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Bringing down the house? Bicameralism in the Namibian legislature

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This is the second of two briefing papers on the debate around the continued existence of a second chamber in the Namibian legislature. The first paper gives an overview of the theoretical arguments surrounding bicameralism and also gives an indication of its global and African position. It concludes that the only way to determine whether bicameralism is in fact the best alternative for a specific legislature, is to examine its existence within that particular country – its suitability can only be judged according to the degree of fit with the idiosyncrasies of a given environment. This paper examines the development of bicameralism within the Namibian context and also provides some practical insights into its functioning gained from Namibian members of parliament.

1. Introduction

O'Brien, in an article written for the Canadian Parliamentary Review (1997) quotes Edward Sall, who remarked that legislatures usually evolve without specific, previously-agreed purposes or goals. This means that legislative development is less the product of constitutional or institutional engineering, and more the product of constitutional and institutional evolution. Namibia is no exception – it seems that the disagreements regarding the structure of the legislature that existed at the time of independence, still exist today. This paper will thus examine bicameralism's development and implementation within the Namibian context to determine whether its existence and suitability is based on an evaluation of its purpose and value.

2. Bicameralism in Namibia

Present Configuration¹

Namibia has a republican Constitution with strong executive powers given to the President. The person who occupies this position is both the chief of state and head of government and has an established position within Namibian politics. The President is elected by popular by vote for a five-year term. He also appoints the Prime Minister, the rest of the Executive, as well as the Government. Pennings (2000: 9) has done some research on the level of parliamentary control

¹ Apart from the National Assembly and the National Council mentioned in this section, the Constitution makes an additional provision for the inclusion of specific interests. This is found in Article 102, which states that a Council of Traditional Leaders shall be established in order to advise the President on the use of communal land and any such matters as may be referred to it by the President.

over the executive in 47 countries. His findings conclude that Namibia has a strong head of state and a weak parliament.

Federal systems usually tend to establish bicameral legislatures, while smaller countries with unitary governments tend to implement unicameral legislatures – Namibia is an exception to this rule. The legislative branch is a bicameral parliament composed of the National Assembly, or lower house, and the National Council, or upper house, which is a house of review.

The National Assembly has 78 members who serve for five years at a time. Of this number, the President appoints six members and 72 members are elected from closed party lists in accordance with the principles of proportional representation prescribed in Article 49 of the Constitution. Seats are allocated by means of a Hare quota, with provision for the largest remainders. According to this formula, the total number of votes cast in a general election for these seats are divided by 72 and the result constitutes a quota of votes per seat. If more seats need to be allocated, this is done on the basis of the remainders (i.e. the figure that remains after the votes per party have been divided by 72).

The functions of the National Assembly are set out in the Constitution. In order to receive the legislative status, all bills require the assent of the President. However, a bill passed by more than two-thirds of the National Assembly, and which is approved by the National Council, must be sanctioned by the President. The President has the right to reject a bill under any circumstances, but this bill may be resubmitted to him after consideration by the Assembly. Should a two-thirds majority not have passed a bill, and should the President again refuse assent, the bill will lapse (Harlech-Jones 1997: 198).

As far as voting is concerned, Articles 53 and 54 of the Constitution state that a quorum of at least 37 members is required in the case of the National Assembly. If votes are equal, the Speaker or presiding member has the power to cast a decisive vote.

Members of the National Council serve for terms of six years. The total membership is 26 – two from each of the 13 regions of the country, which is based on the principle of territorial representation. They are elected from the members of the Regional Council for each region. Articles 76 and 77 of the Constitution state that the presence of the majority of the members of the National Council is necessary to constitute a valid meeting of the council for the exercise of its powers and functions. All questions in the National Council are determined by the majority of votes cast by the members present, other than the Chairperson or the member presiding, who holds a decisive vote.

Development

The election of the Constituent Assembly of Namibia, the country's first parliament after independence, was held during November 1989, just seven months after the implementation of Resolution 435 which brought an end to colonial rule. Ten political parties or alliances took part in the elections, with the South West Africa People's Organisation (SWAPO)² and the Democratic Turnhalle Alliance (DTA) as the acknowledged front-runners. There was not much doubt that SWAPO would obtain at least 50% of the votes. However, another issue was also at stake. The Namibian Constitution, to be drafted by the 72 elected members, had to be adopted by a two-thirds majority. The attainment of two-thirds of the overall vote, i.e. 48 seats, would be vital if the

² After Independence, when the country's name changed from South West Africa to Namibia, this political party decided to change their name to SWAPO Party, keeping the acronym, but abandoning the name.



constitution were to be drafted in such a way that it reflected SWAPO's ideals for the future shape of Namibian society (Harlech-Jones 1997: 179).

Approximately 96% of registered voters cast their ballots and the results indicated that the following parties gained seats in the Constituent Assembly – the number of seats is also indicated (Harlech-Jones 1997: 184):

• South West African People's Organisation (SWAPO)	41
• Democratic Turnhalle Alliance (DTA)	21
• United Democratic Front (UDF)	4
• Action Christian National (ACN)	3
• Federal Convention of Namibia (FCN)	1
• Namibia National Front (NNF)	1
• National Patriotic Front (NPF)	1

In November 1989, the 72 elected members of the Constituent Assembly met for their first session. The aim was to devise a constitution for the country based on the constitutional principles and guidelines contained in the "Principles Concerning the Constituent Assembly and the Constitution for Independent Namibia" (Security Council document S/15287)³. All seven countries represented in the Constituent Assembly formally presented constitutions. No public debate on constitutional principles took place, as proposed and argued for by the DTA, but rather this assignment was given to a Standing Committee on Rules and Orders, composed of representatives from all the parties (Cliffe *et al.* 1994: 201).

It was unanimously agreed to use SWAPO's constitutional proposal as the basis for deliberations concerning the new constitution, although other constitutions were taken into consideration in those areas where the SWAPO constitution was thought lacking, e.g. especially regarding the provision of a second chamber (Cliffe *et al.* 1994: 202).

The minutes of the Standing Committee make for interesting reading. The debates culminated in significant changes from the SWAPO draft constitution (Cliffe *et al.* 1994: 202 – 203):

1. There would be a list system of voting in future elections, as in the independence elections.
2. The Bill of Human Rights had been expanded and tightened, but there was still provision for preventive detention.
3. The death penalty would be abolished.
4. The role of the executive President would be limited.
5. Government ministers would be appointed from among members of the National Assembly.
6. Trade union rights would be included, but not in the Bill of Fundamental Human Rights as the trade unions had wanted.
7. SWAPO had agreed to the establishment of a second chamber with the power to review and delay legislation.

³ This document was accepted by all parties concerned by July 1982, and contained provisions including the following: there would be a system of government with three branches – an executive, a legislature and an independent judicial branch; the rights of life, personal liberty and freedom of movement; freedom of conscience; freedom of expression, including freedom of speech and a free press; freedom of assembly and association, including political parties and trade unions; the establishment of elected councils for local and/ or regional administrations; and various provisions concerning the electoral system including: universal, adult suffrage by secret ballot; ensuring fair representation to political parties that gained substantial support in the election etc. (Harlech-Jones 1997: 188 – 189).



The two issues proving to be major bones of contention in the debates were interlinked, namely the powers to be awarded to the President and whether or not Namibia should have a two-chamber parliament. The role that the President would fulfil was debated at length in the Standing Committee. SWAPO saw the presidency in an idealised way and stated that he was to be a father figure, elected directly by the people. They also felt that the President's powers should include approval of all legislation, as well as the appointment of key officers of the state (Harlech-Jones 1997: 193).

On the other hand, Mr. Mudge of the DTA referred to Mr. Botha, the President of South Africa at that time, as an example to support his reservations against an executive president (Cliffe *et al.* 1994: 202). This party objected to the wide range of presidential powers of appointment and proposed that the President should have largely executive functions, acting to a significant extent on the instructions of Parliament (Harlech-Jones 1997: 193). The DTA concluded that it was in favour of an executive president, but not one that was directly elected (Cliffe *et al.* 1994: 207 – 208).

The second issue, the existence of a second chamber in Parliament, was opposed only by SWAPO and Action Christian National (ACN), while all the other parties represented in the deliberations were in support of such an arrangement (Harlech-Jones 1997: 195). Mr. Moses Katjuongua, the NPF representative, made a very strong case for a bicameral parliament. He felt that the only practical way to build a healthy democracy was to provide mechanisms through which everyone could feel that they were a part of the same process and that they had institutional inputs into what the country will look like (Standing Committee on Standing Rules and Orders 1989: 28). He also suggested that bicameralism should be implemented initially and abandoned if experience should show that it had become unnecessary (Standing Committee on Standing Rules and Orders 1989: 31).

Mr. Eric Biwa of the Patriotic Unity Movement (PUM)⁴ focused on issues surrounding territorial representation in his support of bicameralism. He felt that the proportional representation electoral system left some gaps that had to be filled if all the people of the country were to be represented in parliament. He stated that it was not possible to discuss a specific region of the country if there was no one present from that region to provide information (Standing Committee on Standing Rules and Orders 1989: 47). In this argument, he was supported by Mr. Vehui Rukoro of the NNF who felt that a second chamber should be regional in nature in order to offset the imbalance caused by the composition of Namibia's population (Standing Committee on Standing Rules and Orders 1989: 46).

Mr. Rukoro stated that in a unicameral legislature, the upper chamber (i.e. National Council) regulates the President and the Cabinet, while the people are only in a position to check the lower chamber (i.e. National Assembly) every five years or so – when new members are elected. He posed the question of what happens in the meantime and felt that some sort of co-ordinate organ of the state should be in place with the requisite capacity, status and powers to operate as a democratic check (Standing Committee on Standing Rules and Orders 1989: 46-47).

Continuing in this vein of argument, based on checks and balances, which is seen as the main argument in favour of bicameralism in available theory and literature, Mr. Mudge of the DTA mentioned that after a long discussion in the Standing Committee, it was agreed that some sort of

⁴ The United Democratic Front consisted of eight political parties, six of which were tribally based. This alliance was later joined by two other, more military oriented parties, which included the PUM (Cliffe *et al.* 1994: 99 and 151).



system of control over the Executive was essential. He qualified his argument by stating that this control was not intended to stop the Executive in the performance of its duties, but merely to limit and restrict it, so that it doesn't "pick up speed and end up in disaster" (Standing Committee on Standing Rules and Orders 1989: 48). He concluded that there should only be one legislative body, i.e. the National Assembly, but that a second body should have the power to pass laws back to it, should it not agree with them (Standing Committee on Standing Rules and Orders 1989: 49). This argument supports theoretical notions that the powers of delay or review conferred upon such a second house are instrumental in improving the quality of legislation, since they allow reconsideration.

One of SWAPO's representatives was Mr. Nahas Angula. His main argument against bicameralism was based on the fact that he felt that the current representation was improved, the number of people should be increased and, for him, this brought the argument full circle back to the National Assembly – he did not recognise the necessity of a second house (Standing Committee on Standing Rules and Orders 1989: 34). Mr. Angula's personal opinion was, furthermore, that a second house would not be able to offer anything significant in terms of checks and balances and that this would make it redundant, and the costs associated with keeping it in existence unnecessary. As far as representation was concerned, he felt that the problem should be solved by getting closer to the 'grassroots' and according to him this was to be achieved by creating more regional, rather than central, institutions (Standing Committee on Standing Rules and Orders 1989: 35-36).

Dr. Amathila, another SWAPO representative, referred to the inefficiency associated with bicameralism in literature, by stating that the checks and balances could become too much and slow down the pace. It was also mentioned that the danger existed that this "will just bring the whole train possibly to a cacophony of discord" (Standing Committee on Standing Rules and Orders 1989: 52).

After hard bargaining, which nearly brought the process to a standstill, SWAPO had to agree to a second chamber in parliament as part of a trade-off whereby its proposal for an executive presidency was accepted. The only concession made was to limit the time of office of any future president to two terms⁵ (Cliffe *et al.* 1994: 202-203).

It is clear that the opposition parties were mostly in favour of bicameralism, with opposition coming from SWAPO's quarters. Given the fact that SWAPO had agreed to a bicameral parliament, it begs the question of what is sparking the current debate. Could it be that SWAPO's assent was merely a token gesture, thinking that the party could wait for an opportunity during its time in power to change the set up? Or are calls for abolition of the second chamber truly justified by experience?

3. The Current Situation

Shortcomings of the Second Chamber

In his book entitled *Namibia's Post-Apartheid Regional Institutions*, Forrest writes that the National Council was "born at a distinct disadvantage" (1998: 237) as it operates without any formal law-making powers – these are concentrated in the National Assembly, while the role of the National Council mostly entails powers of review (Forrest 1998: 261). Forrest also mentions that these

⁵ In 1998, an amendment to the Namibian Constitution was passed which enabled President Nujoma to run for a third term as president.



powers of review of the National Council are limited – if a bill is referred back to the National Assembly for consideration, and it decides to ignore the National Council’s recommendations, the bill would pass in its original form (1998: 261). In other words, the National Council’s recommendations regarding amendments to bills are not legally binding for the National Assembly (Forrest 1998: 285).

In an interview with Mr. Pretorius of the Monitor Action Group (MAG)⁶, July 2003, it became clear that he considered the National Council unnecessary. His main reason was that a second chamber has no value in a one-party dominated state (which he feels Namibia has become). Furthermore, he feels that the function of checks and balances that the second house is supposed to perform has been turned into nothing more than a delaying function. He said that if the Executive wants to decide something urgently, it can simply rule by decree and bypass Parliament.

Professor Töttemeyer, a member of SWAPO Party, shares the opinion that the National Council is expendable. He sets out his views on the matter in a discussion paper entitled *The Namibia State and its Legislature – a Functional Analysis Eleven Years After Independence*. He writes that he also finds the issue mentioned above problematic. According to him, many important laws are unduly delayed due to the review of the National Council (Töttemeyer 2001: 4). In an interview with him (also in July 2003), he made mention of a specific matter that was referred to the National Council at some stage during last year on which, as yet, no feedback had been received.

At its inauguration, the National Council was also assigned the power to propose legislation⁷. In his inaugural address to the National Council on the day of its founding in 1993, President Sam Nujoma urged the various regional councillors to obtain information about particular policy preferences in their respective regions and to make these known to Central Government (Forrest 1998: 261). As straightforward as this may sound, there have proved to be some problems with implementation. Forrest writes that the chairperson of the National Council at the time of its founding (Kandy Nehova) was certain that this body possessed “an unambiguous constitutional power to introduce its own legislation” (1998: 288). However, some National Assembly members were reluctant to accede that the National Council did in fact hold such powers. Their view was that the National Council could suggest to the National Assembly that a specific bill should be passed, and not that it had the power to draft and introduce its own bills. Whatever the case may be, Professor Töttemeyer mentions that up until the present, it has never made use of this ability and he feels that consequently, the National Council fulfils a reactive, rather than a proactive (or even active) role.

In defence of the National Council, Forrest writes that on various occasions, the National Council had stated that its biggest problems were “the lack of legal advisors, along with inadequate numbers of staff members” (1998: 247). According to Forrest, the absence of legal advisors, who would have been able to make sense of the plethora of existing laws, did set back the extent of the National Council’s legislative capacity building (1998: 247). Mr. Pretorius, however, is of the opinion that the main reason the National Council has not yet made use of its right to propose laws is largely due to the practicalities of party discipline. He explained that after he became the first person in Namibia to propose private legislation, the Cabinet decided that any proposals would have to be cleared by it first. Therefore, the National Council would be deemed disloyal if it

⁶ This party has its roots in Action Christian National (ACN) and Mr. Pretorius was also a member of the Standing Committee on Standing Rules and Orders that debated the first Constitution.

⁷ This is contained in Article 74, Section (a), Paragraph (c) of the Constitution of the Republic of Namibia.



proposed legislation without first running it by the Cabinet, and then only if the Cabinet approves, allowing the bill to be refined by its legal advisors etc.

According to Professor Töttemeyer, another major shortcoming of the present legislative system is the “long and exasperating debates” (2001: 4) in the National Assembly. Professor Töttemeyer explained, in the interview, that this is due to the fact that 44 of the National Assembly members form part of the Executive and are thus excluded from the work done by standing committees (Töttemeyer 2001: 3) – bodies that he feels could contribute extensively towards smoothing the legislative process. Furthermore, in the interview, Professor Töttemeyer mentioned that the implementation of a policy of decentralisation (in an attempt to bring Government closer to the people) means that regional councillors will be required to be present, and involved, at the constituency level to a greater degree – an issue that he describes in more detail in his discussion paper (Interview 2003). He writes that some National Council members have become increasingly “urbanized” (2001: 10), residing outside their constituencies in an attempt to fulfil their parliamentary responsibilities, which in turn weakens their link to the “grassroots level” (Töttemeyer Interview 2003).

Mr. Pretorius also mentioned that he feels there is a lot of unnecessary personal competition going on between the two houses – if the National Council does in fact oppose the National Assembly, one is not certain whether it is to score points against the first house, or to genuinely serve a specific cause. Mr. Pretorius feels that the National Council is a duplication of the National Assembly (most obvious in the construction of separate buildings), as it does not bring that much differentiation, or variation, to the process (Interview 2003).

Efficiencies of the Second Chamber

An interview was also held with Mr. Asser Kapere, a member of the National Council. He felt that the National Assembly has a more senior status than the National Council, due to the fact that it (the National Assembly) was created first and had the responsibility to set in motion the creation of the second house, according to the Constitution. In his opinion, this situation combined with the fact that most of the senior political leaders are members of the National Assembly makes it quite hard to question its work. When asked to explain this statement, he said that, although on a personal level it might prove somewhat daunting for a member of the National Council to question the work of the National Assembly directly, in the end the aim and the purpose of the National Council is to improve legislation drafted by the National Assembly. This is something that Kapere believes it achieves very well (Kapere Interview 2003).

He elaborated that the National Council is able to improve the quality of legislation, due to the fact that matters are considered from a different angle. Mr. Kapere mentioned that in the National Assembly, legislation is most likely approached in a different manner than in the National Council. According to him, the departure point of the National Assembly is the Cabinet, and throughout the legislative process it is also briefed by the Cabinet. He felt that the National Council can operate without these restraints and that it is free to take legislation anywhere it deems useful – either back to the regions, or it could even call on the help of organised public committees in “refining and polishing legislation”. Furthermore, he said that it was clear from their debates that the regional representatives are in fact connected to what is really going on a “practical level” (Kapere Interview 2003).

In a similar vein, Forrest writes that “the representational function was reflected in the National Council’s utilisation of its institutional energies to influence the policy process, despite that fact that policy-making power was centred in a different government institution” (1998: 281). In addition,



rural-national communication links were intensified and regular attendance and participation in both regional council and National Council meetings were the norm (Forrest 1998: 282). This means that the National Council established itself as a “grassroots-transmission legislative body devoted to promoting the policy interests of ordinary villagers and the organisational interests of the regional councils at the national level” (Forrest 1998: 282).

4. The Way Forward

Addressing a meeting of the Association of European Senates⁸, Schambeck stated that second chambers have always existed “within a field of tension between received tradition and present political responsibility” (2002: 2) and that the question of their relevance in parliament is an ongoing issue (2002: 1). This paper has presented the theoretical arguments both for and against bicameralism and has provided some insight into how bicameralism works in practice in the Namibian legislature. Now as it attempts to draw a conclusion from this, the aim is to lay the grounds for debate by highlighting suggestions from Namibian players and providing examples from other parts of the world.

Proposals for Reform of the Namibian Parliament

Both Mr. Pretorius and Mr. Töttemeyer’s suggestions, although somewhat different, involve making Namibia a unicameral state. Professor Töttemeyer states that Namibia has had the opportunity to test its constitutional framework over the past decade and that the time has come to consider enhancements. This is based on the fact that, in his opinion, the existence of the National Council within the Namibian legislature does not make it as “functional, representative, receptive and cost-effective” (2001: 13) as it could be. His main suggestion centres on abolishing the National Council and then increasing the number of persons serving in the National Assembly. According to Professor Töttemeyer, this would make more persons available for service in Standing Committees. These, he believes, will be able to perform the functions that the National Council is responsible for at the moment, only more efficiently so (Interview 2003).

Mr. Pretorius feels that a change is definitely in order. He referred to the implementation of bicameralism as a “settlement” rather than a “solution”, and mentioned that any settlement could be improved. His suggestion rests largely on his belief that a second chamber is unnecessary within the realms of a one-party dominated state⁹. This concept of congruent bicameralism¹⁰, referred to earlier, hinges on the argument that “party parallelism” cancels out the individual significance of the second chamber (Schambeck 2002: 7). When the same party forces operate in both chambers, this influence goes beyond all bounds and leads to a loss of the most effective features of bicameralism (i.e. checks and balances). Furthermore, as long as this dominance of power prevails, the importance of the second chamber is reduced (Schambeck 2002: 7).

The main cause of such congruence across chambers is party discipline¹¹ – an issue also referred to by Mr. Pretorius (Interview 2003). Congleton writes that parties often co-ordinate voting among elected members, “encouraging them to vote along party lines in order to support the party’s announced legislative agenda” (2002: 12). He also explains that the effects of party discipline are

⁸ The information can be found at www.senateurope.org/precedentes/ljubljana_2002/schambeck_en2002.pdf

⁹ The ruling party holds 78% of the seats in the National Assembly and 84% of the seats in the National Council.

¹⁰ Congruent bicameralism is defined in terms of the similarity of political composition of the two chambers (Tsebelis and Money 1997: 44).

¹¹ Congleton writes that it is likely that party discipline lead to the similar patterns of voting in the Swedish bicameral parliament, which impacted on the decision to end the existence of its regional chambers through constitutional reforms that created a unicameral parliament (2000: 4 and 12).



quite striking. The main implication is that the range of policy outcomes is entirely bounded by the respective party platforms, which automatically reduces the scope of possible political outcomes (Congleton 2002: 12).

Zanotelli is of the opinion that this problem is not present in unicameral legislature, as it allows for a non-partisan feature. He argues that the absence of a party whip allows for the consideration of measures based on their value, and not because of partisan necessity (2002: 25). He refers to unicameral legislatures as a “free-market” of bill-making, where legislators can choose their individual battles, and likens bicameral legislatures to “central planning”, where you either vote with the party or lose its support (Zonotelli 2002: 27).

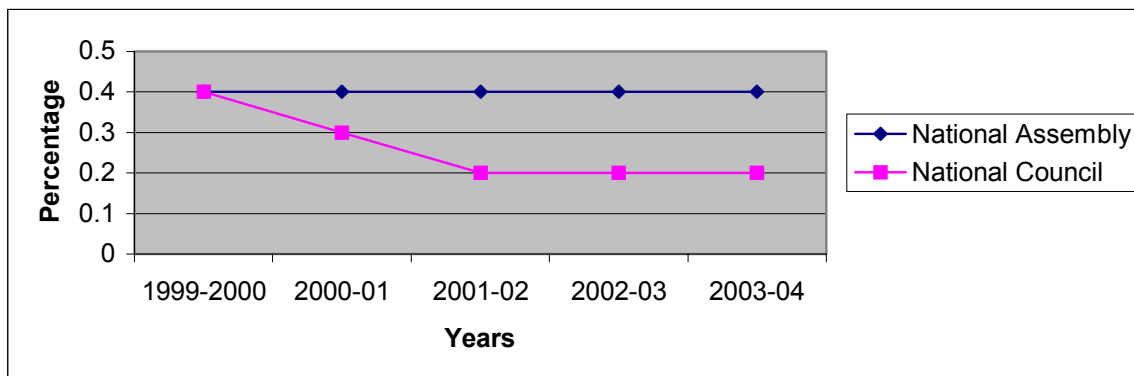
Rebuttal

It is important to classify the arguments in favour of abolition of the upper chamber into two groups – those that focus on problems caused by the existence of two chambers in the legislature, and those that focus on problems that originate elsewhere. The fact remains that bicameralism is only a single aspect of the parliamentary design. The presence or absence of a second chamber is not enough to determine whether a legislature will operate as an effective democratic institution.

As far as problems specifically related to bicameralism are concerned, it has often been argued that having two chambers increases the costs that have to be borne by Government, and as a result, the taxpayers. However, this begs the question of whether the existence of a specific institution is related to its democratic value, or to the availability of resources? Furthermore, who is to decide on an appropriate cost-threshold; and what would that threshold be?

Figure 1 below gives a summary of government expenditure on Parliament from 1999 to 2003¹².

Figure 1: A summary of government expenditure on Parliament, 1999 to 2003



Source: *Estimate of Revenue and Expenditure for the Financial Year(s) 1 April 2001 – 31 March 2002 and 1 April 2003 – 31 March 2004.*

This figure shows that the government’s expenditure on Parliament as a whole, over the past five years, does not even amount to 1% of the total budget for expenditure. Furthermore, whereas the National Council’s allocation¹³ has declined over the past five years, that of the National Assembly¹⁴ has remained the same.

¹² The figures for 2003/04 are projected budget figures.

¹³ The items included in the figure for the National Council are: remuneration and the purchase of other goods and services for a) Office of the Chairman and b) Administration and Legislation.

¹⁴ The items included in the figure for the National Assembly are: remuneration and the purchase of other goods and services for a) Office of the Speaker, b) Administration and Legislation and c) Library and Computer Services. It is



The second chamber's ability to delay legislation is a definite consequence of bicameralism. Theory states that it can be either good or bad – depending on which side you are on. In Namibia, the amount of time that the National Council has available to debate bills before reporting back to the National Assembly is limited. If the period of three months for legislation (excluding bills related to taxation or public funds which must be reported back on within a month) is too long, it can be shortened – or more areas of legislation can be allocated a specified shorter periods for reporting back to the National Assembly. It is a rectifiable drawback of bicameralism, and not sufficient justification to warrant a constitutional reform.

As far as all the other arguments presented above are concerned, they do not have their origin in bicameralism. The fact that there is very little variation between the two houses stems from SWAPO's electoral dominance. Besides, Congleton writes that analysis suggests bicameral parliaments may still advance public interests, even in cases where no systematic difference exists between the interests represented in the two chambers (2002: 4). To continue, party discipline is a feature of the type of electoral system used in Namibia, i.e. proportional representation, and not of bicameral parliaments.

Professor Töttemeyer argued that the National Council is not playing an active role in proposing legislation. There are several possible reasons for this. First of all, it could be that the National Council does not possess the necessary expertise or time to play an active role in suggesting legislation. The issue then would have to focus on institutional capacity building to put the National Council in a position to take advantage of its rights.

Secondly, and more importantly, it seems that legislative power is becoming increasingly centralised in the Executive. In order for any bill to become a law, it is first presented to the Attorney General who makes sure that it is in line with the Constitution. After this, it is sent to a Cabinet Committee for Legislation – if it is approved by this Committee, it passes on to the Minister of Justice for final drafting by legal drafters, and from there it is tabled in the National Assembly for debate. This means that no legislation has any chance of being debated in the National Assembly, let alone the National Council, if it does not carry the initial approval of the Cabinet. Furthermore, as Professor Töttemeyer writes, a majority of the members of the National Assembly serve on the Executive. This extends Cabinet's control over the Executive even further. However, once again it should be noted that this is not a problem related to bicameralism. An oversized executive and the fact that the executive is appointed from legislative ranks cause this problem.

Considering a Shift¹⁵

During the past half century, there have been various countries that have made a permanent, or temporary shift, from bicameralism to unicameralism. These include:

- Denmark (1953)
- Sweden (1970)
- New Zealand (1954)
- Peru (1993)
- Turkey (1982 –1989)

important to note that the salaries of the Executive are not included in the remuneration figures of the National Assembly, as these are paid by the various ministries.

¹⁵ The first of the two briefing papers on bicameralism gives an overview of several countries who have made the change to unicameralism and which policies they have implemented.



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- Sri Lanka (1971 – 1972)
 - Panama (1979 – 1989)

Congleton writes that it is interesting to note that most of these changes took place during “extraordinary” times. With the exception of Sweden, all the countries mentioned above adopted unicameralism following periods of extreme domestic turmoil or an international crisis (2002: 16), which would suggest that the change was not necessarily due to an appreciation of the value of unicameralism, but rather an attempt to create stability in some way. Congleton also mentions that case studies of Sweden and Denmark have shown that the shift to unicameralism affected public policy and national welfare in the former (2002: 16) and made public policy less predictable in both (2002: 23).

5. Conclusion

It seems that the party-specific positions related to bicameralism have not changed since the first round of this debate around the time of independence. As mentioned before, it is possible that the ruling party feels that the time has now come to achieve what it could not achieved earlier due to the need for compromise. It is conceivable that the ruling party is aiming to maintain and even extend its control over legislative power. The fact that Cabinet has to approve all legislation before it can proceed any further means that institutions that can provide checks and balances on executive power should be strengthened, not abolished. This makes the case for bicameralism even stronger.

It has been shown that some of the main problems within the Namibian legislature, used as support for arguments in favour of abolishing the National Council, are not consequences of bicameralism. This means that using them in support of a constitutional reform is misplaced. The fact remains that a constitutional reform is not something to be taken lightly. The Constitution forms the foundation of democratic governance in a society – and there are some things that should remain firm and unchanged, especially the rights and institutions protected therein. Thus, constitutional reforms should not be implemented unless absolutely necessary. If the problems mentioned above can be rectified using other measures, a constitutional reform is not the best, or wisest, solution.



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