



Republic of Namibia

**MOTIVATION STATEMENT TO THE NATIONAL ASSEMBLY BY HONOURABLE UTONI
NUJOMA MP, MINISTER OF LAND REFORM ON THE DRAFT DEEDS BILL.**

NATIONAL ASSEMBLY - WINDHOEK

28 OCTOBER 2015

Honourable Speaker

Honourable Members of the National Assembly

1. It is an honour to have this opportunity to present to the National Assembly, the **Deeds Registries Bill**, for discussion and adoption. The Bill seeks to consolidate and amend the **Deeds Registries Act, of 1937 (Act No. 47 of 1937)**, and the **Registration of Deeds in Rehoboth Act, of 1976 (Act No. 93 of 1976)**, to ensure a common standard practice for land registration in Namibia, bring equal service to all citizens and provide for incidental matters.
2. The House is aware that the process of reviewing and amending the two pieces of legislation was deemed necessary by the observation that since independence, the system of land legislation in Namibia did not have equal status. It was also clear that for the registration of deeds to have the same status the law had to be harmonised. Hence the Ministry of Land Reform took the opportunity to create one law that governs property registration in the country. Several consultations with communities and stakeholders to explain the draft Deeds Bill took place and comments were gathered. These comments were incorporated into the Bill that is being tabled today.
3. Meanwhile, in its current format, the **Deeds Registries Act, of 1937 (Act No. 47 of 1937)**, commenced on the **1st of September, 1937** and was made applicable in Namibia on the **1st of June 1972**, and is still applicable in accordance with Article 140 of the Constitution of the Republic of Namibia. While, the **Registration of Deeds in Rehoboth Act**,

(Act No. 93 of 1976), came into operation on the 26th of November, 1976 and is still applicable in Namibia. The **Deeds Registries Act, 1937** (Act No. 47 of 1937), was enacted to serve the whole country except the **Rehoboth Gebiet**. Since 1976 to date, Rehoboth has been operating under a separate land registration system to all of Namibia [as if it is not part of the Republic of Namibia].

4. It should be noted that both pieces of legislation are based on outdated colonial South African laws that do not address the current needs nor respond to the aspirations of the Namibian people and the socio-economic and political situation in the country. Due to the uncertainties and practical problems caused by the provisions of these Acts, the need to repeal the legislation became a priority.
5. Further to this the consolidation and amendment of the two Acts was also necessitated by identified challenges that are specifically embodied in the two existing legislations relating to the following:
 - a) **The Walvis Bay Scenario:** whereby tenure rights for **black Namibians** were registered in Cape Town, South Africa and held under “**second hand**” leasehold rights under laws only applicable in South Africa. Despite the provision of Article 1(4) of the Namibian Constitution, Walvis Bay and the Off-shore Islands continued to be controlled by the Republic of South Africa in accordance with the laws of South Africa until the date of re-integration of Walvis Bay into Namibia, being 1 March 1994.
- Prior to the above-mentioned date, land tenure rights such as leaseholds were issued and registered in the Deeds Office in Cape Town in respect of the people of Kuisebmund township in terms of the provisions of the

Black Communities Development Act, 1984 (Act No 4 of 1984) of South Africa. The holders of these rights could not mortgage the land nor could they even sell the right.

- The upgrading of the **Land Tenure Rights Act, 1991 (Act No 112 of 1991)** made provision for the conversion of the leasehold into freehold. However, neither of these two Acts are applicable in Namibia. The existing Act does not provide for the above-mentioned situation. In practice, this meant that the registered owner of a house in Kuisebmund Township is not able to obtain funding from the bank nor can they sell their property, but in terms of the new Deeds Registries Bill that I am tabling today, the owner of a leasehold in Kuisebmund Township will be able to obtain full ownership of their property. **Clause 95 of the Draft Deeds Bill** provides for the conversion of certificates of leasehold [previously registered in South Africa] into title deeds free of charge to bring relief to the communities residing in Kuisebmund.

b) **Secondly, the Rehoboth Scenario:** whereby the community has been experiencing many challenges through the application of a law that was different from the rest of the country. The Government through this exercise took the opportunity to bring unification in the registration of property especially agricultural land within Rehoboth that is held under undivided shares. This issue posed a lot of challenges to the general implementation and administration of agricultural land tax. In this case some of the physical boundaries of the land in Rehoboth are not surveyed and thus cannot be determined. It is also a challenge to place a value on each undivided share for land tax purposes. Of importance to note also is the fact that currently the **Registration of Deeds in**

Rehoboth Act, does not make provisions for the registration of sectional titles, however the new draft Bill provides for the development and registration of sectional title schemes in the local Deeds Office.

- In respect to the Rehoboth case the new Deeds Registries Bill provides for the integration of all immovable property within the Rehoboth *Gebiet* into the mainstream economy and the conversion into title deeds. **Clause 95 in the Draft Deeds Bill** makes provisions for the surveying of all undivided portions of agricultural land and upon approval by the Surveyor General the commencement of registration and integration into title deeds.
 - Further to this, land owners could use the surveyed and registered land as collateral. These changes will also address other social issues pertaining to inheritance of farms/property which can be a challenge in the absence of legal records. The new land registration system as proposed in the Bill will facilitate land transfers, secure tenure and provide consistency.
- c) **Thirdly, in the Deeds Registries Act of 1937**, all deeds registration in respect of immovable property has to be prepared and registered by a Conveyancer. The Ministry has listened and noted the comments by the stakeholders during consultation that the services of Conveyancers are expensive and unaffordable to the majority of the people. Thus in the proposed Deeds Bill, **Clause 9**, empowers the property owner to prepare and lodge his/her own deeds documents at the Deeds Registry and to make a choice whether to make use of the services of a Conveyancer. This clause does not allow Estate Agents or Commercial Banks the right to prepare title deeds or mortgage bonds since they are not the

registered owner of the property. The technical staff within the Ministry have visited other countries and witnessed the operations of a walk-in system at work. In those countries it has proved to be a cost effective and secure system. As Government we have a social responsibility to empower and educate our citizens and this Bill provides for that.

6. As alluded to earlier, the introduction of this Bill is long overdue as it is part of the many instruments of transformation that our Government is spearheading to improve the quality of life and livelihoods of the Namibian people. This initiative is similar to that of the Ministry of Industrialisation, Trade and Small Medium Enterprise Development where the business sector has been transformed by updating the registration of companies through the provision of facilities for on-line registration without the requirement for assistance from a third party.
7. The Ministry acknowledges the various initiatives embodied within the **Fourth National Development Plan [NDP4]**, that are targeted towards achieving sustainable high economic growth, the creation of employment opportunities and the eradication of inequality in the distribution of economic benefits. It is accepted that to achieve the goals of **NDP4** certain reforms must be undertaken. Having due regard of these development goals **Clause 2 in the Draft Deeds** addresses the important issue of the decentralisation of the work of the Deeds Registry. I am pleased to inform that the Deeds Office will establish Deeds Offices/Sub-Deeds Offices country-wide. This is meant to bring service to our people and reduce the time taken in property transactions.
8. As Government it is our duty to see to it that all past discriminatory laws are reviewed, repealed and that the current laws being enacted

benefit all of our people equally. As it stands, we have two different pieces of legislation governing different areas in respect of the same land and country. The Ministry after a thorough streamlining of the current policies, legal framework and informed by our mandate to deliver to the Namibian Nation as a whole and the current dynamics on the land market world-wide and in our country felt that the Deeds Bill should be prioritised. Hence the initiative by the Ministry of Land Reform to amend the Deeds Registry Act and to repeal the Rehoboth Deeds Registry Act.

9. Honourable Speaker, this House is aware of the Ministry's mandate to implement a Land Reform process that is guided by a robust legal and policy framework. The Deeds Bill will bring efficacy into the land administration processes and enhance the Ministry's deliverables within the land sector. Today let us address these apparent shortcomings that are a consequence of our colonial past and look forward to a successful economic future for our country.

10. In conclusion, Mr Speaker, Honourable Members, I appeal to this House to debate and consider the Draft Deeds Bill favourably in light of our quest to reform this legislation and create one law that govern land registration in our country.

I thank you.

