

NANGOF-Civil Society Organizations Working Group on Land Reform
Proposed recommendations to the 2nd National Land Conference for consideration at the Thematic
Working Group Discussions

October 2018

INTRODUCTION

This paper raises thoughts on the land question as it presents itself in 2018 which stem from a process led by the Namibia Non-Governmental Organisations Forum (NANGOF) Civils Society Organizations' Working Group on Land Reform (CSO-WGLR) which consist of organizations of farmers, rural women, youth, NGOs, trade unions, churches, shack dwellers and other social movements .

This document does not represent a comprehensive list of issues to be addressed at the Second National Land Conference (NLC) but highlights critical issues from extensive, literature review, regional consultations and thematic workshops with inputs from land experts, researchers, and activist.

In 1991 the Government of Namibia organized the 1st National Land Conference. By then civil society organizations and other non-state actors were not well coordinated, but nevertheless made efforts to influence the outcomes. However, three years after the National Land Conference when little action was taken by government to implement the resolutions taken at the 1st National Land Conference, civil society organizations under the facilitation of the Rural Peoples Institute for Social Empowerment (RISE Namibia) organized the 1st Peoples Land Conference in Mariental in September 1994, attended by close to 400 delegates from all over Namibia.

One of the resolutions of the Peoples Land Conference was to set up a Civil Society Organisations Working Group on Land Reform (previously referred to as the NGO-Working Committee on Land Reform). The NANGOF CSO-WGLR was established with the aim to advocate for inclusive just and sustainable land and agrarian reform as well as urban land reform in Namibia. This includes policy advocacy, budget influence, research and documentation, piloting agrarian models and promoting and facilitating participatory development and empowerment of poor and marginalised communities through sustainable utilization of land and other natural resources.

2nd National Land Conference

In August 2016 the Minister of Land Reform announced plans to hold the 2nd National Land Conference in Namibia to review progress made - on land reform at the end of November 2016 but was later called off due to government budgetary constraints. At the beginning of 2017, the date of the conference was set to September 2017. After several correspondence and submissions from civil society, President Geingob, less than a month before the 2nd National Land Conference, agreed to postpone the Conference to October 2018 to allow for more consultations, inclusive planning and preparations and expert inputs.

While petitioning the President, civil society organizations recommended that the organization of the conference be moved from Ministry of Land Reform to either the Office of the Prime Minister (OPM) or the Presidency and that an inclusive national organizing committee be constituted to take charge of conference organising. Subsequently, the President moved the conference organising to the OPM and established an High Level Committee (HLC). Several civil society representatives as proposed by CSO-WGLR have been appointed by the Prime Minister to the HLP.

In preparation of this position paper, NANGOF CSO-WGLR undertook countrywide consultations since September 2016 and concluded at beginning of 2018, with the support from the Fredrich Ebert Stiftung (FES). The Secretariat for the NANGOF Civil Society Working Group on Land Reform is hosted by the Desk for Social Development of the Evangelical Lutheran Church in the Republic of Namibia (DfSD-ELCRN). The aim of this was to consult key stakeholders in preparation for the 2nd National Land Conference. These consultations targeted, farmers, peasants, landless people, resettled farmers, urban landless and traditional and community leaders. In addition, three thematic workshops were held in September 2018, where regional findings were presented and recommendations below finalised with inputs from land experts from the Namibia University of Science and Technology (NUST), the University of Namibia (UNAM), and other organisations.

Part 1 of this document outlines some of the general points that were raised in this process. **Part 2** organises points in five categories: Urban Land Reform, Ancestral Land Rights and Acquisition, Commercial Land Reform and Related Matters, Communal Land Reform and Related Matters. These five categories are similar to those in the thematic working groups on the agenda of the 2nd National Land Conference scheduled for 1st to 5th October 2018. Some of these points are problem statements, while others are strategic interventions or formulated as resolutions; therefore the points have been organised in these three sub-categories.

GENERAL POINTS

The land question has evolved from what it was in 1990 and it is important to acknowledge the changes. Land question is fundamentally about power and political economy, and therefore it must be attended with the highest consideration. One of the key points in today's land question is how to address historical injustices due to land dispossession.

Land acquisition for land reform has been slow and costly. Government has only spend less than N\$2billion on land acquisition over the pass 27years since the 1st National Land Conference to date. According to most recent statistics by the Namibia Statistics Agency (NSA) more than 70% of productive agricultural land is still owned by a small white minority on the expense of the vast majority of black Namibians that were dispossessed by German and South African colonial regimes, including those affected by genocide. The slow-pace of land acquisition subjects the majority of black Namibians to social and economic injustice a situation.

Historical land dispossession has caused generational poverty and destitution, the effects of which are lived by young generations today. If this dispossession is not addressed, we may find a much more difficult situation in the future.

Urban land is one of the key issues today. A recent count by the Shack Dwellers Federation of Namibia (SDFN) indicate that 228,423 shacks in 308 informal settlement estimate to accommodate up to 950,000 people. This represents about 40% of the national population. Despite this, SDFN groups have not been able to access for the past 12 years in Windhoek. There is also a crisis regarding local authorities financing, which impacts development in urban areas.

The denial of ancestral land claims is perceived as a denial of the struggles against colonial power, and a denial of the reasons why an independent Namibia was found. The question of ancestral land would've not come to such a volatile point if the matter would've been addressed in the 1991 National Land Conference or if the resolutions of that conference would've met the expectations in terms of redistribution.

It is a matter of historical record that as a result of successive German and South African colonial regimes Namibians communities living in 8 regions of Namibia namely Erongo, //Kharas, Hardap, Omaheke, Otjozondjuba, Khomas, Oshikoto and Kunene which are mainly from the Nama, Damara, Herero and San (and other other marginalised communities) in Namibia suffered massive land loss during the colonial era. Communities who live north of the veterinary Red Line suffered relatively less from land dispossession then those who live south of the Red Line. This fact should be recognised.

Restorative justice should not be understood as an event, but a process. In this respect, some authors have proposed the following steps¹:

- Recognition: finding truth and describing injustices;
- Responsibility: the acknowledgement of responsibility for injustices;
- Remorse: a sincere apology for injustices;
- Restitution of lands and resources, and the power to determine their use;
- Reparation for injustices in financial terms, recognizing that many harms are untouched by this compensation;
- Redesigning State political-legal institutions and processes to empower indigenous participation in self-government and State governance;
- Refraining from future injustices by assuring past and present injustices will not be repeated; Reciprocity in the obligation on the harmed to do unto others as they would have done unto them.

OVERALL RECOMMENDATION ON POST CONFERENCE ARRANGEMENTS

NANGOF Civil Society Organizations Working Group on Land Reform appreciated the framework that was setup for the organizing of the 2nd National Land Conference. Experiences from the 1st National Land Conference underscore the need for proper post conference arrangements not to lose the momentum after the conclusion of the meeting. It is against this background that the following recommendations are being made:

- Establishment of an inclusive body of stakeholders to monitor the implementation of the 2nd National Land Conference to be hosted in the Presidency or at the Prime Minister's Office with clear terms of reference and a plan of work.
- Number of inclusive technical committees be set up on various land use (agricultural land, urban land reform, ancestral land, constitutional aspects, finance, agrarian reform and institutional issues etc... to provide advice and guidance to the above body
- Particular temporary commissions be set up by the Presidency on various critical issues relating to land reform.
- Information and publicity strategy be developed to improve transparency and accountability.

PART 2. THEMATIC POINTS

URBAN LAND REFORM

WHAT WILL BE THE IMPACT OF URBANIZATION IN NAMIBIA IN THE NEXT 30 YEARS?		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> In 2018 Namibia reached 50% urbanization rate (which was only 28% in 1990/Independence) and by 2050 this will have increased to 72%, the exact opposite of 1990. This means, Namibia will have to accommodate 2 million additional urban residents by 2050 (5 x Windhoek or 22 x Rundu or 100 x Gobabis) Urbanization and migration from rural to urban areas is generally considered a negative phenomenon in Namibia. 	<ul style="list-style-type: none"> Acknowledge that urbanization is an opportunity for inclusive development in municipalities, towns, villages and settlements. Investing in urbanization and housing is a cost-effective and impactful way to improve people's quality of life (e.g. education, health, economic opportunities). 	<ul style="list-style-type: none"> The magnitude of the urbanization challenge must be acknowledged as a priority in the 2NLC resolutions

WHY IS THERE A NEED FOR URBAN LAND REFORM?		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> Colonial-Apartheid legacies continue to define urban areas as much as rural land. Inequality is perpetuated and expanded through unequal urban development Rural and urban are not separate entities, but closely intertwined 40% of the national population and 86% of the urban population live in informal settlements and lack basic services such as sanitation. 	<ul style="list-style-type: none"> Create mechanisms and interventions that redress apartheid-designed urban structures and 'redistribute' access to urban economic opportunity. Commit to develop a National Urban Policy and a National Spatial Development Plan to fundamentally re-imagine the future development of urban <u>and</u> rural areas in Namibia. 	<ul style="list-style-type: none"> Commit to transformation of Namibian urban policies, legal frameworks, strategies and actions at the national, regional and local levels to enable inclusive, sustainable and prosperous towns and cities. Urban Land Reform to be directed to improve the situation for the urban poor <u>as a priority</u> in order to have the widest possible impact.

WHAT IS URBAN LAND REFORM?		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> Urban land reform does currently not exist in policy The responsibilities of addressing urban development, infrastructure and housing 	<ul style="list-style-type: none"> Define the aims of a redistributive urban land reform informed by the UN-defined right to adequate housing Define urban land reform beneficiary target groups proportional to demographics of income groups 	<ul style="list-style-type: none"> Establish Urban Land Reform as integral part of land reform through a transparent process of public engagement with civil society.

<p>remain institutionally fragmented across various Ministries (MLR, MURD, MoWT)</p>	<ul style="list-style-type: none"> • Define eligibility criteria for urban land reform beneficiaries, with special regard for gender equality • Define available land and mechanisms to access such land • Establish a National standing, cross-institutional body to coordinate urban land reform (incl. Government O/M/As, Civil Society, NGOs and CBOs, Universities) reporting directly to Parliament / Cabinet • Establish a professionally-capacitated spatial planning unit accountable to the above standing body • Develop an inter-ministerial, GIS-based, information platform for urban and regional spatial data, including urban land/housing needs assessment and a database for monitoring allocation. • Develop democratic/transparent processes of public engagement for urban land reform policy development, implementation, periodic review and evaluation (i.e. local urban land committees) 	
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WHY HOUSING IS CENTRAL TO URBAN LAND REFORM?		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Most of urban land is used for housing, which at the moment mainly consists of undignified housing (e.g. shacks) • The UN-defined 'right to adequate housing', which includes access to land, is not prominent in national housing policy and debates • The Mass Housing Development Programme has been reviewed, but the outcome has not yet been made public 	<ul style="list-style-type: none"> • Implement the recommendations of the Revision of the Mass Housing Programme, undertaken by ILMI / NUST in 2017 for MURD, which provide a comprehensive overview of housing and urban land delivery. • Government support for adequate housing should move away from the provision of "a house", but rather facilitate incremental access to secure tenure, serviced land, and financial support for the construction and incremental improvements of housing. 	<ul style="list-style-type: none"> • Enshrine the UN-defined 'right to adequate housing' in Namibia's legal framework • Revise the 2009 National Housing Policy based on the right to adequate housing

PART 2. Topics derived from consolidated regional consultations report

(1.) URBAN LAND PRICES		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Urban land servicing is not structurally 	<ul style="list-style-type: none"> • Define 'subsidy' levels and access mechanisms for 	<ul style="list-style-type: none"> • Establish a system of capital and end-user

<p>subsidized by government, transferring the costs for land servicing to end-users</p> <ul style="list-style-type: none"> • 89% of households have a monthly income below N\$ 5,000 (NSA) • 67% of employment lies within the informal sector (NSA) • The commercial private sector cannot provide structural solutions for ultra-low income groups 	<p>urban land per beneficiary group (informal settlements, backyarders, waiting lists, etc.)</p> <ul style="list-style-type: none"> • Acknowledge the importance of the informal economy in urban development and livelihood generation. Besides conventional public amenities, public land and infrastructure must be made available to support a gradient of small and emerging economies. • Acknowledge that PPPs and private sector investment have a limited role to play in addressing the urban land and housing crisis, as they are accessible for middle-income groups. 	<p>subsidies for land servicing as part of Urban Land Reform</p>
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(2.) URBAN LAND DELIVERY		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • At independence it was estimated that only 20% of the urban population lived in informal settlements in Namibia. According to the latest preliminary CLIP data, today there are about 950 000 people living in informal settlements out of a total urban population of 1.1 million, equalling 86% of urban residents. This should be considered a National crisis. • Most regulatory frameworks and policy supports formal urban development and disregards informal urban development. • While community-led participatory informal settlement upgrading and housing production by Shack Dweller’s Federation / Namibia Housing Action Group has proven to yield tangible results, state financial support to such initiatives has been negligible 	<ul style="list-style-type: none"> • Prioritize large-scale, participatory informal settlement upgrading in all local authorities • Prioritize planned urban expansion areas with incremental service provision for new urban residents in all local authorities • Strengthen and Scale Up Community Land Information Program (CLIP) and other land related information systems • Implement participatory city-wide and neighbourhood-based planning and test area-based urban management. • Commit adequate state support and resources for community processes to drive their own urban land and housing solutions based on their established needs and affordability (also see Access to Finance for Housing below) 	<ul style="list-style-type: none"> • Prioritize large-scale, participatory informal settlement upgrading • Implement planned urban expansion areas for new urban residents • Allow incremental development of buildings and services

(3.) FLEXIBLE LAND TENURE SYSTEM		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • The Flexible Land Tenure system has been in the making since 1995, and the Act was passed only 	<ul style="list-style-type: none"> • Transfer the responsibility for FLTS implementation from MLR to MURD 	<ul style="list-style-type: none"> • Transfer the responsibility for FLTS implementation from MLR to MURD

<p>in 2012. It then took another 6 years (!) to gazette the regulations in 2018</p> <ul style="list-style-type: none"> • FLTS placed under the Ministry of Land Reform while it aims at facilitating <u>urban</u> land delivery • Overt emphasis on ‘individual ownership’ without support mechanisms to avoid beneficiaries selling such “assets” can jeopardize security of tenure of the poor in the longer term 	<ul style="list-style-type: none"> • FLTS implementation should be accompanied by investment in public infrastructure to enhance the sense of tenure security in tenure-insecure areas • Focus on security of tenure and security of occupancy of urban land and housing, instead of only ‘individual ownership’. • Develop alternative housing models including social rental housing. 	
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(4.) LAND SIZES FOR HOUSING AND STANDARDS

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Namibian urban areas are largely characterized by socially, economically and environmentally unsustainable low-density urban sprawl • The established minimum erf size of 300m² (for single residential zoning) is unaffordable to the majority, costing an average of N\$86,000 per erf to service, and is widely regarded to be a major cause of retarding land delivery • Formal economic growth and job creation is not keeping pace with (informal) urbanization leading to the rapid development of informal economic activities 	<ul style="list-style-type: none"> • Commit government at all levels to pursue equitable, sustainable, and compact urban development (reduce emphasis on individual plots and detached houses) that will maximize the impact of public infrastructure; and pursue regulatory reform to this effect • Develop strategies for the inclusion of economic opportunity at all scales and all degrees of formality through review of restrictive zoning regulations 	<ul style="list-style-type: none"> • Commit to integrated, compact urban development • Review the minimum erf size of 300m² • Review zoning regulations to enable economic opportunities in urban areas

(5.) SUSTAINABLE FUNDING FORMULA FOR LOCAL AUTHORITIES

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Government spends insufficient resources on housing and urban development in comparison with other countries • Most Local Authorities have a poor rates and tax base, and rely on sale of land for revenue generation. High land prices are thus necessarily in the interest of Local Authorities. • Local Authorities receive ad-hoc project-based capital subsidies from Central Government which does not allow for structured planning of 	<ul style="list-style-type: none"> • Commit to increase public spending on urban development and housing to levels to ensure adequate impact in curbing the urban land and housing crisis • Develop a capital funding formula for central government to support regional and local government financially (land servicing, infrastructure development, community-led upgrading) to reduce the price of serviced land to end-users (as proposed in the Review of the Mass Housing Program undertaken by NUST) • Review local authority finance as well as national and 	<ul style="list-style-type: none"> • Develop a capital funding formula for central government to support regional and local government in land servicing and infrastructure development • Review local authority finance and national and local taxation to align with urban land reform aims

capital investment in urban land servicing	local taxation to align with urban land reform aims <ul style="list-style-type: none"> • Make local government reform an integral part of urban land reform 	
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(6.) RENT CONTROL ACT LEGISLATIONS

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Namibia lacks adequate rental regulation and protection of tenants' rights • Historically rental has a negative connotation as it was seen as an inferior form of tenure security • Namibia does not have a social housing sector 	<ul style="list-style-type: none"> • Rent regulation must be implemented and relevant laws amended as advocated for by the Affirmative Repositioning Movement • Develop new rental housing models • Explore the possibility of a social housing programme by taking advantage of existing government flats, which is a de facto subsidized housing scheme 	<ul style="list-style-type: none"> • Rent regulation must be implemented • Invest public resources in development of protected rental (social) housing sector

(7.) MORATORIUM ON RE-ZONING OF PRIVATE FARMLAND

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Expansion of urban areas happens haphazardly, especially in the case of Windhoek where surrounding commercial farms are transformed into residential areas 	<ul style="list-style-type: none"> • Land use zoning changes should be guided by a National Spatial Development Framework (see above) 	

(8.) ACCESS TO FINANCE FOR HOUSING

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Only 11% of households have a monthly income above N\$ 5,000, making commercial finance for housing non-viable for the majority • The Build Together Programme (BTP), which performs as a state-supported finance mechanism for the poor, has never been audited nor reviewed • State support to community finance through the Shack Dwellers Federation is negligible given its wide impact 	<ul style="list-style-type: none"> • Develop a broad spectrum of finance mechanisms incl. community finance (savings groups), NHE finance mandate, building societies and private investment (PPPs) with urban land reform aims and to ensure affordability for all income sectors • Evaluate, review and strengthen BTP • Strengthen community finance mechanisms (such as Twahangana fund) proportional to number of beneficiaries 	<ul style="list-style-type: none"> • Increase state support to community finance mechanisms (such as Twahangana fund) proportional to number of beneficiaries

(9.) TOWNLAND EXPANSION AND COMPENSATION

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • A coherent and comprehensive urban policy and national spatial development plan does not exist, creating a lack of vision of future spatial development (urban and rural) • Namibia's towns and cities continue to reflect apartheid segregation and increasingly class segregation. The poor are only accommodated at the edge of towns, far from the opportunities of urban life, locking them into perpetual poverty • Urban land values are structurally embedded in town planning schemes, making mixed-income neighbourhoods virtually non-existent in Namibia • Urban areas surrounded by commercial farmland have little relationship to their surrounding rural areas and often become reserves for surplus labour with a limited economic base • Urban areas surrounded by communal land expand by effectively expropriating communal farmers who lose their livelihoods and are compensated according to the compensation policy of 2009 	<ul style="list-style-type: none"> • Develop a National urban policy and a National Spatial Development Plan, integrating metropolitan planning and agrarian / rural land reform as a matter of urgency through broad-based public engagement • Consider strategic land expropriation without compensation for strategic urban expansion, densification, and structural transformation (redressing apartheid structures). Such policy must ensure fairness and equality between expansion of townlands in commercial areas and communal areas • Provide affordable land and housing so in central urban areas and not only at the edge of towns • Develop strategic agricultural zones around existing towns and settlements that enable farmers residing within town lands to promote agricultural development as a land use option and increase food security and income generation in the towns. 	<ul style="list-style-type: none"> • Consider strategic land expropriation without compensation for urban expansion, densification, and structural transformation (redressing apartheid structures) • Provide affordable land and housing in central urban areas and not only at the edge of towns

ANCESTRAL LAND RIGHTS AND ACQUISITION

(1.) ANCESTRAL LAND CLAIMS AND RESTITUTION		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Historical injustices are currently addressed without the direct involvement of those who directly lost land • Although government has put in place legislation that recognises traditional authorities, the basis of such recognition is 	<ul style="list-style-type: none"> • Land policy must recognize and acknowledge that not all people in Namibia lost land. A definition of 'land dispossessed peoples' must be established. • Land reform legislation should embody the spirit of restorative justice for the 'land dispossessed people'. 	<ul style="list-style-type: none"> • Land policy must recognize and acknowledge that not all indigenous people in Namibia lost land equally. A definition of 'land dispossessed people' must be established. • A Multi-stakeholder Commission on Ancestral Land Claims and Restitution to be established.

<p>linked to geographical space and territory of ancestry. Therefore government cannot recognise all TAs while at the same time denying them the right to land claims.</p> <ul style="list-style-type: none"> • The question of the 'cut-off date' to lay claims to ancestral land rights is used to discredit the discussion of the ancestral land question • It is unclear how Government intends to address generational poverty caused by land loss, if not through ancestral land restitution. • Although Namibia has ratified international law compelling them to respect, protect and fulfil indigenous land rights and to take responsibility for past injustices of land dispossession, this is effectively not implemented. 	<ul style="list-style-type: none"> • A commission to be established and be responsible to define ancestral land rights; identify historical geographic boundaries; study specific land claims; deal with cases of restitution and study overlapping land claims through the establishment of an Independent Ancestral Land Claims Tribunal. • Make use of international frameworks and case law that allow to make a case for ancestral land claims in Namibia. 	<ul style="list-style-type: none"> • The issue of ancestral land cannot be conclusively decided during the conference as further investigations and public engagements are needed. A post-conference process must be established to deliberate on the issue. • The Presidency to consult and involve landless Namibians who did not attend the 2nd Land Conference to seek a sustainable way forward in the spirit of Harambee.
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COMMUNAL LAND REFORM

Communal Land Development – future role of communal areas		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • 70% of the population derives their livelihood from communal areas yet this sector is underdevelopment and most neglected in terms of public investment. • Large tracks of communal areas remain underutilised including virgin lands and those encroached by bush due to lack of infrastructure (water, fencing roads etc). • Lack of political will to support communal land development and absence of a long term vision for communal land development. • The Ministry of Land Reform and the Ministry of Agriculture do not harmonize efforts to ensure productivity of communal land. Separating the 2 Ministries may not be viable for agrarian reform over the long term. 	<ul style="list-style-type: none"> • Increase investments in communal areas and expand the communal development support program to all regions in Namibia with options for group tenure rights. • Develop a longterm agrarian transformation vision to fully exploit the potential of communal land. • The merging of the Ministry of Land Reform and the Ministry of Agriculture must be investigated and appropriate recommendations made after wide and inclusive consultations. • Develop financial instruments that address the needs of beneficiaries. • Reconsider the need to provide registered leases as the only form of tenure security in view of the 	<ul style="list-style-type: none"> • Development of master plan for communal land development as part of national development plans with a focus on agrarian transformation • Undertake a detailed assessment and investigation on underutilised communal lands including virgin lands and those captured by bush encroachment and development a plan to develop those areas. • Develop land markets in communal areas through improvement in security of tenure and providing access to finance for small scale farmers.

<ul style="list-style-type: none"> • Fencing of communal areas and water is a key investment for ensuring sustainable land and grazing management, yet government has done very little to support communal farmers with such infrastructure. It is difficult if impossible for farmers to improve productivity and yields without adequate support. Farmers suffer huge losses due to damaged or non-existing infrastructure. • Many communal farmers and resettlement beneficiaries experience cash flow problems, partly because they do not have access to loans. Registered lease agreements or title are perceived to enable beneficiaries to offer their and as collateral for loans. But many farmers are asset poor and thus unable to service loans, with or without title. Agribank offers loans without collateral, but repayments are deducted from salaries. • At present, land markets in the resettlement and customary sector are prohibited by law. But they exist and are growing informally. The absence of a land market has several disadvantages, which include that registered leaseholds cannot serve as collateral and that underutilised land cannot be sub-leased to farmers who need more land. 	<p>fact that many beneficiaries and small-scale farmers in communal areas simply cannot repay a loan, with or without leasehold or even title.</p> <ul style="list-style-type: none"> • Develop a land market for land leased from the state and in communal areas with a regulatory framework to prevent short-term speculation and elite capture. Keep transaction costs as low as possible by streamlining procedures. 	
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Land Allocation and Administration by Traditional Authorities and Communal Land Boards and Land Rights Registration in Communal Areas		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS
<ul style="list-style-type: none"> • Insecure tenure rights in communal areas remains a challenge 	<ul style="list-style-type: none"> • Tenure reform should focused on making customary tenure more secure through formalization or 	<ul style="list-style-type: none"> • Establish group tenure is an option to improve security of tenure in communal

<ul style="list-style-type: none"> • The Communal Land Reform Act (CLRA) lays down one set of rules for all communal areas. For example, the maximum size of land that may be held under registered customary leasehold is 20 ha. It is clearly modelled on land required for cultivation and a homestead but is meaningless in livestock farming areas. This caused widespread confusion and tenure insecurity. • The provisions in the CLRA to improve tenure security through the registration of customary land rights is restricted to private rights (homestead, fields for cultivation and stock pens). It does not provide sufficient legal protection for undivided rights to commonages. • The CLRA makes no explicit provision for local level management of commonages. • The CLRA makes no explicit provision for local level management of commonages. • Security of tenure depends to some extent on the manner in which disputes are resolved and decisions implemented. Headmen continue to be the first port of call when disputes arise. Their ability to do so fairly is hampered by the fact that they often are the cause of disputes. The dispute resolution procedures prescribed in the Act and Regulations are largely inaccessible to many rural people. • The CLRA provides for land claimants to appeal against decisions taken by TAs. To this effect the Minister may appoint Appeal Tribunals. While these provisions incorporate basic legal 	<p>registration.</p> <ul style="list-style-type: none"> • Review the CLRA to lay down fundamental principles of land governance, but at the same time allow for flexibility in implementation. • Allow local practices regarding land access and tenure to guide peoples' decisions within national constitutional and legal framework. • Provide for the legal protection of all informal land rights. • Provide for alternative ways to confirm those rights building on local practices. • Provide for the establishment of village-based governance structures. • Community based natural resources management should include all land-based resources and various pieces of legislation need to be harmonised to achieve this. • Communities should have the option to elect their own village-based management bodies to democratise the land management process. Recommendations from this local structures could be made to traditional authorities and communal land boards. • Other natural resources legislation provides various levels of community-based management (water, conservancies and forests). <ul style="list-style-type: none"> • Strengthen local level dispute resolution processes' Administrative, judicial and law-making powers at local level need to be separated. • The MLR should investigate how the appeals procedure could be made more accessible to land claimants. • In areas where there is no clarity of areas of 	<p>areas.</p> <ul style="list-style-type: none"> • Establish local level democratic community structures for administration of communal areas that makes recommendations to traditional authorities and communal land boards. • Provide security of tenure for commonage to provide for rights over grazing and other natural resources especially through group tenure. • Improve appeal procedures and dispute resolution processes for communal area administration and management.
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<p>principles of administrative justice, the procedure is cumbersome and probably inaccessible to many customary land rights holders as written appeals have to be submitted to the Permanent Secretary.</p> <ul style="list-style-type: none"> • Only traditional authorities recognised by the state in terms of the Traditional Authorities Act, 2000 may perform the functions stipulated in the CLRA. In areas where TAs are not recognised, the CLRA and in particular the registration of customary land rights cannot be implemented. In some areas, jurisdictions of TAs overlap as there are no defined areas of jurisdictions. • The CLRA provides for the granting of leaseholds for agricultural and other purposes. Approximately 650 farms have been surveyed, gazetted and allocated in Ohangwena, Kavango West and East and Zambezi. This development was authorised by Cabinet in 1997 but contradicts some Land Conference Resolutions. In several cases, the holders of customary land rights have been dispossessed of their rights because of both official and unofficial enclosures. • Governance of the land redistribution process is weak. There is little transparency of how decisions are taken and implemented. Accurate and reliable information is hard to come by. 	<p>jurisdictions or TAs are not recognized, Communal Land Boards should be given responsibility to verify existing and new customary land rights in close co-operation with traditional leaders.</p> <ul style="list-style-type: none"> • The extent of land rights losses because of enclosures needs to be authoritatively established and affected communities compensated. • Consideration should be given to transfer the management of land redistribution to an independent body representing relevant stakeholders. • A new land policy and legislation should oblige the MLR to provide relevant information in a timely and professional manner. 	
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Illegal Fencing in Communal Areas and access to communal land		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	PROPOSED RESOLUTIONS

<ul style="list-style-type: none"> • Large parts of the communal areas have been expropriated by individuals for private farming by fencing off large tracts of land. The legality of these enclosure spans the entire spectrum from legal to illegal. This situation needs to be addressed. • Privatization of communal areas through legal and illegal fencing and therefore change in agrarian structure and ownership patterns in communal areas happening through land privatization which happens through two streams: <i>-Unofficial:</i> these fences – commonly referred to as illegal fences - are of dubious legal standing as many were developed without any authorization. Other were authorized by traditional authorities. <i>-Official:</i> the official privatization process is happening through the Programme for Communal Land development (PCLD), which is implemented by the MLR with the financial assistance of ‘international development partners’. This contradicts a resolution of the first Land Conference. 	<ul style="list-style-type: none"> • An adjudication process should be set in motion to regularise enclosures. Section 37 of the CLRA provides for this. • The boundaries of enclosures found to be legal should be determined, leaseholds to be granted and lease fees charged. • Fences found to be illegal should be taken down at the expense of the ‘owner’. • 	<ul style="list-style-type: none"> • Establish a Judicial Commission of Enquiry to assess existing disputed fences in communal areas to determine their status and for recommendations to remove or legalise. • Fencing approved by Traditional Authorities and Communal Land Boards without following law and procedures must be removed. • Provide guidelines for future fencing in communal areas.
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COMMERCIAL LAND REFORM PROGRAMME AND RELATED MATTERS

(1.) WILLING SELLER WILLING BUYER PRINCIPLE		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Government has only spent less than N\$2 billion on land acquisition over the past 27 years, a comparatively minimal amount considering spending in other sectors. • Most of the land that has been offered to government was not purchased, but has been 	<ul style="list-style-type: none"> • Land reform must become a central policy priority in national development plans. • Land reform must be resourced appropriately. • A new approach to WBWS should be developed and 	<ul style="list-style-type: none"> • Land reform must become a central policy priority in national development plans. • WBWS policy must be abolished.

<p>waived.</p> <ul style="list-style-type: none"> • Willing Buyer and Willing Seller (WBWS) is unsustainable as government continuous to purchase land on distorted and inflated land market prices. Offers to buy are also sporadic and only in selected regions, mostly with poor agricultural land. This makes integrated planning impossible and complicates post-settlement support. 	<p>replaced with options for expropriation.</p>	
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(2.) EXPROPRIATION OF AGRICULTURAL LAND (FOREIGN OWNED FARMS, UNDERUTILIZED LAND, ABSENTEE LANDLORDS, FARM SIZE AND NUMBERS)

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Freehold farmland is predominantly owned by previously advantaged (a recent Namibia Statistics Agency report states that more than 70% of productive agricultural land is owned by previously advantaged). • Currently, land reform is seen mainly through the lens of agricultural productivity, not equity. • Compensation should not be assumed to be 'market value', and a framework for valuation in the land reform process should be developed. • Foreign ownership of land (including absentee landlords) was resolved not to be allowed in 1991, but this has not been implemented. • No comprehensive assessment has been conducted to determine unutilised and underutilized agricultural land to explore this criteria for expropriation of agricultural land. 	<ul style="list-style-type: none"> • There needs to be political will to change racial pattern of land ownership. • Integrate land reform at the core of existing poverty eradication policy and programmes. • Expropriation can be considered to acquire strategic pieces of land (rural and urban) for expansion of communal areas and urban areas. • Contiguous rather than scattered resettlement farms are more efficient in terms of service provision, and expropriation would make sense in these cases. • A strategic purchase of commercial farms around the settlements and the resettlement of farmers on the land acquired would empower existing settlement patterns. • Criteria must be established to determine which land is under-utilized in order to make sure that land is used productively, government must put in place support mechanisms for farmers and monitor progress. 	<ul style="list-style-type: none"> • Compensation must be defined in the interest of the landless and with colonial injustice in mind, and must not be assumed to be market value. • Expropriation without compensation refers to the value of the land, compensation should be considered for the infrastructure on the land. • Implement 1991 resolution on foreign land ownership and expropriate land. • Establish criteria and undertake assessment of underutilised land for expropriation.

(3.) RESETTLEMENT POLICY AND CRITERIA

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • There is a process of 'elite capture' (powerful individuals, groups or companies seizing land from small holder farmers) in the resettlement 	<ul style="list-style-type: none"> • It should not be assumed that redistributive land reform means that the land will remain in government ownership, but new tenure modalities 	<ul style="list-style-type: none"> • The notion of previously disadvantaged should be abandoned and substituted with <u>currently</u> disadvantaged, including the

<p>programme.</p> <ul style="list-style-type: none"> • Resettlement currently doesn't give priority to those who lost land through colonial land dispossession. • The recommendation of the Land Advisory Commission to have a 70% quota for beneficiaries for the region in question and/or the 'land dispossessed' has not been decisively implemented. • Land rights for group resettlement are still based on individual tenure, which creates division. • The process of resettlement is centralised by current design; all regions are involved in the resettlement of all regions, which creates inefficiencies. • There is generally little transparency in land governance, which affects resettlement policy and implementation. • No critical independent review of the resettlement program has been undertaken. • There is a contradiction between Resettlement Policy-intended beneficiaries and the criteria for resettlement, particularly regarding the scoring systems. • The Resettlement Beneficiaries list that was recently released lacks critical analysis required to inform the discussions and debates on the Resettlement Policy and Program. • The Resettlement Policy and Program doesn't have cap/ceiling and is currently being exploited by the wealthier and well-connected elite that could in any case access Agribank loans through the Affirmative Action Loan Scheme (AALS); this adds to the process of 'elite capture'. 	<p>enhancing sense of ownership should be explored.</p> <ul style="list-style-type: none"> • Collective tenure should be recognised in group resettlement schemes. • Government must commission an independent external evaluation of the resettlement program. This should include assessments in terms of impact on livelihoods of beneficiaries as well as to the environment. • The definition of the 'historically land dispossessed' should be clarified. • The resettlement program should be decentralised so that regions have more decision power in the resettlement process. • Land Advisory Commission should be more representative in terms of stakeholders. • Resettled farmers must have legal user rights for all natural resources on the land they occupy. • Resettled farmers must have wider land rights to administer the land that they occupy • Government must not only consult professional experts but also take into account local indigenous knowledge about the carrying capacity and the use of the land and involve those with such knowledge in the process. . • Independent analysis of the beneficiaries' list is required to understand the situation 	<p>definition of the 'historically land dispossessed'.</p> <ul style="list-style-type: none"> • The proposed 70% quota for beneficiaries from the region and/or 'land dispossessed people' should be implemented. • Resettlement Program must be independently evaluated and farms audited and on the basis revise Resettlement Policy and Program
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(4.) PRE AND POST SETTLEMENT SUPPORT

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Post resettlement support required to boost productivity. Even if the small farmer is eventually resettled, s/he does not have the financial resources to rebuild the infrastructure. When units are demarcated, the carrying capacity of the land is not considered, neither is it checked whether all required infrastructure exists on the unit. • Resettlement beneficiaries experience cash flow problems. partly because they do not have access to loans. Registered lease agreements or title are perceived to enable beneficiaries to offer their and as collateral for loans. But many farmers are asset poor and thus unable to service loans, with or without title. Agribank offers loans without collateral, but repayments are deducted from salaries. • The resettlement program by design does not take into account multiple land uses and confines beneficiaries to livestock farming only, without allowing diversified livelihood options through game conservation, the use of local plants, crop farming, poultry farming and aquaculture. • The draft Revised National Resettlement Policy 2018-2027 has an elite and male bias, proposing a three-tiered model for resettlement (high, medium and low economic value). 	<ul style="list-style-type: none"> • Develop financial instruments that address the needs of beneficiaries. • Reconsider the need to provide registered leases as the only form of tenure security in view of the fact that many beneficiaries and small-scale farmers in communal areas simply cannot repay a loan, with or without leasehold or even title. • The draft Revised National Resettlement Policy 2018-2027 must be reviewed through broad-based public engagement. to eliminate gender and elite bias. 	<ul style="list-style-type: none"> • The draft Revised National Resettlement Policy 2018-2027 must be reviewed through broad-based public engagement to eliminate gender and elite bias.

(5.) AFFIRMATIVE ACTION LOAN SCHEME		
PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Large communal farmers have been transferred to commercial farmland through AALS, however the tangible impact of this policy has not been independently evaluated. 	<ul style="list-style-type: none"> • Commission an independent evaluation of AALS should be established to look at the number of farmers resettled, size of land, origin of communal area, productivity, among other aspects. • AALS beneficiaries should be supported through 	<ul style="list-style-type: none"> • Establish an independent evaluation commission for AALS.

	training, extension services, mentoring, etc.	
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(6.) ACCESSIBILITY TO LAND BY WOMEN AND YOUTH

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Women are still marginalised in the redistribution process. In the freehold areas, female land ownership is 23% versus male ownership of 77% (National Statistics Agency, 2018). • Customary inheritance laws are still applied to the disadvantage of women and children. Rural women still experience property grabbing and disinheritance • Several studies have been carried out in the northern communal areas to critically review the status of women in the land reform process. However, no such studies have been conducted in other regions. • Women who are not married but have cohabited for an extensive period of time are not always protected in terms of ownership and inheritance. • Rural women perform unpaid, and un-recognised productive and reproductive labour. • Women in rural areas lack services, which impacts on their workloads and forms part of the un-enumerated labour women perform, which will be negatively impacted by climate change. • The 1928 Native Administration Proclamation is discriminatory towards married women with regard to marital property; women in customary marriages are not covered by the Married Persons Equality Act 1 (1996); • 	<ul style="list-style-type: none"> • Increase public awareness on the right of women to own and inherit land. • Legislation must be put in place to ensure the protection of single mothers and women who cohabit for extensive periods, who culturally have no right to property after the death of the partner. • Support women in rural areas through farming equipment and livestock; training and extension services; water infrastructure; affordable access to certified indigenous seeds; fencing materials; fertilizers and cultivation tools. • The immediate enactment of the Uniform Marital Property Regime Bill and Intestate Succession Bill to eliminate gender discrimination in inheritance practices and to replace the unconstitutional and discriminatory Native Administration Proclamation 15 of 1928. 	<ul style="list-style-type: none"> • The resettlement program must aim for 50:50 gender ratio resettlement of beneficiaries. Any future Land Bill should mainstream gender disparities. • Women must be prioritised as immediate beneficiaries of land resettlement programmes, freehold affirmative action financing and communal land allocation processes to gain gender parity in land, access, ownership and control

(7.) FARMWORKERS (INCL. GENERATIONAL FARMWORKERS)

PROBLEM STATEMENT	STRATEGIC INTERVENTIONS	RECOMMENDED RESOLUTIONS
<ul style="list-style-type: none"> • Farmworkers who were employed on the farms 	<ul style="list-style-type: none"> • Monitoring and evaluation systems must be put in 	<ul style="list-style-type: none"> • Re-visit the Kameeta Report and establish a

<p>bought by government are not considered for resettlement, even if they had been living on those farms over several generations.</p> <ul style="list-style-type: none"> • Aspects such as grazing rights and residence rights of farmworkers on commercial farms are not addressed in current legislation. • There is no mechanism to deal with indiscriminate evictions of farmworkers. • Security of tenure of farmworkers is weak. The Kameeta Commission of 2007 recommendations on this matter have been disregarded and haven't had impact. • Unionization in the farming sector remains difficult due to structural factors such as isolation, among others. • 	<p>place to assess remuneration, social security registration and living conditions of and impacts on the lives of farmworkers.</p> <ul style="list-style-type: none"> • The findings of the surveys conducted by NAU and others should be distributed widely and used actively to inform decision making about the status of farmworkers • Support systems must be established to support unionisation. Legislation must be put in place compelling employers to deduct and pay membership fees to farmworkers unions, so that the unions are able to pay for costs related to their work. • Legislation must be enacted and enforcement mechanisms put in place to ensure grazing and residential rights for workers, as well as protection from evictions. • When a farm is bought by government, the long-term farmworkers should be prioritized for resettlement. • Explore joint shareholding of commercial farms between employer and employees to enable workers to buy shares in the farm business. 	<p>commission to make recommendations on security of tenure for farmworkers</p>
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