

# The Intricacies of Land Reform in Namibia: An Overview of the Land Question in Namibia 33 Years After Independence

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## Abstract

It is trite that at independence in 1990 Namibia inherited a skewed land distribution system in favour of a white minority, which necessitated the newly elected government to take drastic steps to redress the historical injustices pertaining to land ownership. The steps taken to address the land issue were birthed at the first National Conference on Land in 1991. This article investigates those measures and their effectiveness or lack thereof in satisfactorily solving the land question. One of those measures is the Willing-Seller Willing-Buyer Policy (WSWB) which, together with the legislative framework on land has failed dismally in ensuring the equitable distribution of land and realising the transformative aims of the Constitution. The article identifies various challenges Namibia faces in addressing the land issue, including the difficulty in implementing a mandatory policy of expropriation of private lands without compensation in a capitalist society. It further criticises the concept of national reconciliation adopted at the first National Land Conference in that it may have deprived the country of an opportunity to holistically address the skewed land distribution system once and for all. The article finds that the major constraints to meaningful land reform in Namibia are contained in the legislative framework and policies on land, which emanate from pre-independence provisions contained in the 1982 Constitutional Principles. The article also finds that due to those inherent constraints in the legislative framework, it is impossible to realise the transformative aims of the Constitution which include, equality in land distribution. There is therefore a need to rethink land reform in Namibia. In this regard it is imperative to infuse the concept of restorative justice in the debate of land and to compel private landowners to participate in the process of land reform.

## Keywords

Namibia; land reform; colonial dispossession; willing seller willing buyer; transformation; land redistribution.

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## 1 Introduction

Land was the cornerstone of colonial exploitation.<sup>1</sup> As such, after colonialism ended in countries like Namibia land reform became a necessary tool to redress the injustices of the past. Assuredly, land reform is a revolutionary step; it passes power, property, and status from one group in the community to another. Where a government is dominated or strongly influenced by the landholding group - the group that is losing its prerogatives- no one would expect effective land legislation as an act of grace.<sup>2</sup> This paper discusses the historical developments of the land reform question in Namibia. To this end the paper is divided into these sections, namely a brief historical background of land dispossession prior to and post-independence; an analysis of the successes and failures of land reform, and an investigation into whether or not the legislative framework on land is adequate to realising the transformative objectives of the Constitution.

## 2 Historical development of land ownership in Namibia

### 2.1 Colonial dispossession prior to 1915

Namibia's history is marked by the loss of land and land theft perpetrated by the white settler colonists. The trend in the land appropriation commenced with the Germans in the early 1880s and reached a critical point from 1904 to 1908 when the German-Nama and German-Herero wars broke out.<sup>3</sup> After the wars ended with the defeat of both the Hereros and the Namas, German dispossession policies were implemented.<sup>4</sup> The colonial administration's main vehicle of appropriating land became the legislative framework, through which several regulations and policies were utilised to legitimise the expropriation of all land belonging to the Herero and the Nama

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<sup>1</sup> Hangula 2000 *Population–Development–Environment in Namibia* 80. Also see Khapoya *The African Experience* 100; Delgado *Short Socio-Spatial History of Namibia* 5; Swartbooi "On the Land Question" 15; Muundjua "Historical Origins of the Ovaherero and Nama Genocide" 11.

<sup>2</sup> Takigawa 1964 *The Developing Countries* 77.

<sup>3</sup> Forrest 2001 *Historia* 346; Melber 2018 <https://theconversation.com/namibias-long-standing-land-issue-remains-unresolved-105301>. Also see Werner 1993 *Journal of Southern African Studies* 137; Glinz 2009 *Law and Politics in Africa, Asia and Latin America* 264; AU *Framework and Guidelines on Land Policy* 6.

<sup>4</sup> Hangula 2000 *Population–Development–Environment in Namibia* 80; Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>. Also see Mthembu 2019 *Town and Regional Planning* 61.

people.<sup>5</sup> To this end, then, the legislature has been and will always be a powerful tool in implementing any reform.

Without doubt, the indigenous land tenure system in terms of which the land is communally owned by the community as opposed to a system of individual ownership of land made it easy for Europeans to grab land from Africans.<sup>6</sup> Hangula<sup>7</sup> argues in this regard that:

The encounter of an indigenous land tenure system that is humanitarianistic and not based on a system of property registration with a land-hungry, freehold-oriented and militarily highly equipped settler community soon made the incoming white settlers 'voracious for land' in Namibia.

It is apposite to note that despite this liberal manner of land ownership, the Europeans did not infiltrate all parts of the country. The indigenous people in the southern part of the country were more affected than the indigenous people in the northern part of the country due to the absence of a high degree of political centralisation or of political structures amongst the southern communities, which the northern regions boasted.<sup>8</sup> Assuredly this made it easy for German colonialism to position itself among the southern communities and to take advantage of the liberal communal way of land holding by those communities.<sup>9</sup> As a result, the northern regions remained unaffected by the cruel appropriation of land by the Europeans.

The process of dispossession had serious repercussions for the indigenous people, who not only lost their land but were also introduced to a new type of land tenure, that is, private holding or ownership of land, which effectively replaced communal land usage.<sup>10</sup> The South African government would pick up the reins of colonialism from the Germans from 1915 until independence in 1990.

## **2.2 Land policies after 1915**

In 1918 Germany lost the war and all its colonies, including Namibia were given to other countries.<sup>11</sup> From 1915 to 1919 Namibia was under the

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<sup>5</sup> Amoo and Harring "Intellectual Property under the Namibian Constitution" 300. Also see Werner 1993 *Journal of Southern African Studies* 138-139. This is primarily why land reform should be specific and oriented towards the Nama and the Herero people.

<sup>6</sup> Mthembu 2019 *Town and Regional Planning* 61.

<sup>7</sup> Hangula 2000 *Population–Development–Environment in Namibia* 80.

<sup>8</sup> Hunter "Who should Own the Land?" 1. This is, *inter alia*, because the Ovambo chiefs refused to sign protection treaties with the German colonial Governor; and most importantly, because the military and political strength of the Ovambo kingdoms was no match for that of the small German garrison.

<sup>9</sup> Werner 1993 *Journal of Southern African Studies* 137.

<sup>10</sup> Werner 1993 *Journal of Southern African Studies* 137.

<sup>11</sup> Forrest 2001 *Historia* 346; Geiseb "Genocide against the Ovaherero and Nama Peoples" 8.

military rule of the Union government.<sup>12</sup> When South Africa received the mandate over Namibia in 1919 it transferred all the land that was owned by the Germans to the South African administration. This means that black Namibians who had settled on German farms after 1915 were promptly evicted.<sup>13</sup> More and more natives were moved to marginal areas in order to accommodate the flux of incoming whites, but the final phase of these forced removals was inaugurated by the Commission of Enquiry into South-West Africa Affairs, also known as the Odendaal Commission.<sup>14</sup> This Commission was appointed for the sole purpose of entrenching territorial apartheid in Namibia, effectively cementing the distribution of land along racial lines.<sup>15</sup> To this end Hangula<sup>16</sup> submits that the "South Africa expansionist, annexationistic and racialistic politics exacerbated and lastly, polarised the land question up to 21 March 1990".

### **2.3 Land policies after 21 March 1990**

The inequitable distribution of land inherited at independence, which entrenched structural inequalities, prompted the newly elected government to undertake measures to redress the past injustices of land dispossession by successive colonial governments.<sup>17</sup> To this end the government adopted a constitution which was highly influenced by the 1982 Constitutional Principles, and with a clause entrenching private property rights. This protection of property rights was a huge blow to most Namibians, who expected independence to bring about a significant change in land ownership.<sup>18</sup> To the white part of the population, the property clause became a guarantee that the right to own property, irrespective of how it was acquired, was legally recognised and would not be arbitrarily tampered with.<sup>19</sup>

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<sup>12</sup> Werner 1993 *Journal of Southern African Studies* 141.

<sup>13</sup> Von Wietersheim *This Land is My Land!* 100.

<sup>14</sup> Werner 1993 *Journal of Southern African Studies* 145.

<sup>15</sup> Delgado *Short Socio-Spatial History of Namibia* 11.

<sup>16</sup> Hangula 2000 *Population–Development–Environment in Namibia* 80-81.

<sup>17</sup> De Villiers *et al* "Land Governance in Namibia" 8. Also see Lund, Odgaard and Sjaastad 2006 [https://pure.diiis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diiis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf) 1; Amoo "Land Reform in Namibia" 13; Swartbooi "On the Land Question" 15.

<sup>18</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>. Also see Hunter "Who should Own the Land?" 2.

<sup>19</sup> Horn "Forerunners of the Namibian Constitution" 63.

### 3 Basic concepts and policies underlying land reform in Namibia

#### 3.1 *The 1982 constitutional principles*

The attainment of independence in Namibia did not bring about immediate change in land ownership, much to the dismay of most Namibians.<sup>20</sup> Given that the liberation struggle was primarily aimed at recovering the stolen land, the failure to immediately transform the skewed distribution of land was a huge disappointment.<sup>21</sup> Melber<sup>22</sup> blames the negotiated transition to democracy in 1990 for this failure. In this regard he argues that the SWAPO government accepted the structural inequalities all too easily by conceding to the 1982 Constitutional Principles (CPs), and that SWAPO should have negotiated this issue more vigorously, as the final step to democracy. Instead, the 1982 Constitutional Principles were adopted and utilised by the West to maintain economic inequality in Namibia.<sup>23</sup>

The Constitutional Principles (CPs) were adopted primarily to ease the fears of the white minority and internal parties, who were afraid that the new government would restore the land to the originally dispossessed black Namibians, much as the late Robert Mugabe's government did in Zimbabwe during the fast-track land reform period.<sup>24</sup>

Assuredly, the willingness of the CPs to usher the new nation into independence was a compromise aimed at overcoming the established colonial system. Hunter<sup>25</sup> argues therefore that the compromise was motivated by three main reasons: firstly, the realisation that the former opponents would need each other; secondly, it was necessary to avoid an apocalyptic disintegration of the territory; and thirdly; the compromise was necessary to secure political and economic stability.

The CPs will always feature in the history of the land question in Namibia, and their memory will serve as a reminder that foreign countries have prevented Namibia from addressing the land issue responsibly and or

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<sup>20</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

<sup>21</sup> Fuller and Eiseb 2002 <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF> 1; *Günther Kessl v Ministry of Lands and Resettlement* (High Court of Namibia) case numbers 27/2006 and 266/2006 (6 March 2008) 9; Hunter "Who should Own the Land?" 1.

<sup>22</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

<sup>23</sup> The 1982 Constitutional Principles (CP) were drafted by the Western Contact Group (WCG) comprising of Canada, France, West Germany, the United Kingdom, and the United States of America (USA).

<sup>24</sup> Horn "Forerunners of the Namibian Constitution" 63.

<sup>25</sup> Hunter "Who should Own the Land?" 2.

effectively, and that the independence of Namibia hinged on a compromise.<sup>26</sup>

### 3.2 *The Constitution*

The right to own property is provided for in Article 16 of the Namibian Constitution.<sup>27</sup> This Article, also referred to as the "property clause", was adopted from the 1982 CPs. In terms of subsection 1 of Article 16, all persons have the right to acquire, own and dispose of all forms of property in any part of Namibia. However, foreign nationals cannot acquire agricultural land in Namibia.<sup>28</sup> This is in accordance with the *Agricultural Commercial Land Reform Act* (ACLRA).<sup>29</sup> This means that the phrase "all persons" does not literally mean "everyone".

The theoretical basis of Article 16 is based on the state's sovereign concept of eminent domain and police powers.<sup>30</sup> According to Seervai,<sup>31</sup> police power is defined as "the inherent power of a government to exercise reasonable control over person and property within its jurisdiction in the interest of general security, health, safety, morals and welfare except where legally prohibited (as by constitutional provision)", whereas eminent domain

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<sup>26</sup> Horn "Forerunners of the Namibian Constitution" 63.

<sup>27</sup> Article 16 of the *Constitution of the Republic of Namibia*, 1990 reads as follows:  
"(1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

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

Also see *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004), where the Court held that "Article 16 tacitly permits the reasonable regulation of property rights in the public interest."

<sup>28</sup> *Wohlfart v Bergh* (HC-MD-CIV-MOT-GEN-2019/00004) [2019] NAHCMD 264 (28 May 2021). Also see Harmse *Guidebook on Laws Relating to Immovable Property* 9.

<sup>29</sup> Section 58(1)(a) of the *Agricultural Commercial Land Reform Act* 6 of 1995 (ACLRA) prohibits a foreign national from acquiring agricultural land in Namibia without the prior written consent of the Minister. Also see *Wohlfart v Bergh* (HC-MD-CIV-MOT-GEN-2019/00004) [2019] NAHCMD 264 (28 May 2021) [7].

<sup>30</sup> *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004).

<sup>31</sup> Seervai *Constitutional Law of India* Vol II para 14.24 as cited in *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004) 28.

relates to "the power of the sovereign to take property for public use without the owner's consent upon making just compensation".<sup>32</sup>

Article 16(1) (which entails the Willing Seller Willing Buyer (WSWB) policy), confirms the concept of police powers, while Article 16(2) confirms the principle of eminent domain. The view that Article 16 was inspired by the state's police powers and its power of eminent domain was confirmed in *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy*, where the court stated:<sup>33</sup>

It seems to me that in so far as a comparison can be drawn this distinction between the State's police power and its power of eminent domain is to a certain extent inspirational for Art. 16 of our Constitution and that Art. 16(1) can be compared to the State's police powers and Art. 16(2) its powers of eminent domain.

There are divergent views of Article 16, one of which is that the founding fathers never intended to change the property regime in Namibia.<sup>34</sup> According to *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy*,<sup>35</sup> "the purpose of Article 16 was to protect the right of individuals and body corporates to acquire and possess property and did not intend this to change on the advent of Independence." This view supports Melber's<sup>36</sup> argument that SWAPO failed to negotiate the land issue as vigorously as it should have done, instead of simply conceding to the property clause. This view is also shared by critics of the SWAPO government, who maintain that SWAPO over-compromised by conceding to the property clause.<sup>37</sup> The view that Article 16 was a compromise to appease the white farmers and international parties is shared among scholars, including Horn.<sup>38</sup> Similarly, Amoo and Haring submit that:<sup>39</sup>

Once the war for independence had been won, it was the incorporation of Article 16 property rights that gave legitimacy to the existing, racially structured, property regime in Namibia. Thus, the political expediency of ending the war at the expense of recognising white property rights was a

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<sup>32</sup> Seervai *Constitutional Law of India* Vol II para 14.24 as cited in *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004) 28.

<sup>33</sup> *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004) 28.

<sup>34</sup> Amoo and Haring "Intellectual Property under the Namibian Constitution" 301, where they argue that Art 16 did not take sufficient consideration of the property rights of the black majority because that was not its political object.

<sup>35</sup> *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004) 25.

<sup>36</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

<sup>37</sup> Mumbuu *New Era* 3.

<sup>38</sup> Horn 2015 *SADC Law Journal* 96. Also see Melber 2018 <https://theconversation.com/namibias-long-standing-land-issue-remains-unresolved-105301>.

<sup>39</sup> Amoo and Haring "Intellectual Property under the Namibian Constitution" 301.

political compromise. This cannot be judged backwards against the flow of history: it is what occurred and it is now embodied in the Constitution.

It is therefore not surprising that there are two opposing views on Article 16. The blacks see it as a legitimisation of the colonial appropriation of land, while the white settlers regard it as the sacred heart of the Constitution.<sup>40</sup>

However, both Amoo and Haring<sup>41</sup> hold another view of Article 16. In this regard, they submit that Article 16 is "completely adequate for the purpose it was intended to serve". Accordingly, Amoo and Haring advance an argument that:<sup>42</sup>

This adequacy also reflects the intention of those who drafted Article 16: that it serve this foundational political and legal purpose – and not to purport to be any kind of a model property clause for world constitutions. Future interpretation could be left to a strong legal system, completely competent for that purpose, and able to interpret the property provision as new problems developed.

Despite Article 16 being a costly compromise for which the country is still paying 33 years after attaining its independence, I believe that it could still be a powerful tool in addressing the inequitable distribution of land if the courts could adopt a broad, purposive and liberal interpretation thereof. In this regard I believe that transformative constitutionalism is one of the ways in which the property clause could be interpreted to bypass its apparent limitations and to bring into reality the transformative aims of the constitution. Accordingly, the Supreme Court in *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy*<sup>43</sup> stated that Article 16:

being part of Chapter III of the Constitution, must be interpreted in a purposive and liberal way so as to accord to subjects the full measure of the rights inherent in ownership of property.

### **3.3 The First National Land Conference**

The First National Land Conference convened in 1991 was the first point of departure in the government's efforts to redress the injustices of the past in respect of land. To this end the government opted to adopt a stance of national reconciliation, unity and nation building instead of going back into history and reclaiming land that had been appropriated by successive colonial governments.<sup>44</sup> At the conference 24 Resolutions were made to

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<sup>40</sup> Horn 2015 *SADC Law Journal* 96; Hunter "Who should Own the Land?" 2.

<sup>41</sup> Amoo and Haring "Intellectual Property under the Namibian Constitution" 299.

<sup>42</sup> Amoo and Haring "Intellectual Property under the Namibian Constitution" 299.

<sup>43</sup> *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004) 23.

<sup>44</sup> Mufune 2010 *International Journal of Rural Management* 19; Von Wietersheim *This Land is My Land!* 31; Hunter "Who should Own the Land?" 2.



provide a bedrock for land policies and subsequent legislation.<sup>45</sup> The redistribution of commercial farmland, on the basis of the WSWB policy, the preferential right of government to acquire agricultural land for resettlement purposes, and the fact that there would be no restitution of ancestral land were some of the Resolutions made at the conference.<sup>46</sup>

The government's view on restitution was based on the perception that the concept is too complex, and restitution in full is close to impossible.<sup>47</sup> Because of the government's decision to forego restitution, it was impossible to implement any type of restitution.<sup>48</sup> The result thereof is a feeling, especially amongst the dispossessed communities, that the liberation rhetoric was a farce. This is unlike the situation in South Africa, where restitution of ancestral rights is a component of land reform. However, it is important to note that although restitution is a component of land reform in South Africa, it did not actually result in a significant change in landownership. This is because the majority of the claimants opted to be paid in cash instead of getting back the land that was appropriated by the colonists.<sup>49</sup> As such, it cannot be assumed that the restitution of ancestral land would have automatically resulted in a change in land ownership in Namibia, unless restitution was restricted to actual restoration of the appropriated lands.

### **3.4 The land reform programme**

The basis of land reform is enunciated in Article 16 of the Namibian Constitution.<sup>50</sup> It is on this basis that legislation was enacted to guide the land reform process.<sup>51</sup> The land reform programme comprises of four key components, namely<sup>52</sup> redistributive land reform (which comprised of the Resettlement Scheme); the Affirmative Action Loan Scheme (AALS); tenure reform; and the development of unutilised communal land. Several laws

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<sup>45</sup> Von Wietersheim *This Land is My Land!* 33; Gumede and Makuwira 2018 *Journal of Public Administration* 572.

<sup>46</sup> Delgado *Short Socio-Spatial History of Namibia* 13; Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

<sup>47</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>. See also Von Wietersheim *This Land is My Land!* 33, where Von Wietersheim submits that restitution was considered implausible because there "was no fixed point in history (such as the Land Tenure Act of 1913 of South Africa) which could or would be used to restore ancestral land rights." The clear documentation of land in South Africa made it possible for restitution to take place. The same could not be said about Namibia. Also see Hunter "Who should Own the Land?" 2.

<sup>48</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

<sup>49</sup> Lahiff 2016 *Current History* 182.

<sup>50</sup> Glinz 2009 *Law and Politics in Africa, Asia and Latin America* 265.

<sup>51</sup> Glinz 2009 *Law and Politics in Africa, Asia and Latin America* 265.

<sup>52</sup> Werner "Land Reform in Namibia" 6.

were enacted to guide the land reform programme, together with relevant policies, some of which are discussed below.

The *Agricultural Commercial Land Reform Act* (ACLRA),<sup>53</sup> enacted in 1995, was the first legislation to address the skewed distribution of agricultural commercial land.<sup>54</sup> Its object was to guide the two programmes for commercial land reform, namely the Resettlement Scheme and the AALS.<sup>55</sup> To this end, then, the ACLRA was enacted to enable the government to expropriate agricultural land in line with the concept of eminent domain.<sup>56</sup> Expropriation is carried out under the auspices of the market-related WSWB policy.<sup>57</sup>

In 1998 the first ever National Land Policy was enacted, and it laid the foundation for further legislative exercises that would address the persisting land issues, including the need for equality in the acquisition of communal land for both genders.<sup>58</sup>

In 2002 another piece of legislation, the (Agricultural) *Communal Land Reform Act* was enacted with the sole purpose of outlining a clear and cohesive manner of administrating communal land.<sup>59</sup> This was necessary to curb the abuse of power by traditional chiefs and leaders, who had unregulated authority and control over the allocation and administration of communal land.

In 2018, after years of frustration at the pace of land reform, a second National Conference on land was convened to address the persistent land issue. In essence it allowed the country to reflect on how far it has come

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<sup>53</sup> *Agricultural Commercial Land Reform Act* 6 of 1995 (ACLRA).

<sup>54</sup> Glinz 2009 *Law and Politics in Africa, Asia and Latin America* 265.

<sup>55</sup> Von Wietersheim *This Land is My Land!* 34. The Act was later amended in 2002 to compel juristic persons to comply with the preferential power of the state to acquire agricultural land. See Mufune 2010 *International Journal of Rural Management* 21. See also Fuller and Eiseb 2002 <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF> 12.

<sup>56</sup> The state's power to expropriate land under the auspices of eminent domain is recognised under Art 14 of the *African Charter on Human and Peoples' Rights* (1981). See Home "Law in African Land Reform" 136. See also *Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004); *Ongwediva Town Council v Jonas* (HC-NLD-CIV-MOT-GEN-2018/00001 [2018] NAHCNLD 22 (12 March 2018) para [44].

<sup>57</sup> Section 14(1) of the ACLRA reads: "The Minister may, out of moneys appropriated by Parliament for the purpose, acquire, in accordance with the provisions of this Act, agricultural land in order to make such land available for agricultural purposes to Namibian citizens who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices."

<sup>58</sup> Republic of Namibia *National Land Policy*.

<sup>59</sup> The *Communal Land Reform Act* 5 of 2002 (CLRA).

with regard to land reform and to acknowledge the amount of work which lay ahead if the land issue is ever to be resolved once and for all.

### **3.5 The failed resettlement policies**

In the 1980's land redistribution was commonly done through state-led reforms, which entailed expropriation and free provision. However, this mode of land redistribution did not bring about the expected results and so other means of land redistribution such as the market-assisted model gained popularity.<sup>60</sup> The essence of market-assisted redistribution is that government gives grants to beneficiaries which allow them to purchase land in the open market. It relies on the WSWB policy, and it requires "a relatively dynamic land market, with the capacity to bring forth a stable flow of willing sellers capable of matching redistribution targets over time."<sup>61</sup> This has not been the case in Namibia, where the number of willing sellers needed to match redistribution targets remains few.

It is important to note that both state-led redistribution and market-assisted redistribution of land are provided for in legislation, that is, through the WSWB policy option (section 14), and land expropriation in the public's interest (section 20).<sup>62</sup> This is even though land reform in Namibia is seen from a redistributive perspective. This redistributive aspect of the land reform programme is considered as one of the necessary rudiments for successful rural development and poverty alleviation.<sup>63</sup>

The first option, being the WSWB policy, has been prioritised by government as the preferred mode of the acquisition of land; while the second option has been rarely utilised.<sup>64</sup> In many cases the second option has attracted lawsuits from the farm owners, as they contest the expropriation of their land.<sup>65</sup> Arguably, financial constraints as well as legal battles play a role in

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<sup>60</sup> Lund, Odgaard and Sjaastad 2006 [https://pure.diis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf) 16. Penciakova 2010 <https://www.files.ethz.ch/isn/136670/WP100.pdf> 10-11; Lahiff 2007 *Third World Quarterly* 1577.

<sup>61</sup> Lund, Odgaard and Sjaastad 2006 [https://pure.diis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf) 17. See also Fuller and Eiseb 2002 <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF> 2.

<sup>62</sup> Section 20(1) of the ACLRA reads:  
"20. (1) ... The Minister may, subject to the payment of compensation in accordance with the provisions of this Act, expropriate such property for such purpose."

<sup>63</sup> Gumede and Makuwira 2018 *Journal of Public Administration* 571.

<sup>64</sup> Von Wietersheim *This Land is My Land!* 49. Also see Fuller and Eiseb 2002 <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF> 1; Dlamini *Taking Land Reform Seriously* 39.

<sup>65</sup> Gumede and Makuwira 2018 *Journal of Public Administration* 565. See also Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia/>; Von Wietersheim *This Land is My Land!* 49. According to Von Wietersheim, by 2006, only

government's reluctance to utilise section 20 of the ACLRA.<sup>66</sup> Government is thus reluctant to interfere with the constitutionally protected right to own private property despite legislation authorising expropriation in the public interest. This reluctance raises the question of whether the expropriation of land in the public interest should be utilised only after the WSWB is exhausted or whether there are situations that would adequately qualify as requiring expropriation in the public interest.

Government then opted to adopt a market-assisted method of land distribution, and according to Pankhurst<sup>67</sup> this is because:

A land reform requiring strong state intervention in land and produce markets, let alone one that included the historic recompense from the country's white communities, would have been anathema to the free market ideology on which the pre-dominant continent-wide policy framework of structural adjustments rests.

Naturally then, the WSWB appeared as the ultimate solution to the land issue for the newly independent Namibia.<sup>68</sup> Further, the WSWB policy was adopted in order to maintain economic stability in the wider economic market, and especially in the agricultural commercial land sector.<sup>69</sup> However, just as in South Africa the WSWB proved to be a slow process, this tardiness being attributed to inherent flaws in the market-assisted method of redistribution. It is characterised by the gradual and/or piece-meal delivery of land into the market, which means that beneficiaries tend to be translocated on a scale which is not feasible, both economically and politically.<sup>70</sup>

Further, the policy failed due *inter alia* to the exorbitant and unreasonable prices at which land is sold by white owners.<sup>71</sup> The reluctance by the minority to reconcile and cooperate with government frustrates the process of land reform and redistribution as well, which in turn makes it impossible for the government to expedite the land reform process.<sup>72</sup> As a result, the policy is quickly becoming redundant and useless.<sup>73</sup>

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five farms comprising of 24 451 hectares were acquired in terms of s 20 of the ACLRA.

<sup>66</sup> Gumede and Makuwira 2018 *Journal of Public Administration* 565.

<sup>67</sup> Pankhurst *A Resolvable Conflict?* 111.

<sup>68</sup> Delgado *Short Socio-Spatial History of Namibia* 13.

<sup>69</sup> Fuller and Eiseb 2002 <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF> 14.

<sup>70</sup> Alden and Anseeuw 2016 *Journal of Political Science* 9. See also Mumbuu *The Namibian* 5; Amoo "Land Reform in Namibia" 16; De Vos 2013 <https://www.dailymaverick.co.za/opinionista/2013-06-13-willing-buyer-willing-seller-works-if-you-have-a-lifetime-to-wait/>.

<sup>71</sup> Tjiriange 2014 <https://allafrica.com/stories/201403201483.html>; Gumede and Makuwira 2018 *Journal of Public Administration* 571.

<sup>72</sup> Tjiriange 2014 <https://allafrica.com/stories/201403201483.html>.

<sup>73</sup> Tjiriange 2014 <https://allafrica.com/stories/201403201483.html>.

For Dlamini<sup>74</sup> the slow pace of reform can be attributed to the fact that "the political balance of forces is stacked against the landless and dispossessed in particular" and this is related to how land dispossession impacted on different indigenous communities. Alden and Anseeuw<sup>75</sup> agree with this view, claiming that the motivation for adopting the WSWB policy was that SWAPO's support base was largely drawn from Ovambo people who themselves had not been dispossessed of their land. Hunter<sup>76</sup> agrees with this view and argues that a transparent land reform process does not seem to be a priority to most Namibians because not all people were affected directly by colonial land grabbing. For Melber<sup>77</sup> the programme failed due to the sheer lack of political will and the incompetence of the government agencies, coupled with greed and corruption among the new elites.

Additionally, the policy has failed because from the outset it was insufficient to meet the demand for land. It had already been argued in 1996 that the land reform programme did not have the capacity to adequately address the land issue, and that no amount of land reform would successfully change the patterns of land ownership in Namibia.<sup>78</sup> In my view this can be attributed to the fact that the only way the pattern of land ownership can be changed in Namibia is if the state would disregard Article 16(1) and expropriate all commercial farms currently belonging to the white minority, as the late Robert Mugabe's government did during the fast-track Zimbabwean land reform programme period.

However, it is important to note that the failure of the programme cannot simply be attributed to external factors. There are also inherent factors in the state institutions which render the pace of the programme slow. An example is the failure of the Ministry of Land Reform to spend the annual allocated budget for the purchase of agricultural land, despite the fact that many farms were on the market.<sup>79</sup> Government's reluctance to buy certain farms can be attributed to the fact that some of the available farms were not fit for agricultural purposes. There is no point in asking if Namibian land reform has been a successful exercise, as most people agree that the land reform programme failed to deliver the expected results. However, one should not lose sight of the fact that the government has acquired 549 farms

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<sup>74</sup> Dlamini *Taking Land Reform Seriously* 41.

<sup>75</sup> Alden and Anseeuw 2016 *Journal of Political Science* 11.

<sup>76</sup> Hunter "Who should Own the Land?" 2.

<sup>77</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>. See also Melber 2020 <https://www.dandc.eu/en/article/policy-proposed-namibias-first-national-land-reform-conference-early-1990s-never-took>.

<sup>78</sup> Pankhurst *A Resolvable Conflict?* 1.

<sup>79</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

of 3.2 million hectares at the price of N\$ 1.9 billion and resettled 5338 beneficiaries through the WSWB policy.<sup>80</sup>

Assuredly, land remains an emotive issue. Most people who were dispossessed of their land cannot understand why the law does not allow for the swift restitution of lost lands, particularly because one of the main motivations of the liberation struggle was to get access to land.<sup>81</sup> They see the law as protecting the interests of the white minority, who acquired the land through various means, some of which were *de facto* illegal (i.e. the forced removal of the native people, illegal contracts, and the discriminatory laws and practices adopted by the colonial governments). However, as a democratic state Namibia must pay due regard to democratic principles such as those enunciated in the 1982 Constitutional Principles instead of taking a radical approach to the land issue. And this is what triumphs in the land reform process. It is also important to realise that the equitable distribution of land would not automatically bring about social and economic transformation. While the redistribution of land is the main ingredient of land reform, it is not in itself enough to change the socio-economic status of the beneficiaries. Other factors such as the provision of services and support programmes would also be necessary to complement the redistribution of land and to achieve the objectives of land reform.

## 4 Transformation and the land question

It is argued that one of the main aims of land reform is to transform "the institutional structure of the relations between humans and land by intervening in the dominant ownership, control and use of land."<sup>82</sup> Is the law then able to change the skewed land tenure system inherited at independence without derogating from international standards that protect the right to own property? Is the Namibian legislative framework able to bring about change in the position inherited at independence?

### 4.1 Challenges to land reform in capitalistic countries

Takigawa<sup>83</sup> argues that it is challenging to enforce land reform in the radical sense in a capitalistic society, because doing so is at variance with the right to own private property. Radical land reform would entail the expropriation of land without compensation, as occurred during the fast-track land reform programme period in Zimbabwe. This is a challenge for Namibia as well, where private property is protected in the Constitution. To compulsorily acquire all agricultural land through expropriation without compensation

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<sup>80</sup> Gumede and Makuwira 2018 *Journal of Public Administration* 571.

<sup>81</sup> Horn "Forerunners of the Namibian Constitution" 63.

<sup>82</sup> Azadi and Vanhaute 2019 *Land Journal* 1.

<sup>83</sup> Takigawa 1964 *The Developing Countries* 72.

would be inconsistent with Article 16, and would be a flaw in the prevailing capitalist system.

Mufune<sup>84</sup> asserts that the government's manner of addressing the land question is in line with the aspirations and promises enunciated in the preamble of the Constitution, which is committed to addressing rights that Namibians were denied due to apartheid, racism and colonialism. Mufune submits further that the Constitution provides both opportunities and constraints to land redistribution.<sup>85</sup> Opportunities for land redistribution are found in two Articles, that is, Article 10(2), which prohibits discrimination against persons on the basis of sex, colour, ethnic origin, religion, creed or social or economic status, and Article 23(2), which empowers parliament firstly to enact laws for the advancement of persons who have been previously disadvantaged either socially, economically or educationally by past discriminatory practices; and secondly, to implement policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society arising out of past discriminatory practices.<sup>86</sup>

Accordingly, the government is in a position to employ the legislative framework to enact policies that will ensure the fulfilment of both Article 10(2) and Article 23(2). This would entail a purposive and liberal interpretation of the property clause. However, the government has not always utilised the legislative framework to achieve the transformative aims of the constitution as articulated in the preamble. An example is the *Communal Land Reform Act (CLRA)*, (inspired by the Land Policy of 1998, and which calls for equal treatment of both men and women in respect of access to land) which failed to provide for specific rights pertaining to women despite the clear need to do so in a highly patriarchal society. The CLRA would have been a perfect starting point to realise the transformative aims of the Constitution as enunciated in Article 23(2).

The constraints to land redistribution are found in the wording of Article 16, which entitles all persons to acquire, own and dispose of all forms of immovable and movable property. This means that the state cannot arbitrarily interfere with a persons' right to own property. As such, the effect of Article 16 is that the acquisition of land would be based on the WSWB policy.<sup>87</sup> This means that the provisions of Article 16 already imply that the state would not have unregulated powers to deprive individuals of owning land, notwithstanding the manner of the original acquisition. Because of the

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<sup>84</sup> Mufune 2010 *International Journal of Rural Management* 23.

<sup>85</sup> Mufune 2010 *International Journal of Rural Management* 23.

<sup>86</sup> Mufune 2010 *International Journal of Rural Management* 23. Also see the Namibian Constitution Arts 10(2) and 23(2).

<sup>87</sup> Mufune 2010 *International Journal of Rural Management* 24.

regulated powers of the state to compulsorily acquire land and redistribute such land in line with any scheme of land reform, Haring<sup>88</sup> submits that there is in actual fact no constitutional obstacle to land reform in Namibia. This is mainly because the state has a prerogative to compulsorily acquire all farms in the country and redistribute them in line with any scheme of land reform. However, one should note that although the state has powers to expropriate land, not all land is suitable for resettlement purposes. Additionally, owners entangle government in costly legal battles against expropriation, thereby undermining the process of land reform.

#### **4.2 What makes a land policy transformative?**

The call to transform is a constitutional imperative and is aimed at establishing a truly equal society in which socio-economic rights are accessible to everyone. However, despite attaining independence and political sovereignty 33 years ago, Namibia remains divided along racial and economic lines drawn *inter alia* by the inequities of access to land and resources. And even though several measures have been put in place to address the inequitable distribution of resources, especially land, the question remains: can the land reform programme be regarded as transformative in nature? Does it assist in establishing a truly equal society? To answer this question it is imperative to consider what makes a land reform programme transformative.

In order for a land reform programme to be transformative it is imperative to consider who the programme is intended to benefit, what the goals of the programme are, what mechanisms are being employed to acquire and redistribute land, the type of support services to be provided to beneficiaries of the programme, to identify what structural transformation of the agrarian economy would be required to alleviate poverty and inequality, and what policies need to be enacted to bring about the expected transformation.<sup>89</sup>

An application of these requirements to the Namibian context demonstrates that land reform cannot conclusively be regarded as being transformative. I say so for the reasons advanced below. Firstly, in Namibia, land reform is intended for landless Namibians, specifically the previously disadvantaged who suffered injustice as a result of colonialism. As such, beneficiaries of land reform are defined broadly rather than narrowly, which means that essentially all black Namibians qualify as beneficiaries of land reform. This liberal way of defining beneficiaries robs the true victims of land dispossession from enjoying a preferential right to access to land. As a result the true victims of land dispossession now have to compete with

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<sup>88</sup> Haring "Stolen Lands under the Constitution of Namibia" 13.

<sup>89</sup> Hall and Ntsebeza *Land Question in South Africa* 2.



people who were never dispossessed of their land. In this context then, transformation remains nominal.

Secondly, the goals of the land reform programme are to solve the issue of landlessness inherited at independence and to disallow foreigners from owning land at the expense of landless Namibians. The pace of land reform has been slow, and the issue of the skewed distribution of land remains unsolved.

Thirdly, there are currently two main methods of land acquisition being utilised by government, that is, the WSWB policy and the expropriation of land in the public interest. The WSWB policy has failed dismally in bringing about the equitable distribution of land. As such, it is difficult to argue that this policy has led to transformation and establishing a truly equal society.

Fourthly, although beneficiaries of land reform receive support services, those support services are not adequate to make them self-reliant. The beneficiaries remain reliant on government and are in most cases struggling to utilise the land productively as many lack the necessary skillsets to farm productively. As such, resettlement does not automatically translate into transformation.

Lastly, the programme still needs to identify what structural transformation would be needed to assuage poverty and inequality, and there is a need to rely more on the purposive approach when interpreting statutes in order to bring about the expected transformation and economic development. This is because there is already a plethora of legislation and policies enacted to address the inequitable distribution of land. Without a doubt, land remains a powerful tool in the debate of transformation.

To this end, it has been argued that land reform is an indispensable condition of the economic development of underdeveloped countries.<sup>90</sup> This means that land reform is a *sine qua non* for economic development in developing countries. The significance which marginalised/poor people attach to land cannot be underplayed. Land is an increasingly crucial asset for livelihood and a lot of people attach more importance to land than to other resources.<sup>91</sup> Melber<sup>92</sup> agrees with Von Wietersheim's view and argues that land is not just an economic affair. It is also a matter of identity to both those who own it and those who believe they should own it. In the minds of

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<sup>90</sup> Takigawa 1964 *The Developing Countries* 72. Also see Chitonge "Rethinking Land Reform in Africa" 198.

<sup>91</sup> Von Wietersheim *This Land is My Land!* 73. Also see Lund, Odgaard and Sjaastad 2006 [https://pure.diis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf) 4.

<sup>92</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

many people, there can never be a separation between colonialism and land dispossession.

As such, the present skewed distribution of land in favour of a white minority serves as a constant reminder that colonialism has not actually come to an end with independence. For Melber<sup>93</sup> these sentiments will persist unless and until restorative justice is infused in the debate on land. This entails acknowledging that some level of restitution to the dispossessed communities is necessary if the wounds of the past are to be healed or at least treated. To this end, land reform still remains a pressing and emotive issue, 33 years after independence.

However, it is important to realise that despite the urgency of the need for land reform, it would not be enough in itself to bring about transformation. In this regard it is argued that if land reform is "not combined with other adequate policies, such as increasing the productivity in agriculture and raising perpetually the income of the formerly landless farmers", it would not be successful.<sup>94</sup> In the same vein, Walker<sup>95</sup> submits that changing landownership racial patterns would not be sufficient to ensure the success of land reform. Land reform, then, in its narrow sense is not sufficient to bring about a change in livelihoods, social equality or rural stability.<sup>96</sup>

This raises the question, what is needed to make land reform effective? Hangula<sup>97</sup> argues that in order to be effective land reform needs to be carried out within the confines of the law. However, it has been argued that the law itself places a hindrance on land redistribution, particularly Article 16(2) of the Constitution. Currently, land reform stands on three significant but shaky pillars; namely: (i) the availability of land on the market; (ii) the availability of funds for government to acquire such land; and (iii) the quality and quantity of the land offered.<sup>98</sup> The government's assent to the WSWB policy means that "land reform becomes a reactive exercise, submissive to the drives of the market principles."<sup>99</sup> This fact puts the landowners in a position where they are effectively in control of the land reform process, unless and if government continues to exercise its power of expropriation in terms of Article 16(2) and section 20 of the ACLRA. This position is exacerbated by the fact that there are no coercive measures in the legislation to compel landowners to relinquish their rights to private property for the benefit of land reform. The land is therefore still in the hands of those

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<sup>93</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

<sup>94</sup> Takigawa 1964 *The Developing Countries* 72.

<sup>95</sup> Walker "Land Question in South Africa" 2.

<sup>96</sup> Walker "Land Question in South Africa" 2.

<sup>97</sup> Hangula 2000 *Population–Development–Environment in Namibia* 87.

<sup>98</sup> Hangula 2000 *Population–Development–Environment in Namibia* 87.

<sup>99</sup> Hangula 2000 *Population–Development–Environment in Namibia* 87.

who owned it prior to independence, and it has in fact been passed from generation to generation.

Unless the factors which slow down land reform are addressed, the land reform programme will continue to be a slow, ineffective and costly exercise. Government needs to capitalise on section 20 of the ACLRA and acquire more land for the purposes of land reform. The land reform programme also needs to include restitution as a means of rectification for the land lost by the tribes through dispossession. The starting point in respect of restitution is to understand that history cannot be reversed fully, and that the wounds of the past may never be fully healed, nor can the marks left by the violent dispossession of land by the colonial powers be erased.<sup>100</sup> However, certain things may be done to soothe these wounds, such as addressing the emotions surrounding the dispossession of land by infusing restorative justice in the land reform programme. In this regard Melber<sup>101</sup> argues that acting on Resolution 38 of the second National Conference on land, which requires government to undertake "measures to restore social justice and ensure economic empowerment of the affected communities" is crucial. This involves clear attempts to redistribute land to the landless, and more specifically to the Herero and Nama people, who were the main victims of land appropriation.

It is imperative, however, to realise that accelerating the pace of land reform does not mean that current regulations should be abandoned. This is because, to date, government has acquired over 3 million hectares of land for the purposes of land reform, which translates to an average of 1 million hectares per decade. However, this slow pace of land reform could be accelerated by increasing the use of market mechanisms in an open, inclusive framework; by setting long-term goals; by putting in place coercive measures to force commercial farmers to substantially contribute to the land reform program; and by making land reform a priority again.

## 5 Conclusion

The call to transform is a constitutional imperative. And this call to is aimed at establishing a truly equal society whereby socio-economic rights are accessible to everyone. In a nation characterised by acute inequalities the pursuit of substantive equality should be spearheaded by government and desired by all. This entails that government should initiate and constantly facilitate a serious conversation on the need to transform between Namibians of European descent who own land and black Namibians who do not have land. A belligerent and hostile posture between those who own

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<sup>100</sup> Lund, Odgaard and Sjaastad 2006 [https://pure.diiis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diiis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf) 4.

<sup>101</sup> Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>.

land and those without should be discouraged. Without doubt, all land reform projects can contribute towards the realisation of substantive transformation if managed properly, through the correction of inequalities created by historical dispossession. Essentially then, the pursuit of the political and economic objectives of transferring land to those who were previously dispossessed should take place in a manner that acknowledges that the quest for transformation should benefit all Namibians. While acknowledging the emotions associated with the historical dispossession of land, a divisive government rhetoric language that pits Namibian landowners of European descent against black Namibians should be discouraged as it does not foster national reconciliation and will ultimately frustrate the effort to bring about land reform.

## **Bibliography**

### **Literature**

Alden and Anseeuw 2016 *Journal of Political Science*

Alden C and Anseeuw W "The Gathering Storm? Namibia and the Land Question" 2016 *Journal of Political Science* 1-32

Amoo "Land Reform in Namibia"

Amoo SK "Land Reform in Namibia: Beyond 2018" in Odendaal W and Werner W *Neither Here nor There: Indigeneity, Marginalisation and Land Rights in Post-Independence Namibia* (Legal Assistance Centre Windhoek 2020) 13-34

Amoo and Harring "Intellectual Property under the Namibian Constitution"

Amoo SK and Harring S "Intellectual Property under the Namibian Constitution" in Bösl A, Horn N and Du Pisani A (eds) *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades* (Macmillan Education Windhoek 2010) 299-309

AU *Framework and Guidelines on Land Policy*

African Union *Framework and Guidelines on Land Policy in Africa Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods* (ECA Publications and Conference Management Section Addis Ababa 2010)

Azadi and Vanhaute 2019 *Land Journal*

Azadi H and Vanhaute H "Mutual Effects of Land Distribution and Economic Development: Evidence from Asia, Africa, and Latin America" 2019 *Land Journal* 1-15

Chitonge "Rethinking Land Reform in Africa"

Chitonge H "Participatory Land Governance in Africa: The Key to Raising Productivity and Promoting Equitable and Sustainable Land Use" in African

Development Bank *Rethinking Land Reform in Africa: New Ideas, Opportunities and Challenges* (African Development Bank Abidjan 2020) 198-210

De Villiers *et al* "Land Governance in Namibia"

De Villiers S *et al* "Land Governance in Namibia" Unpublished contribution delivered at the *Land Governance in Southern Africa Symposium Conference* (3-4 September 2019 Windhoek)

Delgado *Short Socio-Spatial History of Namibia*

Delgado G *A Short Socio-Spatial History of Namibia (ILMI Working Paper No 9)* (Namibia University of Science and Technology, Integrated Land Management Institute Windhoek 2018)

Dlamini *Taking Land Reform Seriously*

Dlamini SRA *Taking Land Reform Seriously: From Willing Seller-Willing Buyer to Expropriation* (LLM-thesis University of Cape Town 2014)

Forrest 2001 *Historia*

Forrest JB "Land, Agriculture and Racial Inequality in South-West Africa" 2001 *Historia* 345-346

Geiseb "Genocide against the Ovaherero and Nama Peoples"

Geiseb S "The Genocide against the Ovaherero and Nama Peoples" European Center for Constitutional and Human Rights and Akademie der Künste *Colonial Repercussions: Namibia 115 Years after the Genocide of the Ovaherero and Nama* (European Center for Constitutional and Human Rights Berlin 2019) 8

Glinz 2009 *Law and Politics in Africa, Asia and Latin America*

Glinz C "The High Court of Namibia: '*Gunther Kessl v Ministry of Lands and Resettlements and 2 Others*. Case No 27/2006 and 266/2006'. A Test Case for the Namibian Land Reform Program" 2009 *Law and Politics in Africa, Asia and Latin America* 263-274

Gumede and Makuwira 2018 *Journal of Public Administration*

Gumede N and Makuwira J "Contemporary Challenges of Post-Colonial Land Reform in Namibia: Lessons for South Africa" 2018 *Journal of Public Administration* 565-579

Hall and Ntsebeza *Land Question in South Africa*

Hall R and Ntsebeza L *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (HSRC Press Cape Town 2007)

Hangula 2000 *Population–Development–Environment in Namibia*

Hangula L "Land Reform in Namibia" 2000 *Population–Development–Environment in Namibia* 75-92

Harmse *Guidebook on Laws Relating to Immovable Property*  
Harmse PJ *Guidebook on Laws Relating to Immovable Property in Namibia*  
(Ministry of Land and Resettlement Windhoek 2014)

Harring "Stolen Lands under the Constitution of Namibia"  
Harring S "The Stolen Lands under the Constitution of Namibia: Land Reform under the Law" Unpublished contribution delivered at the *AASA Conference* (July 2000 Windhoek)

Home "Law in African Land Reform"  
Home R "Law in African Land Reform: Contested Areas" in African Development Bank *Rethinking Land Reform in Africa: New Ideas, Opportunities and Challenges* (African Development Bank Abidjan 2020) 132-141

Horn "Forerunners of the Namibian Constitution"  
Horn N "The Forerunners of the Namibian Constitution" in Bösl A, Horn N and Du Pisani A (eds) *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades* (Macmillan Education Windhoek 2010) 63-82

Horn 2015 *SADC Law Journal*  
Horn N "The Western Sahara Case: Land Reform and Pre-Colonial Land Rights in Namibia" 2015 *SADC Law Journal* 96-109

Hunter "Who should Own the Land?"  
Hunter J "Who should Own the Land? An introduction" in Hunter J (ed) *Who should Own the Land? Analyses and Views on Land Reform and the Land Question in Namibia and Southern Africa* (Konrad-Adenauer-Foundation Windhoek 2004) 1-7

Khapoya *The African Experience*  
Khapoya V *The African Experience* 4<sup>th</sup> ed (Routledge New York 2012)

Lahiff 2016 *Current History*  
Lahiff E "Stalled Land Reform in South Africa" 2016 *Current History* 181-187

Lahiff 2007 *Third World Quarterly*  
Lahiff E "Willing-Buyer, Willing-Seller: South Africa's Failed Experiment in Market-Led Agrarian Reform" 2007 *Third World Quarterly* 1577-1597

Mthembu 2019 *Town and Regional Planning*  
Mthembu A "Reflections on Expropriation-based Land Reform in Southern Africa" 2019 *Town and Regional Planning* 54-65

Mufune 2010 *International Journal of Rural Management*

Mufune P "Land Reform Management in Namibia, South Africa and Zimbabwe: A Comparative Perspective" 2010 *International Journal of Rural Management* 1-31

Mumbuu *New Era*

Mumbuu E "Kapofi Brushes Off 'Sell-Out' Tag" *New Era* (28 September 2022) 3

Mumbuu *The Namibian*

Mumbuu E "WBWS Policy has not Failed" *The Namibian* (Windhoek, 28 September 2018) 5

Muundjua "Historical Origins of the Ovaherero and Nama Genocide"

Muundjua FU "Historical Origins of the Ovaherero and Nama Genocide" in European Center for Constitutional and Human Rights and Akademie der Künste *Colonial Repercussions: Namibia 115 Years after the Genocide of the Ovaherero and Nama* (European Center for Constitutional and Human Rights Berlin 2019) 11

Pankhurst *A Resolvable Conflict?*

Pankhurst D *A Resolvable Conflict? The Politics of Land in Namibia* (University of Bradford England 1996)

Republic of Namibia *National Land Policy*

Republic of Namibia, Ministry of Lands, Resettlement, and Rehabilitation *National Land Policy* (Ministry of Lands, Resettlement, and Rehabilitation Windhoek 1998)

Seervai *Constitutional Law of India*

Seervai HM *Constitutional Law of India: A Critical Commentary* 3<sup>rd</sup> ed (University of Michigan Ann Arbor 2005)

Swartbooi "On the Land Question"

Swartbooi B "On the Land Question" in European Center for Constitutional and Human Rights and Akademie der Künste *Colonial Repercussions: Namibia 115 Years after the Genocide of the Ovaherero and Nama* (European Center for Constitutional and Human Rights Berlin 2019) 15

Takigawa 1964 *The Developing Countries*

Takigawa T "Landownership and Land Reform Problems of the Philippines" 1964 *The Developing Countries* 58-77

Von Wietersheim *This Land is My Land!*

Von Wietersheim E *This Land is My Land! Motions and Emotions around Land Reform in Namibia* (Friedrich Ebert Stiftung Windhoek 2021)

Walker "Land Question in South Africa"

Walker C "The Land Question in South Africa: The Challenges of Transformation and Redistribution" Unpublished contribution delivered at the *Harold Wolpe Memorial Trust Conference (25-27 March 2004 Cape Town)*

Werner 1993 *Journal of Southern African Studies*

Werner W "A Brief History of Land Dispossession in Namibia" 1993 *Journal of Southern African Studies* 135-146

Werner "Land Reform in Namibia"

Werner W "Land Reform in Namibia: Motor or Obstacle of Democratic Development?" Unpublished paper presented at a conference titled *Land Reform in Southern Africa (28 May 2003 Berlin)*

### **Case law**

*Günther Kessl v Ministry of Lands and Resettlement* (High Court of Namibia) case numbers 27/2006 and 266/2006 (6 March 2008)

*Namibia Grape Growers and Exporters Association v Ministry of Mines and Energy* (SA 14 of 2002) [2004] NASC 6 (25 November 2004)

*Ongwediva Town Council v Jonas* (HC-NLD-CIV-MOT-GEN-2018/00001) [2018] NAHCNLD 22 (12 March 2018)

*Wohlfart v Bergh* (HC-MD-CIV-MOT-GEN-2019/00004) [2019] NAHCMD 264 (28 May 2021)

### **Legislation**

*Agricultural Commercial Land Reform Act* 6 of 1995

*Communal Land Reform Act* 5 of 2002

*Constitution of the Republic of Namibia*, 1990

### **International instruments**

*African Charter on Human and Peoples' Rights* (1981)

### **Internet sources**

De Vos 2013 <https://www.dailymaverick.co.za/opinionista/2013-06-13-willing-buyer-willing-seller-works-if-you-have-a-lifetime-to-wait/>

De Vos P 2013 *Willing Buyer, Willing Seller Works... If You Have a Lifetime to Wait* <https://www.dailymaverick.co.za/opinionista/2013-06-13-willing-buyer-willing-seller-works-if-you-have-a-lifetime-to-wait/> accessed 18 May 2022



Fuller and Eiseb 2002 <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF>

Fuller B and Eiseb G 2002 *Commercial Farm Market in Namibia: Evidence from the First 11 Years (IPPR Briefing Paper No 15)* <https://ippr.org.na/wp-content/uploads/2010/06/BP15.PDF> accessed 13 August 2023

Lund, Odgaard and Sjaastad 2006 [https://pure.diiis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diiis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf)

Lund C, Odgaard R and Sjaastad E 2006 *Land Rights and Land Conflicts in Africa: A Review of Issues and Experiences* [https://pure.diiis.dk/ws/files/68278/Land\\_rights\\_and\\_land\\_conflicts\\_in\\_Africa\\_a\\_review\\_of\\_issues\\_and\\_experiences.pdf](https://pure.diiis.dk/ws/files/68278/Land_rights_and_land_conflicts_in_Africa_a_review_of_issues_and_experiences.pdf) accessed 14 August 2023

Melber 2018 <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia>

Melber H 2018 *The Battles over Land in Namibia* <https://africasacountry.com/2018/12/the-battles-over-land-in-namibia> accessed 16 May 2022

Melber 2018 <https://theconversation.com/namibias-long-standing-land-issue-remains-unresolved-105301>

Melber H 2018 *Namibia's Long-Standing Land Issue Remains Unresolved* <https://theconversation.com/namibias-long-standing-land-issue-remains-unresolved-105301> accessed 22 May 2022

Melber 2020 <https://www.dandc.eu/en/article/policy-proposed-namibias-first-national-land-reform-conference-early-1990s-never-took>

Melber H 2020 *How the First Redistribution Attempt Failed* <https://www.dandc.eu/en/article/policy-proposed-namibias-first-national-land-reform-conference-early-1990s-never-took> accessed 16 May 2022

Penciakova 2010 <https://www.files.ethz.ch/isn/136670/WP100.pdf>

Penciakova V 2010 *Market-Led Agrarian Reform: A Beneficiary Perspective of Cedula Da Terra. LSE Working Paper Series N° 10-100* <https://www.files.ethz.ch/isn/136670/WP100.pdf> accessed 16 May 2022

Tjiriange 2014 <https://allafrica.com/stories/201403201483.html>

Tjiriange N 2014 *Willing Seller, Willing Buyer Policy – Is It Effective?* <https://allafrica.com/stories/201403201483.html> accessed 16 May 2022

## List of Abbreviations

AALS	Affirmative Action Loan Scheme
ACLRA	Agricultural Commercial Land Reform Act 6 of 1995
AU	African Union
CLRA	Communal Land Reform Act 5 of 2002

CPs	Constitutional Principles
SADC	Southern African Development Community
SWAPO	South West Africa People's Organisation
WSWB	Willing Seller Willing Buyer