PO Box 11618, Windhoek
Tel.: (+264)811460814
Fax.: (+264)88620356
eben@isgnamibia.com

ANALYSIS OF THE INVESTMENT PROMOTION AND FACILITATION BILL (IPFB)

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This document was prepared by several experts in Law (including International Trade Law), Economics, Business Management, Corporate Governance, Risk Management, Financial Management, Public Governance and Futures Studies.

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EXECUTIVE SUMMARY

The Namibia Investment Promotion Act ("NIPA" or "2016 Investment Act") was promulgated in 2016. Given its glaringly obvious deficiencies, it was never enacted. In November 2021, a supposed "new and improved" investment bill, known as the Investment Promotion and Facilitation Bill (hereinafter "IPFB" or simply, "the bill") was tabled. Following public and expert outcry, IPFB was promptly withdrawn (ostensibly, to be re-tabled in early 2022). Even a cursory glance at IPFB shows that the intervening 5 years between NIPA and IPFB were clearly not spent productively. If anything, the "new and improved" investment bill is worse than its already deficient 2016 (NIPA) iteration.

Instead of facilitating and easing investment, IPFB presents substantial obstacles to potential foreign (and domestic) investors. IPFB has the (stated and noble) aim of promoting and facilitating foreign and Namibian investment to enhance sustainable economic development and reduce unemployment. The most likely outcome however is underwhelming; it will almost certainly lead to further economic contraction**,** reduced investment, increased unemployment and increased poverty.

This bill - read together with the pending National Equitable Economic Empowerment Bill (NEEEB) - creates a toxic policy and investment environment. It has plenty of stick, but very little carrot. The bill is open to abuse and may lead to the effective nationalisation of the private sector, most likely for the benefit of a few connected persons. These policies, although coated with lofty promises of improving the lives of all Namibians, will create institutions of extraction, as defined by Acemoglu and Robinson in their book "WHY NATIONS FAIL".[1] Institutions of extraction, set up to benefit a few, at the expense of the larger population, impoverish a nation and most often cause substantial hardship. As with the abovementioned policies, they are often created with the promise of empowerment and poverty reduction, but the outcome is always the same, increased poverty, and in many instances, a failed state.

As in the case of NEEEB the IPFB aims to socially engineer preferred and utopian outcomes on a grand, national scale. It does so by introducing **vague and draconian legislation** where virtually **unfettered power and discretion** rests in the hands on one Minister to prescribe investment by foreigners, as well as Namibians. The Minster's powers to decide who may invest, where they may invest, what they invest, and to prescribe terms and conditions for each and every investment, are virtually unlimited. An established business in a designated sector or "business activity" may also not change ownership or control without the Minister's consent, and on such conditions as the Minister may prescribe. The Minister may also prescribe who the incoming owners will be, through a system of "accredited" enterprises who will be eligible as "partners" to investors. As with NEEEB, the IPFB uses licenses, permits and other authorisations by Government as a tool to ensure that the Minister has complete control over virtually every

[1] Acemoglu D., Robinson J.A. 2013. *Why nations fail: The origins of power, prosperity and poverty*. Profile Books. Croydon, UK.

investment (i.e. business) and thus to exercise disproportionate powers over such investments (and their owners). The bill is unconstitutional in numerous regards. This is however little solace for Namibians who will again suffer from the increased, protracted, economic decline this bill is likely to cause, as was witnessed with the NEEEB and 2016 Investment Promotion Act. The Namibian child will suffer the consequences of these destructive policies for many decades to come.

The Namibian Investment and Promotion and Development Board (NIPDB), tasked with the consultative process on both the abovementioned policies, expressed its dismay with the fact that the Minister did not take the submissions made by it into account in the latest bill. For the reasons stated in this report, EPRA implores the Minister, the Cabinet, and the Parliament, not to proceed with this bill, or any other policy which will cause further, substantial damage to our country's investment environment. Since 2016 local and international experts and institutions warned Government of the possible consequences of destructive policies such as NEEEB and the Investment Bill. The Government did not heed these warnings, and the economic fallout was felt by every Namibian, as well as Government, as tax revenue reduced and government debt ballooned.

Like with NEEEB, the IPFB carries significant downside risk for all Namibians, but especially for the most vulnerable and disadvantaged Namibians. It sets the stage for substantive abuse of power, corruption, nepotism and government control. It actively discourages foreign and domestic investment, actively hampers expansion of current businesses, encourages capital outflows, and violates several key fundamental constitutional rights and international treaty obligations. It shall achieve sub optimal outcomes for the majority, while padding the pockets of a politically connected minority. It is EPRA's submission that inequality and poverty can and should be reduced by sensible, pro-growth, business friendly policies. Such policies should be based on sound economic and legal principles. Like NEEEB, the IPFB is highly regressive and the very antithesis of such policies.

Government would be well advised to discard efforts to engineer outcomes of prosperity through symptom level, punitive and anti-investor policies, and to rather focus, with support from private sector, on improving inputs, including sensible **pro-growth** legislation. There are many global examples of good investment policy. Government should learn from the success of others, as reported herein, instead of gravitating towards communist style central planning control mechanisms which cannot possibly attract meaningful investment.

The IPFB is a missed opportunity. It is not an improvement over the previously impugned Investment Act. It does not adequately protect investor rights, nor does it provide any real privileges (read, actual incentives) to investors. EPRA is of the opinion that the bill should either be substantially reworked or discarded completely to mitigate the decrease in investment and increase in poverty, unemployment and inequality which the mere tabling of this bill has in all likelihood already triggered.

PART ONE – LEGAL PERSPECTIVE

1.1 Introduction

This section provides a legal impact analysis of the IPFB. It will illustrate that the impact of the bill, if passed in its current form, will probably be devastating for Namibia's economy, apart from the numerous clauses therein unlikely to pass constitutional muster.

1.2 Development of the IPFB and Legal Duties of Affected Parties

In this section we will inter alia highlight numerous aspects of the IPFB that are unlikely to pass constitutional muster. In the Supreme Court Judgment in the case of *Itula and Others v Minister of Urban and Rural Development and Others (2020 NASC 6)* the (5) Honourable Judges stated (in para 101 and para 102): *"The applicants sat back at their peril in waiting until the very eve of the election before taking up this issue - a mere month before the holding of the elections. Plainly, parties seeking to challenge the conduct of an election are under a duty to act 'timeously ensuring that potential violations can be remedied by the granting of (an) interdict or other forms of relief' … This issue is raised as a factor in the exercise of this court's discretion as to further appropriate relief upon the granting of the declaratory relief".* [own emphasis]

In this judgement the Supreme Court effectively placed a duty on those affected by the actions and laws of public power to take action "timeously" before some prejudice to them occurs for which they then later seek remedy from a court. For this reason, it is crucial that this report is as comprehensive as possible, time permitting, and that it is provided directly to the minister responsible for industrialisation and trade without delay. It is also necessary to provide some background on the process employed by government over the past five years to reach the current position in the development of the IPFB.

The past five years, since the Investment Promotion Act was first introduced, were marred with confusion and lack of policy coordination by Government, to put it mildly. Numerous committees and working groups were established to assess the impact of the 2016 Act, and to propose improvements. The NIPDB was also established and provided crucial input to the Minister to make the Act more palatable. Shortly after the IPFB was tabled in November 2021, NIPDB expressed concerns in writing. NIPDB's concerns included, amongst others:

- The attempt by the IPFB to reduce the powers of NIPDB to engage in actual investment promotion, facilitation and advocacy.[2]
- The exclusion by the Minister of various inputs provided by NIPDB.
- The fact that recommendations by NIPDB (which inter alia stemmed from two Cabinet Committees) were left out, without any engagement, consultation and explanation as to the rationale for such exclusion.

[2] The IPFB potentially reduces NIPDB to a mere registry, to keep records, and any powers they may have in future, will be at a whim and in the sole discretion of the Minister.

- The introduction of an inspector of investments, which NIPDB (correctly) states is unique, and not present in any country benchmarked by NIPDB in its own research. NIPDB states that such inspector is "incongruent first with the concept of facilitating investment. Moreover, policing investments in this way is a negative element for our private sector development".
- NIPDB goes on to say that "Normally Investment (sic) promotion laws are meant more for facilitating investment and providing the right framework for investment to happen in the country. Instead this proposed bill is heavier on offences, penalties, disputes and on this issue we are afraid that if investors read this law in detail, they may decide to shy away instead from our Country (sic) as it is not very business friendly".
- The fact that the approval period for applications is set at 10 months.[3] NIPDB states this will "unfortunately make Namibia lose its attractiveness in particular for businesses that are mobile such as manufacturing that we badly need in this country".
- "The dispute settlement clauses as they are drafted … is (sic) likely to be an open door for Namibia to face international disputes of large magnitude … We would recommend that these be reviewed as it can cause large prejudice to our national coffers.".
- NIPDB is generally concerned that the Minister (who serves in a policy-making position) becomes a key implementer in the bill, instead of the agency previously specifically tasked with such implementation (i.e NIPDB itself).[4]

EPRA shares NIPDB's concerns. However, they only touch on a small number of the potential issues. The scope of the bill is far greater. It is likely to have a significant negative impact on the Namibian economy, as will be explained in more detail hereunder.

1.3 Summary of the IPFB

The stated aim of the IPFB is to promote investment. This is, in itself, an agreeable objective. Sadly however, the tone and content of the bill is not aligned with its stated objective. Logically this aim cannot be achieved, as the bill introduces a host of obstacles in the form of additional requirements for investors. It disincentivises, rather than incentivises. As currently drafted, the bill will reduce the pool of potential foreign and domestic investors by excluding certain (yet unknown) sectors and "business activities" for certain investors. Investors may be further excluded, and investments limited, as per the Minister's discretion.

Even if investors are able to overcome the numerous obstacles presented by the bill, they may then only proceed on further conditions set by Minister. The investors are then vigorously policed by an investigative unit acting on instruction of the Minister and can face up to 10 years in jail for defiance of the Minister's conditions. Hardly an investment friendly climate. Ironically,

[3] The approval period allowed for the Minister to assess an application is actually more than a year, if you consider that the different periods making up the total maximum period is expressed in business days, and not calendar days.
[4] The bill makes provision for the Minister to appoint another one or more agencies, thus completely bypassing NIPDB in all investment matters in any event.

the newly established NIPDB is likely to play no meaningful role in the promotion and facilitation of investments in future, as their mandate will be dictated solely by the Minister, and any other "agency" may be established by the Minister to fulfil the role of investment promotion.

The IPFB is essentially premised on the following flawed assumption: Only the Minster is sufficiently knowledgeable to know what investments are needed in Namibia, where investment is needed, and who (Namibians and foreigners) should be allowed to make investments. As an outflow of the above assumption, the Minister then also has express powers to refuse a Namibian to invest locally, expand a current investment, or transfer ownership in or a license held by any investment (existing or future).

The IPFB defines "investment" as, inter alia, any enterprise lawfully established in Namibia. "Business activity" is defined as "any activity conducted in Namibia". Thus, all businesses in Namibia, registered and unregistered, are potentially subject to the IPFB. This also means they are potentially subject to all the restrictions that may be imposed on investments, including establishment, expansion and change of ownership. This is the rent-seeking economy referred to throughout this report. Such economies are not sustainable and bound to fail because they do not attract good, sustainable investment. As the investment pool diminishes, existing investments are diluted and carved up amongst a few elites until there is eventually nothing left to distribute amongst themselves.

Effectively the Minister may potentially obtain complete control over every private sector business. Such control is unlimited because no investment may proceed (or expand or change ownership) unless it is in accordance with the Ministers conditions.

The above may seem depressingly familiar. It echoes the same broad powers which NEEEB intends to give to an (as yet unknown) minister, with the same outcome: complete control over all private sector business entities. Those allowed to participate in the Namibian economy (Namibians and foreigners) will only be able to do so at the mercy of the Minister, and on such conditions as may be imposed by the Minister. Put differently, no Namibian or foreigner may invest, and thus participate in the Namibian economy, without the express approval of the Minister and no Namibian or foreigner may invest, and thus participate in the Namibian economy with co-owners or investors whom the Minister refuses to approve. Only "accredited Namibian enterprises"[5] may partner with investors. Such accreditation occurs at the discretion of the Minister.

1.4 Dubious or False Premises

The IPFB, and especially section 3 which states the "Objectives of the Act", is based on several dubious or false premises. These include:

[5] Section 6(2)(iii) read with the powers of the Minister to approve applications (Part 5) and set terms and conditions (Section 5(c) and Section 16(3)) .

a) "*Clear and transparent framework for sustainable investment*":
The bill introduces numerous uncertainties for investors. It raises, rather than answers questions. For example: Who will the Minister allow to invest? What sectors or "business activities" will be brought under the Minister's control? When will these sectors be brought under the Minister's control? What conditions will the Minister impose on potential investors? Who will be the "approved" parties who may "partner" with investors? On what basis will they be selected? Exactly what state must the Namibian economy be in to warrant potential expropriation of the investment, or refusal to repatriate profits? These uncertainties, and countless more, cannot possibly result in attracting sustainable investment.

b) "*Promote Namibia as an attractive and efficient investment and business destination*"
We found nothing in the bill that could improve Namibia's attractiveness for investment. Quite the contrary, the bill is likely to scare investors to a degree apparently unfathomable by policy makers. The Minister will have the powers to control every aspect of private sector, and "business" will only be possible by the Minister's blessing, with absolutely no guarantees given to protect any investor (except - what the Minister may decide). There is nothing attractive in that uncertainty for any reasonable investor. Arguably, certain portions of North Korea have more investor friendly policies, as discussed in the previous section.

c) "*provide strong institutional support for strategic economic planning and ensure greater coherence and effectiveness in economic policy formulation*"
This bill does nothing more than elevate the Minister to sole gatekeeper of all private sector economic activity in Namibia. The fact that the Minister must give approval (anytime within a year of application), does not translate to "institutional support", but rather extreme bureaucracy. The current functions of all other ministries remain, and the bill does not reduce the current red tape. The only policy formulation that can be improved from this bill is the policy on which economic sector or business activity to reserve (and thus completely control) next, and thus whom next to exclude from participating in the Namibian economy.

d) "*provide an efficient dispute resolution mechanism*"
The bill only provides for the Minister to, in her sole discretion, establish a panel for alternative dispute resolution when an investor has a dispute with the State. The investor may also approach the court directly. These are the same rights any investor, and the State, currently enjoys.

e) "*enhance the investment facilitation process, aftercare and ensure a conducive and seamless business environment*"
As explained earlier, the bill does not contain any meaningful provisions to improve investment facilitation. It does in fact add substantial uncertainty, and major obstacles to the process of investment. The bill does not remove any of the current red tape. It

only states that the Minister will engage other government ministries and agencies to improve investment facilitation. One would assume this is a key, current function of the Minister, and if unsuccessful until now, will not be successful by the mere inclusion of such function in a future law. There is no provision to improve "aftercare" (whatever that may mean), and there is nothing contained in the bill that can ensure a conducive, seamless business environment. There will however be investigators, acting on instruction of the Minister, with powers over all law enforcement agencies, who will police investors. This is only likely to make investors feel like criminals, rather than welcome. Not your average "welcome to Namibia" sign.

f) "*provide for a mechanism for inter-ministerial coordination …*"
As stated before, nothing currently prohibits inter-ministerial coordination, and should that currently be lacking, it can only stem from poor leadership. If a written document or policy is indeed required to improve coordination, a Memorandum of Understanding between ministries and government agencies should suffice.

g) "*allow for designation of certain sectors of the economy to be reserved for certain investors and investments*"
This is the only objective which speaks to the possible outcome of the bill. But it will logically result in restricting certain portions of the economy for certain investments and investors, thus naturally reducing investment, for the benefit of a selected few, handpicked by the Minister. The Minister's discretion is unlimited, and may even be used to refuse men, or members from a certain race to practice certain professions, i.e. legal, accounting, engineering etc.

h) "*promote sustainable economic development and growth … through attraction of domestic and foreign investment* .."
For reasons stated before, the IPFB (in its current form) is extremely unlikely to attract investment. The bill provides no tangible investment incentives, but plenty of disincentives through additional obstacles, business costs, waiting periods, and other bureaucracies. Very little carrots, but plenty of sticks. This creates substantial uncertainty for investors. As a result, the IPFB cannot lead to prosperity and industrialisation, and cannot encourage the creation of employment. It can however make a few, who were "accredited" wealthy, for a short time. This is unlikely to serve the nation as a whole. It cannot "build capacity" and "technology transfer" as there are even more obstacles in the bill to import skilled people than currently exists. It cannot reduce poverty, as reduced investment will logically lead to increased poverty, as Namibia already witnessed from 2016. It cannot accelerate growth, as it places substantial obstacles on investment. It cannot create diversification of the economy as the Minister does not create the supply for investments. Only investors do. The bill only close certain sectors and business activities for local and foreign investment.

i) “*support the development of local entrepreneurs and SMEs …*”
As the Minister will select those who may participate in investment and partner with investors, one can argue that such “entrepreneurs” will be “supported”. This can only be done by a very selective process, which by its nature will be open for abuse, and will logically not serve the whole nation, who will be the ones who suffer under reduced investment and economic decline, as we have witnessed from 2016.

j) “*promote development of innovation and encourage business to upgrade their skills and technology …*”
The extreme regulation introduced by the bill is unlikely to lead to any form of innovation and is most likely to stifle innovation completely. Major obstacles to expand an investment are also likely to cause stagnation and decline of businesses, rather than expansion of skills and technology. Again, this has been very clear since 2016 when NEEEB and the Investment Act were introduced.

The bottom line is that the objectives of the bill are not reflected in the actual language, tone and content of the bill. As currently drafted, it is likely to have the exact opposite effect than its stated objectives. EPRA is eager to see the research (if any) which led the policymakers to believe that the restrictions imposed in the bill could possibly lead to the stated (and mostly noble) objectives.

1.5 The Scope of the IPFB

The IPFB does not contain a section dealing specifically with the scope of the bill. This is especially frustrating as it leaves the larger business and investment community guessing as to whether their sectors and business activities will fall within the scope of the proposed legislation, and then guessing what the potential consequences will be given the unlimited powers of the Minister once a sector or business activity is reserved. This ads to policy uncertainty for current and potential investors. The potential consequences of this bill for current and potential investors are at best a guessing and hope-for-the-best game.

To establish the intended scope (note, not the stated intention, which is vastly different) of the IPFB is indeed challenging and only possible through careful analysis of several and mostly unrelated portions and subsections of the bill. Unfortunately, the devil is in the detail, which is difficult to digest in the public media. Thus, even after a reading the bill itself, it is likely that the majority of Namibians may not grasp the full, adverse impact the bill will have on investment.

The bill applies to all current and potential investors who have invested or intend to invest in a sector or “business activity” which is “reserved”. “Investment” is inter alia defined as any enterprise lawfully established in Namibia. “Investor” includes foreign and Namibian investors. The fact that only investment in “reserved sectors and business activities” are subject to the IPFB is of no comfort to investors, as such sectors and business activities can change at the whim of the Minister, at any time. The fact that Cabinet must give approval for “reserved sectors and business activities" to be reserved is also of little solace to investors. The President appoints the Minister, and the whole Cabinet. Thus, the decision on who may or may not participate in the Namibian economy essentially vests with one person (the President) who appoints "his/her" Cabinet (along party lines) who then decides what sectors are reserved and who then give power to one person (the Minister) to approve or disapprove investment. There is no cross-party consultation or buy-in required for this process. The dominant political party therefore effectively decides who may or may not participate in Namibia's economy.

It is concerning that policymakers have not opted for Parliament to decide on reservation of sectors and business activities as Parliament would at least have been in a better position to protect the interest of the greater population, being representatives of the greater population, and not just one political party.

Ultimately, any businesses may at any point in time become subject to the bill, depending solely on when the proverbial chief so decides. When that decision has been made, the Minister takes full control of that business, and effectively, its operations (as conditions set by the Minister to operate are virtually unlimited).

The Minister thus decides who may invest, where, when, how, for how long and under what conditions. The scope of the bill thus effectively includes all current and future Namibian businesses, whether locally or foreign owned. Once an investment (read business) approved by the Minister commences, such investment is then also continuously subject to policing by the Minister, through an inspectorate executing the instructions of the Minister.

As with NEEEB, the Minister may use additional enforcement mechanisms to ensure compliance with the Minister's conditions (read directives), the issuing and renewal of licences, permits and concessions. This mechanism will ensure that those Namibians and foreigners whom the Minister decided may not participate in the economy, are indeed excluded.

1.6 Obstacles to Investors

The bill presents a host of obstacles and disincentives to investors in reserved sectors and business activities and no meaningful incentives. These obstacles and disincentives include:

- Expansion is impossible without the Minister's approval.
- Investment in a Namibian company (even through publicly traded shares) is impossible without the Minister's approval, even if a minority ownership is to be obtained.
- The Minister (through Cabinet) may at any time declare any sector and any "business activity" as reserved and no exemption is provided for those investors who already invested in such sectors or business activities at that time.
- The Minister must approve (and may therefore hand-pick) the partners in an investment.

- The Minister may exclude “certain categories of investors and investments” from investing in Namibia. Such categories may include Namibians, for example Namibians from a certain race, gender or tribe.
- The Minister may, in her sole discretion, prescribe any terms and conditions for investments to proceed (for Namibians and foreigners), and non-compliance with such terms and conditions is an offence, punishable by 10 years imprisonment.
- Investment includes the acquisition of any license, permit or concession issued by the State. To illustrate the intended scope of control that the Minister will acquire, licenses may include vehicle licenses.
- The functionaries of investment facilitation are convoluted, as the Minister may delegate powers to an “agency”, which can be NIPDB, but can also be any other “body designated by the Minister”. The Minister has the powers to set “terms and conditions of investing” (S5(c)), but it is also an express function of NIPDB to “enter into performance agreements … including agreeing on the terms and conditions of incentives …”.
- In essence, NIPDB is reduced to a secretariat to the Minister.
- Inspectors appointed by the Minister will police investors. All public entities, including law enforcement agencies, have a statutory duty to comply with the instructions of such inspectors. NIPDB also has the function to “review compliance with any approval and conditions”. Non-compliance is an offence.
- The process of applying for investment approval from the Minister is convoluted and uncertain, and the Minister is provided more than a year to provide a final ruling on such application. As a reminder, this applies to Namibian investors as well.
- The Minister decides who may invest, in what sector or business activity may be invested, and on what terms and conditions. On reservation of sectors and business activities the Minister must consult other ministers, but at the same time is given unlimited powers to act alone in formulating policy and issuing regulations (S4(1)).
- Investors (including foreign investors) must show that the investment will advance previously disadvantaged Namibians. The Minister may prescribe to the investor how such advancement must be effected. Of course, the investor carries the burden of all additional costs for such “advancement”.
- Certain persons and “categories of persons” (including Namibians) may be expressly prohibited from investing in Namibia or partnering with foreign investors.
- The Minister may set thresholds or criteria for the value of an investments and the number of employees of an investor.
- The Minister may limit the regional location in which may be invested and may set thresholds or criteria for specific “sub-activities” of any business activity.
- No change of ownership, control or expansion in, or relocation of an investment (read business – including Namibian businesses) may be effected without the Minister’s approval.

- All investments (read businesses) must register with NIPDB and provide any information as may be prescribed by the Minister. As there is no limitation on the information to be required for registration, same can include intellectual property.
- Expropriation of investments are arbitrary, depending solely on the Minister's discretion on whether such expropriation is in "public interest".
- Expropriation must be done through "just compensation", which ultimately says nothing as the Minister is allowed to assess the "just compensation" based on "an equitable balance between public interest and the interest of those affected" and the actual amount of compensation is determined by the Minister. Approval of the amount must be given by Cabinet, but we reiterate what we have stated before, that this is of little comfort to an investor.
- A court which reviews a decision to expropriate, or the amount determined, will be bound to the "principles" set out in section 24 of the bill, thus limiting the court's inherent jurisdiction to ensure fairness and reducing the protection the affected persons would have enjoyed outside of the bill.
- Although the bill states that foreign investors will not be treated less favourably than Namibians (which is what most of Namibia's foreign treaties require in any event), section 22(4) <u>nullifies</u> such undertaking in stating that nothing "prevents Namibia from adopting or maintaining a measure[6] that prescribes special formalities in connection with investments of foreign investors".
- Although the bill states that a foreign investor may transfer funds relating to the investment into and out of Namibia, this undertaking is <u>nullified</u> by section 29(4) which will allow the State to delay or prevent such transfers for various reasons, including a "serious or exceptional balance of payments or external financial difficulty, or anticipated financial risk experienced in Namibia", or "to prevent movements of capital that cause or threaten to cause serious difficulties for macro-economic management, including monetary or exchange rate policies in Namibia." As can be seen with the Zimbabwean example in Part Two, this only means that there are effectively no undertakings given to an investor that funds may be freely repatriated. Namibia already finds herself in an extremely prejudicial economic situation, which may according to the wording of sections 29(4)(e) and 29(4)(f) already warrant a prohibition on repatriation of funds. With the current redistributive and investment policies being mooted, this dire economic situation is extremely unlikely to improve anytime soon.
- An investor may only employ skilled foreigners if the Minister, the minister responsible for immigration (and in some circumstances other ministers) agree and then only if they are to perform "scarce key professional and managerial functions", or "specialised services" or have scarce skills or specialities. Such permission will only be granted on condition that the investor employs Namibians with available skills, invest in human capacity development and ensure transfer of skills as to "achieve the developmental objectives of Namibia". The additional costs associated with these requirements are

[6] Measure is defined as including "any form of legally binding act of State" and includes laws, regulations, procedures and "requirements".

naturally for the account of the investor. Ironically, a foreign investor's whole family (parents, spouse and children) automatically obtain the right to live and work in Namibia, irrespective of their skills and qualifications, thus becoming entitled to directly compete with all Namibians in the labour market. This right, given the unlimited powers of the Minister to approve investors, is wide open for abuse.

- The bill introduces a host of new criminal offences for investors (foreign and local), with penalties up to N$2 million (apart from administrative fines, for which no limit is set, equal to the "full economic benefit" received by the investor) or 10 years imprisonment.
- Investments can be "suspended, withdrawn, or cancelled" at any time at the discretion of the Minister.
- An aggrieved investor whose investment has been "suspended, withdrawn, or cancelled" who wishes to approach the High Court is limited to appeal proceedings, and thus excluded from taking the decision of the Minister on review (S35(4)). This substantially limits the remedies an investor would normally have.
- The time limit to file an appeal is 30 days, an extremely short time bar given the potential complexity for the grounds of appeal and the fact that foreigners are the potential appellants.
- The Minister may prescribe "any fees" to be paid for "services" provided under this bill.
- The Minister may issue regulations on any additional functions of inspectors, or "any matter which … is required or permitted" and "generally any matter which the Minister considers necessary or expedient to prescribe". This effectively gives the Minister carte blanche to issue any regulation which in any way deals with investment, without having to pass through the actual lawmakers, i.e. Parliament.
- The Minister may also prescribe any penalties for breach of any regulation.

1.7 Applicable "Only to Foreign Investors" – a False Narrative

There appears to be a misperception amongst the public that the IPFB is only applicable to foreign investors. This is of course not true. A small portion of the bill deals with foreign investors – in fact, only sections 22, 26, 27 and 29. Even the definition of "foreign investor" still includes a Namibian company which is not owned or controlled by a Namibian. The bill predominantly deals with "investors" which include Namibian investors, i.e. Namibian business owners. The full wrath of absolutist control by Government (and mostly one Minister) (in particular Part 5 of the bill – which requires application to and approval by the Minister) thus spans across the whole of the Namibian private sector.[7]

[7] As change of control or ownership of any existing business is subject to Part 5 of the bill, which from that point forward gives the Minister total control over such business. Once an investment is approved under Part 5, the full bill becomes applicable to such investment (read business).

1.8 Constitutionality

The IPFB is unconstitutional for numerous reasons as discussed hereunder. Unfortunately, the parts that are unconstitutional form the core functionality of the bill, the intended regulatory system which, as it stands now is wholly unconstitutional in its powers and functionality.

1.8.1 Duty to Promote Investment

Article 99 of the Constitution states: "*Foreign investments shall be encouraged within Namibia subject to the provisions of an Investment Code to be adopted by Parliament".* It should be obvious by now that the IPFB does not encourage foreign investment, but in fact provides substantial disincentives for foreign investment.

1.8.2 Broad and Vague Powers

The IPFB contains several sections which provide seemingly unlimited powers to the Minister. In this part the fact that Cabinet approval must be obtained is ignored, for, as discussed before, Cabinet consists of the Minister's peers, appointed by the same President. Meaningful dissent against the Minister's submission in Cabinet is thus unlikely. The wide powers provided to the Minister include:

- The powers of the Minister to decide who may be excluded from participation in certain sectors or "business activities" (which is defined as <u>any activity</u>), based on vague criteria such as "public interest", "development objectives", "national security interests", "social inclusion", and "enhancement of innovation".

- The powers to approve / reject applications on the basis of vague criteria such as "national development", "economic growth", "public policy", "national security objectives", and most profoundly "any other factor which the Minister may prescribe". The latter, especially, elevates the Minister to *de facto* legislator.

- The powers whereby the Minister may set any terms and conditions for an investment to proceed.

- The powers by which the Minister may prescribe who may be accredited partners to investors, and subsequently approve an investment on condition that an accredited (or even very specific person) must be the investment partner.

- Section 7(1)(d) read with section 36(1)(h)– whereby investigators shall "perform such other functions as may be prescribed or determined by the Minister".

- Section 36(1)h whereby the Minister may make regulations on "generally any matter in respect of which the Minister considers it necessary or expedient to prescribe …".

- Section 36(1)(c) – whereby the Minister may prescribe "any fees" for "services" under this bill.

In the case of the *Medical Association of Namibia and Another vs Minister of Health and Social Services and Others* 2017 (2) NR 544 (SC) the Supreme Court expressed itself on laws providing for broad and vague powers given to statutory bodies and public functionaries. The quoted text hereunder contains own emphasis throughout.

The judgement states in paragraph [63]: *"…where the legislature confers a discretionary power, the delegation must not be so broad or vague that the body or functionary is unable to determine the nature and scope of the power conferred. That is because it may lead to arbitrary exercise of the delegated power. Broad discretionary powers must be accompanied by some restraints on the exercise of the power so that people affected by the exercise of the power will know what is relevant to the exercise of the power and the circumstances in which they seek relief from adverse decisions. Generally, the constraints must appear from the provisions of the empowering statute as well as its policies and objectives*".

The judgment continues to state in paragraph [80]: "*A very important plank of the doctors' challenge against the licencing scheme is that it has made the Council an 'omnipotent legislature'. It is said that the expressions in 'public need and interest' and 'required competence' permit the Council to disregard the doctors' rights as the vagueness, uncertainty and unintelligibility of that phraseology has the consequence of conferring wide and unfettered exercise of discretion on the Council. It is suggested in that context that those concepts do not provide any objective standard or norm and in that way imposes an unreasonable restriction on the fundamental right to carry on a doctor's profession, occupation, trade or business*."

The judgment continues in paragraph [85]: "*It is settled jurisprudence by the Constitutional Court that to pass the test of 'law of general application', a statutory measure conferring discretionary power on administrative officials or bodies must be sufficiently clear, accessible and precise to enable those affected by it to ascertain the extent of their rights and obligations (Dawood para 47); it must apply equally to all those similarly situated and must not be arbitrary in its application (S v Makwanyane para 156), and it must not simply grant a wide and unconstrained discretion without accompanying guidelines on the proper exercise of the power (Dawood para 47)*"

As per paragraph [88] the Honourable Judges quotes as follows:

"*And in the words of Justice Jackson in Railway Express Agency v New York 336 US 106 (1949) at 111-13:*

'[T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be

imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus escape the political retribution that might be visited upon them if larger numbers are affected.'"

The IPFB as it currently stands allows for a Minister to make rules, and exclusions, applicable only to a minority. So, for instance, the bill provides for certain "categories of persons" (read persons of certain race or tribal groups) to be excluded from reserved sectors or business activities. Given the repeated reference to previous disadvantaged persons, and injustices of apartheid, it is reasonable to assume that white Namibians will be the first "category of persons" to be excluded from investing (or expanding existing investments) in reserved sectors and business activities. One can only guess from which sectors and business activities they will be excluded from.

The Honourable Judges in the *Medical Association* case ruled that certain sections of the applicable legislation was "unconstitutional and therefore invalid". This was the first time in Namibia's history that a court outright ordered that an unconstitutional section becomes invalid with immediate effect, instead of referring same to the legislator to cure the unconstitutionality within a specified period.

Such broad discretionary powers, without constraints, also offend Article 1(1) of the Constitution which states that Namibia is a democratic state founded on the principles of democracy, the rule of law and justice for all. As per the *Medical Association* case, the IPFB offends the principles of the rule of law. Segregating Namibians based on any criteria, including colour of their skin, and to, on that basis alone, reduce their access to the economy and the job markets, with no regard to actual financial means, poverty, or employment status, means that the IPFB cannot possibly result in "justice for all". As it currently stands, the Minister can apply the bill to enrich any person he/she chooses, even a previously disadvantaged but current billionaire, and exclude from investment any other persons she chooses, by the mere colour of their skin.

The "*Study by the International Commission of Jurists on Apartheid in South Africa and South West Africa*" states: "*As understood by the International commission of Jurists, the Rule of Law requires an ordered legal and constitutional framework which will permit the full development of the individual by ensuring for him the rights and freedoms set out in the Universal Declaration of Human Rights …*" [1967, p. 3].

The human rights and freedoms discussed hereunder are anchored in this declaration, and the IPFB will thus offend this international declaration.

1.8.3 Fundamental Human Rights and Freedoms

Article 22(a) of the Namibian Constitution states that when any law sets a limitation on any fundamental right or freedom entrenched in the Constitution, such law shall be of general application and shall not negate the essential content thereof and shall not be aimed at a particular individual.

Section 5(e) and 12 of the IPFB gives the Minister the powers to identify and designate certain sectors and business activities that are reserved for certain categories of investors. The Minister also has the powers to decide who may partner with a foreign investor (and who may not). Such powers allow for largely arbitrary exclusion of "certain categories" of persons (including Namibians) and thus such powers offend the principle of general applicability - a core principle of the rule of law.

Article 10 of the Constitution states:

"*(1) All persons shall be equal before the law.*

"(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status."

Article 10 prohibits discrimination against anybody based on "race, colour, ethnic origin, creed or social status or economic status". Article 23(2) allows for discrimination against a single racial group of Namibians.

Article 23(2) does not allow for any other fundamental right or freedom as contained in Chapter 3 of the Constitution to be limited or abolished. It is inconceivable that the authors of the Constitution envisaged that any law could be passed to effectively exclude any "category of persons" from full participation in the economy, as is allowed for in the IPFB.

No Namibian's constitutional rights and freedoms stated hereunder may be limited by any law of parliament (except under Article 22, as also discussed hereunder), while the IPFB makes provision for limitation, even abolishment of such rights and freedoms. They are, for example:

- Respect of Human Dignity (Article 8):

"(1) The dignity of all persons shall be inviolable.
(2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment."

The IPFB explicitly aims to engineer social outcomes, such as the ownership structure of the Namibian economy. In terms of the IPFB the Minister can dictate which group (read "categories of persons"), potentially divided along infinite lines and criteria (also amongst empowerment beneficiaries – and thus along tribal lines), may own and control businesses in certain sector or each company. There can be little doubt that the explicit exclusion of certain "categories of

Namibians" from participating in the whole economy (irrespective of how they may later be defined as by the Minister) will feel injured in their dignity. In essence, their right to make a living may be severely impeded, and possibly completely denied.

With reference to George Orwell's Animal Farm, some Namibians can and will be regarded as more equal than others.

- Property (Article 16)

"(1) 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 …
(2) The State or a competent body or organ authorised 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."

The IPFB will allow the Minister to prohibit certain persons from owning certain businesses or alienate ownership in established businesses. This can happen with one foul swoop, for instance, by designating the agriculture sector for a "category" of investors which speaks a certain home language. As absurd as this may sound, this is what the IPFB potentially allows. As restrictions are also placed on the acquisition of licences, permits etc. (as such act is defined as an "investment") this mechanism may be used to force alienation of ownership in a business. If you do not partner with the prescribed (accredited) person(s), you may simply not get such documents from the State. No change of control or ownership in a business in a designated sector or business activity is allowed without the Minister's approval.

This is a denial of the protection of property rights as entrenched in this article. It is in fact a disguised method of coerced expropriation without just compensation, which is unconstitutional.

A business which requires and is refused a licence, permit or some other official document or authorisation to conduct certain economic activity is effectively forced to cease operations. This forced closure is sanctioned by the IPFB. It further effectively denies the owner the right to bequeath or sell such property to a person who falls within a certain "category of person".

- Administrative Justice (Article 18)

"*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*."

Namibians will be subjected to arbitrary decisions by a Minister who holds virtually unlimited powers to control ownership, control, and all other aspects of the private sector economy.

- Fundamental Freedoms (Article 21)

"(*1) All persons shall have the right to:*

...

(j) practise any profession, or carry on any occupation, trade or business."

Namibians' right to practice any profession and carry on any occupation, trade or business will be reduced, and potentially denied as some will be excluded from participating in certain sectors and business activities. This is clearly unconstitutional.

- Limitation of rights and freedoms (Article 22)

Article 22 does make provision for the limitation of the above-mentioned rights and freedoms, but then only if the law providing for such limitation is of general applicability (which the IPFB is not – given that "categories" of Namibians may be excluded from participating in the economy- and shall not negate from the essential content.

1.9 Limited Trading of Shares in Public Companies

The acquisition of publicly traded shares is not exempted from the IPFB: all shares bought on the Namibian Stock Exchange in companies that operate in designated sectors and business activities are regarded as "investments", and thus subject to approval by the Minister. This will deal a massive blow to the Namibian Stock Exchange.

1.10 Breach of International Law

All foreign investors will be subject to the IPFB. The IPFB brazenly overrides Namibia's international treaties on investment in stating that, notwithstanding such treaties, "*nothing prevents Namibia from adopting or maintaining a measure*[8] *that prescribes special formalities in connection with investments of foreign investors*".

Article 144 of the Constitution states: "*Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia*." It is disappointing that Namibia continues to moot laws that are in direct conflict with her international treaties.

[8] Measure is defined as including "any form of legally binding act of State" and includes laws, regulations, procedures and "requirements".

Continuing along this path will inevitably lead to a breakdown in international trust relationships, particularly if foreign countries realise that Namibia cannot be trusted to honour its treaties, and to protect property rights. The consequences of reduced investment, and dismal economic performance since 2016, are now well documented, the biggest policy blunders being NEEEB and the 2016 Investment Act. The IPFB will make matters exponentially worse.

1.11 Laws Not For Proper Purpose

The IPFB is sold to Namibians as a law that will promote investment. The reality is that it is more likely to lead to substantially reduced investment in Namibia. The question remains: Given its obvious shortcomings, why would our policymakers insist on introducing such a badly drafted policy in the first place? One wants to assume that the policymakers do not have the intention to reduce investment and harm the economy further.

Two years ago Namibians were shocked by the revelation that legislation (the Marine Resources Act) was (and can again be) used for corrupt purposes, with approval of Parliament (legalised corruption). So, for instance, legislation was passed to allow for increased quotas to the now infamous Fishcor, a SOE and thus a public entity, which stands in the centre of a grand scheme of corruption. An institution of extraction (see an explanation of this construct in Part 4 hereunder) was created to benefit a few, at the expense of the rest of the population. It is estimated that Namibia lost N$2.5 billion in natural resources through this corrupt scheme. It is interesting to note that, many years later, there still appears to be no intention to rectify the amendments which enabled Fishrot. In fact, government continues with Fishcor, and continues to issue quotas for “government objectives”. The quota allocation remains shrouded in secrecy, and some seniors in the industry speculate that in 2021 “government objective” quotas exceeded those given to legitimate rights. The Namibian public will probably never know, as the Access to Information Bill also gets kicked down the proverbial road; as well as the Whistle-blower Protection Bill. Recent surveys show that trust in Government is waning, and waning fast. One can understand why.

The true intent of the IPFB, as also with NEEEB, is similarly in question. For reasons explained, the IPFB is open to substantial abuse, and favouritism of a select few. It places a Minister in potentially complete control of private sector. We have recently read Part 1 of the Zondo Commission on State Capture in South Africa. It raises further, crucial questions as to why so much power should be given to a single Minister, to control (and potentially capture) private sector, especially since there are no meaningful incentives in this investment “promotion” bill?

As there are remarkable similarities between NEEEB and the IPFB, we provide a quote from our previous report on NEEEB:

“*A question which remains unanswered since 2016 is: Who in government is really pushing for NEEEB? It is unlikely that “the people” of Namibia are. Several opposition parties have already expressed their disapproval of NEEEB. There was no outcry, and these parties performed well. It* *is therefore unlikely that there is a populous drive behind NEEEB. As many tens of thousands of Namibians have experienced the consequences of this policy since 2016, in the form of major job losses, it is unlikely that there is support for this policy even amongst the poor, unemployed Namibians.*

Since 2016 there is sufficient evidence that NEEEB, and especially now the newest version, will cause even deeper contraction in the economy, and possibly total economic collapse. The first who have suffered since 2016 were the workers, those who were retrenched as companies started to fail. Workers will be the first to suffer as NEEEB becomes law, and distrust in Namibia as investment destination grows.

As we now have the benefit of hindsight, with economic data of the previous five years showing dismal investment figures, substantial business closures and major job losses, why is NEEEB still pursued, and for whose benefit?"

The same questions can be posed with regards to the 2016 Investment Act. And yet we now sit with a new bill which will most likely be substantially more damaging than its predecessor. It is notable that EPRA published its last report on NEEEB on 11 March 2021. Since then NIPDB was established and tasked to conduct extensive industry consultations on NEEEB, which, by all accounts, it did. It also appears that NIPDB provided extensive (pragmatic and sensible) recommendations on NEEEB to the Prime Minister. Despite all this effort (and considerable cost no doubt), the Prime Minister tabled NEEEB in Parliament in November last year. The document remained unchanged from the November 2020 version, which begs the question: why is no meaningful input considered, not even from a Government agency like NIPDB which was established and funded specifically to do research, consult, and advise on investment policy? Is there an ulterior motive which results in the bulldozing of a destructive policy such as NEEEB (and now the IPFB)? To a neutral observer, this certainly appears to be the case.

1.12 The End of the Free Market Economy?

The IPFB potentially introduces absolutist control over investment (businesses) in Namibia (foreign and domestic owned). With Government dictating the "who", "where", "how" and "when" of investment in Namibia, from control and ownership rights to "specific sub-activities of any business activity". Government can effectively take full control of the private sector economy. A free-market economy cannot survive such absolutist and interventionist Government control.

It is objectively true that Namibia's economy has been in decline since 2016 (when NEEEB and the Investment Act were introduced). No matter the ideological persuasions of the policymakers, certain policies will have inevitable results. A simple Futures Wheel analysis (a forecasting tool used to design policy based on cause and effect, or causality) indicates that the expected negative consequences of the IPFB are extremely likely to materialise. At its most basic level, investment cannot be expected to increase when a plethora of obstacles to investment are introduced. The economy cannot expand as a result of the bill as new investment and expansion of current investments are severely curtailed by the investors' choice of partners, choice of location, choice of business model and operations, additional bureaucracy in getting approval (currently not required), reduced pool of skills available in ownership and control, and additional costs in compliance generally.

Under such circumstances capital flees. Skilled people leave, and those who stay find it increasingly difficult to find jobs. At least those who could not find jobs had the freedom to start a business, which freedom may now be severely curtailed by the IPFB, and instead placed under direct control (and mercy) of a Minister.

Since 2016 the policymakers were warned, by numerous local and international experts, that NEEEB and the 2016 Investment Bill will cause substantial damage to the Namibian economy. Five years later the evidence that these warnings were well-founded is clear. EPRA respectfully, once again, implores policymakers to reconsider going down this dangerous path of self-destruction. Toxic policies are detrimental to Namibia's socio-economic wellbeing.

We are frequently asked: What are your alternative proposals? In our latest report on NEEEB we provided a long list of proposals. Unfortunately, as with the input provided by NIPDB on the IPFB and NEEEB, making constructive proposals appears to be a futile exercise.

We have included in this report under Part Four hereunder, an extract from a research paper on where Namibia may find herself by 2040. This extract contains a rich comparison of policies from different countries – those who failed dismally and those who succeeded spectacularly. Therein is contained yet another, vast list of proposals on how to improve Namibia, not only on an economic level, but on a socio-economic level, i.e. inclusive growth, poverty reduction, etc.

If we can reiterate one proposal here: The establishment of institutions of extraction, whereby only (and only possibly) a few may gain, at the expense of the rest of the population, will lead to a failed state. These institutions are created by Government under the guise of "empowerment", "inclusive growth", "government objectives", and many more, and they always take on the same form: increased government control of public goods and reduction of rights of a portion of the population. In this regard the IPFB bears a striking resemblance to NEEEB.

In the following part a global perspective is assessed, to better understand what pro-investment policy means, and assess best practice in the establishing a pro-growth investment environment. It will illustrate that, given our analysis of the content, the bill does not follow good practice to promote and facilitate investment – quite the opposite.

PART TWO - INTERNATIONAL BENCHMARKING

2.1 Background

We detailed the legal concerns with the IPFB in Part One above. It is useful to benchmark the IPFB against international best (and worst) practice. We will attempt to do so below. This is by no means an exhaustive comparison, but it should immediately become obvious that the IPFB falls far short of international best practice. We assume that NIPDB did a thorough and more detailed benchmarking exercise. Sadly, it appears that their recommendations were incorporated in the latest draft of the bill.

It is of course true that each country has its own economic challenges which means there is not a "one size fits all" investment solution. However, there are some solutions which work better than others. Like water, investment tends to gravitate towards countries with the least obstacles and most attractive investment environments. Generally, this tends to mean countries with liberalized, open, and transparent investment policies, as opposed to protectionist, closed or regressive investment regimes.

2.2 Do All Countries Have Investment Laws?

It might be surprising to learn that not all countries have specific investment promotion laws. In fact, some of the most successful investment destinations (like Singapore) do not have investment laws. It is therefore by no means guaranteed that investment laws attract investment. It is certain however that bad investment laws make investors run for the hills.

There are currently 195 countries in the world. Of these, 96 countries[9] have Investment, and/or Foreign Investment and/or Investment Promotion laws.

Countries without an Investment Law	99	50.8%
Countries with an Investment Law	52	26.7%
Countries with a Foreign Investment Act	32	16.4%
Countries with an Investment Promotion Law	12	6.1%

Source: World Bank, UNCTAD

As can be seen from the table above, more than half the countries in the world do not have dedicated investment laws. Rather, investment in those countries is regulated by generally applicable legislation (such as company, labour, contracts and numerous other laws). Where investment laws do exist, such laws generally provide benefits to investors over and above the benefits provided by the generally applicable laws. Investment laws thus aim to make investment more attractive. It is clear from the analysis under Part One, that the IPFB will achieve the exact opposite – it will make investment in Namibia (domestic and foreign) far more unattractive.

[9] UNCTAD

A "normal" investment law ideally describes the purpose of the law, safeguards fair treatment of investors, strikes a reasonable balance between protecting local industry and incentivising investment, grants legal protection to investors, guarantees free repatriation of profits and funds (subject to taxation), respects the rule of law, protects private property, upholds freedom of contract, and contains adequate dispute resolution mechanisms.

Successful investment destinations make it attractive for investors to invest. In contrast, countries that attract little investment tend to assume (wrongly) that there is a long line of investors who do not know what to do with their money and are desperate to be burdened with a country's internal development agenda. At best, international investment facilitates economic growth which leads to job creation and poverty alleviation (a win-win situation for everybody involved). At worst, international investment promotes (especially in countries where corruption is rife, and institutions of extraction are the norm) a rent seeking economy.

As stated before, each country has its own (unique) developmental challenges. Most countries however try to improve their own economic condition by attracting investment. Still, there are a handful of countries which (as part of their overall investment landscape) go further, and expressly aim to redress past imbalances when attempting to entice international investors. Let's take Namibia, South Africa and Zimbabwe as examples.

2.3 South Africa, Namibia and Zimbabwe

In South Africa, Section 12 of the Protection of Investment Act (22 of 2015) reads (in part) as follows:

*"**Right to regulate***

1. *Notwithstanding anything to the contrary in this Act, the Government or any organ of the State may, in accordance with the Constitution and applicable legislation, take measures, which may include-*
    a. *Redressing historical, social and economic inequalities and injustices;*
    b. *Upholding the values and principles espoused in Section 195[10] of the Constitution; (meaning addressing the imbalances of the past)"*

In Namibia, the IPFB (in Section 18) sets out criteria for the approval of investments which includes "*the contribution of the investment to the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices"* and *"the contribution of the investment to the implementations of programs and policies aimed at redressing social and economic imbalances in Namibia, including gender-based imbalances".*

In Zimbabwe, the Investment and Development Agency Act (2020) has two very interesting stipulations:

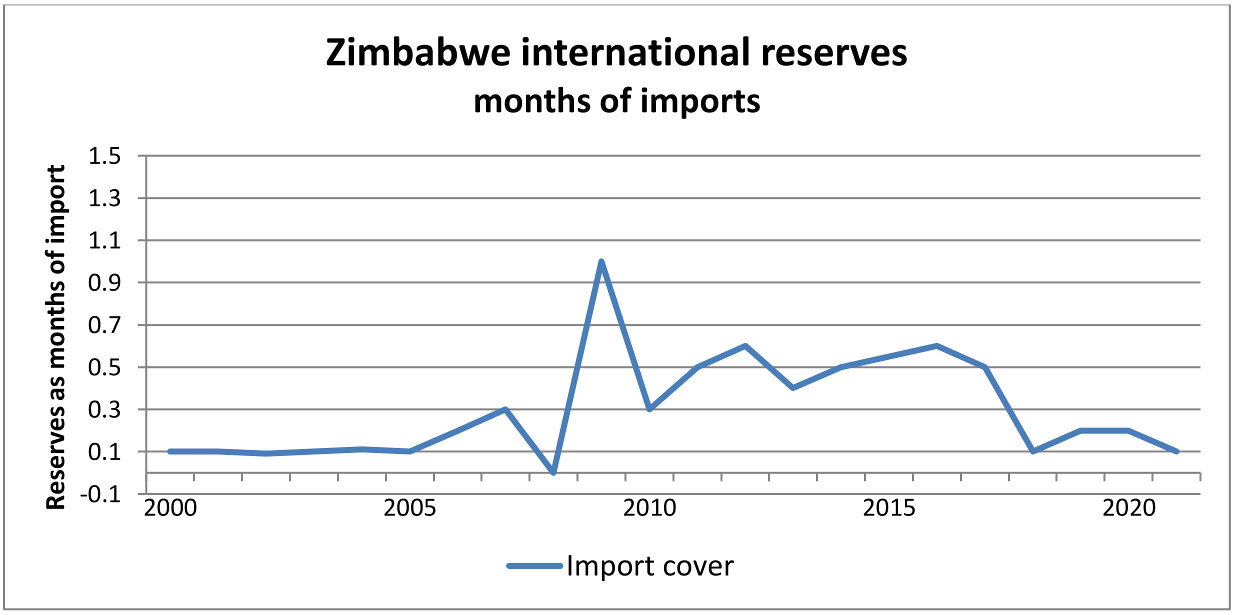
[10] The section 195 is the basic principles and values governing public administration which includes inter alia the need to redress the imbalances of the past to achieve broad representation.

Section 17 provides that no investment shall be nationalised or expropriated except for a public purpose in which case prompt, adequate and effective compensation shall be paid.

Section 19 generally allows the free transfer of funds. However, there is one noticeable exception which states that *"notwithstanding subsection (1) and (2), in the event of serious balance-of-payments or external financial difficulties, the Government temporarily restrict payments or transfers related to investments, provided that such restrictions are imposed on a non-discriminatory and good faith basis".*

The net effect is that investors in Zimbabwe know upfront that there are no guarantees their investment will not be expropriated. If it is expropriated, then they know it will be against fair market value but only if funds are available, which they rarely are, since Zimbabwe already defaulted on foreign debt repayments in the past. The investors can also freely transfer profits and dividends, but subject to the availability of foreign exchange. Foreign exchange constraints are a chronic problem in Zimbabwe since the late nineties. It is generally accepted that a country should have reserves of at least equal to 3 months' imports. In Zimbabwe the average import cover since 2010 was 0.36 months and currently stands at one week. This is hardly an investment friendly climate. The Namibian IPFB contains similar clauses as the Zimbabwean investment laws. If the Namibian economy is struggling, investments may be expropriated, and repatriation of capital may be prohibited. Whether or not the economy is struggling is a discretionary evaluation by the Minister and thus this "safeguard" provides no comfort to the investor.

Monthly import forex cover in Zimbabwe



Source: IMF reports

Any informed investor will evaluate investment laws (and political promises) against the actual investment reality. Zimbabwe is a good example of what happens when investment risk is compounded by the possibility of expropriation and balance of payments problems. Zimbabwe's GDP per capita is amongst the lowest in the world and declining fast since 2016. Namibia and South Africa also experienced substantial economic contraction in recent years, with Namibia's

GDP per capita reducing from US$5,942 in 2012 to US$4,211 by 2020 and South Africa's GDP per capita reducing from US$8,007 in 2011 to US$5,090 by 2020.[11]

If these countries are examples of what not to do, are there countries which show us how it can and should be done? Fortunately, we do not have to look too far beyond our borders to find a country that has improved investment laws (and outcomes).

2.4 Rwanda

Rwanda experienced significant success in attracting investment recently. In 2021 it enacted the Investment Promotion and Facilitation Law No. 6. The law expands on the list of eligible investors from the earlier 2015 investment law and offers generous tax incentives for those who choose Rwanda as their preferred investment destination.

Article 3 opens all sectors of the Rwandan economy to private investors (although they are encouraged to invest in priority sectors).

Investors who meet certain criteria are then guaranteed certain incentives as further detailed below.

Generally, investors in Rwanda have the right to own property and assets which cannot be seized or confiscated (Article 10) with very limited exceptions. Any expropriation will be met with fair compensation, without caveats. Intellectual rights are also protected (Article 11) and capital and assets may generally be freely repatriated (after payment of tax). Generous assistance is offered to investors with operational formalities (visas, work permits, licenses and investment related support). Commercial entities have to register their investment (Articles 17 and 18) but investment certificates are (upon completion of formalities) issued within 2 days. If rejected, an investor is informed of the reasons within 2 working days from receipt of the application (Article 18). Contrast this with the IPFB which has timeframes for approval exceeding 270 business days, effectively more than a year.

No reasonable investor will wait that long to be informed of the outcome of his investment application.

An investment certificate is valid for 5 years (Article 19) but is renewable. If renewal is rejected, then a decision is made within 10 days. Investors must abide by the terms of the investment certificate but may make changes provided they do not materially alter the commitment made by the investor.

In terms of tax incentives, certain registered investors are afforded zero or low-income tax rates (ranging from 0% tax to 25%) and up to 150% tax deduction depending on the scale and nature of their investment. There are also significant incentives for philanthropic investors and

[11] Source: World Bank

generous tax holidays (up to 5 years) and zero-rated withholding tax rates (again, depending on the nature and scope of investment). No such equivalent incentives exist in the IPFB which is unduly focused on policing and punishing rather than attracting and rewarding investors. Even the (not so democratic) People's Republic of Korea (North Korea) in its economic and trade zones (Rason) offers zero percent income and corporate tax rates for 3 years (admittedly with not much success, for obvious reasons).

Although still amongst the poorest countries in the world, Rwanda experienced consistent economic growth since 1994, with GDP per capita increasing 500% up to 2020.[12] Space does not permit us to analyse each and every provision of Rwanda's investment law in detail. Suffice to say that it is demonstrably more "investor friendly" than our very own IPFB. It certainly appears that Rwanda understands the importance of attracting investment for economic growth and job creation better than Namibia (where "allowing" foreign investors to invest seems to be regarded as a "discretionary privilege" rather an economic necessity to improve social outcomes).

2.5 UNCTAD Investment Policy Guidelines

The United Nations Conference on Trade and Development (UNCTAD) is a permanent intergovernmental body established by the United Nations General Assembly in 1964. UNCTAD[13] is primarily tasked with developing international trade and is currently involved with 218 projects in 80 countries. It has over the years developed a robust investment policy framework based on international best practice which can broadly be summarised as follows:

Investment and sustainable development strategy	Integrating investment policy in sustainable development strategy Maximising the contribution of investment to productive capacity building and international competitiveness
Investment regulation and promotion	Designing investment-specific policies regarding: • Establishment and operations • Treatment and protection of investments • Investor responsibilities • Investment promotion and facilitation
Investment-related policy areas	Ensuring coherence with other policy areas, including: trade, taxation, intellectual property, competition, labour market regulation, access to land, corporate responsibility and governance, environmental protection, infrastructure and PPPs
Investment policy effectiveness	Building effective public institutions to implement investment policy Measuring investment policy effectiveness and feeding back lessons learned into new rounds of policymaking

Source: UNCTAD

[12] Namibia experienced a similar growth trend, albeit from 2002, but a drastic decline since 2016, the year when NEEEB and the Investment Promotion Act were introduced.
[13] UNCTAD. 2019. National Investment Policy Guidelines, page 55. Investment Policy Framework (unctad.org)

It is not clear whether any input from UNCTAD has been sought in drafting the IPFB, but given the UNCTAD guidelines on best practice, and the fact that the bill substantially deviates from these guidelines, it is unlikely.

2.6 What is Namibia's Position on Investment Policy?

The tabling of the IPFB in November 2021 was met, perhaps predictably, with public outcry. The bill was withdrawn shortly thereafter for "further consultations" without explanation. It is telling that Namibia's own investment promotion agency (NIPDB) in a leaked document also criticised the bill for being overly preceptive and failing to adequately address legitimate investor concerns. The only "official" comment on the IPFB we have is from the Deputy Executive Director of the Ministry of Industrialisation and Trade, Dr. Michael Humavindu.

According to Dr. Humavindu, the public and media outcry is misplaced. He argued that there is a "misdiagnosis" of the bill and that some media journalists have "deficiencies in economic journalism competencies". In his view it is a modern bill based on modern investment legislation themes which aim to support sustainable investment and incorporates the aims of the Sustainable Development Goals (SDGs). Dr. Humavindu bases his argument for the 'modern' investment bill on the narrative that Namibia faces "increasing global asymmetries requires a much more nuanced and focused approach to a national investment policy inclusive of sector reservations and an applicable rules regime thereof." He is of the view that Namibia faces the "twin threats of a Middle–Income Trap and Premature Deindustrialisation as we have no or little competent capacities built to compete on the basis of innovation, technological change and the production of knowledge-intensive goods and services." Furthermore, he stated that "the design of one's national investment policy and law therefore should be a critical tool to help ameliorate these structural developmental limitations and act as a bulwark against the twin threats".

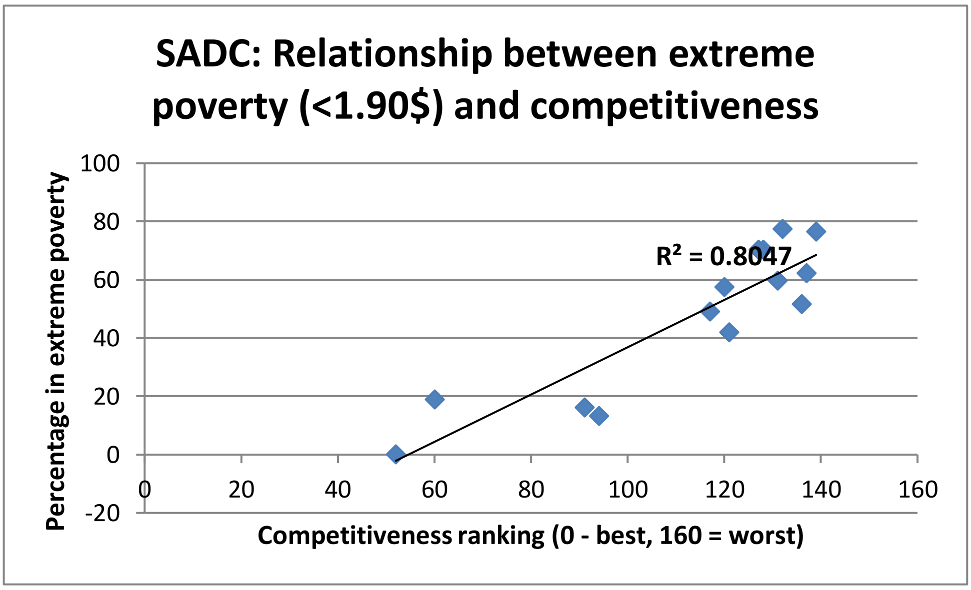
It appears that the IPFB, at its core objective, aims to set a legal framework for the protection of the Namibian economy against the twin threats identified by the Ministry of Industrialisation and Trade. If this is correct, then Namibia has given up being competitive and embracing globalisation. A 'bulwark' policy will mean that Namibia will be highly selective and will follow an inward-looking investment policy in future. In its inward-looking investment policy, the bill inter-alia also aims to excluding certain domestic investors from certain sectors and "business activities". This is arguably understandable, is it desirable? Is this the appropriate approach to promote and facilitate investment? Will the general population benefit from this closed-economy approach?

According to international best practise, an investment policy should not only contribute towards a sustainable development strategy (e.g. SDGs), but also towards productive capacity building and international competitiveness. Dr Humavindu is of the view that the global asymmetrical development requires a new investment act which will be a bulwark against the threats of being treated as a middle-income country and the fear of deindustrialisation is seemingly a reality in the Ministry. Would a 'bulwark' policy choice promote investment and assist Namibia to achieve sustainable growth? Put differently, is the bulwark policy the right choice given the perceived threats of increased competition?

International competitiveness does matter. If Namibia wants to avoid an increase in extreme poverty, competitiveness must improve. A study done on the SADC region shows that the relationship between extreme poverty (income of less than USD 1.90 per day) has a regression R^2=0.8047 (see graph below), which means that the decline in competitiveness is linked to an increase in extreme poverty. Small, open economies with small domestic markets (e.g. Namibia) should not fear the so called "entrenched global asymmetries" which "perpetuate inequality", but improve and engage with the rest of the world as the 'bulwark' mentality has proven that it lends itself towards increased degeneration, stagnation and state capture based on cronyism and other indigenisation policies (North Korea, Venezuela, Cuba, DRC, South Africa and Zimbabwe are prime examples).

In essence, any sensible investment law should not deter investors, rather it should de-risk the (already risky) business of investing. The de-risking of investment requires regulatory stability, good policies, clarity on the rule of law and an open non-confrontational relationship between business and government. Open societies that value progress tend to be forward looking. They spend quality time on achieving favourable investment outcomes (which includes having a vision of a better, more sustainable, and inclusive future) rather than dwelling on memories of the past (which, admittedly, can attract votes in the short term but hardly ever improves lives in the long term).

To avoid extreme poverty one has to improve competitiveness

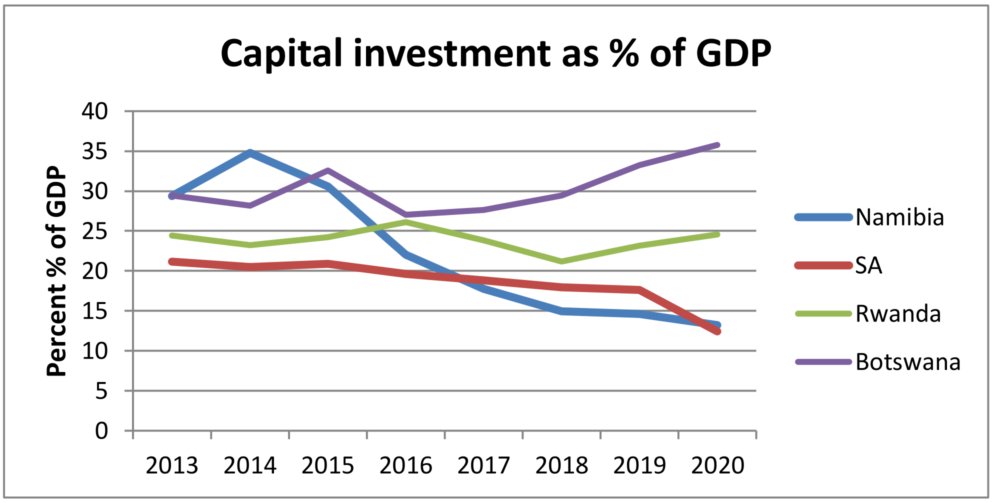


Source: World Bank, World Economic Forum

2.7 Does Good Investment Policy Make a Difference?

There is a clear and direct correlation between good investment policies and meaningful investment.

A good investment policy does matter

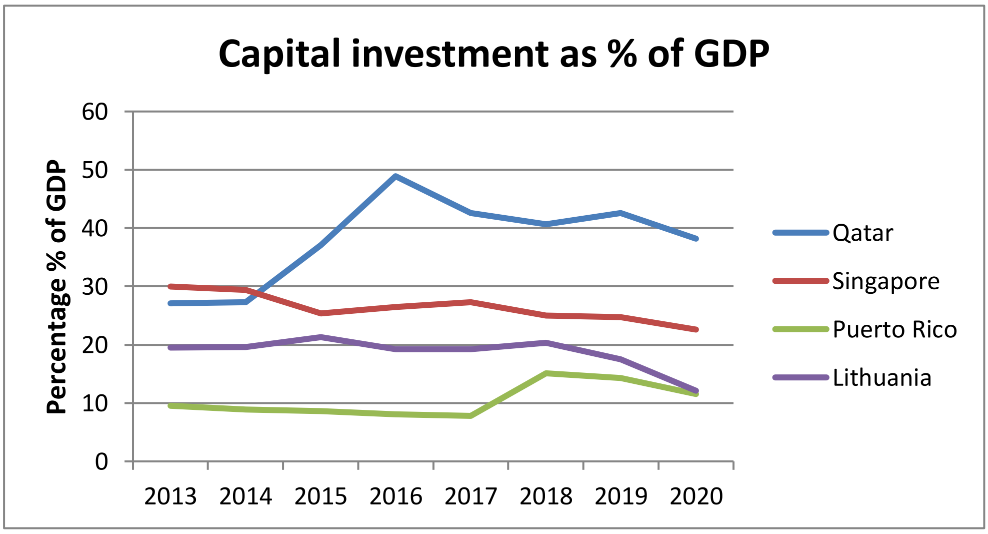


Source: World Bank

If one compares capital investment as percentage (%) of GDP of Namibia, South Africa, Rwanda and Botswana, it demonstrates that a good investment climate does matter. Namibia and South Africa are showing a declining trend and Rwanda and Botswana an increasing trend, even during Covid times in 2020.

To compare the investment performance of similar countries according to the size of the internal market (from a population perspective) it is evident that a good investment climate leads to better investment. The following countries are included in the comparison: Botswana, Lithuania, Namibia, Puerto Rico, Singapore and Qatar. The investment performance (capital investment as % of GDP) of Qatar, Puerto Rico, Lithuania and Singapore are shown in the table below.

Good investment policies matter



Source: World Bank

Puerto Rico and Lithuania show a declining trend in the last two years and in both Qatar and Singapore investment performance is high (although all declined in 2020 due to Covid). If one compares the six countries on other indicators than investment as % of GDP, then the following information should also inform policy making:

Category	Botswana	Lithuania	Namibia	Puerto Rico	Qatar	Singapore
Population in mill.	2.4	2.7	2.58	2.8	2.9	5.9
Company Tax	22%	15%	**32%**	18.5%	10%	17%
Dividend Tax	10%	0%/15%	10%/20%	10%	0%	0%
Investment Act	×	√	√	×	√	×
Invest. 1960-2020	30.5%			17.2%		31.1%
Invest. 1980-2020			19.9%			
Invest. 1995-2020		21.2%			34.4%	

Source: World Bank, Deloitte

High levels of investment (capital investment as % of GDP) are achieved, even in a small market, by good policies, low taxes, consistency, political stability, good governance and low corruption. Namibia is blessed with (relative) political stability, but has high levels of systemic corruption, high taxes (with one of the highest tax-to-GDP ratios in the world), poor economic policies (NEEEB and the IPFB) and generally a lack of urgency and consistency when it comes to attracting investment. Ultimately, an investment law is not a prerequisite to economic growth, but if we do opt to have one then it better be an attractive one (or at least one which does not actively chase away investors).

Investors (especially institutional investors) also consider a country's overall risk profile when deciding where to invest. Moody's, Fitch and Standard & Poor (all rating agencies) regularly assess the risks of countries and companies.

Moody's rating of countries

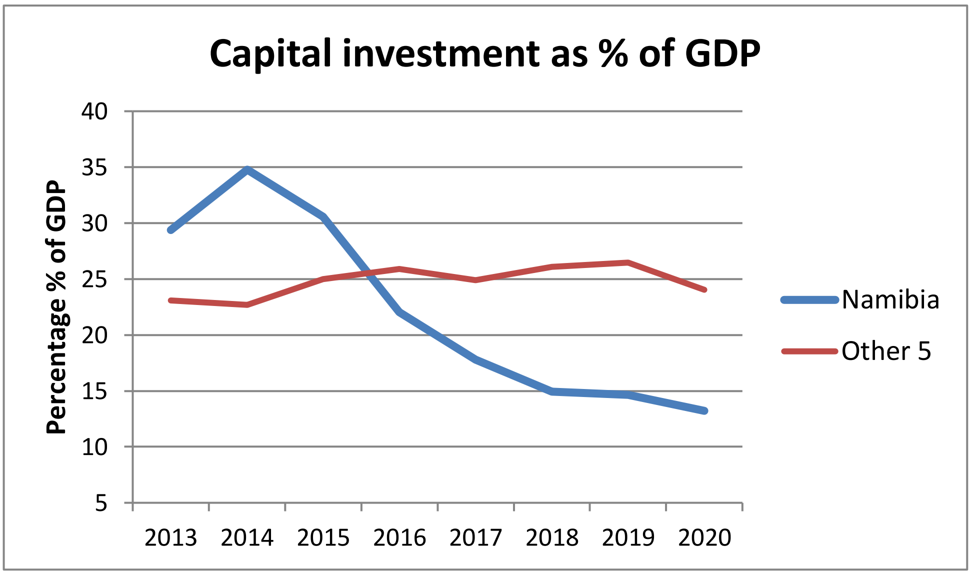
Prime	Aaa	Singapore
High Grade	Aa1 Aa2 Aa3	 Qatar
Upper medium grade	A1 A2 A3	 Lithuania Botswana
Lower medium grade	Baa1 Baa2 Baa3	
Non – investment grade, speculative	Ba1 Ba2 Ba3	Puerto Rico ***Namibia***
Highly speculative	B1 B2 B3	
In Default		

Source: Moody's

Namibia's rating is speculative non-investment grade and even worse than Puerto Rico. Investments are attracted by a trade-off between risks and return on investments. If one takes the average of the 5 countries compared (Botswana, Lithuania, Puerto Rico, Qatar and Singapore) in the capital investment as percentage of GDP in comparison to Namibia for the period 2013-20, one can benchmark Namibia's investment performance.

The graph below depicts Namibia's investment performance against the benchmark (average) of the other five countries. From 2013 to 2015 Namibia performed better than the benchmark, and since 2016 Namibia performed below the benchmark. The introduction of the Namibia Investment Promotions Act in 2016, and NEEEB in the same year, had a devastating influence on investor confidence in Namibia and led to investment outflows. It is easy to blame Covid-19, but in neighbouring Botswana investment increased despite the pandemic. In fact, it was reported on 16 December 2021 that South African born but California based billionaire Patrick Soon-Shiong's NantWorks chose Botswana as an investment friendly country for its ease of doing business and is due to invest heavily in establishing a biological manufacturing technology plant in Botswana. Ironically, one of the aims of this investment is to build capacity in South Africa, yet South Africa was not found to be sufficiently investor friendly to establish his technology firm there. This begs the question: why was Namibia then not chosen? Could it be that, despite Government's insistence that Namibia is investor friendly, international investors clearly also do their own research and do not agree?

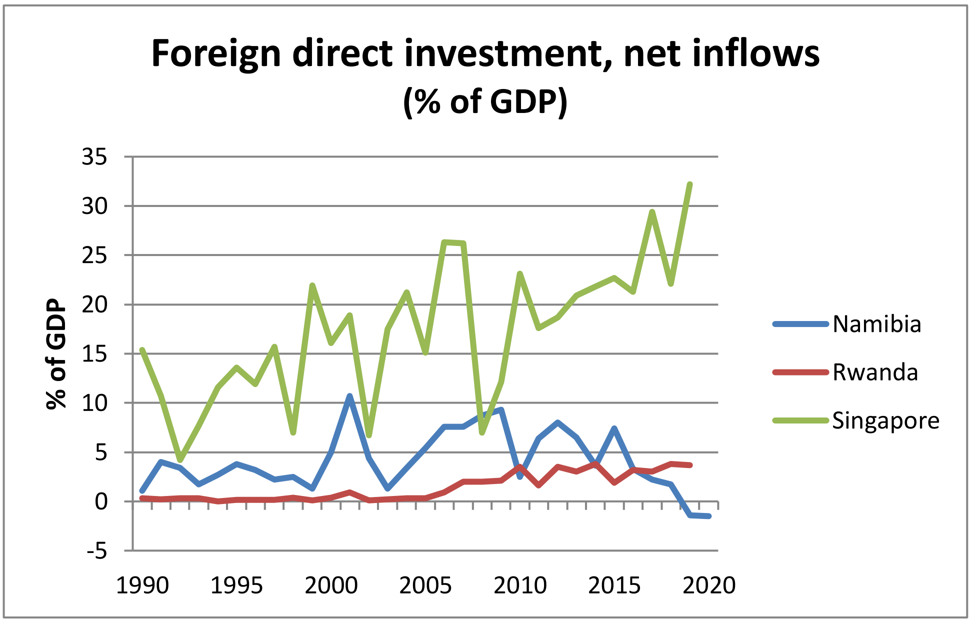
Namibia is underperforming since 2016



Source: World Bank

The 2016 Investment Promotions Act not only had a negative impact on domestic investment, but also on the inflow of foreign direct investment.

Namibia's foreign direct investment reached negative net inflows in 2019



Source: IMF

The graph above succinctly illustrates that Singapore attracted investment (since 1990) whereas Namibia peaked first in 2001 and then in 2009. Since 2008 a declining trend emerged and since 2019 the net inflows are negative, thus disinvestment occurred for the last two years. Rwanda steadily received an increased foreign direct investment inflow from 2007 onwards and when they announced their new incentives for registered investors. Rwanda surpassed Namibia from 2016 onwards. From the Rwandan experience we can deduct that a liberal and open investment policy impacts positively on attracting foreign direct investment as well as local investment.

As in the example from Rwanda, an investment policy does matter. However, the overall investment performance (e.g. Botswana, Qatar and Singapore) depends on the domestic ideology influencing policy choices. A liberal, open and free economy which improves its competitiveness will achieve more wealth, improve employment and reduce poverty.

In the case of Namibia competitiveness seems to be on the policy backburner, and we appear instead to follow an investment policy based on being a 'bulwark' against the 'threats' of 'asymmetric' globalization. Namibia sees itself as victim of external threats and the evils of apartheid four decades ago. This victim mentally likely influences public officials not to innovate and think about how to engage the future constructively, but rather devise strategies of how 'the local is lekker' approach to the economic path lends itself more and more to social engineering (NEEEB, and now IPFB), ultimately, rent seeking. The believe that politicians can engineer prosperity[14] is a fallacy. Good policies and inclusive political and economic institutions make all the difference and Namibia can learn from neighbouring Botswana, and many other countries in this regard.

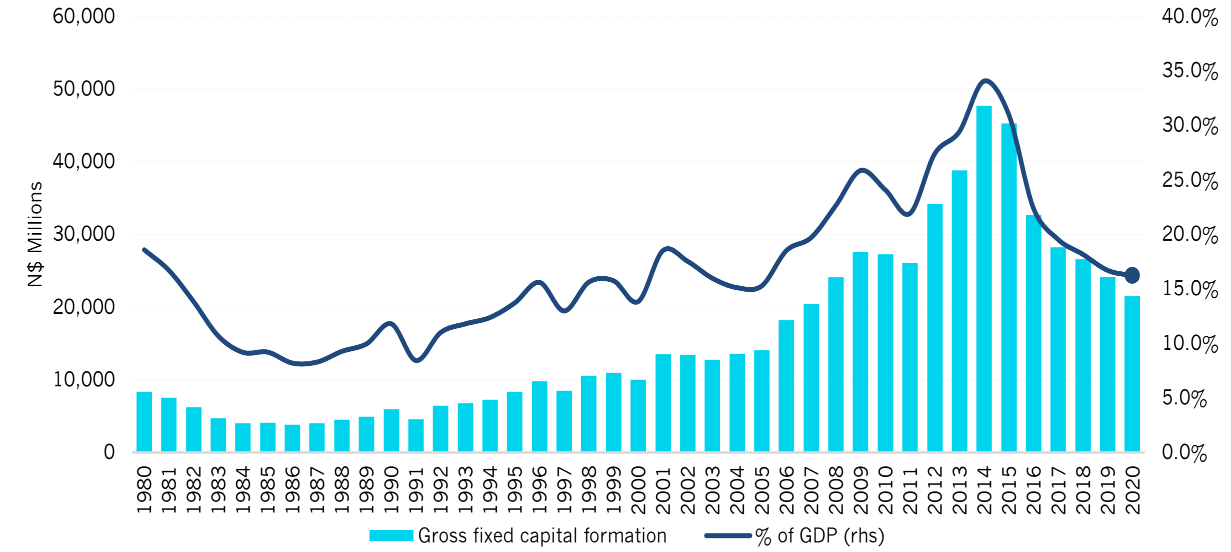
[14] Acemoglu, D. and Robinson J. A. 2013. Why Nations Fail. The origins of power, prosperity and poverty. Profile Books.

PART THREE – ECONOMIC and HUMAN DEVELOPMENT PERSPECTIVE

3.1 Economic Background

Gross fixed capital formation (GFCF) has been declining steadily since 2014, in both real and nominal terms, and has contributed less and less to GDP over the last six years (to levels last seen 15 years ago). Although it was expected to see some decline after 2014, with the completion of major mines in Namibia (B2Gold's Otjikoto mine, Swakop Uranium's Husab mine, and Weatherly's Tschudi mine), the decline has been persistent and has not yet been arrested. While the decline has often been attributed to Government's reduced or stagnating Development Budget (and halt on construction/capital projects), the National Accounts clearly indicate that the primary driver of the investment slowdown has been the private sector.

Gross Fixed Capital Formation (constant '15 prices)
Investment as a% of GDP has been declining since '15.



Source: Namibia Statistics Agency

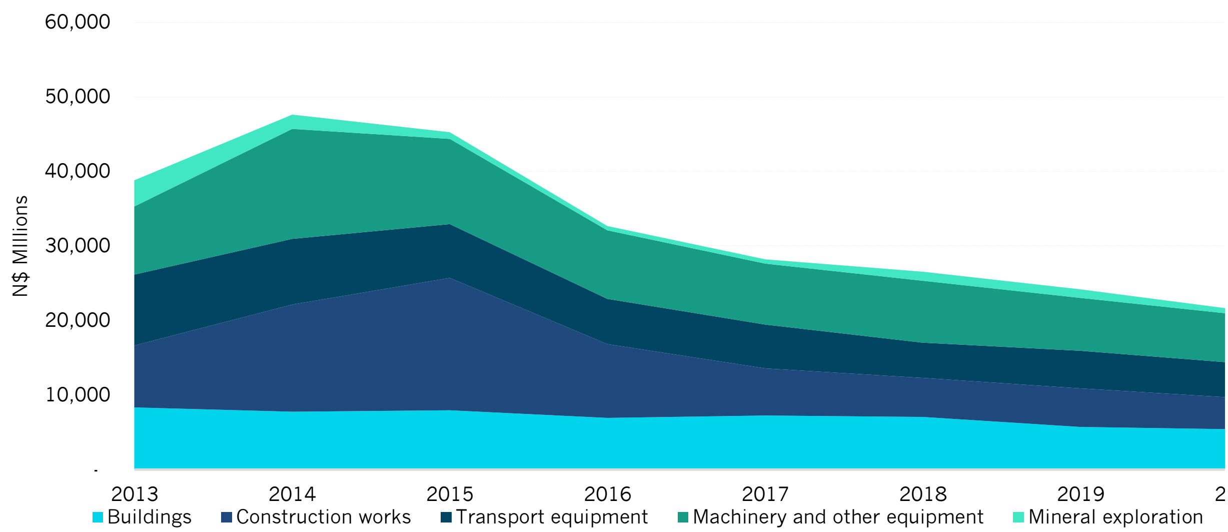
Since independence, GFCF has averaged 18.5% of GDP. Its contribution to GDP peaked in 2014 at 34.0%, but has declined steadily since then and has been below this long-term average since 2018 (2018: 18.2%; 2019: 16.7%; 2020: 16.2%).

GFCF has been contracting in both nominal and real terms since peaking in 2014. In real terms, GFCF of N$21.5 billion (in 2020) is 55.0% below its peak in 2014 and 44.7% below its 2013 level. Across the 11 activities for which GFCF is measured, all posted real contractions in 2020 except for mining and quarrying. Instead, GFCF for mining and quarrying increased for a second consecutive year (2019: +1.9%; 2020: +15.9%). This is due to ongoing investment into existing mines to extend life of mines, as the GFCF by type of asset indicates material reduction in mineral exploration.

In absolute terms, the largest decreases in GFCF in 2020 were seen in electricity and water (-N$810 million), manufacturing (-N$780 million), and fishing (-N$633 million). Looking at GFCF by type of asset, real decreases were seen across all lines. However, the largest were in construction works (-N$952 million), machinery and other equipment (-N$555 million), and mineral exploration (-N$492 million).

GFCF by asset (constant '15 prices)

Investment by type of asset has steadily declined across all lines since '15

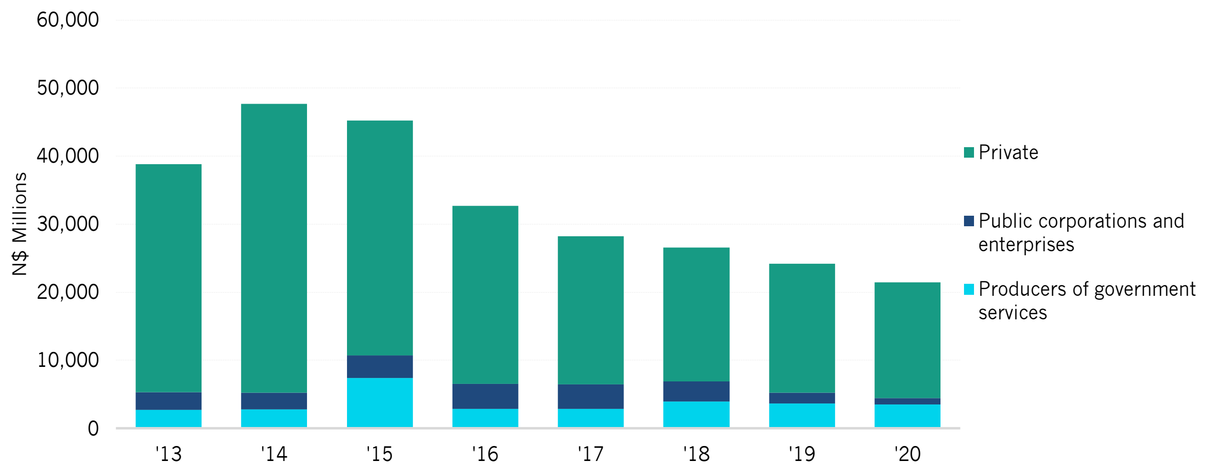


Source: Namibia Statistics Agency

Private investment has been the largest driver of GFCF, particularly in the build-up to 2014 with largescale investment into Namibia's mining sector. The decline in private investment in 2015 was partially offset by increased investment spend by Government (particularly state-owned enterprises), thereafter declined as well due to the need for fiscal consolidation.

GFCF by ownership (constant '15 prices)

The decline in investment has very much been due to reduced private investment.

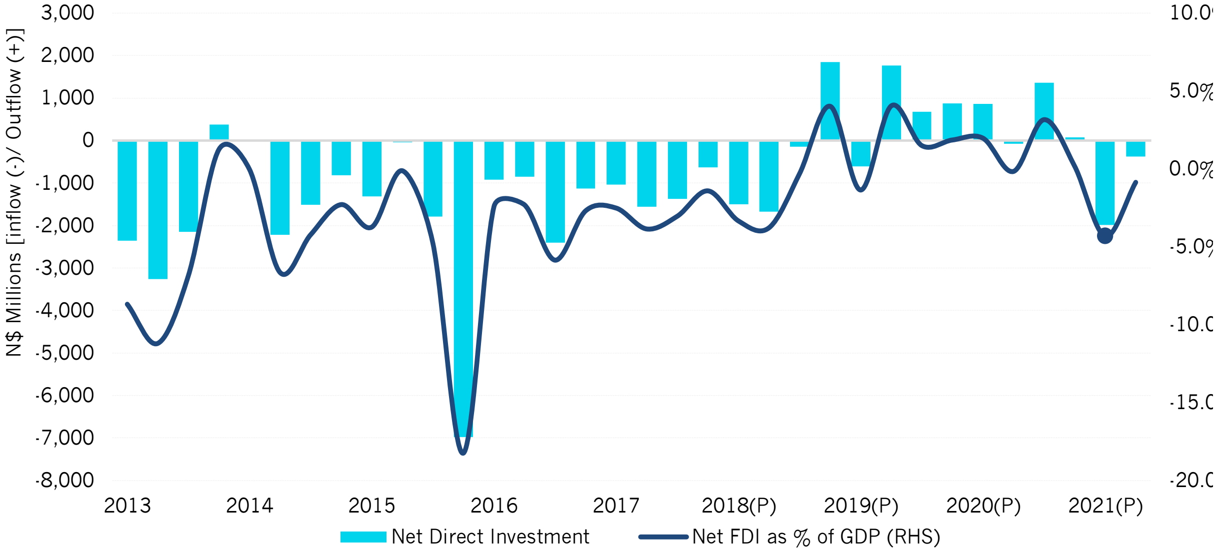


Source: Namibia Statistics Agency

Historically, Namibia has been a substantial recipient of net foreign direct investment (FDI) inflows. However, this changed from late 2018 where Namibia saw regular quarters of large net FDI outflows. This coincides not only with Namibia's economic slump, but also the raft of investment-deterring policy (and uncertainty), all of which are intertwined. Namibia has seen some net FDI inflows again for the first two quarters of 2021, largely driven by investment into Namibia's mining sector once again – including exploration activity.

Net FDI

Namibia has seen dramatically reduced net FDI inflows since late '18.



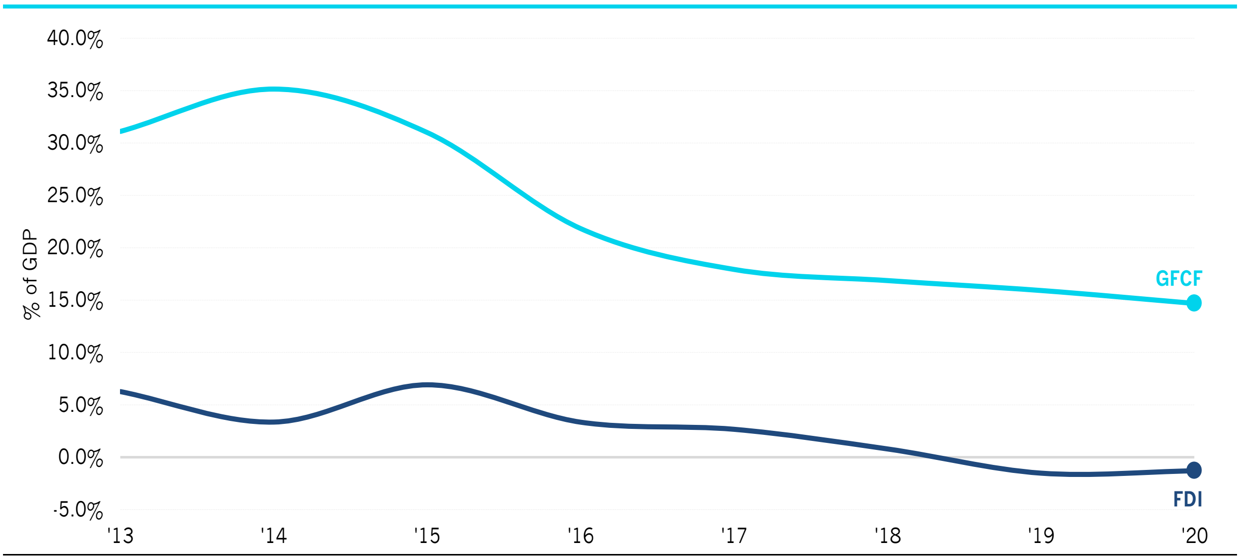
Source: Bank of Namibia

Investment has steadily been declining, in overall terms and also foreign direct investment. This is unsurprising, given the policies that have been floated in recent years (and those that have still not been resolved), as well as the deterioration in the economy and poor growth outlook.

Government's limited fiscal manoeuvrability, especially given the large operational expenditure requirement, means that it is not expected to rekindle investment directly. However, given that private investment is by far the largest portion, it should not be Government directly driving investment. Rather, Government should look to encourage private investment through appropriate policy, creating a conducive investment and business environment. However, policy proposals over the last half-decade have done more of the opposite – clearly reflected in the investment data.

Investment slump

Both overall investment and FDI have been decreasing, with net FDI outflows since late '18.



Source: Namibia Statistics Agency, Bank of Namibia

3.2 Desired vs Expected Outcomes

Government's stated aim is to attract investment. In fact, Harambee Prosperity Plan II, Goal 3, explicitly states that Government will "design and offer competitive investment incentives to facilitate local and foreign direct investment, attraction and retention". Whilst Government accepts that attracting investment capital is a critical component of private sector led economic growth, its proposed laws do not always reflect, or support, intended outcomes. The IPFB is a good example of good intentions ambushed by bad policies.

While the broad objectives of the IPFB (reduced employment, attraction of sustainable investment, and improved investment processes) are agreeable and shared by most, the outcomes of the bill, as elaborated upon in the rest of this document, will be the opposite. **Far from increasing investment, it will deter investment, reduce jobs and reduce government revenue.** Moreover, it presents vast opportunity for abuse, firstly, for the legalised enrichment of a politically connected minority and, secondly, to enact draconian measures of policing local and foreign investors and creating new crimes for which investors can be imprisoned for up to 10 years. One such crime will be a breach of an agreement with the Minister. The laws governing contracts, which falls under the branch of civil law, is now moved to criminal law if that contract is entered into with an omnipotent Minister. This hardly creates a "friendly" investment environment.

We assume the drafters and advisors of the bill have no intention to abuse the vast powers granted to the relevant Minister. Concerningly however, IPFB has baked into its architecture a foundation which lends itself to wholesale business grabs or effective capture of the private sector. The vast powers granted to an omnipotent minister, the introduction of draconian policing regimes, the prohibition on certain types of investment, and limits on the expansion of current businesses without approval, are particularly concerning.

The recent "Fishrot" scandal threw into stark relief the fact that concentrated power without accountability attracts maleficence. While the fishing quota honey pot was always going to be appealing to bad actors, the honey pot presented by IPFB (and also the pending NEEEB) is orders of magnitudes larger. That the latter is not the intention, as the parties responsible for the bill will no doubt argue, is of little solace. It is once again a gun held to the head of Namibian businesses and foreign investors with the promise not to pull the trigger. Good foreign investors (as opposed to those who purchase favours) will disappear. Local investors do not have the luxury of disappearing, although they will no doubt attempt to remove themselves (and their savings) from what is increasingly becoming a toxic investment environment.

3.3 Baseline

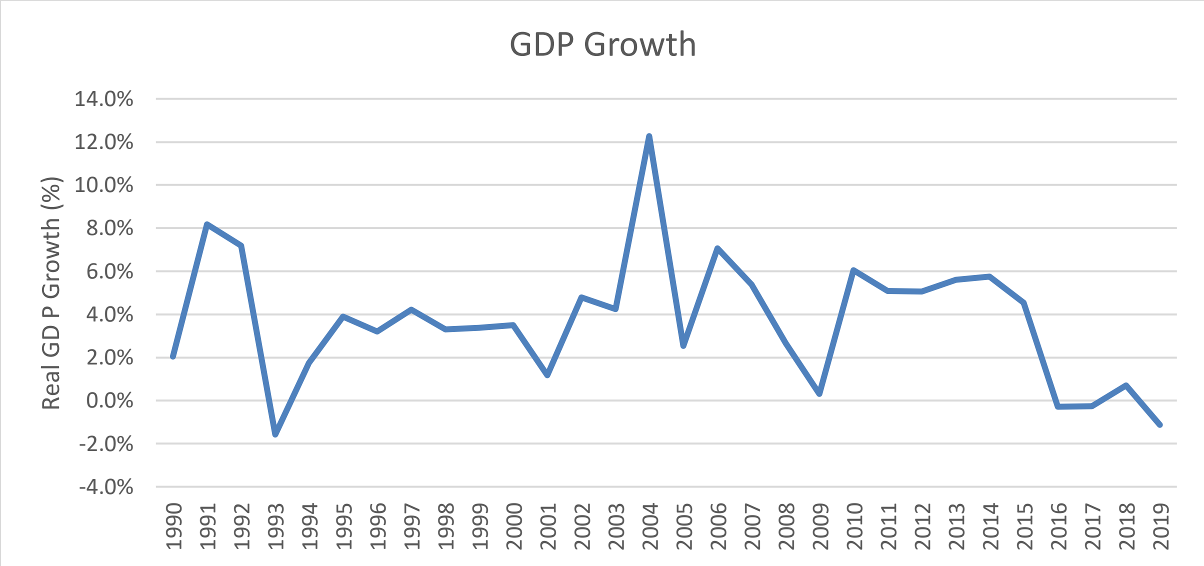
We are not aware of any empirical research to support the view that IPFB will solve Namibia's investment challenges. It is clear however (and has been publicly reported) that extensive efforts by NIPDB to make the 2016 NIPA more palatable have been largely ignored. It is evident that IPFB falls far short of international best practice on investment policy. The bill provides no actual incentives to increase investment (local or foreign) but does provide numerous disincentives. Under these circumstances, reasonably informed investors are likely to run for the hills.

In addition, there is no research to show why so few post-independence business success stories exist, and why natural transformation of the economy has been so slow. Finally, and most importantly, there has been no research presented on other pragmatic and business friendly options available to address these concerns. It appears from the IPFB that the Minister now tilts towards a closed economy and protectionist policies as opposed to an open economy (which has a proven track record of attracting investment). Thus, we are left with inadequately researched legislation with potentially far reaching consequences.

3.4 Macroeconomic Backdrop

3.4.1 Growth

From 2016 to 2019 (pre-COVID-19) Namibian GDP growth fell from one of the higher rates in the world, to one of the lowest rates in the world. Thus, while much of the rest of the world was rapidly expanding, Namibia underwent a period of contraction and stagnation. In 2019, Namibia was the 16th slowest growing economy in the world.



Source: Namibia Statistics Agency

2020 and 2021 were difficult years for much of the world, due to COVID-19. However, those countries that entered the crisis on the back of strong growth are likely weathered the storm best and recover fastest. Namibia will emerge from COVID slowly at best, and the outlook remains extremely fragile, and material GDP growth, as detailed above, is likely to remain elusive.

There are only four components of GDP, and unless these are seeing net expansion on a weighted basis, the economy will not grow. These components are household consumption (approximately 70% of GDP), government spending (approximately 24% of GDP), net exports (approximately -6% of GDP, as we are net importers) and investment (the remainder).

3.4.2 Households

Even prior to COVID-19, the current high levels of household debt, formal sector job losses and low wage adjustments meant that households were not able to drive growth. COVID-19 has added fuel to the fire, and households are in an increasingly vulnerable position, with little chance of driving growth over the next half decade.

3.4.3 Public Finances

If we look at government spending, Namibia has the third best-resourced government in the world relative to the size of its economy (third highest tax-to-GDP ratio in the world). However, despite these staggering resources, in normal years, government spends approximately 5% of GDP (generally around N$10 billion in 2020 value terms) a year more than the revenue it collects. Clearly, this is not sustainable. This weak fiscal situation further deteriorated since COVID-19, with government having a deficit of close to N$18 billion in 2020/21 due to additional (COVID-19 linked) expenditure, and lost revenue. Moreover, a contraction in SACU revenue in 2021/22 and 2022/23 will mean that substantial budget deficits can be expected for the following two years, totalling approximately N$18 billion again in 2021/22, and around N$15 billion in 2022/23. As a result, government will not be able to stimulate growth sustainably through more spending over the near term and will have to borrow at an unsustainable rate to maintain current spending levels.

With regards to net exports, theoretically this could be improved either through reduced imports or increased exports. The former is currently happening because of weak household demand in the country, while the latter is highly dependent on fixed capital investment. By the end of 2020, exports plummeted to levels last seen in 2014.

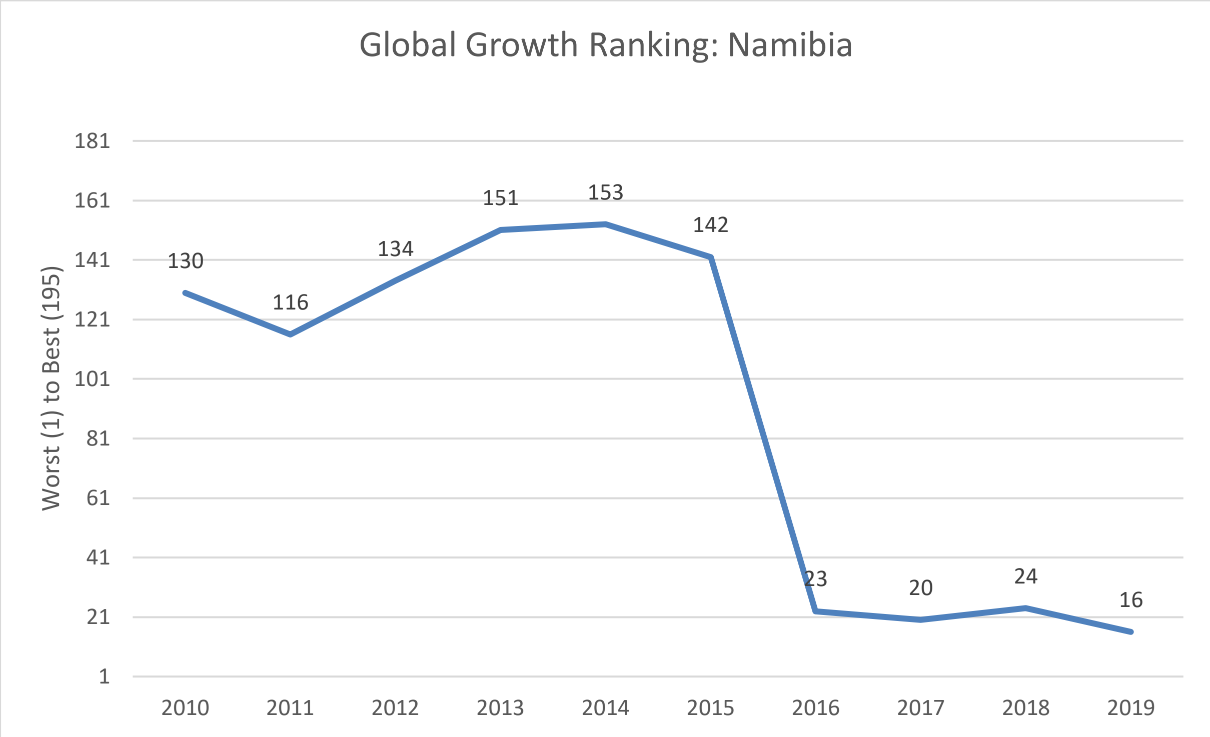
Investment is without a doubt the silver bullet to Namibia's current growth collapse. Without investment, we will not see a recovery in employment and household incomes, and thus will not see material recovery in government revenue (personal income tax, VAT and corporate taxes). Thus, government spending, household incomes and net-exports will most probably remain under pressure until we see an investment recovery.

3.4.4 Investment

During the previous few years, Namibia began to feel a withdrawal of investment. The most recent data shows this both in terms of gross fixed capital formation and net direct investment. This coincides notably with a dramatic shift in policy and legislation. For much of her independent history, Namibia has enjoyed a relatively free market which attracted investment, spurred growth, and played an important role in much of the progress made since 1990 – whether directly, such as through upliftment thanks to employment or corporate social responsibility; or indirectly, by providing the finances for government to do so (through tax revenue).

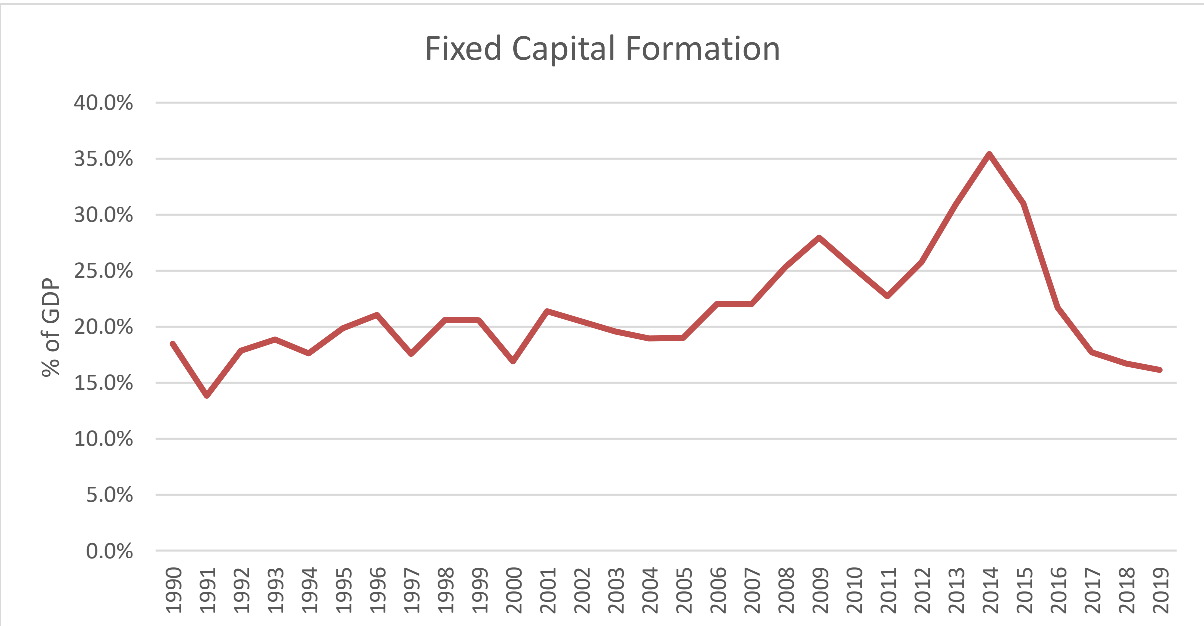
However, over the past decade there has been a notable shift in policy and a clear ideological drift towards a more government-controlled economy, through general regulatory creep, and specific interventions. Examples of this are plentiful, including the introduction of more interventionist policy from government, as exemplified by the controversial Investment Promotion Act of 2016 and different versions of NEEEB, as well as several other detrimental policies such as the sheep marketing scheme (which decimated the local industry), the Additional Conditions imposed on mineral exploration licences introduced in 2015 (which dramatically decreased exploration activity), and regulation 13 (previously 28) of the Pension Fund Act, which decreased the ability of professional capital allocators to generate optimum long-term returns for pension fund members. The amendment of the Marine Resources Act has 'legalised' the allocation of quotas to Fischcor and the political connected that enabled Fishrot.

The ideological drift further left has coincided with a collapse in growth (pre COVID-19) and has caused Namibia to disconnect from the rest of the world from a growth perspective, going from one of the faster growing economies in the world, to one of the slowest.



Source: IMF

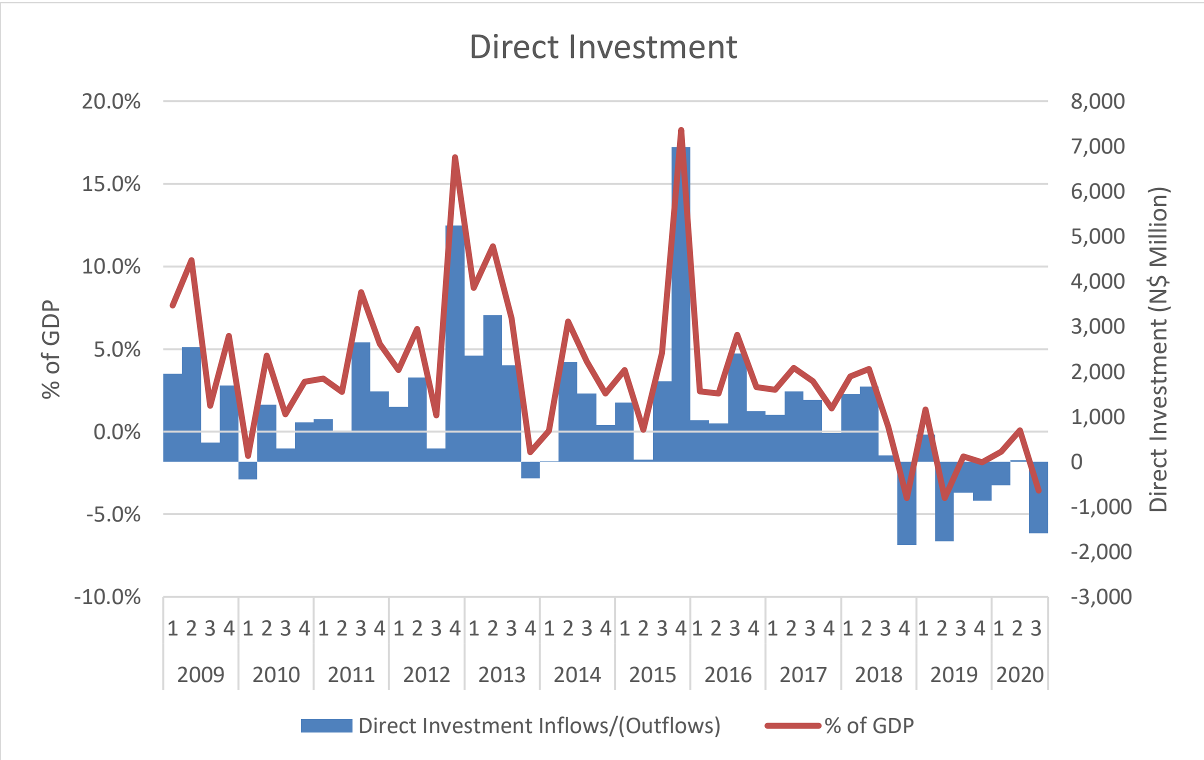
The reaction to the increasingly investor-unfriendly and overly government-controlled policy environment, is self-evident. Gross fixed capital formation, which is a leading indicator, is at an all-time low as a percentage of GDP, and continues on a steep downward trend. This shows that investment, whether local or foreign, in productive, fixed capital has slowed notably, and continues to do so. Investors simply do not feel secure in committing and would rather wait out the uncertainty or deploy their capital elsewhere. Through the tabling of the IPFB, it is likely that many potential investors now finally saw a clear message in Government's policy direction, and turned their back on Namibia for good.



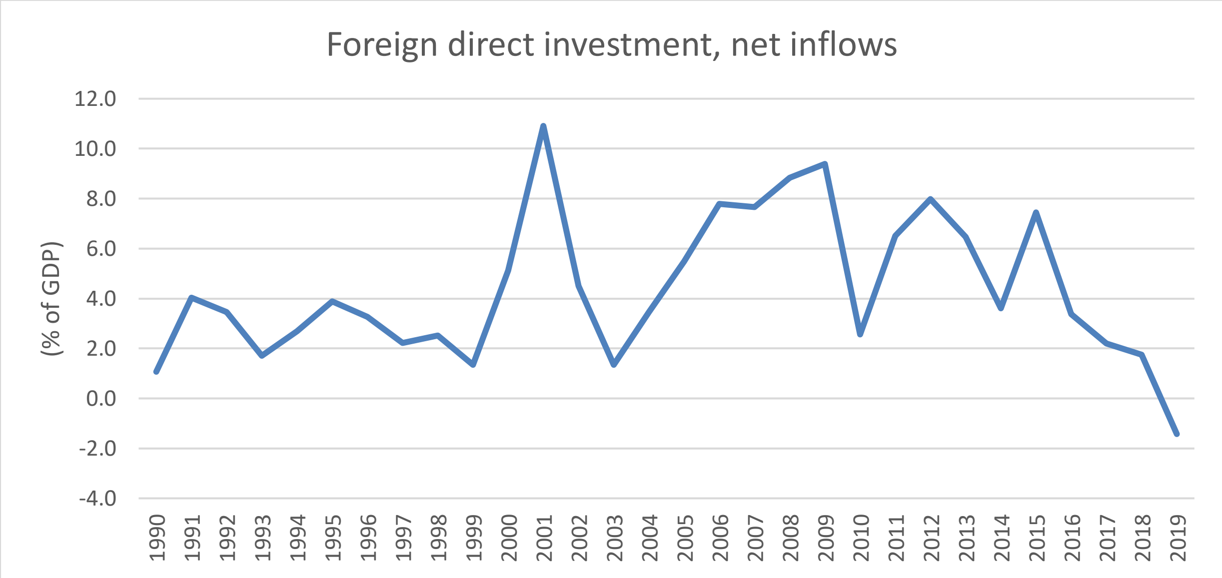
Source: Namibia Statistics Agency

In a similar fashion, net direct investment has begun to dry up as well. Traditionally, Namibia has enjoyed relatively large inflows of foreign direct investment which has helped to sustain the balance of payments and maintain the currency peg with the rand. However, this has also changed in recent years.

With the introduction of anti-business and investor policy and rhetoric, local capital has slowly started to leave the country, and little foreign capital has entered the country. Initially, Namibia avoided dramatic capital flight, and rather a lot of capital waited on the side-lines to observe what happened with policy, NEEEB and the 2016 Investment Act in particular. However, from 2018 until now, a more material capital outflow has been observed. Given a globalised world, this presents a major risk to Namibia. A capital-unfriendly policy environment can cause material capital exodus from the country, resulting in more aggressive capital controls. Should this happen, it will see the final nail delivered to the coffin of investment into Namibia – money will simply not come into a country if it cannot leave again. The IPFB will place repatriation of foreign investment profits under full discretion and control of the Minister. Not exactly a comforting prospect.



Source: Bank of Namibia



Source: World Bank

Notably, the Namibia Statistics Agency reports in its 2021 Third Quarter Bulletin that investment declined by 43.3% from the corresponding period in 2020. This trend is likely to continue if Namibia does not improve its toxic investment environment.

3.4.5 Employment

According to the 2018 Namibia Labour Force Survey, there are only 214,693 people employed in private companies, enterprises or co-operatives in Namibia. Assuming an average of around 10 employees per employer, there are probably no more than 20,000 companies active and employing people in the country. Simultaneously, the 33.4% overall unemployment rate, and close to 60% youth unemployment rate, are amongst the highest rates of sustained unemployment in the world. These high degrees of unemployment are structural, and have persisted for decades, which contributes to high degrees of inequality in income.

3.5 NEEEB and IPFB Impact

When NEEEB and the Investment Promotion Act were introduced in 2016, several experts raised concerns that these policies are likely to have a detrimental impact on the Namibian economy. In the subsequent five-year period, these concerns (despite Government's insistence to the contrary) have largely proven to be well founded. The last five years have seen, as predicted, a withdrawal of investment, coupled with a reduction in (formal sector) employment, a reduction in government domestic revenue, a reduction in GDP, and expected increases in inequality and unemployment (not recently measured, however). It is concerning that the very same policies which have led to our economic decline are being re-introduced. The same concerns as discussed in this report remain valid and were discussed above.

3.5.1 Impact on Investment

Namibia was a relatively investor unfriendly jurisdiction even before NEEEB and the 2016 Investment Promotion Act were conceived. In 2016, Namibia ranked 108 out of 189 nations (according to the World Bank), with a plethora of challenges pertaining to over-regulation and inefficiency, from the number of days it takes to open a business (66 days, currently 56), to the ability to claim back tax, to time taken to pay tax, to processes and time required to attain licenses. This relative investor-unfriendly climate means that investors face significantly more hurdles to run a sustainable business in Namibia than they would elsewhere.

It has become fashionable to seek binary solutions to complex problems. When faced with substantial challenges (such as inequality and poverty), politicians (all over the world) tend to look for obvious and "bite sized" bogeymen and scapegoats. It is critical to bear in mind however that politicians and businesses do not always have the same objectives. Their objectives may converge from time to time but remain inherently different. The core difference is that businesses must be profitable to survive, and thus their core decisions are focused on how make and sustain profit. In so doing, they often contribute to the objectives of politicians/governments (who do not have to be profitable to survive, only popular), such as job creation, reduction in poverty or inequality, or GDP growth. This does not mean that businesses do not value sustainable development or neglect the importance of social development. However, this is not their core function. Where these macro-level objectives (e.g., inequality) are forced on entities that have micro-level objectives (e.g., profit), in many instances the micro-level objective becomes unattainable, making the macro-level objective unachievable. Profit is fundamental to an economy. Without profit, private capital (large or small) whatever its geographic origin, cannot be invested, as private businesses cannot survive. When business does not survive, then everything that flows from business is also lost. Goods and services are not provided; employment is not created; tax revenues are not grown; public service decreases, and human development is arrested. When this happens, people tend to lose hope of a better future and anarchism prevails.

Despite the critical nature of profit in any functioning economy, the IPFB will put profit at risk for many businesses and foreign investors. The breadth of the legislation means that for all businesses operating in the country, the business managers, who must deal with endless complex decisions and considerations (on product, pricing, technology, marketing, employment, other input costs etc.), are materially restricted in their ability to make these decisions in an objective manner, in the best interest of the business. This is because such decisions may in future be contained in "terms and conditions" as set by a Minister. In many ways, government has control over their fate with undisclosed and highly uncertain and ever-changing regulations and mandatory "agreements" which will set terms and conditions which, if breached, will be a crime and may result in imprisonment.

In this regard, the legislation is so far-reaching and uncertain that for many, it will make investing in the country so risky that it is not worthwhile. This is especially probable as the IPFB intends to allow conditions for investment to be specific, meaning that individual businesses (whether natural or juristic) can be targeted with unique prescriptions, at the sole discretion of a Minister.

All in all, the effect of the IPFB is to reduce the ability of businesses to make decisions ensuring their long-term survival, in favour of power to public officials who will apply political objectives to these entities (reducing their chance of long-term survival), or delay decisions and/or not take decisions at all (also reducing the chance of long-term survival). Where similar policies have been tried elsewhere in the world and closer to home (e.g., Venezuela and Zimbabwe) the inevitable outcomes were extensive business collapse, job losses and public finance collapse.

Added to the above, the broad powers given to a single minister and lack of oversight or accountability in the IPFB are a direct erosion of private property rights, as they disempower asset owners (of all natures) from making decisions over the use of their assets. Quite simply, private property rights are a fundamental condition for a functioning economic system. Without an absolute guarantee of property rights, extremely limited investment will take place in Namibia as investors, companies and individuals generally, do not keep assets in jurisdictions in which ownership of their assets are not directly and actively protected in law and practice. Further, by adding vast layers of bureaucracy (regulations that will follow from the legislation), forcing management and ownership structures that may well be sub-optimal for businesses and requiring large additional business expenditure (such as on compliance), to name but a few, the legislation will reduce the return on invested capital available to investors.

3.5.2 Impact on Employment

It is a stated objective of the IPFB to reduce unemployment. There is however no mechanism in the bill that can logically result in reduced unemployment. Quite the opposite. As the bill hampers, and in some instances prohibits, new and expansion of current investments, it creates a nightmarish bureaucratic regime for any investor, adds a draconian investment "police force", and elevates the Minister to the position of sole gatekeeper of all businesses, investment in businesses will decline, and major job losses are likely to follow.

Official unemployment in Namibia stood at 33.4% in 2018, with the youth (ages 15-24) facing the highest unemployment rate of 60.0%. Even those qualified with university diplomas and degrees are struggling to find work in the country, with 23.8% of educated Namibians being unemployed in 2018 (compared to 7.8% in 2014). Unemployment amongst postgraduates increased from 0.9% in 2014 to 9.5% in 2018. Namibia does not have a shortage of employees, it has a critical shortage of jobs. And the IPFB will exacerbate this crisis substantially, as did NEEEB and the 2016 Investment Promotion Act since 2016.

There is no guarantee, comparable legislation or valid and reliable research findings that the IPFB can or will improve the lives of the more than 364,000 people who suffer the indignity of unemployment. Most worrying, the direction of this policy continues down the path that led to failed states and economic and household income collapse over the last century.

Source: Namibia Statistics Agency

Furthermore, decreased investment in fixed capital and productive assets means we will not see increases in employment. Going forward, the introduction of draconian, interventionist policy will only hasten disinvestment, resulting in direct job losses. With unemployment already at worryingly high levels, particularly for the youth, increased unemployment, as businesses close or move elsewhere, will result in another generation left behind – a further great injustice to those who have been left behind by one administration after the other. This will only serve as a further barrier to upward mobility and increase inequality.

3.5.3 Impact on Inequality

The dilemma is this: To reduce inequality, we need to improve incomes of lower-income households. To do this sustainably, we need to create jobs faster than we are increasing the number of job seekers in the country (and there is a huge backlog to deal with, given high unemployment rates). Jobs are created by investment, whether Namibian or foreign. Investors invest their capital to generate returns. As with NEEEB, the IPFB also introduces an effective tax on capital, which disincentivises investment. As a result, the bill will continue to reduce job opportunities in Namibia. While skilled persons can leave the country and find employment elsewhere, unskilled and/or low skilled persons are unlikely to do the same. These job losses mean lower household incomes for particularly lower-skilled families, thus driving up inequality – the opposite of Government's stated objective, and grave insult to the already suffering majority in our society.

3.5.4 Impact on Skills

While capital moves quickly and with relative ease, skills tend to be more jurisdictionally 'sticky'. While the outflow of capital is a worrying leading indicator, the departing of skills is a long-term crisis as individuals and families tend to emigrate permanently. It is off the back of skills and capital that an economy grows. Despite this stickiness of skills, anecdotal evidence suggests that many skilled Namibians, white and black, have upped their roots in search of greener pastures over recent years.

Skills, as much as capital, are required for an economy to grow. However, in a globalised world, skilled and educated persons, especially the youth are increasingly global citizens, who can move and take their skills to wherever they are best rewarded. Many such skilled individuals in Namibia benchmark themselves to skilled persons elsewhere in the world and realise that there is a material risk of being "left behind" by global standards if they ply their trades in a small, shrinking, Namibian economy.

The danger here is that skilled individuals do not find it difficult to relocate in this globalised environment. However, not only do they leave Namibia bereft of their skills, but also their contributions to society, to government's revenue, and to potential employment (as many are or will become employers). They leave behind the poor and vulnerable, who will be reliant on transfers from an ever-less-resourced government.

3.5.5 Impact on Public Finances

The effect of reduced investment, less business activity, and increased unemployment will have a direct impact on the fiscus, as mentioned above. The government has been able to introduce several redistributive policies owing to being relatively well financed. These include efforts like the state old-age grant, which has arguably been one of the most effective measures by government to alleviate the brunt of extreme poverty, including, rural electrification, access to safe drinking water, sanitation, infant mortality rate, etc.

An expected exodus of skills and capital would result in a significant decrease in tax revenues, which would result in government needing to introduce austerity measures. This will jeopardise infrastructure spending – placing further constraints on economic growth. It would also reduce the ability of government to further its redistributive policies and address service delivery.

3.5.6 Impact on Politics

The impact of the stagnating economy and high levels of youth unemployment can now clearly be observed in political outcomes in the country. The failure to meet the aspirations of young people with regards to jobs (needed to improve lives) has resulted in an increasingly clear reduction in support for the ruling party, SWAPO. As the 2016 Investment Promotion Act and NEEEB has already and substantially discouraged investment, and as the newly introduced IPFB provides for an even more toxic investment environment, new jobs being created in large quantities going forward is unlikely.

More jobs are likely to be lost due to downscaling and closure of existing businesses, as uncertainty grows, and Government makes its intention to capture the private sector even more clear. As a result, the real deterioration in people's lives over the past five years, coupled with a lack of inward investment expected over the next five years due to NEEEB and investment policies (the 2016 Act and IPFB), will make a change in political leadership more likely come the 2024 national elections.

3.5.7 Impact on the Currency Peg

Namibia typically runs a Current Account deficit, due to the value of our imports exceeding the value of our exports. Our trade deficit for the third quarter of 2021 alone stood at N$8,1 billion. This draws down on our international reserves, which Namibia needs to maintain a minimum level of to guarantee the currency peg. Until recently, net portfolio inflows (e.g., money from pension funds), external debt issuance by the government, and net direct investment have been sufficient to offset the outflows from our trade deficit.

However, going forward, portfolio flows will be greatly reduced as most pension funds meet the increased statutory domestic asset allocations. As explained above, Namibia has also started recording net direct investment outflows. In addition, the COVID-19 shock has meant that SACU receipts, a core capital inflow, will be materially reduced for several years. This means that Namibia stands the risk of seeing net outflows on both the Current Account, as well as the Capital and Financial Accounts.

The result of the previously stated is that there will be a net outflow of international reserves. Should they drop below the minimum level, the SARB will no longer guarantee the currency peg and the Namibian dollar will inherently depreciate against the rand. This would have a catastrophic result on the Namibian economy. Not only will it decimate the assets and balance sheets of businesses and individuals alike, but it will also result in an immediate spike in inflation – eroding the value of pensions and other private contractual savings, and salaries, for instance. The said mentioned matters for every Namibian, as their entire assets – their life's savings, their hard work – will immediately lose value. Equally prescient is the impact this would have on the buying power of individuals with low-income wages. A spike in inflation for low-wage earners would cause a dramatic reduction in buying power and living standards.

As with NEEEB, the IPFB presents a very real risk to the currency peg. The reason for this is simple: these policies do not only discourage investments, they encourage disinvestment, emigration, and people seeking to relocate their assets elsewhere. Disinvestment and the offshoring of assets will result in an outflow of international reserves. If substantial enough, this would force a currency decoupling, which would see the country take a multi-decade step back in terms of human development.

We suspect that to try and mitigate this (self-inflicted) risk, we may see government tightening capital controls or imposing some form of prescribed assets for pension funds. It is far from certain that the IPFB guarantees investors the freedom to repatriating their capital. If the economy is ailing, and it will for a very long time to come, investors may be prohibited from taking their capital out of the country (and their assets could under certain circumstances be expropriated). If this happens, it will sound the death knell for the economy – no money comes into an economy when it cannot be repatriated.

3.5.8 Summary of Impact

The sad reality of sub optimal policies like IPFB (and NEEEB) is that they will not, in any universe, achieve the stated objectives of reducing unemployment and creating sustainable economic growth. Extensive government interference in business decisions will without doubt exacerbate the issues highlighted. The more likely outcome is that the bill will only enrich a small, previously (but not currently) disadvantaged elite. As currently drafted, the bill will likely lead to a contraction in growth, material deterioration in investment, increased unemployment, and (ironically) increased inequality.

Legislation that adds substantial and unnecessary costs and risk to doing business does not encourage investment. It reduces profit, increases risk and raises uncertainty while undermining property rights for investors. This in turn means that only the most profitable, least risky or most naïve investment takes place. Any other “normal” investment, as well any investment that is broadly movable (and could just as easily take place in Botswana as it does in Namibia) will simply not come to Namibia. This, unfortunately, is not speculation. We are already seeing the negative effects of bad policy decisions over the past five years (particularly since NEEEB and the 2016 Investment Act were introduced).

The effect of Namibia’s policy environment has resulted in not only reduced net direct investment, but during 2019, it in fact turned negative, meaning Namibia recorded net direct investment outflows (or disinvestment). This is a clear message to policymakers that we are doing something wrong and has severe implications on the macro economy. As mentioned earlier, Namibia ranks relatively low as a global investment destination, meaning there are dozens of other countries that are better ranked for investing money, even if we discount the regressive investment policies introduced in 2016.

Investors detest uncertainty. What they detest even more, is a certainty that investments will not (or are extremely unlikely to) yield positive returns (despite their best efforts). The point is that removing uncertainty by simply finalising bad policy does not remove the obstacles to investment. It is better to have no policy than to have a terrible policy. Just finalising and introducing an amendment to the 2016 Investment Promotion Act is therefore not an improvement over the current uncertainty *per se*. The regulations, reserved sectors and business activities, and “terms and conditions” for investment may after all change at any time in future, at the whim of the Minister. Given the far-reaching consequences of such decisions from time to time, this only adds to the already existing policy uncertainty.

Critically, the provisions in this bill provide for an exceptional concentration of power, which is not immune to abuse as we have witnessed in the ongoing “Fishrot” matter. As with the allocation of hugely valuable fishing quotas (done by one Minister in a highly untransparent manner), the IPFB provides broad and extraordinarily intrusive powers to one individual, without any checks and balances.

The broad powers that the bill allocates to the Minister will mean that effectively no economic activity can be conducted in Namibia without the Minister's blessing. At best, this will mean that all economic activity is hampered by the vast bureaucracy and inefficiency of government's administrative processes with over a year allowed for a decision on any application before the Minister. At worse, the bill allows the Minister to cherry pick who may and may not participate in economic activity in the country, and if they are allowed to participate, on what terms and conditions. These high levels of economic repression are the opposite of the economic freedom that has caused inclusive countries to become successful, and the opposite of what is needed for Namibia to stage an effective and sustained economic recovery.

The IPFB creates an additional bureaucratic burden to doing business in Namibia – especially from the need for monitoring compliance – which also brings with it increased direct costs through managing compliance, amongst numerous other additional costs. This will make Namibia a far less attractive investment destination than it was before, which certainly does not stem the "capital outflow" or "unlock domestic and foreign direct investments."

In addition to the said mentioned scenario, decreased investment in fixed capital and productive assets means we will not see increases in employment. Going forward, the introduction of draconian, interventionist policy will only hasten disinvestment, resulting in direct job losses. With unemployment already at worryingly high levels, particularly for the youth, increased unemployment as business close or move elsewhere will result in another generation left behind – a further great injustice to those who have been left behind by one administration after the other. This will only serve as a further barrier to reducing inequality.

Namibia spent the last 5 years pondering bad or sub optimal policies such as NEEEB and the IPFB. Many other countries in the meantime spent this time improving their investment policy environment. The net effect is that Namibia became less attractive for investment, and (some) other countries became more attractive. We do not need to reinvent the wheel, we just need to adopt sensible, pragmatic, pro -growth policies to try and become a favoured investment destination.

3.6 Alternatives

3.6.1 Sustainable Options

Successful countries (irrespective of their troubles history – e.g., Rwanda emerging from Genocide in 1994) tend to follow a broad approach to achieve greater, shared, inclusive prosperity. They achieve this by opening their economy, reducing trade, labour and investment barriers, and generally encouraging high levels of economic freedom and participation (the opposite of NEEEB and the IPFB). These incentives are backed by extremely efficient, transparent, accountable use of public finances to redistribute funds from the more-wealthy (net-tax payers) to the less-wealthy (net tax recipients). This redistribution ensures that individuals are equipped with the basic building blocks for success – education, health, housing, and opportunity. As with successful nations, this should be Namibia's approach as well.

With regards to economic freedom, Namibia has never scored particularly well and has generally ranked in the mid-to-bottom half of the nations of the world in most measures of economic freedom or ease of doing business. These low scores are problematic for smaller economies, as these economies need to be particularly competitive to gain an edge against larger, more established, more skilled-based economies.

With regards to Namibia's redistributive process, it can fairly be described as dysfunctional (at best). Despite having one of the highest tax-revenue to GDP ratios in the world, very little in the way of high-quality basic services are available to most of the population. We are referring to the basic building blocks of human development, including housing, healthcare and education. Where available, they are often substandard or of poor quality. This does not mean the Government has not had some success in improving living conditions for the most vulnerable Namibians, but we could have done so much better given the vast resources available to Government.

3.6.2 What Can Be Done?

Firstly, a material improvement in the utilisation of Namibia's enormous tax-revenue (relative to GDP) is required. At present, these funds are sub-optimally allocated, are not utilised in line with development objectives, and as a result have limited impact on bringing about equality of opportunity. For example, instead of expediting access to housing, we construct white-elephant dams; instead of pursuing world class education, we bow to teacher unions at the expense of quality educational outcomes; instead of building new hospitals, we build marbled floored administration buildings.

Until this misuse of public funds is addressed, no real equality of opportunity can be expected, as the rich will continue to enjoy superior basic services, such as housing, education and healthcare, while the poor remain left behind.

Moreover, until the tax revenues are better utilised, it is unlikely that private citizens will be willing to give more money or more administrative/economic power to government.

Secondly, the focus needs to shift from outcomes (inequality and poverty) to inputs. To reduce poverty and inequality, households need incomes. Material incomes can only be earned sustainably if earned in exchange to produce goods or services, for which individuals are paid.
Thus, the focus needs to shift towards job creation *en masse*, which can only be achieved through large numbers of entities and individuals becoming job-creators or expanding current

job creation. This, in turn, only happens if the conditions exist in which these job creators can generate revenue greater than the cost of providing their service. Thus, a hard push needs to be made to reduce the costs of doing business in the country (i.e., to become materially more competitive), and to provide support to those looking to create jobs.

Individuals and entities (that make up "private sector") cannot be effectively "instructed" to do things (as NEEEB and the IPFB aims to do). Instead, these individuals and entities respond to incentives and disincentives. The IPFB (as with NEEEB) is a major disincentive to invest in Namibia, and investors are already responding to this, and will continue to do so until the disincentive is addressed. Thus, an appropriate and sustainable set of incentives need to be developed to attract investments, and the extensive disincentives for investment, starting with the investment laws (and NEEEB), need to be removed.

Potential incentives to doing business include:

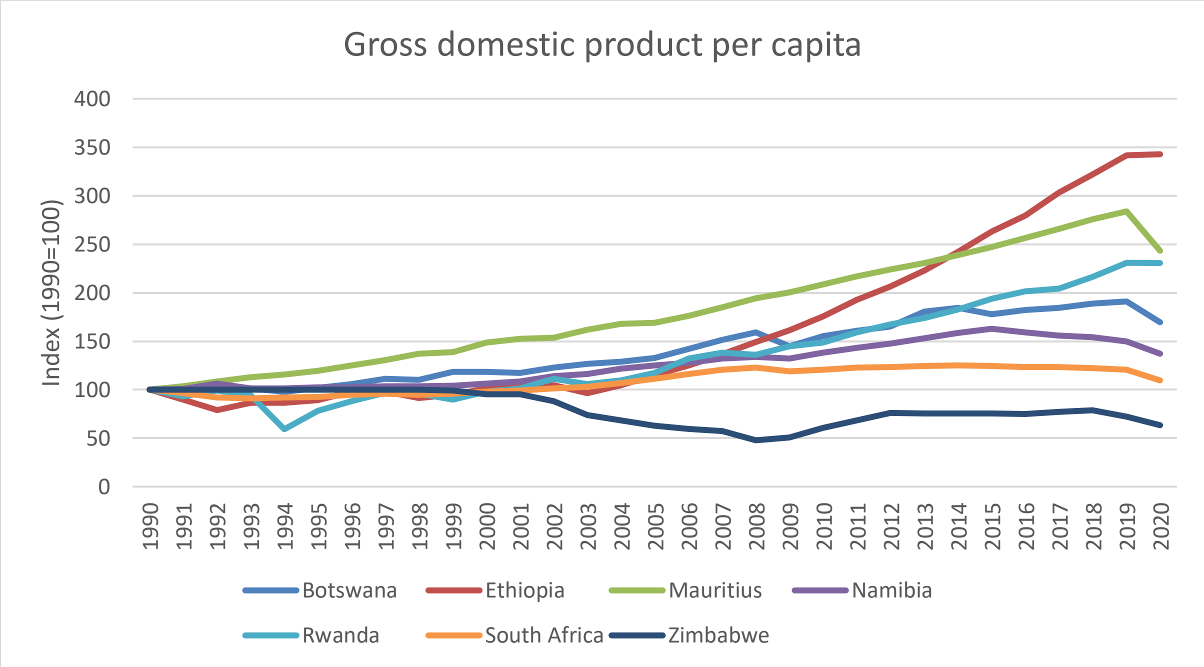
- Reduced corporate tax rates (particularly for small businesses)
- Reduces exchange control restrictions
- Tax incentives for manufacturing activity
- Material de-regulation of extensive aspects of the business environment
- Reduced number of licenses and requirements for doing businesses (registration, tax, massive turn-around times to issue official documents, etc).
- Making land available to foreign investors for investment
- Funding for SMEs/start-ups.

Reduced cost of doing business include:

- Reduced number of processes
- Simplified and clarified legislation on basic business matters
- Improved administration (halving or less the time taken) of all business-related licenses and regulatory matters:-
    - Tax submission processes
    - Repaying tax (VAT and other)
    - Issuing farm waivers
    - BIPA registrations, conversions
    - Registrations with NTB
    - Etc.
- Material reduction in the number of activities for which government/quasi-government/regulator permission is required.

A simple assessment of performance of economies across the continent (and indeed, the world) over the past three decades lays bare the simple fact that excessive government control and government intervention in an economy is counterproductive. The continent's success stories over this period have been those that have liberalised, opened up, embraced the free market and private sector, and implemented (often difficult) structural changes. Examples include

Mauritius, Botswana, Rwanda and Ethiopia. Zimbabwe and South Africa have taken the opposite path and are the laggards of the region. The IPFB, far from liberalising the economy, creates more layers of bureaucracy, and moves Namibia to a closed economy, closer to the policies of South Africa and Zimbabwe, away from the proven successes of more open economies like Mauritius, Botswana, Rwanda and Ethiopia.



To reverse the economic stagnation of the past half-decade, to reduce poverty and inequality and to restore public finances, a drastic reversal of Namibia's toxic, growth-killing policy approach is needed.

The following part contains extracts from a recent study of several constructs, drivers and contributors that may influence Namibia's future, to become a prosperous or a failed state. It concludes with some results from a recent survey by EPRA on the sustainability of the private sector.

PART FOUR – QUO VADIS, NAMIBIA?

4.1 Introduction

This part provides some constructs, extracts and research results from a recent study for the development of possible scenarios for Namibia's future by 2040[15] and concludes with some results of a recent survey conducted by EPRA. The survey results are provided in amplification of the research on possible scenarios for Namibia's future.

4.2 Research Abstract

The aim of the research was to develop scenarios for Namibia's possible futures by the year 2040. From the literature review and primary data collected, scenarios were developed based on the Double Variable 4Q model.

To assess Namibia's possible futures the secondary research objectives were:

- to assess to what extent the desire for dignity and recognition may influence future government policies relating to the economy and human development;
- to assess how possible government policies may shape Namibia's future;
- to assess how support for the rule of law, or derogation therefrom, may shape Namibia's future; and
- to assess whether Namibia may in future become, or avoid becoming, a predatory state.

From the literature review and primary data obtained, five main factors were identified that will probably have a substantial impact on Namibia's future. They are corruption, the quality of education and vocational skills development, the prudent management of the economy, a policy environment which enables private sector growth, and the role of party politics in policymaking.

An assessment of these factors through the Influence Matrix methodology showed that the only critical factor among these factors is the role of party politics in policymaking. The influence value of the other four factors was almost equal. As a result, all five factors were combined into two variables, namely the non-acquisitive state *vs* the predatory state, and regressive policies *vs* progressive policies. From these variables, four scenarios were developed on a 4Q model. They are called the Highway, Dirt Road, *Cul-de-Sac*, and Service Road scenarios.

Based on the research results, Namibia probably already finds herself slightly in the *Cul-de-Sac* scenario, and substantial effort and unpopular decisions will have to be made if Namibia is to stand a chance at reaching the preferable scenario, the Highway scenario, by 2040. To reach this preferred scenario some proposed actions were provided in the Scenario Transfer section of the Research Report.

[15] De Klerk, E. (2020). *Quo Vadis Namibia? The development of scenarios to provide more insight into where Namibia may find herself by 2040* (MPhil Futures Studies - Research Report). University of Stellenbosch Business School, South Africa.

4.3 Introduction to Research Report

The concepts of progress, success, and failure are relative terms, and the definitions of these terms, in assessing a country's possible futures, are subjective. Academics have, however, identified several constructs that can be accepted as indicators for progress, and ultimately success, or in the absence of progress and success, failure. These constructs include economic achievement (Lister, 2011; Vandemoortele & Bird, 2010), human development (Frankel, 2012; United Nations Development Programme [UNDP], 1990), rule of law (Miller, 2010) and the dignity and acknowledgement of individuals and groups (Fukuyama, 2018).

The future of Namibia's economy and human development is directly dependent on the policy direction that the government takes from time to time. Support for the rule of law and enforcing respect and acknowledgement of individuals can however not be controlled directly through legislation. Progress cannot be designed (by law) and its direction cannot be anticipated; progress is a hope that originates in the protection of human freedom. The rule of law is strict about protecting freedom (Miller, 2010). Government policy can, however, derogate from the rule of law, through coercion of individuals and groups, for instance, to attempt to engineer social justice. According to Von Hayek (1960), such policies will be a synthetic construct of a new body of morals, rather than spontaneous, undirected growth, which underlies the true evolution of societal morals. Coercion can therefore not bring about substantive equality and inclusiveness.

Government policy thus directly influences Namibia's future economy and human development. It may also indirectly, and negatively, affect upholding of the rule of law and injure respect and recognition, for example, through coercive policies.

It is also possible that government policy is not aimed at influencing the above constructs, but rather for the benefit of a small group who obtain their wealth through political power. This is a characteristic of a predatory state (Vahabi, 2016). In these circumstances, future policy direction is erratic and impossible to foresee. Policy uncertainty is the primary reason advanced by international rating agencies for their numerous downgrades of Namibia's investment grade since 2016, well into junk status, with a remaining negative outlook.

Namibia's investment rating is not the only country indicator with a negative outlook. The Afrobarometer surveys, which were conducted in Namibia since 1999, indicate that numerous indicators on the economy, democracy, and governance have declined substantially from 2014 to 2019. Corruption Perceptions indices by Transparency International 1998-2020, indicate that Namibia, with the most significant statistical value (representing the mean and mode) of 4.5 out of 10 (55% corrupt) did not improve in terms of corruption and governance over a period of 23 years (Coetzee, 2021). The implementation of NEEEB in the already corrupt Namibian culture, will enable an increase in abuse of power and will further deteriorate investment and increase inequality.

Namibia's socio-economic circumstances, demographics, and of late, protectionist and redistributive policies (other than a progressive tax system), are still largely dictated by her history, and more particularly her history found in the oppressive apartheid regime. To reach the objective of this research, Namibia's history must be understood, especially when researching the constructs of dignity, recognition, and the rule of law.

Since Independence, Namibia has performed well in numerous areas. For example, in terms of reducing poverty, expanding most industries, increasing investment in education, establishing advanced financial markets, growing the economy, improving equal opportunities for indigenous and indigent people, protecting human rights, and upholding the rule of law (to a large extent).

Despite these gains and many other great achievements, Namibia currently finds herself at a crucial junction in the road. Several recent political, economic, and socio-economic trends are raising concern that Namibia is eroding its past successes and could possibly become a failed state.

Kovacs (2012) defined a failed state as a state which not only performs poorly in the economic environment, but which displays a breakdown of the viability and legitimacy of the state itself. Since 2010, Namibia's government debt-to-gross domestic product (GDP) ratio increased substantially and a further, significant increase in debt is budgeted for future years. The public wage bill relative to the GDP is among the highest in the world. Decreasing the public wage bill is nearly impossible, as the ruling party, firmly in control of the government, fears a decrease in support, and a fall from power. Income inequality in Namibia is among the highest in the world.

Educational outcomes in the public education system are extremely poor. Institutions are weak, lack capacity, are underfunded and politically undermined. In addition, trust in the judiciary and support for democracy is declining. A past regime of racial segregation and discrimination, which purposefully obstructed equal opportunity for all, still lingers in the Namibian psyche. The said mentioned probably contributed to many of the country's lingering challenges, most notably a lack of national identity.

Despite Namibia's gains over the first two decades since independence, most trends over the previous decade indicate a bleak future ahead, and possibly, a "failed state" status by 2040. However, this does not have to be Namibia's future.

4.4 Key Constructs

It is assumed that success or failure in achieving economic growth and human development may be material factors in assessing scenarios for Namibia's future. By assessing peer-reviewed, academic articles and published books, the following constructs underlying these indicators were examined: rule of law *vs* coercion, freedom *vs*, engineering social justice (or social outcomes or substantive equality), identity politics, recognition as driver of national policy *vs* identity politics, distributive and nationalist policies, open economy, coerced redistribution of wealth, and the predatory state.

Rule of Law and Coercion

Von Hayek provided a rich contribution to the understanding of what constitutes progression and what causes a society to progress – the ultimate "ideal" being the construct of rule of law. He advocated for freedom, which is the absence of coercion from government, with exceptions such as paying taxes and military conscription, which he argues is justified for the common good of a civilisation (Miller, 2010, p. 20).

The purpose of rules (laws) is to confine an individual's actions to the range within which we are able to foresee relevant consequences and to prevent us from overstepping those limits. It is because of such boundaries that our causal knowledge about the likely consequences of a particular course of action can serve us effectively. These rules enable the individual actor, when caught up in the emotions of the moment, to avoid actions of a kind for which the foreseeable results seemed desirable, but which were likely to lead to the destruction of the order on which the achievements of the human race rested (Miller, 2010, p. 69).

Von Hayek stated that rule of law (not to be confused with rules of law) is the highest ideal of success, where freedom is guaranteed through applying rules, fairly and equally, to curtail coercion and allow for innovation, individual growth, and societal progress (Miller, 2010, p. 102). Progress itself cannot be designed and its direction cannot be anticipated. The best hope is to protect human freedom, and the rule of law is strictly about protecting individual freedom (p. 106).

According to Von Hayek, the biggest distraction from the rule of law in history came when governments created for themselves powers to shape social relations deliberately (i.e. in Nazi Germany), according to some ideal of social justice. Opinion soon turned against free institutions making them incapable of serving their intended aims (Miller, 2010, 107). True law safeguards the private sphere, is known and certain, applies generally and equally, and requires an independent judiciary (p. 122). Policies that do not serve a free society, and thus the rule of law, are policies that cannot be achieved by merely enforcing general rules but, out of necessity, involve arbitrary discrimination between persons (p. 137).

Lister (2011, p. 29) argued that Von Hayek is a closet egalitarian liberal who reaches inegalitarian conclusions only via equivocation and implausible empirical claims. Lister does, however, admit that one lesson Von Hayek has to teach us, is that markets and private property rights are important not only because they are efficient at producing wealth, but because they involve people, with very different values and purposes, who manages to cooperate in generally beneficial ways despite their many disagreements about how society ought to allocate its resources. Lister concluded that it would be a mistake to ignore the tremendous creativity and innovation that markets and private property permit.

Institutional strength and independence are crucial for a country's success. Von Hayek regarded the rule of law as the "ideal" goal in society (as discussed below) and argued that the rule of law cannot be upheld without institutions supporting it (Miller, 2019, p. 110). Fukuyama (2018, p. 47) added that the rule of law also serves the principle of equality by applying rules equally to all citizens, including those who hold the highest political offices within the system.

Frankel (2012, p. 18) further argued that the quality of institutions, especially for protecting property rights and the rule of law, is the fundamental factor that determines which countries experience good performance and which do not. He also stated that it is futile to recommend good macroeconomic or microeconomic policies if the institutional structure is not sufficient to support it. It can be assumed that Von Hayek and Fukuyama will agree with Frankel.

Engineering Social Outcomes

Von Hayek steadfastly opposed policies that aim at wealth redistribution or "social justice" engineering. His sharpest criticism of the socialistic welfare state is based on its use of wealth redistribution to achieve social justice. There is a deep conflict between the ideal of freedom and the desire to "correct" the distribution of incomes to make it more "just".

The pursuit of distributive justice cannot follow general rules. It requires that all resources should be centrally allocated according to the aims and knowledge of the planning authority. Eventually, it leads to command economy (such as in communism). The rule of law 'checks' this pursuit at every turn. It serves freedom by precluding all those measures which would be necessary to ensure that individuals will be rewarded according to another's conception of merit or reward rather than according to the value that their services have for their fellows (Miller, 2010, p. 148).

To secure freedom, the state should avoid coercing citizens unnecessarily and should also prevent them from coercing each other. The welfare state fails on both counts. Its social security and taxation policies are inherently coercive, and it fails to prevent labour unions from coercing workers. Moreover, the welfare state's monetary policy is highly inflationary, and its policies on natural resource use, education, and scientific research tend to inhibit progress (Miller, 2010, p. 148). Namibia can be categorised as complying with the indicators of a welfare state, and her recent, exorbitant increase in government debt bears witness to Von Hayek's argument on inflationary outcomes.

Individual freedom can for very plausible reasons be placed at the centre of long-term growth in a civilisation; freedom equals progress (Miller, 2010:49). On progress, Von Hayek explains that if a new way proves to be effective, others may imitate it. The selection by imitation of successful institutions and habits is decisive for social evolution. In the past, society's growth has depended on an unconscious process of trying new things, learning, imitation, selection, and adaptation; and this remains largely true even with the emergence of reason. Von Hayek explains intellectual progress in terms of this broader process of social evolution. Advances in thought depend fundamentally on man's unconscious adaptation to changed material conditions and thus on freedom of action (Miller, 2010, p. 50).

Laws should not attempt to engineer outcomes (or social justice), as laws can by nature not determine outcomes. Instead, laws should only allow free action, and society will determine the outcomes within that freedom. This, according to Von Hayek, is what is required for “peaceful progress”, free of coercion. Coercion will not end peacefully and is unlikely to stimulate progress (Miller, 2010, p. 53).

Von Hayek further argued that people are unequal because of nature and nurture, and coercion (to obtain equality, or social justice) is evil precisely because it eliminates an individual as a thinking and valuing person and makes him or her a bare tool in the achievement of the ends of another (Miller, 2010, p. 78). In this context, Fukuyama (2018, p. 48) also stated that the effective recognition of citizens as equal adults with the capacity to make political choices is a minimal condition for being a liberal democracy. Authoritarian governments, by contrast, fail to recognise the equal dignity of their citizens – they may pretend to do so by flowery constitutions, but the reality is different.

A modern market economy depends on the free movement of labour, capital, and ideas from places where they are abundant to places where they can earn a higher return (Fukuyama, 2018). The universal recognition offered by liberal societies was particularly conducive to capitalist development since it protected individuals’ freedom to engage in commerce from the state and preserved their right to own private property. It is thus not surprising that liberalism became the handmaiden of economic growth.

Coercion cannot be used as a tool to bring about substantive equality (Miller, 2010, p. 80), there must be opportunities for all, and everyone must be ensured the same prospect of success (p. 82). People’s value can only be rewarded by the market – and the government has the duty to facilitate that free market, not to pursue social justice (which, according to Von Hayek, cannot happen through rules). This statement is a sin in the Namibian, South African, and Zimbabwean political context, but there are numerous global examples of its accuracy, and unlikely a single example of its fallacy.

Policies of collectivisation are open to substantial critique for such policies have not only failed miserably in the past century, but they have also caused the death of hundreds of millions of people, mostly through starvation (Peterson, 2017). He provided the situation in Ukraine in the 1930s as one of several examples. He explained that when dealing with human productivity, the general rule is that 10% of people produce at least 90% of the goods, and past attempts to equalise this by way of collectivism, and to protect proletarians, have caused far greater hardship than the original inequality as a burden to society.

Socialism is also a topic that Von Hayek addressed while providing possible solutions within his constructs of societal progress and the ideal state, in which an individual is free of coercion (by the government or otherwise) outside of the realm of the rule of law (Miller, 2010, p. 127). Socialism will fail, if only as a result of such coercion and lack of freedom within the rule of law.

Socialism has reached a dead end of sorts: “the ever-expanding welfare state is set to run into fiscal constraints”, (Fukuyama, 2018, p. 112). Governments respond by printing more money (for the private sector has disappeared and taxes have dried up) and soon inflation overruns the country, causing large-scale poverty almost instantaneously. Redistributive programs create perverse incentives that discourage work, savings, and entrepreneurship, which then limit the size of the pie available for redistribution (Fukuyama, 2018). Zimbabwe serves as an excellent example to confirm these theories.

Socialism can only be effective in extremely small communities, and as societies grew larger, it has failed to sustain such societies (Miller, 2010, p. 70). He stated that socialists stopped referring to themselves as such. They abandoned the programme of nationalisation and instead promoted the idea of wealth redistribution, which all along had been their true aim. The new, nameless socialism resembles the old in its advocacy of central planning and economic control, and its guiding ideal – achieving social justice – remains the same. What has changed is its method (Miller, 2010, p. 146). Von Hayek does not believe that socialism allows for “novelty” which in his opinion is crucial for the progress of civilisation (Miller, 2010, 74).

These arguments form an important part of the fundamental premises researched. Several negative economic and socio-economic trends in Namibia of late have coincided with the government increasing its drive towards nationalism, collectivism, and redistributive policies.

Identity Politics and the Want for Recognition

Economic inequalities had arisen over the past 50 or so years and today have become a major factor in contemporary politics (Fukuyama, 2018:11). Economic grievances become much more acute when they are attached to feelings of indignity and lack of recognition. The underlying debate is thus about dignity and recognition, and less about material wealth. What is often lacking in the debate is pragmatic job creation initiatives, as opposed to the distribution of wealth. Being employed not just conveys resources but brings with it recognition from the rest of society that one is doing something socially valuable. Someone paid for doing nothing has no basis for pride (Fukuyama, 2018, p. 84).

In his assessment of “identity”, Fukuyama (2018) analysed one of the deep driving forces of man, with the word “man” in itself an injustice to woman, according to his construct of identity politics. He broadly defined “identity” as the ultimate driving force (or recognition, as per Hegel’s understanding of the ultimate driver of human history) directing people’s feelings, upon which they base decisions and upon which they act. Ultimately identity is a deep and untiring desire for respect and recognition. Even the roots of greed and corruption can be found in the desire for respect and recognition when people believe that material wealth can buy respect and recognition (Fukuyama, 2018). In an increasingly consumerist and competitive world, this belief is understandable.

Self-esteem and the desire for respect give rise to identity politics (Fukuyama, 2018). Although, according to him, identity politics did result in some positive policies, Fukuyama regards the biggest disadvantage of identity politics as the lack of tolerance, rationality, and open communication that these politics often result in (Fukuyama, 2018, p. 122). Preoccupation with identity has clashed with the need for deliberative discourse. The focus on lived experiences by identify groups valorises inner selves that are experienced emotionally, rather than examined rationality (p. 117).

In 2004, the Namibian government issued a vision statement, setting out Namibia's goals by 2030 in a strategy document called Vision 2030 (Government of the Republic of Namibia, 2004). The vision was that by 2030 there would be a sound macroeconomic environment that attracts and maintains private financial and investors to Namibia. According to the vision, a condition of high economic growth would exist, which would place Namibia in a "high"-income category. All Namibian workers would earn decent wages which would allow them to lead a life well above the poverty level. "We now live very well as a people" (Government of the Republic of Namibia, 2004, p. 28). This vision indeed reflects a state of dignity, as advocated for by Fukuyama (2018, p. xiii). It also describes a state that is able to provide individual recognition, which Hegel argues is the main driver of human history (Fukuyama, 2018, p. 10).

<u>Predatory States</u>

Predatory states capture assets by some form of coercion leading to involuntary redistribution, including state confiscation, expropriation, extortion, and theft (Vahabi). His description of the predatory state closely resembles the construct of extractive institutions (Acemoglu & Robinson, 2012, p. 398). Such institutions keep countries poor and prevent economic growth. The basis of these institutions is an elite who designs economic institutions to enrich themselves and perpetuate their power at the expense of the majority in society. Zimbabwe, among many others, is an example of a country overtaken by extractive institutions (Acemoglu and Robinson, 2012).

In Zimbabwe, South Africa, and Namibia, the noble concept of "helping those left behind", based solely on race, has in recent years been transformed into policies of the coercive redistribution of wealth. This contributed to economic decline and substantial investor distrust. Such policies are marketed as the solution(s) to the greater part of society being poor and left behind by previous oppressive regimes. These policies are criticised for ultimately benefiting only a small group in the society, at the expense of the society as a whole, as predicted by Vahabi (2016, p. 153) as part of his "predatory theory", and as stated by Acemoglu and Robinson (2012) to be the common and real reason behind extractive institutions.

<u>"Success" *vs* "Failure"</u>

From the literature review and after researching states such as South Korea, Zimbabwe and Mauritius the Research Report states that the study of a country's possible future success or failure is a far more complex endeavour than simply assessing economic policy or political stability. It involves a far deeper understanding of constructs such as identity, rule of law, coercion *vs* freedom, and the elements of a predatory state and an open economy.

The causes and results of identity politics need to be understood, especially in its creation of a specific type of leadership and the policies designed by such leadership. Judging from what constitutes societal progress, success and failure, and by comparing it to Namibia's recent trends, it appears that Namibia has recently embarked on a path of becoming a predatory state, which may end in failure, the failed state.

Countries are more likely to succeed:

- If they build a strong national identity that unifies all citizens, instead of dividing them into ever-increasing smaller groups demanding special, group collective, exclusive rights.
- If they adopt structures that guarantee inclusivity in policymaking, instead of structures aimed at excluding certain groups.
- If they build a strong culture based on accepting the rule of law, which, crucially, should guarantee equal treatment of all citizens and protect property rights for all.
- If countries elect to provide freedom for all to prosper, instead of forcefully coercing the prosperous to redistribute wealth (taxes being accepted).
- If governments are not corrupt, and the gains from successes are responsibly deployed to increase human development, especially education.
- If they have competent, visionary leaders to make all of the above possible.

On the contrary, countries are more likely to fail:

- If leaders elect to spend time on creating divisive identity politics instead of building a strong national identity.
- If leaders fail to put in place and fully support strong institutions of democracy, to sustainably guide a sensible economic strategy and to continuously ensure political participation.
- If governments become predatory states, where wealth is gained from political power and benefits are diverted to a smaller group within the population.
- Where the rule of law is not upheld, and laws are made that are not generally applicable to all or aim to give one group in a population a benefit over another.
- Where governments fail to invest in human development, especially quality education for all, which is crucial for instilling respect and national identity.

4.5 Research Results of Scenario Planning for Namibia

The research included data collection by way of key informant interviews with three broad categories of informants: A) Policymakers in government, B) Non-governmental (independent) experts in the fields of economics, political science, social welfare, human development, and C) Civil society organisations operating in the fields of educational, policy research, protection of the rule of law, regulatory bodies, law development, human rights, economics, and social welfare.

Government showed very limited interest to participate in the research and very few results were received.

Participation by independent experts and civil society organisations was good.

The interview questionnaire consisted of 46 questions aimed to inform the following secondary research objectives:

- to assess to what extent the desire for dignity and recognition may influence future government policies relating to the economy and human development;
- to assess how possible government policies may shape Namibia's future;
- to assess how support for the rule of law, or derogation therefrom, may shape Namibia's future; and
- to assess whether Namibia may in future become, or avoid becoming, a predatory state.

Several factors that may possibly influence different futures, as informed by the literature review, were integrated in the questions. They included Namibia's current and anticipated trajectory compared to *Vision 2030* (and specific goal as stated before), unemployment, labour policies, social grants, dignity and recognition, most probable indicators of a predatory state, redistribution of wealth, the free market economy, contributors to the previous five (5)-year economic decline, standards of education, rule of law, the enabling environment for economic growth, alleviation of poverty, and factors that are likely to play a dominant role in Namibia's demise, or success by 2040.

A summary of the results is provided under the topics that follow.

<u>The rule of law and the free market</u>

There was strong support for the rule of law in Namibia, also from the government. This is a positive outcome of this research that should not be underestimated, for as long as the principles of the rule of law is upheld, a country is unlikely to become a failed state, and it always has a chance of changing course towards a more prosperous future.

Support for the free-market economy was strong, although many respondents stated that Namibia lacks a free-market economy due to government policies subduing the free market, and continuous government encroachment on, and competition with the free market. The latter, some respondents argued, is because of a strong, albeit covert, drive within the current government to turn Namibia into a socialist state, destroying the enabling environment required for the economy to grow and resolve many of the socio-economic issues Namibia faced of late. Although the drive for freedom and the rule of law is evident from daily reports in the media, too few policymakers elected to be interviewed to obtain verification on this issue.

Unfortunately, as the government continues to grow and encroach on the private sector. This trend cannot be halted by the rule of law, as legal or constitutional principles do not prohibit government to intervene in and encroach on the freedom needed by the private sector to make profit. It does also not prohibit politicians and public officials from personally competing in the private sector. However, these politicians and officials set the rules by which the private sector operates. Politicians, government officials, and ultimately the government itself can act as player and referee simultaneously.

What is required for a better future?

According to the respondents, the main issues to be addressed to achieve a better future follow. Poor educational outcomes, rampant corruption, the lack of an enabling policy environment for private sector growth, a lack of investment in human development, a bloated and inefficient public service, a lack of nationhood because of exclusive policies and political rhetoric, and economic mismanagement.

What is foreseen as the most probable future?

There was overwhelming doubt that Namibia can turn the current tide of economic demise, rampant corruption, poor educational outcomes, and economic mismanagement. Many respondents argued that this will only be possible through political change, which must result in mature, competent leadership, a drastic overhaul of the public service and educational sector, an enabling environment for the private sector to grow, and an efficient regulated free market system to unlock opportunities for all.

As per the construct of a predatory state, many indicators show that, under the current ruling party, Namibia has taken the turn to become a predatory state. In such a state, state policy aims to serve only a few, while corruption consumes society and severely hampers human development and progress in general. Respondents did not foresee a change in this trend under the current regime.

Unfortunately, too few policymakers have elected to participate in this research to express their opinion on the future of Namibia. However, from numerous sources reporting on the current government's intended policies and increasing, rampant corruption reported almost daily, the experts and CSOs probably had a realistic view of Namibia's likely future, as bleak as it may appear.

Key drivers

The probable key drivers of different futures that emanated from this research are (in no specific order):

1. corruption;
2. quality of education and vocational skills development;

3. economic prudence;
4. a policy environment that enables private sector growth; and
5. the role of party politics in policymaking.

These drivers were assessed and unpacked to develop four possible scenarios for Namibia by 2040. The driving variables were the “predatory state” versus the “non-acquisitive state” on one axis of the 4Q model, and “regressive policy” versus “progressive policy” on the other axis.

The preferable scenario (the “Highway”) lies in the quadrant where “non-acquisitive state” overlaps with “progressive policy”. The worst, and most probable scenario (the “*Cul-de-Sac*”) lies in the quadrant where “predatory state” overlaps with “regressive policy”.

4.6 Description of Scenarios

Two of the four scenarios are described hereunder, the preferable scenario, or Highway, and the most probable (based in the research data) scenario, the *Cul-de-Sac*. The other scenarios not included herein were the Dirt Road and the Service Road.

<u>The Highway</u>

The highway has space for all. Everybody knows where they are going, and signboards to the destination are big and clear. The road is well maintained, and a pleasure to travel on. Although some travel faster than others, all are moving towards the same destination. Travellers show respect to all their fellow road users. Emergency services and roadside assistance are excellent, and travellers find comfort in that. Traffic flows well and travellers do not fear unexpected adverse conditions in the road ahead. Instead, they know that the road will be well maintained right up to their destination.

The government is honest and truly serves the people. An extremely tough stance is taken against corruption and law enforcement and anti-corruption agencies are independent and well capacitated to fight corruption without fear or favour. The government has changed the laws to enable this ability to self-governance of individuals, to ensure meritorious appointments, and to guarantee sufficient funding to those agencies. In addition, unjust self-enrichment by politicians and government officials has become the ultimate sin in the eyes of both the Namibian civil society and government officials.

Namibia has an open economy, attractive to both investors as well as the best-skilled workers the world has to offer. The private sector is flourishing, demanding more labour and more skills. This increases the quality of education, which the government caters for in the public education sector by prudent investment in human capital – investment that continues to increase as the growing private sector continues to pay more taxes. Taxes are increased merely from its expansion of the private sector, and not by increasing tax rates. Namibia’s tax rates have become among the most attractive in the world, especially the corporate tax rate. This spurs further economic growth and increased tax revenue.

The national budget is carefully balanced to ensure responsible spending on development and to support the destitute, especially those who do not have much opportunity to advance their circumstances, such as the disabled and the elderly. Welfare is coupled to training, to assist those in need of welfare to accumulate sufficient skills to partake in the free market economy. As a result, people feel increasingly dignified because they can take responsibility for their own lives, as they become more skilled and the demand for their labour increases. The expanding economy and enabling environment to incentivise increasingly experienced people to venture into entrepreneurship, becoming business owners and employers in their own right. This further increases the tax revenue and allows for more investment in quality public education, healthcare, and housing.

Namibia has a strong national identity and party politics do not overshadow the national vision and agenda of prosperity. People do not fear political change, as there is a certainty that the government will pursue a rational, common national agenda, irrespective of which party is in control. A career in politics, interests only those with a desire to serve the people and pursue the agreed national agenda, not those who wish to become rich. The avenues to become rich through politics were closed as Namibia clamped down on corruption.

Government values the growth in the private sector, as it understands that all investment in the public good, and especially welfare, is fully funded by private sector growth. The private sector is therefore government's most important development partner, and the private sector is consulted meaningfully on all proposed policy decisions.

Leadership is inclusive and there is a system in place that ensures that no minority group is excluded at any level of policymaking. There are no laws that discriminate against any specific portion of the society, for any reason. It is engrained in the Namibian psyche that all Namibians are heading in the same direction, and are contributing towards a prosperous future, no matter their means or the size of the contribution they can make. Meritocracy is valued in both the private sector and the government, which increases efficiency and quality of services.

Local and international investors have certainty in Namibia's policy direction, and her investment environment appears extremely attractive. It is especially Namibia's open economy that is attractive. It is not a threat, but an opportunity, as its balance of trade is positive due to an industrious and innovative private sector, fully supported by the government. Namibia can add value to its natural resources and is thus able to produce and export more than it imports.

Namibia has a sound macroeconomic environment that attracts and maintains private financial and real investors in the country. Exchange control measures are minimal, and unnecessary, as people prefer to invest in Namibia. This makes Namibia even more attractive to investors. Namibia experiences high economic growth, which places the country in a high-income category. All workers earn decent wages that allow them to live a life well above the poverty level and all people are living very well. This is Vision 2030, that can be realised in the year 2040.

The *Cul-de-Sac*

A *cul-de-sac* is a dead-end road. Unlike some nice-looking *cul-de-sa*cs, this one is terrible. Travellers mostly find themselves there by accident. There is little to find but disrepair and filth. Those who find themselves there are mostly confused and desperately looking for a way out. There is only one way out, and that is by making a complete U-turn. Those who stay on this road have no options – nowhere to go. If they thought that this was a highway, they now find out that it is the highway to hell. They stay in disbelief and squalor. Travellers who know of this road avoid it at all cost. This road has nothing to offer but confusion, and despair.

The predatory state has taken over completely. Corruption is the "new normal" in Namibia and the only way of operating in most business areas. Policies and laws are designed to benefit those in power, who become rich from ill-gotten gains, until there is little left to steal. The population's only hope is handouts from the few rich political elites, which will only come in exchange for votes. That is if one can still consider this road as democracy, for corruption has infiltrated the electoral system, ensuring perpetual power to the corrupt political elite of the day.

The nation stands divided, as the elite chose to divide and conquer. The only chance of breaking free from destitution is to join the predatory state, to toe the party line of corruption, and to work your way up in an immoral system that promises economic gain – should you achieve sufficient political power.

Any form of dissent is violently squashed, and people are punished, in terms of the laws promulgated by the predatory state, if they voice any critique against the government or any of its leaders. The freedom of the press is severely constrained, and the government often lashes out against the press and tries to pass laws that curtail the freedom of the press and social media usage.

People are regularly reminded that the ruling party is the only hope they have for peace, stability, and survival. The Namibian state has strong diplomatic ties with other predatory states, and they will always support each other no matter what.

Any visible failure is immediately blamed on outside forces and "enemies and detractors". Any international critique of the predatory state is condemned by the Namibian government as an attempt to destabilise a sovereign country and to recolonise it.

The judiciary has also been infiltrated by corruption. A judgment critical of the Namibian government is almost inconceivable, and if it does happen, the judge mysteriously resigns or retires, or is deported shortly thereafter. Property rights are not guaranteed, and populist policies aimed at expropriation and reduction of the rights of property owners are rife. The common law is developing into a protection mechanism for the state, through the disingenuous interpretation of the Constitution by the courts. The courts also find ways to expand the government's powers in the Constitution instead of protecting the constitutional rights of the citizens.

The security cluster is employed to spy on civilians, especially those critical of the government, and whistle-blowers who intend to expose the government's corruption. Politicians employ the politically captured institutions to victimise any person or entity that they perceive to be standing in the way of the government or the ruling party. Such Namibians live in constant fear of reprisal and their voices are almost always silenced.

The private sector has almost disappeared, and the little that is left also belongs to politicians and their cronies, directly or through proxies. The ruling party's private sector enterprises, funded by public funds, continue to expand through substantial preferential treatment from the government.

There is no hope for investment to revive or for the private sector to grow, as policies pose too much of a risk for any rational investor. The only space open for "investment" is the selling of resources to corrupt countries, with such selloffs being facilitated by politically connected middlemen. The spoils from these sales are shared amongst the political elite, who also approve these deals.

There is scant investment in human development. The only jobs available are in the informal sector, for which no formal skills are required. Going to school thus serves no purpose anymore. Those who go to school and local universities are no better off than the unskilled labourers in the informal sector, for they cannot find jobs locally, and their education is worth nothing abroad.

Hundreds of thousands flee to neighbouring countries in the hope of finding any low-end job as such jobs remain better than those from the barren job-market in Namibia. Informal settlements fill the landscape in all Namibian towns, and the politically connected elite violently protect the agricultural land and decent houses that they have acquired through land reform and expropriation programmes that were marred by corruption.

The cost of doing business has become extremely expensive and cumbersome due to corruption and incompetent political appointees in government. As a result, the price of utilities and basic goods continue to rise, causing hyperinflation that leaves the country's currency worthless.

The black market takes over the trade in foreign currency, as new extreme protectionist policies are incorporated almost monthly. People are continuously reminded that these protectionist policies are necessary to grow the local economy. The police suppress the citizens upon command. The police themselves have no alternative job opportunities.

The little public healthcare that is left is sponsored by benevolent international agencies. Government debt has become unserviceable due to an ever-increasing debt burden, and ever-decreasing tax revenue. The only possibility of obtaining additional income is through debt. Such debt is only available from countries desiring to obtain public assets and natural resources. Namibia is for sale to the highest, and most corrupt, bidder.

Globally, Namibia ranks among the 10 most failed and fragile states. Namibia has no credibility left on the world stage, and credit rating agencies have downgraded Namibia to the worst possible rating. The government denies this status and blames "external forces" and "foreign powers" of having hidden agendas. Taken together, Namibia has reached a dead end and the government blames sanctions, which were imposed when the rule of law was abandoned and human rights violations became rife.

The full Research Report is available upon request.

4.7 Results of EPRA Survey on the Sustainability of the Private Sector, 2020

The results of a survey run by EPRA by the end of 2020 follow. The survey was conducted amongst 559 business entities. The response rate was just above 40%. Approximately 20% of respondents were SMEs. Approximately 30% of respondents create annual revenue of N$10 million or more.

The results are provided for the purpose of providing better insight in the realities experienced by private sector, and to contextualise the summary about the earlier discussed future scenarios.

The results of the said mentioned survey follow.

49.8% of businesses reported that they had to downsize since the beginning of 2020.

Of those businesses who had to downsize, **77%** reported that **they experienced difficulty even before the appearance of Covid**.

Questioned on whether Namibia's policy environment, referring to existing and proposed laws and policies, is **conducive for private sector economic growth**, **23.8%** reported that the policy environment is **somewhat unconducive** and **64.3%** reported that the policy environment is **extremely unconducive**.

Asked about the prospect of current businesses still **surviving for another ten years given the current policy environment**, only **1.9%** of businesses stated that they are **extremely positive**.
31.4% stated that they will **probably survive**.
32.9% stated that they will **probably not survive**.
30.5% stated that the prospect of their survival for another 10 years is **extremely negative**.

Asked about **unemployment rates** in Namibia over the next five years, **63%** stated that unemployment will **increase substantially**, and **28.4%** stated unemployment will **increase somewhat**.

On the question: "***Do you believe that government understands what is required to grow the private sector?***", **92.4%** answered "**NO**".

On the question: "***Do you believe that it is an honest objective of government to grow private sector?***" **83.8%** stated "**NO**".

48% of respondents believe they have **no influence over government policy**, while **5%** believe they can influence policy **directly** and **41%** believe they belong to some **association which can influence government policy**. In a similar survey conducted in April 2019, **82%** of businesses reported that they do not belong to NCCI, and only **7%** stated that they trust NCCI to adequately and effectively represent the interests of the Namibian business community.

64.8% think government interference in the free market economy as "**high**", and **19.5%** regard government's interference in the free market economy as "**extremely high**".

42% of respondents think the **registration, taxations and regulatory requirements** when doing business as "**somewhat onerous**", while **39%** regard such requirements as "**extremely onerous**".

75% of respondents think tax revenue as being "**mostly wasted**" by government, while **22%** regard Namibia's tax revenue as "**somewhat wasted**".

56% of respondents find it "**difficult**" to obtain **appropriately skilled employees,** while **30%** find it "**extremely difficult**" to obtain appropriate skills.

45% of respondents think the standard of education in public schools as "**poor**", while **40%** think the standards in public schools as "**extremely poor**".

CONCLUSION

The IPFB is not aligned with its stated policy objectives. The bill, despite Government assurances to the contrary, does not incentivise investment. Instead, it disincentivises investment. It does so by increasing policy uncertainty, giving virtually unlimited powers to a Minister (which is open to substantial abuse), and creating vast layers of additional bureaucracy (and therefore cost to doing business). In short, it offers plenty of stick, but no (or very little) carrot. These are all things Namibia can ill afford. The IPFB also contains sufficient unconstitutional provisions and systemic flaws that it may be impossible to cure.

For reasons explained, the IPFB cannot attract substantive investment. As a result, it cannot achieve empowerment or grow Namibia's economy. Its logical consequence (irrespective of its stated noble intentions) will lead to reduced economic freedom, abolishment of the principles of the rule of law, abolishment of the protection of property rights and coerced redistribution of wealth, which harms our constitutionally guaranteed mixed market economy. The mechanisms put in place to approve or disapprove investors (both Namibian and foreign) and to police investment are open for abuse and further enrichment of an already wealthy, political and business connected elite of the population who will qualify as "approved" investors. It only serves to promote rent-seeking.

The IPFB breaches Namibia's international treaties. It will create further distrust and uncertainty in the Namibian economy. Like the proposed NEEEB, it will cause further, substantial economic decline. It will cause further capital outflows. It will cause further business closures and it will cause further job losses.

Inequality is a complex and systemic challenge, with various contributors. This challenge can only be tackled through coordinated efforts between government and private sector to increase Namibia's' drive to improve human development. Inequality cannot be addressed by linear approaches which reduce access or exclude some groups from participation in the economy.

Excluding any group (or "categories of investors") will be to the detriment of investment and employment creation. It will also be detrimental to those most in need of upliftment and who have not yet shared in "empowerment" since 1990, for they will suffer the brunt of the consequences of further economic decline. The mere unequal treatment envisaged in the IPFB is a gross negation of the rule of law, without which the economy will substantially contract further, as it did since 2016.

The IPFB increases uncertainty for domestic and foreign investors as all sectors and "approvals required" are open-ended and can be changed at any time in future, while largely bypassing the legislative process. Unfortunately, it appears that sensible and pragmatic input on the bill (even from Government's own investment agency) has largely been ignored. Instead, any objective and constructive criticism is dismissed with a barrage of outdated ideological slogans (or worse, silence), rather than constructive and meaningful engagement. Namibia is unlikely to reach its full potential as long as policy makers encourage and promote a toxic policy environment.

This report may again be ignored, and it is then appropriate to conclude with the words of Advocate Chuma Nwkolo, "Tell them we have tried".[16]

[16] Nwkolo, C. 2018. The Bribe Code. Lagos. Author of 7 books about African literature and Chairman of Project Consortium Africana.

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