



REPUBLIC OF NAMIBIA

MINISTRY OF HOME AFFAIRS, IMMIGRATION, SAFETY AND SECURITY

**RESPONSE BY HON. DR. ALBERT KAWANA, MP,
MINISTER OF HOME AFFAIRS, IMMIGRATION,
SAFETY AND SECURITY, ON THE OCCASION OF THE
SECOND READING OF PUBLIC GATHERINGS AND
PUBLIC PROCESSIONS BILL**

Thursday, 06 February 2025

National Assembly

Windhoek

1. Honourable Speaker, I rise to respond to the issues raised during the debate on Public Gatherings and Public Processions Bill.

2. Allow me, Honourable Speaker, to express my appreciation and gratitude to all Honourable Members who took part in the debate during the Second Reading of the aforementioned Bill. I also thank Honourable Members who supported the passing of the Bill in silence.

3. It is not surprising given the nature of the Bill that it generated considerable interest not only in this august House but also in both print and social media among our citizens as well as those who regard themselves as scholars and political analysts. Just like in this august House, some views were objective although some of them were based on the lack of understanding and wrong interpretation. Some views were based on subjective considerations with political bias.

Again, this is not surprising because Namibia is an open society whose governance is based on the rule of law and democracy.

4. My task today, however, is to respond to the contributions of some of the Honourable Members of this august House as per the requirements of the current Rules and Procedures of the House. As will be more apparent during my response, I have taken note of the views of the Honourable Members, including those views which I do not agree with or which are based on wrong interpretation of the Bill on account, perhaps, of lack of background information. Some views are based on ideological political background which I fully respect, especially given the fact that last year was the year of national elections.

5. Honourable Speaker, the Bill attracted a significant number of contributions. Among them are Honourable Dienda, Honourable Smit, Honourable Nuyoma, Honourable Mutorwa

my neighbour, Honourable Venani, Honourable Katamelolo, Honourable Kapofi and Honourable Schlettwein. A number of Honourable Members from the opposition, especially PDM were critical with certain provisions of the Bill. Within the letter and spirit of our democratic culture, I have taken note of objective views expressed during the debate and have adjusted some provisions of the Bill accordingly. Where the views are premised on wrong information or lack of information, I will point out the correct position under the existing legislation.

6. Honourable Speaker, a number of issues were pointed out which some Honourable Members have some difficulties to support. Allow me, therefore, Honourable Speaker to point out issues of major concern and how they are dealt with in my reply. May I point out that in my reply, I have avoided to be personal.

I am aware that the views expressed by Honourable Members were expressed on behalf of their political parties as well as in the spirit of open debate.

7. The fundamental difficulties expressed by some Honourable Members is that some provisions of the Bill put unreasonable restrictions on citizens who want to demonstrate thereby negating the principles of democracy such as freedom of expression. These restrictions, they contend, violate fundamental human rights and freedoms which are guaranteed in the Namibian Constitution. They further say that the police are given too much power to the point that they can impose unreasonable conditions before a demonstration or procession is allowed. The notice period required before a demonstration or procession is allowed is too long and, therefore, in some instances defeats the purpose of the demonstration or procession.

Restricted areas have an effect of denying citizens the right to express their feelings at or near institutions where they can freely express their views in order to have an impact. The penalties which are imposed are too high. Provided civil liabilities of organisers and those who take part in public demonstration and public processions is unnecessary because the civil liabilities have an effect of restricting the right to demonstrate. Certain expressions in the Bill are not defined such as reference to a weapon which renders the Bill ambiguous and vague. The requirement for consultation between the organisers of the demonstration and the police has an effect of restricting the right to demonstrate. Use of force by police officers has an effect of abuse and could lead to the subjugation of peaceful assemblies.

8. Honourable Speaker, before I respond to the specific issues which were raised by some Honourable Members during the debate, allow me to explain the status of our laws in the context of the Bill. The Namibian laws consist of three hierarchy, namely, the Namibian Constitution, which we refer to as the Supreme law of our Land of the Brave, followed by Acts of Parliament as the second tier, and at the bottom tier is the common law and customary law. Any common law or customary law which is in conflict with an Act of Parliament or the Namibian Constitution, an Act of Parliament or the Namibian Constitution prevail. Any Act of Parliament which is in conflict with the Namibian Constitution, the Namibian Constitution prevails. Therefore, unlike in some countries such as the United Kingdom where Parliament is supreme and can pass any law without fear of violating the constitution, in Namibia, the Namibian Constitution is supreme.

9. I also wish to inform Honourable Members of this august House that the Namibian Constitution provides what we call Bill of Rights as contained under Chapter 3 titled "**Fundamental Human Rights and Freedoms**". Some provisions which are relevant under the Bill of Rights or Fundamental Human rights and Freedoms include Article 5 - **Protection of Fundamental Rights and Freedoms** which must be respected and upheld by the Executive, Legislative and the Judiciary. These rights are enforceable by the Courts. Article 6 - **Protection of Life** which are to be respected and protected. No law may prescribe death as a complete sentence. No Court or Tribunal has the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

10. Article 7 - **Protection of Liberty**. No persons shall be deprived of personal liberty except in accordance with procedures established by law.

Article 8 (2)(b) – **Respect for Human Dignity**. No persons shall be subject to torture or to cruel or inhuman or degrading treatment or punishment. Article 11 (1) – **Arrest and Detention**.

No persons shall be subject to arbitrary arrest or detention.

Article 12 (1)(a) and (d) – **Fair Trial**. In the determination of their criminal charges, all persons are entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law. In addition, such persons shall be presumed innocent until proven guilty according to law.

11. Lastly, Article 21 (1)(d) with a heading **Fundamental Freedoms**, *inter alia*, provides that all persons shall have the right to assemble peaceably and without arms. Due to the importance of the Bill of Rights as contained under Chapter 3 of the Namibian Constitution, they are entrenched under Chapter 19, Article 131 which states as follows and I quote:

“No repeal or amendment of any of the provisions of Chapter 3 hereof, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that Chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.”

12. It is against the aforementioned background that the comparison of the Bill and the situation during the repressive colonial apartheid regime is very far from reality and such fears are unfounded. Indeed, consistent with our democratic culture, Namibia has put in place systems, process and institutions to curtail any potential abuse of State power. It is also my submission that just like during the apartheid colonialism, there are no Bill of rights in repressive regimes.

Indeed, in my respects as will be shown below, the Bill before this august House is intended to align with the Namibian Constitution by repealing the existing Public Gathering Proclamation of 1989 (AG Proclamation No. 23 of 1989) because some of its provisions are not in line with the Namibian Constitution.

13. Honourable Speaker, section 4(1) and (2)(m) of the 1989 Proclamation states as follows:

Section 4(1) "Subject to the provisions of subsection (3), no person shall at any public gathering have any weapon with him."

Section 4(2)(m) "For the purposes of Subsection (1) "weapon" shall include -

(m) any fire-arm, but excluding a pistol or revolver carried in a bag, holster or other container in such a manner that it is completely concealed";

The provisions of section 4(2)(m) of the Proclamation which are patently unconstitutional have been replaced with clause 11 of the Bill aimed at aligning it with Article 21(1)(d) of the Namibian Constitution.

14. In order to ensure that the demonstration is peaceful, no person who takes part in a public demonstration or public procession shall be allowed to carry a weapon. This is in line with Article 21(1)(d) of the Namibian Constitution. Honourable Speaker, some Honourable Members of this august House express a concern regarding what they considered to be a long period of notice required before a public demonstration or a public procession can take place.

Borrowing from the mantra of our late President Dr. Hage G. Geingob, I can say I heard you and in the interest of progress, the proposed notice period shall be reduced from five days to two days as opposed to the three days in the current law. Under certain circumstances, such as urgency, the police may accept a shorter period provided it is not less than 24 hours.

15. Honourable Speaker, allow me to make one thing clear, serve under exceptional circumstances such as a state of emergency or where there is credible information that may lead to bloodshed in the interest of health such as the outbreak of dangerous communicable disease such as Covid 19, the Inspector-General of Police or any other police officer has no power to prevent a public demonstration or a public procession. Therefore, the concerns of some members to this effect is based on misunderstanding of our current law.

The power of the Inspector-General is merely to put conditions before such a public demonstration or a public procession can take place, for example, the route of the public demonstration or public procession in the interest of controlling traffic or the venue in the interest of maintaining law and order where there are rival groups which are opposed to each other. As to questions whether or not the conditions are reasonable, these are questions of law which can be challenged in a Court of Law. The situation on the ground will normally inform the police as to what conditions are appropriate and reasonable. Therefore, the police will be required to use their discretion in a reasonable manner. In addition, Clause 4 (2) of the Bill grants power to the Minister to exempt, subject to conditions, certain public gatherings or public processions from conditions.

16. Honourable Speaker, some Honourable Members felt that the penalties provided for in case of breach of the provisions of this part of the law are too high. Clause 3(8) provides a fine of N\$ 5 000 or imprisonment for a period not exceeding one year. As a compromise, the fine part can be reduced to N\$ 2000 from the current N\$4000 that is provided for under Section 2(b) of the current law, namely, the Public Gathering Proclamation, AG 23 of 1989. Honourable Members are hereby informed that when it comes to imprisonment, section 2(b) of the 1989 Proclamation provides for imprisonment for a period not exceeding two years. This has been cut by half to one year maximum imprisonment of the Bill. Therefore, I do not propose any change to the part which refers to imprisonment.
17. Some Honourable Members have some difficulties in holding consultative meetings with the police where this is deemed desirable.

I am very surprised by this because in certain situations, including in this august House, certain situations require consultation in order to resolve critical issues of national importance. Honourable Speaker, I can state here with utmost confidence that consultations in a situation where citizens want to stage a public demonstration or a public procession is vital for the sake of finding a solution. This has worked very well in the past and in our democratic culture, reaching out to one another is extremely important. I therefore implore Honourable Members who have difficulties with this approach to reconsider their position.

18. Under clause 5(12) of the Bill as a compromise, I propose to reduce the penalty provided therein from N\$5000 to N\$ 2000. I hope that this will satisfy the Honourable Members as we aim to balance the right of our citizens to stage a public demonstration or public procession with a need to maintain law and order.

I confirm that this is a difficult balance but as they say, “**where there is a will there is a way**”. I believe that this compromise will provide a way.

19. Honourable Speaker, I have also considered the views expressed by some Honourable Members regarding the penalties provided for under Clause 6(8) of the Bill. As a compromise, I am prepared to reduce the fine from N\$ 5000 to N\$ 2000 and leave the term of imprisonment for a period not exceeding one year. I further propose that Clause 6(4)(a) of the Bill be deleted in order to remove the power of the police from prohibiting public demonstration or public procession. The situation on the ground will determine, having regard to the general powers of the Police under the Police Act of 1990, whether or not such a public demonstration or public procession should continue or not. It is further proposed that the fine provided under Clause 6(8) of the Bill be reduced from N\$ 5000 to N\$ 2000 and leave the term of imprisonment for a period not exceeding one year.

20. Honourable Speaker, another topical area during the debate was the issue of restricted areas as contained in Clause 12 of the Bill. Currently, Section 2(1) of the Demonstration in or near Court Buildings Prohibition Act of 1982,(Act No. 71 of 1982) prohibits any demonstration within a radius of less than 500 meters from a Court building excluding Saturdays, Sundays and Public Holidays. I take note of the views of the Honourable Members who have difficulties with the issue of restricted areas. Restricted areas under the Bill are covered under Clause 1(a) and (b) as well as Clause 12 of the Bill. There are good reasons why these provisions were included. I am sure all of us have witnessed ugly incidences elsewhere where national buildings are set on fire.
21. I take note of the argument that in order to have an impact, sometimes it is necessary to demonstrate as near to the building as necessary.

However, in most cases, the object of the public demonstration or public procession is to hand over a petition which contains issues which require a response from relevant authorities not so much about the proximity to a building. I therefore propose that due to the strong views expressed by some Honourable Members, the Clause should be deleted and the subject matter will be governed by various laws pertaining to such institutions such as the Courts, Military buildings and other associated security institutions, airports, embassies and high commissions and well as international organisations. Therefore, the police and those who take part in the public demonstration or public processions should be made aware of such restriction and the police will apply the law accordingly.

22. Honourable Speaker, another area which attracted debate among some Honourable Members is the issue of liability for riot damage as contained under Clause 15 of the Bill.

For the sake of progress, this Clause will be rephrased to refer to the Criminal Procedure Act of 1977. The Act grants a discretion during the criminal trial to the presiding officer to award compensation to the victim. This will be an added route to be exercised by the victim in addition to the choice of taking civil action although this option has considerable financial implications to the victim. Therefore, adjustment will be effected accordingly.

23. My dear Honourable Dienda, the word weapon is defined under Clause 1 of the Bill.

24. Honourable Speaker, allow me once again to take this opportunity to thank all the Honourable Members who took part in the debate on this Bill. I believe that with the amendments to be introduced, we will move forward as a nation to further mature our cherished democracy.

I thank you!