

FINANCING RESETTLEMENT AND SECURING TENURE: ARE LEASEHOLD AGREEMENTS THE KEY TO SUCCESS?

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Introduction

Two significant events regarding post-settlement support to resettlement farmers took place in Namibia in 2009.

The first event was the signing of a memorandum of understanding between the Ministry of Lands and Resettlement (MLR) and Agribank in February. This agreement entails that each of these institutions will contribute N\$10 million (in total N\$20 million) annually to a special account which they would jointly establish, to be administered by Agribank, with the aim of ensuring that resettled farmers are able to acquire the equipment necessary to increase their agricultural production (*The Land*, July 2009: 2).

The second event took place in August when – nearly 15 years since Parliament passed the Agricultural (Commercial) Land Reform Act 6 of 1995 – the MLR commenced with issuing leasehold agreements to resettlement beneficiaries, beginning in Khomas Region. At the signing ceremony held at Dordabis near Windhoek, Minister !Naruseb stated that the signing of the 99-year leasehold agreements will secure tenure for resettled farmers and enable them to access loans from Agribank as well as commercial banks in the future (*Namibia Economist*, 28 August 2009).

While these two events are important milestones in Namibia's resettlement programme, a few questions remain unanswered with regard to the real benefits that leaseholds will bring to resettlement beneficiaries.

To explore how land reform has impacted on poverty reduction and livelihood improvement objectives, research was carried out under the umbrella of the *Livelihoods after land reform* (LaLR) programme. Two other research teams conducted similar assessments in Limpopo Province in South Africa and Masvingo Province in Zimbabwe. A central issue in the research was the *viability* of

new land-based livelihoods. Guiding questions included whether beneficiaries were able to use their land productively, whether they were able to achieve food security, and whether land redistribution in its current form is sustainable in the long run.¹

Why has it taken so long to issue leaseholds?

Before any land is registered with the Registrar of Deeds, the Office of the Surveyor-General has to survey it. Secondly, the Office of the Valuer-General has to value the surveyed land to render the leasehold agreement valid. The Directorate of Resettlement, responsible for the allocation of resettlement units and issuing of leases, cannot process leasehold agreements without survey diagrams and valuation figures for each unit.

The main reason for the delay in issuing the agreements is said to be that the Directorate of Survey and Mapping and the Directorate of Valuation and Estate Management within the Ministry of Lands and Resettlement could not produce survey diagrams and valuation figures on time due to a lack of personnel (interview, Directorate of Resettlement, 25 November 2009). In 2000 the two directorates had a workforce of 200, and by 2009 this number had decreased to around 50. The decrease is attributable largely to personnel having taken up higher-paid employment in the private sector.

Since the start of the resettlement programme, about 424 farms have been surveyed. By the end of 2009, only 50 beneficiaries had been registered and given their leaseholds (interview, Directorate of Resettlement, 25 November 2009).

In brief, the criteria to be fulfilled before a resettlement beneficiary can be issued a leasehold are as follows:

- A survey diagram of the farming unit must be obtained after the farm has been demarcated.
- The survey diagram, valuation letter and resettlement notice must be attached to the leasehold agreement.

A farming unit has to be valued because the lease fee is determined from the valuation. The valuation determines the unit's market value or capital value, from which an annual lease amount is derived. Resettlement beneficiaries will be required to pay a lease fee of 5% of the market value per annum after the first five years (*Agreement of Lease*, 2009: 3; interviews with Directorate of Valuation and Asset Management and Directorate of Resettlement, 25 November 2009). The lease fees received from the beneficiaries are deposited in the Land Acquisition and Development Fund (LADF).

¹ The three-year research programme was undertaken by the Institute for Poverty, Land and Agrarian Studies, School of Government at the University of the Western Cape; the Institute for Development Studies, University of Sussex, UK; and the Legal Assistance Centre, Namibia. We would also like to thank the Economic and Social Research Council (ESRC) of the UK for its financial support for the project (number RES-167-25-0037). See www.lalr.org.za for more details and other research outputs.

The Land Acquisition and Development Fund

Apart from the costs of acquiring and developing agricultural land, the LADF is used to pay compensation, interest and other costs, such as costs in connection with a termination or cancellation of a lease in terms of section 13B of the Agricultural (Commercial) Land Reform Act 6 of 1995 (ACLRA). The MLR manages the LADF. In addition to the N\$50 million that bolsters the LADF annually, the Fund has received an annual inflow of approximately N\$27 million since land tax was introduced in 2005 (interview, Division of General Services, 8 February 2010).

Can a leasehold be used as collateral?

In principle, financial institutions accept land as collateral as long as a leasehold is in place. At present, however, Agribank is not clear on what procedures to follow if a resettlement farmer defaults in repaying the loan. Repossessing land in the event of a farmer defaulting on his/her mortgage bond would certainly undermine the aims of the land reform process. At the same time, denying resettlement farmers commercial credit may undermine their ability to farm successfully. The MLR is adamant that Agribank cannot repossess resettlement land because it belongs to the State. As a measure to prevent default, Agribank is expected to inform the MLR in advance if a beneficiary will not be able to repay the loan. In turn, it is Agribank's responsibility to encourage beneficiaries to repay their loans. The interest rate on the loans is set at 4%, but the MLR is of the opinion that this is too high (interview, Agribank, 26 November 2009). It is likely – although neither the MLR nor Agribank has stated this – that defaults would be overlooked. How exactly each of these institutions would deal with default is unclear.

The Post Settlement Support Fund (PSSF)

Agribank manages the PSSF which was established jointly by Agribank and the MLR. These institutions have pledged to contribute N\$10 million each to the PSSF annually. This Fund is earmarked to help resettled farmers to develop and maintain their farm infrastructure, purchase more livestock and start other income-generation projects. The PSSF is aimed specifically at providing post-resettlement support to farmers, while the LADF supports the broader aims and objectives of the land reform programme. The leasehold agreement is the main requirement for resettlement beneficiaries to qualify for post-settlement support, and it also serves as collateral for accessing funds from the PSSF.

Who will benefit from the PSSF?

Between the official launch of the PSSF in May 2009 and the time of writing in February 2010, 276 applications for PSSF loans had been received, totalling N\$40 million, which exceeds Agribank's current available resources. By February 2010, the bank had only been able to approve loans totalling N\$13 million and benefitting 232 applicants, while 44 applications were still pending

(*The Namibian*, 9 February 2010). Of course, more applications for PSSF loans are expected. Initially the MLR proposed that every resettlement beneficiary should receive N\$100 000 from this Fund, but this now seems impossible in view of the amounts already applied for and approved by February 2010. The N\$20 million earmarked for 2010 will not suffice to satisfy the needs of an ever-increasing number of applicants for loans as well as cover payments of N\$100 000 to assist every beneficiary (interview, Agribank, 26 November 2009).

Most beneficiaries do not yet have a leasehold agreement, so most cannot presently use the agreement as collateral for a PSSF loan. Agribank appears willing to fund farmers without this collateral, but is of the opinion that the loans should be used exclusively to increase the numbers and quality of livestock, not to rehabilitate dilapidated infrastructure. The findings of the LaLR research in Omaheke and Hardap Regions suggest that the MLR has not been forthcoming with the funds needed to rehabilitate dilapidated infrastructure on resettlement farms (Werner and Odendaal, 2010).

Once the leasehold system is in place, the government envisages charging beneficiaries rent to recover the funds loaned for rehabilitating dilapidated infrastructure on resettlement farms. However, in the interim, if farmers lack financial means to maintain infrastructure because they cannot access loans, investment in infrastructure will remain virtually non-existent, with the likely result that infrastructure on resettlement farms will become even more dilapidated and ever more costly to rehabilitate.

Do commercial banks recognise the leasehold agreement?

It is stipulated in the *Agreement of Lease* that no lessee will be allowed to mortgage leased land without the prior written consent of the Minister of Lands and Resettlement (*Agreement of Lease*, 2009: 9). Thus, at least in theory, a lessee could obtain a mortgage over property owned by the State with the Minister's approval. However, meetings attended by senior staff of Agribank, the MLR and all of Namibia's commercial banks in 2006 and 2007 led to a different conclusion. The purpose of these meetings was to discuss the content of the lease agreement and decide whether it can be used by beneficiaries as collateral to obtain loans from commercial banks. The banks were informed that since the leased land belongs to the State, it cannot be repossessed in the event of default on repayments. The banks' response was that they will not accept the lease agreement because it is not tradeable (interview, Agribank, 26 November 2009).

Can a leasehold be inherited?

The *Agreement of Lease* makes provision for married couples – including couples married under customary law and cohabitating couples – to be co-lessees of resettlement units. However, the document is silent on the fate of the leaseholders in the event of divorce/separation. It is likely that the jointly held leasehold would have to be given up. Furthermore, it has emerged that a lessee cannot authorise the MLR to transfer a resettlement farm to, for example, surviving children should a lessee die. Section 53 of the ACLRA stipulates that if a lessee dies, the executor of the

lessee's estate may assign the lease to any person approved of by the Minister in writing on the recommendation of the Land Reform Advisory Commission. It thus appears that the lessee's will as to who should inherit the leasehold can be overridden by the executor's decision.

No option to purchase leased land anymore

Section 47 of the ACLRA, which was repealed by Act 13 of 2002, gave resettlement beneficiaries the option to purchase the units leased from the State at a price equal to the capital value thereof, on condition that five years had elapsed since the commencement of the lease and that the lessee had complied with the terms and conditions of the lease. The amending Act 13 of 2002 has scrapped the option to purchase leased resettlement land. A likely reason for the amendment is that the State acquired the land specifically for land reform purposes and wants to retain control over this land. The then Minister of Lands, Resettlement and Rehabilitation and current President of Namibia justified the amendment in the National Assembly by arguing that state-owned land "... which is acquired for the purpose of land reform should not be for sale. It should rather serve as a place where some future potential commercial farmers should graduate from and be able to acquire their own agricultural land." (MLRR 2002: 3)

Not all resettlement beneficiaries want to become commercial farmers, but it appears that many do, and certainly the fastest way to facilitate this aspiration is to give them leasehold agreements that provide for maximum flexibility in exploring and exploiting all possible livelihood and business options.

Land use

The *Agreement of Lease* stipulates that land should be used for agricultural purposes such as livestock production (*Agreement of Lease*, 2009, 4). It does not provide for alternative land uses such as game farming and charcoal production.

The Agreement also stipulates that huntable game on resettlement farms will remain the property of the State, and that beneficiaries can only harvest wild animals once all legislation and regulations pertaining to game hunting in the country have been passed and the beneficiaries have obtained the necessary government permission (*Agreement of Lease*, 2009: 6). Experience in communal areas has shown that communal communities have had little incentive to protect the wildlife there, firstly because it belongs to the government and secondly because in many of these areas it is believed that wildlife competes with livestock for scarce natural resources such as water and grazing. The Nature Conservation Amendment Act of 1996 changed the status quo by giving communal communities user rights over wildlife on the precondition that they organise and register themselves as conservancies. This resulted not only in the recovery of wildlife numbers in many parts of the communal areas, but also in additional income for communities who are now allowed by law to charge fees for the hunting and selling of wildlife. In view of the relative successes thus far achieved by communal conservancies, the same rights should be extended to resettlement farmers to render game farming a workable income-generating option for them.

The way forward

The MLR has consistently stated that resettlement beneficiaries are entitled to 99-year leasehold agreements, which will be registered with the Deeds Office as soon as the MLR has completed the process of providing ownership certificates to the beneficiaries (National Resettlement Policy, 2001: 6). This process is well underway in February 2010. However, many questions regarding the legal implications and practical implementation of leasehold agreements and their use as collateral remain unanswered.

For example, it is not clear whether leases will be renewable after the 99-year period elapses, and if they are renewable, whether a leaseholder's family will inherit the lease as a matter of right or only with government approval of a transfer to the family (Harring and Odendaal, 2002: 101). As indicated in the discussion above, it appears that it will not be possible to trade these leases with commercial banks.

Beneficiaries have a legal interest in the land that they farm because it gives them a sense of ownership, the social status that accompanies land ownership, stability in their communities, confidence that their work will permanently benefit their families, and, perhaps in the first place, collateral for accessing post-settlement support funds.

A land leasehold in its normal (universal) meaning and application is a property right that can be sold or mortgaged. In other words, a leasehold gives the holder the right to sell or use the leased land as collateral. However, the restrictions currently applying to leased resettlement land in Namibia make it unlikely that any resettlement beneficiary will either qualify for a loan from a commercial bank by using his/her piece of state-allocated land as collateral, or become the freeholder of the land.

For resettlement farmers, in the absence of any meaningful access to sources of finance other than Agribank, the only realistic option for obtaining financial support seems to be that government will have to guarantee some or all loans made to beneficiaries. The reason for this is obvious: repossessing land in the event of default on loan repayments would defeat the aims of the national land reform programme. A possible measure to prevent default is to use the LADF to cover farmers whom the MLR believes are at risk of defaulting without some further support. Shorter-term loans to improve livestock production on resettlement farms should also be made available. However, there should be a limit on how much a beneficiary can borrow from the LADF, and the terms and conditions of a loan should stipulate clearly that the loan is to be used for the specific purpose/s for which it was granted, and not to pay off debt on consumables or any item that is not directly related to farming.

Resettlement farmers who receive loans under Agribank's Affirmative Action Loan Scheme (AALS) are given up to 25 years to repay the loans, but they are expected to become self-sufficient by the fourth year of operation (National Resettlement Policy, 2001: 7). Resettlement farm projects are not considered to be long-term projects, with the result that economic success is expected too soon. Arguably, the main reasons for the economic failures of resettlement farms to date

are inaccessibility to capital and a lack of long-term investments. For most development projects, sustainability can only be achieved if the project is implemented over a longer term or a minimum of 10-15 years, and if the project is monitored independently by professional consultants on a tender basis as well as a five-year renewable contract basis.

In conclusion, the challenge of land reform and resettlement must be understood in the context of the challenges facing Namibian agriculture as a whole. To meet all these challenges, Namibia needs to revise or devise two policies: firstly, a clear and integrated agricultural development policy that provides for restructuring the existing commercial agricultural sector as well as improving agriculture on the communal lands; and secondly, a bold and creative policy that deals more effectively with land reform and resettlement. Enabling resettlement beneficiaries to benefit fully from their rights of leasehold could well prove to be the key to integrating resettlement beneficiaries into mainstream commercial farming in Namibia.



Resettled, asset-poor farmers at Skoonheid, Omaheke Region.



Dilapidated infrastructure on Mara resettlement farm, Maltahöhe District, Hardap Region.



Diversification – leather tanning at Skoonheid Resettlement Project, Omaheke Region.



Successful small-scale commercial farming, Westfalen group resettlement project, Hardap Region.

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