

# X PERSPECTIVES ON PARLIAMENT

Issue No.3

THE NATIONAL COUNCIL

August 2016

## FUNDING LOCAL DEVELOP- MENT

One of the few bills to have started its life in the National Council is the Constituency Development Fund Bill. This bill essentially seeks to solve the financial problems that Constituency Development Committees (CDCs) currently face. At the moment, these committees are barely functioning as they do not receive much in the way of funding, and are thus powerless to implement development initiatives. If this bill should come into action, CDCs could apply to the fund with proposals for projects. Money from the fund would be allocated with the aim of furthering development. The Ministry of Urban and Rural Development would oversee this fund.

The National Council drafted and passed the law, and handed it over to the National Assembly. The NA, however, has not yet debated it. If well implemented – and, crucially, left free from interference when it comes to the allocation of money – this fund could have positive impacts. It remains to be seen whether the NA will move this project along.

## AN OVERVIEW OF THE NATIONAL COUNCIL



### History

Many countries have two chambers of parliament. Often, this system is chosen to provide a balance between competing powers. Take the case of the United States of America, which famously has the House of Representatives (the lower chamber) and the Senate (the upper chamber) - which together are called the Congress. In the US, this system reflects a contentious debate that consumed the founding fathers as the country's rules were drawn up. The House of Representatives has 435 voting representatives, but they are not shared equally – states with a higher population get more representatives than states with fewer people. California has 53 representatives,

whereas Wyoming only has one. When the US constitution was drawn up, states with fewer people were scared that they would be easily outvoted by those states that had bigger populations, and that their interests would therefore not be represented. As a compromise, it was decided that each state would have two Senators in the Senate. In theory, the upper house where every state has equal representation balances the lower house where populous states dominate.

The National Council was similarly created shortly after Namibia's liberation, after a lengthy debate, as the newly-elected members of the Constituent Assembly decided on the structures of the Namibian government. As the Senate in the US, the National Coun-

cil was suggested to create a balance of powers. The position of Swapo was that Namibia should be characterised by a highly centralised government. As President Geingob writes in an article on the drafting of the constitution, "Namibia needed a leadership structure that would promote cohesiveness by bringing together various ethnic and racial groups that had been divided under apartheid rule. Anything short of that structure had the potential of undermining the fragile unity of the society. Therefore, SWAPO argued for a strong central government and against Namibia's becoming a federal state."<sup>1</sup> Swapo argued that as a unitary state, Namibia should have one legislative chamber - basically looking like the National Assembly we have now. Opposition parties, however, argued for a second house "with equal representation from various regions."<sup>2</sup>

The same argument as in the US applies: especially as Namibia becomes more urbanised, an ever-higher proportion of the population would live in the cities. At some point, cities would represent the biggest share of voters – and therefore legislators would care most about the concerns of urban residents and neglect development in the regions. Why spend much effort on Okatyali constituency with its 1600-odd voters, when doing well in Ondangwa guarantees success in elections? This reasoning is essentially the same as in America – the fear was that high-population areas receive all the attention, while low-population regions are neglected.

There was more to the debate, however. President Geingob points out in his 2004 PhD thesis:

As SWAPO's power base was perceived to be restricted to one northern region where most of the Oshiwambo-speaking people lived,

nonSWAPO parties [sic] felt that they stood a good chance of controlling the second house as they could gain majorities in many other regions.<sup>3</sup>

## Elections

Geingob's assurance that Swapo were confident of being victorious in the elections to the National Council, and thus "had no difficulty accepting" the proposal to have two chambers might be coloured a bit by the benefit of hindsight. Either way, it turned out that Swapo really did have nothing to worry about. As constituency lines were to more fairly represent the distribution of the population, it became apparent that Swapo's heartland would account for more than just a seat or two. "Under the old arrangement, only two candidates could be sent to the National Council from former Ovamboland, but under the new delimitation arrangement, eight could be sent from the same area that had been divided into four regions,"<sup>4</sup> writes Geingob. Swapo ended up controlling both chambers comfortably, winning 19 seats in the first regional elections in 1992, and has never come close to relinquishing control. In fact, its control of the National Council has only increased with time. In the November 2015 elections, Swapo made enough headway into the last opposition strongholds that it had enough Regional Councilors to choose every single seat in the NC. Instead, the party "allowed" the DTA and UDF one seat each – but this was due to Swapo's generosity, not because the opposition had earned the seats. In reality, the current National Council should be without opposition MPs.

## A ROLE MODEL FOR TRANSPARENCY?

Parliamentarians in Namibia are supposed to declare their financial interests. This is done to prevent conflicts of interest and ensure greater public trust in our representatives. Those who make the rules of the country should be accountable so that people can be sure that politicians are not benefiting unfairly from their power. Despite the constitution mandating both the NA and the NC to ensure their members declare their assets, the National Assembly has traditionally not followed its own rules. The last disclosure of assets happened in 2009, and after approving a new set of rules in 2015, the body still has not released its declarations – many months after the November 2015 deadline.

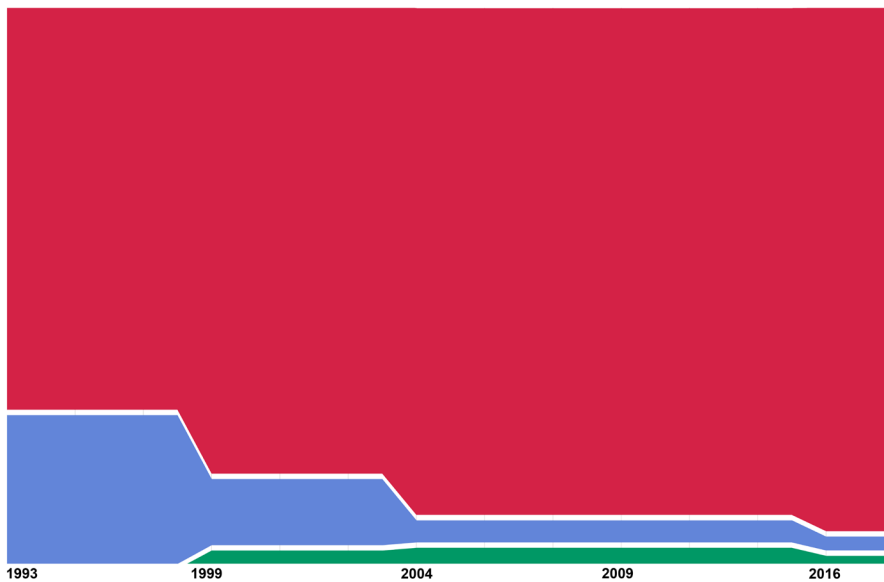
The National Council, on the other hand, has consistently published its register of interests on time. The 2015/16 edition, which is easily available to the public, is no different. However, a look at the declarations suggests that it is still very easy for Parliamentarians to get away with not disclosing their financial interests. For example, seven Members (almost a fifth of them) claimed they had nothing at all to disclose – no property, no shares, not even a bank account containing more than N\$20 000. It is unclear whether anyone checks the Members' submissions for accuracy, or if their claims are taken at face value. While the NC should be commended for consistently declaring their financial interests in time, a stronger system is needed.

<sup>1</sup> Geingob, Hage. 2010. "Drafting of Namibia's Constitution". Constitutional Democracy in Namibia - a critical analysis after two decades. Eds. Bosl, A., Horn, N., du Pisani, A. Konrad Adenauer Stiftung. Windhoek, Namibia

<sup>2</sup> Ibid

<sup>3</sup> Geingob, Hage Gottfried. 2004. "State Formation in Namibia: Promoting Democracy and Good Governance". PhD Thesis, University of Leeds. p.132

<sup>4</sup> Ibid



The graph shows how Swapo has increased its percentage of seats after every election since independence. Red - Swapo, Blue - DTA, Green - UDF

## Seats in the National Council

Year	Swapo	DTA	UDF
1993	19	7	0
1999	19	3	1
2004	24	1	1
2009	24	1	1
2016	40	1	1

## Decentralisation

How well does the National Council represent regional concerns? According to Geingob, the pro-regional aspect was a reason why Swapo accepted the proposal in the first place, thinking that “the regional aspect of the second house would be very useful in bringing democracy closer to the people.”<sup>5</sup>

When it comes to discussions, the National Council’s debates usually reflect rural issues to a significant extent. Notably, much of the National Council’s time so far this year has been devoted to the tabling and discussion of reports for each Region. In fact, when newspapers accused National Councillors of being unprepared for debates on bills, members pointed to their work on regional reports as an excuse for

why they couldn’t prepare.<sup>6</sup> But the National Council is not alone in dwelling on these issues. Several parliamentarians in the National Assembly also bring up regional matters. On one day in July alone, the NA debated the slow implementation of decentralisation, a poisonous plant that kills livestock, and the functioning of Regional Councils and multi-purpose community centres. Overall, however, those issues are often more driven by individual parliamentarians with strong interests in rural issues. In the National Council, on the other hand, the whole body is primed for these debates and they therefore tend to take up more of the Council’s attention. In the National Council, regional issues are the main concern. In the National Assembly, they matter but are not the largest focus.

## A PLACE OF INACTIVITY?

### Rubber-Stamp or Checks and Balances?

The National Council might discuss certain issues a lot, but can they do anything about them? The upper house in a bicameral system usually has two functions: representing people who are not represented in the first chamber (in our case the regions), and to generally push back on the lower house. In Namibia, the upper chamber has had to battle the impression that it is a toothless institution, approving just about everything that comes its way and seldom pushing back against the National Assembly. As Hopwood writes in his Guide to Namibian Politics, “although the NC has sent a handful of bills back to the NA over the years, it has not played a strong checking and balancing role because of its limited powers and its domination by Swapo MPs.”<sup>7</sup>

At the end of the last session, and as the new session began this year, the National Council did flex its muscles a little. It sent back the Regional Councils Amendment Bill, because Councillors disliked a clause that required councillors be “able to communicate, read and write in the official language of Namibia”.<sup>8</sup> When the Local Authorities Amendment Act reached the National Council, the NC went even further. Enraged that the act proposed wide-reaching changes to local government without consulting the bodies affected, the new National Council held regional consultations, and convened a special session before the official opening of Parliament for the year to reject the bill on principle. This means the NA has to now pass it with more than two-thirds support to overrule the National Council.

With the 2014 constitutional amendment, the National Council has found its power significantly constrained on key legislation. Since the amendments passed, when it comes to bills “dealing

<sup>5</sup> Geingob, Hage Gottfried. 2014. “State Formation in Namibia: Promoting Democracy and Good Governance”. PhD Thesis, University of Leeds. p.133

<sup>6</sup> Tjihenua, Theresia, Kahiurika, Ndanki.(2016) “Lazy day in the National Council ... unprepared members fail to debate four bills”. The Namibian. 11.05.2016 <http://www.namibian.com.na/index.php?page=archive-read&id=150583>

<sup>7</sup> Hopwood, Graham. 2007. Guide to Namibian Politics. Namibia Institute for Democracy.

<sup>8</sup> Government of Namibia. 2015. Regional Councils Amendment Act. Section 2.

with the levying of taxes or the appropriation of public monies subject thereto”,<sup>9</sup> the National Council may no longer suggest amendments. If it finds errors, i.e. a spelling error or a mistaken calculation, it can send a bill back, but the chamber may no longer change a bill in any substantive way before sending it back to the National Assembly. This means that for this set of bills – a very important category, as it includes the yearly appropriation bill which decides on government spending – the NC is now effectively condemned to be a rubber-stamping body by the constitution. Therefore, for example, even if all Members of the National Council think a budget focuses too much on cities and regions receive too little development funding, they are powerless to change the allocation of funds to better serve their constituents.

In all fairness, the NC's lack of power represents a general trend in Namibian politics where the executive has a great control over the laws that get passed. As Wiese explains in a 2003 IPPR pub-

lication, laws pass through the Attorney General, then the Cabinet, then to Parliament. In other words, the executive has to approve of a law before it is seen by Parliamentarians at all. And once a bill reaches Parliament, it is unlikely to be challenged – partly because the Cabinet (and President) who signed off on the bill are their seniors in their political party, and partly because Cabinet represents a high share of Parliamentarians. The NC may be especially toothless, but legislative weakness is a general problem in Namibia.

### Who shows up?

In the course of the same 2014 constitutional amendment, the rule on quorum was also changed. The quorum is the minimum number of Councillors who have to be at a session for it to be valid. If, for example, only three councillors show up, most people would agree they cannot make decisions on behalf of the body. The rule in Namibia used to be that more half of the National

Council had to be present to constitute a meeting.<sup>10</sup> Now, the requirements are less strict. If the National Council wants to vote on a bill, more than half of the Members still have to be there. But for everyday business – the tabling of reports, discussion of issues in the regions, and so on – only a third of the members have to be present.<sup>11</sup> In theory, this would give the Members more time to be in their regions and engage with their constituents to represent them better. However, an argument could also be made that they have many weeks in between sessions to engage their constituents, and that when Parliament is in session, Members should at the very least show up. The basic question is: is it unreasonable to request that more than a third of the members of a body of parliament should be present at all times to engage in the work required? Assessing the actual performance remains difficult as the National Council, like the National Assembly, does not publish attendance records and does not provide them upon request, either.

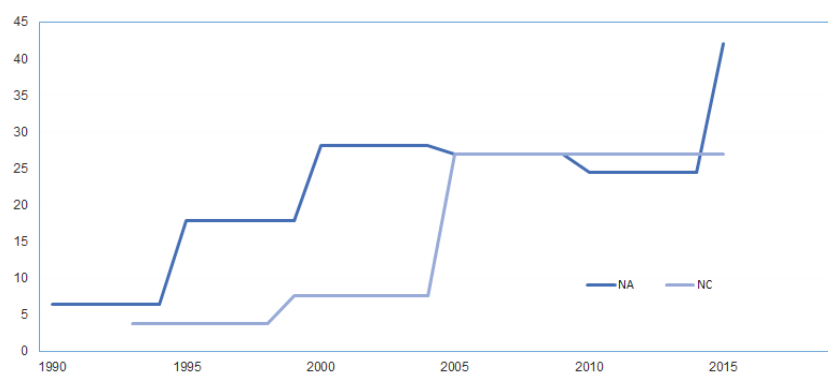
## GENDER

If the National Council exists to better represent the regions of Namibia, then it should surely pay special attention to women. After all, women represent a majority of the rural population in our country, up to 55 percent in some regions.<sup>12</sup> Unfortunately, they have never been close to achieving majority representation in the second house of Parliament. The first National Council only had one woman member, who was joined by one more colleague during the next session. There have been more substantive increases – there were seven women members from 2004 to 2010, and eleven now – but still women have never made up even a third of representatives in the National Council. Even the increase in numbers to eleven in the last election, a record-high, did little in terms of overall share as the National Council itself also expanded from 26 to 42 members.

### Women in the National Council

	1992-1998	1998-2004	2004-2010	2010-2016	2016-2020
Number of Women	1	2	7	7	11
Percentage of seats	3.8%	7.6%	27%	27%	26%

### Women in the National Assembly and National Council (percent)<sup>13</sup>



With its stagnation in terms of women's participation the National Council runs counter to the general trend in the Na-

tional Assembly, which has seen a sharp increase in women represented at the national level in recent years. This uptick

<sup>9</sup> Namibian Constitution Third Amendment Bill. Clause 17.

<sup>10</sup> The Constitution of the Republic of Namibia. Article 76.

<sup>11</sup> Namibian Constitution Third Amendment Bill. Article 18

<sup>12</sup> Namibia Statistics Agency. 2011. "Namibia 2011 Population and Housing Census Main Report" p. 29.

<sup>13</sup> Shejvali, Nangula. 2015. "A Thorn in the Flesh for Gender Equality: How the gender gap in Namibia's regional council elections undermines the country's otherwise impressive gender equity gains at other levels of governance". Institute for Public Policy Research Election Watch Briefing Paper No. 2. p.3



in representation can be largely credited to Swapo's "Zebra style" gender quotas, where the party committed itself to have men and women alternate on its party list for the National Assembly. This had promising results for the NA, with the

share of women rising from 24 to 42 percent after the 2014 election. But when it came to electing Regional Councillors, who constitute the pool from which the National Councillors would be chosen, Swapo only put up 23 women candidates

out of a total 121 – a paltry 19 percent. Other parties did not fare much better: the DTA's candidate list was comprised by 22 percent of women politicians, while the overall rate for the Regional Council elections stood at 15 percent.<sup>14</sup>

# NEWS FROM PARLIAMENT

Work in the National Assembly started off slowly. After the yearly process of the appropriations bill being discussed vote by vote, there seemed to be a dearth of new legislation to discuss. Despite the long list of bills to be tabled this year, newspapers reported that a shortage of legal drafters meant none of these documents were ready for discussion. For a few weeks, the NA kept itself busy discussing motions ranging from traffic safety to poisonous plants – and of course the visit by the President of India.

However, the pace picked up in the last few days of June as a few bills were tabled in short succession. The Anti-Corruption Act was amended to create a permanent secretary for the commission, and an amendment to the liquor act was proposed to limit the sale of alcohol in certain areas. More importantly, the long-awaited Business and Intellectual Property Authority Bill was introduced, a key piece of legislation for dealing with issues such as trademarks and patents. The National Assembly also passed the Namibia Investment Promotion Bill.

The National Assembly was very busy in terms of international agreements. On July 13, Parliament ratified four international conventions regarding national security: the International Convention for the Suppression of Terrorist Bombings of 1997; the International Convention for Suppression of Acts of Nuclear Terrorism of 2005; the International Convention against Taking of Hostages of 1983; the Convention on Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents of 1973.

Parliament also took an important step forward in committing Namibia to good governance when it ratified two important international agreements on the subject. On July 14, the National Assembly agreed to accede to the African Charter on Democracy, Elections and Governance, and ratified the Memorandum of Understanding on the African Peer Review Mechanism. The African Charter on Democracy, Elections and Governance commits signatories to standards of good governance in a variety of areas such as elections and rule

of law. Meanwhile, the Peer Review Mechanism is a system by which African states hold each other accountable for their compliance with a range of human rights treaties and standards. Every two to four years, a country answers a detailed questionnaire to complete a self-assessment. After receiving a report from the Peer Review Mechanism Secretariat, the country creates a plan of action including all stakeholders. Afterwards, the review team visits the country and drafts a report. The African Peer Review Panel of other heads of state can then apply pressure on the country in question to improve the situation. Finally, the report is tabled in regional bodies, and donors step in to finance programmes to improve the shortcomings identified. Namibia's ratification of both these documents sends a message of commitment regarding good governance that is long overdue.

The final two days of the National Assembly's session were characterised by controversy. On the last day, a Ministerial Statement introduced by the Prime minister to clarify government's stance on the genocide negotiations with the German government caused an emotive debate, with several MPs accusing government of disrespecting the groups affected by the genocide in denying them a formal seat at the table.

Opposition members were also enraged when the PM introduced an unannounced motion to confirm a new set of Electoral Commissioners. According to the Electoral Act, appointing commissioners is a process that includes the public. The posts are advertised in the newspaper, and the public gets to attend interviews and object to candidates. This process was not followed. While the government pointed out that there was a provision in the law for Parliament to appoint members, the opposition was upset that no reasons were given for the public process not being followed.

<sup>14</sup> Shejvali, Nangula. 2015. "A Thorn in the Flesh for Gender Equality: How the gender gap in Namibia's regional council elections undermines the country's otherwise impressive gender equity gains at other levels of governance". Institute for Public Policy Research Election Watch Briefing Paper No. 2. p.2

## LIST OF STANDING COMMITTEES

The National Council website explains that “a Committee of the National Council is entitled to conduct hearings and to collect evidence, as it considers necessary for the exercise of its powers of review and investigations.” Committees scrutinise legislation, develop policies, and supervise government. This is mandated by the Constitution itself. The standing committees of the National Council and their chairs are:

### **Committee on Audit**

Hon. Rosa Kunyanda Kavara

### **Committee on Public Accounts and Economy**

Hon. Peter Kamunguisi Kazongominja

### **Committee on Security, Constitutional and Legal Affairs**

Hon. Rosalia Shilenga

### **Committee on Urban and Rural Development**

Hon. Phillipus Wido Katamelo

### **Committee on Gender, Youth and Information Communication Technology**

Hon. Ambrosius Kandjii

### **Committee on Habitat**

Hon. Cletius Sipapela Sipapela

### **Committee on Women Caucus**

Hon. Margaret Natalie Mensah-Williams

## LIST OF NATIONAL COUNCILLORS



**Mensah-Williams, Margaret Natalie**  
Khomas



**Sibalatani, Bernard Songa**  
Zambezi



**Tobias, Lebbius Tangeni**  
Oshikoto



**Boois, Dawid**  
Karas



**Kandjii, Ambrosius**  
Khomas



**Katamelo, Phillipus Wido**  
Omaheke



**Kavara, Rosa Kunyanda**  
Kavango West



**Nicanor Hilma Ndinelago**  
//Karas



**Shilenga, Rosalia**  
Oshana



**Sipapela, Cletius Sipapela**  
Zambezi



**Nangolo, Johannes**  
Erongo



**Hamutenya Johannes Tuhafeni**  
Erongo



**Ndjago, Melania**  
Erongo



**Dukeleni, Simon Christy**  
Hardap



**Mungenga, Nico Herman**  
Hardap



**Van Neel, Jeremias Gregory**  
Hardap



**Ephraim, Paulus Amukoshi**  
//Karas



**Kauma, Victoria Mbawo**  
Kavango East



**Kavhura, Petrus  
Muyenga**  
Kavango East



**Shikongo,  
Michael Mukoya  
Shipandeni**  
Kavango East



**Muha, Lukas  
Sinimbo**  
Kavango West



**Nakambare,  
Damian Haikera**  
Kavango West



**Namuhuja,  
Ruusa Joyce  
Nangula**  
Khomas



**Antsino,  
Johannes  
Hishidimbwa**  
Kunene



**Muharukua,  
Nguzu Johannes  
Pelsler**  
Kunene



**Mupya,  
Weich Murcle  
Uapendura**  
Kunene



**Ndakunda, Jason  
Nghihepa**  
Ohangwena



**Shikongo, Phillip  
Haitange**  
Ohangwena



**Kaishungu-  
Shinana, Lonia**  
Ohangwena



**Kanguatjivi,  
Cornelius Vejama**  
Omaheke



**Kazongominja,  
Peter Chance  
Kamanguisi  
Razungama**  
Omaheke



**Kalipi, Werner**  
Omusati



**Kanyeke, Titus**  
Omusati



**Shiimi, Gerhard**  
Omusati



**Kuushomwa,  
Lotto**  
Oshana



**Mupetami,  
Joseph**  
Oshana



**Kaula, Betty  
Beatrice**  
Oshikoto



**Nambondi, Hans  
Linekela**  
Oshikoto



**Booy, Steve  
Biko**  
Otjozondjupa



**Ghauz, Fransina**  
Otjozondjupa



**Likando, John  
Musialela**  
Zambezi

## ABOUT THE AUTHOR

Max Weylandt is an IPPR Research Associate focusing on analysis of parliamentary matters. He holds a Master's degree in Development Studies from the University of Oxford and joined the IPPR in 2015.

## ABOUT DEMOCRACY REPORT

Democracy Report is a project of the IPPR which analyses and disseminates information relating to the legislative agenda of Namibia's Parliament. The project aims to promote public participation in debates concerning the work of Parliament by publishing regular analyses of legislation and other issues before the National Assembly and the National Council. Democracy Report is funded by the Embassy of Finland.

## ABOUT THE IPPR

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 was established in the belief that development is best promoted through free and critical debate informed by quality research.



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**Directors:** M M C Koep, D Motinga, M Humavindu,  
N Nghipondoka-Robiati, J Ellis, G Hopwood

PO Box 6566, Ausspännplatz, Windhoek, Namibia  
Tel: +264 61 240514/5  
Fax +264 61 240516  
info@ippr.org.na  
[www.ippr.org.na](http://www.ippr.org.na)