

# **ELECTION EXPERTS MISSION (EEM)**

## **SWAZILAND**

*Primary and Secondary Elections*

*24 August – 20 September 2013*

## **FINAL REPORT**

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*This report was produced by the European Union Election Experts Mission (EEM) to Swaziland and presents the Mission's assessment of the Primary and Secondary elections held, respectively, on 24 August and 20 September 2013. The views expressed in this report have not been adopted or in any way approved by the European Union and should not be relied upon as a statement of the European Union. The European Union does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.*

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**ACRONYMS**

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CANGO	Coordinating Assembly of Non-Governmental Organizations
COMESA	Common Market for Eastern and Southern Africa
COSPE	Cooperation for the Development of Emerging Countries
CPA	Commonwealth Parliamentary Association
EBC	Elections and Boundaries Commission
EDF	European Development Fund
EEM	Election Experts Mission
EU EOM	European Union Election Observation Mission
ExM	Exploratory Mission
MISA	Media Institute of Southern Africa
NGO	Non-governmental Organization
NNLC	Ngwane National Liberatory Congress
PS	Polling Station
PUDEMO	Peoples United Democratic Movement
SADC	Southern Africa Development Commission
SWADEPA	Swazi Democratic Party

## I. SUMMARY

- Swaziland held two elections on 24 August and 20 September 2013 to elect the members of parliament and the members of the administrative committee (*bucopho*) and the head of the committee (Indvuna *yeNkhundla*) at constituency (*inkhundla*) level. The first election, or Primary election, nominated the candidates that were selected by the voters in the 385 chiefdoms on August 3 and 4 and who later, in second or Secondary election, contested the 55 seats of the House of Assembly. Any eligible person could be nominated if supported by ten other eligible voters. The King names another ten members to the House of Assembly, whose members also elect a woman from each region of the country. The Swazi parliament also has a 30-member Senate: 20 members (at least eight women) appointed by the King and 10, half being women, elected by the members of the House of Assembly.
- In the so-called, and questioned, *Tinkhundla* (constituencies) system, recently renamed by the King as Monarchial Democracy, candidates are selected by individual merit; although the Constitution guarantees the right of association, political parties are prevented to participate in the elections under the system. Is this clash between the Constitution and the Swazi traditions and customs that takes into questioning the entire electoral process run by an Elections and Boundaries Commission whose chairperson and members are, as every other official in the country, appointed or recommended by King Mswati III. The King has been on the throne since 1986 and his far-reaching powers make Swaziland the last of Africa's absolute monarchies. The *Tinkhundla* system seems to have wide support from politicians. Measured by the press interviews made with the candidates prior to the Secondary election, the majority of the interviewed described the system as a better option to a multi-party system. However, the system goes against the requirements by the international treaties and commitments signed by Swaziland.
- The EBC conducted both elections in a generally organized and timely manner, despite some shortcomings in the Primary election. The election was marred by huge lines in the polling stations, a lack of voters' card-reading machines in some polling stations, and failure to cross-check the pictures and names of candidates in the ballots for the *Bucopho* nominees of one chiefdom, which ended up in the postponement of the local election. The situation improved substantially in the Secondary election and only minor irregularities were observed or reported. The Secondary election followed the same trend of the Primary held three weeks before: peaceful, orderly and transparent. The EBC provided adequate training to the polling staff although voting procedures were applied differently by the presiding officers. There was a repetition of the long lines in some polling stations but, in general, voters exercised their right freely and in an expeditiously and organized manner.
- Campaigning was not allowed before the Primary election although it was reported by the press that many candidates spent substantial amounts of money to attract supporters. Campaigning for the Secondary election started two days after the Primary and ended 24 hours before election day. Candidates concentrated their activities basically on their constituencies and were few the electoral ads published on the media. There was no free airtime for the candidates on the state-run media outlets.

- After a long and overnight process of counting the votes at Constituency level, the Election and Boundaries Commission (EBC) made the official announcement of the winners of the Secondary two days after election day. Despite some procedural complaints, there were no formal challenges to the results, which showed a wide diversity in the representation of the new parliament: most of the 55 new elected members were business people but voters also elected farmers, teachers, a policeman, one unemployed, a bus owner, a gospel singer and just two former member of the cabinet, out of the nine that were nominated, in a clear show of rejection of the past government. The new parliament will have only one woman<sup>1</sup> among its members, compared to five in the last legislature. Voters elected 39 new members and reelected 16. Despite the implicit banning of political parties, four members of unregistered political parties were elected even though one of the winners was under detention<sup>2</sup>.
- It's still unclear the rate of participation of voters both in the Primary and Secondary elections. The EBC had not announced at this writing how many of the 415,012 registered voters exercised their right in the two elections. It is also unclear if the huge lines of voters during the Primary election were consequence of voters' interest in participate or the result of the excessively high number of voters per polling station, in some cases more than 2,000. The King welcomed the participation and enthusiasm of the people and was impressed by the high numbers, according to press reports, comments that may have left the EBC in a delicate situation if the numbers didn't correspond to the monarch's perception. After splitting into two some polling stations and increasing the number of voting booths, the long lines practically disappeared during the Secondary election, when turnout was estimated by observers at around 50 percent.
- The polling stations opened mostly on time at 07:00 am during the Primary and Secondary elections. For the Secondary election closing was extended one hour to 07:00 pm and the number of polling staff, voting booths and ballot boxes was increased, sometimes in exaggeration like one polling station in the constituency of Motshane, region of Hhohho, which showed 21 election officials. Despite the reliable and safe biometric registration of voters, Swaziland still inks the voters' fingers to avoid double voting, an unnecessary procedure vis-à-vis its benefits. There were some incidents reported during the Secondary election involving voters who refused to vote due to the location of polling stations out of what they alleged to be their chiefdom. Also the EEM witnessed confusion in a polling station split up into two with almost no advance notice, surprising the voters who, however, were transported to the new location by vans hired by the EBC.
- Counting during the Primary election proceeded without incidents at almost all polling stations (PS); during the Secondary, the process was transferred from the PS level to a constituency-counting center. If the climate of voting during the Secondary was tranquil and generally organized the same couldn't be said of the counting process, which started many hours after the closing of the polling stations at 06:00 pm. The ballot boxes had to be taken to a central place in each constituency where all the ballots were shuffled, sorted and counted. On top of the long

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<sup>1</sup> Esther Dlamini, candidate for the Mbabane East constituency.

<sup>2</sup> The elected members were Jan Sithole, chairman of the Swaziland Democratic Party (SWADEPA), Tilus Thwala, also from SWADEPA, Gideon Dlamini and Marwick Khumalo, both members of *Sive Syinqaba* (Nation as a Fortress) movement. The latter was detained after the Primary on corruption charges.

distances sometimes between the polling station and the Constituency counting center, election officials and candidates wasted long time discussing procedures.

- The EEM noticed that the difference in electoral population among the chiefdoms might give an unfair advantage to the candidates for Member of Parliament and *Indvuna* of the most populated chiefdom. A redrawn of boundaries is still not in the plans of the EBC. Despite the time-consuming process of counting votes at constituency level, the centralization of the counting at that level might still help avoid the identification of the preferences at each chiefdom.
- Despite Swaziland has committed itself to respect the principles contained in several international instruments guaranteeing protection of the civil and political rights as well as fundamental freedoms, it has been constantly criticized for its inability to adopt these principles in its national legislation and for ignoring the calls from regional and international organizations to do so. After a review process of the previous electoral legislation, six new laws recently approved regulated the 2013 electoral process together with the 2005 Constitution. An analysis of the electoral legislation cannot be made *per se* but within a broader context of the Swazi system of government and universally accepted basic principles for a democratic state. Although the Constitution provides for the existence of political parties, there is no subsidiary law that regulates the formation and registration of political parties. Therefore, the state is denying a constitutional and a fundamental political right to its citizens. Even if the government enacted a political party registration law and allowed for the participation of political parties in the 2013 elections, it would not tackle the fundamental problem: the system of government and the respect for the principles of separation of power, rule of law and independence of the judiciary.
- Although the electoral legal framework contains the technical aspects required for the proper administration of elections, it does not conform to international principles for the conduct of democratic elections, since it does not respect the freedom of association.
- Despite the international commitments of Swaziland regarding women's rights and empowerment of women, interlocutors usually stress that women are considered a "second class citizen." Traditional common laws do not empower women with the same rights as men. Polygamy is allowed in the country. Only in March 2013, the High Court sitting as Constitutional Court issued a decision on women's right to sue and being sued without the assistance of their husbands, and nullifying the common law concept of marital power by considering it unconstitutional. Swazi married women may, since March this year, sue and be sued in their own names. As a regional trend, women represent more than half, or 53 percent, of the electorate. However, the number of elected women has decreased from five, in the 2008 elections, to only one elected female candidate to parliament this time. Curiously, women are well represented at middle and lower levels of the public service and have been the majority of election officials. From the five election commissioners of the EBC, only one is a woman.
- More than 150 observers from international organizations were deployed by the Southern Africa Development Commission (SADC), African Union, the Commonwealth Secretariat, the Common Market for Eastern and Southern Africa (COMESA) and the Commonwealth Parliamentary Association (CPA). All observation missions considered the elections in general well organized raising, however, the issue of the participation of political parties.

- The media enjoys freedom when covering the electoral process but faces some restrictions when dealing with other issues, according to the Media Institute of Southern Africa (MISA). The country has two newspapers, one privately owned (*Times of Swaziland*) and the other controlled partly by the government (*The Observer*), besides a state-run radio and TV. A recent report by Freedom House warned that official censorship and self-censorship still coexist in the private media on political and royal matters. The report, excerpts of which were published by the *Times*, also stressed that low pay and insufficient training affected at times the quality of reporting.

## II. MISSION BACKGROUND

The Election Experts Mission (EEM) arrived in Swaziland on 17 August 2013 for the first round of elections, known as Primary election, and left the country on 2 September 2013. On 15 September 2013, the two-member team returned to the country for the Secondary Election and departed on 26 September 2013. The EEM was composed by Antonio Reis (Portugal), electoral expert, and Tania Marques (Portugal), legal expert. The Terms of Reference of the EEM stressed as its overall objective “to produce strategic analysis and reporting” on the electoral process and “to provide inputs for confidence-enhancing demarches” during and after the elections. The purpose of the Mission was to collect factual information concerning the electoral process, in line with the criteria contained in the Commission Communication on Electoral Assistance and Observation. The Mission maintained contacts with government and election officials, representatives of unregistered political parties, the media and civil society. Both on the Primary and the Secondary elections, the Mission visited polling stations in the four regions of the country –Lubombo, Hhohho, Manzini and Shiselweni– departing from its center of activities in the capital, Mbabane.

There was no Exploratory Mission (ExM) prior to the deployment of the EEM and the Mission relied on past Election Observation Missions (EOMs) reports released by other institutions, official documents and an informative package of information distributed by Brussels before its deployment. Due to time constraints, there was no briefing in Brussels before deployment. With the help of the EU delegation in arranging meetings with different stakeholders, the Mission was able to familiarize itself with electoral start-up issues like voters’ registration and the candidates’ selection process. The early sending of background materials by Brussels and the assistance offered by the EU delegation facilitated the EEM in reaching its objectives.

## III. POLITICAL ENVIRONMENT

Swaziland is going through its second electoral process since a new Constitution was adopted in 2005<sup>3</sup>. It would be regular election activities with the usual shortcomings were not for the context in which the elections were being held. Although there has been extensive critical debates about the conduction of the current electoral process and on how the Elections and Boundaries Commission (EBC) prepared itself

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<sup>3</sup> The Constitution came into force on 8 February 2006.

to run the two 2013 elections –a Primary and a Secondary Elections- the attention from almost all stakeholders concentrate on the legitimacy of such electoral process under a Constitution that is superseded by the traditions and customs of this country and its 1.4 million inhabitants. Swaziland is the last absolute monarchy in Africa, an executive monarchy in which 45-year old King Mswati III, on the throne since 1986, is constitutionally empowered to run the government and decide ultimately on almost every, if not all, misgivings, objections or complaints affecting the Swazi society. And elections would not be the exception; the King names the members of EBC and has the strong allegiance of the chiefs of the 385 chiefdoms, where the electoral process starts with voters nominating their candidates, selecting them in a Primary Election and electing them to the House of Assembly of the parliament in a Secondary Election.

This electoral process is known as the *Tinkhundla* (constituencies) system, or “monarchical democracy” as the King recently renamed it after having a vision during an unforeseen thunderstorm, according to press reports, and is responsible for the intense political arguments that highlight the conflict between the Constitutional rights of the Swazis and their acceptance of customs and traditions. Notwithstanding the lack of independence and checks and balances among the state powers, a strong executive-influenced judiciary and the cold shoulder to Constitutional provisions and international obligations (see Legal Framework), the issues that most attract political attention are the absence of an independent electoral administration, the incapacity of balancing tradition and modernity and the lack of political (or monarchical) will to address a program of democratic change and improved political participation.

The *Tinkhundla* system is based exclusively on the selection of candidates by individual merit, or independent candidates, nominated by the voters of each of the 55 constituencies. Any eligible voter with the support of ten others can be a candidate. Although the Constitution (section 25) protects the freedom of assembly and association, and therefore the creation and organization of political parties, such rights are taken away by the same Constitution when it asserts that the system of government is “a democratic, participatory, *Tinkhundla*-based system which emphasizes devolution of state power from central government to *Tinkhundla* areas and individual merit as a basis for election or appointment to public office.”<sup>4</sup>

Swaziland banned political parties in 1973 when King Sobhuza II abolished the 1968 Constitution and its bill of rights, and assumed supreme power. The last 40 years, however, saw the emergence of political organizations although not registered as political parties. Their existence has not been easy though, according to their leaders in conversations with the EEM, due to persecutions, constant harassment by the security forces and a process that they called of “demonization” of the political parties by officials and others against a multi-party system in Swaziland. The imposition of tradition over the Constitution led Swaziland to ignore and neglect its formal commitments under international treaties that call for a multi-party system. Not even the remarks of former and influential South African president Nelson Mandela that “you can’t use customs and tradition to suppress the people’s rights” impacted on the firm stand of the monarchy against political parties. International pressure has been very light to promote changes and a multi-party system, something “that will not happen in the near future,” said to the EEM a high government official. Despite a call from the political parties to bring them to “the market and let them fail, if the majority doesn’t want them,” a recent *sibaya* (open meeting of society with the king), when supposedly 75 percent of those present rejected the political parties, still supports the arguments by those in power against a multi-party system.

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<sup>4</sup> The other two countries in Africa without a multi-party system are Eritrea and Somalia.

Despite the monarchical rigid control of government and affairs of most Swazis, the King was unable to avoid a considerable opposition to the government and an active although concealed participation by the political parties. A vote of no confidence passed against the Prime-Minister and the Cabinet was reversed later after the King's intervention and the government survived; however, voters showed on the Primary Election their ongoing dissatisfaction with the government by rejecting five of the nine elected ministers of cabinet<sup>5</sup> who were candidates in the Primary Election and looking to continue as members of parliament. The political parties -with the exception of PUDEMO (Peoples United Democratic Movement) which boycotted the elections<sup>6</sup>- actively sought to have or maintain a presence in parliament and managed to nominate and having selected some of its members. Four members of political parties were elected for the new parliament. The EEM had meetings with the main political organizations and all of them viewed the election of its members to parliament as a chance to engage and participate and to impulse reforms. There is, however, the perception among political observers that is almost nothing what a member of parliament can do to promote change; members of parliament pledge their allegiance to the King, not to the people, and the King has the power of assent all bills of parliament. The Ngwane National Liberatory Congress (NNLC) had one of its prominent members in parliament during the last legislatures and, like the Swazi Democratic Party (SWADEPA), was powerless in proposing changes. It's a king-based not a people-based system, said an NNLC member to the EEM.

Swazis went to the polls on 24 and 25 of August to select the candidates nominated on 4 August. On 20 September a Secondary Election elected the new 55 of the 69 members of the House of Assembly, ten appointed by the King and four women from the four regions selected by the House of Assembly .The Secondary also elected the chairperson (*Indvuna YeNkhundla*) of the executive committees at constituency level. The committees' members (*bucopho*) were elected in the Primary Election. There was no campaigning for the Primary Election and for the Secondary Election it started on 26 August and ended on 18 September.

#### IV. ELECTORAL FRAMEWORK

The Elections and Boundaries Commission (EBC) was established as an independent body by the Constitution and is composed by five commissioners. Commissioners are appointed by the King on the advice of the Judicial Service Commission for a period not exceeding 12 years and ought to possess the qualifications of a judge of the superior courts or be persons of high moral character, proven integrity and relevant experience and competence in the conduct of public affairs. The EBC is mandated to organize, conduct and supervise elections activities, facilitate civic and voter education and review and determine constituency boundaries for the purpose of elections. The EBC has the power to make rules required for the efficient performance of its functions. Three of the five commissioners, including either the chairperson or the deputy-chairperson, form the quorum for the EBC meetings and decisions.

##### *a. Voters' Registration*

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<sup>5</sup> The cabinet has nine elected and nine non-elected members. It should have been dissolved after the dissolution of parliament but, as per the King decision, remained to take care of business during the election period. A caretaker government should have been into place.

<sup>6</sup> PUDEMO told the EEM that its participation in the elections under the current circumstances would compromise their principles as a national liberation movement, and that their activists would be better off outside than inside parliament.

Swaziland enjoys a modern biometric system of registration with several safety features to avoid duplication of voters' cards and double voting. The registration process took place mainly at the chiefdoms between 13 May and 30 June 2013. Citizens do not have necessarily to vote in their chiefdoms and can select other places if able to prove it's their place of residence or work. It is important to exactly establish the place because a great number of the complaints on election day involved the voting of people who were not known to the residents of the chiefdom. Seven registered voters were arguably held back from a polling station and unable to vote on grounds that they were strangers to the chiefdom<sup>7</sup>. After checking the information provided by the registrants and cross-checking the fingerprints to avoid double entries, the registration rolls were then placed for public verification for two weeks until 23 July. It is at this public view that voters have the opportunity to challenge the registration of those citizens strange to the chiefdom. However, according to the EBC commissioner who overview the registration, very few people filled the so-called form 7 to challenge registrations and complained when was too late, during nomination and the Primary Election.

#### *b. Candidates' Registration*

Candidate nomination took place on 3 and 4 August at each chiefdom during a public ceremony. In order to stand for the Primary election, aspiring candidates were required to be citizens of Swaziland, at least 18 years of age, registered voters in the constituency where they were standing for and cleared of any due taxes. Voters gathered in the nomination site and came forward with names of potential candidates or declared they wanted to be nominated. A candidate needed to be supported by at least ten registered voters who publicly state their support. The candidates had to submit to the returning officer a nomination form as well as a police clearance certificate, proof of payment of taxes and a declaration of oath. According to the 2005 Constitution, a person is not qualified to be appointed, elected or nominated to the House of Assembly or Senate if declared of unsound mind, is under a sentence of imprisonment for more than six months for a criminal offense, or is holding or acting in any public office. Such disqualifications raised two issues. First, the Cabinet remained in office after the dissolution of parliament, which raised doubts on whether the ministers would then be qualified or not to stand for elections or to be appointed members of parliament (either for the House of Assembly or the Senate) as they continued to hold public office. The Constitution, however, clearly mentions that public office does not include the office of ministers. The second issue was related to disqualification due to a sentence of imprisonment; although the Constitution only disqualifies a person under a sentence of death or imprisonment for more than six months, section 31. 8 d) of the Elections Bill of 2013 goes beyond to disqualify a person who has served a sentence of imprisonment during the previous 10 years. This section is said to be intentionally targeting specific persons to disqualify them to stand for elections.

#### *c. Campaigning and Campaign Expenses*

Campaigning was only authorized for the Secondary Election, starting the day after the Primary Election and ending 24 hours before the polls. Campaign expenses were regulated by the Elections Expenses Act passed this year by parliament. A candidate who intended to spend money in his/her campaign was

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<sup>7</sup> The seven voters signed an affidavit at the police station saying they in fact were strangers and had been taken by a person, obviously a candidate, to be registered at the chiefdom. Even under these circumstances, the law doesn't foresee such event as cause for not allowing them to vote. The EBC considered that recognizing being a stranger to a chiefdom was enough to not allowing them to vote.

required to open an election expenses account where all resources, including donations, had to be deposited, and ensure that all expenses were paid from such account. The law forbids the candidates to receive funds from proscribed organizations and donors outside Swaziland<sup>8</sup>. Candidates were supposed to have disclosed to the EBC, three days after the Primary, the amount of funds available and expected to finance his/her campaign. However, the EBC informed the EEM that due to a technicality the law requirements were not into force. The Minister of Justice should have prescribed the maximum amount a candidate could use on election expenses, but he could not issue the notice because the regulation could not be seen by the parliament, which had been dissolved. Therefore, it was unclear if other requirements of the law, like the 90-day deadline after the Secondary Election to report on the expenses incurred in campaigning, would be enforceable.

## V. ELECTORAL SYSTEM

The parliament of Swaziland comprises the House of Assembly and the Senate with a total of 95 members. The Senate is composed by 30 members: ten members, of which half should be women, elected by the House of Assembly – the candidates have to be proposed by a member of the House and seconded by other and can't be an unsuccessful candidate from a recent general elections – and 20 members appointed by the King of which at least eight should be women. Therefore, according to the Constitution, the Senate shall have 13 women. The House of Assembly is composed by a total of 65 members: 55 elected during parliamentary elections through the *Tinkhundla* system and 10 members appointed by the King. Of these 10 members appointed by the King, the Constitution provides that at least half should be women and others should represent different interests, including marginalised groups that are not yet adequately represented in the House. Excluding the House of Assembly elected members, the Constitution provides for a representation of 45 per cent of women out of the 40 remaining members (the Senate and ten appointed members of the House of Assembly). In case women representation in the complete parliament is less than 30 per cent, four other women shall be elected from the four regions of the country elevating the number of members to 69.

Swaziland is divided into 55 constituencies (*Tinkhundla*), each constituency (*Inkhundla*) is composed by several chiefdoms, which may significantly differ from each other in terms of population and number of registered voters. For the House of Assembly elections, each chiefdom nominated not less than three and not more than 20 candidates among its registered voters. After nomination, a Primary election is held in each chiefdom to elect a candidate who will then compete with the candidates of the other chiefdoms within each constituency for the Secondary election. As an example, if a constituency has four chiefdoms, four candidates (one from each chiefdom) will compete for the seat in parliament representing that constituency. The great importance put on the chiefdoms and on the chiefs makes the parliamentary elections more a competition between chiefdoms than a representation of the people in that constituency. The electoral system is known as *Tinkhundla* system, and although claimed to be a unique system, is basically a First Past the Post (FPTP) system with two main differences from other FPTP systems: 1) political parties are not allowed to participate by nominating candidates, only independent candidates can participate; 2) Primary elections are held with the participation of all voters in each chiefdom, whereas in other system Primary elections are usually held within political parties and voted by party members.

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<sup>8</sup> Political analysts and the media coincide in perceiving the passing of the Elections Expenses Law as an exclusive act to specifically target one candidate, SWADEPA's president Jan Sithole, a former influential union leader who allegedly received funds from a Danish organization.

## VI. LEGAL FRAMEWORK

### *a. Universal and Regional Principles and Commitments*

Swaziland signed or ratified a number of international instruments committing it to respect and protect civil and political rights as well as the fundamental freedoms of its citizens. These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Political Rights of Women (CPRW). As for regional instruments, Swaziland is committed to the African Charter on Human and People's Rights of 1981, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of 2003 that was signed in 2004 and is yet to be ratified, the African Charter on Democracy, Elections and Governance of 2007 also yet to be ratified, and the 1997 SADC Declaration on Gender and Development. The country is also politically committed to the 2002 African Union Declaration on Principles governing Democratic Elections in Africa, the New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic and Corporate Governance of 2002, the 2004 SADC Principles and Guidelines Governing Democratic Elections, the 1991 Harare Commonwealth Declaration and the 2000 Cotonou Agreement between the European Union and the African, Caribbean and Pacific (ACP) countries. Although the government has committed itself to respect the principles contained in these instruments, it has been constantly criticized for its inability to adopt these principles in national legislation and for ignoring the calls from regional and international organizations to do so.

### *b. Legal Context*

Swaziland undertook a review of the previous electoral legislation. Six new laws recently approved regulated the 2013 electoral process together with the 2005 Constitution. These include the Elections and Boundaries Commission Bill, the Elections Bill, the Parliament (Petitions) Bill, the Election Expenses Bill, the Senate (Elections) Bill and the Voters Registration Bill. An analysis of the electoral legislation cannot be made *per se* and it has to be seen in a broader context of the Swazi system of government and universally accepted basic principles for a democratic state. Although the Constitution provides for the existence of political parties, there is no subsidiary law that regulates the formation and registration of political parties. Therefore, the state is denying a constitutional and a fundamental political right to its citizens. The debate about political parties and the freedom of association has been going on at national and international levels for the past years and has, at times, diverted the attention from other fundamental problems of the Swazi democratisation process. Even if the government enacted a political party registration law and allowed for the participation of political parties in the 2013 elections, it would not tackle a fundamental problem which is the system of government and the respect for the principles of separation of power, rule of law and independence of the judiciary.

The King has absolute power and is considered to be above the law, including the Constitution, enjoying the power to assent laws and immunity from criminal proceedings. A bill shall not become law unless the King has assented to it, meaning that the parliament is unable to pass any law which the King is in disagreement with. The King will refer back the provisions he is not in agreement with, which makes the parliament and its elected chamber, the House of Assembly, ineffective, unable to achieve the objective a parliament is created for: to be the legislative branch of the state and maintain the government under scrutiny. Some of the provisions of the new electoral legislation were passed in this context, namely the Election Expenses Bill that was previously rejected by the House and, later on, agreed after the intervention of the Ministry of Justice.

Elections are a mechanism for the popular control of government and ensure the government accountability to the people. The King appoints the Cabinet. A vote of no confidence in the prime minister and government from more than two-thirds of the members of the House, in October last year, was easily reversed although the Constitution provides that in such cases the prime minister shall be removed from office.

In this context, an analysis of the legal framework for elections seems quite a redundant exercise, as the main principles for a democratic state are not in place. Although the electoral legal framework contains the technical aspects required for the proper administration of elections, it does not conform to international principles for the conduct of democratic elections, as it does not respect one of the fundamental rights for participation –the freedom of association. In this context, the electoral process, and the overall democratization process, is impaired since its start. On the other hand, the new electoral legislation was approved in July, about one and a half months before the Primary election – and after the voter registration exercise took place - and did not really had an impact on the process. The most controversial provisions were in the Elections Expenses Bill relating to the disclosure and declaration of campaign funds. The House of Assembly considered it more applicable to political parties and not to individual candidates. However, due to its late approval, the law was not fully enforced.

Moreover, some provisions in the electoral laws raise concerns over their adequacy and constitutionality and have been disputed by stakeholders. These include clause 89 of the Elections Bill dealing with criminal proceedings against a candidate or a person who intends to be a candidate, and clause 9(3) of the Elections Expenses Bill that provides for the right to search any premise without a search warrant or notice in relation to the inspection of candidates' expenses.

The electoral law imposes time limits to the judicial process, interfering with the stipulated time for a due process in the judicial system. It also establishes the possibility of disqualification from office of the accused candidate without, and before, being found guilty due to time limits. Overall, clause 89 violates the principles of separation of powers and allows for the possibility of an illegal and unconstitutional disqualification of a duly elected candidate. Further, the Election Expenses Bill provides the right of the registrar (the head of the EBC) to search any premises without a search warrant ordered by a court of law or notice in relation to the inspection of candidates' expenses. This clause seems overly exaggerated not only conflicting with the jurisdiction of the courts but also opening space for abusive searches and violation of privacy and property guaranteed by the Constitution. Therefore, its constitutionality can be easily challenged as the protection from arbitrary search and entry is guaranteed in section 14 (1) (e) of the Constitution.

Although the right of political parties to participate in the elections is denied, the right of participation of individuals as voters and as independent candidates is provided by law. The requirements for disqualifications of citizens as voters and as candidates are reasonable, except for the one foreseen in clause 31 (8) (d) of the Elections Bill that disqualifies a candidate to stand for elections if convicted to a sentence of imprisonment for more than six months, during the previous 10 years before elections. This provision can also be considered unconstitutional as it exceeds what is foreseen in section 97 (b) of the Constitution<sup>9</sup>. This was one of the provisions agreed at government level.

The right to appeal all decisions of the Elections Boundaries Commission to the High Court is not made clear in the law. While the law, in general, foresees this right, at the same time it considers the EBC

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<sup>9</sup> Constitutionally, the disqualification of a person occurs when under a sentence of death or imprisonment for more than six months; there is no disqualification of a person who served previous convictions.

decisions as final in the cases of candidate nominations, appointment or dismissal of elections officers. However, the case of a female candidate who saw her nomination refused by the returning officer was dealt with by the High Court that ordered the nomination to be accepted one day before election day. Therefore, in practice the High Court exercises its original jurisdiction.

## VII. PRIMARY ELECTION

Swazis went to the polls on Saturday, 24 and Sunday, 25 August 2013, to select the candidates who would run for the 55 elected seats of the House of Assembly in parliament, and for the positions of members of the executive committees (*Bucopho*) and of *Indvuna yeNhundla* (chairperson of the *Bucopho*) of the *Inkhundla*, one of the *Tinkhundla* (constituencies) into which Swaziland is divided. The candidates to be selected in the Primary election were nominated on 3 and 4 August 2013 in the 385 chiefdoms of the 55 constituencies and would contest the 55 Assembly seats in the Secondary election. The Primary was generally peaceful, orderly and transparent despite some reported localized incidents that marred the general trend: an ill-prepared early voting for members of the Elections and Boundaries Commission (EBC) and security forces, misprinted ballots and a consequent postponement of voting, arguments between voters and police, accusations of vote-rigging and -buying in one chiefdom and flared tempers in others. However, based on the polling stations observed and the general climate in the country, the election seemed far from the “fiasco” reported by the print media. The non-technical conflicts were certainly due in the majority of cases to the excessive number of voters per polling station. In all polling stations visited and seen from the roads there were huge lines of voters all day through the voting time from 07:00 am to 05:00 pm but voters were in most cases patient when enduring the delays and the sun overhead. The polling stations were well organized although not prepared to receive in some cases almost 3,000 voters, regardless the high rate of abstention verified in the polling stations observed, from 40 to 50 percent. Most of them were set up in school classes, and the election officials kept the voters outside waiting for their turn to vote; when voters were allowed to line inside, the generally narrow spaces turned the polling station into overcrowded sites prone for arguments and disorganization. To guarantee a smooth and orderly voting and manage the large number of voters, the polling stations were generally staffed with a substantial number of election officials, a minimum of eight and sometimes twice as much, which also contribute for overcrowding.

There were 415,012 registered voters, out of a population of more than 1.3 million (below the average of 55 percent used as threshold for African countries and with a great section of under-18 population), distributed in 458 polling stations spread over the 385 chiefdoms. The EBC conducted the elections in a generally organized and timely manner, despite some shortcomings like a lack of database computers in some polling stations, late arrival of electoral material and failure to cross-check the pictures and names of candidates in the ballots for the *Bucopho* nominees at one chiefdom. However, it provided adequate training to the polling staff despite different procedures adopted by the presiding officers on how to issue ballots to voters. The EBC also aired a weekly radio program to raise the awareness of voters on procedures and election date (including sending invitations to vote through SMS messages to cellular phones). Voter education was limited to this radio program and the publication by the media of the pictures, names and a short biography of the candidates.

Polling stations were set up on time in most of the cases but not always on the place established (a polling station in Kukhanueni was moved to another location after the discovery of a suspected substance sprayed in the premises). Arguments about the precise location and jurisdiction of a small chiefdom in Ebutfongweni also kept many residents out of the polls. The setup and design of the polling stations not always guaranteed the secrecy of the vote. In one polling station visited by the EEM the

voters' preferences were easily seen by any inside bystander. In general, the election officials moved the voter lines with efficiency but in some cases they were overwhelmed by their huge numbers. Voting was also delayed in some instances by the insistence of presiding officers to hand the ballots to voters one each time making the voter go back and forth to vote (a method which didn't avoid one voter to misplace the ballot in a ballot box). It took between 9 and 12 minutes for a voter to complete the cycle. After checking the biometric voter card, the polling official double-checked the card using a reader of a database computer; from there, wrongly because it should be after voting, the voter had his/her finger inked—a process which might be eliminated since there are enough checks to avoid double voting—and handed one or three ballots (depending on the polling station). Next, s/he would mark with an "X" the picture of a candidate, the only identification besides the name underneath. There were quite a few numbers of spoiled ballots which indicates a good familiarity of the voter with the system. For these elections, the ECB implemented the recommendations made by international observers in the past elections of 2008 and used transparent ballot boxes. Also, the electoral management decided to have the counting process immediately after the closing of voting instead of having the police to safeguard the ballot boxes overnight and do the counting the day after.

Counting took several hours due to the large number of votes and three elections, and in some cases it went overnight; in one polling station in Lubuli, voters were angered after the police carried out the ballot boxes when the lights went off, a problem that also made voting going after hours in other polling stations. In one polling station observed by the EEM, the counting method used by the presiding officer was well accepted by all candidates, agents and the chief of the chiefdom for its originality: ballots were piled up in three stacks on a table in front of the candidates, and then about 10 polling officers would pick one ballot at a time and walk circling the table. In a constant move, they showed it off to those present before placing them on another table, where new stacks were made this time on spots with the names of the candidates making it easier sorting the ballots.

Under the circumstances, where political parties are maintained out of the process and customs and traditions were almost successful in restricting women to be nominated for wearing pants or being widows, the electoral process was conducted according to the electoral calendar but under an unsatisfactory legal framework. Citizens and candidates were able to vote and be voted freely but didn't enjoy their full political rights, limited by the choice of independent candidates only and the absence of political parties. There is certainly plenty of space for legal improvements in a system which the elected are subservient to the non-elected. As for the electoral act itself, the EBC acted with impartiality and professionalism, contributing for a transparent process. The conduction of the election was in line with best practices in elections. Women were present in large number among members of all polling stations visited by the EEM and were the majority of the electoral population. However, they remain under-represented in the political life and in public institutions.

### **VIII. SECONDARY ELECTION**

The Secondary election on 20 September 2013 followed the same trend of the Primary held three weeks before: peaceful, orderly and transparent. The Elections and Boundaries Commission (EBC) seemed, however, to be better prepared for election day than during the Primary, when voters experienced the misprint of ballot papers, huge lines at polling stations and postponement of voting in some polling stations. This time voting ran generally smooth in the polling stations visited by the EEM, and reported irregularities were mainly related to lack of material (many polling stations didn't receive the electronic readers to check the voters' cards), inadequate setup of voting booths and use of different voting procedures. There was a repetition of the long lines in some polling stations but, in general, voters

exercised their right in an expeditiously and organized manner. The lines were more a consequence of the excessive number voters at certain polling stations –in some cases more than 2,000– than of interest in participating in the election. The turnout was higher than expected in the polling stations visited by the EEM although running low around 50 percent and with many polling stations empty of voters by midday. It was feared that many voters would ignore the election once their candidates were defeated in the Primary, when participation seemed much lower than what was portrayed by the press, the monarchy and government officials. Up to this writing, the EBC had not issued the final results of the Primary elections, limiting itself to simply announce the official winners who participated in the Secondary election.

The polling stations opened mostly on time at 07:00 am and the number of polling staff, voting booths and ballot boxes was increased, sometimes in exaggeration like one polling station in the constituency of Motshane, region of Hhohho, which showed 21 election officials. The presiding officers used different procedures for voting, issuing the two ballot papers to voters at the same time or one at a time making the voter to go back and forth to the voting booth. Despite the reliable and safe biometric registration of voters, Swaziland still inks the voters' fingers to avoid double voting, an unnecessary procedure vis-à-vis its benefits; a female voter refused to ink her finger alleging allergic health problems and a Rastafarian alleged religious principles to avoid inking. There were some incidents reported involving voters who refused to vote due to the location of polling stations out of what they alleged to be their chiefdom. Also the EEM witnessed confusion in a polling station which was split up into two with almost no advance notice, surprising the voters who, however, were transported to the new location by vans hired by the EBC.

If the climate of voting was tranquil and generally organized the same couldn't be said of the counting process, which started many hours after the closing of the polling stations at 06:00 pm. The ballot boxes had to be taken to a central place in each constituency where all the ballots were shuffled, sorted and counted. On top of the long distances sometimes between the polling station and the Constituency counting center, election officials and candidates wasted long time discussing procedures, like when the ballots cast during the early voting held four days before should be counted. In general, counting started three or four hours after closing and many centers had not finished in the early hours of morning the day after. In the election of the members of parliament, the EEM noticed that the difference in electoral population among the chiefdoms might give an unfair advantage to the candidate of the most populated chiefdom. A redrawn of boundaries is still not in the plans of the EBC.

Voter education was limited to radio programs and the publication by the media of the pictures, names and a short biography of the candidates. Campaigning was not allowed during this period before the Primary election but it was reported that many candidates spent substantial amounts of money to attract supporters. Campaigning for the Secondary election was mostly localized with candidates approaching voters on a personal basis and attracting others with offers of food and construction material, widely reported in the press despite its illegality.

#### *a. Announcement of Results*

The EBC announced the final results on Sunday, 22 September, and were published in the media the day after. The results for member of parliament were the following:

REGION	INKHUNDLA	MEMBER OF PARLIAMENT	No. OF VOTES	M/F
HHOHHO	Hhukwini	Magagula Saladin	1333	M
	Lobamba	Masilela Michael Vusani	3535	M
	Madlangempisi	Mdluli Bongani	2299	M
	Maphalaleni	Maseko Mabulala	2501	M
	Mayiwane	Matsebula Eric Sifiso	1466	M
	Mbabane East	Dlamini Esther S.	2030	F
	Mbabane West	Shongwe Johane	1338	M
	Mhlangatane	Ndwandwe Mbalekelwa	2225	M
	Motshane	Hlatshwayo Phesheya V.	3693	M
	Ndzingeni	Ndwandwe Jeremiah	1663	M
	Nkhaba	Mabuza Lucky Xolani	2568	M
	Ntfontjeni	Magagula Sifiso Sompisi	2783	M
	Timphisini	Ndlovu Sikhumbuzo Apton	1483	M
	Piggs Peak	Mabuza Jabulani Clement	4126	M
LUBOMBO				
	Dvokodweni	Dlamini Musa Stezi	2627	M
	Hlane	Maseko George	1601	M
	Lomahasha	Magagula Phineas	2534	M
	Lubuli	Gwebu Muzi	1453	M
	Matsanjani	Buthelezi Phila	1875	M
	Mhlume	Magagula Sifiso	1210	M
	Mpolonjeni	Siwela Jacob	1345	M
	Nkilongo	Hans Steffen	1845	M
	Siphofaneni	Gamedze Gundwane	3139	M
Lugongolweni	Souza Joseph	3155	M	
Sithobela	Mamba Magobetana	2351	M	

MANZINI				
	Kukhanyeni	Mabuza Bongani	2104	M
	Kwaluseni	Dlamini Makhosi	2890	M
	Lamgabhi	Jele Sicelo	1593	M
	Lobamba Lomdzala	Khumalo Marwick	2457	M
	Ludzeludze	Sithole Bambumuti	2130	M
	Mafutseni	Gamedze Christopher		M
	Mahlangatsha	Hlophe Bongani C.	2034	M

	<b>Mangcongco</b>	Motsa Patrick		M
	<b>Manzini North</b>	Sithole Jabulani Jan	1769	M
	<b>Manzini South</b>	Nxumalo Owen	1439	M
	<b>Mhlambanyatsi</b>	Mabuza Phiwayinkhosi	821	M
	<b>Mkhiweni</b>	Dlamini Gideon City		M
	<b>Mtfongwaneni</b>	Dlamini Mjuluko Canaan	1582	M
	<b>Ngwempisi</b>	Shongwe Veli	2763	M
	<b>Nhlambeni</b>	Dlamini France		M
	<b>Ntondozi</b>	Vilakati Moses	1894	M

<b>SHISELWENI</b>	<b>Gege</b>	Malinga Mbongiseni	1536	M
	<b>Hosea</b>	Masuku Thulani	1654	M
	<b>Kubuta</b>	Mabuza Njabulo	1403	M
	<b>Maseyisini</b>	Dlamini Mduduzi Small-Joe	3241	M
	<b>Matsanjeni</b>	Mhlungu Sikiza Edward	1099	M
	<b>Mtsambama</b>	Simelane Richard Mphaya	2920	M
	<b>Ngudzeni</b>	Ngcamphalala Dumsani		M
	<b>Nkwene</b>	Dlamini Sikhumbuzo	1673	M
	<b>Sandleni</b>	Simelane James F.	2010	M
	<b>Shiselweni 1</b>	Nxumalo Mandla	1140	M
	<b>Shiselweni 2</b>	Kunene Mthokozisi	2707	M
	<b>Sigwe</b>	Ngcamphalala David	1685	M
	<b>Somntongo</b>	Nxumalo Sandile	909	M
	<b>Zombodze</b>	Thwala Titus Siphon	2052	M

## IX. COMPLAINTS AND APPEALS

Questions related to the nomination process of members of the House of Assembly should be submitted to the returning officer whose decision could be appealed to the Elections and Boundaries Commission. The decision of the EBC should be final, according to the Elections Bill 2013, and not providing for judicial review. Nevertheless, an aggrieved 19-year-old female aspiring candidate, who saw her nomination refused by the returning officer on the grounds that she was wearing pants, sought a remedy at the High Court and her nomination being reinstated one day prior to the Primary election. The High Court ordered the EBC to include her name in the ballot paper.

Two other cases regarding the nomination process are pending decision at the High Court. Members of the Ngwane National Liberatory Congress (NNLC), who attempted to be nominated on behalf of the party, submitted the two cases. Both nominations were refused by the returning officer as the national law does not provide for political parties registration and candidates can only be nominated as independent. The party is expecting the cases to be dismissed by the High Court. However, their aim is to exhaust the national remedies so that the case can be admissible at the international courts and bring international attention to the issue of political parties and freedom of association in Swaziland.

Challenges to elections results –for the elected members of the House of Assembly– may be presented to the High Court by way of petition within 21 days from the date of publication of the election results in the Gazette. After the Primary elections, around 20 complaints were filed at the Elections and Boundaries Commission. These complaints related to allegations that voters in several places cast their ballot without belonging to the chiefdom, that the voting period was not sufficient for voters to cast their ballots, and voters being ferried by candidates to polling stations. According to the EBC, all this complaints were dismissed.

Also, Jennifer Du Pont, the female candidate who claimed the chief of her chiefdoms made a statement to the community members not to vote for her because she was a widow, filed a case at the High Court seeking an order to annul the results of the Primary election and to suspend the Secondary election in her constituency due to a number of anomalies. The case was dismissed.

After the Secondary election, and at the time the EEM left the country, there were no official complaints regarding the election results.

## **X. HUMAN RIGHTS AND WOMEN PARTICIPATION**

### *a. Human Rights*

A Commission on Human Rights and Public Administration has been established in September 2009. The Commission is composed of five commissioners though, at the moment of this writing, there was no chairperson since the previous one was appointed Minister of Justice. The Commission has its offices in the same compound where parliament and the Elections and Boundaries Commission are installed, a *king's kraal*. Women cannot enter the compound wearing pants since the premises are within a royal compound. The Human Rights Commission acknowledged that the physical site of its offices may serve as deterrent for persons to look for their assistance, and have already a new office approved by the government in the capital, Mbabane, closer to the people. Since 2010, 72 complaints have been lodged with the Commission, most of these related to land disputes lodged by chiefs due to court orders evicting people from the land. Other types of complaints are related to labor issues as complainants do not have to pay to get their case through the Commission. There is no Legal Aid Board in Swaziland, what makes the access to justice by ordinary citizens very difficult. There were very few complaints related to violations of freedoms of expression, association and assembly coming from political parties. The Human Rights Commission has not yet the sufficient human resources, such as investigators and representatives in the regions, to respond to a higher number of requests from citizens. It seems the establishment of the Human Rights Commission has been more of a political maneuver by the government to please the international community than to pursue the real goal of a human rights commission.

The human rights record of Swaziland has been characterized repeatedly by Amnesty International and other human rights bodies by violations of fundamental freedoms such as the freedoms of expression, association and peaceful assembly, arbitrary arrests and excessive use of force to crush political protests, including torture and political prosecutions. These violations have been confirmed by persons who are linked to political parties in conversations with the EEM. The African Commission on Human and People's Rights adopted, in May 2012, resolution 216 on the Human Rights Situation in the Kingdom of Swaziland calling the government to respect and protect fundamental freedoms and to implement the Commission's previous decision (251/2002). The decision related to the case *Lawyers for Human Rights v Swaziland* which, despite several requests from the Commission to Swaziland to respond, the government never did it. The May resolution also calls for implementation of the recommendations contained in the report of the African Commission Mission to Swaziland, in 2006.

The recommendations of the African Union Mission of 2006 included *inter alia* requests to the government to ensure the independence of the judiciary and respect the decisions of the courts and that the constitution recognizes and complies with the provisions of the African Charter on Human and Peoples' Rights (in particular the right to assembly and association, including the right to form and belong to political parties and trade unions). It also recommended the repeal of the law on Public Order to guarantee that individuals who wish to protest would not need a permit but would rather inform the Police for the latter to provide security and the necessary logistics. Moreover, the AU Mission suggested equality before the law and more: to ensure the monarch respects the doctrine of separation of power and the rule of law as well as that power belongs to the people; ensure that the seemingly conflict between culture/customary law and positive law is harmonized to avoid confusion; encourage individual as well as group participation in the socio-economic and political governance of the country; allow civil society organizations including the Swaziland Law Society access to prisons and other places of detention; abolish the death penalty; ensure that the Police is properly trained to ensure respect for the rights of individuals in an open and pluralistic society; take steps to ratify the protocol on the rights of women in Africa and the protocol on the establishment of an African Court on human and peoples' rights. Since the publication of the African Commission mission recommendations in 2006 very little seemed to have been done. The government has continuously ignored the resolutions of the African Commission in the same manner as it keeps ignoring its duty to bring into national legislation the fundamental human rights provisions contained in international treaties.

#### *b. Women Participation*

Despite the international commitments of Swaziland regarding women's rights and empowerment of women, interlocutors usually refer that women are considered a "second class citizen." Traditional customary laws do not provide women with the same rights, if any rights at all. Polygamy is allowed in the country, with an example coming from the King. The King has 13 wives and may choose, as part of tradition, a new wife from the participants of the yearly Reed Festival, when young women parade in traditional attire for the Queen Mother and the King.

Although being legal, divorce initiated by women continues to be a taboo and the King has demonstrated his disapproval on his speeches. Only in March 2013, the High Court sitting as Constitutional Court issued a decision on women's right to sue and being sued without the assistance of their husbands, nullifying the common law concept of marital power and considering it unconstitutional. Swazi women have been basically denied legal personality, an inherent right of any human being that has only been corrected by a court of law in the year 2013. Swazi married women may, since March this year, sue and be sued in their own names. An example of this lack of respect for women legal personality are the cases filed by two women candidates from the Ngwane National Liberatory Congress (NNLC), who attempted to be nominated on behalf of the party and saw their nominations refused. The party shared with the EEM that the returning officer tried to dissuade the filling of the cases by calling the husbands of the aspiring candidates as this is considered a common practice. Also, during nomination period, two women faced some challenges. One candidate, Jennifer du Pont, after nomination, allegedly faced some opposition from the chief in her chieftom because she was a widow. According to customary law, widows should be in mourning for three years. The candidate was not elected in the primaries. Another female aspiring candidate saw her nomination refused by the returning officer on the grounds she was wearing pants. The High Court later reinstated her candidature; however, she also did not pass the primaries.

As a regional trend, women represent more than half of the voters with a 53 percentage. However, the number of elected women has decreased from five, in the past legislature, to only one elected female candidate this time. Curiously, women are well represented at middle and lower levels of the public service and have been the majority of election officials, although not in decision-making positions. From the five election commissioners, only one is a woman. Civil society organization's activities and messages, although making efforts for the awareness on women's rights, are always subject to the authorization and censorship of chiefs and local authorities. A good example of these obstacles is the inability of CANGO to carry out voter education. In a small country such as Swaziland, with more than a million inhabitants only, awareness on women's rights and gender equality followed by proper legislation changing cultural behavior would not be difficult to implement if there was political will.

## XI. DOMESTIC AND INTERNATIONAL OBSERVERS

The 2013 electoral legislation regulates the rights and duties of national and international election observers. CANGO, the Coordinating Assembly of Non-Governmental Organizations, is the umbrella organisation carrying out electoral observation. It comprises 60 NGOs. Although CANGO received funding from UNDP, Canada, and USAID for civic education activities, it was hampered in carrying out its activities for lacking a specific permission from EBC. There were suspicions that the messages CANGO was trying to pass on were not in agreement with EBC expectations. CANGO mobilized 40 observers with basic training provided by the SADC Election Network during the Primary elections, and deployed 70 observers for the Secondary election. CANGO considered that "the elections took place under peaceful and fairly efficient logistical conditions. These conditions included the transparent counting of all the votes including special votes." Also, CANGO noted the lack of cooperation from the election officials and proper voter education.

More than 150 observers from international organizations were deployed by the Southern Africa Development Commission (SADC), African Union, the Commonwealth Secretariat, the Common Market for Eastern and Southern Africa (COMESA) and the Commonwealth Parliamentary Association (CPA). All observation missions considered the elections in general well organized, although always highlighting the issue of participation of political parties.

## XII. MEDIA

The media enjoys freedom when covering the electoral process but faces some restrictions when dealing with other issues, according to the Media Institute of Southern Africa (MISA). The country has two newspapers, one privately owned (*Times of Swaziland*) and the other owned by a parastatal corporation (*The Observer*). The main means of communication in the country, capable of reaching remote areas, is radio and is controlled by the government. *Swazi Radio* and *Swazi TV* both air programs in English and Swati, the official languages. There is a private TV channel, *Channel Swazi*, and a strong community radio (*Voice of the Church*) which, however, doesn't include news in its programming. Since there was no campaigning in the Primary, the media restricted its coverage to inform about the electoral process but some public officials also candidates themselves in the current elections benefited from incumbency by being exposed in the media during their official activities. During the campaign for the Secondary, there were a few individual paid ads by candidates and a broad coverage of the election preparations and of the candidates, supported by polls and op-eds. A recent report by Freedom House warned that official censorship and self-censorship still coexist in the private media on political and royal matters. The report, excerpts of which were published by the *Times*, also stressed that low pay and insufficient training affected at times the quality of reporting.

### XIII. TECHNICAL ASSISTANCE

Besides the projects included in the 10<sup>th</sup> European Development Fund (EDF) targeting, among other areas, education, health and capacity building for the government, the European Union provided financial support, around €300,000 to a civic education and women empowerment project carried out by the Cooperation for the Development of Emerging Countries (COSPE), an Italian NGO. The project concentrated its activities on the empowerment of women and their political participation at local level.

The EEM does not recommend any electoral assistance while the government continues to fail in respecting its international obligations and commitments. Additionally, the EBC and the government do not need assistance in the technical aspects of election management since they have the best mechanisms already in place (e.g. voters' registration) and enough capability to run an electoral process.

### XIV. RECOMMENDATIONS

The following recommendations to improve the electoral process and related areas are offered for consideration and action by the Elections and Boundaries Commission and Swazi authorities. The EEM also suggests that these activities and reforms be adopted during the current electoral cycle and before the next elections.

#### Election Administration

1. Swaziland has a modern system of voters' registration that allows the quick identification of voters, exposes double registrations and avoids double-voting. Therefore, the use of indelible ink is redundant and unnecessary besides being an extra financial burden. The EBC should consider its elimination in future electoral processes.
2. The registration of voters is carried out at chiefdom level and it is at that level a person foreign to the chiefdom should be identified and registered or not. Once this person is registered s/he has the right to vote at that chiefdom. The EBC should enforce this right and avoid that election officials impede legally registered voters to vote as consequence of *ad hoc* decisions on election day even if such voters admit they were strangers to the chiefdom.
3. The EBC should be the authority, and not local officials, to decide on whether an election should be extended beyond the opening hours of the polling station in order to avoid confusion and arbitrary decisions.
4. The EBC should consider the establishment of new polling stations to avoid the overcrowding and huge lines observed during the Primary election, and in some polling stations during the Secondary election. Since polling stations are generally located in schools, the establishment of new polling stations on the same location would not create any logistical or financial constraints besides, in some cases, the costs of hiring extra polling staff. The schools might become polling centers and such arrangement would certainly eliminate huge lines and overcrowding inside and outside the polling stations.
5. The EBC should consider the adoption of strict procedures to guide the voting and, especially, the counting processes. The voting cycle, and specifically the issuing of ballots to voters, should follow a uniform procedure and not rely on the discretion of each presiding officer. Counting

should follow strict procedures to avoid waste of time with arguments between election officials and candidates about the sequence of counting. As a consequence, counting during the Secondary election started in general more than three hours after closing of voting and proceeded overnight.

6. Polling stations should be set up with a design that guarantees the secrecy of vote in the voting booth and allow for the identification of those voters who might be involved in irregular voting. There is a concern that voters might be also using the secrecy of the voting booth to benefit from vote-buying (e.g. using cell phones to photograph their ballots) and that would justify the voting booth being against a wall to allow election officials to pinpoint irregularities. A change in the design of the voting booth, just allowing for the hands to be hidden, might eliminate such irregularity.
7. Although the EBC has announced with considerable speed the winners of both elections, it has not up to date published the official numbers of the Primary and Secondary elections. It is part of an electoral process the knowledge of how many voters participated in the election vis-à-vis the number of registered voters and the number of spoilt, invalid and blank votes. The lack of such information feeds the speculations that the EBC might be avoiding such announcements to evade contradicting the King's perception of a highly participative electorate.

### Legal Framework

8. A clear separation of executive, legislative and judicial powers should be adopted by Swaziland, through a constitutional review, in order to improve the democratization process in the country and ensure that the parliament is the owner of the legislative power and to assure the independence of the judiciary and the compliance with its decisions.
9. Freedom of association should be respected as provided in Swaziland's international commitments by allowing the participation of political parties in the electoral processes as well as the adoption of national legislation for registration of political parties. The existence and participation in elections of political parties can take place, as in other First-Past-the-Post systems, without affecting the current *Tinkhundla*, or monarchial democracy, electoral system.
10. Consider a review of the electoral laws to eliminate the provisions that raise issues over their constitutionality. These include clause 89 of the Elections Bill dealing with criminal proceedings against a candidate or a person who intends to be a candidate, and clause 9 (3) of the Elections Expenses Bill that provides for the right to search any premise without a search warrant or notice in relation to the inspection of candidates' expenses. Also, review clause 31 (8) (d) of the Elections Bill determining the disqualification of a candidate if convicted to a sentence of imprisonment for more than six months, during the previous 10 years before elections. It largely exceeds what is foreseen in section 97 (b) of the Constitution. Lastly, consider the elimination of the requirement that ballot papers contain serial numbers and that polling officials write the registration number of the voter in the counterfoil of the ballot papers to avoid compromising the principle of secrecy of the vote.

### *Women Participation*

11. The development and implementation of programs, supported by donors, for the promotion of women participation in public life and on elections, focusing on capacity-building, would prepare female participation for future electoral processes.

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## ANNEX

### INTERNATIONAL PRINCIPLES FOR DEMOCRATIC ELECTIONS

Democratic benchmarks for good electoral practice mainly revolve around principles as enshrined in Article 25 of the International Covenant for Civil and Political Rights (ICCPR) of 1966: *periodic elections; universal and equal suffrage; right to stand for public office; right to vote; secret ballot; genuine elections allowing for the free expression of the will of the people*. In practical terms, those principles translate into some overarching criteria for good electoral practice. These are:

- Not to exclude any significant sector of the electorate or potential contenders and not to tamper with electoral procedures.
- Fair legal provisions are required as much as good will and neutrality in law enforcement and implementation by public authorities, both electoral and others.
- Electoral management bodies in charge of elections should perform in a neutral, professional and transparent manner. Independent of how the electoral bodies may be staffed - whether on a political party basis, by independent professionals or a mix of both - in all cases they should deliver as non-partisan, efficient and transparent authorities. As main elements of good practice, their work should include devising a strategic, managerial and operational plan for the elections, conducting proper recruitment and training of electoral officials, producing adequate voting materials, conducting public outreach for the information of voters, and ensuring effective control of logistics for registration, voting and counting.
- Transparency requirements imply that the decision making process, production of electoral materials, the logistics for registration, voting and counting is open to scrutiny of observers, especially political parties and candidates agents) with whom the electoral authorities

- should systematically relate to as the main players in the electoral game.
- A secret ballot must allow for the free expression of the will of the people. Secrecy of the vote, as a matter of principle, goes far beyond the idea of the screen for anonymity at the polling station. It includes the need for an absence of intimidation and threats on the voters prior to showing up at the voting booth. Genuine elections require a level playing field where a real possibility for choice is provided to voters.
  - Equitable access to resources for competition should not be denied and the authorities should remove at least main obstacles for competition. If fair conditions are given for choice and competition, then the will of the people can be expected to emerge freely and effectively.

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