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INFORMATION ABOUT NAMIBIA'S LAW

The Land Bill: What is it all about and is it needed?

Background

The Land Bill has come a long way. The first draft was circulated to the public in 2010. Its principal aim is to consolidate and amend the [Agricultural \(Commercial\) Land Reform Act 6 of 1995](#) and the [Communal Land Reform Act 5 of 2002](#) in order to ensure that all land in Namibia has the same status.

The Bill was eventually tabled in 2016 in the National Assembly. However, it was soon withdrawn in order to incorporate resolutions to be taken at the second national land conference announced by the then Minister of Land Reform.

This conference finally took place in October 2018 and a total of 40 resolutions were passed. A revised version of the Land Bill was circulated in September 2020. This version appears to reference some of the resolutions taken at the 2018 conference.

This column gives a brief overview of the September 2020 version of the Land Bill and considers its intended outcome.

Contents of the September 2020 Land Bill

The proposed Land Bill would replace the Communal Land Reform Act and the Agricultural (Commercial) Land Reform Act.

The Land Bill firstly focuses on communal land reform. It provides for the establishment of communal land boards and sets out their powers and functions. It also provides for the demarcation and extent of communal land areas, the allocation of rights in respect of communal land and the powers of the chiefs, the Minister and traditional authorities.

The Land Bill secondly focuses on commercial land reform. This part of the Bill establishes the Land Reform Advisory Commission that deals with advice on commercial land reform. It gives the State a preferential right to purchase agricultural land, and provides for the compulsory acquisition and alienation of agricultural land by the State. It also prohibits the acquisition of agricultural land by foreign nationals and regulates the leasing of agricultural land by foreign nationals.

The Land Bill would establish a Lands Tribunal and set up a Land Acquisition and Development Fund. It would also provide for the allocation of un-surveyed State land and impose land tax and lease hold fees.

Finally, the Land Bill also retains the policies in the current law mandating that agricultural land is provided by the State for the purposes of land reform, to be allocated to Namibian citizens who do not own or otherwise have the use of adequate agricultural land – with priority being given to Namibian citizens who were socially, economically or educationally disadvantaged by past discriminatory laws or practices.

With regard to the last point, the principle behind land reform remains to make land available to those who were previously disadvantaged, rather than focusing on those who are currently marginalised or disadvantaged.

How would the Land Bill change the existing land reform institutions?

Under the proposed Land Bill, Communal Land Boards and Traditional Authorities would retain their functions with regard to the allocation of customary and leasehold rights. The granting of occupational land rights for public services also features in the Land Bill.

The Land Bill also includes new sections that would prohibit the granting of customary land right to foreign nationals, while the acquisition of leaseholds by foreign nationals would be restricted but not prohibited.

The prohibition against illegal fencing on communal land remains in the Land Bill, as this is clearly still a huge challenge for both Land Boards and Traditional Authorities.

With regard to the composition of land boards, conservancies would not be represented feature on land boards under the proposed Bill. It is not clear what has led to this decision, as conservancies have a vested interest in the use of communal land. A new addition to land boards would be a representative from the Ministry of Justice.

The Land Bill retains the key features from ACLRA that gives the Minister the right to acquire commercial agricultural land for purposes of land reform and the vesting in the State of the preferential right to purchase such land.

The key institutions established by Agricultural (Commercial) Land Reform Act would remain in place under the proposed Land Bill: the Land Reform Advisory Commission, the Lands Tribunal and the Land Acquisition and Development Fund.

The Commission's functions would remain purely advisory, and would include making investigations and recommendations to the Minister.

With regard to the Lands Tribunal, the proposed Bill would give it jurisdiction to rule on any land related matter or dispute – including those relating to communal land. This is a welcome step as far as communal land dispute resolution is concerned, because the Tribunal would have several experts on board, including a judge with 10 years' experience as the chairperson, along with experts in the fields of law, customary law, agriculture, social sciences and land valuation.

Finally, the Land Acquisition and Development Fund established under the current law would also retain its current functions under the proposed Land Bill. The Fund consists of

appropriations from Parliament as well as other sources of income. It is earmarked to cover the acquisition or development of agricultural land, the payment of compensation in connection with any termination or cancellation of a lease, compensation for improvements on both communal and agricultural commercial land, agricultural infrastructure on both commercial and communal lands, capacity building for land reform beneficiaries and farming inputs.

Conclusion

Efforts to merge the Agricultural (Commercial) Land Reform Act and the Communal Land Reform Act into a single Land Act have been in the making for over ten years.

While the idea to create one uniform Land Act for the whole of Namibia carries certain political mileage, the reality of Namibia's land administration often tells a different story.

Namibia's communal and commercial land reform processes have different applications, challenges and intended outcomes. For example, the Agricultural (Commercial) Land Reform Act deals mainly with facilitating a land reform process where commercial agricultural land is made available to those Namibians who have been disadvantaged by past discrimination. In contrast, the Communal Land Reform Act deals mainly with land tenure reform for the purpose of promoting the economic and social development of the people of Namibia.

While these ideals are not mutually exclusive, the truth is that they serve different purposes. This makes the merger of the two existing laws seem rather superficial.

It would make more sense to focus on how the provisions under both of the current laws could be improved to bring about the necessary socio-economic changes that both these laws seek to achieve. This process should include an honest assessment of the shortcomings of the existing laws and a review of the accompanying land policy frameworks to identify changes that could strengthen the performance of the current land reform institutions.

For more background information on the proposed Land Bill, see Wolfgang Werner, "The 2016 Land Bill: Making Law Without Consultation and Policy Review," IPPR, February 2017, available at ippr.org.na/wp-content/uploads/2017/02/Briefing_Land2017.pdf.

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