



**Republic of Namibia**

**MINISTERIAL RESPONSE TO QUESTION NO. 170**

**ASKED BY**

**HONOURABLE UTAARA MOOTU**

**ON 26 SEPTEMBER 2023**

**IN THE NATIONAL ASSEMBLY**

**BY**

**THE MINISTER OF JUSTICE**

**YVONNE DAUSAB, MP**

**5 OCTOBER 2023**

**- To be checked against delivery -**

**Honourable Speaker,**  
**Honourable Members,**

1. I rise today to provide a response to the Questions raised by Honourable Utaara Mootu with respect to matters pertaining to the Office of the Prosecutor-General.
2. I now intend to respond to each question as follows:

### **Question 1**

It is crucial to clarify that the Prosecutor General does not have unilateral authority to dictate how the criminal justice system operates, whom it favours or whom it disadvantages. The criminal justice system is founded on principles of fairness, impartiality, and the rule of law. Its functioning is governed by a complex set of legal provisions, including legislation, regulations, and established legal precedents. The Prosecutor General, like all other actors within the system, operates within this legal framework. It is not accurate to suggest that the Prosecutor General wields unchecked power over the justice system.

Furthermore, The Prosecutor General of the Republic of Namibia takes serious exception to the conduct of the member of the National Assembly bearing in mind that she had taken the oath to uphold the laws of the Republic of Namibia. In particular, the Prosecutor General reiterates that the supreme law of the land i.e. the Namibian Constitution which enunciates in Article 88<sup>1</sup> the independence of the Prosecutor General. Henceforth, the Prosecutor General is only subject to the Constitution and the law.

From the foregoing, the Office of the Prosecutor General has procedures in place to be followed where members of the public have complaints to make. The Office of the Prosecutor General is a public office meaning that complaints are conducted in the same manner as any other public office. For complaints outside of Windhoek, complainants may approach the Control Prosecutor in that district with their complaint or may also directly formulate a written complaint to the Prosecutor General, via the contact details provided on their website. Further, the same office in Grootfontein, has procedures in place on how criminal cases should be

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<sup>1</sup> See Art. 88 of the Namibian Constitution which provides for the appointment, powers and functions of the Prosecutor-General. Also, see section 3 of the Criminal Procedure Act, 1977 (Act No.51 of 1977) which further provides for the prosecuting authority of the Prosecutor-General.



I do not agree, because the Prosecutor General does not conduct her work in a manner as alluded by the member. Our legal system is designed to hold individual accountable for their actions and protect the rights of all citizens, regardless of political affiliation. Therefore, it is

#### Question 4

The matter under review, according to the Control Prosecutor of Grootfontein, is still under investigations and therefore is not with the Prosecutor General as the Honourable member alleges. When a criminal case is opened against any political office bearer in the Regions, such dockets are not submitted to the Prosecutor General before investigations are fully finalised. The docket can only be submitted to the Prosecutor General after the completion of police investigations.

#### Question 3

The allegations made by the Honourable member, to the Namibian Nation, that it has become a regular feature that the Prosecutor General's Office delays or sits on matters that involve political office bearers is malicious, false, misleading and devoid of truth.

trust.

When the Prosecutor General is dealing with dockets, she does not take into account any political or, status affiliation of any person when the decision to prosecute or not to prosecute is made. The idea of using political considerations as a tool of legal application is contrary to the fundamental principles of a fair and impartial justice system. Any compromise of this independence would undermine the integrity of the criminal justice system and erode public trust.

and the applicable legal standards.

No, the Prosecutor General does not use political considerations in her prosecutorial decisions. In many democratic societies, including ours, the principle of prosecutorial independence is a cornerstone of criminal justice system. This means that the Prosecutor General is expected to make prosecutorial decisions based solely on the merits of each case, the evidence presented,

#### Question 2

handled in order to give effect to the mandate to prosecute crime effectively and efficiently even where political office bearers are involved.

not accurate to suggest that the Prosecutor General uses political consideration or favours certain politicians in her prosecutorial decisions, as doing so would undermine the very foundations of our criminal justice system.

To this effect the Honourable member should be informed that the Prosecutor General is not privy to the content of the docket relating to the matter as cited by the Honourable member until such time as the docket is placed before the Prosecutor General and that is only after the finalisation of investigations.

Finally, and in conclusion, the Honourable member is hereby advised if she has any question and/or query relating to a criminal matter, she should approach the investigating officer in the case or the Control Prosecutor for the Magisterial District in which such a case is registered. The Honourable member should further be informed to verify her facts before she makes scandalous allegations.

As a member of this Honourable house, she should be informed that no political considerations in the exercise of the Prosecutor General's powers whether or not to prosecute is made, as the Constitution clearly states that the Prosecutor General performs her mandate only subject to the Constitution and the law and does not protect any person in the exercise of such Constitutional power.

The rules of this August House, in their wisdom, made rules that do not allow this kind of questioning. This is so because under rule 88<sup>2</sup> of the Standing Rules and Orders of the National Assembly, a member is not allowed to ask questions that border on inferences, opinions, imputations, epithets or hypothetical cases but should rather ask questions which have the object to obtain information on a question of fact within the official cognisance of the Minister. For future reference, the Honourable Member is accordingly reminded of the norms and standards of the quoted rule.

I thank you and so submit.

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<sup>2</sup> See Standing Rules and Orders of the National Assembly, specifically rule 88 which provides for the general rules for questions.