



THE RALLY FOR DEMOCRACY AND PROGRESS (RDP)



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Statement by Honorable Mike Kavekatora, RDP Member of Parliament on the Motion debating the use of Electronic Voting Machines in future Presidential, National, Regional and Local Authority elections in Namibia

The 7th March 2018

INTRODUCTION

Honourable Speaker, Honourable Members,

Voters in democratic societies go to elections to freely choose their leaders and representatives. Some of the most important ingredients of democratic elections are transparency, credibility and fairness.

Namibia introduced EVMs under the pretext that it will be an efficient, faster and reliable voting method in the conduct of free, fair, credible and transparent elections. Preceding the actual introduction of EVMs was the law reform process carried out by the Law Reform Development Commission (ELDC) of the Ministry of Justice.

During the consultations with stakeholders, the ELDC received in October 2011 proposed reforms from ten (10) political parties, of which the Rally for Democracy and Progress (RDP) was one of them. Some of these proposals were implemented while others were not. With regard to the EVMs the collective position was that the EVMs were still an untested technology but the political parties took note of the fact that the EVMs have already been purchased by the Electoral Commission of Namibia (ECN).

It was therefore proposed that the EVMs be introduced at the then upcoming by-elections in parallel or simultaneous to the use of traditional ballot papers as a way of creating confidence and gaining experience to prove or disprove the effectiveness and efficiency of EVMs. However, this parallel running of the two systems never materialized.

ELECTORAL LAW AMENDMENTS

Hon. Speaker

Ultimately the EVMs were formally introduced as one of the voting method through the Amended Electoral Act, Act 5, of 2014. For the purpose of this debate, I will make reference to some relevant sections of the new Electoral Act:

Section 99 of the Electoral Act, Act 5, of 2014 is referring to voting by secret ballots and reads as follows:

(1) Voting in any election in terms of this Act is by secret ballot.

(2) Every ballot paper, including a ballot paper used in respect of a voting machine, are in the form as prescribed and must contain –

(a) in the case of an election on party lists –

(i) the names, in alphabetical order, of the registered political parties or registered organisations taking part in the election;

(ii) the abbreviated name, if any, of each such political party or organisation;

(iii) the distinctive symbol, if any, of each such political party or organisation; and

(iv) the photo of the head of each such political party or organisation submitted in accordance with section 77(5); or

(b) in the case of an election otherwise than on party lists –

(i) the surnames, in alphabetical order, of all the duly nominated candidates in the election and the other names or initials of the candidates as the Commission may determine;

(ii) the name and, if any, the abbreviated name and distinctive symbol of the registered political party or registered organisation by whom each candidate was nominated, or, if a candidate was not nominated by a registered political party or registered organisation, the word “independent”; and

(iii) a photo of each candidate; and

(c) the other particulars as may be prescribed.

Honourable Speaker, Honourable Members,

During debates on the Bill in this August House on October 2014, RDP representatives asked the Minister of Regional and Local Government, Housing and Rural Development several pertinent questions relating to the anxiety of the opposition parties who doubted the efficiency and reliability of EVMs to conduct free, fair, credible and transparent elections in Namibia. The well-grounded mistrust of EVMs emanated from the fact that the Amended Act, Act 5, of 2014 was to be implemented **partially, i.e., Using EVMs without the requisite Voter Verifiable Paper Audit Trail (VVPAT) as per Section 97 (3 & 4).**

In this regard, questions were raised in view of the then, and still, existing scientific proof since April 2010 that the Indian EVMs acquired by the Electoral Commission of Namibia (ECN) are **vulnerable to fraud**, as discovered and explained in finest detail, including video demonstrations, by a research team of three renowned security analysts, who carried out two successful attacks on real EVMs and identified several other potential vulnerabilities. The same Indian EVMs were repeatedly subject to court interventions, when

- in **July 2011 the Supreme Court of India** asked the Indian Electoral Commission to consider and respond to the request that the EVMs should be **modified by providing a simultaneous printout of the voter's ballot on paper;**
- in **January 2012 Delhi High Court** ruled that the EVMs are not **"tamper-proof"**, and added that the Electoral Commission of India should hold wider consultations with the Executive, political parties and other stakeholders;
- in **October 2013 the Supreme Court of India** directed the Electoral Commission of India to introduce **Voter Verifiable Paper Audit Trail system** for the next general elections in India, in order to ensure free, fair and credible elections;
- the Electoral Commission of India informed the Supreme Court that **EVMs with the Voter Verified Paper Trail were successfully and satisfactorily used at 21 polling stations in Nagaland during assembly elections in February 2013;** and that
- the New Delhi constituency utilized **EVMs with Voter Verified Paper Trails in its constituency elections on the 4th of December 2013**, enabling voters to verify if their vote was recorded correctly, and being hailed as successful and a positive experience!?

Honourable Speaker, Honourable Members,

During these debates in Parliament, the then Minister of Regional and Local Government, Housing and Rural Development never disputed the fact that, with the current EVMs, there is no way, whatsoever, of verifying the ballot in case of an election challenge in a court of law. We all know that our courts are courts of evidence and in the absence of paper trail there is no way any aggrieved party can challenge an election. Moreover, the Minister never disputed that the only way to ensure trust and confidence of the electorate in the EVMs is by adding a Voter Verifiable Paper Audit Trail, which will enable the voter to see a paper printout of their electronic ballot, displaying name and/or symbol of the chosen Party or Candidate of her or his choice, before dropping in a ballot box as provided for in the Law.

It appeared then, and even now, that the government of the day is indifferent to the fact that EVMs are banned in: The Netherlands (2006) – due to the secrecy risk of electronic eavesdropping; Republic of Ireland (2009) – due to lack of transparency and trust; Germany (2009) – Supreme Court declares EVMs unreliable and unconstitutional due to lack of transparency to a common voter; United States – California and other States ban EVMs without Paper Trail, and United Kingdom and France – decided not to implement EVMs for more or less similar reasons.

Hon. Speaker, Hon Members

The new Electoral Law (Act 5, of 2014) was passed without convincing answers as to how the EVMs contribute to the enhancement of freedom, fairness, credibility, verifiability and transparency of elections.

Even though the amended Act has incorporated the VVPAT, its implementation commenced on October 17, 2014, with the exception of Sections 97 (Clauses 3 – 4) and 99 (Clauses 1 - 2). This is very worrisome. More so because despite the fanfare that accompanied the introduction of EVMs, the RDP and other parties can now testify that contrary to the stated objectives of EVMs, these machines are unreliable, untrustworthy, and insecure and they have in actual fact slowed down the voting, the counting process and the release of election results in Namibia. Voters are unable to verify how their votes are allocated.

Besides the afore-stated shortcomings, ECN has relied on foreign technicians to deal with technical hiccups. This unfortunate scenario exposes Namibian elections to possible manual and electronic manipulations by foreigners. Hence, the EVMs remain under suspicion over their alleged tamper-ability and security problems during elections despite all assurances from ECN.

Honourable Speaker, Honourable Members,

I am convinced that the EVMs were introduced hastily as a sure method by the ruling party to continue rigging elections without risking embarrassing themselves in the courts of law as it happened during the 2009 court challenge

It is inconceivable that ECN and its backers in this matter have chosen to behave as if the new Electoral Act has not made provision for manual voting as per Section 99 of the Electoral Act.

Since 2015, the RDP has engaged various offices, institutions and the Parliament to seek redress in this matter:

a) State President

In August 2015 the RDP sought audience with the Head of State, President Hage Geingob, to discuss the concerns about the EVMs. The President assigned the Prime Minister to discuss our concerns.

b) Prime Minister

On the 14th October 2015 an RDP delegation met with the Right Honourable Prime Minister, Saara Kuugongelwa-Amadhila, and her delegation that included the then Attorney General, Mr. Sacky Shanghala, to discuss the EVMs concerns, mostly the use of these machines without paper trail. This meeting was also attended by ECN representatives.

The ECN representatives assured the meeting that the acquisition of VVPAT was one of ECN's priorities under MTEF 2016-2019 and will only take 9 months to complete. ECN further promised that the 2015 Regional and Local Authority Elections were to be the last elections to use EVMs without VVPAT.

c) ECN

Ever since RDP consultations with the Prime Minister, ECN has not demonstrated its seriousness to deliver on its promise. To add salt to injury, they have lately come up with flimsy excuses, that there are irreconcilable errors in the introduction of paper trail.

d) Parliament

Failure by ECN to deliver on its promise has left the RDP with no other option but to bring the EVM issue back to this August House, on September 21, 2017, by way of a number of questions directed to the Prime Minister. Unfortunately, the responses given on EVMs were not that convincing.

Honourable Speaker, Honourable Members,

Let me conclude by stating the following:

First and foremost Swapo is the ruling party and everything it does matter. The reluctance of the ruling party to use EVMs during their congress held in November last year is a clear demonstration that even some Swapo members are questioning the reliability and credibility of EVMs. The ruling party cannot and should not expect other stakeholders to trust the system if they are casting doubt on the same system.

In view of the above, I recommend the following:

- ECN to revert back to the traditional voting method as provided for under Section 99 of the Electoral Act.
- Engaging all stakeholders on how to effectively and efficiently conduct free, fair, credible and transparent elections in Namibia.
- Interrogate some credible democracies that are reluctant to use EVMs to get clarity as to why they are reluctant to use EVMs.

I recommend that this matter be referred to a relevant Parliamentary Committee for further investigation and report back to this August House.

I Thank You.