

The parliamentary dimension of Namibia's foreign relations*

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Introduction

This discussion opens with an investigation of the roles defined for Parliament under the Constitution of the Republic of Namibia and the White Paper on Foreign Policy, Defence and Security. The remainder of the article offers an insight into Parliament's oversight function in respect of foreign relations, namely by way of explaining the role of the Standing Committee on Foreign Relations, Defence and Security. It will then analyse Parliament's legislative role by illustrating how international agreements are ratified. This will be followed by an outline of Parliament's role and function in regional, continental and international parliamentary bodies, and an outline of policy statements by Parliament on current issues and crises. Next up is a discussion of former Foreign Minister Theo-Ben Gurirab's specific role as former President of the United Nations (UN) General Assembly and of the Inter-parliamentary Union (IPU). As a parting shot, the article looks at whether Parliament indeed plays its designated role, and at whether that role merely looks good on paper but is in effect negligible.

Parliament's constitutional and political role in Namibia's foreign relations

Role definitions in the Constitution of the Republic of Namibia

In Chapter 1 of the Constitution of the Republic of Namibia, Article 1 states the following:

The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.

Article 3 declares that –

[t]he main organs of the State shall be the Executive, the Legislature and the Judiciary.

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This division of powers among the three organs of state forms the foundation of our democracy, and the Constitution stipulates clearly what the role of these organs is. Thus, any discussion of the role of the legislature – Parliament – must of necessity be based on its constitutional role. Apart from its role as the principal legislative authority in and over Namibia, exercising its oversight function over the executive and having the power to make and repeal laws, in a democratic state, Parliament should have input in the formulation of foreign policy, according to Article 63 of the Constitution.

For the purposes of this paper, Article 63 – specifically Sub-Article (2)(d), (e) and (f) – forms the basis of Parliament’s legislative role with regard to foreign and international relations. The Article in question reads as follows:

- (2) The National Assembly shall further have the power and function, subject to this Constitution: ...
 - (d) to consider and decide whether or not to succeed to such international agreements as may have been entered into prior to Independence by administrations within Namibia in which the majority of the Namibian people have historically not enjoyed democratic representation and participation;
 - (e) to agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32(3)(e) hereof;
 - (f) to receive reports on the activities of the Executive,

Furthermore, Article 144 of the Constitution contributes to Parliament’s powers in regard to its legislative role in foreign relations, namely the issue of ratifying international agreements.¹ Article 144 reads as follows:

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

On the other hand, as regards the execution of Parliament’s oversight function, it has a number of options with regard to the conduct of foreign relations:

- During the debate on the Appropriations Bill, the Minister of Foreign Affairs can be questioned by all Members of Parliament (MPs) when his/her budget is being motivated. The Minister, as the steward of monies allocated to the Finance Ministry, is obliged to account for the way in which funds were expropriated in a prior financial year, and to inform the House how monies are to be expended during the next financial year. Members can make use of this opportunity to question the Minister in respect of international agreements, membership of international organisations, and the way in which Namibia’s foreign missions represent the country.

¹ For a detailed analysis, see the chapter herein by Sacky Shanghala on international agreements.

- One can ask questions in the House on any matter relevant to the Ministry.
- One can bring motions on any topic with regard to foreign policy.
- One can debate ministerial statements.
- One can introduce legislation through a private members' bill, and/or
- One can debate any White Paper on Foreign Policy.

Role definitions in the White Paper on Namibia's Foreign Policy and Diplomacy Management

When one researches Parliament's constitutional and political role in Namibia's foreign relations, another important document to consult is the White Paper on Namibia's Foreign Policy and Diplomacy Management, published in March 2004. The White Paper highlights the objectives and procedures of the country's foreign policy.

In its foreword, the policy document highlights that all three branches of government – the executive, legislature and judiciary – play a role in contributing to Namibia's foreign policy. Parliament's legislative role allows it to function as a forum for –²

... political and legislative intercourse among parliamentarians and political parties ... [where] ideas, questions and answers [are generated and] debate on pertinent issues about world affairs [takes place], thus enriching the process of foreign policy formulation.

The White Paper further states that such debate strengthens the quality of Namibia's foreign policy by building interstate institutions and venting discussion on the ratification of international agreements.

In addition, the policy document highlights that the sphere of foreign relations needs to remain "in tune with the aspiration of the nation [and] ... the demands expectations, anxieties and resourcefulness of the people"³ are to be considered. Thus, one might conclude that Parliament, as the nexus between the people and the government, and as the principal representative of the people, is a key player when it comes to defining foreign policy.

The White Paper also makes general reference to parliamentary foreign affairs committees, which can influence the making of foreign policy in a meaningful way.⁴

2 Republic of Namibia (2004:iii).

3 (ibid.).

4 See below for more on the Parliamentary Standing Committee on Foreign Affairs, Defence and Security.

Regarding Parliament's oversight function, the White Paper simply states that the Ministry of Foreign Affairs routinely informs Parliament of developments abroad that affect the country.⁵

The policy document concludes that, —⁶

... these days, parliamentarians are extensively involved in international affairs and are thus duty bound to make their contribution to the projection of good images for their countries.

For this reason, MPs might use international forums to articulate the country's interests and to engage in international debates.

All in all, the White Paper does not specify what the National Assembly is tasked with when it comes to Namibia's foreign relations, although the reader will get an idea of its general orientation towards Parliament's role therein.

The Parliamentary Standing Committee on Foreign Affairs, Defence and Security

Parliament exercises its option to conduct an oversight function through Parliamentary Standing Committees, which in fact execute most parliamentary work. With regard to foreign policy, the Standing Committee on Foreign Affairs, Defence and Security⁷ has the right, in terms of its mandate, to involve itself in all discussions of foreign policy matters. However, the majority of back-benchers and all office-bearers serving on this Committee are members of the ruling SWAPO Party of Namibia. As is the case with the House in general, the ruling party members of the Committee have absolutely no interest in drafting foreign policy, but rather see themselves as unconditionally supporting whatever policy the executive may decide on. For example, although the Committee has the right to be informed of selections being made for Heads of Diplomatic Missions and is entitled to make suggestions in that regard as well, these specific procedures have not been followed to date because doing so is deemed as being tantamount to interfering with the powers of the Head of State to make such appointments.

Parliamentary Standing Committees reflect the same ratio of party representation as that in the House. In other words, SWAPO Party members make up two thirds of the membership, and invariably the Chairperson and Deputy Chairperson of such Committees are elected from within their own ranks. Such positions are decided by the Party Caucus and serve the political interests of the ruling party: the selections are

5 Republic of Namibia (2004:88).

6 (ibid.:15).

7 Five of its six members belong to the SWAPO Party of Namibia; cf. Parliament of Namibia [n.d.].

not based on a candidate's qualifications, experience, or ability. It goes without saying that this has a serious impact on the Committee's work. SWAPO party members argue that such representation is a reflection of the will of the electorate, and elections are democratic. However, this line of reasoning does not hold if the ultimate goal of the Committee is for Parliament to exercise its oversight function. With things as they stand, such attitudes play a crucial role in making Parliament impotent.

From time to time, the Committee receives and reciprocates visits to its sister committees from countries with whom Namibia enjoys excellent bilateral relations. However, such visits are more of a familiarisation with another country's policies and procedures than an opportunity to deal with foreign relations issues. Nonetheless, it does happen that a visiting delegation will raise a matter of concern to them; at such times, opposition members have criticised government policy. One glaring example of the conflict between ruling and opposition parties is on the issue of Namibia's foreign relations with Zimbabwe. Members disagree particularly on the question of Zimbabwe's elections; but whatever position the opposition parties may hold, it is overruled. For example, a Southern African Development Community Parliamentary Forum (SADC-PF) Observer Mission report opined that Zimbabwe's elections in 2000 did not conform with the Norms and Standards for Elections in the SADC Region agreed to by all SADC leaders.⁸ The report was hailed internationally as one of the most objective. Namibian MPs were part of that delegation. However, once the SWAPO Party members of the SADC-PF delegation had returned from Zimbabwe, they supported the position of the SWAPO Party at home to the effect that the elections were free and fair. Fortunately, history has absolved the Forum delegation because the report was proof of electoral fraud – even in subsequent elections in Zimbabwe.

This raises the question as to whether Namibia is a democracy or a one-party state through democratic elections. This issue is often reflected in the work of Parliamentary Standing Committees in general, when opposition party representatives differ with their ruling party counterparts on such Committees. The SWAPO Party's position is that it is the President's constitutional right to appoint an executive of any size. Opposition parties, however, maintain that such power is subject to the demands of the Constitution. In other words, in a democracy, the executive should not be put in a position where it is larger than the legislature and, therefore, exercises oversight over itself. Indeed, for this reason, members of Cabinet are not allowed to serve on Parliamentary Standing Committees. This was a mechanism devised in order to facilitate and guarantee oversight, but it has failed in practice because of the unwillingness of back-benchers to 'oversee' Ministers whom they regard and constantly refer to as their 'senior leaders'.

As a result, the major thrust of the Standing Committee on Foreign Affairs, Defence and Security's work is to pay regular visits to Namibia's missions abroad, especially

8 SADC-PF [Date unknown].

those that are deemed to be ‘hardship’ missions, and to present reports to the Ministry of Foreign Affairs. Such reports mostly have to do with conditions of service at the missions, and how to improve the lot of diplomatic staff. Such occasions are also the only time the Committee makes use of its power to summon the Foreign Affairs Minister and staff to appear before it.

The practice of paying study and in situ visits to parliaments abroad, and receiving such visits from others in return, has contributed greatly to broadening Standing Committee members’ insight into parliamentary policy and procedure. In addition, the constant problem of being unable to form a quorum in the House applies – and should be a matter of concern – to all members of the House. However, although Parliament has the power to change the rules on quorums in order to facilitate its work, after more than two decades after Independence no concrete steps have been taken in this respect. Namibia could, for example, take a leaf from Sweden’s book. There, when a Minister had to answer questions, only s/he, the parliamentary speaker and the relevant minister are needed for decisions that allow work to proceed. Another fine example to emulate is presented by the Ghanaian Parliament, where a special day is set aside for all MPs to put questions to ministers, and all MPs are entitled to ask further questions. In Namibia’s Parliament, a minister only has to answer questions put by a specific MP, and only that MP is permitted to ask any additional questions. Indeed, when Standing Committee have reported back on their return from such visits, they have – irrespective of their political affiliation – often tried to share their experiences in the House in the hope of introducing more democratic practices, but to no avail. Their recommendations are usually not even debated.

Parliament’s engagement with international parliamentary bodies

Since globalisation affects not only economic but also political actors, and since one cannot nowadays clearly distinguish between national and international topics, the last few years have shown that there is a serious democratic deficit in foreign relations in general and among international organisations in particular. The UN articulates this fact very intelligibly:⁹

Concerning democracy, a clear paradox is emerging: while the substance of politics is fast globalizing (in the areas of trade, economics, environment, pandemics, terrorism, etc.), the process of politics is not; its principal institutions (elections, political parties and parliaments) remain firmly rooted at the national or local level.

For example, international agreements on human rights, trade and other topics concerning and influencing the national level are passed “through the House (of Parliament) instead

9 Note by the Secretary-General at the 58th Session of the United Nations General Assembly; cited in Beetham (2006:157); cf. also Karuombe (2008:241).

of being passed by the House”,¹⁰ as Karuombe descriptively writes. Since Parliament is the embodiment of participatory democracy and the sole institution which represents the electorate, it is highly qualified to dismantle the democratic deficit and oversee the actions of heads of state at the international level. Furthermore, on the international level, parliaments are able to gain information and experience on recent developments and best practices, and can in turn exchange these with others.¹¹

Karuombe outlines a number of functions parliaments can perform with respect to foreign relations. He mentions their “legislative and democratic oversight function” first,¹² followed by the function of domesticating, implementing, conducting national planning for, and popularising international agreements, thereby accelerating regional integration, for example.¹³ Also, national parliaments are (theoretically) able to give feedback to and from the electorate.¹⁴ Focussing on the SADC–PF, he also notes that parliamentarians are part of highly acknowledged SADC election observations.¹⁵ Furthermore, he illustrates that the SADC–PF offers MPs a platform to deliberatively contribute to the development and integration of southern Africa.¹⁶

All in all, parliamentary involvement in foreign affairs theoretically has the possibility to increase a state’s accountability and transparency at international level.

The following section presents a discussion of the extent to which the Namibian Parliament is involved in international parliamentary bodies like the SADC–PF, the Inter-parliamentary Union (IPU), the Pan-African Parliament (PAP), and the African–Caribbean–Pacific and European Union Joint Parliamentary Alliance (ACP–EU JPA).

The SADC Parliamentary Forum

The late Dr Mosé Tjitendero was one of the most active members of the SADC–PF, serving on its Executive Committee and being instrumental in convincing the Namibian Government to provide the facilities for its headquarters in Windhoek as well as offering material and moral support to the Forum and its Parliamentary Leadership Centre. He remained one of the most respected, active and analytical Speakers in the organisation.¹⁷

10 Karuombe (2008:222).

11 (ibid.:235).

12 (ibid.:223).

13 (ibid.:223, 228).

14 (ibid.:233).

15 (ibid.:235).

16 (ibid.:234).

17 The gratitude of SADC–PF member states and individuals was visible not only by their attendance at his funeral, but also by the fact that any delegation attending a SADC–PF meeting, workshop or conference always first requested a visit to his grave to show their respect.

Namibia hosted the historic summit that transformed the Southern African Development Coordination Conference (SADCC) into the Southern African Development Community (SADC) in 1992. Namibia also hosted the conference which established the SADC–PF, despite limited resources at its disposal. These successes show that Namibia’s foreign policy supports international efforts to strengthen the role of parliamentary institutions in respect of their contribution to democracy.

The five MPs delegated to serve on the SADC–PF also played a very significant role in policy formulation and execution within that organisation. The author of this article held the position of Vice-Chairperson for two years, also participating in the drafting of the Norms and Standards for Elections in the SADC Region, which are now used by the African Union as well as SADC. Other members of the SADC–PF have also served on the various Parliamentary Standing Committees, and have held leadership positions from time to time.

A major commitment which received extensive support not only from the members of the SADC–PF, but also from Namibia’s current President, Hifikepunye Pohamba, was the SADC–PF’s transformation into a regional parliament, similar to that of the Economic Community of West African States (ECOWAS) for West Africa and the East African Legislative Assembly (EALA) for East Africa. Even if the examples of ECOWAS and EALA show that there is still a long way for them to go before they become fully fledged parliamentary bodies that are able to exert their oversight and legislative functions,¹⁸ it would be a good start for the SADC–PF to become a regional parliament. Unfortunately, this transformation has not succeeded as yet and the SADC–PF remains a “parliamentary deliberative body without legislative powers”.¹⁹

In his welcoming remarks on the occasion of the official opening of the 28th SADC–PF Plenary Assembly, Namibia’s current Speaker in Parliament, Dr Theo-Ben Gurirab, stated the following:²⁰

It is our view that the SADC Parliamentary Forum has distinguished itself in promoting the regional parliamentary work over recent years and the time has come for us to be transformed into a fully-fledged regional parliament. ...

Our deliberation at this Assembly must serve as a catalyst in our quest for the establishment of a SADC Parliament. We must therefore move forward with determination, commitment and a sense of urgency to realize this worthy vision, whereby SADC–PF will become the institution that will monitor, scrutinize and evaluate the impact of SADC programmes and its institutions in our region. ...

18 (ibid.:229, 230).

19 (ibid.:229).

20 Gurirab (2010:4).

In our efforts to become a regional parliament it is imperative that we continue to promote alliances with regional, continental and international institutions. In particular I would like to emphasize the need for closer networking with the SADC Secretariat and the Pan[-]African Parliament.

These statements and commitments – also at the level of the International Parliamentary Union – with regard to enhancing the role of parliament are indicative of Namibia's decision-makers' resolve with respect to the role parliaments have to play in a democracy. However, the issue of establishing a SADC Parliament was not on the agenda of the 30th SADC Summit of Heads of State and Government held in Windhoek in August 2010. Indeed, the resolution of its plenary to consider including the matter on the agenda for the next summit prompts the conclusion that the necessary political will to finalise the matter is still not there – despite lobbying efforts by the Presidents of Namibia and Malawi.

SADC–PF plays a very significant part in the training of new MPs by way of workshops and by sending delegations to other SADC countries to participate in discussing issues like HIV and AIDS, gender, and peacemaking and peacekeeping. Members are also involved in election observer missions to all countries in the region. Some of these missions, especially the one to the 2000 elections in Zimbabwe, have raised international recognition for the SADC–PF. In this instance, unlike most of the other continental and international observer missions, the SADC–PF was the only one to declare that the elections had not conformed with the Norms and Standards for Elections in the SADC Region drawn up by the SADC–PF and endorsed by SADC.

The SADC–PF was established with the aim of forging common economic, political and social values for the region as a whole. The body faces difficulties in implementing its protocols due to a lack of commitment by member countries. For example, the SADC Protocol on Gender and Development has not been ratified by some member states, while others are simply ignoring the SADC–PF guidelines on elections. Even Namibia does not fully adhere to these guidelines.²¹

Inter-parliamentary Union

Another international platform where Namibian MPs have played a very significant part in drawing up foreign policy agreements was within the IPU. Once again, Namibia has to thank the late Dr Tjitendero and Theo-Ben Gurirab, who were two of the IPU's most influential members. Tjitendero served on its Executive for more than four years and was a candidate in the election for its President. He lost by a very narrow margin because some delegates from Africa left before the vote was taken. In spite of the loss, Tjitendero remained the most influential member of the organisation until his passing. Whenever

21 Cf. Tjirera ([forthcoming]:16).

there was a stalemate on any issue, especially when the position of the African Group was crucial, he was the one called upon to mediate.

The Namibian delegation has also played and continues to play a significant part in the reform of the IPU. Apart from the late Speaker, the Deputy Chairperson of the National Council, Margreth Mensah-Williams, also served on the Executive Committee, the Women's Coordinating Committee, and as Vice-President of the IPU.

IPU Standing Committees deal with foreign affairs in the following areas:

- Sustainable development, finance and trade²²
- Peace and security
- Finance, and
- Human rights.

Members of the Namibian delegation have served on all these committees as ordinary members.

A major thrust of the work in the IPU is to support democracy. When there was a coup d'état in Thailand, for example, the IPU's membership was suspended and the conference that was supposed to be held there was moved to Indonesia.

A considerable amount of work goes into looking after the human rights of detained MPs as well. From the time that Namibia joined the IPU, it worked towards obtaining associate membership of the UN – in which it succeeded five years ago. It is important to note that topics for deliberation at IPU conferences are carefully chosen to correspond with major items of deliberation at the UN General Assembly. In fact, UN Millennium Development Goals 3 and 5 were proposed by the IPU at the time that Gurirab was President of the General Assembly. It is worth noting that Namibia's associate membership of the IPU at the UN happened just before he took over the IPU Presidency.

Gurirab served as President of the UN General Assembly between September 1999 and September 2000, as well as carrying out his national duties as Minister of Foreign Affairs. He was renowned for his commitment to highlighting Africa. Although he stated that "it is not parliaments but governments that make decisions", he played a significant role as President of the General Assembly, but also later as the IPU President, in respect of enhancing the role of parliaments in democracies. He also kept the issue of UN Security Council reform on its agenda.

The late Moses Katjiuongua also played a pioneering role at the IPU and was instrumental in getting Namibia's first Speaker elected onto its executive. Because of his extensive knowledge of international politics as well as the contacts he had built with freedom

22 The author served on this Standing Committee for two terms as Vice-President.

fighters from the region, Katjiuongua played a significant part not only in deliberations from the floor, but also in caucusing with his African and Asian colleagues on order to find a common platform.

The IPU's most notable success through its associate membership of the UN was to ensure that MPs, as the democratically elected representatives of the people, were granted a say in the UN – thus representing ruling as well as opposition parties.

The Namibian members of the IPU made it their duty to report matters relating to its work not only to the House, but also, through regular press conferences, to the nation as a whole.

The IPU has a National Group of Namibia to which parties appoint their representatives. This is the platform from which decisions regarding participation at IPU meetings are taken. These decisions would include time slots for regular IPU meetings. The National Group also serves as a platform for discussing IPU delegations and budgets, and it prepares regular reports to the IPU. Notably, this is the only National Group to have elected a member of the opposition as its Vice-President.

The IPU holds two meetings per year. There is one in Geneva, which principally deals with administrative issues; and then there is the deliberative Annual Assembly, which is held in a member country. As stated previously herein, it is usual practice to choose agenda topics in line with those on the UN agenda, and resolutions are passed in a similar manner. The various IPU Standing Committees deliberate and submit proposals to the Annual Assembly.

The Pan-African Parliament

At the PAP's inception, it was decided that, contrary to its statutes, representatives would not be elected by the peoples of the member states concerned; instead, they would be appointed by their respective parliaments, according to the ratios of those parliaments, for a specified term. As a result, the Namibian PAP delegation consists of four members of the ruling party and one from the opposition. Thus, the ruling party is in effect over-represented: the SWAPO Party constitutes 80% of the delegation's membership, despite it not holding an 80% majority in the House.

Namibia's foreign policy is based on whatever position the executives of African Union member states adopt on any foreign policy issue. Predictably, the members of the Namibian delegation take a view which does not contradict their government's position on such issues.

After ten years of PAP's existence, there has still been no election of its members. In other words, the members serving on PAP simply continue to be appointed by their

respective parliaments. Also, the fact that its members have not been elected may be one of the reasons why PAP is still a consultative body with no legislative power on the continent.

According to an interview with Dr Peter Katjavivi, Governing Party Chief Whip and leader of the Namibian delegation to PAP, Namibia considers PAP as an instrument for enhancing unity on the continent, in the same vein as the first Pan-African Congress had done in Paris in 1919. Katjavivi also stated that Namibia saw PAP as a major factor in promoting parliamentary democracy.

Furthermore, Katjavivi reported on the latest motion brought to PAP by the Namibian delegation: it proposed a resolution on what he termed “the current crisis” in Libya. The resolution was adopted and –²³

... formed part of the initiative taken by the African Union through the president of South Africa when he visited Libya recently.

This resolution criticised the action taken by the UN and the North Atlantic Treaty Organization (NATO) to assist the rebels, and pushed for dialogue between the Libyan actors in order to preserve the country’s national sovereignty. In the interview, Katjavivi also stated that “Africa should not be involved into [sic] change of government by force”.²⁴ This shows that Namibian foreign policy tends to adhere to the traditional notions of *state sovereignty* and *non-interference* rather than to the modern notions of *human rights* and *human security*.²⁵

The ACP–EU Joint Parliamentary Assembly

The ACP–EU Joint Parliamentary Assembly (JPA) is an institution made up of parliamentarians of the African, Caribbean and Pacific (ACP) states and those of the European Union (EU). The JPA originates from the Cotonou Agreement signed in 2000 by 78 ACP states²⁶ and the states of the EU, and it contains the ACP–EU strategy for poverty eradication and development and trade issues, such as the incorporation of ACP states into the world economy.²⁷ According to an interview with the former Namibian MP Johan de Waal, the JPA concentrates on economic aspects and is a more theme-based parliament.²⁸ He also stated that two thirds of the members of the Namibian delegation to the JPA are members of the ruling party, while one third are from the opposition.

23 Radio interview with Peter Katjavivi, Windhoek, Namibia, 1 June 2011.

24 (ibid.).

25 See elsewhere in this volume for the article on Namibia and the AU.

26 Cuba is the only state which has not signed the Agreement.

27 Cf. ACP–EU JPA (2006). See also elsewhere in this volume for the article on Economic Partnership Agreements.

28 Cf. Hanson & Julian (2008).

Since the Cotonou Agreement contributed considerably to the developmental aid Namibia received, the ACP–EU partnership is of great value to the country. But what role could Namibia's Parliament play in the ACP–EU JPA?

De Waal illustrated that the ACP–EU JPA was a valuable platform for lobbying, networking and discussion, and it could influence EU MPs. For example, at this forum it was possible to promote Namibia in terms of tourism.

However, when it came to exercising the JPA's oversight function, major flaws hindered the delegations from doing so. De Waal stated that there was much room for improvement in terms of informing the delegations to and preparing them for ACP–EU JPA meetings: they needed to know about topical issues. Also, because two thirds of the delegation were members of the ruling party, when it came to voting, the delegation usually voted in line with government policies. In De Waal's view, this showed that the delegations did not comply with the role parliaments ought to play on this international stage. De Waal concludes that Parliament did not play a big role "on foreign relations as such", and that it did not "give an input in the making of our [Namibian] foreign policy".²⁹ Asked about the most important topic the ACP–EU was concerned with, namely the Economic Partnership Agreements (EPAs), De Waal could only state that they had been discussed in the Parliamentary Standing Committee on Economics, Natural Resources and Public Administration, but could not give a statement on whether or how they had been discussed in the JPA.

Another source highlights that EPAs have been a very important issue in JPA talks.³⁰ A newspaper article about a JPA resolution safeguarding Namibia's interests confirms this,³¹ and indicates the strength of the Namibian delegation. De Waal also concludes that the Namibian Parliament's influence in the ACP–EU structure is mostly in terms of bilateral issues, not foreign affairs.

In another article, Tjirera concludes that —³²

... most of the decisions taken in these organisations [PAP, SADC–PF, IPU, ACP–EU JPA] are not binding, but [are] of advisory importance. In the case of Namibia, reports are compiled based on the discussions in these forums but, in most cases, are only tabled for note[-]taking and not for discussion. Due to the excessive dominance of the Namibian parliament by the executive it is not likely for the Namibian delegation to these forums to take a position that contradicts the country's position. Thus the role of [the] Namibian Parliament, as an autonomous organ of the state, in international relations is very limited.

29 Interview with Johan de Waal, Windhoek, 17 May 2011.

30 See Hanson & Julian (2008).

31 See Duddy (2009).

32 Tjirera ([forthcoming]: 16).

Despite some shortcomings, through their membership of international parliamentary bodies, MPs have managed to play a very significant role in the SADC region, on the continent and internationally. This was possible mainly because Namibian MPs always presented a united front when issues were discussed. Whilst they would disagree at home, such disagreements were set aside abroad and colleagues supported each other – especially when it came to having Namibian delegates elected to serve on the governing bodies of international parliamentary organisations based on their ability, rather than their party affiliation.³³

International agreements

The Namibian Constitution states the following in Article 144 under Chapter 21:³⁴

Unless otherwise provided for by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

Thus, the Constitution opens up a space for international law to be incorporated into Namibian municipal law, and provides for a strong role for Parliament. Article 63(2)(e) of the Constitution strengthens this role of Parliament as follows:

The National Assembly shall further have the power and function, subject to this Constitution: ...
(e) to agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32(3)(e) hereof;

In his research into the incorporation of international law into Namibian law, Onkemetse Tshosa emphasises the role of Parliament as last resort, and states that Article 144 does not harm the “sovereign power of the Namibian legislative authority to transform treaties”.³⁵ With reference to the Constitution, he adds that it is absolutely possible for Parliament to democratically control and oversee “the nation’s conduct of its foreign relations”.³⁶ He concludes that Article 144 does not interfere with Parliament’s power to decide on international law and international agreements.

But what does this look like in practice? How does Namibia’s National Assembly actually comply with its constitutional role as legislator when it comes to international agreements?

33 Compare, for example, the following section on the role of the current Speaker of Parliament, Theo-Ben Gurirab.

34 For an appraisal of Article 144, see Dausab (2010).

35 Tshosa (2010:20).

36 (ibid.:21).

Unfortunately, there are many flaws which prevent Parliament from complying with this role. International agreements are often not presented to the National Assembly until the very day they are supposed to be ratified. Cabinet Ministers decide whether and when to bring a treaty or other document to Parliament for ratification. MPs often do not have a chance to see the document until the day before such ratification. Once the agreement has been ratified, there is no follow-up process to domesticate the law, i.e. to review and amend national law in accordance with such agreement. De Waal and Katjavivi also confirmed that MPs were often ill-prepared and seldom proactive; that Parliament did not take control of the ratification process; and that a flawed implementation process had led to a lack of implementation.³⁷

Policy statements by the National Assembly on current international issues, crises and conflicts

The National Assembly very rarely makes policy statements on current international issues, crises and conflicts. In most cases, a Minister will make a ministerial statement in the House, but it is almost never debated, the Minister cannot be extensively questioned. Thus, not only are divergent views not articulated, they are also never incorporated – not even when Namibia is directly involved in international conflicts, such as the wars in Angola and the Democratic Republic of Congo. Even though the Constitution makes provision for such participation by Parliament, it is not involved in the decision-making process. Indeed, it was a direct order from the Head of State, Sam Nujoma, to intervene in the latter conflicts: Parliament's role was reduced to legitimising and justifying a decision that had already been made.³⁸ There can be no clearer indication of what role the ruling party is prepared to allow the opposition to play.

When researching the parliamentary dimension of foreign relations, one also has to focus on the life of Theo-Ben Gurirab, who has been an important figure in Namibian foreign policy. Besides being an MP and Namibia's current Parliamentary Speaker, he served as President of the UN General Assembly between September 1999 and September 2000, and as President of the IPU from 2008 to 2012.³⁹

When he was elected President of the UN General Assembly – “the world's greatest parliament”,⁴⁰ as he called it – he was highly praised by other diplomats. It was said that

37 Interview with Johan de Waal, Windhoek, 17 May 2011; radio interview with Peter Katjavivi, Windhoek, Namibia, 1 June 2011.

38 Cf. Melber (2006:8).

39 IPU ([n.d.]).

40 *Government News* (1999a); available at http://www.gov-news.org/gov/un/news/my_mind_heart_devotion_always_close_un_charter/1085.html; last accessed 4 October 2011. Compare his statement on the General Assembly: “Because of its transparency and representative character -- it is the most deliberative policy-making organ in the United Nations -- its authority

he would ensure the UN did not forget Africa because he saw the continent “as a global issue and how global issues impact on Africa”.⁴¹ Gurirab was also described as “the right man at the right time”, who brought great advantage to the job when the UN faced enormous challenges entering the new millennium.⁴²

Despite declaring that “it is not parliaments but governments that make decisions”,⁴³ he tried his best as President of the General Assembly to keep the issue of reforming the UN Security Council on the UN’s agenda.⁴⁴ He stated that —⁴⁵

... it was high time for Member States, particularly those from the developing countries, to redress the persistent attacks on and marginalization of the foremost organ of the United Nations.

Theo-Ben Gurirab also submitted a Draft Resolution containing a proposal for the UN Millennium Declaration.⁴⁶ The Declaration was presented to the UN Millennium Summit held from 6 to 8 September 2000, and was later adopted by the General Assembly. This Declaration is the key document on which the Millennium Development Goals are based. He also ensured that the Declaration included a reference of the important role of parliaments.⁴⁷

Gurirab called for “globalization with a head, a heart and a human face”, meaning —⁴⁸

... [developing world] debt cancellation, productive investment, measures to discourage financial speculation, and firm action to end the tariff and non-tariff barriers that are still imposed lopsidedly against developing countries that can least afford them.

As President of the IPU, he pronounced that he was not serving as a Namibian, but as a world representative.⁴⁹ With this he meant his agenda was not focussed on Namibian issues only, but on global issues relevant to all parliaments. He also stated that —⁵⁰

and integrity must be reinforced. It is here, in the General Assembly, where all the nations, big and small, rich and poor, are represented, that democracy really comes alive. It happens nowhere else. ... and the mandate of the General Assembly should be restored”; available at http://www.gov-news.org/gov/un/news/transcript_press_conference_assembly_president/4670.html; last accessed 4 October 2011.

41 Mwaura (1999).

42 (ibid.). It seems that he delivered on these high expectations. A reporter stated that he knew no other General Assembly President that had spent so much time at the UN as Gurirab had; see *Government News* (2000).

43 *New Era* (2008:8).

44 *Government News* (1999b).

45 UNIS (2000).

46 UN (2000).

47 *Diplomacy Namibia* (2010).

48 UN Forum (2000).

49 *New Era* (2008:8).

50 (ibid.).

Parliaments are not the first movers in a democracy. It is the government that has to do things first. We [the IPU] will bring the attitude of an inspector of what governments do.

This statement highlights the importance of parliaments in terms of social issues. This includes their oversight function with regard to the implementation of the Millennium Development Goals, a task that was adopted by the IPU at its 115th Assembly in Geneva in 2006.⁵¹ At another occasion, Gurirab highlighted the need to improve the accountability of parliaments.⁵²

Under his presidency, the IPU has provided capacity-building to meet MPs' information and knowledge needs, and has sent observers to several elections. The President has also voiced the IPU's concern about undemocratic transitions of power on several occasions.⁵³

However, despite Gurirab having stated that he wanted to send election observers through SADC regional arrangements,⁵⁴ the IPU database only quotes positive SADC and AU statements on the Namibian and other elections: even PAP's critical assessment is ignored.⁵⁵ Indeed, after each election, opposition parties go to court to point out irregularities; one such case is still in court.⁵⁶

Gurirab was a vocal IPU President, speaking up about a number of regional conflicts and global crises. For example, he made statements on the global financial crisis, on Palestine, Zimbabwe, and, more recently, on Egypt and the Ivory Coast.

Thus, it is no exaggeration to say that Gurirab represented the Namibian Parliament in an outstanding way. Through his positions as President of the General Assembly and, recently, the IPU, he was at least able to try to set the agendas of these institutions. He definitely was and is a shining example of Namibian diplomacy and influence at international level.

One also has to look at his domestic role within Parliament to see what he has done to strengthen the parliamentary dimension of foreign relations. Gurirab has served as Minister of Foreign Affairs, Prime Minister, and Speaker of the Parliament. These three very senior positions affect Parliament's role. The Speaker has the power to allow debate; s/he has the power to defend the right of any member in the House to participate in the affairs of Parliament; and s/he has the power to control MPs' behaviour. As Prime Minister, Gurirab was first amongst equals: he had influence over the executive, especially with regard to their performance in the House and the way they interacted with their

51 Gurirab (2008).

52 *Diplomacy Namibia* (2010).

53 Mingxin (2009).

54 *New Era* (2008:8).

55 IPU ([n.d.]b); Shejavali (2009).

56 Sasman (2011).

colleagues across the floor. As Foreign Minister, he was at the helm of Namibia's foreign relations. He was one of the few Ministers who treated members of the opposition with respect. But it took years before a White Paper on Foreign Relations was tabled in the House. He will, therefore, have to account to history – if not today – why Parliament has absolutely no say in Namibia's foreign policy. Most of the people interviewed for this chapter are in agreement that this is indeed the case. In a recent newspaper interview, for example, the Speaker seems to agree with this criticism by expressing concern about Parliament's powerlessness.

Conclusion

During the first five years of the first legislative period, the ruling party did not have a two thirds majority in the House. As a result, the role of opposition parties in the House was more significant.

However, after the ruling party had obtained a two thirds majority, the powers of the legislature diminished. The executive now has the overall majority in the House and, as such, is not only responsible for making laws, but also for controlling debates in the House.

The backbenchers of the ruling party never disagree with the Ministers or their Deputies. In terms of the Standing Rules and Orders of the House, time for debate is allocated proportionally. As a result, especially during the second reading of a Bill when the debate is more general, members of the opposition never have enough time to make contributions.

Furthermore, because of the executive's size, Ministers – who are responsible for drafting and presenting Bills – end up talking more than the backbenchers and opposition combined, and it is obvious that these parties hardly ever criticise each other; and even if they do, when it comes to the vote, they never vote against a motion or even abstain. As a result, laws are made that have to be amended on a regular basis.

All of this means that Parliament has very little influence on policymaking. When an MP asks questions, it sometimes takes weeks – if not months – to receive an answer. Often, there is no answer forthcoming at all; and if the answer is given, very often it is merely referred to as the member wanting to score political points. It lies within the Minister's discretion as to whether to answer the question at all. A small number of Ministers take the responsibility of accounting to the House very seriously and, after intensive research, answer the questions put to them in a very respectful manner. However, the majority treat the function of answering questions with impunity. It is very unfortunate that, in most cases, by the time the question is answered, it is no longer relevant.

If an MP opts to put forth a motion, s/he will usually not even get a chance to complete the motivation to do so before the motion is thrown out. It is not surprising, therefore, that no MP has introduced a private members' Bill on Foreign Relations.

As stated earlier, despite the right of the legislature to agree to ratify and/or accede to international agreements, the status quo leaves much to be desired. Very often, agreements are brought to the House for ratification, but it would be the first time that the National Assembly had ever seen the agreements. In most cases, Parliament has no input in the preliminary discussions that take place in respect of international agreements, so when such agreements are brought to the House for ratification, it is not more than a rubberstamping exercise. In any event, because of the majority of the executive in the House, it has no power to deny ratification at any point. Members of the executive attend international meetings or conferences where agreements are discussed and decided upon, but there is no practice that obliges the Minister to report on the matter in Parliament in a manner that would enable it to have an input before agreements are acceded to. In most cases, when such agreements on foreign policy are made, Namibia's position is dictated by whatever SADC or the AU decides. Within SADC, various levels of decision-making take place. First senior civil servants meet; they in turn advise their Ministers, who then meet before the Heads of State and Government do. Policies are formulated at a Summit of Heads of State and Government. When decisions are taken at international meetings, therefore, all SADC – or, for that matter, AU – member states will vote according to such decisions.

Thus, a critical assessment of the role of Namibia's Parliament in the domain of foreign affairs leads to the conclusion that, because of the majority of the executive in Parliament and the reluctance of SWAPO Party backbenchers to criticise their Ministers, the role of Parliament, with its very small opposition – though deemed very important as far as the Constitution is concerned – is very limited in practice. As indicated herein, it depends on the individual MPs to map out the role they can play in regional, continental and international affairs. Experience has shown that the involvement of MPs in Namibia is much more successful at regional, continental and international organisations because the delegation is perceived as a unit and not as one divided according to party-political membership. Members of such delegations are judged according to their ability and potential with respect to how they can contribute to the organisation in question's success.

It is common practice within international organisations for MPs to vie for leadership positions in the executive as well as on committees. Naturally one's contribution to debates, motions or other activities within these organisations is noted by one's peers, and when vacancies occur, one is known. Very often, some horse-trading takes place as well, and getting one's continent's support is vital. This was evident during Theo-Ben Gurirab's election to the IPU Presidency: SADC–PF chose him as its candidate for the region, while PAP made him their candidate for the continent. From there, everyone

worked tirelessly to obtain the support of other geopolitical groups. Without that support, he would have lost the election.

Because of the efforts by all its MPs, Namibia has gained respect and recognition in international organisations, where comments have often been made that its representation on decision-making structures belies the country's smallness in terms of its population. Because of Namibia's MPs' commitment to participate actively – irrespective of their party-political affiliations – in the various regional, continental and international parliamentary organisations, the country has managed to play a major role in discussions and decisions relating to foreign policy.

This role is facilitated by the fact that, within these organisations, ruling parties scan the political platform. Whereas one delegation may, because of its composition, follow a very leftist/socialist line, another with a conservative ruling party may hold exactly the opposite position. Furthermore, geopolitical groups within the UN–IPU may often have a united approach to issues. Thus, international parliamentary organisations like these are more representative of their electorates. Reforms that have taken place within the UN–IPU relationship as well as those within the IPU itself have enabled parliaments to be recognised as the elected representatives of their peoples – and as having the right to participate in their own right and not through the executive alone.

One of the main reforms within the IPU that have become institutionalised is its Associate Membership of the UN, which has enabled representation of all elected MPs and not just the Cabinet. The introduction of a gender perspective – in terms of which delegations had to include democratically elected MPs that included women in particular – allowed delegations to be disqualified if there was no gender balance. Secondly, the suspension of parliaments which were not democratically elected, the collapsing of the two annual IPU meetings into one, the working session held in Geneva, and one deliberative session held in a member country which offers to hold it, are all examples of reforms that have been implemented.

Because of these reforms, it has become common practice for MPs – including opposition MPs – to be included in official delegations from their respective countries. This includes UN General Assembly sessions as well as all its committees. Moreover, national delegations to international meetings also include MPs. In this way, Parliament can be involved in discussion and decisions on foreign policy in deliberations that relate to international agreements. This involvement has not yet become common practice in Namibia, but times are changing. The latest demonstrations by citizens on the African continent who demand the democratisation of their societies make it imperative for the Namibian Government to practise what it preaches and implement what the Supreme Law dictates, namely to provide space for Parliament to exercise its oversight and legislative functions – not as an opposition or enemy, but as an integral part of a democratic system.

When this happens, the people of Namibia, through their elected representatives, will truly own whatever foreign or other policies its government decides on.⁵⁷

Ben Amathila, the previous leader of the Namibian delegation to PAP, even called for greater participation by civil society in this continental parliament. Namibia has the potential to play a much more significant role in international affairs if it were prepared to use all its human resources at hand. Our Speaker was the President of the IPU; his predecessor, the late Tjitendero, played a great role in SADC–PF as well as in the IPU. Their election to various positions of leadership was successful because of their delegations – and opposition MPs were their most active lobbyists. Namibia is being sold short: it can only gain by maximising the potential of its MPs to influence foreign policy and develop beneficial foreign relations with all its international partners. If one looks at Namibia's neighbours, or the continent, for that matter, people who have shared the country's common history – i.e. Namibia's struggle comrades, many of whom are academicians of international repute – hold very important positions in international bodies. This is not because Namibia's neighbours are better than us, but because they support each other as citizens of the same country. For example, if one considers Namibia was a child of the UN and held its presidency at one point, it is amazing that there are so few Namibians within the UN system. If one visits UN offices, be it in Austria, Geneva or New York, you will find even security staff from our sister countries. Where are the Namibians?

After more than two decades of independence, Namibia needs to remove its “sole and authentic”⁵⁸ blinkers and don the cloak of “One Namibia, One Nation”.⁵⁹ Fortunately, all is not lost. Ambassador Eddie Amkongo, Chairperson of Namibia's Public Service Commission and a long-standing and faithful member of the SWAPO Party, recently published an opinion piece titled “The paradox of the separation of power”.⁶⁰ At last, someone from within the ruling party has opened up a debate in which all should participate. The following excerpt from his piece deserves quoting here:⁶¹

Two decades of our democratic exercise have shown that there are frictions due to either deliberate [misinterpretation] if not application, regarding some articles of the Constitution, the practice of which appears inconsistent with the principle of the separation of power. ...

57 That being said, it is an open question whether Parliament really represents and is in touch with its electorate – the people of Namibia. A report by the Institute for Public Policy Research shows that 96% of respondents had not contacted a member of the National Assembly in 2008 (Parliament of Namibia 2009:9).

58 Reference to the UN's recognition of SWAPO as being the only credible representatives of the Namibian nation prior to Independence.

59 One of the official nation-building slogans.

60 Amkongo (2011).

61 (ibid.).

Parliamentarians, amongst whom are Cabinet ministers, not only debate it but also vote it into law, because they are full-time members and, to make things ludicrous all Ministers are frontbenchers who dominate the august House. Participation by ordinary MPs, including opposition members of parliament, becomes a facade and oftentimes the debate is punctuated with bashing, accusations and unnecessary interjections. ...

Put into perspective, the Minister initiates, formulates, debates, votes into law and, finally, takes back his/her finished product to the ministry to implement.

This is the best explanation why Parliament in Namibia has very little, if any, say in foreign policy, and that is why a paper on the parliamentary dimension of foreign relations will remain limited in scope. This underlines the absence of debate on key international events and their impact on our domestic agenda as well as our positioning as one of the brighter spots on the African continent

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