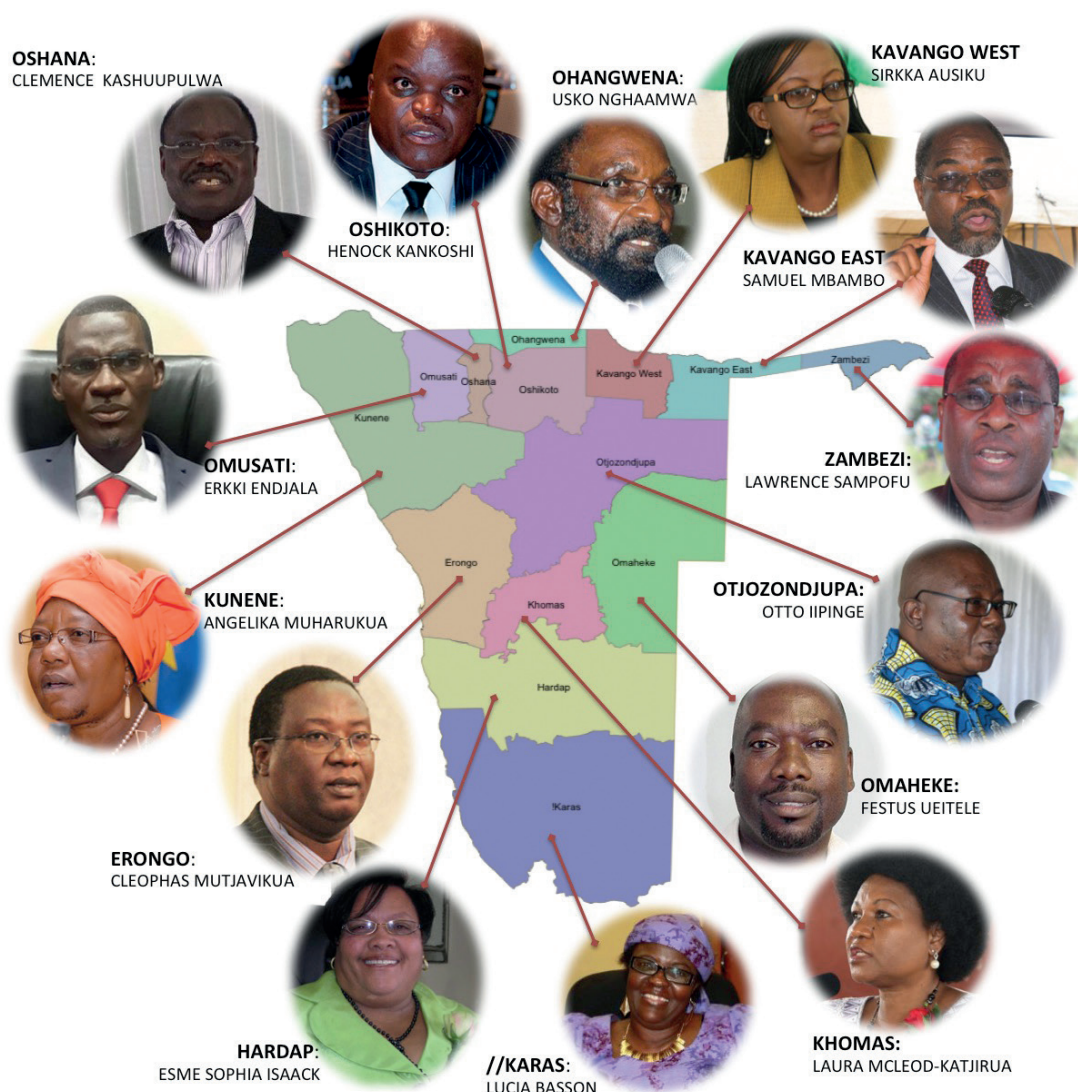


Briefing Paper No. 2

By Nangula Shejavali

REGIONAL GOVERNORS: THE GOOD, THE BAD AND THE UGLY DO THE BENEFITS OF APPOINTMENT BY THE PRESIDENT OUTWEIGH THE LOSS OF DEMOCRATIC REPRESENTATION?

YOUR APPOINTED REGIONAL GOVERNORS (2015-2020):



On April 2nd, 2015, President Hage Geingob appointed Regional Governors to Namibia's 14 Regions. This is the second set of Governors to be appointed by a President. Five years ago, the Namibian parliament passed legislation that allowed for the appointment of Regional Governors by the President – effectively doing away with their election to this office. The change in legislation caused quite a stir on Namibia's political landscape, with the newly appointed officials being likened to Bantu/Native Commissioners by critics such as Professor Joseph Diescho¹, and claims being made of Namibians being stripped of their democratic right to elect regional representatives. Arguments for the new legislation, which were gazetted into law just days before the 2010 regional elections, centred mainly on improving the efficiency and effectiveness of Regional Governors and creating a 'direct line' between regional and national leadership. Calls for doing away with the appointment of Regional Governors, and having them elected into office instead, have continued ever since.

In his book, *Strengthening the Interaction between Civil Society and Regional and Local Government in Namibia*, for example, Professor Gerhard Totemeyer argues that the policy to appoint governors "can be considered a set-back to democratic practices and as contradictory to the decentralisation policy". He goes on to say that this change is "tantamount to the rejection of the principle of free elections and to co-decision at regional level of who the governor of a region should be. The new policy reflects deconcentration of authority".² Totemeyer (and several others) note that the appointment of regional governors 'harms the substance and quality of the decentralisation policy', negatively impacts the independence of regional councils, has the potential to threaten already 'precarious' relations between regional councils and traditional authorities, and presents the question of who really runs the regions (i.e. regional councils or the governor)³.

There is no doubt that at the time of the legislative changes, the Regional Councils were in dire need of some reform. This is acknowledged by many, and discussed in more detail in the content of this paper. The roles and responsibilities of Regional Governors required re-assessment and reorientation. There was an argument that the overlapping roles of Governors and Councillors should be more clearly delineated. The accountability of Regional Councils as regards achieving the development goals set out for their regions and the nation as a whole was in need of long overdue attention. Mechanisms for consultation with citizens, such as constituency development committees, were also in need of urgent review.

But the question that has to be asked is whether the appointment of Governors by the President, specifically, was an appropriate response to these needs for reform. More fundamentally, is the direct appointment of Governors in keeping with Namibia's democratic traditions, based on representation through democratic elections?

This briefing paper examines the controversial Special Advisors and Regional Governors Appointment Amendment Act (Act 15 of 2010), which legislates for the appointment of Governors by the President. The Second Regional Councils Amendment Act (Act 16 of 2010), which separates the powers of the Governors from those of the Chairperson of the Council (previously seen as one role), is also briefly reviewed. Together, these two Acts (along with the Namibian Constitution Second Amendment Act which, amongst others, aligns the tenure period of National Council members with those of the National Assembly), have changed the face of regional governance. This paper attempts to provide a holistic discussion of their implications, appraising the arguments that were presented for and against the appointment of Regional Governors by the President, particularly in the context of democracy building and decentralisation. These include the justifications brought forward by President Hage Geingob (who was Swapo Party Vice President and Minister of Trade and Industry at the time of the changes in legislation), who argued that the Act would essentially quell "divisive forces" trying to disrupt Namibia's "unitary state", and the equally controversial argument by some academicians who have compared the appointments to a return of Bantu/Native Commissioners of the apartheid era.

In addition to these highly publicised lines of reasoning, this paper weighs the merits and demerits of a number of other cases made either for or against the Act.

Finally, in light of the recent appointment of Governors, this paper assesses whether or not the changes in legislation have improved regional governance and worked in the favour of the Namibian people at large in the past five years. It also provides recommendations on what needs to be done to improve their effectiveness and ensure the reform that is desperately needed in regional governance.

What changes were made in the 2010 Acts?

When he tabled the Special Advisors and Regional Governors Appointment Amendment Bill in parliament in early October 2010, the then Regional and Local Government, Housing and Development Minister Jerry Ekandjo explained that the Bill "provides for the appointment of regional representatives by the President and (who) shall hold office at the pleasure of the President".⁴ He also noted that because of the importance of "extending government policies and programmes in our unitary state, it has been deemed imperative that the status of the heads of the regions be elevated to grant such heads with powers at par with the responsibilities attached to the regions".

Below is a brief overview of the Special Advisors and Regional Governors Appointment Amendment Act, and its provisions. This is followed by a synopsis of the Second Regional Councils Amendment Act, to provide some context with regards to how the functions of an appointed Governor are separated

¹ Diescho, J., The return of 'native commissioners' in an independent Republic of Namibia. Opinion piece in The Namibian, 22 December 2010. Retrieved from http://www.namibian.com.na/index.php?archive_id=74404&page_type=archive_story_detail&page=2634.

² Totemeyer, GKH, Strengthening the Interaction between Civil Society and Regional and Local Government in Namibia: Study on the Status, Role and Performance of Regional and Local Government Development Committees in selected Regions of Namibia. Namibia Institute for Democracy, 2014.

³ Ibid.

⁴ Jerry Ekandjo, Tabling of the Special Advisors and Regional Representatives Appointment Amendment Bill in the National Assembly, 6 October 2010.

Table 1: Legislation tabled and gazetted in 2010 that has an impact on Regional Councils

| Name of Act | Date Tabled in NA | Date Passed in NA | Date Passed in NC | Date Ascented (signed by President) | Date Gazetted | Act No. |
|--|-------------------|-------------------|-------------------|-------------------------------------|-----------------------|------------|
| Regional Councils Amendment Act | | | | 13.08.2010 | 13.08.2010 (No. 4543) | 12 of 2010 |
| Second Regional Council Amendment Act | 06.10.2010 | 19.10.2010 | 26.10.2010 | 18.11.2010 | 24.11.2010 (No. 4617) | 15 of 2010 |
| Senior Advisors and Regional Governors Appointment Amendment Act | 06.10.2010 | 19.10.2010 | 26.10.2010 | 18.11.2010 | 25.11.2010 (No. 4618) | 16 of 2010 |

from those of the Chairperson of the Council (who previously served as Regional Governor). It was stated that the Terms of Reference of Regional Governors were set out by the President when he appointed the Regional Governors who took office in 2015. This means that prior to this, Regional Governors who served in office between 2010 and 2015 did so at the service of the President with only the Second Regional Councils Amendment Act to guide them in the execution of their duties.

The Special Advisors and Regional Governors Appointment Amendment Act (Act No. 15 of 2010)⁵

The Special Advisors and Regional Governors Appointment Amendment Act is an amendment to the Special Advisors and Regional Representatives Act of 1990⁶. It was introduced in Parliament in September 2010, and gazetted into law on 24 November 2010, just two days before the Regional Elections.

Introducing new language to the Act, the Amendment essentially states that: "The President must in respect of every region appoint a Governor who shall hold office at the pleasure of the President." This is in contrast to previous legislation, which stated that the Regional Governor was to be an elected Regional Councillor who would be voted into office by the Councillors who had been voted to serve on to the Regional Council through Regional Elections.

The Act goes on to state that the President will determine the terms and conditions of the employment of these Regional Governors. These terms and conditions are not defined within the Act, but it does provide a list of responsibilities for the Governors, which include:

to act as the representative of the central Government in the region concerned;

- (a) to act as representative for central Government;
- (b) to investigate and report on any matter relating to the region concerned if he or she has been requested to investigate that matter by the President or the Minister responsible for regional or local government;
- (c) to keep himself or herself informed of all matters relating to the region concerned and to bring any matter to the

attention of the President or the relevant Minister if he or she thinks that it is advisable;

- (d) to settle or mediate any dispute or other matter that might arise in the region concerned, and
- (e) generally, to act as a link between the central Government and the regional council, or any local or traditional authority in the region concerned.

The Act also makes provision for the President to appoint additional "Special Advisors" to support the Regional Governor in carrying out his functions; adding that officials in the Ministry of Regional and Local Government, Rural Development and Housing will be appointed to assist the Regional Governors as required.

The role of Special Advisors remains as stipulated in the 1990 Act. That is:

- (a) advise the President, the Cabinet or the Minister concerned, as the case may be, in relation to any matter which the President, the Cabinet or such Minister refers to him or her for investigation and advice or which such Special Adviser deems necessary;
- (b) subject to the directions of the President, the Cabinet or the Minister concerned, as the case may be, perform such functions and duties as the President, the Cabinet or such Minister may entrust or assign to such Special Adviser.

In summary, the Special Advisors and Regional Governors Appointment Amendment Act centralises the selection of regional leadership in the hands of the President. Under this set-up, whatever the party predominance on the elected council, the President's decision is what counts in the selection of a Governor. Further, the Act does not set down any guidelines for the President to follow when selecting Governors. However, from what was witnessed in the 2010 and 2015 appointments, strong ruling party credentials are prerequisites for Governors.

What can also be observed from the Act is that the decentralisation policy bears little, if any weight in all this. In the Kunene region, for example, where in 2010 DTA won in the Epupa and

⁵ Special Advisors and Regional Governors Appointment Amendment Act (Act 15 of 2010), Government Gazette, Government of the Republic of Namibia

⁶ Special Advisors and Regional Representatives Act of 1990 (Act 6 of 1990), 24 November 2010.

Opuwo constituencies, UDF won the Kamanjab, Khorixas and Sesfontein constituencies, and Swapo won only the Outjo constituency, a Swapo Regional Governor was still appointed by the President.

One of the main criticisms of the appointment of Regional Governors – at least between 2010 and 2015 when they had no clear terms of reference – was they serve primarily as policemen in the regions to monitor activity and report back to the President on any irregularities, without – as will be discussed in the next section – the ability to vote on the Council.

Second Regional Councils Amendment Act (Act 16 of 2010)⁷

The Second Regional Councils Amendment Act, tabled in Parliament on the same day as the Special Advisors and Regional Governors Appointment Amendment Bill, and gazetted on 25 November 2010, provides for the separation of powers of the office of the Regional Governor, and that of the chairperson of the Regional Council.

In this regard, the role of the chairperson of the Council, who was previously referred to as the Governor of that Region and elected to that role by vote of the Councillors, is now altogether a separate role. In other words, the Chairperson (elected by the Council) and the Governor (appointed by the President) are separate roles with separate powers.

In addition to this substitution, the Amendment Act lists the duties expected of the Governor as follows:

The Governor of a region:

- (a) must be informed of every meeting of the regional council of that region;
- (b) has the right to attend every meeting of that regional council, whether such meeting is open to the public or closed to the public, as provided in subsection (2);
- (c) has the right to take part in the deliberations of that regional council;
- (d) does not have the right to vote at any meeting of that regional council.

These stipulations also apply to meetings of the management committee of the regional council, of which the Governor must be informed, has the right to attend and deliberate, but may not vote.

Neither of the two Amendment Acts clearly delineates the role of the chairperson of the council. Nor do they conclusively differentiate between the functions of the elected chairperson and those of the appointed governor, aside from stating that the Governor is at the service of the President.

Problems with the previous system

In order to appreciate what the above Acts seek to achieve, it is important that we have an understanding of the gaps under the previous system. There is no question that the previous system of regional governance, at least as far as the Regional Governor is concerned, had been ineffective for the most part, with the role of Governors being ambiguous and their relevance questionable. In fact, perhaps worse than some of the inefficiencies of regional government is the fact that many members of the public do not know what they should expect from their regional governors and regional councils at large, and those in office were often oblivious to what their responsibilities were.

The low turnouts recorded during regional and local government elections are a clear indication that Namibians are not convinced about the role of these authorities in improving their lives. The 38.6% turnout on November 26 and 27, 2010, alone points to the fact that neither local nor regional government are taken seriously by the general populace, and may be seen as an indication of their limited performance in the eyes of Namibians. Even lower figures have been recorded in by-elections held since then. (The next regional and local government elections are set for November 2015). Graham Hopwood alluded to this issue ten years ago in his paper *Regional Councils and Decentralisation: At the Crossroads*. In that 2005 piece in which he made an assessment of the 2004 regional elections, he noted that “the lack of clarity about the role of Regional Councils and their limited powers was unlikely to convince the majority of voters that this was a tier of government worth supporting”. This state of affairs remains today.⁸

Former National Council MP and Karas Regional Councillor, Fluksman Samuehl, summarised this problem aptly, saying that: “The fact of the matter is that under the old order, the Governor’s duties and responsibilities were highly ambiguous except to chair meetings of the Regional Council and its management committee. This in itself demonstrates that the position of Governor was one of the vaguest jobs in government.”⁹ He went on to say that, “Because Governors did not have defined roles, they simply did whatever central government deemed them to be capable of. And it would appear as if the intervention of central government to appoint its regional representatives is a confirmation of a vote of no confidence in the old order. However, the new order remains uncertain because it is yet to be tested”. Like many who previously observed some of the inefficiencies of regional government and wondered whether governors did indeed have a role outside of cutting ribbons and reading keynote speeches, Samuehl stated that: “It is highly debatable whether ‘old’ governors have been politically policing their regions or just been acting as tourists within their regions - courtesy of taxpayers’ money. Practically, Regional Governors have maintained a strong link and loyalty to their constituencies where they are directly elected while performing mainly symbolic functions at regional level.”

⁷ Second Regional Councils Amendment Act (Act 16 of 2010).

⁸ Hopwood, Graham, *Regional Councils and Decentralization: At the Crossroads*, Namibia Institute of Democracy, June 2005.

⁹ Fluksman Samuehl, *Taking a Closer Look at Regional Governorship – Then and Now*, The Namibian, 14 December 2010.

The 2014 (Round 6) Afrobarometer Survey for Namibia had a number of interesting findings with regards to public perception of the Regional Councils.

- Asked how much of the time they thought that elected regional councillors tried their best to listen to what people had to say, 28% of respondents replied that they “Never” listen, and 38% replied “Only Sometimes”. Only 14% said that elected regional councillors “Always” listen to what they have to say, and 16% said they often do.
- On other questions in the Afrobarometer that were related to the regional councils, 77% of respondents on the survey said they had never contacted a regional councillor about an important problem or to share their views; and 41% of respondents said that it was not at all or not very likely that they would get together with others and make a regional councillor listen to their concerns about a matter of importance to the community.
- In terms of approval ratings for elected regional councillors, over a quarter (27%) of respondents either ‘disapproved’ or ‘strongly disapproved’ of their regional councillor’s performance over the past 12 months, 53% ‘approved’ of their performance, and 18% ‘strongly approved’. With respect to appointed regional governors, 22% of respondents either ‘disapproved’ or ‘strongly disapproved’ of their regional governor’s performance, 55% ‘approved’, and 21% ‘strongly approved’ of their performance.
- And when it comes to trust, 32% of respondents indicated that they either did not trust their regional council, or trusted them ‘just a little’, 33% answered ‘somewhat’, and 33% said they trust their council ‘a lot’. When asked about their trust levels of their appointed regional governor, 34% indicated that they either did not trust their regional governor, or trusted him/her ‘just a little’, 33% answered ‘somewhat’, and 32% said ‘a lot’.
- Interestingly, when asked whether their elected regional councillors were involved in corruption, only 15% answered ‘none’, a whopping 57% said ‘some of them’, 20% replied that ‘most of them’ were involved in corruption, and 5% responded that ‘all of them’ are involved. When the same question was posed about the appointed regional governor, 19% said none of the regional governors were corrupt, 53% responded ‘some of them’, 21% said ‘all of them were corrupt, and 5% said all regional governors are corrupt.

In the 2008 (R4) Afrobarometer survey, one of the questions asked (which was not asked in the 2014 survey), was whether respondents could name their regional councillor. 28% of respondents said they did not know his/her name, 17% gave an incorrect guess, 12% said they knew their councillor’s name but couldn’t remember it, and only 44% actually gave a correct guess.

Having witnessed the goings on of Regional Councils first hand, Samuehl also noted that under the ‘old order’, without a clear job description or sense of responsibility, it became the norm that Regional Governors were “assumed [to have thee] unwritten powers of ‘senior politician’ and ‘chief government representative’ in the region”. He added that, “The fact of the matter is that Governors operated generally within a vacuum and in the confines of unitary development state coupled with vague political space that is fundamentally very restrictive for those who aspired to have fulfilling careers in mainstream national politics”.¹⁰

In 2006, in an analysis of the different levels of government, Totemeyer picked up on the problems evident in the role and job description of Regional Governors at the time, and wrote¹¹:

The governorship has become a full-time political and executive position. The Governor’s work performance exceeds the normal eight hour office day. This has particular consequences. He/she can no longer be avail-

able to the voters in his/her constituency and can thus not give sufficient attention to the interests of the voters who have elected him/her. The voters of such constituencies are dissatisfied with the present status quo. It is not unwillingness on the part of the governors to be available to the electorate in the constituencies where they were elected. But his/her unavailability affects and harms the democratic principle of political representation and availability to the voters. They are deeply concerned about this state of affairs that needs to be urgently addressed, before the next regional councils elections, by the national policy makers.

The position of the Governor and the way he/she is elected must be reconsidered.

He/she should be given a separate status as governor, relieved of the position of councillor and only perform the role of the chairperson of the Regional Council.

¹⁰ Samuehl, 2010.

¹¹ Totemeyer, G., 2006. Time for Renewal? The Namibian State and its Government, 2006.

This would imply also relieving him/her of the position of chairperson of the management committee. The only position the Governor would then occupy would be that of being the political head of the region, thus also head of the executive. It is recommended that the Governor should be directly and separately elected by the eligible voters of the region on the same date as the regional councillors are elected in their constituencies.

Whether the Presidential appointment of Regional Governors enhances the performance of the regional councils and translates into increased regional development in line with Namibia's national objectives, remains unclear. Between 2010 and 2015, appointed Regional Governors operated without a clear Terms of Reference, and no performance evaluations, major regional developmental achievements, or Monitoring and Evaluation (M&E) frameworks for the post of regional governors exist in the public sphere. Their role in the execution of Regional Development Plans remains ambiguous, the basis for their appointment (aside from having admirable Swapo credentials) vague, and the grounds of their assessment indistinct.

In 2010, Samuehl wrote that: "As the governors assume state power with public resources accompanied by fanfare and pomp, it is imperative to bear in mind that at the end of their five year term in office in 2015, the country will be judged globally in terms of whether or not it has met its commitments in view of the United Nations' Millennium Development Goals (MDGs)."¹² He went on to note that, "With Namibia's largely mercantilist economy, new Governors should be seen as using firepower to push the development agenda without fail. In practical terms, the modern Governors will be judged not just for politics but how they tackle tough socio-economic problems facing the grassroots and the manner in which solutions will be found".

Other problems that have been noted with the previous system of regional governance, include the following:

- Regional Governors essentially played three roles that often overlapped, but that also diverted attention away from each individual role. The Governor of the region was also the Chairperson of the Council, as well as the Councillor of his/her constituency, having been elected to the position of Chairperson/Governor by his/her fellow councillors. Providing the necessary attention to regional issues when he/she also had a mandate to a constituency (or vice versa) and had to ensure administrative controls as the chairperson thus entailed a difficult balancing act, that often made these multiple role players fall short in one area or the other. The separation of these duties was therefore necessary.
- As discussed above, the lack of clarity around the roles and responsibilities of the regional Governors was a major problem. The same has to be said of the other roles in the regional councils – i.e. that of the chairperson and

of the regional councillors, and how these roles relate to other areas of regional development – e.g. at the local authority and traditional authority level. Only once the roles and responsibilities of each of the players that make up the regional structure are cleared up, can regional councils move forward in terms of carrying out their development roles effectively.

- Another issue in that system was the lack of accountability, without which regional councils often assumed a nonchalant *modus operandi*, with either no one to answer to, or no one to listen to them. It was not clear whether they were answerable to the Ministry of Regional and Local Government, Rural Development and Housing (RLGDH); the National Council – to which two members of each regional council takes part; to Cabinet; or to the State House. So without a clear line of command, regional Governors basically operated in a vacuum.
- Another concern raised time and again with the 'old' system was that the regional councils were never really empowered to do anything, given the half-hearted implementation of the decentralisation policy. And this doesn't necessarily help the case for decentralisation as a pathway to enhanced democracy. In his piece on the regional councils and decentralisation, Hopwood wrote that although the case for regional councils is largely tied to the idea that they "strengthen and deepen Namibia's democracy", this notion doesn't always translate into action. He says, "the power of Regional Councils has been so circumscribed that to some extent this undermines the potential benefits of a Regional Councillor's ties to his or her community. The authentic democratic nature of Regional Councils does not simply depend on the fact that they are elected. Regional Councillors must be able to work for improvements and development for their constituencies and regions". Hopwood also posits that, "With Regional Councils having primarily planning and advisory roles, it is certainly not easy for Regional Councillors to be effective on a broader level. Even those Regional Councillors who are selected for the National Council seem to have little opportunity (or possibly inclination) to advance the case for development in their region on the national political stage". So the effectiveness of regional councils, and in turn regional Governors too, is an area that has required attention throughout the past lives of Regional Councils, and that is tied to the issues outlined above with regards to defining roles, being accountable, and having clarity on the purpose of the regional councils.¹³

The loopholes noted above make it clear that amendments to the regional councils act were necessary. However, whether the appointment of Governors solves these problems, is another question altogether. A number of arguments have been lodged both for and against the presidential appointment of Governors. Within each of these arguments, perhaps the most

¹² Samuehl, 2010.

¹³ Hopwood, June 2005.

important questions to be answered are whether the changes made render the regional government system more effective than it was prior to the legislative changes, whether they enhance the accountability of governors to the Namibian people, and how the Act expresses the fundamentals of a truly democratic country.

Arguments in support of the appointment of Governors

UNITY, UNITY, UNITY

Perhaps the most publicised argument made in favour of the Special Advisors and Regional Governors Appointment Act, was that of then Trade and Industry Minister and Swapo Vice President and current President, Dr. Hage Geingob, who noted that such appointment would “strengthen the unitary nature of the state, and make positive contribution to the concept of taking government to the people”.¹⁴

He rationalised the motion (at the time) in the National Assembly by saying that: “The motion in front of this House, is for two reasons: One, to strengthen the unitary nature of the state, and, two, to remove the possibility of any antagonistic, divisive or tribal tendencies creating unrest.”

Geingob also looked to the Constitution to defend his support of the Bill, by noting that under the provisions of the Constitution, Namibia is a “unitary state” and that the regions were simply administrative units of this unitary state.

As the members of this august House know well, the Preamble and Article 1 of the Constitution stipulate that Namibia would be a unitary state. Specifically, Article 1 reads as follows: “The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.”

Some of the members would also recall that the Constitutional Principles prescribed by the Western Five Contact Group had stipulated that Namibia would be a unitary state. Namibia is therefore a unitary and not a federal state. As we had agreed on the concept of a unitary state, it therefore implied that the regions were to be administrative units.

In this regard, Geingob emphasised that only administrative power would be given to Regional Councils and Governors, and not legislative power, as in the case of a federal government.

Geingob also presented the argument that from the onset, the Swapo party had argued for a strong central government wherein the President – having been elected by the country as one

constituency – plays a significant role in building a unified state and selecting ministers from those voted into power by this single constituency. “Appointment of Governors by the President to represent him in the regions would similarly go beyond the Governors just being the representatives of one of the many regional constituencies as the case is now,” he stated.

In addition to these points, one of the more interesting – and perhaps even controversial – arguments presented by Geingob was in terms of maintaining unity as a way of confronting ‘divisive tendencies’. In this regard, he said that, “In order that divisive tendencies do not undermine the unity of the state, many culturally and politically diverse countries have sought to place the representatives of the constitutional head as the heads of the regions. Such is the case in India. The Governors of India’s various provinces are appointed by the President on the advice of the ruling party at the centre. If a federal state like India considers it prudent to have Governors appointed by the constitutional authority to ensure the unity of the country, I would think that there would be even stronger reason for a unitary state, such as ours, to select this mode of appointment for the regional Governors.”

THE DIRECT LINK

Before being debated in the National Assembly, the Special Advisors and Regional Governors Appointment Amendment Bill was justified by Cabinet: “To strengthen and clarify the link between the regional councils and central Government it has become necessary for His Excellency the President to appoint special advisers and regional Governors to serve at the President’s pleasure.”¹⁵

When he tabled the Special Advisors and Regional Governors Appointment Amendment Bill, Jerry Ekandjo, who was the Minister of Regional and Local Government, Housing and Rural Development at the time, also noted that “The appointment of Governors enables such Governors to act as representatives of central Government in the regions concerned and serve as a link between central Government, regional council and local and traditional authority.”¹⁶

Given the pitfalls in the previous system of regional governance, it is true that the link between regional government and central government needed to be strengthened in order to ensure that, in terms of development planning, the two were on the same page. It is unclear from Ekandjo’s statement, however, how the appointment of regional Governors with no direct say/vote in the management of regional councils – as opposed to the election of such governors – makes for a stronger link.

OVERLAPPING ROLES

Another argument lodged in favour of the appointment of Regional Governors by the President is based on the premise that the system whereby Governors were elected from their

¹⁴ Hage Geingob, Address in the National Assembly, 6 October 2010. Retrieved from http://www.parliament.gov.na/cms_documents/33_address_of_hage_g_geingob.pdf on 4 January 2011.

¹⁵ Brigitte Weidlich, Pohamba to Appoint Next Regional Governors, *The Namibian*, 11 August 2010.

¹⁶ Jerry Ekandjo, Tabling of the Special Advisors and Regional Representatives Appointment Amendment Bill in the National Assembly, 6 October 2010.

group of fellow regional councils, meant that the incumbent's responsibilities as Governor would have to compete with his/her responsibilities as a councillor responsible for a constituency. As such, the Governor would therefore often neglect one – often the constituency – in favour of the other.

Geingob, in his speech in support of the changes, summarised this notion, saying that, “As things stand, the Chairman of the Management Committee in the region, who is elected by his/her equals, who are all regional councillors, is at the same time the Governor of the region. I have talked with a number of former and present Governors, and there is general agreement that the arrangement is lopsided. Because of their responsibilities as Governors, some of them ignore their constituencies and that situation is not healthy”.¹⁷

An opinion piece in the *Namibian Sun* also expressed this concern, noting that, “One such consideration that springs to mind is that Governors in the current form are serving as Chairpersons of the Regional Council and also a full-time councillor to a constituency. In this regard the person designated as a Governor of his/her constituency is either benefiting or disadvantaged by the work as governors. In other words the councillor who is also a Governor is mostly absent from his/her constituency office”.¹⁸

Regional councillors agree with the notion that leading both a region and a constituency could be a difficult balancing act for elected Governors. *The Namibian* reported that Swapo regional councillor for Olukonda constituency in the Oshikoto Region at the time, Phillemon Ndjambula, praised the Bill, saying that a Governor who does not have a constituency will be in a good position to co-ordinate and direct all political affairs and development in the region whether the region is dominated by the opposition or not.¹⁹ “This has been quite an awkward situation to these fellow councillors who are expected to deliver both at their constituencies and at the same time to the region,” Ndjambula was quoted as saying.

This was indeed a plausible concern in ensuring the full efficiency of Governors. In fact, the argument for the separation of responsibilities has not been disputed. However, whether the appointment of Regional Governors effectively addresses the problem in the most democratic way has been questioned, as such a conundrum may have been addressed through the direct election of an additional council member who would have the responsibility of Governorship or through a recruitment process for the most qualified administrative head for the region (going with Geingob's ‘administrative unit’ argument), as opposed to the appointment by the President.

INCREASED ACCOUNTABILITY & ACCESS TO POWER

As noted in the section on the problems with the previous systems, one of the issues that faced regional councils were that

their level of accountability, and the entity to whom they were accountable were all questionable. Further, their ability to demand change was undefined, and it was unclear how much power they held in actually directing the change they sought.

Those in favour of the Act have argued that the appointment of Governors by the President fixes this problem, by making Governors directly accountable to the President for progress in their regions, and carrying the weight of his mandate in demanding reform or action on certain issues.

Furthermore, the argument that Regional Governors will have greater access to the powers that be, and a direct link to the President, has also been lodged. Prime Minister Nahas Angula was quoted as saying that, “The people in the regions need attention and Government has made this a priority” and that, “The people must have a direct line [of communication] to the Head of State to bring matters to his attention”.²⁰ Acknowledging past difficulties with regional governance, and describing the functions of the new Regional Governors as being “oversight and monitoring”, Angula was also quoted as saying that, “We want to improve the regions and the Head of State can only solve problems of the regions (by) dealing with the regional councillors and Governors”.

Arguments against the appointment of Governors

While the arguments noted above are important, the major concern noted by those against the appointment of Governors is that they are imposed on the people without the backing of an electorate. Several criticisms of the Bill have been brought up both in parliament and in the media, amongst them, that the Act strips Namibians of their democratic right to elect their leaders; that it works against the policy of decentralisation; that in its implementation, it has missed the opportunity to effectively address concerns regarding tribalism; and that it appears to be a response spurred by fear of the opposition.

The argument has been raised in academic circles that the changes in legislation to provide for Governors appointed by the President constitute a reversion to pre-independence times, when commissioners were imposed upon Namibians to govern and essentially served as spies in the regions.

Both Professor Joseph Diescho and Professor Bill Lindeke likened the Presidentially-appointed Governors to “Bantu Commissioners of old” adding that this new legislation essentially only serves to “recentralise” Government policy despite pro-decentralisation rhetoric. In an interview with the *Windhoek Observer*, Lindeke alluded to ongoing political science research that suggests that African states, to a large degree, reproduce the colonial state in new clothes²¹. He also cautioned that, “The question is how much resources these Governors

¹⁷ Hage Geingob, 6 October 2010.

¹⁸ Appointment of Regional Governors: Myth and Reality, *Namibian Sun*, 19 October 2010.

¹⁹ Absalom Shigwedha, Swapo Parliamentarians back governors' appointment. *The Namibian*, 27 October 2010. Retrieved from http://www.namibian.com.na/index.php?archive_id=72255&page_type=archive_story_detail&page=2123.

²⁰ Brigitte Weidlich, APP wants referendum on regional governors, *The Namibian*, 14 October 2010.

²¹ Governors not Unlike Bantu Commissioners of Old, Tuna Asino, *Windhoek Observer*, December 2010.

would deliver from the central government for development in the region.”²² And in more recent remarks, Diescho noted the concern that, “This system is not democratic because these appointed Governors end up being more accountable to the president than the people they govern.” He added, “A governor should come from the people themselves and should not be imposed on them.”²³

Soon after the 2010 appointment of Governors, Lindeke was quoted as stating that: “As far as actual Governors are concerned, we will have to see what develops. People will use them to seek access to the central decision makers if that is possible. No doubt their performance will be uneven as in the past. Will different regional structures cooperate more than in the past? We must wait and see. There is not much ‘decentralisation’ left in any of this and the relationship to development is very uncertain.”

There was concern from opposition parties too, that Governors appointed by the President would merely act as ‘paper tigers’ and ‘messenger boys and girls’ of the President, without any clear accountability to the people they are supposed to serve. Describing the appointment amendment as a “reactionary amendment bill”, Rally for Democracy and Progress (RDP) President at the time, Hidipo Hamutenya, told *The Namibian* that: “Multi-party democracy has been systematically emasculated over the past 20 years of autocratic rule”. He went on: “Surely this was not the intent of the creators of the regional authority structures, who wanted to achieve the broadening and deepening of the democratic process and giving them more authority.”²⁴

The merits of some of the arguments made against the Acts are explored in more detail below.

DENIGRATING DEMOCRACY

Many criticisms with regards to the appointment of Governors concerned the effect that the Special Advisors and Regional Governors Appointment Amendment Act would have on democracy. In fact, some posited that if the arguments presented in favour of the Act are anything to go by, “we are certainly witnessing a closure of the democratic space orchestrated by the ruling party (Swapo) – more specifically by its leadership”.²⁵

In fact, the whole idea of decentralisation – as per the Decentralisation Policy of 1998 – was to widen the level of democracy at the regional level, and to increase the participation of the general population in participating in their development, thereby “deepening democracy, bringing government closer to the people, promoting broader participation in governmental and developmental affairs by all citizens”.²⁶ In his 2005 paper on

Regional Governance and Decentralisation, Graham Hopwood writes that according to former Deputy Minister in the Ministry of Regional and Local Government, Gerhard Totemeyer, “Decentralisation shifts decision-making power, of no matter what degree, to sub-national administration and political units”. He goes on to say that in Namibia and beyond, decentralisation is often portrayed as closely connected to democratisation, and quotes the words of Dr. Nickey Iyambo, who was Minister of Regional and Local Government when he introduced the Decentralisation Policy to Parliament in 1997. Iyambo noted at that time: “Decentralisation therefore provides an opportunity for people to have access to relevant participative decision-making, extending democracy to people as a right based on national ideas and values.”²⁷

Political commentator Mulife Muchali also argued against these appointments, noting that “this intended political meddling in regional affairs will rob all Namibians of their democratic right in choosing their regional representatives and contesting for the highest office in the region” and that it will undermine the need for public participation in politics.²⁸ He went on to say that “instead of the Governors being the voices of their respective regions with the political clout that goes with the position, the proposed law will turn the Governors into bell-boys and messengers of the state – with no respect from their regions as they would be seen as political impostors.”

Professor Andre du Pisani’s response to Minister Hage Gein-gob’s rationale for the amendment was: “If ever there was a rationale for neo-patrimonial politics from the centre, this was it.”²⁹ (Neo-Patrimonial politics are characterised by web-like networks of interpersonal relationships, control over persons, resources, market access and access to opportunities and capital. This is clearly to the detriment for good governance.)

TRIBAL TENDENCIES?

When we look at the list of Governors appointed to each region, it is also quite clear that appointments were made based on the predominant ethnic make-up of such region. Perhaps through an election, the same trend may have been observed, but when this is outrightly sanctioned by the President himself, without regard for how the communities on the ground may view such appointments, it poses the danger of disregarding the democratic right of people to select Governors that they think would most effectively meet their needs.

A letter from a concerned resident of the then Caprivi Region sheds a little light on this. Self-described as a Swapo party member, and feeling heavily slighted as a member of the Mayeyi community, the resident wrote that: “It is time President Pohamba appoints a Mayeyi-speaking person to be the Governor

²² The Namibian Sun, Governors or Kommissaris? 2011. Retrieved from <http://www.namibiansun.com/governors-or-kommissaris.4544> on 7 September 2015.

²³ Haufiku, Mathias, 2014. Presidential appointment of governors questioned. New Era newspaper, 11 August 2014. Retrieved from <https://www.newera.com.na/2014/08/11/presidential-appointment-of-governors-questioned/> on 4 September 2015.

²⁴ Brigitte Weidlich, Appointed governors merely ‘handpicked messengers’, The Namibian, 15 October 2010

²⁵ Alexactus Kaure, A Reversal of Democratic Politics in Namibia: Apocalypse Now?, The Namibian, 15 October 2010

²⁶ Ministry of Regional and Local Government, Development and Housing, Retrieved from http://www.op.gov.na/Decade_peace/righ.htm on 08/01/2011.

²⁷ Iyambo, Nickey, Ministerial address introducing the National Decentralisation Policy. 1997.

²⁸ Mulife Muchali, Regional Politics: ‘The People Must Decide’. The Namibian, 24 September 2010.

²⁹ Andre Du Pisani, The Political Arena in Namibia: the Regional Council and Local Authority Elections 2010, published in New Era, 9 December 2010

of the region having overlooked us for all his appointments in the past. Mafwe and Masubiya had held the governorship of the region in the past and it should be our time now. Either the President is ignorant of the political situation or dynamics in the region or Dr Kawana is not advising him well. Next elections we will not vote and we will stand our ground. Neither Kawana nor Sioka nor anyone will convince us otherwise.”³⁰

The Namibian's then editor, Gwen Lister, also expressed concern at the “increasing signs of tribalism” in her Political Perspective of 9 December 2010. “The President conferred upon himself the prerogative of appointing the Governors of the 13 regions of the country. While it probably would have been no different had the regional councils themselves selected, it is noteworthy that in most of the areas, he has appointed people of the ethnic group in the majority in the area in question. He hasn’t tried to ‘mix things up’ and appoint, for example, a Nama-speaking Governor in Omusati or a Caprivian in Omusati. And even if he did, I wonder whether the people of those areas would accept such a person!”³¹ She wondered whether there will ever come a time when the tribal factor doesn’t play a role in how Namibia’s democracy plays out, and made the following observation: “It might not be a bad thing, in fact, if Governors were selected based only on their acumen and expertise and own solid contribution to the affairs of the region, rather than simply because they come from the same tribe. I’m not saying that some of those already selected may not make good Governors, but perhaps they’d find it easier to resist the politics of patronage and prevent empire-building, when they are not, in fact from the same ethnic group as the majority they represent. It would be a tough call to get this past the people in some regions, and an even tougher call to get it past the ruling party.”

Geingob argued, however, that the appointment of regional Governors will essentially work towards nation building as far as tribal issues are concerned, in line with Swapo’s ‘One Namibia, One Nation’ slogan. Furthermore, he said that any forces working against this ideology need to be quelled: “... lately, there are some centrifugal forces who want to practise diversity in unity. We should discourage that from happening as it will only promote tribalism.”³²

THE FEAR FACTOR

Others have argued that the Act is nothing more than a fear response by the Swapo Party, who they allege refused to concede any regional power to the opposition parties. In his opinion piece in which he dubbed the Act as “blatantly unconstitutional” and “contrary to the doctrine of separation of powers”, NamRights Director Phil Ya Nangoloh wrote that:

The rationale for the appointment of the so-called regional governors is, to me, purely political expediency because President Pohamba and or his advisors feared

that the Opposition parties would control some of the country’s 13 administrative regions after the just-ended Regional Councils and Local Authorities elections, which the ruling SWAPO Party won by a landslide. Moreover, political expediency is implicit in the enactment of the *Special Advisors and Regional Governors Appointment Amendment Act 2010* (Act 15 2010) and becomes clear through the Parliamentary pronouncements by former Namibian Prime Minister Dr. Hage Geingob who, on October 6 2010, said that the appointment of such regional advisors and or governors was necessary to counter for “centrifugal forces who want to practice diversity in unity” instead of “moulding these different ethnic groups into one Namibian nation”.³³

Muchali, too, posited that “without doubt, the intent behind this political intrusion is to choke the political life out of possible political victory in some regions by members of the opposition parties, especially the coming threats from former Swapo comrades in Rally for Democracy and Progress (RDP).”³⁴

TOWARDS RECENTRALISATION

One of the major criticisms of the new Act is that it reverses efforts made thus far with regards to decentralisation. While the Decentralisation Policy of 1998 recognises Namibia as a unitary state – in line with Geingob’s arguments for the appointment of Governors, its introduction also states that:

“The only guarantor for democracy is people making their own political, cultural, social and developmental decisions at their own level and the only safeguard of sustainable development is when people participate in setting their own priorities, planning, implementing, monitoring them and evaluating these themselves within the overall national interests. Such democratic participation leads to ownership, and therefore sustainability of those development initiatives which result from such participative decision making. Any consequent risks are compensated for by the commitment, ownership and increased capacity resulting from participation, making democratic development cheaper in the long run.”³⁵

However, with the appointment of Regional Governors by the President, the Act essentially centralises this role, going against the provisions of the policy.

In their chapter, *From Government Decentralisation to Decentralised Governance*, Cheema and Rondineeli write that, “Although evidence can be found for both beneficial and negative consequences of decentralisation among and within countries, many of the failures of decentralisation are due less to inherent weaknesses in the concept itself than to government’s ineffectiveness in implementing it. Like any prescription for fundamental change, decentralisation meets resistance from those

³⁰ Author Unknown, It’s Mayeyi’s turn for Governor, *The Namibian*, 9 December 2010

³¹ Gwen Lister, Political Perspective, *The Namibian*, 9 December 2010

³² Hage Geingob, 6 October 2010

³³ Phil Ya Nangoloh, How, Why and Where the Appointment of Regional Governors by President Hifikepunye Lukas Pohamba is Ultra Vires and Contrary to the Doctrine of Separation of Powers, 7 December 2010

³⁴ Mulife Muchali, Regional Politics: ‘The People Must Decide’, *The Namibian*, 24 September 2010

³⁵ Government of the Republic of Namibia, National Policy on Decentralization, 1998.

whose interests are served by the concentration of power and resources in the central government. And as with any fundamental reforms that shift the distribution of power, the successful implementation of decentralisation policies depends on the creation of multiple and complex conditions that make success uncertain in any country".³⁶

In this vein, Totemeyer adds that "accepting the policy of decentralisation but not applying it in its full consequence when appointing the Governor causes doubts whether the government is fully committed to decentralisation. The appointment of a Governor to a region is not an act of decentralisation, but of deconcentration. As both principles are presently combined in the election of sub-national authority bodies and the appointment of a governor, clashes of interest and possible authority conflicts are unavoidable".³⁷

In *Unfinished Business: Democracy in Namibia*, Blaauw also argues that "the decision by the President in 2010 to appoint regional Governors and special advisors serves to strengthen the perception that government controls sub-national structures and continues to hold centralised power in Namibia".³⁸

Many of the arguments from opposition members of Parliament centred around the notion that the appointment of Regional Governors by the President would essentially reverse the country's decentralisation efforts. It was reported that DTA MP Philemon Moongo, criticised the Bill as an attempt to centralise power in the hands of one person, adding that, "It will not strengthen the unitary state but will instead cause unrest and divide the people because the regional leaders will be imposed on them. Let the nation choose who they want. The Swapo Government has decided to take a route that is a betrayal of the Namibian people."³⁹ He was also quoted as arguing, "We now have reached a stage where regional leaders will be undemocratically imposed on the people and it is obvious that the President will appoint Governors who can produce [more] Swapo membership with the hope of keeping Swapo in power in an autocratic way," voicing the concern of many opposition leaders that such a appointment system would warrant them powerless even in cases – either presently (as in the case of the Kunene Region) or in the future – where they may have secured majority votes in the Regional election. Ignatius Shixwameni of the All People's Party called for a referendum, or alternatively for the Bill to be referred to a Parliamentary Standing Committee. Neither of these two proposals was taken up.

Pre-empting the decentralisation debate in his speech on the Bill, Hage Geingob noted, "We had created decentralised structures, such as, the regions, the regional councils, the municipalities, and town councils 'to bring the government closer

to the people'. The intention was never to compromise the unitary nature of the state".⁴⁰

Arguing against the appointment of Governors, on pro-decentralisation grounds, Professor Andre du Pisani wrote:

Neo-patrimonial politics are not new to the Swapo Party of Namibia, nor is it new to African politics in general. Rural social structure in Africa has macro-political implications, precisely on account of the social cohesion that neo-patrimonial politics make possible. In the case of the Swapo Party of Namibia, social cohesion is measured in terms of the capacity of the dominant party functionaries and leaders to control the behaviour of its members. The most powerful members of the community ("leaders") are those who control benefits valued by others: dependency relations are the essence of social hierarchy. These, in turn, constitute the micro- and meso-foundations for macro-(national) politics.

This is the primary context within which the recently promulgated *Special Advisors and Regional Governors Appointment Amendment Act* (Act 15 of 2010) has to be seen. This Act not only undermines the decentralisation project of the state, but is meant to deny political space to upstart and more genuine political entrepreneurs to operate independent of the centre's control, for once mobilised they could be particularly threatening because they are more difficult to co-opt or otherwise to contain.

Du Pisani posits that the Special Advisors and Regional Governors Appointment Amendment Act (Act 15 of 2010), "holds the prospect for creating a new class of 'patrimonial democrats', a phenomenon not unknown in other southern African states."⁴¹

ACCOUNTABILITY FACTOR

With respect to the accountability argument presented by those in favour of the appointment of Governors, proponents of decentralisation would argue instead that the participation of the masses in the election of leaders would be key to ensure accountability to the people. In a discussion on decentralisation in developing countries, Litvack *et al* state: "How decentralisation affects equity also depends in part on the extent of local accountability and local political participation by the poor. Accountability can be enhanced when local leaders are elected and are concerned about providing services to their constituents.... The mere existence of a democratic political system is insufficient unless there is meaningful political participation by all groups."⁴²

³⁶ Cheema & Rondinelli, From Government Decentralization to Decentralized Governance. In *Decentralization and Governance*, Chapter 1, pg 1-20. 2007. Retrieved from http://www.brookings.edu/~media/press/books/2007/decentralizinggovernance/decentralizinggovernance_chapter.pdf on 7 September 2015.

³⁷ Totemeyer, 2014.

³⁸ Blaauw, L., Accountability and Democracy. In *Unfinished Business: Democracy in Namibia*, pg 80. Sims, B. and Koep, M., 2012 (ed.).

³⁹ Brigitte Weidlich, APP wants referendum on Regional Governors, *The Namibian*, 14 October 2010.

⁴⁰ Hage Geingob, 6 October 2010.

⁴¹ Andre Du Pisani, *The Political Arena in Namibia: the Regional Council and Local Authority Elections 2010*, published in New Era, 9 December 2010

⁴² By Jennie Ilene Litvack, Junaid Ahmad, Richard Miller Bird, *Rethinking decentralization in developing countries*, World Bank, 1998.

Diescho has argued on similar grounds, saying Governors would not be accountable to the people in their regions, but solely to the President. Back in 2010, he noted, “The central preoccupation (of the amendments) was to guarantee an absence of dissent in the regions by appointing officials who would serve not the people, but the President of the party as his spy, messenger, defender and praise singer”.⁴³ In fact, he went so far as to say, “A new problem is created and enlarged, namely that of the arrival on the political scene of people, good people, who had no aspirations to become bad politicians, who are thrown into leadership and pretend to be leaders, whereas they are not leaders at all! They will develop a sense that because they were never elected, their responsibility is to please the one who appointed them, not the people. They are likely to do more spying on the elected regional leaders for the President, and, owing to the understandable inferiority complex with which they assume their responsibilities, their behaviour is likely to resemble that of the old Native or Bantu Affairs Commissioners—KOMMISSARISSE”.⁴⁴

More recently, he has stated, “This system is not democratic because these appointed governors end up being more accountable to the president than the people they govern.... This can fuel conflict between the state and the community as the community may feel that leaders are imposed on them. People must be allowed to elect their leaders”.⁴⁵ He made a public call on Namibian citizens and voters “to urge government to stop the practice of appointing Governors to regions” at the National Anti Corruption Conference in June 2015, stating at the event that “How can you [Governor] be accountable to the people if you have no relationship with them? Accountability starts from the region, therefore people needed to be given the opportunity to elect governors”.⁴⁶

These sentiments have been countered though, and Erongo Regional Governor, Cleophas Mutjavikua recently defended the role of Regional Governors, noting that “The President is a servant of the people and he has been given the mandate by the people to appoint people that he needs to lead the country... We do not have a problem whether we are appointed by the President or elected by the people, either way we are accountable to the people”.⁴⁷

WIDENING RIFTS

Another argument presented against the Bill was that the appointment of Governors by the President had the potential of widening the already existing rift between the National Council and the National Assembly, with former DTA President Katutire Kaura stating that it would cause “big rivalry” between the two houses⁴⁸. The RDP was of like mind on this issue, with Steve Bezuidenhout noting that the Bill would “create power

struggles and chaos between appointed and elected leaders”.⁴⁹ Bezuidenhout further argued that the Bill would have a number of other negative effects, including that it:⁵⁰

- Will not enhance any efficiency as intended,
- Will not improve regional service delivery that we so desperately need,
- Will create power struggles and chaos between appointed and elected leaders
- Will legitimise possible cronyism, nepotism and corruption.
- Will promote personalised authority and, therefore, weak institutions.
- Will encourage low levels of accountability in political life.
- Will bring into our democratic system the dreaded norm of autocracy.
- Will exclude political competition and good governance.

He worried that “the democratic principle of being ‘ruled by the people’ will be replaced by the principle of being ‘ruled by political patronage’” and concluded his contribution to the debate by saying: “We trust our people, the citizens, on whose pleasure we are serving as their representatives to elect the President, regional councillors, local councillors and the likes. Why don’t we trust the citizens to elect their own Governors?”

Is democracy at stake?

The strong public reaction to the Special Advisors and Regional Governors Appointment Amendment Act – whether in favour of or against the Act – likely stems from the notion that decentralisation is supposed to go hand-in-hand with building democracy, by bringing power closer to the people at the grassroots level. In fact, when he introduced the Decentralisation Policy to Parliament in 1997, then Minister of RLGDH, Iyambo stated that: “Decentralisation therefore provides an opportunity for people to have access to relevant participative decision-making, extending democracy to people as a right: based on national ideas and values.”⁵¹

Although certain reforms were needed to enhance accountability and service delivery in regional governance, under the previous system, democracy played a more meaningful role in the running of regional government, with Namibians at least having a say in the choice of their leaders, as people at the grassroots had a (indirect) choice in the selection of their leadership was important for democracy – the will of the people – all the same.

For many, the Amendments appeared counter to democratic consolidation, and several political analysts saw the move as

⁴³ Joseph Diescho, 22 December 2010.

⁴⁴ Ibid.

⁴⁵ Matthias Haufiku, Presidential appointment of governors questioned, New Era, 11 August 2014.

⁴⁶ Staff Reporter, Mutjavikua defends regional governors, New Era, 24 June 2015.

⁴⁷ Ibid.

⁴⁸ Brigitte Weidlich, APP wants referendum on Regional Governors, The Namibian, 14 October 2010.

⁴⁹ Steve Bezuidenhout, Address on the Special Advisors and Regional Governors Appointment Amendment Bill, 25 October 2015.

⁵⁰ Ibid.

⁵¹ Iyambo, Nickey, 1997.

an attempt by the ruling party to consolidate its control instead. Diescho wrote: "The questions asked about the hurry to pass an Act that would allow the Head of State to handpick and turn people who are not necessarily political into governors were not about strengthening democracy or even decentralising power, but about control."⁵² Speaking in the context of how the party is concerned with ensuring that Governors stick to the Swapo agenda in the execution of his duties, Diescho went on to say that, "the best and fastest way to gain control of this situation was to change the manner in which the top leaders in the regions get to their seats. To have them elected would make them become too strong and confident, whereas to appoint them would make them meek and fearful of the central government".⁵³

The promise of democracy is also compromised in the sense that the appointment of governors by the president may disregard the preference of the masses in areas where the regional council is controlled by an opposition party. In an interview with the *Windhoek Observer* prior to the appointment of the new governors, Graham Hopwood asked the important question: "The centralised appointment of regional governors could also raise problems if opposition parties control particular regional councils as is the case in Kunene at the moment (2010) where the governor is a UDF councillor... Would the President always appoint a councillor from the ruling party even though opposition parties control the council?"⁵⁴

In both the first and second rounds of presidential appointments of regional governors, all have been prominent Swapo members.

Table 2 Share of Regional Council Seats, 1993-2010

| | Swapo | DTA | UDF | Swanu | Nudo | RDP |
|------|-------|-----|-----|-------|------|-----|
| 1993 | 71 | 21 | 3 | 0 | 0 | - |
| 1998 | 82 | 16 | 4 | 0 | 0 | - |
| 2004 | 96 | 2 | 5 | 1 | 3 | - |
| 2010 | 98 | 2 | 3 | - | 3 | 1 |

It is unclear in both of the two amendments, what the true effect of appointed Regional Governors is expected to be. They have no voting powers on the regional councils, yet, they report to the President on activity within. Further, they sit in on meetings and are allowed to be part of deliberations, but their main function is to be at the service of the President, working almost as an invisible hand within the councils. Anton von Wietersheim of the RDP queried this in the National Assembly: "The imposed Governor will have no voting rights in the regional council. Is it the sole intention to create a new tier of purely ceremonial presidential representatives across 13 regions, special advisors for each governor? Where does that leave the Public Service Commission (PSC)? Are we sidelining the PSC for public service appointments from now on?"⁵⁵

To answer the question of whether democracy is at stake at the regional governance level, the answer is pretty clear: Yes! And the reason is simple: the public has no direct say in who will govern them at the regional level. And even though they previously only had an indirect say in who became Governor, the person in this position relied on the vote of the region's residents to come to that office.

Further, if one ties accountability directly to the way in which one achieves office, then it is clear that the changes in this legislation are not necessarily in the service of the masses at large. As President Geingob noted when he appointed the 14 Regional Governors to serve starting April 2015: "Governors serve at the pleasure of the President as prescribed under Article 110A (2) of the Namibian Constitution, and as such, they may be reassigned to other regions or removed from office."⁵⁶

The question of whether this loss of democracy benefits the people to a greater extent in terms of service delivery at large, is separate altogether.

International Practice

Quite a few countries – mostly with federal systems – have provinces/states/regions whose governors are appointed by the president, the prime minister, or the existing monarch. In India, Zimbabwe, Pakistan and Sri Lanka, governors are appointed by the President; in Malaysia they are appointed by the King; in Belgium, they are appointed by regional government; and in Nigeria, Japan, Mexico, Italy, Chile, Argentina, and the Philippines, governors are elected to office by a direct vote from the people. In Indonesia, both "the Governor and the Vice Governor are elected by a direct vote from the people as a couple, so the Governor is responsible to the provincial residents". Furthermore, because the governor is inaugurated by the President or the Minister of Home Affairs in the President's name, "the Governor is representative of central government in such province, so the Governor is responsible to the President."⁵⁷

⁵² Joseph Diescho, 22 December 2010.

⁵³ Ibid.

⁵⁴ A. Thomas, Government tries power grab in regions, *Windhoek Observer*, Retrieved from http://www.observer.com.na/index.php?option=com_content&view=article&id=120:government-tries-power-grab-in-regions&catid=1:national&Itemid=7 on 18 January 2011.

⁵⁵ Brigitte Weidlich, New Governors will be 'regional kings', *The Namibian*, 18 October 2010.

⁵⁶ Geingob, Hage, 2015. Press Release: Appointment of Governors. Office of the President, 10 April 2015.

⁵⁷ Wikipedia contributors. "Governor." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 16 Jan. 2011. Retrieved from <http://en.wikipedia.org/w/index.php?title=Governor&oldid=408230052> on 18 Jan. 2011.

ZIMBABWE

Before revising the Constitution in 2013, Zimbabwe had a system in which provincial governors were appointed by the President. At the time, it was argued that the appointment of regional governors by the President allows for improved administration of the regions. Zimbabwe is divided into eight provinces (and Harare and Bulawayo also had provincial status), and before the constitutional changes, each was governed by a provincial governor appointed by the President for a period of two years.

This setup drew much criticism, with some questioning why governors were needed at all, whether they served any real purpose, if their appointment improved or worsened the ruling party's waning political fortunes; and whether opposition parties gained anything from 'worrying about these redundant governors'. The Editor at the *Zimbabwean* at the time noted "that in the midst of all the problems confronting Zimbabwe, the coalition parties have elected to expend so much energy and time squabbling over appointment of governors just goes to show how petty and thoroughly delinquent this government has become."⁵⁸

The constitutional changes resulted in the scrapping of provincial governors, and the introduction of "provincial chairpersons" who would "come from the party with majority seats in that particular province. The chairperson will be elected by the provincial council".⁵⁹

In a commentary on the new constitution, Chigwata and de Visser write: Under the old Constitution, the President was empowered to appoint and dismiss provincial governors without consulting anyone. The Constitution's efforts to 'depoliticise the dismissal of provincial and metropolitan chairpersons must be welcomed. It should reduce the scope for politically motivated 'removals' of these office-bearers and the use of these offices for the (re)deployments of party cadres. The inclusion of a possibility for chairpersons to be removed by their own councils is likely to change the political dynamics: these chairpersons will no longer feel accountable exclusively to the central government but will have to work together with their fellow council members, at the risk of them voting for their dismissal'.⁶⁰

INDIA

In arguing the case for the appointment of regional governors by the president, Swapo Vice President and Trade and Industry Minister Hage Geingob looked to India as an example. In this regard, he said that India had sought "to place the representatives of the constitutional head as the heads of the regions" as a means of ensuring that "divisive tendencies do not undermine the unity of the state".

He further noted that, "the Governors of India's various provinces are appointed by the President on the advice of the ruling party at the centre. If a federal state like India considers it prudent to have Governors appointed by the constitutional authority to ensure the unity of the country, I would think that there would be even stronger reason for a unitary state, such as ours, to select this mode of appointment for the regional governors."⁶¹

In India – which has 28 states with more than 400 districts and a population of over 1.1 billion people – Governors are appointed by the President for a term of five years, and have similar functions and responsibilities at the state level as the President has at the national level.⁶² In what is dubbed the world's largest democracy, the Governors of India's states serve at the pleasure of the Prime Minister, and enjoy executive (appointing the Chief Minister and a council of Ministers for their region), legislative, financial and discretionary powers in their states.

But even in this 'federal constitutional republic with its parliamentary democracy'⁶³, the system of the appointment of Governors has drawn much criticism, with critics calling for a Presidential System in which the President and the Governors of states are elected by the people, and not simply appointed as is the case currently. Some have argued that a switch to such a system would rid the country of tribalism, regionalism and regional parties. Others have also noted that this would in effect provide for the development of states that are otherwise caught up in party political issues. It is not clear how the appointment of governors in India has allowed the country to quell 'divisive tendencies' in that country.

⁵⁸ The Zimbabwean, Who really needs governors? 2010. Retrieved from: <http://www.thezimbabwean.co/2010/09/who-really-needs-governors/> on 7 September 2015.

⁵⁹ Chigwata and Visser, How will Zimbabwe's new Constitution change provincial and local government? Retrieved from <http://mlgi.org.za/resources/presentations/Commentary%20on%20Zim%20new%20Constitution.pdf/view?searchterm=chigwata>, 2013.

⁶⁰ Hage Geingob, 6 October 2010.

⁶¹ New Zimbabwe, Provincial governors to be scrapped. 19 January 2015. Retrieved from <http://www.newzimbabwe.com/news-10058-Provincial+governors+to+be+scrapped/news.aspx> on 7 September 2015.

⁶² Wikipedia, Governors of States of India, Retrieved from: http://en.wikipedia.org/wiki/Governors_of_states_of_India on 17 January 2011.

⁶³ Wikipedia, India, Retrieved from <http://en.wikipedia.org/wiki/India> on 17 January 2011.

Does the appointment of Governors benefit Namibians?

It is clear that the Regional Councils were in need of some major reforms. But those reforms should have been more about ensuring enhanced service delivery and key development outcomes, than about appointing the heads of regions into office.

However, an analysis of the two Acts, as well as the absence of performance measures to assess how the appointment (vs. election) of governors enhanced the development of their regions between 2010 and 2015 raises questions about the benefits of these changes. Further, without clear Terms of Reference for Governors during the first round of appointments, it is difficult to assess whether the new system brought about developmental returns for the people (at a significantly better scale than when governors were elected) over the past five years.

As noted above, the appointed Governors are at the service of the President, do not have voting powers on the Councils, and do not have a clear mandate other than to report on the goings on in the council, represent central government, and serve as a 'direct link' between central government and the regions and traditional authorities. How this has translated into enhanced service delivery between 2010 and 2015 is difficult to ascertain without the above mentioned reporting and performance measures.

Additionally, although Governor's benefits and salaries are pegged at those of Deputy Ministers, how they engage their regions with respect to their representation of the President and/or Central Government has been called into question both in the first round of appointed Governors, and in the 2015 batch of Governors. For example, in 2010, when the newly appointed Governor of the Karas region, Bernadus Swartbooi, ordered "government offices, parastatals, local and regional authority offices in the southern region to submit their work schedules to his office immediately" or face the prospect of being "transferred out of the Karas Region", many questioned his mandate in issuing such an ultimatum, stating that he was out of line.⁶⁴ Many questioned his mandate and audacity in issuing such an ultimatum, stating that he was out of line. And in April 2015, when the Minister of Health was visiting the Kunene Region and the Region's Governor, Angelika Muharukua she questioned whether this was, in fact, the right task for her. "A Governor of a region represents the President in that region. Why does it have to be the Governor to introduce the minister? What is the meaning of that? Who is to introduce the minister?" she was quoted as saying.⁶⁵

Goran Hyden writes that: "To fully appreciate the role that governance can play in reducing poverty, it is important to make a distinction between public policy, on the one hand, and governance, on the other. Public policy is made and implemented within a governance framework. The latter can facilitate the policy process, but it may also hinder it. Thus, the challenge is to develop the rules or institutions that promote poverty reduction."⁶⁶ This notion is especially important in ensuring that Namibians benefit from the systems of governance imposed on them, or which they elect.

Ensuring that the arguments made for the appointment of Governors could be made visible through clear performance targets, M&E measures, and tangible development benefits that would not otherwise have been realised, was certainly a missed opportunity for Government. By providing clear measures upon which the performance of Regional Governors could be weighed – whether elected or appointed – the electorate could have been shown the benefits or costs of the rushed changes made to the governing legislation.

It appears that President Geingob's administration felt the same way about the absence of clear measures by which to hold Governors accountable for more measurable and specific roles and responsibilities. When he appointed the new set of Governors (2015-2020 term), he also highlighted a set of Terms of Reference (ToR) that had been issued to the appointed Governors. These include:⁶⁷

- To act as the political head of the region;
- To be the link between the central Government and the Regional Council, Local Authorities and Traditional Leaders in the region;
- To act as the representative of the central Government in the region;
- To oversee the exercise of any executive function of Government in the region, in consultation with the Minister of any Office/Ministry/Agency;
- To deliver a State of the Region Address once every year in accordance with Article 110A (5) and (6) of the Namibian Constitution;
- To investigate and report on any matter relating to the region if requested to investigate such matter by the President or the Minister of Urban and Rural Planning;
- To keep abreast of developments relating to the region and to bring any matter to the attention of the President or the relevant Minister if deemed advisable;
- To settle or mediate any dispute or other matter that might arise in the region;
- To coordinate with the Chairperson of the Regional Council and Members of the Management Committee and other Councilors on such matters which are relevant to the functions of the Regional Council;

⁶⁴ Namibia Press Agency, Karas governor to monitor performance of offices. Published on NAMPAs website on 11 January 2011. Carried in New Era newspaper under the title 'Swartbooi issues the orders' on 13 January 2011.

⁶⁵ New Era, Governors cannot introduce ministers – Muharukua. New Era, 28 April 2015.

⁶⁶ Hyden, Goran, Governance, Development and Poverty Reduction. In *The Twin Challenges of Reducing Poverty and Creating Employment*, pg. 55. United Nations Department of Economic and Social Affairs, ST/ESA/342, 2013.

⁶⁷ Geingob, Hage, Speech on the Occasion of the Appointment of Regional Governors. 10 April 2015.

- To coordinate the functions and activities relevant to Local and Traditional Authorities in the region; and
- To perform any other duties that may be assigned by the President, the Minister of Urban and Rural Planning, and as may be consulted with the President, by any Member of Cabinet, Director-General or the Attorney-General.

Although these ToR are not much different from what has been outlined in the Acts, the public announcement of what they are and their issuance to the incoming Governors is welcome. Perhaps the newest addition is the requirement for a State of the Region address – which would likely assist in being able to carry out more conclusive assessments of what Governors are doing for the development of the regions to which they have been appointed. Further, the announcement that these terms will be tied to performance measures is also important. In a message read on his behalf at the National Anti Corruption Conference by Prime Minister Saara Kuugongelwa-Amadhila, the President stated, “The Regional Governors are also having performance obligations in terms of which they should account to the Namibian people about development progress made in their regions.”⁶⁸

Going forward, whether or not Governors are elected or appointed, having a framework against which their performance can be effectively assessed is critical. Without annual reports, performance measures, regional development plans with M&E targets set out for Governors, etc, it is almost impossible to say whether or not changing the regional governance legislation to appoint Governors has benefitted the Namibian people. Since they are at the service of the President and report directly to him and not to the electorate, it would be for the President to disclose.

All in all, because of the absence of performance measures and a monitoring and evaluation frameworks tied to regional development plans/objectives, it is almost impossible to measure the performance of regional governors both on their own merit, and in contrast to how they might have performed had they been elected as opposed to being appointed by the President. Likewise, outside of the general development work of the regional councils, it is difficult to assess whether Namibians have truly benefitted from having their Governors appointed instead of elected.

Beyond the role and performance measurement of Regional Governors themselves, the overall effectiveness of regional councils needs to be assessed, in terms of enhancing service delivery and responding to the national priority of poverty eradication.

Conclusion & Recommendations

Because of the absence of regional development plans and M&E frameworks that would allow us to measure the performance of Regional Governors, it is difficult to assess wheth-

er the appointment (vs election) of Regional Governors has borne any enhanced benefits or service delivery for the Namibian people across all regions. Essentially, the legislation only removed the ability of Namibians to more robustly hold their Governors accountable for their regional development.

In essence, the decision to appoint (vs elect) Governors has not been convincing for democratic consolidation, or for enhanced service delivery.

Many of the arguments presented in favour of the appointment of Governors by the president seemingly seek to address the numerous pitfalls in the previous system of regional governance. As outlined earlier, there were (and still are) clear issues in the definition of the roles and responsibilities of regional Governors and councillors, the level of accountability of Governors, and the multiple overlapping roles that governors had to assume. However, in stark contrast to the intentions of the decentralisation efforts embarked upon by government, the Act failed to strengthen democracy in Namibia. Moreover, the experience of the role of Governors between 2010 and 2015 provides little indication with regards to how the appointment of Governors by the President – as opposed to their election to office by the public – has countered the stated pitfalls in the most effective manner.

Given the plethora of problems prevalent in the previous system of regional governance, perhaps the most disheartening element in all this is that Government missed out on a prime opportunity to reform the regional governance system and heighten its effectiveness in delivering services to the people, while further consolidating the democracy that Namibians are so proud of, and for which the country has received numerous accolades.

A proponent of direct election of regional governors to the regions, Totemeyer presents a number of important recommendations on the positioning and role of governors. Amongst others, he calls for a review of the Act, noting that the appointment policy “contradicts the principle of free choice by way of a democratic process”; recommends that Governors be elected according to a ‘winner takes all’ election system; and highlights the need to clarify the functions and powers of the regional councils vs. those of the Governor. He also recommends that Governors be nominated for election by the region in which he/she is resident, that the election of Governors take a bottom-up (instead of top-down) approach, and that the role of Governors should be better elucidated in the Regional Council Act.

The author of this paper is in agreement with Totemeyer’s recommendations, particularly with respect to reviewing and revising the policy to allow for the election of Governors rather than their appointment by the president. However, based on the dialogue that has taken place to date, it appears unlikely that the legislature will revisit the way in which Governors come to power any time soon. In the meantime, below are three recommendations to ensure that the Namibian people,

⁶⁸ Geingob, Hage, Speech at the National Anti-Corruption Conference. 22 June 2015.

at large, benefit from the work of their Governors, and are able to strongly hold them to account (through the President):

- It is encouraging that the new administration has issued clear Terms of Reference for the Governors appointed in 2015, which will be tied to performance agreements. The requirement of a State of the Region address is also welcome. Importantly, in order to be able to monitor change and development, key regional performance indicators should be integrated into the SoRAs. Further, the terms of the performance agreements and the measured indicators to which Governors will be held accountable should be made public.
- While annual State of the Region addresses are welcome, they are not enough. Government should ensure the creation of Regional Development Plans that are tied to the NDP goals, to ensure that development at the regional level (taking into consideration the profile and economic potential of that region) feeds into broader national goals. Clear frameworks for the measurement of progress made should be incorporated into these plans, particularly in terms of assessing how Governors perform in terms of poverty reduction in their regions (in line with the priority government has set out for this term).
- Government should revisit the question of whether Governors should be appointed or elected, given the implications that these possibilities have for democratic consolidation in Namibia. Given the way in which the amendments had been rushed through parliament, this revisiting should be put to public consultation, with clear outlines of how the accountability frameworks would differ between the two (or more) options, and how the nation would best benefit from the options at hand.

*All appointed Governors – including that of the Kunene Region which had been run by a UDF Governor since the first regional elections in 1992 – are members of the Swapo Party.

Table 4 List of appointed governors of Namibia's 14 regions – 2015-2020

| REGION | APPOINTED GOVERNOR* |
|--------------|-----------------------|
| Erongo | Cleophas Mutjavikua |
| Hardap | Esme Sophia Isaack |
| Karas | Lucia Basson |
| Kavango East | Samuel K. Mbambo |
| Kavango West | Sirkka Ausiku |
| Khomas | Laura McLeod-Katjirua |
| Kunene | Angelika Muharukua |
| Ohangwena | Usko Nghaamwa |
| Omaheke | Festus Ueitele |
| Omusati | Erkki Endjala |
| Oshana | Clemence Kashuupulwa |
| Oshikoto | Henock Kankoshi |
| Otjozondjupa | Otto lipinge |
| Zambezi | Lawrence Sampofu |

Table 3 List of appointed governors of Namibia's 13 regions – 2010-2015

| REGION | APPOINTED GOVERNOR* |
|--------------|--|
| Caprivi | Lawrence Sampofu |
| Erongo | Cleophas Mutjavikua |
| Hardap | Katrina Hanse-Himarwa |
| Karas | Bernadus Clinton Swartbooi |
| Kavango | Maurus Nekaro Samuel Mbambo (following death of Nekaro) |
| Khomas | Samuel Nuuyoma |
| Kunene | Joshua Hoebe |
| Ohangwena | Usko Nghaamwa |
| Omaheke | Laura McLeod- Katjirua |
| Omusati | Sophia Shaningwa |
| Oshana | Clemence Kashuupulwa |
| Oshikoto | Penda Ya Ndakolo |
| Otjozondjupa | Rapama Kamehozu |



Notes

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Notes

This image shows a full page of blank, lined paper. The paper is white and features evenly spaced, horizontal blue lines running across its entire width. There are no margins, text, or other markings on the page.

About the Author

Nangula Shejavali is an IPPR Research Associate and independent consultant. At the IPPR her research has focussed on democracy, elections, and gender equality. She is currently the lead researcher on IPPR's Election Watch Project. Nangula holds a BA in International Affairs and African Studies from Lafayette College, and a MS Business in Global Marketing Management from Virginia Commonwealth University.

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The Institute for Public Policy Research (IPPR) is a not-for-profit organisation with a mission to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia. The IPPR has been established in the belief that development is best promoted through free and critical debate informed by quality research.

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