



**NATIONAL ASSEMBLY
RESPONSE BY HON. TOM K. ALWEENDO
MINISTER OF MINES AND ENERGY
TO
NOTICE OF QUESTION NO.15 (15 FEB 2024), HON. H. SEIBEB, LPM**

Let me thank Hon. Seibeb for the questions. In the main, Hon. Member's questions are concerned with how applications for petroleum exploration licenses are handled under the existing legal framework, namely the Petroleum Exploration and Production Act. These are important questions for us to consider, especially now that Namibia has discovered oil.

Hon. Seibeb's **first question** relates to the decision-making process within a specific sector governed by a particular Act, what role does the Act play in shaping the Minister's decision.

Hon. Speaker, Namibia ranks high on the governance index, whether gauged from the Global Competitiveness Index or the Mo Ibrahim Index. This record and systematic progression are because we are a rule-based country underpinned by ever evolving institutional strength. Our supreme law is globally and regionally acclaimed, a fundamental anchor on which all other policy and legislative framework are hinged. While the question by the Hon. Member does not display intent, it goes without saying the role of the governing law is to provide a framework for decision making, ensuring that all decisions are made within the provisions set forth by the law. Acting contrary to these provisions would be considered *ultra vires*, or beyond one's legal authority.

Therefore, as the Minister responsible for Mines and Energy, I always follow the existing legislative framework in governing our extractive and energy sectors. Moreover, it is essential to adhere to the sector governing law to maintain legal compliance and integrity in decision making processes. I should stress that the object of the law is not only to provide a consistent basis for decision-making, but also to enable policy implementation and socio-economic development.

It is the application of the provisions of the relevant Acts which have rendered our mining and energy sectors as an attractive avenue for investment inflows and a source of growth for the Namibian economy. This does not negate the imperative for timeously inculcating the ethos of integrity and ethical conduct in the application of the law, not only in the mines and energy sectors, but in all areas of our socio-economic endeavors.

The Second Question relates to the roles of guidelines in decision-making in relation to the statutory requirements stipulated under the sector legislation (Act).

Hon. Speaker, there is no contention that the primary law is the source of legal authority and takes precedence over the Guidelines. However, to effectively implement the provisions of the Act, it is imperative that there exist Guidelines to provide administrative clarity for both the sector regulator and the public. With regards to the Guidelines related to the Applications for minerals or petroleum exploration rights, I can confirm that such guidelines are drafted in line with the existing Minerals Act and Petroleum Act, respectively.

Therefore, ultimately the decisions or actions that we take as custodian of the mining and energy sectors are based on the statutory provisions. I should highlight here that the purpose of the guidelines is to ensure that good governance of our minerals and energy resources is in place. In essence, it should not be implied that administrative guidelines are made independent or contrary to the law as the Hon. Member wishes to imply. Moreover, any party aggrieved by a decision of the Minister has unfettered opportunity for legal recourse.

Questions 3, 4 and 5 from the Hon. Member are interrelated. These questions are about the existing difference in terms Section 68 of the Minerals Prospecting and Mining Act and Section 32 of the Petroleum Exploration. This is regarding the requirement for the applicant of mineral prospecting and petroleum exploration licences to provide proof of financial capacity to conduct exploration. Fundamentally, the two sections are similar, the apparent difference is that Section 68 of the Minerals Act explicitly state the requirement for applicants of minerals rights to provide proof of financial resources while Section 32 of the Petroleum Act does not explicitly state so.

Hon. Speaker, the law might not have explicitly stated that the applicants must provide proof of financial resources required to carry out a reasonable petroleum exploration. However, the mere fact that the law requires the applicant to provide a minimum expenditure, implies that the regulator should establish the ability of the applicant to expend the proposed expenditures. Therefore, it would be incorrect to interpret that requiring proof of financial resources for petroleum exploration license application is outside the ambit of the law. Moreover, how else are you supposed to distinguish between serious applicants and the non-serious ones?

The aim of such requirements is to ensure that we issue petroleum licences to investors who have the financial capacity to explore and find the resources for the benefit of our nation. I would like to highlight that the upstream oil and gas business is capital intensive and highly technical. On the other hand, the energy transition is at a crescendo. These two facts necessitate that we ensure that our petroleum resources are exploited in a timely and economically efficient manner, and this can only be achieved by granting licenses to investors with demonstratable capability to find and develop resources for the benefits of all Namibians.

Questions 6, 7 and 8 of the Hon. Member are also intertwined. In essence, these questions are like questions 3,4 and 5. With these questions, the Hon. Seibeb implies that requirement to provide proof of financial resources in respect of an application for a petroleum exploration licence as per the ministerial guidelines is outside the law.

Hon. Speaker, as I have said earlier, guidelines in themselves are not the law, but rather they are an administrative tool for effective implementation of the law and assurance of good governance of our mineral resources. Therefore, the ministerial guidelines are founded in the existing law. These guidelines serve to clarify and provide practical guidance on how to interpret and apply the law in specific situations.

Thank you, Hon. Speaker, and I hope that the information I provided responded in some way to Hon. Seibeb's concerns.