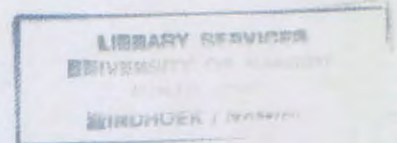


**The Institute of Social Sciences (ISS) in cooperation with the University  
of Namibia (UNAM) Masters Program.**

**Research Paper: Master of Public Policy and Administration (MPPA).**

**Land Policy in Namibia: Formulation and Constraints (with specific  
reference to Commercial Land).**

**Joseph S. Iita (9999922).**



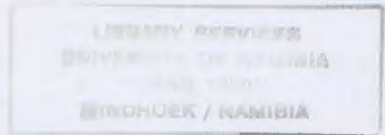
Submitted to:  
**Professor J. Björkman (ISS)**  
**Professor M.El Toukhy (UNAM)**

Den Haag/ Windhoek

November 2000.

## Dedication

This paper is dedicated to my wife Selma, for her commitment, love and understanding. It is also partly dedicated to my children who tolerated the non-availability of their father for social activities in over fifteen months. Finally, this paper is dedicated to my parents and the spirit of my immediate ancestors.



### Acknowledgement.

This paper would not have been possible without the selfless support of Professor M. El Toukhy, my local co-supervisor. The same appreciation goes to Professor J. Bjorkman, my supervisor at the ISS, with whom we have constant e-mail communication. In the same vein, my appreciation goes out to the University of Namibia (UNAM) and its Vice Chancellor for their part in the organization of the course as well as hosting it. I would like to specifically single out those academic and non-academic UNAM staff that worked tirelessly for the success of this program.

Without the theoretical knowledge in public policy, it would have been extremely difficult to analyse the policy making process in Namibia. I would therefore, like to thank the ISS Professors for imparting their knowledge and experience to our group.

It would be a serious oversight if I do not show my appreciation to the Namibian government for making it possible for me to be one of the Guinea Pigs, on the prestigious UNAM/ISS MPPA Program. My appreciation goes to my fellow course participants, for their arguments and exchanges that resulted in a better understanding of current issues.

Finally, my heartfelt thanks to Linda Olivier, for her continued assistance in e-mailing draft chapters to Professor J. Björkman when my own computer failed me.

## ACRONYMS.

ACLRA	The Agricultural (Commercial) Land Reform Act.
CAN	Action National Christian.
Agri-Bank	The Agricultural Bank of Namibia.
CASS	Centre for Applied Social Sciences.
GOZ	Government of Zimbabwe.
GRN	Government of the Republic of Namibia.
IMF	International Monetary Fund.
LRAC	The Land Reform Advisory Commission.
MAWRD	Ministry of Agriculture, Water and Rural Development.
MLRR	Ministry of Lands, Resettlement and Rehabilitation.
MRLGH	Ministry of Regional and Local Government and Housing.
NANGOF	The Namibia Non-Governmental Organizations Forum.
NAPWU	Namibia Public Workers Union.
NAU	Namibia Agricultural Union.
NEPRU	Namibia Economic Policy Research Unit.
NLC	National Land Conference.
NLP	National land Policy.
NNFU	Namibia National Farmers Union.
NPF	National Patriotic Front.
SWAPO	South West Africa People's Organization.
TCCF	Technical Committee on Commercial Farmlands.
WB	World Bank.

## Abstract

The research aims at enhancing understanding of critical constraints in carrying out Land Reform in Namibia. The constraints will be examined from policy formulation through legislation to implementation. The study concentrates on commercial land only. It mainly assesses the Agricultural (Commercial) Land Reform Act, in an effort to identify constraints preventing full or partial implementation of the Act (ACLRA).

Pressure for Land Reform arises from growing disparity between highly unequal, but fixed structure of land ownership, and rapid changes taking place in society. There are many political objectives of Land Reform, including, the strengthening and consolidation of the basis of a new state. The economic objectives of Land Reform are mainly the reduction of absolute poverty and increased agricultural output. In Land Reform, expropriation is politically the most difficult action amongst all instruments.

It has been established that in policy formulation, consultation is very important. It has been further established that separation of policy formulation from policy implementation is a constraint. Policy failures come from several sources. It can also be attributed to inadequate problem definition or policy design.

The ACLRA does not reflect some of the important policy recommendations in its provisions. The policymaking scene is still dominated by groups with conflict of interests. There is lack of capacities within the implementing organization. The structures set up to implement land policy were inadequate. The Act is full of loopholes, making it difficult to implement. The composition of the LRAC is in itself a constraint.

It has been established that the presence of squatters is a manifestation of a land reform that is not well implemented. Squatters are in many categories, including farm invaders and former farm labourers. For the invaders, they must be sent back to where they came from. As for the former farm labourers, they should be accorded priority land settlement.

The principle of willing seller willing buyer is a serious constraint and needs to be replaced with other measures in line with the Constitution. One such measure is that compensation should only be paid out for actual development on the land in question. A major lesson learnt is that successful land reform programs are costly. This is however a price worth paying for.

It has been concluded that there should be no separation of policy formulation from policy implementation and that all stakeholders, including civil servants should be involved. A conclusion is reached that capacity of the implementing institution should be further developed in the areas of land management and administration. The study recommends a review of the principle of willing seller willing buyer within the confines of the Namibian Constitution. While it is agreed that the productive agricultural system should not be disturbed, this must be balanced with allocating any land to the land-less for productive purposes. There is a need for Namibia to source funding for land reform. It is further established that Kenya carried out a successful land reform from which Namibia needs to learn.

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## CHAPTER ONE.

### Introduction

#### 1.1 Historical Background.

During the colonization of Namibia by Imperial Germany, Namibians lost their land as a result of repeated conquests. In order to justify their occupation, many views were advanced, including the fact that in some cases land was bought from African leaders. However, no valid contracts in law dating to those periods are in existence today. The concept of land sale was unknown to the African people in pre-colonial Africa. What is known is that land was taken away from the African people by force and fenced off thereafter.

As more and more land was alienated to colonial settlers, the African people were forced into marginal and infertile land areas. Land dispossession of the African people was thus begun. The German colonial government acquired large tracts of land, which it hoped that concession companies would administer and develop. By 1893 all of Namibia was essentially parcelled out to eight concession companies (Adams et al, 1990:11). Far from investing capital in Namibia, these companies blocked the introduction of settlers into the country by holding back sales of land for speculative purposes (Ibid, p11). Although so-called protection treaties had signed much land away, very little actual alienation of land had occurred before 1897.

In 1897, rinderpest pandemic swept through the country wiping out 90% of cattle stock. More and more of the little land Africans had was alienated to German colonial authorities. The land situation worsened with the taking over of Namibia by the Union of South Africa after World War 1.

Many wars were fought over land. As these were localized, European intruders always defeated the African people with sophisticated weapons.

What followed was a protracted struggle by the Namibian people to reclaim their land, a struggle that culminated in national independence on March 21<sup>st</sup>, 1990.

With the achievement of national independence, people hoped to get back their land. Some went to the extent of calling for forced return of ancestral land. The thrust for Namibian independence was in part driven by the expectation that land would be redistributed from the white dominated commercial farming districts.

Meanwhile, the Government of an independent Namibia initiated a policy of National Reconciliation. This policy was found essential in view of the polarization of the Namibian Society by the past discriminatory policies. The policy was put in place to heal the wounds caused by long years of separate developments. In line with this policy, land would only be acquired after fair and just compensation is effected.

Turning back to land policy, the government decided to hold a National Land Conference in 1991. Prior to the conference the land question was debated extensively in the National Assembly. Hon. Moses Katjiuongwa tabled a motion on the land question in the National Assembly on 1 June 1990. In that motion, he called for a national land conference. Meanwhile, in the same speech, he admitted that Hon. Marco Hausiku, and then Minister of Lands, Resettlement and Rehabilitation had earlier informed him that the government was already organizing such a conference. Hon. Katjiuongwa was speaking on behalf of his political party, the National Patriotic Front (NPF). He made the following proposals:

The state will have to purchase under utilized land and lease it to potential farmers in need of land, on condition that the land is used productively.

The state will have to create and encourage credit institutions to help promising farmers who do not appear productive to use more efficient means to increase productivity and to make a greater contribution to agricultural production. The state will have to impose a tax on farmland, to discourage people from keeping too much farmland for the purpose of tax avoidance. All political parties supported the motion. These deliberations were captured in the **Debates of the National Assembly, first session, first Parliament, Volume 2, 1st June to 11th June 1990, pages 3 to 75.**

### **1.2 The Research Problem.**

Land is an emotive issue in Namibia as it is throughout the world. The Namibian people believe that lack of access to land is the main constraint hindering poverty alleviation, if not its eradication. In this regard, Namibian people experienced colonial exploitation for over one hundred years.

### **1.3 The Land Question, Government Actions and Policies.**

In order to redress the imbalances created by the deliberate apartheid policies, the Namibian Government, in close consultations with relevant national stakeholders, initiated a National Land Conference in 1991. At that conference, Namibians from all walks of life produced a consensus document. This document was later to play a major role in the formulation of the National Land Policy. It was this document that was relied upon heavily by the drafters of the Agricultural Commercial Land Reform Bill and the subsequent National Land Policy.

The National Land Conference was conceived in the National Assembly after a motion by a Member of Parliament, Moses Katjuongwa called for such a conference. The conference brought together Namibians from all walks of life.

The general objectives of the National Land Conference were to achieve the greatest possible consensus on the Land Question, thus providing a solid basis for the formulation of a policy on Land Reform and a program of action to implement the necessary changes and measures (**Report of the Technical Committee on Commercial Farmlands: July 1992:Xiii**). At its closing session, the Conference adopted twenty-four recommendations in the form of consensus resolutions, which were submitted to government.

The quest for the resolution of the land question finds its origin in the national liberation struggle waged by the South West African People's Organization (SWAPO). The Government of the Republic of Namibia set up a Technical Committee on the Commercial Farming Land with a clear mandate to evaluate the facts regarding under-utilised land, absentee ownership, viable farm sizes in different regions, excessively large farms and multiple ownership of farms. It was further expected to make appropriate recommendations for the acquisition and reallocation of land so identified. The work of the Committee culminated in the drafting of the Agricultural Commercial Land Reform Bill of 1994. The guiding principle for the formulation of the National Land Policy is found in the SWAPO Party Manifesto of 1994. The Bill became law after it was gazetted in March 1995. Implementation was to start immediately. The Act makes provision for the establishment of the Land Reform Advisory Commission, the Rules Board and the

Lands Tribunal. It defines procedures to be followed in the acquisition of land as well as its allocation.

The Ministry of Lands, Resettlement and Rehabilitation was assigned the responsibility of formulating and implementing the National Land Policy in consultation with stakeholders. The latter included the Namibia Agricultural Union (NAU), Namibia National Farmers Union (NNFU), Traditional Leaders, Non-Governmental Organizations Forum (NANGOF) and many others.

No specific criteria were used for inclusion or exclusion, which in itself is a constraint. In fact, government sought to embrace everybody in the process. Some were mandated by the Government to consult widely on its behalf. The results of the consultations and input from different institutions culminated in the endorsement in 1998 by the National Assembly of the National Land Policy for Namibia. It must however be emphasized that some stakeholders felt that their viewpoints did not feature in the final document. This is more evident in the complaints of NANGOF and NNFU that claim that their position papers were ignored. NNFU went to the extent of demonstrating in 1999. The demonstrations by some of the stakeholders point to absence of meaningful consultations. The NNFU represents the interests of formerly disadvantaged farmers.

With regards to Communal Land, the government invited Traditional Leaders to a consultative Workshop on the draft Communal Land Bill in 1996. But, communal land does not form part of this research. The objective was for them to be briefed and fully participate in the deliberations.

The Ministry of Lands, Resettlement and Rehabilitation is assigned a political task of implementing the Land Policy. A statutory body, the Land Reform Advisory

Commission was established in 1995. Its main function is to advise the Minister on land matters. The Commission is composed of members from the private sector, farmers unions, NGOs and the Government.

The Lands Tribunal, which will arbitrate in disputes on land prices between the farmers and the government, was also established. The Tribunal arbitrates in cases that are referred to it by the aggrieved landowners, after failure to reach agreement with the purchaser (government). The Land Reform Advisory Commission is functioning satisfactory while the Lands Tribunal had not dealt with a single dispute despite abundance of such cases. Many farmers were referred to the Tribunal for arbitration.

In summary, governmental actions and policy related to the Land Question issues, Land Reform and National Land Policy are re-distributive in nature. Since there are gainers and losers, it is generally expected for policy to be opposed by those who currently possess land. In order to maintain political stability, the government has to be committed to both reconciliation and Land Reform. Such reconciliation seems to be one of the constraints in the implementation of the Land Policy.

#### **1.4 Research Objective.**

The objective of this research is to enhance understanding of critical constraints in carrying out land reforms in Namibia.

The constraints will be examined from policy formulation through legislation to policy implementation, with a strong focus on the latter.

It is important to note at the beginning that the emphasis in this study is on commercial land and related policy and not concerned with reforms of communal lands.

The research concentrates mainly on assessing the Agricultural Commercial Land Reform Act (ACLRA). It seeks to identify the main constraints preventing full or partial implementation of the ACLRA. The constraints could be related to policy formulation and /or other constraints, such as political, social, economic constraints, including reconciliation.

### **1.5 Significance of the study.**

The study is expected to help policy makers in formulating appropriate policies addressing the Land Issue in Namibia with specific reference to commercial land. It is expected that the study will help in assessing the Land Question and reach some policy recommendations.

Research recommendations could help policy makers to improve policy formulation and possible amendments to the ACLRA. The research will examine the Act in order to identify constraints in policy formulation and policy implementation. The current land policy, through the implementation of the Agricultural Land Reform Act (ACLRA), which implies acquisition of land through “a willing seller willing buyer principle”, is in itself a constraint.

The Ministry is often blamed for lack of capacity to implement a meaningful land reform program. The study will assess the Ministry in terms of its institutional, human and material resources with the view to determining capacity.

## **1.6 Research Questions and Methodology.**

In addressing the research objectives, the following questions are raised:

- a) What are the factors influencing the formulation of the National Land Policy and more specifically the Commercial Land Reform Act?
- b) What are the factors affecting the implementation of the Act?
- c) What is the way forward?

Much is said about land reform but little of this is adopted as policy for implementation. There is no literature available on the constraints of land reform implementation in Namibia. Reports of the Ministry of Lands, Resettlement and Rehabilitation, discussion documents especially from NEPRU and other institutions will be used as sources of secondary data. Experience at the Ministry of Lands, including non-published materials, will also be used. Literature on neighbouring countries will be used for comparative purposes.

Literature on policy formulation and implementation will be used for theoretical framework. Literature on land reform will be used in the body of the text. Examination of the Agricultural Commercial Land Reform Act (ACLRA) will constitute a substantive part of the study.

## **1.7 Organization of the Research.**

In order to reach its objectives, the study will be organized as follow:

Chapter One (1) introduces the historical background, the research problem and governmental actions, the research objectives, the significance of the study, research questions and methodology and finally, organization of the study.

Chapter two (2) reviews the suitable literature. The literature review is divided into two parts, one on literature on policy formulation and the other on complementary literature on Land Reform in general. The chapter helps with understanding the basis of policy formulation as well as incentives behind Land Reform.

Chapter three (3) assesses the formulation of the National Land Policy (NLP) and promulgation of the Agricultural Commercial Land Reform Act (ACLRA) in an attempt to determine the main constraints hindering its implementation. It also compares the extent to which its formulation has been consistent with methods stated in chapter 2.

Chapter four (4) deals with African experiences and the lessons that Namibia can derive from those experiences.

Chapter five (5) provides a summary and conclusions.

## **1.8. Chapter Outline.**

### **CHAPTER ONE:**

#### **Introduction**

- 1.1 Historical Background
- 1.2 The Research Problem
- 1.3 The Land Question, Government Actions and Policies.
- 1.4 Research Objective.
- 1.5 Significance of the Study.
- 1.6 Research Questions and Methodology.
- 1.7 Organization of the Research.
- 1.8 Chapter Outline.

### **CHAPTER TWO:**

#### **Literature Review.**

- 2.1 Introduction.
- 2.2 Literature Review on Land Reform in general.
- 2.3 Literature Review on Policy Formulation and Implementation.

### **CHAPTER THREE:**

#### **The formulation of the Land Policy in Namibia**

- 3.1 Introduction.
- 3.2 The Policy Content.
- 3.3 The Policy formulation process.
  - 3.3.1 Political Parties
  - 3.3.2 The Political Executive

3.3.3 Senior Civil Servants

3.3.4 The Legislature

3.3.5 The Academia

3.3.6 The Namibia Non Governmental Organization Forum (NANGOF)

3.3.7 The Traditional Leaders

3.3.8 The Namibia Agricultural Union (NAU).

3.4 Problems encountered.

3.5 Some of the salient points from the consensus document of the National Land Conference of 1991 and recommendations of the TCCF.

3.6 The Agricultural (Commercial) Land Reform Act (ACLRA) examined.

3.7 Status of the Land Reform Program and capacities of the implementing institution.

3.8 The policy process.

## **Chapter 4**

### **African Experiences and lessons for Namibia.**

4.1 Introduction.

4.2 The case of Zimbabwe.

4.3 The case of Kenya.

4.4 Some lessons for Namibia.

## **Chapter 5**

### **Summary and Conclusions.**

5.1 Summary

5.2 Some policy implications.

### **References.**

## **Chapter Two**

### **Literature Review**

#### **2.1 Introduction**

The objective of the study in this chapter is to understand the theoretical background of public policy formulation and constraints. It is to understand the important aspects in such formulation. However, it might be useful to first understand the theoretical background of land reform in general in an attempt to understand the importance of land reform issues, particularly in developing countries.

Accordingly, the literature Review is divided into two parts, general literature on land reform and literature on policy formulation.

#### **2.2 Literature on Land Reform.**

In his book, *Agricultural Policies in Developing Countries* (Ellis 1992:195) states that the fundamentally political nature of land reform must be recognized at the outset. Land Reform seldom involves making only a minor adjustment in the socio-economic environment. Historically, many land reforms have attempted to change social relationships of property ownership, wealth, social status and political power. As such, they tend to be contested in the political sphere. The contention is between those forces seeking to put land reform into effect and those powerful members of society expecting to lose from it.

According to (Herring 1983), agrarian reforms worthy of the name transform rural society through alterations in the property structure and production relations,

redistributing power and privilege. Some attributes of land according to (Ellis 1992:195) are as follows:

- a) Land is a resource in agricultural production but is ultimately fixed in supply within a nation state.
- b) Land is a stock of capital, a fixed asset or investment and measure of wealth. Land plays multiple roles in these regards. Land is also held as livelihood security, as a financial security, as transfer of wealth across the generations and as a resource for consumption purposes.
- c) Land is often private property, and as such is inalienable in law. Land reform is redistribution of property ownership in land or other rights of access to the use of land. Land reform is not tax reform. Property taxes, estate duties or taxes on idle land do not constitute land reform, even though in a long term may have minor impact on land ownership and its uses.
- d) Land Reform always has a mixture of political, social and economic objectives (Ibid. p198). Pressure for land reform arise due to the growing disparity between highly unequal, but fixed, structure of land ownership, and the rapid changes otherwise taking place in society. These changes include population growth, increased mobility, and development of the market, income growth, and changing forms of economic exchange or social interaction. Ellis went on to state that eventually, the disparity between rigid land ownership and accelerating social change become so wide, that explosive social forces are set in motion.

The political objectives of land reform present themselves in some of the following possibilities (Ellis 1992:198):

- Land reform occurring as the outcome of revolutionary political change, its main objective being to strengthen and consolidate the basis of the new state.
- Land reform as a platform of liberal political groups, its main objective being to undermine the power of the land based elite.
- Land reform as a platform for socialist political groups, its main objective being to institute co-operative, collective, or state forms of agricultural production.
- Land reform as a defensive measure by conservative political groups, determined to prevent social change, by making an appearance of change in land tenure systems, or by making the minimum change considered necessary to maintain the social status quo. This is known as defensive land reform. Land reform sometimes occurs as the result of unlikely coalitions between political groupings with different ultimate aims in view.

The two main economic objectives of land reform are to reduce absolute poverty and to increase agricultural output. These are known as equity and efficiency goals of land reform. The instruments of land reform include the following (Ibid p204): payment of compensation, the setting of exemptions or ceilings, and the rules of distribution to land reform beneficiaries. Three main groups of land reform instruments can be identified as

- 1) Instruments of tenancy reform
- 2) Instruments of land redistribution and
- 3) Instruments of land settlement.

Expropriation is politically the most difficult action amongst all instruments of land reform. Where land reform comes about as a consequence of a socialist revolution,

expropriation may be automatic, and widespread with few exceptions (Ellis 1992:205). In all other cases, expropriation is the outcome of a political process involving many trade-off and compromises.

The amount of compensation for land re-allocated in land reform legislation is another difficult and highly charged matter. It has usually been beyond the capacity of many states to pay the full market price for the land confiscated.

Many land reforms in practice contain exemptions to the criteria that are established in law for expropriation. These exemptions represent political compromises in the drafting of legislation and they can be fatal for the realization of the goals of the reform.

On implementation, there are many reasons why the outcomes of land reform do not live up to promises of the rhetoric that surrounds their legislation (Ibid 207-208). Some of these reasons are associated with compromises made during the legislative process. Others are related to the practical problems of implementation in an environment where the losers will do their best to evade or thwart the intentions of the legislators. Some of the reasons for land reform to turn out very different in practice from its theoretical intent are:

- ◆ Foot dragging at the legislative stage. Opposition politicians ensure that the legislation takes months, even years to become law. This delay gives landowners more time to rearrange their property in order to evade expropriation.
- ◆ Modification and exemptions. The final legislation may no longer serve the original goals intended.
- ◆ Evasion by landowners. Land can be registered in countless different names.

- ◆ Role of the courts.
- ◆ Legal title problems.
- ◆ Failure of institutional adaptation.

Because Land Reform is fundamentally a political issue that seeks to achieve or prevents social change, examining explicitly the political expectations from reform for different groups permits us to order and clarify the massive number of arguments advanced on the subject (de Janvry 1975:264). To borrow a definition of reform from de Janvry (Ibid 264), “ a reform is an institutional innovation promoted by the ruling order in an attempt to overcome economic or political contradictions without changing the dominant social relations”. Thus, reform falls short of revolution (where the dominant social relations are changed) and goes beyond mere disregard of economic repression or political demands. Land reform in particular aims at transforming the agrarian structure. A system of social relations and a system of land tenure (de Janvry 1975:264) characterize the agrarian structure. By the system of social relations is meant modes of production and their corresponding social class composition. By the system of land tenure is meant ownership and usufruct of land and water by farm sizes. Land reforms consequently can change the modes of production in agriculture, the class structure and the pattern of land tenure. A land reform is then nothing else than an attempt by the government, through public policies, at either inducing a change among states of the agrarian structure or at preventing such a state (Ibid 265).

More often than not, settlers are not familiar with the land and require capital and farming skills appropriate to new area (Binswanger and Elgin 1998:746). In addition, new settlements require costly infrastructure and support services (Ibid.).

**From the above literature**, it can be **concluded** that pressure for land reform arise from growing disparity between highly unequal, but fixed structure of land ownership, and rapid changes taking place in society. The disparity between rigid land ownership and accelerating social change becomes so wide that explosive social forces are set in motion.

The political objectives of land reform are many but these are the most relevant ones to the situation in Namibia:

Firstly, Land Reform occurs as the outcome of revolutionary change, its objective being to strengthen and consolidate the basis of a new state. Secondly, Land Reform as a platform for liberal political groups, its main objective being to undermine the power of the land based elite. Thirdly, Land Reform as a defensive measure by conservative political groups determined to prevent political changes. Finally, Land Reform sometimes occurs as a result of unlikely coalitions between groupings with different ultimate aims in view.

As stated earlier, there are two economic objectives of Land Reform: to reduce absolute poverty and to increase agricultural output. These in turn are known as equity and efficiency goals of land reform. The instruments of land reform include payment of compensation, the setting of exemption ceilings, and the rules of distribution to land reform beneficiaries. Three main groups of land reform instruments have been identified as the instruments of tenancy reform, instruments of land redistribution and instruments of land settlement. Expropriation is politically the most difficult action amongst all instruments of land reform. The only exception has been under socialist revolutions. In all other situations, expropriation is the outcome of a political process involving many

trades-off and compromises. Foot dragging, exemptions, role of the courts and failure of institutional adaptations, are some of the reasons that turn land reform in practice to differ from its theoretical intent.

Land reform is nothing else than an attempt by the government, through public policies, at either inducing a change among states of the agrarian structure or at preventing such a state.

### **2.3 Literature on policy formulation and implementation.**

Public policy is a complex matter. It has social, economic, political, administrative, legal and other consequences, which need to be looked at together as an integrated entity. Decision making on public policies is fragmented among various ministries, departments, sections, and levels of government, which also hamper in taking a holistic view of problems.

Different scholars have presented a number of typologies. The purpose of providing a typology is to distinguish between different types of policies and to indicate certain characteristics of the type of the process, which characterize the process of their decision-making. Public policy should distinguish between what government intends to do and what in fact they actually do. Government inactivity is as important as government activity. Public policy involves all levels of government and is not restricted to formal actors. Informal actors are also extremely important. Public policy is an ongoing process. It involves not only the decision to enact law but also the subsequent actions of implementation, enforcement and evaluation (Theodoulou p2). According to Theodoulou, public policy is a product of group struggle. The central argument of both

group theory and pluralism is that society consists of a large number of social, ethnic or economic groups that are more or less well organized. These groups are in political competition with each other thus putting pressure on the government to produce policies favourable to them (Ibid p5).

One explanation of how public policy is made and who makes it is provided by group theory. This holds the view that policy making is essentially the outcome of struggles between groups (Koenig 1986). A group here is defined as a collection of individuals joined by shared attitudes or interests. They use many kinds of resources to influence policymaking. When groups fail to achieve their goals sufficiently through private action, they may resort to politics and public policy making to advance their interests. Groups pursue a strategy of forming coalitions with other groups and steadfastly observe a towering maxim of policy politics—that large coalitions beat smaller ones. Group processes entail a double exchange between group leaders and office holders and between group leaders and their group members. The tendency of many forgotten groups is to remain disorganized. Koenig further remarked that our lives are shaped by public policies, whether we are aware of it or not. Much of what we can/cannot do is determined by them. If we are afflicted by the problems that are beyond our control, our thoughts about their solutions lead quickly to public policy. Our vision of a better life, although its attainment depends on our own efforts, will most likely include public policy to help effect it.

(Koenig 1986:156) states that because policy goals are usually multiple, conflicting, and vague, and because of the policy makers' cognitive limitations and the unpredictable dynamics of the environment, it is impossible to anticipate all the relevant

constraints applicable to a policy when it is adopted. Instead, they are discovered as implementation proceeds.

According to (Harris 1965: 309), politicians in most of the developing nations frequently make important policy decisions without the advice of their civil servants. Moreover, political leaders and party officials interfere to an excessive degree in even the detailed implementation of the government policies and programs because of their lack of confidence in the loyalty of bureaucrats. In one perspective, implementers suffer endless disparagement, not because of their intrinsic shortcomings, but because they are victims of overload, which others impose on them. Much policy is made during implementation itself. It is at this stage that implementers develop routines and shortcuts for coping with their everyday jobs (Koenig 1986: 157) and (Palumbo et al 1990). When policy objectives are not met, most studies refer to failure during the implementation process, i.e. conflicting interests of implementation actors or lack of implementation capacity. The truth is, however, that irrespective of commitment of resources of implementing agencies, some policies are impossible to implement from the outset. This leaves us with the fact that policy makers were not rational, because the causal theory of policy is either invalid or missing or because they have not structured the implementation process sufficiently to secure compliance by participating implementers (Koenig 1986).

There are three models of policymaking: the rational decision model, the conflict bargaining model and the organization process model. Impact of policy formation process on implementation outcome can be analysed using these models. Successful implementation is likely to be negatively related to the degree of conflict in the policy formulation phase (Palumbo et al 1990). The rational model holds the view that

organizations are efficiency maximisers. Organization's behaviour and its hierarchical structure facilitate achievement of goals. Within this structure, decisions are top down i.e. control is a feature of this organization. It is further believed that implementation failure results from breakdown in control or poor management. The bureaucratic process model is also a top down process, with its key features of discretion and routine. It is more conducive to policy goal achievement. Bureaucrats take the blame when there is a gap between promise and performance in a policy and there is always such a gap. There are many reasons for such a gap (Palumbo et al 1990):

- Most legislation passed at the national level is symbolic. Legislation is often not based on sound program theory.
- Administration discovers during implementation that a different type of program or organizational structure would work better than the one envisioned in legislation.
- Insufficient resources are committed to the program.
- Implementers do not have the know-how to make the policy work.

The separation of policy formulation from policy implementation is false. It is now an accepted policy doctrine that administration plays as great if not a greater part at all stages of the policy process, as do executive and legislators. Early implementation studies were wrong in that they assumed that problem definition and policy design are usually clear and unambiguous. But this seldom happens. Problem definition and policy design are political activities and are therefore products of conflict that results in bargaining and compromise (Ibid. 1990). Policy failures come from several sources. It is due as much to inadequate problem definition or policy design as it is to administrative

misfeasance, malfeasance, or nonfeasance. Moreover, administrative failures may now be seen as stemming from the inattention paid by legislators to program constraints during policy design.

The fragmented structures of implementing institutions have implications for social politics, significantly affecting the range and feasibility of policy possibilities (Palumbo et al 1990).

According to (Moharir 1991:5) most policies considered successful by a cross section of the population will fulfil in large the four criteria of effectiveness, efficiency, responsiveness and innovation. To the four sets of criteria is added the secondary criteria of political and administrative feasibility.

From the course on policy formulation by professor Moharir, the following can be recited: "Policy relevant knowledge is expanding fast but policymaking systems are not making use of this knowledge. Political rationality differs from economic rationality and when the two are in disagreement, no decision will be made. Policy change is often a result of crisis rather than ongoing policy analysis. Policymaking is more reactive, adopting a passive style with lack of linkage between various policy oriented processes. Policymaking is essentially about the use of state power to alter distributional outcomes in society. The authority and coercive power of the state sanction public policies. Without the allocation of resources, policy intentions do not become policies".

From the course on implementation by professor Bjorkman, the following can be quoted: " Governments are large and complex but attempt to solve problems by creating more organisations. Policy design is not linked to policy objectives. Implementation varies by policy content and vague policy goals result in poor implementation. The

number of decision points also affects implementation while extensive discretion lowers implementation effectiveness. Opposition to policy affects implementation negatively”.

**From the literature** on policy formulation and implementation, it can be **concluded** that in policy formulation, one need to consult widely. There should be no separation of policy formulation from implementation and that there will always be bargaining and compromises in the policy making process.

Policy failures come from several sources. It is as much to inadequate problem definition or policy design as it is to administrative misfeasance, malfeasance, or nonfeasance. Moreover, administrative failures may now be seen as stemming from the inattention paid by legislators to program constraints during policy design.

The fragmented structures of implementing institutions have implications for social politics, significantly affecting a range and feasibility of policy possibilities. Successful implementation is likely to be negatively related to the degree of conflict in the policy formulation phase. When formulating policy, concerned parties must be consulted widely. Consultation should be all embracing, to include both the landowners and the landless. There must be no gap between policy formulation and implementation. Successful policies fulfil the four criteria of effectiveness, efficiency, responsiveness and innovation. To these, political and administrative feasibility are added. It is further concluded that despite advance in policy relevant knowledge, policymaking systems do not make use of this knowledge. Political rationality differs from economic rationality and policymaking is more reactive to situations. It is concluded that implementation varies by policy content with vague policy goals resulting in poor implementation.



## Chapter Three.

### The formulation of Land Policy in Namibia.

#### 3.1 Introduction.

The objective of this chapter is to look at the land policy formulation scene in Namibia. It does not aim at evaluating the policy implementation itself. It is to examine different aspects of policy formulation in an attempt to understand to what extent such formulation is consistent with theory as stated in chapter two. In addition, the study aims at examining the main problems in such formulation and which may represent constraints on the implementation.

#### 3.2 The Policy Content.

Among the broad issues discussed in the National Land Policy are the following:

**Rural Land:** It deals with ownership of land and its administration, multiple forms of land rights and customary grants. This section further discusses registration of tenure, funding, staffing and training of Land Boards. Other important issues discussed are freedom of movement, settlement and acquisition of land rights. Rural land further deals with availability of land for agricultural leasehold, dual grazing, security and credit, land taxation and user fees. Though not entertained, restitution of land rights is briefly mentioned in addition to land redistribution, excessive land holdings, abandoned and under-utilised land. Finally, foreign nationals (and their access to land), environmentally sustainable land use, Land Use and Environmental Board, sub-division of land, land enclosure and land use planning are discussed. **General Considerations:** This part deals with ministerial responsibilities, information, consultation and local involvement.

### **3.3 The Policy formulation process.**

The formulation of the National Land Policy was influenced by a number of factors. Among them were the enshrined Fundamental Principles of Human Rights of 1982 by the Western Powers Contact Group. The other factor was the proximity of the former colonial power, South Africa. One other factor, which influenced the formulation of the National Land Policy, was the National Conference on Land Reform and the Land Question held in July 1991. These factors made it almost impossible to adopt a radical land policy. It must be stated that this is a multi-disciplinary policy requiring a new paradigm shift. In terms of National Land Conference consultation, this policy was inclusive. It was designed post independence and its impact areal.

Non-resolution of land issues magnifies future problematic. Its pragmatics is both exogenous and endogenous in nature. Both content and process indicate a good policy but different stakeholders had different interests. To a certain extent, land policy making is fragmented among various ministries and levels of government. This hampers taking a holistic view of problems.

The fragmented approach to land is evident in policy formulated by the Ministries of Agriculture, Environment and Tourism and Lands, Resettlement and Rehabilitation. There appears to be inconsistencies in these policies and are to some extent contradictory.

One typology of public policy states that government's inactivity is as important as government activity. In this direction, the government did in fact talk about land matters but no policy was formulated. It was only after the National Land Conference of 1991 that serious efforts were made in putting legislation in place. This only materialized three years after the conference has ended.

The national land policy formulation in Namibia indicates a strong element of group struggle. This means that society consists of a large number of social, ethnic and economic groups with different levels of organization. The groups are normally in political competition with each other. They put pressure on government to produce policies favourable to them. The Namibia Agricultural Union (NAU) in their submission to the Land Conference strongly made proposals that would have been in their group's interests. The Namibia Farmers Union (NNFU) demonstrated in front of the Parliament and State House in 1999, attempting to influence public policy in favour of the disadvantaged majority, a clear indication of groups' struggles in opposition to the vested interests.

The tendency of forgotten groups is to remain unorganised. Groups representing the interests of formerly disadvantaged people did not make any presentation at the National Land Conference. The Non-Governmental Forum did not feature at the National Land Conference. Apart from government, the formerly advantaged groups dominated the policy-making scene. These included the political opposition party Action Christian National (ACN) and the Namibia Agricultural Union (NAU). The domination of the conference by groups with vested interests resulted in the so-called consensus document reflecting mostly their written submissions.

It is however important to stress that the groups such as the Namibia Public Workers Union (NAPWU) and the Legal Assistance Centre made written submissions. It is interesting to observe that their submissions did not feature in the consensus document. If they did, then they were similar to those of the NAU/ACN. The NAU heavily influenced the deliberations of the Technical Committee on Commercial Farmland.

### 3.3.1 Political Parties.

In terms of the Political Parties, the ruling South West Africa People's Organization (SWAPO) played a major role in both the organization of the National Land Conference and the formulation of the National Land Policy. The role of this party at the National Land Conference was to set the tone for the conference by stressing the need for consultations before the formulation of the policy.

“ The land question in Namibia is one of the most burning issues facing our young nation. Indeed, it was central to the struggle for national liberation. A quick glance at the political economy of this country clearly reveals why land is of such importance. In the first place, about 90% of the population derives its livelihood from land, either as peasants, private owners of commercial farm land or workers on such farms”. These were the words of the ruling party at the national land conference as echoed by the Namibian Head of State - His Excellency Dr. Sam S. Nujoma (Consensus document, July 1991:3).

With regards to the national land policy formulation, the party contributed significantly by upholding most of the conference consensus principles in the policy formulation.

The SWAPO Party Manifesto of 1994 on land read as follow. “ The land question is the single most poignant reminder of the inequities of the past. We aim to correct these inequities and provide land to the landless and land hungry to help them become self-employed”. The action plan of the party stated that it will “ commit one hundred million Namibia dollars annually to acquire land for the land-less”. SWAPO was the dominant

party in the Constituent Assembly that finalized the Namibian Constitution. This party, through its policy of national reconciliation ensured that there was to be no expropriation of land without compensation.

There is no direct role for the Party in the implementation process. It must be noted that the implementation of policies is left to civil servants and the Land Reform Advisory Commission (a statutory body) in commercial areas, and to Traditional Leaders and Land Boards for communal land. One has to point out however, that there is a thin division if any, between policy formulation and its implementation. Through Cabinet Ministers and key individuals, the ruling party is able to directly influence policy implementation. This brings in the theory that political rationality differs from economic rationality. If economic rationality was to prevail, land reform will be seriously affected.

One political party that made written submissions on the land question was the Action Christian National (ACN). Not surprisingly, its major intent was to maintain the status quo. This is evident in their opinions and recommendations on the land question. In their account of the historical background, it was stated, "there is no reliable information about the exact extent of the areas inhabited by the various population groups of South West Africa prior to the second half of the previous century. Especially in the southern part, the population groups were nomadic herdsmen, hunters and gatherers of veld food." They went on to state that land could only be acquired in accordance with the ancient and present internationally recognized norms (de Wet July 1991:2).

They then listed these norms as:

- By conquering it.
- By means of negotiation.

- By occupying unoccupied land.
- By means of donation and
- Through inheritance.

This party then concluded that if one does not accept the above norms, then “the only group in Namibia which can justifiably claim land is the Bushmen as they were the first to have occupied the country”. The ACN further warned “no-one can therefore justifiably claim that land should merely be distributed by taking it away from the rightful owners and redistributing it at will”. This party made few concrete recommendations including one that the government should only resettle people on existing unoccupied communal land, unproductive land irrespective of ownership, land voluntarily offered to the state and land owned by multi-national companies. It went on to state that it accepts the principle of Land Tax on commercial farms, but it must be based on economic principles.

The ACN fought very hard for its political interests as represented by politician Janie M.de Wet. They wanted the conference to come up with answers to the following issues, which they considered important:

- The pattern and desirability of land ownership in the commercial areas.
- The future of traditional tribal land ownership.
- The development of a land tenure and financing system that makes land ownership accessible and secure to all.
- Ensuring the sustainable and productive use of land to benefit both present and future generations. Land ownership is not only a right it carries certain

responsibilities. One such responsibility is to ensure that land is put to best use; otherwise the land is a liability to owner and country alike.

Although the above statements by the ACN sound genuine and convincing, the truth is that it infers that blacks will make commercial land unproductive.

In their submission, the party reminded the conference of the constitutional guarantee of property rights, quoting Article 16(1) of the Namibian Constitution. They then equated property rights to human rights. In addition, the party listed conditions under which expropriation is applicable, with compensation of course. This was followed by a number of cases to provide a comparative perspective quoting only from Europe, USA and some South American countries.

This political party made twenty-seven recommendations at the National Land Conference. The recommendations included the following:

- ◆ That existing productive farmers, must be able to, and indeed must be encouraged to remain farming without prejudice or fear of losing their livelihood and homes.
- ◆ That never-mind who had come to Namibia first and who had come here last. The crux of it all is that we are all here together now and we need each other to create a better tomorrow for God, man and country.
- ◆ That agricultural land will be used for agricultural purposes only.
- ◆ That all proposals and recommendations take into account resources available and are capable of successful implementation on the ground.
- ◆ That all farmers are given the best available training, thus laying a solid foundation for the future of commercial agriculture.

- ◆ The principle of land tax applied to commercial framers is acceptable, but it must be based on economic principles to assure that it does not disrupt or harm economic production in any way.

This party did not have any direct role to play in the policy implementation. It died a natural death through the democratic process and is no more in existence. But the interests it stood for did not disappear. In fact they made up the bulk of the content of the Agricultural Commercial Land Reform Act of 1995, which was drafted by the Technical Committee on Commercial Farmlands.

Other political parties participated in the formulation of the National Land Policy through debates in the National Assembly. Their contribution in Parliament was significant. As far as implementation is concerned, they have no direct role. But through questions in Parliament, they keep the Executive accountable.

### **3.3.2 Political Executive**

The political executive played a major role in the formulation of the National Land Policy through their input at the National Land Conference, the Conference on Land Reform with specific reference to the Communal Land Bill, discussions at Cabinet and debates in the National Assembly. It must be understood that without the political executive decision, no policy will pass the formulation stage. Political Executives are directly accountable for their Ministries and as a result have a major role to play in the implementation of policy, although this is theoretically a function of the Civil Servants. There is no unanimity even among the political executive on land matters. Some have gone on record in their private capacities as opposed to the principle of willing buyer

willing seller. With such a stance even from political executives, it is very difficult to implement the policy effectively.

### **3.3.3 Senior Civil Servants**

Senior Civil Servants in fact formulated the policy based on the consensus of the 1991 National Land Conference. They were responsible for muting the ideas of a series of national consultation strategies to popularise the draft policy. They were instrumental in networking with the Judiciary to ensure that the contents of the policy were not at odd with the Constitution.

The Technical Committee on Commercial Farmland drafted the Agricultural Commercial Land Reform Bill that was promulgated into an Act of Parliament in 1995. The Senior Civil Servants in the Ministry of Lands, Resettlement and Rehabilitation engineered both the National Land Policy as well as the Agricultural Communal Land Reform Bill. As far as the implementation is concerned they are administering the Agricultural Commercial Land Reform Act (ACLRA) in acquiring land for resettlement purposes.

The responsibility of training a cadre for the implementation of the Land Reform Program rests with this group in the Ministry. To date, a number of surveyors, land use planners, mappers and valuers have either been trained or are undergoing training. This capacity building exercise is important for a successful land reform program. The Permanent Secretary of Lands, Resettlement and Rehabilitation chairs the Land Reform Advisory Commission (LRAC).

Whenever there is a gap between policy formulation and its implementation, the blame is always heaped on the civil servants. Land Reform is no exception. In fact, the problem with land reform lies with a policy that is difficult to implement from the word go.

Civil servants in its composition dominated the Technical Committee on Commercial Farmlands (TCCF). The following are some of the recommendations emanating from the TCCF Report of 1992 (TCCF Report July 1992:XIV-XV) on targeted land:

- **Abandoned land:** an initial amount of 370 614 hectares of this land was located by the committee, and it is recommended that this should be expropriated for reallocation and brought into productive use.
- **Under-Utilized land:** a total of 4,052 million hectares of under-utilized land has been identified and at least 2,026 million hectares are considered utilizable in a land reform program. Such land is also available (but not readily quantifiable) within the boundaries of individual farms.
- **Over-utilized land:** since over-utilization in Namibia is typically exemplified by bush encroachment, erosion and desertification for which the cost of reclamation would be prohibitive, no actual area could be identified in this category.
- **Unused land:** no unused land was identified within the commercial farming area.
- **Multiple farms and excessive land ownership:** the committee only estimated that this is in excess of 1,306 million hectares.
- **Foreign owners:** foreigners own just over 3 million hectares of agricultural land in Namibia (1992). The committee recommends that foreigners or foreign owned

companies wishing to invest in Namibia in the future may be allowed to use land on a long-term lease basis in line with the government policy of encouraging foreign investments.

- **Absentee owners:** it is recommended that the land owned by absentee foreigners should be expropriated and reallocated to the land reform program. It is further recommended that local absentee owners should be allowed to own farms on condition that these are used productively.
- **Normal sales:** it is recommended that the government establish a national policy of first refusal for all farms offered on the open market. In addition, an independent evaluator should price farms that are suitable for the land reform program.

The committee received written submissions from many institutions and individuals. The NAU was the most important contributor to the committee's deliberations. We will see later how the committee recommendations feature in the formulation of the Agricultural land reform Act of 1995.

#### **3.3.4 Legislature.**

This body approved the National Land Policy. It is the most crucial institution and without its adoption, no policy will be implemented. The Legislature debated the ACLRA before it became law. It played a major role in the Agricultural Communal Land Reform Bill, which was approved by the National Assembly but rejected by the National Council.

The Legislature consulted widely with the communities on the Communal Land Bill. Its role in the policy implementation process cannot be underestimated.

The Legislature can question the Political Executive in the National Assembly to account for the policy implementation. Most of the queries are traditionally made during budget debates. There have been instances of legislators questioning specific land related issues.

The process of compromise and bargaining resulted in the Agricultural Commercial Land Reform Bill sailing without major hitches in the National Assembly towards the end of 1994. This was mainly due to the fact that many recommendations of the National Land Conference and those of the Technical Committee on Commercial Farmlands, though heavily influenced by submissions from representatives of landowners, disappeared. Indeed, whenever the interests of landowners are threatened, debates in the National Assembly become heated. In the case of the ACLRA, opposition members and landowners did not bother as most of their interests were taken care of.

### **3.3.5 Academia.**

The Social Sciences Division of the University of Namibia helped with the drafting of the National Land Policy. Training future members of the Regional Land Boards involve it in the implementation. This is done on an agency basis.

The Ministry of Lands, Resettlement and Rehabilitation in conjunction with the Polytechnic of Namibia institutionalised courses in Land Use Planning and Land Measuring. This is done with the intention of building capacity in Land Reform. Other courses that started at the Polytechnic in January 2000 are in the areas of Land Valuation,

Land Management and Resettlement. The Centre for Applied Social Sciences (CASS) at UNAM helped organize and provided secretarial services for the Traditional Leaders Conference on Communal Land in 1996. But this does not form part of the research. Academia does help with consulting services.

### **3.3.6 The Namibia Non Governmental Organization Forum (NANGOF.)**

The Ministry of Lands, Resettlement and Rehabilitation (MLRR) tasked this NGO with the responsibility of taking the draft National Land Policy to the people for awareness and their input. It is also vocal in its position on land. No proof was obtained that it participated in the National Land Conference. It has become vocal after the promulgation of the ACLRA.

In addition to the task given to them by the MLRR, this NGO did present their position paper on the National Land Policy. In the introduction to their position paper, NANGOF had this to say: "in this spirit we would accordingly urge Government to ensure that the consultation campaign is properly carried out and to even extend its deadline should it appear that significant sectors, regional interests or other stakeholders have not been consulted" (NANGOF Position Paper on NLP, December 1996:1). The NGO continued to state that they had many more concerns but would not air all of them. Instead, they listed what they considered to be major concerns. They commended the government for initiating an ambitious national consultation campaign aimed at having the contents of the NLP endorsed by the Namibian nation at every level. This, according to NANGOF accords with a democratic and transparent process of policy formulation, which the NGO supports. NANGOF then indicated some of the problems experienced,

including the fact that the government undertook to carry out a publicity and consultation campaign. It undertook to translate the NLP into all major Namibian languages, discuss and publicize it in all radio programs, consult with regional councils, request all regional councils to hold consultative meetings in their constituencies, and organize meetings with interest groups and the NGO Working Group on Land Reform. The policy is then to be revised on the basis of the consensus of opinion drawn from the consultation process. The NGO accused the Ministry of setting up a Steering Committee that could not meet with stakeholders. As a result, NANGOF was frustrated, as there was little co-ordination between it and the Ministry. NANGOF felt therefore, that many of the activities the government committed itself to still need to be carried out. They requested the Ministry to extend the consultation period to at least 31 March 1997.

The second issue dealt with by NANGOF, was the pace of land reform. They complained that during the consultations, concern was shown in regard to the slow pace of land reform in Namibia. This they believe was unacceptable five years after the mandate given at the National land Conference in 1991. The report stressed the point that NANGOF was of the view that the land reform program should be speeded up, but based on sound and widely accepted policy (Ibid. 3).

With few exceptions, it only quoted the National Land Policy (NLP) and criticized it where it felt that its needs were not addressed. Among the issues, NANGOF referred to the following:

- Need for community tenure.
- Back yard gardening.
- Total opposition to converting communal land to freehold.

- proposed that illegal fencing in communal land be removed and
- That a moratorium on new fencing be implemented.

Except for the exclusion of community tenure, the rest of the proposals were incorporated into the final policy document. It must however be emphasized that the National Land Policy was formulated while the ACLRA was operational. A strange arrangement indeed, given the accepted norm that policy should precede legislation. In any case, some of these solid and popular recommendations did not feature in their original form in the Communal Land Reform Bill. A case in point is (illegal) fencing in communal land. Its provision in the Bill is almost meaningless and is definitely worded to protect those who have fenced off land. It also gives room for other would be a fencer to fence off as soon as possible before the Bill becomes law.

The Head of State announced a moratorium on fencing in communal areas and limited this to ten (10) hectares only. This was done after consultations with Traditional Leaders in 1997. It must be stated that this moratorium was neither implemented nor had it appeared in the new Communal Land Reform Bill. This prompted the national Council to reject the Bill. With the rejection of the Bill by the National Council, it is hoped that this issue will be adequately addressed before it is sent through the system again. It is also hoped that the President's moratorium, which has the support of the people including Traditional Leaders will be addressed. This topic is however, not a candidate of this research.

### **3.3.7 Traditional Leaders.**

The traditional leaders played leading roles at both the National Land Conference and the Conference on the Communal Land Reform Bill. Their input was considerable at both occasions. The current Communal Land Reform Bill incorporated a number of their proposals such as membership of Land Boards by their nominated representatives.

Traditional Leaders are directly involved in the implementation of the National Land Policy dealing with communal land. Despite the status of the Communal Land legislation, administration of land by traditional leaders continues.

### **3.3.8 Namibia Agricultural Union (NAU).**

The NAU is an Association of current commercial farmers. As expected, they do not favour access to land by the majority of Namibians. In justifying the exclusion of access by landless Namibians, they instead proposed resettlement in the communal areas by developing what they call "un-utilised land in communal areas". Their other point was for potential communal farmers to buy land in the commercial areas. It was then proposed that potential farmers be given credit to buy farms through Affirmative Action Loan Scheme. The Union proposed the principle of willing seller willing buyer. It accepted the introduction of Land Tax. This union made written submissions to the National Land Conference of 1991 as well as to the TCCF. In their documents submitted to the National Land Conference of June/July 1991, the NAU expressed its appreciation for the consultative and participatory approach adopted by government. It went on to indicate that the documents reflect the general views of the NAU members, both commercial and communal and that their consultants wrote some of the documents for them. The submission by the NAU was divided into five chapters, with chapter one dealing with the

introduction. Chapter two gives background information on which the NAU is and what its objectives are. Chapter three contains points of departure on agricultural development, broad economic principles and land reform.

Chapter four deals with models of the NAU for upgrading of the communal areas, while chapter five consists of two detailed documents. The first one outlines the present situation regarding the production, marketing and economic viability of different commodities.

It is interesting to note that purchase of land through Affirmative Action Credit Scheme was accepted and is operational. In addition, the principle of willing seller willing buyer was also accepted as policy and is used in the acquisition of land now. The land tax is an important component of the Land Policy. Land Tax Regulations were prepared but only approved by the National Assembly in April 2000. It remains to be seen as to when the land tax will be imposed.

### **3.4 Problems encountered.**

Problems were mainly as a result of group struggles and compromises reached. As expected, the problems normally arose whenever one's interests were at stake. The landowners were particularly uneasy whenever expropriation of land was mentioned.

This was a manifestation of land reform as a defensive measure by conservative groups determined to prevent political changes. This support theory discussed in chapter two.

The idea of previously disadvantaged people gaining access to land was seen as a threat to the status quo. One must not forget that the groups that failed to get their

interests incorporated at the formulation stage will ensure that implementation does not succeed by blocking it. The land reform policy formulation has pointed to the fact that the Namibian government is pursuing both political and economic objectives of land reform.

Traditional leaders felt uneasy about the proposed Land Boards as they felt that they were to take over their functions.

The question of ancestral land was close to the hearts of some but it was overwhelmingly decided not to pursue that option. At implementation, some stakeholders felt that the Government did not take their views on how best to carry out land reform seriously. It is common in some circles to hear that there was no consensus on ancestral land at the Land Conference. The NNFU for example, went to the extent of staging a huge demonstration on the 9th September 1999. They descended on State House and the National Assembly. They expressed their anger at non- co-operation from the side of the Ministry of Lands. Landowners have asked for exorbitant prices for their farms.

The structures set up to implement the land policy were inadequate. The grouping of the stakeholders in the LRAC made the government's task in addressing the land question, even more difficult. This is due to deliberate loopholes in the Act. These loopholes concern modalities in both acquisition and allocation of land. It is obvious that the policy is inadequately defined and that legislators as well as the executive did not pay attention to possible constraints on the implementation of the ACLRA, hence the loopholes in the Act.

### 3.5 Some of the salient points from the consensus document of the National Land Conference of 1991 and recommendations of the TCCF.

As this research is concerned only with commercial land, the general consensus pertaining to this land will be the only ones stated. The consensus document listed the agreed areas as follows:

- **Injustice:** the conference concluded that there was injustice concerning the acquisition of land in the past and that something practicable must be done to rectify the situation.
- **Ancestral Rights:** the conference concludes that given the complexities in redressing ancestral land claims, restitution of such claims in full is impossible.
- **Foreign owned farmland:** the conference resolves that foreigners should not be allowed to own farmland, but should be given the right to use and develop it on a leasehold basis in accordance with Namibia's open door policy towards foreign investment.
- **Under-utilised land:** the conference resolves that under-utilised and abandoned commercial land should be reallocated and brought into productive use.
- **Absentee landlords:** the conference resolves that land owned by absentees should be expropriated, but that there should be a distinction, in respect of owners who do not live on their farms, between foreign and Namibian owners.

- **Farm size and numbers:** the conference resolves that very large farms and ownership of several farms by one owner should not be permitted and such land should be expropriated.
- **Land tax:** the conference resolves that there should be a land tax on commercial farmland.

These were some of the consensus issues at the 1991 National Conference on Land Policy. The conference resolved that a Technical Committee on Commercial Farmland must be established. The TCCF did finalize its work in July 1992 with a report.

Its recommendations did not differ from the consensus achieved at the conference. It is therefore not necessary to repeat them here.

It must be stressed with confidence that the process was that of bargaining, at times emotional but remained fairly rational. Different groups employed different tactics to get maximum benefits out of the exercise. For example, the Commercial Farmers Union (NAU) fought for the willing seller willing buyer principle. The political party ACN fought for government to acquire land owned by absentee landlords and abandoned land.

All the institutions were accommodated to a certain extent as shown by the contents of the policy. It was a win-win situation in the sense that there were compromises. An example is the fact that compensation is made at market prices.

The divergent views were rationalized in such a way that most of the concerns were addressed, culminating in the ACLRA. Whether the ACLRA addresses the issues, it is a question that begs for answers. The policy problem was identified at the conference

although it had no mandate or power to formulate policy. This function remained a mandate of the executive arm of the state.

### **3.6 The Agricultural (Commercial) Land Reform Act (ACLRA) examined.**

The Agricultural (Commercial) Land Reform Act, Act N0.6 of 1995 provides for the acquisition of agricultural land by the State for the purposes of land reform and for the allocation of such land to Namibian citizens who do not own or otherwise have the use of any or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices; to vest in the State a preferent right to purchase agricultural land for the purposes of the Act; to provide for compulsory acquisition of certain agricultural land by the State for the purposes of the Act; to regulate the acquisition of agricultural land by foreign nationals; to establish a Lands Tribunal and determine its jurisdiction; and to provide for matters connected therewith. It is a mouthful but this is the Act signed into law by the President of the Republic of Namibia, on the 15 February 1995. While it is a mouthful, the interest is on whether the recommendations and consensus areas were incorporated in the Act. Secondly, the fundamental loopholes will be looked at.

Most of the conference recommendations were incorporated in the Act. Whether these can be implemented is another issue. The Act is full of loopholes that will be identified in due course. Both the TCCF and the National Land Conference recommended that foreign nationals should not own land. The Act makes provision for foreigners to

acquire land in Namibia. But the decision is left to the discretion of the Minister of Lands, Resettlement and Rehabilitation. Section 58(3) of the Act provides a lucrative loophole for foreign nationals to acquire land en masse. While the Act allows them to purchase land only with the consent of the Minister, the above section allows foreign nationals to register farms into their names for a period of 60 days from the commencement date of the Act. The Minister may indeed extend the time for registration. It is obvious here that in promulgating the Act, the consensus of the conference and the TCCF recommendations for foreigners to lease land were ignored.

The land tax was incorporated in the Act but was to be implemented only through its own regulations. To make things worse, the regulations need to be adopted by the National Assembly. These regulations have taken long to be prepared, given the fact that vested interests control the drafting process. It was a protracted struggle to get the regulations in the first place from the Legal Drafters. It is also proving difficult to have these regulations expedited by the Legislators.

While the Act makes provision for the preferent right of the state in land acquisition, there are clear loopholes favouring landowners who may want to deny the state the land it needs for resettlement purposes. Reference is hereby made to Section 17(3) where exemptions for the application of the preferent right are listed. One of the exemptions is the close corporation. This is a major loophole in the Act. Many foreign nationals have acquired land through close corporation since they could only get shares in the close corporation companies. But, these are shares in land. Many people have formed closed corporations in order to either circumvent the application of the preferent right or to sell land to foreign nationals. These are the results of manipulation of the policymaking

process by organised interest groups and the expense of the formerly disadvantaged. The Act reflects this trend. In summary, it is very difficult to implement the Act in its present form.

### **3.7 Status of the Land Reform Program and capacities of the implementing institution.**

Emphasis is on rural land here. The Agricultural Commercial Land Reform Act is in operation. That part of the policy is therefore implemented continuously.

The Agricultural Communal Land Reform Bill is finalized. The National Assembly passed it but was rejected by the National Council. Most proposals on land are either being implemented under the Commercial Land Reform Act or waiting to be implemented under the Communal Land Reform Act once promulgated. The policy on commercial land is implemented through an Act of Parliament on a willing seller willing buyer principle. The prices paid are market related and the farm assessment was initially out-sourced to the Agricultural Bank (Agri-Bank). The Ministry later developed capacity in land valuation to an extent that those exorbitant prices were no longer widespread. This led to few farms being offered to the Government. In addition, farmers tried in many cases to withdraw their offers after realizing that they could not get exorbitant prices they hoped for.

Once an agreement had been reached between the Ministry and the individual farmer a contract agreement is signed. Normally, the Ministry either pay to a lawyer or a Bank that has a stake in the farm in order for them to deduct what they are owed.

Once a farm is acquired the Land Use Planners in the Ministry prepare demarcation plans. These plans are then used to prepare allotment plans. The Survey and Mapping Directorate that is under the same Ministry do a survey of the farms and come up with proper maps. The farm is then advertised in the media for people to apply for resettlement after the normal gazetting process.

The LRAC meets monthly in order to deliberate on land issues including land acquisition and makes recommendations to the Minister. So far the process has been slow but not as a result of lack of financial resources. The problem is lack of suitable farm offers. This is one of the major constraints in the land reform process. It simply means that unsuitable farms are offered to the state while good farms form part of close corporations and guest farms. Most of the farms offered to the government are unsuitable for resettlement purposes. On resettlement proper the initial screening and selection is left to Regional Resettlement Committees.

There is noticeable change in land ownership since the implementation begun. Up to March 2000, seventy- nine (79) commercial farms covering 438 395 hectares at a cost of N\$ 52 451 355,79 were purchased by the government in six regions of the country.

The extent of this policy is limited by the Constitution and is highly re-distributive in nature. The policy has economic, social, political, administrative, financial and legal consequences. The policy outcome has impacted positively on the lives of the beneficiaries especially the former farm-workers and people who were grazing their animals along the corridors in as much as access to land is concerned. On impact in their economic and social lives it is difficult to say. As stated earlier the machinery selected for implementation was inadequate given the loopholes in the Act and the capacity of the

implementing institution. Changes are required in the legislation as the Act makes it almost impossible to implement a meaningful land reform program.

The problem areas including lack of capacity to implement a land reform program are constraints. Another constraint is the composition of the Land Reform Advisory Commission (LRAC). This body is composed of people, some of whom represent diverse views and interests. There have been cases of political representation and continuous group interests representation.

The public and private sectors are brought together in this program by being members of the Land Reform Advisory Commission. There are functions such as farm assessments that were contracted out partially. The Government has however developed capacity in land valuation. This has led to less reliance on the outside instances such as the Agriculture bank.

It must be stated that the objective of this research is not to evaluate performance of the land policy, as it is relatively new. The ACLRA was promulgated in 1995 and there are still problems with its implementation. A policy cannot be evaluated if it is only five years old. The implementing institution in this case is the Ministry of Lands, Resettlement and Rehabilitation (MLRR), a relatively new Ministry. By capacities it is meant political, administrative and technical capacities. All these capacities leave a lot to be desired within the Ministry. The reason for lack of capacity is either as a result of shortage of qualified personnel especially technical staff or lack of managerial direction and policy guidance. Policy formulation and implementation are disjointed.

The process of land acquisition and its demarcation, advertisement of allotments and their resettlement are cumbersome. This is a serious constraint given the lack of

human resources to carry out a professional land resettlement program. The shortage of or lack of land use planners, land valuers, land managers and land economists, to mention just a few add to the list of constraints in the implementation of the land policy. To this one needs to add land surveyors and land registration officers.

### **3.8 The policy process.**

The National Land Policy formulation was a protracted struggle. It took about five years from the National Land Conference to the promulgation of the first Land Legislation. It took even longer for the adoption of the National Land Policy by the members of Parliament. To be specific it took eight years. It is obvious from the period under consideration that there were delays in formalizing policy and legislation on commercial land reform in Namibia. There are even more problems in the communal sector of the agricultural economy. Communal land remains a serious bone of contention fraught with dangers if not carefully handled for the benefit of future generations.

There were serious constraints in the formulation and adoption of this policy. As is obvious from literature agreement at policy formulation level through so-called consensus is only possible after many compromises. Were there compromises at the formulation stage? This question may even be irrelevant given the fact that compromises and conditions binding on the new state were incorporated in the Namibian Constitution. The final Legislation was therefore a compromise between the views of the majority represented by the government and the current landowners as represented by the opposition political parties and the mainly commercial farmers dominated agricultural union. Poor policy formulation will definitely always lead to serious problems at the

implementation stage. This theoretical concept is and will always remain valid as long as there are policy formulation and implementation disciplines.

With the start of the implementation of the Commercial Land Reform Act people had different expectations. The landowners saw an opportunity to make quick money out of the Land Reform exercise. On the other hand the landless majority expected to be resettled with speed. In the meantime the Government of the Republic of Namibia had to acquire land through the principle of willing seller willing buyer-using resources from its own limited budget. Unlike her neighbour to the east – Zimbabwe, Namibia has no external financial support to carry out her Land Reform Program. Everything depended on the national budget.

In addition to financial self-dependence the institutions responsible for implementing Land Reform lacked the political, administrative and technical capacities to carry out a meaning full Land Reform Program.

The Act itself is full of loopholes in such a way that implementation is compromised. Beneficiaries of the Land Reform Program have not yet graduated to the position of self-reliance and as independent food producers, with few exceptions. It is therefore obvious that there are serious constraints to the implementation of this policy. What is really delaying the process of Land Reform in Namibia?

Through individual and concerted affiliated body actions, people accused the government of carrying out Land Reform at a snail's pace. Some have come to the point of calling for land confiscation and the stoppage of buying what they term as stolen land. On the other hand, the government has to deal with the question of inflated land prices. In the process land delivery became too slow. People are also unhappy about the fact that

there is a significant time lag between the acquisition of land and resettling people thereon. This is a confirmation of a policymaking theory that states that if we are afflicted by problems that are beyond our control our thoughts about their solutions lead quickly to public policy.

The majority of landless Namibians and black farmer unions blame the principle of willing seller willing buyer for the non- delivery of land. As land acquisition depends on the availability of farms on offer by their owners, farms were not acquired where the government wanted them most. It is evident that no farms were bought close enough to the communal areas to increase communal area land. This is one of the serious constraints. How can the government acquire land where it need it most when the onus is on the seller to offer and not designation? The Namibia National Farmers Union and their followers are of the view that the current land reform in line with the Commercial Land Reform Act does not deliver results and is slow. Land should therefore be expropriated and given back to its original owners.

**In concluding** this chapter, the study has revealed that there has been a separation between policymaking and policy implementation. Implementation was not made part of the policymaking process. The principle of a manufacturer of policy and its implementers will never result in meaningful implementation. It has also been established that the ACLRA does not reflect some of the important policy recommendations in its provisions. The land reform scene is still dominated by group interests, with all types attempting to influence government to devise policies in their favour. The capacity in the implementing institution is lacking but there have been serious efforts aimed at developing human

capacity. Apart from missing some aspects of policy formulation the constraints are caused by circumstances that are country specific.

Problems were mainly as a result of group struggles and compromise reached. As expected the problems normally arose whenever one's interests were at stake. The landowners were particularly uneasy whenever expropriation of land was mentioned, a manifestation of land reform as a defensive measure by conservative groups determined to prevent political changes.

The idea of previously disadvantaged people gaining access to land was seen as a threat to the status quo. One must also not forget that groups that failed to get their interests incorporated at the formulation stage will ensure that implementation does not succeed by blocking it.

The structures set up to implement land policy were inadequate. The grouping of the stakeholders in the LRAC made the government's tasks in addressing the land question even more difficult. This is due to deliberate loopholes in the Act. These loopholes concern modalities in both land acquisition and its allocation.

The policymaking process was that of bargaining at times emotional but remained fairly rational. Different groups employed different tactics to get maximum benefits out of the exercise.

One problem area identified is the capacity of the implementing organization to implement a land reform program. This is a serious constraint. The previous discussions revealed that there has been separation of policy formulation from policy implementation, no consideration for the implementation of the land reform program and how the costs should be handled. Costs of land reform should include costs of transfer ownership.

Capacity should also mean the training of beneficiaries to make the program successful, access them to finance and marketing and provide training to enable performance monitoring of beneficiaries. The main objective of land reform should not only be political. Land Reform should be dominated by economic objectives such as increased production, creation of employment opportunity and wealth.

## **Chapter Four**

### **African experiences and lessons for Namibia.**

#### **4.1 Introduction.**

The objective of the study in this chapter is to understand what lessons Namibia can draw from these case studies and why are some of them more successful compared to others. Is it because different aspects of policy formulation were carefully considered in some cases than in others? What are the main reasons for such success? Were the circumstances more conducive in some cases compared to others? These are some of the questions the chapter attempts to answer.

#### **4.2 The case of Zimbabwe.**

In his paper entitled "What happened to the Land Question in Zimbabwe, Rural Reform in the 1980s", Gasper presented a good analysis of the Land Reform situation in Zimbabwe (Gasper October 1990). It was argued (Auroi 1988:2) that the views on the slow progress in land reform fall in two broad schools, those who see it as reflecting purely the current balance of group interests and who tend to be disappointed at the rate of change, and those who see a rational choice by the government in terms of a broader national interests given the actual opportunities and constraints it has faced.

In other words, the government refuses to disrupt a production system that works relatively well while at the same time trying to correct its unbalanced structure of land distribution and access to resources in general (Auroi 1988:2).

Realizing the economic risk of mass resettlement, the government of Zimbabwe turned to resettling people in communal areas. One major constraint in the Zimbabwe Land Reform Program is the Lancaster House Constitution. The independence agreement was a compromise that made it difficult for the freedom fighters to get all that they stated in their programs. The white settlers obtained important concessions. In the 1980s Zimbabwe saw a period of transition, reconciliation, reconstruction and learning. In short as the white settlers excluded the blacks from training and responsibility during the colonial era they had to catch up in the 1980s.

The Government of Zimbabwe conceded “ the ambitious goals as formulated at independence to resettle 162,000 households within a period of five years have proved to be overoptimistic by far” (GOZ 1998a: 6). Studies have indicated that factors that hindered performance of the resettlement policies were multiple. These comprised among others a number of years of severe drought and partly factors related to substantial shortage of capital, shortages of qualified manpower, institutional problems and – up to 1992- restrictive provisions due to the willing buyer willing seller principle and possibly lack of political will. Huisman and Broekhuis further argued that no other African government has ever acquired such hectares of land commercially for distribution purposes. In Zimbabwe people became impatient with the pace of land reform and illegally squatted on commercial land. Officially, squatting is not condoned by the government since it is concerned about the nature of land use by squatters and fears a

negative environmental impact from the squatters' farming practices (Gasper 1990:46-48). Ever since the initiation of land reform policy the official view of the national government on squatting has remained a simple one: evict squatters and send them back to their places of origin. In some districts such a policy cannot be implemented. In many cases the squatters themselves have been farm labourers on the defunct large-scale commercial farms where they were eking out a living. Now that the government for resettlement purposes has bought these farms for most of the households, which did not succeed in obtaining a permit squatting on these or nearby lands is the only option available (Huisman and Broekhuis: 12). Under these circumstances it may be obvious that the government by its own policy is partly responsible for the squatter problem.

(Moyo 1998:11) stated that settlers illegally allocated land rights to outsiders. In addition some of the squatters have moved in without such allocation. The relations between settlers and squatters have not been good. Some settlers have obtained access to only half of the legally set amount of arable land.

**From the above case, it can be concluded** that one major constraint in the Zimbabwe Land Reform Program is the Lancaster House Constitution that was a compromise. White settlers obtained important concessions. The government is aware of the importance of a productive system that works well and refuses to disrupt it. On the other hand it has to address the unbalanced structure of land distribution and access to resources in general. The government has conceded that the ambitious goal formulated at independence to resettle 162 000 household in five years was overoptimistic. Factors, which hinder performance of the resettlement policies, were multiple. These included a number of years of severe drought and restrictive provision of willing seller willing buyer

principle. As the pace of land reform was slow landless people became impatient and started squatting on commercial land illegally. The government policy was to send them back where they came from.

The white settlers excluded the blacks from training and responsibility during the colonial period. The relations between settlers and squatters have not been good. Some settlers have obtained access to only half of the legally set amount of arable land.

It can be argued that the Zimbabwe case is to some extent similar to the Namibian Land Reform Program. The property rights are enshrined in the Namibian Constitution. This fact makes the work of the government in addressing the land question very difficult. Like its Zimbabwean counterpart, the Namibian government is faced with a productive agricultural system that works, and serious lack of access to land by the majority. Drought is a recurring phenomenon in Namibia as it is in Zimbabwe. The principle of willing seller willing buyer is a major constraint in Namibia as well. There has been illegal squatting in Namibia. This was tantamount to farm invasions when illegal occupiers took over government farms without authorization. Government action was to obtain court orders for their eviction. This was done relatively fast with the purpose of maintaining law and order and to prevent chaos erupting in the country. The land reform issues in Zimbabwe were consistent with the theory discussed in chapter two.

#### **4.4 The case of Kenya.**

Kenya is one of the few English speaking African countries with an experience running to thirty-seven years or more of experimenting with new forms of land tenure reform, agrarian reform and agricultural development. Kenya has a history of European

colonization and European settlement up to the time of political independence in 1963 (MLRR 1993:118).

The present land tenure situation in Kenya is the result of an evolution of an array of multi-ethnic traditional systems, some of which were very old. The evolution of the land tenure systems took place in four phases (Ibid p121):

- The pre-colonial and early colonial phase when the sedentarization of the populations was in process but because of low population density, land was freely available and its use was dictated by traditional tenure systems based on access and use rather than ownership.
- The phase where there was a clear competition between European land tenure and African land tenure system(s). The impact of European settlement was obvious mainly because of the pressure it put on traditional systems that had been so far regarded as self-regulating and self-sufficient.
- The period immediately after the Second World War especially the 1950s when the colonial government brought about a change in policy regarding land holding and land tenure by Africans in the former African Reserves. This was also a period which marked a deliberate effort by colonial government to introduce and where necessary to impose western concepts of land tenure in the African areas. The intention was to get away from the restrictions imposed by the concept of communal ownership.
- The final phase could be regarded as covering the period before independence and the nearly thirty years since independence saw consolidation of what in the early stages were still largely experimental ideas in land reform. This stage has been of

great interests as it has enabled the independent government to push ahead those policies that had proved practical and worthwhile and to make somewhere possible. The four phases are reproduced from a book entitled "land as a factor in poverty alleviation" published by the MLRR on pages 121-122.

It is the last phase that will be dealt with for the comparative study. By the time Kenya achieved her independence, there were land reform policies introduced earlier by the colonial authorities. The independent government of Kenya sought and obtained some development funds for the completion of what has been started ten years before independence. It was not easy, as a new and more complicated problem had arisen which demanded and received most of the attention and available funds. This was the resettlement program on former European held land in the Kenya Highlands since this was a special program. The progress with reform and land registration can be measured by the fact that in mid 1980s close to 20% of small scale agricultural land had been registered and title deeds given to individuals or to groups in the case of group ranches.

According to (Odingo 1989:106) the secret of success of the massive land transfer program was the sources of funding from Britain, West Germany and the World Bank. Once sources of funding had been identified and an agreement on transfers paying special attention not to interrupt production, the program was an assured success. The transfer involved physical planning, orderly movement of large numbers of families and the intensification of agricultural production MLRR, (1993:132). Initially, the land transfer program targeted mostly mixed farming while leaving out plantation agriculture. This involves tea, coffee, sisal estates and some mixed farms, which had large chunks of these crops (Ibid p133).

#### 4.5 Some lessons for Namibia.

Examining the previous cases it is clear that there are important issues that need attention in addressing land reform. Two of the most important are:

- Availability of funding and
- Comprehensive consultation.

In Zimbabwe, the relations between settlers and squatters have not been good. Some settlers have obtained access to only half of the legally set amount of arable land. This is an indication that the land reform process itself has not been well implemented. An important lesson to learn is that the relationship between settlers and squatters must be good. Firstly, there would have been no squatters had the implementation of the land reform program been successful. It is therefore important to ensure that squatting is not allowed on officially designated resettlement areas. Secondly, squatting in itself is a constraint. While arguments of lack of access to land may be advanced it is in the national interests to allow only orderly resettlement. The policy of the Namibian government to evict squatters is a sound one. There are however different types of squatters, some of whom are farm invaders, while others are former farm labourers. As for former labourers, the only option is to consider them as priority candidates for resettlement on acquired farms.

In Zimbabwe the white settlers excluded the blacks from training and responsibility. Namibians have been worst off than their Zimbabwean counterparts in the area of training. In this regard proper and comprehensive training should be given in the

areas of land management, land administration, land registration and survey and mapping.

It is important to note that the Namibian government had taken steps in training a cadre of professional people in land matters.

The government of Zimbabwe is aware of the importance of a productive system that works and refuses to disrupt it. At the same time it has to address the unbalanced structure of land distribution and access to resources in general. This is the greatest challenge in carrying out successful land reform programs in Namibia, South Africa and Zimbabwe. While it is true that the productive system should not be disrupted, the objective of land reform is also to allocate land to people for productive purposes. There is therefore no contradiction between productivity of land and access to it by the formerly marginalized. The unbalanced structure of land must be addressed without delay. Vesting too much land in the hands of a few while others remain land-less is not only an injustice but also an insensitive act, which does not bode well for the future.

The principle of willing seller willing buyer was one of the factors hindering performance of the resettlement policy. The principle of willing seller willing buyer in use in Namibia is a serious constraint. Without derogating the rights of landowners this principle will never achieve the goals of land reform. More effective policies in line with the constitution should be put in place. These may include expropriation in the real sense of the word with compensation only paid out for actual development of the land in question. A ceiling may also be set on the size and amount of farms one can own in Namibia. It is also hoped that more land may be acquired through the introduction of a land tax. Failure to pay tax will result in that land being expropriated without compensation. It will also discourage the holding of land for speculative purposes.

It is ironically the Kenyan experience that provides good lessons for land resettlement. The independent government of Kenya sought and obtained some development funds. These were for the completion of what has been started ten years before independence. There was a resettlement program on former European held land in Kenya Highlands. The exercise was successful. It was successful because there was massive land transfer program with funding from Britain, West Germany and the World Bank.

The Kenya experience indicates that successful land reform depends on funding. In the case of Kenya, they got substantial funding from the above stated countries and the World Bank. It was one of the rare successful land reform programs carried out under reconciliation. This indicates that sometimes reconciliation and land reform are compatible. In the case of Namibia this is a good lesson. Namibia could demand for funding from her former colonizers whose descendants are still occupying huge tracts of land in commercial areas. The two former colonial powers are South Africa and Germany. This massive funding for a successful and meaningful land reform program in Namibia can be done under reconciliation as it happened in Kenya by transferring land ownership and keeping the land productive.

One major lesson to learn is that successful land reform programs are costly. But this is a price worth paying for.

## Chapter Five

### Summary and Conclusions.

#### 5.1 Summary.

Namibians lost their land as a result of colonial conquest. As more and more colonial settlers came to Namibia land was alienated to them while African people were forced into marginal and infertile land areas. Finally, the people of Namibia were subjugated and forced into a colony.

With the achievement of independence in 1990, people hoped to get their land back. Some called for the forced return of ancestral land. The Namibian people believe that lack of access to land is the main constraint hindering poverty alleviation if not its eradication.

The instruments of land reform include payment of compensation, the setting of exemption or ceilings and the rules of distribution to land reform beneficiaries. Three main groups of land instruments can be identified as:

- 1) Instruments of tenancy reform,
- 2) Instruments of land redistribution and
- 3) Instruments of land settlement.

Expropriation is politically the most difficult action amongst all instruments of land reform. The economic objectives of land reform are to reduce absolute poverty and increase agricultural output.

Successful implementation is likely to be negatively related to the degree of conflict in the policy formulation phase. Policy failures come from several sources. It is

due as much to inadequate problem definition or policy design as it is to administrative misfeasance, malfeasance or nonfeasance. Moreover, administrative failures may now be seen as stemming from the inattention paid by legislators to program constraints during policy design. The fragmented structures of implementing institutions have implications for social politics, significantly affecting the range and feasibility of policy possibilities.

There has been separation between policymaking and policy implementation. Implementation was not made part of the policymaking process. It has been established that the ACLRA does not reflect some of the important policy recommendations in its provisions. The land reform scene is still dominated by group interests. The capacities in the implementing institution are lacking.

The blacks were excluded from training and responsibility in the past. The relations between settlers and squatters have not been good. Some settlers have obtained access to only half of the legally set amount of arable land.

Governments are faced with the daunting tasks of respecting agricultural systems that work well, while at the same time, are required to address the unbalanced structure of land distribution and access. The principle of willing seller willing buyer is a major constraint in the land reform program. Squatting and farm invasions are consequences of a people frustrated at the slow pace of land reform.

Successful policies satisfy the four criteria of effectiveness, efficiency, responsiveness and innovation in addition to political and administrative feasibility. The policy is relatively new making it almost difficult to assess the criteria of a good policy. But it seemed as if the political rationality outweigh economic feasibility by a small

margin. Due to the political nature of land reform implementation is never carried out as planned, as intervention is inevitable at any time.

The success of land reform is dependent on sources and level of funding.

## **5.2 Some policy implications.**

### **Introduction.**

According to the literature on policy formulation there should be no separation between policymaking and policy implementation. In addition there must be wide consultations.

Analysing the situation in Namibia it is clear that such separation and lack of consultation were obvious problems in the case of Land Reform Policy. These problems could have caused delays of implementing such policy in Namibia. It can therefore be recommended that Land Reform Policy needs to be reconsidered so that these problems are taken into consideration.

It is also clear from the case studies that successful land reform depends on the availability of funding. Such funding was the most important factor that made the Kenya case one of the real successful land reform programs carried out under reconciliation. This is a good example for Namibia. Namibia could demand funding from her former colonisers whose descendants are still occupying large tracts of land in the country.

It is important for Namibia that the productive agricultural (sector) system disturbed. It is also important that allocating any land to the landless be for productive purposes and that illegal squatters should not be allowed on the farms.

Chapter three points to a lack of capacities in the implementing institution. Namibia should therefore expand and strengthen the capacity building exercise at the Ministry of Lands, Resettlement and Rehabilitation to cover all levels of the institution.

In examining the ACLRA, it became obvious that the Act was full of loopholes that make implementation of a successful land reform program difficult. The loopholes include the exemptions for closed corporation, procedures to be followed in the acquisition of land through the principle of willing seller willing buyer and so on. Based on these and other arguments it is therefore recommended that the principle of willing seller willing buyer be reviewed within the confines of the Namibian Constitution. It is further recommended that the government land expropriation with compensation made only on actual development on the farms. As soil and grass is god given, this option is still within the confines of our Constitution.

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