

TALKING POINTS BY SISA NAMANDJE AT THE OCCASION OF THE LAUNCH OF HIS BOOK *ADMINISTRATIVE LAW GUIDE FOR POLITICAL LEADERS ON 13 APRIL 2024*

On 27 November 2024, the socio-political will of Namibians as a collective largely organised by political parties shall again, as done before, be transformed into a representative government which is the government of the people, by the people and for the people. This happens, in Namibia, peacefully so, every five years. This had enabled Namibians to transform the country into a respected global citizen.

The electoral process to take place in November will certainly cause some Namibian men and women to assume or retain public office either as members of the National Assembly or the Executive.

But those who aspire to assume or retain public office particularly in the two branches of the State – the Legislature and the Executive – will be unable to competently and effectively carry out the constitutional and statutory mandate they have on behalf of the people of Namibia, if they are found to be wanting in key areas of public governance.

Unfortunately in many cases people aspiring to take up public service positions are often found to lack essential knowledge of the values, aspirations and ethos repeatedly echoed throughout the Constitution of Namibia. This problem is not necessarily caused by lack of formal education. Not necessarily. It is something else. It is mostly caused by the fact that political parties across the political spectrum, in most cases, fail to socialise their aspiring leaders sufficiently into the norms and values of democratic governance so as to enable them when assuming public office to tangibly contribute to and strengthen the political stability of the country.

Justice Kate O'Regan who served in the South African Constitutional Court from 1994 to 2019, speaking of the levels at which political parties, had this to say:

At organisational level within the party itself (again when operating optimally), a political party recruits, selects and trains potential political leaders so “socialising them into the norms and values of democratic governance and thereby contributing to political stability; and the party analyses policy choices and determines an appropriate electoral platform.

Within the broader population, both at election time and at other times, political parties mobilise members of the public to participate in elections and other political processes, educate the broader public about democratic processes and these values that underpin them and articulate and explain the policy choices that are at issue.

Within government, political parties seek to implement their identified policy choices, and to ensure that the administration of government works. Because, as classically understood, the electorate assesses a governing party on the performance of government, the party normally has a direct interest in ensuring that government works efficiently in implementing its policy choices, but also in carrying out the tasks of government that may be outside the areas of electoral competition, but nevertheless basic for a stable and successful state.”

The Preamble of the Namibian Constitution speaks of the determination with which the people of Namibia adopted their Constitution - which Constitution expresses for the present and future generations the resolve not only to cherish but to protect the gains of our long struggle.

The Republic of Namibia as a sovereign State is foundationally based on democracy, the rule of law and justice for all. Those who aspire to be political leaders must realise that our Constitution stands as a bridge

between the past and the future. The past represents a legacy of deeply divided society characterised by hunger, strife, conflict, untold suffering and injustice. Thousands of Namibians died at the hands of brutal foreign occupiers. Some Namibians bear the scars of this legacy to this date. They have not been able to meaningfully undertake economic activity for their own wellbeing because of the effects of the past injustices. They look at executive and legislative to pull out a robust and firm social economic agenda for public good.

On the other hand, the future is founded on the recognition of various fundamental rights and freedoms and the strengthening of our democratic project. It represents a future in which political leaders must possess mental attitudes that abhor vengeance and who do not practice or promote retaliation but reparation, and who do not support and propagate victimisation but peace-making.

Competent political leaders should have enough skills, understanding and ability to recognise and protect every one's status as a human being who is entitled to unconditional respect, dignity, value and acceptance from other members of the community. A competent political leader (in a democracy) is therefore one that fully understands constitutionalism, respects of the rule of law and who understands procedural and substantive requirements of an effective and efficient public office in a democratic country.

Our constitutional dispensation thus demands that a political leader aspiring to assume public office must possess sufficient skills on various principles of public law administration. If not – he/she must be far from public office – very far.

A few are: A political leader must know that in a constitutional democracy public power can only be exercised if authorised by law and in a

manner prescribed by law. Our Supreme Court in an election case has once stated:¹

“[23] The rule of law is one of the foundational principles of our State. One of the incidents that follows logically and naturally from this principle is the doctrine of legality. In our country, under a Constitution as its 'Supreme Law', it demands that the exercise of any public power should be authorised by law — either by the Constitution itself or by any other law recognized by or made under the Constitution. 'The exercise of public power is only legitimate where lawful.' If public functionaries purport to exercise powers or perform functions outside the parameters of their legal authority, they, in effect, usurp powers of State constitutionally entrusted to legislative authorities and other public functionaries. The doctrine, as a means to determine the legality of administrative conduct, is therefore fundamental in controlling — and where necessary, in constraining — the exercise of public powers and functions in our constitutional democracy.

A few other substantive and procedural requirements for the exercise of public power are that the decision-making must be:

- (1) rational,
- (2) fair and
- (3) reasonable.

Power should not be exercised for ulterior purpose. Laws and other administrative stipulations must be clear and unambiguous to enable citizens to know what is prohibited and what is not prohibited. In the South African Constitutional Court, speaking on the relationships between law on

¹ RDP v ECN 2010 (2) NR 487; para. 23.

one hand and individual and public officials on the other hand in *Lötter N.O. and Others v Minister of Water and Sanitation*² stated that:

“[54] The full bench's approach was erroneous. It asked itself the wrong question and appears to have conflated the way in which the law regulates the conduct of public bodies, on the one hand, and private individuals, on the other. The true distinction was drawn thus by Laws J in R v Somerset County Council, ex parte Fewings and Others:

'Public bodies and private persons are both subject to the rule of law; nothing could be more elementary. But the principles which govern their relationships with the law are wholly different. For private persons, the rule is that you may do anything you choose which the law does not prohibit. It means that the freedoms of private citizens are not conditional upon some distinct and affirmative justification for which he must burrow in the law books. Such a notion would be anathema to our English legal traditions. But for public bodies the rule is opposite, and so of another character altogether. It is that any action to be taken must be justified by positive law.'”

We have moved from a past characterised by lethargic and discriminatory governance system which was arbitrary and unequal in its application of the law. We are now concerned with a present and a future – (in a constitutional State) - where State action must be such that it is capable of being analysed and justified rationally. The idea of the constitutional State presupposes a system whose operation can be rationally tested against or in terms of the law. Arbitrariness, by its very nature, is at odds with the very concept of constitutional order.

² 2022 (1) SA 392 (SCA); para. 54.

The *Administrative Law Guide for Political Leaders* is thus a basic guide aimed at socialising aspiring political leaders into the necessary ethos of public service in both the Legislature or the Executive.

Time has therefore come that those who aspire to be representative of the people of Namibia must socialise themselves into foundational constitutional values in order to enable them to represent us in a manner that accords to the constitutional vision apparent from the Preamble to the Schedules of our Constitution.