



NATIONAL ASSEMBLY

16 FEBRUARY 2022

MOTION BY THE HONOURABLE ELMA JANE DIENDA FOR THE HOUSE TO DEBATE THE IMPACT OF THE EXECUTIVE ON SEPARATION OF POWERS

MOTIVATION

Hon. Speaker
Hon Members,

1. Article 1 (1) of the Namibian Constitution establishes the Republic of Namibia as a democratic State founded upon the principles of democracy, the rule of law and justice for all.
2. An important principle underpinning all democracies is the separation of powers. The Namibian Constitution incorporates tripartite separation of governmental power as the basis of our political system. To this end, Article 1 sub-article 3 of the Constitution unambiguously provides that:

"The main organs of the State shall be the Executive, the Legislature and the Judiciary."

3. The separation of powers doctrine depends on the three branches of State each understanding their respective responsibilities, and not exceeding them

in a continuous or overt manner. In terms of this doctrine each of the three branches is assigned differing tasks and the system ensures that institutions are able to conduct assigned differing tasks and the system ensures that institutions are able to conduct checks and balances on one another, thus stopping one branch becoming too powerful and in turn undermining, damaging or destroying the democratic fabric of governance. To guarantee this balance, it is essential that the parliament or legislature remains independent and does not become a tool or appendage controlled by the government.

Hon. Speaker

Hon. Members,

4. The critical function of parliaments to hold governments responsible for their actions and decisions. Parliament is unique in being the only institution with a political mandate from the people to monitor the management of the state by the government. This principle is embedded in our Constitution which provided for the following in Article 41, which states the following:

“All Ministers shall be accountable individually for the administration of their own Ministries and collectively for the administration of the work of the Cabinet, both to the President and to Parliament.”

5. This Article makes it clear that Parliament has a unique constitutional oversight function. Article 32 (2) In accordance with the responsibility of the executive branch of Government to the legislative branch, the President and the Cabinet shall each year during the consideration of the official budget attend Parliament.

Hon. Speaker

Hon. Members,

6. The second Global Parliamentary Report (GPR) jointly produced by the InterParliamentary Union (IPU) and the United Nations Development Programme (UNDP) is of great assistance in understanding the true meaning of parliamentary oversight and the challenges thereto. This Report, published in

2017, is entitled "Parliamentary oversight: Parliament's power to hold government to account". It offers valuable insights on the issue of parliamentary insights and is accordingly liberally quoted to inform this motion.

7. The second GPR defines parliamentary oversight as the means by which parliament and parliamentarians, on behalf of the people, hold the government to account between elections. Accountability, in this context, is explained as the "converse process", through which the overseen body accounts for its choices, actions and decisions.
8. It follows that oversight and accountability are major dimensions of the complementary democratic mandates of government and parliament. The distinct and separate roles of parliament and government need to be well understood though. Governments provide services to citizens. Parliaments, on the other hand, hold government to account by questioning and challenging government actions and policies and making recommendations for change.

Hon. Speaker

Hon. Members,

9. The recurrent concern is whether the Executive (government), under the current scheme could really be held accountable by the legislature, considering that a significant number of the legislature is made up of executive members. There is consensus among scholars that the balancing of the relationship between the executive and the legislature is essential to successfully embed the rule of law and ensure greater accountability as required by our Constitution.
10. The vacuum in the Constitution to make explicit the relationship between Ministers and the Parliament has facilitated Executive dominance. Power has become skewed in the Executive's favour, replacing the Parliament as the primary forum for decision making with the party room.

11. The large dual membership of ministers to the executive and legislative branches of government as well as their proportionately large number, have resulted in decreased parliamentary oversight capacity. Sadly, Parliament primarily became a reactive institution rather than proactive one, largely unable to respond sufficiently to emerging challenges, opportunities and national emergencies.
12. Under the current scheme Parliament is effectively rendered a rubber-stamp legislature. Surely this could not have been the intention of our constitutional drafters. This begs the question: How can Parliament - as the representative institution and voice of the citizenry - be strengthened and the principle of separation of powers be better observed?
13. Kenya presents an excellent example on how to minimise Executive dominance in the legislature and preserve the crucial aspect of parliamentary oversight. For instance, the 2010 Constitution of Kenya sets a minimum floor and a ceiling on the number of Cabinet Secretaries (Ministers) which may be appointed. Their Constitution stipulates that a minimum of 14 and maximum of 22 Cabinet Secretaries (Ministers) may be appointed.
14. Furthermore, in Kenya the President nominates, and with the approval of the National Assembly appoints his/her Cabinet Secretaries (Ministers). Strikingly, in Kenya Cabinet Secretaries (Ministers) are not Members of Parliament. This notwithstanding, they are, however, still enjoined to provide Parliament with full and regular reports concerning matters under their control.
15. The Namibian situation is directly opposite to that of Kenya. In our case, the President is given absolute power to appoint his/her Cabinet. Also, there is no minimum and maximum cap place on the number of ministers and deputy ministers s/he can appoint. To add salt to injury, ministers are full Members of Parliament. It therefore comes as no surprise that Namibia is listed amongst the countries where Government dominates parliament.

Hon. Speaker
Hon Members,

16. The reluctance and/or failure of the drafters of our Constitution to make explicit the relationship between Ministers and the Parliament planted the seed for Executive dominance. The naivety of the drafters of our Constitution, in my views, was the perceived presumption that 'responsible government' would magically exist despite warnings of impending party consolidation. Today's system of party, rather than parliamentary, government is the result of gaps left in our Constitution.
17. It is trite that the size of the Executive in Parliament should not be such as to reduce the oversight potential of Parliament. When ministers also serve as MPs, as is the case in Namibia, then a large cabinet may result in very few backbenchers who are available to scrutinise the executive.
18. In sum, the PDM believes that time has come for us to interrogate the issue of parliamentary oversight seriously and robustly. Countries such as Kenya present us with excellent examples in this regard. Only through relevant parliamentary and constitutional reforms as well as the reorientation of value systems, will we lend true meaning to the axiom "Governments for the people, of the people and by the people!"

Hon. Speaker
Hon. Members,

19. Practical steps can be taken to ensure that the balance of power between the Executive and the Legislature is levelled in Namibia. These practical steps can be sub-divided into ten key action areas.
 1. Bring together all stakeholders to define and commit to a constructive oversight process.
 2. Assess parliament's strengths and weaknesses regarding its oversight function.

3. Commit to regularly review and report on how parliament performs its oversight role.
 4. Ensure that formal powers to oversee the government are clearly established in law and parliamentary rules.
 5. Ensure that committee rules and practices support oversight.
 6. Develop specific research capacity to support oversight.
 7. Solicit outside help.
 8. Make oversight consequential by keeping track.
 9. Consider ways to achieve government compliance with oversight requirement.
 20. In conclusion, I want to indirectly quote the President of the PDM and Leader of Official Opposition Hon. McHenry Venaani when he said the following:
"Do not be happy when an unjust system is benefitting you, because that system may eventually turn against you"
 21. The current over dominance of the Executive benefits the current government run by SWAPO, but one day-just one day, this system will turn against SWAPO when they lose government.
 22. I recommend that this motion be send to the relevant Standing Committee for further scrutiny and report back to this August House.
- I so move Hon. Speaker.**