



IRON CURTAIN ... A steel fence with barbed wire on the inside has been erected around the parliament precinct, in a move aimed at restricting access to parliament precinct spaces. Criticisms of the fence have included that it undermines the notion of an accessible and open parliament.

Source: Contributed

Political parties non-compliant on financial transparency

Parties are not adhering to rules on transparency and accountability, and regulatory and oversight entities are not doing their part to enforce compliance.

It's almost seven years since the Electoral Act (No.5 of 2014) became law, and in all that time Namibian political parties have been largely non-compliant on political financing provisions of the law.

According to Article 139 of the

Electoral Act of 2014, all registered political parties, not just those with representation in parliament, were supposed to have submitted a declaration of assets and liabilities to the ECN within 21 days from the opening of parliament.

Since the Namibian parliament officially opened on 2 March 2021, by the end of March 2021 all registered political parties should have been in compliance with Article 139.

Furthermore, according to Article

140 of the Electoral Act of 2014, all registered political parties should by now have lodged audited financial statements with the ECN, as well as having had such statements published in at least two newspapers with nationwide circulation.

The issue is not an insignificant one, as for the 2020/21 financial year over N\$102 million was paid out of state coffers to political parties with representation in parliament.

TO PAGE 2

However, it's not just the ECN that has a role to play in regulating or overseeing political party finances.

For, according to Article 160 of the Electoral Act of 2014: "Within three months after the end of the financial year, the Secretary of the National Assembly must submit all received audited statements of political parties allocated funds during the past financial year to the National Assembly for discussion."

Suffice to say, this has not happened by October 2021, over halfway through the 2021/22 financial year.

ECN response

When asked about political parties' compliance with Article 139 of the Electoral Act, Chief Electoral Officer at the ECN, Theo Mujoro, stated:

"It is correct that all registered political parties (as well as all registered organisations and associations) should have complied with section 139 of the Electoral Act of 2014 by the end of March 2021 already. Despite the fact that all registered political parties (as well as registered organisations and associations) are fully aware of the requirements of the Electoral Act and its regulations, only one political party complied with section 139, and they did so in August 2021."

With regard to compliance with Article 140 of the Electoral Act, ECN's Mujoro stated:

"The same state of affairs is evident with regard to compliance with section 140 of the Electoral Act. Only two political parties complied with section 140, and one of them submitted financial statements which have not been audited as per the requirements of the Act. Neither of the two political parties provided proof of publication in two newspapers as is required by the Electoral Act."

As to the ECN's lack of enforcement of these sections of the electoral law, Mujoro stated:

"It is clear that political parties are either having difficulties or are reluctant to comply with the law, which places

the ECN in a very unenviable position. The ECN is of the view that the whole concept of declaring of assets and liabilities and the lodging of financial statements by political parties is a misplaced function of the ECN, but should rather be dealt with by a more appropriate body with the requisite capacity, skill and competency. The ECN is currently undertaking a process of amending the Electoral Act, and this issue is part thereof.

The ECN responses in September 2021 are at odds with responses pro-

vided to the Democracy Report in October 2019.

At that point the ECN's Mujoro stated that as soon as regulations operationalising the political finance sections of the law were in place (the regulations were gazetted in November 2019), they would "ensure strict compliance". There was no talk then of amending the law to shift the regulatory responsibility to another public entity.

But the ECN is not alone in not enforcing compliance with the Electoral Act.

National Assembly response

According to the Electoral Act, the National Assembly has an oversight role to play, in that it has to ensure that political party books are tabled and discussed in the Chamber.

However, the National Assembly secretariat takes a very passive approach to its oversight role in political finance.

In response to a question on its oversight role, the National Assembly secretariat stated: "Please be advised that section 158(6)(a) of the Electoral Act of 2014 provides that "the accounting officer of a represented political party must submit the auditor's report and audited statements concerned to the [Electoral] Commission within three months after the end of the financial year of the political party".

"The National Assembly has to date not received any audited statements from the Commission during this financial year. The National Assembly is not empowered in terms of the Act to compel political parties to comply with the provisions to provide audited statements, these powers rest solely with the Electoral Commission in terms of section 158(8)(a) of the Act."

While the National Assembly cannot compel political parties to comply with the law, nothing in the Electoral Act prevents the National Assembly from proactively requesting of the

ECN to provide it with the audited financial accounts of political parties funded by the state.

Article 160 of the law states that "the Secretary of the National Assembly must submit all received audited statements of political parties allocated funds during the past financial year to the National Assembly for discussion" within "three months after the end of the financial year". This means political party audited statements must have been tabled for discussion in the National Assembly before the end of June every year.

A more proactive approach by the National Assembly secretariat, in order to ensure its own compliance with the political finance provisions of the Electoral Act, could force the ECN to engage in "strict compliance" enforcement.

The fact that this is not happening means that not only political parties are non-compliant with the Electoral Act, but so too are the ECN and the National Assembly, which both appear to have adopted a passive approach to their regulatory and oversight roles.

The culture of non-compliance and non-enforcement of the law means that Namibians, who are providing the funds that are disbursed to political parties represented in parliament, remain largely in the dark as to how such monies are spent.

The PDM party list affair revisited

The legal battles around the Popular Democratic Movement's 2019 candidates list remain unresolved nearly two years after the November 2019 elections.

On 6 November 2019, ahead of the 2019 National Assembly elections slated for 27 November, the Electoral Commission of Namibia (ECN) published the gazetted lists of names of political parties' candidates for the National Assembly.

On the gazetted list for the Popular Democratic Movement (PDM) the names of Charmaine Tjirare, Hidipo Hamata, Yvette Araes and Maximilant Katjimune appeared.

However, on 1 December 2019, following the elections of 27 November, the names of Esmeralda !Aebes, Johannes Martin, Kazeongere Tjeundo, Geoffrey Mwilima, Sydney Ndumbah and Pieter Mostert appeared on the PDM's National Assembly candidates list. Some of these new names replaced those of Charmaine Tjirare, Hidipo Hamata, Yvette Araes, and Maximilant Katjimune.

Importantly, the ECN allowed this change to be effected and amended the list to reflect the PDM's changes.

What preceded this was that, in October 2019 the ECN had issued a directive to all political parties that all candidates for parliament would have to resign their positions in the public service or face being removed from a party list. It was reported that the replaced PDM candidates had not been employed in the public service, nor did they occupy positions in any regional or local council before the National Assembly elections of 2019. The six candidates who later replaced them on the list only resigned from their positions or employment after the election, when the party had secured 16 seats.

Charmaine Tjirare and Hidipo Hamata decided to challenge their drop down the candidate list, which effectively meant they would not be sworn in as parliamentarians in March 2020, in the Electoral Court.

Electoral Court ruling

On 13 July 2020, the Electoral Court ruled that the Electoral Act did not give the ECN the power to amend a party list after a National Assembly (NA) election had taken place.

The swearing-in as members of the National Assembly of Esme !Aebes, Johannes Martin, Kazeongere Tjeundo, Geoffrey Mwilima, Sydney Ndumbah and Pieter Mostert was declared "unconstitutional, unlawful and therefore null and void".

The Electoral Court also ordered the chairperson of the ECN to make a declaration that Frans Bertolini, Charmaine Tjirare, Yvette Araes, Maximilant Katjimune, Raymond Reginald Diergaardt and Mike Rapuika Venaani were duly



Charmaine Tjirare



Hidipo Hamata



Max Katjimune

Photos: facebook/twitter

elected members of the National Assembly as of 20 March 2020.

The PDM position

During the Electoral Court challenge the PDM argued that it had the discretion to nominate members of its party to serve in the National Assembly, even if they were not gazetted in terms of section 78 of the Electoral Act of 2014.

It has maintained that position ever since despite losing in the Electoral Court.

In a 20 October 2020 news report on the matter, PDM president McHenry Venaani was quoted saying: "PDM's position remains the same. Unless the Supreme Court makes an anterior determination, our legitimate members of parliament are currently serving in parliament and are doing a stellar job for the democracy of our republic."

The ECN position

In September 2021, the ECN stated in response to an information request from Democracy Report that it had never changed the PDM party list. The ECN stated that the PDM presented a list of candidates for gazetting before the elections, but that after "a National Assembly election, if a political party qualifies for seats in the National Assembly, and in conjunction with Schedule 4(4) of the Namibian Constitution, it can choose in its own discretion which persons to nominate as members of the National Assembly to fill the said seats."

What now?

The PDM is appealing the Electoral Court ruling. The interpretation of Schedule 4(4) of the Namibian Constitution is currently on appeal before the Supreme Court. The Supreme Court has yet to indicate when the appeal hearing would take place.

Election Update - Katima Mulilo Urban Constituency By-election

On 25 August 2021 the by-election for the Katima Mulilo Urban Constituency, in the Zambezi Region, was held following the untimely death in a car accident of late constituency councillor John Mukaya earlier in the year.

Mukaya was a Swapo Party regional councillor who had been elected in November 2020.

For the August 2021 by-election, four parties fielded can-

didates, while two independent candidates also took part.

In the end, the Swapo Party candidate, Simasiku Kennedy Simasiku, was elected to the Zambezi Regional Council.

According to the Electoral Commission of Namibia (ECN), a total of 3,008 votes had been cast during the by-election, of which 3,002 were counted. The voter turnout was put at 21% of registered voters in the constituency.

Katima Mulilo Urban Constituency by-election results

Candidate	Political party	Votes recorded
Kubwima Poniso Miller	Independent Candidate	156
Malipa Lynette M	Independent Patriots for Change	296
Matengu Mwetli Marklee	Popular Democratic Movement	294
Nkando Gibson Kabuna	Independent Candidate	417
Simasiku Chripher M.	National Democratic Party	282
Simasiku Kennedy Simasiku	SWAPO Party	1,557

Trends

The Swapo Party has carried the constituency in every election since 2004. Before then it had firmly been a DTA of Namibia (now the Popular Democratic Movement (PDM)) stronghold.

Katima Mulilo Urban Constituency election trends

Year	Registered voters	Participating parties	Winning party votes
1998	4,561	DTA of Namibia	DTA of Namibia 2,458
		Swapo Party	
2004	10,778	Swapo Party	Swapo Party 3,095
		DTA of Namibia	
		Congress of Democrats	
		Republican Party	
2010	11,740	Swapo Party	Swapo Party 2,535
		DTA of Namibia	
		All Peoples' Party	
		Rally for Democracy and Progress	
2015	N/A	Swapo Party	Swapo Party 2,267
		DTA of Namibia	
		Rally for Democracy and Progress	
		Independent candidate (IC)	
2021	13,860	Swapo Party	Swapo Party 1,557
		Popular Democratic Movement	
		Independent Patriots for Change	
		National Democratic Party	
		Two (2) independent candidates	

While the number of registered voters in the constituency has increased steadily over the last two decades, voter turnout has remained consistently low in regional council elections since 2004.

SPOTLIGHT –

ACTION Coalition concerns with ATI Bill

ACCESS TO INFORMATION BILL
KEY ISSUES OF CONCERN

23 June 2020

A section of the detailed analysis of the ATI Bill done by the Legal Assistance Centre (LAC) and the ACTION Coalition.

The Access to Information Bill is back in the National Assembly ... with the same issues that were flagged in 2020 when it was first tabled.

On 15 September 2021, information minister Peya Mushelenga retabled the Access to Information (ATI) Bill in the National Assembly.

The Bill had initially been tabled in June 2020, but due to disruptions to the parliamentary calendar the Bill fell off the parliamentary agenda after having been referred to the National Assembly's Standing Committee on Information, Communication, Technology and Innovation.

The Bill that minister Mushelenga retabled in September 2021 is the same one that was tabled in June 2020.

Following the June 2020 tabling, the Access to Information in Namibia (ACTION) Coalition issued a statement on some of the issues that needed to be addressed in the Bill's text "with the aim of making the eventual law and regulatory framework even stronger".

The ACTION Coalition prefaced its criticisms of the draft Bill by stating: "On the whole, the ACTION Coalition considers the ATI Bill to be a strong one, that for the most part captures the essence and contains the necessary substance of a modern, workable access to information framework."

That said, the concerns with the ATI Bill that the ACTION Coalition raised are the following:

1. The blanket exemption for "proceedings and decisions of Cabinet and its committees" in the Access to Information Bill is too broad and not an international norm. We recommend the removal of clause 2(2)(a) (i) which exempts Cabinet entirely from the Act. Sub-

“

... we feel some of these concerns would benefit from wider public input, and we would welcome the opportunity to make a submission or presentation before any parliamentary committee on the issues outlined in this statement.

stitute it with a new provision exempting information about Cabinet deliberations until a period of 10 years have passed (i.e. two presidential terms of office) – but do not provide any exemption for Cabinet decisions and resolutions, or for factual information submitted to Cabinet or its committees. In addition, all Cabinet materials (like other government documents) should be subject to the public interest override in clause 64.

2. Blanket confidentiality of judicial functions and nomination, selection and appointment of judicial officers (clause 2) goes too far. We propose the removal of clauses 2(2)(a)(ii) and (iii) and substituting them with more narrowly-worded provisions which exempt from the Act only material relating to the deliberations of judicial officers and judicial selection bodies – without shielding from the public other information about the operations and the decisions of courts and tribunals, or information about the nominations, qualifications and appointment of judicial officers.

TO PAGE 6

BILL

To provide for the appointment of an independent and impartial Information Commissioner and Deputy Information Commissioners; to provide for the obligations of public entities; to provide for the right of access to information held by public and private entities; to provide for the promotion, creation, keeping, organisation and management of information in a form and manner that facilitates transparency, accountability, good governance and access to information; to provide for requests for access to information; to provide for internal review, appeal and judicial review of decisions on access to information; to provide for information exempt from disclosure; and to provide for incidental matters.

(Introduced by the Minister of Information and Communication Technology)

ARRANGEMENT OF ACT

Top segment of the front page of the ATI Bill that was retabled in the National Assembly in September 2021.

3. The rationale for exemptions of some non-profit public entities under clause 29 is unclear. We propose either the complete removal of clause 29 or clear criteria for the exclusion of certain “public entities” from the coverage of the Bill, if there is a rational motivation for any such exclusion.
4. The definition of “personal information” in clause 1 may be too broad while at the same time excluding some issues that should be covered – and the procedure for dealing with situations involving third party personal information in clause 38 seems too cumbersome. We propose: (1) Re-consider the definition of “personal information”; (2) To streamline the access process, the law should enumerate more specific exemptions to the protection of personal information to give guidance to the exercise of discretion by information officers; (3) The law should not equate inability to locate the third party in question, or a lack of response by the third party, with consent to the release of the information.
5. The wording of the public interest override (clause 64) is too narrow. We propose changing the “and” in clause 64 to “or” in order to broaden its scope.
6. The ATI law should be inapplicable if disclosure is reasonably regulated by another law. Clause 3(3) should be reworded or omitted since some other laws may have rules about access to information which are appropriate to their context – without necessarily being more or less “favourable” to access. The general rule provided in clause 3(3) as it stands is too general to fit every situation.
7. The Selection Committee for the appointment of the Information Commissioner described in clause 6(2) consists of five persons. We propose that the Media Ombudsman (who could be defined in the law) should be an additional member of the Selection Committee, which would also provide a better government-civil society balance. We further propose that interviews of short-listed candidates for Information Commissioner should take place in public.
8. Clause 12 contains a broad definition of “private entity”. We propose that the appropriateness of the current definition be discussed with the Namibian Chamber of Commerce and Industry and the Namibian Employers Federation, to ensure that it will be practically workable.

The ACTION Coalition ended off by stating: “Given these concerns, the ACTION Coalition urges Members of Parliament to refer the bill to a committee for fine-tuning, but we are not proposing going back to the drawing board. Furthermore, we feel some of these concerns would benefit from wider public input, and we would welcome the opportunity to make a submission or presentation before any parliamentary committee on the issues outlined in this statement.”

The above spotlighted issues with the Bill were captured in an in-depth analysis of the ATI Bill done by Dianne Hubbard, of the Legal Assistance Centre (LAC), on behalf of the ACTION Coalition in mid-2020.

The points and the detailed analysis of the Bill were shared with parliamentarians at the time the Bill was in the National Assembly for debate and discussion following the June 2020 tabling.

The detailed analysis of the ATI Bill can be viewed on the ACTION Coalition website, at the following URL: <https://action-namibia.org/wp-content/uploads/2021/09/Namibia-Draft-ATI-Bill-ACTION-Coalition-Concerns.pdf>

Disclaimer: The IPPR is a founder and Working Group member of the ACTION Coalition, and the Democracy Report coordinator, Frederico Links, is the chairperson of the ACTION Coalition Working Group.

Notable events and statements in the National Assembly

(September – October 2021)



Photo: The Namibian

National Assembly

- **7 October 2021** – The minister of fisheries and marine resources responds to an article titled ‘Angolan vessels accused of stealing Namibian fish’, in The Namibian newspaper of 5 October 2021. The minister said the article sounded as if illegal fishing by Angolans at the northern maritime border was still happening, which was not the case. The minister stated that an automatic identification system was in place that notified the ministry of any suspicious behaviour.
- **6 October 2021** – Resumption of the debate on the draft joint declaration of the Republic of Namibia and the Federal Republic of Germany; Resumption of consideration of report of the Privileges Committee on the investigation into the conduct of LPM’s Bernadus Swartbooi and Henny Seibeb on 15 April 2021 during the State of the Nation Address.
- **5 October 2021** – Consideration of a parliamentary standing committee report on a stakeholder consultation workshop at Otjiwarongo.
- **29 September 2021** – Ministerial statements by the agriculture minister, on measures to address the water crisis at Rundu, and the environment minister on the veld fires in the country.
- **28 September 2021** – The deputy finance minister tabled the special report of the Auditor-General on the Namibia government’s response to COVID-19 for the period March-June 2020.
- **28 September 2021** – The higher education minister made a statement denying allegations that she had a close relationship with the Limkokwing University of Malaysia, and that she was part of a plan to favour the Malaysian entity.

TO PAGE 8

THE DEMOCRACY REPORT TEAM

The Democracy Report project will run from June 2021 to December 2022.

HERE IS OUR TEAM:



Frederico Links
Project Coordinator

Frederico Links is a long-time Institute for Public Policy Research (IPPR) research associate with wide ranging research interests. He is a journalist by training and has extensive experience working in the Namibian media sector, as well as being an access to information and freedom of expression activist. He is involved in various research projects run under the IPPR.



Bradley Tjongarero
Lead Researcher

Bradley Tjongarero joined the Institute for Public Policy Research (IPPR) in 2021 as a researcher on the Democracy Report project. He holds a Bachelor of Political Science degree from the University of Pretoria.



Esther Shakela
Junior Researcher

Esther Shakela joined the IPPR in 2021 as a researcher on the Democracy Report project. She studied public management and majored in political science at the University of Namibia. She is passionate about youth matters and has previously served on the National Youth Week Task Force. She is also the acting spokesperson of the Namibia National Students Organisation (NANSO).



Henny Seibeb



Bernadus Swartbooi

Photos: The Namibian

- **23 September 2021** – The agriculture minister provided an update on the Foot and Mouth Disease (FMD) outbreak in the Kabbe South Constituency in the Zambezi Region.
- **22 September 2021** – The Speaker presented a petition lodged on 21 September 2021 by representatives of the Ovaherero, Ovambanderu and Nama communities and the LPM, RDP, PDM, NEFF, NUDO, SWANU and IPC. The petition called for the rejection of the Reconciliation and Reconstruction Agreement and Joint Declaration by the governments of Namibia and Germany and for the renegotiation of the agreement. The Speaker announced that the petitions would be submitted to the relevant standing committees for deliberation.
- **21 September 2021** – The fisheries minister provided an update on the circular issued by the finance ministry on 20 May 2021, which contained terms for the disposal of the Governmental Objective Fish Quota for Horse Mackerel to the highest bidder, and several other similar fisheries species.
- **21 September 2021** – The defence minister moved that the National Assembly discuss the draft joint declaration of the Namibian and German governments.
- **16 September 2021** – The finance minister tabled the special report of the Auditor-General on the non-submission of financial statements by some local authorities, regional councils, statutory bodies and funds.
- **16 September 2021** – The justice minister addressed the National Assembly on the increase of sexual violence against children and reported that in August–September 2020 alone, 120 children were raped in Namibia.
- **15 September 2021** – The international relations minister informed the National Assembly that a joint delegation from Namibia and Botswana visited the Chobe District in Botswana and the Zambezi Region in Namibia on 2–3 September 2021. The minister reported that the joint delegation urged the Chobe District and Zambezi Region Council to sign a twinning agreement, thereby ensuring equal access to shared natural resources along the common river boundaries for citizens of both countries.
- **15 September 2021** – The information minister retabled the Access to Information Bill.
- **9 September 2021** – The finance minister moved that his request to “Scrutinize and to agree to the Ratification of the SADC Agreement in Tax Matters”, for which notice was given on Tuesday, 7 September 2021, be withdrawn.
- **9 September 2021** – The deputy youth minister presented the 3rd Version of the National Youth Policy. The purpose of the policy is to empower young people through improved educational, health and economic outcomes and increased civic and political participation.
- **9 September 2021** – The environment minister reported on the unprecedented impact of the COVID-19 pandemic on the tourism sector and efforts to revive the sector.
- **8 September 2021** – The environment minister reported on veld fires in Namibia. He called on the public, farmers/landowners and all stakeholders to put in place fire prevention measures.
- **8 September 2021** – Start of the discussion of the report of the Privileges Committee on the investigation into the conduct of Hon. Swartbooi and Hon. Seibeb on 15 April 2021 during the State of the Nation Address.
- **7 September 2021** – The Fourth Session of the Seventh Parliament resumes.
- **7 September 2021** – The Speaker reported that the 41st SADC summit in Malawi in August 2021 approved the transformation of the SADC Parliamentary Forum into a SADC Regional Parliament.
- **7 September 2021** – LPM MPs Bernadus Swartbooi and Henny Seibeb welcomed back. They had been suspended from National Assembly sittings.
- **7 September 2021** – The Speaker tabled a petition from the CoD, NEFF, PDM, NUDO, UPM, SWANU, APP, RP and AR. The Petitioners were against the re-appointment of the Anti-Corruption Commission Director-General, Paulus Noa, and his deputy, Erna van der Merwe, by the National Assembly on 29 July 2021.