

THE FACADE AND EROSION OF DEMOCRACY IN NAMIBIA. THE NOVEMBER 2009 ELECTIONS FOR PARLIAMENT AND THE PRESIDENT

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On November 27 and 28 of 2009, voters in Namibia were called to the polls to elect the country's president and the 72 members of the National Assembly (parliament). The official results were finally announced on December 4, following significant delays and confusion among the opposition parties as well as vast portions of civil society. Nine opposition parties did not acknowledge the results and took court action, alleging substantial and verifiable fraud. After a refusal by the Namibian Election Commission, the High Court of Namibia ruled on December 24 that the complaining parties of the opposition must be granted access to all relevant election materials, allowing them to provide proof for their accusation of substantial election manipulation by January 4, 2010. Thus, at the end of 2009 and more than four weeks after votes were cast, it remains to be seen whether the official election result announced by the Namibian Election Commission, which would keep the status quo of the governing party and its 3/4 majority in the National Assembly, will be upheld. Furthermore, there is the question whether individual or all electoral districts will have to be recounted, as happened in 2004, or even whether new elections must be held (as demanded by the opposition), which would be a first in Africa's history.

According to official information from the Electoral Commission of Namibia (ECN), between 822,344 and 1.3 million voters (total population of about 2 million people) were called to choose the president from among twelve candidates and to elect the 72 members of Namibia's National Assembly from within 14 parties. For this purpose, 998 stationary and 2,238 mobile polling stations were prepared throughout the country. Roughly 11,300 polling assistants, organized in 536 teams, were charged with ensuring orderly elections. Numerous national and international teams of election monitors were invited to observe the political environment before, during and after the elections. Potential violence, intimidation and dishonest procedures during the campaigns, as well as irregularities in the election register and manipulation during the casting and counting of votes, were supposed to be recorded. After significant delays during the vote count, caused primarily by the implementation of a procedure for "verifying" votes – after the votes had been counted and in the absence of independent election monitors or observers from the parties (party agents) – the ECN finally announced the result of the presidential and parliamentary elections on December 4, 2009.

According to the provisional official results, the ruling SWAPO party will keep its two-thirds majority in the National Assembly and get 54 seats, one seat less than after the previous elections in 2004. The Rally for Democracy and Progress (RDP), which was only founded in November 2007, is the second most powerful party with eight seats, taking over the official role of the opposition from the Congress of Democrats (CoD). Depending on the election register, up to 98.6 percent of those eligible to vote participated in this election.

The opposition expressed doubt about this result and have included it in their joint suit. Aside from a few questionable aspects, the preliminary report by the Namibia Institute for Democracy NID calls the overall elections free and fair. However, the Namibia Non-Governmental Organizations Forum (NAN-GOF) and its SADC partner (SADC-CNGO) have issued a preliminary report which, after a detailed list of deficits that runs several pages, expresses serious reservations about calling the election process free and fair.

Due to the fact that the public and accredited election monitors were systematically excluded from the so-called verification process, which had never been practiced before, the procedure suffered a massive loss of credibility. The deliberate lack of transparency during the so-called vote verification, along with the delay in publishing the results, led to a loss of confidence in the election commission's independence and created much scepticism among large portions of the general public. Nine opposition parties therefore refused to acknowledge the elections and must now prove in the court action to come that their accusations of manipulation are well-founded. This means that the possibility of re-elections has not been ruled out. However, the opposition parties have only a few days to prove their allegations. Meanwhile, the national Electoral Commission's systematic delay in providing election documents does not bode well for the conditions met by opposition parties in Namibia and is yet another indicator for the dubiousness of the accuracy of the results published on December 4, 2009.

The legality of the elections in Namibia will now be decided the country's judges. Their highest representative (Chief Justice) also administers the oath on the constitution for delegates, ministers and even the president. This is not merely a symbolic act but also demonstrates the importance and sovereignty of the judicial branch. Namibia's adjudication can – independent of the final verdict yet to be pronounced – prevent a further loss of image for the democracy. Namibia is frequently considered as Africa's poster child and model nation. Even though the reputation of Namibia's democracy suffered further from the conduct of the recent elections, the country's strong rule of law is considered a model even beyond Africa. Namibia may therefore keep its model character, although less so because of its democracy and more so because of its independent adjudication. If the complaining opposition parties

manage to convince the courts of Namibia that substantial electoral fraud occurred, requiring re-elections in 2010, Namibia could start a trend in Africa at the beginning of a new decade and set an example for other countries where elections are frequently accompanied by irregularities and manipulation.

Besides the legality of the recent elections, the legitimacy (morality) of the Namibian democracy is at stake as well. After all, a constitutional democracy is more than a formal system of social order governed by courts. It also represents a moral and cultural value system, meaning it is characterized by and even largely based on values and virtues, although without being able to guarantee or demand those values from its citizens. The lack of democratic values (such as tolerance) in Namibia, which was brought to the fore during the campaigns by hate speeches and violent attacks on the opposition in particular, casts a shadow on the moral condition and quality of the democratic value system in Namibia.

Democracy and rule of law remain empty phrases until their formal organizational principles are legitimized, primarily through free and fair elections, an independent judiciary, and the everyday practice of values, and until such a free and democratic government is willing and able to protect the ethical requirements and moral roots that are its life source. It will take more than ensuring the proper conduct of elections and safeguarding constitutional structures in order for Namibia to keep or reach a reputation as a constitutional democracy. Namibia still has a long way to go before democratic values and virtues will be ingrained in the general public and the elite. Representative surveys by the renowned public opinion research institute Afro barometer (of 2003) refer to Namibia as a democracy without democrats. Remarks from high-ranking politicians imply that the adage of Namibia being a democracy without democrats applies even and especially to its elite, whose members are among those who still need to learn about and understand democracy.

According to representative surveys by the opinion researchers of Afro barometer between 1999 and 2008, public approval of democracy and the election of political leaders fell by nearly 30 percent. The 2009 elections and the controversies surrounding their conduct are likely to contribute to the continuation of this trend. The real loser in Namibia's elections of 2009 is thus democracy, which will sustain additional cracks in its facade and erode even further.

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