

“Overall, the Namibian government has been cautious in its handling of land redistribution, despite the fact that the gross inequalities in access to and possession of land are a reflection of earlier colonial expansion.”

## Namibia’s Intractable Land Question

ELLISON TJIRERA

In the course of about 106 years of colonial rule in what became Namibia (then known as South West Africa), historical accounts bear testimony to the fact that the fight against imperialism was by and large about land. From the Massacre of Hornkranz in 1893 to the Genocidal War of 1904–1908, the colonizers maneuvered to force the Indigenous people off their land and entrench their subjugation. The rinderpest epidemic of 1896–97 devastated livestock and impoverished the Herero and Nama communities, forcing some chiefs to “sell” land to the Germans. The context in which these sales took place was clouded by a climate of fear among Indigenous communities whose livelihoods had been decimated. A colonial dispensation is invariably one of power asymmetry, rendering any transaction decidedly one-sided.

In the initial period of German colonial penetration, inter-ethnic clashes between Ovaherero and Nama people made it difficult to form a united front against the colonizer. The Germans took advantage of rifts between Africans. In 1885, Ovaherero chief Maharero signed a protection treaty with Heinrich Göring, the newly arrived imperial commissioner for German South West Africa. Africans eventually took up arms against the Germans once such protection treaties were seen for what they were, a pretext for taking land from locals.

Every opportunity to expropriate land from the Africans was seized upon. Land was confiscated not only through violent means, but also by using fraudulent agreements signed with local chiefs. As if this were not enough, in 1903, the German imperial commissioner, Theodor Leutwein, declared that 75 percent of the land owned by Africans had to be sold to Europeans. The

remaining 25 percent would be designated as native reserves.

Land dispossession continued under South African rule after the Germans surrendered to invading South African and British forces in July 1915. Despite the fierce resistance of Indigenous communities, they were forced to vacate land they had reclaimed after the German departure so that white settlers could move in, and were then relocated to marginal areas. In 1962, the final phase of cementing racially structured land ownership was put in motion with the South African government’s appointment of the Commission of Enquiry into South West Africa Affairs, commonly known as the Odendaal Commission.

Entrenching territorial apartheid, the Commission recommended the establishment of homelands for each black ethnic group. The division of land along racial lines was nothing new. In 1921, the Native Reserves Commission recommended that black settlements should be removed from what were regarded as European areas. Four decades later, the Odendaal Commission went a step further by adding the ethnic dimension to land distribution.

What stretches credulity in the post-independence era—though it is unsurprising given the prevailing legal architecture—is that these patterns of land distribution have remained largely undisturbed. Recent figures from the Namibia Statistics Agency reveal that previously advantaged farmers (read whites) own 27.9 million hectares (70 percent) of the freehold agricultural land, compared with 6.4 million hectares (16 percent) owned by previously disadvantaged (read black) farmers.

As a 2022 World Bank report notes, unequal land ownership perpetuates the historically high levels of income inequality in countries such as Namibia and South Africa. It is no wonder that these two countries remain the most unequal in the world.

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## PATTERNS OF DISPOSSESSION

Land dispossession in Namibia continued almost seamlessly when South Africa took over the colony from Germany. The South Africans found a well-oiled state apparatus with which to proceed with forced expropriation of land from the Indigenous communities. There were other continuities between German rule and South Africa's occupation. As political analyst Phanel Kaapama has observed, "The Republic of South Africa, just like [its] German predecessor, deployed similar administrative actions for the transplantation, adaptation and enforcement of foreign and colonial European legal discourses of property rights in land."

By all indications, these continuities have outlived both German and South African colonial rule. Their reverberations are felt in contemporary Namibia, particularly as far as the legal property regime is concerned.

From 1977 to 1982, the Western Contact Group (WCG)—which included three of the five permanent members of the United Nations Security Council (the United States, Britain, and France), plus two non-permanent members (Canada and the Federal Republic of Germany)—led international diplomatic efforts to bring about Namibian independence. Its influence in shaping important elements of Namibia's 1990 constitution, the basis for the negotiation of the country's independence, cannot be overemphasized.

A key stumbling block that precluded the pursuance of radical socioeconomic transformation was the Security Council's imposition of a preliminary set of constitutional principles in 1982. Principle B5 set out fundamental human rights and freedoms, and prohibited any amendment that would repeal, diminish, or detract from them. One of those rights, with a direct bearing on the land question, related to "protection from arbitrary deprivation of private property without just compensation." This formed the basis for Article 16 of the 1990 Constitution, which reads:

1. All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems

expedient the right to acquire property by persons who are not Namibian citizens.

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

These provisions are seen by descendants of the dispossessed as instruments that protect ownership of land acquired by force during the colonial period. As a consequence of Article 16, the "willing seller, willing buyer" (WSWB) principle became the cornerstone of land acquisition by the state for the purpose of redistribution. To say that this acquisition approach has yielded less than satisfactory results would be an understatement. The WSWB principle is a crude market-driven vehicle, inimical to structural transformation. It has contributed to the escalation of farmland prices well above the land's productive capacity, since sellers inflate the value of their properties.

The WSWB principle had already failed spectacularly in the case of Zimbabwe, where the Lancaster House constitutional provisions of 1979 obligated the independent state to acquire land on a WSWB basis.

The land offered to the government was expensive and marginal, making it difficult to bring about any meaningful land redistribution. As land supply failed to match demand, the WSWB principle came to be seen by many as an instrument for protecting landowners and paying lip service to those dispossessed by the colonial system. Zimbabwe then took the radical path of forced land expropriation without compensation. The Fast Track Land Reform Program formally began with the Land Acquisition Act of 2002. Though this program polarized opinions and its effectiveness is undetermined, the foremost Zimbabwean land expert, Sam Moyo, notes that "[f]ast track land redistribution reversed racial patterns of land ownership and broadened access to land across ethnically diverse provinces, while replacing most private agricultural property rights with land user rights on public property."

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colonial expansion. This cautious approach has dimly failed to address the land question in any meaningful way. Any proposal of radical alternatives is almost immediately shunned by the state and big landowners, yet preserving the status quo is untenable in the long run. Difficult conversations need to be held, and painful decisions must be made to prevent a festering wound from becoming malignant.

It must be recognized that the WSWB approach has failed. Yet a radical path such as Zimbabwe's runs the risk of encroaching on equally important rights and freedoms. Nonetheless, calls for land grabbing from certain quarters of society cannot be ignored for much longer. Many political and economic elites own several farms, whereas the majority of the population is land hungry. For a start, owning more than one farm should be made illegal.

## BALANCE OF FORCES

To signal the centrality of land reform for an independent and potentially transformed Namibia, the First National Land Conference was held in Windhoek in 1991, a year after the country attained political independence. This conference was attended by no fewer than 500 delegates from a broad spectrum of stakeholders, including government officials, traditional leaders, academics, and civil society organizations. It was intended to provide a platform for fostering national consensus on the volatile postcolonial land question.

The conference came up with a number of recommendations, such as distributing commercial farmland on the basis of WSWB, introducing a land tax, eliminating foreign-owned land and absentee landlordship, and reallocating underutilized land. But ancestral land claims were regarded as too cumbersome and complex to be addressed.

Twenty-seven years passed before the Second National Land Conference was held, again in Windhoek. In between the two conferences came a number of policy initiatives aimed at redistribution. These include the National Resettlement Programme and the Affirmative Action Loan Scheme (AALS). The former involves the acquisition of freehold farms by the state and their transformation into small farming units for qualifying beneficiaries. Under the AALS, Namibians with the necessary assets are given incentives to buy commercial farms, such as subsidized loans. These two

instruments of land reform have delivered results that leave much to be desired.

Implementing the various resolutions adopted at the two national land conferences has proved difficult over the years. Most of the measures set out in the resolutions adopted at the 1991 conference did not see the light of day. Of the 177 resolutions adopted at the Second Land Conference, only nine were implemented between 2018 and 2020. As the most recent (2018) land ownership statistics indicate, the process of acquiring land for resettlement has proceeded at a snail's pace.

The Second National Land Conference resolved to abolish the WSWB doctrine and replace it with "alternative acquisition methods." The fact that these alternative methods were left unspecified is revealing of the flippancy pervading land reform policy. Two years after that conference, the government backpedaled on the abolition of the WSWB principle. What informed this reversal? A progress report issued by the Office of the Prime Minister in December 2020 stated:

Government consulted thoroughly on the implementation of this resolution and found that Willing Seller–Willing Buyer is entrenched in Article 16 of the Constitution that bestows persons with the right to sell and buy property in Namibia. This means that the express deletion of the principle of Willing Seller–Willing Buyer from the [Agricultural (Commercial) Land Reform Act (No. 6 of 1995)] would be a futile exercise as the right to buy and sell will remain entrenched in Article 16.

In light of the foregoing, it appears that what has been identified as an impediment to an accelerated land reform process has been decreed to remain in place eternally, no matter what alternatives might be proposed. One wonders why a resolution that was destined to hit a constitutional brick wall was adopted in the first place.

With regard to developing "alternative acquisition methods," the progress report states that "[so] far the market has delivered land for acquisition." This observation is contestable, for the market seems to be crudely distorted by sellers, making land acquisition a very expensive undertaking. The political balance of forces remains stacked against the landless and the dispossessed.

The 2018 Ovaherero Traditional Authority Position Paper on Land and Related Matters—which was submitted to the Second National Land Conference—singled out WSWB as one of the legal

constraints that slows down the restitution process and increases its cost. In the eyes of descendants of the victims of settler colonialism, the international community's imposition of the 1982 constitutional principles provided an alibi for protecting vested interests that were established through colonial theft and plunder. This flies in the face of calls for pursuing meaningful national reconciliation based on principles of restorative justice.

## THE URBAN TURN

Although the mushrooming of slums has become a noticeable feature of most urban centers across Namibia, it was not until very recently that urban land featured in the national discourse. Whenever discussion of land reform or the "land question" is conducted, most Namibians from all walks of life tend to assume that it concerns commercial and communal land. This framing of land reform is by no means an accident. It has been shaped by the way land issues are approached at the national level.

It is worth noting that none of the 24 resolutions adopted at the 1991 land conference addressed the status of urban land even remotely. In fact, all the resolutions were grouped under the rubrics of either "commercial land" or "communal areas." As events of the past few years have shown, this has proved to be a simplistic reading of the land question.

This state of omission is what the Affirmative Repositioning (AR) movement has sought to address since entering the fray in 2014. In the following year, the group organized a mass mobilization of land applications in Windhoek and other cities in Namibia. This action brought the plight of the urban poor into sharp focus, drawing attention to a hitherto neglected dimension in the broader land question. In 2015, AR was granted an audience with President Hage Geingob, and the government made a commitment to provide public services to 200,000 plots of urban land countrywide.

In 2021, AR took the government to court for having failed to honor the agreement. The High Court dismissed the government's argument that the pact was unenforceable. As for the mass land applications launched under the AR banner, nothing tangible has come of the exercise.

The Second National Land Conference of 2018 had a thematic area of discussion titled "Urban Land Reform Programs and Related Matters." This area included about 56 resolutions dealing with matters such as housing prices, the problem of tenure insecurity in urban informal settlements, the need for town land expansion through extension of municipal boundaries, and compensation.

Although the issue of urban land has entered the public discourse, many challenges remain when it comes to the delivery of affordable land, provided with basic services like sewage, water, and electricity, that would allow low-income residents to build or expand houses. The problem is compounded by the absence of security of tenure for the majority of residents in informal settlements. This discourages them from investing in incremental upgrading of their dwellings, since illegal structures invite evictions and demolitions.

## GENOCIDE 'REPARATIONS' AND LAND

There is no denying that the issue of historical land dispossession in Namibia is intricately linked to the Herero–Nama Genocide of 1904–1908, in which no less than 80 percent of Ovaherero and at least 50 percent of Nama people were killed. It took more than a century until Germany finally admitted in

2015 that the extermination order and the subsequent atrocities in German South West Africa were tantamount to genocide. This statement came about as a result of pressure from civil society organizations, the Namibian state, and representatives of the victims' descendants.

Despite protracted negotiations over a formal acknowledgment and reparations for this genocide, the May 2021 Joint Declaration (JD) by the Namibian and German governments did not bring any closure to this ugly period of Namibia's colonial history. The JD has drawn much criticism ever since it was put before the National Assembly for debate. Part of the problem is that the agreement calls for Germany to provide over 1 billion euros in development assistance in parts of the country populated by the descendants of the victims, but without using the term "reparations." Instead, the JD is couched in the language of "reconciliation and reconstruction."

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The declaration skirts the matter of land reform and offers nothing new on this issue. Clause 16—the only clause dealing with land—reads:

A separate and unique reconstruction and development support programme will be set up by both Governments to assist the development of descendants of the particularly affected communities, in line with their identified needs. Representatives of these communities will participate in this process in a decisive capacity. Under this programme, projects will be implemented in the following regions: Erongo, Hardap, ǀKharas, Khomas, Kunene, Omaheke, and Otjozondjupa. The projects will include the following sectors: Land Reform, in particular Land Acquisition, within the framework of the Namibian Constitution, and Land Development, Agriculture, Rural Livelihoods and Natural Resources, Rural Infrastructure, Energy and Water Supply, Technical and Vocational Education and Training.

All these areas of focus are already part of Namibian government programs across various ministries. Land reform-related matters such as agriculture, rural infrastructure, and water supply are some of the key responsibilities of the Ministry of Agriculture, Water, and Land Reform.

A group of Herero and Nama representatives recently filed a lawsuit to block further discussion of Namibia's agreement with Germany in parliament, which could lead to its subsequent adoption and ratification. The descendants claim that the JD is illegal because it would not provide them with direct compensation. They have also argued that their representatives were not adequately included in the negotiations. Parliamentary debate on the measure has come to a complete halt.

## ELITE CAPTURE

More than a century after the end of colonialism, the land ownership patterns that it bequeathed to contemporary Namibia are still difficult to dislodge. Hopes for radical change will remain a mirage as long as a legal stranglehold maintains the status quo. This enduring inequality is compounded by elite capture of opportunities created by the redistribution of land at taxpayers' expense. The politically well-connected own huge tracts of land, while the majority is squeezed into crowded communal areas.

In 2018, the Ministry of Land Reform had to be threatened with legal action to release the list of land resettlement beneficiaries after a public outcry that the process had been hijacked by political elites and their cronies. Before the independent Office of the Ombudsman said it would file for an injunction, a high-ranking ministry official claimed that releasing the list would stoke tribal tensions. This episode gave credence to the perception that the majority ethnic group, the Aawambo, tend to take precedence in land resettlement programs, even though they were not among those who were dispossessed of land.

Elite capture of land resettlement initiatives has ensured a lackadaisical approach to the land question in Namibia. Political elites are the beneficiaries of the gridlock that besets land redistribution. Allowing that stasis to continue might make political sense for those in power, whose election campaigns can point to a problem in need of solving.

This status quo allows unequal patterns of land distribution to persist. The acquisition methods tried thus far have failed to deliver for the land hungry. Genuinely alternative approaches to the land question have yet to be conceived. What exists at the moment is smoke and mirrors. ■