



REPUBLIC OF NAMIBIA

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INTRODUCTION

TO THE

PUBLIC SERVICE AMENDMENT BILL

BY

THE RIGHT HONOURABLE NAHAS ANGULA, MP, PRIME MINISTER

OF THE REPUBLIC OF NAMIBIA

08 MARCH 2012

**NATIONAL ASSEMBLY,
WINDHOEK**

1. **Honourable Speaker, I rise to motivate the Public Service Amendment Bill which is before this august House.**
2. **The people of Namibia took up arms to fight for freedom and independence. One of the main objectives was to bring about justice for all. Today, Namibia is a mature democracy founded on the principle of the rule of law. I am proud to state that on this point, we have kept to the letter and spirit of the Namibian Constitution.**
3. **Honourable Members will recall that Section 27 of the Public Service Act provides for disciplinary action against civil servants. In terms of that provision, Permanent Secretaries take disciplinary action against staff members. In turn, the Secretary to the Cabinet takes disciplinary action against Permanent Secretaries.**
4. **Whereas Permanent Secretaries are required to charge staff members with misconduct and establish disciplinary committees to which they are excluded, to inquire into the alleged misconduct, the Procedure which involves the Secretary to the Cabinet took a different route. The Section states that the Secretary to the Cabinet charges a Permanent Secretary, establishes a disciplinary committee to which he or she is a Chairperson to inquire into the misconduct.**

This procedure makes the Secretary to the Cabinet a judge and a jury at the same time.

- 5. There is no doubt that the provision is clearly unconstitutional and violates the most basic tenets of natural justice. Article 18 of the Namibian Constitution provides that:**

“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”.

- 6. Honourable Members will recall that Article 18 of the Namibian Constitution is part of Chapter 3 under the heading FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS. You will further recall that this part of our Constitution cannot be amended with a view to diminish the protection and enjoyment of fundamental human rights and freedoms.**
- 7. It is against this background that the Attorney-General recommended an amendment to the Public Service Act of 1992 so as to bring the provision**

under discussion in line with the requirements of our Constitution.

8. In the same vein, an amendment is also effected by Section 27 (6) to enable the Secretary to the Cabinet to charge other staff members, other than Permanent Secretaries, where it is established that a Permanent Secretary conspired with other staff members to commit a misconduct. This is logical because a Permanent Secretary cannot be expected to charge other staff members with misconduct in a case to which he or she is also implicated. In this regard, the Secretary to the Cabinet would be the right person to charge all those who are involved regardless of their rank.
9. Honourable Members, this is a straight forward technical amendment. I therefore move that this august House pass the proposed amendment without any further delay. I so move.

I thank you.