

## **Transparency in the Resettlement Process of Namibia**

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**Key words:** Resettlement, Processes, Transparency, Access to information, Participation

### **SUMMARY**

This paper addresses transparency in the selection processes concerning commercial farm land to be expropriated for the purpose of resettlement and those who are selected as beneficiaries of resettlement. Based on information obtained from various reports, it is clear that transparency principles are applied in certain aspects in Namibia, but it is not always implemented in the mentioned selection processes, though the current laws and legislation in Namibia do make provision for transparency in both these selection processes.

Therefore, Namibians regard the resettlement process of Namibia as not being transparent, especially with the selection process pertaining to beneficiaries to be resettled as well as land to be expropriated for resettlement purposes. In late 2008, the Namibian Minister of Lands and Resettlement, Minister Alpheus !Naruseb expressed the necessity for a resettlement process that is “clear and transparent to an extent that the officials must be able to tell unsuccessful applicants the reason behind a decision”.

In view of this statement, this study was conducted by means of desk research to analyze transparency in the resettlement process with specific reference to the selection of beneficiaries and land to be expropriated to be utilized for resettlement purposes, and to make recommendations for any changes in legislation and processes that improve transparency in the resettlement process.

This paper presents the findings on transparency elements with specific reference to access to information, participation, and institutional reform in selection processes for beneficiaries and the acquisition of farm land by expropriation, for the purpose of resettlement and redistribution. At the end, this paper provides critical recommendations or suggestions for improving the resettlement process so that the process is transparent, efficient and effective.

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## **1. INTRODUCTION**

In late 2008, the Namibian Minister of Lands and Resettlement, Minister Alpheus !Naruseb expressed the necessity for a resettlement process that is “clear and transparent to an extent that the officials must be able to tell unsuccessful applicants the reason behind a decision” (Maletsky, 2008). In view of this statement, the study was conducted by means of desk research to analyze transparency in the resettlement process with specific reference to the selection of beneficiaries and land to be expropriated to be utilized for resettlement purposes, and to make recommendations for any changes in legislation and processes that improve transparency in the resettlement process. Therefore, the main purpose of this paper is to present findings on analysis of current situation of resettlement process with respect to existing land reform act and resettlement policy in the framework of transparency, and to provide some of critical recommendations for improvement.

In the first part of the study, we shortly describe processes and then examine a practical case “Kessl Judgement” in order to make a good analysis with the problems encountered in the resettlement process. Discussion of selection process of beneficiaries and land expropriation together problems encountered are provided in the following section 2. The second part of the study concentrates on transparency and its strategic entry points for discussing land resettlement process. Main issues such as access to information, public participation and institutional reforms with their tools and methods are thoroughly discussed for making land resettlement processes transparent, efficient and effective. These are discussed in the section 3. Lastly conclusions and critical recommendations or suggestions are provided in last section 4 of this paper.

## **2. SELECTION PROCESS FOR BENEFICIARIES AND LAND EXPROPRIATION**

In the preamble to the National Resettlement Policy it is indicated that the aim of Government is to redress the imbalance regarding the past unequal distribution of land and to facilitate the accessibility to available land to the majority of Namibian people within the framework of social justice (GRN, 2001).

From the preceding paragraph one can infer that there are two selection processes which are needed, namely in respect of land resources (the most important of which is land) and in respect of the beneficiaries for resettlement.

The broad process for selection of land and beneficiaries are already prescribed by the Resettlement Manual issued by the former Ministry of Lands Resettlement and Rehabilitation currently called Ministry of Lands and Resettlement (MLR). According to this manual the

Regional Resettlement Committees (RRC) are responsible for the identification of regional resettlement needs, the selection of farms in the region for resettlement purposes, receiving and processing of resettlement application forms, the recommendation of resettlement beneficiaries, the monitoring of regional resettlement projects and the promotion of development.

This committee then makes the recommendations in respect of the resettlement program, with particular emphasis on resettlement schemes, profiles of beneficiaries, demand for preferred settlement areas and types of settlements to the National Resettlement Committee (NRC), who, in turn, advises the MLR and the Land Reform Advisory Committee (LRAC).

The NRC also advises the MLR and the LRAC in the development, planning, terms of settlement and suitability of agricultural land under consideration for allotment. The NRC further assists in the planning and designing of resettlement schemes and allotments. It provides necessary helps in their execution where necessary, approves applications recommended by regional resettlement committees, and recommends them to the LRAC and keep an updated list of allotments.

After consideration by the LRAC of the recommendations made to it by the NRC, the LRAC makes recommendations to the Ministry of Lands and Resettlement for approval.

## **2.1 Selection process for beneficiaries of resettlement**

In order to find out the real situations on specific selection of beneficiaries for resettlement, we made analysis of both process as prescribed in the Resettlement Manual and current practice.

### ***The process and priority as prescribed in the Resettlement Manual***

After the applications were considered and a decision has been made, applicants should be informed of the outcome of the MLR's decisions either by the RRC by sending letters or through the newspaper. There are five organizations/committees that are involved in the selection process of beneficiaries. Applications go through these organizations/committees for decision on beneficiaries in the following sequence:

**Applicants → RRC → NRC → LRAC → MLR → RRC → Applicants**

Three main categories of people are to be targeted for resettlement, namely i) people without income, land or stock; ii) people without income or land, but with stock; iii) people with income and stock, but with no land. Priority should be given to the San Community, ex-soldiers, returnees, displaced persons, people with disabilities and people from overcrowded communal areas. These selection criteria for beneficiaries/ settlers are set out in the Resettlement Policy of October 2001 (GRN, 2001).

These criteria have also been expanded in the Resettlement Manual to include the age of the applicant, provisions on other land rights to be relinquished, the requirement of agricultural background, conditions regarding animal husbandry, provisions on tenure rights, cost recovery and cross fertilization. However, Section 14(1) of the Agricultural (Commercial) Land Reform Act 6 of 1995, as amended, (hereafter referred to as the Act) has a very wide language regarding beneficiaries for the purpose of land reform which includes by inference basically every black person in Namibia (GRN, 1995b). This could result in undermining the objectives of the resettlement policy with the uplifting the priority groups and the reduction of poverty (Harring & Odendaal, 2007).

## **2.2 Selection Process in the acquisition of land by expropriation for resettlement purpose - Kessl Judgment (2008) as practical example**

In the Kessl matter, the Government proceeded during 2006 to expropriate three farms, each farm owned by a foreign national. The owners approached the court. The court found that the procedures as laid out by the Act in respect of the expropriation of farms should be strictly adhered to, which the Government did not do. Consequently, the decision to expropriate, the rights attached to it and the notices to expropriate was all set aside by the High Court of Namibia. The Ministry has filed an appeal against the judgment, which has not been heard yet (Harring & Odendaal, 2007). The Kessl judgment (2008) continued to discuss the relevant constitutional provisions regarding property and interpreted the relevant provisions in the Agricultural (Commercial) Land Reform Act in the context thereof and our natural rule of justice, namely the *audi et alteram partem* rule.

The right to property as envisaged in article 16 of the Namibian Constitution is guaranteed (MRLH & NID, 2002). This right can however be limited by the state interference, e.g. by way of expropriation. In order for this limitation to be constitutional, it must comply with the requirements of both articles 22 and 16 of the Constitution, namely being of general application; not negating the essential content of the fundamental right; it shall not be aimed at a particular individual; the limitation must identify the article on which authority to enact such limitation is claimed (in this case art 16(1)); the ascertainable content of such limitation must be specified; it must be in the public interest; against just compensation and in accordance with the requirements and procedures by Act of Parliament, in this instance the Agricultural (Commercial) Land Reform Act , Act 6 of 1995, as amended (hereafter referred to as the Act).

The Act, as amended, determines that land could be obtained in the public interest and 'for the purposes of that subsection', referring to section 14(1) of the Act, in other words for agricultural purposes and redistribution to specific groups of people. The Act as amended continues in section 20 thereof to prescribe that land can be expropriated by the Minister of Lands and Resettlement:

“after the Ministry had a consultation with LRAC and on recommendation of the LRAC

in the instances where it is for the purpose of section 14(1), as amended, where no mutual agreement could be reached between the Ministry and the landowner or where the whereabouts of the owner could not be determined” (GRN, 1995).

Public interest in the context of expropriation should, according to Kessl Judgment (2008), ‘be interpreted to mean that the particular farm must be suitable for resettlement of this specific group of people and that the Minister must be satisfied that the farm he intends to acquire, complies with these requirements. The Minister must consequently be in possession of enough information regarding the suitability of the specific farm to have enabled him to take an informed decision thereon at the section 14 stage’.

Article 18 of the constitution further determines that ‘Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent court or tribunal’. The prescription of ‘fair and reasonable’ implies that the rules of natural justice, namely that of ‘*audi et alteram*’ applies. According to Rumpf the presumption exists that legislation enacts the rule of ‘*audi et alteram*’ unless expressly excluded (Kessl judgment, 2008). Thus an opportunity must be granted to all parties who will be affected to participate in the decision to expropriate specific land, including the current farm owner. This would also be in agreement with Article 12 of the Namibian constitution affording everyone the right to a fair trial in determining their civil rights.

When land is to be obtained by way of expropriation, the Kessl judgment further provided the following guidelines in terms of the Act that needs to be adhered to:

- The Minister of Lands (and nobody else) has to make a decision to expropriate land;
- The requirements of section 14 of the Act should be complied with including proper consultations, during which consultations the obligatory inspection of all relevant factors of any particular farm land and the possible effect of acquiring the farm for resettlement purposes on the employees and other residents and their respective families residing on the farm at the time should be discussed;
- The Minister must afford the landowner the right to be heard on the issue in order to comply with the *audi alterem partem* principle;
- If a decision is reached by the Minister to expropriate land, he must first notify the landowner in terms of section 20(2) of the Act.

The procedure in the selection of land to be acquired by expropriation must be strictly according to the procedures as laid down in the legislation in terms of section 14 of the act and article 16(2) of the constitution. In this instance, it means that both the procedures in section 14 and 20 of the act must be followed before a decision to expropriate can be taken. The Government must first try to obtain the land on a 'willing buyer/ willing seller' basis. Expropriation should be a last resort. The procedure for the selection or decision to acquire land by expropriation is as follows:

- Inspection to be carried out by the RCC as per sect 15 of the act to determine if land is suitable for the purposes of sec 14(1) of the act. Inspection can be done by the RCC of its own accord or on instruction of the Minister
- The Minister must have proper consultations with the NLRAC, meaning that the parties must come together with open minds, exchanging views, opinions and weighing up the positive and negative consequences of a possible decision.
- The NLRAC makes recommendations to the Minister on the suitability of the land for the purposes of section 14(1) of the Act, farm workers, and negotiations/ mutual agreement with the farm owner.
- The Minister informs the farm owner of his intention to obtain the land and provides the farm owner an opportunity to negotiate a mutual agreement and/or to provide further information as to the suitability of the land for the purposes of section 14(1) of the act. This should also be proper negotiations, providing both parties an opportunity to exchange views, opinions and weighing up the positive and negative consequences of a possible decision. This step gives effect to the 'audi et alteram' rule and the 'willing buyer/ willing seller' principle.
- If the Minister decides to acquire the land, based on the information provided to him as a result of the inspection, consultations with LRAC and the farm owner and a mutual agreement could not have been reached between the farm owner and the Minister, or it happens that after a diligent search that the farm owner could not be located, then only can the Minister decide to proceed with expropriation procedures.
- Farmer informed of the Minister's decision to expropriate by Notice of Expropriation in terms of section 20(1). The Notice of expropriation should make provision for the farm owner to respond within 60 days of the notice to the Minister and a date not sooner than 90 days from the date of the notice to make an application to the Lands Tribunal for determination of compensation.

In summary, underlying principle on the above expropriation procedure as provided for in article 16(2) of the constitution, together with articles 12, 16(1), 18 and 22 of the constitution, and section 20(1) of the act, subject to the provisions of article 14, 15, 16(1), 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the act, is **the principle of transparency**. It provides for a decision to be made in a **participatory manner** (consultation with the LRAC and the owner of the farm an opportunity to provide input) based on proper information (obtained by way of inspection, consultation with the LRAC and the farm owner).

### ***The practical experience of land expropriation and the problems encountered in the resettlement process***

#### a) Selection of beneficiaries

As soon as land/farmland is selected and becomes available for resettlement, an invitation to apply for resettlement is placed in the local newspaper. Anyone interested in being selected for resettlement completes a prescribed form which is dropped in a box in the office of the Regional Council Committee's office.

It is surprising here to note (according to interview made) that no reference number is given to the applicants, nor are copies of applications stamped; nor is a computerized data base of applications kept. Thus there is no way that applicants can follow-up on the status of their specific applications, and they consequently have to apply for resettlement again as soon as a new invitation is placed in a newspaper.

#### b) The experience of expropriation

To date seven farms have been expropriated, the first being Ongombo West in 2004. At the time the farm was lucrative and exported flowers to Holland and Germany. The farm has been expropriated following a labour dispute between the farm workers and the Namibian German farm owners. Expropriation followed shortly after Pres Sam Nujoma announced that 'some of the Whites are behaving as they came from Holland or Germany. Steps will be taken and we can drive them out of this land. We have the capacity to do so'. The farm has been divided into four units. One unit was allocated to the previous farm workers, another unit to 68 ex-prisoners, and the other two units to a government employee and business person respectively who only visit the farms on weekends and who does not make their living off the farms. The farm allocated to the previous farm workers is used for basic subsistence farming and the fourth farm seems to be a residence only to the ex-prisoners. Not much is left of the infrastructure for the flower farming. No post resettlement assistance was provided to those resettled and there are concerns for the land being overgrazed (Harring & Odendaal, 2007).

The farms which were expropriated shortly afterwards, were Okorusu and Marburg. These farms were offered to government for sale as the farm owners deemed the land inappropriate for agricultural purposes due to mining activity on a neighbour farm the owners ended up applying for a court order which directed the Ministry to issue a certificate of waiver in terms of Section 17(4) of the Act to the owners. Shortly after the certificates were issued the Ministry proceeded with expropriation procedures in respect of these two farms, which proceedings could have been avoided if the Ministry acted in time on the offers of the farms. The Ministry used these farms for relocating beneficiaries of resettlement from Cleveland, one of the first farms bought by the government for resettlement under the 'willing buyer-willing seller' principle, as the government decided to use Cleveland for a cement plant. One of the beneficiaries is someone who could easily afford to obtain a farm through the Affirmative Action Loan Scheme. According to witnesses he visits his farm about once a month. No provision was made for the previous farm workers. They received notices of the expropriation from the Ministry and were requested to vacate the premises in order to avoid being evicted. They obtained legal assistance from the LAC and continues to live in their dwellings on the farm, but without land (Harring & Odendaal, 2007).

On 22 December 2006 the Government also proceeded with expropriation procedures in respect of the farms Wyoming and Kansas at Nina. There was a dispute regarding compensation (Rodemeyer, 2007). However, they were successfully expropriated against compensation (Roeschlau, 2007).

None of these farmers challenged the expropriation procedure in court. The first time that the expropriation procedures were challenged and tested in court was with the Kessl judgement.

### c) Problems encountered in the resettlement process

From the current situations as described in previous paragraphs, our study indicates that there is a lack of transparency in the selection processes; thus contributing to the feeling of uncertainty in and failure of the resettlement process. Some of the areas in which a lack of transparency is evident are:

- Selection procedures were carried out without complying to the relevant policies, legislation and regulation;
- Selection procedures were carried out without participation by the parties that were affected by these decisions;
- There was no access to information or availability of information to potential beneficiaries or the landowners regarding the relevant factors considered in the various selection processes or in the event of the selection of beneficiaries/ settlers, the status of their applications;
- No or little co-operation between various stakeholders in order to ensure proper land management, infrastructure developments, water management, training or education of the beneficiaries/settlers, or availability of financial assistance so that the resettlement process could be sustained;
- No information is available on the tenure rights of the beneficiaries or settlers.
- Decisions of the Ministry of Lands and Resettlement to acquire land whether by willing buyer/ willing seller principle and/or expropriation without the necessary information about the suitability of the farm for the purposes of section 14(1) of the Act and a clear land use plan;
- The process of appeal or review is not known to the applicants for resettlement.

## 3. TRANSPARENCY

It is clear from the problem areas identified in above section 2 that there is a need for transparent processes or at least an improvement thereof in the resettlement process. Transparency, in its narrow sense, refers to the description that is attached to an object through which one can see. If one applies that meaning to the land reform and resettlement process, it implies that the process should be open and that there should be good communication between all interested parties. This means that information (including but not restricted to decisions, statistics, policies, rules, regulations, laws) needs to be available and easy accessible. It is also known that transparency is the opposite of secrecy. Secrecy is the breeding ground for corruptions in its various forms, namely bribery, fraud, favoritism, embezzlement, favoritism and its variations or kick backs (Sohail & Cavill, 2009; Van der Molen & Tuladhar, 2006).

Transparency is an essential component of good governance. Governance in relation to the resettlement process involves decision making regarding land use, land selection, selection of



settlers, the allocation of land, the infrastructure that needs to be developed, the training and further education of the settlers, understanding value of land, etc. The quality of governance can have an adverse effect, positively or negatively, on the objects of the resettlement policy, e.g. reduction of poverty, equitable access to land and sustainable development (Shrestha, 2009).

With the existence of transparency within the context of good governance, the theory is that this should lead to a more effective land reform and resettlement process. It should have the further consequence of improving trust between all interested parties, curbing corruption and creating an atmosphere of certainty (Shrestha, 2009).

Having regard to the resettlement process and the aims and objectives as determined in the resettlement policy, transparency will be needed in the areas of land use planning, land management, infrastructure developments, water management, land acquisition, land allocation, training/education and financial assistance.

### **3.1 Strategic entry points for transparency for land resettlement process**

The main strategic entry points for making above areas effective for transparent land resettlement processes are a) access to information, b) public participation and c) institutional reform (UN/Habitat and TI, 2004; Van Der Molen and Tuladhar, 2006).

#### **a) Access to Information**

Transparency presupposes that information is firstly available and secondly accessible. It has been argued that information should be constitutionally guaranteed and that the availability of information should be facilitated by the relevant authorities (van der Molen, 2007).

The Namibian Constitution does not guarantee such a right. The constitution does however determine in Chapter 11, 'Principles of State Policy', in article 95 thereof that

*“The State shall actively promote and maintain the welfare of people by adopting, inter alia, policies aimed at the following: (k) Encouragement of the mass of the population through education and other activities and through their organizations to influence Government policy by debating its decisions.”*

Article 101 determines that these principles (as envisaged by Chapter 11 of the Constitution) are not enforceable by itself, but it should be a guideline to the Government in making and applying legislation and that courts are entitled to have regard to them in interpreting laws based on them. One can make the inference that in terms of article 95(k) an aim of the State should be to produce debate in government decisions, and enabling citizens to do so by providing and disseminating information.

It has also been established that underlying to the fair and reasonable actions of administrative bodies as determined in Article 18 of the Constitution, is the principle of *'audi et alteram partem'* (Kessl judgment, 2006). It will be impossible to give effect to this principle if

information is not available or accessible. One can thus safely say that there is an implied duty on the government to make information available and to facilitate the accessibility thereto.

Various tools and methods can be used to improve access to information. Below follows a table with such tools and the methods in which it can be used:

Table 1: Tools and methods for Access to Information

	<b>Tool</b>	<b>Method</b>
<b>1</b>	LIS (Land Information Systems)	Human & technological efforts combined to collect, retrieve, store, disseminate, & use of land info; Records management and digitalization of data, dissemination through internet; interlinked databases of various services; One stop shop via internet.
<b>2</b>	IT (Information Tecnology)	Digitalization of data, dissemination through internet; interlinked databases of various services; One stop shop via internet.
<b>3</b>	Media	Printed info, Radio & TV, Campaigns
<b>4</b>	Education	Printed info, Radio & TV, Campaigns
<b>5</b>	Service	Dissemination through the internet, citizens can be provided with info via internet, service center or the cell phone as requested; one stop shop via internet, public meeting/hearing; back office/front office.
<b>6</b>	Communication between all stakeholders	Public meeting/hearing; internet discussion forums

Some of the tools and methods mentioned above in the table 1 as well as aspects of access to information and public participation overlaps in certain respects. It should be differentiated by the specific purpose for that specific tool/method, for example, while the methods of media is used to disseminate information to the public (e.g. land that has become available for resettlement) it can also be a method in terms of which the public can be educated regarding aspects of resettlement (e.g. realistic expectations regarding various aspects of resettlement). While a public meeting can be used to provide information to the public (e.g. where there is no room for discussion or consultations) it can also be used as a tool to ensure public participation (where all the parties present have a voice). The way in which a specific tool or method is used determines as to whether it improves access to information or public participation and/ or for which tool of access to information it serves to be a method for.

As can be seen from the above table, electronic communication can play a significant role in the access to and dissemination of information. The use of information and communication technologies to improve the activities of public sector organizations is also referred to as e-governance. To ensure that people uses the facilities so provided, electronic, legal and economic transactions as well as participation should be facilitated via electronic communication. This would only be possible if a comprehensive up to date data bases and structure is maintained (Kadaster International, 2007). Information required can be provided via the cell phone or internet or in an area with high illiteracy levels in combination with the front office/back office and one stop shop principle. An example of e-governance used in land

information is the Dutch Cadastre website<sup>1</sup> which provides interlinked data bases, so that one can access information regarding the title to a property, its value against which it was bought, the taxation on the property, information regarding the sale of properties in the area, geographic information, cadastral information and maps, information about buildings and addresses.

By conducting an internet search of various websites of the ministries (and by visiting them) the ministries that should always be stakeholders in the resettlement process, it was found that the Ministry of Education, Ministry of Agriculture, Water and Forestry and the Ministry of Local, Regional Government & Housing & Rural Development all have websites providing general information on what the specific ministries are about, their respective visions, missions and goals with links to their various services, directorates, projects and other government ministries, international and national organizations.

But the Ministry of Land and Resettlement (MLR) as the main role player in the resettlement process, seems not to have a proper website in place. There is no link from the website of the Government of Namibia to this Ministry's website. While the website of the Ministry of Environment and Tourism is the only website that mentioned about provision of land information data. It provides environmental metadata collected from the Ministry of Agriculture, Water and Forestry; data regarding the Northern Environmental Project provided in the form of GIS data layers and maps, graphs and diagrams collected from various sources; information regarding the protected areas in Namibia, links to a biodiversity database, amongst others.<sup>2</sup>

In the absence of proper web sites with land information, the beneficiaries visits various different offices of the Ministry of Lands and Resettlement and the Ministry of Regional, Local Government & Housing & Rural Development by travelling to these offices and in certain cases, e.g. obtaining information from the Office of the Registrar of Deeds or the Surveyor-General (both offices falls under the Ministry of Lands and Resettlement). For visits to these departments, people requiring information must either travel to Windhoek or instruct someone, usually against an additional fee, to obtain the information on their behalf.

## b) Public Participation

Public participation is a further element used in creating openness and trust. Having regard to article 95 of our constitution, the fact that our government is based on democratic principles and further considering the rule of natural justice of *audi et alteram partem*, public participation in decision making is not just a good idea to keep in mind, but a necessity. Reading the Kessl judgment (2008) carefully one can go as far as saying that it is a requirement in the resettlement process.

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<sup>1</sup> <http://www.kadaster.nl>

<sup>2</sup> <http://www.met.gov.na/>; <http://www.mrlgh.gov.na/>; <http://www.mawf.gov.na/>;  
[www.op.gov.na/Decade\\_peace/lands.htm](http://www.op.gov.na/Decade_peace/lands.htm); <http://www.grnnet.gov.na/>

Without access to information it would be impossible for this specific element of transparency to operate. A further result of public participation is that public officials would be able to make better and more informed decisions and would create an idea of co-ownership for the public in general. The underlying principle is that all interested parties should be consulted and should have a say in decisions that's taken which will affect their respective interests.

Public participation should take place from the very start, even before any decision has been made (DIHR, 2005). This will remove the idea of conflict between the interests of citizens versus the Government. The Kessl judgment further indicated that the requirement of a consultation means that it should be a true consultation.

According to Shrestha (2009) one can thus say that the characteristics of public participation should be/are:

- It closes the gap between provision of information and decision making;
- It should be genuine;
- Not to be manipulated, e.g. holding meetings at odd times & places;
- Not to be used to legitimize decisions/policies
- Public must know that they are taken seriously

Public participation can be initiated by the government at various levels for various purposes, e.g. to obtain information in order to draft policies; to make decisions or to develop these policies; and to evaluate and monitor performance (DIHR, 2005).

Public participation can be obtained by simple methods like questionnaires, scorecards, public hearings, meetings between public officers and a selection of members from a community and IT dialogue forums. The method of public participation is usually determined by the purpose of public participation (DIHR, 2005). Having regard to the various purposes and methods of public participation, it can take various forms as follows:

*Informative participation:* One party gives information through to another without affording the other party a chance to provide feedback.

*Consultation participation:* An opportunity for feedback is provided. It must be true consultations; otherwise the consultation will be nothing more than informative participation.

*Co-operative participation:* Government/relevant authority are only the facilitator; communities are involved in the decision making process from the beginning to the end.

*Mobilization participation:* Strongest form of participation. The Public/Communities initiate the process and are in charge of decision making. The relevant authority becomes part of the decision making process after being approached by the communities.

Public participation in the instances where the communities are involved from the beginning to the end and especially in the instance where it was initiated by a community itself and not

by the government at any level, contributes the most to sustainable development. One such an example can be found during our personal visit in the village of Inn Obermettenbach, Bavaria, Germany. The community experienced problems with flooding. The community wanted to do something about the situation, and they together with their municipality and experts discussed possible ways of solving the problem. The solution was a water retention program which involved the consolidation of land and reallocation thereof. A considerable amount of the project-time was spent on the participatory process because as one resident put it: 'the person has to get used to the idea'. The body of participants consists of all owners of parcels of land as well as those who could be regarded as owners due to hereditary building rights in the area represented by an elected board. Experts such as biologists, zoologists, local planners and freelance landscape architects (who can be contracted out to draft green plans, rural ecology plans and space plans), are also consulted. The maintenance and sustaining of the water retention project is done by the local farmers in co-ordination with the municipality (the municipality provides the machinery and the farmers do the labor). The consequence or the effect that public participation initiated by a community has on that particular community is that of a sense of co-ownership and responsibility. It serves as a motivation for the community to maintain the changes that have been put into place; thus taking some pressure off the government to maintain the resettlement process.

Public participation will not be effective in the resettlement process if all the possible stakeholders are not involved in the process. This should not only assure an atmosphere of openness and trust, but should contribute in better co-ordination between the various stakeholders as well, thus minimizing possible land conflicts in future and furthering the objectives of the resettlement process, especially with regard to sustainable development. We refer in this regard once again to the example mentioned of the Village Inn Obermettenbach. Apart from the obvious government officials that need to be present, the citizens whose interests will be effected (including both the possible settlers, the host community (the community in which the beneficiaries of resettlement will be resettled, and depending on the resettlement plan, the owners of the land that will be acquired for resettlement) should also be present. It is also worth to mention not to underestimate the roles that CBO's (Community Based Organisations) and NGO's (Non- Governmental Organisations) can play in the whole process. Both CBO's and NGO's can be used to gather, share and disseminate information to beneficiaries and other stakeholders. NGO's as resettlement agents might be seen as agents with specialist knowledge, especially direct knowledge about a specific community. They can thus be used to assist in educating beneficiaries, training beneficiaries in various skills and/or stages/aspects of resettlement. Should it be known that the private sector obtains certain information, capacity, skills or knowledge to assist in the resettlement process it might be in everyone's best interest to involve this sector as a stakeholder in public participation as well (Shrestha, 2009).

Factors that can influence public participation can be either internal or external. Internal factors will amongst others include skills, knowledge, employment, education and literacy levels, culture and religion, gender, social and political marginalization. External factors will amongst others include the political context, legislative and policy context and the administrative context. These factors, especially with regard to the internal factors, are

another good reason not to underestimate the value that certain NGO's might have in the resettlement process, specifically regarding the participatory process.

The Participation Process cannot be rushed. Rushed decisions are usually not good or well-thought through decisions. Resettlement is radical for all involved; thus people need time to think about points discussed and the possible consequences if certain decisions that were to be implemented, especially with regard to how their lives will be affected. They will then have to be afforded opportunity upon opportunity to ask questions and give feedback on discussions, until everyone involved is more or less satisfied. If more time is placed on the participation process in the resettlement process than on the actual speed of resettlement, it should in the long run lead to a more effective resettlement process, sustainable development, reduction of poverty and less, little or no land conflicts and better land management. If the public participation process is done properly it takes just as long or even longer than the actual implementation process of decisions and/or plans.

### c) Institutional Reforms

Apart from having appropriate laws in place encouraging transparency, it is essential to have clarity about organizational infrastructures and administrative procedures. Simple procedures with a direct approach with as little as possible staff discretion are considerations in these arenas in order to enhance transparency. General education of the public about a certain organization's infrastructure and administrative procedures also contributes to an impression of openness. If an infrastructure or a procedure is not known to the public, nor the pace against which various processes should run, then the impression of secrecy is created and consequently distrust (Hopwood, 2005).

UN-Habitat in its tools of transparency identified seven tools to improve transparency (UN/Habitat and TI, 2004). Tools like a municipal front office and participatory budgeting were however designed for an urban setting, while this article deals more with the resettlement process concerning commercial farm land. These tools, adapted however, can still be useful within this context.

These tools and their brief introduction are given below:

- i) *Complaints and Ombudsman Office*: It is an independent office dealing mainly with grievances/complaints from the public regarding administrative malpractices of the public service. The office of the Ombudsman can assist in boosting the confidence of public in the government and shows that there is accountability towards the public.

Provision has been made for the Office of the Ombudsman in the Namibian Constitution (GRN, 1990). The Ombudsman Act 7 of 1990 has further provisions regarding this office. The functions of the Ombudsman Office include investigating complaints regarding human rights, maladministration, corruption and environmental issues. The Ombudsman can investigate government institutions, para-statal, local authorities and even private persons and companies, last mentioned in the instance if

human rights have been allegedly violated. It cannot investigate the judiciary. The Office of the Ombudsman of Namibia has proven itself to be independent (Ruppel-Schlichting, 2009).

- ii) Municipal Front Office/ Public office: This institution gives greater access to decision makers and the decision making process. It facilitates the information flow to the public.

The Municipalities in Namibia provide an enquiry counter which provides clients with information and assistance regarding applications, status of applications and breakdowns of statements, applications, directions to other departments for assistance regarding more specific problems or queries.

- iii) One Stop Shop: An easy accessible service provider where the public can be provided with various services at one point, whether via internet or service counter; thus simplifying services.

As an example, Namibia Post Limited (Nampost), provides, apart from the usual postal and courier services, services regarding the payment of various licenses usually payable at the various Municipal Offices (e.g. TV license, dog license, radio license, property taxes), telephone accounts and water & electricity accounts. It further provides pre-paid telephone vouchers, banking facilities through its Smart Card System, and assist clients with Motor Vehicle Accident claims. This is an over the counter service and does not provide it via the internet, nor can the post office in Namibia provide information to clients regarding balances or status of these various accounts. For these queries clients have to approach the specific institutions or companies. However, Nampost has 122 branches throughout Namibia, also in towns where other institutions providing the services mentioned might not be available, which enable people from remote areas easy access to the services provided by Nampost (refer to [www.nampost.com.na](http://www.nampost.com.na)).

- iv) Oversight Committees: Independent and specialized government committees overseeing operations, specific development and proper and efficient use of resources; thus simplifying procedures and detecting corruption easily.

As already mentioned the Ombudsman in Namibia can also attend to complaints regarding the environment, although this function is less known. With more specific regard to land issues, Regional Councils oversee regional resettlement committees and regionally based development committees' work. These councils or committees are however not independent. They are accountable to central government (Fuller, 2006).

- v) Independent Audit Function: This institution should disclose compliance or non-compliance with administrative and financial procedures in an organization. Positive findings can lead to building trust and negative findings can serve as a motivation for change within an organization.

The Namibian Constitution makes provision for the Office of the Auditor-General who has jurisdiction over all levels of government as well as organizations, investments, grants, concessions, contracts in which the government has an interest in or to which the government is a party, as well as the application of receipt by the government. The Auditor-General must comply with international standards of auditing (refer to <http://www.intosaitaudit.org/mandates/writeups/namibia.htm>).

- vi) Independent Anti-Corruption Agencies: These agencies should be differentiated from the Ombudsman. Where the last-mentioned examines administrative fairness, the anti-corruption agencies investigate and prosecute public officials thus sending a strong message about corruption, which can infuse trust with possible investors as well as public. The investigations can further lead to identifying the primary roots/causes of corruption. It can be a catalyst for rooting corruption out systematically.

The Anti-Corruption Commission of Namibia was inaugurated in February 2006 in terms of the Anti-Corruption Act, Act 8 of 2003. Unlike the Ombudsman, the Director and Deputy Director is appointed by the National Assembly after nomination by the President. The Commission is seen as a Public Service Agency, which should act independently. Where the Ombudsman Act and the Constitution does not make explicit provision for the Ombudsman to investigate matters on its own initiative, such explicit power is given to the Anti-Corruption Commission. The Anti-Corruption Commission has been given the authority to investigate both public and private organizations with regard to corrupt practices where the Ombudsman has power to investigate corruption only in respect of government institutions, parastatals and organizations in which the government has a substantial interest (GRN, 2003c). The Anti-Corruption Commission made news recently by determining that bidding awarded to an organization in which officials of the office of ex-president Nujoma and politically well connected persons are the main stakeholders and beneficiaries of profits regarding the import of oil into the Namibia and which contract has been approved by the Prime Minister, Theo Ben-Gurirab, as void of corrupt practices (Afro News, 2009).

- vii) Participatory Budgeting: A tool for good urban governance. All interested parties take part in decision making about the spending of the financial resources on infrastructure.

Participatory budgeting is recognized by the government in their guidelines to developing planning and budgeting as part of the process of decentralization. The process of decentralization commences with the power at central government with some powers being delegated to regional councils and local authorities until full devolution of power to the regional councils. Stakeholders involved should be sector ministries, Regional Councils, local authorities, NGO's, CBO's, CSO's and traditional authorities (GRN, 1992a; GRN, 1992b; GRN 2000; GRN, 2003a).



- viii) Others: Transparency International also has a format for charters into which organizations can enter setting out their vision and purpose. Organizations can further be more service orientated in that it can make a commitment to customers about the services they are providing and setting out a time period in which certain actions/procedures can be expected to be completed or complaints could be handled. The purpose and responsibilities of the organization should be clear to the public. This will create a further opportunity for trust. Organizations can further enter into integrity pacts regarding contracts which will be awarded. Protection should be afforded to whistleblowers.

In Namibia, the Public Service Act 13 of 1995 and its regulations, provision has been made for a code of conduct, disciplinary proceedings, various provisions regarding terms and conditions of employment of staff members of the Public Service and the administration of the Public Service (GRN, 1995a).

### 3.2 Measuring transparency

There are various innovative ways in which one can measure transparency. Some examples are surveys, complaints and reporting violations:

*Surveys:* Surveys can be conducted in various ways, namely the evaluation form which a client completes after receiving a certain service, random telephone interviews, discussion forums on an internet site, face to face interviews in a group or individually, mail surveys, the house drop-off questionnaire. Key questions to be asked and answered would deal with amongst others the availability and access to information, whether an organisation complied with there service standards and time periods of dealing with procedures and complaints, the standard of service which was received, fees that needed to be paid, simplicity of procedures (FAO, 2007). Surveys can be conducted by an independent organisation or NGO's or agencies (NID, 2000).

*Complaints:* Where a system is in place for complaints, the amount and frequency of complaints received and the effectiveness with which complaints are dealt with, for instance the time period from receipt of the complaint, investigations into the complaint and the feedback to the client in which it is dealt with, can be measured. Complaint systems would include amongst others a customer care system, complaints received by the Ombudsman and the Anti- Corruption Commission.

An interesting complaint system was introduced in selected sites in Bangladesh called the corruption report card to the mayor. Officers in charge of civil affairs and civilians who made a civil application who have signed a contract with the Metropolitan Government received a post card which they would mail back as soon as they detect any wrong doings. Upon receipt of the post card, the mayor would then order an investigation and if corruption has been proven, appropriate punitive measures are issued (Sohail & Cavill, 2009).

*Reporting Violations:* Violations will be easy to measure when codes of conduct, a service charters, integrity pacts, appropriate laws, an appeal/ review system and independent auditing system are in place. The actual violations of these various codes, charters or laws are measured by the convictions recorded at the court, disciplinary hearings, the Ombudsman, and the Anti-Corruption Commission for instance.

#### **4. CONCLUSIONS AND SOME RECOMMENDATIONS:**

Though access to information is not guaranteed in our law, it does make provision for it in terms of the rules of natural justice and the principle of democracy. It is also publicly acknowledged by public officials that information should be made available to the public.

Irrespective of the law and the public acknowledgements, land information or information regarding the various procedures in the resettlement process are not available and/or not accessible, or not easily accessible, nor is there any information available regarding tenure security or by way of education/ training following the resettlement process to ensure the sustainability of the resettlement process.

Provision has been made in the Agricultural (Commercial) Land Reform Act for a participatory process regarding the acquisition of farm land, whether on the willing buyer/ willing seller principle or by way of expropriation. But no such provision has been made for the selection of settlers/beneficiaries or land allocation to the beneficiaries. As mentioned, the Kessl judgement does discuss that administrative bodies should act fair and reasonably in terms of Article 18 of the Constitution which means that one should have regard to the natural rule of justice, namely '*audi et alteram partem*', which has the implication that administrative decisions cannot be made without listening to all parties concerned, which should involve genuine consultations. Due to a lack of and/or inaccessibility of information, public participation cannot reach its full potential. Public participation in the resettlement process with specific regard to the acquisition of commercial farm land by way of expropriation is government initiated, informative of nature and is done after a decision to expropriate has already been taken. Public participation, in any form, concerning the selection of beneficiaries is rare or non-existent.

Tools for institutional reform such as a complaint and Ombudsman Office, independent audit function and an independent anti-corruption agency are already in place. An independent judiciary further enhances the review and appeal process. A one-stop shop for easy access to services and information, a functional regional front office regarding land information and administration; oversight committees overseeing sustainable resettlement and development and the necessary education regarding this and participatory budgeting for infrastructure developments on the resettlement areas are still lacking.

The Namibian legislation has already provisions that would allow for transparency to apply in the resettlement process. Thus our conclusions bring the following some of critical recommendations or suggestions to improve transparency in the resettlement process with specific regard to the selection of land to be acquired and the beneficiaries of resettlement so that it is 'clear and transparent to the extent that the officials must be able to inform

unsuccessful applicants the reason behind a decision' as mentioned by Alpheus !Naruseb, the Minister of Lands and Resettlement (Maletsky, 2004):

- Computerization of land information system for easy access;
- Legislation guaranteeing availability and access to information and the facilitation thereof by the relevant authority;
- A one stop shop combined with a regional front office providing the necessary services regarding land information, administration and transactions;
- Greater involvement of the Regional Resettlement Committees to the extent of functioning as specialised oversight committees overseeing the resettlement process with the further task of educating and training of the public regarding the resettlement processes, the demand for information by the public, the initiative the public can take in the participation process, procedures of the resettlement process and the possibility of complaints to be lodged which education task can be undertaken in co-operation with NGO's and CBO's;
- The implementation of participatory budgeting for the development of infrastructure on the land acquired and allocated for resettlement purposes in co-operation with all stakeholders; and
- Integrity pacts and service charters to be entered into by the Ministry of Lands and Resettlement with specific regard to the resettlement process or if it already exists the education of the public in the contents and consequences thereof.

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