The Bare Bones of the Bank of Namibia Act of 2020

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Introduction

This opinion piece aims to ascertain the extent to which the new Bank of Namibia Act 1 of 2020 (the Act) imports the neoliberal rules of central banking and it also assesses the level of departure, if any, from the conventional central bank mandates couched in law. The piece further highlights the domestication of the rules of the Central Bank Model Law adopted by the Southern African Development Community (SADC).

The origins of central banks are traceable to the Bank of Stockholm, which became the Riksens Ständers Bank that evolved into the Sveriges Bank, the current day central bank of Sweden[1]. Many countries establish central banks when they achieve independence, and this was no exception for Namibia in 1990.

The Namibian Constitution provides for the establishment of a central bank[2]. As a result and immediately after independence the Bank of Namibia ('the

Bank' or 'BoN') was established by the enactment of the Bank of Namibia Act 8 of 1990, which was later repealed in 1997 and further amended in 2004. The latter laws were recently repealed by the Bank of Namibia Act 1 of 2020.

The salient provisions in the Act

An assessment of the provisions of the Act indicates a hybridization of traditionalism and neoliberalism. The law is largely modelled on the SADC model law for central banks, it furthermore seeks alignment with the SADC ideals of harmonization of laws underpinned by regional integration within the sub-region.

One of the key improvements in the Act is that it strengthens the independence of the Bank to the extent where interference with the Bank operations is criminalized. In addition to the principle of independence, the Act displays a higher level of transparency and accountability. Central bank independence (CBI) constitutes a core element of modern central bank law. More importantly, it forms a key part of neoliberalism theory. Central bank independence is an advantage, but the real question is: what is independence? Capie[3] defines it as the right to change the operating variable without challenge from or a consultation with government. An assessment of the Act still indicates several instances where consultation is required with the minister, for example the appointment of the governors and non-executive independent directors. The independence of the bank thus remains questionable even though provision therefor is made in the law. The independence remains a fiction because of the interrelatedness of the bank and the government and thus may not prevail. Independence may and is mostly experienced in the monetary policy formulation to the extent that the bank enjoys autonomy in this regard, considering the currency peg arrangement with the South African Reserve Bank. It however seems that the intention of the legislator is to maintain the bank, free from political interference.

The object and the functions of the Bank have been expanded, the object being to promote monetary stability. Stabilization, both in terms of price stability (i.e., monetary stability) or financial stability, is a key component of neoliberal economic theory in central banking. The functions have been expanded and now allow for the Bank to foster the development of the banking sector. A key introduction in the Act is that the Bank now bears the function of macro-prudential oversight over the financial system. This means that the bank now has oversight over the non-bank financial sector (insurance companies and micro-lending businesses) in Namibia. The Bank is now responsible for coordination of activities involved in safeguarding financial stability in Namibia. In doing so, the Bank has the powers to issue directives after consultation with the Namibia Financial Institutions Supervisory Authority (NAMFISA) regarding macro-prudential matters and the co-ordination of activities involved in the safeguarding of financial stability, and to ensure compliance with the directives. It also empowers the BoN to manage events of system-wide financial crisis jointly with the Minister and NAMFISA with the aim of stabilizing and restoring confidence in the financial system, etc. The inclusion of this function was also prompted by the findings of the Financial Sector Assessment (FSAP - 2018) recommendations of the International Monetary Fund and the World Bank Group.

This provision is important because of the risk of contagion or systemic risk. This function now vests the bank with a developmental role. Financial stability remains a core function of central banks in both traditional and neoliberal theories.

Chapter 4 outlines the institutional arrangements of the Bank. This chapter provides for the Bank's board of directors and their functions and powers. The chapter also outlines the appointment of the governor and deputy governors. Moreover, it provides for the terms of appointment, qualification, and disqualification of members of the Board, as well as those of the governor and deputy governors. The new addition to this section is that, unlike in the repealed Act, the President must now appoint the governor and the deputy governor(s) only after having consulted the Board, the Public Service Commission, and the Minister responsible for finance.

Neoliberalism and modern central bank orthodoxy strive to insulate the central banks from the executive branch and the vicissitudes of politics. The involvement of the board in the appointment of the governors encourages alignment with such orthodoxy and seeks to depoliticize the appointment of the most senior executive in the institution. The governor is the Board chairperson and chief executive officer of the Bank. The duality in this function can be ascribed to the *sui generis* nature of a central bank. The removal of the governor and deputy governors are only permissible in strict circumstances which include grounds of incapacity and gross misconduct as provided for in the Act itself. The Act is now very prescriptive on the process that needs to be followed in the removal of the governor or deputy governor. This process fortifies the independence of the central bank. Unlike other presidential appointments such as ministers who serve at the pleasure of the President, the governor and deputy governors are now shielded from whimsical and arbitrary termination from their positions.

Monetary Policy Committee

Chapter 5 makes provision for the establishment of the Monetary Policy Committee (the MPC), its composition, structure, and functions. This section has been maintained because the power to determine the monetary policy is an inherent function of a central bank. The section now requires that the members of the monetary policy committee must be persons with knowledge and experience on matters relating to monetary policy, and persons of probity, competence and of sound judgment. A new introduction is that the governor as chairperson of the MPC may appoint a mix of internal staff members and non-staff members to the committee. The appointment is subject to Board approval. The Board approval is important to avoid the concentration of power in appointing authority and it provides credence to the committee and ultimately the monetary policy formulation in the country.

Financial Stability functions (Macroprudential oversight)

The Act now makes provision for the establishment of a Financial System Stability Committee and outlines provisions pertaining to the maintenance and enhancement of a stable financial system in Namibia. It provides that the Bank is responsible for the macro-prudential oversight as well as the coordination of activities involved in safeguarding financial stability. In terms of this mandate, the Bank may enter arrangements with other financial institutions and supervisory authorities to co-ordinate financial stability measures for Namibia. Before the enactment of the Act, the Bank was responsible for the micro-economic function of stability in the banking sector and the NAMFISA was responsible for oversight on the non-bank financial institutions (insurance and micro lending). Further to this, provision is also made for the Bank to obtain any information and to share such information with financial institutions and supervisory authorities if the Bank considers it expedient. The financial system stability committee is now a statutory committee, unlike in the past where it was based on internal arrangements between the Bank and NAMFISA. The workings of the financial system stability committee will now be memorialized in a memorandum of agreement between the relevant parties to ensure the division of responsibilities and mark the terms of engagement. The section does not strip NAMFISA of its authority, but it aims to ensure that the coordination and oversight responsibility rests with the Bank.

Chapter 7 of the Act deals with one of the traditional functions of the Bank, namely currency design and issuance. One of the shortcomings of the definition of currency is that it limits currency to physical cash and does not include central bank digital currency. The latter is currently a very topical issue that is being researched by many central banks. If the Bank of Namibia considers issuing a digital currency, it will require an amendment to the Act because the current definition is narrow and does not include virtual currencies such as Bitcoin.

The Act outlines the terms upon which the Bank may grant loans to the Government of Namibia. The chapter provides limitations regarding excessive lending by the Bank to the Government and clearly stipulates that such lending may not exceed five percent of the Government’s average annual ordinary revenue for the three financial years immediately preceding such loan. However, in exceptional circumstances, the Bank may be allowed to lend an amount not exceeding ten percent of the average annual ordinary revenue. This provision in the Act have been tailored to international best standards. It also aspires to avoid undue shareholder loans. Neoliberalism also entails inducing fiscal discipline because deficits and public debts undermine a central bank’s core mandate to stabilize prices and the value of the currency. Effectively, deficits and debts increase inflation and can even lead to hyperinflation and decrease the value of the currency.

As with other central banks, the Act maintains the Bank of Namibia as the lender of last resort. The section is enhanced and operationalized in terms of the lender-of-last-resort policy of the Bank. This is important to balance the moral hazard. The purpose of this arrangement is to ensure sound financial stability and to prevent liquidity crises in the financial sector. For institutions to be considered for this facility, they must be solvent.

Chapter 10 outlines the provisions pertaining to the Bank’s mandate to maintain the international reserves of Namibia. In this regard, it is important to note that international reserves may be applied to cushion the national economy against external shocks such as a sudden rise in import prices and ultimately against crises when they occur. Given the importance of foreign reserves for Namibia, the new Act makes provision for the Bank and the minister of finance to agree on the measures to grow and build these reserves to an adequate level. The costs of growing the reserves following the measures agreed upon by the Bank and the minister will be borne by the Government. Evident from the COVID 19 pandemic is the fact that international reserves cushion the economy against public health and other national crises. It thus remains important that countries grow and maintain international reserves at best practice benchmarks.

A new insert in the Act is that the Governor must now appear before the relevant standing committee of the National Assembly at least once a year to report on the operations of the Bank. This provision does not seek to diminish the independence of the Bank but rather is a way to improve transparency in the operations of the Bank. Unlike neoliberals, John Maynard Keynes and his followers believed that the central bank must be subjected to some measure of democratic control. By contrast, neoliberals insist on leaving the operations of the central bank to a group of experts or technocrats. By obliging the BoN Governor to report, at least once a year, to the National Assembly on how the central bank has operated, the new Act ensures both transparency and accountability and should not necessarily be viewed as an attempt to dilute the independence of the central bank. To put it simply, this obligation to report in Parliament appear to uphold the views of Keynes and Keynesian economists on the independence of central banks.

Namibia is one of the first countries to have transcribed and domesticated the principles in the SADC model law for central banks. An assessment of the Act indicates largely that it reproduces the tenets of neoliberalism in central banking and it breaks rank with them in some aspects, namely that it gives the bank a developmental role in the banking sector and the economy, and secondly that it subjects the central bank to democratic control through a positive obligation to report to the National Assembly at least once a year thereby breaking down the walls of the ivory towers in which central banks have been operating for a long time.

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[1] Lecture presented by Honourable Iipumbu Shiimi at the Harold Pupkewitz Business School on 6 September 2016, at the time Mr Shiimi was the Governor of the Bank of Namibia.

[2] Article 128 of the Namibian constitution

[3] Capie F (1995) *The evolution of General Banking.* World Bank Policy Research Working Paper 1534.