

PERSPECTIVES ON PARLIAMENT

Issue No. 7

LAW MAKING

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IMPORTANT TERMS

Act: the name of a law. For example, the “Electoral Act” sets the rules of elections in Namibia.

Attorney-General: the Attorney-General is the top legal adviser to the Government. His or her responsibilities include protecting and upholding the Constitution

Bill: A bill is the name for a draft law – in other words, what we call the document when it is still being discussed and has not officially become a law.

Cabinet: Cabinet is the group of high-level members of the executive that decides on the direction of the Namibian government and advises the President. Apart from the President and the Vice-President, Cabinet includes all Ministers and the Attorney-General.

Table: when an MP officially introduces a document in Parliament, they “table” it (they put it on the table). As soon as a document is tabled in Parliament it becomes a public document that anyone is allowed to see.

Sponsor: in the context of law-making, this is the person or organisation proposing the bill. The sponsor is usually involved in writing the law and will take charge in pushing the bill through the process required to make it a law. In Namibia, usually a Ministry will sponsor a bill.

Veto: when the President decides not to sign a bill, this is often called a veto. The National Assembly can overrule him by passing the bill with 2/3 of its members.

HOW LAWS ARE MADE



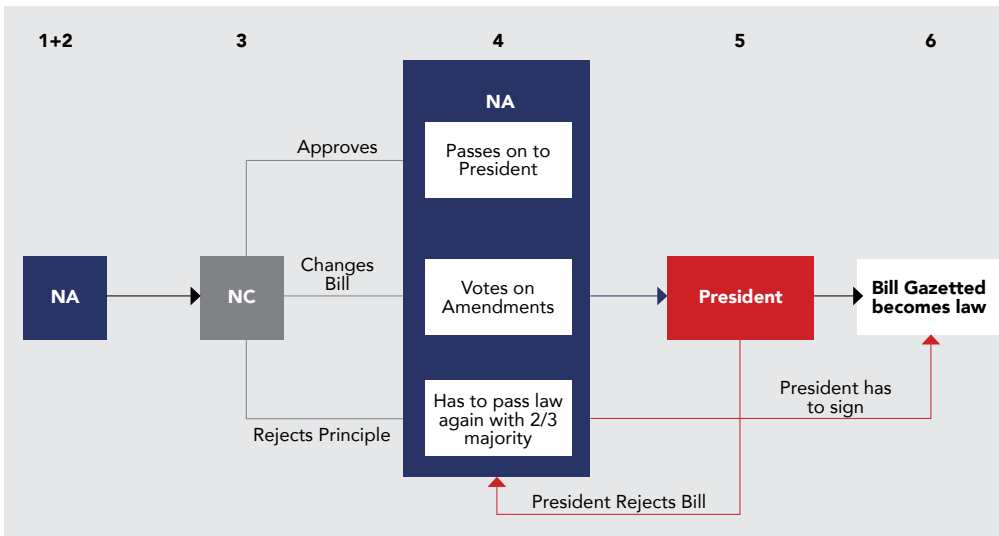
Making laws is one of the most important functions of Parliament. Members of Parliament (MPs) spend a lot of time debating how our laws should look, and they have to debate a lot of issues: since independence, Parliament has passed around 600 laws. Because these laws have such a big impact, it is important that Namibian citizens understand how they are made. While Parliament plays a big role in making laws, many other institutions and persons also influence the law-making process.

Behind the Scenes

Before a law is a law, it is a bill – a proposal for a law that is discussed and changed by various people before Parliament passes it. But who writes this proposal for the law? A Bill usually starts with a Ministry deciding that it needs a law to set the rules on a certain issue. For example, the Ministry of Finance could decide that it needs to change the way taxes are collected, and so they want to sponsor a

bill to make this possible. First, they would go to the Attorney-General who decides if the proposed law would conflict with the Constitution. The sponsoring ministry then goes to a sub-committee of Cabinet – the Cabinet Committee on Legislation – usually with a rough draft of the bill they want to propose. If the Committee agrees that the issue should be addressed with a law, they send the matter to the whole Cabinet. Cabinet then approves the drafting of a bill. At this stage, legal drafters in the Ministry of Justice convert the rough draft into a bill with the proper legal formatting. This is a very difficult task, which is why Ministries cannot write the final draft themselves – the Ministry of Justice employs experts just for this task. If the sponsoring Ministry is happy with the bill, it sends it to the Cabinet Committee on Legislation for approval. Finally, it goes to the Attorney-General, who certifies that the bill is ready to be tabled in the National Assembly.

STEP-BY STEP



1. First, the bill is ‘tabled’ (officially submitted for discussion) in the National Assembly. A draft law is usually called a bill while it is still being discussed; when it has become a law we call it an ‘act.’ In theory, any Member of the National Assembly can introduce a bill, but in reality bills are usually tabled by a Minister or Deputy Minister.
2. The bill goes through three stages in the National Assembly, called the three readings.
 - a. During the first reading, the sponsoring MP literally puts the document on the table of the Speaker of Parliament. The title of the bill is read out aloud and the bill immediately becomes a public document.
 - b. During the second reading, MPs debate the contents of the law. The opposition often makes suggestions for changes at this stage. At the end of this process, the sponsoring MP summarises questions and concerns and responds to them.
 - c. After the second reading, MPs go into the details of the law. They go through each clause of the bill, one-by one, voting on whether or not they agree with each clause. They can offer amendments (changes) for each clause, which also have to be voted on. Once they have approved all the clauses, the title of the bill is read again. This is the third reading, and the bill has now officially passed the National Assembly. (Note: sometimes, after the second reading MPs will vote to send the bill to a standing committee. This Committee discusses the bill, proposes what to do with it, and MPs vote on this suggestion.)
3. After the bill has been read a third time, it is passed on to the National Council, which also goes through the three readings like the National Assembly does. The National Council can do three things with the Bill:
 - a. It can approve the bill without changes
 - b. It can change some clauses of the bill
 - c. It can reject the bill on principle (In other words, the National Council can say the whole bill should not exist)
4. After the National Council has dealt with the bill, it goes back to the National Assembly. Depending on what happened in the National Council, the National Assembly does the following:
 - a. If the National Council passed the bill without changes, the National Assembly just passes it on to the President if it is happy with the bill. But the National Assembly can still make changes if it wants and send the changed bill to the President, this time without asking the National Council.

DRAFTING DIFFICULTIES

In the past few years, it has happened several times that bills which made it to the National Assembly were of poor quality. These bills contained errors, including spelling mistakes. At the same time, several Ministers have complained that it is taking too long for bills to be drafted. Last year, the ministry worked on 42 bills but only completed 25 of them. While the Ministry of Justice’s own rules say bills should be completed within six months, many bills have been worked on for much longer. This makes the Ministers’ jobs harder, because a Minister often cannot act to address a problem if there is no law giving her or him the power to do so.

It seems that all of these difficulties are caused by the fact that there are not enough legal drafters in the Ministry of Justice. As discussed above, drafting is a very difficult task that not a lot of people can do, and the Ministry of Justice has struggled to find enough people to fill their job openings. A newspaper reported that at one point the Ministry could not find a qualified person for a position for seven years. As of 2016, the Ministry only had four experienced drafters who had to check the work of 12 junior drafters. This lack of skilled persons leads to a lot of pressure, mistakes in bills, and delays in passing laws.

- b. If the National Council changed parts of the bill, the National Assembly votes on the specific changes. It can decide to accept the changes, or to keep the original way the bill was written. The final version does not go back to the National Council, but is passed to the President.
 - c. If the National Council rejected the bill on principle, the National Assembly has to vote on it again to overrule the National Council. If fewer than two-thirds vote for the bill, it does not become a law. If two-thirds or more MPs vote for the bill, it passes to the president.
5. The bill now goes to the President, so that he can sign the bill. The President may refuse to sign the bill, in which case, the National Assembly can vote to overrule him – again, with two-thirds of members. There is one special case: if the President thinks the law is unconstitutional, he can ask a court to review it. If the court rules that the law violates the constitution, the President cannot sign the bill and it does not become a law.
 6. Once the President has signed the bill, it is published in the government gazette (a regular government publication). It becomes an official law (i.e. an Act) the day the gazette is published, or on a specific date in the future if it is stated in the gazette.

DOES THE EXECUTIVE DOMINATE LAW-MAKING?

A very important concept in our democracy is the idea of checks and balances. The three branches of our government – legislative (Parliament), executive (the President and his ministries), and judiciary (the courts) – all have power to keep each other in check and prevent abuses of power. One of the key functions of Parliament is to oversee the work of the executive and ensure they are doing their job properly.

In Namibia, it can be argued that the executive has too much influence over the way laws are written. As shown above, a Cabinet committee has to approve a law twice before it even comes to Parliament for public debate. Why does this matter? Namibia has 27 Ministries, each of which has a Minister and at least one deputy – and all of them are in Parliament and vote on laws. Remember that the National Assembly has 96 voting Members (and 8 non-voting Members). There are more than 50 MPs who are also ministers or deputies, who can pass a law all by themselves. The other MPs will find it difficult to push back and change laws they do not think are good, because their colleagues who are in ministries will follow the decision made by Cabinet. In other words, by the time a law is introduced in Parliament, the decision has likely already been made. The National Council does not have the same problem, but in reality most law-making happens in the National Assembly.

PUBLIC INPUT

Because laws are important, it is vital that Namibians get the opportunity to contribute when they are being made. There are a variety of ways in which laws can be influenced. Sometimes, lawmakers will invite the public directly to give inputs on a proposed law. For example, the Ministry of Home Affairs and Immigration placed ads in newspapers that invited Namibians to send in their opinion on whether or not the time should be changed in winter. With some bills, lawmakers go to all the regions of Namibia, where they hold events where people can come in person and discuss the proposed law. For the Child Care and Protection Act, the Ministry of Gender Equality and Child Welfare even opened an SMS line so that people could use their phones to give inputs.

Some countries have started looking at crowdsourcing legislation. Crowdsourcing is the idea that we should let large crowds of people come up with solutions to problems. This has become possible due to new technologies such as the internet. In Finland, lawmakers wanted to come up with a new law on off-road traffic (in Namibia this would be a law that states how and where quadbikes can be used). First, government asked people about their experiences and problems with these vehicles. Secondly, people could suggest rules. Finally, government asked the people to vote for the best approach. Another approach is that people can directly edit the text of a proposed bill online – just like Wikipedia. But crowdsourcing does not have to be so complicated. Here in Namibia, MPs could use social media, like Facebook, to ask people for their input and suggestions on laws, before trying to get more detailed input. With more and more Namibians using mobile phones and being connected to the internet, we could become a world leader on involving people in the process of writing laws.

One danger of crowdsourcing, however, is that because so many people take part, the voices of minority groups and women get lost and in the end government focuses on the opinion of the majority. In fact, in the experiment in Finland that is discussed above, a large majority of people who gave inputs were men. However this does not mean that other voices were lost. The Finnish government used a computer algorithm to sort through inputs from the public. This computer noticed that women's responses were usually different from the rest of the population, and this could then be considered. In other words, while crowdsourcing technology brings the risk that only majority voices are heard because they are the loudest, the smart use of technology can actually allow government to pay special attention to gender and minority issues.

NEWS FROM PARLIAMENT

IN THE BEGINNING OF JULY, THE NATIONAL ASSEMBLY PASSED THE LOTTERIES BILL, AND MADE SOME CHANGES TO IT: the board overseeing the lottery needs to have someone with legal qualifications as well as someone from each sector that will receive the funds from the lottery. The amendments also introduced very clear requirements that regulate where the money can go – worthy causes such as arts, culture, and youth empowerment. On July 13, the National Assembly went on break until September 12.

The National Council started on the 31 of July and considered nine bills that the NA had passed in the previous months. The table below shows which bills it has sent back to the National Assembly for final reconsideration. The National Council amended the lottery bill – but these changes were small fixes to formal issues like misspellings and typos. It also amended the Namibia Revenue Agency Bill and the Local Authorities Amendment Bill.

When it returned, the National Assembly swore in a new member: Paula Kooper, who replaced Bernadus Swartbooi after SWAPO had expelled him from the party. It passed the Property Valuers Profession Amendment Bill, and will reconsider the bills sent back by the National Council.

BILLS OF 2017

The highlighted bills are ones the National Council reviewed and passed in its most recent session.

Bill	NA	NC	NA	President
Whistleblower Protection Bill	●	●	●	
Witness Protection Bill	●	●	●	
Nature Conservation Amendment Bill	●	●	●	●
Namibian Time Bill	●	●	●	
Access to Biological and Genetic Resources and Associated Traditional Knowledge Bill	●	●	●	●
Regional Councils Amendment Bill	●	●	●	
Local Authorities Amendment Bill	●	●		
Private-Public Partnership Bill	●	●	●	●
Appropriation Bill	●	●	●	●
Controlled Wildlife Products and Trade Act Amendment Bill	●	●	●	
One Stop Border Posts Control Bill	●	●	●	
Lotteries Bill	●	●		
Namibia Revenue Agency Bill	●	●		
Usury Amendment Bill	●	●	●	
Property Valuers Profession Amendment Bill	●			

ABOUT THE AUTHOR

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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

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