



NATIONAL ASSEMBLY

15 FEBRUARY 2022

MOTION BY THE HONOURABLE ELMA JANE DIENDA FOR THE HOUSE TO DEBATE ARTICLE 47 (1) (e) (f) and (2) (b) OF THE NAMIBIAN CONSTITUTION IN AS FAR AS IT VIOLATES THE RIGHTS OF MEMBERS OF THE NATIONAL COUNCIL, REGIONAL AND LOCAL AUTHORITIES AS WELL AS CIVIL SERVANTS FROM PARTICIPATING FREELY IN THE NATIONAL ASSEMBLY ELECTIONS.

MOTIVATION

Hon. Speaker

I am retabling this motion after it lapsed during the 2021 legislative year.

Hon. Speaker

Hon. Members,

Despite the fact that equal treatment is one of the fundamental principles of our democracy, it seems that our own constitution directly discriminates against certain members of society, and their inalienable right to participate in our elections and democratic processes.

In particular, the Namibian constitution impedes the rights of members of the National Council, Regional and Local Authority Councillors as well as Civil Servants from freely participating as candidates in the National Assembly elections.

Hon. Speaker
Hon. Members,

Article 46 (1) (a) of the Namibian constitution deals with the composition of members of the National Assembly, and it reads as follows:

'(1) The composition of the National Assembly shall be as follows:

(a) ninety-six (96) members to be elected by the registered voters by direct and secret ballot. Every Namibian citizen who has the qualifications described in Article 17 hereof shall be entitled to vote in the elections for members of the National Assembly and, subject to Article 47 hereof shall be eligible for candidature as a member of the National Assembly;'

However, Article 47 which deals with the disqualification of members of the National Assembly stipulates the following at sub-article 1 (e) and (f), and I quote once again:

'(1) No persons may become members of the National Assembly if they:

(e) are remunerated members of the public service of Namibia; or

(f) are members of the National Council, Regional Councils or Local Authorities.'

Sub-article (2) (b) of Article then goes on to specify that:

'(2) For the purposes of Sub-Article (1) hereof:

(b) the public service shall be deemed to include the defence force, the police force, the correctional service, para-statal enterprises, Regional Councils and Local Authorities.'

Hon. Speaker
Hon. Members,

Article 47 (1) (e) and (f) and sub-article (2) (b) are in direct contravention of Article 17 (2), which expressly states and grants that;

'every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office.'

Therefore Article 47 (1) (e) and (f) and sub-article 2 (b) are unconstitutional provisions because they impinge on the rights of National Council members, Regional and Local Authority councillors and civil servants from freely being elected to the National Assembly without having to lose their respective jobs.

The provision is also discriminatory in the sense that it only discriminates against members of the public and civil service, and not those employed in the private sector. The fundamental question then follows; are members of the public and civil service not equally entitled to participate freely as candidates in the National Assembly elections?

It also escapes simple logic that public and civil servants are expected to resign from their jobs while having no assurance that they will actually be elected as members of the National Assembly. There is nowhere in the world where someone is expected to resign from their jobs without a letter of appointment from their other desired job.

This puts enormous strain on public and civil servants, as they face the possibility of not only losing income in the excess of four months before the swearing-in of the new National Assembly, but also becoming unemployed permanently if they do not get elected as members of the National Assembly.

Hon. Speaker

Hon. Members,

It is therefore imperative that the provisions of Article 47 of the Namibian constitution that deal with the disqualification of members of the National Assembly be amended. The only reasonable conditions that can apply is if members of the public and civil service are only compelled to resign from their respective jobs after being duly elected as members of the National Assembly.

That is the only common sense *modus operandi* in which Article 47 should be amended. We must not make and normalize laws that are unreasonable. Every law has to make common sense, and 47 (1) (e) and (f) and sub-article 2 (b) clearly do not meet the standards of common sense.

Hon. Speaker

Hon. Members,

I would therefore recommend that this motion be sent to the relative Standing Committee for further scrutinizing and to report back to this August House.

I so move Hon. Speaker.