



NATIONAL LAND POLICY

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Foreword

Among the sensitive and complicated issues Namibia strives to solve since independence is the land question. The circumstances under which land ownership passed from one social group to another or from community to private individuals have complicated matters further. Expropriation of land without compensation, theft, and unfair acquisition characterised the pre-independence history of Namibia. Such expropriation facilitated the concentration of large tracks of fertile land in the hands of a small section of the population.

During the era, the indigenous Namibians were forced into communal areas which are predominantly marginal and poor for agricultural production. Lack of secure land tenure is among the constraints which inhibit development in communal areas. With the introduction of different but secured land rights in communal lands, land ownership and the administration thereof will be streamlined.

As the offshoot of colonial legacy and some archaic traditional norms and culture women did not have rights to land. Often, widows and their children are evicted from the land after the death of the husbands or father to pave the way for occupation by male relatives of the deceased.

The philosophy behind this National Land Policy is aiming at redressing, in the spirit of national reconciliation constitutionality and nation building, the problem of dispossession, discrimination, and inequitable distribution of land that characterised the pre-independence era. It is the first time in the history of Namibia that a policy on land is designed and which provides for a unitary land system where Namibians have equal rights, opportunities, and security across a range of land tenure irrespective of whether such land is in communal or commercial area.

This document contains the most progressive land reform package our epoch has ever known. The package represents the basic principles and guidelines on which land legislation for both the commercial and subsistence sectors should be developed. It should further be seen as the basic for the promotion of sustainable utilisation of land as a natural resource.

Land utilisation without the concomitant good management thereof is the fastest way of enlarging our two deserts: the Namib and the Kalahari. This must be everybody's watch out reminder.


Mrs Pendukeni Iivula-Ithana (MP)
MINISTER

Introduction

Access to, and tenure of land were among the most important concerns of the Namibian people in their struggle for independence. Since 1990, and following the 1991 National Conference on Land Reform, and the Consultative Conference on Communal Land Administration in 1996, Namibia's democratically elected government has maintained and developed its commitment to redressing the injustices of the past in a spirit of national reconciliation and to promoting sustainable economic development. The wise and fair allocation, administration and use of the nation's urban and rural land resources are essential if these goals are to be met.

Namibians still have many concerns about land. In the rapidly expanding urban areas, many poor people have no official rights to the land on which they are trying to exist. Others are uncertain about how their long standing land rights on the edges of growing towns will be affected by the expansion of urban boundaries and the establishment of municipalities. In many previously unproclaimed towns, there is frustration at the inability to survey and register land rights and ease access to credit for investment and development. In many parts of the country, there is a serious lack of urban and regional planning capacity, with the result that residential and industrial growth is inefficient, poorly serviced and sometimes harmful to the economic and environmental welfare of the nation.

In the rural areas where the majority of Namibians live, people are concerned about the lack of clear policy and administrative structures for land allocation and management. Long standing grievances about the injustice of colonial land allocations will begin to be addressed by the Agricultural (Commercial) Land Reform Act of 1995. But in the communal areas, clear steps need to be taken to remove uncertainty about legitimate access and rights to land, and the ways in which land is administered. In some areas, traditional authorities currently undertake land administration with varying degrees of efficiency and legitimacy. In other areas, there is no clear or broadly accepted authority over land. In several parts of the country there is growing tension between those who are thereby excluded from access to this land. The roles and rights of the government, the chiefs, the rich and the poor are still uncertain. Under these circumstances, many people continue to see the communal areas, and communal land tenure, as receiving second class treatment and offering second class land rights to the Namibians who live there.

As the most arid country in Southern Africa, the climate of Namibia is highly variable and dry years are normal. This restricts the productive potential of the land and therefore the people's expectations and considerations must always be based on the long terms average and not on good years. The productive potential of the land is not uniform, that is why flexible and regionally appropriate utilisation of natural resources is essential. Because of poor resource management, inequitable land distribution and increasing population pressure, land use is typically unsustainable.

1. FUNDAMENTAL PRINCIPLES

Namibia's National Land Policy is based upon the principles enunciated in the Constitution and on the national commitment to redress the social and economic injustices inherited from the colonial past.

1.1 Equality before the law

Article 10 of the Constitution of the Republic of Namibia states that all persons shall be equal before the law and that no one shall be discriminated against on the grounds of sex, colour, ethnic origin, religion, creed or social or economic status.

1.2 A mixed economy

Article 98 of the Constitution provides for a mixed economy based on the following forms of ownership; public, private, co-operative, joint public-private, co-ownership and small-scale family.

1.3 A unitary land system

In keeping with these constitutional principles, this National Land Policy provides for a unitary land system for Namibia, in which all citizens have equal rights, opportunities and security across a range of tenure and management systems. Under the colonial regime there were, in effect, first and second class systems of land tenure, divided along racial lines. In independent Namibia, the full range of tenure and management systems will be given equal status and validity before the law. Where possible account may be taken of regional differences when designing a land reform programme.

1.4 Focus on the poor

Within Namibia's unitary land tenure system, Government policy will at all times seek to secure and promote the interests of the poor, ensuring that they are in practice able to enjoy the rights of which they are assured in principle. A special commitment will be made to ensure equity in access to land and in security of land tenure. Special programmes to help the poor to acquire and develop land will be considered.

In determining who constitutes 'the poor', reference will be made to the following description of the target group, namely 'the landless or those with little or insufficient access to land who are not in formal employment or engaged in non-agricultural business activities'.

1.5 The rights of women

In accordance with Article 95 (a) of the Constitution, women will be accorded the same status as men with regard to all forms of land rights, either as individuals or as members of family land ownership trusts (see below). Every widow (or widower) will be entitled to maintain the land rights she (or he) enjoyed during the spouse's lifetime.

In practical terms this means that-

- * Women will be entitled to receive land allocations and to bequeath and inherit land;
- * government will actively promote the reform of civil and customary law which impede women's ability to exercise rights over land;
- * policy will promote practices and systems that take into account women's domestic, productive and community roles, especially in regard to housing and urban development, agricultural development and natural resource management.

1.6 Security and protection

As implied by the principles earlier stated, Namibia's unitary land system will accord full and equal security and protection to all legally held land rights, regardless of the form of tenure, the income, gender or race of the rights holder.

1.7 Sustainable use of land and natural resources

In accordance with Article 95 (L) of the Constitution, this National Land Policy requires environmentally sustainable land and natural 'resource use'

1.8 Public accountability and transparency

Subject to legitimate requirements of confidentiality which may be necessary in the public interest, Government will ensure through appropriate legislative provisions that:

- * All aspects of land administration by Government and other agencies are open and transparent;
- * all financial transactions involving land and public funds are audited on a regular basis in accordance with generally accepted accounting principles;
- * all proceedings of regional and local land boards shall be open to the public and the minutes of such meetings open to public scrutiny.

1.9 Land as property

Article 100 of the Constitution states that land belongs to the State if it is not otherwise lawfully owned.

Lawful land tenure' will in future be defined to mean all forms of land rights recognised by this policy and consequent legislation.

1.10 'Land' as a renewable natural resource

Tenure rights allocated according to this policy and consequent legislation will include all renewable natural resources on the land, conditional on sustainable use and subject to details of sectorial policy and legislation.

1.11 Multiple forms of land rights

Namibia's Land Policy will accord equal status before the law to several forms of land rights and several categories of land rights holder.

Forms of land rights will be:

- * customary grants
- * leasehold
- * freehold
- * licences, certificates or permits
- * State ownership.

Categories of land rights holder will be:

- * individuals
- * families which are legally constituted as family trusts in order to assure specified individuals and their descendants of shared land rights
- * legally constituted bodies and institutions to exercise joint ownership rights
- * duly constituted co-operatives
- * the State

Government will expedite legislation setting out the forms and conditions of ownership and association specified above.

2. URBAN LAND

2.1 Establishment and proclamation of local authorities

Prior to independence many urban areas developed, which because of the discriminatory policies of the colonial regime, were never proclaimed as municipalities or townships and in which no local authority administration developed.

The National Land Policy requires the establishment and proclamation of urban or urbanising areas as townships and municipalities where appropriate, to promote decentralisation and the close involvement of communities in their own administration.

While pursuing this policy, Government acknowledges the inadequacies of the present proclamation procedures, particularly in respect of the time the process takes and the lack of provision for dealing with rights and property existing prior to proclamation. To address this, a review and amendment of the legislation and the procedures will be instituted.

Whilst the main thrust of the re-drafting will be to streamline the process, particular attention will be paid to the establishment of a transparent, flexible and fully consultative local authority planning system together with discretionary development regulations.

Legislation will also be enacted to enable the compulsory acquisition of land by central or local government authorities for public purposes in accordance with Article 16 of the Constitution.

2.2 Land administration

Urban land administration will continue to be carried out by local authorities.

Rapid urbanisation requires that this situation be urgently reformed. Therefore Government will immediately begin to develop the necessary human capacity to decentralise the land administration with the placement of land officers in Regional centres to service groups of local authorities within the Region. This will be co-ordinate with the establishment of Regional Land Registries (Land Registration).

While the more complicated situations may still have to be referred to MRLGH headquarters, much of the work will be handled regionally. In due course, where volume dictates and as technical and professional capacity expands through training, lands officers will be placed at local level.

2.3 Survey & Mapping

Survey and Mapping is the bedrock of all developments and main contrivance for locating, recording and managing natural and other resources. Therefore, in order to achieve our goal of even development throughout the country, Government will endeavour to build up local capabilities and capacities in survey and mapping to be able to:

- * Develop the competence to record in detail, with maps and co-ordinates, Namibia's natural resources and infrastructure;
- * establish and density geodetic control points throughout the country;
- * produce and revise topographic maps of the country at relevant scales;
- * execute cadastral surveys in support of proclamation of towns and property registration;
- * provide geospatial information in support of socio-economic planning and development;
- * acquire and establish the necessary tools and capacity to adjudicate over and justly distribute, land with secure tenure rights, to its owners.

2.4 Land delivery

Namibia, like most countries in Africa and the developing world, is experiencing a rapid urbanisation of its population, sometimes referred to as urban drift. The existing land delivery system in urban areas administered by local authorities and MRLGH has historically concentrated on providing serviced land, for whatever purpose, to middle and upper income individuals and business concerns. However, the greatest demand now comes from the urban drift (usually the very poor and those disadvantaged under previous regimes) and the present system has yet proved unable to satisfy this demand.

Town planning will take into account the interests of the poor, as historically they have been neglected in terms of town planning done in Namibia.

Issues that need attention are the following:

- * Topography (rivers and hilly areas);
- * the deliberate segregation of the poor restricting their potential for proper integration into the social fabric of the urban environment;
- * unavailability of local building material resources to the poor, such as sand and clay;
- * distances from places of work;
- * inflexibility of town planning schemes.

Town planning studies will be conducted at an early stage of the implementation of the policy and the establishment of municipalities, towns and villages to ensure that they develop according to flexible guidelines which take into consideration multi-sectoral inputs, including community consultation. It is particularly important to co-ordinate the activities of urban land administration with the functions of the Regional Land Boards envisaged in the rural sector, as well as with other planning bodies such as the Land Use and Environmental Board and the Environmental Commissioner proposed by forthcoming legislation.

Namibia's Land Policy, while recognising that the need of all sectors of the population for urban land should be addressed, will aim to overcome inequalities in the system and provide access to affordable land for the poor and disadvantaged sectors of society:

- * Local authorities will provide land serviced to an absolute minimum, i.e. a planned layout with a graded access road, through increasing levels of utilities to fully serviced plots;
- * the servicing of under-serviced land will be upgraded as the occupant's financial means permit;
- * where possible servicing will be carried out by labour intensive methods, drawing on local communities;
- * plots will be planned for groups as well as for individual use;
- * those who cannot afford to purchase the most basically serviced plot will be granted a long term right of occupation to a plot where regular rental payment will count towards purchase of the land over an extended period of time;
- * local authorities will audit their land holdings and re-examine the utility value of any open space to identify additional development land for all use categories;
- * the local authority will continue to be the land administrator while Government will act as an enabling agency, wherever possible, and enact legislation to ensure policy implementation;
- * Government undertakes to enact a broad piece of enabling legislation in order to alleviate problems which may arise due to a lack of, or unduly restrictive legislation, in order to ensure the immediate implementation of this policy.

The desire for a more secure form of tenure and a wide array of property related needs has been expressed from various parts of Namibian society.

Government will address these further needs around land delivery including:

- * The assurance that people and their families will not be evicted without fair compensation;
- * the assurance that the immediate heirs can inherit property;
- * the assurance that people will be able to sell or otherwise transfer their property;
- * a reduction in land disputes;
- * an inexpensive and easily accessible system for administering property rights.

While these policy provisions are implemented immediately to try to cater for the present urban land shortages, other measures will be taken to address the causes. These will include:

- * The establishment of a second national city in the northern quarter of the country in order to break the 'capital city syndrome' of concentrating the majority of business activity in Windhoek, where rapid population growth and lack of water now threaten the very fabric of the city.

2.5 Land tenure

Freehold title is the only form of secure, registerable title available in urban areas which affords the holder ownership that is transferable, inheritable and provides collateral against a loan. Government is aware that not all citizens can afford a freehold title immediately, but that they may aspire to it and the advantages it conveys. Whether or not they seek a freehold, most wish to obtain some form of secure tenure.

Government endorses the idea that urban dwellers, especially in informal settlements should be entitled to hold rights to urban land on the basis of group tenure. This makes sense where there is a desire by a community to retain a customary tenure arrangement already existing or where a community development organisation decides to acquire land and facilitate an urban housing development project. This approach also ties-in with the policy provisions of Government in terms of which it intends to encourage communities to participate in and take responsibility for as much of their own land administration as possible.

Therefore a number of different types of secure title, that may be held by groups as well as individuals, will be introduced. Through amendments to the existing titling and registration procedures, costs will be reduced to provide a starter title, inexpensive enough to enable the poor owner to benefit.

The titles aimed at the lower income groups will be upgradable by stages as and when the owner's financial circumstances permit, and if so desired, eventually to a freehold.

Customary tenure is likely to exist within certain urban areas for some time to come and will be accommodated and accorded equal status alongside other forms of tenure in line with the unitary land system.

2.6 Permission to Occupy (PTO) certificates

The urban PTO now issued by MRLGH is in the nature of a licence allowing the holder to occupy Government land. It conveys no rights of ownership but it does contain an option for the holder to obtain secure title to the land if at any time during the currency of the PTO such title becomes available.

The PTO system in urban areas will be phased out as the full range of existing and projected forms of tenure becomes available.

PTO's will only be converted into secure title once it has been determined in accordance with Communal Land Legislation as to whether the holder thereof is actually entitled thereto.

2.7 Land registration

At present Namibia has only two registries for land rights: Windhoek and Rehoboth. In line with the national policy to provide secure rights on a much wider scale and to bring more control and direction of land matters to the communities affected, it will be necessary to increase registration capacity and to decentralise it.

Government will establish Regional Land Registries as and where the volume of transactions dictates. In addition, Local Land Registries in each urban area will be established in terms of legislation introducing the upgradable title system. These registries will record the starter titles of the upgradable title system. To avoid duplication, the setting up of these registries will be co-ordinate with the establishment of Land Boards for rural land and their needs for such services.

2.8 Finance

Finance for land acquisition and development is well organised and provided for in respect of middle and upper income classes and for the formal business sector.

Namibia's land policy will endeavour to correct the current bias and ensure that access to finance to acquire land is available.

2.9 Taxation

Land and property taxation in proclaimed urban areas already exists in the form of rates levied against land and improvements situated on freehold land. In many unproclaimed and newly proclaimed urban areas significant private developments exist on non-freehold land and thus escape taxation. Different rates of land taxes will therefore be introduced in the rural areas.

2.10 Informal settlements/squatting

The rapid urbanisation of Namibia's population, together with the inability of the land administration system to provide sufficient plots to meet demand, and/or the demand being unable to meet the cost of such plots, has resulted in the growth of informal settlements in the formal urban areas and in the periurban areas.

In terms of Namibia's Land Policy a squatter is a person occupying land without the owner's permission and where that owner wishes to, or is trying to, remove the squatter. An informal settler is a person occupying land in an unplanned manner, with the owner's expressed or implied permission to be there.

A squatter ceases to be classed as such when she/he obtains formal ownership of the land or enters into a rental agreement for the occupation of the land or leaves the land.

The National Land Policy will continue to support the present multi-sectoral programmes to upgrade informal and squatter settlements by:

- * Ensuring that additional local land is available to settle those displaced by the formalised planning of such settlements;
- * the provision of secure tenure through the upgradable tenure system and registration based on local land registries.

The provision of services and the level of upgrading of plots will be based on the same criteria as for the provision of very low cost plots set out in 'Land delivery'. Such provision will include cost recovery.

Each informal housing structure will be regarded as part of the country's limited housing stock and, where not situated on public land, will be upgraded rather than removed against the will of those people occupying it. In this process the co-operation and participation of informal settlers will be sought.

2.11 Industrial and commercial land

The National Land Policy will support multi-sectoral efforts to increase employment by making industrial and commercial land available in areas identified for such development. The policy will promote co-

ordination between relevant Ministries, in particular between MLRR, MRLGH, MAWRD and the Ministry of Trade and Industry, to ensure that land is available to support investment incentives across the country and thereby increasing employment opportunities.

2.12 Environment

Environmental issues are not the sole concern of the rural areas. They encompass the whole country, and urban land use must recognise this. All future development will be scrutinised for its environmental impact.

Financial and tax incentives together with the necessary new and reinforced legislation, will be put in place to promote:

- * The use of renewable energy resources;
- * the protection, promotion and rehabilitation of existing natural environments.

2.13 Under utilised or abandoned land

Namibia's urban population is currently growing at an alarming rate. The National Land Policy requires that existing urban land be fully utilised.

Under utilised and or abandoned urban land may be expropriated by the state for re-alienation.

2.14 Urban agriculture

Many of the soon to be proclaimed (or recently proclaimed) urban areas have small scale agricultural activities taking place in them. Every effort will be made to retain and accommodate such activities, only removing them when the subject land is physically required and after paying compensation to lawful occupiers.

Backyard gardening for nutritional purpose should be encouraged.

3. RURAL LAND

3.1 Ownership of land

In terms of schedule 5 (1) of the Constitution communal land is vested in the Government of the Republic of Namibia. The Government undertakes to administer this land in trust for the benefit of traditional communities residing on such land and for the purpose of promoting the economic and social development of the Namibian people.

3.2 Administration of land

The Administration of land in communal areas shall vest in Land Boards and Traditional Authorities. The Land Boards will be responsible for the survey and registration of all approved forms of land title in the area of their jurisdiction.

Regional Land Boards will, in particular, be responsible for:

- * Zoning areas within their region for National and Community development;
- * setting limits on the amount of land which can be made available for leasehold (in aggregate and to any individual).

3.3 Multiple forms of tenure

All rural people will be offered equal access to all the forms of tenure endorsed by this policy and to be specified under subsequent legislation. All these land tenure types will be given equal status, security and protection.

Tenure rights allocated according to this policy and consequent legislation will include all renewable natural resources on the land, subject to sustainable utilisation and the details of sectoral policy and legislation. These natural resources include wildlife, tourist attractions, fish, water, forest resources and vegetation for grazing.

Tenure rights allocated according to this policy and consequent legislation will be exclusive rights, enforcement of which will be supported by the law. However, the sharing of land and natural resources to mutual benefit between neighbours will be encouraged, particularly in times of drought and other stress.

(a) Freehold tenure

Although freehold tenure may offer advantages to those who have it in terms of mortgage-ability and security, these advantages are often exaggerated and can in fact be enjoyed through other forms of tenure if these are properly recognised in law and by financial institutions. It is not necessary to convert to freehold in order to redress the 'weakness' in current communal tenure systems.

b) Permission To Occupy (PTO) certificates

The rural PTO issued by the Ministry of Lands, Resettlement and Rehabilitation allows the holder to occupy state land.

As the new system becomes operative, the PTO system will be phased out. Existing PTO holders will be entitled to apply to their relevant Regional Land Boards for conversion to one of the new forms of tenure. Where this happens, such holders will have to establish with the Regional Land Board that he or she is legally entitled to the PTO and that it was not obtained through fraud or by any other irregular means.

(c) Leasehold

Long term leases which are secure, registerable, transferable, inheritable, renewable and mortgageable will be introduced in the rural areas, primarily for business purposes. These leases will be for periods of up to 99 years.

Leases will only be granted where the Land Board is satisfied that no person or group of person has existing rights to the land, and where they do, only where they consent thereto. Such leases include the granting of tourism concessions.

3.4 Customary grants

Allocation of customary land rights for residential and subsistence farming purposes shall be made by Traditional Authorities as has been the practice prior to the introduction of this policy.

A certificate of rights which is secure, inheritable by immediate family, i.e. husband/wife and natural children, and not limited in time will be introduced for customary uses such as residential purposes and subsistence farming. This certificate will not be mortgageable or transferable outside the limits of consanguinity.

3.5 Registration of tenure

All approved forms of land tenure will in future be accorded equal recognition and status, and the rights thereto will be entitled to inventory and/or registration with the appropriate Land Board or other approved authority.

3.6 Funding, staffing and training of Land Boards

The Ministry of Lands, Resettlement and Rehabilitation (MLRR) will provide for the capital and recurrent costs of establishing, staffing and operating Land Boards throughout the country. MLRR will also provide Land Boards with the necessary administrative and technical support and training.

3.7 Freedom of movement, settlement and acquisition of land rights

Namibia's Land Policy recognises all citizens right to freedom of movement, residence and settlement in terms of Article 21 (1) and (2) of the Constitution. This fundamental freedom does not refer to land ownership or property rights. Freehold is the only form of land property right covered by Article 16 (1) of the Constitution, which allows for all citizens to acquire, own or dispose of property anywhere in Namibia.

Rights to residence and settlement, where these require additional residential sites, are contingent upon the availability of suitable land and the approval by the competent local authorities (see 'Urban land'). Similarly, Namibians may acquire land anywhere in the country either by purchase of land through freehold or by application to, and on approval by, the Land Boards to be constituted in terms of this policy.

3.8 Availability of land for (agricultural) leasehold

Land in communal areas may be leased for agricultural purposes.

3.9 Dual Grazing

Dual grazing rights will be prohibited: persons with exclusive access to areas of grazing land will not be allowed to have access to areas of communal grazing land, except by express permission of the communities holding rights to such communal land.

In rural areas other than communal areas only freehold and leasehold title can be bought, sold or granted. For the transfer of other forms of title, the only payment required will be to cover administrative costs. This payment will be made to the authorised local land authority.

Government will investigate the possibility of a programme whereby the customary grant holdings of large commercial herd owners are upgraded to leasehold or where these large commercial herd owners are transferred from the communal areas to commercial farms so as to relieve grazing pressure in the communal areas. Any such programme will specifically exclude dual grazing rights for the commercial farm owners in communal areas.

3.10 Security and credit

As already provided in part by the Agricultural Bank Amendment Act, persons, families, groups or communities with forms of land rights other than customary rights are entitled to use these rights as collateral when applying for credit from lending institutions.

Government will promote the development of lending institutions that recognise these new forms of collateral.

3.11 Land taxation and user fees

A tax on freehold agricultural land will be introduced. The regional Land Board will be encouraged (and empowered) to introduce user fees for specified natural resources (in particular grazing land). These fees will be collected, managed and spent by the Regional Councils with financial supervision by the Ministry of Finance.

3.12 Restitution of land rights

Restitution of land rights abrogated by the colonial and South African authorities prior to Independence, will not form part of Namibia's Land Policy. However, this policy is committed to special support to all landless or historically disadvantaged persons and communities.

3.13 Land redistribution

Through the implementation of Land Reform, Government will promote a more just and equitable distribution of agricultural land to the benefit of formerly disadvantaged Namibians.

Land will be procured by Government from the freehold sector, either through the exercise of the Minister's right of first refusal when land is sold, or by compulsory acquisition of excessive and or under-utilised land. An inventory will be made of the Government's already extensive land holdings, and arrangements will be made to extend the use and/or disposition of this land to maximum social, economic and environmental advantage, while also taking into account the rights of those currently living there.

In line with the strategy to promote group tenure through a Regional Land Board in the communal-tenure areas, land redistribution efforts and the resettlement programme will have the following three key elements.

- * Develop un/under-utilised communal areas where this is environmentally sustainable;
- * purchase commercial farms in blocks and/or neighbouring/adjacent to existing communal areas wherever possible in order to increase efficiency, i.e. lower support

costs, the maintaining of links with traditional farming systems and the relieving of local pressure on existing cultivated and grazing land;

- * encourage the movement of large scale communal farmers from communal areas to freehold-tenure areas, thereby allowing the many small holders to stay.

The land so procured, together with available State land (other than the current communal land) will be redistributed by sale, lease or customary grant to Namibian individuals, companies or other legally constituted groups, on condition that these beneficiaries do not already have adequate land holdings. Priority will be given to those who will use the land for the purpose of production, including such activities as agriculture, game ranching and tourism.

3.14 Excessive land holdings

In terms of the Agricultural (Commercial) Land Reform Act, freehold land in excess of two economic units as defined by the Land Reform Advisory Commission may be compulsorily acquired by the Minister for redistribution.

Land Boards will be authorised to take similar measures against holders of other informal or formal land rights where their land holdings are considered, on the advice of the Ministry of Agriculture, Water and Rural Development (MAWRD), to be in excess of what is required for normally profitable production.

Any such action by Land Boards will require the approval of the Minister. Compensation may take the form of alternative land and/or money.

3.15 Abandoned and under utilization of land

The Agricultural (Commercial) Land Reform Act also provides for the compulsory acquisition by the Minister of Lands, Resettlement and Rehabilitation which has been abandoned or which, according to the advice of the Land Reform Advisory Commission and the MAWRD, is being under utilised. Land Boards will be authorised to take similar measures against land holders with excess holdings.

3.16 Foreign nationals

In accordance with the Agricultural (Commercial) Land Reform Act, foreign nationals may not acquire land or acquire any other property rights, except with the express permission of the Minister.

3.17 Environmentally sustainable land use

In accordance with Article 95 (1) of the Constitution, Namibia's Land Policy will at all times promote environmentally sustainable land use. Failure to demonstrate that proposed land uses are environmentally sustainable, will be grounds for Land Boards to terminate or deny the award of title.

3.18 Land Use Environmental Board

The Land Use and Environmental Board through its subordinate structures, the Inter-Ministerial Standing Committees on Land Use Planning (rural and urban), shall ensure that land use planning, land administration, land development and environmental protection are promoted and co-ordinated on a national and regional basis to guarantee environmental, social and economic sustainability.

Failure to maintain such sustainable use, or the infliction of any other environmental damage, will be cause for Land Boards to cancel a title, in consultation with the Regional Land Use and Environmental Board and with the approval of the Minister.

3.19 Subdivision of land

Despite the increasing pressure which population growth is putting on the land, limits will be placed on farmers wishing to subdivide and fragment commercial farm land in freehold tenure areas. Subdivision of commercial farm land will be allowed in order to broaden access to land, but only on condition that appropriate provision is made for the maintenance of farming units of an economically viable size and the long term sustainability of natural resources and agricultural production on the land.

3.20 Land enclosure

Land to which individuals or groups have formal rights of any of the types specified by this policy, may be fenced or otherwise enclosed, subject to appropriate spatial planning and consultation with users of land neighbouring the area to be enclosed. Under forthcoming land legislation, the enclosure of other land will be construed as unlawful abrogation of rights and will be an offence. Before the fencing of land is approved, it must be demonstrated that enough land remains available for other local users at present and in the foreseeable future.

In order to prevent anymore private enclosure, this policy declares an immediate end to any new fencing (for private enclosure of non-residential or crop land). Government will undertake an urgent census of private enclosure to help enforce the moratorium and to determine the exact extent, nature and impact of private enclosure.

3.21 Land Use Planning

Land use planning, natural resource management and related issues will be the responsibility of Land Use and Environmental Boards. These Boards shall be required to consult with Regional Land Boards on matters which will affect the administration of land rights.

Regional Land Boards shall liaise closely with Regional Councils in connection with their land use planning functions as Regional Councils have overall responsibility for development planning.

In accordance with the Minerals (Prospecting and Mining) Act, 1992, all mineral rights, notwithstanding the ownership of any person over land in, on and under which any minerals or groups of minerals are found, belong to the State.

However, the following are excluded from the term "minerals":

water, soil, sand, clay, gravel or stone, if used in buildings, agriculture, fencing, roads, bricks and tiles, sports fields, airfields, dams, reservoirs, weirs, canals or other irrigation works.

4. GENERAL CONSIDERATIONS

4.1 Ministerial responsibilities

The Ministry of Lands, Resettlement and Rehabilitation has the primary responsibility for the implementation for the National Land Policy. This duty will be performed in close consultation with other Ministries, including the Ministry of Agriculture, Water and Rural Development (with reference, inter alia, to land use planning); the Ministry of Regional and Local Government and Housing (with reference, inter alia, to urban and regional planning, Regional Councils and local authorities); and the Ministry of Trade and Industry (with reference, inter alia, to regional planning, investment incentives schemes, export processing zones and the relationship of credit to land rights).

4.2 Information, consultation and local involvement

Namibia's Land Policy is required to serve the community at large, and requires that the stakeholders be involved in the decision making process. To that end Government will provide for local consultation and involvement.

- * By ensuring that information on land matters and procedures is freely available throughout Namibia in all languages;
- * in addition to being published in the Gazette and local newspapers, notification to the stakeholders of land issues, particularly land planning, disposals and acquisitions, will be broadcast on the radio in local languages and posted as public notices throughout the subject areas;
- * by involving stakeholders, NGO's and individuals, formally and informally, in land administration and ensuring that they have a full understanding of the Land Policy and its implications for their community.

5. IMPLEMENTATION

Two key pieces of legislation will follow:

- * Agricultural Communal Land Legislation to establish Land Boards and deal with matters relating to customary grants and leasehold.
- * The Amendment Agricultural Commercial Land Reform Act which governs the acquisition and expropriation of commercial land for resettlement purpose.