



ACCESS TO INFORMATION AND ELECTIONS

... the case of Namibia

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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 People's Rights, is used as the benchmark to gauge Namibia's compliance.

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List of Abbreviations

African Commission	African Commission on Human and People's Rights
ACHPR	African Charter on Human and Peoples Rights
ConCourt	Constitutional Court of South Africa
ECN	Electoral Commission of Namibia
EMB	Electoral Management Body
ICCPR	International Covenant on Civil and Political Rights
IDEA	International Institute for Democracy and Electoral Assistance
IPPR	Institute for Public Policy and Research
MPs	Members of Parliament
OHCHR	Office of the High Commissioner for Human Rights
PAIA	Promotion of Access to Information Act
The Guidelines	Guidelines on Access to Information and Elections in Africa
UNCAC	United Nations Convention on Corruption

One of the most critical ways individuals can influence government 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.¹ In this context, Namibians are due to go to the polls towards the end of 2019 to exercise their right to elect their president and members of the National Assembly.

The right to vote is guaranteed in various international and regional human rights instruments. These instruments consistently recognise the integral role that transparent and open elections play in ensuring the fundamental right to participatory government.²

Article 17 of the Namibian Constitution, which guarantees the right to vote to each citizen of 18 years and older, implicitly envisions an informed exercise of this. Herein lies the link between the right to vote and the right to access to information. The right to access to information is regarded as a crosscutting right. It is a right that is necessary for the realisation of other human rights, including the right to vote.

The connection and relevance between these two rights were recently explored by the Constitutional Court (ConCourt) of South Africa in deciding whether the Promotion of Access to Information Act 2 of 2000 (PAIA) was deficient and as such inconsistent with the SA Constitution insofar as it did not allow for the recordal and disclosure of information on the private funding of political parties.

Thus, the ConCourt engaged in an incisive questioning exercise. Some of these questions, of relevance to this briefing paper were: Does a citizen's constitutional right to vote necessarily entail the right to cast an informed vote? If so, does the informed vote include the obligatory recordal, preservation and simplified, yet effective, access to relevant election information? And, does the country's existing regulatory framework for the exercise of the right to vote, read together with the right to access to information, enable a voter to enjoy real access to that critical information?³

There is consensus that election data, like all public and government produced data, should be regarded as open data. Open data, according to the International Institute for Democracy and Electoral Assistance (IDEAS), is data which is easily accessible, usually online. It can also be used equally by anyone. It is generally free of charge with no technical, legal or other restrictions on processing and sharing.⁴ Viewing election data as open data, according to Yves Leterme, holds numerous benefits. For instance,

“[I]t provides civil society, citizen journalists, electoral observers and citizens access to the same detailed information that was previously only available to selected stakeholders such as large media outlets. In doing so, open data allows all interested stakeholders to follow and understand the electoral process and can enable more inclusive, transparent and trusted elections.”⁵

This briefing paper was compiled through these lenses. It embraces a rights-sensitive approach to the holding and disclosure of election related information. From this

1. See Study Guide: The Right to Vote of the University of Minnesota Human Rights Centre, accessible at <http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html>

2. Ibid.

3. My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17, at par. 5.

4. International Institute for Democracy and Electoral Assistance (IDEAS). 2017. “Open Data in Electoral Administration”, p.1.

5. Ibid, p.iii.

“ There is consensus that election data, like all public and government produced data, should be regarded as open data. ”

vantage point the Namibian government bears the responsibility to create an atmosphere that fosters access to election related information. Hence, this briefing paper evaluates the availability, accessibility, acceptability, and quality of election related information to the electorate and the media in general.

To this end, the recently launched Guidelines on Access to Information and Elections in Africa by the African Commission on Human and People’s Rights (ACHPR) primarily serves as the benchmark to gauge Namibia’s compliance in this regard.

The guidelines list a number of general principles constituting the minimum standards on access to information in elections. Needless to say, due to space limitations a critical choice had to be made.

This briefing paper starts by pointing out the link between access to information and elections. It then continues to reflect on the meaning of proactive disclosure of election related information, the grundnorm of the guidelines, and the status thereof in the Namibia political and election environment. The third section enquires into the existence of established procedures for accessing election related information as required by the guidelines. The last section looks at the contentious issue of access to information and political party funding.

“ There is a vital connection between a proper exercise of the right to vote and the right of access to information. ”

Link between access to information and elections

The Namibian Constitution does not expressly provide for the right to access to information. There is currently also no access to information legislation in the country. However, Namibia acceded to and ratified various international and regional human rights instruments which recognise and guarantee the rights to access to information. Such instruments include the International Covenant on Civil and Political Rights (ICCPR)⁶, the United Nations Convention on Corruption (UNCAC)⁷, the African Charter on Human and Peoples Rights (ACHPR)⁸, and African Union Convention on Preventing and Combating Corruption.⁹

These provisions read the right to access to information into the Namibian legal system through Article 144 of the Namibian Constitution. This is so because this article affirms that all treaties binding upon Namibia, as well as general rules of public international law, are incorporated into the country’s domestic law.¹⁰ Moreover, Article 96(d) of the Constitution calls on the Government to foster respect for international law and its treaty obligations. From this, it is beyond doubt that the right to access to information is fully guaranteed in the Namibian legal system despite the fact that it is not expressly guaranteed in the Constitution.

There is a vital connection between a proper exercise of the right to vote and the right to access to information. The former, in the words of Chief Justice Mogoeng Mogoeng of the South Africa Constitutional Court (SA ConCourt), is not to be exercised blindly or without proper reflection.¹¹ The vital link between the right to vote and the right to access to information was also aptly captured by Sandile



NAMIBIA BECAME THE FIRST AFRICAN COUNTRY TO INTRODUCE AN ELECTRONIC VOTING SYSTEM IN 2014.

6. See Article 19 of the ICCPR.
 7. See Article 13(i)(b) of UNCAC
 8. See Article 9 of the ACHPR.
 9. See Article 9 of the AU Convention on Preventing and Combating Corruption.
 10. See Article 144 of the Namibian Constitution.
 11. My Vote Counts NPC case at par. 35, see footnote 1 above.

Ngcobo, former Chief Justice of the SA ConCourt. His observation, although directed at a South African audience, undoubtedly also applies to Namibia:

“In a democratic society such as our own, the effective exercise of the right to vote also depends on the right of access to information. For without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined.”¹²

Access to information also empowers the electorate to be well informed about political processes with due regard to their best interests. These include, the right to elect their freely chosen political representatives. And, to hold public officials accountable for their acts or omissions in the execution of their duties. Access to information is thus a foundational requirement of the practice of democratic governance.¹³

In the celebrated case of *S.P Gupta v. Union of India* the Supreme Court of India held that:

“No democratic government can survive without accountability and the basic postulate of accountability is that people should have information about the functioning of government.”¹⁴

The link between access to information and elections clearly requires a broader and imaginative interpretation of certain constitutional provisions. The right to vote, for instance, will have to be read as requiring of all relevant electoral stakeholders to record or hold and preserve information in a way that would render it capable of being reasonably accessible or disclosable.¹⁵ This calls for the proactive disclosure of election related information.

Proactive Disclosure of election related information

Helen Darbshire brilliantly explains the two main ways by which information held by public bodies can be accessed by the public. The first, as pointed out by her, is when the public requests for and receives information. This is referred to as reactive disclosure.¹⁶ The second, is when information is made public at the initiative of the public body, without a request being filed. This is known as proactive disclosure. The Guidelines embrace the latter approach.

Proactive disclosure as defined in the Guidelines “refers to a regular flow of information by routinely providing information to the public without the need to make a request”.¹⁷ To this end, the Guidelines establish a presumption that all information held by relevant electoral stakeholders is subject to full disclosure. It

“ The link between access to information and elections clearly requires a broader and imaginative interpretation of certain constitutional provisions.”

12. President of the Republic of South Africa v M & G Media Limited [2011] ZACC 32; 2012 (2) SA 50 (CC); 2012 (2) BCLR 181 (CC) at para 10.

13. See “Guidelines on access to information and elections in Africa”, p.3.

14. S.P. Gupta V. President of India AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365 30 December 1981, at par. 63

15. My Vote Counts NPC case at par.25, see footnote 1 above.

16. Helen Darbshire. Proactive Transparency: The future of the right to information? Accessible at http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbshire_Proactive_Transparency.pdf

17. See the Clause 1 of the Guidelines on Access to Information and Elections in Africa

accordingly imposes an obligation on all relevant electoral stakeholders to publish key information that is of public interest.

All electoral stakeholders are accordingly required to proactively disclose information on matters related to decision-making processes, actual decisions taken, revenue accrued and expenditure made in relation to the electoral process.¹⁸ The sweep of those regarded as electoral stakeholders is quite broad. Resultantly, those to whom the Guidelines on proactive disclosure apply are many and varied.

They include election management bodies, political parties, election observers, election monitors, law enforcement agencies, campaign funders whether public or private entities of persons, media regulatory bodies, the media, civil society organisations, professional organisations, religious bodies, and other relevant State institutions, departments and private entities.¹⁹

The benefits of proactive disclosure of state held information are numerous and beyond dispute. Proactive disclosure, in the words of the then Interim Information Commissioner of Canada, is an essential component of the broader concept of open government. Open government, in turn, is predicated on a system in which government records are available to citizens in open standard formats which permit the unlimited use and re-use of such information.

The proactive disclosure of state-held information thus facilitates public engagement and participation which, in turn, promotes greater transparency, accountability and trust in government.²⁰ The proactive disclosure of state-held information, according to Helen Darbshire, also results in proactive transparency.²¹

With that said, what is the current approach to the issue of accessing election related information in Namibia? Do the laws and practices of the electoral stakeholders embrace the reactive disclosure or do they subscribe to the proactive disclosure propagated by the Guidelines?

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), the election management body in the country. The Electoral Act provides for the proactive disclosure of certain information. For example, it requests that information regarding the appointment of members of the Commission, the Chief Electoral Officer and names of candidates running in a given election, be proactively published by the Commission.

Other demands are that the provisional and final voters' register, and the results of an election also be proactively published. For instance, in respect of the appointment of new commissioners, the Act requires that the public be informed about the imminent expiry of the terms of office of the serving commissioners at least a month before such expiry. Such notification must be published in at least two daily newspapers circulating throughout Namibia. Surprisingly, the Act only requires that the date for the selection of commissioners be published in the Government Gazette and not in newspapers.

“The right to access information and the right to vote, as stressed earlier, are legally guaranteed human rights and freedoms. These right, like any other human right, are not abstract or empty slogans.”



NAMIBIANS QUEUE AT A VOTING STATION NEAR THE NAMIBIAN CAPITAL, WINDHOEK

18. Paragraph 3 of the Guidelines.

19. See the Clause 1 of the Guidelines

20. Address on Proactive Disclosure by the Interim Information Commissioner of Canada, Standing Committee on Access to Information, Privacy and Ethics, Thursday, 29 April 2010. Accessible at http://www.oic-ci.gc.ca/eng/pa-ap-appearance-comparison-2010_3.aspx

21. Helen Darbshire. Proactive Transparency, p.3, footnote 1 above.

This, arguably, is a serious flaw considering that the proceedings of the Selection Committee are open to the public and the media.²² Furthermore, information such as the final voters' register is published in hard copy format only. This makes the inspection of the voters' register an overly burdensome and strenuous exercise as was pointed out by one key informant for this work.²³ This constitutes a retrogressive step since the previous Act required that electronic versions of the final voters' register be made available for public scrutiny.²⁴

Online availability of government held information is now considered a basic standard. The ECN will have to do more to proactively disclose election related information in online formats as required by the Guidelines.²⁵

Complying with the proactive disclosure requirement of the Guidelines presupposes the existence of a simple, quick and affordable process of making information reasonably accessible to the requester.

Procedure for accessing election related information

It is apparent that Principle IV read with the requirement for an establish procedure for accessing election information necessitate that reasonable access be institutionalised. Such crucial information is not to be subject to the benevolent exercise of a ministerial discretion.

The right to access information and the right to vote, as emphasised earlier, are legally guaranteed human rights and freedoms. These rights, like any other human rights, are not abstract or empty slogans.²⁶ They impose several obligations on the State, as the primary duty-bearer of human rights, to respect, protect and fulfil them. Specifically, the right to access to information read with the entitlement to exercise or protect the informed right to vote, implicitly demands that elections related information be recorded and preserved by all relevant stakeholders and made reasonably accessible to the public.²⁷ Failure to do so constitutes a violation of these two human rights and freedoms.²⁸

The Guidelines seek to get all relevant electoral stakeholders to comply with their human rights obligations in the context of elections. To this end, the Guidelines require all relevant stakeholders to have an established procedure on how their information could be accessed upon request by interested parties.²⁹ It further directs that such a procedure be simple, quick and affordable.³⁰ Where payment is needed, no fees other than the actual cost of reproduction must be charged. Also, such costs should be waived where the requester is indigent.³¹

Refusal to disclose elections related information by a relevant electoral stakeholder must be well reasoned, premised on existing regional and international standards, and best practices on access to information.³² Furthermore, a refusal for information must be provided timeously, in writing and must be subject to an expeditious and inexpensive internal appeal process.³³

22. See sections 6 subsections (3), (10) and (12) of the Electoral Act.

23. Interview with Mrs. Carola Engelbrecht, Director of Citizens for an Accountable and Transparent Society (CATS) (House of Democracy, Windhoek, 11 September 2018).

24. Ibid.

25. See par. 18(g) of the Guidelines.

26. Office of the High Commissioner for Human Rights. 2008. "Claiming the Millennium Development Goals: A human rights approach", UNHCR, p.3.

27. My Vote Counts NPC case at par.69, see footnote 1 above.

28. See The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, par. 6.

29. See paragraph 5 of the Guidelines.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

With such elaborate built-in procedural safeguards, the African Commission seeks to give practical effect to Principle IV of its Declaration of Principles on Freedom of Expression in Africa. Under Principle IV, the African Commission unequivocally declares that “public bodies hold information not for themselves but as custodians of the public good”.³⁴

The Principle accordingly endows everyone with the right to access information held by public bodies. This right is extended to information held by private bodies where such information is needed for the exercise or protection of any right.³⁵ It is apparent that Principle IV read with the requirement for an established procedure for accessing election information necessitates that reasonable access be institutionalised. Such crucial information is not to be subject to the benevolent exercise of a ministerial discretion.³⁶

All said begs the question: To what extent is the law and practice of relevant electoral stakeholders in Namibia consistent with the dictates of the Guidelines in this regard? The next section attempts to shed some light on this.

The Electoral Act does not compel relevant electoral stakeholders to an established procedure on how to request election related information. Unsurprisingly, none of the relevant electoral stakeholders surveyed for this work, including the ECN, has such a procedure in place. According to Mrs. Marilynne Katjitudu, Deputy Director: Democracy Building and Voter Education, “the ECN has no standard written procedure in place to be followed by members of the public or the media when requesting for specific information.”³⁷ Generally, information pertaining to electoral processes is published in the Government Gazette and newspapers where so required by the Act.

For all other instances, information is availed on an ad hoc basis. For instance, the Act provides that the audited financial accounts of political parties submitted to the ECN may be inspected by the public. Despite this provision, no procedure is in place to actualise this entitlement. In fact, this information is not even available on the ECN’s website.

Carola Engelbrecht described the prevailing attitude in relation to information requests as: “the information is already published, what more do you want?”³⁸ Such attitudes, sad to say, are reflective of the general approach prevailing in the country when it comes to requests for information.

The Electoral Act also provides that the audited financial accounts of political parties submitted to the ECN may be inspected by the public. Despite these provisions, however, no procedure is currently in place to actualise this entitlement. In fact, such information is not reflected at all on the ECN’s website. The ECN’s website currently only shows its own annual reports containing the EMB’s audited financial accounts. It must be stressed though that the website is not regularly updated. The website is also not providing information pertaining to the audited financial accounts of political parties submitted to the ECN. The ECN, according to Mrs. Katjitudu, is aware of these shortcomings and is has set plans in motion to address

34. See Principle IV of the Declaration of Principles on Freedom of Expression in Africa of the African Commission on Human and Peoples’ Rights, 2002: Banjul, The Gambia.

35. Ibid.

36. My Vote Counts NPC case at par.70, see footnote 1 above.

37. Telephonic Interview with Mrs. Marilynne Katjitudu, Deputy Director: Democracy Building and Voter Education (17 December 2018).

38. Interview with Mrs. Carola Engelbrecht, see footnote 21 above.

“The disclosure of political party funding party finances serves the important goals of protecting the integrity of the electoral process.”

them. Per Katjitudu: “Our webmaster has been instructed to update our website and, specifically, to populate it with all relevant electoral information, including that of the audited financial accounts of political parties submitted to us.”³⁹

The Guidelines also require relevant electoral stakeholders to provide reasons where they refuse to give information. This matter is not expressly addressed in the Electoral Act. In the case of the ECN, however, such a refusal would amount to an administrative action and falls within the purview of Article 18 of the Namibian Constitution. Refusal could thus be challenged for being unlawful, unfair and or unreasonable. Namibian superior courts have consistently ruled that the denial to grant reasons for administrative decisions is incompatible with Article 18.⁴⁰

A challenge is generally speaking likely to arise if non-state actors such as political parties deny information requests in the absence of an express statutory injunction to provide such information. This is so because Article 18 only applies to organs of the state, such as the ECN. The silence of the Electoral Act on the issue of granting reasons for refusing information requests is thus a serious flaw and shortcoming. It is worth repeating that accessing election related information should not be made subject to the benevolent exercise of a ministerial discretion. Having reasonable access to such information should be institutionalised.

“ A quick survey to assess to what extent party funding information is easily and reasonable accessible reveals that compliance with this ”

Access to information and political party funding

The rationale behind political party funding from the public purse has been justified as follows:

“Political parties are indispensable for a well-functioning democracy. They aggregate citizens’ interests into policy platforms, and represent voters when laws are made. Because they give voice to the citizenry, it matters that they operate effectively – a system with weak parties does not represent citizens as well as it could. This idea, that effective parties are vital to a thriving democracy, underpins the idea of public funding.”⁴¹

Funding is essentially to help parties to represent and engage with citizens. Funding is ultimately taxpayers’ money, spent for taxpayers’ benefit.⁴² As taxpayers foot the bill, it is reasonable that they should get to know how their money is spent. That parties should account for the money they receive from the public purse, is a reasonable and legitimate expectation.⁴³

Access to election related information also plays the vital role of combating corruption and holding political parties accountable.⁴⁴ The disclosure of political party funding serves the important goal of protecting the integrity of the electoral



IT IS WELL ESTABLISHED THAT FREEDOM OF EXPRESSION AND POLITICAL DEBATE IS FUNDAMENTAL TO FREE, FAIR AND GENUINELY DEMOCRATIC ELECTIONS. IN ORDER TO PLAY THEIR ROLE, THE MEDIA NEED BOTH ACCESS TO INFORMATION AND THE FREEDOM TO FREELY AND SAFELY COMMUNICATE THEIR FINDINGS.

39. Ibid.

40. See amongst others, Chairperson of the Immigration Selection Board v Frank and Another 2001 NR 107 (SC); Government of the Republic of Namibia v Sikunda 2002 NR 203 (SC); Kaulinge v Minister of Health and Social Services 2006 (1) NR 377 (HC).

41. IPPR, 2016. “Party Funding - An overview”. PERSPECTIVES ON PARLIAMENT, Issue No. 2.

42. Ibid.

43. Ibid.

44. Tamukamoyo, H. 2013. “Democracy for sale? The need for transparency in political party funding.” ISS Today, 2 September 2013. Available at <https://issafrica.org/iss-today/democracy-for-sale-the-need-for-transparency-in-political-party-funding>

process.⁴⁵ Such disclosures help voters to make informed choices on Election Day on the basis of the broadest possible information viz. the parties and candidates' sources of funding.⁴⁶ It is thus important to ensure that the electorate have access to information on political party funding from both public and private sources.

The Guidelines address the issue of political party funding in clear and unambiguous language. For the avoidance of any doubt, it requires that there be a law governing this issue. It commands that the legal framework impose an obligation on political parties to proactively disclose certain types of information. To this end, the Guidelines dictate that the law should expressly require political parties to proactively disclose information on, for example, how much campaign funding they received from both public and private sources.⁴⁷

The law should similarly stipulate that information on campaign expenditure be broken down into distinct line items specifying the sources of funding and actual amounts. Political parties are also required to proactively disclose their annual audited financial reports.⁴⁸

How then does Namibia's political party funding regime compare to the Guidelines in terms of both law and practice? The next section attempts to give such an assessment. It also gives a general impression of the compliance of relevant elections stakeholders with this provision of the Guidelines and the relevant sections of the Electoral Act respectively. Due to space limitations only the practices of the ECN and the two main political parties are flagged for this work.

The issue of political party funding is governed by sections 140, 141, 154 to 161) of the 2014 Electoral Act respectively. Section 140 outlines political parties' responsibilities in maintaining and disclosing financial records. Section 141 deals with disclosing donations to the party, and sections 154 to 161 deal with the allocation of public funding. Sections 140 and 141 deal with private funding of political parties.

These provisions variously offer recordal, preservation and disclosure of information on private funding of registered political parties and prescribe how such funds should be accounted for. For instance, income derived from sources such as contributions, donations (cash or in kind), membership dues as well as the name(s) of every person who contributed the funds must be disclosed. Such information must be accessible to any member of the registered political party upon request.

Furthermore, all registered political parties are also expected to annually audit their financial accounts. These audited financial accounts must be submitted to the ECN and abridged versions thereof must be also be published in two daily newspapers. The audited financial accounts may also be inspected by the public against payment of a fee.⁴⁹

A quick survey to assess to what extent party funding information is easily and reasonably accessible shows that compliance with this requirement leaves much to be desired. For instance, the website of the governing party, the Swapo Party, is largely outdated and gives no information of its past audited annual financial statements.

45. See "Information about Elections, Political Parties and Candidates" on the website of Right2INFO.org accessible at <https://www.right2info.org/testing/deleted-stuff/information-about-elections-political-parties-and-candidates>

46. Ibid.

47. See paragraph 21 of the Guidelines.

48. Ibid.

49. See section 140 of the Electoral Act.

Political parties are also required to proactively disclose their annual audited financial reports.

The ECN website, similarly, does not reveal the audited financial accounts submitted to it by the registered political parties. This, reinforces the notion that relevant electoral stakeholders, including the ECN, only disclose the bare minimum of information as required by the Act and nothing more.⁵⁰

The Electoral Act makes provision for the funding of political parties represented in the National Assembly from the national fiscus. The public funding of such parties is governed by sections 155 to 161 of the Act. Generally, Namibian law allows parties to spend at will, save for a small set of prohibited uses.⁵¹ For instance, parties may not use the fund to pay members of Parliament or other public servants already receiving a salary, or use the funds to fund activities that contravene the code of ethics of Parliament, Regional Councils, or Local Authorities, or establish profit-making businesses or fund illegal activities.⁵²

As is the case with private funding, the Act also requires political parties to report and account for the funds they received during a given financial year. They must separately audit these funds, submit such accounts to the ECN, and publish an abridged version of such accounts in two daily newspapers as a way of accounting to the public.

Strikingly, the provisions governing the public funding of political parties are silent on whether or not the ECN must disclose the audited statements submitted to it, and whether the public may inspect the audited statements submitted to the ECN. These omissions are, arguably, cured by the fact that all audited financial statements of political parties allocated funds during a given financial year must be submitted to the National Assembly through the Secretary for discussion. Such reports, by default become public documents upon tabling.

The omission raises pertinent questions nonetheless. It creates the impression that only the National Assembly is entitled to express an opinion on the way political parties spent funds received from the national fiscus. This cannot be the case.

Logically, the taxpayer who ultimately foots the bill for political party funding should be the first in line to express an opinion on this matter. The right to freedom of expression as guaranteed under Article 21 of the Constitution lays a solid basis for such a claim. The impression created by the Electoral Act that such an expression is the preserve of the National Assembly is therefore misleading and deficient.

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.⁵³

Proactive disclosure of election related information, the mantra of the Guidelines, is a tool for fostering accountability and transparency of key election stakeholders and for guaranteeing the credibility and integrity of the electoral process.⁵⁴

50. Interview with Mrs. Carola Engelbrecht, see footnote 21 above.

51. IPPR (2016:6), footnote 19 above.

52. See section 157 of the Electoral Act

53. My Vote Counts NPC case at par.34, see footnote 1 above.

54. See The Guideline, p.4.

“ The vital link between a proper exercise of the right to vote and the right to access to information is beyond dispute. ”

This assessment, regrettably, found that the levels of transparency and accountability of relevant electoral stakeholders are below satisfactory. Relevant electoral stakeholders, including the ECN, still do not have the practice of disclosing even basic election related information. Data delivery is generally done reactively, except for the few instances where the Act requires proactive disclosure of information.

To ensure greater transparency and accountability in the electoral process, it is necessary to:

- conduct a comprehensive audit of current legislation, policies, practices and procedures to access to information on the electoral process with a view to comply with the provision of the Guidelines;
- expedite the promulgation of access to information legislation which must provide for the recordal and disclosure of election related information, including
- public and private funding information;
- increase the number of available information through easily accessible formats by the use of new technologies; and
- compel the ECN, as the electoral management body, to develop guidelines and requirements of proactive disclosure for the relevant electoral stakeholders.

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John Nakuta is the Media Ombudsman for Namibia. He is a full time lecturer at the University of Namibia (Unam) where he lectures administrative law and human rights law. He identifies as a social justice academic. He regularly collaborates with government ministries and agencies, international organisations, and civil society organisations to advance respect for human rights, equality, and non-discrimination by providing legal and policy advice and participating in norm-setting processes. His approach to performing his office as media ombudsman is informed by the dictates of human rights principles and standards.