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**Comments on the Namibian Presidential
and National Assembly Elections**

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National Democratic Institute For International Affairs

conducting nonpartisan international programs to help promote, maintain and strengthen democratic institutions



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Comments on the Namibian Presidential and National Assembly Elections December 7-8, 1994

On December 7 and 8, 1994, Namibia held Presidential and National Assembly elections, the first national elections to be administered by Namibians without major international assistance. The National Democratic Institute for International Affairs (NDI) maintained an office with two representatives in Namibia who were active before and throughout the election process. NDI has paid close attention to electoral developments in Namibia through these representatives' activities, which included interactions with the Directorate of Elections and political leaders, as well as direct observations and press reports. The comments presented here are based on these activities and are offered in the spirit of international cooperation and ongoing support for Namibia's democratization process.

NDI has been working in Namibia since before independence, beginning with its first election observation mission in May 1989. During the ensuing six years, the Institute has focused its efforts on parliamentary training, election-related programs and political party building. NDI's programs related to the 1994 elections included voter education, political party training and party agent training. The Institute's programs were supported by the U.S. Agency for International Development and the National Endowment for Democracy. NDI field representatives were provided access to all stages of the election process in the course of these programs. Furthermore, NDI maintained close communications with the political parties throughout the process. NDI representatives observed the voting and the counting but at no time did they attempt to make a comprehensive assessment of the elections, nor did they seek to supervise the elections or certify the integrity of the process.

Overall, the election process in Namibia appeared to operate smoothly. The Namibian government should be commended for its commitment to adhere to the elections schedule prescribed in the constitution. Priority was placed upon adequate registration, voter education and transparency. Officials emphasized secrecy of the ballot and public ownership of the elections. Measures were taken to ensure the integrity of the process, such as permitting international observers into the polling and counting stations, encouraging the use of party seals for the ballot boxes and allowing party agents to remain in the polling station before, during and after the voting process.

Efforts were made by the Electoral Commission, the Directorate of Elections and the political parties to make the process smooth and fair. Although some problems did occur, they did not appear to be widespread or intentional. The elections marked another significant step forward in Namibia's democratic process.



ELECTORAL ADMINISTRATION

Namibia's Electoral Commission is empowered by the 1992 Electoral Act with the "exclusive authority to direct, supervise and control in a fair and impartial manner any elections" under the Act. This includes, among other matters, supervision and control of voter registration, registration of political parties and the actual conduct of elections. The Electoral Commission consists of a chairperson, who must be a judge of the Supreme Court or High Court, and four other persons appointed by the president of the Republic, with the approval by resolution of the National Assembly.

The Directorate of Elections, set up under the prime minister's office, is responsible for the administrative and clerical work involved in the performance of the Commission's functions. The director of elections, the head of the Directorate, serves as secretary of the Electoral Commission and exercises administrative authority subject to the direction and control of the Commission. The prime minister's office must approve expenditures of the Directorate of Elections.

The Republic is divided into constituencies for the purposes of elections, which are subdivided into polling districts. The highest election officer in each constituency is the returning officer, who exercises functions subject to the direction and supervision of the director of elections. Each polling district contains a polling station, headed by a presiding officer and staffed by polling officers. In addition, counting officers assist in the determination of the result of the poll.

PRE-ELECTION ACTIVITIES

Building on lessons learned during the local and regional elections in 1992, election officials worked to strengthen the electoral process. A number of positive developments distinguished these elections from those held in 1992.

- 1) The voter registration process was simplified because the Directorate of Elections was able to use the registration list from 1992 as a base. The Directorate made substantial efforts to register all qualified voters and update the voter rolls. At the same time, there were problems, such as sufficiently communicating with the public about the location of mobile registration sites and numerous last-minute requests for duplicate registration cards. There also was a lack of understanding of the registration process by some officials. The Directorate promptly responded to these problems by extending the registration period for one week to accommodate those who had been unable to register and to address other issues.
- 2) The 1994 Electoral Amendment Act amended the 1992 Electoral Act, which prompted several significant changes. Among the changes was the introduction of a tendered ballot system, whereby a voter could cast a vote outside of the constituency

in which he or she was registered. Provision was also made, starting in 1995, for continuous registration.

3) The Directorate held weekly meetings with representatives of all political parties and the media in an effort to communicate and respond to questions. Weekly press conferences updated the media on any progress or problems the Directorate encountered.

4) Preparation of voting materials was done in an expeditious and effective manner. Ballot boxes, invisible ink, ballot papers, t-shirts for election officials and other materials were obtained and distributed to regional and local sites in advance of the elections.

5) More time was used for the selection and training of election officials than in 1992. The Directorate began the selection process in early October immediately upon completion of the registration process. All officials, including presiding and returning officers, had been chosen by the beginning of November, and the Directorate made a concerted effort to train all officials. The Directorate continued to rely on many civil servants whose services are cheaper than those of regular citizens.

6) The parties were better able to communicate with the electorate through the print and broadcast media. Coverage was given to political rallies, panel discussions between party representatives and other political events. Individual party advertisements were also run. As in 1992, weekly meetings were held between the political parties and the Namibia Broadcasting Corporation, a parastatal organization and the major radio and television station in the country. Both the NBC and the parties were more committed to using the meetings as a way to resolve issues related to elections coverage than was previously the case. The meetings were well attended and generally marked by a spirit of cooperation.

7) Three organizations launched voter education campaigns to target the rural and illiterate electorate. The Directorate, the Namibia Institute for Democracy and NDI took part in the production of radio talk shows, dramas, public service announcements and posters. The goal was to encourage the public to vote by reiterating the importance of individual participation in a democracy. There was broad agreement after the elections that voters were much better informed during these elections than in 1992, as demonstrated by the small number of spoiled ballots.

8) For the first time, Walvis Bay residents participated in Namibian general elections.

Notwithstanding these positive developments, some problems did occur during the pre-election period.

- 1) There appears to be a continued lack of trust between the political parties and the official electoral bodies. While the Electoral Commission is generally regarded as impartial and unbiased, uncertainty exists among a number of political actors concerning the objectivity of the Directorate of Elections.
- 2) The registration process encountered some obstacles, among them difficulty with the public distribution of information regarding registration sites. Complaints were heard that mobile stations occasionally did not appear on time and sometimes did not appear at all. Approximately 34,000 people applied for duplicate registration cards, a figure much higher than anticipated by the Directorate. It is important to note that these issues should be moot in upcoming elections, because the 1994 Electoral Amendment Act provides for continuous registration in the regions starting in 1995.
- 3) As the Directorate has noted, insufficient time was allotted to adequately train election officials. In addition, there were reports that some officials were absent from training sessions.
- 4) There were undocumented and unconfirmed reports of intimidation, including farmers refusing to let their workers register or receive voter education and traditional leaders refusing to allow political parties to campaign freely.

VOTING DAY ACTIVITIES

Election day procedures also were marked by a number of positive developments, including the following.

- 1) On election day, the balloting appeared generally open, orderly and well-administered.
- 2) The atmosphere in and around the polling station was peaceful, and there were few substantiated reports of intimidation or misconduct.
- 3) Voter turnout was 76 percent of registered voters, a figure higher than anticipated by most groups involved in the process.
- 4) Less than 2.5 percent of the ballots were spoiled, indicating the electorate's understanding of the voting procedures.
- 5) The elections appeared to be transparent, according to party agents and international observer reports. When small problems arose the party agents were often able to assist the election officials in resolving the situation.

Minor irregularities occurred at a few stations. Among them were the following.

- 1) There were complaints of late openings of polling stations, as well as isolated shortages of materials, defective invisible ink, ballot boxes sitting unguarded, parties campaigning closer than legally permitted to polling stations and confusion over how to use the secret stamp. Election officials were not always well-informed about the procedures, particularly about the recently introduced tendered ballot.
- 2) Lines outside the polling station were long on the first day of voting, partially due to the government's decision to declare December 7 a public holiday.
- 3) Many more tendered ballots were cast than expected. There has been speculation that the tendered ballot system was abused by voters who did not want to wait in long lines and sought a less populated station nearby, where they cast tendered ballots. The large number of tendered ballots cast caused shortages of ballot papers at certain stations and delays in counting the ballots.
- 4) Complaints were heard from party officials who claimed they tried to reach the Directorate by telephone or fax during the first day of voting to report problems, but were unable to get through on the Directorate's single phone line. The Directorate claims to have received only one written complaint during the polling days and a few telephonic complaints from the official opposition party, the Democratic Turnhalle Alliance (DTA).
- 5) Some voters arrived at the polling station unaware of the documents needed to vote.

FORMAL COMPLAINTS

A formal complaint was lodged with the High Court of Namibia by the DTA, charging that irregularities occurred in the elections, and asking that an independent audit be conducted of votes in certain regions and 90 ballot boxes that were returned unsealed. The complaint, which centered on four polling districts in three northern regions where the number of ballots cast exceeded the number of registered voters, included affidavits alleging inconsistent practices throughout the voting and counting process. The application was dismissed by the Court in a 2-1 decision on the grounds that the Court was not empowered by the Electoral Act or the Constitution to order the relief sought in the circumstances.

There are 95 constituencies in Namibia. The four implicated in the complaint represent 3 percent of the electorate. The number of ballots cast in these four constituencies exceeded the number of registered voters by approximately 1,000 votes. The excess represents far less than 1 percent of the total votes cast (497,499). While these problems could have very serious implications, no evidence has been presented to date that suggests



they were national in scope or that they affected the outcome of the presidential or National Assembly contests.

Nonetheless, there is cause for concern that the existing system did not provide for resolution of these inconsistencies. The Court stated that based on the evidence provided, "[Q]uite clearly an irregularity occurred and an explanation is called for." In four of the eight constituencies, namely Engela, Oshikango, Ogongo and Okatjali, votes cast exceeded the number of voters registered in each constituency. The Directorate of Elections responded to this complaint by explaining that it was due to the mishandling of tendered ballots by elections officials. The Court said that while the explanation was plausible, "the very fact that returns showed that more votes were cast than there were registered voters must be regarded as constituting strong grounds for ordering an inspection of the election material received from those four constituencies." The court noted that the Electoral Commission has the power to order such an inspection in these circumstances while the court may only do so in criminal prosecutions.

The Court noted with surprise that Section 93(4) of the election law, as amended, restricts its power to order the opening of sealed election materials only in criminal prosecutions. The Court also stated that by enacting such provisions the legislature "placed a severe fetter on the Court's ability to ensure that justice is done between the parties to an election application..." It added that the remedy to the circumstances "must be sought in an appropriate amendment to the [Electoral] Act."

The Court's ruling, which has drawn criticism from some quarters in Namibia, passes the responsibility to the Electoral Commission to order an investigation of the irregularities found by the Court. It also passes responsibility to the legislature to empower the courts to provide effective remedies in similar cases in the future.

TABULATION OF RESULTS

Counting agents and observers at the counting stations indicated that the counting process was transparent. There were a few reports of loose seals on ballot boxes, unattended or unlocked boxes and an excessive number of spoilt ballots in the president's constituency. However, such reports were isolated.

The results were announced five days after the voting ended on a live simultaneous television and radio broadcast. The announcement was delayed by several days because of logistical difficulties in bringing the tendered ballots to the capital city for counting and the problem in four northern constituencies described above under "Formal Complaints." After a quick investigation of these problems, the Commission announced the results.

According to the Electoral Commission, the decision to announce the results was based on several factors. The Commission argued that: the results could not be delayed indefinitely; it would have taken approximately two months to match the 1,000 ballots in



question with the ballots' counterfoils; and provisions within the Electoral Act permit a party to dispute the election results by filing an application with the High Court. This meant that if a party disagreed with the results, it was free to lodge a judicial challenge that could lead to setting aside the results. DTA's court case, described above, sought judicial relief but was dismissed by the Court.

COMMENTS AND RECOMMENDATIONS

Namibia's experience with elections began with the UN-administered national elections in 1989 that led to Namibian independence. In May 1989 NDI made 11 recommendations to UNTAG for the conduct of elections and all but one was accepted. The one that was rejected -- creation of an independent electoral commission -- continues to be an important issue and is again recommended in this report. The 1989 elections were followed by Namibian-run local and regional elections in 1992. As noted above, a number of significant improvements have been made to Namibia's election system. Namibia's 1992 Electoral Act, together with the 1994 Electoral Amendment Act, compares favorably with international electoral standards. There are several areas where further clarifications and refinements could improve the process. Following are recommendations that address some of these areas. The recommendations are based on NDI's experience in Namibia and numerous other countries. They are offered in the spirit of international cooperation and support for Namibia's continued democratic development.

1) Independence of Electoral Authorities. Questions concerning the objectivity of the Directorate of Elections have been raised by political parties. The perception of the Directorate of Elections as an impartial and politically neutral body would be enhanced if it were made independent of any ministry. Serious consideration should be given to this important issue.

Namibia's Electoral Commission is an independent body as provided under the Electoral Act. The Directorate of Elections is responsible for the administrative and clerical work of the Electoral Commission (Article 11). The Directorate is administered by the Director of Elections, who exercises powers subject to the direction and control of the Electoral Commission (Article 11). The Directorate of Elections, however, is a division of a ministry (Article 11) and is placed under the prime minister's office. Budget expenditures are therefore matters for approval by the prime minister's office. In addition, the Electoral Commission must reach agreement with the ministry concerning personnel to assist in administering its activities. These provisions may create bureaucratic complications and lead to a perception that the Directorate could be subjected to pressures that might affect its ability to function impartially.

In many electoral systems, the official in charge of directing elections and the corresponding administrative body is directly under the election commission for all purposes, including budgetary matters. The election commission is responsible for presenting a budget to the appropriate body and receives a direct appropriation for all electoral matters. The



election administrators then answer to the election commission concerning budgetary and personnel issues. This reinforces public confidence in the independence of electoral administration. Such an arrangement would enhance the public's perception of the Directorate of Election's impartiality.

2) The Permanent Voter Registration Process. The permanent voter registration process provided in the 1994 Electoral Amendment Act should be implemented as soon as practicable. This would avoid many problems that the Directorate confronted with mobile registration teams and last-minute applications for duplicate registration cards.

3) Electoral Commission Investigation of Irregularities. The Electoral Commission, in order to ensure public confidence in the election process, may see it within its purview to consider ordering an investigation, under Article 94, of the irregularities found by the Court in the DTA case. The scope of the investigation could take the form described by the Court in the event that the Court had been empowered to order such action. The investigation could culminate in a report that includes recommendations for avoiding such problems in the future.

4) Clarification of the Court's Power under the Electoral Act. The DTA case revealed certain inconsistencies within the Electoral Act concerning the provision of effective remedies for electoral applications (complaints). The legislature, therefore, may find it appropriate to consider amending the Electoral Act to empower the Court to order inspections of electoral materials and to apply its inherent jurisdiction to regulate its own procedures in non-criminal matters pertaining to electoral applications.

5) Expedited Procedures for Challenges to Electoral Results. The procedures for challenging the results of elections in Namibia are complicated and can be time consuming. This can leave political contestants and the electorate in an uneasy state of suspense concerning the validity of elections to offices that come under challenge. It may, therefore, be appropriate to consider mechanisms to accept and process complaints in a more rapid fashion.

The Namibian election law provides that, if a public riot, violence or any other emergency situation interferes with polling at any polling station to such a degree that the objects of the election law cannot be achieved, the presiding officer must discontinue the voting; polling at that location must then be rescheduled for another time (Article 78(4)). The law does not otherwise provide for the rescheduling of polling by election officials, for example if the number of ballots cast significantly differs from the number of voters on the electoral register or the number who are marked on the register as having voted.

The election law provides that when the counting of votes is completed, the returning officer for a constituency and the Director of Elections must announce the result of the count, whether or not the report of ballots issued, cast, spoiled and unused was correctly and satisfactorily reconciled. The law also provides that when the head of the Electoral



Commission receives the results from the returning officers and the Director of Elections, he or she must determine and announce the results of the elections (*e.g.*, Articles 88 and 89, each as revised). No discretion is provided concerning these steps, even if there is reasonable concern about irregularities or illegal practices affecting the results.

The election law provides that the Electoral Commission, after the determination of the result in any election, may order a verification of ballot paper accounts and may publish a report of the verification procedure (Article 94). The law does not empower the Electoral Commission to set aside election results. The election law vests the High Court of Namibia with jurisdiction to review complaints of "an undue [election] return or an undue election" (Article 109). Such complaints must be filed within 30 days of the declaration of the election result and must be decided normally within 60 days of from the date of the complaint (Articles 110(1) and 116(3)). The Court has the power to set aside the result of an election. The Court can vacate a disputed seat in favor of another candidate to be declared duly elected by the Electoral Commission on the basis of the election, or determine that no person was duly elected in the election (Articles 116(6)-(7)). The Court may not set aside the result of an election if improper acts are proved, but the acts did not affect the election result (Articles 95 and 116(4)).

These provisions can create an awkward circumstance where election officials must calculate and report the result of an election even when they are not confident that the result is proper. While Namibia's procedures are not inconsistent with internationally recognized standards, they can create uncertainty among the electorate. In some election systems, the election commission is given discretion to set aside the count at any polling station, or in a constituency where a significant number of polling stations are affected, if it is not possible to determine whether the results of the poll accurately reflect the will of the electorate. In such cases a rescheduled poll is conducted. A time is then provided for the re-vote in order not to unreasonably delay the announcement of official election results.

In election systems where exclusive jurisdiction is given to the courts to determine whether the result of an election should be invalidated, it is best to provide for an expedited judicial process in order to prevent uncertainty among the electorate caused by time consuming court procedures. In Namibia, approximately three months could pass from when election results are announced and a decision on an electoral challenge is rendered by the Court. In exceptional cases this time could be extended. It may therefore be appropriate to consider shortening the time for filing an electoral challenge from the 30 days presently provided (for example to five or 10 days from the announcement of results; some countries provide as little as 72 hours to file an electoral challenge). It may also be appropriate to consider shortening the time when the Court must render its decision from the 60 days presently provided (for example, five or 10 days from the time the challenge is filed; some countries provide as little as 72 hours for rendering a decision).

6) An Expedited Administrative Complaints Procedure. Appeals of and objections to Electoral Commission decisions regarding voter and political party registration may be lodged with designated judicial bodies (Articles 19, 22 and 45). The election law does not explicitly address the lodging of complaints concerning technical elements of the electoral process with the Electoral Commission, the Directorate of Elections or with the judiciary. Clarification in the election law should be considered regarding the filing of such complaints, and a speedy complaint procedure should be provided in order to ensure effective remedies concerning all steps of the election process.

7) A More Effective Training Process for Election Officials. Sufficient time should be allotted for training officials. This year the Directorate had nine weeks between the end of the registration period and the elections to select and train officials. Training could be more thorough if selection of officials were made earlier (*e.g.*, prior to the registration period), enabling training to begin immediately after the registration period. Training periods also could be carefully scheduled so as not to interfere with the working hours of individuals who hold full-time jobs. Attendance at training sessions should be mandatory.

8) Civic Education Programs. While significant voter education efforts were undertaken in the months preceding the elections, more education is needed to help the citizenry understand their role outside of elections. The electorate and the citizenry at large should understand their rights and responsibilities in a democratic society, so that they can contribute further to Namibia's democratic development. Implementing ongoing civic education programs that would involve all segments of society, from elementary school students to illiterate adults in rural areas, could be an important step in this process. Civic organizations could play an important role in these programs.

The recommendations presented above are offered in recognition of the important strides made in establishing democracy in Namibia. All electoral systems can benefit from clarification, refinement and modification, as part of any continuing democratic process. The government of Namibia -- including the Electoral Commission and the Directorate of Elections -- the political parties, civic organizations and mass media have cooperated warmly with NDI by freely offering their views. NDI offers the comments presented here in the same spirit of cooperation. The Institute looks forward to continuing its program work in Namibia as the country consolidates its democratic system.

