Build Strong Institutions, Not Empires

By **John Nakuta**

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The National Assembly is debating the petroleum (exploration and Production) amendment bill, which would shift day-to-day upstream oil governance to the Office of the President.

It establishes an Upstream petroleum Unit (UPU) within the presidency, headed by a director general and a deputy director general.

The bill proposes that the authority of the Ministry of Mines and Energy and petroleum commissioner be reassigned to the president, UPU's director general and its deputy director general.

These powers include core licensing, compliance and data management functions.

The bill also tightens conflict-of-interest rules and asset declaration obligations for senior UPU officials.

Another notable change is the introduction of annual reporting to parliament on royalty remissions.

These reforms are presented as modernisation and integrity measures in light of the country's offshore discoveries.

What may appear to be bold anti-corruption steps and welcome transparency gains simultaneously risk far-reaching shifts in constitutional accountability.

RED FLAGS

Housing the UPU inside the Presidency raises red flags for constitutionalism and accountability, warranting rigorous scrutiny.
The bill blurs the line between referee and player.

Positioning the Presidency at the heart of daily upstream operations conflates political oversight with administrative action, guaranteeing role confusion and eroding the rule-bound discipline of administrative law that should guide line ministry decisions.
Article 18 of the Constitution is the critical bulwark against excess. To honour it, technical decisions must be kept at arm's length from the Presidency.

There is also a functional risk in involving the Presidency in the 'nitty gritty' of upstream activities.

When the head of state becomes entangled in the details of petroleum audits, the bill exposes the highest office in the land to an avalanche of potential administrative litigation.

TWO MASTERS?

It also raises a critical question: is it rational to split the petroleum sector between two masters – the president and the minister? This will inevitably slow decision-making, blur lines of command and create inefficiency.

Most worryingly, the proposed bill encroaches on parliament's oversight powers and functions.

The National Assembly is constitutionally mandated to supervise the executive and receive reports on its activities.

Moving the upstream engine room into the Presidency – an office not routinely interrogated on the floor in the same way as ministries – risks diluting this oversight.

The bill's single annual report on royalty remissions does not cure this constitutional concern.

The bill also undermines ministerial accountability. Ministers are individually and collectively accountable to both the president and parliament.

Creating a powerful unit outside any ministry, led by presidential appointees, weakens the constitutional chain of responsibility that allows members of parliament to question a minister on operational choices.

THE GHOST OF FISHROT

We have walked this path before. In 2015, the Marine Resources Amendment Act was rushed through with similar promises of serving the “national interest”.

Instead, it inadvertently (or otherwise) paved the way for the Fishrot corruption scandal.

The lesson is not that presidents or ministers are inherently corrupt. Rather, it is that concentrated discretion combined with weak guardrails creates risk.

The Fishrot saga forces us to be candid considering that the Constitution grants the president immunity from criminal and civil proceedings while in office, and imposes high bars even post-tenure.

While this is intended to protect the dignity of the head of state, it can become an escape hatch for a future unscrupulous leader.

If the UPU becomes embroiled in administrative or financial mismanagement, the Presidency could become a fortress where accountability will die.

Supporters of the Presidency model often invoke the anti-corruption reputation of the current president and the need for decisive coordination from the top.

Namibia’s current leadership has indeed framed the UPU as an integrity-driven reform.

However, laws are drafted to create systems and institutions and cannot be designed for a specific individual.

ALTERNATIVES

What, then, should a safer and stronger model look like – one that does not relocate the UPU to state house? The following long-term, sustainable anti-corruption measures are proposed:

> Create (or retain) a single, specialised upstream regulator by statute – outside the Presidency – with a clear mandate across licensing, compliance, data and audits: Require its leaders to appear before parliamentary committees regularly and on demand.
> This builds on the bill’s transparency gains, such as mandatory reporting on royalty remissions, but channels accountability through parliament rather than the presidency.
> Ring-fence conflicts and publish decisions. Keep the Bill’s conflict-of-interest, asset declaration and eligibility rules for oil officials.

Add proactive disclosure requirements for licensing decisions, reasons and key datasets, subject to legitimate confidentiality.

> Operationalise our dormant accountability laws: The Access to Information (ATI) Act of 2022, which establishes an independent information commissioner, has yet to commence. Expedite its operationalisation and ensure it is led by individuals of fiercely independent mind.

Do the same for the Whistleblower Protection Act of 2017, which remains largely unimplemented nearly a decade after passage. Without ATI and protected disclosures, even the best-drafted oil laws will lack sunlight.

> Resource the watchdogs: Parliament cannot oversee what it cannot see. Equip standing committees with budgets to hire independent petroleum, legal and financial analysts.

Similarly, empower the auditor general and Anti-Corruption Commission to embed specialist teams on upstream audits.

> Align with global governance commitments: SDG 16 and Africa Agenda 2063 both demand effective, accountable, and inclusive institutions to curb corruption and uphold the rule of law.

Strong institutions distribute authority and embed transparency; they do not concentrate decision-making in a single political office, however honourable its current occupant.

‘BOLSTER GUARDRAILS’

Namibia can build an agile, expert upstream regulator while preserving constitutional architecture that keeps power answerable to parliament and the courts.

The petroleum amendment bill has promising elements on transparency and conflicts of interest.

Retain those, and strengthen them. But don’t relocate the engine room of licensing and compliance to state house. Build guardrails, not guardians.

– Author’s note: This argument is about systems, not individuals. A Presidency that believes in strong institutions should welcome safeguards as a Presidency that plays by the rules has nothing to fear.

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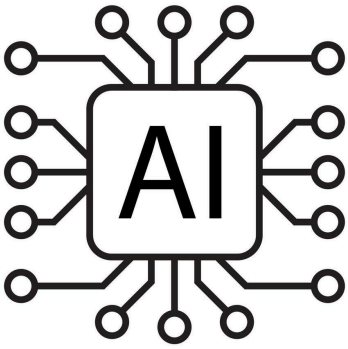

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