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INFORMATION ABOUT NAMIBIA'S LAW

Proving citizenship for voting

Who has a right to vote? The Namibian Constitution is clear. Article 17(2) says: “Every citizen who has reached the age of eighteen (18) years shall have the right to vote”. Article 17(3) provides that this right can only be restricted 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”.

The Electoral Act excludes only two categories of persons on this basis: (1) persons who have been declared to be “of unsound mind or mentally disordered or defective” by a competent court, and (2) persons who are detained on the grounds of mental illness under any law. These exclusions make sense since persons in these categories would not be able to exercise a meaningful choice when it comes to voting – and both exclusions require the involvement of courts, which ensures that they will not be abused.

When it comes to local authority elections, Article 111(3) of the Constitution says: “Persons shall be qualified to vote in elections for Local Authority Councils if such persons have been resident within the jurisdiction of a Local Authority for not less than one (1) year immediately prior to such election and if such persons are qualified to vote in elections for the National Assembly.”

So, in other words, citizens who have reached the age of 18 and are not disqualified from voting for the National Assembly can vote in local authority elections if they can prove that they have lived in that local authority for the previous year.

Against this background, it is clear that proof of citizenship is a pre-requisite for voting in any election in Namibia. The Electoral Act accordingly states that “no person may be registered as a voter unless that person has submitted proof that he or she is a Namibian citizen”.

So how does a prospective voter prove Namibian citizenship? The Electoral Act lists four ways, without eliminating other possibilities. (If you are a close election-watcher, the relevant provision is section 26(4)(c).)

Certificates of citizenship

The first form of proof is a certificate of Namibian citizenship issued under the Namibian Citizenship Act 14 of 1990. That law allows the Minister of Home Affairs and Immigration to issue certificates of citizenship to anyone who is a Namibian citizen, including cases where there is some doubt. Certificates of citizenship are particularly useful for persons who have acquired Namibian citizenship by registration (immediately after Namibian independence), descent, marriage or naturalisation. A person who holds a certificate of Namibian citizenship can apply for a Namibian ID as a Namibian citizen.

Namibian passports

The second form of proof is “a valid ordinary Namibian passport”. This seems straightforward because ordinary passports (the green ones) are issued only to Namibian citizens. Such a passport clearly indicates the holder’s nationality as Namibian.

Birth certificates

The third form of proof is more problematic. The Electoral Act says that person seeking to register can provide an official birth certificate showing that the person in question “was born in Namibia” or “is a Namibian citizen”. This must be accompanied by a sworn statement by the person seeking to register to vote saying that he or she has not renounced Namibian citizenship in terms of the Namibian Citizenship Act.

There are several problems here. Not everyone born in Namibia is a Namibian citizen. In terms of both national and international law, all children born in Namibia must be registered immediately after their birth. Birth certificates are first and foremost a statement of fact. They record the date and place of birth and identify the child’s parents in so far as possible.

In a number of situations children who are born in Namibia are clearly *not* Namibian citizens. This would include, for example, children born to Angolan mothers who come to Namibia temporarily to give birth in a Namibian medical facility, children born to foreign citizens who are diplomats or military personnel seconded to Namibia, and children born to foreign citizens who are not ordinarily resident in Namibia such as persons on temporary tourist or study visas who have not made Namibia their home.

The government has tried to distinguish Namibian citizens by issuing “Namibian” and “non-Namibian” birth certificates. However, as recent case law has shown, this is not always a reliable approach. Where a child is born in Namibia to non-Namibian parents (who are not permanent residents), a further enquiry is required to determine if at least one of the foreign parents was ordinarily resident in Namibia at the time of the child’s birth – which is the requirement for a child born to that parent in Namibia to be a Namibian citizen.

The Ministry officials who issue birth certificates (which takes place primarily at hospital-based facilities immediately after birth) cannot be expected to always make reliable determinations on this point, and there is no easy route to challenge their decision aside from a High Court challenge which will be out of reach for most.

There is yet another problem. The provision from the Electoral Act says that it is proof of citizenship if a person's birth registration shows that the person was born in Namibia OR is a Namibian citizen. So, in terms of this wording, even a birth certificate that was labelled "non-Namibian citizen" would have to be treated as providing proof of citizenship for purposes of voter registration - as long as it stated that the person in question was "born in Namibia". This would, of course, be nonsensical, as it would violate the Constitutional requirement that voters must be citizens.

Finally, the reliance on sworn statements as to whether Namibian citizenship has been renounced is an odd approach, since it would be much more reliable to get information on renunciations directly from the Ministry of Home Affairs and Immigration – and to do this regardless of what proof of citizenship has been provided.

Namibian IDs

There appears to be a fourth form of proof of citizenship – but this is not entirely clear because the relevant provision of the Electoral Act contains a cross-reference to a paragraph which does not exist.

It appears that this erroneous cross reference was intended to refer to a paragraph which lists identity documents. If so, this covers an ID containing a photograph that indicates that the holder was born in Namibia OR is a Namibian citizen – provided that the ID was issued in terms of the Identification Act 21 of 1996, or in terms of the South African or South West African laws which preceded the Identification Act.

This raises some of the same problems as birth certificates – particularly in respect of the reference to being born in Namibia OR being a Namibian citizen.

Proposals for law reform

The right to vote is a fundamental one in democratic countries. The methods for proving that one has this right should be crystal clear.

In considering a better approach, it should be kept in mind that birth certificates will not generally be useful as proof of citizenship *except* in the case where the birth certificate shows that *at least one parent* of the person in question was a *Namibian citizen* – meaning that the holder of that birth certificate is almost certainly a Namibian citizen by birth.

If birth certificates are to be reliably labelled as "Namibian" or "non-Namibian", there should be clear and transparent guidelines for this determination, as well as an accessible right of appeal.

The Namibian ID is a clearer proof of citizenship, because such IDs are issued after being checked against the citizenship recorded in Namibia's population register, and there is a procedure for instituting investigations into any of the relevant particulars. But there should also be an accessible process for challenging the government's refusal to issue a Namibian ID to someone who believes themselves to be a Namibian citizen.

In the meantime, electoral officials are probably not applying the Electoral Act in a manner that allows persons who are not actually Namibian citizens to register to vote – but commitment

to the rule of law means that the Electoral Act should be written in a way that is clearly consistent with the Namibian Constitution, with requirements for proof of citizenship that are logical and clear to all potential voters.

At the moment, if someone seeking to register to vote believes themselves to be a Namibian citizen but lacks proof of this, the best course of action would be to approach the Ministry of Home Affairs and Immigration to obtain a suitable document such as a certificate of citizenship, birth certificate or identity document.

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