

# IMPROVING TENURE SECURITY FOR THE RURAL POOR

## NAMIBIA – COUNTRY CASE STUDY



Dr. Ben Fuller

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Support to the Legal Empowerment of the Poor (LEP)

Improving tenure security for the rural poor –

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# **IMPROVING TENURE SECURITY FOR THE RURAL POOR**

**NAMIBIA – COUNTRY CASE STUDY**

**INVESTING IN RIGHTS: LESSONS FROM RURAL NAMIBIA**

**Dr. Ben Fuller**

2006

Photograph by Bennet K. Fuller  
(Water hole in Etosha Park)

This paper was prepared under contract with the Food and Agriculture Organization of the United Nations (FAO). The positions and opinions presented are those of the author alone, and are not intended to represent the views of FAO.

Most of the world's poor work in the "informal economy" – outside of recognized and enforceable rules. Thus, even though most have assets of some kind, they have no way to document their possessions because they lack formal access to legally recognized tools such as deeds, contracts and permits.

The **Commission on Legal Empowerment of the Poor** (CLEP) is the first global anti-poverty initiative focusing on the link between exclusion, poverty and law, looking for practical solutions to the challenges of poverty. CLEP aims to make legal protection and economic opportunity the right of all, not the privilege of the few. (see <http://legalempowerment.undp.org/>)

CLEP has identified specific tenure issues, including i) how to make property rights accessible to all, especially poor and marginalized communities, groups or individuals and ii) how to ensure that property rights of the poor function as means of achieving economic and social empowerment, particularly in the context of gender equity and those affected by HIV/AIDS.

There is growing empirical evidence that giving legal recognition to informal property rights in urban areas brings positive results. However, a similar body of evidence does not exist for the empowerment of people in rural areas. Instead, the signs are mixed, resulting in a largely sterile and divisive debate on formalization of rights.

FAO, with donor funding from Norway, has undertaken a set of activities for "Improving tenure security of the rural poor" in order to meet the needs of FAO member countries and, in turn, support the CLEP. This work falls within the FAO corporate strategy on "Sustainable rural livelihoods and more equitable access to resources". Recognizing that secure access to land and other natural resources (forests, water, fisheries, pastures, etc.) is a crucial factor for eradication of food insecurity and rural poverty, FAO's cross-departmental and cross-disciplinary work focused 2005-2006 activities on sub-Saharan Africa which has the world's highest percentage of poor and hungry people.

This paper is part of FAO's effort to inform the CLEP through its working group on property rights. It was prepared for the regional technical workshop on "Improving tenure security of the rural poor" held in Nakuru, Kenya, October 2006, at which issues relating to property rights were reviewed and actions were initiated to develop common strategies for improving the protection of rights to land and other natural resources of the rural poor.



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## LIST OF ACRONYMS

AALS	-	Affirmative Action Loan Scheme
CAMPFIRE	-	Communal Areas Programme for Indigenous Resources Management
CBNRM	-	community based management of natural resources
LIFE	-	Living in a Finite Environment
MAWF	-	Ministry of Agriculture, Water and Forestry
MET	-	Ministry of Environment and Tourism
NACSO	-	Namibian Association of Conservancy Support Organisations
MLR	-	Ministry of Lands and Resettlement
PTO	-	Permit to Occupy
PTT	-	Permanent Technical Team on Land Reform
VCF	-	Veterinary Cordon Fence

This paper uses an exchange rate of US\$1 to N\$6.

## EXECUTIVE SUMMARY

### Introduction

Namibia, the most arid country in sub-Saharan Africa, is one of the most sparsely populated countries on earth, with land area of 824 292 km<sup>2</sup> and population of just over 1.8 million. March 1990 saw the end of a century of colonial rule during which indigenous Namibians were dispossessed from rights to both land and resources. First German and then white South African settlers were encouraged to migrate to Namibia and establish commercial farms and related businesses. Finding the large tracts of land needed for this first wave of resettlement required expropriation of that land from blacks. Access to freehold tenure was reserved for white settlers and tenure security for indigenous Namibians largely disappeared. In non-white areas, rights were provided under indigenous tenure systems whose legal status was somewhat murky. Urban tenure was denied as blacks were not allowed ownership of residential land.

### The Mosaic of Land and Rights Issues

The denial of rights to land and resources to the majority of Namibians during the apartheid, colonial period was the primary fuel for Namibia's liberation movement. While the acquisition and redistribution of freehold farmland has garnered the headlines during the past 16 years, many issues, problems and solutions to the restoration of rights in other areas have emerged. Land and rights reform for Namibia is not the simple task of obtaining from those who have much and redistributing to those who have little. Redistribution, in this classic sense, would apply to only half of the country's land. The story of the other half is often neglected. Namibia has a web of social, historical, environmental and legal parameters that have required a complex approach to both the recognition and restoration of property rights. These are:

- communal versus freehold title;
- historical discrepancies in land investment between communal and commercial land;
- population distribution and urbanization;
- governance and administration;
- farming systems; and
- credit.

### Land Rights Initiatives

The factors noted above show that a one-size-fits-all approach to rights reform is not possible for Namibia. Returning rights to disenfranchised individuals requires targeted investments in the planning and implementation of a comprehensive set of initiatives. Each initiative requires its own basis in law, associated policy and a specific ministry within the Namibian government.

**Table A Rural rights restoration programmes in Namibia**

Programme	Year	Type of rights	Number of beneficiaries <sup>*</sup>	Area <sup>*</sup> 000 ha	Implementing agency
<b>Affirmative action loan scheme</b>	1991	Freehold in commercial farms	660 <sup>**</sup>	3 200	Agricultural Bank of Namibia
<b>Resettlement (commercial)</b>	1995	Leasehold in commercial farms	1 550 <sup>**</sup>	1 056	Ministry of Lands and Resettlement
<b>Conservancies</b>	1995	Partial rights to groups in communal areas <sup>***</sup>	43 000	9 200	Ministry of Environment and Tourism
<b>Communal registration</b>	2002	Leasehold rights in communal areas (25 ha limit)	4 500 <sup>**</sup>	N/A	Ministry of Lands and Resettlement

<sup>\*</sup> The number of beneficiaries and ha is constantly rising. The figures here are based on 2005 data.

<sup>\*\*</sup> Refers to households.

<sup>\*\*\*</sup> Includes only tourism and wildlife.

There have been some successes but also some problems associated with on-the-ground implementation which are discussed below. Table A provides an overview of each initiative.

### Affirmative Action Loan Scheme (AALS)

The AALS began with the 1991 Agricultural Bank Amendment Act. It authorized the Agricultural Bank of Namibia to advance funds to previously disadvantaged farmers at subsidized interest rates. Farmers apply for entry into the AALS in much the same manner as they apply for a loan from a commercial bank. Full-time farmers who purchase commercial farms under this programme receive an initial three-year exemption from repayment on a 20-year bond. In the fourth year, payments begin at a 1 percent interest rate but increase to market rates by the tenth year. In 1997, the programme was changed to allow part-time farmers to participate in the AALS. This change enabled members of the emerging black middle and upper classes to purchase farms. Interest subsidies were based on a sliding scale of formal-sector income.<sup>i</sup> The AALS programme has proven popular and has supported the purchase of more than 660 farms that constitute some 10 percent of the land available in freehold areas.

### Resettlement

The Resettlement Scheme has put more people on the land than the AALS, but with smaller plots. Resettlement involves purchasing commercial farms on a willing seller/willing buyer basis and partitioning them for middle-scale farmers. The resettlement process was formalized with passage of the 1995 Resettlement Act. Prior to this, resettlement took place largely on an emergency and *ad hoc* basis. The target group for this project is the middle-scale farmer who meets AALS criteria. Resettled farmers are given five years to develop an economically viable farming operation. Once the MLR is satisfied that this condition has been met, it will issue a 99-year lease to the resettled farmer. Although the possibility of leases has existed since 1995, the first long-term leases were only issued in 2006.

### Conservancies<sup>ii</sup>

Conservancies pre-date Namibian independence, though as with most land and resource rights at that time, they were legitimized largely by skin colour. Under the 1975 Nature Conservation Ordinance, commercial farm owners were able to declare their farms (or a group of farms) as conservancies, thus gaining rights over wildlife and tourism activities. After 1990, the idea of community-based management of natural resources (CBNRM) gained credence within the government as a way of boosting economic development in formerly neglected areas through wild animal conservation and concomitant increases in tourism revenues. Between 1996 and 2004, 29 communal area conservancies were registered. Numerous other conservancies are at different stages of formation, as shown in Map 4. Support for CBNRM and conservancies has been in the range of several hundred million Namibian dollars (NACSO, 2004).

### Communal registration

The 2002 Agricultural (Communal) Land Reform Act established Communal Land Boards in 12 of Namibia's 13 regions.<sup>iii</sup> These boards have responsibility for registration of land claims, maintenance of regional land registries, land use planning and the settlement of disputes. They also grant approval of four types of tenure: existing rights under customary rule, new rights

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<sup>i</sup> Essentially individuals with US\$17 000 annual income or less started with a 1 percent interest rate in the first year, working their way up to market rates by the tenth year. Individuals with incomes of more than US\$67 000 started repayments at market rates in the first year.

<sup>ii</sup> For the purposes of this discussion, only communal-based conservancies are covered.

<sup>iii</sup> The Khomas Region does not have communal lands.



under customary rule, leasehold rights and existing leasehold rights granted before the passage of the Land Reform Act.<sup>iv</sup> All of these receive a 99-year lease for an approved plot. Farming plots are limited to 25 ha, enough for crop production and a homestead. Livestock requirements are generally too large for this limit.

### **Threats to Rights**

Despite a well developed legal framework for formalizing land and resource rights, there still are cracks. People without access, especially the poor and women, often lack the resources needed to navigate the government's bureaucratic procedures. The situation is similar for farm workers and small-scale communal farmers in areas with a concentration of illegally fenced enclosures. All of these groups suffer varying degrees of marginalization.

### **Strengths and Weaknesses in Rights Reform**

Three of Namibia's programmes for rights reform, the AALS, conservancies and resettlement, have been in operation for more than a decade, making analysis of their operations possible. The fourth, leaseholds in communal lands, is in its infancy so its performance cannot be measured.

#### *Affirmative Action Loan Scheme*

The AALS has been successful in terms of the amount of land redistributed. Furthermore, because it uses established market mechanisms, it has done so with a lower cost to the state. It can be argued that the AALS has contributed to Namibia's stability by providing an avenue for large-scale farmers to obtain land, and, by doing so, has decreased pressure on communal lands. The programme is popular but it faces a major challenge – defaults on loans.

#### *Resettlement*

Despite the policy that allows resettled farmers to obtain long-term leases, none have been issued. The 99-year lease is supposed to provide resettled farmers the surety they need to obtain commercial credit for their operations. This lack of tenure has prevented private investment in the productivity of the land. In addition, uncertainty between the Ministry of Lands and the Ministry of Agriculture over provision of extension and marketing services has been a major impediment to success.

#### *Conservancies*

The first communal area conservancy was gazetted in 1998. An additional 28 conservancies were registered during the next five years (NACSO, 2004). In 2003, communal conservancies covered almost a quarter of all communal lands in Namibia. Measurable income in conservancies started with US\$100 000 in 1998 and grew to US\$1.3 million by 2003. Almost half of these funds have come from joint venture tourism operations (NACSO, 2004). Under such arrangements, a tour company signs a contract for exclusive tourism rights in the area. In return, the conservancy receives a bed levy or other form of income sharing. Many contracts also have clauses committing the tour operator to both hire members of the conservancy and train suitable candidates among them to assume managerial positions. There are approximately 20 such partnerships in operation. As of 2003, approximately 250 conservancy members were employed with contracted tour operators. A key part of the process of negotiating these contracts has been involving the support groups. They can provide access to financial analysis and legal assistance during and after negotiations which, in turn, ensures that poor and historically disadvantaged people do not sign away valuable rights for a pittance.

<sup>iv</sup> These are known as Permits to Occupy (PTOs).

Conservancies have benefited from a 13-year support programme that has gone beyond basic organizational management. Namibia's tourism sector has grown tremendously since 1990. Because conservancies have rights over any tourism within their boundaries, many have had to negotiate with tour operators and companies for fees and other forms of remuneration. It is difficult for poorly educated individuals from rural communities to negotiate effectively with tour companies. The conservancy support programme has provided the technical assistance needed in these negotiations.

### *Communal registration*

Communal Land Boards have been effective, issuing nearly 4 500 leaseholds. Roughly three quarters of these leases are approvals of existing land allocations under customary systems. Thus far, there is no measure of the effects this type of reform is having on issues such as investment in land, increases in agricultural production or poverty reduction.

### **Lessons**

As seen in the Namibian experience, it is possible to transfer deeds, leaseholds and other rights to the poor and historically disadvantaged. Based on what we have learned since 1990, there are three key issues that need to be considered before making investments.

1. Environmental and historical factors must be considered. An underlying reason for the success of some communal conservancies is that they are in prime tourism areas where agriculture is marginal.
2. Extensive support is required. Regardless of the type of tenure security offered, the poor often lack the basic skills necessary for their own economic growth. Conservancies, Namibia's most successful programme for returning rights, have benefited from long-term support including training in basic organizational skills, research to support policy and legal advice. This range of support for conservancies is expected to last for many years.
3. Economics underlying rights transfers need consideration. It is important to be aware that the benefits of resource rights in rural areas can only be achieved if they bring economic opportunities.

## 1 INTRODUCTION

Namibia, the most arid country in sub-Saharan Africa, is one of the most sparsely populated countries on earth with land area of 824 292 km<sup>2</sup> and population of just over 1.8 million.<sup>1</sup> Parts of southern Namibia and its coastal desert receive little or no rain. In the north and northeast parts of the country, rainfall averages from 300 to 500 mm per year on the central plateau, more than 500 mm per year along the northern border with Angola, and closer to 700 mm per year in the Caprivi Strip. Only the Orange, Kunene, Okavango and Zambezi Rivers, all of which form national borders, flow year round.

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

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

This was the situation inherited by the Government of the Republic of Namibia in 1990. Dispossession had been systematic and thorough. Namibia did not have a single unified structure for land rights. Solving a century of dispossession has required a systematic and thorough solution.

Today, aside from freehold versus communal tenure, environmental variations dictate an approach that understands the array of rights that exist within each geographic location and further recognizes which specific rights are best suited for restoration. This factor alone requires a level of investment in both understanding the array of possible rights in an area as well as identifying which rights, if restored, will provide the most benefit.

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

## 2 THE MOSAIC OF LAND AND RIGHTS ISSUES

The majority of Namibians were denied rights to land and resources during the colonial period. This was the primary fuel for Namibia's liberation movement. As with South Africa and Zimbabwe, the country inherited an unequal pattern of land distribution and associated wealth when it achieved independence. At the time, many feared the disruptive potential of the land issue on the emerging democracy. Government response was clear. Ancestral land claims would

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<sup>1</sup> 2001 census

not be allowed, and the principle of willing seller/willing buyer would be the basis of land acquisition for redistribution. Consistency in this approach marked the years from 1990 to 2000. Although in 2004, the government added the option of expropriation with market-related compensation for land acquisition, willing seller/willing buyer acquisition still occurs.

While the acquisition and redistribution of freehold farmland has garnered the headlines since 1990, many issues, problems and solutions to the restoration of rights in other areas have emerged. Land and rights reform for Namibia has not taken the simple form of obtaining from those who have much and redistributing to those who have little. Redistribution, in this classic sense, applies to only half of the country's agricultural land. The story of the other half is often neglected. Simple comparisons to the land situations in South Africa and Zimbabwe overlook Namibia's web of social, historical, environmental and legal parameters that have required a complex approach to the recognition and restoration of property rights. These parameters are discussed below.

## 2.1 Communal versus commercial land

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

Non-white areas<sup>2</sup> tended to be in less productive environmental zones marked by a decades-long process of overcrowding, overgrazing and declining production. More than 1.5 million people sought to make a living in communal areas. An early estimate of landholdings in communal areas was 335 ha per household for livestock and 17 ha for cropping.

Tenure rights in communal areas were fluid at best. Throughout Namibia's colonial century, non-whites were forcibly removed to accommodate settler programmes (Moorsom, 1994). This process reached its zenith in 1964 with the infamous Odendaal Commission Report, a document that created ethnic/tribal homelands as part of the apartheid strategy of separate development. Implementing the Odendaal Plan, as it was called, meant further disruptions to tenure rights of blacks as many were moved to "ancestral homelands" they had never seen. Tenure security depended largely on the whims of apartheid administration.

In white areas,<sup>3</sup> a commercial farm averaged 7 200 ha with some measuring more than 10 000 ha,<sup>4</sup> particularly in Southern Namibia. At independence, some 4 000 individuals owned Namibia's 5 000 or so commercial farms. Most of those who owned farms were white, although during the last decade of apartheid rule, a few non-whites were allowed to purchase commercial farms under schemes developed by the different *bantustan* governments.

## 2.2 Investment discrepancies

Productivity of land requires investment. Historically, almost all investment in land and other resources, and social and physical infrastructure was skewed in favour of white Namibians. During the first 12 years of independence, more than N\$80 billion (US\$13 billion) was spent on development in formerly neglected areas.<sup>5</sup> The focus of these activities was basic infrastructure

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<sup>2</sup> See Map 1, homelands, and Map 3, communal land.

<sup>3</sup> Map 1 shows the area not designated as a homeland and excluding the Namib Desert along the Atlantic coast.

<sup>4</sup> Namibia's extremely arid conditions result in low productivity, meaning that large areas are required for agricultural production.

<sup>5</sup> There have been wide fluctuations in the exchange rate since independence in 1990, however, this paper uses an exchange rate of US\$1 = N\$6.

including roads, electrification, telecommunication, schools, clinics and government offices. Training for health care staff, educational staff and extension officers has also been a priority. These efforts have met with some success, as Namibia has recently seen a significant decrease in poverty levels, enlargement of middle income groups and a concomitant decrease in its Gini co-efficient<sup>6</sup> from 0.7 to 0.6 (Central Bureau of Statistics, 2003-2004).

Namibia's communal areas lag behind commercial farming areas in the south, largely because they are coming from an extremely low base. However, the economic potential of communal areas has been recently acknowledged. Both agriculture, which is possible along much of the northern border, and livestock production are now seen as having potential to stimulate economic growth. Historically, farmers in northern communal areas were prohibited from moving their stock south into formal markets because of their lack of veterinary services and disease control. In fact, veterinary restrictions have been a major impediment to sustained economic development in northern Namibia. A veterinary cordon fence (VCF) runs from the Atlantic Coast to the Botswana border,<sup>7</sup> with more than 60 percent of the country's cattle herd on the north side of the VCF and thus unable to reach markets.

However, because of strengthened infrastructure coupled with political pressure from producers in affected areas, the Namibian Government recently announced that it would begin the phased relocation of the VCF northward to the border with Angola. As this process takes place, direct market access to formerly disadvantaged producers will improve.

### 2.3 Population distribution, farming systems, banking and urbanization

There are four hidden factors that drive Namibia's land debates. They are distribution of population, types of farming systems, need for banking and increased urbanization.

Population distribution. Almost 65 percent of Namibia's population lives in the Omusati, Oshana, Ohangwena, Oshikoto, Kavango and Caprivi Regions (see Map 2), almost all of which are formerly underdeveloped communal homelands (see Map 1). Despite their neglected past, residents of these northern regions now have considerable political clout as a block of voters crucial to Namibia's democracy, shaping both national and internal party politics. However, unlike the rest of the country, this block of voters did not experience either the loss of large tracts of land or large-scale displacement during the period of colonial land expropriation.

Farming systems. The farming system of the northern region includes both crop production and livestock farming. Traditionally, crops were grown around a central fenced compound within which an extended family resided. Pearl millet, sorghum and maize were the main crops, with plots usually ranging between 1 and 25 ha. Livestock production took place on a transhumance basis with animals moving between the central homestead and established cattle posts. The fact that these northern regions have sufficient rainfall to produce crops in most years has a significant impact on land issues. Rainfall tends to be lower and less regular moving south from the VCF which means that this crop-livestock farming system would not be possible throughout most of the commercial farming area. Thus, the fact that many farmers in these regions would have to give up their preferred farming system in order to move their operations south to a commercial farm appears to dampen demand from this group for resettlement to commercial farms.

<sup>6</sup> Measure of inequality of distribution developed by Italian statistician Corrado Gini in 1912.

<sup>7</sup> The route of the VCF is not totally straight, but, as a rule of thumb, it can be considered to divide the country along the parallel of the southern border of the Etosha Pan.

**Banking.** Although a rarely discussed factor, the purchase of freehold land requires a bank-registered bond and associated repayment.<sup>8</sup> Freehold ownership also carries greater exposure to tax assessments. Communal land by comparison is largely unencumbered – the average tax assessor finds it impossible to look at a large herd of livestock and determine who owns specific animals. Large-scale communal farmers confirm that avoiding the long-term debt of a bank bond and the payment of taxes are considerations in the decision to stay in communal farming areas. In communal lands north of the VCF, evidence indicates that residents generally want their own areas developed to the same level as commercial farms, rather than a wholesale movement of people southward into the well developed commercial farming area.

**Urbanization.** The number of Namibians living in urban areas increased from 28 percent to 33 percent between 1991 and 2001. Population distribution experts expect this movement to continue, estimating that by 2020 to 2025, more Namibians will live in urban areas than rural areas. The long-term plan of the country, Vision 2030, predicts that two thirds of Namibians will live in urban areas. As more people move to the cities, demand for land will shift towards urban rights. At the same time, if those moving to the cities leave their lands either partially or completely unused, farmers who chose to remain could consolidate holdings into larger units. This process, if it occurs, has the potential to stimulate new markets for existing land tenure rights in communal settings. As will be shown below, there is already a process underway to formalize rights granted under customary systems.<sup>9</sup>

## **2.4 Post-independence management vacuum in communal lands**

Prior to 1990, rights in communal lands were managed by local traditional leaders. They allocated land, settled disputes and were involved in inheritance matters. The 1990 Constitution of Namibia declared that communal lands were the property of the state, and that power over those lands resided with the President. This left many traditional leaders in a quandary, unsure of their continued role in land management. Responses to the situation varied. Some traditional leaders felt they had lost any authority to discuss land issues, others continued as if nothing had happened, still others fell somewhere in between. Legal clarity only arrived in 1997 with passage of the Traditional Authorities Act that set forth procedures for legal recognition of local traditional leaders. The process of registration and gazetting of traditional authorities was still ongoing in 2006. During the period of uncertainty, opportunistic individuals took advantage of the lack of local management, the consequences of which will be prominent in the discussion on illegal enclosures of communal lands.

## **2.5 Administration and Governance**

At independence, Namibia faced numerous challenges. There was a need to bring government institutions in line with the needs of the whole country as opposed to a privileged elite. In many parts of the country, this meant creating an effective administration literally from the ground up. Aspects of this larger process affected the delivery of land rights. As discussed above, the land issue was seen as a possible threat to stability in a fledgling Namibia. One of the first orders of business in 1990 was to create the Ministry of Lands Resettlement (MLR).<sup>10</sup> The young ministry faced many critical challenges including building human resource capacity, defining ministerial mandates and establishing local governance.

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<sup>8</sup> Prices for commercial farms range from US\$130 000 to US\$330 000. Under affirmative action purchasing schemes, maximum interest rates were 12.5 percent.

<sup>9</sup> See Map 3.

<sup>10</sup> For purposes of this discussion, the new name will be used. Before 2005, it was known as the Ministry of Lands Resettlement and Rehabilitation (MLRR). The Directorate of Rehabilitation was moved to the Ministry of Health under the administration of the current President.

Human resource capacity. Land administration skills, such as land use planning, were virtually non-existent in the early 1990s. There were a few qualified land surveyors in government service but most went into private practice and contracted back to the government for many times their former salaries. Building capacity, particularly capacity that demands a high level of technical skills, is a lengthy process. As recently as 2005, the need for greater capacity within the MLR was noted in a report to the cabinet by the Permanent Technical Team on Land Reform (PTT).<sup>11</sup>

Ministerial mandates. The second challenge to the MLR was determining administrative turf. At independence, two well established ministries, the Ministry of Agriculture, Water and Forestry (MAWF)<sup>12</sup> and the Ministry of Environment and Tourism (MET), also had land tenure responsibilities within their mandates. Both had extensive technical capacity and experience in their given areas and, as could be expected, both were reluctant to cede power to a new player. Cabinet and ministerial-level decisions were made on the division of responsibilities, but on the ground, particularly in outlying areas, changes and cooperation were slow to happen. Bureaucratic inertia and resistance to change were probably heightened by the fact that few staff in the MLR had strong technical knowledge of their field. While progress has been made in resolving these issues, there is still work that needs to be done.

Local governance. Maintaining the *bantustans*, in which the vast majority of Namibians lived, was not acceptable nor was running all government functions from Windhoek. In fact, 13 regional governments were established by the 1992 Constitution (see Map 2). Each is governed by a regional council with members elected on a constituency basis. Regional councils are responsible for the physical development of their respective regions which places them in the centre of land issues. As with the MLR, regional councils were hindered throughout the 1990s by their low human resource capacity and the need to define their own turf within an arena of more established actors.<sup>13</sup>

In spite of their legislated responsibility, regional councils began to play a role in land decisions when regional resettlement committees were established in 1995. Their roles expanded greatly after the 2002 Communal Land Act established communal land boards in 12 of the 13 regions.<sup>14</sup> Communal land boards bring land management and decisions over land rights closer to Namibia's rural poor – a positive factor. In addition, they have benefited from other initiatives to create regionally based committees such as development committees. As the government established different regional bodies throughout the 1990s, the need to provide support through training and a secretariat became evident. By 2002, these lessons had been learned.

### 3 LAND RIGHTS INITIATIVES

The factors noted above show that a one-size-fits-all approach to rights reform was not possible in Namibia. Establishing return rights to the disenfranchised called for a comprehensive set of initiatives. Four initiatives have been established: affirmative action loans, resettlement, conservancies and communal registration. As these initiatives have developed and matured, they have remained loosely connected, although some had originated in sector-specific

<sup>11</sup> The issue was also addressed by the Rural Poverty Reduction Programme, a large multisector project funded by the European Union. Since the late 1990s, the Polytechnic of Namibia has expanded its Department of Land Management to provide the skills required by the MLR. As with all capacity-building programmes, it can be years before results are felt.

<sup>12</sup> Ministry of Agriculture, Water and Forestry, the current designation of this ministry, is used instead of its legacy designation as the Ministry of Agriculture, Water and Rural Development.

<sup>13</sup> See (Fuller, B., et. al.: 1994) for a discussion of the issues faced by Regional Councils in their formative years.

<sup>14</sup> The Khomas Region does not have any communal lands.

activities. Currently, each has its own basis in law, associated policy and a specific ministry within the Namibian government. On-the-ground implementation has had some levels of success but also problems. Table 1 provides an overview of each initiative.

**Table 1** Rural rights restoration programmes in Namibia

Programme	Year	Type of rights	Number of beneficiaries*	Area* 000 ha	Implementing agency
<b>Affirmative Action Loan Scheme</b>	1991	Freehold in commercial farms	660**	3 200	Agricultural Bank of Namibia
<b>Resettlement (commercial)</b>	1995	Leasehold in commercial farms	1 550**	1 056	Ministry of Lands and Resettlement
<b>Conservancies</b>	1995	Partial rights to groups in communal areas***	43 000	9 200	Ministry of Environment and Tourism
<b>Communal registration</b>	2002	Leasehold rights in communal areas (25 ha limit)	4 500**	N/A	Ministry of Lands and Resettlement

\* The number of beneficiaries and ha rises constantly. The figures here are based on 2005 data.

\*\* Refers to households.

\*\*\* Includes only tourism and wildlife.

### 3.1 Affirmative Action Loan Scheme (AALS)

The AALS began with the 1991 Agricultural Bank Amendment Act that authorized the Agricultural Bank of Namibia to advance funds to previously disadvantaged farmers at subsidized interest rates. Farmers apply for entry into the AALS in much the same manner as they apply for a loan from a commercial bank. Full-time farmers who purchase commercial farms under this programme receive an initial three-year exemption from repayment on a 20-year bond. In the fourth year, payments begin at a 1 percent interest rate increasing to market rates by the tenth year. The state covers the sliding interest rate with a subsidy. The initial target group for the AALS was the larger livestock herders in communal areas.<sup>15</sup> The intent was to move as many of them as possible out of communal areas in order to creating space for smaller scale farmers. In 1997, the programme was changed to allow part-time farmers to participate in the AALS. This change enabled members of the emerging black middle and upper classes to purchase farms. Interest subsidies were based on a sliding scale of formal-sector income.<sup>16</sup> The AALS programme has proven popular and has supported the purchase of more than 660 farms that constitute some 10 percent of the land available in freehold areas and have a value of approximately US\$110 million. The government has provided an additional US\$40 million in interest subsidies for these farms.

### 3.2 Resettlement

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

<sup>15</sup> Criteria for entry into the AALS is a minimum of 150 head of cattle or 800 head of small stock such as goats and sheep.

<sup>16</sup> Essentially individuals with up to US\$17 000 annual income started with a 1 percent interest rate in the first year and work their way up to the market rate by the tenth year. Individuals with incomes of more than US\$67 000 started repayments at market rates in the first year.



In 2003, the possibility of expropriation for commercial farmland was introduced. Expropriation is governed by procedures laid out in the 1995 Resettlement Act as well as in the Constitution. Despite the publicity surrounding the decision to expropriate, less than a handful of the 150 farms purchased for the programme have been through expropriation. The expropriation of a commercial farm took place in 2005. Thus far, the time required to expropriate a farm roughly equals that of the time required to purchase a farm. A key issue in expropriation is determining the farm's market value. Table 2 lists the number of farms purchased under the Resettlement Scheme. The variation in purchases reflects adherence to willing seller/willing buyer principles. The impact of expropriation on the variation of land acquisitions remains to be seen.

**Table 2** Resettlement acquisitions from 1990 to May 2006\*

Year	No. of farms	No. of ha	Cost (US\$)	Families resettled
1990 – 1994	12	60 564	739 102	151
1995	8	35 961	1 231 225	87
1996	6	32 343	1 093 574	125
1997	22	162 324	2 640 997	227
1998**	17	86 436	1 665 634	109
1999	7	38 845	342 316	14
2000	12	76 673	2 480 944	66
2001	24	137 672	4 427 510	100
2002	8	62 638	1 992 278	36
2003	10	87 569	2 040 586	25 (2 farms pending)***
2004	8	45 902	671 131	(all pending)
2005	16	131 474	2 673 147	6 (15 farms pending)
2006 (through May)	17	76 362	3 003 939	(all pending)

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

\*\* Six farms which make up a single block were donated to the government in 1998. With assistance from the Spanish government, they have been turned into a joint crop and livestock resettlement scheme. Fifty families were selected for this scheme as beneficiaries.

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

Middle-scale farmers who meet criteria of the AALS are the target group for this project. They also must have the access to credit and thus ability to invest in their farming operations. In 2001, the vetting process was devolved to regional councils. Regional councillors have familiarity with the farms in their constituencies purchased for the programme and often know the applicants personally. Once an applicant is approved by a regional council, the application is forwarded to the MLR for processing by a national resettlement committee. If approved, the application goes to the Land Reform Advisory Commission and finally for ministerial approval. Box 1, "Steps to resettlement", itemizes the necessary steps.

**Box 1** Steps to resettlement

Steps to resettlement
1. Farm is purchased and public requested for applications
2. Application completed
3. Application co-signed by local traditional leader, regional councillor or relevant MLR staff
4. Regional Resettlement Committee approval
5. MLR regional officer approval
6. National Resettlement Committee approval
7. Land Reform Advisory Commission approval
8. Minister for Lands and Resettlement approval

Resettled farmers are given a five-year period to develop an economically viable farming operation. Once the MLR is satisfied that this condition has been met, it issues a 99-year lease to the resettled farmer. While the possibility of leases has been in effect since 1995, it was only in 2006 that the first long-term leases were issued. Previously, most resettled farmers had documentation that gave them only an indication of rights to the land they occupied. While this was sufficient for most resettlement beneficiaries to feel personally secure in their tenure (Kruger, *et al.*, 2005), the impact it had on personal investment in the productivity of land is unknown at this time. The crucial question will be whether or not the leases can be used to obtain commercial forms of credit as a means of boosting production.

### 3.3 Conservancies<sup>17</sup>

Conservancies pre-date Namibian independence, though as with most land and resource rights at that time, they were legitimized largely by skin colour. Under the 1975 Nature Conservation Ordinance, commercial farm owners were able to declare their farms (or a group of farms) as conservancies and, thus, gain rights over wildlife and tourism activities. The realization that the same could apply to communal lands with blacks managing the resources arose in the early 1980s with the activities of a few visionary and courageous officials within the apartheid government (Fuller, 1999; Long, 2004). These efforts were concentrated in what is now the Kunene Region of northwest Namibia and focused on wildlife conservation through use of local authorities and local anti-poaching units known as community game guards.

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

Communal area conservancies must meet a number of criteria before they are approved by the Ministry of Environment and Tourism including: defining boundaries, drafting a constitution, defining membership and demonstrating ability to manage the organization and its finances. Once approved, the conservancy is gazetted, thus becoming a legal entity. In the eight years between 1996 and 2004, 29 communal area conservancies were registered. Numerous other conservancies, as shown on Map 4, are at different stages of formation. Support for CBNRM and conservancies has been in the range of "several hundred million (Namibian) dollars" (NACSO, 2004).

### 3.4 Communal registration

The 2002 Agricultural (Communal) Land Reform Act established communal land boards in 12 of Namibia's 13 regions.<sup>18</sup> These boards, modelled after similar boards in Botswana, are tasked with the registration of land claims, maintenance of regional land registries, land use planning and settlement of disputes. They include representatives of relevant ministries, community members, farmers associations, traditional leaders and elected politicians. Members receive both sitting allowances and daily subsistence allowances when on duty. Each board is provided with a secretary and a land use planner. Many board members have received training in land-related areas such as mapping, records and meeting management and understanding of legislation and policies affecting operations.

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<sup>17</sup> For the purposes of this discussion, only communal-based conservancies are covered.

<sup>18</sup> The Khomas Region does not have communal lands.

Communal land boards can approve four types of tenure: existing rights under customary rule, new rights under customary rule, leasehold rights and existing leasehold rights granted before the Act of 2002.<sup>19</sup> All grantees receive a 99-year lease for their approved plot. Farming plots are limited to 25 ha, enough for crop production and a homestead but inadequate for livestock breeding farms. Registration of a plot requires completion of a form and a diagram of the plot's boundaries. These are verified by MLR staff and forwarded to communal land boards for approval. Communal land boards also are empowered to settle land disputes in cooperation with local traditional authorities and can act as avenues of appeal should a person not be satisfied with the decision of the traditional leader. Should the person still not be satisfied, he or she can appeal to the Minister of Lands and Resettlement. The 12 communal land boards heard almost 200 disputes between the time of their establishment in 2002 and the end of 2005.

## 4 THREATS TO RIGHTS

Despite a well developed legal framework for formalizing land and resource rights, there are still individuals or groups who fall through the cracks. This mainly includes three prominent groups: i) those with limited access who have been excluded historically, ii) farm workers on commercial farms and iii) small-scale communal farmers in areas with a concentration of illegally fenced enclosures. Each of these groups suffers varying degrees of marginalization.

The issues concerning implementation contribute to this problem. Many of the structures responsible for rights restoration are young. A good deal of land rights restoration involves setting precedents for the operation and responsibilities of these bodies as illustrated in the case on illegal fencing discussed in section 4.3. Before the problem could be resolved, the Namibian government had to examine recent legislation and policy in order to determine the proper procedural way forward. Doing so took time, but it showed those involved that creating new rights regimes also requires preparation, planning and institutional capacity.

### 4.1 Groups with limited access

All of Namibia's programmes to restore rights have one commonality – they require interface with a government structure. This interface requires some level of literacy, the ability to obtain and complete necessary forms, the ability to travel to government offices and the ability to participate in the different levels of review (and possible appeal) of official decisions. Groups that are most at risk of being left out under this scenario because of illiteracy, lack of awareness, lack of legal knowledge or difficulty in travelling are women, the poor, the San<sup>20</sup> and HIV/AIDS-affected households. Under some, but not all, customary systems in Namibia, women have tenuous rights to land. Widows, in particular, are most at risk as they can be forced off land after their husbands pass away. There have been moves by some traditional authorities to modify customary laws that discriminate against women and widows. However, on-the-ground application of these new principles does not always take place.

While the poor do not suffer from overt discrimination, they are often at a loss when they contend for rights against those who are better off. The case of small-scale farmers such as the San who were pushed out of their traditional lands exemplifies this situation. San have lived on the margins of society since the colonial period. As an economic underclass, they have long been the last served when sitting at the table of tenure rights. Post-independence initiatives to

<sup>19</sup> These are known as "Permits to Occupy" (PTOs).

<sup>20</sup> Formerly known as "bushmen".

enhance their tenure security have been uneven. A successful conservancy has been established near Tsumkwe,<sup>21</sup> and the government, through the office of the Deputy Prime Minister, has placed special emphasis on social recognition and empowerment of the San. There are also strong civil society organizations devoted to issues relating to San. Despite these efforts, many still live at a disadvantage, particularly those living and working on commercial farms.

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

## 4.2 Farm workers

Farm workers on commercial farms live within a grey area of rights. There are two accepted categories of farm workers. The first is those who live elsewhere and have moved to the farm to take up employment. This group generally engages in standard employer/employee relations and rights to land terminate with the end of employment. The second group is generational farm workers who have lived most or all of their lives on the farm. In some instances, a farm worker's roots to the land go back a number of generations. On commercial farms where ownership has been within a family for generations, it is possible that current owners and some of their workers have effectively grown up together. Should the workers be dismissed or retrenched, they may have no other options for access to land, including residential land.

Traditionally, workers have been allowed by commercial farmers to keep small numbers of livestock on the farm. Defining the rights of farm workers to the land on which they toil is difficult and the fact that they live at their place of work further complicates the issues.

In 2002, the MLR drafted a policy on farm worker's rights,<sup>22</sup> giving attention to the rights under which each class of farm workers would have access to land. Short-term workers would have their rights specified by a contract with the farmer. Generational workers would, in certain cases, have tenure rights to stay on the farm after retirement, but their children would not. Thus far, the policy has not been published, leaving a vacuum. Tenure for farm workers still depends on the decision of the farm owner. As one can imagine, the range of decisions can be broad, going from the extremely generous where lifetime usufruct is given to a farm worker all the way to outright expulsion from the farm when the worker is no longer required.

Expulsion from a farm is a regular fate of farm workers, particularly if they are too old to work. A change of ownership can also lead to expulsion if the new owner wants to employ his or her

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<sup>21</sup> Fuller and Turner (1995) found that certain groups of San in the Ohangwena Region had benefited from locally driven attempts to provide them with agricultural and grazing land.

<sup>22</sup> The author was part of that process.

own workers.<sup>23</sup> The majority of farm workers have little or no formal education. While agreements exist between commercial farmers and the national farm workers union on minimum wage, enforcement mechanisms do not exist. Rights concerning working conditions are regulated under the 1992 Labour Act but they are difficult to enforce due to lack of access by farm workers to both legal advice and courts. These factors increase vulnerability and, unfortunately, there is no solution on the horizon.

### 4.3 Small-scale farmers and illegal fencing<sup>24</sup>

As explained in section 2.4, the creation of a leadership and land management vacuum was an unintended by-product of independence. This vacuum has led to a major land dispute along the western border of the Kavango Region.<sup>25</sup>

In the early 1990s, traditional authorities tried to make sense of their legal status as defined in the Constitution. At the same time, newly formed government institutions such as the MLR and regional councils were occupied with establishing operations and building human resource capacity. Most activities on land issues during this time focused on the redistribution of commercial farms, a major post-independence issue.

However, while attention focused on the commercial farms south of the VCF, the process of illegal fencing began in communal areas of northern and eastern Namibia. The process was most pronounced in the area just west of the border with the Kavango Region where there were few permanent settlements.<sup>26</sup> In the past, it had served as a grazing area for transhumance herders whose households were situated in heavily populated areas around Ondangwa (see Map 4). Cattle posts in this eastern section were semi-permanent, moving every few years with changes in grazing conditions.

The situation changed dramatically in the early and mid-1990s during what can only be described as a fencing boom. Fencing in communal areas had long been known to be illegal, except under specified conditions, but still, large tracts of land were enclosed. Fenced areas measured 2 to 5 km per side. In some cases, government boreholes were enclosed taking the crucial resource of drinking water away from other residents and their livestock. The process went largely unnoticed because of the factors noted above and because much of the area that is fenced is poorly developed and difficult to access. Those doing the fencing tended to be well off financially and well connected politically.<sup>27</sup>

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

<sup>23</sup> The process is not always driven by skin colour. There have been instances where AALS farmers evict workers after purchasing a farm. The author was once told by a newly established black farmer words to the effect of, "I'm now running a business here, suddenly solidarity with my black employees becomes less important."

<sup>24</sup> See Fuller, Nghikembua with Irving (1995) for a discussion of the issues presented in this section.

<sup>25</sup> This border is best shown in Map 1, as 18° east longitude, north of the VCF.

<sup>26</sup> These are the eastern portions of the Oshikoto and Ohangwena Regions.

<sup>27</sup> There have been rumours that a secondary market in fenced-off farms in this area has begun.

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

During the latter months of 2005, efforts to solve the dispute increased. Clearly, however, a number of precedents were involved. The MLR by itself was unable to issue eviction orders. Under new legal frameworks, and after some debate, the Kwangali Traditional Authority in conjunction with the Kavango Region Communal Land Board had to issue eviction notices. Notices were sent out early in 2006. In parallel with these activities, both the Ondonga and Kwanyama Traditional Authorities became involved in the process. The Ondonga traditional leader promised to make land available for those who returned. The situation remained unchanged for some months but, in mid-August 2006, the police began to evict farmers and their cattle forcibly. Farmers who refused to comply were arrested and their cattle were driven to a holding camp. Evictions might have solved the problem in Ukwangali but it will most probably re-emerge further west, in Oshikoto and Ohangwena. Efforts to remove the root causes of the problem, namely the illegal fences, are indistinct.

## **5 STRENGTHS AND WEAKNESSES IN RIGHTS REFORM**

Three of Namibia's programmes for rights reform – affirmative action loan scheme, resettlement and conservancies – have been in operation for a decade, making analysis of their operations possible. The fourth, leaseholds in communal lands, is too new for its performance to be measured. Each programme has achieved success but there are still areas of concern.

### **5.1 Affirmative Action Loan Scheme**

In terms of the size of land redistributed, the AALS has been successful. In addition, it has used established market mechanisms with a lower cost to the state. It can be argued that the AALS has contributed to Namibia's stability by providing an avenue for large-scale farmers to obtain land, and that by doing so has decreased pressure on communal lands. Yet despite its popularity, it faces a major challenge because of the number of loan defaults. The actual number of defaulters out of the 660 loans is confidential information. However, senior officials at Agribank have acknowledged concern over the issue.

This concern was echoed in a study carried out in 2004 in which roughly 15 percent of AALS farmers were interviewed (Fuller and Van Zyl, 2005). Using aggregated data, a gross margins model was developed for different combinations of large-stock and small-stock operations of farmers surveyed. Farming systems that relied solely on small stock<sup>28</sup> fared worse than those that had a mixed small-stock/large-stock strategy. Considering the first year repayment on an average loan brings into question the ability of AALS farmers to meet their bond obligations. It should be noted that Table 3 figures apply only to the farming operation itself and do not include personal/household expenses. Had those been included, then results would paint a darker picture.

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<sup>28</sup> Sheep and goats.

**Table 3** Average gross margins and effect of first year of bond repayments

	Average gross margin	Loan payment in first year*	Balance
<b>Cattle and sheep</b>	N\$7 900	N\$5 000	N\$2 900
<b>Cattle and goats</b>	N\$7 500	N\$5 000	N\$2 500
<b>Sheep and goats</b>	N\$4 800	N\$5 000	N\$ - 200

Loan repayment begins after the third year of the bond with an interest of 1%. As repayments progress to the tenth year of the bond, they reach market rates, currently at 12%.

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

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

## 5.2 Resettlement

From late 2003 to 2004, the government appointed a Permanent Technical Team on Land Reform (PTT) with the broad mandate of reviewing land reform efforts within Namibia in order to provide a comprehensive plan on future government programmes and expenditures.<sup>29</sup> In its subsequent study on the resettlement programme, the PTT members found that despite the policy that said resettled farmers would obtain long-term leases, none had been issued.

The 99-year lease is supposed to provide resettled farmers the surety needed to obtain commercial credit for their operations. Therefore, the lack of this tenure prevented private investment in the productivity of the land. Even though they lack leases, other studies (Harring and Odendaal, 2005; Kruger, *et al.*, 2005) found that most resettled farmers have some form of government documentation establishing their right to occupy part of a resettlement farm. A gap in policy objectives of resettlement exists.

In addition, many resettled farmers were unaware they had responsibility to invest in and develop their land (Harring and Odendaal, 2005) They were also unaware that, as resettled farmers, they had the potential for long-term title to the land that would, of course, promote personal investment.

<sup>29</sup> Unfortunately, communal lands were not included in the brief of the PTT.

In its analysis of the programme, PTT found that a lack of capacity within the MLR contributes to this problem (Eiseb, personal communication) and uncertainty concerning the respective roles of the MLR and the MAWF exacerbates these issues. Traditionally, the MAWF has provided extension and marketing services but now there is uncertainty on the ground as to whether the MLR or the MAWF is supposed to provide the support services on resettlement farms. The vacuum creates large cracks through which farmers can fall. The PTT found that most resettled farmers had increased the size of their herds which is their asset base. Yet, this increase in value went largely unrewarded, as marketing opportunities were almost non-existent. Both access to markets and lack of extension and training are problematic for this programme. PTT's report to Cabinet gave prominent attention to the needs of resettlement farmers and solutions to those needs. The report was accepted by Cabinet in early 2006.

### 5.3 Conservancies

Although the CBNRM movement in Namibia emerged in the 1980s, significant support for such activities was already in place during the transition from South African rule. The existence of similar programmes on the continent, such as the Communal Areas Programme for Indigenous Resources Management (CAMPFIRE) programme in Zimbabwe, provided templates for Namibia's CBNRM movement. Support from within the MET as well as from donors and international NGOs came early in the 1990s.<sup>30</sup>

The Living in a Finite Environment (LIFE) programme was established by the World Wildlife Fund in 1993, three years before legislation was passed to establish conservancies. LIFE has been a lead organization in CBNRM, providing both direct support to conservancy formation and support to Namibian NGOs. Local NGOs that work to support CBNRM activities have formed an umbrella agency, the Namibian Association of Conservancy Support Organisations (NACSO) to provide indigenous coordination and support for CBNRM activities. Overall, assistance to the CBNRM exceeds "several hundred million (Namibian) dollars" (NACSO, 2004).

The three-year lead time between LIFE beginning its activities and the promulgation of legislation to create conservancies turned out to be important to the overall success of the programme. This allowed time for capacity-building activities at local level. It must be remembered that in the early 1990s, the effects of decades of apartheid rule were painfully evident in Namibia's communal areas. Few adults had education beyond primary school and fewer still were able to speak English. Accounting, business and governance skills needed for such activities as running meetings or keeping minutes were almost non-existent. So, in addition to assistance with natural resource management, LIFE provided training in these necessary skills – an activity it still provides. This support has had a considerable impact on rural communities in Namibia. Now, members of conservancy committees can use their skills when they participate in other governing committees such as local development boards, village councils, and school and church committees.

Support for conservancies was not a one-off initiative. The LIFE programme began in 1993 and NACSO was founded in 2000. As conservancies have continued operation, follow-up capacity support has been available in areas that extend beyond basic organizational management. For instance, Namibia's tourism sector has grown tremendously since 1990 and conservancies have rights over tourism. Thus, many conservancies were required to negotiate with tour operators and companies for fees and other forms of remuneration. It is difficult for poorly educated rural people to negotiate effectively with tour operators ranging from single person operations to large companies. However, the support structure available to conservancies has provided critical technical assistance needed for these negotiations.

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<sup>30</sup> This included (but was not limited to) the World Wildlife Fund, USAID, SIDA and the Namibian government.



The first communal area conservancy was gazetted in 1998. An additional 28 conservancies were registered over the next five years (NACSO, 2004). In 2003, communal conservancies covered almost a fourth of all communal lands in Namibia. Measurable income to conservancies was US\$100 000 in 1998 but had grown to US\$1.3 million by 2003. According to NASCO, almost half of these funds came from joint venture tourism operations in which a tour company signed a contract for exclusive tourism rights in the area. In return, the conservancy received a bed levy or other form of income sharing. Many contracts also had clauses committing the tour operator to hire members of the conservancy and to train suitable candidates to assume managerial positions. There are approximately 20 such partnerships in operation. As of 2003, approximately 250 conservancy members were employed with contracted tour operators. The involvement of the support groups is key to the process of negotiating these contracts. Support groups provide access to financial analysis and legal assistance during and after negotiations which, in turn, ensures that these generally poor and historically disadvantaged people do not sign away valuable rights for a pittance.

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

Funds raised by conservancies are used in a variety of ways, determined by local governing committees. Some decided to distribute earnings as dividends to members, others invested in social infrastructure such as schools or clinics, still others re-invested their funds in additional income-generating activities. The positive track record of conservancies and CBNRM in Namibia has generated interest among many communal residents to form their own. Because of this long standing and locally based support, communal residents who want to start conservancies can learn from those of a similar social and economic backgrounds.

Despite its strengths, the conservancy programme in communal areas has one major weakness – limited rights. A variety of rights regimes, sometimes coincidental, sometimes overlapping can be found within the geographical space of one communal area. They cover such areas as rights to grazing, crop lands and water. Conservancies are limited to only two of the many rights regimes – tourism and wildlife – and thus are vulnerable to claims by individuals who claim rights to that geographic space under a different set of rules. The most common cause of dispute is with livestock farmers who claim grazing rights over areas within a conservancy. Livestock and wildlife often use the same resources such as graze and water and, thus, come into conflict. Legally, conservancy committees are unable to do anything about intrusions by livestock farmers. Even in instances where the livestock farmer acts in contradiction to CBNRM activities, conservancies can only negotiate.

#### **5.4 Communal registration**

Registration of land rights in communal areas has benefited from the fact that it was implemented some 12 to 13 years after independence when the MLR was in a much better position to implement policies. Both the government and the donor community had recognized the need to build capacity in land administration and capacity-building programmes had been in place for some years. Many younger ministry staff had received formal training in their fields and older staff who may not have had formal training benefited from their accumulated experience in land administration.

Hence by 2002, the MLR was in a much better position to manage the implementation of communal land boards. The process of decentralization was underway across government, and other regional bodies had been established. Regional councils, the institutions that host communal land boards, were also much stronger in 2002 than in the previous decade.

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

## 6 LESSONS

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

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

The poor often lack the basic skills necessary for their own economic growth. Conservancies, Namibia's most successful programme for returning rights, have benefited from long-term support including training communities in basic organizational skills, providing professional research to support policy and offering legal advice. This level of support for conservancies is expected to continue for many years and should be copied into other programmes of rights reform.

3. Investment in the underlying economic infrastructure is crucial. Rights transfers that fail to bring increases in rural incomes will also fail to reduce poverty. Having secure tenure over resources can enhance investments and, in turn, lead to increased productivity. However, the final link to poverty reduction is the parallel enhancement of economic activities needed to transform increased production into income. Market analysis is required to identify products, their potential and how to link them to existing markets. This is an activity that requires national- and regional-level input. Creating marketing structures comes next. This includes developing physical infrastructure such as storage facilities, auction pens and transportation systems. But it also includes developing social infrastructure such as marketing and producer associations, value adding intermediaries and finally, market sales support.

Ironically, Namibia's apartheid past highlights the need for investment in the economic structures that underpin the transfer of rights. The Land Settlement Scheme, the vehicle through which land was removed from blacks and handed over to white settlers, ran from the early 1920s through the 1950s. In many ways, the Land Settlement Programme was a scheme dedicated to providing security of tenure and the potential for poverty reduction to a racially defined class of people. Aside from generous direct financial support for the purchase of land and the establishment of farming operations, extensive ancillary support systems were created (Fuller, 1998). This included the development of transportation infrastructure, extension services, communications facilities and marketing support. Indeed, much of the annual budget of colonial era governments in Namibia was dedicated to supporting white settler farmers either directly or indirectly – support that ran into tens of millions of dollars annually.<sup>31</sup> At the end of the process, the commercial farming sector in Namibia was well developed and largely profitable with the ability to participate in international markets successfully.

Today, as Namibia embarks upon poverty reduction through title provision in less developed parts of the country, it has to plan for a long-term process. Even with this level of knowledge, it is a process that may take decades and, without doubt, will require multiple levels of long-term investment.

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<sup>31</sup> Unfortunately, almost no research has been carried out into the finances behind the Land Settlement Scheme.

## BIBLIOGRAPHY

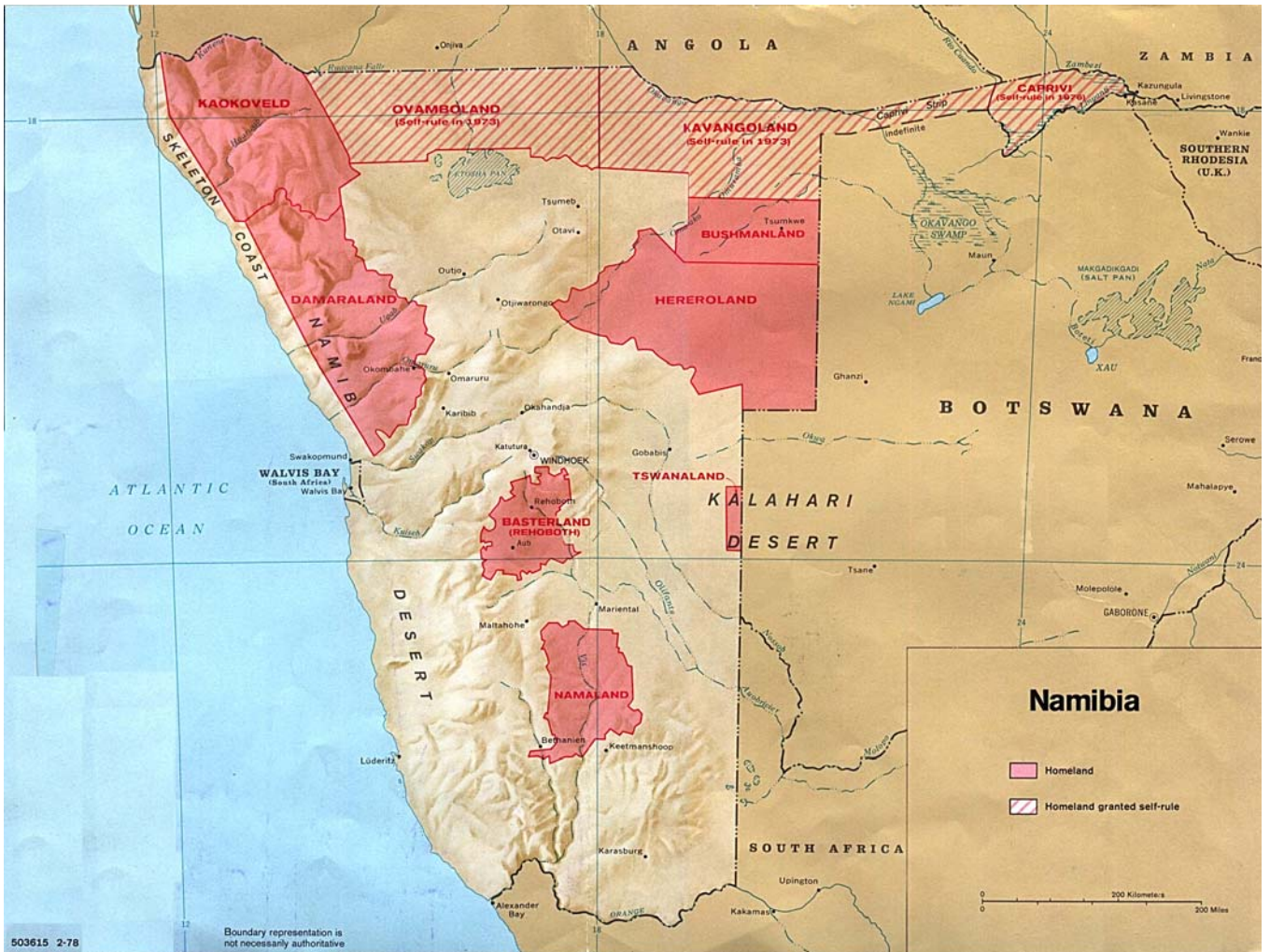
- Central Bureau of Statistics.** 2006. *Preliminary Report: Namibia Household Income and Expenditure Survey, 2003/2004*. National Planning Commission. Windhoek.
- Fuller, B. & Van Zyl, D.** 2006. *Silently Starving: A New form of Famine among Small Scale Farming Households Affected by the HIV Epidemic?* NEPRU Working Paper No. 107, Windhoek. (also available at <http://www.fuller.na>)
- Fuller, B. & Van Zyl, D.** 2005. *A Socio-Economic Survey of Affirmative Action Loan Scheme Farmers*. ms. Windhoek.
- Fuller, B. & Eiseb, G.** 2002. *The Commercial Farm Market in Namibia: Evidence from the First Eleven Years*. IPPR Briefing Paper No. 15. Institute of Public Policy Research, Windhoek.
- Fuller, B.** 1999. Returning their Rights: A Case Study of Namibia's Communal Areas. In J. Ogelthorpe, ed. *Tenure and Sustainable Use SUI Technical Series Vol. 2*. IUCN (World Conservation Union), Washington D. C.
- Fuller, B.** 1998. *We Live in a Manga: Constraint and Survival in Otjimbingwe*. In P. Hayes, J. Silvester, M. Wallace, W. Hartmann, with B. Fuller, eds. *Trees Never Meet, People Do: Namibian History 1916 - 1945*. James Currey, Oxford, UK.
- Fuller, B. & Nghikembua S. with Tani Forbes Irving.** 1995 *The Effect of Land Enclosure on Grazing Practices in Eastern Oshikoto Region*. SSD Discussion Paper No. 24 Multidisciplinary Research Centre, University of Namibia, Windhoek.
- Fuller, B., & Turner, S.** 1995 *Access to Resource and Land Management Practices in Three Communal Areas of Namibia*, SSD Discussion Paper No. 23 Multidisciplinary Research Centre, University of Namibia, Windhoek.
- Fuller, B., Harris, B. & Turner, S.** 1994 *National Development Planning and the Regions of Namibia*. National Planning Commission Publication No. 2, Windhoek.
- Jones, B.** 2003. *Selected Natural Resource Management and Limited Rural Development Assessment*. USAID/Namibia, Windhoek.
- Harring, S. & Odendaal, W.** 2002. *"One Day We Will All be Equal...": A Socio-Legal Perspective on the Namibian Land Reform Process*. Legal Assistance Centre, Windhoek.
- Kruger, B., Ngaujake, T. & Werner, W.** 2005. *Needs Assessment Study that Focuses on Government's "Farm-Unit Resettlement Beneficiaries"*. NNFU/NAU Emerging Commercial Farmers' Support Program. Namibia National Farmers Union and Namibia Agricultural Union, Windhoek.
- Long, A. ed.** 2004. *Livelihoods and CBNRM in Namibia: The Findings of the WILD Project*. Ministry of Environment and Tourism, Windhoek.
- Moorsom, R.** 1994. *Comparative and Multidimensional Analysis of Communal and Private Property Resources in Africa: the Case of Namibia*. FAO. Rome.

**NACSO.** 2004. *Namibia's communal conservancies: a review of progress and challenges.* Namibian Association of Conservancy Support Organisations, Windhoek.

**Vigne, P. & Motinga, D.** 2005. *Training Needs Assessment Focussing of the Beneficiaries of the Affirmative Action Loan Scheme / North South Incentive Scheme.* NNFU/NAU Emerging Commercial Farmers' Support Program. Namibia National Farmers Union and Namibia Agricultural Union, Windhoek.

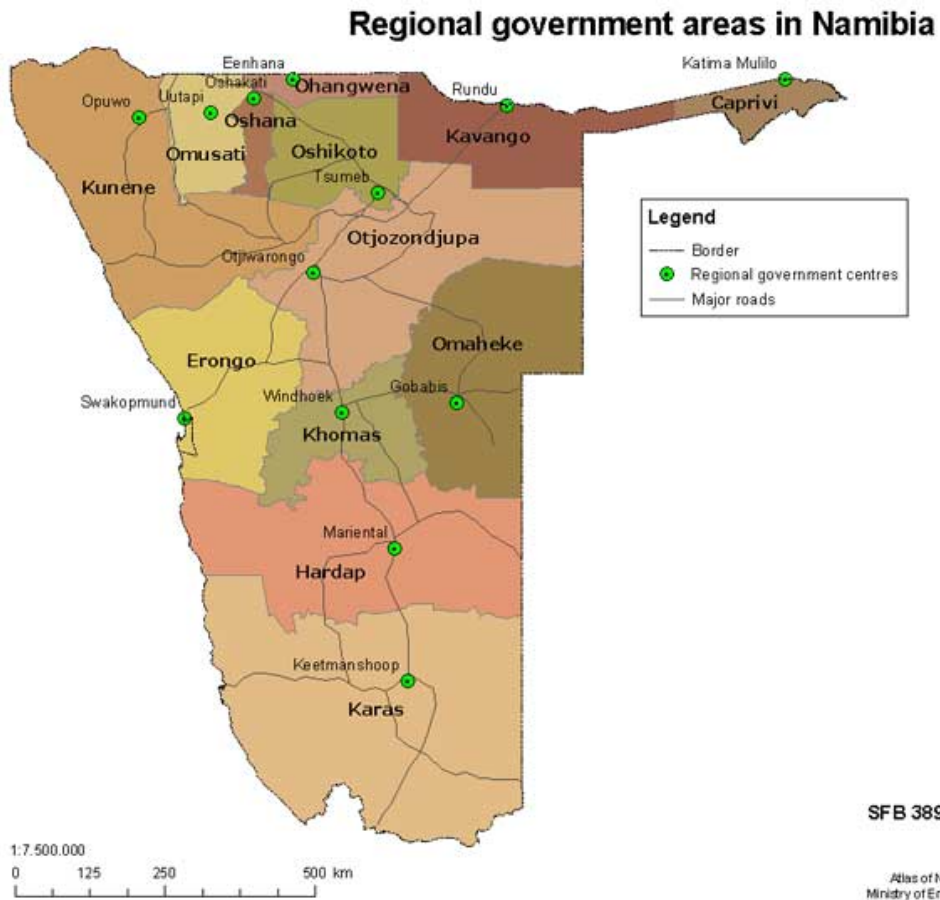
Appendix: MAPS OF NAMIBIA

Map 1 Pre-Independence Homelands



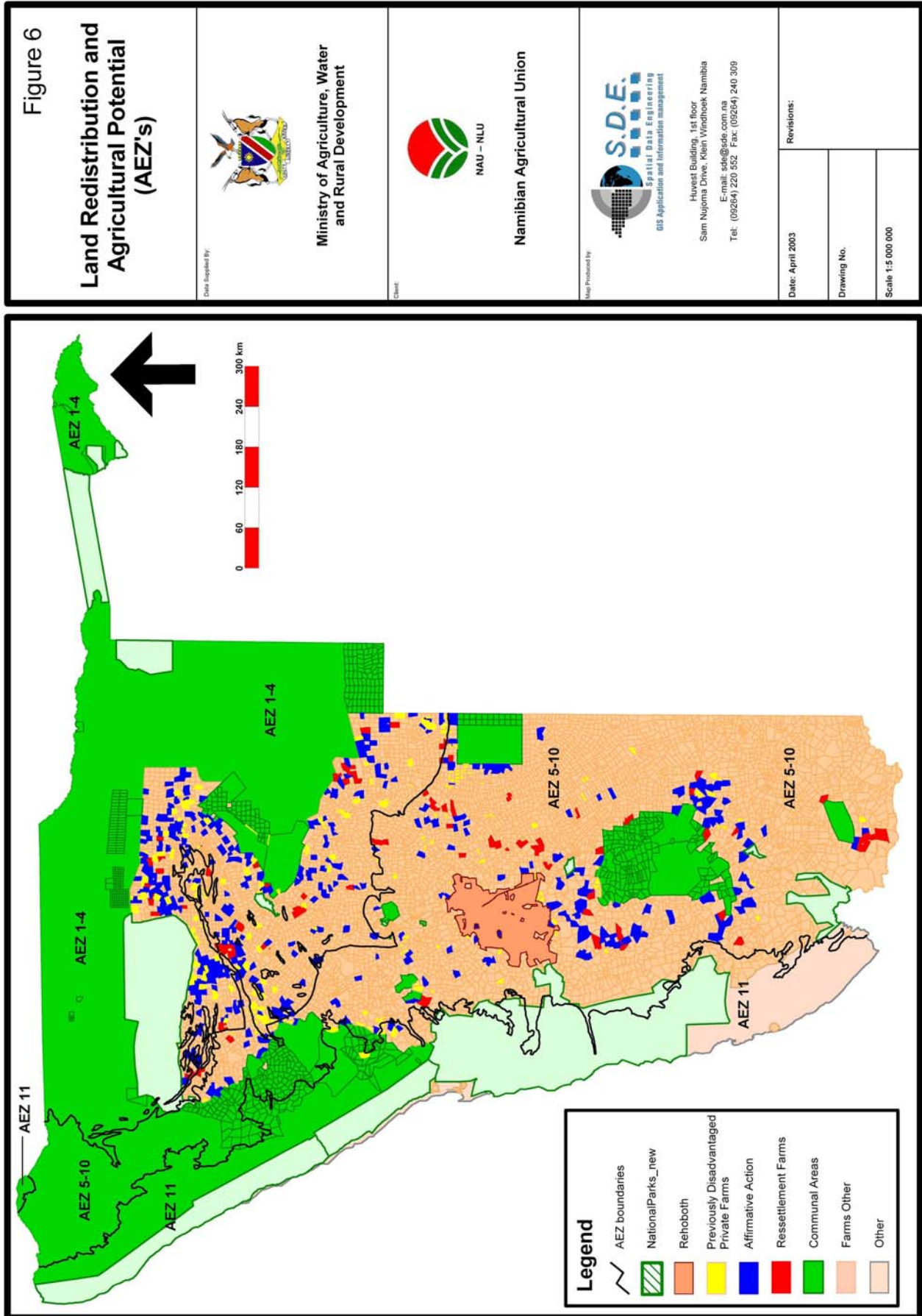
Source: Perry-Castaneda Library Map Collection, University of Texas at Austin.  
[http://www.lib.utexas.edu/maps/africa/namibia\\_homelands\\_78.jpg](http://www.lib.utexas.edu/maps/africa/namibia_homelands_78.jpg)

Map 2 Current Administrative Regions





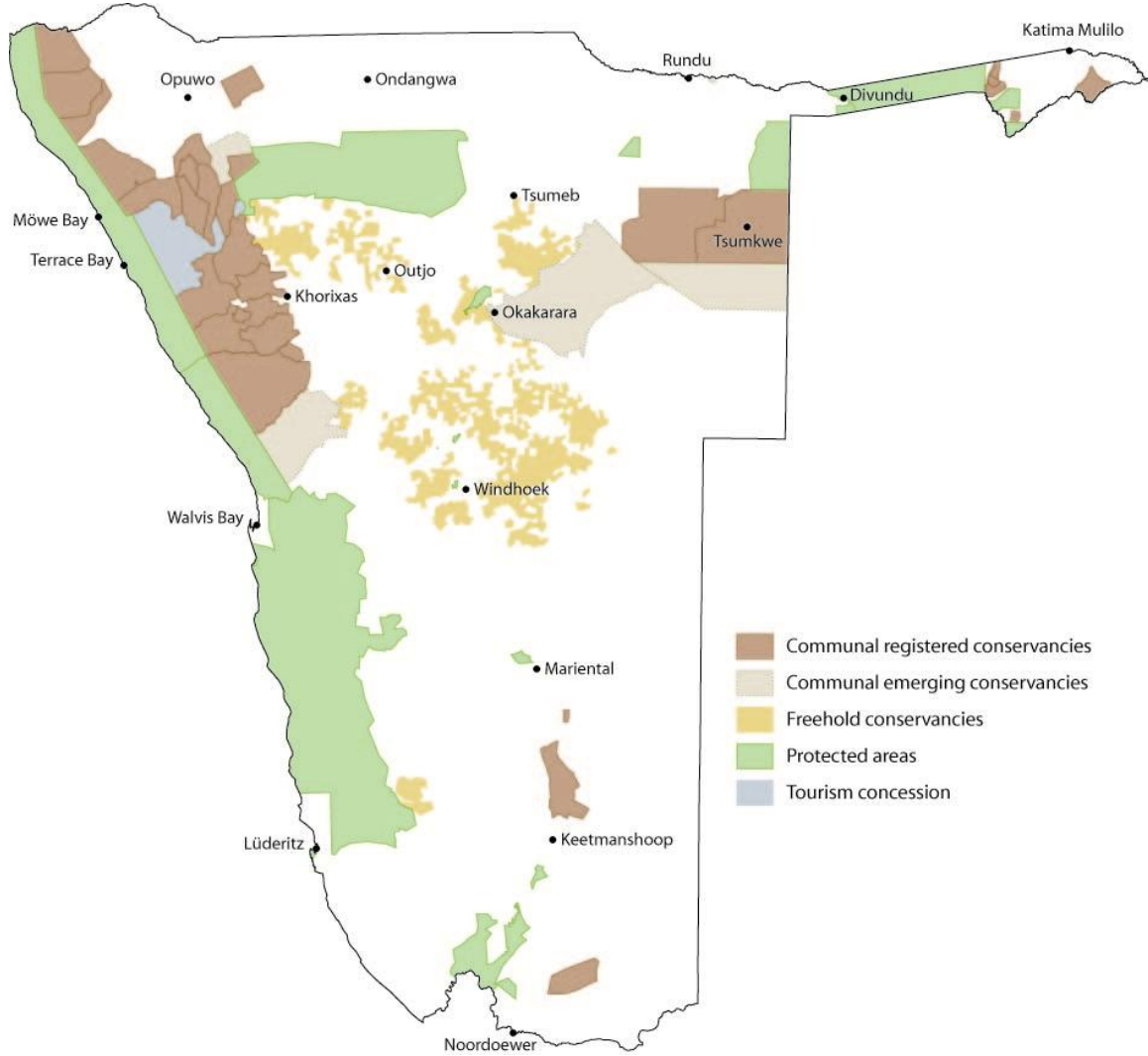
Map 3 AALS and Commercial Resettlement Farms, Current Situation



Source: (Vigne and Motinga)



**Map 4** *Conservancies in Namibia*



Source: (NACSO)



