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## **INFORMATION ABOUT NAMIBIA'S LAW**

### **Election Day: What to do if you witness an irregularity**

Namibia is a young democracy. The forthcoming elections are the nation's sixth national election. So far, Namibia has avoided the pitfalls of many nations whose elections are marred by violence and fraud.

There is always the possibility that some person or party may attempt to unfairly influence an election. As a citizen you have a right to be concerned, even though no election fraud has ever been proved in Namibia.

Some have expressed concerns about the missing electronic voting machines. However, if the rules about checking and re-checking the serial numbers of the machines used on Election Day are carefully followed, this should not open the door to any problems.

There are also other mechanisms in place to address possible irregularities. Public awareness of the procedures will help to safeguard the process.

According to the Electoral Act, the Electoral Commission of Namibia (ECN) has a duty to "meticulously direct, supervise, manage and control" elections "in a free, fair, credible, and impartial manner, without fear, favour or prejudice."

One safeguard is having a system of accredited election observers who can monitor the process impartially and independently of any political party. They can observe not only the voting process but also materials, counting and announcement of results, as well as the important stages that occur prior to Election Day such as staff training and voter registration.

Observers must submit reports after the election which not only outline their observations, but also offer a critical analysis of the process that can help identify areas for improvement. The involvement of observers should be viewed as a strength and not a sign of weakness – no democracy, however experienced, is so perfect that it cannot benefit from the ideas of others.

There are many ways in which irregularities could occur on polling day. Many potential problems are addressed by offences which carry stiff penalties. For example, it is an offence to attempt to vote fraudulently by presenting an altered voter registration card or by pretending to be someone else. There are also offences related to tampering, interference, attempting to open the voting machine, or intentionally damaging the voting machines or the Occurrence Book where

complaints and incidents are recorded. It is also illegal to obstruct a voter, or to try to influence someone's vote through threats or bribery.

The Electoral Act includes a "Bill of Fundamental Voter's Rights and Duties" that enshrines voters' right to a free, fair and credible voting process amongst other things. This includes a right to lodge complaints and challenges about the election and to have them resolved by the relevant court or tribunal, fairly, efficiently and timeously.

Problems that take place before the polling day, such as the inclusion or exclusion of a name on the voters' register or illegal campaign practices or improper conduct by an election official, are decided by a regional court magistrate sitting as an electoral tribunal. The election tribunal must give its decision and reasons within five days of the conclusion of the hearing, and in the case of a time-sensitive issue, within 48 hours. Decisions of the electoral tribunal can be appealed to the Electoral Court, which must hear and decide on any such appeal within three days, and always before Election Day.

Problems that take place on or after Election Day can be taken directly to the Election Court, which is a special court made up of the Judge-President and two other Judges of the High Court. This includes the commission of any crimes related to the voting process, violation of the right to vote in secret, or illegal acts by election officials.

The Electoral Court is designed to be much speedier than most courts. It must act quickly and release a decision as soon as possible, within 72 hours if the matter is urgent. The Chairperson of the Court must avoid the typical formalities of court proceedings. The Court is authorised to conduct hearings in the manner most suitable to clarifying the issues. The Court cannot order a party to pay the other side's costs unless that party has acted in a frivolous or vexatious manner, such as bringing a false claim. However, anyone who wants to bring a matter to the Court must furnish security for the payment of costs associated with the proceeding, such as the summoning of witnesses.

So, what should you do on Election Day if you observe some irregularity or offence? If you see something that seems wrong, you should report what you have observed to an observer, an election official, a candidate, a party agent or a police officer at the polling station so that it can be recorded in the Occurrence Book. Every polling station must have an Occurrence Book where incidents can be recorded by any of these people, and each entry must be signed by a witness. The purpose of this is to provide evidence in case of a later court case.

If conduct takes place that constitutes a crime - such as someone assaulting you at the polling station or trying to intimidate you to cast your vote in a particular way - you could ask for help from a police officer stationed at the polling place.

You could also bring a case to the Election Court. You might want to discuss the irregularity you observed with the political party of your choice. If there appears to be a pattern of wrongdoing aimed at supporters of a particular party, the party might assist individuals in bringing cases to the Election Court. The law allows an individual to bring a case to the Court on their own, or to be represented by a lawyer or by any office-bearer of a registered political party. It also

allows joint applications on behalf of a group of applicants who have a similar claim against the same respondent.

Every vote counts, and the right to vote is a fundamental constitutional right. A single vote may not change the outcome of the election on its own, but every citizen can help make sure that the election process is lawful and fair.

*This article is part of a series on election issues made possible  
by support from the Hanns Seidel Foundation.*