

Southern Africa Report

Namibia's electoral reform

Implications for the 2014 elections

Dimpho Motsamai

Summary

Namibia will hold general elections in November 2014, and while a new Electoral Bill was tabled on 19 August 2014, there has been a lack of clarity as to when it would be passed into law. The new bill is the result of a protracted electoral reform process. Initially welcomed by the opposition, it gradually became a point of contention with the government after being delayed for several months. The Law Reform and Development Commission, which drafted the legislation, was alleged to have allowed political interference from the ruling Swapo Party of Namibia in the process. This is largely due to the introduction of unexpected constitutional amendments. These were passed in August 2014, despite a lack of consultation on the changes and the glaring fact that the proposed Electoral Bill was still pending. Therefore, instead of improving prospects for more efficient administration in the forthcoming elections, Namibia's electoral reform may instead undermine the credibility of its electoral processes.

NAMIBIA IS PREPARING TO HOLD general elections in November 2014. However, at the time of writing (September 2014), it still had to conclude the electoral reform process that was started in 2011. A new Electoral Bill was tabled in the National Assembly on 19 August 2014, but it was unclear when it would be passed. Presuming that the entire electoral reform is completed albeit, not as timeously as would have been ideal, the question arises whether the country will be ready to manage an election guided by a new electoral framework in barely two months' time. The number of people, in both political circles and society in general, who understand the likely impact of the changes, has arguably been very limited. A lack of clarity from the government about when the reforms will be concluded has largely characterised the process. This, particularly, has been more pronounced since the beginning of the year.¹ The ambiguity from government about the reform's logical

conclusion has been a key concern for the various stakeholders involved in the process. This is especially because the central objective of the reform exercise was to overhaul Namibia's election framework – not only to ensure that the 2014 polls are conducted professionally but also to limit the discontent and legal wrangling associated with Namibian elections in the past.

The electoral reform process, which was encouraged and welcomed by the small opposition and wider civil society in the country, has been hamstrung for several months by reported technicalities. However, the country's Law Reform and Development Commission (LRDC), which is drafting the legislation, also faces allegations of party-political interference in the process because of its apparent lack of communication. As the ruling party, the Swapo Party of Namibia (SWAPO) can significantly influence the outcome of the process. Recent developments in the country are lending credence to these claims.

The electoral reform process has been hamstrung for several months by reported technicalities

In July 2014, the LRDC apparently proposed and instituted far-reaching constitutional changes, 'outside' the initial election reforms discussed by stakeholders, which will concentrate more power in the Presidency and the executive branch of the state while diluting Parliament and crippling the opposition.² The amendments, for instance, include changes to the composition of the National Assembly, where the overall number of seats is to be increased from 72 to 96.³ The size of Parliament, in terms of the number of its members, will thus increase by 40% (in both chambers).

It was initially reported that a threshold would also be introduced for gaining a parliamentary seat, but this is not the case in the new Bill. There are, however, clauses that require parties to have a 'national character' when registering for the elections. They need 3 500 card-carrying members distributed equally across at least seven regions to qualify for participation. This will have a negative impact on smaller parties based in one or two regions. These last-minute amendments do not reflect the initial discussions during policy consultations. As a result they have caused concern that the revised election law may have 'surprise elements' added by SWAPO to further consolidate its power and disempower the opposition.⁴

The importance of passing this legislation must be seen in the context of previous attempts to fix loopholes in Namibia's election system. These attempts often did not achieve what they intended. For example, the Namibian Electoral Act 1992 has now been amended 11 times. Past efforts have been labelled as short sighted and ineffectual, since the amendments perpetuated systematic deficiencies in electoral administration and failed to respond to the need for quality election management. In fact, the electoral shortcomings in Namibia date back even further. They have been a feature of Namibia's troubled history of drafting election legislation since the first constituent assembly elections in 1989 that led to the country's independence from apartheid South Africa in 1990. Unfortunately, the problems have had a negative impact on the perceived credibility of the Electoral Commission of Namibia (ECN).

While uncertainty is a feature of even the healthiest political processes, the failure to guarantee the integrity of the 2014 electoral process by drafting and passing legislation that enjoys stakeholder consensus, and in a transparent way, could hamper the country's electoral management this year. It is with this in mind that this

REPORTED AMENDMENTS INCLUDE CHANGES TO THE COMPOSITION OF THE NATIONAL ASSEMBLY, WHERE THE OVERALL NUMBER OF SEATS IS TO BE INCREASED FROM

72 to 96

report documents the trajectory of the country's electoral reform, the politics driving the electoral reform dynamics, and the likely impact the process will have on the management and credibility of the November 2014 presidential and parliamentary elections. This report is the product of field research conducted with Namibian government and non-government stakeholders in April 2014. Divided into four main sections, the report discusses the political context of electoral reform in Namibia; the political dynamics surrounding it; the key reform proposal issues raised by stakeholders; and the impact the process could have on the political landscape in the run-up to the elections.

Since independence SWAPO has enjoyed a comfortable majority, but this is not to imply a lack of opposition

Political context of electoral reform in Namibia

Political power and its distribution, as well as the interaction between the ruling party, the opposition and the public, shape the political context within which electoral reform is managed. Moreover, it is widely recognised that political elites in power are only likely to support key reform processes if they can perceive a benefit to themselves or if they are apprehensive about the existing system.⁵ This is yet to be tested for the SWAPO government, although indicators point to a strong desire to maintain power through the unexpected constitutional amendments tabled in Parliament. Since independence, SWAPO has enjoyed a comfortable majority in Parliament. It not only amassed a two-third majority in all the national elections since 1994, but it also has retained control of most authorities in regional and local elections.

This is not to imply a lack of opposition in the country. However, the opposition does not have a significant presence in Parliament.⁶ This is best illustrated by the country's 2009 election results, which resulted in the 72-member National Assembly being dominated by SWAPO with 54 elected seats, with the highest number of opposition seats being the eight held by the official opposition, the Rally for Democracy and Progress (RDP).⁷ The remaining eight seats were divided among seven other opposition parties, with the Democratic Turnhalle Alliance (DTA), the National Unity Democratic Organisation (NUDO) and the United Democratic Front (UDF) obtaining two seats each. Four parties obtained one seat each, namely the Congress of Democrats (CoD), the Republican Party (RP), the All People's Party (APP) and the South West Africa National Union (SWANU). Out of all the parties in Parliament, the largest three are linked

to SWAPO, with the RDP and COD being SWAPO breakaways and the APP a breakaway from the COD.

The opposition in the national legislature presents little competition to SWAPO and is not, by and large, an effective political counterweight to the ruling party. There are various reasons for this state of affairs, many of which have nothing to do with SWAPO. However, what is key is that the ruling party's performance at the polls is strongly linked to the current electoral rules, which since 1992 have prompted various legal challenges by different parties, such as by the DTA in 1994, SWAPO in 2004, the RP and COD in 2004, and the RDP in 2010. The last case arguably gave fresh motivation to the attempt to make a legal U-turn in the country's established culture of electoral disputes.⁸ It lent the most recent impetus to the launch of the 2011 election reform process, whereby a High Court application by nine opposition parties was lodged to challenge the ECN's management of the 2009 national assembly elections. The main grievances included a constitutional and legal election framework perceived to be inadequate and faulty; an uneven playing field that favoured the incumbent party and prejudiced other political parties; an ECN 'controlled by SWAPO'; and a partial and unprofessional Electoral Commission. These claims have also been substantiated by opposition complaints concerning shambolic voters' rolls in previous elections and the lack of provision by the government of equitable funding for all political parties.⁹ Concerning the above matter before the courts, the High Court struck the case off the roll because of a late submission of court documents by the applicants, who then took the matter on appeal to the Supreme Court. That court referred the matter back to the High Court for a full hearing.

The opposition in the national legislature presents little competition to SWAPO

In 2011, a landmark ruling was made in favour of the opposition parties by judges Collins Parker and Petrus Damaseb. The ECN and SWAPO, which opposed the application, lost the case on appeal. The final ruling expressed dissatisfaction with the state of Namibia's electoral law, labelling it as 'very scattered'.¹⁰ The judges drew attention to the difficulties experienced by courts in adjudicating electoral disputes due to a myriad of amendments that make it difficult to ascertain applicable provisions. They concluded that the current electoral law was unsatisfactory and said that 'something must be done as a matter of urgency and before the next round of elections to consolidate the electoral law of Namibia'.¹¹ In their opinion, legislative intervention was

necessary, as some of the complaints made to the court had been premised on the repealed provisions of the 1992 Electoral Act, and there was confusion about the application of a range of election legislation.¹²

As a result of this ruling, the LRDC, a government institution mandated to consolidate and review all Namibian legislation, undertook the electoral reform initiative in 2011. The LRDC and the ECN did in fact agree that the election management problems stemmed from two main issues. The first of these was the constant electoral petitions by political parties against the ECN; and the second was the incessant legislative changes to Electoral Act 1992 (Act 24 of 1992), which had resulted in contradictions in terms of its legal application and interpretation. The fact that there were now nine pieces of legislation was confusing and difficult to apply.

The need for the Act to be amended 11 times was mainly ascribed to an incomplete drafting process following the UN-supervised elections of November 1989, as well as the rush to have a legislative framework in place for the December 1994 national polls.¹³ The amendments, which were linked to the 1994, 1999, 2004 and 2009 elections, and their objectives were as follows:¹⁴

- Electoral Amendment Act 1994 (Act 23 of 1994) defined procedures for legal revisions, deletions and repeals
- Local Authorities Amendment Act 1997 (Act 3 of 1997) elaborated on the definition of terms, and the establishment and constitution of the organs of the Electoral Commission
- Electoral Amendment Act 1998 (Act 30 of 1998), as amended by the Electoral Amendment Act 1999 (Act 11 of 1999), stipulated the transitional provisions relating to the Electoral Commission and the director
- Electoral Amendment Act 1999 (Act 19 of 1999) addressed the suspension of voter registration
- Electoral Amendment Act 2002 (Act 20 of 2002) provided for additional voter registration time
- Electoral Amendment Act 2003 (Act 7 of 2003) gave definitions, established temporary registration points and laid down the remuneration of election officials
- Electoral Amendment 2006 (Act 4 of 2006) addressed the empowerment of local authority area returning officers
- Electoral Amendment Act 2009 (Act 7 of 2009) specified additional rules and regulations and empowered certain electoral officers
- Electoral Amendment Act 2010 (Act 11 of 2010) defined the terms of office of members of the Electoral Commission
- Electoral Amendment Act 2012 (Act 8 of 2012) dealt with digital voter registration
- Electoral Amendment Act 2013 (Act 9 of 2013) set the dates for the third general voter registration

Apart from all these amendments having to be incorporated into one new Act, as determined by the LRDC, the following election management issues also needed to be addressed by revised legislation:¹⁵

- The ECN's lack of autonomy and independence. This is not provided for in the Namibian constitution.



THE MAIN ACTORS MANAGING
THE ELECTORAL REFORM
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THE LRDC, THE MINISTRY OF JUSTICE
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- Electoral machinery that is not fully insulated against political interference by the ruling party. For instance, the head of the ECN is considered a permanent secretary. In Namibia, permanent secretaries fall under the authority of the country's president, the prime minister or the minister concerned. This has resulted in confusion about lines of reporting and ECN accountability.
- The ECN's 'blurred' relationship with the Namibian public service and its lack of authority to develop an administrative framework that is distinct from the rest of Namibia's public service.¹⁶
- The voters' roll: different voter registers apply to different levels of government, i.e. there is one for presidential, legislative and regional elections, and another for local authority elections. These need to be combined into a single register. An additional problem is that the voters' roll has weak checks and balances, as it is not linked to the national population register and related census institutions.
- The common practice of registering voters without the individuals concerned having to present identity documents.
- Loopholes in the 'tendered ballot system': where voters can vote outside their constituency, but the process has inadequate checks and balances, and often no verifiable paper trail.
- The inadequate levels of transparency at the Central Elections Results Centre, its lack of accessibility, and the erratic and late release of results.
- The two-day voting arrangement period, which leads to suspicions of vote rigging (it was proposed that it be amended to one day).

Political dynamics and key drivers

The main actors managing the electoral reform process have been the Namibian government through the LRDC, the Ministry of Justice and the office of the Attorney General. The LRDC, which launched the Electoral Laws Reform Project (ELRP) in Windhoek on 30 August 2011, reports to the Ministry of Justice and is supervised by the Attorney General as far as the finalisation of proposed amendments for approval by the country's executive is concerned.¹⁷ The ECN has been a secondary and largely peripheral actor. As a case in point, both the LRDC and the ECN initially embarked on isolated processes of electoral review. The LRDC began its work in 2011 with the assistance of the Namibia Institute for Democracy (NID), which facilitated its national consultations. These were followed by consultations with the political parties registered with the ECN. According to the LRDC chairperson, Sacky Shanghala, direct consultations were held with most political parties except the

DTA, the Communist Party and the NDMC between 2011 and 2013.¹⁸

Originally, the ECN was not a partner to the LRDC process because of a decision by the LRDC chairperson that law reform generally was the exclusive mandate of the LRDC. In his view, the LRDC was therefore solely empowered to research and examine both the substantive and procedural legislation, and make recommendations on reform and further development. This was affirmed by the LRDC chairperson at the ECN's consultative workshop in March 2013 when he stated that the ECN's mandate was limited to directing, supervising and controlling elections in Namibia, whereas the LRDC had to 'ensure that the law [all branches of the law] is adequately reformed as may be required'.¹⁹ According to ECN contacts present at the consultative workshop, the attitude of the LRDC chair was somewhat dismissive and reinforced perceptions that this approach would render the ECN secondary if not peripheral to the electoral reform process.

ECN initiated its own process in 2011, which resulted in a White Paper on Electoral Law Reform

Despite this, the ECN initiated its own process in 2011 as part of its institutional introspection, which resulted in a White Paper on Electoral Law Reform.²⁰ In 2012, the LRDC called on the ECN to make a submission on electoral law proposals. On the basis of these proposals and its White Paper's recommendations, the ECN produced an Electoral Law Review Concept Paper. This was discussed and validated by government and non-governmental stakeholders in March 2013. The paper was subsequently submitted to the LRDC, which at the time had concluded its own public consultations.

The LRDC and ECN consultation processes thus run in parallel, with the former acting as the main driver. This resulted in the LRDC's drafting of the final legislation, which was submitted to the Attorney General and the Ministry of Justice in April 2014.²¹ According to various sources, the fact that both institutions embarked on law reform resulted in institutional tension and differences of opinion between the ECN and the LRDC. It is also apparent that the opposition parties and civil society played only a secondary role in both processes. According to the opposition, its role was restricted to making submissions in good faith on the two proposals, even though there were no adequate procedures for giving feedback. In other words, there was no express guarantee from the LRDC in particular that party inputs would be considered or that the outputs of the process would be shared timeously.

The reforms proposed by the combined opposition were submitted to the LRDC in October 2011 following the LRDC's launch of its ELRP.²² Thereafter there was little consultation, to the dismay of the opposition, and there were differences between the opposition and the ECN regarding outstanding work on the reform process, the proposed amendments, and probable timeframes for enacting and implementing new legislation. All these issues have underlined the opposition's concerns about the ensuing opaque handling of the process. The parties are increasingly worried that the impasse over the new legislation will disadvantage them in the November polls.²³ Some opposition members consider the process as SWAPO-dominated and question the impartiality of the LRDC, as its chairperson is a member of SWAPO's think tank. In August 2014, the LRDC's chairperson also emerged as a would-be candidate on SWAPO's party list for the National Assembly.

Moreover, Attorney-General Albert Kawana, who has significant decision-making powers over the contents of the new Bill, is a member of SWAPO's politburo. The Minister of Justice, Utoni Nujoma, who presides over the process, is also a SWAPO party member. The LRDC has been criticised for being a one-man show since only one commissioner other than the chairperson is serving in the commission. The previous five commissioners ceased to hold office when their terms of office (of three years) lapsed in November 2013.

The country's last three elections have produced more or less the same number of parliamentary seats for the ruling party

More cynicism about the credibility of the process has been caused by the view in some quarters that SWAPO would never craft legislation that would enable the opposition to participate in electoral processes as equals.²⁴ This cynicism derives in part from the fact that the country's last three elections have produced more or less the same number of parliamentary seats for the ruling party.²⁵ It should be noted as well that SWAPO's submissions to the LRDC on the proposed reforms were neither made public nor made available to the other political parties. SWAPO was subsequently accused of 'hijacking' the process by attempting to introduce its proposals to the consolidated submission of the LRDC. This refers to the fact that SWAPO's 50/50 gender quota, which it adopted as a party strategy, would now be mandatory for all political parties.²⁶ It was also claimed that there were divisions within SWAPO over the shape of the final election Bill and that this undermined transparent and effective policymaking.²⁷ The opposition argues that it will be in SWAPO's interest to delay the finalisation of the election legislation and pass the Bill with limited consultation.

In terms of civil society input into the electoral reform, views are varied. In general, this is because cooperation between the government and non-governmental organisations (NGOs) has been characterised by apathy from civic groups, on the one hand, and tensions with the organisations that challenge the government and SWAPO, on the other.²⁸ There is also a belief that the Namibian government, while generally open to consultative processes when drafting laws and policies, is selective as far as NGO engagements are concerned, and that it consults only with those that support SWAPO. At the other end of the spectrum is the view that the government consults extensively with NGOs but deliberately fails to take their inputs into consideration, thus consulting superficially and in bad faith.²⁹

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THE NUMBER OF MAIN PROPOSALS
THE ELECTORAL COMMISSION OF
NAMIBIA (ECN) HAS MADE

According to the LRDC, a special consultation with NGOs and civil society was arranged in 2012 under the auspices of the Namibian NGO Forum (NANGOF) umbrella network. This allowed institutions such as the Institute for Public Policy Research (IPPR) and Citizens for an Accountable and Transparent Society to give their input on various matters relating to the electoral process. However, few NGOs were represented at the meeting. Most of the civic groups were subsequently largely inactive as far as their engagement with the LRDC and the ECN was concerned, despite the convention that 'public policy and law is too important to be left in the hands of politicians alone'.³⁰

SWAPO's 50/50 gender quota, which it adopted as a party strategy, would now be mandatory for all political parties

Main issues addressed in the ECN proposals

Issues of both a substantive and an operational nature are addressed consistently in all the proposals submitted by stakeholders. Substantive issues are concerned with legislation that guarantees independence, impartiality and consistency in election management. Operational issues refer to efficiency, sustainability and professional conduct. The ECN has made 13 main proposals. These cover all three phases of an electoral cycle. The main emphasis of the proposals is on the following:³¹

- Constitutional protection for and the autonomy of the ECN, which is not stipulated in the Namibian constitution.
- Clarity on the ECN's executive authority, primarily its managerial autonomy.
- Voter registration, in particular the necessity to amend the constitution as regards proof of residence requirements. The current situation disenfranchises Namibians who live in informal settlements and do not receive municipal bills, which means that they cannot validate their place of residence. Another demand is to abolish sworn statements used to vouch for people who do not have identity documents.
- Development of an electoral dispute resolution system, since the prevailing one relies quite heavily on the use of magistrates' and other courts. There is no hierarchy of dispute resolution.
- Development of political party funding legislation and regulation of political party financing arrangements.
- Gender mainstreaming such that the incorporated reforms are gender responsive.

The consolidated submission from the LRDC largely mirrors the issues raised in the ECN proposals, but includes some additional points, namely:³²

- The independence and autonomy of the ECN. It must be able to operate at arm's length from the Executive, have its own budget and staff, and be accountable to the Legislature. Implicit in this proposal is the need to strengthen the ECN's structural, functional, behavioural and financial independence.
- The composition of the ECN. The selection of commissioners must be public and transparent; the number of commissioners must be increased from the current five to seven; and the ECN must be chaired by a (retired) judge or someone qualified to be a judge.
- Voter registration, in particular repeal of the provision allowing a vote to be registered by sworn statement. The ECN should maintain a national register linked to the national population register to ensure the continued cleaning up of the voters' roll, including the removal of 'ghost' voters.
- A provision that voting will held on just one day and that the tendered ballot system be done away with.
- Government to finance political parties and organisations on an equal basis, with the funding of the day-to-day activities of parties being based on the numerical strength of each political party or organisation in Parliament.
- The establishment of Party Liaison Committees (PLCs) as permanent structures within the ECN and their extension to embrace independent candidates and registered associations and organisations.
- Establishment of an electoral court that has the same powers as the High Court in relation to electoral matters such as appeals, applications, petitions and reviews. The court is to have exclusive jurisdiction on all matters falling under the new electoral Act.
- The new Act should provide for mechanisms that make it easier to hold the ECN accountable and enables the ECN to be taken to court. It should also enable the director of elections and the ECN commissioners to be held personally accountable for the transgression of electoral laws.
- The proposed electoral court should adjudicate election petitions and the deadlines for different stages of court applications should be extended. In the case of court judgements, reasonable deadlines should be set by law to avoid long drawn-out court cases. The legal costs for court applications should be carried by the state, but there should be stipulations to prevent the frivolous abuse of the provision.

- The regulation of state-owned media (print and electronic) in respect of election-related coverage. News coverage by the Namibian Broadcasting Commission (NBC) has been criticised by opposition politicians for advancing SWAPO causes, especially during national and regional elections.

Implications for the 2014 elections

Successive elections have seen SWAPO consolidate and increase its support among the electorate, from 57,3% of the National Assembly vote in 1989 to 76,1% in 2004 and 76,4% in 2009. The opposition, especially the RDP, has also gained ground, getting 11,8% of the vote in 2009. The DTA came next with 3,02%, while the remaining 9,49% of the vote was divided among the other opposition candidates. Contested changes to the country's constitution and electoral legislation should therefore be understood in the context of a strong incumbent and a struggle by the opposition to guard against changes that could further reduce its political space and even electoral participation.

At the time of writing, the LRDC had drafted an Electoral Matters Bill to be tabled in Parliament as the new election legislation.³³ Further to this is the Namibia Constitutional Amendment Bill, the so-called 'surprise element' of the electoral reform, criticised by the opposition and civic stakeholders as having been outside the scope of the electoral reform project. The proposed constitutional amendments were arguably also ill timed considering that the outgoing Parliament and government did not have enough time to consider the proposals before November, when the elections will be held. On the one hand, the constitutional changes were rushed through Parliament without adequate consultation; and on the other, the new Electoral Bill is indeed being introduced too close to the election, also without adequate time for stakeholders to study it and give their feedback.

The implications of the electoral reform for the on-going preparations for the November 2014 elections are grave and can be split into three key matters. The first relates to the different expectations from and reactions to the outcome of the process and the substance of amendments by the ECN, opposition parties, NGOs and electorate. The second is the retroactive power of the new laws: what aspects of the country's electoral cycle will be affected by the revised legislation? The third is how electoral reform will increase or decrease political equality for the opposition, and whether it will permit electoral outcomes to be challenged by legal and extra-legal means. As far as the preparations for the November elections are concerned, it can be concluded that the ECN, the opposition parties and the electorate will be affected in different ways. These are described below.

For the ENC

- Public awareness and confidence-building: The electoral reform has been driven by the LRDC and this has limited the ECN's role of open engagement in terms of the evolution and potential impact of new election laws. Political parties have lobbied the ECN to raise public awareness about these key issues.
- ECN-LRDC relationship: The two organisations have had a challenging relationship and will have to define the interactional roles between themselves in order to shape policy and address institutional change once the new legislation has been implemented.
- Institutional bureaucracy: It will be a challenge to transform the ECN completely. As an institution that still retains remnants of its past identity as a ministerial department, the ECN has to absorb fully its intended role under the new legislation.

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IN 2009

Although formal rules may change overnight because of political or judicial decisions, informal constraints embodied in customs, traditions and codes of conduct are much more impervious to deliberate politics.

- Implementation capacities: The selection, timing and sequencing of reforms are crucial for successful implementation. With less than two months before the elections are to take place, the meticulous and accurate implementation of revised electoral procedures will be a great challenge. Raising public awareness of the revised electoral legislation and educating voters are among the more immediate challenges.
- New voting procedures: Electronic voting machines (EVMs), untested in Namibia, will reportedly be used for the first time in the 2014 polls, but it is unclear whether they will be used on their own or parallel to the traditional ballot-paper system. The legal framework for switching to EVMs is not clear.

For the opposition parties

- Political participation: The law reformers and the ECN have failed to inform political parties sufficiently about the ensuing changes and their implications for the wider electoral period in 2014.
- Voter registration and credibility of the voters' roll: The official opposition has already challenged the general voter registration process that began in January 2014 under the 'old and faulty' legislation. The RDP led a campaign to inspect the voters' roll in April 2014. The roll was found to contain fraudulent and duplicated names, including, apparently, the names of Angolan citizens thought to have been registered through the abuse of the sworn statement provision.³⁴
- Political campaigning: The legislation that guides election campaigns is unclear, as is the voting schedule.
- Political party funding: Most parties depend on government funding, which is provided in proportion to a party's representation in the National Assembly. This system has proved to be inadequate, marginalises smaller parties, and gives disproportional bias to SWAPO.

For the electorate

- Perceptions of and trust in the ECN: Potential chaos with regard to the interpretation and application of new legislation may foster widespread scepticism about the ECN's management of future elections.
- Voter apathy: Ultimately, voter apathy is the result of distrust in electoral processes and outcomes. It is deepened by the absence of viable political alternatives. A lack of

understanding of new election legislation may lead to political disinterest and disillusionment with participation in elections in general.

- Disenfranchisement: Public awareness of the electoral reform process has been low, which may disenfranchise the voting public should new electoral rules that have not been popularised be applied. There have been suggestions that the ECN establish a civil society liaison committee for the purpose of transparency, accessibility and the timely dissemination of information.³⁵

Conclusion

Not all movements for the review and change of electoral legislation are successful and prevailing political circumstances will largely determine their outcomes. In Namibia, the political context within which the electoral reform has been managed has been characterised by opaqueness on the part of the LRDC and allegations of SWAPO's potential politicisation of the process. There is a growing belief that, due to the delays in concluding the process timeously and transparently, the likelihood of covert policymaking and instituting changes otherwise not agreed by stakeholders is high. This seems to be borne out by the introduction of constitutional amendments understood to be outside the scope of agreed electoral reforms. Namibia's electoral reform trajectory, initially relatively transparent and consultative, is indeed at a critical crossroads and is likely to be contested by both the opposition and civil society. However, the opposition has been unable to reassert control over the reform process, even during the final, legislative phases, and the resultant electoral legislation will be perceived as either 'forced' legislation or political engineering by the ruling party. Either way, it will not act as a panacea for the country's protracted electoral management problems.

The alleged covert overhauling of the country's constitution under the pretext of making amendments to the electoral law; the Electoral Matters Bill that has resulted from this opaque process and has yet to be published; and the resultant confusion and contestation over its application, are likely to have a negative impact on the management and perceived credibility of the elections. Rather than leading to improved electoral administration in this election year, the reforms may strongly undermine their credibility, as was the case in 2009 and electoral petitions against the ECN may, again ensue. Future controversies arising from the fact that some electoral processes have been circumvented are likely. Flaws in the voter registration process and a disputed voters' roll already demonstrate this. As such, the outcome of the reforms will potentially constitute a new source of struggle and discord in the 2014 electoral arena and in months succeeding the polls.

Notes

- 1 This is according to an interview with Sacky Shanghala, chairperson: Law Reform and Development Commission, Windhoek, 10 May 2014.
- 2 See *The Namibian*, Namibia: death of opposition, 23 July 2014, <http://allafrica.com/stories/201407230960.html>; and *Star Africa*, Namibia's main opposition rejects constitutional amendments, 28 July 2014, <http://en.starafrika.com/news/namibias-main-opposition-rejects-constitutional-amendments.html>.
- 3 See Namibia Law Reform and Development Commission: LRDC 31; Electoral Law Reform Project (ELRP) – Report on the Revision and Reform of the Namibian Electoral Framework Volume 2, July 2014, Windhoek.
- 4 Telephonic interviews with Libolly Haufiku, chief administrator, RDP, Tsudao Gurirab, COD, and Carola Engelbrecht, August 2014.
- 5 See International IDEA, *Electoral system design: the new International IDEA handbook*, Stockholm, 2005, p.20.
- 6 Interviews with Bernd Althusmann, head of the Konrad Adenauer Foundation – Namibia, and Dennis U Zaire, programme manager, Konrad Adenauer Foundation – Namibia, Windhoek, 28 March 2014.
- 7 Namibia's constitution stipulates that the National Assembly will have 78 members, with 72 elected on proportional representation based on the country's 13 regions, and six appointed by the president. The ECN determines the allocation of seats in proportion to the number of votes cast for each contesting political party. The president appoints a Delimitation Commission on the approval of the National Assembly to delimit regional and local government seats.
- 8 Interview with Dennis U Zaire, programme manager, Konrad Adenauer Foundation – Namibia, Windhoek, 28 March 2014.
- 9 See Second ruling of the high court in the matter *Rally for Democracy and Progress & Others versus Electoral Commission of Namibia & 5 Others*, Case No: A 01/2010 (No. 2).
- 10 Ibid., paras 325, 326, 160.
- 11 Ibid.
- 12 Interview with Sacky Shanghala, chairperson: Law Reform and Development Commission, Windhoek, 27 March 2014.
- 13 The 1989 'independence elections' took place seven months after the implementation of UN Resolution 435 and put in place a parliament with a five-year term that served as a constituent assembly as well. The 1994 polls consisted of presidential and parliamentary elections and were not based on a constituent model.
- 14 See Gerhard KH Tötemeyer, Electoral law and reform project: revision and reform of the Namibian Electoral Act (Act No. 24 of 1992), Law Reform and Development Commission (LRDC) Consultative Discussion Paper 19, Windhoek, June 2012, 28.
- 15 These are views from various interview respondents from the research and also ones highlighted in the Electoral Commission of Namibia Concept paper, (Windhoek, Namibia 2013) and the the Namibia Law Reform and Development Commission's Electoral Law Reform Project (ELRP) – Report on the Revision and Reform of the Namibian Electoral Framework Volume 2, Windhoek, July 2014.
- 16 Interview with Professor Joseph Diescho, executive director of the Namibia Institute of Public Administration and Management (NIPAM), 26 March 2014.
- 17 Interview with Sacky Shanghala, chairperson: Law Reform and Development Commission, Windhoek, 27 March 2014.
- 18 The LTDC met the following parties: APP, COD, DPN, MAG, NDP, NUDO, RDP, RP, SWANU, SWAPO, UDF and UPM.
- 19 These remarks were presented at the ECN's Consultative Workshop held in Windhoek, 12–13 March 2013.
- 20 Interview with ECN commissioner Barney Karuumbe, 31 March 2014.
- 21 Interview with Moses Ndjarakana, ECN director of elections from March 2008 to July 2013, Windhoek, 26 March 2014.
- 22 The proposed reforms were submitted jointly by the APP, CP, COD, DPN, DTA, NUDO, RDP, RP, UDF and the UPM.
- 23 Interview with Tsudao Gurirab, COD, Windhoek, 4 April 2014.
- 24 These are views expressed by the COD, the APP and the RDP during interviews conducted with their representatives from 27 March to 2 April 2014.
- 25 Interview with Tsudao Gurirab, COD, Windhoek, 4 April 2014.
- 26 See *New Era*, '50/50 gender quota debate rages on', 31 July 2014, <http://www.newera.com.na/2014/07/31/5050-gender-quota-debate-rages-on/> (accessed 2 August 2014).
- 27 Telephone interview with opposition sources who wish to remain anonymous, 18 June 2014.
- 28 Interview with Phil Ya Nangoloh, Director of NAMRights, Windhoek, Namibia, 4 April 2014.
- 29 Interview with Carola Engelbrecht, director, Citizens for an Accountable and Transparent Society (CATS), Windhoek, 1 April 2014.
- 30 Interview with Tsudao Gurirab, COD, Windhoek, 4 April 2014.
- 31 See the Electoral Commission of Namibia Concept paper, 17–20, Windhoek, Namibia 2013.
- 32 See the Namibia Law Reform and Development Commission: LRDC 31; Electoral Law Reform Project (ELRP) – Report on the Revision and Reform of the Namibian Electoral Framework Volume 2, Windhoek, July 2014.
- 33 Ibid.
- 34 Interview with Libolly Haufiku, chief administrator, RDP, Windhoek, Namibia, 11 May 2014.
- 35 See Carola Engelbrecht, *Civil society consultative workshop on the legal framework for free and fair elections in Namibia*, Windhoek, 25–26 February 2008, Workshop report, Windhoek: NANGOF Trust Election Coalition (NTEC) & Friedrich Ebert Stiftung.



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About the author

Dimpho Motsamai joined the ISS in 2010 as a researcher in the Conflict Prevention and Risk Analysis division. Her work focuses on the Southern African Development Community's peace and security policies and structures; and security and conflict vulnerability dynamics in Swaziland, Lesotho, Zambia, Botswana and Namibia and Mozambique. Dimpho studied at the University of the Witwatersrand (Wits) in Johannesburg and holds a master's degree in international relations. She is currently pursuing a doctoral degree at the Wits School of Governance.

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Block C, Brooklyn Court,
361 Veale Street
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Pretoria, South Africa
Tel: +27 12 346 9500
Fax: +27 12 460 0998
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4th Floor, Immeuble Atryum
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