

Chapter 2

The Electoral Framework and Preparations for the Elections

The Constitution

The 1994 Presidential and National Assembly Elections took place under the Constitution adopted by the Constituent Assembly in February 1990, which came into force on Independence Day, 21 March 1990. It provides for a unitary, secular republic with an executive presidency, a two-chamber legislature, regular multi-party elections based on universal adult suffrage, an independent judiciary and a Bill of Rights. The Constitution includes 25 entrenched clauses providing for a wide range of fundamental human rights and freedoms.

Executive power is vested in the President, who is limited to a maximum of two five-year terms and must obtain more than 50 per cent of the popular vote to be elected. A 72-member National Assembly has legislative power. The President's executive powers include the appointment of the government, the Chief of Staff of the National Defence Force and members of the Public Service Commission. The President can dissolve the lower house, the National Assembly, 'if the government is unable to govern effectively'.

The National Assembly is also elected for a term of five years, on the basis of proportional representation, whereby the number of seats a political party wins is in direct proportion to its share of the total number of valid votes cast. That is, the whole of Namibia is treated as a single constituency in that a member of the National Assembly does not represent any particular part of the electorate. It should be noted that, for the purposes of regional and local government elections, the country is divided into 13 administrative regions, with each of those further divided into constituencies and polling districts. There are 95 constituencies but these bear no substantive relationship to the National Assembly elections and their single constituency basis.

Electoral Act 1992 and Electoral Amendment Act 1994

The Electoral Act 1992 and the Electoral Amendment Act 1994 provide the primary legal framework for Presidential and National Assembly elections, as well as the election of members to Regional Councils and local authority councils.

Features of the legislation include provision for:

- the establishment of an Electoral Commission and delineation of its powers, duties and functions;
- a Directorate of Elections as a division in a government ministry, responsible for the administrative and clerical work involved in the functions of the Electoral Commission;
- the registration of voters and of political parties, covering such matters as entitlement to vote, the preparation and publication of voters' registers, and conduct of political parties; and
- the conduct of elections, including the appointment of election officers and identification of their powers, the nomination of candidates, identification and siting of polling stations, provision of equipment and materials, voting at polling stations, and determination and announcement of results.

The Electoral Commission

The exclusive authority for directing, supervising and controlling the conduct of elections to the Presidency and the National Assembly is vested in the Electoral Commission.

Additionally, the Commission is, among other things, specifically charged with supervising and controlling:

- the registration of voters;
- the preparation and publication of a national voters' register; and
- the registration of political parties.

The Commission comprises a Chairperson, who must be a judge or former judge of the Supreme Court, and four other members, all appointed by the President with the approval of the National Assembly. The current Chairman of the Commission is the Judge-President of the High Court of Namibia. The other four members come from widely different experiences and backgrounds in public and civic life. Their appointments have to be approved by a resolution of the National Assembly.

Decisions of the Commission are reached by a majority vote. In practice, the Commission confines itself to relevant policy issues while the implementation of policy and the execution of the administrative work involved is carried out by a Directorate of Elections. For example, in one instance which arose during the early part of our mission while awaiting our deployment to the regions, it had been reported to the Commission by one of the political parties that one of its public meetings had been disrupted by a rival party in breach of an agreed Code of Conduct. The Commission concluded that it was a criminal matter, and the complaint was remitted to the Directorate of Elections to be pursued with the police through the normal channels.

The Directorate of Elections

The Directorate of Elections operates as a Division within the Prime Minister's Office. It is headed by a Director of Elections who is appointed by the President in accordance with the rules governing the public service and who serves as the Secretary of the Electoral Commission. Although the Directorate operates as a Division of the Prime Minister's Office, the Director is required to exercise and to perform the functions of the office subject to the direction and control of the Commission.

The Director is assisted by other officers designated by the Permanent Secretary of the Prime Minister's Office but the Commission may also, in consultation with the Permanent Secretary, engage the services of others.

Included among the staff of the Directorate are, for the purposes of registration for elections under the Electoral Act, a supervisor of registration and a registration officer for each constituency and local authority area as the case may be. The Electoral Commission has wide powers which may be delegated to make such other appointments as it may deem fit to assist the supervisor of registration or registration officer in the performance of their duties. It also has powers, which may be delegated, to appoint election officers. These powers of appointment provide the Director with a certain amount of discretion and flexibility in making appointments which facilitate the delivery of electoral services in the most efficient manner.

To facilitate the smooth conduct of the December 1994 elections, the Director of Elections took the strategic decision to appoint in each of the 13 administrative regions a Co-ordinator through whom election materials were delivered to constituencies and polling districts throughout the length and breadth of the country, and who acted essentially as the Director's eyes and ears in the field during the entire election process. We also benefited from the appointment of these Co-ordinators, who served as an important point of contact during the deployment phase of our mission.

From July 1994 and during the period immediately leading up to the elections, the Director of Elections had established a useful mechanism for keeping both the political parties and the

media informed about the preparations for the elections. He initiated with all the political parties a weekly forum at which he briefed their representatives on the progress of the arrangements for the elections and where matters of common concern were discussed. It was, for instance, at this forum that the Code of Conduct for political parties in the election campaign was conceived and developed. (A poster publicising a short version of the Code of Conduct is attached at *Annex VIII*.) However, we were told by the Director that this forum seemed to serve a useful purpose at the beginning but that it subsequently ceased to do so because many of the political parties only sent representatives who had little or no authority and that some of the smaller parties did not participate at all.

Similarly, the Director developed a practice of meeting the media at a weekly press briefing at which he updated them on the current state of the preparations for the elections. This enabled the Press, in turn, to keep the general public informed.

Registration of Voters

The Voters' Register prepared for the 1992 regional and local authority elections formed the basis of an updated Register for these 1994 Presidential and National Assembly elections. There was reportedly some confusion surrounding the preparation of the original Register, apparently on the part of both officers and prospective voters. This may have carried over into a certain lack of confidence in the most recent efforts to update the Register. There were, for example, allegations from some political parties, denied by the Director of Elections, of the presence on the Register of some 15,000 or so ineligible voters believed by them to be citizens of Angola. Other allegations that some 50,000 people were unable to vote because they did not receive replacement Voters' Registration Cards, were countered by the Director of Elections who said that only 23,000 applications for such cards had been received, and some 21,000 had been issued for distribution. (Difficulties with distribution of the cards are referred to in Chapter 4.)

Concern was also expressed to us about the decision not to use the Voters' Register (broken down by constituencies) at polling stations during the poll, as had originally been intended. The Electoral Act of 1992 had provided for a certified copy of the relevant part of the Voters' Register to be available at each polling station. However, the Electoral Amendment Act which was promulgated in October 1994 had removed that requirement in order to accommodate an anticipated substantial number of eligible voters who might be unable to vote at their places of registration. It was put to us by the Directorate that not to have done so would have required the availability of the full national Register of Voters at every polling station, or that it would have led to the possible disenfranchisement of a high proportion of migratory voters, possibly as much as 20 per cent of the electorate. The Directorate had concluded that neither approach was a feasible or desirable option. In the end, the votes of those voting outside the constituencies in which they were registered were classed as 'tendered' votes and were counted separately at a central point in Windhoek.

When the Register was finally published on 1 December 1994, the number of registered voters stood at 654,192, which was judged to be about 89 per cent of the total number of eligible persons, i.e., about 727,000. (The shortfall from the 750,000 or so who had registered for the 1989 independence elections was explained to us by the Director of Elections in terms of the large number of South Africans and other foreigners who had been able to vote in 1989.)

Voter Education

We heard that over the months prior to the elections, a programme of voter education had gradually developed with the co-operation of the Ministry of Information and Broadcasting, the radio and television networks of the Namibian Broadcasting Corporation (NBC), the Namibia Institute for Democracy, the Friedrich Ebert Foundation, the University of Namibia, the European Union and the National Democratic Institute (NDI) of the United States. The Directorate itself had mounted an extensive voter education programme largely by way of poster campaigns, radio and television broadcasts and live theatrical shows. A sample

selection of some of the voter education materials, which struck us as being of high quality, is included at *Annex IX*.

The 1992 regional and local authority elections had shown that a minority of Namibians had access to television or read a newspaper, but that probably 90 per cent listened regularly to radio broadcasts in at least one of the nine different language broadcasts of the NBC.

Political party agents also played an important and generally non-controversial role in assisting with registration and education of voters. Even in the more isolated areas when asked whether voters understood the process, the agents of all parties assured us they did. They asserted, for instance, that there was a great deal of pride in being able to vote and since the 1989 and 1992 elections, voters had become much more confident and aware of the process. It is also worthy of note that during the poll itself, polling officials went to a great deal of trouble to advise the unsure and elderly, step by step, of the procedures they were to follow.

The political parties themselves appeared to have become involved in voter education in varying degrees of intensity, at a much later stage because of financial constraints. We were able to observe some evidence of their efforts when they utilised the generous free airtime made available to them on both radio and television which was paid for by the NDI.

The contribution to the cultivation of the voting culture and participatory democracy in Namibia should not be underestimated. Perhaps a measure of the cumulative impact of these various endeavours and the time and money spent on them is reflected in the relatively low proportion of spoilt ballots (in the National Assembly elections 1.58 per cent and in the Presidential election 2.45 per cent).