12 Steeling for the next pandemic through fiscal responsibility: The Bank of Namibia as fiscal council

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12.1 Introduction

If you are tempted to think that nothing could be worse than the unfolding COVID-19 pandemic, think again. Even before the COVID-19 pandemic broke out, some experts had predicted that the future has several global pandemics in store.[1] The fact that 25 heads of state clamoured for a multilateral treaty for 'pandemic preparedness and response'[2] reveals that some leaders are now making the same predictions.

Similarly, in light of the ongoing COVID-19 pandemic and those in the future, this chapter mounts a fiscal responsibility framework to enable developing countries, Namibia in particular, to strike the delicate balance between easing short-term liquidity crises and preserving their country's long-term development. This pandemic has created manifold pandemonium, affecting the economy, the healthcare system, and state finances. Hence, this public health nightmare has set the stage for upheaval and bitter strife within society.

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1 See R Preston *Crisis in the red zone: The story of the deadliest Ebola outbreak in history, and of the outbreaks to come* (2019); S Shah *Pandemic: Tracking contagions, from cholera to Ebola and beyond* (2016) (submitting that civilisation has carried along many new pathogens – a situation that has led many researchers to predict a new pandemic); D Quammen *Spillover: Animal infections and the next human pandemic* (2012).

2 World Health Organisation 'Global leaders unite in urgent call for international pandemic treaty' (30 March 2021), https://www.who.int/news/item/30-03-2021-global-leaders-unite-in-urgent-call-for-international-pandemic-treaty (accessed 30 April 2021).

Inexorably, most governments will have to borrow money if they genuinely wish to pull through COVID-19, the world's worst economic crisis since the Great Depression. On the African continent, the most industrialised nation, South Africa, had to resort to emergency funding from the International Monetary Fund (IMF),[3] and so did its western neighbour, Namibia.[4] In fact, several affected countries have received funds from the IMF.[5]

Disasters such as the latest coronavirus cause government spending to shoot up. The authorities need to spend huge sums to engage in relief activities, recover losses suffered or repair damage caused, and shore up the economy. Crucially, however, disasters tend to push up public debt to unsustainable levels.[6]

While economists and economically-oriented lawyers spoke about this thorny dilemma, the legal literature has remained silent as to how developing countries could use or tweak their laws to tackle this singular and multi-faceted crisis. In a related vein, no one seems to have studied the possibility of modifying budget system laws in order to face the crisis.

The time is opportune to ponder on budget system laws in developing countries and reflect on how governments can adapt to suit the unique and uncertain circumstances brought about by the COVID-19 pandemic and the ensuing Great Lockdown. This holds especially true given the evidence that this pandemic may be one only of several pandemics to come.

Accordingly, this chapter seeks to resolve this trade-off between emergency liquidity and long-term solvency by exploring the possibility of

3 International Monetary Fund 'IMF executive board approves US $4,3 billion in emergency support to South Africa to address the COVID-19 pandemic' (27 July 2020), https://www.imf.org/en/News/Articles/2020/07/27/pr20271-south-africa-imf-executive-board-approves-us-billion-emergency-support-covid-19-pandemic (accessed 15 June 2021).

4 International Monetary Fund 'IMF executive board approves US $270,83 million disbursement to Namibia to address the COVID-19 pandemic' (31 March 2021), https://www.imf.org/en/News/Articles/2021/04/01/pr2195-namibia-imf-executive-board-approves-disbursement-to-address-covid-19-pandemic (accessed 15 June 2021).

5 For an overview of the lending and debt service relief financed by the International Monetary Fund (IMF), see International Monetary Fund 'COVID-19 financial assistance and debt service relief' (27 May 2021), https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker (accessed 15 June 2021).

6 See E Borensztein et al 'Debt sustainability under catastrophic risk: The case for government budget insurance' (2007) Inter-American Development Bank Working Paper 607 4 (observing that disasters increase government debt and the risk that the debt reaches unsustainable levels).

enacting fiscal responsibility laws. To help policy makers juggle between these two diametrically-opposed poles, I have divided the substance of this chapter in five parts. The first part looks at the COVID-19 pandemic that forms the context of this chapter, focusing on its effects on Namibia's fiscus. The second part presents the core dilemma that has ensnared developing countries, namely, the uneasy balancing act that consists in defusing the present liquidity crises while ensuring long-term growth and development.

Third, the chapter analyses best practices around the globe in budget system laws to gain insights about the broad policy directions that responsible governments take when facing major economic shocks, such as the Great Depression in the 1930s,[7] the Great Recession in 2007-2009, and the unfolding Great Lockdown. In this part I also sketch Namibia's budget system laws before affirming that Namibia lacks any legal framework for fiscal responsibility. Next, by relying on those best practices, the chapter outlines the framework for a fiscal responsibility law (FRL) that a developing country such as Namibia could pass to safeguard debt sustainability.

Subsequently, the chapter assesses the FRL outlined in the previous part. I advance the thesis that, as it currently stands, Namibia's legal system can most effectively balance the liquidity-strategy dilemma by enabling the Bank of Namibia, the central bank, to act as a fiscal council. The Southern African Development Community (SADC) appears to have carved out that role for central banks in the region. In 2009 SADC adopted a model law[8] that Namibia utilised to enact a new law in 2020 which makes it possible for the central bank to act as a fiscal council.[9] In that capacity, the Bank of Namibia can guide the government in fixing the appropriate level of public debt that Namibia can take on. This level strikes a balance between the two poles of the dilemma mentioned above – a dilemma that pits short-term emergency against long-term strategy. I round off this chapter with brief remarks.

12.2 The context of the (next) global pandemic(s)

The latest coronavirus pandemic is not the first outbreak of this kind. For example, the SARS preceded COVID-19. From 2002 to 2004, that severe acute respiratory syndrome (SARS) pandemic erupted in China, spread to other Asian countries and to several other countries (including Canada

7 The Great Depression lasted from 1929 to 1939.

8 See SADC Central Bank Model Law 2009.

9 See Bank of Namibia Act 1 of 2020.

and the United Kingdom), claiming the lives of 774 people.[10] However, what sets this latest coronavirus outbreak miles away from its predecessors relates to its wide sweep. None of the earlier coronavirus outbreaks[11] had led to both contagion and economic recession worldwide. Fortunately, COVID-19 remains far behind the devastating toll of the Black Death, which broke out in the fourteenth century and killed at least 75 million people.[12]

The COVID-19 pandemic has given headaches not only to the peoples it infected, but also to the policy makers and the governments tasked with protecting those peoples. The proper policy response calls for targeted measures in matters concerning the country's constitution, the economy, the budget, public health systems, society, and the security apparatus.[13] However, even if it touches on how COVID-19 has affected some of these facets of national life, this chapter mostly focuses on the budgetary policy responses that the government can or should mount against this global pandemic.

12.2.1 Pandemics and pandemonium

Like SARS or the avian flu, global pandemics drastically disrupt international trade, and severely affect the world economy and the national budgets of individual countries. In Namibia the government announced that it would borrow an extra 40 billion Namibian dollars (that is, ZAR 40 billion) over three years to deal with the liquidity and monetary crises brought about by the COVID-19 pandemic.[14] Borrowing such a huge amount would push up the country's public debt to its highest level since Namibia achieved statehood in March 1990.

10 NHS 'SARS (severe acute respiratory syndrome)' (24 October 2019), https://www.nhs.uk/conditions/sars/ (accessed 24 January 2021).

11 Note that although the Spanish flu caused a pandemic in 1918 that spread around the globe, the 1918 virus (ie, Influenza A Subtype H1N1) differs from coronaviruses generally and the latest coronavirus (ie, SARS-CoV-2). Furthermore, the 1918 virus descends from a family of viruses that differs from the family to which SARS-CoV-2 belongs.

12 See MS Rosenwald 'History's deadliest pandemics, from ancient Rome to modern America' *The Washington Post* (7 April 2020), https://www.washingtonpost.com/graphics/2020/local/retropolis/coronavirus-deadliest-pandemics/ (accessed 24 January 2021).

13 For a rundown of anti-COVID-19 policy responses around the globe, see the IMF policy tracker: International Monetary Fund 'Policy responses to COVID-19', https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19 (accessed 29 April 2021).

14 See L Amukeshe 'Govt in deeper debt ditch' *The Namibian* (21 October 2020) 1.

COVID-19 represents an elusive worst-case scenario: The fiscal position of the government worsens as revenue drops and as the crisis induces the government to spend more to assist citizens and businesses; inflation then edges up;[15] and the trade balance deteriorates as the crisis hampers exporting capacity while imports go up, which exerts pressure on the exchange rate, prompting investors' concerns about the government's ability to repay public debt.[16] In Namibia the COVID-19 pandemic added to the pre-existing worst economic recession since independence and to revelations about the 'Fishrot Files',[17] arguably the country's ugliest corruption scandal.

As this nightmare scenario unfolds, many businesses, such as the state-owned national carrier Air Namibia, close down and lay off workers, resulting in the government losing substantial tax revenue. These losses leave the government with little to no room for manoeuvre through the budget. This reduced fiscal space leads to far-reaching consequences, as governments run short of money to spend on social services, among others, which often sparks disenchantment, discontent, upheaval and pandemonium.

Repairing or reconstructing what disasters have damaged or destroyed widen budget deficits over several budget cycles.[18] Similarly, experts fear that this global pandemic will dim the growth prospects of developing countries for several years to come, as they crumble under the weight of much heavier debt burdens. For instance, Namibia is expected to pay at

15 See MB Reinsdorf 'COVID-19 and the CPI: Is inflation underestimated?' (2020) International Monetary Fund Working Paper WP/10/248 13 (showing that, during the height of the pandemic, true inflation rose higher than what the consumer price index recorded in almost all regions). See also C Öner 'Inflation: Prices on the rise' (2017) *Finance and Development* 31 (explaining that inflation results when, among others, the government raises spending and the ensuing rise in demand outstrips an economy's production capacity).

16 Borensztein et al (n 6) 6.

17 The ongoing 'Fishrot' scandal is a kickback scheme that implicates prominent ministers (ie, the Justice Minister and the Fisheries Minister), business people, lawyers and their firms, and senior members of government and the ruling SWAPO party in Namibia as well as powerful fishing interests in Iceland. The scandal broke on the front pages of newspapers in November 2019 before the general and legislative elections took place in Namibia that same month. See eg J Kleinfeld 'Namibian president caught in new fishing corruption allegations' *Al Jazeera* (2 April 2021), https://www.aljazeera.com/news/2021/4/2/namibian-president-caught-in-new-fishing-corruption-allegations (accessed 29 April 2021).

18 See Borensztein et al (n 6) 5 (explaining that expenditures associated with those storms that hit Belize in 2000 and 2001 increased budget deficits and took three fiscal cycles).

least 35 billion Namibian dollars over the next three years only to cover debt interest.[19]

The consequences of a global pandemic for the economy and state finances can span an entire decade. In the Global South, like the Global North, the COVID-19 pandemic has decimated public finances; the pandemic's fiscal fallout and the ensuing chaos will be keenly felt in the next decade, whether or not medical researchers or pharmaceutical companies develop effective vaccines or start more effective treatments for the disease. Developing countries, in particular, will struggle to recover from the deterioration of their finances and may watch powerlessly as their population, especially the youth, live through a 'lost decade' – a long period of mass unemployment and low growth caused by duties to repay the large debts at the detriment of spending in key sectors, such as social services, health and education.

12.2.2 The fiscal fallout of COVID-19: The Namibian experience

According to Mwinga et al, Namibia has been 'sleepwalking its way into troublesome debt-to-gross domestic product (GDP) ratios'.[20] Since independence the debt-to-GDP ratio shot up, from 7 per cent in 1990/91 to 45 per cent in 2018/2019.[21] Even before the onset of the COVID-19 pandemic, the IMF had projected that Namibia's debt-to-GDP ratio would jump from 39,9 per cent in 2015 to 56 per cent in 2024. Now, with the emergency borrowing necessitated by the pandemic, Namibia has already surpassed the projected 2024 ratio.[22] In October 2020 the Finance Minister estimated public debt at 68,8 per cent of GDP.[23] Running parallel, the cost of servicing this public debt has ballooned from 2 per cent of government revenue (that is, 200 million N$/Rand) in 1990/1991 to 11 per cent of revenue (that is, 6,5 billion N$/Rand).[24]

19 Amukeshe (n 14) 1.

20 M Mwinga et al *Namibia: Fiscal policy analysis* (2019) 22.

21 As above.

22 International Monetary Fund *Namibia: Staff report for the 2019 Article IV consultation* (2019) 31.

23 Ipumbu Shiimi, Minister of Finance 'FY2020/2021 Mid-Year Budget Review and Medium Term Budget Policy Statement', https://mof.gov.na/documents/35641/36583/2020_21+Mid-Year+Budget+Review+and+Medium-Term+Policy+Statement+.pdf/7bade6a3-7108-f792-d0f2-6a534fda937c (accessed 8 March 2021).

24 Mwinga et al (n 20) 25.

That said, Namibia's debt-to-GDP ratio of 45 per cent compares favourably with the ratios of most African countries. In 2019 the debt-to-GDP ratio averaged 48,2 per cent in sub-Saharan Africa, 56,3 per cent in SADC, and 54,9 per cent in the Southern African Customs Union (SACU).[25]

In July 2020 Namibia approached the IMF for a loan of 4,5 billion N$/Rand (about 273 million US dollars). In requesting the IMF for a loan, the Namibian government sought to fund heightened spending due to the COVID-19 pandemic.[26] In the 2020/2021 mid-term budget review tabled in Parliament by Finance Minister Iipumbu Shiimi, the government plans to borrow 40 billion N$/Rand in the next three years, pushing up the country's debt burden to 158 billion N$/Rand.[27] Over the same period, the government will pay at least 35 billion N$/Rand in interest payments only.[28]

The pandemic leaves the Namibian government with no choice than to borrow. The government must now trade off a long-term strategy against short-term stability. The next part shows how this dilemma plays out.

12.3 Short-term liquidity versus debt sustainability

Policy experts can barely imagine a central bank doubling as a fiscal council, even if the existing economic and legal literature on fiscal responsibility, debt sustainability, and catastrophes opens up vistas of possibilities and worlds of alternative policy responses. That literature has not yet seriously mooted the possibility of a 'fiscal' central bank, but I hope that this chapter will allow policy makers to start imagining such a central bank – a bank that enables the government that it advises to become much better at managing the core issue: the delicate balance between short-term liquidity and long-term development strategy.

12.3.1 A delicate balance

Seemingly, to come to grips with the COVID-19 pandemic, governments in Africa and the rest of the planet will not avoid contracting heavier debt burdens. Müller et al predict that during downturns, both left-leaning and

25 Mwinga et al (n 20) 26.

26 L Amukeshe 'IMF still sitting on N$ 4,5 billion loan request' *The Namibian* (2 December 2020) 13.

27 Amukeshe (n 14) 1.

28 As above.

right-leaning governments will take on more debt.[29] Using a dynamic stochastic general equilibrium (DSGE) model, they show that fiscal policy swings between left-leaning governments (which favour public goods) and right-leaning governments (which favour private consumption). They also predict and test their predictions that left-leaning governments will increase taxation and government expenditures, and decrease debt, except during downturns.[30] Conversely, right-leaning governments will decrease taxation and expenditures, and increase debt.[31] These tested predictions contradict the rhetoric of recent debates which typically present left-leaning governments as caring less for fiscal responsibility.[32]

These findings, though they relied on data from the United States (US) and countries belonging to the Organisation for Economic Cooperation and Development (OECD), predict that the left-leaning SWAPO-led[33] government or any right-leaning government would increase Namibia's debt burden.

In sum, governments should not sacrifice tomorrow for today, and to do so, they must maintain a certain balance. That balance proves delicate because it carries the risk of default. Along with default comes the risk of debt restructuring. Indeed, if a government borrows money beyond a certain threshold, it shortens the odds that the government will default on its debt.

12.3.2 Easing short-term liquidity crises

The COVID-19 pandemic brings about crises of several sorts. Crucially, liquidity shortfalls count among the series of crises that the government has to handle. These cash flow problems require rapid relief, typically in the form of debt. This is precisely what led the government of Namibia to decide last year that, for the first time in its history as an independent state, it will borrow money from the IMF. Criticisms stung scathingly.[34]

29 A Müller, K Storesletten & F Zilibotti 'The political colour of fiscal responsibility' (2015) 14 *Journal of the European Economic Association* 252.

30 Müller (n 29) 288-289.

31 As above.

32 Müller et al (n 29) 289.

33 Since independence the South West Africa People's Organisation (SWAPO) has been the ruling political party in Namibia.

34 E Brandt 'PDM labels IMF loan as "rent-seeking"… Says money will disappear in bottomless pit' *New Era* (4 August 2020), https://neweralive.na/posts/pdm-labels-imf-loan-as-rent-seekingsays-money-will-disappear-in-bottomless-pit (accessed 25 August 2020); J Heita 'We don't need an IMF loan – Nico Smit' *Eagle FM* (3 August 2020), https://www.eaglefm.com.na/news/we-dont-need-an-imf-loan-nico-smit/ (accessed

A prominent member of the ruling party and a former Prime Minister, Nahas Angula, argued that Namibia can simply not afford the IMF loan worth US $273 million(about ZAR 4,5 billion).[35]

On 31 March 2021 the IMF approved the "outright purchase" of special drawing rights (SDR) 191,1 million (about US $270,83 million and about ZAR 4,062 billion) to Namibia under the rapid financing instrument (RFI).[36] The IMF declared that it lent that financial assistance to Namibia to address 'urgent balance of payment and fiscal financing needs stemming from the COVID-19 pandemic' and to 'mitigate the severe socio-economic impact of the pandemic'.[37] For the international lender, disbursing this finance enables Namibia to respond to the pandemic, including the purchase of vaccines and the deployment of the vaccine campaign.[38]

The RFI has a maturity of five years.[39] Over this period the interest rate that the IMF is charging Namibia for the RFI will vary.[40] The rate starts at 1,04 per cent for the year 2021, continues at 2,07 per cent for 2022 and 2023, drops to 1,97 per cent for 2024, and ends at 1,12 per cent for 2025.[41]

Nonetheless, the dire peril when addressing these liquidity emergencies is their short-termism. Indeed, governments factor electoral cycles in their decision making, and this way of thinking does not always advance the best interests of the country over the long haul. Their focused attention to the 'now' may make them lose sight of the 'after' and the bigger picture.

So how can governments deal with or alleviate these short-term liquidity crises? This chapter now turns to this question.

12.3.3 The imperative of preserving long-term development

The urgency of the short-term liquidity challenges must be tempered with the necessity to preserve future development. Although this way of easing

25 August 2020).

35 N Angula 'Can Namibia afford an IMF loan?' *The Namibian* (7 August 2020) 11.

36 International Monetary Fund (n 5).

37 As above.

38 As above.

39 International Monetary Fund 'Financial position in the Fund for Namibia as of June 30, 2021' (30 June 2021), https://www.imf.org/external/np/fin/tad/exfin2.aspx?memberKey1=689&date1key=2099-12-31 (accessed 12 July 2021).

40 As above.

41 As above.

liquidity crises may at first come across as insensitive to the people's or the citizens' plight, in reality this tempering demonstrates real leadership. It recognises that, in a situation such as the one with which countries in every corner of the globe grapple, governments must act (or react) swiftly but, at the same time, it reckons that, precisely because they have to act swiftly and decisively, governments tend to make ghastly and irreversible mistakes.

New Zealand's Fiscal Responsibility Act of 1994,[42] which pioneered FRLs, also aimed to tilt the balance of fiscal decision making towards strategic and long-term objectives.[43] In that regard, the Act departed from the former position, which attached great weight to short-term policies and economics.[44]

What does the imperative of 'long-term development' entail? Scholars define and understand 'development' differently, and this chapter does not seek to define this idea holistically. Rather, the notion of development employed in this chapter simply refers to the ability of the state to use the budget to make targeted expenditures. Thus, when I say that the COVID-19 pandemic hinders development, I merely intend to say that it adversely affects the ability of the state to use the budget to grow the economy, achieve welfare, and fulfil its policy goals.

By 'long term' I mean any period beyond the medium term, to wit, any period extending beyond three years from now. Strictly speaking, my rendering of 'development' in this chapter does not require the time element conveyed by the expressions 'long term' and 'short term', but discussing the sustainability of public debt without that element would not make sense. Likewise, discussing fiscal discipline or FRLs without focusing on debt sustainability would lead nowhere.

Prioritising long-term development calls for hard choices that, if implemented, may motivate citizens to vote out of power the courageous governments that made those hard yet necessary choices. Seen like this, the challenge for governments consists in summoning up the courage to make those hard choices without compromising their electability.

42 Fiscal Responsibility Act 1994 (1994 No 17) (New Zealand). The Act no longer applies in its initial form in New Zealand. In 2004 the New Zealand Parliament incorporated the Fiscal Responsibility Act into the Public Finance Act as Chapter 2. Then, in 2013, Parliament amended Chapter 2 of the Public Finance Act substantially. See The Treasury [New Zealand] *An introduction to New Zealand's fiscal policy framework* (2015) 8.

43 G Scott 'New Zealand's Fiscal Responsibility Act' (1995) 2 *Agenda: A Journal of Policy Analysis and Reform* 3.

44 As above.

12.4 Fiscal responsibility and budget system laws

In the face of a fiscally crippling pandemic, a FRL could assist a government in preserving long-term development. Namibia has neither a FRL nor an explicit fiscal responsibility framework. Considering the grim statistics that Namibia is staring at (see part 2.2 above) the absence of any FRL does not bode well. Accordingly, this part proceeds to outline a fiscal responsibility framework.

12.4.1 The role played by the law

Governments cannot dispense with the law as they fight the COVID-19 pandemic. The laws in question do not merely comprise those that regulate the lockdown, social distancing, the closing of businesses or schools, and so forth. They also pertain to the budget and its system.

These budget system laws include the Constitution, public finance laws, and the budget document itself, also known as the 'Appropriation Act' in common law jurisdictions such as Kenya, South Africa and Namibia.

Sceptics could retort that I place too much faith in the capacity of the law to bring about change and raise living standards. Increasingly, states legislate fiscal policy, yet this trend has not yielded the intended outcomes.[45] The inconclusive nature of the evidence on how FRLs impacted economies[46] seems to support their scepticism. While I agree that it cannot easily legislate away its debt woes, the Namibian government has a good track record of executing the laws that Parliament has passed.[47] I would therefore not be foolish to suggest that, by adopting a FRL, the country with Africa's strongest adherence to the rule of law[48] could restrain the government's fiscal policy. Thus, when Namibia enacts laws,

45 See G Kopits 'Overview of fiscal policy rules in emerging markets' in G Kopits (ed) *Rules-based fiscal policy in emerging markets. Procyclicality of financial systems in Asia* (2004) 1; G Kopits 'Fiscal rules: Useful policy framework or unnecessary ornament?' (2001) International Monetary Fund Working Paper 1/145.

46 See eg L Aaskoven 'Do fiscal rules reduce political polarisation' (2019) 18 *Comparative European Politics* 630 (finding that little evidence that fiscal rules independently depoliticise fiscal rules by forcing political parties to adopt similar stances on fiscal policy).

47 See World Justice Project *Rule of Law Index 2020* (2020) 16-17 (giving Namibia a score of 0,63 out of 1,0 (ie, 63 per cent) and ranking it 35th best in the world (out of 128 countries)).

48 As above (indicating that Namibia has the strongest adherence to the rule of law in Africa).

it routinely implements them and, if it promulgates a FRL, the Namibian government will most likely apply it.

12.4.2 In Namibia, no framework for fiscal responsibility

Overall and, quite disturbingly, Namibia lacks any fiscal responsibility framework, let alone a law that disciplines the fiscus. The existing legal framework comprises the Constitution, the State Finance Act 31 of 1991, the freshly-adopted Bank of Namibia Act 1 of 2020, and the Appropriation Acts.

The Constitution

The Constitution, Namibia's supreme law,[49] does not expressly encourage the state or its organs to uphold fiscal discipline. Article 95, which falls under Chapter 11 (principles of state policy), urges the state to 'actively promote and maintain the welfare of the people'. However, the Constitution waters down this overarching welfarist principle by providing that the courts have no duty to enforce the principles spelled out in Chapter 11, although they may resort to those principles when interpreting laws based on them.[50] Hence, a concerned citizen cannot prompt the government to spend responsibly by invoking article 95.

Despite the absence of express provisions on fiscal responsibility, the Constitution sets up structures that deal with state finances, including notably the Auditor-General and the State Revenue Fund. The Constitution lays down that the pre-independence Central Revenue Fund of the mandate territory of South West Africa/Namibia must continue as the State Revenue Fund.[51] The Fund's mission consists in receiving all income accruing to the central government.[52] The Constitution vests the government with the sole authority to dispose of the income deposited in the Fund,[53] but it does not say how responsibly or prudently the government should dispose of that money.

In addition to the State Revenue Fund, the Constitution establishes the office of the Auditor-General. It empowers the President to appoint an Auditor-General after the Public Service Commission recommends it and

49 Constitution of Namibia art 1(6).

50 Constitution of Namibia art 101.

51 Constitution of Namibia art 125(1).

52 Constitution of Namibia art 125(2).

53 As above.

the National Assembly approves it.[54] The Constitution hands the Auditor-General the mandate to audit the State Revenue Fund and entrenches that office.[55] Although the Auditor-General's role involves detecting, disclosing and reporting irregularities, it does not imply stopping the government from incurring huge debts that it will probably fail to repay.

The Constitution provides for annual budgets or 'Appropriation Acts'. In a vibrant democracy, the process of approving budgets proposed by the government affords elected representatives a golden opportunity to warn the government and the Finance Minister against profligacy.

The Constitution obliges the Finance Minister to table in the National Assembly, at least once every year, a budget proposal for the prospective year.[56] The members of the Assembly then examine the proposed budget before they accept it and pass an Appropriation Act.[57] Prior to the legislative elections of November 2019, the ruling party enjoyed a super-majority in the National Assembly, thereby hindering the ability of opposition members to check the spending habits of the government. However, since the latest legislative elections, the South West Africa People's Organisation (SWAPO) has lost its super-majority, and opposition parties can henceforth control the government's fiscal policy more effectively.

The State Finance Act

Like the Constitution, the State Finance Act contains no provision that expressly addresses fiscal prudence. In terms of the Act, the Finance Minister may borrow moneys within and outside Namibia to obtain foreign currency or finance budget deficits.[58] For those purposes, the Minister could enter into agreements with banks and finance institutions, including the central bank and foreign banks, and he could issue treasury bills, public stock, bills of exchange or debentures.[59]

The Act gives the Finance Minister the tools to stop the public debt from spiralling up. Still, these tools are no straightjacket, and they will not preclude unsustainable deficits. In reality, several factors converged and heaped immense pressure on the government and the Finance Minister to drain the purse. The economy has slid into recession since 2016, the Fishrot

54 Constitution of Namibia art 127(1).

55 Constitution of Namibia arts 127(2)-(4).

56 Constitution of Namibia art 126(1).

57 Constitution of Namibia art 126(2).

58 State Finance Act 31 of 1991 secs 29(1)(a)-(b).

59 State Finance Act sec 29(2).

scandal has engulfed the ruling government and the SWAPO party since November 2019, and the COVID-19 pandemic has devastated businesses and families since December of the same year. Thus, the worst economic crisis, the ugliest corruption scandal, and the worst public health disaster all combine to pressure the government into a debt trap.

The central bank law

Unlike the Constitution and the State Finance Act, the new central bank law stands out as that part of the legal system that targets fiscal responsibility closely. The Bank of Namibia Act 1 of 2020 (BON Act) casts Namibia's central bank in fiscal, lending, borrowing and debt-manager roles.

The Act describes the Bank of Namibia (BON) as the fiscal advisor[60] and fiscal agent[61] of the government. In its advisor capacity, BON may 'on its own initiative' share its opinion on the budget.[62] This suggests that BON may advise the Finance Minister on budget policy when, for instance, it considers that Namibia cannot afford more debt or when the debt stock becomes too heavy. However, the Act does not clarify what BON's fiscal agency entails.

The Act allows BON to lend to the government on terms that it negotiates with the Finance Minister.[63] However, the Act forbids BON from lending to the government where the loan exceeds 5 per cent (or, exceptionally, 10 per cent) of the economic aid received by government for the three preceding years.[64] (This economic aid includes loans and grants received by the government.)[65] If lending to the government nears that ceiling, the Act obliges BON to report that fact to the Finance Minister and advise him on how to avoid breaking that ceiling.[66]

Interestingly, the Act imposes a duty on the government, its institutions and statutory bodies to consult BON before borrowing from any source outside the country.[67] BON will then advise them on the terms and financial expediency of the intended borrowing.[68] If BON determines

60 Bank of Namibia Act 1 of 2020 sec 46(1) (BON Act).

61 BON Act sec 48(a).

62 BON Act sec 46(3).

63 BON Act sec 49.

64 BON Act secs 50(3)-(4).

65 BON Act sec 50(1).

66 BON Act sec 46(1).

67 BON Act sec 51(1).

68 BON Act sec 51(1)(a).

that such borrowing is 'financially or economically inappropriate', it must report the matter to the Finance Minister and recommend to him measures that BON deems necessary to remedy the situation.[69]

Last, but not least, the central bank may manage public debt. If the Finance Minister authorises it, BON acts for the government and pays government debt, interest, and any debt-related expenses.[70] If authorised, BON can also issue public debt securities locally or internationally on behalf of the Namibian government.[71]

12.5 Fitting Namibia with a fiscal responsibility law

As just explained, the budgeting process in Parliament and the Finance Minister's borrowing powers may serve to keep finances from veering off rails. Nonetheless, these provisions lack one crucial thing: holism. This means that the presence of these provisions in the legal system will not keep the country from falling into a bottomless debt trap. Hence the necessity of a complete legal framework for fiscal responsibility.

In addition to the elements of FRLs discussed later in this chapter, other provisions of budget system laws may qualify as best practices. These include fiscal space and insurance. Many of the standards or norms deemed best practices boil down to creating fiscal space while grappling with the severe crises. 'Fiscal space' denotes the room in a government's budget that allows the government to spend for a desired purpose without sacrificing the sustainability of its finances or the stability of the economy.[72]

Budget insurance

To drastically improve debt sustainability in the disaster-prone areas of the world, Borensztein et al recommend that governments take out

69 BON Act sec 51(2).

70 BON Act sec 53(1)(a).

71 BON Act sec 53(1)(b).

72 P Heller 'Understanding fiscal space' (2005) International Monetary Fund Policy Discussion Paper PDP/05/4 3. Heller first introduced the term 'fiscal space'. For a different definition, see I Ortiz et al *Fiscal space for social protection: A handbook for assessing financing options* (2019) 9 (defining 'fiscal space' as 'the resources available as a result of the active exploration and utilisation of all possible revenue sources by a government'). After offering their own rendering of the term 'fiscal space', Ortiz et al (10) noted that Heller's definition has ignited controversy. See also AR Ghosh et al 'Fiscal fatigue, fiscal space and debt sustainability in advanced economies' (2013) 123 *Economic Journal* F4. Nonetheless, Heller's understanding of the term suits the purposes of this chapter perfectly.

'catastrophic risk insurance'.[73] While they focused on Belize as a case study of budget insurance in the Caribbean region, one of the world's more disaster-prone areas, nothing bars governments from considering such insurance in other regions. The fact that the Caribbean must weather more disasters than others does not obviate the necessity of insurance for other countries. It only means that countries in other regions will pay lower premia than Caribbean nations. Furthermore, if predictions that other pandemics will hit the globe in the future prove true, then these other regions, including Africa, may wish to reconsider their notion of disaster-prone geography and arrange their finances as though they belonged to disaster-prone areas.

Borensztein et al believe that international organisations have an important part to play in government budget insurance. They claim that they can assist countries when insurance markets are distorted and in easing internal resistance to the purchase of insurance policies. The World Bank and other international institutions have already sponsored the development of insurance and reinsurance markets for national disasters.[74]

I think that the IMF could assume the role of facilitator in insuring government budgets. Actually, in return for its member states agreeing to pay premia, the IMF could serve as the insurer of government budgets. Governments could pass on risks of pandemics, national or global, to an international insurer and mandate that insurer to finance budget deficits when the governments contract huge debts to deal with those pandemics. For want of space, I cannot lay out the nuts and bolts of this insurance scheme in this chapter, but I believe that the idea deserves attention.

If nations in SADC and Africa do not deem it wise to entrust the IMF with such a responsibility, they could launch the African Monetary Fund (AMF)[75] and appoint it to perform the roles of facilitator and insurer.

However, as Borensztein et al note, developing countries do not have affordable insurance options.[76] All the same, this dearth of real alternatives

73 Borensztein et al (n 6).

74 Borensztein et al (n 6) 4.

75 The African Monetary Fund (AMF) has not yet started operating because, though ratified by the requisite number of states, the instruments that established it – the Protocol on the Establishment of the African Monetary Fund and the Statute of the African Monetary Fund – have not yet received enough ratifications to activate the AMF.

76 Borensztein et al (n 6) 5.

should not prevent developing country governments from spending responsibly and devising a framework to guide their expenditures.

12.5.1 Fiscal responsibility

Perhaps the best of the best practices entails establishing a framework for assuring responsibility in fiscal matters. The 2007-2009 financial crisis has prompted scholars to examine more closely fiscal stimuli, government deficits and debt. Apart from concerns about increasing government debt, they started to worry about the sustainability of government debt.[77] Against this backdrop, Kregel advocated a 'responsible' fiscal policy.[78]

For their part, Posner & Blöndal recommended that nations couple actions to jump-start economies with fiscal consolidation.[79] Those that delay fiscal consolidation will pay a steep price economically and politically.[80]

12.5.2 The legal framework for fiscal responsibility

After the 2007-2009 financial tsunami hit the globe, many countries enacted FRLs. In so doing, they aimed to promote fiscal discipline credibly, predictably and transparently.[81]

However, middle-income countries far outnumber advanced countries in adopting FRLs.[82] For example, Brazil and Paraguay enacted a FRL in 2000 and in 2013, respectively. Nonetheless, despite its middle-income

77 See eg JL Palmer & RG Penner 'The hard road to fiscal responsibility' (2012) 32 *Public Budgeting and Finance* 4 (describing fiscal problems in the US indicating that, without major changes in its revenue and spending policies, the country would suffer a sovereign debt crisis like countries did in Southern Europe); P Posner & J Blöndal 'Democracies and deficits: Prospects for fiscal responsibility in democratic nations' (2011) 25 *Governance* 11.

78 J Kregel 'Fiscal responsibility: What exactly does it mean?' (2010) Levy Economics Institute of Bard College Working Paper 206. With respect to sustainable public debt and deficits, Kregel advocates a concept of 'responsible' government policy that conveys the idea that the policies of the government should respond to the needs and wants of citizens by providing not only education and physical security, but economic security as well.

79 Posner & Blöndal (n 77) 11.

80 As above.

81 C Caceres et al 'Structural breaks in fiscal performance: Did fiscal responsibility laws have anything to do with them?' (2010) International Monetary Fund Working Paper WP/10/248.

82 I Lienert 'Should advanced countries adopt a fiscal responsibility law?' (2010) International Monetary Fund Working Paper WP/10/254 4.

status, Namibia is yet to enact its own FRL. Lienert cites a few reasons for the reluctance of advanced countries to embrace FRLs, including the existence of a legal framework that already provides for strong budget systems, supranational rules and political arrangements in countries belonging to the European Union (EU), and botched attempts[83] to insert quantitative fiscal rules in laws.[84]

12.5.3 Main features

FRLs typically feature four key clauses, namely, deficit ceilings, expenditure ceilings, escape clauses and sanctions. Expenditure ceilings can enable governments to cap the wage bill. In Namibia, the IMF and local economists have flagged the wage bill as unsustainable and significantly contributing to deficits and the ballooning debt.

Table 1: Main provisions of fiscal responsibility laws

Types of	**Provisions**
Transparency	The government must present to Parliament the draft annual budget law, a medium-term fiscal plan (covering the next three years), and a debt sustainability analysis. Government agencies must publish reports relating to fiscal policy.
Deficit ceiling	The deficit of the central government must not exceed a certain percentage of GDP.
	Ex-ante medium-term budget plan The average deficit (budgeted) over three consecutive budget periods must not exceed a certain percentage of GDP.
Expenditure ceiling	The rate at which current primary expenditure for the public sector grows must not exceed a certain percentage in real terms.

83 Lienert (n 82) 25-27) explained that quantitative rules in FRL-type legislation failed in advanced countries because quantitative targets, as opposed to qualitative rules, do not allow flexibility for a government to change its medium-term trajectory for fiscal balances and debt.

84 Lienert (n 82) 16-29.

Escape clauses	Parliament can approve a higher deficit (up to a certain ceiling)85 in cases of national emergency; an international crisis affecting the domestic economy; or negative growth.
Debt sustainability	The government must conduct and present a debt sustainability analysis to Parliament.
Sanctions	The FRL deems any deviation from it a dereliction of duty and imposes sanctions on the civil servant(s) responsible for the deviation.

Source: Partly adapted from AC David & N Novta 'A balancing act: Reform options for Paraguay's fiscal responsibility law' (2016) International Monetary Fund Working Paper WP/16/226 4-5

To uphold transparency, the FRL must empower the body or the officer tasked with administering the FRL to publish reports produced by government agencies, with some exceptions carved out in the law.[86]

Debt ceilings

One common strategy for preserving fiscal sustainability consists in adding debt ceilings to fiscal policy. These constraints can also make fiscal policy credible. For the same reason, however, increasing debt ceilings carry costs for the government's reputation.[87]

85 Up to 3% of GDP in Paraguay. See AC David & N Novta 'A balancing act: Reform options for Paraguay's fiscal responsibility law' (2016) International Monetary Fund Working Paper WP/16/226 5.

86 See David & Novta (n 85) 4 (observing that the FRL in Paraguay enshrines greater transparency by mandating open access to reports produced by government agencies, subject to some exceptions); C Pereira 'Brazil's fiscal responsibility law and the quality of audit institutions' (2010), https://www.brookings.edu/wp-content/uploads/2016/06/12_brazil_pereira.pdf (accessed 2 November 2020) (stating that the FRL mandated state audit institutions (*Tribunais de Contas*) to conduct external control of public administration by imposing certain procedural rules, such as rules on reporting transparency); M Melo et al 'Creative accounting and the quality of audit institutions: The Achilles heel of the fiscal responsibility law in Brazil' (2009), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.320.6987&rep=rep1&type=pdf (accessed 2 November 2020) (stating a position similar to Pereira's in the publication cited immediately before this one).

87 David & Novta (n 85).

To confront economic downturns, governments must resolve a trade-off between building fiscal credibility and amending the existing fiscal rule to provide themselves with space for counter-cyclical policies.[88]

These practices may involve, for instance, *temporarily lifting debt ceilings*. While African countries, and Namibia in particular, should raise their debt levels, later on they must consider instituting a debt ceiling, which in many cases they have not yet done. In Germany the debt ceiling, the so-called 'debt brake' (*Schuldenbremse*) is found in the Constitution itself.

Escape clauses

Developing nations and members of the SADC may *exempt certain expenditures* from debt ceilings. For instance, governments may decide to exempt public investment expenditures from any debt ceilings. In 2020 Germany invoked an escape clause to suspend its 'debt brake', the debt ceiling engraved in the Constitution, to cushion its economy from the fallout of COVID-19.[89]

Nevertheless, to maintain fiscal credibility and sustainability, governments must accompany this sort of exemption with better public investment management, stronger implementation of FRLs, and stricter adherence to debt ceilings with respect to other expenditures.[90]

To operate the fiscal framework effectively, governments must introduce explicit mechanisms to correct deviations from fiscal rules and to chart the path back to compliance with those rules.[91]

The Auditor-General

In Brazil and Paraguay the FRL conferred on the comptroller general the power to administer how agencies, at different levels of government, apply the FRL. In Brazil, state audit institutions (*Tribunais de Contas*) are ancillary bodies of the legislative branch, although they function like quasi-independent courts.[92] In Namibia, the Constitution establishes

88 David & Novta (n 85) 3.

89 See 'Why German politicians are fighting over the debt brake' The Economist (5 July 2021), https://www.economist.com/the-economist-explains/2021/07/05/why-german-politicians-are-fighting-over-the-debt-brake (accessed 13 July 2021).

90 David & Novta (n 85) 23.

91 David & Novta (n 85) 24.

92 Pereira (n 86) 4.

the Auditor-General.[93] Both the Brazilian audit institutions[94] and the Namibian Auditor-General[95] enjoy a large degree of autonomy.

David & Novta warn against entrusting the Comptroller General (that is, the Auditor-General in Namibia and South Africa) with administering the FRL.[96] Although it works independently from the Finance Ministry, the Comptroller General follows the established practice of generally auditing all government finances, which audit takes place several months after the close of the calendar year.[97] Such lagging audit does not assist the Comptroller General to flag breaches of the FRL early and inform the relevant agencies or officers while they execute the budget so as to help them enforce the law.[98]

Fiscal councils

I propose that governments entrust fiscal councils with the mission to administer the FRL. Experts increasingly view fiscal councils as a way to promote fiscal responsibility because these councils enhance the availability of good information about fiscal policy and provides the right incentives to achieve good outcomes.[99] They independently scrutinise fiscal policies, plans and performance. In particular, these fiscal councils (such as the US Congressional Budget Office and the Swedish Fiscal Policy Council) combat bias towards spending and deficits while improving the quality of fiscal policy debates.[100]

12.5.4 Indebtedness and sustainability

When deciding whether to fix or lift the debt ceiling to cope with the global pandemic, governments will have to ascertain the optimal level of indebtedness. Ascertaining the optimum in this circumstance, like in many others, is no easy task. Moreover, different schools of thought calculate the optimum differently.

93 Constitution of Namibia art 127(1).

94 Pereira (n 86).

95 See Constitution of Namibia arts 127(1), (3)-(4).

96 David & Novta (n 85) 4.

97 As above.

98 As above.

99 R Hemming & P Joyce 'The role of fiscal councils in promoting fiscal responsibility' in M Cangiano, T Curristine & M Lazare (eds) *Public financial management and its emerging architecture* (2013) 205.

100 As above.

Sustainable levels of indebtedness

Today, economists tend to calculate the level of indebtedness in relation to the budget or the gross domestic product (GDP). More often than not, they employ the GDP as a yardstick to determine the sustainability of the debt levels.

In short, economists and policy makers strive to identify the *debt limit.* The debt limit enables policy makers to determine sustainable levels of indebtedness. Specifically, this limit indicates the debt level beyond which a government loses its solvency and dramatically risks defaulting on its growing debt.[101]

Ultimately, debt limits depend on how a government behaves. They evolve with monetary policy (captured by the risk-free interest rate), market reactions and growth prospects.[102] For instance, a debt limit, expressed as a percentage of the budget or the GDP, will increase or decrease depending on whether the government works out an interest rate that matches the probabilities that the economy will expand or contract. Seen from that perspective, debt limits serve less to indicate the time when a government will default and more to signal sustainability given the actual conditions of the economy.[103] This aphorism tells us that, if it borrows beyond its debt limit, the government will not necessarily default on its debt at the precise moment when it exceeds that limit. Rather, the aphorism indicates that, at that moment, the government can no longer guarantee that it will pay back the debt.

Is Namibia's debt sustainable?

Even before the COVID-19 pandemic erupted, the Namibian government lived beyond its means. Indeed, Namibia's public debt increased at an average rate twice higher than the average rate at which its economy grew. The debt that Namibia contracted and the interest that it paid for the debt both increased at an average speed of 26 per cent per year[104] while the nominal GDP only grew at 12 per cent per year.[105] As a consequence,

101 See Ghosh et al (n 72).

102 JM Fournier & F Fall 'Limits to government debt sustainability in OECD countries' (2017) 66 *Economic Modelling* 31, 40.

103 Fournier & Fall (n 102) 31.

104 Mwinga et al (n 20) 22, 25.

105 Mwinga et al (n 20) 25.

capital expenditure as a percentage of GDP growth decreased by 2 per cent.[106]

The ongoing pandemic has darkened Namibia's debt profile. In the fiscal year 2020/2021 it shrunk the economy by 7,9 per cent, 'a historic high' the effects of which cut across all sectors.[107] It reduced government revenue by 4,9 billion N$/Rand and drove up the budget deficit to 10,1 per cent of the GDP, resulting in a public debt standing at 68,8 per cent of GDP.[108]

These numbers mean that, over time, Namibia has been losing its capacity to spend on both essential and social services. In short, these numbers depict a bleak future for Namibia.

12.6 Assessing fiscal responsibility laws

The Namibian government will find it difficult to let the Bank of Namibia act like a fiscal council without, at the same time, subscribing to the neoliberal economics that informs its central bank and its monetary policies. In the same fashion, the government will consider it almost impossible to enact a FRL without furthering efforts to 'commercialise, corporatise and privatise the public sector.'[109] Like mainstream central banking theory and the SADC Model Law that inspired the BON Act,[110] FRLs are neoliberal.

Neoliberalism is a theory of political economy premised on the idea that human welfare flourishes by liberating individual entrepreneurial freedoms and skills within institutions characterised by strong private property rights, free markets and free trade.[111] Neoliberals insist that

106 Mwinga et al (n 20) 26.

107 Ipumbu Shiimi, Minister of Finance 'FY2020/2021 Mid-Year Budget Review and Medium Term Budget Policy Statement', https://mof.gov.na/documents/35641/36583/2020_21+Mid-Year+Budget+Review+and+Medium-Term+Policy+Statement+.pdf/7bade6a3-7108-f792-d0f2-6a534fda937c (accessed 8 March 2021).

108 As above.

109 See S Newberry & J Pallot 'Fiscal (ir)responsibility: Privileging PPPs in New Zealand' (2003) 16 *Accounting, Auditing and Accountability Journal* 467.

110 See eg DP Zongwe 'Three ways to redefine the romance between the central bank and financial markets in South Africa' (2021) 10 *Interdisciplinary Journal of Economics and Business Law* 64, 68-69, 70-71 (explaining that standard theory of central banking and the SADC Central Bank Model Law follows the neoliberal model).

111 D Harvey *A brief history of neoliberalism* (2005) 2.

the state must build and nurture a framework that buttresses those institutions.[112]

Whatever misgivings economists may have about the fiscal BON idea, the BON Act has already refashioned BON into a fiscal council. The question left for debates now concerns the avenues for framing BON within a broader FRL and for infusing BON with features that will make it respond to the needs of citizens, rather than the profit-maximising goals of businesses, more effectively.

12.6.1 Politics, impact and strength of FRL

The neoliberalism behind fiscal responsibility laws

Fiscal responsibility laws drew from New Zealand's Fiscal Responsibility Act of 1994, a legislation that ushered in and entrenched neoliberalism in that country. Kelsey faults the 1994 Act, together with the Reserve Bank Act of 1989, for shifting New Zealand's economy from Keynesian welfarism to neoliberalism.[113] She adds that, unlike other ordinary laws, these two Acts enjoyed 'constitutional' standing.[114]

That FRLs are the offspring of neoliberal thinking poses a major problem because of this paradigm's poor record in the developing countries where the governments imported it. Klein explained how a network of right-wing thinkers take advantage of catastrophes – say a flood or a pandemic – as 'exciting opportunities' for them to launch pro-market neoliberal policies.[115] These policies have further impoverished people in developing countries.[116] If anything, the COVID-19 pandemic may have heralded the demise of the neoliberal state and the ascent of the welfare state.[117]

Unlike FRLs elsewhere, my plea for a FRL in Namibia and for BON to act as fiscal council does not stem from a pro-market agenda. My plea emerges because, over the years, public debt steeply increased in Namibia,

112 As above.

113 J Kelsey '"Regulatory responsibility": Embedded neoliberalism and its contradictions' (2010) 6 *Policy Quarterly* 36.

114 As above.

115 N Klein *The shock doctrine: The rise of disaster capitalism* (2007) 6.

116 Klein (n 115) 171-217, 263-280, 325-340.

117 See K Schwab & T Malleret *COVID-19: The great reset* (2020) 85-89 (observing that, though the neoliberal doctrine had been waning, the COVID-19 pandemic brought the *coup de grace,* making the government important again in tackling systemic problems).

as discussed earlier in this chapter. Unless the government reverses it, this trend will eat away the livelihood of ordinary citizens and mortgage their future. To reduce the risk that the government will unwittingly practise the sort of economics that favours the market at the detriment of low-income households, I recommend below ways in which the proposed fiscal framework can empower the general public and civil society organisations to monitor BON and the nation's purse.

Impact of fiscal responsibility laws

Researchers have only found little, inconclusive empirical evidence that the FRLs have boosted performance (with respect to primary balances, and so forth).[118] Some researchers, however, have maintained that FRLs may have positively impacted other aspects of the problem, such as enhancing transparency, guiding the budget process, improving forecasting, lowering sovereign risk premia, and easing access to government financing.[119]

Other scholars, such as Pereira, appear to have found evidence of certain positive outcomes of FRLs. For Pereira the fiscal situations of Brazil's states have unquestionably picked up considerably since the government passed the FRL in 2000.[120] More importantly, Pereira claims that, following the FRL's enactment, a succession of primary surpluses enabled the government to reduce the GDP/debt ratio.[121] After it peaked at 55 per cent of GDP in 2002, that ratio fell sharply to 36 per cent of GDP in 2008.[122]

The government and audit institutions at national and sub-national levels in Brazil have responded to fiscal constraints by resorting to window dressing and (more) 'creative accounting'.[123] For example, they sometimes delayed unpaid commitments to the next fiscal year, thereby postponing

118 J Thornton 'Do fiscal responsibility laws matter? Evidence from emerging market economies suggest not' (2009) 12 *Journal of Economic Policy Reform* 127 (finding that improved performance in nine emerging market economies resulted from a factor other than FRLs); Caceres et al (n 81) 11 (measuring performance as the level of primary balances and their volatility and finding little empirical evidence linking FRLs to changes in fiscal performance).

119 David & Novta (n 85) 23 (noting that implementing the FRL showed signs of improved budget forecasting, procedures and compliance in Paraguay); Caceres et al (n 81) 11 (stating that adopting the FRL may have positively impacted transparency, the budget process, sovereign debt premia, and access to government financing).

120 Pereira (n 86).

121 As above.

122 As above.

123 Pereira (n 86); Melo et al (n 86).

the effect of those commitments on the primary balance.[124] Although undesirable, these efforts to evade the letter of the FRL through creative accounting reflects the binding nature of the FRL and confirms that civil servants will incur costs for breaching it.[125] Pereira concludes that this response to fiscal constraints undermines the sustainability of fiscal balance.[126]

Attempting to depoliticise fiscal policy

By campaigning for FRLs, I urge governments to depoliticise fiscal policy. I know that this proposition goes against the grain. For instance, some finance experts have pointed out that the way the existing macro-economic orthodoxy pressures governments to depoliticise monetary policy by insulating central banks from politics will not work in the case of fiscal policy. As Hemming and Joyce noted, designing fiscal policy proves more complicated than formulating monetary policy, especially because decisions about tax, expenditure and borrowing have complex and often contentious consequences in terms of distribution.[127] For that reason, they believe that such decisions should only be made by those democratically accountable for their consequences.[128]

In the next parts of this chapter I justify my plea. In essence, I maintain that, of the all the institutions that could assume the mantle of fiscal council in Namibia , the central bank stands out as the one that can advise and restrain the government on fiscal matters most effectively and most independently.

Strengthening the fiscal framework

For David & Novta, whether a FRL works effectively depends, at the end of the day, on measures to strengthen the legal and institutional aspects of the fiscal framework.[129] This generally means that governments must develop systems designed to manage public expenditures so that they can monitor and enforce FRLs adequately.[130] Still, FRLs, however effective in

124 Melo et al (n 86).

125 As above.

126 Pereira (n 86).

127 Hemming & Joyce (n 99) 205-206.

128 As above.

129 David & Novta (n 85) 24.

130 As above.

helping to improve fiscal management, cannot substitute for strong budget frameworks and a commitment to prudent fiscal policy.[131]

12.6.2 Fiscal fatigue

Fournier and Fall calculated a function that gives the value of the debt limit to react to assessments by markets of the probability of a government to default on a public debt.[132] They found that, at high debt levels, the primary balance displays fiscal fatigue.[133] 'Fiscal fatigue' relates to the ability of the primary balance to increase at the same pace as higher interest payments, as debt soars.[134] Fatigue happens when it becomes ever more difficult for a heavily-indebted government to produce sustainable primary balances.

Both fiscal fatigue and markets' assessment of the probability to default on a growing debt – an assessment reflected by interest rate – determine the debt limit beyond which debt cannot roll over. The framework developed by Fournier and Fall illustrates the contingent nature of debt limits and the vulnerability of governments when conditions in the market and the macro-economy change.[135] Their model-based framework calculates the debt limits of advanced economies.

Ghosh et al put forth a framework that employs the notion of fiscal space, which they define as the difference between a country's current debt level and its debt limit.[136] That stochastic model takes into account 'fiscal fatigue' and 'fiscal space'. In other words, fatigue kicks in when, after the debt level rises above a certain threshold, a government abandons efforts to consolidate its finances to repay its debts. This phenomenon implies that governments no longer increase their primary balance to keep their debts from accumulating.[137] Fournier and Fall estimated that, above 170 per cent of GDP, OECD governments exhibited fiscal fatigue.[138] However, at 120 per cent of GDP, governments react strongly to rising debt.[139]

131 As above.
132 Fournier & Fall (n 102) 30.
133 Fournier & Fall (n 102) 32.
134 Ghosh et al (n 72) F5, F6. See also Fournier & Fall (n 102) 30.
135 Fournier & Fall (n 102) 30.
136 Ghosh et al (n 72) F4.
137 Fournier & Fall (n 102) 31.
138 Fournier & Fall (n 102) 32.
139 Fournier & Fall (n 102) 40.

Debt limits vary depending on fiscal fatigue. If fatigue materialises at a lower debt level in the future, debt limits get revised down; if it occurs at a higher debt level, debt limits go up.[140] Using that model, Ghosh et al found in 2013 that debt limits and corresponding fiscal space vary widely across countries, ranging from 150 per cent and 250 per cent of GDP.[141] In addition, a number of countries, such as Greece, Iceland, Italy and Portugal, had little to no fiscal space whereas countries such as Australia and South Korea enjoyed ample space.[142]

However, the debt limits found by scholars[143] such as Ghosh et al will hardly have any relevance for Namibia, SADC countries, or other countries in the developing world because they only applied to 'advanced' economies. Based on the debt limits identified in advanced economies, researchers could maybe hypothesise the debt limit of a given developing country, but the macro-economic conditions that helped to fix the debt limits of developed countries contrast sharply with those obtaining in developing and least-developed countries.

12.6.3 The central bank as fiscal council

As I have explained earlier, the central bank in Namibia acts as a fiscal agent, a fiscal advisor, a lender, a foreign-borrowing expert, and a public-debt manager. I submit that, taken together, *these multiple roles have transformed the central bank into a fiscal council*.

The Bank of Namibia may be better equipped to act as fiscal council than the Auditor-General, the Ministry of Finance, a parliamentary committee such as the Swedish Council, or a specialised agency within the executive branch. Why? Because the BON Act shields the independence of the central bank like no other laws do for any of these other bodies. The BON Act not only safeguards the independence of the central bank,[144] but also penalises any person who interferes with such independence – a criminal offence punished by a fine not exceeding 2 million N$/Rand or

140 Fournier & Fall (n 102) 36.

141 Ghosh et al (n 72) F22.

142 As above.

143 See eg B Fincke & A Greiner 'Debt sustainability in selected Euro area countries: Empirical evidence estimating time-varying parameters' (2011) 15 *Studies in Nonlinear Dynamics and Econometrics* 1 (testing the sustainability of public debt in some countries of the Eurozone, including Portugal, Italy, Ireland, Greece and Spain); B Fincke & A Greiner 'How to assess debt sustainability? Some theory and empirical evidence for selected Euro area countries' (2012) 44 *Applied Economics* 3717.

144 BON Act sec 5.

by a jail term not exceeding 20 years.[145] In so doing, Namibia went much further than what the SADC Central Bank Model Law recommended.[146]

Some scholars have advised against proposals to depoliticise the budget and fiscal policy in the manner that monetary policy is.[147] They reason that fiscal policy has proved more complex and more politicised by nature than monetary policy.[148] They think it naïve to believe that the ruling party would risk becoming unpopular or losing the next elections only in the name of neoliberalism[149] or fiscal prudence. In the process, the BON would likely lose its independence *vis-à-vis* the executive.

However, precisely because electoral cycles will induce the government to spend imprudently, a fiscal council with a legally-enforceable independence can restrain the Finance Minister, thereby functioning like a commitment technology. As Schaumburg and Tambalotti enthused, '[t]hanks to this technology, policymakers can guarantee their own promises' in spite of democratic pressures.[150]

At any rate, the world has entered an age of fiscal prudence after the COVID-19 pandemic has dried state coffers. Even if the drafters of the BON Act never intended to turn it into a fiscal council, they might as well repurpose the central bank now. If Namibian policy makers choose that route, they would still have to embed the BON-fiscal council within a proper fiscal responsibility framework. This FRL would strengthen the fiscal council in its tasks.

Moreover, the BON Act requires the central bank governor to report at least once a year to Parliament about its activities. This requirement ensures that, though operating independently, this central bank would nonetheless account for its actions to the people of Namibia, which aligns with article 95(k) of the Constitution – a provision that presses the government to encourage the masses to influence government policy through debates. The governor could table debt sustainability analysis

145 BON Act sec 5(3).

146 See Southern African Development Community *Explanatory Guide to the SADC Central Bank Model Law* (2011) 53-62.

147 See eg JA Dorn 'Maintaining distance between monetary and fiscal policy' *Cato Institute* (18 November 2020), https://www.cato.org/publications/pandemics-policy/maintaining-distance-between-monetary-fiscal-policy (accessed 1 March 2021).

148 See Hemming & Joyce (n 99) 205-206.

149 Admittedly, New Zealand enacted the first FRL around the time neoliberal policies were on the rise in that country.

150 2005.

in Parliament to facilitate those debates. Although the impact of FRL has remained inconclusive, this reporting requirement, coupled with the strong independence of the BON-fiscal council, should allow the FRL to have the teeth that it needs to succeed. They key here is to have more eyes on the money.

12.7 Conclusion

The COVID-19 pandemic has been a trial of strength for Namibia's fiscus and budget system. The Namibian experience with the COVID-19 is instructive because it gives an idea of how a developing country run by a fairly capable and well-managed government can address the pandemic. As one of Africa's best-governed countries, the Namibian example does not statistically represent governance standards on the continent, but it sets an example that other African countries can aspire to when thinking about what they could realistically and feasibly achieve, if they lift their game, in fighting this pandemic and the next one(s).

At very few points in time in human history have governments met head-on the sort of stark choices that developing nations face now. They either plunge deeper into the debt ditch or watch their economies sink. These brutal realities underscore the quagmire in which the developing country finds itself and test the steel of the country's fiscal architecture.

To enlighten policy makers, fiscal authorities and other stakeholders in contracting more debt more responsibly, this chapter outlined a model fiscal responsibility law, with the central bank as a linchpin. The Bank of Namibia stands in a better position than the Auditor-General, a parliamentary committee or a court, to function like a fiscal council. BON boasts two advantages over these other bodies: First, it enjoys a legally-protected independence, in a country with a sterling reputation for its strict adherence to the law; second, it has greater expertise and more resources in matters pertaining to the macro-economy and system-wide risks.

Critics could counter that, given that fiscal policy can affect the re-election chances of a government, the presence of a fiscal council would impel the government to interfere with the BON's independence or operations. Even if future events vindicated the critics, BON would still be the institution most apt to resist interference from government and other powerful interests.

Hopefully, with the fiscal responsibility framework recommended in this chapter, policy makers will not have to think twice about how to balance short-term emergency borrowing and long-term development the next time a pandemic comes around.

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