



Electoral Commission of Namibia



NAMIBIA 2009 ELECTORAL SYMPOSIUM



Code of Conduct for political Parties:

A Tool to ensuring Free, Fair and Credible elections

By John Nakuta

Faculty of Law, University of Namibia

Definition of code of conduct

Code of conduct means “ *a set of rules of behaviour for Political parties and their supporters relating to their participation in an election process, to which the Parties will voluntarily agree; which may, subsequent to that agreement be incorporated in law*” –

Nigerian Code of Conduct for Political Parties

The Content of a Code of Conduct

- ❑ Framework of behaviour
- ❑ sound principles of ethics
- ❑ promote transparency
- ❑ eradicate illegal activity
- ❑ to regulate all aspects of the parties' relationships
- ❑ to serve as an instrument to achieve wide participation in elections.
- ❑ regular dialogues among political parties, police and other security agencies throughout the process.
- ❑ Point of reference for conflict management

Why the need for a code?

- ❑ Constitutional values i.e. democracy and the rule of law
- ❑ Constitutional rights, amongst others:
 - i). to participate in peaceful political activity;
 - ii) to form and join political parties;
 - iii) to participate in the conduct of public affairs;
 - iv). to freedom of speech and expression;
 - v). Freedom of association

The Nam Code: contextualized

- Initiated by ECN in 1994
- Section 43(2), Electoral Act (No. 24 of 1992)
- ECN empowered to issue guidelines for the conduct of political activities by political parties i.r.o. elections
- One would have assumed issuance of such guidelines (under the Act) would be legally enforceable;
- The Code does not have such status;
- However, many of its prohibitions are also violations of electoral or ordinary law and are enforceable as such

EMBs and Code of conduct

- ❑ Complete awareness of Electoral Officials
- ❑ Dispute to be resolved in relation to the Code
- ❑ Officials alert to detect offending conduct
- ❑ I.e. undermine electoral process;
- ❑ Appropriate action

Comparative Analysis

Country	Status	Key Elements
Angola	Violators may be prosecuted.	<ul style="list-style-type: none">•Respect for the constitutional and legal rights of citizens•Timely provision of election related information.•Transparent financing within the prescriptions of the law.•The location of polling stations in neutral areas.•The counting of votes at the polling stations where the voting occurred.• Commitment to achieve the minimum goal of 30% gender representation.

Comparative Analysis (cont)

Lesotho

Status (Code)

- Code binds all candidates and all registered political parties;
- Infringements punished by a formal warning, fine, suspension of media access or restrictions on campaign activities

Key Elements

- Sanctions for infringements (Code) i.e. a formal warning, a fine of up to M10 000, suspension of media access for a specified period or restrictions on campaign activities such as prohibitions on meetings, on entry to certain geographic areas or on literature distribution;

Heavier penalties:

- Acts of violence, intimidation or gross violations of the rights of any political party, candidate or voter may lead to cancellation of registration with the IEC.
- Obtaining votes by fraud may lead to a reduction in the vote count of the party concerned.
- Prevention of another party from free and safe access may lead a party being excluded from particular voting stations.

Comparative Analysis (cont)

South Africa

Status (Code)

- Established by Electoral Act (1998, Schedule 2)
- Party candidate lists submitted must be accompanied by undertaking binding the party, its agents and its candidates to adhere to the provisions of the Code; failure to do so carries the risk of disqualification.

Key Elements

- Registered parties and candidates must state publicly that all have the rights enumerated in Code
- Registered parties and candidates must publicly condemn any action that may undermine the free and fair conduct of elections
- Registered parties and candidates are not permitted to for instance publish false or defamatory allegations.

Comparative Analysis (cont)

Zambia

Status (Code)

- Issued as a regulation by the Electoral Commission of Zambia
- Contravention carries with it the possibility of a fine or up to a year imprisonment

Key Elements

- the ECZ may set up Conflict Management Committees to resolve conflicts.
- all unlawful actions and intimidatory conduct be brought to the attention of the relevant Conflict Management Committee and to the Zambian Police.
- The Conflict Management Committees may impose punishments that the ECZ determines by statutory instruments
- Elaborately restricts behaviour that might lead to violence or abridge the right to freedom of campaigning.

Need for Change?

- Nam Code of Conduct PR exercise?
- Is that the intention of the legislature (s 43(2), Electoral Act
- Presumption against that!
- Current Code falls short of true intention of the legislature
- Changing current status imperative
- Effective instrument ensuring free, fair and credible elections!

Nam Code of Conduct for Political Parties: the way forward

- Need an urgent overhaul
- Legally enforceable
- Sanctions for infringements (criminal and administrative)
- Establishment of Conflict Management Committees
- Endorse the participation of women and youth as candidates for office and leaders of political parties

Conclusion

By: John Nakuta

jnakuta@unam.na