



A New Parliamentary Precedent?

Executive Overreach, Judicial Intervention and Rising Political Temperatures in Namibia's National Assembly



Henny Seibeb



Peter Katjavivi



Bernadus Swartbooi

Photos: The Namibian, Namibian Sun



1. Introduction

This study seeks to evaluate the appropriateness of parliamentary procedure in Namibia's National Assembly with a particular eye to those processes applied in the aftermath of disorderly conduct committed by Members of Parliament (MPs).

Parliamentary procedure refers to the rules of order, guidelines and practices regulating the governance of elected, deliberative assemblies. Rules of procedure are essential components for "defining the character of a Parliament by describing the rights and obligations of elected parliamentarians ... the manner in which business is conducted" in the House and in doing so, demonstrating to "the wider public that Parliament works fairly and effectively" on their behalf (OPPD of the European Parliament 2010:6). As a component of common law, parliamentary procedure in Namibia draws from various sources of international best practice employed in the governing of other parliamentary democracies as well as key domestic texts including the Standing Rules and Orders and Internal Arrangements of the National Assembly, the Powers, Privileges, and Immunities of Parliament Act (No. 17 of 1996), and the Namibian Constitution.

The impetus for this study is linked to an incident that unfolded in the National Assembly on 15 April 2021 during President Hage Geingob's State of the Nation Address (SONA) which resulted in the forced ejection of the leader and deputy leader of opposition political party the Landless People's Movement (LPM), Bernadus Swartbooi and Henny Seibeb, from the assembly chambers.

The response of parliamentary authorities to these events has since elicited considerable public controversy from across the political spectrum while also triggering the judicial involvement of Namibian High Court and Supreme Court, respectively. The removal and subsequent suspension of the two opposition MPs from Parliament by the National Assembly Speaker, Peter Katjavivi, has also raised important questions surrounding freedom of political expression, parliamentary privilege, and the separation of powers. It is at the intersection of these foundational concepts with pre-existing statutory frameworks that this study will evaluate the appropriateness of current parliamentary processes in dealing with incidents of disorderly conduct.

2

While a Supreme Court overruling of the High Court's initial dismissal of the two MPs' suspension appeal has since granted Swartbooi and Seibeb the right to return to the National Assembly, the precedent that this incident has set for future contraventions of parliamentary rules of procedure remains debatable. The internal ruling of the Parliamentary Standing Committee on Privileges, for example, which recently found the two MPs guilty of misconduct and deserving of penalties is arguably suggestive that such precedent-setting may already be in motion.

With these developments in mind, this paper will examine the actions taken by the Speaker against the two MPs' disorderly conduct as well as the "bitter divisions" generated as a result as something of a "litmus test" for the appropriateness of current parliamentary rules of procedure in this regard (OPPD European Parliament 2010:13).

Going forward, it is crucial that seemingly competing concerns with upholding the decorum and integrity of the Namibian Parliament be balanced and reconciled with upholding the rights of all members to exercise their freedoms to political expression, however contentiously, without the threat of censorship. The necessity of striking this delicate balance will likely become more pressing as Namibia's political opposition begins to grow stronger and more cohesive.

Thus, against the backdrop of rising political temperatures, this study argues that it is irrefutably in the interests of advancing Namibia's parliamentary democracy that proportionate and proper protocols are adhered to without exception to safeguard against the imminent risk of executive overreach showcased in the National Assembly on 15 April 2021.

2. Politico-Historical Background

Turning Tides in the Efficacy of Namibia's Political Opposition

Historically, Namibia has been widely conceived as a dominant one-party state with “moribund opposition parties in the process of continual decline” (Kaapama 2004:106, in Hopwood 2005:132).

While the ruling Swapo Party has continued to reap electability benefits from its former status as a national liberation movement prior to independence, the competitive edge of opposition parties has vacillated with none of them able to achieve longevity or electoral success beyond regional enclaves. A number of reasons have been advanced for the poor performance of opposition parties over the years including the strength the ruling party gains “from its position of occupancy” especially with respect to monopolisation of state institutions, resources, and patronage networks (ibid:133).

However, advantages yielded by the ruling party from political incumbency notwithstanding, the inefficacy of opposition parties themselves cannot be understated. No opposition parties have been able to advance a political vision differing substantially from the largely centrist ideology of the Swapo Party and as a result have neither “contributed to contemporary public debates nor sought to attend to issues affecting the country as a whole” (*The Namibian* 2017-08-24). Instead, the opposition has existed in a state of collective lethargy, passively responding to changes in the political climate rather than proactively rallying around salient issues reflective of the current government's failings, such as persistently high unemployment or the slow pace of land reform, and thereby steering the direction of political discourse in their favour.

The most damaging outcome of this historical weakness in Namibia's political opposition has been the “lack of political counterweight of any relevance” to challenge or at the very least hold the ruling party to account (Tötemeyer 2007:2).

Instead, fragmentation has been widespread both within and across opposition party lines which has also prevented the formation of a functioning parliamentary coalition to allow for the pooling of resources, political appeal, and most importantly, votes to offset Swapo's dominance. However, the rise of a new breed of social-movements-turned-political-formations including Affirmative Repositioning (AR) and the LPM, both of which have built their support bases around the highly topical issues of land redistribution and a lack of affordable housing, are indicative that the relative efficacy of Namibia's political opposition may be turning a corner.

3

The Rise of the Landless People's Movement and Mounting Electoral Opposition

Similar to the political origins of the Economic Freedom Fighters (EFF) in neighbouring South Africa after the expulsion of Julius Malema from his former role as president of the ANC Youth League, the LPM was born out of its current leader Bernadus Swartbooi's ejection from his previous position in the ruling Swapo Party.

Acting in his capacity as then-deputy land reform minister in 2016, Swartbooi was recalled from Parliament after referring to his superior, the Minister Utoni Nujoma, as a “fat idiot” and accusing him of resettling people from other regions in the south of the country ahead of the historically dispossessed Nama population. After refusing to apologise to Nujoma for these insults and denunciations, Swartbooi was subsequently fired from his position by President Hage Geingob in December 2016 and resigned as a member of the Swapo Party in July 2017. Upon cancelling his membership, Swartbooi began to vocalise his detestation of what he characterised as the government's tribalist approach to land reform in its favouring of Namibia's majority Oshiwambo-speaking population from which the ruling party historically originated.

Working initially as a pressure group after its founding in 2017, the LPM focused its efforts on grassroots activism and advocacy for the return of ancestral land to the San, Herero, Nama, and Damara communities, as well as more general agrarian reforms.

At the beginning of 2019, however, the LPM successfully applied to the Electoral Commission of Namibia (ECN) for political party status in time to contest the November 2019 general elections. The party's entry into electoral politics coincided with the worst turnout in support of Swapo since independence, with the ruling party's share of the vote dropping from 80% in the previous election cycle to 65% while President Geingob fared even worse, securing only 56% of the vote compared to his decisive 87% share in 2014.



Meanwhile, opposition contenders enjoyed relatively better outcomes, with independent candidate Panduleni Itula securing 30.16% of the vote, followed by the Popular Democratic Front (PDM) with 5.3% and the LPM which gained 2.7% of the vote. Despite the opposition's success in breaking Swapo's two-thirds majority by gaining a collective 33 seats in the National Assembly, the LPM led the charge calling for the nullification of the 2019 election, citing the ECN's delayed announcement of the final results, allegedly due to technical failures, as evidence that the legitimacy of the electoral process had been compromised. While efforts to expose alleged irregularities were ultimately fruitless, the LPM's walking straight into Parliament with four seats in its first election showing ahead of numerous more established opposition parties speaks to the momentum that has defined the party's entry into electoral politics.

The results of the November 2020 regional councils and local authority elections put the LPM and opposition forces more broadly in an even stronger position, not only as individual political entities, but also with respect to strategic coalition-building opportunities. Overall, the LPM gained control of the //Karas and Hardap regions while the newly formed Independent Patriots for Change (IPC) made significant gains at the coast by taking control of the Erongo region. At the local authority level, Swapo lost its absolute majority in the Windhoek Municipal Council as it managed to gain only five of the 15 seats with the remainder shared between the IPC, AR, LPM, PDM and NUDO.

The absence of a clear electoral majority necessitated the holding of coalition talks between the various parties, with Swapo attempting from the outset to form partnerships with the IPC and NUDO in order to retain control of the capital. However, these attempts were ultimately rejected by the so-called 'progressive forces' whose members seemed to have acquired a new degree of cognisance regarding the benefits of coalition-building amongst opposition parties. In a letter addressed to the party's regional structures, PDM secretary general Manuel Ngarinombe urged representatives to avoid forming coalitions with the ruling party and to instead seize the "golden opportunity to unite as the opposition front ... to save our local authorities from maladministration" (*The Namibian* 2020-11-30).

In some respects, these initial indicators of a more organised opposition appear to have tentatively trended beyond election season. For example, in July 2020, various opposition parties threatened court action against Swapo who they accused of trying to manipulate the composition of parliamentary committees serving as oversight bodies in the National Assembly. Pointing out that opposition parties now collectively hold the majority of backbenchers in the National Assembly, PDM Leader McHenry Venaani accused the ruling party of trying to "bulldoze the process [of forming committees] ... [by] using committee membership to appease its own disgruntled members" (*New Era* 2020-07-08). These sentiments were echoed by Rally for Democracy and Progress (RDP) Leader Mike Kavekatora who asserted that the Standing Rules and Orders of the National Assembly were "not properly constituted" and were being "raped by Swapo to advance their dominance" (*ibid*).

An Increasingly Contentious Parliamentary Discourse

The relative strengthening of political opposition in Namibia has progressed parallel to rising tensions and increasingly heated confrontations in the country's Parliament. In particular, hostilities between Swartbooi and his former superior Nujoma have continued to simmer and flare up periodically since the former's departure from the ruling party in 2017, with both individuals repeatedly demanding apologies and threatening to open legal cases against the other. A brief summary of these encounters and related aspects is pertinent to illustrate the hostile political environment that had already begun to take root in the lead up to the events that unfolded during the President's SONA in April 2021.

- In March 2020, an altercation ensued between Swartbooi and Nujoma in which the former was filmed taking off his jacket and moving to physically confront the latter, allegedly in retaliation against Nujoma's use of "explicit language ... bordering on cursing his mother", claims that Nujoma vehemently denied as attempted character defamation (*The Namibian* 2020-06-11). Nujoma then opened a case of assault by threat against Swartbooi, demanded a written apology and threatened to report his former subordinate to the Disciplinary Committee for Legal Practitioners;
- In June 2020, during a National Assembly discussion on the national reconciliation policy, Swartbooi retaliated against Doreen Sioka's quotation of Founding President Sam Nujoma's autobiography *Where Others Wavered* calling the Founding President "a thug, liar and a loser" while LPM deputy leader Henny Seibeb made the claim that he had "lost relatives because of Nujoma" (*The Namibian* 2020-07-01). Both MPs were subsequently ordered to leave the National Assembly chambers;
- In July 2020, Speaker Katjavivi gave the two MPs a verbal warning for their comments about the

Founding President: “in terms of Rule 124 (1), read with Rule 111, I issue you with a warning that if you do not refrain from this behaviour ... I will have you removed from this House. I keep on appealing to you to behave in a manner befitting an MP to no avail” (The Namibian 2020-07-02);

- In September 2020, Katjavivi announced that the National Assembly had acquired a “system controller to switch off the microphones of any member who starts talking without requesting the floor in terms of the rules” in order to deal with the issue of “members shouting out comments and calling each other names ... and other unbecoming gestures when the Assembly is in session” (The Namibian 2020-09-21);
- In March 2021, environment minister Pohamba Shifeta publicly criticised the Speaker for failing to take action to maintain order during parliamentary proceedings. While Katjavivi had blamed his lack of decisive action on delays in the formation of the Parliamentary Standing Committee on Privileges, Shifeta contended that the rules and codes of conduct for the ethical behaviour of MPs were already very clear in outlining the appropriate penalties for MPs guilty of misconduct (The Namibian 2021-03-15).

Fever Pitch: The President's 2021 SONA and its Aftermath

“This has been coming for a while ... What is happening is no longer permissible.”
– Speaker Peter Katjavivi (The Namibian 2021-04-16).

On 15 April 2021, chaotic scenes engulfed President Hage Geingob's seventh State of the Nation address as Bernadus Swartbooi and Henny Seibeb were forcibly removed from the National Assembly.

The tumult arose during the question-and-answer segment of the SONA where, after a heated exchange of words in which Seibeb accused the President of evading his enquiry into allegations of corruption against the Prime Minister, Speaker Katjavivi ordered the withdrawal of the two LPM parliamentarians for disorderly conduct. Bernadus Swartbooi was subsequently escorted out of the National Assembly by parliamentary security officers, though not before seizing the ceremonial mace and tossing it in the direction of the President on his way out. Meanwhile, Swartbooi's deputy Henny Seibeb began slamming his copy of Geingob's signature Harambee Prosperity Plan II on his desk before walking, ripping the document apart, in the direction of the President. At this point, Seibeb was apprehended by President Geingob's personal head of security, Johan Ndjaronguru, who was filmed, along with a number of other security officials, physically dragging Seibeb out of the National Assembly chambers.

In response to these scenes of disorder, Speaker Katjavivi promptly ordered that the remainder of the assembly's sitting be adjourned. The events following the two MPs' removal from Parliament are multiple and involve numerous actors and are thus best captured in the form of chronological timeline outlined below.



Event Timeline

16 April 2021 – National Assembly Secretary, Lydia Kandetu, issues a press statement in which she claims that Seibeb was removed by parliamentary protection services as a “final resort”, in keeping with Rule 113 of the Standing Rules and Orders and Internal Arrangements of the National Assembly (*The Namibian* 2021-04-19). She makes this claim despite video footage to the contrary showing Seibeb being removed by the President’s head of security Johan Ndjaron guru who is not the Serjeant-at-Arms.

19 April 2021 – Speaker Katjavivi sends written correspondence to Seibeb and Swartbooï, suspending them indefinitely from the National Assembly until the relevant Standing Committee made a recommendation on how to deal with their alleged misconduct.

The spokesperson of the National Assembly, David Nahogandja, announces that the Parliamentary Committee on Standing Rules and Orders and Internal Arrangements is scheduled to meet on 20 April 2021 after being referred the matter by the Parliamentary Committee of Privileges.

Seibeb opens a case against Johan Ndjaron guru who was filmed dragging him out of the National Assembly, allegedly ripping his suit in the process.

Ndjaron guru opens a case of treason and assault against Seibeb, who he accuses of threatening the safety of the President.

21 April 2021 – Seibeb and Swartbooï apply to the High Court for declaratory relief against their indefinite suspension from attending sessions in the National Assembly on the basis that Speaker Katjavivi lacks the executive powers to suspend them and that, according to Rule 124 of the Standing Rules and Orders, only the House is empowered to make this judgement. The High Court postponed the application to 26 April to afford the Speaker the opportunity to respond to the application and for the application to be determined finally.

LPM MP Utaara Mootu is temporarily obstructed from entering the National Assembly building by parliamentary police officers. Following PDM MPs’ alerting secretary Kandetu to the situation, it is established that police had misinterpreted their instructions to prevent Seibeb and Swartbooï from entering the Parliament building and had applied this order to all LPM parliamentarians. Mootu was subsequently allowed to enter the National Assembly.

6 May 2021 – High Court Acting Judge Kobus Miller makes a ruling that any interference in legislative matters surrounding Seibeb and Swartbooï’s suing of Speaker Katjavivi for their indefinite suspension would amount to judicial “overreach”. This judgement corresponds with the arguments put forth by Katjavivi’s lawyer Sisa Namandje who contended that the courts should “step back and allow the internal processes [of parliamentary committees] to unfold to finality” (*The Namibian* 2021-04-27). Swartbooï and Seibeb’s case is subsequently dismissed with cost, and Judge Miller refers the matter back to Parliament to be dealt with internally.

12 May 2021 – Lawyers Dr Weder, Kauta and Hoveka representing Seibeb and Swartbooï approach the Supreme Court to appeal the High Court’s dismissal of their case and to declare it unlawful, null and void. They further ask the Supreme Court to interdict and restrain Katjavivi from pursuing his “unlawful decision” to suspend their clients’ rights to attend National Assembly sessions as well as to require him to pay the costs of the court application. The appellants also directed an application to the Chief Justice for their appeal to be heard outside the prescribed terms under Rule 3(5) of Supreme Court rules. This application was subsequently granted, with an early hearing of the appeal scheduled for 21 July 2021.

20 July 2021 – The Supreme Court’s hearing of the LPM MPs’ case against Speaker Katjavivi takes place. The appellants’ lawyers Patrick Kauta and Gerson Narib argue that Parliament should remain subject to constitutional scrutiny, despite the separation of powers between the legislative, executive, and judicial arms of the state. Meanwhile, Katjavivi’s legal team asserts that Parliament has full powers to control and regulate its own internal affairs while also implying that Seibeb and Swartbooï are a security threat to other parliamentarians.

21 July 2021 – LPM lawyers Patrick Kauta and Mercy Kuzeeko write to Speaker Katjavivi after a pistol is allegedly detected in their possession by a security screening machine at the Parliament building. They accuse Katjavivi of attempting to frame Swartbooi and Seibeb by depicting them as a security threat so as to buttress his own legal counsel's submissions (*New Era* 2021-07-26). The Office of the Speaker vehemently denies these claims.

4 August 2021 – The appeal lodged by Seibeb and Swartbooi against their suspension from Parliament succeeds as Judge David Smuts writes a judgement in agreement with Chief Justice Peter Shivute and Acting Judge Theo Frank stating that the decision to suspend the two MPs was outside the Speaker's powers and not in accordance with the Standing Rules and Orders or the Privileges Act.

6 September 2021 – Seibeb and Swartbooi return to the National Assembly after a Supreme Court hearing overturned a previous dismissal of their case by the High Court, stating that Katjavivi's role under the Standing Rules and Orders in relation to incidents of disorderly conduct by parliamentarians does not include powers to take disciplinary action against them, thus making his executive decision to indefinitely suspend the LPM MPs unlawful.

8 September 2021 – Swartbooi and Seibeb are found guilty of misconduct by the Parliamentary Standing Committee on Privileges which affirms that, having failed to conduct themselves in a manner which maintains the dignity and image of the National Assembly, they should receive penalties. However, "taking note of the fact that the two members' suspension ... spanned a significant amount of time", the Privileges Committee does not recommend any further punishment (*New Era* 2021-09-09).

Swartbooi responds to the verdict by stating that the Privileges Committee's report was "procedurally wrong [because] you [Speaker Katjavivi] can't be the one who reports the matter, sits on the matter [as Chair of the Privileges Committee], hears the evidence and is also the judge in the matter" (*ibid*).

The Committees' investigation also sparks criticism for failing to respond to the fact that the President's personal bodyguard, Johan Ndjaronuru, was filmed violently removing Seibeb from Parliament, in contravention of the Standing Rules (*The Namibian* 2021-09-10).

19 October 2021 – The National Assembly adopts the findings of the Standing Committee on Privileges' report which found the two LPM leaders breached the Parliamentary Code of Conduct in terms of Clause 3.1 (b) by failing to maintain the dignity and image of the National Assembly. The two MPs are formally reprimanded for their conduct.

RDP leader Mike Kavekatora objected to the report's findings, claiming that "it is only Swapo members who have agreed" to its contents (*Eagle FM* 2021-10-21). Meanwhile, Henny Seibeb contends that there were "lots of errors [in the report] as the LPM's legal counsels' submission was not considered" and that an LPM challenge to the report would soon follow.



3. Statutory and Conceptual Frameworks

Before evaluating the appropriateness of parliamentary procedures taken and the potential precedents set in relation to the events of 15 April 2021, it is first useful to review the statutory and conceptual frameworks on which existing procedures are based. These frameworks are contained within several key documents including:

1. The Standing Rules and Orders and Internal Arrangements of the National Assembly
2. The National Assembly Code of Conduct and Disclosure of Members' Interests
3. The Powers, Privileges, and Immunities of Parliament Act (No. 17 of 1996)
4. The Namibian Constitution
5. International Best Practice Documents, e.g., Rules of the National Assembly of the Republic of South Africa.

Within the **Standing Rules and Orders and Internal Arrangements of the National Assembly** (SROs), several rules, contained within 'Chapter X – Standing and Select Committees', 'Chapter XI – Conduct of Members' and 'Chapter XII – General Provisions' respectively, are of particular relevance:

- **Rule 68 (1-4):** "The Standing Committee of Privileges shall act in terms of these Rules, the Code of Conduct for Members of the National Assembly and exercise such duties, powers and functions as prescribed by an Act of Parliament ... the Assembly may remove a person, other than the Speaker as a Member of the Committee ... a Member must recuse him/herself from participating in an investigation ... [if] there is a conflict of interest as defined in the Code of Conduct. If a member recuses him/herself, the Speaker shall request the same political party ... as that of the disqualified member, to nominate [another] member of the Committee ... the Committee may, in particular ... deal with matters relating to the conduct of Members, including the misuse or abuse of the Rules of the Assembly" (Parliament of the Republic of Namibia 2015:49)
- **Rule 111:** "The Presiding Member shall order a member whose conduct is grossly improper to withdraw immediately from the Assembly Chamber for the remaining period of a sitting day in question" (ibid:78).
- **Rule 112:** "If the Presiding Member deems the powers conferred by Rule 111 inadequate, the Speaker may report it to the Standing Committee on SROs and that Committee may recommend that the member concerned be suspended for seven days, on the second occasion for fourteen days, and on a third occasion for 21 days" (ibid).
- **Rule 113 (b):** "Any Member who fails to withdraw from the Chamber when instructed in terms of Rule 111 by the Presiding Member shall be escorted from the Chamber by the Serjeant-at-Arms" (ibid).
- **Rule 115:** "In the event of grave disorder as a whole the Speaker may adjourn the Assembly without the question put or suspend any sitting period to be stated by him/her" (ibid:79).
- **Rule 116:** "A Member may not ...
 - o (c) use the name of the President or Acting President in a disrespectful manner during a debate or to influence the Assembly in its deliberations;
 - o (e) use offensive or unbecoming words against the President, the Assembly or proceedings or in reference to any Member thereof;
 - o (k) pass between the Chair and the Member who is speaking, nor stand in the gangways or on the floor of the Chamber" (ibid: 79-80).
- **Rule 118 (b):** "The Speaker shall not allow the President to be addressed in a disrespectful manner and neither shall he/she allow disrespectful remarks towards the President" (ibid).
- **Rule 124 (a):** "In any matter for which these SROs do not provide or that is not provided for by a Sessional Order or other Order, the decision of the Speaker ... shall be final, and in arriving at such a decision he/she may take as his/her guide the relevant practices in other jurisdictions" (ibid:82).
- **Rule 124 (b):** "A ruling framed by the Speaker shall remain in force until it is set aside on recommendation of the Standing Committee on SROs" (ibid).

The **Code of Conduct and Disclosure of Members' Interests** document, a component of the Rules of Procedure of the National Assembly as contemplated under Article 59 of the Namibian Constitution, also provides for standards of behaviour expected of MPs as well as procedures to be followed should MPs be in violation of these expectations:

- **Preamble:** "The Members of the National Assembly ... have a duty to maintain the dignity and im-

age of the National Assembly ... maintain minimum standards of ethical behaviour ... [and] respect the law and institution of the National Assembly" (Parliament of the Republic of Namibia 2002:1).

- **Clause 3 (2-3):** "A Member must ... act in the interests of the Namibian people and their Parliament" and in doing so "uphold the law and act in conformity with the rules, conventions and practices of the Assembly" (ibid:3).
- **Clause 7 (13):** "A Member breaches the Code of Conduct if he or she contravenes or fails to comply with a provision of this Code" (ibid:10).
- **Clause 7 (15-18):** "The Committee of Privileges may of its own accord investigate an alleged breach of this Code by a Member ... in accordance with the Privileges Act ... where it has found a Member has breached a provision of this Code, the Committee must recommend the imposition of penalties ... submit a report on its finding and recommended penalties within 7 days ... [and] the House must discuss the Committee's report and take such disciplinary action against the Member as it deems appropriate" (ibid:11).

Next, the **Powers, Privileges, and Immunities of Parliament Act (No. 17 of 1996)** (hereafter, the Privileges Act) provides for MPs' rights to freedom of speech and debate by outlining their specific privileges and immunities in the parliamentary context as well those regulatory powers and functions exercised in conjunction with these freedoms by the Committee on Privileges. It also enshrines the principle of Parliament having full powers over its own internal affairs, though mediated by some constitutional parameters:

- **Section 2:** Members' freedoms to express themselves "without liability to any civil or criminal proceedings" ensures that, as a deliberative body, the National Assembly is able to sustain a spirit of open debate in which the principle of representation, provided under Article 45 of the Constitution, can be meaningfully embodied (Republic of Namibia 1996:4).
- **Section 8 (b):** "The Assembly may at any time remove a person, other than the Speaker, as a member of the Committee of Privileges" (ibid:5).
- **Section 12 (b):** The Committee of Privileges ... may investigate, either of its own accord or upon a complaint made by the House, any matter relating to the conduct of any member ... or an alleged breach by any member of the relevant SROs" (ibid:6).
- **Section 13:** "The House shall ... consider a report and recommendation ... and may take such disciplinary action against the member as it may deem appropriate" (ibid:7).
- **Section 21:** "Parliament shall have full powers to control, regulate and dispose of its internal affairs. Subject to Article 5, 79(2) and 80(2) of the Namibian Constitution, no proceedings of, or decisions taken by, Parliament in accordance with the SROs ... shall be subject to any court proceedings" (ibid:9).

9

The **Namibian Constitution** also provides foundational guidance on some of the core questions being grappled with as a consequence of the incidents of disorderly conduct by the two MPs under discussion and, in its supremacy over all other laws, has the final say regarding the appropriateness of current parliamentary protocols going forward:

- **Article 1(3)(6):** "The main organs of the State shall be the Executive, Legislature and the Judiciary ... the Constitution shall be the Supreme Law of Namibia" (Republic of Namibia 2002:9).
- **Article 59(1):** "The National Assembly may make such rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and procedures of committees, and formulate such standing orders, as may appear to it to be expedient or necessary" (ibid:34).
- **Article 60(1):** "All members of the National Assembly shall maintain the dignity and image of the National Assembly both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly" (ibid:35).
- **Article 60(3):** "Rules providing for the privileges and immunities of members of the National Assembly shall be made by an Act of Parliament and all members shall be entitled to the protection of such privileges and immunities" (ibid).

The above articles not only make essential provision for the separation of powers between the three organs of the state, but also ensure that each of these organs is constrained by the principle that they may only exercise their respective powers and functions as far as these are conferred upon them by law. In other words, each organ's control over its own proceedings remains subject to the Constitution and the constitutional obligation to observe the limits of its own powers as well as those of its counterparts. This means that the courts are required to ensure that the legislature and the executive act in accordance with the Constitution and vice versa.



Finally, a brief survey of relevant **international best practice** provides additional guidance on the standards and procedures adopted by other parliamentary democracies as the most effective means of managing incidents of disorderly conduct by MPs.

In the case under consideration, legal counsel for Speaker Katjavivi constructed part of their defence in referencing English, Indian, South African, and other international instruments. This is in keeping with Rule 124 of the SROs which states that, "in any matter for which these SROs do not provide ... the Speaker may take as his/her guide the relevant practices of other jurisdictions". Below are several examples of best practice legislation on this issue, drawn from the United Kingdom, the European Union, and the Republic of South Africa, respectively.

1. Britain's House of Commons Standing Orders (2019)

- o **Rule 43:** "The Speaker, or the Chair, shall order any member whose conduct is grossly disordered to withdraw immediately from the House during the remainder of that day's sitting; and the Serjeant-at-Arms shall act on such orders as he may receive from the Chair in pursuance of this order".
- o **Rule 46:** "In cases of grave disorder arising in the House, the Speaker may adjourn the House without putting any question or suspend the sitting for a time to be named by him".
- o **Rule 149:** "There shall be a select Committee on Standards ... to consider any matter relating to the conduct of members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed ... and to recommend any modifications to such code of conduct as necessary".

2. Rules of the National Assembly of the Republic of South Africa (2016)

- o **Rule 64:** "Members must at all times accord the Presiding Officers of the National Assembly and members due respect and conduct themselves with dignity and in accordance with the decorum of the House".
- o **Rule 73(1):** "If a member refused to leave the Chamber when ordered to do so by the Presiding Officer ... the Presiding Officer must instruct the Serjeant-at-Arms to remove the member from the Chamber".
- o **Rule 73(2):** "If the Serjeant-at-Arms is unable to effect the removal of the member, the Presiding Officer may call upon the Parliamentary Protection Services to assist in removing the member from the Chamber".
- o **Rule 69:** "Members may not engage in grossly disorderly conduct in the House and its forums including ... deliberately creating serious disorder or disruption ... repeatedly undermining the authority of the Presiding Officer or repeatedly refusing to obey rulings of the Presiding Officer or repeatedly disrespecting and interrupting the Presiding Officer while the latter is addressing the House ... using or threatening violence against a member ... acting in any other way to the serious detriment of the dignity, decorum or orderly procedure of the House."
- o **Rule 74:** "The suspension of a member on the first occasion during a session continues for 5 parliamentary working days, on the second occasion for 10 days and on any subsequent occasion for 20 parliamentary working days".

3. Parliamentary Rules of Procedure of the European Parliament (2010)

- o **Rule 152 (1-4):** "The President shall call to order any Member who disrupts the smooth conduct of proceedings or whose conduct fails to comply with the relevant provisions. Should the offence be repeated, the President shall again call the Member to order, and the fact shall be recorded in the minutes. Should the disturbance continue ... the offender may be excluded from the Chamber by the President for the remainder of the sitting day ... the Secretary-General shall, without delay, see to it that such disciplinary measures are carried out, with the assistance of ushers and, if necessary Parliamentary Security Services. Should disturbances threaten to obstruct the business of the House, the President shall close or suspend the sitting for a specific period to restore order".

4. Evaluating Key Contentions

A combination of the above sources have been cited to advance the arguments of the various parliamentary and judicial bodies that have since passed judgement on the events that unfolded in the National Assembly on 15 April 2021. However, different actors have offered diverging interpretations of these core statutory frameworks, such that the same rules have been cited to justify the opposing conclusions drawn.

The remainder of this paper will compare and critically evaluate the merits of these competing interpretations in order to arrive at a judgement on the appropriateness of existing parliamentary protocols with regards to incidents of disorderly conduct in the National Assembly going forward.

Preserving the Decorum of Parliament versus Protecting the Freedoms of Lawmakers

Calls for punitive measures against the conduct of Swartbooi and Seibeb during parliamentary sessions predated the events that unfolded during the President's 2021 SONA.

Notwithstanding the chronology of altercations involving the LPM leader and Utoni Nujoma summarised earlier, Swartbooi has also launched a number of venomous attacks on some of his other former Swapo Party comrades during parliamentary sittings.

In March 2021, for example, Swartbooi was recorded hurling "some of the worst insults heard in the home of Namibian law-making" when he crassly referred to Swapo's information secretary, Hilma Nicanor, as an "infertile witch" (*The Namibian* 2021-03-19). Swartbooi's comments drew widespread condemnation not only for reinforcing sexism – First Lady Monica Geingos described them as an attempt "to shame women into obedience" – but also for promoting a debased standard of political engagement "that eschews civility and the contestation of ideas" (*ibid*). Such incidents were consequently referenced in order to justify the executive actions taken by the Speaker to remove and suspend the two LPM parliamentarians from the National Assembly on 15 April 2021. These actions were rationalised on the basis that moving to suspend the two MPs was in the broader interests of maintaining the dignity and image of the National Assembly.

In his opposition to the High Court application filed against him by Swartbooi and Seibeb, Speaker Katjavivi detailed the longstanding disruptive conduct of the two MPs and the subversive effects on the authority of Parliament. Defending his decision to indefinitely suspend the two MPs, he argued that the "unprecedented nature of this disruption" as well as "the prospects of further disruptions" had given rise to a "situation not foreseen by the rules" which had entitled him to invoke Rule 124(a) of the SROs (*Swartbooi and Seibeb v. the Speaker of the National Assembly*, 2021:6).

The Speaker's legal counsel advanced an interpretation of Rule 124(a) which, in the absence of the SROs providing powers to suspend the MPs pending the finalisation of disciplinary proceedings, "vested him with discretion to act in the interim and rule that their suspension remain in place" pending a ruling by the Standing Committee (*ibid*:7). To further bolster this claim, it was submitted that the Speaker had been approached by a number of MPs who would "seriously fear for their safety" if the appellants, both of whom had publicly stated their intention to continue causing disruptions similar to those of 15 April 2021, "were to be permitted to return to parliament before the disciplinary proceedings are finalised" (*ibid*:7). Finally, counsel cited an interpretation of Section 21 of the Privileges Act which states that "no decision taken by Parliament in accordance with the SROs shall be subject to court proceedings" so as to thwart the fundamental validity of the courts' involvement in the matter in terms of Rule 124(a).

On the other hand, the lawyers of Swartbooi and Seibeb sought to characterise the Speaker's actions as illegitimate by highlighting double standards in his application of penalties for disorderly conduct depending on whether the offending party was a member of the opposition or the Swapo Party. In a letter sent to Katjavivi regarding a similar incident of misconduct in the National Assembly Chambers in 2020, legal counsel implied that LPM parliamentarians were being systematically provoked and that "despite numerous transgressions of rules ... against our clients by members of the ruling party, you selectively apply the rules of Parliament against our clients unfairly and unjustly" (*New Era* 2021-07-03).

The accusation that the Speaker acted prejudicially towards the two LPM parliamentarians was in turn used to advance the argument that their indefinite suspension had curtailed their rights as MPs to freedom of political expression. To legitimise this reading, legal counsel proffered an interpretation of the Privileges Act which



prohibits the suspension of MPs based on something they have said in the National Assembly, citing Section 2 which guarantees members' immunity from legal proceedings. Counsel also advanced a more holistic reading of the SROs which, while binding as a means of controlling the National Assembly's internal arrangements and procedures, must ultimately allow for "due regard to representative and participatory democracy" by upholding an open political service where all MPs are equally at liberty to express themselves (ibid). This point was further advanced by LPM parliamentarian Utaara Mootu who publicly criticised her party leaders' exclusion from parliamentary debates on key issues as evidence that "Katjavivi's decision [to impose suspension] and other tactics used by the Swapo administration ... are the utmost threat to our democracy" (*The Namibian* 2021-07-27).

This legal argument that parliamentary protocols had been violated at the expense of lawmakers' freedoms was further bolstered by Seibeb's treatment at the hands of President Geingob's personal security. Video footage from the President's SONA on 15 April 2021 shows Seibeb being pursued and violently removed from the National Assembly by Geingob's personal bodyguard, Johan Ndjaronuru.

According to LPM lawyers, this ejection contravened Rule 113 (b) of the SROs which states that any MP who fails to withdraw from the Chamber when instructed to do so by the Speaker "shall be escorted out by the Serjeant-at-Arms, defined as the Officer who leads the Presiding Officer in and out of the Chamber and carries the ceremonial mace" (*The Namibian* 2021-04-19). Not only did counsel seek to condemn the manner in which Ndjaronuru was allowed to throw an elected representative out of Parliament but his position as presidential bodyguard was also argued to demonstrate executive overreach. Indeed, the impunity with which such "disproportionate" methods of subduing disorderly conduct were allowed to unfold also promoted similar conclusions in the public sphere that a dangerous new precedent was being set which "could intimidate [other] lawmakers who want to hold the executive to account" (*The Namibian* 2021-04-20). The failure of the Standing Committee on Privileges to even address Ndjaronuru's actions as a violation of parliamentary protocols during the course of its own internal investigation into the incident arguably adds further credence to these concerns.

MPs' Disorderly Conduct as an Internal Matter of Parliament versus a Question for the Courts

One of the most salient issues surrounding Swartbooi and Seibeb's removal and indefinite suspension from the National Assembly is whether these decisions were solely for the internal deliberation of Parliament or whether they warranted the involvement and superseding jurisdiction of the courts.

Initially, it appeared that the principle of the separation of powers stipulated the former. In its affidavit filed with the High Court on 21 April 2021, the LPM's legal team consisting of Gerson Narib, Patrick Kauta and Mekumbu Tjiteere requested declaratory relief for their clients' indefinite suspension from Parliament which, they argued, was imposed in contravention of the SROs. Not only was Speaker Katjavivi's ruling for indefinite suspension argued to have violated Rule 111, which only provides for MPs' suspensions for the remainder of the sitting day, but his decision to do so unilaterally also violated the parameters of Rule 112. According to the LPM's interpretation of said rule, where an instruction for MPs to withdraw is deemed to be inadequate, the Speaker is only empowered to refer the matter to the Standing Committee on SROs which can itself only recommend a longer period of suspension for up to 21 days.

This additional recommendation for further disciplinary action can either be adopted or rejected by the House in keeping with Section 13 of the Privileges Act. Therefore, counsel contended, the Speaker had made a "unlawful decision, interfering with their [clients'] rights as elected members to attend National Assembly sessions, to make contributions during its debates or to use their Party's offices in the Parliament building" (*The Namibian* 2021-04-27).

In the Speaker's defence against the LPM's High Court affidavit, however, legal counsel Sisa Namandje asserted that the principle of the separation of powers provided for the National Assembly's entitlement to make its own rules in regard to parliamentary privileges and to conduct its own procedures. Furthermore, Section 21 of the Privileges Act was interpreted to preclude the courts from passing judgements on parliamentary actions taken in respect to internal affairs in the absence of a constitutional challenge, thus classifying the issue of MPs' suspensions as an internal affair of Parliament. Namandje also cited various sources of international best practice to support this point further, drawing from Canadian, English, Indian, South African, and Australian legal authorities to reinforce his position that parliamentary affairs should not be moderated by the courts, but rather that issues relating to parliamentary privilege must be decided upon by Parliament alone (*Swartbooi and Seibeb v. the Speaker*, 2021:9). Finally, it was argued that the Speaker's interpretation of Rule 124 was lawful because there were no other powers provided for in the SROs to sus-

pend members pending an enquiry by the relevant Standing Committee. Given the extent of the disruption caused by the accused MPs, Namandje contended that it was necessary for the Speaker to imply such a power to suspend based on relevant practices in other jurisdictions and that in keeping with Rule 124(b) this ruling was sanctioned to remain in force pending a recommendation by the Standing Committee on SROs.

On 6 May 2021, Acting Judge Kobus Miller of the High Court dismissed Swartbooi and Seibeb's affidavit requesting declaratory relief with cost and referred the matter back to Parliament to be dealt with internally. This ruling was founded on the basis that any interference in legislative matters surrounding the two MPs' indefinite suspension would amount to judicial overreach. Instead, the High Court affirmed that Parliament was constitutionally empowered to control, regulate, and dispose of its own internal affairs and possessed the necessary organs to do so effectively and independently. Furthermore, according to the court's interpretation of Section 21 of the Privileges Act, the Judiciary was precluded from usurping parliamentary proceedings pending before the Committee on Privileges at the time the case was filed (*Swartbooi and Seibeb v. the Speaker*, 2021:7). Given the fact that the Committee was already "seized of the matter for which the appellants were seeking relief through a declaratory order", it would be more appropriate to "raise these issues in their application before the Committee" where, the Court insisted, "their remedies would lie" (*ibid*:8). Reactions to Judge Miller's ruling were mixed, attracting a number of critiques not only from the appellants but also from other opposition MPs as well as certain more critical segments of the media.

"He [Judge Miller] basically avoided dealing with the core question that we have asked which is, does the Speaker have the power in terms of Rule 124, to withdraw members of our party as he did? All he [Judge Miller] says is there are internal processes ongoing"

– Bernadus Swartbooi (*Windhoek Observer* 2021-05-07).

"This is a mockery of our democracy. It creates a precedent that they [the Swapo-controlled government] can do whatever they want, and they will be protected by law. The Speaker took a decision without convening a committee. I am part of the SROs Committee along with the leader of the PDM McHenry Venaani. Neither the SROs Committee nor the Privileges Committee was consulted before the Speaker took his decision"

– Mike Kavekatora, leader of the RDP (*ibid*).

"This judgement ... was constitutionally incorrect. The prohibition of arbitrariness is a constitutional value, and the High Court should have considered using constitutional values in its adjudication of this particular case. If Swartbooi and co. allege arbitrariness, the court must have considered making a value judgement in this regard, and not outrightly dismissing the case because of ... judicial overreach. Constitutional values are higher norms that must guide interpretation ... the court would not have intruded in the domain of the legislature if they had made a value judgement to this case because it is a principle of law that everyone is equal before the law, and the legislature is no exception to this rule"

– Opinion Piece from the Editorial Team (*New Era* 2021-05-14).



Shortly after the High Court's dismissal was made public, Dr Weder, Kauta and Hoveka, acting as the LPM's legal representatives, filed court documents to the Supreme Court to appeal the ruling, requesting for it to be declared unlawful, null and void. After an application for the appeal to be heard outside the prescribed Supreme Court rules was granted, an early hearing took place on 21 July 2021. The outcome of this hearing, which resulted in the Supreme Court's overturning of the High Court's dismissal of the LPM's case against the Speaker, is deliberated in conjunction with an opposing ruling made shortly thereafter by the Parliamentary Committee on Privileges in the final section.

A Lack of Alignment between the Judiciary and the Legislature

The appeal case submitted to the Supreme Court by LPM lawyers Patrick Kauta and Gerson Narib was built upon the legal supremacy of the Namibian Constitution. Where the principle of the separation of powers had been used to substantiate the High Court's dismissal of Swartbooi and Seibeb's request for declaratory relief, in their appeal it was argued that this did not preclude parliamentary decisions from being subject to constitutional scrutiny. These decisions were argued to be impermissible under the SROs because they involved the Speaker's taking unilateral action to punish the two MPs by suspending them for disorderly conduct while simultaneously referring this conduct to the Standing Committee on SROs for further deliberation (*The Namibian* 2021-07-23). As discussed in the previous section, legal counsel for the Speaker had defended these actions on the basis that Swartbooi and Seibeb acted in violation of their constitutional obligation to maintain the dignity and image of the National Assembly, thus creating a set of unforeseen circumstances which obliged Katjavivi to take unprecedented executive action. However, the LPM's appeal case disputed these claims, arguing that, while authorised to order disorderly MPs to withdraw and to report such matters to the Standing Committee, the Speaker's executive decision to indefinitely suspend them was emphatically not authorised under the SROs or the Privileges Act upon which Katjavivi had also relied to dispute the involvement of the courts in the incident.

On hearing the above arguments, Supreme Court Judge Smuts, in agreement with Chief Justice Shivute and Acting Judge Frank, moved to overturn the High Court's dismissal of Swartbooi and Seibeb's case. This ruling was made on the basis that the judiciary is authorised to intervene in parliamentary affairs in accordance with Article 5, 79(2) and 80(2) of the Constitution which affirm the responsibilities of the courts to uphold constitutionally enshrined fundamental rights and freedoms and to adjudicate on the interpretation of the Constitution in this regard. Essentially, this meant that the "constitutional jurisdiction of the courts could not be ousted" because the principle of the separation of powers "is inclusive of checks and balances between the three state branches [which] are not independent in every aspect of their operation" but rather remain subject to the Constitution "as interpreted and applied by the judiciary" (Legal Assistance Centre, IPPR Questionnaire:2021).

This fundamental distinction, outlined in Section 21 of the Privileges Act, also served to undermine Katjavivi's reliance on the same legislation to protect his actions from adjudication by the courts. This is because Section 21 was only ever meant to apply to actions taken by Parliament through the National Assembly, the National Council or the Standing Committees and does not pertain to any decisions taken unilaterally by the Speaker. Thus, Section 21 was found, in any event, not to preclude the courts from applying due constitutional scrutiny to the case in question.

Lastly, the Supreme Court's decision was also driven by its being unconvinced of the Speaker's interpretation of Rule 124 as affording him powers to suspend members on the basis that "this would be reasonably incidental to his power to maintain order in parliamentary proceedings" (*Swartbooi and Seibeb v. the Speaker*, 2021:20). While the court concurred that the SROs provided authority for the appellants to be disciplined in line with Rule 111, 113, 113 and 115, it found that "the power to suspend is not accorded to the Speaker at all, let alone the power to do so indefinitely" (ibid). Thus, the Supreme Court ruled that Katjavivi acted unlawfully and overreached in his role as Speaker of the House by unilaterally moving to exclude Swartbooi and Seibeb from attending National Assembly sessions despite possessing no powers to do so.

However, where the Supreme Court made its ruling in favour of the LPM, an internal investigation into the two MPs' conduct carried out by the Parliamentary Standing Committee on Privileges arrived at opposing conclusions. After being formally referred the matter by the Speaker and holding its first meeting on 26 April 2021, the Privileges Committee resolved to investigate the events of 15 April 2021 in line with Section 12(b)(i) of the Privileges Act, Rule 68(4) of the SROs as well as Clause 7.3 of the MPs' Code of Conduct all of which affirm its powers to investigate and report on matters pertaining to the conduct of members and potential misuse or abuse of the SROs. The Committee's investigation sought to focus primarily on the question of whether Swartbooi and Seibeb had acted in violation of their responsibilities under Clause 3.1(b) of the Code of Conduct and

Article 60(1) of the Constitution requiring MPs to “uphold the Constitution ... and act in conformity with the rules of the National Assembly”. The Committee was also compelled, from the outset, to address concerns surrounding its impartiality due to the Speaker’s occupation of overlapping roles both as its chairperson and as the complainant who had referred the matter for investigation. To dispel these concerns, the Committee applied a construction of the principle of natural justice in the parliamentary context proffered by the South African Joint Subcommittee on Powers and Privileges which seeks to “protect a person’s legal rights when decisions are made which impact those rights ... by ensuring their right to a fair, impartial hearing, the right to be heard, and the right to know the case put against them and to confront witnesses” (Parliament of the Republic of Namibia, 2021:14-15).

In its report, the Committee outlined the steps it had taken to satisfy the above requirements and to eliminate the possibility of political bias in favour of the executive:

1. The Committee issued summons to the two MPs on 7 May 2021 to appear before it in terms of Section 14 and 15 of the Privileges Act in order to inform them of the nature and purpose of the investigation (ibid:15).
2. The Committee gave the two members time to make representations to it on 21 May 2021 on any matter pertaining to the investigation and on the process that will guide the investigation (ibid:16).
3. In light of Swartboo’s withdrawal from the Committee, he was requested on 28 April 2021 to nominate someone from his political party to act in his place as a member of the Privileges Committee. However, the Committee did not receive a nomination by its 3 May 2021 deadline (ibid:17).
4. The two MPs were granted the opportunity to make submissions on the proceedings and to provide responses on any matters for clarification or concern (ibid).
5. The two MPs were granted the opportunity to make submissions to the Committee before it made its final recommendation to the House, as well as to question or counter any statements made by witnesses or to call witnesses of their own. However, both chose not to attend the investigation on 20 July 2021, opting to have their legal representatives present instead (ibid:18).
6. Finally, to refute criticism of the Speaker for assuming the roles of complainant, prosecutor, and judge in this case, it was argued that “if one accepts that the courts have power to punish contempt directed against them, there is in principle no reason why this power should be denied to Parliament” (ibid:16).

The findings of the Privileges Committee’s investigation into the conduct of Swartboo and Seibeb drew from video footage of the National Assembly from 15 April 2021 as well as supporting testimonies from three witnesses, including the Chief Whip of the Swapo Party, Hambyuka, the deputy director of security services at the National Assembly, Gideon Shuuya, and the Presidential Security Chief, Johan Ndjaron guru.

Having examined the evidence and questioned witnesses, the Committee reached a verdict that both MPs were guilty of grossly improper conduct and had acted in breach of Clause 3.1(b) and Article 60(1) of the Constitution requiring them to maintain the dignity and image of the National Assembly. Therefore, in accordance with Chapter 7 of the MPs’ Code of Conduct and Section 13 of the Privileges Act, the Committee recommended the imposition of penalties on the two MPs with the specific submission that a reprimand be entered into the minutes of the House Proceedings in keeping with Clause 7.5(a). However, “taking note of the fact that the two members’ suspension in terms of Rule 124(a) spanned a significant amount of time”, it chose not to recommend any further period of suspension from the National Assembly (ibid:34). The Committee then called upon the House to consider its recommendations and take such disciplinary action as it deemed appropriate in line with Section 13 of the Privileges Act. Subsequently, the National Assembly voted to adopt the Committee’s findings and Swartboo and Seibeb were formally reprimanded by the House for their disorderly conduct.

The conflicting rulings advanced by the National Assembly and the Supreme Court speak to a chasm between the legislature and the judiciary regarding the appropriateness of parliamentary procedures in moderating an increasingly contentious political discourse. During the National Assembly’s deliberations over the Privileges Committee’s report, Swartboo sought to urge his fellow members to align their votes with the Supreme Court’s judgement in order to “ensure that the Speaker ... doesn’t overreach in terms of powers he doesn’t have and cause [further] prejudice to members” (*The Namibian* 2021-09-20). The Committee’s internal investigation was also criticised by other political observers for appearing to disregard key violations of the SROs made on the part of the executive while focusing on those of the opposition.

For example, the Committee’s decision not only to ignore the violent and unlawful involvement of the President’s bodyguard, Johan Ndjaron guru, but to nominate him as a key witness to Seibeb’s alleged misconduct was criticised for “setting a dangerously biased precedent” against the opposition (*The Namibian* 2021-09-10). Moreover, the Committee’s decision to overlook what the Supreme Court had already found to be unlawful actions taken by its own Chairperson in his capacity as Speaker raised further doubts about its capacity to act impartially in light of the inherently political nature of such parliamentary proceedings.



5. Conclusion: New Precedents?

The foregoing analysis of the appropriateness of existing parliamentary procedures in Namibia's National Assembly speaks to the fact that "parliamentary rules on their own do not have the capacity to substantially modify deficiencies in a given political environment" (OPPD of the European Parliament 2010:8).

However, particularly in the current context of rising political temperatures, a common respect for and sharing of ownership over these rules both by the majority and opposition parties is becoming ever more critical to offset the deepening divisions increasingly characteristic of the Namibian political climate. To that end, this paper is compelled to align itself with the Supreme Court ruling that proper parliamentary protocol was not appropriately applied in dealing with the misconduct exhibited by Swartbooi and Seibeb during President Geingob's 2021 SONA.

To reiterate this judgement, the principle of the separation of powers advanced to defend the actions of the Speaker is not absolute, but remains constantly subject to constitutional scrutiny. As such, the Supreme Court was right to make a value judgement on the actions taken by the legislature. In scrutinising these actions and determining that the Speaker had engaged in executive overreach, the court's ruling underscored the importance of upholding checks and balances between the three organs of state.

To be sure, this paper does not conceive of protecting lawmakers' rights to freedom of political expression as affording any Member of Parliament a 'free pass' to needlessly disrupt the course of parliamentary proceedings. While there is a role for disruptive action both within electoral politics and wider society, "elected representatives should endeavour to work within the parliamentary framework in the first instance ... appealing to public opinion with reasoned arguments instead of relying primarily on disruption and theatrics" (Legal Assistance Centre, IPPR Questionnaire:2021).

Understanding and internalising these differences represents an essential prerequisite for Namibia's political opposition to become a truly effective political counterweight to the Swapo Party's electoral hegemony in the future. For now, though, opposition parties, as key components of the legislature, along with civil society and the wider Namibian public, must concern themselves with ensuring that dangerous new precedents in how the executive deals with contraventions of parliamentary rules and procedures do not become the norm. More specifically, constitutional values must continue to be defended as the highest norms guiding the interpretation of all other laws used to regulate the increasingly rocky waters of Namibian political discourse.

Works Cited

Policy Documents and Legislation

- Republic of Namibia, 1996. Powers, Privileges, and Immunities of Parliament Act, No. 17 of 1996. Windhoek: Government Printers.
- Republic of Namibia. 2002. *The Constitution of Namibia*. Windhoek: Ministry of Regional and Local Government and Housing, Namibia Institute for Democracy.
- Parliament of the Republic of Namibia, 2002. 'National Assembly Code of Conduct and Disclosure of Members' Interests. 28 November 2002.
- European Parliament, 2010. 'Rules of Procedure for the 7th Parliamentary Term'. July 2010.
- Office of the Promotion of Parliamentary Democracy (OPPD) at the European Parliament, 2010. *Parliamentary Rules of Procedure: An Overview*.
- Parliament of the Republic of Namibia, 2015. 'Booklet of the Standing Rules and Orders and Internal Arrangements of the National Assembly'. 15 October 2015.
- Parliament of the Republic of South Africa, 2016. 'Rules of the National Assembly: 9th Edition'. 26 May 2016.
- United Kingdom Parliament, 2019. 'House of Commons: Standing Orders for Public Business'. 05 November 2019.
- Supreme Court of Namibia, 2021. *Bernadus Swartbooi and Henny Seibeb v. the Speaker of the National Assembly*. Case No SA 38/2021, 04 August 2021.
- Parliament of the Republic of Namibia, 2021. 'Report of the Standing Committee of Privileges of the National Assembly: Investigation into the Conduct of Bernadus Swartbooi and Henny Seibeb on 15 April 2021 during the State of the Nation Address'. September 2021.



Newspaper Articles

- "Where is the Opposition ... When Swapo is Fighting itself?"
The Namibian, 24 August 2017.
- Tjitemisa, K., 2020. "LPM Mps Claim They Were Provoked".
New Era, 03 July 2020.
- Tjitemisa, K., 2020. "Opposition Parties Gang up on Swapo".
New Era, 08 July 2020
- Ndenyanale, E., 2020. "LPM Blasts Nujoma and Lawyer".
The Namibian, 11 June 2020.
- Ndenyanale, E., 2020. "Sam Nujoma is a thug ... LPM Leader Lashes out in Parliament".
The Namibian, 01 July 2020.
- Ndenyanale E., and C. Ngathiheue, 2020. "Swartbooi is Dividing the Nation".
The Namibian, 02 July 2020.
- Ndenyanale, E., 2020. "Katjavivi Acquires Machine to 'Mute Unruly MPs'".
The Namibian, 21 September 2020.
- Ndenyanale, E., 2020. "No Coalitions with Swapo – PDM".
The Namibian, 29 November 2020.
- Iikela, S., 2021. "I'm Incapacitated on Unruly MPs".
The Namibian, 15 March 2021.
- The Namibian Editorial Team, 2021. "OPINION – Root Out Insults and Abuse".
The Namibian, 19 March 2021.
- Peterson, S., 2021. "Katjavivi Defends Throwing Swartbooi, Seibeb out of Parliament".
The Namibian, 16 April 2021.
- Peterson, S., 2021. "Hengari Claims Seibeb Threatened Geingob's Safety".
The Namibian, 19 April 2021.
- The Namibian Editorial Team, 2021. "OPINION – No Way to Treat Lawmakers".
The Namibian, 20 April 2021.
- Amakali, M., 2021. "SONA Fallout Rumbles on ... as Katjavivi Questions Court's Jurisdiction".
New Era, 27 April 2021.
- Menges, W., 2021. "Judge Weighs up Ban on LPM Leaders".
The Namibian, 27 April 2021.
- Kathindi, A., 2021. "LPM High Court Judgement Questioned".
Windhoek Observer, 07 May 2021.
- "OPINION – The Dismissal of Swartbooi and Seibeb v. Katjavivi Case".
New Era, 14 May 2021.
- Tjitemisa, K., 2021. "LPM Leaders Appeal High Court Ruling".
New Era, 18 May 2021.
- Menges, W., 2021. "LPM Leaders Challenge Booting in Top Court".
The Namibian, 23 July 2021.

- Nakale, A., 2021. "Parliament Rubbishes LPM Framing Claim". *New Era*, 26 July 2021.
- Iikela, S., 2021. "Our Voices Have Been Suppressed – LPM". *The Namibian*, 27 July 2021.
- 2021. "SONA Fracas Ends with Slap on the Wrist". *New Era*, 09 September 2021.
- The Namibian Editorial Team, 2021. "OPINION – Entitlement Without Boundaries". *The Namibian*, 10 September 2021.
- Iikela, S., 2021. "MPs' 'Guilty of Sodomy' Should Also Be Punished – Swartbooi". *The Namibian*, 20 September 2021.
- Heita, J., 2021. "Katjavivi Reprimands LPM for Posterity". *Eagle FM*, 21 October 2021.

Other Sources

Legal Assistance Centre, IPPR Questionnaire Responses received by Dianne Hubbard (Coordinator of the LAC) on 19 October 2021 at Windhoek.

Hopwood, G., 2005. "Trapped in the Past: The State of the Opposition" in *Spot the Difference: Namibia's Political Parties Compared*. Namibia Institute for Democracy: Windhoek.

Tötemeyer, G., 2007. *The Management of a Dominant Political Party System with Particular Reference to Namibia*. Windhoek: Friedrich Ebert Stiftung.



ABOUT THE AUTHOR

Kitty McGirr is an IPPR Research Associate with a specialist interest in the intersection of labour, land, economic and racial justice issues. She holds a Bachelor's Degree in Political Science and African American Studies from the University of California and a Master's Degree in International Politics from SOAS, University of London with a regional focus on Southern Africa. She has previously worked for a number of civil society organisations in Namibia, the US, and the UK.

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. The contents of this briefing paper do not necessarily reflect the views of the Embassy of Finland.

About 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 into social, political and economic issues that affect development in Namibia. The IPPR was established in the belief that free and critical debate informed by quality research promotes development.

Institute for Public Policy Research (IPPR)
House of Democracy
70-72 Frans Indongo Street
PO Box 6566
Windhoek
Namibia
info@ippr.org.na
www.ippr.org.na
Tel: +264 61 240514