

National Land Conference and land policy development Concept Note

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April 2018



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1 Introduction

During his State of The Nation Address on 10 April 2018, H.E. The President stated that the National Land Conference will be held in October 2018. He reiterated an earlier statement during his Opening Address to Cabinet on 8 February 2018 that the National Land Conference will be held under the auspices of the Prime Minister. A High Level Committee under the chair of the Minister of Land Reform will be established. The President called on the following elements of the Land Conference to be defined:

1. The **objectives** of the Conference
2. The **format** of the Conference
3. The **outcomes** of the Conference

It is suggested at the outset that the National Land Conference should be the beginning of a wider policy development process that should be based on the outcomes of the Land Conference and the inputs from subject matter specialists. The inputs of stakeholders and subject matter specialists should contribute to what is referred to as evidence-based policy development. Enemark (2017, p. 44) presented four broad principles of evidence-based policy making in Figure 1 below.

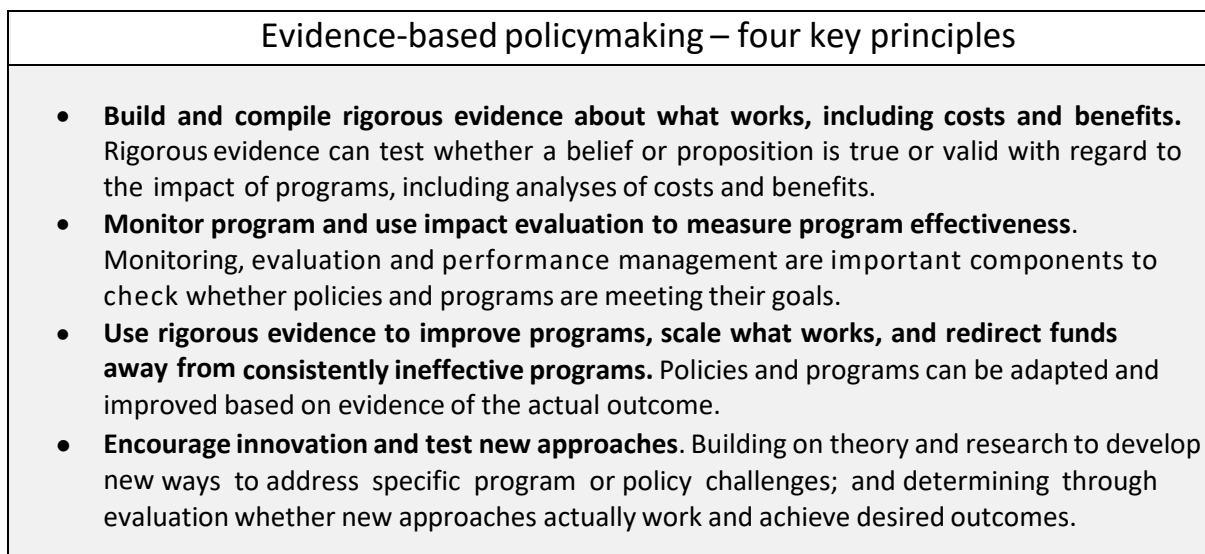


Figure 1 Four key elements of evidence-based policy making

1.1 Policy development process in other countries

Our approach in Namibia differs slightly from the general approach followed in countries such as Botswana, Uganda and Malawi. In these respective countries, a Land Conference – if it was held – was preceded by a thorough fact finding exercise, frequently in the form of a Commission of Inquiry. A Draft National Land Policy (Uganda) or White Paper (Botswana) would be drafted based on this exercise and taken for consultations at national, regional and sub-regional levels. These can take the form of visits to all regions or a Land Conference. The box below summarises Botswana’s policy making process.

The nature of the policy making process in Botswana

Because of its sensitivity and complexity, land tenure reform is a time-consuming process...**progress is dependent on appropriate constitutional and legal frameworks and requires thorough public consultation and careful preparation.** For the last quarter of a century in Botswana, iterative policy making in the different sectors, including land, has followed a process extending up to two years:

- (i) A commission of inquiry (or an expert review); calls for written submission; public meetings involving a wide range of stakeholders;
- (ii) The preparation of a draft report, oral presentations and discussions at a national workshop covered by the media;
- (iii) A draft paper which is debated in Parliament;
- (iv) The publication of a government white paper setting out the policy change adopted; the recommendations which have been accepted, amended and deferred (or rejected) with justification for government having done so;
- (v) Finally, where relevant, the drafting of laws or amending existing laws (Adams et al., 2003, p. 11, emphasis added).

What follows are a few suggestions on how the Land Conference can be integrated into a wider policy development framework. These are not exhaustive and are presented to support a process on obtaining agreement on the objectives of the Conference, its format and outcome, areas for investigation by subject matter specialist and how best to process these.

2 Objectives

The overall objective of the Second National Land Conference should be to lay the foundation of a systematic policy development process, by providing the space for stakeholders to articulate their challenges, expectations and solutions of land related issues. The final outcome should be a revised and up to date National Land Policy that comprises all aspects of land related activities.

In 2016, the Minister of Land Reform spelled out four objectives of the Second National Land Conference. At that time these were:

1. To review the progress made in the implementation of the resolutions of the 1991 land conference;
2. To take stock and address the encountered challenges;
3. To discuss the emerging land related issues; and
4. To come up with strategic resolutions informed by the identified challenges and future aspirations of the Namibian people.

These objectives are adequate to address the requirements of bringing our land policy and legislation in line with land related issues that have developed over the past 27 years. They also confirm the need expressed by the President to complement stakeholder consultations with inputs by subject matter specialist. Without the latter, Objectives 2 to 4 would be impossible to meet.

It is of great importance that subject matter specialists identify the challenges and emerging land issues as accurately as possible. A decision needs to be taken about the subject areas that require more in-depth investigation.

The credibility of the National Land Conference hinges on the extent to which recommendations by stakeholders are taken on board in a new land policy. It is acknowledged that making policy is the prerogative of elected political leaders. However, to satisfy the demands of those dependent on

access to land as well internationally accepted guidelines² on land policy development, a clear message needs to be formulated about the extent to which recommendations of the Conference are binding or not.

3 Suggested expert inputs

In preparation of the first Land Conference in 1991, a series of Briefing Papers were prepared by local and international researchers. The aim of these papers was to provide empirical information to inform debates at the Land Conference and covered the following topics:

- alternative approaches to the settlement of land
- institutions of land reform
- land reform and position of women
- farm workers and land reform
- subsidies, taxation and viability of the commercial sector
- economic analysis of land reform options
- government expenditure and agricultural support services

These Briefing Papers were the equivalent of what the President referred to as ‘inputs from subject matter experts and other important stakeholders’. As broad areas for inputs they are as relevant today as in 1991.

It will be helpful to align inputs from subject matter specialists with the elements of a typical land policy. While each country has its own specific characteristics that need to be accommodated in its land policy, it is possible to distil several generic components of a land policy. These have been summarised by Enemark (2017, p. 15) and are presented in Figure 2 below.

<p>The land question Country context, rationale</p> <p>Vision, Objectives and Principles</p>	<p>Land Use Management Framework (Uganda Ch 6; Kenya Ch 3.4) Land use planning and regulation Natural resources Environmental management State land management</p>
<p>Land Policy Framework and issues Categories of land Categories of land tenure Access to land rights Land market issues Role of state and market in land reform Land tax Transaction costs</p>	<p>Institutional Framework (Kenya Ch 4; Uganda Ch 4) State, regional and local authorities Land boards, tribunals, land courts Land acquisition and compensation</p>
	<p>Implementation Framework (Uganda Ch 8; Kenya Ch 5) Timeline, costs, monitoring, evaluation</p>

Figure 2 Key areas of a National Land Policy Framework

²² See for example the *Framework and Guidelines on Land Policy in Africa* (AUC-ECA-AfDB Consortium, 2010) or the *EU Land Policy Guidelines for support to land policy design and land policy reform processes in developing countries* (European Union, 2004).

A few suggestions for specialist inputs under these main headings will be provided in sections below. These suggestions are by no means exhaustive but are intended to provide pointers and are complementing those identified by the President in his SONA address on 10 April which are:

- The willing-seller willing-buyer principle of land acquisition
- Ancestral land claims for restitution
- Expropriation in public interest with just compensation as provided for in our Constitution
- The Veterinary Cordon Fence (Geingob, 2018).

3.1 The land question

The point of departure of the Land Conference should be a critical reflection on what the land question is today as opposed to 1990. To be sure, large scale dispossession of land and subsequent racially structured access to agricultural land remain the point of departure of the land question in Namibia. A reformulation of the land question not only needs to include this part of our history, but needs to conceptualise the restitution of dispossessed lands demanded by so many. Failing to do so will perpetuate the disjuncture in our land policy which legitimizes the reacquisition and redistribution of dispossessed land without explicitly acknowledging the demands of the dispossessed.

However, since 1991, several new issues have developed as a result of the changing socio-economic environment in the country and the implementation of our land reform programme. Namibia's rural areas, and in particular communal areas, have been undergoing continuous change. At the most general level, these changes are manifesting themselves in rural livelihoods strategies becoming increasingly detached from land. Agricultural households are becoming increasingly reliant on off-farm incomes to make ends meet, as agricultural incomes on their own are no longer sufficient to sustain households. One result of this is the increasing migration of rural people to towns, leading to rapid urbanisation and its associated challenges. But it also changes the demographic character of rural areas, with average ages of rural households increasing. Against this process of 'de-agrarianisation', the link of land/agriculture and poverty reduction needs to be interrogated to come up with appropriate policy interventions. The rural and urban land questions cannot be separated and need to be conceptualised in an integrated manner.

A debate of the current land question should enable us to formulate a vision of where we want land reform to take the country. A review of the land policy development process in Uganda concluded that the 'statement of the vision, goals, conceptual framework and principles is a critical first step', providing focus and political buy-in (Rugadya & Scalise, n.d., p. 5).

3.2 Land Policy Framework and issues

3.2.1 Land audit

The last resettlement and farm audit was carried out ten years ago. It is recommended to carry out a new audit to establish, *inter alia*, the following:

- Farms offered
- Farms purchased
- Farms declined
- Number of people settled
- Age profile of beneficiaries
- Full-time or part-time
- Tenure security

The basis for an updated audit could be the 'Revised Synthesis Report: Resettlement Audit' prepared for the MLR in 2010. The recommendation was made in the report that the regionally disaggregated data be updated by regional Development Planners of the MLR under competent supervision. This

would save costs and if properly implemented, provide reliable regional data within a relatively short period of time (Werner, 2010, p. 71; Brown & Mendelsohn, 2008).

3.2.2 Land acquisition and allocation

Market based land acquisition has been the subject of constant criticism of not delivering sufficient quantities of land fast enough. There is reason to believe that the willing seller – willing buyer principle is often discarded without proper analysis of its shortcomings. Similarly, expropriation is frequently touted as the panacea for ‘fast track’ land reform. Despite its various potential advantages, expropriation also has definite drawbacks that need to be elaborated.

It is suggested that regarding the willing-seller willing-buyer mode of land acquisition the following is done:

- A critical review of appropriateness and efficiency of the approach
- An investigation of the duration of the land acquisition process
- Identify the different steps in the process
- Reflect on intra-ministerial co-ordination of valuation, planning, etc.
- Identify inefficiencies

Such an investigation should recommend a more streamlined process for land identification, planning, settler selection and allocation

With regard to expropriation, a review of international experiences should be carried out and a comprehensive review of existing legislation and court records (Kessl) be done

The basis for this process should be existing documents, which need to be verified and possibly complemented by more up-to-date information. An input on this topic should inform discussions on how land acquisition and allocation can be speeded up and made more transparent.

3.2.3 Restitution

Ancestral land claims and their restitution has been put on the agenda of the National Land Conference by H. E. The President. This is a welcome response to growing demands among the dispossessed for their voices to be taken seriously. The first Land Conference has shown how difficult the task will be to disentangle possible overlapping land claims. This requires that compromises will have to be negotiated between all affected parties. Criteria need to be laid down to define what ancestral land claims and land rights are, as it cannot be assumed that this is clear to everybody. Such criteria should be negotiated and agreed to in advance of the Conference by a small group of relevant stakeholders. Unless this happens, Conference proceedings are likely to get bogged down in discussing these criteria.

3.2.4 Land tenure

Land reform and land policy development are fundamentally concerned with peoples’ access rights to land and tenure security. Little is documented on the state of tenure security and equal rights of access to land.

3.2.4.1 Resettlement land

- State of tenure security
- Compliance with Act to issue registered leaseholds
- Constraints to register leaseholds: magnitude of the problem, costs of surveying etc.
- Managing land rights to resettlement land

3.2.4.2 Non-freehold land (communal)

- Customary land rights registration
- Extent of land privatization and recommendations how to deal with it
- Rights to commonage grazing and other communally used land-based natural resources (wildlife, forest products)

- The privatisation of communal land resources

3.2.4.3 Urban areas

- The nature of urban forms of tenure, both formal and informal
- Impediments to access land legally

3.2.5 Land market issues

There are various prohibitions (customary in communal areas and legal on resettlement land) on trading in land rights. It is clear, however, that a flourishing land market in communal areas and on resettlement land exists. Its extent and nature are not well understood. There are risks of poor households losing land rights. Moreover, leased land cannot be used as collateral because it cannot be traded. It is therefore very important to assess all aspects of these land markets to make recommendations on policy interventions. Specific issues include:

- The extent and nature of markets for agricultural land in communal areas and on resettlement land
- The extent and nature of an urban and peri-urban informal land market, not only but particularly around newly proclaimed towns in communal areas
- The desirability or otherwise of encouraging and regulating such markets
- The feasibility of using land as collateral for bank loans, particularly among asset poor farmers

3.2.6 Land tax

While the land tax as such has not met with much opposition, its implementation has created major concerns. Amongst other things, one major issue concerns how farm valuations are carried out. Inputs from land tax specialists will assist the MLR to address these concerns based on concrete evidence.

3.3 Redistribution and resettlement

A number of issues have accumulated over the years with regard to government's National Resettlement Programme. A review of the redrafted Resettlement Policy may be desirable but could also be dealt with separately. Some issues that need inputs from subject matter specialists include the following:

- Small-scale farming, i.e. the sub-division of large freehold farms: is this economically and financially sustainable in view of growing globalisation
- Target groups of resettlement need to be redefined
 - are we still happy with the generic category of previously disadvantaged or does it need redefinition to currently disadvantaged in view of a changed reality
 - limits of annual incomes of applicants
- Post settlement support
- Tenure security

3.4 Land use management framework

A new Land Policy for Namibia should provide a comprehensive framework for the management of the country's land-based resources. The new Land Policy should deal with issues such as land use, urban and regional planning as well as the management of our rangeland, wildlife and forests. This does not imply that the MLR will take over the implementation of different programmes in the respective sectors. But an overarching land policy framework may go some way to mitigate the current situation where land management policies of different line ministries not only do not complement, but frequently contradict each other.

3.4.1 Sectoral policy and legislative analysis

The harmonization of different land management policies has been called for a long time. The proposed Land Conference provides an opportunity to take stock of the situation by carrying out a sectoral policy and legislative analysis. Issues that need attention include the following:

- The articulation of rights to land-based resources with land rights granted under current land legislation
- The institutional framework existing in communal areas to manage land-based resources and their relationship with traditional leaders
- The desirability or otherwise of extending comprehensive group rights to rural communities which demand such an option

3.4.2 Land use planning and regulation

Integrated land use planning is continuing unabated without a proper legal framework or approved policy. On the other hand, the Urban and Regional Planning Act has been approved recently. There appears to be a need to make a critical assessment of the current policy and legal framework to recommend policy interventions that spell out clearly how the planning of our rural and urban resources should happen.

3.5 Institutional framework

Land related functions have been decentralised to various degrees by line ministries. New institutions have been developed in the all land sectors (water, wildlife, forests). Little is known how well these various institutions function.

The functioning of traditional authorities as the oldest of rural institutions needs critical reassessment. Bearing in mind that in most rural areas, headmen perform the day-to-day functions of land management, the issue of their future role in land and natural resources management requires elucidation. Should they disappear, or would it make sense to support them to become more effective local level management bodies?

It is strongly recommended that as a first important step to identify what kind of inputs are required from subject matter specialists, an inventory of all consultancy reports that were prepared for the Ministry of Land Reform on the land issue be compiled and evaluated. While the data in most if not all those reports is old, many issues raised and discussed undoubtedly continue to exist. This will save a lot of costs. Should it be desirable to update these reports, requesting the initial consultants to do so should result in further savings. It should be kept in mind that these inputs are not intended for peer reviewed academic journals, but to inform debates through robust evidence.

3.6 Resources

As a final comment on inputs by subject matter specialists it is suggested that the High Level Committee appoints a knowledgeable person to compile a list of research and consultancy reports that were prepared over the years for the MLR. Taking stock of what has been done already but was never discussed in public is likely to speed up the process of preparing such inputs and save costs.

4 Processing inputs from subject matter specialists

Participants at the Land Conference should have access to all available information to make informed proposals and contributions. However, one lesson learnt from the first Land Conference in 1991 was that much of the information, the evidence needed for policy formulation, was never really discussed in a critical way. Several possible reasons for this can be adduced.

In the first place, the factual information presented by subject matter specialist was voluminous, covering 600 odd pages. That this is too cumbersome for ordinary stakeholders to digest and reflect

on critically stands to reason. Moreover, time and resources do not allow a slot during the Conference for every technical input to be debated and decided upon.

Given the importance of inputs by subject matter specialists in evidence-policy development, it must be decided how best to process this information into a format that is more easily accessible to most stakeholders.

As a basic principle, all information must be made available to all stakeholders. However, deliberations at the actual Conference should focus on the discussion of issues that participants can relate to directly. Many of these issues would have been identified in regional and local level consultations by NGOs and others. But written submission should also be invited, as was done for the first Land Conference.

The debates should be tightly chaired, but not in a manner that will stifle debates. This is important, since many participants may not be used to state their cases in front of a strange and large audience.

Many contributions by subject matter specialists invariably will be of a more technical nature. While such contributions should fulfil high research standards of accuracy and truthfulness, the main objective of this exercise is to enable government to draft a new land policy based on empirical evidence.

Against this background it is therefore recommended that the technical papers be reviewed and synthesised by a small policy development committee before or after the Conference. This synthesis should be complemented by the results of the deliberations during the main Conference.

The outcome of this process would be a draft land policy. This document should become the focus of widespread consultations and discussion with rural constituencies, special interest groups etc. The advantage of this approach would be that stakeholders would be able to look at one integrated document, instead of many different papers. Comments and suggestions from these consultations should be integrated into the draft Land Policy and presented to the National Assembly as a White Paper.

5 Format

A crucial component of the Land Conference will be to select participants and determine how many people to invite. To provide some perspective: five hundred stakeholders were invited to the first Land Conference in 1991 and hosted at government expense. People were provided with an opportunity to apply to attend the Conference. From these applications participants were diligently selected using some basic criteria, the main one of which was that they represented an organized constituency such as a farmers' union, co-operative or traditional authority. This presents a huge logistical challenge and requires large amounts of money. By contrast, only 200 stakeholders were invited for the Second National Traditional Authority Conference on Communal Land Administration in 1996.

Clearly, the number of people to be invited for this Land Conference will be determined to a large extent by the available human and financial resources, as well as time. In the interest of transparency and fairness, Government must develop clear criteria to select stakeholders. This will be particularly important if financial resources are limited.

One possible way around budget constraints would be to invite single representatives from each political constituency in the country in addition to one representative from regional councils and traditional authorities.

The length of the Conference will be determined by how many inputs will be invited. The National Conference on Land Reform and the Land Question in 1991 was held over 7 days. About 20 inputs from subject matter specialists as well as 55 submissions by private individuals and organisations formed part of the information base of the Conference. The Second National Traditional Authority

Conference on Communal Land Administration held in 1996 was done over 3 days. Nine presentations including some by Ministers and 13 statements by traditional authorities formed part of the inputs. An outline of the National Land Policy and Communal Land Bill was distributed before the Conference.

It must also be considered whether specific inputs are presented at the Conference to start and inform a debate or not.

6 High Level Committee

On April 10 H. E. The President informed the nation during his SONA address that a High Level Committee chaired by the Prime Minister has been constituted. This Committee will be served by Technical Committee under the Chairmanship of the line Minister, comprising of Ministerial and civil society subject matter experts. Members of the Technical Committee should be selected based on their experience in managing and or researching land related matters. Other stakeholders such as organised agriculture and civil society need to be represented. The Committee should steer the process and provide professional inputs.

To function effectively in guiding the Conference and the subsequent policy development process, the Technical Committee needs to have clear Terms of Reference. It should be tasked to identify areas for subject matter specialist inputs and draft appropriate Terms of Reference. It should also appoint suitably qualified consultants and have the capacity to supervise their work.

7 Information

Much effort was put into providing the general public with information about the first National Land Conference in 1991. This included visits to all regions by members of the organizing committee to provide information about the Conference, as well as a flyer and a 11 page Conference Brief, setting out the broad programme, research projects, organization as well as Advisory Committee and Secretariat members. It is important to provide stakeholders with information well in advance of the Conference to enable them to make the necessary arrangements to attend, especially those coming from far.

We have organized and hosted a big Land Conference under the auspices of the Prime Minister, now President of the country. It can be done again.

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