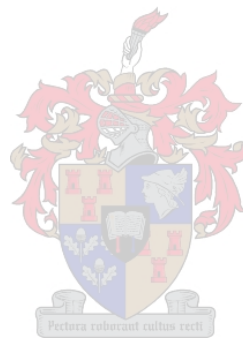


# Chapter 1

## Introduction

**One dog cannot kill an elephant and one finger cannot squash a flea.  
(Herero proverb)**



## 1. Introduction

The word “democracy” is one of the most misinterpreted words in all of history. It has been used to describe dictatorships and the most stifling autocratic governments in history, most notoriously by the Nazis or Communist governments. Therefore it is important to steer the discussion in the right direction from the beginning; what we actually mean by democracy when discussing the word.

Oxford Dictionary defines democracy as “a state of government by all the people, direct or representative; form of society ignoring hereditary class distinctions and tolerating minority views.” Interestingly since we are talking about democracy in Namibia, the dictionary also defines the word democratic as, “practising, advocating, constituting democracy; favouring social equality.”

For us democracy is a system of governance where the people hold power, the government is elected and held accountable by the people, and democratic institutions are in place. Consolidated democracy is realised when this system endures, the institutions of democracy hold up and they ensure that ultimately the powers of the state, whether the people elected good or bad governments, remain accountable to the people.

But rather than entering the often dichotomous debate about the definition of democracy, we rather approach the issue by excluding factors how democracy could not exist. Breytenbach (2002, pp. 87-88) writes,

For definition of democracy, three assumptions were made. First, that without appropriate state institutions (and freedoms) democracy is not possible (“no state, no democracy”); second, without favourable socio-economic conditions, democratic institutions are unlikely to endure and consolidate (“once a country has a democratic regime, its level of economic development has a very strong effect on the probability that democracy will survive”); and third, that there are degrees of democracy (“Therefore it might be sensible to establish a category of semi-democracies to separate democracies from non-democracies”).

Therefore institutions of democracy are necessary to consolidate democracy. Without free and fair elections, rule of law, checks and balances in government, various government institutions representing the people, political parties and civil society all in place and enduring there cannot be consolidation of democracy.

Accordingly, we will first seek to find out whether Namibian democratic institutions have endured the test of time, whether Namibia has consolidated its democratic institutions, and if it hasn't, why not?

Furthermore, we study whether certain socio-economic conditions must be in place to consolidate democracy. Democracies do not statistically endure and consolidate, if socio-economic conditions are too unfavourable.

Hence, we will also seek to find out what kind of impact socio-economic conditions in Namibia have on the consolidation of democracy.

Thirdly, direction matters, too. We seek to determine the direction in which Namibia is going with its socio-economic conditions, state institutions and freedoms, especially in the respect of democratic consolidation.

The purpose of this study is to establish what democracy is; what consolidated democracy is; what the criteria for these two are; and finally, how Namibia measures up.

Namibia sets an example that is of particular academic and political interest for at least four main reasons. First, it was described as the last struggle for pan-africanism and for many the last colony in Africa, which gained its independence only as late as 1990. The majority of Namibians had been excluded from ruling the country before.<sup>1</sup>

Therefore, due to the late arrival to the community of free African countries it had also the benefit of hindsight while drafting its transition to democracy. Many failed efforts for lasting and enduring democracy in other African countries made Namibians and the international community supporting it determined for a better result. Lessons learned gave Namibia the basis for to gaining its progressive Constitution.

Secondly, the strong involvement of both the Western and Eastern World in the anti-apartheid struggle (not to say that all Western countries would have been involved, because some were in fact supporting the apartheid regime) and the end of the Cold War gave Namibia a favourable international climate to democratise in. The negotiated common ground found that having a one-man-one-vote system installed to Namibia gave the country better a standpoint from which to democratise than perhaps other African countries had had before.

Thirdly, Namibia is an interesting experiment in global conflict prevention and conflict management where Namibians themselves were not involved with the signing of the actual peace accord of the war of liberation. Though Namibians and the SWAPO in particular had been heavily involved in drafting the various resolutions in peace, through their official Embassies in the United Nations and several key countries and of course the UN Namibia Institute in Zambia, they were not invited to the negotiations where the peace accord and transition to democracy was agreed on. The involved parties at that crucial negotiation for Namibians were South Africa, Cuba, Angola, Soviet Union and the United States.

Fourth, Namibia gained its independence and had its first free and fair multiparty elections four years before the first democratic elections were held in South Africa. Namibia, a country 25 times smaller in population than South Africa and with several socio-economic, historical and cultural similarities with it, could be seen as the test case for transition from apartheid system to democracy. Thus, of course, the endurance of Namibian democratic institutions 15 years after the first elections should be of particular interest to South Africans too. The First democratic elections in South Africa were held five years after the first elections in Namibia.

### **1.1. Problem statement**

In this study we will attempt to understand the democratic development of Namibia from the dawn of independence until the general elections of 2004. Through a comparative study based on visits to Namibia, interviews and library studies on several authors, we will attempt to find whether Namibia is deepening or eroding its democratic consolidation.

The timeframe is limited to the first 15 years of independence, because it is the first clearly defined era in Namibian politics. The post-Nujoma era is still very unclear and only time will tell how

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<sup>1</sup> Turnhalle government was seen as window dressing for South African rule in South West Africa. SWAPO and its representatives in exile were considered by the UN as the “only representatives of the Namibian people”.

power is going to be shared in Namibian government during the Pohamba Presidency (Melber 2005, p. 12).

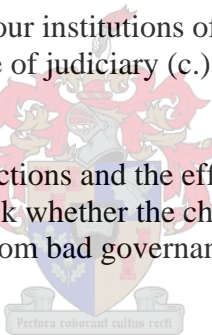
The problem statement of this study is first to establish whether Namibia has consolidated its democracy and then if it hasn't, what is preventing the proper consolidation of democracy in Namibia – inappropriate institutions or insufficient socio-economic conditions, or both? The attempt is to determine the direction in which Namibian democracy is going, and what the favourable or unfavourable conditions for democratic consolidation in Namibia are.

It is common knowledge that there are regular free and fair elections and some other democratic institution in place, but a closer look is needed to determine whether Namibia is enduring or consolidating toward a government that is ruled and held accountable by the people. Elections are necessary, but not sufficient to consolidate democracy (Breytenbach 2002, p. 87). All institutions of democracy need not only to be in place, but also to endure in order to consolidate democracy. What is the state of democratic institutions in Namibia?

Larry Diamond (1996, p. 31) argues, in line with Breytenbach, that multiparty system and regular elections are not necessarily enough to create “liberal” democracies as they could also be seen as either “pseudo” or merely “electoral” democracies where authoritarian trends are still pervasive. Is Namibia not a liberal democracy, if the democratic institutions are not enduring?

The study will concentrate especially on four institutions of democracy: the presidential system (a.), the electoral system (b.), the independence of judiciary (c.), and, finally, on the centralisation and decentralisation of state institutions (d.).

We study freedoms, the land issue, the elections and the effectiveness of the Namibian Constitution in protecting the Namibian citizens. We ask whether the checks and balances embedded into the Constitution e.g. still protect Namibians from bad governance and centralisation of government power that easily leads to corruption.



By observing, for example, the extent to which the power of the president reaches the legislative or Judicial branch of government, and whether the separation of powers still exists, we can draw conclusions whether Namibia still is a *rechstaat*, a constitutional democracy.

Therefore we will evaluate whether some of Namibia's democratic institutions have crumbled or whether they were inappropriate in the first place. For if extensive presidential powers over the other branches of government, for example, are seen as destructive or stagnating for Namibian democratic consolidation, it is important to know whether the constitution allows this. Are we dealing with a poorly designed constitution, or has some part of the government deemed itself supreme to the constitution against the original intent of the Constituent Assembly?

In determining this we do not only study the various institutions of democracy in place, but place especial emphasis on investigating whether Namibians have the necessary freedoms in order to democratise. The Freedom House has followed the development of Namibian freedoms before and after the independence. Namibian researchers have also touched upon the issue on several occasions. Freedom of speech and Namibians' rights to the land have been investigated thoroughly and should therefore also be focal point of this research.

The Namibian Constitution is the primary source for political rights and civil liberties. The Constitution grants the rights and liberties to all Namibians and protects all citizens by entrenching

these into the Constitution. Nevertheless, the word of law *de jure* cannot be practised without it being interpreted without precedence.

In consolidated democracies where democratic institutions are in place, namely when separation of powers and independent judicial system are working efficiently, these rights are also guaranteed to the citizens in practice. Therefore we make a point of assessing freedoms in Namibia also in practice *de facto*, not only what is guaranteed to them by the word of law *de jure*. Do Namibians have the necessary freedoms in order to consolidate their democracy?

Then we continue with Breytenbach's, Huntington's and Przeworski's argument and find out whether Namibian socio-economic conditions affect the consolidation of Namibian democracy. We assess what the socio-economic conditions according to various theories are that Namibia would need in order to make its democracy endure and therefore consolidate Namibia's democracy. We will also establish what is harmful and what kinds of socio-economic conditions are beneficial for Namibia in order for it to consolidate its democracy.

Moreover, we investigate the role of affluence measured not only by the GDP per capita, but also by Human Development indices in order to find out whether these factors make a difference for democracies' ability to endure, and then we make comparisons with Namibia.

We evaluate the role of socio-economic inequalities in Namibia and draw conclusions of their significance for Namibian democracy in order to consolidate. We discuss the role of different social classes and whether they affect the consolidating and enduring of democracies, have the roles of social classes, or a lack thereof, affected the democratic consolidation in Namibia?

Then finally we draw a conclusion of Namibian socio-economic factors in general and how they might contribute to the consolidation of democracy there. Do Namibians have sufficient levels of socio-economic development in order to consolidate their democracy?

In order to establish the direction of Namibian democratic consolidation, which was the third part of our problem statement, the research draws from the evidence of the above two questions, plus sees this development also within a timeframe. Therefore we ask how Namibian democratic institutions and socio-economic conditions have developed within the period of 1989 to 2005? With this information we should be able to assess whether Namibia is going in the direction of consolidating its democracy or not.

## **1.2. Theoretical and analytical framework**

The problem statement, whether Namibia is a consolidated democracy and if not what prevents the proper consolidation of democracy in Namibia, shall deal with theory and extrapolate the problems of this study from the following theoretical insights.

As said before we accept the theory of democratic institutions and the arguments of institutionalists like Sartori, Dahl, Schedler and Schmitter in the Namibian context. Starting with the State they argue that all democratic institutions need to be in place and working effectively in order for democracy to endure and consolidate. We ask, whether Namibian democratic institutions are in place, and are they enduring the dominant party rule? For if they are not, could this be a factor that prevents consolidation?

The main argument of these institutionalists, like the above mentioned four, is that in order to have consolidated democracy all of the democratic institutions need not only to be in place, but most of all they also need to be enduring. For Namibia, the Constitution set up several of them, but we still need to ask whether they have been able to stand the test of time, the political power—grabbing and dominant party rule over the first 15 years of independence.

We need to ask whether the institutions set up by the constitution are effective and real, and whether they are operational, because just like other laws written by the legislature, as discussed above, they are not real before they have been tested in the judiciary. The separation of powers is therefore at the heart of this issue. The two branches of government must have worked together before any law can enter into force. Just like there are dead clauses and amendments in the United States Constitution that have come about from the political changes in American politics over time (Swidorski ed. 1996, p. 4), we need to find whether these institutions of democracy drafted in these Namibian Constitution are still effective.

Sartori (1987, p. 13) writes that, “In a democracy no one can choose himself, no one can invest himself with the power to rule, and therefore no one can abrogate himself unconditional and unlimited power.” Power corrupts, that’s why there are checks and balances in every working government. This is the assumption we take, so power needs to be shared in a democratic government.

Consolidated democracies have established a political system and a stable political forum where conflicts between different viewpoints can be resolved peacefully through democratic practices. Linz and Stepan (1996, p. 7) argue, that not only elections and markets need to be in place for consolidated democracies, but also legal guarantees for freedoms need to be exercised, political-, economic societies and civil society need to be in place and enduring and state bureaucracy need to operate under democratic government. Or ultimately, as they conclude, political decision-making systems in consolidated democracies are more democratic than elsewhere under other kinds of rule.

Samuel Huntington argues that electoral or transitional democracies need to have had at least two turnovers in government before they have consolidated their democracy (Huntington 1991, p. 266-267). Adam Przeworski argues that democracy is a system where parties also lose elections, for otherwise the people have no way of knowing whether the governing party would relinquish power (Przeworski et al 2000, pp. 23-26). This is the test for consolidation also in Namibia.

Willie Breytenbach (2002, p. 88) argues in line with Bratton (1998, p. 52) and Schedler (1998, p. 91), that consolidated democracies are democratic countries, electoral democracies not necessarily. Moreover, free and fair elections are not sufficient for liberal or advanced democracies.

Andreas Schedler differentiate between different levels of democracy and makes a point that negative trends in electoral democracies could indicate regression or erosion back into authoritarian ways (Schedler 1998, p. 91-95). We therefore need to not only study where Namibia currently stands, but also find out where it is going. Direction is thus an equally important aspect of this study.

Schedler (1998, p. 95) further argue, in line with Thomas Carothers (2002, pp. 5-14), that the strengthening or deepening of democracy is not inevitable. In fact, Carothers (2002, p. 11) is very critical about the misconception that young democracies would inevitably take the way of becoming consolidated democracies. He argues the progress or regression of these transitional governments to be chaotic rather than a linear one-way direction.

Furthermore, Carothers (2002, pp. 11-12) argue that authoritarian trends can emerge, even after setting up the democratic institutions, and there can be regression rather than continued progress toward consolidation of democracy. We therefore need to find whether this could be the case in Namibia.

A particular form of erosion is what Carothers (2002, p. 12) calls the “dominant-power system”, where the lines of state and party blur. The other form of erosion he calls “feckless pluralism” where electoral democracy exists, but without consolidation of democracy. The difference between the two is that the latter is democratic and the first is not. Breytenbach (2002, p. 88) makes further sub divisions into his three categories which are - (1) autocracy, (2) electoral, and (3) the consolidation zone. He also divides the electoral zone in two: “His [Schedler’s] electoral category can perhaps be subdivided further, providing for *dictatura* (elected dictatorship) as the most authoritarian form of an electoral democracy; and *democratura* (‘hard’ democracy) which is less authoritarian, but still lacking in full political and civil liberties.”

The question here in our study, after establishing that Namibia has established at least an electoral democracy, according to Schedler, but not a consolidated one. The issue here is what kind (degree of democracy) it is. The leading party has clearly emerged stronger every year and the opposition has very little say in Namibian politics. This raises a concern whether the line between the Swapo - party and the government of Namibia has blurred, for there is little competition to assume governmental power.

Likewise, it could be argued that Schedler’s point extends to the legislative and judicial branch of government as well. Are they effective and independent enough, and not controlled by the leading party, to be consolidated? Should they not be, it could very well be argued that Namibian government structures are not consolidated. And then if they are not consolidated, if they are not able to exercise the power invested in them, could this be the reason why Namibia is possibly finding it hard to fully consolidate its democracy?

Moreover, we also need to discuss freedoms. The Freedom House (2005, the Internet) ranks Namibian civil liberties and political freedoms somewhere on the Schedler’s electoral zone. Is Namibia then a democracy or a dictatorship according to this rating? If it’s considered more on the side of *democratura*, then is it liberal, and has it even moved up to the consolidation zone?

For Schedler and Breytenbach the crucial issue is the level of freedom in the country, specifically the level of human rights and civil liberties and whether they are improving or not. The Constitution entrenches freedoms to Namibians, but as discussed before, there is a difference between written law and practice. Before the law is tested it is not real. Before it is practised and tried in the courts there need to be several other institutions of democracy in place. The Namibian Constitution grants the freedoms, but for measuring levels of freedom we use the political freedoms and civil liberties ratings of the Freedom House from the past 16 years.

Nevertheless, we didn’t set out only to investigate the institutions of democracy that are in place or that are crumbling, but ambitiously we asked whether only sufficient freedoms and democratic institutions in place are enough to consolidate democracy. Adam Przeworski, Huntington and Breytenbach suggest that sufficient socio-economic conditions have also something to do with it.

Przeworski (1996, p. 42-43) suggests that wealth does not particularly lead to democracy, though it sustains democracy once achieved. It is therefore an integral part, not necessarily of building the democratic institutions that are to be in place, but of democratic consolidation especially. He finds that affluence on the one hand and inequalities on the other can be determining factors for

democracies to endure. Breytenbach (2002, p. 87) further argues that socio-economic conditions as well as the levels of freedoms may be the missing link for Southern African electoral democracies to advance towards democratic consolidation. We will study these deterrents for Namibia. We take a careful look especially at development, for it both can be and has been measured in Namibia.

Barrington Moore wrote about the role of the classes and more specifically the role of the middle classes in order to have democracy. For him, modernisation and democracy depended on the capitalist middle classes, hence his dictum, “No bourgeoisie, No democracy” (Moore 1966, p. 418). We take a look at whether this is also a factor to be considered.

Namibia surely does not have significant middle classes. Notoriously rated as one of the most economically divided societies in the World, it seems to have only two operative classes trying to consolidate the new system: The rich (or super-rich) and the masses of the mostly unemployed poor.

Could they both be seen as the enemies of democratic consolidation as Moore (1966, p. 418) suggests even though voting turnouts continue to be high and the leading party finds its main support from the lower income and unemployed masses? If so, is Namibia setting an example to the larger communities trying to consolidate their electoral democracies, first in South Africa, but then also in the Baltic States and Eastern Europe as a whole? Namibia has an unemployment rate of over 38% and the richest quarter of the population owns more than 75% of the wealth, richest 5% more than half (UNDP-Namibia 2000, p. Preface). Can merely the rich and the poor keep the government inclusive and competitive? Can they alone keep the government accountable to the rule of people?

Namibia seems to be sufficiently affluent to sustain any kind of democratic development. Namibia is considered as a low middle-income country even on a national average (Faure 2001, p. 283). Its per capita income is well above \$1000 which Przeworski regards as above the danger zone, but far below the \$6000 “impregnable” zone (Przeworski 1996, p. 41). Namibia ranks between 77<sup>th</sup> and 85<sup>th</sup> richest in the World per capita and although it is slipping down in the rankings its GDP per capita ranking is considerably higher, some thirty places, than in the UN Human Development Index rankings. This is due to the extreme inequalities. “The ratio of per capita income between the top 5% and the bottom 50% is about 50:1”, writes the UNDP country report on Namibia (UNDP-Namibia 1998, p. 5-9). Can Namibian democracy endure and consolidate in these kinds of socio-economic conditions?

We have now established the theoretical research framework for institutions of democracy and socio-economic conditions in Namibia. However, we also set out to research trends in these two areas and to keep it simple we’re only going to follow the framework within a timeframe of the last 15 years, too. Democratic institutions like for example freedoms can be followed yearly with the statistics from the Freedom House. Similarly Namibian socio-economic development can be followed carefully on an annual basis.

The research becomes more problematic when rule of law, for example, is assessed. But it can be done by following examples. When did the Legislative and the Judicial branch of government accept a third term for President Nujoma? When was the first parliamentarian replaced without elections? Who ordered it? How could it be done? Did the order break the separation of powers? When did the President ban government officials from buying the Namibian –newspaper? When did the President send troops abroad, without consulting the Parliament? When were the locally elected local government officials replaced by the central government, and so on? Trends can also be identified by following events over time.



### 1.3. Conceptual clarification

Before advancing further we need a definition of democracy. We discussed the concept in the beginning and gave a definition to it by the Oxford dictionary. Moreover, we defined consolidated democracy as democracy that endures.

Nevertheless, more refined discussion is still needed to define that we are not talking about a democracy that would control all aspects of political life, for example the economy of the country. The democracy we are talking about is based on a liberal market economy, though as Linz and Stepan later discuss with some necessary regulations.

Total democracy is a utopian concept or as Robert A. Dahl (1971, p. 8-9) puts it, “No large system is fully democratised” and therefore he prefers to be talking about polyarchies rather than democracies as a sign of democratic consolidation. We have stated that we will compare Namibia to countries that have consolidated their democracies. Thus we need to observe that the citizens and voters of the consolidated democracies have very little power over the economies of their countries, and therefore democratic decision-making in consolidated democracies does not cover the whole of society.

Moreover, we note that consolidated democracies are not perfect either. Linz and Stepan say, also in line with Dahl’s thinking that:

We do not want to imply that consolidated democracies could not continue to improve their quality by raising the minimal economic plateau upon which all citizens stand and by deepening political and social participation in the life of the country. Within the category of consolidated democracies there is a continuum from low to high quality democracies; an urgent political and intellectual task is to think about how to improve the quality of most consolidated democracies (Linz and Stepan 1996, p. 6).

This continuum of low to high-quality democracies implies that there are also different degrees of democracies as discussed in the chapter above. We have discussed that we adopt the idea that there are such concepts as semi- or full democracy, or electoral, liberal and advanced democracy, as Andreas Schedler defines them, and we adopt our own linear rank for these categories and try to define where Namibian democratic development would be situated at the moment. We have also expressed a need to establish direction in it as well, where is Namibian democracy going according to this theoretical framework?

We do this all in order to understand whether Namibia is consolidating or not. We defined consolidated democracy as a democracy that endures all internal and external pressures and the test of time. Thus, for example, it will not have problems with government turnovers, but rather it will encourage them in order for the people to keep their leaders accountable.

As a result, we adopt Breytenbach’s (2002, p. 87) definition of democracy and consolidated democracy. He makes three assumptions: first, without appropriate state institutions and freedoms democracy is not possible (Linz and Stepan); second, without favourable socio-economic conditions, democratic institutions are unlikely to endure and consolidate (Przeworski et al); and third, that there are degrees of democracy (Schedler).

#### 1.4. Purpose and significance

The purpose of this study, as set out in the introduction, is to establish what democracy is; what consolidated democracy is; what the criteria are; and finally, how Namibia measures up.

Moreover, if the data collected on the Namibian institutions and socio-economic conditions and their impact to democratic consolidation are found to enforce each other, then the purpose is also to establish a trend on Namibian democratic consolidation from the beginning of independence to the last elections.

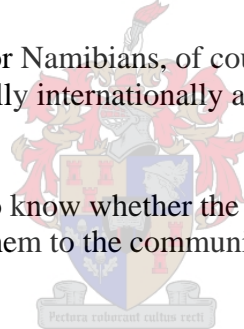
In more detail on the study of democratic institutions, the purpose is to find whether it is possible for Namibia to consolidate its' democracy with current voting trends and a single party being so dominant. Can institutions of democracy endure?

Furthermore, when studying socio-economic factors and their impact on democratic consolidation the purpose is to establish whether Namibia can consolidate its' democracy with current extreme inequalities in place, for example.

The purpose of establishing a trend is simply to try to predict the future. If there has been a clear trend for the past 15 years, we can assume that it is not going to alter its course within the next few years without major changes to the political- or economic systems.

This study should be most significant for Namibians, of course, but also regionally for Africa and especially for Southern Africa, and finally internationally and to the actors in the development cooperation.

For Namibians it should be important to know whether the state of their democratic institutions and the current direction are going to take them to the community of consolidated democracies of the World.



Regionally, since the birth of the nation Namibia has been under careful observation of the democratic elements in Africa. There have only been very few, if any success stories for democracy in Africa. Furthermore, consolidated democracies are especially rare in Africa.

Nevertheless, hopes were especially high for Namibia to succeed. Youngest child in the family of African democracies Namibia had the benefit of a progressive and democratic constitution, a stumbling block for many African countries. The constitution, established by the democratically elected Constituent Assembly, granted Namibia democratic institutions right from the beginning.

Furthermore, the transition to democracy in South Africa, culturally and historically a very similar country to Namibia, was also happening already when Namibia received its' independence and held its first democratic elections. For many Namibia was a test case also for the endurance of South African democracy.

There are many similarities. The political forces preceding and succeeding the first democratic elections are similar, both countries are similarly ethnically and socio-economically very heterogeneous, and they share a history of colonialism, apartheid and land issues for example, that still dramatically affects the politics of both.

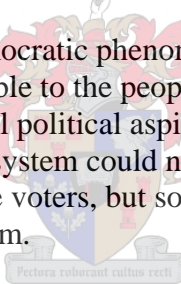
SWAPO, as the liberation front for Namibia against the oppressive apartheid South Africa, was supported internationally to bring about democracy (Soiri and Peltola 1999, p. 7). Diescho (1994, p

xvi) also writes about the struggle for most Namibians being about freedoms and how they can be protected. Therefore it's significant for Namibians aspiring to democracy to ask what happened to the protection of these freedoms? What happened to the protection of freedoms by the Constitution? Is the Constitution alive and effective, or has it been undermined by internal conflicts that can be exploited in a dominant party system?

Lesser issues, but still important ones are the example Namibia sets to the region, and the country's international relations. The European support to the liberation front ended during the first elections and when SWAPO liberation front became the Swapo-party and multipartyism was established.<sup>2</sup> This is important to note, because international support to a single party during and after the elections would be undermining democracy. Prior to the first free elections, while still struggling for universal suffrage, outside support was seen as pro-democratic work. Direct relations to Swapo the political party, have been much colder than before, though development cooperation with the state has been extensive. It has been difficult for some Swapo members to understand why the former allies would not support the party as they did the liberation front. In fact, during the first elections Swapo candidates were proud of the international financial contributions to the party from Nigeria (Kangas 2002, interview). For us this becomes significant because it is a question of whether the line between the state and the party has been blurred.

Furthermore, it is important to Namibians to establish whether politics of patronage exist in Namibia, because even in the most basic electoral democracy the elected representatives of the people have to be dependent on the electorate. We have earlier stated that we seek exactly that.

Politics of patronage are inherently undemocratic phenomena and work against any systems that would keep the holders of office accountable to the people. For if the people holding government office are not accountable to the people, all political aspirations to gain power would have to be directed towards somewhere else and the system could not then be called a democracy. The politicians' task would not be to please the voters, but someone else. The system would not work from the ground -up, but from top to bottom.



This is not only a question that should be raised by Namibians: if we do find politics of patronage it should also be reflected in relations in development cooperation. Donor countries should assess whether there exists a clear common understanding of the goals. For if the goals are not understood similarly, then the donors should be questioning the cooperation altogether. Why are there joint development cooperation projects for democracy? Why are there, for example, an ongoing common development project to build the infrastructure for decentralisation worth millions of European taxpayers Euro, if there is no political will to empower this structure?

Direction matters a great deal to donors. The question of whether international support for democracy, before and after independence, has been in vain is significant at least for the international community. The Namibian and Finnish governments for example agreed in 1990 that support for the emerging nation should be given for the first five years. This was after the SWAPO liberation movement had been supported for nearly 20 years before independence.

The post-independence support to Namibia, not the leading party, was earmarked as, "support to the young transitional democracies" in the Finnish budget for development cooperation. Then in 1995 there was a request to extend the support for another five years, until in 2000 the government of

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<sup>2</sup> Note, we refer to South West Africa Peoples Organisation as SWAPO in capitals pre-independence and Swapo after the independence, in order to make a clear distinction between the two. For us they are not the same and is consistent with other literature about Namibia.

Finland decided to gradually withdraw the grant-based development cooperation money by the year 2007 (Kangas 2002, interview).

South Africa, though currently a low middle-income country like Namibia, receives similar earmarked money for its transition to democracy. This also gives special significance to the debate about development cooperation Namibia. The support to young transitional democracies implies development towards democracy, a direction. Were the direction wrong, should not the grant support be pulled out from other countries, too?

The Organisation for Economic Co-operation and Development member states Development Assistance Committee (OECD/DAC) supports the Namibian Swapo-led government with over USD 200 million per year equalling 1/5 of the Namibian government budget (Faure 2001, p. 239). For them, similarly to the example of Finland, the direction that democratic development is going in usually seems to be more important than the level or state of democracy at the moment. A direction toward a more autocratic rule dries up the grant support and direction toward more democratic rule usually raises the support as we can see with the cases of Mozambique and Angola, for example. Far less democratic than Namibia, but with increasing grant support from the OECD/DAC countries because of their *direction* toward a more democratic governance.

Therefore there is significance in talking about the direction in which Namibian democracy is going also from the perspective of the development cooperation and of the region as a whole. For South Africa it is a question of USD 600 million, for Angola it is a USD 500 million question and it is more than 1 billion US dollar for Mozambique. If we conclude that Namibian democratic development is on the decline as is the international support, shouldn't we conclude that Namibians are setting a precedence?

### 1.5. A preliminary review of Namibian politics

We resolved to study four of the institutions of democracy and whether they exist effectively in Namibia: (1.) the presidential system, (2.) the electoral system, (3.) the independence of judiciary, and finally (4.) we investigate whether there exists a high degree of centralisation of state institutions. Positive signs of the first three would be considered as signs of consolidation, but the fourth one should show signs of decentralisation rather than centralisation as a sign of democratic consolidation.

Namibia has several active political parties, but can the opposition achieve governmental power? Are the Namibian parties therefore institutionalised? On Dahl's scale Namibia achieved high inclusiveness in 1989, but is there sufficient competitiveness necessary for polyarchy? If there is no challenge to the government the parties cannot be institutionalised.

We said that Nicholas van de Walle (2002, p. 76-78) argues—in line with Dahl, who measures governments against scales of inclusiveness and competitiveness—that sufficient “electoral uncertainty” needs to exist. He says that if elections are uncertain enough so that an incumbent can lose, the quality of democracy increases because it makes the ruling party less complacent and more accountable.

We should therefore note the following factors: what is the number of effective parties in the country, and in more detail, what is the number of effective parties in the Namibian 13 regions? Christiaan Keulder has investigated these issues in detail. For again, like Przeworski (2000, p. 23-26) and Huntington (1991, p. 266-267) would argue, if there is no turnover in elections one cannot

say whether the government is democratic or not. If there are not enough effective parties, i.e. not enough electoral uncertainty, there could not be any turnovers. Could we tell in Namibia whether Swapo would relinquish its power and hand the power over to the military and the police if they would lose elections?

Namibian freedoms are protected by the Constitution. Namibians fought a long and bitter liberation struggle in order to gain their freedom, civil rights and political liberties. The Constitution was thus built to protect and celebrate these freedoms, describes Joseph Diescho (1994, p. XVI) the Namibians' intimate link with their Constitution.

The first chapter of the Namibian Constitution states that there are three branches of government and according to Diescho they all check each other in the normal functioning of the government (Diescho 1994, p. XVI). For him, as to most students of democracy, the separation of powers is essential to the proper functioning of the democratic government (Diescho 1994, p. 82). The separation of powers needs to be in place in order to protect the freedoms. For without checks and balances stemming from the separation of powers in place, the government power can grow to an overwhelming extent, a dominant power system. This kind of dominant power system, as discussed, is bad for endurance and consolidation of democracy.

Therefore it is the task of this study to find evidence whether Namibia has weakened its system of checks and balances, the separation of powers and in more detail, what the role of the Executive branch of the Namibian government is in comparison to the other two branches. Differences are brought forward to show whether Namibia has developed consolidation of these democratic institutions as far as advanced democracies have.

Furthermore, regular free and fair elections are also another very important institution of democracy. Though as discussed before not sufficient alone to consolidate democracy, they are still the foundation on which to build the other democratic institutions. One of the main political rights for Namibians, for which the Namibians struggled for longer than any other African country, was the right to "one-man-one-vote" elections. Once achieved, this struggle to gain it was then manifested through the nationwide celebration to use it. Through considerable inconveniences in the actual voting process<sup>3</sup>, 96% of the eligible voters celebrated their right to vote in the first free and fair elections 1989. Namibians gave themselves a good start for the road to consolidating their democracy.

Therefore, we ask if a closed-list PR system of elections is good for Namibian democratic consolidation, for there have not been turnovers in government. Diescho (1994, p. 101) criticised the (closed-list) PR system Namibia has chosen to use for not granting the legislators their own electorate and thus they cannot be held accountable. Keulder (2001, p. 30-31) on the other hand concludes, though noting the problem of lack of accountability, that the results would be the same under any democratic electoral system. We need to find out whether the electoral system is a consolidated institution of democracy and whether it works towards consolidating Namibian democracy as a whole.

This study also tests Paavo Pitkänen's (2000, p. 80) report on Namibian elections concluding that they have been free and fair to all parties involved and again observing the comprehensive statistical studies and conclusions of Keulder (2001, p. 4) on this same matter. How would the power be divided under other kinds of elections and are there other factors that come into play, like

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<sup>3</sup> UNTAG election observers reported that voters had to queue up to 3 to 4 days, sometimes in over 35 degrees heat, in order to cast their votes. See also Pitkänen 2000, p. 4.

the influence of the Presidents power over the other branches of government for example, that should be taken into account?

If it is shown that the President handles all government powers in Namibia, i.e. no separation of powers exists, then it should also be investigated whether only the presidential elections matter in Namibia. Therefore one should also investigate whether the perils of presidentialism as Juan Linz (1990, p. 51-69) writes them, are even more obvious. Do the perils of presidentialism in fact become perils to the whole system of government and to the consolidation of democracy?

Namibia does have a strong presidential system, but the Constitution ensures some parliamentary characteristics as well. We note that it is typical to the presidential elections that the winner takes all the power contested in the elections and nothing is left to the opposition, whereas regarding the parliamentary elections the Namibian Constitution has gone to great lengths to ensure the integration of also the minorities and the opposition into the government. Namibia does have factors from both systems, but are they effective and working, when the parliament is also dominated by the President's party?

A dominant party position can only become from the strength of one party and the weakness of the others. Andre Du Pisani (2002, lecture) argues that other parties are weak on the ground and only the Swapo has local power brokers to dominate politics at the grass roots level. Keulder (2001, p. 30-31) adds that due to Namibian population distribution the leading party needs only to secure the four O's, the four largest regions of the total thirteen, to gain governmental power. Therefore this study digs deeper to understand what the main problems are that prevent the opposition parties from succeeding? What prevents Huntington's two turnovers from happening in Namibia? Does Van de Walle's "necessary electoral uncertainty" exist there? Are they problems of the democratic institutions crumbling or the fault of the Namibian electoral system or perhaps of something else altogether?

Furthermore, as we set out to comprehensively understand the reasons for the Namibian political system, we should not forget the socio-economic factors that come into play as well. Namibia has been described as a dual-economy because of its extremely unequal and divided socio-economic structure.

The incomes of the richest quarter can only be compared to the wealth of an average rich European or North American citizens (UNDP-Namibia 2000, p. 6), but the problem with the capitalist rich in Namibia, from the viewpoint of modernisation, economic growth and thus also democracy, is that they consume foreign goods and seem to direct their investments abroad. The money doesn't stay to benefit the country, even if the people remain inside the borders.

Similarly, the masses of the unemployed poor also work outside the system. They are not productive members of society and although their consumption is mostly directed to local goods (benefiting economic growth), due to lack of investments they don't have jobs in order to be socially productive. They do not choose to be cast aside, but are forced to submit to it due to the lack of opportunities to be productive. This fact becomes especially alarming when one considers that in the age groups from 15 to 24, the largest population group in Namibia, over 60% of people are unemployed (UNDP-Namibia, p. 6).

"After the role of the middle classes and affluence, the other significant variable in the endurance of democracy, is the reduction of income inequalities", writes Breytenbach (2002, p. 91) in line with Przeworski's main findings. In order to study this we use the worsening United Nations Development Report National and Regional Human Development Indices (HDI) and Human

Poverty Indices (HPIs). Further look on HDI is also done with the population divided into different language groups to fully understand different development levels in Namibia. The UN Human Development Report on Namibia writes:

Although international comparisons are problematic, it is possible to state that Namibia includes language groups [German, English, Afrikaans] that enjoy qualities of life comparable to those of Sweden and Australia at one end of scale, and groups that suffer poverty similar to that of Ethiopia and Sierra Leone at the other (UNDP-Namibia, p. 33).

Can these kinds of socio-economic indicators prevent the consolidation of democracy in Namibia?

## 1.6. Methodology

This thesis is a secondary study and it does not consist of empirical information, data from surveys or questionnaires.

The literature of this thesis can be roughly divided in two. First, there are the books and articles on the theoretical overview of democratic consolidation, on democratic institutions and the effects socio-economic conditions have on it. Second, there is the literature on Namibian democratic development, on different democratic institutions, and finally the statistics on Namibian socio-economy.

The study and the theories used in this study can also be divided in two different categories: democratic institutions and the role of socio-economic conditions in democratic consolidation. The literature also reflects this thematic division. First there are the theories of democratic institutions and what should be in place in order to consolidate democracy, and then the theories about how socio-economic conditions affect the consolidation and endurance of democracies.

However, the literature on Namibia, though it self-evidently reflects the theory we discuss, is not specifically written about the same issues, but only some aspects of them. There are good studies on elections, some parts of the civil society, local government, history of some parties, the freedoms and the constitution, but there exists no comprehensive study on all democratic institutions together.

Namibian socio-economic conditions and development are also broadly investigated. Nevertheless, very little is written on its links to the development of Namibian democracy.

We therefore integrate theory on consolidating democracy and how social-economic factors play into it, and then integrate different conclusions drawn from the Namibia-based studies into it.

From the perspective of literature overview, this is the dilemma for this thesis, in a nutshell. There is good literature on the issue we try to prove in general, i.e. that development of democratic institutions and socio-economic conditions do matter for consolidation of democracy, but it's virtually non-existent when it comes to directly discussing the case of Namibia. There is good literature on Namibia and democracy from one or a few aspects of some institutions of democracy; about the elections, the constitution, labour movement, civil society, decentralisation and so on, but nothing that we know of that is trying to paint the whole picture on whether Namibia is consolidating its democracy.

All of the various extensive books on some detail about Namibian democracy, or the institution of democracy, do give us a direction and understanding of how their various issues affect the

development and consolidation of democracy and they might even have a learned opinion on it, which we do always try to voice, but they are not conclusive. We try to be. As ambitious as it might seem, we try to show a direction where Namibia is going: towards the consolidation of its democracy or not.

The research will be mainly done in libraries consulting several authors. We are also interviewing different politicians, civil servants, civil activists, diplomats, development cooperation workers and researchers in Namibia, Europe and America. The main theoretical framework will be found from authors like Andreas Stepan, Juan Linz, Larry Diamond, Samuel Huntington, Barrington Moore, Adam Przeworski, Robert Dahl, Thomas Carothers, Willie Breytenbach and Andreas Schedler. Furthermore, The Freedom House political rights and civil liberties ratings from the past 15 years are used to determine the trend of liberties in the independent Namibia. Economic statistics are extracted from the UN Human Development Reports from the late 90's to the new millennium.

We will not be using questionnaires and thus have no empirical evidence. Large parts of the day-to-day political observations are based on the few newspapers published in Namibia within the last six years. Newspapers and other media obviously have a role to play in the democratic development, which is also taken into consideration. Their bias on some issues of democracy can therefore be understood. Take for example Gwen Lister, the editor of *The Namibian* –newspaper. *The Namibian* is the largest paper and possibly the most powerful print media in Namibia, and it is probably the loudest voice of opposition to the politics of the Namibian government on issues of democracy and human rights.

The individuals interviewed for the study vary. We include people from the government of Namibia, Dr. Nicky Iyambo, former Minister of Health and Minister of Trade and Industry, a signatory for the Constitution of Namibia, a cabinet member of all Namibian executive governments since independence. Members of parliament, past and present, are interviewed. For example Danie Botha former Swapo MP (1990-94), is interviewed. He is also a signatory of the Constitution and a member of the Constituent Assembly.

People from the legal profession are interviewed from both the civil society and the government side. Norman Tjombe director of the Legal Assistance Centre, Chairman Clement Daniels from the Legal Association are interviewed, and the Ombudswoman Bienice Gawanas will be representing the state. Moreover there have been several background discussions with legal experts from the Office of the Ombudsman, legal advisors to the Parliament like Deidre Sauls and individual lawyers such as Richard Salazar of NDI and Esi Scwimming-Chase who was part of the law team for the Caprivi 128 case.

There will be interviews from researchers in Namibia, namely Andre du Pisani, Iina Soiri and Christiaan Keulder. People from the non-governmental organisations working with Namibian democracy will be consulted broadly. Extensive interviews will be conducted with Phil ya Nangoloh the director of National Society for Human Rights and Clement Daniels then still the director of Legal Assistance Centre. Labour union people, the NUNW, LaRRI and churches, namely the council of churches (CCN) are not forgotten, either. In addition we will use the comments of Dr. Aldo Ajello, the United Nations Ambassador to the Great Lakes region, former Ambassador of Finland in Namibia Kari Karanko, and current Charge d'Affaires Sinikka Antila, Ambassador Lauri Kangas (Head of Mission and Charge d'Affaires to Namibia 1989-91) and Ambassador Kirsti Lintonen (Ambassador to Namibia 1990-1994 and South Africa and Namibia from 2000 up to date). There will be an interview with Mr. Paavo Pitkänen one of the election observers in Namibia, as well as other development cooperation workers and election observers,



past and present, to shed light on the perspective the international community is looking at the Namibian democratic development from.

Elections, at the heart of democratic consolidation, are looked at from the basis of three scholars: Paavo Pitkänen's European Union election commission consultant evaluation on Namibia over the past ten years; Christiaan Keulder's study for the University of Namibia and the National Institute for Democracy (NID), and Iina Soiri's study of Namibian local elections for the University of Helsinki's, Institute for Development Studies.

The strengths of this methodology applied, mostly based on literature on democracy and Namibian democracy, is its solid background on theory and the amount of detailed information and statistics about Namibia. We draw from the extensive research of scholars and integrate bits of their knowledge with ours in order to build a complete picture from the puzzle. Our study is not very deep, but its strength is in the footnotes. Discussing the literature altogether gives a fuller understanding of the present state of democratic consolidation in Namibia. The strength of this study is in the theory and the details.

Furthermore, of course, the interviewed are also a strength of this study. Being able to sit down with the signatories of the constitution, for example, is a special privilege for any scholar and deepens the validity of the discussion. In fact, one could draw even more extensive conclusions with this information gathered; one could, for example discuss the original intent or the spirit of the constitution and compare this with current affairs. Nevertheless we settle for only discussing about democratic consolidation.

This methodology forces us as said before to be very shallow. When the literature about Namibia that is referred to in this study has some deeper knowledge of a certain slice of Namibian democracy, we only take the conclusions and try to tie them together in order to understand something comprehensively. We have a shallow, but hopefully comprehensive understanding of Namibian democracy, whereas the studies we refer to have some deeper knowledge about elections, civil society, decentralisation, the party system, socio-economy, history and so on.

Furthermore we recognise that, when this methodology is applied, especially when discussing democracy, it is prone to political snobbery, cultural ignorance and an overly elitist view of the matters. We only hear the scholars and top politicians on the issue, all part of the Windhoek elite, and being a secondary study have not found a way to include knowledge from various different ethnic groups, social classes, the countryside or regions of Namibia.

Namibia, as will be discussed, is a very divided country. Thus, our applied methodology relies wholly on assuming that the literature we refer to has taken these issues into consideration. Reflecting the views of the newspapers or interviewing only the elite and the intellect of Namibia probably gives a false picture of the state of affairs in Namibia. Unfortunately, not a single Namibian interviewed is outside that richest income 5% bracket, who control over half of the total income in Namibia.

Additionally, we only apply theoretical framework from the English-speaking world, areas with a strong colonial influence on their culture and thinking, and therefore we are also prone to thinking about Namibia in a certain one-track way influenced by history and the culture of democracy. In detail, we have not considered enough factors like the people's ownership of the Constitution, for example, or the people's wishes on how they would want to democratise their government.

In fact, we take for granted, for example, that the opposition would be doing its job were it contesting the government enough for the people to recognise that there is an alternative option, and we judge according to our understanding of what a government for the people and by the people should be. We do not question the fact that Namibians do recognise that they live in a democracy where, if they wish to do so, they can overthrow the government.

We do recognise that there is an Afrobarometer published by the Institute for Public Policy Research also on Namibia asking many of the above mentioned questions, but we've chosen to neglect this information for practical reasons, namely to narrow down the study a little bit and because it was not yet available when we did the bulk of our research.

Henceforth, though we do make a shy attempt to understand the effect of Namibian socio-economic realities on the consolidation of its democracy, we have little if any evidence of how Namibian citizens themselves feel about the state of their democracy or the direction they feel its going in. We have not made efforts to understand the values and opinions of the Namibian people and have not tried to ask them directly, or have any empirical evidence on it. Nevertheless, we rely on the other studies for having done exactly that, and thus simply remain debating the issue in the libraries where most of the written knowledge is available.

## 1.7. Summary

To summarise the first chapter we outlined the study in six different ways.

We said our problem statement is first to investigate whether Namibia has consolidated its democracy and then see which direction it is going in. Whether it's going to consolidate its democracy in the future, as things are going at the moment, or not going to consolidate. And then finally we wanted to know why?

If it was found that Namibian democracy is not yet consolidated, we would then set out to find reasons for it. We said that Namibia might have inappropriate democratic institutions, or they might be crumbling, or perhaps the reasons can be found in Namibia's unfavourable socio-economic conditions.

The theoretical and analytical review we discussed in this chapter outlined the various theories we're comparing Namibian development to in order to determine the issues mentioned above. We said that Namibia needs turnovers in government to be consolidated, democratic institutions to be in place and working effectively to move towards consolidation, and finally, favourable socio-economic conditions in order to endure and consolidate.

We clarified what we mean by the concept of democracy, arguing that total democracy is an utopian ideal, and that democracy is a process, leading to a conclusion that consolidated democracy is a democracy that endures. Furthermore we argued that democracy cannot exist without democratic institutions and freedoms, it is unlikely to endure the test of time without socio-economic development and that there are various degrees of democracy.

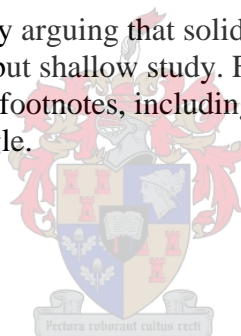
We then discussed where and how we are going to learn about Namibia. How does it compare to the theories of democratic consolidation that we discussed? We discussed how the ways to show that the Swapo -party dominates the Namibian government with weak opposition, there is a constitution that provides the main institutions of democracy, protects freedoms and sets out the separation of powers, but cannot protect itself if the dominant party wishes to misuse it. We started

the discussion about the basis of Swapo -party dominance in Namibia and why the opposition is so weak. Furthermore, we discussed various Namibian authors following contributions to the study and started the discussion on the fact that though Namibians vote for the Swapo –party in high numbers and seem thus unified, it is an extremely and increasingly divided country, both socially and by class.

The significance of this study was justified in this chapter by arguing that Namibia could be an example for the region and for young democracies all around the World. We said that it is significant to study Namibian progress, because bigger countries like South Africa are stemming from a similar political and socio-economic background. Furthermore, we said that the Namibian example is significant because it shows comparatively that the direction of democratic development is more important to the international donor community than the actual level of democracy. Namibia is more democratic than Angola or Mozambique, but they are favourites of the international community in development cooperation whereas Namibia is not.

Finally, methodology was discussed as well. We said that in addition to the main bulk of the research done in libraries there are also some important interviews. First the literature was reviewed, and we noted that the literature in this study should be divided roughly into two: the literature on theory of democratic consolidation and about Namibian democracy, and then on its democratic institutions and socio-economic conditions.

We justified this kind of methodology by arguing that solid theoretical research needs to be done to try to conceptualise this kind of a wide but shallow study. Furthermore, we argued that the depth of our various discussions comes from the footnotes, including the various in-depth studies on Namibian democracy from a certain angle.



## Chapter 2

### Institutions

**Badger will come out of its hole; the hunter will leave his hut, but seldom on a same day.  
(Herero proverb)**

**Good luck doesn't come twice.  
(Ndebele proverb)**



## 1. Institutions: Introduction

There is a theory that democratic institutions need to be in place before democracy can work. Elections alone are not enough, even if they were very competitive and inclusive. These institutions are necessary for the people's choice of government to operate effectively and for the people to keep it accountable.

Therefore when discussing Namibian democracy and its consolidation one cannot avoid discussing these institutions. Consolidated democracies have them operating effectively and they endure.

In the following chapter we first discuss theory, what is the logic of discussing these institutions? Then we move on discussing, comparing and analysing the state of these institutions; in place or crumbling in Namibia. We analyse some of these institutions in detail, for example the political rights and civil liberties and observe how vital role does the constitution play as one of the democratic institution itself and guaranteeing some of the other institutions to exist in Namibia.

Again our ambition in this chapter is not only to observe what kind of institutions have been founded for Namibia but also to observe whether they are operational, or perhaps being held ineffective for some reason. For example, freedom of press is guaranteed for Namibians by the constitution as all necessary freedoms are entrenched into it. Nevertheless in order to study whether Namibia has been able to consolidate its democracy we also need to ask whether freedom of press for example is also exercised, not only guaranteed by the constitution. Are there some instances in Namibian politics that feel they can rise above the constitution and get away with it?

### 2.1. Theory of democratic institutions

Dahl assumes and we agree on his assumption that eight freedoms need to be in place in order for a government to be democratic. He also creates a two dimensional axis in which these freedoms exist and governments can be judged to be more or less democratic. He says: "I assume that a key of a democracy is the continuing responsiveness of its citizens, considered as political equals" (Dahl 1971, p. 1) More inclusive and competitive system of governance is the better, closer to *polyarchy*, his word for what we call a consolidated democracy. The broader the right for people to participate, the more inclusive, the higher the reigning regime's contestation; the better it is on the axis of contestation. The assumed freedoms he speaks of are:

- Freedom to form and join organisations
- Freedom of expression
- Right to vote
- Eligibility for public office
- Right of political leaders to compete for support
- Alternative sources of information
- Free and fair elections
- Institutions for making government policies depend on votes and other expressions of preference (Dahl 1971, p. 3).

Henceforth, let's construct the theories needed to interpret the case of Namibia, already briefly discussed in the first chapter. Dahl is an institutionalist and like Sartori who argues for moderation in successful government and against extreme political ideologies in political parties, that the executive branch of government needs to be balanced in power with other political forces of government, like the legislature. This argument for checks and balances in government is important

to make, because when Dahl's (1971, p. 1) problem statement is: "Given a regime in which the opponents of the government cannot openly and legally organize into political parties in order to oppose the government in free and fair elections, what condition favour or impede a transformation into a regime in which they can?" Our study is far narrower, seeking only to find the direction where Namibian democracy is going and to find factors that would necessarily prevent democratic consolidation. Separation of powers is at the heart of this matter.

Andreas Schedler in his article, "What is democratic consolidation?" attempts to anchor the discussion on democratic consolidation. He writes:

When students of democratisation seek to classify regimes, the key distinction, of course, runs between those that are democratic and those that are not (the latter often generically labelled as "authoritarian"). The most widely accepted criteria for identifying a country as democratic have been put forward by Robert Dahl—civil and political rights plus fair, competitive, and inclusive elections. Dahl calls countries that meet these criteria "polyarchies," but they are more commonly referred to as "liberal democracies" (Schedler 1998, p. 92).

Then he further postulates two different subtypes of democratic consolidation. He continues, "...there are all those borderline cases that possess some but not all of liberal democracy's essential features, and therefore fall somewhere in between democracy and authoritarianism. I call such semi democratic regimes 'electoral democracies'" (Schedler 1998, p. 92-93)

He explains that a special feature of these electoral democracies is that they have managed and are managing to have more or less free and fair elections, but fail to uphold the political and civil freedoms essential for liberal democracy (Schedler 1998, p. 93). Furthermore, he also argues that the classification "liberal democracy" is not enough either, but further classification of "advanced democracy" is needed. Therefore leaving us, similarly to the arguments of David Collier and Steven Levitsky (1997), with four regime classifications, which are authoritarian-, electoral democratic-, liberal democratic-, and advanced democratic regimes.

Schedler also discovers certain movement of regimes, new democracies, between these categories, regression from liberal democracy to electoral democracy or deepening of democracy from electoral to liberal and advanced, and so on. Alongside with Samuel P. Huntington and Guillermo O'Donnell, he argues that the biggest threat to new democracies comes, not from sudden deaths, *coup d'états* and the sort, but from erosion within. He quotes Huntington who goes as far as saying: "The problem is not overthrow but erosion: the intermittent or gradual weakening of democracy by those elected to lead it" (Schedler 1998, p. 93)

There are different kinds of slow deaths to the liberal democracies, negative trends as he puts it. Besides the threat of military bureaucracy eating away the decision making power of the elected government, i.e. which has happened more often than not in Latin America, there are also other ways of erosion. Attack on the democratic institutions, the very pillars on which democracy stands on, he finds even more threatening. Weakening rule of law, rise of hegemonic parties that may lead to suffocating the electoral competition, the decay of electoral institutions are some of the threats he counts (Schedler 1998, pp. 97-98).

For understanding the state of Namibian democracy these are very important issues to discuss. More detailed explanation to these negative or anti-democratic regime developments comes from Thomas Carothers who describes these new democracies developments as erratic, even chaotic, rather than linear.

Nevertheless, the main argument Schedler makes is that consolidating democracy is synonymous with institution building. He writes, “It [consolidating democracy] implies constructing all those big organisations that make up the characteristic infrastructure of modern liberal democracies: parties and party systems, legislative bodies, state bureaucracies, judicial systems, and systems of interest intermediation” (Schedler 1998, pp. 100-101) This should be the root assumption to this study. Democratic consolidation to us means democratic institution building and that the institutions endure. And *vice versa*, eroding or reversed consolidation means that the institutions of which democracy is built upon, are crumbling. Furthermore, we also subscribe to Schedlers’ suggestion that the meaning of “democratic consolidation” is restricted to its classical meaning, “expectations of [democratic] regime continuity—and nothing else”, and “consolidated democracy” to describing, “a democratic regime that relevant observers expect to last well into the future—and nothing else” (Schedler 1998, p. 103)

Therefore if Dahl, Schedler and others make the point about democracy building being about building the institutions of democracy, and consolidation of democracy being an achieved system of liberal democracy that continues to endure, then one needs to take a closer look at where Namibia currently stands. To understand this we again look at the writings of Thomas Carothers, who first heavily criticises political scientists that talk about “transitional democracies” after the first successful elections, and then goes on to explain different types of stagnation of democratic development in these countries. He is observes critically these countries which have had first successful free and fair elections, but have still not consolidated their democracy. He argues that they are often not democratic at all, not having governments truly accountable to the people. He considers these governments to be in the “grey zone” (Carothers 2002, pp. 5-14).

Carothers (2002, p. 11) theoretical contribution to the study is twofold. Firstly, he also subscribes as an institutionalist and secondly, he further explains the syndromes that prevent democratic consolidation for these “grey zone” governments. He calls them “feckless pluralism-” and “dominant-power” syndromes.

He argues that, “the most common other political syndrome in the grey zone is dominant-power politics” (Carothers 2002, p. 11), and further describes dominant-power syndrome stating:

Countries with this syndrome have limited but still real political space, some political contestation by opposition groups, and at least most of the basic institutional forms of democracy. Yet one political grouping—whether it is a movement, a party, an extended family, or a single leader—dominates the system in such a way that there appears to be little prospect of alternation of power in the foreseeable future (Carothers 2002, p. 11-12).

The description continues to probably the most important point for our study. He says, “...a key political problem in dominant-power countries is the blurring of the line between the state and the ruling party. The state’s main assets—that is to say, the state as source of money, jobs, public information (via state media), and police power—are gradually put in the direct service of the ruling party” (Carothers 2002, p. 12). Then he also says that, typical for these dominant-power countries is that the judiciary is cowed, as part of the one-sided grip on power, elections over time tilted enough to favour the ruling group by suffocating the opposition just enough that they won’t die and as a result, the political elites are safely in the grip of power and uprooted from the considerations of the voters (Carothers 2002, p. 12).

Moreover Carothers (2002, p. 12) continues that dominant-power systems of usually having “a loose collection of advocacy NGOs and independent media (often funded by Western donors) that

skirmish with the government on human rights, the environment, corruption, and other issues of public interest.” And when he explains that dominant-power systems are prevalent especially in sub-Saharan Africa and have problems with large-scale corruption and crony capitalism that the leaders do often feel some pressure from the public to curb down (Carothers, p. 12). It seems to become too close of a description of Namibian political life, not for us to consider making observations and comparisons whether Namibia really is plagued with what he calls the dominant-power system.

Therefore the list of dominant-power systems characteristics and Namibian system of governance interpreted by the interviewed experts should be analysed. If enough similarities are found the conclusion can only be that Namibia is in fact a dominant-power system and in the “grey zone” rather than a liberal democracy that would have consolidated its democratic form of governance. Characteristics of dominant-power system to him are:

1. Some real political space for opposition to operate, but one political grouping dominates the system in a way that there seems little prospect of alternation of power in the foreseeable future. Freedom of forming political opposition, but contestation is poor.
2. Most basic institutional forms of democracy.
3. Blurring of the line between the state and the ruling party.
4. Cowed judiciary, where the ruling party has been able to extend its power over the judicial branch of the government.

First we seek to tackle the relationship to the opposition in Namibia. The best description of the situation comes again from the icon of SWAPO-movement, Minister Andimba Toivo ya Toivo, who recently described Namibia becoming almost a one-party state, but without the deliberate aim of the Swapo-party or the government (Toivo ya Toivo 2003, YLE24 TV). This is in line with the discussions with Nickey Iyambo, also a member of Swapo highest decision making body, the Politburo, and a cabinet member since the independence (Iyambo 2001, interview).

University of Namibia Professor Andre Du Pisani (15 May, 2002, Interview) further explains the situation in his study about political power brokers, the root of Swapo power, in Namibia. He first quotes the studies of another former UNAM scholar Christiaan Keulder who concludes that in order to win elections in Namibia one needs to control the five O’s, referring to the five former Owamboland elections constituencies, of the overall 13 provinces and election constituencies. Du Pisani then continues that the Northern region is under the tight grip of the leading party, because of the Swapo local officials that handle any grievances from the constituency. He describes a situation where the pump for a well, a source of life in the North, would be broken. People would turn to the Swapo official, the local power broker, rather than the local government for help and obviously this help, from the local government’s budget, would come with the understanding that Swapo-party took care of the problem. Du Pisani’s conclusion therefore is that before the opposition is in position to use state funds for solving grievances, it is very unlikely that they would win votes in these crucial northern constituencies.

There are few students of Namibian politics who wouldn’t admit that the Swapo-party dominates all political life in Namibia and the opposition parties are very weak. But with basic freedoms almost intact, it is not a dominant-power system. Namibia does have most basic institutional systems of democracy in place, with three branches of government operating and a state bureaucracy in place. The little contestation in the system may indicate “feckless pluralism”.

However, there is a blurring of the line between the leading party and the state. Du Pisani gives good examples of this blurring, at the local grass-roots level, nevertheless further evidence can also



be found. Carothers talks about clientilism created by the party to the state officials; state as a source of money, jobs, public information (via state media), and police power. How much is Swapo-party directly benefiting from these state resources? How much can it control?

About resources, we can conclude that the leading party in Namibia has full control of state resources, if the following factors are fulfilled:

1. The President of Namibia appoints various ministers and therefore the executives to various ministries,
2. Cabinet ministers control the finances for their various ministries, therefore controlling the formation of the national budget,
3. There are no objections from the National Assembly to the Cabinet proposed budget,
  - o The leading party controls the decisions of the National Assembly, and
4. (a) The executive branch of Namibian government, forming the government, and the party leadership are controlled by the leading party, or
  - (b) The executive and the party leadership is in same hands, controlling both the executive and the party, and he/she is willing to take the power vested in him/her under the Namibian Constitution.

Then, about controlling state jobs, we can conclude that if the state resources are found to be fully in the hands of the leading party and there has not been any turnover in government since the independence, then all the state jobs are at least dependent on the favour of the leading party. It is so in Namibia as it is in all democracies in the world that the bureaucracy is submissive to the elected politicians in charge of the government. This will be fully elaborated in the coming chapters. The Cabinet ministers run various ministries and all government bureaucracy fall under a certain ministry. What remains to be questioned then, about whether the state jobs are being controlled by the leading party, is therefore whether the leading party controls the cabinet.

Furthermore, the leading party monopolising the security forces of Namibia, again, falls under the question above, whether the leading party controls the executive (4a) or if the President of Namibia is in fact the same person than the leader of the party and he/she has the power to control the decisions of the party (4b)? This is because it is clearly stated in the Namibian Constitution that The Inspector-General of Police, The Chief of the Defence Force and Commissioner of Prisons are all appointed and removed from their office by the President<sup>4</sup>.

Similarly, the leading party could also control state information. The President, who is also the leader of the governing party, hires and fires the Cabinet, though a single Cabinet minister can be fired by the vote of no confidence by the National Assembly also. Therefore it can be concluded, that if questions 3 and 4 above are found true then the leading party fully controls the state media, as it does also to all other state resources. For example, Namibia has a special Ministry for Information that is normally directed by a regular member of the Cabinet. Recently though, prior to the National elections, the President has not trusted anyone with this power, but has allocated this Ministry to himself to manage similarly to that of the President in Zimbabwe. Information is power, especially at the time of elections.

Media Institute for Southern Africa (MISA), an affluent, foreign funded, Namibian based, international non-governmental organisation (INGO), covering the whole of Southern Africa but based in Windhoek, reports the following about the state of media in Namibia 2001, "...the media

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<sup>4</sup> See, The Constitution Chapter 15, Article 116 and 117 for the Inspector-General of Police, Article 119 and 120 for the Chief of the Defence Force, and article 122 and 123 for the Commissioner of Prisons

were faced with an intensification of government's intolerance of the free and independent press... Censure of the media came from all three branches of the government, as well as extra-parliamentary groups" (Titus 2001, p. 77-78), and in 1998, "...these [media rights violations] incidents are not enough to make Namibia a media freedom hotspot on the MISA barometer, but they are enough to raise concern that one of Africa's few role-model democracies may be on the brink of sliding down the same slippery slope as Zambia and Zimbabwe" (Galant, Mwape and Minnie 1998, p. 54).

First, we need to establish what institutions are in place in Namibia and how do they operate. Only then should we analyse their effectiveness on the consolidation of democracy. Whether the democratic institutions are in place, only then whether they are crumbling.

Diescho (1994, p. XIII) argues that the Namibian struggle for independence led to a constitution that protected human rights and liberties for all Namibians. The Namibian Constitution was built to protect the freedoms of all Namibians. We therefore say it is the primary source of political rights and civil liberties to all Namibians.

These freedoms, categorised in political rights and civil liberties, have also been measured in Namibia, as well as around the world in several other countries. The Freedom House, independent American based organisation, has measured Namibian freedoms since the independence and even before, if one takes to account the ratings given to the apartheid South Africa. We study these ratings that within the last fourteen years have fallen between "free" and "partly-free". We also said to investigate whether the constitution in fact does guarantee the freedoms necessary for democratic consolidation (Breytenbach 2002, p. 87).

Where would Dahl place Namibia on his scales of inclusiveness and competitiveness? We seek to find whether all the necessary freedoms are in place and then whether all issues concerning the state are in the hands of the government officials elected? Dahl argues that no large system is fully democratised and certainly Namibia would fall into this category. Nevertheless, we can discuss whether Namibian democracy has been consolidated or if some level of polyarchy is found, as Dahl would put it.

Namibia does have the three necessary conditions for democracy, laid out by Dahl. Namibians can formulate their preferences, are able to spread the word of their differing political opinions quite well and there is little discrimination to their preference. Therefore, Namibia scores comfortably so that one can say that the three prerequisites are fulfilled.

On the issues of rights and freedoms of Namibians, advancement is not clear. Namibians do have the right to form and join organisations (1.), freedom of expression (2.), right to vote (3.), eligibility for public office (4.), right of political leaders to compete for support and votes, with the exception of Misheake Muyongo who led an armed insurrection in Caprivi and lives in exile currently in Denmark. Nevertheless, other than him personally, his political views could possibly be raised freely in parliament, would any parliamentarian want to do so. And a candidate in an election could freely raise those contesting views. Therefore, fulfilling the fifth point (5.) sufficiently. Namibians also have alternative sources of information of different political opinions in the country. There is freedom of press, though sometimes quite heavily attacked upon by the government and the leading party. The playing field for different opinions in media is not level, since the leading party and the government spares no effort on dominating all of it, as the annual publications of the Media Institute of Southern Africa (MISA) quite elaborately explains (Titus 2001, p. 31). But again, the sixth point (6.) could be considered fulfilled, since the alternative sources for information are in existence and not *totally* suffocated. Namibians are enjoying free and fair elections (7.), but the

eighth point (8.) the institutions, which is the last, most elaborate, and difficult freedom to fulfil is the one that Namibians are stumbling on. Namibians do not have the institutions in place for making government policies depend on votes and other expressions of preference. Or maybe it could be argued, that Namibians have one political institution, the President, who is directly dependent on their opinions in elections, but the other institutions of democracy are only dependent on the President and not directly to the people the way it was intended in the Constitution. We will revisit this point in the chapter on presidential system.

The Freedom House scores two (2) “free” on the scale of one (1) to seven (7) on the protection of Human Rights and three (3) “partly-free” on the issue of political liberties for Namibia. This has been the case ever since the independence 1990. Clearly then the above mentioned freedoms are not fully available for Namibians and this could be considered as a sign of Namibia not to have consolidated democracy. Consolidated democracies score almost without exception highest on both scales (The Freedom House 2002, Internet).

Then how would Namibia fair on the scales of Dahl about public contestation and inclusiveness. As examples Dahl argues that in the Soviet Union for example there was high inclusiveness of people into the system, but public contestation was non-existent. Alternatively, the Swiss or the Brits would have enjoyed long a system with high public contestation, but not universal suffrage, therefore making it fairing low on the scale on inclusiveness.

Namibians do fair well on the scales of inclusiveness. Inclusiveness was what the Namibians fought for, since previously only the minority whites could be involved in politics. The first free and fair elections in 1989 enjoyed an unprecedented 96% voter turnout and ever since the presidential elections have always had internationally recognized high voter turnout. Only voter registration *per se*, can raise issues of doubt about including all eligible voters into the system<sup>5</sup> and extremely low voter turnout in the local elections, 32% in the 1999 elections, voice a concern for the system. Though it is clear, that the voters also understand that only the presidential elections matter, therefore explaining the huge difference in turnout in these two different types of elections. The difference in elections is discussed further on in this chapter. Nevertheless, inclusiveness can be considered as the strong point to Namibians.

Elections are regular. But are they truly contested? Namibian opposition is simply too weak to pose any kind of threat to the leading party in the elections. Swapo-party controls over 2/3 of the parliament with 73% of the votes and the President has won all his three elections with even greater numbers. Andimba Toivo ya Toivo, Minister of Prisons and Rehabilitation, a great, or perhaps even the greatest figurehead in Namibian politics said in a TV interview recently: “If people democratically choose Swapo, what can we do? We hope for opposition parties to strengthen to challenge Swapo, but for time being, we don’t attempt to be one party state, but since people want Swapo, what can we do? It’s democracy at work” (Toivo ya Toivo 2003, YLE24 TV).

Therefore we should take a closer look at institutionalism. What various authors have said about it and find whether Swapo domination in elections, the lack of true contestation, is perhaps a result of the failing system rather than the works of democracy as Honourable Toivo ya Toivo suggested.

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<sup>5</sup> According to Christiaan Keulder some lower income- and poorer education areas have lower voting registration percentages compared to the richer and more educated areas.

### 2.1.1. Political rights and civil liberties

The Namibian Constitution guarantees all Namibians extensive freedoms as will be discussed in detail in the following chapters, and it is therefore the primary source of freedoms in Namibia. Nevertheless, we set out to find whether all these freedoms, political rights and civil liberties are also exercised in Namibia.

Is there a link, therefore, between the freedoms (could there be democratic consolidation in Namibia without basic civil liberties and political freedoms), the role of civil society (could there be consolidation without effective civil society) and democratic culture (could there be consolidation without democratic culture)?

The Freedom House has been rating the political rights and civil liberties of the Namibians since the dawn of independence, and even before if one takes into account the ratings of the colonial power apartheid-era South Africa, whose laws Namibians had to live under. These ratings and the Freedom House assessment of the development, or rather the stagnation, shall be discussed in detail in chapter 2.7., but for now we note that there is a gap between the civil liberties and political rights guaranteed by the constitution and the rating the Freedom House gives Namibia for how are they exercised.

Therefore, it is our task to elaborate on this gap and how it affects the Namibian process of democratic consolidation.

Remembering Dahl's list of rights that make a difference for a democracy, let's concentrate on the latter half of the eight listed above: the right of political leaders to compete for support and votes, alternative sources of information, free and fair elections and institutions for making government policies depend on votes and other expressions of preference.

We have already concluded that elections in Namibia have been widely accepted as free and fair, but there is more doubt about the rest of the points. Iina Soiri writes in her report on the four different elections held in Namibia in 2004 that Namibia did not produce signs of democratic consolidation or signs of direction towards it. She continues with several examples but we are especially interested in two. First what happened in the rundown to the presidential elections and then what happened to the old Mayor of Ongwediva. She writes about the rundown to the Presidential elections and the Swapo candidate selection process (translated from Finnish by author):

“Only in the beginning of this year [2004] Nujoma announced his intention not to run for Presidency and the party secretary Tijingare confirmed the matter soon after. [Previously in the article Soiri had explained that Swapo could have changed the constitution with its over two-thirds majority in parliament and accommodated Nujoma's wishes to continue as President for the fourth term.] This started the run for succession of which Swapo had no experience. It was made clear from the very beginning that Nujoma who had led the party since its birth would let others have the presidency of the nation, but would not be willing to relinquish the party chairmanship. The successor should therefore be submissive to Nujoma's discipline in the party hierarchy...

The party announced three candidates. They were, Minister for Higher Education Nahas Angula, Minister for Foreign Affairs Hidipo Hamutenya and the Minister for Land Reform and -Resettlement, vice-chairman of the party, Hifikepunye Pohamba – all long standing members of the party and government, former refugees in exile and over 60 years old.

Furthermore they were all part of the largest ethnic group in Namibia, where Swapo finds its strongest support, the Owambo speaking population group. Hamutenya's ambitions for Presidency were well known, but Pohamba was ordered to run by Nujoma. Populist Angula was seen as the compromise for the other two...

The regional party delegates were sent to the party extraordinary conference, but nobody knew of the selection process. All that was known was that, if none of the candidates would be receiving more than 50% of the support there would be a second round...

Four days before the party conference the country was spread with a rumour that Hamutenya and his aids were suspended from the office and detained for High Treason. The rumour was only half true. Two days before the party conference Hamutenya and his vice-minister Kaire Mbuende were suspended from office. It was announced that they had been guilty of dividing the nation and the party...

The conference started behind closed doors, where the candidates were presented to the delegates. On Saturday the elections started. In the evening it was announced that none of the candidates had received over 50% majority of the votes. The winner was Pohamba (213 votes), then Hamutenya (166 votes) and in the last place was Angula (137 votes).

The second vote started immediately. Early Sunday morning my cell phone beeped, "Pohamba is the President." He had won the second round with overwhelming majority, but on TV Nujoma was shown as the biggest winner. Pohamba spoke briefly saying, that he knew that he was going to win" (Soiri 2004, p. 28-29).

On the next day *The Namibian* elaborated on the events of the weekend. They wrote that Nujoma had stood up in front of the delegates after the first elections and distributed a list of comrades that were to divide and destroy the party. The list was spearheaded by Hamutenya and his supporters. It was clear that nobody would dare to contest the party chairman.

The result was that Hamutenya and several other Cabinet Ministers didn't even make the list of candidates for the parliamentary elections (or in fact their ranking would have been so low that it was very hard for them to have made it into the National Assembly from the Swapo list).

Dahl writes about the right of political leaders to compete for support and votes and the Namibian Constitution guarantees it. This right has not been deprived from Hamutenya, Nickey Iyambo or others that were blacklisted, for they can always choose the way Misheake Muyongo took. The former Swapo vice-chairman prior to independence chose to lead the opposition party DTA in the first elections 1989. Similarly Ben Ulenga the former trade union leader and therefore an important member of SWAPO inside South West Africa before independence chose to start his own party, the Congress of Democrats.

But what about Hamutenya's, Muyongo's or Ulenga's right to run for office? We say it's granted, because they can join the opposition ranks in the elections. Nevertheless, whether they have a chance in this dominant party system to gain any power in order to run Namibian affairs is a much more complex question. Keulder has said and we will elaborate on this in the next chapter that there is no multipartyism in the key regions where Namibian elections are decided. Therefore the opposition parties do not have the chance to win necessary support on the national scale. So what about Hamutenya's right to compete for votes in order to gain some political power? We would have to conclude that in this dominant party situation in Namibia that right is non-existent.

Let's move on to another example by Iina Soiri (2004, p. 27). She writes that in the 2004 local elections the Mayor of Ongwediva was not eligible at first for list ranking by the local Ongwediva section in the Swapo internal elections, but nevertheless prevailed to become the Mayor again because the party main office decided to rearrange the list after the local elections were held. Swapo

gained support with one list and then rearranged it after the people had cast their votes and therefore the Mayor who had lost his support locally, but remained a favourite of the party main office, could remain in power.

This manufacturing of results again leads us to question the rights of the losing Swapo candidates. Their rights were violated in these elections, because they were not allowed to receive the benefits of the votes they had gained. Nevertheless, that can be seen as an issue of lacking democratic practices within the party, not necessarily of the whole system, since they could contest for votes again in the next elections from the ranks of the opposition. But what about their real possibilities to run for office in the elections, remembering that we are investigating the gap between the rights granted by the constitution *de jure* and the rights of the Namibians in reality *de facto*? Ongwediva is one of the regions where Swapo wins more than 96% of the votes cast in the National elections and the opposition doesn't even contest them in the local elections. Therefore what are these candidates' *de facto* rights to run for votes? We would have to conclude that they are non-existent.

The last item on the list of rights and freedoms by Dahl was making government policies depend on votes and other expressions of preference. "Namibia's eleven-year experiment with democratic governance has not led to the establishment of democratic culture", says Christiaan Keulder (2001, interview) the co-director of the Institute for Public Policy Research in Namibia. Furthermore, Linz & Stepan, Barrington Moore and Karl Polanyi argue that democratic culture is the most important factor in developing democracies and it should be in place before democratic consolidation. What led Keulder to his conclusion? Does Namibia have enough freedom to develop democracy and is there enough political space for democratic culture to prosper? And could this possible lack of democratic culture be the one factor that would alone prevent the consolidation? The examples discussed above should suggest not. The Mayor of Ongwediva is not dependent on the expressions of preference of the locality, because there are not enough choices. We could draw the conclusion that Dahl would argue that Ongwediva is not competitive enough.

Development theories in the context of transition and democratic culture are also discussed in this part. Carothers (2001) for example argues against the argument of Przeworski et al. that democracy building would be a logical sequential transition towards, and sometimes reversing, democratic consolidation. He says it is not, like the third wave democracy promoters would like to believe, a transition or a sequence of events to consolidation, but rather democratic development does "almost never conform to technocratic ideal of rational sequences on which the indicator frameworks and strategic objectives of democracy promoters are built. Instead they are chaotic processes of change that go backwards and sideways as much as forward, and do not do so in any regular manner" (Carothers 2001, p. 15). Henning Melber in *Namibia: Society, Sociology* describes the Namibian State in a similar way, strong and weak at the same time, depending on how one looks at it:

"...I think the Namibian state we witnessed throughout the 1990s is almost a classic case of post-colonial states that are neither strong nor weak. Or actually they are both – it just depends on what you look at. They are extremely strong when they choose to intervene. In Namibia, the Re-Insurance Bill, the intervention into the fisheries sector, the EPZ case and the Labour Act are some examples of a strong state defending its manoeuvring space and pursuing interventionist or regulatory practices. It is at the same time an extremely weak state in terms of meaningful control over the basic structures of the economy. The property relations inherited at independence were not changed. With reference to the Constitution, to the policy of national reconciliation, the state has developed very little ambition so far to interfere with the principal matters of the mode of production" (Winterfeldt et al 2002, p. 9).

So there are believers in transition and the chaos theory also involved in the debate on these new democracies. This study will also attempt to establish which school of thought would be closer to the truth in the case of Namibia. Does Namibia have one or several developments? And should it even be contemplated whether Namibia's road to consolidation is blocked by something? Furthermore, could there be a barometer that points to where Namibian democratic development is going? Carothers school of thought would definitely question the validity of all of these questions.

Nevertheless, Larry Diamond argues that countries like Namibia become transitional democracies when they have successfully completed their first free and fair elections. This does not mean that there has not been transition to democracy before or that democracy would exist after the first successful elections. In fact as the former European Union Ambassador to the Great Lakes region, Dr. Aldo Ajello (1998, interview) noted, "it is only from the first elections that democratic practices start to take root, and therefore it would be foolish to think that democracy exists immediately there after".

Transitional democracies is a term that best describes the countries that have not yet been able to consolidate their democracies, continues Diamond. Namibia for example has laid down its progressive and democratic constitution and it has had several democratic "one man, one vote" elections already. It has established the rule of law that is working fairly well at the ground level, considering the social and economic inequalities and the years of colonial history that Namibians have endured. The state bureaucracy is supporting the political society, and it is definitely totally dependent on it. Even civil society is working quite freely and sometimes more dynamically than in many old consolidated democracies, although the non-governmental organisation sector should ideally be more contesting in its dialogue with the government, more dependent on the Namibian folk and less dependent on international donors<sup>6</sup>. The ever-important economic society is also institutionalised as discussed in the fourth chapter, excluding the universal problems of corruption. The markets are not perfect because of the problems of democracy stated above, but there are plenty of good developments in Namibia.

Larry Diamond (1996, pp. 20-37) warns that multiparty systems and regular elections are not necessarily "liberal" democracies as they could also be seen as either "pseudo" or merely "electoral" democracies. This is in line with the thinking of Jean-Francois Bayart. Bayart (1993, p. XI) states that in multiparty systems, the ruling parties often (a.) strengthen their control over security forces, (b.) are harassing the opposition, (c.) and/or exercise control over economic rents where dissident opposition politicians are co-opted into lucrative state roles. Furthermore he argues that the international climate is not always favourable for multiparty democracy either, since (d.) the international financial institutions always reward stable macroeconomics first rather than a vibrant democracy.

Furthermore, if Bayart's characteristics fit Namibia, then Carothers again argues that there are two typical ways to stagnate the democratic development, the "feckless syndrome" and the "dominant-power politics syndrome". The question that remains is this; if it is evident that democratic development is stagnated in Namibia, then are there common characteristics with other stagnated "third wave" democracies? Does Namibia subscribe to one of these syndromes, and are the possible "feckless syndrome" or the "dominant-power politics syndrome" the factors preventing the consolidation?

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<sup>6</sup> Grievance by the most NGOs in the discussions between the Finnish delegation for bilateral development co-operation and the Namibian NGOs, Embassy of Finland, 25.3.1999.

### 2.1.2. Press freedom as an indicator for existing rights

The Namibian Constitution grants freedoms and rights to all Namibians, one of which is the freedom of press. The Article §21 Fundamental Freedoms starts with the freedom of speech, “(1) All persons shall have the right to: (a) freedom of speech and expression, which shall include freedom of the press and other media...”

Nevertheless, as said before, the letter of the law is not enough for us. We need evidence of these rights being protected, institutions of democracy being operational.

The Namibian Government has sought to promote these rights by calling international agreements and declarations upon the freedom of press. The Windhoek Declaration for the freedom of press was formed in Namibia 3 of May, 1991 guaranteeing all signatory states citizens the freedom of press. Namibia has thus been on the forefront in the promotion of this freedom across the globe and the continent and we also note that political commentators such as Iina Soiri have described Namibian press as, “pluralistic on an African scale”(2004, p. 27). Free press and especially *The Namibian* had an important role to play in the liberation struggle. Thus press freedom has been seen as an important aspect of Namibian society and democracy also after independence.

Nevertheless, the real scholars of the matter have a bit of a bleak picture to point as well. The Media Institute of Southern Africa (MISA), an international NGO based in Windhoek, is a good source on issues related to press freedom in Namibia and to explain the ongoing conflicts between the free press and the government officials. On the other hand, the freedom of the press is a good indicator of the attitudes of the three branches of government towards the development of democratic culture.

The MISA reports from 1998 to 2001 used in this study write of several cases of censorship of the free press, to limit the inclusiveness, and muscling the public broadcasters into only voicing the leading party’s views on issues. The MISA claims that all three branches of government have in fact censored media (Titus and Hapwood ed. 2002, pp. 77-80). They write:

“Although the Namibian government has given numerous assurances of press freedom since independence in March 1990, the media were faced with an intensification of government’s intolerance of the free and independent press during the past year [2000]. Despite the disturbing development the media, however, continued to operate in an environment free of excessive direct government interference and tolerance. Censure of the media came from all three branches of the government, as well as extra-parliamentary groups. The perception that President Sam Nujoma has, in the past, headed government campaigns against the independent media was given further substance by attacks on the media” (Titus and Hapwood ed. 2002, p. 77).

The MISA argues that the indicators on press freedom are certainly not indicating an increase in the culture of democracy. The freedom of press may have had a good initial standing due to the constitution, but the freedoms are on the decline.

Therefore for our study purposes, we conclude that press freedom is still exercised to a level that it would not be an indicator to stagnate democratic consolidation. Nevertheless, we do have to note that it is declining and thus letting us be more convinced that the freedoms in general are on the decline in Namibia and Namibia is not going that direction of consolidating its democracy.



## 2.2 The Constitution, the supreme law of Namibia

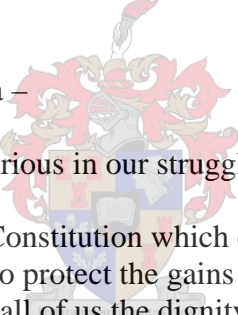
Hegel writes in *The Philosophy of Right*:

*“The State must, in its constitution, permeate all situations. A constitution is not a thing just made, it is the work of centuries, the idea and the consciousness of what is rational, in so far as it is developed in a people. No constitution, therefore, is merely created by the subjects of the State. The nation must feel that its constitution embodies its right and its status, otherwise the constitution may exist externally, but has no meaning or value” (Porter ed. 1989, pp. 421-422).*

We note again that the Constitution is the primary source of rights and liberties for Namibians and thus any evidence of a person, an institution or a part of government rising above it should be seen as an indicator breaking the legitimacy of the constitution and therefore also the institutions of democracy and the democracy of the state.

It is good to acknowledge that the Constitution of Namibia is a democratically accepted document. Freely elected members of the Constituent Assembly signed it and Article §130 of the Constitution states, “This Constitution as adopted by the Constituent Assembly shall come into force on the date of Independence.” It was accepted by the Constituent Assembly, empowered by the people in the first elections 1989, and it therefore represents, via its representatives, the will of the people. The Constitution of Namibia Preamble says:

Whereas we the people of Namibia –



Have finally emerged victorious in our struggle against colonialism, racism and apartheid;  
are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle;  
desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world;  
will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state;  
committed to these principles, have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing to all our citizens justice, liberty, equality and fraternity,

Now therefore, we the people of Namibia accept, and adopt this constitution as the fundamental law of our Sovereign and Independent Republic.

We have already established and will further elaborate on the fact that the Namibian President can control all three branches of government in the dominant party situation that prevails in Namibia at the moment, given that he is the party chairman of the leading party, the party is not democratic and he is willing to do the controlling of the other branches. This kind of use of power would violate the Constitution’s first article and be therefore considered as rising above the rule of law and the principles of *rechstaat*.

The evidence presented in this study of such things happening is twofold. First, we show how it is possible for one-party dominance to exist with more than two-thirds of the seats going to a single party. We establish loopholes, and then secondly we present evidence of how these loopholes have

been used. If no evidence is found and we find that the loopholes have not been abused we conclude that this is strengthening the rights and liberties granted to Namibians based on the Constitution.

In this chapter on the Namibian constitution we present evidence both to support and to contradict the *de facto* rights and liberties of Namibians that are accepted under the Constitution.

### 2.2.1. Namibia is a unitary state

Namibia is a unitary state. Though divided into regions, Namibia is not a coalition of independent states or a federation. There have been attempts to govern some regions independently, like in the case of Caprivi and Rehoboth. Even small-scale armed insurrections for such independence have happened, for example in the Caprivi region in the late 90's, but those attempts have remained as only very singular conflicts that have been quickly resolved.

As mentioned in the first chapter Namibia is a "rechstaat" where the Constitution is the supreme law. The first article of the Constitution, Establishment of the Republic of Namibia and Identification of its Territory states:

- (1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy.
- (2) All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State.
- (3) The main organs of the State shall be the Executive, the Legislature and the Judiciary.
- (4) The national territory of Namibia shall consist of the whole of the territory recognised by the international community through the organs of the United Nations as Namibia including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia, and its southern boundary shall extend to the middle of the Orange River.
- (5) Windhoek shall be the seat of central Government.
- (6) This Constitution shall be the Supreme Law of Namibia.

Nevertheless, Namibia is also divided into regions that are governed by a council elected in the regional and local elections. Chapter 12 and especially Article 102 of the Constitution reserve the right for Regional and Local governments. Article 102(3) reserves that right for the governing body, the council, "which shall carry out all lawful resolutions and policies, subject to this Constitution and any other relevant laws."

Therefore although local governing bodies exist in Namibia, they are all subject to the National Assembly, the laws of the State and the Constitution of Namibia, making the country a unitary state and not a federation. Article 108, Powers of the Regional Councils grants the right for the Regional Councils to elect the National Council, to exercise powers granted to them by Act of Parliament or by the President, to raise revenue as may be determined by the Act of Parliament and to exercise powers as may be determined by the Act of Parliament. The regions have powers, which the central government may grant to them.

The National Council, which the regions have the constitutional right to elect, is an advisory body to the National Assembly and to the President. It can consider and suggest amendments to bills before they are passed and send them back to the National Assembly for consideration. The National Assembly does nevertheless not need the National Council's assent to pass a bill. The Namibian Constitution has therefore reserved the right for the Regional and Local governments to

influence the decision-making of the State, but it has not compromised the unitary nature of government.

### 2.2.2. The Constitution creates checks and balances for the three branches of government

In this study the matter of checks and balances and separation of powers is the most important point to raise on the institutional side of the study. The Namibian Constitution creates three branches of Government and a system of checks and balances for them. Therefore we need to establish whether these rights are also protected *de facto*. Diescho writes:

“The idea of checks and balances refers to the mutual relationship between the various organs of the government, namely the legislature, the executive and the judiciary, insofar as they perform their important functions in such a manner that they keep each other in their proper place, in that they keep careful watch on each other while at the same time being independent of each other. Inasmuch as they recognize the separation of power and roles between them, each of these organs of government seeks to protect themselves against the others, and the citizens of the country against all by requiring the approval of one organ or department for certain acts of another” (1994, p. 80).

It is essential for democratic governance and the protection of the rights of the citizens that no one branch can have influence over another. The dominance of one over another could be seen as a sign of a democracy that has not consolidated, and in fact a factor that would independently prevent consolidation, the kind of factor that we sought out to find in the problem statement.

Nevertheless, Diescho describes the Namibian Constitution guaranteeing that this won't happen. He writes:

“The concept of checks and balances is a very important feature of the Namibian Constitution in that, although the legislature has the power and responsibility to enact the law, the Executive (the President) has the power to approve or veto, or withhold assent. The President may refuse to sign the bill from the National Assembly, in which case such a bill does not become a law. The courts have the power of judicial review, namely to interpret acts of parliament and to declare them unconstitutional and void. In other words, the three branches of government have the means to keep each other within the constitutional framework and limits” (1994, p. 82).

This is no doubt the original intent of the Constitution, for the checks and balances are the foundation of the idea of the *rechstaat*, a constitutional democracy.

However, the current political situation in Namibia, i.e. the dominant party system, creates a very different reality. The Constitution grants the right for the various political parties to appoint and dismiss members of the parliament and therefore, if the President acts as the leader of the dominant party ruling more than 2/3's of the National Assembly, a party that is internally not democratic but hierarchical, then the Executive has, according to the Article 48(1)(a) and (2) the power to influence the whole National Assembly and therefore the Legislative branch of government, i.e. making them dependent of his/her goodwill and therefore crossing the border of the independence of the branches.

Therefore, as we have established that in this political situation in Namibia with one party so dominant breaches could be made. But are they made? This should be asked in order to establish

whether Namibian government is acting against what we call the intention of the Constitution and against the principles of *rechstaat*.

There is an increasing number of examples where such violations took place. Iina Soiri (2005, interview) explains that, when Minister Nickey Iyambo was moved from the post of the Minister for Local Government and Housing to become the Minister of Mines and Energy and President Nujoma wanted to have Joel Kaapanda to replace him, the problem was that the Constitution requires the members of the cabinet to be members of parliament as well. This is a special parliamentary feature of Namibian government, which implies that the Executive branch should be working in accordance with the Legislative branch.

Kaapanda was not elected as member of the National Assembly, but this did not stop President Nujoma. An unwanted member of parliament was made to resign and Kaapanda was granted a seat in the Legislative body without elections. Soon after this he was appointed to become the Cabinet Minister (Soiri 2005, interview).

Similar and in some ways even more striking evidence is the rising of Leon Jooste, formerly not a member of Swapo but the trusted hunting trip organiser for President Nujoma, into the new Cabinet and to the position of Deputy Minister for Local Government and Housing, replacing Professor Gerhard Töttemeyer. He was placed by the party chairman Nujoma on the top of the Swapo election list as number nine in the October party conference, and was thus ensured a place in the new National Assembly (Amupadhi 4 Oct, 2004, p.1), but had previously in September (*The Economist* 10 Sep, 2004, p. 2) received the seat in the National Assembly the same way as Kaapanda making the party dismiss a member from the standing National Assembly.

Of course the Pohamba reign is not foreign to this manipulation of the Legislative branch either. When former Swapo Youth League Chairman Paulus Kapia, who was elected to the National Assembly in the 2004 elections and made minister to the first Pohamba cabinet, was charged of stealing 30 million Namibian dollars from the government and named Sam Nujoma in the investigation. The party chairman soon dismissed him from his seat in the National Assembly and replaced him by the next in line in the party list, Hidipo Hamutenya, stirring controversy and big headlines in the local media (Norman Tjombe 2005, Interview).

Henceforth, what do these three cases prove, similarly to the case of the Mayor of Ongwediva? As said before, the Constitution of Namibia is the primary source of civil and political rights for all Namibians. Are these rights violated by these examples? Furthermore, Dahl argues that in order to have democracy one needs to have all of his eight freedoms fulfilled, including the right to run for support and votes. Does Kaapanda's or Jooste's appointment breach on the rights of the MP's who were forced to resign? (Kapia's case is more muddled, because he was charged with a crime) After all they could still run for parliament from the ranks of another party. Not a party that would have any affect on policy issues, as we discussed in the case of the Mayor of Ongwediva, since there are no other parties than Swapo involved with policy making in dominant party systems like Namibia. Nevertheless they would be eligible to run for votes in another party.

Thus we conclude that these replacements of the members of parliament without elections do breach the political rights of the parliamentarian forced to resign, and therefore the rights of the citizens that elect him or her. This may be a feature of a dominant party system where one party can dominate more than two-thirds of the parliament. This is because when two-thirds of the seats are controlled by one party, the MP cannot find other ways to affect government policy. He or she either votes along the party line or will risk being forced to resign. The party in fact does not need the MP anymore, but vice versa only the MP is dependent on the goodwill of the party.

Should the situation change and the opposition gain more than one-third of the votes, then of course this argument would no longer apply. Government affairs could no longer be managed without the involvement of the opposition.

Then, similar doubts can be cast over the independence of the Judicial branch in comparison to the Executive as well. The Executive branch is reaching over to the side of the Judicial branch. The President can, with the acquired influence in the Judicial Service Commission<sup>7</sup>, effectively both appoint and dismiss all the holders of power in the Judicial branch. In both cases, the President can, in the current political situation, cross the border to influence the other branches.

To continue from Diescho's argument, he points out that,

...[This] illustrates how the three branches of government in Namibia – the legislature, the executive and the judiciary – are constituted and how they relate to one another in the normal functioning of the government, both locally and nationally, and how laws are made and enforced in democratic Namibia (1994, p. XVI).

We agree, that in the normal and democratic functioning of the Namibian government the branches would be independent. Nevertheless we also want to raise the point that, if the government, and in this case the Executive branch especially, seeks to empower themselves to the maximum, there is, in certain specific circumstances, a loophole in the Constitution, which allows breaching of the barriers of the independence of the three branches of government. This will be elaborated in detail further on in this chapter.

Therefore, we know that the separation of powers can be broken in Namibia, but do we know of any examples where Supreme Court Judges have been replaced? We must conclude that we don't have evidence of this. We only know of him regularly appointing his favourites to the high positions in the Judicial branch, but this is quite common and most importantly in accordance with the spirit of the Constitution. President Nujoma has appointed new Chief Justices four times within the last fourteen years (Menges 2 Nov, 2004, p. 1). Even in consolidated democracies the Executive always has the power to appoint the Judges in accordance with the Legislative Branch and who else would they appoint if not their favourites.

Thus our conclusion is that we know that the President could dismiss and replace members of the Judicial branch in Namibia, but we have no evidence of him doing so. Nevertheless, we must assume that if we know that he can dismiss them the high Judges must know this as well, therefore making them more inclined to be in favour of the President's opinions. Furthermore, we conclude that this is possibly the reason why the Supreme Court ruled that President Nujoma can in fact run for a third term in office, although the Constitution clearly states that the President is restricted to only two terms of office. The Supreme Court ruled that the first term started before independence and could thus in reality not be regarded as the first term, and only the term starting from 1994 would have been Nujoma's first term in office. More about this in the following chapters.

### **2.2.2.1. Amendment with a two-thirds majority**

It is very important to clarify the issue of a majority of two-thirds at this point of the study. The Constitution, can be amended for the most part with majority of two-thirds. This was one of the

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<sup>7</sup> See, The Constitution of Namibia: Article 85 for rules on appointment and resignation of JSC, Articles 82 and 84 for appointment and removal of Judges, and Article 86 for Attorney-General.

most important issues to be negotiated into the Constitution in the Namibian peace process, wrote President Martti Ahtisaari in his autobiography. This issue and the issues of fundamental rights, the equal setting for all political parties (including SWAPO), the one man – one vote principle, an independent judicial system and a balanced system of governance (checks and balances) were negotiated and agreed on in December 1981. Some three years after the United Nations Security Council Resolution 435 (1978) had been agreed on (Heikkilä 1997, p. 127).

This is why there was, and will always be, a major interest in following the Namibian general elections to see whether the dominant party will single-handedly receive the rights to amend the Constitution. If this happens the Constitution will be at the mercy of that particular party and its inner decision-making mechanisms. Diescho writes about the first democratic elections in 1989 where Swapo did not win the two-thirds majority, but remained with 57% of the valid votes:

“Politically the result meant that SWAPO, as had been expected by all serious observers, won a solid majority, but not the two-thirds (48 seats) [of the Constituent Assembly] required for the adoption of the Constitution. As the DTA was the principal opposition and the CAN with 3 seats was well to the right of it, SWAPO would have to receive all the votes of the other four small parties if it was to prevail in a contested situation – a daunting prospect” (1994, p 25).

Therefore also the internal democracy of the leading party, or lack thereof, and the whole electoral system becomes important for this study.

The Constitution says the following about the rights of the National Assembly and the National Council to amend it. Article 132 Repeal and Amendment of the Constitution:

- (2) The majorities required in Parliament for the repeal and/or amendment of the provisions of this Constitution shall be:
- (a) two-thirds of all the members of the National Assembly, and
  - (b) two-thirds of all the members of the National Council.

Furthermore, if the two thirds of the National Assembly agrees to amend, but the National Council doesn't the President can call a National Referendum on the issue, and if two thirds of the votes cast are in favour, the President may assent to the bill according to the Article 56.<sup>8</sup>

We have already discussed how the party and the President can control all three branches of government, but this is only if they receive a majority of two-thirds in the National Assembly. Without the two-thirds majority they cannot control the whole of the Legislative branch only parts of it. After winning over two-thirds the National Assembly the Constitution grants the party, as discussed above, all the powers in that branch. Thus we say that the rights of Namibians based on the Constitution are infringed upon if one party dominates the National Assembly with over two-thirds of the seats, because then all powers handled in the National Assembly are dependent upon the goodwill of party leadership.

We have established that the MP's need to be in compliance with the party in order to remain as Members of Parliament and therefore if one party, led by the President of the Nation, receives more than two-thirds of the seats, then all the powers of the parliament are in fact in the hands of the President. This infringes upon the political rights of Namibians, because then all are not equal in

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<sup>8</sup> See, further points on Article 132 of the Namibian Constitution.

front of the law but some can rise above it, and furthermore it breaks the rule of the Constitution where all the rights and liberties of Namibians depend upon.

The way it is breaking it will be further elaborated on in the following chapters.

### **2.2.3. Laws entrenched into the Constitution and the special significance given to the Human Rights**

Chapter 3 of the Constitution sets the protection of fundamental human rights and freedoms into the Constitution. Article 131 Entrenchment of Fundamental Rights and Freedoms protects these freedoms from amendment. No majority can amend them. Article §131 states the following:

“No repeal or amendment of any of the provisions of Chapter 3 hereof, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that Chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.”

Furthermore, to understand Namibian democracy one needs to determine which freedoms the Constitution provides. Chapter 3, Fundamental Human Rights and Freedoms is one of the most tested chapters in the Constitution. For the first ten years of Namibian independence there had been more than 60 High Court and Supreme Court cases on these articles (LAC 2000, p. intro). Article §5 of the Chapter 3, Protection of Fundamental Rights and Freedoms, says:

“The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed”<sup>9</sup>.

The Articles in Chapter 3 are: Article 5, Protection of Fundamental Rights and Freedoms, which orders, as quoted above, the three branches of government to protect them; Article 6, Protection of Life, which essentially bans any execution from taking place in Namibia; Article 7, Protection of Liberty, which protects the right of any individual to liberty except of the ones deprived of it by law; Article 8 Respect for Human Dignity, which guarantees any Namibian respect for human dignity and bans cruel, inhuman or degrading treatment or punishment; Article 9 Slavery and Force Labour bans any form of slavery or forced labour; Article 10 Equality and Freedom from Discrimination guarantees that all persons shall be equal before the law and no one can be discriminated against; Article 11, Arrest and Detention, protects the rights of the detained and arrested; Article 12 Fair Trial guarantees everyone a fair trial; Article 13, Privacy, grants the right for privacy; Article 14, Family, grants all men and women of age the right to marry and have a family; Article 15, Children’s Rights, grants the children of Namibia the right to a name, nationality, the right to know their parents and be cared for by them, and the right to not to be exploited economically, or detained under the age 16.

Articles 16 Property and Article 17 are especially interesting for the purposes of this study. Let us quote them:

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<sup>9</sup> This article was tested by the Supreme Court and High Court cases; State vs. Kandavazu 1998 NR1 (SC) and State vs. Hedenreich 1995 NR 234 (HC)

“Article 16 Property

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the rights to acquire property by persons who are not Namibian citizens.
- (2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment or just compensation in accordance with requirements and procedures to be determined by Act of Parliament.”

Therefore even the white farmers have the right to their property entrenched into the Constitution, although the State can, would the Parliament pass a law on land reform for example, acquire the land with “just compensation”. The word “just” is interesting; common logic would of course be that the market value for the land would be the just price. But then on the other hand, J.M. de Wet the leader of the Commercial Farmers Union and a signatory for the Constitution leading the right-wing party Action Christian National (ACN), for example has been publicly advocating, in his efforts to make the land owned by whites less attractive for the land reform, that the land is “worthless” without the government subsidies they used to receive from the apartheid-South African government (de Wet 2002, interview).

Moreover, we should of course also note the Article 22 of the Constitution, Limitation upon Fundamental Rights and Freedoms, for it is important especially when discussing the issue of land reform. The Article says:

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

Therefore we can assume for example that it would be unconstitutional for example to go forward with a Zimbabwean style land reform where individual farms are targeted to be expropriated.

The Agricultural (Commercial) Land Reform Act (1995) and its Amendment Act (2003) say that it is possible for the Minister to expropriate land in the name of public interest, if

- (a) The land is under-utilised;
- (b) There is an excessive amount of it;
- (c) Workers working on the land are mistreated; or
- (d) It is owned by foreigners or agents working in behalf of foreign owners.<sup>10</sup>

A more detailed discussion on the whole land reform issue will follow in chapter 3.

The Constitution continues with the Article 17 Political Activity:

- (1) “All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of Government. All citizens shall have the right to

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<sup>10</sup> See, Act 6 of 1995, Agricultural (Commercial) Land Reform Act and Act 14 of 2003, Agricultural (Commercial) Land Reform Amendment Act.



forma and join political parties and, subject to such qualifications prescribed by law as are necessary in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

- (2) Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office, unless otherwise provided herein.
- (3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society.”

#### Article 18 Administrative Justice:

“Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.”

The entrenched articles from Chapter 3 continue. Article 19 Culture, protects the right to culture, language, tradition or religion; Article 20 Education, grants all persons the right to education, sets compulsory primary education and grants the right for private schools.

Article 21 is, however important enough for this study to be spelled out. The fundamental freedoms entrenched should provide the necessary freedoms needed as ingredients for an active and consolidated democracy.

#### Article 21 Fundamental Freedoms

- (1) All persons have the right to:
  - a. Freedom of speech and expression, which shall include freedom of the press and other media;
  - b. Freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
  - c. Freedom to practice any religion and to manifest such practice;
  - d. Assemble peacefully and without arms;
  - e. Freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
  - f. Withhold their labour without being exposed to criminal penalties;
  - g. Move freely throughout Namibia;
  - h. Reside and settle in any part of Namibia;
  - i. Leave and return to Namibia;
  - j. Practice any profession, to carry on any occupation, trade or business.
- (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

#### Article 22 Limitation upon Fundamental Rights and Freedoms

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

Where then does the gap between the fundamental rights granted by the Constitution and the “free” and “partly free” ratings given by the Freedom House on the exercise of freedoms and liberties come from? Why does the Media Institute for Southern Africa (MISA) complain about press freedom not being fully exercised in Namibia or why does the National Society for Human Rights (NSHR) periodically unearth human rights violations in Namibia, when they are all protected by the Constitution for all persons? Are the violators of these rights, who have been argued many times to be the State by the aforementioned NGOs, acting unconstitutionally? The question is who interprets the Article 21(2), and where can the fundamental freedoms be infringed in the “interests of sovereignty, and integrity of Namibia, national security, public order, decency or morality”?

The Constitution says in Article 78 that it is the independent Courts of Namibia that interpret the law. But are the courts independent in their judgement of the actions of the State itself? This is the main reason why the integrity of the three branches should be thoroughly investigated. For if the courts are not an independent branch of government then these fundamental freedoms cannot be protected from the persecution of the State. This is, as Diescho (1994, p. preface) argues, the fundamental reason why the liberation struggle was fought, so that the State could no longer persecute its citizens.

Therefore if the Judicial branch of government is not found to be independent, then the freedoms cannot be protected. Furthermore, if the freedoms cannot be protected, there cannot be consolidation of democracy. Diescho adds:

“As a people who had lived under draconian apartheid laws for decades, Namibians started their Republic with a commitment to the rule of law and a respect for fundamental rights that cover a wide range. Apart from the strong checks and balances that define the relationships between the three branches of government, the Constitution contains fundamental rights and liberties that cannot be changed by one or other branch without due procedure of constitutional amendment. The fundamental rights that are enshrined in the Constitution include the protection of liberty, respect for human dignity, equality and freedom from discrimination on the grounds of race, gender, religion or ethnicity, the prohibition of forced labour and slavery, the prohibition of arbitrary arrest and preventive detention, the right to a fair trial, the right to privacy and the right to marry and found a family” (1994, p. 9).

It is vital for this study to look at the Constitution very carefully. There are various claims about stagnated democratic developments in Namibia and it is important to find out whether these claims, true or not, could be constitutional. It is therefore the aim of this study, not to establish whether they do, but to find out whether undemocratic practices could exist within the boundaries of this internationally appraised document (Diescho 1994, p. preface). Would the Constitution of Namibia allow one factor or several factors to prevent democratic consolidation for the Namibian people? Would the Constitution allow the crumbling of democratic institutions, say the three main organs of the State, mentioned in the first article?

Furthermore, to link our study to institutionalist theory: if one compares the freedoms entrenched in the Constitution they are unmistakably similar to the eight freedoms Dahl requires for his polyarchy, listed earlier in this chapter. Only the last point’s existence in the Namibian Constitution can be debated.

The Constitution holds the people's elected representatives in high regard. Nevertheless, as Supreme Law, it prevents the Parliament to entrench, amend and/or repeal the Fundamental Rights stated in Chapter 3. Article §132 provision 5 states:

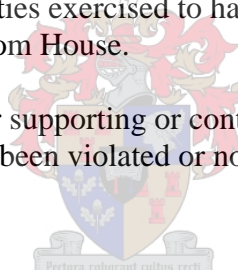
Nothing contained in this Article:

- (a) shall detract in any way from the entrenchment provided for in Article 131 hereof of the fundamental rights and freedoms contained and defined in Chapter 3 hereof;
- (b) shall prevent Parliament from changing its own composition or structures by amending or repealing any of the provisions of this Constitution: provided always that such repeals or amendments are effected in accordance with the provisions of this Constitution.

It can therefore be concluded that even if Namibia would find itself in an even stronger dominant party system, and the opposition would weaken even further, leaving the leading party with even more seats in the National Assembly than the current number above a two-thirds majority, the Fundamental Rights and Freedoms of Namibians could not be constitutionally infringed upon.

Nevertheless, as we set out to also investigate the *de facto* rights of Namibians and not only the rights granted to them by the Constitution *de jure*, we have to conclude that although we have not searched for evidence of Human Rights violations, for that is a theme big enough for a whole thesis of its own, we have to note that there are continuous reports by the Human Rights watchers of government misbehaviour towards its own citizens.<sup>11</sup> For our purposes, when examining whether Namibians have enough rights and liberties exercised to have a consolidated democracy we depend solely on the ratings given by the Freedom House.

We present no empirical evidence either supporting or contradicting arguments about whether the human rights of Namibians would have been violated or not.



#### 2.2.4. Limitation of rights

The Namibian Constitution has several clauses that limit the degree to which the government may “in the public interest”, in times of national crisis, act in a manner that might be an encroachment upon the guaranteed human rights and liberties. Diescho writes:

“The restrictions in the Namibian Constitution are probably more restrictive than those, which are regarded as the minimum in international conventions... It is also provided in the Constitution that the fundamental freedoms have to be exercised according to the law of Namibia, but the law is only constitutional if it imposes what amounts to “reasonable restrictions”, and that is an objective test. Freedom of speech for example can be regulated under any law on obscenity, but those laws which limit the exercise of the underlying freedom have to meet the requirement of being “reasonable restrictions ... which are necessary in a democratic society”, and the courts will ultimately give meaning to that” (1994, p. 60-61).

Therefore we stumble again on the same issue as before. The courts have to remain independent in order for these freedoms to be protected. For if they do not, the freedom of the press could be in jeopardy were it to print anything political opposing the Executive branch or the leading party.

<sup>11</sup> See, National Society for Human Rights reports from the past 15 years.

The Constitution is the primary source for Namibians' rights and liberties. In previous chapters we have presented evidence that the courts may fail to be independent especially toward the President, for they may be influenced by the Judges that are dependent upon his goodwill for their positions.

Thus Diescho's point is worth taking. "Reasonable restrictions" can be interpreted in many ways and ultimately that this interpreting is done by the courts. If courts cannot remain independent then also the Constitution and therefore the rights of the citizens may be suffering. The MISA has given us the evidence the way these reasonable restrictions are exercised, but whether this is in compliance with the rulings of the courts we cannot say.

### 2.2.5. Powers of the government are subject to judicial review

There are three branches of Government in Namibia. Article §1 states that, "all power shall vest in people of Namibia who shall exercise their sovereignty through the democratic institutions of the State (2)", and "The main organs of the State shall be the Executive, the Legislature and the Judiciary (3)." Comprehensive checks and balances have been provided for.

The Judicial branch has been allocated the power of review on the basis of this division of power. First the Constitution vests the judicial power into the three branches of Courts. Article §78 (1) says:

The judicial power shall be vested in the Courts of Namibia, which shall consist of :

- (a) a Supreme Court of Namibia;
- (b) a High Court of Namibia;
- (c) Lower Courts of Namibia.



The power of interpretation of the Constitution, other laws and fundamental rights and freedoms are vested in it. Both the Supreme- and the High Court have this power. Only the decisions of the High Court can be appealed to the Supreme Court.

The powers vested into the Supreme Court become evident in the Constitution Article §79 (2), which says:

"The Supreme Court shall be presided over by the Chief Justice and shall hear and adjudicate upon appeals emanating from the High Court, including appeals which involve the interpretation, implementation and upholding of this Constitution and the fundamental rights and freedoms guaranteed thereunder. The Supreme Court shall also deal with matters referred to it for decision by the Attorney-General under this Constitution, and with such other matters as may be authorised by Act of Parliament."

According to the Article §80 of the Constitution the High Court will hear and adjudicate disputes upon all civil disputes and criminal prosecutions. It also has the power to interpret laws, including the Constitution. In contrast to the Supreme Court the High Court will hear appeals from the lower courts and again its decisions can be appealed in the Supreme Court. It is vital for good governance that the judgements of the courts, the judicial review of the laws made by the other two branches of government, and the whole Judicial branch are independent, for if they are dependant on another branch or a certain political view, then the democratic process of law-making is tilted.

Again we rely on the evidence presented before. How can the rights of Namibians be protected by the Constitution, if we conclude that the Judicial branch can be influenced by the President? If the

Judicial branch is in fact influenced, then ultimately also the powers of the other two branches cease to be “under judicial review.”

The evidence again is two-fold. First we say it’s possible and then whether it is in fact done. Therefore we have no evidence whether powers of the Executive and Legislative branches would not have been under judicial review. We only suggest that under this dominant party system it could be possible for the President for example to influence the judges in order to remain in office for more than two terms. The judges would know better than refuse to grant extraordinary powers to the reigning President, because they would soon lose favour in the eyes of the President and with it their positions as High Court Judges.

### 2.3. Namibia has a presidential system

Concluded Aristotle in *The Politics*:

*“It is evident, then, that those regimes which look to the common advantage are correct regimes according to what is unqualifiedly just, while those which look only to the advantage of the rulers are errant, and are all deviations from the correct regimes; for they involve mastery, but the city is a partnership of free persons” (Porter ed. 1989, p. 106).*

In this chapter our attention is focused on the Namibian presidential system formulated in the Constitution, and furthermore, the perils of this presidentialism and the perils of blurring of the state and party lines and how it effects the Executive branch of the Government. Also, the theoretical constitutional extent of the power of the President of Namibia is investigated, as are the kinds of problems that the blurring of the line between the state and the leading party could pose. For example, how far does the power of the President stretch over the other independent branches of the government, if the line between the party and the state is blurred? Then ultimately, could these perils be the one factor or several factors that prevent Namibian democratic consolidation, and if so, are these issues problems of the Constitution or presidentialism *per se*?

First we have to note that the President, when he ascends to power, does not have to relinquish his party membership or party leadership as it is the case in e.g. Finland. Nevertheless, it should be noted that this alone does not mean anything. There are several advanced and consolidated democracies that have the Head of State as the leader of the strongest party as well. Typical examples can be found in Sweden, The Netherlands or United Kingdom where the Prime Ministers continue as the main holders of the Executive and party leadership powers. In Finland the rule has been that the President has to rise above party politics for the benefit of national unity.

Secondly we must note that the Namibian Constitution can create, though it still hasn’t, the kind of situation that Juan Linz and Diescho describe as the perils of presidentialism. It could be possible that the President would represent one party and another would have a majority in the National Assembly and then the two branches, including the Cabinet and the Parliament in the case of Namibia, would be at odds with each other. Nevertheless, this is not a major concern for Namibian democratic consolidation at the moment. What is more threatening are the results of the dominance of one party with no turnovers.

Therefore to start from the very basics, we shall look at the establishment and most importantly the powers of the Executive branch that make Namibia a presidential system, rather than a parliamentary one. Then we will investigate how “pure” a presidential system the Namibian system really is, and whether it has any parliamentary tendencies?

Juan Linz defines the powers of the President in presidential systems in his article “Perils of Presidentialism”:

“In presidential systems an executive with considerable constitutional powers—generally including full control of the composition of the cabinet and administration—is directly elected by the people for a fixed term and is independent of parliamentary votes of confidence” (1990, p. 52).

The Namibian President is elected by a direct vote. The people confer legitimacy on the institution. Article §28 (2) reads:

Election of the President shall be:

- (a) by direct, universal and equal suffrage; and
- (b) conducted in accordance with principles and procedures to be determined by Act of Parliament: provided that no person shall be elected as President unless he or she has received more than fifty (50) per cent of the votes cast and the necessary number of ballots shall be conducted until such result is reached.

Diescho describes, in line with Linz’s thinking, the challenges in the Namibian Presidential system:

“The President is elected directly by the people, while the Prime Minister and the Cabinet are elected by proportional representation. In a situation where party differences are deep and have ancient roots, a real problem could easily arise if, for example, a president were to win an election while his/her party loses the general election. Such a situation would force the President to work with an opposition National Assembly, from which he/she would have to select his/her executive” (1994, p. 102).

The Prime Minister and the other members of Cabinet have to be members of the National Assembly.<sup>12</sup> Therefore they have to be elected to the National Assembly by proportional representation and the party list, but election to Cabinet positions is solely in the hands of the President. The President can choose his or her cabinet without the approval of the National Assembly. This is a typical feature of presidential systems which differentiates it from parliamentary systems, which furthermore strengthens the Presidents power. Thus, as Diescho describes, a situation where the Legislative branch would have to work with an Executive branch that would unanimously be from the opposition party could potentially exist.

In order to establish whether the rights and liberties of Namibians based on the Constitution are violated, evidence of blurring the line between the state and the leading party must be found and in this case the Office of the President and the Swapo party.

Frequent appointments and dismissals of the parliamentarians to suit the President’s needs are clearly such evidence. When appointing a Cabinet Minister the President is supposed, according to the Constitution, to comply with the Legislative branch by only appointing Cabinet Ministers from among the members of the National Assembly. This is an important parliamentary feature of the Namibian system of government.

President Nujoma nevertheless used his powers as Chairman of Swapo to appoint non-members of parliament to his Cabinet. Appointing Kaapanda to the National Assembly without elections, for

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<sup>12</sup> See, The Constitution Art 35(1)

example, is a shining example of this and therefore we must conclude that blurring of the line between the Office of the President and the Swapo party, between the state and the leading party, does happen.

### 2.3.1. Forming of the Cabinet

Article §27 Head of State and Government, clearly defines the Namibian system as presidential. The Namibian President forms the Cabinet and unlike in parliamentary systems, the ministers, though they need to be members of parliament, are not subject to the approval of National Assembly, but only to that of the Head of State. Although Ministers are required to be Members of Parliament, their position in power depends solely on to the President and not on the National Assembly. Article §27 says:

- (1) The President shall be the Head of State and of the Government and the Commander-in-Chief of the Namibian Defence Force.
- (2) The executive power of the Republic of Namibia shall vest in the President and the Cabinet.
- (3) Except as may be otherwise provided in this Constitution or by law, the President shall in the exercise of his or her functions be obliged to act in consultation with the Cabinet.

Furthermore, the formation of the Cabinet is defined in Article §35 as follows:

- (1) The Cabinet shall consist of the President, the Prime Minister and such other Ministers as the President may appoint from the members of the National Assembly including members nominated under Article 46(1)(b) hereof, for the purposes of administering and executing the functions of the Government.
- (2) The President may also appoint a Deputy-Prime Minister to perform such functions as may be assigned to him or her by the President or the Prime Minister
- (3) The President or, in his or her absence, the Prime Minister or other Minister designed for this purpose by the President, shall preside at meetings of the Cabinet

The fact that Ministers must be members of the National Assembly is a typical parliamentary feature of the Namibian presidential system. Article 41 clearly makes the Ministers accountable to the National Assembly as well. The parliament can give a vote of no confidence to an individual member of the Cabinet and the President is then obliged to appoint a replacement. This, however, does not mean that the National Assembly would have any say in choosing the new Cabinet member, because choosing the Cabinet is not subject to parliamentary approval.

Interestingly, the Prime Minister is one of the least influential politicians within the government in Namibia. He or she has a high public profile, but the PM doesn't have a ministry of function to run, and therefore no budget allocation for it, but only an office to direct.<sup>13</sup> This makes the PM a somewhat empty entity between the President who runs the Cabinet and the other Ministers that execute government matters. In Namibia the PM is at best an advisor to the President, President's messenger to the parliament and a vice-chairman to the Cabinet. Article §36 Functions of the Prime Minister states it best, "The Prime Minister shall be the leader of Government business in Parliament, shall co-ordinate the work of the Cabinet and shall advise and assist the President in the execution of the functions of Government."

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<sup>13</sup> We believe it is fair to say that running a mere office without a clear function does not qualify as running a ministry.

The Legal Assistance Centre in association with the Law Society of Namibia interprets the situation the following way. Their publication *Know Your Constitution!* writes:

“The Cabinet is a group of government officials who advise the President. The members of the Cabinet are the President, the Prime Minister, the Deputy Prime Minister and the Ministers of each government department” (2000, p. 20).

Ministers are advisors to the President on the matters in their portfolio, not independent directors of their ministries. The President of Namibia has significant power. As head of the Cabinet he or she can appoint or dismiss the Prime Minister and various other Ministers. All the Ministers and therefore the various Ministries are in a patron-client relationship with him or her, giving him or her power in the Executive branch.

Furthermore, the President can also dissolve the National Assembly and call for new elections. The article §57 reads:

- (1) The National Assembly may be dissolved by the President on the advice of the Cabinet if the Government is unable to govern effectively.
- (2) Should the National Assembly be dissolved a national election for a new National Assembly and a new President shall take place within a period of ninety (90) days from the date of such dissolution.

### **2.3.2. The President’s powers of appointment and dismissal**

The President’s powers of appointment and dismissal extend over the Judicial branch of the government. The Constitution lists the President’s powers of appointment as follows. There are two categories of powers of appointment and removal; first, the direct power regarding to the Prime Minister and other Cabinet Ministers and Deputy-Ministers and the Attorney-General and the Director-General of Planning (The National Planning Commission). The second category regards situations where the President is required to consult the various commissions set up to recommend and advise the President, such as the Judicial Service Commission, the Public Service Commission and the Security Commission.

Article §32 (3)(i) lists the President’s power of appointment over the Judicial branch members like the Attorney-General (cc) and Article §32(4)(a) on the recommendation of the Judicial Service Commission:

- (aa) the Chief Justice, the Judge-President of the High Court and other Judges of the Supreme Court and the High Court;
- (bb) the Ombudsman;
- (cc) the Prosecutor-General.

What makes this interesting is the leverage the President has on these various commissions. For example, the President has the power to appoint and dismiss most of the Judicial Service Commission. Article §85, The Judicial Service Commission states:

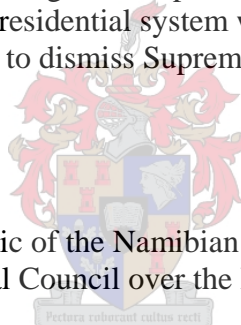
- (1) There shall be a Judicial Service Commission consisting of the Chief Justice, a Judge appointed by the President, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia.



- (2) The Judicial Service Commission shall perform such functions as are prescribed for it by this Constitution or any other law.
- (3) The Judicial Service Commission shall be entitled to make such rules and regulations for the purposes of regulating its procedures and functions as are not inconsistent with the Constitution or any other law.
- (4) Any casual vacancy in the Judicial Service Commission may be filled by the Chief Justice or in his or her absence by the Judge appointed by the President

—therefore leaving all the highest offices in the Judicial branch at his or her mercy, too. When the President has the power to assign and dismiss three of the five members of the Judicial Service Commission, he or she *de facto* receives the power to hire and fire all the highest offices in the Judicial branch of the Government. The powers in the Judicial Service Commission have established a clear patron-client relationship with the offices of Attorney-General, the Chief Justice, the Judge President of the High Court and other Supreme Court- and High Court Judges. A more detailed look on these institutions and the implications of this for the independence of the Judiciary will be taken later on in the chapter.

Nevertheless, whether it is beneficial to the system and the consolidation of democracy or not, we have clear evidence that the President can appoint and potentially also dismiss the various Judges leading the Judicial branch with the powers of the JSC. As discussed before, the High Court Judges have been replaced four times already during the independence (Menges 2 Nov 2004, p. 1). This is a striking contrast to the United States presidential system where the independence of the judiciary is protected by no one having the power to dismiss Supreme Court Judges.



### 2.3.3. Parliamentary characteristics

The strongest parliamentary characteristic of the Namibian system is the National Assembly's power of impeachment with the National Council over the President.

The President serves five-year terms, as stated in the article §29 (1a), but can be removed from office if a majority of two-thirds of all the members of the National Assembly and National Council adopt a resolution impeaching the President on the ground that he or she has been found guilty of a violation of the Constitution, guilty of a serious violation of the laws of the land, or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of the President (2), The President can serve for no more than two terms (3).

Furthermore, even though the President has the power to employ and dismiss the members of his or her cabinet the National Assembly can also give a vote of no confidence to a member of the Cabinet, and in this way force the President to appoint a replacement. Article §39 says:

“The President shall be obliged to terminate the appointment of any member of the Cabinet, if the National Assembly by a majority of all its members resolves that it has no confidence in that member.”

From this angle the Namibian presidential system has parliamentarian characteristics. The Cabinet members must have the support of the National Assembly.

As for the other issues the parliamentary characteristics are also based on the Constitution. For example, Cabinet members do in fact need to be parliamentarians in Namibia. Namibia has not

experienced impeachment of the President, and we have no evidence of it. Therefore this letter of law has not been tested.

### 2.3.4. The role of the National Assembly and the National Council

The relationships of the National Assembly and the National Council with the President and the whole Executive branch are complex and numerous. The most important characteristics are the powers to dissolve the National Assembly. As stated in Article §32 (3), the President has the power to:

- (a) dissolve the National Assembly by Proclamation in the circumstances provided for in Article 57(1) hereof;
- (b) determine the times for the holding of special sessions of the National Assembly, and prorogue such sessions.

“The legislative power are vested in the National Assembly”, starts the article §44 about Legislative power and continues, “with the power to pass laws with the assent of the President...” Here lies the core of the relationship between the National Assembly and the President. The President needs to approve any bill passed in the Parliament, and if he or she refuses, the bill will be sent back to be redrafted.

Nevertheless, if the National Assembly and the National Council are overwhelmingly in support of the bill and it receives more than two-thirds of the votes, Article §56 says: “The President is obliged to give his or her assent thereto.”

Furthermore, there is another peculiar feature of the Namibian system. The President has the power to appoint, without elections, six (6) members of Parliament. Article §46(1)(b) about the composition of the National Assembly, after the elected 72 members, says as follows:

“[N]ot more than six (6) persons appointed by the President under article §32(5)(c) hereof, by virtue of their special expertise, status, skill or experience: provided that such members shall have no vote in the National Assembly, and shall not be taken into account for the purpose of determining any specific majorities that are required under this Constitution or any other law.”

The President can also, “initiate, in so far as he or she considers it necessary and expedient, laws for submission to and consideration by the National Assembly” as stated in Article §32(5)(b).

We argue that the Constitutional right of Namibians to have an effective parliament representing them is in a cloud of doubt. We have evidence that there exists blurring of lines between the state and the party, as well as evidence of the President in fact replacing the people’s representatives in the National Assembly. This constitutes a violation of the Constitution and more importantly a violation of the right of Namibians to have their selected representatives in the National Assembly in accordance with the party lists they have chosen.

The Namibian Constitution does in Article §48 grant parties the right to replace their candidate in the National Assembly in extreme cases. Nevertheless, it does not grant this right to the President of the Republic alone, for that would violate Article §1 of the Constitution.

### **2.3.4.1. An independent second branch of government?**

All these powers are quite ordinary in presidential or mixed systems of government. They become extraordinary only if the line between the party and the state becomes blurred. If the party works through the presidential institution, or if the powers of the Executive branch and the party lie in the same hands, the combination becomes unconstitutional and potentially threatening to the development of democracy. For it is stated in Article §1 of the Constitution that there should be three branches of government, all free of each other's influence.

This arrangement would become stagnating to the consolidation of Namibian democracy, if the leading party for example would be governed, or, even worse, hierarchically governed by the same person that has received the Presidential powers. For in Namibia, the party can not only appoint but also, according to the article §48, dismiss the parliamentarian from his or her duties. It should also be noted that the chairman of Swapo can appoint the first 12 positions on the party list, as both Tangeni Amupadhi (4 Oct 2004, p. 2) and Klaus Dierks (the Internet, accessed 11.8.2004) have noted.

### **2.3.5. Perils of presidentialism**

Juan Linz (1990, p. 53) writes about the perils of presidentialism. For him, the perils of presidentialism are twofold: (1) the winner takes all—no parliamentary role for the losing candidate (Jonas Savimbi went back to the bush and became a warlord) and (2) that deadlocks could emerge with the president representing one party and the legislature being dominated by another, as often is the case in the United States of America. Nevertheless, these scenarios, or these perils, do not apply to present-day Namibia, as President Nujoma and the Swapo -party have won all the contested elections.

To answer the question of the first peril of the presidential system, the winner does take all power in Namibia, although the Constitution has installed parliamentary characteristics into the system. The President and the leader of the reigning party control party lists, and with that all political power in Namibia. There are little if any ways for the opposition to contribute to the governing of the country. The issue boils down to party discipline, which will be discussed in detail in the following chapter while discussing the zero-sum elections.

Diescho (1994, p. 102) discusses the second peril when discussing the challenges of the Namibian Constitution. He argues that there could be a President from one party and the majority from another in Namibia, which could potentially drive the country into a constitutional crisis. That possibility is, however, very remote for now, since Swapo has such an overwhelming dominant-party position in Namibia. Rather, the "peril" here is not presidentialism, but the blurring of state and party lines.

### **2.3.6. Nujoma's three terms in office**

Sam Nujoma, the first and at the time of writing this still the only President of Namibia is even more popular than his own party Swapo. He was overwhelmingly more popular than any of his opposing candidates in the 1999 elections and he is the unanimous selection amongst non-voters also. He received 76% of the total votes cast and 60% of the non-voters interviewed in the Keulder-study (2001, p. 24-25). It was therefore humanly understandable that he sought to extend his

presidential tenure to a third term in office, although the Constitution clearly restricts the presidential terms to two. Article §29 of the Constitution, Term of Office, says:

- (1) (a) The President's term of office shall be five (5) years unless he or she dies or resigns before the expiry of the said term or is removed from office.  
 (b) In the event of the dissolution of the National Assembly in the circumstances provided under Article 57(1) hereof, the President's term of office shall also expire.
- (2) A President shall be removed from office if a two-thirds majority of all the members of the National Assembly, confirmed by a two-thirds majority of all the member of the National Council adopts a resolution impeaching the President on the ground that he or she ahs been guilty of a violation of the Constitution of guilty of a serious violation of the laws of the land or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of President.
- (3) A person shall hold office as President for not more than two terms.
- (4) ...

It is especially interesting for this study to follow the decisions made in 1999 about Sam Nujoma's eligibility to run for a third term, because we have explained that the potential influence of the presidential institution on the Judges of the Supreme Court is considerable. It was exactly those judges that we have cast the doubt upon that decided in favour of Nujoma. The Supreme Court's decision was that the first term in office, from the first elections 1989 to the 1994 elections was really not a term in office for him, since he was elected President before the actual birth of the Republic on March 21<sup>st</sup> 1990. Therefore it was concluded by the Supreme Court judges that President Sam Nujoma could in fact, after serving exactly ten years in office, seek re-election.

#### 2.4. The Office of the Ombudsman

The Ombudsman is a government watchdog institution. It is discussed in this essay separately, because it is the one institution of government that should investigate the issues discussed in this study; the protection of rights and liberties, corruption, and to some extent the separation of powers. The Office of the Ombudsman's task, as stated in the Constitution, is to independently investigate and report government misconduct and to take them forward, if necessary, to the Courts of Namibia.

The Ombudsman<sup>14</sup> system originated in Sweden. Unlike in Namibia, it is usually a part of the Legislative branch and is called a parliamentary ombudsman. Pesonen and Riihinen write:

“The parliamentary ombudsman is a typically Scandinavian office; Sweden established it back in 1809 and the Finnish one was started in 1920. Denmark followed suit later, adopting somewhat different model. In recent years the office has become well known internationally and also the European the European Parliament established such an office in 1995. The roles of the ombudsmen are not identical in different countries: in some, such as the French *mediateur*, the ombudsman attempts to mediate between the citizen and the public administration, in Latin American countries he emphasizes the protection of human rights, whereas in Sweden and Finland the ombudsman watches over the legality of all public administration and is required to prosecute in cases of serious wrongdoing” (2002, pp. 205-207).

<sup>14</sup> The word ombudsman is Swedish and directly translated it comes from two words “ombud” and “man”; i.e. authorised man or authorised representative.

The effectiveness of the institution comes from its independence. Rendering the office under the influence of the Executive branch can prevent the fairness of the investigation.

### 2.4.1. The role of watchdog institutions in Namibia

In the case of Namibia, the Namibian Office of the Ombudsman is placed, according to the Constitution, if not within the Executive branch of government, at least under the influence of the Office of the President, if we accept the above-mentioned logic that the President has influence over the Justice Service Commission. Chapter 10 of the Constitution writes about the Ombudsman in Article §89, Establishment and Independence:

- (1) There shall be an Ombudsman, who shall have the powers and functions set out in this Constitution.
- (2) The Ombudsman shall be independent and subject only to this Constitution and the law.
- (3) No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all organs of the state shall accord such assistance as may be needed for the protection for the independence, dignity and effectiveness of the Ombudsman.
- (4) The Ombudsman shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him or her to practice in all Courts of Namibia.

So, especially the sub-article (3) should guarantee immunity from interference. Furthermore, the independence is especially protected from the Cabinet, including the President, who directs the Cabinet and the legislature.

There has been talk of founding a special branch of government to deal with corruption. Concerns have also been raised about the new branch undermining the authority of the Office of the Ombudsman, for it is supposed to be investigating corruption as well. If the new office is lesser in its powers to investigate the government then these concerns could surely be very legitimate.

Namibia ranked 28<sup>th</sup> in 2002 and 35<sup>th</sup> in 2003 in the World Transparency International Corruption Perceptions Index (The Internet, accessed 11.8.2004). These ratings though declining are still considerably high, especially compared to the environment for corruption. Robin Sherbourne writes, in line with Diescho (NID 2000, p. 31), that bad signs are evident. He argues the opportunities are there and the institutions raising the chances of getting caught are not (yet) operating effectively. He concludes,

“One issue the economics literature fails to address is whether dominant party economies have higher or lower levels of corruption. In theory there are arguments on both sides. On the one hand the leadership of a party securely in power is not compelled to maintain its position by dispensing favours or turning a blind eye. On the other hand accountability is likely to be weak if a party has an overwhelming majority in parliament and control over the civil service. The conclusion here seems to be that much depends on the leadership’s willingness to tolerate corruption and here the signs are not good. The ruling party’s commitment on governing with accountability in its 1994 manifesto remains as yet unimplemented. It is hard to believe stamping out corruption is a government priority and its proposed independent corruption commission remains to be established. Yet this is what will have to happen if corruption is not to seriously undermine Namibia’s economic future” (NID 2000, p. 68).

Diescho's picture is even bleaker. He argues that there is a disregard for ethics as enshrined in the Constitution:

“The subject of good governance with a culture of a bureaucratic ethic continues to be on the agenda of the debate about strengthening democracy in Namibia. More often than not, tendencies within office bearers of the state indicate a disturbing pattern of mal-administration and general abuse of power. The result is a total lack of accountability on the part of those in position of political power. At the heart of the problem is a blatant disregard of ethics enshrined in the Constitution of the Republic” (NID 2000, p. 31).

#### **2.4.2. The Independence of the Office of the Ombudsman secured?**

The problem is mainly concerns the independence of the investigators. The whole government administration working in a patron-client relationship with the President makes independent investigation difficult if not impossible; especially if the office itself is also under the auspices of the Cabinet.

Contrary to the sub-article (3), the Ombudsman is placed in a patron-client relationship with the President of the Republic, if we accept again that the Judicial Service Commission is under the influence of the President. The article §90, Appointment and Term in Office and the article §94, Removal from Office, make it quite clear. The article §90 reads:

- (1) The Ombudsman shall be appointed by Proclamation by the President on the recommendation of the Judicial Service Commission.
- (2) The Ombudsman shall hold office until the age of sixty-five (65) but the President may extend the retiring age of any Ombudsman to seventy (70).

The article §94, Removal from Office, reads:

- (1) The Ombudsman may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission.
- (2) The Ombudsman may only be removed from office on the ground of incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.
- (3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in Sub-Article (2) hereof and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation.
- (4) While investigations are being carried out into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office.

The Ombudsman's relationship with the powers of the President can be compared to the status of the Chief Justice, the Judge President of the High Court, the other Judges of the Supreme Court and the High Court and the Prosecutor-General. The relationships to the Auditor-General and the Governor and Deputy-Governor of the Central Bank that need the recommendation of the Public Service Commission, and The Chief of the Defence Force, The inspector General of the Police and

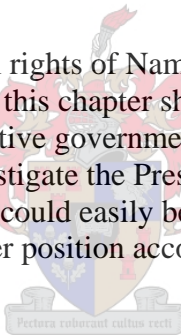
the Commissioner for Prisons that need the recommendation of the Security Commission are also similar<sup>15</sup>.

Diescho vividly describes this reality already in 1996:

Ultimately it is more than a culture of silence – it is a lifestyle, the norm and acceptable political language. This reality is compounded by the fact that most people in political offices would have nothing else to do if they left, or were told to leave political office. To them, losing political office is tantamount to losing political wealth, societal status and everything. So the ruling party will continue for as long as it can to reward and punish in this way and entrench its power. In the end there is no distinction between state interests and party interests as the party leader becomes a diviner and the provider for his royal flock (1996, p. 14).

If the Office of the Ombudsman was independent and checks and balances were in place, say, the power of appointment would lay with the President or the legislature, but power of dismissal would not, and he or she would be accountable only to the people and the Constitution, then the work of the Ombudsman would truly be effective. Now it seems there is a glass ceiling restricting its work. Everyone investigating the workings of the Government do so at the personal risk of being fired by the President. The work itself seems to be like walking a tight rope, constantly trying to regain one's balance. It takes too much civil courage to run the office under current circumstances without proper checks and balances in place.

We have no evidence of the Constitutional rights of Namibians to have an independent Office of the Ombudsman being violated, and therefore this chapter should be considered as supporting the argument that Namibians do have an effective government. Nevertheless, we do raise a point that should the Office of the Ombudsman investigate the President or his Cabinet and find something unconstitutional in their actions, he or she could easily be replaced, for the Ombudsman depends on to the goodwill of the Cabinet for his or her position according to the Constitution.



## 2.5. The Supreme Court and the Judiciary

The most important power of the Judiciary is the power of judicial review, to interpret the acts of parliament. The Supreme Court can, for example, interpret laws and declare them unconstitutional. Their task is to uphold law and constitutionalism. The power to interpret is an integral part of the balance of power between the three branches of government. With this power the Judiciary can check the excess powers of both the Legislative and the Executive branch. If they are independent in their judgement, the Judicial branch of government can—with the aid of the constitution—actively check the law-making powers of the National Assembly and the President. This is the Namibian system of checks and balances.

Discussing the independence of the Judiciary, however, there is a chance to create a loophole in the Constitution of Namibia. If the President can in fact influence the Judicial branch of government, then this casts a doubt on the rule of law in Namibia. If the Supreme Court Judges are, for example, threatened to lose their livelihoods if they decide one way or another, then the whole country has moved away from the rule of law.

<sup>15</sup> See, article §32 of the Constitution: Functions, Powers and Duties [of the President].

This issue calls for a thorough investigation. Not because of what has happened, but for how things could potentially be, for this could surely be the reason preventing Namibia from consolidating her democracy.

Again, it would be a violation of Namibians' rights if the independence of the courts is violated by the President making them dependent upon him. Nevertheless, we have no evidence of this, but only facts suggesting that the President complies with the rulings of the courts. Otherwise, for example, he wouldn't have had to bother asking them for the ruling in the case of a third term in office.

Nevertheless, we do suggest that due to the fact that the President can get the majority votes in the JSC the Judges may be subject to his influence.

### 2.5.1. The rule of law

In the most famous work *The Republic* Plato wrote about the danger of lawlessness some four centuries BC, a danger that Namibians should recognise all too well from the past:

*"I will try to tell you, I said. The most terrible and shameful thing for a shepherd is to train his dogs, who should help the flocks, in such a way that, through lack of discipline or hunger or bad habit, those very dogs maltreat the animals and behave like wolves rather than dogs.—Quite true.*

*We must therefore take every precaution to see that our auxiliaries, since they are the stronger, do not behave like that toward the citizens, and become cruel masters instead of kindly allies.—We must watch this"* (Porter ed. 1989, p. 31).

The rule of law is without a question a prerequisite to a functioning democracy. The rule of law is the one institution of democracy that cannot crumble without crumbling everything else. Freedoms and liberties can only be protected by the rule of law.

The first Article of the Constitution writes that there are three branches of government independent of each other's influence, and so it should be. Nevertheless, the same Constitution writes that other branches can seek influence over each other, namely the Executive branch can seek to influence the works of the Judicial branch. The President can, with the help of the Judicial Service Commission, appoint and dismiss Judges from office, therefore relying on nothing but the high integrity and the democratic mind of the President to protect the rule of law, for the rule of law is broken if anyone in society rises above it.

### 2.5.2. An independent third branch of government?

Writes Alexander Hamilton in *The Federalist No. 78*:

*"The complete independence of courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified expectations to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the*



*reservations of particular rights or privileges would amount to nothing*” (Swidorski ed. 1996, p. 4).

Let us also remind ourselves of the points that Carothers (2002, pp. 11-12) made about dominant-power syndromes. After making his descriptions of one movement, party, extended family or a single leader dominating the system in a way that there would appear to be little prospect of alternation in the foreseeable future, and that there would be some, but very weak, opposition and contestation to this group. Furthermore, he describes that the key problem in all this would be the blurring of the line between the state and the ruling party (or ruling political forces), he goes on to describe the typical problems in the Judicial branch of government:

“Whereas in feckless pluralism judiciaries are often somewhat independent, the judiciary in dominant-power countries is typically cowed, as part of the one-sided grip on power” (Carothers 2002, p. 12).

The above-mentioned is difficult to prove in Namibia. No doubt one could find all the high-ranking Judges and the key figures in the writings of Swapo and the liberation struggle history on the pages of Nujoma’s autobiography, but this should not be conclusive. For who else should the President appoint to these positions in any system than the closest and the most trusted persons. One should, however, ask, whether the President should have left the judges of the Apartheid period standing. I think not.

Therefore, the answer to this question, as to the whole larger question posed in this study should be found in time, when there are turnovers in government. Only then can one conclusively decide whether the President has in fact used his Constitutional power to influence the Judicial branch. This is to say that only if the President actually acts upon the powers granted to him could one see whether the Judicial branch is influenced. This would happen would the President fire the Attorney General, Judges of the Supreme or High Court or the sort, and replace them with his own, more suitable candidates. Only then can we point a finger at him for having trespassed on the wrong side of the border of the constitutional three branches of the government.

The attempt of this study is thus not to conduct a policy study, but simply to point out the loophole in the Constitution, reveal the problems of it and prove that these dramatic actions could potentially stagnate the democratic consolidation of Namibia.

The President may not interfere, but a loophole for a client-patron relationship definitely exists.

### **2.5.2.1. The election and dismissal of judges**

It is common practice in western democracies that outsiders cannot influence the judges. As Pesonen and Riihinen write about the judiciary in Finland:

“Two principles are fundamental to the functioning of Finnish courts of law: the judiciary is independent and the courts are permanent. There cannot be temporary courts, and Finland has career judges who cannot be removed from office and whose decisions are not influenced by outsiders” (2002, p. 203).

The United States is also famous for the same practice, where the independence and the powers of the Supreme Court Judges for example have gone so far, that they cannot *ever* be removed by

anybody from their office. This leads to extremely conservative rulings, and even, as history has shown us in the Civil Rights cases, to moral misconduct and misuse of their powers<sup>16</sup>.

Nevertheless, the Namibian Constitution for some reason<sup>17</sup> also makes elaborate provisions for the President to be able to remove Judges, starting with perhaps the most influential one, the Chief Justice and other Judges of the Supreme Court. First the power to appoint, Article §79. The Supreme Court, “(1) The Supreme Court shall consist of a Chief Justice and such additional Judges as the President, acting on the recommendation of the Judicial Service Commission, may determine.” Then, Article §32, Functions, powers and duties [of the President] writes:

- (4) The President shall also have the power, subject to this Constitution, to appoint:
  - (a) On the recommendation of the Judicial Service Commission:
    - (aa) The Chief Justice, the Judge-President of the High Court and other Judges of the Supreme Court and the High Court
    - (bb) The Ombudsman
    - (cc) The Prosecutor-General
  - (b) On the recommendation of the Public Service Commission:
    - (aa) the Auditor-General...

Furthermore, to complete the powers, as stated in Article §32(3)(i), the President can also directly appoint the Attorney-General similarly to the way he or she can appoint the Prime Minister, other Ministers, and the Director-General of Planning (National Planning Commission) and deputy ministers.

More interesting though are his or her powers to dismiss the members of the Judicial branch mentioned above with the help of the Judicial Service Commission or the Public Service Commission. Article §84 Removal of Judges from Office reads:

- (1) A Judge may be removed from office before expiry of his or her tenure only by the President acting on the recommendation of the Judicial Service Commission.
- (2) Judges may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.
- (3) The Judicial Service Commission shall investigate whether or not a Judge should be removed from office on such grounds, and if it decides that the Judge should be removed, it shall inform the President of its recommendation.
- (4) If the deliberations of the Judicial Service Commission pursuant to this Article involve the conduct of a member of the Judicial Service Commission, such Judge shall not participate in the deliberations and the President shall appoint another Judge to fill such vacancy.
- (5) While investigations are being carried out into the necessity of the removal of a Judge in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Judge from office.

Hence a lot depends on whether the President has leverage on the members of the Judicial Service Commission.

<sup>16</sup> I.e. Making the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> amendments ultimately a “dead letter” in the US Constitution due to the Civil Rights movement and the racial discrimination cases from Dred Scott vs. Sandford (1857) to Brown vs. Board of Education to Milliken vs. Bradley (1974) to Roe vs. Wade and so on.

<sup>17</sup> Finding this “reason” would become the most interesting study for future. It would be the study on the “original intent” of the Namibian Constitution, so popular in other constitutional democracies, like the United States for example. I.e. The Civil Rights Cases.

### 2.5.2.2. The role of the Judicial Service Commission

It all seems to boil down to whether the Judicial Service Commission could be influenced by the President. Without its recommendation the President cannot appoint and he or she most definitely cannot dismiss any of the Judges. The Judicial Service Commission investigates and recommends, doesn't make final decisions itself, but has a very important role in the protection of the independence of the Judicial branch. Should they fail to protect it, there would be nothing standing in the way of the President if he or she were to waltz over to influence Judicial branch.

Article §85 defines the role of the Judicial Service Commission (JSC) as follows:

- (1) There shall be a Judicial Service Commission consisting of the Chief Justice, a Judge appointed by the President, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations.
- (2) The Judicial Service Commission shall perform such functions as are prescribed for it by this Constitution or any other law.
- (3) The Judicial Service Commission shall be entitled to make such rules and regulations for the purposes of regulating its procedures and functions as are not inconsistent with this Constitution or any other law.
- (4) Any casual vacancy in the Judicial Service Commission may be filled by the Chief Justice or in his or her absence by the Judge appointed by the President.

The President appoints three of the five members of the commission. Previously we have discussed his ability to appoint the Chief Justice and the Attorney General. Furthermore Article §84(4) states that if the deliberations of the JSC involve a member of the JSC, "such Judge shall not participate in the deliberations and the President shall appoint another Judge to fill such vacancy".

Therefore, the President has *de facto* power to dismiss the Attorney General or the Chief Justice, for example, although *de jure* he or she should only act according to what the JSC recommends. If the judges in the JSC would try to oppose a dismissal, they would first be made incapable of acting in the JSC by the President, while he would appoint another judge to replace them.

The key factor here lies within the President's constitutional right to directly appoint one judge to the JSC and indirectly appoint the other two. This shifts the balance of votes, within the JSC to favour his or her decisions, whatever the case may be.

Therefore, the only conclusion that can be drawn is that all the high officials, the Attorney General, the Chief Justice, the Prosecutor-General, the Judges of the Supreme Court and the –High Court and the Judge-President of the High Court, are all potentially in a client-patron relationship towards the President.

This casts a serious shadow of doubt on whether the Judicial branch of Namibian Government can ever be independent, and therefore, whether Namibia could ever consolidate its democracy under such a Constitution, without checks and balances in place.

## 2.6. Regional and local government

When discussing the institutions in place in the Namibian government one cannot bypass regional and local government. There are two forms of decentralized government in Namibia, the Regional and the Local government. The Constitution leaves this part of government quite open and undirected. This means that the central government has all power in government.

For the most part the Constitution leaves the powers of these governments to be determined and defined by an Act of Parliament. This is due to the debate surrounding the drafting the Constitution from 1981 to 1989. The SWAPO did not want to divide the nation, nor the power, says Ina Soiri (7 July, 2004, interview) a researcher and an advisor for the Ministry for Regional and Local Government. Joseph Diescho (NID 2000. p. 33) also noted this, arguing that independence leaders such as the SWAPO liberation movement leaders are not prepared to give up any political power. Furthermore, Martti Ahtisaari, the former Special Representative to the Secretary General of the United Nations to Namibia also noted SWAPO's reluctance to share or decentralize power at the time (Heikkilä 1997, p. 127).

Strengthening the power of Regional and Local governments is shifting power away from central government. Gretchen Bauer writes that nationalism has always been the underlying political ideal of Swapo and its leaders, both before and after independence. This was first manifested in the struggle for independence and then in the policies for national unity and reconciliation (Bauer 1998, p. 8). Decentralization of power has been feared to endanger national unity.

Regional and Local governments are not usually a characteristic of unitary states. Nevertheless in Namibia, the National Assembly has the constitutional responsibility to divide the country into regions and localities, which it has in fact done. The regions and localities are subject to the central government. As discussed above, this is why Namibia remains a unitary state. The laws and their enforcement are a good example. Regions do not have the right to pass laws of their own and only the laws of the nation apply. Laws are also enforced by the central government.

According to the Act of Parliament there are 13 regions and 102 localities with their own councils in Namibia. The structure exists, but are they empowered?

The Constitution states in its Article §102:

- (1) For purposes of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such regions and Local Authorities as may be determined and defined by Act of Parliament.
- (2) The delineation of the boundaries of the regions and Local Authorities referred to in Sub-Article (1) hereof shall be geographical only, without and reference to the race, colour or ethnic origin of the inhabitants of such areas.
- (3) Every organ of regional and local government shall have a Council as the principal governing body, freely elected in accordance with this Constitution and the Act of Parliament referred to in Sub-Article (1) hereof, with an executive and administration which shall carry out all lawful resolutions and policies of such Council, subject to this Constitution and any other relevant laws.
- (4) For the purposes of this Chapter, a Local Authority shall include all municipalities, communities, village councils and other organs of local government defined and constituted by Act of Parliament.

- (5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

Unlike parliamentarians or local representatives, regional councillors are elected by a direct vote. Every party selects a candidate for the region and the winner of the election becomes a regional councillor, thus making them the only politicians in Namibia besides the President to have a constituency of their own. The elected representatives from the various regions then select the National Council to advise the National Assembly in its task of making laws.

Nevertheless, the local elections are held using the same list PR system as in parliamentary elections. In fact there are many similarities. The party can also remove and replace local representatives, like parliamentarians with the Supreme Court's decision (2004) without elections. Local representatives should therefore also be considered to be in a patron-client relationship with the party.

### **2.6.1. Local government falls under the Legislative branch of government**

Local government falls under the Legislative branch of government, but is heavily influenced by the Executive branch of government, namely by the Ministry of Local Government and Housing. Since independence the government has spared no effort, nor donor money, in building this part of the government. This is partly because it at its most convenient executes central government policies, but does not in any way balance or contest the power of the central government. The local government cannot decentralise power without proper legislation in place. The Constitution is vague and it leaves almost all issues of power sharing to be decided in the National Assembly, as discussed above.

The reason for this is simple. Namibian regional and local government, unlike Swedish or the Finnish local governments for example that are independent from the central government, is directly under the influence of the Cabinet. Even though in government structure regional and local government is placed with the National Council, which is elected under the Legislative branch of government, it is clear that it falls under the influence of the Ministry and therefore the Executive branch of government.

In order to truly be independent they need to be financially independent from the central government. Only Windhoek, Swakopmund and Walvis Bay can be argued to have budgetary independence from the central government. The other nine regions need to apply annually for funds from the Ministry (Soiri 17 Nov, 2004, interview). The Ministry then approves or disapproves the budget, and thus has a good chance to direct policy as well.

We are making comparisons to the aforementioned unitary Scandinavian countries at this point of the study, not by coincidence, but to make a point to those who argue that Namibia is following the democratic path of Sweden that has had over 40 years of continuous Social Democratic Party rule in government in the past (du Toit in NID 1996, p. 45). The major difference with Namibia, and the reason why democracy never crumbled in Sweden during these 40 years, can be found exactly in the role of the local government.

In Sweden and Finland, regional and local government play an important independent role in the government and therefore also in balancing the power of central government. They have, for example, powers to levy income tax on top of the powers to tax property and land that the

Namibians have, and powers to rule themselves fit. In addition, they have been allocated the most important tasks in upholding the welfare state. Only the power of law-making and military decision-making have been left to the central government. Even and fire fighting are divided between the local and the central governments responsibilities (Pesonen and Riihinen 2002, pp. 189-194).

The municipalities govern hospitals, government day care centres, government schools, homes for the elderly, and so forth. The central government supports municipalities by some 20% of their annual budget, but most of their funds come from taxes paid by their citizens. The power to tax their citizens and govern their own budgets grants municipalities their independence and therefore the power to contest the decisions of the central government in necessary. Hence also the local elections become important and the voting turnout is almost as high as in the Parliamentary and Presidential elections (Pesonen and Riihinen 2002, pp. 194-198). In Sweden and Finland, power and responsibilities have been vested in local government. In comparison to this, only responsibilities to execute the decisions of the central government are vested in Namibian regional and local governments and they have very little, if any, independent decision-making power in matters involving their region.

The regional councils, established through elections, have the power to advise the National Assembly and the President, by establishing and electing the National Council. The Constitution writes about the powers of the Regional Councils. Article §108 says:

Regional Councils shall have the following powers:

- (a) to elect members to the National Council;
- (b) to exercise within the region for which they have been constituted such executive powers and to perform such duties in connection therewith as may be assigned to the by Act of Parliament and as may be delegated to the by the President;
- (c) to raise revenue, or share in the revenue raised by the central Government within regions for which they have been established, as may be determined by Act of Parliament;
- (d) to exercise powers, perform any other functions and make such by-laws or regulations as may be determined by Act of Parliament.

Sub-articles (c) and (d) are particularly important regarding the discussion above. In them the Constitution gives Regional Councils the opportunity for the kind of autonomy and taxation powers that are practised in the above-mentioned Scandinavian countries, therefore balancing powers with the central government. The National Assembly has, however, not distributed this power. Therefore it can be concluded that the leading party, with 73% of the votes in the National elections and full Cabinet responsibility, has seen it wiser not to distribute power to the regions. Furthermore, it can also be concluded that the points (c) and (d) are currently empty letters in the Constitution, only to be fulfilled if the Parliament so wishes.

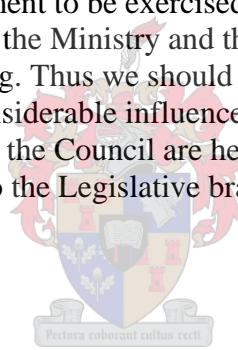
International donors and development agencies, including Finland and Sweden, are helping Namibia to build the framework for regional government to operate in. The cooperation is coordinated by the National Planning Commission, a part of the Cabinet, and implemented by the bureaucracy of the Ministry of Local Government and Housing and international consultants paid for by the donors. The funds for the operations, provided by donor governments, are allocated for the use of the implementers, i.e. the consultants and the Ministry. None of the money, which amounts to several million Euro per year, is governed by existing regional government structures and in fact the only place where the public sees it is in the National Budget.

It is therefore not difficult to see the motivation for the central Government to continue building the structures of regional government. The question remains, though, why not also pass the Act in support for this action in Parliament, give Regions and Localities income taxing rights and thus give meaning to Article §108(c) and (d)?

The points raised in Article §108(a) and (b) are also empty promises, for while it is of course true that regional councils can each appoint two members to the National Council, deeper investigation of the powers of the National Council reveals that it only has power to recommend and discuss issues with the policymakers of the central Government. Point (b) gives regional government the right to implement and perform duties the Parliament or the President assign to them. It grants the power to implement policies directed from the central Government.

In its Article §108 the Constitution of Namibia grants Parliament the possibility to decentralise the government, say, by granting regional councils the right to tax, i.e. “raise revenue” in the localities. These decisions all depend on the decisions of the central government. The National Assembly has granted this right for land and property tax. Most of the country’s 15 towns, 30 cities and 13 regions depend therefore on the favour of the Ministry and the Executive branch.

Therefore, Namibia should have financially independent local governments in place for the Constitutional right of Namibians to have an independent local government system that would fall under the Legislative branch of government to be exercised. Otherwise, as our evidence suggests, the local governments are dependent on the Ministry and therefore the Executive branch rather than the Legislative branch where they belong. Thus we should also make the point that the Ministry for Local Government and Housing has considerable influence on the selection of the National Council, because the local governments selecting the Council are heavily financially depended on it. The Executive branch breaches again over to the Legislative branch and the rights of Namibians are again being violated.



### 2.6.1.1 The National Council

The regional councils have the right to elect the National Council together to represent them. The powers of the National Council cannot in any way be considered to balance those of the organs of the central Government, the President, the Courts or the National Assembly. The National Council is nevertheless an independent body outside the direct influence of the President and the National Assembly, for it receives its legitimacy from the regional representatives who are directly elected by the people of the various regions.

Article §74(1) states the powers and duties of the National Council as follows: the National Council can (a) consider and recommend amendments to the bills to be passed by the National Assembly. They can pass the bill back to be revisited by the National Assembly, but they cannot stop the passing of the bill, and therefore cannot contest the central Government, which in this case represented by the National Assembly.

According to Article §74(b), the National Council can investigate and report any such subordinate legislation, reports and documents that may be against some previous law to the National Assembly, and ask it to table any such bill and revisit the issue. Again, the National Council itself cannot stop the passing of the bill if the National Assembly wishes to do so.

“The National Assembly can also recommend legislation on matters of regional concern for submission to and consideration by the National Assembly”, reads Article §74(1)(c). Again, the

National Council cannot decide upon issues of regional concern, but must submit their considerations to the central government.

It is therefore quite evident that the National Council, as the representative of the regional councils, can perform tasks for the central government but can only decide on its own working methods as stated in the article §74(2). There is no way the National Council could be considered as a balance to the power of the central government.

As from the perspective of the Constitutional rights of Namibians we refer to the discussion in the previous chapter. Namibians' right to have a National Council that is not influenced by the Executive branch, namely the Ministry of Local Government and Housing, is questioned by our evidence.

### 2.6.1.2. The traditional authorities act

The Constitution grants the right to build other Legislative branch authorities. Diescho saw this as a chance to diminish the Western style of government in the Constitution, which he saw as being closer to the former minority rule than the current one. He also saw that this legislation could potentially have positive effects on the governance of Namibia.

Nevertheless, the members of the Council of Traditional Leaders and The Traditional Authorities Act fail to have any other role than an advisory one in Namibian government. Power is not shared with traditional authorities either, but the act makes it very clear that they (the elected traditional authorities) depend totally on the favour of the Minister and therefore the Cabinet. The Traditional Authorities Act, Article §6(2) reads of vacating and replacing a member of the Council of Traditional Leaders:

The Minister may, after consultation with the Traditional Authority concerned, terminate the appointment of any member of the Council if the Minister is satisfied that such member –

- (a) is incapacitated with physical or mental illness,
- (b) has been absent of three consecutive meetings of the Council without consent of the Council; or
- (c) is guilty of conduct which, in the opinion of the Minister, renders his or her continued membership of the council unseemly,

but the Minister may only so terminate member's appointment after giving notice to the member and after affording him or her the opportunity to be heard (*The Government Gazette* 6 Oct, 1997, p. 2).

The traditional authorities and the Council of Traditional Leaders have the power to advise and to voice concerns, but nothing more. Our evidence shows that Namibians' constitutional rights to have traditional authorities have been fulfilled to comply with the letter of the Constitution. Nevertheless, we voice our concern, as Diescho said, that these rights have not been utilized to their full potential. The Namibian leaders have been very conservative on this issue for the first one—and—a-half decades of independence, for National reconciliation and unity has been in the forefront of their minds (Geingob in NID 1996, p. 12).



### 2.6.1. The role of local elections

It is not surprising that local elections do not interest the common voter. While national elections still see a highly respectable voting turnout, the local elections are struggling to interest anyone. In the local elections of 1998 the voting turnout was as low as 32% of the registered voters, which is nearly 40 per cent less than the voting turnout for the National elections the following year. Namibians do seem to understand which elections matter. In the Local Authority- and Regional Council Elections voters elect their representatives to execute central government policies and to recommend new ones. Local and regional authorities have no real power to contest central government decisions.

Article §106, Regional Council Elections, sub section (3) reads: “The elections shall be by secret ballot to be conducted in accordance with the provisions of an Act of Parliament, and the candidate receiving the most votes in any constituency shall be the elected member of the Regional Council for that constituency.” Therefore the Regional councillors have their own constituencies and can be kept accountable. The only problem is that the National Council they elect has only than advisory power over the central government.

The local elections, on the other hand, are conducted in the same way as the National elections, using the list proportional representation (list PR) -system. This means that voters will only vote for a party and therefore accept the complete list and ranking which the party in question has decided on. In local elections this system strengthens the decisions made at party headquarters. It is not uncommon at all for the party to switch candidates that have become too powerful locally and have started to threaten the powers of the Windhoek elite. This way a successful local politician can be discredited by a central office decision. The local government politicians do not have their own local constituencies. Their only constituency are the decision-makers in the party head office. The candidates, and ultimately the local government representatives, are in a direct client-patron relationship to leaders of the various parties.



#### 2.6.1.1. Centralisation versus decentralisation

Unitary systems are centralised; federal systems are decentralised. Namibia is an unitary state. But it would be good to have checks and balances in place especially in the case of a long reign of one party. In the current situation decentralization would be essential for Namibia, for if central government powers are not balanced by anything, it would be very difficult for democracy to endure. Sweden showed the way to endure. We believe that this study shows that Namibia is no Sweden when it comes to the advancement or consolidation of democracy. Central government power, and for the purposes of this study, the powers of the Executive are not balanced by the regional government in Namibia.

### 2.7. The Freedom House indexes from 1990 up to date

The Freedom House index is the most authoritative and reliable for our purposes, firstly because it has measured Namibia's performance every year since independence and even before that. It is widely respected, has very broad comparative data on almost every other country in the world and specialises in investigating young and fragile democracies and the developments of their citizens' rights. It is directed by academic scholars of high calibre and referred to by world famous

institutions like the United Nations Commission for Human Rights (UNCHR) and the Nobel Institute, for example. If the data is good enough for the UN, it is good enough for us.

Since its independence in 1990, Namibia has scored 2 “free” for political rights and 3 “partly-free” in civil liberties every year. Before independence the ratings for South Africa and its colony South-West Africa, as Namibia was then called, were between 5 and 6 i.e. “not-free”. For 1989, the first election year and the year of transition to independence, Namibia scored 3 and 4 i.e. “partly-free” for political rights and civil liberties respectively.

The Freedom House scale is clearly defined: When the freedoms and liberties are well exercised, i.e. ranking from 1 to 2 (or in fact up until the common index 2,5), then the FH ranks the country “free”, while if the index is from 3 to 4 the rating is “partly-free”, and finally, if the rating is as horrible as 5 to 7, the country is labelled as “not free”.

This discussion is important for our study, because we have agreed that freedoms matter in consolidating democracy. Breytenbach (2002) argues that it is vital, for he constructs the chart for consolidation of democracy with the freedoms on the one hand and the socio-economic development on the other. We have accepted this idea and therefore the investigation of freedoms in Namibia is vital for our study.

### 2.7.1. Namibian performance

The Freedom House rates Namibian political rights as 2 “free” on a scale of 1 to 7. The country report states some problems in this field, and therefore does not give it the highest rating between 1990 and 2005 (*The Freedom House* 15 Aug, 2005, the Internet). The following problems concerning political rights were noted in 2003:

- (1) SWAPO scored a sweeping victory, and Nujoma was reelected in 1994. Nujoma, the leader of the country’s struggle against apartheid, has adopted an increasingly authoritarian governing style. He was easily returned to power with 77 percent of the vote for a third 5-year term in the 1999 elections that also saw SWAPO dominate National Assembly polls. The party had succeeded in passing a bitterly contested constitutional amendment to allow Nujoma to seek a third term. Nujoma in 2001 said he would not seek a fourth term, but there is some pressure within the ruling party for him to run again...
- (2) Namibia’s 1999 elections were judged largely free and fair and allowed Namibians to exercise their constitutional right to choose their representatives for the third time. There were some instances of government harassment of the opposition, as well as unequal access to media coverage and campaign financing...
- (3) The ruling party’s main base is among the country’s largest ethnic group, the Ovambo, whose prominence within SWAPO has evoked allegations of ethnic discrimination...
- (4) Namibia’s constitution guarantees the right to free speech and a free press, and those rights are usually respected in practice. Private radio stations and critical independent newspapers usually operate without official interference, but reporters for state-run media have been subjected to indirect and direct pressure to avoid reporting on controversial topics. There are at least eight private radio stations and one private television station. The state-run Namibia Broadcasting Corporation has regularly presented views critical of the government...
- (5) Freedom of assembly is guaranteed, except in situations of national emergency. Freedom of religion is guaranteed and respected in practice. Despite constitutional guarantees, women continue to face serious discrimination in customary law and other traditional

societal practices. Women are increasingly involved in the political process, but remain underrepresented in government and politics...

- (6) Constitutionally guaranteed union rights are respected. Collective bargaining is not practiced widely outside the mining and construction industries. Informal collective bargaining is increasingly common. Essential public sector workers do not have the right to strike. Domestic and farm laborers remain the country's most heavily exploited workers, in part because many are illiterate and do not know their rights (*The Freedom House* 8 Feb, 2003, Internet).

The report continues with a rating of Namibian civil liberties as 3, "partly-free". The country report says the following about civil liberties in Namibia:

- (1) The constitution provides for an independent judiciary, and the government respects this. In rural areas, local chiefs use traditional courts that often ignore constitutional procedures. The Supreme Court in June 2002 ruled that the government must provide legal aid for 128 defendants accused of high treason and other crimes in relation to the Caprivi separatist rebellion. Human rights groups in 2002 said eight Caprivi suspects have died in police custody since 1999. Authorities have dismissed allegations of torture.
- (2) Respect for human rights in Namibia is good, although allegations of abuses by security forces, including torture and extrajudicial killing, have emerged from the Caprivi Strip, the Kavango region, and the Democratic Republic of Congo. All Namibian troops had withdrawn from Congo by 2002. Fighting in Caprivi flared in October 1998 and in August 1999. Caprivi, a finger of land poking eastwards out of northern Namibia along its borders with Angola and Botswana, differs geographically, politically, and in its ethnic makeup from the rest of Namibia. It was used by South Africa in that country's operations against SWAPO guerrillas. Caprivians accuse the government of neglect in the province, which is among the country's poorest. The National Union for the Total Independence of Angola (UNITA) has been accused of supporting Caprivi insurgents. Human rights groups in 2002 said abuses in the Caprivi region diminished following the truce signed in April between the Angolan government and UNITA. Under a 1999 mutual defence pact, the governments of Angola and Namibia agreed that each could pursue suspected rebels on the other's territory.
- (3) The Herero and Damara peoples are among the minority ethnic groups demanding larger government allocations for development in their home areas. Herero leaders in 2002 demanded reparations for abuses they suffered at the hands of German colonists. The Herero were nearly wiped out during colonialism. The government has made efforts to end discrimination of indigenous San (bushmen).
- (4) Violence against women is reportedly widespread, although there is greater attention being focused on the problem (*The Freedom House* 8 Feb, 2003, Internet).

## 2.8. Assessment and conclusion

Swapo members interviewed (eg. Minister Iyambo and others) repeatedly stress that "it is not the fault of the Swapo -party that the opposition is so weak".

The three interviews with Ms. Iina Soiri the co-author of *Finland and National Liberation in Southern Africa* (1999) and the short paper on the Namibian local elections (U of Helsinki – 1998) were conducted both in Namibia and in Finland.

The comment by Christiaan Keulder about the lack of democratic culture in Namibia was made in Windhoek in October 2001, and it is in line with his several studies on Namibian democracy.

The TV interview of Toivo ya Toivo by the Finnish National Broadcasting Company, YLE1, is obviously well documented.

Jan de Wet, the former leader of Action Christian National (ACN) and member of the Constituent Assembly and therefore the signatory for the Namibian Constitution, talked to the European Union coordination committee about the land reform in Windhoek. He was then the leader of the Commercial Farmers' Union that predominantly seeks to protect the rights of the white farmers in Namibia. The lecture was documented with hand-written notes by the author of this study and the points raised here in this study can be confirmed by the members attended the meeting, all Embassies of European Union Member State in Namibia. The lecture was held at the Italian Embassy in Windhoek in December 2002.

The interview with Ambassador Aldo Ajello was conducted in Helsinki during the Conference on Conflict Prevention in Africa, organised by the Citizens' Security Council (KATU) August 1998. The interview was tape-recorded, but the point raised by him can also be found in the conference reports (*Civil Society Conflict Prevention Network 1998*, p. 45).

The multilateral discussions with the Namibian Non-Governmental Organisations in the Embassy of Finland in Windhoek were held during the 1998 bilateral country negotiations between Namibia and Finland. Leaders from various organisations like Director Theunis Keulder from the Namibia Institute for Democracy, Member of the Board for Legal Assistance Centre (LAC), former MP, – and member of the Constituent Assembly and thus signatory of the Namibian Constitution –; Danie Botha Chairman of the Board of P.E.A.C.E.; Vice-Director M. Mnakapa from the National Society for Human Rights (NSHR); Secretary General Ndeshi Kukuri from the Namibian National Association of Women in Business (NNAWIB), and Member of the Board of the Southern African Students Union – Namibia branch (SASU); Director Uhuru Dempers from the Namibian Non Governmental Organisations Foundation (NANGOF); and Nepeti Nicanor Member of the Board of Sister Namibia. H.E. Ambassador Kari Karanko, the Head of the Southern African Unit in the Ministry for Foreign Affairs Finland Kari Alanko and First Secretary Ms. Sinikka Antila also attended. The meeting was not tape-recorded, but the author took notes. The request noted in this study has nevertheless been raised publicly by these organisations several times since this meeting.

From the perspective of theory on the democratic institutions Namibia is a very good example that there can in fact, also be setbacks on the road to consolidating democracy, and that elections alone do not create consolidated democracies. The progressive Constitution founded Namibia's democratic institutions, and Namibia was therefore blessed with a good start. Nevertheless, loopholes for undemocratic practices remained in the Constitution, and therefore a continued progress toward more democratic practices would be necessary in order to consolidate.

Namibian practices have thus tested the theories of both Schedler and Carothers, which were discussed in the first two chapters. It is in fact also possible for a nation to regress after the institutions have been established. Although we are not trying to determine whether such development is chaotic or not, it most certainly does vary and change direction.

Henning Melber's (2003) interpretation of Namibian public policy towards its economy, discussed in detail in the following chapters, can be expanded to explain even more extensive political lines in Namibia. Melber argues that the Namibian government is both strong and weak, depending on the issue. This is exactly, as our studies prove, how things also are on the issue of strengthening the

institutions of democracy. The Constitution, for example, is vigorously protected when it comes to the sovereignty of the state and its unitary characteristic, but weakly protected, or even trampled on, when it demands separation of powers. These are all principles of the first Article of the Constitution, yet they have been protected very differently.

Therefore the final assessment for this chapter is that the democratic institutions necessary to consolidate democracy are present, but are possibly crumbling. Schedler and Carothers are right about the direction being able to change for the worse.

Gerhard Erasmus as quoted by Keulder writes that a progressive constitution may not be enough for Namibia. He argues that though it grants the freedoms necessary and provides the institutional framework for the consolidation of democracy, much depends on how the Constitution is used by ordinary citizens, and on the political will of the leadership (Keulder 2000, p. 9).

Further investigation is therefore needed to understand the workings of the electoral system and whether there are other issues, like socio-economic reasons stagnating the democratic consolidation.

Nevertheless, all studies up to now have not been in vain. We have now established that Namibia is clearly more than just an electoral democracy with free and fair elections in place. It has symptoms of a dominant power syndrome and feckless pluralism, and is perhaps most clearly defined by this category, which suggests that it is still a democracy. These symptoms shall be discussed in detail in the following chapters.

Our own assessment of the discussion and the evidence found in this chapter is that Namibia seems to have had a good start in terms of democratic institutions in place, but they seem to be eroding. The main cause for this is to do with the powers vested into one hierarchical party ultimately led by one man.

The blurring of the line between the state and the party also raises concerns. If it is difficult to determine the capacity in which Nujoma was deciding on replacements of MP's or party lists for various elections, as party Chairman or as President, then there is serious danger of the separation of powers blurring, too. The institutions are in place, but true contestation remains a major concern, as does how well the country is developing socio-economically.

## Chapter 3

### Presidential and Parliamentary Elections

**They can talk day and night about us; it won't burst the boil.  
(Herero proverb)**



### 3. Presidential and Parliamentary Elections: Theoretical introduction

Adam Przeworski writes, “Democracy is a system in which parties lose elections” (1991, p. 14). This is the main issue discussed in this chapter. This thinking goes back to the thinking that there needs to be competition in democracy, and to Dahl (1971) that the political system needs to have contestation in order for democracy to work. Huntington (1991) argues there needs to be two turnovers in government for democracy to consolidate.

All students of Namibian democracy agree that Namibia has already had several free and fair elections during its independence, but elections though necessary are not sufficient to consolidate democracy. Therefore the question remains whether democracy in Namibia has endured, or even progressed and consolidated, and for our purposes again, since we noted that it has not consolidated yet, whether there is something in the Namibian electoral system that would necessarily prevent the consolidation of Namibian democracy?

Namibians have the constitutional right to elect their representatives. Our task is to find evidence either supporting or contradicting this fact. Is there a gap between reality and the rights guaranteed by the Constitution?

#### 3.1. The electoral system

Christiaan Keulder (2001, p. 30-31) argues that the Namibian closed-list proportional representation electoral system used in the Presidential and the Parliamentary Elections is not at fault for creating the Namibian dominant party system. He says that the result, i.e. dominance of the Swapo -party, would be the same in any given electoral system, since such a huge majority of the most populous regions, namely the Ohangwena, Omusati, Oshana and Oshikoto Regions, or the four O's as they are commonly known, only vote for the leading party. Namibia is a unitary state with common general elections. Only if Namibia were a federation of states with independent regions selecting their own representatives could the results be different.<sup>18</sup>

Namibia has enjoyed 15 years of free and fair elections. The Swapo -party has enjoyed a position as the dominant party for the same period of time. The previous chapter discussed the ways in which the position of the dominant party has affected the democratic institutions in Namibia and observed how dependency on the party, blurring of the line between the party and the state, has become more and more evident. For this poses the same question for free and fair elections and to the electoral system as it does to the whole political system. If Swapo was ever to be challenged in the polls, could the state officials running the elections, dependent on the leading party for their livelihoods to, run the elections freely and fairly?

The numbers of seats the Swapo -party has gained during this time of dominance in the National Assembly elections are: 41 seats of 72 in 1989, 53 seats in 1994 and 55 seats in 1999. For the coming 2004 elections the trend is likely to continue unless something dramatic were to happen to the leading party itself.

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<sup>18</sup> Swapo dominance is not that evident in the other 9 regions than in the former Owamboland regions in the North.

### 3.2. Namibia is an electoral democracy

Let us revisit Linz and Stepan's definition of a completed democratic transition.

“A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*” (1996, p. 3).

Namibia has clearly completed its democratic transition. All the factors above are fulfilled. It should, however, be noted that the executive, legislative and judicial powers generated by the new democracy do not have to share power with other bodies *outside* these three, since it is quite evident that they seem to share all power amongst themselves.

The critics of electoral democracies say that democracy can also fail to consolidate or it can even degenerate, due to what Thomas Carothers (2002, p. 10-12) calls either dominant-party or feckless syndrome. The similarities between Carothers' dominant-party syndrome and the political system exercised in Namibia have already been discussed above, but in this chapter we seek to find the effect the Namibian electoral systems have on to this syndrome.

The definition of electoral democracy by both Robert A. Dahl and Adam Przeworski is this: if the opposition has not won any elections, there have not been turnovers in elections, and one cannot tell whether the system is democratic or not.<sup>19</sup> The system is therefore merely an electoral democracy and not a consolidated one.

Namibia has not had any turnovers in elections and is therefore, despite some of the democratic institutions being in place, merely still an electoral democracy. Nevertheless it can be said that the constitution works adequately; the constitution remains the supreme law, there is rule of law, a working judiciary and Namibia receives good ratings from the Freedom House, rating it “free”. Namibia is clearly a democracy, but is it consolidated? What about the dominant ruling party trends and the absence of electoral uncertainty?

### 3.2. The electoral system and democratic consolidation

Does the Namibian electoral system contribute to the inability for Namibia to consolidate its democracy and remain merely an electoral democracy? Ben Reilly and Andrew Reynolds write about the three main tasks of the electoral system in the Institute for Democracy and Electoral Assistance (IDEA) publication:

“An electoral system is designed to do three main jobs. First it acts as the conduit through which the people can hold their elected representatives accountable. Second, it will translate the votes cast into seats won in a legislative chamber. The system may give more weight to proportionality between votes cast and seats won, or it may funnel the votes (however fragmented among parties) into a parliament, which contains two large parties representing polarized views. Third, different electoral systems structure the boundaries of “acceptable” political discourse in different ways, and give incentives

<sup>19</sup> Note that Huntington argues two turnovers are necessary and Przeworski argues that one is necessary to have a consolidated democracy.



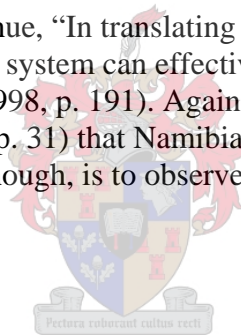
for those competing for power to couch their appeals to the electorate in distinct ways” (Harris and Reilly ed. 1998, p. 192).

Namibian elections, as mentioned above, have been judged by all observers as “free and fair”, yet still fare quite poorly in these three main tasks. Regarding the first task, there is some serious doubt whether Namibian elections do act as the conduit through which the people can hold their elected representatives accountable. For how could the electorate keep their representatives, and since Namibia has list elections, their parties accountable when there has not been any turnover in elections? Again echoing the thoughts of Przeworski, how could we, or more importantly the Namibian electorate, know whether the leading party would submit itself to the rule of the people, were it to lose an election? There is no way of knowing.

The second task is fulfilled quite well: the votes are translated into seats in the parliament. Similarly to the first task, success in the third task is also in a cloud of doubt, for how could incentives be given to those competing for power when it is not evident to the electorate whether the leading party would step aside, if their policies were seen as less appealing than those of the opposition?

But are these problems results of the Namibian choice of electoral system? Again, Christiaan Keulder (2001, p. 31) says they are not. For due to Swapo’s overwhelming victory the result would be the same in any electoral system regardless of the arguments and calculations presented.

Ben Reilly and Andrew Reynolds continue, “In translating the votes in a general election into seats in the legislature, the choice of electoral system can effectively determine who is elected and which party gains power” (Harris and Reilly 1998, p. 191). Again this is not a problem in Namibia, due to the same conclusion by Keulder (2001, p. 31) that Namibia’s electoral system doesn’t currently make a difference. What is important, though, is to observe the way the party controls the candidacy for Parliament and the Presidency.



### 3.3.1. Zero-sum presidential elections

The critique of presidential systems, such as the one in Namibia, is that they leave the losing party with little if any governing power. Sometimes, as in the famous case of Salvador Allende, unanimous governmental power can be achieved even with less than 50% of the popular vote. However, the Namibian Constitution prevents this. Article §28(2)(b), The Election of the President, clearly states that the election of the President shall be:

“Conducted in accordance with principles and procedures to be determined by Act of Parliament: provided that no person shall be elected as President unless he or she has received more than fifty (50) per cent of the votes cast and necessary number of ballots shall be conducted until such result is reached.”

In this case zero-sum elections can nevertheless effectively divide and polarise the country. Namibia’s founding fathers and mothers, the Constituent Assembly, have therefore sought to install some parliamentarian characteristics into the system, so that the national elections would not be a mere zero-sum game.

The most important question is, therefore, whether these parliamentary characteristics have been able to retain their independence and prevent this potential polarisation, and the zero-sum game of the Presidential elections? For most importantly peace has remained, and the opposition leaders that have lost presidential elections have found places in Namibian politics despite losing the elections.

Former presidential candidates are now members of the National Assembly, and are actively integrated into the democratic system.

Nevertheless, this does not mean that they have been granted government power. They have an open forum, the National Assembly, to voice their concerns and opposition politics, but they have not been granted powers to influence government policy.

The question therefore is also to what extent does the party control the parliamentary elections? For if they control them heavily, the result would be a similar polarisation of politics as in the Presidential elections, but if their control is weak, e.g. the parliamentarians would be independent and have their own constituencies, then there would be lesser polarisation, due to potentially different policies raised by the various parliamentarians.

The main issue is party discipline in the National Assembly. If party discipline is strengthened by the electoral system, then the results of the parliamentary elections have little significance compared to the Presidential elections. Alternatively, if party discipline is weak, the National Assembly and the parliamentarians working there can find their own independent role in politics and balance of power with the Executive branch of government.

Let us look at the Namibian dominant party system. In his study of the 1999 National elections and their effect on the Namibian system Keulder concludes:

“...[T]he dominant party’s position certainly does contribute to the stability of the political system as a whole. It also makes for a strong Government that does not have to rely on alliances with other parties to stay in power. In fact, Government has received a clear mandate to continue along its chosen path, and has enough support to embark on further transformations. On the negative side, the most important consequence is that Namibians cannot rely on a strong institutional opposition to prevent bad governance” (2001, p. 31).



### **3.3.2. Advantages and disadvantages of the closed-list PR system in the parliamentary elections**

List PR systems are the most common type of electoral systems of proportional representation. List PR requires each party to present a list of candidates to the electorate. Electors vote for a party rather than a candidate, and parties receive seats in proportion to their overall share of the national vote. Winning candidates are taken from the lists in order of their respective position or ranking (Harris and Reilly 1998, p. 195).

The biggest advantage of list PR systems is its proportionality. It reduces the disparity between a party’s share of national votes and its share of parliamentary seats. For example, if Swapo wins 70 per cent of the votes, it will also win around 70 per cent of the total number of seats, and if a minority party, say the Congress of Democrats, wins 20 per cent of the votes they similarly gain 20 per cent of the total number of seats. This also translates to a higher inclusion of different parties and different political views.

Even very small parties get to participate in government through a seat in the Parliament (Harris and Reilly 1998, p. 195). Reilly and Reynolds write: “For many new democracies, particularly those that face deep divisions, the inclusion of all significant groups in the parliament can be an important condition for democratic consolidation”(Harris and Reilly 1998, p. 195). Thus we can conclude also

that the second issue Reilly and Reynolds discussed above, i.e. translating votes into legislative seats, is done well in Namibia.

The list PR elections are good for nation-building, because they include even the smallest regional and ethnic parties into the parliament. This kind of stability, as Keulder said above, is evident in Namibia. Nevertheless its weaknesses are in accountability. When the party nominates the candidates there is no constituency that could hold the representatives accountable. Only the support for the various parties matters, and only the parties can be held accountable in the next elections.

The Reilly and Reynolds continue about the advantages of the list PR system in elections:

“Proponents of consociationalism<sup>20</sup> favour list PR because it: 1) delivers highly proportional election results, 2) is relatively invulnerable to gerrymandering; and 3) is simpler than many alternative systems for both voters and electoral officials and thus will be less open to suspicion. The successful use of list PR at South Africa’s transitional 1994 elections is often cited as a good example of these qualities, and of the way list PR enables parties to place women or ethnic minorities in winnable places on their party list” (Harris and Reilly 1998, p. 196).

Therefore, the advantage of the list PR system could also be seen as its vice. Parties can decide who will go through and who will not. They can choose to integrate or not to integrate minorities or women for example into their list. The list PR system is therefore potentially good for a short-term conflict resolution, or as they say for young democracies, but the problem is that the party can also choose to maximise its power in the long run and only choose loyalists to join their election ranks. The party can also centralise the national government by choosing the “yes men” closest to the central organisation, given that they win the elections. The problem is that all power is now in the hands of the party and its leadership.

Therefore, in order for list elections to succeed, the power should be decentralised in some way. Sweden is a good example of this. Sweden has sought to create very strong and independent Regional and Local governments with rights to levy tax. In fact almost half of the Swedish taxpayers’ kronor go to the local government rather than the central government. In Namibia, as discussed in detail in the second chapter, the Regional and Local governments are not empowered, but are merely an extension of the central government with no real means to become autonomous in their decision-making.

The key issue in Namibia is therefore how the party decides to compose the list of candidates, and whether the ranking of the list is done democratically or not. In the closed-list PR system in Namibia no democracy is exercised when party list rankings are decided. There are no open or closed primaries for the party candidacy, nor are there free and fair internal party elections to vote for a candidate to rise up in the party list ranking. Party politburo simply decide the ranking among them, or in worst cases the leader decides it on his own, after they have been “advised” by the party congress.<sup>21</sup>

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<sup>20</sup> Consociationalism is a term used in the constitutional engineering. It entails a power-sharing agreement within government, brokered between clearly defined segments of society divided by ethnicity, religion and language. Consociational societies include Belgium, the Netherlands, Austria, and Switzerland.

<sup>21</sup> See the description of this whole process in Namibia by Klaus Dierks at “Chronology”, <[www.klausdierks.com](http://www.klausdierks.com)>, (accessed 30.3.2004) and Tangeni Amupadhi in *The Namibian* Oct. 4, 2004

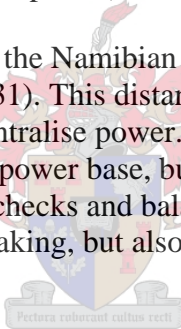
At the centre of the issue is, therefore, the question of how well has the liberation movement succeed in becoming a political party with democratic practices within itself? For if it has not become democratic it is very difficult to consolidate the whole democratic system.

By comparison, in the Finnish form of list PR elections, called d'Hont –system, the candidates compete against each other for a better ranking on the party list in the actual elections. More votes than your fellow candidate on the same list in the elections will ensure a higher ranking on the list and a better likelihood of winning. In this way the system ensures, unlike the Namibian system, the right for the voters to also influence the makeup of the lists. Therefore in Finland the party main office has little, if any, influence on the ranking and the probability of a candidate being elected. The system also gives incentives for the party to find candidates that appeal locally, and in this way to have a constituency of their own.

Pesonen and Riihinen write about the Finnish list PR elections:

“The choices of individual candidates serve two purposes. As in any list system of proportional representation, the ballots are first counted as votes cast for the parties. This count determines how many seats each party is entitled to have in the election district. But, second, personal votes also rank order the candidates within each respective party. This method does not grant the nominating parties any power to guarantee their favourite nominees’ entry to parliament” (2002, p. 141).

Keulder continues about the drawbacks of the Namibian system, “Drawback is the distance between the voters and their candidates” (2001, p. 31). This distance makes it convenient for the leading party, and therefore the government, to centralise power. Without constituencies the parliamentarians cannot rely on their own power base, but depend solely on the party for their position. Centralisation of power reduces checks and balances to the effective government, making it potentially more effective in decision-making, but also reduces contestation and therefore accountability.



Thus it could be concluded that the choice of electoral systems does have an effect on the consolidation of Namibian democracy. Let us remind ourselves that Dahl insisted on two factors being highly effective in order to create an advanced democracy, a polyarchy: inclusiveness *and* competitiveness (Dahl 1971, p. 1). Furthermore we must also keep in mind the argument of Van de Walle (2002, pp. 77-78) who said that there needs to be enough electoral uncertainty to make the elections effective.

Keulder’s calculations support these views. The election results in Namibia would not be different with these percentages of votes going to different parties, but the election percentages might be different if parliamentarians would have their own constituencies, for example. Previously, since the party leadership was in the same hands as the Presidency of the nation, this would also create a clearer divide between the party and the state. So therefore, if we conclude that the problem of Namibian politics is the muddled line between the leading party and the state, then we can argue that the electoral system Namibia has contributed to this blurring.

On the other hand, some of the advantages of the Namibian electoral system are its stability and the strengthened party systems. Keulder made a conclusion in his 1999 Namibian election study that party loyalty is very high in Namibia, not only to the leading party, but to the opposition parties also. Furthermore about the closed-list PR system he concluded that, “loyalty is useful in overcoming a principal drawback of the closed-list PR system, namely the distance between voters and their candidates.”

Therefore, further investigation is needed to determine whether Namibia can consolidate its democracy with the current electoral system in place. There is no clear evidence of the adopted electoral system preventing Namibian consolidation, but rather there are arguments both for and against. It is therefore necessary to look at other factors - institutional, economic and social, in order to assess where Namibia stands on consolidation

### 3.4. Election results and the clear trend

Swapo dominance of polls has increased since the first elections. Meanwhile the opposition has grown weaker as it has divided even further. The demise of DTA has specifically contributed to the growth of the leading party. The founding of the Congress of Democrats (CoD), a party which emerged from the Forum for the Future (FFF) –movement in 1999, has not had any impact on the Swapo dominant party position either, for it has only received votes from the traditional opposition voters. As noted above, party loyalty, especially for the Swapo party, is very strong (Keulder 2001, pp. 30-31). The number of votes the opposition parties have gained has been reducing ever since the first elections, for they have received 31 seats in the Constituent Assembly altogether in 1989, 19 seats in the National Assembly in 1994 and only 17 seats in the National Assembly in 1999. Namibia is far from experiencing Huntington's or Przeworski's test for consolidation, i.e. turnovers in government.

The implications of this kind of a trend are that though Namibia has regular elections, it can only be labelled to have a single dominant party and no viable opposition, again making Namibia an electoral rather than a consolidated or an advanced democracy. Keulder rates Namibia to have 1,65 effective parties nationally in 1999. He uses Laakso and Taagapera's (1979) calculation index to determine the number of effective parties. In the first elections the index was still 2,41 making Namibia still effectively a multiparty state. He writes:

“The fact that the number of effective parties has decreased over time suggests that Namibia has shifted away from a two-and-a-bit party system towards a dominant party system. Hence, the country is moving away from, rather than towards, a true multi-party system. The introduction of the CoD has not prevented this trend, mainly because it obtained seats from the opposition parties (principally the DTA) and not from the ruling party” (Keulder 2001, p. 11).

Furthermore, if centralisation of power is evident, the leading party has power to unanimously amend the constitution to suit its needs and the courts are found affected by this dominance, then it isn't be surprising that voter turnouts are also on the decline. The voting turnouts in the National elections have declined from 96% of registered voters in 1989 to 58% in 1999 (Keulder 2001, p. 7).

### 3.4.1. 1989 election results

Swapo:	57,3% of registered votes	– 41 seats
DTA:	28,5% of registered votes	– 21 seats
UDF:	5,6% of registered votes	– 4 seats
ACN:	3,5% of registered votes	– 3 seats
NPF:	1,6% of registered votes	– 1 seat
FCN:	1,6% of registered votes	– 1 seat
NNF:	0,8% of registered votes	– 1 seat
Total:		– 72 seats

“Namibia’s hero type Head of State is President Sam Nujoma. As the leader of SWAPO, he emerged from the liberation struggle to garner 41 of the 72 seats in the Constituent Assembly in 1989 elections. The DTA received 21 seats and the five smaller parties shared the remaining 10 seats,” writes Sam Graham (IDEA 2000, p. 86) about the first elections. The concern, as Diescho writes, of the first elections was that SWAPO would gain an overwhelming majority of two-thirds in the Constituent Assembly and therefore gain the power to dictate the Constitution without consulting the opposition (Diescho 1994, p. 25). He writes about the implications of the first elections:

“Politically the result meant that SWAPO, as had been expected by all serious observers, won a solid majority, but not the two-thirds (48 seats) required for the adoption of the Constitution. As the DTA was the principal opposition and the ACN with 3 seats was well to the right of it, SWAPO would have to receive all the votes of the other four small parties if it was to prevail in a contested situation – a daunting prospect. Another political reality was that SWAPO’s support had come almost exclusively from the Ovambos, clearly the largest tribe, which was largely concentrated in Ovamboland in the north of the country and in a few districts with many transient Ovambo workers; in most other, more sparsely populated regions, the other parties, in particular the DTA, prevailed” (1994, p. 25).

### 3.4.2. 1994 election results

Diescho’s concerns materialized in 1994. The Swapo -party gained over two-thirds of the registered votes and therefore the right to amend the Constitution without consulting the other parties. It could now pass normal legislation or amendments to the Constitution on its own. 48 seats in the National Assembly were needed to achieve the two-thirds majority. Nevertheless, the Constitution had already been accepted in consultation with other parties. Now, Swapo received the right to amend it alone but amending is always more cumbersome than simply writing it alone.

The National Assembly Election Results in 1994 were:

Swapo:	73,89% of registered votes	– 53 seats
DTA:	20,78% of registered votes	– 15 seats
UDF:	2,72% of registered votes	– 2 seats
DCN:	0,83% of registered votes	– 1 seat
MAG:	0,82% of registered votes	– 1 seat
Total		– 72 seats

The elections were a major upset for the opposition and consequently a triumph to the leading party. Besides Sam Nujoma's landslide victory with 76% of votes for re-election, Swapo gained 12 seats in the Parliament, while official opposition party DTA lost 6 seats.

The international and most importantly the regional political climate shifted dramatically. Support from the white minority government of South Africa to the DTA ended. ANC's ascendance to power in South Africa legitimised majority rule in the whole region. Swapo had been in power for four years and electoral democracy had prevailed. Namibia had not become an African Socialist state, which had been the fear of many before the first elections.

Furthermore, the legitimacy issue of the DTA was raised. DTA, the leading party during South Africa's illegal occupation and white minority rule, was now perceived as a puppet for the old rule. The euphoria of the coming freedom and democracy in South Africa was surely also felt in Namibia.

### 3.4.3. 1999 election results

The voting turnout dropped dramatically in the 1999 elections. Keulder explained this with the Duvanger psychological effect on voting. He noted that voting turnouts dropped especially in regions where Swapo didn't have a stronghold. He continues about Duvanger's effect on voting in Namibia:

“This effect refers to a decision to stop voting because of the fear of “wasting” votes. This could happen in a number of ways. Firstly, smaller parties would stop contesting certain constituencies/Regions simply because they stood no chance of winning there. Secondly, supporters of smaller parties would abstain from voting because their parties stood no chance of gaining representation or of winning. Thirdly, where and if voter blocs (as in the case with the four “O” Regions), smaller voter concentrations, if they supported opposition parties, would be less willing to vote because of the perceived futility of doing so. The “psychological effect” on voting is stronger if a plurality electoral system is used; if social cleavages are geographically entrenched; and if a society has clearly defined, permanent majorities and minorities (ethnic, racial, class, religious etc.). Although Namibia used a PR electoral system, it does meet the remaining criteria. This is clear if we consider the regional dimensions of party support” (2001, p. 7).

Voting turnouts dropped even though another major opposition party was formed. The Congress of Democrats contested the leading party without the baggage of history that the DTA still carries. Ben Ulenga a charismatic labour union leader that had supported the freedom struggle led the party, but all it ultimately did, as Keulder concluded, was divide the opposition. Swapo prevailed even stronger with two more seats into the Parliament and Nujoma gained his 3<sup>rd</sup> term with 76,7% of the registered votes, the highest result ever.

The National Assembly election results 1999 were the following:

Swapo:	76,3% of registered votes	– 55 seats
CoD:	9,9% of registered votes	– 7 seats
DTA:	9,4% of registered votes	– 7 seats
UDF:	2,9% of registered votes	– 2 seats
MAG	0,7% of registered votes	– 1 seat
Total		– 72 seats

### 3.4.4. Free and fair elections with no turnovers yet

Swapo has not lost free elections in Namibia. There have not been Przeworski's one or Huntington's two turnovers in elections and therefore we cannot know whether the institution of elections would operate freely and fairly, would the opposition win elections. Again, we're not suggesting that they would not be free and fair, but simply noting that there is no way of knowing that. There is simply not enough electoral uncertainty (Van den Walle 2002, p. 77-78).

On the other hand there is no doubt that, all parties have had a reasonably free and fair chance to contest the leading party in the Namibian elections. They have just not succeeded in gaining government responsibility, i.e. to create turnovers in elections. The registered voters have given a clear mandate to the leading party to continue on their chosen path (Keulder 2001, p. 31). Therefore it is important to look at the role of the opposition and the basis of Swapo power.

### 3.5. Political parties

Keulder (2001) has already pointed out that the opposition is not "effective" in the key electoral regions in the North. Furthermore, his calculations pointed out that since the 1994 National elections only one party has effectively dominated elections nationally.

The Namibian political system does provide opposition some role, though. The opposition lost the elections and they have no real chance of rising to government power, but the role of the official opposition (a party or an alliance) in the National Assembly is quite significant.

The role of an official opposition is given to the largest opposition party or alliance that is not in the government. This has, in fact, been the most significant ongoing power struggle in parliament, since independence (Salazar 13 Nov, 2002, interview). Swapo dominance in the National Assembly is so great that no real threat to its policy-making can be created, thus leaving this struggle the only place to voice the opposition's concerns as it is the only hotly contested power struggle in the Legislative branch.

Since the 1999 elections when Congress of Democrats (CoD) won second place in elections, the former official opposition party Democratic Turnhalle Alliance of Namibia (DTA) has sought to ally itself with the smaller parties in order to create an alliance larger than the seats given to the CoD. This effort succeeded so that the DTA alliance has been in the position to voice the opposition concerns for the last five years. Parliamentarism has been working on petty issues in Namibia in this way.

Namibian's parties have the constitutional right to freely join, organise and support political parties. Furthermore Keulder (2001, p. 31) says alongside with most of the political analysts in Namibia, that this right is also well supported in reality. The opposition parties remain fragmented, though, and Swapo cruises to crushing victories at the polls year after year. Why does a more balanced struggle for political power not exist in Namibia?



### 3.5.1. Democratic Turnhalle Alliance of Namibia

Diescho writes about the legitimacy problems of the DTA in Namibia:

“The official opposition, the Democratic Turnhalle Alliance, has steadily lost ground because of the heavy political baggage it has to carry in its own battle to overcome a host of difficulties. First is its history with the South African colonial administration and the fact that it was literally spoon-fed by the enemy before and even after independence. The people of Namibia are astute enough to distinguish leaders from mere messengers of their masters” (1996, p. 9).

The DTA’s role in Namibian politics has been diminishing ever since the founding of the party, prior to the first free and fair elections. The DTA was, as discussed above, one of the key parties in the shadow government without SWAPO before independence. In fact, they were the leading party in the *Turnhalle*, before democracy. Peter Katjavivi writes of the developments in 1978:

“The internal elections were held in Namibia in December 1978, amidst widespread fraud and intimidation of voters. The Democratic Turnhalle Alliance (DTA) claimed victory and gained control of a newly established constituent assembly, although this had no real power” (1988, p. 123).

In the first free elections of 1989, the DTA secured 21 seats in the 72-seat Constituent Assembly with the help of a massive South African apartheid government-financed election campaign. The party was led by Misheke Muyiongo former Acting Vice President of SWAPO<sup>22</sup>, who now turned to contest his former comrades as new leader of the DTA. After the first elections the opposition was a viable force first in the Constituent Assembly- and later in the National Assembly. Because of the strong DTA, Swapo didn’t receive the necessary two-thirds of the Constituent Assembly to be able to dictate the formation of the Constitution and Swapo was forced to compromises. Eventually, through several negotiations, the DTA also became a signatory for the new Constitution of the Republic of Namibia (Nujoma 2001, p. 436).

In the 1999 elections the DTA lost votes especially in their former stronghold regions. The Caprivi and Hardap regions, the only two regions left where the DTA beat Swapo turned away from them the second time around. Caprivi’s 1994 election result of 50,87% of the votes cast dropped dramatically to 5,4% in the 1999 elections and Hardap saw a decline almost as dramatic from 51,56% to 24,4%. Kavango was the only region where they saw an increase in votes from 14,66% to 16,2%, due to the 10% decline in Swapo support in that region (Keulder 2001, p. 8).

Nevertheless, all election calculations with the DTA as well as with the CoD are in vain since neither party succeeded in penetrating the regions of the four O’s in any way. DTA support in the most populous areas was between 0,2% in Ohangwena and 1,8% in Oshikoto, whereas Swapo gained over 95% of the votes there.

The only other populous region where the DTA had some kind of a following was in the Khomas Region around the Capital Windhoek. The DTA commanded a respectful 41,26% of votes there in 1994, but the figure dropped dramatically with the entry of the CoD to 8,2% in the 1999 elections.

In February 2004 *The Namibian* wrote about the final demise of the once-largest opposition party. Herero Chief Kaulima Riruako decided to break up the party and start one of his own by revitalising

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<sup>22</sup> Misheke Muyiongo is currently in exile with UNHCR refugee status in Denmark for, if he would return to Namibia he would be charged with treason, due to his leadership in the armed insurrection in the Caprivi.

the old National Democratic Unity Organisation–NUDO (Amupadhi 11 Feb, 2004, p. 1). The Herero speaking areas in Namibia had traditionally supported the DTA due to the fact that Swapo had strong roots in the Oshiwambo speaking tribes in the North. Now, after the Herero's have left the party, it will struggle to have even two to three seats in the upcoming elections in 2004.

### 3.5.2. Congress of Democrats

The formation of the new party, the Congress of Democrats some months before the 1999 elections somewhat confused Namibian political life. In the media, both in the media favouring the opposition or backing the leading party, the effect was thought to be more threatening to the leading party than it eventually turned out to be. Obviously without any proper fieldwork done in the few months prior to the elections, the CoD did not gain a following large enough to overthrow the government. The CoD did however gain a significant following, because they beat the DTA by a very small margin in the elections.

The only problem from the opposition point of view and the competitiveness point of view was that the following came almost exclusively from the old opposition and Swapo, who the new party tried to attack, remained in power and became perhaps even stronger. The opposition had effectively been divided and Swapo had in fact gained support in the 1999 elections. Furthermore, President Sam Nujoma gained the largest victory ever seen in Namibia with almost 77% of the votes cast.

The CoD was thought to have wider support due to its leaderships close relations with the labour unions and civil society. The CoD did not carry the baggage of the old opposition that had collaborated with racists and occupiers. On the contrary, all of the leading figures had commanded significant positions in the liberation struggle and SWAPO before and after independence.

Ben Ulenga, the first leader of the party led the first labour unions in Namibia during the years of the independence struggle and commanded a widespread respect of the workers across Namibia. Gretchen Bauer (1998, p. 82) describes the mid 80's labour movement and the involvement of Ben Ulenga as follows: The National Union of Namibian Workers (NUNW) emerged under the leadership of Ben Ulenga to become an inspirational force for change inside Namibia. The National Union of Mineworkers (MUN) also took hold of the diamond mines in Oranjemund and the uranium mine at Arandis. By 1987 nearly every sector of the Namibian economy had been unionised, leading to the exile of the SWAPO secretary for labour and later the NUNW general secretary to lament that the union movements had become “even stronger than the political organisation SWAPO” (Bauer 1998, p. 82).

Reflecting this background, several political observers, civil society and the sort thought the CoD would challenge the leading party. However, the CoD though commanding a respectable following in several regions, was not able to gain votes in the critical areas of the North. It gained a following of almost 10% nationally, even receiving high percentages in the high 30's in some regions and 21% of the votes in the Khomas Region, but only between 0,4% to 4,2% in the four O's.

Ambassador Lauri Kangas, the Head of the Finnish Mission for the Foreign Affairs at the time, explains the concerns of the international community in the first elections 1989:

We were all concerned about the low literacy rate of Namibians when SWAPO-D registered the known SWAPO ensemble, the fist with the torch, for their party in the first elections. We thought that the illiterate might vote for SWAPO-D by mistake, though they wanted to cast their votes for the original SWAPO. We were all fooled. Namibians, illiterate or not made

sure that their votes were counted in the place of their choice. The education level of the people had not mattered. They knew very well what they were doing! (Kangas 14 Feb, 2000, interview).

Similarly to the SWAPO-D in the first elections, the CoD couldn't "fool" Namibians to break off from voting the Swapo -party with only some weeks of existence. The voters had not seen anything viable from the CoD, other than the fact that its leadership consisted of bitter, formerly sidelined old Swapo-members of parliament.

### 3.5.3. The smaller parties

As said in the opening of this sub-chapter, the other opposition parties are not significant groups in the National Assembly, but they have special significance in representing different socio-economic and ethnic groups that divide the nation. They can therefore be argued to have a special significance in nation building and national unity. Even small ethnic groups have received access to the national decision making body.

The strength and the weakness of these parties is that they receive most of their votes from one or two regions, and usually only one ethnic group. This is a strength in local elections where the regional party can contest the mighty Swapo, but a hindrance when votes are counted on a national level. These parties have no votes from the most populous regions, namely the four O's and therefore no hope to ever contend for government responsibility. Keulder writes about the biggest small opposition party: "The party with the strongest vote concentration is the UDF, followed by the Democratic Coalition of Namibia (DCN) and the CoD" (2001, p. 9).

The most successful of the bunch has been the United Democratic Front (UDF), which receives most of its votes from the district of Damaraland, the regions of Erongo and Kunene and other areas where the ethnic Namas and Damaras live (Diescho 1994, p. 124). They have received 4, 2 and 2 seats in the National Assembly with between 2,5% and 5,6% of the registered votes in the past three National elections. For the past ten years they seem to have secured a steady 2,5% to 3% support in the National elections. In the towns of Khorikhas and Daures the UDF was by far the biggest party in the 1999 National Elections (Keulder 2001, pp. 33-35).

The second-largest small opposition party, disregarding the ACN that was a one-election phenomenon, is the MAG that has received seats in the National Assembly since it's founding in 1994. The main bulk of the votes come from the Hardap region and especially from the town of Mariental where Rehoboth voters still go loyally to the two main opposition parties; from the Karas region and Keetmanshoop, south of Mariental; and especially from the Windhoek East, Rural and West areas. The ethnic base of these votes is also clear. The MAG receives close to no votes from the key four O regions (Keulder 2001, pp 33-35).

Furthermore, Namibia's oldest party, the South West Africa National Union (SWANU) founded in 1959 and its young allied party the Workers Revolutionary Party (WRP) founded in 1989 also earn a mention in this study, because they are the exception to the rule among the ethnically and regionally based small parties. SWANU/WRP, as Keulder writes, "has the broadest support base across the Regions... despite the fact that this joint party's overall support is insufficient for it to gain a seat in the National Assembly" (2001, p. 9).

Nevertheless, the conflict prevention aspect of the integration of the smaller parties also applies to the SWANU/WRP. If they were not allowed to take part in the elections the potentially explosive socio-economically defined group of “revolutionary workers” would be cast outside the system.

### 3.6. Swapo

Danie Botha, long time Swapo member, Member of the Constituent Assembly, a former Swapo MP and a signatory of the Namibian Constitution explains the internal Swapo decision making to be hierarchal and the selecting of the party list for the National Assembly election to be completely in the hands of the party chairman (Botha 23 Nov, 2002, interview). This translates to a complete disregard of democratic processes within the leading party. Dr. Klaus Dierks, also a member of Swapo, a Member of Parliament for ten years, a Member of the Swapo Central Committee and a Cabinet Minister for ten years, writes about the Swapo election list drafting in 1994:

“The new SWAPO party list for the 1994 elections is established by internal elections by the SWAPO Electoral College in Katutura (Windhoek). The first 32 members are, according to the SWAPO Party Constitution, appointed by the Party President, Sam Nujoma. This list is headed by the Vice President, Hendrik Witbooi and the Secretary General, Moses Makue /Garoëb. The list of the 32 contains also candidates of the NUNW, the recently revived SWAPO Youth League (SYL) and the SWAPO Women’s Council (SWC). The remaining 40 members are elected by the Electoral College. The top positions are filled by Klaus Dierks and Nangolo Mbumba, followed by Nathaniel Maxuilili. Former Agriculture Minister, Anton von Wietersheim is off the elected list and so are SWAPO back bencher Danie Botha and Deputy Agricultural Minister, Stan Webster. Michaela Hübschle reaches a hopeless position on the party list” (Dierks 30 March, 2004, internet).

Namibian parties have the constitutional right to dismiss a Member of Parliament. This is a typical right granted to parties in countries holding list elections. The Prime Minister usually leads both the ruling party and the government. The opposition has a voice in parliament though the seats granted to them in the elections.

Nevertheless, two things make the Namibian system so vulnerable— compared to a consolidated democracy such as Holland, for instance. The first one is the steep hierarchy and lack of democracy within the ruling party, and the second issue is the two-thirds majority the ruling party has in the parliament.

All decision-making powers of the National Assembly lie with the ruling party and it is impossible for the opposition to gain leverage and bargaining power with the few seats it has. Swapo with its two-thirds does simply not need the opposition for anything, and with the steep hierarchy within the party the leadership of Swapo can practically govern the country without anyone checking its power.

Furthermore, when party leadership remains in the same hands as the Presidency of the country, this dominance and hierarchy within the party also results in blurring the line between the various branches of government. The Executive can effectively dismiss and appoint two-thirds of the Legislative branch, making the whole branch dependent on him or her.

The line between the State and the party become totally blurred by this kind of dominance, and ultimately even one of the most important democratic institutions, the Parliament, becomes a puppet.

The problem is not so much the party list system, which operates effectively in several consolidated democracies, but it is the dominant power position of the leading party achieved by its two-thirds majority in parliament that, with the constitutional rights granted to the President and the parties, leads to blurring the line between the different branches of government and state and the party.

Let us remind ourselves of what the Article §48(1)(b) and (2) of the Namibian Constitution says about the vacation of seats:

- (1) Members of the National Assembly shall vacate their seats:
  - (a) ...
  - (b) if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such political party;
  - (c) ...
- (2) If the seat of member of the National Assembly is vacated in terms of Sub-Article (1) hereof, the political party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating any person on the party's election list compiled for the previous general election, or if there be no such person, by nominating any member of the party.

Therefore, the Constitution in its Article §48(1)(b) and (2) respectively grants the political parties the power to dismiss and appoint Members of the National Assembly without elections, making MP's fully dependent on their party.

For the first fourteen years of Namibian independence the leadership of Swapo -party has been in the same hands as the Presidency of the Nation. Therefore, if we conclude that the Swapo -party is internally fully hierarchical, the conclusion is that the Constitution of Namibia has granted the Powers of the National Assembly and the Presidency to the same person.

Since the last general elections Sam Nujoma is no more the President, but the patron-client relationship of the parliamentarians have not changed much. As dismissal of Paulus Kapia shows, every MP is still ultimately dependent on the goodwill of the party and its leadership. The debate whether the party is reigned by the Chairman or the Politburo, is thematic. Patron-client relationship to the party leadership of more than two-thirds of the National Assembly remains unchanged and the party is still governed undemocratically.

Then how important is this blurring the line between two branches of government for our study, if the institutions that are crumbling can be rebuilt with merely new election results, i.e. Swapo not receiving two-thirds? Surely this is a sign of a bad direction, or as Carothers says, of chaotic development. We leave further interpreting of this issue for future scholars. If the dominant status of one party is not permanent, if the opposition parties become institutionalised enough at some point to win at least one-third of the seats in the National Assembly, then we can say that the system is not totally destruct, and therefore with this system in place Namibia could still consolidate its democracy. This is therefore not an issue that would necessarily prevent consolidation.

To understand the election results with sweeping victories for the leading party year after year, one needs to understand the electoral trends in Namibia and the reasons why Swapo has arrived at the kind of dominant position that it holds at the moment.

### 3.6.1. Swapo support bases

Namibia's vast lands are very unevenly populated. The majority of the population lives in the North, and the Capital Windhoek is the only other area with a higher population density in the country. This obviously has implications on the nature of politics in Namibia. In fact, the electoral system is highly affected by it. Christiaan Keulder writes:

“The distribution of Namibia's population has a significant impact on the development of multi-partyism in the country – not only because of the unevenness of such distribution, but also because of the devoted link between the most populated Regions and a single party.”

It has been evident in all the elections held so far in Namibia that if the party gains a strong victory in the North, it will also win the elections. The concentration of voters in the Northern areas has a significant impact. Collectively, the four O's, i.e. the Ohangwena, Omusati, Oshana and Oshikoto Regions account for almost 42% of the total potential voters' body. If one includes the Kavango Region the number rises to 52% of the total potential (Keulder 2001, p. 6). Keulder continues:

“Thus the eight remaining Regions account for less than half the total potential voter population. Politically, this is quite important: it implies that any party which manages to perform very well in these five Regions can obtain an electoral victory without having to perform as well in the remaining eight Regions. Conversely, any party that fails to do well in the northern regional bloc will struggle to achieve an overall electoral victory – irrespective of its achievements elsewhere. This is, of course, if all Regions vote in equal proportions” (2001, p. 6).

Then let us look at the voting turnout and the success of different parties in the North and elsewhere. First, the voting turnout is over 10% higher on average in the regions of the four O's than elsewhere in the country. The voter turnout for the 1999 National elections was 58,08% and as high as 70,16% in the four O's. This makes it even more important for political parties to succeed there.

The root of Swapo dominance in the polls is explained when votes are counted by region. In the four O's the poorest result for Swapo was in the Oshikoto region, where 92,1% of the votes cast went to Swapo. The best result for Swapo came from Ohangwena where 98,1% of the total votes went to Swapo.

In 1989, on the verge of independence, the election fever was greater than ever. Some 96% of the registered voters turned up at the polling stations to vote for their favourite party, which for most people was for the first time in their lives. There was great anxiety from all involved and when the counting of votes took place, region by region, the results were very close. Most of the evening the DTA was in fact leading the race, which led to several cries of frustration from the people, especially in the black townships. After 30 years of struggling for independence the election victory seemed to be slipping away. The situation seemed unreal for many, and some already lost faith in the new system of democracy. Until the results of the last regions, the Owamboland Regions, came in. Swapo had won over 96 percent of the votes there, and thus had won the first national elections

overwhelmingly. People broke in tears of joy and the celebration was unparalleled to probably anything in the World on that day, or that year for that matter.

This is to underline the importance of the North in Namibian politics. It is, as Keulder describes it, statistically the only place that really matters in Namibian politics. It is also the psychological home for most Namibians. It is the home place of the biggest tribe in Namibia, it is the home ground of the church, it is the land that saw the fiercest fighting during the struggle, and quite naturally the birthplace of the Owamboland People Organisation (OPO), which later came to be known as the South West African Peoples Organisation (SWAPO) liberation front and finally the Swapo -party.

Keulder's statistics of regions that really matter for a party:

“The importance of these five Regions to SWAPO's overall performance is enormous. In the 1999 elections, SWAPO received 249 025 votes from the four “O” Regions alone, i.e. slightly more than 61% of all votes cast for the party. If one adds the Kavango Region to the equation, the concentration of SWAPO votes in the north-central Regions is even more profound. If aggregated in this manner, SWAPO received 282 995 votes from a (national) total of 408174 from these five Regions, representing almost 70% (69.3%) of all votes cast for the party. Where one party's votes are as concentrated as this, not all Regions are “effective” – equally important – as suppliers of votes for a party” (2001, p. 9).

He concludes that Namibian parties have 7,7 effective Regions out of the total 13 Regions altogether due to the smaller parties that do not see it worthwhile to extend nationally, and Swapo's index is just above 8. “The effectiveness” -index is calculated according to the following logic:

“A simple analogy serves to explain the notion of effective Region. If 50 companies all sell the same product but one company is responsible for 97% of all sales, the latter company monopolises the market – irrespective of the fact that the other 49 companies exist. There is, thus, only one “effective” company. Similarly, if a party receives votes from then different Regions but only three of those Regions supply 90% of all its votes, then there are less than ten “effective” Regions for that party. Hence, “number of effective regions” is an indicator of the extent to which any party's votes are concentrated in or dispersed across Regions it contested in an election” (2001, p. 9).

Even more interesting for our purposes are the statistics on Namibian multipartyism. As discussed briefly above, Keulder uses the formula devised by Laakso and Taagapera to formulate the number of effective parties at national level. A sign of two or more effective parties in a party system indicates a multi-party system. The trend was clear: the 1989 elections had 2,41 effective parties and therefore multipartyism, in 1994 the index had dropped to 1,68 and 1999 as low as 1,65. It can be concluded then that Namibia has been effectively in a dominant party system at least since 1994.

Regionally this is even more astonishing. Keulder (2001, p. 11) calculated the index for the four O's, for example, to be between 1,03 and 1,18. There was effectively only one party in that region: Swapo was monopolising the elections, in the heart of Namibian politics. In the most populous five regions there exists only a single dominant party, and only three regions had three or more effective parties. Those ones, the Hardap, Kunene and Othozondjupa regions are traditionally opposition strongholds and two of the three most sparsely populated regions in the country. Says Keulder, “Multi-partyism is, therefore, not developing equally across the country” (2001, p. 11).

Keulder continues with his conclusions that, “Dominant party system is becoming well-entrenched. How this will affect the prospects for a consolidated democracy remains to be seen. At the time of

writing this report, the dominant party's position certainly does contribute to the stability of the political system as a whole" (2001, p. 31). Then he further states that, "Opposition parties face a real challenge, therefore: loyalty, the distribution of the eligible voting population and the psychological impact of a stable majority are all obstacles in their path to expansion" (2001, p. 31). Or to put it even more concisely:

"Namibia's party system will remain stable as a single dominant party system until the ruling party's hegemonic position in the northern Regions is successfully challenged – and none of the opposition parties seem capable of doing so. In fact, SWAPO has managed to increase its overall support levels by approximately 2%" (Keulder 2001, p. 12).

### 3.6.2. Swapo's consolidation of power

As discussed above, Swapo consolidated its power in the 1994 elections. In the first nine years of independence it was argued that Swapo dominates the polls, because the opposition is tarnished by the politics of the apartheid era. Swapo was the only major Namibian party that was denied, or more accurately denied itself<sup>23</sup>, status in South-West Africa during the South African occupation, and it is still the only party that came out of the national liberation struggle. The argument was that the DTA, often seen as the agent of the forces behind the apartheid occupation, could never achieve the popular support required to gain government responsibility. The heavy support from South Africa's apartheid regime in the first elections did not work for the advantage of the party either.

The tables turned within the opposition in 1999. The Congress of Democrats, founded that same year, became the first opposition party with leadership that had taken significant part in the national liberation struggle. Misheake Muyongo of the DTA for example was always seen as window dressing for the white minority rule supported party.

The CoD were not the first to break off from Swapo, since the Swapo-D -party had done so already in the 80's, but they were another attempt that had not been tarnished by apartheid money. We will not attempt to analyse the failure of SWAPO-D, but will simply note that the CoD has been much more successful and organised so far.

The results of the 1999 national elections were somewhat surprising. The new party had not been able to gain voters from the Swapo ranks, though their leaders came from Swapo elites and had participated strongly in the struggle, but rather their support came almost directly from the former leader of the opposition, the DTA. This led to the conclusion that DTA support had earlier been founded only on anti-Swapo votes, rather than a genuine following of the DTA policies. The CoD was seen as the new hope to overthrow the leading party and the opposition supporters turned to supporting it. Nevertheless, the attempt failed and the composition of the government remained the same and the Swapo dominant party position strengthened.

### 3.6.3. Politics of patronage

Diescho writes:

"One of the strengths of SWAPO is its ability to appear to transform itself from a non-democratic, authoritarian, top-down organisation to a democratic, participatory organisation

<sup>23</sup> SWAPO felt that without liberation and independence there cannot be free and fair elections.



while essentially remaining the same. It is this style of political chicanery that makes it very difficult for opposition against SWAPO. In this context SWAPO owes its resilience more to a lack of challenge than to its own strength. There is also a strong pretence at accountability while the party remains accountable only to its leader who continues to reward on the basis on loyalty to him more easily” (1996, p. 14).

We have concluded that party lists are directed by the party chairman; we have noted that elected MP’s are dependent on him; and we have observed the leverage that the chairman, when acting also as the President of the Republic, can have on the Supreme Court Judges, the Chief Justice, the Attorney-General, the Prosecutor-General, The JSC, The Office of the Ombudsman and of course the Cabinet. We can also safely assume that the leverage extends, through the Cabinet Ministers, to the civil servants’ body and therefore also to the Regional and Local governments. With the current dominance in the National Assembly, the party leadership’s decision-making power even extends to amending the Constitution.

Therefore, we should remind ourselves of the theories of democratic institutions. Is the lack of public contestation perhaps a result of a failing system rather than the works of democracy as Honourable Toivo ya Toivo suggested?<sup>24</sup> Andreas Schedler attempts to anchor the discussion on democratic consolidation in his article, “What is democratic consolidation?”. He writes:

“When students of democratisation seek to classify regimes, the key distinction, of course, runs between those that are democratic and those that are not (the latter often generically labelled as “authoritarian”). The most widely accepted criteria for identifying a country as democratic have been put forward by Robert Dahl—civil and political rights plus fair, competitive, and inclusive elections. Dahl calls countries that meet these criteria “polyarchies,” but they are more commonly referred to as “liberal democracies” ” (1998, p. 92).

Then he further postulates two different subtypes of democratic consolidation. He continues, “...there are all those borderline cases that possess some but not all of liberal democracy’s essential features, and therefore fall somewhere in between democracy and authoritarianism. I call such semi democratic regimes ‘electoral democracies’ ” (1998, p. 93).

He explains that a special feature of these electoral democracies is that they have managed and are managing to have more or less free and fair elections, but fail to uphold the political and civil freedoms essential for liberal democracy (Schedler 1998, p. 93). Furthermore, he also argues that the classification of “liberal democracy” is not enough either, but further classification of “advanced democracy” is needed (1998, p. 93). This leaves us, similarly to the arguments of David Collier and Steven Levitsky (Schedler 1998, p. 93), with four regime classifications, which are authoritarian-, electoral democratic-, liberal democratic-, and advanced democratic regimes.

Schedler also discovers certain movement of regimes, new democracies, regimes between these categories, regression from liberal democracy to electoral democracy or deepening of democracy from electoral to liberal and advanced, and so on. Alongside with Samuel P. Huntington and Guillermo O’Donnell, he argues that the biggest threat to new democracies comes, not from sudden deaths, *coup d’etats* and the sort, but from erosion within. He quotes Huntington who goes as far as

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<sup>24</sup> Andimba Toivo ya Toivo, founder of SWAPO, Cabinet member since independence, member of the SWAPO politbureau, a great, or perhaps even the greatest, figurehead in Namibian politics said in a TV interview recently: “If people democratically choose Swapo, what can we do? We hope for opposition parties to strengthen to challenge Swapo, but for time being, we don’t attempt to be one party state, but since people want Swapo, what can we do? It’s democracy at work.”

saying: “The problem is not overthrow but erosion: the intermittent or gradual weakening of democracy by those elected to lead it” (Schedler 1998, p. 93).

As mentioned in Chapter 1, there are different kinds of slow deaths to the liberal democracies, negative trends as he puts it. Besides the threat of military bureaucracy eating away the decision making power of the elected government, there are also other ways of erosion. He finds attack on the democratic institutions, the very pillars on which democracy stands on, even more threatening. A weakening rule of law; the rise of hegemonic parties that may lead to suffocating the electoral competition; and the decay of electoral institutions are some of the threats he lists (Schedler 1998, pp. 97-98).

Nevertheless, the main argument Schedler makes is that consolidating democracy is synonymous with institution building. He writes, “It [consolidating democracy] implies constructing all those big organizations that make up the characteristic infrastructure of modern liberal democracies: parties and party systems, legislative bodies, state bureaucracies, judicial systems, and systems of interest intermediation” (1998, pp. 100-101).

We have accepted that institutions are essential for democracy. Democratic consolidation means democratic institution building to us. *Vice versa*, eroding or reversed consolidation means that the institutions on which democracy is built upon are crumbling. Furthermore, we also subscribe to Schedlers’ suggestion that the meaning of “democratic consolidation” is restricted to its classical meaning, “expectations of [democratic] regime continuity—and nothing else”, and “consolidated democracy” to describing, “a democratic regime that relevant observers expect to last well into the future—and nothing else” (1998, p. 103).

Carothers is rather critical of these countries that have had their first successful free and fair elections, but have still not consolidated their democracy. He talks of them often not being democratic at all, i.e. governments that are truly accountable to the people. He refers to these governments as being in the “grey zone” (2002, p. 9).

His theoretical contribution to the study is twofold. One, he also subscribes to institutionalist ideas and two, he further explains the syndromes that prevent the democratic consolidation of these “grey zone” governments. As said before he calls them “feckless pluralism-” and “dominant-power” syndromes. We concentrate on the latter rather than the first, because Namibia is still to see a turnover in government and therefore a form of “feckless pluralism” governance would be impossible.

He argues that, “the most common other political syndrome in the grey zone is dominant-power politics” (2002, p. 11). And further describes dominant-power syndrome that:

“Countries with this syndrome have limited but still real political space, some political contestation by opposition groups, and at least most of the basic institutional forms of democracy. Yet one political grouping—whether it is a movement, a party, and extended family, or a single leader—dominates the system in such a way that there appears to be little prospect of alternation of power in the foreseeable future” (2002, pp. 11-12).

The description continues to probably the most important point for this study. As mentioned before, he says, “...a key political problem in dominant-power countries is the blurring of the line between the state and the ruling party. The state’s main assets—that is to say, the state as a source of money, jobs, public information (via state media), and police power—are gradually put in the direct service

of the ruling party” (2002, p. 12). He continues further to state that it is also typical for the dominant-power countries to have a cowed judiciary, as part of the one-sided grip on the power, elections are tilted enough over time to favour the ruling group by suffocating the opposition just enough that they won’t die, and as a result the political elites are safely in the grip of power and uprooted from the considerations of the voters (2002, p. 12).

Unfortunately Namibia fits these descriptions perfectly and therefore the only logical conclusion is that Swapo’s dominant party position and the politics of patronage are destructive forces for the democratic institution of elections and therefore also destructive to the consolidation of democracy.

### 3.6.4. Swapo and the land reform

Certain issues gain increased prominence during Namibian elections. Land and especially the talk of the land reform is certainly one of them. The land reform has not been on the Swapo election agenda and the government has been very careful in its actions to fix this colonial injustice.<sup>25</sup> It has followed the “willing buyer, willing seller” principle, also noted in the Constitution, and therefore significance has diminished in the three national elections.

Nevertheless, it should be noted that ever since the Nujoma’s strong support to Mugabe in his campaigns in Zimbabwe, the issue was raised on a number of occasions in public before the 2004 general elections. Hon. H. Pohamba, Nujoma’s favourite for the presidency, has made the issue his special topic for years. Now that he is the President and soon will ascend to power also in Swapo, and therefore rule also over the National Assembly, change will also come to the leading party and government policy. Nevertheless it should be noted that the official government policy has not yet changed, and until it does all this is merely speculation.

Article §16(2) of the constitution grants the State the right to expropriate property in the public interest, subject to the payment of just compensation. Further Acts on the issue, the Agricultural (Commercial) Land Reform Act of 1995 and 2003, have paved the way for the land reform, granting the State more distinct rights to expropriate, and to go ahead with the plan if it chooses to. The state can therefore be seen to be as preparing for the reform.

The history of the issue during the time of independence should be understood. There was a widespread belief in 1989 that SWAPO, once in power, would repossess all commercially farmed land, i.e. the white-owned farms. After the elections it was very quickly noted that this would not happen. There has been wide consensus for the first fifteen of independence years that Namibia’s arid lands require large farms to keep them commercially viable. Gretchen Bauer goes even as far as to argue that the Swapo -party has sought to strike a deal with the white landowners and business people ever since it ascended to power, arguing that economic growth can be achieved best thorough an alliance between the two (1998, p. 100).

Diescho writes:

“The land question is the most complicated problem the Namibian government will face for a long time to come. This difficulty is in part due to the nature of land use during the past several decades in Namibia. The majority of the Namibian people are farmers who have a subsistent lifestyle by living off and from the land without owning it, whereas the minority owned the land and used it to accumulate wealth. Both these groups had an intimate

<sup>25</sup> Diescho (1994, p. XIV) noted that 75% of the total and all the better land was owned by the 8% white population in 1989.

relationship with the land for as long as they lived. The feelings that are attached to the land are ancient and deep” (1994, p. XIV).

We shall further discuss the issue of land and land reform in the context of consolidating Namibian democracy in Chapter 4 - Socio-economic conditions and democracy in Namibia, but for now we merely note that it has had little effect on Namibian elections and electoral system up to date. Henning Melberg concludes in *The Namibian* on July 13<sup>th</sup>, 2001 that the issue has not yet been politically manipulated by irresponsible populist rhetoric, and that there is still time to enrich the majority of the population in order to ease the pressure. He writes in *The Namibian*:

“Economic growth to the benefit of the majority of the population would make the land issue less emotionally loaded and reduce the danger of being exploited for political manipulation by irresponsible populist rhetoric” (13 July, 2001, p. 2).

Again, further investigation of the socio-economic conditions in Namibia is needed to determine the effects of this on Namibian democratic consolidation.

### 3.6.5. Swapo and traditional authorities

As noted in the second chapter, the Traditional Authorities Act makes the official traditional authorities dependent on the goodwill of the Cabinet, and ultimately the Cabinet leader – the President, via Minister for Regional and Local government – for their position. This is important to note because the traditional leaders are also significant leaders of opinion in the elections.

Andre du Pisani noted that the on-the-ground local Swapo power brokers are the ultimate key to Swapo’s electoral success (Du Pisani 15 May, 2002, lecture). Furthermore, Keulder writes that virtually all people living in communal areas in Namibia live under the jurisdiction of the Traditional Authority (Keulder ed. 2000, p. 161). A network of highly dependent traditional authorities can be a powerful tool in elections. The opposition, of course, has no access to these kinds of tools for it has no access to the affairs of the Ministry.

In the Oshiwambo speaking tribes the traditional role of the leaders is to deliberate politics or disputes. The argument is brought to the chief or chiefs or council of elders and discussed. The issue is always deliberated until there is consensus. This can sometimes take days or even weeks, but once a consensus is reached and everyone is united behind one decision, then it is very important that no one contests that decision afterwards (Kalliokoski 22 March, 2000, interview). The tradition is naturally tricky to uphold in a democracy, where contesting ideas and policies especially afterwards, keeping the representatives accountable, is the prerequisite. Nevertheless, this largely explains the extremely high party loyalty in those areas, but it also gives potential significance to traditional leaders. This is perhaps also why the Swapo government has gone to great lengths to diminish their independence, as is done in Act 13, 1997 Council of Traditional Leaders Act (*The Government Gazette* 6 Oct, 1997). It has traditionally seen the rising of diverse ethnicity as a dividing factor and undermining nation building.

The role of traditional authorities in current affairs should therefore not be exaggerated. There is potential power to influence the elections, but the government has been extremely slow in granting official status to traditional authorities. During Minister Nickey Iyambo’s reign in the Ministry of Local Government and Housing less than ten official authorities were named until 2002. The Local Authorities Act was passed in the National Assembly in October 1997. There are more than two hundred traditional chiefs in Namibia.

Mr. Hage Geingob, Prime Minister at the time, openly expressed his dismay and disappointment at the dividing of the Namibian nation by the rise of ethnicity:

“Regrettably, there is evidence today that there are centrifugal forces at play in our country that work towards tearing the nation apart. They are dividing people along ethnic lines. See, for instance, how the so-called kings are being imposed upon the various population groups by some vested interests. These vested interests know well that where there are kings, there have to be kingdoms, and where there are kingdoms there have to be territories, and where there is territory, there are boundaries, and where there are boundaries there is the imperative to protect them, if need be, by force” (NID 1993, p. 14).

We conclude that Traditional Authorities, though they have great potential, do not significantly affect the election results in Namibia.

### 3.6.6. Swapo and the role of civil society: Trade unions and churches

Interestingly, Carothers also describes the dominant-power systems usually as having “a loose collection of advocacy NGOs and independent media (often funded by Western donors) that skirmish with the government on human rights, the environment, corruption, and other issues of public interest” (2002, p. 12).

There are two kinds of parts of civil society in Namibia: the traditional one where the people have participated in great numbers, the church and the trade unions for example, and then there are strong non-governmental organisations that are usually advocating and lobbying for democracy, human rights and equality. The first is part of the establishment, the state and the leading party, and the second is not. The latter nevertheless is heavily funded from outside the borders of Namibia.

Some conclusions can also be drawn from their political affiliations. The people associated with the first, more traditional parts of civil society, vote largely for the leading party and the people in the latter usually vote for the opposition, for they are not happy with the current state of affairs.

When the Ombudswoman Bienice Gawanas asked 40 different Namibian civil society participants, including no members of trade unions or churches, in the *Peace-building, Governance and Civil Society* –seminar in Midgard, Namibia: “What is civil society?” All the participants answered in consensus that, “It is the group of people who are working outside government and are opposing it” (Gawanas 11 Nov, 2000, lecture). This is the best definition of the “second” kind of civil society in Namibia mentioned above, because that is how they see it themselves.

The Church and the trade unions can be argued to see things totally differently. Diescho writes about the role of the Church in Namibian politics. He argues that churches also contribute to the lack of real opposition:

“Once SWAPO came to power, the churches, which had championed the cause of human rights and political independence in Namibia prior to independence, no longer had a clear role. A number of formerly outspoken church leaders were coopted in government or are continuously used to sanction the activities of the state. The end result is that there is no real opposition to SWAPO and this state of affairs is likely to prevail in the foreseeable future” (1996, p. 12).

The trade unions also have a role to play in elections. They supported Swapo during the independence struggle and also fought to overthrow the colonial rule, as Gretchen Bauer explains. Therefore they have old and close links to the Swapo -party. Nevertheless, former union leader Ben Ulenga now leading the CoD stirred the pack. There is definitely sympathy towards him and his party in the ranks of the trade unions, but there is no doubt that the current union bosses are closer to Swapo. The National Union of Namibian Workers (NUNW), the roof organisation for Namibian trade unions, is an official affiliate of the Swapo party and has its own quota (15) of members in the Swapo party congresses. Besides utilizing this position, in the general elections, they naturally also do so in the internal politics within the leading party (*The Namibian* 28 May, 2004, p. 2).

Last but not least, when on the issue of civil society's effect on the elections and the electoral system, one should remember that the NGO movement called Forum for the Future formed the leading opposition party CoD. NGO's do therefore have a significant effect on the elections in Namibia. Whether it is in favour of the leading party or the opposition mainly depends on the history of that particular movement. There is no basis to a universal conclusion that civil society would support the opposition for example, though occasionally such claims raises from the government ranks. Civil society in Namibia is as diverse as are its actors.

Therefore if we conclude that civil society action matters in elections, then the interesting question to ask is whether international donors effect, via the civil society organisations that they support, the elections in Namibia? This question will be answered to a larger context, while discussing international influences in chapter four.

### 3.7. Future of the opposition

The role of the opposition could very well be the factor we are looking for, i.e. the one factor preventing the Namibian democratic consolidation or steering the development of Namibian democracy in the a wrong direction. Does a weak opposition undermine consolidation? This chapter deals with the role of the opposition in elections. What is the role of the opposition in Namibian elections, and does the lack of it prevent democratic consolidation?

Under the proportional representation and closed list election (closed List PR) system the tendency especially in the multi-ethnic and multi-regional states is that smaller parties are fragmented into near insignificance in national politics. This happens especially when the threshold is low or when it does not exist, as is the case in Namibia.

Keeping the threshold non-existent in Namibia has been argued to be a conflict prevention measure. With proportional representation and no threshold the system has ensured that even the smallest parties have been integrated into the National Assembly. Namibia has therefore prevailed peaceful and even the most extreme political views have been successfully debated in the parliament, rather than over the barrel of a gun. Nation-building did not suffer.

The best example of this was when in the first elections in 1989 a remnant of the Apartheid era, the thoroughly racist party Action Christian National (ACN) was sitting successfully in the same parliament with their former military foe Swapo. Diescho describes this as one of the greatest successes in Namibian reconciliation, democracy and democratic history (Diescho 1994, p. 25).

There is therefore a role for the smaller parties as well. One cannot argue that they act as policy-makers in the parliament, but they have significance in conflict prevention. Should the Namibian system have a threshold of 10% like in Turkey, for example, then these smaller parties would all be erased from the National Assembly. Even the threshold of 5% or 3%, as is the case in most European List PR systems, would be so high that none of the smaller parties from 1989 to 99 would have made it to the National Assembly. This could have had devastating effects on peace in Namibia.

Therefore we find, as said earlier in this chapter, that the right for Namibians to have, form, and join political parties is exercised well and it has worked well for national unity and reconciliation. Nevertheless, once Namibian democracy is consolidated and democracy be regarded as the “only game in town”, then maybe it would be wise to force opposition coalitions with the threshold percentage. It’s a vicious cycle from the perspective of democracy, really. In order to have a more competitive system and consolidation of democracy Namibia would need stronger and more unified opposition to keep the leading party accountable. On the other hand, before advancing to the consolidated stage it would probably not be safe to limit the number of parties.

Predicting the future of the opposition is difficult for it depends on at least three things; first, that the space for opposition to operate freely will remain at a good level, secondly the performance, the viable options and development that the opposition can provide, and then finally on the performance of the leading party. With current trends the only way real opposition will emerge in Namibia is the way it happened in Kenya, for example, by the leading party braking from within and the breakaways joining forces with agents of development that the people have learned to trust, i.e. the civil society. Current opposition parties in Namibia are not viable to create turnovers in elections.



### **3.8. Assessment and conclusion**

Lauri Kangas was the Head of the Finnish Observer Mission to South West Africa during the elections of 1989 and was interviewed via e-mail from Addis Ababa in February 2000.

Richard Salazar was the Executive Programme Officer for National Democratic Institute for International Affairs (NDI), an American based NGO working in Namibia with the National Assembly and the National Council, providing them with technical assistance. The interview was conducted in Windhoek in November 2002.

Danie Botha is a Swapo party member and a former member of the National Assembly. He was also a Member of the Constituent Assembly and is therefore also a signatory of the Namibian Constitution. He was cut from the Swapo party election lists in 1994 and has since joined and organised several civil society organisations dealing with the human trauma of the liberation struggle. The interview was conducted in Windhoek in November 2002.

Lectures given by Ombudswoman Bienice Gawanas and University of Namibia Professor for Political Science Andre du Pisani were observed in the *Peace-building, Governance and Civil Society* -seminar in Midgard, Namibia in November 2000. Du Pisani also lectured at the “Partners in Democracy”-meeting for international donors in May 2002.

Chief Seppo Kalliokoski, a Finn born in the Ovambo, a missionary and a Chief under the King of Ondonga is currently also the Chairperson for the Finnish-Namibia Society in Finland.

The strengths for this chapter can be found, similarly to the second chapter, in its theoretical background. There is ample evidence that democracy is a system where parties lose elections, and all consolidated democracies have turnovers in elections. Therefore the conclusion that the institution of elections has not yet been tested is solid. It is impossible for us to know whether election officials, dependent on the state for their livelihoods to the state and therefore, if blurring of the line between the two is evident, on the leading party, would keep the elections free and fair would the leading party be truly contested or even losing at the polls. We are not suggesting they wouldn't be, but we are only observing that this has never been tested. Therefore we suggest that the institution of elections has also not been tested.

Furthermore, Keulder's studies on the reasons for Swapo dominance should shed light on the Namibian dominant party system. The population distribution, the electoral system, the laws, especially the Traditional Authorities Act of 1997 and the history in cooperation with the Church and the trade unions all contribute to the Swapo success in the elections.

The main finding of this chapter is that of Keulder's that Swapo dominance in the polls will continue until multipartyism is introduced to the most populous regions of the country.

Can the Namibian electoral system with these voting trends ultimately prevent Namibian democratic consolidation? There are several things to say about this: first, the elections are not alone sufficient to consolidate democracy; secondly, they need to be inclusive and competitive, and there needs to be sufficient electoral uncertainty; and thirdly, they must produce turnovers in order to consolidate themselves and the other institutions of democracy.

Therefore, in the case of Namibia, the first prerequisite is fulfilled but the second and third are not. Namibian elections, though very high on the scale of inclusiveness, have not been able to produce enough electoral uncertainty. Furthermore, the elections have not produced an even playing field, so there have not been turnovers.

However, in order to determine whether elections could alone prevent consolidation, we need to remember Keulder's conclusions and say that the results would have been the same using any given electoral system. Therefore it is not the fault of the elections alone; nevertheless, sadly we have to conclude that it does contribute to the stagnation of Namibian democratic development.

Further investigation is needed to understand what prevents Namibian democratic consolidation. We need to move outside the institutional factors and look at the socio-economic factors in Namibia, too.

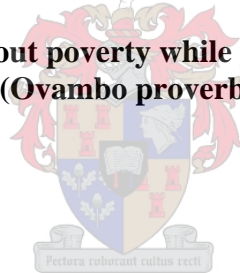


## **Chapter 4**

### **Socio-Economic Conditions and Democracy in Namibia**

**What you have eaten is yours; what you saved belongs to the chief's men.**  
**(Ovambo proverb)**

**Don't talk about poverty while you are sitting.**  
**(Ovambo proverb)**



#### 4. Socio-economic conditions and democracy in Namibia: Introduction

Before discussing the impact of socio-economic conditions have on the consolidation of democracy in Namibia, one needs to take note of few historical facts. First, Namibia is still heavily influenced by the colonial period and the economic structure of it (Winterfeldt 2002, pp. 9-10, UNDP – Namibia 2000, preface, Bauer 1998, pp. 97-102 and Diescho 1996, p. XIV). Colonialism sought to divide the peoples of Namibia racially and ethnically, but most importantly for this chapter, also socio-economically. It is therefore not surprising that after only 14 years of independence there is still extreme inequality in Namibia, and the nation is very divided. Nevertheless what is surprising is that this inequality is continuously worsening (UNDP-Namibia 1998, p. XIV and UNDP-Namibia 2000, preface).

There is no point in looking for a scapegoat or a person to blame for this, because we know that colonial structures are extremely difficult to dispose of and there are very few tools for a government to drastically change the social structure of the country. It has to be noted, however, that in consolidated democracies it would be the government in power to be held accountable and made responsible for such things. Citizens simply wouldn't vote for a government that has failed in such a way; the systems are that competitive.

Market economy is the only viable option for a government to pursue, but on the other hand we know that unregulated market economy makes the rich even richer and therefore increases inequalities. Thus we ask what the effects of Swapo's liberal market approach on the nation's economy have been and therefore what the effect have been on the consolidation of democracy?

##### 4.1. The democracy/economic development nexus

As noted above, democratic institutions in place and regular elections are not enough to create consolidated democracy. Therefore a closer look is needed to determine whether there is one factor or several factors in the socio-economic conditions that could be preventing the consolidation of democracy.

Breytenbach argues, referring to the studies of Richard Joseph that, "Africa seemed to override the concern for the assumed prerequisites of liberal democracy such as economic wealth, class and political history. The effect of this was a rapid erosion of democratic institutions soon after the democratic initiation" (Breytenbach 2002, p. 90).

Przeworski et al. (2000) concluded that wealth does not particularly lead to democracy, though it sustains democracy once achieved (Breytenbach 2002, p. 91). In their earlier study of 135 countries within the last 40 years (1996) they also concluded the following:

"If a country, any randomly selected country, is to have a democratic regime next year, what conditions should be present in that country and around the world this year? The answer is: democracy, affluence, and growth with moderate inflation, declining inequality, a favourable international climate, and parliamentary institutions" (Przeworski et al 1996, p. 39).

Out of the seven conditions to survive, i.e. to consolidate the democracy, three were issues of prospering economy namely affluence, growth with moderate inflation and declining inequality. Furthermore, the favourable international climate can also be seen as an economic indicator, though it naturally also includes politics unrelated to economy.

Therefore Przeworski as well as Breytenbach go as far as to argue various levels of affluence to effect the endurance of democracy in different ways. Przeworski makes a simple statistic of the survival rates of countries with different income levels. Przeworski et al. write:

“Once a country has a democratic regime, its level of economic development has a very strong effect on the probability that democracy will survive. Poor democracies, particularly those with annual per-capita income of less than \$1,000, are extremely fragile: based on our study, the probability that one will die during a particular year is 0,12. This rate falls to 0,06 in the \$1,000 to \$2,000 range, to 0,03 between \$2,000 and \$4,000, and to 0,01 between \$4,000 and \$6,000. These numbers mean that a democracy can be expected to last an average of about 8,5 years in a country with per-capita income under \$1,000 per annum, 16 years in one with income between \$1,000 and \$2,000, 33 years between \$2,000 and \$4,000, and 100 years between \$4,000 and \$6,000” (1996, p. 40-41).

There is a lot of evidence to suggest that democracies endure, or consolidate, better with wealth surrounding it. However, we need to ask the question in a different way. What do the studies suggest about whether the democratic system should provide that wealth?

Przeworski et al. suggest that the evidence is not conclusive. Democracies do provide better economic growth, but not drastically. On the other hand they do provide, due to their egalitarian nature, much less poverty, better general health and better social services than in autocracies. Therefore democracies do provide better welfare for their citizens.

Nevertheless, investments in democracies are not bigger than in autocracies. Therefore, there is no more economical growth on average in democracies than in dictatorships. Przeworski et al. also differentiate between the rich and the poorer countries. The difference they argue is not as much in the kind of regime practised, as how wealthy the country of the regime is. They write:

“Poverty appears to leave no room for politics. In countries with incomes below \$3000 the two regimes have almost identical investment shares, almost identical rates of growth of capital stock and of labour force, the same production function, the same output per worker, the same labour share, and the same product wages. Poor countries invest little, get little benefit from total factor productivity, and pay low wages. And though a few countries have escaped this bond of poverty, most poor countries, have remained poor. Democracy is highly fragile in such countries, and thus most of them have dictatorial regimes. But regimes make no difference for growth, quantitatively or qualitatively.

Perhaps surprisingly, affluence differentiates regimes. Wealthier dictatorships invest a somewhat larger share of income, experience higher growth of the labour force, have higher capital and lower labour elasticities derive more growth from capital input and less from labour input and from total factor productivity, have lower output per worker, have a lower labour share, and pay lower wages. Wealthier dictatorships grow by using a lot of labour and paying it little. Because they repress labour, they can pay it little; perhaps because they can pay it little, they care less how it is used. They pay more for capital—the average relative price of investment goods is higher under dictatorships—and they use it well. But because they rely on force to repress workers, they can pay lower wages and use labour inefficiently. In the end, total output grows at the same rate under the two regimes, both in poor countries and in wealthier countries. But the reasons are different: In poor countries, regimes simply do not matter. In wealthier countries, their average growth rates are the same, but the patterns of growth are different” (Przeworski et al. 2000, p. 178).

How does this translate to Namibia? With the benefit of hindsight we can at least say that the arguments of Przeworski et al. are correct in the case of Namibia. Namibia has not been able to create considerable economic growth since the dawn of democracy. Nevertheless, no doubt the living conditions for most Namibians have improved, simply because of the increase in their political rights since the oppressing times of apartheid.

#### 4.1.1. Political effect of economic inequality

Linz and Stepan write about what they call “the economic society” being vital for consolidating democracies. Without it, they say, a country cannot consolidate its democracy:

“First, there has never been and there cannot be a non-wartime consolidated democracy in a command economy. Second, there has never been and almost certainly there will never be a modern consolidated democracy in a pure market economy... modern consolidated democracies require a set of socio-politically crafted and socio-politically accepted norms, institutions, and regulations, which we call *economic society*, that mediates between state and market” (1996, p. 11).

They argue that the markets in consolidated democracies require state intervention in three ways:

“(1.) ...[The] corporation laws; the regulation of stock markets; regulated standards for weight, measurement, and ingredients; and the protection of property, both public and private... (2.) [In line with Adam Smith’s *Wealth of Nations*]... Even the best markets have market failures that must be corrected if the market is to function well... [And] (3.) The third reason for market intervention in consolidated democracies is that democracy entails free public contestation concerning governmental priorities and policies. If a democracy never produced policies that generated government mandated public goods in the areas of education, health, and transportation some safety net for its citizens hurt by major market swings, and some alleviation of gross inequality, democracy would not be sustainable” (1996, p. 12).

This is important to note in light of the gross inequalities in Namibia. Democracy, ultimately an egalitarian system, finds it hard to succeed in very unequal societies. Extreme liberalism in the economy, more liberal than Adam Smith’s theories, for example, can therefore be seen as harmful for the consolidation of democracy in very unequal countries such as Namibia.

Hence, though public policies are hard to test academically and which is not our intention either, we do take into account Gretchen Bauer’s observation on the neo-liberal direction Swapo has taken to economically further liberalise the country. Bauer argues that SWAPO policy in matters of the economy has been pragmatic and moderate, and based on the policies of reconciliation. She says SWAPO made a promise to the foreign and domestic investors that there would not be expropriations, nationalisation, or expulsions, and up to now it has kept its word (Bauer 1998, pp. 97-102).

Linz and Stepan continue with their arguments, “...at least a nontrivial degree of market autonomy and ownership diversity in the economy is necessary to produce the independence and liveliness of civil society so that it can make its contribution to a democracy” (1996, p. 11). Therefore also the existence and vibrancy of civil society should be examined in this chapter.

On the other hand Linz and Stepan argue, in line with Dahl and many others, that it is not good to go too far to the left either:

“If all property is in the hands of the state and all price, labour, supply, and distributional decisions are the exclusive purview of the state in control of the command economy, the relative autonomy of political society required in a consolidated democracy could not exist” (Linz and Stepan 1996, pp. 11-12).

Thus we should also look at what the land issue in Namibia, the Constitutional right for property Article 16 and the Agricultural Land Reform Act No. 6 of 1995 have to say. For if they were extending the rights of the state to repossess property, for example, then maybe that could be a factor, according to Linz and Stepan, preventing democratic consolidation. This is also interesting in comparison with what Bauer wrote about the pact between the domestic and foreign investors and the Swapo-party (Bauer 1998, p. 100).

Then why is it important to this discuss when studying the consolidation of democracy? Breytenbach writes, in line with Linz and Stepan, that “On the relationship between development and democracy there is a strong assumption that institutional survival depends very much on development, affluence and growth” (2002, p. 90) and continues:

“But it would be wrong to be too dogmatic about this... though hunger and democracy don’t mix there are major difficulties with the social preconditions of democracy approach as this tends to confuse causes and effects. Our view on this point is the same as that of Plattner who observes that you cannot have liberalism or democracy or development without the other” (2002, p. 90).

Furthermore, Przeworski et al also write about the link between socio-economic conditions and the durability of democracy: “...the secret of democratic durability seems to lie in economic development... under democracy with parliamentary institutions,” and continue that, “poverty is a trap”, and that “poor countries, those with per capita income under \$1000, do not develop” (1996, p. 41), hence poor democracies are unlikely to survive (Breytenbach 2002, pp. 90-91).

Inequality, society that is socio-economically extremely divided and perhaps the role of classes, especially the middle classes, are factors that cannot be dismissed either. Barrington Moore (1966, p. 418) argues that the middle classes are especially necessary for the development of democracy. This is important to note while studying Namibia, because the class divide is so deep. Bauer quotes the World Bank 1991 –report on Namibia that Namibia has inherited a “dual economy.” She continues:

“[Dual economy] marked by two societies and economies—north and south of the “Red Line”. One was “wealthy, educated, healthy and European—the other “poor, illiterate, malnourished and African,” with gross inequalities in income and access to public services between the two. The same dualism marked the productive sectors of the economy as well, according to the report, for example, in the contrast between mining and commercial agriculture, on the one hand, and subsistence agriculture, on the other” (1998, pp. 97-98).

There are virtually only a class of the rich, or super rich, and the masses of poor in Namibia (UNDP-Namibia 2000, p. 33). For Breytenbach (2002, p. 91) these two classes, both the very rich and the poor, are destructive to the development of democracy. For him the white-collar, professional and property-owning classes are essential for the endurance of liberal democracy.

In Namibia the single largest group of people are the unemployed. All other classes, the working poor, the rich and the super rich are smaller (UNDP-Namibia 2000, p. 32 and Malan 1995, p. 4).

The national unemployment average in 1998 was 35%, when over 60% of the youth between 15 to 24 years of age were unemployed (UNDP-Namibia, p. 7). While the richest 10% receive 65% of the total income in Namibia, the remaining 90% only receive 35% of the total (UNDP-Namibia 1998, p. 9).

The saying “not to become a statistic” has become notorious in the poor neighbourhoods around the World. It means that when more than half of that area or population group ends up bankrupt, sick, or even dead, then it is a struggle to rise above that half and be in the group of the successful, i.e. not to become a mere statistic.

Let's take the wealthiest 10% off the equation, since they have no poverty amongst them. The 90% of Namibians, that on average, although like UNDP said there is no “average income or development level” person in Namibia, have an annual income of US\$ 727. That's approximately 2 US\$ per day. But the curve is also steep for the poor. We know also that 50% of Namibians survive with an annual income of US\$ 190, which is 52 cents US\$ a day, considerably less than the UN poverty level which is 1 US dollar a day.

What is most notable for the purposes of our study is that over 90% of the people in Namibia receive an annual income of less than the US\$ 1,000 per capita set as bar by Przeworski to move up from the category of “extremely fragile democracies” to the “grey zone”, where democracies endure for 33 years on average. What does this mean? Can we still argue that Namibia is in the “grey zone” even though virtually everybody, i.e. considerably more than 90% of the population as we can assume from the statistics, in Namibia lives on income of less than US\$ 1,000?

This inequality translates in many ways to the study of democracy, but before going ahead we need to establish what it does not link up with. First, there is no automatic link between economic resources and human rights. The UNDP (2000, pp. 80-81) studies argue, (a.) that measures to promote realisation of human rights span the entire spectrum—from the cost-free to the unaffordable, (b.) resources do not guarantee rights, and (c.) there is no automatic link between economic growth and progress in human development and human rights.

A good example of this for our purposes is also presented by the UNDP statistics. Here South Africa, having a socio-economic history so tightly tied to Namibia, can also be seen as an indicator for Namibia. Namibia is just a little poorer, a periphery of the South African economy. Inequalities and the Gini coefficient index are roughly the same. The UNDP writes:

“Consider the stark contrast between South Africa, with a per capita income of \$3,310, and Viet Nam, with a per capita income of \$350. Infant mortality is 60 per 1,000 live births in South Africa, 31 in Viet Nam. The adult literacy rate is 84,6% in South Africa, but 92,9% in Viet Nam” (2000, pp. 80-81).

Therefore it is important to apply measures of Human Development Index (HDI), while rating the development of democracy, rather than GDP per capita for example, because it explains social welfare and affluence better. Even if it is reasonably argued that economic growth does not guarantee human development and human rights, or democracy, human development certainly has a clear link to the endurance of democracy (Breytenbach 2002, p. 88).

Henceforth, similarly to Breytenbach, we use the HDI to measure affluence in Namibia and when the HDI results are divided into regions which contrast each other sharply, then the correlation with democratic development can be assumed to be rather accurate.

To sum up all that is to be investigated in Chapter 4: first we investigate where Namibia falls in the categories that Przeworski sets; 0-US\$ 1,000 per capita – vulnerable, US\$ 1,000-US\$ 6,000 – grey-zone, or \$6000 and above – impregnable (Przeworski et al. 1996 , pp. 40-41). We then observe the HDI numbers for Namibia nationally and regionally. We draw conclusions about the effects of inequality in Namibia, including the class structure. We observe the freedoms of Namibians, the development of civil society, political society and then, finally, we conclude whether socio-economic factors have contributed to the stagnation of Namibian democratic development. Does a socio-economic reason or reasons exist that prevent the democratic consolidation in Namibia?

#### 4.2. Economic development in Namibia: empirical evidence

With it's approximately US\$ 2,000 GNP per capita Namibia qualifies as a “middle income country”, according to the UNDP (UNDP-Namibia 2000, p. 9). OECD/DAC rates Namibia as a “low middle income country” with the same World Bank rating, US\$ 1,930 GNP per capita in 1998 (Faure 2001, p. 288). Whichever the case from the National development point of view, Namibia ranks well below Przeworski's high ranks of democracies that endure 100 years or more. Namibia ranks well above the so called Least of the Least Developed Countries (LLDCs) or Low Income Countries (LICs) that have a smaller GNP than US\$ 765 per capita, that are usually targeted by the international donors of development aid. But perhaps more importantly, though well above the US\$ 765, Namibia ranked well below the required US\$ 5,295 in 1995 by the World Bank for loan eligibility. Namibia is macro-economically in what Breytenbach calls the “grey zone”.

As said before the Human Development Index explains the levels of development better than GDP levels, which the issue we're looking for in order to study the development of democracy. The Human Development Index has three components, writes the UNDP –report: longevity, knowledge and access to resources (UNDP-Namibia 2000, p. 10).

**Table 1. OECD/DAC, World Bank and UNDP indicators about Namibian national economic development and poverty<sup>26</sup>**

Year	HDI	HDI ranking	GNP <i>per capita</i>	GDP per capita (PPP \$US)	GDP per capita rank	GDP per capita rank minus HDI rank
1995	0,611	108			77	-31
1996	0,573	116			79	-37
1997	0,570	118			83	-35
1998	0,644	107	US\$1930		85	-22
1999	0,683	115			71	-44
2000	0,632	115		US\$5176	75	-40

Namibia's HDI ranking is 40 places lower than its GDP per capita ranking. It has averagely more money than development. As a comparison Cuba ranks some 59 places higher on the Human Development Index than Namibia with a GDP of only US\$ 3,967 per capita (with purchasing power parity). While Namibia ranks –40 in GDP per capita rank minus HDI rank, Cuba ranks +40. This means that they have a Human Development Index much higher than Namibia with considerably lesser financial means.

<sup>26</sup> Compiled from Faure 2001, UNDP 2000, UNDP – Namibia (1998) and UNDP – Namibia (2000)

This again portrays the dualistic nature of the Namibian economy. The averages go up when the very rich upper class contributes to the Gross Domestic Product and the numbers on national incomes. The reality is different. The large majority of Namibians are poor with very little income and a very low Human Development Index. This dualistic nature of the economy will be explained in detail in the following chapters. For now we settle for noting that HDI figures explain the development and affluence levels better than GDP and GNP numbers, especially in Namibia.

“After the role of the middle classes and affluence, the other significant variable in the endurance of democracy, is the reduction of income inequalities.” Breytenbach writes, and continues that since the Gini coefficient numbers for the countries in the Southern African region are rarely available, the UN HDI figures are a useful substitute.

Nevertheless, we do not only see the current state of Namibian HDI figures and the index of Gini coefficient, but we also follow the trend of the past several years and look at the data regionally and divided by language groups. This should give us a clear understanding of the current levels of development in Namibia on which it is trying to build and consolidate its democracy.

As stated before, Namibia qualifies as one of the most unequal countries in the World with a Gini coefficient index of 0.70, which is more unequal than Brazil or Bangladesh, on an index that rates total equality as 0, and total inequality as 1 (UNDP-Namibia 2000, p. 20). Namibia ranks 44<sup>th</sup> out of the 85 least developed countries in the World in the UNDP calculated Human Poverty Index (UNDP 2000, p. 169). Gini coefficient rankings are not necessary, since as stated above, there is a significant number of countries from which these numbers are not available, thus making the ranking misleading.

There are three different layers of poor people in Namibia. First the poorest of the poor that are rural and predominantly San speaking peoples, then there are the masses of rural poor including several language groups, and thirdly, there are the poor, also in several different language groups, that have moved to the cities.

The first group is easy to identify by language group. The San speaking peoples have, on average, an incredible Human Poverty Index of 60%. This group is as large as some 27,000 people (UNDP-Namibia 1998, p. 18). More or less the same amount of people as the two richest language groups the German and the English in Namibia combined. Then there are the masses of poor. The Caprivi/Lozi –speaking, the Nama/Damara, Oshiwambo, Otjiherero, Rukavango and Tswana – speaking peoples, so virtually all the black people have poverty index of 20% to 30%. These language groups constitute over 90% of the Namibian population (UNDP-Namibia 2000, p. 33). The Namibian national average is therefore 26.6%, similar to that of Viet Nam (27.4%) that has per capita income of US\$ 350 (UNDP 2000, p. 170). This makes us even more convinced that the GNP and GDP per capita numbers give a false impression of Namibia’s wealth, development and affluence.

On the other hand if you look at the HDI numbers for different language groups, the German speaking people in Namibia for example, have it better than the highest national average in the World (UNDP-Namibia 2000, p. 32) with an HDI of 0.960. Canada had the best national average in year 2000 with 0,935 followed by Norway with 0.934, the United States 0.929, and Iceland with 0.927 (UNDP 2000, p. 157). If one takes the approximately 25,000 native, almost exclusively white, German and English speakers one can conclude that they have better living standards, according to the HDI, than the average person in the richest countries in the World.



The richest 10% of the society receive 65% of the income and the remaining 90% of the people receive only 35%. The richest 22% receive 75% of the total income and the remaining 78% of the people only 25%. Furthermore, the curve of income levels is steep; half of the population survive on 10% of the average income (UNDP-Namibia 2000, pp. 11-12). This leads to most interesting conclusions about how misleading the use of national average is in Namibia. UNDP –county report (1998) writes:

“The average Namibian, in economic terms, does not exist. Reference to an average income becomes rather meaningless in a country where hardly anybody has incomes anywhere near the average, and virtually everybody has either considerably higher, or considerably lower incomes” (UNDP-Namibia 1998, p. 10).

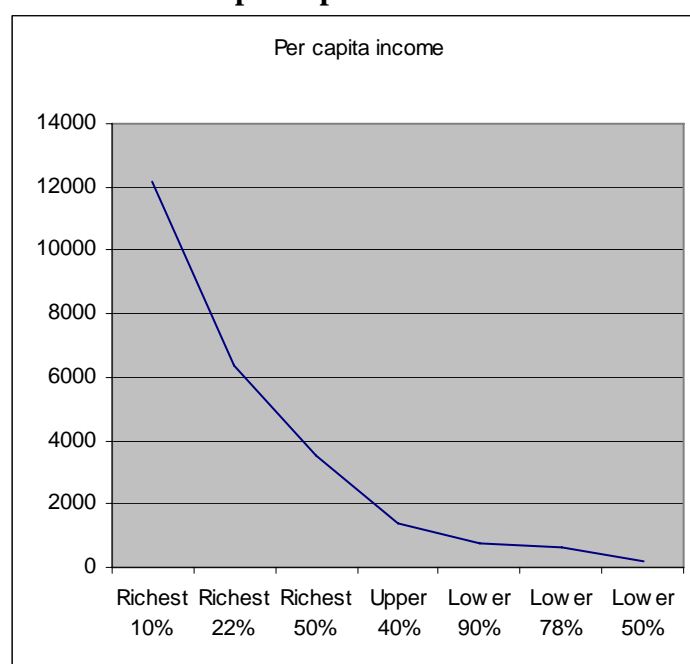
**Table 2. World Bank, OECD/DAC, NEPRU and UNDP indicators of wealth in Namibia year 2000<sup>27</sup>**

Population group	World Bank ranking	GNP	GNP per capita	GNP per capita with purchasing power parity <sup>28</sup>	Per capita Income comparable to...	Per capita income purchasing power comparable to... <sup>29</sup>	Numbers of people
Richest 10%	More advanced developing countries	US\$2017,6m	US\$12154	US\$46185	Cyprus, Israel	Luxembourg	166000
Richest 22%	High Income Countries	US\$2328m	US\$6375	US\$24225	Saudi Arabia, Seychelles, Uruguay	Finland, Sweden, Germany	365200
Richest 50%	Upper Middle-Income Countries	US\$2946,3m	US\$3550	US\$13490	South Africa, Mexico	Czech Rep., Hungary	830000
Upper 50% minus the richest 10%	Lower Middle-Income Countries	US\$928,7m	US\$1399	US\$5316	Swaziland, Morocco	Brazil, Ukraine	664000
Everyone minus the richest 10% (poorest 90%)	Low-Income Countries	US\$1086,4m	US\$727	US\$2762	Honduras, Zimbabwe	India, Indonesia	1494000
Everyone minus the richest 22% (poorest 78%)	Least Developed Countries	US\$776m	US\$599	US\$2276	Cameroon, Lesotho	Pakistan	1294800
Poorest 50%	Least Developed Countries	US\$157,7m	US\$190	US\$722	Eritrea, Mozambique	Nigeria	830000
National Total	Lower Middle-Income Countries	US\$3104m	US\$1930	US\$7334	Iran, Macedonia	Russia, South Africa, Turkey	1660000

<sup>27</sup> Compiled from Faure (2001. pp. 230-288), UNDP (2000), UNDP – Namibia (1998) and (2000).

<sup>28</sup> The purchasing power parity used for Namibia is the same than found for South Africa 2002. US\$2600 in South Africa translated to US\$9870 purchasing power. This gives us a multiply of 3,8. See, Statistics Finland, p. 40

<sup>29</sup> See, Statistics Finland, p. 40

**Table 3. Annual per capita income in Namibia USD**

The gender gap is also significant in Namibia. Men receive approximately one and a half times the income women do. When the GDP per capita nationally is US\$ 5,176 the women account for only US\$ 3,513 while the men make US\$ 6,852 (UNDP 2000, p. 163). This equals to a 66/34 ratio in the favour of men. If this ratio is applied to the National income figures, the numbers become even more devastating. We can conclude that 90% of women receive annual incomes close to US\$ 508, three-fourths of women receive around US\$ 400 annually and over half of the women receive an annual income of only US\$ 129 dollars. There are only very few countries in the World with a National average that low. If one dollar a day is the globally accepted poverty line we, can conclude that more than half of the total population and almost three-fourths of women live in poverty.

Henceforth, Jauch argues that the situation has been worsened by Namibian policies of reconciliation and affirmative action, because only the black men have been the beneficiaries of such policies and black women have now suffered from what he calls “double discrimination” (Winterfeldt 2002, p. 18).

#### 4.2.1. Middle class elite

Barrington Moore argues that the middle-classes, which usually are the educated, propertied and professional classes are necessary for development. Then on the other hand, as explained before by Breytenbach, (economic) development is necessary for the endurance and consolidation of democracy. The key issue for development to Moore are investments. He argues that only the investments by the middle-class are sufficient to make a difference.

We agree that socio-economic development is necessary for the consolidation of democracy. Therefore the arguments about investing domestically become crucial. We also agree with Moore that it is especially the middle-classes that invest in the development of the country and therefore they would play an important role also for Namibia.

Thus, the problem for Namibia, again, is its socio-economic structure. It is divided, as UNDP says, in line with the World Bank (1991) report and Bauer's statement on the "dualistic nature of Namibian society" (UNDP-Namibia 2000, p. 20). The UNDP statistics divide the country into two, the rich 5 or 10% and the masses of poor. As seen in the table 2., the richest 10% have incomes comparable to European standards and the rest, 90% or more, live on incomes comparable to the living standards of Low Income Countries like Zimbabwe or Honduras. A closer look at the life of the rich, seeing that the German mother tongue speakers in Namibia have higher HDI levels than the richest countries in the World, makes us convinced that these people cannot be considered to be the middle-class, but much more. They are a class of either the rich or the super-rich, so high are their living standards.

The rich in Namibia also behave like the rich, as described by Moore. They rarely invest in the country, and would rather invest abroad. A typical example of this is Adino Tre's answer when asked about his investment plans. He said that he prefers to invest in high-risk Internet stocks abroad than invest with high risk locally, because the markets abroad are more manageable. He also gave an example of this: His option as an investor is to buy shares in Google, for example, or to invest that same money in a local fishing company. Both are high risk investments, but for different reasons.

Google is well managed but the markets are not, while the Namibian fishing company's markets are solid, but the management and the business climate can be very volatile. The big difference is, though, that with Google stocks one can collect the money invested and the expected profits in a matter of seconds over the Internet, while the collection of money and profits can turn out to be very cumbersome for the owners of shares in the Namibian company. Tre therefore prefers to invest internationally, because the invested money and the profits can be withdrawn more easily from abroad than when invested locally (Tre 17 Oct, 2001, interview).

This is typical behaviour of a rich or a super-rich capitalist, whereas a middle-class investor invests in getting a job, i.e. a living for himself and the family. In this case, Adino's father who built a chain of supermarkets in Namibia may have been middle-class, but Adino himself is already considered rich or super-rich and a capitalist.

This investment logic of the rich in Namibia fits the arguments of Kari Karanko, former Finnish Ambassador to Namibia, who argues that one of the problems of the Namibian economy is not that there is a lack of money in the country, but that the considerable amounts of Namibian investment money are not invested domestically.

The consequences are dramatic. If there is no investing locally, there cannot be domestic economic development. And if there is no domestic development, no investments by the middle-class Moore argues that there cannot be consolidation of democracy either.

The masses of poor are also the problem. If over 90% of the population have incomes below the level of Low Income Countries, then these people cannot be considered as a source for investments. Furthermore, if 50% of the people live with incomes close to the poverty line at the level of Least of the Least Developed Countries, and the unemployment rate is nationally as high as 35%, the picture is very bleak.

The majority of Namibians cannot produce economic growth, because all their resources go towards survival. Furthermore, the minority of the rich that could potentially invest and produce growth will not invest in Namibia, because the options offered by global competition are more attractive and it

is unrealistic to expect them to do so. After all, the international investors class, a class that they actually belong to, do invest into Namibia either.

Namibians annual investments abroad are about US\$ 200 million (2000). Foreign investments in Namibia amounted to about US\$ 80 million (2000).<sup>30</sup> That's a capital outflow of approximately US\$ 120 million annually. There is more money flowing out of the country than the collective income of the 800 000 poorest people per year.<sup>31</sup> This is with an unemployment rate of approximately 38%. Namibia needs a new class of people that would have the money to invest, but would do it locally. A middle-class, as Barrington Moore argues.

Both *nouveau-riche* and old money exist in Namibia, and unfortunately the two groups can easily be defined racially. If you are white with money, then that money has most likely accumulated to you and your family during the time you were privileged because of your race. Then on the other hand, if you're black and have money you are most likely to have accumulated recently, during the time of independence, because it would have been impossible for you to have made it in South West Africa before the independence. Thus it is safe to assume that the newly rich in Namibia are the previously disadvantaged, and the ones that were advantaged already then control the old money.

The UNDP calculates that the richest 10% of the country have averagely the same income levels as an average (Greek side) Cypriot (with purchasing power parity adjustments in order to better compare the real incomes). The income levels with purchasing power parity are approximately twice the average in Finland, and one-third higher than the average in the United States and Norway or Switzerland (Statistics Finland 2004, p. 40). 10% of the Namibian population equals 166 000 people. Then let's deduct the 40 000 either English or German native tongue speakers and the 40 000 Afrikaans speakers of European descent that are the language groups we know to be white and previously advantaged (Malan 1995, p. 4). We're left with at least 86 000 rich people in Namibia. Some of them are also from the groups that were already previously advantaged like the Afrikaans mother tongue speakers for example, but not all of them belong to those groups. Therefore we can safely assume that there are more than 100 000 previously disadvantaged, now rich people in Namibia, who are as rich or even richer than an average resident of a European country.

Many have hoped that the new rich elites would take upon them the task of investing locally. For many, especially from the previously disadvantaged groups, it is one's moral duty toward the newly independent country. The problem with this assumption is the universal one, in fact it is almost the same as the problem with capitalist old money. The *nouveau-riche* have accumulated too much wealth too quickly, and have also become part of the rich or super-rich capitalist elites themselves. They too have the option of investing elsewhere, and do so because of the sheer potential for money making in it and lesser risks exactly like the old money in Namibia. They too have the option of becoming capitalists. They don't have to depend on the investments they make for their livelihoods. They buy farms, companies, lodges and hotels because of the capital profit they intend to gain from them, not because they need to squeeze a livelihood out of it. Thus, by definition they are not middle-class.

Furthermore, the newly rich also have the option of investing abroad with very little strings attached to the actual company, and the opportunity to make quick profits is equally tempting. But most of all, their motivation for developing the company or the farm is lower than that of a person who has invested in it with the intention of making the company grow with his or her personal effort. The issue is ultimately about what is at stake: your entire livelihood or loss of some of your money?

<sup>30</sup> Numbers in N\$ from Herbert Jauch's lecture (Winterfeldt et al. 2002) were converted to US\$ with the conversion rate of 1:10, which was the average of conversion rate of year 2000.

<sup>31</sup> Poorest half of the population make US\$157,7 million annually.

The *nouveau-riche* have thus also become a problem for the development of economy and hence democracy in Namibia. More importantly they are also the ones in political power, therefore forming a dangerous alliance between the rich elites and politics, if not held accountable. John Coatsworth (1994) writes about sad examples of this in Latin America, and how the elite is pocketed by the power brokers of United States foreign policy. It would be very difficult for a politician that has become rich with the help of the system to see that he or she is part of the problem. It would be very difficult for him or her to pass progressive tax legislation for the good of the country, for example, if the ones hit hardest by this legislation would be they themselves.

Gretchen Bauer has elaborate examples of this alliance. She argues that the Swapo government has sold out to corporate interests and the old establishment has had all the chances to continue as before, only now they are aligning with the new establishment (Bauer 1998, p. 100). Similarly to the sad examples from Latin America the old and new elites, domestic and international, have found common interests (Coatsworth 1994, preface). This is why it took more than ten years for the government to come up with a poverty reduction plan.

### 4.3. International influences

Barrington Moore (1966, p. 122) writes, “Every country, large and small, capitalist, socialist, or in between, is to a degree subject to the sanction of international markets. There is probably no way to eliminate this vulnerability”.

Large economies, i.e. countries that have large and developed economic sector, tend to favour “open door” type policies in their foreign policy. These are policies that let all companies from around the World compete freely without political borders. The United States are the best example of this as Harvard Professor Coatsworth (1994, preface) and President Clinton’s economic advisor Stiglitz (2002, pp. 54-55) explain. Bigger and more developed companies win the free market competition and therefore it is in the interests of the United States, a holder of most of the biggest and most competitive companies, to advocate lifting all customs barriers or any other policies protecting local markets.

Both Stiglitz and Coatsworth argue that this is, and has been, the main standpoint of all US foreign policy since its independence, i.e. for over 250 years. In fact, their war of independence was fought to liberate themselves from the customs the British were imposing on them. The war was fought over the same economic realization that underlies all decisions of today, free “open door” markets are the most beneficial for United States and any protectionism is carving out potential wealth they could win from the people of the United States (Stiglitz 2002, p. 55).

#### 4.3.1. International competitiveness

The Namibian economy is minuscule on a global scale. It is therefore unnecessary to ask, whether it should protect its economy, for it has no way of doing so. Namibia is good example of a country where good decisions and the logic needed to survive were seen as more important factors than total independence of international influences on the State. One of the first decisions of independent Namibia, as bitter as it sounds, is evidence of this. This was its decision to remain in the Southern African Customs Union (SACU).

Swapo, now in government responsibility, fought a long and bitter war of independence against apartheid South Africa and then immediately after the independence sought to align themselves closely with the former oppressors economically (Kangas 28 Sep, 2002, Interview). At that time in 1990, not even most of European countries that are now in the European Union had such close economic ties to each other. Customs borders in Europe were very closely guarded, and the European Monetary Union was still in the planning stages.

Nevertheless, Namibia remained tied its currency to the Rand and kept their borders open to the South African trade. This was a major step for a liberal, open market and open door society. The Swapo –government’s decision would certainly not have been made, had it not been a necessity. Namibia was forced to face the realities of international influences.

Present-day Namibia is flooded with foreign goods. We have no numbers in this study, but the situation is such that it would be impossible for Namibians to start a national campaign to purchase Namibian goods rather than foreign goods in order to boost the local economy. There simply is not enough Namibian goods available. These kinds of campaigns are common in industrialized countries, but Namibia simply doesn’t have enough local goods to promote.

Namibian companies are therefore successful in only very few sectors, as Bauer explained before: the fishing and the service sector, of which only one includes manufacturing. The mining sector cannot be included, because as Jauch earlier noted, although it is a very large sector it doesn’t include any Namibian companies. The Namibian diamond mines have been exclusively given to foreign companies to be exploited tax-free. There are so few sectors of business life, because the borders are open to overwhelming international competition, and of course also because of history and the way colonial powers constructed the Namibian economy.

We conclude that there are very few sectors of economy in Namibia and there are very few ways for Namibians to remedy this with open markets. On the other hand, closing the borders isn’t an option either. The Namibian economy is simply too small and underdeveloped.

Furthermore, we have noted that Namibia is receiving close to US\$ 200 million in development cooperation grant aid per year (Faure 2001, p. 230). All this cooperation money comes with ties. Not necessary in the neo-colonial way as is so often claimed, but it is always directed towards some specific commonly negotiated development effort. Therefore there is always a restricting direction that the donors must have agreed on. Shifting this direction, whether the people wanted it democratically or not, would not be possible without the agreement of the donor, i.e. a foreign government. Not a single bi- or multilateral donor has granted Namibia so-called budget aid, money to the government treasury without ties.

Hence, after 15 years of independence, almost USD\$ 3 billion has been spent on common development projects in Namibia, but not a cent of those development grants has been directed by Swapo -government alone. The projects are always jointly governed either by multilateral or bilateral partners. This is evidence of the international influence on the decisions of the Namibian government. Prior to independence, aid to the SWAPO liberation movement did not have these ties, and therefore the so-called “earmarked” development cooperation money is a continuous source of friction between the development partners, Namibia and the donor country.<sup>32</sup>

In all fairness, however, it should also be kept in mind that the development decisions are made in true cooperation with the international donor. Namibia is not excluded from these talks, and

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<sup>32</sup> President Sam Nujoma went as far as saying “We need no more aid!” in his speech in the UN Summit for Sustainable Development in Johannesburg, 2002.

international donors don't direct the decisions alone. The best evidence of this is Finland's decision to phase out of Namibia in 2000. Part of the Finnish logic was that since they could not be sure of the complete Namibian government commitment toward socio-economic development of the country they would rather direct the funds to some other country. Namibia was at that time waging war outside its borders since it had sent troops to the Democratic Republic of Congo, and the Finns felt this was wasting government funds for the Health-, Environment- and Local government sectors they were funding. They felt that the donor could not be sure that the need of these sectors was genuine, if the government had money to waste on military operations over 2000 kilometres away from their borders (Karanko 25 Oct. 2003, Interview).

Therefore, the Finns knew that they didn't have full control of the money, but the cooperation money was directed jointly, and since they didn't want to be financing war efforts the development cooperation had to stop. Thus, we know that development cooperation money is directed jointly by the partners, and not single-handedly by the donor, either. Finland has decided to phase out its bilateral cooperation with the Government of Namibia by 2007. No new projects have been initiated since the decision was made in 2000.

#### **4.3.2. Donor dependency**

Donors create a market with their presence. There is money to be applied for whichever development activity they wish to fund. The money is allocated to the non-profit contractors in exchange for the promise that certain goals of development are met.

There is also donor funding available for civil society activities in Namibia as mentioned above. Nevertheless, this international donor money does not come without strings attached, either. In order to keep projects, and the spending of the Northern taxpayers money, accountable criteria for projects that can apply for this money are very specifically defined. Goals and targets are always predefined by the donor. Furthermore, the donors have demanded higher accountability for this money available every year. Leading to even more foreign control over the project targets.

The Embassy of Finland Fund for Local Cooperation, for example, has four categories of goals: Democracy, Human Rights, Culture and the institutional cooperation to facilitate any development activities between two institutions of the two countries. This money is mainly used to benefit areas of civil society in Namibia, though other development programs are funded too. The Local Cooperation Fund is an addition to the development cooperation done bilaterally and directly with the government of Namibia. Other Embassies and donor agencies have their own similar categories for supporting civil society, depending on their foreign policy agenda toward the cooperation country. The agenda is also in most cases brought forward in the bilateral country negotiations that take place every year, and are also negotiated monthly with other donor agencies to avoid overlapping.

The NGO's in Namibia are therefore free to pursue, from the development agencies perspective, any cause they wish, but funding is available only for certain activities that suit the donors' agenda. Fortunately for Namibian democracy though these donor agendas are mostly pro-freedom, pro-democracy and pro-human rights which are also the very principles of the Namibian Constitution.

The unfortunate consequence of this market created by the donors is that there is a continuous race by the NGO's to please the donors' agenda. Especially the second category civil society organisations that do not have the "burden" of large numbers of members and boards to worry about are very agile in pleasing the donor funding institutions. There is a whole new professional group of

people in Namibia, similarly to other African nations, specialising in writing proposals to the donors in a way especially to ensure a high likelihood of receiving funding. It is a continuous race between the professional proposal writers and the donors to tie the funding to tangible means of auditing the funded activity as tightly as possible.

This can only mean two things for the development and consolidation of Namibian democracy: (1.) First if the donors' agenda remains pro-democratic then these activities can be presumed to advance the democratic institution building and consolidation; (2.) but if the donors' agenda is not pro-Namibian democratic development then this system can be seen destructive.

Ultimately though, the system is not in the hands of the Namibian people in any way and is therefore inherently undemocratic on a national scale, even if it is called a global welfare system (Kiljunen 1991, p. 3). The big question for development cooperation is what would the Namibian people themselves do with the odd 200 million US dollars of development aid per year? That's 240 US dollars per year to the poorest half of the population, whose average annual income is 190 US dollars.

What kind of parameters do these kinds of partnership then pose to development? The Namibian government would surely be able to stop the cooperation and direct its development efforts independently. Though President Nujoma's speech at the UN was probably a show of support to President Mugabe's efforts in Zimbabwe rather than a real public decision to cut the aid, we should nevertheless take a look at what rejecting international cooperation would mean to Namibia.

The results would be devastating for the national budget. With current spending levels the government would have to nearly double the income and profits tax revenue. Namibian budget revenue was estimated in 2001 to be about US\$ 1 billion, increasing steadily by an annual 4 to 5 per cent. It is in comparison some 20% less than the City of Helsinki spends on social welfare services every year (Voutilainen 1 Nov. 2005, Interview).

The budget revenue consists of three main incomes: the taxes on income and profits, SACU revenue and domestic taxes on goods and services. The taxes on income and profits were the smallest of the three, totalling approximately US\$ 200 million per year (NDI 2002, pp. 8-10). Therefore it is roughly the same as the total US\$180 million of international development cooperation grants to the country (Faure 2001, p. 230).

With the current style of (flat) taxing this would mean a double VAT and property tax and a considerable increase of income tax. On the other hand, if income tax was progressive, then this double revenue could easily be achieved. This is due to the fact that the richest 10% receive over two thirds of the national income (NDI 2002, p. 8).<sup>33</sup>

Therefore, we are tempted to make a simple calculation of what increasing the income taxes of the richest minority of the country would do. If the richest 10% per cent would be paying taxes similar to those in the Nordic countries, for example, say a 30% increase to their current income taxes, and receive only 10 times more than 90% of Namibians after taxes, the income tax revenue could be three times the amount it is today.<sup>34</sup>

<sup>33</sup> The conversion rate between the N\$ and US\$ is 1:10 the average of 2002.

<sup>34</sup> Richest 10% receive US\$2000m in total. If they would be taxed with 50% income tax, normal for well-off people in the Nordics, the revenue would be \$US600m in total. Namibian annual budget is about US\$1000m and the international development cooperation money is about US\$180 million per annum.



Government expenditure, of which 16 to 18 per cent goes towards personnel expenditure—highest in the southern African region and growing— exceeds the government revenue by two to six per cent every year since independence. This results in a chronic budget deficit and a need for international loans. The Namibia that was loan-free at independence is now indebted over 29% of its GDP, and the interest payments are about 2.5 per cent of total government expenditure, i.e. US\$ 25 million per year (NDI 2002, pp. 8-13).

For democratic development, which is the focus of this research, this translates in two ways. If Namibians see that the international influence that comes with the development cooperation is hindering their democratic consolidation, then they do have the option of stopping it. Namibians are rich enough to support all these projects by taxing their own people, especially the richest 150 to 200 000.

The percentage of tax revenue percentage is 52% of the GNP in Sweden, in Denmark under the right wing government it is 50%, and in Finland it is 46% (Statistics Finland 2004, p. 24). In Namibia the one billion US\$ collected in taxes is approximately one-third of the GNP (US\$3104m in 1998). As said before the income tax is only one fourth or approximately 25% of the total tax revenue, it is therefore 8.25% of the GNP (NDI 2002, p. 16 and Faure 2001, p. 230). In Finland the progressively raising income tax together with the municipal taxes collected from the salaries equals for 19% of the GNP.

Secondly, the numbers prove that the government does have the possibility of evening out the extreme income inequalities in the country, which is one of the main arguments by Przeworski, Breytenbach and many others why young democracies don't necessarily consolidate.

A direct money transfer from the richest one-tenth of the population—if they were taxed for US\$ 600 million—to the poorest half of the nation would mean that their annual incomes would increase threefold.<sup>35</sup> Alternatively the government could employ the 260 000 jobless people or 38% of the employment force for construction work, for example, like President Roosevelt did after the Great Depression in the United States (a classic Keynesian model example of economics) and give them all an annual salary of US\$ 2,300, or NAD\$ 1,850 a month.<sup>36</sup>

Besides sorting out the problems of inequality the question also boils down to independence. How independent are the funded NGOs, or the Government of Namibia for that matter, when they receive this development cooperation money? Surely the contract made with the donor is as binding as any legal contract in Namibia. It ties the NGO or the government to do exactly what has been agreed on in the contract. In this way the NGO's or the government are merely sub-contractors to the donors. The contracts, however, have of course been agreed upon together.

If the initiative was truly local, without the donors' contribution it can very well be concluded that the NGOs and the government are independent in their activities. So Ibbo Mandaza's (2003, p. 8) classic arguments about donor's influence are actually about what kinds of agreements are made, and what kind of agreements are negotiated before the actual cooperation starts.

<sup>35</sup> Poorest 50% receive an income of US\$190 per year. US\$600 million divided between them would mean an income of US\$722 for each.

<sup>36</sup> The richest 10% incomes (US\$2000m) taxed with 30% more is an extra US\$600m. US\$600m divided by 830 000 people is US\$722, when the poorest half receive only US\$190 per annum. The 38% of the estimated 690 000 total workforce is 260 000 jobless people. US\$600m divided by them is approx. US\$2300 per annum or using the 1:9,5 conversion rate (2002) N\$1850 per month.

Henceforth, we need to note that the development cooperation projects with the government allow the government more independence than when it comes to the NGOs, since it has more bargaining leverage in the planning and negotiation stage. The competition for donor money for NGOs is so tough that the leverage for a single NGO to bargain for independence is virtually non-existent. Any deviation from the donor's agenda drops the chances of receiving funding to non-existent.

Nonetheless, we should concentrate only to the civil society for now. The only way to judge the situation of the Namibian NGOs is to compile a list of donor agendas and then compare that to the list of the activities of the funded NGOs. If the two lists match with almost 100% accuracy, as we suggest unfortunately is the case in Namibia, then it is obvious that the NGOs did not come up with these ideas by themselves and they would only have been consultants. If there was room for independent thinking then the lists could not be a complete or a near match.

From the donors' perspective there have been several attempts by the Dutch and the Swedish in particular to fund NGO's without any strings attached, i.e. to provide so-called core funding without attaching any development goals to it. The results have been extremely disappointing. There has been widespread corruption and hardly any development regardless of the large sums of money spent. The best examples of this are the Dutch HIVOS (internet, 9.9.2004) support to Southern African NGOs in the 90's and the contribution of several different donors to NANGOF, the roof organisation of Namibian NGO's.

On the other hand the NGOs in the first category, i.e. the old and established ones, are not very independent either. Bauer first quotes one observer that, "it is widely believed that African trade unions have nothing to lose but their subordination to the state, are weak, inactive, ineffective in behalf of members, their leaders co-opted by the state, while rank and file members are seen to have little consciousness of their interests but, nonetheless, to have benefited disproportionately in income relative to other wage workers and peasant farmers" (Bauer 1998, p. 4). She continues by quoting Colin Leys and John Saul that, "While a formally democratic system has indeed emerged in Namibia, it seems fair to say that little popular empowerment has been realized", finally concluding that, "Indeed, it appears that in Namibia after the independence, the 'organizations of civil society' are in disarray. Herein lies the potentially debilitating legacy: a civil society so weak that the successful consolidation of democracy is threatened" (Bauer 1998, p. 6).

Civil society in the North and the South is therefore inherently very different. The second form of civil society, discussed above does not exist in established democracies and on the other hand government funded civil society does not exist in the South. Ironically the various governments in the North fund both the civil society in the North and parts of the civil society in the South.

"In Finland the state permeates the civil society and civil society permeates the state", said Jussi Simpura describing when how established the relations between the two are (Pesonen and Riihinen 2002, p. 86). The government is the largest funder of civil society movements, despite sometimes having to endure even heavy criticism from it.

On the other hand, echoing the hopes and wishes described by Bauer earlier in this chapter, 40 out of 40 civil society participants at the Peace-building, Governance and Civil Society -seminar in Midgard November, 2000 answered to the question raised by the Ombudswoman Bienice Gawanas, "what is civil society?" that it is, "some political organisations, outside government, looking to overthrow the government" (Gawanas 2000, interview and ASPR 2001, p. 48).

Civil society in the North and civil society in the South are inherently very different. The differences are even more extreme when Namibian civil society is divided into the three different

groups described in this chapter. There are some similarities in the first category, the labour unions and the church, but as explained before the second group, i.e. the foreign-funded NGOs, are totally different and they don't exist in the North. The third group, the small CBOs, again share some qualities regardless of their geographical location and in fact most resemble the civil society organisations that once existed in Europe, for example, at the time when civil society organisations were about to be born soon after industrialisation.

### 4.3.3. The role of civil society

The development of civil society is integral to the development of democracy. This assumption is made in this study, because historically civil society has played such an integral role in developing democracy in stable, established and consolidated democracies. They are the critical voice, the un-institutionalised watchdog of government, the third sector that keep the state and the economic sector on their toes and aware of the citizens' rights. Pesonen and Riihinen (2002, p. 107) write:

“Citizens’ organisations and social movements form an essential part of any democratic society, and an active civil society is particularly characteristic of established and stable democracies.”

Civil society emerges from freedoms and civil liberties. Without the freedom of association or freedom of speech, for example, it would be very hard for civil society organisations to grow and be active. Though there are examples where civil society has forced the change toward more freedom, freedoms usually come first (Pesonen and Riihinen 2002, p. 107).

The labour movement and the church in some cases have made the change, fought for the necessary freedoms for civil society.<sup>37</sup> Many of the strongest parties in consolidated democracies have a civil society background, most notably the labour parties, the green parties and the Christian democratic parties around the World.

For many, in the North and in the South, civil society represents the vanguard for democratic change.<sup>38</sup> The organisations are expected to create a space where conflicts can be resolved, a space for civil discussion and a forum for democracy. Gretchen Bauer (1998, p. 2) writes about these hopes in Namibia:

“Many scholars and activists who are concerned about democratic prospects in Africa believe there is an alternative to the recently formed or newly reconfigured political parties and prodemocracy movements. For them the concept of civil society promises the strongest hopes for the future of democracy in Africa (Mamdani et al 1992, p. 131). As Celestin Monga (1995, p. 2) notes, in the face of “the risk of being deprived of their democratisation, society has had to invent alternative structures to manage and express its dissatisfaction”; these are the organizations of civil society. Four groups of civil society stand out so far, according to Monga (1995, p. 2): students, the clergy, lawyers, and intellectuals and journalists. This civil society and its and its organizations and movements are variously expected to articulate alternatives to existing one-party states, represent society’s fight for resources and power,

<sup>37</sup> Examples of labour movements making the necessary freedoms for civil society are many from Scandinavian countries to Great Britain and Chile, but the most notable changes the Church has been able to make, or contribute to making, were in Poland and in Namibia.

<sup>38</sup> Not surprisingly thus many former communists since the 1990's have found comfort in this model of democratisation. The Leninist thought that a vanguard of proletariat is needed for advancing socialism has been easily transformed to an idea that a vanguard of civil society activists are needed for advancing democracy.

redefine politics and provide the basis for institutional reform, constitute a potentially subversive space from which new structures and norms may take hold to challenge existing state orders, become an arena for dissent and opposition, hold government accountable, provide a counterweight to state power, facilitate the new alliances and coalitions necessary for the functioning of a viable democracy, be part of a larger, more sustained effort to create a plural society, and more.”

The two strongest and oldest civil society movements in Namibia have been the Lutheran (and Anglican) Church and the labour movement, both with very close ties to the liberation struggle and SWAPO. They both played an integral part in the liberation of Namibia from colonial rule, because they could both operate from the inside of the borders of South West Africa (SWA), while SWAPO guerrilla war, aided by the Cubans and the Angolans, was pushed beyond the borders and to Angola. The civil society movements in South-West Africa were stinging opponents of the oppressive rule and as such they were so successful that the South African military saw it necessary to attack them many times. The most notable examples of this were the bombings of churches and their press in Oniipa and attacks on Union rallies in Katutura and Walvis Bay. President Sam Nujoma (2001, p. 350) writes in his autobiography about the involvement of the Churches in the struggle as follows:

“Our churches paid dearly for their part in the struggle. Church ministers and deacons were detained and tortured, the Anglican seminary and school at St Mary’s mission at Odibo were partly destroyed in June 1981 as well as the ELOK printing press at Oniipa, as well as the headquarters in Windhoek of the Council of the Churches in Namibia” (CCN).

He goes further to cite the students and the NANASO in particular and the workers unions and NUNW in particular having greatly assisted the latter part of the struggle. The mass boycotts and strikes made, in the end, “independence [to Namibians] inevitable” (Nujoma 2001, p. 383).

There are three different kinds of civil society areas in Namibia. The movements and the Non-Governmental Organisations vary a great deal, but three categories can be easily named. First there are the above-mentioned old and large actors like the labour movement and the Church. They have a common history intertwined with the struggle and their particular association first to OPO and SWAPO liberation movement and then to Swapo -party. The student movement was also part of the struggle, at least from the 1988 boycott against military bases in the vicinity of schools onwards.

Secondly, there are the Non-Governmental Organisations that emerged right before or soon after independence. As these NGOs are heavily donor-funded, they are also often very critical of the Swapo -party and the government. Some of them, namely the ones involved with the Forum for the Future (FFF), even came up with the new opposition party CoD. These NGO’s are exercising their right and obligation in democracy to keep the government and the economic sector accountable. They exercise their freedom of speech and assembly to the fullest and therefore test the level of freedoms for everyone. They are often criticized to be more reactionary than proactive toward government policies and the issues they advocate, though this is not to say that even the most critical ones would not be willing to cooperate with the government sometimes.<sup>39</sup> Confrontation is the common means of addressing the government. Cooperation does occur, but it is uncommon.

Nevertheless, heavy dependency on donors is a serious problem for these NGOs, and the race for the most accurate knowledge of the donor’s agenda often seems to be the dictating incentive for all of them. The money for activity becomes more important than the political activity itself. The

<sup>39</sup> Good example of this is the cooperation the National Society for Human Rights for example does with the Ministry of Prisons in the CRIS half way house project and by improving prison conditions in general.

struggle for money is hard, competition is fierce and without large numbers of members money is the only thing keeping the movement alive.

Therefore these NGOs are not often independent thinkers. What is typical for them, whether they are independent activity groups or not, is that they are entirely funded by international donors, they have a comparatively rich and well educated general secretary living in Windhoek, very good international networks, poor associational democracy, hardly any board meetings and very few members. But most notably for this study, they are something that has never existed in the older, established and consolidated democracies when they were still consolidating their democracies. Therefore they are also the ones studied more carefully in this thesis.

Writing somewhat critically about associations in general, Max Weber states, that the birth of associations and organizations does not necessarily end the existence of the movement, but usually it brings about some bureaucracy (Pesonen and Riihinen 2002, p. 88). What is typical for these second category of civil society organisations is that they do not emerge from a movement of any sort. They are simply a bureaucracy or a paid activity group that pleases the funding agencies, and should therefore be called consultancy NGOs. They are the most common type of civil society organisations in Africa.

Thirdly, there are the Community Based Organisations (CBO's) that are usually very poorly funded one-task organisations. They can be local women's groups assembling in the Chief's kraal or house or a small women's shelter or legal advice office in the slums of Walvis Bay. What is most notable of these organisations is that they receive little, if any, outside help and more often than not the actors are local women acting against some vice or for relief from some problem that is terrorising the locality.

Bauer cites Michael Bratton and Nicholas van de Walle that conclude the civil society in Africa to have been "instrumental in democratic transitions [and] they have performed less well during the early stages of democratic consolidation" (Bauer 1998, p. 3). This is due to the assimilation or merging of these movements into the leading party, the former liberation movement, after independence. A typical example of this is the merging of Namibian labour movement into the Swapo-party since 1990.

#### **4.4. Selected economic issues**

One cannot bypass two issues vital to democracy, that drastically affect the issues of inequality and are discussed almost daily in the Namibian newspapers; they are land reform and the role of the trade unions protecting the rights of their members.

Both issues are also long time favourites of the leading party, they have appeared in all election manifestos and as discussed in this chapter they have also been a source of SWAPO power during the struggle for independence.

Furthermore, both issues imply a social change for a more egalitarian society, a change that has yet to actualise. We discuss why these issues are stagnated and what the effect of this is to Namibian consolidation of democracy.

#### 4.4.1. Land reform

There are two different kinds of land in Namibia and two different kinds of land reform problems. Namibia is almost evenly divided into Communal and Commercial land that both have a very different history and legislation attached to them.

Communal lands mainly in the North cover 33.5 million hectares. of which 10 million hectares are unutilised. It supports approximately 140,000 families which constitutes most of the farming population and an estimated 29% of the Namibian labour force. Access to communal land is governed by custom, which is a major drawback for investments to this land. There is no ownership of the land which contributes to the low level of investments, and therefore to the low level of technology and output. Communal farming contributes less than 4% to the National Gross Domestic Production (GDP). If the land is not privately owned the farmers do not have access to loans and therefore capital for investments (UNDP-Namibia 1998, p. 44).

Commercial land on the other hand is very different. These lands, south of the "Red Line", were allocated exclusively to the white farmers during colonial times and still remain mainly privately owned by the ethnic minority of European descent, some of which are still citizens (or have dual citizenship) of the former colonial power. UNDP –report (1998, p. 44) writes:

“Commercial agriculture covers a total area of 36.2 million hectares. Around 4,000 freehold farmers, mostly white, operate 6,337 land holdings averaging 5,700 hectares and concentrating on livestock. They contribute around 5% of GDP, 90% of agricultural GDP and 10% of exports, and employ around 36,000 labourers, which represent about 8% of the labour force.”

So altogether, with these numbers, we can calculate how big an economic issue the land reform would be. The agricultural sector altogether constitutes less than 9% of Namibian GDP and it employs 38% of the total labour force, of which the vast majority works on the communal lands. The total number of Namibians depending on agriculture, i.e. on the income of the labourers, is of course much higher. The UNDP –report (1998) uses a 1:6 ratio and therefore we can calculate that the total number would be around 176,000 families or approximately 1,1 million people. The land reform is therefore not very important macro economically, income- or production wise, but it involves most Namibians. This is a typical sign of the Namibian double-sided economy and what the UNDP calls “bi-modal income distribution” (UNDP-Namibia 1998, p. preface).

It is clear that there is too much poverty in Namibia and only very few clear answers to alleviate it. Land reform is seen by many as the most obvious alternative for poverty reduction. It is thought that if the majority would just have the chance to farm the land as their own, they could pull themselves out of the cycle of poverty. There is a call for the Government to act against poverty. There are no doubt people in the Government that see the land reform as a way to alleviate the poverty situation, but as Herbert Jauch analyses the Namibian day-to-day political debate, we should not exaggerate the importance of the land reform on the agenda. There is a widespread consensus among the leading party and the opposition that the issue is complex and there are no easy answers. The ones that keep raising the issue are the landowners and their representatives, not the political elites. Jauch explains the origins of the political elites’ surprising lack of interest in the issue:

“No doubt, although socio-economic conditions have not improved, the end of war has nevertheless meant a dramatic change in peoples’ lives in the North. If it were not so, SWAPO would not have won the election so overwhelmingly. The mere end of the war period has allowed the population to return to some kind of normality. The bit of

infrastructure that later came including water and electricity supply has made a change in the rural peoples' lives. That is why you have a 95% SWAPO vote, which is a reflection of the people's conviction that their lives have improved.

...[F]rom the perspective of an affluent urban-based population, the living conditions in the North look very much like ten years ago. But it seems that people there feel that their lives have changed in those ten years, and this influences the (political) dynamics in Namibia. This is why the government gets away with an absence of distinct redistribution policies. It might take another ten years before issues of redistribution and socio-economic equality enter the political debate more forcefully. However, at the moment these issues are largely absent from our political debates" (Winterfeldt et al. 2002, p. 18-19).

Therefore politically, remembering Keulder's conclusions about the Regions that matter in elections, we can conclude that the issue has not become very important politically. Both the urban population and the rural population are quite content with the current political status quo. Would the Pohamba election been tighter and needed more rallying around causes, then the issue might have risen to the agenda similarly like it did in Zimbabwe before the 2002 elections. But now that there was no real opposition to the Swapo candidate, the issue remained under the lid.

Nevertheless, a closer look on the issue is needed in order to determine its effect on Namibian democratic development. Almost all commercially farmed land in Namibia is in hands of the former colonisers or their descendants. On the other hand two-thirds of Namibians receive their livelihood either from communal farming or as labourers on commercial farms, or they are dependent on these workers. This same majority has now, after fighting for the right to vote, elected the former-liberation-front-turned-political-party to have overwhelming government responsibility. This is for many the equation that makes the land reform, over a longer period of time, inevitable.

As mentioned before, the issue has turned out to be very complex. There is without a doubt a public call for poverty alleviation that to some equals land reform. However, as will be discussed in this chapter, with the current constitutional framework in place, namely forcing the state to pay fair compensation for the acquired land, the reform can turn out to be very costly to the government.

In addition, Namibia is a very arid country, making most of the land only suitable for cattle farming. Only 5% of the farmland in Namibia gets enough rainfall for crop farming. This means that the farms need to be very large to be economically viable even for subsistence farming.

The 6,337 mostly white owned, commercial farms that are being targeted for land redistribution employ six workers per farm on average. Including the dependants, the estimate is that there are on average 35 dependants per (commercial) farm. The average size of a commercial farm is 5,700 hectares. Therefore if land reform is executed for the benefit of the poor workers it will equal 950 hectares of commercial farmland supporting each farm-worker's family (UNDP-Namibia 1998, pp. 44-46). UNDP (1998, pp. 46-47) continues:

"In terms of recommendation of the Land Reform Advisory Commission, beneficiaries of resettlement should be allocated a minimum of 3 000 ha of land in the south and 1 000 ha in higher rainfall, cattle farming areas. While it remains to be established how much agricultural land falls within either of these categories, this example shows that land redistribution, if conducted in an economically and environmentally sustainable way, will not necessarily put more people on commercial farm land than are employed at present."

It is not clear whether there will be macroeconomic benefits from the reform at least within a short timeframe. The financial turnover from the initial investment by the government can only be expected after years, maybe even decades, after the land reform. The Government price on the higher rainfall areas is NAD\$ 130 per ha<sup>40</sup>. If the average size of the farm should be 1,000 ha in order for it to be environmentally and economically sustainable, then the price of the repossessed farm would be NAD\$ 130,000 for the Government (UNDP-Namibia 1998, p. 47).

The issue is therefore very political. The masses of the poor demand some sort of equality, many feel they took part in the revolution for freedom. The benefits of the revolution do not exclusively belong to members of the vanguard and to SWAPO. Remembering that more than half of the population live below the global poverty line and half of the working population are agricultural workers, the situation seems unbearable for many.

Nevertheless the government finds it hard to deliver solutions, at least when it comes to the land reform. There is understandably pressure for the leading party to amend the constitution with its two-thirds majority in the National Assembly, so that expropriation of land from the white farmers can be done without paying them the market price. This way the land reform could perhaps be seen as viable.

Nevertheless, this approach will also cause economic problems to the Government. If it were not so the land reform would have surely been completed so already. UNDP-Namibia (1998, p. 47) writes:

“The high costs of land acquisition have prompted some sectors of the community to call for a change of the Constitution to facilitate the acquisition of land without compensation, which would significantly reduce costs to the Government, but not entirely. Many commercial farms in Namibia are indebted either to commercial banks or Agribank. In the case of land acquisition without compensation, farmers will not be able to pay their debts, and the Government is likely to be called upon to pay irrecoverable debts. In September 1996 the total debt of the agricultural sector was N\$641 million or about N\$100 000 per farm. Land reform is therefore a complex issue that must balance the needs of the landless with the current realities, which came about as a result of a long period of historical injustices and abuse.”

The issue is difficult also from the perspective of recent history. Lauri Kangas (interview, 14.2.2000) explains that during the last years of South African rule and the early years of independence the white farmers sought to protect their farms by taking heavy out loans on them (from the white owned private banks). This made it difficult for the new majority government to repossess the land without driving the country into a banking crisis. It was a deliberate policy of the white farmers to protect their ill-gained property against the majority.

Therefore the government is left with four options of executing the land reform. One (1.), to buy the land and pay N\$130 per ha keeping the constitutional law and order in place; or two (2.), amend the Constitution and expropriate the land without compensation and pay the private banks N\$100 per ha; or three (3.) amend the Constitution expropriate the land, not pay the private banks and let the private banks fall into banking crises; or finally four (4.), advocate civil society groups like “war veterans” in Zimbabwe to simply to take the land and not pay anyone anything, again driving the private banks and the country into a banking crisis.

The choices are tough which makes the situation stagnant. The land reform acts and amendments in the National Assembly have not resolved this choice and can therefore be seen as mere window-

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<sup>40</sup> With the inflation rate of 15% the NAD\$ 130 in 1998 would be NAD\$ 345 in 2005.



dressings. The acts are preparation for the Government to do something, but the fact still remains that nothing has yet been done.

Henning Melber (*The Namibian* 13 July, 2001, p. 2) approaches the difficult issue from another angle. He argues for poverty alleviation by other means so that the land reform can be environmentally and economically sustainable. He writes:

“Effective redistribution of wealth and poverty reduction is not identical with land redistribution but might at the same time ease the pressure. Economic growth to the benefit of the majority of the population would make the land issue less emotionally loaded and reduce the danger of being exploited for political manipulation by irresponsible populist rhetoric.”

Land reform is envisaged for both the commercial and communal sub-sectors. An Agricultural (Commercial) Land Reform Act was gazetted in 1995 and the Act for the Land Reform in the Communal Lands in 1997. UNDP-Namibia report (1998, p. 46) continues:

“Land redistribution is widely regarded as a prerequisite for the successful alleviation of rural poverty and improvement of rural standards of living. It could contribute to the overall objective of rural poverty alleviation, as part of a wider programme of agrarian reform and employment creation, both in rural and urban areas.

However, land distribution in itself is not a panacea to poverty reduction. The land targeted for redistribution in Namibia is mostly marginal agricultural land, suitable mainly for extensive livestock production. Sixty percent of the commercial farmland receives less than 300mm of rainfall per year, while only 5% receive enough rain for crop cultivation. In such an arid environment, given the poor soil quality and limited access to markets, land ownership becomes much less of a crucial factor than in most countries.”

The issue is one of sharp contrasts. Agriculture in Namibia is sharply divided into communal and commercial farming; the previously disadvantaged majority both lives and works on communal land or work for the white owners of the commercial land. The history of the brutal white minority rule over the majority makes the issue emotionally charged. White people still rule the black workers and their families on their private property. Rules of employment are still very similar to those exercised before independence. Brutal examples of this are periodically reported by all the main media in Namibia.

There are very few previously disadvantaged people in Namibia that would not argue for land reform. Even Diescho, a stinging critic of the current government, argues for immediate land reform. On the other hand his Namibian scholar colleagues, predominantly white, find increasing numbers of difficulties in realising it. The issue is, at what cost are you willing to pay to turn around the historical injustices of land ownership? It is no doubt going to be costly for the government and the macro economy of the country, whether the constitution is amended or not. Not because of the 8% or 9% agriculture contributes to the GDP, but because of the inevitable shock to the free markets the reform would cause (UNDP-Namibia 1998, p. 46).

We have no answers to the issue, but it could be argued that from the point of view of democratic consolidation, if the land reform would be able to produce poverty alleviation and provide work to the masses, i.e. decrease the inequalities, then, with the logic of Przeworski and Breytenbach, Namibian democracy would be more likely to endure. On the other hand, were the land reform to lead to Zimbabwean style lawlessness, it would no doubt crumble the democratic institutions and contribute to the breakdown of Namibian democracy within a short timeframe.

#### 4.4.2. Export Processing Zones

The case example of Export Processing Zones (EPZ) has been included in this study to provide an example of where labour and government interests can be in conflict with each other. They are also included because the EPZ's have created situations in Namibia where trade unions have folded in front of the government's ambitions.

The EPZ's are tax-free economic areas where foreign investors are allocated a land where they can build companies, which are exempt from taxes and some labour laws. The largest company working in these areas in Namibia is Ramatex, a Malaysian-based corporation, notorious of ill-treatment the environment and their employees (Lister 1 Oct. 2004, p. 2). Ramatex creates 6,000 of total 6,600 jobs created by the Export Processing Zones (Dentlinger 15 Sep, 2004, p. 1). Ramatex is the second largest industrial employer, after the ostrich leather industry in Namibia. Approximately half of Ramatex workers are unionised, as are also workers in the total industrial workforce. EPZ workers in total constitute about 2,5% of the Namibian industrial workforce and one per cent of the total employed workforce. Their total annual turnover from Namibia is US\$ 53 million, which is about 44% of the total Ramatex corporation (Dentlinger 15 Sep, 2004, p. 1).

Gwen Lister, editor of *The Namibian* newspaper describes the government dilemma with the EPZ policies at one hand and the unions in their pocket on the other as follows:

“Government must answer the question as to why they bother with the Labour Act or the Affirmative Action law and others, when they appear to be prepared to simply waive concerns about the safety of the workforce when it comes to foreign investment.

Parts of the Labour Act are not applicable in the Export Processing Zone (EPZ) as it is (among these the right to strike). This would apply to Ramatex since they too would be an EPZ company.

So workers here would in any case forfeit certain rights enjoyed by their colleagues working outside the EPZ elsewhere in Namibia. At the very least we should ensure that their safety is not being jeopardised. And only an EIA study can establish this...

...The unions and Swapo fussed often enough in the past about the Rossing workers and their exposure to radiation; TCL workers in the copper smelter and others who were either exploited or subjected to less-than-safe working conditions.

They were right to do so then, and cannot apply different standards now” (Lister 8 Feb, 2002).

The case example is simple. The government has eroded the workers rights in the EPZ's and have even eroded the Labour Act of 1992 with the Export Processing Zone Act of 1995, the gravest loss of which is the right to go on strike. The trade unions, now affiliated with the leading party, have not contended these acts, thus undermining the rights of their members.

For us, this is clear evidence of the union leaders not being able to protect the labour movement interests when they conflict with the interests of the leading party and the government.

Henning Melber argues that the government is both weak and strong in their intervention, depending on what they want to be. Melber argues that the government wants to control the labour movement, but without social change. He says in line with Bauer's criticism of the Swapo government, “...[I]ntervention into the fisheries sector, the EPZ case and the Labour Act are some examples of a strong state defending its manoeuvring space and pursuing interventionist or

regulatory practices. It is at the same time an extremely weak state in terms of meaningful control over the basic structures of the economy” (Winterfeldt et al. 2002, p. 9).

The obvious argument against all these leftist thoughts of the importance of a viable labour movement has to be discussed in a chapter about EPZ as well. Adam Smith said that the cake would grow for all of us, the rich and the poor, if barriers, such as taxes and customs, are removed. Free trade would provide more economic growth. Herbert Jauch of Labour Resource and Research Institute (LaRRI) explains what has happened to Namibia with these free trade zones:

“The government is not getting what it should out of negotiations with these companies. Otherwise, how could it give AngloAmerican Corporation EPZ status for the Skorpion Zinc Mine? You exempt one of the richest companies in the world from paying taxes to a country like Namibia, where mining taxes historically have formed a significant part of a government revenue. Secondly, when it comes to negotiations with investors, Namibia took a slavish stance in granting them whatever the demanded. This, however, did not result in Namibia becoming a major investment destination. Comparing the invest inflow and outflow, last year alone (2000) we had an inflow of N\$795 million as opposed to an outflow of over N\$2 billion. We are exporting capital from this country on a huge scale year after year. At the same time, we call for foreign investments, regarding them as panacea to development. That’s unlikely to work out... The EPZ policy did not work and is unlikely to achieve the expected results in the years to come” (Winterfeldt et al. 2002, p. 12).

Export Processing Zones have created jobs, but at a cost for the environment and the rights and freedoms of Namibians. From the perspective of democratic consolidation for Namibia this is a setback.

#### **4.5. Swapo’s economic policy: co-optation**

When Bauer, Melber, Soiri, Diescho or Keulder describe current day Namibian economic policy, it is described without exception with the policy of reconciliation, meaning that the government has sought to align itself with its former foes, i.e. white owned capital created by the Apartheid government (Bauer 1998, p. 101 and Winterfeldt et al. 2002, p. 10 and Diescho 1996, preface). It has also meant no social change. Bauer (1998, p. 101) writes:

“In addition to the obvious social and political aspects, national reconciliation since independence has had an economic dimension as well, most clearly evident in the government’s efforts not to antagonize the largely white private sector, whether local or foreign.”

Melber (2005, p. 4) writes about the same thing only he specifically includes the international investors in the socio-economic pact for stability:

“In his New Year Message the President pledged that Namibia would continue to pursue what he termed “principles of economic diplomacy” as the core of Namibia’s foreign policy. The country’s international engagement was indeed to a large extent confined to trade and economic negotiations and agreements. The good relations to East Asian countries continued to feature prominently. These operate with companies and contractors in Namibia and employ own citizens in large-scale projects – much to the concern of local stakeholders such as industry and the trade unions...”

Nujoma then travelled on to Malaysia. Over 3,000 workers are employed in a textile factory in Windhoek established with considerable material support from Namibian authorities by a Malaysian company under the US-American African Growth and Opportunity Act (AGOA). This project is considered a success by both governments, notwithstanding massive criticism over the environmental damage, the appalling employment conditions and numerous violations against labour standards and practices, including the illegal employment of several hundred unqualified contract workers from Bangladesh – a scandal which made local headlines during September.”

Rather than calling this Swapo policy “reconciliation” we call it “co-optation”. This is because from the perspective of consolidating Namibian democracy, and the fact that we argue that socio-economic conditions have something to do with it, the word reconciliation might be misleading to believe that this policy would be beneficiary to the development of democracy. We argue that it is not, and therefore prefer to use the word “co-optation”.

The best case example of the casualties of this policy are the trade unions and their inability to act in the best interest of their members at the moment. Swapo has co-opted them and the workers rights have become secondary in the process.

Bauer (1998, p. 130) writes that ever since independence Namibia has seen a similar change of the movement as has been observed also elsewhere in Africa. First, the national liberation movement has seen no need for social change once in power and therefore any independent labour movement has been seen as an enemy and as an activity of the opposition. Secondly, there has been a strong effort to co-opt the movement into the former liberation movement, i.e. the leading political party of today.

As said before, the labour unions are one of the oldest civil society movements in Namibia and they have had a significant impact on Namibia becoming an independent nation. It were the labour unions alongside with some churches that lead the struggle inside the borders of South West Africa, since the liberation movement SWAPO was driven to exile.<sup>41</sup>

Nevertheless, the question of who is protecting workers’ rights in Namibia has become increasingly unclear since independence. The labour unions are so thoroughly co-opted by the Swapo-party that when a conflict of interest arises between the government and the labour unions, the unions fold and workers are left without a front to speak on their behalf (Bauer 1998, p. 8). Since the government has sought, according to Bauer, no social change, the workers are left without a common front for this cause (Bauer 1998, pp. 130-131).

If the Nordic tripartite consensus model is copied, as is argued for by some trade unionists in Namibia, the labour unions need to first have independence and bargaining power. Only then can a consensus contract be reached in negotiations (Pesonen and Riihinen 2002, p. 91).

Bauer (1998, p. 8) cites several authors, Ruth Berins Collier and David Collier, Gay Seideman, Dietrich Rueshmeyer and Evelyne Huber Stephens and John Stephens, who argue civil society and especially the organized labour to have a positive impact to the democratisation of a nation. She writes:

“Many observers have argued that contemporary analyses of democratisation in Africa must focus not only on the formal aspects of political democracy—free and fair elections and

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<sup>41</sup> This is not to say that SWAPO would not have directed attacks inside the borders as well. The best example of this might be the 1988 Windhoek military base bombing. See, Nujoma, p. 380

multipartyism—but also on the vibrancy of associational life, on the strength of social movements and independent organizations that can potentially check the excesses of government and give voice to the underrepresented.”

Nonetheless she then goes on to argue, as we have done earlier in this chapter, that in Namibia the situation, especially with the trade unions is not that clearly cut. She argues that they are too co-opted by the government and the leading party. She argues that “...the labour movement would be better situated than other sectors of society (women, churches, students, rural dwellers) to spawn strong and autonomous organizations in the form of trade unions, appears... to be in a precarious situation” (Bauer 1998, p. 8). She then continues by citing three major weaknesses of it:

“[F]irst, in the structural characteristics of the Namibian economy, that is, a primary export-dominated economy with an insignificant manufacturing sector and a large segment of the population reliant on subsistence agriculture or the informal sector for its livelihood. Second, labour’s weakness lies in both the restrictions and later reforms of an oppressive colonial rule and its enduring legacy, especially in the workplace. Finally, the National Union of Namibian Workers—the major trade union federation in Namibia—and affiliated unions are weak because they emerged and evolved in the context of an externally based nationalist movement, now the ruling party in government (SWAPO), anxious to consolidate its position in post independence Namibia” (Bauer 1998, p. 8).

Namibia has approximately 500,000 of working people, of which 270,000 are agricultural workers and 230,000 are formal sector workers. Out of the formal sector workers approximately half or 115,000 belong to trade unions (Bauer 1998, p. 6).<sup>42</sup> Comparatively, approximately between 170,000 to 190,000 or 38% of the labour force are unemployed in Namibia (UNDP-Namibia 2000, p. 6).

Co-optation has happened to trade unions, because the union leaders and especially the leaders of the trade union roof organisation National Union of Namibian Workers (NUNW) are very close to the leading party and therefore the government. But unlike what Bauer writes, about this being a policy of the government of the independent Namibia, we go as far as to argue that this was the way things were already before independence. Pekka Peltola and Iina Soiri (1999, p. 120) write about the founding of the NUNW, the roof organisation for labour unions in Namibia in Kwanza Sul, SWAPO camp in Angola:

“Finnish trade unions were latecomers to Third World affairs... The solidarity movement for Africa recognized the potential of the trade unions, and they joined in especially in the boycott actions... However, when the need for actual solidarity work world wide was realised at the central organisation level in the unions, its scale and influence began to grow fast. The first project was in Africa, for Namibia. In 1979, the Central Organisation of Finnish Trade Unions (SAK) started to support the building up of Namibian trade unions affiliated to the National Union of Namibian Workers (NUNW), which is the trade union arm of SWAPO. The work was mainly education and it was done in SWAPO refugee settlements in Angola, and by holding seminars elsewhere in Southern Africa (i.e. at UNIN) and in Finland. It included the support for the building and maintenance of Nduuvu Nangolo Trade Union School in Kwanza Sul, and the establishment of the trade union mouthpiece *The Namibian Worker*.”

<sup>42</sup> Note that earlier in this chapter the UNDP calculated their estimates according to a labour force of 450 000.

The NUNW was initiated and soon it controlled all political action for labour movement in Namibia. It is now co-opted by the leading party, which has earlier been described in this study as blurring the line between the state and the leading party. It is therefore very difficult for the labour movement in Namibia first to call for social change outside the policies of the government, and secondly to protect the rights of the workers and oppose the government, or its affiliates, as an employer.

We therefore say that it is normal to have close relations with the government, but it is not healthy for democracy if the union leaders always bend in situations of conflicted interests. The problem here again is the blurring of the line between the party and the state. Trade unions should always, just as the civil society comprehensively, be independent and always represent their members first. For if they are not independent they undermine the vibrancy of civil society, which has been mentioned above to be crucial for development of democracy.

When line between the party and the state blur and trade unions are co-opted to the party, which is inherently undemocratic and hierarchical, then members of the unions no longer govern the movement, but loyalties of the union leaders are directed toward the executive of the party and the state.

#### 4.6. Assessment

Much of this chapter consists of library studies and statistics, but there is also some first hand information. The three week long *Peace-building, Governance and Civil Society* seminar in Midgard, organized by the Austrian Study Centre for Peace and Conflict Resolution in cooperation with the Zimbabwean SARIPS and SAPES trust and the Finnish Civil Society Conflict Prevention Network (KATU), was a most interesting open talk seminar on the conflicts between the government and civil society. The participants of the discussion were politicians, civil servants and civil society leaders, all as high-level as possible.

There were various outcomes. Conflicts did arise and discussion became very candid and direct; resolutions were also made, unlike normally in similar seminars. Political backstabbing is not usually done face-to-face in Namibia, but through an intermediate such as the Namibian newspaper or other media.

Civil society are out to get power, even governmental power, in Namibia. It might be exaggerated to say that they are only confrontational and in opposition. Nevertheless, understanding this rift between the civil society and the government does clarify the difference between the way civil society actors in the south view themselves compared to their colleagues in the north. Seventy government, civil servant and NGO participants from 12 African countries including such important actors as trade unionists, military professionals, politicians, clergy and what we have described in this study as the second form of civil society, the professional NGOs, attended the conference. The small CBO's and small local NGO's were largely absent from this conference.

Lauri Kangas made a note of the action and cooperation of white owned capital while preparing for the transition to democracy, independent Namibia and apparent Swapo- and majority rule, which is interesting in this chapter. Ambassador Kangas, as said before, was the Head of the Finnish Diplomatic Mission in Namibia during the transition and a short while after the independence from 1988 to 1991.

He reminded us of the discussion raising concerns for the implementers of the peace process. White-owned banks and white commercial farmers joined forces in mortgaging the majority of the farms to their full value, thus liquidating the value of the land, and making it impossible for the new government to repossess the land without considerable costs. Obviously it is not normal for banks to mortgage properties to their full value, but the banks in Namibia took the calculated risk that the new government would not act unlawfully and collapse them by repossessing the mortgaged lands. This explains a lot of the undercurrents in the Namibian discussion of land reform. Land reform is very expensive for the government, and on the other hand there is great bitterness surrounding the fact that it has not yet been able to be executed.

#### 4.7. Summary

Linz and Stepan argue there has to be political control of the economy, and they even refer to the Adam Smith's *Wealth of Nations* to argue this. Przeworski argues based on his extensive studies that a certain average of wealth needs to be met before democracies can endure. Therefore, we argue that what Namibia would need in order to make its democracy endure is less inequality, more social change and empowerment of the poor.

Creating a racially integrated class of the rich is not enough, for it is not raising the national average, or more importantly it doesn't benefit the 90% of Namibians that are poor and it does nothing to the dual economy that Namibia has. Creating a new class of the rich diminishes the chances of having democratic control over economy, for it is also in the interest of the newly rich to have the liberal market economy working for their advantage.

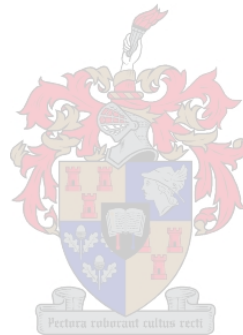
We sought to integrate theory of consolidating democracies to some facts about Namibia. Therefore if we agree with the theories insisting that development and affluence are linked to lessening inequalities, for example, then the picture of Namibia is very bleak. Evidence shows that average Namibian affluence is not among the worst, but inequalities are at an alarming level and worsening, and therefore the vast majority of people live well below the levels needed to have enduring democracy. Furthermore, we found that the Namibian economy is described as a dual economy meaning that there are no existing middle-classes, which are another factor that theories of democratic consolidation request strongly.

The international influences on Namibia, i.e. the competition for a larger and therefore more competitive economy and donor dependency are also indicators suggesting a rocky road to consolidating democracy. Steering the country away from these vices would not be an easy task for any government, let alone for one that seeks to steer itself into worsening cycle of debt.

Domestic factors could nevertheless be the answer, but again we found several difficulties regarding social change. The land reform seems to be a tangled issue with no right answers and the Export Processing Zones, though creating thousands of jobs, crush the very foundations of social justice in Namibia. From the perspective of consolidating democracy these issues are also destructive at the moment.

Furthermore, the Swapo –party's co-optation of the civic movements to further its political ambitions in order to gain even more power are not helping, either. Thus, summing up the evidence in this chapter, we can only conclude that socio-economic factors especially are stagnating democratic consolidation in Namibia.

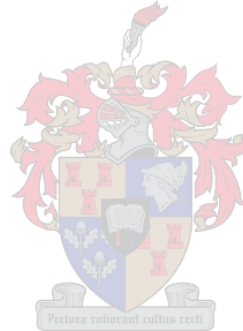
According to various theories we chose to use, Namibia is too poor, but most of all too unequal and going in the direction of becoming even more unequal, i.e. the wrong direction in order to consolidate its democracy.





## Chapter 5

### Conclusion



## 5. Conclusion

We conclude again as we already did in the introduction that Namibia has remained a relatively peaceful country for the first 14 years of independence, which is a considerable accomplishment in itself. Nonetheless, the most sustainable way to resolve conflicts is democracy. Democracy is the only system of governance that will consistently peacefully resolve arising conflicts. It is the only system of governance with is a forum for conflicts to be resolved at and therefore a system of governance where Namibians can find lasting peace and prosperity. No autocratic system of governance can guarantee the same.

In this chapter we also recognise our shortcomings and suggest places for further investigation. We do not hope to be arrogant, but to raise discussion on thoroughly argued issues about Namibian democracy and its future. Truth is found in debate, said Aristotle.

### 5.1. Problem statement revisited

We build a comprehensive framework to understand what the Namibian political system is and where it is going. First we investigated the democratic institutions that are in place or eroding, then the level of freedoms and whether they are sufficient to consolidate Namibian democracy and finally the socio-economic conditions necessary in order to consolidate. We sought to investigate whether the current state caused by affairs is a problem of failing democratic institutions or perhaps the worsening inequalities that are keeping the masses impoverished?

Our problem statement was: what prevents the proper consolidation of democracy in Namibia – inappropriate institutions or insufficient socio-economic conditions, or both?

The major shortcoming of our study already in the problem statement was that it didn't include the possibility of democratic development being stagnated, by appropriate institutions, that were in place but were however now failing in Namibia. We therefore assumed that Namibia could not be a one-off case, which is perhaps a point to investigate in the future. Why could Namibia not be a case where, for example, the socio-economic conditions would not be the reason for democracy not consolidating and the institutions of democracy would initially been working but are now failing.

### 5.2. Methodology

We had major difficulties in the beginning with covering the main literature on Namibian democracy and its socio-economic conditions. The problem is that so much about Namibia is written abroad, and Namibia itself, namely University of Namibia or the private bookstores, do not cover even half of it. We are sure that major pieces written about Namibia exist that we have no knowledge about, and therefore do not claim to have covered all of the literature on this subject matter.

A special thanks also goes to Henning Melber who, currently working at University of Uppsala, has updated Nordisk Afrikainstitutet library with all the main works written in Namibia and most of the international work on Namibia. Without him the Nordic countries would surely be deprived of literature on Namibia. Also, ever since Christiaan Keulder and Robin Sherbounne started the

Institute for Public Policy Research (IPPR) in Windhoek, the availability of articles about Namibian democracy on the Internet has improved.

However, we concede weaknesses. While we were finishing the last chapter, at the last minute before the deadline, we found out about a book that would certainly have contributed to the study and its discussions about the Constitution. The book is written by S.H. Bukurura and it is called “Essays on Constitutionalism and the Administration of Justice in Namibia 1990-2002.”

Nonetheless, the interviews have been useful. Namibians find it easy to talk about their democracy. Even heavy criticism of the system or the leading party has been open and without fear or intimidation. This is a good sign for Namibian democratic culture. In fact, our observation is that there is quite a bit of tolerance for open talk. Even Breaking the Wall of Silence, a NGO working to investigate and expose the fate of victims of torture by the SWAPO liberation movement, and its Executive Pauline Dempers can talk, publish and participate in open forums with only minor harassment from the government and the leading party. For our research purposes, if we had needed Pauline, we would not have had any problems of finding her in the BWS office.

### 5.3. Summary of findings

We divided the study in two after establishing that Namibia is not a consolidated democracy yet. Our first task was to research the democratic institutions in place and then move on to the socio-economic factors potentially contributing to the endurance or the stagnation of Namibian democratic consolidation.

The summary of findings from the first part is following:

#### Institutions

1. Though Namibian Constitution is progressive and lays out a good groundwork for democratic consolidation, Namibia has not been able to consolidate its democracy because the leading party is so dominant that it can find loopholes in the Constitution to blur the line between the state and the leading party.
2. With the power granted to the parties in the Constitution, and since Swapo has received over two-thirds of the votes, the leading party not only gets the power to amend the Constitution, but if the leading party is internally hierarchal and not democratic, and the President is the same person as the leader of the main party, there is a situation created where the Constitution actually grants the right for the President to remove and replace over two-thirds of the parliamentarians without elections. Thus since two-thirds of the parliamentarians can govern the Legislative branch without interference from the opposition, this blurring of the line between the state and the leading party also leads to the blurring of the separation of powers, and their system of checks and balances between the three branches of government.
3. Furthermore the President can also, with the help of the Judicial Service Commission where he has been granted three of five seats to control, remove and replace all the highest Judges of the State. This casts a serious doubt on the independence of the Judicial branch of government and adds to the blurring of the balance of power between the three branches of government.
4. Therefore as long as over two-thirds of the votes are given to the leading party in the elections, the President and the leader of the Swapo party can make all the key positions in the three branches of government subject to him through patron-client type relationships.

## Elections

1. We also found that with over the two-thirds of the votes in the elections the leading party would have won under any system of elections, and in a unitary state exclusive control over the government. We therefore concluded that the closed-list proportional representation electoral system is not preventing Namibian democratic consolidation.
2. Nevertheless, we also found that if the election candidates were granted constituencies, similarly to the d'Hont system of list PR elections, they would be more accountable and the system of governance would be more decentralized.
3. Furthermore we concluded that there has not been a turnover in government yet and thus elections have not been tested, either. We cannot tell whether the elections would remain free and fair if the reigning party were to lose.
4. We said that sufficient electoral uncertainty across the country, nationally and regionally, is necessary for Namibian democratic consolidation.
  - a. Then we concluded from the numbers that Keulder had calculated that the answer to the question of electoral uncertainty is nationally maybe, because up until 1994 there clear multipartyism was exercised in the country, but the index for multipartyism has now dropped below the required two active parties (1,65).
  - b. Furthermore we concluded that looking at the issue regionally the answer was yes in most regions since multipartyism was exercised there, but we also argued that multipartyism is not exercised in the four O's (Ohangwena, Omusati, Oshana and Oshikoto Regions) and there is not enough electoral uncertainty in those most populous regions. Furthermore we quoted Keulder also saying that it is necessary for a party necessarily has to succeed in these four regions in order to win nationally.

## Socio-economy

1. We note that consolidated democracy could not exist in a command economy nor in a pure market economy. Certain market regulations are necessary, and therefore extreme market liberalism is bad for consolidating democracy.
2. We conclude that democratic consolidation needs development and furthermore there needs to be a certain level of affluence for a democracy to endure. Poor countries often do not develop and therefore find it hard to consolidate their democracy. Richer countries with local investments and development have greater possibilities to endure and to consolidate their democracies.
3. We note the role of divided classes in Namibia and conclude that without a middle class there are not sufficient local investments and therefore no development leading to endurance of democracy.
4. Furthermore we conclude that inequalities can prevent democratic consolidation and note that Namibia is a country of extreme inequalities, a "dual economy" where 10% live in luxury and more than half with less than one dollar a day. And then,
5. We conclude that the anticipated land reform is not only very costly for the government, but also not likely to produce real poverty alleviation. Nevertheless, over time the land reform would have the potential of creating local investments and therefore the needed middle class for Namibia.
6. Furthermore we concluded that civil society should ideally be more independent and vibrant and that the donor dependency of the NGO's could be a problem for the consolidation of democracy. Civil society actors that should be the watchdogs and advocates for democracy are not democratically formed themselves, but hierarchal organisations that depend fully on external funding. All major civil society actors are dependent either on the state and the leading party or the international development cooperation donor agencies.

Overall we find that Namibian democracy is enduring, but Namibia has not consolidated yet and at the moment it is not going in the right direction for it, either. Namibia has been stagnated to the level of electoral democracy with both dominant party syndrome and feckless pluralism symptoms clearly visible. Nevertheless, we conclude that Namibia is still a democracy.

We said that democratic consolidation is synonymous with, “expectations of democratic regime continuity”, and that democratic consolidation is, “a democratic regime that relevant observers expect to last well into the future.” Therefore our conclusion is that since Namibian democracy, in spite of its vices and the erosion of its democratic institutions in many places, is still enduring, it is thus also consolidating.

Nevertheless, Namibia is not a consolidated democracy yet, because expectations for it to endure well into the future are not necessarily realistic for the same reasons mentioned above: Its democratic institutions are eroding and its socio-economic conditions, especially the inequality are hindering its democratic development.

### **5.3.1. Electoral democracy eroding**

Nicholas van den Walle argued that electoral uncertainty is necessary for elections. Keulder proved that most regions in Namibia have multipartyism, but the key regions, the four O’s don’t have an effective multiparty system in elections. One party dominates these regions to such an extent that Walle’s electoral uncertainty does not apply. We can therefore make the conclusion that unless these key regions develop enough multipartyism there will not be enough electoral uncertainty and Namibian democracy will not consolidate.

Furthermore, turnovers in government have not happened, not once, which is the prerequisite to Przeworski et al. (2000) to consolidate democracy, and not twice, which is what Huntington argues to be the prerequisite for a consolidated democracy. We then find that before turnovers in government do happen in Namibia we have no way of telling whether the various institutions of democracy have consolidated. Starting from the legitimacy of elections, one cannot tell whether the military or other Swapo-built state bureaucracy would comply with the results if the liberation movement that turned into a party would lose. We predict that they would, but before actual turnover takes place there is no way of telling.

Our title for this subsection “electoral democracy eroding” also suggests a certain amount of regression. This is also one of our conclusions, since Swapo party dominance has strengthened every five years. They received more support in 1994 than in –89 and more in –99 than –94. More importantly though the number of regions with multipartyism has also diminished, leading to our conclusion. Electoral uncertainty has therefore been reduced in the past fourteen years.<sup>43</sup>

#### **5.3.1.1. Dominant party, but a system of feckless pluralism**

We wrote in lengths about how Namibia matches the dominant power syndrome countries described by Thomas Carothers. Namibia fulfils several of the symptoms of dominant party systems, but is still at least an electoral democracy obtaining “free rating” internationally. It is perhaps a case of “feckless pluralism”. The dominant party syndrome symptoms that Namibia has acquired are:

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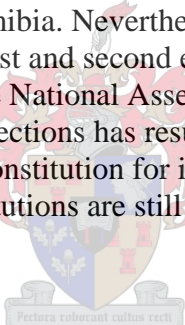
<sup>43</sup> Note 2004 election results are not analysed at the time of writing this.

1. The opposition in Namibia still has some real political space to operate, but one political grouping dominates the system in a way that there seems little prospect of alternation of power in the foreseeable future. There is freedom of forming political opposition, but contestation against the leading party is poor.
2. Namibia has the most basic institutional forms of democracy.
3. There is evident blurring of the line between the state and the ruling party, and
4. There is a clear possibility that the judiciary is cowed. The ruling party and the President have been able to extend their power over the Judicial branch of the government.

Nevertheless we opted to put Namibia on the side of feckless pluralism, because for Carothers these systems are still democratic whereas countries with dominant party syndrome are not. We base this conclusion on the fact that Namibian democratic institutions are still enduring and thus consolidating and because the level of freedoms is still fair, as mentioned above. The Freedom House rates Namibia free with the closest possible margin. Namibia has thus a dominant party, but is a system of feckless pluralism.

### **5.3.2. Democratic institutions eroding**

Democratic institutions in Namibia are based on the Constitution. The Constitution is therefore the first democratic institution in place in Namibia. Nevertheless we conclude that it is not as strong today as it was somewhere between the first and second elections from 1989 to 1994 before Swapo received over two-thirds of the seats in the National Assembly and therefore the right to amend the constitution. Swapo's dominance of the elections has resulted in erosion of the constitutional rule. It has been able to create loopholes in the Constitution for its own and the President's benefit. The pattern is clear Namibian democratic institutions are still enduring, but erosion is well on its way.



#### **5.3.2.1. Weaknesses of the constitution**

It is normal in democratic systems similar to Namibia that the leader of government and state is also the leader of the party that won the most recent elections. It is also normal that in these systems the leading party as well as the opposition parties can replace their parliamentarians that have been selected for their positions with closed party lists in elections. The Dutch Prime Minister for example can do this and the Netherlands is still considered a consolidated democracy.

What makes Namibia stand out and, as we conclude, lead to the erosion of its democratic institutions is that with the 76% of the votes received in the 1999 general elections Swapo can effectively govern the whole Legislative branch of government without interference from the opposition. There is no balance of power in the National Assembly. This leads to blurring the line between the Executive branch and the Legislative branch of government, for the president can now—with the power to remove and replace over two-thirds of the parliamentarians—effectively govern the whole branch. Unlike in Holland for example, the legislature can thus not check the power of the Executive branch and is therefore not equal in power, as stated in the Chapter one of the Constitution. The leading party can therefore effectively exploit this weakness of the Constitution, if they wish to do so.

Furthermore the President can also erode the Constitution by making the main actors in the Judicial branch dependent on him. The Namibian Constitution creates a Judicial Service Commission (JSC) to aid the President in appointing and removing judges. The President can only act on the

recommendation of the JSC. It is therefore crucial to know who gets to elect, and most of all remove the members in the JSC. Who do the members depend on?

In Namibia, the President holds this power concerning three of the members, whereas the Law Association of Namibia appoints the other two. Therefore we conclude that the JSC is also politically under the influence of the President and can recommend whatever the President wishes. This grants the total power of appointment and resignation of the Judicial branch to the leader of the Executive branch, and furthermore again erodes the Constitution.

Would there be vigilant legislature to check the power of the Executive branch, the Constitution could survive without this interference. The Parliament could potentially amend the Constitution to not to grant this sort of power to the President in the JSC and check the President's power there, but with the President's current patron-client relationship to the majority—76% of the legislature to be exact—of the parliament this could not be done. We therefore conclude also that the Judicial branch of government cannot be protected by the Constitution either.

Therefore, the only branch of government that does work in accordance with the Constitution and cannot be influenced by the other two branches in this political climate is the Executive branch, for the President is elected by a direct vote. The President is subject to the will of the people, as it should be.

#### **5.3.2.1.1. Separation of powers**

The separation of the powers of the three branches of government is crucial to consolidating democracy. We have already concluded that this has not been able to happen in Namibia, since the Legislative and the Judicial branch have not been able to remain independent of potential influence from the Executive branch.

Nevertheless, nothing has been done that can't be remedied. The democratic institutions are not wrecked, only eroded in Namibia. The President's influence over the decisions of the entire Legislative branch would end if the leading party received less than two-thirds of the seats in the National Assembly. The other possibility to remedy the situation would be if the party ceased to be governed hierarchically, so that the President would no longer be the executive of the party and the party would seek to separate itself from the state drawing the line again between the party and the state.

Furthermore, the separation of powers from the point of the Judicial branch could also be protected if the leading party receives less than two-thirds majority. If the legislature were independent in their decisions, they could potentially amend the Constitution and remove the powers of controlling the JSC from the President.

The Constitution and its protection of separated powers could also of course be protected by wise decisions by the President not to interfere in the affairs of the other two branches. We let future scholars to do this research on history. We simply conclude that the current powers that Swapo and President Nujoma had or President Pohamba have together with Nujoma, with the help of the party, could potentially break the separation of powers. Furthermore, were the Constitution more specific about the separation of powers stated in its first article, the system would face less problems now

when for example the new President has been elected and the party executive remains as powerful as he does.<sup>44</sup>

### 5.3.2.2. Extreme presidentialism

Interestingly the Namibian system—though we have already described currently the powers of the President to be excessive—is not without parliamentary characteristics. Though the President is not subject to parliamentary review, the parliament nevertheless has the power over the government budget.

We conclude that Namibia does not have a system of extreme presidentialism, but has a presidential system with parliamentary tendencies. Nevertheless, we argue, the powers of the President and the leading party leadership are excessive at the moment and this is harmful to the consolidation of democracy in Namibia. If the leader of the party and the President is the same person, then the situation is even worse.

Linz warns about the perils of presidentialism, stating that the country could slide into a constitutional crisis, if the presidency would fall into the hands of one party and the parliament to another. Furthermore, he warns about the peril of zero-sum elections where only winning the presidential elections would matter and the opposition would be left with nothing.

In Namibia neither is possible. Due to the list PR system being used the opposition is always granted a role in the parliament, and as said above the parliament does have role to play even though the executive powers are very strong. After all, the Namibian Parliament can potentially even remove the President from office and call for new elections, if they find the required two-thirds of parliament to support it. This is very important to note when discussing the power relationship between party chairman Nujoma and President Pohamba.

We therefore conclude that although Namibia does not have a system of extreme presidentialism, granting the President or the party leadership these kinds of extreme powers is not good for consolidating democracy. In fact, the powers are harmful to such an extent that they could alone prevent consolidation.

### 5.3.3. Socio-economic conditions

Another issue that we did a great deal of research on was to understand how Namibian socio-economic conditions contribute to the consolidation of democracy. We learned that the extreme inequalities in Namibia were the most obvious obstacle to overcome in order to bring socio-economic conditions up to the level required for Namibia to be a consolidated democracy. But before that we learned that socio-economic conditions do matter. The drawbacks on the institutional side can be overcome with relative ease, if one compares them to the challenges Namibia is facing on the socio-economic front.

We have already concluded that the economic policies need to be relatively moderate. Extreme leftist or right wing economies are as bad for democracy as any extremism, whether it's religious or political. We also noted that it's statistically better to be a rich country than a poor one in order to

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<sup>44</sup> See *The Namibian* reporting Nujoma re-appointing all the highest judges only a month before the end of his reign to make sure his position and immunity is going to be untouched well into the next administration. Menges, Werner: "Justices Shivute, Damaseb to head Judiciary", *The Namibian*, 2 Nov. 2004.



democracy to endure and consolidate. We laid further emphasis on the issue of development, which brought us to the issues of economic growth, local investments, the lack of middle classes and ultimately the dualistic nature of Namibian economy and how it should be changed.

We noted that history is obviously to blame. The centuries of colonialism still make their presence felt and there are serious structural changes that need to be made before Namibia can find the socio-economic path leading to democratic consolidation. Hunger and democracy do not mix, nor does democracy mix with the fact that richest 10% have an income of sixty-six times more than the poorer half of the nation.

Tools for this change are few, especially since extreme economic policies are ruled out in order to consolidate democracy. Nonetheless, poorer countries than Namibia have become consolidated democracies. Poorer ones than Namibia will also make it in the future, though we are not sure whether they have been or are more unequal.

### 5.3.3.1. Historical drawbacks

Historical drawbacks must also be considered. Namibia has inherited a highly unequal socio-economic structure from the colonial era. Maybe the best example of these drawbacks is the puzzling land question. Since Namibia has chosen a system of liberal democracy and market economy rather than socialist system where the lands would be owned collectively by the state, there seems to be no way of executing a land reform without serious economic repercussions, not only to the state, but to the whole national economy.

If a government that is committed to land reform for the benefit of majority of people is formed some time in the future, it will be extremely costly to the state, whether they amend the Constitution or not. There are three options, as mentioned above: To buy the land; to repossess the land and pay back the mortgages, which is almost exactly as costly as buying the land; or repossess the lands, not pay back the mortgages and run the risk of driving the land into a banking crisis. Whichever the case, the government would need massive resources to successfully implement the reform. Resources that could potentially be directed into other sectors of government helping the life of the poor masses, like the health or education sectors, for example.

Henning Melber argues that the land reform could potentially be a relief to the inevitable social crises that will come from the extreme inequalities that are worsening in the country. If this is so, then the above mentioned historical drawback actively prevents social peace. But how does this translate to what we are studying, i.e. Namibian democratic consolidation?

Breytenbach and Przeworski as well as many others argue that the reduction of income inequalities is a significant variable in the endurance of democracy. Then if land reform is prevented by historical drawbacks we can conclude that history has a significant effect on the consolidation of democracy. There are good studies from the Americas on how the more equal in contrast to very unequal land distribution has contributed to the development of democracy in that region. Costa Rica, with the history of most equal land distribution has been the most successful whereas Nicaragua and Guatemala with the strongest culture of massive *Haciendas* have had the most difficulties in building a system of consolidated democracy (Coatsworth 1994, p. 1).

We do not envy the next president in his decision and direction he have to make on this historical drawback. If he wishes to consolidate Namibian democracy, this is not an easy problem to solve.

### 5.3.3.2. Extreme inequalities

Approximately the richest 170,000 people in Namibia receive an average annual income of US\$12,154. To make it comparable we need to use the purchasing power parity (PPP) in order to understand the kind of wealth and affluence does this income mean in Namibia. With this parity the richest 10% incomes are comparable to an upper-middle class Scandinavian, or the average person in the richest country in the World Luxembourg. Obviously the richest 10% also has a steep curve of income within itself and we do not claim that the poorest ones of the lot would be receiving this kind of income. Furthermore we do realize that the richest 5% receive many times the amounts mentioned above. The curve is steep and it gets even steeper the closer to the top we get, as Table 3. illustrates.

Perhaps the best way to make these income differences understandable is to compare them to the income levels, and most of all purchasing power parity in various different countries. We have therefore dedicated a whole block of Table 2. to this. We compare both real income and purchasing power parity. We already said what countries the richest 10% can be compared to, but the richest 22% are also on the average of a few of the richest countries of the World; Finland, Sweden and Germany. The richest half of the population receive an income similar to a European Union country citizen from the Czech Republic or Hungary, but this is already a very distorted fact. The lower end of this spectrum does not receive even close to the average of these citizens in the EU countries, because the richest 10% of that group receive such a massive portion of the total. Therefore we should only talk about the rich 10% and the poor in Namibia. In fact, the richest 50% minus the group of the richest 10% receive a PPP income comparable to the average one in Brazil or Ukraine. Like the UNDP concluded, there is no average Namibian. The economy is completely dualistic.

The statistic about the masses of the poor in Namibia are even more striking than the statistics about the rich; the poorest half of the population live on an income less than one dollar a day, in fact 0,52 US dollars per day. Purchasing power parity makes the statistics look a bit better, and it is also true that to the poor things are cheaper in Namibia than in North America or in Europe. Nevertheless, even with the purchasing power parity the lower half of the population receive an income comparable to that of the average in Nigeria, two dollars a day.

So how does this translate to what we are investigating? It shows how the socio-economic conditions of large numbers of people need to be improved dramatically before Namibia can consolidate its democracy. If the level Przeworski et al. set for democracies to have even a small chance to endure was an US\$ 1,000 annual income, then we can conclude that more than half of Namibians need to receive more than five times their current income to reach that level.

#### 5.3.3.2.1. Absent middle classes

The middle classes are the key to local investments. Their wealth creates the opportunity to invest, but they are not rich enough to become capitalists and invest abroad. Their investments are directed toward sectors that bring about maximum local growth. They invest their money where their work is invested. Therefore growth and the products of their works are also likely to be maximised.

We concluded that Namibia lacks an existing middle class and therefore local investments and local economic growth and development. Development in hand was argued to be the missing link of consolidating democracy. Therefore we argue that middle classes would also be beneficial for Namibian democratic consolidation.

The middle classes are not smarter in politics, do not hold the politicians more accountable, are no more aware of the issues or no more legitimate in choosing their candidates in elections than the poor. Middle class votes do not count for more than the votes of poor men. Even the poorest Namibians can select their political opinion equally, and cannot be more easily fooled than the rich or the middle-class voter. The success, or lack of it, of the Swapo-D party in the first elections proved that well. They tried to “steal” votes from the Swapo -party in the first elections by having the traditional symbol of the SWAPO next to their party on the ballot, but the poor and the rich of Namibia were not fooled. Their total number of votes was next to nothing whereas the Swapo -party received hundreds of thousands of votes. The middle classes are only important because they bring about the necessary economic development to consolidate democracy.

### 5.3.3.2. Unemployment

Gretchen Bauer counted that there are approximately 250,000 wage labourers in Namibia. That constitutes 35% of the total workforce, which is approximately the same as the amount of people that are unemployed. The rest work in agriculture.

Similarly to the middle classes the working classes also contribute to the development of the economy. They do not have the money to invest, but their labour brings about economic growth. Therefore they might not be as efficient in making the economy grow, but are nevertheless significant.

Thus the unemployed on the other hand can even be considered harmful to the democratic consolidation. They do not bring about economic growth and development and therefore they stagnate democratic consolidation.

Therefore, we conclude that the urgent task for Namibian government in order to consolidate its democracy would be to employ masses of unemployed. Perhaps Lyndon B. Johnson’s New Deal policies that brought America from the great depression should apply. The money for these kinds of Keynesian economic policies could perhaps be found in taxing the rich 10% receiving two thirds of the national income.

### 5.3.3.3. Market liberalism

We do not want to over-emphasise the issue of land, but it gives us a good issue on which to reflect the development of Namibian democracy. Gwen Lister, the editor of *The Namibian* and Gretchen Bauer both have argued on numerous occasions how the formerly left wing SWAPO liberation movement, once in power became a republican sort of nationalist right-wing party in their public policy to govern the newly born country (*The Namibian* 12 Nov, 2004, p. 2). We have discussed Jauch’s criticism of the Swapo policy of granting tax relief to the large multinational corporations exploiting Namibian natural resources and we have noted the problematic Export Processing Zones (EPZ) and how the companies there are granted a status where the labour laws for example, do not apply.

On the other hand, market liberalism is without a doubt also one of the necessary ingredients to consolidate democracy. Linz and Stepan argued that there couldn’t be a democratic system in command economy. Market liberalism is therefore necessary.

Nevertheless, the question remains how liberal should the markets be: without state control or interference by laws protecting the workers, for example? Extremes are usually harmful to the development of democracy and as is the case with this issue also. Extreme market liberalism, decisions that remove all state control over the economy are bad for Namibian efforts to consolidate democracy. Like Linz and Stepan quoted Adam Smith, certain state controls, laws and market regulations, are necessary. They say that a consolidated democracy could not exist in a pure market economy either.

Therefore we make the point that extremes in government policy to liberalise markets can also be harmful for consolidating democracy in Namibia. Unfortunately we have to note that market liberalism in Namibia has been emphasised to the extent that it might also prevent democratic consolidation. By trying to attract foreign investments with the EPZ's, for example the government has actually undermined the legitimacy of the trade unions, since their achievements for the protection of workers rights are undermined. This in hand weakens the development of civil society, which is another factor we have argued that should be in place in consolidated democracies.

The issue is a double-edged sword. We have argued that one necessarily needs local or foreign investments in the country to create prosperity and middle classes, which we have also argued to be necessary for consolidating democracy. But then on the other hand, market liberalism shouldn't develop to an extent where other institutions of democracy are undermined. The million-dollar development question is, how to attract investments without economic tricks like EPZs that undermine other developments?

#### **5.3.4. Enduring, not consolidated yet**

The strengths of this study also lies in the first-hand information. Namibia is a young nation and there is a number of experts that have lived through the time of independence and large portions of the times of the struggle. Almost all the signatories of the Constitution are still alive and active. Where else in the world would this kind of study have access to the founders of the Constitution? The advantage, from the scholars' point of view is also that Namibia is so small. Everyone seems to not only know each other, but also each other's ethnic and family background, geopolitical background and history. Understanding someone's political perspectives becomes easier when the historical background is known. Nonetheless, what should also be noted is that this shapes Namibian politics considerably.

We have established that there is a loophole in the Constitution that could be used by a party in a dominant position. Furthermore, we have shown that in this case the power of the Executive branch would extend too far and break the balance of power, i.e. the checks and balances between three different branches. The weakness of this study is that we have no examples to give. Therefore an urgent subject of investigation for students of Namibian democracy would be to establish whether these loopholes have actually been utilised. Whether, for example, parliamentarians would have been replaced in between and without elections, whether there are real examples of the blurring of the line between the state and the party, or whether there are examples of the President influencing the decisions of the Supreme Court or other Judicial Branch institutions. We simply say that this is possible.

Nevertheless, the government reshuffling of 2001 is a clue for future scholars, especially in the case of appointing the new Minister of Regional and Local Government and Housing. The reshuffling of Swapo lists after the most recent Local Authority elections also raised some eyebrows. We do discuss the Nujoma third term in this chapter, but the workings and motives behind the Supreme

Court's decision to deem the third term constitutional remains unstudied. Perhaps in time more clarity can be found also on these issues. We do not know whether President Nujoma would have fired the Supreme Court judges if the decision had been different. We only know that with the current balance of power in the Justice Service Commission he could have done so.

Furthermore, we should not forget the practices of the new President, elected in 2004. Will he seek to extend his power as far as possible, or maybe strengthen the Constitution by diminishing the President's powers in the JSC and over the appointment and resigning of Judges? Whether he, and at this time we can already talk about him since no female candidates are contending, will continue blurring the line between the state and the party or perhaps try to separate the two? All these issues are interesting and important to discuss.

The most interesting topic, however, might still be the debate surrounding the original intent of the Constitution, so popular around the World and especially in the United States. Was it unintentional to include these kinds of loopholes in the Constitution, say more specifically Article 48 granting the parties the right to dismiss and replace their MP's. Interesting investigations could be conducted on the drafters of the Constitution and since the signatories of the Constitution; the members of the first Constituent Assembly, are still alive it would be interesting to interview them and ask what was the intention, what the debate and politics behind these articles was, and ultimately, how do they see this affecting the separation of powers enshrined in the first chapter?

#### 5.4. Suggestions for future research

There are several issues for further research. The effect of the land reform issue in elections is hard to measure, for example. It might be much ado about nothing. All we know is that it's there and surely, like Henning Melber (*The Namibian* 13 July, 2001, p. 2) concludes, its effect in elections would be reduced if other socio-economic conditions would improve. We have no statistics on the issue and we have not handed out questionnaires. All interviewed are divided on the issue, which is not surprising due to the fact that the leading party and the opposition, as well as civil society, are divided on the issue.

Nevertheless this is not a policy study and therefore we do not seek to find the effects of certain policies of the government to the Namibian democratic consolidation, but rather whether the institutions are in place, whether they are crumbling or if they exist at all.

Therefore, it would be very interesting to know whether traditional authorities are in fact used in elections to favour the standing government, for they have such a clear bond, written in law, to the Cabinet. This would be important to know to further establish blurring lines between the leading party and the state in elections and would also be interesting subjects for investigation for future scholars.

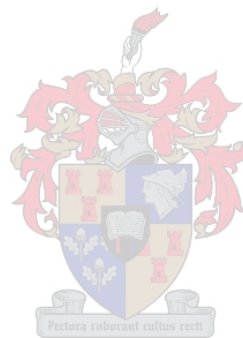
Furthermore, it should be studied whether there are PR systems in the world, for example the one in Finland, which would strengthen the separation between the state and leading party by forcing the parties to submit their electoral lists to the will of the people. It would be interesting to know how the internal democracy of the parties would develop if the voters could decide the order of the various candidates on the party list. This would also make the MP's accountable to the constituency where they have been elected. Furthermore, comparisons should also be made concerning party discipline. How can the parties exercise control over their members in list PR systems with parliamentarians having constituencies? And, of course, how would this kind of change to the

elections affect Article 48 of the Constitution. Should the parties still be able to remove their parliamentarians from the National Assembly?

A further weakness of this study is also in not finding more proof of mortgaging taken out by the commercial farms that we have discussed. The only other confirmation for the information gained from the interview are the UNDP statistics about the commercial land being mortgaged to nearly its complete value. We know there are studies of this both by Namibians and by the United Nations Transitional Forces (UNTAG). President Martti Ahtisaari would surely know a lot about this also, since it was such a hot political topic at the time of the transition and was also possibly a underlying conflict situation, jeopardising the whole peace process. These interviews and research should be the focus of future studies.

Furthermore, we have not gone through different policy papers that influential Swapo members like the Prime Minister Nahas Angula have been writing on the problems of the Constitution in regarding the land reform, or what policies Minister Hifikepunye Pohamba has outlined for the Ministry for Land and Resettlement.

Nonetheless, there was progress: we have realised that Namibian democracy is enduring, but not consolidated yet.



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