

## Will a procurement court lead to more efficiency?



**Dispute resolution in the system has contributed to delays, bottlenecks and undermined service delivery. However, given clear capacity and resource constraints, it is unclear whether a procurement court will make things better or just deepen the dysfunction.**

Dispute adjudication has become a debilitating factor within the public procurement system. This was not supposed to be the case, since the Review Panel mechanism in the Public Procurement Act of 2015 dispensation was supposed to ena-

ble the efficient handling of procurement disputes. However, ten years since the passing of the law and eight years into its implementation, the introduction of a procurement court into the system's decision-making arrangements speaks to a sense of failure around the existing dispute resolution measures and profoundly unrealistic expectations of the Review Panel mechanism in the public procurement regime from the start.

The procurement court is now billed to become the missing piece that would finally contribute to unlocking efficiency, along with other legal and institutional reforms proposed to strengthen the public procurement system for it to become an enabler of optimal government service delivery and socio-economic transformation and inclusion.

However, the experiences of other countries with such mechanisms as procurement courts or tribunals indicate that they might not be as efficiency-inducing as thought or touted.

## The Bill

When he introduced the [Public Procurement Amendment Bill of 2025](#) in the National Assembly on 13 March 2025, former finance minister [Iipumbu Shiimi stated](#) that the “amendments proposed in this Bill are driven by the urgency to strengthen accountability and expedite the resolution of disputes so as to enhance transparency, efficiency and fairness within the public procurement system in Namibia”.

Shiimi noted: “Currently, challenges and disputes arising from public procurement processes experience protracted resolution, potentially hindering essential service delivery and discouraging fair competition.”

He concluded that the Bill directly responded to “the need for a more efficient and just procurement process, particularly in dispute resolution”.

Shiimi also emphasises that the creation of a procurement court is mentioned in the Swapo Manifesto Implementation Plan (SMIP) that was crafted in the wake of the 27 November 2024 presidential and parliamentary elections to crystalise and guide the government’s implementation of the ruling party’s manifesto commitments up to 2030.

The amendment bill was first read in the National Assembly on 13 March 2025 and passed by the assembly on 17 March 2025. It has since reverted to the National Council for review, and should be enacted without much change during 2025.

In short, the Bill creates a specialised public procurement court in the High Court of Namibia, with presiding judges with expertise in public procurement law, as well as setting out the jurisdiction of the court.

Notably, the Bill specifically articulates the need for expedited dispute resolution around especially public healthcare-related procurement, such as the procurement of clinical and pharmaceutical products.

### Jurisdiction of Procurement Court

- 61C. (1)** The Procurement Court has jurisdiction to –
- (a) hear and determine appeals against decisions of the Review Panel; and
  - (b) review decisions of the Review Panel, Board or a public entity.
- (2) A bidder or supplier, who is aggrieved or claims to be aggrieved due to any non-compliance with this Act must exhaust all available remedies under this Act before referring to a matter to the Procurement Court.

*The Bill outlines the jurisdiction of the proposed procurement court in a new section of the Public Procurement Act of 2015.*

## Mixed experiences

That said, on the one hand, it could be, and is certainly hoped

to be, the case that the eventual procurement court will speed up dispute resolution within the public procurement system, as touted by Shiimi.

However, the experiences with such courts or similar tribunals in some jurisdictions have been mixed.

While in some instances such courts or tribunals have reduced delays caused by procurement-related litigation, in others they have contributed to such delays by becoming an additional choke point or bottleneck.

First, the creation of a procurement court adds another level to the dispute resolution framework within the public procurement system. With another level comes increased legal complexity in an already complex regulatory environment.

The fact that the litigants have to exhaust all other complaint and dispute adjudication mechanisms stipulated in the procurement law before approaching the procurement court suggests that the court could become a bottleneck, which could easily become clogged if cases are not cleared within prescribed timeframes (judgements have to be delivered within 14 days of case filing in the case of clinical or pharmaceutical contracts or within 30 days of the end of all other hearings).

At the same time, the very existence of the court could contribute to the lodging of more cases by aggrieved parties, thus further weighing down an already heavily burdened High Court case management system.

This brings into sharp focus another consideration, specifically that specialised courts require specialist judges. In this case, expert judges in public procurement law could be decisive in enabling faster dispute resolution. On the other hand, in jurisdictions where there are no or few expert judges the court could just become an additional hindrance and delay point. Namibia is a jurisdiction which looks to have few if any specialist judges, of any sort.

Consider that in recent times Namibia briefly experimented with a specialist corruption court. The experiment ultimately collapsed as a result of the same bottlenecks and delays, accompanied by capacity and resource constraints, that afflicted the wider courts system.

This experience of this short-lived corruption court bodes ill for the specialised procurement court, as it is unclear whether and to what depth necessary expert capacity exists on the High Court bench and to what extent resources will be allocated, with “urgency”, to make the court adequately functional.

## Contextual caution

Against this backdrop, what impacts a procurement court could have on the actual functioning and perceptions of the public procurement system are hard to discern at this juncture. Namibia is not the only country in southern Africa looking to introduce such a mechanism into its procurement system, for South Africa, afflicted by much the same public procurement systemic dysfunctions, is also looking to introduce a Public Procurement Tribunal.

And in both countries, the factors that could ultimately contribute to undermining the optimal functioning of such a much-needed dispute resolution mechanism are many and deep-rooted.

How these factors are addressed or navigated will ultimately determine how efficient and effective such a procurement court will be.

*\* An AI tool was used to gather some information for this article.*

## Public procurement in President Netumbo Nandi-Ndaitwah's maiden State of the Nation Address



Photo: Namibian Presidency

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Public procurement is important for economic activities. In that vein, I am pleased to inform that the Code of Good Practice, which prioritizes local content has been operationalized. To further improve transparency, accountability and management of procurement data, the Electronic-Government Procurement Portal (E-GP) is now ready for use by OMAs.

- President Netumbo Nandi-Ndaitwah in her SONA in the National Assembly on 24 April 2025

## Public Procurement in the SMIP

**The Swapo Party Manifesto Implementation Plan (SMIP) mentions public procurement in various sections and positions public procurement as an enabler of local business growth and socio-economic inclusion**

Notably, [the SMIP](#), in the section on legal reforms, calls for the creation of a procurement court, which is the feature of this bulletin (See page 1 - 2).

Further along in the document, in the same section, the SMIP calls for the widespread use of exemptions in order to realise much of the plan's commitments.

These concerning calls are made in underscoring “the importance of swift approval of all procurement contracts”.

It is argued: “Implementation of SMIP will require such exemptions for the speedy approval of the appointment of the project professional team and contractors to work in the implementation of SMIP. All lead implementing agents will be expected to apply for exemption from the Procurement Act, using Article (4)(2) of the Procurement Act of 2015. Section 4(2) of the Public Procurement Act of 2015 of Namibia allows the Minister to grant exemptions from certain provisions of the Act.”

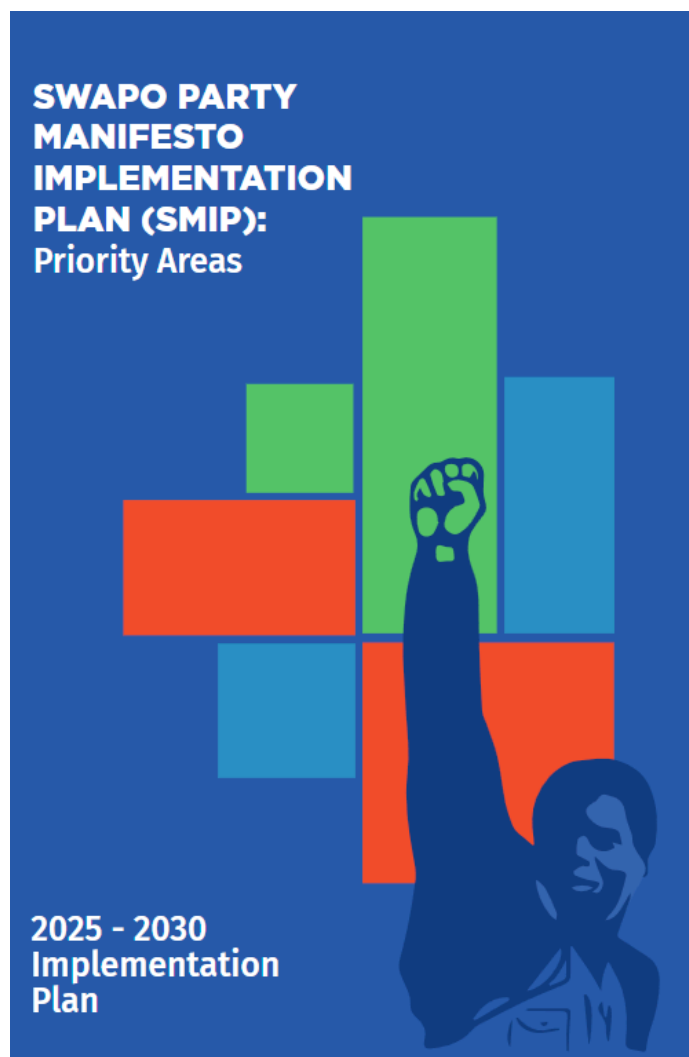
The document goes on to state: “In the application of the exemption, the SMIP Lead Implementing Agent will request for Sub Implementing State-Owned Enterprises to be permitted to undertake Direct Procurement permissible under Section (36), (29), (30), (31), (32) of the Procurement Act of 2015.”

The SMIP goes on to list 10 “Conditions that must be applied by the Minister of Finance to be attached for Exemption”.

A further reading of the document indicates that exemptions will be applied in the contracting of services and works in such areas as housing and sanitation provision over the next five years.

The widespread use of exemptions in public procurement has previously been flagged as an enabler and indicator of corruption within the system.

*\* Some of this analysis was done with an AI tool.*



Screenshot of the cover of the Swapo Party Manifesto Implementation Plan (SMIP) document.



# Public procurement in numbers

The following data has been gathered from information available through the e-Procurement Client System operated by the Procurement Policy Unit in the Ministry of Finance and Public Enterprises.

## Annual Procurement Plans

By the time public entities were supposed to have submitted their 2025/26 annual procurement plans to the Procurement Policy Unit there were **173** public entities with a procurement function. The Procurement Policy Unit (PPU) publishes the plans on the [e-Procurement Portal](#).

By 30 April 2025, only **42** annual procurement plans were viewable via the e-Procurement Portal.

That means only about **24%** of public entities had submitted their plans to the PPU for the **2025/26 financial year**.

According to **Section 25 (4)(a)** of the Public Procurement Amendment Act of 2022, public entities must submit their plans to the PPU **“at least three months before the commencement of each financial year”**.

This means plans have to reach the PPU **by the end of December of every year**, as the financial year of the government ends at the end of March the following year.

Of the 42 procurement plans viewable via the e-Procurement Portal **only 5** were submitted to the PPU before the end of December 2024.

That means only **3%** of procurement plans **were submitted on time**.

Making sure that the public has access to annual procurement plans remains **a major compliance issue** in the public procurement system.

When procurement plans are delayed or not publicly accessible, it can **hinder oversight and lead to inefficiencies** in resource allocation.