



DTA
OF NAMIBIA

**STATEMENT BY HON. ELMA DIENDA, MP
AT SECOND READING OF
JUDICIARY BILL (2015)
27 OCTOBER 2015**

Hon. Speaker, Hon Members,

I rise today to contribute to the discussion on the Judiciary Bill, a Bill which purports to create greater judicial independence and autonomy.

Hon. Speaker,

Before I get to the specific provisions of the Judiciary Bill, it would be amiss of me to not first go back to the Act that has essentially laid the framework necessary for this Bill to stand before this august house today.

The Chief Justice has always been the symbolic Head of the Judiciary, or more specifically the three tiers of the court system – namely, the Supreme Court, the High Court and the Lower Courts e.g. the Magistrates Courts. However, the Chief Justice was more a symbolic figure head, comparable to the situation with the Queen of England, and has not had the power to regulate or oversee the functioning and activities of the various courts.

This position was recently changed by the Third Constitution Amendment Act which constitutionally recognised the Chief Justice as the formal Head of the Judiciary.

The Third Constitutional Amendment Act also sought to create greater judicial independence and separation of powers by removing the financial and administrative functions of the judiciary from the Ministry of Justice and instead creating a separate autonomous office that would be tasked with these functions, to be known as the **Office Of The Judiciary**.

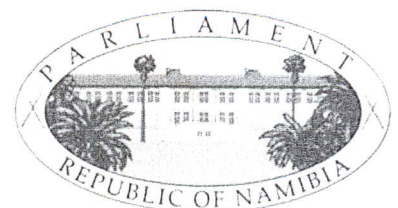
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Hon. Members,

It is in this context that we must understand the Judiciary Bill, as this Bill seeks to provide the legal institutional framework required to provide to establish the Office of the Judiciary.

An independent judiciary is the backbone of any truly democratic society, thus as the DTA of Namibia we support and encourage any and all initiatives aimed at strengthening the independence of the judiciary and allowing it to function freely of not only the executive, but also the legislature.

In this regard we therefore support the establishment of the Office of the Judiciary in principle, however there are a few areas of concern that I would like to address.

Hon. Speaker,

Aside from constitutionally recognising and entrenching the independence of the judiciary, there are other extra-legal measures which can also promote the impartiality and dignity of the judiciary, these include the conditions of service of judicial officers i.e. the remuneration, security of tenure, pension and the manner of appointment of judicial officers or in this case, staff members of the Office of the Judiciary.

The mechanisms for appointment to and removal from office are of particular importance in this regard, due to the fact that if appointments are based, even if only partly, on political patronage and not a completely self-regulating standardised recruitment process in line with common Human Resources practice, then the independence and impartiality of the judiciary could be severely jeopardised.

The phrase “independence of the judiciary” does not only refer to structural, formal, legislative or constitutional independence, but additionally a cultural and institutional independence which enables judicial officers to apply the law without fear or favour.

In this regard, it thus worrying that **Clause 4** of the Judiciary Bill reads as follows, and I quote:

“ 4 (1) The Prime Minister must, subject to subsection (2), in accordance with the Public Service Act, BUT subject to such terms and conditions as may be agreed between the Prime Minister and the Chief Justice, appoint the Permanent Secretary and other staff members as may be required for the proper performance of the functions of the Office.

4(2) Despite section 5(1) of the Public Service Act or a provision in any other law, an appointment made in terms of subsection(1) is made on the recommendation of the Chief Justice.

”

- End Quote –

Hon Members,

If we are to seriously advance the promotion of an independent judiciary, then the P.S of the office of the Judiciary needs to be appointed in terms of a pure Human Resources Labour Recruitment Policy that is not subject to any influence whatsoever from other branches of the government, and the Prime Minister as the Head of the Executive is being placed in an unnecessarily compromised position which brings the separation of powers into question.

The very moment any appointment needs to be confirmed or approved by a political office bearer one opens the way for political patronage to enter the process and this I'm sure is not the best way to go about promoting the independence of the judiciary. This in addition to the fact that the person making the recommendation – the Chief Justice - is also partly appointed by a political office bearer, in that the final decision on the appointment of the Chief Justice, despite the advice of the Judicial Service Commission, rests with the President.

I see no reason why the Permanent Secretary or Accounting Officer, as well as other staff members, of the Office of the Judiciary cannot be appointed in terms of a pure HR Process with no influence from other branches of government or

any political office bearers.

If we are to truly achieve judicial independence it is my submission that this would be the best process to follow.

Moreover, as the constitutional Head of the Judiciary it is only right that the Chief Justice appoints the P.S and staff members of the Office of the Judiciary as ultimately they report directly to him and not to the Prime Minister, who in any event is a member of the Executive and should therefore not be directly involved in the appointment of staff members of the Judiciary.

Hon. Speaker, Hon. Members,

The constitutionally enshrined independence of the administrative and financial functions of the judiciary via the establishment of the Office of the Judiciary is indeed a welcome step in the drive for an independent judiciary, however we must not do things in half measures and must properly commit to promoting an independent judiciary and a key ingredient in ensuring this will be the manner of appointment and employment conditions of staff in the Office of the Judiciary.

Thank You.