

# 50/50: OPTIONS FOR NAMIBIA

Dianne Hubbard, Legal Assistance Centre

June 2001

*Prepared for the Namibian Women's Manifesto Network*

“Without the active participation of women and the incorporation of women's perspectives at all levels of decision-making, the goals of equality, development and peace cannot be achieved.”

*Beijing Platform for Action,  
Women in Power and Decision-Making.*

## BACKGROUND

By the year 2000, there had been only 17 women presidents in history (with the first taking office in 1953), and 32 women Prime Ministers (with the first taking office in 1960) – and 1 out of 5 of the Prime Ministers were related to prominent male political figures.<sup>1</sup> As of the year 2000, there were only 6 female heads of state, in Bangladesh, Guyana, Ireland, New Zealand and two in Sri Lanka (with a mother-daughter President and Prime Minister).<sup>2</sup>

As of May 2001, the world average for women in national legislative bodies in democratic governments was 13,7% -- ranging from a high of 38,8% in the Nordic countries to a low of 4,3% in Arab states. The average in sub-Saharan Africa is 12,1%. This is not far from that in Europe (excluding the Nordic countries) – 13,8%.<sup>3</sup>

Looking at individual countries, Sweden leads the world with a Parliament that is 42,7% women. Mozambique ranks 9<sup>th</sup>, with a parliament that is 30% female, and South Africa is 10<sup>th</sup>, with 29,8% in its lower house of Parliament and 31,5% in its upper house. Namibia ranks 18<sup>th</sup> with 25% women in the National Assembly and 7,7% women in the National Council. Tanzania and Uganda, both of which have affirmative action measures in place at the national level, rank 22<sup>nd</sup> and 34<sup>th</sup> respectively, and Botswana is in 36<sup>th</sup> place. The USA is farther down the list, at 45<sup>th</sup> place, with 14% women in the Senate (the upper house) and 13% in the House of Representatives (the lower house).<sup>4</sup>

Since the Beijing Platform for Action set the goal of 30% women in national decision-making positions, as a milestone toward the ultimate objective of 50%, the percentage of women in Parliaments worldwide has increased from 10% to almost 14%, and women speakers of parliament have been named for the first time in six countries: Ethiopia (1995), Latvia (1995), Peru (1995), Jamaica (1996), Malta (1996) and Poland (1997).<sup>5</sup> In Jamaica, in 2000, women

---

<sup>1</sup> Women around the World, The Centre for Legislative Development, January 2000 (Vol 1).

<sup>2</sup> Women's Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

<sup>3</sup> Information from Inter-Parliamentary Union as at 20 May 2001 ([www.ipu.org](http://www.ipu.org)).

<sup>4</sup> Ibid.

<sup>5</sup> See Women's Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000) and most recent Inter-Parliamentary Union statistics. s

occupied the prominent posts of Speaker of the House, President of the Senate, Leader of Government Business and Majority Whip.<sup>6</sup>

There is less complete information about women in lower levels of government. However, the International Association of Local Authorities estimates that women constitute 23% of local councillors in the United States, 20% in Europe (ranging from a high of 40% in Sweden to a low of 4% in Greece), 18% in Canada, less than 5% in Africa and less than 4% in Latin America.<sup>7</sup> Namibia looks very strong on women in comparison at this level, with women holding 41% of the seats on local authorities immediately after the last elections.

Results such as these did not come about without intervention. As of 2001, there were quotas for women in assemblies or on party lists in force in at least 30 countries.<sup>8</sup>

It has also been noted that different sectors in the same country may be inconsistent. For example, Sweden has the highest percentage of women in parliament, but less than 10% of women in senior academic positions, while in Egypt women constitute less than 2% of Parliament, but over 40% of senior academic staff.<sup>9</sup>

## OVERVIEW OF THE PRESENT SITUATION IN NAMIBIA

Namibia's different levels of government present a similar disparity, with the different levels and sectors showing marked differences:

local: 41% women

regional: about 3%

national: 20% women in Parliament

ministers: 3 out of 19 are women, plus the Director-General of the National Planning Commission

civil service-senior management positions: 24 % women

parastatals-senior management positions: 12% women.<sup>10</sup>

There are a number of reasons for this present distinction. Firstly, an affirmative action provision for women applied to the first two local government elections. Secondly, interviews conducted by the Legal Assistance Centre to assess the operation of this affirmative action provision indicated that some people think that local government is not really about 'politics' but about community issues and is thus more suitable for women than higher levels of government. These reasons help to explain the greater number of women at the local level, but why are women more well-represented at the national level than at the regional level?

The answer is probably the different electoral systems which apply. Regional councils are elected in single-member constituencies. Candidates run for office in a particular constituency, and voters cast their ballots for the individual rather than for the party. This is a "winner-take-all"

---

<sup>6</sup> Women's Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

<sup>7</sup> Women's Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000). No estimate is available for Asia.

<sup>8</sup> Raghavendra Chattopadhyay & Esther Duflo, 'Women's Leadership and Policy Decisions: Evidence from a Nationwide Randomized Experiment in India' (March 2001), citing World Bank, *Engendering Development*, 2001.

<sup>9</sup> Ibid.

<sup>10</sup> The latter two statistics come from the annual report of the Employment Equity Commission, as reported in *The Namibian*, 10 July 2001.

system. It is also sometimes referred to as “first-past-the-post”. The single candidate with the highest number of votes wins, and takes a seat on the regional council to represent the entire constituency. It does not matter if the candidate got 99% of the vote or just 9% of the vote – if that candidate got more votes than any other candidate, he or she wins. Since members of the National Council must be drawn from regional councils, the poor showing of women at the regional level is mirrored by poor representation of women in the National Council.

The National Assembly, in contrast, works on a party list system according to the principle of proportional representation. Voters cast their ballots for a political party, and the political party has the right to seat a number of candidates which is in proportion to the number of votes which it received – a party which received two-thirds of the popular vote will seat two-thirds of the candidates in Parliament.

What has this got to do with gender? Studies show that proportional representation electoral systems are more favourable to women than “winner-take-all” systems. This is logical if you think about it. If a party can field only *one* candidate, it will want to field the individual that will give it the best chance of winning the seat. Because some voters distrust women, and because men tend to be more experienced politicians (since women were not welcomed into this arena in the past), it is more likely that a man will be chosen. If, on the other hand, a political party is putting together a long list of candidates, it is more likely to try to include something for everyone – candidates who will appeal to men, to women, to the youth, to the elders, to all of the interest groups which it thinks are significant. Because it has a large slate of candidates, it can ‘balance’ its list without risking its victory.<sup>11</sup>

And why are there so few women ministers? This is hard to say, but one reason could be that ministerial appointments in Namibia are a matter of political patronage. In electoral systems, parties in some countries select candidates by means of a clearly defined process governed by open sets of rules. This has been referred to as a “bureaucratic system”. In other countries, political parties use a “patronage system” where there may be clear rules and procedures, but power relationships and party loyalty are major factors. In general, bureaucratic systems are usually easier for women to break into than patronage systems, since it is harder to break into existing inner circles of power when the most important rules are the unwritten ones. Standing in Namibia’s different political parties seems to be based in great part on these unwritten rules of loyalty and connection, with the preferences of the President being the primary factor in Ministerial appointments. This can create an unpredictable system which is harder for women – and other newcomers – to negotiate successfully.<sup>12</sup>

Another factor which affects women at all political levels is the fact that a good track record in the party organisation or in the community is an asset, along with a high level of public visibility in one’s profession, or in political or community work. These criteria can work against women, who may be more likely than men to be beginners in public life.

---

<sup>11</sup> Richard E Matland, “Enhancing Women’s Political Participation: Legislative Recruitment and Electoral Systems” in International IDEA, *Women in Politics: Beyond Numbers* ([www.idea.int/women/parl/](http://www.idea.int/women/parl/)).

<sup>12</sup> Ibid.

## EXAMPLES FROM OTHER COUNTRIES

Before returning to Namibia to look at each level of government in more detail, let us look at some examples from other countries.<sup>13</sup>

### Internal rules of political parties

**South Africa** has achieved a good balance of 30% women in Parliament without passing any laws to ensure this result. The 30% target was achieved by lobbying within the ANC for an internal party rule that all party lists will be made up of at least 30% women.<sup>14</sup> The Frelimo party in **Mozambique** similarly adopted quotas of one-third women on their candidate lists. The Liberal Party of **Canada** set a target of 25% women (and achieved 22%) in the 1993 elections, and the **Australian** Labour Party hopes to make 35% of its candidates women by 2002. Quotas are also used by at least one political party in 12 of the 15 countries in the **European Union**.<sup>15</sup>

This approach works best when there is one strong political party which takes most of the seats in the government body in question, or when there is sufficient public pressure to force most or all of the political parties contesting the election to adopt similar affirmative action policies.<sup>16</sup>

One advantage of this approach is that no new laws are required – the corresponding disadvantage is that such rules can easily be changed and so may perhaps be unstable, or dependent on continued pressure from a women’s lobby within the party.

Another factor is that political parties may be more amenable to such internal rules in the party list system, where balance is usually an asset, than in the case of single-member constituencies.

Yet another factor to consider is that a quota on a list of candidates does not ensure a particular level of women’s representation at the end of the day – it depends on which parties seat how many members, and on where women were placed on each list. Even in a case where every party put forward a zebra list, this would not necessarily ensure exactly 50/50 representation – suppose that 5 small parties all put men at the top of their zebra lists, and only received enough votes to seat one candidate each – the result would be 5 men and no women in those seats.

Depending on how strongly worded and binding an internal party rule is, it might be circumvented by claims that sufficient numbers of women candidates are “not available”.

However, it should be noted here that Namibia has experienced limited success with lobbying political parties internally to use the “zebra list system” for local government elections, where a significant number of women were already required by law to be somewhere on the list. Both SWAPO and DTA made a public commitment to “zebra” lists of alternating male and female candidates. However, only about 42% of SWAPO’s party lists substantially followed the “zebra” format, compared to a compliance rating of only about 20% for the DTA.<sup>17</sup>

---

<sup>13</sup> Unless otherwise indicated, the information in this section comes from data gathered by WEDO through its Internet discussion group which involves women from countries around the world.

<sup>14</sup> Women are lobbying for the increase of this quota to 50%.

<sup>15</sup> Chattopadhyay & Duflo.

<sup>16</sup> In both the 1994 and the 1999 elections in South Africa, the ANC was the only political party which utilised a quota system.

<sup>17</sup> Legal Assistance Centre, *Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections* (1998).

**Require by law that parties put a specified number of women on their party lists, and/or as candidates for single-member constituencies.**

This approach has been adopted in 10 Latin American countries since 1990, with national laws require political parties to reserve 20-40 % of candidacies for women. Similar quota laws have been enacted at the sub-national level as well.<sup>18</sup>

One weakness of this approach is demonstrated by the experience of **Nepal**. Clause 114 in Nepal's constitution requires that at least 5% of the total number of candidates contesting an election from any party to the House of Representatives must be women in order to increase women's participation in decision making. But this approach has resulted in only about 3% of the seats actually being filled by women. Major political parties have given tickets to the minimum 5% women candidates, all of whom are not elected, and that is how the result was only about 3% representation.

Thus, as in the case of internal party rules, requiring gender parity on lists of candidates does not necessarily ensure gender parity in the elected body. Another example is **Guyana**, where there is a legal rule that 30% of all candidates must be women. Because this rule has not resulted in 30% women representation, women's groups are now lobbying to have this strengthened by applying the 30% rule to the list of candidates which each party selects *to sit* in Parliament (and also by gradually increasing the percentage until it reflects the proportion of women in the society).

This problem can also be addressed in party list systems by rules about the *position* of women on the party lists. For example, in **Argentina**, the law which requires political parties to include at least 30% women on their lists also specifies that women must be "in every third place on the list". The result is that women occupy 25% of the seats in Argentina's legislative body. **Costa Rica**, in contrast, requires that 40% of the party list be women, but does not specify anything about their position – with the result that parties place women at the bottom of the list, and the proportion of women in the national legislature is not high. Another instructive contrast is the case of **Brazil**, where votes are cast for individuals rather than for parties. There, the requirement that 20% of each party's candidates be women has not had very dramatic results. Women are not politically well-known, making it difficult to get them elected.<sup>19</sup>

A **French** law passed in June 1999 requires all political parties to field an approximately equal number of women and men in all elections – the numbers of each sex may not differ by more than one. The position on the party list is also regulated – the law stops short of requiring a zebra-list system, but requires that each complete group of six names starting from the top of the list must include 3 men and 3 women.<sup>20</sup> Failure to comply disqualifies parties from contesting elections, or from receiving any kind of funding support from government. When this law was applied for the first time, in communes (constituencies) of more than 3500 inhabitants, the percentage of women elected in town councils leaped from 22% to 47.5%.

---

<sup>18</sup> WEDO cites as examples Argentina, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Panama, Peru, Venezuela. Guyana (the only English-speaking country in South America) also has legal requirements that parties must include one-third women on their lists. See also Chattopadhyay & Duflo.

<sup>19</sup> "Women in Decision-Making: Making Women Visible" in *Women around the World*, a quarterly publication of The Centre for Legislative Development", January 2000.

<sup>20</sup> The law states: "On each of the lists, the difference between the number of candidates to each sex may not be greater than one. Within each complete group of six candidates in the order of presentation of the list, there must be an equal number of candidates of both sexes." (L.O.2000-493) (See [www.ipu.org/parline-e/reports/2113\\_B.htm](http://www.ipu.org/parline-e/reports/2113_B.htm).)

Political parties may be more resistant to rules about their candidates when such rules are applied to single-member constituencies rather than to party lists. A compromise approach here would be, rather than to institute an absolute legal requirement, to condition government finance for political parties on compliance with the requirement of gender balance in all candidacies at all levels.

### **Reserve seats for women on the elected body**

At least five countries (Bangladesh, Eritrea, Taiwan, Tanzania and Uganda) use this technique at the national level.<sup>21</sup> This system is also used in some countries at lower levels of government, such as in India and in Punjab, Pakistan (where, in both cases, one third of all local council seats are reserved for women).

In **Uganda** (as of March 2001), the National Parliament has 276 members, 214 of which were elected in single-seat constituencies. Another 39 seats (one per district) are reserved for indirectly elected women (who are elected by the other members of Parliament) and 23 seats are set aside for indirectly elected representatives of the army (10), the disabled (5), youth (5), and trade unions (3). The Vice-President is a woman, as are 5 ministers in the President's 25-member Cabinet. In addition, each of the nation's 45 districts elected a woman to fill a National Assembly seat reserved for women by the provisions of the Constitution. Six other women won openly contested seats for the 276-member Parliament in the 1996 election. The 1997 Local Government Act reserves one-third of the seats on local councils for women.<sup>22</sup>

Observers believe that the presence of increased numbers of women in Uganda's governing bodies has made a difference. For example, women MPs spearheaded law reform on land ownership by married couples and a campaign against poverty.<sup>23</sup> The Women's Caucus in Parliament succeeded in increasing the government's budget allocations for nutrition and for childhood development projects.<sup>24</sup> President Museveni remarked, "Women have stabilised politics in a way because they tend not to be so opportunistic. They tend to go after the interests of stability. They're not so reckless like the men."<sup>25</sup>

**Tanzania** has reserved 15% of its parliamentary seats for women and it hopes to raise this to 30%.<sup>26</sup> In its unicameral National Assembly, there are 274 seats -- 232 elected by popular vote, 37 allocated to women, and five reserved for members of the Zanzibar House of Representatives.<sup>27</sup> Candidates for the women's seats are nominated by the country's five mass organisations (youth, women, parents, workers, and co-operatives, and chosen by the other directly elected representatives on a proportional representation basis (selected by the

---

<sup>21</sup> Chattopadhyay & Duflo.

<sup>22</sup> Based on information from Inter-Parliamentary Union database and US State Dept Report, 1998.

<sup>23</sup> Ann M Simmons & Robin Wright, "Gender Quota Puts Uganda in Role of Rights Pioneer", *LA Times*, 23 February 2000.

<sup>24</sup> Women's Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

<sup>25</sup> Ann M Simmons & Robin Wright, "Gender Quota Puts Uganda in Role of Rights Pioneer", *LA Times*, 23 February 2000.

<sup>26</sup> Flame, November 1999.

<sup>27</sup> Tanzanian Electoral Commission, 2000.

members of the political parties in the assembly in proportion to each political parties other seats). At the local level, 25% of the seats are reserved for women. <sup>28</sup>

In **India**, there is a three-tier system of local government – village councils (known as “Gram Panchayat”), block level councils and district councils. In 1992, the 73<sup>rd</sup> amendment to the Indian Constitution provided that one-third of seats on each of these councils must be reserved for women. Seats were also reserved by this amendment for the two most disadvantaged minorities in India, scheduled castes and scheduled tribes. These categories can overlap, with the result that a seat may be reserved, for example, for a woman from a scheduled caste – which can be a limiting factor. <sup>29</sup> The law has brought nearly one million women into local politics. <sup>30</sup>

Moreover, since 1998, one-third of the top leadership positions of “Pradhan” (Chief) in village councils have been reserved for women, meaning that only women may be candidates for this position in the affected councils. (As in Namibia, the members of the council vote for the leader of that council.) The councils affected by this policy are selected randomly – all of the village councils in India are listed in order by their serial number, and then every third village council is earmarked for leadership by a woman. A recent study of the impact of this policy indicates that it does make a difference – the village councils headed by women have made more investments in issues which are of particular concern to Indian women, such as supplies of fuel and water. <sup>31</sup> However, it has also been noted that caste is sometimes more influential than sex in determining the views of Indian women in political positions. <sup>32</sup> Although not all research agrees on this point, one study found that corruption went down and transparency increased because of women’s increased participation. <sup>33</sup>

The Constitution of **Bangladesh** also reserves seats for women in the national assembly, called the Jatiya Sangsad. This was a temporary measure. In 1972, the Constitution provided for 10 seats for women, later increased to 15, and made the provision valid for 10 years. In 1978, the number of reserved seats was raised to 30 and the period of validity extended to 15 years. The mechanism used to accomplish this was indirect election: the women in the reserved seats were to be chosen by the members elected to the 300 other seats in Parliament in direct elections. <sup>34</sup>

The extended period of 15 years expired in December 1987, but affirmative action had not had its desired effect by this stage – in the subsequent elections which took place without the benefit

---

<sup>28</sup> Information from Interparliamentary Union Parline database.

<sup>29</sup> Women’s Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

<sup>30</sup> “Women in Decision-Making: Making Women Visible” in *Women around the World*, a quarterly publication of The Centre for Legislative Development”, January 2000.

<sup>31</sup> Chattopadhyay & Duflo.

<sup>32</sup> Women’s Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

<sup>33</sup> WEDO material, citing Ranjit Dev Raj, “Empowering Women from the Grassroots Up”, *Choices, the Human Development Magazine*, March 2000. The Chattopadhyay & Duflo study does not support this finding.

<sup>34</sup> Article 65(3) read as follows after the 1972 provision was extended to 15 seats: Until the dissolution of parliament occurring after the expiration of the period of ten years from the commencement of this Constitution there shall be reserved 15 seats exclusively for women members who shall be elected according to law by the members aforesaid (meaning the members elected to Parliament in the general elections). See Fawzia Tawheed, “Politics, Women and the Parliament”, *The Daily Star*. ([www.dailystarnews.com/200009/15/n0091509.htm](http://www.dailystarnews.com/200009/15/n0091509.htm)).

of reserved seats for women, only 4 women were elected. As a result, in 1990, the provision on reserved seats was re-inserted into the Constitution, providing for 30 reserved seats for a further period of 10 years. In recent years, no political party has had an absolute majority or a big margin, so the battle over the reserved seats has decided which political party will form the government – but none of the political parties have included many women candidates on their normal slate of directly-elected candidates or shown significant attention to women’s issues in their manifestos.

The latest provision on reserved seats will expire in 2001, and discussion about the future is underway. Women’s organisations are recommending the reservation of 64 seats for women for the next two elections, to allow for one woman from each district, and that these women should be chosen by direct rather than by indirect election. They are also proposing that, once reserved seats fall away, political parties should be required to include at least 25% women amongst their regular candidates. It has also been recommended that such measures should be accompanied by a commitment to a “woman-friendly” electoral process, with gender balance in the composition of election management bodies and the appointment of senior staff.<sup>35</sup>

In general, the technique of reserved seats raises the question of how they will be filled. Will political parties be allowed to put forward only women candidates for these seats? Will they be indirectly elected by the elected members of Parliament? Will they be filled by Presidential appointees? All of these different options are in use in a variety of other countries.

While reserved seats ensure that gender balance will actually be achieved, they can perpetuate the stereotype that women are not capable of competing with men. As the experience of Bangladesh illustrates, reserved seats can also become a battleground for the interests of political parties competing for greater balances of power.

### **Affirmative action or gender balance?**

It should be noted that there are two conceptual approaches to rules concerning women in decision-making bodies. One is to view this as a temporary measure to implement affirmative action for women. The other is to apply gender-neutral rules in such a way as to ensure a good gender balance in decision-making bodies, on the grounds that such bodies should represent men and women in proportions comparable to their proportion of the population, perhaps permanently, because this ensures that the decision-making body is actually representative of the society.

Examples of gender-neutral approaches are France (discussed above) and Chile, which has adopted a rule whereby neither gender can have more than 60 per cent representation at the national level.<sup>36</sup>

### **Representation for other marginalised groups?**

However, both the concepts of affirmative action and representivity raise the problem of whether or not there should be quotas or similar measures for other specific groups in society – such as racially disadvantaged groups, cultural minorities, persons with disabilities, youth or the elderly. This, in turn, could lead to a fragmentation of society – is it really true that only women can care about women’s concerns, or that only persons with disabilities can address disability concerns? The concept of representivity taken to an extreme could undermine the notion of a united nation in which all persons are committed to the rights and welfare of the entire society.

---

<sup>35</sup> Ibid.

<sup>36</sup> Women’s Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

Uganda, discussed above, is an example of a nation which reserves seats at the national level for a number of interest groups. Another example is the Philippines. The Philippine Constitution provides that the national House of Representatives shall be a mixture of persons who are directly elected and persons who are chosen on a party list system. The party-list representatives must constitute 20% the total number of representatives, and “for three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labour, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector”.<sup>37</sup>

This question of representation for groups other than women may well arise in Namibia, especially since the affirmative action in employment targets three groups for assistance – women, persons with disabilities and the racially disadvantaged.

### **General issues and concerns**

In some countries, women who have benefited from quotas and reservations have not been respected in their own right, but have been chosen because of confidence in their husbands, fathers or other male relatives. This has proved to be a problem, for example, in Colombia and in India. In Uganda, the female Vice President has sometimes been mistaken at official functions for the male President’s wife.<sup>38</sup>

Another problem is that women who do not rise through the party ranks do not have the opportunity to develop the political skills that this path to power entails. A woman who comes into power through a quota system or a system of reserved seats may lack the power within her political party to influence policy effectively.

In other words, numbers alone may not be enough. There are, however, strategies which women can use to surmount such problems, such as caucusing across party lines and networking with women and women’s groups both inside and outside government.

Some women in politics report that political success in the political process requires money, muscle, exposure to hostile media and the adoption of male norms of behaviour, such as aggressive and adversarial approaches.<sup>39</sup> And there may be elements of our society who will be hostile to measures that assist women to enter politics in greater numbers. In Kenya (even in the absence of specific affirmative action measures), 10 supporters of a female candidate for Parliament in 1992 were raped by men who opposed this candidate, to send a message.<sup>40</sup>

---

<sup>37</sup> It “shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila Area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations”. Article VI, Constitution of the Philippines and R.A. 7941.

In the first two elections after the Constitution was ratified in 1987, the President appointed the party-list representatives. For the first time in 1998, they were elected. Honesto C General, “Saving the party list system”, *Philippine Daily Enquirer*, 23 April 2001.

<sup>38</sup> Ann M Simmons & Robin Wright, “Gender Quota Puts Uganda in Role of Rights Pioneer”, *LA Times*, 23 February 2000.

<sup>39</sup> Women’s Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000).

<sup>40</sup> Ibid.

On the positive side, information from many countries indicates that women in decision-making bodies are often successful in making an impact on women's issues. Furthermore, a recent World Bank study indicates a close correlation between women's representation in parliaments and a decrease in the incidence of corruption, although further study is needed to confirm this connection.<sup>41</sup>

## **A MORE DETAILED LOOK AT OPTIONS FOR NAMIBIA**

With the examples from other countries in mind, it is useful to come back to Namibia and examine the possibilities in more detail. We will start from the bottom up. As a backdrop, we must keep in mind that the Namibian Constitution makes provision for affirmative action by authorising Parliament to enact laws "providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices" – and that it points to the need for affirmative action for women in particular, noting that "women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation".<sup>42</sup>

### **Local level**

Articles 102 and 111 of our Constitution require that local authorities be established. Article 111(2) says that "the method of electing person to Local Authority Councils... shall be determined by Act of Parliament".

The Local Authorities Act 6 of 1992 originally provided that the first local authority elections would be held on a party list basis. An affirmative action provision stipulated that party lists had to include at least two women in respect of local authority councils of 10 or fewer members, and at least three women for councils with 11 or more members. Parties were required to supply a full slate of candidates, even if their chances of winning more than one or two seats were highly improbable.<sup>43</sup> The results of the 1992 elections held under this system were local authorities that were 32% women (including Walvis Bay, which had its elections only later, after re-incorporation).<sup>44</sup>

It was anticipated that the second local government elections would be held on a constituency basis, with local authorities being divided into wards and voters casting their ballots for individual candidates rather than for political parties. Under this system, affirmative action for women would no longer apply. However, Parliament amended the Local Authorities Act in 1997, to make the party list system applicable to the second local government elections. This amendment also strengthened the affirmative action provision for women, by increasing the minimum number of women who must be placed on each party list.

---

<sup>41</sup> Women's Political Participation and Good Governance: 21<sup>st</sup> Century Challenges (UNDP 2000), referring to the 1999 World Bank report "Are Women Really the 'Fairer' Sex?".

<sup>42</sup> Article 23.

<sup>43</sup> Section 68(1), Electoral Act 24 of 1994.

<sup>44</sup> Legal Assistance Centre, *Affirmative Action for Women in Local Government in Namibia* (June 1993); Legal Assistance Centre, *Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections* (1998).

The exact wording of the strengthened affirmative action provision is as follows, with reference to local elections held on the party list system:

*... each party list shall contain as candidates for such elections –*

*(a) in the case of a municipal council or town council consisting of 10 or fewer members or a village council, the names of at least three female persons;*

*(b) in the case of a municipal council or town council consisting of 11 or more members, the names of at least five female persons.*<sup>45</sup>

At the same time, the size of some local authorities changed. Municipal councils, originally composed of 7-12 members, were increased to 7-15 members, depending on the size of the municipality. Town councils remained the same, at 7-12 members. Village councils remained at 7 members each for the second local government elections, but are to be decreased to 5 members with effect from the third local government elections.

The decision to extend the party list system to the second election was hotly debated in Parliament. It is useful to examine these debates, for they indicate some of the arguments which may be put forward in response to the 50/50 campaign.

The Minister of Regional and Local Government and Housing (at that time Dr Iyambo) stated that one of the “*main reasons*” for the proposed amendments was “*that government is concerned about the level of women representation in all levels of decision-making*”. The second reason cited was the opinion of the Association of Local Authorities that local authorities were in general “*not prepared for the implementation of the ward system*”. The third motivation was the desire to change the Delimitation Commission from an executive body to an advisory body.<sup>46</sup>

In support of its assertions that Namibia was not ready for the ward system, SWAPO pointed to the continuing racial fragmentation of most local authorities. It noted that residential areas tend to be predominately occupied by particular tribal or racial groups as a continuing legacy of the old apartheid policies, and asserted that a ward system under such conditions would perpetuate racial and ethnic division.<sup>47</sup> SWAPO argued that the temporary continuation of the party list system at the local level would be the best way to encourage “*unity in diversity*”.<sup>48</sup>

The opposition parties opposed the amendments, arguing that the real reason behind them was SWAPO’s calculation that it would lose local representation under a ward system.<sup>49</sup> SWAPO refuted this, pointing to their majority showing under both the party list system which applies to the National Assembly elections and the constituency system which applies to regional council elections.<sup>50</sup>

---

<sup>45</sup> Local Authorities Amendments Act 3 of 1997 (Government Gazette 1584).

<sup>46</sup> Debates of the National Assembly, 4 March 1997 at 25-26; 25 March 1997 at 59.

<sup>47</sup> Debates of the National Assembly, 11 March 1997 at 99-ff; 17 March 1997 at 270.

<sup>48</sup> See, for example, the speech of the Prime Minister, Debates of the National Assembly, 14 March 1997 at 213.

<sup>49</sup> See, for example, Debates of the National Assembly, 11 March 1997 at 118; 12 March 1997 at 131, 139; 19 March 1997 at 334. .

<sup>50</sup> See, for example, Debates of the National Assembly, 14 March 1997 at 215, 217-18, 225, 226; 19 March at 345-6.

Many members of the various opposition parties argued that personal accountability of a councillor to a constituency is particularly important in local government, where the issues tend to be local service ones which are outside the main political arena.<sup>51</sup> The Prime Minister, speaking for SWAPO, countered these concerns by noting that the party list system did not preclude the assignment of local councillors to particular areas, in the same way that SWAPO representatives in the National Assembly, who take office on a party list basis, are assigned to particular regions.<sup>52</sup> The SWAPO Minister of Justice, Mr Tjiriange, emphasised in response to such concerns that the bill was not intended to do away with the ward system, but only to defer it until wards could be introduced “*more systematically and in an environment conducive to their success*”.<sup>53</sup>

The specific issue of affirmative action for women also drew hot debate, primarily around the sincerity of SWAPO’s stated concern for women.<sup>54</sup> One DTA member launched a stinging attack on the affirmative action aspect of the bill, dismissing it as “*window dressing*” and arguing that women should and would be nominated on merit. He even went so far as to suggest that using women in such a way constitutes “*political rape*”.<sup>55</sup>

A female DTA member stated that “*there is no need for women to rely on a party list system to occupy any position in the three levels of government, because women, like men, are capable of fighting an election and they occupy any position without any help from men, which is a proof of women being capable of running a campaign on their own..*”<sup>56</sup>

The MAG representative commented: “[*if I was a woman I would regard this amendment Bill as window-dressing, as a slap in my face, because I would know that I would always have to carry the stigma, the label around my neck that I did not make it on my own merit, but that I was made an affirmative action candidate by law... [W]e do not need a party list system to boost our women. We will do them a favour by allowing them to win their colours in a ward system themselves...*”<sup>57</sup>

SWAPO representatives defended the affirmative action provision by pointing out that other democratic countries employ such methods to raise the level of political representation by women<sup>58</sup>, and by noting Namibia’s international and regional commitments to the promotion of women’s participation in decision-making roles. The idea was even suggested at that stage, as

---

<sup>51</sup> For example, one DTA member argued, “Let our people not be politicised in all levels of governance.” Debates of the National Assembly, 17 March 1997 at 264. See also, for example, Debates of the National Assembly, 11 March 1997 at 90-91, 105, 118; 12 March 1997 at 131, 139, 145, 150.

<sup>52</sup> Debates of the National Assembly, 14 March 1997 at 212.

<sup>53</sup> Debates of the National Assembly, 19 March 1997 at 344-5.

<sup>54</sup> See, for example, Debates of the National Assembly, 19 March 1997 at 334.

<sup>55</sup> Debates of the National Assembly, 12 March 1997 at 140-141.

<sup>56</sup> Debates of the National Assembly, 18 March 1997 at 294.

<sup>57</sup> Debates of the National Assembly, 12 March 1997 at 148.

<sup>58</sup> Debates of the National Assembly, 12 March 1997 at 140, 152.

we are suggesting now, that the law should go even farther and require that party lists be 50% women.<sup>59</sup>

One female SWAPO MP, Dr Amathila, defended the fact that the proposed amendments set the minimum number of women at only about 30% of each party list, on the grounds that women in Namibia were disadvantaged by inferior education. She also emphasised that the proposed amendment would not stop any party from going beyond the minimum requirements.<sup>60</sup> She asserted that women would not fare well under the ward system, because “*nobody is going to vote for a woman*”, arguing that the need for affirmative action for women had not yet passed.<sup>61</sup>

Dr Amathila continued:

*Involving women in the political process is in the interest of society as a whole. Because women values and women sense of justice become integrated into the political life of our nation. Therefore, I call upon women, all women sitting here, to identify capable women in their areas, in their parties and to encourage them to stand as candidates. Women must also lobby their political leaders within their parties to put these women on their lists... I will conclude by saying that it is not that we women are weak, but we need to be encouraged and the Constitution has made provision in Article 10 that women must be given extra, extra, extra encouragement, and that is what we are doing.*<sup>62</sup>

Similar sentiments were put forward on behalf of SWAPO by the Minister of Justice, Mr Tjiriange, who stated:

*Let us face it, affirmative action is not only and necessarily a question of numbers, although that is evident thereof. But most importantly affirmative action, in particular gender equality, requires societal and mental transformation. Our society must, where necessary, be assisted to undergo such transformation... The party list system will assist greatly at this formative stage of our society to cement and strengthen the roots of equality, gender in particular, and a non-divided society.*<sup>63</sup>

He also suggested that the party list approach allowed parties to ensure the representation of other significant segments of society, such as the youth, the elders, former combatants, and other special interest groups.<sup>64</sup>

The amendment, as we know, did pass, and affirmative action in the second local authority elections succeeded in giving 41% of the seats to women.

There are two approaches to affirmative action at the local level: one is to propose that the party list system remain in place with an appropriate affirmative action component, the other is to propose an affirmative action system for the ward system which is currently expected to apply to the next local elections.

---

<sup>59</sup> Debates of the National Assembly, 12 March 1997 at 153-54.

<sup>60</sup> Debates of the National Assembly, 17 March 1997 at 268. The fact that most local authorities are composed of 7 members makes it obviously impossible to impose an exact gender balance in most cases. The amended affirmative action provision mandates 3 women on party lists of 7 members, which is equal to about 43%.

<sup>61</sup> Debates of the National Assembly, 17 March 1997 at 269.

<sup>62</sup> Debates of the National Assembly, 17 March 1997 at 269-70.

<sup>63</sup> Debates of the National Assembly, 19 March 1997 at 345.

<sup>64</sup> *Id.*

One other issue to be noted is that there are an odd number of seats on most local councils, meaning that there cannot be an exact 50/50 balance unless the size of the council is changed.

The recommended options for local authorities are :

**(1) Extend the party list system used in the first two local elections to the next several elections. Require that the number of candidates of each sex in the lists put forward by any participating political party or association may not differ by more than one (to allow for councils with odd numbers of members). Require further that the names of male and female candidates must follow a zebra-list pattern.**

One difficulty with this approach is that, in terms section 5 of the Local authorities Act (as amended by Act 3 of 1997), a delimitation commission was to be appointed 'not later than 3 years after the second general elections' for local authority councils to begin the process of demarcating the local authorities into wards. The date of the second local elections was 16 February 1998, meaning that the division into wards should have begun in February 2001.

**(2) Alternatively, support the change-over to the ward system for the next election, as currently planned, but require that all parties and associations participating in the elections must put forward equal numbers of male and female candidates for each local authority election in which they take part.** This would not ensure a 50/50 balance on the council itself, since the men from one party might be standing against women from other parties in a particular ward. However, it does not seem feasible to declare that some wards must be represented by women, as this might raise political or legal arguments about the fairness of singling out only certain constituencies in this way, particularly in a small country such as Namibia.

As a result, parties might try to put their women candidates in wards where they believe their chances of winning a seat are already slim, so that they can put their male candidates in the more hotly contested wards. On the other hand, parties might put women candidates in wards where they felt that their victory was already assured, on the theory that women "could do no harm" to their chances in these wards.

It will be possible for independent candidates to contest local authority seats under the ward system.<sup>65</sup> Since these candidates would be running as individuals, it would not be feasible to apply affirmative action provisions to them. Women's groups could simply mobilise to put forward independent women candidates to counter large numbers of independent male candidates if this became necessary to maintain gender balance.

### **Regional level**

The single-member constituency system is specified by the Constitution for the regional level of government. Article 106 states that each region shall be divided into 6-12 constituencies, and that each constituency shall elect one member to the regional council by means of secret ballot, and "the candidate receiving the most votes in any constituency shall be the elected member of the Regional Council for that constituency". Unless the Constitution were amended, this rules out reserved seats and leave open only the option of requiring parties to put forward a certain percentage of women candidates. (The Constitution could be amended to require that a man and a woman be elected for each constituency, but the option of doubling the size of regional councils is probably prohibitively expensive.)

---

<sup>65</sup> See section 67(1)(b)(ii)(bb) of the Electoral Act 24 of 1992 and the accompanying references to independent candidates in subsequent sections.

Article 102(3) states that both local and regional authorities shall have councils which are “freely elected”. It might perhaps be argued, especially in the case of wards and constituencies, that this phrase forestalls any attempts to constrain the voter’s choice by means of affirmative action. For example, it has been argued in other countries (such as France and Italy) that reserving a quota of seats for women restricts the freedom of the people (or of party members) to select the individual they believe is most suitable for the position. However, since the Namibian Constitution specifically authorises affirmative action for women, it is quite possible that a system of quotas or reservations could survive Constitutional scrutiny.

The **recommended option for regional authorities** is:

**Require that all parties and associations participating in the elections must put forward equal numbers of male and female candidates for each regional election in which they take part.** As noted above, this approach would not ensure a 50/50 balance on the council itself, since the men from one party might be standing against women from other parties in a particular constituency. However, it does not seem feasible to declare that some constituencies must be represented by women, as this might raise political or legal arguments about the fairness of singling out only certain constituencies in this way, particularly in a small country such as Namibia. If the balance did not prove to be acceptable in practice, reserved seats could be suggested at a later stage.

The same factors about party placement of women candidates discussed above in respect of the ward system would also apply at the regional level.

It is possible for independent candidates to contest regional council seats under the ward system.<sup>66</sup> As noted above in respect of local authorities, it would not be feasible to apply affirmative action provisions to independent candidates contesting a single seat. Independent candidates at the regional level are at present rare, and (as in the case of local authorities) women’s groups can mobilise to put forward independent women candidates to maintain gender balance if necessary in future.

## **National level**

The basic electoral system for this level of government is also set by the Constitution.

### *National Assembly*

Article 46 requires that there be 72 voting members of the National Assembly elected by ‘general, direct and secret ballot’, plus 6 non-voting members appointed by the President “by virtue of their special expertise, status, skill or experience”. Article 49 says that elections to the National Assembly must take place on party lists and in accordance with the principles of proportional representation. Article 45 helps the 50/50 cause by stating that “the members of the National Assembly shall be representative of all the people”.

### *National Council*

Article 69 requires that the National Council be made up of 2 members from each region, to be elected from amongst the members of the Regional Council for that region, by the Regional Council itself. (Two members for each region would of course divide neatly into male and female for a 50/50 balance in each region.)

The Constitutional requirements for elections at any level are not in the entrenched parts of our Constitution, meaning that they could be amended -- but of course proposing constitutional amendments is likely to be a more difficult political battle than proposing legal changes in the form of amendments to statutes.

---

<sup>66</sup> See section 61(1)(b)(ii) of the Electoral Act 24 of 1992 and the accompanying references to independent candidates in subsequent sections.

The **recommended options at the national level** are:

(1) **National Council:** Require that each regional council elect one male member and one female member to sit in the National Council (with an exception for unlikely cases where a particular regional council was composed of only men or women). This would be likely to ensure a precise balance of 13 men and 13 women in the National Council. The proviso is necessary in the unlikely case that women end up running against men from other parties in every constituency in the region, and losing in every case.

(2) **National Assembly:** Require that the number of candidates of each sex in the lists put forward by any participating political party or association must be 50/50 men and women. Require further that the names of male and female candidates must follow a zebra-list pattern. This would ensure an approximately 50/50 balance in Parliament, although not perfectly so (supposing, for example that one or two small parties took only one seat and had a male at the top of their lists).

This proposal would not affect the 6 non-voting members appointed by the President. It is recommended that these non-voting members be left out of the proposal. Since the Constitution itself sets forth criteria for the selection of these members, and does not mention sex, a requirement of gender balance here might raise Constitutional problems. Since these 6 members cannot vote in any event, they would not significantly upset the gender balance achieved with elected members whatever their sex.

#### **Comment on the recommendations**

These recommendations would require amendments to the Local Authorities Act (sections 5-6), Regional Councils Act (sections 6, 26-27) and the Electoral Act (sections 59, 61, 67 and the corresponding provisions on death of a candidate in each case). Regulations issued in terms of the Electoral Act on the nomination of candidates might also be affected.

The recommendations would, however, avoid the necessity of a Constitutional amendment which would be politically more difficult. They focus on candidates rather than seats, as this is also more consistent with the requirements already set forth in the Constitution. Furthermore, all of them could be achieved informally by means of lobbying, as a fall-back position if legal change is not successfully achieved.

The campaign should be ready to argue as to why affirmative action should be applied only for women and not for any other marginalised or under-represented groups in society.

#### **Additional recommendations**

Amend section 5 of the Electoral Act to require that at least 2 of the 5 members of the Electoral Commission must be women, or (to be gender-neutral) that the difference between the sexes on the Commission may not be more than one.

Political parties should be encouraged to introduce voluntary mechanisms to ensure gender balance in their internal party structures. This could be a key way to augment the political power and influence of women, so that women in elected bodies can be politically effective.

Additional ways to empower and support women who are in public office should be explored, such as training and effective networking inside government and with civil society.

\*\*\*\*\*

## **THE 50/50 BILL**

**To provide for gender balance in the National Assembly, National Council, regional councils and local authority councils; to require that all future elections for local authority councils shall be held on a party list system with provisions for gender-balanced party lists; to amend the Regional Councils Act, 1992, the Local Authorities Act, 1992 and the Electoral Act, 1992 accordingly; and to provide for incidental matters**

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

### **Amendment of section 26 of Act 22 of 1992.**

1. The following subsection is substituted for subsection 26(1) of the Regional Councils Act, 1992:

(1) (a) For purposes of the provisions of article 69 of the Namibian Constitution, a regional council shall elect from amongst its members one woman and one man as members of the National Council in the manner provided in section 27: Provided that if a regional council is at the time of such election composed entirely of members of one sex, that council shall elect from amongst its members any two persons as members of the National Council in the manner provided in section 27.

(b) Where one of two members of the National Council from a particular regional council has vacated a seat in the National Council as provided in subsection (2)(b), that regional council shall elect from amongst its members a person to fill the vacant seat who is of the opposite sex of the remaining National Council member: Provided that if a regional council at the time of such election contains no members who are of the opposite sex of the remaining National Council member, that council shall elect from amongst its members any person to fill the vacancy in question, in the manner provided in section 27.

### **Substitution of section 27 of Act 22 of 1992.**

2. The following section is substituted for section 27 of the Regional Councils Act, 1992:

#### **“Manner of elections for members of National Council by regional council**

27. (1) A person designated by the Electoral Commission established by the laws governing elections shall for purposes of the provisions of this section preside at a meeting of a regional council during which an election for a member or members of the National Council in terms of Article 69 of the Namibian Constitution is held, and during such meeting no debate shall be allowed.

- (2) (a) Where there are two vacancies on the National Council, the person presiding over the meeting shall --
- (i) where a regional council is composed of both female and male members, invite nominations for one female member and one male member to represent that regional council on the National Council; or
  - (ii) where a regional council is composed of members of only one sex, invite nominations for any two members to represent that regional council on the National Council.
- (b) Where there is one vacancy on the National Council, the person presiding over the meeting shall –
- (i) where a regional council is composed of both female and male members, invite nominations for a member of the opposite sex from the member who is already representing that regional council on the National Council; or
  - (ii) where a regional council is composed of members of only one sex, invite nominations for any member to fill the vacancy in question.
- (3) A member of a regional council, having first obtained the willingness by any instrument in writing of not more than one member in respect of each vacancy to be filled whom he or she wishes to propose as a member or members of the National Council to serve if elected, may upon the submission of such instrument so propose such member or members, but the proposal shall lapse if it is not seconded.
- (4) A member may not propose or second his or her own candidature.
- (5) (a) Where a regional council is composed of both female and male members, and only one nomination is proposed and seconded for a female representative or a male representative on the National Council, the sole candidate in respect of that position shall be declared duly elected.
- (b) Where a regional council is composed of members of only one sex and no more candidates than the number of vacancies to be filled are proposed and seconded, such candidate or candidates shall be declared duly elected.
- (6) (a) If more candidates than the number of vacancies to be filled are proposed and seconded, a vote shall be taken by secret ballot, each member having one vote in respect of each vacancy.
- (b) At any voting by secret ballot in terms of paragraph (a)-

(i) the person presiding at the meeting shall issue to each member a ballot paper bearing the names of the candidates and, on the reverse side thereof, an official mark: Provided that if there are elections at the same time for a female representative and a male representative, separate ballots containing the names of male candidates and female candidates shall be prepared in respect of each position;

(ii) a member shall record his or her vote by placing a cross on the ballot paper opposite the name or names of the candidate or candidates for whom he or she wishes to vote, and shall fold the ballot paper in such a manner that the cross placed on it by him or her is not visible;

(iii) the person presiding at the meeting shall call the name of each member, whereupon the member concerned shall, if he or she wishes to vote, proceed to the place where the ballot box is situated and there place his or her ballot paper, or ballot papers, folded as aforesaid, into the ballot box;

(iv) as soon as every member who wishes to vote has done so, the person presiding at the meeting shall examine the ballot papers and determine the number of votes cast for each candidate and shall announce the result of the voting.

(7) The person presiding at the meeting shall declare duly elected the candidates equal to the number of male or female vacancies to be filled in terms of subsection (2)(a)(i) or 2(b)(i), or equal to the number of non-specified vacancies to be filled under subsection 2(a)(ii) or (2)(b)(ii), and in whose favour the greater or greatest number of votes are recorded: Provided that the number of votes so recorded in respect of each such candidate, shall not be less than the majority of all the members of the regional council.

(8) If due to an equality of votes or the proviso to subsection (7), the number of candidates declared duly elected as contemplated in that subsection, are less than the number of vacancies to be filled, the meeting shall be adjourned on one occasion to a time during that day or the next day determined by the person presiding at such meeting after consultation with the members of the regional council present at such meeting, whereupon at such an adjourned meeting a further vote shall be taken in accordance with the provisions of subsection (9).

(9) (a) At an adjourned meeting contemplated in subsection (8), nominations and voting for the remaining vacancies shall proceed *mutatis mutandis* in accordance with subsections (2)-(6).

(b) The person presiding at the meeting shall declare duly elected the candidates equal to the number of male or female vacancies to be filled in terms of subsection (2)(a)(i) or 2(b)(i), or equal to the number of non-specified vacancies to be filled under subsection 2(a)(ii) or (2)(b)(ii), and in whose favour the greater or greatest number of votes are recorded.

(c) If two or more candidates for any such vacancy have received the same number of votes, the candidate to be elected shall be determined by lot.

*Comment: This two provisions require that regional councils which have male and female members must send one male and one female to the National Council. The draft retains the basic election procedures which exist at present (a second round of voting if no candidate receives a majority of the votes in the first ballot, then determination by a plurality of votes if there is still no majority in the second ballot; ties in the first vote to be resolved by a second vote, but to be resolved by lot if they recur in the second ballot). However the draft requires separate voting for the male representative and the female representative.*

*It is necessary to provide for the unlikely possibility that there could be an all-male or an all-female council. Even though the bill requires that parties put forward equal numbers of male and female candidates for regional elections, under the constituency system it is possible that only men or only women might be elected for a given region.*

*If there is only one vacancy on the National Council (because the other member has died or resigned, for example), that vacancy should be filled by a person who is the opposite sex from the National Council member who is still representing that regional council. If this is not possible, because the council is composed of only male or only female members, then the vacancy may be filled by any member.*

#### **Amendment of section 2A of Act 23 of 1992, as inserted by Act 24 of 2000.**

3. Section 2A(2)(a) of the Local Authorities Act, 1992 is amended by the deletion of the words “and wards”.

#### **Amendment of section 5 of Act 23 of 1992, as amended by Act 3 of 1997 and Act 24 of 2000.**

4. Section 5 of Act 23 of 1992 is amended:

(a) by the substitution for the heading of the following heading:

**“Appointment of delimitation commission”**

(b) by the substitution for subsection (1) of the following:

“(1) The President shall appoint from time to time by proclamation in the *Gazette* a delimitation commission consisting of a judge or retired judge of the Supreme Court of the High Court of Namibia, who shall be the chairperson, and two other persons for the purpose of performing the functions described in section 2A.”

(c) by the repeal of subsections (2), (3), (6), (7), (8) and (9).

*Comment: This provisions relating to wards are repealed but the delimitation commission remains for the purpose of altering the boundaries of local authorities from time to time.*

**Amendment of section 6 of Act 23 of 1992, as amended by Act 3 of 1997 and Act 24 of 2000.**

5. (1) The following subsection is substituted for subsection 6(2) of the Local Authorities Act, 1992:

“(2) The members of a local authority council shall at the first elections held by virtue of the provisions of Article 137(5) of the Namibia Constitution and at all subsequent general elections to be held in accordance with the provisions of article 8, or at any election in respect of a new local authority established at any time, be elected on party lists.”

(2) The following subsection is substituted for subsection 6(4) of the Local Authorities Act, 1992:

“(4) For the purposes of any election contemplated in subsection (1) –

(a) the numbers of men and women on each party list may not differ by more than one

(b) the names of men and women on each party list shall alternate, so that each group of two candidates in the order of presentation on the list contains one candidate of each sex.”

*Comment: This provision provides for “zebra lists”. In the case of local authority councils with uneven numbers of members, the numbers of men and women on the list can differ by one (eg 5 candidates made up of 3 men and 2 women, or 7 candidates made up of 4 women and 3 men). The wording about alternate candidates is designed to apply to the entire list, including the first candidate and the last candidate – if you take any two names from the list in the order that the list presents them, you must have the name of one woman and one man. Parties would be free to choose whether to put a man or a woman at the top of the list. The provision would apply to residents’ associations as well as to political parties.*

**Amendment of section 13 of Act 23 of 1992, as amended by Act 24 of 2000.**

6. (1) Subsection 13(2) of the Local Authorities Act, 1992 is amended as follows:

“(2) When a member of a local authority council has vacated his or her office as such a member in terms of this section or has died, the chief executive officer shall forthwith by notice in the *Gazette* give notice that a vacancy in the membership of the local authority has occurred, the date on which it occurred and the cause thereof. ~~and, in the case of a member elected in respect of a ward, the ward in respect of which it has occurred.~~”

(2) The following is substituted for subsection 13(3)(a) of the Local Authorities Act, 1992:

“(3)(a) Subject to the provisions of paragraph (b), a casual vacancy in a local authority council shall be filled within three months after it has occurred by

the nomination by the party, association or organization which nominated the member who has vacated his or her office, by any person of the same sex on the election list compiled by that party, association or organization in respect of the previous election of the local authority council, or, if there is no such person, by nominating any member of that party, association or organization who is of the same sex as the member who has vacated his or her office.”

*Comment: This amendment removes all references to wards, and requires that casual vacancies be filled by persons of the same sex as the member who vacated the seat, in order to retain the gender balance.*

**Amendment of section 1 of Act 24 of 1992, as amended by Act 23 of 1994, Act 3 of 1997 and Act 30 of 1998.**

7. The definitions in section 1 of the Electoral Act, 1992 are amended as follows:

- (a) the words “required to be held on party lists” are deleted from the definition of “party list”
- (b) the words “or ward” are deleted from the definition of “presiding officer”
- (c) the definition of “ward” is repealed.

*Comment: These amendments relate to the elimination of the ward system for local authority elections.*

**Amendment of section 5 of Act 24 of 1992, as amended by Act 30 of 1998 and Act 11 of 1999.**

8. The following subsection is substituted for subsection 5(18) of the Electoral Act, 1992:

“(18) The Selection Committee shall at the meeting convened in terms of subsection (9) interview the applicants referred to in subsection (10), and shall in so doing act in accordance with the principles of transparency and openness, and shall make its recommendations in terms of subsection (21) with due regard to –

- (a) an applicant’s suitability, qualifications and experience;
- (b) the qualifications and criteria determined in terms of subsection (5);
- (c) the need for gender balance on the Commission; and
- (d) the objections, if any, lodged in terms of subsection (19).”

*Comment: The procedure for selecting members of the Electoral Commission is very elaborate, beginning with an invitation for applications from members of the public. Qualifications and criteria for members of the Electoral Commission are to be set by the Committee of Privileges of the National Assembly, and applications must be assessed in*

*light of these criteria. Affirmative action for women is applied in this draft by means of citing gender balance as a goal, rather than by insisting on a "quota" of women. The rationale is to make a minimal change here, so as to focus attention on the more crucial provisions concerning the 50/50 balance in elected bodies.*

**Amendment of section 13 of Act 24 of 1992, as amended by Act 23 of 1994.**

9. (1) Section 13(1)(b) of the Electoral Act, 1992 is amended by the deletion of the words "or where such area is divided into wards, in the particular ward of the local authority area in which he or she is resident".

(2) Section 13(3) of the Electoral Act, 1992 is amended by the deletion of the words "or ward" both times that they appear.

**Amendment of section 14 of Act 24 of 1992, as amended by Act 23 of 1994.**

10. Section 14(1)(b)(ii) of the Electoral Act, 1992 is amended by the deletion of the words "or, where such area is divided into wards, for each ward in that area".

**Amendment of section 16 of Act 24 of 1992, as amended by Act 23 of 1994.**

11. Section 16(1)(b) of the Electoral Act, 1992 is amended by the deletion of the words "or, where such area is divided into wards, for the ward in question".

**Amendment of section 18 of Act 24 of 1992, as amended by Act 23 of 1994.**

12. Section 18(2)(a)(ii) of the Electoral Act, 1992 is amended by the deletion of the words "or ward, as the case may be".

**Amendment of section 20 of Act 24 of 1992, as amended by Act 23 of 1994 and Act 30 of 1998.**

13. (1) Section 20(1)(c) of the Electoral Act, 1992 is amended by the deletion of the words "and, where such area is divided into wards, the ward in question".

(2) Section 20(4)(a) of the Electoral Act, 1992 is amended by the deletion of the words "or, where applicable, ward" and the words "or ward".

**Amendment of section 26 of Act 24 of 1992, as amended by Act 23 of 1994.**

14. Section 26(4) of the Electoral Act, 1992 is amended by the deletion of the words "or areas" and "or wards".

**Amendment of section 28A of Act 24 of 1992, as inserted by Act 23 of 1994 and amended by Act 19 of 1999.**

15. Section 28A(4)(b)(ii) of the Electoral Act, 1992 is amended by the deletion of the words "or where applicable, ward".

**Amendment of section 30 of Act 24 of 1992, as amended by Act 23 of 1994.**

16. Section 30(1) of the Electoral Act, 1992 is amended by the deletion of the words "or in any other ward of the same local authority area" and "or ward".

**Amendment of section 32 of Act 24 of 1992, as amended by Act 23 of 1994.**

17. (1) Section 32(1)(b)(iii) of the Electoral Act, 1992 is amended by the deletion of the words "or ward".

(2) Section 32(1)(c) of the Electoral Act, 1992 is amended by the deletion of the words "or ward". wherever they appear.

(3) Section 32(1)(f) of the Electoral Act, 1992 is repealed.

**Amendment of section 37 of Act 24 of 1992, as amended by Act 23 of 1994.**

18. Section 37(d) of the Electoral Act, 1992 is amended by the deletion of the words "or wards", "or wards, respectively" and "or wards, as the case may be" wherever they appear.

**Amendment of section 49 of Act 24 of 1992.**

19. (1) Section 45(2)(a)(iii) of the Electoral Act, 1992 is amended by the deletion of the words "in the ward in respect of which the vacancy in that council occurred,"

(2) Section 45(3) of the Electoral Act, 1992 is amended by the deletion of the words "or, where that area has been divided into wards, in respect of every ward in that area".

**Amendment of section 50 of Act 24 of 1992, as amended by Act 23 of 1994.**

20. Section 50(1)(a)(iii) of the Electoral Act, 1992 is amended by the deletion of the words "or, where such an area has been divided into wards, for the ward in which such an election is to take place".

**Amendment of section 51 of Act 24 of 1992, as amended by Act 23 of 1994 and Act 19 of 1999.**

21. (1) Section 51(1)(a)(iii) of the Electoral Act, 1992 is amended by the deletion of the words “or, where such area has been divided into wards, for a ward”.

(2) The proviso to section 51(1) of the Electoral Act, 1992 is amended by the deletion of the words “or ward”.

(2) Section 51(2) of the Electoral Act, 1992 is amended by the deletion of the words “or ward, as the case may be”.

*Comment: The amendments in sections 9-21 are all related to the elimination of the ward system for local authority elections.*

### **Amendment of section 59 of Act 24 of 1992, as amended by Act 23 of 1994.**

22. The following subsection is substituted for subsection 59(2) of the Electoral Act, 1992:

“(2) (a) The names on a list of candidates shall be selected at the political party’s discretion, with a view to the provisions of paragraph (4) of the said Schedule 4 to the Namibian Constitution: Provided that the numbers of men and women on each party list may not differ by more than one.

(b) The names on a list of candidates shall appear in such order as the registered party may determine: Provided that the names of men and women on each party list shall alternate so that each group of two candidates in the order of presentation on the list contains one candidate of each sex.

(c) The registration number of each candidate shall be stated on the list after his or her name.”

*Comment: This provision provides for “zebra lists” of candidates for the National Assembly. The current law requires that parties submit lists containing at least 24 but not more than 72 names. Thus, parties could submit lists of odd or even numbers of names. In the case of lists with uneven numbers of candidates, the numbers of men and women on the list can differ by one. Parties would be free to choose whether to put a man or a woman at the top of the list.*

### **Amendment of section 60 of Act 24 of 1992.**

23. Section 60(2) of the Electoral Act, 1992 is amended by the addition of the following proviso:

“Provided that the person whose name is added or inserted shall be of the same sex as the person whose name was deleted.”

*Comment: The provision requires that a person whose name has fallen off a party list for any reason prior to the election must be replaced by a person of the same sex.*

### **Amendment of section 61 of Act 24 of 1992.**

24. Section 61 of the Electoral Act, 1992 is amended by the insertion of the following subsection:

“(2A). The numbers of men and women amongst the candidates of any political party which nominates candidates in more than one constituency in a region may not differ by more than one in respect of that region.

*Comment: This requires any political party which contests more than one constituency in a region to include equal numbers of men and women amongst its candidates for that region. If the party fields an uneven number of candidates in that region, the numbers of men and women may differ by one. Because the law does not specify which constituencies must have male candidates and which must have female candidates, it is possible that all parties might field candidates of the same sex for a particular constituency. However, it would probably be an unfair interference with party and voter choice to earmark some constituencies for male representation and others for female representation. Therefore, this requirement might not produce perfectly gender-balanced regional councils.*

*Independent candidates can be of any sex. It would not be possible to regulate independent candidates without earmarking constituencies for representation by persons of one or the other sex.*

#### **Amendment of section 67 of Act 24 of 1992.**

25. (1) The following subsection is substituted for subsection 67(1)(b) of the Electoral Act, 1992:

“(b) is nominated on a party list, in a manner as hereinafter provided, as a member of a political party, by that political party.”

(2) Section 67(b) of the Electoral Act, 1992 is amended by the substitution of “(b)” for “(b)(i)” where this phrase first appears, and by the deletion of the words “for the purposes of the elections on party lists referred to in the said paragraph (b)(i)”.

(3) Subsection 67(3) of the Electoral Act, 1992 is repealed.

*Comment: These changes relate to the removal of the ward system in respect of local authority elections.*

#### **Amendment of section 68 of Act 24 of 1992, as amended by Act 23 of 1994.**

26. (1) Section 68(1)(a) of the Electoral Act, 1992 is amended by the deletion of the words substitution of “(b)” for “(b)(i)” wherever this phrase appears, and by the deletion of the words “for the purposes of the elections on party lists referred to in the said paragraph (b)(i)”.

(2) Section 68(1)(b) of the Electoral Act, 1992 is repealed.

(3) Section 68(2)(a)(ii) of the Electoral Act, 1992 is repealed.

(4) Section 68(2)(c) of the Electoral Act, 1992 is amended by the deletion of the words “or candidate”.

(5) Section 68(2)(d) of the Electoral Act, 1992 is amended by the deletion of the words “in the case of a nomination by a political party”.

(6) Section 68(2)(e) of the Electoral Act, 1992 is repealed.

(7) Section 68(3)(a) of the Electoral Act, 1992 is amended by the deletion of the words “or a candidate, as the case may be” and by the deletion of the words “in the ward” and “in that ward”.

(8) Section 68(3)(b) of the Electoral Act, 1992 is amended by the deletion of the words “or a candidate, as the case may be”.

(9) Section 68(3)(c) of the Electoral Act, 1992 is amended by the deletion of the words “or the person nominated as a candidate”.

*Comment: Most of this section deals with the removal of the ward system, which also takes away the possibility that independent candidates could stand for election at the local level.*

*Section 68(1)(a) requires (among other things) when a person’s name has fallen off a party list for any reason prior to the local authority election, this must be dealt with in the same way as for party lists for the National Assembly – that is, in a manner which maintains the required gender balance.*

#### **Repeal of sections 69-72 of Act 24 of 1992, as amended by Act 23 of 1994.**

27. Sections 69-72 of the Electoral Act, 1992 are repealed.

*Comment: These repeals remove sections of the act which apply only to wards.*

#### **Amendment of section 73 of Act 24 of 1992, as amended by Act 23 of 1994.**

28. Section 73(1) of the Electoral Act, 1992 is amended by the deletion of the words “or, where applicable, each ward of a local authority area”.

#### **Amendment of section 80 of Act 24 of 1992, as amended by Act 23 of 1994.**

29. Subsection 80(1) and subsection 80(2)(a) of the Electoral Act, 1992 are both amended by the deletion of the words “or, where applicable, the ward”.

#### **Amendment of section 89 of Act 24 of 1992, as amended by Act 23 of 1994.**

30. (1) Section 89(3)(b)(ii) of the Electoral Act, 1992 is amended by the addition of the following proviso:

“Provided that the requirements of section 59(2) are adhered to in respect of any additional candidates added to the party list in terms of this subsection”

(2) Section 89(4) of the Electoral Act, 1992 is amended by the addition of the following words at the end of the subsection:

“and such person’s place on the list shall be filled in accordance with subsection 89(3)(b)(ii).”

*Comment: These amendments ensure that any candidates added to the list at a later stage maintain the gender balance. Also, if a person on the list has died or is found not to qualify after the election has taken place, but before the results are declared, instead of simply skipping over that name on the list (which would affect the gender balance), the vacant spot on the list must be filled in such a way as to maintain the ‘zebra pattern’.*

### **Amendment of section 91 Of Act 24 of 1992.**

31. (1) The following subsection is substituted for section 91(1) of the Electoral Act, 1992:

“(1) When all the votes in respect of all the polling places in a local authority area have so been counted and the number of votes recorded has been determined, for each political party in that area, the returning officer concerned shall determine *mutatis mutandis* in the manner referred to in section 89(2) the number of candidates of that political party to be declared in accordance with the provisions of subsection (2)(a) of this section duly elected as members of the local authority council in question, as if the election for member of that council were an election for members of the National Assembly.

(2) Section 91(2) of the Electoral Act, 1992 is amended by the deletion of the words “in relation to- (a) an election referred to in paragraph (a) of that subsection” and by the addition of the following proviso to subsection 91(2)(ii)(bb):

“Provided that the requirements of subsection 6(4) of the Local Authorities Act, 1992 are adhered to in respect of any additional candidates added to the party list in terms of the subsection”

(3) Section 91(2)(b) of the Electoral Act, 1992 is repealed.

(4) Section 91(3) of the Electoral Act, 1992 is amended by the deletion of the words “of paragraph (a) or (b)”.

(5) Section 91(4)(a) of the Electoral Act, 1992 is amended by the deletion of the words “paragraph (a) of”, and by the addition of the following words at the end of the subsection:

“and such person’s place on the list shall be filled in accordance with subsection 91(2)(ii)(bb).”

(6) Section 91(4)(b) of the Electoral Act, 1992 is repealed.

**Comment:** *As in the case of the National Assembly, these amendments ensure that any candidates added to the list at a later stage maintain the gender balance. Also, if a person on the list has died or is found not to qualify after the election has taken place, but before the results are declared, instead of simply skipping over that name on the list (which would affect the gender balance), the vacant spot on the list must be filled in such a way as to maintain the 'zebra pattern'.*