



**STATEMENT BY THE PRESIDENT OF THE INDEPENDENT PATRIOTS FOR CHANGE (IPC) – PANDULENI F. B. ITULA (DR).**

**TITLE: AN ANALYSIS OF THE LEGAL STATUS OF THE “LEADER OF THE OFFICIAL OPPOSITION”**

**APRIL 2025**

## **INTRODUCTION AND BACKGROUND**

1. The purpose of this statement is to address and critically examine the office of the “Leader of the Official Opposition” in Namibia, a position which has been treated as if it were an official public office despite having no clear legal foundation. This analysis is rooted in first principles of law – beginning with the Namibian Constitution, and extending to relevant statutes and proclamations. It will demonstrate that the Namibian Constitution does not establish or envision any office titled “Leader of the Official Opposition.” Furthermore, it will show how subsequent attempts to attach benefits and status to this title through statutes and presidential proclamations have created a position that is administrative and symbolic rather than lawful. In short, the “Leader of the Official Opposition” is an office that exists solely by executive decree, lacking formal parliamentary sanction or constitutional basis, and is therefore of dubious legality – a “shadow with a salary” rather than a constitutionally recognized institution.

## **CONTEXT**

2. In 2017, the President of the Republic (acting on advice from the Public Office-Bearers Commission) purported to “establish” the Office of the Leader of the Official Opposition by proclamation. This was followed by further proclamations in 2021 (published in Government Gazette No. 7476) that set out various remuneration and benefits for this so-called office. These actions were justified by invoking comparative Commonwealth practices and by referencing Article 32(7) of the Constitution – a provision allowing the President to constitute offices in the public service under certain conditions [OBJ]. However, as will be argued, this approach bypassed the normal legislative process and stretches constitutional powers beyond their intended scope. The result is an office that carries trappings of officialdom (office space, staff, vehicles, and salary perks) but no lawful authority or definition in Namibian governance structures.

3. This statement is structured to first examine the constitutional framework, then the role (and limits) of the Public Office-Bearers (Remuneration and Benefits) Commission Act, 2005, followed by an analysis of the 2017 and 2021 presidential proclamations. It concludes with a critique of the constitutional implications and presents clear recommendations to address this anomaly. The tone is formal and rooted in legal reasoning, combined with a sharp political critique of the manner in which this office was created and maintained.

### **CONSTITUTIONAL FRAMEWORK: ABSENCE OF A LEGAL BASIS**

4. **No Provision in the Constitution:** The Namibian Constitution is the supreme law and the point of departure for defining all public offices in the Republic. Nowhere in the Constitution is there any provision for an office titled “Leader of the Official Opposition.” The Constitution meticulously outlines the structure of Government and State, establishing the offices of the President, Prime Minister, Ministers and their Deputies, the Speaker of the National Assembly, the Chairperson of the National Council, the judiciary officers, and other constitutional commissions and posts. It does not create or even mention a position for the head of the opposition in Parliament. In a constitutional democracy governed by the rule of law, if an office is not provided for in the supreme law or an Act of Parliament, that office has no legal existence.
5. By contrast, when Namibia has deemed it necessary to add new high offices or positions to the governance framework, it has done so by constitutional amendment or by enacting legislation. For example, the position of Vice-President was created via constitutional amendment, ensuring that the office became part of the constitutional architecture with a clear mandate and legal recognition. No such amendment or law was ever passed to establish a “Leader of the Official Opposition.” The absence of any constitutional amendment or explicit Act of Parliament

for this role is a glaring omission that cannot be cured by executive action alone.

- 6. Improper Use of Article 32(7):** It has been argued by the Executive that Article 32(7) of the Constitution provided a pathway to “constitute” the office of Leader of the Official Opposition. Article 32(7) allows the President, “in consultation with the Cabinet and on the recommendation of the Public Service Commission,” to constitute any office in the public service of Namibia not otherwise provided for by law, appoint a person to such office, and determine the terms and conditions of service. This provision is generally understood to relate to administrative offices in the public service (civil service) — for instance, creating a new department or a special public service position that is not established by existing law. It was never intended as a back-door method to create new high-level political offices or alter the structure of the legislature. The phrase “subject to the provisions of this Constitution and of any other law” in Article 32(7) is critical <sup>[OBJ]</sup>. It means the President’s power to create an office cannot be exercised in a way that contradicts the Constitution or statutes.
- 7. Invoking Article 32(7) to create a political office in the Legislature –** effectively conferring a quasi-executive status on the head of the opposition – is a serious stretch of that provision. The Leader of the Opposition is not a public service employee; he or she is an elected Member of Parliament, typically the head of the largest opposition party. Such a role is part of the legislative and political process, not part of the civil service that Article 32(7) targets. The attempt to squeeze this position under the label of “public service” is constitutionally questionable. It blurs the separation of powers by allowing the Executive to unilaterally fashion a role in the Legislative branch. It is telling that no other law “of application in this matter” provided for such an office, prompting the use of Article 32(7) in the first place – a clear indicator that this move filled a legal void with a mere presidential proclamation.

8. **No Parliamentary Approval or Oversight:** Notably, Article 32(8) of the Constitution requires that any appointment or action taken under Article 32(7) must be announced by Proclamation in the Gazette. Indeed, Proclamation No. 4 of 10 March 2017 was issued in the Government Gazette for this purpose. However, beyond gazetting, Parliament was not actively involved in establishing this office. Article 32(9) does provide a mechanism for the National Assembly to review or reverse actions taken by the President under Article 32 (by a two-thirds majority), but no such resolution was ever sought or passed regarding this proclamation. In effect, the Office of the Leader of the Official Opposition came into being solely by presidential fiat, without a direct vote or debate in the National Assembly on its creation. This lack of parliamentary sanction means the office lacks the democratic legitimacy and legality that comes from an Act of Parliament. It remains an anomaly: a position with public funding and perks that owes its existence to a discretionary presidential power rather than to the sovereign will of the people expressed through legislation.
9. In summary, from a constitutional standpoint, the Leader of the Official Opposition is a constitutional orphan – it is not found in the letter of the Constitution, and its attempted adoption via Article 32(7) is at best an abuse of an administrative power and at worst ultra vires (beyond the President’s legitimate authority). This sets the stage for examining the subordinate instruments and laws that have been cited in relation to this office, none of which can substitute for the absent constitutional foundation. In addition, they have no fundamental legal basis to so create such an office.

## **THE PUBLIC OFFICE-BEARERS (REMUNERATION AND BENEFITS) COMMISSION ACT, 2005 – SCOPE AND LIMITATIONS**

10. To understand how benefits came to be attached to the so-called shadow Office of the Opposition Leader, we turn to the Public Office-

Bearers (Remuneration and Benefits) Commission Act, 2005 (Act No. 3 of 2005) (hereafter “Public Office-Bearers Act” or “POB Act”). This Act establishes a Commission tasked with making recommendations on the remuneration and benefits of public office-bearers. Crucially, the Act does not create any public offices by itself – it merely provides a mechanism to determine and review the salaries and benefits of persons holding offices that are already established by the Constitution or other laws (for example, the President, Vice-President, Prime Minister, Ministers, MPs, Judges, regional governors, etc.). In other words, the Act’s function is derivative: it attaches remuneration and perks to pre-existing offices defined elsewhere in law.

#### **COMMISSION’S MANDATE:**

11. Under the POB Act, the Commission reviews and recommends appropriate pay and perks for various grades of public office-bearers. These recommendations are then considered by the President, who, under Section 8 of the Act, has the power to determine the remuneration and benefits for such offices by proclamation, after considering the Commission’s advice. Nothing in the Act empowers the Commission or the President to invent new political or constitutional offices. The wording of Section 8 and related provisions presupposes that the offices it deals with have a legal existence independent of the Act. The Act uses terms like “public office-bearer” in the ordinary sense – meaning someone holding an office created by the Constitution or statute (or in the case of regional/local authorities, by relevant legislation).

#### **MISAPPLICATION TO A NON-EXISTENT OFFICE:**

12. In the case of the “Leader of the Official Opposition,” the Public Office-Bearers Act was effectively used in reverse. Instead of the office existing first and the Act simply assigning a pay grade to it, the executive attempted to use the Act’s framework to give substance to an office that

had no prior legal substance. The Commission (reportedly in its Second Review Report, per statements made in Parliament) recommended providing certain “tools of trade” and benefits to the Leader of the Opposition, citing “Commonwealth practice” and democratic norms. The President then “approved the report and the resultant recommendations” and proceeded to proclaim benefits for the opposition leader position . This sequence creates the false impression of a lawful office: because the POB Act was invoked and a proclamation was issued under its authority, it appears as if the Leader of the Opposition is just another public office-bearer being catered to by existing law. In reality, this use of the Act is predicated on the prior executive creation of that office by the 2017 Proclamation, without which the Act would have no object to operate on.

13. It is telling that in the Government Gazette No. 7476 of 4 March 2021, which contains the relevant proclamations, the Leader of the Official Opposition is listed among other public offices solely by virtue of presidential designation. In an Annexure of designated public office-bearers (under regulations for transport benefits), the “Leader of Official Opposition” is inserted as a position of grade POB 05 – notably the same grade as Deputy Ministers and Regional Governors, for instance. In other jurisdictions, the position is not lower than that of a Minister, whereas in other’s still, it is not lower than the executive head (Fiji, New Zealand and the UK). All other offices in that list (Deputy Prime Minister, Speaker of the National Assembly, Ministers, etc.) are creatures of the Constitution or Acts of Parliament. The Leader of the Opposition stands out as the only position on that list that has no independent legal footing, appearing there only because someone decided to treat it as if it were an office. The Act’s machinery was extended to cover a title that, strictly speaking, lay outside the scope of any law.
14. The Public Office-Bearers Commission and Act were essentially used to confer salary and benefits on a political figurehead, but this does not

transform that figurehead into a legitimate office-bearer. The Act attaches benefits to offices that exist in law; it does not and cannot create an office out of thin air. The inclusion of the Opposition Leader in remuneration schedules was contingent on the earlier Proclamation “constituting” that office – a circular arrangement that tries to use a remuneration law to validate what is, at its core, an extra-legal position.

15. In summary, the Public Office-Bearers Act was misapplied in this scenario. It was intended to implement the principle of fair compensation for legitimate office-bearers, not to serve as a vehicle for political accommodation or to bypass the absence of a legal mandate. By using the Act to grant benefits to the “Leader of the Official Opposition,” the Executive has attempted to cloak an informal political arrangement in the garb of formal law, without ever addressing the foundational question: by what lawful authority does this office exist? The answer to that question lies in the 2017 and 2021 proclamations, which we address next – and that answer is deeply unsatisfactory from a rule-of-law perspective.

#### **PROCLAMATION NO. 4 OF 2017: EXECUTIVE DECREE IN QUESTION**

16. **Opaque Origins:** Proclamation No. 4 of 10 March 2017 is the instrument by which the President ostensibly established the Office of the Leader of the Official Opposition. This Proclamation was issued pursuant to the authority in Article 32(7) (as discussed above) and was published in the Government Gazette as required by Article 32(8). However, the text of this Proclamation is notably difficult to obtain in the public domain – it was not included in the publicly circulated gazette documents provided for review, raising concerns about transparency. The very fact that one must hunt for the content of a proclamation that creates a new public office is problematic. Public laws and proclamations are supposed to be readily accessible; Proclamation 4 of 2017 is, for all intents and purposes, a secretive foundation for a public expenditure, with its precise terms hidden from scrutiny.



17. **Lack of Parliamentary Endorsement:** From what can be inferred, Proclamation 4 of 2017 likely declared that the position of “Leader of the Official Opposition in the National Assembly” was constituted as an office, and possibly it named the individual (the president of the largest opposition party at the time) as the holder of that office, along with broad terms of appointment. This was done unilaterally by the President, without prior parliamentary debate or specific enabling legislation. There was no Constitutional provision, neither an Act of Parliament establishing such an office to which this proclamation was giving effect; rather, the proclamation itself was the source. This means the office was created by executive decree alone, which is a constitutional violation of the limitations of Presidential powers. A power is only validly exercised if authorized lawfully. Parliamentary and constitutional supremacy prohibits and executive coercion.
18. No evidence has emerged that Parliament formally approved or ratified this proclamation after the fact. Article 32(9) provides that the National Assembly could by a two-thirds majority vote to “review, reverse or correct” actions taken under Article 32. Yet, the creation of the opposition leader’s office was never brought for such a vote – unsurprisingly, since the beneficiary of the action was the opposition leader himself and the opposition had no incentive to challenge a decision granting their leader more resources, while the ruling party likely saw it as a gesture to enhance democratic optics. The result is that Proclamation 4 of 2017 remained an executive act not subjected to legislative oversight or approval, apart from the passive provision of Article 32(9) which was not invoked. In a Westminster-style system, if such an office were desired, typically a statute would be passed (as has been done in other jurisdictions) to formally recognize the Leader of the Opposition and define the role and benefits. In Namibia, this step was skipped.

## CONSTITUTIONAL AND LEGAL DOUBTS

19. The legality of Proclamation 4 of 2017 is highly dubious. The President's power under Article 32(7) was arguably misused to trespass into legislative territory. The Public Service Commission's recommendation was obtained (as per the Constitution's requirement for constituting an office), but again, the PSC's remit is the civil service – it has no known mandate to opine on positions in the political governance arena. Therefore, the process followed was irregular: a civil service mechanism was used to justify a political office. This raises the question of motive – why was this path chosen instead of the straightforward route of drafting a bill and engaging the legislature in creating the office? The likely answer is expediency: it was faster and easier to do it by decree. However, ease of action does not equal legality or propriety. The executive action simply violate the principle of rule of law.
  
20. In the absence of the actual text of Proclamation 4 of 2017 in the public eye, we rely on how it was referenced in later documents. The 2021 Government Gazette explicitly refers to “the Leader of Official Opposition in the National Assembly referred to in Proclamation No. 4 of 10 March 2017”. The phrasing “referred to in” indicates that the 2017 proclamation is the only anchor point giving that title any official standing. If that proclamation were shown to be legally flawed or if it were to be repealed or invalidated the entire edifice of the Opposition Leader's official status would collapse. There is no statute or constitutional clause to fall back on. Thus, the 2017 proclamation is a solitary thread from which this “office” hangs, and that thread is exceedingly thin from a legal standpoint.
  
21. **Symbolic, Not Legal:** In truth, what Proclamation 4 of 2017 achieved was largely symbolic and administrative. It designated an individual (the opposition party leader) as holding a title for protocol and benefit purposes. It did not confer any defined powers, duties, or constitutional role beyond what that individual already had as a Member of Parliament.

The Leader of the Opposition did not suddenly acquire a constitutional function (for example, there is no requirement to consult the Leader of Opposition on state appointments in our Constitution, unlike some other countries; no formal role in legislative proceedings beyond that of any other MP or party leader). Therefore, the proclamation essentially created an honorific with perks. It was an executive recognition of a position that politically existed (by convention, the main opposition leader) but legally remained unrecognized. This is the very definition of a symbolic move – it appears to grant status, but in the hierarchy of law, it sits on shaky ground (note the provisions of rule 9 that seeks the superiority of a non-existent statutory provision).

22. **In summary**, Proclamation 4 of 2017 stands as a case of executive overreach cloaked as administrative routine. It underscores the central argument: the office of Leader of the Official Opposition has no solid legal foundation. It was willed into existence by one branch of government without it being firmly anchored in any supreme law or an act of the legislature. It violates the principle of constitutional and parliamentary supremacy. This situation was compounded in 2021 when further proclamations built upon the 2017 decree; those are addressed next.

### **PROCLAMATIONS NO. 12 AND 13 OF 2021 (GAZETTE 7476): ADMINISTRATIVE CODIFICATION OF BENEFITS**

23. In March 2021, the Government Gazette No. 7476 published two proclamations by the President (among other contents) that pertain to the Leader of the Official Opposition.

These are:

- Proclamation No. 12 of 4 March 2021: which issued Regulations (specifically, “Regulations Relating to Transport Benefits for Public

Office-Bearers”), and included the Leader of the Official Opposition in its list of entitled office-bearers.

- Proclamation No. 13 of 2021: titled “Determination of Additional Benefits for Leader of Official Opposition: Public Office-Bearers (Remuneration and Benefits) Commission Act, 2005.”. This proclamation, made under Section 8 of the POB Act, conferred specific additional benefits on the person holding the title of Leader of the Official Opposition.

24. **Inclusion in Benefits Schedule:** The Regulations under Proc. 12 of 2021 essentially treat the Leader of the Official Opposition as one of many “designated public office-bearers” (the designating power or authority is absent) for purposes of state benefits (in this case, transport – e.g., official vehicles, fuel allowances, etc.). In the Annexure of those regulations, “Leader of Official Opposition” appears as a Grade POB 05 office alongside Deputy Ministers, Vice-Chairperson of the National Council, Regional Governors, etc. This was an administrative step that normalized the presence of this title within government benefit schemes, as if it were an established part of the state’s structure. It is important to stress that listing a title in a regulation does not create the legal authority for that title; it assumes the title is valid and then allocates resources to it. The regulation’s drafters, on instruction from the Executive, simply took the 2017 proclamation’s outcome (that there is an office called Leader of the Opposition) as a given and slotted it into the benefits framework. This act of inclusion is purely derivative of the 2017 proclamation. It carries zero independent legal weight to justify the office’s existence.

25. **Specific Benefits Awarded:** Proclamation 13 of 2021 went further to enumerate additional benefits exclusively for the Leader of the Official Opposition, under the authority of the POB Act. The President, citing Section 8 of Act 3 of 2005 and the recommendations of the POB Commission, determined that the Leader of the Opposition “referred to

in Proclamation No. 4 of 10 March 2017” shall be entitled to certain benefits in addition to the standard remuneration. Among these benefits were: an official office (physical office space) at the National Assembly premises, a personal/administrative assistant of his or her choosing, an official vehicle with driver, and a security aide, as well as other related support. These are substantial perks, equivalent in many ways to what a Deputy Minister or similar office-holder would receive, and go beyond what an ordinary Member of Parliament is afforded.

26. The language of the proclamation is telling. It does not say “hereby create the office of Leader of Opposition and give it benefits” – that creation part had to be assumed from the 2017 proclamation. Instead, it explicitly references the earlier act (“Leader of Official Opposition in the National Assembly referred to in Proclamation No. 4 of 10 March 2017”) as the basis, and then layers benefits on top of that presumed office. This construction underscores how everything hinges on the 2017 executive action. The 2021 proclamations, therefore, are administrative in nature: they deal with remuneration and logistics (offices, car, staff). They do not and cannot address the legitimacy of the office itself, let alone remuneration and benefits paid from the National assembly vote without the authority therefrom.

#### **NO LEGISLATIVE RATIFICATION:**

27. Just like the 2017 proclamation, these 2021 proclamations were not followed by any legislative Act to confirm or establish the office. They were tabled as a *fait accompli* – regulations and benefits schedules are typically not debated clause by clause in Parliament like a bill would be. At most, they might be noted by a parliamentary standing committee, if at all, or simply gazetted by presidential authority under the existing Act’s delegation. Indeed, the Minister in the Presidency, in informing the National Assembly of these developments, framed it as an implementation of recommendations “in line with Article 32(7) of the

Constitution” and the Public Office-Bearers Commission’s report, rather than as a matter requiring a new law. In essence, Parliament was presented with a complete executive action to administer, not asked for its consent.

## **PURELY HONORARY ROLE IN LAW**

28. It bears repeating that nothing in Proclamations 12 or 13 of 2021 (nor in the 2005 Act under which they were made) assigns any official duties or powers to the Leader of the Opposition. The proclamations deal exclusively with benefits – they are about what the office-holder gets, not what or who the office-holder is or does. This cements the notion that the office is an honorific with material benefits attached, rather than a functional part of governance. It is a status bestowed by the Executive. One could remove all these benefits tomorrow, and it would make no difference to how Namibia is governed – because the Leader of Opposition has no constitutional or statutory responsibilities beyond being an MP and party leader. The leader elected at its congress or convention. Conversely, if one tried to exercise any authority by virtue of being “Leader of the Opposition”, there is no legal text that grants such authority. The office is thus entirely one-sided: it receives, but it does not empower.

29. In summary, the 2021 proclamations in Gazette 7476 show the culmination of the process that started in 2017: the Executive, having unilaterally declared an office, went on to unilaterally endow it with taxpayer-funded benefits. This was done through subordinate legislation (regulations and determinations under an Act) rather than through primary legislation. It was an administrative codification of a political arrangement. While these steps may have followed the formalities of the procedures (consulting the POB Commission, PSC, Cabinet, gazetting, etc.), they collectively amount to an executive shortcut around the

Legislature. The result is a position that looks official on paper yet lacks lawful substance.

## **CONSTITUTIONAL AND POLITICAL IMPLICATIONS**

30. The creation of the “Leader of the Official Opposition” office by executive decree has significant implications, both legally and politically:

- **Undermining the Rule of Law:** Namibia prides itself on a foundation of constitutionalism and rule of law since Independence. By sidestepping the normal law-making process and inventing an office through a presidential proclamation, the Executive has set a concerning precedent. It suggests that important changes to government structure can be made without consulting the people’s representatives in Parliament, which is antithetical to the rule of law. A constitutional democracy demands that new institutions or offices be grounded in law, not personal discretion. This action sits uncomfortably with the principle that all governmental power must stem from the law (the principle of legality).
- **Separation of Powers Concerns:** The Legislature’s domain includes creating offices and defining roles through laws; the Executive’s domain is to implement laws. Here, the Executive effectively legislated by creating a new role in the legislative sphere. This blurs the separation of powers. The Legislature was not given the opportunity to deliberate on whether the opposition leader (which denotes the leader of the second largest party emerging from an electoral process as the leader of the largest political party) should have official status and resources, which could have involved debate on the role of the opposition in a democracy, checks and balances etc. Instead, the President, via Article 32(7), dealt with it unilaterally. This concentration of power contradicts the spirit of inclusive governance.

- **Accountability and Transparency:** Because this office was created and operationalized without a specific Act, there is no clear statutory delineation of its purpose or limits. This can lead to accountability issues. For instance, public funds are now being expended on the Leader of the Opposition's salary top-ups, vehicles, staff, etc., in the absence of a law explicitly authorizing such expenditure for such an office. One might well ask: under what vote or budget line are these expenses accounted? Likely they are tucked into the National Assembly's budget or a general "public office-bearers" budget. This murkiness is not ideal for transparency. Parliament never got to scrutinize a "Leader of Opposition Office Budget" through an Appropriation Bill or dedicated debate; it was folded into existing structures. The public too was largely left in the dark about this until media reports surfaced about the "perks" being given [OBJ]. Such opacity can breed mistrust and allegations of backroom deals.
- **Political Co-optation vs. Democratic Support:** Politically, opinions may diverge on whether giving the opposition leader official resources is good or bad. On one hand, it can be argued that supporting the Official Opposition with resources strengthens democracy, as the opposition can do its job of holding government accountable more effectively (this was the Executive's ostensible rationale, citing "building strong democratic architecture"). On the other hand, doing so via an executive privilege rather than a legal entitlement can be seen as a form of co-optation or patronage. It puts the opposition leader in a somewhat dependent position: their perks come at the discretion of the President. This could compromise the independence of the opposition or at least create a perception thereof. A truly institutionalized Leader of Opposition would have their office protected by law, not subject to the grace and favor of the Head of State. By making it an executive grant, it almost has the character of a political favor. This dynamic can blunt the sharpness of opposition critique indeed, the very need for this statement underscores that other voices (perhaps smaller opposition parties or principled members of the ruling party) are questioning the legitimacy of what the main opposition leader accepted.



- **Constitutional Dubiousness (“Shadow with a Salary”)**: Ultimately, the office of Leader of the Official Opposition as it stands now is, as earlier phrased, a “shadow with a salary.” It is a shadow because it lacks corporeal form in the law it’s not defined in the Constitution or a statute, making it effectively a nullity in a strict legal sense. Yet it carries a salary (and other benefits) drawn from public coffers. This situation is constitutionally dubious because it amounts to spending public money on a position that legally does not exist or, put differently, exists only because the President decided it should. If challenged in a court of law, serious questions would arise: Can an executive proclamation create an “office” that the State is then obliged to fund? Does this not circumvent Article 117 (which establishes the Public Service Commission and implicitly the framework for public offices) or even Article 26/27 if one considered the need for parliamentary approval for creating significant public obligations? While the nuances could be debated, the safe observation is that the arrangement sits at the edges of constitutional permission and possibly beyond. It survives only because it has not been formally contested or scrutinized in a judicial or full parliamentary process.

31. In conclusion of this section, the impact of maintaining an office with no legal foundation is corrosive to our constitutional order. It conveys that form can trump substance that one can hold a lofty title, draw taxpayers’ money, yet be standing on thin air legally. This is not a precedent Namibia should entrench. It is imperative to address this anomaly head on, both to uphold the sanctity of our legal framework and to ensure clarity and fairness in how we support the institutions of democracy.

## **32. CONCLUSIONS AND RECOMMENDATIONS**

33. After careful analysis, it is evident that the Office of the “Leader of the Official Opposition” in Namibia lacks any proper legal foundation. It is a creature of expedience, created by an executive proclamation rather than by law, and propped up through administrative instruments. The Namibian Constitution does not recognize it, and the statutes invoked do not legally establish it. In its current form, this office is constitutionally suspect and politically problematic. It exists as a de facto arrangement a political accommodation with benefits but not a de jure institution of state. In sum, it remains a “shadow with a salary,” devoid of formal legitimacy.

34. This has been a formal statement combining legal analysis with political critique, and it leads to the following clear recommendations for corrective action:

- **Enact Proper Legal Foundations or Cease the Practice:** If it is deemed desirable for Namibia’s democracy to have an official Leader of the Opposition with a defined role and state support, then it must be done lawfully. This means introducing a constitutional amendment or passing an Act of Parliament to formally create that office and enumerate its functions, privileges, and term. Only through such legislative action can the office gain the legitimacy and clarity it currently lacks. Conversely, until such a law is in place, the practice of treating the opposition leader as if it were a formal office should be halted. In principle, Namibia should either legalize this office properly or abandon the pretense of it altogether. The democratic correct course is to go through the people’s representatives. Therefore, a call is made for Parliament to consider a constitutional amendment or enabling legislation to lawfully establish the Office of the Leader of the Opposition, should the nation deem it necessary.
- **Suspend and Review Benefits Granted Under the Disputed Designation:** In the interim, given the doubtful legality of the current

arrangement, there should be a suspension or thorough review of all benefits and remuneration afforded to the so-called Leader of the Official Opposition under this disputed designation. The Public Office-Bearers Commission and relevant government agencies must revisit their frameworks to ensure that no benefits are being conferred ultra vires. If an office is not legally constituted, public funds should not be allocated to it without explicit legislative approval. This review should be carried out with urgency and transparency, ideally by the National Assembly's Public Accounts or Standing Orders committees, to determine the proper course of action regarding salaries, allowances, vehicles, staff, and other resources currently allocated. No further benefits or expansions should be given under this title until the legal status is resolved.

- **Launch a Public Inquiry into the 2017 Proclamation and its Motivations:** There should be a public inquiry or at least a detailed parliamentary probe into the legality and motivations behind Proclamation No. 4 of 2017. This inquiry would serve multiple purposes.
- **First**, it would bring to light the exact content of that proclamation (which has been worryingly elusive), allowing legal experts and the public to scrutinize how the President framed the creation of this office.
- **Second**, it would examine why proper procedures were not followed was there any legal advice given at the time, were any concerns raised by the Attorney-General or others about using Article 32(7) in this novel way, and why Parliament was not engaged on the matter.
- **Third**, it would explore the motivation: Was this done purely to strengthen democracy (as officially claimed), or were there political bargains or understandings at play (for instance, to placate the opposition or create a certain image)? Unpacking the motivation is important for accountability; if it was in good faith (all be it misguided) effort to align with Commonwealth norms, in the mother of parliaments, this office is on par with the executive head of government-see also rule 8 of the standing rules, that will emerge and if it was a politically

convenient arrangement devoid of legal rigor, that too should be laid bare. Such an inquiry could be conducted by a parliamentary committee or an independent commission, and its findings should be made public to ensure full transparency. Ultimately, this process would help prevent similar occurrences in the future by clarifying the boundaries of constitutional power and the importance of adhering to them.

- **Restore Constitutional Order and Clarity:** As a broader recommendation, the Government and Parliament should reaffirm the principle that all public offices and expenditures must have a firm basis in law. Whether through a resolution of Parliament or a policy directive, it should be made clear that ad hoc creation of offices by executive decree is not the norm in Namibia's governance. If certain roles (like that of the opposition leader) are considered crucial for our democracy, they should be constitutionally and statutorily recognized, not left in a gray zone. Additionally, if the review mentioned above finds that the use of Article 32(7) was inappropriate in this context, Parliament might consider legislating clearer limits or definitions for that article to prevent potential abuse (for example, explicitly excluding the creation of political offices from the ambit of "public service" offices that the President can establish unilaterally). This will ensure future Presidents are guided and restrained by more explicit language, preserving the separation of powers.

35. **In closing**, the official recognition of a Leader of the Opposition is not inherently a bad idea many democracies do it to affirm the role of opposition in governance. However, how it is done matters profoundly. In Namibia's case, it was done incorrectly, bypassing the very democratic principles it purports to support. It also ignores the disjunctive provisions of **Article 17** of the Namibian Constitution and the absence of clarity in the **Electoral Act, Act 5 of 2014**. To uphold the sanctity of our Constitution and the credibility of our democratic institutions, we must rectify this. Let us either ground the Leader of the Opposition's office in law or cease according it an official status. What we cannot do is

continue with a constitutional charade an office that looks real in government circulars but vanishes when one opens the Constitution.

36. This statement and its recommendations are submitted for consideration by the Parliament of Namibia, for communication to the wider public through the media, and for guiding internal strategy within political parties committed to the rule of law. It is a call to action to ensure that Namibia remains a nation of laws, not executive whims. Let us strengthen our democracy the correct way: through lawful means that honor both the letter and spirit of our Constitution. This is the legal basis why the leader of the IPC, shall not, neither the IPC, seek to violate the constitutional principles of rule of law.

### **37. Sources Cited:**

- *Namibian Constitution (particularly Article 32(7)-(9)).*
- *Public Office-Bearers (Remuneration and Benefits) Commission Act, 2005 (Act No. 3 of 2005) as referenced in Government Gazette No. 7476 (4 March 2021).*
- *Government Gazette No. 7476 (4 March 2021), Proclamation 12 of 2021 (Transport Benefits Regulations) and Proclamation 13 of 2021 (Additional Benefits for Leader of Official Opposition).*
- *New Era, "More perks for Venaani... opposition leader will welcome second-hand car" (18 June 2020) – reporting on the announcement of the Opposition Leader's office and quoting Article 32(7) and officials' statements.*
- *Statements by the Minister in the Presidency (March 2020) on the implementation of Public Office-Bearers Commission recommendations*