

Investing in Rights: Lessons from Rural Namibia

(Review Draft, please send comments to e-mail below)

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Improving Tenure Security for the Poor
Food and Agriculture Organisation
High Level Commission on Legal Empowerment for the Poor
Kenya
23 – 26 October, 2006

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Introduction

The 2001 Census lists just over 1.8 million Namibians. Coupled with an area of 824,292 square kilometres the country is one of the most sparsely populated on earth. Namibia is also defined by arid conditions. Parts of Southern Namibia and its coastal desert receive little or no rain in all but exceptional years. As one moves North and North-east rainfall improves from 300 – 500 mm per year on the central plateau, to over 500 mm per year along the Northern border with Angola, and closer to 700 mm per year in the Caprivi Strip. Within the country there are no rivers in continual flood, only the Orange, Kunene, Okavango and Zambezi Rivers, all of which form borders, flow year round. Namibia is the most arid country in Sub-Saharan Africa.

March 1990 saw the end of a century of colonial rule. Germany ruled from the 1880s through 1917. After World War I, Namibia was transferred to South Africa under a League of Nations Mandate. Colonial rule saw a long process through which indigenous Namibians were dispossessed from rights to both land and resources. First German and then white South Africa settlers were encouraged to migrate and establish commercial farms and related businesses. Finding the large tracts of land needed for this first wave of resettlement required expropriation of that land from blacks. The end result of this process can be seen in Map 1.

Tenure security for indigenous Namibians largely disappeared. Access to freehold tenure was reserved for white settlers. The only place where blacks had some form of rights was in Native Reserves or, as they were later called, Bantustans. Rights in these places were provided under indigenous tenure systems whose legal status was somewhat murky. Urban tenure, in the ghettos attached to any town, was denied as blacks were not allowed ownership of residential land. They were only allowed to rent, even if for decades and across generations. Briefly, this was the situation inherited by the Government of the Republic of Namibia in 1990.

Solving a century of dispossession is not easy. Dispossession was systematic and thorough. Consequently, the solution must be systematic and thorough. Namibia did not have a single, unified structure for land rights. Aside from freehold versus communal tenure, environmental variations dictate an approach that understands which specific rights (among the array of rights that exist within any geographic location) are best suited for restoration. This factor alone requires a level of investment in understanding the array of possible rights in an area as well as identification of the rights whose restoration will provide the most benefit.

Within Namibia, however, another factor is added to rights restoration – poverty reduction. Namibia's policy context has poverty reduction, as one of its main pillars. This requirement complicates rights restoration as it demands attention to the wider causes and symptoms of poverty. In other words, different levels of investment are required to link tenure rights with

poverty reduction.

The Mosaic of Land and Rights Issues

The denial of rights to land and resources to the majority of Namibians during the colonial period was the primary fuel for Namibia's liberation movement. Like South Africa and Zimbabwe, the country inherited an unequal pattern of land distribution and associated wealth when it achieved Independence. At the time many feared the disruptive potential of the land issue on the emerging democracy. Government's response was clear. Ancestral land claims would not be allowed, and that the principle of willing seller/willing buyer would be the basis of land acquisition for redistribution. Consistency in this approach marked the years from 1990 to 2000. In 2004, however, Government added the option of expropriation with market-related compensation for land acquisition. Willing seller/willing buyer acquisition still occurs.

While the acquisition and redistribution of freehold farmland has garnered the headlines over the past sixteen years, many issues, problems and solutions to the restoration of rights in other areas have emerged. Land and rights reform for Namibia is not the simple task of obtaining from those who have much, and redistribution to those who have little. Redistribution in this classic sense, applies to only half of the country's agricultural land. The story of the other half is often neglected. Simple comparisons to the land situations in South Africa and Zimbabwe mask a web of social, historical, environmental and legal parameters that have required a complex approach to the recognition of, and restoration of, property rights. These parameters are discussed below.²

Communal versus commercial land

In apartheid Namibia, land rights were determined by skin colour. Whites had freehold rights to land and many of its associated resources. Non-whites were forced into homelands where communal land tenure was in effect. The size of white and non-white areas were roughly the same: 36 million ha and 34 million ha respectively.

Non-white areas ("homelands" as shown in Map 1, "communal land" in Map 3) tended to be in less productive environmental zones. Overcrowding and overgrazing in non-white areas combined in a decades long process of declining production. In communal areas over one and a half million people sought to make a living. An early estimate of landholdings in communal areas was 335 ha per household for livestock and 17 ha for cropping (Moorsom, p. 13).

Tenure rights in communal areas were fluid at best. Throughout Namibia's colonial century, non-whites were forcibly removed to accommodate different settler programmes (Ibid, pp 9 – 13). This process reached its zenith in 1964 with the infamous Odendaal Commission Report, the document that created the different ethnic/tribal homelands as part of the apartheid strategy of separate development. Implementing the Odendaal Plan, as it was called, meant further disruptions to tenure rights of blacks as many were moved to "ancestral homelands" they had never seen. Tenure security depended largely on the whims of apartheid administration.

In white areas – the part of Map 1 not designated as a homeland, excluding the Namib Desert along the Atlantic coast – a commercial farm averaged 7,200 hectares with some, particularly

² Please refer to the maps in Appendix 1 for this discussion.

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in Southern Namibia, measuring over 10,000 hectares.³ At Independence approximately 4,000 individuals owned Namibia's 5,000 or so commercial farms. Most of those who owned farms were white, as during the last decade of apartheid rule, a few non-whites were allowed to purchase commercial farms under schemes developed by the different Bantustan governments.

Investment discrepancies

Productivity of land requires investment. Historically, almost all investment whether in land, other resources, social and physical infrastructure was skewed in favour of white Namibians. During the first twelve years of Independence over N\$ 80 billion was spent on development in formerly neglected areas.⁴ The focus of these activities has been on basic infrastructure; roads, electrification, telecommunication, schools, clinics, and government offices. Training for health care staff, educational staff and extension officers has also been a priority. These efforts have met with some success, as Namibia has recently seen a significant decrease in poverty levels, enlargement of middle income groups and a concomitant decrease in its Gini co-efficient from 0.7 to 0.6 (Central Bureau of Statistics, pp. 40-41).

While Namibia's communal areas still lag behind commercial areas (largely because they are coming from an extremely low base), the economic potential of communal areas is recently acknowledged. Both agriculture, which is possible along much of the Northern border, and livestock production are now viewed for their potential to stimulate economic growth. Historically, a lack of veterinary services prohibited farmers in Northern communal areas from moving their stock South into formal markets. Veterinary restrictions (concretized in a Veterinary Cordon Fence (VCF) which runs from the Atlantic Coast to the Botswana border⁵) are a major impediment to sustained economic development in Northern Namibia. Over 60% of the country's cattle herd is on the wrong side of the VCF. Because of strengthened infrastructure coupled with political pressure from producers in affected areas, the Namibian Government recently announced that it would begin the phased relocation of the VCF Northward to the border with Angola. As this process takes place, direct market access to formerly disadvantaged producers will improve.

Population distribution, farming systems, banking and urbanization

These four are hidden factors in Namibia's land debates. First, almost 65% of the population lives in the Omusati, Oshana, Ohangwena, Oshikoto, Kavango and Caprivi Regions (See Map 2). Almost all of this land is former underdeveloped communal homelands (Owamboland, Kavangoland and Caprivi of Map 1). Despite their neglected past, residents of these Regions now exercise considerable political might. This block of voters is crucial in Namibia's democracy. Both national and internal party politics are shaped by voters in these Northern Regions. However, this block of voters, unlike the rest of the country, did not experience either the loss of large tracts of land, or large scale displacement during the period of colonial

3 Namibia is the most arid country in Sub-Saharan Africa. Rainfall ranges from 100 mm per year in the South of the country to 700 mm in the Northeast. The resulting low productivity means that large areas are required for agricultural production.

4 At a rate of US\$1 = N\$ 6, this is roughly equivalent to US \$ 13 billion. This rate will be used throughout this paper to calculate values. The reader should know that there have been wide fluctuations in the rate over the past sixteen years.

5 The route of the VCF takes many turns. As a rule of thumb, it is best to think of it as dividing the country along the parallel with the Southern Border of the Etosha Pan.

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land expropriation.

Second, is the farming system of Northern Regions. Here, agriculture sits atop two pillars; crop production and livestock farming. Traditionally, crop farming occurred around a central fenced compound within which an extended family resided. Pearl millet, sorghum and maize were the main crops on plots usually ranging between 1 – 25 hectares. Livestock production took place on a transhumance basis with animals moving between the central homestead and established cattle posts. Central to this farming system is rainfall. The Northern Regions have sufficient rainfall to produce crops in most years. These factors have an impact on land issues because this preferred farming system is not possible throughout the majority of the commercial farming area. Rainfall tends to be lower and less regular as one moves South from the VCF. That many farmers in these Regions would have to give up their preferred farming system in order to move their operations to a commercial farm, appears to dampen demand from this group for resettlement to commercial farms.

Third, is a rarely discussed factor. Freehold land, if purchased, requires a bank registered bond and associated repayment.⁶ Freehold ownership also carries greater exposure to tax assessments. Communal land by comparison is largely unencumbered, and the average tax assessor finds it impossible to look at a large herd of livestock and determine who owns specific animals. Numerous conversations with large scale communal farmers confirms that avoiding the long term debt of a bank bond, and the payment of taxes are considerations in the decision to stay in communal farming areas. In communal lands North of the VCF evidence indicates that residents generally want their own areas developed to the same level as commercial farms, rather than a wholesale movement of people Southward into the well developed commercial farming area.

Lastly, Namibia is urbanizing. Urban Namibians increased from 28% to 33% of the population between the 1991 and 2001 Censuses. Different estimates of population distribution expect this movement to increase, and that sometime between 2020 and 2025, more Namibians will live in urban areas than in rural areas. The long term plan of the country, Vision 2030, predicts that two thirds of Namibians will live in urban areas. As people leave rural settings demand for land will shift towards urban rights. Also, as rural people move to cities, leaving their lands either partially or completely unused, farmers who chose to remain, could consolidate holdings into larger units. This process, if it occurs, has the potential to stimulate new markets for existing tenure rights to land in communal settings. As will be shown below, there is already a process under way to formalise rights granted under customary systems.⁷

Post-Independence management vacuum in communal lands

Prior to 1990, rights in communal lands were managed by local traditional leaders. They allocated land, settled disputes and were involved in inheritance matters. The Constitution of Namibia declared that communal lands were the property of the State, and that power over those lands resided with the State President. This left many traditional leaders in a quandary, unsure over their continued role in land management. Responses to the situation varied, some traditional leaders felt they had lost any authority to discuss land issues, others continued as if nothing had happened, still others fell somewhere in between. Legal clarity only arrived in

⁶ Prices for commercial farms range from US\$ 130,00 to US\$ 330,000. Under affirmative action purchasing schemes, maximum interest rates were 12.5%.

⁷ See Appendix 2

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1997 with passage of the Traditional Authorities Act which set forth procedures for legal recognition of local traditional leaders. The process of registration and gazetting of traditional authorities is still ongoing in 2006. During the period of uncertainty, opportunistic individuals took advantage of the lack of local management. The consequences of which will be prominent in the discussion on illegal enclosures of communal lands.

Administration and Governance

Independent Namibia was faced with numerous challenges. There was a need to bring the institutions of government in line with the needs of the whole country as opposed to a privileged elite. For many parts of the country this meant the creation of effective administration literally from the ground up. Aspects of this larger process affected the delivery of land rights. As discussed above, the land issue was seen as a possible threat to stability in a fledgling Namibia. One of the first orders of business in 1990 was to create the Ministry of Lands and Resettlement (MLR)⁸. The young ministry faced critical challenges. The first was capacity. Land administration skills were virtually non-existent in the early 1990s. Land use planners and land administrators did not exist. There were a few qualified land surveyors in government service. Most of them went into private practice and contracted back to the government for many times their former salaries. Building capacity, particularly capacity that demands a high level of technical skills is a lengthy process. As recently as 2005 the need for greater capacity within the MLR has been noted.⁹

The second challenge to the MLR was over administrative turf. At Independence there were two well established ministries, Ministry of Agriculture Water and Forestry¹⁰ and the Ministry of Environment and Tourism, who also had a brief that covered land issues. Both had extensive technical capacity and experience in their given areas. As could be expected, both were reluctant to cede power to a new player. Cabinet and Ministerial level decisions on the division of responsibilities could be made, but on the ground, particularly in outlying areas, changes and cooperation were slow to happen. Bureaucratic inertia and resistance to change were probably heightened by the fact that few staff in the MLR had a strong technical knowledge of their field. While progress has been made to resolve these issues, there is still work that needs to be done.

Another administrative issue for the new Namibian government was local governance. Keeping the same Bantustans, in which the vast majority of Namibians lived, was not acceptable. Running all government functions from Windhoek was also not an option. The Constitution provides for regional governments. Thirteen Regional governments were established in 1992 (See Map 2). The governing body of each Region is a Regional Council consisting of members elected on a constituency basis. A key responsibility of Regional

8 For purposes of this discussion, the new name will be used. Before 2005, it was known as the Ministry of Lands Resettlement and Rehabilitation (MLRR). The Directorate of Rehabilitation was moved to the Ministry of Health under the administration of the current President.

9 This was in the report of the Permanent Technical Team on Land Reform (PTT) to Cabinet. The issue was also addressed by the Rural Poverty Reduction Programme, a large multi-sector project funded by the European Union. Since the late 1990s, the Polytechnic of Namibia has expanded its Department of Land Management to provide the skills required by the MLR. As with all capacity building programmes, there is a lead time of years before results are felt.

10 As with the MLR, I use the current designation of this ministry instead of its legacy designation as the Ministry of Agriculture, Water and Rural Development.

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Councils is the physical development of their respective regions. This places them in the center of land issues. As with the MLR, Regional Councils, throughout the 1990s were hindered by low levels of capacity, and the need to define their own turf within an arena of more established actors.¹¹

In spite of this legislated responsibility, Regional Councils only played a role in land decisions from 1995 onwards when Regional Resettlement Committees were established. The role expanded greatly after the Communal Land Act of 2002 established Communal Land Boards in twelve of the thirteen Regions.¹² Communal Land Boards bring land management and decisions over land rights closer to Namibia's rural poor – a positive factor. Communal Land Boards have, in many respects, benefited from other initiatives to create regionally-based committees such as Development Committees. As government established different regional bodies throughout the 1990s, the need to also provide support through training and a secretariate became evident. By 2002, these lessons had been learned.

Land Rights Initiatives

The factors noted above show that a one-size fits all approach to rights reform is not possible for Namibia. Returning rights to disenfranchised individuals involves a comprehensive set of initiatives. As these initiatives developed and matured, they can be viewed as loosely connected, though some have their origin in sector-specific activities. Each has its own basis in law, associated policy and a specific Ministry within the Namibian Government. There are both levels of success and problems associated with on the ground implementation. Table 1 provides an overview of each initiative.

Table 1: Rural rights restoration programmes in Namibia

<i>Program</i>	<i>Year</i>	<i>Type of rights</i>	<i>Number of Beneficiaries*</i>	<i>Area</i>	<i>Implementing Agency</i>
Affirmative Action Loan Scheme	1991	Freehold in commercial farms	660**	3,200,000 ha	Agricultural Bank of Namibia
Resettlement (Commercial)	1995	Leasehold in commercial farms	1,550**	1,056,000 ha	Ministry of Lands and Resettlement
Conservancies	1995	Partial rights to groups in communal areas***	43,000	92,000 km ²	Ministry of Environment and Tourism
Communal Registration	2002	Leasehold rights in communal areas (25 ha limit)	4,500**	N/A	Ministry of Lands and Resettlement

* Both the number of beneficiaries and number on hectares is constantly rising. The figures here are based on 2005 data.

** Refers to households.

***Includes only tourism and wildlife.

11 See (Fuller, B., et. al.: 1994) for a discussion of the issues faced by Regional Councils in their formative years.

12 The Khomas Region does not have any communal lands.

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Affirmative Action Loan Scheme (AALS)

The AALS began with the Agricultural Bank Amendment Act of 1991. It authorised the Agricultural Bank of Namibia to advance of funds, at subsidized interest rates to previously disadvantaged farmers. Farmers apply for entry into the scheme in much the same manner as they apply for a loan from a commercial bank. Full-time farmers who purchased commercial farms under this programme received an initial three year exemption from repayment on a twenty year bond. In the fourth year, payments began at a 1% interest rate. By the tenth year interest increases to market rates. The state covers the sliding interest rate with a subsidy. The initial target group for the AALS were the larger livestock herders in communal areas.¹³ The intent was to move as many of them as possible out of communal areas thereby creating space for smaller-scale farmers to grow. In 1997, the programme was changed to allow part-time farmers to participate in the AALS. This change enabled members of the emerging black middle and upper classes to purchase farms. Interest subsidies were based on a sliding scale of formal sector income.¹⁴ The AALS programme has proved popular with over 660 farms purchased. These farms are about 10% of the land available in Freehold areas. They have a value of approximately US \$110 million dollars. The cost of government interest subsidies for these farms in an additional US \$ 40 million.

Resettlement

The Resettlement Scheme has put more people on to the land than the AALS, but with fewer hectares. Under this scheme, land is purchased on the willing seller/willing buyer basis. Resettlement involves the purchase of commercial farms, and partitioning those farms for middle scale farmers. The process of resettlement has been on-going since 1990, though the programme was only formalised with passage of the Resettlement Act of 1995. Prior to this, resettlement took place largely on an emergency and *ad hoc* basis. After 1995, the government acquired commercial farms, and through the Ministry for Lands and Resettlement (MLR) and allocated plots to those who had applied for the programme. The 1995 Act requires that all commercial farms sold must first be offered to the government for resettlement. If the government does not want the farm, the Minister of Lands and Resettlement issues a waiver. If the government wants to use the farm, it then negotiates with the seller for purchase. Negotiations over price, and then the procedures required to transfer the deed, can take as much as a year.

In 2003 the possibility of expropriation for commercial farmland was introduced. Expropriation is governed by procedures laid out in the of 1995 Act as well as in the Namibian Constitution. Despite the publicity surrounding the decision to expropriate, less than a handful of the 150 farms purchased for the programme have been through expropriation. The expropriation of a commercial farm took place in 2005. Thus far, the time required to expropriate a farm roughly equals that of the time required to purchase a farm. A key issue in expropriation is determining the market value of a farm. The table below lists the number of farms purchased under the Resettlement Scheme. The variation in purchases reflects adherence to willing seller/willing buyer principles. The impact of expropriation on the variation of land acquisitions remains to be seen.

13 Criteria for entry in to the AALS is a minimum of 150 head of cattle or 800 head of small stock (goats and sheep).

14 Essentially individuals with US \$17,000 annual income, or less, started with a 1% Interest rate in the first year, working their way up to market rates by the tenth year. Individuals with incomes over US \$ 67,000 started repayments at market rates in the first year.

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Table 2: Resettlement Acquisitions from 1990 to May 2006¹⁵

Year	No. of Farms	Hectares	Cost (USD)	Families Resettled
1990 – 1994	12	60,564	\$739,102	151
1995	8	35,961	\$1,231,225	87
1996	6	32,343	\$1,093,574	125
1997	22	162,324	\$2,640,997	227
1998¹⁶	17	86,436	\$1,665,634	109
1999	7	38,845	\$342,316	14
2000	12	76,673	\$2,480,944	66
2001	24	137,672	\$4,427,510	100
2002	8	62,638	\$1,992,278	36
2003	10	87,569	\$2,040,586	25 (2 Farms pending) ¹⁷
2004	8	45,902	\$671,131	All pending
2005	16	131,474	\$2,673,147	6 (15 farms pending)
2006 (through May)	17	76,362	\$3,003,939	All pending

The target group for this project is the middle scale farmer who does meet criteria of the AALS. The ability of the applicant to also invest in his/her farming operation is a requirement. In 2001 the vetting process was devolved to Regional Councils. Regional Councillors have familiarity with the specific farms in their constituencies purchased for the programme, and a potentially better knowledge of the applicants themselves. Once an applicant is approved by the Regional Council, his/her application is forwarded to the MLR for processing by a National resettlement Committee. If approved application goes to the Land reform Advisory Commission, and lastly for Ministerial approval. The steps to acquiring land for resettlement are shown below.

15 The figures here will not add up to those presented in Table 1 because in the available data set, there are a number of farms that do not have the year of purchase, and thus they are not included.

16 Six farms which make up a single block were donated to the Government in this year. With assistance from the Spanish Government they have been turned into a joint crop and livestock resettlement scheme. Fifty families were selected for this scheme as beneficiaries.

17 A “pending” farm has been purchased but not yet been made available for resettlement. Some farms require planing for the number of beneficiaries as well as upgrades in infrastructure before people can be resettled. Some “pending” farms may also have applicants who are still going through the approval process.

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Steps to Resettlement

- Farm is purchased and public request for applications
- Application completed
- Application co-signed by local traditional leader, Regional Councillor, or relevant MLR staff
- Regional Resettlement Committee approval
- MLR Regional Officer Approval
- National Resettlement Committee approval
- Land Reform Advisory Commission approval
- Approval by Minister for Lands and Resettlement

Resettled farmers are given a five year period in which to develop an economically viable farming operation. Once the MLR is satisfied that this condition has been met, it will issue a ninety-nine year lease to the resettled farmer. While the possibility of leases has been in effect since 1995, it is only in 2006 that the first long-term leases were issued. Before this, most resettled farmers had some form of documentation that gave them an indication of rights to the land they occupied. While this was sufficient for most resettlement beneficiaries to feel personally secure in their tenure (Kruger, B., et al.), the impacts on personal investment in the productivity of land are unknown at this time. A more crucial question will be whether or not the leases can be used to obtain commercial forms of credit as a means of boosting production.

Conservancies¹⁸

Conservancies pre-date Namibian Independence, though as with most land and resource rights back then they were legitimized largely by skin colour. Under the Nature Conservation Ordinance of 1975, commercial farm owners were able to declare their farms (or a group of farms) as conservancies, and thus gain rights over wildlife and tourism activities. The idea that the same could apply to communal lands with blacks managing these resources arose in the early 1980s with the activities of a few visionary, and courageous, officials within the apartheid government (Fuller, 1999:114-115, Long: 28-29). These efforts were concentrated in Northwest Namibia (The current Kunene Region.), and were focused on wildlife conservation through use of local authorities and local anti-poaching units (known as Community Game Guards).

After 1990, the idea of community based management of natural resources, hereafter known as CBNRM, gained credence within the government as a way of boosting economic development in formerly neglected areas. The idea of handing rights to tourism and wildlife over to previously disadvantaged communities gained support among NGOs and donors. Programmes to foster and support the creation of conservancies in Namibia's communal areas were operational well before enabling legislation was passed. The Nature Conservation Amendment Act of 1996 allowed the creation of conservancies in communal areas.

18 For the purposes of this discussion, only communal-based conservancies are covered.

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Communal area conservancies must meet a number of criteria before they are approved by the Ministry of Environment and Tourism. The most important are; defined boundaries, a constitution, defined membership, and demonstrated ability to manage the organization and its finances. Once approved, the conservancy is gazetted, thus becoming a legal entity. In the eight years between 1996 and 2004, a total of twenty-nine communal area conservancies were registered. Numerous other conservancies are at different stages of formation. (See Map 4.) Support for CBNRM and conservancies has been in the range of “several hundred million (Namibian) Dollars.” (NACSO: 6)

Communal Registration

The Agricultural (Communal) Land reform Act of 2002 established Communal Land Boards in 12 of Namibia's thirteen Regions.¹⁹ These Boards are tasked with the registration of land claims, maintenance of regional land registries, land use planning and the settlement of disputes. Communal Land Boards are modelled after similar boards in Botswana. They include representatives of relevant ministries, community members, farmers associations, traditional leaders and elected politicians. Members receive both sitting allowances and daily subsistence allowances when on duty. Each board is provided with a secretary and a land use planner. Many board members have received training in land issues including skills in mapping, legislation and policies affected operations and records and meeting management,

Four types of tenure are approved by Communal Land Boards; existing rights under customary rule, new rights under customary rule, leasehold rights, and existing leasehold rights granted before the Act of 2002.²⁰ All of these receive a ninety-nine year lease for their approved plot. Farming plots are limited to 25 hectares, enough for crop production and a homestead. Livestock requirements are generally too large for this limit. Registration of a plot requires completion of a form and a diagram of the plot's boundaries. These are verified by MLR staff and forwarded to the Communal Land Board for approval. Communal Land Boards also are empowered to settle land disputes. This is done in cooperation with local traditional authorities. Frequently, traditional authorities are asked to settle disputes. Land Boards can act as an avenue of appeal should a person not be satisfied with the decision of the traditional leader. Should a person still not be satisfied, he or she can appeal the the Minister of Lands and Resettlement. The twelve Communal Land Boards have heard close to two hundred disputes through the end of 2005.

Threats to Rights

Despite a well developed legal framework for formalizing land and resource rights, there still are cracks through which individuals or groups may fall. Three prominent groups are, those who have been historically excluded, farmworkers on commercial farms and small scale communal farmers in in areas with a concentration of illegally fenced enclosures. Each of these groups suffer varying degrees of marginalization. Before moving on to the specifics of these issues, the issue of implementation weaves its way through discussions on land rights. Many of the structures responsible for rights restoration are young. A good deal of land rights restoration will involve setting precedents for the operation and responsibilities of these

19 The Khomas Region does not have communal lands.

20 These are known as “Permits to Occupy” or as “PTO.”

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bodies. The case on illegal fencing discussed in this section points to this issue. Before the problem was resolved, the Namibian Government had to first examine recent legislation and policy in order to determine the proper procedural way forward. Doing so took some time, but it presents the opportunity to learn that creating new rights regimes also requires preparation, planning and institutional capacity.

Groups with Limited Access

All of Namibia's programmes to restore rights have one commonality. They require interface with a government structure. In turn this means some level of literacy, the ability to obtain and complete necessary forms, the ability to travel to government offices and the ability to participate in the different levels of review (and possible appeal) of official decisions. Groups that are most at risk under this scenario are; women, the poor, the San²¹ and HIV and AIDS affected households. Under some, but not all, customary systems in Namibia, women have tenuous rights to land. Widows, in particular, are most at risk as they can be forced off land after their husbands pass away. There have been moves by some traditional authorities to modify customary laws that discriminate against women and widows. However, on the ground application of these new principles does not always take place.

While the poor do not suffer from overt discrimination, they are often at a loss when they contend for rights against those who are better off. The case below of small scale farmers pushed out of their traditional lands exemplifies this situation. San have lived on the margins of society since the colonial period. As an economic under class, they have long been last served when sitting at the table of tenure rights. Post Independence initiatives to enhance tenure security have been uneven. Near Tsumkwe a successful conservancy has been established.²² The Government, through the offices of the Deputy Prime Minister, has placed special emphasis on social upliftment and empowerment of the San. There are also strong civil society organizations devoted to issues relating to San. Despite these efforts, many San live at a disadvantage, particularly those living on and working at commercial farms.

One last group deserves mention, people living in HIV and AIDS affected households. Unlike other historically disadvantaged groups, these people are a recent phenomenon. The HIV and AIDS pandemic took root during the 1990s in Namibia. By the early years of the new millennium, Namibia had one of the highest prevalence rates in the world. The impact of the epidemic has been severe, with dire effects on lower income households. A study carried out in late 2004 showed (Fuller and van Zyl: 2006) that over 90% of HIV and AIDS affected rural households that relied upon agriculture were unable to meet basic daily food requirements. Living on the wrong side of food security, these households are at a severe disadvantage when, or if, they want to formalize their customary claims to land. Tasks such as travel to a government office or filling out and returning documents needed to register title are near impossible in situations of constant hunger. Hence, this group of people faces the danger of missing out on a chance to secure access to productive resources. While the study did not find evidence of the practice, the temptation for hungry families to give up, or otherwise alienate their land in return for short term supplies of food exists.

Farm Workers

Farm workers on commercial farms live within a grey area of rights. Farm workers live at

21 Formerly known as "Bushmen."

22 Fuller and Turner (1995) found that certain groups of San in the Ohangwena Region had benefited from locally driven attempts to provide them with agricultural and grazing land.

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their place of work, a factor that complicates issues relating to rights to land. Traditionally, workers have been allowed by commercial farmers to keep small numbers of livestock on commercial farm. Two accepted categories of farm workers exist. The first is those who live elsewhere, and have moved to the farm to take up employment. This group generally engages in standard employer/employee relations and rights to land terminate with the end of employment. The second group is generational farmworkers. These individuals have lived all, or most, of their lives on the farm. Should they be dismissed or retrenched, they may have no other options for access to land, including residential land. In some instances a farm worker's roots to the land go back a number of generations. On commercial farms where ownership has been within a family for generations, it is possible the the current owner and some of his/her workers have effectively grown up together.

Defining the the rights of farmworkers to the land on which they toil is difficult. In 2002 the MLR drafted a policy on farm worker's rights.²³ Attention was given to the rights under which each class of farm workers would have access to land. Short term workers would have their rights specified by a contract between the farmer and the worker. Generational workers would, in certain cases, have tenure rights to stay on the farm after retirement, but their children would not. Thus far, the policy has not been published leaving a vacuum. Tenure for farm workers still depends on the decision of the farm owner. As one can imagine, the range of decisions can be broad going from the extremely generous where lifetime usufruct is given to a farm worker all the way to outright expulsion from the farm when the worker is no longer required.

Expulsion from a farm is a regular fate of farm workers, particularly if they are too old to work retrenched or dismissed. A change of ownership can also lead to expulsion if the new owner wants to employ his or her own workers.²⁴ The majority of farm workers have little, or no, formal education. While agreements exist between commercial farmers and the national farm workers union on a minimum wages, enforcement mechanisms do not exist. Rights over working conditions, while regulated under the Labour Act of 1992, are also difficult to enforce due to lack of access by farm workers to both legal advice and courts. These factors increase vulnerability, and unfortunately there is no solution on the horizon.

Small Scale Farmers and Illegal Fencing²⁵

On page 4 above, the creation of a leadership and land management vacuum as an unintended by-product of Independence was noted. This vacuum has led to a major land dispute along the Western border of the Kavango Region.²⁶ In the early 1990s traditional authorities were trying to make sense of their legal status as defined in the Constitution. Similarly, government institutions such as the MLR and Regional Councils were newly formed, with little capacity and occupied with establishing operations. Most activities on land issues during this time focused on the redistribution of commercial farms as this was thought to be a major post Independence issue.

23 The author was part of that process.

24 The process is not always driven by skin colour. There have been instances where AALS farmers evict workers after purchasing a farm. The author was once told by a newly established black farmer words to the effect of, "I'm now running a business here, suddenly solidarity with my black employees becomes less important."

25 See (Fuller, Nghikembua with Irving, 1995) for a discussion of the issues presented in this section.

26 This border is best shown in Map 1, as 18° East Longitude and North of the VCF.

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With attention drawn to the commercial farms South of the VCF, the process of illegal fencing began in communal areas of Northern and Eastern Namibia. The process was most pronounced in the area just West of the border with the Kavango Region.²⁷ The area had few permanent settlements. In the past it had served as a grazing area for households situated heavily populated areas around Ondangwa (See Map 4) in the system of transhumance herding. Cattle posts established in this Eastern section were semi-permanent moving every few years with changes in grazing conditions.

The situation changed dramatically in early and mid-1990s during what can only be described as a fencing boom. While fencing in communal areas, except under specified conditions, had long been known to be illegal, large tracts of land were enclosed. Fenced areas measured two to five kilometres on a side. In some cases, government boreholes were enclosed taking the crucial resource of drinking water away from other residents and their livestock. The process went largely unnoticed because of factors noted above, and because much of the area that is fenced, is poorly developed and difficult to access. Those doing the fencing tended to be well off financially and politically well connected.²⁸

As land was enclosed, poor farmers from other parts of the Oshiwambo speaking areas (largely members of the Ondonga and Kwanyama ethnic groups) to the West were also moving into these areas. Rather than coming to keep livestock, they sought land for permanent settlement. Increasingly poorer farmers found themselves squeezed by fences. They were reduced to living in corridors between enclosures. Subsequently these farmers moved East across the Kavango border into the Southern areas of the Kwangali tribal authority. Initially, this was done with permission of the tribal authority, and the belief that such moves were temporary. This was the case in 1995.

By 2003 temporary appeared to shift toward permanent, and the numbers of poorer farmers moving into Kwangali territory was increasing. It was estimated that over 60,000 head of cattle had been brought in by marginalized farmers. What had been a festering problem broke into sporadic violence between local Kwangali residents and immigrant Oshiwambo-speaking farmers. In late 2005 the situation was unresolved. Ondonga and Kwanyama farmers continued to arrive in Ukwangali. Again sporadic violence broke out, and the police were required to intervene. A public order by the Government to the settlers to move back from whence they came proved ineffective.

During the latter months of 2005 efforts to solve the dispute increased. Clearly, however, a number of precedents were involved. The MLR by itself was unable to issue eviction orders. Under new legal frameworks, and after some debate, the Kwangali Traditional Authority in conjunction with the Kavango Region Communal Land Board had to issue eviction notices. Notices were sent out early in 2006. In parallel with these activities both the Ondonga and Kwanyama Traditional Authorities became involved in the process. The Ondonga Traditional Leader promised to make land available for those who returned. The situation was unchanged for some months, but in mid August 2006 the police began to forcibly evict farmers and their cattle. Farmers who refused to comply were arrested and their cattle were driven to a holding camp. Evictions solve the the problem in Ukwangali. However, further West, in Oshikoto and Ohangwena the problem will most probably re-emerge. What is not clear are efforts to remove the root cause of the problem, namely the illegal fences.

27 These are the Eastern portions of the Oshikoto and Ohangwena Regions.

28 There have been rumours that a secondary market in fenced off farms in this area has begun.

Strengths and Weaknesses in Rights Reform

Three of Namibia's programmes for rights reform have been in operation for over a decade, making analysis of their operations possible. The fourth, leaseholds in communal lands, is in its infancy hence its performance cannot be measured. As will be seen each programme, despite some good works, has areas of concern.

Affirmative Action Loan Scheme

In terms of the size of land redistributed, the AALS has been successful. Furthermore, since it uses established market mechanism, it has done so with a lower cost to the state. It can be argued that the AALS has contributed to Namibia's stability by providing an avenue for large scale farmers to obtain land, and that by doing so has decreased pressure on communal lands. Despite the popularity of this programme, it faces a major challenge, default on loans. While the actual number of defaulters out of the 660 loans is confidential information, senior officials at Agribank have acknowledged concern over the issue.

This concern was echoed in a study carried out in 2004 in which roughly 15% of AALS farmers were interviewed (Fuller and Van Zyl: 2005). Using aggregated data a gross margins model was developed for different combinations of large stock and small stock operations of farmers surveyed. Farming systems that relied solely on small stock²⁹ fared worse than those that had a mixed small stock/large stock strategy. When the impacts of first year repayment on an average loan are taken into account, then ability of AALS farmers to meet their bond obligations comes into question. It should be noted that the figures below apply only to the farming operation itself and does not include personal/household expenses. Had those been included, then results in the table below would paint a darker picture.

Table 2: Average Gross Margins and Effect of First year of Bond Repayments

	Average Gross Margin	Loan Payment in First Year ³⁰	Balance
Cattle and Sheep	\$ 7,900	\$ 5,000	\$ 2,900
Cattle and Goats	\$ 7,500	\$ 5,000	\$ 2,000
Sheep and Goats	\$ 4,800	\$ 5,000	\$ - 200

²⁹ Sheep and goats.

³⁰ The reader is reminded that this repayment begins after the third year of the bond and only has an interest of 1%. As repayments progress to the tenth year of the bond, they reach market rates, currently at 12%.

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Within Namibia two main reasons for this state are accepted. First, some farmers who join the AALS do so with minimal cash or capital reserves. In other words, in order to obtain the loan from Agribank, some farmers only have the absolute minimum numbers of livestock required to qualify and/or they drain their cash assets to make the down payment. The survey found that some farmers in this category had no flexibility to cope with the vagaries of farming. A period of drought which reduces productivity, or the need to repair farm infrastructure (such as boreholes) would cause the farmer to sell some of his/her original stock. By doing so the farming operation could become crippled because loan repayment calculations are based on the three year grace period providing sufficient time for additions to the livestock herd and subsequent ability to generate the income required to meet bond obligations.

The second generally accepted reason for AALS problems ties into the first – namely a lack of proper preparation and training for beneficiaries. Both the study cited above, and one carried out in parallel (Vigne and Motinga, 2005), came to similar conclusions. Some communal farmers, who may have large herds, have very little knowledge of business operations and/or the ability to plan for the peaks and valleys of profitability that goes hand in hand with commercial farming. Each study recommended a broad array of training activities to take place both before an AALS loan is granted as well as after the loan is in operation. These activities included both extension services and business operations counselling. Currently, these recommendations are under review, by the Government and Agribank. Additionally, Agribank has begun to foreclose loans against AALS farmers unable to meet their payments. This has occurred within the past year, therefore the short and long term impacts are not yet known.

Resettlement

From late 2003 to 2004, the Namibian Government appointed a Permanent Technical Team (PTT) on land reform. Broadly this team was to review land reform efforts within Namibia and provide a comprehensive plan on future government programmes and expenditures.³¹ The PTT carried out its own study on the Resettlement Programme. Its members found that despite the policy that resettled farmers would obtain long term leases, none had been issued. The ninety-nine year lease is supposed to provide resettled farmers the surety needed to obtain commercial credit for their operations. Therefore, the lack of this tenure prevented private investment in the productivity of the land. Notwithstanding the lack of leases, other studies (Harring and Odendaal:2005 and Kruger et. al.:2005) show that most resettled farmers have some form of government documentation on their right to occupy part of a resettlement farm. A gap in policy objectives of resettlement exists. Harring and Odendaal (p. 100-101.) found that many resettled farmers were unaware of their responsibility to invest in and develop their land. They were also unaware that as resettled farmers, they had the potential for long term title in the land which would, of course, promote personal investment.

The PTT in its analysis of the programme, found that a lack of capacity within the MLR contributes to this problem (Eiseb, personal communication). Uncertainty over respective roles of the MLR and the Ministry of Agriculture, Water and Forestry (MAWF), exacerbates these issues. Traditionally, the MAWF provides extension and marketing services. On the ground there is uncertainty as to whether or not the MLR or the MAWF is supposed to provide the support services on resettle farms. The vacuum creates large cracks through which farmers can fall. The PTT found that most resettled farmers had increased their asset base – the size of their herds. Yet, this increase in value went largely unrealised as marketing opportunities were almost non-existent. Both access to markets as well as a lack of extension

31 Unfortunately, communal lands were not included in the brief of the PTT.

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and training are problematic for this programme. In its report to Cabinet, the needs of resettlement farmers, and solutions to those needs, was prominent. The PTT report was accepted by Cabinet in early 2006.

Conservancies

As noted above, the CBNRM movement in Namibia has its roots in the 1980s. Significant support for such activities was already in place during the transition from South African rule. The existence of similar programmes on the continent, such as the Communal Areas Programme for Indigenous Resources Management (CAMPFIRE) programme in Zimbabwe, provided templates for Namibia's CBNRM movement. Support, from within the Ministry of Environment and Tourism (MET), from donors and international NGOs came early in the 1990s.³² The Living in a Finite Environment (LIFE) programme was established by the World Wildlife Fund in 1993, three years before enabling legislation for conservancies. LIFE has been a lead organization in CBNRM by providing both direct support to conservancy formation and support to Namibian NGOs. Local NGOs that work to support CBNRM activities have formed an umbrella agency, the Namibian Association of Conservancy Support Organisations (NACSO). NACSO provides indigenous coordination and support for CBNRM activities. Overall, assistance to the CBNRM exceeds “several hundred million (Namibian) dollars” (NACSO: p.6).

The three year lead time between the LIFE beginning its activities and the promulgation of legislation to create conservancies is important to the overall success of the programme. Capacity building activities at local level was a major output. It must be remembered that in the early 1990s the effects of decades of apartheid rule were painfully evident in Namibia's communal areas. Few adults had education beyond primary school, fewer still were able to speak English. Accounting, business and governance skills (running meetings, keeping minutes, etc.) were almost non-existent. In addition to assistance with natural resource management, training in these necessary skills was (and still is) provided. This support has had a considerable impact on rural communities in Namibia. Members of conservancy committees take those skills to other governing committees such as local development boards, village councils, school and church committees.

Support for conservancies was not a one-off initiative. The LIFE programme is now in its thirteenth year. NACSO's origins begin in 2000. As conservancies have continued operation, follow-up capacity support has been available. This has not been limited to basic organizational management. Namibia's tourism sector has grown tremendously since 1990. Because conservancies have rights over tourism, many were required to negotiate with tour operators and companies for fees and other forms of remuneration. It is difficult for poorly educated individuals from rural communities to negotiate effectively with tour operators ranging from single person operations to large companies. In this respect the support structure available to conservancies is able to provide the needed technical assistance in these negotiations.

The first communal area conservancy was gazetted in 1998. An additional 28 conservancies were registered over the next five years (NACSO: p. 2.) In 2003, communal conservancies covered almost one quarter of all communal lands in Namibia. Measurable income to conservancies started with US \$ 100,000 in 1998 and by 2003 had grown to US \$ 1.3 million.

32 This included (but not limited to) the World Wildlife Fund, USAID, SIDA and the Namibian Government.

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Almost half of these funds come from joint venture tourism operations. (NACSO: p, 30.) Under such arrangements, a tour company signs a contract for exclusive tourism rights in the area. In return the conservancy receives a bed levy or other form of income sharing. Many contracts also have clauses committing the tour operator to both hire members of the conservancy, and to train suitable candidates among them to assume managerial positions. There are approximately 20 such partnerships in operation. As of 2003 approximately 250 conservancy members were employed with contracted tour operators. A key part of the process of negotiating these contracts is the involvement of the support groups mentioned. Support groups provide access to financial analysis and legal assistance during and after negotiations which in turn ensures that generally poor, and historically disadvantaged, people do not sign away valuable rights for a pittance.

Another main source of conservancy income, roughly one third, comes from trophy hunting. With their origins in anti-poaching activities, many conservancies have seen dramatic increases in wild game. Trophy hunting, which is regulated by the MET, is highly profitable. In addition to fees earned by the conservancy, meat from organized hunts is often distributed to members. In a similar fashion conservancies will organize, again in association with the MET, community hunts in which the meat from culled animals is distributed throughout the community.

Funds raised by conservancies are used in a variety of ways, depending on decisions taken by local governing committees. Some hand out their earnings as dividends to members, others invested in social infrastructure such as schools or clinics, still others re-invested their funds in additional income generating activities. The positive track record of conservancies and CBNRM in Namibia has generated interest among many communal residents to form their own. One positive effect of the long standing and locally based support, is that communal residents wanting to start conservancies can learn from those of a similar social and economic background.

Despite its strengths, the conservancy programme in communal areas has one major weakness: limited rights. Communal areas consist of different, sometimes coincidental sometimes overlapping rights regimes within the same geographic space. Common examples are rights over grazing, crop lands and water. Due to their limitation to only two of many potential rights regimes, tourism and wildlife, conservancies are vulnerable to claims by individuals who invoke claims to that geographic space under a different set of rules. The most common cause of dispute is with livestock farmers who claim grazing rights over areas within a conservancy. Livestock and many wildlife species use the same resources (graze and browse, and water), and thus come into conflict. Legally, conservancy committees are unable to do anything about intrusions by livestock farmers. They can only negotiate even in instances where the livestock farmer acts in contradiction to CBNRM activities.

Communal Registration

Registration of land rights in communal areas has benefited from the fact that its implementation is a good twelve to thirteen years after Independence. The MLR is in much better position to implement policies. Both the government and the donor community recognized the need to build capacity in land administration. Capacity building programmes had been in place for some years. Many younger staff within the Ministry have received formal training in their fields. Older staff, who may not have left for formal training, benefit from accumulated experience in land administration. Hence, by 2002 the Ministry was in a much better position to manage the implementation of Communal Land Boards. Across

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government the process of decentralization had been under way with other regional bodies established. Regional Councils, the institution which hosts Communal Land Boards, were also much stronger in 2002 than in the previous decade.

Communal Land Boards have been effective. Close to 4,500 holdings have been registered. Roughly three quarters of these are approvals of existing land allocations under customary systems. Thus far, there is no measure of the effects this type of rights reform has had on issues such as investment in land, increases in agricultural production and/or poverty reduction. In the long term, communal lease rights could play an important role in the perceived rural to urban transition of Namibia. Urbanization increased by roughly a third between the Censuses of 1991 and 2001. Population projections for Namibia's Vision 2030 predict that two thirds of Namibians will live in urban areas. As people leave rural Namibia, they may find existing leases on their land a useful asset which can be either sold or rented.

Lessons

As seen in the Namibian experience, it is possible to transfer deeds, leaseholds and other rights to the poor and historically disadvantaged. It is, however, not a process that can happen overnight. Some Namibian programmes have been more successful than others. Based on what we have learned since 1990, there are three key areas that require high levels of investments for successful rights transfer to rural dwellers.

1. Understand the rights that can be provided as well as the economic benefits that rights can bring. Here, environmental and historical factors must be considered. There has to be an appreciation that the model of a small scale agricultural holder may not always be the best approach to handing out rights. Namibia's conservancies are a good example. Some of the more successful conservancies are in areas where the value of tourism and related activities outweighs the value of agriculture. The understanding of this difference only came after considerable investment in an array of socio-economic research. In a similar fashion, research and planning on the most appropriate way to devolve tourism rights took place. Using communities as the basis for creating a legal entity also took considerable investment and planning at the policy, legislative and community levels. All of this activity requires investment.
2. Investments in capacity are crucial. Regardless of the type of tenure security offered, extensive support is required. Investments in capacity have to take place at all levels, from the national, to regional down to beneficiary communities. At the national level there is a need to develop policies and effective management schemes for rights devolution. As noted above, Namibia's Ministry of Lands and Resettlement is now, after 16 years of operation, in a much better position to effectively participate in the transfer of rights. Regional structures provide an important level of intermediation between national policies and local complexities. Aside from bringing services closer to communities, regional structures are also able to translate policy and law to match the vagaries of local customs and situations. This can only be done if regional governments have the levels of skill and capacity required. This was not always the case in Namibia. From the late 1990s through the present, the results of capacity building programmes at both national and regional levels has become evident.

The poor often lack the basic skills necessary for their own economic growth. Namibia's most successful programme for returning rights, conservancies, has benefited from long term support. Support which ranged from giving basic organizational skills to communities to professional research to support policy to legal advice. This range of support for conservancies is expected to last for many years,

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and it needs to be copied into other programmes of rights reform.

3. Investment in the underlying economic infrastructure is the last point mentioned here. Rights transfer that fails to bring increases in rural incomes will also fail to bring poverty reduction. Secure tenure over resources can enhance investments which in turn can lead to increased productivity. The final link to poverty reduction, however, is the parallel enhancement of economic activities needed to transform increased production into income. Enhancing economic activities requires a range of activities. Market analysis is required to identify products, their potential and how to link them to existing markets. This is an activity that requires national and regional level input. Creating marketing structures comes next. This includes physical infrastructure such as storage facilities, auction pens and transportation systems. It also includes social infrastructure such as marketing and producer associations, value addition intermediaries and sellers into the final market.

Ironically, Namibia's apartheid past highlights the need of investment in the economic structures that underpin the transfer of rights. The Land Settlement Scheme, the vehicle through which land was removed from blacks, and handed over to white settlers, ran from the early 1920s through the 1950s. In many ways the Land Settlement Programme was a scheme dedicated to providing security of tenure and the potential for poverty reduction to a racially defined class of people. Aside from generous direct financial support for the purchase of land and the establishment of farming operations, extensive ancillary support systems were created (Fuller, 1998). Included, was the development of transportation infrastructure, extension services, communications and marketing support. Indeed, much of the annual budget of colonial era governments in Namibia either directly, or indirectly was dedicated to supporting white settler farmers. These figures annually ran into tens of millions of dollars.³³ At the end of the process, the commercial farming sector in Namibia is well developed, and largely profitable with the ability to successfully participate in international markets. Thus, today, when we embark upon poverty reduction through title provision in less developed parts of the country, we have to plan for a long term process. A process that may take decades, a process that will definitely require multiple levels of long term investment.

³³ Unfortunately, almost no research has been carried out into the finances behind the Land Settlement Scheme.

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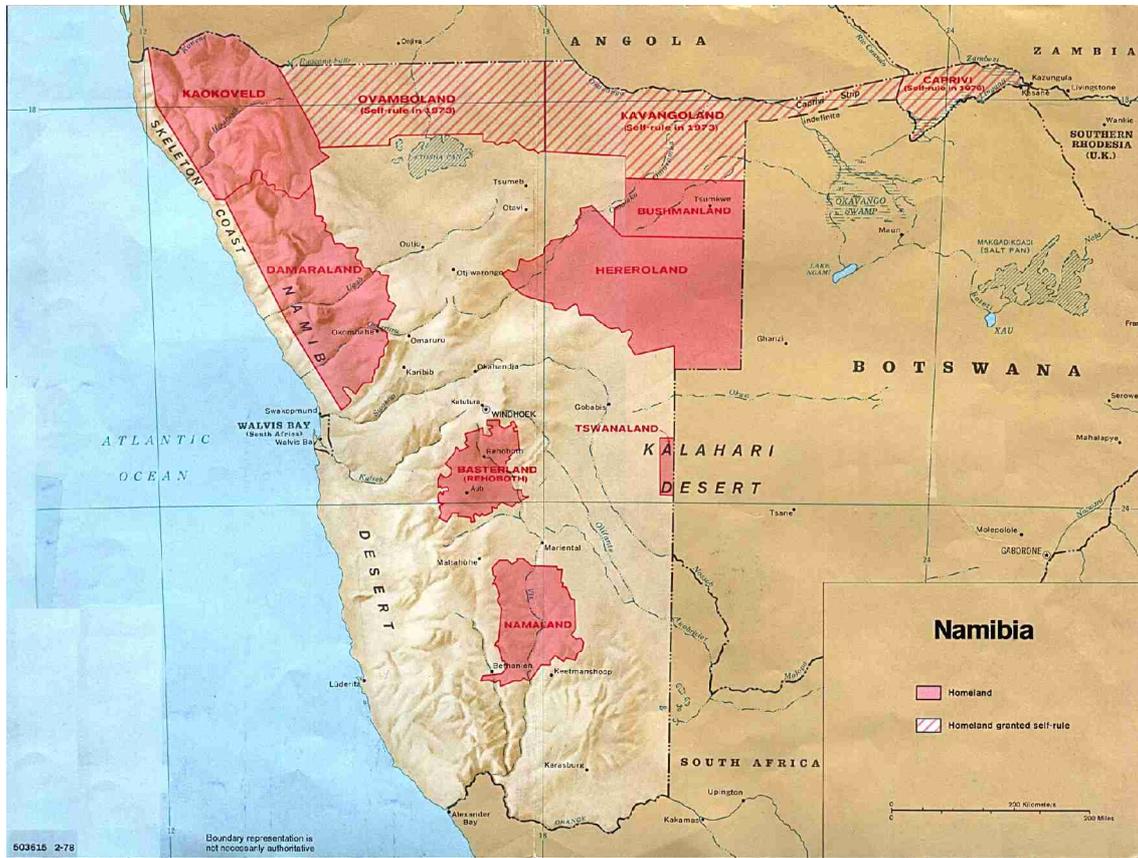
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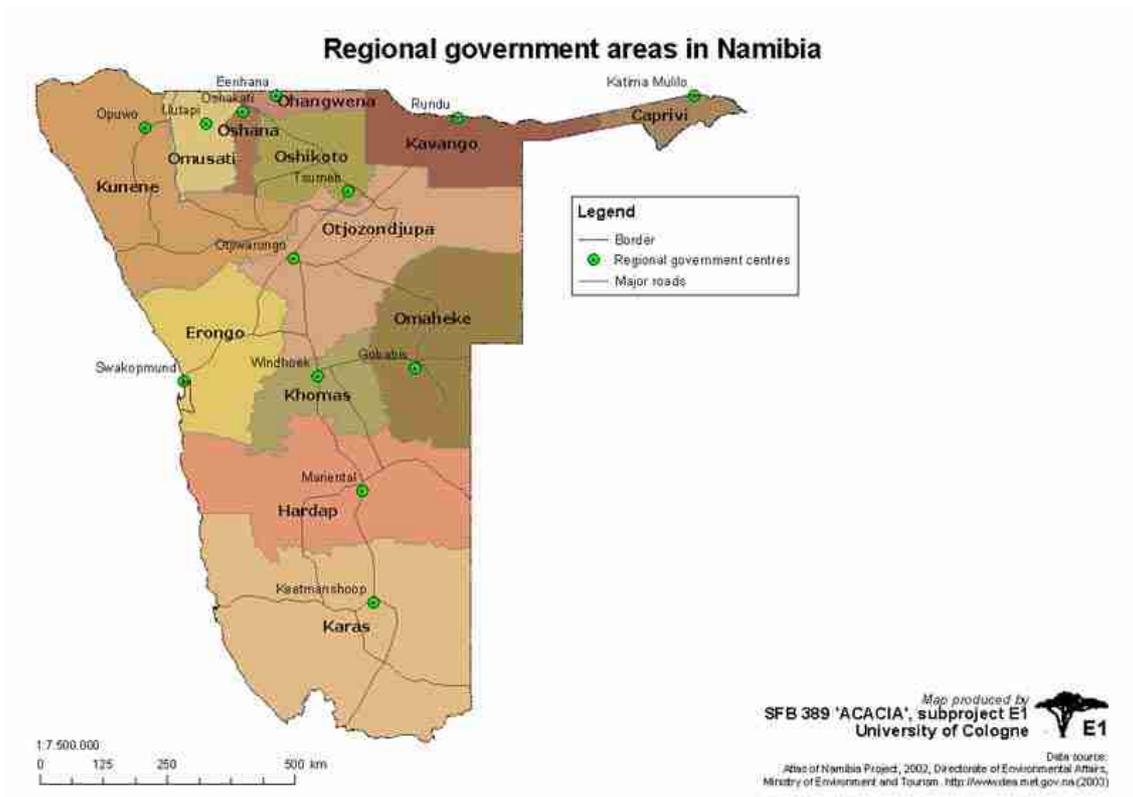
Appendix: Maps of Namibia

Map 1. Pre-Independence Homelands



Source: Perry-Castaneda Library Map Collection, University of Texas at Austin.
http://www.lib.utexas.edu/maps/africa/namibia_homelands_78.jpg

Map 2: Current Administrative Regions



Map 3 (Overleaf) : AALS and Commercial Resettlement Farms, Current Situation
Source: (Vigne and Motinga)

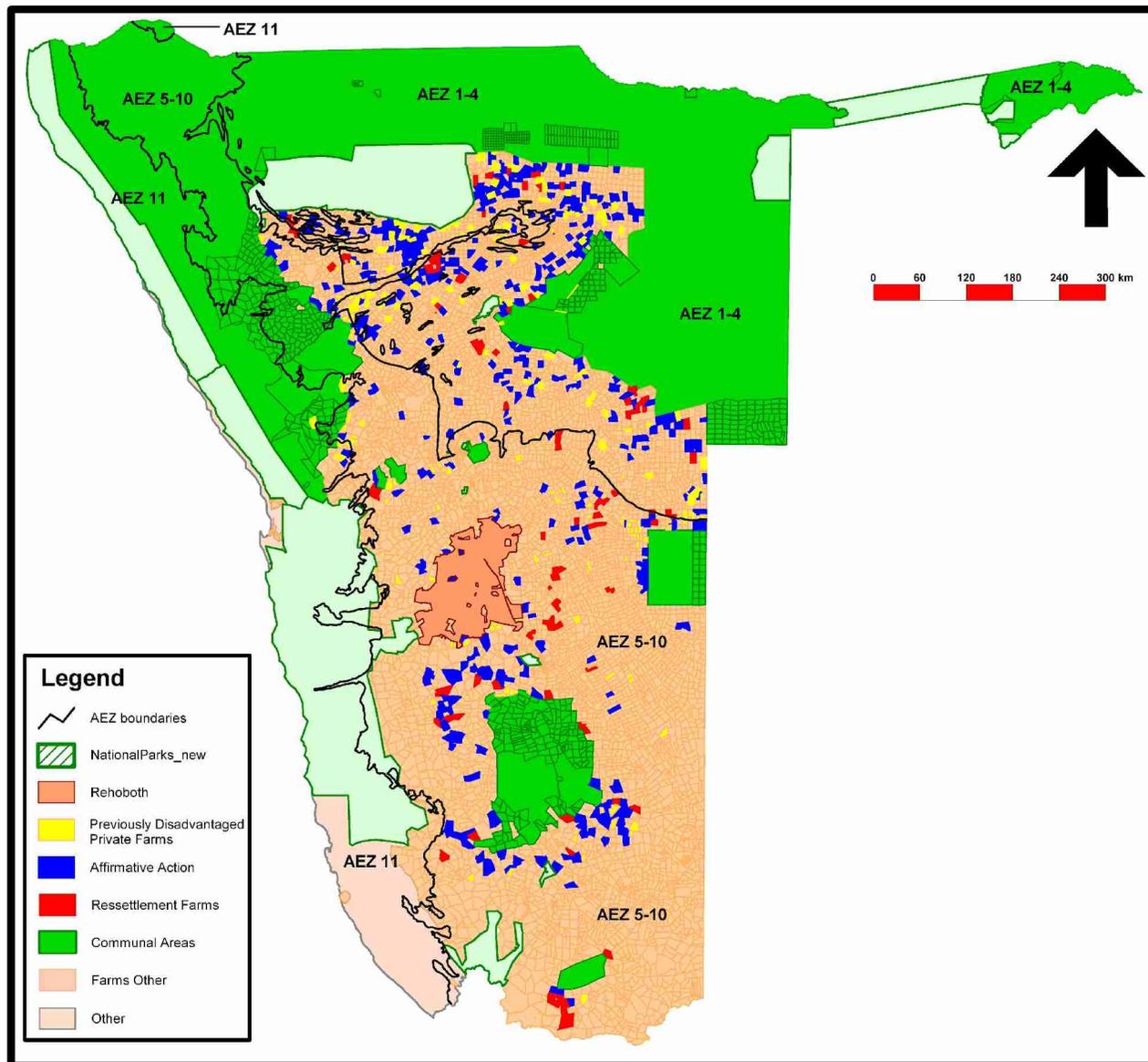


Figure 6

Land Redistribution and Agricultural Potential (AEZ's)

Data Supplied By:



Ministry of Agriculture, Water and Rural Development

Client:



Namibian Agricultural Union

Map Produced by:

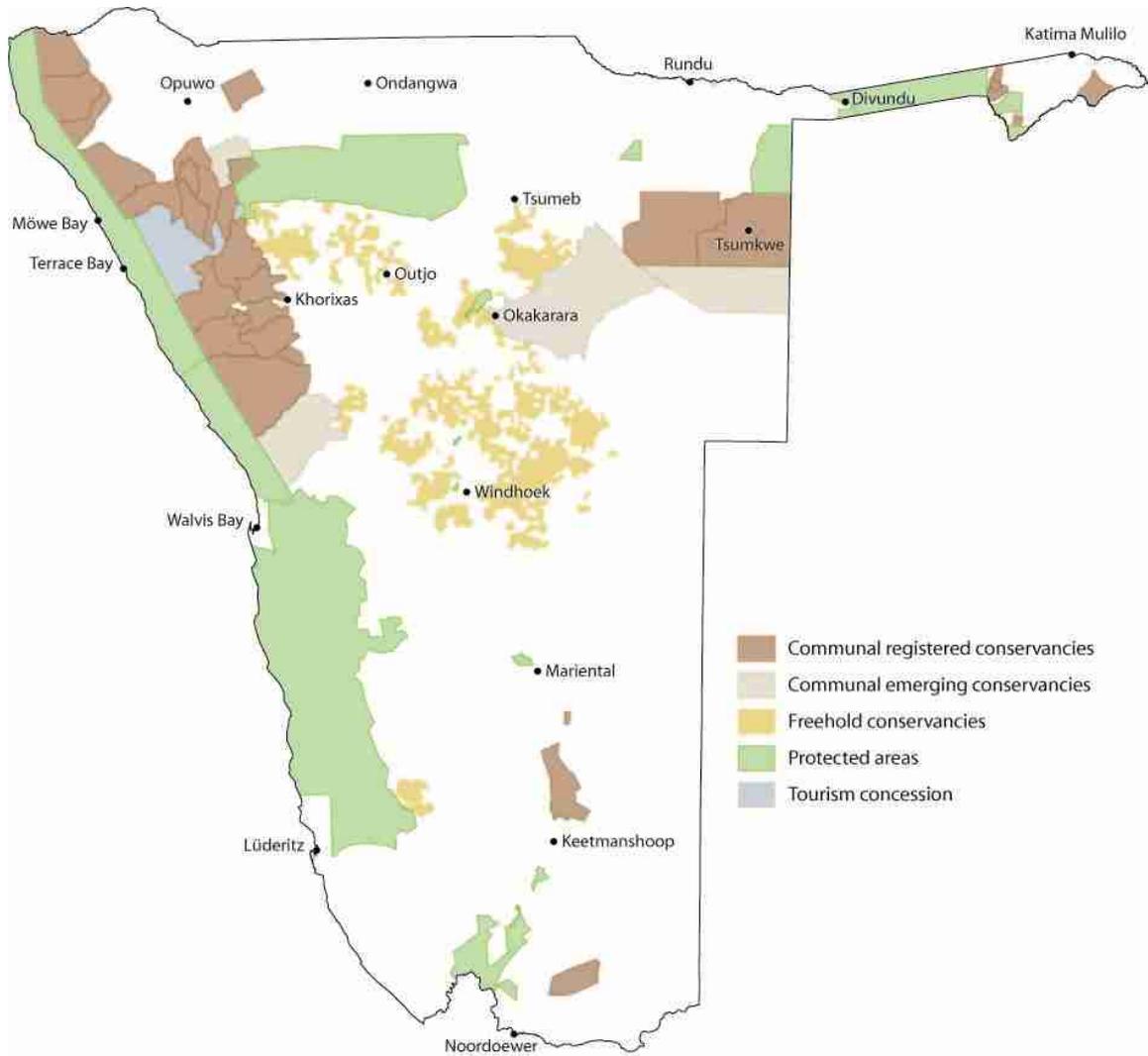


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Date: April 2003	Revisions:
Drawing No.	
Scale 1:5 000 000	

Map 4: Conservancies in Namibia



Source: (NACSO)