

**IMPLEMENTATION OF CABINET DECISIONS ON THE RECOMMENDATIONS OF THE SPECIAL CABINET COMMITTEE ON LAND AND RELATED MATTERS**

**A PRESENTATION TO   
 PARLIAMENTARY COMMITTEE ON LAND AND SOCIAL ISSUES**

**08 JULY 2015**

1. **INTRODUCTION**
   1. Namibians have gone through German Colonial Rule and the South African Apartheid Colonial Era, during which the indigenous population was forced out of their traditional areas and their farmlands seized. They were divided and restricted into ‘native reserves’ and ‘homelands’ through forceful removal of some communities from most of their fertile land. Therefore, the struggle of the Namibian people for National Independence, *inter alia*, mainly centred on returning the land from the hands of the colonial authorities and settlers to the Namibian people, its rightful owners. It is therefore appropriate to state that the liberation struggle was about returning the land to its rightful owners.
   2. It is also against the aforementioned background that Article 16 (2) of the Namibian Constitution, the supreme law of Namibia, states that:

*“The State or a competent body or organ authorized by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.”*

* 1. In respect of land expropriation, this is covered under the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995).
  2. Given the centrality of the land question to sustainable development, social harmony and economic prosperity of the Namibian people, soon after Namibia’s independence, a **National Conference on Land Reform** **and the Land** **Question** was held in 1991 to discuss the redistribution of land. Recommendations were made on how to address the Land Question. Reference is made to the 1991 National Conference on Land Reform and the land Question “consensus Document” (pg 23-25), herewith some of the key recommendations of the conference as summarized:
     1. “Foreigners should not be allowed to own farm land, but should be given the right to use and develop it on a leasehold basis in accordance with Namibia’s open door policy;
     2. Abandoned and under-utilised commercial land should be reallocated and brought into productive use;
     3. Farms owned by absentees should be expropriated, but there should be a distinction, between foreign and Namibian owners who do not live on their farms;
     4. Very large farms and ownership of several farms by one owner should not be permitted and such land should be expropriated; and
     5. There should be land tax on commercial farmland.”
  3. However, all recommendations made and actions taken or to be taken should be guided by Article 16 (a) of the Namibian Constitution which allow *“all persons to acquire, own and dispose of all forms of immovable and movable property…..”*
  4. Pursuant to the conference, Cabinet established a **Technical Committee on Land Reform** in 1991/1992 which came up with a report on how to implement the 1991 consensus resolutions.
  5. The Technical Committee on Land Reform was followed by the Permanent Technical Team in 2005, which reviewed the land reform programme and also made recommendations regarding the acquisition and distribution of land in the country. Cabinet adopted the report which formed the basis of implementing land reform in Namibia.
  6. Notwithstanding the ongoing efforts and programmes of the Government of the Republic of Namibia on land reform, the land question (both agricultural and urban) has remained topical among the Namibian citizens. In an effort to accelerate the land reform process, i.e. land acquisition and redistribution of both agricultural commercial land and urban land, Cabinet constituted a **Special Committee on Land and Related Matters (SCLRM)** comprising relevant Ministers and members of the SWAPO Party Politburo to examine and provide proposals and recommendations relating to all legal aspects related to an effective land acquisition, the appropriate procedure and successful SWAPO Party Politburo to examine and provide proposals and recommendations relating methods of land acquisition, mechanisms to address the escalation of land (urban and rural) prices, as well as any other matters incidental thereto.
  7. Against the aforementioned background and taking into account the resolutions of the SWAPO Party National Policy Conference which were subsequently adopted by the SWAPO Party Congress of 2012, the SWAPO Party Politburo established a Special Committee on Land and Related Matters. The said Committee was later translated into a Special Cabinet Committee on Land and Related Matters (SCLRM) with the following Terms of Reference**:**
     1. Investigate and recommend all legal aspects related to an effective land acquisition;
     2. Investigate and determine appropriate procedures and successful methods of land acquisition;
     3. Explore mechanism to address the escalation of land prices including urban land.
  8. The other objectives considered are:
     1. Investigate any other matter incidental thereto;
     2. Cabinet further directed the Ministers of Lands and Resettlement, Regional and Local Government, Housing and Rural Development, and Finance to consult on the budget of the operations for the SCLRM.

1.11 The SCLRM which comprises the members listed hereunder, met on 18 of February 2014 to deliberate on the Terms of Reference (ToR):

1.11.1 Ministry of Presidential Affairs and Attorney General;

1.11.2 Ministry of Finance;

1.11.3 Ministry of Lands and Resettlement;

1.11.4 Ministry of Agriculture, Water and Forestry;

1.11.5 Ministry of Foreign Affairs;

1.11.6 Ministry of Local and Regional Government, Housing and 1.11.7 Rural Development;

1.11.8 Governor of the Hardap Region; and

1.11.9 Member of SWAPO Politburo.

1.12 At the aforesaid meeting, a **Technical Committee** was set up to assist the Special Committee in carrying out its mandate as per the ToR listed above. The Technical Committee comprises of the Permanent Secretaries of the following Ministries:

1.12.1 Ministry of Lands and Resettlement (Chairperson and Secretariat);

1.12.2 Ministry of Agriculture, Water and Forestry;

1.12.3 Ministry of Environment and Tourism;

1.12.4 Ministry of Foreign Affairs;

1.12.5 Ministry of Finance;

1.12.6 Ministry of Trade and Industry;

1.12.7 Ministry of Regional and Local Government, Housing and 1.12.8 Rural Development; and

1.12.9 Attorney-General’s Office

1.13 The Technical Committee to the SCLRM convened from 03 – 07 March 2014 and extensively deliberated on the Terms of Reference and came up with a report which was submitted to the Chairman of the Special Committee on 18 March 2014.

1.14 Subsequent to the submission of the report, the Special Committee on Land and Related Matters met on 7 April 2014, 23 April 2014, 22 and 26 January 2015 to consider the report.

1.15 The Special Committee on Land and Related Matters submitted its Report to Cabinet and Cabinet, at its meeting held on 17 February 2015, adopted the Committee’s Recommendations (Cabinet Decision no. 1st SP/17.02.15/001). The resolutions are outlined in Annexure 1 hereto.

1. Following here below is a summary of the recommended changes that are of legislative and regulatory nature:

**2.1. AGRICULTURAL (COMMERCIAL) LAND**

* + 1. Amendment of Chapter 4 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) (ACLRA) in order to shorten the expropriation processes (Guidelines on expropriation were finalised and are in the process of being gazetted);
    2. Tabling of the new Land Bill to prohibit ownership of agricultural land by foreign nationals (Amendments effected);
    3. Amendment of the ACLRA in order to provide for a situation where a foreign national, who owns agricultural land, has offered such land to Government for sale and where the Government issues a waiver, such waiver should be issued with a condition that such land can only be sold to a Namibian national. In the absence of a Namibian buyer, such land should be offered back to the State (Amendments effected);
    4. Amendment of the ACLRA in order to provide for the leasing of agricultural land for investment purposes by foreign nationals under strict conditions and with the express approval of the Minister responsible for land in consultation with the Minister of Agriculture, Water and Forestry as prescribed by relevant laws (Amendments effected);
    5. A review of all bilateral agreements entered into by Namibia to ensure that the provision of those agreements are in harmony with national legal instruments and aspirations of the Namibian people, in respect of the acquisition and ownership of land by foreign nationals (Work in progress);
    6. Amendment of the Deeds Act, 1937 (Act No. 47 of 1937) to oblige the Registrar of Deeds and the Registrar of Companies and Close Corporations to share information on Companies or Close Corporations that own land on a periodical basis (Amendments effected);
    7. Amendment of the Deeds Act, 1937 (Act No. 47 of 1937) in order to oblige the Registrar of Deeds to ask for additional documents to determine the nationality of the legal entity which is seeking to acquire land (Amendments effected);
    8. Provision for a deeming clause in the Land Bill to provide for (Section 75) cases where a person disposes of his or her interest in a juristic entity owning land, such disposal will be deemed to be an alienation of land and that the State shall be entitled to expropriate such land subject to fair and just compensation in line with Article 16 of the Namibian Constitution (Amendments effected);
    9. A review of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) to provide a definition of an Economic Farming Unit (EFU) to enable the State to determine whether land is excessively held by one owner/entity (Amendments effected);
    10. To provide for regulation of the consolidation of agricultural land under Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) (Work in progress);
    11. Consolidation of the Subdivision of Agricultural Land Act of 1970 and Administration of Estates Amendment Act (Rehoboth Gebiet), 1981 (Act No. 5 of 1981) into a single law (Work in progress);
    12. A provision is being made in the Land Bill requiring that in the event where a foreign national who owned agricultural land has no heirs to the property, such agricultural land must first be offered to the State, and in case where the State waives its preferent right, such waiver must be accompanied by a condition that such land must be sold to Namibian citizens;

* + 1. A provision in Land Bill authorizing and empowering the Minister responsible for land to gazette/publish information on the farms waived; (Done);
    2. Harmonization of all legislations related to land in Namibia in order to create better coordination in dealing with change of land use in the country (Work in progress); and
    3. A provision in the Land Bill (Section 75 (8) (iii)) expanding the membership of the Farm Price Negotiation Committee (FPNC), which is tasked to negotiate farm prices (Done).
  1. **URBAN LAND**
     1. Amendments to the Local Authorities Act, 1992 (Act No. 23 of 1992) and the Regional Councils Act, 1992 (Act No. 20 of 1992) to prohibit the sale of urban land through auction and also to prohibit ownership of urban land by foreign nationals. Foreign nationals shall only be allowed to lease such land;
     2. Amendments to the Local Authorities Act, 1992 (Act No. 23 of 1992) and the Regional Councils Act, 1992 (Act No. 20 of 1992) authorising and empowering the Minister to direct that foreign nationals who own urban land, before the coming into force of the proposed amendments to the existing laws and the new law, to only sell such land to Namibian citizens with first option granted to the Local Authorities (Amendments effected);
     3. Repealing of all outdated urban and regional planning laws and introducing a single planning legislation (Urban and Regional Planning Bill) (Amendments effected);
     4. A provision in Consumer Protection Bill to regulate the property rental market, with a view to prevent the current exploitation of tenants by landlords (Work in progress);
     5. Amendments to the Local Authorities Act, 1992 (Act No. 23 of 1992) and the Regional Councils Act, 1992 (Act No. 23 of 1992) to introduce and strictly enforce measures to regulate the sale of urban land to private developers (Amendments effected); and
     6. Amendment of the Estate Agents Board Act to regulate the conducts of estate agents and property developers (Work in progress).

**3.3 COMMUNAL LAND**

* Amendment to the Communal Land Reform Act, 2002 to provide for the establishment of Land Administration Committees in areas where there are no recognised traditional authorities (Amendments affected).

**4. GENERAL**

* 1. Cabinet has adopted 89 Resolutions on Land and related matters.
  2. Some of these resolutions have legal implications, some have personnel implications and all have financial implications.
  3. All these issues are under consideration**.**

Compiled by:

Ministry of Land Reform;

Ministry of Urban and Rural Development; and

Office of the Attorney- General.

**End.**