



**Electoral Commission
of Namibia**

PERFORMANCE ASSESSMENT

**2019
Regional Council
Oshakati East Constituency
By-Election**

15th June 2019

AND POST-ELECTION REPORT

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List of Abbreviations

CERC	Central Results Centre
ECN	Electoral Commission of Namibia
EVMs	Electronic Voting Machines
FLC	First Level Check
LA	Local Authority
O/M/A's	Office, Ministries and Agencies
RC	Regional Council
SVR	Supplementary Voter Registration
VRKs	Voter Registration Kits
VVDs	Voter Verification Devices

Preface

Regional Government is commonly referred to as “government closest to the people” and members are elected by direct ballot, whereby the “winner-takes-all” or the majoritarian electoral system is used.

The Electoral Commission of Namibia (ECN) in terms of its mandate conducted a by-election for the Oshakati East Constituency following the occurrence of a vacancy in terms of the Regional Councils Act.

The Oshakati East Constituency by-election was the second by-election which the Commission was required to conduct for the 2019/20 Financial year amid the ongoing preparations for the 2019 Presidential and National Assembly Elections. While the Commission appreciates the fact that regional councilors are elected by direct ballot, the time frame of conducting these by-elections sometimes possess a challenge in terms of preparations. Supplementary registration of voters for the by-election had to be conducted within less than one month prior to the national Supplementary Registration Process for the National Elections.

This is one of the recurring challenges identified which will once again be brought to the attention of the relevant stakeholders and line Ministry concerned. Despite continuous and reinforcement of voter education during by-elections, the Commission once again regrets to note the low voter-turnout for the Oshakati East by-election.

Notwithstanding the challenges encountered the Commission is delighted to announce that the by-elections conducted were a resounding success.

As a Commission we extend our sincere appreciation to all stakeholders for the continued support and cooperation and particularly to those voters that have exercised their democratic right by participating in this by-election.



Adv. Notemba Tjipueja
Chairperson

Adv. Notemba Tjipueja
CHAIRPERSON
July 2020

Executive Summary

In terms of the legal framework, it is important to bear in mind that elections in Namibia are regulated by two Acts – the Regional Councils Act (Act No.22 of 1992) and the Electoral Act (Act No.5 of 2014). These two Acts must be read in conjunction in order to appreciate and fully comply with legal requirements. In terms of Section 63(3)(2)(b) of the Electoral Act read in conjunction with Section 10(3) of the Regional Council's Act, the Electoral Commission of Namibia (ECN) is obliged to conduct a constituency by-election within 90 days of a vacancy occurring in a particular constituency. It is against the backdrop of the above cited legal framework, and as prescribed in terms of Section 116 of the Electoral Act, that the ECN initiated the process of conducting a performance assessment in respect of Oshakati East Constituency by-election polling process.

In the case of Oshakati East Constituency, the vacancy occurred on 27th May 2019, following the death of the sitting constituency councilor, Honorable Lotto Kuushomwa. The Chief Regional Officer for the Oshana Regional Council gave notice in the Government Gazette dated 14th June 2019 as required in terms of the Section 10(2) of the Regional Councils Act, and in accordance with the stipulations contained in Section 64(1) of the Electoral Act. The President, upon recommendation by the Commission determined 24th August 2019 as the date on which the by-election for the Oshakati East constituency was to be conducted.

The Oshakati East Constituency by-election was conducted in accordance with strict observance of all relevant legal provisions. This was illustrated by the court case challenge that was lodged against the ECN during the Nomination process. After the Nominations, the All Peoples Party (APP) lodged a court case at the Electoral Tribunal against ECN and its Returning officer alleging that the APP candidate was unlawfully refused nomination after the candidate missed the deadline of the submission of nomination documents by 11h00 on the last day of nominations. The case was, however, dismissed by the judge at the hearing on 23rd August 2019. Reassuringly, it was found that ECN was indeed in full compliance with the Electoral Act.

In addition, the Oshakati East Constituency by-election has highlighted an increasing trend on the Namibian political scene – the nomination of Independent candidates to contest political position at all levels of governance in Namibia. In the case of Oshakati East Constituency by-election,



Theo Mujoro
Chief Electoral and
Referenda Officer

a young female, Ms. Fiina Kuutondokwa was nominated as an independent candidate. In total six candidates were nominated, including five candidates fielded by political parties. What was noteworthy was the strong showing by the independent candidate, coming second to the winning candidate of a political party.

Furthermore, the outcome of the Oshakati East Constituency by-election also highlighted another worrying trend – that of low voter turnout. Out of about 18 385 registered voters, only 3 413 voters turned out to cast their votes, representing 19% of voter turnout.

In conclusion, the Oshakati East Constituency by-election has also pointed out minor challenges as highlighted in Section 3 of this report, but these are minor exceptions. In this regard, the ECN is pleased to, once again, announce another delivery of a near-flawless and credible election to the nation.

Theo Mujoro
CHIEF ELECTORAL AND REFERENDA OFFICER
July 2020

Performance Assessment and Post-Election Report

The Performance Assessment and Post-Election Report of the Oshakati East Constituency by-election is a statutory requirement in terms of Section 116 of the Electoral Act. This section obliges the Electoral Commission of Namibia (ECN) to conduct a performance assessment in respect of any electoral process and publish a post-election report in respect of the election concerned.

The Electoral Act of 2014 (No. 5 of 2014) is prescriptive of the content of the post-election performance assessment report. The following issues must be covered in the report:

- Constitutional and electoral issues;
- Systems and logistics, including infrastructure;
- Training of staff members or temporary staff members (electoral officials) and their performance;
- Voter and Civic Education;
- The voting processes and analysis of results;
- Possible recommendations of amendments to any electoral legislation;
- Any other matter which the Commission may deem necessary.

The Post-Election Performance Assessment Report must be submitted to the National Assembly. This is to be done by the Chairperson of the Commission within six (6) months after an election.

The Act is also explicit on how the Speaker of the National Assembly should deal with the report. It requires the Speaker to cause the National Assembly to discuss and consider the report. The Speaker is further required to refer and distribute the report to the President, Chief Justice, the Chairperson of the Electoral Court, the Chairperson of the Magistrates Commission and the Chairperson of the Law Reform and Development Commission. The Speaker is similarly required to make the report available for public inspection.

Section 116 of the Act is clearly meant to solidify accountability, build confidence in the electoral process and to deepen democracy. This publication constitutes the performance assessment report for the Oshakati East Constituency by-election, which was held on 24th August 2019.

1. Chapter One: Pre-Election Phase

This chapter reports on the pre-election phase. It provides a brief synopsis of the place and scope of the Regional Councils (RC) elections within the Namibian electoral system. Furthermore, the (ECN's) state of preparedness for the conduct of this particular election with regard to budgeting, financing, procurement, recruitment and training of electoral officials, civic and voter education, voter registration, the publication of the provisional voters' register, the various stakeholder engagements held, as well as the printing of ballot papers, are also some of the major issues reported on in the next sections.

1.1 Legislative Framework

1.1.1 Constitutional Provisions

The Constitution of Namibia, provides for the different spheres of government. Article 106 (2) provides that each constituency elect one member to the Regional Council for the region in which it is situated. Furthermore, Article 106 (3) directs that elections be conducted by secret ballot in accordance of the provisions of an Act of Parliament, and the candidate receiving the most votes in any constituency shall be elected as member of the Regional Council in that constituency. Regional Council elections are thus conducted according to the majoritarian or First-Past-The Post electoral system.

1.1.2 Regional Councils Act

The Regional Councils Act, Act 22 of 1992 provides for the establishment and constitution of regional councils, qualification of, and dates for elections for, members of the regional councils and meetings of regional councils, amongst others.

Any casual vacancy in a regional council shall be filled within a period of three months after it has occurred by holding an election, in terms of Section 10 (3) of the Regional Councils Act. The date on which an election is to take place should be determined by the President by proclamation in the Gazette of a member as contemplated in section 7(2) for an unexpired portion of the period office of the member who has vacated his or her office, unless the period of office of the member who has so vacated his or her office expires during the said period of three months.

A vacancy occurred on 27th May 2019 in the Oshakati-East Constituency, following the death of, Honorable Lotto Kuushomwa.

The Chief Regional Officer for the Oshana Regional Council gave notice in the Government Gazette dated 14th June 2019 as required in terms of the Section 10(2) of the Regional Councils Act, Act 22 of 1992 on the occurrence of the vacancy.

1.1.3 Electoral Act

In order to comply with Section 10 (3) of the Regional Councils Act, the Electoral Act in terms of Section 63 (2) (b) provides that if a casual vacancy occurs in any regional council, a by-election must take place in the constituency in respect of which the vacancy in that council occurred.

The President, in terms of Section 64 (1) of the Electoral Act, upon recommendation of the Commission determined 24th August 2019 as the date on which a poll for the Oshakati East Constituency by-election were to be conducted.

1.2 Budgeting

Elections in Namibia are exclusively funded by funds appropriated through the State Finance Appropriation Act. ECN through its annual budget submission makes provision during any given financial year for at least three by-elections to be conducted.

The following financial expenditure was incurred for the Oshakati East Constituency by-election:

Table 1: Expenditure in respect of Supplementary Registration of Voters

DESCRIPTION	TYPE (SECTION CODED)	UNIT	TOTAL AMOUNT
Fuel used for the Vehicles before, during and after the registration process	Transport	35 Vehicle	N\$ 44 488.00
Travelling allowance used by the staff members	Finance		N\$ 80 250.00
Payments of Registration of officials include supervisor.	HR	56 People	N\$ 131 103.00
Refreshment for training of officials incurred	HR	56 People	N\$ 24 000.00
Venue	Planning		N\$ 6 296.00
Overtime expenses	Finance		N\$ 29 107.00
Total Expenditure for SRV			N\$ 315 244.00

Table: Expenditure in respect of Polling process

DESCRIPTION	TYPE (SECTION CODED)	UNIT	TOTAL AMOUNT
Fuel used for the vehicles before, during and after the Election process	Transport	35 Vehicle	N\$ 44 065.00
Travelling allowance used by the staff members	Finance		N\$ 167 181.00
Payments of Election of officials include Returning Officer.	HR	108 People	N\$ 265 813.00
Refreshment for training of officials incurred	HR	108 People	N\$ 109 650.00
Over time expenses for both registration & election.	Finance		N\$ 176 523.00
Venue	Planning		N\$ 5 446.00
Materials bought (EVM ballot paper)	Logistic	Ballot papers	N\$ 28 866.00
Total Expenditure for Election			N\$ 797 544.00

The Grand total of the whole exercise was **N\$ 1 112 788.00**

1.3 Procurement

The Public Procurement Act, Act 15 of 2015 regulates the procurement of goods, works and services through various procurement methods. In preparation for any given election, ECN undertakes procurement of various items required in executing its mandate.

1.4 Recruitment

The ECN recruited a total number of 56 voter registration and 108 polling officials for the Oshakati East Constituency by-elections.

1.5 Voter and Civic Education

In terms of Section 49 of the Electoral Act, the Commission is required to conduct voter and civic education to the Namibian citizenry. The programme voter and civic education is implemented by the Division Democracy Building (DDB) and it focuses on educating and informing the public on different aspects pertaining to electoral issues and matters to assist all eligible voters to make informed decisions and understand as well as participate in the electoral processes. Voter and Civic Education is not the exclusive prerogative of the ECN. The Electoral Act permits any natural or juristic person to provide voter and civic education, provided that such a person must be accredited by the Commission.

The Voter and Civic Education campaign for the Oshakati East Constituency by-election was a mammoth task as the program coincided with the Ondangwa Urban Constituency by-election activities. Apart from the face-face voter and civic education sessions and meetings with communities, voter education materials were also allocated to political parties and the duly nominated independent candidate to distribute further at their rallies and meetings.

The registration materials for voter and civic education were distributed before 14th June 2019. Nineteen (19) registration points were established. Posters containing information on voting steps and registration venues were affixed at various areas within the constituency and information flyers were distributed. The voter education officials visited 25 selected community centres to familiarize themselves with all the center leaders. In addition to the aforementioned, the team also erected gazebos at road sides, shopping malls, open markets, police holding cells, schools and the correctional facilities within the constituency to provide voter and civic education. The voter education program continued until the day of the elections which was 24th August 2019, urging all registered voters to go cast their votes.



1.6 Training and preparation of registration and polling officials

The training of registration officials and party agents was conducted from 8th -12th June 2019, whilst the training for polling officials was conducted from 16th - 22nd August 2019 respectively. The training was successful and recorded a hundred percent (100%) attendance rate. ECN staff members from Human Resource, Information Technology as well as the Registration and Planning Division conducted the training. The training materials were kept at Oshakati Police Station and were collected and returned to the station on a daily basis for safekeeping. The training extensively concentrated on various legal requirements pertaining to the registration and polling processes.

1.7 Voter Registration

In accordance with the Electoral Act, Section 25 (2), a Supplementary Registration of Voters (SRV) process must be conducted before any election. This is to ensure that all eligible voters who qualify to be registered as voters and could not register during the last registration of voters have an opportunity to register to vote.

In addition, during the SRV duplicate voter registration cards are issued for voters who have either lost or damaged their voters' cards, changed residential addresses or personal details. The SRV for the Oshakati East Constituency was conducted during the period 14th – 15th June 2019 using the biometric voter registration kits. A total number of one thousand four hundred and forty-one (1 441) voters were registered.



1.8 Provisional Voters Register

Sections 31 and 32 of the Electoral Act 2014 requires the ECN to prepare, publish and display the provisional voters register for public scrutiny and objections against names of persons included therein. Such objections must be lodged with the Electoral Tribunals designated for the given magisterial geographical area. The Oshakati East Constituency by-election provisional voters register was displayed on 20th June 2019. This exercise provides an opportunity for any registered voter, registered political parties, and political organizations to scrutinize and object to the inclusion of any person in the provisional voter's register for objection. No objection was lodged. The final voters register was available and published in the Government Gazette on 26th July 2019.

1.9 Electoral Campaigns by Political Parties

The Oshakati East Constituency by-election campaign period was conducted in a calm and peaceful atmosphere, with no incidence of violence or intimidation reported before, during and after the election. Adherence to the code of conduct ensured that the election campaigns and political rallies were generally held in a peaceful and tolerant atmosphere.

1.9.1 Distribution of Election Materials

Election materials were transported under the escort of the Namibian police on 16th August 2019 and were booked at the Oshakati police station. The logistics personnel would on a daily basis book out election materials for the practical training sessions of polling officials such as the Electronic Voting Machines (EVMs) and return them to the police station. The distribution of materials to polling teams took place on 23rd August 2019. The total number of EVMs used for the by election were forty-two (42) Control units and forty-two (42) ballot units and including contingency.

In order to ensure that all potential applicants and voters had access to registration points and polling stations within a walking distance, the ECN established a total number of nineteen (19) registration points and twenty-one (21) fixed polling stations. The distribution of registration and election materials took place on 13 June 2019 and 23 August 2019 respectively. All election materials were returned back to Windhoek under escort of the Namibian Police from the Oshakati Police station on the 25th August 2019.

1.9.2 Transport

Reliable and adequate transport is crucial for the conduct of successful elections. With reference to transport, the Commission used a total of thirty-five (35) vehicles for both the supplementary registration of voters and during the elections. The Commission used its internal fleet and engaged the government garage to acquire additional GRN fleet. In this regard, no vehicle accidents were reported during the by-election period.

1.9.3 Printing of EVM Ballot Papers

Political parties are engaged throughout the electoral process. For purposes of enhancing transparency, political parties are invited to confirm details of their candidates after the nomination process has been finalized.

Forty-six (46) EVM Ballot papers were printed in the presence of the political parties and the Namibian Police at Solitaire. Political parties were also allowed to record the serial number of ballot papers printed and seals used on ballot boxes wherein ballot papers were sealed. The sensitive materials were then stored at ECN Headquarters prior to escort to Oshakati.

1.9.4 First Level Checking and Preparations of EVMs

The conduct of the First Level Checks (FLC) is a legal requirement in terms of the regulations on the use of EVMs. The first level check of EVMs took place at the ECN head office in Windhoek on 16th August 2019. Political parties provided their own seals and were allowed to record serial numbers of the EVMs being prepared for the by-election.

1.10 Nominations

The nomination of candidates commenced on 28th June 2019 and ended on 15th July 2019. The submission of the nominations in the case of the Independent candidates was on 13th July 2019 as required in terms of the Electoral Act. The last day of nomination and submission of candidates for political parties was 15th July 2019. Five political parties fielded candidates in addition to one Independent Candidate, which in total six candidates were declared duly nominated. After the nomination process, the All Peoples Party (APP) through Mr. Mike Tshilongo lodged a court case at the electoral tribunal against ECN and its Returning officer Mr. Iiyambo Efraim alleging that the APP's candidate was unlawfully refused nomination after the candidate missed the deadline of the submission of nomination with the Returning Officer at 11h00 on last day of nomination. The case was however thrown out by the judge after hearing of the case on 23rd August 2019. It was found that ECN was in full compliance with the Electoral Act.

The names of the duly nominated candidates were as follow:

Surname	First Name	Political Party
Iiyambo	Elias	Congress of Democrats (COD)
Kamati	Theofelius K	Popular Democratic Movement (PDM)
Kambayi	Rebbeka	Swanu of Namibia (SWANU)
Kuutondokwa	Fiina	Independent Candidate (IC)
Shaduva	Festus D	Namibia Economic Freedom Fighters (NEEF)
Shikongo	Abner S.	Swapo Party of Namibia (SWAPO)

2. Chapter Two: Election Day

This chapter focuses on events that took place on polling day. This includes the opening and closing of polling stations, the performance of EVMs and VVDs as well as the number of polling stations and the procedures used at the polling stations. It further reports on issues pertaining to the secrecy of the ballot, the counting process, tabulation of results, results transmission and the analysis thereof, and finally the voter turnout.

2.1. Security Arrangements

The Namibian police were present during the printing and escorting of the sensitive electoral materials from Windhoek to Oshakati Police station, as well as during the distribution of materials. All EVMs were in the custody of the Namibian Police before, during and after election until they were officially handed over to the Logistic officials following the tabulation of the results.

2.2. Voting Day

The Oshakati East by-election was held on 24th August 2019. All polling stations opened at 07h00 and closed at 21h00 as prescribed by the Electoral Act. All eligible voters who were in the queues at 21h00 were allowed to cast their votes as permitted by the law. A case of double voting was reported at the Omadengu Community Hall (team 107) at about 18h00 by the Presiding officer with the Returning officer. The presiding officer and ballot issuer were requested to narrate what transpired in the presence of political party agents at the polling station and wrote statements to this effect. The voting process resumed thereafter with no further incidences.



2.2.1 Electronic Voting Machines (EVMs)

No technical difficulties were reported on the use of the EVMs. All EVMs functioned properly and no replacements were reported.

2.2.2 Voter Verification Devices (VVDs)

Voter Verification Devices (VVDs) were used to verify and authenticate the voter cards of all voters at polling stations before allowing them to cast their votes. The voters register for the Oshakati East Constituency was loaded on each verification device.

2.3. Counting of Results

Counting of the results commenced immediately after the close of polls at each polling station. The results for each polling station were posted outside the polling stations as required. Thereafter, all polling teams moved to the collation centre at Leo Shoopala Hall where the results were collated and the final announcement made by the Returning Officer.



The tabulation of results took place at Leo Shoopala Hall, which was also the collation center. At the collation center the EVM results were authenticated. The Returning Officer verified the correctness of the returns furnished by the Presiding Officers, collated the results for the Constituency and recorded the votes on Form 30 corresponding to the print out from the tabulator.

2.4 Collation Centers

The tabulation of results took place at Leo Shoopala Hall, which was also the collation center. At the collation center the EVM results were authenticated. The Returning Officer verified the correctness of the returns furnished by the Presiding Officers, collated the results for the Constituency and recorded the votes on Form 30 corresponding to the print out from the tabulator.

2.5. Analysis of Results

The Oshakati East by-election was successfully conducted on 24th August 2019 and the results were announced by midnight.

The results for the by election for the Oshakati East Constituency were as follows:

Candidate duly nominated for election as member of the regional council (in alphabetical order)	Political party/independent candidate	Votes recorded for each candidate
Iiyambo Elias	COD	17
Kamati Theofelus	PDM	185
Kambayi Rebbeka	SWANU	10
Kuutondoka Fiina	Independent candidate	234
Shaduva Festus D	NEFF	32
Shikongo Abner S	SWAPO	2 935
TOTAL		3 413

A low turnout was observed during the Oshakati East by-election. Out of about 18 385 registered voters, only 3 413 voters turned out to cast their votes, representing 19% of voter turnout.

3. Chapter Three: Election Challenges, Recommendations and Conclusion

3.1. Election Challenges and Recommendations

Although both the supplementary registration and election process went well as planned, it was not concluded without minor administrative and logistical issues. The table below summarizes the challenges and recommendations experienced during the Oshakati East by-election:

Subject	Challenges	Recommendations
By elections	The time period, as per the Regional Councils Act at which by elections must be conducted (3 months) is limited in terms of preparations and logistics.	ECN needs to look into consulting relevant authorities on possible amendments to increase time period given.
Voter Turnout	The voter turnout for the Oshakati East by elections was very low.	There is a need to consult stakeholders for possible voter turnout survey to critically analyze the factors that lead to voter apathy in Regional Councils and Local Authority Elections.
Transport	Most of the vehicles availed by government garage were either due for repair or service which lead to transport challenges for polling teams.	Officials from the Head office need to travel together to ensure adequate and good working condition vehicles are availed for the constituency by-elections.

3.2. Conclusion

The ECN is committed to strengthening electoral democracy in Namibia by executing its mandate in a free, fair, credible and transparent manner. The Oshakati East by-election was organized and directed in strict compliance with the provisions of the Electoral Act.

Notes

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Electoral Commission of Namibia

 Private Bag 13352 Windhoek

 +264 61 376200  +264 61 237618

 www.ecn.na

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