

**RESPONSE TO ISSUES RAISED DURING THE DEBATE  
ON THE MOTION FOR THE RATIFICATION OF THE  
COMPACT/AGREEMENT BETWEEN THE GOVERNMENT  
OF THE REPUBLIC OF NAMIBIA AND THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA  
BY HON. HELMUT K. ANGULA**

**Honourable Speaker, Honourable Members,**

I thank all those who participated in the debate, whether from the confines of this house or from outside. The debate helped to create further awareness among our population about this agreement. It also helped to strengthen further our democracy especially the checks and balances provided by our Constitution.

In response to the 23 October 2008 statement on the Compact by Hon. Venaani, the balanced and thoughtful argumentation of which I applaud, I wish to submit to this Honourable House as follows.

Honourable Speaker, Namibia became eligible for MCC funding in November 2005 and negotiations took almost three years to conclude. As the members will appreciate valuable resources – both human and financial – were expended by Government and its private sector and civil society partners to arrive at this milestone.

The debate was in public in the past few weeks; some of the issues raised were indeed rational, but much of it were of emotional nature. Notwithstanding, we welcome the debate on this unique development package and view the questions posed by Hon. Venaani and others as an opportunity to explain to the public through this Honourable House what the MCA Namibia Compact

*contains, equally, what it does not contain.* We thank Hon. Venaani for his words of overall support for the MCA Namibia Compact. After all the commotion of the past weeks, Honourable Speaker and Members of this House, I have to confirm that the Government and the people of Namibia welcome the MCA Namibia Compact – a USD304.5 million grant – and look forward to its successful implementation and to the anticipated impacts the projects will have on rural economic growth and poverty reduction.

The MCA Namibia Compact is a complex, multi-layered agreement that naturally would attract interest from many stakeholders in society, and from many angles.

Honourable Members of this august House, Hon. Venaani and many outside this house raised the following issues:

- 1) The MCA Namibia Compact in relation to Namibian Law (Section 7.1c of the Compact)
- 2) Liability in the event of termination of the MCA Namibia Compact (Section 6.8 of the Compact)
- 3) Procurement Rules for MCA Namibia Programme (Annex VI of the Compact)
- 4) Taxation under the MCA Namibia Compact (Tax Agreement)
- 5) Etosha National Park development investment programmes
- 6) Program Implementation Agreement (PIA)
- 7) Legal Counsel

I will respond to these questions and concerns and I will do so in the order they were presented.

## **1) The MCA Namibia Compact in relation to Namibian Law (Section 7.1c) of the Compact)**

Honourable Speaker, allow me to start with the concern raised to the application of Namibian law. The relevant clause in the Compact is Section 7.1c. We agree with those members of the public who had expressed a similar concern that this Section does not read well. From a legal perspective, the wording is not incorrect *per se* but for those of us without legal background, Section 7.1c is confusing and open to interpretation – at the least. The GNT discussed with our American partners to change this Section and bring the text in line with the Vienna Convention on International Treaties to which Namibia has been a party since Independence, so it has the following or similar reading:

“Namibia may not invoke the provisions of its internal law (other than the Constitution) as justification for its failure to perform the Compact.”

Since this text is already used in the Compact in Section 3.4, MCC agreed to remove Section 7.1c) from the Compact by means of an exchange of letters.

## **2) Liability in the event of termination of the MCA Namibia Compact (Section 6.8 of the Compact)**

The next issue brought before this House by Hon. Venaani concerns the possible suspension/termination of the MCA Namibia Compact and MCC’s none-liability in such an event. It is true that the US Government/MCC may suspend/terminate the Compact without cause. It is also true that the language in Section 6 of the Compact is not uncommon to bilateral development funding agreements. We find similar language in most of our bilateral cooperation agreements. More importantly we are confident that the safeguards provided

for in and outside of the Compact offer sufficient mitigation in the eventuality of suspension or termination.

These safeguards are:

- 1) Authorized work performed under the Compact up to date of suspension/termination will be paid.
- 2) While the Government takes liability for the contracts with suppliers entered into by MCA Namibia, the Compact provides for 120 days (4 months) for the wrap-up of the activities and related financial commitments allowing for “reasonable expenditures” for both project-related work and the programme administration, as per Section 5.1 (c) of the Compact.
- 3) In addition, at the contract level, MCA Namibia will build certain safeguards into the contracts with suppliers, e.g. the right to terminating a supply contract if Compact funding is suspended or terminated. This is a standard clause in many of Government’s agreements with suppliers.
- 4) Finally, the MCA Namibia Compact reflects our own development priorities in education, tourism and agriculture as per NDP3. To give a concrete example, the 47 schools selected for renovation and upgrading were identified using the ETSIP needs pyramid. In fact, all education activities in the MCA Namibia Compact are derived from ETSIP. The Government has a desire to implement the MCA Namibia projects. If MCC funding is withdrawn, GRN would want to complete the affected projects with own resources, possibly phased over a longer period and with some reduction or amendments given resource constraints.

### **3) Procurement Rules for MCA Namibia Programme (Annex VI of the Compact)**

Hon. Venaani's next question takes us to the issue of procurement under the MCA Namibia Compact. The Compact needs to be elevated to an International Treaty, due to specific procurement requirements of MCC for all its MCA Programs, which are similar to the procurement requirements of the World Bank.

Procurements for MCA Namibia will be governed by the Procurement Rules as per Annex VI of the Compact. Upon ratification, the Procurement Rules will as a Treaty obligation take precedence over the Tender Board of Namibia Act.

Motivated by the same arguments as put forward by Hon. Venaani – after all the motto of MCC is poverty reduction through economic growth and our local companies should benefit from the billions of Namibian Dollars made available through the Compact – the Government Negotiating Team did make the case during the Washington negotiations for the application of local preferences. The team was then informed that the US Congress had initially also requested similar preferences for *US companies* since US taxpayers money would be used for the Compacts worldwide. The US Government resisted such preferential treatment of US companies and in exchange agreed that there would be no preferences at all, not for US companies and not for recipient-country companies. Instead, international competitive bidding would apply to all procurements funded by MCC.

Despite this, the GNT succeeded in negotiating a number of important safeguards to ensure maximum Namibian business participation in the Compact implementation. These are:

- 1) A threshold of USD200,000 (or NAD2 million at current exchange rates) for “shopping”, which is a procurement method whereby only 3 quotations are required.
- 2) Thresholds for local advertising are set at:
  - a. USD200,000 (or NAD2 million) for goods and non-consulting services; and
  - b. USD1 million (or NAD10 million) for works.
- 3) Furthermore, MCA Namibia will “Namibianize” tender requirements within set limitations, as follows:
  - a. Creating smaller packages, sized to be manageable for Namibian companies;
  - b. Ensuring local materials are utilized to reduce maintenance costs;
  - c. Demanding adherence to Namibian standards; and
  - d. Requiring a certain level of local knowledge and prior experience.
- 4) Another safeguard is the direct involvement of MCA Namibia and the beneficiary line ministries in the drafting of Terms of Reference and tender specifications for all contracts.
- 5) Also, the Tender Evaluation Panel will include:
  - a. Beneficiary line ministries;
  - b. Namibian technical experts; and
  - c. MCA Namibia.

- 6) And finally, MCA Namibia plans an extensive outreach campaign, informing Namibian private sector through the Namibian Chamber of Commerce and Industry (NCCI) on the procurement rules and plans and encouraging a pro-active approach by the Namibian companies to take advantage of the contracts emanating from the MCA Namibia Compact.

#### **4) Taxation under the MCA Namibia Compact**

Honourable Speaker, so far I have dealt with three of Hon. Venaani's concerns. I now move on to the issue of taxation under the MCA Namibia Compact. Despite the many worries expressed by the public and political groups, and also highlighted by Hon. Venaani, the answer is straightforward: the initialled Tax Agreement provides for full compliance with Namibia's Tax Law.

The Ministry of Finance will treat the MCA Namibia Compact as a Technical Agreement which allows under the VAT Act exemption from VAT and under the Customs and Excise Act of 1998 (rebate item 412.11) and the New SACU Agreement of 2002 (Section 20.3(b)) exemption from customs and excise for all transactions by MCA Namibia. All other indirect taxes are payable and all individuals and companies, local and foreign, deriving income from the Compact are liable for income tax (direct taxes).

It has further been agreed with MCC that the Government of Namibia will refund the taxes collected on the MCC funding to the MCA Namibia Program, according to (1) an agreed formula, (2) an agreed estimated tax amount and (3) a pre-determined payment schedule.

The Government has presented the agreed and initialed Tax Agreement to this Honourable House before today's Debate on the Ratification of the MCA Namibia Compact.

## **5) Etosha National Park**

Next is the issue of the lodges in Etosha or should I say the absence of lodges inside Etosha. In the MCA Namibia Tourism Project, we wish to further the implementation of the 2007 Concession Policy. In this policy, improving access to National Parks and other State Land for conservancies aimed at their economic empowerment takes centre stage.

At present the conservancies around Etosha National Park – that is #Khoadi //Hoas with 3,200 residents, Ehirovipuka with 2,500 residents, Sheeya Uushona with 35,360 residents, and King Nehale with 20,000 residents – derive no material benefit from Etosha. They pay for Human Wildlife Conflict yet do not benefit from being located next to the park.

The conservancies around Etosha and around other National Parks in the Northern Communal Area will benefit from the Tourism Project in the following ways:

- (1) Exclusive access concessions into Etosha. These concessions are exclusive user rights for a fixed period of time and for an agreed set of tourism activities, excluding tourism accommodation.
- (2) Access concessions or lodge concessions into other National Parks.
- (3) Support from the Ministry of Environment and Tourism in the form of (a) tourism track development in the conservancies, using the road maintenance equipment acquired by MET with MCC funding, and (b) the

relocation of game species from Etosha to the adjacent conservancies, using game capture equipment acquired by MET with MCC funding.

- (4) A large technical support programme targeting 31 conservancies with approximately 100,000 residents, rolling out the best practices for Community Based Tourism acquired by Namibia in the past 10-15 years.
- 5) Access to a Joint Venture support facility for approximately 15 of these 31 conservancies to strengthen the negotiating position for these conservancies when negotiating Joint Venture Partnerships for tourism with the private sector.

The Etosha National Park will serve as a model for increased participation in tourism activities by conservancies adjacent to national parks. We believe that the planned interventions under the MCA Namibia Tourism Project will go a long way in drawing conservancies into the mainstream of tourism in Namibia.

## **6) Programme Implementation Agreement**

Hon. Speaker and Honourable Members, the agreed and initialed Program Implementation Agreement (PIA), which is an Executive Agreement that defines the operational framework for MCA Namibia and the Conditions Precedent and related Performance Targets was made available to you, together with the Tax Agreement, before we resumed Debate on the Ratification of the MCA Namibia Compact.

Honourable Speaker, allow me to note that both the Tax Agreement and the Program Implementation Agreement are Executive Agreements and as such – similar to the regulations of an Act – do not require approval by Parliament. In case of a dispute between these supplementary agreements and the Compact, the Compact takes precedence.

## **7) Legal Counsel**

Lastly, I wish to assure this Hon House that the Government Negotiating Team followed established protocol in the negotiations and relied on the Office of the Attorney General for Legal Counsel. No foreign counsel was used by the Government Negotiating Team.

Equally, MCA Namibia made use of the service of the lawyers of the Attorney General's Office throughout the process.

## **Conclusion**

I trust that my explanation meets the approval of Hon. Venaani confirming that his questions and concerns have been adequately responded to.

In conclusion, I submit to this Honourable House that the Compact funding will complement Government and other Development Partner's efforts in alleviating poverty in our country. It is therefore important for the Honourable Members to take note that our individual decision and our collective vote will affect the poor communities in conservancies, communal farmers North of the Veterinary Cordon Fence and most importantly our children.

I therefore call upon you, Honourable Members, to agree to the ratification of the Millennium Challenge Compact, in the form as tabled with the amendment on page 14 of the Compact, for the benefit of the large cross section of our rural communities.

Honourable Speaker, I so submit.