures laid down in the Townships and Division of Land Ordinance of 1963, while villages are not covered in this legislation. Since independence several towns in communal areas have been proclaimed as municipalities, which allow them to generate additional income through charges for water, electricity, sewerage and rent paid for using land. In most towns the MRLGHRD is responsible for local authority administration and personnel. Most towns are not self-supporting and rely on central government to cover salaries and some maintenance costs.

### **3.1.8. The Urban Land Question**

At independence, when apartheid policy was abolished, the Namibian Constitution introduced the right of all Namibians to reside and settle in any part of the country.<sup>61</sup> This provoked a dramatic increase of informal settlement in the capital of Namibia, Windhoek, mostly around the traditionally black township of Katutura. Many living in overcrowded conditions in Katutura moved onto vacant land nearby and many migrants from impoverished rural areas joined them.<sup>62</sup> These newly settled urban residents lived in very unhygienic conditions, without easily accessible water and sewerage facilities. In the early days of informal settlement in Windhoek, the Windhoek City Council (WCC) seemed powerless to stem the tide. Currently, the growing poorer city population profile points at a lower capacity of the city to generate income from rates and taxes annually. The WCC has attempted in recent years to match affordability levels (ability to pay) with an appropriate basic service for the city's poor population.

Namibia's present system of land surveying, registration and development covers only part of the country due to the colonial policy of confining the majority of the national population to the former "homelands" (now communal areas) and barring homeland residents from owning land and securing tenure. An estimated 60% of the national population reside in areas historically excluded from any land registration system.<sup>63</sup> In many municipalities, towns, villages and settlements there is frustration about the inability to plan, survey and register land rights, and the difficulty of accessing credit for investment and development. In the rapidly expanding urban areas, many poor people from rural areas in search of work opportunities have no official right to own or even

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<sup>61</sup> Article 21(1)(h) of the Namibian Constitution.

<sup>62</sup> A survey conducted in Windhoek's informal settlements in 2001 indicated that residents had been living in their informal settlement for an average of 5.2 years and in Windhoek for an average of 12.4 years. These figures suggest that informal growth is not due so much to new rural immigrants building shacks in informal settlements as it is to people living in overcrowded conditions in the city moving out in search of more space for themselves and their families.

<sup>63</sup> Republic of Namibia, *2001 Population and Housing Census: National Report – Basic Analysis with Highlights*, July 2003, at 3.

reside on the land on which they have settled. Others are uncertain about their long-standing traditional right to land on the edges of growing towns in communal areas, and do not know how their rights will be affected by the expansion of urban boundaries and the establishment of municipalities. Up to 100 000 families in Namibia face such problems. The solution for them is a cheap, accessible and creditworthy form of secure land tenure.

The only secure land tenure in Namibia at present is freehold title and leasehold title, because both titles can be used as collateral. However, many Namibians cannot afford these costly titles. In addition, the authorities and professionals do not have human and financial resources to provide freehold and leasehold titles in the quantity required for those who cannot afford such title.

Various options were considered for responding to these problems. It was decided that a parallel interchangeable property registration system will be developed for Namibia, where the initial secure right is not only simple and affordable, but also upgradeable according to what the resident, local authority and government need and can afford at a given time.

In 1994 the MLR launched a pilot programme to investigate options a parallel interchangeable property registration system and solutions to potential problems. At the end of 1997 the ministry completed its investigation and produced a policy document. The policy received Cabinet approval and the system was named the Flexible Land Tenure System. This system is designed to be maintained locally in a land rights office by fewer skilled personnel than are needed in the present system, which makes it affordable.

At the end of the investigation it was recommended that two new types of tenure, the starter title and the landhold title, be introduced in addition to the existing freehold title.

The starter title is a statutory form of tenure registered in respect of a block of land. This title gives the holder the right –

- (a) to perpetually occupy a site within a block or in a similar block (the exact site within the block is not defined); and
- (b) to transfer or otherwise dispose of the occupancy right subject to a group constitution requiring group consent to transfers.

Servitudes or mortgages cannot be registered until individual household sites are defined.

The landhold title is a statutory form of tenure incorporating all of the most important aspects of freehold ownership, but without all the complications of full ownership. This title gives the holder the right to occupy a defined site in perpetuity and to transfer or otherwise dispose of the right. Thus a landhold title can be mortgaged.

The Flexible Land Tenure System is designed for and will be applied in all urban areas<sup>64</sup>. Thus all people living in informal settlements will have the same rights to the land whether the land is located in a communal area or a commercial area. Since the Communal Land Reform Act applies only to rural communal areas and not to proclaimed urban/town lands in communal areas, the Flexible Land Tenure Act will apply in the latter areas.

On the edges of growing towns in communal areas, uncertainty is increasing over long-standing traditional land rights and how these will be affected by the expansion of urban boundaries and the establishment of municipalities. It is assumed that the Flexible Land Tenure Act, once in force, will address this issue, as it would apply to proclaimed towns in communal areas which are run by local authorities bound by the same laws, regulations and policies as towns situated outside communal areas. The Communal Land Reform Act applies only to *rural* communal areas, not to proclaimed urban/town lands in communal areas. The Flexible Land Tenure Act will legislate for low-income housing in communal urban/town lands.

The introduction of the concept of a parallel land registration system in the mid 1990s brought high hopes to many informal urban inhabitants. The enthusiasm and support for the project shown during the various consultation forums clearly indicated an urgent need to take appropriate measures to address the security uncertainties facing thousands of people in informal urban areas. But the project implementation has not proceeded as anticipated and the stakeholders have yet to see significant tangible results outside the pilot areas. In the last five years the project has not moved beyond the consultation and pilot phases, and there is growing impatience and disappointment due to what the stakeholders see as a slow pace of progress. Implementation cannot continue until a number of institutional, technical, legal and financial issues have been resolved.

## **3.2. Key Agrarian Issues**

### **3.2.1. Agricultural Strategies**

#### **Vision 2030**

Vision 2030 recognises land productivity as a major factor challenging not only land-based economies, but the Namibian economy as a whole. The overall aim of Vision 2030 is to provide long term alternative policy scenarios on the future course of development in Namibia at different points in time up until the target year 2030.

#### **National Development Plan 2**

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<sup>64</sup> Urban areas are municipalities, towns, villages and settlements as defined in the Local Authorities Act. Peri-urban land within a municipal boundary is also considered part of the applicable urban area.

NDP1 and NDP2 are important instruments that identify medium term interventions towards the long development vision of 2030. NDP2 recognises the need for cross-sectoral participation on in the planning and administration of land by other stakeholders (i.e. relevant government institutions, NGOs and communities). The NDP2 policy is criticised because it does not provide clarification of an institutional framework to facilitate the contributions of other stakeholders to the process of land reform.<sup>65</sup>

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<sup>65</sup> Government of the Republic of Namibia, Strategic Options and Action Plan for Land Reform in Namibia, Ministry of Lands and Resettlement, The Permanent Technical Team (PTT) on Land Reform, November 2005 at 9.

### **The National Agricultural Policy (NAP)**

The National Agricultural Policy (NAP) was developed in 1995 and aims to realise national goals of reviving and sustaining economic growth, creating employment opportunities, alleviating poverty and reducing income inequalities. In order to give greater support to resettlement beneficiaries, it is recommended that the NAP should be reviewed to provide services based on the specific needs of all farmers, including emerging farmers.<sup>66</sup>

### **The Green Scheme<sup>67</sup>**

Cabinet approved the Green Scheme Policy and National Horticulture Development Initiative of the Ministry of Agriculture, Water and Rural Development at its meeting of 20 August 2003. The Green Scheme was established within the Ministry of Agriculture, Water and Forestry with the mission to enhance socio-economic development and upliftment of Namibia's rural communities. The key towards achievement of such development was based on the facilitation of an efficient economic environment, without, or at least very limited, Government intervention. In principle the strategy entails the creation of an enabling, commercially viable environment through an effective public-private partnership to stimulate increasing private sector investment in the irrigation sub-sector.

A range of individual irrigation projects have been established by the Ministry of Agriculture, Water and Forestry, of which some are administered within the Ministry of Agriculture, Water and Forestry, while others are combined initiatives between the Ministry of Agriculture, Water and Forestry and the Namibia Development Corporation (NDC).

These projects are managed by project managers, who are responsible for the service provision activities and overall co-ordination of the project to ensure achievement of the set objectives guided under a ministerial "Steering Committee". Extension and support services are provided through the various departments at the Ministry of Agriculture, Water and Forestry in terms of engineering, planning, water supply and human resource development.

Similar to the objectives of the Green Scheme, the majority of these projects aim at achieving effective agricultural, economic and socio-economic objectives and returns via the introduction of a resettlement program. However, at least initially, small-scale irrigation farmer involvement demands substantial Government support in terms of pre-investment studies and relevant development arrangements, infrastructure set-up and maintenance, capacity building and development, as well as supporting service provisions within the value chain such as production input supply, storage, marketing and distribution.

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<sup>66</sup> Ibid at 12.

<sup>67</sup> This information on the Green Scheme was obtained from Green Scheme Agency, 4 Schiller St Windhoek, 13 September 2005.

### **3.2.2. Emerging Commercial Farmers Support Programme**

The Emerging Commercial Farmers Support Programme is an agreement between the Government of Namibia, the European Union and the Government of the Netherlands. The programme's principle aim is eradication of poverty in Namibia, targeting agriculture as a priority sector to achieve the development objectives of *Vision 2030* and Namibia's National Development Plans, i.e. poverty reduction, job creation and development of rural areas.

#### **The National Agricultural Support Services Programme (NASSP)**

NASSP is jointly funded by the European Union through the European Development Fund (EDF8) and the Namibian Government. The overall objective of NASSP is to enhance the livelihoods of small-holder farming households in the communal areas of Namibia through improved livestock production practices.

#### **Northern Regions Livestock Development Project (NOLIDEP)**

NOLIDEP is co-financed by the Belgian Survival Fund; the Governments of France and Luxembourg (Lux-Development) and its activities are executed through the MAAF. NOLIDEP has contributed to building a foundation for public services in rural communal areas, neglected prior to independence in 1990. The project has helped construct dams and boreholes so that farming communities have better access to water and have improved veterinary services. The development of a Geographical Information System (GIS), a database of indigenous knowledge and natural and physical resources, has laid the groundwork for better rangeland management. The project is also encouraging poor households, especially those headed by women, to obtain small livestock and find alternative sources of income.

### **3.2.3. Research**

The Farming Systems Research and Extension Programme's (FSRE) objective is to develop and enhance the MAAF capacity to provide services that are more responsive to the needs of farmers. Emphasis is also placed on strengthening the capacity to apply participatory approaches in identifying constraints and challenges and solutions to the identified constraints.

### **3.2.4. Extension**

Before independence, government agricultural services mainly entailed provision of subsidised agricultural services (e.g. development and maintenance of farming infrastructure, farming input sales and ploughing), and administration of government programmes such as drought relief and credit schemes. In the mid-1990s the scenario began to change as it was realised that these services were not benefiting the majority of farmers, and some were also of the opinion that the private sector could provide certain services more effectively than the public sector.

The new focus of agricultural support is provision of advice, information, communications and farmer training services. Extension services are aimed at assisting farmers to develop and adopt improved farming technologies and practices, and to organise themselves through self-help groups in order to interact better with agricultural markets, services, infrastructure, laws and policies within which they operate.

Each district office employs an extension officer to address the needs of emerging commercial farmers in the district, with a ratio of 1 extension officer for every 250 farmers. Currently this is possible only in the sparsely populated south. In the north-central farming areas the ratio is 1:3000, making it impossible for extension officers or technicians to reach every farmer. Extension services have been geared mainly towards communal farmers scooping 80% of the resources; only 20% is geared towards the commercial sector. This is due to a perception that communal farmers have more need for agricultural services than commercial farmers.<sup>68</sup>

Many farmers reside at a long distance from the nearest Agricultural Development Centre (ADC) or agricultural extension office, which contributes to the low level of knowledge among farmers about extension services offered by extension technicians/officers deployed at ADCs.

### **3.2.5. Information**

Radio can play a major role in disseminating agricultural information, as it can reach many farmers simultaneously. For various purposes, such as to speed up adoption of technological or other advances and innovations, radio broadcasts could be used more frequently, though radio is better suited to disseminating news and information of immediate relevance rather than creating awareness of farming methods. For the latter purpose, provision of training and information to farmers should be a systematic process effected stage by stage, e.g. through beginner's, intermediate, advanced and refresher courses.<sup>69</sup>

### **3.2.6. Markets and credit**

Namibia has mainly five major farming systems. They are:<sup>70</sup>

- Small-scale cereals and livestock which include the production of Mahangu (millet), sorghum, maize, goats and cattle. The land area used for this system is small exclusive farms and open grazing in communal land in the northern regions. Production is aimed at domestic consumption and supplementing incomes from non-farming activities.

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<sup>68</sup> Ministry of Agriculture, Water and Rural Development, Baseline Survey of the Impact of Agricultural Extension Services in the Oshikoto Region, Tsumeb, October 2003.

<sup>69</sup> Ibid.

<sup>70</sup> John Mendelsohn, Farming Systems in Namibia, Published by RAISON for NNFU, 2006 at 9.

- Cattle ranching. The land area used for cattle production is large freehold farms, exclusive farms in communal land and open grazing in northern Kunene. Beef is produced mainly for commercial sale to South Africa, Europe and Namibian consumers.
- Small stock. The land area used for sheep and goats is large freehold farms and open grazing in communal land in the southern and western regions. Mutton and goats are produced for commercial sale to South Africa and Namibian consumers.
- Intensive agriculture includes the production of maize, wheat, grapes, ostriches, olives, dates, pigs, dairy products, vegetables and fruit. The land areas used for this farming system are small farms, mostly irrigated throughout the country. Production is aimed at commercial sale to export markets and Namibian consumers.
- Natural resource production includes the harvesting of indigenous fauna and flora. The land areas used for natural resource production include conservancies, game farms, community forests, parks and reserves. Production is aimed at commercial sale to Namibian consumers and for export through tourism.

Namibia's domestic market is very small and its economy is highly dependent on exporting primarily beef to international markets (mainly South Africa and some EU countries), although a growing market for grapes and dates for the EU and Middle East has been progressing steadily since independence. A major challenge since independence is to disentangle the agricultural economy from that of South Africa. Before independence, little effort was made to develop markets for Namibian produce and policies were often driven by motives to integrate Namibia's economy into that of South Africa.<sup>71</sup>

The Namibian government provides little subsidies, to commercial farmers and as a result farm production is expensive and farmers demand high prices for their goods. Global economic integration results in international trade competition, where smaller economies such as Namibia could get squeezed out. The government therefore has to ensure that Namibia's agricultural products continue to enjoy access to international markets. Efforts therefore need to be stepped up to maintain and improve infrastructure, support market research, identification and development of international trade agreements on the competitiveness of Namibian products on international, regional and local markets.

Namibia is a party to many southern African and international trade agreements and communities. These include the Southern African Development Community (SADC) Free Trade Agreement, the Common Market for Eastern and Southern Africa (COMESA) the European Union – African, Caribbean and Pacific countries, the Common Monetary Area and the World Trade Organisation. As a member of the Southern African Customs Union (SACU), Namibia benefits from participation in the SACU/Mercosur agreement with Argentina, Paraguay, Uruguay and Brazil, the

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<sup>71</sup> Mendelsohn, *Ibid* at 17



SACU/European Free Trade agreements, and negotiations to establish free or preferential agreements with China, the USA and India.<sup>72</sup>

The MAWF is targeting to raise the exports of internationally acceptable agricultural products by N\$200 million in real terms by the end of 2006. It also aims to have established alternatively or supplementary markets for 80% of its agricultural products by the end of 2006.<sup>73</sup>

### **3.2.7. Leasehold agreements for resettlement beneficiaries**

Leasehold agreements for resettlement beneficiaries drafted by the Land Reform Advisory Commission (LRAC) have been approved by the Minister of Lands and Resettlement, but it is not clear when the beneficiaries will actually receive them. Presently those resettled have no legal status on their land.

Agribank is currently cautious in granting loans to resettlement beneficiaries because the beneficiaries have no legal ownership interest in the resettlement land. Agribank is not clear on what procedures to follow, should a resettlement farmer default in repaying a mortgage bond. Repossessing land in the event of default would surely defeat the aims of resettlement. At the same time, denying resettlement farmers commercial credit may undermine their ability to farm successfully. A possible measure to prevent default is to use the Land Acquisition Fund to cover a farmer who defaults on his/her loan.

### **3.2.8. Provision of credit through Agribank**

Agribank introduced the National Agricultural Credit Programme (NACP) in 1995 with the aim of promoting development of livestock and crop production ventures in communal areas.

As to the structures Agribank has in place to meet the training needs of emerging farmers, it has become a necessity to train clients in effective utilisation of resources so as to enhance productivity per hectare to enable sustained repayment ability. As such, Agribank has to identify and carry out a training needs assessment that will lead to a blueprint document on training for an everlasting impact. For this reason, various stakeholders, notably NGOs and the donor community, should be consulted to establish partnerships for effective service delivery. In future Agribank will allocate funds for training each financial year.

In terms of the loan application procedure, an applicant has to acquire at least an option to purchase a farm, and then approach Agribank for the necessary

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<sup>72</sup> Ibid

<sup>73</sup> Government of the Republic of Namibia, Second National Development Plan (NDP2) 2001/2002-2005/2006 (Volume 1) Macroeconomic Sectoral and Cross-Sectoral Policies, Chapters 1-22, National Planning Commission at 200

information regarding the own contribution, an amount Agribank may advance to the applicant (with a list of conditions also supplied). The applicant then completes the application form and returns it to the Bank. A submission is then forwarded to the Asset/Liability Management Committee for approval once the Bank has valued the property and verified the applicant's stock numbers.

Agribank conducts a valuation where fixed property is offered as collateral for a loan. Officials of the Bank will visit the fixed property and verify it according to fixed standards. The Bank may also deem it fit to conduct a valuation for attachment or other relevant reasons. Because Agribank values farmland according to productive value factors and not market value, it does not employ external property valuers but rather uses valuers trained in-house. The in-house valuers also receive special training to conduct a valuation of town property offered as security. In exceptional cases the Bank uses external property valuers to conduct town property valuations.

To ensure a sound rate of repayment and to improve the quality of the loan book, the Bank focuses on granting affordable and sustainable loans to farmers. It does not grant a loan without verified security as well as prior determination of a client's repayment ability. Bank officials will visit properties from time to time to identify possible defaults timeously.

At present, Agribank, the Ministry of Agriculture, Water and Forestry (MAWF) and the MLR have no formal structure for service provision to AALS farmers, yet all applicants for purchasing farmland under the AALS are referred to these ministries for their approval of the issuing of guarantee and for an exemption letter. The MAWF also has a representative on the Bank's Board of Directors.

All loans must be repaid in annual instalments over a period of 25 years. The Government pays the difference between the Bank's long-term interest rate and the interest rate that the client is paying. A 10-year restriction clause is registered against the property. If the client wants to sell the property within the 10 years, he/she has to repay all the interest paid by the Government.

Regarding financial support for the Green Scheme, Agribank has entered into agreements to cater for extending finance under the scheme.

### **3.2.9. Infrastructure**

Agricultural infrastructure includes some 8 Abattoirs, some 30 auction pens, some 9 quarantine camps and some 5 veterinary control gates. A veterinary cordon fence separates animals to the south from potential infections of lung sickness and foot and mouth disease in the north. No livestock meat is allowed to cross to the south unless it has been through quarantine procedures.<sup>74</sup> Most meat is processed

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<sup>74</sup> Mendelsohn, *Ibid* at 20

through Meatco, a government parastatal. The slaughtering capacity at Meatco and other smaller abattoirs is 210,000 cattle per annum while the slaughtering capacity for small stock is 1,216,000 per annum. The average number of cattle slaughtered between 2000 and 2004 was 179,376, representing 85.6% of capacity, while the average of small livestock slaughtered during the same period amounts to 473,366, representing 35% of capacity.<sup>75</sup>

The MAWF aims through its support programme to crop and livestock production and diversification, to bring about increased productivity and production of traditional farming by improving crop varieties and production methods.<sup>76</sup> In order to realise these aims, the MAWF has committed itself to develop its infrastructure and institutional capacity through:<sup>77</sup>

- Support to marketing, trade and post harvest operations
- Encourage and support of private sector initiatives to take over facilities and services that are better managed and provided by the private sector
- Finalising the formulation of and implementation of the National Rural Finance Strategy that recognises the critical inter-linkages between various livelihood facets of rural households
- Development of agricultural information systems that will design, maintain and coordinate integrated agricultural database systems that are appropriate to the specific needs of the government, farmers and private sector
- Strengthening human resource capacity to address the broader challenges related to technical skill levels of personnel within the MAWF
- Protection and quality assurance and safety in agriculture in order to strengthen product and food safety regulatory legislations that ensures that pest control and management schemes, producers and processors meet the requirements of consumers and environmental standards
- Support systems to food security to address problem related to sudden losses in agricultural production as a result of drought, outbreak of diseases etc.

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<sup>75</sup> Ibid

<sup>76</sup> NDP2, Ibid at 208

<sup>77</sup> Ibid.

## 4. Impact of Land and Agrarian Reform

### 4.1. Food Security

Namibia's low and unreliable rainfall pattern limits its potential as a commercial, self-sufficient and reliable agricultural crop producer. Extended periods of drought impact heavily on Namibia's agricultural sector and the tenuous food security of the rural poor. Also, during the 1990s livestock losses were heavy due to drought. The world-wide overproduction of cattle and the increased degradation of grazing lands threatens Namibia's commercial farming sector. In addition, it is estimated that as many as 60 to 80% of Namibia's commercial farms are not profitable.<sup>78</sup> Commercial farmers were heavily subsidised during South African rule and it appears that Namibia's farmers are now feeling the effects of the gradual withdrawal of those subsidies.

In recent years, commercial livestock farmers have moved increasingly towards mixed game/livestock farming and many have embarked upon wildlife-based tourism enterprises. This trend in stock diversification has helped to maintain biodiversity and creates a valuable buffer against the effects of drought. In addition, the demand for horticulture exceeds the local production in Namibia by far. It is estimated that local Namibian producers supply only 18% according to value of the demand while 82% is imported.<sup>79</sup>

Agricultural incomes for the estimated 150 000 households living on communal land are very low, mainly because they are excluded from benefits such as improved farming techniques, technology, access to formal credit facilities and regulated markets. Communal farmers are mostly dependent on rain-fed crops (mainly millet) and livestock and receive little income at all from their work: almost all of their production is consumed by their own households.

Thus, the logic and potential of the land reform process should not only be analysed against the legacy of colonialism and apartheid, but also against the reality of the agricultural potential and the environmental realities of Namibia.

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<sup>78</sup> Werner reports that about 30% of all farmers are essentially debt free, but that the average farmer had a debt of N\$227,000 and would have to sell off 64% of his livestock herd to repay that debt. If one removes the 30% who are debt free from that average, the average farmer is in debt over \$300,000 or roughly the total value of her/his livestock. Wolfgang Werner, "Agriculture and Land, in Henning Melber, *Namibia: A Decade of Independence, 1990-2000*, Namibian Economic Policy Research Unit, Publication No. 7, 2000, at 33.

<sup>79</sup> National Horticulture Development Initiative: Feasibility Study into the Development of Infrastructure for the Marketing of Horticultural Produce in Namibia compiled by International Development Consultants (IDC) in Association with Agritel and MBB Consulting Engineers for the Namibian Agronomic Board as implementing Agent for the Ministry of Agriculture, Water and Rural Development, May 2004 at 5.

## **4.2. Poverty Reduction**

Namibia presents a unique situation in that it did not have to formulate a poverty reduction strategy and plan in the traditional sense. With its relatively high per capita income, Namibia cannot be categorised as a Highly Indebted Poor Country, nor does it qualify for a Poverty Reduction and Growth Facility, but it does have a poverty reduction strategy, authored under the tutelage of the World Bank and United Nations Development Programme (UNDP).

The familiar sectors of education, health, agriculture, etc. are identified in the NPRAP and Poverty Reduction Strategy Plan (PRSP), and for each sector “actions” are formulated, these being statements of intent on the steps to be taken to achieve the objectives identified. The PRSP takes the familiar approach of identifying strategies, targets and indicators for various initiatives, and includes dedicated sections on monitoring and review, with a budgetary link. An interesting addition to the paper is a set of 10 principles to underlie the design and operation of any poverty reduction strategy in Namibia. Though the need to address gender issues is one of these principles, the strategies formulated to uphold it are weak.

In general, rural Namibia receives a lot of attention in the PRSP, with special mention in almost all the sectoral strategies, but little is said about the role of rural land in poverty alleviation. Land redistribution can be considered a vehicle for poverty alleviation, and the PRSP mentions that the skewed distribution of commercial land has enhanced household vulnerability and poverty among the majority of the nation’s farmers.

In summary, the PRSP views this extension of tenure to the poor as a means for them to obtain loans and start businesses. While providing urban tenure security for the poor is commendable, relying on collateralisation as a product of this process seems optimistic – if experience in other countries is anything to go by. It is important that provision of secure tenure be seen as a poverty alleviation strategy. Rural land reform, on the other hand, is scarcely mentioned in the PRSP, and in view of the land redistribution process in Namibia progressing slowly, as is widely known, more direct linkages would have been useful. Finally, Namibia fails to address gender issues adequately in its programmes and strategies, an obvious shortcoming.

## **4.3. Economic Growth**

The objectives of resettlement for beneficiaries are to become self-reliant, to contribute to the national economy and to create jobs. However, the current performance results of the resettlement programme suggests a loss for the economy if taken into account that resettlement farms were used for commercial purposes before. Some of the major problems that result in the low productivity of the resettlement programme as a whole are the fact that beneficiaries have very little access or no access to credit markets. This situation is contributed to the fact that resettlement beneficiaries do not hold any form of title deeds which could be

used for collateral. In addition, various socio-economic studies conducted on resettlement farms come to the conclusion that beneficiaries often lack technical, and institutional support, skills training and they often have little access to markets. These factors should be regarded as crucial to the development and economic growth of the resettlement programme.

On the other hand, if the current setbacks experienced by the Affirmative Action Loan Scheme (AALS) can be overcome, there is no reason for emerging black farmers not to become successful farmers. But, for this to happen, a combined effort on the part of the Government, the commercial farming sector and the donor community is needed to support the AALS. Established farmers should become more proactively involved in sharing their wealth of experience in farming commercially. The Government should approach and encourage established farmers to become more involved in the land reform process as a whole.

#### **4.4. Environment**

Given the widespread existence of degraded pasture and farming lands in Namibia, it may be necessary for the MLR to build its own capacity to restore farms before they are allocated to the resettlement process. In other words, 'land reform' has an ecological quality as well as a social and political quality: degraded lands cannot be resettled, so they must either be left idle or restored. Plans for environmental reconstruction of degraded commercial and communal farmland also have to be developed. Ironically, the groundwork for this reconstruction can provide jobs for labourers and skills that can later be put to use in resettlement projects. Obviously, land with little carrying capacity cannot provide meaningful employment for hundreds of resettlement beneficiaries. Land reform must therefore begin with a rational assessment of the future potential of each commercial farm selected for resettlement.

In addition, it is very important that the National Assembly passes the following, already proposed, legislation as soon as possible:

- Environmental Management and Assessment Bill
- Parks and Wildlife Management Bill
- Pollution Control and Waste Management Bill
- Biosafety Bill
- Access to Biological Resources and Associated Traditional Knowledge Bill

In the absence of a comprehensive collective environmental policy framework, existing Acts pertaining to the environment are too fragmented to be of any use in land reform planning and land development. It is thus recommended that the above-mentioned laws be passed to complement the existing land reform policies and legislation.

Land reform and resettlement policy should form part of the broader policy on agricultural and rural development. Plans for environmental reconstruction of degraded

commercial and communal farmland also have to be developed. Thus, greater emphasis should be placed on environmental and land reform policies so as to provide for the rehabilitation of overgrazed and bush-encroached land that has environmentally degraded the land's value.

#### 4.5. Equity

In the post-independence era, problems of inequity are attributable chiefly to class rather than race issues, though the latter are certainly still at play in pockets of Namibian society. Since independence, by virtue of affirmative action and other policies, (such as the Affirmative Action Loan Scheme to purchase commercial farms) supporting previously disadvantaged Namibians, a so-called 'black elite' has emerged. As mentioned earlier in this report, the Namibian society rates among the world's most unequal societies, and could even be the most unequal if the Gini coefficient is used as an indicator of wealth and income disparity.

As was stated earlier in this report, the Agricultural (Commercial) Land Reform Act 6 of 1995 was enacted with among other purposes to,

*"...provide for the acquisition of agricultural land by the State for the purposes of land reform and for the allocation of such land to Namibian citizens who do not own or otherwise have the use of any or of adequate agricultural land, and foremost to those Namibian citizens who have been socially disadvantaged by the past discriminatory laws or practices..."*

It is thus clear from the Act that it aims to bring about a more equitable distribution of and access to land. However, the land reform process is often being criticised for being too slow, and as a result not bringing equitable land redistribution about. The Institute for Public Policy Research (IPPR), an independent research organisation in Namibia, has pointed out that the slow process of land reform should be attributed to "leaden-footed bureaucracy rather than commercial farmers dragging their heels". The IPPR found, for example, that 142 farms were offered for sale to the Government in 1999, but only 4 were purchased, while in 2000 only 15 of 125 farms offered were purchased for resettlement purposes.<sup>80</sup> Thus it appears that the Ministry of Lands and Resettlement (MLR) has been under- rather than overspending its budget for purchasing farms. It is also possible that most farms that the MLR has waived have been made available for emerging black farmers to buy under the Affirmative Action Loan Scheme (AALS), hence by the beginning of 2005, approximately 612 farms had been bought by emerging black commercial farmers through the AALS.

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<sup>80</sup> B de Villiers, "Land Reform: Issues and Challenges – A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia", Occasional Papers, Konrad Adenauer Foundation, Johannesburg, 2003, at 38.

## **5. Challenges and Initiatives**

Given the background of unequal distribution of land along racial and ethnic lines during pre-independent Namibia, the land reform process is not only desirable from a social and political point of view, but also necessary to give the agricultural sector a much-needed injection of new life, its contribution to the gross national product having dropped steadily over the last couple of decades. It has become clear, however, after nearly 16 years of implementing the Resettlement Programme, that it is not working, or to put it more bluntly, the programme has failed thus far to empower the poor and the landless in their bid to become self-sufficient farmers.

On the other hand, if the current setbacks experienced by the Affirmative Action Loan Scheme (AALS) can be overcome, there is no reason for emerging black farmers not to become successful farmers. But, for this to happen, a combined effort on the part of the Government, the commercial farming sector and the donor community is needed to support the AALS. Established farmers should become more proactively involved in sharing their wealth of experience in farming commercially. The Government should approach and encourage established farmers to become more involved in the land reform process as a whole. We believe there is sufficient goodwill and willingness among established farmers in Namibia for their involvement to be realised. Some good examples of established farmers' involvement already exist among the established farming communities of Uhlenhorst and Outjo.

Land reform involves more than just buying or expropriating land from one group in order to give more land to another group; it also involves a complex human process that requires careful social and economic planning. It is thus essential for the Government together with all other stakeholders in agriculture to evaluate the land reform process on a regular and transparent basis.

Whatever the exact mechanics, land reform in Namibia over the last 15 years has often been presented as a politically cataclysmic 'all or nothing' kind of deal, rather than as a process, or better yet, as a continuous building of new relationships. Political considerations aside, some aspects of land reform give Namibia an opportunity to create a 'unique' land reform programme. For example, Namibia has a relatively low population, enough European donors willing to support the land reform process, co-operative white farmers and arguably enough time to not have to succumb to political pressure as happened in Zimbabwe's disastrous land reform process.



## **6. Recommendations**

### **6.1. Providing clear criteria for expropriation of land**

Despite the provisions of the Namibian Constitution and the Agricultural (Commercial) Land Reform Act on expropriation of commercial farmland, it appears that the MLR has no clear criteria guiding its decisions on which lands to expropriate. The Agricultural (Commercial) Land Reform Amendment Act of 2003 made it possible for the MLR to expropriate virtually any commercial farmland it desires, for which compensation is constitutionally guaranteed. Recent expropriation notes appear to have been handed to farmers who have a history of labour disputes with their farm workers. This would have the effect of reducing the process of expropriation to a punitive measure instead of basing it on what is in the public interest. While 'unofficial' government policy dictates that land belonging to such farmers should be expropriated, it does not take into account the contribution their farms are making in terms of earning foreign currency and providing employment. This unclear policy on expropriation also has a negative effect mainly on white commercial farmers as it gives them little incentive to invest in their farms, and indeed makes them reluctant to do so. The negative effect of this on the country's economy is obvious.

### **6.2. Factors to be considered when land is expropriated**

Disputes may arise as to whether or not the expropriation of a particular piece of land is in the public interest. In this regard factors such as current and future land-use patterns, the real and potential benefits of such land to the public, the financial costs to the State of expropriating land, the environmental condition of the land and the availability of other land for the same or a similar purpose, should be considered in deciding on expropriations.

Evidently, numerous factors could be considered when land is targeted for expropriation. It is therefore recommended that land expropriation should be dealt with in accordance with set criteria. Such criteria ideally would be contained in the policy documents. The Government is bound to follow its own policy guidelines in making decisions on expropriation. Such policies would also set clear guidelines for the public as to how the Government is to implement its expropriation policy.

### **6.3. Farm workers**

Farm workers should not only be included in the land reform process, but should also be deemed a primary and priority target group in land reform projects. This view is based on the following considerations:<sup>81</sup>

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<sup>81</sup> Keulder, Odendaal and Hamman, *The Impact of Land Reform on Farm workers: A Report to the Permanent Technical Team (PTT) on Land Reform*, 2004. (Unpublished report)

- Farm workers have the skills needed for farming – this is especially true in a country like Namibia with its very high incidence of part-time farmers or multiple farm-holding patterns).
- Land reform is a political priority in Namibia.
- Commercial agriculture is an important contributor to the economy, and settlement patterns that compromise agricultural output should be avoided.
- Farm workers' preference for the on-farm lifestyle.
- The high cost of and low opportunity for re-employment in other sectors.
- How much value is added to the economy by workers on commercial farms (N\$18 461) as opposed to communal farmers (N\$ 5 231).<sup>82</sup>
- The relatively stable workforce.

There is also general consensus that farm workers lack the management skills required to become an effective farmer overnight. In this regard, existing commercial farmers should be the primary conduit for skills transfer to emerging farmers.

These views, coupled with farm workers' strong preference for commercial farming and co-operation with commercial farmers, leads one to recommend that joint ventures and shared ownership models involving commercial farmers and farm workers be encouraged as an appropriate land reform strategy. Such an approach would transfer land and skills from white commercial farmers to emerging black farmers without compromising the important contribution of commercial farming to Namibia's economy.

#### **6.4. Sustainability of Resettlement Projects**

The MLR states in its White Paper on Resettlement Policy that it will restrict its support for individual resettlement projects to five years. It reasons that, "within this period it is expected of settlers (beneficiaries) to have gained enough experience and self-confidence to be able to support themselves".<sup>83</sup> Currently, not a single resettlement project has become sustainable after five years. Sustainability can only be achieved if development projects are implemented over a longer-term period of 10-15 years, on condition that the projects are monitored independently by consultants on a tender and five-year renewable contract basis. Even then, this monitoring process must be active, and the MLR must be prepared to intervene in and restructure failing projects. It must also provide more education and technical support.

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<sup>82</sup> M. Angula & R. Sherbourne, *Agricultural Employment in Namibia: Not the Engine of Wage Employment Growth*, Institute for Public Policy Research, Briefing Paper, Windhoek, 2003, at 5.

<sup>83</sup> Ministry of Lands, Resettlement and Rehabilitation, "White Paper on Resettlement Policy", July 1997, at 9.

## **6.5. Environmental rehabilitation**

Financial assistance in the form of an environmental reconstruction fund should be given priority to help with rehabilitating degraded land earmarked for resettlement. Land with little carrying capacity cannot provide meaningful employment for hundreds of resettlement beneficiaries. It is thus recommended that both the Commercial (Agricultural) Land Reform Act and the Communal Land Reform Act be amended to include provisions that support the rehabilitation of degraded agricultural land.

## **6.6. Integrated agricultural economy**

Namibia needs an integrated agricultural economy, based on a new model of agricultural planning that transforms and closes the gap between commercial and communal agricultural practices. However, this type of effort, which is absolutely necessary for a land reform programme to be effective, requires a level of rural and agricultural planning not yet seen in Namibia. Despite its large agricultural sector and small population, Namibia is self-sufficient only in beef, mutton and dairy production. This kind of monoculture is not good agricultural policy. Namibia could grow much more fruit, vegetables and nuts. Excellent examples of post-independence commercial agricultural initiatives are the date project at Naute Dam and the vineyard irrigation project at Aussenkehr on the Orange River. Vast parts of Okavango and Caprivi Regions are unexplored in terms of crop production.

## **6.7. Gender issues**

Article 95(a) of the Namibian Constitution guides the State to actively promote and maintain the welfare of the people by adopting policies aimed at enacting legislation "... to ensure equality of opportunity for women, to enable them to participate fully in all spheres of the Namibian society ...".

Considering that traditionally, important decisions on land matters were and still are taken by men, and in view of the important role that land and access to land play in the political, social, economic and cultural life of the nation, it would have been appropriate to compel the Lands Tribunal to reserve a set number of seats for women – as is the case with the Communal Land Reform Act which requires at least four members of each Communal Land Board to be women.

## 6.8. Skills sharing and training methods

The transition from communal farming to commercial farming for most emerging farmers requires giving farmers the necessary management skills and technical know-how. This includes:<sup>84</sup>

- Awareness of the importance of rotational grazing has to be strengthened and adapted to befit the situation of each group of beneficiaries.
- Skills development in rangeland evaluation will help farmers with planning for pastures and using them sustainably.
- Training in livestock breeding should be provided, including animal health, herd composition, breeding systems, livestock grading and animal nutrition.
- Provisions of the Labour and Social Security Act should be simplified in the form of a labour relations manual.
- Beneficiaries should be assisted in drawing up proper labour contracts.
- Financial planning and management skills are in need of improvement.
- The nature of credit has to be explained to beneficiaries.
- Practical skills in water-point maintenance, basic mechanics and construction have to be developed

Short formal courses may be more appropriate for topics such as financial management and budgeting. Farmers' Days and exposure visits should continue, as these are useful for sharing knowledge and solving problems, and for building relationship based on trust/confidence between established white farmers and emerging farmers.

## 6.9. Using resettlement farms as collateral

Financial institutions accept land as collateral security, but communal and resettlement farms are not acceptable as collateral as this land is not owned by a group of people. Agribank is cautious with regard to granting loans to resettlement beneficiaries because they have no legal ownership interest in the land granted to them. Agribank is not clear what procedures to follow should a resettlement farmer default in repaying the loan. A repossession of land in the event of a resettlement farmer defaulting on his/her mortgage bond would surely defeat the aims of the resettlement. At the same time, denying resettlement farmers commercial credit may undermine their ability to farm successfully. The Government should investigate means to improve property rights in communal and resettlement areas to facilitate access to credit.<sup>85</sup> The rationale for creating full rights to use land (rather than full ownership of land) is to make leaseholds tradable or to enable communal and resettlement communities to use their land as collateral or security. A possible means to prevent default is to use the Land Acquisition Fund to cover a farmer's loan default.

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<sup>84</sup> Adapted from a presentation by Wolfgang Werner at the National Workshop of the Emerging Commercial Farmers Support Programme (ECFSP), a project of the Namibian Agricultural Union and Namibia National Farmers Union, at the Safari Court Hotel in Windhoek on 31 March 2005.

<sup>85</sup> "How to redefine property rights for access to credit", *The Namibian Economist*, 7 July 2005.

### **6.10. Solving farm worker disputes**

The question of farm workers' tenure rights raises both labour- and resettlement-related concerns. Strong co-operation between the respective ministries, farmers and workers is therefore needed in formulating comprehensive tenure rights policies. Farm labour issues in other countries, notably South Africa and Zimbabwe, should also be investigated before appropriate law reform proposals are made for Namibia. South Africa's Land Reform (Labour Tenants) Act and Extension of Security of Tenure Act protect farm worker tenure rights by laying down detailed procedures for eviction. Since farm worker eviction is such a sensitive issue in Namibia, all stakeholders should critically assess the provisions of these Acts in the Namibian context. Such an approach will strengthen the cause of farm worker tenure rights.

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