

NEO-LIBERALISM MASQUERADING AS 'MIXED ECONOMY'? A CRITICAL ANALYSIS OF NAMIBIA'S PRINCIPLES OF ECONOMIC ORDER

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Abstract

Whereas a number of studies exists on the causes and impacts of inequality, poverty and unemployment, in which the majority of Namibians are trapped, very few, if any, of these studies cared to interrogate the role and place of the constitution in aiding the status quo. Most of the studies, even those on the constitution, are often disinterested in the question of political economy, and how it relates to the constitution. A constitution can be understood as a set of fundamental laws determining the orientation (values and principles), structure and power of the state. To understand the economic system of a given state, the constitution ought to be the first point of call. In Namibia the picture is not as clear as it should be. The theory and the practice on the question of political economy do not necessarily intertwine. This text is concerned with the question of political economy. It analyses the constitutional principle of "Mixed Economy", with the view to understand – and explain – the triumph of neoliberalism in Namibia. It impenitently concludes that, given the lack of clarity of the principle of "Mixed Economy" – a principle this text renders suspect – there is a need to relook at the constitution of the Republic of Namibia in order to address the question of political economy. The finding, however, is clear: Namibia is a neoliberal state.

Introduction – What are the issues?

The general understanding, in Political Science, is that the state exists to provide for the common and greater good of all members of society. For Aristotle, a famous and revered Greek philosopher, the state, as an association of persons, has as its aim the attainment of the 'best life possible' (Haworth, 2012). For John Locke, Thomas Hobbes and Jean Jacques Rousseau, the state exists as a result of a social pact the people enter into. While political philosophers differ on the key reasons that necessitate individuals to consent to this social pact, it is generally accepted that this pact is aimed at achieving the greater good for the members of society as a collective (Heywood, 2012; & Haworth, 2012). Given that the overriding

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purpose of the state is to provide for the greater good of men, as per the social pact - to use the Social Contract language, it then follows that the performance(s) of states is to be assessed by looking at the extent to which it provides and caters for the greater good of men. One of the important aspects of the greater good of men is the economic life of society and its people. It is one of the most important, if not the most important, aspects of human life. Marxist scholars are more pronounced on this particular score. British Marxist and Sociologist John Scott summarises:

People must eat, drink, and be clothed and housed if they are to engage in any other social activities. The production of subsistence is a need that 'must daily and hourly be fulfilled merely in order to sustain human life'. This production of the means of subsistence is conditioned by physical circumstances as these have been modified by human activity over generations, and so any account must begin from the social activities through which people relate to nature. Any particular way of life depends upon the maintenance of a specific and 'corresponding' mode of production that is the basis of the 'mode of life. (Scott, 2011, p. 52)

It is not only western political philosophers and theorists who understood the centrality and importance of economic welfare of the people as the key performance indicator for the state in fulfilling and meeting the greater good of all members of society, and the people as a whole. President Julius Nyerere, the first president of Tanzania, not only theorised the need for people-centered production, but also made practical efforts (regardless of success and longevity) of ensuring that the state, in fulfilling its obligation for the greater good of society, decisively intervene in the economic life on behalf of the people as a whole (Nyerere, 1968; Hyden, 2013). As Kamuzora (2009) explains on *Pambazuka News* website:

[President Nyerere's] aspiration was to attain a self-reliant, egalitarian and human-centred society where all members have equal rights and equal opportunities; in which all can live in peace with their neighbours without suffering or imposing injustice, being exploited, or exploiting; and in which all have a gradually increasing basic level of material welfare before any individual lives in luxury.

Nyerere was not alone. Kwame Nkrumah, the first president of Ghana, subscribed to the same principles. Indeed, when Africans had started fighting against colonialism, the primary motivating factor was the disturbance of their economic life, particularly, the dispossession of their land and the introduction of alien European economic methods of production. Even after colonialism had come to an end, and most African states attained independence the analysis of their economic life remained central. It is this question, the question of economic life, which Pan-African scholar Walter Rodney explores in his 1972 seminal

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text titled *How Europe Undeveloped Africa*. For some African prominent figures, such as Kwame Nkrumah and Cheikh Anta Diop, African political independence attained towards the end of the 1950s meant nothing more than a springboard towards economic freedom. For this reason they strongly argued for continental unity in order to win the incomplete task of economic emancipation of the African peoples (Rodney, 1972; Diop, 1974; Nkrumah, 1963).

By the time the United Nations (UN) came to Namibia in order to implement UN resolution 435, and pave the way for Namibia's independence, many were hopeful for a new society that signaled the end of colonialism on the African continent. What expectantly awaited this small nation and the African continent, as envisioned by Nkrumah and others, was a clear path towards economic prosperity for the African people. In the words of Hage Geingob (2010, p. 106), the first Prime Minister of Namibia and current President of the country, "the Organization of the African Unity, the Frontline States and members of the Non-Aligned Movement were happy to see the last colony in Africa become independent".

What awaited post-independence Namibia was something that many may not have anticipated, given the exuberance brought by decolonisation. Many saw a smooth ride towards economic prosperity for all. 20 years after independence though, it became clear that the promises of post-independence 'milk and honey' have not been fulfilled, as Jauch et al (2011, p. 161) note in detail:

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

These are not the only local scholars who saw the dichotomy resulting from the promises made at independence, and the reality of today. Writing for *This Is Africa*, an online forum on African opinion and art in 2012, a seemingly terrified writer, Siji Jabbar (2012), has the following to say:

21 years after independence, Namibia is still ruled and "owned" by the descendants of the German and white South African colonizers. A few thousand white Namibians living

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

What happened, and how it reached this point in Namibia, the point of neoliberalism that has produced and reproduced inequality, is the concern of this text: distinct in the manner of how it approaches the subject matter. Whereas there has been many studies conducted on inequality and economic deprivations of the masses of the Namibian people, such studies have hardly focused and analysed the supreme law of the land, the constitution, in order to explore possible questions and contributing factors, if any, resulting from the Namibian constitutional disposition towards the status quo. The text does not pretend to study the entire constitution but specifically explores Article 98 on the Principles of Economic Order, more particularly, the principle of "Mixed Economy", and then juxtaposes it to the emergence and the consequences of neoliberalism that posits, in practical terms, the real principle of economic order in Namibia. In doing so, the text critically analyses the politics of drafting the Namibian constitution in order to provide proper context before delving into and interrogating the principle of "mixed economy". It then discusses the rise of neoliberalism and its consequences before concluding with scant perspectives on what could be done. It is important to again emphasise why the constitution and constitutional principles are centralised. This is so from the perspective stated earlier that the state exists to provide for society's greater good, and that of the people as a whole. In assessing the state's fulfillment of this greater good, economic life remains important. That said, it is the constitution that articulates the foundational framework for what the state does: the how, when and where. As such the analysis of Article 98 and juxtaposing it to social manifestations, such as neoliberalism, are indeed assessing how the state is faring in the fulfillment of the greater good for society and the people as a whole.

The state, constitution and constitutionalism

For the purposes of clarity, it is necessary to discuss, albeit briefly, the key concepts surrounding the subject matter: the state, constitution and constitutionalism. Historically, the concept of the state is traced through the organisation of public life in ancient Greece. While Ancient Greek political philosophers, such as Plato, Aristotle and Socrates, debated the disposition of the state, there has been a considerable con-

sensus on the need for the state to exist. Plato, in his seminal text, *The Republic*, saw the state as a somewhat pyramid-like structure that is underpinned by excellence and run by the finest of minds – a meritocracy. Haworth (2012, pp. 14-15) elucidates:

Plato's state's most fundamental feature is its system of administration. There is a pyramidal class structure, with a ruling group of 'philosopher rulers' or 'guardians' [also referred to as philosopher kings and queens] at the pyramid's peak. It is their job, and their alone, to rule. That is because they are philosophers which mean they – and they alone – know what is good and will therefore do what is best. Everyone is supposed to 'mind their own business' and concentrate on what they are best at, leaving the philosopher rulers to get on with the job of ruling ... immediately subsidiary to the guardian class is a class of 'auxiliaries'. Their job is to ensure that the rulers' directives are carried out. Finally, at the base of the pyramid, the largest class is composed of everyone who is not a guardian. It is the class of ordinary people.

With the passage of time, Plato's work came to influence other philosophers, such as Machiavelli and Thomas Hobbes, who argued along the lines of the state as a strong institution of society that is regulating and saving human beings from their evil self. Supported also by thinkers, such as Hans Morgenthau, this approach to the state became dominant in what later became known as 'classical realism' - the argument for a strong state on the basis that human beings are evil; and it is this disposition that characterises the state (Heywood, 2012; Haworth, 2012; O'Brien & Williams, 2010; Brown & Ainley, 2005). With the passage of time, the approach and understanding of the state kept shifting to new understandings although the basic fundamentals, such as meritocracy, *trias politica*, the greater good, and the representative government, remained. For example, the modern state is viewed by Heywood (2012, p. 145) as a "sovereign body that exercises supreme authority over all individuals and associations living within a defined geographical area". In the light of the above and in summary, the state – the domineering center of society - is generally understood as a permanent institution of society that is characterised by a clear territory and boundaries (geographically demarcated area); a permanent population; sovereignty (no domestic equal – no external superior); and international recognition. The state can be looked at from an organic, configuration, and an interactive approach. The organic view on the state looks at the state in terms of the influence it has on the social and economic processes, and how it affects the outcomes affected by these processes. In this view the state is a structure of domination and a unitary autonomous actor in society that exists to full certain functions. The configuration approach is principally concerned with how the state is structured; the argument that it is the state apparatus that provides the framework for the rules of

engagement, i.e., what is possible and not possible in a given political system. The interactive approach is concerned with state-society relations, i.e., how the two interact and constitute each other's interests (Carnoy, 1984; Midgal, 2001; Heywood, 1997).

Whereas in Europe the development of the modern state can be traced in the context of historical developments such as the 1648 'Treaty of Westphalia' and the 1789 Paris 'Declaration of the Rights of Man and of Citizens' through the processes of either (a) the gradual transformation of existing independent political units, such as medieval monarchies; (b) the unification of independent but isolated political units; and (c) the break-up (often called succession) of independent political units into single units – the state in Africa did not go through the similar European experiment (Caramani, 2011; Kasselmann et al, 2013; Newton & Van Deth, 2010). In Africa, the development of the modern state can be traced to the 1884/5 Berlin conference, where Africa was divided between and amongst the select European states for the purposes of imperial conquest. The history of state creation in Africa was characterised by colonialism, manipulated and arbitrary boundaries that ignored African realities, and the dispossession of land and other natural resources of the African people. At the core of the creation of the State in Africa, therefore, was the safeguard of imperial capitalist interest of Europeans – an occurrence that remains true of the African state today. The institutions, structures and functions of the colonial state will later present serious difficulties to the African independent state. Most liberation movements that fought for self-determination were more clear about what they did not want – oppression and colonialism – and were hardly concerned with the configuration of the state. It is for this reason that, at independence, the new governments operated with exactly the same institutions and operated, at most, under the same laws as that of the colonial states (Bayart, 2009; Chabal & Daloz, 1999; Thomson, 2010; Fanon, 1963).

There can hardly be a thorough and fitting understanding of the dealings of the state, including the identity and principles, without looking at the constitution of that state. To Thomas Paine, an American political activist credited for the enlightenment-era ideas that influence the American Revolution, a constitution is the "property of a nation, and not of those who exercise the government. [Constitutions] ... are declared to be established on the authority of the people" (Paine, 1791). Writing in *Political Science Quarterly* already in 1892, Charles Borgeaud defined a constitution as:

...the fundamental law according to which the government of a state is organized, and agreeably to which the relations of individuals or moral persons to the community are determined. It may be a written instrument, - a precise text or series of texts, enacted at a given time by a sovereign power, - or it may be the more or less definite result of a series

of legislative enactments, ordinances, judicial decisions, precedents and customs, of diverse origin and of unequal value and importance. Most existing free constitutions are of the first-mentioned type. To the second class belongs the English constitution – the one from which all others are in some degree descended. (Borgeaud, 1892, p. 613)

The written constitutions are the most popular in the study of the modern state. Although contested in some circles, it is argued that the American constitution is amongst the first written, completed, constitutions. Kim Lane Scheppele, a then senior visiting scholar at the National Constitution Center (NCC) in the US, traces the history of written constitutions and writes on the NCC website in 2016:

The American Constitution was the first complete written national constitution. But it was neither the first constitution of a general government, nor the first written constitution. A number of governments, starting with the Greek city-states, had customary or partially written constitutions. The American Constitution drew from many sources. Britain was the most obvious. But the comparative knowledge of the Framers ranged from Ancient Greece to then contemporary Poland ... Once the American Constitution was ratified, the idea of the single written constitution became popular the world over. Poland adopted its first written constitution in the spring of 1791; France followed with its first written constitution later that year and went through four constitutions in the 1790s alone. Many 19th century changes of government were marked by the adoption of written constitutions ... The European Revolutions of 1848 produced dozens of new constitutions in that year alone...In the 20th century, constitutions have become fashionable, especially since the Second World War. Almost all democratic governments now have written constitutions. The United Kingdom, New Zealand and Israel are the notable exceptions.

The states in Africa, including Namibia, thus followed the state constitutional principles of the European exercise. Hage Geingob, who chaired the Constituent Assembly that drafted the constitution of Namibia, understands the constitution as dealing with two elements: an act of 'constituting' a government and an act of 'limiting' government powers. It is evident that his thoughts are influenced by Thomas Paine and Charles Howard McIlwain. He (2010, pp. 83-84) submits:

All constitutional government is by definition limited government or limiting of government. Legal limitations on the government are, however, not arbitrary. They are or should be based on certain fundamental values, unalterable by ordinary legal process. These fun-

damental values are an inheritance of the long history of human thought and specific national history and context. Preambles to most of the constitutions acknowledge and recognize these values. Fundamental values based on the inheritance of the long history of human thought include democracy, freely elected representatives of the people, rights of man, sovereignty, and liberty.

For the case of Namibia, the legal Assistance Center, writing in 1990 to simplify the newly adopted Namibian constitution to the Namibian people, explained that "the Constitution is the most important law in Namibia. It protects the basic rights of all people and guarantees that there will be equal rights for all. The Constitution explains how Namibia will be governed" (Legal Assistance Center, 1990, p. 1). Accordingly, the above stated perspectives and narratives are contained in Article 1 of the Namibian constitution as follows:

(1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all. (2) All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State. (Government of Namibia [GRN], 1990)

In post-constitutional order in general and in post-independence societies in particular, one often come across the term constitutionalism. What is constitutionalism? Andre du Pisani, a Namibian professor of Political Science, provides clarity in that "constitutionalism, in a narrow sense, then, is the practice of limited government ensured by the existence of a constitution" (Du Pisani, 2010, p. 11). This basically means that constitutionalism is the practice or implementation of the order created by the constitution. It then follows the logic of discussions above that with the state discussed, explained and understood, how the state works is outlined by the constitutions. The practice of what is contained in the constitution is what becomes known as constitutionalism. Du Pisani (2010, pp. 11-12) provides further clarity:

More broadly and usefully, constitutionalism is a set of political values and aspirations that are anchored on the desire to protect liberty through the establishment of internal and external checks on government power. In this sense, constitutionalism is a key aspect of political liberalism; the latter is typically expressed in the form of support for constitutional provisions that achieve this goal, for example, by way of a codified constitution, a Bill of Rights, a separation of powers, the rule of law, and decentralized authority.

Central to the idea of constitutionalism is the concept of the 'rule of law', considered to be in contradiction to the 'rule of men'. The Legal Assistance Center of Namibia (LAC) simplifies this concept through accessible language: "The rule of law means that everyone must obey the law, even people in positions of power. It also means that the law must apply equally to all people, and that everyone has the right to seek help from the courts if the law is not followed" (1990, p. 2). To understand the constitutional principle of the 'mixed economy' and the triumph of neoliberalism in Namibia, as will clearly emerge in the following pages, it was necessary to provide a brief discussion and understanding of the state, the constitution and constitutionalism.

The politics of drafting the Namibian constitution

At the Berlin Conference of 1884/5, a conference of European imperial powers organised and chaired by the first Chancellor of Germany, Otto von Bismarck, the territory of present day Namibia (then called South West Africa) was claimed as a German colony. This conference outcome, contained in what was known as the 'General Act of the Berlin Conference', would then serve as the beginning of a formal process that would inflict suffering to millions of Africans in the form of colonialism – an event of which the outcomes are affecting Africans to this day. Before the Berlin conference and its outcomes, African livelihoods were organised in political units called kingdoms and empires. The economic life was organised on the basis of what was known as African communalism (Hyden, 2013; Thomson, 2010; Wallace & Kinahan, 2011; Dobell, 2000). The misplaced narratives of Africans as underdeveloped and backward were challenged and discredited by several historians and scholars, such as Cheikh Anta Diop and Walter Rodney. These scholars point to the fact that Africans were developed and led organized lives well before the arrival of Europeans on the continent. For example, Rodney (1982, pp. 41-42), notes:

... under communalism every African was assured of sufficient land to meet his own needs by virtue of being a member of a family or community ... African manufacturing had advanced appreciably. Most African societies fulfilled their own needs for a wide range of articles of domestic use, as well as for farming tools and weapons ... [for example] through North Africa, Europeans became familiar with a superior brand of red leather from Africa which was termed "Moroccan leather." In fact, it was tanned and dyed by Hausa and Mandinga specialists in northern Nigeria and Mali. When direct contact was established between Europeans and Africans on the East and West coasts, many more impressive items were displayed ... Africa was a continent of innumerable trade routes ... Various communities were producing surpluses of given commodities which could be exchanged

for items which they lacked. In that way, the salt industry of one locality would be stimulated while the iron industry would be encouraged in another. In a coastal, lake, or river area, dried fish could become profitable, while yams and millet would be grown in abundance elsewhere to provide a basis for exchange ... Indeed, the first Europeans to reach West and East Africa by sea were the ones who indicated that in most respects African development was comparable to that which they knew.

While the differences in the scale of development between Europe and Africa existed, it is a discredited notion – as aptly demonstrated by Rodney above - that Europeans came to Africa to bring development to a 'dark, uncivilized, barbaric undeveloped' continent, as is often touted. Europeans came to Africa; it must immediately be submitted, in order to pursue imperial capitalist goals as contained in the 'General Act of the Berlin Conference'. The same is true for with the Germans who occupied Namibia. Henning Melber, a Namibian professor of political science, details how German colonial occupation of Namibia took shape:

On 5 September 1884, the German Empire formally declared the south-western coastal strip of Africa under its flag. Soon, however, the area under her "protection" stretched from the Kunene River in the north to the Orange River in the south, and to the sandy desert of the Kalahari in the east. This formal declaration of colonial responsibility was followed by a period in which a representative of the German Empire tried to conclude "protection treaties" with local chiefs...the German empire at this time was preoccupied mainly with building its own internal capitalist system. It was not yet in a position to take systematic advantage of its colonial possessions. Economic interests were mainly represented by a number of "concessionary companies". In the main, these existed only for speculative purposes with regard to land allocation and the exploitation of natural resources...The official German administration established itself in 1893. Only from that time on did a colonial power structure and administrative apparatus come into being, which in its aims and effects was soon to undermine the existence of certain Namibian groups... the German colonial power had, by 1907, gained complete control over the territory. (Melber, 2010, pp. 28-39)

The local communities waged several wars, including what is regarded as the War of National Resistance, against the German colonial state. They fought bravely even though they did not have modern weaponry

as was the case with the colonial state. As a case in point, between 1904 and 1907, the Germans committed what is now regarded as the first genocide of the 20th century during which more than 100 000 Hereros and Namas were exterminated upon the order of a German general, Lothar von Trotha (SWAPO, 1981; Melber, 2010; Wallace & Kinahan, 2011).

For the purposes of this text, it is important to note that the German colonial state continued with its occupation of the territory - and it had as state policy - the unleashing of brutality upon the indigenous populations in order to achieve its capitalist imperial objectives. Following the Versailles Treaties, and to a certain extent the occupation of Namibia by the South African troops in 1914-15, Germany was forced to relinquish the territory; a profitable colonial booty. Namibia was now handed over to another colonial master who would exploit the country, its people and its resources for another 75 years (Melber, 2010). Du Pisani (2010, pp. 53-55) provides an account of the circumstances under which Namibia became a colony of South Africa and the subsequent colonial policy:

World War I was terminated by the terms of Article 119 of the Peace Treaty of Versailles signed by various parties in June 1919. This transferred sovereignty of the former German colonial Government over to German South West Africa to the Principal Allied and Associated Powers, and they, in turn, transferred the "full powers of administration and legislation" to the Union of South Africa as the mandatory power. Supervisory power over South Africa (as mandatory power) was vested in the Permanent Mandates Commission of the League of Nations... When the Union of South Africa was designated the mandatory power over Namibia in 1919, that country set out to redefine public space and political life in the mandated territory. Political developments, such as the creation of an all-white Advisory Council in 1921, the introduction of English and Dutch as official languages (in January 1920) and Roman-Dutch law as the common law in Namibia, land policy, education policy, as well as the active encouragement of white settlement, all pointed to an attempt to reconfigure public space in Namibia so as to contain the movement of the majority black population. The Vagrancy Proclamation of 1920, which made it an offence for black men to move around the Police Zone ... was, one of the keystones of colonial policy.

As previously stated, the indigenous people stood up and resisted both the German and South African colonial occupation of Namibia. The local chiefs fought bravely against German colonialism. The South African colonialism was resisted by several nationalist forces and groupings from which the South West

Africa People's Organization (SWAPO) later, particularly after the 1960s, emerged as the leading nationalist movement fighting against apartheid and colonialism in favour of freedom and independence in Namibia. Accordingly, SWAPO went to articulate its struggle and vision as that of uniting "all Namibian people, particularly the working class, the peasantry and progressive intellectuals, into a vanguard party capable of safeguarding national independence and of building a classless, non-exploitative society based on the ideals and principles of scientific socialism" (SWAPO, 1981, p. 275). This conceptualisation of a vision attracted the Organization of African Unity (OAU) which later, in 1965, recognised SWAPO as the representative liberation movement of the Namibian people. 11 years later, in 1976, the UN General Assembly passed resolution 146 'baptizing' SWAPO as the 'sole and authentic representatives of the Namibian people' (Wallace & Kinahan, 2011; Dobell, 2000; UNIN, 1987; SWAPO, 1981). As such, SWAPO's struggle for freedom and independence of Namibia, including its armed struggle, was already internationalised. In fact, there have been Namibians who had made contact with the outside world, including the UN, on the matter of South Africa's occupation of Namibia. One such Namibian was Herero Chief Hosea Kutako who, through Rev. Michael Scott, petitioned the UN in 1946. Later on Mburumba Kerina, Hans Beukes, Jariretundu Kozonguizi, Sam Nujoma and others (Zaire, 2014) joined these ranks. From the time when the UN declared SWAPO as the 'sole and authentic representatives of the Namibian people' to the attainment of independence, the struggle and its plea for Namibia's independence and its future became an international affair. As Horn (2014, p. 63) stated: "... both the [UN] General Assembly and the Security Council had maintained constant pressure on South Africa since the 1960s". It was thus not surprising that the drafting of the Namibian constitution was highly internationalised. Professor Nico Horn, a professor of Law at the University of Namibia, captures this history of the internationalised struggle for Namibia leading up to and characterising the drafting of the Namibian constitution:

Two important international decisions smoothed the transition to Namibia's independence, but also had a decisive influence on the content of the Namibian Constitution. Firstly, in 1978, the UN Security Council accepted Resolution 435 as a basis for Namibia's independence ... the second important international initiative was the drafting in 1981 of the Constitutional Principles by the Western Contact Group (WCG) ... consisting of Canada, France, West Germany, the United Kingdom and the United States... In January 1981, the UN sponsored the so-called pre-implementation conference for the Security Council Resolution 435. The conference [that took place in Geneva] came to naught because the delegation comprising the South Africans and internal parties used the opportunity to attack the UN for its partiality...After the Geneva conference, the WCG started working

on constitutional principles that would ease the fears of whites and be acceptable to all parties involved. Although SWAPO initially rejected the Constitutional Principles, they eventually agreed that the document could become the foundation for the independence process and the Namibian constitution... Eventually, the Principles became the foundation on which the Constitution was built. At the first meeting of the Constituent Assembly on 21 November 1989, Theo-Ben Gurirab of SWAPO proposed that the Assembly adopt the Principles as a "framework to draw up a Constitution for South West Africa/Namibia". The proposal was unanimously adopted. (Horn, 2010, pp. 64-65)

Four things clearly emerge from this history: (1) Western countries, through the UN, took a lead and responsibility for the process and content of what later became the Namibian constitution; (2) white fears and interest increasingly became a key factor in the process of drafting the Namibian constitution; (3) SWAPO capitulated its leftist/socialist position in order to gain political power; and (4) the constitution of Namibia is a product of compromises. These observations are supported by several writers, such as Mudge (2010) and Gurirab (2010), who were also participants in the drafting of the Namibian constitution. In a study on the rhetorical analysis of the making of the constitution of Namibia, Mathe (2009) corroborates the compromises made by parties in the process of the drafting of the Namibian constitution.

Hage Geingob (2010, p. 106), the chairperson of the Constituent Assembly, confirms, for example, how white fear and interests were taken care of:

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

This was to place on record in order to emphasise that white economic interests are protected by the constitution. Horn (2010, p. 68) corroborates the SWAPO capitulation in submitting that SWAPO's discussion paper on the constitution of independent Namibia submitted to the Constituent Assembly did not have an economic policy spelt out but the document nevertheless included a paragraph protecting "vested legal rights and titles in property". With evidence of confirmation that settlers and white economic interests were protected in the constitution – and given the confirmation by Geingob (2010, p. 106) that SWAPO's single most delight was that "its many years of struggle had at last borne fruit" – it can be argued that the economic question and agenda for independent Namibia were exclusively framed by

westerners. Westerners, acting in the interest of whites, conceptually dealt with the economic question in our constitution.

The principles of economic order: interrogating the "mixed economy"

Having discussed the historical background on how the Constituent Assembly dealt with the economic question, it is necessary to look at the specific provision (article) relevant to this text. Article 98 of the Namibian constitution on the Principles of Economic Order introduces the concept of "Mixed Economy".

For the sake of clarity, Article 98 (1) and (2) state:

(1)The economic order of Namibia shall be based on the principles of a mixed economy with the objective of securing economic growth, prosperity and a life of human dignity for all Namibians... (2) The Namibian economy shall be based, inter alia, on the following forms of ownership: (a) public; (b) private; (c) joint public-private; (d) cc-operative; (e) co-ownership; (f) small-scale family. (GRN, 1990)

For the past 26 years, there has been no clarity on the part of government to provide a clear ideological context to what constitutes a mixed economy. Some make use of the basis of the Namibian economy as outlined in Article 98 (2) to explain the principle of the mixed economy. Other argue that there is a difference between the 'principle' and organisational 'forms' of the economy. They further question why, given that Article 98 (1) and 98 (2) are the same, the drafters of the constitution made a numerical distinction? Even ordinary citizens are confused about the "Mixed Economy". In 2012, an exchange of letters between ordinary citizens is illustrative of the above. On 27 July 2012, Clarence Mbai wrote a letter to *The Namibian* newspaper titled 'Namibia is a Mixed Economy', arguing as follows:

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

individuals especially those who benefited the most from the colonial and apartheid era.
(Mbai, 2012)

A month later, on 10 August 2012, J Shimwafeni wrote a letter in the same newspaper titled "'Mixed economy' is a red herring", submitting the following:

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

The fact that even the citizens who appear to have benefited from higher education, cannot make out what the actual economic order, is disturbing. Those who argue for the existence of the 'mixed economy' in practical sense, such as Mbai above, do not only face sharp questions from the likes of Shimwafeni, but are also called upon to explain the practical existence of the provisions of Article 98 (2). While private ownership of economic activities are understandably provided for by Article 21 (1) (j), some provisions, with the exception of public ownership, remain unexplained. For example, it is still not explained what is

meant by "small-scale family" as a form of economic ownership. Scandalously, the public-private framework was only presented to parliament for discussion in 2016. At the time of writing, it was still being debated and had not yet become law.

Given that there is no clear conceptual and operational definition of a 'mixed economy' in Namibia, it is necessary to explore international literature in an attempt to understand the origins of this concept. Writing in *Equilibrium*, a Ukrainian quarterly Journal of Economics and Economic Policy, Tetiana Bogolib (2013, pp. 126-128), explores the origins of the concept of 'mixed economy':

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

From the above account, and from further readings of scholars (e.g. Reisman, 1994), it can be understood that a 'mixed economy' is a European construct that sought to explain economic circumstances where the state historically intervened in the capitalist economy in order to ensure public economic participation, and to enforce regulations. From reading of the intentions, it would appear that a 'mixed economy' is a tentative flirtation with a so-called 'developmental state' – a concept presently dominant in contemporary African political economic discourses. When the case of Namibia is considered, the concept is not explained properly, prompting ordinary citizens, such as Shimwafeni (quoted above), to conclude that "the idea of a 'mixed economy' was really a misnomer, a red herring. It was an attempt to blow smoke into the eyes of the working class to believe that they are living in a mixed capitalist-socialist society".

The rise and consequences of Neoliberalism in Namibia

Three important observations clearly emerged from the above discussion on the mixed economy: one is that SWAPO took a back seat, abandoning its long-held socialist beliefs, allowing the Western Contact Group and Apartheid negotiators to take the lead on the economic architecture of independent Namibia that is to be contained in the national constitution. Writing for one of leading newspapers in the US, *The New York Times*, only a day after Namibia's independence on 22 March 1990, Christopher Wren (1990) observes the following shift in ideological positions:

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

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

In what was widely regarded as a signal that the new government intended to follow orthodox economic and fiscal policies, Otto Herrigel, a conservative white Namibian with a background in business, was picked as the country's first Minister of Finance. While there is no doubt that Herrigel's presence did much to reassure the nervous white business community, it was not clear [if] he was the right choice to steer the country's finances in the new direction required... Herrigel ended up resigning from Cabinet in April 1992 over the issue of the Presidential jet about which he had been kept in the dark and was replaced with another white Namibian... Gert Hanekom. (2013, p. 29)

The third observation is that on the part of many Namibians, and as shown by the absence of legislative clarity of which some only came under discussion in 2016, there is no uniform understanding of what constitutes a 'mixed economy'. Where there is such an understanding, debates still ring as to whether

the 'mixed economy' contained in the constitution is supported by the daily outplay of the economy. Be that as it may, westerners and whites seem to profit from this lack of clarity. As illustrated by European literature discussed earlier on the origin of the 'mixed economy', it is understood as a situation, given financial and economic crisis, wherein some minimum levels of state intervention is allowed in the capitalist economy. On the question of the principles of economic order, It can be argued that only westerners fully comprehended the construct, and how it will serve their interests. Indeed, as Hage Geingob, then chairing the Constituent Assembly, confirmed: westerners managed to protect the economic interest of the whites. Where the principles of economic order might have suggested that there is indeed room for some socialist policies in the 'mixed economy' westerners ensured that all principles of state policy, including principles of the economic order of "Mixed Economy", are restricted to an arena of dreams. Article 101 of the Namibian constitution thus becomes clear:

The principles of state policy contained in this Chapter shall not of and by themselves be legally enforceable by any Court, but shall nevertheless guide the Government in making and applying laws to give effect to the fundamental objectives of the said principles. The Courts are entitled to have regard to the said principles in interpreting any laws based on them. (GRN, 1990)

This basically means that, even if 'mixed economy' exists in Namibia, ordinary citizens cannot compel the state to implement this because the constitution is forthright in stating that these principles "shall not of and by themselves be legally enforceable by any Court". Article 101 reduces these principles to a mere 'guide'. Understanding this limitation, the westerners ensured that the right to property and the right to business are contained in Chapter 3 of the Namibian constitution as expressed in Articles 16 and 21 respectively.

Not only the history of the constitutional economic architecture and privileging of white economic interests became clear over the past 26 years of independence; it also became evident that there is nothing or little mixed about the Namibian economy. It became clear that Namibia is a neoliberal capitalist economy. Heywood (2012, p. 50) defines neoliberalism as an idea in classical political economy of which the "central theme is that the economy works best when left alone by government, reflecting a belief in free market economics and atomistic individualism...in short, the neoliberal philosophy is: 'market: good; state: bad'. Key neoliberal policies include privatization, spending cuts (especially in social welfare), tax cuts (particularly corporate and direct taxes) and deregulation. Neoliberalism is often equated with a belief in market fundamentalism, - absolute faith in the capacity of the market mechanism to solve all economic and social problems."

Neoliberalism became dominant with the rise of Margaret Thatcher of the United Kingdom and Ronald Reagan of the US. As Heywood (2012, p. 49) explains:

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

Similarly, Hickel (2012) explains how neoliberalism moved beyond the borders of the UK and the US, arguing that "while Western countries like the United States and Britain have experimented with neoliberalism in their own economies, they have also aggressively – and often violently – forced it on the post-colonial world, and in even more extreme measures". For sub-Saharan Africa the neoliberalism project arrived during the 1980s through the World Bank and the International Monetary Fund's structural adjustment programs which had a devastating effect on Africa's economic development. Hickel (2012) further explains:

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

At the time of the drafting of the Namibian constitution, neoliberalism was the popular economic policy in international political economy, prompting Margaret Thatcher to proclaim that there were no alternatives to neoliberalism (Hickel, 2012). The UK and the USA, countries that propagated neoliberalism, played a key role, as has been established earlier, in deciding upon the contents of the constitution. At the time, it would have been only wild imagination to expect them to introduce principles of economic order advocating a socialistically planned economy. It can be argued that the entrenching of Article 16 and 21, and the insertion of Article 101, was a well-calculated strategy to ensure that capitalist principles remain permanently embedded in the constitution, whilst the little proviso that can be used for socialist demands are reduced to a mere guide, and are not enforceable in the court of law. Indeed, an argument can be

submitted that at the core of this constitutional design is a strategy to ensure that the economic order in Namibia remains neoliberal.

Post-independence Namibia, as per the above design, did indeed become characterised by a neoliberal economic order. Stated differently, post-independence Namibia witnessed a radical manifestation of neoliberalism. In their study on inequality in Namibia, Jauch et al (2011, pp. 224-225) buttresses this point:

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

It is thus prudent to recall the words of Shimwafeni (2012), as earlier invoked from *The Namibian* newspaper: "... the idea of a 'mixed economy' was really a misnomer, a red herring. It was an attempt to blow smoke into the eyes of the working class to believe that they are living in a mixed capitalist-socialist society. Of course, this is impossible since these two economic systems are fundamentally different. There could never be a 'good balance' between capitalist and socialist ideals... Namibia, quite simply, has a capitalist economy, not a 'mixed economy'". If the Shimwafeni (2012) is regarded as exaggerating, a confirmation from a state official is warranted: Nahas Angula, one of the drafters of the Namibian Constitution and a former Prime Minister of Namibia, confirmed that Namibia is a neoliberal state in the following telling text of 2011:

The structure of the Namibian economy illustrates a branch plant economy. Players in the Namibian economy are companies which are branches of foreign mother companies: A branch plant economy does not have internal synergies for sustained growth. In other words, the Namibian economy is neo-colonial. If conditions for economic take-off were to be created the structural challenges in our economy must be addressed... The neo-liberal policies of our Government have created necessary conditions to build on. These

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included macro-economic stability; governance institutions; sound physical infrastructure; communication infrastructure; national savings; and political stability. These conditions though necessary are not however sufficient to create the preconditions for take-off ... these constraints can best be overcome through direct State interventions. The Namibian State must therefore become a Developmental State.

At the time of writing, confirming the "neoliberal policies" of government, Nahas Angula was the sitting Prime Minister. As a custodian of government policy, there could be no confusion that Namibia indeed constitutes a neoliberal state.

Conclusion – What is to be done?

This text is located within the discourses of political economy. It looked at the constitutional principle of 'mixed economy' and analysed the realities of neoliberalism in Namibia. Of course there was a puzzle: Why is it that, despite the riches in the country, the majority of the Namibian people remains in poverty? Why is it that Namibia has one of the highest records of inequality despite its small population? The answers to these questions, and indeed the responses, require a good understanding of the Namibian political economy. In answering this question, most studies focused on the symptoms: the meanings and impacts of inequality. Only a few studies investigated the constitution and the role it plays in creating and sustaining the economic circumstances the Namibian society finds itself in today. There have been several studies conducted on the Namibian constitution as well. One such study was the 2010 volume titled *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, edited by Anton Bösl, Nico Horn and Andre du Pisani. This volume covered various aspects on the Namibian constitution but fell short addressing the political economy in general, and specific focus on the 'mixed economy' as constitutional principle of the economic order, in particular. This is one of the reasons why this text is unique.

The evidence provided in this text leads to at least six conclusions: (1) as is the case elsewhere in Africa, the state in Namibia did not develop organically; it was established to achieve the settlers' imperialist capitalist goals. The post-independence state still battles the legacies left behind by the 106 years of colonialism and apartheid. Worse, for Namibia, westerners who played an important role in the crafting and designing the national constitution ensured that the supreme law is designed in such a way that the economic fundamentals protecting white privilege remained intact; (2) scandalously, the former liberation movement (by own admission) openly capitulated and embraced the capitalist neoliberal economic order in exchange for political power. In mischievous language, SWAPO leadership traded their revolutionary outfits for air-conditioned offices as opposed to the total transformation of society – a vision for which it

fought for more than 20 years before independence; (3) the inequality, poverty and underdevelopment characterising the black majority can be placed at the doorsteps of SWAPO in general and its capitulation at the negotiation tables in particular. More alarming even, is the reality that the SWAPO elites are often heard at public platforms confirming their capitulation and its consequences, yet they are unwilling to make clear reform interventions, even 26 years after independence. It was, therefore, no surprise that President Hage Geingob disclosed to the world his fear of white retaliation, should he intervene on the land question as per the demands of the majority of the Namibian landless masses (Windhoek Observer, 2016); (4) there seems to be no determined effort to deal with past ambiguities and provide clarity on fundamental economic aspects, such as 'mixed economy', which are perpetuating economic despondency of the majority of the Namibian people. The black elites in power have joined their former oppressors to become oppressors against their own people as explained by Paulo Freire in the *Pedagogy of The Oppressed*; (5) there are voices, albeit few, that are beginning to speak against neoliberalism; (6) lastly, it has been unearthed that Namibia's constitutional principles of economic order in general, and the principle of 'mixed economy' in particular, are suspect as cover for neoliberalism.

The question, in this concluding note, is what is to be done. Former Prime Minister Nahas Angula attempted to answer as outlined earlier: "... the Namibian State must therefore become a Developmental State." For such a dream to take place, there must be a relook at the principles of economic order in general, and the principle of 'mixed economy' in particular. This is what Nahas Angula did not mention: there is a need to revisit the 'compromise'-riddled constitution in order to address the economic question. As Jauch et al argued earlier: "... an alternative development agenda will have to be built from below and place redistribution and social justice above the interests of global corporations and their allies among governments. The market-based paradigm of the past decades simply offers no hope for the poor".

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