

Ans



Republic of Namibia

**MINISTRY OF URBAN AND RURAL DEVELOPMENT**

**NATIONAL ASSEMBLY**

**NOTICE OF QUESTIONS BY HON. LUKAS HIDIPO HAMATA (PDM) ON  
OMUTHIYA TOWN COUNCIL**

**NOTICE OF QUESTION NUMBER 173 (26 September 2023)**

**RESPONSE ON 05 OCTOBER 2023**

Hon. Speaker  
Hon. Members

I rise to respond to the Questions that have been asked by Honorable Lukas Hidipo Hamata of PDM on Omuthiya Town Council as follows:

**QUESTION 1**

*Hon. Minister, according to Section 14(2)(a)(iii) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended and Rule 6(5) of the Code of Conduct for members of the local authority councils, a two-thirds majority vote is required for suspending a member. However, in practice, this provision is often not adhered to. How does your Ministry plan to ensure that Local Authority Councils follow the prescribed processes, especially when it comes to voting and adhering to the two-thirds majority requirement? And if such is not adhered to, what consequences, if any, are meted out to the council to avoid doing same in future?*

**Answer:**

As the sector Minister responsible to oversee the functions of Regional Councils and Local Authorities, it is often practically not possible for me and the Ministry in general to intervene in the administration of affairs of the councils due to various factors. Firstly I am usually only officially informed of councils' operations by means of submissions of minutes of Council meetings in terms of Section 15(2) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended.

As elected leaders and public office bearers, it is expected of Councillors to conduct themselves in a manner that befits the offices they hold and in the public interest. In this connection, there are specific provisions in the governing Acts and the Code of Conduct that guide members of local authority councils on how to conduct themselves and to exercise the power and duties assigned to them. The Ministry is unfortunately not in a position/capable to be present at each and every council to give hands-on advice and ensure that council decisions/processes are in compliance with the law or regulations at all times. Equally so, the Ministry must also not be answerable/responsible to ~~of~~ for matters councils have taken in their own volition, which are illegal.

In an effort to amicably remedy issues of this nature, as a Cabinet Minister I am mandated in terms of Article 41(k) of the Namibian Constitution read together with Section 92 (1) (c) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended, to issue directives and notices after I have been presented with and established the existence of irregularities at a particular council.

## **QUESTION 2**

*Section 10(3) of the Act grants the Minister the authority to prescribe a Code of Conduct for members of local authority councils. Why has the code not been updated to include the provision for ceasing or forfeiting a suspended member's benefits, despite it being outlined and provided for under Section 10(4)(a)(ii) of the Act?*

### **Answer:**

The Ministry has so far not identify serious challenges with regard to the current version of the Code of Conduct for members of Local Authority Councils. As such no amendments have been made. The Ministry and Legal Drafters collectively always avoid a situation in which some draft static laws will be regarded draconian and are only imposed on the end-user, but to rather make it flexible in the wording to read “**may**” (as it does now), to allow for the democratic and decision making purpose for which this structures were established; and to also afford the Minister and Council to make their own justification in the nature of the perpetration committed and to decide for themselves on the punitive measures to be taken in that respect.

### QUESTION 3

*In the case of the Omuthiya Town Council, members were suspended before the Council verified and confirmed whether the minutes of the meeting where such decision was based indeed indicates that there was a two-thirds majority vote of members present. Is it legally permissible for Council decisions, which are in violation of the Code of Conduct for members of Local Authority Council, to be implemented prior to ensuring that indeed there was such two-thirds majority vote of members present? In the failure of such adherence what measures, if any, are applicable to prevent such situations from occurring in future to ensure due process?*

**Answer:**

Not only Council Resolutions which are in violation of any particular law, but rather all Council Resolutions must be implemented only after the confirmation of the Council Meeting minutes, unless such a resolution/s reads “to be implemented with immediate effect” and provided that such a resolution vest in the absolute powers of the Council and that it is not a consultative or ultra-vires resolution.

It is for this reason we have advised the Council in our letter dated 30 August 2023, to implement the suspension of Hon. Cllrs. Nghipudilo ya Shiindi and Moses Amukoto respectively, only after the confirmation of the Council Meeting minutes. This was to ensure that Council had complied with the legal measure during the suspension of this Councilors and if they had not complied, the minutes could not have been confirmed and there could be no bases for the suspension. Regrettably, we were verbally informed that the 30 days suspension without benefits was effected already on 24 July 2023, for Cllr. Moses Amukoto and an indefinite suspension for Cllr. Nghipudilo ya Shiindi until I respond to their letter dated 22 September 2022 (of which I have responded to).

There is unfortunately no way in which, we can totally avert instances or issues of this nature, since each case may or will be different in nature which will determine their merit and/ or justification. In this regard, I will request for an official account of what has transpired from the Council and the status quo. I will than analyze the provided information with the supporting documentation and may as already alluded to, in terms of Article 41(k) of the Namibian Constitution read together with Section 92 (1) (c) of the Local Authorities Act, 1992 (Act No. 23 of 1992) as amended, issue directives and notices to remedy the irregularity. Alternatively and as it may be necessary the services of advisory and oversight institutions such as the Attorney-General (the Ombudsman) and the Anti-Corruption Commission can be enlisted to render advice or investigations

into the matter and depending on the outcome of the investigation, individually or collectively hold the responsible members accountable.

The above listed are all legally possible options I will diligently rest my final decision on the information and cooperation provided by the Council.

#### QUESTION 4

*Hon. Minister, can you provide a clear and detailed account of events and decisions that transpired at Omuthiya Town Council that led to the suspension of members, including the subsequent events thereafter, the handling of meeting minutes, and actions, if any, taken by your Ministry in response to the situation?*

*Answer:*

As I have already indicated, I will request for an official account of what has transpired at the Council and the status quo. However, from the secondary information as purported in the Council Meeting minutes, the atmosphere at the Council has been tense and unpleasant for a long time. Although we take cognizance of this immaterial issues recorded in the minutes, as a Ministry we would at first render advice and encourage and allow Council members the space to attempt to resolve their differences on their own. It is for this reason that we never intervened whatsoever into this issue at the Council but have thus far rather provided advice to the Council.

Hon. Speaker

These are my responses to the questions posed, and I wish to thank the Hon. Member who posed them

I thank you.