

OUR LAND WE FARM

**An analysis of the Namibian Commercial
Agricultural Land Reform Process**



**Land, Environment and Development (LEAD) Project
LEGAL ASSISTANCE CENTRE**

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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 |
| InWEnt | Organisation für internationale Weiterbildung und Entwicklung |
| IPPR | Institute for Public Policy Research |
| JACC | Joint Agricultural Coordinating Committee |
| JV | joint venture |
| KEFA | Kunene Emerging Farmers Association |
| 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 |
| MLRR | Ministry of Lands, Resettlement and Rehabilitation |
| NACP | National Agricultural Credit Programme |
| NASSP | National Agricultural Support Services Programme |
| NAU | Namibian Agricultural Union |
| 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 |

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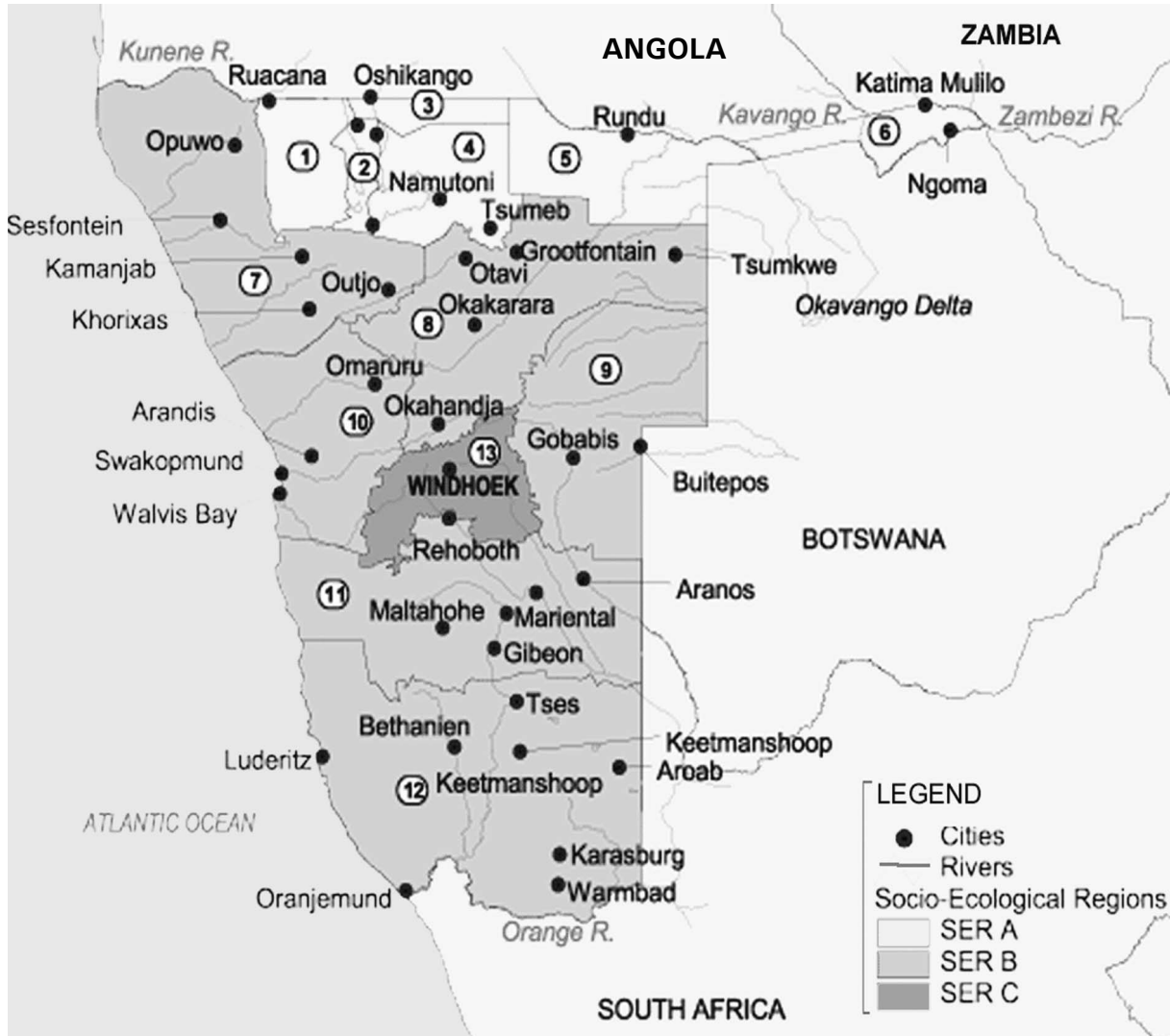
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Namibia's regions and main towns



CHAPTER 1

Introduction

1. Overview of pre-independence land allocation in Namibia

Contrary to popular belief, the post-independence land reform process is not the first land reform process in Namibia's history. The German and South African colonial governments also made land allocations. Following is an overview of pre- and post-independence land allocations in Namibia.

1.1 German colonial rule

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 surface area had been allocated as freehold (commercial) farmland while the recognised communal land area had shrunk to just 9%.¹

1.2 South African colonial rule

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.²

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.

¹ 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.

² 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.

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.³

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.⁴ The South African Administration maintained the German colonial policy of using the term "Police Zone"⁵ 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.⁶ 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.⁷

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.

³ 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.

⁴ United Nations Institute for Namibia, 1988, *Namibia: Perspectives for National Reconstruction and Development*, at 36.

⁵ 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.

⁶ United Nations Institute for Namibia, *Perspectives for National Reconstruction and Development*, 1988, at 38.

⁷ 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,⁸ 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.⁹

1.3 Commission of Enquiry into the Affairs of South West Africa (“Odendaal Plan”)

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 Namibia.¹⁰

The Commission's report, published 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.¹¹

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.¹² In some ways the Odendaal Plan merely extended and rationalised an administrative system created in the 1920s by the Native Reserve Commission.

Although the Odendaal Plan increased land available to black Namibians by nearly 50%, the agricultural potential of the newly ‘received’ land was very limited.¹³

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

⁸ United Nations Institute for Namibia, 1988, op cit., at 39.

⁹ “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.

¹⁰ 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.

¹¹ Odendaal Commission, at 85, 87, 97, 107, in Fiona Adams and Wolfgang Werner with contributions by Peter Vale, op cit., at 94-95.

¹² *Index to the Laws of Namibia (NAMLEX)*, Legal Assistance Centre, Windhoek, 2000 update, at 7.

¹³ 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.

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,¹⁴ 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. 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.¹⁵

1.4 Representative Authorities Proclamation 8 of 1980

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.

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.

2. Overview of commercial farming in Namibia since independence

On gaining its independence in 1990, the new Republic of Namibia inherited two agricultural sub-sectors, namely communal and commercial agriculture. These parallel agricultural systems not only divided Namibia almost equally in terms of land utilisation, but also reflected the racial division in the country at the time of independence. This remains the status quo: almost all of the freeholders today are white, and all of the communal landholders are black. White Namibians enjoy one of the world's highest standards of living while black Namibians

¹⁴ 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.

¹⁵ C. Botha, "The Odendaal Plan: Development for Colonial Namibia", University of Namibia, Department of History, accessed at <<http://namibweb.com/oden.htm>> (05/09/05).

are among the poorest of the world's populations, making Namibia one of the most unequal societies in the world. This inequality is deeply rooted in land.

At independence Namibia also inherited some myths about the commercial agricultural sector that today are the source of very deep misunderstandings regarding agriculture and land. The central myth is that successful commercial farming in Namibia is associated with wealth. It is easy to see how this myth came into being. Before independence, commercial farmers were provided with subsidies in the form of concessionary finance, direct subsidies and veterinary services.¹⁶ Subsidies, in other words, contributed to raising agricultural income mainly for white commercial farmers during the pre-independence period. In addition, Namibia's white social order was based on land and agriculture. The present irony of white farms being unproductive and deeply in debt makes no sense at all to poor black communal farmers. The political and social reality is that land reform is required, but this goal has to be separated from the idea that farming is a source of great wealth.

Commercial agriculture in Namibia after independence underwent a number of changes. Firstly, a combination of reduced subsidised support to established farmers and sporadic droughts during the 1990s had a negative impact on commercial agriculture. Secondly, after independence the Government was forced to address the inequitable access to commercial land ownership. A Land Conference was held in Windhoek in 1991. The conference adopted a policy stating that rectifying specific historical wrongs by means of seizing land from particular peoples of European descent who acquired land under successive German or South African colonial powers was not to be attempted. Instead, the new government adopted a policy aimed at redressing Namibia's history of skewed land ownership through a process of national reconciliation and in accordance with the provisions of Article 16 of the Namibian Constitution.¹⁷ This declared land reform policy has hung like a dark cloud over commercial agriculture ever since, making further investment a risky venture.

The 1991 Land Conference furthermore established a platform from which the land reform programme, policies and legislation were to be developed. However, 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 Rehabilitation¹⁸ 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:¹⁹

¹⁶ Wolfgang Werner, *Rights and Reality: Farm workers and human security in Namibia*, a CIIR Publication, Russell Press Ltd, Nottingham, 2001, at 7.

¹⁷ Article 16 of the Namibian Constitution deals with property and provides that:

(1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property, individually or in association with others, and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

(2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

¹⁸ The Ministry of Lands, Resettlement and Rehabilitation was renamed the Ministry of Lands and Resettlement in March 2005.

¹⁹ Namibia Country Paper, accessed at http://www.gmnnet.gov.na/News/Archive/2001/September/Week4/land_acquisition_rpt.htm.

- 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.

Since independence in 1990, the Government has purchased only 142 farms totalling 843 789 hectares, on which resettlement beneficiaries have been accommodated.²⁰ These government-owned farms range from formal resettlement project schemes to farms that are meant to be leased out to large farmers from Namibia's communal areas, to land held in reserve and leased out for emergencies such as drought.

In addition, a number of farms have been purchased by formerly disadvantaged farmers either through an affirmative action loan scheme financed by the Government, or through a private bank. Approximately 612 farms (March 2005 stats) have been purchased over the past 15 years in this way.²¹ This data indicates that private land redistribution has purchased four times the number of farms that the Government has purchased for land reform. In some government circles – surely reflecting some degree of public opinion – it has been argued that the pace of land redistribution has been far too slow.

The Government blames the country's commercial farmers for the delays, arguing that they had offered to sell only small, uneconomical plots for resettlement according to the "willing buyer willing seller" model. In his farewell speech as Minister of Lands, Resettlement and Rehabilitation in March 2005, Namibia's President Pohamba stated that "... those who have land to sell [should sell] a little land to the Government at fair prices so that we [the Government] have land to give to the landless people." The President further stated that the SWAPO leadership fears that Namibia could be rendered ungovernable if the 'have-nots' run out of patience with the current slow process of land reform.²² This belief surely reflects recent events in African history, particularly the failure of land reform in Zimbabwe.

In Namibia, ownership of farmland is inextricably linked in people's minds to wealth; land is a key source of wealth. Traditional beliefs about land and livestock across races combined with a long history of racial preferences for land make it a hard notion for economists to dispel. Surely there is some historical truth to the idea that 'land equals wealth', but when experts apply their rational economic analysis to the question of land, they are generally viewed with even more suspicion than usual. General observations are that prices of commercial farmland in Namibia are high relative to the actual production value and profits made from commercial livestock farming. Most Namibian commercial farms are in deep financial difficulty and many operate at a loss. Even communal farms, producing mostly subsistence food crops, are not highly productive relative to the money and labour expended.

It has been argued that much more land was available for purchase than the Government could buy. 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

²⁰ Statistics on resettlement obtained from the Ministry of Lands and Resettlement in February 2005.

²¹ Information from the Ministry of Agriculture, Water and Forestry, March 2005.

²² "Pohamba warns of 'revolution' over land reform", *The Namibian*, 22 March 2005.

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.²³ 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.

3. Namibian land statistics²⁴

3.1 Statistics on land use in Namibia

Namibia has a landmass of approximately 824 000 km², of which 114 500 km² (13.9% of total area) are national parks, 21 600 km² (2.5%) are a restricted 'Diamond Area', 469 100 km² (57.0%) are title deed in freehold land and 218 300 km² (26.5 %) are non-title deed in communal land. The latter two, freehold and communal land, totalling 687 400 km² or 83.5% of the country's landmass, are considered to be available for agricultural land use.

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.

3.2 Statistics on land ownership in Namibia

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 km² (the 4 890 remaining title deeds are plots and small farms, representing approximately 44 400 km² or 6.4% of the land normally referred to as 'agricultural land'). This figure (424 700 km²) forms the basis of the following discussion.

The distribution of this 424 700 km² is as follows:

- White individuals own 170 000 km², or 40% of title deed land, 24.7% of agricultural land and 20.6% of Namibia's land surface.
- Companies own 63 200 km², 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.

²³ 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.

²⁴ Statistics obtained from the Ministry of Agriculture, Water and Forestry, 2005.

- 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 km², 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 km² 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 km², 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 km², 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.
- Municipalities, organisations (such as churches) and trusts (mostly of deceased estates) own 5 900 km², 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 km² 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.²⁵

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 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%.

²⁵ The Deeds Office (Ministry of Lands and Resettlement) is the custodian of cadastral information, but has this information only on paper, which makes extraction of information problematic. The database used for compiling these figures is the only digital information available in the country on this subject. It was compiled by the Ministry of Agriculture, Water and Rural Development (reorganised as the Ministry of Agriculture, Water and Forestry in March 2005) from "Farm Registers" of the Deeds Office. These registers, being summaries of the individual deeds, are updated from time to time by Deeds Office staff. The database had also been updated from information received from agricultural extension staff in the regions. The database is the best available source of information at present and is used extensively by the Ministry of Agriculture, Water and Forestry, but it cannot be considered a legally valid document.

CHAPTER 2

Land Tax

1. Introduction of the land tax

Namibia historically has had no tax on farmland. This land was itself a direct government subsidy for commercial agriculture. 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 rate or progressive rate as may be determined by a notice under section 76 of the Act. Income generated from the land tax is to be used for the benefit of the Land Acquisition and Development Fund.

Section 2(1) sets the rate of the land tax on commercial farmland at:

- ▶ 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.

2. Use of taxes, fees and legislation

The commercial agricultural land valuation process was completed in 2004. This is seen as an essential step towards implementing Namibia's commercial agricultural land tax. The first collection of a land tax on commercial farmland was to take place at the end of the 2004/2005 tax year. The due date for payment, however, was extended from 22 March to 31 July 2005 and again to 31 August 2005 to give the people affected more time to resolve with the MLR issues regarding their land tax assessments.²⁶

Land tax is progressive, meaning that the percentage of tax payable increases with the number of farms owned by an individual. 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 units because they cannot afford to pay the tax; the second aim is to create much-needed revenue to buy more commercial agricultural land for the resettlement programme.

²⁶ Christoff Maletsky, "Government extends deadline for land tax", *The Namibian*, 22 August 2005.

By implementing a commercial land tax, the Government aims to influence the market by imposing higher tax rates on large or excessive land holdings, or on farmland that is not used productively. In addition, according to the Deputy Minister of Lands and Resettlement, it is assumed that a taxpayer will increase his/her production to meet the extra cost assuming ideal production conditions and that those who hold land for mere speculative purposes will start producing on it or otherwise sell it to those who need land for production.²⁷

From an environmental point of view, the introduction of a land tax has been criticised for its potential to place additional strain on a sector already experiencing financial difficulties. It is argued that farmers may be tempted to recover the additional costs by increasing the number of livestock on their farms and thereby increasing the pressure on grazing land.²⁸

3. The land valuation process

The first-ever Valuation Land Tax Court sat in Windhoek in November 2004 in line with the provisions of section 76 of the Agricultural (Commercial) Land Reform Act 6 of 1995 together with the Land Valuation and Taxation Regulations promulgated by Government Notice No. 259 of 29 December 2001.

The Minister of Lands and Resettlement appoints a valuer who is responsible for the valuation of agricultural land and for preparing a provisional valuation roll containing:

- a description of the agricultural land in question;
- the name and address of the owner of the land;
- the size of the land in hectares and its carrying capacity; and
- the Unimproved Site Value of the land.

The valuer must sign and date the completed provisional valuation roll and submit it to the Minister. The roll can then be inspected by any interested person at a place and time made known by the Minister in the *Government Gazette*. A valuer has to value any commercial agricultural land at a rate equal to the best price at which, in the valuer's opinion, that land might reasonably be expected to be sold by a willing buyer to a willing seller at the date of the valuation.²⁹

4. Objections to the provisional valuation roll

The Act allows for objections to the provisional valuation roll. But first the Minister has to publish a notice in the *Government Gazette* and at least two circulating newspapers no later than 60 days before the date determined by the Minister for the commencement of the

²⁷ "Government Aims to Expropriate 9 Million Hectares", accessed at <www.gmnnet.gov.na/News/Archive/2004/march/government_aims.htm> (15/02/2005).

²⁸ De Klerk J.N., "Bush Encroachment in Namibia: Report on Phase 1 of the Bush Encroachment Research Monitoring and Management Project", Ministry of Environment and Tourism, Government of Namibia, Windhoek, 2004, at 209.

²⁹ This also includes commercial farming units smaller than 3 000 ha, which are generally considered as uneconomical to farm on.

Valuation Court. The notice should inform every owner who has lodged an objection of the date, time and place at which the valuation court will sit.

Regulation 6 of the Regulations as amended by section 4(b) provides that every owner of agricultural land who wishes to object to a valuation can lodge their objection with the Minister within 21 days of the date of the notice. According to the MLR Directorate of Valuation, of a total of 12 509 freehold farmers and 344 who initially lodged an objection, 82 then withdrew it, leaving just 262 for the Valuation Court to deal with.

The range of objections heard by the Valuation Court was as follows:

(a) **Value of land too low**

Some farmers argued that their farm is in an agricultural-ecological zone with high rainfall and is therefore more valuable. Others argued that they have increased their farm's carrying capacity by investing in the land using various rehabilitation methods such as treating bush encroachment and planting grass (e.g. blue buffalo grass) for grazing. Others stated that consistently good rains over the past decade or so had increased the carrying capacity of their land.

(b) **Value too high**

Some farmers argued that the Government had overvalued their farm and had not taken into account environmental factors such as low carrying capacity caused by bush encroachment, and geographical factors such as rough terrain and low rainfall potential. Thus the value of a specific farm as determined by the Directorate of Valuation in the valuation process does not reflect the true market value of that agricultural land.

Some farmers also felt that every property is unique in terms of its own geography, carrying capacity and rainfall, thus the Directorate of Valuation should have physically inspected and valued each and every property.

Obviously, factors that increase the value of a piece of land also raise the level of taxation.

5. Consolidation of farm units

Consolidating farm units means that two or more units are valued as one unit. This is advantageous under the new tax law. Over the years, most Namibian farmers have treated two or more adjacent farms as a single entity, but adjacent farms are usually registered in the Deeds Office as separate entities. Land tax on commercial farms is progressive as the number of farms owned by one person increases. Currently there is no legislation prohibiting a farmer from applying to the Surveyor-General to consolidate adjacent farms to form a single entity that the farmer can register as a single farming unit. If not consolidated, the adjacent properties will be regarded as two separate entities, with every additional farm unit taxed progressively.

6. Mass appraisal approach to valuating farms

The Valuer-General, Dr Nashilongo Shivute,³⁰ informed the Valuation Court that because it was impractical to physically visit 12 509 farms, the mass appraisal approach, a valuation method recognised internationally, was adopted for the valuation process. This approach entails that the value of a specific piece of land is determined on the basis of market evidence in its specific agricultural-ecological zone. Land valuation involves valuating a piece of land in its natural form and does not take into consideration any infrastructural improvements. According to Dr Shivute, a carrying capacity map dated April 2002 was used in the valuation process, but some farmers argued that the map was outdated since it was based on data dating back thirty years.

During the Valuation Court proceedings, some farm owners stated that they were denied access to valid information and were not properly informed of the criteria applied by the MLR in the valuation process. Proper information, they argued, would have placed them in a position to hire private valuers for independent valuations of their properties, and would have enabled them to lodge their objections accordingly.

The Court ruled for a revaluation by the Directorate of Valuation and Estate Management of a number of farms whose owners had complained about the valuation process.

7. Commercial agricultural land tax

Land tax is levied on all commercial agricultural land in Namibia. As already mentioned, for Namibians the current tax rate is 0.75% for the first land unit, and the progressive rate is 0.25% per additional unit (title deed). Non-Namibians will be taxed at 1.75% for the first unit.

These tax rates could create the following anomalies, for example:

- (1) If a person owns one farm of 10 000 ha, but another owns four farms of under 10 000 ha in total, the first owner will be levied a lower tax than the second, which defeats the objective of the land tax, i.e. the release of under-utilised land for the purposes of land reform. In other words, the system may be more fair if the tax rate is based on the combined size of an owner's multiple agricultural lands rather than on the number of farms per title deed held by a particular owner.
- (2) Non-Namibian citizens who own land in Namibia are taxed at a rate of 1% more than Namibian citizens are taxed on land, which raises the question of whether such unequal treatment of foreigners is a violation of the equality provisions contained in Article 10 of the Namibian Constitution. While Article 10(1) makes everyone equal before the law, Article 10(2) includes nationality as a prohibited ground of discrimination.

On the other hand, Article 16(1) expressly authorises Parliament to enact legislation to prohibit or regulate non-citizens' right to acquire property. It could therefore be argued

³⁰ The Valuer-General is based in the Directorate of Valuation and Estate Management, Ministry of Lands and Rehabilitation.

that differential treatment of foreign land owners is a means employed by the State to regulate property ownership by foreigners.

It should be noted that Article 16(1) prohibits or regulates the right to land ownership only of foreign nationals who wish to purchase property in Namibia, not of foreign nationals who already own property in Namibia. In other words, Article 16(1) does not authorise a different land tax rate for existing land owners who are foreign nationals, making its constitutionality questionable.

Further, a Namibian citizen and a foreign national can jointly own land in Namibia, but the current land tax system does not provide adequately for such cases, in that it is unfair and inconsistent to impose different tax rates on the co-owners: the rate applicable to the foreign national would be a disadvantage for the citizen; the rate applicable to the citizen would enable the foreign national to escape the higher tax. This situation defeats the objectives of the tax system, and is unfair and inconsistent especially if the foreign national owns just a small and insignificant share.

The differential tax rate is even more unfair and inconsistent where a 'juristic person' (i.e. company, close corporation or trust) owns the property. Such an entity may be registered in Namibia – and for all practical purposes is a 'Namibian corporate citizen' – but its shareholding or interests may be controlled by foreigners (perhaps through Namibian citizens as proxies), and through vast layers of holding companies and subsidiaries, making it difficult to trace the nationality of the 'real' owner of the property.

These inconsistencies can expose the differential tax system to a serious constitutional challenge, particularly under Articles 10 and 16 of the Constitution.

To remedy this situation, the Government should consider introducing a uniform tax rate for Namibian citizens and foreign nationals. Foreign nationals who would like to acquire land in Namibia are already restricted by the fact that they cannot buy land without the prior written consent of the Minister of Lands and Resettlement. To avoid under-utilisation of land owned by absentee foreign land lords, the Minister may request prospective foreign nationals to provide a detailed 10-year investment and development plan for the land in question.

- (3) A uniform land tax could apply to all farming units, irrespective of the amount of income generated on a unit.

It is recommended that land units with higher income-generation potential be taxed at a higher rate than units with lower income-generation potential. Criteria that may be considered for determining different tax rates in this respect are:

- land units in agro-ecological zones where the agricultural income-generating potential is higher due to higher rainfall, better soil conditions, etc.; and
- land units in areas where the tourism income-generating potential is higher due to natural scenic beauty, abundant and unique wildlife, etc.

8. Land tax to be paid

Land tax has to be paid by all registered owners of commercial agricultural land who have freehold tenure rights to that land. For the purposes of land tax, a farm is a piece of commercial agricultural land that is registered at the Deeds Office and situated outside the jurisdiction of designated town lands. Tax on commercial agricultural land is levied in proportion to its size and its Unimproved Site Value.³¹ For example, if a farm of 6 000 ha is situated in the valuation zone of N\$250/ha of unimproved land, the following formula applies:

$$6\,000\text{ ha} \times \text{N}\$250/\text{ha} = \text{N}\$1\,500\,000$$

N\$1 500 000 represents the Unimproved Site Value of the farm. If this unit is the owner's first or only unit, the tax payable per annum will be:

$$\text{N}\$1\,500\,000 \times 0.75\% = \text{N}\$11\,250$$

Resettlement farmers who do not own land on a freehold basis but enjoy a long leasehold interest will pay an annual rental fee – yet to be determined by the MLR – for the right to occupy such land.³²

However, to date no resettlement farm leaseholds have been registered at the Deeds Office.³³ In addition, Agribank cannot provide loans if clients have insufficient collateral. Resettlement farms cannot currently offer collateral as the land belongs to the State. Various sources in the MLR say that the MLR is at an advanced stage in discussing the option of transferring land rights by offering long-term lease agreements (Title Deeds) to enable resettlement farmers to use the land as collateral.

Section 13B of the Agricultural (Commercial) Land Reform Second Amendment Act 16 of 2000 provides that any amount payable in terms of the Act is meant to meet any liability of the State, such as the acquisition or development of agricultural land or any right or interest in such land, including the payment of compensation, interest, costs and other moneys incidental to the exercise or performance of any such power, function or duty. How much of this money would be used for skills development and training is presently unclear.

9. Tax exemptions

Certain persons and organisations are exempted from land tax, but they have to apply to the Minister of Lands and Resettlement for exemption. The Minister may exempt "persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices". Section 76B of the Agricultural (Commercial) Land Reform Second Amendment Act 2 of 2001 provides for an exemption to be granted to formerly disadvantaged citizens. An exemption will be granted only on application by the land owner.

³¹ Responses to Parliament Debate on Land Tax, accessed at <http://www.gmnnet.gov.na/News/Archive/2002/July/Week2/land_tax_rpt.htm> (23/08/2005).

³² Ibid.

³³ Conversation with Mr Beukes at the Deeds Office, Windhoek, on 23 March 2005.

It has been reported that a tax exemption will be granted to new entrants into the agricultural sector, such as those who have purchased a farm through Agribank's Affirmative Action Loan Scheme (AALS) or with a private loan. A benefit in this case is an exemption of up to 85% of the tax payable, with the remaining 15% payable by an emerging farmer on application.³⁴

An exemption will also be considered if the land is used primarily for the activities of a church, mission, hospital, school or hostel, provided that such activities are not for profit. Applications for exemption can be made only at the offices of the MLR, Inland Revenue or a magistrate. An exemption will not necessarily be granted in cases of natural disaster such as drought. The MLR or the National Assembly will have the discretion to grant exemptions in such cases.

In addition, no tax rebate or incentive will be given for rehabilitating degraded and bush-encroached land. According to section 4(5) of the Agricultural (Commercial) Land Reform Second Amendment Act 2 of 2001, in determining the value of any piece of land in terms of these regulations, the valuer must give regard only to the land's carrying capacity and must disregard any mortgage or other judicial encumbrance on the land, the value of improvements to the land and any depreciation of its value caused by excessive grazing, bush encroachment and other bad farming practices or poor management of that land. The MLR argues that bush encroachment can be the result of long-term poor management of a farm, and according to Deputy Minister Katali, making adjustments for this would seem to recognise and reward the owner for his poor management.³⁵

Land tax will not be deductible from personal and company tax. The MLR argues that the tax levied on agricultural land is very low and will thus not impact negatively on farming as a business.³⁶

³⁴ Catherine Sasman, "Land Tax Payment Deadline Extended", *New Era*, 10 March 2005.

³⁵ Responses to Parliamentary Debate on Land Tax, accessed at <http://www.gmnnet.gov.na/News/Archive/2002/July/Week2/land_tax_rpt.htm> (23/08/2005).

³⁶ Ibid.

CHAPTER 3

Land Expropriation

1. Constitutional issues

Property in Namibia has always been protected by the common law. One consequence of introducing the Namibian Constitution is that property is now constitutionally protected. However, ownership of property is not absolute; it is limited by Article 16(2) of the Constitution which provides for expropriation of private property "in the public interest" upon payment of "just compensation".

Despite expropriation of private property being sanctioned, it remains a drastic restriction of the rights of individuals. Strong protective provisions have to be built into legislation to provide for remedies in cases of infringement or limitation of constitutional rights.

The Minister may decided to expropriate property in terms of section 20 of the Agricultural (Commercial) Land Reform Act 6 of 1995, but there is no provision in the Act to protect a land owner from a *mala fide* decision. The only recourse would be to challenge the decision to expropriate under administrative law and in the High Court.

It would thus have been appropriate to give the Lands Tribunal administrative powers to review the Minister's decision where a land owner has grounds to request a review. Such a procedure might help to speed up the land reform process and may be cheaper than review applications in the High Court. In its present form the Agricultural (Commercial) Land Reform Act makes provision for the Land Tribunal to adjudicate on the price offered for a particular farm, though to date the Land Tribunal has not been used for this purpose.³⁷ The Government's claim that farms are too expensive to purchase for land reform purposes is undermined by the fact that the Government itself is not using the mechanisms created by Parliament to resolve the very issue that the Government is complaining about.

2. Lands Tribunal

The Lands Tribunal has wide-ranging powers in terms of the Agricultural (Commercial) Land Reform Act, and may limit the free exercise of constitutionally guaranteed rights of individuals, in particular the right to own property under Article 16 of the Constitution. Further, Article 12(1)(a) stipulates that any civil rights and obligations can be determined by an independent, impartial and competent Court or Tribunal established by law. The Lands Tribunal established in terms of section 63(1) of the Agricultural (Commercial) Land Reform Act is such a Tribunal.

³⁷ According to Mr Dirk Conradie, Chairperson of the Lands Tribunal, interviewed on 8 June 2005.

The Lands Tribunal must comply with the express provisions of Article 12(1)(a) of the Constitution, including that it should be independent, impartial and competent. Therefore, the manner of recruitment and actual appointment of persons to the Tribunal, their security of tenure and the grounds for and manner of their removal from the Tribunal would have to demonstrate that the Tribunal complies with the Constitution.

Under the Agricultural (Commercial) Land Reform Act, the Minister has the discretion to nominate all five members of the Tribunal for appointment by the National Assembly, the only restriction being that the members must have such backgrounds as required by section 63(2)(a)-(c) of the Act. The National Assembly may reject a particular nominee. There is no requirement that nominees must be independent and impartial.

In the event of one or all Tribunal members having a direct or indirect interest in a case before the Tribunal, the Tribunal's constitutionally required independence and impartiality will be placed in question. The nature of land reform, especially where contentious issues such as expropriation enter the picture, is such that the State will always be an interested party; indeed it will always be one of the parties in the process. Thus, if a public servant is nominated and appointed to the Tribunal, the Tribunal's independence and impartiality will be open to a constitutional challenge.

Following are some observations regarding the Lands Tribunal:

- (a) All members of the Tribunal are appointed by the National Assembly on the Minister's recommendation. To prevent suspicion of partiality, it might be wise for the Minister to invite interested institutions to nominate persons to serve on the Tribunal – as the Minister does with the Communal Land Boards established under the Communal Land Reform Act 5 of 2002. An interested institution could be an organised farming community composed of farmers and farm workers, or a line ministry such as the Ministry of Agriculture, Water and Forestry or the Ministry of Environment and Tourism.
- (b) A constitutional challenge concerning Tribunal members' competency is not foreseen considering the wide range of skills and the backgrounds they are required to have.
- (c) Another important shortcoming in the Tribunal's composition is the absence of a requirement that some members must be women. Article 23(3) of the Constitution obliges the State, when enacting affirmative action legislation, "to have regard to the fact that women have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation". In addition, Article 95(a) 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 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.

The Agricultural (Commercial) Land Reform Act should thus be amended to provide for a set number of women to be appointed to the Tribunal. The failure to legislatively commit to preferential treatment for women opens the composition of the Tribunal to a constitutional challenge on the grounds that it violates Article 23(3) of the Constitution.

3. Expropriation procedure

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. Following is a brief explanation of the expropriation procedure.

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.

4. Expropriation in the "public interest"

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.

However, the Agricultural (Commercial) Land Reform Amendment Act 14 of 2003 amended section 14(2) of the principle Act to provide some guidelines regarding the types of agricultural land that the Minister may acquire for the purposes of land reform. These include:

- (a) any agricultural land offered for sale to the Minister in terms of section 17(4), whether or not the offer is subsequently withdrawn;
- (b) any agricultural land which has been acquired by a foreign national, or by a nominee owner on behalf of or in the interest of a foreign national, in contravention of sections 58 or 59,³⁸ and
- (c) any agricultural land which the Minister considers to be appropriate for the purposes contemplated in this subsection.

It is interesting to note that the Amendment Act 14 of 2003 has amended the principal Act of 1995 in so far as the principal Act specifically provided for the "expropriation of under-utilised and excessive land". The amended Act has a much broader application in providing that "any agricultural land which the Minister considers to be appropriate for the purposes contemplated in that subsection" can be earmarked for expropriation.

It is thus clear that section 14(2) 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".³⁹

The Agricultural (Commercial) Land Reform Act does not provide for the expropriation of land from absentee landlords. If the Government wishes to include such provision in the Act, the Act will have to be amended. However, if the term "absentee landlords" is applied without a distinction being drawn between Namibian landlords who either farm part-time in Namibia or live abroad, and foreign land owners who live permanently abroad, some challenges to

³⁸ Sections 58 and 59 respectively deal with the restriction on acquisition of agricultural land by foreign nationals, and the acquisition and holding of agricultural land for foreign nationals.

³⁹ Christoff Maletsky, "We take any farm we need: Govt", *The Namibian*, 4 March 2004.

the law are likely. One can assume that the rationale for expropriating land from absentee landlords would be to provide that land to Namibian farmers who lack sufficient land to farm to make an adequate living, while absentee landlords frequently have access to alternative sources of income.⁴⁰

An issue that needs resolving is who should be regarded as an absentee landlord and who not. For example, should part-time Affirmative Action Loan Scheme (AALS) farmers, who make up about 41% of all AALS farmers,⁴¹ be regarded as absentee landlords? Expropriating land bought under the AALS would surely defeat the objectives of the scheme. It could be argued that some of these absentee landlords have farm managers who live permanently on the farm, but then the same argument should also be acceptable where, for example, a foreign land owner employs a Namibian farm manager to manage his farm in his absence.

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.

It should be borne in mind that the Government has yet to announce publicly the criteria it will adopt for land expropriation. If it includes a criterion that compels the Government to expropriate land on the basis of "the mistreatment and eviction of farm workers", such a criterion will probably be unconstitutional as it would blend the need to protect farm workers from unfair labour practices and the need for land reform. In view of the absence of effective farm worker tenure legislation, farm workers remain among the most vulnerable wage earners in Namibia, but instead of strengthening the labour inspectorate and building strong provisions into the labour law to protect farm workers from eviction, it appears that the Government wants to solve labour disputes by expropriating land from the perceived problematic land owners. 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.⁴²

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. Expropriation should therefore always be foreseeable, non-discriminatory and based on reason or principle.⁴³

5. Will expropriation speed up land reform?

There is little evidence to suggest that the MLR is proceeding to purchase farms for resettlement based on any kind of plan. Isolated farms are acquired when they are offered for sale, but only if they are "suitable" for resettlement given unknown criteria.

⁴⁰ Christina Treeger, "Legal analysis of farmland expropriation in Namibia", Konrad Adenauer Stiftung and Namibia Institute for Democracy, May 2004, at 4.

⁴¹ Robin Sherbourne, "A rich man's hobby", IPPR Opinion No. 11. Institute for Public Policy Research, Windhoek, December 2003, at 6.

⁴² Treeger, *op cit.*, at 5.

⁴³ *Ibid.*

Also, since 2003 the Government has increased its budget for acquiring farms. (This was after the Government under-spent its previous small budget). The budget was increased from N\$20 million to N\$50 million. But, while it increased the budget for land acquisition, the Government failed to increase accordingly the capacity of its technical services. The MLR has a shortage of land evaluators, for example. Their small number rendered them unable to do their work effectively, with the result that too few or non-viable farms were purchased. With an increased budget and the option of choosing between the 'willing buyer willing seller' approach or expropriation – the latter makes more farms available for purchase – it is likely that the MLR's capacity to run an effective resettlement programme is now even more stretched.

It is therefore doubtful that expropriation will speed up the land reform process in Namibia.

CHAPTER 4

Foreign Ownership of Commercial Agricultural Land

1. Restriction on acquisition of agricultural land by foreign nationals

Part VI of the Agricultural (Commercial) Land Reform Act regulates the acquisition of agricultural land by foreign nationals. Its approach is twofold: firstly, it restricts commercial agricultural land acquisition by foreign nationals; and secondly, it makes recommendations on issues pertaining to the acquisition of agricultural land by foreign nationals.

In short, Part VI provides that no foreign national is allowed, without the prior consent of the Minister to:

- acquire such land through the registration of the transfer of ownership in the Deeds Registry; or
- enter into an agreement with any other person whereby any right to occupy or possess such land or a portion thereof is conferred upon a foreign national for, in effect, a period which is more than or could exceed 10 years.

In addition, Part VI provides that:

- where the controlling interest in any company or close corporation which is the owner of such land passes to a foreign national, that company or close corporation shall be deemed to have acquired that land on the date when the controlling interest so passed; and
- no person shall acquire or hold such land as a nominee owner on behalf of or in the interest of any foreign national if the Minister's written consent has not been obtained.

The Minister may grant an application subject to such conditions as he/she may determine, and may direct that such conditions be included in the deed of transfer. Any conditions imposed in the deed of transfer may be changed or withdrawn at the owner's request.

The Minister shall not grant an application unless he is satisfied that:

- the acquisition, occupation or possession of the land will constitute an eligible investment under the Foreign Investments Act 27 of 1990, and that the appropriate procedures under the Act have been or will be activated in respect of that land;
- the land concerned is capable of being used or occupied beneficially for the purposes for which the applicant proposes to use or occupy it; and
- the use or occupation will not have an adverse effect on the environment, or adequate measures will be taken by the applicant to prevent or deal with such adverse consequences as may arise.

If agricultural land has been acquired in contravention of Part VI of the Act, the Minister may issue an order for such land be sold unless he decides that acquiring that land is compulsory for the purposes of section 14.⁴⁴

Where the Minister issues an order to sell, he has to give notice in writing to the foreign national or nominee owner that, unless such a person submits to the Minister within 90 days an agreement of sale or other disposal of the land, the Minister may cause the land to be sold by public tender or auction.

If, after the agreement has been submitted, subsequent proof of the land's transfer to the purchaser is not furnished to the Minister within 120 days of the date of issue of the notice, or such extended period as the Minister may allow, then again the Minister may cause the land to be sold by public tender or auction.

A copy of every notice issued has to be transmitted to the Registrar of Deeds. If the Minister causes a withdrawal of the notice, this has to be transmitted to the Registrar.

Part VI of Act prescribes that the Registrar of Deeds may not register any transfer of agricultural land or any lease or sublease thereof unless:

- a statement made under oath as to the nationality of the transferee etc. is submitted to the Registrar; and/or
- the transferee etc. is a nominee, and the names and nationalities of the persons for whom s/he is a nominee are stated; and
- the statement is to the effect that foreign nationals are involved in the transfer etc. with the written approval of the Minister;

or

- proof by affidavit exists in the form and manner determined by the Registrar that the transferee etc. qualifies for exemption; and
- if requested by the Registrar, the transferee etc. submits further proof that he/she may lawfully acquire or hold agricultural land.

After consulting with the Minister of Agriculture, Rural Development and Forestry, the Minister of Lands and Resettlement may by notice in the *Government Gazette* exclude from the application of the provisions of Part VI of the Agricultural (Commercial) Land Reform Act any agricultural land or any category of such land or any category of persons, which illustrates the Minister's wide-ranging and relatively unlimited powers under Part VI. While the Minister of Lands and Resettlement holds ultimate power to expropriate farms under the Act, he/she is advised by a Land Reform Advisory Commission (LRAC) consisting of stakeholders able to advise the Minister on all matters under the Act. The LRAC, however, operates only in an advisory capacity and the Minister is in no way bound by any of its recommendations. It might therefore be desirable to amend the Act to require the Minister to refer all applications to the LRAC for consent to transfer land to foreign nationals.

In addition, for constitutional reasons, an appeal to the Lands Tribunal against the exercise of the Minister's powers should be granted in cases where the Minister's decision to refuse to

⁴⁴ Section 14 deals with the acquisition of agricultural land for purposes of land reform.

consent to a transaction with a foreign national adversely affects a Namibian citizen who has contractual and investment obligations with such foreign national.⁴⁵

2. Agricultural Commercial Land Reform Amendment Act 13 of 2002

A key component of the Agricultural (Commercial) Land Reform Act of 1995 is the requirement that all commercial farmland sold must first be offered to the Government for redistribution through its resettlement programme. Until 2002 when the Act was amended by the Agricultural Commercial Land Reform Amendment Act 13 of 2002, land transfers as donations to a close corporation were exempted from the provisions of the Act. Land transfers without sale have mostly been done through close corporations. For example, there was an increase of over 250% in the number of corporate registrations between 1994 and 1995 – the year when reporting of sales of commercial farms became mandatory. It has been suggested that the majority of post-1995 transfers categorised as donations have been structured so as to avoid provisions of the 1995 Act.⁴⁶

As a result there is no sale of land between parties and no need to first offer the land to the Government by seeking a waiver from the Minister of Lands and Resettlement. The short-term effect is that commercial land is removed from the process of redistribution at the point when ownership is transferred. A longer-term effect is that once land is owned by a corporation, it is possible to gain control over it by selling or purchasing shares of the corporation. This means that no sale of land as such occurs, and any subsequent change of ownership is not liable to provisions of the Act, including provisions against ownership of multiple holdings and ownership of land by non-Namibians.

The Amendment Act of 2002 was introduced to eliminate some of the loopholes in the 1995 Act. Currently the Amendment Act specifically provides that the passing of commercial agricultural land to another person in terms of the controlling interest in a company or close corporation owning agricultural land be deemed as void, unless a certificate of waiver is first obtained from the Minister of Lands and Resettlement.

3. Protection for foreign investors

The Foreign Investment Act 27 of 1990 provides for the promotion of foreign investment in Namibia. In accordance with section 13 of the Foreign Investment Act and the Arbitration Rules of the United Nations Commission on International Trade Law, foreign investors can settle disputes in respect of Status Investments through international arbitration. This provision gives adequate protection to foreign land owners who have to be compensated once their property has been earmarked for expropriation. The Act also guarantees foreign nationals the repatriation of funds and interest invested in Namibia.

⁴⁵ P. McAuslan, R.H. Behnke & J. Howard, "Namibia: Assistance in implementation of Agricultural (Commercial) Land Reform Act" FAO/UNDP, 1995, at 43.

⁴⁶ B. Fuller & G. Eiseb, *Same Ingredients Same Recipe: Will there be Enough Land to Reform?*, IPPR, Windhoek, 2001.

CHAPTER 5

Two Land Reform Initiatives – National Resettlement Programme and Affirmative Action Loan Scheme

The two land reform initiatives through which the Namibian Government aims to address the land reform process in Namibia are the Resettlement Programme and the Affirmative Action Loan Scheme (AALS). The Resettlement Programme run by the MLR provides for the resettlement of poor and landless Namibians on state-acquired commercial agricultural land. The AALS, implemented by the Agricultural Bank of Namibia (Agribank), assists stronger farmers to acquire commercial farms through subsidised interest rates and loan guarantees by the State.⁴⁷

1. Resettlement Programme

The Resettlement Programme targets five principal categories of people: the San community; ex-combatants; displaced, destitute and landless people; people with disabilities; and people in overcrowded communal areas (MLRR, 2001). The target groups are further prioritised according to the following criteria:

- 1 = persons with no land, no income and no cattle
- 2 = persons with no land, no income, but with cattle
- 3 = persons with no land, but with income and cattle

According to the National Resettlement Policy (NRP), the aim of the Resettlement Programme is "to make settlers [sic] self reliant, either in terms of food production or self employment and income generating skills". Among the programme's most important objectives are: to redress past imbalances in the distribution of natural resources, particularly land, to give the target groups an opportunity to produce their own food with a view to self-sufficiency; to bring small-holder farmers into the mainstream Namibian economy by producing for the open market; and to contribute to the country's Gross Domestic Product.

The MLR further states in its NRP that approximately 243 000 poor and landless Namibians need to be resettled. In March 2004 the MLR considered plans to expropriate nine million hectares of commercial agricultural land to resettle 230 000 resettlement applicants in the next five years. This time period, the MLR said, could be extended beyond five years if the estimated N\$1 billion needed to carry out this process is not available. (In June 2005 the MLR announced that it is aiming to obtain 320 farms of approximately 4.8 million ha in total by 2010 for resettlement purposes.)

⁴⁷ Parliamentary Standing Committee on Economics, Natural Resources and Public Administration, "Report on the Affirmative Action Loan Scheme (AALS)", April 2004.

However, recent resettlement statistics obtained from the MLR show that to date only 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 15 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.

Considering the resettlement projections and statistics above, and judging by the number of people that the MLR has *actually* resettled over the last 15 years, it becomes clear that the goal of resettling 230 000 people over the next five years is unrealistic from an economic point of view, and logistically impossible.

As the Chairman of the Parliamentary Standing Committee on Economics, Natural Resources and Public Administration, Mr Pohele ya France, recently stated in the House in referring to the settlement of landless Namibians without means and skills to become productive farmers, "such a practice is as good as not resettling them at all".⁴⁸

Resettlement is a difficult human process. Poor people with limited skills are moved hundreds of kilometres to a strange piece of land with the expectation that they make a living there. But farming is a demanding occupation, and is subject to both economic and natural forces.

1.1 Status of 99-year 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.

Before any land is registered with the Registrar of Deeds, the Office of the Surveyor-General should survey it. Secondly, the Office of the Valuer-General should value the surveyed land to render the leasehold agreement valid. In other words, beneficiaries should be able to use their leasehold agreements as collateral to obtain loans from Agribank or any commercial bank. To date,⁴⁹ 40 resettlement farms have been surveyed but none can be registered as valuation has not taken place. One possible reason for the delay in the registration process is that provisions for statements made under oath and for other information to be submitted to the Registrar of Deeds increase the costs and prolong the process as is currently the experience with the registration of resettlement beneficiary allotments. Consideration should be given to exempting from these provisions transactions under a certain size, and/or accepting other relevant evidence of Namibian nationality, such as possession of a valid passport.

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.

⁴⁸ "Resettled farmers left in the lurch", *The Namibian*, 21 September 2004.

⁴⁹ May 2005.

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.

2. Affirmative Action Loan Scheme (AALS)

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 disadvantaged farmers, with Agribank administering the loans. The policy underpinning the AALS has three fundamental rationales:⁵⁰

- 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 loans to persons possessing over 150 large stock units (LSUs) or 800 small stock units (SSUs). The subsidised interest rate ranges from 2% below prime for part-time farmers to 4% below prime 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.

In recent years a number of farmers have reported, as Agribank confirms, that they are unable to meet the repayment conditions. In the period March to September 2004 the amount in arrears doubled, and in March 2004 Agribank reported that 199 out of 544 or 37% of the AALS loan accounts were in arrears.⁵¹

⁵⁰ Information obtained from the Agricultural Bank of Namibia (Agribank), March 2005.

⁵¹ "Angula Admits AA Loan Scheme Defective", *The Namibian*, 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.⁵²

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.⁵³

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.⁵⁴ 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.

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.

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.

⁵² Comment by Mr Mwazi, an Agribank Public Relations Officer.

⁵³ Agricultural Bank of Namibia, newsletter, March 2005.

⁵⁴ Ibid.

As to the structures Agribank has in place to meet the training needs of emerging farmers, Chief Executive Officer Mr Leonard Lipumbu stated that 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 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.

The AALS repayment rates are as follows:

(1) **Full-time farmers:**

| | |
|------------|--|
| Years 1-3: | Grace period with no capital or interest payment |
| Years 4-6: | 2% |
| Years 7-8: | 4% |
| Year 9: | 8% |
| Years 10+: | 9.5% (Agribank long-term rate) |

(2) **Part-time farmers:**

(a) *With an annual off-farm income not exceeding N\$100 000:*

Years 1-3: 1%

Years 4-6: 3%

Years 7-8: 5%

Year 9: 9%

Years 10+: 9.5 % (Agribank long-term rate)

(b) *With an annual off-farm income of N\$100 001 to N\$200 000:*

Years 1-3: 2%

Years 4-6: 3%

Years 7-8: 5%

Year 9: 9%

Years 10+: 9.5 % (Agribank long-term rate)

(c) *With an annual off-farm income of N\$200 001 to N\$300 000:*

Years 1-3: 6%

Years 4-5: 9.5%

Years 6-7: 9.5%

Years 8-9: 9.5%

Year 10+: 9.75%

(d) *With an annual off-farm income of N\$300 001 to N\$400 000:*

Years 1-5: 9.5% (Agribank long-term rate)

Years 6+: 9.75%

(e) *With an annual off-farm income of over N\$400 001:*

Years 1-3: 9.5% (Agribank long-term rate)

Years 4+: 9.75%

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. Agribank could not provide recent statistics of defaulted repayments nor possible reasons for such a large default.

All the repossessions of farms were due to other creditors instituting legal action against AALS clients, and Agribank was forced to act to protect itself against possible losses. The Bank does not allow grace periods but repayment proposals from clients are considered if viable. The Board of Directors approves the instigation of legal action whereupon the Bank institutes legal action through its attorneys, and normal court proceedings are followed as prescribed by law.

In response to some of the AALS farmers' complaints that they face dilemmas with working/running capital, Mr Lipumbu explained that the Bank gives production loans on a revolving credit basis. However, Agribank is in a position to advance loans at a small margin above the actual cost at which it has obtained the funds.

The difference between the 'loan price' and the 'fair price' is that the loan price refers to the loan value amount that Agribank is prepared to advance to the applicant while taking into account the fair agricultural value as well as the risk and the client's ability to service the loan, whereas the fair price refers to the agricultural production value, which is normally 20% higher than the loan value.

3. Role of agricultural extension services

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.⁵⁵

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.

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

⁵⁵ Ministry of Agriculture, Water and Rural Development, Baseline Survey of the Impact of Agricultural Extension Services in the Oshikoto Region, Tsumeb, October 2003.

training and information to farmers should be a systematic process effected stage by stage, e.g. through beginner's, intermediate, advanced and refresher courses.⁵⁶

3.1 Competition between ministries

There appears to be a high turnover of staff within the MAWF. After gaining a couple of years of work experience with this ministry and upgrading their qualifications, many public servants reportedly join other ministries in search of better benefits. In other words, various ministries appear to compete to attract the best candidates for jobs. This tendency could have a negative effect on the MAWF because it inhibits capacity and continuity within its ranks.

3.2 Role of tertiary institutions in the land reform process

It is generally believed that agriculture plays a key role in economic development, and that agricultural development can be achieved only if human resources are empowered through proper training and formal education. The University of Science and Technology (until March 2005 named Polytechnic of Namibia) and the University of Namibia (UNAM), and the two affiliated agricultural colleges, Neudamm and Ogongo, are presently the only tertiary training institutions offering agricultural training in Namibia.

UNAM's Faculty of Agriculture and Natural Resources offers a 4-year Bachelor of Science degree in Agriculture. Undergraduate students undergo a bridging course of natural science subjects for the first year, and then take up the 3-year National Agricultural Programme degree course. In the second year they study at Neudamm Agricultural College near Windhoek. In the third year they have to specialise in either crop science, natural resources, or food science and technology. Crop science students move to Ogongo Agricultural College in Omusati Region, natural resources students move back to the main campus in Windhoek and food science and technology students remain at Neudamm.⁵⁷

The University of Science and Technology (UST) offers a 3-year diploma course in Agriculture. Diploma graduates can enrol for an additional 1-year degree course to obtain a Bachelor of Technology (B-Tech) qualification. No exemption is given to diploma graduates who want to continue their studies at UNAM. Such candidates must start again from first year, which means redoing the bridging course of natural science subjects before embarking on the 3-year National Agricultural Programme degree course. UNAM states that it does not exempt UST diploma holders because they have a poor background in natural science subjects.⁵⁸ The UST and the MAWF are engaged in a joint effort to improve and emphasise the importance of the science subjects at diploma level, but to date this effort has not reaped success. The MAWF argues that it is not responsible for higher education and thus has no mandate to review the UST B-Tech degree course.⁵⁹

⁵⁶ Ibid.

⁵⁷ Interview with Dr Scheider, Deputy Dean of the Faculty of Agriculture, University of Namibia.

⁵⁸ Interview with Salomon Mbai, Senior Lecturer, Department of Agriculture, University of Science and Technology.

⁵⁹ On average, UNAM has produced 33 BSc Agriculture graduates over the past five years, while the Polytechnic has produced on average 95 B-Tech graduates over the past five years (2000-2004).

At present, B-Tech graduates from the UST who become extension technicians in the MAWF cannot acquire extension officer status because the B-Tech course content is inadequate for equipping candidates with the necessary scientific skills.

The MLR does not seem to have any strategy for recruiting graduates from either UNAM or the UST to work as skills trainers or agricultural managers on resettlement projects and farms.

3.3 Co-ordination between ministries

The Resettlement Policy provides that a number of ministries should carry a responsibility for co-ordinating action plans in a particular area to ensure that sectoral partners in government and NGOs are involved with these plans. For example, the MLR's main responsibility is to finance the resettlement programme, whereas the MAWF is responsible for, among other things, training resettlement beneficiaries through its Directorate of Extension Services.

A lack of co-ordination and communication between these two ministries has hampered the successful implementation of an agricultural training programme for resettlement farmers.⁶⁰ The MLR in the past has contracted Agrifutura, an NGO offering a wide variety of one-week courses designed to provide knowledge and skills to semi-skilled and unskilled employees and rural communities. Agrifutura course subjects range from brickmaking to sophisticated business training.

Skills training for resettlement communities is often just a one-off basic skills training session, and there is no data available for assessing the effectiveness of the courses. In addition, the MAWF's extension services appear to give priority to communal farmers' training and service needs, and contract out to private contractors the provision of technical services to resettlement projects. This clearly shows that despite the Government's pledge to empower beneficiaries to become self-sufficient, the beneficiaries have to rely on external services to repair what is often a minor problem. Resettlement beneficiaries often complain that the MLR does not allow them to repair broken equipment themselves, but rather appoints a technical team to undertake repairs, which usually involves hiring private contractors.

Indeed, a major shortcoming of virtually all resettlement projects appears to be a lack of capacity to manage them efficiently, which is crucial to achieving self-sufficiency. Moreover, there is little to suggest that resettlement beneficiaries are encouraged to participate in the decision-making processes of their respective projects. To the contrary, in most instances beneficiaries seem to wait for the MLR to decide for them. Beneficiaries at most projects have complained that the MLR seldom visits the projects and hence is not always aware of the beneficiaries' needs. In addition, supplies provided by the MLR (diesel fuel, seed, agricultural implements, etc.) and the service of fixing water pumps often come too late. On the Skoonheid and Westphalen projects, for example, beneficiaries mentioned that water pumps which had broken down had not been repaired for periods of five and three months respectively, and this had resulted in a loss of crops and vegetables.

⁶⁰ Interview with Mr Ndala, Director of Planning, Research and Training, Ministry of Lands and Resettlement.

Also evident is that beneficiaries lack basic agricultural skills, resulting in low sustainable incomes and continued reliance on government support. Few of those interviewed by the LAC mentioned having received any kind of formal agricultural training as part of their initiation into a project aimed at making them self-sufficient farmers. If self-sufficiency and higher incomes are sought, specific agricultural skills training for beneficiaries is paramount.

According to Mr Ndala, to address the issue of capacity-building and transfer of skills, the MLR is looking at the possibility of handing over resettlement projects to Regional Councils, which perhaps are better equipped to address the particular problems faced on resettlement projects.

3.4 Targeting farm workers as main land reform beneficiaries

Available research suggests that workers in the agricultural sector have little access to formal education and are among the earners of the lowest cash wages in Namibia.⁶¹ As a result, farm workers have limited employment opportunities outside the agricultural sector. Considering that farm workers generally have few de facto land tenure rights and no choice but to establish their homes at their workplaces, one can appreciate why the situation of farm workers is often described as a "continuous cycle of dependency and vulnerability".⁶²

Recent labour disputes between farm employers and employees have once again drawn attention to the lack of existing secure land tenure rights for farm workers. It has also raised concerns about the applicability of eviction order procedures in view of the sensitive political climate surrounding land reform in Namibia. The current situation in Namibia is that no specific legislation exists through which farm worker tenure rights can be addressed.

Following is a brief discussion on the relevance of the Labour Act 6 of 1992 (as the new labour law is not yet in force) and the National Land Tenure Policy in securing farm worker tenure rights in Namibia.

3.5 Labour Act 6 of 1992

The Namibian Constitution lays down basic fundamental human rights which the Labour Act embodies. The Act has in turn created favourable conditions through which the concerns of labourers in all of Namibia's commercial sectors can be addressed, including those of agricultural labourers.

In addition, the Labour Act guarantees farm workers rights to adequate housing, cultivating land and keeping livestock. Farm workers required to live on farms must also be provided with housing, sanitation and a water supply sufficient to meet their own needs and those of their dependants.

However, the Act is too unspecific to be of much practical use, as it leaves to the farm owner's discretion the meaning of the terms "reasonable requirement" and "reasonable need" under

⁶¹ Wolfgang Wemer, *Rights and Reality: Farm workers and human security in Namibia*, op cit. (note 16), at 8.

⁶² *Report by the Commission of Inquiry into Labour-related Matters affecting Agriculture and Domestic Employees*, Republic of Namibia, Windhoek, July 1997, at 19.

Section 38. This section also does not address the specific needs of retired workers and others left homeless because they can no longer work. Access to workers' homes is a further point of contention under Section 38. The fact that farm workers have no legal land tenure rights means that farm owners maintain the de facto right to determine who can visit and reside on the farm as a worker's dependant.⁶³ As a result, restrictions are placed on farm workers' freedom to mix with others as they choose, as would be their right on rented or privately property.

It is thus clear that the Labour Act addresses the general labour concerns of farm workers, but not the specific issue of farm worker tenure rights.

The Government's National Resettlement Policy is equally silent on how farm worker tenure rights are to be protected once commercial farms become available for resettlement.

3.6 National Land Tenure Policy

The National Land Tenure Policy is aimed at addressing, inter alia, the issue of farm worker tenure rights and eviction.

The Policy seeks to establish Regional Land Tenure Committees in each region to address key issues of concern to farm workers. The committees will be able to mediate in disputes between owners and occupiers involving eviction, removal and resettlement, and assist owners and occupiers in drafting agreements.⁶⁴

Under the Policy, commercial farmers will be obliged to draw up agreements with farm workers. Farm workers, with their dependants, will have the right to indefinite occupation once they have lived and worked on a farm for a period of 10 years. When a farm worker retires, he/she will have legally recognised rights to remain on the farm and use the land for farming activities according to his/her reasonable needs.

The Policy further states that all established legal procedures must be met before eviction can take place. The Regional Land Tenure Committees will be empowered to investigate and mediate in disputes between employers and employees. In addition, the Committee will have the power to remove and suitably resettle a farm worker. Where mediation fails, either party is entitled to take his/her claim for an eviction order or restoration of rights of residence to a court of law.

In the event that a farm worker is required to leave the farm, he/she will have a grace period during which the owner helps to arrange a suitable site for resettlement, assisted by the MLR.

If the owner wishes to obtain an eviction order, a notice of intention must be given to the occupier. An occupier will be required to vacate a farm particularly if he/she violates the conditions of the contract. In this case, a farm worker will be given due notice and the owner should find a suitable resettlement site for that worker with assistance from the MLR.

⁶³ Ibid., at 20.

⁶⁴ "National Land Tenure Policy (Final Draft)", Ministry of Lands, Resettlement and Rehabilitation, October 2003, Windhoek, at 22.

3.7 Mediation as a means to resolve farm labour disputes

The National Land Tenure Policy's focus on mediation to solve disputes between farm owners and workers should be viewed as a welcome alternative to the often expensive and confusing court procedures applied in farm worker eviction cases.

The issue of farm worker tenure rights raises both labour- and resettlement-related concerns, thus strong co-operation between the respective ministries, farmers and workers is 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.

CHAPTER 6

Case Studies and Field Visits

1. Field research visits

As part of the research methodology, the LAC researchers paid a number of visits to various established and emerging commercial farmers and resettlement beneficiaries countrywide to hear about their objectives, activities and achievements, grievances and logistical problems.

1.1 Visits to the south

The southern part of Namibia is known for its low rainfall, averaging at 150 mm per annum. Drought often has a severe impact on farming activities in the south. According to a farmer in Maltahöhe District, one would need a minimum of 20 000 ha to farm economically and sustainably in the south. Most commercial farmers in the Maltahöhe area have turned to tourism and hunting as an alternative to commercial livestock farming.

1A. Hoërand Farmers Association

The Hoërand Farmers Association has been involved in providing technical training to communal farmers in the Gibeon area since 2002 through regular field visits and organising communal farmer support days. According to Hoërand Chairperson Mr Coetzee, the farmers often lack the knowledge required to upgrade the quality of livestock.

In 2004 the Association and the Hardap Regional Council jointly undertook field visits to the resettlement farms of Kleinfontein, Mara and Narobmund in Hardap Region. One major problem identified at all these farms was that the Government had not supplied sufficient drought aid. Broken water pumps were found at all these farms. In addition, resettlement farmers seem to find it difficult to market their products because they do not have easy access to established markets. Long travelling distances to established markets were also identified as a major stumbling block.

Based on its findings at these farms, Hoërand has identified a few key issues needing attention and possible means to address problems currently experienced at these farms:

- Both Kleinfontein and Mara have strong and sufficient underground water sources to support the cultivation of oranges, grapes and lucerne. There is a big demand in the area for lucerne to be grown for sale to farmers as fodder for small livestock.
- Established commercial farmers could undertake joint commercial ventures with the resettlement farmers to enable the latter to acquire management and technical skills in crop production, marketing, etc. Such ventures could be implemented over a period of 10 years, for example. In the first year the established farmer could have an interest of 90% in the joint venture and the resettlement farmer an interest of 10%. During the

start-up years the established farmer's main responsibility would be to get the joint venture off the ground while simultaneously transferring skills to the resettlement farmer. By the tenth year the latter should have acquired sufficient skills and should have an interest share of 90% in the joint venture, and the established farmer a 10% share. By the eleventh year the venture should belong entirely to the resettlement farmer.

- Tourism could be an alternative or additional source of income for these resettlement farmers as most in the Maltahöhe area are located close to popular tourist destinations such as Sossusvlei, the Tiras Mountains, the Fish River Canyon and Lüderitz. As water availability does not appear to be a problem for the Kleinfontein and Mara farms, the farmers there could cultivate orange trees and sell oranges to tourists. The sale of *karrosse* (skin rugs) produced from goat, sheep or springbuck and production of curios such as beads and traditional needlework for sale to local guest farms and lodges are also potential income-generating options for these farms. Cultural tourism is a further option. For example, overnight accommodation could be provided to tourists in the form of traditional Nama huts.

1B. Bernafay Resettlement Project

The Bernafay Resettlement Project, initiated in 1997, is situated in Hardap Region about 35 km south of Stampriet, on a farm of about 3 730 ha purchased by the MLR for N\$1 300 000. The project accommodates farm workers who remained on the farm when it was sold to the MLR, and a number of resettlement applicants. The total number of project beneficiaries was unclear at the time of the visit. The project also hosts two Cuban irrigation specialists who divide their weekly work schedule between Bernafey and the Westphalen Resettlement Project approximately 130 km north of Bernafey. The Namibian and Cuban Governments have an agricultural exchange agreement to provide training to beneficiaries at both Bernafey and Westphalen.

The project's main income derives from selling oranges and lemons. Until August 2004, only one field of approximately 8 ha was used for cultivating vegetables including water-melons, sweet melons, carrots, beetroot and pumpkins. Some beneficiaries also own a few head of livestock including cattle, goats, sheep and donkeys. This project remains heavily dependent on government support.

1C. Westphalen Resettlement Project

The Westphalen Resettlement Project is also situated on a farm in Hardap Region, about 8 km east of Uhlenhorst. The project was started in 1997 when the MLR purchased the farm, of about 1 200 ha, for N\$1 617 000. A small portion of the farm is used for growing vegetables, while approximately 9 ha are used for citrus cultivation. Six people live on the farm, one of whom is a woman. All have relatives living with them. The MLR recently completed new houses for the project beneficiaries. At the time of the LAC visit to the project in February 2005, beneficiaries complained that the damaged water pump had been left in a state of disrepair for three months. According to the beneficiaries, it was the duty of the MLR to fix the pump. As a result of the pump not being fixed for so long, all the vegetables died. Like Bernafay, Westphalen is also still heavily dependent on government support.

1D. Uhlenhorst Initiative

The Uhlenhorst Initiative was started in April 2002. Some members of the Uhlenhorst Farmers Association identified a need for farming skills training and support among resettlement farmers in the Uhlenhorst area.

The Initiative and the MLR in Mariental met on 29 March 2003 on the farm Tsaurob owned by Mr Peter Bassingthwaighte who co-coordinates the Initiative. The meeting was attended by 123 people – 36 emerging farmers, representatives of the MLR, the President of the Namibian National Farmers' Union (NNFU), the Director of the Namibian Agricultural Union (NAU) and media workers. The then Minister of Lands, Resettlement and Rehabilitation, Hon. Hifikepunye Pohamba (now Namibia's President) opened and addressed the meeting.

An Initiative Liaison Committee representing the resettlement farmers was established after the Tsaurob meeting. This committee met for the first time on 3 May 2003 to determine the way forward and identify focal topics for future Farmers' Days. The topic for the first Farmers' Day on 31 May 2003 at Gemini Resettlement Farm was the maintenance and repair of water installations. On 6 August 2003 the UN Food and Agricultural Organisation (FAO) met with 22 resettled farmers at Tsaurob to determine their concerns about the Resettlement Programme. The next Farmers' Day was held on 1 November 2003 at the farm Jena owned by Mr Raimar von Hase, the newly elected NAU President. The topic was the karakul industry and the promotion thereof. A number of resettlement farmers and representatives of the European Union (EU) and FAO attended.

The first Initiative meeting of 2004 was held on 27 March at the Uhlenhorst Farmers Association hall, with a total of 40 resettlement and emerging farmers in attendance. The topic for the day was how to improve the breeding standards of the Dorper sheep.

On 29 May 2004 the Uhlenhorst Farmers Association organised an information day at its hall, covering issues relating to veterinary diseases and livestock medicines, with 120 resettlement farmers in attendance. Other farmers' day meetings held in 2004 focused on how to improve the breeding standards of the Van Rooy sheep and the Boer goat, grazing management and financial planning. Five farmers' day meetings are planned for 2005.

Thus far the Uhlenhorst Farmers Association and commercial farmers involved in the initiative have funded all the farmers' day meetings. Costs to be covered for an average farmers' day include the sending out of invitations, lunch and drinks for the participants, and the course leaders' travelling expenses. According to Mr Bassingthwaighte, a farmers' day can cost the Association anything from N\$1 500 to N\$3 500.

1E. Proposed project for cultivating table grapes in the Maltahöhe area

The LAC team visited Mr Barney Groenewald, owner of the farm Schwartzkuppe about 70 km south of Maltahöhe. Mr Groenewald was born in Hex River Valley in South Africa's Western Cape Province. Hex River Valley is one of the biggest grape production areas in South Africa. Mr Groenewald grew up on a grape farm where he acquired at an early age all the basic skills and a passion for table grape farming. He also had an opportunity to do his own grape farming from 1976-1982, whereafter he involved himself in the marketing of table grapes. A joint venture was formed and a cold-storage facility was built to enable the venture

to serve the surrounding farming community more effectively. With the deregulation of the fruit export industry in South Africa in 1996, the fast-changing environment challenged the joint venture to extend its business from local to export markets such as EU countries.

Mr Groenewald stated that he would like to share his knowledge and experience of grape farming and marketing with the residents of the Maltahöhe area, especially the resettlement communities.

A development project for the cultivation and export of table grapes has been proposed for implementation in the Maltahöhe area on 60 ha of government property to be developed over a period of 10 years. Donor and/or government funding support will be needed for the first 3-4 years. The project could be subdivided into three different projects on the resettlement farms Kleinfontein (Project 1 – 10 ha), Mara (Project 2 – 20 ha) and Voigtsgrund (Project 3 – 30 ha). The water supply, climatic conditions and soil conditions on these farms are favourable for cultivating table grapes.

Government and donor support is requested for the first 3-4 years of Project 1 at Kleinfontein, and the income generated will subsidise the development of Projects 2 and 3 at Mara and Voigtsgrund.

For example, Kleinfontein's income in Year 4 will be used for establishing and developing Project 2 at Mara, while the income at Kleinfontein in Year 7 and at Mara will be used to establish and develop Project 3 at Voigtsgrund. Profits generated by all three projects over the long term can be used to develop other similar or diverse projects in the area.

According to Mr Groenewald, the grape varieties Regal Seedless, Red Globe, Victoria and La Rochelle are the most popular on the market and will be planted at Kleinfontein.

Regal Seedless is a large white berry with no seeds. It is easy to grow and has good storage potential. It is a relatively new variety on the market and has proved very popular with UK consumers. Red Globe is a large red seeded berry that is also easy to grow. It has a marketing potential in Europe, especially in Spain, as well as in the Far East. Victoria is a large yellow seeded berry which is very popular in southern Europe. La Rochelle is a black seeded berry with good storage potential and marketing prospects in both Europe and Asia. The expected average yield on 10 ha is 6 000 cartons (4.5 kg per carton) per hectare. Future market changes and the development of new grape varieties will determine which varieties are used in Projects 2 and 3.

Three to four potential project leaders will be identified in the early stages of the first project. They will receive thorough training in all the different aspects and phases of table grape farming before the first season commences. In addition, once the project is in full production, up to three permanent workers could be employed per hectare. As part of their training before the first season, the workers will undergo a training programme at Hex River Valley in the Western Cape, South Africa.

The immediate benefits of these proposed projects for the Maltahöhe area as a whole and its individual resettlement communities are permanent jobs and skills training. Secondly, the income generated from these projects can be used to develop other similar or diverse

projects in the area, in which more community members could be involved. Thirdly, projects may be able to benefit from using their cold-storage facilities to store meat during the off-season. In terms of benefits for the Namibian economy, the exportation of table grapes would boost the influx of foreign currency.

The proposed table grape joint venture between resettlement farmers and Mr Groenewald, an established commercial farmer with many years of experience in producing, marketing and exporting table grapes, would be a first for the Maltahöhe area. It should be borne in mind that traditionally, agricultural activities and infrastructure in the Maltahöhe area are geared towards farming of small livestock, and a change to another agricultural activity such as table grape production, which requires a lot of capital investment, could be perceived as a high financial risk. At the same time, producing table grapes for export is not only labour- and capital-intensive, but also management- and technology-intensive, but the vast majority of the workers would not have been exposed to the level of management training required to run a large-scale commercial operation effectively, thus a considerable amount of time and money would have to be invested in skills development.

Whether the Namibian Government, and more particularly the MLR, would be willing to take this financial risk and invest in such projects is uncertain. Indeed, investment in these projects seems to be *the* key to putting up the necessary infrastructure, and for this purpose donor funding as well as private investment is needed.

1F. Joint ventures (JVs)

Joint-venture projects such as those proposed at Kleinfontein, Mara and Voigtsgrund have become an increasingly common feature of land and agrarian reform in South Africa. JVs usually involve, on the one hand, black people who have land rights or are land reform beneficiaries eligible for a government subsidy, and on the other hand, white commercial farmers engaging in joint agricultural production. The motivation for entering into a JV is that land reform beneficiaries have access to capital and land, while white commercial farmers or companies have expertise that empowers land reform beneficiaries.⁶⁵

Those in support of JVs argue that they contribute to transforming the countryside by giving poor or unemployed black people practical options for engaging in commercial agriculture particularly. Sceptics of JVs, on the other hand, are of the opinion that they are a new form of exploitation; a mechanism through which white commercial farmers and corporations are able to spread the risk of engaging in an increasingly complex and capital-intensive sector while gaining market and political credibility in the process.⁶⁶

Though these arguments for and against JVs hold true also for the South African land reform process, it should be borne in mind that partnerships between resettlement project beneficiaries and the private sector (i.e. commercial farmers with donor funding support) are virtually non-existent. In fact, the involvement of the commercial farming sector through JVs in the resettlement programme appears not to have been contemplated when the MLR drafted the National Land Reform Policy.

⁶⁵ Mayson D. Joint Ventures, *Programme for Land and Agrarian Studies*, University of the Western Cape, School of Government and Surplus Project, September 2003, at 1.

⁶⁶ Ibid.

If JVs were to become likely options for resettlement farms such as Kleinfontein, Mara and Voigtsgrund, then perhaps the South African model of equity sharing could be considered. Following is a discussion (bearing in mind the proposed projects at Kleinfontein, Mara and Voigtsgrund) on how equity sharing could empower the beneficiaries of resettlement projects that hold potential for production and marketing of high-value agricultural products such as table grapes.⁶⁷

Equity sharing entails that resettlement beneficiaries on a farm pool their grants and invest in the farm by buying equity or shares in the farm.⁶⁸ Beneficiaries and the commercial farmer typically would form a trust through which to invest funds in the joint venture. While they continue working as resettlement beneficiaries, they become entitled to representation on the board and thus take part in strategic decision-making on management. One of the most important decisions in this regard is approving the budget, including wage increases.

The effect is that beneficiaries not only continue in employment, but effectively share in decision-making and profits, and an increase in labour productivity. At the same time the commercial farmer's managerial skills are retained to the benefit of all. Workers are exposed to management of the joint venture through a capacity-building programme.

In South Africa the equity share model has proved the predominant form of land reform in the high-value agricultural sector. It gives beneficiaries access to and control over the means of production while simultaneously providing economies of scale and managerial expertise.

Among the preconditions for implementation of an equity share project are:

- the inherent viability of the farm;
- very good labour relations;
- a willingness to share in the wealth and in decision-making, and a commitment to doing so; and
- a capacity-building programme to support workers.

On the other hand, in South Africa there have been cases of deeply indebted commercial farmers entering into equity schemes with beneficiaries only for both parties to go bankrupt. This happened especially in the late 1990s when the rapid deregulation of the agricultural marketing system saw a rapid drop in prices and farm income. Farms in this predicament typically would have a high debt-equity ratio, would be growing low-price cultivars and would not have an appropriate level of management expertise.

The lesson to be learnt from these cases is that when commercial farmers face financial difficulty, they tend to invest less in the empowerment aspect of the project, with the result that returns are lower than the beneficiaries expect, thus they become frustrated and inadequate channels exist through which they can voice their frustration.

These failures have led to a suspicion, especially among NGOs, that equity share projects are intended to rescue bankrupt farmers. However, this suspicion can be addressed when the

⁶⁷ The discussion of equity sharing is largely based on an article by South African writer Johann Hamman, titled "Black Economic Empowerment". The article has been adapted to fit with the Namibian agricultural context.

⁶⁸ The ability of beneficiaries to buy equity derives from their access to government subsidies or access to credit as a result of donor funding.

grant distribution bodies are capacitated sufficiently to be able to distinguish between viable and non-viable projects. It is interesting to note that currently the bankruptcy rate among equity share schemes in South Africa is significantly lower in general than among commercial farmers.

According to Agribank, financing of joint ventures, such as between a commercial farmer and an AALS resettlement farmer, could be arranged.

1G. Lessons for Namibia

The South African examples of employers sharing in the means of production with workers, and the state and private sector actively supporting such ventures, hold valuable lessons for the black economic empowerment debate and more specifically for resettlement farmers and beneficiaries in Namibia.

First, equity sharing in South Africa has shown that it is workers who benefit. This benefit is manifest not only in monetary terms, but also in the form of improved skills through exposure to management. It is very probable in the foreseeable future that participants in these projects will become independent commercial farmers in their own right, having accumulated the capital and expertise necessary to run their own farms. Unlike black economic empowerment strategies whereby a few people become very rich, the wealth deriving from a venture is distributed equitably among all those who work for it.

Second, equity sharing is a growth strategy. The grants allocated to pay for the equity are invariably reinvested in the farm, thus providing a source of capital in a context of interest rates often being higher than returns on investment. This provides much-needed capital to expand production and thereby 'grow the cake'. Though agriculture contributes only 5% to GDP, it accounts for almost 30% of GDP through backward and forward linkages, and this growth pervades the economy.

Third, the role of the State is not only to regulate but also to help fund the transformation process. Similar initiatives are already taking shape in the tourism sector and could be replicated in many others. This will also depend on whether the Government is to adapt its economic strategy.

This is not to say that equity sharing is an instant solution or that it reaps immediate success. It focuses directly on overcoming and reconciling race and class inequities, the two most dominant categories of inequity in Namibian society. It challenges the traditional perspectives of both employers and employees, and forces them to rethink their roles in the workplace and the economy.

Internationally the emphasis is shifting away from individualist approaches to economic restructuring to a collective approach. The latter is not necessarily an anti-market strategy; it is a strategy that can ensure that all workers and not just a few privileged individuals benefit from their input into a venture.

1.2 Visits to the north

Northern and southern Namibia are very different agricultural environments. The north is much wetter and can sustain grain crops such as corn and wheat. It is also far more densely settled than southern Namibia, hence pressure for land reform is much greater in the north.

The Joint Agricultural Coordinating Committee (JACC) in Grootfontein District was elected in April 2004. The JACCs' primary objective is to co-ordinate farmers' activities at regional level and get established commercial farmers and emerging farmers to co-ordinate their activities and exchange ideas. According to the Grootfontein JACC Chairperson, Mr Tjipura, "In general, established commercial farmers are willing to assist their emerging neighbours to get off the ground and make a success of farming and to assist them to not repeat the same mistakes they [the established farmers] did in the past."

Initially the NAU and NNFU provided funds for the JACC operations, but thereafter funds were not always forthcoming, which restricted operations. Established farmers in the Maize Triangle (Grootfontein, Otavi and Tsumeb Districts) have nevertheless continued with their activities by funding open Farmers' Days from their own pockets. These efforts show the willingness of established commercial farmers to transfer their knowledge and skills. Most emerging farmers have welcomed this initiative, believing that it speeds up the transition from communal to commercial farming. Regular communication between commercial and emerging farmers in these districts has developed into relationships of trust. Due to Namibia's history of apartheid, getting white and black farmers to work together towards a common goal, being to build a vibrant and successful agricultural economy for Namibia, is probably the biggest challenge for the agricultural sector as a whole.

2A. Farmers' Day at farm Dornhügel

In the last few years the Joint Agricultural Forum in Grootfontein, Tsumeb and Otavi Districts has organised a number of field days, referred to as Farmers' Days, for emerging farmers in the area. The Farmers' Days are organised on the Forum's behalf by select joint committees of the NAU and NNFU in the Grootfontein area. The fourth Farmers' Day took place on 22 January 2005 on the farm Dornhügel, approximately 35 km east of Grootfontein. Judging by the number of people in attendance, these field days are growing in popularity.

Focal topics for the Farmers' Days included veterinary aspects of Namibian agriculture and combating bush encroachment. At Dornhügel, a number of established commercial farmers, including a veterinarian, gave a presentation on improving the reproductive qualities of cow herds.

2B. Outjo project

Since the inception of the Affirmative Action Loan Scheme (AALS) in 1992, more than 100 emerging commercial farmers have purchased farms in Outjo District through the AALS. During the late 1990s, the Outjo District Agricultural Union, and more specifically the Excelsior Farmers Association, identified a need among emerging commercial farmers to acquire additional agricultural knowledge and skills to bridge the gap between communal and commercial farming, and to reduce uncertainty among farmers finding themselves in a new

environment, but especially to ensure sustainable use of land, an increase in soil productivity and financially feasible production in the long term. The MAWF, and more specifically its extension office in Outjo, has contributed significantly to addressing this need of emerging commercial farmers by means of disseminating information and organising 'information days' on topics such as rangeland management, production management and lick management.

The emerging farmers in attendance expressed the hope that these information days would continue and be expanded. A committee was elected to develop a project proposal and oversee the implementation and management of the project. The overall goal of the project is to provide support to emerging farmers in Outjo District to help them to farm in an economically and environmentally sustainable manner. To achieve this goal, the following objectives have been set:

(1) *Assist emerging farmers to apply efficient financial management practices.*

In pursuit of this objective, the following activities have been agreed upon:

- Conduct a series of interactive and practical training sessions, covering financial management (including income and expenditure sheets, budgeting and value-added tax) and labour management.
- Provide backstopping in financial management to emerging farmers on a regular basis.

(2) *Assist emerging farmers to practise sustainable rangeland management practices.*

To achieve this result, the following major activities have been agreed upon:

- Conduct a series of training courses on crop production, rangeland management and drought management.
- Conduct a series of interactive and practical 'information days' to share information and ideas on best practices with regard to:
 - (a) crop production and horticulture as possible means of diversification;
 - (b) rangeland management, including assessment of carrying capacity and bush encroachment and identification of grasses;
 - (c) drought management;
 - (d) provision of professional backstopping through regular visits to farms; and
 - (e) sustainable livestock production management practices.
- Conduct interactive and practical training courses on:
 - (a) herd management, including selection criteria for increased productivity, management of mating seasons aimed at increased productivity, and animal husbandry;
 - (b) marketing, including the impact of consumer needs on marketing, management practices to increase income from marketing, pricing, and supply and demand;

- (c) feed management, including lick management and the nutritional demand of the herd during various stages of production;
 - (d) game management;
 - (e) artificial insemination;
 - (f) pregnancy checks;
 - (g) agricultural management; and
 - (h) grading and marketing of beef.
- Conduct a series of interactive and practical information days sharing information on the latter topics.
 - Provide professional backstopping on a regular basis.

A group of emerging and established farmers in Outjo District undertook a farm tour on 21-23 October 2003 for the purposes of sharing experiences on commercial farming practices, getting to know each other better and planning for future co-operation between emerging and established farmers. Participants in the tour included management and members of the Kunene Emerging Farmers Association (KEFA), members of the Coordination Committee for Training of Emerging Farmers in Outjo District, established commercial farmers in Outjo District, senior management of the Division of Extension in the north-west of the country, and a facilitator from the Desert Research Foundation of Namibia (DRFN).

During the tour, emerging farmers were asked to identify their major needs and established farmers were asked to identify possible support they could provide to emerging farmers. Service organisations were also asked to identify what support they could provide.

One major concern of emerging farmers is that the development of infrastructure on farms should be subsidised. In this regard, emerging farmers are of the view that Agribank should provide additional financial assistance to cover the development and maintenance of existing infrastructure. Emerging farmers also complain that the interest rates escalate during the 25-year payback period, the current rates are too high, and the grace period is too short. Currently loans are made 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.

Emerging farmers have expressed a need for practical training on technical issues, and some feel that they have inadequate management knowledge and skills. In response established farmers have offered training in breeding, selection, animal husbandry, infrastructure maintenance, supplementary feeding, rangeland management and overcoming cash-flow problems.

Various needs for support from service providers were also identified. Service providers, together with established farmers, indicated that they could provide information, advice and guidance to a prospective emerging farmer before he/she buys a farm in the area.

At the end of the tour meeting a committee was elected to take this process forward. The committee, consisting of two emerging farmers, one established farmer and an agricultural extension technician in the MAWF is tasked to develop a detailed work plan to guide them in finding interested emerging farmer participants, setting conditions for their participation and identifying mentors. The committee is also tasked to solicit funds from Meatco to implement the work plan and promote the project concept at national level.

CHAPTER 7

Donor Support in the Land Reform Process

1. Emerging Commercial Farmers Support Programme

The Emerging Commercial Farmers Support Programme (ECFSP) 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.

Since independence, about 9.1% of the freehold (commercial) land has been redistributed. This was done mainly through the government-initiated Resettlement Programme which resettles people on state-acquired freehold farms, and through Agribank's Affirmative Action Loan Scheme (AALS) which helps strong communal farmers to procure commercial agricultural land. Unfortunately, the emerging commercial farmers received little backup support (extension services, management training, etc.) which undermined their chances of becoming economically self-sustainable farmers able to contribute to agricultural production and development.

While the Ministry MAWF concentrates its extension services on communal farmers, an urgent need has been identified to assist emerging commercial farmers. After initial informal discussions with emerging commercial farmers, the NAU and NNFU were approached for technical assistance on financial, sustainable rangeland and livestock production management. Both unions have taken up the challenge. The NNFU has been tasked to conduct a needs assessment for resettlement farmers while the NAU initiated workshops to bring emerging commercial farmers and established commercial farmers together. The project's overall objective is to increase agricultural production in Namibia by applying appropriate economically and environmentally sustainable agricultural practices and socially accepted agricultural practices. Therefore the project aims to empower emerging commercial farmers by giving them knowledge and skills necessary to become economically viable farmers while ensuring sustainable land-use practices and increased production. The programme's inception phase will prepare the way for implementation of this mentorship scheme.

The inception phase is funded through the Embassy of the Netherlands, while the implementation phase (i.e. the mentorship scheme) could be included for support under the National Agricultural Support Services Programme (NASSP)⁶⁹ and/or under the new rural development

⁶⁹ The NASSP is funded jointly by the European Union through the European Development Fund (EDF) and the Government of Namibia. The programme complements the Namibian government's efforts to enhance the livelihood of smallholder households. It has five components: institutional support; rural enterprise develop-

programme of the 9th European Development Fund (EDF) and/or through other possible donors. The cost of the six-month inception phase is N\$1 500 000. Major budget items include 10 mobilisation workshops for and a needs assessment among emerging commercial farmers, establishing an agency to manage the mentorship scheme and preparation of the long-term project proposal including a monitoring system. Although emerging commercial farmers are mainly men, attention will be given to female emerging commercial farmers and the project will also ensure a positive impact in terms of environmental conservation and sustainability. The overall objective of the inception phase is to build trust between stakeholders so that future co-operation can take place. The envisaged outcomes of the inception phase are: emerging commercial farmers and established commercial farmers mobilised for the mentorship scheme; identification of the needs of ECFs; an agency established to manage the mentorship scheme; a steering committee set up for the scheme; and a long-term project proposal for the mentorship scheme for submission to possible donors.

2. German donor support

German donor support to the Namibian land reform process has featured prominently since independence. German development co-operation in the natural resource management sector is especially well established. Over the last decade, German assistance has targeted a wide spectrum of problems in areas such as agriculture, range management, fisheries, environmental conventions, water resource management and water supply, hydro-geology, geology, park management and community forestry.

German support comprises a broad spectrum of instruments. These include the Kreditanstalt für Wiederaufbau (KfW), Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Bundesanstalt für Geowissenschaften und Rohstoffe (BGR), Deutscher Entwicklungsdienst (DED), Centrum für Internationale Migration (CIM) and Organisation für internationale Weiterbildung und Entwicklung (InWEnt). Technical co-operation (GTZ) takes up the experience to date in the priority area and deploys instruments such as policy advice, human and institutional capacity-building and support for developing, testing and disseminating information on innovative concepts and procedures, and cross-links these instruments. Financial co-operation (KfW) finances investments in the priority areas, especially those linked to land reform (commercial and communal areas), community forest management and management of parks involving communities. To implement the advisory service and investment programmes, development workers (DED) and integrated experts (CIM) are assigned. Dialogue fora and courses will be available in Germany and Namibia through InWEnt to provide advanced training to partner experts.

A strong need has been identified for better linking of these instruments. Efforts in this direction are ongoing and currently include the following:

- KfW and GTZ co-operation on land reform issues – to be further intensified when the FC and TC operations are fully established.
- KfW and DED agreement for close co-operation in supporting communal forest management in north-eastern Namibia.

ment and finance; livestock development; crop diversification; and mahangu (millet) development. In addition the NASSP provides funding for supporting emerging farmers.

- DED and GTZ joint exploration of possibilities for co-operating on some aspects of land reform, in particular those linked to regional land boards.

Priority should be given to requests that must clearly be handled by the land management sector, such as requests for water and biodiversity resources. Land reform support, land-use planning and capacity-building for sustainable land management are considered to be of key importance. This links with planned or existing co-operation agreements of GTZ and KfW.

It is admitted that German donor assistance has to be better synchronised and more focused. Many of the German-funded projects have rendered effective support in their own right, but lacked co-ordination and a guiding framework for support. Consequently few synergetic effects could be achieved. This reduced the effectiveness of the German assistance in rural areas. Better co-ordination structures and procedures are now in place and the definition of a strategy for the priority area is expected also to provide a guiding framework and assist in reorienting the development portfolio.

Current German development assistance and current plans for this assistance in the priority area are as follows:

(1) **Infrastructure investments relating to land reform**

The project will provide infrastructure support in the context of land reform, and envisages activities supporting land reform in the commercial areas and the establishment of small-scale commercial farms in un- or under-utilised communal areas.

(2) **Support to land reform, land policy and land use**

The project initially assists in the formulation of an Action Plan on Land Reform in Namibia, and then addresses capacity constraints that prevent balanced and fair access to land and its sustainable management.

(3) **Namibian Water Resources Management Review**

The project supports interventions in the water sector that relate directly to rural development and land reform. In future it will focus on integrated water basin management, emphasising land-water linkages.

(4) **Capacity-building for biodiversity, conservation and sustainable natural resource management**

The project will strengthen the capacity of the Ministry of Environment and Tourism in the fields of biodiversity, conservation and sustainable natural resource management in order to make better use of the inherent synergy potential.

(5) **Support to the Geological Survey of Namibia**

The project supports the Geological Survey of Namibia to further strengthen its Division of Engineering and Environment. Geological information is relevant for the optimisation of land use and urban and rural development, for the sustainable use of natural resources and for the protection of the environment at large. Training on the job and scholarships will be part of the capacity-building in environmental geology.

2.1 Aims of German development co-operation

The principle aim of German development co-operation is to help Namibian stakeholders to attain improved access to land and sustainable use of natural resources.

Land policies are important instruments in place to guide the land reform process. These have to be complemented by institutional strengthening as institutional performance is crucial to any achievement in land policy implementation. Support will be provided in these two areas in order to address the land issue in an informed and rational way, and to delineate further action in an agreed action plan. This includes determining land values for different uses and quantifying production potentials, as well as offering assistance towards the implementation of land reform policies and legislation.

Capacity-building is needed for the resettled farmers and service providers, especially in the fields of co-ordinated and integrated extension, human resource development and any support services required to promote innovative sustainable land use. This will be done in close co-operation with existing capacities in the field. A training needs assessment is required and the best institutional arrangements for practical training will be investigated. Current efforts of agricultural unions (NAU, NNFU) and farmer initiatives (e.g. Uhlenhorst) to provide training and capacity-building for resettlement farm families have been reviewed for support. Relevant credit policies in Namibia are to be analysed and commercial partnership models of innovative land use and co-ownership developed. Resettlement support services will be concentrated in selected resettlement areas but not confined to a single geographical region.

The strategy will promote sustainable rural livelihoods and address land issues in communal areas specifically, following a regional rural development approach in selected regions. This approach involves giving special consideration to the decentralisation of land reform implementation to the regional level, and to the establishment and functioning of land boards and land administrative systems. Regional Council structures have to be strengthened to assume new functions assigned to them under the decentralisation policy.

The strategy will generally be aimed at attaining a more equitable distribution of and access to land resources and appropriate service systems for farming communities, especially in northern communal areas.

2.2 Better management capacities for resource use

Training and capacity-building are required both within the MLR and for other stakeholders on integrated land-use planning, with special emphasis on the involvement of communities, and consideration given to gender aspects, the socio-economics of a planned area, and the long-term viability of proposed land-use options. In this field the MLR has already foreseen co-operation with non-state actors to draw on their relevant skills and competencies.

Efforts to manage natural resources through communities and to implement biodiversity conservation are supported. In particular, the strategy will include interventions to enable rural communities in communal areas to manage their land sustainably. The opportunities available to the rural poor need improving so as to strengthen, diversify and sustain their livelihoods, thus they need assistance to set up both farming and non-farming income-generating enterprises. Production of and trade in biodiversity products and services (i.e.

'biotrade'), including strengthening production and value chains as well as access to international markets, are expected to hold significant potential for increased rural incomes.

Mechanisms for involving rural communities in community forest management and conservancies, as well as co-operation with regional stakeholders on land use and land-use planning, will be facilitated. Support will be aimed at fostering appropriate community participation in different aspects of forest management and reconciliation of the interests of those parties with a legitimate interest in forests. It will give specific emphasis to gender and other equity impacts of different forest management options. The threats of land degradation (mainly in communal areas), bush encroachment (mainly in commercial areas) and desertification due to inappropriate land use are to be addressed as a high priority. Restoration of degraded lands may require piloting in selected agro-ecological zones.

The strategy will incorporate aspects of water resource management. Namibia's extreme aridity calls for a joint consideration and close adjustment of land and water issues. In line with Namibia's Second National Development Plan and the provisions of the new water policy, the strategy will address the need for integrated water basin management. Since land and water linkages are an important issue in all activities relating to natural resource management and rural development, this aspect deserves a stronger and more explicit emphasis as a cornerstone of future strategies in the water sector.

2.3 Provision of rural infrastructure

Financial co-operation will be directed to infrastructure development relating to land reform. This will include resettlement projects in commercial areas as well as infrastructure needs on under-utilised land in communal areas. Underprivileged people especially should take advantage of the infrastructure development.

Of particular importance will be the poverty-reducing effects of the infrastructure investments and broadening and diversification of the scope for rural production. Through the infrastructure provided and the promotion of alternative income-generating options, rural communities can take advantage of new opportunities and comparative advantages based on different resource endowments. Farmers, especially small-scale farmers in communal areas, need assistance with appropriate infrastructure in their effort to generate environmentally sustainable increases in production and productivity in the crop and livestock farming sub-sectors.

2.4 Institutional capacity-building for environmental and natural resource management

Support should be offered for systematic information gathering and assessment of the natural resource potential, resource economics, alternatives for land use, and related economic and social conditions, to ensure selection of the best land-use options. These will have to be adapted to the specific agro-ecological conditions. Better environmental information will enable stakeholders to select and introduce those land uses that will best meet the needs of the people, while safeguarding a sustainable utilisation of resources to the benefit of current and future users. Land capabilities and suitability for various land uses in other regions will be assessed to enable the preparation of sound land-use and resettlement proposals, as well as plans for specific land-use options. Further assistance is offered for co-ordination of land-use planning at national and regional level and related capacity-building.

Geophysical exploration and remote-sensing capabilities will be strengthened. This should contribute to a better assessment of water resources available for sustainable production, ground suitability for dam construction or building sites, desertification levels and potential for alternative land uses such as small-scale mining. Groundwater exploration and hydro-geological investigations of selected artesian aquifers will assist in the compilation of a comprehensive information base on groundwater resources and in planning for their sustainable use.

Effective rural service systems need to be put in place. This requires a sound information base and a thorough analysis of rural service systems and effective promotion activities for rural service delivery. This will be supported as a component of the focal area, i.e. promotion of the economy.

Of particular importance will be the exchange and linking of the various information sources within the key government institutions and their regional structures. This applies mainly to the Ministry of Environment and Tourism, the MAWF and the MLR, but also to the various non-governmental institutions.

The strategy will be aimed at improving the living conditions of Namibia's rural population. In particular it will aim to improve livelihoods for resettled people, farm workers, subsistence farmers with and without livestock, emerging commercial farmers, communities in northern communal areas, rural people involved in mixed activities (some on-farm some off-farm), rural communities involved in community-based forest management or conservancies, rural entrepreneurs and formal as well as informal rural service providers. Support measures will be based on a stakeholder analysis.

2.5 Complementarity with other donors

Of paramount importance will be co-ordination with the rural development programme of the European Union (EU). This is facilitated by close links between the EU Delegation and the Counsellor for Development Cooperation of the German Embassy. While preparing for the implementation of the EU programme, the EU requested inputs from all donors in the rural development arena, which allowed for harmonising the support, especially in the area of land reform and sustainable land use. Thus the prospects for effective co-ordination are good and duplication of efforts is unlikely.

The significance of donor contributions is the combined effects of the strategy components chosen, i.e. improved access to productive resources (especially land), better management capacities for resource use (land, water, communal forests, protected areas), provision of rural infrastructure (focusing on land reform), and generating and managing environmental information. These components are expected to make a significant contribution to achieving Namibia's development goals. The strategy can also build on substantial project experiences gained since independence through development co-operation. In terms of aid volume, German development support for natural resource management and rural development is the most significant after EU support.

CHAPTER 8

Conclusions and Recommendations

Summary

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 15 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.

Recommendations

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.

If challenged in court, a criterion compelling the Government to expropriate land based on "the mistreatment and eviction of farm workers" would most likely be found unconstitutional, as it would blend the need to protect farm workers from unfair labour practices and the need for land reform. But the justification for expropriating land on this labour dispute basis would leave 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.

It is therefore recommended that if the Government is serious about protecting the rights of farm workers, it should strengthen its Labour Inspectorate (Omaheke Region, for example, is said to have only one Labour Inspector) and build strong provisions into the labour law to protect farm workers from arbitrary eviction.

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. (Compare with Recommendation 1 on clear criteria.)

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:⁷⁰

- ▶ 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.

⁷⁰ Unpublished findings by Keulder, Odendaal and Hamman, 2004.

- 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).⁷¹
- 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.

In pursuit of such a strategy, funds for settlement should be made available to farm workers in the form of a land acquisition grant, provided that they can prove a partnership with a skilled commercial farmer, while the AALS should be extended to farm workers on condition that they undergo compulsory training.

These proposals strongly resemble the farm worker equity scheme projects successfully implemented in South Africa. In these projects, farm workers qualify for grants (and lower interest rate loans) if they wish to purchase equity (shares) in the farm on which they work or a neighbouring farm in co-ownership with their employer. These projects generally result in increased labour productivity and higher incomes for farm workers.⁷² They also enable the farm workers to acquire the capital and skills they need to become independent farmers over time.

Black professionals who currently qualify for an AALS loan could also be encouraged to participate in such projects. In view of the traditional paternalist labour relations system in place on most commercial farms, farm workers might feel insufficiently empowered to challenge managerial decisions. Such professional participants could serve as mentors for the farm workers, and protect and advance the workers' interest in the joint venture. In particular, black graduates of the University of Namibia and University of Science and Technology (previously named the Polytechnic of Namibia) could be recruited to provide additional services to empowered farm workers.

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

⁷¹ 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.

⁷² J. Hamman, "Black Economic Empowerment in Agriculture", unpublished paper, 2003, at 2-3.

of settlers (beneficiaries) to have gained enough experience and self-confidence to be able to support themselves".⁷³ The LAC research team did not find a single resettlement project to be sustainable after five years. Our opinion is that sustainability can be achieved only 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.

5. Environmental issues

Given the widespread existence of degraded pasture and farming lands in Namibia, it may be necessary for the MLR to build its own capability to restore farms before they are allocated to the resettlement process. Obviously, land with little carrying capacity cannot provide meaningful employment for hundreds of resettlement beneficiaries. 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. Land reform and resettlement policy should be a part of a broader policy of agricultural and rural redevelopment. Thus, greater emphasis should be placed on environmental and land reform policies in order to provide for the rehabilitation of overgrazed and bush encroached land that has environmentally degraded the value of land. Financial assistance in the form of an environmental reconstruction fund should be given priority to help with rehabilitation of 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.

Ironically, the groundwork for this reconstruction can provide both jobs and skills for labourers that can later be used in resettlement projects. It is therefore recommended that land reform must begin with the land, based on a rational assessment of the future potential of each commercial farm selected for resettlement.

6. Including gender issues in land reform

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.

⁷³ Ministry of Lands, Resettlement and Rehabilitation, "White Paper on Resettlement Policy", July 1997, at 9.

It is recommended that the Agricultural (Commercial) Land Reform Act be amended to provide for a set number of women to have representation on the Tribunal. Not only is it desirable for such a provision, but the failure to legislatively commit to preferential treatment for women opens the composition of the Tribunal to a serious constitutional challenge as a violation of Article 23(3) of the Namibian Constitution.

7. 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:⁷⁴

- 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.

8. 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.⁷⁵ The rationale for creating full rights to use land (rather than full ownership of land) is to make leaseholds tradeable or to enable communal and resettlement communities to use

⁷⁴ 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.

⁷⁵ "How to redefine property rights for access to credit", *The Namibian Economist*, 7 July 2005.

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.

9. 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.

Conclusion

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.

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