

RESPONSE BY THE HON MODVA TO THE QUESTIONS OF HON MIKE KAVEKOTORA ON THE FINANCIAL POSITION OF THE MINISTRY OF DEFENCE: THURSDAY 02 JULY 2020

Honourable Speaker, Honourable Members:

I'm profusely grateful to Hon Kavekatora for choosing to pose this question in parliament and not leaving it to the Parliamentary Standing Committee on Public Accounts. Otherwise we would not have had the opportunity to publicly rebut the aspersions that the Auditor-General is casting on the Namibian Defence Force.

Given the importance of this matter to parliament and the nation at large, I have decided to take no prisoners and shall give a step-by-step account of what led to this state of affairs. I'm doing this for two reasons.

One, I would probably have been brief and to the point had I been convinced that the actions of the A-G and his officials were out of ignorance and naivety on defence matters, but the facts speak of persons that know what they are doing and probably want to tarnish the image of the ministry.

Two, during my budget speech I had informed the House that from next year onwards the budget debate of Defense will be conducted according to international norms. Thus, it will be submitted for discussion to the Standing Committee on Foreign Affairs, Defense and Security and will only come into the House for reading. However, I wouldn't want us to migrate to the new dispensation with a cloud of doubt still hanging over the Defence Force in terms of issues of governance, accountability and transparency.

Honourable Speaker, Honourable Members:

When I was appointed as ED and started to engage with the Office of the Auditor General, I realized that I was up against an institution that isn't used to be questioned or talked back to. Just because they are a watchdog, they feel they are above the law and have powers over everyone and everything.

You often refer to them as toothless dogs. But that is a misnomer. These gentlemen and ladies are Sabre Toothed Tigers that are in the habit of instilling fear in the lives of poor Executive Directors with threats of adverse opinions and subpoena.

Honourable Speaker, Honourable Members:

The decision of the Auditors to link the inability to audit N\$ **506,399,999.01**; under operational equipment, machinery and plant to the restrictions of access to military facilities is a red herring. It is designed to deflect from the real issues for reasons only known to themselves.

AUDIT REPORT ENDING 2017 – QUALIFIED AUDIT OPINION

I started working in the ministry around **September 2017**. That is about the time of the year that the draft audit reports will be sent to the ministry for comments. When I saw the qualified opinion in the draft report, I gathered my staff in order to find out what was wrong and how it could be fixed.

We went through the report and discovered that most of the 18 findings for which we got a qualified opinion were incorrect. Some were incorrect due to erroneous calculations on the part of the auditors and others were incorrect due to the fact that the Management Comments provided by the Ministry were being selectively incorporated into the report and therefore not giving a correct and complete picture of the responses by the Ministry.

In its response to the draft audit report dated **6th April 2018** the Ministry pointed out the discrepancies.

In their feedback dated **30th April 2018** the auditors acknowledged their mistakes and agreed to delete 10 of the 18 items and rewrite six of the comments correctly. **[Exhibit 01: A-G letter dd 30 April 2018]**.

However, the opinion still remained qualified. When the Ministry made further inquiries, it was told that the final report had already been signed and therefore the opinion cannot be changed.

The staff observed that the A-G is in the habit of agreeing with the Ministry and still not effect the changes agreed to. So, in this financial year the Ministry was robbed of an unqualified opinion.

AUDIT REPORT ENDING 2018 – UNQUALIFIED AUDIT OPINION

Honourable Speaker, Honourable Members:

In order to avoid the problems of the previous year, the Ministry decided to start off early in having a firm and persistent engagement with the Auditors.

Two audits were carried out in this financial year: 1. Financial Audit and 2. Compliance Audit and Audit of Performance Information. The reasons for the Compliance Audit and Audit of Performance Information will be elaborated on later.

This year we received an unqualified opinion in both the Financial Audit and Audit of Performance Information. We were supposed to be happy, but for one thing—the sensitivity of the information contained in the Performance Information Audit.

The Compliance Audit was introduced at the initiative of the OPM. The OPM wanted to establish whether the Performance Management System was being fully implemented by the OMAs and that the Performance Agreements were being signed at all levels within the OMAs and not just between the EDs and the Secretary to Cabinet.

From the Ministry's understanding a Compliance Audit meant the A-G was to establish whether each OMA had a Five Year Strategic Plan, an Annual Plan, that Performance Agreements were being signed, that Quarterly Reviews were being conducted and an End of Year Assessment was being done.

Now, my first concern was that the A-G extended this to include an Audit of Performance Information which essentially meant duplicating the functions of the OPM—that is Performance Review. Now the policy states that a Performance Review is supposed to be between the member and his immediate supervisor--there is no role for an external evaluator.

My other concern with the approach of the AG was the confidentiality of the information contained in the Performance Report. Being a contingency organization the report of the NDF will mainly be on its state of readiness. We tried to explain to our colleagues at the Exit Meeting of **11 February 2019** that putting out such information in the public domain is a threat to national security.

On the **13th February 2019** we wrote two separate letters on the two matters to both the A-G and the Secretary to Cabinet. In the letter to the A-G, I requested an audience with him before the final report is released. [**Exhibit 02 & 03: letters to the A-G & SC dd 13 February 2019**].

In a letter dated **20th February 2019** the SC responded that he concurred with the interpretation of the Ministry and will engage the Deputy A-G on the matter. No response was received from the A-G.

In a follow up letter dated **19th March 2019** I again requested an audience with the A-G but there was no response to this either. Instead the D/A-G summoned one of my officials and questioned him on what I wanted to see the A-G about. My request and that of the SC was ignored and the report was released anyway. [**Exhibit 04: letter to the A-G dd 19 March 2019**]

AUDIT REPORT ENDING 2019 – QUALIFIED AUDIT OPINION

Honourable Speaker, Honourable Members:

Having ignored the Ministry for the better part of the year, a Chief Auditor from the office of the A-G wrote us a letter on **30th September 2019** requesting additional information on the fighting capabilities of the fighter jets and other equipment for the 2018/2019 Performance Information Audit. It was at this point that we became concerned and suspicious about the intentions of the Auditors. [**Exhibit 05: letter from A-G dd 30 September 2019**].

In my response dated **04th October 2019** and copied to the Rt Hon PM I refused to provide the additional information requested, because from my training and understanding this amounted to daylight espionage. [**Exhibit 06: letter to A-G dd 04 October 2019**].

It was only when I copied the last letter to the Rt Hon PM that I was able to catch the attention of the A-G. He eventually wrote me a long letter dated **11th October 2019** the content of which, in the main, was meant to intimidate than to inform. However, it did contain one important piece of advice in that according to **Section 25 (3) of the State Finance Act** the Minister of Defence can request for an exemption from the President. [**Exhibit 07: letter from A-G dd 11 October 2019**].

In our response to the A-G dated **31st October 2019** we indicated to him that the Minister will indeed proceed to request the President for exemption as advised. However, while the process for exemption is ongoing, the information requested will be withheld and access to operational bases as opposed to logistics and support bases is withdrawn. [**Exhibit 08: letter to A-G dd 31 October 2019**]

On the **20th November 2019** the Minister of Defence eventually wrote to HE the President requesting for an exemption to the auditing of Performance Information and access to Operational Bases. [**Exhibit 09: letter to HE the President dd 20 November 2019**].

CONCLUSION

Honourable Speaker, Honourable Members:

In summary, until 2017 the Auditor General will perform only one type of audit that is the Financial Audit which they performed without obstruction. In 2018 at the behest of the OPM another audit was introduced that is the Compliance and Performance Information Audit which they equally performed without hindrance. However, we requested the A-G not to release in public the information contained in the 2018 Performance Audit. They ignored our request and published it anyway.

In 2019 when they requested us for information on the Performance Audit, we only furnished them with non-confidential information. When they insisted on having the confidential part of the information, we refused and also barred them from visiting the operational bases.

As you can see the Financial Audit is not featuring anywhere in our correspondences and that's where the NAD 506 million will normally be discussed; what was under discussion was what should happen to the information in the Performance Audit; and we won't compromise on that. We would rather have an adverse opinion than release that information. **Honourable Speaker, Honourable Members:** If the A-G had given me audience, I wouldn't be here wasting your precious time.

Honourable Speaker, Honourable Members:

QUESTION 1:

The State Finance Act doesn't feature anywhere in this matter. It is the Defense Act that has been contravened by the A-G.

Section 54 (1) (a) (b) of the Defence Act [A-G]

No person may publish in any newspaper, magazine, book or pamphlet or by radio, television, or any other means –

- (a) Any information calculated or likely to endanger national security or safety of members of the Defence Force; or*
- (b) Any statement or comment calculated directly or indirectly to convey any information referred in paragraph (a).*

Section 54 (3) (a) (ii); (3) (b) of the Defence Act [ED]

Any person who discloses to any other person any secret or confidential information relating to the defence of Namibia –

- (a) Which came to such person's knowledge –*
 - (ii) by reason of such person's employment in the Public Service or any other office, post, appointment or capacity in the service of the State; or*
- (b) Which was given to such person in confidence by any person who was authorized or whose duty it was to give such information,*

Commits an offense, unless such disclosure was authorized by the Minister or on the Minister's authority or by order of a competent court or it was the duty of such person in the interest of the State to disclose such information to such other person.

Section 26 (1) (2) [Power of the Minister and Officers]

The Minister may, by order issued under the Minister's hand and published in the Gazette or made known in any other manner which the Minister considers sufficient in the circumstances, prohibit or restrict the access of any person or category of

persons to any military camp, barracks, dockyard, installation or other premises or any land or area of water, used for military or defence purposes or which is under military control.

An officer in command of any military camp, barracks, dockyard, installation or other premises or any land or area of water, referred to in subsection (1) may, by order issued under such officer's hand and made known and displayed in such a manner as such officer considers sufficient in the circumstances, temporarily prohibit or restrict the access of any person or category of persons to such camp, barracks, dockyard, installation, premises land or area.

QUESTION 2:

Already explained in the narrative.

QUESTION 3:

Yes, it can be shared.

QUESTION 4:

No response received yet.

However, I would like you to take note that it's within the powers of the Minister to restrict access to military bases. However, he chose to consult and seek consensus from the President.

Secondly exemption from PMS is a matter that could be resolved between the OPM and the Ministry. Nevertheless, the Minister still chose to bring it to the attention of HE the President. The principle is that an OMA that has its own system of conducting Performance Assessment doesn't need to adopt that of the OPM. If the Ministry is not required to provide that report by the OPM, then there will be nothing to audit. **[Exhibit 10: Confidential Report Forms]**

QUESTION 5:

Request for exemption doesn't include Financial Audits; hence the NAD 506 million is irrelevant here.

However, I elect to give further information on the NAD 506 million. The equipment for these contracts were already delivered in 2013/14&15. We haven't entered into any new contracts since then. With the economic downturn we defaulted in 2017 and had to renegotiate the payment terms so there is no equipment to inspect against the payments.

In fact, contrary to what the A-G wants to make you believe that amount was audited. In fact they were so determined to find fault in that of the NAD 506 million, NAD 484 million worth of invoices were audited which is a very huge sample indeed.

[Exhibit 11: Audited Vouchers dd 19 November 2019]

QUESTION 6:

The auditors have issued a misleading statement in frustration of their objective to access classified information having been thwarted.

The restrictions were introduced on 31st October 2019 and by then the visit to the bases would have been completed. Moreover, visits to units are not conducted every year and there was no request in that regard for this financial year. Therefore, those restrictions will only have an impact on the Audit Report ending 2020. They will also then have impacted the whole budget and not only the amount of NAD 506 million given the fact that everything we procure is delivered and consumed in the bases.

Again the restrictions were introduced on 31st October 2019. Even after the restrictions were introduced we still received a qualified opinion in the draft report of 16th December 2019 and not a disclaimer. Further to that of the 13 items for which we got a qualified opinion 5 were deleted, and 8 incorporated but then the opinion still went from bad to worse. i.e. from qualified to disclaimer.**[Exhibit 12A&B: letter from A-G dd 27 February 2020].**

I would further like to inform the house that this visit to military bases is a new practice that started about four years ago. Mr. Kandjeke will not tell of an instance where the Auditors visited military bases during his tenure as Director Finance at the Ministry of Defence.

Furthermore, we have had previous examples where our civilian institutions have been used to probe for confidential information in the Ministry of Defence.

Examples being the Ministry of Finance, the Ombudsman, and the Ministry of Public Enterprises, DCA MWT, and NAMPORT.

Going forward, I would like to warn other OMAs that have a relationship with our Ministry that they should familiarize themselves with Section 54 of the Defence Act in order to avoid possible prosecution.

POINTS TO PONDER:

Do you think we should provide them with the information they are demanding regardless?

With all these egregious mistakes arbitrariness:

Do we still give them the additional powers and autonomy that they are demanding?

Do we still think the audit team assigned to the Ministry of Defence should continue to audit the institution?

Don't we think the A-G owes the Ministry an apology for treating us in the manner that they did?