



THE PROMISED LAND AND FRUSTRATED EXPECTATIONS:

A report on the Land Reform and Resettlement Programme in Namibia by the Ombudsman

While we intended to submit our report to the Hon. Minister of Land Reform before the start of the Second National Land Conference, it turned out not to be possible for various reasons, among others, the extend of the research, the inordinate delay by the Ministry to provide the Ombudsman with the full list of beneficiaries, the proofreading and printing of the report. However, we have decided to submit the concluding observations and recommendations to the Hon. Minister and release them for public information, hoping they will stimulate the discourse at the Land Conference. The recommendation are available on our website, www.ombudsman.org.na and Facebook page.

The concluding observations and recommendations are from:

1. The United Nations Treaty Bodies and the African Commission's Working Group on Indigenous Populations and Communities (2005).
2. The National Human Rights Action Plan (2015-2019).
3. The Report on the National Inquiry into Racism and other Forms of Discrimination and Tribalism (2017).
4. The Public hearings and written submissions.
5. The Ombudsman and panel.

1. **The United Nations Treaty Bodies and African Commission on Human and Peoples' Rights**

African Commission's Working Group on Indigenous Populations/Communities (2005)

- Though land is being acquired for resettlement under the Land Reform Act, the primary objectives of the national resettlement policy have thus far been achieved only in part, and in some cases not at all. Recent research has revealed that since the inception of the resettlement programme, the objective of attaining self-sufficiency by means of *"creating employment through full-time farming and bringing smallholder farmers into the mainstream of the Namibian economy by producing for the market"* has not been accomplished. The San in all the areas visited, except Tsumkwe, reported a lack of access to the wildlife and forest fruits they were used to. They also complained about their inability to do large-scale commercial farming due not only to lack of resources but

also due to lack of training. Most of them depend almost entirely on government food aid, which is very irregular.

- The process of applying for resettlement also often bypasses the San, one reason being that most San in Namibia live in remote areas and are not made aware of resettlement projects planned in their areas until it is too late to apply, another reason being that many are illiterate and unable to submit a written application.

Committee on the Elimination of Racial Discrimination (2016)

- The Committee acknowledges the difficulties within a democratic system in implementing land reform policies with a view to addressing existing imbalances. However, it is concerned about the apparent lack of clear and transparent criteria for the redistribution of land in practice, and notes with concern the paucity of information concerning the implementation of relevant policies in this field. (art. 5(d)(v)).
- The State party is encouraged to implement its policies on land reform in such a way to ensure the equal exercise by the different ethnic communities of the rights enshrined in the Convention within the framework of a democratic system. The Committee invites the State party to provide information on the measures taken to ensure the implementation of land reform policy and particularly its impact on vulnerable groups.

Committee on Economic, Social and Cultural Rights (2016)

- Without prejudice to the overall objective of the land reforms and the “*willing seller – willing buyer*” approach, the Committee is concerned that the land reform programme of the State party has not addressed poverty or that security of tenure remains an enduring challenge, as a large number of individual and communal land owners are without title. The Committee is also concerned that many resettled farmers have not been able to restore their livelihoods and earn an adequate standard of living, even when support has been provided. Moreover, the Committee is concerned that the Communal Land Reform Act of 2002 has had little effect on women’s access to land.
- The Committee recommends that the State party take account of the following in the implementation of the resolutions adopted by the Special Cabinet Committee on Land and Related Matters:
 - (a) Streamline land registration procedures and render them affordable and accessible, including in rural and remote areas, and proactively reach out to register communal lands;
 - (b) Work with indigenous peoples on titling of their traditional lands and securing their rights to these lands, to the extent compatible with the rights of others;
 - (c) Increase the resources allocated to the acquisition of land for resettlement;
 - (d) Engage in meaningful consultation processes with individuals and groups concerned prior to and during the resettlement;

- (e) Assist resettled farmers, beyond the provision of infrastructure such as fencing and land servicing, in restoring their livelihoods and lifting them out of poverty, and monitor the situation of resettled farmers;
- (f) Ensure, in the case of indigenous peoples, that the resettled groups lead and design the process and are provided with support during the rebuilding of their communities;
- (g) Ensure that the Communal Land Reform Act is implemented, so that widows can remain on communal land allocated to their deceased husbands;
- (h) Enact the Land Bill of 2010 in order to enhance the protection of communal lands;
- (i) Urgently address the excessive prices of land, including in urban areas.

Report on the Working Group on the Universal Periodic Review (2016)

- During the interactive dialogue the following response was made:
 - The delegation of Namibia stated that Namibia had no national legislation directly related to indigenous people and that the term “marginalized people” was used. One of the resolutions of the National Land Conference of 1991 had been that the land rights of disadvantaged communities should receive special protection with the San and other marginalized communities receiving specific mention. The National Resettlement Policy of 2001 identified the San as a specific target group for resettlement, which was given conditional rights in terms of hunting concessions.
- It is recommended that Namibia should:
 - further strengthen its successful land reform and resettlement program, which grants land to historically disadvantaged groups;
 - continue implementing its agrarian reform policy and resettlement program by land to groups who have been historically disadvantaged;
 - pursue its land reform and resettlement program in order to enable underprivileged persons to have access to land, given that the right to land is a fundamental right;
 - continue government’s efforts with its land reform and resettlement program both at rural and urban level.

Committee on the Elimination of Discrimination against Women (2015)

- The Committee expresses its concern at women’s limited access to land and the lack of information on rural women’s access to microfinance and microcredit schemes. The Committee is particularly concerned at reports of land grabbing by relatives of deceased spouses and the impact on women in rural areas. The Committee calls upon Namibia to adopt specific measures aimed at facilitating women’s access to land, in particular in rural areas and to intensify efforts aimed at curbing land grabbing, especially as regards women in rural areas, which affects the full enjoyment of the right to property by women.

2. **National Human Rights Action Plan (2015-2019)**

The key shortcomings highlighted by the 2011 Universal Periodic Review, the 2012 baseline survey and identified at the 2013 National Consultative Conference and the 2014 series of stakeholder consultative workshops include the following:

Commercial Land Reform

- Multiple farm ownerships and absentee land owners still prevalent
- Slow implementation of 1991 NLC recommendations

Communal Land Rights

- Fencing off of large tracts of communal land to the detriment of subsistence communal farmers and the resultant impact of diminishing grazing land
- Ethnic considerations in land allocation by TAs and CLBs
- Women's rights to land are still not acknowledged due to cultural and traditional practices
- IPs and marginalized groups in national parks are experiencing continued threats to land rights (including conservancies), in terms of tenure security and land grabbing (under the disguise of providing access to investors in communal land areas)

Urban Land Rights

- Lack of security of tenure for impoverished urban households living in illegal and informal settlements
- Exorbitant land prices that exclude the poor
- Little transparency in land allocations with allegations of corruption in land administration
- Delays in proclamation of peri-urban areas (i.e. settlements in terms of security of tenure)
- Illegal occupation of land demarcated for development
- Unavailability of serviced land and affordability of urban land
- Urban land legal and regulatory framework outdated –contributing to cost
- Compensation challenges experienced by LAs and RCs

Resettlement

- Lack of clarity about resettlement
- Inconsistencies in application of selection criteria for resettlement as well as inadequate selection criteria
- Non-productive use of resettlement farms by beneficiaries
- Inadequate support for resettled farmers and groups
- Affordability of farm land for resettlement purposes.

Key Interventions suggested by the NHRAP includes the following:

Pro-poor approaches

- Research discriminatory practices against women in respect of access to and ownership of land, including inheritance issues, with a view to law reform.
- Commission a study to investigate threats to the land rights of indigenous people.

Education and Awareness on land

- Undertake public education to make people aware of the provisions of the Communal Land Reform Act (no 5 of 2002), the resettlement programme and the National Land Compensation Policy.

Agricultural Land Reform and Resettlement

- Preview and improve resettlement criteria to include generational farm worker status and ancestral land ties, as well as properly defining “*disadvantaged person*”.
- Develop communal land for lease by small-scale communal farmers.
- Undertake a formal review of the 1991 National Land Conference recommendations on land ownership by foreigners, absentee landlords and multiple farm ownership.
- Convene a 2nd National Land Conference.
- Review the Report of the Permanent Technical Team on Land Reform in Namibia drafted in November 2004.
- Develop enforcement mechanisms for preventing and reversing fencing in communal areas.
- Establish multi-sector post-settlement support (including training for resettled farmers, including groups).

The full report is available on our website.

3. Report on the National Inquiry into Racism, Racial and Other Forms of discrimination and tribalism

The panel wishes to draw the attention of the Ministry of Land Reform to the importance of above recommendations and while full implementation is not possible at this moment, the Ombudsman wishes to recommend that the Ministry include the following on the agenda of the proposed land conference –

- a discussion point on ancestral land;
- a discussion point on the land resettlement policy with a view to establish a transparent application process with criteria which are objective and fair and include an appeal process;
- a discussion point on title deeds for subsistence farmers on farming units of 20ha or more;
- a discussion point on the removal of the 'red line';
- a discussion point on the renaming of communal land areas, which still appear as Kaokaland, Damaraland, Owamboland, Kavango, Caprivi, Bushmanland, Hereroland East and West, Namaland in the Communal Land Reform Act (No 5 of 2002);
- a discussion point on a clear policy of land reform, which should include, amongst others –
 - > a clear timeline for future expropriations;
 - > an expropriation process that will meet the requirements of the Act and natural justice;
 - > a process that will produce a living income for re-settled farmers; and
 - > a process which would ensure that funds appropriated for the allocation of farms is aligned with reachable annual targets.

The Ministry should also –

- request ancestral land claim owners or interest groups to make their claims on title known in time for the land conference;
- publish an up to date list of names of the beneficiaries of land resettlement before the start of the conference;
- take account of the recommendations made by the Committee on Economic, Social and Cultural Rights (2016) and the Committee on the Elimination of Discrimination against Women (2015) in the discussion at the land conference;
- discuss with the Rehoboth Baster Community the injustice done to the people of Rehoboth (litigation did not help the Rehoboth Baster Community in their three cases at the Namibian High and Supreme Courts as well as the Human Rights Committee).

The full report is available on our website.

4. Public hearings and written submissions

- Traditional Authorities must be allowed to apply for land for allotment to persons farming in their area of jurisdiction.
- National resettlement programme should not have started before the issue of ancestral was not dealt with; programme must be halted.
- Regional Resettlement Committee (RRC) must make the final decision who to resettle; should not only make recommendations.
- 60% of people of a region must first be resettled before persons from other regions are resettled.

- Three forms of resettlement must be implemented:
 - 5-10 ha for those who have 5-10 livestock
 - erf for those who do not really want to farm
 - economic viable unit for those who want to farm and have the means to farm productively.
- Receipt of application must be acknowledged by Ministry
- Group resettlement does not work because resettlement farms become a location.
- Resettlement farms and beneficiaries must be protected against illegal invaders.
- The current criteria exclude people from the San and other marginalized communities; it must be reviewed and the San and other communities must get the opportunity to give their input in the formulation of the new criteria.
- No criteria for the poor. The poor can not meet the current criteria and are therefore excluded from applying for resettlement.
- The resettlement process must be sped up, to avoid vandalism of property on farms that were already purchased and now await resettlement.
- There is a perception of nepotism and favoritism – Ministry of Land Reform employees resettle themselves first; resettlement programme criteria and application must be reviewed.
- Advertisements of resettlement farms in newspapers do not reach all, additional or other means of advertising should be considered.
- Applicant should submit a business plan with the application for resettlement on a specific farm.
- Objectives of the resettlement programme should be clear; eradication of poverty should be included.
- The scoring system by officials does not work- process must be transparent.
- Treatment of certain applicants as “*special cases*” should stop, all applicants should be treated equal.
- There should be effective monitoring of allocated resettlement farms and the activities on those farms to prevent subleasing.
- Political appointees should not be members of the RRCs.
- Many “*worthless*” farms were bought; experts must be employed to do the evaluation.
- If a resettlement farm is not occupied by the beneficiary, the resettlement allocation must be cancelled.
- Inventory of property on farm must be drawn up before resettlement.
- Subdivision of farms into 3-4 units makes some unit unproductive – units are too small to farm.
- Farm workers, working on the specific farm should be allowed to resettle on a unit of a farm earmarked for resettlement before other people are resettled.
- Farms must be allocated to those who do not earn much; not to those who earn N\$ 360 000 per annum or more.
- The employed and politicians should not benefit from the resettlement programme.
- Beneficiaries who lack farming skills should be trained by retired farmers – government should put money into training.
- Government should stop buying farms without water and infrastructure.

- Government must buy urban land to resettle those who do not want to farm.
- Government should stop eviction farm workers.
- Farms should be subdivided in more units so that more people can be resettled.
- Resettlement of people of 80 years and Ministry of Land Reform employees should stop.
- The current Resettlement Program forces us to share land with people who never lost land. The return of ancestral land must be part of the policy and such a policy should not prioritize the number of livestock but rather restitution.
- Government buys farms for million of dollars and allows it to lie idle for years. The property is vandalized and government must again put in money to repair the damage. The resettlement process is too slow.

5. Ombudsman and panel

- An effective land reform and resettlement programme must be carefully planned and be transparent. Therefore:
 - all proceedings of the RRCs must be open to the public and the minutes of such meetings open to public scrutiny so that there can be open discussion on who are benefitting and why.
 - information about the land reform programme must be easily accessible and in plain language.
 - not all persons can complete the required forms or is conversant in the English language. At all offices there should be a designated help desk or information officer who can assist those persons with their queries and the completion of the necessary forms.
- If the Ministry's goal is to acquire 5 million ha by 2020, is that the end of the programme?
 - The uncertainty on how the land reform and resettlement programme will be implemented after 2020, which farms and how many will be purchased, what the criteria for resettlement will be, how beneficiaries will be selected; the monitoring of the resettlement farms must be addressed in a participatory and transparent manner.
- Unsuccessful applicants may be required to apply over and over again, reproducing the same documentation over and over again, just to find that other applicants were resettled and not them. These unsuccessful applicants do not know why their applications are rejected which in turn can assist them to bring a better application the next time Therefore:
 - all unsuccessful applicants must be informed of the Minister's decision in writing together with full reasons for his decision.
 - in the same notice the applicants must be inform of their right to appeal to the Lands Tribunal or review by the High Court as well as the specific time lines applicable to such an appeal or review application.

- in doing so the Minister will respect and fulfil applicants' right to be given reasons for his administrative decision.
 - when an applicant knows the reasons for the decision of the Minister he/she can properly consider whether to appeal or not.
 - it will also allow the applicant to better motivate or comply more with the criteria when he/she lodges a next or future application.
- Beneficiaries of the land reform programme cannot enjoy their benefit of their "own land" because illegal settlers turn their land to "squatter camps" or "locations". Therefore:
 - the Ministry Land Reform should restore the property rights of beneficiaries by removing all illegal settlers from farms. The Attorney-General's office should be involved to ensure that all processes that are followed to remove or evict illegal settlers on farms, comply with legal requirements
 - regular inspections and effective monitoring of activities on resettlement farms should be conducted.
- The situation of farm workers on farms allotted by government raises the question whose responsibility it is to deal with them. Therefore:
 - the omission must be remedied in the Draft Land Bill;
 - provision must be made for resettling or otherwise accommodation of the farm workers as a legal condition for expropriating or purchasing a farm for resettlement.
 - land tenure for long serving farm workers after retirement must be critically discussed by all stakeholders in order to formulate comprehensive land tenure policies which land tenure must eventually be protected by legislation.
 - farm owners should be encourage to register land tenure rights against their property for long serving farm workers
- *It is a common fact that beneficiaries, who do not own livestock, sub-lease their land in order to generate income. The Auditor-General confirmed this trend in his audit report of the land reform and resettlement progamme for 2010-2013. Out of 182 farms visited, he found that 105 or 68% being sub-leased, chiefly because the beneficiaries were unable to maintain the farm. The purpose of the resettlement programme is also not to allow persons to generate additional income by sub-leasing government property. Therefore:*
 - *the prohibition on sub-leasing must be strictly enforced*
 - *if the lessee fails to fulfil any term or condition of the lease, the Minister should cancel the lease, after complying with the provision of section 50(1) of the Agricultural (Commercial) Land Reform Act (ACLRA)*

- *the activities on resettlement land should be continuously monitored by the Ministry of Land Reform.*
- It appears that some of the resettlement farms are too small to farm productively and resettlement farmers are doomed to fail – Seemingly no reason exists to sub divide some commercial farms into smaller units, e.g. 3-5 units and resettle a number of beneficiaries, especially if there is only one functioning water point or bore hole on the whole undivided farm. Each unit must at least have water. If all the units depend on the one of two water points on the farm, and if they dry up the farm will become worthless, unless government intervenes and drill new boreholes. There seem to be no formula to decide which farms should be divided and which farms should remain as a single farming unit or if there is such a formula, it is not known and not shared.
 - The decision whether to sub-divide an existing commercial unit into more than one unit for resettlement purposes should be critically looked at in order to determine the ability of the farm to support economic farming activities on each of these units, independently from the resources on the other farming units.
 - The available water points, dams, corrals, dwellings, etc. should be considered when deciding to divide or not divide a farm into units.
- The responsibility of the upkeep of the infrastructure remains the duty of the government for the period of 99 years. Therefore:
 - beneficiaries/lessees should be held responsible for maintaining infrastructure and water sources.
 - farms should be inspected on a regular basis to determine what the condition of the infrastructure is as well as what he/she is doing towards maintaining it.
- Section 47 of the ACLRA made it possible for beneficiaries to buy resettlement farming units after 5 years, however this provision was repealed in 2002 by the Agricultural (Commercial) Land Reform Amendment Act, no 13 of 2002. It does not make economic sense to invest millions of public money into the purchasing of land and then place the control of the land and property in the hands of beneficiaries/lessees for 99 year without receiving any returns on the investment; only land damaged by over grazing and damaged infrastructure. Statistics show that it took the Ministry of Land Reform 27 years to acquire 517 farms at a cost of N\$ 1.8 billion. How long will it take and how many farms must still be acquired to redress the historic imbalance of land distribution in the country? The current process is unsustainable. Therefore:
 - lease agreements should not be longer than 10 years;
 - government should consider selling resettlement farms to beneficiaries in order to generate funds to purchase more farms;

- the option to purchase resettlement farms by lessees should be made a condition of the lease agreement.

The goal, purpose, objective, etc. are set out in virtually all policy documents and in relevant legislation. Overarching purpose is to acquire land and make such land available, foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices. The criteria developed to achieve this purpose are too vague and general and the application thereof creates more confusion. Alleviation of poverty does not receive much attention, neither does the allotment of resettlement farms follow the priority list of beneficiaries as stated in the National Resettlement Policy. While the draft policy on resettlement makes resettlement now available to all middle class public officials and private sector workers, the poor, displaced, destitute and landless people have now to compete with the well off for access to land. Therefore:

- the resettlement criteria should be thoroughly reviewed to ensure that it answers the question of what purpose such resettlement serves.
 - such criteria should then be made available in simple language to all Namibians (maybe translated into other languages).
 - such criteria should be applied consistently and in a transparent manner and should not leave room for arbitrary decision making.
- Section 53 of the ACLRA provides that in the event of death of the lessee, the executor of the lessee's estate may assign the lease to any person approved by the Minister. This means that the lessee's will as to who should inherit the leasehold can be disregarded by the Minister. This may create discontent among heirs and relatives. Therefore:
 - section 53 should be amended to apply only in cases of intestate succession, i.e. where the lessee did not leave a will.
 - the Ministry of Land Reform should investigate the possibility for the beneficiary to file with the Ministry the name of the person who should be considered for allocation of the lease after his/her death.
 - Although the 99 years leasehold is some form of land tenure, in resettlement farms under leasehold, ownership remains with government. While it is possible for married persons (in the broadest sense) to be co-lessees of the resettlement unit, the ACLRA is silent on the fate of leaseholders in the event of divorce or separation. Therefore:
 - the Act should be amended to clarify the position of leaseholders in the event of divorce or separation.

- Who are the previously disadvantaged in Namibia; only those born before the Independence of the country? If one's parents are considered previously disadvantaged, does one inherit the 'title' if born after 1990, thus making one previously disadvantaged and eligible to benefit from the land resettlement programme? Previously disadvantaged relates to Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices. This 'definition' is grounded in Article 23(2) of the Namibian Constitution. The implementation of the National Resettlement Policy must be aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws and practices. For many it is difficult to understand why a person between the age of 18 and 25 years, born after 1990 should benefit from the resettlement programme where it is supposed to be for the previously disadvantaged. Therefore:
 - previously disadvantaged should be redefined and state in no uncertain terms who are considered previously disadvantaged.

- From the public hearings, it appears that many applicants for resettlement do not necessarily want land to farm, but rather a piece of land to build their own homes and "farm" on a household subsistence level. Because of the high costs and unavailability of urban land and the absence of alternative resettlement models, they are forced to apply for small-scale farms in competition with other potential beneficiaries where they can not necessarily farm economically. Therefore:
 - the proposed review of the National Resettlement Police should make provision for the landless who want a piece of land with secure land tenure where they can build a home and make a livelihood for themselves and their families.
 - government is encourage to put regulations in place to force local authorities to service land annually with a certain percentage of the land that must be made available for the landless people seeking to establish a homestead (or just a place to stay).

- It was argued that it is unfair in an independent Namibia that some Namibians get farms virtually for free for a period of 99 years, while those in cities and towns who cannot farm are forced to live in informal settlements on land which they illegally occupy or have to buy land at exuberantly high prices. Therefore:
 - the discussion of access to urban land (and water and sanitation) should be an integral part of the discussion of the land reform programme.

- Public authorities hold information not for themselves, but as custodians of the public good and every citizen has a right to access this information, subject only to clearly defined limitations as provided for by law. Non-responsiveness in the public administration is linked to the culture of secrecy in state and private institutions. We will only have a responsive administration once the culture of secrecy is replaced by a culture of openness or transparency. Transparency is one of the

fundamentals of good governance, which is one of the pillars on which NDP5 is built. Public authorities should part with information voluntarily and not wait for legislation to force them to make such information available. Therefore:

- the Ministry of Land Reform should open a register containing all the details with regard to farmland in the country, be it commercial, state, communal or resettlement. Such register must be open to public scrutiny.
- The general administration of the resettlement programme and subsequent monitor and control mechanisms must ensure that the beneficiaries pay the yearly rent. In a number of instances no rental agreements were entered into between the beneficiary and the Government of Namibia although allotment letters have been issued more than a year ago. Therefore:
 - the rental amount should be included in the allotment letter until it is formalized in the lease agreement.
 - the signing of lease agreements and the registering of such lease agreements must be prioritized.
- The amount of revenue collected from resettlement leases during the 2016/17 financial year was N\$ 177,236, while 442 lease agreements have been issued for resettlement (2002-2018). It appears that resettled beneficiaries are not willing to pay their lease fees due to dilapidated infrastructures on their respective land. It is unfair of beneficiaries to hold government responsible for maintaining infrastructures for 99 years and then withhold payment of rent. Payment of annual rent is a condition of the lease. Therefore:
 - payment of annual rent should be strictly enforced;
 - if the lessee fails to pay the annual rent, the Minister should cancel the lease after complying with the provisions of section 50 (1) of the Act;
 - the Ministry should consider annual increases of the rent amount.