

Constitutionalism and principles of economic order. Examining Namibia's 'mixed economy' and the economic asylum of neoliberalism

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Abstract

While a number of studies exist on the causes and impact of the inequality, poverty and unemployment in which the majority of Namibians are trapped, very few, if any, of these studies examine the role and place of the constitution in maintaining the status quo. Most of the studies, even those on the constitution, do not focus on the question of political economy and how it relates to the constitution. A constitution can be understood as a set of fundamental laws determining the orientation (values and principles), structure and power of the state. To understand the economic system of a given state, one ought to start by studying the constitution. In Namibia the picture is not as clear as it should be. Theory and practice, on the question of political economy, do not gel. The text analyses the constitutional principle of 'mixed economy' with a view to understanding – and explaining – the triumph of neoliberalism in Namibia. It concludes that given the principle of 'mixed economy' is not clearly defined – an unsound principle according to this text – there is a need to re-examine the constitution of the Republic of Namibia to address the question of political economy.

Introduction – what are the issues?

The general understanding, in political science, is that the state exists to provide for the common and greater good of all members of society. For Aristotle, the state, as an association of persons, has as its aim the attainment of the 'best life possible'.¹ For John Locke, Thomas Hobbes and Jean Jacques Rousseau, the state exists as a result of a social pact the people enter into. While political philosophers differ on the key reasons which lead individuals to consent to this social pact, it is generally accepted that the purpose of such a pact is to achieve greater good for the members of society as a collective.² Given that the overriding purpose of the state is to provide for the greater good of men, as per the social pact – to use the social contract language, it then follows

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¹ Alan Haworth, *Understanding the Political Philosophers: From Ancient to Modern Times*, London and New York, Routledge, 2012.

² Andrew Heywood, *Political Ideologies: An Introduction*, New York, Palgrave Macmillan, 2012.

that the performance of a state is to be assessed by looking at the extent to which it provides and caters for the greater good of men. To do this one must examine the economic life of society and its people. It is one of the most important, if not the most important, aspect of human life. Fundamental to assessing how a state performs in providing for the greater good of men in general and in the economic life of a nation-state in particular is an analysis of the constitution of that given state.

Having obtained its independence on 21 March 1990, Namibia is one of the youngest democracies in Africa. When the United Nations (UN) implemented UN resolution 435, paving the way for Namibia's independence, many were hoping for a new society which would signal the end of colonialism on the African continent. What awaited this small nation and the African continent was a clear path, it was expected, towards economic prosperity for the African people. In the words of Hage Geingob, the first Prime Minister of Namibia and current President of the country, "the Organization of African Unity, the Frontline States and members of the Non-Aligned Movement were happy to see the last colony in Africa become independent".³

What awaited post-independence Namibia is something that many may not have anticipated in the euphoria over decolonization. Many saw a smooth ride towards economic prosperity for all. Twenty years after independence, it became clear that the promises of post-independence 'milk and honey' had not been fulfilled as Herbert Jauch et al. notes:

Namibia holds the infamous record of being the country with the highest levels of inequality in the world [...] 20 years after independence the country is still highly fragmented [...] the country's negotiated transition to independence ensured that economic structures remained largely intact [...] despite various attempts by the Namibian government to provide basic services for all and despite several policy interventions aimed at redressing the apartheid legacies, Namibia still ranks amongst the most unequal societies in the world [...] no systematic programme of redistribution was implemented and thus the country's achievements, in terms of overcoming poverty and inequality, were limited [...] the rural population, vulnerable workers and informal economy workers [part of the population's majority] experienced only few material improvements since independence.⁴

It is not only local scholars who see the dichotomy resulting from the promises made at independence and the reality of today. Writing for *This Is Africa*, an online forum on African opinion and art, in 2012, Siji Jabbar, has the following to say:

21 years after independence, Namibia is still ruled and "owned" by the descendants of the German and white South African colonizers. A few thousand white Namibians living large, while the majority black population hews wood,

³ Hage G. Geingob, "Drafting of Namibia's constitution", in: Anton Bösl, Nico Horn and André du Pisani, (eds.), *Constitutional Democracy in Namibia. A Critical Analysis after two Decades*, Windhoek, Macmillan Education Namibia, 2010: 83-107 (106).

⁴ Herbert Jauch, Lucy Edwards and Braam Cupido, "Inequality in Namibia", in: Herbert Jauch and Deprose Muchena, (eds.), *Tearing Us Apart: Inequality in Southern Africa*, Johannesburg, Open Society Initiative for Southern Africa, 2011: 161-223 (243f.).

draws water, lives mostly in townships and under the poverty line, and remains mostly unemployed. White Namibians are Namibians, too, of course, but when the wealth gap is so obviously based on race as a result of the country's history, isn't some faster redistribution of the country's wealth called for? At the current rate it will take a few generations to make much of a difference, let alone equitable. A time-bomb waiting to explode, as it did in Zimbabwe.⁵

What happened and how Namibia reached this point of such striking and frightening income inequality, is the key concern of this text. For this an analysis of the constitution is important. Writing on the impact of the Namibian constitution on state- and nation-building, political scientist Henning Melber notes,

[The Namibian constitution] is the only relevant framework to which all sections of society can refer and should respect. It is the fundament for consolidating legitimate sovereignty in a democratic state that serves all people, and thereby continues to build the nation.⁶

The above argument by Melber and others buttresses the centrality of the Namibian constitution in the study of the country's socio-economic life. This paper does, indeed, place the constitution at the centre. Specifically, it analyses the principles of economic order, termed 'mixed economy' as provided for by Article 98 of the Namibian constitution. Careful analysis of this principle of 'mixed economy' not only exposes the constraints on the state in addressing the economic challenges faced by the black majority but also, and more importantly, shows that this notion of a 'mixed economy' is but a cover for neoliberalism – an approach to economic policy that promotes the supremacy of the markets, supports deregulation of these markets and endorses a minimalistic state which does not become actively involved in the economy.

While there have been many studies conducted on the inequality and economic deprivations suffered by the masses of the Namibian people, such studies have hardly focused on or analyzed the supreme law of the land, the constitution, to explore questions of positionality and possible contributing factors, which are results of the Namibian constitutional posture and disposition, to the status quo of economic deprivation of the majority of the population. Through intense scrutiny of Article 98 the text critically analyses the politics involved in the drafting of the Namibian constitution to provide a proper context before delving into and examining the principle of 'mixed economy'. It then discusses the rise of neoliberalism and its consequences before concluding with very brief and very vague perspectives on what can be done to change things.

⁵ Siji Jabbar, "Namibia, the African country not owned by Africans", This is Africa, 2012, <<http://archived.thisisafrica.me/opinion/detail/4174/Namibia-the-african-country-not-owned-by-africans>> [accessed 29 November, 2016].

⁶ Henning Melber, "The impact of the constitution on state-and nation building", in: Anton Bösl, Nico Horn and André du Pisani, (eds.), *Constitutional Democracy in Namibia. A Critical Analysis after two Decades*, Windhoek, Macmillan Education Namibia, 2010: 35-44 (43).

The processes and politics towards drafting the Namibian constitution

At the Berlin Conference of 1884/85, a meeting of European imperial powers organized and chaired by the first Chancellor of Germany Otto von Bismarck, Germany claimed the territory of present day Namibia (then called South West Africa) as a colony. This outcome, contained in what was known as the 'General Act of the Berlin Conference', would set in motion a formal process that would inflict pain and suffering on millions of Africans in the form of colonialisation – the effects of which are still felt by Africans today. Before the Berlin conference, African livelihoods were organized in political units called kingdoms and empires. Economic life was organized on the basis of what is known as African communalism.⁷ The misplaced narratives of Africans as underdeveloped and backward were challenged and discredited by several historians and scholars such as Cheikh Anta Diop and Walter Rodney. These scholars point to the fact that Africans lived good lives in well developed societies before the arrival of Europeans on the continent. Rodney, for examples, notes that

under communalism every African was assured of sufficient land to meet his own needs by virtue of being a member of a family or community [...] African manufacturing had advanced appreciably. Most African societies fulfilled their own needs for a wide range of articles of domestic use, as well as for farming tools and weapons [...] [for example] through North Africa, Europeans became familiar with a superior brand of red leather from Africa which was termed "Moroccan leather." In fact, it was tanned and dyed by Hausa and Mandinga specialists in northern Nigeria and Mali. When direct contact was established between Europeans and Africans on the East and West coasts, many more impressive items were displayed [...]. Africa was a continent of innumerable trade routes. [...]. Various communities were producing surpluses of given commodities which could be exchanged for items which they lacked. In that way, the salt industry of one locality would be stimulated while the iron industry would be encouraged in another. In a coastal, lake, or river area, dried fish could become profitable, while yams and millet would be grown in abundance elsewhere to provide a basis for exchange [...]. Indeed, the first Europeans to reach West and East Africa by sea were the ones who indicated that in most respects African development was comparable to that which they knew.⁸

While differences in the level of development in Europe and Africa existed, the assertion has been discredited – as aptly demonstrated by Rodney above – that Europeans came to Africa to bring development to a 'dark, uncivilized, barbaric undeveloped' continent. Europeans came to Africa to pursue imperial capitalist goals as contained in the 'General Act of the Berlin Conference'. These goals were the same for the Germans who occupied

⁷ Göran Hydén, *African Politics in Comparative Perspective*, Cambridge, Cambridge University Press, 2013. Also see Marion Wallace with John Kinahan, *A History of Namibia: From the Beginning to 1990*, Auckland Park, S.A., Jacana, 2011; and Lauren Dobell, *SWAPO's Struggle for Namibia, 1960–1991. War by Other Means*, Basel, Schlettwein, 1998.

⁸ Walter Rodney, *How Europe Underdeveloped Africa*, Washington D.C., Howard University Press, 1972: 41.

Namibia. Henning Melber, a professor of political science and an academic authority on Namibia, details how German colonial occupation of Namibia took shape:

On 5 September 1884, the German Empire formally declared the south-western coastal strip of Africa under its flag. Soon, however, the area under her “protection” stretched from the Kunene River in the north to the Orange River in the south, and to the sandy desert of the Kalahari in the east. This formal declaration of colonial responsibility was followed by a period in which a representative of the German Empire tried to conclude “protection treaties” with local chiefs [...] the German empire at this time was preoccupied mainly with building its own internal capitalist system. It was not yet in a position to take systematic advantage of its colonial possessions. Economic interests were mainly represented by a number of “concessionary companies”. In the main, these existed only for speculative purposes with regard to land allocation and the exploitation of natural resources [...] The official German administration established itself in 1893. Only from that time on did a colonial power structure and administrative apparatus come into being, which in its aims and effects was soon to undermine the existence of certain Namibian groups [...] the German colonial power had, by 1907, gained complete control over the territory.⁹

The local communities waged several wars, including what is regarded as the War of National Resistance, against the German colonial state. They fought bravely although they did not have modern weaponry. As a case in point, between 1904 and 1907, the Germans committed what is regarded as the first genocide of the 20th century.¹⁰

For the purposes of this text, it is important to note that the German colonial state continued with its occupation of the territory and it had as state policy the unleashing of brutality upon the indigenous populations in order to achieve its capitalist imperial objectives. Following the Versailles Treaties, and to a certain extent the occupation of Namibia by the South African troops in 1914–15, Germany was forced to relinquish the territory; a profitable colonial booty. Namibia was now handed over to another colonial master who would exploit the country, its people and its resources for another 75 years. Du Pisani provides an account of the circumstances under which Namibia became a colony of South Africa and the subsequent colonial policy:

World War I was terminated by the terms of Article 119 of the Peace Treaty of Versailles signed by various parties in June 1919. This transferred sovereignty of the former German colonial Government over German South West Africa to the Principal Allied and Associated Powers, and they, in turn, transferred the “full powers of administration and legislation” to the Union of South Africa as the mandatory power. Supervisory power over South Africa (as mandatory power) was vested in the Permanent Mandates Commission of the League of Nations [...] When the Union of South Africa was designated the mandatory power over Namibia in 1919, that country set out to redefine public space and

⁹ Henning Melber, “Economic and social transformation in the process of colonisation: Society and state before and during German rule”, in: Christiaan Keulder, (ed.), *State, Society and Democracy: A Reader in Namibian Politics*, Windhoek, Macmillan Education Namibia, 2010: 16-48 (28f.).

¹⁰ South West Africa People’s Organization (SWAPO), *To Be Born a Nation: The Liberation Struggle for Namibia*, London, Zed Press, 1981. Also see Melber, “Transformation”: 28-37; and Wallace with Kinahan, *History*.

political life in the mandated territory. Political developments, such as the creation of an all-white Advisory Council in 1921, the introduction of English and Dutch as official languages (in January 1920) and Roman-Dutch law as the common law in Namibia, land policy, education policy, as well as the active encouragement of white settlement, all pointed to an attempt to reconfigure public space in Namibia so as to contain the movement of the majority black population. The Vagrancy Proclamation of 1920, which made it an offence for black men to move around the Police Zone [...] was, one of the keystones of colonial policy.¹¹

As previously stated, the indigenous people rose up and resisted both German and South African colonial occupation. The local chiefs fought against German colonialism. South African colonialism was resisted by several nationalist forces and groupings from which the SWAPO Party later, particularly after the 1960s, emerged as the leading movement in the fight for Namibian freedom and independence. Accordingly, SWAPO went on to articulate its struggle and vision as that of uniting

all Namibian people, particularly the working class, the peasantry and progressive intellectuals, into a vanguard party capable of safeguarding national independence and of building a classless, non-exploitative society based on the ideals and principles of scientific socialism.¹²

This conceptualization of a vision attracted the OAU which later, in 1965, recognized SWAPO as the representative liberation movement of the Namibian people. In 1976, the UN General Assembly passed resolution 146 'baptizing' SWAPO as the 'sole and authentic representatives of the Namibian people'.¹³ As such, SWAPO's struggle for the freedom and independence of Namibia, including its armed struggle, was already internationalized. In fact, there were Namibians who had made contact with the outside world, including the UN, on the matter of South Africa's occupation of Namibia. Among these were the first petitioners to the UN, Herero Chief Hosea Kutako who, through Rev. Michael Scott, pleaded his case before the UN in 1946, and later on Mburumba Kerina, Hans Beukes and Jariretundu Kozonguizi, Sam Nujoma and others.¹⁴ From the time the UN declared SWAPO as the 'sole and authentic representatives of the Namibian people' the struggle for Namibia's independence and future, and the associated discourse, became an international affair. As Nico Horn further states, "both the [UN] General

¹¹ André du Pisani, "State and society under South African rule", in: Christiaan Keulder, (ed.), *State, Society and Democracy: A Reader in Namibian Politics*, Windhoek: Macmillan Education Namibia, 2010: 49-76 (53-55).

¹² SWAPO, *Nation*: 275.

¹³ United Nations Institute for Namibia (UNIN), *Namibia: Perspectives for National Reconstruction and Development*, Lusaka, UNIN, 1986.

¹⁴ Dennis U. Zaire, "Namibia and the United Nations until 1990", in: Anton Bösl, André du Pisani and Dennis U. Zaire, (eds.), *Current Dimensions, and Perspectives for the 21st Century*, Windhoek, Macmillan Education Namibia, 2014: 37-50.

Assembly and the Security Council had maintained constant pressure on South Africa since the 1960s.”¹⁵

It is, therefore, unsurprising that the drafting of the Namibian constitution was highly internationalized. Professor Nico Horn, a professor of Law at the University of Namibia, captures this history of the internationalized struggle for Namibia, leading up to and during the drafting of the constitution. It is worth reproducing his narration at length:

Two important international decisions smoothed the transition to Namibia's independence, but also had a decisive influence on the content of the Namibian Constitution. Firstly, in 1978, the UN Security Council accepted Resolution 435 as a basis for Namibia's independence [...] the second important international initiative was the drafting in 1981 of the Constitutional Principles by the Western Contact Group (WCG) [...] consisting of Canada, France, West Germany, the United Kingdom and the United States.. In January 1981, the UN sponsored the so-called pre-implementation conference for the Security Council Resolution 435. The conference [that took place in Geneva] came to naught because the delegation comprising the South Africans and internal parties used the opportunity to attack the UN for its partiality [...] After the Geneva conference, the WCG started working on constitutional principles that would ease the fears of whites and be acceptable to all parties involved. Although SWAPO initially rejected the Constitutional Principles, they eventually agreed that the document could become the foundation for the independence process and the Namibian constitution [...] Eventually, the Principles became the foundation on which the Constitution was built. At the first meeting of the Constituent Assembly on 21 November 1989, Theo-Ben Gurirab of SWAPO proposed that the Assembly adopt the Principles as a “framework to draw up a Constitution for South West Africa/Namibia”. The proposal was unanimously adopted.¹⁶

Four points emerge clearly from this; (1) it was western countries, through the UN, who mostly took the lead in and responsibility for the process and content of what later became the Namibian constitution; (2) white fears and interests increasingly became a key factor in the process of drafting the Namibian constitution; (3) SWAPO abandoned its leftist/socialist position in order to gain political power; and (4) that the constitution of Namibia is a product of compromises. These observations are supported by several writers such as Dirk Mudge and Theo-Ben Gurirab who were also participants in the drafting of the constitution.¹⁷ On his part, Gurirab writes in detail about how the SWAPO leadership, himself included, went to great lengths to reach consensus and to placate the white population. He records that even before the actual negotiations and drafting of

¹⁵ Nico Horn, “The forerunners of the Namibian Constitution”, in: Anton Bösl, Nico Horn and André du Pisani, (eds.), *Constitutional Democracy in Namibia. A Critical Analysis after two Decades*, Windhoek, Macmillan Education Namibia, 2010: 63-82 (63).

¹⁶ Ibid.: 64f.

¹⁷ Theo-Ben Gurirab, “The genesis of the Namibian constitution: The international and regional setting”, in: Anton Bösl, Nico Horn and André du Pisani, (eds.), *Constitutional Democracy in Namibia. A Critical Analysis after two Decades*, Windhoek, Macmillan Education Namibia, 2010:109-117. Also see Dirk Mudge, “The art of compromise: Constitution-making in Namibia”, in: Anton Bösl, Nico Horn and André du Pisani, (eds.), *Constitutional Democracy in Namibia. A Critical Analysis after two Decades*, Windhoek, Macmillan Education Namibia, 2010: 119-145.

the constitution, the leadership met with the Oppenheimers, a wealthy white family with business interests in diamonds in southern Africa and Namibia to seek consensus on the economic future of the country. In a rhetorical analysis of the making of the constitution, Audrin Mathe also found and corroborates the compromises made by parties in the drafting process.¹⁸

Hage Geingob, the chairperson of the Constituent Assembly, confirms, for example, how white fear and interests were handled:

It was the spirit of compromise that eventually resulted in achieving an outcome satisfactory to all [...] the United Kingdom, France, and Germany managed to protect their economic and settler interests in the region [...] the United States of America secured its economic and geopolitical interests in the region.¹⁹

For the purposes of emphasis, this places on record that white economic interests are protected by the constitution. Horn further corroborates SWAPO's capitulation in admitting that the party's discussion paper on the constitution of independent Namibia submitted to the Constituent Assembly did not elaborate on economic policy but that the document included a paragraph protecting "vested legal rights and titles in property".²⁰ With confirmation that settler and white economic interests were protected in the constitution – and given the confirmation by Geingob that SWAPO's preoccupation and happiness was that "its many years of struggle had at last borne fruit" – it can be argued that the economic question and agenda for independent Namibia was exclusively framed by westerners.²¹ It was westerners, acting in the interest of whites, who handled the economic question in the Namibian constitution.

By its own admission, SWAPO had to change its position, on economic policy, due to the realities and changes in international politics. Close reading of the writings of the some of its key leaders shows that the party was aware of the consequences of such an adjustment. Gurirab, for example, wrote the following:

Yes, we have a fine Constitution; so far, so good. The political stability, visible peace, and social relations in the country are harmonious. But for our democracy to flourish, for our Constitution to be written into the hearts and minds of the people, we – as the government, as the Parliament, as the Judiciary, as a nation – must be able to deal with poverty, land reform, homelessness, joblessness, and all the other social challenges. If not, this model, this success story so far, will be short-lived. Without economic and financial underpinnings, Namibia's democracy will remain fragile. Namibia's people must have confidence in the future.²²

The above indicates that SWAPO's elites were well aware of the economic consequences of their adjustments. It is interesting to note that despite this consciousness, the SWAPO

¹⁸ Audrin Mathe, *Persuasion as a Social Heuristic: A Rhetorical Analysis of the Making of the Constitution of Namibia*, Ph. D. (Rhetoric Studies), Cape Town, University of Cape Town, 2009.

¹⁹ Geingob, "Drafting": 106.

²⁰ Horn, "Forerunners": 68.

²¹ Geingob, "Drafting": 106.

²² Gurirab, "Genesis": 117.

elites, as will be dealt with in the subsequent sections, failed to amend the constitution to effect changes and relevant clauses that would enable the country to deal with “poverty, land reform, homelessness, joblessness, and all the other social challenges”. It is important to note that Theo-Ben Gurirab served in the Namibian executive and legislature in various portfolios such as foreign affairs minister, prime minister and speaker of the National Assembly. He did not make use of these portfolios to effect or influence the necessary and required change to end the fragility of Namibia’s democracy and to enable Namibians to “have confidence in the future”.

The principles of economic order: examining the ‘mixed economy’

Having discussed the historical background on how the Constituent Assembly dealt with the economic question, it is necessary to look at the specific provision relevant to this text. Article 98 of the Namibian constitution, on the Principles of Economic Order, introduces the concept of ‘mixed economy’. For specificities Article 98 (1) and (2) states:

(1)The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians [...] (2) The Namibian economy shall be based, inter alia, on the following forms of ownership: (a) public; (b) private; (c) joint public-private; (d) cc-operative; (e) co-ownership; (f) small-scale family.²³

For the past 27 years, the government has failed to provide clear ideological context to the narratives of what constitutes a mixed economy. Some have used the basis of the Namibian economy as outlined in Article 98 (2) to explain the principle. Others argue that there is a difference between the ‘principle’ and organisational ‘forms’ of the economy. They argue further that if Article 98 (1) and 98 (2) are the same why did those drafting the constitution make a numerical distinction? Even the ordinary citizens are confused about the ‘mixed economy’. An exchange of letters between ordinary citizens in 2012 is illustrative of this. On the 27 July 2012, Clarence Mbai wrote a letter to *The Namibian* newspaper titled ‘Namibia is a mixed economy’ arguing as follows:

This is in response to Theuns who wrote a letter titled ‘Namibia is a socialist state’ on Friday 13th July 2012. I totally disagree with the author and his understanding of socialist and capitalist economies is somewhat inaccurate. The major difference between these two systems is that in a strictly capitalist state the means of production (farms, factories, stores etc.) and control of capital is owned by private individuals whereas in a strict socialist model ownership of the means of production is characterised by the state. The second major distinction between the two is that capitalism simply is profit driven whereas in theory the focus in socialism is just to ensure that everyone has enough to make a decent living. Namibia does not even remotely resemble a socialist state because the means of production and control of capital primarily rests in the hands of a few

²³ The Constitution of the Republic of Namibia, Act 1 of 1990.

private individuals especially those who benefited the most from the colonial and apartheid era.²⁴

A month later, on 10 August 2012, J. Shimwafeni wrote the following in a letter titled “‘Mixed economy’ is a red herring” to the same newspaper:

The letter ‘Namibia is a mixed economy’ (The Namibian, 27 July) by Clarence Mbai was interesting for various reasons [...] For us, the idea of a ‘mixed economy’ arose in the context of the Cold War and referred to a social-democratic system. Besides the fact that this debate excludes the political system, such a ‘mixed economy’ was supposedly a capitalist society with a well-supported public sector. However, the idea of a ‘mixed economy’ was really a misnomer, a red herring. It was an attempt to blow smoke into the eyes of the working class to believe that they are living in a mixed capitalist-socialist society. Of course, this is impossible since these two economic systems are fundamentally different. There could never be a ‘good balance’ between capitalist and socialist ideals [...] Namibia, quite simply, has a capitalist economy, not a ‘mixed economy’. In answering this question, the nature of the ruling class is decisive in terms of characterizing the mode of production. And it cannot be disputed that Namibia has a capitalist ruling class. The main task of this ruling class since political independence has been to further integrate the Namibian economy into the world capitalist system. We should stop trying to fool the Namibian working class that they are living in a ‘mixed economy’ and by implication that they should therefore not struggle against capitalism. The fact is that the level of social inequality in this country is the highest in the world. So even if there was something like a ‘mixed economy’, there is simply nothing to boast about because the majority of the people do not benefit from this.²⁵

It is troubling that even the citizens who appear to have benefited from higher education cannot say what the economic order really is. Those like Mbai who argue for the existence of the ‘mixed economy’ in practical sense not only have their points of view questioned by the likes of Shimwafeni but are also called upon to explain the practical existence of the provisions of Article 98 (2). While private ownership of economic activities is understandably provided for by Article 21 (1) (j), some provisions, with the exception of public ownership, remain unexplained. For example, it has not been explained what is meant by “small-scale family” as a form of economic ownership. The public-private framework was only presented to parliament for discussion in 2016. At the time of writing, it was still being debated and had not yet become law.

Given that there is no clear conceptual and operational definition of a ‘mixed economy’ in Namibia, it is necessary to refer to international literature in an attempt to understand the origin of this concept. Writing in *Equilibrium*, a Ukrainian quarterly Journal of Economics and Economic Policy, Tetyana Bogolib explores the origin of the concept of ‘mixed economy’:

²⁴ Clarence Mbai, “Namibia is a mixed economy”, *The Namibian*, 27 July, 2012, <<http://www.namibian.com.na/index.php?id=98025&page=archive>> [accessed 04 December, 2016].

²⁵ J. Shimwafeni, “Mixed economy is a red herring”, *The Namibian*, 10 August, 2012, <<http://www.namibian.com.na/index.php?id=98576&page=archive-read>> [accessed 04 December, 2016].

The creation of public sector in the national economy reflects a global process of emergence of a new type of economic system – mixed economy, which is dependent on the correct combination of private and public property [...] The idea of a mixed economy originated in the late 20th century in the years of the transformation of liberal capitalism into a monopoly and the growth of the state's economic role in these conditions [...] a mixed economy is an economic system which in a natural way combines institutional elements of market (private sector) and government (public sector) approaches to the allocation of public resources [...] The more holistic theory of the mixed economy was developed by W. Sombart only in the 1920s of 20th century. In the works "Socialism and the Social Movement" and "Modern capitalism", he equated socialism with all forms of increasing the role of the public sector in the capitalist economy and increasing government intervention in the economy, which gave him the reason to talk about the emergence of a mixed economy [...] It should also be noted that the concept of a mixed economy is a general undifferentiated in its nature, which suggests the existence of different types of so-called models, depending on the particular value of institutional elements.²⁶

From the above account, and from further readings of scholars such as David Reisman, it can be understood that a 'mixed economy' is a European construct that sought to explain an economic circumstance whereby the state historically intervened in the capitalist economy to ensure public economic participation and ensure regulations.²⁷ It was convened in western circumstances to address the above stated circumstances. From the reading of the intentions, it would appear that a 'mixed economy' is a flirtation with a developmental state – a concept that is currently dominant in contemporary African political economy discourses. In Namibia's case, the concept has not been explained adequately prompting ordinary citizens, such as J. Shimwafeni to conclude that "the idea of a 'mixed economy' was really a misnomer, a red herring. It was an attempt to blow smoke into the eyes of the working class to believe that they are living in a mixed capitalist-socialist society".²⁸

The rise and consequences of neoliberalism in Namibia

There are three important observations to be made on the above discussion on the mixed economy. One is that SWAPO took a back seat, abandoning its long held socialist beliefs, allowing the Western Contact Group and Apartheid negotiators to take a lead on the economic architecture of independent Namibia that was to be incorporated into the national constitution. Writing for *The New York Times* just a day after Namibia's independence on 22 March 1990 Christopher Wren observes this shift in ideological positions:

As Namibia celebrated its first day of independence today, President Sam Nujoma proclaimed his Government's commitment to a mixed economy and

²⁶ Tetyana Bogolib, "The public sector of mixed economy in the modern world", *Equilibrium*, 8 (1), 2013: 125-136 (126-128).

²⁷ David A. Reisman, *Theories of the Mixed Economy*, Volume 10, London, Pickering, 1994.

²⁸ Shimwafeni, "Mixed-economy".

invited foreign investors to come and help break the country's dependence on South Africa [...]. In its election statement last year, Swapo declared that it still considered socialism superior to capitalism. But it admitted that a mixed economy might be in Namibia's immediate interests. After having the opportunity to study the economic problems facing his Government, Mr. Nujoma sounded less equivocal. Mr. Nujoma made no reference to nationalization of industries or to land distribution, two policies that Swapo initially endorsed.²⁹

The second observation relates to the first one. SWAPO's shift in ideological positions as far as the economy is concerned meant that it allowed westerners and whites to take a lead. This was done to accommodate whites who were ready to handover political power as long as they maintained their grip on the economy. Robin Sherbourne, an economist who conducted a comprehensive study on the Namibian economy, notes the extent to which SWAPO went to accommodate white economic interests:

In what was widely regarded as a signal that the new government intended to follow orthodox economic and fiscal policies, Otto Herrigel, a conservative white Namibian with a background in business, was picked as the country's first Minister of Finance. While there is no doubt that Herrigel's presence did much to reassure the nervous white business community, it was not clear [if] he was the right choice to steer the country's finances in the new direction required [...] Herrigel ended up resigning from Cabinet in April 1992 over the issue of the Presidential jet about which he had been kept in the dark and was replaced with another white Namibian [...] Gert Hanekom.³⁰

The third observation is that for many Namibians there is no universally accepted understanding of what constitutes a 'mixed economy', a fact highlighted by the discussion on legislative clarity which was still ongoing in 2016. Where there is such an understanding, there is still debate as to whether the 'mixed economy' of the constitution truly reflects the reality of the Namibian economy. Be that as it may, westerners and whites seem to profit from this lack of clarity. As illustrated by European literature on the origin of the 'mixed economy' which was discussed earlier it is understood as a situation, given financial and economic crises, wherein minimum levels of state interventionism are allowed in the capitalist economy. It can be argued, on the question of the principles of economic order, that it is only westerners who fully understood this construct and how it would serve their interests. Indeed, as Hage Geingob who was chairing the Constituent Assembly confirmed, westerners managed to protect the economic interest of the whites. Where the principles of economic order might have suggested that there is indeed room for some socialist policies in the 'mixed economy' westerners ensured that all principles of state policy, including principles of economic order of 'mixed economy', are restricted to an arena of dreams. Article 101 of the Namibian constitution is thus very clear:

²⁹ Christopher Wren, "Namibia stresses a mixed economy", *The New York Times*, 22 March, 1990, <<http://www.nytimes.com/1990/03/22/world/namibia-stresses-a-mixed-economy.html>> [accessed 06 December, 2016].

³⁰ Robin Sherbourne, *Guide to the Namibian Economy 2013/14*, Windhoek, Institute for Public Policy Research, 2013: 29.

The principles of state policy contained in this Chapter shall not of and by themselves be legally enforceable by any Court, but shall nevertheless guide the Government in making and applying laws to give effect to the fundamental objectives of the said principles. The Courts are entitled to have regard to the said principles in interpreting any laws based on them.³¹

This basically means that even if there is such a thing as a 'mixed economy' ordinary citizens cannot compel the state to implement it for the constitution cannot be challenged as these principles "shall not of and by themselves be legally enforceable by any Court". Article 101 reduces these principles to a mere 'guide'. Understanding this limitation, the westerners ensured that the right to property and right to business are contained in chapter 3 of the Namibian constitution as Article 16 and 21 respectively.

What becomes clear, over the past 27 years of independence, is not only the history of the constitutional economic architecture and privileging of white economic interests; it also becomes evident that there is nothing or little mixed about our economy. Namibia is quite clearly a neoliberal capitalist economy. Andrew Heywood defines neoliberalism as an idea in classical political economy whose

central theme is that the economy works best when left alone by government, reflecting a belief in free market economics and atomistic individualism [...] in short, the neoliberal philosophy is: 'market: good; state: bad'. Key neoliberal policies include privatization, spending cuts (especially in social welfare), tax cuts (particularly corporate and direct taxes) and deregulation. Neoliberalism is often equated with a belief in market fundamentalism, – absolute faith in the capacity of the market mechanism to solve all economic and social problems.³²

Neoliberalism became dominant with the rise of Margaret Thatcher in the United Kingdom and Ronald Reagan in the US. As Heywood further explains:

Neoliberalism had its greatest initial impact in the two states in which free-market economic principles had been most firmly established in the nineteenth century, the UK and the USA. However, in the case of both 'Thatcherism in the UK and Reaganism' in the USA, neoliberalism formed part of a larger, new right ideological project that sought to fuse laissez-faire economics with an essentially conservative social philosophy.³³

Similarly, Jason Hickel explains how neoliberalism moved beyond the borders of the UK and the US, arguing that "while Western countries like the United States and Britain have experimented with neoliberalism in their own economies, they have also aggressively – and often violently – forced it on the postcolonial world, and in even more extreme measures".³⁴ For sub-Saharan Africa the neoliberalism project came in the 1980s through the World Bank and International Monetary Fund's Structural Adjustment

³¹ Act 1 of 1990.

³² Heywood, *Ideologies*: 50.

³³ *Ibid.*: 49.

³⁴ Jason Hickel, "A short history of Neoliberalism (and how we can fix it)", New Left Project, 09 April, 2012, <http://www.newleftproject.org/index.php/site/article_comments/a_short_history_of_neoliberalism_and_how_we_can_fix_it> [accessed 04 December, 2016].

programmes which had a devastating effect on Africa's economic development. Hicckel expounds:

Prior to the 1980s, developing countries enjoyed a per capita growth rate of more than 3%. But during the neoliberal era growth rates were cut in half, plunging to 1.7%. Sub-Saharan Africa illustrates this downward trend well. During the 1960s and 70s, per capita income grew at a modest rate of 1.6%. But when neoliberal therapy was forcibly applied to the continent, beginning with Senegal in 1979, per capita income began to fall at a rate of 0.7% per year. The GNP of the average African country shrank by around 10% during the neoliberal period of structural adjustment. As a result of this, the number of Africans living in basic poverty has more than doubled since 1980.³⁵

At the time of the drafting of the Namibian constitution, neoliberalism was the popular economic policy in international political economy – prompting Margaret Thatcher to proclaim that there were no alternatives to neoliberalism.³⁶ As mentioned earlier, the United Kingdom and the USA, the propagators of neoliberalism, played a key role in defining the content of the constitution. It would have been unrealistic to have expected them to produce principles of economic order that advocate a socialist planned economy. It can be argued that the entrenching of Article 16 and 21 and the insertion of Article 101, were well calculated strategies to ensure that capitalist principles remain permanently embedded in the constitution while the minor proviso that can be used for socialist demands is reduced to a mere guide and not enforceable in the court of law. Indeed, there is a very strong case for arguing that at the core of this constitutional design is a strategy to ensure that the economic order remains neoliberal.

Post-independence Namibia, as per the above design, has indeed become characterized by neoliberal economic order. In other words, post-independence Namibia witnessed a radical manifestation of neoliberalism. In their study on inequality in Namibia, Jauch et al. buttress this point:

Namibia's economic policies followed largely the neo-liberal dogma and were shaped by the desire to accommodate foreign investments, which was regarded as the engine of economic growth and job creation [...] experiences in Namibia and elsewhere in Africa point to the urgent need to depart from the neoliberal, free market approach to social and economic policy. Changing the entrenched neo-liberal development paradigm will certainly be an ongoing struggle as different class interests (and imperial interests) will inevitably clash. An alternative development agenda will have to be built from below and place redistribution and social justice above the interests of global corporations and their allies among governments. The market-based paradigm of the past decades simply offers no hope for the poor.³⁷

It is thus prudent to recall the words of Shimwafeni:

the idea of a 'mixed economy' was really a misnomer, a red herring. It was an attempt to blow smoke into the eyes of the working class to believe that they are living in a mixed capitalist-socialist society. Of course, this is impossible

³⁵ Ibid.

³⁶ Ibid.

³⁷ Jauch et al., "Inequality": 224f.

since these two economic systems are fundamentally different. There could never be a 'good balance' between capitalist and socialist ideals [...] Namibia, quite simply, has a capitalist economy, not a 'mixed economy'.³⁸

Shimwafeni's view is supported by Nahas Angula, one of the drafters of the Namibian Constitution and a former Prime Minister, who confirmed the neoliberal nature of the economy in the following text:

The structure of the Namibian economy illustrates a branch plant economy. Players in the Namibian economy are companies which are branches of foreign mother companies: A branch plant economy does not have internal synergies for sustained growth. In other words, the Namibian economy is neo-colonial. If conditions for economic take-off were to be created the structural challenges in our economy must be addressed [...] The neo-liberal policies of our Government have created necessary conditions to build on. These included macro-economic stability; governance institutions; sound physical infrastructure; communication infrastructure; national savings; and political stability. These conditions though necessary are not however sufficient to create the pre-conditions for take-off [...] these constraints can best be overcome through direct State interventions. The Namibian State must therefore become a Developmental State.³⁹

At the time of writing Nahas Angula was Prime Minister, and thus a custodian of government policy. Therefore there can be no question that Namibia is, indeed, a neoliberal state.

The three constitutional amendments

If, as was intimated earlier, SWAPO's 'deradicalization' and changing of its economic positions can be attributed to the global political climate at the time – characterized by the collapse of communism and the triumph of capitalism and neoliberalism – which left the party little room to manoeuvre, then an analysis of post-independence constitutionalism is warranted. Said differently, if Cold War politics was an inhibiting factor during constitution-making then an analysis of the era of constitution-making without the Cold War is necessary. The Namibian constitution has thus far been amended three times; 1998, 2010 and 2014. Sacky Shanghala, chairperson of the Law Reform and Development Commission at the time and currently the Attorney-General, summarized the first two constitutional amendments:

Hitherto, the Namibian Constitution has been amended twice; once by the Namibian Constitution First Amendment Act, allowing for the first President of Namibia, Dr. Sam Shafiqshuna Nujoma, to serve another term of office as President; and then by the Namibian Constitution Second Amendment Act, allowing for more amendments to the Constitution relating to the following, inter alia; extension of the period required for the acquisition of Namibian citizenship by spouses of Namibians and for naturalization; alignment of the period of

³⁸ Shimwafeni, "Mixed-economy".

³⁹ Nahas Angula, "Macro-economic fundamentals", *The Namibian*, 23 August, 2011, <<http://www.namibian.com.na/index.php?id=84396&page=archive-read>> [accessed 04 December, 2016].

tenure of members of the National Council with those of members of the National Assembly; subjecting the appointment of foreign judges to a fixed-term contract; removal of the function of investigating corrupt matters from the Ombudsman's powers and functions; establishment of the Anti-corruption Commission as an institution of state; decreasing the term of office of members of the Management Committees of Regional Councils to two years and six months; redefinition of prison service as correctional service; elevation of the head of the Prison Service to the rank of Commissioner-General of Correctional Service, and, provision for incidental matters relating to the amendments.⁴⁰

The third, and most recent amendment which was passed by the National Assembly in 2014, increased the number of seats in the National Assembly from 72 to 96, increased the number of seats on the National Council from 26 to 42, established the position of and appointed the Vice President and increased the number of Presidential appointments to the National Assembly from 6 to 8, changed the powers of the National Council and established the Namibian Central Intelligence Service as a constitutional office.⁴¹ What is clear is that the economic empowerment and reform agenda was not a key consideration in any of the three amendments. In contrast to the situation at the time the constitution was being drafted in 1989, when decisions were influenced by Cold War politics, there was nothing to stop SWAPO, with a two-third majority, amending the constitution to include economically empowering clauses. The third constitutional amendments were seen as a missed opportunity by scholars and activists. Nixon Marcus, a constitutional law expert and former member of the Law Reform and Development Commission, launched a scathing attack on the third amendment for the absence of a social justice motive:

Our Constitution, over which the Namibian people never really had a free hand to determine its content, is not a perfect document. In my opinion it falls short of the promise to achieve social justice for the people. Fundamental social and economic changes are necessary in order to attain social justice for the impoverished masses. This can only be done through constitutional reforms, which so far have not been undertaken. In my opinion the proposed constitutional amendments do not seek to effect a fundamental social and economic change. In that regard they fall short of the promise for social justice.⁴²

Concurring with Marcus, Job Amupanda argued that the third amendments are elite amendments that have little to do with changing the socioeconomic position of the majority of the Namibian people. He notes:

Yes, our Constitution needs amending. Our supreme law, written with the influence of foreigners, surely needs changing. Just not by a select adventurous

⁴⁰ Sacky Shanghala, "Amendments to the Namibian constitution: Objectives, motivations and implications", in: Anton Bösl, Nico Horn and André du Pisani, (eds.), *Constitutional Democracy in Namibia. A Critical Analysis after two Decades*, Windhoek, Macmillan Education Namibia, 2010: 361-378 (362).

⁴¹ Theresia Tjihenuna, "Constitutional amendments passed", *The Namibian*, 28 August, 2014, <<http://www.namibian.com.na/index.php?id=127315&page=archive-read>> [accessed 05 April, 2017].

⁴² Nixon Marcus, "How Namibia's new constitutional changes are failing the promise of freedom", 29 August, 2014, <<http://www.constitutionnet.org/news/how-namibias-new-constitutional-changes-are-failing-promise-freedom-0>> [accessed 05 April, 2017].

few. We need amendments to deal with the land question. Amendments are needed to deal with current unenforceable principles of state policy, an outdated foreign policy outlook, the inhibiting property clause and a neo-liberal falsehood economic model of 'mixed economy'. Indeed, amendments are needed to bring about direct representation (constituency-based representation as opposed to the current list system to end current inferred representation). Unfortunately, all these are not contained in more than 40 elite proposals. To be sure, the current proposals are exclusively confined to power alignment, realignment and consolidation.⁴³

Despite three opportunities to amend the constitution, the SWAPO-led government failed to deal decisively with issues of poverty, economic deprivation and inequality. It left the neoliberal economic order undisturbed. As a result, the country has in recent years seen radical and sometimes violent protests the key cause of which is the championing of the socioeconomic agenda.

Conclusion – what is to be done?

This study belongs within the discourses of political economy. It looks at the constitutional principle of 'mixed economy' and analyses the realities of neoliberalism in Namibia. Of course there is a puzzle; why is it that, despite the riches, the majority of the Namibian people continues to live in poverty? Why is it that Namibia has one of the highest records of inequality despite its small population? To answer these questions one requires a comprehensive understanding of the Namibian political economy. Most studies have focused on the symptoms – the meanings and impacts of inequality. There have been few studies that looked at the constitution and its role in creating and sustaining the economic circumstances our society finds itself in today. There have been several studies on the Namibian constitution. One such study was the 2010 volume titled "Constitutional Democracy in Namibia: A Critical Analysis After Two Decades" edited by Anton Bösl, Nico Horn and André du Pisani. This volume covered various aspects of the constitution but did not include contributions on political economy in general or with specific focus on the 'mixed economy', as a constitutional principle of economic order, in particular.

This study contrasts with the work of Bösl, Horn and du Pisani in this aspect and for that reason is unique. The evidence provided here leads to at least six conclusions; (1) as is the case elsewhere in Africa, the state in Namibia did not develop organically – it was established to achieve the settler's imperialist capitalist goals. The post-independence state is still struggling with the legacies left behind by the 106 years of colonialism and apartheid. Worse still, for Namibia, westerners who played an important role in the crafting and designing of the national constitution ensured that the supreme law is designed so that the economic fundamentals protecting white privilege remain intact; (2) the former liberation movement (by its own admission) openly capitulated and

⁴³ Job Shipululo Amupanda, "Youth against elite constitutional amendments", *The Namibian*, 27 August, 2014, <<http://www.namibian.com.na/index.php?id=127278&page=archive-read>> [accessed 19 April, 2017].

embraced the capitalist neoliberal economic order in exchange for political power. In other words, the SWAPO leadership traded their revolutionary outfits for air-conditioned offices as opposed to the total transformation of society – a vision for which it fought for more than 20 years before independence. (3) The inequality, poverty and underdevelopment that characterise the lives of the black majority are the results of SWAPO's politics in general and its capitulation at the negotiation tables in particular. More alarming is the reality that the SWAPO elites are often heard at public platforms confirming their capitulation and its consequences yet unwilling to make clear reform interventions, 27 years after independence. SWAPO amended the constitution three times, and on those three occasions there was no single amendment that dealt with economic empowerment in general and Article 98 of the constitution in particular. It was, therefore, no surprise that President Hage Geingob disclosed to the world his fear of white retaliation should he intervene on the land question as per the demands of the majority of the landless Namibian masses;⁴⁴ (4) there seems to be no determined effort to deal with past ambiguities which are perpetuating economic despondency for the majority of the disenfranchised Namibian people or to provide clarity on fundamental economic aspects, such as 'mixed economy'. The black elites in power have joined their former oppressors to become oppressors of their own people as explained by Paulo Freire in the Pedagogy of The Oppressed; (5) there are voices, albeit few, that are beginning to speak against neoliberalism; (6) lastly, it has been shown that Namibia's constitutional principles of economic order in general and the principle of 'mixed economy' do little to disguise the inherent neoliberalism.

The question in this concluding note is what is to be done. Former Prime Minister Nahas Angula attempted to answer as outlined earlier: "the Namibian State must therefore become a Developmental State." For this to happen there must be a re-examination of the principles of economic order in general and the principle of 'mixed economy' in particular. What Nahas Angula did not mention was that there is a need to re-examine the 'compromise'-riddled constitution to address the economic question. As Jauch et al. argued earlier:

[A]n alternative development agenda will have to be built from below and place redistribution and social justice above the interests of global corporations and their allies among governments. The market-based paradigm of the past decades simply offers no hope for the poor.⁴⁵

⁴⁴ Staff Reporter, "Whites will retaliate over land – Geingob", *Windhoek Observer*, 29 September, 2016, <<http://www.observer.com.na/index.php/sports/item/7010-whites-will-retaliate-over-land-geingob>> [accessed 04 December, 2016].

⁴⁵ Jauch et al., "Inequality": 225.

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