



ACCESS TO INFORMATION & ELECTIONS



ABSTRACT:

This paper embraces a rights-sensitive approach to the holding and disclosure of election related information. It specifically enquires into the extent to which relevant electoral stakeholders proactively disclose election related information to the electorate and the media. The recently launched *Guidelines on Access to Information and Elections in Africa*, produced by the African Commission on Human and Peoples Rights, is used as the benchmark to gauge Namibia's compliance.

INTRODUCTION

One critical way individuals influence governmental decision-making is through voting. Voting is a formal expression of preference for a 'candidate' for office or for a proposed resolution of an issue.

- The right to vote is guaranteed in various international and regional human rights instruments.
- Article 17 of the Namibian Constitution, guarantees the right to vote to each citizen of 18 years and older. It implicitly envisions an informed exercise.



Link between access to information (ATI) and elections

The Namibian Constitution does not expressly provide for the right to ATI. There is currently no ATI legislation in the country. However, Namibia acceded to and/or ratified various international and regional human rights instruments which recognise and guarantee the rights to ATI.

International instruments

- International Covenant on Civil and Political Rights (ICCPR)
- United Nations Convention against Corruption (UNCAC)
- African Charter on Human and Peoples Rights (ACHPR)
- African Union Convention on Preventing and Combating Corruption

- Article 144 of the Namibian Constitution, affirms that all treaties binding upon Namibia, and general rules of public international law, should be incorporated into Namibian domestic law. Furthermore, Article 96(d) of the Constitution calls upon the Government to foster respect for international law and treaty obligations.

Proactive disclosure of election information

- Helen Darbshire, a human rights and ATI specialist brilliantly explains the two main ways by which information held by public bodies can be accessed.



1) REACTIVE DISCLOSURE

- when the public requests and receives information



2) PROACTIVE DISCLOSURE

- when the information is made public at the initiative of a public body

- All electoral stakeholders are accordingly required to proactively disclose information on matters related to decision making processes, revenue and expenditure in relation to the electoral process.

ATI AND ELECTIONS



PROCEDURE FOR ACCESSING ELECTION INFORMATION

In Namibia, the publication of key election related information is governed by the Electoral Act (No. 5 of 2014). This Act is implemented by the Electoral Commission of Namibia (ECN) and makes provision for the proactive disclosure of certain information, for example:

- Appointment of members of the Commission and the Chief Electoral Officer
 - Availing of a provisional and final voters' register
 - Names of candidates running in a given election
 - Results of an election
- The rights to access information and vote are legally guaranteed human rights and freedoms. They impose several obligations on the State, as the primary duty-bearer of human rights, namely to *respect, protect and fulfil* them. Failure to do so constitutes a violation of these two human rights and freedoms.
- The *Guidelines on Access to Information and Elections in Africa* requires that all relevant stakeholders have an established procedure on how their information can be accessed upon request. It further directs that such a procedure must be simple, quick and affordable.



IS THE LAW AND PRACTICE CONSISTENT?

- The Electoral Act does not require relevant electoral stakeholders, including the ECN to setup an established procedure on how to request election related information.
- Information pertaining to the electoral processes is published in the government gazette and the newspapers where so required by the Act.
- The Electoral Act also provides that audited financial accounts of political parties submitted to the ECN, may be inspected by the public. However, no procedure is currently in place to actualise this entitlement.
- The ECN's website only shows its own annual reports containing the EMB's audited financial accounts



ATI and political party funding

- Funding is essentially to enable parties to represent and engage with citizens. Funding is ultimately taxpayers' money, spent for taxpayers' benefit.
- As taxpayers' foot the bill, it is entirely reasonable that they get to know how their money is spent. This is a reasonable and legitimate expectation.
- Access to election related information plays the vital role of combating corruption and holding political parties accountable.

GREATER TRANSPARENCY AND ACCOUNTABILITY

- The ATI legislation should urgently be promulgated to provide for the recordal and disclosure of election related information, including public and private funding information;
- New technologies should be used to increase accessible formats of available information; and
- The ECN should develop guidelines of proactive disclosure for the relevant electoral stakeholders.

CONCLUSION

The vital link between a proper exercise of the right to vote and the right to access to information is beyond dispute. For every citizen to be truly free to make an informed political choice, access to relevant or empowering information must be facilitated.

This paper was adapted from the briefing paper 'Access to information and elections: The case of Namibia' by John B. Nakuta, Assisted by H. Janser; A. Leukes, and P. Karamata



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