

Division of Powers in Namibia

On October 13.th, the KAS Namibia organized a Panel Discussion on Separation of Powers. Members from different parts of society were invited to listen to and discuss with the panellists.

After Mr Dennis Zaire welcomed the audience and the panellists, the head of the KAS office, Mr Holger Haibach gave a short overview of the theoretical concept of separation of powers, its historical roots and raised the question if Namibia is already out of age 20 years after its independence.

Mr Graham Hopwood holds the relationship between executive and legislature responsible for problems in Namibia

Subsequently, Mr Graham Hopwood, the Director of the IPPR, argued that in Namibia the judiciary and the rule of law are reasonably intact, disregarding e.g. delaying cases, the understaffed office of the Prosecutor General or the sometimes problematic investigation of political cases. He claimed that the main problems in Namibia arise because of the relationship between the legislature and the executive. Hopwood stated that Namibia has become a one-party-dominant-state in which the ruling party has a majority in both houses of parliament. 42 members of parliament are at the same time also members of the government, leaving only ca. 30 MPs to do the work in the committees, which are supposed to be the key controlling body of the executive. Hopwood stressed that the strong party discipline within SWAPO leads to an atmosphere in which it is doubtful that their own backbenchers are able to speak and think independently, limiting the controlling func-

tion of the legislature, too. Mr Hopwood also criticized the sometimes infrequent attendance of the MPs in parliament e.g. because of outreached programmes. According to him the civil society needs to monitor this behaviour especially if one wants the parliament to discuss important issues and make MPs accountable to the population and not only to their parties. He stated that especially in foreign policy issues such as the Arab spring sometimes it is embarrassing that even if opposition parties bring in motions they are most times ignored. This situation is even aggravated within the National Council, where SWAPO holds 24 out of 26 seats. Despite of that, at times the NC questioned legislation of the executive but was ignored by government. Afterwards Mr Hopwood gave some examples of legislation, from which he drew the conclusion that sometimes MPs don't even read the bills passed by the executive and that the drafting process in some cases resembles a "cut and paste" from legislation of other countries. A lot of times the bills are unconstitutional or defective so that they cannot be implemented. In the end Mr Hopwood referred to the proposal that the ministers should be forbidden to become MPs, but this would also pose a problem in the sense of how could they be made accountable then.

Mr McHenry Venaani reports about practical problems of separation of powers in Namibia

The third speaker, Mr McHenry Venaani, as a member of the opposition party DTA especially reported the practical problems in

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applying the concept of separation of powers to Namibia. One of them refers to the budget, which has never been amended by the National Assembly which therefore has no oversight over it, but only the cabinet and especially the finance minister. Venaani stated that in 1995 the separation of powers in Namibia was still intact, but until today it declined. One of the problems which arose since then he sees rooted in the constitution which allows the president to attend parliament sessions, to choose cabinet members from parliament and to appoint 6 additional MPs. The reason why these regulations are part of the constitution is because difficult jobs need experienced personal, so it could be helpful for parliament if the president appoints very qualified persons. But he criticised that the president cannot appoint anybody neither as MP nor as minister. In this issue Venaani demanded an amendment as well as to reconfigure the ministries. In his point of view it is in the interest of SWAPO to have a lot of ministers because they support their president if being awarded for serving him as royalties. Another problem he announced is that even if the National Assembly and the National Council pass a motion, it seems that the ministers don't want to implement it. In addition the role of backbenchers should be raised so that their duty is to form an effective legislative and being responsible not to their party but to the people to obtain their seat so that they can be more independent. For the same reason they should be granted more staff and also a higher salary.

person and one party ruling instead of shared leadership. The problem with separation of power also arises from the difficult understanding of state, government and party because the latter has become the most important. He claimed that the state is not fit for purpose and the purpose is not known. The African leaders have stopped their thinking process after the struggle for independence was over and even now they are still fighting for liberation but without the colonisers. In the USA, Prof Diescho compared, the constitution has been drafted in regard to the future, in Africa they have been drafted focussing on the past. He imputed moral bankruptcy and intellectual laziness to the African leaders as well as a prevailing policy of the stomach. So Prof. Diescho concluded that the political systems need new researchers and innovators as well as a new kind of accountability.

In the following discussion subjects like the shortcomings of opposition parties, opportunities of civil society and media and possible amendments to the constitution were raised.



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Prof. Diescho refers to the African mindset and its consequences on separation of powers

The last speaker Prof. Diescho underlined the importance of different contexts and mindsets for the application of separation of powers. The African context, as he stated, gives a lot importance to the concept of one