



**NATIONAL ASSEMBLY**

**7<sup>th</sup> PARLIAMENT**

**PARLIAMENTARY STANDING COMMITTEE ON NATURAL RESOURCES**

**REPORT ON THE PETITION TO PROVIDE FOR THE REGULATION OF  
FOREIGN OWNERSHIP OF LAND IN NAMIBIA**

**REPORT NO. 07/2025**

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### *Acronyms*

AR	- Affirmative Repositioning
ACLRA	- Agricultural (Commercial) Land Reform Act
CLRA	- Communal Land Reform Act
CSO	- Civil Society Organizations
CCN	- Council of Churches in Namibia
OMAs	- Offices, Ministries and Agencies
LAC	- Legal Assistance Centre
LRDC	- Law Reform and Development Commission
MURD	- Ministry of Urban and Rural Development
MAWLR	- Ministry of Agriculture, Water and Land Reform
NNFU	- Namibia National Farmers Union
NAU	- Namibian Agricultural Union
ARC	- Association of Regional Councils
ALAN	- Association of Local Authorities
NIPB	- Namibia Investment Promotion Board
PDNFU	- Previously Disadvantage Namibia Farmers Union
NYC	- National Youth Council
SRO	- Standing Rules and Orders
WAD	- Women Action for Development

### ***Chairperson's foreword***

Land reform is an important political and economic topic in Namibia since independence. The country held its first land conference in 1991, followed by the second one in 2018 all in effort to acquire and redistribute land to rectify colonial injustices. The restitution of ancestral land rights in Namibia has since independence divided opinions, this led to the commissioning of an Inquiry into Claims of Ancestral Land Rights and Restitution by the President in 2018 borne of the 2018 Land Conference. Government after Independence adopted the principle of willing buyer-willing seller land redistribution, which has been blamed for the escalation in the price of farmland and not having achieved targets set.

Land redistribution seeks to provide the disadvantaged and the poor with access to land for residential and productive purposes. Land dispossession during the colonial era and the decades of apartheid rule produced a highly unequal pattern of land ownership and widespread rural poverty. The land reform programme should therefore seek to address three key elements: restitution, tenure reform and redistribution. While restitution deals specifically with historical rights in land, and tenure reform with forms of land holding, redistribution is specifically aimed at transforming the racial pattern of land ownership. Redistribution of land is widely seen as having the potential to significantly improve the livelihoods of the rural poor and to contribute towards economic development. The Committee in general supports any viable approaches and strategies to resolve the Land Issue provided are in synch with the Rule of law and will empower and transform the people's lives.

The Committee made a number of critical recommendations that I believe will assist us as a nation to better find a long lasting solution that has eluded us since Independence. I therefore urge all of you, Hon Members of this august House to peruse through the report to better understand and appreciate the views expressed for us to make informed decisions.

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## **1 INTRODUCTION AND BACKGROUND**

### **1.1. REFERRAL OF THE PETITION**

Affirmative Repositioning (AR) an activist's movement submitted a Petition on 18 March 2019 in form of a draft Bill titled '*Bill to provide for the regulation of foreign ownership of land*'. The Petition was referred to the Natural Resources Committee in line with Rule 93(c) of Standing Rules and Orders on 12 April 2021.

### **1.2 MANDATE OF THE COMMITTEE**

The Standing Committee on Natural Resources has the duty to;

- (a) Consider any matter it deems relevant with regard to the Offices, Ministries, Agencies, and all State-owned Enterprises and Parastatals responsible for the following category of affairs which shall, inter alia, include: Agriculture, Water and Forestry; Environment, and Tourism; Fisheries and Marine Resources; Mines and Energy and Land Reform.
- (b) Monitor, enquire into, and make recommendations to the Assembly on matters that may directly or indirectly affect the natural resources of the Republic of Namibia and its people;
- (c) Operate with a vision to promote sustainable utilization of Namibia's natural resources;
- (d) Review and advise the National Assembly on the activities and matters related to the agriculture, water and forestry;
- (e) Ensure that government put restraint on environmental degradation and protect the environment;
- (f) Review and advise the National Assembly on matters related to mines and energy sectors;
- (g) Ensure a fair distribution of farming land and productive utilization of it in Namibia;

### **1.3. COMMITTEE MEMBERSHIP**

The Standing Committee on Natural Resources has 22 Members of Parliament from various political parties represented in the National Assembly.

### **1.4. METHODOLOGY**

To obtain the necessary information and evidence relevant to the Petition the Committee resolved to conduct public Hearings with key stakeholders dealing with issues on land such as Offices, Ministries and Agencies (OMAs), Organizations representing the Youth, Women and Marginalized Communities, Farmers Unions and Traditional Authorities whose are the de facto custodians of Customary land on behalf of the state. To ensure awareness, participation and attendance of the public and the media fraternity the hearings were posted on the Parliament website and social media platforms such as Instagram and Facebook (livestreamed) in line with SRO (58 (a) and (b)).

All invited stakeholders were without exemption required to make a presentation and to avail any supporting evidence, documentation to augment their stand on the matter. All key documentations received, form part of this report as annexures.

## **1.5. OBJECTIVES OF THE INVESTIGATION**

The Main objectives of conducting the investigation on the Petition were to amongst others:

- (a) Investigate issues of key concerns raised by the Petitioners in regard to land ownership by Foreign Nationals;
- (b) Obtain inputs on the Petition from relevant Stakeholders;
- (c) To compare and analyze existing legislations, policies on Land with the proposed Bill to better understand the root of the Petition.
- (d) Establish compliance of the proposed Bill in relation to the Supreme Law of the Land, the Constitution.
- (e) Produce a comprehensive report on the findings and make informed recommendations to the (House) Assembly.

## **1.6. PURPOSE OF THE REPORT**

The purpose of the report is to apprise the National Assembly of the Committee's findings and recommendations on the Petition to regulate foreign Ownership of Land in Namibia.

## **2. THE PETITION**

### **2.1. AFFIRMATIVE REPOSITIONING MOVEMENT**

AR submitted the Petition in 2019 in form of a draft Bill for debates and general discourse necessary for the decisive legislation to solve the land question at the legislative level. The draft Bill has two chapters with the first dealing with definitions, applications of the Act and the Objectives which are to;

- 1) fulfill the directives and objectives of Article 16(1) of the Namibian Constitution,
- 2) regulate the right to acquire poverty by persons who are not Namibians citizens,
- 3) reaffirm and give power, control and ownership of the land in Namibia to the people of Namibia and to
- 4) provide for incidental matters

Chapter two of the Bill deals with orientation towards the land question, covers in part 1 the state as the custodian of the land, prohibition of ownership of land by foreign Nationals and the Conditions and circumstances of utilization of land by foreign Nationals. The Bill provides for conditions under which foreign nationals may utilize land in Namibia as listed in section 5.

Part 2 of the Bill deals with matters regarding Urban Land, Agricultural Land and Communal Land whereas chapter 3 deals with general provisions in regard to expropriation of land, status as a primary legislation, protection from proceeding in foreign courts and title of the Bill.

## 2.2. RELIEF BEING SOUGHT BY THE PETITIONER

The Affirmative Repositioning Movement is seeking for the passing of the draft Bill to regulate the foreign ownership of land in fulfillment of the directives and objectives of Article 16(1) of the Namibian Constitution. Article 16(1) ***states that 'All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens'.***

## 3. PUBLIC HEARINGS

The Committee held public hearings with all identified key stakeholders in Windhoek.

### 3.1 AFFIRMATIVE REPOSITIONING MOVEMENT (AR)

AR was represented by Dr. Job Shipululo Amupanda, Mr. Dimbulukeni Nauyoma, Mr. Benedict Low and Mr. Maitjituavi Kavetu. Dr. Amupanda quoted Articles 1 (2) and 45 of the Namibian Constitution, and then gave a historical background of the land in Namibia dating back from 1884. He narrated how the land was lost at different stages during the colonial era.

According to Dr. Amupanda the size of Namibia is 824 292 square kilometers, which translate roughly to about 42 million hectares, plus /minus 43 million football stadiums. From that, 39 million hectares is referred to as free hold agricultural land lawfully owned with title deeds, white people own 27% while black people own 16% and government own only 5 million hectares which is 14%. From the 12 380 farms privately owned, 7000 are owned by individuals, 2800 by companies and 1200 owned by government, 150 farms owned by trust and 71 farms are owned by churches. 250 farms measuring 1, 2 million hectares of land is owned by foreigners. The movement strongly condemned land ownership by foreigners and urged government to come up with a regulatory framework, not necessary the bill they have submitted but as long as the principle set remain and that the leasing of land to be reduced to 10 years not the current 99 years.

### 3.2. MINISTRY OF AGRICULTURE, WATER AND LAND REFORM

The Ministry of Land Reform enacted the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) to regulate the acquisition of agricultural commercial land by foreign nationals. The Acquisition of agricultural land by foreign nationals is subject to the written consent of the Minister. The Agricultural (Commercial) Land Reform Act, 1995 (Act Number 6 of 1995) does not prohibit foreigners from acquiring agricultural land in Namibia. However, foreigners would only be competent to acquire agricultural land through the registration of transfer of ownership in the deeds registry with the prior written consent of the Minister.

Agricultural land comprising of 281 farms with a combined size of 1,376,086.7010 hectares is owned by foreign nationals some of whom hold such farms for periodic hunting purposes. Of these about 34 farms comprising of 176,693.3200 Hectares are owned by foreign nationals in conjunction with Namibians (**Figure 1 below**). Some of the challenges the Ministry experience are; some farm owners circumvent the law by registering farms into companies, close corporations and trusts; the delay in the promulgation of the Land Bill prolongs the trespassing of the law and further result in agricultural land being acquired by foreign nationals and the

expropriation process that is lengthy when faced by legal challenges and also costly as compensation is involved.

The Ministry is in the process of consolidating the Agricultural (Commercial) and Communal Land Reform Acts into a Land Bill, which advocates for outright prohibition of acquisition of agricultural land by foreign nationals as put forth by AR in their Petition. The Ministry is committed to deliver on the draft Land Bill with tabling in the National Assembly envisaged for the last session September to November 2022. Extensive consultations were carried out in all regions heading back to 2010 when the drafting started. The Committee was assured that specific proposals made by AR are already catered for, most of them were the same as the pronouncements made at the Second National Land Conference.

AR offered a definition of a lease (Chapter 1 (1)), the definition will be included in the Land Bill because the current Land Bill did not define what is termed to be a lease. The Ministry is not in support of an outright ban of Foreign Nationals to own land in particular agricultural land. Namibia needs to improve food security and, in some cases, meagre agriculture projects are inevitable. To ensure economic growth agricultural land must be accessed by foreign nationals but through strict control and leasing so that we outline our position under which conditions the land is to be leased.

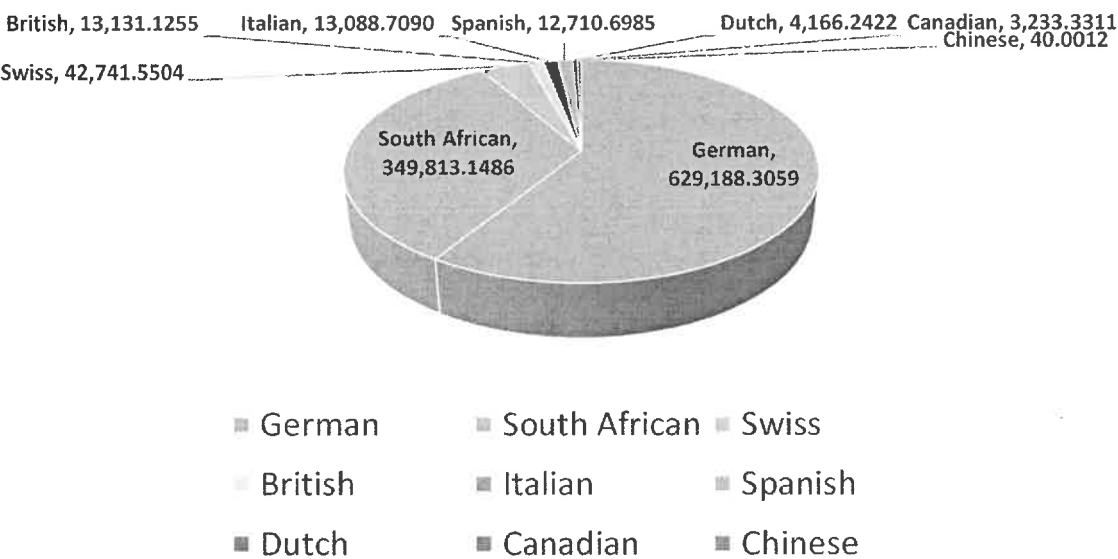


Figure 1: Land Ownership by Nationality (source: MAWLR)

### 3.3 MINISTRY OF URBAN AND RURAL DEVELOPMENT (MURD)

The Ministry led by the Deputy Executive Director Mr. Uyepa informed the meeting that they needed time to consult due to the fact that the Ministry does not directly deal with land. Indirectly deal with it in the sense that in terms of claiming that is now special planning which is being done by the Ministry or under the custodian of the Ministry through the Urban and Regional Planning Act to deal with urban land. It is also dealt with in the sense that any land that must be disposed,

urban land in particular need to be approved by the Ministry but the actual implementers are Local Authorities and Regional Councils.

In terms of the laws that deal with urban land, foreign ownership is not prohibited. There was an attempt by some stakeholders around 2015-2016 where the Ministry of Urban and Rural Development was requested to introduce amendments to the Local Authorities Act in order to provide for the prohibition of ownership of land by foreign nationals. The amendment was done and presented to Parliament. However, the particular Amendment dealing with foreign land ownership was rejected by both Houses and thereby removed from the approved Bill. The ministry advised that a legal interpretation of a Foreigner be clearly obtained to avoid any ambiguity. In addition, the Ministry cautioned the provision to prohibit ownership need to be properly researched for it not to scare away investors as they need land to build their business premises.

### **3.4 MINISTRY OF JUSTICE (LAW REFORM AND DEVELOPMENT)**

The Ministry through the LRDC in trying to establish the constitutionality of the proposed Bill explained in detail what article 16(1) refers to. The key words are what constitute the provision which are; property, rights to acquire and persons involved. **Property** means a real right over the property which comprises of ownership (freehold), leasehold, mineral rights etc. In the current context of the proposed law, property is in relation to ownership of land.

Right to Acquire denotes that any law that prohibits or regulates ownership of property, in this case land, by a Non-Namibian citizen will have to be confined to future acquisition and not current ownership. Any provision that seeks to deprive a Non-Namibian citizen off their existing land rights, would have to be done in accordance with Article 16(2). **Persons**, the understanding of persons in Article 16(1) includes both natural and juristic persons. This means that in considering a law to prohibit or regulate land ownership by Non-Namibian citizen, the definition of Non-Namibian citizen should include foreign juristic persons.

#### **3.4.1. Limitation to Constitutional Rights by the Bill**

The proposed Bill has an impact on certain rights and freedoms, particularly the fundamental rights and freedoms as contained in Chapter 3 of the Namibian Constitution. It has an impact on the right to equality (Article 10(1)) in that it seeks to treat non-Namibian citizens different from Namibian citizens, it has an impact on the right to property (Article 16) in that it limits the rights of an existing owner on how or to whom to dispose the property to, as well as limiting the rights of non-Namibian citizens to acquire property; it has an impact on the freedom of association (Article 21(1)(e)) in that it limits the manner in which persons may form associations or legal entities in the acquisition of property with non-Namibian citizens; it also has an impact on the freedom to contract which is the right of persons to freely contract and bind themselves in respect of all legitimate subject matters, in that it prohibits with whom persons may enter into contracts for the sale of land and land rights. In this regard, any limitation of all of the above rights by the proposed Bill must pass the test provided for by the Constitution as interpreted by our courts.

To illustrate further, The Ministry quoted judgement on *Another v Minister of Justice & Others* 1998 NR 96 (HC) wherein Maritz AJ referred to the words of Chaskalson P in *S v Makwanyane* 1995 (6) BCLR 665 (CC) at 708 [104] where he states that 'In the balancing process, the relevant

considerations should include the nature of the right that is limited, and its importance to an open and democratic society based on freedom and equality; the purpose for which the right is limited and the importance of that purpose to such a society; the extent of the limitation, its efficacy, and particularly where the limitation has to be necessary, whether the desired ends could reasonably be achieved through other means less damaging to the right in question’.

### **3.4.2. The Retroactive Effect of Clause 8 (2) of the Bill**

Clause 8(2) of the Bill (Chapter 2, part 2, 8(2) provides that: Any allocation of communal land to a foreign national before this act shall be deemed to have been an illegal transaction and shall be repudiated. The clause raises a concern in that it seeks to have retroactive effect by declaring transactions, which may have been lawfully executed at the time, to be illegal. Although the general prohibition against retroactive legislation contained in Article 12(3) of the constitution is applicable to criminal legislation, in civil and administrative law such retroactive effect can negatively affect the rights and legal interest of persons.

The LRDC outlined existing legislations and their stand on prohibiting Foreign Nationals from buying land in Namibia which are; Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995); Communal Land Reform Act, 2002 (Act No. 5 of 2002); Local Authorities Act, 1992 (Act No. 23 of 1992); Regional Councils Act, 1992 (Act No. 22 of 1992); Flexible Land Tenure Act, 2012 (Act No. 4 of 2012); Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978) and Deeds Registries Act, 1937 (Act No. 47 of 1937). None of these legislations prevents nor prohibits foreign nationals to acquire land in Namibia with the exception of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) section 17 which prevents any persons including citizens to acquire communal land as it’s vested in state.

### **3.5. LEGAL ASSISTANCE CENTRE**

The LAC emphasised that the constitutionally guaranteed right to property effectively means: a) the right to buy and own property (whether jointly or alone); b) the right to use, access and enjoy the property and c) the right to sell the property or dispose of in any other way e.g. donation or in a will to your heirs. The right to own property is also guaranteed by Article 17 of the Universal Declaration of the Rights and Duties of Man. Everyone has the right to own property alone as well as in association with others and that no-one may be arbitrarily deprived of property. This right is guaranteed in many other international instruments to which Namibia is a signatory. Any limitation of this right in the domestic context must thus be weight against international laws pertaining thereto.

No expropriation process or foreign ownership prohibition requirements and procedures are set out in Article 16. The Agricultural (Commercial) Land Reform Act (6 of 1995) is currently the only legislation that explicitly deals with the “requirements and procedures” for expropriation, as authorised under article 16(2) – read together with article 16(1) of the Constitution. Article 16 represents a balancing act or political compromise of sorts between Government’s Land Reform intend and the guarantee of private property rights. The Agricultural (Commercial) Land Reform Act (6 of 1995) currently already makes provision for compulsory expropriation of agricultural land under section 14(2) under four different categories: a) expropriation of under-utilised land; b)

expropriation of excessive land; c) expropriation of land owned by foreigners; and d) expropriation of land where the state has failed in applying the willing seller willing buyer principle.

LAC maintained that it is unclear how the passing of the Regulation of Land Ownership by Foreign Nationals Bill and bringing additional powers would change the current status quo. It would in LAC view amount to a duplication and could potentially create confusion and erode legal certainty. They advised to rather insert additional categories or grounds of expropriation in the existing legislation other than a standalone legislation. Section 5 of AR Bill should define what constitutes commercial land. The ACLRA already deals with the regulation and limitation of foreign ownership of agricultural land, it would therefore suggest that commercial land in this sense refers to a different kind of land, but in the absence of a definition therefore in the Draft Bill, it is difficult to determine specifically to what category of land the prohibition against foreign ownership of commercial land entails.

The Draft Bill provision for lease renewals (Chapter 2, Part 1, 5(3) but does not state the requirements and procedures that would have to be followed in pursuit of such renewal. This leaves a critical gap in the Draft Bill, which whilst not fatal, would certainly leave a lot of room for constant litigation, by virtue of the failure to provide clear procedures and requirements.

The limitation proposed on Urban Land is similar to the one in respect of agricultural land under the ACLRA, in that existing ownership is not terminated, but continued ownership is prohibited (in ACLRA continued ownership of agricultural land is only limited or regulated, not prohibited as is the case here). Urban Land is currently regulated under the Local Authorities Act (1992): there are currently no outright restrictions placed on foreign land ownership under the Local Authorities Act. LAC is of the view that whilst a limitation on foreign ownership of urban land is potentially necessary, a blanket prohibition which does not set out any requirements or procedure to be followed when being implemented and also does not provide for just compensation in the event of expropriation would in all likelihood not hold up to international law requirements and the requirements in built into Article 16.

In respect of **“Agricultural Commercial Land”**: The three-year requirement (Chapter 2, Part 2, 7(1) is ambitious out of necessity, in light of the landlessness and homelessness facing Namibians, but given the history of the implementation of the expropriation procedures contained in the ACLRA the practicality and implement ability thereof is uncertain. In respect of **“Communal Land”**: Whilst ordinarily communal land is normally held in the hands of Namibian Nationals and this would ordinarily be the case, a blanket ban may harm the communal communities and stifle investment, tourism and economic opportunities in communal areas. LAC proposed the use of limitation in respect of partnerships with Namibians having a 51%+ controlling interest would be a more practical and feasible solution that would be more beneficial to the local communities. A blanket ban without clear procedures and requirements leans itself towards being arbitrary and being subject to legal challenges.

In respect of **“Court Proceedings”**: Unlike the ACLRA which establishes the Lands Tribunal and other dispute resolution mechanisms, the Draft Bill does not specifically address dispute resolution mechanisms. This LAC asserted is an unfortunate omission as experience has taught us that land rights litigation needs to specifically be provided for given the many points of

difference and contestation that could arise. Providing for clear dispute resolution mechanisms would also lessen the burden on the traditional courts to deal with land rights litigation and should provide a faster, cheaper, more accessible and efficient procedure to protect and safeguard any rights that may be affected by implementation of the Bill. LAC welcomes the Bill as an addition to the discourse on accessing land rights but still needs significant refinement and re-consideration before it can be turned into law.

### **3.6. NAMIBIA NATIONAL FARMERS UNION**

NNFU represents the majority 70% of farmers in Namibia inclusive of communal farmers. They emphasized that the status quo shows that 2% of Namibia's agricultural land is still owned by none Namibians. It is a concern that at this stage Namibian people are still struggling to have land. NNFU is aware that of the need to promote global competitiveness to allow the market to regulate itself. The reality remains that when the market fails to regulate itself there is a need for the Government to come in, this is evident in the issue of land in Namibia. Thus NNFU supports any Bill that aims to resolve the Land issue.

### **3.7. NAMIBIAN AGRICULTURAL UNION**

NAU is a non-political voluntary membership organization with its primary focus for the past 75 years on agriculture. It represents in excess of 2,000 paid up members mostly Namibians but also none Namibians engaged in agriculture across title deed areas of Namibia. NAU's vision as Commercial Farming Union is to create an enabling environment for all primary agricultural product to sustainably grow their enterprises and the agricultural sector at large thereby feeding the nation and contributing significantly to the gross domestic product of Namibia. Namibia cannot afford any land that is not utilized in a productive and sustainable manner irrespective of whether the land is situated in a title deed or a communal area or owned by either Namibians, foreigners or the Government of Namibia. Investments, focus, determination and hard work is need to achieve productivity benefitting all Namibians.

The Bill's provisions will impact adversely on both current and future foreign investments by none Namibians in the country. The Bill will preclude embassies of foreign countries to purchase land in urban areas for the establishment of offices in Namibia and for the accommodation of ambassadors, offices, the aides and staff or for their families and which will constrain them to conditional leases of such land for less than ten years. The greater chilling effect on future foreign investments in agriculture in Namibia will be the proposed expropriation of that land within three years as contemplated in the Bill (Chapter 3 (9)). This will entail expropriation within three years old land being owned by mining corporations in agricultural areas where they have invested millions of Namibian dollars sometimes billions in mining plants, housing and other infrastructural developments. Developments required for the conduct of efficient mining operations to be conducted for decades even centuries in certain instances on farmlands.

NAU wanted clarity on clause 5 (Chapter 2, Part 1, 5(1)) of the Bill, ownership of 51 % by a Namibian. The key question to ask is how many Namibians, are in a position to contribute millions of Namibian dollars for the development and conduct of mining activities for large scale mining or is the idea that the Namibian citizens will be entitled to 51% of the profits but the foreign nationals or concerns would have to contribute all of the costs for the mining infrastructure and operations.

The arrangement of leases contemplated in the Bill carries with it the real risk that mining houses may look elsewhere for investment opportunities resulting in a substantial loss of taxes, royalties and many thousands of employment opportunities in Namibia. The attempted exclusion of international jurisdiction in clause 11 (chapter 3, 11(1)) of the Bill may not be looked upon favorably internationally and is likely to have an impact on foreign investors.

NAU supports both in principle and in substance the programme of land reform initiated by the Government and being implemented in a fiscal and responsible manner. It respectfully submits amongst others for the reasons advanced earlier herein that the Bill proposed by the AR is formulated overall broad in its purpose and effect and if it is promulgated in its current form it will have unconstitutional and severely impact on the fundamental rights of Namibian owned companies and corporations amongst others to acquire own and dispose of land in Namibia protected under Article 16 of the Constitution.

The Bill will preclude the acquisition of land by other countries to establish and maintain an efficient diplomatic presence in Namibia. It will rheumatically and prejudicially affect the ownership of commercial agricultural land by all foreign nationals who had obtained the Government's concern and existing legislation and policies to acquire and own such land and who, on account of such consent had made substantial investment in such land to enhance the production and infrastructure thereof to create employment and contribute to the economy of the country. It may detrimentally affect Namibia's standing as a respected member in the eyes of the international community and it's in effect will wave a red flag for all and much needed foreign investments in the country and result in a substantial drop in the GDP, employment opportunities for Namibians and diminish the welfare of the people.

### **3.8 ASSOCIATION OF REGIONAL COUNCILS**

ARC resolved at their annual meeting to allow each Regional Council an opportunity to deliberate on the Petition and provide their inputs. Thus far the Committee only managed to get inputs from two Councils, Oshana and Otjozondjupa. Oshana advocated for the expropriation of land occupied by absentee landlords of essence should be productive lands. Foreigners should not be given nor permitted to own land, but rather be allowed to lease it for agricultural and trading purposes for a period not longer than 25 years. Article 131 of the Constitution should be taken into consideration before amending article 16(1) for the sake of regulating the proposed petition.

Otjozondjupa proposed Chapter 1, Part 1; Section 3 sub section (1) (b) to replace the word 'enable' to enabler to read *'to serve as an enabler for the government and the state including any of its agencies to regulate land ownership in relation to foreign nationals'*. Sub section (1) (c) the word indigenous to be removed as it's not defined thus might attract ambiguous interpretation the sentence should read *"to regulate and ensure land allocation to Namibians"*. Chapter 2, subsection (1) (b) remove repetitive word 'Cabinet'. In addition, the Council proposed the following inclusions under Section 6;

- i. Limitation on size of land to be 5 hectares as per the land conference resolution
- ii. In terms of alienation, Government should regulate the price
- iii. Land lawfully owned by foreign nationals prior to enactment of the act to be subject to limitation in terms of size, number/amount of land owned as well as economic or ecological usage with the excess expropriated.

### **3.9. ASSOCIATION OF LOCAL AUTHORITIES**

The Association provided written inputs on the Petition. ALAN proposed for section 5(3) 'lease of land not to exceed 10 years' to be revisited, for the main reason that it risks compromising large investments where the return on investment requires periods of more than 20 years. In regard to section 6(2), ALAN proposed that mechanisms be put in place to avoid companies and trusts to exchange ownership of land between them to ensure land does not remain in the hands of foreigners. In addition, ALAN proposed that a study be conducted to harmonize all the different laws that govern land by engaging all sectors.

### **3.10. NAMIBIA INVESTMENT PROMOTION BOARD**

The Board was not supportive of the Bill in its current form as it Creates policy uncertainty for investors. Generally, the Bill doesn't promote investments in Namibia, it renders the country uncompetitive, reduces the ease of doing business and increases the cost of doing business. Rather they advised that since the land bill is already in progress, issues that resonate with the Constitution be consolidated in the Land Bill. Instead of prohibiting the Board advised Lease be allowed based conditions/provisions in place for regular monitoring in the purchase agreements (e.g. clawback conditions/provisions within the act or investment performance agreement).

On urban land, adopting the Bill as is will mean no ownership of land for offices or industrial land for foreigner's a situation that is highly unattractive to foreign investments. Thus the Board recommended to allow purchases of urban land with conditions/provisions in place for regular monitoring in the purchase agreements (e.g. clawback conditions/provisions within the act or investment performance agreement). Communal land should have value, prohibition of all types of ownership discourages investments that create/increase value in communal land. Agricultural land projects are possible along the perennial rivers of the Orange, Kunene, Okavango, Zambezi and Chobe. These are largely bordering communal land. A prohibition for foreign nationals to utilize such land would block all foreign investment into any such agricultural projects. NIPB advocated for allowing leasing of agricultural land by foreigners as this is the common trend followed by countries such as Philippines, Thailand, Cameroon, Kenya, etc.

On the issue of conditions for acquiring land, the Board was not in agreement with the Bill as this will mean the investor/foreigner will carry 100% risk and zero control as according to the Bill the partnership should be 51 % for local giving them controlling interest. In addition, the 10 years' lease proposed (Chapter 2, Part 1, (3) is too short, unattractive to investors as its short term for long term investment, 99 years is the benchmark world practice. Project financing will be difficult for investors to obtain as 10 years is not commercially viable.

### **3.11. PREVIOUSLY DISADVANTAGE NAMIBIA FARMERS UNION**

PDNFU based their support to the Bill on the Impact of land reform in Namibia since independence in particular affirmative action loan scheme whose main Aims and Objectives were to contribute to peaceful land redistribution and Economic performance. They questioned if after more than 30 years of independence has the country met its key objectives in land acquisition and distribution to which available data indicates not even half the target has been realized to date. PDFU called on the Committee to recommend to Agribank to call off all Legal actions and Auctioning of land of

PDFN Farmers. In summary the association fully supports the Bill in aspects of land ownership that needs to be regulated and retained by Namibians.

### **3.12. NATIONAL YOUTH COUNCIL**

National Youth Council was enacted in 2009 through the Act of Parliament Act 3 of 2009. It has its powers and functions in Section 3 of the aforementioned Act mostly important is Section 3(h) that gives it the mandate to speak to the following to implement, monitor and evaluate youth development programs in areas of education, employment creation, health and wellbeing, civic and political participation. Fundamentally the National Youth Council agrees with the petitioners on their recognition that people have for so long been subjected to a state of 'landlessness, arbitrary evictions and inhuman living conditions' and continue to suffer and perish under colonial laws and proclamations regulating land in our country.

It is in light of the above that the Council agrees as per its previous submissions to both the Second Land Conference and the Ancestral Land Commission that there is a need for the regulation of land ownership by foreigners in the country and that Parliament through its Constitutional mandate must act upon it.

In Section 5 of the Bill, the proposal of Namibian citizen's ownership of more than 51% on the leased land for purposes of economic development requires the Namibian citizen to invest shared capital into such a venture. The same problem may plague resettled farmers as they will find themselves in a situation where the resources required to develop the land for economic gain remains elusive thus giving rise to the practice of illegal sub-leasing to advantaged Namibians. To address the loopholes section 5 will cause, Government commitment must be legalized through regulations as leaving it a chance will see Namibians owning more than 51% on paper and not been practiced. Expropriation and compensation remain a matter that has not received its due attention it is the view of the National Youth Council that the recommendation of the ancestral land Commission report must be considered.

### **3.13. WOMEN ACTION FOR DEVELOPMENT**

WAD approached the AR Bill from a Human Rights perspective referencing Article 5 of the Constitution which obligates the Executive, Judiciary and the Legislature to promote, respect and uphold the Fundamental Human Rights and Freedoms. This they emphasized means government must adopt positive action to ensure the fulfillment of Human Rights and Freedoms. Article 10 was also quoted which relates to Equality and Freedom from Discrimination that all persons shall be equal before the law and no persons may be discriminated against on the grounds of sex, race, color, ethnic origin, religion, creed or social or economic status. Article 14 deals with Family and states that Men and women of full age, without any limitation due to race, color, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and have a family.

They shall be entitled to equal rights as to marriage, during marriage and at its dissolution, these provisions WAD argued the Bill seem to have overlooked. WAD was of the view that Article 16 on which the Bill is premised is fundamental but the right is not absolute. Section 5 of the Bill that lists the conditions and circumstances of utilization of land by foreign nationals was planned for

omitting marriage. WAD affirmed that following customary law strictly under these circumstances, the Bill will not promote gender equality, and will not improve the position of women and girls in traditional communities and in society. The provision may also discriminate against children born outside the country. In summary WAD was against the Bill based on facts that it will be in violation of existing legal frameworks; will perpetuate discrimination; violate international instruments Namibia signed and has the potential to derail Investment opportunities and job creation in the rural setup.

### **3.14. COUNCIL OF CHURCHES IN NAMIBIA**

The Council of Churches in Namibia has been at the forefront of the struggle for freedom and independence. It is often referenced that the aim and focus of the struggle was to regain the land and other natural resources and to provide a better life and livelihood for all Namibians. It is within this context that the CCN has participated in debates and discussion and various processes for land reform since independence. The Council of Churches in Namibia serves on the high-level Committee that organised the Second National Land Conference and now implementing the resolutions of the Second Land Conference and also the report of the Presidential Commission of Inquiry into ancestral land rights and restitution.

CCN together with other progressive civil societies forces organised under the Civil Society Organisations Working Group on land reform in principle supports the intention and principle of the proposals in the petition. First National Land Conference in 1991 resolves that foreigner should not be allowed to own farmland but should be given the right to use and develop it on a leasehold basis in accordance with Namibia's open-door policy towards foreign investment. Regrettably Parliament of Namibia passed the Commercial Agricultural Land Act providing a back door for foreign ownership and giving the Minister of Land Reform powers to approve land transactions involving foreigners.

The Bill refers to Namibians in general and then also refers to indigenous Namibians and it would be important to clarify what we mean with indigenous Namibians because there is an intention to distinguish Namibians and indigenous Namibians, a definition and understanding of indigenous Namibians would be critical. The Bill is proposing a ten-year limit on lease agreements, less than ten years is what is recommended by the Presidential Commission on ancestral land rights depending on the kinds of investment the projects years could be more.

It is imperative to assess what impacts the implementation of this Bill will have on investments to ensure it does not impact on our developmental goals. CCN were of the view that instead of upright ban for foreigners to invest in Communal Land, the emphasis should be on increased ownership share of Namibians in those businesses. The Second National Land Conference and the Presidential Commission of Inquiry into ancestral land has pronounced themselves on all issues in the proposed Bill and has recommended the same. Therefore, CCN felt the debate has been long settled, it is now time for Parliament to put the recommendations in action by coming up with appropriate legislation.

### **3.15. COUNCIL OF TRADITIONAL LEADERS**

The Committee has tried on several occasions to invite the Council to provide its inputs on the Petition to no avail since 2021. The Committee invited the Council twice in 2022, at both occasions they could not give their views on the Petition citing lack of representativeness. It was then agreed the matter be placed at their annual general meeting (AGM) which took place in September (Ohangwena) of the same year no discussions took place. The Committee tried again in 2022 in October to meet with the Chairperson of the CTL to no avail. In 2023 the Committee again tried this time offered to fund the costs of the advisory council to a meeting in Windhoek to no avail. Again in 2023 the Committee wrote a letter asking for the matter to be placed at AGM in September. Two Members were advanced to present the petition at the AGM. The Committee has still not yet received any inputs.

## **4.FINDINGS AND OBSERVATIONS**

### **4.1. Constitutional Violations**

The proposed Bill if passed in its current format will be in violation of existing legal frameworks in particular the supreme law of the land the Constitution as follows;

- i. The proposed Bill will have an impact on certain rights and freedoms, particularly the fundamental rights and freedoms contained in Chapter 3 of the Namibian Constitution, the right to equality (Article 10(1)) in that it seeks to treat non-Namibian citizens different from Namibian citizens,
- ii. Impact on the right to property (Article 16) in that it limits the rights of an existing owner on how or to whom to dispose the property to, as well as limiting the rights of non-Namibian citizens to acquire property;
- iii. Impact on the freedom of association (Article 21(1) (e)) in that it limits the manner in which persons may form associations or legal entities in the acquisition of property with non-Namibian citizens;
- iv. It also will have an impact on the freedom to contract which is the right of persons to freely contract and bind themselves in respect of all legitimate subject matters, in that it prohibits with whom persons may enter into contracts for the sale of land and land rights.
- v. It is also unclear how the passing of the Regulation of Land Ownership by Foreign Nationals Bill and bringing additional powers would change the current status quo. It would amount to a duplication and could potentially create confusion and erode legal certainty.

### **4.2. Existing Legislations**

Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995); Communal Land Reform Act, 2002 (Act No. 5 of 2002); Local Authorities Act, 1992 (Act No. 23 of 1992); Regional Councils Act, 1992 (Act No. 22 of 1992); Flexible Land Tenure Act, 2012 (Act No. 4 of 2012); Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978) and Deeds Registries Act, 1937 (Act No. 47 of 1937). None of these legislations prevents nor prohibits foreign nationals to acquire land in Namibia with the exception of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) section 17 which prevents any persons including citizens to acquire communal land as it's vested in state.

#### 4.3. Impact on Foreign Investments

- i. It may detrimentally affect Namibia's standing as a respected member in the eyes of the international community and its effects will wave a red flag for all and much needed foreign investments in the country and result in a substantial drop in the GDP, employment opportunities for Namibians and diminish the welfare of the people.
- ii. The Bill doesn't promote investments in Namibia, it renders the country uncompetitive, reduces the ease of doing business and increases the cost of doing business. It is imperative to assess what impacts the implementation of the Bill will have on investments to ensure it does not impact on the country's developmental goals.
- iii. The investor/foreigner will carry 100% risk and zero control as according to the Bill the partnership should be 51 % for local giving them controlling interest this will drive investors away.
- iv. The 10 years' lease proposed (Chapter 2, Part 1, (3) is too short, unattractive to investors as its short term for long term investment. Ninety-nine (99) years is the benchmark world practice. Project financing will be difficult for investors to obtain as 10 years is not commercially viable.

#### 4.4. Expropriation of Land

No expropriation process or foreign ownership prohibition requirements and procedures are set out in Article 16 on which the Bill base its roots. The Agricultural (Commercial) Land Reform Act (6 of 1995) is currently the only legislation that explicitly deals with the "requirements and procedures" for expropriation, as authorised under article 16(2) read together with article 16(1) of the Constitution. Article 16 represents a balancing act or political compromise of sorts between Government's Land Reform intent and the guarantee of private property rights. Land Expropriation will require just compensation which will cost Billions, money that the State does not have.

#### 4.5. Lease Renewal

The Draft Bill does make provision for lease renewals (Chapter 2, Part 1, 5(3) but does not state the requirements and procedures that would have to be followed in pursuit of such renewal. This leaves a critical gap in the Draft Bill, which whilst not fatal, would certainly leave a lot of room for constant litigation, by virtue of the failure to provide clear procedures and requirements.

#### 4.6. Urban Land

The limitation proposed on Urban Land is similar to the one in respect of agricultural land under the **ACLRA**. There are currently no outright restrictions placed on foreign land ownership under the Local Authorities Act. A blanket prohibition which does not set out any requirements or procedure to be followed when being implemented and also does not provide for just compensation in the event of expropriation would in all likelihood not hold up to international law requirements and the requirements in built into Article 16.

#### **4.7. Agricultural Land**

The three-year requirement (Chapter 2, Part 2, 7(1)) is ambitiously out of necessity, given the history of the implementation of the expropriation procedures contained in the ACLRA the practicality and implement-ability thereof is uncertain. Namibia needs to improve food security and, in some cases, meagre agriculture projects are inevitable. The economic growth of agricultural land must be accessed by foreign nationals but through strict control and lease conditions.

#### **4.8. Communal Land**

Whilst ordinarily communal land is normally held in the hands of Namibian Nationals, a blanket ban may harm the communal communities and stifle investment, tourism and economic opportunities in such areas. Clause 8(2) of the Bill (Chapter 2, part 2, 8(2)) provides that: Any allocation of communal land to a foreign national before the act shall be deemed to have been an illegal transaction and shall be repudiated. The clause raises a concern in that it seeks to have retroactive effect by declaring transactions, which may have been lawfully executed at the time, to be illegal.

#### **4.9. Court Proceedings**

Unlike the ACLRA which establishes the Lands Tribunal and other dispute resolution mechanisms, the Draft Bill does not specifically address dispute resolution mechanisms. Providing for clear dispute resolution mechanisms would also lessen the burden on the traditional courts to deal with land rights litigation and should provide a faster, cheaper, more accessible and efficient procedure to protect and safeguard any rights that may be affected by implementation of the Bill.

#### **4.10. Definitions**

The Bill refers to Namibians in general and then also refers to indigenous Namibians thus it would be important to clarify what is meant with indigenous Namibians because there is an intention to distinguish Namibians and indigenous Namibians, a definition and understanding of indigenous Namibians would be critical. It is also important to clearly define who is regarded as a foreigner in this regard.

### **5. CONCLUSION**

The Petition provided the Committee with the opportunity to engage all the relevant stakeholders by obtaining valuable inputs to address the relief being sought by the Petitioners. It is the Committee's conviction that the objective and mandate extended to it by the House has been executed successfully in an objective, open, fair, and transparent manner. The information provided by stakeholders the Committee feels was more than sufficient to make its recommendations.

## 6. RECOMMENDATIONS

6.1. The Ministry of Agriculture, Water and Land Reform should engage with the Petitioners (Affirmative Repositioning) before the Land Bill is tabled to harmonize and compromise on the proposals in the Petition for inclusion in the draft Land Bill.

6.2. The Proposed Bill need not be a stand-alone, the agreed inclusions should be made part of the existing legislations on Land Affairs as amendments.

6.3. Legal Drafters in the Ministry of Justice should subject the agreed provisions of the draft Bill to legal scrutiny to ensure the provisions do not in any manner violate the Constitution as the Committee findings indicate.

6.4. The envisaged Land Bill once tabled in the House should be referred to the Committee on Natural Resources for further scrutiny, investigation and report back to ensure key recommendations of this report were adhered to.

## 7. MEMBERS SIGNATURES

Hon. Tjekero Tweya (Chairperson)

Hon. Agnes Mpingana Kafula' (Deputy Chairperson)

Hon. Gotthard Kandume

Hon. Herlinde Tjiveze

Hon. Vincent Joseph Mareka

Hon. Bernadus Swartbooi

Hon. Maria Elago

Hon. Diederik Vries

Hon. Jan Van Wyk

Hon. Gotthard Kasuto

Hon. Natangue Ithete

Hon. Kletus Karondo

Hon. Paula Kooper

Hon. Sebastiaan Karupu

Hon. Hilaria Mukapuli

Hon. Jan Mukwiilongo

Hon. Jerry Ekandjo

Hon. Lucia Witbooi

Hon. Dr Tangeni Iijambo

Hon. Maria Kamutali

Hon. Nghidipohamba Hamata

Hon. Johanna Kandjimi

Hon. Fenni Nanyeni

Hon. Annakletha Sikerete

Hon. Mike Venaani

Hon. Ephraim Nekongo

*Randini*

*[Signature]*

*Ms. Sikerete*