



## NATIONAL ASSEMBLY

02<sup>nd</sup> JULY 2024

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### CONTRIBUTION TO THE MARRIAGE BILL BY HON ELMA JANE DIENDA

Honourable Speaker

Honourable Members

Members of the Public

I would like to express my gratitude to the Minister of Home Affairs, Immigration, Safety and Security for this profound Marriage Bill, which will significantly advance the principles of Article 14 of the Namibian Constitution. This Bill provides clear and concise definitions of marriage and spouses, addressing and resolving the confusion that has previously complicated the interpretation of the Divorce Bill. The clarity and straightforwardness of the terminology used in the Marriage Bill serve as a strong foundation for our legal framework.

Under *section 1* on Definitions, the Marriage Bill refers to the Civil Register and the Civil Registration and Identification Act, which is not yet passed but I have noticed that the Honourable Minister will motivate a Bill today called the Civil Register. My question is whether or not the Civil Register is being tabled today is the same Civil Register referred to in the Marriage Bill? This inclusion creates

ambiguity and could lead to enforcement issues if the referenced Act is not enacted in time. It is essential to reference only existing laws to ensure clarity and avoid potential legal conflicts.

Under *section 3* on Designation of Members of Religious Denominations or Organisations as Marriage Officers, the Marriage Bill states that the Minister may, on application, designate a member of a religious denomination or organization as a marriage officer to solemnize marriages according to the rites of that religion and the requirements of this Act.

I have noticed that this section gives the Minister power to designate a member of a religious denomination as a marriage officer. I submit that this section must also require spouses whose marriages are solemnized by marriage officers from religious denominations to follow the set rules of these religions. It doesn't make sense not to follow the objectives of the religious denomination.

Honourable Speaker

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Members of the Public

*Section 5* on the Rules Applicable to Designation of Persons as Marriage Officers stipulates that a marriage officer may be re-designated in writing as a marriage officer on the expiry of his or her previous designation. My submission is that the period for which one is a valid marriage officer must be clearly stipulated. This ensures transparency and consistency in the designation process.

Under *section 9* on the Prohibition of Marriage of Minors and Consent Required for Marriage of Persons Below Age of 21, subsection 1 stipulates that the Registrar-General or a registrar may not issue a pre-marriage confirmation for a

marriage where one or both persons are under the age of 18 years. To avoid situations where minors are forced into marriage, this section must require the express and written consent of the minor, ensuring that it represents the true wishes of the minor. This should be read together with *subsection 2*.

Under *section 13* on Requirement of Additional Documentation for Marriage Between Namibian Citizen and Foreign National, *subsection (c)* stipulates that a valid visa or permit authorizing the foreign national to be legally present in Namibia is required. My question to the Honourable Minister is, what type of visa or permit are we referring to? Does any visa or permit suffice? This needs clarification to ensure that the visa requirements are specific and appropriate for the intended marriage.

Under *section 14* on Public Notice of Intended Marriage, *subsection 4* stipulates that intending spouses may apply in writing to the registrar for a waiver of notification requirements. *Subsection 6 (b)* allows the Registrar-General to approve the application if there is urgency due to serious illness, impending death of a close family member, the anticipated birth of a child, or other circumstances prescribed by the Minister. My submission is that *subsection 6 (b)* could be abused to waive *subsection 4*. Additionally, what are the "other circumstances" that the Minister may prescribe under *subsection 6 (d)*? Clear definitions are needed to prevent misuse.

Honourable Speaker

Honourable Members

Members of the Public

Under *section 19* on the Expiry of Pre-Marriage Confirmation, *subsection 3* prohibits a marriage officer from solemnizing a marriage after the confirmation

expires, with *subsection 4* imposing penalties for non-compliance. I submit that we must add that the marriage officer's license should be canceled in case of non-compliance to *subsection 3* to ensure accountability.

Under *section 23* on Solemnisation of Marriage by Marriage Officer, *subsection 1 (a)* requires the presence of intending spouses and at least two witnesses. My question is, what are the requirements to be a competent witness as intended by *section 23, subsection 1*? This needs clarification to ensure that the witnesses meet the necessary legal standards.

Under *section 27* on Issuing of Marriage Certificate and Corresponding Marriage Record, *subsection 6* stipulates that a marriage officer who fails to comply with *subsections 1 and 3* commits an offense and faces fines or imprisonment. I submit that we must add that the marriage officer's license should be canceled to enforce strict compliance.

Honourable Speaker

Honourable Members

Members of the Public

Under *section 32* on Good Faith Marriages, *subsection 1* stipulates that a marriage between a Namibian citizen and a foreign national is not in good faith if primarily intended for acquiring Namibian domicile, residence, or citizenship. I submit that we add a period of at least a two-year relationship before a valid marriage between a Namibian and a foreigner can take place to reduce incidences of marriages of convenience. A two-year demonstrated relationship period will show genuine intent and commitment.

Under *section 33* on the Requirements for Marriages in Namibia Between Two Foreign Nationals, the section requires foreign nationals to comply with the requirements of the Bill and submit additional documentation. I submit that we add a provision that these foreigners can only be married according to Namibian law only. This ensures that the legal standards and cultural values of Namibia are upheld.

Honourable Speaker

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In conclusion, I am in support of the Marriage Bill represents a significant step forward in advancing the principles of *Article 14* of the Namibian Constitution, ensuring clarity and consistency in our legal framework regarding marriage. By providing precise definitions and addressing cultural and societal nuances, this Bill lays a solid foundation for the protection and recognition of marital unions in Namibia.