

Recent Developments in Land Issues in Namibia

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Introduction

Land reform in Namibia comprises three main components: (i) redistributive land reform; (ii) tenure reform; and (iii) the development of unused land in non-freehold or communal areas. It remains a moot point whether the Affirmative Action Loan Scheme (AALS) should be regarded as being part of wider land reform or not. The AALS encourages previously disadvantaged Namibians to buy commercial agricultural land through the provision of subsidised loans administered by Agribank. In a sense, therefore, the Scheme widens access for previously disadvantaged Namibians, albeit not the poorest of the poor, to freehold land held primarily by white owners.

The development and implementation of policy and legal instruments to address these various components of land reform has been highly uneven. For obvious reasons, redistributive land reform enjoyed priority among politicians. Five years after Independence the *Commercial (Agricultural) Land Reform Act, 1995* was passed. It formed the legal basis for the acquisition of freehold land through the willing seller-willing buyer principle. By the end of 2002 Government had purchased 118 farms totalling 710,000 hectares. Most of these farms have been allocated to individual beneficiaries.

In 1997 the *National Resettlement Policy* was adopted by Government. A slightly amended *Policy* was approved in 2001. In 1998 the *National Land Policy* was published.

Land tenure reform enjoyed little attention during the first ten years of Independence. The Communal Land Reform Act was only passed in 2002 and a Land Tenure Policy is in the process of being finalised.

The latter are the most recent developments with regard to land policy in Namibia. This paper will provide a brief overview of tenure reform as contemplated by the new *Communal Land Reform Act* and the draft *National Land Tenure Policy*. It will also briefly highlight a new initiative by commercial farmers to assist government in developing a sustainable redistributive land reform programme and discuss some of the concerns about land reform that have been raised.

Tenure reform

The most recent development regarding land reform was the passing of the *Communal Land Reform Act, 2002* in the latter half of 2002. An earlier attempt to pass it in 2001 failed because the National Council referred the Bill back to the National Assembly to amend some of the provisions on enclosure of communal pastures.

In broad terms, the *Communal Land Reform Act* provides for the registration of all land rights held in communal areas. It distinguishes two different kinds of rights to be recognised: (i) customary land rights; and (ii) rights of leasehold.

With regard to customary land tenure, the *Act* recognises and confirms the powers of traditional leaders to allocate and revoke rights in land. However, customary land administration will be formalised. Proposed *Communal Land Boards* will control customary allocations and revocations of land rights. After commencement of the *Act*, applications for new allocations of land will have to be addressed in writing to the Traditional Authority. Once granted, the latter will have to inform *Communal Land Boards* about new allocations and furnish particulars with regard to such allocations to the Board. Once the Board has satisfied itself that a particular allocation does not infringe on the land rights held by another person, does not exceed the maximum area prescribed and does not fall into an area reserved for common usage, such a right will be registered by the Communal Land Board and a certificate of registration will be issued to the applicant. In this way customary land rights will be legally protected.

Existing customary land rights holders will have to apply to their respective Land Boards for recognition and registration of their land rights. The criteria used in new allocations are applied to assess the legitimacy of such allocations. Should there be reason to doubt the validity of a claim or that there are conflicting claims, Land Boards will have to initiate a hearing.

The *Act* provides for the inheritance of customary allocations through the Traditional Authority of a particular area. These provisions are aimed to ensure that rights to land will remain in a particular family for as long as a family wishes to keep them. Any other transfers of customary rights can only occur with the written consent of the Chief or Traditional Authority of a particular area.

The *Communal Land Reform Act* seeks to make unused communal land available to individuals under leasehold with a view to promote agricultural development. This will effectively reduce the areas of jurisdiction of traditional leaders by bringing customary land under the control of the state. The *Act* empowers the Minister of Lands to designate portions of a particular communal area within which long term leases may be granted for agricultural development purposes. Such designation has to be preceded by consultations between the Minister, the Land Board and Traditional Authority of a particular communal area. Land Boards are only authorised to grant rights of leasehold if Traditional Authorities have consented to this. Should the latter refuse, the Land Board will submit the matter to arbitration.

Grantees of leaseholds may be required to survey their land at their own expense. Once surveyed, the leasehold will be registered in the Deeds Office under the *Deeds Registries Act, 1937*.

The *Act* also provides for the legalisation of enclosures of communal pastures and prescribes an elaborate procedure for assessing such applications

Finally, persons who are aggrieved by a decision of a Traditional Authority and/or Land Board will be able to appeal against such a decision to an appeal tribunal appointed by the Minister of Lands.

The second draft of the *National Land Tenure Policy* contains much of what the *Communal Land Reform Act, 2002* provides for. In some instances, however, the *Policy* is more specific and seems to address issues which are not covered in the *Act*.

The gist of the draft *Land Tenure Policy* is to formalise land rights with a view to regulate different forms of tenure. It recognises the ‘traditional village’ as the lowest customary land management unit and proposes that the boundaries of each village be demarcated by Communal Land Boards. An adjudication process to obtain agreement on boundaries will be followed by the survey of these boundaries and subsequent registration. In addition, ‘members of traditional villages will be given formal perpetual rights over land and all resources in each village’, and village communities will have the power to accept or reject new people to their community. A record of all rightful members of a village will be kept and updated regularly. Traditional leaders and Land Boards will each have a copy of these records.

It is not clear what the role of traditional leaders will be in these demarcated villages. More specifically the *Policy* is not clear on whether village communities will be given powers different to what village headmen and their councils have now or not. Will village headmen continue to allocate land as before without improved accountability? What will their roles be in solving disputes? These ambiguities have undoubtedly contributed to a perception among some traditional leaders that in 10 years time they will no longer have any powers over land matters.

Resettlement

Tenure rights to land redistributed to beneficiaries remain contested among politicians. The *Agricultural (Commercial) Land Reform Act, 1995* provides for the granting of 99 year leasehold rights to allocated farming units and subsequent registration of such lease agreements in the Deeds Office.¹ In terms of the *Act*, however, these rights are circumscribed in so far as rights to assign, sublet, mortgage or in any way encumber a farming unit allocated by the MLRR is subject to the written approval of the Minister. However, in a legal opinion the Office of the Attorney-General expressed the view that a mortgage could be registered on any lease agreement registered in the Deeds Office.

In spite of this legal opinion, the draft *Land Tenure Policy* continues to state that the rights of settlers will be subject to a number of limitations which include the right of the Minister to change the agreement with settlers and the power to revoke a lease if the holder is in breach of the terms and conditions relating to the productive use of the land, financial viability etc. Even the erection of buildings on a holding will be prohibited unless consent from the Minister has been obtained.

Towards the end of 2002 the Minister of Lands, Resettlement and Rehabilitation introduced an amendment to the *Land Reform Act*, in which he proposed that the section of the *Act* which provides for the option to purchase a farming unit after five years be deleted. Such land, he argued, should never be for sale. Instead, 'it should rather serve as place where some future potential commercial farmers should graduate

¹ Not a single lease agreement has been registered in the Deeds Office to date, although some beneficiaries have signed them. The problem is that the MLRR has to survey subdivided portions of freehold farms and attach survey diagrams to lease agreements. Capacity to carry out the surveys seems to be lacking.

from and be able to acquire their own agricultural land'. Repeated attempts to establish whether the amendment has been adopted by the National Assembly have failed.

Farm workers

The insecurity of tenure of farm workers both on commercial farms and redistributed land was highlighted towards the end of 2002. In the first case, a commercial farmer obtained a court order to evict generational workers from his farm, Kalkpan, without an alternative place to accommodate these workers. This gave rise to the temporary occupation of the farm by SWAPO Youth League members and high level meetings to diffuse the situation. As a result of this crisis, the President instructed the Minister of Lands to secure tenure for farm workers as recommended by the *Commission of Inquiry into Labour-related Matters affecting Agricultural and Domestic Employees*. A Committee chaired by the Minister of Lands was appointed to do the groundwork for the implementation of the recommendations of the Commission (The Namibian 15.11.2002).

The *Commission* submitted its report in 1997. However, the report was not released to the public until 2000. Amongst other things it recommended that generational workers and those who had worked on a particular farm for over a decade should be entitled to legally sanctioned rights of tenure and that such rights should be included in the title deeds of the farms in question. It also recommended that the *Labour Act, 1992* be amended to prevent dismissals of farm workers without prior consultations with and approval of the Labour Commission (Werner 2002a).

At more or less the same time, the eviction of farm workers from farming units allocated to land reform beneficiaries by the MLRR was given considerable publicity. It has been clear for some time that government has not made any provisions in its land reform programme for farm workers who are displaced as a result of land redistribution. Although not documented, it must be assumed that most farm workers on redistributed land have lost their jobs without compensation (Werner 2001; Werner 2002a). However, the issue was never discussed in public. When it became known that beneficiaries – who included a Permanent Secretary – on a particular farm had evicted farm workers, it grabbed the imagination of the public.

It is not known, however, whether the President's instructions to the Minister of Lands to secure the rights of farm workers included those who lost access to employment and land as a result of land redistribution. To be sure, the *Commission of Inquiry into Labour-related Matters* had some very specific recommendations on the matter. Amongst other things it recommended that

- Government consider agricultural employees as primary beneficiaries of the land reform policy, in order to break the cycle of poverty and dependency from which generational workers, in particular, suffer;
- Government allocate State-owned land to, or purchase freehold land for individual or groups of agricultural employees and their families;
- Government and agricultural banks consider granting loans to agricultural employees to buy into, and thereby jointly own, private land, on condition that employees obtain a minimum 50% share of such property; and
- Government consider purchasing privately-owned land in selected areas to be used for the resettlement of currently employed or retired agricultural employees and their dependants, and to be managed on an individual or collective basis (RoN 1997: 228).

Tenure security of farm workers is dealt with in the draft *Land Tenure Policy*. Proposals for improved tenure security have been copied from South African legislation such as the *Extension of Security of Tenure Act, 1997*.

Land tax

Government announced in April 2002 that it would start to implement a land tax. The initial rate of taxation will be 0,75% per hectare of unimproved agricultural land for Namibian land owners and 1% per hectare of land owned by foreigners. For each additional farm the tax per hectare will increase by 0,25%. It is proposed that land reform beneficiaries be exempt from land tax for the first five or ten years.

In order to verify its valuation roll, the MLRR requested commercial farmers to provide the Ministry with certain information. This includes information on the owners of farms such as citizenship and contact details, the region in which farms are situated, number of title deed, farm number and registration division as well as whether the farmer is the owner of the land or renting it. The deadline of this process

was 5 December but has been extended to 28 February due to a slow response² (The Namibian 21.2.2003).

Government estimates that land tax will yield about N\$ 18 million during the first year. These monies will be paid into the *Land Acquisition and Development Fund* which was established in terms of an amendment of the *Agricultural (Commercial) Land Reform Act, 1995* in 2000.

Development of non-freehold land

The development of unused communal land for agricultural purposes is the third component of the land reform programme. The feasibility of this option was investigated for the *National Conference on Land Reform and the Land Question* in 1991. It was concluded then that this was a high cost option and that benefits were unlikely to be widely distributed (RoN 1991: 498). However, the Minister of Lands argued that it was much cheaper to develop communal land for small scale commercial farming than to buy developed land on the open market. For that reason, government is pursuing this option.

The Ministry of Lands, Resettlement and Rehabilitation appointed consultants to investigate the potential of developing unused communal land for agricultural purposes. They identified approximately 3,8 million hectares of communal pasture land that could be developed into 945 fenced farms in 5 northern and north-eastern regions at an estimated cost of N\$ 370 million. The development of a single 4,000 ha farm was estimated to be N\$ 392,000 compared to the average of N\$ 1,2 million the Ministry had paid for developed land³ (Republikein 16.5.2002). The MLRR is in the process of looking for funding for a phased implementation of these recommendations.

² According to preliminary figures there are 12,753 taxable properties registered in the Deeds Office. So far only 3,075 farmers have returned their forms. It is doubtful, however, that all 12,753 units constitute commercial farms. It was generally assumed that commercial farmers numbered about 4,200 in total.

³ It is likely that this estimate is far too low. The capital costs of developing a 5,000 ha farm in Oshikoto and Kavango region with 8 paddocks in the 1980s ranged between N\$ 440,000 and N\$ 480,000 (RoN 1991: 485). More specifically, the present estimate does not seem to factor in the high failure rate of drilling for water.

Increased public awareness of land reform

Apart from continuing debates on whether the pace of land reform is acceptable or not, questions have been raised in the local press about the beneficiaries of redistributive land reform. The discussion started in November when it was revealed in the National Assembly that beneficiaries included at least one Permanent Secretary, a Regional Governor and several people who were employed either in the civil service or elsewhere. To be sure, the definition of who should qualify for resettlement is wide enough to include any previously disadvantaged person with less than 150 large stock units. Ownership of more than this number makes people eligible for the Affirmative Action Loan Scheme. In defence of allocations of land to people with regular incomes, the Permanent Secretary in the Ministry of Lands, Resettlement and Rehabilitation is reported to have stated that 'income of people being resettled played no role in the decision to give them land' (The Namibia 21.11.2002).

There is growing concern that redistributive land reform is benefiting mostly those that are relatively wealthy already. Apart from the merits of debating who the beneficiaries of land redistribution should be, it is interesting to note that this comes several years after the *Agricultural (Commercial) Land Reform Act, 1995* was gazetted and the *National Resettlement Policy* was adopted. It suggests that little consensus exists in the country about what redistributive land reform should deliver beyond redistributing primarily white-owned land to previously disadvantaged Namibians. Several factors may have contributed to this situation.

In the first place, the land reform process lacks transparency.⁴ This starts with the Land Reform Advisory Commission which was established in terms of *Agricultural (Commercial) Land Reform Act, 1995*. It is a body consisting of government and non-government representatives which has to advise the Minister on matters pertaining to land reform. In terms of Article 11 of the *Act*, no member of the Commission is permitted to disclose any information on the business of the Commission without the written consent of the Minister. The general public thus has very little information on what the criteria are in terms of which land is allocated. It is also not clear how

⁴ Ironically, when government is transparent, nobody pays attention. In March 2002 the MLRR placed a full-page advertisement announcing the names and identity numbers of 106 land reform beneficiaries and the farming units that were allocated to them. Included in the list are a Permanent Secretary and a Regional Governor. Such announcements are required by the *Agricultural (Commercial) Land Reform Act, 1995* (Republikein, 7.3.2002).

representatives of organised agriculture and other stakeholders report back to their constituencies without breaking the law.

Secondly, basic information on resettlement is either not processed, or if it is, is not easily accessible. Annual reports of the Ministry of Lands are notoriously thin on accurate and reliable data. It is thus impossible to know how beneficiaries were selected, where they were settled and how land redistribution has impacted on their livelihoods. This situation is aggravated by the fact that no (known) independent evaluation of land reform and resettlement has been carried out to date.

Finally, civil society is too weak to have a significant impact on policy discussions. Organisations such as the Namibia National Farmers Union and the Namibian Non-governmental Forum (NAGOF) – an umbrella organisation of Namibian NGOs – have regularly provided policy inputs and recommendations. The perception is widespread that these are not taken seriously by government.

Involvement of the Namibia Agricultural Union

The most powerful and well-resourced of all non-governmental organisations in Namibia, namely the Namibia Agriculture Union (NAU), has decided to become more directly involved in planning for land reform. The NAU is an umbrella body of local and regional level farmers' associations. It has approximately 2,000 members out of an estimated 4,200 commercial farmers. Redistributive land reform is targeting primarily the land owned by these commercial farmers.

In November 2002 the NAU committed itself to prepare a programme for land redistribution to be presented to government for discussion in early 2003. This initiative followed on a strategic planning meeting of the NAU which was addressed by the Prime Minister and the Deputy Minister of Lands, Resettlement and Rehabilitation. Their message to the NAU was 'that the land reform process needed a faster momentum' and wanted to know how commercial farmers could contribute towards 'a lasting land reform process' (The Namibian 15.11.2002). This message probably reflected the political pressure that came to bear on the SAWPO leadership at the party's Congress in August 2002 to accelerate land redistribution as well as the political animosities that followed the eviction of generational workers from a farm in Omaheke Region.

The NAU leadership responded by calling on commercial farmers to come up with a compromise on land redistribution. The President of the NAU stated that farmers had to 'meet government half way or face the consequences'. He called on commercial farmers to stop complaining about land reform and come forward with solutions rather than reject the land distribution programme.

In preparation of the proposals for land reform, the NAU organised a series of meetings with land owners around the country. It was felt that such a procedure would provide all farmers, regardless of whether they were members of the NAU or not, with an opportunity to air their views on land reform.

The management of the NAU identified five questions that needed to be discussed by the NAU and government in order to achieve consensus:

1. what constitutes an economic unit;
2. what is regarded as excessive land;
3. is the land price in the freehold sector too high as government and others maintain;
4. what are the criteria that determine whether land is suitable for redistribution and resettlement; and
5. who is defined as an absentee farmer and foreign landowner (Republikein 15.11.2002).

The series of meetings process was concluded in mid-February 2003. Proposals from regional and local farmers' associations gathered during these meetings will be processed into a proposal and discussed at a special congress of the NAU in March 2003, before the Union will present them to government for further discussion.

Conclusion

With the new *Communal Land Reform Act* government is attempting to introduce more tenure security in non-freehold areas. The *Act* also proposes an institutional framework that needs to be developed from scratch. Of some concern is that this will require considerable resources, both financial and human. Given the low budgetary priority that land matters enjoy, it is questionable that sufficient funds will be made

available to establish this new institutional framework. Equally disconcerting is the fact that the existing customary institutional framework does not receive more attention in the draft *Land Tenure Policy*.

An interesting feature of some recent developments is that fissures seem to appear in blocks that were previously regarded as homogenous in their support for or opposition to land redistribution. In 1994 the then Minister of Information and Broadcasting, Ben Amathila, asserted in the National Assembly that blacks were unanimous on the land issue, 'not only in principle, but in anticipated reality'. While unity still exists in principle, an increasing number of people are beginning to criticise the reality of it all. This has taken various forms ranging from of an impoverished community in the south of the country which barred the entrance to a farm which was reportedly allocated to people well connected to the Regional Council and the Ministry of Lands (Republikein 27.7.2002) to an NGO in Omaheke Region which alleges that government's land reform programme was producing poverty by allowing nepotism in the selection of beneficiaries (Namibian 21.2.2003).

At the other end of the spectrum, the recent initiative of the NAU has brought into the open serious differences among commercial farmers on how to deal with land reform. A sizeable group sees a compromise on the issue as unavoidable, particularly in view of recent events in Zimbabwe, while many others seem reluctant to engage with government on finding a sustainable solution to the land question.

It remains to be seen how these developments will impact on the future of redistributive land reform in particular.

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