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THE 2016 LAND BILL: MAKING LAW WITHOUT CONSULTATION AND POLICY REVIEW

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1 Introduction

On November 9, 2016, the Minister of Land Reform tabled the Land Bill for discussion in the National Assembly (Republic of Namibia, 2016). The aim of the Bill is, *inter alia*, to consolidate and amend the Agricultural (Commercial) Land Reform Act, No. 6 of 1995 (ACLRA) and the Communal Land Reform Act, Act 5 of 2002 (CLRA) in order to ensure 'that all land in Namibia has the same status' (Minister of Land Reform, 2016a, p. 3). Six years have lapsed since a first draft of this Bill was submitted to a National Consultative Workshop in Windhoek in July 2010.[1] Exactly two weeks later, the Minister withdrew the Bill after members of parliament expressed their dissatisfaction with the lack of consultation that had taken place over the Bill. The reasons for withdrawing the Bill were 'to allow more time for further deliberations when Parliament resumes' in early 2017, according to a Press Release on the Land Bill by the Ministry of Land Reform (MLR) (Minister of Land Reform, 2016b). The Press Release, which appeared verbatim in some daily newspapers, also invited additional comments from all stakeholders between 15 December 2016 and 16 January 2017, i.e. over the Christmas holidays. This deadline was extended to 16 February.

The Bill was tabled in the National Assembly after the Minister of Land Reform had announced a second national land conference. Several members of Parliament as well as civil society groups called on the Minister to withdraw the Bill, in order to incorporate resolutions to be taken at the proposed conference. The Minister of Land Reform postponed the proposed national land reform conference indefinitely, and withdrew the Bill two weeks after it was tabled on 24 November 2016. This caused the former Deputy Minister of Land Reform to refer to

[1] An IPPR Briefing Paper reviewed the proposed Land Bill in 2010 (Werner, 2010).

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both these actions as failures (Beukes, 2016, p. 2).

1.1 Land policy making and consultation

The advertisement referred to above summarises the history of the Land Bill 2016. It states that 'the objective of the Bill is to respond to land administration needs of all Namibians within the commercial and communal sectors and to close legal loopholes that affected the application (sic) of the Agricultural (Commercial) Land Reform Act of 1995 (Act No. 6 of 1995) and the Communal Land Reform Act of 2002 (Act No 5 of 2002) as amended' (Minister of Land Reform, 2016b). The review of and 'consultations' on these two pieces of legislation started in late 2005, when the MLR hosted the *National Stakeholders Conference to propose amendments to the Communal Land Reform Act, Act No.5 of 2002*. Seventy stakeholders reviewed the Act for three days near Windhoek and came up with a total of fifty-five resolutions. Of these, thirty were adopted and twenty-five rejected (See Werner, 2010, p. 4 for more detail). Not all of the adopted resolutions were incorporated into the 2010 Land Bill, while others appeared in that Bill, but were taken out of the 2016 Land Bill.

In 2008 the Ministry initiated 'an evidence-based consultative process once again that involved community discussions at Constituency, Regional and National levels with all stakeholders'. These 'consultations' were conducted in the languages of local communities and recorded by private consultants (Minister of Land Reform, 2016b)[2]. A legal consultant from the University of Namibia crafted these various inputs into the 2010 Land Bill, which was tabled at the National Consultative Workshop in Windhoek in July 2010.

While the MLR puts much emphasis on its consultation process, the nature of this process raises some questions. The consultant's report on these consultations leaves no doubt that the consultations were highly structured around pre-defined issues in order to obtain specific results. The typical programme of these consultations entailed the following three main parts:

- **'Part I:** Background to the consolidation of the two Acts and explanations to the specific amendments, presented by the technical expert assigned to prepare the draft bill, Prof. SJ Amoo of the University of Namibia.
- **Part II:** Break-away group discussions of the proposed amendments, which participants chose in terms of the primary concerns and interests of their constituents, as follows:
  - Group 1: Proposed definitions; proposed Institutions and the Land Reform Advisory Commission
  - Group 2: Allocation of rights in respect of communal land
  - Group 3: Acquisition of agricultural land by the State; preferential right of the State to purchase agricultural land and restriction on acquisition of agricultural land by foreign nationals
  - Group 4: Expropriation of agricultural land and Land Tax
- **Part III:** Plenary feedback and finalisation of suggested/recommended additions or changes, in response to the proposed amendments' (Consulting Synergies Africa, 2010, p. 4).

The narrow focus of consultations is confirmed by the official documentation of the process. The results have been presented in tabular form, reflecting responses to specific sections and subsections of the legislation. The example from Ongwediva below illustrates the point (Ibid, p.5).

Table 1: Outcomes Ongwediva: Kunene, Ohangwena, Omusati, Oshana, Oshikoto

Section of Act	Issue addressed (amendment)	Concerns/ Focus of discussions
Sec. 2 and 4	Establishment of Regional Land Boards	• The role of chairperson was very important to most participants; emphasis on the appointment of and/or permanence of the portfolio showed that the position may be used beyond its intended influence only.
Sec. 13	Land Acquisition & Development Fund	• Access to and administration of funds at regional level were the focus of discussion. Clearly, participants were encouraged by the prospects of having more funds available locally (in the Regions), but there was concern about administration of the fund at a decentralised level. They were also concerned about the availability of funds for agricultural infrastructure development.
Sec. 21(c)	Land rights for "cluster residential units"	• Clarification of the meaning and definition of this concept took much time and led to debate on the relevance of the concept for "other cultural groups" and their practices.
Sec. 26(2) (c) & (d)	Duration of a customary Land Right (inheritance)	• The determination of which children and how they are to be referred to in the bill was a matter of lively discussion; for some participants the matter of children from polygamous family set-ups were also a point of concern.
Sec. 34 (6) to (9)	Duration of leasehold: inheritance of loans	• Much concern was raised over the obligations related to the loan and the exploration of other avenues of settling the loan.
Sec.51 Land Bill (New)	Restriction on registration of leasehold rights: foreign Nationals	• Debate centered around the possible abuse of the right of foreign nationals to marry Namibians; participants generally felt united in wanting to prevent such abuse. The protection of women's rights was also an issue raised by some participants.
Sec.59 Land Bill (New)	Environmental protection of communal land	• Participants representing the Forestry and Water sectors were at pains to alert others of the importance of aligning legislation with the provisions for protection of these resources.
Sec. 74(2)(d)	Penalties for refusal of consent: state inspection of properties	• Participants enthusiastically addressed the issue of appropriate penalties to discourage such practices.
Sec. 76(3)(a)	Obligation of companies and CC: preferential rights	• Debate centered around the links between new companies and possible interest in/ participation in agriculture.

The fact these consultations were structured so tightly by the MLR suggests that political expediency rather than a meaningful

[2] Several reports about these consultations were circulating. Those with distinct authorship include Consulting Synergies Africa, 2010 (Muenjo, 2010).

review of land issues in the country was the primary objective of this process. This predefined structure did not provide much space for new land issues to be raised during the consultations. Instead, it provided an effective political measure to control what could be raised and what not. To put it simply: because there was no clause on the restoration of ancestral land rights or the protection of rights to commonages, these issues could not be discussed, and hence did not appear in the 2010 Land Bill.

After the National Consultative Workshop, a Special Cabinet Committee on Land and Related Matters (SCCLRM) was set up in 2013 'to examine and provide proposals and recommendations relating to all legal aspects of an effective land acquisition process and recommendations relating to methods of land acquisition, mechanisms to address the escalation of land (urban and rural) process, as well as any other matters incidental thereto' (Minister of Land Reform, 2016a, p. 2). This Committee comprised of members of the Ministries of Presidential Affairs and Attorney General; Finance; Lands and Resettlement; Agriculture, Water and Forestry; Foreign Affairs; Local and Regional Government, Housing and Rural Development; the Governor of the Hardap Region and a member of the Swapo Politburo (Ministry of Land Reform, Ministry of Urban and Rural Development, & Office of the Attorney-General, 2016, p. 4). A Technical Committee was set up to assist the SCCLRM. It comprised of Permanent Secretaries of all the Ministries represented on the SCCLRM except for the Ministry of Presidential Affairs, the Governor of the Hardap Region and the Swapo Politburo member. In addition, the Permanent Secretaries of the Ministries of Environment and Tourism and Trade and Industry served on the TC (Ibid.). Altogether 89 resolutions based on the recommendations of the SCCLRM were adopted by Cabinet on 17 February 2015 (Nandi-Ndaitwah, 2015, p. 5). This information was 'shared with the Nation' at a Press Conference on 10 July 2014 (sic)' (Minister of Land Reform, 2016b).

The absence of a meaningful consultation process in preparation of a land policy and land act has been described by Adams et al (Adams, Kalabamu, & White, 2003, p. 11) as a Cabinet task, which 'reflects political short-term expediency' rather than addressing real land administration and tenure issues. This approach removes policy making from the public eye (Hall, 2012, p. 2).

This is confirmed to some extent by the observation that all major interventions in the land sector did not emanate from the Ministry of Land Reform and its previous incarnations, but from the highest political office. The first land conference in 1991 was organised by the Office of the Prime Minister and the Technical Committee on Commercial Farmland, which reported in the same year (Office of the Prime Minister, 1992), similarly resorted under the PM's Office and was chaired by his Permanent Secretary. The announcement of impending land expropriation in 2004 was also made by the Prime Minister (Harring & Odendaal, 2008, p. 3), to be explained later by the Minister of Lands and Resettlement. Although the Minister of Land Reform announced the second land conference - and postponed it - the initiative arose in State House as part of the Harambee plan.

The peculiar nature of policy development in this country explains the outcry by private stakeholders and members of the National Assembly to withhold the tabling of the Land Bill to allow for more meaningful consultation (See Ngatjiheue, 2017a).

While the Minister's invitation for public inputs into the Bill may be a laudable effort, the question must be asked why the general public and specific stakeholders have not been advised where to obtain the Land Bill as well all the other documentation with regard to public consultations and Cabinet deliberations.[3] Moreover, while the first invitation to provide inputs could be either hand delivered or e-mailed, the notice of extending the deadline to 16 February requires that any inputs and comments should be hand-delivered to the Office of the Permanent Secretary. All these factors restrict the opportunity to make inputs and provide comments to people living in or close to Windhoek – the location of the Office of the Permanent Secretary – or have access to a computer. The vast majority of Namibia's rural population is thus excluded from this process.

Apart from local level consultations, a thorough policy review did not take place, not even after the 2010 National Consultative Workshop.

1.2 Law without a policy

A peculiar feature about passing land legislation in Namibia is that this has happened either without a comprehensive land policy - as was the case with the ACLRA, 1995 - or without a thorough review of the land reform programme since Independence – the Land Bill 2016. After 20 years, this is long overdue, as many things have changed in the communal and urban areas over this period. The National Land Policy of 1997 is no longer likely to address the complex set of land related issues that have either existed already or have developed over the years as a result of government and market interventions. It sets out general policy principles for a more equitable distribution land and an improved land administration and management system, but does not provide guidance on a number of important issues both in the freehold and non-freehold sectors that require policy and legal direction.

When policy was made, it was not based on analysing the specific land issues experienced by different communities across the country. These were identified through surveys in preparation of the Land Conference in 1991 (See Republic of Namibia, 1991). In the case of the CLRA 2002, failure to recognise and analyse some of the complex and subtle differences in land issues across the country has resulted in a 'one-size-fits-all' legal framework that appears to have worked in some regions, was rejected in others and perceived as plain useless in communal areas that depend on extensive livestock farming. The specific issue that caused unnecessary resentment in many communal areas is of course the maximum amount of land that customary land rights holders are able to register. While this improves

[3] A check on the MLR's website (http://www.mlr.gov.na/) on 18 January 2016 revealed that the Land Bill 2016 was not available. Only the CLRA, 2001 could be downloaded, apart from some forms and information booklets.

tenure security on land allocated for residential and cultivation purposes, it does very little to protect the commonages on which livestock farmers across the country depend for subsistence.

It is a truism that good laws depend on good policy. It is therefore strongly recommended that before public comments are invited or the Land Bill tabled in the National Assembly, a thorough policy review of the entire land reform process and its laws is carried out. As recent public debates around the former Deputy Minister of Land Reform seems to suggests, the nation has not even agreed on what the land questions in Namibia is. This has to be the starting point of any policy discussion. The same debates and public spats have also shown that colonial land dispossession primarily of communities that do not practice cultivation as a main agricultural pursuit, is part and parcel of a definition of the national land question in Namibia. How the country should deal with the issues then become a matter of policy. Against the background of this brief discussion one can agree with Adams et al (2003, p. 11) who have argued, 'it is difficult to detect a linear relationship (or any kind of systematic relationship) between the analysis of the problem or opportunity and the assessment of the evidence, the formulation of recommendations and the announcement of the policy change' in Namibia.

The comments by Adams et al arise from their direct acquaintance with policy review and formulation in Botswana, which they argue represent best practice. The country is well known for its regular reviews of policy and legislation through a thorough review and amendment process. A first review of its *State Land Act*, 1966 happened in the early 1980s and was carried out by a Presidential Commission on Land Tenure. In 1989 the *Review of the Tribal Land Act*, *land policies and related issues* was carried out. Another Presidential Commission reported on *Land Policies in Mogoditshane and other peri-urban villages*, while the last large-scale policy review was done in 2002 (Adams et al., 2003). The box below summarises the policy making process in Botswana. Namibia would do well to emulate Botswana's example.

The nature of the policy making process in Botswana

Because of its sensitivity and complexity, land tenure reform is a time-consuming process... progress is dependent on appropriate constitutional and legal frameworks and requires thorough public consultation and careful preparation. For the last quarter of a century in Botswana, iterative policy making in the different sectors, including land, has followed a process extending up to two years:

(i) A commission of inquiry (or an expert review); calls for written submission; public meetings involving a wide range of stakeholders;
(ii) The preparation of a draft report, oral presentations and discussions at a national workshop covered by the media;
(iii) A draft paper which is debated in Parliament;
(iv) The publication of a government white paper setting out the policy change adopted; the recommendations which have been accepted, amended and deferred (or rejected) with justification for government having done so;
(v) Finally, where relevant, the drafting of laws or amending existing laws (Adams et al., 2003, p. 11).

1.3 Policy reviews

At the time of tabling the Land Bill in November 2016, the MLR had started a process of reviewing the National Land Policy of 1997. This process appears to be carried out by a consultant in close co-operation with the MLR. Ideally, such a process should be based on the systematic review of policy strengths and weaknesses based on concrete evidence from the different regions. Specific issues that deserve to be included in a revised land policy and legislation include the following:

- Granting of registered customary and leasehold rights to groups of customary land rights holders. This should be an option to groups of people enjoying customary land rights to commonages in order to protect their rights and investments on the land. The PCLD in the MLR has gained valuable experience in the implementation of communal land development on the basis of registered leasehold for groups of people. These experiences should feed into a policy on this.
- Development of land markets in the resettlement and communal sectors. Transfers in land rights, both customary and leasehold, are happening already, albeit illegally. The absence of legal protection and regulation bears the risk of weaker land rights holders to be treated unfairly. Apart from that, a land market would introduce flexibility into the rigid resettlement model currently followed. It would allow stronger farmers to lease in land additional to their allocation to increase their assets, while allowing those farmers with insufficient livestock numbers and other assets necessary for farming, to remain on their allocation while obtaining an income stream from sub-leasing. Moreover, any registered land right can only become collateral, if financial institutions are able to sell the rights in case of defaulting borrowers. Without a well-functioning land market, this will not be possible.
- The enclosures of communal commonages, commonly referred to as 'illegal fencing', needs to be dealt with at a policy level in order to regularise what is on the ground and to have a consistent approach to individualised commercial farming in non-freehold areas. On the one hand, the legal status of those fences erected in the 1980s and 1990s is unclear and described by many as illegal. On the other hand, the MLR, with support from international partners, is investing large amounts of capital to develop small-scale commercial farms in the Kavango East and West regions on land that was allocated in the early 1990s by respective *hompas*.
- The restitution of ancestral land rights requires review as well. Despite a resolution taken at the National Land Conference in 1991 that ancestral land rights cannot be restored 'in full', the issue continues to simmer, threatening to become more serious by the day. The fact that overlapping land claims prevent a simple solution can no longer be an excuse not to deal with the issue. A national dialogue that includes representatives of dispossessed communities is necessary to come to a negotiated solution.

The list is by no means exhaustive, but illustrates that over

the years, new situation have arisen that require an appropriate policy and legal framework.

Revising existing and drafting new land policy can draw on a reasonably extensive body of consultancies and reports that would help to ease the process. The most recent policy reviews are listed below. The Millennium Challenge Account, through its Communal Land Support Programme, has funded the following studies:

1. A review of policies concerning tenure in communal areas of Namibia (Millennium Challenge Corporation Namibia, 2011).
2. Proposed working policy for group land rights (Communal Land Support Activity) (Millennium Challenge Corporation / Orgut COWI, 2014b).
3. Proposed guidelines for group land rights in communal areas (Communal Land Support Sub-activity) (Millennium Challenge Corporation / Orgut COWI, 2014a).

The MLR has engaged with the recommendations of the first consultancy in some detail (Ministry of Lands and Resettlement, 2011). But only a few, if any, of the recommendations approved by the MLR have found their way into the Land Bill 2016.

In addition to these reviews, the Programme for Communal Land Development (PCLD) in the Ministry of Land Reform has commissioned a number of studies which have a direct bearing on policy development. Titles include the following:

1. Supporting the establishment of Group Rights for the Development of Small Scale Farming areas on communal land in Namibia (2013).
2. Development of a lease management system (2014).
3. Identifying, streamlining and harmonizing existing land rights and access arrangements to provide security of tenure in areas designated for commercialization of land-based production (2015).
4. Conceptual input on group rights to the MLR's Programme for Communal Land Development (PCLD) (2015).
5. Workshop on Land use overlaps in communal areas (2016).

If government's own views on group tenure as laid down in the Draft Land Tenure Policy (Ministry of Lands, Resettlement and Rehabilitation, 2005) is added to this list, a substantial body of work already exists to draft policy on group tenure and tenure security and administration in communal areas for debate by all stakeholders. In addition, numerous consultancy reports carried out for the MLR contain information that could be incorporated into policy.

So why has this not happened? What are the possible reasons for the seeming 'policy paralysis'?

1.4 The politics of not making policy [4]

It is conceivable that the absence of clear policy guidelines is the result of government finding it difficult to address a number of controversial issues or to incorporate proposals that would benefit land rights holders but may have unforeseeable impacts on rural politics. Possible examples include:

- The restitution of ancestral land rights: the complexity of this issue defies easy answers. The challenge is to reconcile the legitimate demands by historically disposed communities to some form of redress with the objectives of national reconciliation, which strives to achieve a unified Namibian nation where all black citizens are equal, regardless of their historical experiences.
- The necessity to create a land market in the small-scale farming sector. By not providing a political and legal framework for the development of land markets and consequent ability to trade land formally owned by the state, the state retains control over its land, much like a commercial farmer. Allowing independent economic and social subjects to emerge on resettlement or communal land, for example, implies that that they are free of state control. The continued use of land to entrench and further develop political patronage, could therefore be at risk.
- The hesitation to provide clear guidelines on how to deal with enclosures of communal land and the related issue of protecting customary land rights of communities to commonages may be related to a fear of upsetting the balance of political power in the rural areas, and in particularly the mixed farming areas of north-central and north-eastern Namibia, where traditional leaders are still strong.

Another possible reason for the absence of a comprehensive policy on land is that the main constituency of the ruling party and a majority of the Namibian population have never been dispossessed, despite political claims to the contrary. Given the relatively low number of dispossessed in Namibia and their low level of organisation, the balance of political power is stacked against the dispossessed minorities of the country, implying that the ruling party does not have to fear any real adverse political consequences for not coming up with a comprehensive land policy.

A comparison of two major events in the mid-1990s will illustrate the importance or otherwise of different constituencies to the ruling party, and hence the balance of power. When the Peoples' Land Conference was held in Mariental in 1994, the highest government official in attendance was the Director of Lands, despite the fact that the Ministers and Permanent Secretary in charge of the Ministry of Lands, Resettlement and Rehabilitation as well as the Cabinet Committee charged with drafting land legislation were invited, but did not appear.

In stark contrast to this, several Cabinet Ministers not only appeared at the Conference on Communal Land Administration in September 1996, but made written inputs (Malan & Hinz, 1997). In the audience were several kings and senior traditional councillors from the mixed farming areas. Such was their power that the MLRR had to hastily amend the draft CLRA, after traditional leaders rejected the proposal

[4] This sub-heading has been borrowed from Hall (2012)

that communal land boards should take over the functions of traditional leaders with regard to land allocations and land administration.

1.5 Land reform and agrarian reform

The lack of a clear policy framework laying down the objectives of transformation and inclusive growth has 'allow(ed) land reform to continue along its present path – of slow progress, unsustainable outcomes and elite capture' (Hall, 2012, p. 3). Small-scale farming, whether in the non-freehold sector or on resettlement farms, generally continues to be characterised by low productivity. The absence of an updated policy creates the space for short-term political expediency rather than meaningful change to dominate the discourse on land reform. The MLR will continue to chase numbers to prove that its targets are met: in the resettlement sector the number of hectares bought and people resettled and in the non-freehold sector the number of customary land rights registered. Little regard is had as to 'to whether this serves the interests on inclusive growth or poverty reduction' (Hall, 2012, p. 3). In its 1998/1999 Annual Report the Ministry of Lands and Resettlement referred to a 'paradigm shift in its search for an integrated and sustainable resettlement programme', suggesting that it was not satisfied with the way resettlement was going (Annual Report 1998/1999, p33).

The primary reason for this state of affairs is that government has separated land and agrarian reform. This refers to the transformation of existing agrarian structures to serve small-scale farmers in an integrated manner and provide them with adequate support. Small-scale farmers in communal and freehold areas need better extension services, access to markets and agricultural inputs, training and clear, secure land rights to ensure that their land is used more productively. The general lack of capital and cash flow confines small-scale farming to little more than subsistence agriculture. It needs to be emphasised in this context that registered leasehold or customary land rights will not automatically turn land into meaningful collateral and hence open opportunities to obtain loans. Apart from the fact the there is no land market for small-scale farmers leasing land from the state, the vast majority of small-scale farmers is not likely to have the necessary income streams to service agricultural loans. Alternative forms of finance therefore need to be thought about.

Objectives of the Land Bill

(a) to address, in accordance with the Namibian Constitution, injustices of the past which included dispossessions, discrimination and inequitable access to and unequal distribution of land under colonialism and apartheid;
(b) to provide for a unitary land system, where Namibian citizens have equal rights, opportunities and security with regard to land, irrespective of where the land is situated;
(c) to make special provisions in the allocation of land to Namibian citizens who -
(i) do not own or otherwise have the use of any or of adequate land, and most importantly to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices in accordance with Article 23 of the Namibian Constitution;
(ii) are unemployed, incapacitated, indigent and disadvantaged in accordance with Article 95(g) of the Namibian Constitution, to ensure a decent standard of living which recognises their inherent dignity as members of the human family;
(d) the commitment of the nation to land reform and reforms to bring about equitable access to the natural resources of Namibia, in order to address the results of racial discriminatory laws or practices made under colonialism and apartheid;
(e) to ensure that there is established an independent, expeditious, cost effective and just system for adjudication of land disputes which will hear and determine land disputes fairly and without delay;
(f) to ensure the productive use of land in compliance with the principles of sustainable use for the benefit of present and future generations in accordance with Article 95 (l) of the Namibian Constitution;
(g) to ensure that payment of just compensation for expropriation of property must reflect an equitable balance between the public interest, which includes the nation's commitment to land reform and the rights of those affected; and
(h) to provide for an efficient, effective, economical and transparent system of land administration and accountability of public officials.

Source: Republic of Namibia, 2016, p. 11

2 The Land Bill, 2016

The Land Bill 2016 seeks to consolidate and amend the two major pieces of legislation that have governed land reform so far: the Agricultural (Commercial) Land Reform Act, Act No. 6 of 1996, as amended (ACLRA), and the Communal Land Reform Act, Act No 5 of 2002 (CLRA). The remainder of this report will review the provisions of the Land Bill 2016 against the original laws.

It is appropriate as a matter of introduction to be reminded of the objectives of the Land Bill. These are presented verbatim below.

The report makes no claim to be exhaustive, but serves to highlight possible contradictions, omissions and innovations, with the occasional attempt to provide an analysis of the reasons for changes.

The remainder of the report will also not deal with gender issues in the Land Bill 2016. This has been done very competently by the Legal Assistance centre and should be read in conjunction with this report (Gender Research and Advocacy Project, 2016).

2.1 Communal land

2.1.1 Land Boards

Communal land boards (CLBs) were created in the CLRA, 2002 to improve the administration of customary land rights and to provide oversight in the granting of leasehold rights. Records of registered land rights are kept by CLBs. A proposal in the Land Bill 2010 to transform CLBs into Regional Land Boards was dropped in the Land Bill 2016.

The current Bill does not propose major changes in the powers and functions of Communal Land Boards (CLB) as provided for in the CLRA, 2002. The only proposed change is that customary land rights, rights of leasehold and occupational rights which have to be entered in a register established and maintained by CLBs, should be registered in accordance with the Deeds Registries Act, No 14 of 2015 'after such communal land has been surveyed'.

Secondly, CLBs are proposed to 'consider and resolve land disputes or refer them to appropriate authorities' (Section 5(e)). While many CLBs have performed such services in the past, they were never given those powers in law. While this may amount to a formalisation of what has been going on anyway, it will make it easier for marginalised groups and women to approach Land Boards to solve disputes, particularly land disputes (Werner, 2008b, pp. 24–25).

The proposal made in the Land Bill of 2010 to rename CLB Regional Land Boards (RLB) has been reversed in the Land Bill 2016. The functions of RLBs amounted to a meaningful decentralisation of the resettlement programme, as they included the selection of beneficiaries for resettlement', the identification of appropriate land for acquisition and allocation in the regions and the monitoring of resettlement farms and regional resettlement projects (Werner, 2010, p. 6). A possible explanation for this may be a political concern that in those regions, in which historically dispossessed communities are the majority, the principle of settling people from all 14 regions on land acquired for resettlement, might have been at risk. To rephrase this in the current debates on restitution: the proposed regional resettlement committees might have introduced the restitution of ancestral land rights through the backdoor.

With regard to their composition, CLBs should now include a representative of the Ministry of Justice as well as the Chief Regional Officer and the regional head of the MLR. The Chief Regional Officer must be a member, although not necessarily the Chairperson. Chairperson and deputy chairperson must be elected by members of the Board. If the Chief Regional Officer is unable to attend a meeting, the Minister will appoint a substitute after consultation with the Chief Regional Officer concerned (Section 6). The Land Bill 2010 proposed to make Regional Land Boards more representative, by including the National Youth Council, Community Based Natural Resources Management bodies and a person nominated by NGOs. These proposals have not been included in the Land Bill 2016.

The CLRA 2002 provided for CLBs to establish committees to advise the Boards on any matter which they refer to such committees. In contrast to the CLRA, the Land Bill proposes that a CLB may co-opt into the membership of any committee people whose knowledge and skills may benefit the committee's deliberations. However, in terms of Section 10(3) a Board 'may at any time dissolve or reconstitute a committee'. This provision gives Land Boards the power to dissolve a committee if its findings and recommendations do not suit CLB members.

Remuneration of CLB members who are not in full-time employment of the State will be determined by the Minister of Land Reform with the concurrence of the Minster of Finance. Expenditures of CLB will be paid from monies appropriated by Parliament and from the Land Acquisition and Development Fund (Sections 12 & 13).

2.1.2 Powers of traditional authorities

Traditional authorities continue to play a central role in the allocation and cancellation of customary land rights as well as in the proclamation of designated areas and the granting of leaseholds. The Land Bill proposes, however, that such allocations or cancellations are subject to ratification by the CLBs, something that has been the practice all along, but was not explicitly required by law (Section 22(1)). The same section also introduces improvements in accountability of traditional leaders with regard to the allocation and cancellation of customary land rights. Amongst other things, the Section proposes to give applicants of customary land rights the right to request the services of an arbitrator in the event of a traditional authority refusing an application while, in the opinion of the CLB, it should have been granted. If the request is granted, an arbitrator will be appointed by the Minster of Land Reform.The arbitrator must be approved by both the responsible land boardand traditional authority. If, after arbitration, the aggrieved party is still dissatisfied, it may appeal to the Lands Tribunal within 30 days. The High Court will be the court of last appeal, if the aggrieved party is not happy with the outcome of the deliberations of the Lands Tribunal.

The same opportunities to appeal do not apply in the event of a customary land right being cancelled by the traditional authority. Section 29(3) in the Land Bill simply states that customary land rights may not be cancelled before the traditional authority has provided the holder in writing with the reasons for a cancellation. The holder then has 21 days to show reason why the cancellation should not go ahead. The Land Bill does provide the same avenues for remedies as in the case of an application for a customary land right.

The Land Bill 2016 strengthens the rights of customary land rights holders and applicants to either formally appeal decisions that they do not agree with, or make appropriate representations. An example of this would be changes to communal land areas – either their enlargement or decrease – as envisaged in Section 18. Amongst other things, the President must invite objections from persons who will be affected by such changes. Affected persons may also make representations to the National Assembly through the Minister of Land Reform, 'and the National Assembly must take such representations into account when acting' on a request by the President to affect changes to communal areas.

The provisions to appeal decisions by traditional authorities and representations about changes in the size of communal areas flow from the attempt to create a unitary legal system in the land sector in Namibia. It is not clear how these will be implemented in practice. Aggrieved parties must have all the procedural information contained in the law to make use of these provisions. In addition, they must be able to read and write and have the means to deliver their requests or appeals to the right office. To physically access these different options of relief may turn out to be practically impossible for many rural households. Moreover, while these proposals are likely to help many aggrieved parties to get justice, the Land Bill 2016 still does not propose mechanisms which would improve transparency and accountability of traditional leaders downwards, i.e. regarding their subjects. The observation made in 2010 that 'there is nothing in the original and proposed new law that compels traditional authorities to consult members of the traditional communities they represent about decisions with regard to land transactions' (Werner, 2010, pp. 8–9), still holds true with regard to the Land Bill 2016. Such provisions are necessary to prevent customary land rights holders from losing their lands to big agricultural projects without their consent or likely future benefit.

The implementation of the CLRA 2002 was hampered in those areas without recognised traditional leaders/authorities. A traditional authority needed to be recognised in terms of the Traditional Authorities Act, No. 25 of 2000 in order to exercise the powers and functions provided for in the CLRA 2002. Section 61 of the Land Bill 2016 provides a solution in that provides for CLBs to take decisions 'which in terms of this Act could have been exercised by a traditional authority'. Ratification of a decision taken by a CLB will be done by the Minister.

2.1.3 Customary land rights

The CLRA 2002 recognises two forms of customary land rights: the right to an area on which a person can farm, the farming unit, and a residential unit (Ueitele, J., 2016, p. 11). The CLRA did not specify the content of customary land and resource rights (Werner, 2010, p. 14). The Land Bill 2016 addresses some of these concerns by proposing the nature of customary land rights, which includes where they may apply, by what rules they should be governed and who they apply to. These provisions are contained in Section 23, which is a new section. The Section contains some important changes from the previous 'one-size-fits-all' approach to customary tenure, which characterised the CLRA 2002, by recognising local customary practices. The section states, inter alia, that

(a) 'Customary land rights may
(b) be applicable to a specific area of land and a specific description or class of persons;
(c) be governed by rules generally accepted as binding by the class of persons to which it applies;
(d) be applicable to any person acquiring land in that area in accordance with those rules;
(e) apply local customary regulation and management to individual and group ownership use and occupation of and transactions in land;
(f) provide for communal use of land;
(g) customary land rights may provide for parcels of land that may be recognised as subdivisions belonging to a person, a family or a group of families having business or residence in the area where the land is situated'.

The Section further stipulates that customary land rights are held in perpetuity and may be inheritable and transmissible by will.

Section 31 of the Land Bill dealing with Commonages spells out a number of specific rights that may be exercised on commonages. These are

(a) the grazing and watering of stock;
(b) fishing and hunting in established conservancies;
(c) the gathering of wood fuel and building materials;
(d) the gathering of forest resources for food and medicinal purposes; and
(e) such other purposes as are traditionally accepted by the community
(f) using the land communally.

The recognition of local customary practices and provisions for the application of local customary regulation and management of the use of land appear to be contradicted by powers given to traditional authorities to make rules with regard to the management of commonages in consultation with CLBs and traditional communities. This implies that in contrast to the CLRA 2002, the Land Bill recognises localised customary laws and practices and seeks to ensure that traditional communities are consulted in terms of making management rules. But traditional authorities rather than local level land management structures retain the powers to allocate and withdraw any rights to commonage resources subject to following a specific procedure, which allows the alleged transgressor 'to make representations why the right should not be withdrawn' (Section 31(4, 5). Recognition of local customary management and regulatory practices does require a legal framework to ensure that a number of fundamental principles regarding equity, accountability and transparency are observed.

2.1.4 Group tenure

Formal customary land rights to land used by groups of people did not receive any attention in the CLRA 2002. Arguably, only 21(c) of the CLRA 2002, which gave powers to the Minister to recognise 'a right to any other form of customary tenure that may be described by the Minister by notice in the Gazette', might have allowed groups of people to apply for formal group tenure.

The Land Bill 2016 continues to refer to group tenure only implicitly, resulting in considerable ambiguity. Section 23(d), as cited above, recognises group tenure and Section 27(1)(a) provides for the registration of group rights 'where they occur'. However, Section 24(1) which deals with the application for customary land rights, only refers to 'a person applying', but not groups.

For group rights to be effective, the law must lay down in detail who and under what conditions people can apply for formal

group tenure. Mechanisms need to be established for inclusive decision making (Millennium Challenge Corporation / Orgut COWI, 2014b, p. 9). These could take the form of grassroots *Commonage Land User Associations* as proposed by the National Stakeholders Conference in 2008 (Werner, 2010, p. 9) or *Rural Land Management areas* (Millennium Challenge Corporation Namibia, 2011, pp. 19–22).

Legislation on conservancies and community forests are good examples to follow in drafting legislation for group tenure. The respective Acts prescribe what legal requirements need to be fulfilled before conservancies or community forest can be registered. Clear governance structures need to be in place as well as constitution. None of this is in the Land Bill 2016, but needs to be addressed urgently.

The MLR has been vacillating on the group rights issues for many years. Apart from the fact that the Land Tenure Policy has remained a draft ever since it has been approved by the Minister in 2005 (See Werner, 2010, p. 13), the Ministry of Lands and Resettlement rejected proposals to establish *Customary Land User Associations* in 2005 (Werner, 2010, p. 5). However, in 2011 it accepted recommendations to establish *Rural Land Management Areas* as 'a good idea… for protection of group rights for sustainability and "allocation discrepancies"'. The MLR went further in its support for the idea by suggesting that more research should be carried out to identify weaknesses of existing structures and to make recommendations on how these could be improved to carry out the tasks associated with group management (Ministry of Lands and Resettlement, 2011, p. 7).

2.1.5 Application for customary and rights

Section 24 of the Land Bill 2016 seeks to make the allocation of customary land rights more transparent than in the past. Applications still have to be made in writing, which begs the question how people who cannot read or write will do this. The Land Bill 2016 proposes that written applications must be displayed 'for a period of at least 21 days on a notice board at the offices of the traditional authority and of the board concerned to enable interested parties to raise objections. In addition, a traditional authority must cause such applications to be broadcast on any radio station broadcasting 'in its communal area', and cause it to be published in a newspaper circulating in its area, all at the cost of the traditional authority. If objections are raised, the traditional authority must conduct a hearing to afford the applicant and objectors an opportunity to argue their cases. On the basis of such a hearing a traditional authority may either grant or refuse an application, but has to keep records of the proceedings.

An application fee will have to be paid into the community trust account and not to the chief as proposed in the Land Bill 2010 or the Land Acquisition and Development Fund (LADF). A significant departure from the CLRA 2002 is that the Land Bill proposes that 'a traditional authority may charge a fee that is customarily charged in the area for the allocation of a customary land right, but the fee may not exceed the fee as may be prescribed' (Section 24(11)). This proposes to make it legal again for traditional leaders to receive payment upon the allocation of a land parcel, a practice that is widely reviled.

The determination of maximum customary land sizes that can be registered will, in terms of the Land Bill 2016, now be determined by the Minister of Land Reform with the consent of the minister responsible for agriculture (Section 25). Previously, consultation between the two ministers sufficed.

Current practice with regard to registering customary land rights is that the CLB causes such a right to be registered and to issue to the person a certificate of registration. The Land Bill 2016, in Section 27, replaces the term 'certificate of registration' with 'certificate of registered title'. It also proposes that CLBs must provide a copy thereof and a plot diagram to the Registrar of Deeds for recording and safekeeping in the deeds office. The Bill 2016 concludes the Section 27 by stating that 'the customary land rights granted under this Act are registered in accordance with the Deeds Registries Act'.

2.1.6 Fencing

In his motivation statement, the Minister of Land Reform stated that one of the factors hampering the registration of customary land rights was 'illegal fencing' and argued that the Land Bill introduced amendments of the CLRA which would 'ensure a transparent and accountable communal land administration system', which would ultimately address issues of security of tenure in communal areas (Minister of Land Reform, 2016a, p. 7).

The provisions on fences in communal areas are befuddled by the absence of a definition of fences in the Land Bill 2016. Section 20 of the Bill categorically prohibits the erection of fences 'on any portion of land situated within a communal area', except after having obtained permission from the CLB. Section 30 (6) makes provision for people to apply for the retention of fences. If CLBs are satisfied that a fence 'was erected in accordance with customary law or any other law (and) does not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community (and) in the circumstances of the particular case, reasonable grounds exist to allow the applicant to retain the fence or fences concerned', they must authorise the retention of a fence.

Although not stated explicitly, it must be assumed that only land which does not exceed the prescribed maximum size may be fenced. Section 31(12), however, prohibits any exclusive grazing rights or the fencing off of land reserved for grazing, except where such land is in a designated area.

The provisions in the Land Bill 2016 on private enclosures or 'illegal fencing' of communal grazing areas for private, small farms on communal land, are inadequate to deal with the issue. In view of the highly ambiguous policy and legal provisions before Independence, the legality of fences on commonages is a contested issue and range from legal to completely illegal (See Werner, 2011). A new Land Act must contain provisions that all fences on commonages exceeding a specific size should be subjected to a process of adjudication to determine their legality. The mechanisms for such a process exist in the CLRA 2002

and are included in Section 46 of the Land 6. Currently, the law does not make it obligatory to adjudicate any rights claimed to fenced land in communal areas. An investigation provided for in Section 46(1) can only be done by the Minister 'with consent of a board'.

Section 1.3 touched very briefly on the need to regularise enclosures of large tracts of commonages. But it requires political will as anecdotal evidence suggests that many senior politicians and Cabinet members have acquired fenced farms on communal land after Independence, which would run the risk of being found to be illegal.

2.2 Agricultural land

To a large extent, the provisions in the Land Bill 2016 concerning agricultural land, or more accurately, freehold land that is targeted for acquisition and redistribution by the state, have remained unchanged. Like the ACLRA of 1996, the Bill has chapters on the Land Reform Advisory Commission (LRAC), the preferential right of the state to purchase freehold land for redistribution, the expropriation of freehold land, the allotment of land acquired by the state, the rights of foreigners to buy land as well as the Lands Tribunal, the Land Acquisition and Development Fund (LADF), land tax and its related service, land valuation. Comments in the following section will be limited to sections of the Land Bill that deal with aspects of resettlement.

2.2.1 Land Reform Advisory Commission

The importance of the LRAC in the land reform process was emphasised in the judgement in the Kessl court case (See Harring & Odendaal, 2008). The judge argued that the Commission was essential 'in making a "sound administrative judgement" with regard to the sustainability of a particular piece of land for redistribution'. This was particularly important in view of the fact that 'the required information on the farms, even if gathered properly, is complex and difficult to interpret' and 'the range of practical experience represented on the Commission was necessary to evaluate the information and make sound recommendations' (Harring & Odendaal, 2008, p. 18 as cited in Werner, 2010, p. 17).

The Land Bill 2016 proposes to weaken the mandate of the LRAC by absolving the Minister from consulting and receiving recommendations from the Commission in several matters related to agricultural commercial land, thus giving the Minister wider powers. A few examples will illustrate the point.

Section 3 of the ACLRA 1996 as amended, gives powers to the LRAC 'to investigate and consider, either of its own accord or upon a request by the Minster, any matter relating to the exercise of the powers of the Minister under this act and to make recommendations to the Minister in connection with any such matter'. In the Land Bill 2016 this has been replaced by Section 64(a) which states that the Commission shall 'deliberate and recommend to the Minister upon [a] request by him/her on matters related to agricultural commercial land'. The Section thus takes the Commission's sovereignty to investigate matters on its own accord away, by stating that this will only be done 'upon a request by the Minister'.

A similar proposal is made with regard to the inspection of agricultural land to be acquired by the state. The ACLRA 1996 vested powers to inspect such land in the LRAC. It was the competent body to authorise any person to inspect a farm if it 'considers it necessary or expedient for the performance of its functions under this Act' (Section 15(1)). Section 76 of the Land Bill 2016 transfers these powers to the Minister who may delegate them to his/her Permanent Secretary.

The Land Bill 2016 also gives the Minister more powers with regard to the allocation of resettlement land. In terms of Section 36 of the ACLRA 1996, the Minister could only allocate land 'after consultations with the Commission'. The Land Bill 2016 has removed this obligation, stating that the Minister 'may allot to any person or group of persons' land for resettlement (Section 95). However, in cases of insolvency of a beneficiary or death and mental illness, the LRAC must make a recommendation to the Minister as to who the lease should be assigned to (Sections 107, 108). Applications to purchase allocated resettlement land (see section 3.1.1) in terms of Section 109 have to be referred to the Commission for scrutiny and a recommendation.

Procedures for sub-dividing commercial farms for reallocation to resettlement beneficiaries, are proposed to change. Section 96 of the Land Bill 2016 now requires the concurrence of the Minister responsible for agriculture to decide on sub-divisions, i.e. minimum farm sizes. The ACLRA 1996 only required the Minister of Land Reform to consult with the minister responsible for agriculture (Section 38). The latter also provided that sub-divisions of freehold farms could only happen 'in accordance with a partition plan prepared and recommended by the Commission' (Section 38(2)). The Bill 2016 leaves open who should prepare a partition plan, except to say that subdivision of land must 'be carried out in accordance with a partition plan approved by the Minister' (Section 96(2)).

The Land Bill 2016 thus provides little guidance on how minimum farm sizes should be determined. It must be assumed that the intent to require the consent of the Minister of Agriculture is to ensure that farm sizes are not smaller than a minimum threshold required to generate revenues sufficient to improve the livelihoods of beneficiaries and pay for maintenance and investments. Moreover, sub-divisions should be consistent with the provisions of the sub-division of Agricultural Land Act, No 70 of 1970, by relating them to specific agro-ecological regions. It is common knowledge that none of this has happened in the past.

The target incomes of beneficiaries are not a purely technical issue. Socio-economic and political factors need to be considered when determining whether annual income targets should be set at the level of a government Director, Deputy Director or lower. This needs to be negotiated between all relevant stakeholders. The LRAC provides an appropriate forum where this could happen. To date, political expediency has determined minimum farm sizes, which are too small in most cases to be fi-

nancially sustainable, but certainly push up the numbers of resettled beneficiaries. The establishment of acceptable income targets is essential to determine how much land a beneficiary needs in a particular agro-ecological region to achieve those targets during a normal year.

The powers of the Minister of Land Reform to expropriate freehold land for purposes of redistribution are retained in the Land Bill 2016. However, the LRAC no longer seems to play a role in the decision as to what land to expropriate. By contrast, the ACLRA (Section 20) stated that the decision of the Minister to expropriate should follow consultations with the LRAC.

A significant change proposed with regard to the composition of the LRAC is that organised agriculture – the Namibia Agriculture Union and the Namibia National Farmers Union - will no longer be represented on the LRAC (Section 65). Section 4(1)(e) of the ACLRA 1996 required 'two persons nominated by each of such associations or bodies involved in agricultural affairs' to be members. Instead, a staff member of the Agricultural Bank of Namibia as well as a staff member of the ministry managing environmental affairs are proposed to become members.

Five out of the total 13 proposed members of the LRAC will be recruited from outside the Public Service. Apart from the stipulation that at least three of these will be women, the Bill also proposes that they should 'have knowledge and experience' in the fields of land surveying and valuation, agricultural economics and land management and administration as well as any other field the Minister may determine. In terms of the ACLRA 1996, the Minister appointed all members with the exception of members from outside the Public Service, who could be appointed only with the approval of the National Assembly (Section 4(1)).

By contrast, the Land Bill 2016 proposes that these five members will be selected after having advertised these positions by notice in the Gazette and 'at least two local newspapers circulating nationally'. Interested persons who comply with the requirements must apply in writing. As the Land Bill is not specifying how candidates will be selected, it must be assumed that this decision is left to the Minister. All members of the LRAC must take an oath or solemnly affirm that they will 'administer justice to all persons alike, without fear, favour or prejudice, and as the circumstances in any particular case may require, in accordance with the law of the Republic of Namibia' (Section 65(6)).

The prohibition on publication or disclosure of confidential information obtained by members of the LRAC in the performance of their duties, except with the written consent of the Minister, is retained in the Bill (Section 72).

2.2.2 Land acquisition

In terms of Section 78(7) of the Land Bill 2016, the LRAC must consider an offer of sale and make recommendations to the Minister within a specified period of time. A provision contained in Section 17(5)(A)(a) in the amended ACLRA 1996 that a seller of land may withdraw such an offer has been omitted in the Land Bill 2016. Instead, if the Minister considers the purchase price to be excessive, (s)he will provide the seller with a written counter offer. A negotiating committee will be appointed 'to negotiate a purchase price with the owner'. The Committee consists of 6 staff members of the Ministry and any invited person 'whose presence is in its opinion is desirable'. While being allowed to partake in the deliberations of the commission, such an invited person may not partake in the decisions. If the negotiating committee fails to reach an agreement that is acceptable both to the seller and the Ministry, the owner may apply to the Lands Tribunal 'for the determination of the purchase price' (Section 78(9-12).

Section 78(17) allows the Minister and seller to withdraw from the transaction 'before the land is transferred' if there are satisfactory reasons and the seller is a Namibian citizen.

The Land Bill 2016 appears to formalise the practice that land owners who sold their land to a previously disadvantaged Namibian under the Affirmative Action Loan Scheme were not required to obtain a certificate of waiver. The result of this practice, which was never formally expressed in a policy document, was that AALS buyers were able to snap up the best agricultural land, as owners did not have to offer it to the state first as the ACLRA 1996 required (for a discussion of this see Werner, 2008a). The MLR and popular opinion blamed the willing seller – willing buyer principle for the fact that the MLR ended up not only with too little land, but in many cases with land of lesser quality. Section 78(4)(c) now legalises this practice. This boils down to the formalised prioritisation of the interests of the socio-economic elite, by enabling them to have the first pick on agricultural land offered. Resettlement beneficiaries often end up with the crumbs, so to speak, as the MLR is forced to buy land that is not attractive to AALS buyers on account of its quality (See Werner, 2008a).

Curiously, Section 75(2)(d) of the Land Bill 2016 reintroduces Section 14(2) of the ACLRA 1996, which set out specific categories of land that the Minister may target for acquisition. These include land in excess of an economic farming unit, land owned by absentee owners and land that is underutilised or abandoned. The original Section was repealed in 2002.

The reasons for reintroducing these categories are not clear. The state has never made use of them when they were still part of the law in the latter half of the 1990s. Targeting such land sounds reasonable in the Namibian context, but implementation is more complex. To give one example: at what level is a farming unit considered underutilised, given that sustainable farming practices in variable environments, like most of Namibia's extensive livestock farming areas, require that a certain percentage of grazing is set aside as reserve grazing? Sustainable stocking rates would have to be determined for each agro-ecological region. Similarly, the definition of an absentee owner requires a consistent definition, given that many previously disadvantaged Namibians, who bought farms under the AALS, can be considered as absentee farmers. Economic farming units would also have to be determined for each

agro-ecological region. Land which is not utilised for economic purposes is the easiest to define but does not feature in the relevant section.

The Land Bill 2016 proposes a greatly expanded section on the inspection of agricultural land to determine its suitability, should the Minster consider this to be necessary or expedient. Amongst other things such an inspection should investigate the current use and value of the land, its suitability for resettlement, 'the extent of direct state investment and subsidy in acquisition of the land and any beneficial capital improvement of the property, the history of acquisition and use of the land' and other relevant factors (Section 76(1)). In order to carry out an inspection, duly authorised people may require the owner, tenant or occupier of the land to provide any document which the inspector 'reasonably requires' (Section 76(2).

The phrase 'extent of direct state investment and subsidy in the acquisition and beneficial improvement of the property' re-appears in Section 89(1)(c) which sets out the basis on which compensation is to be determined in the event of expropriation. The only possible intention of this proposal is to discount the price demanded by an owner for his/her farm by the amount of state subsidies received. Once again, the implementation of this provision will present serious challenges. The same requirement does not exist for the valuation of farms for land tax purposes (See Section 141(6)).

It is not immediately apparent what value the detailed information stipulated in the Bill will add to the assessment of commercial farms, particularly in view of the fact that it will not be obligatory to gather all the data. It will be necessary 'where the Minister considers it necessary or expedient'. The analysis of the data will require skills and time, all of which is likely to further delay land acquisition.

2.2.3 Resettlement

The Land Bill 2016 lays down in more detail than the amended ACLRA 1996 who the beneficiaries of land acquired for resettlement should be. Beneficiaries are mentioned generically as previously disadvantaged who do not have the beneficial use of agricultural land. No attempt is made to put an end to elite capture of resettlement benefits, for example by introducing income ceilings (Section 75). No reference is made to those Namibians who have lost their land as a result of genocide and colonial dispossession. It should be recalled that the restitution of ancestral land was not completely ruled out during the Land Conference in 1991. Resolution 2 dealing with Ancestral Rights states that 'restitution of such claims in full is impossible' (Republic of Namibia, 1991, p. 31).

Overlapping claims to ancestral land present a formidable challenge in this regard and no ready solutions exist. However, to have used these problems as justification to drop restitution from the national political agenda is not likely to make the issue disappear, as recent public anger has shown. The challenge is to negotiate a political solution that reconciles the demands of the dispossessed and those whose access to land was curtailed by the previous dispensation with the overall aims of national reconciliation, which seeks to forge a Namibian nation by moving away from particularistic interests.

2.2.4 Regional resettlement committees

The Land Bill 2016 proposes to establish regional resettlement committees. While the ACLRA 1996 in Section 9 provided for the establishment of committees by the LRAC 'to inquire into and to report to it in regard to any matter falling within the scope of the functions of the Commission or to assist the Commission in the exercise of such of its powers or the performance of such of its duties or functions under this Act as the Commission may delegate or assign to it', Section 70 of the Land Bill 2016 explicitly provides for the establishment of regional resettlement committees to assist the Commission in its duties and functions, thereby formalising a practice that had existed for several years.

This introduces some ambiguity, as the section setting out the powers and functions of the LRAC does not include any competencies with regard to the selection of beneficiaries. Presumably, its involvement in the process is at the Minister's behest. Inviting the LRAC to consider applications would improve transparency to some extent.

But more crucially, the Land Bill fails to spell out what the powers and functions of these regional resettlement committees should be. Are their powers only to make recommendations or are their decisions binding, subject to review by the LRAC and the Minister? This is a pertinent point, as some regional resettlement committee have complained in the past that their recommendations were frequently overturned by the LRAC and or the MLR in Windhoek without providing reasons.

In addition, the Bill is not specific on how the proposed 11-19 members will be selected and appointed, except to state that regional resettlement committees will be chaired by regional governors, and 'one or more members' designated by the Commission 'and, if the Commission considers it necessary, one or more other suitable persons who are not members of the Commission' (Section 70).

In view of the fact that the selection of beneficiaries has given cause to major dissatisfaction in the past, the Land Bill should have included provisions aimed at achieving greater consensus and transparency in the process.

2.3 Foreigners

The ownership of agricultural land by foreigners in Namibia continues to stir up political emotions. It is not surprising that previously disadvantaged Namibians who demand access to farming also demand that the ownership of land by foreigners be strictly controlled, if not prohibited. Sections 114 to 119 deal with the prohibition on acquisition of agricultural land by foreign nationals.

In his motivation statement in the National Assembly, the Minister of Land Reform hailed the prohibition on the acquisition of agricultural land by foreigners in Section 114 of the Land Bill as one of the most prominent amendments of previous legisla-

tion (Minister of Land Reform, 2016a, p. 8). This amounts to an overstatement, as the Land Bill presents no amendments of the provisions dealing with foreign ownership in the ACLRA 1996 as amended. To be sure: foreigners may still acquire agricultural land in Namibia, provided the Minister has given his/her written approval. Section 114(6) lays down specific conditions a foreign applicant must fulfil before the Minister may consent. These include that the foreign owner will contribute to economic development, inter alia, by 'increasing employment opportunities, providing training for Namibian citizens, earning or saving foreign exchange or generating development in the less developed areas of Namibia'. The aim of these provisions is to strike a balance between demands by previously disadvantaged Namibians for improved access to agricultural land and continued foreign investment in the agricultural sector.

There can be no question that foreign ownership of freehold agricultural land must be discussed. At the same time, the extent of foreign land ownership, and in particular its seeming decline since Independence, suggests that the issue is being used to blame internal failures on foreign landowners. Providing considerable detail to the press on the extent of the problem, the Director Land Reform, Mr. Peter Nangolo, stated in August 2016 that 247 farms measuring 1,2 million hectares were owned by foreigners (Nakale, 2016). If these official figures and those presented to the National Conference on Land Reform and the Land Question in 1991 can be believed, foreign ownership of agricultural land shows a decline from a total of 382 farms (6.1 per cent of the total) measuring 2,96 million hectares in 1990 to the current 247 (Republic of Namibia, 1991, pp. 126, 135).

2.4 Right to appeal: the Lands Tribunal

Appeal Tribunals as provided for in Section 39 of the CLRA 2002 have been abolished in the Land Bill 2016. It widens the jurisdictions of Lands Tribunals to 'adjudicate upon all land related disputes and matters' (Section 124(2)(a). While this is a good decision in principle, access to the Lands Tribunal may prove to be a major issue for many small-scale farmers in the non-freehold and freehold areas, particularly in view of the fact that appeals have to be made within a prescribed period of time.

Composition of the Tribunal has been increased from five to seven members. It is now chaired by a Judge of the High court and seven additional members with at least 10 years' experience in law, economics and finance, agriculture, customary law, social sciences, valuation. They must be approved by the National Assembly (Section 120).

3 The Land Bill and economic transformation

Land reform, and in particular redistributive land reform, is aimed at bringing about economic transformation in order to uplift previously disadvantaged Namibians by integrating them into the wider economy (Ministry of Lands, Resettlement and Rehabilitation, 2001). An important start has been made in this direction with the passing of the original ACLRA 1996 and the CLRA of 2002. The former gives powers to the Minister to acquire freehold agricultural land for sub-division and subsequent allocation to previously disadvantaged Namibians under long-term leaseholds. The CLRA 2002 provides for the formal demarcation and registration of customary land rights and the introduction of long-term leaseholds in the non-freehold areas. The Minister and CLB respectively must cause these rights to be registered in the Deeds Office Sections 100, 27).

The underlying development objective of providing for registered long-term land rights in both the non-freehold and freehold sectors is to establish a small-scale farming sector that operates along and within the commercial, market-based system of the Namibian economy. Central to this objective is the belief that once small-scale farmers have a registered land right, they will be able to use this as collateral to obtain loans for productive purposes. This will put them on a path of self-directed economic development.

3.1 Using registered land rights as collateral

The Land Bill 2016 discusses the issue of leasehold in the non-freehold sector and the freehold sector separately. It is suggested that a more appropriate approach would be to deal with registered land rights in the context of developing and strengthening a small-scale commercial farming sector. To name only a few reasons for this: in both sectors the state is the lessor of land and lays down the conditions of lease, which are broadly identical. This is not unusual, as any registered owner of land lays down the conditions of lease. Secondly, and at the risk of generalising, small-scale farmers in both sectors find themselves in very similar socio-economic positions, particularly with regard to the ownership of both moveable and immovable assets. This, it is argued, has a significant negative impact on their ability to obtain loans from financial institutions. Thirdly, the needs of small-scale farmers in both sectors are very similar. They require access to extension services and skills support, input and output markets, and financial infrastructure if their registered land rights are to facilitate the economic transformation of their individual lives (See Moyo & Chambati, 2012).

The Land Bill 2016 addresses some of these issues, albeit insufficiently, when it proposes that the capital of the Land Acquisition and Development Fund (LADF) should be utilised for the benefit of small-scale farmers in both sectors. It stipulates that the costs of paying for infrastructure development and 'capacity building of the beneficiaries' as well as the provision of farming inputs in both the freehold and non-freehold areas should be defrayed from the Fund (Section 134). However, the Bill falls short in providing the legal and market framework required to make long term leases work for beneficiaries.

3.1.1 Approaches to land titling: option to purchase an allotment

The Bill 2016 retains the prohibition on conferring 'any right of freehold ownership of any portion of communal land' and that nobody may obtain rights of freehold over communal land (Section 19(2)). However, the Bill reintroduces the right of resettlement beneficiaries to buy their allocation. This right was contained in the ACLRA of 1996, but was repealed by Act 13 of 2002. At the time, the Minister of Lands, Resettlement and Re-

habilitation justified the amendment by arguing that 'land, which is acquired for the purpose of land reform, should not be for sale. It should rather serve as a place where some future potential commercial farmers should graduate from and be able to acquire their own agricultural land' (Minister of Lands, 2002, p. 3). The Land Bill 2010 also did not provide for this option.

The Bill includes the provisions of the ACLRA 1996 verbatim, allowing beneficiaries to apply for the purchase of their allocation after at least five years. The LRAC must ensure that all relevant conditions are met and make a recommendation to the Minister in this regard, 'stipulat(ing) the terms and conditions in terms of which it recommended the option'. Although the purchaser is entitled to obtain registered title of the land, (s)he may only use the land for agricultural purposes, except with the written permission of the Minster (Section 112). In the event of contravening these provisions, the Minister may expropriate the land.

The reasons for these controls are not clear. Suffice to say, therefore, that the implementation of these provisions is unrealistic, and will require resources that could be more usefully spent elsewhere. Perhaps more significantly, it subjects beneficiaries who bought the land at a 'price equal to the capital value' (Section 108) to controls that do not apply to any other registered title, and opens the door for political interference in the economic activities of title holders.

Despite these controls, it must be assumed that purchasers of resettlement land are free to sell such land, should they wish to do so. As holders of registered title, they will be able to offer their land as collateral, as financial institutions will be able to sell the land in case of default. Regrettably, the Bill does not go far enough to enable holders of registered leasehold to do the same.

3.1.2 Using leasehold as collateral

Long-term registered leasehold is widely assumed to open the door to agricultural credit for small-scale farmers, by enabling them to offer their leasehold as collateral. In the resettlement sector, the provisions of the Land Bill 2016 are identical with those of the ACLRA as amended, with the exception of the right to sub-lease resettlement land. In terms of Section 46 of the Commercial (Agricultural) Land Reform Act 1995 as amended, resettlement beneficiaries may sub-lease their allocations subject to the written consent of the Minister upon a recommendation of the Land Reform Advisory Commission. This is no longer possible in the Land Bill 2016, which prohibits sub-leasing in a separate sub-section, with no option to apply to the Minster for approval (Section 104(6). That this is a serious issue for the state is underlined by the fact that the Land Bill makes it separate a sub-section of Section 104, whereas it featured as part of Section 46(1)(a) of the amended ACLRA of 1996.

The explicit prohibition on sub-leasing resettlement land contradicts the provisions of the *Regulations on procedure to sub-lease portion of farming unit: Agricultural (Commercial) Land Reform Act, 1995* (Ministry of Lands and Resettlement, 2013), which permit the limited sub-leasing of land. The Regulations stipulate that a beneficiary may not sub-let more than 50% of his/her land parcel. If the area to be sub-let exceeds 25% of the allocated land, the applicant must furnish reasons why (s) he intends to sub-lease such a portion. The maximum time of a sub-lease is 5 years, and the conditions for sub-letting include that the sub-lessor is a full-time farmer, or if employed elsewhere, has received his/her allocation less than 3 years before entering into a sub-lease agreement. This suggests that part-time farmers, who have been occupying their farm units for more than three years, may not sub-lease land (Werner & Bayer, 2016, p. 50). The Land Bill also provides in (Section 34(12) that a right of leasehold for agricultural purposes in a designated area may be sub-leased 'on the recommendation of the board and with the approval of the Minister and as prescribed'.

To be sure, the Land Bill provides for the option to mortgage land leased from the state. However, it requires the written approval of the Minister, i.e. to do so is not only fraught with bureaucracy, but in the final analysis becomes a political decision (Section 104).

Several conditions need to be in place before land can become collateral. At the most basic level, an allocation needs to have proper boundaries in order to be surveyed and registered. However, the Bill does not go far enough to ensure that this happens.

Land intended to serve as collateral must have clear boundaries to be identified clearly. The Land Bill does not make this a requirement. Section 97 of the Land Bill simply states that the boundaries of each farming unit need to be 'shown' and 'described' in the advertisements, but there is no provision that these boundaries should also exist physically, i.e. in the form of fences. In some cases, beneficiaries have been allotted properly fenced units, but in many more cases, the boundaries are 'shown' on farm planning maps used by the then Department of Agricultural Technical Services in the early 1970s to facilitate fencing subsidies under the Soil Conservation Act. The planned fences of camps have not been erected in all cases, so that many beneficiaries can show the boundaries of their allocations on such maps, but not on the ground (See Werner & Odendaal, 2010).

In addition, the boundaries of a parcel of land need to be surveyed and a survey diagram produced before registration in the Deeds Office. It is a well-known fact that a large number of allocated units have not been surveyed and hence no lease agreements can be registered. The Bill does not make the surveying of an allocated land parcel obligatory. Section 96 dealing with the sub-division of land merely states that the Minister may 'cause each holding to be surveyed'. A new Land Act should not leave the decision whether to survey allocated farming units or not to the whims of the Minister, but should make it a legal obligation.

For as long as these issues are not addressed in law the use of land as collateral will be impossible.

3.1.3 Land markets

In order for registered immoveable property to be accepted as collateral, a well-developed land market must exist. Land only becomes collateral if financial institutions can sell land in cases of foreclose on bad debts. Foreclosure implies that these institutions should be able to sell land held under registered leasehold with the least possible transaction costs (Werner & Bayer, 2016). The Land Bill does not address this issue at all.

There are several reasons why a land market should be legislated for, not least of which being the fact that informal land markets exist in both the resettlement and non-freehold sector without legal protection. In addition, permitting the sub-leasing of land leased in designated areas and the resettlement sector – assuming that the Regulations on Sub-lease of 1995 apply - wittingly or unwittingly created the foundation of a land market. Instead of building on these foundations, the Land Bill reverses these small gains. Apart from the confusion this generates, the omission of providing a legal framework for the controlled sub-leasing of resettlement land perpetuates a resettlement model that is inappropriate and lacks the flexibility required to allow those farmers who do not have sufficient land to accumulate enough livestock to qualify for an AALS loan to expand their agricultural production, while allowing those beneficiaries who are not able to farm productively either through a lack of assets, age or ill-health to continue to benefit from their allocation (Werner & Bayer, 2016, pp. 51–53).

3.1.4 Granting of leasehold

Communal Land Boards will no longer have the powers to grant rights of leaseholds in communal areas. These powers now rest with the Minister, who 'on the recommendation of the board concerned' may grant rights of leasehold to a portion of communal land (Section 33). In the CLRA of 2002 it was the board. In terms of Section 34 of the Land Bill 2016, CLB in future will simply receive applications for leasehold, transfer them to the traditional authority concerned for their consent or rejection. 'As soon as possible' after the traditional authorities have given their consent, the CLBs must submit applications to the Minister with possible comments by the traditional authority or the relevant CLB. CLBs thus have become conduits for processing applications.

In terms of Section 34(8), community-based organisations may apply for leasehold, which, once obtained, may be subleased to an investor. A sub-lease agreement only becomes valid after approval by the Minister.

3.2 Is the Bill adequate

One of the objectives of the Land Bill is to establish a unitary land system, 'where Namibians have equal rights, opportunities and security with regard to land, irrespective of where the land is situated' (Republic of Namibia, 2016, p. 11). One major challenge of this objective is to harmonise statutory and customary land rights, which until recently have not been recorded in writing.

In the absence of a reviewed land policy, any assessment of the Land Bill 2016 is highly subjective. However, a number of criteria have been proposed by Knight (2010, p. xi) that should be met in legislation to successfully address some fundamental land issues. These are reproduced in the text box below, to assist those who will be involved in analysing the current Bill in order to come up with recommendations. While being focused on the non-freehold or communal sector, several of these criteria apply equally to small-scale farmers in the freehold sector.

Seven equally-important things a law should have within its text to successfully harmonise statutory and customary land rights

1. Flexibly allow for the full range of customs within a nation to be expressed and practiced while implementing restrictions that impose basic human rights standards on customary practices, protect against intra-community discrimination, and ensure alignment with the national constitution.

2. Create local land administration and management structures that: come out of – and look much like – existing local and customary land management structures; are easily established; are low cost both to the state and for users; are highly accessible; and leverage local individuals' intimate knowledge of local conditions.

3. Establish administrative processes and dispute resolution mechanisms that are simple, clear, streamlined, local, and easy for rural communities to use to claim, prove and protect their land rights.

4. Establish appropriate checks and balances between customary/local leadership and state officials, create new, supervisory roles for land administrators, and ensure direct democracy and downward accountability to the people.

5. Include accessible, pragmatic and appropriate mechanisms to safeguard against intra-community discrimination against women, widows and minority groups.

6. Protect community land claims and create real tenure security while allowing for investment in rural areas, ensuring that all development will be sustainable, integrated, and beneficial for local communities.

7. Establish good governance in land administration by: creating appropriate mechanisms to ensure the law's enforcement; penalizing state officials who are contravening the law's mandates; and setting up dispute resolution mechanisms that allow for appeal of customary, community-level decisions up into the national justice system.

Source: Knight, 2010, p. xi

4 Conclusion

The Land Bill 2016 has all the hallmarks of legislation that was drafted without a comprehensive policy framework. Namibia's National Land Policy is twenty-years old this year, and badly in need of a thorough review of land issues across the country. Such a review would have revealed several issues that are becoming increasingly important, but not well provided for in the Bill or completely ignored. These issues include the following:

- Granting of registered customary and leasehold rights to groups of customary land rights holders. This should be an option to groups of people enjoying customary land rights to commonages in order to protect their rights and investments on the land.
- Development of land markets in the resettlement and communal sectors. This would not only provide legal protection to transfers of land that are happening already, but also introduce much need flexibility in the resettlement sector. Moreover, registered land right can only become collateral, if financial institutions are able to sell the rights in case of defaulting borrowers. Without a well-functioning land market, this will not be possible.
- The enclosures of communal commonages, commonly referred to as 'illegal fencing', needs to be dealt with at a policy level in order to regularise what is on the ground and to have a consistent approach to individualised commercial farming in non-freehold areas.
- The restitution of ancestral land rights requires review as well. Despite a resolution taken at the National Land Conference in 1991 that ancestral land rights cannot be restored 'in full', the issue continues to simmer, threatening to become more serious by the day.

The Bill introduces a number of positive changes to existing laws. In communal areas, procedures to appeal against decisions by traditional authorities and land boards have been clarified. However, whether aggrieved parties can access the proposed process remains to be seen.

A significant departure from existing legislation is that the Land Bill provides more detail on the content of customary land rights and the modalities of where customary land rights apply. Recognising local customary allocation and management practices appears a big step forward from the previous one-size-fits-all legislation.

While the Land Bill improves the accountability of traditional authorities in general, it does not go far enough to enforce accountability by traditional authorities towards their subjects. This is particularly important where large tracts of land are allocated for big agricultural projects. Legal mechanisms need to be in place to include local populations in the decision-making process, and to ensure that they will benefit as well.

In the freehold sector, the Land Bill seems to weaken the powers and functions of the Land Reform Advisory Commission. It proposes that the Minister should be able to take decisions on several important aspects of land reform without necessarily consulting the LRAC. Significantly, the two main agricultural organisations, the NAU and NNFU are no longer automatically represented on the LRAC.

Regional Resettlement Committees will be established, but their powers and functions have not been elaborated in the Bill. This is important to prevent previous dissatisfaction with the operation of regional resettlement committees, which made recommendations to the LRAC which were often changes without explanation.

The process of developing new land legislation and policy has caused major public outcries. To start with, government's claimed consultation process should be improved. It should become more inclusive by consulting people in the regions at local level. This would give thousands of small-scale farmers, some of whom probably cannot prepare written inputs, to be heard and taken seriously. Currently, consultation can only happen by means of written comments.

Making land policy and laws in Namibia is largely the prerogative of politicians. This risks a situation where political expediency rather than long-term solutions are reflected in policy and legislation. Despite the disparaging remarks made by the Minister of Land Reform as reported in The Namibian (Ngatjiheue, 2017b) that government does not 'want to waste money on consultations' and that concerned citizens 'are just making noise in newspapers', a constructive national dialogue has to take place about the land issue in Namibia. The outcome of such a dialogue should be a comprehensive land policy that reflects pertinent land issues and proposals how to address them. Good policy makes for good legislation.

Hall (2012, p. 4), writing in the South African context, suggests a few questions that such a national dialogue should consider. These include

- Who should benefit from land reform? Should it be a programme for the poor or should it target groups with sufficient assets to farm? What is the class agenda of land reform?
- What changes should land reform bring about in land uses and farm sizes?
- Where should land reform be targeted? What land should be targeted for acquisition?
- How will land be acquired? Should government pursue the willing seller – willing buyer principle or explore other options?
- What agricultural and other services need to be put in place to ensure that beneficiaries are able to use their allocations productively and thus improve their livelihoods?

In order for new policy and legislation to have a positive impact on small-scale farmers in particular, the land and agriculture sectors need to be integrated in a comprehensive agrarian reform programme. Low productivity in the small-scale farming sector – both on freehold and non-freehold land - is the result of government having separated the land and agrarian issues.

5 References

Adams, M., Kalabamu, F., & White, R. (2003). Land tenure policy and practice in Botswana - governance lessons for southern Africa. *Journal Fuer Entwicklungspolitik (Austrian Journal of Development Studies), XIX*(1), 55–74.

Beukes, J. (2016, December 15). Swartbooi dares Hage to fire him. *Namibian Sun*. Windhoek, Namibia.

Consulting Synergies Africa. (2010). *Land Bill consultation process report for Ministry of Lands and Resettlement. January & February 2010*. Windhoek, Namibia: Ministry of Lands and Resettlement.

Gender Research and Advocacy Project. (2016). Gender issues in the 2016 *Land Bill*. Windhoek, Namibia: Legal Assistance Centre.

Hall, R. (2012). The politics of not making policy: The new Land Reform Green Paper. Retrieved from http://plaas.org.za/blog/politics-not-making-policy-new-land-reform-green-paper

Harring, S. L., & Odendaal, W. (2008). *Kessl: a new jurisprudence of land reform in Namibia?* Windhoek: Land, Environment, and Development Project of the Legal Assistance Centre : Namibia Economic Policy Research Unit.

Knight, R. S. (2010). *Statutory recognition of customary land rights in Africa. An investigation into best practices for lawmaking and implementation.* Rome: FAO.

Malan, J., & Hinz, M. (Eds.). (1997). *Communal land administration. Second National Traditional authority Conference. Proceedings.* Windhoek: Centre for Applied Social Sciences.
Millennium Challenge Corporation / Orgut COWI. (2014a). Proposed guidelines for group land rights in communal areas (Communal Land Support Sub-activity) (p. 73). Windhoek: Millennium Challenge Account Namibia.

Millennium Challenge Corporation / Orgut COWI. (2014b). *Proposed working policy for group land rights* (Communal Land Support Activity) (p. 24). Windhoek: Millennium Challenge Account Namibia.

Millennium Challenge Corporation Namibia. (2011). *A review of policies concerning tenure in communal areas of Namibia.* Windhoek: MCA Namibia.

Minister of Land Reform. (2016a). Motivation statement by the Honourable Utoni Nujoma, MP, Minister of Land Reform on the Land Bill. Ministry of Land Reform / National Assembly.

Minister of Land Reform. (2016b, December 19). Press release on the Land Bill. *Republikein*. Windhoek Namibia.

Minister of Lands, R. and R. (2002). Introductory Remarks by Hon. H. Pohamba, Minister of Lands, Resettlement and Rehabilitation: Tabling Proposed Amendments to the Agricultural (Commercial) Land Reform Act, Act No. 6 0f 1995. Ministry of Lands, Resettlement and Rehabilitation.

Ministry of Land Reform, Ministry of Urban and Rural Development, & Office of the Attorney-General. (2016). *Implementation of Cabinet Decisions on the recommendations of the Special Cabinet Committee on Land and Related Matters. A presentation to Parliamentary Committee on Land and Social Issues.* Windhoek.

Ministry of Lands and Resettlement. (2011). *Consideration of Policy review recommendations.* Comments on the recommendations. Windhoek, Namibia: Ministry of Lands and Resettlement.

Ministry of Lands and Resettlement. Regulations on procedure to sublease portion of a farming unit: Agricultural (Commercial) Land Reform Act, 1995. Government Notice No. 241 (2013).

Ministry of Lands, Resettlement and Rehabilitation. (2001). *National Resettlement Policy.* Windhoek, Namibia: Ministry of Lands, Resettlement and Rehabilitation.

Ministry of Lands, Resettlement and Rehabilitation. (2005). National Land Tenure Policy. (Final Draft). Windhoek, Namibia: Ministry of Lands, Resettlement and Rehabilitation.

Moyo, S., & Chambati, W. (2012). Unlocking the Economic Potential of Communal Land: Regional/African Experiences. Presented at the 14th Annual Symposium of the Bank of Namibia, Windhoek. Retrieved from http://www.bon.com.na/Publications/Previously-held-Symposiums.aspx

Muenjo, C. (2010). Report on *Land Bill stakeholders' consultative workshop for northern regions (Oshikoto, Oshana, Ohangwena, Kunene and Omusati).* Windhoek: Ministry of Lands and Resettlement.

Nakale, A. (2016, August 25). Foreigners still own huge tracts of land. *New Era.* Windhoek, Namibia. Retrieved from https://www.newera.com.na/2016/08/25/foreigners-huge-tracts-land/

Nandi-Ndaitwah, N. (2015). *Implementation of eighty-nine Cabinet Resolutions on the recommendations of the Special Cabinet Committee on Land and Related matters. Report to the Swapo Party Central Committee by the Chairperson, Honourable Netumbo Nandi-Ndaitwah, MP, Deputy Prime Minister and Minister of International Relations and Cooperation.* Windhoek, Namibia.

Ngatjiheue. (2017a, January 17). Calls mount to suspend land reform activities. *The Namibian.* Windhoek, Namibia.

Ngatjiheue, C. (2017b, January 26). Nujoma insists he consulted on the Land Bill...but htinks public consultations are a waste of money. *The Namibian*, p. 5. Windhoek, Namibia.

Office of the Prime Minister. (1992). *Report of the Tchnical Committee on Commercial Farmland.* Windhoek: Office of the Prime Minister.

Republic of Namibia (Ed.). (1991). *National Conference on Land Reform and the Land Question (Vol. 1).* Windhoek: Office of the Prime Minister.

Republic of Namibia. Land Bill, Pub. L. No. B.19-2016 (2016).
Ueitele, J. In the matter between: The N#jagna Conservancy Committee, Applicant and the Minister of Lands and Resettlement & 35 others, respondents, No. A 276/2013 (High Court of Namibia Main Division, Windhoek 13 September 2016).

Werner, W. (2008a). *Land Acquisition for Resettlement: An assessment prepared for GIZ.* Windhoek, Namibia: Ministry of Lands and Resettlement.

Werner, W. (2008b). *Protection for women in Namibia's Communal Land Reform Act: is it working?* Windhoek, Namibia: Land, Environment and Development Project, Legal Assistance Centre.

Werner, W. (2010). *Missed opportunities and fuzzy logic: A review of the proposed Land Bill (IPPR Briefing Paper No. 51).* Windhoek, Namibia: Institute for Public Policy Research.

Werner, W. (2011). *'What has happened has happened'. The complexity of fencing in Namibia's communal areas.* Windhoek, Namibia: Legal Assistance Centre.

Werner, W., & Bayer, C.-T. (2016). *Leasehold as a vehicle for economic development. A case study of small-scale farmers in Namibia's Oshikoto Region.* Windhoek, Namibia: LEAD Project, Legal Assistance Centre / Namibia University of Science and Technology.

Werner, W., & Odendaal, W. (2010). *Livelihoods after Land Reform.* Windhoek, Namibia: LEAD Project, Legal Assistance Centre.

Notes

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