

AFRICAN UNION
الاتحاد الأفريقي



UNION AFRICAINE
UNIÃO AFRICANA

**AFRICAN UNION ELECTION OBSERVATION MISSION
TO THE 28 NOVEMBER 2014
PRESIDENTIAL AND NATIONAL ASSEMBLY ELECTIONS IN
THE REPUBLIC OF NAMIBIA**

Preliminary Statement

30 November 2014

INTRODUCTION AND BACKGROUND

1. At the invitation of the Government of the Republic of Namibia, the African Union Chairperson, H.E. Dr Nkosazana Dlamini-Zuma deployed an African Union Election Observation Mission (AUEOM) to the 28 November 2014 Presidential and National Assembly elections in the Republic of Namibia.
2. The Mission is headed by Her Excellency, Ambassador Fatuma Ndangiza, the Chairperson of the African Peer Review Mechanism (APRM) Panel of Eminent Persons; and former Ambassador of Rwanda to Tanzania. The mission is comprised of 45 observers drawn from the African Ambassadors to the African Union, Pan-African Parliament, Election Management Bodies, Civil Society Organisations and experts from the following countries: Botswana, Burundi, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritania, Mozambique, Nigeria, Rwanda, South Africa, South Sudan, Sudan, Tanzania, Uganda, Zimbabwe.
3. The Mission is supported by a technical team drawn from the African Union Commission (AUC), the Pan-African Parliament (PAP) and the Electoral Institute for Sustainable Democracy in Africa (EISA).
4. The AUEOM's observed the 28 November 2014 Presidential and National Assembly elections in Namibia in conformity with the provisions of the Constitutive Act of the Union adopted in July 2000; the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl.1 XXXVIII) as adopted by the Assembly of Heads of State and Government of the African Union and the African Union Guidelines for Election Observation and Monitoring Missions, both adopted in July 2002; the African Charter on Democracy, Elections and Governance, which entered into force on 15 February, 2012. The Mission is also guided by other relevant regional and international instruments governing the conduct of elections such as the Universal Declarations of Human Rights (UDHR) adopted by the UN General Assembly in December 1948, the International Covenant on Civil and Political Rights (ICCPR), which entered into force in March 1976, and the Constitution and National Laws of the Republic of Namibia.

MISSION OBJECTIVES AND METHODOLOGY

Objective

5. In fulfilling its mandate in conformity with the aforementioned instruments, the objective of the AUEOM is to make an independent, impartial and objective assessment of the 28 November 2014 Presidential and National Assembly elections in the Republic of Namibia.

Methodology

6. To achieve its stated objective, the AUEOM undertook the following activities:
 - i. AU observers arrived in Windhoek on the 18th November 2014 and held a three days training from 22 – 24 November 2014. This provided an opportunity for observers to be trained on the African Union observation methodology, security and safety procedures, reporting and AU code of conduct for observers before deployment.
 - ii. Observers also received comprehensive briefing from the Electoral Commission of Namibia (ECN); Police; civil society groups; legal and political experts on pre-election issues pertaining to the Namibia 2014 elections.
 - iii. The Head of Mission also held further consultations with key election stakeholders including the President of the Republic of Namibia, the Minister of Foreign Affairs, the Chief Justice, the Inspector General of Police, the Electoral Commission of Namibia, leaders of political parties and civil society organisations
 - iv. On 25 November 2014, the Mission deployed 15 teams of two observers each to 10 of the 14 regions of Namibia, namely: Erongo, Hardap, Karas, Khomas, Ohangwena, Omusati, Oshikoto, Oumaheke, Outzonjupa and Zambezi. While on ground in their areas of deployment, observers consulted with provincial and district level officials of ECN, the Police and other relevant stakeholders.
 - v. On the Election Day, the teams visited 152 fixed polling stations and 41 mobile polling stations totalling 193 polling stations.

- vi. AUEOM returned to Windhoek on 29 November for a debriefing session where they reported back on their findings and shared their overall assessment of the elections
7. This statement presents the Missions preliminary findings up until the close of polling. These findings are based on data gathered through direct observations and consultation with stakeholders. The Mission therefore presents its preliminary findings and recommendations. A final report of the mission's assessment of the process will be published within 2 months of the announcement of final results.

PRELIMINARY FINDINGS AND OBSERVATIONS

(a) General Political Context

- 8 The political environment was generally peaceful and calm. Political parties freely campaigned and reached out to voters. AUEOM commends the political parties, candidates and supporters on their conduct in the lead up to the elections, and encourages the people of Namibia to continue in the same manner in the post-election period.

(b) Legal and Institutional Framework

9. The legal framework for the 2014 elections comprised of the 1992 Constitution of the Republic of Namibia as amended in 2014 and the Electoral Act of 2014.

Constitutional and Electoral reforms ahead of the 2014 elections

10. Ahead of the 2014 elections, reform initiatives were undertaken to improve the electoral process. The mission notes the following reforms:
 - The creation of separate Electoral Tribunals and Courts to handle elections related disputes within clearly stipulated timeframes.
 - The introduction of electronic voting mechanisms.
 - The consolidation of all laws relating to electoral process in a single Act.
 - The strengthening of the independence of the ECN in terms of its recruitment procedures, appointment, funding and accountability.

11. The AUEOM however notes that concerns were raised by stakeholders on the level of consultations on the constitution amendment process. The timing of the coming into force of the new Electoral Act less than two months before the elections also raised concern by stakeholders. In addition, some stakeholders expressed concerns with the suspension of the provision of the Act that regulates Voter Verifiable Paper Audit Trail (VVPAT) for electronic voting machines.

The Constitution

12. In line with Namibia's international obligations, the 1992 Constitution provides for and guarantees fundamental rights and freedoms that are crucial to the integrity of an election. These include freedom of expression, association, assemble and freedom of movement. Further, the third Constitutional amendments of 2014 strengthened the mandate of the Namibian Electoral Commission by making it a constitutional entity and safeguarding of its independence.

The Electoral Act

13. The 2014 Electoral Act of Namibia is a consolidation of the different legislation and various amendments relating to elections. The Electoral Act No. 5 of 2014 of the Republic of Namibia is the principal law that governs all aspects of elections at all levels. This Act provides for the right to vote, the registration of voters, the nomination of candidates, polling procedures, processes of dispute resolution and a clear description of election related offences. This consolidation of all election related laws into a single Act provides citizens, political parties and candidates with clarity and a comprehensive legal framework that protects the integrity of the electoral process in the Republic of Namibia.
14. The AUOEM notes that the Act provides for mandatory disclosure of party expenditure. However, the Act does not place a ceiling on party and candidate campaign expenditure, neither does it regulate funding sources for party finances. The AUEOM notes the possible effect this gap in the Electoral Act could have on the fairness of political parties' access to resources and the undue influence of private money in politics. Unregulated flow of money during elections could disadvantage small political parties with limited access to particular sources of funding as well as the possible subversion of the will of voters.

15. The AUEOM also notes with satisfaction the existence of an enforceable Code of Conduct for political parties.
16. The Mission further notes that the Electoral Act of Namibia places a blanket ban on people with mental or intellectual disability from participating in elections. The Mission wishes to draw the attention of the Government of Namibia to its obligation under art.12 of the Convention on the Rights of Persons with Disability to ensure that legal capacity is the only basis for political participation.

Electoral Framework

17. Elections in Namibia are governed by the Electoral Act (Act No 5 of 2014), which establishes the Electoral Commission of Namibia (ECN). The Act was amended in 1998 to secure greater independence of the ECN from the Executive. Several clauses in the act were amended as recently as October 2014, although many of these amendments will only be enacted after the current elections due to the short period of time between the time of amendments and the preparations for the 2014 elections. The Director of Elections serves the ECN in his/her capacity as the Chief Executive Officer and the Permanent Secretary simultaneously.
18. Commissioners are appointed for five years, but may be reappointed for further five-year terms, and may lose their positions for incapacity or may be removed by the President for misconduct with the approval of a resolution of the National Assembly. A minimum of two women must sit on the ECN at any point in time. The Electoral Act mandates the Electoral Commission of Namibia (ECN) to organise, direct, control and manage the electoral processes envisaged under the Act. The Act provides for a transparent process of nominating members of the ECN, guarantees its functional and financial autonomy. The Act also confers on the ECN the powers to register and regulate the conduct of political parties.

Electoral System

19. The Electoral Act provides for two systems for electing representatives. The President is elected through the first-past-the-post system. Presidential candidate needs only to secure 50% of the total vote to be declared a winner. The President

is elected for maximum of five two-year terms. Whereas, parliamentarians are elected through proportional representation on the basis of a closed party list system. Parliamentarians are elected for a term of five years. Elections are conducted at three levels: national, regional and local council levels.

20. Due to the proportional representative system in Namibia, the AUEOM notes that independent candidates are not able to contest in parliamentary elections. The Mission wishes to draw the attention of the Government of Namibia to the judgment of the African Court on Human and Peoples' Rights to the effect such legal provisions is not in line with the provisions ACHPR.¹

PRE-ELECTION PERIOD

(a) Political Context of the 2014 Elections

21. The 2014 Namibian Presidential and National Assembly elections are a historic first, not just for Namibia, but also for the African continent. For the first time, an African state is conducting voting via a fully automated system of voting using EVMs. The 2014 elections also take place in the context of an extended period of single party dominance by the ruling SWAPO, which has enjoyed clear majorities in the National Assembly since independence. Elections have historically been peaceful, without major incidents of violence or intimidation during the electoral period.

(b) Preparedness of the Electoral Commission of Namibia

22. The 2014 elections in Namibia will be the first in the country's history to be conducted using Electronic Voting Machines (EVMs), and will also be the first elections in Africa to incorporate paperless balloting into the voting process. The use of technologies in the election process was also expanded to include biometric voter registration and voter identity verification technologies.

¹ *Tanganyika Law Society and The Legal and Human Rights Centre and Reverend Christopher Mtikila v The United Republic of Tanzania*, Applications 009 and 011/2011 where the Court held that the ban on independent candidacy violated the *individual* right to equal protection of the law and the prohibition against discrimination (Articles 2 and 3), the right to association (Article 10), and the right to political participation (Article 13) of the African Charter.

23. In preparation for these elections, 1,255 fixed polling stations and 2,711 mobile stations were established. The AUEOM noted with satisfaction the initiative of providing mobile stations to ensure coverage of all registered voters across the country especially those in correctional facilities and hospitals.
24. The ECN recruited 12,480 polling personnel who were trained before the elections. The Mission commends the initiative taken to test-run these systems at the advance voting and in by-elections to engender public confidence ahead of Election Day.
25. The AUEOM noted that the ECN undertook the planning and logistics towards the Election Day in a professional and effective manner. Specifically the mission noted that election materials were deployed in a timely manner despite the logistical concerns expressed in its pre-election press briefing.
26. The AUEOM noted that advance voting for registered voters in diaspora and sea-going personnel was conducted on the 14th November 2014. The Mission wishes to register its concerns about the possible impact of the release of the results of these elections ahead of the results of the general elections. By international best practise, it is expected that results of advance voting be kept secret and declared on the same day as the results of the general elections.

(c) Civic and Voter Education

27. The ECN is mandated to undertake civic and voter education. Political parties and civil society groups are allowed to register with the ECN to conduct voter education, and are legally required to sign a code of conduct prior to engaging in voter education activities.
28. Civic education campaigns reportedly began prior to the amendments to the Electoral Act. However, efforts to sensitise the electorate on the use of the EVMs only began in October. The ECN conducted a number of demonstrations for political parties, media and observer groups prior to the elections to demonstrate and explain the use of the EVMs.

(d) Candidate Registration and Campaigns

29. Nine (9) candidates contested in the 2014 Presidential elections, and 16 political parties contested seats in the National Assembly elections. A total of 1,088 candidates were nominated through party lists in the National Assembly elections.
30. Candidates contesting the presidential elections are required by the Electoral Act (2014) to register their candidature with the ECN. For presidential elections, registrations can be made either by registered political parties or independent candidates. For party-sponsored candidates, registration requirements are: proof of party registration, a deposit of N\$20,000 and a list of 3,500 endorsements gathered nationally. Independent candidates must be supported by a list of at least 500 endorsements per region (in total 7,000 nationally), and pay a deposit of N\$10,000. The AUEOM notes the disparity in candidate registration requirements between party-sponsored and independent candidates which may raise issues about fairness.
31. Submission of candidatures to the ECN for both elections took place between 13 and 29 October 2014. The AUEOM noted that no presidential candidate or party list was rejected.
32. The Electoral Act stipulates that all political parties must abide by the Code of Conduct developed by the ECN. Campaigning took place in a peaceful and law-abiding manner, with no major incidents reported.

(e) The Media Environment

33. There are no specific media laws in Namibia but media conduct is guided by the Constitution which provides for media freedom and freedom of expression. The AUEOM notes with satisfaction that, for the first time ahead of the 2014 Presidential and National Assembly elections in Namibia, the national television and radio broadcasters provided equal broadcast time to all political parties. In previous elections, this scheduling was allocated proportionally according to the party's representation in the National Assembly, which excluded a number of smaller parties without seats in Parliament. The AUEOM noted however, that this allocation of broadcast airtime was done voluntarily by the NBC, rather than by legal requirement.

(f) Women Participation in the Electoral Process

34. In line with the African Union's principle and commitment to gender parity as stated in article 2.1 (a) of the AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and article 3.5 of the African Charter on Democracy, Elections and Governance, the AUEOM notes that the Electoral Act does not include specific provisions on gender equality for candidates in national elections, though such provisions exist for candidates in regional and local elections.
35. The AUEOM notes that some political parties notably SWAPO voluntarily adopted measures to improve gender representation in their nominations lists through a 50/50 Zebra list. As a result, 42.6% of all parliamentary candidates were women.

ELECTION DAY FINDINGS

(a) Opening Process

36. On Election Day, the AUEOM observed the opening process, including the preparations and pre-testing of electronic voting machines, at 14 voting stations in 10 regions of Namibia.
37. All observed polling stations had queues of 50 to 200 voters at opening time, and the environment was very calm and peaceful. In the observed polling stations, 50% opened on time, and couple of stations opened up to an hour late.
38. The late opening was generally due to pre-opening procedures, the pre-testing of EVMs in particular, taking longer than anticipated, difficulties with the card scanners as polling staff were not fully familiarised with the technology. The signing of the oath of secrecy by observers and party agents at the polling stations before opening also distracted staff from other opening procedures and in some cases delayed the set up and pre-testing of voting machines.
39. In all polling stations, where AU Observers were present at the opening, the pre-test of EVMs was successful and to the satisfaction of party agents. Voting materials were available in sufficient quantities at opening time except for a few stations where the occurrence book and the voters register were not available at opening time.

(b) Voting Process

40. AU teams visited 193 polling stations in 10 of the 14 regions of Namibia where they observed the voting process. The stations visited covered 146 stations located in urban areas and 47 in rural areas; 152 were fixed stations and 41 were mobile stations. The atmosphere in those polling stations was very peaceful and calm, despite the long queues and the slowness of the voting process.
41. The use of electronic voting was largely successful in all observed polling stations, with a few instances of machine malfunction. Although most voters were using the EVMs for the first time and they often required instructions from polling staff, they were generally comfortable with using the EVMs. The AUEOM noted with satisfaction the simplicity of the design of the EVMs.
42. The Mission noted that stipulated procedures for voting were generally adhered to by polling staff.
43. In 70% of the stations visited, it took voters more than 3 minutes to complete the voting process. The slowness was mainly due to:
- The voter identification system, which required both the scanning of the card and finger printing. In some cases, voters had their five fingers scanned;
 - The recording of voters' card details and signatures before the issuing of each ballot;
 - Interruptions due to equipment malfunction, especially the identity verification machines and the slow response of the field technical teams². This was the case in 10% of the stations visited; and
 - Poor queue management by polling staff in a few polling stations.
44. The AUEOM witnessed long queues outside most polling stations visited throughout the day, and this persisted in the majority of observed stations until after official closing time at 9pm. In addition to the slowness of the voting process, the long queues were also caused by allowing voters to choose any polling station to cast their ballot, which led to imbalances in voter turnout

² The ECN recruited on-site technical support personnel per constituency

between polling stations. Disruptions in the schedule of mobile stations, led many voters to flock to fixed polling stations, thus increasing the number of voters at those stations.

45. While the AUEOM notes that a one-day voting process is in line with international practice, in the case of Namibia, the newly adopted voting procedures were lengthy and made it difficult to complete voting within the stipulated 14 hour voting period.
46. At 92% of stations visited, priority was given to elderly voters, expectant mothers and voters with infants. Voters who required assistance during the process were given such assistance without compromising the secrecy of the ballot.
47. The allocation of a single stream per polling station contributed to the delays in the process

(c) Security Personnel

48. Security personnel were present in all polling stations, and played a key role in queue management and maintaining peace and order. Their presence was visible and active, but discreet and unobtrusive. Security personnel casted their votes alongside the other voters and in may cases were given priority to cast their vote

(d) Polling Stations

49. The AU teams noted that the layout of 90% of the visited polling stations assured the secrecy of the ballot and, with the exception of some mobile stations, it promoted an easy flow of voters. The observer teams reported that the location of 85% of polling stations visited was easily accessible to persons with disability.

(e) Polling Personnel

50. The AUEOM notes with satisfaction that 61% of the staff and 74% of party agents in stations visited were women.

51. It was also noted that polling personnel conducted their duties in a professional manner and with commitment, even late into the night.
52. It was however noted in 15% of the stations visited that staff had challenges with the equipment and they required technical support, which was not immediately available.

(f) Party Agents and Independent Observers

53. In 96% of observed stations there was at least one party agent present. The AUEOM however noted that citizen observers were present in only 8% of the stations. It further notes that party agents and independent observers were granted free access to the stations and they were able to discharge their duties without hindrance or interference.

(g) Closing and Counting Process

54. The closing and counting process was observed in 13 voting stations in 9 regions. 92% of observed polling stations closed late after 9pm, and 58% more than one hour late. Some polling stations only completed the counting process in the morning of 29 November. The main reason for late closing were the long queues of voters still waiting to cast their ballot at the closing time. All voters on the queue by closing time were allowed to vote.
55. In 15% of the observed polling stations visited by AUEOM, voting stopped at least once, due to technical issues with the use of the voter verification or EVM systems. These issues delayed counting in some stations by up to 1 hour, but in some cases were resolved quickly. In all cases, normal voting resumed after the issue was resolved.

RECOMMENDATIONS

56. Based on its findings, the AUEOM offers the following recommendations:
57. ***The AUEOM encourages the parliament to:***

- a. Amend the electoral law to regulate sources of party funding and to provide mandatory ceilings on campaign expenditure to ensure fair access to resources amongst political parties.
- b. Harmonise the provisions on gender equality for regional and local elections with the provisions of the Electoral Act to ensure gender equality in national elections.
- c. Entrench the principle of allocating free airtime in the public broadcaster for political party campaign on an equal basis in the Electoral Act.
- d. Ensure that amendments of the legal framework take place at reasonable time before Election Day to enable that ECN to have adequate time to plan and operationalise the new law and to also sensitise the electorate on the new legal provisions.
- e. Regularise the role of the media by prescribing specific roles and expected standards of reporting during the election period by enacting appropriate legislation regulating media conduct.

58. *The AUEOM encourages the ECN to:*

- a. Consider simplifying polling station procedures, namely the voter identity verification process and recording of voter's presence to ensure that all procedures can be completed within the stipulated voting hours.
- b. Consider limiting the number of voters per polling station to reduce voters' waiting times and overcrowding of some polling stations.
- c. Ensure that the training of staff on the use of technology in elections is continuous to further improve their ability to operate the equipment.
- d. Administer the oath of secrecy for observers and party agents before Election Day, preferably during accreditation in order to speed up opening procedures on Election Day.
- e. Develop efficient measures to improve the management of mobile polling stations to make them more effective.
- f. Consider including security personnel for advance voting to free some polling stations for regular voters and reduce crowding on the Election Day.

59. The AUEOM encourages the Government of the Republic of Namibia to ratify the African Charter on Democracy, Elections and Democracy to further strengthen and entrench democratic governance in Namibia in line with its international obligation.

CONCLUSION

60. The AUEOM congratulates the Republic of Namibia for taking an innovative and bold step in adopting the use of electronic voting machines in the 2014 elections. Cognisant of the challenges that a national roll out of the use of EVMs may entail, the AUEOM commends the ECN for their efforts in the 2014 elections.
61. The 28 November 2014 elections in the Republic of Namibia were conducted in a peacefully environment free from violence and intimidation. The elections were conducted in compliance with the national laws of the country and in line with its international obligations. They were conducted in a manner that allowed Namibians to express their will freely and in a credible and transparent manner.