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## INFORMATION ABOUT NAMIBIA'S LAW

### Independent Candidates

Recent articles in the press may have created some confusion about the law in Namibia on independent candidates, so this article will outline the provisions in the Namibian Constitution and the Electoral Act on this issue.

Article 17 of the Namibian Constitution provides that any citizen who has reached the age of twenty-one years has the right to be elected to public office, subject to limitations imposed by Parliament “in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society”. In terms of Article 28(3), any Namibian citizen by birth or descent who has reached the age of 35 is eligible to run for President.

The Namibian Constitution sets out two different systems of voting. Article 49 requires that members of the National Assembly must be elected “on party lists”.

In contrast, voters must cast ballots for individual candidates for President and Regional Councils. Article 28(2) of the Constitution provides that the President must be elected directly by the voters. Article 106 requires that each region must be divided into constituencies which each elect one person by secret ballot to sit on the Regional Council, with each Regional Council then electing three of its members to sit on the National Council in terms of Article 69.

The Constitution does not mandate any particular system of election for local authorities, leaving it to Parliament to decide on the method of election at this level in terms of Article 111(2).

Within this framework, the Electoral Act makes provision for independent candidates to run for President or to stand for election to Regional Councils.

An independent candidate for President must deposit N\$10 000 with the State Revenue Fund and demonstrate the support of at least 500 registered voters *in each region*, for a total of 7000 voters. Presidential candidates nominated by registered political parties must deposit N\$20 000, and all political parties must demonstrate the support of at least 3500 registered voters “*distributed evenly from a minimum of seven of the regions in Namibia*” in order to register. The deposits are forfeited to the State if the candidate is unsuccessful in his or her bid to be elected as President. These differing requirements mean that an independent candidate in a Presidential race

must show double the support of a candidate nominated by a political party, from a much broader geographical spread, while providing a deposit of half the amount required from a party candidate.

An independent candidate for a Regional Council must demonstrate the support of at least 150 registered voters in the relevant constituency. In contrast, there is no requirement for a showing of support in a specific constituency for a candidate from a registered political party, which must have demonstrated the support of 3500 registered voters across at least seven regions in order to register as a party. All regional council candidates, whether independent or running as a representative of a political party, must deposit N\$2500 with the State Revenue Fund. The Act appears to provide that these deposits will be returned after the election has taken place, although the law is not entirely clear on this point.

One major distinction between independent candidates and political party candidates is that all political parties represented in Parliament are eligible for State funding for their campaigns. Independent candidates are not eligible for any State funding.

Some studies of political systems around the world define an independent candidate as one who has no party affiliation, while others define an independent candidate more narrowly as one whose nomination is not subject to endorsement by a political party.

The Electoral Act does not define “independent candidate”, and it is silent on the question of whether it is permissible for an independent candidate to be a member of a registered political party – although it does provide that, where a political party is deregistered before an election takes place, a candidate nominated to stand for election by that party may continue to stand for election as an independent candidate.

Zambia’s Constitution provides that an independent candidate for a National Assembly seat may not be a member of a political party and must not have been a party member for at least two months immediately before the date of the election, while the Constitution of Ghana provides that a person elected to Parliament as an independent candidate must resign the seat if he or she joins a political party. However, neither Namibia’s Constitution nor any of the Namibian laws pertaining to elections contain such rules.

This suggests that membership in a political party is not a disqualifying factor for an independent candidate, but this point is not clear and has not been addressed by Namibia’s courts as yet – although Namibia’s High Court has noted that one of the key philosophies of the SADC principles and guidelines on democratic elections is “that all political parties and independent candidates participating in any election in any SADC member state should be afforded maximum opportunity and reasonable access to participate in and have a say in the entire electoral process”.<sup>1</sup>

On the other hand, the rules of various political parties could conceivably require that standing for office as an independent candidate will disqualify a person from remaining a member of the political party. The Electoral Act sets out requirements for registered political parties in section 135 without discussing this issue. This section prohibits a registered political party from “discriminatory practices contrary to the Namibian Constitution or any other law”, but it would be

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<sup>1</sup> *Rally for Democracy & Progress v Electoral Commission of Namibia* 2013 (2) NR 390 (HC), para 225.

hard to argue that rules requiring the expulsion of a member who chooses to stand for office in opposition to the party's chosen candidate constitutes a discriminatory practice.

Some analysts criticise electoral systems that place loyalty to the party and its leadership ahead of accountability to the voters. Independent candidates elected on a constituency basis are perhaps the most directly accountable to their constituents, but the lack of party affiliation can also mean that such candidates may lack the clout to engage in effective action.

There may well be a need to examine the Electoral Act's provision on independent candidates, to see if any reforms are needed to level the playing field between party-nominated candidates and independent ones.

It would also be possible to amend Schedule 4 of the Namibian Constitution to modify the proportional-representation party-list system, to make provision for voters to indicate preferences for specific candidates (as in the "open list" systems used by many countries), or to provide for the participation of independent candidates within the proportional representation system (as in the Republic of Ireland and Malta).

The current public debate on independent candidacy can be viewed as a positive development in exploring the pros and cons of the current Namibian electoral systems, and possibly to point to ways in which Namibian democracy can be deepened.

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