

# **Farm workers and land reform in Namibia**

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## Land reform in Namibia

The Land issue in Namibia is a burning issue that captures the media headlines from time to time in Namibia. The Land redistributive process that took place in Zimbabwe fueled up the critical analysis and debate of the land reform and redistributive process in Namibia. A closer analysis and scrutiny of this process revealed that the process has moved at a very slow pace since Independence. Arguments for the 'slow pace of the process' has been attributed to the principle of the "willing buyer/ willing seller principle", which according to the stakeholders involved limits the capacity at which the government can buy land. This situation has led to the ministry not utilising its full budget as allocated for the purpose of buying land. The reason mostly being that the land that gets to be offered for sale is not suitable for resettlement purposes.

Another factor that has stimulated further debate is the eviction of farm workers from the farms where they have worked once employment ceases. The trade unions have been very instrumental in this regard as they have fought hard for the rights of these workers. One such union is NAFWU (Namibia Farm Workers Union). NAFWU has taken up the government and the employers on the issue of farm workers rights, especially on the issue of unfair dismissal, minimum wages and eviction of workers.

## Historical perspective

In order to understand the why Namibia has embarked on a land reform programme, it is imperative to undergo a historical journey that will bring this discussion to the present. Namibia, as most African countries experienced colonialisation, first by the Germans and later on by apartheid South Africa. The Germans came to Namibia in 1883 and signed treaties with the indigenous tribes which later on led to the colonialisation of these communities. The central and Southern parts of the country were then proclaimed police zones, thus dividing the country into two parts, the north and the south. In 1915, South African colonial troops overpowered the Germans and as a result, South Africa's homeland policies and other discriminatory policies were extended to Namibia. During

the period of colonialism by both Germans and the apartheid South Africa, land was expropriated from the Namibian people. Thus by the time of Independence, the new Namibian government was faced with the problem of a dual and unequal land tenure that favored commercial farmers and not communal farmers. This situation led the government to embark on land redistribution and land reform programme.

## The process of land reform in Namibia

One year after Namibia gained Independence, the government, supported by the opposition parties, conducted a national consultation on the land question which led to a National conference on Land Reform and the land question. The conference was held in Windhoek on from the 25<sup>th</sup> June to 1<sup>st</sup> July 1991. The objective of the conference was to achieve a consensus on the major issues and to make recommendations to government on a policy of land reform and a programme of action for the implementation of the necessary changes. The conference made the following resolutions:

- Foreigners should not be allowed to farmland
- Underutilized freehold land should be reallocated
- Land of the absentee landlords should be expropriated
- Very large farms, and/or ownership of 'several farms' should not be allowed
- That land tax be imposed on commercial farm land
- Other resolutions related to the need to improve the conditions of farm workers.

The recommendations and resolutions made at the conference acted as a guideline for the land legislation framework within which Namibia took.

## Land laws in Namibia

In order to understand the Land reform programme in Namibia, a short overview of what the applicable laws say about commercial land reform in Namibia needs to be given.

Article 16 (1) of the Namibian constitution guarantees all persons the right to acquire, own and dispose of all forms of immovable property in any part of Namibia. However, by a provision to article 16(1), parliament is permitted to prohibit or regulate the right of

foreign nationals to own or acquire property in any part of Namibia. One of the principle contained in article 16(1), which is the willing buyer, willing seller principle has proven to be quite cumbersome for the Namibian government in their attempt to resolve the issue of land redistribution.

Article 16(2) gives the power to parliament to make the laws would enable the state or any body or organ established by law for that purpose to expropriate property in the public interest and subject to the payment of just compensation to the owners. Article 16(2) and the provisions to article 16 (2) therefore constitute a limitation or derogation of the right to own property in Namibia. All this entails that there is no absolute right to private ownership of land in Namibia. The state has the power to expropriate the property in accordance with the procedures laid down by an act of parliament, and has therefore the right to interfere with individual's right to own property. The individual's right to sell agricultural land is also closely restricted.

The Agricultural (Commercial) Land Reform Act 6 of 1995 makes provision amongst other things the acquisition of agricultural land by the state for purposes of land reform and compulsory acquisition of agricultural land. The above mentioned act entails that the owner of agricultural land makes the first offer to the government before making the offer to anybody else. In the instance that government declines to buy the land, then that is when offers can be made to any other person who is by law permitted to buy the land. When the state declines to buy the land concerned, it issues the prospective seller with a certificate of waiver in respect of the specific land on offer, and only then can a seller enter into a valid contract of sale with a third party.

The rights of the owner at the time when he/she owns that property are neglected by article 16 of the Namibian Constitution. This neglected aspect allows the owner of the farm to use his/her discretion to decide whether farm workers should be allowed to live on the farm, or whether they should be relocated.

## Government and Land Reform

From 1990 to December 2003, the government, through the MLRR has acquired 121 farms with a total landmass of 791 674.00 hectares of agricultural land in the commercial areas. Out of this figure, only 22 605 hectares were donated to the government by a

commercial farmer's family for it to be distributed to the landless, through the resettlement programme.

The government of Namibia has, so far, spent N\$121 280 173.72 million on land purchase for the past 13 years of independence. Since 1995, the government has made a budgetary provision of N\$20 million per annum for land purchase in commercial areas. Since 2003, the amount allocated for land purchase did increase to N\$50 million per annum.

### Recommendations to the government

With all the laws that have been passed in Namibia with regard to Land Reform, this issue has not yet been properly addressed. One of the recommendations made during the conference was on the need to improve the working conditions of the farmworkers, which judging from the current situation has not been resolved. The "Kameeta Report of 1997" also made recommendations with regard to the Labour Act. The recommendations clearly stated that the Labour Act should be amended to protect agricultural employees by prohibiting the unfair termination of an agricultural employee without the approval of the Labour Commissioner and only after all representations on the matter has been taken into account.

All these recommendations have clearly not been taken into consideration because the media is filled with stories of how farm workers are being evicted from the farms, unfair dismissals and poor working conditions. Regardless of the fact that a minimum wage was introduced for farm workers, some farmers still pay their workers lower wages than the prescribed minimum wage. In the Position paper drafted by NUNW to government, the federation stated clearly that had the recommendations made in the Kameeta Report been implemented, the problems of unfair dismissals and farm evictions would be experienced today.

The Namibia Farmworkers Union (NAFWU) and its federation (National Union of Namibia Workers) has continued to fight for the rights of the farm workers. In their attempts to resolve the problems affecting farm workers, NUNW proposed a position paper on farm workers early this year within which it made the following demands and proposals to government:

- Implement without delay the recommendations of the “Kameeta Commission” and incorporate tenure rights for farm workers into the new labour bill.
- Stop the widespread retrenchments of farm workers and other workers by introducing a mechanism of approval for retrenchments.
- Retrenched farm workers need to be included among the beneficiaries of the resettlement policy .
- Utilise land tribunals to settle price disputes regarding farms that are offered at artificially high prices that prevent ownership of people who need land for their livelihood.
- Expropriate land of foreign and absolute landlords as per resolution of the SWAPO party congress of 2002.
- Allocate sufficient and effective labour inspectors to the agricultural sector.

2004 has begun as a promising year for the farm workers as government finally introduced an “Interim policy on the eviction of farm workers following the recent cases of labour unrest in the country. In the Interim policy, cabinet resolved that it should, as a matter of urgency and absolute necessity introduce a Temporary Intervention Policy of Eviction pending long term solutions to the problem. The cabinet also recommended that the policy on eviction should be aimed at farm workers and their dependants, as well as the length of service on the farm. This policy prohibits all outright evictions.