

# Understanding the Democratic and Smooth Transition of Power in Namibia

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Namibia's democratic and peaceful transition of power since its independence in 1990 has positioned it as a model for political stability in Africa. This article explores the key factors that have contributed to Namibia's transitions, focusing on the institutional, political, and cultural elements that have underpinned democratic processes. By examining historical milestones, such as the successful 1990 independence elections, the 2005, 2015 and 2025 presidential transitions, and the country's consistent adherence to constitutional principles, this research highlights the role of strong democratic institutions, political tolerance, and active participation of civil society. The article also addresses the significance of leadership and the political culture that foster trust in democratic institutions. Furthermore, it assesses the role of regional and international support in reinforcing Namibia's democratic processes. By comparing Namibia's experience with other African nations facing transitions of power, the article offers insights into broader implications for governance, democratic consolidation, and stability in the African context. The article analyses Namibia's experience in light of similar transitions in Africa, identifying key factors that promote a peaceful transfer of power in the aftermath of an expected presidential demise. The findings aim to contribute to the understanding of successful democratic transitions and provide a blueprint for other nations striving for peaceful power of changes. Ultimately, this work offers valuable insights into the dynamics of democratic resilience in Namibia and highlights important lessons for other African nations confronting leadership transitions.

*Keywords:* Democracy, political succession, electoral process, governance, rule of law, political stability, constitutionalism and democratic consolidation

## Introduction

The peaceful and democratic transition of power is a hallmark of political maturity and stability in any nation. In many parts of the world, especially in post-colonial states, leadership transitions have often been marked by political uncertainty, contested elections, or even violence. In contrast, Namibia stands out as a notable exception on the African continent. Since gaining independence from South Africa on 21 March 1990, Namibia has maintained a consistent record of peaceful and democratic transfers of power between elected leaders. This has positioned the country as a model of political stability in the Southern African region.

Namibia's democratic success is underpinned by a strong constitutional framework, adherence to the rule of law and the presence of credible institutions such as the Electoral Commission of Namibia and the Judiciary. The country's leadership transitions from founding President Sam Nujoma to his successors Hifikepunye Pohamba and Hage Geingob have been carried out in accordance with the constitutional procedures and without

political unrest. Most recently, the smooth assumption of power by Vice President Nangolo Mbumba following the death of President Hage Geingob on 4th February 2024 further demonstrated the resilience of Namibia's democratic structures. H.E. Dr. Hage G. Geingob, was a Namibian politician who served as the third president of Namibia from 2015 until his untimely death in February 2024. The demise of President Hage G. Geingob on 4th February 2024 and the succession of H.E. Dr. Nangolo Mbumba as the 4th President of the Republic of Namibia has led to discussions about the existing constitutional laws governing power transitions.

H.E. Dr. Nangolo Mbumba, the then Vice-President of the Republic of Namibia, has assumed the presidency in accordance with the law of the constitution that followed the death of President Hage Geingob (Anon, 2024; Staff, 2024). There has been a lot of fussing particular over this choice of the incumbent, especially in regards to democratisation which stands for respecting succession plans and constitutional requirements. It is essential to be transparent and unwaveringly support the constitutionally provided scope since the nation is known for mounting tough challenges in implementing democracy and sticking to basic essentials (Erasmus, 2010). The light of democracy is shining at the moment of truth for Namibia, and this truth highlights that one should make sure that the nation continues to obey democratic principles and rules even when they are hard to follow during challenging times like transition (CGTN, 2024). These issues will dramatically influence the character of Namibia's democratic transformation and the country's positioning as a beacon of democratic governance in the region.

This explains the nature of the discussion where the nomination process of Vice President Nangolo Mbumba as the possible replacement of the deceased president of the day has to be covered to the end.

The history of Namibia is painfully infinite in the folds of the colossal transition from the slavery of the colonial conquest to the epitome of sovereign independence that not only set the people free but also dawned the era of democracy and self-determination according to the borders of the state. This transformative period was documented in the pages of the history book, thus it became the foundation for a new era that was anchored on the core values of democratic principles (Hartmann, 2009).

In the wake of this seismic phenomenon, the Namibian state took up the cudgels as a trailblazer of democratic resilience as characterised by the flawless and scripted transfer of power realised through successive democratic elections. At the defining stages of the set transitions, the nation has demonstrated this kind of commitment by presenting it as a visible embodiment of the unfaltering dedication to the preservation and promotion of democratic norms and principles, consequently, through this act, it has attained its position as a shining example of democratic governance in Africa and beyond (Erdmann, 2003).

This paper seeks to explore the underlying factors that have enabled Namibia to achieve and sustained such smooth transitions of power. It examines the role of democratic institutions, political culture, leadership, and constitutional provisions in facilitating orderly changes in government.

Furthermore, the study situates Namibia's experience within the broader African context, where transitions are often fraught with challenges and, aims to identify lessons that can inform democratic development in other emerging democracies.

This piece of writing specifically targets the democratic journey of Namibia, trying to find answers to such questions as to why was it (Namibia's democratic journey), what is it (Namibia's democratic journey), and how does it work (the transition processes in Namibia's democratic journey) through historical setting of the story, the constitution, and political factors grounding its transition. Through the analysis of recent events and legal interpretations, this research will provide insights into democratic principles that underlie governance of Namibia,

and the shortcomings of the country in facilitating power transfer in a smooth way.

As per the stipulations contained in the legal succession constitution of Namibia, the acting president should take the position of the President for a period of complete 90 days, after which, the newcomer will be at the helm office, citing death, resignation, or dismissal as reasons.

Rethinking leaders and the means to power is a heavy task and contributes to several social conflicts as well as raises doubts about the new governments or the new reign's willingness thereto hold to such democratic ideals (Melber, 2011).

Firstly, Dr. Erasmus brings up leadership of Namibia as a champion of democratic transition during the phase of a transition because democratic values are of importance. Apparently, transparency and awarding these reforms to the already-prevailing constitution are the ones required in this case.

Namibia's democratic transitional phases, unlike the former ones, will affect its legitimacy and control of the sub-region. Consequently, its engagement during the transition period would be seen as proof of Namibia's trustworthiness by those involved in the movement towards national independence.

Constitutional and transparency issues have been long standing and significant challenges for Namibia's democracy, upon which erstwhile Vice President Nangolo Mbumba will base the success of his presidency.

This article begins a search on the multiple dimensions of power transition interactions in Namibia, aiming to uncover the complex mix of legal interpretations, political dynamics, and the final implications for democratic consolidation.

It is at the core of this exploration that the deft and scrupulous provisions, woven to sustain democratic principles and the smooth transfer of authority, are tested. We aim to exemplify the strength of Namibia's constitutional framework in terms of the ability to deal with the leaders change and its unwavering devotion to the democratic principles through the exploration of the legal provisions and the historical precedents.

To achieve this objective, we prioritise exploring the robustness of Namibia's institutional infrastructure to endure the turbulence of governance change whilst preserving the tenets of democracy. This is (aims) to provide perspectives on the effectiveness of the Namibian law and system of governance in addressing the problems that are inherent in the power transitions, and hence to contribute to a better understanding of the nation's democratic journey and its boldness in maintaining the democratic values.

By understanding the Namibian case, this research contributes to the growing body of knowledge on democratic consolidation and peaceful transitions in Africa. It highlights the importance of institutional design, political will, and civic engagement in fostering democratic resilience and long-term political stability.

Moreover, the legal perspective is complemented by the political analysis in the study not only in the narrow sense, but in the entire broad framework within which these transitions occur. The intent is to disentangle the complexities that underpin the Namibia's political environment by investigating the roles those political parties, civil society, as well as various stakeholders play in directing the trajectories of governance. The author strives to achieve this by means of a thorough account of the relationship between politics and the wider forces that participate in the succession processes and how this interplay affects the way these processes consolidate democracy in related countries. Analysing these multidimensional interactions lies the unveiling of the hidden forces that regulate the progression processes and, in turn, influence the development of democratic principles. With a holistic approach, one has the broader understanding of Namibia's political landscape, with the complexity of governance being illuminated and the many influences that are at the heart of democratic evolution being highlighted.

Furthermore, the effectiveness of governance factors significantly influences a nation's ability to address current socio-economic challenges and achieve sustainable development. Therefore, this research will explore how potential leadership transitions may impact key policy areas, including economic governance, social welfare programs, and public service delivery. By such an analysis of these areas, we seek for the clarification of how leadership transitions may alter the paths of development of the Namibian society and economy, comprising possibilities of policy reorientations, resource reallocation, and the overall effectiveness of public interventions. The considerations outlined above form a critical basis for any comprehensive evaluation of the broader implications of leadership changes on Namibian society, as well as for all strategies designed to address the risks and take advantage of the opportunities present in such a scenario for the purpose of sustainable development.

At the core level, this paper analyses the Namibia's power shift going beyond complex legal judicial interpretations and embracing the various spheres of political, legal, and socio-economic complexities. Achieving this goal implies tackling the complexity of the underlying factors that determine the strength of Namibia's democratic framework and the barriers that should still be overcome to secure democracy. Going in depth into the complex dimensions of Namibia's transition process, the article aims to provide the reader with broader grasp of the intricate relationship between political, legal, and socio-economic dynamics that determine the country's democratic destiny. Through this in-depth examination it hopes to provide more clarity on the capacity of Namibia's democratic institutions to cope with the changing landscape of challenges, as well as highlighting areas where attention is required for democratic governance. Through such an all-encompassing exploration we aim to add our views to the discussion on Namibia's democratic development, thus giving reflections that could be used for shaping policies and strategies which promote a more flexible and inclusive democratic structure found in the nation's future ventures.

### **Historical Context**

The long road to Namibia's independence was a drawn-out affair spanning over decades of defiant fighting against the tyranny of colonial domination and the unbreakable chains of the apartheid regime of rulership. The liberation movement, South West African People's Organisation (SWAPO) guided by tough and resilient liberation movements represented the indomitable spirit and unparalleled stubbornness of a nation determined and dedicated to gaining freedom and autonomy. This struggle for emancipation was defined by an indestructible desire to fight for freedom even in the most trying times, and an unquenchable spirit that just wouldn't give up in the face of tyranny. In this context, SWAPO surpassed any other political and liberation parties in the quest for Namibian self-determination, instilling a solid foundation for the people to unite and fight for their freedom not less than zealously. The journey to freedom was built upon the backbone of selfless individuals such as Sam Nujoma, Toivo Ya Toivo, Hage Geingob, Hifikepunye Pohamba, Peter Nanyemba, Dimo Hamaambo, Peter Mweshihange, Mzee Simon Kaukungwa, John Otto Nankudhu, Dr. Nickey Iyambo, Dr. Libertina Amadhila, Dr. Iyambo Indongo, Dr. Theo-Ben Gurirab, Hidipo Hamutenya, Ben Amadhila, Moses Garoeb, Pendukeni Iivula-Ithana, Netumbo Nandi-Ndaitwah to mention but a few, who risked persecution and were willing to stick to their ideals irrespective of the challenges; they were the ones who nurtured the revolutionary fire that consumed the oppressors and finally led to freedom (Szasz, 1994). The Namibians have managed to keep freedom from colonialism and apartheid as the best monument of their will and steadfastness.

The endorsement of a democratic constitution in 1990, was the outcome of negotiations that recognised equality, the rule of law, and human rights. This ideal statement capturing the spirit of the people in general was

a vision for the future as well as the direction of Namibia. The focus of the constitution is on inclusivity, equality, and dignity; that is, the constitution takes into account the problems of getting from the oppressed colony to a democratic nation. The country stood face to face with the unequal and demanding task of bringing about reconciliation of long-entrenched demarcations of the differences which had been created throughout years of segregation and racial discrimination.

The scale of these challenges notwithstanding, the unshakable attitude of national reconciliation, and nation building of Namibia served as a torch bearer with towering perception, guiding the path towards a united and harmonious society. The country took on a more resilient role during the period of turbulence, with the people embracing a united journey for healing and acceptance. With collective efforts of redressing past injustices and involving diverse communities in dialogue, Namibians never relented, setting the pace for a cooperative and even development sector. The pledge to mend the past wounds and bring the people together turned into the motto of the Namibian struggle for the creation of a society based on principles of tolerance, understanding, and shared well-being (Cottrell, 1991). Namibia's commitment to cordial relations between its people remained a manifestation of the prevailing spirit of tenacity and vision as the country strove to move towards a promising future.

It would be true to say that the search for reconciliation became the basis of the Namibian identity after independence, as the nation was trying to create a common cultural identity threaded through from the different fields of its vast cultural heritage. The journey towards a dignified, equitable discussion was accompanied by various initiatives aimed at the healing of the scars of history, and this was the starting point of the thriving of the democratic dreams of Namibia. The country was thus successfully addressing the history of grievance within the process of all-embracing dialogue, which meant a quiet but irrevocable transition to national renewal. The implementation of policy of national reconciliation was the key factor to the healing process and from there the unit was created paving the way for a more compact and stronger community, where diversity is appreciated and unity is embraced. In its long and challenging freedom journey, the spirit of reconciliation has been a bright star guiding Namibia through the many complexities forgiving the past and facing its future, defined by peace, shared understanding, respect, and mutual prosperity. By subscribing to this ethos, Namibia displayed its indefatigable determination to construct a nation model founded on the principles of pluralism and urged by the values of peace, fairness, and acceptance for all.

Although the democratic seeds were planted, their blossoming and evolution needed to be continuously watched over and supported by the selfless and unwavering. Namibia's fledgling democracy, however, had to come against numerous challenges that ranged from the development of intricate democratic institutions to the flourishing of active civil society. Nevertheless, propelled by unwavering drive and head strongness, Namibia inexorably started the journey of ensuring that democracy sneaked into its political system, with unflinching resoluteness of its citizenry and the democratic sentiment. Undertaken in a combined manner and through persistent determination, Namibia experienced the lessons from democratic transition and made progress on consolidation of the democratic infrastructure. This was a journey of human endurance and the permanence of democratic values, sources of strength which stood firm to the face of unfavourable odds. With Namibia having paved its democratic path forward, it held fast to the fulfilment of its vision to bring about a democratic culture based on accountability, transparency, and inclusivity, thereby providing the foundation for an improved prosperous future (Bösl, 2010).

In hindsight, the route which led to Namibia's independence will serve as an example of the power of determination and spirit in going beyond the limits, the statue of the indestructible force of hope and courage. It

is a story of courage in overcoming the tyrant, of unity that exists despite the divisions, as well as of progress that triumphs over the adversity.

In the journey of Namibia through the peaks and valleys of history, its unwavering commitment to democratic ideals, human rights, and the rule of law, tend to light an eternal flame that, in turn, will be borne by the generations to come. This journey embodies the indomitability and braveness of Namibians which forms the basis of a dream founded on principles of justice, equality, and freedom. The country's progress is aimed at upholding the values that continue to define its unique identity, serving as a source of inspiration for nations pursuing the banners of freedom and democracy worldwide. In summary, Namibia is a poignant manifestation of the intrinsic resilience of humanity in its journey to regain dignity and forge a better destiny for all.

### **A Critical Examination of the Namibian Constitution, International Law, and the Courts**

Despite the stability of the constitution, the best way to implement international law locally is still up for debate. It's a common claim in the literature that Namibia interprets international law monastically. While this is just a starting point, it is far from sufficient to encompass and tackle the plethora of legal entanglement that arises from the local application of international law. The paper will begin by outlining the theoretical framework that will be used to apply international law domestically. As the theoretical and practical concerns pertaining to the local implementation of international law are examined, the connection between international law and municipal law is examined in detail, by means of a comparative viewpoint and scholarly analysis of Namibian jurisprudential and doctrinal frameworks.

In this article, it will be argued that public international law, which includes both customary international law and general legal concepts, and international agreements are the two main categories of international law that are incorporated into Namibian law. In doing so, the evaluation will highlight the scant attention paid by domestic courts to the local application of international law and, when it has been, the analysis has occasionally been erroneous and imperfect.

For the purpose of interpreting international agreements that bind Namibia, the proper interpretative techniques will be mentioned as Articles 31 and 32 of the Vienna Convention on the Law of Treaties between States, 1969, three sections that reflect customary international law (Ndeunyema, 2020). Examining the validity of "soft law" sources in Namibian courts will also be crucial, with a focus on the general observations of treaty bodies established under international agreements. Since the research is centred on how international law is implemented in a domestic adjudication, this section examines how it is applied in Namibia. To encourage normative clarity, the article's conceptual framework will be found in international human rights legislation.

### **Theorising the International Law-Municipal Law Relationship**

Discussions on the relationship between municipal law and international law revolve around the issue of primacy and the degree of independence or separation between the two legal orders. Anytime international law is applied in a domestic context, concerns regarding the nature of the relationship arise, making the legitimacy of this analysis pertinent. Four broad concepts have been put up to describe the relationship between local law and international law in ascertain country. Along with inverted monism and harmonisation, the two most well-known concepts are monism and dualism. Given that these theories are flawed, insufficient, and out-of-date paradigms for comprehending the connection between international law and local law, the historical study is emphasised

not least due to the modern international judicial system's globalisation.

Therefore, monism encapsulates unitary legal notions in which local and international laws are seen as parts of a single, cohesive system. In both international and local choices, a monist perspective gives precedence to international law over local law. International law is immediately incorporated into domestic law and has direct impact; it does not need to be further transformed or included within the State through the use of domesticating legislation, for example (Zongwe, 2019a).

Consequently, such international law would bind that State, including its legal system, where a monist established as customary international law, a general principle of law, or where a State has committed itself to an international agreement in accordance with its domestic laws. There would be no requirement for additional legislative confirmation for domestic application.

In a dualist model, municipal law takes precedence over international law in municipal choices, but international law maintains its supremacy over international law in international decisions. Dualism, often known as pluralism, begins with the idea that law is an act of sovereign will. In contrast to participation in a collective act of sovereigns, municipal law is a manifestation of the will that is inwardly directed, setting it apart from international law. According to the theory of dualism, local and international law are two distinct and opposing legal systems with little link or overlap. A traditional claim made by dualists is that the two legal systems should be distinguished according to the specific relationships that they oversee.

Furthermore, domestic law handles social contacts between people living in a State; international law only addresses social interactions between States. Dualism further confirms the supremacy of the independent State and its own local law. The application of the doctrines of transformation (or incorporation) and adoption is consequently required for international law to have legal force in municipal courts.

According to the transformation paradigm, separate principles of international law will only be intentionally changed or assimilated into municipal law. Through legislative act, treaty promulgation, or other appropriate constitutional gesture, reflects an "extreme" dualist position.

According to the transformation doctrine, international law must be "transformed" into municipal law by the Legislature and Executive, two branches of the sovereign will, because it is inapplicable in municipal courts on its own. Within the tradition of parliamentary sovereignty, which is typified by the United Kingdom, the transformation thesis is widely accepted. In a dualist state, the sovereign would have to enact legislation in order to issue treaties. It is also necessary to adopt customary rules. the adoption concept asserts that municipal law presumes a mandate from the sovereign to include international law, and it is an alternative dualist notion from transformation. Consequently, the sovereign need not expressly declare international law to be a part of local law in order for domestic courts to use it. Still, Domestic courts would continue to be constrained by superior standards, such local laws.

A type of monism known as "inverse monism" holds that when making choices on both the international and local levels, municipal law supersedes international law. Lastly, harmonisation completely rejects the idea that local law and international law are at odds. By claiming that the attempt to resolve dispute by claiming the automatic superiority of one legal regime over the other does not reflect reality, harmonisation casts doubt on the general ability of monist and dualist perspectives.

When evaluating these theories in the Namibian context at this moment, it's critical to keep in mind Tshosa's three cautionary remarks. First, choosing the appropriate theory shouldn't be done solely on the basis of theory and abstraction.

Municipal law regulations would influence the domestic application of treaties in particular and international law in general. Most legal systems that employ constitutions as their primary normative framework share the core premise that constitutional law controls the internal implementation of treaties. This principle applies to Namibia, as we shall see later. Second, Tshosa points out that the practical methods used by national courts, of which Namibia is one, demonstrate that courts routinely fall short of enforcing legally enforceable agreements, even in monist states.

In his concluding remarks, Tshosa states that these theories are applicable to Namibia exclusively within the framework of customary international law, not conventional law (Zongwe, 2019b). According to Tshosa, the actual issue is “how international law principles can be integrated” or, alternatively, national legal laws are “incorporated” into local law to improve the effectiveness of the national legal system because they are sometimes vague and insufficient to address legal problems in the actual world. However, Tshosa’s cautions do not negate the concepts of municipal law and international law superfluous. Instead, they make it possible to keep bringing that relationship to light. It is true that there is a “symbiotic” relationship between municipal law and international law, with local law serving as both a source of material for international law and a vehicle for its effect. Consequently, the constitutional stance should be carefully taken into account when evaluating the connection. The Namibian Constitution’s “prescriptions” are the subject of the following section.

### **The Use of International Law Prior to the Constitution**

The Constitution’s “newly” established position on international law must be appropriately contextualised in light of the legal continuity reflected in Article 66(1), which recognises the common law’s continued force and validity as at independence, with the exception of situations where it conflicts with the Constitution or other laws. Therefore, the pre-constitutional common law position on the application of international law would be appropriate, unless the reverse is implied by the Constitution or other statutes.

Prior to Namibia’s independence, the legal framework of South West Africa was largely a continuation of the South African Westminster parliamentary sovereignty models that had been established during colonial rule. Nothing regarding the application of international law was mentioned in South Africa’s then-composite, unwritten constitution. Speaking of international accords, Namibia’s pre-Constitutional view was that ratifying, signing, or joining international accords was an executive act. It was necessary for domestic incorporation through a legislative act to become a part of municipal law, as was established in *Binga*. In separating civil from international agreements, such as resolutions adopted by the United Nations General Assembly (UNGA) and United Nations Security Council (UNSC) that terminated South Africa’s mandate from the League of Nations for South-West Africa, J. Strydom declared: A South African court, or any court in this territory, will generally only give effect to obligations incurred by international treaties and resolutions by international organisations like the United Nations, which are on a different footing from international customary law resolution was included in the national legislation by a legislative act.

Before an international agreement is applied, *Binga* verifies its domestic incorporation need through legislation (Ruppel, 2011). This stance was qualified, although, by the possibility that unincorporated treaties might be taken into consideration when interpreting unclear laws. The way that customary international law was applied domestically was established by judicial rulings and common law concepts. Following a protracted period of ambiguity and dispute, the South African Supreme Court of Appeal’s Case ruling confirmed for the first time that customary international law is in fact a component of South African law. Case was applied to South West



Africa and Namibia because of the vassal nature of the country's legal system before independence.

Case included disclaimers derived from the then-current English law. Firstly, if customary international law conflicts using a South African Parliament Act, it does not apply. This was consistent with the legislative sovereignty idea. If a court's established precedent conflicts with a customary international law rule, courts are nonetheless required to respect it under the stare devises theory; customary international law could be superseded by the Executive's prerogative power under the Act of State doctrine. There doesn't seem to be much pre-constitutional court guidance about the application of broad legal principles domestically as a legally binding source of international law.

### **The Constitution's View on International Law**

Following independence, the Constitution adopted legal provisions that are referred to as "international law positive" or "international law friendly", discarding the idea that foreign laws are unfavourable. Examining the bill of rights framework obviously draws from international human rights law, but the Minutes of the Constituent Assembly that drafted the Constitution do not specify why this embrace of international law was made. However, a reading of the Constitution at the time suggests that it was most likely a response to Namibia's past of colonialism and apartheid, two regimes that flagrantly disregarded and breached international law, including the international humanitarian law norms that were ostensibly relevant during the conflict that preceded independence.

Sometimes it is said that "Namibia is a child of international solidarity", a political and legal truism that properly sums up the part the United Nations and international community have played in the "Question of Namibia". Numerous clauses in the Constitution, such as the Preamble and other express provisions resembling international law, demonstrate the document's supportive attitude towards international law. The main one of these is Article 144, which states that the general principles of public international law and international agreements that Namibia is bound to under this Constitution must become a part of Namibian law, unless expressly established otherwise by this Constitution or an Act of Parliament.

Even if it's bland, the conclusion that Article 144 "sought to give expression to the intention of the Constitution to make Namibia part of the international community" is welcomed and aligns well with the two main principles of international law: State consent and sovereignty. The Article 144 examination begins with a dissection of the definitions of "international agreements" and "general rules of public international law".

### **Explaining "General Rules of Public International Law" and "International Agreements"**

There is not much debate regarding the interpretation of Article 144's reference to "international agreements", which refers to any written agreements that Namibia has made with other States or international bodies. It demonstrates Namibia's commitment to uphold the conditions of the agreement.

Many clauses in the Constitution specify the steps that must be taken before an international agreement can be incorporated into Namibian law. Using the authority conferred by Article 32(3)(e), the President (or his representative) would first negotiate an international agreement before signing it. Cabinet Ministers are empowered by Article (i) to assist the President in "determining what international agreements are to be concluded, acceded to, or succeeded to" by providing support for the exercise of these powers. In addition, Article 63(2) (e) gives the National Assembly the power and duty, after the President's signature, to "agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article

32(3) (e)". Thus, the people have the power to negotiate (and dissolve) foreign agreements because the Constitution stipulates that the President may only act with the approval of the National Assembly.

It is submitted that the Constitution's dual-responsibility framework for negotiating international accords may also strengthen the democratic benefits of parliamentary oversight and executive accountability, minimising the absence of democracy in international law making. The interpretation and scope of Article 144's "general rules of public international law" are subject to further debate. The limited view that the term is equivalent to customary international law is adopted by scholars with a focus on Namibia, such as Tshosa and Erasmus. Using comparative constitutionalism, one can discover that comparable allusions to "general rules of public international law" may be found in constitutions such as those of Kenya and Germany... The terms "customary international law" are used explicitly in other constitutions (Malawi and South Africa 49) (Patel, 2007; Mumisa, 2002) to distinguish between international law that derives from treaties and other sources.

According to me, while interpreting the Constitution with a generous, comprehensive, and purposeful perspective, it is accurate to interpret the term "general rules of public international law" broadly to mean both general legal principles and customary international law. This interpretation primarily draws from the language of Article 38(1)(a)-(c) of the International Court of Justice Statute that defines "international custom, as evidence of a general practice accepted as law" and "the general principles of law of civilised nations", in addition to international agreements. It is widely accepted that Article 38(1) of the formal sources of international law incorporates customary international law.

Furthermore, the three sources do not follow an a priori hierarchy, while some contend that general legal principles are a "secondary" source that primarily serves to "fill gaps", when there is not a treaty or accepted practice, while others might disagree.

Accordingly, it is argued that binding Namibian law incorporates both general legal principles and customary international law.

The textbook technique for developing customary international law is defined as "evidence of a general practice accepted as law" under Article 38(1)(b) of the International Court of Justice Statute. Usually, there are two components to this. First, the objective aspect of state practice, known as *construed*, is a general practice that is sufficiently pervasive and representational; uniformity is not necessary. The second is *opinion juries*, which is a personal element that distinguishes custom from merely usage or habit by requiring states to do their actions because they believe there is a legal responsibility. It's unclear exactly what these components signify and how they are used to create custom.

The argument that domestic courts consistently determine custom using this textbook approach has been shot down by certain academics. Others prove that the International Court of Justice, in particular, has not employed a single approach when determining rules of custom, but rather a combination of three: induction, deduction, and assertion (the primary method). The main tenets or the numerous criticisms of custom are outside the purview of this work. The article will instead adopt the well-established stance that the two components are still necessary and unchanging in order to demonstrate whether there is a rule of customary international law. Although Namibian law is obligatory and incorporates customary international law, general legal principles are not as well-established. Hardly any attention has been paid to these.

Or mention in Namibian courts, as the case studies that follow will demonstrate. The determination of general principles under international law is still controversial, in part because of their unwritten nature. Among the relevant doctrinal issues is their determinative methodology whether or not these are general principles of

international law, municipal law, or global legal systems. Since these matters are not the subject of this discussion, the stance taken is consistent with the generally held belief put out by Redwell, which holds that general principles in the sense of Article 38(1)(c) can originate from and diffuse through both local and international law.

The following section looks at how broadly Article 144 can be applied because it has been established that the three main sources of international law are customary international law, international agreements, and basic legal principles—are incorporated into obligatory Namibian law.

### **How Non-binding International Law Sources Are Used and Interpreted Domestically**

When understanding and applying “hard law”, which might be found in statutes, international law, or the Constitution, one can refer to interpretations found in a variety of sources that are not legally enforceable, or soft law. The African Commission for Human and Peoples’ Rights, the Committee on the Elimination of Racial Discrimination and Discrimination against Women, the Committee on Economic, Social, and Cultural Rights (CESCR), and other quasi-judicial or non-judicial organisations frequently issue the law in the form of general comments, general recommendations, or resolutions.

Comparative law derived from foreign rulings (including those from other countries) must be distinguished from soft law sources, which could have persuasive power in Namibian legal reasoning. Soft law is important because it can help with interpretation, especially in cases when the law is ambiguous, contestable, vague, or open-ended. Although it is well-established that soft law sources do not have legal force of their own, consideration must be given to their persuasiveness and authoritative weight. These worries are not wholly novel. Scholarly analysis has focused on the nature, drafting style, and legitimacy of soft law sources; Keller and Grover (2012) have probably raised the profile of these discussions in relation to the United Nations Human Rights Committee’s general comments. The problems that Keller and Grover’s analyses are similar to those that result from soft law that has been issued by other organisations like the African Commission and the here’s “CESCR” spread out: Committee on Economic, Social, and Cultural Rights as well as other soft law tools available to domestic courts.

Responses to broad remarks fall on several “binding authority” spectrum points. Supporters of opponents of their use as “broad, unsystematic, statements which are not always well founded, and are not deserving of being accorded any particular weight in legal settings” and supporters of their usage as “authoritative interpretations” of treaty rules are at opposite ends of this spectrum.

Additionally, certain States have been known to object to general remarks, claiming that their content amounts to an “unacceptable attempt to attribute to treaty provisions a meaning which they do not have.” One example of similar critique is provided by individuals who criticised general comments.

The standard of logic, language, and the method used to generate general comments should all be taken into consideration when evaluating the normative legitimacy of these statements, as this will affect their persuasiveness as well as their interpretative and deliberate inventiveness.

Hence, there are two main ideas that support using generic comments in treaties. The first is the philosophy of subsequent practice. According to this perspective, general remarks can be considered in interpreting an international agreement since they are seen as representing subsequent practice for the purposes of Article 31(3)(b) Vienna Convention on the Law of Treaties (Tzevelekos, 2009) (less so if a State has opposed the content of the general comment). Likewise, States parties’ compliance with general remarks would. According to the argument, States parties are required by Article 31(1) Vienna Convention on the Law of Treaties to interpret an instrument

in good faith and to give due consideration to the general comments provided by the body tasked with interpreting the instrument and encouraging adherence to it. The suggestion is that, contrary to conventional wisdom in the interpretation of international law, Article 31(1)(c) of the Vienna Convention on the Law of Treaties be read more widely to encompass the actions of treaty monitoring agencies as well as States.

The authoritative interpretation theory comes in second, when generic remarks about a treaty are claimed to be “authoritative” interpretations or declarations. Their authority stems from the fact that members of treaty body committees are chosen to carry out specific tasks, which necessitates the adoption of broad remarks. Committee members’ areas of expertise might also contribute to their authoritativeness. General comments have some legal effect despite beings of law in nature.

By laying out significant background concepts that a law may be examined against, they are especially helpful in both domestic and supranational contexts where attempts are made to resolve “hard cases”. Unquestionably, general remarks serve to promote a common international understanding of treaties and prevent State parties from asserting that a treaty obligation is restricted to a particular area of their experience. This is why they are considered unassailable.

Therefore, soft law sources like general comments can be properly relied upon by Namibian courts in the interpretation of the law, given the combined power of later practice and authoritative interpretation theories. Despite being conscious of their lack of legal force, Courts should view of that law as tools that can be useful for interpretation, deliberation, and even persuasion. This is consistent with the Constitution’s overall international law-friendly attitude.

### **Constitutional Framework**

At the heart of democratic governance in Namibia is the Constitution. A great seminal document ratified after gaining the independence that presents the basis of political mechanisms of the state. However, hiding in the depths of the” text are decisive provisions that very detail the procedures concerning the actions to be taken whenever there is a vacancy of power. The Constitution forms the basic framework that defines the organisation of power in the country, reflecting the united goals and principles of the people at large.

It is postulated that the Constitution is couched in workmanship, and it provides the principles that govern leadership transitions, maintaining stability and continuity in governance. It is therefore a pillar to democracy and a source of hope for citizens of Namibia. The people in this country have bluntly rejected despotism and arbitrary government. Consequently, these are the mechanisms that promote transparency and accountability of leaders in government. Indeed, as the foundation of the legal and political system of Namibia, the Constitution has a central function in defining the nature of the country’s trends in democratic development and promoting the culture of respect for legal procedures. These articles are symbol of confidence, stability, and order within which democratic institutions and practices are installed and the power transition is gradual.

The pillar of the Namibian Constitution is Article 28, which outlines the procedural practices that should be followed in the event of an occurrence of vacancy to the presidency; this letter guarantees the mantle of executive leadership passes smoothly during times of transition. It should be noted that Article 29 has provided a clear instruction for the rest of the interim period for a former President, ensuring the country’s governance structure’s continuity and stability. These provisions of the constitution act as pillars; thus, outlining and guidelines to be used to manage the unexpected and protect the order of the constitution. Article 28 guarantees a structured procedure on presidential succession, thereby assuring a peaceful and legal transition of powers pending the

solution of the matter. This ensures the avoidance of disruptions to governance. Formally the Article 29 provides us with a systematic method of finishing the term of the former president, which guarantees that there is continuity and consistency within the executive branch. These articles jointly demonstrate the democratisation pursuit of the principle of law, as they build block of the legal framework to be used during leadership transfers and the protection of the political stability and institutional morality of the country.

### **Political Dynamics**

The South West African People's Organisation (SWAPO) is the ruling party in Namibia's multiparty system. Lots of talk and debate both within and outside SWAPO have been ignited by President Geingob's passing on. The emergence of questions relating to electoral machinery, political organisation structures, and constitutional interpretation has been a result of this shift, an indication of the magnitude of democratic governance and social transformation that a nation undergoing change faces. Perpetuation of democratic systems and institutional stability depends on Namibia maintaining a compromise between the dynamism and stability. Leaderships of the elites and SWAPO are saying succession and changes in leadership as they are waiting for Geingob to leave. In such as choosing a new leader, keeping a party together and differentiating the tactics to the demanding social change illustrate the suitability of these leadership functions (Melber, 2011). In this critical juncture, decisive and pragmatic approach is required to steer leadership succession which enhances unity and party momentum. With the intention of SWAPO Party holding the first position of political power in Namibia, the process of managing these internal politics proves to be a guide for the party's robustness and flexibility amidst the dynamics in political landscape. By way of sturdy discourse and common sense, SWAPO was destined to exit this transition stage more strengthened and consolidated, renewing its promise to champion the Namibian people.

In a wider political ground, outside of SWAPO, there are confusion and speculation in the air as opposition parties and civil society actors equally watch with keen interest. In the aftermath of the leader's notion of the authenticity of the electoral process is questioned, the leaders are not held accountable and the democratic structures are on the brink of collapse. The shadow of doubt covers the future of politics in Namibia. Now at the crucial stage of its democratic development, Namibia struggles with the issues of fairness and openness of its election procedures. It is also suffering from prejudices on the part of the public. The nation is being shaken by a disturbing period of political transition, and then all the social segments should be more active and attentive in order to protect democratic values. Making democracy work—openness, responsibility, and democracy are values to be preserved with teamwork.

This Democracy journey will be an assurance of the country's backing of democratic governance and the rule of law if it is successful. Various stakeholders from different spheres of life are required to interact, come into terms and further the sense of democracy. Anchored in the ability to navigate around the waves, Namibia is a resilient democracy which upholds values of accountability, transparency, and inclusivity.

Through the emphasis of inclusivity and high transparency, the country can stay afloat of the woes of transition and emerge more robust than ever. It is this unwavering loyalty to democratic principles that provides a sense of light at the end of the tunnel, which platforms the country into a better tomorrow.

As Namibia spells out its path ahead, it is indispensable to remain anchored in the principles that have propelled its struggle for democracy up to this point in time. Adhering to its values and facing challenges with a firm determination Namibia can overcome difficulties and reach the envisaged future where stability is the main characteristic, where there is shared prosperity, and development continues (Bayer, 2017).

Additionally, as stated by Article 34, the constitution design outlines a succession separate hierarchy. Here, the vice president takes over as president in the event of the elected leader's disability or absence, if the vacancy occurs not more than one year before the date on which Presidential elections are required to be held. If the vacancy occurs more than one year before the date on which Presidential elections are required to be held, the Vice President will be acting in the position of the President, while the election for the President is being held within a of 90 days from the date on which the vacancy occurred.

This structure, which is hierarchical in nature and functions as a methodical mechanism for this cession of executive power, protects against the uncertainties arising from an extended political process. Article 34 lays forth a clear succession plan that ensures governance continuity by using a Convention on the Rights of the Child instead of a deed of appointment (Cheng, 2021). In certain situations, the vice president takes over as president. By outlining the succession plans in the event of unanticipated issues with the leadership, the constitution safeguards the nation's anti-fragility. This permits the country to continue having faith in its system of government. The clauses of Namibia's dynamic constitution, especially the one pertaining to the president's power, have given rise to disagreements regarding their interpretation and application. With the advent of democratic governance in all its vitality, it is imperative that various political actors participate in meaningful discussion and decision-making to safeguard the democratic legacy and constitutional principles. A path forward can be identified by suggesting candid and open discussions regarding the interpretation of certain constitutional clauses. By establishing a political climate that prioritises responsibility, openness, and the supremacy of the law, the plan will bring the nation's democratic principles into alignment.

However, maintaining the core values of openness, responsibility, and the rule of law—which foster public confidence in the institutions tasked with upholding the constitution's order—becomes even more important during ongoing negotiations. Additionally, proactive measures must be made to disseminate constitutional education and provide citizens with the knowledge they need to understand the framework of the constitution. This will encourage citizens to actively participate in the democratic process and to exercise their rights by holding their elected representatives accountable.

Navigating these delicate constitutional dynamics, Namibia has come to terms with a situation where observance of constitutional principles and sustenance of democratic norms take the first seat. Through the cultivation of a culture built on constitutionalism and upholding the impregnability of the law of the land, Namibia can practically deal with the intricacies regarding presidential succession with trustable resoluteness. By adopting this approach, Namibia will guard the consolidation of all its democratic institutions, thus reiterating its commitment to democratic governance and all the underlying principles.

### **Challenges and Opportunities**

Namibia's discussions on power transition provide us with dramatic warnings of the both the challenges and hopeful outcomes on the part of democratic transition. One of the main topics for the debates is the constitutional interpretation, the complicated parts of running democratic parties, and the leadership passage challenges. The overcoming of the democratic problems is the matter of public discussion of the right balance of democratic values and law which is the basis of the rule of law.

The process of constructional interpretation is at the core of this practice and requires precise review to guarantee consistency with democratic outlines. The ever-changing nature of legal discussions stresses how the constitutional provisions that relate to succession and governance require that agreement and clarity should

prevail in their interpretation. Via democratic deliberation and legal dialogue, Namibia will make its democratic framework sturdier and increase confidence in the ability of its institutions to operate aboveboard.

Additionally, partisan politics is a dual-faceted terrain that separates progress from hindrance. The dynamics between political parties, but more particular during the leadership transitions, need the fine-tuning to support the party unity while not losing the faith to the democratic heritage. Through the fostering of intra-party deliberation and the creating of an atmosphere of inclusion, Namibia may utilise the power of political pluralism for the building of the democratic fibre.

Further it is extremely crucial to address the issue of leadership succession, which warrants sticking to the constitutional procedures. Demonstrating leadership clearly, accountably, and transparently of structures and processes of change of leadership, are important in protecting the democratic legitimacy of the country. Compliance with the standard procedures and the advocacy of meritocratic principles can pave the way for Namibia's smooth leadership transitions that should be perceived as such beams of democratic stability rather than the source of conflicts.

Indeed, civil society, media, and other stakeholders cannot be underplayed when it comes to steering the direction of successful democratic consolidation. They are the cornerstone in the process of keeping the government responsible, advocating for public disclosure and voice amplification of those in the minority. Democracy in Namibia can be strengthened by fostering the growth of a dynamic civil society and guaranteeing the press freedom, which enable the creation of a healthy democratic atmosphere dominated by the foundations of transparency and citizens' participation.

In spite of the complications, Namibia is at a critical point which calls for a fresh look on the possibilities of re-affirming its democracy. Inclusive dialogue becomes the basis for success, providing the participants with an opportunity to discuss various options and consider different positions. In synchrony with the joint actions of Government, civil society, and private sector, Namibia will start the journey of institutional reforms that will ensure democratic governance and national resilience.

The complexities of Namibia's democratic institutionalisation stem from the fact that the democratisation process itself has both challenges and opportunities that are intricately interwoven, creating a multi-dimensional terrain that offers potentials for change. Through the effective management of the varied challenges of transformation with resilience and resolve, Namibia will be able to map a way forward characterised by openness, social cohesion, and shared prosperity. By doing so, the nation will once again reassure itself and the rest of Africa as the torch bearer of democracy on the continent and serve as an aspiration to the rest in the quest of democratic ideals.

## **Conclusion**

In conclusion, the democratic and peaceful transition of power remains a cornerstone of Namibia's political stability and development. Upholding transparent electoral processes, fostering accountable leadership and, respecting constitutional frameworks are essential to safeguarding this tradition. As Namibia navigates future leadership transitions, sustaining these principles will be vital in reinforcing public trust, promoting national unity, and advancing the country's socio-economic aspirations.

The journey of Namibia to democracy is a long road. It is a trip down memory lane of a country that has endured great suffering and terror. Though of late stirring varying debates and discourses around the finer points of the constitutional regulations in times of power transition, the events equally present us with prospects for a

fresh look at things and rejuvenation. In these realms of discourse Namibia is at the centre of a crossroad, ready with an opportunity to reaffirm its adherence to the democratic principles and to pave away to the reinvented national revitalisation.

The tenacity and resilience of the Namibian people in the face of historical hardships is the very embodiment of the hope from the depths of tyranny and the sacred covenant between democracy and Namibian identity. Amidst the struggles brought by the recent developments, Namibia's democratic journey is unblemished and remains an unstoppable trajectory towards democracy, with the strong conviction and fervour to protect and uphold the sovereignty of democratic governance and the rule of law.

The dispute emerging from recent events not only provides a platform for the actors to reflect critically but also creates an atmosphere conducive to constructive dialogue and compromise. Through open deliberations which take politics across the board, Namibia will be able to tap into the knowledge and intelligence of its heterogeneous population to navigate the dynamics of political change calmly. Namibia can be resilient and stronger in the subsequent period as well as more democratic and transparent following the democratic principles and clear and open processes.

Democracy expansion in Namibia will be guided by the relentless grip on sustaining the rule of law and abiding constitutional values that hold the democratic institutions accountable. Namibia is able to streamline its governance structures and guarantee the rights and liberties of all its citizens by adhering to the rule of law and the existing legal norms and procedures. Through the process, Namibia ascertains its position as a torch-bearer of democracy and rule of law for the region and beyond.

Namibia has to be watchful and act as a guarantor of the rights and freedoms of all its citizens irrespective of whether they are from the majority, the minority, or any other background or category. Inclusive governance, which is based on principles of equality and equity, is key to a society that all individuals are able to prosper and help nation to achieve more. Through the pillars of inclusivity and social cohesion, Namibia could lay the foundations for a future where all the citizens of the country will be empowered and be able to unleash their full potential and thus, contribute to the shared prosperity of the nation.

Finding the right path further forwards, Namibia needs to remain steadfast in building its democratic culture and the principles of freedom, equality, and justice. Through the receptiveness of political transition and its obstacles as occasions of growth and renewal, Namibia can emerge sturdy and resilient and ready to fully and truly express its democratic desire and secure a brighter future to next generations. In this way, Namibia shows the world a leading light, and one that is very inspiring, a case for democracy as a lasting force in the face of hardship and one on the way to a better and more prosperous future.

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