

LEGAL ASSISTANCE CENTRE

LEAD Project Annual Report 2000

1. Staffing

The Land, Environment and Development Project (“LEAD Project”) is currently staffed by the project co-ordinator, Norman Tjombe, and Collette Campher, who serves as project assistant to LEAD, the Gender Research and Advocacy Project and the Human Rights and Constitutional Litigation Unit. In addition, Willem Odendaal, a researcher primarily for the Gender Research and Advocacy Project, assists LEAD with research, and Andrew Corbett and Elly Shipiki (previous LEAD co-ordinators) continue to render consultancy services to the project. An additional legal practitioner and a project assistant will be recruited in January 2001 to work full-time for the project.

2. External evaluation of the LEAD Project

As specifically requested by Hivos, one of the project donors, an external evaluation of the LEAD Project was commissioned and completed in 2000. South African lawyer and land reform expert Johann Hamman and Namibia National Farmers’ Union official Paul Vleermuis were the external consultants contracted to conduct the evaluation.

The primary purposes of the evaluation were:

- (a) to analyse the extent to which the LEAD Project has fulfilled its objectives and carried out its objectives;
- (b) to assess the results and effects of the financial support rendered by the LEAD Project donors; and
- (c) to assess the future short-term and long-term objectives of the LEAD Project and strategies for achieving these objectives.

The final report notes the following:

Respondents argued that the LAC was still the best institution [in which] to base the service. It has demonstrated its financial propriety and has an impressive track record in serving the needs of its intended beneficiaries. Staffed by highly skilled professionals, [the LAC] can be referred to as a ‘blue chip’ NGO. Relationships with donors are good, and the organisation has an ‘institutional memory’ which ameliorates the possibility of skills being too closely associated with a person or persons – a real risk in the context of a dearth of skills.

However, the report also identifies major shortcomings:

First, the LEAD project was always closely identified with Andrew Corbett. As the project developed, he became more experienced and skilled, and served as valuable resource to many of the organisations working in the rural development field. There is an anxiety that these skills will be lost to them under the current structure.

Second, the demand emanating from the field is not being met properly. CBNRM experts expect the registration of approximately 30 new conservancies over the next two years. These applications and registrations, as well as the concomitant constitutions and joint venture agreements, will place heavy demands on the LAC. Recent experiences with the LAC have been disappointing.

And further:

To the evaluators it became clear that the LAC's LEAD project cannot continue with the current capacity. Ironically, it is doing more harm than good by creating expectations of service provision which it cannot meet.

The recommendations of the report have been noted. As stated above, the project is recruiting an additional full-time legal practitioner and a full-time project assistant. Also, it has been proposed to management that the "senior" candidate legal practitioners at the LAC devote some of their time to the LEAD Project. A proposal has been submitted to the Namibia Nature Foundation for additional funding to enable the project to advocate in complicated matters and to conduct training workshops on CBNRM issues.

3. Research

Andrew Corbett produced a paper titled "Southern African Public Interest Law and Community-based Property Rights", which was presented at a workshop in Arusha, Tanzania, in August 2000. The workshop was organised by the Center for International Environmental Law based in Washington, USA, and the Legal Environmental Action Group of Tanzania.

In October 2000 Andrew attended a conference hosted by the Programme for Land and Agrarian Studies (PLAAS) at the University of the Western Cape in Cape Town, South Africa, and presented a paper there titled "Legal Aspects of Governance in CBNRM in Namibia".

Andrew delivered a particularly informative research paper titled "The Nature of Legal Assistance Required for the Community-based Natural Resources Management Programme" at a conference of the CBNRM Association of Namibia (CAN) in October 2000.

An 18-month regional research project titled "A Regional Assessment of the San of Southern Africa" has been completed and the five reports produced under the project will be printed early in 2001.

Currently the LEAD Project and Gender Research and Advocacy Project are jointly conducting a study aimed at assessing the impact of the land reform process in respect of commercial agricultural land. The research will look particularly at whether land was redistributed by way of sale, lease or other means; how many land allocations had been effected in the name of men relative to women; whether in law and in practice the inheritance rights of dependants are protected when the person(s) in whose name(s) the land is allocated die(s). The research, which started in earnest in June 2000, will be completed before the end of 2000.

4. Litigation and legal advice

Epupa hydroelectric scheme: Since 1997 LEAD has represented the Ovahimba community at Epupa in negotiations with government over government's proposal to build a hydroelectric power scheme on the Kunene River which traverses the Ovahimba's traditional land. This representation

continues, though nothing has been forthcoming from the side of the governments of Namibia and Angola. The LAC's continued support to the Ovahimba community on various other issues (such as tourism development) is strengthening the community's ability to deal more effectively with such threats.

Purros community: The LEAD Project is representing the Purros Community in their bid to reclaim their community campsite from a family.

Conservancy and tourism rights: Though a number of conservancies are up and running, the LEAD Project had been requested by Integrated Rural Development for Nature Conservation (IRDNC), the existing conservancies and communities wanting to set up conservancies to continue rendering legal services to them.

Masubia land dispute: The LEAD Project is representing the Masubia community and the Salambala Conservancy Committee in the Caprivi Region in a land dispute involving four families which are jeopardising the conservancy set up by the Salambala Masubia community by refusing to move out of its core wildlife area. In 1998 LEAD successfully opposed a High Court spoliation application by the families and instituted proceedings to evict them from the area, and soon it will institute an eviction action against the four families.

Insecurity in the Caprivi Region: The CBNRM activities in West Caprivi have been massively disrupted by the ongoing conflict in region. The LEAD Project is advising the IRDNC in the region on various matters – ranging from the killing of a community game guard and the arrest of another. LEAD is also advising the Kxoe community of West Caprivi in relation to harassment from the Namibian security forces.

Sesfontein community: The LEAD Project is currently consulting with the Sesfontein community with a view to assisting them to register the proposed Sesfontein Conservancy. The registration has been blocked by a traditional chief who appears to be fearing the loss of some of his powers to the conservancy.

Women's rights to inherit land and land rights: The LEAD Project has been approached via the Human Rights Centre (HRC) in Ongwediva to legally assist a widow in preventing the male relatives of her late husband to evict her from her and her late husband's homestead. All the affidavits have been prepared except for that of the expert on Kwanyama customary law. The application will be launched in December 2000.

Adequate compensation of private land: The LEAD Project is representing four clients in Oshakati in an eviction case. The University of Namibia and the Oshakati Town Council issued notices evicting the four clients from their land, which was demarcated for UNAM's regional campus development. They were offered ridiculous amounts as compensation for their conventional brick houses – the highest being N\$2 000,00! LEAD has made counter-proposals for compensation, but the matter is still pending.

5. Education and training

Namibia's National Land Policy has been translated into a simplified English version, and is due to be published shortly. In the course of 2001 we will translate the policy into all indigenous languages for maximum accessibility.

Norman and Elly conducted a one-day workshop on the Communal Land Reform Bill at the HRC for staff of the Rundu Advice Office and HRC.

Elly also conducted several workshops on the Communal Land Reform Bill in several communal areas, for example those in the Kavango, Ohangwena and Omusati Regions. The target groups were mostly traditional authorities, farmers and community activists. Two more workshops on the bill will be conducted in the Kunene Region.

Professor Sidney Haring of the USA, a world-renowned expert on aboriginal land claims, presented his views at a round table discussion on the land reform process in Namibia and aboriginal title. The discussion was organised by the LEAD Project and attended by people from the History Department and Law Faculty at the University of Namibia, and staff of the LAC and other NGOs.

The Namibia Community Based Tourism Association (NACOBTA) organised a workshop with the Spitzkoppe Development Committee, which Andrew attended on behalf of the LEAD Project. He is now assisting the committee in establishing itself as a legally recognised body, as well as advising it on a Permission to Occupy (PTO) and a tourism concession.

In April 2000 Elly attended a workshop in the Namib Desert hosted by the Desert Research Foundation of Namibia (DRFN). The workshop theme was “Community-based Drylands Tourism”. Elly acted as a legal resource person and gave input on the laws applicable to community-based tourism.

In July 2000 Andrew and Elly attended a workshop hosted by NACOBTA focusing on reviewing the latter’s community-based tourism policy and joint venture agreements. The general feeling of the participants was that the LAC should be more involved in the sector and take particular responsibility for the review of joint venture agreements and providing general advice to emerging conservancies.

Norman participated in a panel discussion along with Wolfgang Werner of the Namibian Economic Policy Research Unit (NEPRU), Berry Karoumbe of the Namibian Non-Governmental Organisations Forum (NANGOF) and Paul Vleermuis of the Namibia National Farmers’ Union (NNFU) on the land reform process in Namibia. This event – which attracted considerable interest – was one of the activities of NGO Week.

In October 2000 Elly attended a lecture on the National Land Policy and the Communal Land Reform Bill during a workshop organised by Women for Development (WAD).

6. Plans and priorities of the LEAD Project

LAC Director Clement Daniels and Norman Tjombe met with two regional representatives of Hivos in March 2000 to discuss the LEAD Project’s priorities and plans, and Hivos held a very favourable view of it. Following is a summary of the plans and priorities presented to Hivos. Some plans are already being realised:

Education and advocacy

1. Continue reviewing – together with other NGOs – the land reform process and particularly the Communal Land Reform Bill.
2. Produce educational material on the Communal Land Reform Bill, such as a simplified version of it for use by the general public.

3. Embark on extensive training and information-sharing activities to educate people (such as the traditional authorities and end users) on the mechanisms, rights and obligations created by the Communal Land Reform Bill.
4. Continue to provide training for communities wanting to establish communal area conservancies and other tourism activities.

Litigation and advice

5. Continue advising the West Caprivi Kxoe community on their land and cultural rights, and assist them to develop a strategic response to the envisaged Babwata proposal – particularly since the government is in the process of establishing a presidential commission of inquiry to investigate the Kxoe community's land rights.
6. Continue advising the Epupa community in respect of the Epupa Hydropower Scheme – particularly since a final decision on whether or not the dam will be built is likely to be made during the course of this year.
7. Continue providing legal assistance and advice to the Epupa community regarding developmental activities (especially community-based tourism) undertaken by them.
8. Continue assisting the established as well as emerging conservancies with the drafting of their constitutions and joint venture and concession contracts, and with dispute resolutions.
9. Researching and taking legal action and/or making appropriate proposals for law reform on the inheritance of land in black estates.

Other

10. Investigate illegal fencing in communal areas, especially in the northern regions, the eastern parts of the Otjozondjupa Region and the Omaheke Region.
11. In collaboration with other NGOs, continue investigating the viability of introducing a project to provide capacity within the national Community Based Natural Resource Management Programme for the resolution of conflict over the use of natural resources.
12. Networking in the region on land reform and environmental protection.
13. In collaboration with the trade unions, provide training and organise other information-sharing activities on occupational hazards – especially in the mining and fishing sectors.

NORMAN TJOMBE

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Friday 1 December 2000